



**THE PROTECTION OF WOMEN FROM  
DOMESTIC VIOLENCE**

**ACT, 2005**

Handbook

**Ready reckoner for individuals, families,  
Activists & Law Enforcement Agencies**

Prepared by Women's Justice Initiative, Kerala

## **BOUT HRLN**

The Human Rights Law Network (HRLN) is a collective of lawyers and social activists dedicated to the use of the legal system to advance human rights, struggle against violations, and ensure access to justice for all. Starting in 1989 as an informal group, it has an active presence in many states of India. HRLN collaborates with social movements, human rights organizations, and grass-roots development groups to enforce the rights of children, dalits, people with disabilities, farmers, HIV positive people, the homeless, indigenous people, prisoners, refugees, religious and sexual minorities, women and workers among others. HRLN views the legal system as a limited but crucial instrument for realizing human rights.

## **BOUT US**

Women's Justice Initiative (WJI) oppose all forms of gender-based discrimination and violence against women. WJI works to increase women's access to the justice system, as a vital means to empowerment. Keeping with our philosophy, WJI provides comprehensive free legal advice to poor and marginalized women.

## **SOME OF THE WJI ACTIVITIES**

- Legal aid and Public Interest Litigation
- Counseling and help lines for psycho-social support.
- Legal Education & Advocacy
- Investigation
- Monitoring and Crisis response
- Campaign

## **OUR CONCERNS**

- Sexual assault
- Domestic violence
- Matrimonial cruelty and disputes
- Reproductive and sexual health rights of women/adolescent girls
- Pre-birth sex selection and elimination of female foetuses
- Trafficking for commercial sexual exploitation
- Equal employment opportunities for women
- Denial of property/inheritance rights to women
- Rights of women who are marginalised, commercially sexually exploited, HIV positive, prisoners, lesbians and disabled.

# ***A Word Before....***

Domestic violence persists as a major human rights violation. No doubt, it is a serious deterrent to overall development of women.

The recently enacted 'The Protection of Women from Domestic Violence Act 2005' is a redical leap towards recognizing this issue.

The legislation addresses most of the concerns relating to gender based violence that happens in 'private sphere'. It endeavors to provide both civil and criminal remedies without too many procedural hassles, making it accessible for the aggrieved woman to approach the system and obtain relief. It provides quick and easy remedy for victim of violence.

This handbook is meant 'popularize' the said law to enable its effective usage by our women.

**WJI Kerala**

# FACT SHEET

Domestic violence is a major problem in India, both in the States and Union Territories.

\*At least 19 women are killed everyday for 'Dowry'.

\*At least 160 women are subjected to cruelty by husbands and in-laws everyday.

\*At least 94 women are molested everyday.

\*Domestic violence is the most common and least reported in India.

Domestic violence is the number one cause of women's injuries.

Each year millions of women seek medical assistance for injuries caused by wife beating but seldom complain about it as such.

Domestic violence is considered as a family matter, so seldom come out of the four walls of the home.

\*Source - National Crime Records Bureau, 2005)

you are beaten up, threatened or harassed in your home by a person with whom you reside in the same house, then you are facing domestic violence.

# **MAJOR MYTHS AND REALITIES ABOUT DOMESTIC VIOLENCE**

**MYTH: An occasional beating by the partner is not a serious issue.**

**REALITY:** Every act of domestic violence starts as an occasional one but a time, it may develop into an unhealthy habit, if not checked and objecte Injuries sometimes lead to hospitalization and can even end in death. Freec exposure to beating is also damaging to one's own self-esteem, self-worth self-confidence.

**MYTH: Domestic violence is "unintentional"**

**REALITY:** In a patriarchal society men most often use violence as an effe tool to control and subjugate the women. There are other forms of contrc behaviors: intimidation, economic control, destruction of property and the Therefore, any form of domestic violence us intentional.

