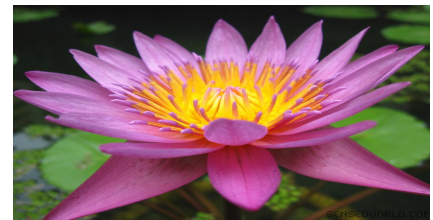


# Citizen Guide

*People Friendly Version*



## Ten Essential Laws : Every Citizen Must Know



*This handbook is for informational purposes only. The information given in this book is merely for reference and must not be taken as binding in any way. This Manual is intended to provide guidance to the readers, but cannot be a substitute for the Act and the Rules made thereunder. If any comments or suggestions please connect us at: [contact@citizensupport.in](mailto:contact@citizensupport.in)*

***A Citizensupport Initiative***

[www.citizensupport.in](http://www.citizensupport.in)

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*Understanding law is important as our life. It is vital to learn about important laws existing in India for the smooth flow of life as well as for an active society to step up confidence, integrity and nation building. Most among us including educated class don't know much about our rights, legal procedures, legal – administrative system, which proliferates large amount of issues including denial of rights, legal protection, cheating and mental harassment. Citizensupport.in taking its steps to spread laws and its application for the purpose of 'awareness, alertness and awokeness' among the society.*

*This Guide is focuses on the essential Ten laws which every one of us need to know for our day to day life.*

## Information Technology Amendment Act 2008

*IT Amendment Act 2008 is an important law in this computer age. Knowing law can limit unforeseen mishaps and increase privacy protection.*

**Cyber Crime** : Means that any action which is related to computer and crime. I. T. Act defines a computer, computer network, data, information and all other necessary ingredients that form part of a cyber crime, and mandatory precautions.

### Act focuses on

- ◆ Focussing on data privacy
- ◆ Focussing on Information Security
- ◆ Defining cyber café
- ◆ Making digital signature technology neutral
- ◆ Defining reasonable security practices to be followed by corporate
- ◆ Redefining the role of intermediaries
- ◆ Recognising the role of Indian Computer Emergency Response Team
- ◆ Inclusion of some additional cyber crimes like child pornography and cyber terrorism
- ◆ Authorizing an Inspector to investigate cyber offences

### Definitions

- **'Computer'** means any electronic magnetic, optical or other high-speed data processing device or system which performs logical, arithmetic, and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software, or communication facilities which are connected or related to the computer in a computer system or computer network; So is the word 'computer system' which means a device or a collection of devices with input, output and storage capabilities.
- **"Communication Device"** means Cell Phones, Personal Digital Assistance (Sic), or combination of both or any other device used to communicate, send or transmit any text, video, audio, or image.
- **"Computer Network"** means the interconnection of one or more Computers or Computer systems or Communication device through-
  - (i) the use of satellite, microwave, terrestrial line, wire, wireless or other

communication media; and

(ii) terminals or a complex consisting of two or more interconnected computers or communication device whether or not the interconnection is continuously maintained.

■ **"Computer Resource"** means computer, communication device, computer system, computer network, data, computer database or software.

■ **"Computer System"** means a device or collection of devices, including input and output support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files, which contain computer programmes, electronic instructions, input data, and output data, that performs logic, arithmetic, data storage and retrieval, communication control and other functions

■ **"Digital Signature"** means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of section 3.

■ **"Electronic signature"** means authentication of any electronic record by a subscriber by means of the electronic technique specified in the second schedule and includes digital signature.

■ **"Intermediary"** with respect to any particular electronic records, means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web hosting service providers, search engines, online payment sites, online-auction sites, online market places and cyber cafes.

## **Penalties And Adjudication [Chapter Ix]**

Chapter IX contains sections 43 to 47. It provides for awarding compensation or damages for certain types of computer frauds. It also provides for the appointment of Adjudication Officer for holding an inquiry in relation to certain computer crimes and for awarding compensation. Sections 43 to 45 deal with different nature of penalties.

➔ If any person without permission of the owner or any other person who is in-charge of a computer, computer system or computer network -

(a) accesses or secures access to such computer, computer system or computer network or computer resource (ITAA2008)

(b) downloads, copies or extracts any data, computer data base or information from such computer, computer system or computer network including information or data held or stored in any removable storage medium;

(c) introduces or causes to be introduced any computer contaminant or computer virus into any computer, computer system or computer network;

(d) damages or causes to be damaged any computer, computer system or computer network, data, computer data base or any other programmes residing in such computer, computer system or computer network;

(e) disrupts or causes disruption of any computer, computer system or computer network;

(f) denies or causes the denial of access to any person authorized to access any computer, computer system or computer network by any means;

(g) provides any assistance to any person to facilitate access to a computer, computer system or computer network in contravention of the provisions of this Act, rules or regulations made there under,

(h) charges the services availed of by a person to the account of another person by tampering with or manipulating any computer, computer system, or computer network,

(i) destroys, deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means (Inserted vide ITAA-2008)

(j) Steals, conceals, destroys or alters or causes any person to steal, conceal, destroy or alter any computer source code used for a computer resource with an intention to cause damage, (Inserted vide ITAA 2008)

**he shall be liable to pay damages by way of compensation to the person so affected.**

## **Compensation for failure to protect data**

Where a body corporate, possessing, dealing or handling any sensitive personal data or information in a computer resource which it owns, controls or operates, is negligent in implementing and maintaining reasonable security practices and procedures and thereby causes wrongful loss or wrongful gain to any person, such body corporate shall be liable to pay damages by way of compensation, to the person so affected.

### **Sec 44 Penalty for failure to furnish information, return, etc.:**

If any person who is required under this Act or any rules or regulations made there under to -

(a) furnish any document, return or report to the Controller or the Certifying Authority, fails to furnish the same, he shall be liable to a penalty not exceeding one lakh and fifty thousand rupees for each such failure;

(b) file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefore in the regulations, he shall be liable to a penalty not exceeding five thousand rupees for every day during which such failure continues.

(c) maintain books of account or records, fails to maintain the same, he shall be liable to a penalty not exceeding ten thousand rupees for every day during which the failure continues.

**Sec 45** provides for residuary penalty. Whoever contravenes any rules or regulations made under this Act, for the contravention of which no penalty has been separately provided, shall be liable to pay a compensation not exceeding twenty-five thousand rupees to the person affected by such contravention or a penalty not exceeding twenty-five thousand rupees.

## **Offences**

**Sec 65:** Tampering with source documents is dealt with under this section. Concealing, destroying, altering any computer source code when the same is required to be kept or maintained by law is an offence punishable with three years imprisonment or two lakh rupees or with both. Computer source code under this Section refers to the listing of programmes, computer commands, design and layout etc in any form.

**Sec 66:** Computer related offences are dealt with under this Section. Data theft stated in Section 43 is referred to in this Section. Whereas it was a plain and simple civil offence with the remedy of compensation and damages only, in that Section, here it is the same act but with a criminal intention thus making it a criminal offence. The act of data theft or the offence stated in Section 43 if done dishonestly or fraudulently becomes a punishable offence under this Section and attracts imprisonment upto three years or a fine of five lakh rupees or both.

**66A** Sending offensive messages through communication service, causing annoyance etc through an electronic communication or sending an email to mislead or deceive the recipient about the origin of such messages (commonly known as IP or email spoofing) are all covered here. Punishment for these acts is imprisonment upto three years or fine.

**66B** Dishonestly receiving stolen computer resource or communication device with punishment upto three years or one lakh rupees as fine or both.

**66C** Electronic signature or other identity theft like using others' password or electronic signature etc. Punishment is three years imprisonment or fine of one lakh rupees or both.

**66D** Cheating by personation using computer resource or a communication device shall be punished with imprisonment of either description for a term which extend to three years and shall also be liable to fine which may extend to one lakh rupee.

**66E** Privacy violation – Publishing or transmitting private area of any person

without his or her consent etc. Punishment is three years imprisonment or two lakh rupees fine or both.

**66F** Cyber terrorism – Intent to threaten the unity, integrity, security or sovereignty of the nation and denying access to any person authorized to access the computer resource or attempting to penetrate or access a computer resource without authorization. Acts of causing a computer contaminant (like virus or Trojan Horse or other spyware or malware) likely to cause death or injuries to persons or damage to or destruction of property etc. come under this Section. Punishment is life imprisonment.

**Sec 67** deals with publishing or transmitting obscene material in electronic form. As per ITAA 2008 in which child pornography and retention of records by intermediaries were all included. Publishing or transmitting obscene material in electronic form is dealt with here. Whoever publishes or transmits any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely to read the matter contained in it, shall be punished with first conviction for a term upto three years and fine of five lakh rupees and in second conviction for a term of five years and fine of ten lakh rupees or both. Involvement in sending obscene message in the name of a married women amounting to cyber stalking, email spoofing and the criminal activity stated in this Section.

**67-A** deals with publishing or transmitting of material containing sexually explicit act in electronic form. Contents of Section 67 when combined with the material containing sexually explicit material attract penalty under this Section. Child Pornography has been exclusively dealt with under Section 67B. Depicting children engaged in sexually explicit act, creating text or digital images or advertising or promoting such material depicting children in obscene or indecent manner etc or facilitating abusing children online or inducing children to online relationship with one or more children etc come under this Section. ‘Children’ means persons who have not completed 18 years of age, for the purpose of this Section. Punishment for the first conviction is imprisonment for a maximum of five years and fine of ten lakh rupees and in the event of subsequent conviction with imprisonment of seven years and fine of ten lakh rupees. Bonafide heritage material being printed or distributed for the purpose of education or literature etc are specifically excluded from the coverage of this Section, to ensure that printing and distribution of ancient epics or heritage material or pure academic books on education and medicine are not unduly affected. Screening videographs and photographs of illegal activities through Internet all come under this category, making pornographic video or MMS clippings or distributing such clippings through mobile or other forms of communication through the Internet fall under this category.



