

The Protection from Domestic Violence Bill, 2002

A

BILL

to protect the rights of women who are victims of violence of any kind occurring within the family and to provide for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Protection from Domestic Violence Act, 2002.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

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

(a) “aggrieved person” means any woman who is or has been a relative of the respondent and who alleges to have been subjected to act of domestic violence by the respondent;

(b) “domestic violence” has the same meaning assigned to it as in section 4;

(c) “Magistrate” means the Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, exercising jurisdiction under the Code of Criminal Procedure, 1973 (2 of 1974) in the area where the aggrieved person resides;

(d) “monetary relief” means compensation which a Magistrate may order at any stage during the hearing of application seeking a protection order, to meet the expenses incurred and losses suffered by the aggrieved person as a result of the domestic violence;

(e) “notification” means a notification published in the Official Gazette;

(f) “prescribed” means prescribed by rules made under this Act;

(g) “Protection Officer” means an officer appointed by the State Government under section 5;

(h) “protection order” means an order made under section 14;

(i) “relative” includes any person related by blood, marriage or adoption and living with the respondent;

(j) “respondent” means any person who is or has been a relative of the aggrieved person and against whom the aggrieved person has sought monetary relief or has made an application for protection order to the Magistrate or to the Protection Officer, as the case may be; and

(k) “service provider” means any voluntary association 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 means including legal aid, medical, financial or other assistance.

3. Act not in derogation of any other law.-The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.

CHAPTER II DOMESTIC VIOLENCE

4. Domestic violence.-*(1)* For the purposes of this Act, any conduct of the respondent shall constitute domestic violence if he,—

(a) habitually assaults or makes the life of the aggrieved person miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment; or

(b) forces the aggrieved person to lead an immoral life; or

(c) otherwise injures or harms the aggrieved person.

(2) Nothing contained in clause (c) of sub-section *(1)* shall amount to domestic violence if the pursuit of course of conduct by the respondent was reasonable for his own protection or for the protection of his or another’s property.

CHAPTER III PROTECTION OFFICER

5. Appointment of Protection Officer.-*(1)* The State Government shall, by notification in the Official Gazette, appoint such number of Protection Officers in each district as it may consider necessary and shall notify the area or areas within which a Protection Officer shall exercise his powers and perform his duties under this Act.

(2) The Protection Officer shall possess such qualifications as may be prescribed.

(3) The terms and conditions of service of the Protection Officer and other officers and employees shall be such as may be prescribed.

6. Duties of Protection Officer.-*(1)* Where the Protection Officer, after enquiry, believes either *suo motu* or on the basis of information received from any person under sub-section *(1)* of section 8 that action should be taken, it shall be his duty to—

(a) inform the aggrieved person of right to apply for protection order under section 9;

(b) inform about a service provider in the area where the aggrieved person resides so that she may seek support and help from such service provider;

(c) inform the aggrieved person of her entitlement to legal services under the Legal Services Authorities Act, 1987 (39 of 1987);

(d) perform such other duties as may be prescribed or as may be ordered to be

performed by the Magistrate.

(2) It shall also be the duty of the Protection Officer to entertain any request or application made or presented to him under the provisions of this Act by the aggrieved person or by any other person on behalf of the aggrieved person.

(3) The Protection Officer on receipt of an application under sub-section (2) shall, where so desired by the aggrieved person, endeavour to assist the aggrieved person and the respondent in an independent and impartial manner to reach an amicable settlement of the grievance under this Act.

(4) If no such settlement as stated in sub-section (3) is arrived at, the Protection Officer shall file an application to the Magistrate under this Act if so desired by the aggrieved person.

7. Powers of Protection Officer.-(1) A Protection Officer within the local limits for which he is appointed shall exercise such powers as may be conferred on him by or under this Act.

(2) A Protection Officer may take assistance of any person while exercising his powers or discharging his duties under this Act.

(3) A Protection Officer authorised to discharge functions under this Act shall be deemed to be a Civil Court for the purposes of holding enquiries under this Act.

