

## THE PROTECTION FROM DOMESTIC VIOLENCE BILL, 2004

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

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

### CHAPTER I

#### 1. Short title, extent and commencement.

- (1) This Act may be called the Protection from Domestic Violence Act, 2004.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

#### 2. Definitions.

In this Act, unless the context otherwise requires,-

- a) "aggrieved person" means any woman who is or has been a relative of the respondent and who alleges to have been subjected to act of domestic violence by the respondent;
- b) "application" means any application made by an aggrieved person on her own behalf or on behalf of her child under this Act for any appropriate relief;
- c) "appropriate government" means the State Government in relation to States and the Central Government in relation to the Centre;
- d) "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;

\*being part of the draft Note for Cabinet under reference to Ministry of Law & Justice

- e) "compensation order" means an order granted in terms of Section 18 of this Act;
- f) "custody order" means an order granted in terms of Section 17 of this Act;
- g) "domestic incident report" means a report in the form prescribed made on the receipt of a complaint of domestic violence by an aggrieved person;
- h) "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in the 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;
- i) "domestic violence" has the same meaning as assigned to it in section 4;
- j) "dowry" shall have the same meaning assigned to it under the Dowry Prohibition Act, 1961;
- k) "Magistrate" means the Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, exercising jurisdiction under the Code of Criminal Procedure, 1973 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;
- l) "medical facility" means medical facilities notified by the appropriate government under this Act;
- m) "monetary relief" means compensation which a Magistrate may order at any stage during the hearing of application seeking a protection order, to meet the expenses incurred and losses suffered by the aggrieved person as a result of the domestic violence;
- n) "notification" means a notification published in the Official Gazette;
- o) "prescribed" means prescribed by rules made under this Act;
- p) "Protection Officer" means an officer appointed by the State Government under section 5;

- q) "protection order" means an order made under section 15;
- r) "residence order" means an order granted in terms of Section 15 of this Act;
- s) "respondent" means any 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;
- t) "service provider" means any voluntary association registered under the Companies Act, 1956 or any other law for the time being in force with the objective of protecting the rights and interests of women by any means including legal aid, medical, financial or other assistance.
- u) "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 person aggrieved and the respondent, or owned or tenanted by either of them, any such household in respect of which either the person aggrieved 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 person aggrieved has any right, title or interest in the shared household"

3. Act not in derogation of any other law.

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

## CHAPTER II

4. Domestic Violence.-

Domestic violence means an act, omission or commission or any conduct of the respondent which:

- (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 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) threatens the aggrieved person or any person related to her by any conduct mentioned in clauses (a) and (b); or
- (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

## Explanation 1:

(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.

(iii) "Verbal and emotional abuse" includes:-

- (a) insults, ridicule, humiliation, name calling, including insults, ridicule 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.



(iv) "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 persons 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

Explanation 2:

A single act of commission or omission may constitute domestic violence.

### CHAPTER III

#### 5. Appointment of Protection Officer.

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

(2) Protection Officers shall as far as possible be women and shall possess such qualifications and experience as may be specified in the rules.

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

6: Duties and Functions of Protection Officers:-

(1) It shall be the duty of the Protection Officer

- a) To assist the Court in the discharge of its functions under the Act;
- b) To make a Domestic Incident Report in the prescribed form upon receipt of a complaint of domestic violence and forward copies thereof to the police officer in charge of the police station within whose jurisdiction the violence was committed and the service providers in that area;
- c) If the aggrieved person so desires, to make an application to the court for the protection order in the prescribed form;
- d) To ensure that an aggrieved person is provided legal aid under the Legal Services Authority Act and make available prescribed forms in which the complaint can be made free of cost;
- e) To maintain a list of all service providers providing legal aid, counselling, shelter, medical facilities in the jurisdiction;
- f) To make available a safe shelter home, if the person aggrieved so requires and forward a copy of his report of having lodged an aggrieved women in a shelter home to the police and Magistrate having jurisdiction in the area where the shelter home is located;
- g) To get the person aggrieved medically examined, if she has sustained injuries and forward a copy of the medical report to the police and Magistrate having jurisdiction in the area where the domestic violence took place;
- h) To ensure that the order for monetary relief under Section 16 is complied with and executed, in accordance with the procedure prescribed under the Code of Criminal Procedure.

(2) The Protection Officer shall be under the control and supervision of the Court, and shall perform duties imposed on him or her by the Court and by this Act.

(3) A Protection Officer shall be considered a 'public servant' within the meaning of the Indian Penal Code for the purposes of this Act.

