

The Protection of Women from Domestic Violence Act, 2005

What it is ?

- It is a piece of social legislation, passed by the Parliament of India, in August, 2005. It received the assent of the President of India on 13th September, 2005. It is now a part of the law of the land, that is, of India.

2. Its object

To protect women from domestic violence.

2.1. Not that there was no law in India earlier dealing with violence against women.

2.2. The previous law, however, was not specific to domestic violence against women.

2.3. Therefore it was not very effective in controlling violence committed against women, within the family or inside the household.

3. Commencement of the Act.

This Act came into force on 26th October 2006.

4. Extent of operation

It extends to the whole of India, except the State of Jammu and Kashmir

5. Domestic Violence – its literal meaning

Simply speaking, it means violence committed by a member of the family against another member.

5.1. Here, the term “domestic” has been used as an adjective. It pertains to home, family, household, private and the like.

5.2 Violence within the family or inside the household, between parties, who are in intimate relationship with each other, is commonly called “Domestic Violence”.

6. Domestic Violence under the Act

The expression “Domestic Violence” has been defined in sec 3 of the Act.

- 6.1 It is very comprehensive. It embraces wide range of wrongs.
- 6.2 Roughly it includes physical injury, mental harm, sexual harassment, economic exploitation, emotional abuse and many acts of commissions and omissions rooted in gender discrimination, inequality, subordination and injustice.

6.3 The Act does not, however, cover all kinds of violence against women. The violence, to be within the meaning of the Act, has to fulfil certain conditions, namely

- i. the victim must be a woman
- ii. the violence should be committed by an adult male person.
- iii. There should exist domestic relationship between the two persons, namely the aggrieved woman and the alleged perpetrator of violence.

Note : the violence against the children under the care and custody of the victim woman is also covered by the Act.

7. Reliefs available under the Act :-

- i) Protection order (sec. 18)
- ii) Residence order (sec. 19)
- iii) Monetary Relief (sec. 20)
- iv) Custody order (sec. 21)
- v) Compensation order (sec. 22)
- (vi) Interim and ex parte order (sec. 23)

8. The Authority competent to grant such reliefs

All the reliefs specified in para (7) above may be granted by the same Authority, namely Judicial Magnitude, First class or the Metropolitan Magistrate, as the case may be

9. The facilities provided under the Act

- i. Medical facilities (sec. 7)
- ii. Shelter homes (sec. 8)
- iii. Counselling (sec. 14)
- iv. Assistance of welfare experts (sec. 15)
- v. Support by Protection Officers, Police Officer and Service Providers (sections 4, 5, 8, 9 and 10)

10. Proceedings under the Act for reliefs

It may be initiated by an application addressed to the Magistrate (see 12).

10.1 The application may be made by an aggrieved person, or Protection Officer or any person on behalf of the aggrieved person , seeking one or more reliefs.

10.2 The Magistrate, within three days from the date of receipt of the application should fix the first date of hearing..

10.3 Service of the notice to the Respondent, that is, the person (adult male) against whom allegation of domestic violence has been made.

10.4 Counselling from and assistance of the welfare expert may be availed, if the Magistrate thinks it fit to do so.

10.5. The proceedings may be held in camera (sec. 16.).

Note : Camera really means the chamber of the Judge (here the Magistrate) where proceedings may be conducted, excluding public and maintaining secrecy.

10.6: Hearing of the parties – reasonable opportunity to both sides of being heard.

10.7 Grant of relief, if and when the Magistrate is satisfied that a case of domestic violence, actual or threatened, has been made out.

11. Nature of the reliefs under the Act:

It is civil in nature and not criminal.

11.1 : The object of Civil Justice is the enforcement of rights, while that of criminal justice is punishment of the offenders.

11.2 : The Act offers remedy for the wrong of domestic violence, by providing easy access to justice mechanism insisting on simplicity of procedures and urging upon expeditious hearing.

12. Satisfaction of the Magistrate and standard of proof.

It is pre-ponderance of probability and not proof beyond reasonable doubt.

- 12.1 : The standard of proof is the same as in civil cases. The weight of evidence tilts the balance in favour of which party – is the point to be decided.
- 12.2 For passing protection orders, the Magistrate ought to be prima facie satisfied.
- 12.3. Prima facie literally it means “on the face of it” or “at first sight.”
- 12.4. In law, “prima facie evidence” is generally taken as equivalent to “sufficient evidence”.

12.5 “Prima Facie Case” is a case established by sufficient evidence, which would stand out, if not rebutted by the evidence to the contrary.

13. Enforcement of Protection Orders passed by the Magistrate u/s-18 Violation of protection order is an offence u/s 31 (1).

