

# **LAW ON**

## **DOMESTIC VIOLENCE ACT, 2005**

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- 1(A). "Domestic Violence" is a human rights issue :** "Domestic Violence" is undoubtedly a human rights issue, which was not properly taken care of in this country even though the Vienna 1994 and the Beijing Declaration and Platform for Action (1995) had acknowledged that domestic violence was undoubtedly a human rights issue. UN Committee on Convention on Elimination of All Forms of Discrimination against Women in its general recommendations had also exhorted the member countries to take steps to protect women against violence of any kind, especially that occurring within the family, a phenomenon widely prevalent in India. Presently, when a woman is subjected to cruelty by husband or his relatives, it is an offence punishable under Section 498-A, IPC. The Civil Law, it was noticed, did not address this phenomenon in its entirety. Consequently, the Parliament, to provide more effective protection of rights of women guaranteed under the Constitution under Articles 14, 15 and 21, who are victims of violence of any kind occurring in the family, enacted the DV Act. See : **Indra Sarma Vs V.K. Sarma, AIR 2014 SC 309.**
- 1(B). "Domestic relationship" defined by Section 2(f) of the Protection of Women from Domestic Violence Act, 2005 recognizes only five types of relationships :** "Domestic relationship" defined by Section

2(f) of the Protection of Women from Domestic Violence Act, 2005 recognizes only five types of relationships. The said definition makes it restrictive and exhaustive. See : **Indra Sarma Vs V.K. Sarma, AIR 2014 SC 309.**

**1(C). Magistrate can grant six types of reliefs u/s 12 of the 2005 Act :**

Kindly see : **Indra Sarma Vs V.K. Sarma, AIR 2014 SC 309 (para 16)**

**1. Respondent to include Female relative of husband also--- (A) u/s 2(q) of the Protection Of Women From Domestic Violence Act, 2005, A female relative of husband is also covered in the definition of word respondent. Female relative of husband can also be joined as respondent. Word respondent in Sec.(2q) of the Act does not necessarily mean only male members. See---**

1. **Sandhya Manoj Wankhade Vs. Manoj Bhimrao Wankhade, 2011 CrLJ 1687 (SC).**
2. **Jaydipsinh Prabhatsinh Jhala Vs. State of Gujrat, AIR 2010 (NOC) 616 (Gujarat)**
3. **2010 Cr L J (NOC) 549 (Kerala)**
4. **R.Nivendran Vs. Nivashini Mohan, AIR 2010(NOC) 688 (Madras...DB)**
5. **Baldev Raj Gagneja Vs. Smt. Neha Gagneja, AIR 2010(NOC) 689 (Uttrakhand)**

**(B) Respondent not to include Female relative of husband ---u/s 2(q) of the Protection Of Women From Domestic Violence Act, 2005, A female relative of husband is not covered in the definition of word respondent. See---**

1. **Ajay Kant Vs. Smt. Alka Sharma, 2008 Cr L J 264 (MP)**

2. **Smt.Rina Mukherjee Vs State of W B, AIR 2009 (NOC) 2841 (Calcutta)**
3. **Smt. Menakuru Renuka Vs. Smt. Menakuru Mohan Reddy, 2009 Cr L J (NOC) 819 (AP)**
4. **Amruth Kumar Vs. Smt. Chithra Shetty, AIR 2010 (NOC) 687 (Karnataka)**

**(C) Respondent not to include a male not in domestic relationship with the aggrieved person**---The definition of word ‘respondent’ as given u/s 2(q) of the Protection Of Women From Domestic Violence Act, 2005, does not include adult male member who is not or has not been in domestic relationship with the aggrieved person. See--- **Amruth Kumar Vs. Smt. Chithra Shetty, AIR 2010 (NOC) 687 (Karnataka)**

**(D) ‘Relative’ u/s 2(q), proviso & its meaning**--- **The terms ‘respondent’ and ‘relative’ in proviso to Sec. 2(q) of the PWDO Act, 2005 is not restricted to ‘male’ relative only but includes ‘female’ relatives as well. See---R.Nivendran Vs. Nivashini Mohan, AIR 2010(NOC) 688 (Madras...DB)**