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

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

CHAPTER IV

PROCEDURE FOR OBTAINING PROTECTION ORDER

9. Application to Magistrate.-(1) The aggrieved person who is a victim of domestic violence, or any other person on her behalf, or the Protection Officer, may present an application to the Magistrate for seeking relief under section 14.

(2) The application under sub-section (1) may contain particulars in such form as may be prescribed or as near thereto as possible.

(3) The Magistrate shall fix first date of hearing which shall not exceed fifteen days from the date of the receipt of the application by the Magistrate for consideration of the application.

10. Service of notice.-(1) Notice of the date fixed under section 9 shall be given by the Magistrate to the Protection Officer, who shall get it served by such means as may be prescribed on the respondent, and on any other person, as directed by the Magistrate.

(2) A declaration in such form as may be prescribed, of the Protection Officer regarding service of notice shall be the proof that such notice was served upon the respondent and on any other person as directed by the Magistrate unless the contrary is proved.

11. Counselling.-(1) The Magistrate at any stage of the proceedings under this Act may direct the respondent or the aggrieved person, either singly or jointly, to undergo mandatory counselling with any service provider.

(2) Where the Magistrate has issued any direction under sub-section (1), he shall fix the next date of hearing of the case within a period not exceeding two months.

12. Assistance of welfare expert.-In any proceedings under this Act, the Magistrate may secure the services of such person, preferably a woman where available, whether related to parties or not, including a person engaged in promoting family welfare as he thinks fit, for the purpose of assisting him in discharging his functions.

13. Proceedings to be held *in camera*.-The proceedings may be held *in camera*, if the Magistrate considers that the circumstances of the case so warrant, and shall be so held if either party so desires.

14. Passing of protection order.-(1) The Magistrate, after giving opportunity of being heard to the parties to the application, and after being satisfied that the aggrieved person is being subjected to domestic violence,—

(a) may pass the protection order by directing the respondent to,—

(i) refrain from committing any act of domestic violence; or

(ii) pay such monetary relief as the Magistrate deems just, and specify the period in the protection order within which the amount of such monetary relief is to be paid by the respondent to the person aggrieved; or

(b) pass such other direction as may be considered necessary.

(2) Subject to section 11, every endeavour shall be made by the Magistrate hearing the application under this Act to dispose it of within three months from the date of filing of the application.

(3) All evidence in any proceeding under this Act shall be taken in the presence of the respondent, or, when a personal attendance of the respondent is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed for summons-cases in the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that if the Magistrate is satisfied that the respondent is wilfully avoiding service of notice, or wilfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case *ex parte*.

(4) A copy of the protection order shall be forwarded to the Protection Officer and parties to the application.

(5) Where the Magistrate is satisfied that circumstances stated in the application presented under section 9 are such so as to justify the immediate intervention of the Magistrate to restrain the respondent from committing domestic violence, the Magistrate may issue an interim protection order directing the respondent to refrain from engaging in any act of domestic violence, and the Magistrate may further require the respondent to show cause as to why he should not be ordered to execute a bond, with or without sureties, for maintaining domestic peace for such period as the Magistrate thinks fit.

15. Duration and alteration of protection order.-(1) A protection order made under section 14 shall be in force in the first instance for such period as the Magistrate may fix but not exceeding two years.

(2) The protection order, for reasons to be recorded in writing, may be altered, modified, varied or revoked, on an application either by the aggrieved person or the respondent provided that the Magistrate is satisfied that there is a change in the circumstances that requires such alteration, modification, variation or revocation, as the case may be.

CHAPTER V

MISCELLANEOUS

16. Appeal.-There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be.

17. Protection Officer to be public servant.-Every Protection Officer, when acting or purporting to act under this Act, shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

18. Penalty for breach of protection order by the respondent.-A breach of protection order, or of the interim protection order, by the respondent shall be an offence and shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to rupees twenty thousand, or with both.