7. Information to Protection Officer and exclusion of liability.

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

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

8. Duties of the police, service provider and Magistrate

A police officer, protection officer, a service provider or a magistrate 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-

- (1) inform the person aggrieved of her right to apply for and obtain a protection order, an order for monetary relief, custody orders and/or a residence order under the provisions of this Act;
- (2) inform the person aggrieved of the services of service providers;
- (3) inform the aggrieved person of the services of the protection officers;
- (4) inform the person aggrieved of her right to free legal services under the Legal Services Authorities Act, 1987;
- (5) inform the aggrieved person of her right to file a complaint under Section 498A of the Indian Penal Code, 1861, 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.

#### CHAPTER IV Procedure For Obtaining Protection Order

##### 9. Application to Magistrate.

- (1) The aggrieved person who is a victim of domestic violence, or any other person on her behalf, or the Protection Officer, may present an application to the Magistrate for seeking relief under section 15.
- (2) The application under sub-section (1) may contain particulars in such form as may be prescribed or as near thereto as possible.
- (3) The Magistrate shall fix first date of hearing, which shall not exceed three days from the date of the receipt of the application by the Magistrate for consideration of the application.
- (4) The application made under clause (1) shall be disposed of within a period of 60 days.

##### 10. Service of notice.

- (1) Notice of the date fixed under section 9 shall be given by the Magistrate to the Protection Officer, who shall get it served by such means as may be prescribed on the respondent, and on any other person, as directed by the Magistrate within a maximum period of two days.
- (2) A declaration in such form as may be prescribed, of the Protection Officer regarding service of notice shall be the proof that such notice was served upon the respondent and on any other person as directed by the Magistrate unless the contrary is proved.



11. Counselling

(1) The Magistrate at any stage of the proceedings under the Act may direct the respondent to undergo mandatory counselling with a service provider who is qualified in counselling.

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

12. Assistance of welfare expert.

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

13. Proceedings to be held in camera.

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

14. Right to reside in a shared household and the right to protection against violence

(1) Notwithstanding any other law 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) An aggrieved woman shall have a right not to 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.

### 15. Passing of protection and residence orders

(1) The court on being satisfied on a balance of probabilities that domestic violence has taken place or is likely to take place, 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) attempting to communicate in any form whatsoever with the person aggrieved, including personal, oral or written, electronic or telephonic contact;
- (v) committing any other act as specified in the protection order;
- (vi) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both parties, jointly 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 court;
- (vii) causing violence to the dependants, other relatives and persons who give the person aggrieved assistance from domestic violence.

(2) In addition to the order under sub-section (1), or otherwise, the court, on being satisfied on a balance of probabilities that domestic violence has taken place, may pass a residence order to:

- (i) restrain the Respondent from dispossessing or in any 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;
- (ii) direct the Respondent to remove himself from the shared household;
- (iii) restrain the Respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;
- (iv) restrain the respondent from alienating or disposing off the shared household or encumbering the same;

- (v) restrain the respondent from renouncing his rights in the shared household except with the leave of the court;

~~(vi)~~ direct the respondent to secure alternate accommodation for the person aggrieved or to pay rent for the same, if the circumstances so require.

Provided that no order under sub-section 2(ii) shall be passed against any respondent who is a woman.

- (3) The court may impose any additional conditions or pass any other direction which it deems reasonably necessary to protect and provide for the safety of the person aggrieved or any child.
- (4) The court may require from the Respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence. An order under this sub section shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure and dealt with accordingly.
- (5) While passing an order under sub-sections (1), (2) or (3), the Court may also pass an order directing the police to give protection to the person aggrieved or to assist her or the person making an application on her behalf in the implementation of the order.
- (6) While making an order under sub-section (2), 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.
- (7) The court may direct the police officer in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the Protection Order.
- (8) 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.
- (9) 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 parties to the application,



police officer in-charge of the police station in whose jurisdiction 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.

#### 16 Monetary Relief-

(1) 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, including an order under or in addition to an order under Section 125, CrPC

Explanation 1: The monetary relief granted under sub-section (1) shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

Explanation 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.

Explanation 3: (1) If an order for maintenance remains unexecuted within a reasonable period despite the best efforts made under this Act, the court shall direct that the aggrieved person be given all the benefits available under existing poverty alleviation schemes of the appropriate government mentioned in the Schedule to this Act as amended from time to time.

(2) Copies of an order for monetary relief shall be forwarded by the Court to the parties to the application and to the Station House Officer of the police station within whose jurisdiction the respondent resides.



