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ཨ།ཝ།ཁ།ཅ

Domestic Violence Prevention Act of Bhutan 2013

ལམ་ཁང་།

PARLIAMENT OF BHUTAN

ཨེན་ཨེ་བི/ཨེས་པི-༢༢/2023/ 240

སྤྱི་ཟླ་ 27.03.2023 ལྷ།

3 མི་རྒྱ་ཤེས་རིག་བློན་པོ་མཆོག་ལྷ། དོན་འཐས་ དེའི་ འབྲུག་གི་སྤྱི་ཚོགས་དང་པའི་ཚོགས་ཐེངས་ ༧0 པའི་ནང་ལས་ ཆ་འཛིག་གྲུབ་པའི་ **འབྲུག་གི་ནང་འཁོད་རྒྱལ་སྤྱོད་ལག་གཤོལ་བཅའ་ཁྲིམས་ 2023 ཅན་མ**འདི་ རང་ལུགས་གནས་ལོ་ཏུ་ མོ་སྒྲུལ་ལོ་བྱ། 2 པའི་ཚེས་ 21 ལྷའམ་ སྤྱི་ལོ་ 2023 ཟླ་ 3 པའི་ཚེས་ 15 ལུ་ བསྟར་སྤྱོད་ཀྱི་བཀའ་སྒོལ་གནང་ཡོད་མི་དང་འཁྲིལ་ དེར་ལྷན་ཁག་གི་ཅོར་བས་ལས་ དང་བླངས་ཏུལ་མཐུན་མཛད་དགོས་བཅས། རང་ལུགས་གནས་ལོ་ཏུ་མོ་ སྒྲུལ་ལོ་བྱ། 2 པའི་ཚེས་ 4 ལྷ།

(འཛིགས་མེད་ཏུལ་ཁྲིམས)

ཚོགས་དཔོན།

འདྲ 1. **གཞུང་སྐྱོང་དཔྱད་ཁང་མི་རྒྱ་བློན་ཆེན་མཆོག་ལྷ། སྐུན་སྒྲོན།**

2. འབྲུག་གི་མི་རྒྱ་ཁྲིམས་སྒྲོན་བློན་པོ་མཆོག་ལྷ། སྐུན་སྒྲོན།

3. རྒྱལ་ཡོངས་ཚོགས་སྡེའི་མི་རྒྱ་ཁྲི་འཛིན་མཆོག་ལྷ། སྐུན་སྒྲོན།

4. མངའ་བདག་དྲུང་ཆེན་ལྷ། སྐུན་ཞུའི་ཆེད།

5. རྒྱལ་ཡོངས་ཚོགས་འདུའི་ཡོངས་ཁྱབ་དྲུང་ཆེན་ལྷ།

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PREAMBLE

WHEREAS in consonance with the Constitution of the Kingdom of Bhutan towards the right to equality and to freedom and security of a person with the ultimate desire to realize happiness for all its citizens;

WHEREAS traditional means prevail to foster and promote family integrity and institution in the pursuit of Gross National Happiness;

WHEREAS the integrity and sanctity of person are respected and accorded the highest regard;

RECOGNIZING the need to prevent domestic violence and promote harmony, coexistence and respect within families and domestic relationships;

IT IS THE PURPOSE of this Act to ensure a prompt and just legal remedy for the victims of domestic violence; facilitate access to remedies for immediate and effective assistance; establish homes and protection to the victims of domestic violence and to introduce measures which seek to ensure that the relevant organs of the State give full effect to the provisions of this Act.

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Parliament of the Kingdom of Bhutan do hereby enact the Domestic Violence Prevention Bill of Bhutan 2013 on 19th Day of the 1st Month of Water Female Snake Year of the Bhutanese Calendar corresponding to 1st Day of March 2013 at its 10th Session of the First Parliament as follows:

CHAPTER I
PRELIMINARY

Short title, commencement and extent

1. This Bill shall:

   (1) Be called as the DOMESTIC VIOLENCE PREVENTION ACT OF BHUTAN 2013;

   (2) Come into force on the 7th Day of the 2nd Month of the Water Female Snake Year of the Bhutanese Calendar, corresponding to 18th Day of March 2013; and

   (3) Extend to whole of Bhutan.

