

**CHAPTER - VII**  
**A CASE FOR SEPARATE**  
**LEGISLATIVE ENACTMENTS FOR**  
**DOMESTIC VIOLENCE**

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## **A CASE FOR SEPARATE LEGISLATIVE ENACTMENT FOR DOMESTIC VIOLENCE**

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Women serves man with sincerity as mother, wife, friend, guide, companion and nurse, yet she suffers all forms of violation and atrocities of all kind are instituted against her. Women have been victims of violence and exploitation in this male dominated society. The phenomenon of violence against women is age old and existed in this society since ancient period. She is subjected to violence not only outside her home but also inside it. Marriage which meant to be a social security for women has become society's social institution wherein women face various forms of discrimination in the hands of the person whom they trust and love. Each year more than 10 million married women experience violent episodes during which their husbands and in-laws try to inflict pain and serious injuries on their person.<sup>1</sup> Incidents show that she is stamped, strangled, and burned with matches, cigarettes and hot irons. She is kicked, beaten up by her husband, sexually abused by her relatives and often denied the minimum requirement for her existence. The concept of the primitive period still continues to prevail in the patriarchal society that woman still is a commodity which a man possesses; she is the property of the man and should be under his control. Hence, men can treat her as he wish. She is thus, subjected to violence even inside her house. The National Family Health Survey (NFHS) carried out in 29 states during

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1. Subhash Chandra Singh, *Violence Against Women: A Case Against Patriarchy*, Cr LJ 2001 J 105 at 106.

2005-2006 and released in 2007 reveals over 37 percent married women in the country are victims of physical or sexual abuse by their husbands. As per the report of United Nation Population Fund as many as 70% of married women between the ages of 15-48 suffer domestic violence. A nationwide survey by the International Centre for Women's Research shows that 52% of women suffer at least one incident of physical or psychological violence in their lifetime. And as per UNICEF report 2006 around 69 million children witness violence within homes in India.<sup>2</sup> Thus, Sydney Brandson has rightly pointed out that "*Statistically it is safer to be on streets after dark with a stranger than at home in the bosom of one's family, for it is there that accident, murder and violence are likely to occur.*"<sup>3</sup>

The issue relating to domestic violence has become a major issue all over the world. A debate over the issues relating to domestic violence is going on since the late sixties and has gained its momentum as a result of the increase in domestic violence. Domestic violence is a universal problem; however, the issue of domestic violence in India came into focus in 1980's as a result of spread of mass media which covered incidents of torture of the brides, dowry deaths, female infanticide, sexual abuse etc. It is one of the main causes of the Women Movement all over the world. Women's Movement in India is basically revolved around the domestic violence against women. Every day we come across reports in newspapers and television regarding violence on women within the family. Despite the presence of a large number of legislations regarding the protection of women, violence against women has increased substantially. Large number of cases involving domestic violence i.e. violence within the family are

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2. <http://www.wecanendvaw.org/india%20detail.htm>[Visited on 14<sup>th</sup> Feb' 2008].

3. Sydney Brandon in M. Borland (Ed): *Violence in family*, (1976) 1. [Quoted in Mamta Rao, *Law Relating to Women & Children*, Eastern Book Company, Lucknow, 2005, P. 152.

coming to light almost everyday due to the vast expansion of electronic media.<sup>4</sup> The existing law was not sufficient to include the domestic violence of all kinds as they are inadequate to deal the domestic relationship. Thus, the need for a new legislation to understand domestic violence, covering all forms of domestic violence and penalties for violation of the provisions of the Act was found important. As a result of this the Parliament ultimately passed the Protection of Women from Domestic Violence Act 2005 to address the problems of domestic violence faced by women in India.

### **DOMESTIC VIOLENCE: DEFINITIONAL ASPECT:-**

Women are subjected to the violence in the domestic front since a very long period but it came into light only after the encroachment of the electronic media in our households. Unlike the other crimes domestic violence occurs within the four walls of the house and the strangers or the outsiders can't have access to what is going inside the house. This makes it more dangerous for the women who are facing this form of violence. It is thus essential to determine what we mean by domestic violence.

One of the toughest tasks is to define domestic violence. In order to know what constitutes domestic violence it is essential for us to know what violence is. Violence is an act of aggression that crosses the boundary of other person's autonomy and identity. In other words it is a coercive instrument by which a person asserts his will over another, to prove or feel a sense of power. Domestic violence against women is systemic and structural, a mechanism of patriarchal control of women that is built on male superiority and female inferiority, sex stereotyped roles and expectations and economic, social and political predominance of men and dependency of women. Domestic Violence is a

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4. Shyamal Kumar Mukherjee, *Protection of Women From Domestic Violence Act 2005-Need for Amendment*, Cr LJ, 2008, Journal Section, J 207.

gender specific offence.<sup>5</sup> In simple words domestic violence means an abusive, violent, coercive, forceful, or threatening act or word inflicted by one member of a family or household on another. It occurs when a family member tries to physically or psychologically dominate or harm the other. It may also include behavioural patterns that are characterized by the misuse of power and control by one person over the other in an intimate relationship. It includes violence by an intimate partner including a cohabiting partner and by other family members. The term 'domestic' is related to the relationships exist between the people involved and not where the violence is committed.<sup>6</sup> The domestic violence occurs when a family member, partner, or ex-partner attempts to physically or psychologically dominate the other. Domestic violence differs from other forms of violence because it occurs within an ongoing relationship; which is expected to be productive, supportive and nurturing.

Domestic violence against women can occur within or beyond the household. Similarly, we can observe that the domestic violence against women at their natal home and at their matrimonial/conjugal home. The Indian society prefers the son which endangers the existence of daughters in such households, thus, in this light the girl child is subjected to violence such as infanticide and foeticide; abandonment of the girl child; child abuse and incest; child labour; deprivation of basic needs i.e. ignorance of health, medical care, food, education etc. The woman is subjected to violence at her matrimonial/conjugal home which includes sexual abuse; wife battering; dowry demand; cruelty; forced to do undignified jobs.

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5. Ashirbani Dutta, *Domestic Violence as Human Rights Violation: A Reality that Bites*, Cr LJ, 2005, Journal Section, J 25.

6. Vijendra Kumar, *Law Relating to Domestic Violence*, S. Gogia & Company, Hyderabad, 2007, P.2.

The Protection of Women from Domestic Violence Act defines 'domestic violence' as any act or omission or commission or conduct of the following shall constitute domestic violence in case it:-

- (a) harms or injures or endangers the health, safety, life, limb or well being, whether mental or physical of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal or emotional abuse and economic abuse;
- (b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or any property or valuable security;
- (c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b);
- (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.<sup>7</sup>

The Act, thus, gives a very comprehensive definition of domestic violence.

### **DOMESTIC VIOLENCE: A CYCLE OF VIOLENCE:-**

Domestic violence differs from other forms of violence as the tension and disagreements in domestic violence differs from the other forms of violence. In other forms of violence incidents of abuse and violence generally repeat themselves in a fairly clear pattern. However, the victims of domestic violence do not live in situations of continual abuse or the abuse and violence they face do not have a particular pattern. Instead in case of domestic violence there is are periods in violence cycle when abuse is not present. The cycle of domestic violence is made up of three repeating phases:

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7. Section 3, *The Protection of Women from Domestic Violence Act, 2005*.

- (i) **Tension Building:** - It is the first phase of violence. During this phase the abuser engages in increasingly abusive behaviours such as calling names, constant criticism, harassment, public embarrassment and humiliation, and minor battering incidents. The victim reacts to this behaviour in a typical fashion by rationalizing and denying the behaviour and not recognizing that this represents the beginning of a cycle. This denial and rationalization reinforces the perpetrator's need for power and control and the victim often reacts by withdrawing and avoiding contact with the perpetrator so as to not 'set him or her off.'<sup>8</sup>
- (ii) **Battering incident:** - The second phase of violence is the battering incident which increases to a level above minor battering. This phase represents an act of physical, emotional, or sexual violence against the victim, often accompanied by severe verbal abuse. This phase is of very short duration but the physical and emotional injuries inflicted by the batterer or abuser may take a lifetime to heal. The abuser does not understand or acknowledge his/her anger during this phase, and the victim tends to blame herself/himself for provoking the abusive act. The victim usually minimizes the abuse and the perpetrator quickly forgets what happened.<sup>9</sup>
- (iii) **Honeymoon Stage:** - This is the third state wherein the victim often responds with anger or threats after the abuser abuses and the abuser begins to feel that he/she must apologize and act lovingly to the victim. In this stage the perpetrator gives gifts, flowers, compliments, promises to change, and other non-threatening behaviour to the victim. This

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8. <http://ohcm.gsfc.nasa.gov/family/domestic/whatis.htm> [Visited on 28th April 2008].

