



Gujarat National Law University

Women's Rights

“An Actionable Guide
for Enforcing Rights”



An Initiative by



Knowledge Partner



SAR&L KANOON

Women's Rights

“An Actionable Guide
for Enforcing Rights”



Gujarat National Law University

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We have taken necessary care to produce as accurate information as possible; however, the readers may feel free to suggest topics and/or corrections if any to make this booklet more comprehensive.

Foreword



The Constitution of India guarantees several rights to women such as the right to equality under article 14; right against discrimination on the ground of sex under article 15, which further empowers the State to make any special provision for women and children; right to equality of opportunity in matters of public employment or opportunity to any office under article 16; freedom of speech and expression and freedom to practice any profession or to carry out any occupation, trade or business under article 19; and right to personal liberty, irrespective of gender, under article 21 of Constitution. The Directive Principles of State Policy state that the State shall direct its policies to secure that citizens, men and women equally have the right to an adequate means of livelihood, that there is equal pay for both men and women, provide free and compulsory education for children and duty to improve public health.

While the Constitution guarantees gender equality, women, by and large are deprived of the benefit thereof. Gender equality means equal rights, obligations and opportunities for women and men in different spheres of life. To promote gender equality, women need to be empowered by concentrating on areas which are most crucial to their wellbeing. Women have suffered mental harassment, physical torture, sexual violence since time immemorial and violation of women rights is still common in India despite the fact that there are several laws that give women the power to fight adversities such as discrimination, harassment, violence and abuse. However, this situation can be changed if women can effectively challenge the injustice inflicted upon them.

Towards this end, it is necessary for women to be aware of their rights and understand the remedies available to them when such rights are violated. Though most women hesitate to approach courts or the police to enforce their rights, knowledge of law is essential to understand the boundaries of law and the manner in which such rights can be secured.

Women rights can be broadly classified into two categories — constitutional rights and legal rights. As to what are these rights has been clearly and concisely put forth in this handbook, which makes an endeavour to educate women in India of their basic rights and the remedies available to them if such rights are violated. The life cycle approach, starting from the foetal stage to issues of marriage, employment, abuse, sexual harassment and inheritance, makes it interesting and keeps one captivated. The booklet exhaustively covers all the laws touching the lives of women in India and of which they

should be aware and puts the same in simple language and in a simple manner, making it easy for the reader to understand both the law and the remedy. The handbook is also aesthetically appealing. In fact, reading the handbook had been like a refresher course in all the laws touching women's rights.

A very elaborate and commendable task has been performed by GNLU Centre for Law and Society and Saral Kanoon in preparing this handbook and it is heartening to see young people like Aaditya Bhatt and Chandani Joshi and students of GCLS put in such immense efforts for empowering women and mitigating their problems.

I strongly advocate that this handbook be distributed widely in schools, colleges and elsewhere, to educate women about their basic rights and remedies. I am sure it will be extremely helpful to them. The handbook will also be very handy for young lawyers.

Justice Harsha Devani

Former Judge

High Court of Gujarat

Preface

This handbook - Women's Rights: An Actionable Guide for Enforcing Rights has been developed by GNLU Centre for Law and Society with the aid of its knowledge partner Saral Kanoon. Although laws have been made to govern all realms of life, they are not equally accessible to all. The objective of this handbook is to give a brief overview of the various legal provisions for women in India.

The handbook acts as a primer and simplifies laws for all audiences. It follows a life cycle approach, starting from the foetal stage to issues of marriage, employment, sexual harassment and inheritance. Various laws applicable to women and their rights under such laws along with the procedure to avail them are succinctly explained. Efforts have been made to source all images used in the booklet from the internet with open access, available in public domain, free of copyright restrictions. Let the knowledge disseminate!

Contents

<i>About Gujarat National Law University</i>	7
<i>About the GNLU Centre for Law and Society</i>	8
<i>About (we) innovate</i>	9
<i>About Saral Kanoon</i>	10
<i>Acknowledgement</i>	11
<i>Listed Contributors</i>	12
Female Foeticide	14
Safe Abortion	18
Female Infanticide and Abandonment of Newborn Girl Child	20
Sexual Offences Against Children	22
Education of the Girl Child	32
Female Genital Mutilation or Circumcision	36
Acid Attack	39
Eve Teasing	41
Cyber Crimes	44
Sexual Violence	48
Marriage and Divorce.....	53
Child Marriage.....	65
Forced Marriage.....	68
Honour Killing.....	70
Dowry.....	73
Domestic Violence	75
Marital Rape.....	81
Property Rights and Maintenance.....	83
Adoption	90
Sexual Harassment at Workplace.....	92
Equal Pay.....	97
Maternity Benefit.....	100
Trafficking of Women	102
Annexure 1: Approaching the police - Filling of an FIR and a Complaint	106
Annexure 2 : Important Contact Details	108
Annexure 3 : Right to Free Legal Aid.....	109

About Gujarat National Law University (GNLU)



Gujarat National Law University

Gujarat National Law University (GNLU) is the statutory university established by the Government of Gujarat under the Gujarat National Law University Act, 2003. The University has been in the process of striving for academic and professional excellence in the field of legal studies in the country since 2004, ensuring all-round and interdisciplinary academic excellence in sync with the other National Law Schools of the country. As a socially-responsible educational institution, GNLU is committed to being a leader in the research, teaching and extension of environmental sustainability. The ethos of imparting education in GNLU comprises a mutual endeavour of the faculty and the students who become part of the august family. The University has numerous research centres that foster academic research and writing.

About GNLU Centre for Law and Society (GCLS)



The GNLU Centre for Law and Society functions as a focal point for socio-legal research, facilitating interdisciplinary and multi-disciplinary research and study on law and society, and law and legal institutions. The mission of the Centre is to promote an understanding of the role of law in society. The Centre encourages multidisciplinary perspectives to inform analysis and debate on socio-legal issues, thereby providing the most comprehensive approach to research and policy-making. It seeks to examine and inquire into law-related issues from the perspectives of a broad range of disciplines, such as anthropology, communication, critical gender studies, economics, environmental studies, ethnic studies, history, linguistics, philosophy, political science, psychology, sociology, and urban studies and planning. Findings originating at the Centre are disseminated through conferences and symposia, journals, in-house student vignettes, and policy white papers.

The Centre hosts the flagship essay competition, titled the GNLU Essay Competition on Law and Society, annually. In the past, it has also organized various events such as the International Conference on Social Work, Law and Human Rights, open houses and special guest lectures on a variety of subjects. The centre also publishes the Law and Society Review, a yearly, double-blind peer-reviewed academic law review, which focuses on socio-legal issues and processes. The objective is to make the findings easily accessible to professionals in government, business, or the law, and in so doing, to bridge the gap between academia and policymaking.

About (We) Innovate



At (We) Innovate, people are at the heart of what we do. (We) Innovate Social and Technological Research Foundation is an open group of people having willingness to give back to society. Our mission is to

strategically support ideas that make a measurable social impact. People, participation and innovations are at our heart. We believe in innovations to improve the lives of people. The problems turn smaller if the solutions are innovative; in this context, the constructive use of Information Communication Technology (ICT) is being recognized and acknowledged world over.

ICT as a tool for development and empowerment is being realized by its various stakeholders. Countries of the world are resorting to the use of ICT to better their socio-cultural and economic landscapes in ways which are feasible and sustainable, depending on their ground level situations. The ICT components increasingly being used for development and empowerment purposes include computer, internet, community radio, audio-video, blogs, and other latest gadgets. Although technology or innovations per se is not an end in itself, they help us find the problem areas which can help achieve the cause in a most efficient manner; and we further believe that such solutions contribute to build a healthy and participatory civic life;

In this present initiative called Saral Kanoon; we collect, compile and disseminate the Legal Information, in a systematic, graphically illustrative and concise manner, so that legal information required to build a right conscious society and participatory democracy, trickles to the bottom most strata of the society. Saral Kanoon aims to bridge the knowledge divide through innovative means with the use of Information and Communication Technology following the principle of Participatory Action Research.

About Saral Kanoon



SARAL KANOON

Law sets everything in motion: it shapes the social, economic, cultural and political landscape of a country. Besides this, it also defines the commercial code of conduct for public and private institutions. By way of regulations, policies and landmark case laws, law outlines the interaction of individuals with the government and the society at large. It lays down the cornerstones of human rights and ensures its protection. However, law is written in a complex manner. In the era of Right Based Empowerment, there are multiple laws that confer rights to vulnerable groups. However, it is difficult for a common man to understand the law: what to do, where to go and how to initiate legal procedure to protect and enforce his/her legal rights. The complexities of legislations cannot be done away with, for if laws were written in spoken language it would increase the chances of intentional misinterpretation. Legal language is, therefore, strict. It gives rights but the complex language acts as an impediment in availing them. Mere rulemaking by the legislature does not empower a common man and at the same time it is not always possible for a right conscious common man to approach a lawyer for his every small queries. It is, therefore, essential that these rules are simplified for a common man to understand and invoke the provisions of the law. Saral Kanoon attempts to solve this problem by integrating technology, legal genius and graphical creativity, to make laws easily understandable without losing its precision. In the future, Saral Kanoon aims to build such platform that can integrate the same information in a more diverse fashion, with active use of technologies such as SMS, Interactive Voice Response System etc. and by focusing on Indian vernacular languages so that common man with no knowledge of English can also participate in civic life.

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1

FEMALE FOETICIDE

Female Foeticide is the termination of the life of the foetus inside the womb of the mother, provided the foetus is found to be female.

Statistics

According to the Population Research Institute, at least 12,771,043 sex-selective abortions had taken place in India between 2000 and 2014. It takes the daily average of sex-selective abortions to 2,332 (Daily Average 2000-2014).

Causes of Female Foeticide:



- Historically, the dowry system has been one of the key causes of female foeticide.
- Perceived economic benefits of having a son against the cost of having daughters.
- Male child is preferred because they provide manual labor and carry forward the family lineage.
- There is a notion that a son is an asset since he can earn and support the family; and a daughter is considered a "liability" since she will be married to another family, and will not contribute financially to the family.

- Many religious rites, for instance kindling funeral pyre in Hindus, are gender biased and in favour of male child.

Know the legal provisions:

Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (PNDT Act)

Prenatal diagnostic tests and procedures, for example ultrasonography,

fetoscopic or any test or analysis of amniotic fluid, chorionic villi, blood or any tissue of the body, for purpose of sex determination are strictly prohibited. These tests are permitted only for a small range of purposes for detection of any abnormality like chromosomal abnormalities, genetic metabolic diseases, congenital abnormalities, haemoglobinopathies, and sex-linked genetic diseases. A genetic counselling centre/genetic clinic/genetic laboratory can include any institute, hospital, clinic, nursing home, vehicle or any place by whatever name called. These have to be registered under the Appropriate Authority and the certificate of the same has to be mandatorily displayed at the conspicuous place of business. If anybody coerces a pregnant woman into going to any unrecognized and unregistered place, action can be taken against such person. The fact that sex determination is illegal should be displayed in English and a local language at a conspicuous place in such clinics. The above-mentioned techniques and tests can be conducted for these limited purposes; that too only if any one of these conditions is fulfilled, viz. age of pregnant woman is above 35 years, the woman has undergone two or more spontaneous foetal loss, the woman has been exposed to potentially teratogenic agents such as drugs, radiation, infections, chemicals, or has a family history of mental retardation or physical deformities or genetic diseases.

Only a medical geneticist, pediatrician, gynecologist, sonologist/radiologist or image specialist can conduct the permitted tests. The woman or her family members on her behalf can ask for their registration and certification documents at any moment. A woman has the right to be explained of all the known side and after effects of the procedures and it is only after receiving her written consent that such procedure can be undertaken. Nobody, including the woman's husband, can encourage or influence the conduct of these techniques except for these pressing conditions mentioned above. No person conducting these pre-natal diagnostic procedures can communicate to the woman or her family, by signs, gestures or words or in any manner, the sex of the unborn child. The use of terms such as “*Laddoos*” or “*Jai Bajrang Bali*” for a boy, “*Barfis*” or “*Jai Mata Di*” for a girl child etc. is also prohibited.

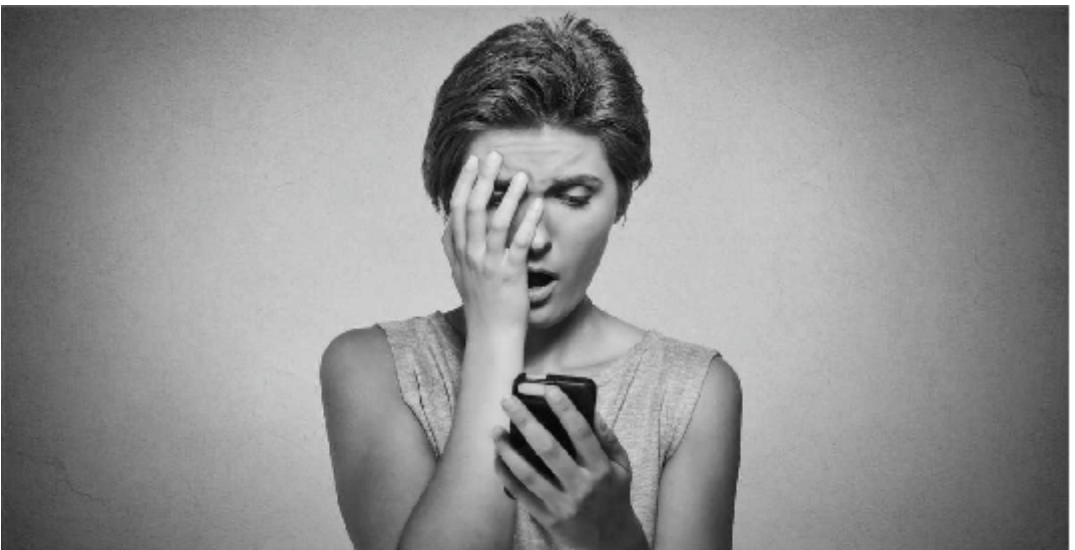




Know the procedure related issues:

A complaint can be filed by any person by approaching the designated Appropriate Authority of the State or district or sub-district level. The easiest point of access will be the civil surgeon or the chief medical officer at the district level or the chief health officer or a ward health officer in a city or medical superintendents of the rural hospitals. A written complaint has to be filed and the complainant has the right to get an acknowledgement receipt of the same. Action has to be taken within 15 days of lodging the complaint. If no action has been taken within such time period, the complainant can also approach a social organisation like an NGO working on women's rights issues in the area or State. Once complaint is filed, legal procedure will be set in motion; the authority will investigate, search and seize evidence like records, registers etc. It may suspend the registration without any notice.

After this stage, case will be filed and on proving of offences, the guilty will be punished under provisions of PNDT Act. The offence is cognizable (i.e., arrest is possible without warrant), non-bailable (i.e., getting bail is not the right of the



accused, it is possible only after court directs) and non-compoundable (no out of court settlement can take place). Medical practitioners, owners, employers and employees of genetic clinics/laboratories etc. who contravene provisions of the Act can be subject to punishment for a term which may extend to three years with a fine extending to ten thousand rupees, and on subsequent conviction, with imprisonment up to five years and fine extending to fifty thousand rupees.

Persons who seek help of these clinics or practitioners and contravene provisions of the act, including the pregnant woman herself, unless she was coerced and compelled, shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees and on any subsequent conviction with imprisonment which may extend to five years and with fine which may extend to fifty thousand rupees. Persons advertising the same in the form of notices, circulars, wrappers, hoardings etc. through any medium, print, electronic or visual or even sensory, including light, signal, smoke, gas can be imprisoned for up to three years and fined for Rs. 10000. The law presumes that unless contrary is proved, the pregnant woman has been compelled by the family members to undergo pre-natal diagnosis and sex determination. The benefit of doubt is rightly given to the woman.

One can take the advertising banner or poster, or click the photo of the same, or record the conversation between the practitioners or the patients as evidence that will help the Appropriate Authority to investigate the case.