**2(A).Shared household & its meaning & claim of residence in the house owned by parent-in-laws (Sec. 23)**---(A) Mother-in-law’s house or father-in-law’s house is not covered with in the expression ‘shared house hold accommodation’. Mother-in-law’s house does not become shared house hold merely because applicant wife had shared that house with her husband earlier. For that it has to be a house owned or taken on rent by husband or a house which belongs to joint family of his husband is a member. See---

**(i) S.R.Batra Vs. Smt. Taruna Batra, AIR 2007 SC 1118**

**(ii) Vimla Ben Ajitbhai Patel Vs. Vatsalaben Ashokbhai Patel, (2008)  
4 SCC 649**

**2(B). Continuing domestic violence & past conduct of parties before coming into force of the 2005 Act** : Where husband was not allowing wife to reside in shared household matrimonial house even after passing of order by the sub-ordinate judge, it has been held by the Supreme Court that there is a continuance of domestic violence committed by the husband against his wife. Question whether such acts committed prior to coming into force of the Act and whether it falls within the definition of domestic violence u/s 3, need not be gone into in view of such continued domestic violence. See : **Saraswathy Vs. Babu, AIR 2014 SC 857.**

**2(BB) Brother-in-law & shared house**---where the complaint under the PWDO Act, 2005 was made against the brother-in-law but the complainant and the brother-in-law never stayed together in the same household, it has been held that merely because she was abused by the brother-in-law & certain allegations were made against her, it will not amount to domestic violence in the absence of ingredients of shared household. See---**K.Narasimhan Vs. Smt. Rohini Devanathan, 2010 Cr L J 2173 (Karnataka)**

**(C) Shared household & woman's right therein(Sec.23)**---where the house was owned by husband and his mother in proportion of one and half each and the wife was living in that matrimonial house before differences erupted, it has been held that such house is shared household/matrimonial accommodation and the wife is entitled to her right of residence in such house u/s 23 of the Protection Of Women

From Domestic Violence Act, 2005. See---**Jyotsana Sharda Vs. Gaurav Sharda, AIR 2010 (NOC) 634 (Delhi)**

**(D) Self acquired house of father-in-law or mother-in-law & right of**

**residence of wife therein**--Daughter-in-law would have no right to claim residence in self-acquired house of parents-in-law i.e. father-in-law ( or mother-in-law) u/s 17 & 26 of the PWDO Act, 2005. Parents-in-law being absolute owners of such house, injunction in their favour restraining the daughter-in-law from dispossessing parents-in-law from their house can be granted See---**Shubhwant Kaur Vs. Lt.col.Prithi Pal Singh Chugh, AIR 2010 (NOC) 638( P & H)**

**(E) Claim of wife to alternative accommodation**---

U/s 19(1) of the PWDO Act, 2005, claim of right to alternative accommodation by wife can be made to husband only. See---**S.R.Batra Vs. Smt.Taruna Batra, AIR 2007 SC 1118**

**(F) Protection-cum-residence claim of wife after long time of**

**marriage**...where an women after 31 years of marriage, having no children, was compelled to leave alone at advanced age of 63 years without any means of sustenance, it has been held that this situation falls within the definition of "domestic violence" as defined u/s 3 of the PWDV Act, 2005. See..**V.D. Bhanot Vs. Savita Bhanot, (2012) 3 SCC 183.**

**(G) Depriving wife economically amounts to domestic violence ...**

Term 'domestic violence' as defined u/s 3 of the Protection Of Women From Domestic Violence Act, 2005 is not limited to physical cruelty only but is also includes mental cruelty and economical abuse. Omission on the part of husbands to look after his wife depriving her of her economic basis also tantamounts to domestic violence. See...

**Ramesh Kumar v. State of Rajasthan, AIR 2011 (NOC) 134 (Rajasthan) .**

**3(a). Impleadment of a person as respondent**--- Unless aggrieved person substantiates that person concerned has got domestic relationship or that he is family member. Such person cannot be mechanically impleaded as one of respondents in application filed under the PWDO Act, 2005 See--- **2010 (NOC) CrLJ 448 (Madras)**

**3(b).Family members of husband not to be casually named under the DP Act, 1961** : Where large No. of family members like unmarried sister, elder brother and the parents of the husband were named by the wife under section 3 and 4 of the Dowry Prohibition Act, 1961, it has been held by the Supreme Court that the allegations against such family members must be specific and there should be disclosure of their active involvement in the matter otherwise cognizance of the offence u/s 3 & 4 of the said Act would not be justified and the same would be abuse of judicial process. See.. **Geeta Mehrotra Vs. State of UP, (2012) 10 SCC 741.**

