

# A LIFE FREE FROM VIOLENCE

## The Protection of Women from Domestic Violence Act: A commentary

*Editor*

Sheela Ramanathan



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जुल्म इतना  
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**HRLN**

Human Rights Law Network

# A LIFE FREE FROM VIOLENCE

## The Protection of Women from Domestic Violence Act A COMMENTARY

*Editor*

Sheela Ramanathan

# Human Rights Law Network VISION

- To protect fundamental human rights, increase access to basic resources for the marginalised communities, and eliminate discrimination.
- To create a justice delivery system that is accessible, accountable, transparent, efficient and affordable, and works for the underprivileged. Raise the level of pro bono legal expertise for the poor to make the work uniformly competent as well as compassionate.
- Professionally train a new generation of public interest lawyers and paralegals who are comfortable in the world of law as well as in social movements, and who learn from social movements to refine legal concepts and strategies.

## A LIFE FREE FROM VIOLENCE

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Editor: Sheela Ramanathan

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At the end, any error in the volume is solely our responsibility.

Women's Justice Initiative  
Human Rights Law Network  
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## Introduction

**G**ender according to some thoughts means a range of differences between men and women extending from the biological to the social construct. But according to me when we are talking about violence against women, we have to think of the whole issue from the point of view of a woman. That is from the perspective of the person against whom violence is perpetrated. The Protection of Women from Domestic Violence Act, 2005 (PWDVA), must begin with the international framework on violence against women. The standards set in the international instruments have been a main source of inspiration for the PWDVA.

“Domestic violence” was not defined under the Indian legal discourse prior to 2005. The primary approach to ensuring gender justice was recognized in 1922 by the CEDAW Committee through the General recommendation 19. The recommendation takes an all encompassing approach to violence and also provides that any form of discrimination or violation of rights of women will be considered to be violence and further that the State will be responsible not only for violation of rights by public actors but also in the private sphere.



The PWDVA is in conformity with the UN Model Legislation on Domestic Violence, which provides comprehensive guidelines for State in drafting legislation on domestic violence. The model Legislation provides guidelines on what constitutes “domestic violence”.

It is in this spirit of guidelines that the comprehensive definition of domestic violence under the PWDVA had been enacted, with the emphasis placed not merely on physical abuse but also taking note of the multiple ways in which violence within the family is manifested and affects the women. It is structured towards providing support to women to deal with the ways in which domestic violence affects women at multiple levels.

The Universal Declaration of Human Rights opens with an accretion of the equal inalienable rights of all members of the human family to inherent dignity and the recognition of the aspiration of the common people for a world that is free from experiences of barbarious acts which have outraged the conscience of human kinds.

Articles 1, 2, 3, 7, 16 (3), 22, 25(2) are specifically relevant to the present purpose, addressing question of entitlement to dignity and freedom without distinction of race, colour, sex, etc. They further assert the right to life, liberty, security of person, equality before the law; the entitlement of the family to protection by the State; the entitlement to the realization of social security; care and assistance towards motherhood and childhood. All children whether born in or out of wedlock are stated to enjoy the same social protection. Finally, everyone is entitled to a social and international order in which the rights and freedoms set out in the declaration can be fully realized.

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Violence is not a new concept to women - be they urban, rural, Indian or European or any of the first world countries or the third world countries. Nor is it confined to any caste or class. Many of the first world countries do have legislations prohibiting and protecting women from violence and the State taking responsibility for the protection. Likewise, we have the Indian Penal Code, the Dowry Prohibition Act and the Vishaka Judgement concerning violence perpetrated against women.

The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), which was adopted by the General Assembly of the UN in 1979, is the first international Convention that comprehensively underscores rights of women. The Indian Government ratified CEDAW in 1993. The significance of CEDAW is that it presents an opportunity and challenge to use the law to women's advantage, to broaden the way in which we perceive the law and its possibilities in terms of gender violence. Recommendation No.19 to CEDAW is the broadest attempt so far to understand what violence against women is, in terms of women's experience.

Its importance is that it helps give recognition to those areas of abuse and neglect which have so far not been acknowledged as gender violence including displacement, sexual harassment, and certain kinds of customary laws, family violence and sexual exploitation. It also recognises health, both mental and physical as an issue of abuse.

Traditional laws on domestic violence against women seek to penalize the offender via systems that lead to protect her from humiliation and suffering. The recommendations rise to correct this by specifically providing for 'support services' and 'gender sensitive training for judicial law enforcement



officers and other public officials' to ensure effective implementation of CEDAW.

After the adoption of the CEDAW, 44 countries have enacted separate laws on domestic violence. The report by the Special Rapporteur on violence against women as model legislation on domestic violence, recommends that the States should adopt the broadest possible definitions of acts of domestic violence and relationships within which domestic violence occurs.

Relationships which come within the purview of the legislation must include wives, live-in partners, former wives or partners, girlfriends, female relatives (including but not restricted to sisters, daughters, mothers) and female household workers. The States are urged to enact comprehensive domestic violence legislation, integrating criminal and civil irregularities, rather than making marginal amendments to existing penal and civil laws.

Violence again has been confined to the walls of the home. Those within do not wish to speak about it, and those outside do not want to hear it. It is observed that women in general, the families, and the community, the courts, the police and the Government all seem to keep it hidden. The State and its agencies and particularly the police are more prone to consider familial violence as a private or domestic matter and they refrain from taking action against the erring man.

A report by Saksha, a Delhi based women organization, makes startling revelation about the attitudes of judges towards domestic violence. Nearly 74% of the judges felt that preservation of the family should be a preliminary concern for women even if there is violence in the marriage. 90% of the judges said they would not opt for legal redress in case of

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domestic violence involving or other family's relatives. 51% of the judges said that women who stay with men who abused them are partly to be blamed for their situation.

Needless to say that ordinarily a woman in distress is reluctant to approach the police. In the context of the home, emotional ties and the tendency to revere family relationships have always discouraged women generally from expressing any displeasure or unhappiness at what happens to them. It is only after the violence becomes unbearable that she decides to register a formal complaint.

But in a situation of violence, her logical next step means she must assume the enormous burden of breaking ties with the family. Even if she goes to the police she faces several barriers right from the stage of filing the FIR. By and large they reaffirm traditional concepts of honour, shame, dignity and guilt there by giving her little encouragement to seek legal redress.

At present the emphasis of the law on violence against women is on detection and punishment and not on victims' support or treatments. It is necessary to create a range of flexible and speedy remedies under the special Domestic Violence Legislation, Penal and Civil remedies to discourage harassment of women.

In contrast, in UK these are no longer ancillary matters. Once a matrimonial court seized of a matrimonial cause it continues exercising jurisdiction on all the matters even if no relief is granted in the courts. England had a matrimonial Home Act, 1967 and the Domestic Violence and Matrimonial Proceedings Act, 1976. Both these acts are substantially overridden by Family Laws Act, 1996 which protects the right of

the wife in the matrimonial home and provides remedies against domestic violence. The draft legislation contained a provision that the burden of proof in domestic violence is on the accused to demonstrate that such violence did not take place. There may be some difficulty in adopting the recommendation but most counties have adopted relaxed standard of proof. Incidentally, under various enactments these proceedings are treated as civil proceedings.

Amongst other legislations, the Domestic Violence Bill introduced by the Republic of South Africa is the most exhaustive legal framework. The South African Bill contains a very exhaustive definition of domestic violence. Under Clause 11 of the Bill, the Court is obliged to issue a suspended warrant in granting an interim protection order. The warrant remains in force unless the interim protection order is set aside. The police are required to execute the warrant of arrest if the applicant files an affidavit that the respondent has breached the protection order.

The English Act also contains a provision for issuing a suspended warrant. However, this is rather restrictive in its applicant and covers only cases of molestation and bodily harm. The contravention of the protection order is made punishable with a fine and imprisonment not exceeding five years. Even Mauritius has introduced a Bill to provide protection to the victims of domestic violence.

Keeping in mind that domestic violence is a form of violence distinct from other forms of violence, it was desirable that the legislature should enact a special Civil Law on Domestic Violence. Such a law would confer jurisdiction on the family courts and the civil courts to deal with the domestic violence

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cases in a more effective manner. Over a period it was agreed that a civil law, which would provide maintenance, compensation and damages for injuries was urgently needed.

In 1994, the National Commission for Women came out with its draft Bill on Domestic Violence, which was vehemently criticized by women's organizations. But activists and women's groups saw this initiative as a positive sign because earlier the State was not even ready to recognize the existence of domestic violence. Thereafter, in 1999, women's organizations came out with its draft law on domestic violence which added the broad support of the Women's Movement to its major provisions. Also, this draft bill was drafted in accordance with the UN framework for model legislation on domestic violence.

The UN framework for model legislation on domestic violence states: "All acts of gender based physical, psychological and sexual abuse by a family member against women in the family, ranging from simple assaults to aggravated physical battering, kidnapping, threats, intimidation, coercion, stalking, humiliating verbal use, forcible or unlawful entry, arson, destruction of properties, sexual violence, marital rape, dowry or related violence, female genital mutilation, violence against household workers and attempt to commit such acts shall be termed as domestic violence."

Under persistent pressure from the women's organizations, in December 2001, the ministry of human resource development of Government of India, decided to draft its own bill on domestic violence, which was introduced in Lok Sabha in the same year. The objective of the bill was, as follows: 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.

Firstly, the bill provided an ambiguous definition of domestic violence. According to the bill, any conduct of the respondent shall constitute domestic violence, if he habitually assaults, or makes the life of the woman, miserable by cruelty of conduct even if such conduct does not amount physical ill treatment, forces the aggrieved person to lead an immoral life, or otherwise injures or harms the aggrieved person. Besides representing the entire dimension of violence against women this definition only dealt with habitual assault totally excluding sporadic or isolated cases of violence which is an extremely widespread phenomenon and is equally dangerous.

This obviously was its great flaw, providing easy loopholes to the abusers. The expression, any conduct which makes a woman's life miserable is also subjective and vague. Secondly, the bill failed to cover other intimate relations outside marriage, for instance, female relatives, live-in relationships etc. The bill also did not address the typical problem of a woman who believed that she got married to a man and later got to know that there was no marriage at all as essential ceremonies of the marriage were not performed when the marriage took place. Such women are simply abandoned with no means of livelihood and cannot approach the court either.

Thirdly, the bill did not declare the rights of shared household. In India a lot of sanctity or value is attached to a married woman living in her marital home. In fact, it is considered reprehensible for a married woman to live outside her matrimonial house thus the fear of being driven out of her husband's house may keep a woman from protesting against

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the violence inflicted on her. Also shelter homes are very few and often run in prison like conditions. Why should a woman be outside her matrimonial home at all is of course the main issue.

Many women continue to stay in violent relationships for one crucial reason, their economic dependence upon the man, to support them and the children. However the bill was silent about maintenance, compensation and damages for injuries as also the custody of the children by making interim monetary relief discretionary. In effect the bill weakened or at least did not take the opportunity to strengthen this security. This bill gave a right of self defence to the perpetrator. It said that a man is entitled to self defence and to defend his property, or the property of another for perpetrating violence. With this provision the bill clearly became an anti-women bill since an abuser can always say that he was trying to save himself or was trying to save his property or the property of any other person.

Although after the protest the bill was referred to a parliamentary standing committee which had accepted several recommendations submitted by many women's groups from all over India. The basic lacuna was that the bill had failed to make a declaration that women have a right to be free from violence in their home. The women's groups had therefore been holding consultations and recommendations started pouring in to have successfully kept up the pressure and the bill finally got amended to the present Act.



## Chapter One



# Domestic Violence in India

**D**omestic violence is not a unique phenomenon of our country. It is widespread and universal. It is socially accepted and sanctioned. Therefore, it is much harder to prevent or to remove from the society altogether. Until and unless women are considered as citizens with equal rights of existence and use their potential to the maximum for their own welfare and growth, it is doubtful whether one can put an end to domestic violence.

Forming laws for the benefit of all citizens is the basic responsibility of the State. However, laws alone cannot combat such evils which have pervaded the society. In the last century, India has made many gains for the protection and preservation of its female citizens. The Constitution of India, especially Article 15(3), made provisions for creating special laws or rules for women and children. Through the enactment of several laws designed to protect and to decrease incidents of violence against women, much progress has been made.

However, for the Indian women, divorce does not denote freedom from violence. She may have to face mental trauma of a single woman, given the extreme importance attached to marital status. The mindset of Indian society is geared



towards keeping women within the confines of marriage, be it even a violent and potentially life-threatening one.

Most notably, is the recent enactment of the Protection of Women from Domestic Violence Act, 2005, drafted and created under the auspices of Article 15(3) to explicitly provide civil remedies to combat violence within the walls of intimate and family relationships. However, the Domestic Violence Act, with all its good intentions of addressing abuse and exploitation in the private sphere of women, has its own shortcomings. Several problems arise during the legal process under the Act - from reporting acts of violence to protection officers to enforcement of court orders. While attempting to resolve domestic violence disputes, it also ignores the complex patriarchy pervading all aspects of Indian life and perpetuating abuse. Until the patriarchal mindset of Indian society is dismantled, the Domestic Violence Act will do nothing to decrease the overall levels of violence. This stands as a testament to the fact that we need awareness in addition to laws.

In India, women's rights are still shackled to age old, outdated and archaic norms of male supremacy. As a result, women in the country face a wide range of human rights abuses that breach fundamental provisions of the Indian Constitution and international conventions ratified by the Indian government. This book seeks to discuss the blocs to combat violence or access justice under the Domestic Violence Act and propose remedies that must be implemented, in order to truly access justice for women, protect and provide them with safety, redress, and freedom from violence.

## Chapter Two



# What is Violence

**V**iolence can never be one thing. It is defined in many ways and takes many forms. Different countries, different cultures, and different neighbourhoods may have markedly contrasting notions of violence. And if the term could be defined - narrowed down - it would only limit the perceptions of what constitutes violence and what does not, perhaps even becoming an obstacle in determining what constitutes crime.

Abuse inflicted on women and children usually occurs within the private sphere - the home or familial or intimate relationships. However, it also occurs in the public sphere - at the workplace, on the road, in the community due to caste etc. Also, even when the violence is not physical, the person who is victimized is subject to many social and cultural factors.

Violence can depend entirely on the mind-set of each individual. Depending on that person's upbringing, culture, class, etc. violence could vary widely. As such the forms of violence are numerous and span a wide range.

According to the Domestic Violence Act, "domestic violence" is defined under Section 3 as 'any act, omission or commission

or conduct of the respondent [that]

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

The Act goes on to define the various types of abuses:

- (i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;
- (ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;
- (iii) "verbal and emotional abuse" includes -
  - (a) insults, ridicule, humiliation, name calling and insults or ridicule especially with regard to not having a child or a male child; and

- (b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested
- (iv) “economic abuse” includes –
  - (a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a Court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, *stridhan*, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance
  - (b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonable

However, the types of violence above cannot concisely and completely account for all types of abuses. Most importantly, in almost all situations, this power dynamic is one which the abuser knows and exploits the vulnerability of their victim, either to get their way or to violently vent their personal issues. For example, in certain instances, class can be a driving force for violence and the abuser can harp and harass his victim with demeaning and denigrating remarks on her caste, income, education, etc. In India, where people are divided amongst several castes and a long tradition of prejudice still exists, caste-based ridicule can further subjugate a person.

Even if initially, the man married her because of being in love with her, later the caste becomes an issue for abuse.

The most dangerous forms of domestic violence are those that go smothered in the confines of homes and familial relationships. Another example is seen in manipulative use of abstinence or desertion where the perpetrator withholds sex in order to take advantage of the other person or compel her to act according to the first party's wishes. Furthermore, a perpetrator can exploit his victim's economic dependence on him, again manipulating the victim to his whims. It is important to remember that under the Domestic Violence Act, the victim or the aggrieved person is always a woman.

Therefore, violence must be recognized in both its more subtle, less obvious forms to its blatantly dangerous designs.





## Chapter Three

# CAUSES OF DOMESTIC VIOLENCE

**T**here are many reasons cited for domestic violence but none is necessary for resorting to violence to occur nor is any single one a sole reason for abuse. Most importantly, it is important to remember that none of these factors are ever-legitimate causes for anyone to commit violence on another human being.

## **Power and Control**

The violence especially in a domestic relationship is an accepted norm. There is no societal stigma attached to violence committed against a woman in an intimate relationship. The admitted and approved factor acts to continue the abuse, as the society or the community does not have any deterrent to stop or combat violence inside the family or relationship. Unless there is an effort to stop the violence internally it will continue in spite of the external factors such as police or laws. The overarching reason for domestic violence is said to stem from a perpetrator's efforts to dominate his partners. Whether due to low self-esteem, feelings of inadequacy, unresolved childhood conflicts, the stress of poverty, hostility and resentment towards women, hostility and resentment towards men, misandry, personality

disorders, genetic tendencies, socio-cultural influences, substance abuse, mental illness, peer pressure, etc., the abuser seeks or finds excuses to establish his supremacy through means of force or verbal demoralization.

Some experts theorize that domestic violence is an abuser's strategy to gain or maintain power and control over the victim. Others see abuse as arising from the abuser's powerlessness which he externalizes and projects onto his victim. His subsequent violence is an attempt to reassure himself of his power, but because the beating never resolves his inadequacy, he continues an addictive cycle of abuse. Whichever theory, it is undisputed that for the abuser, the need for control (and of course incorrectly) validates the violence.

## **Family**

Some Indian families can be categorized as a joint family system where the family lives under one roof and is typically large, consisting not only of husband, wife and their children, but also grandparents, grandchildren, siblings, etc. The joint family in India also follows a traditional patriarchal structure. The male role within this structure is as head of the family - the "dominant patriarch" who rules the family and provides for it. He presides over the property, the religious rites of the family, and enjoys full authority. The female role is one of "an obedient helpmate" who is charged with the care of the home and children, and gives full deference to the husband's right to make decisions for the family. The females in these families are therefore considered to be kept in a subjugated position.

Most apparent is the continued preference for a male child over a female child. Many domestic violence cases handled by HRLN Bangalore unit involve inhumane treatment towards the wife if she bears a girl. If a family violates the prohibition for gender identification while the woman is still carrying the foetus, abortions are often encouraged and executed if it turns out to be a girl. Although illegal, sex-selective abortions still do occur. Furthermore, an unmarried daughter is considered a social taboo. There is strong pressure to marry and finding a suitable husband may often be disregarded in favor of simply ridding her maternal family of a financial drain. When the daughter marries, she is considered part of her husband's family. Now that she no longer is part of her natal family, she cannot take care of her parents in their old age - another contributing factor for preferring male children. It is also falsely perceived by Indian parents that a male child is necessary to do the last rites and send them to their heavenly abode.

However, with better education facilities, increased wage-earning opportunities and other social and economic factors, the social structure of the home is moving towards radical change. Modernization and development challenge traditional patriarchal systems. There is a perceived threat by those men who are not willing to give up their domination. As such, believing that they must retain their control over their family - a unit they consider their property - these men feel justified in resorting to violence.

Furthermore, because the family is the sphere in which one grows and learns behaviours, domestic violence in the household teaches family members that violence and



mistreatment are accepted modes of behaviour. Children learn that violence perpetrated against women is neither censured nor prohibited. Thus, one cycle of abuse begets another.

## **Poverty**



Low-income is often cited as a reason for domestic violence, but it is not at all determinative. Data retrieved from low-income communities shows it does not necessarily occur more often in these poorer homes than in middle class or upper income

families. Though economic stress might cause a person to lash out physically or verbally, the tie between wealth and domestic violence should not be relied on for fear that society mistakenly regards domestic violence as merely a lower class issue. Violence on women is seen to be all-pervasive, irrespective of caste, class or religion.

## **Drug and Alcohol Abuse**

Like the issue of poverty above, drug and alcohol abuse may fuel certain violent behaviours but it is never a necessity for violence. Drugs or alcohol can impair one's judgement and lead to abusive acts. However, it is important to understand that there are many substance abusers who do not commit domestic violence and domestic violence perpetrators who do not use drugs or alcohol. It is also true that a habitual wife beater assaults his wife not only when drunk and alcohol cannot be an excuse for his beatings.

## **Gender Roles**

As in many cultures, there are longstanding traditions of gender inequality. Outside the family sphere, the roles of males and females strikingly diverge in Indian society and prejudice against women is rampant. Even when one is not married, a woman's place is often still within the home. If married, then she is often considered her husband's property. (Sections of the IPC)

## **Culture**

It is undisputed that India is a patriarchal society. Certain tenets of the several cultures making up the Indian community impose certain guidelines on how a woman and man are supposed to behave. Most, if not all, the rituals place the woman in a subordinate position in the family, especially the Brahminical cultures, which have percolated to other cases as more and more families migrate to urban centers.

## **Society**

Divorce or living apart from one's husband continues to be a deep-rooted social stigma for Indian women. The failure of a marriage is always considered the wife's fault, and becomes a reflection of her character, morals or child-bearing ability. Often, if she chooses to leave her matrimonial home, she returns to her natal family. Indian society is one in which the Hindu husband is perceived as 'god.' It is a society where if a woman's husband dies, she is expected to throw herself on his funeral pyre or shave her head and dress in white. It is a society in which a widow is considered a bad-omen, shunned and feared by society. It is a society where men can

take on another spouse if his first wife cannot bear children. And, finally, it is a society in which the media criticizes and ridicules laws like the Protection from Domestic Violence Act because it is gender-specific - even though it seeks to enforce basic human rights for women.



## Chapter Four

# Understanding the Domestic Violence Act

**A**fter international and nation-wide consultations with women's groups, for the first time the State took responsibility to protect and prevent domestic violence. Facing pressure from the legal fraternity, especially from Ms. Indira Jaising, Senior Supreme Court Advocate, the Protection from Domestic Violence Act was finally approved and passed in 2005, providing much-needed legal remedies to abused women.

Though the Act does enable women to voice their trauma and receive government help, there remain problems. Even successful orders have lacked any real power over abusers; especially those who believe that socially and culturally they have done nothing wrong.

## **The Economic Roots of the Domestic Violence Act**



Domestic violence prevents the development of women, society and, especially, a country's economy. It is found that domestic violence and/or sexual harassment at the workplace

affects production and reduces profit. The government, the public sectors and the private sectors, as well as unorganized sectors and domestic workers, are all comprised of women workers. Women significantly contribute to the economic growth of a society. However, their contribution is not acknowledged or recognized.

Be it a homemaker [women who work at home and look after the family without wages], sex workers, police, sweepers, *beedi* workers, domestic workers, *udubathi* workers, tailors, helpers for the tailors, caterers, unorganized workers, or workers in the factory, officers [government or otherwise], service providers such as hotels, entertainment, etc., all encounter violence in one form or the other perpetrated against them by their husbands, companions, pimps, bosses, colleagues, co-workers, or even the general public on the road or in public/private transport, etc. Violence in any form causes absence from work, resignations, inefficiency, decrease in production, etc., thus, causing loss to the employer and medical expense to the family and the victim. The passing of domestic violence laws in first world countries may have the genesis in concern for the loss in production rather than concern for the woman herself. Consequently, laws based solely for economic benefit may not address the real need for change, and a system of oppression and unequal rights will continue.

## **Economic Violence**

One of the most frequent forms of violence is financial abuse. Perpetrators often force their partners to take out loans or to live without monetary support, surviving on whatever income they can make or help from their own families.

## Shared Household

Under Sec 2(s) shared household means " *a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.*"

One of the most significant remedies afforded by the Domestic Violence Act is the creation of a right to reside in the "shared household" or to seek alternative housing arrangements. Despite the explicit law stating that a woman who has lived and shared a household with her spouse has a right to continue to reside there, the perpetrator, his family and the in-laws will force the wife out. Sometimes they are ignorant of the law while at other times they are exploiting the victim's ignorance of her rights. It is a unique feature of this provision that enables the victim to seek orders not only against her husband or boyfriend but also against family members or in-laws, if the household in which she resides consists of other members of the family.

However, the DV Act does not address the cause of violence nor does it offer permanent solutions. It is a civil remedy without penal punishments, not offering any substantial rights. Though the court can issue resident order under Sec 23,

restraining the respondent from throwing out the aggrieved party, restraining the respondent from coming anywhere near the shared household, restraining the respondent from alienating, disposing or creating third party rights in the shared household, it does not create any title on the property for the woman. She can only continue to reside in the property or ask for alternate accommodation, which could also be only temporary. It does not create any entitlements or resolve any dispute in the property in her favour, thereby causing her to revert to a civil court for determining her civil rights. In case, the shared household is owned by a third party, a case can be filed by the third party against the aggrieved person or the respondent for eviction, since the ownership is vested with them. There is no remedy protecting the aggrieved person against the ownership of the third party.

In order to maintain a woman's right to the shared household, the Act and this provision must get greater attention to inform the entire Indian population of a domestic violence victim's rights. In many cases the in-laws interfere with the marital relationship, and in some instances, their interference is motivated by greed for the matrimonial property. Hoping to get title and throw the victim out on the streets, in-laws may abuse the woman until she voluntarily relinquishes her right, returns to her natal home or commits suicide.

## **Femicide**

As discussed previously, males remain the preferred children in Indian society. The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act prohibits sonograms meant to scan for a foetus' gender. The Domestic Violence Act and Domestic Incident Report take account of

harassment for having female children, but do not account for a particularly disturbing form of abuse - forced abortions. Because of the continued desire for male children and the abhorrent treatment of female children, the Act must expand its purview of abuse based on a child's gender.

## **Suicide**

Suicide is not an unusual occurrence even in modern day India. With the social and cultural constraints associated with being a woman in India, sometimes options are few and suicide is perceived as a viable, if not only, option. Even though she has done nothing wrong to incur the abuse, she blames herself. Second, the woman may think that it is better to end her life rather than take the inevitable violence from the outside world. Society, with its deep-rooted stigma against single or separated women, can be cruel and further traumatize a woman.

## **Marital Rape**

Indian law does not recognize marital rape as rape and, thus, provides no legal remedy or criminal penalty. As such, husbands continue to perceive and treat their wives as property, using them for their own sexual pleasure without consent. While other countries, including the United States, now allow marital rape as a cause of action against a husband for which he can be imprisoned, there is no such remedy for Indian women. Therefore, it is imperative that marital rape - even if not subject to criminal penalties in the meantime - should be explicitly and seriously considered a form of violence covered under the Domestic Violence Act in order to prevent further sexual violence against a victim. Of course



some feel that though marital rape is not considered as rape under the Indian Penal Code 1869, it could be considered as 'sexual violence' under the Protection from Domestic Violence Act.

In criminal matters, such as marital rape, though not considered as rape under Sec 376 of the IPC, the victim can file under the DV Act for protection, compensation and monetary relief, but that does not entitle her to seek for arrest or imprisonment under the Indian Penal Code. The penal provision comes into being only when the protection order is violated by the respondent. Granting of monetary relief and compensation for damages caused is not an everyday affair in matrimonial disputes. Such matters are viewed with eyes of granting maintenance to the aggrieved woman and her children, just sufficient to keep her body and soul together. The maintenance amount is obtained after long legal battles in the court and the amount is such it does not enable the women to live independently on her own nor sufficient to upgrade her skill or enhancing her livelihood. It is not sufficient to enable her to have a dignified life. A deserted or a divorced woman, unlike the first world countries, apart from carrying with her a huge trauma or stigma is economically disadvantaged to a great extent. Therefore, under the DV Act, the courts being mired in precedents and their general outlook on determining maintenance rarely grant the damages due. However, there are rare cases, where the court has judicially determined the amount keeping in view the losses suffered by the aggrieved person.

## **Appeals**

Another vital feature of the Domestic Violence Act is the swift turnaround of cases. Sec 29 of the DV Act dealing with Appeal

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

The time limit provided for filing appeal is 30 days. A hearing on the case is held almost immediately after the application is submitted. However, although the Act contains time requirements for disposing cases (60 days), it is silent on time limits for disposal of appeals. While the respondent should and must have the right to appeal an unfavourable decision, appeals under the Act can have dire consequences. That said and done, there is no provision in the Act or Rules about the time within which the matter should be decided by the Appellate court. Thus, a good protection order, with a favourable maintenance amount gets stuck in the Sessions Court thereby providing no relief to the aggrieved person. As such, perpetrators are able to prolong cases, causing more emotional damage to the applicant by dragging the issues out and forcing her to relive the abuse.

### ***MD's & C's case***

1. In spite of seeking injunction against disposal of property and assets, the matter keeps dragging giving an opportunity to the respondent to transfer his assets to another's name.
2. Repeated adjournments given for meaningless mediation and for the respondent to harass the aggrieved party in delaying payment of any monetary relief or maintenance.
3. Aggrieved persons subjected to trauma by filing divorce petition in another state.

4. Magistrate's Court orders dismissing the aggrieved person's complaint on the ground of lack of jurisdiction in spite of clear jurisdiction being given under Sec 31 for filing the complaint where the aggrieved person even temporarily resided.
5. The said court order to the plight of the women who have been subjected to extreme violence. One lady was assaulted and the wounds certificate from a government hospital and the complaint launched with the police station were available at the police station to prove that there was actual violence against the aggrieved person and that it was dangerous for her to be in the premises. In spite of it, the court order states that the aggrieved person must approach court where husband resides. The order does not take into consideration that the woman has no legal support or place to reside or protection in anyway at the place of incidence of violence. The court did not take into account the addresses given as proof of residence by the protection officer in spite of a clear mention of temporary residence to satisfy jurisdiction in Sec 31

It is vital that the current domestic violence law be amended to include a short time limit for disposal of appeals in order to ensure the physical safety and mental sanity of the victim and her children.

## **Police Misconduct**

The Domestic Violence Act clearly and explicitly states the role and duties of protection officers, and complaints to police are to be taken into account. Even so, the police may not provide

adequate assistance. They may believe the husband has the right to treat his wife as he wishes; or perhaps they disbelieve the complainant. More likely, they may regard matters of the home are not appropriate for police intervention. In any event, the police can easily and often do exploit their discretion in favour of the respondent. Hence, such actions induce victims to remain silent and deter them from taking police or legal action. A woman will then resign herself to the violence or choose suicide. The police, charged with the duty to hold the respondent accountable for breach of the orders, instead ignore the wife's pleas and she is forced to struggle once again through the court system.

## **Procedure**

To obtain an order from the court, a woman must first file a formal complaint with the magistrate, via an application under Section 12 of the Domestic Violence Act. The Domestic Incident Report is provided by the protection officer, or a service provider. However, the jurisdictional point remains unclear. Depending on the whims and fancies of the protection officers available, a woman may not be able to report her claim. If she is denied, the woman may not know who next to approach. In addition, the process also requires assistance from the police and other branches of the legal system. Their required participation breeds corruption and economic stress on the aggrieved person. (Manjula's case)

The Act provides in camera proceedings, allowing the victim privacy and confidentiality during the hearing of her case. However, even with this provision, the courts generally do not provide such hearings unless the woman explicitly prays for it in her application. Moreover, with the court requiring

an application in the form of a petition, the woman in all likelihood will not be able to proceed on her own and will require legal assistance. If pro-bono attorneys are not available, the hiring of an attorney can be costly and dissuade a woman from pursuing her claim.

Section 12 of the Act further requires that all proceedings brought under the Act be disposed within 60 days of the first hearing, which must occur within 3 days following the application. However, the court system is overloaded with cases and resources already stretched thin. As such, even with the 60 day provision, cases usually go over the deadline. The long drawn-out hearings make the time limits a farce.

In addition, courts keep very short dates and hearings resulting in both clients and advocates being required to return to court again and again almost on every other day for each case. This time-consuming process for each case quickly takes its toll on all. The victim, the most vulnerable one in this procedure, must mentally prepare herself for every court date in order to re-live the violence and see the perpetrator. She may lose wages in order to attend hearings or forced to rely on others for her children's care. Thus, she is repeatedly traumatized, expending both emotional energy and financial resources.

## **Conflicts of Jurisdiction**

*Provision for Single Window Approach:* The DV Act seeks to provide a unified approach to dealing with matters of domestic violence, by making available, a single forum where all the concerned matters can be judicially resolved. The DV Act is a domestic legislation and has to be interpreted accordingly, but sometimes, alternative measures pursued by the opposite

parties in the Family Court may hinder those seeking justice under the DV Act.

Under Section 29, should an order be passed against the respondent, he may subsequently appeal. The appeal must be filed within 30 days from the date on which the order by the Magistrate is served on the aggrieved person or the respondent, whichever is later. However, once an order is passed, the respondent must comply. Otherwise, under Section 31, failure to do so can lead to criminal sanctions against the abuser in the form of imprisonment for a maximum of 1 year or a maximum fine of 20,000 rupees or both. The Magistrate may also bring charges against the abuser under Section 498-A of the Indian Penal Code or any other provision of that Code or the Dowry Prohibition Act.

## Remedies

Magistrates may issue several kinds of orders under the Act. However, even though monetary relief, compensation, etc. can be ordered, the patriarchal attitude of Indian society is one that views women as not entitled to property and compensation for violence. The amount of maintenance awarded is so meager that it makes the women completely dependent on the natal family or other supports, thus it does not free them or empower them to break free and start afresh. As such, courts give inadequate awards and women are left struggling to care for themselves and, if they have any, their children. A description of each remedy available is given below:

*Ex Parte Orders, under section:* if the Magistrate is satisfied that the application discloses commission of an act of domestic violence, he may grant an ex parte order (before

hearing the opposite party). Magistrates may also pass interim orders if the matter is of an urgent nature. One can get ex parte interim relief immediately on filing the application if the condition requires such an order or can get interim relief after issuing notice to respondent (within 2 days) and after hearing him. The entire proceedings will be closed and final orders will be passed within 60 days.

Under Section 18 of the Act, the court can issue a Protection Order, prohibiting the respondent from:

- committing acts of violence
- aiding and abetting in the commission of domestic violence
- entering the place of employment or school when there are children
- alienating assets, bank accounts, stridhan or any property held jointly or separately

Under Section 19 of the Act, the court can issue a Residence Order:

- ordering the respondent to remove from the shared household
- restraining the abuser from entering any portion of the household where the victim resides
- directing the respondent to secure alternative accommodation
- restraining the abuser from alienating or disposing of the shared household

Under Section 20 of the Act, the court can provide monetary relief to the victim which includes

- expenses incurred
- losses suffered
- medical expenses
- loss to property
- maintenance for the victim and her children

Under Section 21 of the Act, Custody Orders may be issued

- granting custody of the child(ren) to the aggrieved person while the application is pending
- denying visitation rights to the respondent if such visit is harmful to the child

Under Section 22 of the Act, the court may issue a Compensation Order for any damages incurred for injuries, including for mental torture and emotional distress caused by the act of domestic violence

General Orders may also issue stopping the domestic violence complained or reported

Finally, Special Orders may issue requiring the respondent to:

- remove himself or stay away from the aggrieved person's place of residence or workplace
- stop making any attempts to meet the victim
- stop calling the victim over the phone or making any attempts to communicate by letter, e-mail, etc.



- stop talking to complainant about marriage or forcing her to meet a particular person of his/her choice for marriage
- stay away from the children's school or any other place where the victim and her children visit
- surrender possession of firearms or any other dangerous items
- not to acquire firearms, any other weapon or dangerous substance
- not to consume alcohol or drugs which have led to past violence
- any other measure required for ensuring the complainant and her children's safety

The Act provides under Sec 25, for determining custody of the child. This provision is a boon to many women since women tolerate violence mainly to retain custody of their children. They have the wrong concept that once they complain to the police or any other agency, they're threatened that their child will be taken away by the respondent. This Act provides for determining the custody of the child.

