

# PROCEDURAL DILEMMAS AND PROTECTIVE DISCOURSES: RETHINKING THE INDIAN DOMESTIC VIOLENCE LAW

## Abstract

The Protection of Women from Domestic Violence Act, 2005 was introduced as a progressive legal measure to shield women from abuse within the domestic sphere. It marked a significant shift towards recognising domestic violence not merely as a private issue but as a public wrong requiring state intervention. However, the practical implementation of the Act has been marred by significant conceptual vagueness and procedural loopholes that often dilute its effectiveness and frustrate its intended objectives. Despite its remedial character, the Act lacks the necessary clarity in key definitions and procedural safeguards, creating space for varied and sometimes conflicting judicial interpretations.

This paper presents a critical examination of the Act's statutory structure and procedural application, with particular focus on the interpretive uncertainties surrounding provisions such as sections 2, 12, 18, 29, 31 and 32 *etc.* It contends that the absence of precise definitional boundaries and procedural checks has, in certain instances, resulted in the law being weaponised for personal retaliation rather than protection. This misuse has led to retaliatory, frivolous, and vexatious litigation that not only burdens the judiciary but also undermines the credibility of the legal system as a whole.

The paper further explores how judicial interpretation, instead of resolving ambiguities, has sometimes aggravated the situation by expanding the scope of penal provisions beyond what the statute originally intended. The shifting judicial stance on many a relevant substantive and procedural aspects of the statute is analysed in depth to demonstrate this concern. Through a detailed examination of key judgments and statutory provisions, the paper calls for urgent legislative reform and consistent judicial interpretation. It argues that safeguarding the legitimacy of the Act requires striking a careful balance between the need for protection and the fundamental principles of fairness, due process, and legal certainty.

## I Introduction

FEMINIST LEGAL scholarship underscores the significance of acknowledging that women's emotional realities and embodied experiences often diverge substantially from those of men, both in form and intensity. It argues that women are frequently more sensitively affected by societal structures and dynamics that may go unnoticed or be interpreted differently by men. What might be seen by a man as a mutually acceptable or harmless interaction can, for a woman, feel coercive, intrusive, or emotionally unsettling; highlighting the gendered asymmetries in perception and lived experience that law must engage with critically.

The Constitution of India, originally conceived in a patriarchal milieu and often critiqued for its gendered silences, has steadily evolved to reflect feminist ideals through its growing commitment to substantive equality. While articles 14, 15, and 16 guarantee

formal equality, constitutional interpretation and legislation have evolved to recognize the distinct and often unequal experiences of women. Influenced by feminist jurisprudence, this approach acknowledges that gendered social structures shape women's suffering in ways that may be overlooked in male-centric norms. Judicial decisions like *Vishaka v. State of Rajasthan*<sup>1</sup> and *Independent Thought v. Union of India*<sup>2</sup> reflect this shift by addressing systemic gender-based harm. This line of reasoning has greatly influenced the development of protective laws, including those addressing domestic violence. Laws such as the Protection of Women from Domestic Violence Act, 2005, further validate that harm can be emotional, psychological, and economic, aligning legal standards with women's lived realities. This evolution marks a clear constitutional openness to feminist insights in the quest for gender justice.

However, the same subjectivity that has empowered women to articulate harm has also opened difficult questions about the boundaries of harm itself. When personal perception becomes the primary measure of victimhood, legal systems risk drifting into zones of ambiguity and objective evidence is often overshadowed by personal narratives.

In this context, it becomes imperative to scrutinize whether laws rooted in feminist legal thought; such as the Protection of Women from Domestic Violence Act. are vulnerable to misuse. Are these laws still serving their protective purpose, or have they, in some instances, been weaponized? Can subjectivity alone form the basis of criminalization, or must the law evolve mechanisms to balance claims of harm with procedural fairness? Are there adequate safeguards to prevent the misuse of such protective laws? Issues emerge when a law has gaps or ambiguous provisions that affect its proper enforcement. These shortcomings can result in varied interpretations, potential misuse, or an inability to fulfil the law's intended purpose. This paper undertakes a critical and jurisprudential exploration into the foundational underpinnings of domestic violence legislation, interrogating the structural and procedural contours of its provisions with a view to assessing their normative coherence, functional clarity, and systemic consistency. In particular, premised on the presumption of a discernible pattern of misuse and instrumentalisation of this benevolent legal framework; often as a tool for personal vendetta, the inquiry further engages with the normative potential of the harms that such egregious application could bring about; drawing substantively on judicial pronouncements to anchor the discourse within established doctrinal reasoning and constitutional fidelity.

---

1 AIR 1997 SC 3011.

2 AIR 2017 SC 4904.

## **II The Protection of Women from Domestic Violence Act, 2005: Genesis and jurisprudence**

The feminist wave of the 1970s significantly influenced the legal landscape in India, leading to the insertion of Sections 498A and 304B into the Indian Penal Code, 1860. These provisions were intended to combat the growing concerns around spousal cruelty and the alarming rise in dowry-related fatalities. The momentum generated by these reforms sparked a broader call for a dedicated legal framework to address domestic violence. Driven by advocacy from the National Commission for Women and persistent efforts by grassroots women's organizations, this movement eventually led the Government of India to introduce the Protection from Domestic Violence Bill in the Lok Sabha in 2001. With serious flaws in it drawing heavy criticisms from all quarters, the Bill couldn't get through and lapsed with the dissolution of the Lok Sabha in 2004. A re-presented Bill in 2005 resulted in the enactment of the Protection of Women from Domestic Violence Act, 2005<sup>3</sup> and it, along with the Protection of Women from Domestic Violence Rules, 2006 was brought into force on October 26, 2006.<sup>4</sup>

The Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the DV Act), represents a normative convergence between domestic legal reform and evolving international human rights jurisprudence on gender-based violence. Rooted in a broader transnational legal framework, the Protection of Women from Domestic Violence Act reflects an evolving international commitment to gender justice. Drawing inspiration from the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979, along with the Declaration on the Elimination of Violence Against Women and the foundational principles of the Universal Declaration of Human Rights, the Act resonates with global human rights norms. Although CEDAW does not expressly mention domestic violence in its original provisions, its scope has been clarified and expanded through General Recommendations Nos. 12, 19, and 35, which interpret domestic violence as a manifestation of structural gender discrimination. By incorporating these international legal developments, the DV Act illustrates India's intent to harmonise its domestic laws with its international obligations and affirms a rights-based approach to the protection of women from violence in intimate settings.

## **III The Domestic Violence Act: A critical dissection of the statutory architecture**

The Act comprises of 37 sections arranged into five chapters. Curiously, the Act, in its Statement of Objects and Reasons, aspires to provide 'more effective' protection

---

3 Act No.43 OF 2005.

4 Vide notification No. S.O. 1776(E), dated by October 17, 2006, see Gazette of India, Extraordinary, Part II, s. 3(ii).

of the rights of women guaranteed under the Constitution who are victims of violence occurring within the family. However, it offers little clarity on the precise deficiencies in the existing legal protection that this enhanced effectiveness seeks to remedy. In one of the earliest interpretations of the Domestic Violence Act, the High Court of Madras in *Vandhana v. T. Srikanth*<sup>5</sup>, acknowledged that the legislation was enacted to give effect to Recommendation No. 12 of the UN Committee on CEDAW, 1989, which India ratified in June 1993. The court emphasized that the legislation must be construed in alignment with international conventions, instruments, and norms. The High Court of Bombay in *Ishpal Singh Kabai v. Ramanjeet Kabai*<sup>6</sup> reaffirmed that the primary objective of the DV Act is to extend statutory protection to victims of domestic violence, particularly women without proprietary rights. The judgment clarified that the Act ensures a woman's right to security and residence, irrespective of her legal title, with the broader aim of preventing the recurrence of domestic abuse. Deriving its constitutional legitimacy from Articles 15(3)<sup>7</sup> and 253<sup>8</sup> of the Indian Constitution, this special legislation ostensibly aims to address the shortcomings and inefficacies present in existing legal frameworks dealing with domestic violence.

