

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2015

CORAM

THE HON'BLE MR.JUSTICE S. MANIKUMAR

Criminal Revision Case Nos.1418 and 1494 of 2012

M.P.Nos.1 and 1 of 2012

Jagadesan .. Petitioner in Crl.R.C.1418/12
1st Respondent in Crl.R.C.1494/12

Vs.

1. The State of Tamil Nadu,
rep., by its Public Prosecutor... 1st Respondent in
Crl.R.C.1418/12

2. Kalpana

3. Minor Srivatsa
(Minor rep by his mother
Kalpana) .. Respondents 2&3 in Crl.R.C.1418 /12
Petitioners in Crl.R.C.1494/12

4. The Principal,
Sri Krishna College of Technology,
Kovaipudur, Coimbatore-42. ... 4th Respondent in
Crl.R.C.1418/12
2nd Respondent in Crl.R.C.1494/12

Common Prayer:- Petition filed under Section 397 r/w. 401 of Cr.P.C, praying to set aside the order dated 21.08.2012, made in C.A.No.180 of 2012, on the file of the First Additional District and Sessions Judge, Coimbatore, modifying the order, dated 15.06.2012, passed in C.M.P.No.2112 of 2012 in D.V.A.No.34 of 2010, on the file of the Judicial Magistrate No.1, Coimbatore.

For Petitioner in Crl.R.C.1418/12 : Mr.P.Raja

For 1st Respondent in Crl.R.C.1418/12 : Mr.P.Govindarajan,
Addl. Public Prosecutor

For Respondents 2 & 3 in Crl.R.C.1418/12: Mr.K.Thilageswaran

For 4th Respondent in Crl.R.C.1418/12 : Mr.P.Mahesh Kumar

O R D E R

Both the revision petitions arise out of the order dated 21.08.2012, made in C.A.No.180 of 2012, on the file of the First Additional District and Sessions Judge, Coimbatore, modifying the order, dated 15.06.2012, passed in C.M.P.No.2112 of 2012 in D.V.A.No.34 of 2010, on the file of the Judicial Magistrate No.1, Coimbatore. As pleadings and submissions are common, both the revision petitions are disposed of, by a common order. For brevity, husband is described as petitioner, wife and son, as respondents.

2. Wife and son/respondents, have filed DVA.No.34 of 2010, under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as, "Act"), before the learned Judicial Magistrate No.1, Coimbatore, against the petitioner and others, for the following reliefs:-

- (1) To pay maintenance at the rate of Rs.10,000/- each, towards medical expenses and clothing, under Section 20(1) (d) of the Act,
- (2) To pay Rs.20,00,000/- for educational expenses, under Section 20(2) of the Act, which includes Rs.5,00,000/- already spent by the Wife,
- (3) To pay Rs.10,00,000/- under Section 20 of the Act,
- (4) For an order to protect the right to reside in the share household, under Section 17 of the Act,
- (5) For protection order, under Section 17(e) of the Act, not to alienate or encumber the property.

3. Before the learned Judicial Magistrate No.1, Coimbatore, Wife has contended that marriage between herself and the petitioner was solemnized on 22.08.1993. Son was born on 13.03.1995. At the time of filing of DVA.No.34 of 2010, Son was in Standard 11th in Vithya Vikash School, Thiruchengode. From 9th Standard, Wife was incurring educational expenses. At the time of marriage, the petitioner, his parents, brother and sister, demanded 60 sovereigns of gold jewels and Rs.1,00,000/- Cash, as dowry. It was agreed to, by both the parties, to have 30 sovereigns of gold jewels, for the Wife and 2 sovereigns of gold jewels, for the Husband. Both parties have also agreed to share the marriage expenses.

4. In D.V.A.No.34 of 2010, it was further submitted by the wife that when arrangements for the marriage was in progress, an additional demand of 20 sovereigns of gold jewels and Rs.50,000/- Cash, was made. As invitations were already distributed, additional demand of dowry caused depression to the Wife. Though it was beyond the capacity of her parents, they had no other option, except to accept the same, for payment of Rs.20,000/- Cash. After marriage, spouses started their matrimonial life, at Edayarpalayam, Coimbatore.

Son was born on 13.03.1995. However, Husband refuted consortium, particularly physical relationship. Certain habits of the Husband were inexplicable.

5. Wife has further contended that the schedule mentioned properties in DVA.No.34 of 2010, were purchased in the name of the petitioner. But construction was made, out of her dowry amount, and also by pledging her jewels. Her father extended financial assistance to the petitioner. During night time, either his mother or aunt, would sleep, in the same room, where the spouses slept.

6. Even during the Son's Ear Boring Ceremony, the petitioner and others conducted themselves in a manner, which was disgusting to the Wife's parents. For some reasons or the other, Husband has categorically refused to spend any money for the education of the 2nd respondent-Son. One day, when the Wife, requested him to accompany her, for affixing his signature in a document, in the school, he replied to her to take somebody, as Husband and refused to come to the school. Son was not allowed to enter the house and he was sent out. Thus, the petitioner neglected both his Wife and Son. While things stood thus, spouses went to Trichy. The petitioner and in-laws hated respondents. Picking up the frequent quarrels and using unparliamentary words, they caused mental agony. Husband forcibly removed the marriage sacred thread, "Mangalsutra" from the Wife and sent both the respondents out of the house. Left with no other alternative, they started living with her mother, at Coimbatore.

7. While the Husband continuously neglected the respondents, elders negotiated for amicable settlement. A demand of Rs.1,00,000/- was made for reunion. With great difficulty, the said amount was arranged and given to the petitioner. With that amount, he put up first floor, in the building at Edayarpalayam. While Wife and Son continued to live in the first floor, Husband stayed at Trichy. Now and then, he visited them at Coimbatore. Without any reason, the petitioner used harsh words against his Wife. Her parents were also not spared. Though the respondent-Wife initially was not able to understand the behaviour of Husband gradually, from experience, she found that the activities of her Husband, such as, walk, speech, conduct, showed increase in feminine activities. He was more interested in being like a girl and not showing any interest in consortium. Gradually, Wife came to understand the actual reason, for his indifferent attitude and behaviour, as to why, he had avoided consortium and others have supported him. Husband and in-laws threatened her that if she does not seek for divorce, on her own accord, properties, which stood in the name of the petitioner, would be settled, in favour of others, and without a penny, Wife and Son, would have to suffer. Considering dignity of the family and also future of the Son, she did not agree for the proposal of the husband for divorce, to be made by her.

8. Thus the Husband totally neglected both the Wife and Son. As she had studied medical transcription, with her little earning, she made arrangements to provide education to her Son. But due to the continuous harrasment, ill-treatment and mental stress, she had to quit her job. Her father also died in the year 2009. Thereafter, Husband settled a property, purchased in his name, in favour of his sister. He also threatened her that if his request for divorce, is not complied with, he would transfer all the properties to his family members.

9. While things stood thus, on 13.08.2010, both the respondents were beaten up and sent out of the matrimonial home. Wife immediately approached the Police, for security. On the next day Morning, a Police Constable came to the house and asked her to go over to Thudiyur Police Station. She gave a complaint to the Police, which was taken on file. Thereafter, Husband came to the Police Station. Before the Police, he agreed to pay only one term fees, for the education of the Son. However, he refused to provide maintenance. In order to conceal his physical problem, threat of divorce, transfer of properties, before the Police, Husband took a false stand that, if the Wife and Son, return to Trichy, he would maintain them. However, having regard to ill-treatment, mental injury, mala fide intention on the part of the Husband, Wife and Son decided to continue to reside at Coimbatore. Thereafter, Husband caused a legal notice. Explaining the sequence of events, a reply notice, dated 12.10.2010, was given. Lateron, Wife came to know that on 14.09.2010, Husband had settled the schedule mentioned properties in D.V.A.No.34 of 2010.

10. Thereafter, Husband threatened the respondents to vacate from the residence at Coimbatore. According to the Wife, Husband's mother, owns property worth crores both in the native place and Coimbatore. They own a rice mill, cattle field and a marriage hall. They are also engaged in providing vessels for various functions. Husband is a landlord and earns not less than Rs.2 Lakhs per Month.

11. By threatening the respondents, Husband obtained her signature on a receipt, as if payment of Rs.3,00,000/- was made. Transfer of some of the schedule mentioned properties was made to exert pressure on the Wife, for divorce, at her instance, and one such alleged transfer was made after the complaint given to Thudiyalur Police Station. There are many properties in the name of the Husband. Thus, citing various instances, Wife has alleged domestic violence, against the Husband and in-laws and prayed for the reliefs, stated supra, in the application filed under Section 12 of the Act, numbered as D.V.A.No.34 of 2010, on the file of the learned Judicial Magistrate No.1, Coimbatore.

12. Pending disposal of D.V.A.No.34 of 2010, on the file of the Judicial Magistrate No.1, Coimbatore, respondents have filed C.M.P.No.2112 of 2012, under Section 23(1) of the Act, praying for an

interim maintenance of Rs.10,000/- each, and a sum of Rs.15,00,000/- towards educational expenses. Respondents have further contended that till the date of filing of the Miscellaneous Petition No.2112 of 2012, on the advice of his relatives, petitioner has paid only the 1st term fees for Standard 8th. Despite her request, the petitioner refused to bear the educational expenses. In the School, he shouted at the Wife, threatened her to vacate the shared household. Subsequently, a Police Complaint was lodged and on the advice of the Police and relatives, he remitted the fees, for Standards 11th and 12th. Due to the constant mental agony and stress, Son, who had secured 91% in 10th Standard, was not able to maintain the performance in 12th Standard and secured only 70%.

13. According to the Wife, till her father was alive, he had rendered financial assistance. After his demise, when she had quit the medical transcription job, the respondents were forced to starve. Husband, by constant domestic violence, caused mental agony, verbal and emotional abuse and by depriving economic and financial assistance, made them to starve and failed to provide food, shelter and clothing and even, educational expenses to the Son. Praying to treat the averments made in application filed under Section 12 of the Act, as part and parcel of Miscellaneous Petition No.2112 of 2012, respondents have sought for a sum of Rs.10,000/- each, as interim maintenance and a further sum of Rs.15,00,000/- towards educational expenses.

14. Notice on the petitioner has been taken on 07.06.2012. Thereafter, C.M.P.No.2112 of 2012, has been ordered to be posted on 16.07.2012, for hearing. Husband did not file any counter. Thereafter, the learned Judicial Magistrate No.1, Coimbatore, has passed the following orders:

"The second petitioner namely, Srivadhya present in person. He is a student who said to have passed +2 examination. He is going to get admission in Engineering College, he said to have secured 70% marks in his Higher Secondary Examination. He himself represented before the Court that he is living with his mother, he is willing to join in V.L.B. Engineering College for which he need Rs.5 Lakhs Rupees for get into admission in the said college.

The second petitioner asserts that his father neglected him and he is not maintained by his father. He further said that his father is running Rice Mill and he is having Agricultural lands and he is capable to advance the said amount.

The second petitioner is a budding engineer and forth coming pillar of the country. Already he would have suffered lot due to domestic problems, both physically and mentally inspite of that he likes to continue his studies. His rightful desire must be given due attention and to be

executed. As a father the respondent have both moral and legal responsibility to afford the education to his Son. Hence, the respondent is directed to advance an amount of Rs.5,00,000/- to the 2nd petitioner towards his educational expense and to get admission in the Engineering College.

Compliance report and for filing counter in other respect call on 25.06.2013."

15. From the material on record, it could be seen that on 25.06.2012, the Husband was not present and no counter affidavit has been filed. Subsequently, a counter affidavit is stated to have been filed in the main application in D.V.A.No.34 of 2010, on 08.03.2012. The learned Judicial Magistrate No.1, Coimbatore, directed the petitioner-Husband to pay Rs.5,00,000/- towards the educational expenses.

16. Being aggrieved by the interim directions to pay a sum of Rs.5,00,000/-, to the Son, towards the educational expenses, for admission in the Engineering College, the petitioner has filed an appeal, in Criminal Appeal No.180 of 2012, on the file of the First Additional District and Sessions Judge, Coimbatore. After hearing both the parties, vide judgment, dated 21.08.2012, the appellate Court has ordered as follows:

"In the result, the 1st respondent is required to furnish the proof of admission in VLB College or any other college and also to furnish the complete fees structure to be paid for this year along with the proof of capitation fees, if any, before the trial Court and the appellant/petitioner herein is directed to pay the college fees for this year and 50% of the capitation fees arrived at, as directed by the trial Court, within 2 days of filing the proof of fees structure before the trial Court. The rest of the 50% of the capitation fee to be paid by the 1st respondent for 2nd respondent and the 1st respondent to file the admission letter before the trial Court, on completion of the admission formalities. Further, the petitioner herein on admission of the 2nd respondent in a college is to deposit Rs.50,000/- within 7 days, in the name of the 2nd respondent, who is at liberty to utilise the same, for his other personal expenses. Monthly maintenance of Rs.5,000/- for the 2nd respondent to be deposited by the appellant/petitioner on or before, every 5th day of the English calendar month in the personal account of the 2nd respondent till the disposal of the D.V.A.No.34 of 2010."

Being aggrieved by the above, the petitioner-Husband has filed the present Criminal Revision Case No.1418 of 2012.

17. Assailing the correctness of the order made in appeal in C.A.No.180 of 2012, dated 21.08.2012, modifying the order, dated 15.06.2012, passed in C.M.P.No.2112 of 2012 in D.V.A.No.34 of 2010, on the file of the Judicial Magistrate No.1, Coimbatore, Mr.P.Raja, learned counsel for the petitioner submitted that the challenge in this revision is to the order, directing the petitioner to pay a lumpsum payment of 50% of the capitation fees and payment of Rs.50,000/- to the Son.

18. According to the learned counsel for the petitioner-Husband, alleging domestic violence, DVA.No.34 of 2010 has been filed before the learned Judicial Magistrate No.1, Coimbatore, in the year 2010. Miscellaneous Application has been filed after two years. It is his contention that from 2004 onwards, the respondents were living separately and therefore, the averments made in DVA.No.34 of 2010, filed in the year 2010, alleging domestic violence, are not true. In any event, the averments have to be proved. While that be the case, the learned Judicial Magistrate, ought not to have entertained C.M.P.No.2112 of 2012, filed under Section 23 of the Act, filed after two years.

19. He further submitted that the very purpose of considering the grant of interim exparte order, is to mitigate the circumstances, warranting any protection or other orders, to be considered, under Sections 18 to 23 of the Act, and when the respondents have not chosen to seek for any interim exparte order, in 2010, when they filed DVA.No.34 of 2010, under Section 12 of the Act, directions to pay lumpsum payment of 50% of the capitation fees, upon filing the proof of fees structure, before the trial Court and also to pay a sum of Rs.50,000/- to the son, are wholly untenable and erroneous. According to the learned counsel for the petitioner-Husband, lumpsum payment can be ordered only under Section 12 of the Act.

