

The Domestic Violence Against Women (Prevention) Bill, 2001

A Lawyer's Collective, Women's Rights Initiative Proposal

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An Act to address the growing menace of domestic violence and in particular to empower courts to grant orders for the protection of victims of domestic violence.

PREAMBLE

WHEREAS the Republic of India is party to several international instruments such as the Convention on the Elimination of Discrimination Against Women (CEDAW);

AND WHEREAS the United Nations adopted a Declaration on the Elimination of All Forms of Violence against Women in 1993;

AND WHEREAS the constitutional guarantee under Article 14 of the Constitution of India guarantees to women equality before the law and equal protection of the laws, and Article 21 secures for women the right to life and personal liberty;

AND WHEREAS domestic violence has operated as a severe form of oppression of women and which has been increasing with alarming proportions thereby affecting the fundamental rights of women;

AND WHEREAS Article 15(3) of the Constitution of India permits special provisions to be made in the interests of women and children;

AND WHEREAS it is necessary to recognise the right of women to protection against violence and to reside in their shared household and towards that end to put into place a co-ordinated and integrated system of responses;

BE IT THEREFORE ENACTED by the Parliament in the _____ year of the Republic of India, as follows: -

Chapter I
PRELIMINARY

1) **Short title and extent:**

a) This Act may be called the Prevention of Domestic Violence Against Women (Prevention) Act, 2001.

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

2) **Definition**-In this Act, unless the context indicates otherwise-

a) **“accredited service providers”** means governmental, non-governmental, voluntary and charitable associations or institutions working for the welfare of woman that are registered under Societies Registration Act or any other law and providing medical, shelter homes, counselling, legal and financial or other assistance to victims of domestic violence who have entered their names in a register maintained by the State Government under the provisions of this Act;

b) **“court”** means any court established under the provisions of the Family Courts Act 1984 or where no such court exists, the principal civil court of original jurisdiction or any court or lok adalat or any other authority which the State Government may, by notification in the Official Gazette, specify as a court competent to deal with all or any of the matters specified hereunder and includes any court in which a petition may be made under section 8 of the Act;

c) **“child”** includes any adopted, step or foster child or any other minor i.e. below the age of 18 years, in a domestic relationship or in a shared household.

- d) **"domestic relationship"** means a relationship between two persons who live or have, at any point of time, lived together in the shared household, in any of the following ways:
- i) they are or were married to each other, including marriage according to any law, custom, religion or usage whether such marriage is legally valid or not;
 - ii) they cohabit or have at some stage cohabited together;
 - iii) 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.
- e) **"domestic violence"** means any act, omission or conduct which is of such a nature as to harm or injure or has the potential of harming or injuring the health, safety or well-being of the person aggrieved or any child in the domestic relationship and includes physical abuse, sexual abuse, verbal and mental abuse and economic abuse.

Explanation -

- i) "physical abuse" includes any act or conduct which is of such a nature as to cause bodily pain, harm or danger to life, limb, or health or impair the health or development of the person aggrieved, and includes assault, criminal intimidation and criminal force.
- ii) "Sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of the person aggrieved and includes sexual intercourse against the will or without the consent of the person aggrieved and refusal to co operate in contraception when the person aggrieved may reasonably require. Provided that where the person aggrieved is below the age of sixteen, any sexual intercourse, whether or not against her will or without her consent shall amount to sexual abuse;
- iii) "sexual abuse" of a child includes any act or conduct of a sexual nature that abuses, harms or violates a child in a domestic relationship.
- iv) "verbal and mental abuse" includes
 - a) insults, ridicule, humiliation, degrading or name calling, including insults, ridicule or name calling specially with regard to not having a child or a male child, or ;
 - b) repeated threats to cause physical pain to any person in whom the person aggrieved is interested .
- v) "economic abuse" includes -
 - a) deprivation of any or all economic or financial resources to which the person aggrieved is entitled under law or custom whether payable under an order of court or otherwise or which the person aggrieved requires out of necessity, including but not limited to household necessities for the person aggrieved and her children, if any, stridhan, property, jointly or separately owned by the person aggrieved, payment of rental related to the shared household and maintenance;
 - b) disposal of household effects, any alienation of assets whether moveable or immovable, valuables, shares, securities, bonds etc or other property in which the person aggrieved has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the person aggrieved or her children or her stridhan or any other property jointly or separately held by the person aggrieved; or,