19. Penalty for not discharging duties by Protection Officer.-If any Protection Officer fails or refuses to discharge his duties as directed by the Magistrate in the protection order without any sufficient cause, he shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to rupees twenty thousand, or with both.

20. Cognizance of offence committed by Protection Officer.-No prosecution or other legal proceeding shall lie against the Protection Officer unless a complaint is filed with the previous sanction of the State Government or an officer authorised by it in this behalf.

21. Protection of action taken in good faith.-No suit, prosecution or other legal proceedings shall lie against the Protection Officer for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act or any rule made thereunder.

22. Power to make rules.-(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) qualifications, terms and conditions of service for the appointment of Protection Officers, other officers and employees and their duties under section 5;

(b) duties of the Protection Officer under section 6;

(c) prescribing the form in which the application may be presented under sub-

section (2) of section 9;

(d) the form and manner in which notice may be served on the respondent and other persons by the Protection Officer under section 10; and

(e) any other matter in connection with or in relation to this Act.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

Domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Platform of Action (1995) both have acknowledged this. The United Nations Committee on CEDAW (Convention on Elimination of All Forms of Discrimination Against Women) 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 visited with cruelty by her husband or his relatives is an offence under section 498A of the Indian Penal Code, 1860. The civil law does not address this phenomenon in its entirety.

3. With a view to providing a remedy under the civil law which is intended to preserve the family and at the same time provide protection to victims of domestic violence, legislation is being proposed. The main features as contained in the Bill are as follows:—

(i) it is being provided that any conduct of relative of the victim, which subjects her to habitual assault, or makes her life miserable, or injures or harms, or forces her to lead an immoral life would constitute domestic violence;

(ii) the Judicial Magistrate of the first class or the Metropolitan Magistrate may take the cognizance of domestic violence and pass a protection order requiring the relative of the woman to refrain from committing an act of domestic violence, or pay monetary relief which is deemed fit in the circumstances or pass any other direction as the Magistrate may consider just;

(iii) the Magistrate may even require as an interim and urgent measure from the relative of the woman to execute a bond, with or without sureties, for maintaining domestic peace;

(iv) the violation by the relative of the order made by the Magistrate would constitute an offence punishable with imprisonment up to one year, or with fine, or with both;

(v) it is being proposed to set up an institution of Protection Officer to help the victim of

domestic violence in making application to the Magistrate and in availing of her other legal rights;

(vi) a provision is being made for the appointment of Protection Officers by State Governments and they shall possess such qualifications as may be prescribed by the Central Government; and

(vii) Protection Officer shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860, and if he fails or refuses to discharge the duties as directed by the Magistrate, his act shall amount to an offence punishable with imprisonment up to one year, or with fine, or with both.

4. The Bill seeks to achieve the above objects.

NEW DELHI; MURLI MANOHAR JOSHI.

The 14th February, 2002.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clauses (2) and (3) of clause 5 seek to confer power on the Central Government to make rules for prescribing qualification, terms and conditions of service of the Protection Officer and other officers subordinate to him. Clause 6 prescribes duties of Protection Officer in addition to the duties which the Central Government can impose on them by virtue of powers conferred by sub-clause (1) of the said clause. Sub-clause (2) of clause 9 confers power on the Central Government to make rules for prescribing the form in which the application may be presented by the aggrieved person to the Magistrate. Sub-clauses (1) and (2) of clause 10, confer power on the Central Government to make rules regarding service of notice on respondent. Clause 22, *inter alia*, confers power on the Central Government to make rules for carrying out the purposes of the Bill, and for any other matter in connection or in relation to the Bill.

2. The matter in respect of which provision may be made in the rules are generally matters of procedure and detail. The delegation of legislative power, is therefore, of a normal character.

FINANCIAL MEMORANDUM

The provisions of the Protection from Domestic Violence Bill, 2002 will be enforced through the existing machinery of the States and the Union territories. It is not envisaged to create any new post at any level. Therefore, no expenditure is involved from the Consolidated Fund of India.

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