2

SAFE ABORTION

While sex determination and female feticide is illegal, abortion per se is not unlawful and discriminatory. It is a legal right of a woman to terminate the pregnancy within 24 weeks, if there is physical or mental risk to a mother's life, or if the pregnancy is due to rape, contraceptive failures or if there are physical or mental abnormalities in the child. Given that abortions are widely conducted by unregistered, untrained providers under unsafe conditions, 8% maternal mortality occurs due to unsafe abortions.

Know the legal provisions:

Medical Termination of Pregnancy Act, 1971 (MTP Act)

To prevent unsafe abortion, Medical termination of pregnancy is allowed:

- a) if the continuation of pregnancy would risk the life or cause grave injury to the physical or mental health of the pregnant woman;
 - b) if there is substantial risk of physical or mental abnormalities in the child;
 - c) if the pregnancy is due to rape;
 - d) if the pregnancy of a married woman is due to failure of contraceptives.
- The consent for termination of only the pregnant woman is required if she is above the age of 18 years and not mentally ill. The pregnant woman's relatives such as husband or in-laws or brother or father do not have any saying the termination and their consent/disapproval does not matter. Only in case of a minor or a mentally ill woman of any age, is the consent of guardian required.
 - The termination can be performed only at a hospital established or maintained by government or at an approved private place.
 - Pregnancy with the gestation period of eight weeks or between eight weeks and twelve weeks can be terminated at Community Health Centres or twenty-four-seven Primary Health Centres. Pregnancy with gestation between twelve weeks and twenty weeks can be terminated at District

Hospitals or approved private places only. If conducted at an approved private place, the certificate of approval by the District Level Committee chaired by the Chief Medical Officer has to be conspicuously displayed.

- Opinion form for each MTP done must be duly filled with reason for termination and signature with date within three hours of termination of the pregnancy. The ground for termination must be clearly stated in the opinion form.
- The admission register is a confidential document and cannot be opened or inspected by any person except under the authority of law. No entry of the termination can be done in any other case sheet or operation-theatre register, follow up card or any other document or register than this admission register.
- In only extreme situations and emergencies can the pregnancy be terminated to save the life of the woman at unapproved place, cognizance of which has to be given to the Chief Medical Officer the same day or the next day. Abortion should not be misused for sex determination. If the same is suspected, the person should immediately lodge a complaint to the Appropriate Authority for the reasons and manner as explained above.



3

FEMALE INFANTICIDE AND ABANDONMENT OF NEWBORN GIRL CHILD

What is Female Infanticide?

It is the crime of killing unwanted girl child soon after birth. As per Asian Centre for Human Rights, India witnesses one of the highest female infanticide incidents in the world.

Know the legal provisions:

Indian Penal Code, 1860

Section 315 makes any act done with intent to prevent a child from being born alive or to cause it to die after birth punishable with imprisonment which may extend to ten years, or fine, or both. The exception is when the act is done in good faith for the purpose of saving the life of the mother. Section 316 punishes the causing of death of a quick unborn child by an act amounting to culpable homicide. The punishment under section 316 is imprisonment for a period which may extend to ten years and fine. These offences are cognizable, non-bailable, non-compoundable and triable by the Court of Sessions.



What is Child Abandonment?

The primary responsibility of the upbringing of a child is on the parents who



have brought him or her into existence. As per Article 7 of UN Convention on the Rights of the Child, every child has the right to know and be cared for by his or her parents. When the child of a tender age is abandoned or deserted by a parent, this right is violated. In cases of a girl child being born, this is usually done by throwing the new-born girl child in garbage, leaving her on the streets, abandoning her on the gate of a temple or in the cradle at the hospital.

- Section 317 punishes the abandonment or desertion by a parent of his or her child or by a person having care of such child. This provision is applicable only when the child, under the age of 12 years, is exposed or left in any place with the intention of wholly abandoning it.
- This offence is cognizable, bailable, non-compoundable and is triable by a magistrate of first class.
- The punishment may extend to imprisonment for seven years, or fine, or both.

What if you encounter an abandoned new-born baby? You must inform the police immediately. The child is first sent to the district child protection unit (DCPU) who will officially declare that the child is abandoned and then will give the child up for adoption. If you find any abandoned child in the need of care and protection, you can contact any of the following:-

- (a) Childline (Toll Free Number-1098)
- (b) Local Police
- (c) Any Specialized Adoption Agency (SAA)
- (d) Child Welfare Committee (CWC)
- (e) District Child Protection Unit (DCPU)

Know the Procedure:

On receiving any information of instances of female infanticide or abandonment of girl child, an FIR can be filed with police to initiate legal action against the perpetrator. Please refer to Annexure 1 to know more on filing an FIR. Alternatively, even National Commission for Women (NCW) or respective State Commission for Protection of Child Rights can be approached.

4

**SEXUAL OFFENCES
AGAINST CHILDREN**

The Protection of Children from Sexual Offences Act, 2012 (POCSO Act) was brought into force on June 20, 2012 to protect children from offences of sexual abuse, sexual harassment and pornography and to provide a child-friendly system for the trial of these offences. The Act identifies any person under the age of 18 years as a child and protects him/her. The Act provides equal protection to both girls and boys.

Offences under POCSO Act

The POCSO Act classifies offences under the following six categories:

- i. Penetrative sexual assault
- ii. Sexual assault (i.e., non-penetrative sexual assault)
- iii. Aggravated penetrative sexual assault & aggravated sexual assault
- iv. Sexual harassment



- v. Using a child for pornographic purposes
- vi. Abetment Offences under the Act are non-bailable and the burden of proof to prove his/her innocence is on the accused.

Explanation

- i. **A person commits penetrative sexual assault if -**
 - a) he penetrates his penis into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or
 - b) he inserts, to any extent, any object or a part of the body other than penis into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
 - c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or
 - d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.
- ii. **A person commits sexual assault**, if with a sexual intent, he/she:
 - a) touches the vagina, penis, anus or breast of the child; or
 - b) makes the child touch the vagina, penis, anus or breast of such person or any other person; or
 - c) does any other act with sexual intent which involves physical contact without penetration.
- iii. **Any offence of penetrative sexual assault or non-penetrative sexual assault is an aggravated penetrative sexual assault or aggravated sexual assault**, if it has been committed by:
 - a) Police officer/member of armed forces in course of his duty;
 - b) Public servant;
 - c) Management or staff of a jail or remand home or protection home or observation home;
 - d) Management or staff of a hospital on a child in that institution;



- e) Management or staff of an educational institution or religious institution on a child in that institution;
- f) Relative of the child (either through blood or adoption or marriage or guardianship), or having domestic relationship with a parent of the child or who is living in the same or shared household with the child;
- g) Management or staff of any institution providing services to children, on a child in such institution;
- h) Whoever is in a position of trust or authority of a child on such child;
- i) Who has been previously convicted of committing any offence under this act or any sexual offence punishable under any other law for the time being in force.

The following instances of sexual assault/penetrative sexual assault are also considered to be aggravated assaults:

- a) Committing gang sexual assault/penetrative sexual assault on a child;
- b) Committing sexual assault/penetrative sexual assault using a deadly weapon, fire, heated substance or corrosive substance;
- c) Causing grievous hurt or bodily harm or injury to sexual organs of the child;
- d) Physically incapacitating the child or causing the child to become mentally ill or rendering the child unable to perform regular tasks, temporarily or permanently;
- e) Inflicting the child with HIV or any other life-threatening disease or infection;
- f) Taking advantage of a child's mental or physical disability, commits sexual assault/penetrative sexual assault;
- g) Committing sexual assault/penetrative sexual assault more than once or repeatedly;
- h) Committing sexual assault/penetrative sexual assault knowing that the child is pregnant;
- i) Committing sexual assault/penetrative sexual assault and attempting to murder;
- j) Committing sexual assault/penetrative sexual assault in the course of communal or sectarian violence;
- k) Committing sexual assault/penetrative sexual assault and making the

child strip or parade naked in public.

iv. A person is said to commit sexual harassment upon a child when such person with sexual intent-

- a) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or
- b) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or
- c) shows any object to a child in any form or media for pornographic purposes; or
- d) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or
- e) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or
- f) entices a child for pornographic purposes or gives gratification therefore.

v. Whoever, uses a child in any form of media, for the purposes of sexual gratification, which includes-

- a) representation of the sexual organs of a child;
- b) usage of a child engaged in real or simulated sexual acts (with or without penetration);
- c) the indecent or obscene representation of a child, shall be guilty of the offence of using a child for pornographic purposes.



vi. **A person abets an offence, who-**

Firstly:- Instigates any person to do that offence; or Secondly: - Engages with one or more other person or persons in any conspiracy for the doing of that offence, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that offence; or Thirdly:- Intentionally aids, by any act or illegal omission, the doing of that offence.

Whoever, either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act. Whoever employs, harbours, receives or transports a child, by means of threat or use force or other forms of coercion, abduction, fraud, deception, abuse of power of a position, vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of any offence under this Act, is said to aid the doing of that act.

Punishments under POCSO Act

Penetrative Sexual assault

Imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life and fine. If such offence is committed on a child below the age of 16 years, the offender will be punishable with imprisonment between 20 years to life.

Sexual Assault

Imprisonment of either description for a term which shall not be less than three years but which may extend to five years.

Aggravated Penetrative Sexual Assault

Imprisonment of either description for a term which shall not be less than twenty years and fine or death penalty.

Aggravated Sexual Assault

Imprisonment of either description for a term which shall not be less than five years but which may extend to seven years with fine.

Use of Child in Pornography

Depending upon the involvement in the offence, the punishment may extend to seven years and fine.

Abetment

The punishment for abetment is the same as the punishment for the offence which was abetted.

Services Available to a Child under the POCSO Act

- **Medical Care:**

A child victim of sexual offences is eligible to receive free medical care and treatment at any private or government hospital.

- **Counselling for the child:**

Professionals and experts or persons having knowledge of psychology, social work, physical health, mental health and child development are to be associated with the pre-trial and trial stage to assist the child.

- **Free Legal Counsel:**

The family or the guardian of the child victim is entitled to the assistance of a legal counsel of their choice for any offence under this Act. The Legal Services Authority shall provide a legal counsel to the child victim free of cost.

- **Compensation:**

Various states in the country have different compensatory schemes for child victims of sexual offences. The police are supposed to inform the child and/or his/her family of the scheme.

- **Shelter:**

If the child victim continues to remain unsafe or at-risk at home, especially in cases involving incest, the child may be transferred to a Shelter Home where all needs of the child will be taken care of. Child Welfare Committee is required to make this arrangement within three days of receipt of complaint.

- **Education:**

Post the incident of abuse, it is essential that the child's life is gradually returned to normal. Enrolling in schools and resuming their education is an important step towards rehabilitation of the child. Under the Right to Education Act, 2009, the child can receive free and compulsory education till the age of fourteen years.

- **Support Person:**

The CWC can provide a Support Person to assist the child victim and his/her family during the investigation and trial of the case.

Know the Procedure

a) Reporting cases

- If any person has knowledge that an offence under the Act has been committed or has an apprehension that it is likely to be committed, then such person has the duty to provide such information to: a) the local police; or b) the Special Juvenile Police Unit.
- Any person working in media, hotel/ lodge, hospital, club, studio or photographic facilities, on coming across any material which is sexually exploitative of the child, will have to lodge a complaint with the police or Special Juvenile Police Unit.
- Failure to report any offence under the Act is punishable with an imprisonment for a term which may extend to one year and with fine. However, no such punishment is applicable if a child fails to report any offence under the Act.
- It should also be noted that filing false complaint or giving false information with the intention to humiliate, extort, threaten or defame another person is punishable with an imprisonment for a term which may extend to six months or with fine or with both.

Duties of Police or Special Juvenile Police Unit within 24 hours of receiving complaint

- The police on receiving any such complaint will have to record it in writing, ascribe an entry number and read the statement to the informant. If the informant is a child, then the report has to be written in a simple language which the child can understand and if the contents are recorded in a language not understood by the child, then an interpreter will have to be provided to the child.
- The police or the Special Juvenile Police Unit will have to report the matter to the Child Welfare Committee and Special Court within





twenty-four hours of receiving the complaint.

- The police will have to ensure that medical examination of the child is done within 24 hours of receiving the complaint.
- If the child is in need of care and protection, then the police will have to make immediate arrangement for the same. Such arrangement could also include admitting the child into shelter home or to the nearest hospital. If the child requires immediate medical care, the police will have to ensure that it is provided.

b) Medical examination of the child

- Medical examination of the child has to be completed within 24 hours of receiving of the complaint.
- Such medical examination can be conducted only by a registered medical practitioner employed in a government hospital and only in the absence of such medical practitioner, by any other registered medical practitioner.
- In case the victim is a girl child, such medical examination has to be conducted by a woman doctor.
- The medical examination has to be conducted in presence of the parent of the child or any other person whom the child trusts and reposes confidence. In cases where such a person is not present, the medical examination has to be conducted in presence of a woman nominated by the head of the medical institution.



c) Recording statement of the child

- Statement of a child can be recorded either by the police or a magistrate.
- If the statement is being recorded by the police, following things need to be taken care of:
 - a) The statement has to be recorded at the residence of the child or a place where he/she usually resides or at a place of his/her choice, where the child is comfortable.
 - b) As far as possible, the statement is to be recorded by a woman police officer not below the rank of sub-inspector.
 - c) The police officer recording such statement cannot be in uniform.
 - d) While examining, it has to be ensured that the child does not come in contact with the accused at any point of time.
 - e) No child can be detained in the police station in the night for any reason.
 - f) The police officer needs to ensure that the identity of the child is protected from the public media.
- If the statement is being recorded by a magistrate, he/she needs to ensure that the statement is recorded as spoken by the child.
- The following provisions need to be followed by both police and magistrate while recording the statement:
 - a) The statement has to be recorded in presence of the parents of the child or any other person in whom the child has trust or confidence.
 - b) If the child has any mental or physical disability, the police or magistrate can seek assistance of a special educator or any person familiar with

the manner of communication of the child or an expert in that field, to record the statement of the child.

- c) Wherever possible, the statement is also to be recorded by audio-video electronic means.

d) On completion of investigation by the police

- The investigation is to be completed within two months from the date of filing of FIR.
- Once the police completes the investigation, the magistrate has to provide the following documents to the child and his/her parents or representatives:
 - a) The police report;
 - b) The First Information Report;
 - c) Statements of witnesses whom the prosecution proposes to examine;
 - d) The confession or statement made by the accused;
 - e) Any document or relevant extract forwarded to the magistrate.

e) Trial

- For the purpose of speedy trial, a Special Court has been constituted in each district to try offences under the POCSO Act.
- As far as possible, the Special Court has to complete the trial under this Act within a period of one year from the date of taking cognizance of the offence.
- The trials are to be conducted in camera i.e., in absence of public view and in the presence of the parents of the child or any other person in whom the child has trust or confidence.
- The Special Court needs to ensure that:
 - a) A child-friendly atmosphere is created;
 - b) The child is not repeatedly called to testify;
 - c) There is no aggressive questioning or character assassination of the child;
 - d) Identity of the child is not disclosed;
 - e) The dignity of the child is maintained at all times during the trial.

5

EDUCATION OF THE GIRL CHILD

Every child in the age group of 6-14, has the right to free and compulsory education in a neighborhood school, till the completion of elementary education.

Constitution of India

Article 21-A of the Indian Constitution of India provides for free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such a manner as the State may, by law, determine.

The Right of Children to Free and Compulsory Education Act, 2009 (RTE Act)

- The Act provides for the right of children to free and compulsory education.
- It clarifies that 'compulsory education' means obligation of the appropriate government to provide free elementary education and ensure compulsory admission, attendance and completion of elementary education to every child in the six to fourteen age group. 'Free' means that no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education.