**MYTH: Alcohol is responsible for violence.**

**REALITY:** Alcohol is just and excuse and according to statistics, more thz percent of batterers do not drink at all.

**MYTH: Women suffer violence for the sake of children.**

**REALITY:** Violence breeds violence. Children who live in atmosphere with violence, more often than not because become batterers when they be adults.

**MYTH: There is no way out of Domestic Violence.**

**REALITY:** A violence free atmosphere is the birth right of every women. ] are laws to support and protect women from violence.

# *What the Law says?*

## **What is Domestic Violence?**

ommission or commission or conduct of a person that causes; harm, injury or danger the health, safety, life, limb or well being, whether mental or Sexual, Physical, Verbal, Emotional and Sexual Abuse.

**Sexual Abuse:-** Which means any conduct of sexual nature that abuse, humiliates, degrades or otherwise violates the dignity of women.

3- Forced sexual intercourse, Forcing to watch pornography, child sexual abuse.

**Physical Abuse:-** Which means any act or conduct of such nature which cause daily pain, harm or danger to life, limb or health or impair the health or development of the aggrieved women.

**Verbal Abuse:-** Which means using such words which cause mental agony.

5- Insults, Name calling, Ridicule, Taunting for not having male child, humiliating, Taunting for dowry.

**Emotional Abuse:-** Means repeated threats to cause physical pain to any person whom the aggrieved women is interested.

7- Preventing you and your child from attending educational institutions, Not letting to take up job, Preventing you from meeting any person, Forcing you to marry a person against your wish, Preventing you to marry, Threaten you to commit suicide.

**Economic Abuse:-** Deprivation of all or any financial resources to which aggrieved person is entitled under law or custom.

- Depriving you of entitlement under law, custom, court order or otherwise, taking your stridhan, Depriving you of joint ownership, disposing household

assets, Depriving aggrieved women & children of household necessities  
Alienating moveable or immovable property in which you and your children  
have an interest entitled by way of relationship.

- ▶ 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
- ▶ Has the effect of threatening the aggrieved person or any person related to her  
with any conduct mentioned above.

**Only a woman can file a complaint of domestic violence under the**

### **Against Whom?**

Complaint can be made against any adult male person or his relations (including women) who have been in a domestic relationship with aggrieved woman. For example, husband or male partner or mother-in-law.

### **Whom to complain**

- ⇒ Protection Officer
- ⇒ Police Officer
- ⇒ Service Provider
- ⇒ Judicial Magistrate of First Class Metropolitan Magistrate

### **How to complain?**

- ⇒ Over telephone/E-mail to the Protection Officer/Service Provider
- ⇒ Written Complaint to Protection Officer, Police Officer, service Provider or  
Magistrate

### **When can you complain?**

- ⇒ When the incident of domestic violence has happened
- ⇒ When the incident of domestic violence is happening
- ⇒ When there is a probability that it will happen

# WHO CAN HELP A VICTIM OF DOMESTIC VIOLENCE?

The Act specifies a set of mechanisms to help the victims of domestic violence. They are (a) Protection Officer (b) Service Provider.

## Protection Officer (PO)

Protection Officer functions under the control and supervision of the Magistrate. There can be more than one PO in a district appointed by respective State Government. He/she is the key person entrusted with the responsibility to assist the victim and get her justice. The following are the duties of PO's.

*The primary duty of the Protection Officer to inform the aggrieved persons of their rights under the Act and:*

to prepare and file a complaint about the domestic violence to the Magistrate.  
to visit the victim at home and prepare a Domestic Incident Report and file it in the Court.  
to inform the aggrieved person of her right to free-legal aid, availability of counselors, medical facilities and shelter homes

to maintain a list of Service Providers (who provides legal aid, counseling, shelter homes and medical facilities)

to ensure the victim medically examined if she has sustained injuries and forward a copy of medical report to the concerned police station and the Magistrate.  
to ensure compliance of protection orders obtained from the Magistrate.  
to assist the Magistrate in discharge of his duty related to the Act.

