

**DOMESTIC VIOLENCE
AND
THE DOWRY PROHIBITION ACT, 1961**



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Domestic Violence

Domestic Violence is comparatively a new terminology in the field of law though most of us knew that violence which take place in domestic places is rampant. The members of the household are on one hand perpetrators and on other hand are the victims. The women are particularly more vulnerable, susceptible and exposed to violence at the hands of not only her own husband but also from other relatives of the husband. The legislature knowing this menace, came out with a new laudable law known as THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 to not only meet the situation but also to provide protection and dignity to the victims of domestic violence.

This Act is applicable to all persons who are in domestic relationship which means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;



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What is Domestic Violence ?

Any act or conduct of the respondent (man & woman) shall constitute domestic violence in case it does any of the following acts

- 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.



Who can file complaint under the act?

Aggrieved women includes (1) wife, (2) woman living with a man and sharing household, at any point of time when they are related consanguinity, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family

All live-in- relationships are not relationships in the nature of marriage

Against whom Complaint can file:

Any adult male person who is, or has been, in a domestic relationship with the aggrieved person (and provided that an aggrieved wife or female living in a relationship in the nature of a marriage) and also against a relative of the husband or the male partner; which includes female relatives of the husband or male partner.



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**Sou. Sandhya Manoj Wankhade V/s Manoj Bhimrao Wankhade & Ors
(MANU/SC/0081/2011)**

It was held that the complaint can be even filed by a woman who was no longer residing with her husband or who was allegedly subjected to any act of domestic violence prior to coming into force of the Act on 26th October, 2006. The conduct of the parties even prior to the coming into force of the Act can be taken into consideration while passing order under this Act.

V. D. Bhanot Vs Savita Bhanot (MANU/SC/0115/2012)

In this case, the court held that complaint could be filed at

- The place where woman is residing
- The place where the domestic violence was committed



Before whom complaint can be filed?

A) Before the Protection Officer

or

B) Before the Magistrate

When complaint filed before Protection Officers

Upon receipt of a complaint of domestic violence

1. Protection Officer has to make a domestic incident report to the Magistrate
2. If the aggrieved person so requires, Protection Officer to make available a safe shelter home
3. If aggrieved person has sustained bodily, Protection Officer to get the aggrieved person medically examined, injuries
4. If aggrieved person wants to claim relief for issuance of a protection order; Protection Officer shall make an application to the Magistrate.



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5. To ensure that the aggrieved person is provided legal aid under the Legal Services Authorities Act, 1987 (39 of 1987) and make available free of cost the prescribed form in which a complaint is to be made;
6. To ensure that the order for monetary relief passed by the Magistrate under section 20 is complied with and executed, in accordance with the procedure prescribed under the Code of Criminal Procedure, 1973 (2 of 1974);
7. 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.



When complaint filed before Magistrate

Upon receipt of a complaint of domestic violence Magistrate shall direct Protection Officer to submit report of domestic incident and the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

If Protection Officer's report does not support the complaint filed before the Magistrate then the complaint would fail

It is mandatory for the Magistrate to take into consideration the domestic incident report of the Protection Officer before passing any order under the Act



What relief can be prayed?

1. Payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for injuries caused by the acts of domestic violence committed by the adult male member, with a prayer for set off against the amount payable under a decree obtained in Court;
2. The Magistrate can 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.



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Aggrieved person shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.

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.

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 shared household;



- 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:
 - (1) 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,



(4) 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 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

(5)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.



(6) 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.

(7) 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 in charge of the police station within the local limits of whose jurisdiction the respondent resides.

(8) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).

(9) 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.



(10) Custody orders.

Magistrate can 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.

Compensation

(11) 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.



Power to grant interim and ex parte orders.

(12) Magistrate may pass such interim order as he deems just and proper.

(13) 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 as stated above against the respondent.

All proceedings under the Act, are in the nature of civil remedy and therefore, it will be open for the accused to submit appropriate application before the concerned Magistrate and request to withdraw the notice and/or drop the proceedings.

