

The Domestic Violence to Women (Prevention) Bill.

Introduction

The Committee of Experts considered aspects pertaining to domestic violence with a view to providing legal remedies to the distressed victims, taking note of the Indian conditions. It recommends the accompanying Draft Bill, titled, "The Domestic Violence to Women (Prevention) Bill" for adoption. The background relating to domestic violence and the salient features of the Draft Bill are given below:

The term "domestic violence" is wide and encompasses in its scope all types of violence resorted to within the precincts of a home whether by male or female members of a family. But the overwhelming majority of victims of domestic violence are women. To be sure all such acts are punishable under the provisions of the Indian Penal Code, 1861. Nonetheless resort to the general law of the land is very seldom made by the women-victims of domestic violence owing to a variety of factors. Some of these factors are: a) close familial relationship, b) dependency, financial or otherwise, c) lack of legal literacy, and d) helplessness of the victims. Most of these cases go unreported and give rise to serious human problem.

Studies have pointed out that family violence is cyclic and is apt to pass from one generation to another; that children who had experienced violence are more likely to be violent towards wife and children in their adult-life, and that in order to reduce societal violence, it is necessary to reduce violence within the family.

A prominent type of domestic violence in India is dowry-related domestic violence. In recent years considerable number of legislations were enacted and amendments to legislations were made to curb the evil. The Criminal Law (Second Amendment) Act, 1983 introduced the new offence of cruelty under section 498-A; section 174 of the Criminal Procedure Code was amended to secure post mortem in case of death or suicide of a married girl; section 113-A was inserted in the Indian Evidence Act; and new section 304-B relating to 'Dowry death' was incorporated in the Indian Penal Code. In view of these specific legislative provisions, the Draft Bill limits itself to other forms of domestic violence against women.

Domestic violence has been given a wide definition. It includes not only conduct which amounts to cruelty but also includes any act which is unbecoming of the dignity of the women. Clause 3 of the Draft Bill states that the provisions of the Domestic Violence to Women (Prevention) Act are in addition to and not in derogation of any other law.

The Committee considered the "Model Law Against Domestic Violence" of the Lawy Collective sent by Ms. Indira Jaising. The Draft sent by her is heavily based on Lisa G. Lerman's "A Model State Act: Remedies for Domestic Abuse" published in *Harvar Journal of Legislation*. This Model State Act does not at all take into consideration the social milieu and conditions in India. For this reason the Model State Law was found to be unsuitable. The other foreign legislation noticed by the Committee was the Domestic Violence and Matrimonial Proceedings Act, 1976 of the U.K. Under this a party to a marriage is entitled to get an injunction from a Country court restraining the other party from molesting the applicant or a child living with the applicant. The injunction may also contain a provision excluding the other party from the matrimonial home or any part of it. Further, if the judge is satisfied that actual bodily harm has been caused to the party to a marriage or a child of the spouse, it may attach a power of arrest to the injunction for its breach; thereby a constable is empowered to arrest a person committing the breach of the injunction without a warrant.

Some of the factors which inhibit or discourage women-victims from seeking the available legal remedies have been mentioned before. The approach of the Draft Bill to meet these problems may be pointed out.

One of the major difficulties faced by victims of domestic violence is their inability to approach the courts for relief as they (courts) are located in urban centres. This is specially so in case of victims drawn from rural areas. The Draft defines a "court" in wide terms as including a Family Court, a Civil Court and a Mahila Panchayat consisting of three women members of a Gram Panchayat, if so declared by a State Government. The creation of Mahila Panchayats as courts takes note of the socio-cultural context that prevails in rural areas and will help in rendering speedy justice in cases of domestic violence.

The existing delays in getting a legal remedy in cases of domestic violence discourage a victim, or a relation of the victim or a social worker who wants to aid the victim from seeking relief. Therefore clause 4 of the Draft Bill proposes a time-frame in the matter of disposal of the petitions. First, if the court is satisfied on a consideration of the statement made in the petition, it can forthwith make a Protection Order, even ex-parte, and fix a date for further consideration of the petition. Second, in case it is not satisfied with the statement made in the petition, it will fix a date without making an order; but the date so fixed should not be more than 7 days from the date of issue of notice to the concerned persons. Sub-clause 8 of clause 4 of the Draft envisages that the court should dispose of the petition expeditiously and not later than 3 months from the date of filing of the petition.