- Section 12(1)(c) of the RTE Act mandates unaided and non-minority schools to keep aside 25% seats for underprivileged children of society through a random selection process.
- It makes provisions for a non-admitted child to be admitted to an age-appropriate class.
- It specifies the duties and responsibilities of appropriate governments, local authority and parents in providing free and compulsory education, and it specifies the sharing of financial and other responsibilities between the Central and State Governments.
- It lays down the norms and standards relating inter alia to Pupil Teacher Ratios (PTRs), buildings and infrastructure, school-working days, teacher-working hours.
- It provides for rational deployment of teachers by ensuring that the specified pupil teacher ratio is maintained for each school, rather than just as an average for the State or District or Block, thus ensuring that there is no urban-rural imbalance in teacher postings. It also provides for prohibition of deployment of teachers for non-educational work, other than decennial census, elections to local authority, state legislatures and parliament, and disaster relief.
- It provides for appointment of appropriately trained teachers, i.e., teachers with the requisite entry and academic qualifications.
- It prohibits (a) physical punishment and mental harassment; (b) screening procedures for admission of children; (c) capitation fee; (d) private tuition by teachers and (e) running of schools without recognition.
- It provides for the development of curriculum in consonance with the values enshrined in the Constitution, which would ensure the all-round development of the child, building on the child's knowledge, potentiality and talent and making the child free of fear, trauma and anxiety through a system of child friendly and child centred learning.
- Recently, the Karnataka High Court held that students have no right of admission to private schools, as long as the government schools, local authorities' schools or aided schools are available in the neighborhood.

Sarva Shiksha Abhiyan

- Sarva Shiksha Abhiyan is Government of India's flagship programme for achievement of Universalization of Elementary Education (UEE) in a timebound manner.

- The programme seeks to open new schools in those habitations which do not have schooling facilities and strengthen existing school infrastructure through provisions of additional class rooms, toilets, drinking water, maintenance grants and school improvement grants.
- Existing schools with inadequate teacher strength are provided with additional teachers, while the capacity of existing teachers is being strengthened by extensive training, grants for developing teaching-learning materials and strengthening of the academic support structure at a cluster, block and district level.
- Sarva Shiksha Abhiyan seeks to provide quality elementary education including life skills. Sarva Shiksha Abhiyan has a special focus on girl's education and children with special needs. Sarva Shiksha Abhiyan also seeks to provide computer education to bridge the digital divide.

Know the Procedure

For getting admission in a school under RTE Act, the following steps can be followed:

1. **Check Schools in the Neighborhood:** The first step to applying for schools under the RTE quota is to find eligible schools in your neighborhood. One can find information about schools in their state online.
2. **Fill the Form:** Parents opting to enter their children in a school using the quota should log onto the government portal and fill the document provided. Once you fill the form, print it.



- 3. Submit the form:** You can then submit the form with the relevant documents to the relevant authorities in the school of your choice. A child is guaranteed entrance in government schools. Private schools should accept 25% of students under this law.

Relevant Documents

- Government IDs of parents - Driver's license, voter IDs, Aadhar card, ration card, birth certificates, and passports.
- Child's ID - Parents must furnish any and all government documents of the children, including but not limited to, a birth certificate, passport, and Aadhar card.
- Caste certificate - Caste certificate is also an important document for RTE admission.
- Income certificate from the Revenue Department of India.
- Relevant certificates to prove that a child has special needs. This will be provided to you by the Department of Health.
- In case of a street child or a child of a migrant worker, an affidavit must be produced that is issued from the Labor Department, Department of Education, and Department of Women & Child Development.
- Photographs of the child.
- If the child is an orphan, the death certificate of both parents must be produced.
- All applications must be entered before the deadline for admissions. The last date of RTE admission is normally between the second and last week of April every year.

It should be noted that a child cannot be denied admission for lack of age proof.

More information can be obtained through the following website:

<http://righttoeducation.in/resources/states/gujarat>

6

FEMALE GENITAL MUTILATION OR CIRCUMCISION (FGM/FGC)

What is Female Genital Mutilation or Circumcision (FGM/FGC)?

According to the WHO, Female Genital Mutilation/Circumcision includes all procedures that partially or totally remove the external female genitalia, or injure the female genital organs for non-medical reasons. A public interest litigation was filed before the Supreme Court, challenging the practice of female circumcision, or "khatna" as it is practiced in the Dawood Bohra community in India. The Division Bench referred the case to a Constitution Bench to assess whether female circumcision is an essential religious practice.

Statistics

More than 200 million women and girls around the world are living with the results of the dangerous practice of female genital mutilation. More than 30 countries are practicing FGM/FGC. This harmful traditional practice has existed for more than 2,000 years and is performed on girls from birth, up to marriage, and sometimes beyond.

Why is it performed?

It attempts to gain control over a woman's sexuality. Also, it is a false belief that women who have not undergone FGM are oversexed and impure. Here, the clitoris is seen as an "immoral lump of skin" or a "source of sin" which needs to be removed so that women don't stray away from their marriages.



Immediate complications can include:

- Severe Pain
- Excessive Bleeding (Haemorrhage)
- Genital Tissue Swelling



- Fever
- Cyst
- Shock
- Infections e.g. – Tetanus
- Urinary Problems
- Wound Healing Problems
- Injury to Surrounding Genital Tissue
- Lasting psychological consequences.

Long-term consequences can include:

- Urinary problems (painful urination, urinary tract infections)
- Vaginal problems (discharge, itching, bacterial vaginosis and other infections)
- Menstrual problems (painful menstruations, difficulty in passing menstrual blood, etc.)
- Scar tissue and keloid
- Sexual problems (pain during intercourse, decreased satisfaction, etc.)
- Increased risk of childbirth complications (difficult delivery, excessive bleeding, caesarean section, need to resuscitate the baby, etc.) and newborn deaths.

What are the rights violated by FGM/FGC?

The practice of FGM/FGC violates Article 21 and Article 15 of the Constitution (fundamental rights) that guarantees life and personal liberty and rejects discrimination on the grounds of religion, race, caste, sex or place of birth.

While no separate law has been enacted to specifically deal with FGM/FGC, certain provisions of Indian Penal Code (IPC) and Prevention of Children from Sexual Offences Act, 2012 (POCSO) will be attracted if FGM/FGC is practiced.

The provisions include:

IPC

Section 320- Grievous hurt, Section 322- Voluntarily causing grievous hurt, Section 324- Voluntarily causing hurt by dangerous weapons or means, Section 326- Voluntarily causing grievous hurt by dangerous weapons or means.

POCSO

Section 3 of POCSO Act addresses penetrative sexual assault by any person on any child. One of the offences under this section is insertion of any object into the vagina of a girl. Since vagina also includes labia majora any procedure involving insertion of a sharp object will be considered as penetrative sexual assault.

Know the Procedure

Please refer to the “Know the Procedure” part of Chapter 4 to know more about procedural aspects under POCSO Act and refer to Annexure 1 to know more about filing FIR.

7

ACID ATTACK

What is Acid Attack?

The act of throwing acid or a similar corrosive substance onto the body of another "with the intention to disfigure, maim, torture, or kill". Perpetrators of these attacks throw corrosive liquids at their victims, usually at their faces, burning them, and damaging skin tissue, often exposing and sometimes dissolving the bones. This is one of the most vicious and heinous forms of crime in the society. Acid attack cases have risen in the past few years and most of the victims are women. The horrific act of attacking people with acid has been taking place across different parts of country. Man has chosen an alternative form of action to exploit the life of women. Hydrochloric acid and Sulfuric acid which are easily available in the market are used for acid attack which melts the skin and even bones of the victim.

Know the legal provisions:

Indian Penal Code

Section 326A and 326B were added in IPC in 2013 in order to punish the act of voluntarily causing grievous hurt by the use of acid etc.; or voluntarily throwing or attempting to throw acid causing permanent or partial damage, or deformity to, or burns or maims or disfigures or disables any part of the body of that person. The minimum punishment under section 326A is not less than 10 years which may extend to imprisonment for life and fine. The fine amount should be just and reasonable to meet the expenses of the treatment of the victim and it must be given to the victim. Under section 326B, for voluntarily throwing or attempting to throw acid, the minimum punishment is of five years that may be extended to seven years and fine.

Public Interest Litigation (PIL) in the Supreme Court

Laxmi, whose face and other body parts were disfigured in the acid attack, had filed a PIL in 2006. A minor then, Laxmi was attacked with acid by three men near Tughlaq road in New Delhi as she had refused to marry Naeem Khan aka Guddu, of the trio. Her PIL sought framing of a new law, or amendment to the

existing criminal laws like IPC, Indian Evidence Act and CrPC for dealing with the offence, besides asking for compensation. She had also pleaded for a total ban on sale of acid, citing increasing number of incidents of such attacks on women across the country. In 2013, the Supreme Court ruled in favour of Laxmi and Rupa's plea, thereby creating a fresh set of restrictions on the sale of acid. Under the new regulations, acid could not be sold to any individual below the age of 18 years. One is also required to furnish a photo identity card before buying acid.



8

EVE TEASING**What is Eve Teasing?**

It is the harassment of women by strangers in public places, streets and public transport. It includes both verbal assaults-making passes or unwelcome sexual jokes and non-verbal assaults such as showing obscene gestures, winking, whistling and staring and physical assaults such as pinching, fondling and rubbing against women in public places. It is expected out of women to ignore such incidents every day. Eve-teasing occurs in public places which can be effectively curbed, with a little effort, and consequences of not curbing such a menace, needless to say, at times are disastrous. There are many instances where young girls are harassed, which sometimes may lead to serious psychological problems and even committing suicide. Eve teasing and molestation are problems that women all over the world, especially in India, grapple with every day. Often, many women are unaware of the laws and regulations that give them protection against such acts.





Where does Eve Teasing happen?

In a civilised society, eve teasing is causing harassment to women in educational institutions, public places, parks, streets, malls, railway stations, and other public places which only shows that the requisite sense of respect for women has not been socially cultivated.

Know the legal provisions:

Fundamental Rights under the Constitution of India affected are:

- Article 14- Equality before the law.
- Article 15- Prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth.
- Article 21- Protection of life and personal liberty.

Indian Penal Code

Section 294 states that if any person does an obscene act or sings, recites or utters any obscene song, ballads or words in a public place and such act causes annoyance to others then that person shall be imprisoned for a term with either description which may extend to three months or with fine or both.

Section 509 states that if a person with the intent to insult the modesty of a woman utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound or such gesture or object intrudes the privacy of the woman shall be punished with simple imprisonment which may extend to one year or with fine or both.

Section 354 states that whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Know the Procedure

Police can be approached in instances of eve teasing. Please refer to Annexure 1 to know more on the procedure to file an FIR.



9

CYBER CRIME**What is Cyber Crime?**

Cybercrime is defined as a crime in which a computer is the object of the crime (hacking, phishing, spamming) or is used as a tool to commit an offense (abusing, pornography, hate crimes). Cybercrimes can be both gender neutral (which is usually cheating or fraud for monetary gains) and crime against women which usually emanates from misogyny. Some common types of cybercrimes are explained below:

Cyberstalking: Cyberstalking is a way to use the internet to stalk someone for online harassment and online abuse. A cyberstalker does not engage in direct physical threat to a victim but follows the victim's online activity to gather information, make threats in different forms of verbal intimidation.

Defamation: Cyber defamation includes both libel and defamation. It involves publishing defamatory information about the person on a website or circulating it among the social and friends circle of victims or organization which is an easy method to ruin a woman's reputation, subsequently causing her grievous mental agony and pain.

Morphing and Cyber Pornography: Morphing is highly increasing. It is done by editing the original picture of a woman and by sharing such morphed (edited/photo shopped) picture on social media to misuse it.

Cyber-pornography is another threat to women because this includes



publishing pornographic materials in pornography websites by using computers and internet wherein women will not even be aware of such publication of their very own image.

E-mail Spoofing: It refers to an email that emerges from one source but has been sent from another source. It can cause monetary damage.

Phishing: Phishing is the attempt to gain sensitive information such as username and password.

Trolling: Trolls spread conflict on the internet, start quarrels or upset the victim by posting inflammatory or off-topic messages in an online community (such as a newsgroup, forum, chat room, or blog) with the intention to provoke victims into an emotional, upsetting response.

Know the legal provisions:

Cybercrimes are dealt by Information and Technology Act, 2000 and by certain provisions of Indian Penal Code 1860. Certain legal provisions against cybercrimes are elucidated below:

Provisions under Information Technology Act, 2000

Sending offensive messages online: 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 under section 66A. Punishment for these acts is imprisonment up to three years or fine.



Dishonestly receiving stolen computer resource or communication device:

Dishonestly receiving stolen computer resource or communication device has a punishment up to three years or one lakh rupees as fine or both.

Identity theft:

Identity theft i.e., fraudulently or dishonestly using electronic signature, password or other unique identification feature of any other person is punishable with imprisonment of either description for a term extending to three years and fine which may extend to one lakh rupees.

Personation: Cheating by personation using computer devices is punishable with imprisonment of either description for a term may extend to three years and shall also be liable to fine which may extend to one lakh rupees.

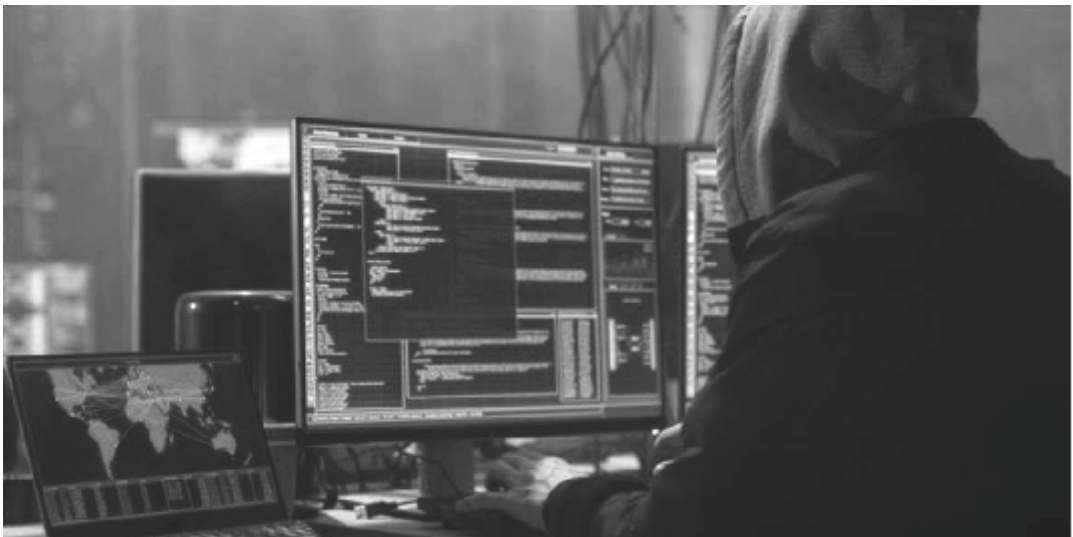
Privacy violation: Videotaping, photographing, filming or recording by any means, of private areas of a person; publishing or transmitting such photographs without the consent of such person is violation of privacy. Punishment of such offence is three years imprisonment or two lakh rupees fine or both.

Publishing or transmitting obscene material in electronic form: Publishing or transmitting obscene material in electronic form is an offence punishable with imprisonment of either description for three years with a fine extending to five lakh rupees for the first conviction and an imprisonment for a term extending to five years with a fine which may extend to ten lakh rupees for the second conviction.

Publishing or transmitting material depicting children in a sexually explicit act in electronic form: Creating, publishing or transmitting material depicting children in a sexually explicit act is an offence punishable on first conviction with imprisonment of either description for a term which may extend to five years with a fine which may extend to ten lakh rupees. In the event of second or subsequent conviction, the punishment is imprisonment of either description for a term which may extend to seven years and a fine which may extend to ten lakh rupees.

Provisions under Indian Penal Code, 1860

Section 354D deals with cyber stalking. It defines stalker as a man who follows a woman and tries to contact such woman despite clear indication of disinterest; or who monitors every activity undertaken by the woman while using digital media. Such stalking is punishable with imprisonment of either description for a term which may extend to three years, and the offender shall



also be liable to fine on first conviction; and with imprisonment of either description for a term which may extend to five years along with fine on second or subsequent conviction.

Know the procedure:

The procedure for reporting cybercrimes is more or less the same as for reporting any other kind of offence. The local police stations can be approached for filing complaints. There are also cybercrime cells designated with the jurisdiction to register cybercrime complaint. In addition, provisions have now been made for filing of 'e-FIR' in most of the states.

