

**DISTRICT AND SESSION COURT KONDAGAON  
DISTRICT KONDAGAON (C.G.)**

**DIVISIONAL JUDICIAL SEMINAR BASTAR DIVISION  
07/05/2023, SUNDAY**

**ISSUES AND CHALLENGES IN ADJUDICATION OF MATTERS UNDER  
THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT 2005  
DISTRICT KONDAGAON**



## TABLE OF CONTENTS

1. INTRODUCTION.....	3
2. WHAT IS DOMESTIC VIOLENCE ?.....	3
3. WHO CAN BE A VICTIM ?.....	3
4. WHO CAN BE AN ACCUSED ?.....	4
5. WHAT IS SHARED HOUSEHOLD ?.....	4
6. POWERS AND DUTIES OF PROTECTION OFFICERS, SERVICE PROVIDER AND MAGISTRATE... ..	5
7. WHO CAN MAKE AN APPLICATION TO MAGISTRATE ?.....	5
8. JURISDICTION AND TRIAL .....	6
9. BONDS AND SURETIES .....	6
10. WHO AND HOW SERVICE OF NOTICE SERVED.....	6
11. COUNSELLING.....	7
12. PROCEDURE FOR OBTAINING ORDERS OF RELIEFS.....	7
13. PROTECTION ORDERS.....	7
14. RESIDENCE ORDERS .....	7
15. CUSTODY ORDERS.....	8
16. MONETARY RELIEFS.....	8
17. COMPENSATION ORDERS.....	9
18. POWER TO GRANT INTERIM AND EX PARTE ORDERS .....	9
19. DURATION AND ALTERATION OF ORDERS.....	9
20. APPEAL.....	9
21. RELIEF IN OTHER SUITS AND LEGAL PROCEEDINGS.....	10
22. PENALTY FOR BREACH OF PROTECTION ORDER BY RESPONDENT.....	10
23. ACT NOT IN DEROGATION OF ANY OTHER LAW.....	10
24. CONCLUSION.....	10

THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT 2005  
ACT NO. 43 OF 2005

**INTRODUCTION :**

An Act which provide for more effective protection of the rights of women guaranted under the Constitution who are victims of violence of any kind occuring within the family and formatters connected therewith or incidental thereto,

**WHAT IS DOMESTIC VIOLENCE ?**

Any violence or other abuse that occurs in a domestic setting, such as in a marriage or cohabitation. The term Domestic violence has been widely defined under section 3 of the act. Any act, omission or conduct which harms or injures or endangers the health, safety, life, limb or well being, whether- mental of physical, of the aggrieved person, constitutes domestic violence. Even harassment, threat or coercion to meet any unlawful demand for any dowry or other property or valuable security is covered under it. Not all domestic violence is equivalent. Differences in frequency, severity, purpose, and outcome are all significant,which includes :

- (a) Physical abuse, sexual abuse,verbal and emotional abuse and economic abuse.
- (b) Unlawful demand for any dowry or other property or valuable security.
- (c) Threatening the aggrieved person or any person related to her by any conduct.
- (d) Injures or causes harm, whether physical or mental, to the aggrieved person.

**WHO CAN BE A VICTIM ?**

1. Any women (Of any age) 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.
2. Domestic relationship between two 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.

**IN CASE OF : D VELUSAMY VS D PATCHIAMMAL (2010) 10 SCC 469**

In this case Hon'ble Supreme Court explained "the relationship in the nature of marriage" and also the term "wife" which includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried. But this act provides for maintenance of an aggrieved party in addition to an order of maintenance under section 125 of the CrPC.

**WHO CAN BE AN ACCUSED ?**

Earlier it was any 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. But now 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.

**IN THE CASE OF : HIRAL P. HARSORA VS KUSUM NAROTTAM DAS HARSORA (2016) 10SCC 165 :**

In this case Hon'ble Supreme Court held that the word "adult male" were in violation of article 14 of the Constitution of India 1949, it was struck down. It has been rectified by this judgement that the definition of the word "Respondent" shall be changed, and it shall include anyone and everyone without discriminating on gender or age.

**WHAT IS SHARED HOUSEHOLD ?**

A household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and whether owned or tenanted or jointly or singly have any right, title, interest or equality and includes such a household which may 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.

**IN THE CASE OF S.R.BATRA AND ANOTHERS VS. SMT TARUNA BATRA (AIR 2007 SC 1118)**

In this case Hon'ble Supreme Court said that the claim for alternative accommodation can be only made against husband and not against in laws or other relative. BUT

**IN THE CASE OF SATISH CHANDRA AHUJA VS. SNEHA AHUJA (2021) 1 SCC**

**414**

In this case Hon'ble Supreme Court held that women has right to stay in house of in laws . This means that even if the matrimonial house held by the husband or his relative in their name, the women can still go ahead and make a valid claim over the same under the provison of this act.

**POWERS AND DUTIES OF PROTECTION OFFICERS , SERVICE PROVIDER AND MAGISTRATE :**

Any person who has reason to believe that an act of domestic violence has been, or is being, or is likely to be committed, may give information about it to the concerned Protection Officer.

