

An Act to provide for the making of protection Orders in instances of domestic violence and for matters connected therewith or incidental thereto:-

BE it enacted by the parliament of the Democratic Socialist Republic of Sri Lanka as follows:-

*Sort title*

1. This Act may be cited as the Domestic Violence Act, No.                      of 2002

*An aggrieved person to make an application*

2. (1) Any person who is aggrieved by an act of domestic violence, may make an application to the Magistrate's Court for the making of protection Order.

(2) An application under subsection (1) may be made -

(a) by an aggrieved person:

(b) where the aggrieved person is a child –

(i) by a person with whom the child resides;

(ii) by a parent or guardian of the child;

(iii) by a person authorized in writing by the National Child Protection Authority established under the Child Protection Authority Act, No 5 of 2002.

(c) by a police officer on behalf of an aggrieved person referred to in paragraphs (a) or (b).

(3) An application under subsection (1) shall be substantially in the form set out in Schedule I hereto and shall be made to the Magistrate Court within whose jurisdiction the aggrieved person or the relevant person resides, or the act of domestic violence took place.

(4) The Court shall cause a certified copy of the application and any supporting evidence to be served on the respondent.

*Matters to be taken into account when issuing an Interim Order or a Protection Order.*

3. In determining an application for a Protection Order, the court shall have regard to -
  - (a) the need to ensure that the aggrieved person is protected from any further violence;
  - (b) the welfare of any child affected or is likely to be affected, by the respondent's conduct;
  - (c) the need for accommodation of the aggrieved person or the children (if any)
  - (d) any hardship that may be caused to the respondent or to any other person as a result of the making of the order;
  - (e) any other matter which the court considers relevant in the circumstance of the case.

*Orders made with consent of parties.*

4. The Court may, with the consent of the parties to the proceedings, make any order under this Act without proof or admission of guilt.<sup>5</sup>

*Procedure to be followed in granting an application*

5. (1) Upon an application being made in accordance with the provisions of this Act the Court shall forthwith proceed to hear the application and where the Court is satisfied on a balance of probability
  - (i) that the respondent has engaged or is likely to engage in an act of domestic violence and that in order to ensure the safety of the aggrieved person pending the application, it is necessary to forthwith make an Interim Order irrespective of whether a copy of the application has been served on the respondent or not, make order for the hearing of the application on a day not later than fourteen (14) days from the date of receipt of such application; or
  - (ii) that the making of an Interim Order is not necessary in the circumstances, proceed to hear the application in terms of section 7 hereof.

*Requirements of an Interim Order*

6. (1) The Court shall not make an Interim Order unless the application is supported by oral evidence given on oath by the aggrieved person.
- (2) An Interim Order -
  - (a) shall restrain the respondent from committing any act of domestic violence;
  - (b) shall not contain any other prohibition or condition specified in section 8 unless the Court is satisfied by reason of the circumstances of the case, that it is necessary to do so to ensure the safety of the aggrieved person;
  - (c) shall call upon the respondent to show cause, on the date specified in the notice referred to in Schedule II as to why a Protection Order should not be issued.
- (3) An Interim Order shall not be enforceable unless it has been served on the respondent, and notwithstanding anything contained in any other law, shall where the respondent is evading service, be deemed to be served on the respondent, if it is posted in a conspicuous place on the premises where he normally resides.
- (4) An Interim Order shall remain in force until a Protection Order is issued by the Court, or the Interim Order is revoked, modified, or varied by the Court, under section 9.

*Protection Orders.*

7. (1) Where the Court has not issued an Interim Order then the Court shall serve on the respondent, the notice referred to in Schedule II, calling on the respondent to show cause on such date as is specified in the notice, why a Protection Order should not be issued:

Provided however the notice returnable date shall not be more than two weeks from the date of the application.

(2) Where the respondent does not appear on the date specified in the notice issued under subsection (1) and the court is satisfied that :-

(a) the Interim Order of notice of service has been served on the respondent;

(b) and the application contains *Prima facie* evidence that the respondent had committed, is committing, or is likely to commit an act of domestic violence,

the court shall issue a Protection Order, which shall remain in force a period not exceeding twelve months, as specified therein.

(3) Where the respondent appears on the date specified in the notice the court shall proceed to hear the matter.

(4) Where the respondent appears on the date specified in the notice and does not admit the act or acts of violence, but does not object to the issue of a Protection Order, the court shall issue a Protection Order.