Application

2. This act shall apply only to violence as described in section 4 of this Act occurring within domestic relationship and shall not extend to other types of violence in the society.

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CHAPTER II
DOMESTIC VIOLENCE

Domestic violence

3. For the purpose of this Act, domestic violence means violence against a person by another person with whom that person is, or has been in a domestic relationship.

4. For the purpose of this Act, violence means any act, omission or behavior towards a person which results in physical, sexual, emotional or economic abuse.

   (1) "Physical abuse" includes any act or conduct of the defendant which:

   (a) Causes bodily injury, pain, harm, or danger to life;

   (b) Impairs the health or development of the victim; or

   (c) Otherwise violates the dignity of the victim.

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(2) “Sexual abuse” includes any conduct of sexual nature that humiliates, degrades or otherwise violates the dignity of the victim.

(3) “Emotional abuse” includes distress caused by:

(a) Intimidation;

(b) Harassment;

(c) Damage to property;

(d) Threats of physical abuse or sexual abuse;

(e) Degrading or humiliating verbal conduct; or

(f) Any other conduct that violates the dignity of the victim.

(4) “Economic abuse” includes:

(a) Unreasonable deprivation of economic or financial resources and facilities which the victim is entitled to use or enjoy, which results in emotional distress or hardship;

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(b) Disposal of household effects, any alienation of assets whether movable or immovable, valuable shares securities, bonds and the like or other property in which the victim has share or is entitled to use by virtue of the domestic relationship or which may be reasonable required by the victim or children or any other property jointly or separately held by the victim; or

(c) Prohibition or restriction to continued accesses to resources, accounts or facilities which the victim is entitled to use or enjoy by virtue of the domestic relationship.

5. For the purpose of this Act, domestic relationship means:

(1) Spousal relationship; or

(2) A family relationship; or

(3) An intimate personal relationship; or

(4) Ordinarily shares a household with a defendant.

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CHAPTER III
IMPLEMENTING AUTHORITY

Competent authority

6. The government shall establish a competent authority responsible for the effective implementation of this Act.

7. Until the competent authority is established under section 6 of this Act, the National Commission for Women and Children (NCWC) shall function as the competent authority.

Function of the competent authority

8. The competent authority shall:

   (1) Develop, coordinate and monitor such programs and activities for the effective implementation of this Act by the relevant agencies;

   (2) Develop reintegration programs and activities to facilitate livelihood of the victims;

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(3) Conduct periodic study to monitor the situation of domestic violence;

(4) Develop programs and activities to advocate against domestic violence;

(5) Take all measures to ensure that the provisions of this Act are given wide publicity through public media including the television, radio and the print media at regular intervals;

(6) Conduct periodic sensitization and awareness training on the issues addressed by this Act; and

(7) Establish central database management system in order to maintain upto date record of all the domestic violence cases in the country.

Finance

9. The government shall provide adequate budget for the effective implementation of this Act.

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Functions of the Government

10. The Government shall:

(1) Ensure all the relevant agencies/focal persons to collaborate with the Competent Authority for effective implementation of this Act.

(2) Through concerned agencies or institutions provide community based services responding to special needs, problems, interests and protection of victims of domestic violence.

CHAPTER IV
COMPLAINT

Reporting

11. A complainant may report the domestic violence to:

(1) Royal Bhutan Police;

(2) Protection officer;

(3) Service provider/the social welfare officer;

(4) Competent Authority; or

(5) Members of the Local Government.

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12. The authorities mentioned under section 11 (1, 3, 4 & 5) shall upon reciept of the compliant conduct physical verifications and report immediately to the nearest police station, if the victim so desires.

Registration of complaint

13. A complaint of domestic violence may be registered in the police station by:

(1) The victim;

(2) Any person acting in the best interest of the victim;

(3) Any person having care or custody of a victim who is a minor;

(4) The protection officer or the social welfare officer of the service provider caring for the victims;

(5) Educational Institutions; or

(6) The police personnel may suo motu register the complaint.

