

Protection of Women from Domestic Violence Rules, 2005

1. Short Title and commencement.- (a) These rules may be called "The Protection of Women from Domestic Violence Rules, 2005".

(b) They shall come into force on the date of their publication in the official Gazette.

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) Government includes the Government of Union Territories, State and Central Government.

3. Qualifications and experience of a protection officer and the terms and conditions of service of the protection officers under Section 37

(2) (a) and (b) of the Act.- the state government shall by notification nominate /appoint / re-designate all/any of the following persons as protection officer and notify the area or areas within which the protection officer shall exercise powers and perform the duties conferred upon him under the Act

(i) The Protection Officer shall be an officer of the State Government not below the rank of Deputy Tehsildar or a block development officer or

(ii) Any representative of a non-governmental organization or a representative of the service provider registered under the Act, may be appointed, on such terms and conditions as may be prescribed by the State Government, as a protection officer provided that such a person has been serving in the organization for at least 2 years and has been working in the area of empowerment of women

(iii) The terms and conditions of service of a Protection Officer may be such as may be prescribed by the State Government.

(iv) Not less than one Protection Officer shall be appointed for the area of a judicial magistrate. The State Government may however appoint more than one Protection Officer having regard to the area & volume of work involved.

(v) The state government shall provide the protection officer the necessary infrastructural facilities for the running of his office and the financial provisions for the same shall be made by the respective governments in the

same manner, as for the office of the assistant public prosecutor, which shall include clerical, transport and other facilities and reimbursements for the performance of the duties as assigned to the Protection officer

(vi) For the effective implementation of the Act, the state government shall designate a Nodal Ministry to over see, supervise and monitor the effective implementation of the Act

4. Form and manner of domestic incident report.- A domestic incident report under section 37 (2) (c) -

(a) On receipt of a complaint or information, the protection officer or a service provider shall record domestic incident report under section 9(1)

(b) or section 10(2)(a) of the Act, in the form prescribed in FORM 1 of schedule I (b) Such domestic incident report shall be signed by the aggrieved person or by any person giving such information

(c) Information under Section 4(1) of the Act shall be either conveyed orally or in writing to the Protection Officer. Oral information shall be reduced to writing. Every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it. A copy of the information as recorded under (c) shall be given forthwith, free of cost to the informant.

(d) Copy of Domestic Incident Report shall be provided to the aggrieved person free of cost.

5. Applications to the Magistrate.- (1) Applications to the magistrate under sec 37 (2) (d) and sec 12 for protection, residence orders and other relief's as provided under the Act shall be made in the manner prescribed in FORM II of schedule I.

(2) In case the person giving any information or aggrieved person is illiterate, the contents of the application shall be read over and explained to her, by the protection officer, bearing a thumb impression of the aggrieved person, and shall be forwarded to the concerned police station.

(3) The applications under Section 12 of the Act shall be dealt with and the orders enforced in the manner prescribed under Section 125 of the Cr.PC.

6. Application under Section 9 (1) (d) for legal aid.- Application for legal aid and services shall be made in the manner prescribed in FORM III of schedule I

7. Other duties to be performed by the protection officer.- (1) The protection officer shall, in addition to the duties assigned to him under the Act:-

(a) give the aggrieved person immediate and adequate notice of her rights and of the remedies and services available by ensuring that the information and the contents of the Act are adequately explained to the aggrieved person , in the manner prescribed in form IV of schedule I

(b) Maintain a record and copies of the report or documents forwarded under Section 9, 12, 20, 21, 22, 23 or any other provisions of the Act or the rules.

(c) Provide all possible assistance to the aggrieved person and the child to ensure that she is not victimized or pressurized as a consequence of reporting the incident of domestic violence.

(d) Take any action necessary to provide for the safety of the aggrieved person and any family or household member.

(e) Liaison between the aggrieved person(s), police, service provide in the manner prescribed under the Act and Rules.

(f) Maintain proper records of the service providers, medical facility shelter homes in the area.

(g) The protection officer shall scrutinize the applications and maintain a list of the counselors which shall be made available to the Magistrate.