**4. CRPC not to strictly apply in the proceedings Under the Act 2005-**

--(A) In view of the nature of the proceedings before the Magistrate and in view of the procedural flexibility provided by the legislature to the Magistrate in deciding the applications u/s 12(1) of the Act, it cannot be stated that the Magistrate is bound by the straight jacket formula for procedure laid down under the Code of Criminal Procedure, In a given case, it would be open for the Magistrate to make deviation therefrom as may be found necessary in the interest of justice. See---**Jaydipsinh Prabhatsinh Jhala Vs. State of Gujrat, AIR 2010 (NOC) 616 (Gujarat)**

**(B) Nature of proceeding under the PWDO Act, 2005 as Civil---**

Proceedings under the PWDO Act, 2005 are essentially civil in nature and it is only for the purpose of cutting down procedural delays that powers have been conferred on the Magistrate under Cr.P.C. for enforcement of rights under the Act. Petition u/s 482 Cr.P.C does not lie against an order passed under the Act. See--- **Dr. Vinod Parashar Vs. State of UP, 2008 (61) ACC 775 (All.)**

**5. Dropping of proceedings against the respondent by Magistrate**

**(Sec.12)**---If in a given case upon service of summons, any of the respondents in an application u/s 12(1) of the Act can demonstrate before the Magistrate that he or she has been wrongly joined or that there are no allegations against him or her to proceed further, it would be open for the Magistrate to delete such respondent from the proceedings and to drop further proceedings against him/her. Of course such powers need to be exercised with due care and circumspection and unless it is pointed out on admitted or indisputable facts or on application of law on admitted facts that the proceeding against such a respondent are not maintainable, such powers should not be exercised. This would also be in the larger interest of justice since in a case, it is so demonstrated, the Magistrate would not to perforce proceed against such respondents where no case at all has been made out, nor would such respondents be compelled to approach the High Court for quashing proceedings there by causing harassment and prejudice to such parties and increasing the work burden of the High Court. See---**Jaydipsinh Prabhatsinh Jhala Vs. State of Gujrat, AIR 2010 (NOC) 616 (Gujarat)**

- 6- (A) Interim custody of child (u/s 21)**---A Magistrate can, u/s 21 of the 2005 Act, not only pass interim order of custody of child of aggrieved woman but also ex-parte interim order. See---**Anvarbhai Rasulbhai Sanghvani Vs. Mumtazben Anvarbhai Sanghvani, AIR 2010 (NOC) 627 (Gujarat)**
- (B) Ex-parte order of Custody of child(u/s 21)**---A Magistrate can, u/s 21 of the 2005 Act, not only pass interim order of custody of child of aggrieved woman but also ex-parte interim order. See---**Anvarbhai Rasulbhai Sanghvani Vs. Mumtazben Anvarbhai Sanghvani, AIR 2010 (NOC) 627 (Gujarat)**
- (C) Ex-parte ad interim order (u/s 21)**---A Magistrate can, u/s 21 of the 2005 Act, not only pass interim order of custody of child of aggrieved woman but also ex-parte interim order. See---**Anvarbhai Rasulbhai Sanghvani Vs. Mumtazben Anvarbhai Sanghvani, AIR 2010 (NOC) 627 (Gujarat)**
- 7. Jurisdiction of Sessions Judge**--- Sessions Judge of local area where complaint is lodged has jurisdiction to proceed against the accused husband. Cognizance of offence u/s 3/14 of the PWDO Act, 2005 can be taken by the court in the case of repeated overt act of cruelty, torture and other physical assault including verbal harassment against spouse as such acts constitute domestic violence and are of continuing nature. Continuing cause of action of filling complaint subsists notwithstanding acts committed prior to coming into force of the PWDO Act, 2005 i.e. w.e.f. 26.10.2006. See---**Smt. Bulu Das Vs. Ratan Das, AIR 2010(NOC) 615 (Gauhati)**.
- 8(A). Retention of Stridhan by husband or his family amounts to Continuing Offence under the Protection of Women from**



**Domestic Violence Act, 2005** : Retention of Stridhan by husband or his family amounts to Continuing Offence under The Protection of Women from Domestic Violence Act, 2005. See : Krishna Bhattarjee Vs. Sarathi Choudhury, (2016) 2 SCC 705.