- c) prohibiting or restricting continued access to resources or facilities which the person aggrieved is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household;
- f) “*monetary relief*” means monetary relief which a court may order under Section 6 of this Act.
- g) “*person aggrieved*” means any woman or child who is or has been in a domestic relationship with the respondent and who has been subjected to acts of domestic violence ;
- h) “*petitioner*” means any person who makes a petition under Section 8 of this Act;
- i) “*prescribed*” means prescribed by or under this Act or rules made hereunder;
- j) “*protection officer*” means an officer appointed under section 24 by the State Government in relation to or for the purposes of this Act;
- k) “*protection order*” means an order granted in terms of Section 5;
- l) “*residence order*” means an order granted in terms of Section 7;
- m) “*respondent*” means any person who is or has been in a domestic relationship with the person aggrieved or a person who is aiding such a person in committing or threatening to commit domestic violence;
- n) “*shared household*” means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes property owned jointly or by either the person aggrieved or the respondent or property, including tenements, in respect of which either the person aggrieved or the respondent or both jointly have any right, title, interest or equity and includes property which may belong to the relations of the person aggrieved or the respondent or the joint family of which the respondent is a member irrespective of whether the respondent or the person aggrieved has any right, title or interest in the shared household;

Chapter II Rights of an aggrieved person

- 3. **Right to reside in a shared household and the right to protection against violence**
 - a) Notwithstanding any other law in force, every woman in a domestic relationship shall have the right to reside in the shared household.
 - b) If in occupation of the shared household, a woman in a domestic relationship shall have a right not to be evicted or excluded from the same or any part of it by the respondent save in accordance with the procedure established by law.
 - c) If forcibly evicted or denied access to the shared household, a woman in a domestic relationship shall have a right to enter into and occupy the same.

d) Notwithstanding any other law in force, every woman in a domestic relationship has a right to obtain protection against domestic violence under this Act in the form of a protection order and/or a residence order and/or an order granting monetary relief.

4. **Duty to inform person aggrieved of rights-** A police officer or a protection officer who has received a complaint of domestic violence or is otherwise present at the scene of an incident of domestic violence or when the incident of domestic violence is reported to him, shall-
- a) inform the person aggrieved of her right to apply for and obtain a protection order, an order for monetary relief and/or a residence order under the provisions of this Act;
 - b) inform the person aggrieved of the services of accredited service providers and
 - c) inform the person aggrieved of her right to free legal services under the Legal Services Authorities Act, 1987.

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 cognisable offence.

Chapter III Orders

5. **Protection order—**

- a) The court may pass a protection order prohibiting the respondent from:
- i) committing any act of domestic violence;
 - ii) aiding and abetting in the commission of acts of domestic violence;
 - iii) entering the place of employment of the person aggrieved or, if person aggrieved is a child, its school; or any other place frequented by the person aggrieved;
 - iv) entering the residence of the person aggrieved;
 - v) attempting to communicate in any form whatsoever with the person aggrieved, including personal, oral or written, electronic or telephonic contact;
 - vi) committing any other act as specified in the protection order;
 - vii) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both parties, either singly or jointly; including her stridhan or any other property held either jointly or separately by the person aggrieved;
 - viii) causing violence to the dependants, other relatives and persons who give the person aggrieved assistance from domestic violence.
- b) The court may impose any additional conditions which it deems reasonably necessary to protect and provide for the safety of the person aggrieved or any child.
- c) While passing an order under Section 5(a) or (b), the Court may also pass an order directing the police to give protection to the person aggrieved or to assist her or the petitioner in the implementation of the order.
- d) The court may direct the respondent to return to the possession of the person aggrieved her stridhan or any other property or valuable security to which she is entitled to either singly or jointly.

