

LOCAL LAWS – II

E-CONTENT

UNIT IV: JAMMU AND KASHMIR PROTECTION OF WOMEN ACT, 2010.

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INTRODUCTION:

The Jammu and Kashmir Protection of Women from Domestic Violence Act, 2010 (JNKPWDVA), was repealed by The Jammu and Kashmir Re-organisation Act, 2019.

Before coming to the (JNKPWDVA) let's first discuss the genesis of protection of women from domestic violence movement in India. Domestic violence (DV) is common among ladies in India and has been related with poor mental and physical wellbeing. **Domestic violence is a quiet emergency that happens every day and with exemption away from plain view and inside cosy connections in numerous Indian homes. Domestic Violence isn't simply hitting, or battling, or an incidental contention. It's an abuse of energy. The abuser torments and controls the casualty by computed dangers, terrorizing, and physical violence.**

The World Conference on Human Rights in Vienna (1993) accepted that the rights of women and girls are "an inalienable, integral and indivisible part of universal human rights." The United Nations General Assembly adopted the Declaration on the Elimination of Violence against Women, in December 1993. It is the first international human rights instrument to deal exclusively with violence against women and kindling a string of enactments against the abuse of women at home world across. The United Nations defines violence against women as any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life Domestic violence occurs daily in homes throughout the world. The National Coalition against Domestic Violence reports that 1.3 million women are victims of domestic abuse each year. Violence against women is a serious problem in India. Overall, one-third of women age 15-49 have experienced physical violence and about 1 in 10 has experienced sexual violence. It is very disturbing as well as discouraging to think that a country that praises womanhood through epics and their devotion to goddesses can be so demeaning and indifferent when it comes to the common women living in the country. Although there are laws (civil & criminal) to tackle

the issues of domestic violence, it is not implemented effectively. It could be verbal or physical.

National Crime Records Bureau Report of 1991 reveals that in every 33 minutes one Indian woman is being abused by her husband. It also reveals that in 1989 one dowry death occurred in every 125th minute. In 1990, 91, 92 and 93 the figures were 109th, 102th, 106 and 90th minute respectively. India's National Family Health Survey-III, carried out in 29 states during 2005-06, has found that a substantial proportion of married women have been physically or sexually abused by their husbands at some time in their lives. The survey indicated that nationwide 37.2% of women experienced violence after marriage. Bihar was found to be the most violent, with the abuse rate against married women being as high as 59%. It was followed by Madhya Pradesh (45.8%), Rajasthan (46.3%), Manipur (43.9%), Uttar Pradesh (42.4%), Tamil Nadu (41.9%) and West Bengal (40.3%). The National Crime Records Bureau has recorded an increase of 40% in the case of social harassment, and 15.2% in cases of dowry deaths. The NCRB statistics reveal altogether different picture of prevalence among Indian states. West Bengal now tops in the recorded domestic violence, followed by Andhra Pradesh and Rajasthan. The rate of incidence of the domestic violence too is very high in West Bengal with figure of 21.6% among all cognizable crimes. The National Crime Records Bureau (NCRB) Report for the year 2011 further highlights some staggering statistics about the domestic violence against women. The percentage share of domestic violence against women in the cognizable crime has grown from 3.8% in 2007 to 4.3% in 2011. The cruelty by husband and relatives under IPC 498A comes at number four in the maximum incidences of cognizable crimes. Only theft under IPC sec. 379-382, hurt under the IPC Section 323-333 and sec 335-338; and causing death by negligence under IPC Section 304A are more frequent than the domestic violence.

In 1983, domestic violence was recognized as a specific criminal offence by the introduction of section 498-A into the Indian Penal Code. This section deals with cruelty by a husband or his family towards a married woman. Four types of cruelty are dealt with by this law:

- (a) Conduct that is likely to drive a woman to suicide;**
- (b) Conduct which is likely to cause grave injury to the life;**
- (c) limb or health of the woman, Harassment with the purpose of forcing the woman or her relatives to give some property; or**

(d) Harassment because the woman or her relatives is unable to yield to demands for more money or does not give some property.

The punishment is imprisonment for up to three years and a fine. The complaint against cruelty need not be lodged by the person herself. Any relative may also make the complaint on her behalf. The above section relates to the criminal provisions of a more stringent offence. The civil law does not however address this phenomenon in its entirety. There was a need of provision in law with more pliable remedies to offer within the broader framework of civil and criminal laws. A law was enacted keeping in view the rights guaranteed under the article 14, 15 & 21 of the constitution to provide for a remedy under 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.

On the comparative footings “**The Protection of Women from Domestic Violence Act, 2005**” was passed which give security to ladies against the violence done by their male accomplice or his relative. The Protection of Women from Domestic Violence Act 2005 is an Act of the Parliament of India enacted to protect women from domestic violence. It was brought into force by the Indian government from 26 October 2006. *The Act provides for the first time in Indian law a definition of “domestic violence”, with this definition being broad and including not only physical violence, but also other forms of violence such as emotional/verbal, sexual, and economic abuse. It is a civil law meant primarily for protection orders and not for meant to be enforced criminally. In **Vandhana V. T. Srikanth (2007)5CTC 679**, the court held that this Act was enacted with a view to implement the recommendations provided under “Recommendation No XII of UN committee on convention on Elimination of All forms of Discrimination Against women (CEDAW),1989 and ratified by India in June 1993. Interpretation of said should be in conformity with international convention and international instruments and norms.*

Causes of violence:

There are 4 main reasons for domestic violence to persist in India.

