

## IMPORTANT LEGISLATIONS RELATING TO THE RIGHTS OF WOMEN AND CHILDREN

### INTRODUCTION:

In order to live with dignity certain basic rights and freedoms are necessary, which all Human beings are entitled to; these basic rights are called Human Rights. Those who have had to bear the brunt of global deprivation and denial of human rights the most and at all times are women. Violence against women in its various forms is a violation of human rights. It deprives women of their ability to enjoy fundamental freedom. It is an obstacle to equality and rights. Violence against women intersects with multiple forms of discrimination.

The status of **women in India** has been subject to many great changes over the past few millennia. The Constitution of India guarantees to all Indian women equality (Article 14), no discrimination by the State (Article 15(1)), equality of opportunity (Article 16), and equal pay for equal work (Article 39(d)). However, women in India continue to face numerous problems, including violent victimization through rape, acid throwing, dowry killings, and the forced prostitution of young girls. Police records in India show a high incidence of crimes against women. Though There Are very much legislation to protect and safeguard women and children .still there are violations against their rights continues. Some important legislations relating to women and children are as follows:

### I. PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005:

The **Protection of Women from Domestic Violence Act 2005** is an Act of the Parliament of India enacted to protect women from domestic violence. It was brought into force by the Indian government from 26 October 2006. The Act provides for the first time in Indian law a definition of "domestic violence", with this definition being broad and including not only physical violence, but also other forms of violence such as emotional/verbal, sexual, and economic abuse. It is a civil law meant primarily for protection orders and not meant to penalize criminally.

The Protection of Women from Domestic Violence Act 2005 differs from the provision of the Penal Code - section 498A of the Indian Penal Code - in that it provides a broader definition of domestic violence.<sup>[3]</sup>

Domestic violence is defined by Section 3 of the Act as "any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it:

1. 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
2. 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
3. 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
4. Otherwise injures or causes harm, whether physical or mental, to the aggrieved person."

The Act goes on, through the section *Explanation 1*, to define "physical abuse", "sexual abuse", "verbal and emotional abuse" and "economic abuse".

### Scope

Primarily meant to provide protection to the wife or female live-in partner from domestic violence at the hands of the husband or male live-in partner or his relatives, the law also extends its protection to women living in a household such as sisters, widows or mothers. Domestic violence under the act includes actual abuse or the threat of abuse whether 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.

The salient features of the Protection from Domestic Violence Act, 2005 are as follows:

- The Act 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 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. Even those women who are sisters, widows, mothers, single women, or living with them are entitled to get legal protection under the proposed Act.
- "Domestic violence" includes actual abuse or the threat of 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.
- One of the most important features of the Act is the woman's right to secure housing. The Act 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. These residence orders cannot be passed against anyone who is a woman.
- The other relief envisaged under the Act 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.

The draft Act provides for appointment of Protection Officers and NGO,s to provide assistance to the woman w.r.t medical examination, legal aid, safe shelter, etc.

- The Act provides for breach of protection order or interim protection order by the respondent as a cognizable and non-bailable offence punishable with imprisonment for a term which may extend to one year or with fine which may extend to twenty thousand rupees or with both. Similarly, non-compliance or discharge of duties by the Protection Officer is also sought to be made an offence under the Act with similar punishment.

While "economic abuse" includes deprivation of all or any economic or financial resources to which the victim is entitled under any law or custom whether payable under an order of a Court or otherwise or which the victim 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 her, payment of rental related to the shared household and maintenance and 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 victim has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the victim or her children or her stridhan or any other property jointly or separately held by the victim and prohibition or restriction to continued access to resources or facilities which the victim is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household, "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 victim and includes assault criminal intimidation

### **Application to the magistrate**

An application regarding domestic violence can be presented to the magistrate seeking one or more reliefs mentioned in sections by:

- The aggrieved person,
- Protection officer on behalf of aggrieved person
- Any other person on behalf of aggrieved person

### **Jurisdiction of court**

The first class magistrate court or metropolitan court shall be the competent court within the local limits of which

- The aggrieved person permanently or temporary resides or carries on business or is employed
- The respondent permanently or temporally resides or carries on business or is employed or
- The cause of action arises.

Any order made under this Act shall be enforceable throughout India While disposing application the magistrate shall take in to consideration any domestic incident report received from the protection officer or service provider. The relief sought under this section includes the issuance of order of payment or compensation or damages without prejudice to the right of such person to institute suit for compensation or damages for injuries caused by the act of domestic violence. 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 there is a likelihood of such violence, he may grant following exparte interim order against the respondent on the basis of affidavit of the aggrieved person. Magistrate can issue different orders such as Protection order, residence order, monetary relief, custody order or compensatory orders as per the circumstances of the case.