- e) The court may direct the Protection Officer or any other authority to remove the person aggrieved to a place of safety such as any short stay home run by any accredited service provider.
- f) The court shall, in all cases where it has passed a protection order under this section, order that a copy of such order be given to the protection officer in charge of the area and to any accredited service provider located within the local limits of the jurisdiction of the Court.

6. Monetary Relief-

- a) The court may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the person aggrieved and any child as a result of the domestic violence and includes but is not limited to-
 - i) loss of earnings;
 - ii) medical expenses;
 - iii) loss caused due to the destruction, damage or removal of any property from the control of the person aggrieved;
 - iv) maintenance for the person aggrieved as well as her children, if any;
 - v) compensation for the domestic violence inflicted upon the person aggrieved
- b) Copies of an order for monetary relief shall be forwarded by the Court to the concerned protection officer and to the Station House Officer of the police station within whose jurisdiction the respondent resides.
- c) The respondent shall pay monetary relief to the person aggrieved within the date specified in the order made in terms of sub-section (a) and in accordance with the terms there
- d) The protection officer may, upon the failure on the part of the respondent to make payment in terms of sub-clause (c), by an order, direct an employer or a debtor of the respondent, to directly pay to the person aggrieved 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.

7. Residence order-

- (a) The court may pass a residence order to:
 - i) restrain the respondent from alienating or dispossessing the shared household or encumbering the same;
 - ii) restrain the respondent from renouncing his rights in the shared household except in favour of the person aggrieved;
 - iii) require the respondent to permit the person aggrieved to enter and remain in the shared household or part thereof;
 - iv) prohibit, suspend or restrict the exercise by the respondent of his right to occupy the shared household;
 - v) restrain the respondent from dispossessing the person aggrieved from the shared household and
 - vii) direct the respondent to secure alternate accommodation for the person aggrieved or to pay rent for the same, if for sufficient reasons, the court is of the opinion that it will be harmful or injurious for the person aggrieved

to live with the respondent in the shared household, having regard to the circumstances of the case.

- (b) While making an order under this section, the court may impose on the respondent obligations relating to the discharge of rent or other payments, having regard to the financial needs and resources of the parties.

- 8. **Custody Order** – Notwithstanding any other law in force, the court may, at any stage of the hearing of the petition for protection order, grant temporary custody of any child or children to the person aggrieved or the petitioner and specify, if necessary, arrangements for visitation by the respondent.

Provided that in any case where a complaint of sexual abuse of a child has been made, and the court is prima facie satisfied that such allegation is true, the court shall grant custody to the person aggrieved or the petitioner and no such order for arrangements for visitation by the respondent shall be made.

- 9. **Compensation Orders** –

- a. In addition to other reliefs under this Act, the court may on an application by the person aggrieved, pass an order directing the respondent to pay compensation and damages for the injuries caused by the acts of domestic violence committed by the said respondent.
- b. The person aggrieved may make an application for compensation and damages under this section without any 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 person aggrieved, the amount, if any, paid or payable in pursuance of the order made by the court 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 (5 of 1908), or any other law for the time being in force, be executable for the balance, if any, left after such set off.

Chapter IV **Practice and procedure**

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- 10. **Petition** - Any person aggrieved may apply to the court for appropriate relief against domestic violence in a form prescribed which form may be obtained free of cost from any court, police station or protection officer.

11. Particulars of the petition—Ordinarily, the petition, accompanied by an affidavit must contain the following particulars -

- a) particulars of the person aggrieved and the respondent
- b) the facts on which the petition is based;
- c) the nature of relief sought whether a protection order , residence order and/or an order for monetary relief and
- d) the name of the police station at which the person aggrieved is likely to report any breach of the orders.

12. Petition by next friend or a protection officer-

Notwithstanding the provisions of any other law, the petition may be brought on behalf of the person aggrieved by any other person, provided that the petition must be brought with the written consent of the person aggrieved.