**67-C** fixes the responsibility to intermediaries that they shall preserve and retain such information as may be specified for such duration and in such manner as the Central Government may prescribe. Non-compliance is an offence with imprisonment upto three years or fine.

**Sec 69:** Allows Government or agencies as stipulated in the Section, to intercept, monitor or decrypt any information generated, transmitted, received or stored in any computer resource, subject to compliance of procedure as laid down here. This power can be exercised if the Central Government or the State Government, as the case may be, is satisfied that it is necessary or expedient in the interest of sovereignty or integrity of India, defence of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence relating to above or for investigation of any offence. In any such case too, the necessary procedure as may be prescribed, is to be followed and the reasons for taking such action are to be recorded in writing, by order, directing any agency of the appropriate Government. The subscriber or intermediary shall extend all facilities and technical assistance when called upon to do so.

**69-A** inserted in the ITAA, vests with the Central Government or any of its officers with the powers to issue directions for blocking for public access of any information through any computer resource, under the same circumstances as mentioned above.

**69-B** discusses the power to authorise to monitor and collect traffic data or information through any computer resource. Section 69 of ITAA is far more intrusive and more powerful than the above-cited provision of Indian Telegraph Act 1885. Under this ITAA Section, the nominated Government official will be able to listen in to all phone calls, read the SMSs and emails, and monitor the websites that one visited, subject to adherence to the prescribed procedures and without a warrant from a magistrate's order. I

**Sec 73** Penalty for publishing electronic Signature Certificate false in certain particulars:

(1) No person shall publish a Electronic Signature Certificate or otherwise make it available to any other person with the knowledge that

(a) the Certifying Authority listed in the certificate has not issued it; or

(b) the subscriber listed in the certificate has not accepted it; or

(c) the certificate has been revoked or suspended, unless such publication is for the purpose of verifying a digital signature created prior to such suspension or revocation

(2) Any person who contravenes the provisions of sub-section (1) shall be

punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

**Sec 74** provides for punishment with imprisonment for a term which may extend to two years or with fine which may extend to Rs.1 lakh or with both to a person whoever knowingly publishes for fraudulent purpose any Digital Signature Certificate.

**Sec 78** Power to investigate offences (Amended Vide ITAA 2008): Notwithstanding anything contained in the Code of Criminal Procedure, 1973, a police officer not below the rank of Inspector shall investigate any offence under this Act. (Amended Vide ITAA 2008)

**Sec 79** Liability of intermediaries and the concept of Due Diligence has been discussed in Section 79. As per this, intermediary shall not be liable for any third party information hosted by him, if his function is limited to providing access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted or if he does not initiate the transmission, select the receiver of the transmission and select or modify the information contained in the transmission and if he observes due diligence and follows the guidelines prescribed by the Central Government.very often, nothing could be seen as a scene in cyber crime! The evidences, the data, the network and the related gadgets along with of course the log files and trail of events emanating or recorded in the system are actually the crime scene. While filing cases under IT Act, be it as a civil case in the adjudication process or a criminal complaint filed with the police, many often, evidences may lie in some system like the intermediaries' computers or some times in the opponent's computer system too. In all such cases, unless the police swing into action swiftly and seize the systems and capture the evidences, such vital evidences could be easily destroyed. In fact, if one knows that his computer is going to be seized, he would immediately go for destruction of evidences (formatting, removing the history, removing the cookies, changing the registry and user login set ups, reconfiguring the system files etc) since most of the computer history and log files are volatile in nature.

**Sec 80** Power of Police Officer and Other Officers to Enter, Search, etc.:

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any police officer, not below the rank of a Inspector or any other officer of the Central Government or a State Government authorized by the Central Government in this behalf may enter any public place and search and arrest without warrant any person found therein who is reasonably suspected of having committed or of committing or of being about to commit any offence under this

## Act

**Sec 84 C** Punishment for attempt to commit offences (Inserted Vide ITA-2008):  
Whoever attempts to commit an offence punishable by this Act or causes such an offence to be committed, and in such an attempt does any act towards the commission of the offence, shall, where no express provision is made for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence or with both.

### **Competant authorities**

- ✓ Indian Computer Emergency Response Team to serve as national agency for incident response.
- ✓ The “Cyber Regulations Appellate Tribunal” has appellate powers in respect of orders passed by any adjudicating officer. Civil courts have been barred from entertaining any suit or proceeding in respect of any matter which an adjudicating officer or Tribunal is empowered to handle.

## **The Lokpal And Lokayuktas Act, 2013**

An Act to provide for the establishment of a body of Lokpal for the Union and Lokayukta for States to inquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereto.

The Lokpal shall inquire or cause an inquiry to be conducted into any matter involved in, or arising from, or connected with, any allegation of corruption made in a complaint in respect of the following, namely:—

(A) any Group 'A' or Group 'B' officer or equivalent or above, from amongst the public servants defined in sub-clauses (i) and (ii) of clause (c) of section 2 of the Prevention of Corruption Act, 1988 when serving or who has served, in connection with the affairs of the Union;

(B) any Group 'C' or Group 'D' official or equivalent, from amongst the public servants defined in sub-clauses (i) and (ii) of clause (c) of section 2 of the Prevention of Corruption Act, 1988 when serving or who has served in connection with the affairs of the Union subject to the provision of sub-section (1) of section 20;

(C) any person who is or has been a chairperson or member or officer or employee in any body or Board or corporation or authority or company or society or trust or autonomous body (by whatever name called) established by an Act of Parliament or wholly or partly financed by the Central Government or controlled by it: Provided that in respect of such officers referred to in clause (D) who have served in connection with the affairs of the Union or in any body or Board or corporation or authority or company or society or trust or autonomous body referred to in clause

(E) but are working in connection with the affairs of the State or in any body or Board or corporation or authority or company or society or trust or autonomous body (by whatever name called) established by an Act of the State Legislature or wholly or partly financed by the State Government or controlled by it, the Lokpal and the officers of its Inquiry Wing or Prosecution Wing shall have jurisdiction under this Act in respect of such officers only after obtaining the consent of the concerned State Government

## **Procedure In Respect Of Preliminary Inquiry And Investigation**

➔ The Lokpal on receipt of a complaint, if it decides to proceed further, may order—

(a) preliminary inquiry against any public servant by its Inquiry Wing or any agency (including the Delhi Special Police Establishment) to ascertain whether there exists a prima facie case for proceeding in the matter; or

(b) investigation by any agency (including the Delhi Special Police Establishment) when there exists a prima facie case: Provided that the Lokpal shall if it has decided to proceed with the preliminary inquiry, by a general or special order, refer the complaints or a category of complaints or a complaint received by it in respect of public servants belonging to Group A or Group B or Group C or Group D to the Central Vigilance Commission constituted under sub-section (1) of section 3 of the Central Vigilance Commission Act, 2003: Provided further that the Central Vigilance Commission in respect of complaints referred to it under the first proviso, after making preliminary inquiry in respect of public servants belonging to Group A and Group B, shall submit its report to the Lokpal in accordance with the provisions contained in sub-sections (2) and (4) and in case of public servants belonging to Group C and Group D, the Commission shall proceed in accordance with the provisions of the Central Vigilance Commission Act, 2003: Provided also that before ordering an investigation under clause (b), the Lokpal shall call for the explanation of the public servant so as to determine whether there exists a prima facie case for investigation: Provided also that the seeking of explanation from the public servant before an investigation shall not interfere with the search and seizure, if any, required to be undertaken by any agency (including the Delhi Special Police Establishment) under this Act.

(2) During the preliminary inquiry referred to in sub-section (1), the Inquiry Wing or any agency (including the Delhi Special Police Establishment) shall conduct a preliminary inquiry and on the basis of material, information and documents collected seek the comments on the allegations made in the complaint from the public servant and the competent authority and after obtaining the comments of the concerned public servant and the competent authority, submit, within sixty days from the date of receipt of the reference, a report to the Lokpal.

(3) A bench consisting of not less than three Members of the Lokpal shall consider every report received under sub-section (2) from the Inquiry Wing or any agency (including the Delhi Special Police Establishment), and after giving

an opportunity of being heard to the public servant, decide whether there exists a prima facie case, and proceed with one or more of the following actions, namely:—

- (a) investigation by any agency or the Delhi Special Police Establishment, as the case may be;
- (b) initiation of the departmental proceedings or any other appropriate action against the concerned public servants by the competent authority;
- (c) closure of the proceedings against the public servant and to proceed against the complainant under section 46.

**(4)** Every preliminary inquiry referred to in sub-section (1) shall ordinarily be completed within a period of ninety days and for reasons to be recorded in writing, within a further period of ninety days from the date of receipt of the complaint.

**(5)** In case the Lokpal decides to proceed to investigate into the complaint, it shall direct any agency (including the Delhi Special Police Establishment) to carry out the investigation as expeditiously as possible and complete the investigation within a period of six months from the date of its order: Provided that the Lokpal may extend the said period by a further period not exceeding of six months at a time for the reasons to be recorded in writing.

**6.** Where the Lokpal, while making a preliminary inquiry into allegations of corruption, is prima facie satisfied, on the basis of evidence available,—

(i) that the continuance of the public servant referred to in clause (d) or clause (e) or clause (f) of sub-section (1) of section 14 in his post while conducting the preliminary inquiry is likely to affect such preliminary inquiry adversely; or

(ii) such public servant is likely to destroy or in any way tamper with the evidence or influence witnesses, Power of Lokpal to recommend transfer or suspension of public servant connected with allegation of corruption. then, the Lokpal may recommend to the Central Government for transfer or suspension of such public servant from the post held by him till such period as may bespecified in the order.

**7.** The Central Government shall ordinarily accept the recommendation of the Lokpal made under sub-section (1), except for the reasons to be recorded in writing in a case where it is not feasible to do so for administrative reasons.

