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**Changes is brought about in criminal law  
relating to protection of women**

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## **Chapter I**

### **Introduction**

The Constitution of India has laid down certain provisions for empowerment of women. Article 14, 15(3), 21, 39 (a), 51A (e), Preamble, etc. are envisaged to meet this demand. Article 15(3) permits special provisions for women and children, has been widely restored to and the court have upheld the validity of special measures in legislation and executive orders favouring women. In particular, provisions in the criminal law, in favour of women, or in the procedural law discriminating in favour have been upheld. Moreover the constitution of India is the basic document, which provides for women empowerment within the framework of the plenary provision. The Courts always try to interpret the cases, which are detriment to women within the area Social justice with this article.

Although there were many legislations in India which have given the women the power in respective fields but particular, so far as the torture, cruelty and harassment are concerned, the provision of Section 498 A and 304 5 of IPC and the Dowry Prohibition Act, 1961 are the basic provisions. Perhaps these grounds of National and international bounties compelled the Indian Government to enact the Protection of Women from Domestic violence Act. 2005 for making restrictive provisions for errant family members for Prohibiting harassment or any violence against women and girls.

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 It is, therefore, proposed to enact a law keeping in view the rights guaranteed under Articles 14, 15 and 21 of the

Constitution to provide for a remedy under the civil law which is intended to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.

Domestic violence is undoubtedly a human right issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General Recommendation No. XII (1989) has recommended that State parties should act to protect women against violence of any kind especially that The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under Section 498-A of the Indian Penal Code. The civil law does not however address this phenomenon in its entirety.

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

- i. It covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage or adoption. In addition, relationships with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to legal protection under the proposed legislation. However, whereas the Bill enables the wife or the female living in a relationship in the nature of marriage to file a complaint under the proposed enactment against any relative of the husband or the male partner, it

does not enable any female relative of the husband or the male partner to file a complaint against the wife or the female partner.

- ii. It defines the expression “domestic violence” to include actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.
- iii. It provides for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate.
- iv. It empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence.
- v. It provides for appointment of Protection Officers and registration of non-governmental organisations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe shelter, etc.

The Bill seeks to achieve the above objects. The notes on clauses explain the various provisions contained in the Bill.

## Chapter II

### 1 .This Act may be called the Protection of Women from Domestic Violence Act, 2005.

- a) It extends to the whole of India except the State of Jammu and Kashmir.
- b) It shall come into force on such date<sup>1</sup> as the Central Government may, by notification in the Official Gazette, appoint.

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

- a. “aggrieved person” means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;
- b. “child” means any person below the age of eighteen years and includes any adopted, step or foster child;
- c. “compensation order” means an order granted in terms of section 22;
- d. “custody order” means an order granted in terms of section 21;
- e. “domestic incident report” means a report made in the prescribed form on receipt of a complaint of domestic violence from an aggrieved person;
- f. “domestic relationship” means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;

- g. “domestic violence” has the same meaning as assigned to it in section 3;
- h. “dowry” shall have the same meaning as assigned to it in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961);
- i. “Magistrate” means the Judicial Magistrate of the first class, or as the case may be, the Metropolitan Magistrate, exercising jurisdiction under the Code of Criminal Procedure, 1973 (2 of 1974) in the area where the aggrieved person resides temporarily or otherwise or the respondent resides or the domestic violence is alleged to have taken place;
- j. “medical facility” means such facility as may be notified by the State Government to be a medical facility for the purposes of this Act;
- k. “monetary relief” means the compensation which the Magistrate may order the respondent to pay to the aggrieved person, at any stage during the hearing of an application seeking any relief under this Act, to meet the expenses incurred and the losses suffered by the aggrieved person as a result of the domestic violence;
- l. “notification” means a notification published in the Official Gazette and the expression “notified” shall be construed accordingly;
- m. “prescribed” means prescribed by rules made under this Act;
- n. “Protection Officer” means an officer appointed by the State Government under sub-section (1) of section 8;
- o. “protection order” means an order made in terms of section 18;
- p. “residence order” means an order granted in terms of sub-section (1) of section 19;

- q. “respondent” means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner.

- r. “service provider” means an entity registered under sub-section (1) of section 10;
- s. “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 such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.
- t. “shelter home” means any shelter home as may be notified by the State Government to be a shelter home for the purposes of this Act.