In case of an earlier decree of compensation or damages passed by any other court, in favour of aggrieved person, the amount if any paid shall be set off against the order of amount payable under this act. The application to the magistrate shall be as nearly possible to the formats prescribed under this Act and Rules. After receiving the application the Magistrate shall fix the date of first hearing within 3 days and the magistrate shall endeavor to dispose of every application be within a period of 60 days of the first hearing. The notice of the date of hearing shall be given by the magistrate to the protection officer who shall get it served to the respondent. At any stage of the application, the magistrate may order, counselling of the respondent or aggrieved person either singly or jointly with any member of service provider. The magistrate may secure the service of suitable person preferably a woman including a person engaged in the welfare of women for assisting the court in the discharge of its function. If the circumstance of the case so warrant and if either party so desires the magistrate may conduct the proceedings on camera.

### ***Right to reside in a shared house hold:***

Every women in a domestic relationship shall have the right to reside in the shared household, irrespective of the fact that she has right, title or beneficial interest in it. The aggrieved person shall not be evicted from the shared house hold or any part of it by the respondent without the procedure established by the law. The Hon'ble Supreme court in a case, S.R Batra and another V Smt Taruna Batra, held that the exclusive property of mother -in-law of Smt Taruna Batra is not a shared household as defined in S.2 of the Act. shared property means the house belongs to husband or taken rent by him or joint family property. Wherever the couple lived together in the past and treating that property as shared household would lead to chaos and such interpretation would be absurd.



## **Different kinds of order issued by the Magistrate**

### ***Protection orders***

After giving an opportunity to the aggrieved person and respondent of being heard and the magistrate is satisfied that a prima facie case of domestic violence has taken place or is likely to take place, pass a protection order in favor of the aggrieved person prohibiting the respondent from the following acts such as committing any acts of domestic violence

- Aiding or abetting in the act of domestic violence
- Entering the place of employment of aggrieved person or if the person is child, its school or any other places
- Attempting to communicate in any form including personal, oral or written, electronic or telephonic contact
- Alienating any assets, operating bank account, bank locker held or enjoyed by both parties jointly or singly by the respondent including her stridhan
- Causing violence to the dependents, or other relative or any other person who give the assistance to the aggrieved person or
- Committing any other acts specified by the protection officer

### ***Residence orders***

The magistrate being satisfied that a domestic violence has taken place, pass residence order-

- Restraining the respondent from dispossessing or in any manner disturbing the peaceful possession of the shared household
- Directing the respondent to remove himself from the shared household
- Restraining the respondent or his relatives from entering any portion of the shared house hold where the aggrieved person lives
- Restraining the respondent from alienating or disposing of the shared house hold or encumbering it
- Restraining the respondent from renouncing his right in the shared household
- Directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her or to pay rent for the same if the circumstances so require.

No order shall be made against women under this section. Magistrate may impose additional condition and pass any other order to protect the safety of the aggrieved person or her child. Magistrate is also empowered to order direction the concerned station house officer of the police station to give protection to the aggrieved person r to assist in implementing his order. Magistrate may also impose on the respondent to direct stridhan or any other property or valuable security she is entitled.

### ***Monetary relief***

The magistrate may direct the respondent to pay monetary relief to meet the expenses of the aggrieved person and any child as a result of domestic violence and such relief include

- Loss of earnings
- Medical expenses
- Loss caused due to destruction or removal or damage of any property
- Pass order as to maintenance for the aggrieved person as well as her children if any

Including the order under or in addition to an order of maintenance under section 125 criminal procedure code or any other law.

The quantum of relief shall be fair reasonable and consistent with the standard of living to which the aggrieved person is accustomed to. Magistrate can order a lump sum amount also . On failure of the respondent to make payment of this order, magistrate shall order employer or debtor of the respondent to directly pay to the aggrieved person or to deposit in the court a portion of the salary or wage due to the respondent. Magistrate can order a lump sum amount also . On failure of the respondent to make payment of this order, magistrate shall order employer or debtor of the respondent to directly pay to the aggrieved person or to deposit in the court a portion of the salary or wage due to the respondent.

### **Custody orders**

Magistrate can grant temporary custody of any child or children to the aggrieved person or to the person making application on her behalf and specify the arrangements for visit of such child by the respondent. Magistrate can refuse the visit of such respondent in such case if it may harmful to the interest of the child.

