

Domestic Violence (Crime and Punishment) Act, 2008, Nepal

(Unofficial translation by FWLD)

A Bill made for providing measures to control the act of Domestic Violence

Preamble: Respecting the right of every person to live a secure and dignified life; to prevent and control violence occurring within the family and for matters connected therewith and incidental thereto making such violence punishable; and for providing protection to the victims of violence; Be it enacted by the Constituent Assembly in accordance with Article 81(1) of the Interim Constitution of Nepal, 2007 as follows:

1. Short Title and Commencement:

- (1) This Act may be called the **Domestic Violence (Crime and Punishment) Act, 2008**
- (2) This Act shall come into force with immediate effect.

2. Definitions: In this Act unless the context otherwise requires:

- a) "Domestic Violence" means any form of physical, mental, sexual and economic abuse perpetrated by any person to the other person with whom he has a family relationship. The definition also covers acts of reprimand or emotional abuse.
- b) "Domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household and are related by consanguinity, marriage, adoption or are family members living together as a joint family; or a dependant domestic help living in the same family.
- c) "Physical abuse" means any act or conduct which is of such nature as to cause bodily harm or injury except the losing and breaking of limbs; holding the person captive, inflicting physical pain or any other act connected therewith and incidental thereto.

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- d) "Mental abuse" means any act of threatening the aggrieved person of physical torture, showing terror, reprimanding him, accusing him of false deeds, forcefully evicting him from the house or otherwise causing injury or harm to the aggrieved person emotionally and this phrase also denotes discrimination carried out on the basis of thought, religion or culture and customs and traditions.
 - e) "Sexual abuse" means any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of any person; or any other act that hampers safe sexual relations.
 - f) "Economic abuse" includes deprivation of all or any property jointly or separately held by the aggrieved person to which he/she is entitled to under the law; or deprivation of or access to employment opportunities, economic resources or means.
 - g) "Aggrieved person" means any person who is, or has been, in a domestic relationship with the defendant and who alleges to have been subjected to an act of domestic violence by the perpetrator.
 - h) "Perpetrator" means the person having family relations with the aggrieved person who alleges to have been subjected to an act of domestic violence by the defendant and this word also indicates any person who is involved on some way in the act of domestic violence or in the abetment of the crime.
 - i) "Police Office" means that Police Office closest to the residence of the aggrieved person, the perpetrator or that office which is closest to the scene of crime and the word also indicates the Women or Children Service Center under the District Police Office; or Police Post or Sub-Police Post under the Police Office.
 - j) "Court" means any court that is mentioned and notified in the Gazette of Nepal.
 - k) "Prescribed" or "as prescribed" means as prescribed by the Rules made under this Act.
3. Domestic Violence shall not be committed, aided or abetted: (1) No body shall commit; or aid or abet; or incite the commission of acts of domestic violence.
- (2) Whoever commits an act contrary sub-section (1) shall be deemed to have committed an offence under this Act.

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4. File complaint or petition: (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 immediately lodge a written or oral complaint with the Police Office, National Women's Commission or Local body.¹

(2) In pursuance of sub-section (1), a complaint shall be registered immediately if received in a written manner; and after writing down the factual details with the signature of the complainant, if received in an oral manner.

(3) If the complaint is lodged in the National Women's Commission, necessary action will be taken in accordance with the relevant law that governs the National Women's Commission.

(4) If the complaint is lodged in the Police Office, excluding the time of travel, the perpetrator shall be produced in the Police Office within 24 hours of the lodging of the complaint for the recording of his statement. If he refuses to appear, force may be applied for his arrest.

(5) If the complaint is lodged with the Local Body, excluding the time of travel, the perpetrator shall be produced in the Local Body within 24 hours of the lodging of the complaint for the recording of his statement. If he refuses to appear, force may be applied for his arrest.

(6) If the aggrieved person has been physically wounded or mentally tortured as a result of the act of domestic violence, he shall be immediately sent to the nearest hospital or health post for necessary check-up and an injury report shall be drawn up. If the medical report is prepared by the Local Body, a copy of it shall be sent to the Police Station.

(7) While conducting preliminary investigation on the complaint lodged as per sub-section (1) of section 4, if the situation so requires, the aggrieved person and his dependants shall be provided with immediate protection with the help of the Police Office.

(8) Upon statements recorded as per sub-sections (4) or (5) of section 8, if there is reason to believe that an act of domestic violence has been committed, and if the aggrieved person so desires, the police

¹ Local Bodies consist of Ward Committees, Village Development Committees, District Development Committees. The local body to be vested with powers under this Act shall be clarified in the Rules.

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officer or local body officer, may, within 30 days from the date of registration of the complaint, conduct reconciliation between the parties.

(9) While conducting reconciliation according to sub-section (8), as per necessity and availability, assistance may be taken from a psychologist, sociologist, social activist and a family member trusted by the aggrieved person; or any other witness. The psychological and social effects on the aggrieved person, of such reconciliation as well as his/her right to confidentiality shall be borne in mind.

(10) The Police Officer or Local Body Officer shall, during the prosecution and/or arriving at a decision upon the receipt of the complaint, ensure presence of the perpetrator on the due date of the Court.