**8(B). Continuing Offence under PWDO Act, 2005 & its cognizance :**

Cognizance of offence u/s 3/14 of the PWDO Act, 2005 can be taken by the court in the case of repeated overred Act of cruelty, torture and other physical assault including warble harassment against spouse as such acts constitute domestic violence and are of continuing nature. See---Smt.Bulu Das Vs. Ratan Das, AIR 2010(NOC) 615 (Gauhati)

**9. Powers of Magistrate Vis-a-vis protection officer under the PWDO Act, 2005---**

Under the PWDO Act, 2005, aggrieved can directly approach magistrate for redressal of her domestic violence or she can approach protection officer in case of emergency with the service providers and with their help to magistrate concerned. There is no illegality in directly approaching magistrate for tacking cognizance in the matter. Magistrate concerned can take help of protection officer and service provider after receiving complaint. See---Baldev Raj Gagneja Vs. Smt. Neha Gagneja, AIR 2010(NOC) 689 (Uttrakhand).

**10. Magistrate may seek help from service provider or protection officer---**

Under the PWDO Act, 2005, aggrieved can directly approach magistrate for redressal of her domestic violence or she can approach protection officer in case of emergency with the service providers and with their help to magistrate concerned. There is no illegality in directly approaching magistrate for tacking cognizance in

the matter. Magistrate concerned can take help of protection officer and service provider after receiving complaint. See---**Baldev Raj Gagneja Vs. Smt. Neha Gagneja, AIR 2010(NOC) 689 (Uttrakhand)**

- 11. Consequences of not submitting report by Protection Officer to magistrate in prescribed Form( Sec,12(1)(5)---Submission of report by Protection Officer to Magistrate regarding domestic violence in prescribed Form 1 is only procedural in nature. If the protection officer fails to submit his report strictly as per Rule 5 in Form 1 then it is always open to magistrate to call for further report from the protection officer in Form 1. However, such procedural errors committed by the protection officer in submitting the report to magistrate should not be made ground for rejecting the application. See---**Baldev Raj Gagneja Vs. Smt. Neha Gagneja, AIR 2010(NOC) 689 (Uttrakhand)****

- 12(A).Appeal u/s 29 of the PWDO Act, 2005 to the sessions Judge---**  
Irrespective of the nature of order passed by the Magistrate under the PWDO Act, 2005, the same is appealable to the court of Sessions Judge u/s 29 of the Act. See---

**Manish Tandon Vs. Richa Tandon, 2009(1) ALJ 347 (All.)**

**Dr. Vinod Parashar Vs. State of UP, 2008(61) ACC 775 (All.)**

- 12(B).Appeal u/s 29 of the PWDO Act, 2005 not maintainable against rejection of an application to decide an issue first :** Order rejecting application filed by husband to decide issue whether he was married to opposite party on ground that issue could be decided only after evidence is not appealable u/s 29 as such an order did not decide any issue so as to cause any prejudice to the party as it had only

deferred its consideration till stage of evidence. See : **Ranvijai Singh Vs. State of UP, AIR 2016 (NOC) 91 (All).**

**13. Petition u/s 482 Cr.P.C. not to lie against any order passed by Magistrate under the PWDO Act, 2005**--- Petition u/s 482 Cr.P.C. does not lie against any order passed by Magistrate under the PWDO Act, 2005 as the same is appealable to the court of sessions Judge u/s 29 of the Act. See---

**Manish Tandon Vs. Richa Tandon, 2009(1) ALJ 347 (All.)**

**Dr. Vinod Parashar Vs. State of UP, 2008(61) ACC 775 (All.)**

**14(A).Live-in-relationship & presumption of marriage u/s 114 Evidence Act**... Live-in-relationship between parties if continued for a long time, cannot be termed in as “walk in & walk out” .There is a presumption of marriage between them. See ... **Madan Mohan Singh Vs. Rajanikant, AIR 2010 SC 2933.**

**14(B).Live-in relationship when doesnt amount to marriage** .... Merely spending weekends together or a one night stand would not make it a ‘domestic relationship’ u/s 2(f) of the Protection of Women from Domestic Violence Act,2005.All live-in relationships will not amount to in the nature of marriage.Live-in relationships in the nature of marriage under the 2005 Act must fulfill the following conditions –

- (a) the couple must hold themselves out to society as being akin to spouses.
- (b) they must be of legal age to marry
- (c) the must be otherwise to qualified to enter into a legal marriage, including being unmarried.

