

LEGAL MECHANISMS ADDRESSING VIOLENCE AND CRIMES AGAINST WOMEN: SECTION 31 OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT AS AN ENFORCEMENT TOOL

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The Protection of Women from Domestic Violence Act (PWDVA) is a vital legal framework in India designed to protect women from a range of domestic abuses. Enacted to meet international obligations and constitutional rights, it broadly defines domestic violence to encompass physical, sexual, verbal, emotional, and economic abuse. This article examines a significant issue: whether failure to comply with court-mandated maintenance payments constitutes a breach of a protection order under Section 31 of the PWDVA, thus qualifying as a punishable offense. This inquiry raises important questions about the interpretation of the word 'protection' or 'interim protection' used in Section 31, PWDVA, the nature of orders passed in other provisions of PWDVA, the consequences of not meeting court-ordered maintenance obligations under Section 20, PWDVA and the potential extension of Section 31 to breaches of other orders passed under PWDVA, such as those concerning residence or custody. The discussion on this issue is significant owing to the divergence of views by various High Courts and the absence of a direct precedent by the Hon'ble Supreme Court of India.

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I. INTRODUCTION

The Protection of Women from Domestic Violence Act (“PWDVA”) is a beneficial legislation that provides a single-window mechanism to cater to a plethora of needs of women who are victims of domestic violence. Domestic Violence has been widely recognized as a human rights infringement, particularly vide Vienna Accord of 1994,¹ Beijing Declaration and Platform for Action, 1995.² The United Nations Committee on Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in its General Recommendation No. XII, 1989 recommended that all state parties should act to protect women against violence of any kind,

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¹ Vienna Declaration and Programme of Action (United Nations 1993).

² The Beijing Declaration and the Platform for Action: Fourth World Conference on Women, Beijing, China, 4-15 September 1995 (Dept of Public Information, United Nations 1996).

especially that occurring within the family.³ The UN Declaration on Elimination of Violence against Women 1993 (“UN Declaration”), to which India is a party, defined violence against women as acts of gender-based violence that result or may result in “*physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.*”⁴ The UN Declaration further provides the forms of violence occurring within families as physical, sexual, and psychological violence, sexual abuse of female children, dowry-related violence, marital rape, female genital mutilation, and non-spousal violence and violence related to exploitation.⁵

Moreover, leading a dignified life free from violence can be construed as a fundamental right to life under Article 21 of the Constitution of India. It is against this backdrop that PWDVA was enacted to safeguard women from all forms of domestic violence. Additionally, the PWDVA aims to provide a comprehensive remedy that combines civil rights specifically tailored for women, addressing gaps in civil law. While Section 498A of the Indian Penal Code addresses specific or graver forms of cruelty or domestic violence as a criminal offense, the PWDVA was enacted to offer civil remedies for safeguarding women against domestic violence. Section 3,⁶ PWDVA defines domestic violence as any act, omission, commission, or conduct that Harms/injures/endangers the health, safety, life, limb, or well-being, whether mental or physical, of the woman and includes causing physical abuse, sexual abuse, verbal and emotional abuse, and economic abuse, amongst other things. Explanation I to Section 3, PWDVA defines what constitutes physical, sexual, verbal, emotional, and economic abuse.⁷ In a nutshell, economic abuse has been understood to include a woman’s deprivation of economic or financial resources to which she may be entitled under law, or which she requires out of necessity, such as household expenses for self and children, her personal effects such as istridhan, payment of rents and maintenance, amongst other things.

The purpose of PWDVA is not only to protect victims but also to prevent such violence within society. The remarkable aspect of the Protection of Women from Domestic Violence Act (PWDVA) is that a woman can reside in the same shared household as the aggressors and still utilize the remedies provided by the PWDVA to protect or enforce her various rights. It is to

³ UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendation No. 12: Violence against women, 1989, <https://www.refworld.org/legal/general/cedaw/1989/en/53527> [accessed 30 May 2024].

⁴ Ibid.

⁵ Ibid.

⁶ Section 3, Protection of Women from Domestic Violence Act, 2005.

⁷ Ibid.

ensure that the women, who are victims of domestic violence, are not compelled to leave their matrimonial homes, and at the same time, continue to enjoy the protection and/or enforcement of their rights. Section 26, PWDVA is yet another distinguishing feature of PWDVA that enables a woman to claim any of the reliefs recognized under PWDVA in any other pending proceedings, and she need not file a separate case for enforcement of her rights.⁸ Therefore, the multiplicity of proceedings and conflicting decisions can be easily avoided if recourse is made to Section 26,⁹ PWDVA, which provides that any remedy provided under the provisions of PWDVA can also be sought in any legal proceeding, whether before a civil court, family court, or criminal court, that involves the aggrieved woman and the respondent. Furthermore, it provides that any such relief (under PWDVA) is in addition to any other relief being sought under any other pending proceeding before a civil or criminal court.

In this paper, the moot issue involved is whether the non-payment of maintenance allowance as ordered by the concerned court is tantamount to the breach of a protection order under Section 31,¹⁰ PWDVA thereby making such a breach a cognizable offense. To appreciate the said moot issue, it would be helpful to briefly understand the framework of the PWDVA.

II. FRAMEWORK UNDER PWDVA

The nature of acts or conduct of an aggressor that may amount to Domestic Violence is defined in Section 3, PWDVA, which includes physical, sexual, verbal, emotional, and economic abuse.¹¹ In addition to the act or conduct of an aggressor amounting to “domestic violence”, it is essential that the aggrieved woman lives or has lived at any stage with the respondent in a “domestic relationship”. The expression “respondent” occurring in Section 2(q),¹² PWDVA has been understood to also include female relatives of the male aggressor/husband as the words

⁸ Rattan Deep v. Sushma, 2016 SCC Online Del 1294. Pramodini Vijay Fernandes v. Vijay Fernandes, 2010 SCCOnline BOM 246,

⁹ Section 26, Protection of Women from Domestic Violence Act, 2005.

¹⁰ Section 31, Protection of Women from Domestic Violence Act, 2005. Penalty for breach of protection order by respondent:

(1) A breach of protection order, or an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

(2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.

(3) While framing charges under sub-section (1), the Magistrate may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions.

