

# Domestic Violence Handbook

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# 1. WHAT IS DOMESTIC VIOLENCE?

Domestic violence may be perpetrated by spouses, lineal ascendants and descendants and the lateral branch of the family up to the IV degree whether they are related by blood, marriage, fosterage or adoption, or by intimate partners or legal guardians.

Violence within families, right from the denigration of honour, is considered to be domestic violence and is covered under the general provisions of penal codes even if it not explicitly mentioned therein. Moreover, the laws themselves have been amended and harmonised so as to remove obstacles in tackling the issue of domestic violence. For example, earlier definitions of rape exclusively spoke of extra-marital rape, and marital rape did not expressly constitute an offence (in most cases).

The spectrum of domestic violence (which, incidentally, has a high level of recidivism) may include psychological, physical, sexual, financial and emotional abuse which may manifest itself as physical injury, the deprivation of food, money or other resources, intimidation, humiliation and degradation, and may result in anhedonia, pain, exhaustion, isolation, alienation, depression, fear, and decreased levels of self-esteem, productivity and attentiveness.

## 2. WHY DOES SHE STAY?

In an article by [Evan Stark](#) called '[The Entrapment Enigma](#)' in the OUP USA blog, the author pointed out that although in the 1970s, the psychiatric establishment believed that women brought abuse on themselves by being “masculine,” “frigid,” “overemotional” with “weakened ties to reality,” or having “inappropriate sexual expression”, this belief had been belied by the late 1980s. By this time, empirical studies had, in fact, revealed that battered women have a better sense of reality than those who batter them. Studies also showed that battered women are more “social” more “sympathetic”, and less “masculine” than their nonbattered counterparts, and that battered women attempt to change their situation using a broader range of strategies than nonbattered women who are also in problematic relationships use.

The question which has remained, however, is why battered woman stay in an abusive relationships. In her book 'Trauma and Recovery', Judith Lewis Herman wrote, “Prolonged, repeated trauma, by contrast, occurs only in circumstances of captivity. When the victim is free to escape, she will not be abused a second time; repeated trauma occurs only when the victim is a prisoner, unable to flee, and under the control of the perpetrator.”

Being unable to flee, to use the author's words could be is a result of four factors:

### 1. Practical Difficulties

*such as being financially dependant on the abuser and having nowhere to live*

### 2. Social Conditioning

*such as believing that a woman's value as an individual is derived from her ability to 'keep' a man which is reinforced by living in a societies where women will be looked down on for supposedly failing to do so*

### 3. Personal Beliefs

*such as those where a woman is unable to believe that she is worthy of being treated with either respect or kindness as a result of having had her self-esteem torn to shreds by being abused*

### 4. Institutional Responses

*such as finding it difficult to convince police to file charges against the perpetrator, not having access to shelters, knowing that courts are unlikely to convict the perpetrator.*

### 3. REACTING TO DOMESTIC ABUSE

What do you do if you know that someone you know is in a violent relationship? There are no clear cut answers but there are a few straightforward suggestions:

1. If you've got nothing sensible to say, just shut up. Don't come up with the *oh-but-it-takes-two-hands-to-clap* analogy. **No one asks to be abused, ever.**
2. If the person being abused has trouble keeping in touch or otherwise seems erratic, bear in mind that it's not about you; most perpetrators of abuse will do what they can to ensure that their victims are socially isolated. If you want to be a friend, it's up to you to stick around.
3. Don't mail them a checklist asking questions so that they can clarify in their own minds whether or not they're being abused. Chances are that behind closed doors, minus an audience, they know. They may choose not to but that's another matter.
4. Don't insist on discussing it if they don't want to. Tactfully let them know that you know and if they want to, they'll follow it up. If they don't, they won't. Either way, it's **not** your decision.
5. If you can help, by all means, help. Be **very clear** about what you are willing to do and make damn sure that you don't go back on your word.
6. Don't say things like, "I wish I could just take you to live at my place" — if that's what you really wanted to do, that's what you'd do. And whoever you say that to realises that too (especially in a country like India where you'd make space for your fifth cousin whom you don't know from Adam without a second thought).
7. Be realistic. Don't tell them that they should just walk out when you know that they've got nowhere to go. You're just going to make them feel obliged to waste time and energy figuring out how to politely tell you that while they appreciate your concern, you're an idiot.
8. Don't be critical. Abuse, especially by someone whom they either do or think they should love, is confusing. And criticism is anyway what they get from the perpetrator. Respect their decisions and just, well, be nice. Don't start conversations by telling them that the colour they're wearing looks lousy on them; for all you know it could have taken them half the morning just to garner the will and the energy to get out of bed that day.
9. Help them sort out important documents and keep them in one place so that if need be, they can leave their home in 30 seconds flat. Or better still, offer to keep the documents with you. Clothes can be left behind. A passport cannot. And if you're willing to, agree on some form of signal or codeword you can use in a telephone conversation which once you hear, will let you know that they need help to leave **immediately**.
10. Don't treat the abuse as being anything but serious but don't spend your time giving the victim stats on how many people die every day because of domestic violence.