20. It is his further contention that the interim order granted in C.M.P.No.2112 of 2012 in D.V.A.No.34 of 2012, dated 15.06.2012, would have the effect of granting the main relief, sought for, under Section 12 of the Act. He further submitted that it is the Wife, who had caused all the matrimonial problems. The petitioner had incurred educational expenses for the Son and that the Wife was also collecting rent from the dwelling place. Besides, she was also earning. Therefore, there was absolutely no reason to contend that there was any cause for neglect or non-payment of maintenance to them. According to him, Wife and Son, had means to maintain themselves. If the allegations of domestic violence are proved, at the time of final disposal of D.V.A.No.34 of 2010, then the lower Court can consider, granting appropriate relief, for lumpsum payment, under Section 12 of the Act and not, by way of an interim order, under Section 23 of the Act.

21. Mr.P.Raja, learned counsel for the petitioner further submitted that before the conclusion of trial and arriving at the finding of domestic violence, Courts are not empowered to pass any interim order, directing lumpsum payment, under Section 23 of the Act and if the said provision is interpreted in the manner, to confer jurisdiction on Courts, to order any lumpsum payment, at the interim stage, then it would be amounting to granting the main relief, without there being any proof of domestic violence.

22. Inviting the attention of this Court to the date of Birth of the Son and the definition of the word, "Child", as per Section 2 (b) of the Act, learned counsel for the petitioner submitted that a person, below the age of 18 years, alone is a child and in as much as the Son had attained the age of majority, on the date of passing an order in C.M.P.No.2112 of 2012 in D.V.A.No.34 of 2012, dated 15.06.2012, the petitioner is not legally bound to pay any maintenance. Learned counsel for the petitioner also submitted that the direction to pay Rs.50,000/- to Son, with liberty to utilise the same, for other personal expenses, is wholly untenable. According to him, directions ordered lack statutory support.

23. Referring to Section 23(2) of the Act, learned counsel for the petitioner further submitted that even taking it for granted, an application filed after two years, under Section 23 of the Act, praying for an interim ex parte orders, could be entertained, according to him, an ex parte order, can be passed only on the basis of an affidavit, in such form, as may be prescribed and in the absence of satisfying the mandatory requirement of filing of an affidavit, the lower Court has erroneously considered C.M.P.No.2112 of 2012 in D.V.A.No.34 of 2012 and passed an ex parte interim order, which has been modified on appeal.

24. According to the learned counsel, when the statute contemplates a procedure to be done in a particular manner, the same ought to have been followed. In the absence of an affidavit, petition in C.M.P.No.2112 of 2012 in D.V.A.No.34 of 2012, ought to have been rejected. It is also his submission that when the petitioner has filed a counter affidavit to D.V.A.No.34 of 2012, as early as on 08.03.2012, the learned Judicial Magistrate could have very well taken D.V.A.No.34 of 2010, for final disposal, instead of entertaining C.M.P.No.2112 of 2012 in D.V.A.No.34 of 2010, and passing orders thereon. For the reasons, stated supra, he prayed to set aside the impugned order.

25. Responding to the submissions and referring to the definitions, "Domestic Violence", "Monetary Relief", "Economic Abuse", as defined under Sections 2(g) and (k) and 3(d)(iv), respectively and Sections 12, 18, 19, 22 and 23 and also explaining the scope of the Protection of Women from Domestic Violence Act, 2005, need to pass interim orders, directing

monetary reliefs, to meet the expenses incurred, loss suffered, as a result of domestic violence and further contending that such monetary relief can be claimed at any stage of the proceedings, Mr.K.Thilageswaran, learned counsel for the respondents submitted that C.M.P.No.2112 of 2012 in D.V.A.No.34 of 2010, has been rightly entertained by the learned Judicial Magistrate, when the respondents were in dire need of economic assistance to meet the expenditure towards maintenance of the respondents and educational expenses to the Son.

26. Mr.K.Thilageswaran, learned counsel for the respondents further submitted that in the case of cruelty, under Section 498-A of the Act, the alleged victim Wife, can seek for compensation, under Section 357 Cr.P.C. According to him, the very purpose of enacting Protection of Women from Domestic Violence Act, 2005, is not only to protect the women and other persons, from violence and it is also to ensure prevention of occurrence of domestic violence, which includes sufficient protective orders, required to be passed by the Magistrate, under Sections 18, 19, 22 and 23 of the Act.

27. Disputing the contentions of the petitioner, learned counsel for the respondents submitted that all along, Wife and her Son, were neglected and ill-treated, and that the petitioner has failed to provide even the basic amenities. It is also his contention that a complaint with the police was also lodged and sufficient materials were placed before the lower Court, and only after considering the same, interim directions were granted.

28. Learned counsel for the respondents further submitted that initially, rent was collected by the respondents, from the house at Edayarpalayam, upto 2009. Thereafter, the Husband's brother, is collecting the rent. First respondent-wife's father, died in the year 2010. Prior to his death, out of love and affection, he extended financial assistance and thereafter, the respondents were literally starving. Earlier, with the little contributions from her father, she was managing the educational expenses.

29. As dutiful mother, she wanted to provide the best education to her Son and thus, admitted in Sri Krishna College of Technology at Coimbatore. Thus, at the time, when there was necessity to meet the educational expenses and maintenance, C.M.P.No.2112 of 2012 in D.V.A.No.34 of 2010 was filed in 2012, setting out the reasons, for the interim reliefs, sought for.

30. Referring to the definitions "Monetary Reliefs", under Section 2(k) and "Economic Abuse" under Section 3(d)(iv) and the power of the learned Judicial Magistrate, under Section 23, learned counsel for the respondents further submitted that the learned Judicial Magistrate is empowered to pass suitable exparte interim order, as he deems, just and proper, depending upon the necessity,

and that there is no embargo to pass a direction, to pay the lumpsum amount to meet the educational expenses. He also invited the attention of this Court to the expression, "lumpsum payment" in Section 20(2) of the Act.

31. As regards filing of an affidavit, referring to Section 28 (2) of the Act, learned counsel for the respondents submitted that statute empowers the Court to lay down its own procedure for disposal of an application under Section 12 or under sub-Section (2) of Section 23. He also submitted that the plea of not filing an affidavit, has not been specifically raised in the memorandum of grounds of revision and therefore, prayed to reject the same.

32. According to the learned counsel for the respondents, at the time of filing C.M.P.No.2112 of 2012, a prayer to treat the averments in DVA.No.34 of 2010, as part and parcel of the Miscellaneous Petition has been made and therefore, considering the object of the Act, enabling the Court of competent jurisdiction to grant ex parte interim orders, prayed this Court to ignore the irregularity, if any.

33. Inviting the attention of this Court to the averments made in H.M.O.P.No.605 of 2010, filed by the petitioner, learned counsel for the Wife submitted that there is a clear admission, on the part of the petitioner that he is having lands and rice mill and thus, sufficient means, is proved. Despite the same, he has neglected the Wife and Son, and failed to pay maintenance.

34. On the aspect of maintenance for the Son, after the age of 18 years, learned counsel for the respondents submitted that in the light of definition of "economic abuse", as deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom, Son is entitled to seek for maintenance. He further submitted that currently, Son has completed 2nd year in Sri Krishna College of Technology, Kovaipudur, Coimbatore.

35. Inviting the attention of this Court to the Memorandum, dated 15.12.2014, filed by Sri Krishna College of Engineering, Coimbatore, learned counsel for the respondents further submitted that as on today, a sum of Rs.2,11,200/-, is due and payable, for the 3rd and 4th years. For non-payment of fee for 3rd year, Son has been sent out of the College and his education is disrupted. Though only a sum of Rs.5,000/- has been ordered as maintenance, considering the costs of living, price index, etc., learned counsel for the respondents seek for appropriate revision.

36. Both the learned counsel have relied on case laws, in support of their contentions.

Heard the learned counsel for the parties and perused the materials available on record.

37. The Protection of Women from Domestic Violence Act, 2005,, 2005 (Act 43 of 2005), is enacted to provide for more effective protection of the rights of women guaranteed under the Constitution, who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. As per Section 2(f), "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.

38. Monetary relief is defined under Section 2(k), which means, the compensation which the Magistrate may order the respondent to pay to the aggrieved person, at any stage during the hearing of an application seeking any relief under this Act, to meet the expenses incurred and the losses suffered by the aggrieved person as a result of the domestic violence.

39. Section 3(d)(iv) of the Act, defines, "economic abuse", as follows:

"(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 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."

40. Chapter 4 of the Act, deals with the procedure for obtaining orders of reliefs. Section 12 deals with an application to the Magistrate and the said Section reads as follows:

"12. (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:

Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.

(5) The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing."

41. Section 17 deals with the right to reside in a shared household, 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. 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.

42. Sections 18, 19, 20, 21 and 22, deal with protection orders, residence orders, monetary reliefs, custody orders and compensation orders, respectively and the said sections are extracted hereunder:

"18. 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 favour 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.

19. Residence orders: (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.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 and shall be dealt with accordingly.

(5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the court may also pass an order directing the officer in charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

(7) The Magistrate may direct the officer in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.

(8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to.

20. Monetary reliefs:-

20. (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; and

(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 or any other law for the time being in force.

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

(4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in charge of the police station within the local limits of whose jurisdiction the respondent resides.

(5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

21. Custody orders:- Notwithstanding anything contained in any other law for the time being in force, the Magistrate may, at any stage of hearing of the application for protection order or for any other relief under this Act grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent:

Provided that if the Magistrate is of the opinion that any visit of the respondent may be harmful to the interests of the child or children, the Magistrate shall refuse to allow such visit.

22. Compensation 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."

43. As per Section 23 of the Act, the Magistrate has got powers to grant interim ex parte orders, as he deems just and proper, if he is satisfied that the application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order, on the basis of an affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.

44. In exercise of the powers, under Section 37 of the Act 43 of 2005, the Central Government have made the Protection of Women from Domestic Violence Rules, 2006. Rule 2(d) defines "Form", which means a form appended to these rules. Rule 7 deals with an

affidavit for obtaining ex-parte orders of Magistrate and it states that every affidavit for obtaining ex-parte order under sub-section (2) of section 23 shall be filed in Form III. Application to the Magistrate under Section 12 of the Protection of Women from Protection of Women from Domestic Violence Act, 2005,, 2005, shall be in Form No.2. The said form contain the details of the prayers sought for under Sections 18 to 22 and such other reliefs. Details of the previous litigation are also to be furnished. At the end of Form No.2, the applicant has to give a declaration that the contents of paragraphs 1 to 12 of the said application are true and correct to the best of his/her knowledge and nothing material has been concealed therefrom. Applicant has to sign the application column and counter signed by the Protection Officer with date. Affidavit under Section 23(2) of the Act in Form No.3, is extracted hereunder:

FORM NO. III

[See rule 6(4) and 7]

AFFIDAVIT UNDER SECTION 23 (2) OF THE PROTECTION OF WOMEN
FROM Protection of Women from Domestic Violence Act, 2005,,
2005

IN THE COURT OF.....,
MM,

P/S:.....

IN THE MATTER OF:

Ms. & Others ... COMPLAINANT

VERSUS

Ms. & Others ... RESPONDENT

AFFIDAVIT

I,, W/o Mr....., R/O.....
D/o Mr., R/o....., presently
residing atdo hereby solemnly
affirm and declare on oath as under:

1. That I am the Applicant in the accompanying
Application forfiled for myself and 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 to swear 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 section (s)..... have been entered into by me/at my instructions.

6. That the contents of the application have been read over, explained to me in English/Hindi/any other local language (Please specify.....)

7. That the contents to the said application may be read as part of this affidavit and are not repeated herein for the sake of brevity.

8. That the applicant apprehends repetition of the acts of domestic violence by the Respondent(s) 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 much as the applicant would face great financial hardship and would be forced to live under threat of repetition/escalation of acts of domestic violence complained of in the accompanying application by the Respondent(s) if the said reliefs are not granted on an ex -parte ad-interim basis.

11. That the facts mentioned herein are true and correct to the best of my knowledge and belief and nothing material has been concealed therefrom.

DEPONENT

VERIFICATION

Verified at..... on this..... day of.....
20.....

That the contents of the above affidavit are correct to the best of my knowledge and belief and no part of it is false and nothing material has been concealed therefrom.

DEPONENT

45. One of the contentions raised before this Court, by the petitioner, is that the learned Judicial Magistrate has no power to grant lumpsum payment, under Section 23 of the Act. It is contended that an order of lumpsum payment of monetary relief, can be granted, only under Section 12 of the Act, ie., at the time of filing of disposal of the main petition. Effect of the interim order should not tantamount to granting the main relief. In this context, reliance was placed on the decision in State of U.P., v. Private Secretaries & personal Assistants' Brotherhood, High Court, Allahabad, reported in 2001 (9) SCC 644. In the said judgment, on the facts of the case,

the Apex Court held that the High Court ought not to have passed the interim orders, which had the effect of allowing the writ petition.

46. In *State of U.P., v. Modern Transport Co., Ludhiana* reported in 2002 (9) SCC 514, the relief sought for, in the writ petition, was against the seizure of a vehicle and detention of goods. Direction sought for was the release of the goods and vehicle. After perusal of the order, the Apex Court has observed that there was nothing to indicate that any notice was issued and adequate opportunity was given to the appellants therein, to file a reply in opposition to the writ petition. Without giving any reason whatsoever, orders were passed by the High Court, directing release of truck and the goods. That was the only prayer in the writ petition and on the above facts, the Supreme Court, observed that it was unfortunate that the High Court has given no reason whatsoever in support of its order and by virtue of the same, the main relief itself has been granted.

47. First of all, in *Private Secretaries & personal Assistants' Brotherhood's case* (cited supra), facts could not be deduced from the judgment. Secondly, it is the general principle of law, to be followed in judicial proceedings. But there is no hard and fast rule that in given circumstances, no interim order, which has the effect of granting the main relief, cannot be granted at all. For instance, in a suit for injunction, not to demolish a building or not to interfere with the possession and enjoyment, removal of an alleged encroachment, without due process of law and in such other cases, where protective interim orders are prayed for, Courts cannot simply postpone the hearing of the interim applications, till the disposal of the suits and allow demolition of the building or interference with possessory rights, and depending upon the nature of relief, sought for, interim orders can be granted. The above instances are only illustrative. In any event, interim orders granted in the proceedings are subject to the outcome of the trial. Even the interim order of injunction granted can be vacated at the time of final disposal of the proceedings. For the abovesaid reasons, both the judgments relied on by the learned counsel for the petitioner would not lend any support to the facts of this case.