9. *Ibid.*

behaviour encourages the victim to stay in relationship and strengthens his/her sense of hope for positive change.<sup>10</sup>

Unfortunately, the cycle of violence is usually continuous. The perpetrator again go to Phase one i.e. without any change on behalf of the victim Phase three leads to Phase one and the cycle continues.

### **FORMS OF DOMESTIC VIOLENCE: -**

Domestic violence is a pattern of violent, abusive and coercive behaviour used by one partner in a relationship to gain and maintain power and control over another person. It is not a marital conflict, mutual abuse, a lover's quarrel or a private family matter. It consists of repeated, severe beatings and control. Various research shows that domestic violence exist in the following forms which has also been provided under the Protection of Women from Domestic Violence Act, 2005<sup>11</sup>: -

- (a) **Physical Assault/Abuse:** - "Physical abuse" means any act or conducts which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force. It consists of any direct physical violence ranging from unwanted physical contact (rape) to murder. It also consists of indirect physical violence, including destruction of objects, striking or throwing objects near the victim, causing harm. It includes shoving, pushing, restraining, hitting or kicking. Physical assaults may occur frequently or infrequently, but in many cases they tend to escalate in severity and frequency overtime.

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10. *Ibid.*

11. Explanation to Section 3, *The Protection of Women from Domestic Violence Act, 2005.*

**(b) Sexual Assault/Abuse:** - "Sexual Abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman. It means any time one partner forces sexual acts which are unwanted or declined by the other partner. This includes rape and instances of coerced sex through threats, intimidation or physical force, unwanted sexual acts and sexual assaults. It consists of incest also. The sexual violence and incest mentioned under this form can be use of physical force to compel a person to engage in a sexual act against the will, whether or not the act is completed; attempted or completed sex act involving a person who is unable to understand the nature or condition of the act unable to decline participation, or unable to communicate unwillingness to engage in the sexual act, e.g., because of underage, immaturity, illness, disability, or the influence of alcohol or other drugs, because of intimidation or pressure, or because of seduction and submission; and abusive sexual contact.

**(c) Verbal and emotional Assault/Abuse:** - "Verbal and emotional abuse" includes insults, ridicule, humiliation, calling names and insults or ridicule specially with regard to not having a child or a male child; and repeated threats to cause physical pain to any person in whom the aggrieved person is interested. It, thus, consists of verbal threats of physical violence to the victim, the self or others, including children, ranging from explicit, detailed and impending to implicit and vague as to both content and time frame. Non verbal threats like gestures, facial expressions and body postures are also included. It is also know as psychological assault/abuse as the abuser controls what the victim can and cannot do, it also include withholding information from the victim, deliberately doing something to make the

victim feel diminished or embarrassed, isolating the victim from friends and family.

**(d) Economic Assault/Abuse:** - “Economic Abuse” means deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a Court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, *stridhan*, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance; disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her *stridhan* or any other property jointly or separately held by the aggrieved person; and prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household. Thus, it means controlling the victim’s money and other economic resources. Usually, this involves putting the victim on a strict allowance, withholding money at will and forcing the victim to beg for the money until the abuser gives them some money. It is common for the victim to receive less money as the abuse continues. This also includes preventing the victim from finishing education or obtaining employment, or intentionally squandering or misusing communal resources.

## **THEORIES OF DOMESTIC VIOLENCE: -**

In order to understand the nature and extent of domestic violence against women, to identify the major social factors associated with domestic violence and to suggest measures to control and minimize the occurrence various theories has been developed by various scholars. There are some of the theories of domestic violence which help us explain the causes of domestic violence and they are as follows: -

**(a) Resource theory:** - The resource theory was suggested by William Goode in 1971. As per this theory the domestic violence rests upon the notion that the decision-making power in family relationship depends to a large extent on the value of resources each person brings to the relationship. It means that women who are dependent on the spouse for economic well being does not have any say in the matter of the family. The husband decides for the family. This theory is also called the Status Inconsistency Theory. It suggests that violence against women by men is an inevitable result of status inequalities. A man perceives his status consistent with his traditional power in the family, and uses it to inflict violence over the women.<sup>12</sup> It also means that dependency gives women fewer options and few resources to help them cope with or change their spouse behaviour especially if she has children to take care of, as it increases the financial burden and makes it difficult for women to leave her matrimonial home.

**(b) Social Control Theory:** - As per this theory there is a general perception in our mind that familial relationship can not be broken off easily and it is due to this reason the family members who are victims of domestic

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12. Vijender Kumar, *Law Relating to Domestic Violence*, S. Gogia & Company, Hyderabad, 2007, P 7.

violence in their daily interaction with the members who inflict such injuries resort to violence rather than break up their ties with such member of their family.

**(c) Patriarchal Perspective of Domestic Violence:** - The society in our country is a patriarchal society. Women tend to be victim of domestic violence due to this patriarchal form of family as in such families the males are a dominant force in the family. Thus, patriarchal society is one of the primary causes of never ending violence over the women.

**(d) Social stress and learning Theory:** - Stress is one of the reasons of domestic violence. With the increased pressures a person living in a family may feel stress due to inadequate finances or other problems which may further increase tensions. Although stress does not always gives rise to violence but may be one of the ways that some people respond to stress. Due to increased stress and conflicts about finances and other aspects the person resort to violent behaviour to express his helplessness to control his financial status and violent behaviour he want to express his masculinity. Through the violent behaviour he wants to maintain his control over the other spouse or members of the family. It also suggests that the person who in his young age has observed or gone through domestic violence resort to domestic violence or violent behaviour against his spouse, he is likely to imitate such behaviour in his married life too. Studies have revealed that the impact of witnessing parental violence in childhood is a stronger prediction of violence in adulthood.<sup>13</sup> Hence, this theory is also known as social learning theory. Thus, the behaviour of such person will be to learn

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13. S. Sanyal, *Causes and Consequences of Domestic Violence*, in Nirmal Kanti Chakrabarti and Shachi Chakrabarti's, *Gender Justice*, R. Cambay & Company Pvt. Ltd., 2006, P. 137.

form their childhood and likely to continue it. Often violence is transmitted from one generation to another more in a cyclic manner. The National Family Health Survey (NFHS-3) has revealed that women whose mothers were beaten by their fathers were more likely to be in an abusive marriage themselves. 33% of women whose mothers experienced spousal violence had themselves experienced spousal physical or sexual violence, compared with the percent of women whose mothers did not experience spousal violence.<sup>14</sup>

- (e) **Symbolic Interaction Theory:** - It explores the different meanings of violence and the consequences of such meanings in a situational setting. This theory suggests that domestic violence is a result of interactional processes that exist within the society.<sup>15</sup>

Recently, a new conceptual framework called Dependency Framework Theory<sup>16</sup> has been evolved and is being used to understand the phenomenon of domestic violence against women. The term “dependency” means the conditions over which the victim of domestic violence does not have any control, such as economic, social or physical etc.

## **CAUSES OF DOMESTIC VIOLENCE: -**

Violence in any form is always disliked and disapproved by a stable individual. It is the outcome of aggression and hostility which one holds towards another person. Domestic violence is one such form of violence which has

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14. The Hindu, November 10, 2008, P.8.

15. *Supra* 13.

