

THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 – AN OVERVIEW



IDENTIFY THE ACTS OF DOMESTIC VIOLENCE

Physical Violence

- Beating,
- Slapping,
- Hitting,
- Biting,
- Kicking,
- Punching,
- Pushing,
- Shoving, or
- Causing bodily injury or pain in any other manner.





Violence
Domestic
women
abuse
men

affects those you love



SEXUAL VIOLENCE

- Forced Intercourse,
- Forced you to look at pornography or any other obscene pictures or materials,
- Any act of sexual nature to abuse, humiliate or degrade you or which is otherwise violiative of your dignity or any other unwelcome conduct of sexual nature,
- Child Sexual abuse.

VERBAL & EMOTIONAL VIOLENCE

- Insults
- Name calling
- Accusations on your character or conduct etc.
- Insults for not having any male child
- Insults for not bringing dowry etc.
- Yelling and Screaming
- Preventing you or the child in your custody from attending school, college or any other educational institutions.

Contd:

- Preventing you from taking up a job,
- Forcing you to leave job,
- Preventing you or the child in your custody from leaving home,
- Preventing you from meeting any person in normal course of events,
- Forcing you to marry when you are not willing to,
- Preventing you from marrying a person of your own choice,
- Forcing you to marry a particular person of his/their choice,
- Threat to commit suicide,
- Any other verbal or emotional abuse.

ECONOMIC VIOLENCE

- Not providing you money for maintaining you or your children,
- Not providing food, shelter, medicines etc. for you or your children,
- Stopping you from carrying on your employment or,
- Disturbing you in carrying on your employment,
- Not allowing you to take up an employment,
- Taking away your salary, income, wages etc.,
- Forcing you out of the house you live in,
- Stopping you from using or accessing any part of the house,
- Not allowing use of clothes, articles or things of general household use
- Not paying rent if staying a rented accommodation etc.

WHO IS THE VICTIM ? (AGGRIEVED PERSON)

Every women (aggrieved person) or a child who is, or has been, in a domestic relationship with the perpetrator (respondent) of the domestic violence can take help of the PWDV ACT, 2005.



WHO IS THE ABUSER/ PERPETRATOR OF DOMESTIC VIOLENCE

Any person (perpetrator) who is, or has been, in a domestic relationship with the aggrieved person (victim).

Also 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.

DOMESTIC RELATIONSHIP

A relationship between two persons who live or have, at any of time, lived together in a shared household, when they are related by consanguinity (blood) , marriage, or through a relationship in nature of a marriage, adoption or are family members living together as a joint family.

SHARED HOUSEHOLD

A Household where the victim lives or at any stage of time, have lived with in a domestic relationship either singly or along with the perpetrator and includes such households whether

- Owned,
- Tenanted either jointly by the victim and the perpetrator,
- Or owned or tenanted by either of them in respect of which either of them or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the perpetrator is a member, irrespective of whether the perpetrator (respondent) or the victim (aggrieved person) has any right, title or interest in the shared house hold.

WHAT YOU NEED TO DO ?

- Raise your voice.
- Talk to your friends and relatives about it.
- Take the help of an NGO or police.
- Take the help of the protection of women against domestic violence act, 2005 (PWDV ACT, 2005) and contact the protection officer of your area and register DIR (Domestic Incident Report).
- You can also go directly to the magistrate.

HOW LAW CAN HELP YOU ?

- Under the PWDV Act, 2005 you can get the following reliefs/orders:
 - Protection (from any act of domestic violence) order
 - Residence orders – right to reside.
 - Monetary reliefs.
 - Custody orders.
 - Compensation orders.
 - Interim and ex-parte orders.

CASE LAW: SURESH v. JAIBIR (2009)

The magistrate is not only empowered to grant monetary relief while finally disposing off an application under sub section (1) of section 12 of the act, but empowered to grant maintenance to the aggrieved person as an interim arrangement during the pendency of the application by way of passing an interim order.

WHERE YOU CAN FILE A CASE AGAINST THE PERPETRATOR OF DOMESTIC VIOLENCE ?

You can file a case in the court of judicial magistrate of first class or the metropolitan magistrate within the local limits of the area where :

1. You, permanently or temporarily resides or carry on business or employed; or
2. Where the perpetrator permanently or temporarily resides or carry on business or employed; or
3. The cause of action had taken place.

HOW CAN YOU CLAIM ORDERS/RELIEFS ?