1. **Male dominated society:** Even though women had risen to top positions, India was & still remains as a male dominated country.
2. **Lack of awareness of Laws:** Victims of domestic violence are afraid to protest as there is lack of awareness or rather lack of initiative to make her aware of her rights.

3. Laxity in implementation of the existing Acts: No or less efforts are made to increase awareness amongst the women by the authorities posted to implement the Act.

4. Bureaucracy & Fear: If a domestic violence is reported by a third party then he/she is scrutinized as an intruder and problem maker by the community. The bureaucracy associated with reporting of domestic violence, lack of funds for support group adds up to the continued domestic violence in India.

There are many different theories as to the causes of domestic violence. These include psychological theories that consider personality traits and mental characteristics of the perpetrator, as well as social theories which consider external factors in the perpetrator's environment, such as family structure, stress, social learning. As with many phenomena regarding human experience, no single approach appears to cover all cases. Researchers suggest it is useful to think of three sources of Domestic Violence:

- 1. Childhood socialization*
- 2. Previous experiences in couple relationships during adolescence, and*
- 3. Levels of strain in a person's current life.*

People who observe their parents abusing each other, or who were themselves abused may incorporate abuse into their behaviour within relationships that they establish as adults (Kalmuss & Seltzer 1984). The various theories put forward are:

Psychological theory:

80% of men have personality disorder, psychopathology, poor impulse control, low self esteem.

Behavioural, Social theories:

External factors in the offender's environment such as: family structure, stress & social learning.

Resource theory:

Women who are most dependent on the spouse for economic well being (e.g. homemakers/housewives, women with handicaps, the unemployed), and are the primary caregiver to their children, fear the increased financial burden if they leave their marriage.

Dependency means that they have fewer options and few resources to help them cope with or change their spouse's behaviour.

Social stress theory:

Inadequate finances or other such problems in a family may further increase tensions. Violence is not always caused by stress, but may be one way that some people respond to stress. Some speculate that poverty may hinder a man's ability to live up to his idea of "successful manhood", thus he fears losing honour and respect. Theory suggests that when he is unable to economically support his wife, and maintain control, he may turn to misogyny, substance abuse, and crime as ways to express masculinity.

Social learning theory:

People learn from observing and modelling after others behaviour. If one observes violent behaviour, one is more likely to imitate it. If there are no negative consequences (e. g. victim accepts the violence, with submission), then the behaviour will likely continue. Often, violence is transmitted from generation to generation in a cyclical manner.

Power and control theory:

In some relationships, violence is posited to arise out of a perceived need for power and control.

Mental illness:

Psychiatric disorders are sometimes associated with domestic violence, like Borderline personality disorder, conduct disorder in childhood, antisocial personality disorder, Bipolar disorder, Schizophrenia, Drug abuse & personality disorder

SCOPE OF THE ACT:

Primarily meant to provide protection to the wife or female live-in partner from domestic violence at the hands of the husband or male live-in partner or his relatives, the law also extends its protection to women living in a household such as sisters, widows or mothers. Domestic violence under the act includes actual abuse or the threat of abuse whether 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.

The salient features of the Protection from Domestic Violence Act, 2005 are as follows:

1. The Act seeks to cover 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 a relationship in the nature of marriage, or adoption; in addition relationship 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 them are entitled to get legal protection under the proposed Act.

2. "Domestic violence" includes actual abuse or the threat of abuse that is physical, sexual, verbal, emotional and economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

3. One of the most important features of the Act is the woman's right to secure housing. The Act provides for the woman's right to reside in the matrimonial or shared household, whether or not she has any title or rights in the household. This right is secured by a residence order, which is passed by a court. These residence orders cannot be passed against anyone who is a woman.

4. The other relief envisaged under the Act is that of the power of the court to pass protection orders that prevent the abuser from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented visited by the abused, attempting to communicate with the abused, isolating any assets used by both the parties and causing violence to the abused, her relatives and others who provide her assistance from the domestic violence.

5. The draft Act provides for appointment of Protection Officers and NGOs to provide assistance to the woman, medical examination, legal aid, safe shelter, etc.

6. The Act provides for breach of protection order or interim protection order by the respondent as a cognizable and non-bailable offence punishable with imprisonment for a term which may extend to one year or with fine which may extend to twenty thousand rupees or with both. Similarly, non-compliance or discharge of duties by the Protection Officer is also sought to be made an offence under the Act with similar punishment.

Mrran Nama V. State of Tripura
(2010) 90 AIC(Gau), the court Held that purposes of Protection of Women from Domestic Violence Act 2005 is to protect and curb widely prevalent offenses of domestic violence but

women are still at the receiving end not because of inadequate law but due to lack of implementation in proper spirit.

THE LAW:

The **Protection of Women from Domestic Violence Act 2005 (PWDVA)** was brought into force by the Indian government from October 26, 2006. The Act was passed by the Parliament in August 2005 and assented to by the President on 13 September, 2005. The Act has 5 chapters & 37 sections. Below are the few important sections of the Act:

Section 2 enumerates various definitions to be used in the Act.