## **4. CHILDREN AND DOMESTIC VIOLENCE**

### **4.1 Children who Witness Domestic Violence**

The effects of domestic violence are not confined to its victims. Apart from the fact that children may try to intervene to protect adult victims (thus putting themselves in danger), children who witness domestic violence are more likely than others to develop psychological and social problems including stress-related disorders such as PTSD. They may be fearful and angry, and exhibit (both as children and as adults) internalized and externalized behavioral problems including withdrawal, hostility and substance dependency. Their relationships may also reflect violence learned or seen at home.

### **4.2 Children who are Targets of Domestic Violence**

The reported instances of violence against children in the form of acts and omissions which endanger their physical or emotional health, well-being and development have increased over the last few decades. The primary forms of violence and abuse against children are neglect, exploitation and physical, sexual or emotional abuse, and they can have devastating consequences for victims both immediately and in the long-term.

Violence against children is completely illegal and schools, doctors and social workers have a duty to report suspicions of child abuse to the relevant legal authorities.

There appears to be no single, definitive cause of abusive behaviour against children. At one end of the scale, the number of officially recorded child murders has steadily risen over the years and 60% of those charged with these murders are the parents of the murdered children. According to John Keane, in many of these cases, it is clear that both the victims and the perpetrators are trapped in high tension zones 'where the conflict-ridden logics of the household (intimacy, sexual desire, identity formation, personal habits, marriage, money, housework and childcare) interact with, reinforce and often contradict virtually the same list of conflict-ridden logics of the labour market (with its additional special stresses and strains of employment, unemployment and underemployment) and its neighbouring criss-crossing social relations with the wider civil society'.

## 5. THE USE AND MISUSE OF SECTION 498A, IPC

Many people seem to associate Section 498A of the Indian Penal Code exclusively with Indian anti-dowry laws. One does, of course, often hear allegations of the section being widely misused but very rarely does one hear any actual cases being cited to support such a claim.

In fact, a Tata Institute of Social Sciences study in 1999 indicates that few women's organisations recommend recourse to section 498A IPC as a first resort and that the number of such cases are miniscule in comparison to the prevalence of domestic violence. However, such studies have done little to stop a large spectrum of people ranging right from husbands and their families to some members of the judiciary from voicing their complaints.

The Section says:

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation: For the purposes of this section, 'cruelty' means- (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

There seem to be two sides to the story : one is that Indian society is patriarchal and public attitudes are firmly in favour of men and wives are usually held responsible for marital problems as the following statement in a report prepared by the legal adviser to the Delhi Commissioner of Police in November 2000 shows: "...the reasons for disharmony between the wife and the husband arise only when either the wife is reluctant/refuses to adjust herself in the family circumstances or if the husband feels reluctant to accommodate his wife either on account of unnecessary interference by the parents of the wife or non-cooperative attitude of the wife."

It would be hard for anyone to deny that domestic violence is rampant — a look at any given day's edition of a local newspaper would probably report at least two cases of women who've been killed / burned to death by it. And those are just the most extreme cases. No one really knows how many instances of domestic violence go completely unnoticed and it seems faintly ridiculous to me to render useless one of the few laws which exist to combat it.