Provided further that such written consent would not be necessary in circumstances where the petitioner is an accredited service provider or a protection officer and where the person aggrieved is-

- a) a minor;
- b) suffering from a mental disorder of such nature and to such an extent that the she cannot reasonably be expected to apply by herself;
- c) unconscious or otherwise physically incapable due to the acts of domestic violence;

Provided further that an accredited service provider or a protection officer shall be entitled to appear before the Court and address the same if such accredited service provider is a petitioner or where the petitioner authorises the accredited service provider.

13. Orders during court recess –A petition under Section 8 of this Act may be brought before the court at anytime. Provided that when a petition is made at any time outside ordinary court hours or on a day that is not an ordinary court day or when the court is not in session, the Duty Magistrate shall pass the necessary protection orders as provided in Sec.5, 6 and 7 of this Act and the same may be confirmed by the court upon resumption of work within 72 hours.

14. Relief in other suits and legal proceedings:

- a) Relief available under this Act, may also be sought in any legal proceeding, civil or criminal, affecting the person aggrieved and the respondent whether such proceeding was initiated before or after the commencement of this Act.
- b)Such order may be sought in addition to and along with any other relief that the person aggrieved may pray for in such suit or legal proceeding, civil or criminal.
- c)During the pendency of investigations in relation to commission of offences mentioned in Schedule 1, a competent court may upon a petition in that behalf by the person aggrieved, grant the orders mentioned in Sec.5, 6 and 7of this Act, as a condition of release on bail of the respondent.

15. Power to grant interim and ex parte orders

- (a) In any proceeding before it under this Act , the Court may pass such interim order as it deems just and proper.
- (b) If a court is satisfied that a petition *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, it may grant an *ex parte* order under sections 5,6,7,8 and or 9 against the respondent, in a form as may be prescribed under the rules.

16. Single acts or condonation-

The court shall not refuse to grant a protection order merely on the basis that:

- a) only a single act of domestic violence has been committed or a single threat has been made by the respondent or on the ground that the acts or threats if viewed in isolation, appear to be minor or trivial.
- b) the person aggrieved had not complained of the acts of domestic violence and had condoned the same.

Provided that the complaint is brought within 7 years from the date of the commission of the act(s) of domestic violence complained of.

17. Notice to show cause

The Court shall issue notice to the Respondent to show cause within the time as may be prescribed why an order under sections 5, 6, 7, 8 and/or 9 should not be granted or if granted under Section 15 why the same should not be confirmed.

18. Confirmation, variation or revocation of order-

- (a) An order under sections 5, 6, 7, 8 and 9 shall operate for a period of three years and may, on application by the person aggrieved, be extended for a further period.
- (b) An order made under this section may, for exceptional circumstances to be recorded in writing, be altered, modified, varied or revoked on an application by either the person aggrieved or the respondent provided the court is satisfied that there is a change of circumstances that requires such alteration, modification, variation or revocation.

19. Appeal –Notwithstanding anything contained in the Code of Civil Procedure,1908 or in the Code of Criminal Procedure, 1973 or in any other law , an appeal shall lie from every judgement or order of the court, to the High Court.

Chapter V
Protection Officers

20. Appointment and qualifications of Protection officers- The State Government shall by notification in the official gazette, appoint such number of Protection Officers in each district as it may consider necessary, to assist the court in the discharge of it's duties under this Act.

Provided that such appointment shall be by recruitment by the State Public Services Commission or such other body which conducts, selections, examinations and recommends recruitments of state public servants.

Provided further that such appointment shall be in accordance with the qualifications for the post of protection officers as may be prescribed by the State Government.