¹¹ Supra note 6.

¹² Section 2(q), Protection of Women from Domestic Violence Act, 2005.

“adult male” were declared to have been deleted.¹³ The expressions “shared household” and “lives or at any stage has lived” continued to vex the courts in India until the Hon’ble Supreme Court in *Satish Chander Ahuja v. Sneha Ahuja*¹⁴ settled that the shared household need not belong to or be taken on rent by husband and the same could belong to any relatives of husband with whom the woman lived in domestic relationship. In furtherance to its ruling in *Satish Chander Ahuja* case, the Hon’ble Supreme Court held in *Prabha Tyagi v. Kamlesh Devi*¹⁵ that the right to reside in the shared household under Section 17¹⁶ read with Section 19,¹⁷ PWDVA cannot be restricted to “*actual residence*”, and even in the absence of actual residence, a woman could enforce her right to residence in the shared household. In other words, the right to residence in the shared household would not only include actual residence but also constructive residence.

The procedure for obtaining various reliefs is stipulated in Chapter IV, PWDVA (i.e. Sections 12 to 29).¹⁸ Section 12,¹⁹ PWDVA provides the procedure for filing the complaint before the concerned magistrate to seek requisite reliefs stipulated under Section 17 (Right to reside in Shared Household),²⁰ Section 18 (Protection orders)²¹, Section 19 (Residence Orders),²² Section 20 (Monetary Relief),²³ Section 21 (Custody Orders)²⁴ and Section 22 (Compensation)²⁵. Section 23,²⁶ PWDVA empowers the Magistrate to grant interim and ex-parte orders of the nature mentioned in Section 18 to Section 22,²⁷ PWDVA. Under Section

¹³ Hiral P. Harsora And Others V. Kusum Narottamdas Harsora And Others, 2016 SCC ONLINE SC 1118.

¹⁴ *Satish Chander Ahuja v. Sneha Ahuja*, (2021) 1 SCC 414.

¹⁵ *Prabha Tyagi v. Kamlesh Devi*, (2022) 8 SCC 90.

¹⁶ Section 17, Protection of Women from Domestic Violence Act, 2005 (which provides that 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 said house, and she shall not be evicted from the same except in accordance with the procedure established by law).

¹⁷ Section 19, Protection of Women from Domestic Violence Act, 2005 (which provides that the court may pass Residence orders restraining respondent from dispossessing the woman from or disturbing her possession of the shared household, amongst other things).

¹⁸ Section 12-29, Protection of Women from Domestic Violence Act, 2005.

¹⁹ Section 12, Protection of Women from Domestic Violence Act, 2005.

²⁰ *Supra* Note 16.

²¹ Section 18, Protection of Women from Domestic Violence Act, 2005.

²² *Supra* Note 17.

²³ Section 20, Protection of Women from Domestic Violence Act, 2005. (Magistrate may pass an order for payment of the maintenance for the aggrieved woman as well as her children).

²⁴ Section 21, Protection of Women from Domestic Violence Act, 2005.

²⁵ Section 22, Protection of Women from Domestic Violence Act, 2005. (Magistrate may pass an order directing the respondent to pay compensation and damages for the injuries, whether mental or physical, caused by the acts of domestic violence committed by that respondent).

²⁶ Section 23, Protection of Women from Domestic Violence Act, 2005. (Power to grant interim and ex parte orders of the nature mentioned from Section 18 to 22, PWDVA).

²⁷ *Supra* Note 18.

28,²⁸ PWDVA, it is stipulated that the proceedings under Sections 12, 18 to 23, and Section 31²⁹ are governed by the provisions of the Code of Criminal Procedure, 1973. However, it shall not preclude the court from laying down its own procedure for the disposal of an application under Section 12 or Section 23(2), PWDVA. Section 29,³⁰ PWDVA provides for the remedy of appeal against orders passed by the Magistrate. Section 31,³¹ PWDVA provides for the penalty for breach of protection order.

In the event of breach of orders passed by the Magistrate, there are provisions in PWDVA that can be utilized for the enforcement of the said orders, e.g. Section 20(6),³² PWDVA, which provides that in the event the respondent/husband fails to pay maintenance or monetary relief, the Magistrate is empowered to “*direct the employer or a debtor of the respondent*” to pay such amount from his wage/salary or debt owed to the aggrieved woman towards her maintenance. Section 20(6),³³ PWDVA is an extremely useful provision for women, whose partner/husband may be gainfully employed with a third party and drawing salary therefrom. In such a scenario, the attachment of the salary of the respondent ensures timely payments of maintenance required for the survival and sustenance of the woman and/or her children.

Section 31,³⁴ PWDVA is yet another important provision that provides a penalty for breach of a Protection order or of an interim protection order by Respondent. While Section 31(1),³⁵ PWDVA uses the words “protection order” or “interim protection order”, which are akin to the words used in Section 18³⁶ and Section 2(o),³⁷ PWDVA and gives an impression that Section 31, PWDVA can only be invoked in the event of a breach of “protection order”. However, some authors endorse the view that Section 31, PWDVA can be invoked for the breach of any order passed under the Act.³⁸ In addition to pursuing execution proceedings to enforce the order and

²⁸ Section 28, Protection of Women from Domestic Violence Act, 2005.

²⁹ Supra Note 10.

³⁰ Section 29, Protection of Women from Domestic Violence Act, 2005.

³¹ Supra Note 10.

³² Supra Note 23.

³³ Ibid.

³⁴ Supra Note 10.

³⁵ Ibid.

³⁶ Supra Note 21.

³⁷ Section 2, Protection of Women from Domestic Violence Act, 2005.

Definitions.—In this Act, unless the context otherwise requires:

(o) “protection order” means an order made in terms of section 18.

³⁸ Indira Jaising, The Lawyers Collective, and Monica Sakhrani, Advocate, Law of Domestic Violence, 2nd edn. (Universal Law Publishing Co. Pvt. Ltd.) at Pg. 63.

possibly filing contempt proceedings for its breach, there is also the option of criminal prosecution for violating the order.³⁹

III. CORE ISSUE

The main issue in controversy is whether non-payment of maintenance/monetary relief ordered to be paid to a woman (whether *ex-parte* or otherwise) under Section 20,⁴⁰ PWDVA amounts to a breach of a “protection order”, and consequently, whether said breach would be prosecutable/punishable under Section 31,⁴¹ PWDVA. If the answer to the aforesaid issue(s) is in the affirmative, it could be further argued that Section 31,⁴² PWDVA can be used to enforce other orders also, e.g. residence orders under Section 19,⁴³ custody orders under Section 21,⁴⁴ etc.