Cybercrime Reporting Portal - www.cybercrime.gov.in

This portal is an initiative of Government of India under National Mission for the safety of women by utilising Nirbhaya funds, to facilitate victims/complainants to report cybercrime complaints online. At present this portal caters to complaints pertaining to online Child Pornography (CP)/ Child Sexual Abuse Material (CSAM) or sexually explicit content such as Rape/Gang Rape (CP/RGR) content. Complaints reported on this portal are dealt by respective police authorities of States/ UTs based on the information in the complaints provided by the complainants. Option for anonymous reporting of CP/RGR content has been provided on this portal as per the direction of Hon'ble Supreme Court under the matter of Suo Motu Writ Petition No. 3/2015.



10

SEXUAL VIOLENCE

What is Sexual Violence?

Offences against the body of a woman can be divided into three main categories depending upon the place where such act is committed -



Public Place



Work Place



Shared Household

The law can further be classified based upon the age of survivor:

1. below 12;
2. between 12-16 or between 16 to 18; or
3. above 18 years of age.

Now, there are six main legislative enactments which deal with the issue:

1. Indian Penal Code 1860 (IPC),
2. Protection of Women from Domestic Violence Act 2005 (DV Act);
3. Protection of Children from Sexual Offences Act, 2012 (POCSO);
4. Sexual Harassment of Women at Workplace (Prevention; Prohibition and Redressal) Act, 2013 (Workplace Act);
5. Information Technology Act, 2000; and
6. Indecent Representation of Women (Prohibition) Act, 1986.

Indian Penal Code, 1860

Section 354 of IPC criminalizes any act by a person who assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of

either description for a term which may extend to two years, or with fine, or with both.

Such an act is punishable with either simple or rigorous imprisonment of up to 2 years, or a fine, or both. Indian courts have ruled that the essence of a woman's modesty is her sex, i.e., a woman possesses modesty by virtue of being a woman.

Section 354:

The IPC defines sexual harassment to include a man committing any of the following acts:

- a) Physical contact and advances involving unwelcome and explicit sexual proposition; or
- b) Demand or request for sexual favours; or
- c) Showing pornography against the will of a woman; or
- d) Making sexually colored remarks.

The punishment for (i), (ii) and (iii) as given above is rigorous imprisonment for a term that may extend to 3 years, or a fine, or both while the punishment for (iv) is either simple or rigorous imprisonment for a term which may extend to 1 year, or a fine, or both.

Section 354B of the IPC criminalises assault or use of criminal force against a woman with the intention of disrobing her, i.e., with the intention of depriving her of her clothing or forcing her to be naked. Such an act is punishable with either simple imprisonment or rigorous imprisonment of 3 to 7 years and a fine. Aiding such a crime also carries the same punishment. While this may sound similar to outraging modesty, it is not. It is considered an offence whether or not the man intended to outrage the modesty of the woman.

Section 354C of the IPC criminalises the act of voyeurism. Voyeurism is when a man watches or captures the image of a woman engaging in a private act in circumstances where she would usually not expect to be observed by the perpetrator or by any other person on the orders of the perpetrator. Distribution of an image so captured by the perpetrator is also voyeurism.

The punishment for committing this offence is simple or rigorous imprisonment of 1 to 3 years and a fine. Repeated offenders are punished with simple or rigorous imprisonment of 3 to 7 years and a fine.

Section 354D of the IPC criminalises stalking of a woman by a man. It defines stalking to include continuous following or contacting a woman by a man or attempting to contact a woman to build a personal relationship with that woman even when the woman has shown a clear lack of interest. It also

includes acts of monitoring a woman's electronic communication i.e., Communication over emails, social media etc. First time offenders can be punished with either simple imprisonment or rigorous imprisonment of up to 3 years and a fine.

Repeated offenders can be punished with simple imprisonment or rigorous imprisonment of up to 5 years and a fine. Stalking is not considered a crime if it is done as a legal duty for prevention and detection of crime by the state or under any legal duty imposed by a law in practice or in a situation where such an act of stacking is seen as reasonable and justified.

Section 370 of the IPC defined human trafficking as the action or practice to transporting people illegally or without their consent across areas mainly to be used in the labour or in commercial sex industry. The immoral Traffic (Prevention) Act, 1956 is the law regulating human trafficking in India.

Section 375 of the IPC defines rape to include any or all of the following acts, by a man against a woman:

- Penetration of a man's sexual organ (penis) into a woman's mouth, vagina, urethra or anus or making her do so with him or someone else; or
- Inserting any object, not the penis, into a woman's vagina, urethra or anus or making her do so with him or someone else; or
- Manipulating any body part of the woman to cause penetration into her vagina, urethra, anus or any other body part or making her do so with him or someone else; or
- Applying his mouth to a woman's vagina, urethra or anus or making her do so with him or someone else.

Under the following circumstances:

- Against her will;
- Without her consent;
- With her consent, if such consent is obtained by causing fear of death or hurt for herself or for someone she knows;
- With her consent, if she believes the man she is engaging with sexually, is her husband;
- With her consent, where due to unsoundness of mind or intoxication, the woman is not able to fully understand the nature and consequences of the act she consents to;
- With or without the consent of a woman who is below 18 years of age;
- When the woman is unable to communicate consent.

Consent is defined as clear communication a woman gives for a certain sexual act. It should be clarified that the communication expresses willingness to participate in the specific sexual act. Further, aspects of 'Consent' like passive acceptance does not amount to consent. It should be clarified that the communication expresses willingness to participate in the specific sexual act.

Marital rape, i.e., rape by one spouse of another is also listed as an exception to the act of rape, as long as the woman is above 15 years of age. Rape by a husband of his wife constitutes as rape if they are living separately and has a punishment of 2 to 7 years jail term of either description and fine. In October 2017, the Supreme Court stated that the act of sexual intercourse by a husband with his wife who is under the age of majority (18 years) would also be treated as rape.

The punishment for rape is rigorous imprisonment of 7 years to life imprisonment and the person will also be liable to pay fine.

How is aggravated rape defined under the IPC?

Special provisions are provided for cases of aggravated rape under the IPC, as amended by the Criminal Law (Amendment) Act, 2013. A rape is considered aggravated if it meets any of the following conditions:

- Rape by someone having authority over the woman because of legal status (for example: police officer, army personnel)
- Rape by someone who is in a position of trust in relation with the survivor (for example: family member, hospital staff)
- Special nature of woman (a pregnant woman, a mentally ill woman, a woman who cannot give consent, a woman below the age of sixteen)
- Rape involving violent circumstances (rape during time of communal riots, repeatedly raping someone)
- Other forms of aggravated rape include crimes where the victim dies from the rape, where the victim ends up in a vegetative state or where the victim is gang raped.

Indecent Representation of Women

The Indecent Representation of Women (Prohibition) Act, 1986 defines "indecent representation of women" to mean depiction of woman in any manner of the figure of a woman, her form or body or any part in such a way as to being indecent, or derogatory to, or denigrating women, or which is likely to deprive, corrupt or injure the public morality or morals. Any person who publishes, sells, lets on hire, distributes or circulates any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph containing indecent representation of women or publishes an advertisement containing indecent

representation of women in any form can be punished with an imprisonment of a term which may extend to two years with a fine extending up to two thousand rupees, for second or subsequent conviction the punishment is a minimum imprisonment for six months but which may extend to five years with a fine between ten thousand rupees and one lakh rupees.

Know the procedure: Complaint against any of the aforementioned offences can be made to the police by filing an FIR. Please refer to Annexure 1 to know more on the procedure to file an FIR.



FIR

11

MARRIAGE & DIVORCE

There are different laws governing marriages in different religions. Inter-religious marriage may also be contracted under the Special Marriage Act. Traditionally in India, owing to the patriarchal nature of family structures in most states, women move in to their husband's house upon marriage. Owing to the marital relationship, a woman is entitled to certain rights, including the right to divorce. Even upon divorce, a woman may be entitled to maintenance in accordance with the applicable law.

Marriage and Divorce Under Hindu Law

Marriage under Hindu Law is considered to be sacramental in nature. This means that the husband and wife are bound together for life. Marriage creates an endearing bond that cannot be untied once it is tied. It creates a permanent relationship for physical, social and spiritual needs of the husband as well as the wife.

Marriage under the Hindu Marriage Act, 1955 (HMA)

- Marriage amongst Hindus is governed by the Hindu Marriage Act ever since it was enacted in 1955.
- It brought about radical changes throughout the nation.
- It was given an overriding effect i.e., any rules or customary practices in contravention of the Act were not allowed.
- However, a considerable space to follow personal practices was also provided. As long as the conditions provided in HMA are complied with, Hindus are free to practice their own customary rituals.

Conditions for a valid marriage

Section 5 of the Hindu Marriage Act lays down the essential conditions and requirements for a valid Hindu marriage.

1. Both parties should be Hindus.

2. **Monogamy:** At the time of marriage, the person must not have any living spouse.
3. **Bigamy:** Bigamy means having two living wives at the same time. It is illegal under Hindu law. It is punishable under Section 494 of the Indian Penal Code
4. **Age:** The groom should have attained the age of 21 and the bride should have attained the age of 18 to be considered eligible for marriage. If this requirement is not complied with, the marriage will be void.
5. **Mental state of the spouse:** Marriage should not be affected by way of threat, coercion, or fraud. Furthermore, the consent should be a valid one i.e., if the person is suffering from unsoundness of mind at the time of marriage, then the marriage will be considered void. The person should be capable of giving valid consent.
6. **Sapinda relationships and prohibited relationships:** Sapinda relationship means the chain of all relationships from the side of brothers or sisters. They cannot marry each other as it is a prohibited relationship. It consists of all relationships till 3 generations from the girl's side and 5 generations from the boy's side. Section 7 lays down the provisions for solemnization of marriage. Marriage can be solemnized by following the ceremonies and rituals of both the parties or either of them.

Divorce under the Hindu Marriage Act, 1955

Divorce is the legal cessation of matrimonial bond. It puts the marriage to an end and reverts the parties to their unmarried status. All matrimonial rights and obligations between the parties cease formally.

Grounds for divorce under the Hindu Marriage Act:

1. Adultery:

- Adultery means the consensual and voluntary intercourse between a married person with another person, married or unmarried, of the opposite sex.
- Even in the intercourse between the husband and his second wife i.e., if their marriage is considered under bigamy, the person is liable for Adultery.
- There must be sufficient circumstantial evidence to prove the liability of another spouse.

2. Cruelty:

- It includes mental as well as physical cruelty.

- Mental cruelty is lack of kindness which adversely affects the health of the person.
- Demand of dowry is a form of cruelty.
- Examples of mental cruelty include false allegations, no maintenance, denial of food, non-fulfilment of marital obligations etc.
- Physical cruelty against women is also punishable by Section 498A of the Indian Penal Code.
- Mere trivial quarrels and normal wear and tear of married life does not amount to cruelty.
- It should be prolonged and sustained throughout married life.

3. Desertion:

- Desertion means the permanent abandonment of one spouse by the other spouse without any reasonable justification and without his consent.
- There should be permanent abandonment of the other spouse.
- There should be rejection of the obligation of marriage.
- It should be without any reasonable justification.
- It should be without the consent of another spouse.

4. Conversion:

- If one of the spouses converts his/her religion to any other religion without the consent of the other spouse, then the other spouse can approach the court and seek the remedy of divorce.

5. Insanity:

It can be a ground of divorce when:

- The respondent should have been incurably of unsound mind.
- The respondent should have been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

6. Venereal Disease:

- If the disease is in communicable form and it can be transmitted to the other spouse, then this can be considered as the valid ground for divorce.

7. Renunciation of the world:

- It means when one of the spouses decides to renounce the world for religious deed.
- In this concept the party who renounces the world is considered as civilly dead.

8. Presumption of death:

- A person is presumed to have died, if the family or the friends of that person does not hear any news about the person being alive or dead for seven years. It is considered as the valid ground for divorce, but the burden of proof is on the person who demands the divorce.

Divorce by mutual consent: As per Section 13B, the person can file the petition for divorce by mutual consent of both the parties. Under Section 14, no court shall entertain a plea of divorce within one year of marriage. However, it can be entertained if the matter is related to bigamy, and where the consent of the spouse was taken through misrepresentation, fraud, undue influence etc.

Marriage under Traditional Hindu Law: "Maintenance" is an amount payable by the husband to his wife who is unable to maintain herself either during the subsistence of marriage or upon separation or divorce.

For more details, refer to the Chapter on Property Rights and Maintenance.

Marriage and Divorce Under Muslim Law

The Muslim law with respect to marriage and divorce has, till some extent, been codified in the Shariat Act, 1937. Section 2 of the Act provides that all questions relating to marriage shall be decided according to the Muslim Personal Law (Shariat). The law relating to dissolution of marriage has been laid down in the Dissolution of Muslim Marriage Act, 1939.

Marriage under Muslim Law

Muslim marriage or 'Nikah' under Islamic Law is considered as a civil contract and also has a religious significance. Similar to contract, a **Muslim marriage should have these essentials –**

1. **Offer (Ijab) and acceptance (Qubul)-** It is necessary that man or someone on his behalf and woman or someone on her behalf should agree to the marriage in one meeting and the agreement should be witnessed by two adult witnesses.
2. **Competent to enter into marriage -** The parties must have the capacity of entering into a contract. Muslim who is of sound mind and has attained puberty may enter into a contract of marriage. The minimum age required is 15 years.

3. Consideration - Consideration is given in the form of 'dower'.

Key aspects –

1. **Iddat** - Iddat is the period after dissolution of marriage in which the woman is not allowed to enter into another marriage. This is 3 months in case of divorce and 4 months 10 days in case of death of the husband
2. **Dower** - Every Muslim husband has to pay this amount to the wife. Even if there is no dower amount is agreed, the wife is entitled to the dower. Once the parties have agreed to the dower the parties have to stick with that amount.
3. **Polygamy** - Under Muslim law, husband can marry as many as four wives.
4. **Absolute prohibition** - If marriage takes place between prohibited degrees of relationships, then it is void. Prohibited relations includes blood relations, relations by fosterage and relations by marriage.
5. **Registration** - According to Section 3 of Muslim Marriages Registration Act, 1981 registration of Muslim marriage is compulsory and mandatory and should be done within thirty days from the conclusion of marriage. Nikahnama is a type of legal document in Muslim marriages which contains the essential conditions/details of the marriage.
6. **Relative prohibition** - Such cases make the marriage irregular and not void. If the irregularity is something which can be rectified then upon rectification the marriage will become valid. Such prohibitions are –
 - A marriage contracted without required number of witnesses;
 - A marriage with women during her Iddat period;
 - A marriage with women without the consent of her guardian when such consent is considered necessary;
 - A marriage with non-Muslims;
 - A marriage with a woman who is pregnant;
 - A marriage with a fifth wife;
 - A marriage during pilgrimage

Types of Marriage

1. **Sahih (Valid)** - when all the legal requirements are fulfilled and there are no prohibitions affecting the parties, then the marriage is valid.
2. **Batil (Void)** - When the marriage is void ab initio, no rights or obligations are created for the parties.

3. **Fasid (irregular)** - Due to lack of some formality, or the existence of an impediment which can be rectified, a marriage becomes irregular. However, this irregularity is not permanent in nature and can be removed. Thus, the marriage itself is not unlawful. It can be made valid once the prohibitions are rectified.
4. **Muta** - The practice is not prevalent in India. It is a temporary marriage for some specific duration of time. When the offer of marriage is made it should mention the exact time frame for which the marriage will exist.

Divorce under Muslim Law

A divorce may be either by an act of the husband or the wife. According to the Dissolution of Muslim Marriage Act, dissolution is always with a reason. Talaq can either be through a judicial decree under the Dissolution of Muslim Marriage Act or through extra judicial means following the personal law. Extra-judicial means to divorce can be exercised by the husband, wife or through mutual consent of both.

