# LL.B. (HONS) PART I SEMESTER I
# PAPER-VI WOMEN AND CRIMINAL LAW

**UNIT-I Introduction**
crimes against women, nature, kinds, international commitments.

**UNIT-II Major Hardships to woman and Indian laws**
Rape, sexual harassment of working women in workplace, indecent representation of women- meaning, protection under Indian laws.

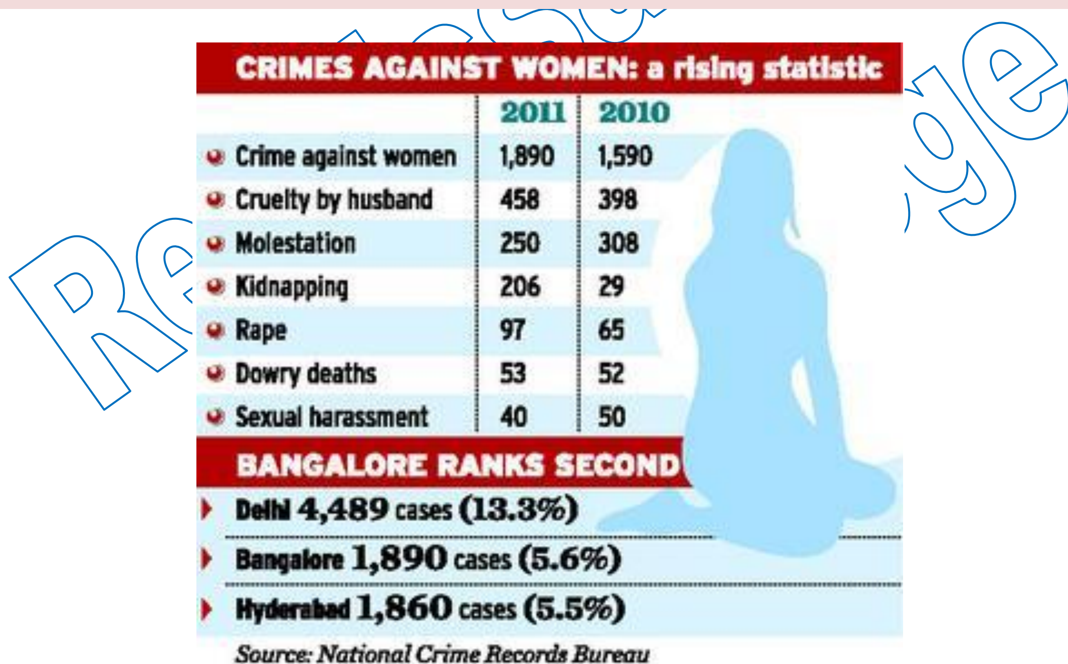
**UNIT-III Particular and general offences**
Dowry death, assault, unnatural offences – National protections.

**UNIT-IV Special offending act**
Immoral trafficking, female foeticide, kidnapping and abduction – National protections.

**UNIT-V Cruelty and violence**
Cruelty and domestic violence against women – National protections.

**UNIT-I INTRODUCTION-** CRIMES AGAINST WOMEN- nature, kinds

**Violence against women** has become a prominent topic of discussion in India in recent years. Politicians and media have placed great focus on the issue due to continuously increasing trends during 2008-2012.
According to the National Crime Records Bureau of India, reported incidents of crime against women increased 6.4% during 2012, and a crime against a woman is committed every three minutes. In 2012, there were a total of 244,270 reported incidents of crime against women, while in 2011, there were 228,650 reported incidents. Of the women living in India, 7.5% live in West Bengal where 12.7% of the total reported crime against women occurs. Andhra Pradesh is home to 7.3% of India's female population and accounts for 11.5% of the total reported crimes against women.
65% of Indian men believe women should tolerate violence in order to keep the family together, and women sometimes deserve to be beaten. In January 2011, the International Men and Gender Equality Survey (IMAGES) Questionnaire reported that 24% of Indian men had committed sexual violence at some point during their lives.


CRIMES AGAINST WOMEN: a rising statistic

| | 2011 | 2010 |
|---|---|---|
| Crime against women | 1,890 | 1,590 |
| Cruelty by husband | 458 | 398 |
| Molestation | 250 | 308 |
| Kidnapping | 206 | 29 |
| Rape | 97 | 65 |
| Dowry deaths | 53 | 52 |
| Sexual harassment | 40 | 50 |

BANGALORE RANKS SECOND
- Delhi 4,489 cases (13.3%)
- Bangalore 1,890 cases (5.6%)
- Hyderabad 1,860 cases (5.5%)

*Source: National Crime Records Bureau*

**NATURE-**
*Physical, mental, social, economical, political, etc (with examples)
*On basis of stages of age (at each stage of life)