This, however, is precisely what the The (all male) Malimath Committee suggested in a way by recommending that such complaints be madeailable and compoundable. The committee produced a 600 page report which among other things included 16 research papers but for some reason excluded not only any discussion on the issue of violence against women but also excluded any inputs either from victims of marital cruelty or from those working in the field. Some of its reasoning seems to have been encapsulated in 16.4.4 of the report which says: "A less tolerant and impulsive woman may lodge an FIR even on a trivial act. The

result is that the husband and his family may be immediately arrested and there may be a suspension or loss of job. The offence alleged being non-bailable, innocent persons languish in custody. There may be a claim for maintenance adding fuel to fire, especially if the husband cannot pay. Now the woman may change her mind and get into the mood to forget and forgive. The husband may also realize the mistakes committed and come forward to turn over a new leaf for a loving and cordial relationship. The woman may like to seek reconciliation. But this may not be possible due to the legal obstacles. Even if she wishes to make amends by withdrawing the complaint, she cannot do so as the offence is non-compoundable. The doors for returning to family life stand closed. She is thus left at the mercy of her natal family.”

But the other side of the story is that there is abuse of the law although the extent to which such abuse takes place has never been firmly established. There are of course unscrupulous women who use section 498A of the IPC for their own ends but what one also has to realise is that very often women are encouraged by lawyers and/or the police etc. to add that the violence they faced was related to dowry so that their complaints would be taken 'seriously'. And that is what is ironical because the section itself is not designed exclusively in reference to dowry-related problems : in itself, it is meant to deal with all forms of domestic violence.

Section 498A is, in a way, in favour of women. It was created by an amendment to the Indian Penal Code in 1983. Complaints under it are cognizable, non-bailable and non-compoundable. Close on its heels came two amendments to the Dowry Prohibition Act of 1961 — in 1984 and 1986 — which made dowry giving and taking cognizable offences. Those accused under both these laws are not assumed to be innocent until proven guilty ; contrary to other laws, the accused are, in theory, required to prove that they have not committed a crime although in reality they often easily get bail.

Tilting the balance in favour of women has often been useful since previously women could not meet the burden of proof quite simply because marital violence usually occurred behind closed doors and that being the case, in the absence of independent witnesses, there was no easy way for women to prove their cases beyond reasonable doubt as was required under criminal law.

The problem, however has been that there was no mechanism brought into play to ensure that women didn't lie. The law against perjury is virtually non-functional in India and there are no deterrents to ensure that complaints made under this section to ensure that only genuine cases are registered.

In December 2003, the Minister of State for Home Affairs, I. D. Swami said, “There is no information available with the Government to come to the conclusion that many families in India are suffering due to exaggerated allegations of harassment and dowry cases made by women against their husbands and other family members involving them in criminal misappropriation and cruelty.”

The statement is probably not entirely true although cases of abuse of section 498A may simply be isolated ones and not part of a general trend. The answer though probably doesn't lie in making the law bailable and compoundable but in amending it so that bonafide and malafide complaints can be separated.

## 6. THE DOMESTIC VIOLENCE ACT, 2005

Women are an integral part of Indian society but suffer from the violence in the family which doesn't seem to be substantially curbed by either education or awareness. Before the 2005 Act was passed, there had been attempts by the Government to help protect women (such as by introduction of The Protection from Domestic Violence Bill, 2002 was supposed to do). The Bill was, however, widely criticized as was the one which came before it and was not passed by Parliament.

One of the problems with the Bill was that it didn't define what Domestic Violence clearly. It spoke of habitually assaulting a woman and no one seemed to know exactly how frequently a woman had to be assaulted for the assault to be habitual.

The Domestic Violence Act was finally passed in 2005, and the judiciary has interpreted it such that it not only includes wives but also live-in mistresses within its scope.