### **3. Definition of domestic violence.—**

For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it—



- a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
- b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
- c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or
- d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

**Explanation I.**—For the purposes of this section,—

- i. “physical abuse” means 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 aggrieved person 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 woman;
- iii. “verbal and emotional abuse” includes—
  - (a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and
  - (b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

iv. “economic abuse” includes—

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

**Explanation II.**—For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes “domestic violence” under this section, the overall facts and circumstances of the case shall be taken into consideration.

**4. Information to Protection Officer and exclusion of liability of informant.—**

1. Any person who has reason to believe that an act of domestic violence has been, or is being, or is likely to be committed, may give information about it to the concerned Protection Officer.
2. No liability, civil or criminal, shall be incurred by any person for giving in good faith of information for the purpose of sub-section (1).

**5. Duties of police officers, service providers and Magistrate:-** A police officer, Protection Officer, service provider or Magistrate who has received a complaint of domestic violence or is otherwise present at the place of an incident of domestic violence or when the incident of domestic violence is reported to him, shall inform the aggrieved person—

- a. of her right to make an application for obtaining a relief by way of a protection order, an order for monetary relief, a custody order, a residence order, a compensation order or more than one such order under this Act;
- b. of the availability of services of service providers;
- c. of the availability of services of the Protection Officers;
- d. of her right to free legal services under the Legal Services Authorities Act, 1987 (39 of 1987);
- e. of her right to file a complaint under section 498A of the Indian Penal Code (45 of 1860), wherever relevant:

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

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

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

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

2. The Protection Officers shall as far as possible be women and shall possess such qualifications and experience as may be prescribed.

3. The terms and conditions of service of the Protection Officer and the other officers subordinate to him shall be such as may be prescribed.

9. It shall be the duty of the Protection Officer—**a.** to assist the Magistrate in the discharge of his functions under this Act;

- a. to make a domestic incident report to the Magistrate, in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence and forward copies thereof to the police officer in charge of the police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service providers in that area;
- b. to make an application in such form and in such manner as may be prescribed to the Magistrate, if the aggrieved person so desires, claiming relief for issuance of a protection order;
- c. to ensure that the aggrieved person is provided legal aid under the Legal Services Authorities Act, 1987 (39 of 1987) and make available free of cost the prescribed form in which a complaint is to be made;
- d. to maintain a list of all service providers providing legal aid or counselling, shelter homes and medical facilities in a local area within the jurisdiction of the Magistrate;
- e. to make available a safe shelter home, if the aggrieved person so requires and forward a copy of his report of having lodged the aggrieved person in a shelter home to the police station and the Magistrate having jurisdiction in the area where the shelter home is situated;
- f. to get the aggrieved person medically examined, if she has sustained bodily injuries and forward a copy of the medical report to the police station and the Magistrate having jurisdiction in the area where the domestic violence is alleged to have been taken place;

- g. to ensure that the order for monetary relief under section 20 is complied with and executed, in accordance with the procedure prescribed under the Code of Criminal Procedure, 1973 (2 of 1974);
  - h. to perform such other duties as may be prescribed.
2. The Protection Officer shall be under the control and supervision of the Magistrate, and shall perform the duties imposed on him by the Magistrate and the Government by, or under, this Act.

**10. Service provider:**-Subject to such rules as may be made in this behalf, any voluntary association registered under the Societies Registration Act, 1860 (21 of 1860) or a company registered under the Companies Act, 1956 (1 of 1956) or any other law for the time being in force with the objective of protecting the rights and interests of women by any lawful means including providing of legal aid, medical, financial or other assistance shall register itself with the State Government as a service provider for the purposes of this Act.

1. A service provider registered under sub-section (1) shall have the power to—
- a. record the domestic incident report in the prescribed form if the aggrieved person so desires and forward a copy thereof to the Magistrate and the Protection Officer having jurisdiction in the area where the domestic violence took place;
  - b. get the aggrieved person medically examined and forward a copy of the medical report to the Protection Officer and the police station within the local limits of which the domestic violence took place;

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

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

11. The Central Government and every State Government, shall take all measures to ensure that—

- a. the provisions of this Act are given wide publicity through public media including the television, radio and the print media at regular intervals;
- b. the Central Government and State Government officers including the police officers and the members of the judicial services are given periodic sensitization and awareness training on the issues addressed by this Act;
- c. effective co-ordination between the services provided by concerned Ministries and Departments dealing with law, home affairs including law and order, health and human resources to address issues of domestic violence is established and periodical review of the same is conducted;
- d. protocols for the various Ministries concerned with the delivery of services to women under this Act including the courts are prepared and put in place.