Further, Sec 32 allows and gives freedoms to the Magistrate to adopt his own procedure, keeping in view the objectives of the Act and the background of the Act. It is expected that a pro-women approach will be adopted, in the procedures. The way we are trained and conditioned by the legal system, we rarely get into the road of activism or innovative or creative solutions, for stopping violence as common as domestic violence. For e.g., the woman has to go through cross-examination, rarely is an *ex parte* protection order passed

against the respondent, in spite of Sec 32 of the DV Act. Thus, the downside is that, though the DV Act provides avenues for the judges to utilize creative activism in diverse means and empower the victim, however that risk is not taken as the judiciary remains so conditioned that it is ever shackled to earlier procedures of the court and being conscious of the right of appeal on technical grounds.



## Chapter Five

# **CASE STUDY**

The DV Act has been a great boon to some whose relationships have not been inside a formal institution of legal marriage. The cases have been filed under Section 2(q) of the DV Act wherein, under the provisions it is been given (provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against the relative of the husband or the male partner.) It has been a boon to some of the mothers who did not want to file criminal complaint against their sons but were at their wits end or sometimes at the verge of being thrown out of their residence due to the inhuman treatment meted out by their sons.

The following cases demonstrate difficulties in the practical implementation of the Domestic Violence Act. Although HRLN has been successful in receiving favourable orders, it is often difficult to enforce them. Furthermore, the events leading up to each case depict a deep problem within the culture and society which the Act does not seek to resolve. Rather than address the patriarchal system, the legal system and the media tend to give deference to it by taking on moralistic overtones with preferences for married women and women

of upstanding credibility. The Act assumes that all domestic relationships are heterosexual. It also does not address violence suffered in lesbian relationships. Furthermore, the Act entitled the *Protection of Women from Domestic Violence*, ironically only protects (perhaps marginally) after domestic violence has already occurred. It does not prevent domestic violence from happening in the first place.

These cases are categorized by certain distinguishing criticisms, but should not be confined to just one. Often these cases overlap with several different categories (eg. involving economic violence, police misconduct and appeals) depicting a continuing need for additional change and legislation. For most cases, the types of violence are listed after the facts to give the reader a comprehensive list of abuses. Where an interim order or order has been issued, the text is provided (note: some orders are translated from Kannada to English). Also, note that party names, dates and locations have been omitted or changed to ensure confidentiality and safety.

“L” Plus point and major good for the woman in obtaining injunction order against violence.

However, no substantial rights over property established. The time limit of sixty days for disposing the application under the Act becomes a farce.

**WHEN DISPOSED:** Matter stayed in High Court

*Facts:* Petitioner is widowed and has four children born out of her wedlock with her late husband. The respondents in this case include husband’s first wife and children, and other relatives who want to usurp all property belonging to petitioner and her children. Petitioner and her children’s livelihood entirely

depend on the rent received from the premises they let out. Respondents publicly humiliate the petitioner and her family by calling them names, consequently affecting their goodwill with the neighbourhood. The police work in cooperation with the respondents to defraud petitioner and her children - arresting petitioner's sons on false complaints and demanding tenants of petitioner's property to pay rent to respondent and not to petitioner. With two marriageable daughters, petitioner and daughters contemplated suicide because of the dishonour and abuse inflicted on them by respondents.

*Types of Violence:*

- Verbal and Emotional Violence
  - ◆ Husband's siblings stand on the road and call P prostitute
- Economic Violence
  - ◆ Intimidation and force on tenants of property to pay rents to Rs and NOT to P
  - ◆ Attempt to usurp property owned by P

**What is asked for: Application under Sec 12, DV Act**

- (a) Protection order under Sec 18 against respondent preventing commission or aiding or abetting of domestic violence, entering premises let out for rent by the aggrieved persons, attempting to communicate in any way with the aggrieved persons, alienating assets belonging to the aggrieved persons or her issues, causing violence to any person involved who aids the aggrieved person or committing any other act specified in the protection order.

- (b) Residence order under Sec 19, directing respondents 4 & 5 vacate the premises of the aggrieved persons and restraining them from committing any acts of domestic violence including economic abuse.
- (c) Monetary Relief under Sec 20 for causing mental and emotional trauma and injuries
- (d) Compensation under Sec 22

**What has been received:** Stayed by the High Court

“M” - The respondent filed preliminary objection disputing jurisdiction. The violence occurred in the matrimonial home which is not in the district where the case was filed. The aggrieved person was residing with her sister in the district where in the application was filed. She had also submitted the domestic incident report from the protection officer who had his office in the district where the petition was filed. The Act specifically states that the jurisdiction is where the aggrieved person temporarily or permanently resides. The interpretation is not to be taken into account the way the jurisdiction is considered where cases are filed in the family court, that the jurisdiction lies where the petitioner and the respondent last resided together, or the respondent resides or where the marriage took place.

Here the aggrieved person is desperate for immediate protection. The police have failed to arrest the respondent or provide any protection.

In this case however the court failed to consider that the aggrieved person cannot file the application where the violence occurred. It failed to consider the report and the present residence of the aggrieved person. It instead decreed

that the application cannot be considered by the court due to lack of jurisdiction.

We were unable to file appeal as the aggrieved person could not be contacted after the matter was disposed by the Magistrate court. It was also very unfortunate that the husband falsely alleged that the aggrieved person had a Muslim lover and thus she had maliciously filed the application against the respondent, the husband.

**WHEN FILED:** 6/10/07

**WHEN DISPOSED:** Not known

*Facts:* petitioner and respondent married. Two children (a boy and a girl) were born out of the wedlock. After the marriage, the couple moved closer to petitioner's mother's home because of landlord problems. Respondent started telling children that petitioner would poison them and asked them not to talk to her. He would tell children that she was mentally deranged and mad. R also accused her of illicit relationships and did not allow her to talk to neighbours or friends. Her brothers would not help her fearing that if petitioner lived with their mother, she would take their mother's money.

Petitioner's mother's ancestral property was divided and one site given to petitioner, who then sold the property and bought another site from her uncle. Petitioner built a home on the site by borrowing a bank loan, selling all her jewellery, saving on household expenses and selling flowers. Her brothers, who are alcoholics, did not like her having built a house on her own. Her husband, the respondent, had a history of abusing petitioner and harassed her for money. He would try to make her sell the house in which they were all residing so he could make purchases for himself. Respondent and brothers tried



to sell her house by bringing in agents. So petitioner lodged a police complaint and respondent promised the police that he would stop all violence and look after her properly. However, when they reached home, respondent and his brother severely beat her, because of her police complaint. Thereafter, the abuse increased. Petitioner tried to commit suicide but was saved by her mother and was allowed to live with her. Respondent never visited her and would not allow her back into their matrimonial home. Their children were kept with respondent's relatives and petitioner was not able to see them. Petitioner attempted to go to matrimonial home but respondent beat her. And when she went to her mother's home, her brother tried to assault her saying she had no right to be there. Again she made a police complaint, but the police merely counseled respondent and when they returned to the matrimonial home, he again beat her, causing her to bleed from the head. She returned to the police station and the police brought in respondent. He was able to convince the police to simply fix a meeting between the petitioner and him and his relatives for a later date to resolve their issues.

*What was asked:*

- (e) Protection order under Sec 18 from abusive husband
- (f) Residence order under Sec 19 to prevent disposition
- (g) Interim order under Sec 20(d) for maintenance of children and self - Rs. 10,000
- (h) Further maintenance for Rs 30,000 pm under Sec 20(d)

**What has been received:** Case dismissed for lack of jurisdiction, waiting for appeal

"SM" - Case disposed in favour of the aggrieved person. It was decreed that the aggrieved person should not be disturbed from their present residence. There was no change in the status of the ownership of the house in which the aggrieved person resided by the decree. The title deeds continued to be in the name of the third party.

Respondent appealed in sessions court under the Criminal Procedure Code and the same was got dismissed by the advocates of Human Rights Law Network.

However the matter is only temporarily in the aggrieved person's favour as the third party has filed for eviction of the aggrieved person.

Maintenance order was passed but the respondent did not pay any money. The execution petition is pending. Instead of single window approach, the matter is pending in many courts and the aggrieved persons that is one lady and two daughters are still very insecure about their residence.

**WHEN FILED:** 4/12/06

**WHEN DISPOSED:** 15/9/08. Time limit of two months stretched to nearly a year.

*Facts:* Petitioner and respondent were married. Out of the wedlock, the couple had two daughters. The petitioner claimed domestic violence since 2003 based on when respondent abandoned the home and went to live with his former personal assistant with whom he was having an illicit affair. Petitioner was forced to find a job at a tailor's shop and received a small salary. Respondent and his mistress came to the marital home, physically assaulted petitioner and a daughter, and tried to throw them out of the house. Petitioner

and her daughter successfully resisted so respondent and his mistress left with the house papers and the house keys. On another occasion, two unknown men came home claiming that respondent sold the house to the mistress and that petitioner and daughters must leave. They refused. Finally, respondent forced petitioner to write a letter "admitting" her wrongs and promising not to harass him. He threatened her that unless she wrote the letter, he would not send money to her for the children's college fees. However, once the letter was written, he stopped contact altogether.

*Types of Violence:*

- Physical Violence
  - ◆ Physical abuse to P and daughter
- Verbal and Emotional Abuse
  - ◆ Bigamy
  - ◆ Forced P to write apology letter
- Economic Violence
  - ◆ Not providing money for maintaining P or children
  - ◆ Not providing food, clothes, medicine, etc. for P or children
  - ◆ Forcing P out of the house she lives in
  - ◆ Preventing or obstructing P from carrying on enjoyment
  - ◆ Non-payment of other bills such as electricity, etc.
  - ◆ Any other economic violence - taking house papers and house keys; selling home without P's consent to R's

**What was asked:**

- (i) Residence Order under Sec 19 restraining respondent from dispossessing or throwing them out, alienating assets etc
- (j) Monetary relief under Sec 20 - Food, clothes, medication etc - Rs 5000, Educational expenses - Rs. 3000, Household expenses - Rs. 2000 and other expenses - Rs. 2000
- (k) Compensation orders under Sec 22

**Order:** The application is partly allowed. The applicant should not be vacated from the shared household. Respondent is directed to pay Monetary relief under Sec 20 - Food, clothes, medication etc - Rs 5000, Educational expenses - Rs. 3000, Household expenses - Rs. 2000 and other expenses - Rs. 2000.

***"S"** - Case disposed in favour of the aggrieved person. In this case the aggrieved person was granted maintenance for herself and her child. However, respondent has filed an appeal in sessions court and is currently up for objections by the respondent. Even execution of the magistrate order is pending, as the respondent has not given any maintenance to the aggrieved person or her child.*

*It is because of the Act that we could file a case against the respondent, as the family court had declared their marriage as void abinitio as the aggrieved person was said to have not been legally divorced from her first husband when she married the respondent.*

*However it was a fact that the aggrieved person cohabited with the respondent and they had a son because of their living together as husband and wife.*

**WHEN FILED:** 4/12/07

**WHEN DISPOSED:** DV case disposed on 28/10/08. Nearly after a year. However, respondent has filed an appeal in Session's court and is currently up for objections by the respondent. Execution orders also pending.

*Facts:* Petitioner and respondent married. After petitioner's in-laws found out about her pregnancy, they began harassing her mentally and physically - keeping separate plates, glasses and treating her as an unpaid servant. They demanded her to have an abortion in the 6th month for which she refused. Thus they continued to torture her until delivery out of which a male child was born. Petitioner and child cohabitated with respondent after child's birth. Petitioner's father paid all medical bills for delivery and although respondent claimed the bill through his office's medical insurance, he never reimbursed the father for payment. When petitioner and child returned to respondent's home, she was beaten up by the whole family and her son was forcibly taken away. Petitioner was thrown out of the house, and finally allowed back inside 2-3 hrs later only because the child was crying too much. On the pre-text that respondent and his family were going out of station, they left petitioner and the child in petitioner's natal home. However, even when the family returned home, they refused to take her back. Respondent cruelly deserted her and the child and continue to desert them to this day. Respondent concurrently filed a petition in Family Court disputing the validity of marriage and praying for custody of the child. The family court decreed that the marriage was void.

*What was asked:*

- (a) Maintenance along with future maintenance under Sec 31(1) to the applicant and her son.
- (b) To pass order directing the employer of ING Vysya Bank under Sec 20(6) to attach the salary of the respondent.

**Order:** The application filed by the applicant under Section 12 of the Protection from Domestic Violence Act is allowed. Respondent is hereby ordered to pay to the applicant Rs. 8000 pm as maintenance.

*"SN" - Case disposed in favour of the aggrieved person. The respondent has gone on appeal. Matter pending in the session court. No real succour to the aggrieved person as she did not get order within 60 days and neither did she get sufficient money for her survival.*

**WHEN FILED:** 29/4/08

**CASE DISPOSED:** 5/6/2008 in Magistrate Court

*Facts:* Petitioner and Respondent have a Muslim marriage, out of which two daughters were born. Respondent hates their children because they are female. During one pregnancy, petitioner was subject to illegal scanning of the foetus by her in-laws. When they discovered the foetus was a girl, petitioner's in-laws wanted her to abort child but she refused. Because of her refusal, her in-laws demanded more dowry for each daughter. Petitioner was treated like a slave and made to do all the housework. On one occasion, her father-in-law sexually abused petitioner and after telling respondent and mother-in-law, she was ostracized.

*Types of Violence:*

- Physical Violence
  - ◆ Physical abuse to P and children
  - ◆ Burned and killed P's sister (thinking she was P)
- Sexual Violence
  - ◆ Forced sexual intercourse
  - ◆ Forcibly using P to entertain others
- Verbal and Emotional Abuse
  - ◆ Insult for not bringing dowry, etc.
  - ◆ Insult for not having a male child
  - ◆ Demeaning, humiliating or undermining remarks/statements
  - ◆ Preventing P from leaving the house
  - ◆ Any other verbal or emotional abuse - scolding and criticizing every time
- Economic Violence
  - ◆ Not providing money for maintaining P or children
  - ◆ Not providing food, clothes, medicine, etc. for P or children
  - ◆ Forcing P out of the house she lives in
  - ◆ Not allowing P to use clothes or articles of general household use
  - ◆ Selling or pawning P's stridhan or any other valuables without informing P and without P's consent
  - ◆ Disposing of stridhan

■ Dowry Related Harassment

- ◆ Demands for dowry made - for two daughters demanded 1 lakh each for the marriage

**What was asked:**

(l) Impugned order dating 5/08/08 (asking for protection under Sec 18, residence order under Sec 19(a) & (f) preventing dispossession of the aggrieved party and securing same level of alternative accommodations, monetary relief under Sec 20 amounting to Rs. 10,000 pm as maintenance, medical expenses and returning of all jewellery belonging to the aggrieved party, compensation order under Sec 22 for mental torture and emotional distress amounting to Rs. 3,00,000 ) to be held correct and valid.

(m) Appeal by appellant to be dismissed with costs.

**What has been received:**

*"N" - Case disposed in favour of the aggrieved person.*

**WHEN FILED:** 5/04/08

**WHEN DISPOSED:** Case pending in court

*Facts:* Petitioner and respondent were married. Respondent was disabled and frequently submitted false claims of abuse by petitioner to the Disability Commission. Respondent physically and verbally abused petitioner. He engaged in sexual violence as well, forcing petitioner to watch pornographic movies and asking her to perform sexual favours for others. He also forced her to have 5 abortions. Without petitioner's knowledge, respondent initiated divorce proceedings. Respondent claims that petitioner had an illicit affair.



*Types of Violence:*

- Physical Violence
  - ◆ Forcing abortion
  - ◆ Physical abuse
- Sexual Violence
  - ◆ Forced sexual intercourse
  - ◆ Forced to watch pornography or other obscene material
  - ◆ Forcibly used P to entertain others
  - ◆ Any other act of sexual nature, abusing, humiliating, degrading or otherwise violative of P's dignity
- Verbal and Emotional Abuse
  - ◆ Accusation/aspersion of P's character or conduct, etc.
  - ◆ Insult for not bringing dowry, etc.
  - ◆ Demeaning, humiliating or undermining remarks/statement
  - ◆ Ridicule
  - ◆ Name calling
  - ◆ Preventing P from taking up a job
  - ◆ Preventing P from leaving the house
  - ◆ Preventing P from meeting any particular person
  - ◆ Any other verbal or emotional abuse
- Economic Violence
  - ◆ Not providing money for maintaining P or children

- ◆ Not providing food, clothes, medicine, etc. for P or children
- ◆ Forcing P out of the house she lives in
- ◆ Preventing P from accessing or using any part of the house
- ◆ Preventing or obstructing P from carrying on employment
- ◆ Not allowing P to take up employment
- ◆ Not allowing P to use clothes or articles of general household use
- ◆ Selling or pawning P's *stridhan* or any other valuable without informing P and without consent
- ◆ Disposing *stridhan*
- ◆ Any other economic violence
- Dowry Related Harassment
  - ◆ Demands for dowry made, asking wife to bring share in the mother's house

**What was asked:**

- (c) Protection order under Sec 18 prohibiting the respondent any act of domestic violence and stop all abuse and from alienating any assets.
- (d) Maintenance under Sec 20(d) Rs. 10,000 towards the applicant and 2 children.
- (e) Retain custody of children under Sec 21
- (f) Compensation and damages under Sec 22 for severe injuries including physical and mental trauma.

- (g) Compensate jewellery pledged by the applicant amounting to Rs. 35,000
- (h) Alternate accommodations and rent thereof to be made payable by the respondent under Sec 19(f).
- (i) Prevent dispossession of shared household by the respondent.

**What has been received:** Directed to pay Rs. 1000 each, to applicant and 2 children and Rs 5000 each to children for educational purposes.

"DTL" - *Case currently pending*. The two months for disposing the application is long past.

**WHEN FILED:** 30/1/08

*Facts:* Petitioner and respondent were married. It was the 2nd marriage for both of them as both petitioner and Respondent were widowed from first marriages. Respondent's daughter from his first marriage lives in the shared household and respondent demands financial assistance to daughter. Respondent did not give money for household expenses and instead demanded petitioner's salary, money for household expenses and money for his daughter's expenses. After reporting incident of abuse to High Ground Police Station, police came to home and instead of protecting petitioner, supported the respondent. The petitioner was forced to leave the home and now lives in rental accommodations.

*Types of Violence:*

- Verbal and Emotional Violence
  - ◆ Mental and social abuse in front of the neighbours

- ◆ Scolding in from all their relatives
- ◆ Scolding with very bad language in front of daughter and other relatives
- Economic Violence
  - ◆ Disposing *stridhan*
  - ◆ Non-payment of other bills such as electricity
  - ◆ Required P to pay for daughter's expenses
  - ◆ Required P to pay for R's medical and other financial commitments
  - ◆ Required P to pay for household expenses, including water and electricity bills every month
  - ◆ Demanded P to give R her salary
  - ◆ Forced to purchase for R golden ornaments (bracelet, chain, ring)
  - ◆ R blackmailed P and pressured her to take a loan

**What has been asked for:**

- Protection orders under Sec 18 against the respondent and his daughter, preventing them from committing acts of domestic violence, preventing alienation of assets or operation of bank lockers and accounts or *stridhan* held jointly or otherwise.
- Residence Order under Sec 19(a), (d), (e) & (f) restraining respondent from disposing, dispossessing, disturbing or alienating the possessions of the aggrieved person from the shared household or the shared household itself, whether or not the former has any legal or equitable interest in the same, restraining the respondents or any

of their relatives from entering any portion of the shared household in which the aggrieved person resides and also secure same level of alternative accommodations for the applicant.

- Under Sec 20, issue directions for monetary relief amounting to Rs 2 lakhs and further under Sec 20(a), direct respondent to pay Rs 1 lakh for loss of earnings. Also direct respondent to repay the amount of Rs. 35,000 worth of jewellery taken from the applicant.
- Under Sec 22 directing the respondent to pay damages and compensation of Rs 2 lakhs for injuries, including mental trauma and emotional distress.

**What has been received:** Case pending in Court.

*"B" - Case disposed. Order issued. however the invalidity of the marriage was not decided for which the aggrieved person has to approach the family court. It defeats the single window approach. The matter took more than two months when the aggrieved person was forced to hide in a shelter home and was subjected to compulsory HIV testing by the home authorities.*

**WHEN FILED:** 12/08/08

*Facts:* When petitioner and respondent married, respondent was already married with 2 children from his first wife. After petitioner reported the incidents of violence by respondent to police for their help, the police merely advised respondent and sent him back home. Respondent continued to harass petitioner's mother and aunts. The court eventually passed protection and maintenance orders, but respondent continued

to disobey the orders, stalking petitioner at her workplace, on the streets when she went out of the house and even on court premises when she came for hearings. When petitioner reported the breach of the protection orders, the police refused to take any action in spite of her repeated complaints and also after instruction given by the protection officer to arrest respondent.

*Types of Violence:*

- Physical Violence
  - ◆ Physical abuse
- Sexual Violence
  - ◆ Forced sexual intercourse
  - ◆ Other act of sexual nature, abusing, humiliating, degrading or otherwise violative of dignity
- Verbal and Emotional Abuse
  - ◆ Prevented from leaving the house
  - ◆ Threatened with murder
  - ◆ Threatened P's mother with murder
  - ◆ Bigamy
- Economic Violence
  - ◆ Forcibly taking away salary, income or wages
  - ◆ Not providing money for maintaining
  - ◆ Not providing food, clothes, medicine, etc
  - ◆ Forcing out of the house
  - ◆ NOTE: Section 31 provides that a breach of protection order or an interim protection by the respondent

shall be an offence under the Act punishable with imprisonment of either description which may extend to one year or with fine which may extend to Rs 20,000 or both.

**What was asked:**

- Prevent the respondent from coming near the applicant's maternal home, relatives residence etc
- Monetary relief under Sec 20 - food, clothes and medication (Rs 5000 pm), educational expenses (Rs. 3000 pm), household expenses (Rs. 2000 pm) and any other expenses (Rs 2000 pm) and any other relief for physical and mental injuries.
- Grant custody of the son under Sec 21.
- Compensation under Sec 22

**Order:** The application filed under Section 12 of the Protection from Domestic Violence Act is allowed. The respondent is directed to pay maintenance to the applicant and her son.

"U" - *Case currently pending. Interim order issued.*

**WHEN FILED:** 12/04

**Facts:** Petitioner and respondent were married. Out of the wedlock, they bore two children. Respondent had a history of physically, mentally and verbally abusing petitioner. After the birth of their daughter, respondent treated petitioner as if she had committed a crime. He refused to take care of their daughter so petitioner was forced to take up work. She, however, could not continue because she had to take care of her small child. Respondent would also draw all the money he

earned from the bank for his own expenses and petitioner was forced to manage with whatever money her parents gave her for the children. In addition, respondent forced petitioner to take a personal loan which she is forced to re-pay as it is in her name.

Respondent frequently insulted petitioner at her work - following her, insulting and scolding her in front of colleagues and suspecting and accusing her of having illicit relationships with her co-workers. Respondent was an alcoholic and would hit P and their daughter. Petitioner was forced to move back to her parents' house but her in-laws forced her to come back, promising that Respondent would not be violent again. However, violence continued unabated and after one incident where he took the cough syrup bottle from her (she was treating her child) and poured it all over her head, petitioner went to the police station. The next day, respondent locked her and their children inside the house and abused her when he returned. She again went to the police but was told that the concerned officer was not available. Petitioner was finally able to lodge a complaint the next day. After her in-laws found out about her complaint, they asked her to get out of the house but she called the police and they came and made enquiries. Respondent did not return to the house until after several days.

The police inspector visited respondent and petitioner and told respondent to take care of petitioner and the children, but respondent did not take petitioner back into the matrimonial home. When petitioner would ask him to take her back, respondent would abuse her over the phone. Her in-laws refused to help and, along with respondent, tried to



force petitioner to vacate the matrimonial home, wanting to give the house to respondent's brother.

*Types of Violence:*

- Physical Violence
  - ◆ Physical abuse
- Verbal and Emotional Abuse
  - ◆ Accusation/aspersion on your character of conduct, etc.
  - ◆ Insult for not bringing dowry, etc.
  - ◆ Insult for not having a male child
  - ◆ Demeaning, humiliating or undermining remarks/ statement
  - ◆ Ridicule
  - ◆ Name calling
  - ◆ Forcing you to not attend school, college, or any other educational institution
  - ◆ Preventing you from taking up a job
  - ◆ Preventing you from leaving the House
  - ◆ Preventing you from meeting any particular person
- Economic Violence
  - ◆ Not providing money for maintaining her or her children
  - ◆ Not providing food, clothes, medicine, etc. for her or her children
  - ◆ Forcing her out of the house she lives in
  - ◆ Preventing or obstructing you from carrying on your employment

- ◆ Not allowing her to take up an employment
- ◆ Not allowing her to use clothes or articles of general household use
- ◆ Non-payment of other bills such as electricity, etc.
- Dowry related harassment
  - ◆ Any other detail with regard to dowry, for site or the value, money for the expenses of daughter

**What was asked:**

- (j) Under Sec 19, preventing the respondent from selling, transferring or creating any 3rd party right on the property.
- (k) Directed under Sec 20 to pay maintenance amounting Rs 5000 pm and litigation fees amounting to Rs 5000.
- (l) Compensation and damages under Sec 22 for mental torture and emotional distress.

**What has been received:** The interim order states that on perusal of the CDPO's report it reveals violence has taken place by respondent on the aggrieved person. Among the abuses is economic violence with respect to preventing or obstructing her from carrying on employment and not allowing her to take up employment. It is crystal clear from the CDPO report that there is violence with respect to employment as petitioner had to resign her job. This is not disputed by respondent. Application under sections 20 and 22 of the Protection of Women from Domestic Violence Act directed. Respondent to pay compensation

*"V" - Case was resolved after mediation. In this case the aggrieved person was living with a man who had not divorced*

*his first wife but the first wife died subsequently. The aggrieved person was also separated from her first husband for the last twenty five years or more. This case could not have been filed for civil remedy in any other court. It also involved filing complaint against the violence perpetrated against the grandmother*

**WHEN FILED:** 7/05/08

*Facts:* The aggrieved person was living with the father of the respondent. Respondent's father was ill and he wanted father's retirement benefits. Respondent consistently abused his 84 year old grandmother. And on one occasion, he hit petitioner with an iron chair. When she cried out, he kicked her repeatedly while she lay on the floor.

*Types of Violence:*

- Physical Violence
  - ◆ Physical abuse of P (R's step-mother) and P's mother-in-law (R's grandmother) - hit P with iron chair and after she cried out, kicked her repeatedly while she lay on the floor; repeated history of abuse of grandmother
- Sexual Violence
  - ◆ Forcibly used to entertain others
  - ◆ Verbal and Emotional Abuse
  - ◆ Accusation/aspersion on character of conduct
  - ◆ Demeaning, humiliating or undermining remarks/ statement
  - ◆ Ridicule

- ◆ Name calling
- ◆ Any other verbal or emotional abuse - using vulgar language
- ◆ Threaten to kill P's son
- Economic Violence
  - ◆ R demands all of father's retirement fund
- Dowry Related Harassment
- Other detail with regard to dowry

**What was asked:**

- (m) Under Sec 18(a), (b), (d), (e), (f) & (g) - preventing commission or aiding and abetting domestic violence, prohibiting the respondent from communicating in any form with the aggrieved person, preventing alienation of their assets or operation of bank lockers and accounts or *stridhan* held jointly or otherwise, preventing commission of violence against any person aiding the aggrieved person and any other act as specified under the protection order.
- (n) Monetary relief under Sec 20 (b) & (c) as follows - medical expenses (Rs. 2000), loss caused due to destruction, damage or removal of any property from the control of the aggrieved person (Rs. 20,000).
- (o) Compensation orders under Sec 22 amounting to Rs. 1,00,000.

**Matter got resolved among the parties.**

***"MD" - Case currently pending. Repeated applications for interim relief sought by the petitioner and the long drawn***

*process of mediation has resulted in prolonging the case. Meanwhile the respondent has filed for divorce in another state, thus inconveniencing the aggrieved person further. The time limit for disposal is not taken into account.*

**WHEN FILED: 24/4/08**

*Facts:* Petitioner and respondent were married in a Christian ceremony. One daughter was born out of the wedlock. The family travelled to Singapore for respondent's work, but returned to India. Respondent is an alcoholic, and beat and abused petitioner. Along with his father, respondent defrauded and extorted money from petitioner. He abandoned petitioner and their daughter.

*Types of Violence:*

- Physical Violence
  - ◆ Beat P - at one time causing bleeding from P's nose and ears; at another time, hit P on the face and head with stones and a knife
- Verbal and Emotional Abuse
  - ◆ Accusation/aspersion on character or conduct, etc. - called prostitute
  - ◆ NOTE: overheard by their daughter who now has nightmares and wakes up screaming and crying
  - ◆ Insult for not bringing dowry, etc.
  - ◆ Insult for not having a male child
  - ◆ Ridicule
  - ◆ Prevented from leaving house
  - ◆ Prevented from meeting any particular person

- ◆ Threatened with murder
- ◆ Received vulgar letters and phone calls addressed to P's father
- ◆ Abandonment
- Economic Violence
  - ◆ Not providing money to maintain P or children
  - ◆ Not providing food, clothes, medicine, etc for P or children
  - ◆ Forcing out of house
  - ◆ Selling or pawning *stridhan* or any other valuables without informing P and without P's consent - nor allowing P to wear jewellery of her own
  - ◆ Forcibly taking away P's salary, income or wages, etc.
  - ◆ Non-payment of other bills such as electricity, etc.
  - ◆ Any other economic violence
  - ◆ Fraudulently obtained P's signature, stating they would deposit money in a joint account, and instead deposited the entire amount in their respective accounts.

**What was asked:**

- (p) Protection orders under Sec 18 against manhandling and other forms of domestic violence.
- (q) Orders under Sec 19 preventing dispossession of the aggrieved persons and alienating furniture and other valuables.
- (r) Rs 30,000 pm as maintenance therein under Sec 20(d).

- (s) Under interim order under Sec 23(2) seeking relief against alienating/ disposing any property, bank lockers or accounts, held jointly or otherwise.

## **Interim Order**

**Order:**

1. The respondent is hereby prohibited from dispossessing the aggrieved persons and alienating the furniture and other valuables from the house.
2. The respondent is hereby prohibited to abuse or manhandle the aggrieved persons.
3. The respondent is hereby prohibited in causing any kind of harm and causing any loss to the aggrieved persons.
4. Issue notice and order to the respondent through P.O. by 12/5/2008.

***"S"*** - *Case currently pending.Prolonged mediation has not led anywhere.*

*Facts:* Petitioner and respondent had a love marriage, against petitioner's father and step-mother's wishes. Once petitioner moved into the matrimonial home, her in-laws started harassing her, saying they had to give free food to both respondent and petitioner. Her in-laws demanded that petitioner pay back the loan borrowed by respondent to rebuild the matrimonial home.

Petitioner started working in a garment factory as a tailor, but brother-in-law said she is spoiling family name by going out to work. As a result, Respondent started abusing her claiming that she was having an affair with her brother-in-

law. Respondent then refused to let her work, so Petitioner quit and stayed at home for six months. Petitioner then started working again and respondent would take all her wages. Respondent would harass her at work or on the road while commuting to the factory. He continued to physically abuse her leading petitioner to attempt suicide by pouring kerosene over herself but her brother-in-law saved her. Petitioner tried to return to her parents' home several times, but her father or in-laws would force her back to her matrimonial home. Petitioner appealed to a women's organization, Vimochana. Meanwhile, respondent's relative and ex-counselor tried to reconcile the couple. As a result of the meeting, petitioner wrote a letter promising to come back to respondent and respondent promised not to trouble petitioner. However, after 1-2 months, he started abusing her again. On one occasion, petitioner borrowed money to give as gift to respondent's brother for his wedding. On the night of the marriage, respondent tried to kill her with a big stone breaking her jaw. Once during work, respondent accosted her and said she dressed like a prostitute. Petitioner's father scolded him but left her back in the matrimonial home. After respondent again abused her on her way to work, she went to the police station and complained, but they simply told her she needs to think about her decision for 2 days and did not lodge any complaint. Petitioner returned to *Vimochana* and submitted a complaint to them.

*"A" - Case disposed though the order against perpetrating violence was passed, the aggrieved person lost her job because of the constant harassment by the respondent while the case was still pending in the court and also because of her attending the court every other day.*



**Order:** It is ordered that the respondent should not in any way commit domestic violence. He should neither enter her workplace nor disturb her. He should not communicate with her either electronically, oral, written or telephone. He should not alienate any property, bank accounts, or bank lockers. He should not operate the joint bank account. He should not alienate her *stridhan* or any property. Respondent has to pay a fixed amount towards maintenance for her.

"SAK" - *Case still pending. Further evidence of the applicant/aggrieved person to be provided. An interim order stating that respondent must pay maintenance. The aggrieved person had to vacate her matrimonial home and the respondent took away the deposit paid for the house even though the aggrieved person's mother had paid the advance. The respondent did not attend court or engage an advocate, but when the matter was at the final stage the respondent engaged an advocate, thus causing undue delay and hardship to the aggrieved person. The aggrieved person even after attending every court hearing is still without a place to reside with two children and also has not got any relief from the court in substantial manner.*

*Facts:* Petitioner got pregnant and respondent was forced to marry her (in a police station). The couple had 2 children. Respondent is from an upper caste while petitioner is from a lower caste about which respondent abused petitioner. Respondent also physically abused petitioner. Both respondent and his family would verbally abuse petitioner. Because of the constant abuse, petitioner attempted suicide. In response to petitioner's claims to the court, respondent counter-claimed that he did not abuse his wife but rather was the victim of

abuse at the hands of her and her brothers. Respondent stated that he loves petitioner and his children, wants to settle the matter and live together with them again.

*Types of Violence:*

- Physical Violence
  - ◆ Physical abuse of P and children
- Sexual Violence
  - ◆ Forced sexual intercourse
  - ◆ Forced to watch pornography or other obscene material
  - ◆ Other acts of sexual nature, abusing, humiliating, degrading or otherwise violative of P's dignity
- Verbal and Emotional Abuse
  - ◆ Accusation/aspersion of P's character or conduct, etc.
  - ◆ Insult for not bringing dowry, etc.
  - ◆ Demeaning, humiliating or undermining remarks/ statement
  - ◆ Preventing P from taking up a job
  - ◆ Preventing P from leaving the house
  - ◆ Preventing P from meeting any particular person
  - ◆ Any other verbal or emotional abuse - caste abuse
  - ◆ P attempted suicide
- Economic Violence
  - ◆ Not providing money for maintaining P and children

- ◆ Not providing food, clothes, medicine, etc for P and children
  - ◆ Forcing P out of the house P lives in
  - ◆ Preventing P from accessing or using any part of the house
  - ◆ Preventing or obstructing P from carrying on employment
  - ◆ Not allowing P to take up employment
  - ◆ Non-payment of rent in case of a rented accommodation
  - ◆ Selling or pawning P's *stridhan* or any other valuables without informing P and without P's consent
  - ◆ Forcibly taking away salary, income or wages, etc.
  - ◆ Disposing P's *stridhan*
  - ◆ Non-payment of other bills such as electricity, etc.
  - ◆ Any other economic violence - no money given for school fees
- Dowry Related Harassment
    - ◆ Confiscated all jewellery, sold and misused money

**When Filed:** 30/04/2008

"P": Matter still pending: The respondent has disputed the jurisdiction of the court on the ground that no domestic violence occurred, after the implementation of the Act. The Magistrate court held in favour of the aggrieved person, that since the respondent was the son of the aggrieved person, he was duty bound to look after her and to provide shelter for his mother. The respondent has filed appeal against the Magistrate's order in the session court. There is no further

progress in the case, as the matter is pending in the sessions court. The aggrieved person along with her 8 dependents are threatened everyday by the 3rd party, the banks from which the respondent has borrowed money, mortgaged the property and has also stopped paying the instalments for repaying the loan.