AGGRIEVED PERSON

PROTECTION
OFFICER (DIR)

SERVICE
PROVIDER

POLICE
STATION

MAGISTRATE

PERSON INCHARGE
OF MEDICAL
FACILITY

MAGISTRATE

1. Within 3 days of receipt of the application by the court, first date of hearing is fixed.
2. Notice of the date of hearing shall be served to the respondent, within two days of its receipt from the magistrate, by the protection officer.
3. If required ex-parte or interim orders are passed.
4. The magistrate shall Endeavour to dispose off every application within 60 days of from the date of its first hearing.
5. There shall lie an appeal to court of session within 30 days of the service of the order to any of the parties.

CASE LAW: PRECELINE GEORGE (Dr.) V. STATE OF KERALA 2010 (5) CRJ 195 (KER)

- Notice of the application filed under section 12 of the act shall be served as provided in the section 13, complying with the procedure laid down in rule 12 of the protection of women from domestic violence rules. Also the notice to be served on the respondent shall be accompanied by copy of application filed under sections 12 and 23 if any.
- The magistrate can pass interim orders under section 23(1) ex parte. But that ex parte order could be passed only after service of notice as provided under rule 12(3).
- If on service of notice , the respondent fails to appear, Magistrate is to pass a final ex parte interim order under section 23(1) with or without modifications of the ad interim order.

PWDV ACT, 2005 – A BROADER INTERPRETATION

The Protection of Women against Domestic Violence act, 2005 needs to be interpreted with much more rationality and open-mindedness.

The fact is that most men think that the PWDV act, 2005 is against them, which is not so. This act is against Violence. The point is does the troubled woman have the power, support and negotiating abilities to stop the violence meted out on her? We need to change our perspective towards this Act.

We always talk about the misuse of law; why not talk about its proper use. The spirit and objective of this law needs to be understood. Sadly, most women are not aware of the benefits of this law.

IS PWDV ACT, 2005 CORRECTLY UNDERSTOOD PROPERLY ?

Domestic violence is a concept which even the police often finds difficult to understand and interpret. The police do not understand their role.

According to the Human Rights and Family Court lawyer, Mr. Asim Sorode, the judiciary's inability to correctly interpret the nature of violence or harassment faced by a woman is also a lacuna. He further says that very often, judges concerned do not understand the application of DVA. Most of them are not aware or are sensitive enough to understand issues of domestic violence. The nature of mental harassment in such a case cannot be measured. This law allows auditing of the various types of harassment, but the focus is often on only physical harassment. Mental, sexual and economic harassment are not taken seriously by the judges themselves because the victim cannot always produce evidence for the same. Understanding a woman as a human being in a relationship is very important, but this is not happening and leading to contradictory judgments.

CRITICISM TO THE ACT

- Men's organizations such as **Save Indian Family** and **Save Family Foundation** have criticised the law since abused men are not covered. Moreover, it might be abused by women and their families during family disputes.
- According to the president of India, Pratibha Devisingh Patil, "Another disquieting trend has been that women themselves have not been innocent of abusing women. At times women have played an unsavoury, catalytic role in perpetrating violence whether against the daughter-in-law, the mother-in-law or female domestic helps. Instances exist whereby protective legal provisions for the benefit of women have been subjected to distortion and misuse to wreak petty vengeance and to settle scores. Some surveys have concluded that 6 to 10 percent of dowry complaints are false and were registered primarily to settle scores. It is unfortunate if laws meant to protect women get abused as instruments of oppression. The bottom-line therefore, is the fair invocation of legal provisions and their objective and honest implementation."

- The Act not covers physical harassment and mental harassment. Even a sophisticated judge may have difficulty deciding if an act really caused mental harassment. On several occasions, the judge changes his mind many times on deciding if an act is mental harassment or not, but the law says that she can go to the protection officer to file the case. In many cases, women file this case just to earn monthly interim maintenance from husband.
- There is no penalty for filing false cases; therefore, false litigation is rising in matrimonial disputes, helping in the breaking social fabric of Indian society.

CONCLUSION

The bourgeois system whereby women, especially poor working women are doubly enslaved, cannot offer any long-term solution for the emancipation of women or their freedom from violence. It is only socialism that can truly emancipate women by not only making her equal under law and giving her every legal protection but, far more important, reversing the injustices of the past thousands of years by socializing the means of production, bringing the woman back into social production and decision-making, freeing her of her domestic enslavement by the state taking responsibility through crèches, community kitchens, old-peoples' homes etc. But its limitations must be kept in mind. Within the existing unjust and unequal bourgeois system here is an act of legislature that gives oppressed women some respite, but a very temporary one as it will not end the hypocrisy of bourgeois monogamy. Hopefully, the contradictions will be so heightened that society will have to go in for more long-lasting solutions.

According to Karl Marx, when the thesis (female society) will clash with the anti-thesis (Male Society) then there will be formation of Anti-thesis (equality).

THANK YOU

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