
IN THE HON'BLE COURT OF
JUDICIAL MAGISTRATE OF SINDUSTAN



MRS. VIMLADEVI.....APPLICANT

VERSUS

MR. HARI LAL.....RESPONDENT

ON SUBMISSION TO THE COURT OF JUDICIAL MAGISTRATE OF SINDUSTAN

MOST RESPECTFULLY SUBMITTED

COUNSELS APPEARING ON BEHALF OF MRS. VIMLA DEVI

WRITTEN SUBMISSION ON BEHALF OF APPLICANT

TABLE OF CONTENTS

INDEX OF AUTHORITIES	1
STATEMENT OF JURISDICTION	4
STATEMENT OF FACTS	5
ISSUES RAISED	6
SUMMARY OF ARGUMENTS	7
PLEADINGS	
ISSUE A	8
ISSUE A.1.....	8
ISSUE A.2.....	8
ISSUE A.3.....	9
ISSUE A.4.....	10
ISSUE B	11
ISSUE B.1.....	11
ISSUE B.2.....	11
ISSUE C	13
ISSUE C.1.....	14
ISSUE C.2.....	14
ISSUE D	16
ISSUE D.1.....	16
ISSUE D.2.....	17
ISSUE D.3.....	19
ISSUE D.4.....	23
ISSUE D.5.....	24
ISSUE D.6.....	25
PRAYER	27

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S. No.	NAME
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2.	The Constitution of India, 1949
3.	The Indian Evidence Act, 1872
4.	The Code of Criminal Procedure, 1973
5.	The Punjab Panchayati Raj Act, 1994
6.	Hindu Adoption and Maintenance Act, 1956
7.	The Limitation Act, 1963

TABLE OF ABBREVIATIONS AND SYMBOLS

ABBREVIATION	DEFINITION
@	Alias
AIR	All India Reporter
Anr.	Another
Art.	Article
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CrLJ	Criminal Law Journal
Ed.	Edition
HC	The High Court
Hon'ble	Honourable
i.e.	That is

ILR	Indian Law Reporter
Ltd.	Limited
No.	Number
Ors.	Others
P.	Page
Pb.	Publication
S.	Section
SC	The Supreme Court of India
SCC	Supreme Court Cases
SCR	Supreme Court Reporter
ss.	Sections
The CrPC	The Code of Criminal Procedure, 1973
The IE Act	The Indian Evidence Act, 1872
The IPC	The Indian Penal Code, 1860
The PWD Act	The Protection of Women from Domestic Violence Act, 2005
u/s	Under Section
UK	The United Kingdom of Great Britain
UOI	The Union of India
V.	Versus
Vol.	Volume

STATEMENT OF JURISDICTION

The Hon'ble Court Judicial Magistrate of Sindustan is empowered to hear this case by the virtue of Section 27 of Protection of Women from Domestic Violence Act, 2005.

The Section reads as:

(1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which-

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

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

(c) the cause of action has arisen,

shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made under this Act shall be enforceable throughout India.

Also, Section- 11 empowers this Hon'ble Court to hear the case and grant relief under the Protection of Women from Domestic Violence Act, 2005.

STATEMENT OF FACTS

HariLal married Vimla Devi in 1983. After marriage Vimla Devi went to her matrimonial house in Bhimpur village which was HariLal's father's house. Gradually, HariLal began to neglect Vimla Devi and began to demand dowry. There was no warmth in the marriage and physical violence against Vimla Devi at hands of HariLal became a routine. During her pregnancy, she was sent to her parent's house and gave birth to a girl child "Dolly" on 22nd March 1986. When the child was two months old, father and brother of Vimla, brought her to the house of HariLal. The father-in-law of Vimla, Ramesh Chand allowed her to stay in his house, however, the incidents of ill-treatment, verbal, physical and emotional abuse at the hands of HariLal aggravated. Soon, she was driven out by HariLal alleging that Dolly was not his child. In 1994 Hari moved the Court under the Guardianship and Wards Act, seeking that the custody of Dolly be handed over to him. The action was contested by Vimla, who was able to substantiate that she was in a better position to take care of Dolly and fulfilling her basic requirements. She admitted in the court that she did not have enough source of income to support the education of her daughter on her own. In the year 1997 Vimla moved an application before the concerned Gram Panchayat of Bhimpur for provision of maintenance for herself and her daughter. The concerned Gram Panchayat, ordered Hari to pay a maintenance of Rs. 500/- per month to the Applicant/Vimla. Not even a single payment was made by him as per this order. Vimla and her daughter had been struck off from the local registers (family registers, ration cards, etc). Hari, who was working as a government servant and earning a monthly salary of about Rs. 30,000, had moved out of the joint family house and constructed a new house in Bhimpur. In the year 2010 when Dolly had already completed her education at the college level, Vimla initiated an action against Hari under the Protection of Women from Domestic Violence Act, 2005, praying that she was 'aggrieved person' within the definition of this expression under the Domestic Violence Act, 2005. She has prayed that the respondent be directed to allow Vimla and her daughter to live with him in his present residence, while ordering him not to commit any further acts of domestic violence against either of them. She has also prayed that the stridhana, that she had left in her matrimonial home in 1985, be restored to her and her daughter should be provided share in property. Monetary relief and compensation has also been prayed for. The respondent was able to prove to the ordered deletion of the name of Vimla from the list of people Below Poverty Line, of the concerned area.

ISSUES RAISED**ISSUE A: WHETHER THE INSTANT CASE IS BARRED BY LIMITATION?**

1. THAT THE PWD ACT DOES NOT STIPULATE ANY OFFENCE
2. THAT THE PWD ACT SILENT ON LIMITATION
3. THAT THE PWD ACT IS A PIECE OF BENEFICIAL LEGISLATION
4. THAT THE PWD ACT APPLIES RETROSPECTIVELY

ISSUE B: WHETHER THE APPLICANT IS BOUND BY THE RULE OF ESTOPPEL?