By Husband

1. **Talaq-ul-Sunant** - This type of talaq conforms to the traditions of the personal law. It is of two types:
 - a. **Talaq Ahsan:** Talaq is given by a single pronouncement in the period of 'tuhr' i.e., when the wife is free from menstruation course. This is followed by a period of abstinence from sexual intercourse during the period of tuhr and Iddat. It is revocable during the period of Iddat.
 - b. **Talaq Hasan:** Talaq is given by three successive pronouncements which are made by the husband during the three consecutive periods of tuhr. No sexual intercourse during the time of all three periods of tuhr. The talaq becomes irrevocable on the last pronouncement.
2. **Talaq-ul-Biddat** - Talaq is given through three successive pronouncements of talaq made in a single tuhr. This is commonly known as triple talaq. The Supreme Court in 2017 has declared triple talaq as unconstitutional. It has been declared illegal under the Muslim Women (protection of rights on marriage) Act, 2019.
3. **Ila** - It is rarely practiced in India. The husband takes an oath to not have sexual intercourse with the wife for a period of four months. After the expiry of this period, the marriage is treated as dissolved. However, if the husband fails to keep his oath before the expiry of the time, then the divorce is considered as revoked.
4. **Zihar** - In this if the husband compares the wife as someone who is coming

within any prohibited decrees, for e.g., mother, sister, then she can ask for divorce. The wife can go to the court and seek a divorce only if the husband refuses to revoke his declaration and undergo an atonement process.

By wife

1. **Talaq-i-tafweez** - This gives a Muslim woman the right to talaq if the same has been delegated to her by her husband. The delegation should be done in the Nikahnama. Such delegation can be conditional or unconditional and can be revoked at any time.
2. **Lian** - If the husband accuses his wife of committing adultery, then the wife becomes entitled to claim a judicial divorce on the grounds of being falsely accused.

By mutual agreement

1. **Khula** - The wife has the option to ask the husband for divorce and if the husband agrees, she has to give some consideration to the husband for her release from the marriage.
2. **Mubarat** - The divorce takes place by mutual consent of the parties. Either party can make the offer of the divorce and if the other accepts, then divorce becomes irrevocable.

Maintenance:

Under the Muslim law, maintenance is called 'nafaqa'. This includes food, clothing and lodging. According to Muslim law, the husband has the obligation to maintain his wife during the period of Iddat and not after that. For more details, refer to the Chapter on Property Rights and Maintenance.

Marriage and Divorce Under Christian Law

Essentials for a valid marriage: The groom must be at least 21 years old. The bride must be at least 18 years old. The agreement between the two parties must be free and voluntary and without compulsion, undue influence, or threat of violence.

Section 5 - The persons by whom marriages may be solemnized

1. By any person who has received episcopal ordination, according to the rules of the Church of which he is a minister
2. By any Clergyman (a male priest especially in a church) of the Church of Scotland given that such a marriage is solemnized according to the rules, rites, ceremonies, and customs of the Church of Scotland
3. By a Minister of Religion licensed under this Act

4. In the presence of a Marriage Registrar appointed under this Act
5. By any person licensed under this Act to grant certificates of marriage between Indian Christians.

Section 10 & 11- Time and place at which marriages may be solemnized

Time for solemnizing marriage

All marriages under the Act must be solemnized between the stretch of 6 am in the morning and 7 pm in the evening.

Place for solemnizing marriage

No clergyman of the Church of England may solemnize a marriage in any place other than a church unless there is no church within five miles distance by the shortest road from such place, unless he has received a special license that authorizes him to do so under the hand and seal of the Anglican Bishop of the Diocese or his Commissary.

Marriages Solemnized by Ministers of Religion Licensed Under the Act

Section 12- Notice of intended marriage

Whenever a marriage is intended to be solemnized, one of the persons intending marriage shall give notice in writing. The notice should be in accordance with the form contained in the First Schedule and to be sent to the Minister of Religion whom he/she desires to solemnize the marriage.

Section 13- Publication of such notice

Once the notice is delivered to the Minister of Religion, he shall affix the notice in some conspicuous part of the Church.

Section 15- Sending a copy of the notice to Marriage Registrar when one party is a minor.

When one of the parties intending to get married is minor, the Minister is required to send the notice to the Marriage Registrar of the district within 24 hours. If there is more than one Registrar, then he should send it to the Senior Marriage Registrar.

Any marriage solemnized, whether before or after the commencement of the Indian Divorce (Amendment) Act, 2001, may, on a petition presented to the district court either by the husband or the wife would be dissolved on the ground that since the solemnization of the marriage, the respondent:

- a. Has committed adultery
- b. Has ceased to be Christian by conversion to another religion

- c. Has been incurably of unsound mind for a continuous period of not less than two years immediately preceding the presentation of the petition.
- d. Has for a period of not less than two years immediately preceding the presentation of the petition, been suffering from a virulent and incurable form of leprosy.
- e. Has for a period of not less than two years immediately preceding the presentation of the petition, been suffering from venereal disease in a communicable form.
- f. Has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of the respondent if the respondent had been alive.
- g. Has willfully refused to consummate the marriage and the marriage has not therefore been consummated.
- h. Has failed to comply with a decree for restitution of conjugal rights for a period of two years or upwards after the passing of the decree against the respondent or dissolution of a marriage.

Special Marriage Act, 1954

The Special Marriage Act, 1954 was enacted to provide a special form of marriage irrespective of the caste and religion of either party to the marriage.

Applicability

The Special Marriage Act, 1954 includes Hindus, Muslims, Christians, Sikhs, Jains, and Buddhists marriages. This act applies to all Indian states and union territories, except the Union Territory of Jammu & Kashmir. This act also includes all Indian citizens in foreign countries. For the benefit of such Indian citizens abroad, it provides for the appointment of Diplomatic and Consular Officers as marriage officers for solemnizing and registering marriages between citizens of India in a foreign country.

Requirements and Conditions for Marriage

For the solemnization of special marriages under this Act, the following conditions are required to be fulfilled:

- The bridegroom must be at least 21 years old, and at the time of the marriage, the bride must be at least 21 years of age. This is the minimum age limit respectively for a boy/girl to marry.
- At the time of their marriage, both parties must be monogamous; i.e., they must be unmarried and at that time should not have any living spouse.

- In order to be able to decide for themselves, the parties should be mentally fit, i.e., they must be sane at the time of marriage.
- They should not be related to themselves through blood relationships; i.e. they should not be subjected to prohibited relationships that otherwise act as a ground for dissolving their marriage.

Section 5 - Notice of intended marriage

When a marriage is intended to be solemnized under this Act, the parties to the marriage shall give notice thereof in writing in the form specified in the Second Schedule to the Marriage Officer of the district in which at least one of the parties to the marriage has resided for a period of not less than thirty days immediately preceding the date on which such notice is given.

Section 11- Declaration by parties and witnesses

Before the marriage is solemnized the parties and three witnesses shall, in the presence of the Marriage Officer, sign a declaration in the form specified in the Third Schedule to this Act, and the declaration shall be countersigned by the Marriage Officer.

Section 12- Place and form of solemnization

The marriage may be solemnized at the office of the Marriage Officer, or at such other place within a reasonable distance therefrom as the parties may desire, and upon such conditions and the payment of such additional fees as may be prescribed.

The marriage may be solemnized in any form which the parties may choose to adopt: Provided that it shall not be complete and binding on the parties unless each party says to the other in the presence of the Marriage Officer and the three witnesses and in any language understood by the parties, — “I, (A), take the (B), to be my lawful wife (or husband).”

Section 13- Certificate of Marriage

When the marriage has been solemnized, the Marriage Officer shall enter a certificate thereof in the form specified in the Fourth Schedule in a book to be kept by him for that purpose and to be called the Marriage Certificate Book and such certificate shall be signed by the parties to the marriage and the three witnesses.

On a certificate being entered in the Marriage Certificate Book by the Marriage Officer, the Certificate shall be deemed to be conclusive evidence of the fact that a marriage under this Act has been solemnized and that all formalities respecting the signatures of witnesses have been complied with.

Judicial Separation

Judicial Separation is a method allowing the parties to live separately from each other, without dissolving the marriage bond, with the option of re-uniting and re-living together if conditions change subsequently.

Grounds for Judicial Separation:

A petition for judicial separation can be presented by either the husband or the wife on any of the grounds that the respondent:

- a) Has committed adultery.
- b) Has deserted the spouse for a period of two years immediately prior to the petitioner's submission without cause.
- c) Is imprisoned for an offence as described in the Indian Penal Code for seven years or more.
- d) Has treated the petitioner with cruelty.
- e) Has been of unsound mind incurably.
- f) Has been suffering from the communicable form of venereal disease.
- g) Has not been heard of from at least 07 years.

Where the petitioner is the wife, on the additional ground, she can file a petition for judicial separation:

- a) That since the solemnization of marriage, her husband has been guilty of Rape, Sodomy, or Bestiality; or
- b) That there has been no cohabitation between her and the husband for not less than one year after passing a decree or maintenance order against her husband; or
- c) That her husband has failed to comply with a decree to restore conjugal rights.

The decree of judicial separation entitles the parties to live separately, and cohabitation is not compulsory on either party as the essential of the marital relation. Marriage continues to be intact. The remedy of judicial separation is a preemptive measure before Divorce whereby this acts as a cooling period to see if things can improve in the relationship.

Divorce

Divorce officially dissolves a marriage whereby both the husband and the wife no longer remain in the marital relationship. Divorce may be unilateral or with mutual consent.

The following are some key points to consider when seeking a divorce by mutual consent:

1. Both parties must present a petition for divorce to the District Court together.
2. There must be a petition on the grounds,
 - a. They lived separately for a period of one year or more.
 - b. That they were not able to live together.
3. Only after one year from the date of entering the wedding certificate in the Marriage Certificate Book can the petition be presented. However, in instances where the petitioner suffers extraordinary hardship or in instances of extraordinary depravity on the part of the respondent, relaxation may be provided.
4. Between six months after and within 18 months, the date of filing of the petition for seeking divorce by mutual consent, both parties must make a motion together for seeking a decree of divorce.

Maintenance and Alimony

Any court exercising jurisdiction under the Special Marriage Act of 1954 may, at the time of the passing of any decree or at any time after the decree, order the husband to secure the wife's maintenance and support, if necessary, by charge on the property of the husband, such gross sum or such monthly or periodic payment of money for a period of time not exceeding her life.

12

CHILD MARRIAGE

Child marriage in India, according to the Indian law, is a marriage where either the woman is below age 18 or the man is below age 21. Most child marriages involve underage women.

The Prohibition of Child Marriage Act, 2006

The Prohibition of Child Marriage Act, 2006 (PCMA) was enacted repealing the Child Marriage Restraint Act of 1929 in order to prohibit child marriages rather than only restraining them. PCMA has been enforced with effect from 1st November, 2007. It makes child marriage an offence and prescribes punishment for those conducting/abetting/promoting/permitting/solemnizing child marriages. The basic premise of the law is: to make a child go through a marriage is an offence. Child or minor is a person up to 18 years in the case of girls and 21 years in the case of boys.

The provisions of this law can be classified into three broad categories: Prevention, Protection and Prosecution of Offenders.

A. Prevention: Prevention more specifically, under the law:

- Child marriage is a cognizable and non-bailable offence.
- The Act provides for appointment of Child Protection Officers.
- The Courts have the power to issue injunction for prohibiting child marriages from taking place.
- Child marriages will be declared null and void if the injunction prohibiting a child marriage from taking place is violated/ contravened or, if the child is taken away from their lawful guardian by enticement, force or by use of deceitful means or, is sold or trafficked for the purpose of marriage.
- The law lays down penal provisions for those who solemnize child marriages.

- The CMPO and District Collector are responsible for sensitization and awareness creation in the community.

B. Protection:

- The law makes child marriages voidable by giving choice to the children in the marriage to seek annulment of marriage.
- It provides for maintenance and residence of the female contracting party.
- It gives a legal status to all children born from child marriages and makes provisions for their custody and maintenance.
- It provides for support and aid including medical aid, legal aid, counselling and rehabilitation support to children once they are rescued.
- The Child Marriage Prohibition Officer has been empowered to:
 - o Provide necessary aid to victims of child marriage
 - o Provide legal aid
 - o Produce children in need of care and protection before the Child Welfare Committee or a First-Class Judicial Magistrate, where there is no Child Welfare Committee.

C. Prosecution of Offenders:

- The law provides for punishment for an adult male above 18 years of age marrying a child.
- It also lays down punishment for those performing / conducting / abetting child marriage.
- It prescribes punishment for promoting or permitting solemnization of child marriage, including for parents, guardians or any other person/association/organisation.
- The law clearly states that women offenders in any of the above categories cannot be punished with imprisonment. However, they can be penalised by way of imposition of a fine.

Know the Procedure

For prevention of a child marriage, the following authorities can be approached:

- a) Police officer;
- b) Child Marriage Prohibition Officer;

- c) Judicial Magistrate First Class or Metropolitan Magistrate;
- d) District Court

In Gujarat, the District Social Welfare Officer is given the powers of Child Marriage Prohibition Officer for his/her district. For prosecution of the offenders, the abovementioned authorities can be approached after the child marriage has taken place, however, the order of nullifying the marriage or maintenance and residence to female contracting party or making provisions for custody and maintenance of children born out of child marriage will be taken by the District Court.

It should be noted that the State Commission for Protection of Child Rights (SCPCR) and even the National Commission for Protection of Child Rights (NCPCR) can be approached if there is any deprivation of child rights or in case of non-implementation of PCMA.

13

FORCED MARRIAGE

What is Forced Marriage?

A forced marriage occurs when one or both spouses do not consent to the marriage and duress is involved. Forced marriage may involve use of coercion, guilt, threats, blackmail, harassment, financial pressure, emotional pressure, physical violence, psychological duress, or being tricked into marriage by family members or by outsiders. As per the laws in India, both men and women have rights against forced marriages. Indian courts are of the opinion that the right to choose a life partner is a fundamental right and it is an integral part of the right to life.

Protection of Women From Domestic Violence Act, 2005 (PWDVA)

A complaint for domestic violence under the PWDVA can be filed against any relative and the Magistrate may pass an ad interim order restraining the family member from forced marriage.

Hindu Marriage Act, 1955

Section 12 of the Hindu Marriage Act states that if consent for marriage was obtained by force or fraud, such marriage is voidable. However, no relief can be claimed under this section if the complainant still lived with the other party with full consent after ceasing of the force.

Know the procedure:

- A woman can contact the Women Cell of a local Police Department or the National Commission for Women to prevent Forced Marriage.
- A complaint to National Commission for Women can be made either at <http://ncw.nic.in> or <http://ncwapps.nic.in>, under the section of 'register online complaints' or by sending a written application through hand or post.
- A complaint for Domestic Violence can be filed under PWDVA. Please

refer to “Know the Procedure” part of Chapter 15 to know more about the procedural aspect.

If a forced marriage has already taken place, then a person can approach the court to nullify it.

14

HONOUR KILLING

Honour Killing or Shame Killing is the murder of a member of a family, due to the perpetrators' belief that the victim has brought shame or dishonour upon the family, or has violated the principles of a community or a religion, usually for reasons such as divorcing or separating from their spouse, refusing to enter into an arranged marriage, being in a relationship that is disapproved by their family, having sex outside marriage, becoming the victim of rape, dressing in ways which are deemed inappropriate, engaging in non-heterosexual relations or renouncing a faith. These killings are completely influenced by the age-old concepts of superiority and inferiority by birth, gender, age or occupation that has been ruling over the minds of certain section of people in the society.

What is Honour Killing?

Honour killings are often a result of cultural views towards women, and the position of women in society. In these traditionally male-dominated societies women are dependent first on their father and then on their husband, whom they are expected to obey. Women are viewed as property and not as individuals with their own agency. As such, they must submit to male authority figures in the family - failure to do so can result in extreme violence as punishment. Violence is seen as a way of ensuring compliance and preventing rebellion.

Know the legal provisions:

Right to marry is a constitutional right guaranteed by Article 21. Under section 3 of Indian Majority Act, 1857, a person who is the citizen of India, attains age of majority after completion of 18 years. A person who is major, wanting to get married to a person of another caste or inter community marriage is not prohibited by law and any honour killings initiated on this ground is unlawful and severe measures can be initiated against the perpetrator (*Sujit Kumar v. State of Uttar Pradesh & Ors*, 2002 SCC OnLine ALL 1326).

