

PROCEDURAL GUIDE FOR DOMESTIC VIOLENCE ACT

Domestic Violence Act, enacted in the year the 2005, is a civil law with an aim to protect women who are victim of violence arising out of relationships in the nature of marriage and for matters connected therewith. This procedural guide is intended to provide a step to step guidance to the lawyers and individuals on how to initiate a legal proceeding and proceed on a domestic violence case.

DOMESTIC VIOLENCE ACT

WHAT CONSTITUTES DOMESTIC VIOLENCE

- Mental physical harm, Injury, endangerment;-
- Includes physical, sexual, verbal and emotional and economic abuse
- Dowry-related harassment-threat to such conduct other injuries/harm

BENEFICIARIES UNDER THIS LAW

- Women in Domestic Relationships-
- Wife /Ex-wife/Widow/Women in relationship in the nature of marriage/ mother/sister/daughters/joint family members/children (male and female)

AGAINST WHOM THE COMPLAINT CAN BE FILED

Any male adult person who is or has been in domestic relationship with the aggrieved person

TO WHOM THE COMPLAINT CAN BE FIELD

- police
- protection officer
- service provider
- magistrate

WHO CAN FILE THE COMPLAINT

- Aggrieved party (woman/behalf of a child)
- Any person who has reason to believe that an act of DV is being/likely to be committed -neighbors, Social workers, relatives etc

WHAT REMEDIES ARE AVAILABLE?

- Residence Orders
- Monetary Orders- maintenance, monetary relief, compensation
- Protection orders
- Custody(temporary)
- Ex parte orders
- Interim and final orders
- Penal- 1 year imprisonment+ fine upto Rs. 20,000/- for disobedience of court orders.

Protection Officer (PO)- They are nominated by the state government under the PWDA for conducting enquiries into cases of violence

Domestic Incident Report (DIR) - It is a complaint of domestic violence from an aggrieved person made in a form of report.

Service Providers (SP)- Any voluntary associations registered under the Societies Registration Act, 1860 or a company registered under the Companies Act 1956 can provide legal aid, medical financial or other assistance to the aggrieved woman by lawful means.

STAGES OF THE PROCEDURE

(i) Stage 1- The complaint

- An aggrieved person can approach a PO (Protection Officer) or SP (Service Provider) with a complaint of domestic violence;
- The PO or SP will record the complaint in DIR (Domestic Information Report). The copies of the DIR should be forwarded to the Magistrate, the local police station and SPs.

(ii) Stage 2: The Application

- If the aggrieved person wants to initiate a legal action, then an application will be filed in the court. The DIR should be attached to this application.
- In a situation, where the aggrieved person directly approaches the court, the court may direct the Protection Officer to file a DIR.

- For immediate interim or ex parte relief , an affidavit may be filed along with the application.
- Applications under the PWDVA are to be filed in the court of the Judicial Magistrate of the first class or the Metropolitan Magistrate within the area where the aggrieved party or the respondent resides or where domestic violence is alleged to have taken place.
- In dealing with the application the court will follow the procedure laid down in the Code of Criminal Procedure, 1973 (CrPc)

(iii) Stage 3 : Service of Notice

- After the application is filed, the court shall issue notice to the respondent for appearing in the court.
- The PO has the responsibility of ensuring the notice is served to the parties. The notice is to be served within two days from the date of filing of the application.
- The first date of hearing is to be fixed after two days of the application being filed.
- The court may grant ex parte interim order provided the application shows that domestic violence has either been committed or that there is a likelihood of its commission.

(iv) Stage 4: The trial

- Once the notice is served, the trial commences with the first hearing at which both parties appear.
- The respondent is given time to file a written response to the application filed.
- The court may pass written orders on the basis of affidavits and oral argument. In addition, the court may summon the parties or witnesses for the purpose of examination and cross-examination.
- If the respondent fails to appear, the court may pass an ex parte order(interim or final) against him

- interim order may be granted by the court at any stage of the proceedings.
- Applying section 14 of the PWDVA the court may direct the parties to undergo counseling. Counseling can happen at any stage of the proceedings.

(v) Stage 5: The order

- After recording all the evidences relating to the case, the court will grant the final order. The Final order can be enforced in any part of India
- For the enforcement of the court orders, Section 125 CrPc is to be applied. The court also has power to issue additional orders to enforce the order.
- The court may also direct the PO and the police for assistance in ensuring the enforcement of orders.

(vi) Stage 6 : Post-order

- If the protection order is breached , then it is a cognizable and non-bailable offence under Section 31 of the PWDVA.

SOURCE :

- ***Saumya Uma, " Addressing Domestic Violence Through the LAW, A iGuide to- The Protection of Women From Domestic Violent Act,2005", Multiple Action Research Group, 2010, New Delhi.***
- ***"Ending Domestic Violence Through Non-Violence: A Manual For PWDVA Protection Officers", Lawyers Collective Women's Right Initiative, 2009.***