16. A Research Study Report, “*A Study of the Nature, Extent, Incidence and Impact of Domestic Violence Against Women in the States of Andhra Pradesh, Chattisgarh, Gujarat, Madhya Pradesh and Maharashtra*”, Yugantar Education Society, 2000, p. 34. [Quoted in Vijender Kumar, *Law Relating to Domestic Violence*, S. Gogia & Company, Hyderabad, 2007, p. 8].

become a global phenomenon which not only inflicts injury upon the victim and deprives them of their right to live with human dignity but also disturbs the stability of a family. The various theories mentioned above helps us to understand the various causes of domestic violence, hence, with the help of the theories we come to a conclusion that there is no single factor which results in domestic violence or which explains that why men assault women and cause the incidences of domestic violence. It is in fact a result of many inter-related factors having different social and cultural contexts. The factors may be social, cultural, and psychological or which is closely related to the family. Following are the main causes which gives rise to domestic violence: -

- (i) In case of spousal abuse there is no one factor which leads to domestic violence. Many factors joined together gives rise to spousal abuse. One of the factor which leads to spousal abuse is the age of both the offender and the victim i.e. the age difference between them; low income which results in financial problems; growing up in a violent family; alcohol addiction or substance abuse, unemployment; sexual difficulties; low job satisfaction etc.
- (ii) Social and cultural influences upon individuals contribute to domestic violence. Mostly the victims of domestic violence are women and girl child. The reason for this is that most societies are patriarchal society wherein women have a definite role to play. The men are the bread earners which makes their position in the family secured and strong. The men due to his superiority in the family as well as the society think himself to be invincible. Even the traditional laws and customs of the society permit them to punish their wives. This is the result of patriarchy system of our society. The patriarchal system also contributes

to the lower economic status of women which makes them dependent on their husbands. The dependency of women upon their husband further increases the abusive attitude of the husband towards his wife as it limits a victim's ability to leave the abusive relationship.

- (iii) Another incident which is causing the incidence of domestic violence is the age old cultural and religious ideology that is women are the property of their husband and by beating their wives the husbands are chastising their wives.
- (iv) The men in the family control the property and even the ownership rights of women have always been put in the backseat. This concept of ownership in turn legitimizes control over the woman's sexuality. The personal laws in India too deny woman her rights to property and these have been used as tools for dominating women by the men.
- (v) The personal laws in India have always been biased. Women in every religion have always been downtrodden. They never favoured the rights and interests of women. For example; the muslim women in India still does not have right to divorces, lack of maintenance norms, property rights, custody of children etc. Similarly, the Hindu personal law has never given women a chance to be at par with the men.
- (vi) Isolation of women in their families and communities is also one of the important factors that contribute to increased violence especially in situations where the women have little access to family or local organizations.
- (vii) The social evils such dowry system which is still prevalent in India among various castes and classes of people still after the legislation against it, is the sad picture of the society wherein due to non fulfillment

of dowry amount results in dowry deaths and the brides suffering from cruelty at the husbands.

- (viii) Daughters in a family are seen as burdens. This is another social factor which increases the incidence of domestic violence in our society. This has given birth to social evils such as female infanticide and foeticide.
- (ix) Lack of support from the maternal home makes women facing domestic violence vulnerable and the abuser becomes more bold and abusive as he knows that no one will help the victim.
- (x) Religion too has played a vital role in domestic violence as the religions which are prevalent in India lays down certain roles which have to be played by both the male and female in the society and it is very clear that in most of the religion the women are dominated by their men. She leads a life of dominance. She is dominated from all sides and spends her life living with such domination.

### **EFFECTS OF DOMESTIC VIOLENCE:-**

Women who are being subjected to domestic violence often do not leave the troubled relationship and continues to suffer at the hands of her perpetrator. She simply resents and thinks that what she got is what she deserved. There are some women who want to preserve the marriage as their status outside it is marginal. Most of the women in India are not educated and has poor opportunities of finding a livelihood, some fear that if they leave their matrimonial home they will not have any shelter as even the maternal family will resent her decision to leave her husband. To top it all there is always fear of unwanted attentions from men in the society if she leaves her matrimonial home. She fears of losing custody of her children and hence can be deprived of even meeting with them. All these fear stops a woman from approaching a legal solution to her

problem. However, such women if continue to live in the environment wherein she is subjected to domestic violence every now and then she may face certain problems and such incidence has certain effect upon her as well as the others such as children which are as follows: -

**(a) Social Impact:** - Women facing domestic violence inhibit them from playing an active role in decision making in the family and influences their participation in public activities. The Children who see gender based violence within their family has serious repercussions such as nervousness, irritation and apprehensive. Such children also perform poorly in the school. The daughters who witness the domestic violence against their mother or themselves become sexually permissive and develop hatred against men. They are more likely to attempt to commit suicide, engage in teenage prostitution, and commit sexual assault crime. Even the men who were exposed to domestic violence when they were children too gets effected by it and are more likely to commit suicide, resort to drugs and alcohol and are twice more likely to abuse their own wife than sons of non-violent parents.

**(b) Economic Impact:** - The domestic violence against women has a serious impact on the economy within the household. It leads to decreased efficiency and productivity as domestic violence constraints human development, economic growth and productivity; it operates as a drain on financial resources and undermines the viability of the family as a key unit of production.

**(c) Psychological Impact:** - Domestic violence against women not only effects a woman physically such as broken limbs, burns, disfigurement,

cuts, bruises, temporary or permanent disability, unwanted pregnancies, sexual abuse, gynecological problems, wounds, headaches, miscarriages, sexually transmitted disease etc. Due to constant violence against her she may get psychologically disturbed such as low self-esteem, compulsive behaviour, eating disorders, stress, phobia, obsessions, sexual dysfunction, emotional disability etc.

### **DOMESTIC VIOLENCE: A HUMAN RIGHT ISSUE: -**

The incidence of domestic violence against women can thus, be treated as Human Rights issues as the social, economic and psychological impact of Domestic violence clearly depict that it violates number of rights which is guaranteed to women by virtue of various national, international and regional instruments. These rights are as follows:-

- i. It violates the right to identity of the women as it reinforces and reproduces the subordination of women to men denying women her very right to a separate identity of her own.
- ii. It violates the women's right to affection which is the basic requirement for human existence.
- iii. It violates the right to peace and enriching relationship which is also the fundamental requirement by every individual.
- iv. The incidence of domestic violence denies the right to equal protection before law to the women which every human being is entitled to.
- v. It denies right to personal development by restricting the movement of women, to mix freely with the people in the society and to participate in various activities, curtails her prosperity in career or working fields, academic field, acquiring skill to develop her personality and prevents her right to personal development.

- vi. The women are denied of right to social and political participation as domestic violence subjects her to home confinement. This does not give her equal access to the public service of the country and to take part in the conduct of public affairs, including decision-making is denied.
- vii. It violates the right to freedom of expression to women as she suffers silently and due to various fears does not assert her opinion against her husband.
- viii. The incidence of domestic violence denies women the right to optimum standard of physical and mental health as unlike the other forms of violence which happens outside the domestic domain the victim of domestic violence undergoes prolonged physical and mental trauma.
- ix. The domestic violence denies women right to life and right to personal liberty and security as the victim has to face fatal consequences and is deprived of the liberty of free existence and right to security.
- x. It also deprives a woman of her right not to be subjected to torture, cruel, inhuman or degrading treatment as in domestic violence this very right is violated and women suffers not only from physical and mental problems but also moral integrity.
- xi. It denies women right to associate freely.

The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action, 1995 have acknowledged that domestic violence is undoubtedly a Human Right issue and serious deterrent to development.<sup>17</sup>

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17. Justice A.K. Sikri, *PWDV Act, 2005: Implementation & Enforcement*, Nyaya Deep, P. 61 at 66.

## **NEED FOR A NEW LAW ON DOMESTIC VIOLENCE: -**

Protection of women against the domestic violence is provided under various civil and criminal laws. When we see the civil remedies against the domestic violence there are various personal laws in India which are existing but the only relief which they provide is judicial separation or divorce. The battered wife can only sought these remedies i.e. also after repeated assaults or serious injury. Such remedy terminates the close environmental and emotional connections within which the assaultative behaviour occurred. However, if often see that women hardly opt for these remedies due to religious, cultural or economic reasons as even though she is entitled to separate residence and maintenance from her violent husband under the personal law for herself and her children, in practice the husband defaults often in payment and seeks to evade liability. The alimony amount ordered by the court for her maintenance in case of a divorce may be insufficient for her needs.<sup>18</sup> The sum becomes even meager if the husband remarries. Further the women does not opt for this remedy is the social stigma which will loom over her i.e. stigma of being a divorced woman. This stigma often becomes an obstacle in her life for example to remarry, to raise the children if she has any, to find an appropriate job, etc. Hence, the combination of such factors and eventualities coerce women to desist from seeking a divorce and instead endure the physical violence from their husbands.<sup>19</sup> And with respect to the Tort actions between spouses, they are not popular especially in India.