### 6.1 THE DEFINITION OF DOMESTIC VIOLENCE

Under Section 3 of the Domestic Violence Act, 2005, any of several possible perpetrators of domestic violence can be dealt with. These perpetrators are referred to as 'the respondent' in the statute and have been defined as any adult male person who is or has been, in a domestic relationship with the aggrieved woman and against whom she has sought any relief under the Act. The perpetrator may be the woman's husband or a man with whom she shares a relationship in the nature of a marriage.

'Woman' means 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 and a 'domestic relationship' means a 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.

A 'child' means any person below the age of eighteen years and includes any adopted, step or foster child.

Any act, omission or commission or conduct of the respondent constitutes domestic violence if it:

- harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the woman or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse
- harasses, harms, injures or endangers the woman with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security
- has the effect of threatening the woman or any person related to her by any conduct mentioned above
- otherwise injures or causes harm, whether physical or mental, to the woman.

## **Explanations**

1. 'Physical Abuse' means any act or conduct 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 woman and includes assault, criminal intimidation and criminal force.
  
2. 'Sexual Abuse' includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman.
  
3. 'Verbal and Emotional Abuse' includes:
  - insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child;
  - repeated threats to cause physical pain to any person in whom the woman is interested.
  
4. 'Economic Abuse' includes:
  - deprivation of all or any economic or financial resources to which the woman is entitled under any law or custom whether payable under an order of a Court or otherwise or which the woman requires out of necessity including, but not limited to, household necessities for the woman and her children, if any, Stridhan, property, jointly or separately owned by the woman, 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 woman has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the woman or her children or her Stridhan or any other property jointly or separately held by the woman.
  - prohibition or restriction to continued access to resources or facilities which the woman is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

*'Shared household' means 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 includes such a household whether owned or tenanted either jointly by the woman and the respondent or owned or tenanted by either of them in respect of which either the woman or the respondent 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 respondent is a member, irrespective of whether the respondent or the woman has any right, title or interest in the shared household.*

To determine whether any act, omission, commission or conduct of the respondent constitutes 'domestic violence' under the Act, the overall facts and circumstances of the case are considered.

## **6.2 PROCEDURE FOLLOWED UNDER THE DV ACT**

The procedure to be followed under the Domestic Violence Act, 2005 is basically that of the Code of Criminal Procedure, 1973 although a Court may lay down its own procedure for the disposal applications or with regard to interim and ex parte orders.

It is a technical procedure and making one's way through it may require the assistance of a lawyer. Women may be able to avail of free legal services under the Legal Services Authorities Act, 1987 to which they have a right.

### **Jurisdiction**

Under Section 27 of the Domestic Violence Act, 2005, the Court of Judicial Magistrate of the First Class (JMFC) or the Metropolitan Magistrate, as the case may be, within the local limits of which:

- the woman aggrieved permanently or temporarily resides or carries on business or is employed
- the perpetrator of the violence resides or carries on business or is employed
- the cause of action has arisen

is the competent Court to grant a protection order and other orders under the Act and to try the offences under the Act.

Any order made under the Act shall be enforceable throughout India.

### **Application to the Magistrate**

A woman or a Protection Officer or any other person on behalf of the woman may present an application to the Magistrate seeking one or more reliefs under the Act.

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. No liability, civil or criminal, shall be incurred by any person for giving information in good faith of information.

Before passing any order on such application, the Magistrate must consider any domestic incident report received by him from the Protection Officer or the service provider.

The relief sought may be the issuance of an order for payment of compensation or damages for the injuries caused by the acts of domestic violence committed by the perpetrator. The woman may also file a separate civil suit for such compensation or damages. If she is awarded any amount as compensation or damages in such a civil suit, the amount, if any,

paid or payable under an order under the DV Act is decreased by the amount she has received in the other suit. And the order under the DV Act is executable for the balance amount, if any.

Every application must be in the prescribed form and contain the required particulars.

The Magistrate must fix the first date of hearing which should not ordinarily be beyond three days from the date of receipt of the application by the Court. He is required to try to dispose of every application within a period of sixty days from the date of its first hearing.

A notice of the date of the hearing fixed must be given by the Magistrate to the Protection Officer, who shall get it served on the perpetrator-respondent, and on any other person as directed by the Magistrate within two days or such further reasonable time as may be allowed by the Magistrate. A declaration of service of notice made by the Protection Officer in the prescribed form is proof that the notice was served unless the contrary is proved.