Section 3 Definition of domestic violence:

For the purposes of this Act, any act, omission or commission or conduct of the respondent 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 and emotional abuse and economic abuse; or
- 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 other property or valuable security; or
- 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); or
- d) Otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I: For the purposes of this section,

"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 aggrieved person and includes assault, criminal intimidation and criminal force; "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman; "verbal and emotional abuse" includes:

- (a) Insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and*
- (b) Repeated threats to cause physical pain to any person in whom the aggrieved person is interested.*
- (i) "economic abuse" includes:*

- a) 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;
- b) 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
- c) 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.

Explanation II: For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration.

Section 4: creates a social responsibility on members of the community at large who have knowledge of an impending or already committed act of domestic violence, to come forward to file complaint on behalf of the victim, this implies that even an individual has an obligation to react against violence.

Section 5: of PWDVA is a social enactment that creates various legal, social, judicial, and administrative mechanisms to provide assistance to victims of domestic violence. This section emphasizes upon 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 (45 of 1860), wherever relevant.

Section 6: clarifies that Shelter Homes are bound to provide shelter.

Section 7: clarifies that the person in charge of a medical facility shall provide medical aid to the aggrieved,

Section 8: of the Act specifies that, as far as possible, Protection Officers should be women and should be appointed as full-time positions.

Section 9: of the PWDVA defines the duties and functions of the Protection Officers.

Section 10: lays down the duties of Service Providers.

Section 11: lays down the various duties of the government to give the Act wide publicity through the media, to conduct periodic sensitization and awareness training of the state/central/police/judicial officers, to co-ordinate different ministries/departments, periodical reviews, and to ensure that protocols for the various ministries concerned including courts are prepared and put in place. The most important essence of this enactment is Section 36 that the Act shall be, in addition to and not in derogation of the provisions of any other law for the time being in force.

Sections 12, 13, 14, 15 and 16 lay out some of the provisions and procedures for obtaining orders or reliefs. Procedure of filing a complaint under PWDVA:

1. The complaint can be made by the aggrieved or by any other person on her behalf to the police officer, service provider, who then informs the protection officer (who ideally is an outreach officer of the court) who liaise between the aggrieved person, police & the service providers (Sec. 5, Rule 5, Form I). He then prepares Domestic Incidence Report (DIR), prepare safety plan (Form V) as desired by the aggrieved to prevent further domestic violence.

2. He arranges legal, medical aid, shelter home, & transport for such facilities. He also updates list of all service providers in the area.

3. The protection officer sends the DIR to the Magistrate.

4. The magistrate can receive application asking relief directly from the aggrieved, from any person on her behalf or from the protection officer (Sec.12).

5. On receipt of application the magistrate then fixes first date of hearing, 3 days after filing of Application. In case of women facing grave danger, the court can pass exparte interim order in her favour and then fix the date. He shall also endeavour to dispose of every application within 60 days of the first hearing {Sec. 12(5)}

6. The respondent is then served with notice of the date of hearing, via the protection officer, within 2 days of filing application and is asked to attend the court.

7. The Magistrate after hearing both the sides may secure assistance of welfare expert (Sec.15) or direct both parties to undergo counselling (Sec. 14). He may also grant exparte

orders on the basis of affidavit filed by the aggrieved (Sec. 23(2), Rule 7, Form III). He may carry out entire proceedings in camera if requested by the aggrieved.

8. The Magistrate can pass orders within 60 days of the filing of the application U/S 17, 18, 19, 20, 21 of the PWDVA or any such order is enforceable throughout India, and shall be in force till the aggrieved person applies for discharge.

9. Either party can appeal against the order passed within 30 days from the date of official receipt of order passed by the Magistrate (Sec. 29)

10. Violation of orders passed by Magistrate, is liable to one year of imprisonment or fine which may extend to Rs.20000/- or both [Sec 31(1)].

Section 17 of the act allows every woman in a domestic relationship to “have the right to reside in the shared household whether or not she has any right, title or beneficial interest in it.

Section 18 of the Act provides 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 from. The aggrieved person shall not be evicted or excluded from the shared household or parts save in accordance with the procedures established by law.”

Section 19 should not be confused with any provision for providing women with property rights. It merely restrains the respondent from dispossessing or disturbing the victim from the shared household. Through this Section, there can be an order directing the respondent to remove himself from shared household, although no such orders could be passed against women. Orders can also be passed restraining a respondent or his relatives from entering any portion of a household where the victim resides. This Section can help victims to secure an alternate accommodation, get directions for Police protection, for the payment of rent and other payments, or for directions for the return of property, stridhan or other valuables to the woman.

The purpose of **PWDVA** is to provide remedy under the civil law which is intended to protect the women from being victims of domestic violence & to prevent the occurrence of domestic violence in society. It is aimed at providing support to woman facing domestic

violence. Legal remedies pertain to civil relief such as injunction, compensation and monetary relief. There can be no arrest made on a complaint filed under this law.

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2010 (Act No. XI of 2010):

[Received the assent of the Governor on 28th April, 2010 and published in the Government Gazette dated 29th April, 2010.]

An Act to provide for more effective protection of the rights of women guaranteed under the Constitution, who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto.

Be it enacted by the Jammu and Kashmir State Legislature in the Sixty first Year of the Republic of India as follows :—

CHAPTER I

Preliminary

1. *Short title, extent and commencement.*—(1) This Act may be called the Jammu and Kashmir Protection of Women from Domestic Violence Act, 2010.