#### **Definitional discrepancies: A flawed flag-off**

The definitional architecture enshrined in section 2 of the Act serves as the initial site of conceptual and interpretative discord, setting in motion a cascade of ambiguities that permeate the statute's operational framework. The definition of 'aggrieved person' under Section 2(a) of the Protection of Women from Domestic Violence Act, 2005, limits its protective framework solely to women who are, or have previously been, in a domestic relationship with the respondent and allege experiences of domestic violence. While this formulation reflects a gender-conscious legislative intent, it also raises critical concerns about exclusion, legal precision, and the broader scope of protection. By restricting the beneficiary class to women alone, the definition precludes men, transgender persons, and other gender-diverse individuals from accessing the remedies of the Act, despite growing recognition of domestic abuse across a spectrum of relationships. This gender exclusivity, though grounded in a social context where women disproportionately face domestic violence, appears increasingly inadequate in addressing

---

5 2007 SCC OnLine Mad 553.

6 2011 SCC OnLine Bom 412.

7 Permitting State to make special provisions for women and children.

8 Conferring on the Parliament, the power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

the full complexity of intimate partner violence in a pluralistic society. However, some judicial interventions give hope of a more egalitarian and inclusive approach.<sup>9</sup>

Moreover, the statutory requirement that the complainant must be in a ‘domestic relationship’ with the respondent, imposes a threshold that may not accommodate certain lived realities; such as violence by in-laws where no cohabitation exists, or abuse within long-term partnerships that fall outside conventional definitions of family or shared households. As a result, many victims may find themselves outside the statute’s protective reach. Additionally, the phrase ‘alleges to have been subjected’ allows proceedings to be initiated based solely on the assertion of violence, without a preliminary evidentiary burden. While this is meant to lower procedural barriers for survivors, it also opens the door to potential misuse, especially in contexts where motive and personal animosity play a role, unless appropriately filtered through fair procedural safeguards.

The reference to past relationships in the definition extends the law’s application to previous instances of domesticity, which is commendable from a victim-centric standpoint. However, this retrospective scope introduces evidentiary complexities, particularly when events occurred long ago and documentation or corroboration is sparse. Finally, the definition’s construction rests on a binary understanding of abuse; where the woman is presumed to be the victim and the man the aggressor. While this may correspond with statistical trends, it oversimplifies the layered and often reciprocal nature of abuse that can exist in domestic settings, thereby failing to address scenarios that fall outside this dichotomy.

Although the current definition of ‘aggrieved person’ embodies the protective spirit of the statute, it reflects conceptual limitations that merit reconsideration. An inclusive and context-responsive approach; without diluting the gender-sensitive foundation of the statute, would better reflect the evolving understanding of domestic abuse and ensure that protection is extended to all individuals who experience violence within the private sphere.

The definition of ‘domestic relationship’ under Section 2(f) of the Act reflects a progressive effort to acknowledge the evolving spectrum of intimate and familial ties in India. By including relationships formed through consanguinity, marriage, adoption, and ‘those in the nature of marriage’, it seeks to move beyond conventional

---

9 Though limited to interpreting the term “respondent” under the DV Act, the Supreme Court in *Hiral P. Harsora v. Kusum Narottamdas Harsora*, (2016) 10 SCC 165, struck down the expression “adult male person” in s. 2(q) as unconstitutional, finding no intelligible differentia with a rational nexus to the Act’s objective. The court clarified that remedies under the Act may be invoked not only against adult males but also against women and minors. This ruling significantly widened the scope of accountability, reinforcing the Act’s protective framework while affirming its gender-neutral applicability in identifying perpetrators.

classifications. Yet, this inclusive framing is undermined by significant conceptual and interpretative ambiguities.

The phrase ‘relationship in the nature of marriage’ lacks statutory clarity, compelling courts to rely on subjective factors like cohabitation duration, shared domestic arrangements, and social recognition. This ad hoc judicial approach has led to inconsistent outcomes and uncertainty about rights and obligations in non-marital partnerships.

Further, the temporal breadth introduced by the words ‘at any point of time’ allows claims from past relationships, enhancing coverage but complicating proof. Without clear evidence of cohabitation or shared domestic life, such retrospective claims may be difficult to verify and vulnerable to misuse. The Supreme Court in *Indra Sarma v. V.K.V. Sarma*<sup>10</sup>, clarified that the definition of ‘domestic relationship’ under the DV Act is exhaustive in nature, as indicated by the use of the word ‘means.’ The court further observed that a ‘relationship in the nature of marriage’ must possess essential marital characteristics, even if not legally formalised. Such a relationship cannot be interpreted in isolation but must be understood contextually; keeping in view the legislative intent and protective purpose of the Act. The reliance on a ‘shared household’ as a precondition also restricts protection in cases where physical cohabitation is intermittent or absent, despite the presence of control or abuse. Additionally, the term ‘joint family’ is left undefined, though deeply rooted in cultural variations, leading to interpretive inconsistencies across cases. Its undefined nature risks unpredictable application and legal confusion.

In sum, while section 2(f) aspires to inclusivity, its imprecise terminology and over-reliance on judicial discretion dilute its effectiveness. A more precise, context-sensitive redefinition would not only enhance legal clarity but also strengthen the protective purpose the statute seeks to serve.

Section 2(o) of the Act defines a protection order as one issued under section 18. However, judicial interpretation of section 31 has led to inconsistent and often problematic understandings of what constitutes a protection order. In some cases, courts have adopted a narrow, definition-bound approach, while in others, they have extended the scope to include residence orders, maintenance orders, and other forms of relief. This divergence in interpretation and its implications are examined in greater detail in the later sections of the article.

The definition of ‘shared household’ under Section 2(s) of the Protection of Women from Domestic Violence Act, 2005 adopts a deliberately broad and inclusive approach, encompassing not only premises where the aggrieved woman currently resides, but also those where she formerly resided in a domestic relationship with the respondent.

---

10 (2013) 15 SCC 755.

This temporal and spatial elasticity is central to the Act's protective framework, recognising that the risk of economic abuse and dispossession often transcends the period of cohabitation.

Critically, the provision decouples residence rights from ownership or title, including homes that are owned or rented by either party, or form part of a joint family estate, irrespective of whether the aggrieved person holds any legal interest. This construction is rooted in social realities, where women, particularly in patriarchal households, often lack proprietary claims over their matrimonial homes.

However, this expansive reading has triggered jurisprudential tension, notably in *S.R. Batra v. Taruna Batra*<sup>11</sup> where the Supreme Court adopted a narrow interpretation, excluding in-laws' property from the scope of a shared household. This view was later corrected in *Satish Chander Ahuja v. Sneha Ahuja*,<sup>12</sup> where the court affirmed that right of residence is a statutory entitlement, not contingent on ownership. And later in *Prabha Tyagi v. Kamlesh Devi*,<sup>13</sup> the Supreme Court further fortified women's rights under the Protection of Women from Domestic Violence Act, 2005 by holding that a woman's right to reside in the shared household under section 17 is independent of any act of domestic violence. The court clarified that the mere existence of a domestic relationship entitles a woman to reside in the shared household, regardless of ownership, title, or beneficial interest. Emphasising the non-derivative nature of this right, the court called for a liberal and purposive interpretation of section 17 to ensure its full protective intent is realised. This ruling marks a progressive shift in reinforcing the residence rights of women as intrinsic to their dignity and security, not contingent on proprietary claims or proof of abuse.

While the liberal interpretation advances the remedial objectives of the DV Act, it also raises practical challenges; especially where competing property rights of third parties are implicated. The courts must therefore maintain a delicate equilibrium between ensuring protective residence rights and safeguarding legitimate proprietary interests.

In sum, the definition of 'shared household' reflects a transformative legislative intent, but its effective application hinges on context-sensitive and balanced judicial reasoning.

The Act commendably provides a comprehensive definition of 'domestic violence' in section 3 encompassing physical, sexual, verbal, emotional, and economic abuse; though arguably, the definition may be overly expansive and all-encompassing in scope. By incorporating both acts and omissions, and by recognising coercive control, threats,

---

11 AIR 2007 SC 1118.

12 AIR 2020 SC 784.

13 2022 Live Law (SC) 474.

and deprivation, the provision attempts to capture the complex realities of domestic abuse beyond physical violence alone.<sup>14</sup>

However, this very expansiveness also brings with it a degree of legal indeterminacy. Terms such as ‘emotional abuse or economic abuse’ are inherently subjective and context-dependent, potentially leading to uneven interpretations and procedural uncertainty. The absence of clearly defined thresholds for what constitutes ‘harm or well-being’ may open the door to overreach or trivialisation of serious allegations, especially in the absence of rigorous evidentiary safeguards.

