

15. Onerous Judicial accountability and Advocates responsibility always to be considered more as self-imposed restraints and discipline and external deterrent methods of disciplinary actions may have only minimal impact. Judicial power and exercise thereof never to be tainted by any extraneous considerations and the self-imposed checks may have to be moulded effectively for protecting the system from the outer attacks. The working of this system, by and large, had proved well as revealed by the Judicial history of about a century.

16. In the light of the change of scenario, both in the light of the internal developments within the Nation and the International compulsions as well, the duties and obligations of the present Professional, inclusive of the Legal Professional became very burdensome in view of the expanding horizon. There is no comparison between a Professional of 1900's and a Professional of 2000. Hence the present Professional is expected to be better equipped to be suitable to the competitive Profession in the present day context. The details in relation thereto need not be enumerated further since the audience are well aware of the same.

17. To keep this Institution live to the expectation of the common man, all concerned to maintain and observe restraints so that this mighty Institution may better achieve the cherished and expected objects in the coming times as well. We belong to judicial family. Family may face so many internal problems. Let not external elements encroach upon our rights under the guise of rectifying our internal problems. Let not the aggression of the other wings touch the pride of the Indian Judiciary. Let not this wing commit such mistakes inviting criticism from other quarters. Let not the healthy traditions followed by the Indian Bar and the Bench for generations be destroyed by a few unruly within. Let not the judicial discipline be disturbed at any costs. Let the soul of the great Judges who contributed a lot to this mighty Institution rest in peace. Those would be disturbed if the coming generations do not keep up the same upto the minimum social expectations at least.

18. I conclude by thanking the audience for giving a patient hearing on this Annual Day Celebration.

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## DOMESTIC VIOLENCE ACT – IMPLEMENTATION AND ITS DIFFICULTIES

*By*

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The protection of women from Domestic Violence Act came into force from 26-10-2006. It is the intendment of the Legislature in enacting this Act as to give more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family. The Print and electronic media have focused on this Act into the public and the public rather sufferers/victims under the

domestic violence had a lot of hope that their sufferance will come to an end after the implementation of this Act. A lot of coverage was also given by the electronic media about the awareness of this Act among womenfolk as well as legal services authorities also took more pains in focusing this Act among the public by conducting various literacy camps by the judicial officers. In my sincere opinion this Act was hurriedly drafted without looking

into the various aspects about the implementation and effectiveness of orders passed by the Magistrates and about the enforcement of orders passed by the Magistrates and also the applicability in various cases.

The Act is silent with regard to the many aspects, out of which I noticed the following aspects wherein the practical problems will arise and the Judicial Magistrate of First Class are not able to proceed further in disposal of the cases under the Domestic Violence Act *viz.*

(1) *The Act is silent with regard to the taking of cognizance of the offence i.e. :*—There is no mention in the Act how the case is to be taken on file whether the case is to be taken under the summary trial case or calendar case or maintenance case or any other case.

(2) *With regard to the charges :*—The Act is silent whether the charges are to be framed or not ? In fact there is no penal provision except under Section 31 of the said Act. When the respondent committed breach of the order passed by the Court then the Court is empowered to frame a charge to that effect under Section 31 of the said Act. But, the Act is so silent when the report or domestic incident report (DIR) or if the Court feels that the offence under Section 498-A of IPC also attracts whether the Court can take cognizance of the offence under Section 498A of IPC along with the offence under the Domestic Violence Act or not is also not clear.

(3) *With regard trial, and procedure :*—The Act is also silent with regard to the recording of evidence and how the case is to be proved. Because in this Act the police will not investigate the case, the Protection Officer or Service Provider will file domestic incident report. So recording of statements under Section 161 of Cr.P.C. or under what basis they came to conclusion that the respondent has committed offence mentioned in the

Domestic Violence Act are all to be seen at the time of disposal of the cases. If the evidence is recorded there will be no opportunity for the respondent to go through the previous statements of the complainant and the other persons who supported the case of prosecution and there is no possibility to test the veracity of the witnesses, to come to a conclusion that all the allegations in the complaint are true or genuine.