**Any one who has the knowledge of the violence happening can give complaint/information**

## Service Provider

Service Providers are Registered Societies or Companies notified by State Government. Protection Officers will have a list of their names. They generally perform the following:

to assist the victim to get medical treatment

to ensure shelter for the victim

to prepare domestic incident report and submit the same to Magistrate, Protection Officer and Police Station.



# WHAT ARE THE RELIEFS AVAILABLE UNDER THE ACT?

Sections	Orders	Nature of Orders
Sec. 18	Protection Order	<p><b>Prohibiting the respondent from</b></p> <ul style="list-style-type: none"> <li>• committing acts of violence</li> <li>• aiding and abetting in the commission of domestic violence</li> <li>• entering place of employment or school in case of a child</li> <li>• alienating assets, Bank accounts, Stridhan or property they hold separately or jointly</li> </ul>
Sec. 19	Residence Order	<ul style="list-style-type: none"> <li>• to remove the abuser from the shared household</li> <li>• restraining the abuser from entering any part of the household where the victim resides</li> <li>• direct the respondent to secure alternate accommodation</li> <li>• restrain the abuser from alienating or disposing of the shared household</li> </ul>
Sec. 20	Monetary Reliefs	<p><b>The victim is entitled to</b></p> <ul style="list-style-type: none"> <li>• expenses incurred</li> <li>• losses suffered</li> <li>• medical expenses</li> <li>• loss to property</li> <li>• maintenance for herself and children</li> </ul> <p>(the Court can direct the employer or debtor of the Respondent to make payment directly to the victim or deposit in Court the amount ordered by the Magistrate)</p>
Sec. 21	Custody Order	<p><b>The Court can grant</b></p> <ul style="list-style-type: none"> <li>• custody of child or children to the aggrieved person during the pendency of any application</li> <li>• magistrate can deny visitation right to respondent if such visit is harmful to the child</li> </ul>

22	Compensation Order	<p><b>In addition to any other reliefs Magistrate may also grant compensation order for</b></p> <ul style="list-style-type: none"> <li>• damages for injuries, including for mental torture and emotional distress caused by the act of domestic violence</li> </ul>
	General Order	<ul style="list-style-type: none"> <li>• Stop the domestic violence complained or reported</li> </ul>
	Special Order	<ul style="list-style-type: none"> <li>• Remove himself/stay away from your place of residence or workplace</li> <li>• Stop making any attempts to meet you</li> <li>• Stop calling you over phone or making any attempts to communicate to you by letter, e-mail etc.</li> <li>• Stop talking to you about marriage or forcing you to meet a particular person of his/her choice for marriage</li> <li>• Stay away from the school of your child/children or any other place where you and your children visit</li> <li>• Surrender possession of firearms any other dangerous substance</li> <li>• Not to acquire possession of firearms any other weapon or any other dangerous substance and not to be in possession of any similar article</li> <li>• Not to consume alcohol or drugs with similar effect which led to the violence in the past</li> <li>• Any other measure required for ensuring your or your child's safety</li> </ul>

### **Ex parte Order**

Magistrate is satisfied that the application discloses commission of an act of domestic violence he may grant an ex parte order (without hearing the opposite party). Magistrate can also pass Interim orders if the matter is of urgent nature.

**Every order made under this Act shall be enforceable throughout India.**

## **WHICH IS THE COMPETENT COURT TO GIVE RELIEF?**

The Court of Judicial Magistrate of the first class or the Metropolitan Magistrate 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) where the violence has happened.