Moreover, Explanation II, which requires consideration of the ‘overall facts and circumstances’, while offering interpretive flexibility, places significant discretion in the hands of adjudicating authorities. This can either be empowering or problematic, depending on the consistency and sensitivity with which discretion is exercised. Additionally, the overlap with existing penal provisions (*e.g.*, section 498A IPC) raises questions about parallel proceedings and the potential for legal duplication or confusion.

In sum, while section 3 is commendable for its holistic and victim-centric framing, its efficacy depends heavily on consistent judicial interpretation, robust procedural safeguards, and a balanced application that distinguishes genuine harm from mere domestic discord. A more calibrated articulation; particularly of non-physical forms of abuse, could enhance both legal clarity and protective justice.

The Act further outlines the institutional framework for its implementation, detailing the authorities and agencies responsible<sup>15</sup> and the various orders and reliefs available under it along with the procedures for securing them.<sup>16</sup> These parts of the statute more or less appear jurisprudentially robust and aligns with the constitutional mandate<sup>17</sup>, as affirmed through a consistent line of judicial pronouncements upholding its validity and normative coherence. In the context of remedies extended by the statute, chapter IV is perhaps the most critical part as it speaks about protection orders<sup>18</sup>, residence orders<sup>19</sup>, monetary reliefs<sup>20</sup>, custody orders<sup>21</sup> and compensation orders.<sup>22</sup> Consistent

---

14 Judicial pronouncements, such as *Bhartiben Bipinbhai Tamboli v. State of Gujarat*, MANU/GJ/0025/2018, have lucidly delineated the various forms of abuse envisaged under the Domestic Violence Act, thereby reinforcing the Act’s expansive and inclusive protective framework.

15 Ch. III of the Act deals with the powers and duties of Protection Officers, Service Providers *etc.*

16 Ch. IV of the Act deals with procedure for obtaining orders of reliefs under it.

17 Relating to Part III of the Constitution of India (Fundamental Rights including art. 14, 15, 21 *etc.*)

18 S.18 of the DV Act.

19 S. 19 of the DV Act.

20 S. 20 of the DV Act.

21 S. 21 of the DV Act.

22 S. 22 of the DV Act.

with the objectives of the Act, this chapter also facilitates grant of interim and *ex-parte*(*ad-interim*) orders<sup>23</sup> thereby ensuring timely and effective relief within the procedural scheme contemplated by the statute. However, several provisions under Chapter IV suffer from critical flaws, rendering them prone to misuse and strategic abuse; few listed and detailed hereunder.

#### **IV From access to excess: The troubling flexibility of section 12 of the DV Act**

Although Section 12 of the Protection of Women from Domestic Violence Act, 2005 is ostensibly designed to provide a swift and victim-centric avenue for redress before the Magistrate, its procedural architecture raises deep concerns. Far from offering a balanced mechanism for relief, the provision, owing to its structural laxity, risks enabling personal vendetta under the garb of statutory protection.

One of the principal shortcomings lies in the unfiltered access it grants to initiate proceedings. The section permits *any person* to act on behalf of the aggrieved, a formulation that, while intended to remove access barriers, inadvertently invites third-party interventions driven by collateral motives. This open-ended standing provision has, in several instances, devolved into a tool for proxy litigation, particularly in highly acrimonious familial disputes.

Further, section 12 allows for the issuance of *ex-parte* ad-interim orders; such as protection, residence, and monetary relief, based solely on unverified allegations. In practice, such orders are frequently granted at the preliminary stage, without affording the respondent an opportunity to be heard. This bypasses the principle of *audi alteram partem* and imposes serious consequences on often unsuspecting individuals, particularly spouses or in-laws, even before any factual determination has been made.

Another critical flaw lies in the treatment of the Domestic Incident Report (DIR). While the statute requires the Magistrate to “take into consideration” the DIR, it neither mandates its filing nor gives it determinative value. As a result, this procedural safeguard often becomes a mere formality, rather than serving as a threshold assessment tool for weeding out frivolous claims.

The discretionary and overly permissive framework of section 12 not only fosters legal uncertainty but also has a chilling effect on intimate and familial relationships. Judicial observations across various forums have increasingly recognised the misuse of this provision as a strategic tool in matrimonial litigation; particularly in divorce and custody proceedings where it is often deployed to exert leverage rather than to seek genuine protection.

---

23 S. 23 of the DV Act.

### Caught between court and code: Decoding procedure under section 28 of DV Act

Section 28 of the Protection of Women from Domestic Violence Act, 2005, prescribes procedural norms in a somewhat unconventional manner<sup>24</sup>. It mandates that proceedings related to protective reliefs under Sections 12, 18, 19, 20, 21, 22 and 23, and offences under Section 31 are to be governed by the Code of Criminal Procedure, 1973. However, subsection (2) curiously empowers the trial court to lay down its own procedure for the disposal of applications under section 12 and for granting *ex-parte* relief under section 23(2). This dual procedural mandate introduces a layer of ambiguity, blurring the line between statutory prescription and judicial discretion.

Such procedural flexibility, though arguably intended to ensure expeditious and victim-centric justice, may inadvertently result in inconsistent adjudications and procedural uncertainties. The lack of uniformity could not only affect the predictability and coherence of trial processes but also raise concerns of fairness and due process for respondents. In a legal system founded on the rule of law, procedural clarity is as essential as substantive justice. Therefore, the procedural scheme under Section 28 warrants a closer examination to ensure that it strikes an appropriate balance between flexibility for the courts and consistency in application.

Judicial interpretation of section 28 has played a pivotal role in shaping the contours of procedural discretion under the Domestic Violence Act. The landmark judgment in *Kunapareddy v. Kunapareddy Swarna Kumari*<sup>25</sup> clarified that the proceedings under Section 12 are not criminal trials in the strict sense, even though the Code of Criminal Procedure (CrPC) is made applicable. The court held that such proceedings are quasi-civil in nature and that procedural adaptations under section 28(2) are both permissible and necessary to fulfil the object of the legislation. This interpretive stance reflects a purposive reading of the statute, prioritizing access to justice over rigid adherence to technical form.

Nevertheless, this hybrid procedural framework raises significant constitutional and practical concerns. While Section 28(1) imports the Cr PC as a procedural skeleton, the discretionary override under Section 28(2) may lead to varying procedural standards across jurisdictions. The absence of codified guidelines or a supervisory procedural framework has allowed trial courts to craft their own rules; some aligned with principles of natural justice, others arguably falling short. This discretionary space, if left unguided,

---

24 S. 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 s. 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974). (2) Nothing in sub-section (1) shall prevent the court from laying down its own procedure for disposal of an application under s. 12 or under sub-s. (2) of s. 23.

25 (2016) 11 SCC 774.

risks eroding the procedural safeguards that the CrPC would otherwise provide, including rights to notice, hearing, evidence, and appeal.

Moreover, the flexible procedural regime under section 28 must also be read in conjunction with the broader legislative context and the overarching principles of fairness embedded in Articles 14 and 21 of the Constitution. A respondent facing proceedings under section 12 may not be subject to penal sanction directly, yet the civil reliefs sought; such as residence orders, monetary reliefs, or custody arrangements, carry significant legal and personal consequences. Procedural vagueness in such matters can translate into substantial injustice, particularly when the reliefs are granted *ex-parte* or without adequate opportunity for contest.

In view of this complex interplay between statutory command and judicial innovation, there is a compelling case for either legislative clarification or judicial guidelines that standardise the scope of discretion under section 28(2). A middle path could involve evolving a uniform set of procedural principles; tailored to the unique character of DV Act proceedings, that safeguard both the spirit of expediency and the minimum threshold of procedural due process.