48. In *Rajesh Kurre v. Safurabai* reported in AIR 2009 (NOC) 813 (CHH.) = 2009 (1) MPHT 37 (CG), the appellant therein challenged the illegality and propriety of judgment, modifying the amount of monthly maintenance awarded to the non-applicants therein, under the provisions of Section 20(1)(d) of the Protection of Women from Domestic Violence Act, 2005. Question raised by the appellant therein was that at the time of awarding any monetary relief, in terms of Section 20(1)(d) of the Act, whether the Court was required to take into consideration, the liability and entitlement of maintenance, in terms of Section 125 of the Code of Criminal Procedure. The appellant

therein has contended that for claiming any monetary relief, under Section 20(1)(d) of the Act, the aggrieved party is required to prove that he or she is unable to maintain himself/herself and having no means to maintain. On the other hand, the non-applicants therein have submitted that maintenance under Section 20 of the Act, is in addition to, an order of maintenance under Section 125 of the Code and therefore, at the time of passing of any order, under Section 20 of the Act, the Court is not required to examine the case, in accordance with the provisions of Section 125 of the Code. Further submission has also been made to the effect that Section 20 of the Act is independent and in addition to the provisions of maintenance under the Code. Submission has also been made that Section 20 of the Act is a special provision for maintenance and also empowers the Court to order lumpsum or monthly payments for maintenance. It has been further contended that the relief available under Section 20 of the Act is an additional relief, available to the aggrieved person and in accordance with Section 26 of the Act and that the aggrieved person may also avail the remedy before a Civil Court, Family Court or a Criminal Court, in addition to, and along with any other reliefs, available under the Act. After considering Sections 20 and 26 of the Act and the decisions relating to Interpretation of Statutes in Gurudevdatto VKSSS Maryadit and Ors., v. State of Maharashtra reported in 2001 (2) SCR 654 and J.P.Bansal v. State of Rajasthan and Anr., reported in 2003 (2) SCR 933, the Chattisgarh High Court held that there was no illegality or infirmity in the order of the trial Court, in awarding maintenance to the persons aggrieved of domestic violence and it observed as follows:

"Section 26 of the Act says that relief available under sections 18, 19, 20, 21 and 22 may also be sought in addition to and along with any other relief which the aggrieved person may seek in any legal proceeding before a civil court, family court or a criminal court. Relief of maintenance to Wife and children is available to the effected party under his entitlement and liability of the person against whom relief is claimed under Section 125 of the Code, when such person is unable to maintain herself and the person against whom relief is claimed is under obligation to maintain and having sufficient means to maintain, but fails to maintain the applicants. But in case of domestic violence, the Court is empowered to grant such relief if the person is aggrieved as a result of the domestic violence and may grant monetary relief in terms of maintenance which would be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved party is accustomed and also empowered to grant lump sum or monthly maintenance or to direct the employer or a debtor of the respondent to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries. However, the Magistrate is not empowered to

grant relief in such form in accordance with Section 125 of the Code."

49. It is worthwhile to extract the judgments relating to interpretation of statutes, considered in the abovesaid judgment.

"10. In the matter of J.P. Bansal v. State of Rajasthan and another [AIR 2003 SC 1405] the Apex Court has held that

"When the words of a Statute are clear, plain or unambiguous i.e. they are reasonably susceptible to only one meaning, the Courts are bound to give effect to that meaning irrespective of consequences. The intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said."

11. While dealing with the question of Interpretation of Statutes, the Apex Court has held in the case of Gurudevdatto VKSSS Maryadit and others v. State of Maharashtra and others [2001 (4) SCC 534], that

"..it is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous then the Courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law giver. The Courts have adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute."

50. Decision in Rajesh Kurre's case only affirms the intention of the Legislature, engrafted in Sections 20 and 26 of the Act, which enables the Court to grant maintenance or lumpsum payment, de hors, Section 125 of the Code of Criminal Procedure, Family Courts Act, 1984 and any other Act, relating to award of maintenance.

51. In Savitri v. Govind Singh Rawat reported in AIR 1986 SC 984 = 1985 (4) SCC 337, the question considered by the Apex Court, was whether a magistrate before whom an application is made under

section 125 of the Code of Criminal Procedure, 1973, can pass an interim order directing the person against whom the application is made under that section to pay reasonable maintenance to the applicant concerned pending disposal of the application. In the abovesaid judgment, Wife, filed an application under Section 125 of the Code, for maintenance. Pending disposal of the main application, she filed an interim application, for a direction to the Husband to pay some reasonable amount, by way of maintenance. The learned Judicial Magistrate, declined to make an interim order, on the grounds that there was no express provision in the Code, enabling the Magistrate to pass such an order. Being aggrieved by the same, Wife filed a Special Leave Petition before the Supreme Court. While answering the issue, in favour of the Wife, the Supreme Court, held as follows:

"In view of the foregoing it is the duty of the court to interpret the provisions in Chapter IX of the Code in such a way that the construction placed on them would not defeat the very object of the legislation. In the absence of any express prohibition, it is appropriate to construe the provisions in Chapter IX as conferring an implied power on the Magistrate to direct the person against whom an application is made under section 125 of the Code to pay some reasonable sum by way of maintenance to the applicant pending final disposal of the application. It is quite common that applications made under section 125 of the Code also take several months for being disposed of finally. In order to enjoy the fruits of the proceedings under section 125, the applicant should be alive till the date of the final order and that the applicant can do in a large number of cases only if an order for payment of interim maintenance is passed by the court. Every court must be deemed to possess by necessary intendment all such powers as are necessary to make its orders effective. This principle is embodied in the maxim 'ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest (Where anything is conceded, there is conceded also anything without which the thing itself cannot exist.) (Vide Earl Jowitt's Dictionary of English Law 1959 Edn. P.1797). Whenever anything is required to be done by law and it is found impossible to do that thing unless something not authorised in express terms be also done then that something else will be supplied by necessary intendment. Such a construction though it may not always be admissible in the present case however would advance the object of the legislation under consideration. A contrary view is likely to result in grave hardship to the applicant, who may have no means to subsist until the final order is passed. There is no room for the apprehension that the recognition of such implied power would lead to the passing of interim orders in a large number of cases where the liability to

pay maintenance may not exist. It is quite possible that such contingency may arise in a few cases but the prejudice caused thereby to the person against whom it is made is minimal as it can be set right quickly after hearing both the parties. The magistrate, may, however, insist upon an affidavit being filed by or on behalf of the applicant concerned stating the grounds in support of the claim for interim maintenance to satisfy himself that there is a prima facie case for making such an order. Such an order may also be made in an appropriate case ex parte pending service of notice of the application subject to any modification or even an order of cancellation that may be passed after the respondent is heard. If a civil court can pass such interim orders on affidavits, there is no reason why a magistrate should not rely on them for the purpose of issuing directions regarding payment of interim maintenance. The affidavit may be treated as supplying prima facie proof of the case of the applicant. If the allegations in the application or the affidavit are not true, it is always open to the person against whom such an order is made to show that the order is unsustainable. Having regard to the nature of the jurisdiction exercised by a magistrate under section 125 of the Code, we feel that the said provision should be interpreted as conferring power by necessary implication on the magistrate to pass an order directing a person against whom an application is made under it to pay a reasonable sum by way of interim maintenance subject to the other conditions referred to there pending final disposal of the application. In taking this view we have also taken note of the provisions of section 7 (2)(a) of the Family Courts Act, 1984 (Act No. 66 of 1984) passed recently by Parliament proposing to transfer the jurisdiction exercisable by magistrates under section 125 of the Code to the Family Courts constituted under the said Act."

Thus, in the above reported judgment, the Apex Court held that the Magistrate has the power to pass an interim order, for maintenance, pending disposal of the main application, filed under Section 125 of the Code. In the case on hand, The Protection of Women From Domestic Violence Act, 2005, is a special enactment. It empowers the Magistrate to pass all orders, permissible under Sections 18 to 22, even at the interim stage.

52. In Dilip Bhattacharjee @ Raghu Bhattacharjee v. State of Bihar reported in MANU/BH/0463/2009, interim maintenance was ordered, while a testamentary suit was pending between the parties. Complainant alleged domestic violence. Respondents therein had beneficial interests in the property under a Will. Taking note of the same, the Courts below granted maintenance. When challenged, in the

above background, the High Court, by raising a doubt that the complaint under the Domestic Violence Act, was nothing but a partition suit, set aside the order of maintenance. The judgment relied on by the learned counsel for the petitioner, is inapposite to the facts of this case.

53. One of the submissions, made by the learned counsel for the petitioner is that C.M.P.No.2112 of 2012 in D.V.A.No.34 of 2010, on the file of the learned Judicial Magistrate No.1, Coimbatore, ought not to have been entertained, as the petitioner did not satisfy the requirement of filing an affidavit, in support of the Miscellaneous Petition. As stated supra, in the averments to the said Miscellaneous Petition, the respondents have prayed the Court below to treat the averments in the main petition in D.V.A.No.34 of 2010, as part and parcel of C.M.P.No.2112 of 2012, filed for interim orders. At the time of hearing of C.M.P.No.2112 of 2012, there was no objection in writing that the respondents have not filed any affidavit. Even before the appellate Court, the said contention has not been raised.

54. As rightly pointed out by the learned counsel for the respondents that there is no specific ground in the present Memorandum of Grounds of revision filed by the husband. On the aspect, as to whether, any separate application is required for appropriate orders, under Section 23 of the Act, for granting interim orders, in P.Chandrasekara Pillai v. Valsala Chandran reported in 2007 CrI.L.J. 2328, at Paragraph 11, the Kerala High Court, held as follows:

"11. I am unable to understand the provisions of Section 23 as compulsorily insisting on any separate application for interim order under Section 23. An application referred to in Section 23(2) is obviously an application under Section 12 claiming relief under Sections 18 to 22. It is impossible to understand the expression "an application" in Section 23(2) as importing a requirement that a separate application must be filed to claim the relief of an interim order under Section 23. Doubts, if any, on this aspect pale into insignificance when we consider that Section 23 only insists on an affidavit in such form as may be prescribed to justify the claim for an interim order and ad interim order under Section 23. Rules prescribe the form of affidavit also. From the plain language employed by the statute in Section 23, it is impossible to spell out an insistence that a separate application under Section 23 must be filed in order to clothe the court with the requisite jurisdictional competence and the claimant with a right to claim the relief of an interim order under Section 23. I do not agree with such interpretation, which is sought to be placed on

the provisions of Section 23(2) by the learned counsel for the petitioner."

55. On the same aspect, in Vishal Damodar Patil v. Vishakha Vishal Patil reported in 2009 CrL.J. 107, the Bombay High Court, at Paragraph 6, held as follows:

"6. There are rules framed by the central Government in exercise of power conferred by section 37 of the said Act. The said rules are known as the Protection of Women from Domestic Violence Rules, 2006 (hereinafter referred to as the said Rules). In view of sub-rule 1 of rule 6, an application under section 12 of the said Act is required to be filed in Form II. The said form is an exhaustive form in which the aggrieved person is required to set out the specific nature of reliefs claimed with particular reference to the reliefs provided under sections 17 to section 22. Rule 7 of the said rules provides that every Affidavit for obtaining an ex parte order under sub-section 2 of section 23 shall be filed in Form III. The language of sub-section 2 of section 22 is very clear. On an affidavit being filed in the prescribed form, the learned Magistrate can exercise power to grant an ex parte ad-interim order under sections 18, 19, 20, 21 or 22 of the said Act provided the learned Magistrate is satisfied that the application made by the aggrieved person prima facie discloses that the Respondent to the said application is committing or has committed an act of domestic violence or there is a likelihood that the respondent may commit an act of domestic violence. Sub-section 2 of section 23 read with the Rule 7 clearly shows that there is no requirement of filing a separate application for interim relief under section 23 of the said act. Apart from these two provisions, subsection 2 of section 28 of the said Act provides that the court is empowered to lay down its own procedure for disposal of an application under section 12 or an application under sub-section 2 of section 23 of the said Act. Therefore, there is no requirement of filing a separate application for grant of interim relief under section 23 of the said Act. However, while considering the question of granting the ex-parte ad-interim or interim relief, the learned Magistrate will have to consider the nature of the reliefs sought in the main application under section 12 (1) of the said Act in as much as an interim relief under section 23 of the said Act can be granted in aid of the final relief sought in the main application. On the basis of an affidavit in Form III prescribed by the Rules, in a given case, learned magistrate can grant ex-parte ad-interim relief. However, before granting an interim relief, an opportunity of being heard has to be

afforded to the respondent. The respondent can always file a reply to the affidavit."

56. "Affidavit" in Latin "Affidare" means to pledge one's faith and a written statement sworn before a person having authority to administer an oath.

57. As per Black's Law Dictionary, 7th Edition, "Affidavit" is a voluntary declaration of facts written down and sworn to by the declaration before an officer authorized to administer oaths of great deal of evidence is submitted by affidavit.

58. "Affidavit" is defined in Section 3(3) of the General Clauses Act, 1897, which include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.

59. In *M.Veerabhadra Rao v. Tek Chand* reported in AIR 1985 SC 28, the Supreme Court explained the word, "affidavit" as follows:

"The expression 'affidavit' has been commonly understood to mean a sworn statement in writing made especially under oath or on affirmation before an authorised Magistrate or officer. Affidavit has been defined in sub-cl. (3) of Sec. 3 of the General Clauses Act, 1897 to include 'affirmation and declaration in the case of person by law allowed to affirm or declare instead of swearing.' The essential ingredients of an affidavit are that the statements or declarations are made by the deponent relevant to the subject matter and in order to add sanctity to it, he swears or affirms the truth of the statements made in the presence of a person who in law is authorised either to administer oath or to accept the affirmation."

60. In the case on hand, material on record discloses that the Wife has made a specific declaration in the application, filed under Section 12 of the Act and signed the verification column in the presence of a Protection Officer. In the light of the definition to the word, "Affidavit" and the judgment of the Apex Court in *M.Veerabhadra Rao's* case (cited supra), this Court is of the view that such affirmation of facts is already available in the application filed under Section 12 of the Act. Moreover, as per the judgments in *P.Chandrasekara Pillai v. Valsala Chandran* reported in 2007 CrI.L.J. 2328 and *Vishal Damodar Patil v. Vishakha Vishal Patil* reported in 2009 CrI.L.J. 107, there is no need to file a separate application, under Section 23 of the Act. That be the legal position, an application filed under Section 23 of the Act, cannot be dismissed, for not filing an affidavit.

61. Section 23 of the Act starts with the opening sentence, "in any proceeding before him under this Act, the Magistrate may pass such interim order as he deems "just and proper".

Judicial Dictionary - K.J.Aiyer:

Just. The term 'just' is derived from the Latin word justus. It has various meanings which are often governed by the context. The word 'just' may apply in nearly all of its senses, either to ethics of law, denoting something which is morally right and fair and sometimes that which is right and fair according to positive law. It connotes reasonableness and something conforming to rectitude and justice, something equitable and fair. [Corpus Juris Secundum, Vol.50, p.1100]. Words and Phrases, West Publishing Co, Vol.23, p.438, the true meaning of the word 'just' states in these terms: 'the word 'just' is derived from the Latin 'justus' which is from the Latin jus, which means a right and more technically, a legal right-a law. Thus 'jus dicere' was to pronounce the judgment to give the legal decision. The word 'just' is defined by the Century Dictionary as 'right in law or ethics', and in Standard Dictionary as 'conforming to the requirements of right or of positive law', and in Anderson's Law Dictionary as 'probable, reasonable'. Kinneys's Law Dictionary defines the word 'just' as 'fair, adequate, probable, reasonable', and justa causa as 'a just cause; lawful ground.' [Bergman v. Kress 81 NYS 1072 (1073), 83 App Div.1].

Proper. Natural; suitably; correct; just; right; becoming. The word is also used in the sense of 'own'.

The Law Lexicon - P.Ramanatha Aiyar:

Just. As an adjective fair; adequate; reasonable; probable; right in accordance with law and justice; right in law or ethics; rightful, legitimate, well founded; conformable to laws; conforming to the requirements of right or positive law; conformed to rules or principle of justice, 2 Bom. LR 845. As an adverb of time the word "just" is equivalent to "at this moment" or the least possible time since" (Ame. Cyc.)