Special Marriage Act, 1954

The objective of this Act is to provide a special form of marriage for citizens of India as well as for Indians residing in foreign nations. A marriage can be solemnised under this Act irrespective of the caste, religion or faith of the intending parties to marriage.

Domestic Violence Act, 2005: Under this Act, if a woman is prevented from marrying the person of her choice, it amounts to emotional abuse of the woman.

Indian Penal Code: Provisions of Indian Penal Code 1860 will be applicable if a woman/couple is threatened by any family/community member. Therefore, a woman/couple should approach police station in case of receipt of any threat of harm or killing.

Supreme Court Guidelines on Honour Killing in Shaktivahini Case:

- There will be fast-track courts for fighting against honour killing cases.
- The disposal of the cases can be expected within 6 months.
- Immediate FIR can be lodged against Khap Panchayat if they order any diktat against any couple.
- There will be a provision of safe houses for the couples by the government, along with security, if needed. DM/SP will supervise such safe houses.
- The safe houses will cater to young bachelor-bachelorette couples with married couples whose relationship is being opposed by Khap.



Guidelines to prevent Khap incidents:

- All the governments should find out districts and villages where incidents of honour killing have been reported in the past.
- The governments should also identify villages with the presence of Khap Panchayats in the last five years.
- Advisories must be issued to the superintendents of police and the police departments by the home department of the concerned states in order to be extra vigilant when an inter-caste marriage under their jurisdiction occurs.
- If any harm is caused to the couple or their family members, the Khap will be criminally liable.
- The police must inform Panchayats that holding Khap meetings is illegal.
- To prevent meetings of Khap, police will be invoking provisions of law, invoking prohibitory orders under Section 144 of the Code of Criminal Procedure.
- Police can also arrest participants of Khap assembly under Section 151 of the Code of Criminal Procedure (CrPC), if needed.

Know the Procedure

Please refer to Annexure 1 to know more about approaching police.



15

DOWRY

What is Dowry?

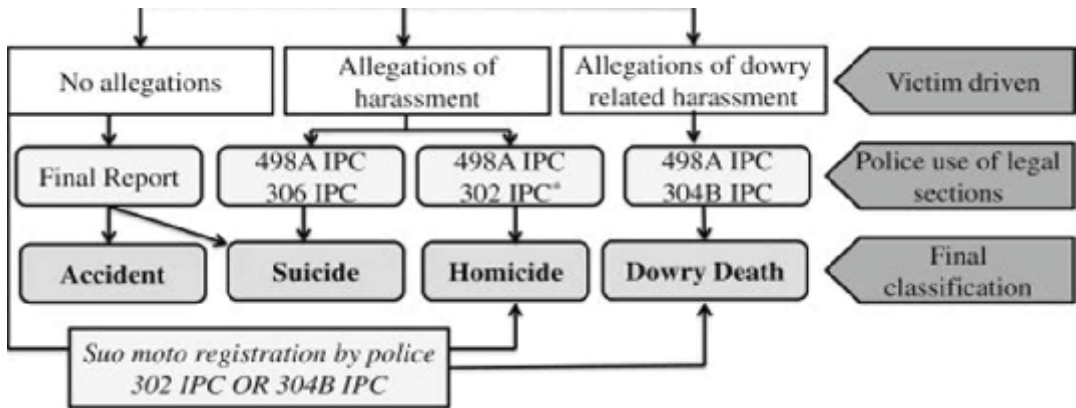
Dowry is any property given or agreed to be given by a party to a marriage to the other party to the marriage, or by their parents, before or after the marriage, in connection with the marriage. Traditionally, dowry has been given from the bride's family to the groom's family.

Know the legal provisions:

The Dowry Prohibition Act, 1961 makes giving or taking of dowry a punishable offence with imprisonment and fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more. The Act also penalizes demanding dowry with an imprisonment term which may extend to two years and with a fine which may extend to ten thousand rupees. It not only penalises giving or taking dowry but as per provisions of this Act, any person who has received any dowry shall transfer it to the woman in connection to whose marriage such dowry was taken.

Such property is to be transferred to the woman within three months after the





date of marriage; or if the woman is a minor, then within three months of her attaining the age of eighteen years. Not transferring such property is punishable with an imprisonment term which may extend to two years or a fine which may extend to ten thousand rupees or both.

Indian Penal Code, 1860

Dowry Death

Section 304B of IPC deals with dowry death. As per this section if the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of marriage and it is shown that soon before her death, she was subjected to harassment by her husband or in-laws for dowry, then such death is deemed to be dowry death. Dowry death is punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

The above flowchart summarises provisions of IPC which deal with harassment of a married woman. Many times, demand for dowry is also followed by harassment by in-laws of the woman, in such instances, provisions of The Protection of Women from Domestic Violence Act, 2005 are also applicable. This Act has been elucidated in the next chapter.

Know the procedure:

Dowry harassment/dowry death cases can be filed at any police station as a Zero FIR i.e., the victim or any family member of the victim can file a complaint in any police station and the complaint would then be transferred to the police station having jurisdiction. Please refer to Annexure 1 to know more about the procedure to file an FIR. Dowry harassment/dowry death cases can also be filed before the National Commission for Women (NCW) through its official website (www.ncwapps.nic.in).

16

DOMESTIC VIOLENCE

What is Domestic Violence?

Domestic Violence as defined under Section 3 of the Domestic Violence Act, 2005 includes: any kind of harm/ injury that is likely to endanger the life, health, limb and wellbeing of the woman, whether physical or mental. It also includes harassment with a view to coerce the woman or any person related to her to meet any unlawful demand of property or security (dowry).

Domestic Violence can be classified into the following categories:

Physical abuse: Physical abuse means any act which causes harm or danger to the life, limb, or health of the victim and it includes - denying food, warmth or sleep to someone, locking up someone, or abandoning someone in a dangerous place.

Sexual abuse: It includes any conduct of sexual nature that abuses, humiliates, degrades or violates the dignity of a woman.

Emotional abuse: It includes insulting, ridiculing, humiliating, name calling or insulting for not having a child or for any other reason or for not having a male child. It also includes threatening to cause physical harm.



Economic abuse: Economic abuse includes depriving money or financial resources to the victim which she requires for household necessities, for her own use, or for her children. It also includes alienation of household items or assets in which the victim has an interest or is entitled to use or alienating her stridhan.

Know the legal provisions:

The Protection of Women from Domestic Violence Act, 2005 (PWDVA)

The PWDVA is a civil law. While the objective of criminal law is to punish the offender, a civil law aims to provide relief to the aggrieved party, in this case, the woman who faces violence at home.

Aggrieved woman under PWDVA: The PWDVA has a very broad definition of who an aggrieved woman is. As per the definition in the Act, it means any woman who is or has been in a “domestic relationship” with the respondent and who alleges to have been subjected to any act of domestic violence.

The term “domestic relationship” means a relationship between persons who live or have lived together in a shared household (i.e., same house) when they are related through:

- Consanguinity (For example, relationship between father-daughter, uncle-niece).
- Marriage.
- Adoption.
- Members of joint family living together.
- Relationship in the nature of marriage (For example, a couple living in a live-in relationship).

In light of the above definition, it's not just a wife who can file a complaint against her husband or in-laws, but even a mother can file a complaint against her son and daughter-in-law. Even a sister is entitled to file a complaint against her brothers.

Reliefs available under PWDVA

The courts on finding a case of domestic violence may pass the following reliefs under PWDVA:

Protection orders: The court can restrain the accused from committing the act of domestic violence on the aggrieved woman or any of her family members. It can even disallow the respondent from entering the aggrieved woman's place of employment or residence, or attempt to communicate. The protection order can be claimed as an interim relief, i.e., before the final

judgement is passed.

Residence orders: The court, if satisfied, that the aggrieved woman has no other place to stay, or for any other reason, can ask the accused to provide an alternate accommodation for the aggrieved person. It can also prevent the accused from dispossessing the aggrieved woman from her matrimonial home and can even disallow the respondent from entering that area of the household in which the aggrieved woman is residing.

Monetary relief: The aggrieved woman can ask the court for monetary relief from the accused in order to incur her medical expenses, any other loss that has occurred to her due to the offence being committed and maintenance for herself and her children.

Custody of the child: The court can also grant temporary custody of the child/children to the person making the application.

Compensation orders: In addition to the above-mentioned reliefs, the Magistrate may also on an application being made by the aggrieved woman, pass an order directing the accused to pay the compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence. Apart from the above reliefs, the Magistrate on receiving an application by the aggrieved woman or the respondent, can direct the parties to undergo counselling by a counselor possessing requisite qualification and experience.



Access to Protection, Shelter, Healthcare and Legal Aid

Recognising that a woman requires assistance with legal procedures and for ensuring safety of the woman, all state governments have appointed Protection Officers and Service Providers under the Act. Any person who knows that an act of domestic violence has been committed or is being committed or is likely to be committed may give such information to the Protection Officer or Service Provider or to the Police. The Protection Officer or the Service Provider will then make a Domestic Incident Report. They can also request the following on behalf of the aggrieved woman: Shelter Home, Medical Facility and 'Free Legal Aid Request for the above facilities can be made not only by the Protection Officer/Service Provider but also by the

aggrieved person or any other person on her behalf.

Indian Penal Code 1860

Section 498A of the Indian Penal Code, 1860, deals with the offence of domestic violence and provides for its punishment i.e., an imprisonment of three years or fine or both. An FIR can be registered with the Police if a woman is being subjected to cruelty by her husband or relatives of her husband.

As per this section, cruelty means those acts which: drive the woman to commit suicide; or cause grave injury or danger to a woman's life, limb or mental or physical health; or harassment for dowry. In comparison to the PWDVA, section 498A has a narrow scope, in the sense that it protects only a married woman against harassment by her husband or relatives of her husband.

Note- Section 498A actually deals with cruelty by husband and his relatives.

Know the Procedure

Protection of Women from Domestic Violence Act

There are four authorities to which any aggrieved woman or any person on her behalf who believes that an act of domestic violence has been committed, or is being committed, or is likely to be committed, can approach to get relief under the Domestic Violence Act. These four authorities are: Service Provider, Protection Officer, Police or JMFC in rural areas and Metropolitan Magistrate in urban areas. Usually the District Social Welfare Officer acts as the Protection Officer. In Gujarat, the following can be contacted to know details of the Protection Officer:



- The Director, Directorate of Social Welfare; or
- The Joint Commissioner, Commissionerate of Women and Child Development.

On receiving any information on domestic violence, Service Provider or Protection Officer will file a Domestic Incident Report, which is a report containing details of domestic violence faced by the aggrieved woman, and after the DIR is prepared, it is forwarded to the police and the magistrate.

The Service Provider and the Protection Officer have a duty to get medical examination of the aggrieved woman done and even the medical examination report is sent to the police and the magistrate. If an aggrieved woman approaches the police, the police will contact the protection officer, and assist the aggrieved woman in filing DIR.

Protection of Women from Domestic Violence Act

An aggrieved woman can also directly approach Courts i.e., JMFC or Metropolitan Magistrate to seek reliefs under the Domestic Violence Act. Even a Protection Officer can approach the magistrate on behalf of the aggrieved woman. If the aggrieved woman directly approaches the Magistrate, the latter might ask the Protection Officer to make a DIR and on taking cognizance of the case he/she will ask the Protection Officer to file and serve a notice to the respondent. In the next stage after serving the notice, the parties will appear before the Court. The Court will take evidence and listen to arguments of both the parties and give a final order. The Magistrate, if he/she deems fit, might also pass interim orders. The final order of Magistrate is appealable to Sessions Court within 30 days of passing of the Order. The Magistrate might also send the parties for counselling at any stage of the proceedings.

On a request by either the aggrieved party or the accused and if the case so requires, the proceedings can be held in camera i.e., the matter will not be heard in open court but in private.

Section 26 of the Domestic Violence Act also allows Family Court or any other Civil Court or Criminal Court to grant reliefs under this Act to the aggrieved woman. It should be noted that if a woman has filed a complaint of domestic violence under this Act, she has a right not to be dispossessed from the shared household, even if she does not have any interest in the house. This means that if a woman has filed a complaint under this Act, say against her husband and her in-laws, they cannot remove her from the shared household. If the woman feels that she is not safe in the shared household, she can ask for separate residence as an interim award or she can seek residence in a shelter home along with praying for a protection order.

It is the duty of every officer that the aggrieved woman knows her rights of benefits available under the Act such as residence in a safe shelter house, free medical facilities and free legal aid; and they need to ensure that the aggrieved woman in need receives these rights.

Indian Penal Code: A zero FIR can be filed under section 498A in any police station. Please refer to Annexure 1 to know more about the procedure to file an FIR.



17

MARITAL RAPE

What is Marital Rape?

Marital rape or spousal rape is the act of sexual intercourse with one's spouse without the spouse's consent. The lack of consent is the essential element and the act need not involve violence. As per the NFHS-4, 5.4 percent of Indian women have been subjected to marital rape. The Karnataka High Court made a significant move in the right direction when it declined to dismiss rape allegations brought by a woman against her spouse, disregarding the legislation's exemption, and instead urged legislators to listen to the "voices of silence." Rape is rape, whether committed by a man, the "husband," or a woman, the "wife". The court disapproved the "age-old... regressive" belief that "spouses are the masters of their women, and their body, mind, and soul should be effaced." It's surprising that a woman may protect her right to life and liberty, but not her body, within her marriage. The definition of rape (section 375 of the IPC) must be altered.

Know the legal provisions:

Unlike rape by an outsider, marital rape is not considered as rape under the Indian Penal Code 1860. In that sense, marital rape is not a criminal offence. However, a victim of marital rape may file a case under section 498A of IPC if marital rape takes place along with cruelty. A victim of marital rape may also file a complaint under The Protection of Women from Domestic Violence Act, 2005. Sexual abuse by husband deems to be a sort of local violence. A woman can seek divorce from her spouse for marital rape under this Act. Nonetheless, marital rape is not considered rape under this act.

The JS Verma Committee, which proposed a host of legal amendments to offences of sexual violence against women in 2013, stated that the exception to marital rape under Section 375 IPC should be deleted. Parliament, on the other hand, has not moved on this idea. In the case of *Bodhisattwa Gautam v. Subhra Chakraborty*, the judge determined that rape is less of a sexual offence than a display of animosity aimed at degrading and traumatising women. In this way, the marital exception doctrine deprives the wife of her

right to a dignified life. Any legislation that jeopardises women's right to respect and empowers husbands to force their wives into sexual intercourse against their consent is unconstitutional. In the historic decision of *Vishakha v. State of Rajasthan*, the Supreme Court expanded the right to privacy in the workplace; in a like manner, we can deduce that there is a right to privacy in sexual relationships, even within a marital relationship. As a result, by decriminalising rape within a marriage, the marital exception doctrine infringes on a married woman's right to privacy, making it a crime.

While deciding on the constitutionality of the marital rape exception, the Delhi High Court has delivered a split verdict. A similar challenge is pending before the High Court of Gujarat.

Know the procedure:

Refer to the chapter on Domestic Violence.

18

PROPERTY RIGHTS AND MAINTENANCE

Provisions Under Law

1. Muslim Law
2. Christian Law
3. Maintenance
4. Important Judicial Pronouncements

Under Muslim Law:

Daughters:

- In inheritance, the daughter's share is equal to one half of the son's due to the concept that a woman is worth half a man.
- She has, however, and has always had full control over this property. It is legally hers to manage, control, and to dispose of as she wishes in life or death.
- Though she may receive gifts from those whom she would inherit from, there should be no doubt that the gift is a means of circumventing the inheritance laws of one third of a man's share, since, under Muslim law the shares of inheritance are very strict.



- Daughters have the right of residence in parent's houses, as well as the right to maintenance, until they are married. In case of divorce, charge for maintenance reverts to her parental family after the Iddat period (approximately 3 months). In case she has children capable of supporting her, the charge falls upon them.
- She inherits equally with any brothers and sisters to her father's estate or her mother's estate.
- She is entitled to shelter and maintenance before marriage, but not after marriage from her parents.
- She has full rights over her personal property, upon attaining majority. Until then, her natural guardian is her father.