(h) Action to be taken in cases of emergency - If the protection officer or a service provider receives a telephone call 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 emergency situation the protection officer or the service provider shall seek immediate assistance of the police who shall accompany the protection officer or the service provider to the place of occurrence and record the Domestic Incident Report and the same be presented to the Magistrate at the earliest without any delay for seeking appropriate orders under the Act.

(2) Duties to be performed on the orders of the court – The Protection Officer, when directed to do so, in writing, by the magistrate shall -

(i) 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 complainant/aggrieved person under the Act and passes an order for such home visit.

(ii) After making appropriate inquiry, file a report on the salary emoluments assets bank accounts or any other documents as may be directed by the court.

(iii) Restore the possession of the personal effects including jewellery of the aggrieved person and the shared household to the aggrieved person.

(iv) Assist the aggrieved person to regain custody of children or secure visitation rights under supervision as directed by the court.

(v) 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, 18, 19, 20, 21 or 23 in such manner as directed by the court.

(vi) Take the assistance of the police in confiscating any weapon involved in the alleged domestic violence.

(3). The protection officer shall also perform any other duties prescribed by the government or the magistrate from time to time. The magistrate may in addition to orders for effective relief in any cases, also issue general practice directions for better handling of the cases, to the Protection Officer within his jurisdiction.

8. Registration of service providers.- (Under Section 37 (2) (g) read with Section 10 (1):

(1) The service providers to be registered under Section 10(1) of the Act shall apply for registration to the Protection Officer, as per the format in Form V in Schedule1, and the Protection Officer in whose area the service providers want to extend their facilities shall maintain the list of such registered service providers.

(2) The service provider to be registered under Section 10(i) of the Act shall possess the following minimum qualifications:

(a) The service provider should have been rendering the kind of services it is offering under the act for at least two years before applying for registration under the act.

(b) In case of service providers running a medical facility, or a psychiatric counseling centre, or a vocational training institution, the registering

authority shall ensure that the applicant fulfils the requirements for running such a facility or the institution prescribed as prescribed by the regulatory bodies regulating the respective professions or institutions.

(c) In case of Service Providers running shelter homes, or any other facility the registering authority shall inspect the shelter home, prepare a report and record a finding on the report, detailing that adequate space and other facility for the persons seeking shelter is available.

(d) Fulfill all the requirements as prescribed in Form No V of schedule 1.

(e) The protection officer shall maintain proper records by way maintenance of registers duly indexed, containing the details of the service provider.

9. Means of service of notices under Section 13 (1).- The notice/summon for appearance under S-13 (1) of the Act shall be as prescribed under the Cr.PC.

(2) The Service of notice/summons shall be made as prescribed in chapter VI of the CRPC

(3) Any order, service of notice or summon shall entail the same consequences, as an order passed under Chapter VI of 'The Code of Criminal Procedure, 1973'.

(4) The Declaration of Service by the Protection Officer under Section 13(2) of the Act, shall be made by countersigning the copy of the notice/summon along with the signatures of the person who received the summon/notice.

10. Counseling.- a counselor appointed by the magistrate under section 14 (1) shall possess the following qualifications and experience

(a) An order for appointment of counselor under Section 14 (1) of the Act shall be made only after passing orders for interim relief under Section 12, 18, 19, 20, 21, 22 or 23 of the Act.

(b) The factors warranting counseling 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, e mail or through any medium except in the counseling proceedings before the counselor.

(c) The counselor shall as far as possible be a woman.

(d) Possessing any of the following qualifications/experience:-

(i) Any person who is related to anyone of the parties and not connected either directly or indirectly with the issue/dispute provided that both the aggrieved person and the respondent consent to appointment of such a person as a counselor; or

(ii) At least 2 years experience of counseling in any Govt. or Non-Govt. organization; or

(iii) Any legal practitioner having experience in handling cases relating to deprivation of women's rights or with at least 2 years experience with the legal services authorities constituted under Legal Service Authorities Act, 1987.

(e) The protection officer shall assist the magistrate in the appointment of a counselor.

11. Procedure to be followed by a counselor.- (a) The counselor shall work under the general supervision of the court and/or Protection Officer.

(b) The counselor shall convene a meeting at a place convenient to/aggrieved woman/both the parties.

(c) Shall assist the parties to reconciliation and shall obtain a written statement from the respondent that the incident of Domestic Violence shall not be repeated and in general strive to arrive at the understanding and redressal of aggrieved women's grievances and reformulating the terms for settlement wherever required.