**KINDS-**
**1. DOWRY DEATH-** A dowry deaths is a murder or suicide of a married women caused by a dispute over her dowry. In some cases, husbands and in-laws will attempt to extort a greater dowry through continuous harassment and torture which sometimes results in the wife committing suicide.
The majority of these suicides are done through hanging poisoning or self-immolation. When a dowry death is done by setting the woman on fire, it is called bride burning. Bride burning murder is

often set up to appear to be a suicide or accident. Dowry is illegal in India, but it is still common practice to give expensive gifts to the groom and his relatives at weddings which are hosted by the family of the bride.
Women are not always the only primary victims of dowry deaths. In some cases children are also killed alongside their mothers. In eastern India, on January 30, 2014, for example, a women and her one-year-old child were burned alive for dowry. 77 minutes. Incidents of dowry deaths have decreased 4.5% from 2011 to 2012.

| Year | Reported dowry deaths |
|---|---|
| 2008 | 8,172 |
| 2009 | 8,383 |
| 2010 | 8,391 |
| 2011 | 8,618 |
| 2012 | 8,233 |

In Uttar Pradesh, 2,244 cases were reported, accounting for 27.3% of the dowry deaths nationwide. In, Bihar, 1,275 cases were reported, accounting for 15.5% of cases nationwide.

**2 HONOUR KILLINGS**

An honour killing is a murder of a family member who has been considered to have brought dishonor and shame upon the family. Examples of reasons for honor killings include the refusal to enter an arranged marriage, committing adultery, choosing a partner that the family disapproves of, and becoming a victim of rape. Honour killings are rooted to tradition and cannot be justified by any major world religion, because none of the major world religions condone honour-related crimes.
The most prominent areas where honour killings occur in India are northern regions. Honor killings are especially seen in Punjab, Haryana, Bihar, Uttar Pradesh, Rajasthan, Jharkhand, Himachal Pradesh, and Madhya Pradesh. Honour killings have notably increased in some Indian states which has led to the Supreme Court of India, in June 2010, issuing notices to both the Indian central government and six states to take preventative measures against honour killings.

**3 WITCHCRAFT RELATED MURDERS**

Murders of women accused of witchcraft still occur in India. Poor women, widows, and women from lower castes are most at risk of such killings.

**4 FEMALE INFANTICIDE**

Female infanticide is the elected killing of a newborn female child or the termination of a female fetus through sex-selective abortion. In India, there is incentive to have a son, because they offer security to the family in old age and are able to conduct rituals for deceased parents and ancestors. In contrast, daughters are considered to be a social and economic burden. An example of this is dowry. The fear of not being able to pay an acceptable dowry and becoming socially ostracized can lead to female infanticide for poorer.

**5 FEMALE FOETICIDE**

Female foeticide is the elected abortion of a fetus, because it is female. Female foeticide occurs when a family has a strong preference for sons over daughters, which is a common cultural theme in India. Modern medical technology has allowed for the gender of a child to be determined while the child is still a fetus. Once these modern prenatal diagnostic techniques determine the gender of the fetus, families then are able to decide if they would like to abort based on gender. If they decide to abort

the fetus after discovering it is female, they are committing female feoticide. The foetal sex determination and sex-selective abortion by medical professionals is now a R.s 1,000 crore (US$ 244 million) industry.

The Preconception and Prenatal Diagnostic Techniques Act of 1944 (PCPNDT Act 1994) was modified in 2003 in order to target medical professionals. The Act has proven ineffective due to the lack of implementation. Sex-selective abortions have totaled approximately 4.2-12.1 million from 1980-2010. There was a greater increase in the number of sex-selective abortions in the 1990s than the 2000s.Po orer families are responsible for a higher proportion of abortions than wealthier families. Significantly more abortions occur in rural areas versus urban areas when the first child is female.

## 6 Sexual crimes

**Rape**

The map shows the comparative rate of violence against women in Indian states and union territories in 2012, based on crimes reported to the police. Crime rate data per 100,000 women in this map is the broadest definition of crime against women under Indian law. It includes rape, sexual assault, insult to modesty, kidnapping, abduction, cruelty by intimate partner or relatives, trafficking, persecution for dowry, dowry deaths, indecency, and all other crimes listed in Indian Penal Code.

Rape is one of the most common crimes against women in India. Criminal Law (Amendment) Act, 2013 defines rape as penile and non-penile penetration in bodily orifices of a woman by a man, without the consent of the woman. In India, a woman is raped every 29 minutes. Incidents of reported rape have increased 3% from 2011 to 2012. Incidents of reported incest rape have increased 46.8% from 268 cases in 2011 to 392 cases in 2012.

| Year | Reported rapes |
|---|---|
| 2008 | 21,467 |
| 2009 | 21,397 |
| 2010 | 22,172 |
| 2011 | 24,206 |
| 2012 | 24,923 |

Victims of rape are increasingly reporting their rapes and confronting the perpetrators. Although women are increasing their exposure to sexual harassment by leaving the home more often, they are becoming more independent. Women are becoming more independent and educated, which is increasing their likelihood to report their rape.

Although rapes are becoming more frequently reported, many go unreported or have the complaint files withdrawn due to the perception of family honour being compromised. Women frequently do not receive justice for their rapes, because police often do not give a fair hearing, and/or medical evidence is often unrecorded which makes it easy for offenders to get away with their crimes under the current laws.