1. THAT THE APPLICANT IS AN 'AGGRIEVED PERSON'
2. THAT THE DOCTRINE OF ESTOPPEL CANNOT DEFEAT THE PURPOSE OF LAW

ISSUE C: WHETHER A *PRIMA FACIE* CASE IS MADE OUT AGAINST THE RESPONDENT?

1. THAT THE ACTS OF THE RESPONDENT HAVE RESULTED IN HARM AND INJURY TO THE HEALTH OF THE APPLICANT.
2. THAT THE APPLICANT HAS BEEN SUBJECTED TO CONTINUAL 'ECONOMIC ABUSE'

ISSUE D: WHETHER THE RELIEFS PRAYED FOR ARE MAINTAINABLE?

1. THAT A PROTECTION ORDER BE GRANTED TO THE APPLICANT
2. THAT A RESIDENCE ORDER BE PASSED IN FAVOUR OF THE APPLICANT
3. THAT MONETARY RELIEF BE GRANTED TO THE APPLICANT
4. THAT COMPENSATION BE GRANTED TO THE APPLICANT
5. THAT STRIDHAN BE RETURNED TO THE APPLICANT
6. THAT THE DAUGHTER OF THE APPLICANT BE SECURED A SHARE IN PROPERTY

SUMMARY OF ARGUMENTS**ISSUE A: WHETHER THE INSTANT CASE IS BARRED BY LIMITATION?**

The Applicant, an “Aggrieved Person” as per the PWD Act, has filed a case to this Hon’ble Court. It is pertinent to mention that in cases involving PWD Act, there is no bar of limitation as has been reiterated by the Hon’ble Supreme Court in its galaxy of precedents. This is meticulously clear from the fact that the PWD Act does not stipulate any offence, as it is a beneficial piece of legislation in favour of the women. Also, the Act is silent on limitation. Therefore, the bar of limitation does not apply on the Applicant.

ISSUE B: WHETHER THE APPLICANT IS BOUND BY THE RULE OF ESTOPPEL?

It is a settled canon of law that the Doctrine of Estoppel does not apply to laws. In the instant case, the Applicant has a statutory right to invoke the jurisdiction of this Hon’ble Court and therefore, the Doctrine of Estoppel does not estop her from invoking the jurisdiction of this Hon’ble Court. The Applicant is invoking this jurisdiction as per procedure established by law.

ISSUE C: WHETHER A *PRIMA FACIE* CASE IS MADE OUT AGAINST THE RESPONDENT?

A prima facie case has been made out against the Respondent. The Applicant has prima facie been subjected to domestic violence. She has been subjected to recurring physical, verbal and emotional abuse by the Respondent. She was harassed with a view to obtain dowry. Consequently, she was driven out. The Applicant has further been subjected to continual economic abuse for nearly three decades as she was left alone to fend for herself and her daughter without any economic support from the Respondent.

ISSUE D: WHETHER THE RELIEFS PRAYED FOR ARE MAINTAINABLE?

The Applicant prays for grant of the various reliefs enshrined in the Act. A protection order would provide her with protection against any act of domestic violence while a residence order would enable her to live peacefully in her matrimonial home. Monetary relief and compensation would further enable the Applicant to lead an economically secure life away

from the caprice of the Respondent. The Magistrate is also pleaded to order return of her stridhana and secure for her daughter a share in property.

PLEADINGS

ISSUE A: WHETHER THE INSTANT CASE IS BARRED BY LIMITATION?

It is submitted by the Applicant that the bar set by the limitation does not hit the instant case.

1. THAT THE PWD ACT DOES NOT STIPULATE ANY OFFENCE

The CrPC only prescribes a period of limitation for cognizance of offences.¹ Only an act or omission punishable by any law for the time being in force is an offence.² The Applicant has sought relief under the PWD Act that does not prescribe punishment for any act. Further, the Limitation Act does not prescribe for a period of limitation for acts of domestic violence. Thus, to reckon a period of limitation, if any, reference may be made to the relevant provision of the PWD Act. On a careful perusal of Section 31 of the Act, it is found that the act of domestic violence does not attract penal consequence as per the Act. Only if a protection order is passed and the respondent in the main petition violates the protection order passed by the court, then such act of breach of protection order is construed as an offence.³

The instant case is filed by the Applicant under PWD Act, 2005 and it does not stipulate any offence. Therefore, the question of Limitation being hit in the instant case is irrelevant.

2. THAT THE PWD ACT SILENT ON LIMITATION

It is a matter of fact that the PWD Act is silent on limitation.

S.2 of PWD Act entails various definitions. The aforesaid section is indicative of the clear legislative intent of the retrospective application/effect of PWD Act. That is to say all the acts committed under the head of Domestic Violence would not be hit by the bar of limitation in any case whatsoever. The use of words such as “*has been and have been*” in S.2(a), “*or have, at any point of time, lived together*” in S.(f), “*has been, in a domestic relationship with the aggrieved person*” in S.2(q), “*at any stage has lived in a domestic relationship*” in S.2(s) iterates the clear intent of the legislature on the point. Also, in S.3 use of words like “*any act*,

¹ S. 468, the CrPC.

² S. 2 (n), the CrPC.

³ Dennison Paulraj and others vs. Mrs. Mayawinola (2008) 2 MLJ (Cri) 389

omission or commission or conduct” further clears and explains the intent of legislature. All these terms/words state that any act, omission or commission or conduct of Domestic Violence (defined under S.3, PWD Act, 2005) have retrospective application of law.

It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation.⁴ The other rules of interpretation e.g. the mischief rule, purposive interpretation, etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule⁵.

The language in the aforesaid provisions/sections, therefore, admits of no other construction but the literal construction. There is no ambiguity in the provisions of Act. Therefore, literal interpretation of the Act/provision shall be applied in the instant case.