(3) The respondent shall pay monetary relief to the person aggrieved within the date specified in the order made in terms of sub-section (1) and in accordance with the terms therein.

(4) The Magistrate may, upon the failure on the part of the respondent to make payment in terms of sub-clause (3), 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.

17. Custody Order—

Notwithstanding any other law in force, the court may, at any stage of the hearing of the application for protection order or for reliefs under sections 16 and 18, grant temporary custody of any child or children to the person aggrieved or the person making an application on her behalf and specify, if necessary, arrangements for visitation by the respondent.

Provided that if the Magistrate is of the opinion that visitation will be harmful to the interests of the child, the Magistrate shall refuse such visitation.

18. Compensation Orders—

(1) In addition to other reliefs under sections 15, 16, 17 and 19 or otherwise 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, including mental torture and emotional distress, caused by the acts of domestic violence committed by the said respondent.

(2) The person aggrieved may make an application for compensation and damages under this section 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 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.

19. Power to grant interim and ex parte orders

(1) In any proceeding before it under this Act, the Court may pass such interim order as it deems just and proper.

(2) If a court 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, it may grant an *ex parte* order on the basis of the affidavit of the aggrieved person under sections 15 to 18 against the respondent in a form as may be prescribed under the rules.

20. Duration and alteration of protection order.

(1) A protection order made under section 15 shall be in force till the aggrieved person applies for discharge

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

21. Relief in other suits and legal proceedings

(1) Relief available under sections 15 to 19 of this Act may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting

the person aggrieved and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) 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.

## 22. Jurisdiction

1). 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;
- ii. the respondent resides, carries on business or is employed; or,
- iii. the cause of action arose.

2) Any order made hereinunder shall be enforceable throughout India.

## 23. Procedure-

(1) Except as otherwise stated in this Act, proceedings regarding the issuance of orders under sections 11, 15, 16, 17, 18 and 22 and offences under section 27(1) provided herein shall be governed by the Code of Criminal Procedure, 1973.

(2) Nothing in sub-section (1) shall prevent the court from laying down its own procedure.

## 24. Court Fees

No court fees shall be payable for any applications under this Act.

## CHAPTER V

### Miscellaneous

## 25. Appeal

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



26. Protection Officer to be a public servant.

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

27. Penalty for breach of protection order by respondent.

- (1) A breach of protection order, or of the interim protection order, by the respondent shall be an offence and shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to rupees twenty thousand, or with both.
- (2) The offence under sub-section (1) shall be triable by the Magistrate who had passed the previous order, breach of which has been caused by the accused.
- (3) While framing charges under sub-section (1), the Magistrate may also frame charges under Section 498A of the Indian Penal Code, any other provision of the Indian Penal Code or the Dowry Prohibition Act, 1961 if the facts disclose the commission of an offence under those sections.

28. Cognizance and proof

- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offence under section 27 (1) shall be cognizable and non-bailable.
- (2) The Court may conclude the commission of an offence under section 27(1) upon the sole testimony of the person aggrieved.

29. 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 rupees twenty thousand, or with both.



30. Cognizance of offence committed by the 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 authorized by it in this behalf.

31. Protection of action taken in good faith.

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

32. Powers of Service Providers

(1) Any service provider registered under this Act shall have the power to:

- a) record the Domestic Incident Report in the prescribed form if the woman so desires and forward a copy thereof to the protection officer and Magistrate having jurisdiction of the place where the domestic violence took place.
- b) get the person aggrieved medically examined and forward a copy of the medical report to the protection officer and the police within the jurisdiction of the place where 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 within whose jurisdiction the domestic violence took place.

33. Duties of Government

(1) It shall be the duty of the Central Government and the State Governments to provide adequate shelter homes, medical facilities and legal aid for women facing domestic violence.

(2) The Government of India, as well as the State Governments, shall ensure that:

- (i) The Act and the contents thereof receive wide publicity in the television, radio and the print media at regular intervals;
- (ii) The government officers, the police and the members of the judicial services are given periodic sensitization and awareness training on the issues addressed by this Act;
- (iii) Effective co-ordination between the services provided by concerned ministries dealing with law and order, health, human resources and any other concerned ministries to address issues of domestic violence and periodically review the same; and
- (iv) Prepare and put in place protocols for the various ministries concerned with the delivery of services to women under this Act including the courts.