(5) In hearing the matter the court may consider any evidence previously received and such further affidavits or oral evidence as it may direct, which shall form part of the record of the proceedings.

(6) Where a respondent is not represented by a legal representative, the court may -

(a) on its own accord or on the request of the aggrieved person, if it is of the opinion that it is just or desirable to do so, order that the examination of witnesses, including such aggrieved person, be conducted by the respondent;

(b) instruct that the respondent shall state the question to court and the court shall repeat the question accurately to the aggrieved person or witness.

- (7) Upon the issuing of a Protection Order the court shall forthwith cause -
- (i) such order to be served on the respondent; and
  - (ii) certified copies of such Order, to be served on the –
    - (a) the aggrieved person;
    - (b) the applicant, where the applicant is not the aggrieved person;
    - (c) the officer in charge of the police stations within whose jurisdiction the respondent and the aggrieved person reside.

*Court's powers in respect of a Interim Order or a Protection Order*

8. (1) The Court may, by means of an interim Order or a Protection Order prohibit the respondent from :-
- (a) committing any act of domestic violence
  - (b) enlisting the help of another person to commit any such act;
  - (c) entering a residence or any specified part shared by the aggrieved person and the respondent;
  - (d) entering the aggrieved persons –
    - (i) residence;
    - (ii) place of employment
    - (iii) school
  - (e) preventing the aggrieved person who ordinarily lives or has lived in a shared residence from entering or remaining in, the shared residence or specified part of the shared residence;
  - (f) occupying the shared residence;
  - (g) having contact with the child or having contact with such child other than on the satisfaction of such conditions as it may consider appropriate, where the court is satisfied that it is in the best interest of such child;

- (h) committing acts of violence against any other it is whether it be a relative, friend, social worker or medical officer, who may be assisting the aggrieved person;
  - (i) preventing the aggrieved person from using or having access to family or shared resources;
  - (j) telephoning or in any other way attempting to establish contact with the aggrieved person;
  - (k) selling, transferring, alienating or encumbering the shared residence in any way if it is the place of residence of aggrieved person;
  - (l) selling jointly owned family assets or assets which although not in the respondent's name, are assets in which the aggrieved person has an interest;
  - (m) following the aggrieved person around as to cause a nuisance;
  - (n) engaging in such other conduct as the court may specify in the Protection Order.
- (2) Where a Protection Order is made and where court is satisfied that it is reasonably necessary to protect and provide for the immediate safety, health or welfare of the aggrieved person the court may order-
- (a) the police to seize any weapons that the respondent may have in his or her possession;
  - (b) the police to accompany the aggrieved person to any place to assist with the collection of personal property;
  - (c) the respondent and or the aggrieved person to attend mandatory counseling sessions, psychotherapy or other forms of rehabilitative therapy;
  - (d) the aggrieved party if such party so requests, may be placed in a shelter to provide her or him with temporary accommodation;

- (e) a social worker, counsellor, medical officer, police officer, friend, or other person whom the court deems fit, monitor the relationship between the aggrieved party and respondent. An affidavit by such person that the respondent has breached the terms of a protection order shall be *prima facie* evidence of such fact.
- (f) the respondent to provide emergency monetary assistance having regard to the financial needs and resources of the aggrieved person and the respondent.

(3) The court may, on the failure of the respondent to make any payment ordered under paragraph (f) of subsection 2 direct an employer of the respondent, to directly pay to the aggrieved person a part or the whole of such financial relief that the court may have ordered.

Variation and revocation of a Protection Order

9. (1) A Protection Order or interim Order may be altered, of modified, varied or revoked on an application by either the aggrieved person or the respondent, and the court is satisfied that there is a change of circumstances that require such alteration, modification, variation or revocation:

Provided however no such alteration, modification, variation or revocation, shall be made without hearing both the aggrieved person and the respondent.

Provided further that Court shall not grant such an application to the aggrieved person unless it is satisfied that the application is made freely and voluntarily.

*Attendance of respondent and witnesses*

10. The magistrate may proceed in the manner provided in Chapter (v) and (vi) of the Code of Criminal Procedure Act, No. 15 of 1979 to compel the attendance of the respondent and of any person required by the applicant to give evidence, and the production of any document necessary, for the purposes of this Act.