## **12. Procedure for obtaining orders of reliefs**

1. An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:

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

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

Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

3. Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.
4. The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.



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

### **13. Service of notice**

1. A notice of the date of hearing fixed under section 12 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 within a maximum period of two days or such further reasonable time as may be allowed by the Magistrate from the date of its receipt.
2. A declaration of service of notice made by the Protection Officer in such form as may be prescribed 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.

### **14. Counseling —**

1. The Magistrate may, at any stage of the proceedings under this Act, direct the respondent or the aggrieved person, either singly or jointly, to undergo counselling with any member of a service provider who possess such qualifications and experience in counseling as may be prescribed.
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.

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

If the Magistrate considers that the circumstances of the case so warrant, and if either party to the proceedings so desires, he may conduct the proceedings under this Act in camera.

**16. Proceedings to be held in camera:- If**

**17. Right to reside in a shared household.—**

1. Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.
2. The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.

**18. Protection orders:—**

The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from—

- a. committing any act of domestic violence;
- b. aiding or abetting in the commission of acts of domestic violence;
- c. entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;
- d. attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;

- e. alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;
- f. causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;
- g. committing any other act as specified in the protection order.

19. Residence Orders can be granted to the applicant under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order—

- a. restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;
- b. directing the respondent to remove himself from the shared household;
- c. restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;
- d. restraining the respondent from alienating or disposing of the shared household or encumbering the same;
- e. restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

- f. directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order under clause (b) shall be passed against any person who is a woman.

5. The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.
6. The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.
7. An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.
8. While passing an order under sub-section (1), sub-section (2) or sub-section (3), the court may also pass an order directing the officer-in-charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.
9. While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

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

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

20. **Monetary relief:-**(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include but is not limited to—

- a. the loss of earnings;
- b. the medical expenses;
- c. the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and
- d. the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

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

2. The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.
3. The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in-charge of the police station within the local limits of whose jurisdiction the respondent resides.
4. The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).
5. Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

## **21. Custody orders—**

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

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

22. Compensation orders:- In addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent.

**23. Power to grant interim and ex parte orders.—**

1. In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.
2. If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.

**24. Court to give copies of order free of cost.—**

The Magistrate shall, in all cases where he has passed any order under this Act, order that a copy of such order, shall be given free of cost, to the parties to the application, the police officer-in-charge of the police station in the jurisdiction of which the Magistrate has been approached, and any service provider located within the local limits of the jurisdiction of the court and if any service provider has registered a domestic incident report, to that service provider.

**25. Duration and alteration of orders.—**

1. A protection order made under section 18 shall be in force till the aggrieved person applies for discharge.
2. If the Magistrate, on receipt of an application from the aggrieved person or the respondent, is satisfied that there is a change in the circumstances requiring alteration, modification or revocation of any order made under this Act, he may, for reasons to be recorded in writing pass such order, as he may deem appropriate.

**26. Relief in other suits and legal proceedings—**

1. Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.
2. Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.
3. In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

**27. Jurisdiction.—**

1. The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which (a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or the respondent resides or carries on business or is employed; or the cause of action has arisen, shall be the



competent court to grant a protection order and other orders under this Act and to try offences under this Act.

2. Any order made this Act shall be enforceable throughout India.

## **28 – Procedure.**

1. Save as otherwise provided in this Act, all proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and offences under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).
2. Nothing in sub-section (1) shall prevent the court from laying down its own procedure for disposal of an application under section 12 or under sub-section (2) of section 23.

29. 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, whichever is later.

## **30. Protection Officers and members of service providers to be public servants.—**

The Protection Officers and members of service providers, while acting or purporting to act in pursuance of any of the provisions of this Act or any rules or orders made thereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

## **31. Penalty for breach of protection order by respondent.—**

1. A breach of protection order, or of 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 Magistrates 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.

**32. Cognizance and proof:-1.** Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offence under sub-section (1) of section 31 shall be cognizable and non-bailable.