21. Duties and Functions of Protection Officers :-

- a) It shall be the duty of a Protection Officer to assist the Court in the investigation of complaints relating to domestic violence.
- b) The Protection Officer shall be under the control of the Court, and shall and perform duties imposed on him by the Court and by this Act.
- (c) In addition to the above the Protection Officer shall perform the following functions:
 - i) Make a Domestic Incident Report in the prescribed form upon receipt of a complaint of domestic violence.
 - ii) Inform the person aggrieved of her right to apply to the court for a protection order, monetary relief and/or a residence order under the provisions of this Act.
 - iii) Assist the person aggrieved in obtaining a protection order from the Court.
 - iv) Ensure that the monetary relief deposited by the respondent is made available to the person aggrieved at the earliest.
 - v) Co-ordinate the activities of the accredited service providers operating in his area.
- (d) The protection officer shall make best efforts to ensure that the activities of the police and the accredited service providers are so co-ordinated as to ensure that a person aggrieved:
 - i) has easy access to information about accredited service providers, including short stay homes in the area that may provide her with support and help that she may require and enable access to services of the accredited service providers;
 - ii) is easily able to access transportation to an alternative residence or a safe place of shelter if the person aggrieved so requires;
 - iii) is able to avail of transportation to the nearest hospital or medical assistance for the treatment of injuries if such assistance is required,
 - iv) is able to obtain assistance in the collection of her belongings, including stridhan or any other property ordered to be returned or restored to her by the order of the court, with the assistance of the police,
 - v) is able to access the Court for orders under this Act.
 - vi) has access to every possible assistance in the service of exparte orders to the respondent, and enforcement of any orders that may have been made by the court under this Act.

- (e) Notwithstanding anything in any law, the protection officer may, subject to confirmation by a Court within 48 hours, by an order:
- i) Direct a bank or a financial institution to suspend transactions in respect of any bank account or locker; or
 - ii) Prohibit a co-operative society or a registry or any authority or an individual or a company from registering a transfer of any share, right or interest in any movable or immovable property.

Chapter V
Offences and Penalties

22. **Breach of a order** – A breach of an order made under Sections 5, 6, 7, 8,9 and/or 15 shall be an offence and shall be punishable with imprisonment which may extend upto three years or with fine which may extend upto Rupees twenty thousand or with both.
23. **Conditional warrant of arrest**- While granting any order under sections 5, 6 7, 8 or 9 of this Act after hearing both the parties, the Court, if satisfied, that the respondent has committed act(s) of domestic violence, may attach to the order, a power of arrest without warrants for any breach of the same.
24. **Execution of the warrant** – Upon a complaint by the person aggrieved or otherwise, if the appropriate police officer of the concerned police station is satisfied that a condition exists for execution of the warrant of arrest, he shall execute the warrant and arrest the respondent.
25. **Cognisance and proof** –
- a The offence under Section 24 shall be a cognizable and non-bailable.
 - b The court may conclude the commission of an offence under Section 24 upon the sole testimony of the person aggrieved.
26. **Offence by Protection Officer** – If any protection officer refuses or without sufficient cause is unable to give effect to the provisions of this Act or discharge his obligation he shall be punished with imprisonment of either description for a term which may extend upto one year, or with a fine which may extend to Rupees five thousand or with both.
- Provided that no Court shall take cognisance of an offence under this section save with the permission of the state government.
27. **Powers of the court in relation to offence**-The court passing an order under Section 5,6,7 or 13 shall have the power to try offences punishable under this Act.

Chapter VI-
Miscellaneous provisions

28. Jurisdiction-

a) Jurisdiction to grant a protection order and/or try offences under this Act lies with any court, within whose jurisdiction-

i) the person aggrieved permanently or temporarily resides, carries on business or is employed; or,

ii) the respondent resides, carries on business or is employed; or,

iii) the cause of action arose

(b) Any order made hereinunder shall be enforceable throughout India.

29. In camera proceedings – Unless the court is satisfied to the contrary, proceedings under this Act shall be held in camera.

Provided however that the protection officer or the accredited service provider may be permitted to attend the same.

30. Non obstante clause- the provisions of this Act and of any rules made hereunder shall have effect notwithstanding anything inconsistent with therewith contained in any other law in force.