If the Magistrate considers that the circumstances of the case so warrant, and if either party to the proceedings so desires, he may conduct the proceedings under the Act in camera.

### **Counselling**

Under Section 14, the Magistrate may, at any stage of the proceedings under the Act, direct the respondent or the woman, either singly or jointly, to undergo counselling with any member of a service provider who possesses the prescribed qualifications and experience in counselling. If the Magistrate has issued any such direction, he is required to fix the next date of hearing of the case within a period not exceeding two months.

### **Assistance of welfare experts**

Under Section 15, in any proceeding under the Act, the Magistrate may secure the services of such person, preferably a woman, whether related to the woman or not, including a person engaged in promoting family welfare as he thinks fit, for the purpose of assisting him in discharging his functions.

### **Appeals**

Under Section 29, an appeal 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 woman or the respondent, as the case may be, whichever is later.

## **6.3 RIGHTS, REMEDIES AND RELIEFS UNDER THE DV ACT**

The Domestic Violence Act, 2005, provides a number of reliefs to women who are victims of domestic violence which were not available earlier. For example, it gives a wife or live-in partner a right to live in her marital / shared home whether or not her name is on the title deeds of the property.

In fact, a Bench of the Delhi High Court comprising Justices Vikramjit Sen and P K Bhasin held that a mistress or a live-in partner is to be treated at par with a wife under the Domestic Violence Act, 2005.

### **Right to Reside in a Shared Household**

A 'shared household' means a household where the woman 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 woman and the respondent or owned or tenanted by either of them in respect of which either the woman or the respondent 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 respondent is a member, irrespective of whether the respondent or the woman has any right, title or interest in the shared household

Under Section 17 of the Domestic Violence Act 2005, every woman in a domestic relationship has the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same. This Section overrides anything contained in any other law for the time being in force. The woman cannot be evicted or excluded from the shared household or any part of it by the respondent except in accordance with the procedure established by law.

### **Protection Orders**

Under Section 18, the Magistrate may, after giving the woman and the perpetrator-respondent an opportunity to be 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 woman and prohibit the respondent from:

- committing any act of domestic violence
- aiding or abetting in the commission of acts of domestic violence
- entering the place of employment of the woman or, if the person aggrieved is a child, its school or any other place frequented by the woman
- attempting to communicate in any form, whatsoever, with the woman, 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 woman and the respondent or singly by the respondent, including her Stridhan 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 woman assistance from domestic violence
- committing any other act specified in the protection order.

A protection order shall be in force till the woman applies for discharge. If the Magistrate, on receipt of an application from the woman or the respondent, is satisfied that there is a change in the circumstances requiring alteration, modification or revocation of any order made under the Act, he may, for reasons to be recorded in writing pass such order, as he may deem appropriate according to Section 25.

## **Residence Orders**

Under Section 19, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order:

- restraining the respondent from dispossessing or in any other manner disturbing the possession of the woman 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 unless the respondent is a woman
- restraining the respondent or any of his relatives from entering any portion of the shared household in which the woman 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 woman as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require

While making an 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.

The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the woman or any child of such woman.

The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence. Such an order is deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 and is dealt with accordingly.

While passing an order, the Court may also pass an order directing the officer in charge of the nearest police station to give protection to the woman or to assist her or the person making an application on her behalf in the implementation of the order.

The Magistrate may direct the officer in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.

The Magistrate may direct the respondent to return to the possession of the woman her Stridhan or any other property or valuable security to which she is entitled to.

## **Monetary Relief**

Under Section 20 of the Act, while disposing of an application, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the woman and any child of the woman as a result of the domestic violence and such relief may include, but not limited to:

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 woman and
4. the maintenance for the woman as well as her children, if any, including an order under or in addition to an order of maintenance under Section 125 of the Code of Criminal Procedure, 1973 or any other law for the time being in force.

The monetary relief granted under this Section shall be adequate, fair and reasonable and consistent with the standard of living to which the woman is accustomed.