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14. The police personnel, social welfare officer and protection officer shall maintain a record of all complaints and reports under this Act and shall contain:

(1) The names, sex and relationship of the parties;

(2) The domestic violence alleged, whether it involved any weapon or resulted in personal injuries and whether the injuries inflicted required medical treatment;

(3) Whether the defendant is a recidivist or not; and

(4) Any other information, if necessary.

Procedure and content of complaint

15. A complaint may be made orally or in writing or through other means of communication and if made orally, it shall be reduced to writing and read over to the complainant.

16. A complaint in writing or reduced to writing shall be signed by the complainant.

17. Every complaint shall be kept confidential and shall not be disclosed except to the investigation officer, Court and prosecuting agency if required.

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18. The identity of the complainant shall be protected and shall not be disclosed except by the order of the Court.

Petition before Court

19. A petition on domestic violence may be filed before the Court by:

    (1) Royal Bhutan Police;

    (2) The Victim;

    (3) The Complainant;

    (4) Protection Officer;

    (5) Competent Authority; or

    (6) Service Providers.

Establishment of Protection Unit or desk

20. There shall be Women and Child Protection Unit or desk at every police station which shall be adequately staffed with at least one female police personnel with relevant expertise in domestic violence.

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Duties of police personnel

21. In addition to Royal Bhutan Police Act, a police personnel shall:

    (1) Protect the victim and ensure that further violence is not perpetrated;

    (2) Investigate the domestic violence and refer for the prosecution as per the existing laws;

    (3) Aid or assist in obtaining shelter, medical treatment or any other services or measures deemed appropriate for the victim;

    (4) Advice the victim of his or her right under this Act; and

    (5) Take statement of the victim by the police personnel of preferably the same sex.

22. If the offence is of misdemeanor and below, and the defendant is not a recidivist, a police personnel may release the defendant

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on surety if detained or may allow the matter to be settled mutually if the victim so desires, considering:

(1) The nature and circumstance of the offence;

(2) The frequency and severity of the abuse;

(3) The age, maturity and state of mind of the victims;

(4) The reparation of the injury and compensation to the victim;

(5) The safety of the family; or/and

(6) The best interest of the victim.

CHAPTER V
PROTECTION OFFICER AND SERVICE PROVIDER

Appointment of a Protection Officer

23. The government in consultation with the Competent Authority shall designate Child Welfare Officer as Protection Officer to exercise the powers and perform the duties conferred under this Act.

24. The Protection Officer, appointed under this Act shall possess such qualification and experience as may be prescribed by the Competent Authority.

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25. The terms and conditions of Protection Officer shall be in accordance with the relevant laws.

26. The Protection Officer shall be under the supervision and guidance of the Competent Authority for discharge of duties under this Act.

Duties of Protection Officer

27. The Protection Officer shall:

(1) Assist the law enforcement agencies in the discharge of their functions under this Act;

(2) Ensure that a domestic violence incident is reported to the police station and service providers, in such form and manner as may be prescribed and forward a copy to the Competent Authority;

(3) Make an application to the Court or police station, if the victim so desires, for issuance of a interim protection/protection order or registration of crime information report;

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(4) Assist the victim to avail free legal aid and relief provided under the relevant law;

(5) Maintain a list of all service providers that provide legal aid, counseling, shelter home and medical facility in a local area within the jurisdiction of the Court;

(6) Accommodate the victim in shelter home, if the victim so requires and inform the police station and the Court of competent jurisdiction;

(7) Get the victim medically examined and forward a copy of the medical report to the police station, and the Court of competent jurisdiction if required;

(8) Facilitate compliance of Court order;

(9) Ensure non-disclosure of the informer and victim's identity, and any information obtained from the victim except to the lawful authority;

(10) Monitor the situation of domestic violence in his or her area of jurisdiction;

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(11) Carry out advocacy programs and activities against domestic violence in his or her area of jurisdiction; and

(12) Perform such other duties as may be prescribed under rules and regulations.