62. The words, "in any proceedings before him under this Act" in Section 23 of the Act, reflects the manifest intention of the Legislature that if the Magistrate is satisfied, he may grant an ex parte order, if an application, prima facie discloses that the respondent is committing, or has committed act of domestic violence or that there is likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under sections 18 to 22 of the Act, against the respondent. Filing

of an affidavit is only an Oath of affirmation of facts and declaration by persons, instead of swearing. Therefore, for the reasons stated, this Court is not inclined to accept the contention of the learned counsel for the petitioner that the Magistrate ought not to have entertained the application under Section 23 of the Act.

63. As per Section 20 of the Act, 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; and (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 or any other law for the time being in force.

64. In *S.R.Batra v. Tarun Batra* reported in AIR 2007 SC 1118, the Supreme Court held that under Section 17 of the Act, for the right to residence in a shared household, residence order could be passed.

65. In a given case, at the time of filing of application, under Section 12 of the Act, the aggrieved person may reside in the shared household. There would not be any apprehension of sending her out of the shared household. Lateron, if the conduct of the respondents, give rise to a reasonable likelihood or genuine apprehension in the mind of the aggrieved person of restricting or prohibiting her from residing at the shared household, and at that stage, she may prefer to seek for an interim exparte order, under Section 23 of the Act.

66. Likewise, at the time of filing of the application, under Section 12 of the Act, the aggrieved person or the child may be hale and healthy and may not require any medical expenses. After the filing of application under Section 12, if anyone of them falls sick or if there is any accident, wife or the child, may require medical expenses and it cannot be said that she has to wait till the final disposal of the application, filed under Section 12 of the Act.

67. In yet another instance, Wife may have some earnings, at the time of filing of the petition, under Section 12 of the Act, which may or may not be sufficient to meet the expenditure, towards basic amenities, including education of the child/children.

68. Wife, may even be financially supported by her father or brother or any near relative. With the sources available, the supporting relative may not be in a position to extend the same,

continuously. Considering the cost of living, inflation, the financial assistance given by the parents or near relative, may not be adequate. After the filing of an application, under Section 12 of the Act, there may be a situation, where the Wife, losing her employment.

69. In a given case, the child may be studying in a good school. Due to deprivation of economic or financial assistance, Wife may not be in a position to provide the same standard of education. When the parties lived together and when there was no domestic violence, the child would have been provided with all the care and assistance, either by the Husband or Wife or any other near relative, and when the same is lost, on account of domestic violence or when there is loss of continued support from other sources, then there would be a necessity, to seek for appropriate interim orders, against the respondents, under Section 23 of the Act. Necessity for claiming all the reliefs, cannot be visualised, at the time of filing an application, under Section 12 of the Act. Instances, stated supra, are only illustrative. There can be other valid reasons also, for the aggrieved person, to seek for any or all of the orders, that can be granted by the Court, under Sections 18 to 23, during any stage of hearing of an application, seeking for any relief, under the Act.

70. Seeking monetary relief, by way of an interim order, depends upon the facts and circumstances of each case. If the contention of the petitioner that lumpsum payment can be awarded, only at the time of final disposal of the main application filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005, has to be accepted, then the aggrieved person, who is in dire necessity to meet the medical expenses to herself or her child/children, educational expenses to the children, would be put to irreparable hardship.

71. Events that may happen, during the stage of the proceedings under Section 12 of the Act, cannot be foreseen. Out of necessity, if the prayer for medical or educational expenses, for the child or wife, as the case may be, is sought for, by way of an interim order, under Section 23 of the Act and if the Court has to decline such prayers, holding that it can be granted only at the time of final disposal of the application filed under Section 12 of the Act, then the aggrieved person and her child/children, would be left without any financial support and there would be a deprivation of her right to live with dignity and that would amount to violation of human rights. At this juncture, this Court deems it fit to reproduce the words of the Apex Court in *Savitri v. Govind Singh Rawat* reported in AIR 1986 SC 984 = 1985 (4) SCC 337, as follows:

In order to enjoy the fruits of the proceedings under section 125, the applicant should be alive till the date of the final order and that the applicant can do in a large number of cases only if an order for payment of interim

maintenance is passed by the court. Every court must be deemed to possess by necessary intendment all such powers as are necessary to make its orders effective. This principle is embodied in the maxim 'ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest (Where anything is conceded, there is conceded also anything without which the thing itself cannot exist.)

Monetary relief granted under Section 20 of the Act, shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

72. Monetary relief is defined under Section 2(k), which means, the compensation which the Magistrate may order the respondent to pay to the aggrieved person, at any stage during the hearing of an application seeking any relief under this Act, to meet the expenses incurred and the losses suffered by the aggrieved person as a result of the domestic violence. The expression "at any stage", during hearing of an application, seeking any relief, under this Act, read with the definition of "economic abuse", where there is deprivation of an aggrieved person, out of necessity, should mean to include educational expenses, to be incurred by the parents of the child. At this juncture, it is to be borne in mind, that while empowering the Courts to grant monetary reliefs, the Legislature has not restricted the power of the Court, only 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; and (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 or any other law for the time being in force. Considering the nature of legislation and reliefs, that could be granted, at any stage of the proceedings, let me consider, some of the decisions on the law, relating to interpretation of statutes,

(i) In Maxwell on Interpretation of Statutes, page 40 to 42, it is stated that preamble is a good means of finding out its meaning and key to its understanding. Since it usually states the object and the intention of the Legislature in passing the enactment, it may legitimately be consulted to solve any ambiguity, or to fix the meaning of words which may have more than one, or to keep the effect of the Act within its real scope wherever the enacting part is in any of these respects open to doubt. Where the language and object, and scope of the enactment are not open to doubt, the preamble cannot either restrict or extend the enacting part.

(ii) In Nairin v. University of St. Andrews reported in 1909 AC 147, it is held that, "Unless there is any ambiguity it would not be open to the Court to depart from the normal rule of construction which is that the intention of the Legislature should be primarily gathered from the words which are used. It is only when the words

used are ambiguous that they would stand to be examined and construed in the light of surrounding circumstances and constitutional principle and practice."

(iii) In *Samrao v. District Magistrate, Thana* reported in AIR 1952 SC 324, the Apex Court held that, "It is the duty of the Courts to give effect to the meaning of an Act, when the meaning can be fairly gathered from the words used, that is to say, if one construction will lead to an absurdity while another will give effect to what common sense would show was obviously intended, the construction which would defeat the ends of the Act, must be rejected even if the same words used in the same section, and even the same sentence, have to be construed differently. Indeed the law goes so far as to require the Courts sometimes even to modify the grammatical and ordinary sense of the words if by doing so absurdity and inconsistency can be avoided."

(iv) In *Poppatlal Shah v. State of Madras* reported in AIR 1953 SC 274, the Supreme Court held that, "It is settled rule of construction that to ascertain the legislative intent all the constituent parts of a statute are to be taken together and each word, phrase and sentence is to be considered in the light of the general purpose and object of the Act itself."

(v) In *Rao Shive Bahadur Singh v. State*, reported in AIR 1953 SC 394, the Supreme Court held that, "While, no doubt, it is not permissible to supply a clear and obvious lacuna in a statute, and imply a right of appeal, it is incumbent on the Court to avoid a construction, if reasonably permissible on the language, which would render a part of the statute devoid of any meaning or application."

(vi) In *Rananjaya Singh v. Baji Nath Singh* reported in AIR 1954 SC 749, the Apex Court held that, "The spirit of law may well be an illusive and unsafe guide in the interpretation of the statutes and the supposed spirit can certainly not be given effect to in opposition to the plain language of the sections of the Act, and the rules made thereunder. If all that can be said of these statutory provisions is that construed according to the ordinary, grammatical and natural meaning of their language they work injustice, the appeal must be made to the Parliament and not to the Supreme Court."

(vii) In *Hari Prasad Shivashanker Shukla v. A.D. Divelkar* reported in AIR 1957 SC 121, the Apex Court held that, "It is true that an artificial definition may include a meaning different from or in excess of the ordinary acceptance of the word which is the subject of definition; but there must then be compelling words to show that such a meaning different from or in excess of the ordinary meaning is intended, Where, within the framework of the ordinary acceptance of the word, every single requirement of the definition

clause is fulfilled, it would be wrong to take the definition as destroying the essential meaning of the word defined."

(viii) In *Collector of Customs, Baroda v. Digvijaysinghji Spinning & Weaving Mills Ltd., Jamnagar*, reported in AIR 1961 SC 1549, the Supreme Court, held that "It is one of the well-established rules of construction is that if the words of a statute are in themselves precise and unambiguous, no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declare the intention of the Legislature. It is equally well settled principle of construction that where alternative constructions are equally open that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating; and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system."

(ix) In *State of W.B., v. Union of India* reported in AIR 1963 SC 1241, the Apex Court held that in considering the expression used by the Legislature, the Court should have regard to the aim, object and scope of the statute to be read in its entirety.

(x) In *Commissioner of Sales Tax v. M/s.Mangal Sen Shyamlal* reported in 1975 (4) SCC 35 = AIR 1975 SC 1106, the Apex Court held that, "A statute is supposed to be an authentic repository of the legislative will and the function of a court is to interpret it "according to the intent of them that made it". From that function the court is not to resile. It has to abide by the maxim, "ut res magis valiat quam pereat", lest the intention of the legislature may go in vain or be left to evaporate into thin air."

(xi) In *C.I.T., Madras v. T.Sundram Iyengar (P) Ltd.,* reported in 1976 (1) SCC 77, the Supreme Court held that, if the language of the statute is clear and unambiguous and if two interpretations are not reasonably possible, it would be wrong to discard the plain meaning of the words used, in order to meet a possible injustice.

(xii) If the words are precise and unambiguous, then it should be accepted, as declaring the express intention of the legislature. In *Ku.Sonia Bhatia v. State of U.P., and others* reported in 1981 (2) SCC 585 = AIR 1981 SC 1274, the Supreme Court held that a legislature does not waste words, without any intention and every word that is used by the legislature must be given its due import and significance.

(xiii) In *M/s.Oswal Agro Mills Ltd., v. Collector of Central Excise and others* reported in 1993 Supp (3) SCC 716 = AIR 1993 SC 2288, the Apex Court held that, where the words of the statute are plain and clear, there is no room for applying any of the principles

of interpretation, which are merely presumption in cases of ambiguity in the statute. The Court would interpret them as they stand.

(xiv) In Dadi Jagannadham v. Jammulu Ramulu reported in (2001) 7 SCC 71, the Supreme Court held that,

"13. We have considered the submissions made by the parties. The settled principles of interpretation are that the court must proceed on the assumption that the legislature did not make a mistake and that it did what it intended to do. The court must, as far as possible, adopt a construction which will carry out the obvious intention of the legislature. Undoubtedly if there is a defect or an omission in the words used by the legislature, the court would not go to its aid to correct or make up the deficiency. The court could not add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. The court cannot aid the legislature's defective phrasing of an Act, or add and mend, and, by construction, make up deficiencies which are there."

(xv) In Nasiruddin v. Sita Ram Agarwal reported in (2003) 2 SCC 577, the Supreme Court held as follows:

"35. In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom. In E.Palanisamy v. Palanisamy [2003 (1) SCC 123], a Division Bench of this Court observed:

37. The court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of the legislation must be gathered from the language used. It may be true that use of the expression "shall or may" is not decisive for arriving at a finding as to whether the statute is directory or mandatory. But the intention of the legislature must be found out from the scheme of the Act. It is also equally well settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions are mandatory in character."

(xvi) In *Easland Combines, Coimbatore v. Collector of Centra Excise* reported in 2003 (3) SCC 410, the Apex Court held that, "It is well settled law that merely because a law causes hardship, it cannot be interpreted in a manner so as to defeat its object. It is also to be remembered that the Courts are not concerned with the legislative policy or with the result, whether injuries or otherwise, by giving effect to the language used nor is it the function of the Court where the meaning is clear not to give effect to it merely because it would lead to some hardship. It is the duty imposed on the Courts in interpreting a particular provision of law to ascertain the meaning and intendment of the Legislature and in doing so, they should presume that the provision was designed to effectuate a particular object or to meet a particular requirement."

(xvii) In *Balram Kumawat v. Union of India* reported in 2003 (7) SCC 628, the Supreme Court held that, "Contextual reading is a well-known proposition of interpretation of statute. The classes of a statute should be construed with reference to the context vis-a-vis the other provisions so as to make a consistent enactment of the whole statute relating to the subject-matter. The rule of "ex visceribus actus" should be resorted to in a situation of this nature."

(xviii) In *Institute of C.A. of India v. Ajit Kumar Iddya* reported in AIR 2003 Kant. 187, the Karnataka High Court held that, "So far as the cardinal law of interpretation is concerned, it is settled that if the language is simple and unambiguous, it is to be read with the clear intention of the legislation. Otherwise also, any addition/subtraction of a word is not permissible. In other words, it is not proper to use a sense, which is different from what the word used ordinarily conveys. The duty of the Court is not to fill up the gap by stretching a word used. It is also settled that a provision is to be read as a whole and while interpreting, the intention and object of the legislation have to be looked upon. However, each case depends upon the facts of its own."

(xix) In *Indian Dental Association, Kerala v. Union of India* reported in 2004 (1) Kant. LJ 282, the Court held that, "The cardinal rule for the construction of Acts of Parliament is that they should be construed according to the intention expressed in the Acts themselves. The object of all interpretation is to discover the intention of Parliament, "but the intention of Parliament must be deduced from the language used", for it is well-accepted that the beliefs and assumptions of those who frame Acts of Parliament cannot make the law. If the words of the statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense. Where the language of an Act is clear and explicit, the Court must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the Legislature. Where the language is plain

and admits of but one meaning, the task of interpretation can hardly be said to arise. The decision in a case calls for a full and fair application of particular statutory language to particular facts as found. It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the Legislature intended something which it omitted to express. A construction which would leave without effect any part of the language of a statute will normally be rejected."

(xx) In *Narendra H. Khzurana v. Commissioner of Police* reported in 2004 (2) Mh.L.R. 72, it is held that it must be noted the proper course in interpreting a statute in the first instance is to examine its language and then ask what is the natural meaning uninfluenced by the considerations derived from previous state of law and then assume that it was properly intended to leave unaltered. It is settled legal position, therefore, that the Courts must try to discover the real intent by keeping the direction of the statute intact.

(xxi) In *Nathi Devi v. Radha Devi Gupta* reported in AIR 2005 SC 648, the Apex Court held that, "The interpretation function of the Court is to discover the true legislative intent, it is trite that in interpreting a statute the Court must, if the words are clear, plain, unambiguous and reasonably susceptible to only one meaning, give to the words that meaning, irrespective of the consequences. Those words must be expounded in their natural and ordinary sense. When a language is plain and unambiguous and admits of only one meaning no question of construction of statute arises, for the Act speaks for itself. Courts are not concerned with the policy involved or that the results are injurious or otherwise, which may follow from giving effect to the language used. If the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In considering whether there is ambiguity, the Court must look at the statute as a whole and consider the appropriateness of the meaning in a particular context avoiding absurdity and inconsistencies or unreasonableness which may render the statute unconstitutional."