*Facts:* The petitioner is a lady aged above 70 years has two sons and three daughters. She had a piece of land allotted to her by the government. Her eldest son promised to build a house for her and her other dependent son and her disabled daughter and daughters. On his promise she sold all hers and her daughters' gold and put her thumb impression on a gift deed transferring the piece of land on to her son. The son mortgaged the land to a bank and built small flats of three storied buildings.

The petitioner with her disabled daughter and other children and grand children lived temporarily in the neighbourhood. Hoping her son will provide her residence after the building was completed. But found instead that he was letting out the premises. She therefore with the neighbours help moved into premises only to find that the banks were after her as her son had not paid the instalments to the bank.





## Chapter Six

# Manipulating the Law

**I**t is seen that the courts act most of the time as a branch of the patriarchal system. Though the violence is culturally based and is socially accepted, to prove the offence in the courts, the tools of the law and the procedures of the outdated system are used. Newer and newer forms of violence have cropped up due to globalization, increase in consumerism, unconcern of neighbours and the community, etc.

Many times the present laws have been used to further perpetrate abuse on the women. For example, in one case, a village girl, aged around 16 years old, came to Mumbai with her uncle in search of a livelihood. She was employed as a domestic worker and, during her commute from her residence to her place of employment; she met an auto rickshaw driver who was from her own village. Being a migrant employee and feeling extremely lonely, her friendship with the auto driver turned to intimacy and she became pregnant. Both of them did not want the pregnancy or the child but at that time, even a government hospital charged nearly 600 rupees for an abortion. Therefore, with no money, they could not abort the child. The girl having no other support was helpless. The boy made her go back to the village and when she returned, her

parents came to know she was pregnant and about the boy's friendship. The boy's parents were economically better off than the girl's parents. Therefore, the father of the girl, apart from the social stigma of his daughter being pregnant without marriage, felt it would be a good match for his daughter even though by that time, the girl had fallen out of love with this boy. A panchayat was called and after forcing the boy and his parents to agree, the girl was forcibly married to the boy.

The boy took her back to Mumbai, made her sign some papers and had the marriage registered under the Hindu Marriage Act. He saw to it that they did not cohabit or have any privacy with each other, and threatened that he would rape her sister if she did not sign some papers. The girl, being illiterate and knowing only to sign her name, signed on all the papers given to her. The boy then filed a case in the family court under Section 12(1)(d) of the Hindu Marriage Act which provides:

- (1) Any marriage solemnized, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:
  - (d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.

He asked for a nullity of the marriage in the family court claiming that the girl was pregnant by some other man other than him. The girl did not know that her marriage was declared as null and void. She was sent back to the village by the boy allegedly for the validity of the child.

The girl gave birth to a boy and since the child's father did not contact her, came back to Mumbai to continue to work as

a domestic servant. After a few months, she came across an acquaintance who told her that the boy was getting married the next day to another woman. He showed her the wedding invitation. The girl immediately contacted the local women's organization and along with the media and police, she went to the wedding hall and stopped the wedding. The boy filed a defamation case against her on the basis of the divorce order he had. The defamation case was filed not only against the girl but also against the women's organization, the concerned police officer, the reporter, and the girl's old uncles and parents. The matter currently continues on in the criminal courts. Thus, the law has been used against this woman instead of preventing violence or helping her in any way.

In another case, a man got married to an African-American woman in the United States. The marriage bore 3 children. Though she suffered from abuse, the woman did not want to divorce her husband, choosing to tolerate violence of all kinds perpetrated against her rather than the social stigma of divorce by her community. After 18 years of marriage, the husband being Asian, came to India where he received a good job offer. However, in India, the discrimination and the violence continued. The man, claiming that the marriage had to be re-registered in India in order to allow her to stay in this country, took his wife to a sub-registrar and made her sign registers and papers. He had also obtained her signature on blank paper. The lady was then sent back to the US convincing her that she needed rest. She was told that she could have a Christmas holiday with her mother and brothers. She left her 3 children in India as they were going to school.



After Christmas, she suddenly could not contact her children as all her calls were blocked. Later, she received a stay order and a divorce petition against her filed by her husband in India. The ex parte order prohibiting the lady from coming to India to see or contact her children was based on one of the blank papers she signed which her husband had now made into a letter. It should be noted that sometimes the courts wholly base their ex parte orders on documents rather than the truth. Furthermore, since India does not have a rehabilitation program for the wife in case of divorce, with reference to the income, property, pre-nuptial agreement etc. of the husband, it was beneficial for him to file for divorce in this country. As in the Indian system, divorce is based on fault grounds. Husband can easily file for divorce on the basis of false claims specified in the statute and, many times, the wife may not get any kind of spousal support or benefits of the amounts accumulated by the husband after marriage.

The man had also taken another paper signed by the wife and filled it in such a way that he was entitled to all the money from their joint bank account in the US. The wife was left penniless. More than anything, she wanted to get in touch with her children, the youngest one being only 3 years old. She contacted a women's organization and HRLN lawyers. And with their help and funding from various sources and charity institutions, she came to India to fight her case. The point here is that the Special Marriage Act was used and also the provisions for ex parte orders to throw the woman out of the marital home and to restrain her from the custody of the children. Because of the legal aid provided by HRLN and advocates, CV Sudhindra and Associates, she was granted

custody of her children, returned to the US with them and had the divorce petition dismissed.

This case demonstrates the misuse of the law in India. In this country, when a man applies for divorce, the woman invariably resists the same or defends the marriage due to the social stigma attached to a divorced or deserted woman. In case the divorce petition is dismissed, the woman gets nothing because the man has not divorced her. The court orders permanent alimony and custody of children only in case of divorce or judicial separation. Thus the law does not help a woman abandoned by her husband on its own in spite of the court coming to the knowledge of the abandonment.

Similarly in the case of death due to dowry under Section 3 not 4 of Indian Penal Code, even if there is evidence showing the prohibited act of giving and taking of dowry, courts rarely convict people based solely on this evidence. Without laws to account for the inequality between the genders to safeguard a woman's right to be free of violence, a man, like the one in the case, can manipulate the court system to further commit abuse and induce subjugation and powerlessness.

## **Misuse of Beneficial laws**

Repeatedly we hear the so-called men's group alleging misuse of 498-A IPC, Dowry Prohibition Laws and the Domestic Violence Act. If such allegations of 'misuse' be true, how come abuse of women in all spheres continues unabated? This is an issue that must be addressed from all perspectives, namely from a media-stand point, since they are often at the vanguard when it comes to blowing these issues out of proportion.

Cases of purported misuse only come up when actual cases of domestic violence go unresolved in courts, having lacked in evidence. This is often because violence perpetuated within the precincts of home life is bound in secrecy and the resulting social stigma leaves most women reluctant to speak out about it. When cases of men on trial under the DV Act come in to the media limelight, and if by chance the women seeking to bring her aggressor to justice happens to be an educated and empowered, then there is an automatic reversion to the assumption that the man is being abused by the power of law. The general public and the media need a woman who is battered and bears the scars of violence. Anything short of that is construed a misuse of a social legislation. Thus, the end outcome is a vicious cycle that leaves its victims battered.

## Chapter Seven

# Conclusion



**F**or meaningful reform, the entire fabric of society must be addressed and informed. Much of the public's understanding of the Domestic Violence Act likely comes from media coverage. Controversy surrounded the passage of the Act, with those opposing it unjustly claiming it would be misused by women and false allegations would become widespread. Instead, the Act is attempting to provide a way for women to finally speak out and to finally receive protection. Even with its shortcomings, the Act allows women to gain custody of their children, stay in the shared household rather than be homeless, and be compensated for economic abuse. With the Act, women are bravely stepping forward and seeking help. But many women, as well as men, still remain unaware of its very existence and the remedies it provides. Thus, the misconceptions of the Act must be dismantled and the media must take a more responsible role in protecting India's vulnerable lot. The media must substitute all the negative portions of the Act with the positive ones, and highlight the actual incidents of violence underlying and persisting in the society. It must address the patriarchal institutions including those in the media itself that are perpetuating the violence and, by doing this, violence may decrease or even stop.

Awareness programs should be implemented in all walks of life, including the workplace and school. Employment and educational institutions must include gender sensitisation programs into their curriculums, teaching the effects of violence on persons and society as a whole. By being made aware of the implications of their actions, people can reconsider and alter their conduct.

Furthermore, additional legislation is needed. Amendments should be brought to clarify and limit the amount of time for the disposal of the appeals. The law should add provisions for the appointment of more protection officers trained exclusively for domestic violence. In conjunction, gender sensitivity trainings should be ordered for all protection officers and their staff. Proper budget provisions should be enumerated and expanded in order to provide adequate services - both legal and rehabilitative - to victims. Rehabilitation schemes that keep with the social and cultural aspects of Indian society should be detailed in the Act and offered for both the complainant and the respondent to stop the cycle of violence. With current criminal penalties ineffective, laws must be made to severely punish respondents to deter future harms.

While the Protection from Domestic Violence Act requires considerable reform, it is an important step in the battle for women's equality. Special laws are necessary to correct the misogyny inherent in traditional society. Changing the treatment of women in India is an uphill battle that will require gender-specific efforts. It is imperative that the Domestic Violence Act is not seen as an end but a continuing process of correction. Despite the horrible stories and criticisms enumerated in this text, we must not lose sight of the goal to have a world free of gender-based violence. All women have the right to live a life free from violence.

# **Recommendations on safeguards to be implemented under the DV Act**

1. Though the Act states it is for protection, it comes into force only after the commission of an offence. The aggrieved party may have to go through a long process of filing complaints, visiting the protection officer, pursuing the offender for serving notice etc. There has to be a system in place by which offence committed against any family member or anyone residing in a shared household being in a disadvantaged position in society should be automatically liable for punishments. Seeking protection or compensation or monetary relief should not be a long, cumbersome process defeating the whole purpose of speedy justice and the sole called statute which is legislated for providing protection. The kind of long drawn procedure envisaged in the courts not different from the procedures mandatory for any other offence is by itself a source of harassment and trauma for women.
2. Further, the DV Act does not address the cause of violence nor does it offer permanent solutions. It is a civil remedy without penal punishments, without giving any substantial rights. [Shared households are defined under Sec 2(s)]. Though the court can issue resident order under

Sec 23, restraining the respondent from throwing out the aggrieved party, restraining the respondent from coming anywhere near the shared household, restraining the respondent from alienating, disposing or creating third party rights in the shared household, it does not create any title on the property for the woman. She can only continue to reside in the property or ask for alternate accommodation, which could also be only temporary. It does not create any entitlements or resolve any dispute in the property in her favour, thereby causing her to revert to a civil court for determining her civil rights. In case, the shared household is owned by a third party, a case can be filed by the third party against the aggrieved person or the respondent for eviction, since the ownership is vested with them. There is no remedy protecting the aggrieved person against the ownership of the third party. (Stella Mary's case)

3. Filing cases under the DV Act should not be considered a ground for divorce. A specific provision should be added barring the man from utilizing the filing of complaints under the DV Act, as a ground for divorce.
4. A woman must not be thrown out of her shared household or matrimonial home when her residence is already protected by the DV Act by any order of decree of the family court, in spite of the family court being higher up than a Magistrate Court. A custody order by the Magistrate Court under the DV Act should hold good as a permanent order of custody and not to be disputed in the family court unless the custody order of the Magistrate Court is appealed against in the Sessions or the High Court.

5. Monetary relief or maintenance orders issued by the Magistrate Courts should be made good immediately by the respondent even if it is appealed against till the decision of the Appellate Court.
6. The time limit prescribed for the Magistrate Court should be applicable to the Appellate Courts and thus any matter in the Magistrate Court or the Appellate Court should not be dragged on for more than 2 months at each court. The Act should provide schedule for determining percentage of damages and quantum of amount to be paid to the aggrieved person with reference to the violence perpetuated. Time limit of mediation and mode of the same must be specified under the Rules.





# **Annexures**



**Section 1 (Chapter 1) PRELIMINARY**  
**THE PROTECTION OF WOMEN FROM DOMESTIC  
VIOLENCE ACT, 2005 NO. 43 OF 2005**

[13th September, 2005.]

An Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:-

**Section 2 (Chapter 2) Short title, extent and commencement.**

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

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

**Section 3 (Chapter 3) Definitions.**

**2. Definitions**

In this Act, unless the context otherwise requires-

- (a) "aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;
- (b) "child" means any person below the age of eighteen years and includes any adopted, step or foster child;
- (c) "compensation order" means an order granted in terms of section 22;

- (d) "custody order" means an order granted in terms of section 21;
- (e) "domestic incident report" means a report made in the prescribed form on receipt of a complaint of domestic violence from an aggrieved person;
- (f) "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;
- (g) "domestic violence" has the same meaning as assigned to it in section 3;
- (h) "dowry" shall have the same meaning as assigned to it in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961);
- (i) "Magistrate" means the, Judicial Magistrate of the first class, or as the case may be, the Metropolitan Magistrate, exercising jurisdiction under the Code of Criminal Procedure, 1973 (2 of 1974) in the area where the aggrieved person resides temporarily or otherwise or the respondent resides or the domestic violence is alleged to have taken place;
- (j) "medical facility" means such facility as may be notified by the State Government to be a medical facility for the purposes of this Act;
- (k) "monetary relief" means the compensation which the Magistrate may order respondent to pay to the aggrieved person, at any stage during the hearing of application seeking any relief under this Act, to meet the expenses incurred and losses suffered by the aggrieved person as a result of the domestic violence;
- (l) "notification" means a notification published in the Official Gazette and expression "notified" shall be construed accordingly;
- (m) "prescribed" means prescribed by rules made under this Act;

- (n) "Protection Officer" means an officer appointed by the State Government under sub-section (1) of section 8;
- (o) "protection order" means an order made in terms of section 18;
- (p) "residence order" means an order granted in terms of sub-section (1) of Section 19;
- (q) "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person sought any relief under this Act: Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner;
- (r) "service provider" means an entity registered under sub-section (1) of Section 10;
- (s) "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household;
- (t) "shelter home" means any shelter home as may be notified by the state Government to be a shelter home for the purposes of this Act.

### **Section 5 (Chapter 5) Definition of domestic violence.**

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

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

case it -

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

**Explanation I:** For the purposes of this section-

- (i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;
- (ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;
- (iii) "verbal and emotional abuse" includes-
  - (a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and
  - (b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) “economic abuse” includes-

- (a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, *stridhan*, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;
- (b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her *stridhan* or any other property jointly or separately held by the aggrieved person; and
- (c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

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

## **Section 8 (Chapter 8) Duties of police officers, service providers and Magistrate**

### **5. Duties of police officers, service providers and Magistrate**

A police officer, Protection Officer, service provider or Magistrate who has received a complaint of domestic violence or is otherwise



present at the place of an incident of domestic violence or when the incident of domestic violence is reported to him, shall inform the aggrieved person-(a) of her right to make an application for obtaining a relief by way of a protection order, an order for monetary relief, a custody order, a residence order, a compensation order or more than one such order under this Act;(b) of the availability of services of service providers; (c) of the availability of services of the Protection Officers;(d) of her right to free legal services under the Legal Services Authorities Act, 1987 (39 of 1987);(e) of her right to file a complaint under section 498A of the Indian Penal Code (45 of 1860), wherever relevant provided that nothing in this Act shall be construed in any manner as to relieve a police officer from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.

### **Section 9 (Chapter 9) Duties of shelter homes**

#### **6. Duties of shelter homes**

If an aggrieved person or on her behalf a Protection Officer or a service provider requests the person in charge of a shelter home, to provide shelter to her, such person in charge of the shelter home shall provide shelter to the aggrieved person in the shelter home

### **Section 10 (Chapter 10) Duties of medical facilities**

#### **7. Duties of medical facilities**

If an aggrieved person or, on her behalf a Protection Officer or a service provider requests the person in charge of a medical facility to provide any medical aid to her, such person in charge of the medical facility shall provide medical aid to the aggrieved person in the medical facility

### **Section 11 (Chapter 11) Appointment of Protection Officers**

#### **8. Appointment of Protection Officers**

(1) The State Government shall, by notification, appoint such number of Protection Officers in each district as it may consider

necessary and shall also notify the area or areas within which a Protection Officer shall exercise the powers and perform the duties conferred on him by or under this Act.

- (2) The Protection Officers shall as far as possible be women and shall possess such qualifications and experience as may be prescribed.
- (3) The terms and conditions of service of the Protection Officer and the other officers subordinate to him shall be such as may be prescribed.

## **Section 12 (Chapter 12) Duties and functions of Protection Officers.**

### **9. Duties and functions of Protection Officers**

- (1) It shall be the duty of the Protection Officer-
  - (a) to assist the Magistrate in the discharge of his functions under this Act;
  - (b) to make a domestic incident report to the Magistrate, in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence and forward copies thereof to the police officer in charge of the police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service providers in that area;
  - (c) to make an application in such form and in such manner as may be prescribed to the Magistrate, if the aggrieved person so desires, claiming relief for issuance of a protection order;
  - (d) to ensure that the aggrieved person is provided legal aid under the Legal Services Authorities Act, 1987 (39 of 1987) and make available free of cost the prescribed form in which a complaint is to be made;

- (e) to maintain a list of all service providers providing legal aid or counselling, shelter homes and medical facilities in a local area within the jurisdiction of the Magistrate;
  - (f) to make available a safe shelter home, if the aggrieved person so requires and forward a copy of his report of having lodged the aggrieved person in a shelter home to the police station and the Magistrate having jurisdiction in the area where the shelter home is situated;
  - (g) to get the aggrieved person medically examined, if she has sustained bodily injuries and forward a copy of the medical report to the police station and the Magistrate having jurisdiction in the area where the domestic violence is alleged to have been taken place;
  - (h) to ensure that the order for monetary relief under section 20 is complied with and executed, in accordance with the procedure prescribed under the Code of Criminal Procedure, 1973 (2 of 1974);
  - (i) to perform such other duties as may be prescribed.
- (2) The Protection Officer shall be under the control and supervision of the Magistrate, and shall perform the duties imposed on him by the Magistrate and the Government by, or under, this Act.

### **Section 13 (Chapter 13) Service providers**

#### **10. Service providers**

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

- (2) A service provider registered under sub-section (1) shall have the power to -
- (a) record the domestic incident report in the prescribed form if the aggrieved person so desires and forward a copy thereof to the Magistrate and the Protection Officer having jurisdiction in the area where the domestic violence took place;
  - (b) get the aggrieved person medically examined and forward a copy of the medical report to the Protection Officer and the police station within the local limits of which the domestic violence took place;
  - (c) ensure that the aggrieved person is provided shelter in a shelter home, if she so requires and forward a report of the lodging of the aggrieved person in the shelter home to the police station within the local limits of which the domestic violence took place.
- (3) No suit, prosecution or other legal proceeding shall lie against any service provider or any member of the service provider who is, or who is deemed to be, acting or purporting to act under this Act, for anything which is in good faith done or intended to be done in the exercise of powers or discharge of functions under this Act towards the prevention of the commission of domestic violence.

## **Section 14 (Chapter 14) Duties of Government.**

### **11. Duties of Government**

The Central Government and every State Government, shall take all measures to ensure that-

- (a) the provisions of this Act are given wide publicity through public media including the television, radio and the print media at regular intervals;
- (b) the Central Government and State Government officers including the police officers and the members of the judicial services are given periodic sensitization and awareness training on the issues addressed by this Act;

- (c) effective co-ordination between the services provided by concerned ministries and departments dealing with law, home affairs including law and order, health and human resources to address issues of domestic violence is established and periodical review of the same is conducted;
- (d) protocols for the various ministries concerned with the delivery of services to women under this Act including the courts are prepared and put in place.

## **Section 16 (Chapter 16) Application to Magistrate**

### **12. Application to Magistrate**

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

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

- (2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent: Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

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

### **Section 17 (Chapter 17) Service of notice**

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

- (1) A notice of the date of hearing fixed under section 12 shall be given by the Magistrate to the Protection Officer, who shall get it served by such means as may be prescribed on the respondent, and on any other person, as directed by the Magistrate within a maximum period of two days or such further reasonable time as may be allowed by the Magistrate from the date of its receipt.
- (2) A declaration of service of notice made by the Protection Officer in such form as may be prescribed shall be the proof that such notice was served upon the respondent and on any other person as directed by the Magistrate unless the contrary is proved.

### **Section 18 (Chapter 18) Counselling**

#### **14. Counselling**

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

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

### **Section 19 (Chapter 19) Assistance of welfare expert**

#### **15. Assistance of welfare expert**

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

### **Section 20 (Chapter 20) Proceedings to be held in camera**

#### **16. Proceedings to be held in camera**

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

### **Section 21 (Chapter 21) Right to reside in a shared household**

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

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

### **Section 22 (Chapter 22) Protection orders**

#### **18. Protection orders**

The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take

place, pass a protection order in favour of the aggrieved person and prohibit the respondent from-

- (a) committing any act of domestic violence;
- (b) aiding or abetting in the commission of acts of domestic violence;
- (c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;
- (d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;
- (e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her *stridhan* or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;
- (f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;
- (g) committing any other act as specified in the protection order.

### **Section 23 (Chapter 23) Residence orders**

#### **19. Residence orders**

- (1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order -
  - (a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;



- (c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;
  - (d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;
  - (e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or
  - (f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require: Provided that no order under clause (b) shall be passed against any person who is a woman.
- (2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.
- (3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.
- (4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.
- (5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the court may also pass an order directing the officer in charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.
- (6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

- (7) The Magistrate may direct the officer in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.
- (8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her *stridhan* or any other property or valuable security to which she is entitled to.

## **Section 24 (Chapter 24) Monetary reliefs**

### **20. Monetary reliefs**

- (1) While disposing an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but not limited to:-
  - (a) the loss of earnings;
  - (b) the medical expenses;
  - (c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and
  - (d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.
- (2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.
- (3) 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.
- (4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and

to the in charge of the police station within the local limits of whose jurisdiction the respondent resides.

- (5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).
- (6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

## **Section 25 (Chapter 25) Custody orders**

### **21. Custody orders**

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

## **Section 26 (Chapter 26) Compensation orders**

### **22. Compensation orders**

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

## **Section 27 (Chapter 27) Power to grant interim and ex parte orders**

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

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

## **Section 28 (Chapter 28) Court to give copies of order free of cost**

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

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

## **Section 29 (Chapter 29) Duration and alteration of orders**

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

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

## **Section 30 (Chapter 30) Relief in other suits and legal proceedings**

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

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

## **Section 31 (Chapter 31) Jurisdiction**

### **27. Jurisdiction**

- (1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which-
  - (a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or
  - (b) the respondent resides or carries on business or is employed; or
  - (c) the cause of action has arisen, shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.
- (2) Any order made under this Act shall be enforceable throughout India.

## **Section 32 (Chapter 32) Procedure**

### **28. Procedure**

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

## **Section 33 (Chapter 33) Appeal**

### **29. 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, whichever is later.

## **Section 35 (Chapter 35) Protection Officers and members of service providers to be public servants**

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

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

## **Section 36 (Chapter 36) Penalty for breach of protection order by respondent**

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

- (1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a

term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

- (2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.
- (3) While framing charges under sub-section (1), the Magistrate may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions.

### **Section 37 (Chapter 37) Cognizance and proof**

#### **32. Cognizance and proof**

- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offence under sub-section (1) of section 31 shall be cognizable and non-bailable.
- (2) Upon the sole testimony of the aggrieved person, the court may conclude that an offence under sub-section (1) of section 31 has been committed by the accused.

### **Section 39 (Chapter 39) Cognizance of offence committed by Protection Officer**

#### **34. Cognizance of offence committed by Protection Officer**

No prosecution or other legal proceeding shall lie against the Protection Officer unless a complaint is filed with the previous sanction of the State Government or an officer authorised by it in this behalf.

### **Section 40 (Chapter 40) Protection of action taken in good faith**

#### **35. Protection of action taken in good faith**

No suit, prosecution or other legal proceeding shall lie against the Protection Officer for any damage caused or likely to be caused by

anything which is in good faith done or intended to be done under this Act or any rule or order made thereunder.

**Section 41 (Chapter 41) Act not in derogation of any other law**

**36. 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.

**Section 42 (Chapter 42) Power of Central Government to make rules**

**37. Power of Central Government to make rules**

- (1) The Central Government may, by notification, make rules for carrying out the provisions 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) the qualifications and experience which a Protection Officer shall possess under sub-section (2) of section 8;
  - (b) the terms and conditions of service of the Protection Officers and the other officers subordinate to him, under sub-section (3) of section 8;
  - (c) the form and manner in which a domestic incident report may be made under clause (b) of sub-section (1) of section 9;
  - (d) the form and the manner in which an application for protection order may be made to the Magistrate under clause (c) of sub-section (1) of section 9;
  - (e) the form in which a complaint is to be filed under clause (d) of sub-section (1) of section 9;
  - (f) the other duties to be performed by the Protection Officer under clause (i) of sub-section (1) of section 9;



- (g) the rules regulating registration of service providers under sub-section (1) of section 10;
  - (h) the form in which an application under sub-section (1) of section 12 seeking reliefs under this Act may be made and the particulars which such application shall contain under sub-section (3) of that section;
  - (i) the means of serving notices under sub-section (1) of section 13;
  - (j) the form of declaration of service of notice to be made by the Protection Officer under sub-section (2) of section 13;
  - (k) the qualifications and experience in counselling which a member of the service provider shall possess under sub-section (1) of section 14;
  - (l) the form in which an affidavit may be filed by the aggrieved person under sub-section (2) of section 23;
  - (m) any other matter which has to be, or may be, prescribed.
- (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 comprised 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.

# THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE RULES, 2006<sup>1</sup>

In exercise of the powers conferred by section 37 of the Protection of Women from Domestic Violence Act, 2005 (43 of 2005), the Central Government hereby makes the following rules, namely:-

## 1. Short title and commencement

- (1) These rules may be called THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE RULES, 2006.
- (2) They shall come into force on the 26th day of October, 2006.

## 2. Definitions

In these rules, unless the context otherwise requires-

- (a) "Act" means the Protection of Women from Domestic Violence Act, 2005 (43 of 2005);
- (b) "complaint" means any allegation made orally or in writing by any person to the Protection Officer;
- (c) "Counsellor" means a member of a service provider competent to give counselling under sub-section (1) of section 14;
- (d) "Form" means a form appended to these rules;
- (e) "section" means a section of the Act;
- (f) words and expressions used and not defined in these rules but defined in the Act shall have the meanings respectively assigned to them in the Act.

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<sup>1</sup> "Vide G.S.R. 644(E), dated 17-10-2006 and published in the Gazette of India, Ext., Pt. II, S. 3(i), dated 17-10-2006.

### **3. Qualifications and experience of Protection Officers**

- (1) The Protection Officers appointed by the State Government may be of the Government or members of non-governmental organisations:

Provided that preference shall be given to women.

- (2) Every person appointed as Protection Officer under the Act shall have at least three years experience in social sector.
- (3) The tenure of a Protection Officer shall be for a minimum period of three years.
- (4) The State Government shall provide necessary office assistance to the Protection Officer for the efficient discharge of his or her functions under the Act and these rules.

### **4. Information to Protection Officers**

- (1) Any person who has reason to believe that an act of domestic violence has been, or is being, or is likely to be committed may give information about it to the Protection Officer having jurisdiction in the area either orally or in writing.
- (2) In case the information is given to the Protection Officer under subrule (1) orally, he or she shall cause it to be reduced to in writing and shall ensure that the same is signed by the person giving such information and in case the informant is not in a position to furnish written information the Protection Officer shall satisfy and keep a record of the identity of the person giving such information.
- (3) The Protection Officer shall give a copy of the information recorded by him immediately to the informant free of cost.

### **5. Domestic incident reports**

- (1) Upon receipt of a complaint of domestic violence, the Protection Officer shall prepare a domestic incident report in Form I and submit the same to the Magistrate and forward copies thereof

to the Police Officer in charge of the police station within the local limits of jurisdiction of which the domestic violence alleged to have been committed has taken place and to the service providers in that area.

- (2) Upon a request of any aggrieved person, a service provider may record a domestic incident report in Form I and forward a copy thereof to the Magistrate and the Protection Officer having jurisdiction in the area where the domestic violence is alleged to have taken place.

## **6. Applications to the Magistrate**

- (1) Every application of the aggrieved person under section 12 shall be in Form II or as nearly as possible thereto.
- (2) An aggrieved person may seek the assistance of the Protection Officer in preparing her application under sub-rule (1) and forwarding the same to the concerned Magistrate.
- (3) In case the aggrieved person is illiterate, the Protection Officer shall read over the application and explain to her the contents thereof.
- (4) The affidavit to be filed under sub-section (2) of section 23 shall be filed in Form III.
- (5) The applications under section 12 shall be dealt with and the orders enforced in the same manner laid down under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974).

## **7. Affidavit for obtaining ex parte orders of Magistrate**

Every affidavit for obtaining ex parte order under sub-section (2) of section 23 shall be filed in Form III.

## **8. Duties and functions of Protection Officers**

- (1) It shall be the duty of the Protection Officer-
  - (i) to assist the aggrieved person in making a complaint under the Act, if the aggrieved person so desires;

- (ii) to provide her information on the rights of aggrieved persons under the Act as given in Form IV which shall be in English or in a vernacular local language;
- (iii) to assist the person in making any application under section 12, or sub-section (2) of section 23 or any other provision of the Act or the rules made thereunder;
- (iv) to prepare a "Safety Plan" including measures to prevent further domestic violence to the aggrieved person, in consultation with the aggrieved person in Form V, after making an assessment of the dangers involved in the situation and on an application being moved under section 12;
- (v) to provide legal aid to the aggrieved person, through the State Legal Aid Services Authority;
- (vi) to assist the aggrieved person and any child in obtaining medical aid at a medical facility including providing transportation to get the medical facility;
- (vii) to assist in obtaining transportation for the aggrieved person and any child to the shelter;
- (viii) to inform the service providers registered under the Act that their services may be required in the proceedings under the Act and to invite applications from service providers seeking particulars of their members to be appointed as Counsellors in proceedings under the Act under sub-section (1) of section 14 or Welfare Experts under section 15;
- (ix) to scrutinise the applications for appointment as Counsellors and forward a list of available Counsellors to the Magistrate;
- (x) to revise once in three years the list of available Counsellors by inviting fresh applications and forward a revised list of Counsellors on the basis thereof to the concerned Magistrate;

- (xi) to maintain a record and copies of the report and documents forwarded under sections 9,12,20,21,22,23 or any other provisions of the Act or these rules;
  - (xii) to provide all possible assistance to the aggrieved person and the children to ensure that the aggrieved person is not victimised or pressurised as a consequence of reporting the incidence of domestic violence;
  - (xiii) to liaise between the aggrieved person or persons, police and service provider in the manner provided under the Act and these rules;
  - (xiv) to maintain proper records of the service providers, medical facility and shelter homes in the area of his jurisdiction.
- (2) In addition to the duties and functions assigned to a Protection Officer under clauses (a) to (h) of sub-section (1) of section 9, it shall be the duty of every Protection Officer-
- (a) to protect the aggrieved persons from domestic violence, in accordance with the provisions of the Act and these rules;
  - (b) to take all reasonable measures to prevent recurrence of domestic violence against the aggrieved person, in accordance with the provisions of the Act and these rules.

## **9. Action to be taken in cases of emergency**

If the Protection Officer or a service provider receives reliable information through e-mail or a telephone call or the like either from the aggrieved person or from any person who has reason to believe that an act of domestic violence is being or is likely to be committed and in a such an emergency situation, the Protection Officer or the service provider, as the case may be, shall seek immediate assistance of the police who shall accompany the Protection Officer or the service provider, as the case may be, to the place of occurrence and record the domestic incident report and present the same to the Magistrate without any delay for seeking appropriate orders under the Act.

## **10. Certain other duties of the Protection Officers**

- (1) The Protection Officer, if directed to do so in writing, by the Magistrate shall-
  - (a) conduct a home visit of the shared household premises and make preliminary enquiry if the Court requires clarification, in regard to granting ex parte interim relief to the aggrieved person under the Act and pass an order for such home visit;
  - (b) after making appropriate inquiry, file a report on the emoluments, assets, bank accounts or any other documents as may be directed by the Court;
  - (c) restore the possession of the personal effects including gifts and jewellery of the aggrieved person and the shared household to the aggrieved person;
  - (d) assist the aggrieved person to regain custody of children and secure rights to visit them under his supervision as may be directed by the Court;
  - (e) assist the Court in enforcement of orders in the proceedings under the Act in the manner directed by the Magistrate, including orders under section 12, section 18, section 19, section 20, section 21 or section 23 in such manner as may be directed by the Court;
  - (f) take the assistance of the police, if required, in confiscating any weapon involved in the alleged domestic violence.
- (2) The Protection Officer shall also perform such other duties as may be assigned to him by the State Government or the Magistrate in giving effect to the provisions of the Act and these rules from time to time.
- (3) The Magistrate may, in addition to the orders for effective relief in any case, also issue directions relating general practice for better handling of the cases, to the Protection Officers within his jurisdiction and the Protection Officers shall be bound to carry out the same.

## **11. Registration of service providers**

- (1) Any voluntary association registered under the Societies Registration Act, 1860 (21 of 1860) or a company registered under the Companies Act, 1956 (1 of 1956) or any other law for time being in force with the objective of protecting the rights and interests of women by any lawful means including providing of legal aid, medical, financial or other assistance and desirous of providing service as a service provider under the Act shall make an application under sub-section (1) of section 10 for registration as service provider in Form VI to the State Government.
- (2) The State Government shall, after making such enquiry as it may consider necessary and after satisfying itself about the suitability of the applicant, register it as a service provider and issue a certificate of such registration:

Provided that no such application shall be rejected without giving the applicant an opportunity of being heard.

- (3) Every association or company seeking registration under sub-section (1) of section 10 shall possess the following eligibility criteria, namely:-
  - (a) It should have been rendering the kind of services it is offering under the Act for at least three years before the date of application for registration under the Act and these rules as a service provider.
  - (b) In case an applicant for registration is running a medical facility, or a psychiatric, counselling centre, or a vocational training institution, the State Government shall ensure that the applicant fulfils the requirements for running such a facility or institution laid down by the respective regulatory authorities regulating the respective professions or institutions.
  - (c) In case an applicant for registration is running a shelter home, the State Government shall, through an officer or



any authority or agency authorised by it, inspect the shelter home, prepare a report and record its finding on the report, detailing that-

- (i) the maximum capacity of such shelter home for intake of persons seeking shelter;
  - (ii) the place is secure for running a shelter home for women and that adequate security arrangements can be put in place for the shelter home;
  - (iii) the shelter home has a record of maintaining a functional telephone connection or other communication media for the use of the inmates;
- (3) The State Government shall provide a list of service providers in the various localities to the concerned Protection Officers and also publish such list in newspapers or on its website.
- (4) The Protection Officer shall maintain proper records by way of maintenance of registers duly indexed, containing the details of the service providers.