3. THAT THE PWD ACT IS A PIECE OF BENEFICIAL LEGISLATION:

“The Act is a beneficial piece of legislation, which is an outcome of the Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995). It is also a result of United Nations Committee on CEDAW..... Therefore, in order to get rid of the mischief of domestic violence...Undoubtedly the Act is meant to protect the women from domestic violence committed against them by the husband and his family members. The Act has recognised the fact that domestic violence is limited not only to physical and mental cruelty..... Since the Act is a social beneficial piece of legislation, Section 3 of the Act must be given a liberal interpretation.”⁶

Also, the provisions of PWD Act, 2005 giving preferential treatment to wife over husband under the Act is not violative of Art 14 or 16 of the Constitution of India. Also, The Constitution itself by virtue of Art 15(3) provides for making special provisions favouring women and children. The PWD Act, 2005 has been enacted in tune with Art 15(3), hence is not unconstitutional.⁷

⁴ Lalita Kumari vs. Govt. of U.P. & Ors.

⁵ Swedish Match AB v. SEBI (2004) 11 SCC 641

⁶ Gajendra Singh Vs. Smt. Minakshi Yadav and Anr. Rajasthan High Court, Jaipur Bench Date of the Judgment — 5th May 2011

⁷ Dennison Paulraj vs. UOI, AIR 2009 (NOC) 2540 (Mad).

Therefore, it is submitted that there is no limitation in filing a case under PWD Act, 2005 and the Applicant is not hit by the bar of limitation.⁸

4. THAT THE PWD ACT APPLIES RETROSPECTIVELY

It is pertinent to mention here that the PWD Act has retrospective application of law and is not hit by the bar of Art. 20(1) of The Constitution of India.

Despite of the fact, it being a beneficial legislation, it also has retrospective effect of law.

In a landmark case⁹ on the point, the Hon'ble Supreme Court relied on a judgment of Delhi High Court; the relevant para of the judgment is as follows:

“12. We agree with the view expressed by the High Court that in looking into a complaint under Section 12 of the PWD Act, 2005, the conduct of the parties even prior to the coming into force of the PWD Act, could be taken into consideration while passing an order under Section 18, 19 and 20 thereof. In our view, the Delhi High Court has also rightly held that even if a wife, who had shared a household in the past, but was no longer doing so when the Act came into force, would still be entitled to the protection of the PWD Act, 2005,”¹⁰

All the aforesaid provisions under PWD Act, 2005 clearly states that the Applicant was not only socially but also, economically deprived of necessities like money, maintenance, stridhan¹¹, property etc. which shall be further discussed elaborately in the subsequent issues.

That in the instant case the offence is a continuing offence and therefore, the present case is not barred by limitation.

⁸ Bulu Das versus Ratan Das, 2010 (85) AIC 952 (Gau.).

⁹ V.D. Bhanot versus Savita Bhanot (2012) 3 SCC 183

¹⁰ Saraswathy versus Babu [2013 4Cr. 610 SC]

¹¹ Balaram Singh versus Sukhwant Kaur, 1992 Cr LJ 707 (MP).

ISSUE B: WHETHER THE APPLICANT IS BOUND BY THE RULE OF ESTOPPEL?

It is most humbly submitted that the Applicant is not bound by the Rule of Estoppel as there cannot be an Estoppel against a Statute or law.

1. THAT THE APPLICANT IS AN ‘AGGRIEVED PERSON’

In the instant case, the Applicant is an “aggrieved person” u/s 2(a) of the PWD Act. The Applicant as per the procedure established by law is liable to get relief under the PWD Act. For the sake of brevity, the same has not been elaborated as it shall be discussed in the subsequent issues. Therefore, as per the procedure established by law is invoking the jurisdiction of this Hon’ble Court.

It is further submitted that the Rule of Estoppel can only be applied against a fact. Since, in the instant case, the law applied is a beneficial piece of legislation in the favour of Applicant, therefore, she cannot be estopped against the law.

2. THAT THE DOCTRINE OF ESTOPPEL CANNOT DEFEAT THE PURPOSE OF LAW

"Estoppel" in Black's Law Dictionary¹², is indicated to mean that a party is prevented by his own acts from claiming a right to the detriment of other party who was entitled to rely on such conduct and has acted accordingly. S. 115 of the IEA is also, more or less, couched in a language, which conveys the same expression.

The Doctrine of Estoppel does not apply on Statues. In other words, a person may not represent true status¹³ of Statute or law, but the other person who realise on such a representation is at liberty to find the position of law on the matter as the maxim says ignorance of law is no excuse. So a person cannot take recourse to the defence of estoppel to plead that a false representation has been made regarding the provisions of a Statute or law.¹⁴ The principles of estoppel cannot override the provisions of the Statutes.¹⁵

In the instant case, since the Applicant has a right to file a case under PWD Act, 2005 as she is an “Aggrieved Person” and there is no limitation or restriction on filing such a case,

¹² Bryan. A. Garner, Black’s Law Dictionary (8th Ed. 2001).

¹³ Ashpital v. Byron, 3B and S. 474(489); Simon v. Anglo American Telegraph Co., (1879) 5 Q.B.D. 188 C.A., per Bramwell L.J. at p. 202; Halsbury, Vol. 13, Para 488

¹⁴ Delhi University vs. Ashok Kumar AIR 1968 Del 131.

¹⁵ Dave, Shreya, “*Doctrine of Promissory Estoppel*”

therefore, the Applicant is not estopped in filing this case. The estoppel cannot be applied against the law.¹⁶

The Hon'ble Apex Court has again and again in its galaxy of judgments¹⁷ have reiterated that a Doctrine of Estoppel can only be applied on facts, not laws. There can be no estoppel against statutes and the Statutory Provisions and therefore, the plea of estoppel has no legs to stand on in law. It is therefore a well-established law that estoppel applies on facts and not laws or Statutes.

Also, Hon'ble Punjab & Haryana High Court has iterated the same provision of law in its various judgments¹⁸.