(2) It extends to the whole of the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Government may, by notification in the Government Gazette, appoint (Enforced vide SRO-210 dated 12.07.2010 with effect from 12th July, 2010).

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) **“aggrieved person”** means any woman who is in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;

(b) **“child”** means any person below the age of eighteen years and includes any adopted, step or foster child ;

(c) **“compensation order”** means an order granted in terms of section 22 ;

(d) **“custody order”** means an order granted in terms of section 21 ;

(e) **“domestic incident report”** means a report made in the prescribed form on receipt of a complaint of domestic violence from an aggrieved person ;

(f) **“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, adoption or are family members living together as a joint family.....

Savita Bhannot V. V.D. Bhannot 2010 , the court held that A petition under the provision of the Act is maintainable by a woman who has stopped living with the respondent, or by a woman who alleges to have been subjected to any act of domestic violence prior to coming into force of the Act on 26-10-2006 The Court further help that if the legislative intent was to keep a person not living with the respondent at the time of coming into force of the Act out of The purview of the Act, there was no necessity for using the words “or has been” in the section 2(a), *Krishna Bhattachargee V. Sarthi Chaudhary, (2016)*, the Court held that judicial separation doesn’t change the status of wife as an aggrieved person under Section 2(a) read with Section 12 and doesn’t end the domestic relationship under section 2(f). Judicial Separation is mere suspension of husband-wife relationship and not complete severance (cutting off) of relationship as happens in divorce, *Hiral P. Harsora. V. kusum narottamdas Harsora 2016(10) SCC 165*, the “ It will be noticed that the definition of (domestic Relationship) contained in section 2 (f) is a very wide one . It is a relationship between persons who live or have lived together in a shared household and are related in any one of four ways... blood, marriage or a relationship in the nature of marriage, adoption. Or family member’s of a joint family. A reading of theses definition makes it clear that domestic Relationship involve persons belonging to both sexes and including related by blood or marriage . This necessarily brings within such domestic Relationships make as well as female in laws quite apart from male and female members of a family related by blood. Equally, a shared household includes a household which belong to a joint family of which the respondent is a member Section 2(f) Domestic relationship-The language of the section 2 (f) of the protection of women from domestic violence Act , 2005 (central) and section 2(f) of the protection of women from domestic violence Act 2010 (J&K) although appear to be similar but there is a difference between the two, while as section 2 (f) of the central Act mentions word “or through a relationship in the nature of marriage,” the side word does not exist in the J&K DV Act therefore while as the central Act covers the live-in Relationship also the same is not true about J&K DV Act;

(g) “**domestic violence**” has the same meaning as assigned to it in section 3 ;

(h) “**dowry**” shall have the same meaning as assigned to it in the Dowry Restraint Act, 1960 ;

(i) “**Magistrate**” means the Judicial Magistrate of the First Class exercising jurisdiction under the Code of Criminal Procedure, Samvat 1989, in the area where the aggrieved person resides temporarily or otherwise or the respondent resides or the domestic violence is alleged to have taken place ;

(j) “**medical facility**” means such facility as may be notified by the Government to be a medical facility for the purposes of this Act ;

(k) “**monetary relief** ” means the compensation which the Magistrate may order the respondent to pay to the aggrieved person, at any stage during the hearing of an application seeking any relief under this Act, to meet the expenses incurred and the losses suffered by the aggrieved person as a result of the domestic violence ;

(l) “**notification**” means a notification published in the Government Gazette and the expression “notified” shall be construed accordingly ;

(m) “**prescribed**” means prescribed by rules made under this Act ;

(n) “**Protection Officer**” means an officer appointed by the Government under sub-section (1) of section 8 ;

(o) “**protection order**” means an order made in terms of section 18 ;

(p) “**residence order**” means an order granted in terms of sub-section (1) of section 19 ;

(q) “**respondent**” means any adult male person who is 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 may also file a complaint against a relative of the husband or the male partner;

From the above it would be apparent that though section 2(q) defines a respondent to mean any adult male person, who is or has been in a domestic relationship with the aggrieved person, the proviso widens the scope of the side definition by including a relative of the husband or male partner within the scope of a complaint. It is true the expression Female has not been used in the proviso to section 2 (q) of J&K DV Act 2010, But on The other hand if legislature interested to “exclude female from the ambit of the complaint, which can be filled by a aggrieved wife or female would have been specifically excluded, instead of it being provided in the proviso that a complaint could also filed against the relative of the husband or the male partner. No such restrictive meaning has been given in the expression “relative”, nor has signed expression been specifically defined in DV Act, to make it specific to male only”

In such circumstances, it is clear that the legislature never intended to exclude female relatives of the husband or male partner from the ambit of a complaint that can be made under the provision of the Act. This aspect has been noticed, and clarified in several rulings by various high Courts.....*Afzalunnisa Begum v. State of A.P., 2009 Cri L.J.4191;*

(r) “**service provider**” means an entity registered under sub-section (1) of section 10 ;

(s) “**shared household**” means a household where the person aggrieved lives 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 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.

Despite useful provisions and positive Judgements by the various courts, there are Judgement given by Supreme Court in cases of *Batra V. Batra and Bhaskar lal Sharma and others Vs Monica*, which severely limits the definition of “Shared Household” and interpretation of cruelty faced by a woman;

(t) “**shelter home**” means any shelter home as may be notified by the Government to be a shelter home for the purposes of this Act.