(d) they must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

See.... **D. Velusamy v. D. Patchaiammal, AIR 2011 SC 479.**

**14(C).Live-in relationships & its preconditions to be treated as marriage**

..... Merely spending weekends together or a one night stand would not make it a 'domestic relationship' u/s 2(f) of the Protection of Women from Domestic Violence Act,2005.All live-in relationships will not amount to in the nature of marriage.Live-in relationships in the nature of marriage under the 2005 Act must fulfill the following conditions –

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(d) they must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

See.... **D.Velusamy v. D. Patchaiammal, AIR 2011 SC 479.**

**14(D).Legal consequences of live-in relationship with a married person :**

Live-in relationship with a married person amounts to intentionally alienating one spouse from other. It is an intentional tort. Wife and children of married party can sue other party to such relationship for damages. See : **Indra Sarma Vs V.K. Sarma, AIR 2014 SC 309.**

**14(E).Live-in-relationship does not amount to marriage :**

Live-in-relationship does not amount to marriage. A woman entering into live-in-relationship simpliciter is not entitled to reliefs available under the

Protection of Women From Domestic Violence Act, 2005. See : **Indra Sarma Vs V.K. Sarma, AIR 2014 SC 309.**

**14(F). Live-in-relationship when to be treated as marriage ?** : In the case noted below, it has been held by the Hon'ble Supreme Court that live-in-relationship does not amount to marriage but under the conditions noted below, live-in-relationship may constitute a relationship in the nature of marriage :

- (i) duration of period of relationship
- (ii) shared household
- (iii) pooling of resources and financial arrangements
- (iv) domestic arrangements
- (v) sexual relationship
- (vi) children
- (vii) socialization in public
- (viii) intention and conduct of the parties. See : **Indra Sarma Vs V.K. Sarma, AIR 2014 SC 309.**

**14(G). Gay & Lesbians not recognized to constitute a relationship in the nature of marriage** : Domestic relationship between same sex partners (Gay and Lesbians) is not recognized by Act. Such a relationship cannot be termed as a relationship in the nature of marriage. Section 2(f) of the DV Act though uses the expression "any two persons" the expression "aggrieved person" under S. 2(a) takes in only a woman hence, the Act does not recognize the relationship of same sex (gay or lesbian) and, hence, any act, omission, commission or conduct of any of the parties, would not lead to domestic violence, entitling any relief under the DV Act See : **Indra Sarma Vs V.K. Sarma, AIR 2014 SC 309** (para 38).

**14(H). Live-in relationship when doesnt amount to marriage ....**  
 (A) Merely spending weekends together or a one night stand would not

make it a 'domestic relationship' u/s 2(f) of the Protection of Women from Domestic Violence Act, 2005. All live-in relationships will not amount to in the nature of marriage. Live-in relationships in the nature of marriage under the 2005 Act must fulfill the following conditions –

- (a) the couple must hold themselves out to society as being akin to spouses.
- (b) they must be of legal age to marry
- (c) they must be otherwise qualified to enter into a legal marriage, including being unmarried.
- (d) they must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

See.... **D.Velusamy v. D.Patchaiammal, AIR 2011 SC 479**

**14(I). Live-in relationships & its preconditions to be treated as marriage.....** Merely spending weekends together or a one night stand would not make it a 'domestic relationship' u/s 2(f) of the Protection of Women from Domestic Violence Act, 2005. All live-in relationships will not amount to in the nature of marriage. Live-in relationships in the nature of marriage under the 2005 Act must fulfill the following conditions –

- (a) the couple must hold themselves out to society as being akin to spouses.
- (b) they must be of legal age to marry
- (c) they must be otherwise qualified to enter into a legal marriage, including being unmarried.
- (d) they must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

See.... **D.Velusamy v. D.Patchaiammal, AIR 2011 SC 479.**

**14(J). Live-in-Relationship Without Marriage & Maintenance :** Living as husband & wife for considerable period without marriage whether or not entitles the woman, has been referred to larger bench by the supreme court. See... **2011 CrLJ 96 (SC)**