31. Counselling-The Court may at any stage of the hearing on the petition for a protection order direct the respondent to undergo singly or, at the option of the person aggrieved, jointly with the person aggrieved mandatory counselling with any accredited service provider.

32. Protection of actions taken in good faith-No suit, prosecution or other legal proceeding shall lie against any accredited service provider or protection officer or police officer for anything which is in good faith done or purported to be done by or under this Act.

33. Procedure-

a) Except as otherwise stated in this Act, proceedings regarding the issuance of orders and offences provided herein against the same shall be governed respectively by the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973.

b) Nothing in sub-section (a) shall prevent the court from laying down its own procedure.

34. Duty of government to ensure effective implementation of the Act -

1) The Government of India shall appoint an eminent person as the Coordinator for Prevention of Domestic Violence who shall submit annual reports to the Government of India on the incidence of Domestic Violence in India and on the implementation of this Act which report shall be laid before both houses of Parliament.

2) The Coordinator for the Prevention of Domestic Violence, appointed under sub-section (1) of this section shall have the powers to perform all or any of the following:

a) powers to investigate and examine all matters relating to Prevention of Domestic Violence

b) make in its annual reports to the Government of India, recommendations for the effective implementation of the provisions of this bill

- c) review, from time to time, the existing provisions of the law on domestic violence.
 - d) Look into complaints and take suo-motto notice of matters relating to domestic violence and the non-implementation of the law on domestic violence
 - e) Call for special studies or investigations into specific incidence of domestic violence
 - f) Participate and advise on the planning process for securing a safe environment free of domestic violence.
 - g) Evaluate the progress of the development of women under the law on domestic violence
- 3) The Government of India, as well as the State Government, shall ensure that:
- a) the Act and the contents thereof receive wide publicity in the television, radio and the print media;
 - b) the government officers, the police and the members of the judicial services are given periodic sensitisation and awareness training on the issues addressed by this Act; and
 - c) effective protocols are formulated by concerned ministries dealing with health, prosecutions and welfare to address issues of domestic violence and that the same are periodically revised.

35. Power to make Rules-

- a) The State Government may by notification in the official gazette, make rules for carrying out the purposes of this Act.
- b) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for-
 - i) prescribing the format in which the forms, petitions, orders, directions and reports under this Act would have to be made;
 - ii) maintaining a register of accredited service providers;
 - iii) rules and procedure for the appointment and co-ordination of protection officers and their duties, tasks and responsibilities;
 - iv) powers of protection officers;
 - v) rules and procedure for appointment of officers to assist protection officers appointed under this Act;
 - vi) method and manner of deposit, recovery and payment of monetary relief;
 - vii) rules of procedure for proceedings under this Act; and
 - viii) any other matter in connection with or in relation to this Act.

SCHEDULE 1

- 1. Offences under the Indian Penal Code, 1860.**
- i) Sections 269 (negligent act likely to spread infection of disease dangerous to life), Section 270 (malignant act likely to spread infection of disease dangerous to life),
 - ii) Offences listed under chapter XVI (offences affecting the human body),
 - iii) Sections 383, 385, 386, 387, 388, 389 (Sections dealing with extortion),
 - iv) Section 403 (dishonest misappropriation of property), Section 405 (criminal breach of trust),
 - v) Section 441 (criminal trespass),
 - vi) Offences listed under Chapter XX (offences relating to marriage),
 - vii) Section 498A ,
 - viii) Section 499 (defamation),
 - ix) Sections 503 (criminal intimidation), 504 (intentional insult with intent to provoke breach of peace),
 - x) Section 507 (Criminal Intimidation by an anonymous communication)
 - xi) Section 509 (word, gesture or act intended to insult the modesty of a woman),
 - xii) Attempt to commit any of the above offences.

Other statutes

- i) All offences listed in the Dowry Prohibition Act, 1961
- ii) Section 4, of the Commission of Sati Act,1987.(abetment of sati)
- iii) All offences listed in the Immoral Traffic (Prevention) Act,1956
- iv) Offence under the Prenatal (Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994