CHAPTER II

Domestic Violence

Section 3: Definition of domestic violence—For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it:

(a) harms or injures or endangers the health, safety, life, limb or wellbeing, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical , sexual abuse, verbal and emotional abuse and economic abuse ; or

(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 other property or valuable security ; or

(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) ; or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I—For the purposes of this section,

(i) “*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 aggrieved person and includes assault, criminal intimidation and criminal force ;

(ii) “sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman ;

(iii) “verbal and emotional abuse” includes—

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child ; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested ;

(iv) “economic abuse” includes—

(a) 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 ;

(b) 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

(c) 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.

Explanation II—For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes “domestic violence” under this section, the overall facts and circumstances of the case shall be taken into consideration.

CHAPTER III

Section 4: Powers and duties of Protection Officers, Service Providers etc.

Information to Protection Officer and exclusion of liability of informant.—(1) 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.

(2) No liability, civil or criminal, shall be incurred by any person for giving in good faith of information for the purpose of sub-section (1).

Section 5: Duties of Police Officers, service providers and Magistrate—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, shall inform the aggrieved person—

(a) 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 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 Jammu and Kashmir Legal Services Authorities Act, 1997 ;

(e) of her right to file a complaint under section 498-A of the Ranbir Penal Code wherever relevant :

Provided 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.

6. Duties of shelter homes—If an aggrieved person or on her behalf a Protection Officer or a service provider requests the person incharge of a shelter home to provide shelter to her, such person incharge of the shelter home shall provide shelter to the aggrieved person in the shelter home.

7. Duties of medical facilities—If an aggrieved person or, on her behalf a Protection Officer or a service provider requests the person incharge of a medical facility to provide any medical aid to her, such person incharge of the medical facility shall provide medical aid to the aggrieved person in the medical facility.

8. Appointment of Protection Officer—(1) The Government shall, by notification, appoint such number of 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 this Act.

(2) The Protection Officers shall as far as possible be women and shall possess such qualifications and experience as may be prescribed.

(3) The terms and conditions of service of the Protection Officer and the other officers subordinate to him shall be such as may be prescribed.

9. Duties and functions of Protection Officer—(1) It shall be the duty of the Protection Officer—

(a) to assist the Magistrate in the discharge of his functions under this Act ;

(b) 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 Incharge 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 ;

(c) 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 ;

(d) to ensure that the aggrieved person is provided legal aid under the Jammu and Kashmir Legal Services Authorities Act, 1997 and make available free of cost the prescribed form in which a complaint is to be made ;

(e) 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 ;

(f) to make available a safe shelter home, if the aggrieved person so requires and forward 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 ;

(g) 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 taken place ;

(h) 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, Samvat 1989 ;

(i) to perform such other duties as may be prescribed.

(2) 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.

10. Service providers—(1) Subject to such rules as may be made in this behalf, any voluntary association registered under the Jammu and Kashmir Societies Registration Act, Samvat 1998 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 Government as a service provider for the purposes of this Act.

(2) A service provider registered under sub-section (1) shall have the power to—

(a) 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 ;

(b) 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 ;

(c) 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.

(3) 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 this Act, for anything which is in good faith done or intended to be done in the exercise of powers or discharge of functions under this Act towards the prevention of the commission of domestic violence.

11. Duties of Government—The Government shall take all measures to ensure that—

(a) the provisions of this Act are given wide publicity through public media including the television, radio and the print media at regular intervals ;

(b) the 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 this Act ;

(c) effective co-ordination between the services provided by concerned 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 ;

(d) protocols for the various departments concerned with the delivery of services to women under this Act including the courts are prepared and put in place.

CHAPTER IV

Procedure for Obtaining Orders of Relief

12. Application to Magistrate—(1) 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 this Act :

Provided that 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.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, Samvat 1977 or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.

(5) The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.

Chapter IV is the heart and soul of the Act which provides for various reliefs that can be granted by magistrate to any aggrieved women these relief are available to aggrieved women under section 12(2), 12 to 18. **Vijay Verma V. State of N.T.C of Delhi &And, 2010(4) JCC 2377** , “Filling of a Petition under Protections of Women from domestic violence Act by The petitioner taking Shelter of domestic relationship and Domestic Violence needs to be considered so that this Act is not misused to settle property disputes”.

Rakesh Manhas V. Aruna Manhas 2014 legal eagle (JK) 166, Limitation under section 468 Cr.P.C, prima facie, is applicable to complaint under section 12 of 2005 Act. Payment of maintenance allowance under section 488 Cr.P.C cannot be taken as a bar to filling an application under section 12(1) of the Act by the respondent given the relief sought by her.

COMMENT:

An application regarding domestic violence can be presented to the magistrate seeking one or more reliefs mentioned in sections by:

- a. The aggrieved person,
- b. Protection officer on behalf of aggrieved person
- c. Any other person on behalf of aggrieved person

Jurisdiction of court:

The first class magistrate court or metropolitan court shall be the competent court within the local limits of which....

- i. The aggrieved person permanently or temporary resides or carries on business or is employed;
- ii. The respondent permanently or temporally resides or carries on business or is employed or;
- iii. The cause of action arises.