Ultimately, the challenge posed by section 28 lies not in its intent but in its implementation. While it rightly departs from a one-size-fits-all model, its ambiguity must not be allowed to devolve into arbitrariness. For a statute that seeks to protect vulnerable individuals within the sanctity of the home, its procedural machinery must itself remain immune from unpredictability and opacity. A coherent jurisprudential framework around section 28 is thus essential; not merely for doctrinal clarity, but for ensuring the consistent and fair application of protective justice.

### **Challenging interim reliefs: The unsettling terrain of Section 29 of the DV Act**

Section 29 of the Act provides for an appeal to the Sessions Court against orders passed by the Magistrate under the Act. The provision, however, has been a subject of considerable debate.<sup>26</sup> Given the Act's numerous provisions enabling the grant of interim and *ex-parte* orders, a significant point of contention has been whether such orders fall within the scope of appeal under section 29. Courts have been called upon to interpret whether these provisional or one-sided orders constitute *orders* in the legal sense envisaged by the section, thereby warranting appellate scrutiny. The High Court of Punjab and Haryana in *Bhanu Kiran v. Rabul Khosla*<sup>27</sup> was called upon to decide on two questions:

---

26 It reads as follows: "There shall lie an appeal to the Court of Session 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."

27 2023 Live Law (PH) 41.

- i. Whether appeal in terms of Section 29 of the DV Act is maintainable against interim order passed by Magistrate under Section 23 of the DV Act?
- ii. Whether appellate court while hearing appeal under Section 29 of DV Act can pass interim order?

In addressing the maintainability of appeals under the Domestic Violence Act, the court emphasized the special statutory character of the legislation. Upon a conjoint reading of sections 28 and 29, it concluded that the procedural framework of the Criminal Procedure Code is not strictly applicable to appeals arising from Magistrate's orders under the Act. Notably, the court observed that where the legislature intended to preclude appeals against interim orders, it did so explicitly. In the context of the Domestic Violence Act, however, both the power to grant interim relief and the right of appeal have been statutorily provided, with no express bar against challenging interim orders. Consequently, the court held that an appeal against an interim order issued under section 23 is maintainable before the sessions court under the enabling provision of section 29.<sup>28</sup>

The High Court of Kerala has consistently affirmed the maintainability of appeals under Section 29 of the Protection of Women from Domestic Violence Act, even in respect of interim orders. The High Court of Kerala in *Karthikeyan v. Sheeja*.<sup>29</sup> has held that any impugned order affecting the rights of the parties in the DV case is certainly an appealable order under Section 29 of the DV Act. In *Girijan v. Subhadra*<sup>30</sup>, the court specifically addressed the issue of an interim order and held that such an order is appealable under Section 29. This position was reinforced in *Chandrasekhara Pillai v. Valsala Chandran*<sup>31</sup> and *Sulochana v. Kuttappan*<sup>32</sup> where the court held that orders passed under the DV Act, including those granting interim relief, fall within the ambit of appeal under the said provision. These decisions collectively establish a judicial consensus in Kerala that Section 29 encompasses both final and interim orders passed by the Magistrate under the Act.

The High Court of Jammu and Kashmir and *Ladakhin Abdul Rouf Shah v. Atiqa Hassan*<sup>33</sup> held that "from a perusal of Section 29 (of the DV Act), it is clear that an appeal lies to the Court of Sessions from an order made by the Magistrate and the

---

28 An interesting analogy is drawn by the High Court of Punjab and Haryana of section 29 DV Act with that of the amended S. 28 of the Hindu Marriage Act, 1955 to drive home the dictum that had the legislative intent been to exclude interim-orders from the purview of appeal, it would have expressly been stated in the statute.

29 WP (C) No. 34531 of 2007 decided on Feb. 4, 2008

30 W.P. (C) No. 19032 of 2008 decided on June 25, 2008.

31 [2007 (2) KLT 36].

32 [2007 (2) KLT 1].

33 CrI. MC No.157/2024 (2024 Live Law (JKL) 169).

said appeal has to be filed within thirty days. It is not specified in section 29 as to which type of orders would be appealable in nature. Section 29 neither bars filing of an appeal against an interim order nor does it specifically provide for an appeal against an interim order”.

The High Court of Orissa in *Smita Singh v. Bishnu Priya Singh*<sup>34</sup> held that “the provision for appeal under S. 29 of the Act is not restricted to order passed under any specific provision of the Act.”

The High Court in Uttarakhand in *Manish Tandon v. Richa Tandon*<sup>35</sup> has held that appeal is maintainable against interim order passed under section 23 of DV Act. The relevant extracts read as follows: “the word ‘order’ used in section 29 connotes all types of orders passed by the Magistrates under the 2005 Act including orders granting interim maintenance under Sub-section (1) of section 23 as well as ex- parte interim maintenance granted under Sub-section (2) of section 23. Since the word ‘order’ has not been qualified by any suffix or prefix in Section 29, the clear legislative intent is that each and every type of order, irrespective of its description and nature, passed by a Magistrate has been made appealable to the court of Session Judge under Section 29.”

The position that any *order* passed under the Domestic Violence Act, 2005 is appealable under section 29 has been unequivocally upheld by many other high courts as well. The High Court of Delhi, in *Braham Pal Arya v. Babita Arya @ Kila Devi*<sup>36</sup> and *Amit Sundra v. Sheetal Khanna*<sup>37</sup> affirmed that the right of appeal under section 29 extends to all orders, including interim and ex parte reliefs. Similarly, the High Court of Bombay in *Abhijit Bhikaseeth Anti v. State of Maharashtra*,<sup>38</sup> reiterated this principle, holding that no distinction can be drawn between interim and final orders for the purpose of appeal under the Act. These rulings reflect a broad and purposive interpretation of section 29, ensuring that litigants have recourse to appellate remedies against any order that substantially affects their rights under the Act.

The High Court of Kerala in the case of *Chithrangathan v. Seema*<sup>39</sup>, which examined the question of maintainability of revision against an ad interim order passed under section 23(2) of the Act and held that the order impugned was appealable under section 29 of the Act and revision was not maintainable; *no* longer holds ground. Since an appeal against any order passed in an application under section 12 of the Domestic Violence Act lies before the sessions court under section 29, and the

---

34 2013 KHC 3659; 2013 CriLJ 4826.

35 2008 (21) RCR (Criminal) 525.

36 2009 (12) RCR (Criminal) 699.

37 2008 Cri. L.J. 66.

38 2009 Cri. L.J. 889.

39 2008 (1) DMC 365

procedure governing such applications is prescribed by the Code of Criminal Procedure, the revisional jurisdiction under the CrPC must logically remain accessible to an aggrieved party.<sup>40</sup> Although the decision ostensibly addressed the inapplicability of article 227 in challenging appellate orders under Section 29 of the Domestic Violence Act, it paradoxically paved the way for invoking the high court's revisional jurisdiction, thereby subtly reconfiguring the appellate-review framework envisaged under the statute.

### **Appellate powers under section 29: Unfolding the interim order conundrum**

A recurrent issue before appellate courts, particularly the courts of sessions, in domestic violence litigation concerns the extent of their authority to grant interim relief during the pendency of appeals. The Supreme Court's decision in *Shalu Ojha v. Prashanth Ojha*<sup>41</sup>, aptly evocative of the adage 'some things are better left unsaid'; centred on the contentious issue of whether appellate courts possess the jurisdiction to grant interim relief in appeals under the Domestic Violence Act. In *Shalu Ojha*, the Supreme Court ventured into relatively uncharted territory by making suggestive, albeit non-conclusive, remarks regarding the legal competence of sessions courts to pass interim orders under the Domestic Violence Act. These observations, lacking definitive clarity, inadvertently opened the floodgates to a host of interpretive arguments before various high courts. Consequently, the high courts were left with the complex task of discerning the scope and binding nature of the Supreme Court's dicta, navigating the fine line between authoritative precedent and obiter commentary. And what followed (in various high courts) was indeed amusing. The High Court of Karnataka in *Yashaswini v. M. Anegudde Ganesha*<sup>42</sup> held that the sessions court has no power to stay the operation of the order passed by the Magistrate particularly when there is no criminal/penal consequence to such an order. However, the very same high court in *K.M. Leelavathi v. K.M. Sonia Madaiah*<sup>43</sup> rejected the law laid down in the *Yashaswini* decision and held that for an appellate court to provide remedy, powers to pass interim orders must be available. The court in this case went on to add (rightly) that the Supreme Court, in *Shalu Ojha* had not decided on the appellate court's power to grant interim reliefs in appeals under the Domestic Violence Act.