**8.** The Lokpal may, in the discharge of its functions under this Act, issue appropriate directions to a public servant entrusted with the preparation or

custody of any document or record—

- (a) to protect such document or record from destruction or damage; or
- (b) to prevent the public servant from altering or secreting such document or record; or Power of Lokpal to give directions to prevent destruction of records during preliminary inquiry.
- (c) to prevent the public servant from transferring or alienating any assets allegedly acquired by him through corrupt means.

**9.** The Lokpal may, by general or special order in writing, and subject to such conditions and limitations as may be specified therein, direct that any administrative or financial power conferred on it may also be exercised or discharged by such of its Members or officers or employees as may be specified in the order.

### **Assessment of loss and recovery thereof by special court**

**39.** If any public servant is convicted of an offence under the Prevention of Corruption Act, 1988 by the Special Court, notwithstanding and without prejudice to any law for the time being in force, it may make an assessment of loss, if any, caused to the public exchequer on account of the actions or decisions of such public servant not taken in good faith and for which he stands convicted, and may order recovery of such loss, if possible or quantifiable, from such public servant so convicted: Assessment of loss and recovery thereof by Special Court. Provided that if the Special Court, for reasons to be recorded in writing, comes to the conclusion that the loss caused was pursuant to a conspiracy with the beneficiary or beneficiaries of actions or decisions of the public servant so convicted, then such loss may, if assessed and quantifiable under this section, also be recovered from such beneficiary or beneficiaries proportionately.

**45.** If any public servant wilfully or for reasons which are not justifiable, fails to:

- (a) to declare his assets; or
- (b) gives misleading information in respect of such assets and is found to be in possession of assets not disclosed or in respect of which misleading information was furnished, Presumption as to acquisition of assets by corrupt means in certain cases. then, such assets shall, unless otherwise proved, be presumed to belong to the public servant and shall be presumed to be assets acquired by corrupt means: Provided that the competent authority may condone or exempt the public servant from furnishing information in respect of assets not exceeding such minimum value as may be prescribed.

## **Offences and Penalties**

**46. (1)** Notwithstanding anything contained in this Act, whoever makes any false and frivolous or vexatious complaint under this Act shall, on conviction, be punished with imprisonment for a term which may extend to one year and with fine which may extend to one lakh rupees.

**(2)** No Court, except a Special Court, shall take cognizance of an offence under sub-section (1). Prosecution for false complaint and payment of compensation, etc., to public servant.

**(3)** No Special Court shall take cognizance of an offence under sub-section (1) except on a complaint made by a person against whom the false, frivolous or vexatious complaint was made or by an officer authorised by the Lokpal.

**(5)** In case of conviction of a person [being an individual or society or association of persons or trust (whether registered or not)], for having made a false complaint under this Act, such person shall be liable to pay compensation to the public servant against whom he made the false complaint in addition to the legal expenses for contesting the case by such public servant, as the Special Court may determine.

**47. (1)** Where any offence under sub-section (1) of section 46 has been committed by any society or association of persons or trust (whether registered or not), every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the society or association of persons or trust, for the conduct of the business or affairs or activities of the society or association of persons or trust as well as such society or association of persons or trust shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

**50.** No suit, prosecution or other legal proceedings under this Act shall lie against any public servant, in respect of anything which is done in good faith or intended to be done in the discharge of his official functions or in exercise of his powers. Protection of action taken in good faith by others



## Food Safety And Standards Act, 2006

*An Act to consolidate the laws relating to food and to establish the Food Safety and Standards Authority of India for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto.*

### Definitions

“**Adulterant**” means any material which is or could be employed for making the food unsafe or sub-standard or mis-branded or containing extraneous matter;

“**Contaminant**” means any substance, whether or not added to food, but which is present in such food as a result of the production (including operations carried out in crop husbandry, animal husbandry or veterinary medicine), manufacture, processing, preparation, treatment, packing, packaging, transport or holding of such food or as a result of environmental contamination and does not include insect fragments, rodent hairs and other extraneous matter;

“**Extraneous matter**” means any matter contained in an article of food which may be carried from the raw materials, packaging materials or process systems used for its manufacture or which is added to it, but such matter does not render such article of food unsafe;

“**Misbranded food**” means an article of food –

- A) if it is purported, or is represented to be, or is being –
- (i) offered or promoted for sale with false, misleading or deceptive claims either;
    - (a) upon the label of the package,
    - (b) through advertisement,
  - (ii) sold by a name which belongs to another article of food;
  - (iii) offered or promoted for sale under the name of a fictitious individual

**or**

company as the manufacturer or producer of the article as borne on the package or containing the article or the label on such package;

**or**

- B) if the article is sold in packages which have been sealed or prepared by **or** at the instance of the manufacturer or producer bearing his name and address but

-

- (i) the article is an imitation of, or is a substitute for, or resembles in a manner likely to deceive, another article of food under the name of

which it is sold, and is not plainly and conspicuously labelled so as to indicate its true character;

(ii) the package containing the article or the label on the package bears any statement, design or device regarding the ingredients or the substances contained therein, which is false or misleading in any material particular, or if the package is otherwise deceptive with respect to its contents; or

(iii) the article is offered for sale as the product of any place or country which is false; or

C) if the article contained in the package –

(i) contains any artificial flavouring, colouring or chemical preservative and the package is without a declaratory label stating that fact or is not labelled in accordance with the requirements of this Act or regulations made thereunder or is in contravention thereof;

(ii) is offered for sale for special dietary uses, unless its label bears such information as may be specified by regulation, concerning its vitamins, minerals or other dietary properties in order sufficiently to inform its purchaser as to its value for such use;

(iii) is not conspicuously or correctly stated on the outside thereof within the limits of variability laid down under this Act.

**“Unsafe food”** means an article of food whose nature, substance or quality is so affected as to render it injurious to health :—

- by the article itself, or its package thereof, which is composed, whether wholly or in part, of poisonous or deleterious substance; or
- by the article consisting, wholly or in part, of any filthy, putrid, rotten, decomposed or diseased animal substance or vegetable substance; or
- by virtue of its unhygienic processing or the presence in that article of any harmful substance; or
- by the substitution of any inferior or cheaper substance whether wholly or in part; or
- by addition of a substance directly or as an ingredient which is not permitted; or
- by the abstraction, wholly or in part, of any of its constituents; or
- by the article being so coloured, flavoured or coated, powdered or polished, as to damage or conceal the article or to make it appear better or
- by the presence of any colouring matter or preservatives other than that specified in respect thereof; or
- by the article having been infected or infested with worms, weevils, or insects; or

- by virtue of its being prepared, packed or kept under insanitary conditions
- by virtue of its being mis-branded or sub-standard or food containing extraneous matter; or
- by virtue of containing pesticides and other contaminants in excess of quantities specified by regulations.

### **General Provisions As To Articles Of Food**

- No article of food shall contain any food additive or processing aid unless it is in accordance with the provisions of this Act and regulations made thereunder.

Explanation.— For the purposes of this section, “processing aid” means any substance or material, not including apparatus or utensils, and not consumed as a food ingredient by itself, used in the processing of raw materials, foods or its ingredients to fulfil a certain technological purpose during treatment or processing and which may result in the non-intentional but unavoidable presence of residues or derivatives in the final product.

1) Contaminants, naturally occurring toxic substances, heavy metals, etc No article of food shall contain any contaminant, naturally occurring toxic substances or toxins or hormone or heavy metals in excess of such quantities as may be specified by regulations.

2) Pesticides, veterinary drugs residues, antibiotic residues and microbiological counts

3) No article of food shall contain insecticides or pesticides residues, veterinary drugs residues, antibiotic residues, solvent residues, pharmacological active substances and micro-biological counts in excess of such tolerance limit as may be specified by regulations.

4) No insecticide shall be used directly on article of food except fumigants registered and approved under the Insecticides Act, 1968 (46 of 1968).

Explanation.

5) Genetically modified foods, organic foods, functional foods, proprietary foods, etc. Save as otherwise provided under this Act and regulations made thereunder, no person shall manufacture, distribute, sell or import any novel food, genetically modified articles of food, irradiated food, organic foods, foods for special dietary uses, functional foods, nutraceuticals, health supplements, proprietary foods and such other articles of food which the Central Government

6) No person shall manufacture, distribute, sell or expose for sale or despatch or deliver to any agent or broker for the purpose of sale, any packaged food products which are not marked and labelled in the manner as may be

specified by regulations: Provided that the labels shall not contain any statement, claim, design or device which is false or misleading in any particular concerning the food products contained in the package or concerning the quantity or the nutritive value implying medicinal or therapeutic claims or in relation to the place of origin of the said food products.

7) Every food business operator shall ensure that the labelling and presentation of food, including their shape, appearance or packaging, the packaging materials used, the manner in which they are arranged and the setting in which they are displayed, and the information which is made available about them through whatever medium, does not mislead consumers.

### **Liability of the manufacturers, packers, wholesalers, distributors and sellers**

(1) The manufacturer or packer of an article of food shall be liable for such article of food if it does not meet the requirements of this Act and the rules and regulations made thereunder.

(2) The wholesaler or distributor shall be liable under this Act for any article of food which is—

- (a) Supplied after the date of its expiry; or
- (b) Stored or supplied in violation of the safety instructions of the manufacturer; or
- (c) Unsafe or misbranded; or

27(d) Unidentifiable of manufacturer from whom the article of food have been received; or

(e) Stored or handled or kept in violation of the provisions of this Act, the rules and regulations made thereunder; or

(f) received by him with knowledge of being unsafe.

(2) The seller shall be liable under this Act for any article of food which is –

- (a) sold after the date of its expiry; or
- (b) handled or kept in unhygienic conditions; or
- (c) misbranded; or
- (d) unidentifiable of the manufacturer or the distributors from whom such articles of food were received; or
- (e) received by him with knowledge of being unsafe.