(xxii) In *Nathi Devi's* case, it is further held that, "It is equally well-settled that in interpreting a statute, effort should be made to give effect to each and every word used by the Legislature. The Courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. A construction which attributes redundancy to the legislature will not be accepted except for compelling reasons such as obvious drafting errors."

(xxiii) In *State of Jharkhand v. Govind Singh* reported in (2005) 10 SCC 437, the Supreme Court held that,

"12. It is said that a statute is an edict of the legislature. The elementary principle of interpreting or construing a statute is to gather the mens or sententia legis of the legislature.

13. Interpretation postulates the search for the true meaning of the words used in the statute as a medium of expression to communicate a particular thought. The task is not easy as the "language" is often misunderstood even in ordinary conversation or correspondence. The tragedy is that although in the matter of correspondence or conversation the person who has spoken the words or used the language can be approached for clarification, the legislature cannot be approached as the legislature, after enacting a law or Act, becomes *functus officio* so far as that particular Act is concerned and it cannot itself interpret it. No doubt, the legislature retains the power to amend or repeal the law so made and can also declare its meaning, but that can be done only by making another law or statute after undertaking the whole process of law-making.

14. Statute being an edict of the legislature, it is necessary that it is expressed in clear and unambiguous language.....

15. Where, however, the words were clear, there is no obscurity, there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to innovate or take upon itself the task of amending or altering the statutory provisions. In that situation the judges should not proclaim that they are playing the role of a lawmaker merely for an exhibition of judicial valour. They have to remember that there is a line, though thin, which separates adjudication from legislation. That line should not be crossed or erased. This can be vouchsafed by "an alert recognition of the necessity not to cross it and instinctive, as well as trained reluctance to do so". (See *Frankfurter: "Some Reflections on the Reading of Statutes"* in *Essays on Jurisprudence*, *Columbia Law Review*, p. 51.)

16. It is true that this Court in interpreting the Constitution enjoys a freedom which is not available in interpreting a statute and, therefore, it will be useful at this stage to reproduce what Lord Diplock said in *Duport Steels Ltd. v. Sirs* [(1980 (1) All.ER 529)] (All ER at p. 542c-d):

"It endangers continued public confidence in the political impartiality of the judiciary, which is essential to the continuance of the rule of law, if judges, under the

guise of interpretation, provide their own preferred amendments to statutes which experience of their operation has shown to have had consequences that members of the court before whom the matter comes consider to be injurious to the public interest.

19. In *D.R. Venkatachalam v. Dy. Transport Commr.* [1977 (2) SCC 273] it was observed that courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation."

(xxiv) In *Vemareddy Kumaraswamy Reddy v. State of A.P.*, reported in (2006) 2 SCC 670, the Supreme Court held that,

"12. It is said that a statute is an edict of the legislature. The elementary principle of interpreting or construing a statute is to gather the mens or sententia legis of the legislature. It is well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous."

(xxv) In *A.N.Roy Commissioner of Police v. Suresh Sham Singh* reported in AIR 2006 SC 2677, the Apex Court held that, "It is now well settled principle of law that, the Court cannot change the scope of legislation or intention, when the language of the statute is plain and unambiguous. Narrow and pedantic construction may not always be given effect to. Courts should avoid a construction, which would reduce the legislation to futility. It is also well settled that every statute is to be interpreted without any violence to its language. It is also trite that when an expression is capable of more than one meaning, the Court would attempt to resolve the ambiguity in a manner consistent with the purpose of the provision, having regard to the great consequences of the alternative constructions."

(xxvi) In *Adamji Lookmanji & Co. v. State of Maharashtra* reported in AIR 2007 Bom. 56, the Bombay High Court held that, when the words of status are clear, plain or unambiguous, and reasonably susceptible to only meaning, Courts are bound to give effect to that meaning irrespective of the consequences. The intention of the legislature is primarily to be gathered from the language used. Attention should be paid to what has been said in the statute, as also to what has not been said.

(xxvii) In *State of Haryana v. Suresh* reported in 2007 (3) KLT 213, the Supreme Court held that, "One of the basic principles of

Interpretation of Statutes is to construe them according to plain, literal and grammatical meaning of the words. If that is contrary, to or inconsistent with any express intention or declared purpose of the Statute, or if it would involve any absurdity, repugnancy or inconsistency, the grammatical sense must then be modified, extended or abridged, so far as to avoid such an inconvenience, but no further. The onus of showing that the words do not mean what they say lies heavily on the party who alleges it must advance something which clearly shows that the grammatical construction would be repugnant to the intention of the Act or lead to some manifest absurdity."

(xxviii) In *Sanjay Singh v. U.P. Public Service Commission* reported in (2007) 3 SCC 720, the Supreme Court held that,

"It is well settled that courts will not add words to a statute or read into the statute words not in it. Even if the courts come to the conclusion that there is any omission in the words used, it cannot make up the deficiency, where the wording as it exists is clear and unambiguous. While the courts can adopt a construction which will carry out the obvious intention of the legislative or the rule-making authority, it cannot set at naught the legislative intent clearly expressed in a statute or the rules."

(xxix) In *T.N.State Electricity Board v. Central Electricity Regulatory Commission* reported in 2007 (7) SCC 636, the Supreme Court held that, "Resort can be had to the legislative intent for the purpose of interpreting a provision of law, when the language employed by the legislature is doubtful or susceptible of meanings more than one. However, when the language is plain and explicit and does not admit of any doubtful interpretation, the Supreme Court cannot, by reference to an assumed legislative intent expand the meaning of an expression employed by the legislature and therein include such category of persons as the legislature has not chosen to do."

(xxx) In *Visitor Amu v. K.S.Misra* reported in 2007 (8) SCC 594, the Supreme Court held that, "It is well settled principle of interpretation of the statute that it is incumbent upon the Court to avoid a construction, if reasonably permissible on the language, which will render a part of the statute devoid of any meaning or application. The Courts always presume that the legislature inserted every part thereof for a purpose and the legislative intent is that every of the statute should have effect. The legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons. It is not a sound principle of construction to brush aside words in a statute as being in apposite

surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute."

(xxxii) In *Suresh Khullar v. Vijay Khullar* reported in AIR 2008 Del. 1, the Court held that, "Where alternative constructions are possible the Court must give effect to that which will be responsible for the smooth working of the system for which the statute has been enacted rather than the one which would put hindrances in its way. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation the Court should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result."

(xxxiii) In *Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd.*, reported in (2008) 4 SCC 755, the Supreme Court, at Paragraphs 52, 54, 55 and 56, held as follows:

"52. No doubt ordinarily the literal rule of interpretation should be followed, and hence the court should neither add nor delete words in a statute. However, in exceptional cases this can be done where not doing so would deprive certain existing words in a statute of all meaning, or some part of the statute may become absurd.

54. Thus, in *Surjit Singh Kalra v. Union of India* [1991 (2) SCC 87] this Court has observed that sometimes courts can supply words which have been accidentally omitted.

(xxxiiii) In *Ansal Properties & Industries Ltd. v. State of Haryana*, reported in (2009) 3 SCC 553, the Supreme Court held that,

"39.It is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. The language employed in a statute is determinative factor of legislative intent. If the language of the enactment is clear and unambiguous, it would not be proper for the courts to add any words thereto and evolve some legislative intent, not found in the statute.

40. In *Ganga Prasad Verma (Dr.) v. State of Bihar* [1995 Supp (1) SCC 192], it has been held that: (SCC p. 195, para 5)

"5. Where the language of the Act is clear and explicit, the court must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the legislature."

(xxxiv) In Mohd. Shahabuddin v. State of Bihar, reported in (2010) 4 SCC 653, the Supreme Court held that,

"179. Even otherwise, it is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. The language employed in a statute is a determinative factor of the legislative intent. If the language of the enactment is clear and unambiguous, it would not be proper for the courts to add any words thereto and evolve some legislative intent, not found in the statute. Reference in this regard may be made to a recent decision of this Court in Ansal Properties & Industries Ltd. v. State of Haryana [2009 (3) SCC 553]

180. Further, it is a well-established principle of statutory interpretation that the legislature is specially precise and careful in its choice of language. Thus, if a statutory provision is enacted by the legislature, which prescribes a condition at one place but not at some other place in the same provision, the only reasonable interpretation which can be resorted to by the courts is that such was the intention of the legislature and that the provision was consciously enacted in that manner."

(xxxv) In Satheedevi v. Prasanna reported in (2010) 5 SCC 622, the Supreme Court held as follows:

"12. Before proceeding further, we may notice two well-recognised rules of interpretation of statutes. The first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. If the words used are capable of one construction, only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise—Kanai Lal Sur v. Paramnidhi Sadhukhan [AIR 1957 SC 907]

13. The other important rule of interpretation is that the court cannot rewrite, recast or reframe the legislation because it has no power to do so. The court cannot add words to a statute or read words which are not there in it. Even if there is a defect or an omission in the statute, the court cannot correct the defect or supply the omission—Union of India v. Deoki Nandan Aggarwal [1992 Supp (1) SCC 323]

and Shyam Kishori Devi v. Patna Municipal Corpn. [AIR 1966 SC 1678]"

(xxxvi) In Sri Jeyaram Educational Trust & Ors., v. A.G.Syed Mohideen & Ors. reported in 2010 CIJ 273 SC (1), it is held that,

"6. It is now well settled that a provision of a statute should have to be read as it is, in a natural manner, plain and straight, without adding, substituting or omitting any words. While doing so, the words used in the provision should be assigned and ascribed their natural, ordinary or popular meaning. Only when such plain and straight reading, or ascribing the natural and normal meaning to the words on such reading, leads to ambiguity, vagueness, uncertainty, or absurdity which were not obviously intended by the Legislature or the Lawmaker, a court should open its interpretation tool kit containing the settled rules of construction and interpretation, to arrive at the true meaning of the provision. While using the tools of interpretation, the court should remember that it is not the author of the Statute who is empowered to amend, substitute or delete, so as to change the structure and contents. A court as an interpreter cannot alter or amend the law. It can only interpret the provision, to make it meaningful and workable so as to achieve the legislative object, when there is vagueness, ambiguity or absurdity. The purpose of interpretation is not to make a provision what the Judge thinks it should be, but to make it what the legislature intended it to be."

(xxxvii) In Delhi Airtech Services (P) Ltd. v. State of U.P., reported in (2011) 9 SCC 354, the Supreme Court held that,

"55. It is well settled as a canon of construction that a statute has to be read as a whole and in its context. In Attorney General v. Prince Ernest Augustus of Hanover [1957 AC 436], Lord Viscount Simonds very elegantly stated the principle that it is the duty of court to examine every word of a statute in its context. The learned Law Lord further said that in understanding the meaning of the provision, the Court must take into consideration "not only other enacting provisions of the same statute, but its preamble, the existing state of the law, other statutes in pari materia, and the mischief which I can, by those and other legitimate means, discern that the statute was intended to remedy." (All ER p. 53 I)

57. These principles have been followed by this Court in its Constitution Bench decision in Union of India v. Sankalchand Himatlal Sheth [1977 (4) SCC 193]. At SCC p. 240, Bhagwati, J. as His Lordship then was, in a concurring

opinion held that words in a statute cannot be read in isolation, their colour and content are derived from their context and every word in a statute is to be examined in its context. His Lordship explained that the word context has to be taken in its widest sense and expressly quoted the formulations of Lord Viscount Simonds, set out above (see para 54, p. 241 of the Report).

73. In Section 20 of the Act, the Legislature has used the expression, "but is not limited to". In other words, the inference that could be safely drawn, is that apart from what is specifically mentioned in Section 20 of the Act, the Magistrate can pass appropriate orders, for any kind of deprivation of economic loss incurred by the wife. The expression, "but is not limited to", should be interpreted as "means and includes". At this juncture, this Court deems it fit to consider some of the decisions of the Apex Court, dealing with the expression, "means and includes".

(i) The manner of construing the inclusive clause and its widening effect, has been explained in *Dilworth v. Commissioner of Stamps* (1899) AC 99, and it is held as follows:

"The word "include" is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include."

(ii) In the case of *V.F. & G. Insurance Co. v. M/s. Fraser & Ross*, reported in AIR 1960 SC 971, the Apex Court observed that when expression "means" is used, generally the definition is exhaustive.

(iii) In the case of *State of Bombay v. Hospital Mazdoor Sabha* reported in AIR 1960 SC 610, it was observed that "it is obvious that the words used in an inclusive definition denote extension and cannot be treated as restricted in any sense"

(iv) In *Commissioner of Income-Tax, Andhra Pradesh v. M/s. Taj Mahal Hotel, Secunderabad* reported in 1973 (1) MLJ 4, at Paragraph 4, the Supreme Court, considered as to how, the word "include" in the statute, should be interpreted. It is held that the word "includes" is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute." When it is so used, these words and phrases must be construed as comprehending not only such things as they signify according to their nature and import but also those things which the interpretation clause declares that they shall include.

(v) In P.Kasilingam v. P.S.G.College of Technology, reported in AIR 1995 SC 1395, the Apex Court observed that:

"It has been urged that in Rule 2(b) the expression 'means and includes' has been used which indicates that the definition is inclusive in nature and also covers categories which are not expressly mentioned therein. We are unable to agree. A particular expression is often defined by the Legislature by using the word 'means' or the word 'includes'. Sometimes the words 'means and includes' are used. The use of the word 'means' indicates that 'definition is a hard and fast definition, and no other meaning can be assigned to the expression than is put down in definition.' (See : Gough v. Gough, (1891) 2 QB 665; Punjab Land Development and Reclamation Corpn. Ltd. v. Presiding Officer, Labour Court, (1990) 3 SCC 682, at p.717). The word 'includes' when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. The words 'means and includes', on the other hand, indicate 'an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions.' (See : Dilworth v. Commissioner of Stamps, 1899 AC 99 at pp. 105-106 (Lord Watson); Mahalakshmi Oil Mills v. State of Andhra Pradesh, (1989) 1 SCC 164, at p. 169 : (AIR 1989 SC 335 at p. 339). The use of the words 'means and includes' in Rule 2(b) would, therefore, suggest that the definition of 'college' is intended to be exhaustive and not extensive and would cover only the educational institutions falling in the categories specified in Rule 2(b) and other educational institutions are not comprehended."

(vi) In Bharat Co-operative Bank (Mumbai) Ltd., v. Coop. Bank Employees Union, reported in AIR 2007 SC 2320, the Apex Court observed as follows:

"On the other hand, when the word 'includes' is used in the definition, the legislature does not intend to restrict the definition; makes the definition enumerative but not exhaustive. That is to say, the term defined will retain its ordinary meaning but its scope would be extended to bring within it matters, which in its ordinary meaning may or may not comprise. Therefore, the use of the word 'means' followed by the word 'includes' in Section 2(bb) of the ID Act is clearly indicative of the legislative intent to make the definition exhaustive and would cover only those banking companies which fall within the purview of the definition and no other."

(vii) In *Ramanlal Bhailal Patel v. State of Gujarat* reported in AIR 2008 SC 1246, the Apex Court has observed that in such a case, the use of word 'includes' indicates an intention to enlarge the meaning of the word used in the Statute.