2. Upon the sole testimony of the aggrieved person, the court may conclude that an offence under sub-section (1) of section 31 has been committed by the accused.

**Penalty for not discharging duty 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 twenty thousand rupees, or with both

**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.

### **Protection of action taken in good faith.—<sup>1</sup>**

No suit, prosecution or other legal proceeding 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 or order made there under.

The Union Cabinet approved the introduction of the Protection of Women against<sup>2</sup> Sexual Harassment at Workplace Bill, 2010 in the Parliament to ensure a safe environment for women at work places, both in public and private sectors whether organised or unorganized. The measure will help in achieving gender empowerment and equality.

The Bill proposes a definition of sexual harassment, which is as laid down by the Hon'ble Supreme Court in Vishaka v. State of Rajasthan (1997). Additionally it recognises the promise or threat to a woman's employment prospects or creation of hostile work environment as 'sexual harassment' at workplace and expressly seeks to prohibit such acts.

The Bill provides protection not only to women who are employed but also to any woman who enters the workplace as a client, customer, apprentice, and daily wageworker or in ad-hoc capacity. Students, research scholars in colleges/university and patients in hospitals have also been covered. Further, the Bill seeks to cover workplaces in the unorganised sectors.

The Act uses a definition of sexual harassment which was laid down by the Supreme Court of India in Vishaka v. State of Rajasthan (1997) Article 19 (1) g of the Indian

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<sup>1</sup> Page nos. 5 to 27 all information taken from the Bare Act The Protection of women from Domestic violence Act, 2005.

<sup>2</sup> From wikipedia free encyclopedia.

Constitution affirms the right of all citizens to be employed in any profession of their choosing or to practice their own trade or business. Vishaka v. State of Rajasthan established that actions resulting in a violation of one's rights to 'Gender Equality' and 'Life and Liberty' is in fact a violation of the victim's fundamental right under Article 19 (1) g. The case ruling establishes that sexual harassment violates a woman's rights in the workplace and is thus not just a matter of personal injury

### **Criminal Law Amendment Act 2013**<sup>3</sup>

Through the Criminal Law offence and Amendment Act Sec. 354 was added to the Indian Penal Code that stipulates what consist of a Sexual Harrassment offence and what the penalties shallbe for a man committing such an offence penalties range from one to three years imprisonment and fine additionally.

**INDIAN PENAL CODE** also contains many provisions pertaining specifically to women They are:

Sec. 228A Disclosure of identity of the victim of certain offences, etc.-

This section was inserted by the Criminal Law(Amendment)Act,1983.This provision intends to protect the victim embarrassment due to the glare or damaging publicity and as such the identity of any person against whom an offence under sections. 376,376-A,376-B,376-C or 376-D is alleged or found to have been committed .

Sec.304-B Dowry Death: Where the death of any women is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it shshown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any

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<sup>3</sup> From Wikipedia free encyclopedia

demand for dowry, such death shall be called “dowry death”, and such husband and relative shall be deemed to have caused her death.

Sec.354-----It makes punishable any act of assault or criminal force to woman with intent to outrage her modesty.

Sec.361-----This section makes punishable kidnapping of a girl below eighteen years of age from lawful guardianship.

Sec.363-----It makes punishable an offence of kidnapping or maiming a minor girl for the purpose of begging.

Sec.366-----Kidnapping, abduction or inducing woman to compel her marriage, e.t.c made punishable.

Sec.366-A-----Makes punishable procurement of minor girl under the age of eighteen years.

Sec.366-B-----Makes punishable the importation of girl under the age of twenty one from foreign country.

Sec.372-----Penalises selling of minor for purposes of prostitution, etc.

Sec.373-----Penalises buying of minor for purposes of prostitution, etc.

Sec.375 and 376 makes punishable the offence of rape.

Sec.376-A---Penalises intercourse by a man with his wife during separation.

Sec.376-B----, Penalises intercourse by public servant with his woman in his custody.

Sec.376-C---Penalises intercourse by superintendent of jail, remand home with his woman in his custody.

Sec.376-D---Penalises intercourse by any member of the management or staff of a hospital with any woman in that hospital.

Sec.493-----Provides punishment for cohabitating with women deceitfully inducing a belief of lawful marriage.

Sec.494-----Makes punishable act of marrying again during the life time of wife.

Sec.495-----Same offence with concealment of former marriage from person with whom subsequent marriage is contracted is made punishable.