*Form of proceedings*

11. Subject to the provision of section 12 all evidence taken by a Magistrate under this Act shall be taken in the presence of the respondent, and where his personal attendance is not required by the Magistrate, in the presence of his attorney-at-law, if any and shall be recorded in the manner prescribed for trials in the Magistrates Court:

Provided however, it shall not be necessary to frame a charge or to record the statement of the person against whom the application is made in the manner prescribed in the Code of Criminal procedure Act, No. 15 of 1979:

Provided further, that in any proceedings under this Act it shall be competent for the respondent to give evidence upon oath or affirmation as an ordinary witness, and a spouse shall be a competent witness against the other spouse.

*Right of Appeal*

12. Any person who shall be shall be dissatisfied with any order made by a Magistrate under section 6 or 7 may prefer an appeal to the relevant High Court established under Article 154 P of the Constitution in like manner as if the order was a final order pronounced by Magistrate's Court in a criminal case or matter, and sections 320 to 330 (both inclusive) and sections 357 and 358 of the Code of Criminal Procedure Act, No. 15 of 1979 shall, *mutatis mutandis*, apply to such appeal:

Provided, however, that notwithstanding anything to the contrary in section 323 of the Criminal Procedure Act, No. 15 of 1979 an order under section 6 or section 7 shall not be stayed by reason of such appeal, unless the High Court directs otherwise for reasons to be recorded:

Provided further that the Magistrate in forwarding the record to the High Court shall retain a copy of his order for purposes of enforcement.

*Enforcement of Order*

13. Where any respondent against whom an Interim order or a Protection Order, as the case may be, has been issued and has failed to comply with such Order, the Magistrate may, for breach of the Order, sentence such person to imprisonment of either description for a term not less than six months and not exceeding one year.

*Other actions not barred*

14. Nothing in this Act shall be construed as depriving an aggrieved person of a right if any, to institute a separate civil action or criminal proceeding.

*Sinhala text to prevail in case of inconsistency*

15. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall pre

*Interpretation.*

16. In this Act unless the context otherwise requires:-

**"aggrieved person"** means a person in respect of whom n act of domestic violence has been, or is likely to be, committed:

**"child"** means a person who is under the age of 18 years;

**"domestic violence"** means-

- (a) an act committed by a relevant person which constitutes an offence under Chapter 16 of the Penal Code or an attempt to commit such an act; and
- (b) emotional abuse,

**"emotional abuse"** means a pattern of degrading or humiliating conduct directed towards an aggrieved person, including-

- (a) repeated insults, ridicule or name calling;
- (b) repeated threats which cause emotional pain; or
- (c) the repeated exhibition of obsessive possessiveness or jealousy such as to constitute a serious invasion of the aggrieved person's privacy, liberty, integrity or security;

**"relevant persons"** means,-

- (a) the spouse;
- (b) the father, mother, grandfather, grandmother, step father, step mother, father-in-law or mother-in-law;
- (c) the son, daughter, grandson, grand daughter, step son, step daughter, or son-in-law;
- (d) the brother, sister, half-brother, half-sister, step brother, step sister, brother-in-law or sister-in-law;
- (e) the uncle, aunt, uncle-in-law or aunt-in-law;
- (f) the nephew or niece;
- (g) the cousin;

of an aggrieved person;

**"respondent"** in relation to a Protection Order or an Interim Protection Order means the person against whom the Order is sought or made, as the case may be.

**SCHEDULE 1 Section 2 (3)**

**APPLICATION**

**In the Magistrate Court of .....**

A.B., of ..... (name, description and address of the aggrieved person, and if he sues in any representative capacity, state the capacity - e.g., if the aggrieved person is a minor or a person of unsound mind appearing by his guardian or next friend, say "a minor, by C.D. of ..... his next friend")  
..... (Aggrieved person).

Against

Y.Z., of ..... (name, description and address of the respondent)  
..... Respondent.

The .....day of ..... 20.....

The plaintiff of the above-named aggrieved person (or aggrieved persons) (and if the case is so add: appearing by C.H. her registered attorney) states as follows:

(Here set forth the cause of action, and if they are more than one , thus):

First: for a first cause of action - 1. That, &c, according to terms following,

Second: and for a second cause of action - 1. that, &c... &c.

Wherefore the aggrieved person (or aggrieved persons) prays for a protection order against the respondent with effect from the ..... day of ..... 20.....

.....  
Signature  
Aggrieved person