

Bill No. 38 of 2018

THE SPECIAL COURTS FOR WOMEN BILL, 2018

By

DR. UDIT RAJ, M.P.

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BILL

to provide for constitution of special courts for women and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Special Courts for Women Act, 2018.

Short title,
extent and
commencement.

(2) It extends to the whole of India.

5 (3) It shall come into force at once.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) 'appropriate Government' means in case of a State the Government of that State and in all other cases, the Central Government;

(b) 'offence' means any offence committed against a woman including rape, criminal assault, mental injury and sexual harassment at any place or in any form or by any means either physical, verbal or any other way, or any dowry related cases where the sufferer is a woman; and

(c) 'prescribed' means prescribed by rules made under the Act. 5

Establishment of special courts for women.

3. (1) The appropriate Government shall set up sufficient number of special courts to deal exclusively with matters arising out of atrocities or offences committed against women.

(2) Every special court shall consist of a Principal Judge and such number of other Judges to be appointed by the appropriate Government as it may deem fit.

Qualification for appointment as Principal Judge and other Judges of special court.

4. (1) A person shall not be qualified for appointment as a Principal Judge, unless he,— 10

(a) is, or has been, a judicial magistrate; or

(b) has, for at least two years, held the office of the Judge of the special court; and has, for at least five years, been associated with women's cause.

(2) A person shall not be qualified for appointment as a Judge, unless he,— 15

(a) is, or has been, a judicial magistrate; or

(b) has, for a period of not less than five years, been practising law, and has, for at least five years, been associated with women's cause.

(3) Every Principal Judge and other Judges of a special court in a Union territory shall be appointed by the President. 20

(4) Every Principal Judge and other Judges of a special court in a State shall be appointed by the Governor of the State concerned.

(5) At least half of the total number of Judges of a special court shall be reserved for women.

Senior most Judge to act as a Principal Judge or to discharge his functions in certain circumstances.

5. (1) In the event of occurrence of any vacancy in the office of the Principal Judge of a special court by reason of his death, resignation or otherwise, the senior most Judge of that court shall act as the Principal Judge until a new Principal Judge, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(2) If the Principal Judge is unable to discharge his functions owing to his absence from duty due to any reason, the senior most Judge of that special court shall discharge the functions of the Principal Judge until the Principal Judge resumes his duties. 30

Term of Office.

6. Every Principal Judge and other Judges shall hold office for a period of five years from the date on which he enters upon his office or until he attains,—

(a) in the case of the Principal Judge, the age of sixty-five years, and

(b) in the case of any other Judge, the age of sixty years whichever is earlier. 35

Resignation.

7. Every Principal Judge or a Judge may, by notice in writing under his hand addressed to the President in case he is a Principal Judge or a Judge of a special court in a Union territory or to the Governor, in case he is a Principal Judge or a Judge of a special court in a State, as the case may be, resign from his office:

Provided that the Principal Judge or any other Judge shall, unless he is permitted by the President or the Governor, as the case may be, to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest. 40

8. The salaries and allowances payable to and other terms and conditions of service including pension, gratuity and other retirement benefits of the Principal Judge or a Judge of special court shall be such as may be prescribed:

Salary, allowances and other conditions of service of the Principal Judge and other Judges.

Provided that neither the salary and allowances nor the other terms and conditions of service of the Principal Judge or a Judge of a special court shall be varied to his disadvantage after his appointment.

9. Every Principal Judge shall exercise such financial and administrative powers over the special court as may be vested in him in such manner as may be prescribed.

Financial and other powers of the Principal Judge.

10. The appropriate Government shall determine and provide categories of the officers and other employees required to assist a special court in the discharge of its functions.

Staff of the special court.

11. Save as otherwise expressly provided in this act, every special court shall exercise all the jurisdiction, powers and authority exercisable immediately before that day by all courts except the concerned High Court and the Supreme Court in relation to all matters of offences or atrocities committed against women under the Indian Penal Code, 1860 or any other law for the time being in force relating to women.

45 of 1860.

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Jurisdiction, power and authority of special courts.

12. Every special court constituted under this Act shall have the same powers to hold any inquiry as are vested in a civil court under the Code of Civil Procedure, 1908 and in a criminal court under the Code of Criminal Procedure, 1973.

5 of 1908.
2 of 1974.

Powers of special courts.

13. On the date of coming into force of this Act, the jurisdiction, powers and authority in relation to any offences or crimes or atrocities committed against women, shall be exercisable by a special court and no other court except the High Court concerned and the Supreme Court shall have, or be entitled to exercise any jurisdiction, powers or authority in relation to such offences or crimes or atrocities committed against women.

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Exclusion of jurisdiction of cases of special court except the High Court concerned and Supreme Court.

14. Every suit or other proceeding pending before any other court or any authority immediately before the date of coming into force of this Act, being a suit or proceeding the cause of action wherein it is based, is such that it would have been if it had arisen after such constitution, within the jurisdiction of such a special court, shall stand transferred on that date to such special court:

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Transfer of pending cases.

Provided that nothing contained in this section shall apply to a suit or other proceedings pending in a High Court or the Supreme Court.

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15. The appropriate Government shall make necessary arrangements and provisions for free legal aid to women for meeting the cost of litigation in special courts.

Free legal aid to women.

16. Every case in special court shall be heard on daily basis and disposed of at the earliest but in any case not later than six months from the date of filing of the suit in the court.

Disposal of cases by special courts.

17. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

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Power to make rules.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

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STATEMENT OF OBJECTS AND REASONS

In our society, atrocities against women are increasing day by day as a result of which cases of atrocities against women are piling up in court. The delay, by courts in disposing of the cases add to the woes of hapless women. By the time the courts give their judgement, the life of the women becomes miserable. Ordinary courts take unduly long time for deciding the cases. Therefore, it is proposed to set up special courts for women to exclusively deal with cases against women expeditiously.

The Bill seeks to achieve the above objectives.

NEW DELHI;
January 31, 2018.

UDIT RAJ

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides that every State Government and Union territory administration shall set up sufficient number of special courts to deal exclusively with matters arising out of atrocities committed against women. Clause 8 provides for payment of salaries and allowances to the Principal Judge and other Judges. Clause 10 provides for appointment and provision of officers and staff required for special courts. Clause 15 provides for free legal aid to women. The expenditure in respect of special courts in States will be met out of Consolidated Funds of the respective States. The expenditure in respect of special courts for Union territories shall be met out of the Consolidated Fund of India. It is likely that an amount of rupees one thousand crore will be involved for setting up special courts in Union territories and by way of grants of States per annum from the Consolidated Fund of India.

A non-recurring expenditure of about rupees two hundred crore is also likely to be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 17 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill. Since the rules will relate to matters of detail only, the delegation of legislative power is of a normal character.

LOK SABHA

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(Dr. Udit Raj, M.P.)