Any order made under this Act shall be enforceable throughout India While disposing application the magistrate shall take in to consideration any domestic incident report received from the protection officer or service provider. The relief sought under this section includes the issuance of order of payment or compensation or damages without prejudice to the right of such person to institute suit for compensation or damages for injuries caused by the act of domestic violence. 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 there is a

likelihood of such violence, he may grant following ex-parte interim order against the respondent on the basis of affidavit of the aggrieved person. Magistrate can issue different orders such as Protection order, residence order, monetary relief, custody order or compensatory orders as per the circumstances of the case.

In case of an earlier decree of compensation or damages passed by any other court, in favour of aggrieved person, the amount if any paid shall be set off against the order of amount payable under this act. The application to the magistrate shall be as nearly possible to the formats prescribed under this Act and Rules. After receiving the application the Magistrate shall fix the date of first hearing within 3 days and the magistrate shall endeavour to dispose of every application be within a period of 60 days of the first hearing. The notice of the date of hearing shall be given by the magistrate to the protection officer who shall get it served to the respondent. At any stage of the application, the magistrate may order, counselling of the respondent or aggrieved person either singly or jointly with any member of service provider. The magistrate may secure the service of suitable person preferably a woman including a person engaged in the welfare of women for assisting the court in the discharge of its function. If the circumstance of the case so warrant and if either party so desires the magistrate may conduct the proceedings on camera.

13. Service of notice— (1) A notice of the date of hearing fixed under section 12 shall be given by the Magistrate to the Protection Officer, who shall get it served by such means as may be prescribed on the respondent, and on any other person, as directed by the Magistrate within a maximum period of two days or such further reasonable time as may be allowed by the Magistrate from the date of its receipt.

(2) A declaration of service of notice made by the Protection Officer in such form as may be prescribed shall be the proof that such notice was served upon the respondent and on any other person as directed by the Magistrate unless the contrary is proved.

14. Counselling— (1) The Magistrate may, at any stage of the proceeding under this Act, direct the respondent or the aggrieved person, either singly or jointly, to undergo counselling with any member of a service provider who possess such qualifications and experience in counselling as may be prescribed.

(2) Where the Magistrate has issued any direction under sub-section (1), he shall fix the next date of hearing of the case within a period not exceeding two months.

15. Assistance of welfare expert—In any proceeding under this Act, the Magistrate may secure the services of such person, preferably a women, whether related to the aggrieved person or not, including a person engaged in promoting family welfare as he thinks fit, for the purpose of assisting him in discharging his functions.

16. Proceeding to be held in camera—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 this Act in camera.

17. Right to reside in a shared household—(1) Notwithstanding anything contained in any other law for the time being in force, every women in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.

(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.

18. 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 from—

- (a) committing any act of domestic violence ;
- (b) aiding or abetting in the commission of acts of domestic violence ;
- (c) 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 ;
- (d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact ;
- (e) 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 or any other property held either jointly by the parties or separately by them without the leave of the Magistrate ;
- (f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence ;
- (g) committing any other act as specified in the protection order.

COMMENT:

After giving an opportunity to the aggrieved person and respondent of being heard and the magistrate is satisfied that a prima facie case of domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person prohibiting the respondent from the following acts such as committing any acts of domestic violence:

- a. Aiding or abetting in the act of domestic violence;
- b. Entering the place of employment of aggrieved person or if the person is child, its school or any other places;
- c. Attempting to communicate in any form including personal, oral or written, electronic or telephonic contact;
- d. Alienating any assets, operating bank account, bank locker held or enjoyed by both parties jointly or singly by the respondent including her stridhan;
- e. Causing violence to the dependents, or other relative or any other person who give the assistance to the aggrieved person or
- f. Committing any other acts specified by the protection officer.

19. Residence order.—(1) While disposing of an application under subsection

(1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order—

- (a) 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 ;
- (b) directing the respondent to remove himself from the sharedhousehold ;
- (c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides ;
- (d) restraining the respondent from alienating or disposing off the shared household or encumbering the same ;
- (e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate ; or
- (f) 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 :

Provided that no order under clause (b) shall be passed against any person who is a woman.

(2) 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 aggrieved person or any child of such aggrieved person.

(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, Samvat 1989 and shall be dealt with accordingly.

(5) While passing an order under sub-section (1), sub-section (2) or subsection

(3), the court may also pass an order directing the officer incharge 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.

(6) While making an order under sub-section (1), 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.

(7) The Magistrate may direct the officer incharge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.

(8) The Magistrate 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.

In Shpal Singh kahai V. Ramanjeet Kahai, (2011)3 MAh LJ 849 (bom), the held that object of the Act is to Grant statutory protection to victims of the violence in domestic sector who had no property rights. The Act provides for security and protection of a wife (women) irrespective of her rights in her residence. It aims at protecting the wife against violence at prevention of recurrence of acts of violence.

In S.R.Batra v/s Taruna Batra 2007 SC C (Cri) 56, the court held that the Wife's claim for alternative accommodation in terms of section 19(19)(f) can only be made against her husband and not against her in-laws or other relatives of the husband Jurisdiction of Magistrate.

In Samir vidasagar Bhardwaj V. Nandita Samir Bhardwaj 2017 SCC, the Court held that jurisdiction of magistrate has jurisdiction to direct removal of spouse from shared household on being satisfied That domestic violence had taken place.