(viii) In *Karnataka Power Transmission Corpn., v. Ashok Iron Works (P) Ltd.*, reported in 2009 (3) SCC 240, at Paragraphs 16 and 17, held as follows:

"16. *Dilworth* (supra) and few other decisions came up for consideration in *Peerless General Finance and Investment Co.Ltd.* and this Court summarized the legal position that inclusive definition by the Legislature is used; (one) to enlarge the meaning of words or phrases so as to take in the ordinary, popular and natural sense of the words and also the sense which the statute wishes to attribute to it; (two) to include meaning about which there might be some dispute; (three) to bring under one nomenclature all transactions possessing certain similar features but going under different names.

17. It goes without saying that interpretation of a word or expression must depend on the text and the context. The resort of the word 'includes' by the Legislature often shows the intention of the Legislature that it wanted to give extensive and enlarged meaning to such expression. Sometimes, however, the context may suggest that word 'includes' may have been designed to mean "means". The setting, context and object of an enactment may provide sufficient guidance for interpretation of word 'includes' for the purposes of such enactment."

74. Economic abuse means deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom. It is customary that father is morally bound to maintain his Wife and child, by providing basic amenities like, food, shelter and clothing. He is also bound to provide health and education. Protection of Women from Domestic Violence Act, 2005, is intended to provide for more effective protection of the rights of women guaranteed under the Constitution.

75. Eventualities and necessity to seek for just and proper orders, cannot be visualised, at the time, when Section 12 application is filed. That is why, the Legislature has defined the words, "economic abuse", as including, all the deprivation or any economic or financial resources to which the aggrieved person is entitled to, under any law or custom. Every word and expression used in the Protection of Women from Domestic Violence Act, 2005, has to be interpreted to mean that the Legislature has carved out the same, with a clear intent and purpose. Let me consider some of the decisions, on purposive construction of the statutes.

(i) In *Keshav Chandra Joshi v. Union of India* reported in AIR 1991 SC 284, the Supreme Court explained, as to how, the rules, which are legislative in character, to be interpreted. At Paragraph 3, it held as follows:

"3. Since the rules are legislative in character, they must harmoniously be interpreted as a connected whole giving life and force to each word, phrase and rule and no part thereof should be rendered nugatory or a surplusage. Resort to iron out the creases could be had only when the construction of the relevant rule, phrase or word would lead to unintended absurd results."

(ii) In *United Bank of India, Calcutta v. Abhijit Tea Co. Pvt. Ltd.*, reported in AIR 2000 SC 2957, in regard to purposive interpretation, the Supreme Court extracted, what Justice Frankfurter observed, which is as follows:

"Legislation has an aim, it seeks to obviate some mischief, to supply an inadequacy, to effect a change of policy, to formulate a plan of government. That aim, that policy is not drawn, like nitrogen, out of the air; it is evidenced in the language of the statute, as read in the light of other external manifestations of purpose ("Some Reflections on the Reading of Statutes) 47 Columbia LR 527 at 538) (1947)"

(iii) In *Lalit Mohan Pandey v. Pooran Singh* reported in AIR 2004 SC 2303, the Supreme Court, dealt with, as to how, an act should be interpreted, to advert to the purpose, for which, it is enacted. At Paragraphs 55 to 57 and 64 to 67, the Supreme Court, held as follows:

"55. It is trite that for the purpose of interpretation a statute is to be read in its entirety and all efforts must be made to give effect to the statutory scheme. [See High Court of Gujarat & Anr. Vs. Gujarat Kishan Mazdoor Panchayat & Ors. [JT 2003 (3) SC 50], *Indian Handicrafts Emporium and Others v. Union of India and Others* [(2003) 7 SCC 589], *Ameer Trading Corporation Ltd. v. Shapoorji Data Processing Ltd.*, [JT 2003 (9) SC 109 = 2003 (9) SCALE 713], *Ashok Leyland Vs. State of Tamil Nadu and Anr.* [2004 (1) SCALE 224], *State of West Bengal and Ors. Vs. Sujit Kumar Rana* [2004 (1) SCALE 641], *Deepal Girishbhai Soni & Ors. Vs. United India Insurance Co. Ltd. Baroda* [2004 (3) SCALE 546] and *Secretary, Department of Excise & Commercial Taxes and Others Vs. Sun Bright Marketing (P) Ltd., Chhattisgarh and Another* [(2004) 3 SCC 185].

56. The object underlying the statute is required to be given effect to by applying the principles of purposive construction.

57. Francis Bennion in his treatise 'Statutory Interpretation' at page 810 described purposive construction in the following manner:-

"A purposive construction of an enactment is one which gives effect to the legislative purpose by

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive-and-strained construction).

64. In Mahadeo Oil Mills and Others Vs. Sub-Divisional Magistrate Araria and Others [AIR 1978 Patna 86], it was held:

"It was stated in this way by Parke B.: 'It is a very useful rule, in the construction of a statute, to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the legislature, to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified, so as to avoid such inconvenience, but no further.' 'If', said Brett L.J. 'the inconvenience is not only great, but what I may call an absurd inconvenience, by reading an enactment in its ordinary sense, whereas if you read it in a manner in which it is capable though not its ordinary sense, there would not be any inconvenience at all, there would be reason why you should not read it according to its ordinary grammatical meaning.'"

65. Even a construction which would make the provisions more effective and workable must be adopted and to see if it is possible to be done without doing too much violence of the language used.

66. Every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute.

67. This would be more so if literal construction of a particular clause leads to manifestly absurdity or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J., in Artemiou v. Procopiou [1966 1 QB 878] "is not to be imputed to a statute if there some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result: we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction."

(iv) In *Padma Ben Banushali v. Yogendra Rathore* reported in AIR 2006 SC 2167, at Paragraphs 10 and 11, the Supreme Court held as follows:

"10. In *Canada Sugar Refining Co. v. R.* [1898 AC 735 : 67 LJPC 126], Lord Davy observed :

"Every clause of a statute should be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject-matter."

11. The Court has adopted the same rule in *M. Pentiah v. Muddala Veeramallappa* [AIR 1961 SC 1107]; *Gammon India Ltd. v. Union of India* [(1974) 1 SCC 596], *Mysore SRTC v. Mirja Khasim Ali Beg* [(1977) 2 SCC 457], *V. Tulasamma v. Sesha Reddy* [(1977) 3 SCC 99], *Punjab Beverages (P) Ltd. v. Suresh Chand* [(1978) 2 SCC 144], *CIT v. National Taj Traders* [(1980) 1 SCC 370], *Calcutta Gas Co. (Proprietary) Ltd. v. State of W.B.* [AIR 1962 SC 1044] and *J.K. Cotton Spg. & Wvg. Mills Co. Ltd. v. State of U.P.* [AIR 1961 SC 1170]. This rule of construction which is also spoken of as "ex visceribus actus" helps in avoiding any inconsistency either within a section or between two different sections or provisions of the same statute.

(v) In *National Insurance Co. Ltd. v. Laxmi Narain Dhut* reported in AIR 2007 SC 3079, the Supreme Court, considered the golden rule of interpretation and purposive construction and at Paragraphs 27 to 36, held as follows:

"27. Golden Rule" of interpretation of statutes is that statutes are to be interpreted according to grammatical and ordinary sense of the word in grammatical or liberal meaning unmindful of consequence of such interpretation. It was the predominant method of reading statutes. More often than not, such grammatical and literal interpretation leads to unjust results which the Legislature never intended. The golden rule of giving undue importance to grammatical and literal meaning of late gave place to 'rule of legislative intent'. The world over, the principle of interpretation according to the legislative intent is accepted to be more logical.

28. When the law to be applied in a given case prescribes interpretation of statute, the Court has to ascertain the facts and then interpret the law to apply to such facts. Interpretation cannot be in a vacuum or in relation to hypothetical facts. It is the function of the legislature to say what shall be the law and it is only the Court to say what the law is.

29. In *JT. Registrar of Co-op. Societies v. T.A. Kuttappan* (2000 (6) SCC 127), *Associated Timber Industries v. Central Bank of India* (2000 (7) SCC 73), *Allahabad Bank v. Canara Bank* (2000 (4) SCC 406), *K. Duraiswamy v. State of*

Tamil Nadu (2001 (2) SCC 538), Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. (1987 (1) SCC 424), Chief Justice of A.P. v. L. V. A. Dikshitulu (AIR 1979 SC 193), Kehar Singh v. State (Delhi Admn.) (AIR 1988 SC 1883), and Indian Handicrafts v. Union of India (2003 (7) SCC 589), this court applied the principle of purposive construction.

30. In Reserve Bank of India's case (supra) this Court observed:

"Interpretation must depend on the text and the context, They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation, Statutes have to be construed so that every word has a place and everything is in its place.

31. In Dikshitulu's case (supra) a Constitution Bench of this Court observed as under:

"The primary principle of interpretation is that a constitutional or statutory provision should be construed 'according to the intent of they that made it' (Code). Normally, such intent is gathered from the language of the provision. If the language of the phraseology employed by the legislation is precise and plain and thus by itself, proclaims the legislative intent in unequivocal terms, the same must be given effect to, regardless of the consequences that may follow. But if the words used in the provision are imprecise, protean, or evocative or can reasonably bear meaning more than one, the rule of strict grammatical construction ceases to be a sure guide to reach at the real legislative intent. In such a case, in order to ascertain the true meaning of the terms and phrases employed, it is legitimate for the court to go beyond the arid literal confines of the provision and to call in aid other well-recognised rules of construction such as its legislative history, the basic scheme and framework of the

statute as a whole, each portion throwing light on the rest, the purpose of the legislation, the object sought to be achieved and the consequences that may flow from the adoption of one in preference to the other possible interpretation".

32. In *Keher Singh v. State (Delhi Admn.)*, it was held:

"During the last several years, the 'golden rule' has been given a go-by. We now look for the 'intention' of the legislature or the 'purpose' of the statute. First we examine the words of the statute. If the words are precise and cover the situation on hand, we do not go further. We expound those words in the natural and ordinary sense of the words. But if the words are ambiguous, uncertain or any doubt arises as to the terms employed, we deem it as our paramount duty to put upon the language of the legislature rational meaning. We then examine every word, every section and every provision. We examine the Act as a whole. We examine the necessity which gave rise to the Act. We took at the mischiefs which the legislature intended to redress. We look at the whole situation and not just one-to-one relation. We will not consider any provision out of the framework of the statute. We will not view the provisions as abstract principles separated from the motive force behind. We will consider the provisions in the circumstances to which they owe their origin. We will consider the provisions to ensure coherence and consistency within the law as a whole and to avoid undesirable consequences".

A statute is an edict of the Legislature and in construing a statute, it is necessary to seek the intention of its maker. A statute has to be construed according to the intent of those who make it and the duty of the court is to act upon the true intention of the Legislature. If a statutory provision is open to more than one interpretation the Court has to choose that interpretation which represents the true intention of the Legislature. This task very often raises difficulties because of various reasons, inasmuch as the words used may not be scientific symbols having any precise or definite meaning and the language may be an imperfect medium to convey one's thought or that the assembly of Legislatures consisting of persons of various shades of opinion purport to convey a meaning which may be obscure. It is impossible even for the most imaginative Legislature to foresee all situations exhaustively and circumstances that may emerge after enacting a statute where its application may be called for. Nonetheless, the function of the Courts is only to expound and not to legislate. Legislation in a modern State is actuated with some policy to curb some public evil or to effectuate some

public benefit. The legislation is primarily directed to the problems before the Legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of things, it is impossible to anticipate fully the varied situations arising in future in which the application of the legislation in hand may be called for, and, words chosen to communicate such indefinite referents are bound to be in many cases lacking in clarity and precision and thus giving rise to controversial questions of construction. The process of construction combines both literal and purposive approaches. In other words the legislative intention i.e., the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed. (See District Mining Officer and Ors. v. Tata Iron & Steel Co. & Anr. JT 2001 (6) SC 183).

34. It is also well settled that to arrive at the intention of the legislation depending on the objects for which the enactment is made, the Court can resort to historical, contextual and purposive interpretation leaving textual interpretation aside."

.....

36. More often than not, literal interpretation of a statute or a provision of a statute results in absurdity. Therefore, while interpreting statutory provisions, the Courts should keep in mind the objectives or purpose for which statute has been enacted. Justice Frankfurter of U.S. Supreme Court in an article titled as Some Reflections on the Reading of Statutes (47 Columbia Law Reports 527), observed that, "legislation has an aim, it seeks to obviate some mischief, to supply an adequacy, to effect a change of policy, to formulate a plan of Government. That aim, that policy is not drawn, like nitrogen, out of the air; it is evidenced in the language of the statutes, as read in the light of other external manifestations of purpose".

(vi) In New India Assurance Co. Ltd.. vs. Nusli Neville Wadia and another, reported in 2007 (14) SCALE 556, the Supreme, at Paragraph 51, held as follows:

"51. Barak in his exhaustive work on 'Purposive Construction' explains various meanings attributed to the term "purpose". It would be in the fitness of discussion to refer to Purposive Construction in Barak's words:

15 "Hart and Sachs also appear to treat "purpose" as a subjective concept. I say "appear" because, although Hart and Sachs claim that the interpreter should imagine himself

or herself in the legislator's shoes, they introduce two elements of objectivity: First, the interpreter should assume that the legislature is composed of reasonable people seeking to achieve reasonable goals in a reasonable manner; and second, the interpreter should accept the non-rebuttable presumption that members of the legislative body sought to fulfill their constitutional duties in good faith. This formulation allows the interpreter to inquire not into the subjective intent of the author, but rather the intent the author would have had, had he or she acted reasonably."

76. At this juncture, this Court deems it fit to remind the parties, as what our Great Thiruvalluvar has about the duties of a father and education.

"(i) je;ij kfw;FMw;Wk; ed;wp mitaj;J
Ke;jp apUg;gr; bray;/

The good which a father can do to his son, is to prepare him,

For a prominent role in the assembly of the learned.

nfoy; tpGr;bry;tk; fy;tp xUtw;F
khly;y kw;iw ait

One's learning alone is one's indestructible and outstanding wealth,

Nothing else possesses this special value."

77. Family is one of the most cherished facet of any human being. Father has an obligation to provide love and affection, righteousness basic amenities and the most important among others, health and education and the necessities of life. He has a unique role in the family. Protection intended in the Act is exhaustive. He is legally and morally obligated to provide all material needs and responsible to provide means of livelihood in all forms. His role is not stopped on the child attaining majority.

78. As per Section 19(6) of the Act, while making a residence order under sub-section (1) of Section 19, the Magistrate may impose on the respondent, obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

79. Monetary reliefs, that can be granted, under Section 12 of the Act, is to meet the expenses, incurred and losses suffered, by the aggrieved person and her child, as result of domestic violence and such reliefs may include, but not limited to only 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; and (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 or any other law for the time being in force.

80. Monetary relief that can be granted, under Section 20 of the Act, should be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed. Reverting to the case on hand, at the time of filing of an application, under Section 12 of the Act, Son was studying in Standard 11th in Vithya Vikash School, Thiruchengode. Due to deprivation of economic and financial resources, the aggrieved person, Wife, not in a position to meet the expenses, has sought for suitable orders. For continuation of the child's education, certainly there is a necessity to seek for suitable orders, under Section 23 of the Act.

81. Child is defined under Section 2(b) of the Act, as any person, below the age of eighteen years and includes any adopted, step or foster child. One of the contentions raised is that son has attained majority and therefore, cannot be any order of maintenance.