Therefore, in the instant case, the Applicant is not estopped from invoking the jurisdiction of the Hon'ble Court as it is guaranteed to her as per the procedure established by law.

¹⁶ C.I.T. vs. Mr. P. Firm Maur, AIR 1965 SC 1216.

¹⁷ Olga Tellis vs. Bombay Municipal Corporation 11 1986 AIR 180; State of Bihar and others v. Project Uchcha Vidya, Sikshak Sangh and others (2006) 2 SCC 545 Faqir Chand vs Shri Ram Rattan Bhanot 1973 AIR 921 1973 SCR (3) 454 ; Air India Etc. Etc vs Nergesh Meerza & Ors. 1981 AIR 1829 1982 SCR (1) 438; 1981 SCC (4) 335 1981 SCALE (3)1275; C. Beepathumma And Ors. vs V.S. Kadambolithaya And Ors. AIR 1965 SC 241, 1964 5 SCR 836; Sitarama Chetty and Anr. v. Krishnaswami Chetty [(1915) I.L.R. Mad., 38, 374.]; Jalandhar Improvement Trust vs Sampuran Singh AIR 1999 SC 1347, JT 1999 (2) SC 598, (1999) 122 PLR 295; Bennett Coleman & Co. (P) Ltd vs Punya Priya Das Gupta 1970 AIR 426, 1970 SCR (1) 181; Rajendra Jha vs Presiding Officer, Labour Court 1984 AIR 1696, 1985 SCR (1) 544; Sheo Shyam And Ors vs State Of U.P. And Ors Appeal (civil) 1035 of 2004; C.I.T. vs. Mr. P. Firm Maur, AIR 1965 SC 1216; Kale & Others vs Deputy Director Of Consolidation 1976 AIR 807, 1976 SCR (2) 202; Chiranjilal Shrilal Goenka ... vs Jasjit Singh And Ors 1993 SCR (2) 454, 1993 SCC (2) 507; State Of Punjab vs M/S Nestle India Ltd. & Anr on 5 May, 2004; Faqir Chand vs Shri Ram Rattan Bhanot 1973 AIR 921; Indira Bai vs Nand Kishore 1991 AIR 1055, 1990 SCR Supl. (1) 349; Bangalore Development Authority ... vs R. Hanumaiah & Others on 3 October, 2005; Prashant Ramachandra Deshpande vs Maruti Balaram Haibatti 1995 (2) CTC 32, JT 1997 (10) SC 425, 1995 (2) SCALE 804; U.P.Power Corporation Ltd. & Anr vs Sant Steels & Alloys (P) Ltd & Ors on 10 December, 2007; Tamil Nadu Electricity Board & Anr vs Status Spinning Mills Ltd. & Anr on 16 May, 2008; Workmen Of M/S Hindustan Lever ... vs Management Of M/S Hindustan Lever 1984 AIR 516, 1984 SCR (2) 307.

¹⁸ Shri Mahender Singh vs Shri Hukam Singh And Others AIR 1993 P H 172; Mandeep Singh & Anr. vs M.S. Kahlon on 16 September, 2013; Vipul Rai Sharma And Others vs The Ludhiana Improvement Trust AIR 1992 P H 42; The Jullundur Improvement Trust ... vs Baldev Raj Verma , AIR 2002 P H 350; Jalandhar Improvement Trust vs Dr. Gurmit Singh And Ors. on 31 July, 2001; Jasmine Kaur vs Chandigarh Administration & Anr on 27 September, 2013; Union Of India/Union Territory, ... vs Gurcharan Singh on 1 October, 2012; Basant vs State Of Haryana And Others on 13 July, 2012; Suresh Saggarr vs Vijay Saggarr on 23 October, 2009; Surender Kumar And Ors. vs State Of Punjab And Ors. AIR 1983 P H 422.

ISSUE C: WHETHER A *PRIMA FACIE* CASE IS MADE OUT AGAINST THE RESPONDENT?

The PWD Act has been enacted to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.¹⁹ The Applicant has presented an application u/s 12 to the Magistrate seeking the various reliefs enshrined in the Act.²⁰ However, in order to take a petition under PWD Act the Court has to consider whether there is prima facie allegation of acts of domestic violence against the husband and in laws, by the wife.²¹

S. 3 defines domestic violence as follows—“For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it –(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or (b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or (c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.” Explanation I to the stated section provides meaning to its various terms.²²

¹⁹ Statement of Objects and Reasons, the PWD Act.

²⁰ S. 12 (1) states— “Application to Magistrate.-(1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act.”

²¹ *Dennison Paulraj and others V. Mrs. Mayawinola*, (2008) 2 MLJ (CrI) 389, p. 391.

²² Explanation I states—For the purposes of this section—(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force; (ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman; (iii) "verbal and emotional abuse" includes—(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and (b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) "economic abuse" includes—(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance; (b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and (c) prohibition or restriction to continued access

The Applicant submits the following—

1. THAT THE ACTS OF THE RESPONDENT HAVE RESULTED IN HARM AND INJURY TO THE HEALTH OF THE APPLICANT

Pursuant to her marriage with the Respondent in 1983, the Applicant has been subjected to physical violence in her matrimonial home. The marriage lost its warmth as the Respondent began to neglect the Applicant. Such physical abuse not only caused harm and injury to the Applicant but also endangered her life. Harassment with a view to obtain dowry became regular. The Applicant, afraid to return to her parents, continued with her residence hoping for the situation to change. However, the trauma continued as the Applicant was subjected to sexual abuse by the Respondent as she was forced to conceive in the hope of a male child. The girl child subsequently born on 22nd March 1986 was neglected by the Applicant. It was only after the insistence of the family of the Applicant that shelter under the roof of the Respondent was restored to them. During her sojourn, verbal and emotional abuse continued as the Applicant was insulted and ridiculed for not bearing a male child. Consequently, the Applicant was driven out by the Respondent alleging falsely that the Respondent was unchaste and the daughter did not belong to him.