## **12. Means of service of notices**

- (1) The notices for appearance in respect of the proceedings under the Act shall contain the names of the person alleged to have committed domestic violence, the nature of domestic violence and such other details which may facilitate the identification of person concerned.
- (2) The service of notices shall be made in the following manner, namely:
  - (a) The notices in respect of the proceedings under the Act shall be served by the Protection Officer or any other person directed by him to serve the notice, on behalf of the Protection Officer, at the address where the respondent is stated to be ordinarily residing in India by the complainant or aggrieved person or where the respondent is stated to

be gainfully employed by the complainant or aggrieved person, as the case may be.

- (b) The notice shall be delivered to any person in charge of such place at the moment and in case of such delivery not being possible it shall be pasted at a conspicuous place on the premises.
  - (c) For serving the notices under section 13 or any other provision of the Act, the provisions under Order V of the Civil Procedure Code, 1908 (5 of 1908) or the provisions under Chapter VI of the Code of Criminal Procedure, 1973 (2 of 1974) as far as practicable may be adopted.
  - (d) Any order passed for such service of notices shall entail the same consequences, as an order passed under Order V of the Civil Procedure Code, 1908 (5 of 1908) or Chapter VI of the Code of Criminal Procedure, 1973 (2 of 1974) respectively, depending upon the procedure found efficacious for making an order for such service under section 13 or any other provision of the Act and in addition to the procedure prescribed under the Order V or Chapter VI, the Court may direct any other steps necessary with a view to expediting the proceedings to adhere to the time limit provided in the Act.
- (3) On a statement on the date fixed for appearance of the respondent, or a report of the person authorised to serve the notices under the Act, that service has been effected appropriate orders shall be passed by the Court on any pending application for interim relief after hearing the complainant or the respondent, or both.
  - (4) When a protection order is passed restraining the respondent from entering the shared household or the respondent is ordered to stay away or not to contact the petitioner, no action of the aggrieved person including an invitation by the aggrieved person shall be considered as waiving the restraint

imposed on the respondent, by the order of the Court, unless such protection order is duly modified in accordance with the provisions of sub-section (2) of section 25.

### **13. Appointment of Counsellors**

- (1) A person from the list of available Counsellors forwarded by the Protection Officer, shall be appointed as a Counsellor, under intimation to the aggrieved person.
- (2) The following persons shall not be eligible to be appointed as Counsellors in any proceedings, namely:-
  - (i) any person who is interested or connected with the subject-matter of the dispute or is related to anyone of the parties or to those who represent them unless such objection is waived by all the parties in writing.
  - (ii) any legal practitioner who has appeared for the respondent in the case or any other suit or proceedings connected therewith.
- (3) The Counsellors shall as far as possible be women.

### **14. Procedure to be followed by Counsellors**

- (1) The Counsellor shall work under the general supervision of the Court or the Protection Officer or both.
- (2) The Counsellor shall convene a meeting at a place convenient to the aggrieved person or both the parties.
- (3) The factors warranting counselling shall include the factor that the respondent shall furnish an undertaking that he would refrain from causing such domestic violence as complained by the complainant and in appropriate cases an undertaking that he will not try to meet, or communicate in any manner through letter or telephone, electronic mail or through any medium except in the counselling proceedings before the Counsellor or as permissibly by law or order of a Court of competent jurisdiction.

- (4) The Counsellor shall conduct the counselling proceedings bearing in mind that the counselling shall be in the nature of getting an assurance, that the incidence of domestic violence shall not get repeated.
- (5) The respondent shall not be allowed to plead any counter justification for the alleged act of domestic violence in counselling the fact that and any justification for the act of domestic violence by the respondent is not allowed to be a part of the counselling proceeding should be made known to the respondent, before the proceedings begin.
- (6) The respondent shall furnish an undertaking to the Counsellor that he would refrain from causing such domestic violence as complained by the aggrieved person and in appropriate cases an undertaking that he will not try to meet, or communicate in any manner through letter or telephone, e-mail, or through any other medium except in the counselling proceedings before the Counsellor.
- (7) If the aggrieved person so desires, the Counsellor shall make efforts of arriving at a settlement of the matter.
- (8) The limited scope of the efforts of the Counsellor shall be to arrive at the understanding of the grievances of the aggrieved person and the best possible redressal of her grievances and the efforts shall be to focus on evolving remedies or measures for such redressal.
- (9) The Counsellor shall strive to arrive at a settlement of the dispute by suggesting measures for redressal of grievances of the aggrieved person by taking into account the measures or remedies suggested by the parties for counselling and reformulating the terms for the settlement, wherever required.
- (10) The Counsellor shall not be bound by the provisions of the Indian Evidence Act, 1872 (1 of 1872) or the Code of Civil Procedure, 1908 (5 of 1908), or the Code of Criminal Procedure, 1973 (2 of 1974), and his action shall be guided by the principles of

fairness and justice and aimed at finding way to bring an end to domestic violence to the satisfaction of the aggrieved person and in making such an effort the Counsellor shall give due regard to the wishes and sensibilities of the aggrieved person.

- (11) The Counsellor shall submit his report to the Magistrate as expeditiously as possible for appropriate action.
- (12) In the event the Counsellor arrives at a resolution of the dispute, he shall record the terms of settlement and get the same endorsed by the parties.
- (13) The Court may, on being satisfied about the efficacy of the solution and after making a preliminary enquiry from the parties and after, recording reasons for such satisfaction, which may include undertaking by the respondents to refrain from repeating acts of domestic violence, admitted to have been committed by the respondents, accept the terms with or without conditions.
- (14) The Court shall, on being so satisfied with the report of counselling, pass an order, recording the terms of the settlement or an order modifying the terms of the settlement on being so requested by the aggrieved person, with the consent of the parties.
- (15) In cases, where a settlement cannot be arrived at in the counselling proceedings, the Counsellor shall report the failure of such proceedings to the Court and the Court shall proceed with the case in accordance with the provisions of the Act.
- (16) The record of proceedings shall not be deemed to be material on record in the case on the basis of which any inference may be drawn or an order may be passed solely based on it.
- (17) The Court shall pass an order under section 25, only after being satisfied that the application for such an order is not vitiated by force, fraud or coercion or any other factor and the reasons for such satisfaction shall be recorded in writing in the order, which may include any undertaking or surety given by the respondent.

## **15. Breach of Protection Orders**

- (1) An aggrieved person may report a breach of protection order or an interim protection order to the Protection Officer.
- (2) Every report referred to in sub-rule (1) shall be in writing by the informant and duly signed by her.
- (3) The Protection Officer shall forward a copy of such complaint with a copy of the protection order of which a breach is alleged to have taken place to the concerned Magistrate for appropriate orders.
- (4) The aggrieved person may, if she so desires, make a complaint of breach of protection order or interim protection order directly to the Magistrate or the Police, if she so chooses.
- (5) If, at any time after a protection order has been breached, the aggrieved person seeks his assistance, the Protection Officer shall immediately rescue her by seeking help from the local police station and assist the aggrieved person to lodge a report to the local police authorities in appropriate cases.
- (6) When charges are framed under section 31 or in respect of offences under section 498-A of the Indian Penal Code (45 of 1860), or any other offence not summarily triable, the Court may separate the proceedings for such offences to be tried in the manner prescribed under Code of Criminal Procedure, 1973 (2 of 1974) and proceed to summarily try the offence of the breach of Protection Order under section 31, in accordance with the provisions of Chapter XXI of the Code of Criminal Procedure, 1973 (2 of 1974).
- (7) Any resistance to the enforcement of the orders of the Court under the Act by the respondent or any other person purportedly acting on his behalf shall be deemed to be a breach of protection order or an interim protection order covered under the Act.
- (8) A breach of a protection order or an interim protection order shall immediately be reported to the local police station having

territorial jurisdiction and shall be dealt with as a cognizable offence as provided under sections 31 and 32.

- (9) While enlarging the person on bail arrested under the Act, the Court may, by order, impose the following conditions to protect the aggrieved person and to ensure the presence of the accused before the Court, which may include-
- (a) an order restraining the accused from threatening to commit or committing an act of domestic violence;
  - (b) an order preventing the accused from harassing, telephoning or making any contact with the aggrieved person;
  - (c) an order directing the accused to vacate and stay away from the residence of the aggrieved person or any place she is likely to visit;
  - (d) an order prohibiting the possession or use of firearm or any other dangerous weapon;
  - (e) an order prohibiting the consumption of alcohol or other drugs;
  - (f) any other order required for protection, safety and adequate relief to the aggrieved person.

## **16. Shelter to the aggrieved person**

- (1) On a request being made by the aggrieved person, the Protection Officer or a service provider may make a request under section 6 to the person in charge of a shelter home in writing, clearly stating that the application is being made under section 6.
- (2) When a Protection Officer makes a request referred to in subrule (1), it shall be accompanied by a copy of the domestic incident report registered, under section 9 or under section 10:

Provided that shelter home shall not refuse shelter to an aggrieved person under the Act, for her not having lodged a domestic incident report, prior to the making of request for shelter in the shelter home.

- (3) If the aggrieved person so desires, the shelter home shall not disclose the identity of the aggrieved person in the shelter home or communicate the same to the person complained against.

### **17. Medical facility to the aggrieved person**

- (1) The aggrieved person or the Protection Officer or the service provider may make a request under section 7 to a person-in-charge of a medical facility in writing, clearly stating that the application is being made under section 7.
- (2) When a Protection Officer makes such a request, it shall be accompanied by a copy of the domestic incident report:

Provided that the medical facility shall not refuse medical assistance to an aggrieved person under the Act, for her not having lodged a domestic incident report, prior to making a request for medical assistance or examination to the medical facility.

- (3) If no domestic incident report has been made, the person-in-charge of the medical facility shall fill in Form I and forward the same to the local Protection Officer.
- (4) The medical facility shall supply a copy of the medical examination report to the aggrieved person free of cost.



**IN THE COURT OF HONOURABLE METROPOLITAN MAGISTRATE  
COURT, AT**

C. MISC NO.

BETWEEN

Smt. ——— Aggrieved person

AND

Sri ——— Respondent

**AFFIDAVIT**

I, \_\_\_\_\_, Aged Years, residing at \_\_\_\_\_, do hereby solemnly affirm and state on oath as follows:

1. I submit it that I am the Decree Holder in the above case and I am aware of the facts and circumstances of the case.
2. I submit it that I have filed this Execution petition on the orders passed in C. Misc. \_\_\_\_\_ by the Hon'ble \_\_\_\_\_
3. I submit that what is stated in Para \_\_\_\_\_ to of the above Execution Petition is true to the best of my knowledge information and belief.

Identified By me \_\_\_\_\_

DEPONENT

Advocate for the Appellant

DATE: \_\_\_\_\_

BANGALORE.

**IN THE COURT OF METROPOLITAN MAGISTRATE COURT, AT  
C. MISC No.**

BETWEEN:

Smt. ,

Age Years,

Residing at ——— Aggrieved Person

AND:

Sri. ,

Age years,

Residing at ——— Respondent

APPLICATION UNDER SECTION 31(1) READ WITH SECTION 20(d) OF  
THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

1. The Address of the parties are as shown in the cause title and that Decree Holder/Aggrieved person can be served through her Counsel
2. That the decree-holder had filed C. Misc. No under Protection of Women from Domestic Violence Act, 2005 before the honourable seeking for maintenance towards herself and under section 20(d) of the said Act among other reliefs,
3. That the honourable on has passed final order granting maintenance of Rs. per month towards herself and her minor child. Thus it is a protection order under section 18 prohibiting the Respondent from committing any act of domestic violence, that is to stop not paying maintenance and to start paying maintenance of per month thus the Respondent has to comply with the orders of this Honourable Court.

4. The decree-holder submits Section 3 defines Domestic Violence and 3 (iv) (a) defines economic abuse as deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or otherwise or which the aggrieved person requires out of necessities for the aggrieved person and her children if any, *stridhan*, property, rental related to the shared household and maintenance. The respondent till date has not paid any interim maintenance amount to the aggrieved person. Thus the respondent has not obeyed the order of this Hon'ble court and thus violated the protection orders.
5. The decree holder further submits that under sec.20 (6) of the said Act which reads as follows "upon the failure on the part of the respondent to make payment in terms of the order the magistrate may direct the employer or debtor of the respondent, to directly pay to the aggrieved person or to deposit with the Court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent" that the decree-holder prays to direct the employer of the Respondent, to attach his salary.
6. That the decree-holder submits that this Act came into being to provide for an emergent relief to the aggrieved person.
7. That the Respondent is working in at Regional office, earning salary of Rs. per month.
8. The Respondent is also due and liable to pay from to i.e. X per month for Y months

That this Honourable court has jurisdiction to try the above matter.

WHEREFORE, the decree-holder prays before this Hon'ble court may kindly direct the Respondent to pay arrears of maintenance amount due to the decree-holder.

**PRAYER**

The Honourable court may pass the following orders in the interest of justice and equity,

Pass orders under Section 31 (1),

To direct the Respondent to pay maintenance amount along with future maintenance due to the decree-holder and her child.

To pass orders directing the employer under section 20 (6) to attach the salary of the Respondent.

BANGALORE

DEPONENT

DATE:

**VERIFICATION**

I, \_\_\_\_\_ state that what is stated above is true to the best of my knowledge, information and belief.

BANGALORE

DEPONENT

DATE:

BEFORE THE HONOURABLE \_\_\_\_\_ COURT

AT \_\_\_\_\_

Appeal No. \_\_\_\_/\_\_\_\_

IN

C. Misc \_\_\_\_/\_\_\_\_

BETWEEN

Miss X,

Aged \_\_\_\_\_ years,

D/o \_\_\_\_\_

Address:

AND

Mr. Y,

Aged \_\_\_\_\_ years,

S/o \_\_\_\_\_

Address:

**MEMORANDUM OF APPEAL UNDER SECTION 29 OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005**

**Appellant most respectfully submits as follows**

The address of the parties is as mentioned in the cause title. The Appellant may also be served through her counsel Y, Z, A, B and C having their office at \_\_\_\_\_

The Appellant being aggrieved by the judgement dated \_\_\_\_/\_\_\_\_/\_\_\_\_ passed in C. Misc \_\_\_\_/\_\_\_\_ on the file of the Court of the \_\_\_\_\_ Court, begs to prefer the appeal on the following amongst other grounds.

### **Brief Facts of the case**

1. The Appellant was the petitioner in the \_\_\_\_\_ Court in a petition u/s 12 of the Protection of Violence from DV Act 2005. Seeking for the following reliefs.
  - I. Residence Order under Section 19 (a) (d) (e) and (f)
  - II. To pass maintenance order under Section 20 (d) for an amount of Rs. \_\_\_\_\_/- per month
  - III. To pass order not to disturb the custody of her son Mr. \_\_\_\_\_
  - IV. Pass compensation order under Section 22 for mental torture, emotional distress for Rs. \_\_\_\_\_/-
2. The Appellant and the Petitioner were married on — / — / —, they were living together in the shared household at \_\_\_\_\_, they have a son born out of the said wedlock on — / — / — now aged — years.
3. The \_\_\_\_\_ Court passed an order on — / — / — allowing only relief of maintenance denying other reliefs, without any sufficient grounds. The appeal is filed under Section 29 of the Protection of Women from Domestic Violence Act on the orders of the \_\_\_\_\_ Court on the following among other grounds of appeal.

## **Grounds of Appeal**

**Please write the grounds for the appeal**

### **PRAYER**

Wherefore, the Appellant prays before the Honourable Court for the following reliefs.

To enhance the maintenance amount towards the Appellant and her child from Rs. —/- per month to Rs. —/- per month.

To pass residence orders under Section 19 (a) (d) (e) (f)-

- (a) Restraining the Respondent from disposing off in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the Respondent has a legal or equitable interest in the shared household.
- (d) Restraining the Respondent from alienating or disposing of the shared household or encumbering the same.
- (e) Restraining the Respondent from renouncing the rights in the shared household except with the leave of the Court.
- (f) Directing the Respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require.

Pass order that the custody of the child not to be disturbed by the Respondent.

Pass compensation order under Section 22 for mental torture and emotional distress for Rs. —————/-

Pass such other orders and relief as this Honourable Court deem fit in the interest of justice and equity.

Place:

Date:

Appellant

BEFORE THE HONOURABLE \_\_\_\_\_ COURT AT

\_\_\_\_\_  
Appeal No. —/—

IN

C. Misc \_\_\_\_\_/\_\_\_\_\_

BETWEEN

Miss X — Appellant

AND

Miss Y — Respondent

**AFFIDAVIT**

I, Miss X, aged — years, residing at \_\_\_\_\_, do hereby solemnly affirm and state on oath as follows:

1. I submit that I am the Appellant in the above case and I am aware of the facts and circumstances of the case,
2. I submit that I have filed this appeal on the orders passed in C. Misc —/— by the Honourable \_\_\_\_\_ Court.
3. I submit that what is stated in Para — to — of the above appeal petition is true to the best of my knowledge, information and belief.

Identified by me

Advocate for the Appellant

Deponent

Date:

Place:



# Code of Criminal Procedure

## 125. Order for maintenance of wives, children and parents.

- (1) If any person having sufficient means neglects or refuses to maintain-
- (a) His wife, unable to maintain herself, or
  - (b) His legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
  - (c) His legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or
  - (d) His father or mother, unable to maintain himself or herself,

A Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or child, father or mother, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

[Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses for proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person]

**Explanation.**

- (a) Minor means a person who, under the provisions of the Indian Majority Act, 1975 (9 of 1875) is deemed not to have attained his majority;
- (b) "Wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

[(2)Any Such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.]

- (3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each month's [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case be,] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to

live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

**Explanation:** If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to just ground for his wife's refusal to live with him.

- (4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her, husband, or if they are living separately by mutual consent.
- (5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to, live with her, husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

# Hindu Marriage Act, 1955

[Act No. 25 of Year 1955, dated May 18, 1955]

*An Act to amend and codify the law relating to marriage among Hindus*

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

## CHAPTER I: PRELIMINARY

### 1. Short title and extent

- (1) This Act may be called the Hindu Marriage Act, 1955.
- (2) It extends to the whole of India except the State of Jammu and Kashmir, and applies also to Hindus domiciled in the territories to which this Act extends who are outside the said territories.

### 2. Application of Act

- (1) This Act applies
  - (a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,
  - (b) to any person who is a Buddhist, Jain or Sikh by religion, and
  - (c) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

**Explanation:** The following persons are Hindus, Buddhists, Jains or Sikhs by religion, as the case may be:-

- (a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jains or Sikhs by religion;
  - (b) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jains or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs; and
  - (c) any person who is a convert or re-convert to the Hindu, Buddhist, Jains or Sikh religion.
- (2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the official Gazette, otherwise directs.
- (3) The expression "Hindu" in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

### **3. Definitions**

In this Act, unless the context otherwise requires,

- (a) the expressions "custom" and "usage" signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family:

PROVIDED that the rule is certain and not unreasonable or opposed to public policy;

PROVIDED FURTHER that in the case of a rule applicable only to a family it has not been discontinued by the family;

- (b) "district court" means, in any area for which there is a city civil court, that court, and in any other area the principal civil court of original jurisdiction, and includes any other civil court which may be specified by the state government, by notification in the official Gazette, as having jurisdiction in respect of the matters dealt with in this Act;
- (c) "full blood" and "half blood"—two persons are said to be related to each other by full blood when they were descended from a common ancestor by the same wife and by half blood when they are descended from a common ancestor but by different wives;
- (d) "uterine blood"- two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands;

**Explanation:** In clauses (c) and (d), "ancestor" includes the father and "ancestress" the mother;

- (e) "prescribed" means prescribed by rules made under this Act;
- (f) (i) "sapinda relationship" with reference to any person extends as far as the third generation (inclusive) in the line of ascent through the mother, and the fifth (inclusive) in the line of ascent through the father, the line being traced upwards in each case from the person concerned, who is to be counted as the first generation;
- (ii) two persons are said to be "sapindas" of each other if one is a lineal ascendant of the other within the limits of sapinda relationship, or if they have a common lineal ascendant who is within the limits of sapinda relationship with reference to each of them;
- (g) "degrees of prohibited relationship" -two persons are said to be within the "degrees of prohibited relationship"-
  - (i) if one is a lineal ascendant of the other; or
  - (ii) if one was the wife or husband of a lineal ascendant or descendant of the other; or

- (iii) if one was the wife of the brother or of the father's or mother's brother or of the grandfather's or grandmother's brother of the other; or
- (iv) if the two are brother and sister, uncle and niece, aunt and nephew or children of brother and sister or of two brothers or of two sisters;

**Explanation:** For the purposes of clauses (f) and (g), relationship includes-

- (i) relationship by half or uterine blood as well as by full blood;
- (ii) illegitimate blood relationship as well as legitimate;
- (iii) relationship by adoption as well as by blood;

and all terms of relationship in those clauses shall be construed accordingly.

#### **4. Overriding effect of Act**

Save as otherwise expressly provided in this Act:

- (a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;
- (b) any other law in force immediately before the commencement of this Act shall cease to have effect insofar as it is inconsistent with any of the provisions contained in this Act.

## **CHAPTER II: HINDU MARRIAGES**

### **5. Conditions for a Hindu marriage**

A marriage may be solemnised between any two Hindus, if the following conditions are fulfilled, namely:

- (i) neither party has a spouse living at the time of the marriage;
- [(ii) at the time of the marriage, neither party-

- (a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or
  - (b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or
  - (c) has been subject to recurrent attacks of insanity
- (iii) the bridegroom has completed the age of [twenty-one years] and the bride, the age of [eighteen years] at the time of the marriage;
- (iv) the parties are not within the degrees of prohibited relationship, unless the custom or usage governing each of them permits of a marriage between the two;
- (v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;

## **6. Guardianship in marriage**

*[Repealed by the Child Marriage Restraint (Amendment) Act, 1978, w.e.f. 1-10-1978.]*

## **7. Ceremonies for a Hindu marriage**

- (1) A Hindu marriage may be solemnised in accordance with the customary rites and ceremonies of either party thereto.
- (2) Where such rites and ceremonies include the saptapadi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken.

## **8. Registration of Hindu marriages**

- (1) For the purpose of facilitating the proof of Hindu marriages, the state government may make rules providing that the parties to any such marriage may have the particulars relating to their



marriage entered in such manner and subject to such conditions as may be prescribed in a Hindu Marriage Register kept for the purpose.

- (2) Notwithstanding anything contained in sub-section (1), the state government may, if it is of opinion that it is necessary or expedient so to do, provide that the entering of the particulars referred to in sub-section (1) shall be compulsory in the State or in any part thereof, whether in all cases or in such cases as may be specified, and where any such direction has been issued, any person contravening any rule made in this behalf shall be punishable with fine which may extend to twenty-five rupees.
- (3) All rules made under this section shall be laid before the state legislature, as soon as may be, after they are made.
- (4) The Hindu Marriage Register shall at all reasonable times be open for inspection, and shall be admissible as evidence of the statements therein contained and certified extracts therefrom shall, on application, be given by the Registrar on payment to him of the prescribed fee.
- (5) Notwithstanding anything contained in this section, the validity of any Hindu marriage shall in no way be affected by the omission to make the entry.

### **CHAPTER III: RESTITUTION OF CONJUGAL RIGHTS AND JUDICIAL SEPARATION**

#### **9. Restitution of conjugal rights**

When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

[**Explanation:** Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.]

## **10. Judicial separation**

[(1) Either party to a marriage, whether solemnised before or after the commencement of this Act, may present a petition praying for a decree for judicial separation on any of the grounds specified in sub-section (1) of section 13, and in the case of a wife also on any of the grounds specified in sub-section (2) thereof, as grounds on which a petition for divorce might have been presented.]

(2) Where a decree for judicial separation has been passed, it shall no longer be obligatory for the petitioner to cohabit with the respondent, but the court may, on the application by petition of either party and on being satisfied of the truth of the statements made in such petition, rescind the decree if it considers it just and reasonable to do so.

## **CHAPTER IV: NULLITY OF MARRIAGE AND DIVORCE**

### **11. Void marriages**

Any Marriage solemnised after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto 7[against the other party], be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5.

### **12. Voidable marriages**

(1) Any marriage solemnised, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:-

- [(a) that the marriage has not been consummated owing to the impotence of the respondent; or]
  - (b) that the marriage is in contravention of the condition specified in clause (ii) of section 5; or
  - (c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner [was required under section 5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978 (2 of 1978)], the consent of such guardian was obtained by force [or by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent]; or
  - (d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.
- (2) Notwithstanding anything contained in sub-section (1), no petition for annulling a marriage-
- (a) on the ground specified in clause (c) of sub-section (1), shall be entertained if-
    - (i) the petition is presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered; or
    - (ii) the petitioner has, with his or her full consent, lived with the other party to the marriage as husband or wife after the force had ceased to operate or, as the case may be, the fraud had been discovered;
  - (b) on the ground specified in clause (d) of sub-section (1) shall be entertained unless the court is satisfied-
    - (i) that the petitioner was at the time of the marriage ignorant of the facts alleged;
    - (ii) that proceedings have been instituted in the case of a marriage solemnised before the commencement

of this Act within one year of such commencement and in the case of marriages solemnised after such commencement within one year from the date of the marriage; and

- (iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of [the said ground].

### **13. Divorce**

- (1) Any marriage solemnised, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-

- [(i) has, after the solemnisation of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

- (ia) has, after the solemnisation of the marriage, treated the petitioner with cruelty; or

- (ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or]

- (ii) has ceased to be a Hindu by conversion to another religion; or

- [(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

**Explanation:** In this clause-

- (a) the expression "mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

- (b) the expression "psychopathic disorder" means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment or;]
- (iv) has been suffering from a virulent and incurable form of leprosy; or
- (v) has been suffering from venereal disease in a communicable form; or
- (vi) has renounced the world by entering any religious order; or
- (vii) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive,

[**Explanation:** In this sub-section, the expression "desertion" means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.]

- [(1A) Either party to a marriage, whether solemnised before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground-
- (i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of [one year] or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or
  - (ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of

15[one year] or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.]

(2) A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground-

(i) in the case of any marriage solemnised before the commencement of this Act, that the husband had married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnisation of the marriage of the petitioner:

PROVIDED that in either case the other wife is alive at the time of the presentation of the petition; or

(ii) that the husband has, since the solemnisation of the marriage, been guilty of rape, sodomy or [bestiality; or]

(iii) that in a suit under section 18 of Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), or in a proceeding under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) (or under the corresponding section 488 of the Code of Criminal Procedure, 1898 (5 of 1898), a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards;

(iv) that her marriage (whether consummated or not) was solemnised before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.

**Explanation:** This clause applies whether the marriage was solemnised before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976).

### **[13A. Alternate relief in divorce proceedings**

In any proceeding under this Act, on a petition for dissolution of marriage by a decree of divorce, except insofar as the petition is founded on the grounds mentioned in clauses (ii), (vi) and (vii) of sub-section (1) of section 13, the court may, if it considers it just so to do having regard to the circumstances of the case, pass instead a decree for judicial separation.

### **13B. Divorce by mutual consent**

- (1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnised before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.
- (2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnised and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.]

### **14. No petition for divorce to be presented within one year of marriage**

- (1) Notwithstanding anything contained in this Act, it shall not be competent for any court to entertain any petition for dissolution of a marriage by a decree of divorce, [unless at the date of the presentation of the petition one year has elapsed] since the date of the marriage:

PROVIDED that the court may, upon application made to it in accordance with such rules as may be made by the High Court in that behalf, allow a petition to be presented 1[before one year has elapsed] since the date of the marriage on the ground that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent, but if it appears to the court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the court may, if it pronounces a decree, do so subject to the condition that the decree shall not have effect until after the [expiry of one year] from the date of the marriage or may dismiss the petition without prejudice to any petition which may be brought after [expiration of the said one year] upon the same or substantially the same facts as those alleged in support of the petition so dismissed.

- (2) In disposing of any application under this section for leave to present a petition for divorce before the [expiration of one year] from the date of the marriage, the court shall have regard to the interests of any children of the marriage and to the question whether there is a reasonable probability of a reconciliation between the parties before the expiration of the [said one year].

### **15. Divorced persons when may marry again**

When a marriage has been dissolved by a decree of divorce and either there is no right of appeal against the decree or, if there is such a right of appeal, the time for appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed, it shall be lawful for either party to the marriage to marry again.

### **[16. Legitimacy of children of void and voidable marriages**

- (1) Notwithstanding that marriage is null and void under section 11, any child of such marriage who would have been legitimate if



the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.

- (2) Where a decree of nullity is granted in respect of a voidable marriage under section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.
- (3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents.]

## **17. Punishment of bigamy**

Any marriage between two Hindus solemnised after commencement of this Act is void if at the date of such marriage either party had a husband or wife living; and the provisions of sections 494 and 495 of the Indian Penal Code, 1860 (45 of 1860), shall apply accordingly.

## **18. Punishment for contravention of certain other conditions for a Hindu marriage**

Every person who procures marriage of himself or herself to be solemnised under this Act in contravention of the conditions specified in clauses (iii), (iv), [and (v)] of section 5 shall be punishable-

- (a) in the case of a contravention of the condition specified in clause (iii) of section 5, with simple imprisonment which may

extend to fifteen days, or with fine which may extend to one thousand rupees, or with both;

- (b) in the case of a contravention of the condition specified in clause (iv) or clause (v) of section 5, with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both;

## **CHAPTER V: JURISDICTION AND PROCEDURE**

### **[19. Court to which petition shall be presented**

Every petition under this Act shall be presented to the District Court within the local limits of whose ordinary original civil jurisdiction-

- (i) the marriage was solemnised, or
- (ii) the respondent, at the time of the presentation of the petition, resides, or
- (iii) the parties to the marriage last resided together, or
- (iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive.]

### **20. Contents and verification of petitions**

- (1) Every petition presented under this Act shall state as distinctly as the nature of the case permits the facts on which the claim to relief is founded [and, except in a petition under section 11, shall also state] that there is no collusion between the petitioner and the other party to the marriage.
- (2) The statements contained in every petition under this Act shall be verified by the petitioner or some other competent person in the manner required by law for the verification of plaints, and may, at the hearing, be referred to as evidence.

## **21. Application of Act 5 of 1908**

Subject to the other provisions contained in this Act and to such rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908.

### **21[21A. Power to transfer petitions in certain cases**

(1) Where-

- (a) a petition under this Act has been presented to a district court having jurisdiction by a party to a marriage praying for a decree for judicial separation under section 10 or for a decree of divorce under section 13, and
- (b) another petition under this Act has been presented thereafter by the other party to the marriage praying for a decree for judicial separation under section 10 or for a decree of divorce under section 13 on any ground, whether in the same District Court or in a different District Court, in the same State or in a different State,

the petitions shall be dealt with as specified in sub-section (2).

(2) In a case where sub-section (1) applies,

- (a) if the petitions are presented to the same District Court, both the petitions shall be tried and heard together by that District Court;
- (b) if the petitions are presented to different District Courts, the petition presented later shall be transferred to the District Court in which the earlier petition was presented and both the petitions shall be heard and disposed of together by the District Court in which the earlier petition was presented.

- (3) In a case where clause (b) of sub-section (2) applies, the court or the Government, as the case may be, competent under the Code of Civil Procedure, 1908 (5 of 1908), to transfer any suit or proceeding from the District Court in which the later petition has been presented to the District Court in which the earlier petition is pending, shall exercise its powers to transfer such later petition as if it had been empowered so to do under the said Code.

### **21B. Special provision relating to trial and disposal of petitions under the Act**

- (1) The trial of a petition under this Act shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion unless the court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.
- (2) Every petition under this Act shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date of service of notice of the petition on the respondent.
- (3) Every appeal under this Act shall be heard as expeditiously as possible, and endeavour shall be made to conclude the hearing within three months from the date of service of notice of appeal on the respondent.

### **21C. Documentary evidence**

Notwithstanding anything in any enactment to the contrary, no document shall be inadmissible in evidence in any proceeding at the trial of a petition under this Act on the ground that it is not duly stamped or registered.]

**[22. Proceedings to be in camera and may not be printed or published**

- (1) Every proceeding under this Act shall be conducted in camera and it shall not be lawful for any person to print or publish any matter in relation to any such proceeding except a judgement of the High Court or of the Supreme Court printed or published with the previous permission of the Court.
- (2) if any person prints or publishes any matter in contravention of the provisions contained in sub-section (1), he shall be punishable with fine which may extend to one thousand rupees.]

**23. Decree in proceedings**

- (1) In any proceeding under this Act, whether defended or not, if the court is satisfied that-
  - (a) any of the grounds for granting relief exists and the petitioner 7[except in cases where the relief is sought by him on the ground specified in sub-clause (a), sub-clause (b) or sub-clause (c) of clause (ii) of section 5] is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief, and
  - (b) where the ground of the petition is the ground specified in clause (i) of sub-section (1) of section 13, the petitioner has not in any manner been accessory to or connived at or condoned the act or acts complained of, or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty, and
  - [(bb) when a divorce is sought on the ground of mutual consent, such consent has not been obtained by force, fraud or undue influence, and]
  - (c) [the petition (not being a petition presented under section 11)] is not presented or prosecuted in collusion with the respondent, and

- (d) there has not been any unnecessary or improper delay in instituting the proceeding, and
  - (e) there is no other legal ground why relief should not be granted, then, and in such a case, but not otherwise, the court shall decree such relief accordingly.
- (2) Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about reconciliation between the parties:
- [PROVIDED that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause (ii), clause (iii), clause (iv), clause (v), clause (vi) or clause (vii) of sub-section (1) of section 13.]
- [(3) For the purpose of aiding the court in bringing about such reconciliation, the court may, if the parties so desire or if the court thinks it just and proper so to do, adjourn the proceedings for a reasonable period not exceeding fifteen days and refer the matter to any person named by the parties in this behalf or to any person nominated by the court if the parties fail to name any person, with directions to report to the court as to whether reconciliation can be and has been, effected and the court shall in disposing of the proceeding have due regard to the report.
- (4) In every case where a marriage is dissolved by a decree of divorce, the court passing the decree shall give a copy thereof free of cost to each of the parties.]

### **[23A. Relief for respondent in divorce and other proceedings**

In any proceeding for divorce or judicial separation or restitution of conjugal rights, the respondent may not only oppose the relief sought on the ground of petitioner's adultery, cruelty or desertion, but also make a counter-claim for any relief under this Act on that

ground; and if the petitioner's adultery, cruelty or desertion is proved, the court may give to the respondent any relief under this Act to which he or she would have been entitled if he or she had presented a petition seeking such relief on that ground].

## **24. Maintenance pendente lite and expenses of proceedings**

Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable.

## **25. Permanent alimony and maintenance**

- (1) Any court exercising jurisdiction under this Act, may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant, [the conduct of the parties and other circumstances of the case], it may seem to the court to be just, and any such payment may be, secured, if necessary, by a charge on the immovable property of the respondent.
- (2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

- (3) If the court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, 1[it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just].

## **26. Custody of children**

In any proceeding under this Act, the court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible, and may, after the decree, upon application by petition for the purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending, and the court may, also from time to time revoke, suspend or vary any such orders and provisions previously made.

## **27. Disposal of property**

In any proceeding under this Act, the court may make such provisions in the decree as it deems just and proper with respect to any property presented, at or about the time of marriage, which may belong jointly to both the husband and the wife.

## **[28. Appeals from decrees and orders**

- (1) All decrees made by the court in any proceeding under this Act shall, subject to the provisions of sub-section (3), be appealable as decrees of the court made in the exercise of its original civil jurisdiction, and every such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in the exercise of its original civil jurisdiction.