In a detailed and well-reasoned judgment in *Bhanu Kiran v. Rahul Khosla*,<sup>44</sup> the High Court of Punjab and Haryana, drawing on authoritative Supreme Court precedents, affirmed the appellate court's power to grant interim relief under Section 29 of the Domestic Violence Act. The court held that denying such power merely due to the

---

40 *C.K. Kunjumon v. State of Kerala* Neutral Citation: 2024:IO:KER:29; *Dinesh Kumar Yadav v. State of Uttar Pradesh* 2018 Cri. LJ 389.

41 AIR 2015 SC 170.

42 2016 SCC Online Kar 6802.

43 2020 SCC Online Kar 861.

44 2023 SCC Online P & H 7234.

absence of an express provision would undermine the appellate jurisdiction itself. It observed that legal authority to pass interim orders need not be explicitly conferred if it is necessary to preserve the efficacy of the appellate process. It further reasoned that allowing Magistrates to grant interim relief while denying similar powers to appellate courts would result in a legal incongruity, particularly when delays render many appeals infructuous. The court also noted that the Supreme Court in *Shalu Ojha* had not conclusively ruled on this issue, thereby leaving the question open for judicial interpretation.

The High Court of Kerala in *Farsana P.S. v. Razveen Raffique*,<sup>45</sup> in line with the judgment and reasoning in *Bhanu Kiran* stated that if it were to be held that the appellate court lacks the authority to grant interim relief under Section 29 of the Domestic Violence Act solely due to the absence of an express provision, it would logically follow that the court is equally powerless to grant interim relief even in appeals against final orders; since no such explicit power exists in either context. Such an interpretation would unjustifiably strip the appellate court of essential judicial functions. It is a well-settled principle in legal jurisprudence that the existence of a power is distinct from its exercise; the former is a matter of legal capacity, while the latter lies within judicial discretion.

Accordingly, the High Court of Kerala affirmed that appellate court (court of Sessions), while exercising jurisdiction under Section 29 of the Domestic Violence Act, possess the authority to grant interim relief. This position aligns with its earlier ruling in *Gopalakrishnan v. G Aswathy*<sup>46</sup> where the appellate court's power under Section 29 was similarly upheld. The reasoning adopted by the Kerala and High Courts Punjab and Haryana appears consistent with the broader interpretative principle laid down by the Supreme Court in *Savitri v. Govind Singh Rawat*<sup>47</sup> wherein the court held that when the law mandates a particular act to be done, and that act cannot be effectuated without the exercise of a power not expressly conferred, such power must be inferred by necessary implication to give full effect to the statutory purpose.

### **Criminalising contumacy: Navigating the ambiguity of section 31**

Section 31 of the Protection of Women from Domestic Violence Act, 2005, criminalises the breach of a protection order or an interim protection order, treating such breach as an offence (non-bailable and cognizable) punishable with imprisonment of either description for a term extending up to one year, or with a fine up to twenty thousand rupees, or with both. Under Section 2(o) of the Protection of Women from Domestic Violence Act, 2005, a “protection order” refers specifically to an order granted under Section 18. This provision allows the Magistrate, upon forming a *prima*

---

45 2024 SCC OnLine Ker 6055.

46 CrI MC No.6121/2015; Judgment dated 14.09.2015 High Court of Kerala.

47 AIR 1986 SC 984.

*facie* view; after providing both parties an opportunity to be heard; that domestic violence has taken place or is likely to occur, to restrain the respondent from engaging in further abusive conduct. The scope of domestic violence is outlined in Section 3, encompassing various forms of abuse including physical, sexual, verbal, emotional, and economic.

However, Rule 15 of the DV Rules of 2006 provides that any act of resisting or interfering with the implementation of a court's order; by the respondent or any person on his behalf, shall be treated as a breach of a protection or interim protection order. The core interpretative dilemma stems from the ambiguity surrounding the phrase "orders of the Court under the Act." While some argue that Section 31 should apply exclusively to breaches of protection orders issued under Section 18, others contend that it should extend to violations of orders passed under Sections 17, 19, 20, 21, and 22 as well. The lack of authoritative clarification from the Supreme Court has led to divergent judicial interpretations and a lack of uniformity in enforcement.

For instance, the High Court of Kerala in *P.R. Velayudhan Nair v. Chimminakkara Karthiayani*<sup>48</sup> and *Sunesh v. State of Kerala*<sup>49</sup> adopted a narrow interpretation, limiting Section 31 to violations of Section 18 orders alone, seemingly overlooking Rule 15(7) of the DV Rules, which cautions against hyper-technical approaches in such matters. However, in *Vijayakumari v. Jayakumar*<sup>50</sup>, the same court took a different stance, holding that any order prohibiting a specific act; if issued as a form of protection, could be considered a protection order, depending on its nature and content.

Similarly, divergent views have emerged from other jurisdictions. The High Court of Madras in *S. Amalraj v. State*<sup>51</sup> held that failure to comply with a maintenance order amounts to a breach of a protection order, thus attracting prosecution under section 31. In contrast, the High Court of Karnataka ruled that non-compliance with maintenance orders does not fall within the ambit of section 31.<sup>52</sup> The High Court of Delhi in *Savita Bhanot v. V.D. Bhanot*<sup>53</sup> offered yet another interpretation, stating that breaches of orders under Sections 19 or 23 of the Act are prosecutable under section 31. These varying interpretations have contributed to a fragmented legal landscape, leaving the scope of "protection order" under the DV Act unsettled and inconsistently applied across jurisdictions.

---

48 2009 SCC OnLine Ker 6842.

49 2022 SCC OnLine Ker 6210.

50 2024 SCC OnLine Ker 3568.

51 2023 SCC OnLine Mad 8337.

52 *Francis Cyril C. Cunba v. Lydia Jane D. Cunba* 2015 SCC OnLine Kar 8760; *Mohd. Yaseen Naikvadi v. Aneesa* 2023 SCC OnLine Kar 1500.

53 2010 SCC OnLine Del 1278.

### Section 32 of the DV Act: Eroding due process?

Another contentious provision within the Act emerges in the form of section 32, which raises serious concerns regarding procedural fairness and evidentiary standards. A norm so untethered from reason and fairness that it risks collapsing the distinction between law and arbitrariness: its Section 32 of the Domestic Violence Act. The provision and its concept depart sharply from established norms of criminal jurisprudence by rendering offences under section 31 cognizable and non-bailable, and by allowing conviction solely on the testimony of the aggrieved person. While the intention is to empower survivors and streamline access to justice, this provision raises substantial due process concerns.

First, making the offence cognizable and non-bailable strips away the usual procedural protections afforded to the accused, permitting arrest without a warrant and denying routine bail, even in cases that may arise from civil disobedience of interim protection orders. Such blanket criminalisation, without gradation or judicial scrutiny, risks the disproportionate use of state power in what often involves private, familial disputes.

Second, permitting conviction solely on the uncorroborated testimony of the complainant departs from the foundational principle of criminal law i.e. proof beyond reasonable doubt. While the complainant's testimony must certainly be given due weight, excluding the need for corroboration altogether opens the door to arbitrary and possibly vindictive outcomes, especially when combined with the procedural informality of DV proceedings.

In brief, section 32 of the DV Act stretches the boundaries of legal reason and institutional sanity, challenging the very fundamentals of due process and the rule of law. It tilts the scales heavily in favour of prosecutorial ease at the cost of procedural fairness, thereby risking miscarriages of justice under the guise of victim protection. It calls for urgent doctrinal recalibration to align victim rights with the fundamental safeguards of criminal law.