## **WHAT ARE THE PROCEDURES FOR OBTAINING RELIEF UNDER THE ACT?**

- ▶ Either the aggrieved person or the Protection Officer or any other person on behalf of the aggrieved person can make an application in the prescribed form to the class Magistrate of the locality (more or less similar to the form and schedule appended with this handbook)
- ▶ On receipt of the application the Magistrate shall fix the first date of hearing within three days.
- ▶ Ex parte order can be passed by the Magistrate in emergency.
- ▶ The notice of the date of hearing will be served by the PO within a maximum of 2 days.
- ▶ The Magistrate shall also call for a domestic incident report from the Protection Officer or the Service Provider.
- ▶ Before passing any ex parte order the Magistrate will consider the domestic incident report filed by the PO or Service Provider.
- ▶ The Magistrate may at any stage of the proceedings secure the assistance of a welfare expert, preferably women, to assist him.
- ▶ If the Magistrate considers that it is necessary or the parties so desire, the Magistrate can conduct the proceedings *in camera* (not in open court).

## **HOW LONG SHOULD ONE WAIT TO GET RELIEF?**

- ▶ One can get an ex parte interim relief immediately on filing the application if the condition requires such an order or
- ▶ Can get interim relief after issuing notice to respondent (within 2 days) after hearing him.
- ▶ The entire proceedings will be closed and final orders will be passed within 60 days.

## **IS THE PUNISHMENT FOR THE ABUSER IF ORDERS VIOLATED?**

Under the DV Act if the respondent disobeys the order of the Magistrate he is liable to be punished. The punishment for breach of a protection order or of any interim order by the respondent is imprisonment which may extend to one year or with fine which may extend to Rs. 20,000 or with both.

*On breach of a protection order or interim protection order should be immediately reported to the local police station, PO or directly to the Magistrate. The person should be arrested immediately.*

## **CAN ONE DO TO GET RELIEFS UNDER THE ACT, IF THERE IS ALREADY A MATTER PENDING IN THE FAMILY COURT OR CIVIL COURT?**

Aggrieved women can file an application seeking reliefs under the Act in the cases before the Family Court or civil Court. Having cases in other Courts does not bar the aggrieved woman in claiming reliefs under the Act.

## **IS THE ROLE OF POLICE IN IMPLEMENTING THE ACT?**

When the police receives a complaint about domestic violence, the police will forward it to the Protection Officer to file it before the Magistrate. If the complaint involves any other offences punishable under the Indian Penal Code or any other law, the police will take cognizance of the same and register an FIR and proceed with the case.

It is the duty of the police to ensure due compliance of the Protection Order by the respondent. If the aggrieved person reports to the local police about breach of a protection order, the police shall deal with it as cognizable offences.

## **IF THE PROTECTION OFFICER FAILS TO DISCHARGE HIS DUTY?**

If the Protection Officer fails to discharge his duties as directed by the Magistrate without sufficient reason, he/she will be punished under the Act. The punishment will be imprisonment which may extend to one year or with fine which may extend to Rs. 20,000 or with both. However, he/she can be punished only after obtaining due sanction from the Magistrate since the PO is a public officer.

## **WHAT IS THE NEXT OPTION IF THE MAGISTRATE DOES NOT ISSUE A PROTECTION ORDER?**

In that case one can appeal to the Session Court within 30 days from the date of the order. Parties are entitled for free copy of the order.

## **WHAT ACTIONS CAN BE TAKEN IN CASE OF EMERGENCY?**

In case of emergency the PO or the Service Provider shall seek immediate assistance of the police, who shall accompany the PO or the service provider, as the case may be, to the place of occurrence of domestic violence and record the domestic violence incident report and present the same to the Magistrate without any delay for the issuance of appropriate orders under the Act.

## **IS MEDICAL FACILITY AVAILABLE TO AGGRIEVED PERSON?**

Medical facility is available to the aggrieved person. For this the aggrieved person or the PO or the service provider has to make a request to the person-in-charge of the medical facility in writing, clearly stating that the application is being made under section 7.

## **HOW LONG WILL THE PROTECTION ORDERS BE IN FORCE?**

- (a) The interim orders obtained at the initial stage will be in force till final orders are passed, which will be within 60 days.
- (b) The final orders will be in force as long as the complainant wants it to be.
- (c) The final orders can be modified, varied or amended at the request of the complainant in case of changed circumstances.