There are various provisions under the criminal law in India which grants remedies to the battered wife. Under the Indian Penal Code there are provisions which address the issues of domestic violence. Section 498-A was introduced in 1983 which is significant in bringing domestic violence out of the

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18. See S.24 under *the Hindu Marriage Act, 1955*; S.18 and S.20 of *the Hindu Adoptions and Maintenance Act, 1956*; and S. 125 of *the Code of Criminal Procedure, 1973*.

19. M.V. Sankaran, *Intra-Family Violence and the Law*, IBR Vol 13(1): 1996, P. 93.

closet, but this section specifically deals with dowry demands and ignores the other factors of domestic violence. Section 304B too deals with dowry death. Besides these the Parliament also enacted the Dowry Prohibition Act, 1961, which too deals with demand of dowry. Hence, the protection of women under these criminal laws only dealt with domestic violence wherein the women has to suffer torture or is battered for more demand of dowry. These legislations has in fact ignored the fact that there are other forms of violence also which a women faces in her domestic life, such as infanticide, foeticide, marital rape, sexual abuse, wife beating etc wherein there is no demand of dowry yet she is exposed to violence in her domestic life. Moreover, in these cases the women are reluctant to file a case against her husband due to fear of breakdown of her marriage plus she does not want to constraint herself from the legal proceeding which it requires. The roles of the police in such cases are also disputable as the general conception is that it is the matter between husband and wife which will be solved with time.

It can be said that the civil and criminal laws are not enough to deal with the everyday domestic violence in the lives of women because the domestic violence is the kind of violence which women faces in their private domain. No doubt the criminal laws and civil laws are effective in providing protection to women in public domain but when we talk about the violence in private domain their exist a lacuna in the capacity of the legal system to deal with the problem of domestic violence. Another thing which must be kept in mind is that domestic violence does not consist of violence among the marital partners but it covers even the children, aged parents, co-habitants and in-laws among other relationship. Hence, the issues such a marital rape, child sexual abuse or incest, female infanticide and foeticide, wife beating etc are not covered by the criminal and civil law and even if it is covered it is not sufficient. There is thus, a huge gap

in our legal system. These elements give rise to the need for a separate legislation on domestic violence.

## **THE PROTECTION OF WOMEN AGAINST DOMESTIC VIOLENCE ACT, 2005: AN OVERVIEW: -**

The existence of domestic violence in the society has been acknowledged in the Vienna Accord of 1994 and the Beijing Platform of Action 1995. The United Nations too recommended the intervention of the State to protect women against violence of any kind especially the violence which occurs at home. Women's movement in India has been campaigning for the elimination of violence against women for the past few decades. With regards to this movement many legislations for protecting the rights of women and to curb violence against women have passed and to some extent all these legislations have been successful in curbing the respective violence against women. Although these legislations have limited the violence to some extent but with regards to everyday domestic violence faced by women these legislations were silent. Hence there was a need to legislate the domestic violence in India.

### **(A) HISTORICAL BACKGROUND OF THE ACT: -**

The women's groups in India since the early eighties were campaigning to bring out an effective legislation to counter domestic violence. In 1992, Lawyer's Collective drafted and circulated a Bill on domestic violence, which was widely circulated amongst women's groups and organizations including the National Commission for Women. In 1994, NCW came out with its draft Bill on domestic violence which was vehemently criticized by women's

organizations.<sup>20</sup> Hence, in 2001, the Lawyer's Collective formulated the "Domestic Violence Against Women (Prevention) Bill". Several aspects of violence against women and girls within the family was taken into consideration after nation-wide consultations with many women's group and the Bill propose a mechanism for women to approach the court for a protection order to prevent further violence and ensure that they do not have to leave their home. The Bill was given to the government for consideration.

The Government of India circulated another bill in December 2001 named "Protection from Domestic Violence Bill, 2001." However, due to terror attack on Indian Parliament on 13 December 2001 the Bill could not be introduced. Finally the Government of India introduced the Protection from Domestic Violence Bill No. 12 of 2002 in the Lok Sabha on 8<sup>th</sup> March 2002. Again a Bill was drafted by the Government with the change in its name i.e. the Protection of Women from Domestic Violence Bill, 2005. It was passed by the Lok Sabha on 24<sup>th</sup> August, 2005 and the Rajya Sabha on 29<sup>th</sup> August, 2005. It received the assent of the President of India on 13<sup>th</sup> September, 2005 and came on the Statute Book as "the Protection of women from Domestic Violence Act, 2005." It came into force on 26<sup>th</sup> October, 2006. The passing of the much awaited Protection of Women from Domestic Violence Act, 2005 represents a major victory for women's right in India.<sup>21</sup> This landmark judgement protects women whether married or unmarried, against the abuse and threats of their husbands, partners or other male members of their family.

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20. Ashirbani Dutta, *Domestic Violence as Human Rights Violation: A Reality that Bites*, Cr LJ 2005 J 25 at 29.

21. Minal M. Bapat, *Protection of Women from Domestic Violence Act, 2005: A New Direction to ensure Women's safety in the home*, Cri LJ, 2007, J 175.

## **(B) STATEMENT OF OBJECTS AND REASONS OF THE ACT:-**

Domestic violence is one of the human rights issues which must be addressed as it is serious deterrent to development. Women at home faces physical as well as mental violence at the hands of the men folks and the kind of physical violence they face are not necessarily confined to homicidal deaths by way of stabbing, strangulation or setting them afire. The domestic violence can originate from minor offences such as pulling hair, pinching, pushing, hitting, throwing things, abuses etc. Ignoring these minor incidence may lead to fatal form of violence. All the international instruments speak about protection of women from all kinds of violence especially the ones which occur within the family. Although the domestic violence was in existence since a long period but it remained invisible in the public domain due to the factors which are already discussed above. Following are the statement of Objects and reasons of the Act: -

- (1) Domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General Recommendation No. XII (1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family.
- (2) The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under section 498A of the Indian Penal Code. The civil law does not however address this phenomenon in its entirety.

(3) It is, therefore, proposed to enact a law keeping in view the rights guaranteed under articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.

(4) The Bill, *inter alia*, seeks to provide for the following: -

- (i) It covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage or adoption. In addition, relationships with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to legal protection under the proposed legislation. However, whereas the Bill enables the wife or the female living in a relationship in the nature of marriage to file a complaint under the proposed enactment against any relative of the husband or the male partner, it does not enable any female relative of the husband or the male partner to file a complaint against the wife or the female partner.
- (ii) It defines the expression “domestic violence” to include actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.
- (iii) It provides for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial

home or shared household, whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate.

- (iv) It empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence.
- (v) It provides for appointment of Protection Officers and registration of non-governmental organizations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe shelter, etc.

(5) The Bill seeks to achieve the above objects. The notes on clauses explain the various provisions contained in the Bill.

The Statement of Objects and reasons attached to the Protection of Women from Domestic Violence Act, 2005 shows that the Act intends to provide protection to women from domestic violence faced by them in their households at the hands of men.

### **(C) SALIENT FEATURES OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005: -**

The passing of this Act was a victory for the women's group who were campaigning for the protection of rights of women in their household.

The Act is a civil law remedy which seeks to address the situation of women in the household where she is continuously battered. Its main aim is to stop the violence within the household, to help the women during the intense phase of abuse, and the availability of protection orders or residence orders for stopping the violence. It also provides support mechanism as well as a tool for women to negotiate their rights from a position of equality. It not only protects married women but also women who are living in with their partners, and also children from domestic violence. At the same time the Act also creates a balance between the civil and criminal law since it allows for the simultaneous use of the existing criminal provisions. The Act is combination of civil and criminal remedies as the civil remedies is tailored to meet the circumstances of each case, criminal sanctions provide a great deterrent effect among perpetrators. Following are the main features of the Act which helps us to understand the Domestic violence even better: -

**(i) Definitions under the Act: -**

The Act provides us with some vital definitions which help us to understand the domestic violence in a better way. Section 2 of the Act provides us with some important definitions. The Act defines “*aggrieved person*” as any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent.<sup>22</sup> “*Domestic relationship*” means a relationship between the persons who live or have at any point of time lived together in a shared household when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.<sup>23</sup> The term domestic relationship has been given a very wide meaning as it includes

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22. Section 2(a), *the Protection of Women from Domestic Violence Act, 2005*

23. Section 2(f), *Ibid.*

any two persons who have lived together in a shared household at any point of time. Such persons must be related by either consanguinity or marriage. Thus, even the near relatives of the wife will be included. For example mother-in-law stays with the wife for a week and then goes back home is also covered under the Act. Another question comes up before us is that now the concept of live-in relationship which is very common in western countries is being adopted by Indians so whether they will be covered under the domestic relationship or not? Generally we understand domestic relationship as the relationship which has come up by the nature of marriage. The personal laws in India provide that such relationship is not recognized and the children born to them are children born out of wedlock. The relationship between such persons is called void. Even Section 125 Cr.P.C. provides that only wife, aged parents, children are entitled to receive maintenance, and do not recognize persons having illegitimate relationships entitled to maintenance except illegitimate children. Section 125(4) Cr.P.C. specifically prohibits wife living in adultery from claiming maintenance. However, the Protection of Women from Domestic Violence Act, 2005 provides that wherein people are living together as partner but their marriage can not be proved would also come under the ambit of a domestic relationship.