### **Food recall procedures.**

(1) If a food business operator considers or has reasons to believe that a food which he has processed, manufactured or distributed is not in compliance with this Act, or the rules or regulations, made thereunder, he shall immediately initiate procedures to withdraw the food in question from the market and

consumers indicating reasons for its withdrawal and inform the competent authorities thereof.

(2) A food business operator shall immediately inform the competent authorities and co-operate with them, if he considers or has reasons to believe that a food which he has placed on the market may be unsafe for the consumers.

(3) The food business operator shall inform the competent authorities of the action taken to prevent risks to the consumer and shall not prevent or discourage any person from cooperating, in accordance with this Act, with the competent authorities, where this may prevent, reduce or eliminate a risk arising from a food.

(4) Every food business operator shall follow such conditions and guidelines relating to food recall procedures as the Food Authority may specify by regulations.

## **Offences And Penalties**

General provisions relating to offences.

(1) A person may render any article of food injurious to health by means of one or more of the following operations, namely:-

(a) adding any article or substance to the food;

(b) using any article or substance as an ingredient in the preparation of the food;

(c) abstracting any constituents from the food; or

(d) subjecting the food to any other process or treatment, with the knowledge that it may be sold or offered for sale or distributed for human consumption.

(2) In determining whether any food is unsafe or injurious to health, regard shall be had to –

(i) the normal conditions of use of the food by the consumer and its handling at each stage of production, processing and distribution;

(ii) the information provided to the consumer, including information on the label, or other information generally available to the consumer concerning the avoidance of specific adverse health effects from a particular food or category of foods not only to the probable, immediate or short-term or long-term effects of that food on the health of a person consuming it, but also on subsequent generations;

(iii) to the probable cumulative toxic effects;

(iv) to the particular health sensitivities of a specific category of consumers where the food is intended for that category of consumers; and

(v) also to the probable cumulative effect of food of substantially the same composition on the health of a person consuming it in ordinary quantities.

**50. Penalty for selling food not of the nature or substance or quality demanded.**  
Any person who sells to the purchaser's prejudice any food which is not in compliance with the provisions of this Act or the regulations made thereunder, or of the nature or substance or quality demanded by the purchaser, shall be liable to a penalty not exceeding five lakh rupees.

Provided that the persons covered under sub-section (2) of section 31, shall for such non-compliance be liable to a penalty not exceeding twenty five thousand rupees.

**51. Penalty for sub-standard food.**

Any person who whether by himself or by any other person on his behalf manufactures for sale or stores or sells or distributes or imports any article of food for human consumption which is sub-standard, shall be liable to a penalty which may extend to five lakh rupees.

**52. Penalty for misbranded food.**

(1) Any person who whether by himself or by any other person on his behalf manufactures for sale or stores or sells or distributes or imports any article of food for human consumption which is misbranded, shall be liable to a penalty which may extend to three lakh rupees.

(2) The Adjudicating Officer may issue a direction to the person found guilty of an offence under this section, for taking corrective action to rectify the mistake or such article of food shall be destroyed.

**53. Penalty for misleading advertisement.**

(1) Any person who publishes, or is a party to the publication of an advertisement, which—

(a) falsely describes any food; or

(b) is likely to mislead as to the nature or substance or quality of any food or gives false guarantee, shall be liable to a penalty which may extend to ten lakh rupees.

(2) In any proceeding the fact that a label or advertisement relating to any article of food in respect of which the contravention is alleged to have been committed contained an accurate statement of the composition of the food shall not preclude the court from finding that the contravention was committed.

**54. Penalty for food containing extraneous matter.**

Any person whether by himself or by any other person on his behalf manufactures for sale or stores or sells or distributes or imports any article of food for human consumption containing extraneous matter, shall be liable to a

penalty which may extend to one lakh rupees.

**55. Penalty for failure to comply with the directions of Food Safety Officer.**

If a food business operator or importer without reasonable ground, fails to comply with the requirements of this Act or the rules or regulations or orders issued thereunder, as directed by the Food Safety Officer, he shall be liable to a penalty which may extend to two lakh rupees.

**56. Penalty for unhygienic or unsanitary processing or manufacturing of food.**

Any person who, whether by himself or by any other person on his behalf, manufactures or processes any article of food for human consumption under unhygienic or unsanitary conditions, shall be liable to a penalty which may extend to one lakh rupees.

**57. Penalty for possessing adulterant.**

(1) Subject to the provisions of this chapter, if any person who whether by himself or by any other person on his behalf, imports or manufactures for sale, or stores, sells or distribute any adulterant shall be liable –

(i) where such adulterant is not injurious to health, to a penalty not exceeding two lakh rupees;

(ii) where such adulterant is injurious to health, to a penalty not exceeding ten lakh rupees.

(2) In a proceeding under sub-section (1), it shall not be a defence that the accused was holding such adulterant on behalf of any other person.

**58. Penalty for contraventions for which no specific penalty is provided.**

Whoever contravenes any provisions of this Act or the rules or regulations made thereunder, for the contravention of which no penalty has been separately provided in this Chapter, shall be liable to a penalty which may extend to two lakh rupees.

**59. Punishment for unsafe food.**

Any person who, whether by himself or by any other person on his behalf, manufactures for sale or stores or sells or distributes or imports any article of food for human consumption which is unsafe, shall be punishable,–

(i) where such failure or contravention does not result in injury, with imprisonment for a term which may extend to six months and also with fine which may extend to one lakh rupees;

(ii) where such failure or contravention results in a non-grievous injury, with imprisonment for a term which may extend to one year and also with fine which may extend to three lakh rupees;

(iii) where such failure or contravention results in a grievous injury, with imprisonment for a term which may extend to six years and also with fine which may extend to five lakh rupees;

(iv) where such failure or contravention results in death, with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and also with fine which shall not be less than ten lakh Rupees.

**60. Punishment for interfering with seized items.**

If a person without the permission of the Food Safety Officer, retains, removes or tampers with any food, vehicle, equipment, package or labelling or advertising material or other thing that has been seized under this Act, he shall be punishable with imprisonment for a term which may extend to six months and also with fine which may extend to two lakh rupees.

**61. Punishment for false information.**

If a person, in connection with a requirement or direction under this Act, provides any information or produces any document that the person knows is false or misleading, he shall be punishable with imprisonment for a term which may extend to three months and also with fine which may extend to two lakh rupees.

**62. Punishment for obstructing or impersonating a Food Safety Officer.**

If a person without reasonable excuse, resists, obstructs, or attempts to obstruct, impersonate, threaten, intimidate or assault a Food Safety Officer in exercising his functions under this Act, he shall be punishable with imprisonment for a term which may extend to three months and also with fine which may extend to one lakh rupees.

**63. Punishment for carrying out a business without licence.**

If any person or food business operator (except the persons exempted from licensing under sub-section (2) of section 31 of this Act), himself or by any person on his behalf who is required to obtain licence, manufacturers, sells, stores or distributes or imports any article of food without licence, shall be punishable with imprisonment for a term which may extend to six months and also with a fine which may extend to five lakh rupees.

**64. Punishment for subsequent offences.**

(1) If any person, after having been previously convicted of an offence punishable under this Act subsequently commits and is convicted of the same offence, he shall be liable to—

(i) twice the punishment, which might have been imposed on a first conviction, subject to the punishment being maximum provided for the same offence;

(ii) a further fine on daily basis which may extend up to one lakh rupees, where the offence is a continuing one; and



(iii) his licence shall be cancelled. The Court may also cause the offender's name and place of residence, the offence and the penalty imposed to be published at the offender's expense in such newspapers or in such other manner as the court may direct and the expenses of such publication shall be deemed to be part of the cost attending the conviction and shall be recoverable in the same manner as a fine.

#### **65. Compensation in case injury of death of consumer**

(1) Without prejudice to the other provisions of this Chapter, if any person whether by himself or by any other person on his behalf, manufactures or distributes or sells or imports any article of food causing injury to the consumer or his death, it shall be lawful for the Adjudicating Officer or as the case may be, the court to direct him to pay compensation to the victim or the legal representative of the victim, a sum—

(a) not less than five lakh rupees in case of death;

(b) not exceeding three lakh rupees in case of grievous injury; and

(c) not exceeding one lakh rupees, in all other cases of injury:

Provided that the compensation shall be paid at the earliest and in no case later than six months from the date of occurrence of the incident:

Provided further that in case of death, an interim relief shall be paid to the next of the kin within thirty days of the incident.

(2) Where any person is held guilty of an offence leading to grievous injury or death, the Adjudicating Officer or the court may cause the name and place of residence of the person held guilty, the offence and the penalty imposed to be published at the offender's expense in such newspapers or in such other manner as the Adjudicating Officer or the court may direct and the expenses of such publication shall be deemed to be part of the cost attending the conviction and shall be recoverable in the same manner as a fine.

(3) The Adjudicating Officer or the court may also,—

(a) order for cancellation of licence, re-call of food from market, forfeiture of establishment and property in case of grievous injury or death of consumer;

(b) issue prohibition orders in other cases.

#### **66. Offences by companies.**

(1) Where an offence under this Act which has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that where a company has different establishments or branches or different units in any establishment or branch, the concerned Head or the person in charge of such establishment, branch, unit nominated by the company as responsible for food

safety shall be liable for contravention in respect of such establishment, branch or unit: Provided further that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

#### **77. Time limit for prosecutions.**

Notwithstanding anything contained in this Act, no court shall take cognizance of an offence under this Act after the expiry of the period of one year from the date of commission of an offence: Provided that the Commissioner of Food Safety may, for reasons to be recorded in writing, approve prosecution within an extended period of up to three years.