## **CAN A CASE BE GIVEN AGAINST THE WOMEN OF THE HOUSEHOLD?**

Yes, but no order can be passed for removing the women from the household.

**Aggrieved person can also initiate criminal proceeding by lodging First Information Report under Code of Criminal Procedure.**

**THE APPLICATION HAS TO BE MADE SIMILAR TO THE  
OWING FORM WITH THE AFFIDAVIT (for *ex parte/interim orders*)  
PLICATION TO THE MAGISTRATE UNDER SECTION 12 OF THE  
TECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005  
(43 OF 2005)**

Court of Magistrate

.....  
Application under section.....of the Protection of Women from Domestic  
Violence Act, 2005 (43 of 2005)

ETH:  
That the application under section.....of Protection of Women from  
Domestic Violence Act, 2005 is being filed along with a copy of Domestic  
Incident Report by the-

- ) Aggrieved person
- ) Protection Officer
- ) Any other person on behalf of the aggrieved person  
(tick whichever is applicable)

It is prayed that the Hon'ble Court may take cognizance of the complaint/  
Domestic Incident Report and pass all/any of the orders, as deemed necessary in  
the circumstances of the case.

- ) Pass protection orders under section 18 and/or
- ) Pass protection orders under section 19 and/or
- ) Direct the respondent to pay monetary relief under section 20 and/or
- ) Pass orders under section 21 of the Act and/or
- ) Direct the respondent to grant compensation or damages under section 22  
and/or

- ) Pass such interim orders as the court deems just and proper;
- ) Pass any order as deems fit in the circumstance of the case.

Order required:

Protection Order under section 18

- Prohibiting acts of domestic violence by granting an injunction against  
the respondent/s from repeating any of the acts mentioned in terms of  
column 4(a)/(b)/(c)/(d)/(e)/(f)/(g) of the application
- Prohibiting Respondent (s) from entering the school/college/workplace
- Prohibiting from stopping you from going to your place of employment
- Prohibiting respondent(s) from entering the school/college/any other  
place of your children

- Prohibiting from stopping you from going to your school
- Prohibiting any form of communication by the respondent with
- Prohibiting alienation of assets by the respondent
- Prohibiting operation of joint bank lockers/accounts by the resp and allowing the aggrieved person to operate the same
- Directing the respondent to stay way from the dependents/relati other person of the aggrieved person to prohibit violence again
- Any other order, please specify.....

(ii) Residence Order under section 19

- An order restraining respondent(s) from Dispossessing or t me out from the shared household, Entering that portion of the household in which reside, Alienating/disposing/encumber shared household
  - \* Renouncing his rights in the shared household
- An order entitling me continued access to my personal effects
- An order directing respondent(s) to
  - \* Remove himself from the shared household
  - \* Secure same level of alternate accommodation or pay rent same
- Any other order, please specify.....

(iii) Monetary reliefs under section 20

- Loss of earning, Amount claimed.....
- Medical expenses, Amount claimed.....
- Loss due to destruction/damage or removal of property from the of the aggrieved person, Amount claimed.....
- Any other loss or physical or mental injury as specified in claus Amount claimed.....
- Total Amount claimed.....
- Any other order, please specify.....

(iv) Monetary reliefs under section 20

- Directing the Respondent to pay the following expenses as n relief:
- Food, clothes, medications and other basis necessities, Amount.....per month
- School fees and related expenses Amount.....per 1
- Household expenses Amount.....per 1
- Any other expenses Amount.....per 1
- Total.....per 1

Any other order, please specify.....

custody order under section 21

Direct the respondent to handover the custody of the child or children to the

Aggrieved Person

Any other person on her behalf, details of such person.....

compensation order under section 22

any other order please specify.....

details of previous litigation, if any

(a)  Under the Indian Penal Code, Sections.....Pending in the court of.....