Conflict of interest

28. The Protection Officer shall declare any conflict of interest that may arise or appear to arise between his or her duty and private interest, pecuniary or otherwise. In the event of conflict of interest, the case may be referred to the Women and Child Protection Unit /Desk with Royal Bhutan Police.

29. If a Protection Officer fails or refuses to discharge the duties as required under this Act without sufficient cause, he or she shall be liable for administrative action under the relevant laws.

Service Provider

30. Any registered Civil Society Organization with the objective of protecting the rights of victims shall be accredited by the Competent Authority as a service provider for the purpose of this Act.

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31. The Competent Authority shall submit a list of the accredited service provider and services available to the Court and police.

32. Every service provider shall have a certified Social Welfare Officer.

Function of Social Welfare Officer

33. A Social Welfare Officer shall:

(1) Function as a nodal entity of the service provider dealing with the domestic violence victims;

(2) Record the domestic violence incident report;

(3) Get the victim medically examined and forward the medical report to the police station;

(4) If the victim desires, file a petition before the Court through protection officer;

(5) If the victim desires, submit the complaint of domestic violence to the police station having jurisdiction;

(6) Ensure that the victim is accommodated in the shelter home if the victim so desires; and

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(7) Assist victim with livelihood until such time the victim can sustain himself or herself.

34. If any social service provider fails or refuses to discharge the duties as required under this Act without sufficient cause, he or she shall be liable under the relevant laws.

Health services

35. The Ministry of Health shall:

(1) Establish appropriate facilities with trained medical and health personnel to cater to victims of domestic violence; and

(2) Establish a One Stop Crises Centre which shall facilitate the victims in receiving the medical treatment and maintain records of treatment of victim.

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36. The Medical and Health Personnel shall:

(1) Provide necessary medical treatment to the victim and inform the police alongwith medical report if the victim so desires; and

(2) Conduct medical examination with due regard to the right of privacy of the victim.

Community Services

37. The community may provide or strengthen a wide range of community based support measures for the victim, including community centre and services to respondthe problems of victim who is at risk.

38. The community may with assistance from Competent Authority provide such services and measures to the victim to facilitate livelihood and to re-integrate into the society.

39. The government shall endeavor to provide assistance to the community to establish facilities to provide adequate shelter for victim who has no home to live in or is not able to live at home.

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40. A volunteer, voluntary organization, social institution and other community resources may contribute effectively to address the issues related to domestic violence in the community.

CHAPTER VI
CONDUCT OF TRIAL

Conduct of trial proceeding

41. The Court shall hear the cases of domestic violence under this Act expeditiously in accordance with Civil and Criminal Procedure Code.

42. Notwithstanding anything contained in the Civil and Criminal Procedure Code, no person may be present during the hearings except:

    (1) Court officials;

    (2) The parties to the case;

    (3) Any person who filed an application on behalf of the victim or complainant;

    (4) Jabmi or legal representative of the party to the case;

    (5) Witnesses if any;

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(6) One or two person supporting the victim;

(7) One or two person supporting the defendant; or

(8) Any person the Court may permit.

43. The Court may, if satisfied, in the interest of justice exclude any person from attending the hearing.

44. Notwithstanding anything contained in this Act, the Court may hear the case in camera.

No publicity

45. Unless the Courtauthorizes, the proceeding shall not be published in any newspaper, magazine or transmitted through audio-visual electronic medium in any form which may reveal details of the case or disclose the identity of the parties to the case.

46. The media shall maintain professional standards including privacy in reporting and covering cases of domestic violence.

47. The media shall assist the prevention and creation of awareness on domestic violence through positive publication.

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Duty of the Court

48. The Court shall inform the victim or his/her Jabmi or legal representative of:

    (1) The relief available under this Act;

    (2) The effect of any order which may be granted by the Court;

    (3) The right to file a separate criminal complaint against the defendant if a separate criminal offence has been committed by the defendant; and

    (4) The right to claim compensation for any loss suffered or injury caused by domestic violence.