- (2) Orders made by the court in any proceeding under this Act under section 25 or section 26 shall, subject to the provisions of sub-section (3), be appealable if they are not interim orders, and every such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in exercise of its original civil jurisdiction.
- (3) There shall be no appeal under this section on the subject of costs only.
- (4) Every appeal under this section shall be preferred within a period of thirty days from the date of the decree or order.

## **28A. Enforcement of decrees and orders**

All decrees and orders made by the court in any proceeding under this Act shall be enforced in the like manner as the decrees and orders of the court made in the exercise of its original civil jurisdiction for the time being are enforced.]

## **CHAPTER VI: SAVING AND REPEAL**

### **29. Saving**

- (1) A marriage solemnised between Hindus before the commencement of this Act, which is otherwise valid, shall not be deemed to be invalid or ever to have been invalid by reason only of the fact that the parties thereto belonged to the same gotra or pravara or belonged to different religions, castes or sub-divisions of the same caste.
- (2) Nothing contained in this Act shall be deemed to affect any right recognised by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnised before or after the commencement of this Act.
- (3) Nothing contained in this Act shall affect any proceeding under any law for the time being in force for declaring any marriage to be null and void or for annulling or dissolving any marriage or for judicial separation pending at the commencement of this

Act, and any such proceeding may be continued and determined as if this Act had not been passed.

- (4) Nothing contained in this Act shall be deemed to affect the provisions contained in the Special Marriage Act, 1954, (43 of 1954) with respect to marriages between Hindus solemnised under that Act, whether before or after the commencement of this Act.

### **30. Repeal**

[Repealed by Repealing and Amending Act, 1960 (58 of 1960), w.e.f. 26-12-1960]

# **The Muslim Women (Protection of Rights on Divorce) Act, 1986**

[Act No. 25 of 1986 dated May 9, 1986]

## **THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT, 1986**

An Act to protect the rights of Muslim women who have been divorced by, or have obtained divorce from, their husbands and to provide for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Thirty-seventh year of the Republic of India as follows: -

### **1. Short title and extent**

- (1) This Act may be called the Muslim Women (Protection of Rights on Divorce) Act, 1986.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.

### **2. Definitions**

In this Act, unless the context otherwise requires:-

- (a) "divorced woman" means a Muslim woman who was married according to Muslim law, and has been divorced by, or has obtained divorce from, her husband in accordance with Muslim law;
- (b) "iddat period" means, in the case of a divorced woman;
  - (i) three menstrual courses after the date of divorce, if she is subject to menstruation;
  - (ii) three lunar months after her divorce, if she is not subject to menstruation; and

- (iii) if she is enceinte at the time of her divorce, the period between the divorce and the delivery of her child or the termination of her pregnancy, whichever is earlier;
- (c) "Magistrate" means a Magistrate of the First class exercising jurisdiction under the Code of Criminal Procedure, 1973 in the area where the divorced woman resides;
- (d) "prescribed" means prescribed by rules made under this Act.

### **3. Mahr or other properties of Muslim woman to be given to her at the time of divorce**

- (1) Notwithstanding anything contained in any other law for the time being in force, a divorced woman shall be entitled to-
  - (a) a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband;
  - (b) where she herself maintains the children born to her before or after her divorce, a reasonable and fair provision and maintenance to be made and paid by her former husband for a period of two years from the respective dates of birth of such children;
  - (c) an amount equal to the sum of mahr or dower agreed to be paid to her at the time of her marriage or at any time thereafter according of Muslim law; and
  - (d) all the properties given to her before or at the time of marriage or after her marriage by her relatives or friends or the husband or any relatives of the husband or his friends.
- (2) Where a reasonable and fair provision and maintenance or the amount of mahr or dower due has not been made or paid or the properties referred to in clause (d) of sub-section (1) have not been delivered to a divorced woman on her divorce, she or any one duly authorised by her may, on her behalf, make an application to a Magistrate for an order for payment of such

provision and maintenance, mahr or dower or the delivery of properties, as the case may be.

(3) Where an application has been made under sub-section (2) by a divorced woman, the Magistrate may, if he is satisfied that-

(a) her husband having sufficient means, has failed or neglected to make or pay her within the iddat period a reasonable and fair provision and maintenance for her and the children; or

(b) the amount equal to the sum of mahr or dower has not been paid or that the properties referred to in clause (d) of sub-section (1) have not been delivered to her, make an order, within one month of the date of the filing of the application, directing her former husband to pay such reasonable and fair provision and maintenance to the divorced woman as he may determine as fit and proper having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of her former husband or, as the case may be, for the payment of such mahr or dower or the delivery of such properties referred to in clause (d) of sub-section (1) to the divorced woman:

Provided that if the Magistrate finds it impracticable to dispose of the application within the said period, he may, for reasons to be recorded by him, dispose of the application after the said period.

(4) If any person against whom an order has been made under sub-section (3) fails without sufficient cause to comply with the order, the Magistrate may issue a warrant for levying the amount of maintenance or mahr or dower due in the manner provided for levying fines under the Code of Criminal Procedure, 1973, and may sentence such person, for the whole or part of any amount remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one year or until payment if sooner made, subject to such person being heard in defence and the said sentence being imposed according to the provisions of the said Code.

#### **4. Order for payment of maintenance**

- (1) Notwithstanding anything contained in the foregoing provisions of this Act or in any other law for the time being in force, where a Magistrate is satisfied that a divorced woman has not re-married and is not able to maintain herself after the iddat period, he may make an order directing such of her relatives as would be entitled to inherit her property on her death according to Muslim law to pay such reasonable and fair maintenance to her as he may determine fit and proper, having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of such relatives and such maintenance shall be payable by such relatives in the proportions in which they would inherit her property and at such periods as he may specify in his order:

Provided that where such divorced woman has children, the Magistrate shall order only such children to pay maintenance to her, and in the event of any such children being unable to pay such maintenance, the Magistrate shall order the parents of such divorced woman to pay maintenance to her:

Provided further that if any of the parents is unable to pay his or her share of the maintenance ordered by the Magistrate on the ground of his or her not having the means to pay the same, the Magistrate may, on proof of such inability being furnished to him, order that the share of such relatives in the maintenance ordered by him be paid by such of the other relatives as may appear to the Magistrate to have the means of paying the same in such proportions as the Magistrate may think fit to order.

- (2) Where a divorced woman is unable to maintain herself and she has no relatives as mentioned in sub-section (1) or such relatives or any one of them have not enough means to pay the maintenance ordered by the Magistrate or the other relatives have not the means to pay the shares of those relatives whose shares have been ordered by the Magistrate to be paid by such other relatives under the second proviso to sub-section

(1), the Magistrate may, by order, direct the State Wakf Board established under section 9 of the Wakf Act, 1954, or under any other law for the time being in force in a State, functioning in the area in which the woman resides, to pay such maintenance as determined by him under sub-section (1) or, as the case may be, to pay the shares of such of the relatives who are unable to pay, at such periods as he may specify in his order.

### **5. Option to be governed by the provisions of sections 125 to 128 of Act 2 of 1974**

If on the date of the first hearing of the application under sub-section (2) of section 3, a divorced woman and her former husband declare, by affidavit or any other declaration in writing in such form as may be prescribed, either jointly or separately, that they would prefer to be governed by the provisions of sections 125 to 128 of the Code of Criminal Procedure, 1973, and file such affidavit or declaration in the court hearing the application, the Magistrate shall dispose of such application accordingly.

**Explanation:** For the purposes of this section, "date of the first hearing of the application" means the date fixed in the summons for the attendance of the respondent to the application.

### **6. Power to make rules**

- (1) The Central Government may, by notification in the Official Gazette, make rules or carrying out the purposes of this Act.
- (2) In particular and without prejudice to the foregoing power, such rules may provide for-
  - (a) the form of the affidavit or other declaration in writing to be filed under section 5;
  - (b) the procedure to be followed by the Magistrate in disposing of applications under this Act, including the serving of notices to the parties to such applications, dates of hearing of such applications and other matters;

- (c) any other matter which is required to be or may be prescribed.
- (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 comprised 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.

## **7. Transitional provisions**

Every application by a divorced woman under section 125 or under section 127 of the Code of Criminal Procedure, 1973 pending before a Magistrate on the commencement of this Act, shall, notwithstanding anything contained in that Code and subject to the provisions of section 5 of this Act, be disposed of by such Magistrate in accordance with the provisions of this Act.



# Parsi Marriage Act, 1936

An Act to amend the law relating to marriage and divorce among Parsis. Whereas it is expedient to amend the law relating to marriage and divorce among Parsis; It is hereby enacted as follows:

## I- PRELIMINARY

### 1. Short title, extent and commencement

- (1) This Act may be called the Parsi Marriage and Divorce Act, 1936.
- (2) [It extends to the whole of India except the State of Jammu and Kashmir]:

Provided that the Central Government may, in respect of [territories which, immediately before the 1st November, 1956, were comprised in Part B States] by notification in the Official Gazette, direct that the provisions of this Act relating to the constitution and powers of Parsi Matrimonial Courts and to appeals from the decisions and orders of such courts shall apply with such modifications as may be specified in the notification:

[Provided further that nothing contained in this Act shall apply to the Renoncants of the Union territory of Pondicherry.]

- (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 there is anything repugnant in the subject or context:-

- (1) "Chief Justice" includes senior Judge;
- (2) "Court" means a Court constituted under this Act;
- (3) to "desert" together with its grammatical variations and cognate expressions, means to desert the other party to a marriage without reasonable cause and without the consent, or against the will, of such party;

- (4) "grievous hurt" means-
- (a) emasculation;
  - (b) permanent privation of the sight of either eye;
  - (c) permanent privation of the hearing of either ear;
  - (d) privation of any member or joint;
  - (e) destruction or permanent impairing of the powers of any member or joint;
  - (f) permanent disfiguration of the head or face; or
  - (g) any hurt which endangers life;
- (5) "husband" means a Parsi husband;
- (6) "marriage" means a marriage between Parsis whether contracted before or after the commencement of this Act;
- (7) a "Parsi" means a Parsi Zoroastrian;
- (8) "priest" means a Parsi priest and includes Dastur and Mobed; and
- (9) "wife" means a Parsi wife.

### **3. Requisites to validity of Parsi marriages**

[(1)] No marriage shall be valid if-

- (a) the contracting parties are related to each other in any of the degrees of consanguinity or affinity set forth in Schedule I; or
- (b) such marriage is not solemnized according to the Parsi form of ceremony called "Ashirvad" by a priest in the presence of two Parsi witnesses other than such priest; or

[(c) in the case of any Parsi (whether such Parsi has changed his or her religion or domicile or not) who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age.]

[(2) Notwithstanding that a marriage is invalid under any of the provisions of sub-section (1), any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate.]

#### **4. Remarriage when unlawful**

- (1) No Parsi (whether such Parsi has changed his or her religion or domicile or not) shall contract any marriage under this Act or any other law in the lifetime of his or her wife or husband, whether a Parsi or not, except after his or her lawful divorce from such wife or husband or after his or her marriage with such wife or husband has lawfully been declared null and void or dissolved, and, if the marriage was contracted with such wife or husband under the Parsi Marriage and Divorce Act, 1936, or under this Act, except after a divorce, declaration or dissolution as aforesaid under either of the said Acts.
- (2) Every marriage contracted contrary to the provisions of sub-section (1) shall be void.

#### **5. Punishment of bigamy**

Every Parsi who during the lifetime of his or her wife or husband, whether a Parsi or not, contracts a marriage without having been lawfully divorced from such wife or husband, or without his or her marriage with such wife or husband having legally been declared null and void or dissolved, shall be subject to the penalties provided in sections 494 and 495 of the Indian Penal Code for the offence of marrying again during the lifetime of a husband or wife.

#### **6. Certificate and registry of marriage**

Every marriage contracted under this Act shall, immediately on the solemnization thereof, be certified by the officiating priest in the form contained in Schedule II. The certificate shall be signed by the said priest, the contracting parties and two witnesses present at the marriage; and the said priest shall thereupon send such certificate together with a fee of two rupees to be paid by the husband to

the Registrar of the place at which such marriage is solemnized. The Registrar on receipt of the certificate and fee shall enter the certificate in a register to be kept by him for that purpose and shall be entitled to retain the fee.

## **7. Appointment of Registrar**

For the purposes of this Act a Registrar shall be appointed. Within the local limits of the ordinary civil jurisdiction of a High Court, the Registrar shall be appointed by the Chief Justice of such Court and without such limits, by the State Government. Every Registrar so appointed may be removed by the Chief Justice or State Government appointing him.

## **8. Marriage register to be open for public inspection**

The register of marriages mentioned in section 6 shall, at all reasonable times, be open for inspection, and certified extracts therefrom shall, on application, be given by the Registrar on payment to him by the applicant of two rupees for each such extract. Every such register shall be evidence of the truth of the statements therein contained.

## **9. Copy of certificate to be sent to Registrar-General of Births, Deaths and Marriages**

Every Registrar, except the Registrar appointed by the Chief Justice of the High Court of Judicature at Bombay, shall, at such intervals as the State Government by which he was appointed from time to time directs, send to the Registrar-General of Births, Deaths and Marriages for the territories administered by such State Government a true copy certified by him in such form as such State Government from time to time prescribes, of all certificates entered by him in the said register of marriages since the last of such intervals.

## **10. Registration of divorces**

When a Court passes a decree for divorce, nullity or dissolution, the Court shall send a copy of the decree for registration to the Registrar

of Marriages within its jurisdiction appointed under section 7; the Registrar shall enter the same in a register to be kept by him for the purpose, and the provisions of Part II applicable to the Registrars and registers of marriages shall be applicable, so far as may be, to the Registrars and registers of divorces and decrees of nullity and dissolution.

### **11. Penalty for solemnizing marriage contrary to section 4**

Any priest knowingly and wilfully solemnizing any marriage contrary to and in violation of section 4 shall, on conviction thereof, be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

### **12. Penalty for priest's neglect of requirements of section 6**

Any priest neglecting to comply with any of the requisitions affecting him contained in section 6 shall, on conviction thereof, be punished for every such offence with simple imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both.

### **13. Penalty for omitting to subscribe and attest certificate**

Every other person recurred by section 6 to subscribe or attest the said certificate who shall wilfully omit or neglect so to do, shall, on conviction thereof, be punished for every such offence with a fine not exceeding one hundred rupees.

### **14. Penalty for making, etc., false certificate**

Every person making or signing or attesting any such certificate containing a statement which is false, and which he either knows or believes to be false, shall be punished with simple imprisonment for a term which may extend to three months or with fine which may extend to one hundred rupees, or with both: and if the act amounts to forgery as defined in the Indian Penal Code then such person shall also be liable, on conviction thereof, to the penalties provided in section 466 of the said Code.

### **15. Penalty for failing to register certificate**

Any Registrar failing to enter the said certificate pursuant to section 6 shall be punished with simple imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

### **16. Penalty for secreting, destroying or altering register**

Any person secreting, destroying, or dishonestly or fraudulently altering the said register in any part thereof shall be punished with imprisonment of either description as defined in the Indian Penal Code for a term which may extend to two years or if he be a Registrar for a term which may extend to five years and shall also be liable to fine which may extend to five hundred rupees.

### **17. Formal irregularity not to invalidate marriage**

No marriage contracted under this Act shall be deemed to be invalid solely by reason of the fact that it was not certified under section 6, or that the certificate was not sent to the Registrar, or that the certificate was defective, irregular or incorrect.

## **III. PARSI MATRIMONIAL COURTS**

### **18. Constitution of Special Courts under the Act**

For the purpose of hearing suits under this Act, a Special Court shall be constituted in each of the Presidency-towns of Calcutta, Madras and Bombay, and in such other places in the territories of the several state governments as such governments respectively shall think fit.

### **19. Parsi Chief Matrimonial Courts**

The Court so constituted in each of the Presidency-towns shall be entitled the Parsi Chief Matrimonial Court of Calcutta, Madras or Bombay, as the case may be. The local limits of the jurisdiction of a Parsi Matrimonial Court shall be coterminous with the local limits of the ordinary original civil jurisdiction of the High Court. The Chief Justice of the High Court, or such other Judge of the same Court as

the Chief Justice shall from time to time appoint, shall be the Judge of such Matrimonial Court, and, in the trial of cases under this Act, he shall be aided [by five delegates, except in regard to-

- (a) interlocutory applications and proceedings;
- (b) alimony and maintenance, both permanent as well as pendente lite;
- (c) custody, maintenance and education of children; and
- (d) all matters and proceedings other than the regular hearing of cases.]

## **20. Parsi District Matrimonial Courts**

Every Court so constituted at a place other than a Presidency-town shall be entitled the Parsi District Matrimonial Court of such place. Subject to the provisions contained in section 21, the local limits of the jurisdiction of such Court shall be coterminous with the limits of the district in which it is held. The Judge of the principal Court of original civil jurisdiction at such place shall be the Judge of such Matrimonial Court and in the trial of cases under this Act he shall be aided [by five delegates, except in regard to-

- (a) interlocutory applications and proceedings;
- (b) alimony and maintenance, both permanent as well as pendente lite;
- (c) custody, maintenance and education of children; and
- (d) all matters and proceedings other than the regular hearing of cases.]

## **21. Power to alter territorial jurisdiction of district courts**

The State Government may from time to time alter the local limits of the jurisdictions of any Parsi District Matrimonial Court, and may include within such limits any number of districts under its government.

## **22. Certain districts to be within jurisdiction of the Chief Matrimonial Court**

Any district which the State Government, on account of the fewness of its Parsi inhabitants, shall deem it inexpedient to include within the jurisdiction of any District Matrimonial Court, shall be included within the jurisdiction of the Parsi Chief Matrimonial Court for the territories under such State Government where there is such a Court.

## **23. Court seals**

A seal shall be made for every Court constituted under this Act, and all decrees and orders and copies of decrees and orders of such Court shall be sealed with such seal, which shall be kept in the custody of the presiding Judge.

## **24. Appointment of delegates**

- (1) The state governments shall, in the Presidency-towns and districts subject to their respective governments, respectively appoint persons to be delegates to aid in the adjudication of cases arising under this Act, after giving the local Parsis an opportunity of expressing their opinion in such manner as the respective governments may think fit.
- (2) The persons so appointed shall be Parsis, their names shall be published in the Official Gazette and their number shall, within the local limits of the ordinary original. Civil jurisdiction of a High Court is not more than thirty, and in districts beyond such limits, not more than twenty.

## **25. Power to appoint new delegates**

The appointment of a delegate shall be for ten years; but he shall be eligible for reappointment for the like term or terms. Whenever a delegate shall die, or have completed his term of office, or be desirous of relinquishing his office, or refuse or become incapable or unfit to act, or cease to be a Parsi, or be convicted of an offence



under the Indian Penal Code or other law for the time being in force [involving moral turpitude], or be adjudged insolvent, then and so often the State Government may appoint any person being a Parsi to be a delegate in his stead; and the name of the person so appointed shall be published in the Official Gazette.

## **26. Delegates to be deemed public servants**

All delegates appointed under this Act shall be considered to be public servants within the meaning of the Indian Penal Code.

## **27. Selection of delegates under sections 19 and 20 to be from those appointed under section 24**

The delegates selected under sections 19 and 20 to aid in the adjudication of suits under this Act, shall be taken under the orders of the presiding Judge of the Court in due rotation from the delegates appointed by the State Government under section 24;

Provided that each party to the suit may, without cause assigned, challenge any [two] of the delegates attending the Court before such delegates are selected and no delegate so challenged shall be selected.

## **28. Practitioners in Matrimonial Courts**

All legal practitioners entitled to practice in a High Court shall be entitled to practice in any Court constituted under this Act, and all legal practitioners entitled to practice in a District Court shall be entitled to practice in any Parsi District Matrimonial Court constituted under this Act.

## **29. Courts in which suits to be brought**

- (1) All suits instituted under this Act shall be brought in the Court within the limits of whose jurisdiction the defendant resides at the time of the institution of the suit [or where the marriage under this Act was solemnized].
- (2) When the defendant shall at such time have left [the territories to which this Act extends] such suit shall be brought in the Court

at the place where the plaintiff and defendant last resided together.

- (3) In any case, whether the defendant resides in [the territories to which this Act extends] or not, such suit may be brought in the Court at the place where the plaintiff resides or at the place where the plaintiff and the defendant last resided together, if such Court, after recording its reasons in writing, grants leave so to do.

#### **IV. MATRIMONIAL SUITS**

##### **30. Suits for nullity**

In any case in which consummation of the marriage is from natural causes impossible, such marriage may, at the instance of either party thereto, be declared to be null and void.

##### **31. Suits for dissolution**

If a husband or wife shall have been continually absent from his or her wife or husband for the space of seven years, and shall not have been heard of as being alive within that time by those persons who would have naturally heard of him or her, had he or she been alive, the marriage of such husband or wife may, at the instance of either party thereto, be dissolved.

##### **32. Grounds for divorce**

Any married person may sue for divorce on any one or more of the following grounds, namely:-

- (a) that the marriage has not been consummated within one year after its solemnization owing to the wilful refusal of the defendant to consummate it;
- (b) that the defendant at the time of the marriage was of unsound mind and has been habitually so up to the date of the suit:

Provided that divorce shall not be granted on this ground, unless the plaintiff (1) was ignorant of the fact at the time of

the marriage, and (2) has filed the suit within three years from the date of the marriage;

- (bb) that the defendant has been incurably of unsound mind for a -period of two years or upwards immediately preceding the filing of the suit or has been suffering continuously or intermittently from mental disorder of such kind and to such an extent that the plaintiff cannot reasonably be expected to live with the defendant.

**Explanation:** In this clause-

- (a) the expression "mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia,
- (b) the expression "psychopathic disorder" means a persistent disorder or disability of mind (whether or not including subnormality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the defendant, and whether or not it requires or is susceptible to medical treatment;
- (c) that the defendant was at the time of marriage pregnant by some person other than the plaintiff:

Provided that divorce shall not be granted on this ground, unless (1) the plaintiff was at the time of the marriage ignorant of the fact alleged, (2) the suit has been filed within two years of the date of marriage, and (3) marital intercourse has not taken place after the plaintiff came to know of the fact;

- (d) that the defendant has since the marriage committed adultery or fornication or bigamy or rape or an unnatural offence:

Provided that divorce shall not be granted on this ground, if the suit has been filed more than two years after the plaintiff came to know of the fact;

[(dd) that the defendant has since the solemnization of the marriage treated the plaintiff with cruelty or has behaved in such a way as to render it in the judgement of the Court improper to compel the plaintiff to live with the defendant:

Provided that in every suit for divorce on this ground it shall be in the discretion of the Court whether it should grant a decree for divorce or for judicial separation only;]

(e) that the defendant has since the marriage voluntarily caused grievous hurt to the plaintiff or has infected the plaintiff with venereal disease or, where the defendant is the husband, has compelled the wife to submit herself to prostitution;

Provided that divorce shall not be granted on this ground, if the suit has been filed more than two years (i) after the infliction of the grievous hurt, or (ii) after the plaintiff came to know of the infection, or (iii) after the last act of compulsory prostitution.

(f) that the defendant is undergoing a sentence of imprisonment for seven years or more for an offence as defined in the Indian Penal Code:

Provided that divorce shall not be granted on this ground, unless the defendant has prior to the filing of the suit undergone at least one year's imprisonment out of the said period;

(g) that the defendant has deserted the plaintiff for at least 2[two years];

(h) that an order has been passed against the defendant by a Magistrate awarding separate maintenance to the plaintiff, and the parties have not had Marital intercourse for 16[one year] or more since such decree or order;

(i) that the defendant has ceased to be a Parsi 12[by conversion to another religion]:

Provided that divorce shall not be granted on this ground if the suit has been filed more than two years after the plaintiff came to know of the fact.

**[32A. Non-resumption of cohabitation or restitution of conjugal rights within one year in pursuance of a decree to be ground for divorce**

- (1) Either party to a marriage, whether solemnized before or after the commencement of the Parsi Marriage and Divorce (Amendment) Act, 1988, may sue for divorce also on the ground:-
  - (i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or
  - (ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.
- (2) No decree for divorce shall be granted under sub-section (1) if the plaintiff has failed or neglected to comply with an order for maintenance passed against him under section 40 of this Act or section 488 of the Code of Criminal Procedure, 1898 or section 125 of the Code of Criminal Procedure, 1973.

**32B. Divorce by mutual consent**

- (1) Subject to the provisions of this Act, a suit for divorce may be filed by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Parsi Marriage and Divorce (Amendment) Act. 1988, on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved:

Provided that no suit under this sub-section shall be filed unless at the date of the filing of the suit one year has lapsed since the date of the marriage.

- (2) The Court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized under this Act and the averments in the plaint are true and that the consent of either party to the suit was not obtained by force or fraud, pass a decree declaring the marriage to be dissolved with effect from the date of the decree.]

### **33. Joining of co-defendant**

In every such suit for divorce on the ground of adultery, the plaintiff shall, unless the Court shall otherwise order, make the person with whom the adultery is alleged to have been committed a co-defendant, and in any such suit by the husband the Court may order the adulterer to pay the whole or any part of the costs of the proceedings.

### **34. Suits for judicial separation**

Any married person may sue for judicial separation on any of the grounds for which such person could have filed a suit for divorce,

### **35. Decrees in certain suits**

In any suit under section 30, 31, 32 12[32A] or 34, whether defended or not, if the Court be satisfied that any of the grounds set forth in those sections for granting relief exist that none of the grounds therein set forth for withholding relief exist and that-

- (a) the act or omission set forth. in the plaint has not been condoned;
- (b) the husband and wife are not colluding together;
- (c) the plaintiff has not connived at or been accessory to the said act or omission;
- (d) (save where a definite period of limitation is provided by this Act) there has been no unnecessary or improper delay in instituting the suit; and

- (e) there is no other legal ground why relief should not be granted; then and in such case, but not otherwise, the Court shall decree such relief accordingly.

### **36. Suit for restitution of conjugal rights**

Where a husband shall have deserted or without lawful cause ceased to cohabit with his wife, or where a wife shall have deserted or without lawful cause ceased to cohabit with her husband, the party so deserted or with whom cohabitation shall have so ceased may sue for the restitution of his or her conjugal rights and the Court, if satisfied of the truth of the allegations contained in the plaint, and that there is no just ground why relief should not be granted, may proceed to decree such restitution of conjugal rights accordingly.

### **37. Counterclaim by defendant for any relief**

In any suit under this Act, the defendant may make a counterclaim for any relief he or she may be entitled to under this Act.

### **[38. Documentary evidence**

Notwithstanding anything contained in any other law for the time being in force, no document shall be inadmissible in evidence in any proceeding at the trial of a suit under this Act on the ground that it is not duly stamped or registered.]

### **[39. Alimony pendente lite**

Where in any suit under this Act, it appears to the Court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the suit, it may, on the application of the wife or the husband order the defendant to pay to the plaintiff the expenses of the suit, and such weekly or monthly sum, during the suit as, having regard to the plaintiffs own income and the income of the defendant, it may seem to the Court to be reasonable.

#### **40. Permanent alimony and maintenance**

- (1) Any Court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on an application made to it for the purpose by either the wife or the husband, order that the defendant shall pay to the plaintiff for her or his maintenance and support, such gross sum or such monthly or periodical sum, for a term not exceeding the life of the plaintiff as having regard to the defendant's own income and other property, if any, the income and other property of the plaintiff, the conduct of the parties and other circumstances of the case, it may seem to the Court to be just, and any such payment may be secured, if necessary, by a charge on the movable or immovable property of the defendant.
- (2) The Court if it is satisfied that there is change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as the Court may deem just.
- (3) The Court if it is satisfied that the party in whose favour, an order has been made under this section has remarried or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he had sexual intercourse with any woman outside wedlock, it may, at the instance of the other party, vary, modify or rescind any such order in such manner as the Court may deem just.]

#### **41. Payment of alimony to wife or to her trustee**

In all cases in which the Court shall make any decree or order for alimony it. may direct the same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the Court 12[or to a guardian appointed by the Court] and may impose any terms or restrictions which to the Court may seem expedient, and may from time to time appoint a new trustee 12[or guardian], if for any reason it, shall appear to the Court expedient so to do.



## **42. Disposal of joint property**

In any suit under this Act the Court may make such provisions in the final decree as it may deem just and proper with respect to property presented at or about the time of marriage which may belong jointly to both the husband and wife.

## **[43. Suits to be heard in camera and may not be printed or published**

- (1) Every suit filed under this Act shall be tried in camera and it shall not be lawful for any person to print or publish any matter in relation to any such case except a judgment of the Court printed or published with the previous permission of the Court.
- (2) if any, person prints or publishes any matter in contravention of the provisions contained in sub-section, (1), he shall be punishable with fine which may extend to one thousand rupees.]

## **44. Validity of trial**

Notwithstanding anything contained in section 19 or section 20, where in the case of a trial in a Parsi Matrimonial Court not less than 22[three] delegates have attended throughout the proceedings, the trial shall not be invalid by reason of the absence during any part thereof of the other delegates.

## **45. Provisions of Civil Procedure Code to apply to suits under the Act**

The provisions of the Code of Civil Procedure, 1908, shall, so far as the same may be applicable, apply to proceedings in suits instituted under this Act including proceedings in execution and orders subsequent to decree:

[Provided that the presiding Judge shall read out to the delegates the relevant sections of this Act, and may, if he consider it necessary so to do, explain the same:

Provided further that a verbatim record shall be made of what the presiding Judge reads out or explains to the delegates.]

#### **46. Determination of questions of law and procedure and of fact**

In suits under this Act all questions of law and procedure shall be determined by the presiding Judge; but the decision on the facts shall be the decision of the majority of the delegates before whom the case is tried:

Provided that, where such delegates are equally divided in opinion, the decision on the facts shall be the decision of the presiding Judge.

#### **47. Appeal to High Court**

[(1)] an appeal shall lie to the High Court from-

- (a) the decision of any Court established under this Act, whether a Chief Matrimonial Court or District Matrimonial Court, on the ground of the decision being contrary to some law or usage having the force of law, or of a substantial error or defect in the procedure or investigation of the case which may have produced error or defect in the decision of the case upon the merits, and on no other ground; and
- (b) the granting of leave by any such Court under sub-section (3) of section 29:

Provided that such appeal shall be instituted within three calendar months after the decision appealed from shall have been pronounced.

[(2) every appeal under sub-section (1) shall be heard by a Bench of two Judges of the High Court.]

#### **48. Liberty to parties to marry again**

When the time limited for appealing against any decree granting a divorce or annulling or dissolving a marriage shall have expired, and no appeal shall have been presented against such decree, or when any such appeal shall have been dismissed, or when in the result of any appeal a divorce has been granted or a marriage has been declared to be annulled or dissolved, but not sooner, it shall be lawful for the respective parties thereto to marry again.

## **V- CHILDREN OF THE PARTIES**

### **49. Custody of children**

In any suit under this Act, the Court may from time to time pass such interim orders and make such provisions in the final decree as it may deem just and proper with respect to the custody, maintenance and education of the children under the age of 25[eighteen years], the marriage of whose parents is the subject of such suit, and may, after the final decree upon application, by petition for this purpose, make, revoke, suspend or vary from time to time all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such final decree or by interim orders in case the suit for obtaining such decree were still pending.

### **50. Settlement of wife's property for benefit of children**

In any case in which the Court shall pronounce a decree of divorce or judicial separation for adultery of the wife, if it shall be made to appear to the Court that the wife is entitled to any property either in possession or reversion, the Court may order such settlement as it shall think reasonable to be made of any part of such property, not exceeding one half thereof, for the benefit of the children of the marriage or any of them.

## **VI. MISCELLANEOUS**

### **51. Superintendence of High Court**

The High Court shall have superintendence over all Courts constituted under this Act subject, to its appellate jurisdiction in the same manner as it has over other Courts under 26[article 227 of the Constitution], and all the provisions of 27[that article] shall apply to such Courts.

### **52. Applicability of provisions of the Act**

- (1) The provisions of this Act shall apply to all suits to which the same are applicable whether the circumstances relied on occurred before or after the passing of this Act, and whether

any decree or order referred to was passed under this Act or under the law in force before the passing of this Act, and where any proceedings are pending in any Court at the time of the commencement of this Act, the Court shall allow such amendment of the pleadings as may be necessary as 'the result of the coming into operation of this Act.

- (2) A Parsi who has contracted a marriage under the Parsi Marriage and Divorce Act, 18659, or under this Act, even though such Parsi may change his or her religion or domicile, so long as his or her wife or husband is alive and so long as such Parsi has not been lawfully divorced from such wife or husband or such marriage has not lawfully been declared null and void or dissolved under the decree of a competent Court, under either of the said Acts, shall remain bound by the provisions of this Act

**[53. Repeal- Repealed by the Repealing and Amending Act, 937]**

**SCHEDULE I: Table of prohibited degrees of consanguinity and affinity  
(See section 3)**

A man shall not marry his-

1. Paternal grandfather's mother.
2. Paternal grandmother's mother.
3. Maternal grandfather's mother.
4. Maternal grandmother's mother.
5. Paternal grandmother.
6. Paternal grandfather's wife.
7. Maternal grandmother.
8. Maternal grandfather's wife.
9. Mother or stepmother.
10. Father's sister or stepsister.

11. Mother's sister or stepsister.
12. Sister or stepsister.
13. Brother's daughter or stepbrother's daughter, or any direct lineal descendant of a brother or stepbrother.
14. Sister's daughter or stepsister's daughter, or any direct lineal descendant of a sister or stepsister.
15. Daughter or stepdaughter, or any direct lineal descendant of either.
16. Son's daughter or stepson's daughter, or any direct lineal descendant of a son or stepson.
17. Wife of son or stepson, or of any direct lineal descendant of a son or stepson.
18. Wife of daughter's son or of stepdaughter's son, or of any direct lineal descendant of a daughter or stepdaughter.
19. Mother of daughter's husband.
20. Mother of son's wife.
21. Mother of wife's paternal grandfather.
22. Mother of wife's paternal grandmother.
23. Mother of wife's maternal grandfather.
24. Mother of wife's maternal grandmother.
25. Wife's paternal grandmother.
26. Wife's maternal grandmother.
27. Wife's mother or stepmother.
28. Wife's father's sister.
29. Wife's mother's sister.
30. Father's brother's wife.

31. Mother's brother's wife.

32. Brother's son's wife.

33. Sister's son's wife.

**A woman shall not marry her-**

1. Paternal grandfather's father.

2. Paternal grandmother's father.

3. Maternal grandfather's father.

4. Maternal grandmother's father.

5. Paternal grandfather.

6. Paternal grandmother's husband.

7. Maternal grandfather.

8. Maternal grandmother's husband.

9. Father or stepfather.

10. Father's brother or stepbrother.

11. Mother's brother or stepbrother.

12. Brother or stepbrother.

13. Brother's son or step-brother's son, or any direct lineal descendant of a brother or stepbrother.

14. Sister's son or stepsister's son, or any direct lineal descendant of sister or stepsister.

15. Son, or stepson, or any direct lineal descendant of either.

16. Daughter's son or stepdaughter's son, or any direct lineal descendant of a daughter or stepdaughter.

17. Husband of daughter or of stepdaughter, or of any direct lineal descendant of a daughter or stepdaughter.

18. Husband of son's daughter or of stepson's daughter, or of any direct lineal descendant of a son or stepson.
19. Father of daughter's husband.
20. Father of son's wife.
21. Father of husband's paternal grandfather.
22. Father of husband's paternal grandmother.
23. Father of husband's maternal grandfather.
24. Father of husband's maternal grandmother.
25. Husband's paternal grandfather.
26. Husband's maternal grandfather.
27. Husband's father or stepfather.
28. Brother of husband's father.
29. Brother of husband's mother.
30. Husband's brother's son, or his direct lineal descendant.
31. Husband's sister's son, or his direct lineal descendant.
32. Brother's daughter's husband.
33. Sister's daughter's husband.