2. THAT THE APPLICANT HAS BEEN SUBJECTED TO CONTINUAL ‘ECONOMIC ABUSE’²³.

On false accounts of being unchaste, the Applicant was driven out of her matrimonial home by the Respondent. Such wilful expulsion from the household resulted in severe hardships to the Applicant. The unjust eviction not only parted the Applicant from her personal belongings and stridhan but also deprived her from the matrimonial benefits she was entitled to receive. The entitlement to economic and financial resources, and her right remain under the roof and protection of her husband emanates from personal laws.²⁴ Such entitlement extends to household property of the husband.²⁵ The right applies equally to access to residential facilities of her husband. The improper evacuation of the Applicant has resulted in denial of her right to access household necessities and to reside in her conjugal home.

to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

²³ For definition, See Explanation I, S. 3, the PWD Act.

²⁴ MULLA, Principles of Hindu Law, Vol. I, 18th Ed. 2001, paras 554 and 555.

²⁵ A lawfully wedded wife acquires from the moment of her marriage a quasi-right to the property belonging to the husband. See. Sastri, G.S., *Hindu Law*, p. 528.

In view of the above, the Applicant has been subjected to economic abuse by the Respondent. The Applicant, in the absence of any economic support from the Respondent, was left to fend for herself and her daughter. She has struggled for nearly three decades to make ends meet as a person below poverty line.

Thus, it is most humbly submitted that the Applicant is a victim of domestic violence and entitled to various reliefs enshrined in the Act.

ISSUE 4: WHETHER THE RELIEFS PRAYED FOR ARE MAINTAINABLE?

The PWD Act has been enacted to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.²⁶ The approach of the Court always has to be to uphold the parliamentary intention and give it a liberal interpretation rather than confining it, which would inevitably lead to defeating the object of the law.²⁷

To this end, it is most humbly submitted that the reliefs prayed for be granted by the Magistrate.

A. THAT A PROTECTION ORDER BE GRANTED TO THE APPLICANT

It is most humbly submitted that, the protection order must be granted to the Applicant.

Sec.18²⁸ of the PWD Act provides for protection order prohibiting the respondent from committing, aiding, abetting any act of domestic violence, entering the place of employment of the aggrieved person, attempting to communicate, alienating assets etc.

The applicant wishes to invoke the provision of Sec.18(a) i.e order by magistrate to the respondent from committing any act of domestic violence.

As the facts of the case already showcase the incidence of domestic violence in the forms of physical, verbal, emotional abuse, and ill treatment, it is requested that the applicant be granted a protection order by the Honourable Court.

“The pleadings and the documents prima facie discloses that the Revision Petitioner has committed the acts of Domestic Violence and there is always likelihood that he would commit domestic violence in future also²⁹.”

²⁶ Statement of Objects and Reasons, the PWD Act.

²⁷Om Prakash Vs. State of Rajasthan & Anr S.B. Criminal Revision Petition No.1220/2010

²⁸S. 18 reads as follows—Protection Orders.-The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favor 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.

²⁹P.K.Nagarajan @ ... vs N.Jeyarani on 30 January, 2014, Madras High Court

The Madras High Court granted protection order in the case of P.K.Nagarajan @ ... vs N.Jeyarani, apprehending the likelihood of commission of domestic violence.

“The appellant-wife having being harassed since 2000 is entitled for protection orders and residence orders under S. 18 and 19 of the PWD, Act, 2005 along with the maintenance as allowed by the Trial Court under S. 20 (d) of the PWD, Act, 2005.”³⁰

The court decided in favour of the petitioner in the case Varsha Kapoor vs Uoi & Ors. on 3 June, 2010 and opined that the person aggrieved by the offence of domestic violence must be protected the court also opined that, it must be seen that the protection order is observed and if the order is breached, there must be punishment for the same under sec.31 of the D.V Act.

B. THAT A RESIDENCE ORDER BE PASSED IN FAVOUR OF THE APPLICANT

The object of the Act is to enable the Applicant to live in a matrimonial atmosphere with her husband's house and not to get snapped once and for all from her relationship with her husband.³¹ The right of a woman in a domestic relationship to reside in the shared household is well entrenched in S. 17 of the Act.³² The 'right to reside' by a spouse in a shared household is a valuable right.³³ Such a right emanates from the personal laws applicable to Hindus. A Hindu wife is entitled to remain under the roof and protection of her husband and is also entitled to separate residence if situation warrants to.³⁴ A matrimonial home lies at the centre of the concept of marriage.³⁵ The section further prohibits the husband from evicting or excluding his wife from the household. In case of impingement of such right, the wife may seek relief of a residence order.

The Applicant is a victim of domestic violence.³⁶ Pursuant to her marriage with the Respondent, the Applicant has been recurrently subjected to harassment, physical violence and emotional abuse. Ultimately, she was driven out of her matrimonial home. With little support from her parents and under constant loathing of the society, the Complaint has struggled to make ends meet. As a lone parent as well, the Applicant has been unable to

³⁰Saraswathy vs Babu on 25 November, 2013, Supreme Court of India

³¹ Vijaya Baskar vs Suganya Devi CrI.O.P.(MD).No.10280 of 2010

³² Right to reside in a shared household.-(1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same. (2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.

³³P.K.Nagarajan @ Meenakshisundara Vs. I.N.Jeyarani CrI.R.C.(MD).No.570 of 2013.

³⁴ MULLA, Principles of Hindu Law, Vol. I, 18th Ed. 2001, paras 554 and 555.

³⁵ Kailash Vati v. Ayodhia Parkash, ILR (1977) 1 Punj. & Har. 642.

³⁶ See supra ISSUE III.

provide her daughter with good education; a right that she has unduly been bereft of. Under such economic constraints the Applicant prays, *inter alia*, for a residence order.