49. The Court shall maintain a record of petition filed, interim protection order and protection order issued by the Court under this Act.

Counseling

50. The Court at any stage of the proceeding under this Act may direct the defendant or victim, either singly or jointly to undergo counseling with any service provider who possesses such qualification and experience in counseling or institution

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identified by Competent Authority which renders counseling to the victims of the domestic violence.

51. The Court at any stage of the proceeding under this Act may direct the defendant and/or victim to undergo mandatory rehabilitation, if deemed necessary.

Bail and Bond

52. Where the Court is required to determine whether to grant bail to the defendant, the Court may consider, inter alia:

    (1) The need to secure the health, safety and well-being of the victim, and child;

    (2) Any hardship that may be caused to the members of the family if bail is not granted; and

    (3) Any other matter which may be relevant.

53. If the Court grants bail to the defendant, such bail order shall include conditions that the defendant:

    (1) Shall not harass or molest the victim or family members of the victim;

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(2) May not reside on the premises where the victim resides; and

(3) Shall not violate any other conditions issued by the Court.

CHAPTER VII
INTERIM PROTECTION AND PROTECTION ORDER

Application

54. Where an act of domestic violence is or being committed or there is a threat to commit, an application for interim protection order or a protection order may be submitted to the Court by:

(1) The victim;

(2) The complainant;

(3) Any person acting in the best interest of the victim;

(4) Any person having care or custody of a victim who is a minor;

(5) The protection officer or the social welfare officer of the service provider caring for the victims; or

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(6) Competent Authority.

Content of protection order/interim protection order

55. A protection order/interim protection order may, where appropriate:

(1) Prohibit the defendant or the person from committing or aiding to commit the domestic violence;

(2) Prohibit the defendant from entering any place or premises where the victim resides and works;

(3) Direct the defendant to pay monetary relief in respect the victim's needs and those of any child or dependent of the victim;

(4) Direct the temporary custody of any child or dependent of the victim and defendant to any person or institution;

(5) Regulate or deny the defendant to have access to child if the Court is so satisfied in the best interest of the child;

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(6) Direct the defendant to afford the victim or any child or dependant of the victim access to their place of residence and the use of facilities associated therein;

(7) Direct the defendant to pay adequate compensation in the prescribed manner for any personal or physical injury, pain, or loss suffered by the victim;

(8) Direct the victim and the defendant to undergo counseling if necessary;

(9) Direct the defendant to do any act which the Court considers necessary or desirable for the well-being of the victim or any child or dependant of the victim; or/and

(10) Any other conditions as the Court may deem necessary.

Interim protection order

56. A Court may issue an interim protection order before commencement of trial, where reasonable grounds exist

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without show-cause notice to the defendant if necessary

57. An interim protection order shall be issued by the Court in the presence of the parties or their Jabmi or legal representative.

58. Notwithstanding section 57 of this Act, a Court may issue an interim protection order ex-parte, if the Court is satisfied that there is prima facie evidence that:

    (1) The defendant is committing or has committed domestic violence; and

    (2) Undue hardship may be suffered by the victim or an irreparable harm may be caused as result of such domestic violence if an order is not issued immediately.

59. The Court shall give a copy of interim protection order to the victim, complainant, Protection Officer, Social Welfare Officer of the Service Provider, Royal Bhutan Police and defendant or legal representatives.

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60. An interim protection order shall remain in force as specified in the order or unless it is substituted by the protection order.

Protection order

61. Upon registration of an application for protection order under section 54 of this Act, the Court shall serve a show cause notice to the defendant directing him or her to respond to the notice on the date specified which shall not be more than fifteen days.

Determination of an application for protection order

62. The Court shall determine an application as soon as it is filed after issuing the show cause notice to the defendant under section 61 of this Act.

63. The Court may conduct the hearings for protection order independently or concurrently to the trial proceedings.

64. The Court shall not deny protection order on the grounds that other legal remedies are available.

65. The Court may modify or confirm the interim protection order into protection order or terminate the interim protection order

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