**15(A). Standard of proof of marriage :** In the case of **Dwarika Prasad Satpathy Vs. Bidyut Prava Dixit, AIR 1999 SC 3348**, it has been

held by the Hon'ble Supreme Court that the validity of the marriage for the purpose of summary proceeding u/s 125 Cr PC is to be determined on the basis of the evidence brought on record by the parties. The standard of proof of marriage in such proceeding is not as strict as is required in a trial of offence 494 of the IPC. If the claimant in proceedings u/s 125 of the code succeeds in showing that she and the respondent have lived together as husband and wife, the court can presume that they are legally wedded spouses, and in such a situation the party who denies the marital status can rebut the presumption. Once it is admitted that the marriage procedure was followed then it is not necessary to further probe into whether the said procedure was complete as per the Hindu rites in the proceedings u/s 125 Cr PC from the evidence which is led if the magistrate is prima facie satisfied with regard to the performance of marriage in proceedings u/s 125 Cr PC which are of summary nature, strict proof of performance of essential rites is not required. After not disputing the paternity of the child born few days after marriage and after accepting the fact that marriage ceremony was performed, though not legally perfect as contended, it would hardly lie in the mouth of the husband to contend in proceeding u/s 125 Cr PC that there was no valid marriage as essential rites were not performed at the time of said marriage. The provision u/s 125 Cr PC is not to be utilized for defeating the rights conferred by the Legislature to the destitute women, children or parents who are victims of social environment. Moreover order passed u/s 125 Cr PC does not finally determine the rights and liabilities of parties and parties can file civil suit to have their status determined.

**15(B). Standard of proof of marriage** : In the case of **Sumitra Devi Vs. Bhikan Choudhary, 1985 Cr LJ 528 (SC)**, in a case of claim for maintenance u/s 125 Cr PC, it has been held by the Hon'ble Supreme Court that in order that there may be a valid marriage according to Hindu Law, certain religious rites have to be performed. Invoking the fire and performing Saptapadi around the sacred fire have been considered by the Supreme Court to be two of the basic requirements for a traditional marriage. It is equally true that there can be a marriage acceptable in law according to customs which do not insist on performance of such rites as referred to above and marriages of this type give rise to legal relationship which law accepts.

**15(C). Standard of proof of marriage** : In the cases of **Amit Agarwal Vs. State of UP, 2007 (1) ALJ 277 (All)** and **Bhirari Singh Vs. State of UP, 1990 Cr LJ 844 (sic) (All)** it has been held by the Hon'ble Allahabad High Court that Sec. 125 Cr PC proceeds on the basis of de facto marriage and not on marriage de jure because the foundation for payment of maintenance u/s 125 Cr PC is the existence of conjugal relationship. Interpretation of laws which are enacted as measures of Social welfare has to be made in a manner so as to give effect to their enforcement irrespective of minor crucial obstacles. Sec. 125 Cr PC is a Social Welfare legislation meant for benefit of destitute women and the operation of the same should not be allowed to be obstructed or hindered because of pleas about marriage being void, voidable or irregular.

**15(D). Woman not lawfully married not to be treated as 'wife' and not entitled to maintenance u/s 125 Cr PC---** In the case of **Savitaben Somabhai Bhatiya Vs. State of Gujarat, 2005 Cr LJ 2141 (SC)**, it



has been held that the legislature considered it necessary to include within the scope of Sec. 125 an illegitimate child but it has not done so with respect to woman not lawfully married. As such, however, desirable it may be to take note of the plight of the unfortunate woman, who unwittingly enter into wedlock with a married man the legislative intent being clearly reflected in Sec. 125 of the Cr PC, there is no scope for enlarging its scope by introducing any artificial definition to include woman not lawfully married in the expression 'wife' this may be an inadequacy in law, which only the legislature can undo. Even if it is true that husband was treating the woman as his wife it is really inconsequential. It is the intention of the legislature which is relevant and not the attitude of the party. The principle of estoppel cannot be pressed into service to defeat the provision of Sec. 125 of the Cr PC.