The Magistrate is empowered to pass a residence order on his satisfaction of the occurrence of domestic violence by virtue of S. 19 (1) of the Act.³⁷ A residence order provides a woman her right to reside in a secure housing and protects her right to reside in her matrimonial home or shared household whether or not she has any title or rights in such home or household.³⁸ S. 19 (f) further empowers the Magistrate to direct the Respondent to secure the same level of accommodation as enjoyed by her in the shared household. S. 19 empowers the Magistrate with various powers to ensure proper implementation of the order.³⁹

A residence order in the present household of the Respondent would enforce the Applicant's right to residence in the house of her husband; a matrimonial right that has legally been recognized in statutes.⁴⁰ It will restore to the Complaint and her daughter proper shelter in the house of the Respondent. It shall further prevent the Respondent from dispossessing her from his property, a misdeed that he has committed recurrently before. A residence order restraining the Respondent from dispossessing or disturbing her possession of the shared household would thus act as a necessary safeguard against possible actions of domestic violence and dispossession.

A residence order restraining the respondent from alienating or disposing off the household would further ensure continuous possession and residence in the future in the household. The Magistrate may also impose additional conditions for the protection of the Applicant. A bond for preventing the commission of domestic violence may also be passed to further justice to

³⁷ S. 19 defines 'residence orders' as –“(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order -(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;(b) directing the respondent to remove himself from the 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. Provided that no order under clause (b) shall be passed against any person who is a woman.

³⁸ Statement of Objects and Reasons, the Domestic Violence Act, 2005

³⁹ S. 19 (2) empowers the Magistrate to impose additional conditions to protect the Applicant. U/s 19 (3) the Respondent may be compelled to execute a bond to prevent commission of domestic violence. U/s 19 (5) and S. 19 (7) the officer-in-charge may also be directed by the Magistrate to provide protection to the Respondent and also to ensure that such order is implemented.

⁴⁰ See s. 17, the PWD Act; s. 18 of the HAM Act.

the Applicant. The officer-in-charge may also be directed by the Magistrate to provide protection to the Respondent and also to ensure that such orders are implemented.

To this end, the Applicant prays for a residence order.

C. THAT MONETARY RELIEF BE GRANTED TO THE APPLICANT

It is most humbly submitted that, the Respondent is liable to pay monetary relief to the Applicant.

Sec.20⁴¹(1) sub clause a, b, c of the D.V Act provides that the respondent must 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 for the loss of earnings, the medical expenses, the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person.

In the present case, the facts illustrate that the Applicant, who is clearly the aggrieved party having suffered from physical and mental violence by the Respondent and his family, suffered several expenses and losses. Owing to the distressing fate of having driven out from the marital home, the Applicant suffered obvious consequences. The fact state that the Applicant was driven out of her matrimonial home in 1986 and had no source of income and earnings until she was able to somehow manage to secure a job an Anganwadi worker in 1991. This created an evident detriment to the standard of living that the Applicant had been enjoying in her matrimonial home while in the Domestic relationship .The respondent who was a government servant was earning a monthly salary of 30,000 and the salary of an Anganwari worker is not more than mere Rupees 3-4 thousand. It is thus evident that the Applicant witnessed a drastic detriment in her standard of living. Thus subsequently causing the Applicant loss in earning.

⁴¹S. 20, the PWD Act reads as— (1) While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but not limited to,-(a) the loss of earnings;(b) the medical expenses;(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person(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.

It is humbly requested to the honourable court that the context of 'loss of earning' not be viewed in isolation but seen with a wholesome view. Keeping into consideration Sec.18⁴² of The Hindu Adoption and Maintenance Act, S.125 of the CrPC⁴³, states that the responsibility and duty of the husband to maintain his wife and child. Thus, it may be concluded that, the wife is entitled to the earning of her husband in a domestic relationship. Therefore, the exclusion of the husband's earning on separation, consequently causes detriment to the wife's earning.

The facts are however silent upon the medical consequence of the domestic violence, it cannot be overruled that, the aspect of physical abuse at the hands of Hari Lal mentioned in the facts give the clear view of the medical injuries and expenses that must have befallen onto the Applicant as a consequence to the domestic violence that she was subjected to. Thus making the Applicant entitled to monetary relief in reference to the medical expenses incurred.

The facts provide that the Applicant left the matrimonial home in 1986 and lived separately with her daughter ever since. The separation clearly caused the burden on the Applicant alone to tend to any ailments that may have befallen upon the applicant and her daughter. It would be absurd to assume that there were no medical conditions ever to the applicant or her daughter in the course of almost two decades. This however is not an argument expressing itself as a direct consequence of the domestic violence, however, the consequential impact of the domestic violence which include the driving out of the matrimonial home. It must therefore be taken into consideration that the Applicant did in fact incur medical expenses.

The removal of the Applicant from the matrimonial property caused further expense to the Applicant in securing a residential facility for herself and her daughter. There has therefore been an obvious damage and loss to the life and wellbeing of the applicant and her daughter.

It can thus be contended on basis of the above arguments that bound by the provisions of S. 20(1) a, b, c of the PWD Act, the Respondent is liable to pay monetary relief to the Applicant.

⁴² S.18, the PWD Act reads as— Maintenance of wife.-(1) Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her life time.

⁴³S.125Cr.P.C- order for maintenance of wife, children and parents- (1) If any person leaving sufficient means neglects or refuses to maintain-(a) his wife, unable to maintain herself, or(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself.

Now, bringing to light the provision of S. 20(1)(d)⁴⁴ the Applicant also contends entitlement to the claim of maintenance within the monetary relief which also includes the provisions of Sec.125⁴⁵ Cr.P.C.

The matter relating to grant of maintenance are now governed by the provisions of Hindu Adoptions and Maintenance Act, 1956. S.s 3 (b), 18 and 19 of the said Act read as under:

Sec.3 (b) "Maintenance" includes-(i) in all cases, provision for food, clothing, residence, education and medical attendance and treatment;

Sec.18 - Maintenance of wife- (1) Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her life time.