This question came up for consideration in *M. Pilani vs. Meenakshi*.<sup>24</sup> In this case the petitioner filed a plaint against the respondent for declaring that he and the respondent are not married to each other and for consequential injunction restraining her from representing and receiving the benefits as his wife and for costs. In the said proceeding, the respondent had taken out an application in I.A No. 2325 of 2007 for maintenance of Rs. 10,000/- per month for food, cloth, shelter and other basic necessities. The said application was filed under Section 20 read with Section 26 of the Protection of Women from

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24. AIR 2008 Mad 162.

Domestic Violence Act, 2005. The petitioner contended that he and the respondent have not lived together at any point of time and hence the respondent can not claim protection under the said Act. To this, the respondent contended that as per the petitioner has put forth in his petition that the respondent had close relationship with the petitioner. The relationship was so close that they even had sexual intercourse. The plaintiff contends that he only had consensual sex with the respondent and it is not synonymous with the living in relationship. The Supreme Court held that the Act does not contemplate that the petitioner and the respondent should live or have lived together for a particular period or for few days. From the averments made by the petitioner in his plaint and in his counter affidavit, one can infer that both of them seems to have shared household and lived together at least at the time of having sex. Hence, the respondent can claim maintenance under the said Act and their relationship will fall under the domestic relationship. The Supreme Court upheld the decision of the Family Court which has rightly granted maintenance to the respondent.

The Act also provides definition of “*shared household*” which means a household where a person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right title interest or equity and includes such a household, which belong to the joint family of which the respondent is a member irrespective of whether the respondent or the aggrieved person has any right, title, or interest in the shared-household.<sup>25</sup> The expression “*shared household*” has been given a very wide meaning under the Act. It includes the house where all the relatives have been

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25. Section 2(s), *Ibid.*

living. The Act protects and assists women facing domestic violence within the four walls of the household. Thus, from the definition of shared household it is clear that the aggrieved person has, irrespective of whether she has a title or interest, a right to reside in the shared household. She can not be removed from the house except by the procedure established by law.

The expression “*shared household*” can be explained in the case of *S.R. Batra vs. Smt. Taruna Batra*.<sup>26</sup> In this case the respondent (Taruna Batra) was married to Amit Batra on 14<sup>th</sup> April 2000. After the marriage the respondent started to live with her husband Amit Batra in the house of his father who is appellant No. 2. Amit Batra filed a divorce petition against his wife and alleged that a counterblast to the petition the respondent filed an FIR under section 406, 498A, 506 and 34 of Indian Penal Code and got her father-in-law, mother-in-law, married sister-in-law and her husband arrested by the police. They were granted bail only after 3 days. Taruna shifted to her parent’s residence because of the dispute with her husband. She alleged that later on when she tried to enter the house of the appellant No.2 she found the main entrance locked and hence she filed a suit for mandatory injunction to enable her to enter the house. However, the appellants alleged that when the respondent along with her parents forcible broke open the locks of the house. They also alleged that the respondent has been terrorizing them for sometime and hence sometimes they had to stay in their office. The appellants also submitted that their son had shifted to his own flat at Mohan Nagar, Ghaziabad before the above litigation was started between the parties. The Id. Trial judge granted temporary injunction on 4/3/2003 and held that the petitioner was in possession of the 2<sup>nd</sup> floor of the property and granted a temporary injunction restraining the appellants from interfering with the possession of Smt. Taruna Batra. Against the said order the appellants filed an

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26. AIR 2005 Del 270.

appeal before the senior Civil Judge, Delhi who by his order dated 17/09/04 held that Taruna was not residing in the 2<sup>nd</sup> floor of the premises in question; even her husband was not living in the suit property and matrimonial home could not be said to be a place where only wife was residing. He also held that Smt. Taruna Batra had no right to the properties other than that of her husband. He allowed the appeal and dismissed the temporary injunction. Aggrieved by this Smt. Taruna Batra filed a petition under Article 227 of the Constitution which was disposed of by the impugned judgment. The Learned Single Judge of the High Court held that the said property was the matrimonial Home of Smt. Taruna Batra. Even if her husband has started to live separate it will not make it a matrimonial home. Mere change of residence by the husband wouldn't shift the matrimonial home especially when the husband had filed a divorce petition against his wife.

The respondents (petitioners) again filed an appeal in the Supreme Court and finally in 2007 it held that the Supreme Court does not agree with the High Court regarding the matrimonial home.<sup>27</sup> As held in *B.R. Mehta vs. Atma Devi & Others*<sup>28</sup> the rights of the spouses in England to matrimonial home are governed by the Matrimonial Homes Act, 1967 however, there is no such law in India. Under the said Act the rights which may be available under any law can only be as against the husband and not against the father-in-law/ mother-in-law. In this case, the house in question belongs to the mother-in-law of the respondent and not to her husband. Hence, Taruna Batra cannot claim any right to live in the said house. In addition to it with regards to the question whether the house can be termed as shared household or not within the provision of the Act? According to the counsel of the respondent he relied upon sections 17 & 19(1) of the Act and stated that the house in question comes within the meaning of the shared

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27. AIR 2007 SC 1118.

28. (1987) 4 SCC 183.

household. However, the Supreme Court held that if the aforementioned submission is accepted then it will mean that wherever they lived together in the past becomes a shared household for example; husband's father, grand parents, uncles etc. Such a view would lead to chaos and would be absurd. Relying upon Section 19(1)(f) of the Act the court held that she should be given an alternative accommodation. Such claim can be made only against the husband and not her in-laws or other relatives. The Supreme Court is of view that shared household would mean only the house belong or taken on rent by the husband or the house which belongs to the joint family of which the husband is a member. The property in question does not belong to the husband. It belongs to the mother-in-law and hence cannot be called a shared household. The Court held that the definition of shared household is not happily worded and appears to be the result of clumsy drafting but we have to give it an interpretation which is sensible and which does not lead to chaos in the society. Hence, the Supreme Court allowed the appeal and impugned order of the High Court was set aside.

In *P. Babu Venkatesh and Others vs. Rani*<sup>29</sup> the question which came up before the Court was whether the house where parties last resided can be called "shared household"? The Court held that the wife is entitled to seek residence right in shared household. In the said case the dispute has arisen after husband alienated the house in favour of his mother. The Court held that it is irrelevant that there is a case of divorce lying pendent between the parties as it will not affect her right to seek ex parte residence order under Section 23(2) of the Act.

In *Rajkumar Rampal Pandey vs. Sarita Rajkumar Pandey*<sup>30</sup> the petitioner challenged the order of the Court granting relief of residence to wife under the Act as his contention was that the house in which the residence orders is

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29. AIR 2008 (NOC) 1772 (Mad).