Wives:

- In Islamic law a woman's identity, though considered inferior in status to a man's, is not extinguished in him when she marries.
- Thus, she retains control over her goods and properties. She has right to the same maintenance he gives to his other wives, if any, and may take action against him in case he discriminates against her.
- A Supreme Court Judgement has held that in the case of divorce, a Muslim husband is liable to make reasonable and fair provision for the future of the divorced wife which obviously includes her maintenance as well. Such a reasonable and fair provision extending beyond the Iddat period must be made by the husband within the Iddat period in terms of Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 and the liability of Muslim husband to pay maintenance is not consigned to Iddat period.
- Right to Meher is according to the terms of the contract agreed to at the time of marriage.
- She will inherit from him to the extent of one eighth if there are children or one fourth if there are none. If there is more than one wife, the share may diminish to one sixteenth. In circumstances, where there are no sharers in the estate as prescribed by law, the wife may inherit a greater amount by will. A Muslim may dispose of one third of his property by will, though not to a share in the inheritance.
- She is entitled to maintenance from her husband, but his failure to provide the same is not by itself a ground for divorce.
- Upon death of her husband, she is entitled to one third share of his property, the rest being divided among the children equally.



- She must inherit a minimum of Rs.5000/- from her husband's estate. This is subject to the fact that the estate is more than this amount. In case it is not, she may inherit the whole estate.

Mothers:

- In case of divorce or widowhood, she is entitled to maintenance from her children.
- Her property is to be divided according to the rules of Muslim law.
- She is entitled to inherit one sixth of her deceased child's estate.

Under Christian Law:

Mothers:

- She is not entitled to maintenance from her children. In case any of her children dies without being succeeded by any spouse or living children, she may inherit one fourth of their assets.

Under Hindu Law:

The Hindu Succession Act recognises the concept of Hindu Undivided Family (HUF), which means a family of persons who are lineally descended from a common ancestor and are related to each other by birth or marriage. The people who are so descended from common ancestors, were divided in two parts. In the first category are coparceners. Only males were recognised as coparceners of the HUF and all the females were called members. All the coparceners are members but vice-versa is not true.



The rights of coparceners and members in the property of the HUF are different. Coparceners have the right to ask for partition of the property and to get the shares. Members of the HUF, like daughters and mothers, have the right of maintenance from HUF property, as well as to get a share in the property of the HUF as and when partition of the HUF takes place. Upon marriage, the daughter would cease to be a member of the HUF of the father and would thus no longer be entitled to the right of maintenance as well as to get a share in the property of the HUF, if the property were partitioned after her marriage. As only a coparcener was entitled to become the Karta of the HUF, the female members were barred from it.

Daughters:

By the virtue of an amendment brought in the year 2005, daughters now have equal right of inheritance as sons to their father's property. Daughters also have a share in the mother's property. The Hindu Succession (Amendment) Act, 2005 (39 of 2005) came into force on 9th September, 2005. The Amendment removes gender discriminatory provisions in the Hindu Succession Act, 1956 and gives the following rights to daughters:

- The daughter of a coparcener shall by birth become a coparcener in the same manner as a son;
- The daughter has the same rights in the coparcenary property as she would have had if she had been a son;
- The daughter shall be subject to the same liabilities in the said coparcenary property as that of a son;

- The daughter is allotted the same share as is allotted to a son upon partition.

A married daughter has no right to shelter in her parents' house, nor maintenance, as the charge for her is passed on to her husband. However, a married daughter has a right of residence at her parent's house if she is deserted, divorced or widowed. A woman has full rights over any property that she has earned or that has been gifted or willed to her, provided she has attained majority. She is free to dispose these off by sale, gift or will as she deems fit.

Wives:

A married woman has exclusive right over her individual property unless she gifts it in part or wholly to anyone. She is the sole owner and manager of her assets whether earned by her or inherited or gifted to her. She is entitled to maintenance, support and shelter from her husband, or if her husband belongs to a joint family, then from the joint family. Upon partition of a joint family estate between her husband and his sons, she is entitled to a share equal to any other person. Similarly, upon the death of her husband, she is entitled to an equal share of his portion, together with her children and his mother.

Mothers:

She is entitled to maintenance from children who are not dependents. She is also a Class I Heir. A widowed mother has a right to take a share equal to the share of a son if a partition of joint family estate takes place among the sons. All property owned by her may be disposed off by sale, will or gift as she chooses. In case she dies intestate, her children inherit equally, regardless of their sex.

Hindu Succession (Amendment) Act, 2005

Until the Hindu Succession Act, 1956, was amended in 2005 the property rights of sons and daughters were different. While sons had completed right

over their father's property, daughters enjoyed this right only until they got married. After marriage, a daughter was supposed to become part of her husband's family. Under Hindu law, a Hindu Undivided Family (HUF) is a group comprising of more than one person, all lineal descendants of a common ancestor. A HUF can be formed by people of Hindu, Jain,



Sikh or Buddhist faith. Earlier, once a daughter was married, she ceased to be part of her father's Hindu Undivided Family (HUF). Many saw this as curtailing women's property rights. But on September 9, 2005, the Hindu Succession Act, 1956, which governs the devolution of property among Hindus, was amended.

According to the amendment, every daughter, whether married or unmarried, is considered a member of her father's HUF and can even be appointed as 'karta' (who manages) of his HUF property. The amendment now grants daughters the same rights, duties, liabilities and disabilities that were earlier limited to sons. Earlier, a daughter could avail the benefits granted by the amendment only if her father passed away after September 9, 2005 and the daughter is eligible to be a co-sharer only if the father and the daughter were alive on September 9, 2005. The Supreme Court clarified through its judgement dated February 2, 2018, and made it a general rule that a daughter, living or dead, on the date of amendment will be entitled to her share in the father's property, thus making even her children eligible to claim this right.

Equal right to be coparceners:

A coparcenary comprises the eldest member and three generations of a family. It could earlier comprise, for instance, a son, a father, a grandfather, and a great grandfather. Now, women of the family can also be a coparcener. Under the coparcenary, the coparceners acquire a right over the coparcenary property by birth. The coparceners' interest and share in the property keeps on fluctuating on the basis of the number of members, and on the birth and death of the members in the coparcenary. Both ancestral and self-acquired property can be coparcenary property. While in the case of ancestral property, it is equally shared by all members of the coparcenary, in case of self-acquired property, the person is free to manage the property according to his own will. A member of the coparcenary can also sell his or her share in the coparcenary to a third party.



However, such a sale is subject to the Right of Preemption of the remaining members of the coparcenary. The remaining members, also, have the “right of first refusal” over the property, to stop the entry of an outsider. A coparcener can file a suit demanding partition of the coparcenary property but not a member. Thus, the daughter, as a coparcener, can now demand the partition of her father's property.

Maintenance

Section 125 of Code of Criminal Procedure prescribes for maintenance of wives, children and parents. If any person having sufficient means neglects or refuses to maintain-

1. His wife, who is unable to maintain herself, or
2. His legitimate or illegitimate minor child,
3. His father or mother, unable to maintain himself or herself

a court in such cases may order such person to make a monthly allowance for maintenance to the wife, child or parents. The order will be issued by a Magistrate of the first class. A Magistrate can also, during the pendency of the proceeding, order monthly allowance for interim maintenance. Application for the monthly allowance for interim maintenance and expenses of proceeding shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application. “Wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

19

ADOPTION

What is Adoption?

Adoption means the process through which the adopted child is permanently separated from his biological parents and becomes the legitimate child of his adoptive parents with all rights, privileges and responsibilities that are attached to the relationship.

Adoption under the Hindu Adoptions and Maintenance Act, 1956 (HAMA)

- The Hindu Adoptions and Maintenance Act, 1956 (HAMA) is a religious specific law governing Hindus.
- Sections 7 and 8 of the HAMA deals with capacity of persons who may lawfully take a child, who is a Hindu, in adoption.
- Prior to the Personal Laws (Amendment) Act, 2010, married Hindu women did not have the right to adopt a child unless her husband had completely and finally renounced the world, or ceased to be a Hindu, or been declared by a court to be of unsound mind.
- Currently, a married Hindu woman may adopt a child under the HAMA provided, if she has a husband living, the husband must consent to such adoption (similar in nature to the law applicable to Hindu males who have to seek consent from their wife), with the same exceptions as before.
- The 2010 Amendment thus confers equal rights with respect to adoption to both married Hindu males and females.
- A Hindu widow may adopt a child under the HAMA on behalf of her husband and for herself exclusively.

Adoption under the Juvenile Justice (Protection and Care) Act, 2000 (JJ Act) and Rules

- The Juvenile Justice (Protection and Care) Act, 2000 (JJ Act) relates to

children alleged and found to be in conflict with law and children in need of care and protection. Since it is a secular legislation, it is applicable to all persons, irrespective of religion.

- Under Section 40 of the JJ Act, adoption is recognized as the first alternative for the rehabilitation and social reintegration of orphan, abandoned or surrendered children.
- A joint reading of Section 41 of the JJ Act and Rule 33(2) of the JJ Rules clarifies that the guidelines on adoption issued by a State Government, the Supreme Court and the Central Adoption Resource Agency (CARA) from time to time, shall apply.
- The Child Welfare Committee is the sole authority to decide on the adoption of the child under the Act. (Section 29 of the JJ Act)

Central Adoption Resource Authority (CARA)

- The Central Adoption Resource Authority (CARA) is a statutory body of the Ministry of Women & Child Development, Government of India.
- It functions as the nodal body for the adoption of Indian children.
- Under Section 68 of the JJ Act, the CARA is entrusted with several functions including the promotion of in-country adoptions, facilitation inter-State adoptions in coordination with State Agency, and regulation of inter-country adoptions, amongst others.

20

SEXUAL HARASSMENT AT WORKPLACE

Under Prevention of Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Sexual Harassment has been defined to include any one or more of the unwelcome acts or behavior (whether directly or by implication), which involve physical contact and advances, a demand or request for sexual favors, making sexually colored remarks, showing pornography or any other unwelcome physical, verbal or non-verbal conduct of sexual nature accompanied by circumstances.

The following circumstances amount to Sexual Harassment at Workplace:

- Implied or Explicit promise of preferential treatment in her employment or;
- Implied or Explicit promise of detrimental treatment in her employment or;
- Implied or Explicit threat about her present or future employment status or;
- Interference with her work, creating an intimidating or hostile or offensive work environment for her or;
- Humiliating treatment likely to affect her health and safety.

The POSH Act defines workplace to include:

- a) 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;
- b) 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, entertain mental, industrial, health

services or financial activities including production, supply, sale, distribution or service;

- c) Hospitals or nursing homes;
- d) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;
- e) any place visited by the employee arising out of or during the course of employment including transportation by the employer for undertaking such journey;
- f) a dwelling place or a house.

As per the POSH Act, an aggrieved woman is a woman who alleges to have been subjected to any act of sexual harassment. It does not matter if such a woman is employed or not. So, for instance, a client or a consultant or a contractor who has faced any act of sexual harassment is an aggrieved woman. However, in relation to a dwelling place or house, it is necessary that the woman is employed in such a dwelling place or house, for example, maid or house nurse.

Setting up of Internal Complaints Committee (ICC)

Every workplace having more than 10 workers/employees is required to set up an ICC. This means that if an employer has more than one branch and if more than ten employees are employed in each branch then the employer will have to set up an ICC in each branch. All sexual harassment cases are made to ICC, which inquires about each complaint and recommends punishment for the accused. An ICC has to include:

- A senior level woman employee as its presiding officer
- At least two other employees
- An external member from an NGO or an organisation working for the cause of women or a person familiar with the issue relating to sexual harassment.

At least half of the total members need to be women. Failure to not constitute an ICC may lead to a fine of fifty-thousand rupees, a subsequent non-constitution of ICC may also lead to cancellation of license or withdrawal of registration, required for carrying out business or activity, as the case may be.

Procedure to file a complaint

An aggrieved woman can file a complaint to the ICC within a period of three months from the date of the incident or from the date of the last incident, where a series of incidents are involved. Such time limit may be extended, but for not

more than three months, if the Committee is satisfied of circumstances leading to such delay. If the aggrieved woman is unable to make a complaint on her own owing to her physical or mental incapacity or death or for any other reason, either of the following people can make a complaint:

- Her relative or friend; or
- Her co-worker; or
- An officer appointed by NCW or SCW; or
- Any person having knowledge of the incident; or
- A qualified psychiatrist or psychologist (if the woman has mental incapacity to make a complaint)
- Legal heir in case of death of the aggrieved woman or any person having knowledge of incident with a written consent of her legal heir.

The complaint has to be made in writing and has to be appended with supporting documents and names and addresses of the witnesses. If the complaint is against an employer (say for example an owner of a sole proprietorship) or if no ICC has been constituted because there are less than ten employees, then the complaint has to be made to the Local Complaints Committee (LCC) set up under the District Authority for the concerned district.

Inquiry Stage

Before initiating an inquiry, the ICC or the LCC as the case may be, can initiate steps for settling the matter through conciliation. However, such steps can be taken only if the aggrieved woman requests so. Under such conciliation, no monetary settlement can be made and the ICC has to record in writing the terms of settlement. Once the settlement is arrived at, no further inquiry shall be conducted. However, if the respondent does not comply with the terms and conditions of the conciliation, the ICC/LCC can proceed to make an inquiry. If no settlement is arrived at or if the aggrieved woman rejects the conciliation mechanism, the ICC will proceed to make inquiry into the complaint. The inquiry has to be made in accordance with the provisions of service rules and if there are no service rules then it has to be made as per the rules prescribed by the Central Government under the authority of the POSH Act. The inquiry has to be completed within 90 days from the receipt of the complaint. And during the course of the inquiry, the ICC has to ensure that both the parties are given an opportunity of being heard. However, if the respondent fails to present himself before the ICC/LCC without any sufficient cause then the Committee has the right to give an ex parte decision (decision without hearing the other side). The LCC, on the other hand, on being satisfied that there is a prima facie case has to forward the complaint to the police within a period of seven days for registering the case under section 509 of the Indian Penal Code.

The following steps are also taken:-

- 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
- Restrain the respondent from reporting on the work performance of the aggrieved woman or writing her confidential report, and assign the same to another officer; or
- In case of an educational institution, restrain the respondent from supervising any academic activity of the aggrieved woman.

Within ten days of completion of the inquiry the ICC/LCC has to submit an inquiry report to the employer/district officer and the same is made available to both the parties.

Punishment

Punishment if the respondent is found guilty

If the respondent is found guilty of the allegation by the ICC/LCC then the Committee can recommend punishment to the employer who has to act on such recommendation within 60 days from the receipt of the inquiry report. The ICC/LCC can recommend a punishment as prescribed in the service rules and if there are no service rules then it may recommend any of the following punishments:

- deduction of salary or wages to the tune of compensation payable to the aggrieved woman;
- terminating service;
- withholding of promotion;
- withholding of pay rise or increments;
- reprimand or censure;
- warning;
- written apology;
- undergoing a counselling session;
- carrying out community service.

Punishment for false or malicious complaint or false evidence:

The above stated punishments can also be recommended against a person who makes a false or malicious complaint or produces false evidence.

Appeal

Any person aggrieved by the decision of ICC/LCC or on non-implementation of recommendations of ICC/LCC may prefer an appeal to the Court of Tribunal specified in the service rules. If no service rules exist then the appeal can be preferred to the appellate authority appointed by respective state governments. Such appeal has to be preferred within a period of ninety days of the recommendation.

Other Duties of Employer

The employer also has the following duties:

- Provide a safe working environment at the workplace which includes safety from the persons coming into contact at the workplace;
- Display the penal consequences of the POSH Act and setting up of ICC at any conspicuous place in the workplace;
- Organising workshops and awareness programmes at regular intervals for sensitizing the employees with provisions of POSH Act;
- Provide necessary facilities to ICC;
- Provide assistance to an aggrieved woman if she chooses to file a complaint;
- Initiate appropriate action under IPC or any other law against the perpetrator if he is not an employee in the workplace when the incident of sexual harassment took place;
- Treat sexual harassment as misconduct under the service rules and initiate action for such misconduct.