(d) The respondent shall not be allowed to plead any justification for the alleged act of domestic violence in counseling. Any justification for the act of domestic violence by the respondent is not allowed to be a part of the counseling proceeding, should be made clear to the respondent, before the proceedings start.

(e) The respondent shall furnish an undertaking to the respondent 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 counseling proceedings before the counselor.

(f) If the aggrieved person so desires the counselor shall make efforts of arriving at a settlement of the matter. The limited scope of such efforts shall be to arrive at the understanding of the grievances of the aggrieved person and redressal of her grievances. The efforts shall focus on evolving remedies or measures for such redressal. The counselor shall strive to arrive at a settlement of the dispute by suggesting measures for redressal of grievances of the complainant by taking into account the measures or remedies suggested by the parties for counseling and reformulating the terms for the settlement wherever required.

(g) The counselor shall not be bound by the provisions of the Evidence Act, 1872 or the Code of Civil Procedure, 1908, or the Code of Criminal Procedure, 1973, 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. In making such an effort the counselor shall seek guidance from the wishes and the sensibilities of the aggrieved person.

(h) The report of the counselor shall be submitted to the Magistrate for appropriate action.

(i) On arriving at a settlement the counselor shall report the terms of the settlement of the parties, after explaining the terms to the parties in the language of the parties and getting it endorsed by the parties. The court may accept the terms, on being satisfied, about the efficacy of the solution, after a preliminary enquiry from the parties, recording reasons for such satisfaction, which may include undertaking by the respondents to refrain from repeating acts of domestic violence. The court shall on being so satisfied 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.

(j) In cases, where a settlement cannot be arrived at in the counselor proceedings, the conciliator shall report the failure of such proceedings and the court shall proceed with the case under the Act. 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. The court shall pass an order under Section 25 (2) of the Act, only after being satisfied that the application for such an order is not vitiated by force, fraud or coercion or any other factor. The reasons for such satisfaction shall be recorded in writing in the order, which may include any undertaking or surety given by the respondent.

12. Shelter and medical assistance to the aggrieved person.- (a) 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 person complained against.

(b) The shelter home shall not refuse shelter to an aggrieved person under the Act, for her not having lodged a domestic incident report, prior to making request for shelter.

13. Medical facility.- (a) 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 request for medical assistance or examination.

(b) A copy of the medical examination report shall be provided to the aggrieved person by the medical facility free of cost.

14. Breach of protection orders.- (a) An aggrieved person may report a breach of protection order to the Protection Officer. The report shall be in writing by the informant and duly signed by her. The Protection Officer shall forward a copy of such complaint with a copy of the protection order of which a breach is alleged to the concerned magistrate for appropriate orders.

(b) When charges are framed under Section 31 of the Act and offences under Section - 498A Indian Penal Code, 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 and proceed to summarily try the offence of the breach of Protection Order under S-31 of the Act, in accordance with the provisions of chapter XXI of the Code of Criminal Procedure, 1973.

(c) The provisions of Code of Criminal Procedure, 1973, regarding arrest, compelling appearance, summary trial, sentence and conviction shall apply to any offence under Section 31 of the Act.

(d) 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 Section 31(1) of the Act.

(e) Each breach of protection order shall be a separate offence warranting separate charges under the Act.

(f) Without prejudice to the provisions of the Criminal Procedure Code, 1973, a breach of the protection order under Section 31(1) of the Act, may immediately be reported to the local police station and shall be dealt with as a cognizable offence as provided under Section 31 of the Act.

(g) While enlarging the person on bail arrested under the Act, the court may impose the following conditions to protect the aggrieved person and to ensure the presence of the accused before the court, which may include:-

(i) An order restraining the accused from threatening to commit or committing or committing an act of domestic violence.

(ii) An order preventing the accused from harassing, telephoning or making any contact with the aggrieved person.

(iii) 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.

(iv) An order prohibiting the possession or use of firearm or any other dangerous weapon.

(v) Any other order required for protection, safety and adequate relief to the aggrieved person.

(vi) Violation of conditions of bail shall attract the issuance of a Non-Bailable Warrant and immediate arrest of the accused.