30. AIR 2009 (NOC) 1013 (Bom).

awarded to the wife is not “shared household”. He also produced some documents of sale of house executed by his mother. The Court held that it is impossible to believe that the husband in the said house does not have any undivided interest after his father’s death. The documents produced by the petitioner with respect to the sale of the residence by his mother also proved to be false and making false statements that shared certificate was issued by society in favour of his mother during course of hearing just to defeat the legitimate right of wife was found to be bogus. The Court further held that the husband having interest in the house by virtue of inheritance and he was not party to alleged sale transaction, the house can be treated as “shared household” wherein wife lived in domestic relationship with husband. Thus, the residence order is found to be proper. Similar problem was raised in *S. Prabhakaran vs. State of Kerala and Others*.<sup>31</sup> In this case, it was held by the Court that “shared household” means a household over which husband in his capacity as a member of joint family has some subsisting right, even assuming he does not have any exclusive right, title or interest is not correct. Thus, wife has right to live in household be it joint family house of husband or residential building of parent-in-law, if wife lives or has at any stage lived in a domestic relationship either singly or along with husband.

With regards to the live-in relationship there is no tests or standards which has been proposed however, it must be proved that the relationship must have been in ‘the nature of marriage’. First there should be oral evidence about her living with the male partner. Second, any correspondence or documents which show that the woman is living in the same household as the husband must be brought forward.<sup>32</sup> The existence of a sexual relationship or

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31. AIR 2009 (NOC) 1017 (Ker).

32. N.K. Acharya, *Commentary on Protection of Women from the Domestic Violence Act, 2005*, 1<sup>st</sup> Ed. 2006, P. 19 [Quoted in Vijender Kumar, *Law Relating to Domestic Violence*, S. Gogia & Company, Hyderabad, 2007, P 64].

consummation must also be proved to show that the relationship is in the nature of marriage.

The Act also defines the term “*respondent*” as any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act. Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner.<sup>33</sup> The question with regards to the term respondent came up before the court in *Nand Kishore & Others vs. State of Rajasthan & Another*.<sup>34</sup> In this case it was contended that the term respondent does not include the female relatives. However, the court held that if Section 2(q) of the Act and its proviso is read together, nowhere it suggests that relatives of husband or male partner have to be a male. For relatives the term ‘relative’ is used and not ‘male relative’. Therefore, female relatives are not excluded from the definition of respondent contained in Section 2(q) of the Act.

## **(ii) Protection Officers and Service providers: their duties and functions:-**

The Act defines “*Protection Officer*” as an officer appointed by the State Government under the provisions of this Act. It also provides the procedure through which such protection Officer is to be appointed. The Act provides that the State Government shall appoint such number of Protection Officer in each district as it may consider necessary and shall also notify the area or areas within which a Protection Officer shall exercise the powers and perform the duties conferred on him by or under this Act. The Protection Officer shall be as

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33. Section 2(q), the PWDV Act, 2005.

34. AIR 2008 (NOC) 2383 (Raj); 2008 Cr LJ 264 (M.P).

far as possible a woman and shall possess such qualifications and experience as may be prescribed. The terms and conditions of the service of the Protection Officer and the other officers subordinate to him shall be such as may be prescribed.<sup>35</sup> The appointment of Protection Officer is the main purpose of the implementation of this Act as it gives extra security to the women in the household. With regards to the qualification and experience of the Protection Officers the Central Government has made the Protection of Women from Domestic Violence Rules, 2006. It states that the Protection Officers may be of Government or members of non-governmental organizations. Every person appointed as Protection Officer shall have at least three years experience in social sector. The tenure of the office of the Protection Officer shall be a minimum period of three years and the State Government shall provide necessary office assistance to the Protection Officer for the efficient discharge of his or her functions under the Act.<sup>36</sup>

The Act also provides that if any person has reason to believe that an act of domestic violence has been or is being committed may give information about the same to the Protection Officer. Such person will be exempted from any civil or criminal liability for giving such information.<sup>37</sup> With regards to the information, the person giving such information may give it orally or in writing to the Protection Officer. And wherein oral information is given it should be reduced in writing by the Protection Officer and shall be signed by the person giving such information. The Protection Officer has to keep the record of the identity of the person giving such information.<sup>38</sup>

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35. Section 8, the PWDV Act, 2005.

36. Rule 3, *the PWDV Rules, 2006*.

37. Section 4, *the PWDV Act, 2005*.

38. Rule 4, *the PWDV Rules, 2006*.

The Protection Officer under the Act has following duties and functions to perform: -

- To assist the Magistrate in the discharge of his functions under this Act;
- To make a domestic incident report to the Magistrate, in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence and forward copies thereof to the police officer in charge of the police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service providers in that area;
- To make an application in such form and in such manner as may be prescribed to the Magistrate, if the aggrieved person so desires, claiming relief for issuance of a protection order;
- To ensure that the aggrieved person is provided legal aid under the Legal Services Authorities Act, 1987 and make available free of cost the prescribed form in which a complaint is to be made;
- To maintain a list of all service providers providing legal aid or counseling, shelter homes and medical facilities in a local area within the jurisdiction of the Magistrate;
- To make available a safe shelter home, if the aggrieved person so requires and forwards a copy of his report of having lodged the aggrieved person in a shelter home to the police station and the Magistrate having jurisdiction in the area where the shelter home is situated;
- To get the aggrieved person medically examined, if she has sustained bodily injuries and forward a copy of the medical report to the police station and the Magistrate having jurisdiction in the area where the domestic violence is alleged to have been taken place;

- To ensure that the order for monetary relief under Section 20 is complied with and executed, in accordance with the procedure prescribed under the Code of Criminal Procedure, 1973; and
- To perform such other duties as may be prescribed.<sup>39</sup>

The Protection Officer shall be under the control and supervision of the Magistrate, and shall perform the duties imposed on him by the Magistrate and the Government by, or under this Act.<sup>40</sup>

Along with the above duties the Protection Officer, if directed to do so in writing, by the Magistrate shall: -

- Conduct a home visit of the shared household premises and make preliminary enquiry if the Court requires clarification, in regard to granting ex-parte interim relief to the aggrieved person under the Act and pass an order for such home visit;
- After making appropriate inquiry, file a report on the emoluments, assets, bank accounts or any other documents as may be directed by the Court;
- Restore the possession of the personal effects including gifts and jewellery of the aggrieved person and the shared household to the aggrieved person;
- Assist the aggrieved person to regain custody of children and secure rights to visit them under his supervision as may be directed by the Court;
- Assist the Court in enforcement of orders in the proceedings under the Act in the manner directed by the magistrate, including orders under Section 12, Section 18, Section 19, Section 20, Section 21 or Section 23 in such manner as may be directed by the Court;
- Take the assistance of the police, if required, in confiscating any weapon involved in the alleged domestic violence.<sup>41</sup>

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39. Section 9(1), *the PWDV Act, 2005*.

40. Section 9(2), *Ibid*.

The role of the protection officer is to work in tandem with service providers. “*Service providers*” has been defined by the Act as the registered entity under the Act.<sup>42</sup> Service providers are any voluntary association registered under the Societies Registration Act, 1860 or a company registered under the Companies Act, 1956 or any other law for the time being in force with the objective of protecting the rights and interests of women by any lawful means including providing of legal aid, medical, financial or other assistance shall register itself with the State Government as a service provider for the purposes of this Act.<sup>43</sup> The Act also lays down the powers of service providers which are as follows: -

- Record the domestic incident report in the prescribed form if the aggrieved person so desires and forward a copy thereof to the Magistrate and the Protection Officer having jurisdiction in the area where the domestic violence took place;
- Get the aggrieved person medically examined and forward a copy of the medical report to the Protection Officer and the police station within the local limits of which the domestic violence took place;
- Ensure that the aggrieved person is provided shelter in a shelter home, if she so requires and forward a report of the lodging of the aggrieved person in the shelter home to the police station within the local limits of which the domestic violence took place.<sup>44</sup>

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41. Rule 10(1), *the PWDV Rules, 2006*.