While considering the scope of S.125, the CrPC, it is observed that the, provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Art. 39. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause - the cause of the derelicts⁴⁶.The court thus explains and supports that viewing the cause and situation, the statute must be liberally interpreted to achieve its true motive i.e, protection and wellbeing of women and children.

The honourable Supreme Court said that “*Maintenance of a married wife, during subsistence of marriage, is on the husband. It is a personal obligation.*”⁴⁷ Also in Unnamalai Ammal vs. F.W. Wilson⁴⁸, the obligation to maintain wife by a husband has been held to be a personal obligation.

In the case of Balaji Bhaurao Kalbanadevs Parubai Bhaguji Warhade & Anr⁴⁹, the learned judge said that, “*In my opinion, even if the wife earns her livelihood by working on wages, that factor can be taken into account only for assessing the amount of maintenance payable*

⁴⁴D.V Act, S.20(1)(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.

⁴⁵*Supra* note.3

⁴⁶Ramesh ChanderKaushal v. Mrs.VeenaKaushal,[1978] A.I.R. S.C. 1807.

⁴⁷VimalbenAjitbhai Patel vsVatslabeenAshokbhai Patel,AIR2008SC2675.

⁴⁸AIR 1921 Madras 1187.

⁴⁹1984 (1) BomCR 61.

to her. However, the fact that the wife is working on wages and earning some income does not absolve the husband from liability to maintain his wife.”

It is brought to the learned court’s attention that, mere surviving with the little earning from the salary of an Anganwari worker must not be construed as ability of maintaining herself for the applicant. Also, giving due regard to the provision of the law in S. 20(2), the PWD Act that, the Monetary Relief should be as per the standard of living of the husband. It would thus be unfair by comparison to say that the wife is able to maintain herself.

In the case, Kirtikant D. Vadodaria vs. State of Gujarat⁵⁰ : *“According to the Law of the Land with regard to maintenance, there is an obligation of the husband to maintain his wife which does not arise by reason of any contract express or implied but out of jural relationship of husband and wife consequent to the performance of marriage. Such an obligation of the husband to maintain his wife arises irrespective of the fact whether he has or has no property, as it is considered an imperative duty and a solemn obligation of the husband to maintain his wife.”* It was, furthermore, observed, *“Further, according to S. 20 of the Hindu Adoptions and Maintenance Act, 1956, a Hindu is under a legal obligation to maintain his wife, minor sons, unmarried daughters and aged or infirm parents. The obligation to maintain them is personal, legal and absolute in character and arises from the very existence of the relationship between the parties.”*

Reinstating the provision of S.125 of Cr.P.C in Zubedabi's case⁵¹, it was held that, *“..it is obvious that Section 125 of the Code of Criminal Procedure makes it clear that the husband is required to maintain his wife who is unable to maintain herself. This is what Section 125(1)(a) clearly states. That being so, it is obvious that the petitioner must positively aver in her petition that she is unable to maintain herself in addition to the facts that her husband has sufficient means to maintain her and that he has neglected to maintain her.”*

It is thus most humbly submitted that, the Respondent is liable to pay monetary relief to the Applicant.

⁵⁰(1996) 4 SCC 479.

⁵¹1978 Cri LJ 1555 (Kant).

D. THAT COMPENSATION BE GRANTED TO THE APPLICANT

It is most humbly submitted before the Applicant is entitled to be paid compensation and the respondent thus liable.

S. 22⁵² of the Act confers upon the Magistrate, the power to award compensation to the aggrieved person, in addition to other reliefs granted under the Act.

The section provides that, the respondent must pay compensation for damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed.

The facts of the present case clearly provide that the Applicant was subjected to mental torture and emotional distress as a result of the domestic violence done onto the Applicant, as defined in Sec.3 of the D.V Act. The Applicant was neglected from the very starting stage of her marital relationship with the respondent. Demands of dowry were also made to the Applicant. There was lack of warmth, affection and existing physical violence. The fact that the respondent and her family showed no interest of taking care of the Applicant while she was pregnant or to bring her back to the matrimonial home from her maternal home after the birth of her child. The Applicant also went through the trauma of being accused of having the child from another man and driven out of her home thereafter.

The Applicant thereafter also had to go through the tormenting phase of fighting for the custody of her daughter and then having to manage her and her daughter's survival on the mere earnings of an Anganwari worker. The Applicant had to manage all the responsibilities of a father on her own without even any contributory aid of maintenance from the respondent. It is thus undisputable herein that, the Applicant is the aggrieved person here and was subjected to mental torture and emotional distress of living and surviving through the hardships of life alone.

“Chapter IV is the heart and soul of the PWD Act, which provides various reliefs to a woman who has or has been in domestic relationship with any adult male person and seeks one or more reliefs provided under the Act. The Magistrate, while entertaining an application from an aggrieved person under S. 12 of the PWD Act, can grant the following reliefs: 1) Payment of compensation or damages without prejudice to the right of such person to institute a suit

⁵²Compensation orders.-In addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent.

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 Court⁵³”

“Apart from these reliefs, she is also entitled for compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by the respondent-husband. Therefore, in addition to the reliefs granted by the courts below, we are of the view that the appellant-wife should be compensated by the respondent-husband.⁵⁴”

E. THAT STRIDHAN BE RETURNED TO THE APPLICANT

Stridhana connotes property given or bequeathed to a Hindu female whether during maidenhood, coverture or widowhood by her parents and their relation or by her husband and his relations.⁵⁵ Stridhana constitute a woman's absolute property.⁵⁶ She may spend, sell or give it away at her own pleasure by gift or will without reference to her husband and property acquired by it is equally subject to such rights.⁵⁷ There is nothing in the codification of Hindu Law that abolishes the concept of stridhana. Ordinarily, the husband has no manner of right or interest in it. On demand, the husband is bound to return all the items including property, ornaments, money and other belongings offered by the bride's side at the time of marriage.⁵⁸ Any such denial amounts to harassment.⁵⁹

The Applicant is a victim of domestic violence.⁶⁰ Pursuant to her marriage with the Respondent, the Applicant has been recurrently subjected to harassment, physical violence and emotional abuse. Ultimately, she was driven out of her matrimonial home without any material possessions to sustain herself. All her stridhan was subsequently seized and exploited by the Respondent and his family. Though various items exchanged at the time of marriage might have perished away, many might have stood the vicissitudes of time. Such non-perishable items include—refrigerator, gold and silver ornaments, almirah, double-bed, etc.