34. Power to make rules.

(1) The appropriate government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

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

a) qualifications, experience and terms of conditions of service for the appointment of Protection Officers and other officers subordinate to him under section 5

b) prescribing the form in which the application may be presented;

c) prescribing the form in which the domestic incident report will be made;

d) provide for the maintenance of a register of service providers;

e) provide for the maintenance of a list of shelter homes and medical facilities to be notified in the official gazette;

f) specify poverty alleviation schemes in the schedule ;

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

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



### Statement of Objects and Reasons

Domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Platform of Act (1995) both have acknowledged this. The United Nations Committee on CEDAW (Convention on Elimination of All Forms of Discrimination Against Women) and in its general recommendation No. XII (1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family.

2. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is visited with cruelty by her husband or his relatives is an offence under section 498A of the Indian Penal Code, 1860. The civil law does not address this phenomenon in its entirety.

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

- 1) The Bill seeks to cover 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 (not necessarily legal) or a relationship in the nature of marriage, or adoption; in addition relationship with family members living together as a joint family are also included. What this means is that even those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to legal protection under the proposed Bill.
- 2) Domestic violence includes actual abuse or the threat or abuse that is physical, sexual, verbal, emotional and economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.
- 3) One of the most important features of the Bill is the woman's right to secure housing. The Bill provides for the woman's right to reside in the matrimonial or shared household, whether or not she has any title or rights in the household. This right is secured by a residence order, which is passed by a court.



- 4) The other relief envisaged under the Bill is that of the power of the court to pass protection orders that prevent the abuser from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the abused, attempting to communicate with the abused, isolating any assets used by both the parties and causing violence to the abused, her relatives and others who provide her assistance from the domestic violence.
- 5) The draft Bill provides for appointment of Protection Offices and NGOs to provide assistance to the woman w.r.t medical examinations, legal aid, safe shelter etc.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clauses (2) and (3) of section 5 seek to confer power on the Central Government to make rules for prescribing the qualification, terms and conditions of service of the Protection Officer and other officers subordinate to her/him. Section 6(1)(b) confers power on the Central Government to make rules for prescribing the form in which the Domestic Incident Report is to be made. Sub-section (2) of section 9 confers power on the Central Government to make rules for prescribing the form in which the application may be presented by the aggrieved person to the Magistrate. Sub-sections (1) & (2) of section 10 confer power on the Central Government to make rules regarding service of notice on respondent. Sub-section (2) of section 19 confers power on the Central Government to make rules for prescribing the form in which the affidavit may be filed by the aggrieved person to the court.

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

## Submissions on the Protection from Domestic Violence Bill 2004

1. **Title of the Bill-** if the objective of this Bill should be twofold. First, to provide protection to women facing domestic violence and secondly, to prevent the incidence of domestic violence. Hence it is suggested that the title of the Bill be amended as follows:

"The Domestic Violence Against Women (Protection and Prevention) Bill."

2. **Preamble-** The Preamble to any law is important in setting the broad context within which the law is expected to work. Since the Bill on domestic violence attempts to codify human rights standards and victim friendly perspectives towards domestic violence, the Preamble becomes all the more important towards establishing and recognizing these rights.

The Preamble should emphasize three rights important in the context of domestic violence – the right of every woman to live a life free of violence, the right to speedy and effective protection and relief from domestic violence and the right of every woman to reside in the shared household. The Preamble should also mention the source of such rights. This enables such rights to be traced back to the rights of equality before the law and equal protection of the laws and the rights of life and liberty enumerated in the Constitution of India (Articles 14, 15, 21). Such rights also find elaboration in various international law documents including the Convention on the Elimination of Discrimination Against Women (CEDAW) and the United Nations Declaration on the Elimination of All Forms of Violence against Women.

3. **Definition of aggrieved person** The draft Bill mentions the word 'relative' in relation to aggrieved person. The word 'relative' may not cover relationships of cohabitation and where the women are in live-in relationships. A co-habitee may not be considered a 'relative' by the courts. As the Bill is intended to cover such relationships of cohabitation as reflected in the definition of 'domestic relationship' in Section 2(h) and reference in the Statement of Objects and Reasons, this section should be rephrased to provide that an "aggrieved person" means any woman who is or has been in a domestic relationship with the respondent and who has been subjected to acts of domestic violence;"



4. **Definition of "domestic relationship"**- it is suggested that the word 'joint' appearing before the word "family" be dropped , so that the phrase does not limit the understanding of domestic relationships to the traditional joint family set up and to take into account situations which may not be covered by such phrases and to present a broader understanding of relationships and modes of living arrangements.
5. **Definition of "service providers"** – the Service providers envisaged under this law are voluntary organizations working in the area of women's rights and so must be registered under the Societies Registration Act, 1860 and not incorporated under the Companies Act.