IV. DIVERGENCE OF OPINIONS OF VARIOUS HIGH COURTS

There is a divergence of opinions of various High Courts on the aforesaid issue although there is no dispute that Section 31 PWDVA can be invoked concerning the breach of protection order under Section 18, PWDVA. For ease of reference, the views expressed by various High Courts in the affirmative are first discussed below, followed by the views expressed by various High Courts in the negative.

A. HIGH COURTS THAT CONSIDER NON-PAYMENT OF MAINTENANCE AS BREACH OF PROTECTION ORDER PUNISHABLE UNDER SECTION 31, PWDVA

i. MADHYA PRADESH HIGH COURT

In *Sunil v. Sarita Chawla*,⁴⁵ it was held that the absence of a protection order does not preclude the prosecution under Section 31 of PWDVA. It was further observed that Section 18,⁴⁶ PWDVA authorizes the Court to issue a protection order against a respondent who perpetrates domestic violence. Under Section 37,⁴⁷ PWDVA the Central Government has formulated Rules

³⁹ Ibid.

⁴⁰ Supra note 23.

⁴¹ Supra note 10.

⁴² Ibid.

⁴³ Supra Note 17.

⁴⁴ Supra Note 24.

⁴⁵ *Sunil v. Sarita Chawla*, (2010) 1 MP LJ 196; (2009) 5 MPHT 319.

⁴⁶ Supra Note 21.

⁴⁷ Section 37, Protection of Women from Domestic Violence Act, 2005.

governing the Act. It was further held that according to Rule 6,⁴⁸ Protection of Women from Domestic Violence Rules (hereinafter referred to as the “**Rules**”) every application by the aggrieved person must be submitted using Form II.⁴⁹ It was observed that economic violence, defined in Form I, includes failure to provide financial support for necessities like food, clothing, and medicine, for which the Court can issue a protection order.⁵⁰ According to the view taken by the Hon’ble High Court of Madhya Pradesh, Section 28(2),⁵¹ PWDVA allows the Court to establish its procedures for disposing of applications filed under Section 12,⁵² PWDVA.⁵³ It was, therefore, held in the facts of the case that when the petitioner did not pay maintenance, the trial court did not act unlawfully by initiating proceedings under Section 31⁵⁴ of the Act.⁵⁵

The Division Bench of the High Court of Madhya Pradesh was again seized of related issues which were answered in *Surya Prakash v. Rachna*⁵⁶ under

- a) Whether non-payment of maintenance allowance be treated to be a breach of a ‘protection order’ or ‘interim protection order’? If it is not a breach of said orders, whether Section 31 of the PWDVA can be invoked?

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It was observed that the maintenance awarded by the Magistrate is essential for the aggrieved person's basic needs and survival, encompassing not only household essentials but also rental payments related to the shared household.⁵⁷ This amount serves as a form of protection under the Act, as defined in Section 3,⁵⁸ PWDVA extending beyond mere financial support to ensure the well-being of the aggrieved person.⁵⁹ It was held that the violations of such orders are subject to penalties outlined in Section 31,⁶⁰ PWDVA.⁶¹ It was further observed that the monetary relief provided under Section 20,⁶² PWDVA does not preclude the award of

⁴⁸ Rule 6, The Protection of Women from Domestic Violence Rules, 2006.

⁴⁹ Form II, The Protection of Women from Domestic Violence Rules, 2006.

⁵⁰ Form I, The Protection of Women from Domestic Violence Rules, 2006.

⁵¹ Supra Note 28.

⁵² Supra Note 19.

⁵³ Supra Note 45.

⁵⁴ Supra Note 10.

⁵⁵ Supra Note 45.

⁵⁶ *Surya Prakash v. Rachna*, 2017 SCC Online MP 2380.

⁵⁷ Ibid.

⁵⁸ Supra Note 6.

⁵⁹ Supra Note 56.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Supra Note 10.

maintenance under Section 18,⁶³ PWDVA which is integral to an affirmative order addressing domestic violence as defined in Section 3,⁶⁴ PWDVA.⁶⁵ Therefore, failure to pay maintenance constitutes a violation of a protection order, invoking Section 31,⁶⁶ PWDVA. In conclusion, it was held by the Hon'ble MP High Court that the non-payment of maintenance allowance is a deemed breach of a protection order, warranting proceedings under Section 31,⁶⁷ PWDVA.⁶⁸

b) Whether any other breach of any provision of the PWDVA, which does not fall within the ambit of a 'protection order' or 'interim protection order', can be a basis to invoke Section 31⁶⁹ of the PWDVA.

It was held by Hon'ble MP High Court that the said issue is required to be examined in the light of the definition of Section 3,⁷⁰ PWDVA, and if there was "*any instance of domestic violence, for which an affirmative or prohibitory order is passed under Section 18 of the Act, the provisions of Section 31 of the Act can be invoked.*"⁷¹

c) Whether the order passed in *Sunil @ Sonu v. Sarita Chawla*,⁷² conforms to the scheme of PWDVA.

The above question was answered in the affirmative.⁷³

ii. MADRAS HIGH COURT

The High Court of Madras in *S. Amalraj v State and Another*⁷⁴ dealt with the issue of whether the non-payment of maintenance amount is a breach of protection order for which the law enforcement authority has jurisdiction to register a criminal case under Section 31⁷⁵ of the PWDVA. It was observed by the Hon'ble Madras High Court as under:

⁶³ Supra Note 23.

⁶⁴ Supra Note 6.

⁶⁵ Supra Note 56.

⁶⁶ Supra Note 10.

⁶⁷ Ibid.

⁶⁸ Supra Note 56.

⁶⁹ Supra Note 10.

⁷⁰ Supra Note 6.

⁷¹ Supra Note 56.

⁷² Supra Note 45.

⁷³ Supra Note 56.