⁵³Indra Sarma v. V.K.V.Sarma on 26 November, 2013.

⁵⁴Saraswathy v. Babu on 25 November, 2013, Supreme Court of India.

⁵⁵ Mulla, D.F, Mulla Hindu Law, 15th edition, Article 126.

⁵⁶ Banerjee, *Hindu Law of Marriage and Stridhan*, p. 340.

⁵⁷ Pratibha Rani vs Suraj Kumar & Anr 1985 AIR 628.

⁵⁸ Bhai Sher Jang Singh vs Virinder Kaur, 1979

⁵⁹ Pratibha Rani vs Suraj Kumar AIR 1985, SC.

⁶⁰ See supra ISSUE III.

The Applicant prays for return of her stridhan and damages for the stridhan that has been destroyed.

F. THAT THE DAUGHTER OF THE APPLICANT BE SECURED A SHARE IN PROPERTY

It is most humbly submitted that the Magistrate is empowered to pass—

1. AN ORDER FOR SHARE IN PROPERTY AS RESIDENCE ORDER

S. 19 (2) of the Act empowers the Magistrate with the power to impose additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the Applicant or any child of such Applicant. A residence order is intended to prevent the Applicant from being homeless.⁶¹ To this end, plenary powers are vested in the Magistrate to ensure continual residence and shelter. The section also envisages protection of any child of such Applicant. Reference may be made to the relevant provision in the UK Children Act, 1989. The Act describes a residence order to mean an order settling the arrangements to be made as to the person with whom a child is to live.⁶² In deciding any question about a child's upbringing and the administration of his property, the court must treat the welfare of the child as its paramount consideration.⁶³ A residence order thus is not only meant to restore residence to the child of the Applicant but must also ensure an arrangement wherein the welfare of the child is economically secured.

A share in the property of the Respondent would ensure proper care of the child by economically securing her from the caprice of the Respondent.

2. AN ORDER FOR SHARE IN PROPERTY AS MAINTENANCE UNDER PWD ACT

S. 20 (1)(d) of the Act states as follows—"S. 20. Monetary reliefs.—(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but not limited to, - (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

⁶¹ Adil & Ors. v. State & Anr. CRL.M.C. 4159/2009.

⁶² S. 8, the UK Children Act 1989

⁶³ Principle 1.10, the Children Act, 1989 Guidance and Regulations.

the time being in force.” The Magistrate is empowered to order maintenance under the PWD Act as well under the CrPC. The provision is not dependent upon S. 125 of the CrPC as the Court is competent to award maintenance to the aggrieved person and child of the aggrieved person in accordance with the provisions of S. 20 of the Act and the aggrieved person is not required to establish his case in terms of S. 125 of the Code.⁶⁴ By separating the two, the legislature has freed the power of the Magistrate to grant relief from the procedural rigours of S. 125 and has intended to grant such power to be exercised judiciously to further justice. The legislature gives wide and flexible power to the court to decide about the maintenance pendente lite considering the income and other factors like status of living, day to day expenses of the parties, etc.⁶⁵ The obvious intention was to promote economic security of the Applicant.

In exercise of such power, the Applicant prays before the Magistrate to provide the Applicant’s child with a share in property so as to enable her and her daughter to receive monetary benefits from such property. Any economic accrual from the property would greatly benefit the child. Such share would also enable the Applicant to be economically secure and away from the caprice of the Respondent.

3. AN ORDER FOR SHARE IN PROPERTY AS MAINTENANCE U/S 125, THE CrPC

As stated above, the Magistrate is also empowered to pass a maintenance order under S. 125, the CrPC. A lawfully wedded wife acquires from the moment of her marriage a right to the property belonging to the husband at the, time and also to any property that may subsequently be acquired by him, so that she becomes a co-owner of the husband, though her right is not co-equal to that of the husband, but a subordinate one, owing to her disability founded on her status of perpetual or lifelong tutelage or dependence.⁶⁶

The Applicant prays for securing a share in the property for her daughter as a residence order, or as monetary relief under the PWD Act, or as maintenance under the CrPC.

⁶⁴ Rajesh Kurre vs Safurabai Criminal Misc Petition No 274 of 2008.

⁶⁵ Smt. Manju Gupta vs Sh. Sanjay Garg CS (OS) No.444/2007.

⁶⁶ Sastri, G.S., *Hindu Law*, p. 528.

PRAYER

In light of the issues raised, arguments advanced and cases cited it is most humbly prayed before this Hon'ble court—

- A. That the Applicant is not barred by limitation.
- B. That the Applicant is not estopped from filing an application.
- C. That a prima face case has been made out against the Respondent.
- D. That an order for protection u/s 18, an order for residence u/s 19 and relevant orders ensuring its proper enforcement, an order for monetary relief u/s 20 and an order for compensation u/s 22 providing a fair and reasonable amount be granted.
- E. That an order for return of stridhan and an order for share in property of the Respondent are further granted.

Or grant such other relief as the court may deem fit in the light of justice, equity and good conscience.

AND FOR THIS ACT OF KINDNESS THE APPLICANT SHALL DUTY BOUND EVER PRAY

COUNSELS FOR THE APPLICANT