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. He shall send a copy of the order for monetary relief made to the parties to the application and to the in charge of the police station within the local limits of whose jurisdiction the respondent resides.

The respondent shall pay the monetary relief granted to the woman within the period specified in the order.

Upon the failure on the part of the respondent to make payment in terms of the order, the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the woman or to deposit with the Court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

### **Custody Orders**

Under Section 21, notwithstanding anything contained in any other law for the time being in force, the Magistrate may, at any stage of hearing of the application for protection order or for any other relief under the Act grant temporary custody of any child(ren) to the woman or the person making an application on her behalf. The perpetrator-respondent may be given visitation rights unless the Magistrate thinks that such visits may be harmful to the interests of the child or children.

### **Compensation Orders**

Under Section 22, in addition to other reliefs as may be granted under the Act, the Magistrate may on an application being made by the woman, 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.

### **Interim Orders**

Under Section 23, in any proceeding before him under the Act, the Magistrate may pass such interim order as he deems just and proper.

## **Ex Parte Orders**

If the Magistrate 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 against the respondent on the basis of the affidavit in the prescribed form of the woman.

## **Relief under other Statutes**

Relief may also be sought in any legal proceeding, before a Civil Court, family Court or a Criminal Court, affecting the woman and the respondent whether such proceeding was initiated before or after the commencement of the Act.

Any such relief may be sought for in addition to and along with any other relief that the woman may seek in such suit or legal proceeding before a civil or Criminal Court.

In case any relief has been obtained by the woman in any proceedings other than a proceeding under the Act, she shall be bound to inform the Magistrate of the grant of such relief according to Section 26 of the DV Act.

## **6.4 PROTECTION OFFICERS UNDER THE DV ACT**

Protection Officers are creations of the Domestic Violence Act, 2005. In line with a policy of trying to ensure that the woman is safe and that her rights are protected, under Section 8 of the Act, the State Government must appoint as many Protection Officers in each district as it considers necessary. It must also notify the area or areas within which a Protection Officer exercises the powers and perform the duties conferred on him by or under the Act. The Protection Officers should be women, if possible.

It shall be the duty of the Protection Officer:

- to assist the Magistrate in the discharge of his functions under the 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 woman so desires, claiming relief for issuance of a protection order
- to ensure that the woman 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 counselling, shelter homes and medical facilities in a local area within the jurisdiction of the Magistrate
- to make available a safe shelter home, if the woman so requires and forward a copy of his report of having lodged the woman 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 woman 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
- to perform such other duties as may be prescribed.

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, the Act according to Section 9 of the Act.

Under Section 5 of the Domestic Violence Act, 2005, a Protection Officer who has received a complaint of domestic violence or is otherwise present at the place of an incident of domestic violence or when the incident of domestic violence is reported to him, must inform the woman:

- of her 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 the Act
- of the availability of services of service providers
- of the availability of services of the 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 498 A of the Indian Penal Code wherever relevant

A woman or a Protection Officer or any other person on behalf of the woman may present an application to the Magistrate seeking one or more reliefs under the Act.

Under Section 4 of the Act, 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. No liability, civil or criminal, shall be incurred by any person for giving information in good faith of information.

Under Section 33, if any Protection Officer fails or refuses to discharge his duties as directed by the Magistrate in the protection order without any sufficient cause, he is liable to be punished with either simple or rigorous imprisonment of for a term which may extend to one year or with fine which may extend to twenty thousand rupees or with both although Section 34 says that no prosecution or other legal proceeding lies against the Protection Officer unless a complaint is filed with the previous sanction of the State Government or an officer authorised by it in this behalf.

No suit, prosecution or other legal proceeding lies against the Protection Officer for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under the Act or any rule or order made under it according to Section 35. The provisions of the Act are, however, in addition to, and not in derogation of the provisions of any other law, for the time being in force according to Section 36.

Protection Officers, while acting or purporting to act in pursuance of any of the provisions of

the Act or any rules or orders made under it are deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.

### **6.5 SERVICE PROVIDERS UNDER THE DV ACT**

Service Providers are by and large envisaged as NGOs which can provide assistance in cases of domestic violence.