⁷⁴ *S. Amalraj v State and Another*, 2023 LiveLaw (Mad) 191.

⁷⁵ Supra Note 10.

“The transformation of the process of execution of maintenance order into penal statute is a measure of social justice and specially enacted to protect women and children and would fall within the constitutional sweep of Article 15(3) and reinforced under Article 39.”

The Hon’ble Madras High Court disagreed with the reasoning adopted by the Hon’ble Kerala High Court in *Suneesh v. State of Kerala*,⁷⁶ while it endorsed the ratio laid down by the Hon’ble Division Bench of Madhya Pradesh in the case of *Surya Prakash v. Rachna*⁷⁷ stating that Section 31,⁷⁸ PWDVA is the heartbeat of the PWDVA to regulate the violator of protection order passed under Section 18,⁷⁹ PWDVA.⁸⁰ It went a step further to state that the law enforcing authority or the police have jurisdiction to register a case for each breach of the order as the same amounts to a continuing offense.⁸¹

iii. **KARNATAKA HIGH COURT**

The Hon’ble High Court of Karnataka in *Vincent Shanthakumar v. Christina Geetha Rani*⁸² decided the issue of whether the breach of an *ex-parte* interim maintenance order passed by the Court under Section 23,⁸³ PWDVA can constitute an offense punishable under Section 31,⁸⁴ PWDVA. The Hon’ble Karnataka High Court held that economic abuse, as defined under Section 3,⁸⁵ PWDVA, qualifies as domestic violence under PWDVA.⁸⁶ It was observed that to prevent such acts and to ensure the victim is not deprived of court-ordered maintenance, the court has the authority under Section 23,⁸⁷ PWDVA to issue orders prohibiting the respondent from committing such domestic violence.⁸⁸ Although Section 23,⁸⁹ PWDVA does not specifically mention Section 18,⁹⁰ PWDVA, a harmonious reading of the aforesaid provisions suggests that maintenance orders issued under Section 23,⁹¹ PWDVA effectively protect the

⁷⁶ Infra Note 137.

⁷⁷ Supra Note 56.

⁷⁸ Supra Note 10.

⁷⁹ Supra Note 21.

⁸⁰ Supra Note 75.

⁸¹ Ibid.

⁸² Vincent Shanthakumar v. Christina Geetha Rani, 2014 SCC OnLine Kar 12409.

⁸³ Supra Note 26.

⁸⁴ Supra Note 10.

⁸⁵ Supra Note 6.

⁸⁶ Supra Note 83.

⁸⁷ Supra Note 26.

⁸⁸ Supra Note 83.

⁸⁹ Supra Note 26.

⁹⁰ Supra Note 21.

⁹¹ Supra Note 26.

victim from economic abuse, akin to those under Section 18,⁹² PWDVA. It was, therefore, decided that despite being aware of an order granting maintenance, whether issued ex parte or after hearing the parties, if the respondent willfully violates the order, “*it shall be taken as an order deemed to have been passed to prohibit the domestic violence and to protect the victim u/S. 18 of the Act, such violation is punishable u/S. 31 of the Act.*”⁹³ Such violations are punishable as long as the maintenance order remains enforceable unless it is formally vacated or canceled by the competent court.⁹⁴

iv. **BOMBAY HIGH COURT**

Although the aforesaid question central to this paper was not directly or substantially in issue before the Hon’ble Bombay High Court, in *Athish Rakesh Agarwal v. Pallavi Athish Aggarwal & Another*⁹⁵ stated that a criminal complaint can be filed if there is a breach of an order issued under an application under Section 12,⁹⁶ PWDVA granting any relief sought under Sections 18 to 22,⁹⁷ PWDVA.⁹⁸

B. HIGH COURTS THAT DO NOT CONSIDER NON-PAYMENT OF MAINTENANCE AS A BREACH OF PROTECTION ORDER PUNISHABLE UNDER SECTION 31, PWDVA

i. **DELHI HIGH COURT**

In *Nidhi Kaushik v. Union of India*,⁹⁹ the High Court of Delhi was seized of a matter about the cancelation of appointment from service owing to the pendency of proceedings under PWDVA against the Petitioner therein. As such, the Court briefly discussed the issue regarding the nature of proceedings under PWDVA, whether the same are civil or criminal. In doing so, the Hon’ble Delhi High Court observed that “*Section 31 of the Act provides for punishment only if a person commits a breach of protection order passed under Section 18 or an order of interim protection passed under Section 23 of the Act.*”¹⁰⁰ The above observations were made in the context of a service matter, wherein the core issue involved in this paper was not directly

⁹² Supra Note 21.

⁹³ Supra Note 83.

⁹⁴ Ibid.

⁹⁵ *Athish Rakesh Agarwal v. Pallavi Athish Aggarwal & Another*, 2020 SCCOnline BOM 5743.

⁹⁶ Supra Note 19.

⁹⁷ Supra Note 18.

⁹⁸ Supra Note 96.

⁹⁹ *Nidhi Kaushik v. Union of India*, 2014 SCC Online Del 3257.

¹⁰⁰ Ibid.

or substantially under consideration. However, in *Anish Pramod Patel v. Kiran Jyot Maini*,¹⁰¹ the Hon'ble Delhi High Court negated the assertion that the respondent can be summoned as an accused under Section 31,¹⁰² PWDVA for non-compliance with an order of monetary relief. The main reasoning adopted by Hon'ble Delhi High Court is based on a literal and strict reading of the provisions of PWDVA, particularly Section 31,¹⁰³ PWDVA being a penal provision, which uses the terms protection order or interim protection order, and wherein an order granting maintenance/monetary relief under Section 20,¹⁰⁴ PWDVA cannot qualify as a "protection order" which is separately defined in Section 2(o),¹⁰⁵ PWDVA and detailed in Section 18,¹⁰⁶ PWDVA.¹⁰⁷ The Hon'ble Court emphasized that individuals cannot be summoned under Section 31,¹⁰⁸ PWDVA for non-compliance with a monetary order, such as an order for payment of maintenance issued under Section 20,¹⁰⁹ of the PWDVA.¹¹⁰

ii. **RAJASTHAN HIGH COURT**

In *Kanchan v. Vikramjeet Setiya*,¹¹¹ the Hon'ble High Court of Rajasthan dealt with a similar issue. The Hon'ble Rajasthan High Court also adopted a literal interpretation in concluding that the term monetary relief is not mentioned in Section 31,¹¹² PWDVA, thereby making it inapplicable to any breach of an order of monetary relief.¹¹³ The remedy available to a woman, therefore, would be to seek an execution of the order as per Section 20,¹¹⁴ PWDVA, read with Section 125,¹¹⁵ Code of Criminal Procedure.¹¹⁶

iii. **KARNATAKA HIGH COURT**

Although Hon'ble High Court of Karnataka in *Vincent Shanthakumar v. Christina Geetha Rani*¹¹⁷ decided that the intentional breach of an *ex-parte* interim maintenance order passed by

¹⁰¹ *Anish Pramod Patel v. Kiran Jyot Maini*, 2023 SCC OnLine Del 7605.