COMMENT:

The magistrate being satisfied that a domestic violence has taken place, pass residence order:

- I. Restraining the respondent from dispossessing or in any manner disturbing the peaceful possession of the shared household;
- II. Directing the respondent to remove himself from the shared household;
- III. Restraining the respondent or his relatives from entering any portion of the shared house hold where the aggrieved person lives;
- IV. Restraining the respondent from alienating or disposing of the shared house hold or encumbering it;
- V. Restraining the respondent from renouncing his right in the shared household;
- VI. Directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her or to pay rent for the same if the circumstances so require.

No order shall be made against women under this section. Magistrate may impose additional condition and pass any other order to protect the safety of the aggrieved person or her child. Magistrate is also empowered to order direction the concerned station house officer of the police station to give protection to the aggrieved person to assist in implementing his order. Magistrate may also impose on the respondent to direct stridhan or any other property or valuable security she is entitled.

20. Monetary reliefs—(1) While disposing of an application under subsection

(1) of section 12, 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,—

- (a) the loss of earnings ;
- (b) the medical expenses ;
- (c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person ; and
- (d) 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 488 of the Code of Criminal Procedure, Samvat 1989 or any other law for the time being in force.

- (2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.
- (3) 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.
- (4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the incharge of the police station within the local limits of whose jurisdiction the respondent resides.
- (5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).
- (6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person 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.

OM Prakash V. State of Rajasthan & Ors, the Court held that, the Act does not require that The aggrieved wife is not staying with the Petitioner-husband it would not absolve the husband from his liability.

COMMENT:

The magistrate may direct the respondent to pay monetary relief to meet the expenses of the aggrieved person and any child as a result of domestic violence and such relief include

- a. Loss of earnings;
- b. Medical expenses;
- c. Loss caused due to destruction or removal or damage of any property;
- d. Pass order as to maintenance for the aggrieved person as well as her children if any, including the order under or in addition to an order of maintenance under section 125 Criminal Procedure Code or any other law.

The quantum of relief shall be fair reasonable and consistent with the standard of living to which the aggrieved person is accustomed to. Magistrate can order a lump sum amount also. On failure of the respondent to make payment of this order, magistrate shall order employer or debtor of the respondent to directly pay to the aggrieved person or to deposit in the court a portion of the salary or wage due to the respondent. Magistrate can order a lump sum amount also. On failure of the respondent to make payment of this order, magistrate shall order employer or debtor of the respondent to

directly pay to the aggrieved person or to deposit in the court a portion of the salary or wage due to the respondent.

21. Custody orders—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 this Act 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:

Provided that if the Magistrate is of the opinion that any visit of the respondent may be harmful to the interests of the child or children, the Magistrate shall refuse to allow such visit.

COMMENT:

Magistrate can grant temporary custody of any child or children to the aggrieved person or to the person making application on her behalf and specify the arrangements for visit of such child by the respondent. Magistrate can refuse the visit of such respondent in such case if it may harmful to the interest of the child.

22. Compensation orders—In addition to other reliefs as may be granted under this Act, 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.

COMMENT:

Magistrate may pass order directing the respondent to pay compensation to the petitioner for injuries including mental torture and emotional distress caused by the acts of domestic violence committed by the respondent.

Copies of orders passed by the magistrate shall be supplied free of cost to the parties concerned and police officer and service provider

Any relief available under this Act may also be sought in any other legal proceedings before a civil court, family court or criminal court and such relief may be sought in addition to and along with relief sought for in suit, or legal proceeding before civil or criminal court.

23. Power to grant interim and ex parte orders— (1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

(2) 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 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 section 22, as the case may be, against the respondent.

24. Court to give copies of order free of cost—The Magistrate, shall, in all cases where he has passed any order under this Act, order that a copy of such order, shall be given free of cost, to the parties to the application, the police officer incharge of the police station in the jurisdiction of which the Magistrate has been approached, and any service provider located within the local limits of the jurisdiction of the court and if any service provider has registered a domestic incident report, to that service provider.

25. Duration and alteration of orders—(1) A protection order made under section 18 shall be in force till the aggrieved person applies for discharge.

(2) 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.

26. Relief in other suits and legal proceedings —(1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceedings, 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.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before civil or criminal court.

(3) 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.

27. Jurisdiction—The Court of Judicial Magistrate of the First Class within the local limits of which—

(a) the person aggrieved permanently or temporarily resides or carries on business or is employed ; or

(b) the respondent resides or carries on business or is employed ; or

(c) the cause of action has arisen, shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

28. Procedure—(1) Save as otherwise provided 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, Samvat 1989.

(2) Nothing in sub-section (1) shall prevent the court from laying down its own procedure for disposal of an application under section 12 or under sub-section (2) of section 23.

29. Appeal—There shall lie an appeal to the Court of Sessions within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later.

CHAPTER V

Miscellaneous

30. Protection Officers and members of service providers to be public servants—The Protection Officers and members of service providers, while acting or purporting to act in pursuance of any of the provisions of this Act or any rules or orders made thereunder shall be deemed to be public servants within the meaning of section 21 of the Ranbir Penal Code.

31. Penalty for breach of protection order by respondent—(1) 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.

(2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.