Sec.496-----Marriage ceremony fraudulently gone through without lawful marriage is made punishable.

Sec.497-----Makes punishable the act of adultery.

Sec.498-----Penalises the enticing or taking away or detaining with criminal intent a married woman.

Sec.498-A-----Penalises husband or relatives of husband of a woman subjecting her to cruelty.

Sec.509-----Penalises any act of word, gesture or act intended to insult the modesty of a woman.

**Changes in Law:-**Section 370 of Indian Penal Code (IPC) has been substituted with new sections, 370 and 370A which deals with trafficking of person for exploitation. If a person (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person, by using threats, or force, or coercion, or abduction, or fraud, or deception, or by abuse of power, or inducement for exploitation including prostitution, slavery, forced organ removal, etc. will be punished with imprisonment ranging from at least 7 years to imprisonment for the remainder of that person's natural life depending on the number or

category of persons trafficked. Employment of a trafficked person will attract penal provision as well.

The most important change that has been made is the change in definition of rape under IPC. Although the Ordinance sought to change the word *rape* to sexual assault, in the Act the word 'rape' has been retained in Section 375, and was extended to include acts in addition

**CRIMINAL PROCEDURE CODE:-Sec.:51(2)---**In the case of a search of a female the search shall be made by another female with strict regard to decency.

Sec.125 to 128 and 482----Right to maintenance women , parents and children who are unable to maintain themselves.

Sec.160 (1)----A women can not be required to attend any place other than the place in which such women resides

**INDIAN EVIDENCE ACT:-Sec.113A----**Presumption as to abetment of suicide by a married women within seven years from the date of her marriage.

Sec.113B-----Presumption as to dowry death when it shown that such women was subjected to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such a person had caused dowry death.

Sec114A-----Presumption as to absence of consent in certain prosecution for rape

### **Chapter III**

#### **Empowerment under the Criminal Law:-<sup>4</sup> ---**

**Pregnant woman cannot be executed with death sentence:**-According to Section 416 of Cr.P.C. if a woman sentenced to death is found to be pregnant, the High Court shall order the execution of the sentence to be postponed and if thinks fit, may commute the sentence to imprisonment for life.

**Protection in certain offence not to be punished:**-- Rape under Section 376., unnatural offence under Section 377 of IPC empower woman. According to these section the act of man is punishable, but similar act of woman is not punishable under IPC because these sections carry the word “sexual intercourse” and “penetration”, naturally it is only possible by men. If any, woman commits the similar act (outer course with man ) against his will and without consent of the offence, is not punishable with abetment section 354 of IPC makes an act of assault or using criminal force to any woman, intending to outrage her modesty as punishable but, similar act of woman is not punishable, if she does so with man’s modesty Adultery under section 497, criminal elopement under section 498, and cruelty by husband and his relatives under section 498A, are also such offences where woman are not punishable for the similar act on their part.

**Protection from arresting a women in night in absence of Lady Police:-** The Hon’ble supreme court directed the police not to arrest a lady without the presence of a

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<sup>4</sup> Book Law and Socioal Transformation in India page No. 198.



lady constable and also prohibited the arrest of a lady after sunset and before sunrise under any circumstances. The supreme court found the objection behind the direction that a strict compliance of the said direction, in given circumstances would cause practical difficulties to the investigating agency and might even give room for evading the process of law by unscrupulous accused. While it is necessary to protect the female sought to be arrested by the police from police misdeeds, it may not be always possible and practical to have the presence of the lady constable when the necessity for such arrest arises, therefore the Supreme Court modified the said direction without distributing the object behind the same. The object will be served if a direction is issued to the arresting authority that while arresting a female person, all efforts should be made to keep a lady constable present. But, in circumstances where the arresting officer is reasonably satisfied that such presence of lady constable is not available or possible and/or the delay in arresting caused by securing the presence of lady constable would impede the course of investigation, such arresting officer for reasons to be recorded either before the arrest or immediately after the arrest a female person for lawful reasons at any time of the day or night depending on the circumstances of the case even without the presence of a lady constable.