**15(E). Maintenance u/s 23 of POWD Act, 2005 :** Where income of husband was Rs. 28,738/- per month and the husband had not denied his marriage or income or fact that the husband and wife were living separately, it has been held that order of Magistrate granting Rs. 5,000/- per month as interim maintenance to wife u/s 23 of the POWD Act, 2005 was proper. See....**Manoj Anand Vs. State of UP & Another, AIR 2012 (NOC) 287 (Allahabad).**

**15(F). Failure to pay maintenance by husband not punishable u/s. 31 of the POWD Act, 2005 :** A maintenance order is not covered u/s 18 of the POWD Act, 2005. Section 31 of the Act can only be invoked in case of breach of protection order as defined u/s 18. Hence, an order passed by Magistrate to punish husband u/s 31 or his failure to pay interim maintenance to wife has been held as not proper. See... **Manoj Anand Vs. State of UP & Another, AIR 2012 (NOC) 287 (Allahabad).**

**15(G). Belated claim of maintenance etc. by wife after 15 years of separate living refused ....** Where the wife & husband were admittedly living separately since last 15 years, and then the wife abruptly after 15 years alleged domestic violence & she and her son were also already getting maintenance as per orders of court and there was no averment in her complaint regarding claim of higher amount of maintenance or accommodation in the house of husband or its refusal by her husband nor there was any prohibition on use of accommodation, it has been held that the complaint of wife was not maintainable. See.. **2010 CRLJ 4049 (Bombay)**.

**16(A).Second wife when not entitled to maintenance .....** Second wife marrying Hindu male having legally wedded wife, after coming into force of Hindu Marriage Act is *void ipso jure* u/s 5(i) of that Act & is not entitled to claim of maintenance either under the Hindu Marriage Act or u/s 125 of the CrPC. See.... **Mangala Bhivaji Lad Vs. Dhondiba Rambhau Aher, AIR 2010 Bom 122.**

**16(B). Second wife when entitled to maintenance u/s 125 Cr PC ....** Word 'wife' includes divorced wife. However, if second wife has not even been married she could not be divorced & second wife cannot claim to be wife of her husband unless it is established that husband was not earlier married to another woman. See.....

1. **D.Velusamy v. D.Patchaiammal, AIR 2011 SC 479.**
2. **Bai Tahira Vs. Ali Hussaid Fissalli Chothia, 1979 SC 362(Three-Judge Bench)---***Case of divorced Muslim woman*

**16(C).Allegations of second marriage by husband how to be proved ....** Where it was alleged by wife u/s 125 CrPC that husband was married to one 'L' but no notice was issued to 'L' nor she was made party to proceedings, it has been held that any declaration about the marital status of 'L' vis-a-vis husband is wholly null and void as it will be

violative of rules of natural justice. See... **D.Velusamy v. D.Patchaiammal, AIR 2011 SC 479.**

**16(D). Second marriage or re-marriage by husband when not proved :**

Where the wife had alleged that her husband had contracted a second marriage and filed a complaint against her husband for an offence u/s 494 IPC, the dismissal of complaint and acquittal of husband u/s 494 IPC cannot be taken against the wife to be a just ground for her refusal to live with her husband. The court must not lose the fact how it would be difficult for the wife to prove the second marriage. To prove the second marriage as fact essential ceremonies constituting it must be proved and if second marriage is not proved to have been validly performed by observing essential ceremonies and customs in the community conviction u/s 494 IPC ought not to be made. Even though wife was unable to prove that husband has remarried, yet the fact remained that the husband was living with another woman. That would entitle the wife to live separately and would amount to neglect or refusal by the husband to maintain her. Proviso to sub-sec. (3) would squarely apply and justify refusal of the wife to live with her husband. Statement of the wife that she is unable to maintain herself would be enough and it would be for the husband to prove otherwise. See---**Rajathi Vs. C. Ganesan, AIR 1999 SC 2374**

**17(A).Distinction between divorce and judicial separation :** There is a distinction between a decree for divorce and decree or judicial separation. In the decree for divorce, there is a severance of status and the parties do not remain as husband & wife whereas in a decree of judicial separation, the relationship between husband and wife continues and the legal relationship continues as it has not been

snapped. The observation of the High Court that the party is having been judicially separated, the appellant wife has ceased to be an aggrieved person under the protection of Women from Domestic Violence Act, 2005, is wholly unsustainable. See : **Krishna Bhattacharjee Vs. Sarathi Choudhury, (2016) 2 SCC 705** (paras 15 & 23).

