

AN ARTICLE ON THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

By

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Mother, Sister, Wife....., so many roles played by the woman. Since time immemorial, she performs these roles efficiently, with love and affection, compassion and never complaining. What she renders is a selfless service and is always striving for the welfare of her family. She even forgets her own identity. But for all these efforts, is she reciprocated properly? Not always. She is being ill-treated and abused both physically and mentally. She sometimes is not even aware of her basic rights. She is being subjected to cruelty and violence from her own family.

The violence she faces from the members of family is known as domestic violence. That is why, to prevent the women from suffering, the Parliament has passed the “Protection of Women from Domestic Violence Act, 2005”.

The domestic violence is considered as an offence under the Section “498A” of the Indian Penal Code. This Act extends to the whole of India except the State of Jammu and Kashmir, which is due to certain circumstances under which Jammu and Kashmir was acceded to India, in terms of Govt. of India Act. So, Jammu and Kashmir is not separate but an integral part of India, though this Act does not extend to that State.

The title of this Act is descriptive, that is it stresses on the Protection of the Women from Violence. This law is a general law and is applicable to the citizens without any discrimination. It is also applicable to the Indians living abroad. Any Indian woman, facing cruelty can complain to the Magistrate.

If a person is living abroad and the wife lives in India and if the husband threatens the wife with dire consequences and causes mental stress, the wife can complain to the Magistrate. This is also a kind of domestic violence.

The woman, who is abused, should be in a relationship with the abuser living together in a shared household.

Even women, who are sisters, mothers, widows or single woman can seek legal protection against violence caused by a male member of the family. The violence may be abuse of physical nature, sexual, verbal abuse, emotional stress or can be of economic nature like dowry demand *etc.*

Physical abuse will be in the nature of bodily pain, danger to life impairing the health or criminal intimidation. Sexual abuse is a conduct of sexual nature that abuses and humiliates the women or lower the dignity of a lady.

Verbal abuse is causing insults, humiliation, ridicule the woman for not having a child, specially a male child. Economic abuse is depriving a woman from having an access to the economic resources like stridhan, valuables, shares and property *etc.*

The custody of children is also another important issue that an aggrieved woman faces. But this is not a case of domestic violence but a case of causing mental stress. If the child is already in mother’s custody, the Magistrate will allow the custody of the child to the mother only. But if the child is taken away from the mother then the Magistrate orders the custody of the child to

be restored back to her. The respondent will be allowed to visit the child, if the visit will not harm the interest of the child.

The woman also complained against the female relatives like mother-in-law or sister-in-law *etc.*, who caused any kind of abuse or harm to her.

When a woman reports to the Magistrate, he will report it to the Protection Officer. The woman may also approach the Protection Officer directly or can approach the service provider. The Protection Officer is appointed to give assistance and help and also there is a non-Governmental organization like service provider is registered for providing advise, help and relief to the woman. The victim need not necessarily be an adult, but may be a child too. But the complaint will be lodged by an adult to the Protection Officer.

The Magistrate who receives the domestic incident report may take up the enquiry. It will now be called domestic violence case. A notice will be sent to the person who causes the harassment within two days. This person is called as the respondent. The third day will be fixed for hearing. The Magistrate may pass interim orders if he feels it necessary. He directs the Protection Officer to see that the orders are implemented, the Magistrate can grant protection orders, maintenance orders, custody orders and compensation orders. The Magistrate tries to deal and conclude the case within six months. The orders of the Magistrate are to be complied by the respondent, otherwise he will be liable for prosecution. He may be punished if he does not function properly. He may be imprisoned for one year, or he may have to pay a fine of Rs.20,000/- or he may face both these punishments as the case may be.

The Act itself is not a criminal enactment. It itself does not punish the respondent. But if there is any offence punishable under the

Penal Code, or under the Dowry Law or under 498A of the Criminal Procedure Code the Magistrate may frame charges against the respondent.

The aggrieved woman may be provided immediate medical relief free of cost, by the order of the Government or the medical institutions. The monitory relief is also provided, which is of three kinds temporary, quasi-permanent, and substantial.

The aggrieved woman may be provided shelter in shelter homes which may be private or Government owned. The Protection Officer or the service provider may request for the boarding and lodging of the woman for which the respondent is made to pay the cost.

When the job allotted to both the Protection Officer and service provider is over and still if the Magistrate feels that there is need to further look into the matter he may appoint an welfare expert, who mostly will be a woman and the expert will advise the Magistrate on various problems.

Sometimes the respondents or the aggrieved person may request the Court to carry on the proceedings in a closed area away from the third parties or the public. The women are asked such questions which may humiliate her. She may feel ashamed or very delicate to answer some personal question in front of so many people in the Court. This is also a reason for requesting the proceedings to be carried out in a closed area. This is called as in-Camera. The proceedings of camera may be published if the Court permits. The Court may not refuse such a request and the proceedings of the whole case or only on a particular day is conducted in a closed area.

This Act is a boon to the women. This is New Act. Many people specially women may not be aware of it yet so, it is necessary

that every one is made aware of this Act specially the illiterate women. So, that they will understand that there is something very powerful and strong to protect their interest and they can lead their lives peacefully but

one must realise that even the law cannot help much unless and until the women themselves become strong mentally and defend themselves so that they can reap the benefits of this Act.

TREATISES ISSUE OF RATIFICATION UNDER THE CONSTITUTION ON INDIA

By

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Treaties are considered to be a sovereign function of any free nation. In fact no nation can live in isolation and therefore in some form or other they have to enter into treaty relationship with other nations. Every sovereign state has the power to enter into treaties.

Treaty is defined by Lord *MC Nair* in his Law of Treaties “*a written agreement by which two or more states of international organizations intend to create a relationship between themselves operating within the sphere of international law*”.

In fact Lord *Mc Nair* mentions that the making of treaties is one of the oldest and most characteristic exercise of independence and sovereignty on the part of the states. He refers to the observation of the Permanent Court of International Justice in the case of *Wimbledon* that the right of entering into international engagements is an attribute of State's Sovereignty and in an article published in 1958 he refers to the various facets of treaties and sovereignty. In the first place he says treaty making is an exercise of sovereign power and next he refers to the effect upon sovereignty of treaty obligations, the extent to which a state by virtue of its sovereignty is entitled to regulate a right exercisable upon its territory by another state in pursuance of a treaty between them. Then he refers of last

issue as the question of relevance of sovereignty in the interpretation of treaties that is so called the rule of restrictive interpretation. Thus it is seen that treaty making has several facets and has its impact on the municipal law, its limitation on sovereignty and other related matters.

In fact treaties form the very basis and foundation of relations between Governments of different nations and govern the *inter se* relations between two sovereign states in case of bilateral treaties and in case of multilateral treaties between nations who are parties to the same. They create legal obligations, which are binding on contracting states. Since the dawn of civilization and organized Government and the growth of nations treaties have come into vogue governing relations between sovereign nations. There are innumerable number of treaties and in fact it is said that across the globe there are not less than 50000 treaties after the second world war according to Australian Governor – General Sir *N. Stephen* quoted by Mr. *P.M. Bakshi*, Former member of the Law Commission.

Apart from bilateral and multilateral treaties there are another class of agreements between nations which are called executive agreements. Executive agreements are often resorted to. For instance it is said that