(11) If the perpetrator fails to present himself in accordance with sub-sections (4) and (5); or he cannot be made present; or the parties fail to settle their dispute through reconciliation, the Police Officer and Local body officer, with the consent of the complainant shall, after the expiry of 15 days as per sub-section (8) and within 15 days thereafter, send the complaint mentioning all details, along with evidence and other legal documents incidental thereto, to the Court.

(12) It shall be the duty of the Police Officer to provide assistance as per sub-sections (5) and (7).

5. Court shall take action: (1) Upon receipt of a complaint as per sub-section (11) of section 4. the Court shall prosecute and decide the case as per this Act, on the basis of (the facts of) such complaint.

(2) Notwithstanding anything contained in sub-section (1), the aggrieved person may directly file his complaint with the Court.

6. Power to grant interim protection order: (1) If the Court has reason to believe, on the basis of preliminary investigation of the complaint, that the aggrieved person needs to be given immediate protection, it may, till the time the final decision on the complaint is made, pass the following orders against the perpetrator:

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(a) To allow the aggrieved person to continue living in the shared household, to provide him/ her with food, clothes, to not cause physical injury to him/ her and to behave with him/ her in a civilized and dignified manner.

(b) To provide necessary treatment or to give money for the treatment of the aggrieved person if he/ she has incurred physical or mental injury.

(c) To make necessary arrangements for the separate living of the perpetrator in the event that it's not conducive for them to live together, and in such cases, make necessary arrangements for the maintenance of the aggrieved person.

(d) To not insult, threaten or behave in an uncivilized manner; or aid and abet these acts

(e) To not harass the aggrieved person by entering his/ her place of separate residence; or in public roads; or entering his/ her place of employment; or through the media or in any other manner.

(f) To carry out or arrange for getting carried out, necessary and relevant action for the protection and welfare of the aggrieved person.

(2) On the basis of preliminary investigation upon the complaint, if the Court has reason to believe that as per sub-section (1), the minor children of the aggrieved person or any other person dependant on him, require protection, the Court shall issue, from within sub-section (1), any appropriate order.

7. Proceedings to be held in camera: (1) upon receipt of complaint to which this Act applies, all or any proceedings and hearings shall be held in camera if the aggrieved person so desires.

(2) In accordance with sub-section (1), during the proceedings and hearings in camera, the claimant, defendants, their respective legal practitioners and only others who have the permission of the Court, shall be allowed to enter the court room.

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8. Summary Court procedure to be followed: While conducting prosecution and deciding the case as per this Act, the procedures prescribed in the *Summary (Court) Procedures Act, 2028 (1971)* shall be followed.

9. Perpetrator to bear expenses of treatment: (1) If a person who has been subject to domestic violence sustains physical or mental injuries so as to require medical help, the total costs of treatment in the hospital shall be borne by the perpetrator.

(2) Notwithstanding anything contained in sub-section (1), if the Court has reason to believe that the perpetrator is an indigent person, it may order for the sanctioning of treatment expenses for the aggrieved person, from the Service Center.

10. Compensation orders: The Court may, depending on the nature of the act of domestic violence, its degree, the pain undergone by the aggrieved person, and also taking into account the economic and social status of the perpetrator and aggrieved person, order the perpetrator to pay appropriate compensation to the aggrieved person.

11. Service Centre: (1) For the immediate protection of the aggrieved person, and for the separate shelter/ accommodation of the aggrieved person during the course of treatment, the Nepal Government, according to the need, may establish Service Centers.

(2) For the purpose of sub-section (1), any organization may, on gaining permission as prescribed, establish and operate Service Centers.

(3) Service centers operating as per sub-section (2) shall be given financial and other aid from the Treasury established under Section 12 of this Act.

(4) The service centre shall provide, as per necessity, legal aid, psycho-social service and economic aid to the aggrieved person.

(5) The provisions of management, operation and monitoring of Service Centre shall be as prescribed.

12. Service Treasury: (1) Nepal Government shall, for the operation of Service Centers established as per sub-section (1) of section 11, establish a Service Treasury.

(2) In the Treasury established as per sub-section (1), the following funds shall be kept:

(a) Fund received from the Nepal Government

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(b) Fund received from any national or foreign organizations, institutions or individuals

(c) Fund received from any other source.

(3) The management and operation of the Service Fund shall be as prescribed.

13. Punishment: (1) Whoever commits the act of domestic violence shall be punished with a fine of three thousand rupees which may extend up to twenty-five thousand rupees; or six months of imprisonment; or both.

(2) Whoever attempts to commit domestic violence or abets the crime or incites others to commit the crime shall be liable to half the punishment of that of the perpetrator.

(3) Whoever has been punished once for the offence of domestic violence shall be liable to double the punishment upon every repetition of the offence.

(4) If a public servant commits the offence of domestic violence, he shall be liable to an additional ten percent punishment over and above the prescribed punishment.

(5) Whoever doesn't obey the Court orders issued according to Section 6 shall be fined Two thousand rupees to Fifteen thousand rupees; or four months of imprisonment; or both.

14. Limitation Period: The complaint, for an offence committed as per this Act, shall be filed within ninety days of the commission of the crime.

15. Case may be filed as per existing law: Nothing in this Act shall prevent the investigation, trial and decision in an offence which is punishable under this Act as well as an existing law for the time being in force.

16. Shall be according to existing law: This Act shall apply to the provisions under the Act and in all other cases, the existing law shall apply.

17. Right to make Rules: The Nepal Government may make such Rules as it may deem necessary for carrying out the purposes of this Act.