(4) *With regard to the enforcement of the orders :*—Though several powers were given to the Protection Officers, Service Providers, Magistrates for giving protection orders, maintenance orders, residence orders and custody orders, compensation orders and to grant monitory relief to the petitioners. But how these orders will be implemented is Thousand dollar question ? Without proper implementation of the orders passed by the Court, there is no use of passing of orders by the Court. When the orders are un-enforceable or un-executable there is no meaning in passing of the orders. For example if the protection order was granted by the Court to the victim how it has to be enforced was not found in the Act. But there is not only one provision *i.e.*, Section 31 wherein a penalty for breach of protection order by the respondent was mentioned by treating that it is an offence. If the victim is not able to recover the amount or compensation or maintenance amount or any monitory relief granted by the Court there is no use of passing of the orders by the Court and if the respondent fails to pay the amount and even he went to the prison and undergone the sentence passed by the Court still whether the petitioner is able to recover the amount if so under what provision of law and how it has to be recovered is also not clear in the provisions of the Act.

(5) *Applicability of the case against women :*—As per the Domestic Violence Act the male members are only to be shown as respondent/accused which is also not correct and proper to my opinion. Because in any

family the part played by woman will be more than a man when harassing a woman. Simply because the Act is named as protection for women from the domestic violence, women cannot be excluded.

(6) *Whether the Act is prospective and retrospective* :—Though it is settled law that any penal law is only prospective but not retrospective. But, the Protection Officers who are not properly trained without making any proper enquiry they are filing the Domestic Incident Report into the Court and the Courts were already overburdened are also entertained those cases without looking into factual aspects but the Courts could able to notice the same only at the time of enquiry. If the Act is so clear then the woman will come to give reports against the husband or any other men for the acts committed not prior to the commencement of the Act.

(7) *Applicability of the Act when the husband and wife are living separately* :—The domestic violence means if any violence has been committed by the male members of the family against women when they are living together in one roof the Act will not be applicable for those cases where both men and women are not living together in one roof. But, to my knowledge I have come across several cases pending in several Courts wherein the husband or wife are living separately but still the wife used to give complaint against the husband under Domestic Violence Act and the Protection Officers without making prior enquiry they

are filing the cases before the Courts. For example the wife and husband are living separately for the last 10 years and wife also filed complaint against the husband under Section 498-A of IPC, and wife has also filed a maintenance suit, and under Section 125 of Cr.P.C. for the maintenance and also suit for partition *etc.* But, still the women are coming and giving reports to the Protection Officers by making false allegations like harassment, causing hurt or so. Unless there is restriction in the Act or prohibition in the Act the cases will be pooled up and ultimately the Courts will be further more burdened by these cases.

(8) In my sincere opinion the Act is to be thoroughly amended by looking into various aspects in considering above all the aspects or at least it is a high time for the Hon'ble High Court of A.P. to frame certain guidelines how to proceed with the case and how the officers are to be acted when the case is filed under the Domestic Violence Act into the Court. At this point of time I am also to further add that the Act is to be amended that if any monetary relief is granted to the victim it is to be recovered from the husband or from the respondent by invoking the provisions of Section 125 of Cr.P.C. or other procedure is to be mentioned in the Act as to how the amount is to be recovered. Otherwise there is no purpose in enacting this Act which is a social welfare legislation.

“Yatra Naryantu Pujyathe Tatra Devo  
Sthirobhava”

## IS THE DIMENSION OF SECTION 354 IPC CHANGED ?

By

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*“If the makers of the Act had themselves come across this ruck in the texture of it, how would they have straightened it ? A Judge must not alter the material of which is woven, but he can and should iron out the creases.”.....Plowden.*