The only semblance of procedural relief available to a respondent facing prosecution for breach of protection orders under Section 31 of the Domestic Violence Act; particularly in light of the troubling *may conclude* clause under Section 32; is arguably found in Section 223 of the Bharatiya Nagarik Suraksha Sanhita, 2023<sup>54</sup>. This newly enacted provision marks a notable departure from its predecessor, Section 200 of the Code of Criminal Procedure, 1973, by mandating an opportunity for the accused to be heard prior to the Magistrate taking cognizance of the offence. Yet, even this procedural safeguard appears inadequate in the face of the low evidentiary threshold for taking cognizance prescribed under Section 32 of the DV Act, where conviction

---

54 As contemplated by s. 28 of the DV Act, offence under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (BNSS, 2023 now).

may rest solely on the uncorroborated testimony of the aggrieved person. The cumulative effect is a troubling dilution of the evidentiary rigour traditionally required in criminal prosecutions, rendering the standards of proof in such contumacy proceedings constitutionally suspect and legally unsatisfactory.

#### **V Limitation law in DV jurisprudence: Missing temporal boundaries**

Equally troubling is the absence of any prescribed limitation period for initiation of proceedings (civil and criminal) under the Act. The Act does not prescribe any period of limitation for initiation of proceedings or for taking cognizance of offence. Complaints may be initiated long after the alleged incident, severely impairing the respondent's ability to mount an effective defence. The lack of temporal boundaries undermines the principles of legal certainty and repose, fundamental to procedural fairness. Section 28 of the DV Act states unequivocally that all proceedings under Sections 12, 18, 19, 20, 21, 22, 23 and offence under Section 31 shall be governed by the Code of Criminal Procedure, 1973; without prejudice to the court's power in laying down its own procedure for disposal of an application under section 12 or under sub-section (2) of section 23 of the Act. Given the hybrid nature of the statute; comprising a blend of civil and quasi-criminal provisions, and the express stipulation that proceedings under the relevant sections are to be governed by the Code of Criminal Procedure, 1973 (or the Bharatiya Nyaya Sanhita, 2023, as is applicable now), it is logically deducible that the limitation period prescribed under criminal procedural law would apply to proceedings initiated thereunder, including filing of section 12 application before the Magistrate, issuing orders under sections 18, 19, 20, 21, 22 and 23 and particularly in relation to the taking of cognizance of offences under Section 31 of the Act.

Consider, for instance, the application of limitation principles to penal sanctions under the DV Act. Section 468 of the Code of Criminal Procedure, 1973 (corresponding to Section 514 of the Bharatiya Nyaya Sanhita, 2023) prescribes specific limitation periods for various categories of offences and explicitly bars courts from taking cognizance of an offence once the prescribed period has lapsed. This statutory embargo underscores the importance of temporal boundaries in criminal jurisprudence, serving as a safeguard against indefinite exposure to prosecution. The current limits for limitation under the Code of Criminal Procedure are prescribed as follows:

- (i) six months, if the offence is punishable with fine only;
- (ii) one year, if the offence is punishable with imprisonment for a term not exceeding one year;
- (iii) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

With the Domestic Violence Act prescribing a maximum imprisonment of one year for offences under it (prescribed for offences under sections 31 and 32 of the Act); it is logically deductible that a limitation period of one year applies for taking cognizance in such cases. The absence of a prescribed limitation period under the DV Act poses a serious concern, particularly for unsuspecting respondents, often men, who may be subjected to stale or vindictive claims long after the alleged incident. In the landmark case of *Inderjit Singh Grewal v. State of Punjab*<sup>55</sup> the Supreme Court of India confronted an unusually complex factual matrix that raised significant legal questions surrounding the applicability of the Protection of Women from Domestic Violence Act, 2005, particularly the issue of limitation. The matter pertained to a complaint lodged under the DV Act even after the dissolution of marriage by mutual consent; a situation that, on its face, appeared to undermine the foundational premise of a subsisting domestic relationship under the statute. Complicating the legal landscape further were simultaneous proceedings under Section 482 of the CrPC for quashing the complaint, an application under the Guardian and Wards Act, and a civil suit seeking a declaration that the decree of mutual divorce was void. In this convoluted context, the Supreme Court made crucial observations on the temporal scope and maintainability of complaints under the DV Act, particularly in light of Section 468 CrPC dealing with limitation for cognizance of certain offences. However, the legal position was altered subsequently by the Supreme Court in *Krishna Bhattacharjee v. Sarathi Choudhury*<sup>56</sup>, where the court held that a complaint under the DV Act could survive even after divorce if the grievances relate to a continuing cause of action, such as economic abuse.

The court's interpretation, though addressing a factually atypical scenario, opened up nuanced and somewhat counterintuitive dimensions of how limitation principles are to be reconciled with the remedial nature of the DV Act. The relevant portion of the concluding part of the judgment goes as follows: ".....in view of the provisions of Section 468 Cr.P.C., that the complaint could be filed only within a period of one year from the date of the incident seem to be preponderous in view of the provisions of Sections 28 and 32 of the Act 2005 read with Rule 15(6) of The Protection of Women from Domestic Violence Rules, 2006 which make the provisions of Cr.P.C. applicable and stand fortified by the judgments of this court....."

The decision reveals a nuanced legal tension. The quoted passage leans towards the view that limitation under Cr PC does apply, especially in criminal aspects of the DV Act (like section 31). However, it acknowledges that this position is based on certain rules and precedents and is not entirely settled. This interpretive balance is shaped by Sections 28 and 32 of the DV Act read with Rule 15(6) of the 2006 Rules, which

---

55 (2011) 12 SCC 58.

56 (2016) 2 SCC 705.

permit the application of Cr PC procedures only to the extent they align with the Act's remedial purpose. Consequently, while limitation may bar criminal prosecution under certain provisions, it does not preclude access to civil remedies under section 12. The courts thus tread a careful line between procedural propriety and the DV Act's broader protective mandate.

This concern was further compounded by the decision of the Supreme Court in *Kamatchi v. Lakshmi Narayanan*<sup>57</sup>, wherein the court, overruling the contrary view of the High Court of Madras,<sup>58</sup> held that the provisions of limitation under the Code of Criminal Procedure, 1973 would not apply to applications filed under Section 12 of the DV Act. The ruling, while perhaps grounded in a purposive reading of the statute, is deeply unsettling from the standpoint of legal certainty, procedural fairness, and the protection of due process. The court reasoned that it was first necessary to delineate the procedural framework under the Domestic Violence Act, 2005 in contrast to that under the Code of Criminal Procedure, 1973. It noted that Section 28(1) of the DV Act stipulated that proceedings under the Act would ordinarily be governed by the CrPC unless otherwise provided. However, the court observed that the DV Rules carved out specific procedural deviations which warranted careful consideration.

The court highlighted that the term 'complaint' under Rule 2(b) of the DV Rules, 2006 referred to an allegation made to a Protection Officer, which was fundamentally different from a 'complaint' under Section 2(d) of the CrPC; defined as an allegation made to a Magistrate with the object of setting criminal law in motion. It further held that an application under Section 12 of the DV Act, governed by Rule 6(1) and to be made in Form II, was not a criminal complaint as contemplated under the CrPC. The Magistrate, in such proceedings, was not required to take cognizance of an offence but rather to adjudicate on civil remedies such as protection orders, maintenance, and residence rights.

Therefore, the court concluded that provisions like Section 190(1)(a) CrPC and the procedural mandates of Chapter XV; which deal with cognizance based on criminal complaints, had no application to proceedings initiated under Section 12 of the DV Act. These proceedings, it reasoned, were civil in character and did not attract the criminal process at the threshold.

In summation, the court held that section 12 applications were to be assessed within the specialised and self-contained procedural regime of the DV Act and Rules, and not through the lens of traditional criminal jurisprudence. The court's interpretation of domestic violence as a *continuing wrong* effectively extends the temporal scope for

---

57 Criminal Appeal No.627 of 2022 Arising out of Special Leave to Appeal (Crl.) No.2514 of 2021

58 Crl. O.P. No.28924 of 2018, High Court of Madras.

initiating legal proceedings, thereby allowing claims to be filed without the constraints of a limitation period; a stance that raises concerns about evidentiary reliability and procedural fairness. Even while accepting the Supreme Court's interpretation that an application under Section 12 of the DV Act is procedurally distinct from a criminal complaint under the CrPC, thus rendering the law of limitation under Section 468 CrPC inapplicable; the issue remains far from settled with respect to proceedings initiated under Section 31 of the Act. Since Section 31 criminalises the breach of protection orders and treats such breach as a cognizable offence, it reintroduces the question of whether the limitation provisions under the CrPC/BNSS become operative at that stage, thereby complicating the procedural clarity of the statute. These petitions, which invite penal consequences for breach of protection orders issued under Section 12, undeniably fall within the domain of criminal law. As such, they are subject to the limitation framework prescribed under Section 468 of the CrPC (or Section 514 of the Bharatiya Nyaya Sanhita, 2023). While the current legal position treats Section 31 proceedings as time-bound under the CrPC/BNSS, this classification remains susceptible to future reinterpretation, particularly if the courts begin to blur the procedural distinction between civil applications and penal enforcement under the DV Act.