¹⁰² *Supra* Note 10.

¹⁰³ *Ibid*.

¹⁰⁴ *Supra* Note 23.

¹⁰⁵ *Supra* Note 37.

¹⁰⁶ *Supra* Note 21.

¹⁰⁷ *Supra* Note 102.

¹⁰⁸ *Supra* Note 10.

¹⁰⁹ *Supra* Note 23.

¹¹⁰ *Supra* Note 102.

¹¹¹ *Kanchan v. Vikramjeet Setiya*, 2012 SCC OnLine Raj 3614.

¹¹² *Supra* Note 10.

¹¹³ *Supra* Note 112.

¹¹⁴ *Supra* Note 23.

¹¹⁵ Section 125, Code of Criminal Procedure, 1973.

¹¹⁶ *Supra* Note 112.

¹¹⁷ *Supra* note 83.

the Court under Section 23,¹¹⁸ PWDVA constitutes an offense under Section 31,¹¹⁹ PWDVA, the subsequent judgments passed by the Hon'ble High Court of Karnataka have taken a different view without referring to the decision in *Vincent Shanthakumar v. Christina Geetha Rani*¹²⁰ and are therefore *per incuriam*.

In *Francis Cyril C. Cunha v. Lydia Jane D. Cunha*,¹²¹ the Hon'ble High Court of Karnataka framed the issue as to whether a penal provision found in Section 31,¹²² PWDVA could be invoked for non-payment of arrears of maintenance.

The Hon'ble Karnataka High Court, relying on the decision of the Hon'ble High Court of Rajasthan in *Kanchan v. Vikramjeet Setiya*,¹²³ observed that the breach of the order of monetary relief will not pave the way to prosecute the husband. Similarly, in *Mohammed Yaseen Naikwadi v. Smt Aneesa Mohammed Yaseen Naikwadi*,¹²⁴ the Hon'ble Karnataka High Court relied on the aforesaid judgment, i.e. *Francis Cyril C. Cunha v. Lydia Jane D. Cunha*¹²⁵ and reiterated that the protection order does not include the order of granting monetary relief of maintenance under the Act.¹²⁶

iv. **KERELA HIGH COURT**

In *Kanaka Raj v. State of Kerala*,¹²⁷ the Hon'ble Kerela High Court considered the issue of whether a Magistrate is competent to direct the registration of a case and investigation of an offense under Section 31,¹²⁸ PWDVA, in the absence of a protection order or an interim protection order. The line of reasoning adopted by the Hon'ble Kerela High Court is based on a literal interpretation of Section 31,¹²⁹ PWDVA, wherein it observed that the said provision is applicable only in cases of breach of either a protection order or an interim protection order passed under Section 18,¹³⁰ PWDVA and as defined under Section 2(o),¹³¹ PWDVA of the Act.

¹¹⁸ Supra Note 26.

¹¹⁹ Supra Note 10.

¹²⁰ Supra note 83.

¹²¹ Francis Cyril C. Cunha v. Lydia Jane D. Cunha, 2015 SCC OnLine Kar 8760.

¹²² Supra Note 10.

¹²³ Supra Note 112.

¹²⁴ Mohammed Yaseen Naikwadi v. Smt Aneesa Mohammed Yaseen Naikwadi, 2023 KHC 14623.

¹²⁵ Supra Note 122.

¹²⁶ Supra Note 125.

¹²⁷ Kanaka Raj v. State of Kerala, 2009 SCC OnLine Ker 2822.

¹²⁸ Supra Note 10.

¹²⁹ Supra Note 10.

¹³⁰ Supra Note 21.

¹³¹ Supra Note 37.

The Hon'ble Kerela High Court further observed that to execute or enforce other orders passed under Section 19-22,¹³² PWDVA, recourse could be made to Section 28,¹³³ PWDVA which provides for the applicability of the provisions of the Code of Criminal Procedure.¹³⁴ Similar reasoning was adopted by the Hon'ble Kerela High Court in *P.R. Velayudhan Nair v. Chimminikkara Karthiayani*.¹³⁵ Recently, an identical issue again came up for consideration before Hon'ble Kerela High Court in *Suneesh v. State of Kerala*,¹³⁶ wherein it has adopted the same approach and held as under:

“Here, the legislature vigilantly included ‘protection orders’ alone under Section 31 of the D.V Act after specifically categorizing the orders which would be given under the head ‘protection orders’ under Section 18 of the D.V Act. Another very pertinent aspect to be noted in this context is the implication and ramification of widening the scope of Section 31. Say for instance, a person when ordered to pay a specified amount every month as maintenance or interim maintenance and under Section 20(4) of the D.V Act, if he fails to pay the same on completion of every month for justified/unavoidable reasons, is it fair to hold that the said failure and omission would be penalized under Section 31 of the D.V Act. Similar is the position in as much as other orders excluding the order under Section 18. Moreover, if such a wide interpretation is given, the Courts will be over-flooded with cases under Section 31 of the D.V Act and the said situation cannot said to have been intended by the legislature. Therefore, the Court cannot overturn the legislative wisdom to hold that a ‘monetary relief’ such as payment of maintenance, if disobeyed, the same also would attract a significant penalty under Section 31 of the D.V Act, treating the same as a breach of ‘protection order’ or ‘interim protection order’.”¹³⁷

¹³² Supra Note 18.