#### **78. Power of court to implead manufacturer etc.**

Where at any time during the trial of any offence under this Act alleged to have been committed by any person, not being the importer, manufacturer, distributor or dealer of any article of food, the court, is satisfied, on the evidence adduced before it, that such importer, manufacturer, distributor or dealer is also concerned with that offence, then the court may, notwithstanding anything contained in sub-section (3) of section 319 of the Code of Criminal Procedure, 1973 (2 of 1974), or in section 71 of this Act, proceed against him as though a prosecution has been instituted under this Act

#### **96. Recovery of penalty.**

A penalty imposed under this Act, if it is not paid, shall be recovered as an arrear of land revenue and the defaulters licence shall be suspended till the penalty is paid.

#### 4.

### **The Protection Of Women From Domestic Violence Act, 2005**

The kinds of abuse covered under the **Domestic Violence Act '2005** are:

- Physical Abuse
- Sexual Abuse
- Verbal and Emotional Abuse.
- Economic Abuse: depriving the aggrieved person of economic or financial resources to which she is entitled under any law or custom or which she acquires out of necessity such as household necessities, stridhan, her jointly or separately owned property, maintenance, and rental payments;
- Domestic Relationship: A domestic relationship as under the *Domestic Violence Act '2005* includes live-in relationships and other relationships arising out of membership in a family.

#### **Beneficiaries under the Domestic Violence Act '2005**

- Women: The *Domestic Violence Act '2005* covers women who have been living with the Respondent in a shared household and are related to him by blood, marriage, or adoption and includes women living as sexual partners in a relationship that is in the nature of marriage. Women in fraudulent or bigamous marriages or in marriages deemed invalid in law are also protected.
- Children: The *Domestic Violence Act '2005* also covers children who are below the age of 18 years and includes adopted, step or foster children who are the subjects of physical, mental, or economical torture. Any person can file a complaint on behalf of a child.
- Respondent: The *Domestic Violence Act '2005* defines the Respondent as any adult male person who is or has been in a domestic relationship with the aggrieved person and includes relatives of the husband or male partner.

#### **Rights Granted To women under Domestic Violence Act '2005**

The Domestic Violence Act '2005 secures a woman's right to reside in the matrimonial or shared household even if she has no title or rights in the household. A part of the house can be allotted to her for her personal use. A court can pass a residence order to secure her right of residence in the household.

## **Assistance and protection**

A woman who is victimized by acts of domestic violence will have the right to obtain the services and assistance of Police Officers, Protection Officers, Service Providers, Shelter Homes and medical establishments as well as the right to simultaneously file her own complaint under Section 498 A of the Indian Penal Code for matrimonial cruelty.

## **Right to issuance of Orders**

She can get the following orders issued in her favour through the courts once the offence of domestic violence is prima facie established:

- **Protection Orders:** The court can pass a protection order to prevent the accused from aiding or committing an act of domestic violence, entering the workplace, school or other places frequented by the aggrieved person, establishing any kind of communication with her, alienating any assets used by both parties, causing violence to her relatives or doing any other act specified in the Protection order.
- **Residence Orders:** This order ensures that the aggrieved person is not dispossessed, her possessions not disturbed, the shared household is not alienated or disposed off, she is provided an alternative accommodation by the Respondent if she so requires, the Respondent is removed from the shared household and he and his relatives are barred from entering the area allotted to her. However, an order to remove oneself from the shared household cannot be passed against any woman.
- **Monetary Relief:** The Respondent can be made accountable for all expenses incurred and losses suffered by the aggrieved person and her child due to the infliction of domestic violence. Such relief may include loss of earnings, medical expenses, loss or damage to property, and payments towards maintenance of the aggrieved person and her children.
- **Custody Orders:** This order grants temporary custody of any child or children to the aggrieved person or any person making an application on her behalf. It may make arrangements for visit of such child or children by the Respondent or may disallow such visit if it is harmful to the interests of the child or children.
- **Compensation Orders:** The Respondent may be directed to pay compensation and damages for injuries caused to the aggrieved person as a result of the acts of domestic violence by the Respondent. Such injuries may also include mental torture and emotional distressed caused to her.
- **Interim and Ex parte Orders:** Such orders may be passed if it is deemed just and proper upon commission of an act of domestic violence or likelihood of such commission by the Respondent. Such orders are passed on the basis of an affidavit of the aggrieved person against the Respondent.

- Right to obtain relief granted by other suits and legal proceedings: The aggrieved person will be entitled to obtain relief granted by other suits and legal proceedings initiated before a civil court, family court or a criminal court.

### **Liabilities And Restrictions Imposed Upon The Respondent**

1. He can be subjected to certain restrictions as contained in the Protection and Residence order issued against him.
2. The Respondent can be made accountable for providing monetary relief to the aggrieved person and her children and pay compensation damages as directed in the Compensation order.
3. He has to follow the arrangements made by the court regarding the custody of the child or children of the aggrieved person as specified in the Custody order.

The Domestic Violence Act '2005 does not permit any female relative of the husband or male partner to file a complaint against the wife or female partner.

### **Authorities Responsibility And Their Functions**

The Domestic Violence Act '2005 provides for appointment of Protection Officers and Service Providers by the state governments to assist the aggrieved person with respect to medical examination, legal aid, safe shelter and other assistance for accessing her rights.

- Protection Officers: These are officers who are under the jurisdiction and control of the court and have specific duties in situations of domestic violence. They provide assistance to the court in preparing the petition filed in the magistrate's office, also called a Domestic Incident Report. It is their duty to provide necessary information to the aggrieved person on Service Providers and to ensure compliance with the orders for monetary relief.
- Service Providers: These refer to organizations and institutions working for women's rights. They must be registered with the state government to record the Domestic Incident Report and to help the aggrieved person in medical examination. It is their duty to approach and advise the aggrieved person of her rights under the law and assist her in initiating the required legal proceedings or taking appropriate protective measures to remedy the situation. The law protects them for all actions done in good faith and no legal proceedings can be initiated against them for the proper exercise of their powers under the Domestic Violence Act '2005.
- Court of first class Judicial Magistrate or Metropolitan Magistrate: This shall be the competent court to deal with cases of domestic violence and within the local limits of this court, either of the parties must reside or

carry on business or employment, or the cause of action must have arisen. The Magistrate is allowed to hold proceedings in camera if either party to the proceedings so desires.

- General duties of Police Officers, Service Providers and Magistrate: Upon receiving a complaint or report of domestic violence or being present at the place of such an incident, they are under a duty to inform the aggrieved person of:
  - • her right to apply for obtaining a relief or the various orders granted under the Domestic Violence Act '2005;
  - the availability of services of Service Providers and Protection Officers;
  - her right to obtain free legal services; and
  - her right to file a complaint under Section 498 A of the Indian Penal Code.
- Counselors: The Magistrate may appoint any member of a Service Provider who possesses the prescribed qualifications and experience in counseling, for assisting the parties during the proceedings.
- Welfare experts: The Magistrate can appoint them for assisting him in discharging his functions.
- In charge of Shelter Homes: The person in charge of a shelter home shall provide shelter to the aggrieved person in the shelter home upon request made by the aggrieved person, a Protection Officer or a Service Provider on her behalf.
- In charge of Medical Facilities: The person in charge of a medical facility shall provide medical aid to the aggrieved person upon request made by the aggrieved person, a Protection Officer or a Service Provider on her behalf.
- Central and State Governments: Such governments are under a duty to ensure wide publicity of the provisions of this Domestic Violence Act '2005 through all forms of public media at regular intervals, to provide awareness and training to all officers of the government, and to coordinate the services provided by all Ministries and various Departments.

### **Procedure Of Filing Complaint And The Court's Duty**

- The aggrieved person or any other witness of the offence on her behalf can approach a Police Officer, Protection Officer, or Service Provider and file a complaint with a Magistrate for obtaining orders or reliefs under the Domestic Violence Act '2005. The informant who in good faith provides information relating to the offence to the relevant authorities will not have any civil or criminal liability.
- The court is required to take cognizance of the complaint by instituting a hearing within three days of the complaint being filed in the court.
- The Magistrate shall give a notice of the date of hearing to the Protection

Officer to be served on the Respondent and such other persons as directed by the Magistrate, within a maximum period of 2 days or such further reasonable time as allowed by the Magistrate.

- The court is required to dispose of the case within 60 days of the first hearing.
- The court, to establish the offence by the Respondent can use the sole testimony of the aggrieved person.
- Upon finding the complaint genuine, the court can pass a Protection Order, which shall remain in force till the aggrieved person applies for discharge. If upon receipt of an application from the aggrieved person, the Magistrate is satisfied that the circumstances so require, he may alter, modify or revoke an order after recording the reasons in writing.
- A complaint can also be filed under Section 498 A of the Indian Penal Code, which defines the offence of matrimonial cruelty and prescribes the punishment for the husband of a woman or his relative who subjects her to cruelty.

### **Penalty / Punishment**

- For Respondent: The breach of Protection Order or interim protection order by the Respondent is a cognizable and non-bailable offence. It is punishable with imprisonment for a term, which may extend to one year or with fine, which may extend to twenty thousand rupees or with both. He can also be tried for offences under the Indian Penal Code and the Dowry Prohibition Act.
- For Protection Officer: If he fails or does not discharge his duties as directed by the Magistrate without any sufficient cause, he will be liable for having committed an offence under the Domestic Violence Act '2005 with similar punishment. However, he cannot be penalized without the prior sanction of the state government. Moreover, the law protects him for all actions taken by him in good faith.

**An appeal can be made to the Court of Session against any order passed by the Magistrate within 30 days from the date of the order being served on either of the parties.**

**The Unlawful Activities (PREVENTION) Act, 1967**

“**Unlawful activity**”, in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),—

- (i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or
- (ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or
- (iii) which causes or is intended to cause disaffection against India ;

“**Unlawful association**” means any association,—

- (i) which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity; or
- (ii) which has for its object any activity which is punishable under section 153A or section 153B of the Indian Penal Code (45 of 1860), or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity.