#### **VI Punitive shadows in civil spaces: A constitutional and jurisprudential puzzle**

Unlike most legislations in India, the Protection of Women from Domestic Violence Act, 2005 presents a unique jurisprudential conundrum. The central ambiguity arises from its provision of substantive civil reliefs through a procedural framework governed predominantly by the Code of Criminal Procedure, 1973 (CrPC), thereby blurring the boundaries between civil and criminal law. The statute occupies a distinct space within Indian legal jurisprudence, generating considerable debate over its true legal character.

On a plain reading, the statute appears to be civil in nature; however, the forum of adjudication and the penal consequences for non-compliance impart a distinctly criminal character to its enforcement. However, courts have reasoned that the criminal nature of the contumacy proceedings are only to ensure enforcement and do not alter the substantively-civil nature of the legislation. Judicial pronouncements on the nature of proceedings under the Domestic Violence Act have oscillated sharply between characterising them as civil and criminal, reflecting a lack of uniformity and consistent doctrinal clarity. In *Indra Sarma v. V.K.V. Sarma*<sup>59</sup> and *Kunapareddy @ Nookala Shanka Balaji v. Kunapareddy Swarna Kumari*,<sup>60</sup> the Supreme Court clarified that proceedings under the Protection of Women from Domestic Violence Act, 2005 are essentially

---

<sup>59</sup> (2013) 15 SCC 755.

<sup>60</sup> (2016) 11 SCC 774.

civil in nature, even though the forum designated for obtaining relief is a criminal court. Judicial interpretation has repeatedly acknowledged this dual nature. The rationale underpinning this position is that the reliefs envisaged; such as protection orders, residence rights, custody orders, and monetary relief; are inherently civil, aimed at safeguarding the victim's fundamental rights within the domestic sphere rather than imposing punitive sanctions. Decisions like *V.D. Bhanot v. Savita Bhanot*<sup>61</sup> and *Saleem Ahamed v. State of U.P.*<sup>62</sup> have also affirmed the hybrid nature of the Act.

A series of rulings from the High Court of Madras further illustrate the doctrinal divergence. In *P. Pathmanathan v. Monica*<sup>63</sup>, the court reinforced the civil character of DV Act proceedings, emphasizing that the incorporation of criminal procedure is merely facilitative, intended to ensure expedient enforcement rather than reclassify the nature of the reliefs. However, in cases such as *P. Arun Prakash v. S. Sudhamary*,<sup>64</sup> *I.P. Ganesan v. M. Revathy Prema Rubaran*<sup>65</sup> and *Masood Khan v. Millie Hazarika*<sup>66</sup> a contrary view emerged, where the court characterised the proceedings as criminal, pointing to the application of the CrPC and the criminalisation of conduct amounting to domestic violence under section 3. This conflicting stance necessitated reference to a division bench due to the divergence in opinion between Anand Venkatesh J., who affirmed the civil nature of the Act, and Justice S.M. Subramaniam, who endorsed its criminal classification. The division bench ultimately resolved the conflict by reaffirming the predominance of the civil component, aligning with the Supreme Court's ratio in *Kunapareddy* case. It held that while proceedings under Chapter IV of the Act are civil, criminal consequences ensue only upon the breach of protection orders; thus, introducing penal liability not as a primary feature but as a subsequent enforcement mechanism. A full bench of the Supreme Court in *Satish Chander Abuja v. Sneha Abuja*,<sup>67</sup> in 2020 went on to hold that DV proceedings are governed by the Code of Criminal Procedure and that the statute is criminal in nature. However, critics argue that the (eight) questions formulated for determination in *Satish Chander Abuja* case, as outlined in paragraph 27 of the judgment, did not address the nature or character of proceedings under the DV Act. Notably, none of the issues framed pertained to whether the proceedings were civil or criminal in nature, thereby leaving that jurisprudential question untouched.

This jurisprudential trajectory suggests that the DV Act is best understood as a hybrid or *sui generis* statute; civil in substance, but enforced through criminal procedure to

---

61 (2012) 3 SCC 183.

62 (2024) All HC 89128.

63 2021 SCC Online Mad 8731.

64 2021 SCC OnLine Mad 1954.

65 C.R.P.No.PD(MD) No.896 of 2021 High Court of Madras.

66 CrI. Petn. No. 1 of 2021 of High Court of Meghalaya.

67 AIR 2020, SC 2483.

ensure efficacy. The employment of the criminal court system and certain penal provisions underscores the state's commitment to addressing domestic violence with due seriousness, without altering the fundamentally civil orientation of the remedies granted. In essence, while the Act borrows from the procedural rigour of criminal law, its spirit, purpose, and relief structure remain firmly rooted in the civil domain. The dual mechanism is not a contradiction but a deliberate legislative strategy to provide holistic, enforceable, and immediate protection to victims of domestic violence.

However, the provision for appeals from orders under section 12; undeniably civil in nature; being directed to the Sessions Court under Section 29 of the Act, adds to the perplexity. It reflects the increasingly blurred boundaries between civil and criminal forums and procedures within the operational framework of the DV Act, further complicating its classificatory clarity. Notably, this has given rise to significant ambiguity regarding the applicability of the high court's revisional and inherent jurisdictions under the criminal law framework when adjudicating matters arising under the DV Act. The scope and legitimacy of invoking Sections 397 and 482 of the CrPC (Sections 438 and 528 of BNSS respectively) in such cases remain contentious, and this issue is examined in greater detail in the following discussion.

#### **VII Quashing of domestic violence complaints under section 528 BNSS: Evolving jurisprudence and conflicting judicial trends**

Another contentious issue relating to domestic violence cases is the application of section 528 BNSS (erstwhile section 482 CrPC) in quashing complaints (filed under the DV Act). Conflicting decisions aplenty, this area needs legal standardisation. Starting with the current position, the Supreme Court of India in *Shaurabh Kumar Tripathi v. Vidhi Rawal*<sup>68</sup> examined in detail the question related to applicability of section 528 in to quash proceedings initiated under section 12 of the *primarily-civil* Domestic Violence Act, 2005. Through this authoritative pronouncement, the Supreme Court affirmed that proceedings initiated under section 12(1) of the Protection of Women from Domestic Violence Act, 2005 are predominantly civil in nature, and hence distinct from criminal complaints under Section 200 Cr PC or Section 223 BNSS. It clarified that applications under Section 12 do not trigger formal criminal prosecution but seek civil remedies such as protection, residence, and maintenance orders. However, the court also emphasized that the Magistrate's jurisdiction under the DV Act stems from the criminal procedural framework, and the use of Cr PC machinery does not convert these proceedings into full-fledged criminal trials. Importantly, the court acknowledged that Section 28(2) of the DV Act permits courts to devise their own procedures, reinforcing the *sui generis* nature of DV proceedings.