21

EQUAL PAY

India is a developing country and it needs female participation in the economy at a very high rate but discrimination in the wages not only affects the financial but mental and psychological conditions too. The participation of women will not only increase the Gross Domestic Product but also result in an increased growth and profitability in the private sector.

What is Equal Pay?

Equal pay means that men and women in the same employment performing equal work must receive equal pay.

Know the legal provisions:

Fundamental Rights and Directive Principles of State Policy under the Constitution:

- Article 14: Equality before law
- Article 16: Equality of opportunity in matters of public employment
- Article 39(d): The state shall, in particular, direct its policy towards securing - that there is equal pay for equal work for both men and women.

Equal Remuneration Act, 1976

The Equal Remuneration Act, 1976 aims to provide for the payment of equal remuneration to men and women workers and for the prevention of discrimination, on the ground of sex, against women in the matter of employment and for matters connected therewith or incidental thereto. According to the Act, the term 'remuneration' means "the basic wage or salary and any additional emoluments whatsoever payable, either in cash or in kind, to a person employed in respect of employment or work done in such employment, if the terms of the contract of employment, express or implied, were fulfilled." Nothing in this Act shall apply:

- to cases affecting the terms and conditions of a woman's employment in complying with the requirements of any law giving special treatment to women;
- or to any special treatment accorded to women in connection with the birth or expected birth of a child, or the terms and conditions relating to retirement, marriage or death or to any provision made in connection with the retirement, marriage or death.

Main Provisions of the Act:

- No employer shall pay to any worker, employed by him/her in an establishment, a remuneration (whether payable in cash or in kind) at rates less favorable than those at which remuneration is paid by him/her to the workers of the opposite sex in such establishment for performing the same work or work of a similar nature. Also, no employer shall, for the purpose of complying with the provisions of this Act, reduce the rate of remuneration of any worker. No employer shall, while making recruitment for the same work or work of a similar nature, or in any condition of service subsequent to recruitment such as promotions, training or transfer, make any discrimination against women except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force.
- Every employer shall maintain such registers and other documents in relation to the workers employed by him/ her in the prescribed manner.
- If any employer:- (i) makes any recruitment in contravention of the provisions of this Act; or (ii) makes any payment of remuneration at unequal rates to men and women workers for the same work or work of a similar nature; or (iii) makes any discrimination between men and women workers in contravention of the provisions of this Act; or (iv) omits or fails to carry out any direction made by the appropriate Government, then he/she shall be punishable with fine or with imprisonment or with both.
- Where an offence under this Act 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.

The Code on Wages, 2019

The Code on Wages, 2019 will replace the Equal Remuneration Act, 1976 on the date notified by the Central Government in the official gazette. However, it

does not change the right to equal remuneration for women and the right to no discrimination at the time of appointment. The substantial provisions with respect to Equal Remuneration Act, 1976 will remain the same.

Know the Procedure

Every state government has appointed an authority under the Equal Remuneration Act, 1976 to whom complaint can be made regarding contravention of the Act or for non-payment of wages, in the prescribed form.

Such a complaint can be made by a worker herself, or a single complaint can be filed on behalf of a group of workers working in the same establishment, or by a registered Trade Union authorized by the complainant, or by a labour officer appointed under section 9 of the Equal Remuneration Act, or by any other person authorised by the authority. An offence punishable under this Act is triable in a Court not below the Metropolitan Magistrate or Judicial Magistrate First Class.

22

MATERNITY BENEFIT

Know the legal provisions:

The Maternity Benefit Act, 1961 seeks to regulate the employment of women in certain establishments for certain periods before and after child birth and to provide maternity benefit and certain other benefits to women workers.

- No employer should knowingly employ woman during the period of 6 weeks immediately following the day of her delivery or miscarriage or medical termination of pregnancy. Besides, no woman should work in any establishment during the said period of 6 weeks.
- Further, the employer should not require a pregnant woman to do an arduous work involving long hours of standing or any work which is likely to interfere with her pregnancy or cause miscarriage or adversely affect her health, during the period of one month preceding the period of 6 weeks before the date of her expected delivery, and any period during the said period of 6 weeks for which she does not avail of the leave as provided for under Section 6 of the Act. The pregnant woman employee can make an application to the employer to allot her less strenuous work 1 month before the expected delivery.
- Section 5(1) of the Act provides that the maternity benefit to which every woman shall be entitled to and her employer shall be liable for, is a payment to a worker at the rate of average daily wages for the period of her actual absence immediately preceding and including the day of her delivery and for six weeks immediately following that day.
- The period of maternity leave is 26 weeks. Period of pre-natal leave is 2 months. However, a lady with effectively at least two kids is qualified for 12 weeks' maternity leave. The pre-birth leave, for this situation, stays a month and a half.
- According to Section 12(1), when a woman absents herself from work, in accordance with the provisions of the Act, it shall be unlawful for her

employer to discharge or dismiss her on account of such absence or to give notice of discharge or dismissal on such a day that notice will expire during such absence or to vary to her disadvantage any of the condition of her service.

- Once a woman presents herself for work post-delivery, she shall continue in the same post she left. The conditions and benefits attached to that post cannot be altered to her disadvantage.
- An establishment where 30 or more women employees are employed has to provide a creche facility. In Gujarat, a group of shops or establishments can provide a common creche facility if it is within the radius of one kilometer and if such creche is approved by the Inspector appointed under the Gujarat Shops and Establishment (Regulation of Employment and Conditions of Service) Act, 2019.

Know the Procedure

If the employer fails to provide maternity benefit or any other amount under the Act, then the aggrieved woman can make a complaint to the inspector appointed under the Act. The inspector will either himself or herself on a complaint filed by an aggrieved woman make an enquiry into the matter and if he/she finds that a payment is wrongfully withheld, he/she will give an order for making of such payment. This order is appealable within a period of thirty days from the date of its communication.



23

TRAFFICKING OF WOMEN

What Is Trafficking?

The term human trafficking is defined as a trade of humans, most commonly for sexual slavery, forced labour or bonded labour. They may extract organs or tissues or provide a spouse for forced marriage. This type of crime can occur locally, nationally or internationally. It is a heinous crime against the person as it violates the right of the victims of movement through coercion. Though human trafficking is the trade in people, it especially involves women and children and the movement of the person is not always necessary.

Know the legal provisions:

The following legislations have been made to deal with human trafficking:

- Immoral Traffic Prevention Act, 1956
- Transplantation of Human Organs Act, 1994
- Prohibition of Child Marriage Act, 2006
- Bonded Labour System (Abolition) Act, 1976
- Child Labour (Prohibition and Regulation) Act, 1986
- Specific sections in the IPC

The Central Government has also come up with the following policies to deal with human trafficking:

- National Policy for the Empowerment of Women, 2001
- National Plan of Action to Combat Trafficking and Commercial Sexual Exploitation of Women and Children, 1998
- National Plan of Action for Children, 2004
- National Child Labour Policy, 1987

The Immoral Traffic Prevention Act, 1956 makes the following offences punishable:

- Keeping or managing (or assisting in keeping in managing) a brothel or allowing premises to be used as a brothel (including vehicles).
- Living on earning of prostitution (even partly).
- Procuring, inducing, trafficking, or taking person for the sake of prostitution. Even attempt to procure or take a person would constitute the offence.
- Detaining a person in any premises (brothel or any other) where prostitution is carried out.
- Anybody who carries on prostitution, or anybody with whom such prostitution is carried on, in the vicinity of public places (which includes hotel, vehicles, etc.).
- Seducing and soliciting for the purpose of prostitution in any public place or within sight of a public place.
- Seduction of a person in custody (which include causing or assisting seduction for prostitution of a person in custody).

Indian Penal Code, 1860

The Indian Penal Code lays down number of provisions related to trafficking:

- Kidnapping, abducting or inducing women to compel her for marriage (Section 366).
- Selling minors for purposes of prostitution, etc. (Section 372).
- Buying minors for purposes of prostitution, etc. (Section 373).
- Wrongful restraint (Section 339).
- Wrongful confinement (Section 340).



- Mental Torture/Harassment/Assault (Section 351).
- Outraging of modesty (Section 354).
- Rape/Gang Rape/Repeated rape (Section 375).

Child Labor (Prevention & Regulation) Act, 1986

This Act prohibits employment of children below the age of 14 years in notified occupations and processes. The Act also regulates the employment of children in non-hazardous occupations and processes. Some of the important prohibited occupations and processes are carpet weaving, building and construction work, brick kilns, production of hosiery goods, work as domestic servants, and in tea-shops, roadside eateries, etc.

Protection of Children From Sexual Offences (POCSO) Act, 2012

The relevant penal provisions under POCSO Act are as follows (Please refer to chapter on POCSO for more details):

- Penetrative Sexual Assault (Section 3) and fine (Section 4)
- Aggravated Penetrative Sexual Assault (Section 5) and fine (Section 6)
- Sexual Assault (Section 7) i.e., sexual contact without penetration and Aggravated fine (Section 8)
- Sexual Assault (Section 9) by a person in authority — and fine (Section 10)
- Sexual Harassment of the Child (Section 11) — and fine (Section 12)
- Use of Child for Pornographic Purposes (Section 13) — and fine (Section 14)

Criminal Law (Amendment) Act, 2013

Through this Section 370 of Indian Penal Code, 1860 was amended and Section 370A was added to provide for comprehensive measures to counter the menace of human trafficking.

Institutional Mechanism: Setting up of a Central Nodal Authority in the centre and State nodal authorities in the States for preventing and combating the offence of trafficking.

Its functions include:

- Coordination
- Investigation
- Rescue and rehabilitation



- Judicial support
- Cooperation and research training

How and where to lodge complaint against trafficking?

Section 13 of the Immoral Traffic (Prevention) Act, 1956 provides for the appointment of a special police officer not below the rank of an Inspector of Police for each area to be specified by the State Government for dealing with offences of trafficking. Also, you can report to the Central Bureau of Investigation.

Helplines:

Shakti Vahini : 011-42244224, 9582909025

National Helpline/Childline : 1098

Central Bureau of Investigation (CBI) 24x7 Helpline : 011-24368638

Annexure 1: Approaching the Police - Filing of an FIR and a Complaint

What is First Information Report?

First Information Report (FIR) is a written document prepared by the police when they receive information about the commission of a cognizable offence. The police start investigating a case only when an FIR has been registered.

What is a cognizable offence?

Offences can be divided into two: cognizable offences and non-cognizable offences. Cognizable offences are those offences in which the police can arrest a person without a warrant. On the other hand, non-cognizable offences are those offences in which the police do not have the authority to arrest a person without a warrant. An FIR is filed in a cognizable offence as per section 154 of the Criminal Procedure Code, 1973 (CrPC), whereas filing of a complaint for Non-cognizable offence is dealt by section 155 of CrPC. Both these procedures are explained further.

What is Zero FIR?

As a general practice, FIRs have to be filed in the appropriate police station having jurisdiction over the place of commission of offence. However, in the interest of justice, an FIR can be filed in a police station irrespective of the place of crime and area of jurisdiction. The police station where the FIR is registered lodges it under the serial number '00' and it later transfers it to the concerned police station. This ensures quick initiation of investigation process.

Who can file an FIR?

Any person who knows about the commission of a cognizable offence can file an FIR.

What is the procedure of filing an FIR?

As per section 154 of CrPC, the procedure of filing an FIR is as follows:

- The complainant can either orally or in writing give information relating to commission of a cognizable offence.
- If the information is given orally, the police officer will reduce it in writing the information provided and once it is written will read over the FIR to the complainant.
- After the complainant has read the FIR, the police officer will ask the complainant to sign it.

What can be done if the police officer refuses to file an FIR?

The police officer cannot refuse to file an FIR. Any person aggrieved by a refusal on the part of an officer can send his/her complaint to the Superintendent of Police concerned. If the SP is satisfied with the complaint, he will either investigate the case himself or order an investigation to be made out. Alternatively, an aggrieved person can file a private complaint before the Court having jurisdiction.

What is the procedure to file a complaint for non-cognizable offences?

In a non-cognizable offence, the police officer in charge of a police station will enter the information in the prescribed format and then refer the complainant to the Magistrate. After looking into the facts of the case, the Magistrate may give an order to the police officer to initiate the investigation, and only then will the police officer initiate investigation.

Annexure 2: Important Contact Details

181 - Abhayam

(24x7 free Women Helpline for all women citizen of Gujarat).

It provides 24x7 free counselling, guidance and information through centralized response Centre. It responds in emergency situations like domestic violence or any type of violence to shift women to safe places.

+91-7217735372- The National Commission for Women (NCW)

This is an emergency number for women facing domestic violence complaints only.

1098	Childline
112	National Emergency Number
1090	National Women Number
1091	Gujarat Police Helpline' and other women orientated services
011-24368638	CBI Helpline (24x7)

Annexure 3: Right to Free Legal Aid

Article 39A of the Indian Constitution specifies that the State has to provide free legal aid to the poor and weaker section of the society to ensure justice for all. Article 14 and 22(1) of the Indian Constitution also make it obligatory for the State to ensure equality before all and a legal system which promotes justice on the basis of equal opportunity for all. In furtherance of this mandate, the parliament enacted The Legal Services Authorities Act, 1987 (“Legal Services Act”).

The Legal Services Act has set up a three-tier system i.e., District Legal Services Authority (DLSA), State Legal Services Authority (SLSA) and a National Legal Services Authority (NALSA) to ensure access to justice through free legal services.

What are free legal services?

As per the Legal Services Act, legal services include rendering of any service in any case or legal proceeding before any Court or Authority or Tribunal and giving of advice on any legal matter.

Provision of free legal aid may include:

- a. Representation by an advocate in legal proceedings.
- b. Payment of process fees, expenses of witnesses and all other charges payable or incurred in connection with any legal proceedings in the appropriate cases.
- c. Preparation of pleadings, memo of appeal, paper book, for legal proceedings.
- d. Drafting of legal documents.
- e. Supply of certified copies of judgements, orders, notes of evidence and other documents in legal proceedings.

Who is eligible for free legal aid?

The following persons are eligible for free legal aid:

- a. A member of a Scheduled Caste or Scheduled Tribe;
- b. A victim of trafficking in human beings or begar;
- c. A woman or a child;
- d. A mentally ill or otherwise disabled person;
- e. A person under circumstances of undeserved want such as being a victim

of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster;

f. An industrial workman;

g. A person in custody, including custody in a protective home, or in a juvenile home, or in a psychiatric hospital or psychiatric nursing home;

h. A person with income below the specified limit.

How to apply for free legal aid?

If you are eligible for legal aid then you can apply for it both offline and online. Offline application can be made by submitting an application form in your nearest Legal Services Authority (be it Taluka Legal Services Authority, which is usually in the premises of a Court in the Taluka; or DLSA which is usually in the premise of the District Court; or SLSA; or NALSA). Online application can be made through the "Online Application" link available on NALSA's website. Alternatively, an application can also be filed by sending mail to nalsadla@nic.in.

What are the documents to be furnished/information given at the time of filing an application?

At the time of filing an application, you need to provide necessary details such as your name, gender, residential address, employment status, nationality, whether SC/ST (with proof in support), income per month (with affidavit), details of the case for which legal aid is required, reason for seeking legal aid etc.

Is there any charge involved?

There is absolutely no charge involved either at the stage of making an application or while obtaining free legal services. Expenses such as processing fees, drafting fees, typing fees, fees of panel lawyers are all borne by the legal service institutions.

What if you don't know the local language?

The Para Legal Volunteers at the front office of the legal services institutions will help you out if you do not know the local language.

Is there any helpline?

Yes, the Free Legal Services Helpline number is 15100. Contact details of respective SLSAs can be accessed through the following URL: <https://nalsa.gov.in/about-us/directory>

The Department of Justice has also launched tele-law services in a few

districts, where a person can avail legal advice through telephone or videoconferencing. It is free for those eligible for free legal aid, and for others a nominal rate of Rs. 30 is charged.

Further details can be availed from the following URL: <http://www.tele-law.in>



Gujarat National Law University



GNLU
CENTRE FOR LAW AND SOCIETY



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