Earlier the Gujarat High Court held the arrest of a woman in night hours in violation of a Government Circular and directions issued by Supreme Court are violation of human rights enshrined under Art. 21 of the constitution . There were no exceptional circumstances for the arrest in the night that is after sunset and before sunrise. An unhappy incident happened during the night hours when a lady Sarpanch and her husband were arrested, handcuffed and paraded in the village after garlanding them with chappals, etc. As per directions of the High Court an enquiry was conducted and the incident was

found to be correct. The public demanded the enforcement of fundamental rights. Rs.20,000/- was awarded as compensation and this sum was to be recovered from the concerned Police Officers and it was held that such act violated human rights enshrined by Arts. 14, 19 and 21 of the constitution.

In pursuant with the above decision, the code of Criminal Procedure (Amendment ) Act, 2005, has inserted clause (4) to sections 46 of Cr.P.c. which says that “no woman shall be arrested after sunset and before sunrise except under exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the First Class within whose local jurisdiction offence is committed or the arrest is made.

**Protection from Policed harassment:-** A woman cannot be called to Police Station for an inquiry She can only be interrogated at her residence. No woman can be kept in custody at night in a Police Station. Women cannot be imprisonment under Civil Court Decree. Our lawmakers have given continuous attention to women’s condition and have enacted many laws to improve them.

**Protection against harbouring the husband:-** If the wife or husband is given harbour to his/her wife/husband, except in section 157 (persons hired for an unlawful assembly), and in section 130 (State Prisoners), is not offence . The word “harbour” includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means or conveyances, or assisting a person by any means, whether of the same kind as those enumerated in this section or not, to evade apprehension.

### **The Dowry Prohibition Act, 1961 :**

The Legislature has enacted special law on prohibition of dowry in India. The aim of this Act is to prohibit the giving or taking of dowry, with effect from 1<sup>st</sup> July, 1961. This Act provides penalty for giving and taking of the dowry and increased punishment twice, first in 1985 and second time in 1986. This Act also exempts some some gifts at the time of marriage, further, it prohibits the demanding of dowry and makes any agreement for giving or taking dowry to be void. If any dowry is given, it shall be transferred to the women in marriage and if not transferred, such person is punishable. Offences under this Act are cognizable for certain purpose and to be non-bailable and non-compoundable.

### **The Maternity Benefit Act, 1961 :**

This Act regulates the employment of women in certain establishments for certain period before and after child birth and to provide for maternity benefit and certain other benefits and came into force w.e.f 1<sup>st</sup> Nov, 1963. Under this Act, woman means a woman employed.

### **Child Marriage (Restraint) Act, 1929:**

The legislature has substituted the Act to prohibit child marriage in the form of the Prohibition of Child Marriage Act, 2006. The Act curb child marriage more serious and empowers the woman to have maintenance from husband who marries to a girl below the age of 18 years and also empowers the court to give the custody of child in the best interest of the child.

### **Empowerment of women under Factories Act, 1948 :**

This Act is applicable to the factories or establishment, where workers are working with power. Similar provisions are also provided to mines under Mines Act, and some other welfare labour laws.

In every factory/mine wherein more than thirty (30) women workers are ordinarily employed, there shall be provided and maintained a suitable room or room for the use of children under the age of six years of such women. Such rooms shall provide adequate accommodation, shall be adequately lighted and ventilated, shall be maintained in a clean and sanitary condition and shall be under the charge of women trained in the care of children and infants.

No woman shall be required or allowed to work in any factory/mine except between the hours of 6 a.m. and 7 p.m. but may not be permitted to work between the hours of 10 p.m. and 5 a.m. No female child shall be required or allowed to work in any factory except between 8a.m. and 7p.m.

This Act empowers the women to avail twelve weeks paid maternity leave at the time each delivery out of which six weeks before delivery and six weeks after delivery. This benefit is also applicable on the time of adoption of child. Before the maternity period, pregnant women are entitled to work for in favourable conditions. Besides the regular payment, she is entitled for maternity bonus fixed by the Government if, no pre-natal confinement and post-natal care is provided for by the employer free of charge.

## **Equal Remuneration Act, 1976**

This Act provides for payment of equal wages for work of same and similar nature to male and female workers and for not making discrimination against female employees in the matters of transfers, training and promotion etc. central Government is the appropriate Government in respect of industries establishments under the Industrial Disputes Act, 1947. The object of the Act is to provide for the payment of equal remuneration to men and women workers and for the prevention of discrimination, on the ground of sex.

Against women in the matter of employment and for matters, connected therewith or incidental thereto.