### **Compensation orders:**

Magistrate may pass order directing the respondent to pay compensation to the petitioner for injuries including mental torture and emotional distress caused by the acts of domestic violence committed by the respondent.

Copies of orders passed by the magistrate shall be supplied free of cost to the parties concerned and police officer and service provider

Any relief available under this Act may also be sought in any other legal proceedings before a civil court, family court or criminal court and such relief may be sought in addition to and along with relief sought for in suit, or legal proceeding before civil or criminal court

## **II. Juvenile Justice (Care and Protection of Children) Act 2000, as amended in 2006**

The Government of India enacted the Juvenile Justice Act in 1986. In 1989 the General Assembly of the United Nations adopted the Convention on the Rights of a Child. India ratified the UNCRC in 1992. The convention outlines the right of the child to reintegration into society without judicial proceedings where avoidable. Hence the Government, to fulfil the standards of the convention felt a need to re-write the law. Hence in 2000 the old law was replaced by the Juvenile Justice (Care and Protection of Children) Act.

In this act a child or juvenile is defined as a person who has not completed his/her 18th year of age. It outlines two target groups: Children in need of care and protection and Juveniles in conflict with law. This act protects not only the rights of children, but a person's rights when he/she was a child. Meaning that if a crime or an incident took place while the person was a child, and then during the preceding the juvenile ceased to be of age the case would continue as if the juvenile has not turned eighteen yet.

The second chapter of the Act addresses Juveniles in Conflict with Law (JCLs). This section calls for the establishment of Juvenile Justice Boards (JJBs) where the State Government sees fit. JJBs must contain a Metropolitan or Judicial magistrate and two social workers where one of the workers must be a woman. The magistrate is required to have a background in child psychology or child welfare. JCL cases can only be heard in the JJB and not by another court. The powers of the JJB can be exercised in a High court or Court of Session when an appeal has been made as part of the act, the state is required to set up a number of institutions where the needs and protection of juveniles may be fulfilled. For the reception and rehabilitation of JCLs the state must set up Observation Homes and Special Homes in ever district or group of districts. The state may directly set up these homes or contract a voluntary organization to do so. Observation homes are for institutions for juveniles while their proceedings are underway. After the proceedings of a particular case are complete, the JJB may decide that the rehabilitation of the child is not complete and hence place them in a Special home for no longer than three years. <sup>i</sup>

When a police officer comes in contact with a juvenile he must place the child with the Special Juvenile Police Unit (SJPU) who must report the child to the board without delay. Bail is available to juveniles in all cases as long as the Board fined the release of this child will not place him in any danger or in the influence of criminals. If the child is not released on bail he is only to be placed into the custody of an Observation Home. The SJPU are responsible for informing the juvenile's parents of the arrest, as well as inform the Probation Officer who will make the necessary enquires about the child.

The JJB must make an inquiry into the case and if they determine the child is guilty of the crime then they may release the child after advice and counseling. The child can be released either to his parents/guardians or into an institution, with or without a bond. The Board may also make the child pay a fine (if he is above fourteen and earns) or complete hours of community service. A social investigation report from the probation officer is required for the child to be discharged. The probation officers may be required to continue a follow up of the child even after discharge. A child cannot be charged with the death penalty, imprisonment which can extend to life imprisonment or committed to prison for inability to pay a fine or providing a security for the bond.



Under this act juvenile cases can not be processed with non-juvenile cases. A juvenile can not be rendered unfit or 'disqualified'. Juveniles are not exposed to the media as magazines, news papers and visual media are not permitted to release the information about the juvenile. Juveniles who run away from the Observation or Special homes can be brought back without a warrant and without punishment. Cruelty (such as assault or neglect) towards juveniles in the home or by any person in charge of him/her is a punishable offence. This act also has provisions to penalize people who exploit children for a crime. A person, who employs a child in a hazardous industry, employs him/her for begging or provides a child with drugs or alcohol is liable to serve prison time and pay fines.

Chapter III address Children in Need of Care and Protection (CNCP). In place of a JJB, CNCP cases are heard by the Child Welfare Committee (CWC). The committee is meant to have a chairperson and four other members of whom at least one should be a woman and at least one expert in children's issues. The purpose of the CWC is to provide for the care, treatment, protection, rehabilitation and development of the child and in doing so uphold the rights of the child. The child may be brought in front of the CWC by a police officer, public servant, social worker, CHILDLINE, the child or anyone public citizen. The committee may commit a child to the Children's home or a Shelter home if the child has no immediately available family or support system.