The idea of including this provision in the law was to provide recognition to the work carried on by the voluntary organisations engaged with the issue of women's rights and provide them protection for providing legitimate and urgently needed support to women in distress. The Bill recognizes that the State role will be complemented by the role of non-State service providers for effective prevention of domestic violence. It is therefore important that the role of such organizations is encouraged, and not discouraged by a burdensome system of incorporation under the Companies Act.

Voluntary and non-governmental organizations providing medical and legal aid and shelter to women facing domestic violence play a very important role towards the prevention of domestic violence and in assisting women. These organisations are voluntary organisations and are not in a majority of the cases incorporated as companies under the Companies Act.

We also suggest the incorporation of the phrase "and registered in a register maintained under this Act" may be added to the definition of 'service provider'. If an organization fulfilling these criteria would like to adopt a role under this law, it will need to enter its name in a register maintained by the State; there is no formal screening process of such providers under the law. This simplicity in proceedings must be maintained.

6. **Definition of "shelter home"**- this definition is not present in the Bill and requires inclusion.
7. **Addition of the non-obstante clause (Section 3)**- it is suggested that a non-obstante clause "notwithstanding anything contained in any law" is added to the Bill to emphasise the complementary nature of this law. This law does not take away or modify any of the existing reliefs under civil or criminal law. It is meant to be used in conjunction with such reliefs.
8. **Appointment of protection officers (Section 5)**- the role of the protection officer should be akin to the role of an outreach officer of a court hence it is suggested that this provision be amended to include the phrase "to assist the court in the discharge of its duties under this Act".
9. **Duties of the police, service provider and Magistrate (Section 8)**- this section clubs together the duties of three disparate groups. It is suggested that the duties of the police, the service providers, medical facilities be mentioned separately as the kind of services they provide is different. It is also important to enlist the duties of a "shelter home". The reason for elucidating the role of each of these entities is to ensure that a woman facing violence and desirous of accessing the services of such entities is not turned away. Further this puts in place the conditions for a multi-agency response to a woman facing domestic violence.
10. **Application to magistrate (Section 9)**-In sub section (1) of this section, any person may apply on behalf the aggrieved woman for seeking relief. It is essential to add that the application be brought only after the written consent of the aggrieved woman is taken prior to the filing of any application.
11. **Assistance of welfare expert (Section 12)** -the term "welfare expert" used in this provision finds no definition in Section 2. Hence this provision is ambiguous and inaccurate. Further it is disturbing to note the phrase "including a person engaged in promoting family welfare". It must be reiterated that this law is towards stopping violence faced in shared living spaces and not for providing reconciliation to the parties concerned. Hence this



**15. Duties of governments (Section 33)-** the appointment of state and national rapporteurs is crucial to ensure the proper implementation of the Bill. This Bill does not make any reference to the appointment of such rapporteurs.

The State has the responsibility to ensure effective implementation of this law. It can do this through the appointment of national and state level Rapporteurs. Such Rapporteurs would have the power of annual reporting on trends of domestic violence and conducting studies on the issues. They may call for reports on the functioning of this law from all authorities and persons involved in this law. They also have an active role in law reform and suggesting changes to the portions of the law that may not be effective. Such Rapporteurs should also have the power to participate in the planning process towards the provision of a safe environment for women. Thus, the office of Rapporteurs under this law helps to provide a holistic analysis of the trends in domestic violence and enforcement of this law. Hence the following addition should be made to this provision

*"The Government of India and the State Governments shall respectively appoint an eminent person with experience of working on issues of women's rights as the National and State Rapporteur for the prevention of domestic violence.*

The Rapporteur 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:

- (1) To make annual reports to the Central and State Governments on all matters related to the prevention of domestic violence;
- (2) To call for reports on the functioning of this Act from the Chief Judicial Magistrate, Commissioner of Police, service provider, shelter homes and medical facilities under the Act, for the purposes of preparing the annual reports;
- (3) To undertake studies and make recommendations for the effective implementation of the provisions of this Act from time to time;
- (4) To review from time to time, the existing provisions of the law on domestic violence;
- (5) To participate and advise on the planning process for securing a safe environment free of domestic violence including the provision of adequate shelter homes, medical



facilities and legal aid to women who face domestic violence.

The National and State Rapporteurs may be assisted by the service providers in the discharge of their functions."