**Power to prohibit the use of funds of an unlawful association.**

→ Where an association has been declared unlawful by a notification issued under section 3 which has become effective under sub-section (3) of that section and the Central Government is satisfied, after such inquiry as it may think it, that any person has custody of any moneys, securities or credits which are being used or are intended to be used for the purpose of the unlawful association, the Central Government may, by order in writing, prohibit such person from paying, delivering, transferring or otherwise dealing in any manner whatsoever with such moneys, securities or credits or with any other moneys, securities or credits which may come into his custody after the making of the order save in accordance with the written orders of the Central Government and a copy of such order shall be served upon the person so prohibited in the manner specified in sub-section (3).

→ The Central Government may endorse a copy of the prohibitory order made under sub-section (1) for investigation to any Gazetted Officer of the Government it may select, and such copy shall be a warrant where under such



officer may enter in or upon any premises of the person to whom the order is directed, examine the books of such person, search for moneys, securities or credits, and make inquiries from such person or any officer, agent or servant of such person, touching the origin of any dealings in any moneys, securities or credits which the Investigating Officer may suspect are being used or are intended to be used for the purpose of the unlawful association.

→ A copy of an order made under this section shall be served in the manner provided in the 1 [Code], for the service of a summons, or where the person to be served is a corporation, company, bank or other association, it shall be served on any secretary, director or other officer or person concerned with the management thereof; or by leaving it or sending it by post addressed to the corporation, company, bank or other association at its registered office, or where there is no registered office, at the place where it carries on business.

→ Any person aggrieved by a prohibitory order made under sub-section (1) may, within fifteen days from the date of the service of such order, make an application to the Court of the District Judge within the local limits of whose jurisdiction such person voluntarily resides or carries on business or personally works for gain, to establish that the moneys, securities or credits in respect of which the prohibitory order has been made are not being used or are not intended to be used for the purpose of the unlawful association and the Court of the District Judge shall decide the question.

### **Offences & penalties**

(a) a person, who—

(i) is and continues to be a member of such association; or

(ii) takes part in meetings of such association; or

(iii) contributes to, or receives or solicits any contribution for the purpose of, such association; or

(iv) in any way assists the operations of such association, shall be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine; and

(b) a person, who is or continues to be a member of such association, or voluntarily does an act aiding or promoting in any manner the objects of such association and in either case is in possession of any unlicensed firearms, ammunition, explosive or other instrument or substance capable of causing mass destruction and commits any act resulting in loss of human life or grievous injury to any person or causes significant damage to any property,—

(i) and if such act has resulted in the death of any person, shall be punishable with death or imprisonment for life, and shall also be liable to fine;

(ii) in any other case, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.]

**Penalty for dealing with funds of an unlawful association.**

If any person on whom a prohibitory order has been served under sub-section (1) of section 7 in respect of any moneys, securities or credits pays, delivers, transfers or otherwise deals in any manner whatsoever with the same in contravention of the prohibitory order, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both, and notwithstanding anything contained in the 1[Code], the court trying such contravention may also impose on the person convicted an additional fine to recover from him the amount of the moneys or credits or the market value of the securities in respect of which the prohibitory order has been contravened or such part thereof as the court may deem fit.

**Penalty for contravention of an order made in respect of a notified place.**

(1) Whoever uses any article in contravention of a prohibitory order in respect thereof made under sub-section (3) of section 8 shall be punishable with imprisonment for a term which may extend to one year, and shall also be liable to fine.

(2) Whoever knowingly and wilfully is in, or effects or attempts to effect entry into, a notified place in contravention of an order made under sub-section (4) of section 8 shall be punishable with imprisonment for a term which may extend to one year, and shall also be liable to fine.

**Punishment for unlawful activities**

(1) Whoever—

(a) takes part in or commits, or

(b) advocates, abets, advises or incites the commission of, any unlawful activity, shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

(2) Whoever, in any way, assists any unlawful activity of any association declared unlawful under section 3, after the notification by which it has been so declared has become effective under sub-section (3) of that section, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

(3) Nothing in this section shall apply to any treaty, agreement or convention entered into between the Government of India and the Government of any other country or to any negotiations therefor carried on by any person authorised in this behalf by the Government of India

### **Punishment for terrorist act**

(1) Whoever commits a terrorist act shall,—

(a) if such act has resulted in the death of any person, be punishable with death or imprisonment for life, and shall also be liable to fine;

(b) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

### **Punishment for making demands of radioactive substances, nuclear devices, etc.**

Whoever intentionally, by use of force or threat of use of force or by any other means, demands any bomb, dynamite or other explosive substance or inflammable substances or firearms or other lethal weapons or poisonous or noxious or other chemicals or any biological, radiological, nuclear material or device, with the intention of aiding, abetting or committing a terrorist act, shall be punishable with imprisonment for a term which may extend to ten years, and shall also be liable to fine.

### **Punishment for raising funds for terrorist act**

Whoever, in India or in a foreign country, directly or indirectly, raises or collects funds or provides funds to any person or persons or attempts to provide funds to any person or persons, knowing that such funds are likely to be used by such person or persons to commit a terrorist act, notwithstanding whether such funds were actually used or not for commission of such act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.]

### **Punishment for conspiracy, etc**

Whoever conspires or attempts to commit, or advocates, abets, advises or 3 [incites or knowingly facilitates] the commission of, a terrorist act or any act preparatory to the commission of a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

### **Punishment for organising of terrorist camps**

Whoever organizes or causes to be organized any camp or camps for imparting training in terrorism shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.]

### **Punishment for recruiting of any person or persons for terrorist act**

Whoever recruits or causes to be recruited any person or persons for commission of a terrorist act shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

### **Punishment for harbouring, etc**

Whoever voluntarily harbours or conceals, or attempts to harbour or conceal any person knowing that such person is a terrorist shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life, and shall also be liable to fine. Provided that this section shall not apply to any case in which the harbour or concealment is by the spouse of the offender.

### **Punishment for being member of terrorist gang or organisation**

Any person who is a member of a terrorist gang or a terrorist organisation, which is involved in terrorist act, shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine.

### **Punishment for holding proceeds of terrorism**

Whoever knowingly holds any property derived or obtained from commission of any terrorist act or acquired through the terrorist fund shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine.

### **Punishment for threatening witness**

Whoever threatens any person who is a witness or any other person in whom such witness may be interested, with violence, or wrongfully restrains or confines the witness, or any other person in whom the witness may be interested, or does any other unlawful act with intent to cause any of the said acts, shall be punishable with imprisonment which may extend to three years, and shall also be liable to fine.

### **Enhanced penalties**

(1) 1 [If any person with intent to aid any terrorist or a terrorist organisation or a terrorist gang contravenes] any provision of, or any rule made under the Explosives Act, 1884 (4 of 1884) or the Explosive Substances Act, 1908 (6 of 1908) or the Inflammable Substances Act, 1952 (20 of 1952) or the Arms Act, 1959 (54 of 1959), or is in unauthorised possession of any bomb, dynamite or hazardous explosive substance or other lethal weapon or substance capable of mass destruction or biological or chemical substance of warfare, he shall, notwithstanding anything contained in any of the aforesaid Acts or the rules

made thereunder, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

(2) 2 [Any person who with the intent to aid any terrorist, or a terrorist organisation or a terrorist gang] attempts to contravene or abets, or does any act preparatory to contravention of any provision of any law or rule specified in sub-section (1), shall be deemed to have contravened that provision under sub-section (1) and the provisions of that sub-section in relation to such person, have effect subject to the modification that the reference to “imprisonment for life” therein shall be construed as a reference to “imprisonment for ten years”.

### **Forfeiture of proceeds of terrorism.**

(1) No person shall hold or be in possession of any proceeds of terrorism.

(2) Proceeds of terrorism, whether held by a terrorist or 3 [terrorist organisation or terrorist gang or] by any other person and whether or not such terrorist or other person is prosecuted or convicted for any offence under Chapter IV or Chapter VI, shall be liable to be forfeited to the Central Government or the State Government, as the case may be.

### **Court to order forfeiture of proceeds of terrorism .**

Where any property is seized or attached on the ground that it constitutes proceeds of terrorism and the court confirms the order in this regard under sub-section (6) of section 25, it may order forfeiture of such property, whether or not the person from whose possession it is seized or attached, is prosecuted in a court for an offence under Chapter IV or Chapter VI.

### **Appeal**

Any person aggrieved by an order of forfeiture under section 26 may, within one month from the date of the receipt of such order, appeal to the High Court within whose jurisdiction, the court, which passed the order appealed against, is situated.

## 6.

### **The Protection of Human Rights Act, 1993**

“**human rights**” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.

#### **Powers and functions of Human Rights Commission**

##### Functions of the Commission

The Commission shall perform all or any of the following functions, namely:-

- inquire, suo motu or on a petition presented to it by a victim or any person on his behalf [or on a direction or order of any court] , into complaint of
  - (i) violation of human rights or abetment thereof; or
  - (ii) negligence in the prevention of such violation, by a public servant;
- intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;
- visit, notwithstanding anything contained in any other law for the time being in force, any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and make recommendations thereon to the Government;
- review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;
- review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures;
- study treaties and other international instruments on humanrights and make recommendations for their effective implementation;
- undertake and promote research in the field of human rights;
- spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;

#### **Powers relating to inquiries**

(1) The Commission shall, while inquiring into complaints under this Act, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, and in particular in respect of the following matters, namely :

- (a) summoning and enforcing the attendance of witnesses and examining them on oath;
- (b) discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any court or office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) any other matter which may be prescribed.

(2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Indian Penal Code.

(3) The Commission or any other officer, not below the rank of a Gazetted Officer, specially authorised in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document or take extracts or copies therefrom subject to the provisions of section 100 of the Code of Criminal Procedure, 1973, in so far as it may be applicable.