Under Section 10 of the Domestic Violence Act, 2005, subject to the rules as may be made in this behalf, 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 must register itself with the State Government as a service provider for the purposes of the Act.

A registered service provider has the power to:

1. record the domestic incident report in the prescribed form if the woman so desires and forward a copy of the report to the Magistrate and the Protection Officer having jurisdiction in the area where the domestic violence took place
2. get the woman 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 woman is provided shelter in a shelter home, if she so requires and forward a report of the lodging of the woman in the shelter home to the police station within the local limits of which the domestic violence took place.

No suit, prosecution or other legal proceeding shall lie against any service provider or any member of the service provider who is or who is deemed to be, acting or purporting to act under the Act, for anything which is in good faith done or intended to be done in the exercise of powers or discharge of functions under the Act towards the prevention of the commission of domestic violence.

The members of service providers, while acting or purporting to act in pursuance of any of the provisions of the Act or any rules or orders made under it are deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.

### **6.6 DUTIES OF THE AUTHORITIES UNDER THE DV ACT**

The number of women in India who are affected by domestic violence is estimated to be about 50% although under many studies the number is considerably higher. There are a number of factors which have contributed to this including socio-economic factors, the existence of a culture which condones such violence, religious beliefs and the virtual lack of a support system for women who are victims of domestic violence.

The Domestic Violence Act, 2005, aims to place the responsibility of dealing with cases of domestic violence on a variety of persons ranging from the police to the judiciary by focussing not solely on the punishment of perpetrators but also on the safety of women. In order to do this, it has imposed a number of duties on various authorities.

Under Section 5, a police officer, Protection Officer, service provider or Magistrate who has received a complaint of domestic violence or is otherwise present at the place of an incident of domestic violence or when the incident of domestic violence is reported to him, must inform the woman:

- of her 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 the Act
- of the availability of services of service providers
- of the availability of services of the 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 498 A of the Indian Penal Code wherever relevant

This is in addition of the usual requirement that the police proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.

### **Duties of Shelter Homes**

Under Section 6, if a woman or on her behalf a Protection Officer or a service provider requests the person-in-charge of a shelter home to provide shelter to her, such person-in-charge of the shelter home must provide shelter to the woman in the shelter home.

### **Duties of Medical Facilities**

Under Section 7, if a woman or, on her behalf a Protection Officer or a service provider requests the person-in-charge of a medical facility to provide any medical aid to her, such person-in-charge of the medical facility shall provide medical aid to the woman in the medical facility.

### **Duties of Protection Officers**

It is the duty of the Protection Officer:

- to assist the Magistrate in the discharge of his functions under the 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 woman so desires, claiming relief for issuance of a protection order
- to ensure that the woman 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 counselling, shelter homes and medical facilities in a local area within the jurisdiction of the Magistrate
- to make available a safe shelter home, if the woman so requires and forward a copy of his report of having lodged the woman 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 woman 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
- to perform such other duties as may be prescribed.

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, the Act according to Section 9 of the Act.

### **Duties of Government**

Under Section 11, the Central Government and every State Government must take all measures to ensure that:

- the provisions of the Act are given wide publicity through public media including the television, radio and the print media at regular intervals
- the Central Government and State Government officers including the police officers and the members of the judicial services are given periodic sensitization and awareness training on the issues addressed by the Act
- effective co-ordination between the services provided by concerned Ministries and Departments dealing with law, home affairs including law and order, health and human resources to address issues of domestic violence is established and periodical review of the same is conducted
- protocols for the various Ministries concerned with the delivery of services to women under the Act including the Courts are prepared and put in place.

### **6.7 OFFENCES UNDER THE DV ACT**

Under Section 31 of the Domestic Violence Act, a breach of protection order or of an interim protection order, by the perpetrator-respondent is an offence under the Act and is punishable with either simple or rigorous imprisonment for a term which may extend to one year or with fine which may extend to twenty thousand rupees or with both.

The offence is cognizable and non-bailable. Upon the sole testimony of the woman, the Court may conclude that such an offence has been committed by the accused according to Section 32.

If possible, the offence should be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.