Disposed off, details of reliefs.....

(b)  Under CrPc, sections.....Pending in court of

Disposed off, details of reliefs.....

(c)  Under the Hindu Marriage Act, 1956, Sections.....Pending in the court of.....

Disposed off, details of reliefs.....

(d)  Under the Hindu Adoptions and Maintenance Act, 1956

Sections.....Pending in the court of.....

Disposed off, details of reliefs.....

(e)  Application for Maintenance, under section.....under Act

Interim maintenance Rs.....p.m.

Maintenance granted Rs.....p.m.

(f)  Whether Respondent was sent to Judicial Custody

For less than a week.....For less than a month

For more than a month

Specify period.....

(g) Any other order.....

therefore, most respectfully prayed that this Hon'ble Court be pleased to grant relief (s) claimed there in and pass such order or orders or other order as this Hon'ble Court may deem fit and proper under the given facts and circumstances of the case for protecting the aggrieved person from domestic violence and in the best interest of justice.

Complainant/Aggrieved Person Through



**FORM III**

(Refer rules 6 (4) and 7)

**AFFIDAVIT UNDER SECTION 23 (2) OF THE PROTECTION OF WOMEN AND  
DOMESTIC VIOLENCE ACT, 2005**

**IN THE COURT OF .....; MM.....**

**IN THE MATTER OF:**

Ms.....& Others .....Com

**VERSUS**

Mr.....& Others .....Res

**AFFIDAVIT**

I, .....W/O Mr.....R/o.....D/o Mr.....  
R/o.....presently residing at.....do here by s

affirm and declare on oath as under:

1. That I am the applicant in the accompanying application for.....Files for my for my daughter/son
2. That I am the natural guardian of.....
3. That being conversant with the facts and circumstances of the case I am competent this affidavit.
4. That the Deponent had been living with the respondent/s at.....since to.....
5. That the details provided in the present application for the grant of relief under (s).....have entered into by me/at my instructions.
6. That the contents of the application have been read over, explained to me in English any other local language (please specify.....)
7. That the content of the said application may be read as part of this affidavit and repeated herein for the sake of brevity.
8. That the applicant apprehends repetition of the acts of domestic violence by the res against which relief is sought in the accompanying application.
9. That the respondent has threatened the Applicant that.....
10. That the reliefs claimed in the accompanying application are urgent in as muc applicant would face great financial hardship and would be forced to live und of repetition/escalation of acts of domestic violence complained of in the accom application by the respondent (s) if the said reliefs are not granted on an ex-parte at basis.
11. That the facts mentioned herein are true and correct to the best of my knowledge a and nothing material has been concealed there from.

DEF

**VERIFICATION**

Verified at.....on this.....day of.....20.....That the content above affidavit are correct to the best of my knowledge and belief and no part of it is nothing has been concealed there from.

DEF

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# Other Publications Women's Justice Initiative

## BOOKS

- Women & the Law-Vol. I & II
- Mahila Aivam Kanoon ( Women and the Law)
- A Users Manual on Combating Sexual Harassment at the Workplace
- The Campaign against Sexual Harassment at the Workplace-A Training Manual
- Supreme Court on Rape Trials
- Adverse Sex Ratio & The Law
- The Little Hand Book on PC & PNDT Act.
- Humjinsi-A resource book on Lesbian, Gay & Bisexual Rights in India
- Parivarik Adalat Ka Safar.

## POSTERS

- Sexual Harassment at Workplace-English/Hindi
- Sexual Assault Bill-English
- India's Vanishing Girl Child-The pre Conception and Pre Natal Diagnostic Techniques Act
- The protection of Women from Domestic Violence Act
- Female Sterilisation Operations
- Women's Rights: RTI Act, 2005
- Right to safe motherhood

## FILM

**Ab Khamoshi Kyon?** -A training film on sexual harassment at the workplace

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