(3) While framing charges under sub-section (1), the Magistrate may also frame charges under section 498-A of the Ranbir Penal Code or any other provision of that Code or the Dowry Restraint Act, 1960, as the case may be, if the facts disclose the commission of an offence under those provisions.

32. Cognizance and proof—(1) Notwithstanding any thing contained in the Code of Criminal Procedure, Samvat 1989 the offence under sub-section (1) of section 31 shall be cognizable and non-bailable.

(2) Upon the sole testimony of the aggrieved person, the court may conclude that an offence under sub-section (1) of section 31 has been committed by the accused.

33. Penalty for not discharging duty by Protection Officer—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 shall be punished 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.

34. Cognizance of offence committed by Protection Officer—No prosecution or other legal proceeding shall lie against the Protection Officer unless a complaint is filed with the previous sanction of the Government or an officer authorised by it in this behalf.

35. Protection of action taken in good faith—No suit, prosecution or other legal proceeding shall lie 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 this Act or any rule or order made thereunder.

36. 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.

37. Power of Government to make rules—(1) The Government may, by notification in the Government Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the qualifications and experience which a Protection Officer shall possess under sub-section (2) of section 8 ;
- (b) the terms and conditions of service of the Protection Officers and the other officers subordinate to him, under sub-section (3) of section 8 ;
- (c) the form and the manner in which a domestic incident report may be made under clause (b) of sub-section (1) of section 9 ;
- (d) the form and the manner in which an application for protection order may be made to the Magistrate under clause (c) of sub-section (1) of section 9 ;
- (e) the form in which a complaint is to be filed under clause (d) of sub-section (1) of section 9;
- (f) the other duties to be performed by the Protection Officer under clause (i) of sub-section (1) of section 9 ;
- (g) the rules regulating registration of service providers under subsection (1) of section 10 ;
- (h) the form in which an application under sub-section (1) of section 12 seeking reliefs under this Act may be made and the particulars which such application shall contain under sub-section (3) of that section ;
- (i) the means of serving notices under sub-section (1) of section 13 ;
- (j) the form of declaration of service of notice to be made by the Protection Officer under sub-section (2) of section 13;
- (k) the qualifications and experience in counselling which a member of the service provider shall possess under sub-section (1) of section 14;
- (l) the form in which an affidavit may be filed by the aggrieved person under sub-section (2) of section 23 ;
- (m) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of the legislature, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be ; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Both the Acts Central Act 2005 J&K Act 2010 provide for more effective protection of the rights of women guaranteed under the Constitution who are the victims of Violence of any

kind occurring within the family and for the matters connected therewith. Domestic violence is civil nature. It is up to the aggrieved person whether he wants to initiate criminal proceedings by logging FIR under Cr.P.C or not, or he wants civil remedies only.....*Ms Nidhi Kaushik V. U.O.I & other.*

CRITICISM OF THE ACT:

Some have criticized the law as having too little force, serving chiefly as a civil, rather than criminal, law requiring a further offense by the accused respondent (such as violating a Protection Order issued under this law) before triggering criminal law sanctions against the respondent (such as arrest and imprisonment). There are several gaps in the implementation of laws. However, groups involved in drafting the law believed this would provide more rapid and flexible relief for the victim.

Men's organizations such as the Save Indian Family Foundation have opposed the law, arguing that it might be misused by women during disputes.¹ It has been noticed by women's groups that such claims emerge only when special provisions are made for the marginalised. Renuka Chowdhury, Indian Minister for Women and Child Development, agreed in an article in Hindustan Times that "an equal gender law would be ideal. But there is simply too much physical evidence to prove that it is mainly the woman who suffers at the hands of man". Former Attorney General of India Soli Sorabjee has also criticized the broad definition of verbal abuse in the act.

According to the then 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 90 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."

¹ <https://www.legalmatch.com/law-library/article/domestic-violence-against-men.html>.

CONCLUSION AND SUGGESTIONS:

Since the past 2-3 decades, there are lot of efforts made by the NGO's, social activist and time to time by the Government to curb domestic violence against women and safe guard her constitutional rights, but still there is a rise in domestic violence. The reason being incorrect implementation and misuse of these laws by the miscreants; may it be the accused, the police or the lawyers. If applied correctly the Protection of Women against Domestic Violence Act 2005 (PWDVA) is a powerful act. After the implementation of the act wide range of cases were filed across the states of India and judgments delivered under PWDVA by the family courts, civil courts and in few by the supreme courts. It will still remain worthless if there is lack of awareness amongst the people of society, which could be brought about by:

1. Educating every woman about their rights.
2. Removing fear and coming out of the traditional set up of tolerating violence.
3. Counselling all family members along with the victim when the case is reported.
4. Creating awareness of social responsibility on members of society to report domestic violence.
5. Awareness produced through media sources.
6. Sensitization of the police to these issues and the power given to them.
7. Providing adequate assistance to the victim once the complaint is filed and ensuring her safety.
8. Adequate funding and proper shelter homes by the Government.
9. Lawyers should take on the responsibility of ensuring that each state is discharging its duties effectively & is completely implementing the provisions of the Act.
10. Lawyers should connect criminal, civil & family law while negotiating for women's rights.
11. Inclusion of strict punishment for false charge by petitioner or misuse of the law by the respondent.

To conclude it is therefore necessary that every member of society and organizations are duty bound to ensure that every woman lives a violence free life.