¹³³ Supra Note 28.

¹³⁴ Supra Note 128.

¹³⁵ *P.R. Velayudhan Nair v. Chimminikkara Karthiayani*, 2009 SCC OnLine Ker 6842.

¹³⁶ *Suneesh v. State of Kerala*, 2022 SCC OnLine Ker 6210.

¹³⁷ *Ibid.*

v. **TRIPURA HIGH COURT**

In *Sumitra Debnath v. Ratan Debnath*,¹³⁸ the Hon'ble Tripura High Court held that the orders granting residence and monetary relief by the magistrate cannot qualify as orders passed in terms of Section 18,¹³⁹ PWDVA. Therefore, the Magistrate cannot take cognizance under Section 31,¹⁴⁰ PWDVA for breach of the orders of residence and monetary relief under Sections 19¹⁴¹ and 20,¹⁴² PWDVA. The Hon'ble Tripura Court also noted that there is no provision in the statute for enforcement of the order passed under Section 19(8),¹⁴³ PWDVA, though the provisions of the Code of Criminal Procedure could be resorted to for the execution of the orders of monetary relief.¹⁴⁴ The Hon'ble High Court also emphasized the need for legislative change to provide a mechanism for the enforcement of such orders.¹⁴⁵

vi. **ALLAHABAD HIGH COURT**

In *Manoj Anand v. State of U.P.*,¹⁴⁶ the Hon'ble Allahabad High Court dealt with an identical issue and held that the orders granting monetary relief are capable of being enforced under the Code of Criminal Procedure.¹⁴⁷

vii. **BOMBAY HIGH COURT**

The Hon'ble Bombay High Court in *Sachin v. Sau. Sushma*¹⁴⁸ dealt with the issue of whether non-bailable warrants (NBWs) should be issued against defaulters to recover arrears while exercising power under Section 28(2),¹⁴⁹ PWDVA. It was observed that Section 28(2),¹⁵⁰ PWDVA “*can be pressed into service when there is no provision available for implementing a particular order passed under the Protection of Women from Domestic Violence Act, 2005.*”

¹³⁸ *Sumitra Debnath v. Ratan Debnath*, 2015 SCC OnLine Tri 278.

¹³⁹ Supra Note 21.

¹⁴⁰ Supra Note 10.

¹⁴¹ Supra Note 17.

¹⁴² Supra Note 23.

¹⁴³ Supra Note 139

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ *Manoj Anand v. State of U.P.*, 2012 SCC OnLine All 308.

¹⁴⁷ Ibid.

¹⁴⁸ *Sachin v. Sau. Sushma*, 2014 SCC OnLine Bom 592.

¹⁴⁹ Supra Note 28.

¹⁵⁰ Ibid.

If the procedure is available in the Code of Criminal Procedure, that is necessary to be followed.”¹⁵¹

The Court further held that:

“Thus there is absolutely clear provision under the Code of Criminal Procedure, which lays down as to how the amount of maintenance, final or interim, is to be recovered. The Magistrate, in my opinion, could not have issued a non-bailable warrant directly. He should have followed the procedure laid down in sub-section (3) of Section 125 and Section 421 of the Code of Criminal Procedure.”¹⁵²

viii. **MADRAS HIGH COURT**

In *S. Jeeva Ashok v. Kalarani*,¹⁵³ the Hon’ble High Court of Madras held that an interim order passed under Section 23,¹⁵⁴ PWDVA cannot be construed as a protection order and therefore, it is not enforceable under Section 31,¹⁵⁵ PWDVA.

V. OBSERVATIONS PASSED BY THE APEX COURT AND THE EFFECT THEREOF

It appears that none of the previously cited judicial decisions make any reference to the judgment passed by Hon’ble Supreme Court of India in *Kunapareddy alias Nookala Shanka Balaji v. Kunapareddy Swarna Kumari and Another*,¹⁵⁶ which could have somewhat settled the controversy or could have at least served as the north star for the Hon’ble High Courts before embarking on the interpretation of the provisions of PWDVA to decide the issue either way. Article 141 of the Constitution of India lays the foundation for the principle of *stare decisis*,¹⁵⁷ which is quintessential for judicial discipline and also for bringing uniformity and certainty to the decision-making process. In the above case, the main issue was whether a court dealing with the petition filed under PWDVA has the power to allow an amendment to the petition/complaint originally filed, and the consequent issue was whether the proceedings under

¹⁵¹ Supra Note 149.

¹⁵² Supra Note 149.

¹⁵³ *S. Jeeva Ashok v. Kalarani*, 2015 SCC OnLine Mad 3719.

¹⁵⁴ Supra Note 26.

¹⁵⁵ Supra Note 10.

¹⁵⁶ *Kunapareddy alias Nookala Shanka Balaji v. Kunapareddy Swarna Kumari and Another*, (2016) 11 SCC 774.

¹⁵⁷ Article 141, Constitution of India, 1950.

PWDVA are civil or criminal. The following observations made by the Hon'ble Supreme Court are relevant to the present issue:

“13. Procedure for obtaining order of reliefs is stipulated in Chapter IV of the DV Act which comprises Sections 12 to 29 ... Section 23 vests the Magistrate with the power to grant interim ex-parte orders. It is, thus, clear that various kinds of reliefs which can be obtained by the aggrieved person are civil. At the same time, when there is a breach of such orders passed by the Magistrate, Section 31 terms such a breach to be a punishable offense.” (emphasis added)¹⁵⁸

A mere perusal of the observations made by the Hon'ble Supreme Court of India clarifies that while the initial reliefs passed by a Magistrate under Section 18 to 22,¹⁵⁹ PWDVA may be civil, however, once the order is passed the Magistrate granting reliefs such as the monetary relief or residence, etc., the breach thereof is a punishable offense under Section 31,¹⁶⁰ PWDVA. While the above observations came to be made concerning the issue of whether the proceedings under PWDVA were civil or criminal and whether an amendment to the original complaint could be made, the said observations are extremely crucial as the same formed part of the “reasoning” arrived by the Hon'ble Supreme Court and which were essential to determine whether the proceedings were civil or criminal. In *Secunderabad Club v. CIT*,¹⁶¹ the Hon'ble Supreme Court reiterated that the law declared by the Supreme Court (even an obiter dictum) is binding on all the courts under Article 141,¹⁶¹ Constitution of India.