82. Obligations of the parents to provide basic amenities, health and education, cannot be said to be extinguished, on the child, attaining majority. While defining economic abuse, the Legislature has also included deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom. It is the custom and practice that everywhere in the World that parents are morally obligated to provide basic amenities, including health and education.

83. If the contention of the petitioner that the child is not entitled to maintenance or educational expenses, on attaining majority, is accepted, then the expression, "in addition to", employed in Section in Section 20(1)(d) would be otiose. As per Section 2(k), the compensation which the Magistrate may order the respondent to pay to the aggrieved person, at any stage during the hearing of an application seeking any relief under this Act, to meet the expenses incurred and the losses suffered by the aggrieved person, as a result of the domestic violence.

84. Expressions used in the statute have a material bearing on the facts of this case. It is well known that while interpreting the words or expression used in a statute, Courts have to consider the objects of the Act and the intention of the Legislature. The Protection of Women from Domestic Violence Act, 2005,, 2005 (Act 43 of 2005), is enacted to provide for more effective protection of the rights of women guaranteed under the Constitution, who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto.

85. At this juncture this Court deems it fit to extract the Statement of Objects and Reasons of the Protection of Women from Domestic Violence Act, 2005, which reads as follows:

"Domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General Recommendation No.XII (1989), has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family.

2. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her Husband or its relatives, it is an offence under Section 498-A of the Indian Penal Code. The Civil law does not however address this phenomenon in its entirety.

3. It is, therefore, proposed to enact a law keeping in view the rights guaranteed under articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from bring victims of domestic violence and to prevent the occurrence of domestic violence in the society.

4. The Bill, inter alia, seeks to provide for the following:-

(i) It covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage or adoption. In addition, relationships with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with abuser are entitled to legal protection under the proposed legislation. However, whereas the Bill enables the Wife or the female living in a relationship in the nature of marriage to file a complaint under the proposed enactment against any relative of the Husband or the male partner, it does not enable any female relative of the Husband or the male partner to file a complaint against the Wife or female partner.

(ii) It defines the expression "domestic violence" to include actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

(iii) It provides for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate.

(iv) It empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence.

(v) It provides for appointment of Protection Officers and registration of non-governmental organisations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe, shelter, etc.

5. The Bill seeks the above objects. The notes on clauses explain the various provisions contained in the Bill."

86. In *Anwar Hasan Khan v. Mohd. Shafi* reported in 2001(8) SCC 540, the Supreme Court, at Paragraph 8, held as follows:

"For interpreting a particular provision of an Act, the import and effect of the meaning of the words and phrases used in the statute have to be gathered from the text, the nature of the subject-matter and the purpose and intention of the statute. It is a cardinal principle of construction of a statute that effort should be made in construing its provisions by avoiding a conflict and adopting a harmonious construction. The statute or rules made thereunder should be read as a whole and one provision should be construed with reference to the other provision to make the provision consistent with the object sought to be achieved. The well-known principle of harmonious construction is that effect should be given to all the provisions and a construction that reduces one of the provisions to a "dead letter" is not harmonious construction."

87. In *R.S. Pillai v. M.L. Peratchi* reported in (2000) 4 CTC 543, a Hon'ble Division Bench of this Court, at Paragraphs 23 held as follows:

"23. Before we take up such an exercise, the settled legal position in interpreting the statutes has to be borne in mind. It is settled law that the statute

must be read as a whole and this principle equally applies to different parts of the same Section The Balasinor Nagrik Co-op. Bank Ltd., v. Babubhai, AIR 1987 SC 849.

No provision in the statute and no word in the Section may be construed in isolation Syed Hasan Rasul Numa v. Union of India , AIR 1991 SC 711.

Where the language of the provision is plain, clear and unambiguous, only the plain meaning of the provision is to be adopted so as to avoid any hardship or absurdity resulting therefrom R.S.Raghunath v. State of Karnataka, 1992 (1) SCC 335 and Mohammed All Khan v. W.T. Coinmr., AIR 1997 SC 1165."

88. Again in M. Sathyanathan v. The District Collector, reported in (2006) 1 CTC 328, this Court held that,

"8. It is well-settled principle of interpretation that a statute is to be interpreted on its plain reading; in the absence of any doubt or difficulty arising out of such reading of a statute defeating or frustrating the object and purpose of an enactment, it must be read and understood by its plain reading. However, in case of any difficulty or doubt arising in interpreting a provision of an enactment, courts will interpret such a provision keeping in mind the objects sought to be achieved and the purpose intended to be served by such a provision so as to advance the cause for which the enactment was brought into force. If two interpretations are possible, the one which promotes or favours the object of the Act and purpose it serves, is to be preferred. At any rate, in the guise of purposive interpretation, the courts cannot rewrite a statute. A purposive interpretation may permit a reading of the provision consistent with the purpose and object of the Act, but the Courts cannot legislate and enact the provision either creating or taking away substantial rights by stretching or straining a piece of legislation. Vide Sri Ram Saha v. State of W.B. , 2004 (11) SCC 497."

89. In R.Sridharan v. Presiding Officer reported in 2008 (6) MLJ 1181, at Paragraph 41, this Court has held that,

"41. Interpretation of a Statutory provision should be to find out the intention of the legislature and that has to be understood with due regard that the object of the legislation also. The word employed in the Statute will acquire meaning and content depending upon the context in which they are used. The word should not be torn out by the context

and by interpretation, it would make another provision Otiose/redundant and such interpretation should not be adopted."

90. Guidance can be taken from the decision of the Supreme Court in State of Rajasthan and others v. Basant Nahata reported in 2005 (12) SCC 77, that preamble, statement of objects and reasons and other provisions of the statute can be taken into account if they provide good means for finding out the meaning of the offending provision, in case of vagueness or ambiguity when the language of provision is capable of giving more than one meaning but not in the case of use of any expression which is incapable being given any precise meaning.

91. In State of Maharashtra v. Marwagee F. Desai and others reported in 2002 (2) SCC 318, at para 11 the Supreme Court held that "true intent of the legislature shall have to be gathered and deciphered in its proper spirit having due regard to the language used therein. Statement of objects and reasons is undoubtedly an aid to construction, but that by itself cannot be termed to be and by itself cannot be interpreted. It is a useful guide but the interpretation and the intent shall have to be gathered from the entirety of the statute.

92. In Hari Singh Nalwa v. Kartar Singh Bhadana reported in AIR 2001 P & H 86, the Supreme Court at Paragraph 45, held that a Statute is an edict of the legislature and the conventional way of interpreting or construing a statute is to seek the intention of its maker. A statute is to be construed according "to the intent of them that make it" and "the duty of judicature is to act upon the true intention of the legislature - the mens or sententia legis". Legislation in a modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily directed to the problems before legislature based on the information derived from past and present experience. When the purpose and object or the reason and spirit pervading through the statute is clear, Court has to adopt purposive approach in interpreting such a statute.

93. An order under Section 20(d) is not limited to maintenance for the aggrieved person, as well as the children and it includes, an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 or any other law for the time being in force. Manifest intention of the Legislature, conferring power on the Magistrate, to direct the respondent to pay monetary relief, to meet the expenses incurred and the loss suffered by the aggrieved person, is abundantly clear. If the Legislature has intended to restrict an order under Section 20(d), only for maintenance, then there is no need for the usage of the expression, "but is not limited to". Section 20(d) of the Act makes it clear

that in addition to the maintenance, under section 125 of the Code of Criminal Procedure, 1973 or any other law for the time being in force, the Magistrate is empowered to pass an order, granting monetary reliefs. The expressions, "but is not limited to" in Section 20(1) of the Act and "in addition to maintenance", have wide connotation and amplitude and the power of the Magistrate is not circumscribed to only

- (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; and
- (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 or any other law for the time being in force.

94. One of the contentions raised by the learned counsel for the petitioner is that lumpsum payment can be ordered, only at the time of final disposal of the main petition, under Section 12 of the Act and not under Section 23 of the Act. As stated supra, Section 23 starts with the opening sentence, "In any proceeding before him, under this Act" which means that if the Magistrate is satisfied, he may grant an ex parte order, on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person, under Sections 18 to 22, against the respondent.

95. Though Mr.P.Raja, learned counsel for the petitioner submitted that D.V.A.No.34 of 2010, was filed in the year 2010 and when the same was pending for two years, application filed under Section 23(2) of the Act, for various reliefs, stated therein, in the year 2012, ought not to have been entertained and further submitted that the Magistrate has no jurisdiction to order lumpsum payment, this Court was not inclined to accept the said contentions, for the reason that 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, can always be considered and ordered, under Section 20 of the Act.

96. It is the case of the Wife that she had to quit her medical transcription job. Though rent was collected from the tenants at Edayarpalayam, were the respondents reside, it was only upto 2009 and thereafter, Husband's brother is stated to be collecting the rents. Though the petitioner has submitted that his Wife is continuing to engage in the medical transcription job and that there is reasonable income, there is no proof.

97. At the time of filing of the application in D.V.A.No.34 of 2010, the Son was studying in 11th Standard. After completing 12th

Standard, he joined B.Tech in Sri Krishna College of Technology, Coimbatore, 4th respondent herein. Therefore, when necessity has arisen for the respondents to bear the educational expenses and maintenance, Miscellaneous Application in C.M.P.No.2112 of 2012, has been filed in the year 2012. For the reasons, stated supra, merely because an application was filed in the year 2012, under Section 23 of the Act, the contention that such application ought not to have been entertained, deserves to be rejected.

98. As stated supra, monetary compensation can be directed, at any stage of the proceedings. As per the Memorandum filed by Sri Krishna College of Engineering, Coimbatore, Son has completed the first two years in B.Tech IT course. College fees to the tune of Rs.2,11,200/- is payable for the 3rd and 4th years. For non-payment of fees, Son has been sent out of the college.

99. Keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution of India, and to provide a remedy, under the Civil Law, the Protection of Women from Domestic Violence Act, 2005, has been enacted with a clear intention to provide the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. Intention is manifestly clear that there should be not only protection and also prevention. Right to Equality guaranteed, under Article 14 and Right to Live under Article 21 of the Constitution of India, are the goals sought to be achieved. Taking note of the fact that Civil Law does not address the aspect of domestic violence, against a woman, the Protection of Women from Domestic Violence Act, 2005, has been enacted with an aim to protect and to amolierate further domestic violence and to ensure the constitutional rights, under Articles 14, 15 and 21 of the Constitution of India. It is a beneficial and social welfare legislation. Let me consider some of the decisions, where the Supreme Court has explained, as to how, a beneficial legislation has to be interpreted.

(i) In Jeewanlal Ltd. and Ors. v. Appellate Authority reported in 1984 Ind Law SC 198, the Supreme Court observed as follows:

"In construing a social welfare legislation, the court should adopt a beneficent rule of construction; and if a section is capable of two constructions, that construction should be preferred which fulfils the policy of the Act, and is more beneficial to the persons in whose interest the Act has been passed. When, however, the language is plain and unambiguous, the Court must give effect to it whatever may be the consequence, for, in that case, the words of the statute speak the intention of the Legislature. When the language is explicit, its consequences are for the Legislature and not for the courts to consider. The argument of inconvenience and hardship is a dangerous one and is only admissible is

construction where the meaning of the statute is obscure and there are two methods of construction. In their anxiety to advance beneficent purpose of legislation, the courts must not yield to the temptation of seeking ambiguity when there is none."

(ii) In *Bharat Singh v. Management of New Delhi Tuberculosis Center, New Delhi and Ors.*, reported in 1986 (2) SCC 614, the Supreme Court held as follows:

"Now it is trite to say that acts aimed at social amelioration giving benefits for the have-nots should receive liberal construction. It is always the duty of the court to give such a construction to a statute as would promote the purpose or object of the Act. A construction that promotes the purpose of the legislation should be preferred to a literal construction. A construction which would defeat the rights of the have-not and the underdog and which would lead to injustice should always be avoided."

(iii) In *Madan Singh Shekhawat v. Union of India* reported in 1999 (6) SCC 459, on the aspect, as to how, Court should interpret the provision, specially beneficial provision, the Supreme Court, at Paragraph 15, held as follows:

"It is the duty of the Court to interpret a provision, especially a beneficial provision, liberally so as to give it a wider meaning rather than a restrictive meaning which would negate the very object of the Rule."

The Apex Court has considered the view of Lord Denning (as he then was) in *Seaford Court Estates Ltd. v. Asher* (1949 2 All ER 155), which is extracted hereunder:

"When a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament . and then he must supplement the written word so as to give "force and life" to the intention of the legislature. A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they should have straightened it out ? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

(iv) In *Edukanti Kistamma v. S.Venkatareddy* reported in 2010 (1) SCC 756, while dealing with beneficial legislation, which requires interpretation to advance social and economic justice and enforcement of constitutional directives, at Paragraph 26, the Apex Court, held as follows:

"The Act 1950, being the beneficial legislation requires interpretation to advance social and economic justice and enforce the constitutional directives and not to deprive a person of his right to property. The statutory provisions should not be construed in favour of such deprivation. Interpretation of a beneficial legislation with a narrow pedantic approach is not justified. In case, there is any doubt, the court should interpret a beneficial legislation in favour of the beneficiaries and not otherwise as it would be against the legislative intent. For the purpose of interpretation of statute, the Act is to be read in its entirety. The purport and object of the Act must be given its full effect by applying the principles of purposive construction. The Court must be strong against any construction which tends to reduce a statutes utility. The provisions of the statute must be construed so as to make it effective and operative and to further the ends of justice and not to frustrate the same. The court has the duty to construe the statute to promote the object of the statute and serve the purpose for which it has been enacted and should not efface its very purpose. (vide *S.P. Jain v. Krishna Mohan Gupta & Ors.*, AIR 1987 SC 222; *Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. & Ors.*, AIR 1987 SC 1023; *Secretary, Haryana State Electricity Board v. Suresh & Other etc. etc.*, AIR 1999 SC 1160; *Gayatri Devi Pansari v. State of Orissa & Ors.*, AIR 2000 SC 1531; *High Court of Gujarat & Ors. v. Gujarat Kishan Mazdoor Panchayat & Ors.*, AIR 2003 SC 1201; *Indian Handicrafts Emporium v. Union of India*, AIR 2003 SC 3240; *Ashok Leyland Ltd. v. State of T.N.*, (2004) 3 SCC 1; *Ameer Trading Corpn. Ltd. vs. Shapoorji Data Processing Ltd.*, AIR 2004 SC 355; *Deepal Girishbhai Soni & Ors. v. United Insurance Co. Ltd., Baroda*, AIR 2004 SC 2107; *Maruti Udyog Ltd. v. Ramlal & Ors.*, AIR 2005 SC 851; *Oriental Insurance Co. Ltd. v. Brij Mohan & Ors.*, AIR 2007 SC 1971; and *Karnataka State Financial Corporation v. N. Narasimahaiah & Ors.*, AIR 2008 SC 1797)."

100. The Protection of Women from Domestic Violence Act, 2005, is to rectify the causus omission in the ordinary civil law. The expression, "Causus Omissus", as explained in various decisions,

means (1) Omitted case, (2) What a statute or an instrument of writing undertakes to foresee and to provide for certain contingencies, and through mistake, or some other cause, a case remains to be provided for, it is said to be a Causus Omissus.