42. Section 2(r), *the PWDV Act, 2005*.

43. Section 10(1), *Ibid*.

44. Section 10(2), *Ibid*.

The Act further provides immunity to the service provider or any member of the service provider for anything done or intended to be done in good faith under the Act from any suit, prosecution or other legal proceedings.<sup>45</sup>

**(iii) Procedure for obtaining orders of Relief's: -**

The Act lays down the procedure for obtaining orders of relief's under the provisions of the Act. It states that an aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under the Act.<sup>46</sup> The Act provides a proviso to this provision i.e. before passing any order on such application; the magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider. The Act lays down that the application made to the Magistrate under this Act shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.<sup>47</sup> The Magistrate shall endeavour to dispose of every application within 60 days from the date of its first hearing.<sup>48</sup> The Act also provides that a notice of the date of hearing of an application for relief shall be given by the Magistrate to the Protection Officer who shall get it served in Form VII by such means as may be prescribed by the Central Government on the respondent and on any other person within a maximum period of two day or such further reasonable time as may be allowed by the Magistrate.<sup>49</sup> A declaration of service of notice made by the Protection Officer in Form VII shall be a proof of service of notice.<sup>50</sup>

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45. Section 10(3), *Ibid.*

46. Section 12(1), *Ibid.*

47. Section 12(3), *Ibid.*

48. Section 12(5), *Ibid.*

49. Section 13(1), *Ibid.*

50. Section 13(2), *Ibid.*

The Madras High Court in *M. Palani vs. Meenakshi*<sup>51</sup> held that the Id. Practitioner appearing for the petitioner was emphatic in her argument that since in this case the report of the Protection Officer has not been obtained, the order of the Id. Judge of the Family Court at Chennai is liable to set aside. Further, the Court held that Section 12 contemplates the application to Magistrate and the proviso contemplates an order passed by magistrate under the provision after he receives a report from the Protection Officer. The proviso to Section 12 reads that the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider. Such proviso has not been incorporated in Section 26 of the Act. Thus, a conjoint reading of both Sections 12 and 26 will make it clear that when a Magistrate passes an order, he shall receive the report from the Protection Officer but whereas such a report is not contemplated, when an order is passed by the Civil Court or by the Family Court. Hence, the order passed by the Family Court was upheld and the Magistrate can pass the order of maintenance accordingly.

Similarly in *Smt. Neetu Singh vs. Sunil Singh*<sup>52</sup> the petitioner questioned the legality and correctness of the order passed by the Id. Judge, family Court, Bilaspur on an application filed by the appellant under Section 12 of the PWDV Act, 2005 where by the Id. Judge held that since application has been filed under section 12 of the Act which ought to have been filed before the Magistrate and the relief sought for falls under the jurisdiction of the Civil Court, therefore, it be returned to the appellant for filing the same before the competent court having jurisdiction. The Chhatisgarh High Court held that the scheme of the Act specially as per the provisions of Section 26 of the Act, the appellant herein is entitled to such relief available to her under Section 12 of the Act, 2005, which can be

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51. AIR 2008 Mad 162.

52. AIR 2008 Chh 1.

entertained only by the Magistrate having jurisdiction. An application under Section 12 cannot be filed before the Family Court because proceedings under Section 12 have to be filed before the Magistrate and Magistrate is competent to entertain the application. Thus, the decision of the Family Court was not illegal or infirm. The appeal, therefore, is liable to be dismissed. However, the appellant is entitled to move an application under Section 26 of the Act before the Family Court in the maintenance proceeding which is said to be pending before that Court.

In *Sunil Sharma vs. Smt. Vinita Sharma*<sup>53</sup> it was held by the Court that since the husband was Advocate by profession and also earned Rs. 3000/p.m. by working in a company thus, quantum of maintenance to wife of Rs. 3000/p.m. is not improper.

Again in *Milan Kumar Singh and another vs. State of Uttar Pradesh and another*<sup>54</sup> problem with respect to filing of the case under Section 12 came into light. Section 12 read along with Rule 6 provides that the application to the Magistrate by the aggrieved party shall be in Form II or as nearly as possible thereto. The use of words “*as nearly as possible thereto*” shows the intention of the legislature that no complaint will be rejected if it is not filed in the prescribed Form II. The Court held that with respect to filing the complaint to the Magistrate the aggrieved person can file the complaint directly to Magistrate concerned. It is choice of the aggrieved person to directly approach the Magistrate or she can approach protection officer and in case of emergency to the service provider. The Court also held that the complaint cannot be rejected merely on the basis that it does not contain verification note on the complaint itself. Complainant filing the

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53. AIR 2009 (NOC) 1021 (Raj).

54. AIR 2008 (NOC 152) (All); 2007 (5) ALJ 679.

complaint swears the content of the complaint by affidavit which is sufficient compliance of prescribed procedure.

**(iv) Role of Police Officers: -**

A complaint of domestic violence can be lodged directly with police. The police is required to record a Domestic incident report on lodging of complaint. “*Domestic incident report*” means a report made in the prescribed form on receipt of a complaint of domestic violence from an aggrieved person.<sup>55</sup> Such report is to be forwarded to the Protection Officer and Magistrate. The Act lays down that when the incident of domestic violence is reported to the police officer, it is the duty of the police officer to inform the aggrieved person the following things: -

- Of her right to make an application for obtaining relief by way of a protection order, an order for monetary relief, a custody order, residence order, a compensation order or any such order under this Act;
- Of the availability of service of service providers;
- Of the availability of services of Protection Officers;
- Of her right to free legal services under the Legal Services Authorities Act, 1987;
- Of her right to file a complaint under Section 498A of the Indian Penal Code, 1860, wherever relevant.<sup>56</sup>

Proviso to Section 5 provides that nothing in this Act shall be construed in any manner as to relieve a police officer from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.

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55. Section 2(e), *the PWDV Act, 2005*.

56. Section 5, *Ibid*.

Apart from the above duties the police officers are also under an obligation to take cognizance of breach of Protection Order and file a charge sheet.<sup>57</sup> The police continue to play their role under existing laws and take appropriate action such as investigation, arrest etc. for cognizable offences under the Indian Penal Code – offences like grievous hurt, rape, dowry death, Section 498A used in domestic violence cases.<sup>58</sup>

**(v) Duties of Government (Central and State): -**

Section 8 of the Act empowers the State Government to appoint as much Protection Officers in each district as it may consider necessary and shall also notify the area or areas within which a Protection Officer shall exercise the powers and perform the duties conferred on him by or under the Act. The Act also imposes certain duties upon the Government both at the Centre as well as the State. It lays down the following duties of the Government: -

- To ensure that the Act is given wide publicity through public media at regular intervals;
- To give periodic sensitization and awareness training to all functionaries such as government officers, police and judiciary;
- Effective coordination between services provided by all ministries and departments concerned and conduct periodic review;
- Ensure that Protocols for functionaries including courts are prepared and put in place;
- State governments to register the Service Providers under the Act. List of Service Providers must be given to the Protection Officers and published in the newspapers and government websites; and

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57. Section 31 and 32, *Ibid.*

58. Section 36, *Ibid.*

- Budgetary allocations are the responsibility of the state governments.<sup>59</sup>

**(vi) Counseling under the Act: -**

The Act empowers the Magistrate to direct at any stage of the proceedings under this Act, the respondent or the aggrieved person either singly or jointly to undergo counselling with any member of a service provider. The member of the service provider providing the counseling shall possess such qualifications and experience as laid under Rule 11. Where any counseling has been ordered under this Section, the Magistrate shall fix the next date of hearing of the case within a period not exceeding two months.<sup>60</sup> This provision is very useful and relevant as it will help the parties to settle the matter.

**(vii) Kinds of relief provided under the Act: -**

The Act is aimed at providing civil remedy to the aggrieved person on the incidence of domestic violence. The Act provides various kinds of relief which are civil in nature and meant to work within the private sphere of the women. Following are the kinds of relief provided under the Act:-

**(a) Protection Orders: -**

The Magistrate may pass protection order after he gives both the parties an adequate opportunity of being heard and is satisfied that domestic violence has or may take place. Such order may prohibit the respondent from: -

- Committing any act of domestic violence;
- Aiding or abetting in the commission of acts of domestic violence;

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59. Section 11, *Ibid.*

60. Section 14, *Ibid.*

- Entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;
- Attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;
- Alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her *stridhan* (Women's Property) or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;
- Causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence.<sup>61</sup>

The protection order prevents the perpetrator to commit any acts of domestic violence against the complainant. It must be passed directing the respondent not to aid or abet any of his family members to commit acts amounting to domestic violence. As per the Act the magistrate may also pass an order to the respondent to stop all forms of communication with the aggrieved person with a view to preventing any harassment which a woman might face.

In *P. Babu Venkatesh and Others vs. Rani*<sup>62</sup> the court held that the protection order awarded by the Judicial Magistrate to the wife to reside in the house which was in question that whether the house is a shared household or not, the Judicial Magistrate giving a direction to the police authority concerned to

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61. Section 18, *Ibid*.