**Note-** In the above table the words "brother" and "sister" denote brother and sister of the whole as well as half blood. Relationship by step means relationship by marriages.

# The Special Marriage Act, 1954

(Act No.43 of 1954)[9th October 1954]

An Act to provide a special form of marriage in certain cases, for the registration of such and certain other marriages and for divorce. Be it enacted by Parliament in the Fifth Year of the Republic of India as follows:

## 1. Short title, extent and commencement

- (1) This Act may be called the Special Marriage Act, 1954.
- (2) It extends to the whole of India except the State of Jammu and Kashmir, and applies also to citizens of India domiciled in the territories to which the Act extends who are in the State of Jammu and Kashmir.
- (3) It shall come into force on such date, i.e. 1st January, 1955 as the Central Government may, by notification in the Official Gazette, appoint.

## 2. Definitions

In this Act, unless the context otherwise, requires:-

- (a) Omitted
- (b) "degrees of prohibited relationship" - a man and any of the persons mentioned in Part I of the First Schedule and a woman and any of the persons mentioned in Part II of the said Schedules are within the degrees of prohibited relationship.

Explanation I. - Relationship includes:-

- a) relationship by half or uterine blood as well as by full blood;
- b) illegitimate blood relationship as well as legitimate;
- c) relationship by adoption as well as by blood;

and all terms of relationship in this Act shall be construed accordingly.



**Explanation II.** - "Full blood" and "half blood"- two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife and by half blood when they are descended from a common ancestor but by different wives.

**Explanation III.** - "Uterine blood"- two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands.

**Explanation IV.**- In Expls. II and III. "ancestor" includes the father and "ancestress" the mother;

- (d) "district", in relation to a Marriage Officer, means the area for which he is appointed as such under sub-section (1) or sub-section (2) of Sec.3;
- (e) "District Court" means, in any area for which there is a City Civil Court, and in any other area, the principal Civil Court of original jurisdiction, and includes any other Civil Court which may be specified by the State Government by notification in the Official Gazette as having jurisdiction in respect of the matters dealt with in this Act:
- (f) "prescribed" means prescribed by rules made under this Act;
- (g) "State Government", in relation to a Union territory, means the Administrator thereof.

## **Solemnization of Special Marriages**

### **4. Conditions relating to solemnization of special marriage**

Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under this Act, if at the time of the marriage the following conditions are fulfilled namely:

- (a) Neither party has a spouse living:
- (b) neither party-

- (i) is incapable of giving a valid consent to it in consequence of unsoundness of mind, or
  - (ii) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or
  - (iii) has been subject to recurrent attacks of insanity or epilepsy;
- (c) the male has completed the age of twenty-one years and the female the age of eighteen years;
- (d) the parties are not within the degrees of prohibited relationship:
- Provided that where a custom governing at least one of the parties permits of a marriage between them, such marriage may be solemnized, notwithstanding that they are within the degrees of prohibited relationship: and
- (e) where the marriage is solemnized in the State of Jammu and Kashmir, both parties are citizens of India domiciled in the territories to which this Act extends.

**Explanation:** In this section, "customs, in relation to a person belonging to any tribe, community, group or family, means any rule which the State Government may, by notification in the Official Gazette, specify in this behalf as applicable to members of that tribe, community, group or family:

Provided that no such notification shall be issued in relation to the members of any tribes, community, group or family, unless the State Government is satisfied-

- (i) that such rule has been continuously and uniformly observed for a long time among those members;
- (ii) that such rule is certain and not unreasonable or opposed to public policy; and
- (iii) that such rule is applicable only to a family, has not been discontinued by the family.

## **5. Notices of intended marriage**

When a marriage is intended to be solemnized under this Act, the parties of the marriage shall give notice thereof in writing in the Form specified in the Second Schedule to the Marriage Officer of the district in which at least one of the parties to the marriage has resided for a period of not less than thirty days immediately preceding the date on which such notice is given.

## **6. Marriage Notice Book and publication**

- (1) The Marriage Officer shall keep all notices given under Sec. 5 with the records of his office and shall also forthwith enter a true copy of every such notice in a book prescribed for that purpose, to be called the Marriage Notice Book, and such book shall be open for inspection at all reasonable times, without fee, by any person desirous of inspecting the same.
- (2) The Marriage Officer shall cause every such notice to be published by affixing a copy thereof to some conspicuous place in his office.
- (3) Where either of the parties to an intended marriage is not permanently residing within the local limits of the district of the Marriage Officer to whom the notice has been given under Sec. 5, the Marriage Officer shall also cause a copy of such notice to be transmitted to the Marriage Officer of the district within whose limits such party is permanently residing, and that Marriage Officer shall thereupon cause a copy thereof to be affixed to some conspicuous place in his office.

## **7. Objection to marriage**

- (1) Any person may, before the expiration of thirty days from the date on which any such notice has been published under sub-section (2) of Sec. 6, object to the marriage on the ground that it would contravene one or more of the conditions specified in Sec.4.

- (2) After the expiration of thirty days from the date on which notice of an intended marriage has been published under sub-section (2) of Sec. 6, the marriage may be solemnized, unless it has been previously objected to under sub-section (1).
- (3) The nature of the objection shall be recorded in writing by the Marriage Officer in the Marriage Notice Book, be read over and explained if necessary, to the person making the objection and shall be signed by him or on his behalf.

## **8. Procedure on receipt of objection**

- (1) If an objection is made under Sec. 7 to an intended marriage the Marriage Officer shall not solemnize the marriage until he has inquired into the matter of the objection and is satisfied that it ought not to prevent the solemnization of the marriage or the objection is withdrawn by the person making it; but the Marriage Officer shall not take more than thirty days from the date of the objection for the purpose of inquiring into the matter of the objection and arriving at a decision.
- (2) If the Marriage Officer upholds the objection and refuses to solemnize the marriage, either party to the intended marriage may, within a period of thirty days from the date of such refusal, prefer an appeal to the District Court within the local limits of whose jurisdiction the Marriage Officer has his office, and the decision of the District Court on such appeal shall be final, and the Marriage Officer shall act in conformity with the decision of the Court.

## **9. Powers of Marriage Officers in respect of inquiries**

- (1) For the purpose of any inquiry under Sec.8, the Marriage Officer shall have all the powers vested in a Civil Court under the Code of Civil Procedure, 1908(5 of 1908), when trying a suit in respect of the following matters, namely:
  - (a) summoning and enforcing the attendance of witnesses and examining them on oath;

- (b) discovery and inspection;
  - (c) compelling the production of documents;
  - (d) reception of evidence on affidavits; and
  - (e) issuing commissions for the examination of witnesses; and any proceeding before the Marriage Officer shall be deemed to be a judicial proceeding within the meaning of Sec.193 of the Indian Penal Code(45 of 1960).
- (2) If it appears to the Marriage Officer that the objection made to an intended marriage is not reasonable and has not been made in good faith he may impose on the person objecting costs, by way of compensation not exceeding one thousand rupees, and award the whole, or any part thereof to the parties to the intended marriage, and any order of costs so made may be executed in the same manner as a decree passed by the District Court within the local limits of whose jurisdiction the Marriage Officer has his office.

## **10. Procedure on receipt of objection by Marriage Officer abroad**

Where an objection is made under Sec.7 to a Marriage Officer in the State of Jammu and Kashmir in respect of an intended marriage in the State and the Marriage Officer, after making such inquiry into the matter as he thinks fit, entertains a doubt in respect thereof, he shall not solemnize the marriage but shall transmit the record with such statement respecting the matter as he thinks fit to the Central Government, and the Central Government, after making such inquiry into the matter and after obtaining such advice as it thinks fit, shall give its decision thereon in writing to the Marriage Officer shall act in conformity with the decision of the Central Government.

## **11. Declaration by parties and witnesses**

Before the marriage is solemnized the parties and three witnesses shall, in the presence of the Marriage Officer, sign a declaration in the Form specified in the Third Schedule to this Act, and the declaration shall be countersigned by the Marriage Officer.

## **12. Place and form of solemnization**

- (1) The marriage may be solemnized at the office of the Marriage Officer or at such other place within a reasonable distance there from as the parties may desire, and upon such conditions and the payments of such additional fees as may be prescribed.
- (2) The marriage may be solemnized in any form which the parties may choose to adopt:

Provided that it shall not be complete and binding on the parties unless each party says to the other in the presence of the Marriage Officer and the three witnesses and in any language understood by the parties:- "I (A) take thee (B), to be my lawful wife (or husband)".

## **13. Certificate of marriage**

- (1) When the marriage has been solemnized the Marriage Officer shall enter a certificate thereof in the Form specified in the Fourth Schedule in a book to be kept by him for that purpose and to be called the Marriage Certificate Book and such certificate shall be signed by the parties to the marriage and the three witnesses.
- (2) On a certificate being entered in the Marriage Certificate Book by the Marriage Officer, the certificate shall be deemed to be conclusive evidence of the fact that a marriage under this Act has been solemnized and that all formalities respecting the signatures of witnesses have been complied with.

## **14. New notice when marriage not solemnized within three months**

Whenever a marriage is not solemnized within three calendar months from the date on which notice thereof has been given to the Marriage Officer as required by Sec. 5 or where an appeal has been filed under sub-section (2) of Sec.8, within three months from the date of the decision of the District Court on such appeal or where the record of a case has been transmitted to the Central Government

under Sec.10, within three months from the date of decision of the Central Government, the notice and all other proceedings arising there from shall be deemed to have lapsed, and no marriage Officer shall solemnize the marriage until a new notice has been given in the manner laid down in this Act.

### **CHAPTER III: Registration of Marriage Celebrated in other forms**

#### **15. Registration of marriages celebrated in other forms**

Any marriage celebrated, whether before or after the commencement of this Act, other than a marriage solemnized under the Special Marriage Act, 1872 or under this Act, may be registered under this Chapter by a Marriage Officer in the territories to which this Act extends if the following conditions are fulfilled, namely:

- (a) a ceremony of marriage has been performed between the parties and they have been living together as husband and wife ever since
- (b) neither party has at the time of registration more than one spouse living;
- (c) neither party is an idiot or a lunatic at the time of registration:
- (d) the parties have completed the age of twenty-one year at the time of registration;
- (e) the parties are not within the degrees of prohibited relationship:

Provided that in case of a marriage celebrated before the commencement of this Act, this condition shall be subject to any law, custom or usage having the force of law governing each of them which permits of a marriage between the two; and

- (f) the parties have been residing within the district of the Marriage Officer for a period of not less than thirty days immediately preceding the date on which the application is made to him for registration of the marriage.

## **16. Procedure for registration**

Upon receipt of an application signed by both the parties to the marriage for the registration of their under this chapter, the Marriage Officer shall give public notice thereof in such manner as may be prescribed and after allowing a period of thirty days for objection and after hearing any objection received within that period, shall, if satisfied that all the conditions mentioned in Sec. 15 are fulfilled, enter a certificate of the marriage in the Marriage Certificate Book in the Form specified in the Fifth Schedule and such certificate shall be signed by the parties to the marriage and by three witnesses.

## **17. Appeals from orders under Sec. 16**

Any person aggrieved by any order of a Marriage Officer refusing to register a marriage under this Chapter may, within thirty days from the date of order, appeal against that order to the District Court within the local limits of whose jurisdiction the Marriage Officer has his office, and the decision of the District Court on such appeal shall be final, and the Marriage Officer to whom the application was made shall act in conformity with such decision.

## **18. Effect of registration of marriage under this Chapter**

Subject to the provisions contained in sub-section (2) of Sec.24 where a certificate of marriage has been finally entered in the Marriage Certificate Book under this Chapter, the marriage shall, as from the date of such entry, be deemed to be a marriage solemnized under this Act, and all children born after the date of the ceremony of marriage (whose names shall also be entered in the Marriage Certificate Book) shall in all respects be deemed to be and always to have been the legitimate children of their parents:

Provided that nothing contained in this section shall be construed as conferring upon any such children any rights in or to the property of any person other than their parents in any case where, but for the passing of this Act, such children would have been incapable of possessing or acquiring any such rights by reason of their not being the legitimate children of their parents.



## **CHAPTER IV: Consequences of Marriage under this Act**

### **19. Effect of marriage on member of undivided family**

The marriage solemnized under this Act of any member of an undivided family who professes the Hindu, Buddhist, Sikh or Jaina religion shall be deemed to effect his severance from such family.

### **20. Rights and disabilities not affected by Act**

Subject to the provisions of Sec. 19, any person whose marriage is solemnized under this Act, shall have the same rights and shall be subject to the same disabilities in regard to the right of succession to any property as a person to whom the Caste Disabilities Removal Act, 1850 (21 of 1850), applies.

### **21. Succession to property of parties married under Act**

Notwithstanding any restrictions contained in the Indian Succession Act, 1925 (39 of 1925), with respect to its application to members of certain communities, succession to the property of any person whose marriage is solemnized under this Act and to the property of the issue of such marriage shall be regulated by the provisions of the said Act and for the purposes of this section that Act shall have effect as if Chapter III of Part V (Special Rules for Parsi Intestates) had been omitted therefrom.

#### **21-A. Special provision in certain cases**

Where the marriage is solemnized under this Act of any person who professes the Hindu, Buddhist, Sikh or Jain religion with a person who professes the Hindu, Buddhist, Sikh or Jain religion. Secs. 19 and 21 shall not apply and so much of Sec. 20 as creates a disability shall also not apply.

## **CHAPTER V: Restitution of Conjugal Rights and Judicial Separation**

### **22. Restitution of conjugal rights**

When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other the aggrieved party may apply by petition to the District Court for restitution of conjugal rights, and the Court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

**Explanation:** Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.

### **23. Judicial separation**

- (1) A Petition for judicial separation may be presented to the District Court either by the husband or the wife.-
  - (a) on any of the grounds specified in sub-section (1) and sub-section (1-A) of Sec. 27 on which a petition for divorce might have been presented; or
  - (b) on the grounds of failure to comply with a decree for restitution of conjugal rights and the Court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree judicial separation accordingly.
- (2) Where the Court grants a decree for judicial separation, it shall be no longer obligatory for the petitioner to cohabit with the respondent, but the Court may, on the application by petition of either party and on being satisfied of the truth of the statements made in such petition rescind the decree if it considers it just and reasonable to do so.

## **CHAPTER VI: Nullity of Marriage and Divorce**

### **24. Void marriages**

- (1) Any marriage solemnized under this Act shall be null and void (and may, on a petition presented by either party thereto against the other party, be so declared) by a decree of nullity if-
  - (i) any of the conditions specified in Cls. (a), (b), (c) and (d) of Sec. 4 has not been fulfilled : or
  - (ii) the respondent was impotent at the time of the marriage and at the time of the institution of the suit.
- (2) Nothing contained in this section shall apply to any marriage deemed to be solemnized under the Act within the meaning of Sec. 18, but the registration of any such marriage under Chapter III may be declared to be of no effect if the registration was in contravention of any of the conditions specified in Cls. (a) to (e) of Sec. 15:

Provided that no such declaration shall be made in any case where an appeal has been preferred under Sec.17 and the decision of the District Court has become final.

### **25. Voidable marriages**

Any marriage solemnized under this Act shall be voidable and may be annulled by a decree of nullity, if-

- (i) the marriage has not been consummated owing to the wilful refusal of the respondent to consummate the marriage ;or
- (ii) the respondent was at the time of the marriage pregnant by some person other than the petitioner; or
- (iii) the consent of either party to the marriage was obtained by coercion or fraud, as defined in the Indian Contract Act, 1872 (9 of 1872):

Provided that in the case specified in Cl.(ii) the Court shall not grant a decree unless it is satisfied-

- (a) that the petitioner was at the time of the marriage ignorant of the facts alleged;
- (b) that proceedings were instituted within a year from the date of the marriage; and
- (c) the marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of existence of the grounds a decree :

Provided further that in the case specified in Cl.(iii), the Court shall not grant a decree if:-

- (a) proceedings have not been instituted within one year after the coercion had ceased or, as the case may be, the fraud had been discovered; or
- (b) the petitioner has with his or her free consent lived with the other party to the marriage as husband and wife after the coercion had ceased or as the case may be, the fraud had been discovered.

## **26. Legitimacy of children of void and voidable marriages**

- (1) Notwithstanding that a marriage is null and void under Sec. 24, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws(Amendment) Act, 1976, and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.
- (2) Where a decree of nullity is granted in respect of a voidable marriage under Sec.25, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it has been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.

- (3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under Sec. 25, any rights in or to the property of any person, other than the parents, in any case, where, but for the passing of this Act, such child would have been incapable of possessing or requiring any such rights by reason of his not being the legitimate child of his parents.

## **27. Divorce**

- (1) Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the District Court either by the husband or the wife on the ground that the respondent-
- (a) has, after the solemnization of the marriage had voluntary sexual intercourse with any person other than his or her spouse; or
  - (b) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or
  - (c) is undergoing a sentence of imprisonment for seven years or more for an offence as defined in the Indian Penal Code (45 of 1860); or
  - (d) has since the solemnization of the marriage treated the petitioner with cruelty; or
  - (e) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind, and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

**Explanation:** In this Clause-

- (a) the expression "mental disorder" means mental illness, arrested or incomplete development of mind,

psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

- (b) the expression "psychopathic disorder" means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the respondent and whether or not it requires or is susceptible to medical treatment; or
- (f) has been suffering from venereal disease in a communicable form; or
- (g) has been suffering from leprosy, the disease not having been contracted from the petitioner; or
- (h) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of the respondent if the respondent had been alive;

**Explanation:** In this sub-section, the expression "desertion" means desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.

(1-A) A wife may also present a petitioner for divorce to the District Court on the ground.-

- (i) that her husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality;
- (ii) that in a suit under Sec. 18 of the Hindus Adoptions and Maintenance Act, 1956 (78 of 1956), or in a proceeding under Sec. 125 of the Code of Criminal Procedure, 1973 (2 of 1974), or under the corresponding Sec. 488 of the Code of Criminal Procedure, 1898 (5 of 1898), a decree or order,

as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards.

- (2) Subject to the provisions of the Act and to the Rules made thereunder, either party to a marriage, whether solemnized before or after the commencement of the Special Marriage (Amendment) Act, 1970, may present a petition for divorce to the District Court on the ground-
- (i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or
  - (ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.

### **27-A. Alternate relief in divorce proceedings**

In any proceeding under this Act, on a petition for a dissolution of marriage by a decree of divorce, except in so far as the petition is founded on the ground mentioned in Cl. (h) of sub-section (1) of Sec. 27, the Court may, if it considers it just so to do, having regard to the circumstances of the case, pass instead a decree for judicial separation.

### **28. Divorce by mutual consent**

- (1) Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the District Court by both the parties together on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

- (2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the District Court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized under this Act and that the averments in the petition are true, pass a decree declaring the marriage to be dissolved with effect from the date of the decree.

### **29. Restriction on petitions for divorce during first three years after marriage**

- (1) No petition for divorce shall be presented to the District Court unless at the date of the presentation of the petition one year has passed since the date of entering the certificate of marriage in the Marriage Certificate Book:

Provided that the District Court may, upon application being made to it allow a petition to be presented before one year has passed on the ground that the case is one of exceptional hardship suffered by the petitioner or of exceptional depravity on the part of the respondent, but if it appears to the District Court at the hearing of the Petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the District Court may, if it pronounces a decree, do so subject to the condition that the decree shall not have effect until after the expiry of one year from the date of the marriage or may dismiss the petition, without prejudice to any petition, which may be brought after the expiration of the said one year upon the same or substantially the same facts, as those proved in support of the petition so dismissed.

- (2) In disposing of any application under this section for leave to present a petition for divorce before the expiration of one year from the date of the marriage, the District Court shall have regard to the interests of any children of the marriage, and



to the question whether there is a reasonable probability of a reconciliation between the parties before the expiration of the said one year.

### **30. Re-marriage of divorced persons**

Where a marriage has been dissolved by a decree of divorce, and either there is no right of appeal against the decree or if there is such a right of appeal, the time for appealing has expired without an appeal having been presented or an appeal has been presented but has been dismissed, either party to the marriage may marry again.

## **CHAPTER VII: Jurisdiction and Procedure**

### **31. Court to which petition should be made**

- (1) Every petition under Chapter V or Chapter VI shall be presented to the District Court within the local limits of whose original civil jurisdiction-
  - (i) the marriage was solemnized; or
  - (ii) the respondent, at the time of the presentation of the petition resides; or
  - (iii) the parties to the marriage last resided together; or
  - (iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at that time, residing outside the territories to which this Act extends or has not been heard of as being alive for a period of seven years by those who would naturally have heard of him if he was alive.
- (2) Without prejudice to any jurisdiction exercisable by the Court under sub-section (1), the District Court may, by virtue of this sub-section, entertain a petition by a wife domiciled in the territories to which this Act extends for nullity of marriage or for divorce if she is resident in the said territories and has

been ordinarily resident , therein for a period of three years immediately preceding the presentation of the petition and the husband is not resident in the said territories.

### **32. Contents and verification of petitions**

- (1) Every petition under Chapter V or Chapter VI shall state, as distinctly as the nature of the case permits, the facts on which the claim to relief is founded and shall also state that there is no collusion between the petitioner and the other party to the marriage.
- (2) The statements contained in every such petition shall be verified by the petitioner or some other competent person in the manner required by law for the verification of plaints and may, at the hearing, be referred to as evidence.

### **33. Proceedings to be in camera and may not be printed or published**

- (1) Every proceeding under this Act shall be conducted in camera and it shall not be lawful for any person to print or publish any matter in relation to any such proceeding except a judgment of the High Court or of the Supreme Court printed or published with the previous permission of the Court.
- (2) If any person prints or publishes any matter in contravention of the provisions contained in sub-section (1), he shall be punishable with fine which may extend to one thousand rupees.

### **34. Duty of Court in passing decrees**

- (1) In any proceeding under Chapter V or Chapter VI, whether defended or not, if the Court is satisfied that:-
  - (a) any of the grounds for granting relief exists; and
  - (b) where the petition is founded on the ground specified in Cl.(a) of sub-section (1) of Sec. 27, the petitioner has not in any manner been accessory to or connived at or condoned the act of sexual intercourse referred to therein or where

the ground of the petition is cruelty, the petitioner has not in any manner condoned the cruelty; and

- (c) when divorce is sought on the ground of mutual consent, such consent has not been obtained by force, fraud or undue influence; and
  - (d) the petition is not presented or prosecuted in collusion with the respondent; and
  - (e) there has not been any unnecessary or improper delay in instituting the proceedings; and
  - (f) there is no other legal ground why the relief should not be granted; then, and in such a case, but not otherwise, the Court shall decree such relief accordingly.
- (2) Before proceeding to grant any relief under this Act it shall be the duty of the Court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties :
- Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in Cls.(c), (e), (f), (g) and (h) of sub-section (1) of Sec.27.
- (3) For the purpose of aiding the Court in bringing about such reconciliation, the Court may, if the parties so desire or if the Court thinks it just and proper so to do, adjourn the proceedings for a reasonable period not exceeding fifteen days, and refer the matter to any person named by the parties in this behalf or to any person nominated by the Court if the parties fail to name any person, with directions to report to the Court as to whether reconciliation can be and has been effected and the Court shall in disposing of the proceeding have due regard to the report.
  - (4) In every case where a marriage is dissolved by a decree of divorce, the Court passing the decree shall give a copy thereof free of cost to each of the parties.

### **35. Relief for respondent in divorce and other proceedings**

In any proceeding for divorce or judicial separation or restitution of conjugal rights, the respondent may not only oppose the relief sought on the ground of petitioner's adultery, cruelty or desertion, but also make counter-claim for any relief under this Act on that ground, and if the petitioner's adultery, cruelty or desertion is proved, the Court may give to the respondent any relief under this Act to which he or she would have been entitled if he or she had presented a petition seeking such relief on that ground.

### **36. Alimony pendente lite**

Where in any proceeding under Chapter V or Chapter VI it appears to the District Court that the wife has no independent income sufficient for her support and the necessary expenses of the proceeding, it may, on the application of the wife, order the husband to pay to her the expenses of the proceeding, and weekly or monthly during the proceeding such sum as having regard to the husband's income, it may seem to the Court to be reasonable.

### **37. Permanent alimony and maintenance**

- (1) Any Court exercising jurisdiction under Chapter V or Chapter VI may, at the time of passing any decree or at any time subsequent to the decree, on application made to it for the purpose, order that the husband shall secure to the wife for her maintenance and support, if necessary, by a charge on the husband's property, such gross sum or such monthly or periodical payment of money for a term not exceeding her life, as having regard to her own property, if any, her husband's property and ability, the conduct of the parties and other circumstances of the case it may seem to the Court to be just.
- (2) If the District Court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as it may seem to the Court to be just.

- (3) If the District Court is satisfied that the wife in whose favour an order has been made under this section has remarried or is not leading a chaste life, it may, at the instance of the husband vary, modify or rescind any such order and in such manner as the Court may deem just.

### **38. Custody of children**

In any proceeding under Chapter V or Chapter VI the District Court may, from time to time, pass such interim orders and make such provisions in the decree as it may seem to it to be just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes wherever possible, and may, after the decree, upon application by petition for the purpose, make, revoke, suspend or vary, from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending.

### **39. Appeals from decrees and orders**

- (1) All decrees made by the Court in any proceeding under Chapter V or Chapter VI shall, subject to the provisions of sub-section (3), be appealable as decrees of the Court made in the exercise of its original civil jurisdiction, and such appeal shall lie to the Court to which appeals ordinarily lie from the decisions of the Court given in the exercise of its original civil jurisdiction.
- (2) Orders made by the Court in any proceeding under this Act under Sec.37 or Sec.38 shall subject to the provisions of Sub-section (3), be appealable if they are not interim orders, and every such appeal shall lie to the Court to which appeals ordinarily lie from the decisions of the Court given in the exercise of its original civil jurisdiction
- (3) There shall be no appeal under this section on the subject of the costs only.
- (4) Every appeal under this section shall be preferred within a period of thirty days from the date of the decree or order.

### **39-A. Enforcement of decrees and orders**

All decrees and orders made by the Court in any proceeding under Chapter V or Chapter VI shall be enforced in the like manner as the decrees and orders of the Court made in the exercise of its original civil jurisdiction for the time being are enforced.

### **40. Application of Act 5 of 1908**

Subject to the other provisions contained in this Act, and to such rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908.

### **40-A. Power to transfer petitions in certain cases**

(1) Where--

- (a) a petition under this Act has been presented to the District Court having jurisdiction by a party to the marriage praying for a decree for judicial separation under Sec.23 or for a decree of divorce under Sec.27, and
- (b) another petition under this act has been presented thereafter by the other party to the marriage praying for decree for judicial separation under Sec.23, or for decree of divorce under Sec.27 on any ground whether in the same District Court or in a different District Court, in the same State or in a different State.

the petition shall be dealt with as specified in sub-section (2)

(2) In a case where sub-section (1) applies--

- (a) if the petitions are presented to the same District Court, both the petitions shall be tried and heard together by that District Court :
- (b) if the petitions are presented to different District Courts the petition presented later shall be transferred to the District Court in which the earlier petition was presented and both

the petitions shall be heard and disposed of together by the District Court in which the earlier petition was presented.

- (3) In a case where Cl. (b) of sub-section (2) applies, the Court or the Government, as the case may be, competent under the Code of Civil Procedure, 1908 (5 of 1908), to transfer any suit or proceeding from the District Court in which the later petition has been presented to the District Court in which the earlier petition is pending shall exercise its powers to transfer such later petition as if it had been empowered so to do under the said Code.

#### **40-B. Special provision relating to trial and disposal of petitions under the Act**

- (1) The trial of a petition under this Act shall so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.
- (2) Every petition under this Act shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date of service of notice of the petition on the respondent.
- (3) Every appeal under this Act shall be heard as expeditiously as possible, and endeavour shall be made to conclude the hearing within three months from the date of service of notice of appeal on the respondent.

#### **40-C. Documentary evidence**

Notwithstanding anything contained in any enactment to the contrary, no document shall be inadmissible in evidence in any proceeding at the trial of a petition under this Act on the ground that it is not duly stamped or registered.

#### **41. Power of High Court to make rules regulating procedure**

- (1) The High Court shall, by notification in the Official Gazette, make such rules consistent with the provisions contained in this Act and the Code of Civil Procedure, 1908 (5 of 1908), as it may consider expedient for the purpose of carrying into effect the provisions of Chapters V, VI and VII.
- (2) In particular, and without prejudice to the generality of the foregoing provision, such rules shall provide for.--
  - (a) the impleading by the petitioner of the adulterer as a co-respondent on a petition for divorce on the ground of adultery, and the circumstances in which the petitioner may be excused from doing so:
  - (b) the awarding of damages against any such co-respondent,
  - (c) the intervention in any proceeding under Chapter V or Chapter VI by any person not already a party thereto :
  - (d) the form and contents of petitions for nullity of marriage or for divorce and the payment of costs incurred by parties to such petitions ; and
  - (e) any other matter for which no provision or no sufficient provision is made in this Act, and for which provision is made in the Indian Divorce Act, 1869 (4 of 1869).

#### **42. Saving**

Nothing contained in this Act shall affect the validity of any marriage not solemnized under its provisions; not shall this Act be deemed directly or indirectly to affect the validity of any mode of contracting marriage.

#### **43. Penalty on married person marrying again under this Act**

Save as otherwise provided in Chapter III, every person who, being at the time married procures a marriage of himself or herself to be solemnized under this Act shall be deemed to have committed an



offence under Sec. 494 or Sec. 495 of the Indian Penal Code 1860 (45 of 1860), as the case may be, and the marriage so solemnized shall be void.

#### **44. Punishment of bigamy**

Every person whose marriage is solemnized under this Act and who, during the lifetime of his or her wife or husband, contracts any other marriage shall be subject to the penalties provided in Secs.494 and 495 of the Indian Penal Code, 1860 (45 of 1860) for the offence of marrying again during the lifetime of a husband of wife, and the marriage so contracted shall be void.

#### **45. Penalty for signing false declaration or certificate**

Every person making, signing or attesting any declaration or certificate required by or under this Act containing a statement which is false and which he either knows or believes to be false or does not believe to be true shall be guilty of the offence described in Sec.199 of the Indian Penal Code, 1860 (45 of 1860).

#### **46. Penalty for wrongful action of Marriage Officer**

Any Marriage Officer who knowingly and willfully solemnizes a marriage under this Act:--

- (1) without publishing a notice regarding such marriage as required by Sec.5 ; or
- (2) within thirty days of the publication of the notice such marriage;  
or
- (3) in contravention of any other provision contained in this Act, shall be punishable with simple imprisonment for a term which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

#### **47. Marriage Certificate Book to be open to inspection**

- (1) The Marriage Certificate Book kept under this Act shall at all reasonable times be open for inspection and shall be admissible as evidence of the statements therein contained

- (2) Certified extracts from the Marriage Certificate Book shall, on application, be given by the Marriage Officer to the applicant on payment by him of the prescribed fee.

#### **48. Transmission of copies of entries in marriage records**

Every Marriage Officer in a State shall send to Registrar-General of Births, Deaths and Marriages of that State at such intervals and in such form as may be prescribed, a true copy of all entries made by him in the Marriage Certificate Book since the last of such intervals, and in the case of Marriage Officers outside the territories to which this Act extends, the true copy shall be sent to such authority as the Central Government may specify in this behalf.

#### **49. Correction of errors**

- (1) Any Marriage Officer who discovers any error in the form or substance of any entry in the Marriage Certificate Book may, within one month next after the discovery of such error, in the presence of the persons married, or in case of their death or absence, in the presence of two other credible witnesses, correct the error by entry in the margin without any alteration of the original entry and shall sign the marginal entry and add thereto the date of such correction and the Marriage Officer shall make the like marginal entry in the certificate thereof.
- (2) Every correction made under this section shall be attested by the witnesses in whose presence it was made.
- (3) Where a copy of any entry has already been sent under Sec. 48 to the Registrar-General or other authority the Marriage Officer shall make and send in the like manner a separate certificate of the original erroneous entry and of the marginal corrections therein made.

#### **50. Power to make rules**

- (1) The Central Government, in the case of officers of the Central Government, and the State Government, in all other cases, 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) the duties and powers of Marriage Officers and the areas in which they may exercise jurisdiction;
  - (b) the manner in which a Marriage Officer may hold inquiries under this Act and the procedure therefore;
  - (c) the form and manner in which any books required by or under this Act shall be maintained;
  - (d) the fees that may be levied for the performance of any duty imposed upon a Marriage Officer under this Act;
  - (e) the manner in which public notice shall be given under Sec. 16;
  - (f) the form in which, and the intervals within which, copies of entries in the Marriage Certificate Book shall be sent in pursuance of Sec.48;
  - (g) any other matter which may be or requires to be prescribed.
- (3) Every rule made by the Central Government 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 comprised 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.
- (4) Every rule made by the State Government under this Act shall be laid, as soon as it is made, before the State Legislature.

## **51. Repeals and savings**

- (1) The Special Marriage Act, 1872 (3 of 1872), and any law corresponding to the Special Marriage Act, 1872, in force in any Part B State immediately before the commencement of this Act are hereby repealed.
- (2) Notwithstanding such repeal-
  - (a) all marriages duly solemnized under Special Marriage Act, 1872 (3 of 1872) or any such corresponding law shall be deemed to have been solemnized under this Act:
  - (b) all suits and proceeding in causes and matters matrimonial which, when this Act comes into operation, are pending in any Court shall be dealt with and decided by such Court, so far as may be, as if they had been originally instituted therein under this Act.
- (3) The provisions of sub-section (2) shall be without prejudice to the provisions contained in Sec. 6 of the General Clauses Act, 1897 (10 of 1897) which shall also apply to the repeal of the corresponding law as if such corresponding law had been an enactment.