101. In a given case, Wife would not have made any claim for maintenance under Section 125 of the Code of Criminal Procedure, or any other law, for the time being in force. However, under Section 23 of the Act, she can make a claim for maintenance. In such circumstances, the Magistrate has the power to order monthly payment of maintenance, under Section 20(3) of the Act. Though the words, "appropriate lumpsum payment" in Section 20(3) of the Act, may suggest to mean that it is a permanent alimony, yet from the reading of the Act, the power of the Magistrate, to order for lumpsum payment, arising out of necessity, including educational, medical expenses and such other need, enumerated in Section 20 of the Act, is not circumscribed.

102. The primary duty of the Court, while construing the provisions of the Act is to adopt a constructive approach subject to that it should not do violence to the language of the provisions and is not contrary to attempted objective of the enactment.

103. The word 'compensation' according to dictionary, means 'compensating or being compensated, thing given in recompense'. In legal sense it may constitute actual loss or expected loss and may extend to physical, mental or even emotional suffering, insult or injury or loss.

104. When the Domestic Violence Act, vests jurisdiction with the Court to award compensation, it has to be construed widely, enabling the Court to determine the compensation, for any damage or suffering by the aggrieved person, which in law, is otherwise included in the widening meaning of the word, "compensation".

105. Reading of the Act in entirety makes it clear that the legislature has enumerated certain contingencies and circumstances, in relation to domestic violence and empowered the Court to pass just and proper orders, to redress the grievance of the aggrieved person. From the reading of the Act, it is manifestly clear that the Domestic Violence Act, is independent of other laws.

106. It is a complete code in itself, dealing with the entire gamut of family relationship between Husband, Wife and children and the remedies available to an aggrieved person, on account of domestic violence. Chapter III deals powers and duties of Protections Officers, Service Providers, etc., to explain to the aggrieved

person, about the reliefs, to which, she is entitled to. The said chapter is extracted hereunder:

"4. Information to Protection Office and exclusion of liability of informant:- (1) Any person who has reason to believe that an act of domestic violence has been, or is being, or is likely to be committed, may give information about it to the concerned Protection Officer.

(2) No liability, civil or criminal, shall be incurred by any person for giving in good faith of information for the purpose of sub-section (1).

5. Duties of police officers, service providers and Magistrate:-

A police officer, Protection Officer, service provider or Magistrate who has received a complaint of domestic violence or is otherwise present at the place of an incident of domestic violence or when the incident of domestic violence is reported to him, shall inform the aggrieved person.

(a) of her right to make an application for obtaining a relief by way of a protection order, an order for monetary relief, a custody order, a residence order, a compensation order or more than one such order under this Act;

(b) of the availability of services of service providers;

(c) of the availability of services of the Protection Officers;

(d) of her right to free legal services under the Legal Services Authorities Act, 1987;

(e) of her right to file a complaint under section 498A of the Indian Penal Code, wherever relevant:

Provided that nothing in this Act shall be construed in any manner as to relieve a police officer from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.

6. Duties of shelter homes:- If an aggrieved person or on her behalf a Protection Officer or a service provider requests the person in charge of a shelter home to provide shelter to her, such person in charge of the shelter home shall provide shelter to the aggrieved person in the shelter home.

7. Duties of medical facilities:- If an aggrieved person or, on her behalf a Protection Officer or a service provider requests the person in charge of a medical facility to provide any medical aid to her, such person in charge of the medical facility shall provide medical aid to the aggrieved person in the medical facility.

.....

9. Duties and functions of Protection Officers:- (1) It shall be the duty of the Protection Officer-

(a) to assist the Magistrate in the discharge of his functions under this Act;

(b) to make a domestic incident report to the Magistrate, in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence and forward copies thereof to the police officer in charge of the police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service providers in that area;

(c) to make an application in such form and in such manner as may be prescribed to the Magistrate, if the aggrieved person so desires, claiming relief for issuance of a protection order;

(d) to ensure that the aggrieved person is provided legal aid under the Legal Services Authorities Act, 1987 and make available free of cost the prescribed form in which a complaint is to be made;

(e) to maintain a list of all service providers providing legal aid or counselling, shelter homes and medical facilities in a local area within the jurisdiction of the Magistrate;

(f) to make available a safe shelter home, if the aggrieved person so requires and forward a copy of his report of having lodged the aggrieved person in a shelter home to the police station and the Magistrate having jurisdiction in the area where the shelter home is situated;

(g) to get the aggrieved person medically examined, if she has sustained bodily injuries and forward a copy of the medical report to the police station and the Magistrate having jurisdiction in the area where the domestic violence is alleged to have been taken place;

(h) to ensure that the order for monetary relief under section 20 is complied with and executed, in accordance with the procedure prescribed under the Code of Criminal Procedure, 1973;

(i) to perform such other duties as may be prescribed.

(2) The Protection Officer shall be under the control and supervision of the Magistrate, and shall perform the duties imposed on him by the Magistrate and the Government by, or under, this Act.

10. Service providers:- (1) Subject to such rules as may be made in this behalf, any voluntary association registered under the Societies Registration Act, 1860 or a company registered under the Companies Act, 1956 or any other law for the time being in force with the objective of protecting the rights and interests of women by any lawful means including providing of legal aid, medical, financial or other assistance shall register itself with the State Government as a service provider for the purposes of this Act.

(2) A service provider registered under sub-section (1) shall have the power to-

(a) record the domestic incident report in the prescribed form if the aggrieved person so desires and forward a copy thereof to the Magistrate and the Protection Officer having jurisdiction in the area where the domestic violence took place;

(b) get the aggrieved person medically examined and forward a copy of the medical report to the Protection Officer and the police station within the local limits of which the domestic violence took place;

(c) ensure that the aggrieved person is provided shelter in a shelter home, if she so requires and forward a report of the lodging of the aggrieved person in the shelter home to the police station within the local limits of which the domestic violence took place.

(3) No suit, prosecution or other legal proceeding shall lie against any service provider or any member of the service provider who is, or who is deemed to be, acting or purporting to act under this Act, for anything which is in good faith done or intended to be done in the exercise of powers or discharge of functions under this Act towards the prevention of the commission of domestic violence.

11. Duties of Government:- The Central Government and every State Government, shall take all measures to ensure that-

(a) the provisions of this Act are given wide publicity through public media including the television, radio and the print media at regular intervals;

(b) the Central Government and State Government officers including the police officers and the members of the judicial services are given periodic sensitization and awareness training on the issues addressed by this Act;

(c) effective co-ordination between the services provided by concerned Ministries and Departments dealing with law, home affairs including law and order, health and human resources to address issues of domestic violence is established and periodical review of the same is conducted;

(d) protocols for the various Ministries concerned with the delivery of services to women under this Act including the courts are prepared and put in place."

107. It provides for redressal of all kinds of deprivation 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.

108. In Criminal Revision Case No.1494 of 2012, wife and son have sought for a direction to set aside the order made in C.A.No.180 of 2012 dated 21.08.2012 passed by the learned III Additional District and Sessions Judge, Coimbatore and consequentially, prayed to confirm the order passed by learned Judicial Magistrate No.1, Coimbatore in C.M.P.No.2112 of 2012 dated 15.06.2012.

109. As stated supra, the learned Magistrate has directed the petitioner to make payment of Rs.5,00,000/- to the son towards educational expenses for getting admission in Engineering Course. Though, a prayer for maintenance for Rs.10,000/- each, has been made in CMP No.2112 of 2012 in D.V.A No.34 of 2010, the learned Magistrate has not passed any order of maintenance.

110. Wife and son have not filed any appeal against the denial of maintenance. But the petitioner has filed Crl.A.No.180 of 2012 against the directions to pay Rs.5,00,000/- towards the educational expenses to son. The appellate Court has modified the same, to the extent directing wife to furnish proof of admission in VLB College or any other college, and also to furnish complete fee structure to be paid, for the year 2012, alongwith the proof of capitation fees, if any, before the trial Court and further directed the petitioner to pay 50% of the capitation fees within two days of filing the proof of fees structure before the trial Court. The appellate Court has also directed the balance of 50% of the capitation fees to be paid by the husband and on production of the admission letter, before the trial Court. In addition to the above, the appellate Court has directed Rs.50,000/- to be paid to the son, with liberty to utilise the same, for his other personal expenses. Monthly maintenance of Rs.5,000/- for the son has been ordered to be deposited on or before, every 5th day of the English Calendar Month, in the personal account of the son, till the disposal of D.V.A.No.34 of 2010.

111. Though, Mr.K.Thilageswaran, learned counsel for the respondents has sought for upward revision of the maintenance amount ordered by the appellate Court, as rightly contended by the learned counsel for the petitioner/husband, as regards the denial of the prayer for maintenance of Rs.10,000/- each, by the learned Magistrate, no appeal has been filed by the respondents. Had the respondents filed an appeal against the denial, the appellate Court, would have considered the said prayer. In the absence of any appeal, the respondents, are now seeking for upward revision of interim maintenance. At this juncture, if the said prayer is allowed, it would amount to modifying, reversing or altering the order of the learned Magistrate in C.M.P.No.2112 of 2012 in D.V.A No.34 of 2010 dated 15.06.2012, without there being any challenge to the same.

112. In Criminal Revision No.1418 of 2012, there is a continuation by the petitioner-husband of the challenge to the order

made in C.M.P.No.2112 of 2012 in D.V.A No.34 of 2010 dated 15.06.2012, on the file of learned Judicial Magistrate No.1, Coimbatore and modified in Crl.A.No.180 of 2012 dated 21.08.2012 on the file of the learned III Additional District and Sessions Judge, Coimbatore. Thus, in the absence of any appeal by the respondents, as against the denial of interim maintenance of Rs.10,000/- each, at this juncture, this Court is not inclined to consider the request of the respondents.

113. At this stage, what is impugned before this Court, are the directions, against the petitioner. Of course, the respondents have prayed to sustain the same. There is no evidence to prove that the petitioner has incurred the educational expenses for the first two years of B.Tech Engineering Course. It is the wife, who had incurred the same, for getting admission in B.Tech Course in Shri Krishna College of Technology, Kovaipudur, Coimbatore and as per the memorandum dated 15.12.2014 filed, by Shri Krishna College of Technology, Kovaipudur, Coimbatore, a sum of Rs.2,11,200/- has to be paid for the 3rd and 4th year of study.

114. As per Section 2(k) of Protection of Women From Domestic Violence Act, "Monetary relief", means the compensation which the Magistrate may order the respondent to pay to the aggrieved person, at any stage of hearing of an application seeking relief under the Act for meeting the expenses incurred and also the losses suffered by the aggrieved person, as a result of Domestic Violence. Economic abuse is a domestic violence, as per Explanation No.4 to Section 3(1) of the Act.

115. Statement of Objects and Reasons to the Act extracted supra makes it abundantly clear that Act is enacted, keeping in view of the rights guaranteed under Articles 14, 15 and 21 of the Constitution of India, to provide for a remedy and the intention is to protect the women from being victims of domestic violence and also to prevent the occurrence of domestic violence in the society, which means further economic abuse.

116. The Act empowers the Magistrate to pass Protection Orders in favour of the aggrieved person to prevent the respondent from committing domestic violence in future also. For the expenses already incurred and the loss suffered, monetary relief can be granted.

117. In any event, directions issued to pay capitation fee in two instalments cannot be sustained in the light of the Tamilnadu Educational Institutions Prohibition of Collection at Capitation Fee Act, 1992. As per the definition and in the light of the decisions of the Apex Court, as to how, the statute has to be interpreted, the petitioner is obligated to compensate the expenses incurred, and loss suffered. As stated supra, as per section 2(k) of the Act,

petitioner is bound to bear the expenses and loss suffered, at any stage of any proceeding.

118. As per the memorandum dated 15.12.2014 of Shri Krishna College of Technology, Kovaipudur, Coimbatore, the 4th respondent, the total educational expenses/fees for the course, is Rs.4,24,500/-. In the light of the statutory provisions and considering the expenses already incurred towards education, maintenance etc., the petitioner is bound to pay the same. The main D.V.A.No.34 of 2010, is pending before the learned Magistrate, and therefore, at this stage, this Court is not inclined to mulct the petitioner, with a liability to pay the entire monetarily relief. It is made clear that restriction on the quantum of monetary, to the tune of Rs.2,11,200/- does not mean that the Court has disallowed the prayer for the entire educational and other expenses to be borne by the husband. Upon trial, the learned Magistrate is empowered to pass appropriate orders.

119. Respondent No.2, son had already completed two years of his B.Tech Degree Course and the remaining Course fees, as per the college, is Rs.2,11,200/-. Though, a sum of Rs.50,000/- was directed to be paid to the son, is challenged as untenable, this Court is not inclined to accept the same, for the reason that mere payment of tuition fees, alone is not sufficient to pursue higher education. One may require a reasonable sum for purchase of books, stationaries, travel and other incidental expenses. Therefore, sum of Rs.50,000/- ordered to be paid to the son, cannot be said to be without any basis. Hence, this Court is not inclined to upset the same.

120. Statutory provision empowers the Magistrate to pass suitable orders under Section 12 of the Act. All orders, that could be passed under Sections 18 to 22 of the Act, can be passed at the interim stage of any proceedings, which includes lumpsum payment also, under Section 23 of the Act, provided the Court is satisfied, what is just and proper.

121. As the petitioner has expressed a grievance over the pendency of D.V.A.No.34 of 2010 and consideration of interim application, pending disposal of the same, with an order for lumpsum payment, the learned Magistrate is directed to dispose of D.V.A.No.34 of 2010, within two months from the date of receipt of the copy of this order.

122. In the light of the discussion and decisions, Husband is directed to pay a sum of Rs.2,11,200/- towards the college fees for 3rd and 4th years, in two instalments. The first instalment should be paid within 10 days, from the date of receipt of a copy of this order. The 2nd payment should be made within one month thereafter. Payment of Rs.50,000/- to the Son, on admission, is sustained, having regard to the amount spent towards purchase of books, travel, etc.,

for all these years. Monthly maintenance of Rs.5,000/- ordered to the Son is modified and ordered to be paid to the Wife. The 4th respondent-College is directed to permit the Son to continue his education in B.Tech (IT) course, without any interruption. Conversion of the amount of maintenance, earlier ordered to the Son, in favour of the Wife, would not preclude the learned Judicial Magistrate No.1, Coimbatore, to consider the merits of the case and pass suitable orders, as to the entitlement of maintenance of both the respondents. Arrears of maintenance, at the rate of Rs.5,000/-, ordered to be paid to the wife, upto date, shall be paid, within one month, from the date of receipt of the order.

123. With the above directions, both the Criminal Revision Cases are disposed of. No costs.

Sd/-
Assistant Registrar
Dated:9.3.15

True Copy

Sub Assistant Registrar

To

1. The First Additional District and Sessions Judge,
Coimbatore.
 2. The Judicial Magistrate No.1,
Coimbatore.
 3. The Public Prosecutor, High Court, Madras.
- +2 cc's to Mr.s.Subbiah, Advocate, SR.8716
- +1 cc to Mr.K.Thilageswaran, Advocate, SR.8731.

scd(co)
krd 10/3

Criminal Revision Case Nos.1418 and 1494 of 2012
M.P.Nos.1 and 1 of 2012

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