It imposes duty of the employers not to pay less payment to the women workers than the men. This Act prohibits any kind of discrimination on the basis of sex regarding the payment for the work. Further, it also prohibits any kind of discrimination at the time of recruitment in such work but, allows the reservation, enforced by the Government. The Supreme Court held that the term of service fixed by Air India to retire air hostesses at the age of 50 years or grounding them on alternative jobs was also discriminatory treatment to them on basis of sex which violated Section 5 of the Equal Remuneration Act.<sup>33</sup>

For this purpose the Act, constitutes an Advisory Committee, to advice the Government regarding the opportunity of the work, and one-half of members should be women. The appropriate Government is empowered to appoint appropriate authority for hearing and deciding the cases under this Act. And Government has appointed Labour Officers and Inspectors for this purpose. This Act imposes penalty on the ground of violation of any right under this Act a maximum of two years imprisonment and/or fine up to Rs. 20,000.

## **The Pre-Conception & Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 :**

The PCPNDT Act was brought into operation w.e.f. 1<sup>st</sup> Jan, 1996. This Act was intended to regulate the use of pre-natal diagnostic techniques for detecting genetic and metabolic disorders, chromosomal abnormalities, certain congenital mal-formation and/or sex linked disorders. In practice the techniques for pre-natal determination of sex of the foetus led to female foeticide and reinforced the gender bias. This technology is misused on a large scale for sex determination of the foetus and mostly if the foetus is pronounced as female this prompts termination of pregnancy bringing to an abrupt end the growth of an unborn child. It also prohibits any advertisement relating to pre-natal determination of sex and prescribes punishment for its contravention. The person who contravenes the provisions of this Act is punishable with imprisonment and fine. Offences under the Act are: (a) determination of sex selection before or after conception, (b) non-registration under section 3, (c) conduct of PNDT under section 4, (d) communication of sex of foetus under section 5, (e) determination of sex under section 6, (f) advertisement under section 22 and (g) non-maintenance of records under section 29. Further S-27 states that every offence under this Act shall be cognizable, non-bailable, and non-compoundable. In 2002, mass has been made under this Act, in pursuant of decreasing the female ratio in the country. The punishment under the Act was increased to 5 years imprisonment or fine Rs. 1,00,000.

**Right of maintenance from husband :** If a husband having sufficient means, neglect or refuses to maintain his wife who is unable to maintain herself, the wife can through court order get monthly allowance from her husband for her maintenance. Only Muslim women have no right to get such maintenance allowance from their husbands except during iddat period.

### **Muslim Women also entitled to Maintenance under Section 125 :<sup>5</sup>**

The Hon'ble Supreme Court has held in the case of Shah Bano Begum, that if the divorce woman is able to maintain herself, the husband's liability ceases with the period of iddat, but if she is unable to maintain herself after the period of iddat, she is entitled to maintenance under section 125 of the Cr. P.C. This led to controversy as to the obligations of the muslim husband to pay maintenance to the divorced wife. The Muslim women (Protection OF Rights on Divorce) Act was passed to dilute the judgment given in the decision of Shah Bano case. Further, the court has observed, "Whether the spouses are Hindu, Muslim, Christian, Parsis, Pagans or Theathans is wholly irrelevant, in the application of these provisions". Section 125 of the Cr. P.C. said that this section is secular in nature and does apply to all the religions equally. The Andhra Pradesh High Court held that a Muslim minor girl would be entitled to claim maintenance from her father even after the enforcement of The Muslim Women (Protection of Rights on Divorce) Act, 1986.

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<sup>5</sup> Page No. 32 to 39 all information from the book Law and Social Transformation in India. Page no. 183 to 191.

**Conclusion :** The women are empowered by constitution and many other legal provisions in India but, most of them are limited to books only. All these empowerments should be implemented strictly, then only it can be called empowerments. If under any Act any rare case conviction is held then the punishment awarded is only nominal according to reformatory theory of punishments. Whereas all the offences against the women should be treated by exemplary theory and punishment should be awarded as the maximum prescribed by laws. Almost all the enactments are discussed in details under the preceding chapters of the Book. The landmark judgment directed by Supreme Court in the Vishakha v. State of Rajasthan is also an important law decided by Supreme Court under Art 141 of Constitution relating to gender injustice.

In criminal Law there are so many changes which protect the women.



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