62. AIR 2008 (NOC) 1772 (Mad).

break open the lock and give protection to wife to reside in the said house is not illegal.

**(b) Residence Orders: -**

Wherein the Magistrate is convinced that the incidence of domestic violence has occurred or is going to occur he may pass a residence order which consists of the following elements: -

- Restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;
- Directing the respondent to remove himself from the shared household;
- Restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;
- Restraining the respondent from alienating or disposing off the shared household or encumbering the same;
- Restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate;
- Directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require.<sup>63</sup>

Section 19(2) empowers the Magistrate to impose additional conditions and pass any other direction in order to protect the safety of the aggrieved person or her child. Section 19(3) lay down that the Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence. The Act empowers the

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63. Section 19(1), *Ibid.*

Magistrate under Section 19(5) to pass an order directing the officer in charge of the concerned police station to give protection to the aggrieved person or to assist in implementation of the residence order. The Act also provides that the Magistrate may impose on the respondent an obligation to discharge rent and other payments and to direct the respondent to return to the aggrieved person her *stridhan* or any other property or valuable security to which she is entitled.<sup>64</sup>

**(c) Monetary Relief: -**

The Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include but not limited to: -

- The loss of earnings;
- The medical expenses;
- The loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and
- The maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 Cr.P.C or any other law for the time being in force.<sup>65</sup>

Sub-section (2) of Section 20 provides that the monetary relief shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed. The section also empowers the Magistrate to order lump sum or monthly payments for maintenance.<sup>66</sup> Section 20(6) provides that on the failure of the respondent to make payments of the monetary relief, the Magistrate may direct the employer or a debtor of the

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64. Section 19(6) and 19(8), *Ibid.*

65. Section 20(1), *Ibid.*

66. Section 20(3), *Ibid.*

respondent to directly pay to the aggrieved person to deposit with the Court a portion of the wages or salaries or debt due to or accrued to the respondent.

In *Rajesh Kuru vs. Safurabai and Others* <sup>67</sup> with regards to monetary relief a question was raised before the Court i.e. whether the maintenance to aggrieved person in case of domestic violence Court is competent to award maintenance to aggrieved person and child of aggrieved person in accordance with provision of Section 20 of the Act or Section 125 of Cr. P. C. To this the Court held that the golden rule of interpretation of statute is that the words of a statute must *prima facie* be given their ordinary meaning. The words of provisions under Section 20 of the Act are clear, plain and unambiguous. The provisions are independent and are in addition to any other remedy available to the aggrieved under any legal proceeding before the civil court, criminal court or family court. The provisions are not dependent upon Section 125 Cr. P.C. or any other provisions of the Family Courts Act, 1984 or any other Act relating to award of maintenance. In case of award of maintenance to the aggrieved person under the provisions of the Act, the Court is competent to award maintenance to the aggrieved person and child of the aggrieved person in accordance with the provisions of Section 20 of the Act. Aggrieved person is not required to establish the case in terms of Section 125 Cr.P.C. Under Section 125 Cr. P. C. the Court is empowered to award maintenance wherein a person has liability to maintain his wife and children but does not do so. In case of domestic violence, the Court is empowered to grant such relief if the person is aggrieved as a result of the domestic violence and may grant monetary relief in terms of maintenance which would be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved party is accustomed and also empowered to lump sum or monthly maintenance or to direct the employer or a debtor of the respondent to

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67. AIR 2009 (NOC) 813 (Chh).

directly pay to the Court a portion of the wages or salaries. However the Magistrate is not empowered to grant relief in such form in accordance with Section 125 Cr. P. C. At the time of interpretation of Statutes, the Court is required to see whether the provisions of the statute are plain, unambiguous and capable of giving them their ordinary meaning.

**(d) Custody orders: -**

The Magistrate at any stage of hearing of the application for protection order or any other relief under the Act may grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify if necessary the arrangements for visit of such child or children by the respondent. The Act also provides that if the Magistrate is of opinion that any visit of the respondent may be harmful to the interest of the child or children the Magistrate shall refuse to allow such visit.<sup>68</sup>

The Magistrate under this section while granting custody orders have to do think about the impact of domestic violence on the children, rather than the technical issues of custody and guardianship. The Magistrate may order the child to remain with the aggrieved woman, or may direct its restoration to the aggrieved woman. The respondent is bound to pay maintenance for the child or children. While granting custody, the Magistrate has to give emphasis on the interest of the child i.e. if the child prefers to stay with the aggrieved woman, the Magistrate may restore the child to her, or if the child prefers to stay with the respondent, then after examining relevant factors, the Magistrate may order the respondent to take the child home. In *Sheila vs. Phirozshaw*<sup>69</sup> it was held that the Magistrate while granting the custody of the child or children the child's or children's interests are to be kept in mind and not the legal rights of the parties. So

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68. Section 21, *Ibid.*

69. AIR 1981 Bom 175.

long as the child is happy and comfortable he may continue to live with his guardian.

The order of the Magistrate given under Section 21 is temporary in nature, but will continue to operate until it is altered, after receiving the consent of the aggrieved woman or till any competent Civil Court decides to order for an alteration.

In addition to other relief's as may be granted under this Act, the Magistrate may on an application made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent.<sup>70</sup> The Magistrate is also empowered to pass interim order as he deems just and proper and if he is satisfied that an application *prima facie* discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an *ex parte* order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under Section 18, Section 19, Section 20, Section 21 or, as the case may be, Section 22 against the respondent.<sup>71</sup> In *Abhijit Bhikaseeth Anti vs. State of Maharashtra and Another*<sup>72</sup> it was held by the court that the Magistrate can grant *ex parte* ad interim relief in exercise of powers under Section 23. However, before granting interim relief opportunity of hearing is to be granted to respondent. Further, the Court also declared that the interim reliefs granted in exercise of powers under Section 23 are appealable. The appellate Court would interfere with the discretionary order passed under Section 23 only when the said discretion was exercised arbitrarily, capriciously or perversely or when the Court

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70. Section 22, *Ibid.*

71. Section 23, *Ibid.*

72. AIR 2009 (NOC) 808 (Bom).

while granting relief ignored settled principles of law regulating grant of or refusal of interim relief.

The Act also provides a provision of appeal wherein an appeal from the order made by the Magistrate shall lie to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, whichever is later.<sup>73</sup> In *Manish Tandon vs. Richa Tandon and Others*<sup>74</sup> the question with regards to the maintainability of appeal under Section 29 and Section 482 Cr. P. C can be done together was raised. The Court held that the word 'order' used in Section 29 connotes all types of orders passed by the Magistrate under the Act of 2005 including the order granting interim maintenance under Section 23(1) as well as ex parte interim maintenance under Section 23(2). Since the word 'order' has not been qualified by any suffix or prefix in Section 29, the clear legislative intent is that each and every type of order, irrespective of its description and nature, passed by a Magistrate has been made appealable to the Court of Sessions Judge under Section 29. The remedy of filing an appeal under Section 29 therefore, being an alternative and equally efficacious remedy petitioner under Section 482 Cr. P.C. would not be maintainable. It was not open to the petitioner to have by passed the appeal forum by straight way approaching Court under Section 482 Cr. P. C.

Again in *Abhijit Bhikaseth Anti vs. State of Maharashtra and Another*<sup>75</sup> it was held that an appeal under Section 29 will not be maintainable against purely procedural orders which do not decide or determine the rights and liabilities of the parties.

The concept of granting relief is new under the Act and is in fact a welcoming change as the relief's sought for and granted are all of civil

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73. Section 29, *Ibid.*

74. AIR 2009 (NOC) 507 (Utr).

75. AIR 2009 (NOC) 808 (Bom).

nature which will help in reducing the incidence of domestic violence in our society.

However, besides this the Act also provides that wherein the respondent commits breach of protection order given under Section 18 of the Act he shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.<sup>76</sup> Similarly the Act also punishes the Protection Officer who fails or refuses to discharge his duties as directed by the Magistrate in the Protection order with imprisonment of either description which may extend to one year or with fine which may extend to twenty thousand rupees or with both.<sup>77</sup>

The Protection of Women from Domestic Violence, 2005 is the long awaited legislation which is comprehensive law dealing with the domestic violence. The legislation intends to provide protection and assistance to the women facing domestic violence within their homes.

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76. Section 31, *Ibid.*

77. Section 33, *Ibid.*