Experience shows that lack of living accommodation primarily makes a woman suffer silently the battering given by the husband or other male relative. To meet this difficulty clause 5 of the Draft Bill says that the Protection Order direct that the woman shall live separately from her husband and the matrimonial home be given to the wife for her separate living. The term "matrimonial home" includes accommodation that is rented as well as belonging to the



joint family. The Draft also envisages that in case the battered woman is unmarried or widow or divorce, the Protection Order will direct separate living accommodation be provided for her living. Lack of financial support and fear of losing the custody of children force victims of violence to lead a captive existence. To overcome this the clause 5 empowers the court to grant maintenance to the wife and children living with her, and give directions with respect to "such other matters as may be considered necessary"

The Draft envisages a key-role to Protection Officers. The term Protection Officer cover not only an officer appointed by the State Government but also any institution or organization designated by the State Government to perform the functions of a Protection Officer in relation to an area. Thus it envisages a role to non-governmental organizations in combating the problem of domestic violence. If the helpless conditions of woman does not permit her to file a petition for Protection Order, any person on her behalf or a Protection Officer can file a petition for securing the remedies.



The Domestic Violence To Women (Prevention) Bill, 1994

A Bill

To provide for the prevention of domestic violence to women and for matters connected therewith or incidental thereto

Be it enacted by Parliament in the Forty-fifth Year of the Republic of India as follows:

1. Short title, extent and commencement

- (1) This Act may be called the Domestic Violence to Women (Prevention) Act, 1994.
- (2) It extends to the whole of India.
- (3) It shall come into force on the 1st day of January, 1995.

2. Definitions

In this Act, unless the context otherwise requires,

(a) "Court" means, in any area for which there is a Family Court established under the provisions of the Family Court established under the provisions of the Family Courts Act, 1984, that Court, and in any other area, the principal civil court of original jurisdiction, and includes any civil court or a Mahila Panchayat consisting of three women members of a Gram Panchayat which the State Government may, by notification, specify as the court competent to deal with all or or any of the matters specified in this Act:

(b) "domestic violence" means any of the following acts committed on a woman by her husband or any of his or her relatives, namely,

(i) any wilful conduct which-

(A) is of such a nature as is likely to drive the woman out of the house or commit suicide or to injure herself; or

(B) causes injury or danger to the life, limb or health (whether mental or physical) of the woman; or

(ii) harassment which causes distress to a woman; or

(iii) any act which compels the woman to have sexual intercourse against her will either with the husband or any of his relatives or with any other person; or

(iv) any act which is unbecoming of the dignity of the woman; or

(v) any other act of omission or commission which is likely to cause mental torture or mental agony to the woman;

(c) "notification" means a notification published in the Official Gazette;

(d) "Prescribed" means prescribed by rules made under this Act;

(e) "Protection Officer" means an officer appointed by the State Government in relation

to or for the purposes of this Act and includes any institution or organisation designated by the Government to perform the functions of a Protection Officer under this Act, in relation to an area;

(f) "Protection Order" means an order made under this Act for the protection of a woman subject to domestic violence and for such other provisions like separate stay, maintenance and the prevention of further domestic violence;

(g) "relative" includes any person related by blood, marriage or adoption.

3. Act not in derogation of any other law;

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

4. Presentation of petition to Court

(1) Any woman subject to domestic violence or any other person on her behalf or a Protection Officer may, without prejudice to the provisions of this Act, or of any other law for the time being in force, present a petition to the court for the passing of a Protection Order.

(2) A petition presented under sub-section (1) shall, among other things, contain the following particulars, namely:

- (a) the name and particulars of the woman subject to domestic violence or if the petition is presented by any other person, the particulars also of such other person;
- (b) the name and address of the husband or the relative who has committed domestic violence;
- (c) the nature of domestic violence;
- (d) all other particulars which would be necessary for the issue of a Protection Order.

(3) On receipt of a petition under sub-section (1), and on consideration of the statements made therein, and the evidence produced, if the Court is Satisfied that a Protection Order may properly be made forthwith, it may make such order ex-parte, and shall fix a date for further consideration of the petition.