Thus, it can be safely concluded that the Hon'ble High Courts (especially the ones that have decided the core issue in the negative) have not considered the aforesaid observations passed by the Hon'ble Supreme Court of India, and thus do not lay down the correct law.

VI. ANALYSIS

Following the above discussion of the provisions of the Protection of Women from Domestic Violence Act (PWDVA) and various judicial precedents, I delve into addressing the central issue outlined in this paper. It would be appropriate to analyze the relevant provisions of the

¹⁵⁸ Supra Note 157.

¹⁵⁹ Supra Note 18.

¹⁶⁰ Supra Note 10.

¹⁶¹ Supra Note 158.

PWDVA in the backdrop of the tool for purposive interpretation, which may apply to such beneficial legislations.

- (1) The words “protection order” occurring in Section 31,¹⁶² PWDVA have become the pivot on which the relief for enforcement of the orders passed by the magistrate depends. The High Courts, which have decided the core issue in the negative, have taken a narrow, restrictive, and literal interpretation to rely on Section 2(o),¹⁶³ PWDVA read with Sections 18¹⁶⁴ and 31,¹⁶⁵ PWDVA to suggest that the prosecution contemplated under Section 31,¹⁶⁶ PWDVA can only be initiated in the context of protection order passed under Section 18,¹⁶⁷ PWDVA. Section 2(o),¹⁶⁸ PWDVA defines protection order to mean an order passed in terms of Section 18,¹⁶⁹ PWDVA, which provides for certain prohibitory remedies like restraining the respondent from committing or aiding or abetting the commission of any act of domestic violence, entering the place of employment of aggrieved person, attempting to communicate with the aggrieved person, alienating assets or operating bank accounts/lockers, alienating istridhan, causing violence to dependents or relatives of aggrieved person or committing any other act as may be mentioned in the protection order.
- (2) Although the words used in Section 31,¹⁷⁰ PWDVA are “protection order” or “interim protection order,” it would be incorrect to restrict the same to Section 2(o)¹⁷¹ or Section 18,¹⁷² PWDVA, especially when Section 2,¹⁷³ PWDVA itself provides “*unless the context otherwise requires*” which opens up the possibility of a contextual interpretation. Furthermore, it is one of the mechanisms to enforce various orders passed by a Magistrate for residence, custody, or monetary relief in addition to Section 20(6),¹⁷⁴ PWDVA which provides for the attachment order for the salary of the respondent and may be applicable only in case of salaried employees. Arguably, the orders passed by a Magistrate under Sections 19 to 22,¹⁷⁵ PWDVA are also like protection even though they may not be

¹⁶² Supra Note 10.

¹⁶³ Supra Note 37.

¹⁶⁴ Supra Note 21.

¹⁶⁵ Supra Note 10

¹⁶⁶ Ibid.

¹⁶⁷ Supra Note 21

¹⁶⁸ Supra Note 37.

¹⁶⁹ Supra Note 21.

¹⁷⁰ Supra Note 10.

¹⁷¹ Supra Note 37.

¹⁷² Supra Note 21.

¹⁷³ Supra Note 37.

¹⁷⁴ Supra Note 23.

¹⁷⁵ Supra Note 18.

expressly termed as protection orders. Section 18(a),¹⁷⁶ PWDVA provides that a Magistrate may pass an affirmative protection order in favor of an aggrieved person and prohibit the respondent from “*committing any act of domestic violence*”. The word “Domestic Violence” has been defined in Section 3¹⁷⁷ of PWDVA, and takes into its ambit “physical abuse”, “sexual abuse”, “verbal and emotional abuse”, “economic abuse”, etc. An order granting monetary relief or maintenance may be construed as a protection order as it prohibits the respondent from committing economic abuse. Similarly, an order granting the right to reside or access to personal effects in the shared household may also be construed as a protection order as it prohibits the respondent from committing economic abuse. Further, an order granting temporary custody of the child to the aggrieved person is like a protection order as it prohibits the respondent from committing physical (mental) and emotional abuse.

- (3) Thus, the words “protection order” appearing in Section 31,¹⁷⁸ PWDVA ought not to be interpreted or construed in isolation while ignoring the purpose and scheme of the entire legislation. It would be apposite to mention that the intention of the legislature can be gauged from the very title of the PWDVA, i.e. “Protection” of Women from the “Domestic Violence” Act. The legislative intent and its context stand fortified by the Preamble, which reads as under:

*An Act 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.*¹⁷⁹

The word “Protection” is thus employed by the legislature to confer protection to women from domestic violence of any kind and to also protect their rights guaranteed under the law, which cannot be enjoyed or protected in the absence of a proper enforcement mechanism.

- (4) The legislature has, in the exercise of powers conferred in Section 37,¹⁸⁰ PWDVA, framed Rules, wherein Rule 15¹⁸¹ refers to the “*Breach of Protection Orders*” and Rule 15(7),¹⁸² Rules provides that any resistance to the enforcement of the orders of the Court under the

¹⁷⁶ Supra Note 21.

¹⁷⁷ Supra Note 6.

¹⁷⁸ Supra Note 10.

¹⁷⁹ Preamble, Protection of Women from Domestic Violence Act, 2005.

¹⁸⁰ Supra Note 47.

¹⁸¹ Rule 15, The Protection of Women from Domestic Violence Rules, 2006.

¹⁸² Rule 15(7), The Protection of Women from Domestic Violence Rules, 2006.

Act by the Respondent shall be deemed to be a breach of a protection order or an interim protection order.