- 13.1 It is cognizable and non-bailable
- 13.2 The sole testimony of the aggrieved person, may be the basis for conviction of the accused, if not overthrown by the evidence to the contrary.
- 13.3 Prosecution and punishment of the violator of the protection order is a co-ercive method of its enforcement.
- 13.4 The protection order shall remain in force till it is complied with or the aggrieved person says that it is no longer required, that is, when she applies for discharge vide Sec. 25.
- 13.5 The Magistrate may direct the officer-in-charge of the Police Station concerned to assist in the implementation of the protection order.

14. Offences created under the Act:

14.1 : Violation of Protection Order (Vide Sec. 31 (1)) is an offence.

14.2 Not discharging duties by the Protection Officers, without any sufficient course, as directed by the Magistrate in the Protection Order is another offence (Sec. 33).

14.3 sub para 14.3 no. prosecution against a Protection Officer unless a complaint is filed with the sanction of the State Government or an officer authorised by it.

15. The Act is not in derogation of any other law (vide Section 36). It means that the Act provides for additional reliefs, apart from the remedies available under any other law, civil or criminal and does not stand in the way of invoking any other legal remedy.

16. Salient Features of the Act:

- (i) It seeks to protect a woman from domestic violence committed or threatened to be committed, by an adult male member of the family or household.
- (ii) It recognizes the right of the aggrieved woman to reside in the shared household.
- (iii) Aggrieved woman may directly apply to the Magistrate for appropriate reliefs.

- iv. She may also approach the Magistrate through other agencies, such as Protection Officer, Police Officer or Service Provider.
- (v) The role of the NGOs as Service Providers has been acknowledged in the Act itself.
- (vi) A strong support system has been created in favour of the aggrieved woman.
- (vii) It is for the Protection Officer, Police Officer or a Service Provider to aid and assist the aggrieved or affected woman, in seeking appropriate reliefs under the Act and to ensure that the benefits flowing out of the Act are actually made available to her.
- (viii) Aggrieved woman has a right to be informed of the facilities and services that may be available, specially with respect to legal aid, safe shelter, medical facility, etc.

- (ix) It provides for counselling, which may pave the way for proper perspective or reconciling attitude.
- (x) It lays down scope for securing the services of welfare experts.
- (xi) The Act insists on speedy disposal of cases and for what purpose, has fixed time-limits. For termination of various stages of legal process Sec. 12 (4) Sec 12 (5).
- (xii) The Act provides for many remedies which an aggrieved woman may need – protection, shelter, custody of children, medical facility, legal aid, compensation, restoration of property, and monetary reliefs.
- (xiii) The Act prefers sensitized personnel for its implementation. That is why it leans in favour of active participation of the women in the capacity of Protection Officers and also as welfare experts for being more gender-sensitive.

- (xiv) The Act provides for remedies under the Civil Law and at the same time, creates two penal offences.
- (xv) While the Act seeks to punish Protection officers for dereliction of duties, it intends to protect them from false or frivolous complaints. They cannot be prosecuted without any sanction of the State Government. That apart, action taken by them in good faith is protected (Sec. 35).
- (xvi) All proceedings under the Act for obtaining reliefs and also for trial of offences are to be governed by the Code of Criminal Procedure. The Magistrate may, however, evolve his own procedure in two situations u/s 12 and u/s 23 (2).

- (xvii) There are provisions in the Act, empowering the Magistrate to pass interim or ex parte orders. He may deal with emergent situations, as and when they may so require.
- (xviii) Protection Officers and members of the Service Providers shall be deemed to be public servants (Sec 30).
- (xix) Both the offences created under the Act are cognizable and non-bailable.
- (xx) Orders passed by the Magistrate may subsequently be rescinded or modified if the circumstances so require. That kind of flexibility has been in-built in the Act itself.

- (xxi) The Magistrate is under an obligation to give copies of his orders to the parties, officer-in-charge of the Police Stations and Service Providers (if associated) free of cost.
- (xxii) The Act contemplates that all the agencies, namely, Protection Officers, Police Officers and Service Providers, should act in harmony in furtherance of its objectives.
- (xxiii) The speciality of the Act lies not only in empowering a Judicial Officers (JM, Ist class or M.M.) to deliver justice at a single window and under the same roof but also in creating a separate agency, namely cadre of protection officers and making it mandatory for them to render assistance and to extend support to the victim of domestic violence, towards giving them what are due to them.

- (xxiv) Involvement of the NGOs in the area of implementation of the act is another important strategy adopted by the parliament through this legislation, NGOs may get themselves registered as “Service Providers” and once they do so, they derive certain powers and obtain a degree of immunity, as laid down in section 10 (2).
- (xxv) The Act also relies up on Police Officers and imposes upon them specific duties to perform in promotion of its goal, in addition to their obligation to deal with cognizable offences.