Like in the case of JCL, CNCP are provided with Children's Homes and Shelter Homes. The state may directly set up these homes or contract a voluntary organisation to do so. Shelter homes are for children whose family can not be located or whose case has been completed. Children who come from a different area or state are meant to be transferred to an institution and CWC that is closest to his/her residence. The main aim of this system is to restore the child to his family or family environment after determining the safety of the environment.

The fourth chapter discusses the importance of rehabilitation and social integration as the purpose of this act. This section discusses certain non-institutional solutions such as adoption, foster care, and sponsorship. Orphaned and abandoned children are eligible for adoption. The CWC may declare a child fit for adoption and refer him/her to an adoption agency (set up by the government) for placement. Foster care in this act is only for looking after infants before adoption takes place. Sponsorship programmes are to help provide supplementary educational, nutritional, medical and other services to families, guardians, and homes. After-care organisations are also to be set up to take care of children after they leave the homes. *i*

The last chapter of the act contains many miscellaneous provisions. Some of the notable provisions are as follows. The act allows for children with special needs such as a mental or physical disease to be given the necessary attention at an approved institution that specialises in the form of care. Under this act the government can set up advisory boards at different levels to advise them about various implementation aspects of the act. The JJB and CWC have the authority to release a child to his/her parents or give the child leave because of a death in the family, a wedding, a school examination, etc. For the carrying out of this act, the state shall create a Child Protection Unit, whose officers are responsible to ensure that the act is properly implemented. Rules for this act are to be made by each State Government

**Juvenile Justice (Care and Protection of Children) Act, 2015** has been passed by Parliament of India. It aims to replace the existing Indian juvenile delinquency law, **Juvenile Justice (Care and Protection of Children) Act, 2000**, so that juveniles in conflict with Law in the age group of 16-18, involved in Heinous Offences, can be tried as adults. The Act came into force from 15 January 2016. It was passed on 7 May 2015 by the Lok Sabha amid intense protest by several Members of Parliament. It was passed on 22 December 2015 by the Rajya Sabha.

### III. Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994

**Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994** is an Act of the Parliament of India enacted to stop female feticides and arrest the declining sex ratio in India. The act banned prenatal sex determination.

This process began in the early 1990s when ultrasound techniques gained widespread use in India. There was a tendency for families to continuously produce children until a male child was born. Foetal sex determination and sex selective abortion by medical professionals has today grown into a Rs. 1,000 crore industry (US\$ 244 million). Social discrimination against women and a preference for sons have promoted female feticide in various forms skewing the sex ratio of the country towards men. According to the decennial Indian census, the sex ratio in the 0-6 age group in India went from 104.0 males per 100 females in 1981, to 105.8 in 1991, to 107.8 in 2001, to 109.4 in 2011. The ratio is significantly higher in certain states such as Punjab and Haryana (126.1 and 122.0, as of 2001).

#### Objectives

The main purpose of enacting the act is to ban the use of sex selection techniques before or after conception and prevent the misuse of prenatal diagnostic technique for sex selective abortion.

**Definition:** Sex selection is any act of identifying the sex of the foetus and elimination of the foetus if it is of the unwanted sex.<sup>[1]</sup>

#### Salient features

Offences under this act include conducting or helping in the conduct of prenatal diagnostic technique in the unregistered units, sex selection on a man or woman, conducting PND test for any purpose other than the one mentioned in the act, sale, distribution, supply, renting etc. of any ultra sound machine or any other equipment capable of detecting sex of the foetus. Main provisions in the act are<sup>[2]</sup>

1. The Act provides for the prohibition of sex selection, before or after conception.
2. It regulates the use of pre-natal diagnostic techniques, like ultrasound and amniocentesis by allowing them their use only to detect :
  1. genetic abnormalities
  2. metabolic disorders
  3. chromosomal abnormalities
  4. certain congenital malformations
  5. haemoglobinopathies
  6. sex linked disorders.
3. No laboratory or centre or clinic will conduct any test including ultrasonography for the purpose of determining the sex of the foetus.
4. No person, including the one who is conducting the procedure as per the law, will communicate the sex of the fetus to the pregnant woman or her relatives by words, signs or any other method.
5. Any person who puts an advertisement for pre-natal and pre-conception sex determination facilities in the form of a notice, circular, label, wrapper or any document, or advertises through interior or other media in electronic or print form or engages in any visible representation made by means of hoarding, wall painting, signal, light, sound, smoke or gas, can be imprisoned for up to three years and fined Rs. 10,000.