- (5) There is yet another angle from which this controversy can be viewed. PWDVA is a piece of beneficial legislation, and it aims to provide a one-stop forum for women to enforce their rights expediently. Section 31(2),¹⁸³ PWDVA provides that the alleged breach “*shall as far as practicable be tried by the Magistrate who had passed the order*”, Section 26,¹⁸⁴ PWDVA, empowers the grant of reliefs available under PWDVA in any other legal proceeding pending between the parties, and Section 28(2),¹⁸⁵ PWDVA confers flexibility to the court to lay down its procedure for disposal of the application under Section 12¹⁸⁶ or Section 23,¹⁸⁷ PWDVA. If a woman is not allowed to enforce her rights or seek redressal for non-compliance with the orders passed in her favor for residence (Section 19), monetary relief (Section 20), custody (Section 21), etc. under Section 31, PWDVA, there being no other remedy under PWDVA, she will be compelled to file other proceedings, e.g. contempt of court before concerned High Court, execution about reliefs capable of monetary realization, etc. which is both time-consuming and expensive. The aggrieved woman would be made to run from pillar to post, which may be *de hors* the objectives of PWDVA. The difficulties faced by women in enforcing and executing the orders of the courts granting maintenance, and the transformation from the object of preventive maintenance proceedings under the Code of Criminal Procedure into a punitive one, is aptly captured by Madras High Court in *S. Amalraj v State and Another*,¹⁸⁸ wherein it was observed as under:

11.1. Before the commencement of the DV Act, 2015, due to the existing cumbersome procedure to enforce the maintenance order by means of distress warrant procedure under Section 125(3) Cr. P. C as well as distraint warrant procedure under Section 128 Cr. P.C., the aimed result of getting maintenance amount in a speedy manner, has been thwarted. The said execution proceeding comprised its own procedure of filing an execution petition, attachment of the property, salary and finally order for arrest, that too, after consuming 1/6 portion of the life

¹⁸³ Supra Note 10.

¹⁸⁴ Supra Note 9.

¹⁸⁵ Supra Note 28.

¹⁸⁶ Supra Note 19.

¹⁸⁷ Supra Note 26.

¹⁸⁸ Supra Note 75.

period of women and 1/2 portion of the maintenance amount, for meeting the legal expenditure. After the above-mentioned detailed procedure, the trial Court would order the sentence of imprisonment on the husband for not making the payment of the maintenance amount and almost, all the arrest orders have been stayed either by the Revisional Court or by the High Court. As the result, the queue of women folk to get the fixed maintenance amount is endless either in the Execution Court, Revision Court or High Court. In the said circumstances, even though the maintenance proceeding under the Code of Criminal Procedure intended as speedy remedy, reality goes otherwise and once again women are driven to the original position of distress. The execution of maintenance order through Court process has become futile exercise. So, in order to provide immediate relief to the queue of women waiting for getting determined maintenance amount, the legislature brought the penal provision under Section 31 of the DV Act as a life-saving medicine by treating the failure of remittance of maintenance as an offense and crime. The legislature has the present DV Act with the penal provision with an intention of suppressing the mischief of delayed execution proceeding of maintenance award and to provide the speedy remedy to the victim to avoid further destitution and vagrancy.

...

15. It is also aimed to eradicate the situation of a poor woman asked to run from pillar to post for getting a speedy recovery under the Code of Criminal Procedure. There is a complete transformation from the object of preventive maintenance proceedings under the Code of Criminal Procedure into a punitive one i.e., the object of the maintenance proceeding is not to punish a person for his past neglect, but to prevent vagrancy by compelling the husband to make payment as a moral claim to support which has been transformed into legal obligation with probable threat of registration of the criminal case, arrest of husband and likely conviction.

VII. CONCLUSION

To conclude, if the rigors of Section 31,¹⁸⁹ PWDVA are inapplicable to the orders passed under Section 19 to 22,¹⁹⁰ PWDVA there is no other equally efficacious remedy to enforce and/or seek redressal for non-compliance of some of the orders passed by the magistrate, especially where the relief cannot be calculated in terms of money, e.g. residence within the shared household, visitation or custody of the child, etc., and resultantly, there will be no remedy for the intentional breach of such orders, which will essentially defeat the purpose and objectives of the PWDVA. The legislature could not have intended to enact a toothless legislation. Therefore, the courts should apply purposive interpretation to eliminate the mischief and to further the objectives of PWDVA. It will be pertinent to mention here that Section 31,¹⁹¹ PWDVA punishes the breach of protection orders vis a vis enforcement thereof, which aspects also needs some deliberation, while Chapter IX, Code of Criminal Procedure only deals with the orders of maintenance, and thus inapplicable to proceedings under Section 31,¹⁹² PWDVA. Chapter VIII, Code of Criminal Procedure deals with security for peace and good behavior. It will therefore be questionable as to which provisions of the Code of Criminal Procedure are applicable for enforcement of reliefs under Sections 19, 20, 21, and 22 of the PWDVA¹⁹³, in case Section 31,¹⁹⁴ PWDVA does not come to the aid of aggrieved women whose husbands/live in partners continue to violate the orders passed by the Magistrate.

Given the conflicting opinions of various High Courts, the women victims of domestic violence often face distress in getting timely relief, especially in the absence of clarity regarding the applicability of the deterrent envisaged in Section 31,¹⁹⁵ PWDVA. It would be apt that the legislature plugs this ambiguity with necessary amendments and provides a proper procedure for the enforcement of distinct types of orders passed in PWDVA, thereby making PWDVA comprehensive and self-contained. An amendment to Section 31,¹⁹⁶ PWDVA which clarifies that an intentional or deliberate breach of any order(s) passed by the Magistrate under Sections 12, 18-23¹⁹⁷ of the PWDVA may serve the purpose of punishing breach of order(s) passed by

¹⁸⁹ Supra Note 10.

¹⁹⁰ Supra Note 18.

¹⁹¹ Supra Note 10.

¹⁹² Ibid.

¹⁹³ Supra Note 18.

¹⁹⁴ Supra Note 10.

¹⁹⁵ Ibid.

¹⁹⁶ Ibid.

¹⁹⁷ Supra Note 18.

the Magistrate to protect women from different forms of domestic violence, and the words “intentional or deliberate” shall act as a safeguard to shield perpetrators who could not obey the said orders due to genuine or unavoidable reasons.

While such an amendment clarifying the application of Section 31,¹⁹⁸ PWDVA may be a welcome step, in the meantime, Hon’ble High Courts ought to follow the judgment of the Honorable Supreme Court of India in *Kunapareddy alias Nookala Shanka Balaji v. Kunapareddy Swarna Kumari and Another*.¹⁹⁹



¹⁹⁸ Supra Note 10.

¹⁹⁹ Supra Note 157.