### **The first schedule [See Sec.2 (b)]**

#### **Degree of Prohibited Relationship**

1. Mother
2. Father's widow (step-mother)
3. Mother's mother
4. Mother's father's widow (step grand-mother)
5. Mother's mother's mother
6. Mother's mother's father's widow (step-great-grandmother)
7. Mother's father's mother
8. Mother's father's father's widow (step-great-grandmother)

9. Father's mother
10. Father's father's widow (step-grandmother)
11. Father's mother's mother
12. Father's mother's father's widow (step-great-grandmother)
13. Father's father's mother
14. Father's father's father's widow (step-great-grandmother)
15. Daughter
16. Son's widow
17. Daughter's daughter
18. Daughter's son's widow
19. Son's daughter
20. Son's son's widow
21. Daughter's daughter's daughter
22. Daughter's daughter's son's widow
23. Daughter's son's daughter
24. Daughter's son's son's widow
25. Son's daughter's daughter
26. Son's daughter's son's widow
27. Son's son's daughter
28. Son's son's widow
29. Sister
30. Sister's daughter
31. Brother's daughter
32. Mother's sister
33. Father's sister
34. Father's brother's daughter

35. Father's sister's daughter
36. Mother's sister's-daughter
37. Mother's brother's daughter

**Explanation.**- For the purposes of this Part, the expression "widow" includes a divorced wife.

## **PART II**

1. Father
2. Mother's husband (step-father)
3. Father's father
4. Father's mother's husband (step-grandmother)
5. Father's father's father
6. Father's father's mother's husband (step-great-grandfather)
7. Father's mother's father
8. Father's mother's mother's husband (step-great-grandfather)
9. Mother's father
10. Mother's mother's husband (step-grandfather)
11. Mother's father's father
12. Mother's father's mother's husband (step-great-grandfather)
13. Mother's mother's father
14. Mother's mother's mother's husband(step-great-grandfather)
15. Son
16. Daughter's husband
17. Son's son
18. Son's daughter's husband
19. Daughter's son
20. Daughter's daughter's husband

21. Son's son's son
22. Son's son's daughter's husband
23. Son's daughter's son
24. Son's daughter's daughter's husband
25. Daughter's son's son
26. Daughter's son's daughter's husband
27. Daughter's daughter's son
28. Daughter's daughter's daughter's husband
29. Brother
30. Brother's son
31. Sister's son
32. Mother's brother
33. Father's brother
34. Father's brother's son
35. Father's sister's son
36. Mother's sister's son
37. Mother's brother's son

**Explanation:** for the purposes of this Part, the expression "husband" includes a divorced husband.

# The Divorce Act, 1869

## CHAPTER-I: PRELIMINARY

### 1. Short title, commencement of the Act

This Act may be called the Indian Divorce Act, and shall come into operation on the first day of April, 1869.

### 2. Extent of Act

[This Act extends to [the whole of India] [except the State of Jammu and Kashmir.]]. Extent of power to grant relief generally, and to make decrees of dissolution, or of nullity- [Nothing hereinafter contained shall authorise any court to grant any relief under this Act except where the petitioner [or respondent] professes the Christian religion,

or to make decrees of dissolution of marriage except where the parties to the marriage are domiciled in India at the time when the petition is presented,

or to make decrees of nullity of marriage except where the marriage has been solemnized in India and the petitioner is resident in India at the time of presenting the petition,

or to grant any relief under this Act, other than a decree of dissolution of marriage or of nullity of marriage, except where the petitioner resides in India at the time of presenting the petition.]

### 3. Interpretation Clause

In this Act, unless there be something repugnant in the subject or context,

"High Court"- means with reference to any area:-

(a) in a State, the High Court for that State,

[(b) in Delhi, the High Court of Delhi; [(bb) Omitted]



(c) in Manipur and Tripura, the High Court of Assam;

(d) in the Andaman and Nicobar Islands, the High Court of Calcutta;

(e) in [ Lakshadweep], the High Court of Kerala;

[(ee) in Chandigarh, the High Court of Punjab and Haryana;]and in the case of any petition under this Act, "High Court" means the High Court for the area where the husband and wife reside or last resided together;]]

"District Judge"-(2) "District Judge" means a Judge of a principal civil court of original jurisdiction however designated;]

"District Court"-(3) "District Court" means, in the case of any petition under this Act, the Court of the District Judge within the local limits of whose ordinary jurisdiction, or of whose jurisdiction under this Act, the husband and wife reside or last resided together;

"Court"-(4) "Court" means the High Court or the District Court, as the case may be;

"Minor Children"-(5) "minor children" means, in the case of sons of native fathers, boys, who have not completed the age of sixteen years, and, in the case of daughters of native fathers, girls who have not completed the age of thirteen years; in other cases it means unmarried children who have not completed the age of eighteen years;

"Incestuous adultery"-(6) "incestuous adultery" means adultery committed by a husband with a woman with whom, if his wife were dead, he could not lawfully contract marriage by reason of her being within the prohibited degrees of consanguinity (whether natural or legal) or affinity;

"Bigamy with adultery"-(7) "bigamy with adultery" means adultery with the same woman with whom the bigamy was committed;

"Marriage with another woman"-(8) "marriage with another woman" means marriage of any person, being married, to any other person,

during the life of the former wife, whether the second marriage shall have taken place within 12[India] or elsewhere;

"Desertion"-(9) "desertion" implies an abandonment against the wish of the person charging it; and

"Property"-(10) "property" includes in the case of a wife, any property to which she is entitled for an estate in remainder or reversion or as a trustee, executrix or administratrix; and the date of the death of the testator or intestate shall be deemed to be the time at which any such wife becomes entitled as executrix or administratrix.

## **CHAPTER II: JURISDICTION**

### **4. Matrimonial jurisdiction of High Courts to be exercised subject to Act**

Exception-The jurisdiction now exercised by the High Courts in respect of divorce a mensa et toro, and in all other causes, suits and matters matrimonial, shall be exercised by such court, and by the District Courts subject to the provisions in this Act contained, and not otherwise: except so far as relates to the granting of marriage-licenses, which may be granted as if this Act had not been passed.

### **5. Enforcement of decrees or orders made heretofore by Supreme Court or High Court**

Any decree or order of the late Supreme Court of Judicature at Calcutta, Madras or Bombay sitting on the ecclesiastical side, or of any of the said High Courts sitting in the exercise of their matrimonial jurisdiction, respectively, in any cause or matter matrimonial, may be enforced and dealt with by the said High Courts, respectively, as hereinafter mentioned, in like manner as if such decree or order had been originally made under this Act by the Court so enforcing or dealing with the same.

### **6. Pending suits**

All suits and proceedings in causes and matters matrimonial, which when this Act comes into operation are pending in any High Court,

shall be dealt with and decided by such court, so far as may be, as if they had been originally instituted therein under this Act.

## **7. Court to act on principles of English Divorce Court**

Subject to the provisions contained in this Act, the High Courts and District Courts shall, in all suits and proceedings hereunder, act and give relief on principles and rules which, in the opinion of the said courts, are, as nearly as may be conformable to the principles and rules on which the Court for Divorce and Matrimonial Causes in England for the time being acts and gives relief:

[PROVIDED that nothing in this section shall deprive the said courts of jurisdiction in a case where the parties to a marriage professed the Christian religion at the time of the occurrence of the facts on which the claim to relief is founded.]

## **8. Extraordinary jurisdiction of High Court**

The High Court may, whenever it thinks fit, remove and try and determine as a court of original jurisdiction any suit or proceeding instituted under this Act in the court of any District Judge within the limits of its jurisdiction under this Act.

Power to transfer suits- The High Court may also withdraw any such suit or proceeding, and transfer it for trial or disposal to the court of any other such District Judge.

## **9. Reference to High Court**

When any question of law or usage having the force of law arises at any point in the proceedings previous to the hearing of any suit under this Act by a District Court or at any subsequent stage of such suit, or in the execution of the decree therein or order thereon, the court may, either of its own motion or on the application of any of the parties, draw up a statement of the case and refer it, with the court's own opinion thereon, to the decision of the High Court.

If the question has arisen previous to or in the hearing, the District Court may either stay such proceedings, or proceed in the case

pending such reference, and pass a decree contingent upon the opinion of the High Court upon it.

If a decree or order has been made, its execution shall be stayed until the receipt of the order of the High Court upon such reference.

### **CHAPTER III: DISSOLUTION OF MARRIAGE**

#### **10. When husband may petition for dissolution**

Any husband may present a petition to the District Court or to the High Court, praying that his marriage may be dissolved on the ground that his wife has, since the solemnization thereof, been guilty of adultery.

When wife may petition for dissolution-Any wife may present a petition to the District Court or to the High Court, praying that her marriage may be dissolved on the ground that, since, the solemnization thereof, her husband has exchanged his profession of Christianity for the profession of some other religion, and gone through a form of marriage with another woman;

or has been guilty of incestuous adultery,

or of bigamy with adultery,

or of marriage with another woman with adultery, or of rape, sodomy or bestiality, or of adultery coupled with such cruelty as without adultery would have entitled her to a divorce a mensa et toro, or of adultery coupled with desertion, without reasonable excuse, for two years or upwards.

Contents of petition- Every such petition shall state, as distinctly as the nature of the case permits, the facts on which the claim to have such marriage dissolved is founded.

#### **11. Adulterer to be co-respondent**

Upon any such petition presented by a husband, the petitioner shall make the alleged adulterer a co-respondent to the said petition, unless he is excused from so doing on one of the following grounds,

to be allowed by the Court:

- (1) that the respondent is leading the life of a prostitute, and that the petitioner knows of no person with whom the adultery has been committed;
- (2) that the name of the alleged adulterer is unknown to the petitioner, although he has made due efforts to discover it;
- (3) that the alleged adulterer is dead.

## **12. Court to be satisfied of absence of collusion**

Upon any such petition for the dissolution of a marriage, the court shall satisfy itself, so far as it reasonably can, not only as to the facts alleged, but also whether or not the petitioner has been in any manner accessory to, or conniving at, the going through of the said form of marriage, or the adultery, or has condoned the same, and shall also enquire into any countercharge which may be made against the petitioner.

## **13. Dismissal of petition**

In case the court, on the evidence in relation to any such petition, is satisfied that the petitioner's case has not been proved, or is not satisfied that the alleged adultery has been committed, or find that the petitioner has, during the marriage, been accessory to, or conniving at, the going through of the said form of marriage, or the adultery of the other party to the marriage, or has condoned the adultery complained of,

or that the petition is presented or prosecuted in collusion with either of the respondents, then, and in any of the said cases the court shall dismiss the petition.

When a petition is dismissed by a District Court under this section, the petitioner may, nevertheless, present a similar petition to the High Court.

#### **14. Power to court to pronounce decree for dissolving marriage**

In case the court is satisfied on the evidence that the case of the petitioner has been proved, and does not find that the petitioner has been in any manner accessory to, or conniving at, the going through of the said form of marriage, or the adultery of the other party to the marriage, or has condoned the adultery complained of, or that the petition is presented or prosecuted in collusion with either of the respondents, the court shall pronounce a decree declaring such marriage to be dissolved in the manner and subject to all the provisions and limitation in sections 16 and 17 made and declared:

PROVIDED that the Court shall not be bound to pronounce such decree if it finds that the petitioner has, during the marriage, been guilty of adultery, or if the petitioner has, in the opinion of the court, been guilty of unreasonable delay in presenting or prosecuting such petition, or of cruelty towards the other party to the marriage, or of having deserted or willfully separated himself or herself from the other party before the adultery complained of, and without reasonable excuse, or of such willful neglect or misconduct of or towards the other party as has conduced to the adultery.

Condo nation- No adultery shall be deemed to have been condoned within the meaning of this Act unless where conjugal cohabitation has been resumed or continued.

#### **15. Relief in case of opposition on certain grounds**

In any suit instituted for dissolution of marriage, if the respondent opposes the relief sought on the ground, in case of such a suit instituted by a husband, of his adultery, cruelty, or desertion without reasonable excuse, or, in case of such a suit instituted by a wife, on the ground of her adultery and cruelty, the court may in such suit give to the respondent, on his or her application, the same relief to which he or she would have been entitled in case he or she had presented a petition seeking such relief, and the respondent shall be competent to give evidence of or relating to such cruelty or desertion.

## **16. Decrees for dissolution to be nisi**

Every decree for dissolution of marriage made by a High Court not being a confirmation of a decree of a District Court, shall, in the first instance, be a decree nisi, not to be made absolute till after the expiration of such time, not less than six months from the pronouncing thereof, as the High Court, by general or special order from time to time, directs.

Collusion- During that period any person shall be at liberty, in such manner as the High Court by general or special order from time to time direct, to show cause why the said decree should not be made absolute by reason of the same having been obtained by collusion or by reason of material facts not being brought before the court.

On cause being so shown, the court shall deal with the case by making the decree absolute, or by reversing the decree nisi, or by requiring further inquiry, or otherwise as justice may demand.

The High Court may order the costs of counsel and witnesses and otherwise arising from such cause being shown, to be paid by the parties or such one or more of them as it thinks fit, including a wife if she have separate property.

Whenever a decree nisi has been made, and the petitioner fails, within a reasonable time, to move to have such decree made absolute, the High Court may dismiss the suit.

## **17. Confirmation of decree for dissolution by District Judge**

Every decree for dissolution of a marriage made by a District Judge shall be subject to confirmation by the High Court.

Cases for confirmation of a decree for dissolution of marriage shall be heard (where the number of the Judges of the High Court is three or upwards) by a court composed of three such Judges, and in case of difference, the opinion of the majority shall prevail, or (where the number of the Judges of the High Court is two) by a court composed of such two Judges, and in case of difference, the opinion of the Senior Judge shall prevail.

The High Court, if it thinks further enquiry or additional evidence to be necessary, may direct such enquiry to be made, or such evidence to be taken.

The result of such enquiry and the additional evidence shall be certified to the High Court by the District Judge, and the High Court shall thereupon make an order confirming the decree for dissolution of marriage, or such other order as to the Court seems fit:

PROVIDED that no decree shall be confirmed under this section till after expiration of such time, not less than six months from the pronouncing thereof, as the High Court by general or special order from time to time directs.

During the progress of the suit in the court of the District Judge, any person suspecting that any parties to the suit are or have been acting in collusion for the purpose of obtaining a divorce, shall be at liberty in such manner as the High Court by general or special order from time to time directs, to apply to the High Court to remove the suit under section 8, and the High Court shall thereupon, if it thinks fit, remove such suit and try and determine the same as a court of original jurisdiction, and the provisions contained in section 16 shall apply to every suit so removed: or it may direct the District Judge to take such steps in respect of the alleged collusion as may be necessary, to enable him to make a decree in accordance with the justice of the case.

### **[17A.Appointment of officer to exercise duties of King's Proctor**

[The government of the State within which any High Court exercises jurisdiction, may appoint an officer who shall, within the jurisdiction of the High Court in that State, have the like right of showing cause why a decree for the dissolution of marriage should not be made absolute or should not be confirmed, as the case may be, as is exercisable in England by King's Proctor; and the said government may make rules regulating the manner in which the right shall be exercised and all matters incidental to or consequential on any exercise of the right.]



## **CHAPTER IV: NULLITY OF MARRIAGE**

### **18. Petition for decree of nullity**

Any husband or wife may present a petition to the District Court or to the High Court, praying that his or her marriage may be declared null and void.

### **19. Grounds of decree**

Such decree may be made on any of the following grounds:-

- (1) that the respondent was impotent at the time of the marriage and at the time of the institution of the suit;
- (2) that the parties are within the prohibited degrees of consanguinity (whether natural or legal) or affinity;
- (3) that either party was a lunatic or idiot at the time of the marriage;
- (4) that the former husband or wife of either party was living at the time of the marriage, and the marriage with such former husband or wife was then in force.

Nothing in this section shall affect the jurisdiction of the High Court to make decrees of nullity of marriage on the ground that the consent of either party was obtained by force or fraud.

### **20. Confirmation of District Judge's decree**

Every decree of nullity of marriage made by a District Judge shall be subject to confirmation by the High Court, and the provisions of section 17, clauses 1, 2, 3 and 4, shall, mutatis mutandis apply to such decrees.

### **21. Children of annulled marriage**

Where a marriage is annulled on the ground that a former husband or wife was living, and it is adjudged that the subsequent marriage was contracted in good faith and with the full belief of the parties that the former husband or wife was dead, or when a marriage

is annulled on the ground of insanity, children begotten before the decree is made shall be specified in the decree, and shall be entitled to succeed, in the same manner as legitimate children, to the estate of the parent who at the time of the marriage was competent to contract.

## **CHAPTER V: JUDICIAL SEPARATION**

### **22. Bar to decree for divorce a mensa et toro but judicial separation obtainable by husband or wife**

No decree shall hereafter be made for a divorce a mensa et toro, but the husband or wife may obtain a decree of judicial separation, on the ground of adultery, or cruelty, or desertion without reasonable excuse for two years or upwards, and such decree shall have the effect of a divorce a mensa et toro under the existing law, and such other legal effect as hereinafter mentioned.

### **23. Application for separation made by petition**

Application for judicial separation on any one of the grounds aforesaid, may be made by either husband or wife by petition to the District Court or the High Court; and the court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree judicial separation accordingly.

### **24. Separated wife deemed spinster with respect to after - acquired property**

In every case of a judicial separation under this Act, the wife shall, from the date of the sentence, and whilst the separation continues, be considered as unmarried with respect to property of every description which she may acquire, or which may come to or devolve upon her.

Such property may be disposed of by her in all respects as an unmarried woman, and on her decease the same shall, in a case she dies intestate, go as the same would have gone if her husband had

been then dead:

PROVIDED that, if any such wife again cohabits with her husband, all such property as she may be entitled to when such cohabitation takes place shall be held to her separate use, subject, however, to any agreement in writing made between herself and her husband whilst separate.

## **25. Separated wife deemed spinster for purposes of contract and suing**

In every case of a judicial separation under this Act, the wife shall whilst so separated, be considered as an unmarried woman for the purpose of contract, and wrongs and injuries, and suing and being sued in any civil proceedings; and her husband shall not be liable in respect of any contract, act or costs entered into, done, omitted or incurred by her during the separation:

PROVIDED that where, upon any such judicial separation, alimony has been decreed or ordered to be paid to the wife, and the same is not duly paid by the husband, he shall be liable for necessaries supplied for her use:

PROVIDED ALSO that nothing shall prevent the wife from joining at any time during such separation, in the exercise of any joint power given to herself and her husband.

## **REVERSAL OF DECREE OF SEPARATION**

### **26. Decree of separation obtained during absence of husband or wife may be reversed**

Any husband or wife, upon the application of whose wife or husband, as the case may be, a decree of judicial separation has been pronounced, may, at anytime thereafter, present a petition to the court by which the decree was pronounced, praying for a reversal of such decree, on the ground that it was obtained in his or her absence, and that there was reasonable excuse for the alleged desertion, where desertion was the ground of such decree. The

court may, on being satisfied of the truth of the allegations of such petition, reverse the decree accordingly; but such reversal shall not prejudice or affect the rights or remedies which any other person would have had, in case it had not been decreed, in respect of any debts, contracts, or acts of the wife incurred, entered into, or done between the times of the sentence of separation and of the reversal thereof.

## **CHAPTER VI: PROTECTION-ORDERS**

### **27. Deserted wife may apply to court for protection**

Any wife to whom section 4 of the Indian Succession Act, 1865<sup>17</sup>, (10 of 1865) does not apply, may, when deserted by her husband, present a petition to the District Court or the High Court, at any time after such desertion, for an order to protect any property which she may have acquired or may acquire, and any property of which she may have become possessed or may become possessed after such desertion, against her husband or his creditors, or any person claiming under him.

### **28. Court may grant protection order**

The court, if satisfied of the fact of such desertion, and that the same was without reasonable excuse, and that the wife is maintaining herself by her own industry or property, may make and give to the wife an order protecting her earning and other property from her husband and all creditors and persons claiming under him. Every such order shall state the time at which the desertion commenced, and shall, as regards all persons dealing with the wife in reliance thereon, be conclusive as to such time.

### **29. Discharge or variation of orders**

The husband or any creditor of, or person claiming under him, may apply to the court by which such order was made for the discharge or variation thereof, and the court, if the desertion has ceased, or if for any other reason it thinks fit so to do, may discharge or vary the order accordingly.

### **30. Liability of husband seizing wife's property after notice of order**

If the husband, or any creditor of, or person claiming under the husband, seizes or continues to hold any property of the wife after notice of any such order, he shall be liable, at the suit of the wife (which she is hereby empowered to bring), to return or deliver to her the specific property, and also to pay her a sum equal to double its value.

### **31. Wife's legal position during continuance of order**

So long as any such order of protection remains in force the wife shall be and be deemed to have been, during such desertion of her, in the like position in all respects, with regard to property and contracts and suing and being sued, as she would be under this Act, if she obtained a decree of judicial separation.

## **CHAPTER VII: RESTITUTION OF CONJUGAL RIGHTS**

### **32. Petition for restitution of conjugal rights**

When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, either wife, or husband may apply by petition to the District Court or the High Court for restitution of conjugal rights, and the court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

### **33. Answer to petition**

Nothing shall be pleaded in answer to a petition for restitution of conjugal rights, which would not be ground for a suit for judicial separation or for a decree for nullity of marriage.

## **CHAPTER VIII: DAMAGES AND COSTS**

### **34. Husband may claim damages from adulterer**

Any husband may, either in a petition for dissolution of marriage or for judicial separation, or in a petition of the District Court or the High Court limited to such object only, claim damages from any person on the ground of his having committed adultery with the wife of such petitioner. Such petition shall be served on the alleged adulterer and the wife, unless the court dispenses with such service, or directs some other service to be substituted. The damages to be recovered in any such petition shall be ascertained by the said court, although the respondents or either of them may not appear. After the decision has been given, the court may direct in what manner such damages shall be paid or applied.

### **35. Power to order adulterer to pay costs –**

Whenever in any petition presented by a husband the alleged adulterer has been made a co-respondent, and the adultery has been established, the court may order the co-respondent to pay the whole or any part of the costs of the proceedings:

PROVIDED that the co-respondent shall not be ordered to pay the petitioner's costs-

- (1) if the respondent was, at the time of the adultery, living apart from her husband and leading the life of a prostitute, or
- (2) if the co-respondent had not, at the time of the adultery, reason to believe the respondent to be a married woman

Power to order litigious intervenor to pay costs- Whenever any application is made under section 17, the court, if it thinks that the applicant had no grounds or no sufficient grounds for intervening, may order him to pay the whole or any part of the costs occasioned by the application.

## **CHAPTER IX: ALIMONY**

### **36. Alimony pendente lite**

In any suit under this Act, whether it be instituted by a husband or a wife, and whether or not she has obtained an order of protection the wife may present a petition for alimony pending the suit.

Such petition shall be served on the husband; and the court, on being satisfied of the truth of the statements therein contained, may make such order on the husband for payment to the wife of alimony pending the suit as it may deem just:

PROVIDED that alimony pending the suit shall in no case exceed one fifth of the husband's average net income for the three years next preceding the date of the order, and shall continue, in case of a decree for dissolution of marriage or of nullity of marriage, until the decree is made absolute or is confirmed, as the case may be.

### **37. Power to order permanent alimony**

The High Court, may, if it thinks fit, on any decree absolute declaring a marriage to be dissolved, or on any decree of judicial separation obtained by the wife, and the District Judge may, if he thinks fit, on the confirmation of any decree of his declaring a marriage to be dissolved, or on any decree of judicial separation obtained by the wife, order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as, having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it thinks reasonable; and for that purpose may cause a proper instrument to be executed by all necessary parties.

Power to order monthly or weekly payments- In every such case the court may make an order on the husband for payment to the wife of such monthly or weekly sums for her maintenance and support as the court may think reasonable:

PROVIDED that if the husband afterwards from any cause becomes unable to make such payments, it shall be lawful for the court to discharge or modify the order, or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid, and again to revive the same order wholly or in part as to the court seems fit.

### **38. Court may direct payment of alimony to wife or to her trustee**

In all cases in which the Court makes any decree or order for alimony, it may direct the same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the court, and may impose any terms or restrictions which to the Court seem expedient, and may from time to time appoint a new trustee, if it appears to the court expedient so to do.

## **CHAPTER X: SETTLEMENTS**

### **39. Power to order settlement of wife's property for benefit of husband and children**

Whenever the court pronounces a decree of dissolution of marriage or judicial separation for adultery of the wife, if it is made to appear to the court that the wife is entitled to any property, the court may, if it thinks fit, order such settlement as it thinks reasonable to be made of such property or any part thereof, for the benefit of the husband, or of the children of the marriage, or of both.

Any instrument executed pursuant to any order of the court at the time or after the pronouncing of a decree of dissolution of marriage or judicial separation, shall be deemed valid notwithstanding the existence of the disability of coverture at the time of the execution thereof.

Settlement of damages- The court may direct that the whole or any part of the damages recovered under section 34, shall be settled for the benefit of the children of the marriage, or as a provision for the maintenance of the wife.



#### **40. Inquiry into existence of ante-nuptial or post-nuptial settlements**

The High Court, after a decree absolute for dissolution of marriage, or a decree of nullity of marriage, and the District Court, after its decree for dissolution of marriage or of nullity of marriage has been confirmed, may inquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree, and may make such orders, with reference to the application of the whole or a portion of the property settled, whether for the benefit of the husband or the wife, or the children (if any) of the marriage, or of both children and parents, as to the court seems fit:

PROVIDED that the court shall not make any order for the benefit of the parents or either of them at the expense of the children.

### **CHAPTER XI: CUSTODY OF CHILDREN**

#### **41. Power to make orders as to custody of children in suits for separation**

In any suit for obtaining a judicial separation the court may from time to time, before making its decree, make such interim orders, and may make such provision in the decree, as it deems proper with respect to the custody, maintenance and education of the minor children, the marriage of whose parents is the subject of such suit, and may, if it thinks fit, direct proceedings to be taken for placing such children under the protection of the said court.

#### **42. Power to make such orders after decree**

The court, after a decree of judicial separation, may upon application (by petition) for this purpose make, from time to time, all such orders and provisions, with respect to the custody, maintenance and education of the minor children, the marriage of whose parents is the subject of the decree, or for placing such children under the protection of the said court, as might have been made by such decree or by interim orders in case the proceedings for obtaining such decree were still pending.

### **43. Power to make orders as to custody of children in suits for dissolution or nullity**

In any suit for obtaining a dissolution of marriage or a decree of nullity of marriage instituted in, or removed to, a High Court, the court may from time to time, before making its decree absolute or its decree (as the case maybe), make such interim orders, and may make such provision in the decree absolute or decree, and in any such suit instituted in a District Court, the court may from time to time, before its decree is confirmed, make such interim orders, and may make such provision on such confirmation, as the High Court or District Court (as the case may be) deems proper with respect to the custody, maintenance and education of the minor children, the marriage of whose parents is the subject of the suit, and may, if it thinks fit, direct proceedings to be taken for placing such children under the protection of the court.

### **44. Power to make such orders after decree or confirmation**

The High Court after a decree absolute for dissolution of marriage or a decree of nullity of marriage, and the District Court after a decree for dissolution of marriage or of nullity of marriage has been confirmed, may, upon application by petition for the purpose, make from time to time all such orders and provisions, with respect to the custody, maintenance and education of the minor children, and the marriage of whose parents was the subject of the decree, or for placing such children under the protection of the said court, as might have been made by such decree absolute or decree (as the case may be), or by such interim orders as aforesaid.

## **CHAPTER XII: PROCEDURE**

### **45. Code of Civil Procedure to apply**

Subject to the provisions herein contained, all proceedings under this Act between the party and party shall be regulated by the Code of Civil Procedure<sup>18</sup>.

#### **46. Forms of petitions and statements**

The forms set forth in the Schedule to this Act, with such variation as the circumstances of each case require, maybe used for the respective purposes mentioned in such Schedule.

#### **47. Stamp on petition to state absence of collusion**

Every petition under this Act for a decree of dissolution of marriage, or of nullity of marriage, or of judicial separation shall state that there is not any collusion or connivance between the petitioner and the other party to the marriage.

Statements to be verified- The statements contained in every petition under this Act shall be verified by the petitioner or some other competent person in manner required by law for the verification of complaints, and may at the hearing be referred to as evidence.

#### **48. Suits on behalf of lunatics**

When the husband or wife is a lunatic or idiot, any suit under this Act (other than a suit for restitution of conjugal rights) may be brought on his or her behalf by the committee or other person entitled to his or her custody.

#### **49. Suits by minors**

Where the petitioner is a minor, he or she shall sue by his or her next friend to be approved by the court; and no petition presented by a minor under this Act shall be filed until the next friend has undertaken in writing to be answerable for costs. Such undertaking shall be filed in court, and the next friend shall thereupon be liable in the same manner and to the same extent as if he were a plaintiff in an ordinary suit.

#### **50. Service of petition**

Every petition under this Act shall be served on the party to be affected thereby, either within or without 22[India], in such manner as the High Court by general or special order from time to time

directs:

PROVIDED that the court may dispense with such service altogether in case it seems necessary or expedient so to do.

### **51. Mode of taking evidence**

The witnesses in all proceedings before the court, where their attendance can be had, shall be examined orally, and any party may offer himself or herself as a witness, and shall be examined, and may be cross-examined and re-examined, like any other witness:

PROVIDED that the parties shall be at liberty to verify their respective cases in whole or in part by affidavit, but so that the deponent in every such affidavit shall, on the application of the opposite party, or by direction of the court, be subject to be cross-examined by or on behalf of the opposite party orally, and after such cross-examination may be re-examined orally as aforesaid by or on behalf of the party by whom such affidavit was filed.

### **52. Competence of husband and wife to give evidence as to cruelty or desertion**

On any petition presented by a wife, praying that her marriage may be dissolved by reason of her husband having been guilty of adultery coupled with cruelty, or adultery coupled with desertion without reasonable excuse, the husband and wife respectively shall be competent and compellable to give evidence of or relating to such cruelty or desertion.

### **53. Power to close doors**

The whole or any part of any proceeding under this Act may be heard, if the court thinks fit, with closed doors.

### **54. Power to adjourn**

The court may, from time to time, adjourn the hearing of any petition under this Act, and may require further evidence thereon if it sees fit so to do.

## **55. Enforcement of, and appeal from, orders and decrees**

All decrees and orders made by the court in any suit or proceeding under this Act shall be enforced and may be appealed from, in the like manner as the decrees and orders of the court made in the exercise of its original civil jurisdiction are enforced and may be appealed from, under the laws, rules and orders for the time being in force:

PROVIDED that there shall be no appeal from a decree of a District Judge for dissolution of marriage or of nullity of marriage: nor from the order of the High Court confirming or refusing to confirm such decree: No appeals as to costs:

PROVIDED also that there shall be no appeal on the subject of costs only.

## **56. Appeal to the Supreme Court**

Any person may appeal to [the Supreme Court] from any decree (other than a decree nisi) or order under this Act of a High Court made on appeal or otherwise, and from any decree (other than a decree nisi) or order made in the exercise of original jurisdiction by Judges of a High Court or of any Division Court from which an appeal shall not lie to the High Court, when the High Court declares that the case is a fit one for appeal to [the Supreme Court].

## **CHAPTER XIII: RE-MARRIAGE**

**57. Liberty to parties to marry again:** When six months after the date of an order a High Court confirming the decree for a dissolution of marriage made by a District Judge have expired, or when six months after the date of any decree of a High Court dissolving a marriage have expired, and no appeal has been presented against such decree to the High Court in its appellate jurisdiction, or when any such appeal has been dismissed, or when in the result of any such appeal any marriage is declared to be dissolved, but not sooner, it shall be lawful for the respective parties to the marriage to marry again, as if the prior marriage had been dissolved by death:

PROVIDED that no appeal to [Supreme Court] has been presented against any such order or decree. When such appeal has been dismissed, or when in the result thereof the marriage is declared to be dissolved, but no sooner, it shall be lawful for the respective parties to the marriage to marry again as if the prior marriage had been dissolved by death.

**58. English clergyman not compelled to solemnize marriages of persons divorced for adultery.** No clergyman in Holy Orders of the Church of England shall be compelled to solemnize the marriage of any person whose former marriage has been dissolved on the ground of his or her adultery, or shall be liable to any suit, penalty or censure for solemnizing or refusing to solemnize the marriage of any such person.

**59. English Minister refusing to perform ceremony to permit use of his Church.** When any minister of any Church or Chapel of the said Church refuses to perform such marriage-service between any person who but for such refusal would be entitled to have the same service performed in such Church or Chapel, such minister shall permit any other minister in Holy Orders of the said Church, entitled to officiate within the diocese in which such Church or Chapel is situate, to perform such marriage service in such Church or Chapel.

#### **CHAPTER XIV: MISCELLANEOUS**

**60. Decree for separation or protection-order valid as to persons dealing with wife before reversal.** Every decree for judicial separation or order to protect property, obtained by a wife under this Act, shall, until reversed or discharged, be deemed valid, so far as necessary, for the protection of any person dealing with the wife.

No reversal, discharge or variation of such decree or order shall affect any rights or remedies which any person would otherwise have had in respect of any contracts or acts of the wife entered into or done between the dates of such decree or order, and of the reversal, discharge or variation thereof.

Indemnity of persons making payment to wife without notice of reversal or decree or protection-order

All persons who in reliance on any such decree or order make any payment to, or permit any transfer or act to be made or done by, the wife who has obtained the same shall, notwithstanding such decree or order may then have been reversed, discharged or varied, or the separation of the wife from her husband may have ceased, or at some time since the making of the decree or order been discontinued, be protected and indemnified as if, at the time of such payment, transfer or other act, such decree or order were valid and still subsisting without variation, and the separation had not ceased or been discontinued, unless, at the time of payment, transfer or other act, such persons had notice of the reversal, discharge or variation of the decree or order or of the cessation or discontinuance of the separation.

### **61. Bar of suit for criminal conversation**

After this Act comes into operation, no person competent to present a petition under sections 2 and 10 shall maintain a suit for criminal conversation with his wife.

### **62. Power to make rules**

The High Court shall make such rules under this Act as it may from time to time consider expedient, and may from time to time alter and add to the same:

PROVIDED that such rules, alterations and additions are consistent with the provisions of this Act and the Code of Civil Procedure.

# Hindu Adoptions and Maintenance Act, 1956

## CHAPTER 1: PRELIMINARY

### 1 Short title and extent

- (1) This Act may be called the Hindu Adoptions and Maintenance Act, 1956
- (2) It extends to the whole of India except the State of Jammu and Kashmir.

### 2 Application of Act

- (1) This Act applies-
  - (a) to any person, who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,
  - (b) to any person who is a Buddhist, Jaina or Sikh by religion and
  - (c) to any other person who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of the law in respect any of the matters dealt with herein if this Act had not been passed.

**Explanation:** The following persons are Hindus, Buddhists, Jains or Sikhs by religion, as the case may be:-

- (a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jains or Sikhs by religion;
- (b) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina, and Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged;



[(bb) any child, legitimate or illegitimate who has been abandoned both by his father and mother or whose parentage is known and who in either case is brought up as a Hindu, Buddhist, Jaina or Sikh; and]

(c) any person who is convert or reconvert to the Hindu, Buddhist, Jaina or Sikh religion.

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

(3) The expression "Hindu" in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person whom this Act applies by virtue of the provisions contained in this section.

### **3 Definitions**

In this Act, unless the context otherwise requires :-

(a) the expressions "custom" and "usage" signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family:

PROVIDED the rule is certain and not unreasonable or opposed to public policy:

PROVIDED FURTHER that, in the case of a rule applicable only to a family, it has not been discontinued by the family;

(b) "Maintenance" includes-

(i) in all cases, provision for food, clothing, residence, education and medical attendance and treatment;

(ii) in the case of an unmarried daughter, also the reasonable expenses of and incidents to her marriage;

- (c) "Minor" means a person who has not completed his or her age of eighteen years.

#### **4 Overriding effect of Act**

Save as otherwise expressly provided in this Act-

- (a) any text, rule of interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;
- (b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus insofar as it is inconsistent with any of the provisions contained in this Act.

### **CHAPTER II: ADOPTIONS**

#### **5 Adoptions to be regulated by this chapter**

- (1) No adoption shall be made after the commencement of this Act by or to a Hindu except in accordance with the provisions contained in this Chapter, and any adoption made in contravention of the said provision shall be void.
- (2) An adoption which is void shall neither create any rights in the adoptive family in favour of any person which he or she could not have acquired except by reason of the adoption, nor destroy the right of any person in the family of his or her birth.

#### **6 Requisites of a valid adoption**

No adoption shall be valid unless-

- (i) the person adopting has the capacity, and also the right, to take in adoption;
- (ii) the person giving in adoption has the capacity to do so;
- (iii) the person adopted is capable of being taken in adoption; and
- (iv) the adoption is made in compliance with the other conditions mentioned in this Chapter.