(a) Right to make an application for obtaining a relief by way of a protection order, an order for monetary relief, a custody order, a residence order, a compensation order or more than one such

order under this Act;

b) of the availability of services of service providers;

(c) of the availability of services of the Protection Officers;

(d) of her right to free legal services under the Legal Services Authorities Act, 1987 (39 of 1987);

(e) of her right to file a complaint under section 498A of the Indian Penal Code (45 of 1860)

**WHO CAN MAKE AN APPLICATION TO MAGISTRATE ?**

(1) An aggrieved person

(2) A Protection Officer

(3) Any other person on behalf of the aggrieved person may present an application to the Magistrate

But before passing any order on such application, the Magistrate shall take into consideration any domestic incident report (DIR) received by him from the Protection Officer or the service provider.

### **JURISDICTION AND TRIAL :**

The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be,

- (1) Within the local limits of the person aggrieved permanently or temporarily resides or carries on business or is employed
- (2) The respondent resides or carries on business or is employed
- (3) The cause of action has arisen.

The Magistrate shall fix the first date of hearing, Within three days from the date of receipt of the application by the court and shall Endeavour to dispose of every application made within a period of sixty days from the date of its first hearing. Proceedings may to be held in camera. In this Act all proceedings under sections 12,18,19, 20, 21, 22 and 23 and offences under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

### **KAMATCHI VS LAKSHMI NARAYAN 2022**

Limitation period under section 468 of crpc not applicable to application under section 12 of this act.

### **BONDS AND SURETIES :**

The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence, also pass an order directing the officer in charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

The Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

### **WHO AND HOW SERVICE OF NOTICE SERVED ?**

A notice of the date of hearing shall be given by the Protection Officer, who shall get it served on the respondent and A declaration made by the Protection Officer as a proof that such notice was served upon the respondent.

## **COUNSELLING :**

The Magistrate may, at any stage of the proceedings under this Act, direct the respondent or the aggrieved person, either singly or jointly, to undergo counselling with any member of a service provider within a period not exceeding two months. And also provide assistance of welfare expert.

## **PROCEDURE FOR OBTAINING ORDERS OF RELIEFS :**

An aggrieved person or a protection officer, or any other person on behalf of the aggrieved person may present an application to the magistrate for relief and protection also institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent. Magistrate may pass any of the following orders:

### **(1) PROTECTION ORDERS :**

The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent to commit , aiding or abetting domestic violence; 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 including her stridhan used or held or enjoyed by both the parties, jointly or singly.causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence,ommitting any other act as specified in the protection order.

### **(2) RESIDENCE ORDERS :**

he Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order, directing the respondent to remove himself from the shared household or restraining the respondent from renouncing his rights in the shared household. And also restraining the respondent from dispossessing , alienating or disposing off ,or 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, restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides. 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.

**IN THE CASE OF SHRI ABHIJIT SHAH VS SMT SANGEETA SHAH :**

Wife entitled to “Residence order” only if she establish domestic violence. Only man who is respondent can vacant the house not the respondent women.

**(3) CUSTODY ORDERS :**

The Magistrate may, at any stage of hearing of the application for protection order or for any other relief under this Act grant temporary custody of any child or children to the aggrieved person.

**(4) MONETARY RELIEFS :**

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 , the relief should be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person and such relief may include :-

- (1) the loss of earnings;
- (2) the medical expenses;
- (3) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and
- (4) the maintenance for the aggrieved person as well as her children, or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.
- (5) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

#### **(5) COMPENSATION ORDERS :**

The Magistrate may on an application being 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. And also

may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to.

#### **POWER TO GRANT INTERIM AND EX PARTE ORDERS :**

The Magistrate may pass such interim order as he deems just and proper and may grant an ex parte order on to the aggrieved person under section 18, section 19, section 20, section 21, section 22 against the respondent.

#### **IN THE CASE OF NILAKANTA MALAKAR @ SANTO VS. THE STATE OF ASSAM**

Domestic Inquiry Report (DIR) not compulsory for initiating proceeding under section 12 of this act. The court has the ample power to pass an ex parte order to provide such monetary relief.

#### **DURATION AND ALTERATION OF ORDERS :**

A protection order made under section 18 shall be in force till the aggrieved person applies for discharge. If the Magistrate, on receipt of an application from the aggrieved person or the respondent, is satisfied that there is a change in the circumstances requiring alteration, modification or revocation of any order made under this Act, he may, for reasons to be recorded in writing pass such order, as he may deem appropriate.

#### **APPEAL :**

There shall lie an appeal to the Court of Session within thirty days from the date on which the order made.

### **RELIEF IN OTHER SUITS AND LEGAL PROCEEDINGS :**

Any relief available under sections 18, 19,20,21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act and also in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court. In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

### **PENALTY FOR BREACH OF PROTECTION ORDER BY RESPONDENT :**

A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and 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. It is cognizable and non-bailable. Upon the sole testimony of the aggrieved person. While framing charges, the Magistrate may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions.

### **IN THE CASE OF SHOME NIKHIL DANANI VS. TANYA BANON DANANI**

Relief under this act can be sought even after obtaining a maintenance order under section 125 crpc and even an aggrieved person can also filed a case under 498A of IPC.

### **ACT NOT IN DEROGATION OF ANY OTHER LAW :**

The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.

### **CONCLUSION :**

The provision of this act is both of civil and criminal in nature. This act does not provide punishment for committing a domestic violence but provide remedies for aggrieved person . It is a remedial statute.

**:: THANK YOU ::**