### Compulsory registration

The Act mandates compulsory registration of all diagnostic laboratories, all genetic counseling centres, genetic laboratories, genetic clinics and ultrasound clinics.

### Amendment in 2003

Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (PNDT), was amended in 2003 to The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition Of Sex Selection) Act (PCPNDT Act) to improve the regulation of the technology used in sex selection.

Implications of the amendment are

1. Amendment of the act mainly covered bringing the technique of pre conception sex selection within the ambit of the act
2. Bringing ultrasound within its ambit
3. Empowering the central supervisory board, constitution of state level supervisory board
4. Provision for more stringent punishments
5. Empowering appropriate authorities with the power of civil court for search, seizure and sealing the machines and equipments of the violators
6. Regulating the sale of the ultrasound machines only to registered bodies

### IV. The Protection of Children from Sexual Offences Act, 2012

To deal with child sexual abuse cases, the Government has brought in a special law, namely, The Protection of Children from Sexual Offences (POCSO) Act, 2012. The Act has come into force with effect from 14th November, 2012 along with the Rules framed there under.

The POCSO Act, 2012 is a comprehensive law to provide for the protection of children from the offences of sexual assault, sexual harassment and pornography, while safeguarding the interests of the child at every stage of the judicial process by incorporating child-friendly mechanisms for reporting, recording of evidence, investigation and speedy trial of offences through designated Special Courts.

The said Act defines a child as any person below eighteen years of age, and defines different forms of sexual abuse, including penetrative and non-penetrative assault, as well as sexual harassment and pornography, and deems a sexual assault to be "aggravated" under certain circumstances, such as when the abused child is mentally ill or when the abuse is committed by a person in a position of trust or authority *vis-à-vis* the child, like a family member, police officer, teacher, or doctor. People who traffic children for sexual purposes are also punishable under the provisions relating to abetment in the said Act. The said Act prescribes stringent punishment graded as per the gravity of the offence, with a maximum term of rigorous imprisonment for life, and fine.

In keeping with the best international child protection standards, the said Act also provides for mandatory reporting of sexual offences. This casts a legal duty upon a person who has knowledge that a child has been sexually abused to report the offence; if he fails to do so, he may be punished with six months' imprisonment and/ or a fine.

The said Act also casts the police in the role of child protectors during the investigative process. Thus, the police personnel receiving a report of sexual abuse of a child are given the responsibility of making urgent arrangements for the care and protection of the child, such as obtaining emergency medical treatment for the child and placing the child in a shelter home, should the need arise. The police are also required to bring the matter to the attention of the Child Welfare Committee (CWC) within 24 hours of receiving the report, so the CWC may then proceed where required to make further arrangements for the safety and security of the child.

The said Act makes provisions for the medical examination of the child in a manner designed to cause as little distress as possible. The examination is to be carried out in the presence of the parent or other person whom the child trusts, and in the case of a female child, by a female doctor.

The said Act provides for Special Courts that conduct the trial in-camera and without revealing the identity of the child, in a child-friendly manner. Hence, the child may have a parent or other trusted person present at the time of testifying and can call for assistance from an interpreter, special educator, or other professional while giving evidence; further, the child is not to be called repeatedly to testify in court and may testify through video-link rather than in a courtroom. Above all, the said Act stipulates that a case of child sexual abuse must be disposed



of within one year from the date the offence is reported. It also provides for the Special Court to determine the amount of compensation to be paid to a child who has been sexually abused, so that this money can then be used for the child's medical treatment and rehabilitation.

The said Act recognizes almost every known form of sexual abuse against children as punishable offences, and makes the different agencies of the State, such as the police, judiciary and child protection machinery, collaborators in securing justice for a sexually abused child. Further, by providing for a child-friendly judicial process, the said Act encourages children who have been victims of sexual abuse to report the offence and seek redress for their suffering, as well as to obtain assistance in overcoming their trauma. In time, the said Act will provide a means not only to report and punish those who abuse and exploit the innocence of children, but also prove an effective deterrent in curbing the occurrence of these offences.

The said Act is to be implemented with the active participation of the State Governments. Under Section 39 of the said Act, the State Government is required to frame guidelines for the use of persons including non-governmental organizations, professionals and experts or persons trained in and having knowledge of psychology, social work, physical health, mental health and child development to assist the child at the trial and pre-trial stage. The following guidelines are Model Guidelines formulated by the Central Government, based on which the State Governments can then frame more extensive and specific guidelines as per their specific needs.

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