There is no provision for convicting the accused as it is civil remedy.



THE DOWRY PROHIBITION ACT, 1961

This Act was passed to curb the evil of dowry and to protect women from harassment.

This Act excludes presents in the form of clothes, ornaments, etc., which are customary at marriages, provided the value thereof does not exceed Rs. 2,000.

Dowry has been defined as property or valuable security given before, at the time of marriage or after the marriage directly or indirectly in connection with marriage.(s.2). Dower or Mahr given in the case of persons to whom the Muslim Personal Law (Shariat) does not mean Dowry.

Customary payments, e.g., payments which are given at the time of birth of a child or other ceremonies as are prevalent in different societies are not covered by the expression 'dowry';



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Demand for property of valuable security as a consideration from the side of the bride's parents or relatives to the groom or his parents and/or guardian for the agreement to wed the bride-to-be is Dowry. But where the demand for property or valuable security has no connection with the consideration for the marriage, it will not amount to a demand for dowry.

Dowry signifies presents given in connection with marriage to the bridal couple as well as others, Stridhan is confined to property given to or meant for the bride;

Penalty for giving or taking dowry. (s.3)

If any person, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more. However, for special reasons, imprisonment may be reduced.



Following gifts are not considered as Dowry:

- (a) presents which are given at the time of a marriage to the bride:
- (b) presents which are given at the time of a marriage to the bridegroom
- (c) where such presents are made by or on behalf of the bride or any person related to the bride, such presents are of a customary nature and the value thereof is not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given.

Penalty for demanding dowry (s.4)

Demand of Dowry is also made punishable and punishment is imprisonment for six months which may extend to two years along with fine which may extend to ten thousand rupees:

The mere demand of dowry before marriage is an offence;



Ban on advertisement (s.4A)

Any person offering Dowry through any media for the marriage of his son or daughter is punishable with imprisonment for a term which shall not be less than six months, but which may extend to five years, or with fine which may extend to fifteen thousand rupees.

Agreement for giving or taking dowry to be void(s.5)

Any agreement for the giving or taking of dowry shall be void.

Dowry to be for the benefit of the wife or her heirs. (s.6)

This Act further provides that the Dowry which is received is to be transferred to the women in whose marriage the same was received within three months of the date of marriage and pending such transfer, shall hold it in trust for the benefit of the woman. Failure to do so will invite imprisonment for a term which shall not be less than six months, but which may extend to two years or with fine which shall not be less than five thousand rupees, but which may extend to ten thousand rupees or with both.



Where the woman entitled to any property as stated above dies before receiving it, the heirs of the woman shall be entitled to claim it from the person holding it for the time being:

In case of death of the woman within seven years of her marriage due to natural causes, and if she has no children such property shall be transferred to her parents otherwise to her children.

If a person is convicted and if he fails to transfer any property as stated above, equal value of the property shall be recovered from him as if it was a fine and transferred it to her heirs, parents or children. (s.3A)

Cognizance of offences(s.7)

Offences under this Act can be tried by Metropolitan Magistrate or a Judicial Magistrate of the first class.



Offences to be cognizable for certain purposes and to be [non-bailable] and non-compoundable (s.8)

Police can investigate the offences and the offences are non-bailable and non-compoundable.

8A. Burden of proof in certain cases(s.8A)

Where any person is prosecuted for taking or abetting the taking of any dowry, or the demanding of dowry, the burden of proving that he had not committed an offence under these sections shall be on him.



Dowry Prohibition Officers (s.8B)

(1) The State Government may appoint Dowry Prohibition Officers and these officers shall perform the following powers and functions, namely:—

- to see that the provisions of this Act are complied with;
- to prevent as far as possible, the taking or abetting the taking of, or the demanding of, dowry;
- to collect such evidence as may be necessary for the prosecution of persons committing offences under the Act; and
- to perform such additional functions as may be assigned to him by the State Government, or as may be specified in the rules made under this Act.