Crucially, the Supreme Court held that high courts retain inherent jurisdiction under Section 482 CrPC (or Section 528 BNSS) to quash DV Act proceedings, but such

---

68 2025 SCC OnLine SC 1158.

power must be exercised sparingly, with great caution, and only in cases of manifest injustice or abuse of process. The court rejected the restrictive view adopted by certain high courts that precluded interference merely because the proceedings were civil in form. It underscored that reliefs under sections 18 to 23, though civil, may carry serious implications for personal liberty and dignity, warranting careful judicial oversight. The judgment thus reaffirms the high court's role as a constitutional sentinel while preserving the protective ethos of the DV Act, cautioning that unwarranted quashing may undermine its remedial purpose. It is both ironic and amusing that Justice Abhay S. Oka, a member of the Supreme Court Division Bench that upheld the maintainability of quashing petitions under Section 482 CrPC in DV proceedings, had, as a judge of the High Court of Bombay in 2016, endorsed the contrary view; that such remedy was unavailable for applications under Section 12(1) of the DV Act. Notably, that earlier view was subsequently overruled by a Full Bench of the same high court. In a striking moment of judicial humility, the Supreme Court judgment candidly acknowledges this prior misstep, affirming that "learning is a continuous process," even at the highest echelons of the judiciary.

The High Court of Kerala in *Titus v. State of Kerala*,<sup>69</sup> applied the dictum laid down in by the Supreme Court in *Shaurabh Kumar Tripathi* and held that though powers under Section 528 BNSS can be used to quash proceedings initiated under Section 12 of DV Act or interim orders passed under it; the courts must always be cautious and circumspect; and limit the power to cases of blatant irregularity or manifest illegality. Of late this position has been vindicated by most of the high courts when it comes to application of quashing powers in cases of DV proceedings.<sup>70</sup>

In light of conflicting rulings by co-ordinate benches on whether Section 528 BNSS can be invoked to quash proceedings under Section 12 of the DV Act at the notice stage, the High Court of Allahabad has referred the matter to a Larger Bench. Two divergent judgments prompted the referral:

- i. In *Smt. Suman Mishra v. State of U.P.*<sup>71</sup>, the court held that quashing at the notice stage was impermissible, relying on *Kamatchi v. Lakshmi Narayanan*<sup>72</sup>, which characterized DV proceedings as civil and more appropriately challenged under Articles 226/227.
- ii. Contrarily, *Devendra Agarwal v. State of U.P.*<sup>73</sup> upheld the maintainability of quashing petitions under Section 528, disregarding the earlier decision as *per incuriam*.

---

69 2025 SCC OnLine Kerala 4611

70 *Dhananjay Mohan Zombade v. Prachi* 2023 SCC OnLine Bom. 1607.

71 Neutral Citation No.2023: AHC-LKO:60094.

72 2022 INSC 421.

73 Neutral Citation No. - 2024: AHC:128993.

Seven legal questions have now been framed for the Larger Bench, including the maintainability of quashing petitions under Section 528 BNSS in DV Act matters, the scope of writ jurisdiction, and the authority of co-ordinate benches to disregard precedent<sup>74</sup> and the verdict is expected to significantly impact the future jurisprudence on domestic violence and procedural law in India.

To sum up, despite some judicial divergence, the legal position regarding the invocation of inherent powers under Section 528 BNSS (formerly Section 482 CrPC) to quash proceedings and interim orders under the DV Act, has now largely settled in the affirmative, *albeit* with judicial caution. The Supreme Court's endorsement of a measured and restrained approach has brought much-needed clarity, reinforcing that while such powers may be exercised, they must be invoked sparingly and only in cases of manifest injustice or abuse of process. This evolving jurisprudence serves not only to safeguard the remedial intent of the DV Act, but also to act as a check against potential misuse, thereby maintaining a balance between protection and procedural fairness.

#### VIII From DV case to litigation avalanche

It is amusing (and unsettling) the fact that the allegedly malicious DV case has now snowballed into a flurry of legal proceedings across multiple forums. These include an cases under the Juvenile Justice Act, 2015 wherein children are used as weapon against one of the parents, criminal revision petitions under Section 528 of the BNSS for quashing FIRs, criminal defamation complaint before the Magistrate's Court, appeals under Section 29 of the DV Act before the Sessions Court challenging orders (interim and othersies) of the trial court, a transfer petitions before the high court seeking to move the DV cases out of the trial court and parallel proceedings in the family court concerning custody of the child, restitution of conjugal rights, and a counterclaims for divorce. With the conflict intensifying, the list is only expected to grow as more litigation appears imminent.

This instance of legally educated and adept litigants engaging themselves in vengeful and retaliatory litigation underscores the cascading fallout of domestic violence litigations; particularly those rooted in false or exaggerated claims. Frivolous DV complaints often trigger a chain of retaliatory and parallel legal proceedings, yet the DV Act provides no punitive deterrents against such misuse, thereby compounding the hardship for the respondents. Judicial interpretations have, at times, further exacerbated the plight of respondents, who may themselves be victims of misuse; by reinforcing ambiguities and enabling overreach in the application of the DV Act; the latest among them being of the Madurai Bench of the High Court of Madras in

---

74 Available at: [https://www.allahabadhighcourt.in/event/event\\_21306\\_18-02-2025.pdf](https://www.allahabadhighcourt.in/event/event_21306_18-02-2025.pdf) (last visited on Mar. 20, 2026)

*Executive Secretary of District Health Society v. K.S. Subba Karuthukhan*<sup>75</sup>, which held that, held that matrimonial disputes constituted misconduct under the Tamil Nadu Government Servants' Conduct Rules, 1973 and that government departments were empowered to initiate disciplinary proceedings for such misconduct, as public servants were expected to maintain honesty, integrity, and good conduct both in office and in society. The court noted that this principle applied even when misconduct occurred within a marital relationship but failed to delineate the specific nature of the matrimonial misconduct that the High Court of Madras sought to address.<sup>76</sup> Given the absence of specific factual details in the judgment, it remains unclear whether the court is referring solely to bigamy, to some other form of serious matrimonial misconduct, or merely using the term 'matrimonial dispute' in its ordinary and broader sense. The decision does not contemplate the necessity of awaiting the final adjudication of the dispute. As a result, even a frivolous DV petition could lead to severe consequences, including the respondent; who may in fact be the victim, suffering loss of employment.

### IX Conclusion

No doubt, the Protection of Women from Domestic Violence Act, 2005 represents a paradigmatic shift in Indian legal discourse; transforming the traditionally private realm of familial relations into a domain of justiciable rights. Its progressive framework, which departs from retributive models and embraces a rights-based, victim-centric approach, reflects an evolved understanding of structural gender violence. However, the Act's design *i.e.* marrying civil remedies with criminal procedure; while normatively laudable, has engendered interpretive challenges, particularly concerning procedural classification, the role of criminal courts in civil adjudication, and the extent of judicial discretion under inherent powers.

Recent jurisprudence evidences a gradual consolidation of legal standards concerning the scope of rights under the legislation and the delicate interface between procedural law and substantive reliefs. Despite its ostensibly beneficial objectives, the legislation suffers from inherent deficiencies and structural shortcomings that have culminated in glaring disproportionalities and systemic inequalities in its application and outcomes. This evolving interpretive landscape affirms a cautious judicial balancing; one that is attentive to the Act's remedial ethos while safeguarding constitutional values of fairness, due process, and proportionality. Judicial sensitivity and restraint, though desirable, cannot be uniformly sustained across all contexts; it is imperative, therefore, to adopt

---

75 2025 SCC OnLine Mad 2835.

76 R. 19(2) of the Tamil Nadu Government Servants' Conduct Rules, 1973, may be interpreted to encompass acts involving moral turpitude within the realm of marital conduct as constituting misconduct. The principal form of such misconduct contemplated under this provision appears to be bigamy, which is expressly prohibited under the service conduct rules of most state governments for their employees. However, such 'generalisations' in judicial pronouncements catalyse vague interpretations and resultant victimisation.

interpretative and legislative interventions that recalibrate the statutory intent and rectify procedurally unsound provisions and processes.

The full realisation of the Act's transformative potential rests not merely in textual fidelity, but in sustained judicial sensitivity to the lived realities of women navigating intimate violence. As courts continue to navigate the delicate balance between protective mandates and procedural propriety, the DV Act presents a fertile terrain for fostering a more nuanced, equitable, and constitutionally grounded vision of justice within the domestic sphere; yet this pursuit must not come at the cost of compromising the foundational constitutional ethos of equality and due process.

*Asif E\**

*Juny Varghese\*\**

---

\* Assistant Professor, School of Legal Studies, Cochin University of Science and Technology (CUSAT), Kerala

\*\* Assistant Professor, KMM Law College, Kochi, Kerala.