While framing charges, the Magistrate may also frame charges under Section 498 A of the Indian Penal Code or any other provision of that Code or the Dowry Prohibition Act, 1961, as the case may be, if the facts disclose the commission of an offence under those provisions.

Section 498 A, IPC which was introduced in 1983 states: “Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. 'Cruelty' means – (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any persons related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.” And the Dowry Prohibition Act, 1961 aims to ensure that women or their families are not harassed to give dowries at the time of marriage.

## 7. DOMESTIC VIOLENCE IN INDIA

Indian society makes domestic violence invisible and leaves it cocooned by feelings of guilt and embarrassment; according to some findings, two of every five women in an abusive relationship in India do not speak up about the abuse they undergo because of shame and family honor. And this is despite the fact that surveys of women across urban slum, non-slum and rural areas have shown that up to fifty per cent of them have suffered from at least one form of domestic violence in their marital lives.

Unfortunately, this attitude which makes domestic violence an invisible factor in India's social fabric vitiates not only societal responses to the issue but also institutional responses even though studies have repeatedly shown that domestic violence is one of the few phenomena which cuts across all the cultural, socio-economic, educational, ethnic and religious barriers which usually divide society, and, absurdly enough, not only seems to increase with a rise in a woman's education but also prevails among the so-called elite of society.

Laws to deal with domestic violence do exist and they include Section 113 A of the Indian Evidence Act, Sections 498 A and 304 B of the Indian Penal Code, and the Dowry Prohibition Act of 1961 and the Domestic Violence Act which came into force in October 2006. The effect of such laws is, however, currently limited. For example, a report by Amnesty International observes, "Analysis of court decisions in one particular district of Maharashtra, Yavatmal, for example, shows that only 2.2 percent of the cases brought under 498 A during the period of 1990-96 resulted in conviction."

A more pressing problem, however, is that although these laws exist to combat domestic violence, it is extremely difficult to ensure that they are implemented. Judicial records show that the conviction rates in cases of domestic violence are very low and these records don't take into consideration those cases which never even make it to court. Nandita Bhatla and Anuradha Rajan have pointed out, "Lengthy court proceedings, inordinate delays in investigation and irrational procedures are serious deterrents for women to approach courts, let alone see the entire case through."

Attitudes with regard to domestic violence can be modified if not changed completely. And community-based initiatives to deal with cases of domestic violence which have begun to develop in some places can, if used wisely, go a long way in helping to do so. The law in such an arena would not become irrelevant but could be used as a framework within which to negotiate with the perpetrators of domestic violence so as to be able to try to settle such cases out of formal courts since the aim is not just to punish the culprit but to get justice for the victim.

The two aims are not always the same as the former may comprise simply sentencing the perpetrator to a prison term whereas the latter could include enabling a woman to reestablish her right to live in a secure environment in her marital home or ensuring that she receives the support she requires to leave it with or without her children, as the case may be.

However, the trouble with traditional alternatives to litigation is that they are entrenched in patriarchal attitudes and sometimes violate human rights. Even in an ideal scenario, there is only so far that formal legal avenues can take one; ultimately, even if a court does sentence a

person for committing domestic violence, unless the person and the community think that what has been done is wrong, it will make very little difference.

Studies have shown that nearly one-third of women in India who experience domestic violence have thought about running away but fear leaving their young children and having nowhere to go. The Domestic Violence Act should help to take care of this. Community intervention in such a scenario could be made to be useful. In some areas of West Bengal, for example, the 'Shalishi' is used to deal with cases domestic violence (and other issues). 'Shalishi' — which is a word of Persian origin — comprises mediation between the parties involved in a dispute by unbiased but powerful 'Shalishidaars'. It has existed since Pre-Mughal times and with its informal set up, many people find it more acceptable than formal legal avenues. It derives its legitimacy from traditional norms and value systems and it attempts to ensure that the family remains intact while it dispenses justice. In doing so, the 'Shalishi' may compromise on meting out a punishment to the culprit as the formal legal system would do but at the end of the day, it seems to help ameliorate the condition of women and that is a kind of empowerment in itself.

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