## **7 Capacity of a male Hindu to take in adoption**

Any male Hindu who is sound mind and is not a minor has the capacity to take a son or a daughter in adoption:

PROVIDED that, if he has a wife living, he shall not adopt except with the consent of his wife unless the wife has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

**Explanation:** If a person has more than one wife living at the time of adoption, the consent of all the wives is necessary unless the consent of any one of the them is unnecessary for any of the reasons specified in the preceding proviso.

## **8 Capacity of a female Hindu to take in adoption**

Any female Hindu :-

- (a) Who is of sound mind,
- (b) who is not a minor, and
- (c) who is not married, or if married, whose marriage has been dissolved or whose husband is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind, has the capacity to take a son or daughter in adoption.

## **9 Persons capable of giving in adoption**

- (1) No person except the father or mother the guardian of a child shall have the capacity to give the child in adoption.
- (2) Subject to the provision of [sub-section (3) and sub-section (4)], the father, if alive, shall alone have the right to give in adoption, but such right shall not be exercised save with the consent of the mother unless the mother has completely and finally renounced the world or has ceased to be a Hindu has been declared by a court of competent jurisdiction to be of unsound mind.

- (3) The mother may give the child in adoption if the father is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.
- [(4) Where both the father and mother are dead or have completely and finally renounced the world or have abandoned the child or have been declared by a court of competent jurisdiction to be of unsound mind or where the parentage of the child is not known, the guardian of the child may give the child in adoption with the previous permission of the court to any person including the guardian himself.]
- (5) Before granting permission to a guardian under sub-section (4), the court shall be satisfied that the adoption will be for the welfare of the child, due consideration being for this purpose given to the wishes of the child having regard to the age and understanding of the child and that the applicant for permission has not received or agreed to receive and that no person has made or given or agreed to make or give to the applicant any payment or reward in consideration of the adoption except such as the court may sanction.

**Explanation:** For the purposes of this section-

- (i) the expression "father" and "mother" do not include an adoptive father and an adoptive mother;
- [(ia) "guardian" means a person having the care of the person of a child or of both his person and property and includes-
- (a) a guardian appointed by the will of the child's father or mother; and
  - (b) a guardian appointed or declared by a court: and]
- (ii) "court" means the city civil court or a district court within the local limits of whose jurisdiction the child to be adopted ordinarily resides.

## 10 Persons who may be adopted

No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely:-

- (i) he or she is Hindu;
- (ii) he or she has not already been adopted;
- (iii) he or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption;
- (iv) he or she has not completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption.

The person above the age of 15 years cannot be given in adoption and if there is some custom permitting that the same must be strictly pleaded and proved-*Mahalingam v. Kannayyar AIR 1990 Mad. 333. 1989 (2) MLJ 3441*

Existence of custom be it family or tribal custom having its applicability to the parties concerned whereby the adoption of a person married or of the age of more than 15 years is permitted, is all that is required to be established by the provision of section 10 so as to make adoption valid. -*Maya Ram v. Jai Narian 1989 (1) HLR 352*

## 11 Other conditions for a valid adoption

In every adoption, the following conditions must be complied with:

- (i) if the adoption is of a son, the adoptive father or mother by whom adoption is made must not have a Hindu son, son's son or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption;
- (ii) if the adoption is of a daughter, the adoptive father or mother by whom the adoption is made must not have a Hindu daughter

or son's daughter (whether by legitimate blood relationship or by adoption) living at the time of adoption;

- (iii) if the adoption is by a male and the person to be adopted is a female, the adoptive father is at least twenty one years older than the person to be adopted;
- (iv) if the adoption is by a female and the person to be adopted is a male, the adoptive mother is at least twenty -one years older than the person to be adopted;
- (v) the same child may not be adopted simultaneously by two or more person;
- (vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth 1[or in case of an abandoned child or child whose parentage is not known, from the place or family where it has been brought up] to the family of its adoption:

PROVIDED that the performance of datta homam shall not be essential to the validity of adoption.

## **12 Effects of adoption**

An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family :

PROVIDED that -

- (a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;
- (b) any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property,

including the obligation to maintain relatives in the family of his or her birth;

- (c) the adopted child shall not divest any person of any estate which vested in him or her before the adoption.

### **13 Right of adoptive parents to dispose of their properties**

Subject to any agreement to the contrary, an adoption does not deprive the adoptive father or mother of the power to dispose of his or her property by transfer inter vivos or by will.

**Explanation:** Where the child is taken in adoption by the sole surviving widow, oral relinquishment by her in favour of adopted child is valid and effective.-Hirabai v. Babu Manika AIR 1980 Bom. 315

### **14 Determination of adoptive mother in certain cases**

- (1) Where a Hindu who has a wife living adopts a child, she shall be deemed to be the adoptive mother.
- (2) Where an adoption has been made with the consent of more than one wife, the senior-most in marriage among them shall be deemed to be the adoptive mother and the other to be step mothers
- (3) Where a widower or a bachelor adopts a child, any wife whom he subsequently marries shall be deemed to be step mother of the step mother of the adopted child.
- (4) Where a widow or an unmarried woman adopts a child, any husband whom she marries subsequently shall be deemed to be the step father of the adoptive child.

### **15 Valid adoption not to be cancelled**

No adoption which has been validly made can be cancelled by the adoptive father or mother or any other person, nor can the adopted child renounce his or her status as such and return to the family of his or her birth.

## **16. Presumption as to registered documents relating to adoption**

Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved.

## **17 Prohibition of Certain Payments**

- (1) No person shall receive or agree to receive any payment or other reward in consideration of the adoption of any person, and no person shall make or give or agree to make or give to any other person any payment or reward the receipt of which is prohibited by this section.
- (2) If any person contravenes the provision of sub-section (1), he shall be punishable with imprisonment which may extend to six months, or with fine, or with both .
- (3) No prosecution under this section shall be instituted without the previous sanction of the State Government or an officer authorised by the State Government in this behalf.

## **CHAPTER III: MAINTENANCE**

### **18 Maintenance of wife**

- (1) Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her lifetime.
- (2) A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance -
  - (a) If he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or of willfully neglecting her;



- (b) If he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband;
  - (c) If he is suffering from a virulent form of leprosy;
  - (d) If he has any other wife living ;
  - (e) If he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;
  - (f) if he has ceased to be a Hindu by conversion to another religion;
  - (g) if there is any other cause justifying her living separately;
- (3) A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.

## **19 Maintenance of Widowed daughter-in-law**

- (1) A Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained after the death of her husband by her father-in-law:

PROVIDED and to the extent that she is unable to maintain herself out of her own earnings or other property or, where she has no property of her own, is unable to obtain maintenance -

- (a) from the estate of her husband or her father or mother, or
  - (b) from her son or daughter, if any, or his or her estate.
- (2) Any obligation under sub-section (1) shall not be enforceable if the father- in- law has not the means to do so from any coparcenary property in his possession out of which the daughter-in-law has not obtained any share, and any such obligation shall cease on the re-marriage of the daughter-in-law.

## **20 Maintenance of children and aged parents**

- (1) Subject to the provisions of this section a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.
- (2) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.
- (3) The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends insofar as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property.

**Explanation:** In this section "parent" includes a childless step-mother.

## **21 Dependants defined**

For the purposes of this Chapter "dependants" means the following relatives of the deceased:

- (i) his or her father ;
- (ii) his or her mother;
- (iii) his widow, so long as she does not re- marry
- (iv) his or her son or the son of his predeceased son or the son of predeceased son of his predeceased son, so long as he is a minor:

PROVIDED and to the extent that he is unable to obtain maintenance, in the case of a grandson from his father's or mother's estate, and in the case of a great - grand son, from the estate of his father or mother or father's father or father's mother;

- (v) his or her unmarried daughter, or the unmarried daughter of his predeceased son or the unmarried daughter of a predeceased son of his predeceased son , so long as she remains unmarried;

PROVIDED and to the extent that she is unable to obtain maintenance, in the case of a grand - daughter from her father's or mother's estate and in the case of great-grand- daughter from the estate of her father or mother or father's father or father's mother;

(vi) his widowed daughter :

PROVIDED and to the extent that she is unable to obtain maintenance

(a) from the estate of her husband, or

(b) from her son or daughter if any, or his or her estate; or

(c) from her father-in-law or his father or the estate of either of them ;

(vii) any widow of his son or of a son of his predeceased son, so long as she does not remarry:

PROVIDED and to the extent that she is unable to obtain maintenance from her husband's estate, or from her son or daughter, if any, or his or her estate; or in the case of a grandson's widow, also from her father-in-law's estate

(viii) his or her minor illegitimate son, so long as he remains a minor;

(ix) his or her illegitimate daughter, so long as she remains unmarried.

## **22 Maintenance of dependents**

(1) Subject to the provisions of sub section (2) the heirs of a deceased Hindu are bound of maintain the dependants of the deceased out of the estate inherited by them from the deceased.

(2) Where a dependant has not obtained, by testamentary or intestate succession, any share in the estate of a Hindu dying after the commencement of this Act, the dependant shall be entitled, subject to the provisions of this Act, to maintenance from those who take the estate.

- (3) The liability of each of the persons who takes the estate shall be in proportion to the value of the share or part of the estate taken by him or her.
- (4) Notwithstanding anything contained in sub section (2) or sub section (3), no person who is himself or herself a dependant shall be liable to contribute to the maintenance of others, if he or she has obtained a share or part the value of which is, or would, if the liability to contribute were enforced, become less than what would be awarded to him or her by way of maintenance under this Act.

### **23 Amount of maintenance**

- (1) It shall be in the discretion of the court to determine whether any, and if so what, maintenance shall be awarded under the provisions of this Act, and in doing so the court shall have due regard to the considerations set out in sub- section (2), or sub-section(3), as the case may be, so far as they are applicable.
- (2) In determining the amount of maintenance, if any, to be awarded to a wife, children or aged or infirm parents under this Act, regard shall be had to:-
  - (a) the position and status of the parties;
  - (b) the reasonable wants of the claimant ;
  - (c) if the claimant is living separately, whether the claimant is justified in doing so;
  - (d) the value of the claimant's property and any income derived from such property , or from the claimant's own earnings or from any other sources;
  - (e) the number of persons entitled to maintenance under this Act
- (3) In determining the amount of maintenance, if any, to be awarded to a dependent under this Act, regard shall be had to.-

- (a) the net value of the estate of the deceased after providing for the payment of his debts;
- (b) the provision, if any, made under a will of the deceased in respect of the dependant;
- (c) the degree of relationship between the two;
- (d) the reasonable wants of the dependant;
- (e) the past relations between the dependant and the deceased;
- (f) the value of the property of the dependant and any income derived from such property; or from his or her earnings or from any other source;
- (g) the number of dependants entitled to maintenance under this Act.

#### **24 Claimant to maintenance should be a Hindu**

No person shall be entitled to claim maintenance under this chapter if he or she has ceased to be a Hindu by conversion to another religion.

#### **25 Amount of Maintenance may be altered on change of circumstances:**

The amount of maintenance, whether fixed by a decree of court or by agreement, either before or after the commencement of this Act, may be altered subsequently if there is a material change in the circumstances justifying such alteration.

#### **26 Debts to have priority**

Subject to the provision contained in section 27 debts of every description contracted or payable by the deceased shall have priority over the claims of his dependants for maintenance under this act.

## **27 Maintenance when to be a charge**

A dependant's claim for maintenance under this Act shall not be a charge on the estate of the deceased or any portion thereof, unless one has been created by the will of the deceased, by a decree of court, by agreement between the dependant and the owner of the estate or portion, or otherwise,

## **28 Effect of transfer of property on right to maintenance**

Where a dependant has a right to receive maintenance out of an estate, and such estate or any part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right or if the transfer is gratuitous; but not against the transferee for consideration and without notice of the right.

# Family Courts Act, 1984

[Act No. 66 of Year 1984, dated 14th September, 1984]

An Act to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith

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

## CHAPTER I: PRELIMINARY

### 1. Short title, extent and commencement

- (1) This Act may be called the Family Courts Act, 1984.
- (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, and different dates may be appointed for different States.

### 2. Definitions

In this Act, unless the context otherwise requires:-

- (a) "Judge" means the Judge or, as the case may be, the Principal Judge, Additional Principal Judge or other Judge of a Family Court;
- (b) "notification" means a notification published in the Official Gazette;
- (c) "prescribed" means prescribed by rules made under this Act;
- (d) "Family Court" means a Family Court established under section 3;

- (e) all other words and expressions used but not defined in this Act and defined in the Code of Civil Procedure, 1908 (5 of 1908) shall have the meanings respectively assigned to them in that Code.

## **CHAPTER II: FAMILY COURTS**

### **3. Establishment of Family Courts**

- (1) For the purpose of exercising the jurisdiction and powers conferred on a Family Court by this Act, the State Government, after consultation with the High Court, and by notification:-
  - (a) shall, as soon as may be after the commencement of this Act, establish for every area in the State comprising a city or town whose population exceeds one million, a Family Court;
  - (b) may establish Family Courts for such other areas in the State as it may deem necessary.
- (2) The State Government shall, after consultation with the High Court, specify, by notification, the local limits of the area to which the jurisdiction of a Family Court shall extend and may, at any time, increase, reduce or alter such limits.

### **4. Appointment of Judges**

- (1) The State Government may, with the concurrence of the High Court, appoint one or more persons to be the Judge or Judges of a Family Court.
- (2) When a Family Court consists of more than one Judge:-
  - (a) each of the Judges may exercise all or any of the powers conferred on the Court by this Act or any other law for the time being in force;
  - (b) the State Government may, with the concurrence of the High Court, appoint any of the Judges to be the Principal Judge and any other Judge to be the Additional Principal Judge;



- (c) the Principal Judge may, from time to time, make such arrangements as he may deem fit for the distribution of the business of the Court among the various Judges thereof;
  - (d) the Additional Principal Judge may exercise the powers of the Principal Judge in the event of any vacancy in the office of the Principal Judge or when the Principal Judge is unable to discharge his functions owing to absence, illness or any other cause.
- (3) A person shall not be qualified for appointment as a Judge unless he:-
- (a) has for at least seven years held a judicial office in India or the office of a member of a Tribunal or any post under the Union or a State requiring special knowledge of law; or
  - (b) has for at least seven years been an advocate of a High Court or of two or more such Courts in succession; or
  - (c) possesses such other qualifications as the Central Government may, with the concurrence of the Chief Justice of India, prescribe.
- (4) In selecting persons for appointment as Judges:-
- (a) every endeavour shall be made to ensure that persons committed to the need to protect and preserve the institution of marriage and to promote the welfare of children and qualified by reason of their experience and expertise to promote the settlement of disputes by conciliation and counselling are selected; and
  - (b) preference shall be given to women.
- (5) No person shall be appointed as, or hold the office of, a Judge of a Family Court after he has attained the age of sixty-two years.
- (6) The salary or honorarium and other allowances payable to, and the other terms and conditions of service of a Judge shall be such as the State Government may, in consultation with the High Court, prescribe.

## **5. Association of social welfare agencies, etc.**

The State Government may, in consultation with the High Court, provide, by rules, for the association, in such manner and for such purposes and subject to such conditions as may be specified in the rules, with a Family Court of:-

- (a) institutions or organisations engaged in social welfare or the representatives thereof;
- (b) persons professionally engaged in promoting the welfare of the family;
- (c) persons working the field of social welfare; and
- (d) any other person whose association with a Family Court would enable it to exercise its jurisdiction more effectively in accordance with the purposes of this Act.

## **6. Counsellors, officers and other employees of Family Courts**

- (1) The State Government shall, in consultation with the High Court, determine the number and categories of counsellors, officers and other employees required to assist a Family Court in the discharge of its functions and provide the Family Court with such counsellors, officers and other employees as it may think fit.
- (2) The terms and conditions of association of the counsellors and the terms and conditions of service of the officers and other employees, referred to in sub-section (1), shall be such as may be specified by rules made by the State Government.

## **CHAPTER III: JURISDICTION**

### **7. Jurisdiction**

- (1) Subject to the other provisions of this Act, a Family Court shall-
  - (a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

**Explanation:** The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:-

- (a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;
  - (b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;
  - (c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;
  - (d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;
  - (e) a suit or proceeding for a declaration as to the legitimacy of any person;
  - (f) a suit or proceeding for maintenance;
  - (g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.
- (2) Subject to the other provisions of this Act, a Family Court shall also have and exercise:-
- (a) the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and
  - (b) such other jurisdiction as may be conferred on it by any other enactment.

## **8. Exclusion of jurisdiction and pending proceedings**

Where a Family Court has been established for any area:-

- (a) no district court or any subordinate civil court referred to in sub-section (1) of section 7 shall, in relation to such area, have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the explanation to that sub-section;
- (b) no magistrate shall, in relation to such area, have or exercise any jurisdiction or power under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);
- (c) every suit or proceeding of the nature referred to in the explanation to sub-section (1) of section 7 and every proceeding under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974):-
  - (i) which is pending immediately before the establishment of such Family Court before any district court or subordinate court referred to in that sub-section or, as the case may be, before any Magistrate under the said Code; and
  - (ii) which would have been required to be instituted or taken before or by such Family Court if, before the date on which such suit or proceeding was instituted or taken, this Act had come into force and such Family Court had been established, shall stand transferred to such Family Court on the date on which it is established.

## **CHAPTER IV: PROCEDURE**

### **9. Duty of Family Court to make efforts for settlement**

- (1) In every suit or proceeding, endeavour shall be made by the Family Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement in respect of the subject-matter of the suit or proceeding and for this purpose a Family Court may, subject to any rules made by the High Court, follow such procedure as it may deem fit.

- 2) If, in any suit or proceeding, at any stage, it appears to the Family Court that there is a reasonable possibility of a settlement between the parties, the Family Court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect such a settlement.
- (3) The power conferred by sub-section (2) shall be in addition to, and not in derogation of, any other power of the Family Court to adjourn the proceedings.

## **10. Procedure generally**

- (1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings] other than proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)], before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a Civil Court and shall have all the powers of such court.
- (2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973, (2 of 1974) or the rules made thereunder, shall apply to the proceedings under Chapter IX of that Code before a Family Court.
- (3) Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other.

## **11. Proceedings to be held in camera**

In every suit or proceedings to which this Act applies, the proceedings may be held in camera if the Family Court so desires and shall be so held if either party so desires.

## **12. Assistance of medical and welfare experts**

In every suit or proceedings, it shall be open to a Family Court to secure the services of a medical expert or such person (preferably a woman where available), whether related to the parties or not, including a person professionally engaged in promoting the welfare of the family as the court may think fit, for the purposes of assisting the Family Court in discharging the functions imposed by this Act.

## **13. Right to legal representation**

Notwithstanding anything contained in any law, no party to a suit or proceeding before a Family Court shall be entitled, as of right, to be represented by a legal practitioner:

PROVIDED that if the Family Court considers it necessary in the interest of justice, it may seek the assistance of a legal expert as *amicus curiae*.

## **14. Application of Indian Evidence Act, 1872**

A Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872 (1 of 1872).

## **15. Record of oral evidence**

In suits or proceedings before a Family Court, it shall not be necessary to record the evidence of witnesses at length, but the Judge, as the examination of each witness proceeds, shall, record or cause to be recorded, a memorandum of the substance of what the witness deposes, and such memorandum shall be signed by the witness and the Judge and shall form part of the record.

## **16. Evidence of formal character on affidavit**

- (1) The evidence of any person where such evidence is of a formal character, may be given by affidavit and may, subject to all just exceptions, be read in evidence in any suit or proceeding before a Family Court.

- (2) The Family Court may, if it thinks fit, and shall, on the application of any of the parties to the suit or proceeding summon and examine any such person as to the facts contained in his affidavit.

## **17. Judgement**

Judgement of a Family Court shall contain a concise statement of the case, the point for determination, the decision thereon and the reasons for such decision.

## **18. Execution of decrees and orders**

- (1) A decree or an order [other than an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)], passed by a Family Court shall have the same force and effect as a decree or order of a Civil Court and shall be executed in the same manner as is prescribed by the Code of Civil Procedure, 1908 (5 of 1908)] for the execution of decrees and orders.
- (2) An order passed by a Family Court under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) shall be executed in the manner prescribed for the execution of such order by that Code.
- (3) A decree or order may be executed either by the Family Court which passed it or by the other Family Court or ordinary Civil Court to which it is sent for execution.

## **CHAPTER V: 1[APPEAL AND REVISION]**

### **19. Appeal**

- (1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law, an appeal shall lie from every judgement or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law.

- (2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties 2[or from an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) :

PROVIDED that nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) before the commencement of the Family Courts (Amendment) Act, 1991.]

- (3) Every appeal under this section shall be preferred within a period of thirty days from the date of judgement or order of a Family Court.

[(4) The High Court may, of its own motion or otherwise, call for and examine the record of any proceeding in which the Family Court situate within its jurisdiction passed an order under Chapter IX of the Code of Criminal Procedure, 1973 for the purpose of satisfying itself as to the correctness, legality or propriety of the order, not being an interlocutory order, and, as to the regularity of such proceeding.]

- (5) Except as aforesaid, no appeal or revision shall lie to any court from any judgement, order or decree of a Family Court.

- (6) An appeal preferred under sub-section (1) shall be heard by a Bench consisting of two or more Judges.

## **CHAPTER VI: MISCELLANEOUS**

### **20. Act to have overriding effect**

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.



## **21. Power of High Court to make rules**

- (1) The High Court may, by notification in the Official Gazette, make such rules as it may deem necessary 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) normal working hours of Family Courts and holding of sittings of Family Courts on holidays and outside normal working hours;
  - (b) holding of sittings of Family Courts at places other than their ordinary places of sitting;
  - (c) efforts which may be made by, and the procedure which may be followed by, a Family Court for assisting and persuading parties to arrive at a settlement.

## **22. Power of the Central Government to make rules**

- (1) The Central Government may, with the concurrence of the Chief Justice of India, by notification, make rules prescribing the other qualifications for appointment of a Judge referred to in clause (c) of sub-section (3) of section 4.
- (2) Every rule made under this Act by the Central Government 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 comprised 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.

### **23. Power of the State Government to make rules**

- (1) The State Government may, after consultation with the High Court, by notification, make rules for carrying out the purposes of this Act.
- (2) In particular and without prejudice to the generality of the provisions of sub-section (1) such rules may provide for all or any of the following matters, namely:-
  - (a) the salary or honorarium and other allowances payable to, and the other terms and conditions of Judges under sub-section (6) of section 4;
  - (b) the terms and conditions of association of counsellors and the terms and conditions of service of the officers and other employees referred to in section 6;
  - (c) payment of fees and expenses (including travelling expenses) of medical and other experts and other persons referred to in section 12 out of the revenues of the State Government and the scales of such fees and expenses;
  - (d) payment of fees and expenses to legal practitioners appointed under section 13 as amicus curiae out of the revenues of the State Government and the scales of such fees and expenses;
  - (e) any other matter which is required to be, or may be, prescribed or provided for by rules.
- (3) Every rule made by a State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature.

# Indian Penal Code, 1860

## 10. Man & Woman

The word "man" denotes a male human being of any age: the word "woman" denotes a female human being of any age.

### **228-A. [1] Disclosure of identity of the victim of certain offences etc**

- (1) Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under section 376, section 376A, section 376B, section 376C or section 376D is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.
- (2) Nothing in sub-section (1) extends to any printing or publication of the name or any matter which may make known the identity of the victim if such printing or publication is-
  - (a) by or under the order in writing of the officer-in-charge of the police station or the police officer making the investigation into such offence acting in good faith for the purposes of such investigation; or
  - (b) by, or with the authorisation in writing of, the victim; or
  - (c) where the victim is dead or minor or of unsound mind, by, or with the authorisation in writing of, the next of kin of the victim:

Provided that no such authorisation shall be given by the next of kin to anybody other than the chairman or the secretary, by whatever name called, of any recognised welfare institution or organisation.

**Explanation:** For the purposes of this sub-section, "recognised welfare institution or organisation" means a social welfare institution or organisation recognised in this behalf by the Central or State Government.

- (3) Whoever prints or publishes any matter in relation to any proceeding before a court with respect to an offence referred to in sub-section (1) without the previous permission of such court shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

**Explanation:** The printing or publication of the judgement of any High Court or the Supreme Court does not amount to an offence within the meaning of this section.

### **304-B. Dowry death**

- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

**Explanation:** For the purpose of this sub-section, "dowry" shall have the same meaning. as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

- (2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

### **306. Abetment of suicide**

If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

### **309. Attempt to commit suicide**

Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year [1] or with fine, or with both .

### **312. Causing miscarriage**

Whoever voluntarily causes a woman with child to miscarry shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Explanation:** A woman who causes herself to miscarry, is within the meaning of this section.

### **313. Causing miscarriage without woman's consent**

Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with [1] imprisonment for life , or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

### **314. Death caused by act done with intent to cause miscarriage**

Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;

If act done without woman's consent and if the act is done without the consent of the woman, shall be punished either with [1] imprisonment for life or with the punishment above mentioned.

**Explanation:** It is not essential to this offence that the offender should know that the act is likely to cause death.

### **315. Act done with intent to prevent child being born alive or to cause it to die after birth**

Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

### **316. Causing death of quick unborn child by act amounting to culpable homicide**

Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

#### **Illustration**

A man, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured but does not die; but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section.

### **317. Exposure and abandonment of child under twelve years, by parent or person having care of it.**

Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both

**Explanation:** This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure.

### **318. Concealment of birth by secret disposal of dead body**

Whoever, by secretly burying or otherwise disposing of the dead body of a child whether such child die before or after or during its birth, intentionally conceals or endeavours to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

### **359. Kidnapping**

Kidnapping is of two kinds: kidnapping from India , and kidnapping from lawful guardianship.

### **362. Abduction**

Whoever by force compels, or by any deceitful means induces any person to go from any place, is said to abduct that person.

### **366. Kidnapping, abducting or inducing woman to compel her marriage, etc**

Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; [1] and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid .

### **366A. [1] Procurement of minor girl**

Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will

be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

### **366B. [1] Importation of girl from foreign country**

Whoever imports into [2] India from any country outside India [3] or from the State of Jammu and Kashmir any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

### **372. Selling minor for purposes of prostitution, etc**

Whoever sells, lets to hire, or otherwise disposes of any [1] person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Explanation I:** When a female under the age of eighteen years is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution

**Explanation II:** For the purposes of this section "illicit intercourse" means sexual intercourse between persons not united by marriage, or by any union or tie which, though not amounting to a marriage, is recognised by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a quasi-marital relation.



### **373. Buying minor for purposes of prostitution etc.**

Whoever buys, hires or otherwise obtains possession of any [1] person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Explanation I:** Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female under the age of eighteen years shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.

**Explanation II:** "Illicit intercourse" has the same meaning as in section 372.

### **375. Rape**

A man is said to commit "rape" who except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:-

First.-Against her will.

Secondly.-Without her consent.

Thirdly.-With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.

Fourthly.-With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.-With or without her consent, when she is under [1] sixteen years of age.

**Explanation:** Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

**Exception:** Sexual intercourse by a man with his own wife, the wife not being under [2] fifteen years of age, is not rape.

### **376. Punishment for rape**

Whoever commits rape shall be punished with [1] imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, [2] unless the woman raped is his own wife and is not under twelve years of age, in which case he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

#### **376-A. Intercourse by a man with his wife during separation**

Whoever has sexual intercourse with his own wife, who is living separately from him under a decree of separation or under any custom or usage without her consent shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

#### **376-B. Intercourse by public servant with woman in his custody**

Whoever, being a public servant, takes advantage of his official position and induces or seduces, any woman, who is in his custody as such public servant or in the custody of a public servant subordinate to him, to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine

#### **376-C. Intercourse by superintendent of jail, remand home, etc**

Whoever, being the superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and induces or seduces any female

inmate of such jail, remand home, place or institution to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine

**Explanation 1:** "Superintendent" in relation to jail, remand home or other place of custody or a women's or- children's institution includes a person holding any other office in such jail, remand home, place or institution by virtue of which he can exercise any authority or control over its inmates

**Explanation 2:** The expression "women's or children's institution" shall have the same meaning as in Explanation 2 to sub-section (2) of section 376

**376-D. [1] Intercourse by any member of the management or staff of a hospital with any woman in that hospital**

Whoever, being on the management of a hospital or hem. on the staff of a hospital takes advantage of his position and has sexual intercourse with any woman in that hospital, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

**Explanation:** The expression "hospital" shall have the same meaning as in Explanation 3 to sub-section (2) of section 376.

**493. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage**

Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

#### **494. Marrying again during lifetime of husband or wife**

Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Exception:** This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

#### **495. Same offence with concealment of former marriage from person with whom subsequent marriage is contracted**

Whoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

#### **496. Marriage ceremony fraudulently gone through without lawful marriage**

Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

### **497. Adultery**

Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.

### **498. Enticing or taking away or detaining with criminal intent a married woman**

Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, from that man, from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

### **498-A. [1] Husband or relative of husband of a woman subjecting her to cruelty**

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

**Explanation:** For the purpose of this section, "cruelty" means-

- (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand

**509. Word, gesture or act intend to insult the modesty of a woman**

Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.



# Human Rights Law Network (HRLN)

## ANDAMAN & NICOBAR ISLANDS

AB – 31, Babu Lane, Aberdeen Bazar  
Port Blair 744101  
Phone: 03192-230756  
Email: portblair@hrln.org

## ANDHRA PRADESH

21-7-761, Opposit Post Office,  
High Court Road, Ghansi Bazar  
Hyderabad – 500002  
Phone: 040-27661883  
Email: hyderabad@hrln.org

## ARUNACHAL PRADESH

Anam Building, Opposite Civil  
Secretariat, Itanagar  
Phone: 0360-2212099  
Email: arunachal@hrln.org

## ASSAM

C/O P.N. Chaudhury  
Lamb Road, Ambari,  
Guwahati-781001  
Phone: 09864034505

## BIHAR

G-1, Noor Apartment, Infront of  
Masjid,  
Road No. 3J, New Patliputra Colony,  
Patna-800013

## CHHATTISHGARH

Mangal Bhawan, 1st Floor,  
Vyapar Vihar Road, Bilaspur  
Phone: 09977897237, 08085069661

## DELHI

576, Masjid Road, Jangpura  
New Delhi 110014  
Phone: +91-11-24379855/56  
Fax: +91-11-24374502  
Email: slicdelhi@vsnl.net, hrlndel@vsnl.net

## GOA

H. No. 589, 2nd Floor, Plot No. C-9,  
Law-Compala Colony, Miramar,  
panjim, Goa  
Phone: 0832-2464898

## GUJARAT

B-5, Sushil Nagar Society  
Near Octroi Naka, Opp. Gandhi  
Labour Institute, Drive in Road  
Ahmedabad – 380 052  
Phone: 079 – 2747 5815  
Email: ahmedabad@hrln.org

## HIMACHAL PRADESH

Set No. 6, Vimal Sadan  
Near State Cooperative Bank  
Chhotta Shimla, Shimla – 171 002  
Phone: 0177-262 4629  
Email: shimla@hrln.org

## Village Lower Barol

PO Dari Tehsil Dharamshala,  
District Kangra  
Phone: 01892-223 417  
Email: dharmshala@hrln.org

## JAMMU & KASHMIR

(i) Bee Dee House, First Floor  
Near Maulana Azad Urdu University,  
Kursoo Rajbagh Srinagar, Kashmir –  
190 001  
Phone: 0 99066 67957  
Email: srinagar@hrln.org

## (ii) Sub-Unit Pulwama

Court Road, Pulwama.  
Phone: 09419933327, 09797044433

## JHARKHAND

64, MIG Flats, Harmu Housing  
Colony, Surajanand Chowk,  
Ranchi-834012  
Phone: 0651&2341740



**KARNATAKA**

No. 20, Park Road, Tasker Town  
Shivaji Nagar, Bangalore – 560 051  
Phone: 080-65624757  
Email: bangalore@hrln.org

**KERALA**

(i) 58/340, Manavalan Apartments  
Amulya Street, Opp: Banarji Rd  
Cochin 18  
Phone: 0484–2390 680  
Email: kochi@hrln.org

(ii) TC – 25/2952, Old GPO Building  
Ambujavilasom Road  
Thiruvananthapuram – 695 001  
Phone: 0471–5581466, 2460652  
Email: trivandrum@hrln.org

**MADHYA PRADESH**

E-3/212, Arera Colony, Bhopal - 16  
Phone: 0755–4202514  
Email: hrln\_bpl@rediffmail.com  
bhopal@hrln.org

**MAHARASHTRA**

(i) 409, 4th Floor, Prospect  
Chambers,  
D.N. Road, Fort, Mumbai 400 001  
Phone: 022–2204467/68  
Email: admin.mumbai@hrln.org

(ii) 51-B Mata Mandir Road  
C/o Alliance Avrutta Church,  
Gokulpeth, Nagpur  
Email: hrln nagpur@gmail.com

**MANIPUR**

KVIC Building, 2nd Floor,  
Opposite Videocon House,  
Paona Bazar, Imphal 795001  
Phone: 0385–2442165

**NAGALAND**

C/o NVHA, 2nd Floor, New NST  
Complex, Kohima–797001  
Tel: 0370–2291304  
Email: kohima@hrln.org

**ORISSA**

Plot No. 1209-C, 2nd Floor, CDA,  
Sector-6, Cuttack - 14  
Email: bhubaneswar@hrln.org

**PUNJAB, HARYANA &  
CHANDIGARH**

House No. 2439, Sector 37–C  
Chandigarh – 160 036  
Phone: 0172 – 460 3177  
Email: chandigarh@hrln.org

**SIKKIM**

2nd Floor, Satey Bazar, Above  
Mahesh Saloon  
Upper Sichey, Near District Court,  
Gangtok, Sikkim 737 101  
Phone: 03592 – 203557  
Email: sikkim@hrln.org

**TAMIL NADU**

319/155, 2nd Floor, Linghi Chetty  
Street  
George Town, Chennai 600 001  
Email: chennai@hrln.org  
hrlnchennai@yahoo.co.in

**UTTAR PRADESH**

20A, Hasting Road, Ashok Nagar  
Allahabad 211 001  
Phone: 0532– 242 1893  
Email: allahabad@hrln.org

**UTTARAKHAND**

Ishwari Bhawan, West Pokharkhali,  
Ranidhara Road, Almora – 263601  
Phone: 09412092159  
Email: almorah@hrln.org

**WEST BENGAL**

Sohini Apartment, Flat 1A 3 Parbati  
Chakrabarty Lane Kalighat  
Kolkata 700 026  
Phone: 033–2454 6812  
Email: kolkata@hrln.org

**D**omestic violence was not defined under the Indian legal discourse prior to 2005. The primary approach to ensuring gender justice was recognized in 1922 by the CEDAW Committee through the general recommendation 19. The recommendation takes an all encompassing approach to violence and also provides that any form of discrimination or violation of rights of women will be considered to be violence and further that the State will be responsible not only for violation of rights by public actors but also in the private sphere.

The PWDVA is in conformity with the UN Model Legislation on Domestic Violence, which provides comprehensive guidelines for State in drafting legislation on domestic violence. The model Legislation provides guidelines on what constitutes domestic violence.

**HRLN**

Human Rights Law Network

Human Rights Law Network  
(A division of Socio Legal Information Centre)  
576, Masjid Road, Jangpura  
New Delhi - 110014, India  
Ph: +91-11-24379855/56  
E-mail: [publications@hrln.org](mailto:publications@hrln.org)



European Union