(4) If, on consideration of the petition under sub-section (3), the Court is not so satisfied, it shall fix a date for further consideration of the petition without making any Protection Order.

(5) The notice of the date fixed under sub-section (3) or sub-section (4), which shall be more than seven days from the date of issue of such notice, shall be given to the petitioner, or if the petitioner is not the woman subject to violence, to the woman and the Protection Officer, her husband or the relative who has been committing domestic violence and to any other person to whom in the opinion of the Court, such notice shall be given.

(6) A notice given under sub-section (3) or sub-section (4) shall be served on all the persons



to whom it is intended, sufficiently in advance of the date of hearing, and if is not possible for any reason to serve such notice on any of the parties, it shall be pasted on the main door of the premises in which the person to whom the notice is intended is known to have last resided or worked for gain, in accordance with the provisions specified in the Code of Civil Procedure, 1908 for such service, and any notice so served shall be deemed to have been validly served on the party to whom it is intended to be served and shall not be called in question in any court on the ground that the notice had not been validly served.

(7) On the date fixed under sub-section (3) or sub-section (4) or on such date or dates to which the hearing may be adjourned and after hearing the parties, the Court is satisfied that the woman is subjected to domestic violence, it may pass a Protection Order, and if it is not so satisfied, it shall dismiss the petition setting forth the reasons for such dismissal;

Provided that the Court may extend any Protection Order issued under sub-section (3) with or without any alteration or modification or where no such order is issued, it may issue such order, pending, disposal of the petition.

(8) Every endeavour shall be made by the Court hearing the petition under this Act to dispose it of expeditiously and in any case not later than three months from the date of presentation of the petition.

(9) Where any of the parties to the petition so desire, the Court shall on an application made by such party, conduct the proceedings in camera.

(10) A copy of the Protection Order shall be forwarded to the Protection Officer and to all the parties concerned.

(11) A Protection Order made under the section shall be in force for such period not exceeding four years as the court may fix.


5. Contents of Protection Order

The Protection Order shall contain, among other things, the following matters, namely:

- (a) directing the husband or the relative to desist from committing any domestic violence;
- (b) directing in all cases that the wife live separately from her husband, alongwith the children, if any, and the matrimonial home be given to the wife for her separate living;

Explanation For the purpose of this clause, "matrimonial home" means the accommodation in which the husband and the wife lived together immediately before the presentation of the petition, and if such accommodation happens to be rented or belonging to a joint family in which the husband is a member, that house or part of the house;

- (c) where the woman subject to domestic violence is unmarried, widow, divorcee or deserted, directing that separate accommodation be provided for her living alongwith the children, if any;

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- (d) directing that the expenses of such separate living be borne by the husband or relative;
- (e) directing the husband or relative to pay such maintenance to the wife or any children staying with her;
- (f) such other matters as may be considered necessary.

Explanation. For the removal of doubts, it is hereby declared that in the cases covered under clause (e), no maintenance will be provided under any other law for the time being in force.

6. Duties of the Protection Officer

(1) It shall be the duty of the Protection Officer to make himself aware of all the domestic violence being committed in the area for which he is appointed and try to settle it peacefully and amicably between the parties.

(2) Without prejudice to sub-section (1), it shall be within the competence of the Protection Officer, on an application presented to him by the woman subject to domestic violence or any other person on her behalf to arrive at a mutual settlement or on the failure of the parties to arrive at any settlement, to file a petition to the Court under this Act.

(3) It shall also be the duty of the Protection Officer to see that the provisions of the Protection Order are complied with.

7. Protection Officer to be a public servant.

The Protection Officer shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

8. Power to call for information of document.

The Protection Officer may, for the purposes of efficient performance of his duties specified in section 6, require any person or authority to furnish any information or document and it shall be the duty of such person or authority to furnish such information or document.

9. Consequential amendment to the Indian Penal Code and the Code of Criminal Procedure 1973.

(1) In Chapter XX-A of the Indian Penal Code, 1860, after section 498-A, the following section shall be inserted, namely,

'498-B. Husband or relative of husband or of the woman subjecting her to domestic violence.

Whoever, being the husband or the relative of the husband or of the woman, subjects such woman to domestic violence shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

10. Power to make rules

The State Government may by notification make rules to carry out the provisions of this Act. □