**17(B). Irretrievable breakdown of marriage & divorce :** When the break down of marriage is irretrievable then divorce should not be withheld. See..... **Poornima Mishra Vs. Sunil Mishra, 2010(3) ALJ 555.**

**17(C). Divorce decree bars proceedings by Magistrate under the PWDV Act, 2005 :** Where the decree of divorce passed by Civil Court was still subsisting, it has been ruled by the Hon'ble Supreme Court that permitting Magistrate to proceed further under the provisions of the PWDV Act, 2005 was not in consonance with the decree of divorce and the proceedings amounted to abuse of the process of the court. Even if the divorce decree is alleged to have been obtained by playing fraud upon the court, the party has to be approach the appropriate forum for cancellation of the same. See....

- (i). **Inderjit Singh Grewal Vs. State of Punjab & another, 2011 (75) ACC 225**
- (ii) **Hitesh Bhatnagar Vs Deepa Bhatnagar, AIR 2011 SC 1637**

**18. Bigamous child entitled to maintenance:** Even though bigamous marriage is illegal u/s 11 of the Hindu Marriage Act, 1955 but when after such marriage Hindu male and female are living together for a number of years as husband and wife, the child born as a result of such union acquires legitimate status u/s 16(1) of the above Act and

such child is entitled to maintenance u/s 125 Cr PC. See---**Bakulabai Vs. Gangaram, (1988) SCC 537.**

**19(A).Interim stay order by Sessions Judge in appeal u/s 29 of the PWDV Act, 2005 staying execution of order of Magistrate awarding maintenance** : Where an order of Magistrate granting Rs. 2.5 lacs per month as maintenance to the wife was challenged by the husband before the Sessions Court in appeal u/s 29 of the Protection of Women from Domestic Violence Act, 2005, it has been held by the Hon'ble Supreme Court that whether the Sessions Court in exercise of its jurisdiction u/s 29 of the Act has any power to pass interim orders staying the execution of the order appealed before it is a matter to be examined in appropriate case as the question of power of grant of interim order by the Sessions Judge was not pressed before the Hon'ble Supreme Court. See : **Shalu Ojha Vs. Prashant Ojha, AIR 2015 SC 170.**

**19(B).High Court u/s 482 CrPC should be slow in passing interim orders staying execution of order of Magistrate awarding maintenance under PWDV Act, 2005:** Where an order of Magistrate granting Rs. 2.5 lacs per month as maintenance to the wife was challenged by the husband before the Sessions Court in appeal u/s 29 of the Protection of Women from Domestic Violence Act, 2005 and the same was not stayed by the Sessions Judge in appeal filed u/s 29 of the Act but the Hon'ble High Court u/s 482 of the CrPC had passed interim order staying execution of the order of the Magistrate awarding interim maintenance, it has been held by the Hon'ble Supreme Court that the High Court should be slow in granting interim

- orders interfering with the orders by which maintenance was granted to the wife. See : **Shalu Ojha Vs. Prashant Ojha, AIR 2015 SC 170.**
- 20(A). Limitation u/s 468 and 472 CrPC applies to a complaint under Sections 12, 28 &32 of the Protection of Women from the Domestic Act, 2005 :** Limitation u/s 468 and 472 CrPC applies to a complaint under Sections 12, 28 &32 of the Protection of Women from the Domestic Act, 2005. See : **Krishna Bhattarjee Vs. Sarathi Choudhury, (2016) 2 SCC 705.**
- 20(B).No limitation period for filing complaint under PWDV Act, 2005 :** There is no limitation period for filing complaint under PWDV Act, 2005. See..... **Inderjit Singh Grewal Vs. State of Punjab & another, 2011 (75) ACC 225**
- 21. Court can permit amendment in a complaint filed u/s 200 CrPC r/w Sections 26 & 28 of PWDV Act :** Court can permit amendment in a complaint filed u/s 200 CrPC r/w Sections 26 & 28 of PWDV Act for offence u/s 498 of the IPC. **Kunapareddy alias Nookala Shanka Balaji Vs. Kunapareddy Swarna Kumari, AIR 2016 SC 2519.**
- 22. POWD Act, 2005 is retrospective :** POWD Act, 2005 is retrospective. It cannot be said to be post facto criminal law. See : **2010 CrLJ 3759 (AP).**

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