(4) The Commission shall be deemed to be a civil court and when any offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973, forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1973.

(5) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code, and the Commission shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

(6) Where the Commission considers it necessary or expedient so to do, it may, by order, transfer any complaint filed or pending before it to the State Commission of the State from which the complaint arises, for disposal in accordance with the provisions of this Act; Provided that no such complaint shall be transferred unless the same is one respecting which the State Commission has jurisdiction to entertain the same.

## **Procedure**

### ***Inquiry into complaints***

The Commission while inquiring into the complaints of violations of human rights may—

(i) call for information or report from the Central Government or any State Government or any other authority or organisation subordinate thereto within such time as may be specified by it:- Provided that—

(a) if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own;

(b) if, on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly;

If, at any stage of the inquiry, the Commission:-

(a) considers it necessary to inquire into the conduct of any person; or

(b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry; it shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence: Provided that nothing in this section shall apply where the credit of a witness is being impeached.

(ii) without prejudice to anything contained in clause (i), if it considers necessary, having regard to the nature of the complaint, initiate an inquiry.

### **Steps during and after inquiry**

[The Commission may take any of the following steps during or upon the completion of an inquiry held under this Act, namely:-

(a) where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights or abetment thereof by a public servant, it may recommend to the concerned Government or authority –

→ to make payment of compensation or damages to the complainant

→ to the victim or the members of his family as the Commission may consider necessary;

(ii) to initiate proceedings for prosecution or such other suitable action as the Commission may deem fit against the concerned person or persons;

(iii) to take such further action as it may think fit;

(b) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;

(c) recommend to the concerned Government or authority at any stage of the



inquiry for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary;

(d) subject to the provisions of clause (e), provide a copy of the inquiry report to the petitioner or his representative;

(e) the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission;

(f) the Commission shall publish its inquiry report together with the comments of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.]

## **The Personal Injuries (compensation Insurance) Act, 1963**

An Act to impose on employers a liability to pay compensation to workmen sustaining personal injuries and to provide for the insurance of employers against such liability.

### **Compensation Payable Under The Act**

➔ Workmen to whom the Act applies.-The workman to whom this Act applies are--

- workmen employed in any employment or class of employment which is, or has been declared to be, an essential service under rule 126AA of the Defence of India Rules, 1962;
- the workmen employed in any factory as defined in clause (m) of section 2 of the Factories Act, 1948; (63 of 1948)
- workmen employed in any mine within the meaning of the Mines Act, 1952 (35 of 1952);
- workmen employed in any major port;
- workmen employed in any plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);
- workmen employed in any employment specified in this behalf by the Central Government by notification.

➔ Compensation payable under the Act, by whom and how payable.- (1) There shall, subject to such conditions as may be specified in the Scheme, be payable by an employer in respect of personal injury sustained by a gainfully occupied person who is a workman to whom this Act applies, compensation, in addition to any relief provided under the Personal Injuries (Emergency Provisions) Act, 1962, (59 of 1962) of the amount and kind provided by section 7: Provided that where an employer has taken out a policy of insurance, as required by sub-section(1) of section 9, and has made all payments by way of premium thereon which are subsequently due from him in accordance with the provisions of the Scheme or where by the provisions of sub-section(1) of section 9 or of sub-section (2) of section 10 the employer is not required to insure, the Central Government shall assume and discharge on behalf of the employer the employer's liability to pay compensation under this sub-section.

➔ The compensation payable under this Act shall be payable in accordance with the provisions made in this behalf in the Scheme.

➔ This section shall be binding on the Government.

➔ Limitation on right to receive compensation otherwise than under this Act and Act of 1962.- Where any person has a right apart from the provisions of this Act and of the Personal Injuries (Emergency Provisions) Act, 1962, to receive compensation (whether in the form of gratuity, pension compassionate payment or otherwise) or damages from an employer in respect of a personal injury in respect of which compensation is payable under this Act, the right shall extend only to so much of such compensation or damages as exceeds the amount of compensation payable under this Act.

➔ Special provisions in relation to employees of Government.- Where any person in the employ of Government has under the rules regulating the conditions of his service a right apart from the provisions of this Act or of the Personal Injuries (Emergency Provisions) Act, 1962, (59 of 1962) to receive any sum, whether as extraordinary pension, gratuity, compassionate payment or damages, from the Government in respect of a personal injury in respect of which compensation is payable under this Act, then, notwithstanding anything contained in this Act or the Personal Injuries (Emergency Provisions) Act, 1962, that person shall have the right to receive the sum admissible under those rules and if the sum so admissible is less than the amount payable as compensation under this Act and the Personal Injuries (Emergency Provisions) Act, 1962, then, he shall have a further right to receive an amount equal to the difference between the sum admissible under those rules and the amount of compensation payable under this Act.

### **Amount of compensation.-**

(1) The compensation payable under this Act shall be as follows:

(a) where death results from the injury, the amount payable in a like case under the Workmen's Compensation Act, 1923, (8 of 1923) reduced by the value in lump sum of the amount payable under the Personal Injuries (Emergency Provisions) Act, 1962 (59 of 1962);

(b) where permanent total disablement results from the injury, the amount payable in a like case under Workmen's Compensation Act, 1923, reduced by the value in lump sum of the amount payable under the Personal Injuries (Emergency Provisions) Act, 1962;

(c) where permanent partial disablement results from the injury--

(i) in the case of an injury specified in the Schedule--such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of disablement'

(ii) in the case of an injury not specified in the Schedule--the percentage of such compensation specified in the Schedule for disablement held by a competent medical authority acting under the Scheme made the Personal Injuries (Emergency Provisions) Act, 1962, (59 of 1962) to be of corresponding

degree;

(iii) where more injuries than one are sustained-- the aggregate of the compensation payable in respect of those injuries, so however as not to exceed in any case the compensation which would have been payable if permanent total disability had resulted from the injuries;

(d) where temporary disablement, whether total or partial, results from the injury, the half-monthly payments payable in a like case under the Workmen's Compensation Act, 1923, (8 of 1923) reduced in each case, so long as he receives any payment under the Scheme made under the Personal Injuries (Emergency Provisions) Act, 1962, by the amount under the said Scheme.

(2) Where the monthly wages of a workman are more than five hundred rupees, the compensation payable under this Act shall be the amount payable under the provisions of sub-section (1) in the case of a workman whose monthly wages are more than four hundred rupees.

## **The Sexual Harassment Of Women At Workplace (Prevention, Prohibition And Redressal) Act, 2013**

An Act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and matters connected therewith or incidental thereto

**Aggrieved woman**" means-

- (i) in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent ;
- (ii) in relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house;

**"Domestic worker"** means a woman who is employed to do the household work in any household for remuneration whether in cash or kind, either directly or through any agency on a temporary, permanent, part time or full time basis, but does not include any member of the family of the employer;

**"Sexual harassment"** includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:-

- (i) physical contact and advances; or
- (ii) a demand or request for sexual favours; or
- (iii) making sexually coloured remarks; or
- (iv) showing pornography; or
- (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;

**"Workplace"** includes -

- (i) any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society;
- (ii) any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including

production, supply, sale, distribution or service;

(iii) hospitals or nursing homes;

(iv) any sports institute, stadium, sports complex or competition or games venue. whether residential or not used for training, sports or other activities relating thereto:

(v) any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey:

(vi) a dwelling place or a house;

**"Unorganised sector"** in relation to a workplace means an enterprise owned by individuals or semi-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employes workers, the number of such workers is less than ten.

### **Constitutional Internal Complaints Committee**

→ Every employer of a workplace shall, by a written order in writing, constitute a Committee to be known as the "Internal Complaints Committee": Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted in all administrative units or offices.

→ The Internal Committee shall consist of the following members to be nominated by the employer, namely:

(a) a Presiding officer who shall be at workplace from amongst the employees : & woman employed at a senior level at the workplace: Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to;

→ one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment: Provided that at least one-half of the total Members so nominated shall be women.

→ The Presiding Officer and every Member of the Internal Committee shall hold office or such period not exceeding three years, from the date of their nomination as may be specified by the employer.

→ Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident: Provided that where such

complaint cannot be made in writing;

→ the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing: Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend to the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

→ Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section.

→ The Internal Committee or, as the case may be, the Local Committee, may, before initiating an inquiry under section 11 and at the request (If the aggrieved woman take steps to settle the matter between her and the respondent through conciliation: Provided that no monetary settlement shall be made as a basis of conciliation.

→ In case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code, and any other relevant provisions of the said Code where applicable: Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (1) of section 10 has not been complied with by the respondent, the Internal Committee or the local Committee shall proceed to make an inquiry into the complaint or As the case may be, forward the complaint to the police:

### **Complaint Inquiry**

→ During the pendency of an inquiry, on a written request made by the aggrieved woman, the Internal Committee or the Local Committee as the case may be may recommend to the employer to .

- transfer the aggrieved woman or the respondent to any other workplace ;

or

- grant leave to the aggrieved woman up to a period of three months: or grant such other relief to the aggrieved woman as may be prescribed.

- The leave granted to the aggrieved woman under this section shall be in addition to the leave she would be otherwise entitled.

- On the recommendation of the Internal Committee or the Local Committee, as the case may be, under sub-section (1), the employer shall implement the recommendations made under sub-section (1) and send the report of such implementation to the Internal Committee or the Local Committee, as the case

may be.

→ Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.

(3) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be---

(i) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;

(ii) According to provisions of section 15, aggrieved women can be entitled to get salary and other benefits.

(iii) it may direct the respondent to pay such sum to the aggrieved woman:

Provided further that in case the respondent fails to pay the sum referred to in clause (ii), the Internal Committee or, as the case may be, the Local Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District officer.

(iii) The employer or the District Officer shall act upon the recommendation within sixty days of its receipt by him.

● Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or the District Officer. As the case may be, to take action against the woman or the person who has made the complaint under sub-section (1) or sub-section (2) of section 9, as the case may be, in accordance with the provisions of the service rules applicable to her or him or where no such service rules exist, in such manner as may be prescribed.

● Where the Internal committee or the Local Committee, as the case may be, arrives at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness or the District Officer as the case may be, to take action in accordance with the provisions of the service rules applicable to the said witness or where no such service rules exist, in such manner as may be prescribed.



- Compensation amount should be considered on the basis of ;
  - (a) the mental trauma, pain, suffering and emotional distress caused to the aggrieved woman;
  - (b) the loss in the career opportunity due to the incident of sexual harassment;
  - (c) medical expenses incurred by the victim for physical or psychiatric treatment;
  - (d) the income and financial status of the respondent;
  - (e) feasibility of such payment in lump sum or in instalments.
  
- Inquiry, details of the complaint and details of victim should not be published under any circumstances.
  
- Appeal: If the aggrieved/respondent is not satisfied, they can file an appeal without crossing 90 days period.
  
- Where the employer fails to --
  - (a) constitute an internal Committee under sub-section(/) of section 4; Penalty for non-compliance
  - (b) take action under sections 13, 14 and 22; and with
  - (c) contravenes or attempts to contravene" or objects to contravention of other Act. provisions of this Act or any rules made thereunder.
    - he shall be punishable with fine which may extend to fifty thousand rupees.
    - If any employer, after having been previously convicted of an offence punishable under this Act subsequently commits and is convicted of the same offence, he shall be liable to
      - (i) twice the punishment, which might have been imposed on a first conviction, subject to the punishment being maximum provided for the same offence: Provided that in case a higher punishment is prescribed under any other law for the time being in force, for the offence for which the accused is being prosecuted, the court shall take due cognizance of the same while awarding the punishment;
      - (ii) cancel of his licence or withdrawal, or non-renewal, or approval, or cancellation of the registration, as the case may be, by the Government or local authority required for carrying on his business or activity.

## 9.

### **The Child Labour (Prohibition And Regulation) Amendment Act, 2012**

“An Act to prohibit the engagement of children in all occupations and to prohibit the engagement of adolescents in hazardous occupations and processes and the matters connected therewith or incidental thereto.”.

#### **Prohibition Of Employment Of Children In Certain Occupations And Processes:**

No child shall be employed or permitted to work in any of the following occupations: Set forth in part of ‘A’ of the schedule or in any workshop where in any of the process set forth in part ‘B’ of the schedule to this Act.

1. Transport of passengers, goods; or mails by railway
2. Cinder picking, clearing of an ash pit or building operation in the railway premise.
3. Work in a catering establishment at a railway station, involving the movement of vendor or any other employee of the establishment from one platform to another or into or out of a moving train.
4. Work relating to the construction of railway station or with any other work where such work is done in close proximity to or between the railway lines.
5. The port authority within the limits of any port.
6. Work relating to selling of crackers and fireworks in shops with temporary licenses
7. Abattoirs/slaughter Houses
8. Automobile workshops and garages.
9. Founderies
10. Handling of taxies or inflammable substance or explosives
11. Handloom and powerloom industry
12. Mines (Under ground and under water) and collieries
13. Plastic units and Fiber glass workshop

OR

In any workshop wherein any of the following processes is carried on.

- 1 Beedi making
- 2 Carpet Weaving
- 3 Cement manufacture including bagging of cement.
- 4 Cloth printing, deying and weaving.
- 5 Manufacture of matches, explosive and fire works.
- 6 Mica cutting and splitting.

- 7 Shellac manufacture
- 8 Soap manufacture
- 9 Tanning.
- 10 Wool cleaning
- 11 Building and construction industry
- 12 Manufacture of slate pencils (including packing)
- 13 Manufacture of products of agate
- 14 Manufacturing processes using toxic metals and substances such as lead, mercury, manganese, chromium, cadmium, benzene, pesticides and asbestos
- 15 All Hazardous processes as defined in section 2(cb) and dangerous operations as notified in rules made under section 87 of the factories Act 1948
- 16 Printing (as defined in section 2(k) of the factories Act 1948)
- 17 Cashew and cashew nut descaling and processing
- 18 Soldering process in electronic industries
- 19 Agarbathi manufacturing
- 20 Automobile repairs and maintenance (namely welding lather work , dent beating and printing)
- 21 Brick kilns and Roof tiles units
- 22 Cotton ginning and processing and production of hosiery goods
- 23 Detergent manufacturing
- 24 Fabrication workshop (ferrous and non-ferrous)
- 25 Gem cutting and polishing
- 26 Handling of chromites and manganese ores
- 27 Jute textile manufacture and of coir making
- 28 Lime kilns and manufacture of lime
- 29 Lock making
- 30 Manufacturing process having exposure to lead such as primary and secondary smelting, welding etc. ( See item 30 of part B process)
- 31 Manufacture of glass, glass ware including bangles fluorescent tubes bulbs and other similar glass products
- 32 Manufacturing of cement pipes, cement products, and other related work.
- 33 Manufacture of dyes and dye stuff
- 34 Manufacturing or handling of pesticides and insecticides
- 35 Manufacturing or processing and handling of corrosive and toxic substances, metal cleaning and photo enlarging and soldering processes in electronic industry
- 36 Manufacturing of burning coal and coal briquette
- 37 Manufacturing of sports goods involving to synthetic materials, chemicals and leather
- 38 Moulding and processing of fiberglass and plastics
- 39 Oil expelling and refinery
- 40 Paper making

- 41 Potteries and ceramic industry
- 42 Polishing, moulding, cutting welding and manufacture of brass goods in all forms.
- 43 Process in agriculture where tractors, threshing and harvesting machines are used and chab cutting
- 44 Saw mill all process
- 45 Sericulture processing
- 46 Skinning dyeing and process for manufacturing of leather and leather products
- 47 Stone breaking and stone crushing
- 48 Tobacco processing including manufacturing of tobacco, tobacco paste and handling of tobacco in any form
- 49 Tyre making repairing, re-trading and graphite beneficiation
- 50 Utensils making polishing and metal buffing 51 Zari Making (all process)

### **Hours And Period Of Work:**

- No child shall be required or permitted to work in any establishment in excess of number of hours prescribed (Section-7) In Kerala the working hours in limited to four and half hours in a day. (Rule -3).
- The period of work on each day shall not exceed three hours and no child shall work for more than three hours before he has had an interval for rest for at least one hour. No child shall be permitted or required to work between 7 P.m. and 8 a.m.
- No child shall be required or permitted to work overtime. (Section-7)

### **Weekly Holiday:**

Every child shall be allowed in each week a holiday of one whole day.

### **Notice To Inspector:**

Every occupier shall within 30 days send a written notice in Form-A to the inspector within whose local limits the establishment is situated. (Section-8 read with Rule-4).

### **Disputes As To Age:**

If any question arises between an inspector and an occupier as to the age of any child, in the absence of a certificate in Form-C as to the age of such child granted by the prescribed medical authority, be referred by the inspector for decision to the prescribed medical authority. ( A govt. medical officer not below the rank of an Assistant surgeon of a district or on officers having equivalent rank in ESI Dispensaries or hospitals (Section-10 read with Rule - 16)

**Registers:**

Every occupier of an establishment shall maintain a register in respect of children employed or permitted to work at the establishment in Form-B. (Section II read with Rule-15)

**Display Of Notice:**

Every occupier shall display in the establishment the abstract of section-3 and 14 in form-D of the Act (Section 12 read with Rule -17)

**Penalties:**

➤ Violations under Section-3 shall be punishable with imprisonment which shall not be less than three months which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with both.

➤ Continuing offence under section (3) shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years.

➤ Any other violations under the Act shall be punishable with simple imprisonment, which may extend to one month or with fine, which may extend to ten thousand rupees or with both.

➤ Whoever--

(a) fails to give notice as required by section 9; or

(b) fails to maintain a register as required by section 11 or makes any false entry in any such register; or

(c) fails to display a notice containing an abstract of section 3 and this section as required by section 12; or

(d) fails to comply with or contravenes any other provisions of this Act or the rules made thereunder.

shall be punishable with simple imprisonment, which may extend to one month or with fine, which may extend to ten thousand rupees or with both

**Who Can File Prosecutions**

1. Any person
2. Police Officer
3. Inspector appointed under the Act

**Health and safety**

➤ The appropriate Government may, by notification in the Official Gazette, make rules for the health and safety of the children employed or permitted to work in any establishment or class of establishments.

➤ Without prejudice to the generality of the foregoing provisions, the said rules may provide for all or any of the following matters, namely:--

- (a) cleanliness in the place of work and its freedom from nuisance;
- (b) disposal of wastes and effluents;
- (c) ventilation and temperature;
- (d) dust and fume;
- (e) artificial humidification;
- (f) lighting;
- (g) drinking water;
- (h) latrine and urinals;
- (i) spittoons;
- (j) fencing of machinery;
- (k) work at or near machinery in motion;
- (l) employment of children on dangerous machines;
- (m) instructions, training and supervision in relation to employment of children on dangerous machines;
- (n) device for cutting off power;
- (o) self-acting machines;
- (p) easing of new machinery;
- (q) floor, stairs and means of access;
- (r) pits, sumps, openings in floors, etc.;
- (s) excessive weights;
- (t) protection of eyes;
- (u) explosive or inflammable dust, gas, etc.;
- (v) precautions in case of fire;
- (w) maintenance of buildings; and
- (x) safety of buildings and machinery.

## **10. Other Important Laws**

- 1.Right to Information Act.
2. Consumer Protection Act.
3. Bonded Labour Prohibition Act etc.  
Motor Vehicles Act (State wise) etc.

For the detailed understanding please visit our RTI Support and Consumer Support pages.