Increased attention in the media and awareness among both Indians and the outside world is both bringing attention to the issue of rape in India and helping empower women to report the crime. After international news reported the gang rape of a 23-year-old student on a moving bus that occurred in Delhi, in December 2012, Delhi experienced a significant increase in reported rapes. The number of reported rapes nearly doubled from 143 reported in January–March 2012 to 359 during the three months after the rape. After the Delhi rape case, Indian media has committed to report each and every rape case.

**Marital rape**

In India, marital rape is not a criminal offense. 20% of Indian men admit to forcing their wives or partners to have sex.

Marital rape can be classified into one of three types:

- Battering rape: This includes both physical and sexual violence. The majority of marital rape victims experience battering rape.
- Force-only rape: Husbands use the minimum amount of force necessary to coerce his wife.
- Compulsive/Obsessive rape: Torture and/or "perverse" sexual acts occur and are often physically violent.

**Gang rape**

Gang rape is defined as the rape of an individual by two or more perpetrators. The 2012 Delhi gang rape brought a lot of international attention to the issue of gang rape in India. On 16 December 2012, in Munirka, New Delhi, a 23-year-old was beaten and gang raped on a private bus. She died 13 days later. Following the rape, there was widespread national and international coverage of the incident as well as public protests against the government of India and the government of Delhi.

**7 INSULT TO MODESTY**

| Year | Assaults with intent to outrage modesty | Insults to the modesty of women |
|---|---|---|
| 2008 | 40,413 | 12,214 |
| 2009 | 38,711 | 11,009 |
| 2010 | 40,613 | 9,961 |
| 2011 | 42,968 | 8,570 |
| 2012 | 45,351 | 9,173 |

Modesty related violence against women include assaults on women with intent to outrage her modesty and insults to the modesty of women. From 2011 to 2012, there was a 5.5% increase in reported assaults on women with intent to outrage her modesty. Madhya Pradesh had 6,655 cases, accounting for 14.7% of the national incidents. From 2011 to 2012, there was a 7.0% increase in reported insults to the modesty of women. Andhra Pradesh had 3,714 cases, accounting for 40.5% of the national accounts, and Maharashtra had 3,714 cases, accounting for 14.1% of the national accounts.

**8 HUMAN TRAFFICKING AND FORCED PROSTITUTION**

| Year | Imported girls from foreign countries | Violations of the Immoral Traffic Act |
|---|---|---|
| 2008 | 67 | 2,659 |
| 2009 | 48 | 2,474 |
| 2010 | 36 | 2,499 |
| 2011 | 80 | 2,435 |
| 2012 | 59 | 2,563 |

From 2011 to 2012, there was a 26.3% decrease in girls imported to India from another country. Karnataka had 32 cases, and West Bengal had 12 cases, together accounting for 93.2% of the total cases nationwide.

From 2011 to 2012, there was a 5.3% increase in violations of the Immoral Traffic (Prevention) Act of 1956. Tamil Nadu had 500 incidents, accounting for 19.5% of the total nationwide, and Andhra Pradesh had 472 incidents, accounting for 18.4% of the total nationwide.

## 9 DOMESTIC VIOLENCE

Domestic violence is abuse by one partner against another in an intimate relationship such as dating, marriage, cohabitation or a familial relationship. Domestic violence is also known as domestic abuse, spousal abuse, battering, family violence,dating abuse and intimate partner violence (IPV). Domestic violence can be physical, emotional, verbal, economic and sexual abuse. Domestic violence can be subtle, coercive or violent. In India, 70% of women are victims of domestic violence.
38% of Indian men admit they have physically abused their partners. The Indian government has taken measures to try to reduce domestic violence through legislation such as the Protection of Women from Domestic Violence Act 2005.

| Year | Reported cruelty by a husband or relative |
|---|---|
| 2008 | 81,344 |
| 2009 | 89,546 |
| 2010 | 94,041 |
| 2011 | 99,135 |
| 2012 | 106,527 |

Every 9 minutes, a case of cruelty is committed by either of husband or a relative of the husband. Cruelty by a husband or his relatives is the greatest occurring crime against women. From 2011 to 2012, there was a 7.5% increase in cruelty by husbands and relatives. In West Bengal, there were 19,865 cases, accounting for 18.7% of the national total, and in Andhra Pradesh, there were 13,389 cases, accounting for 12.6% of the national total. However the point to be noted here is that the Section 498a, which is called the anti dowry law is the most misused law in India. Many of these cases filed against men using 498A are false and no actions are usually taken against women even if they are proven wrong. This is one of the major factors for married Mens suicide in India which comes to 1 in every 9 minutes.

## 10 FORCED AND CHILD MARRIAGE

Girls are vulnerable to being forced into marriage at young ages, suffering from a double vulnerability: both for being a child and for being female. Child brides often do not understand the meaning and responsibilities of marriage. Causes of such marriages include the view that girls are a burden for their parents, and the fear of girls losing their chastity before marriage.

## 11 ACID THROWING

Acid throwing, also called an acid attack, a vitriol attack or vitriolage, is a form of violent assault used against women in India. Acid throwing is the act of throwing acid or an alternative corrosive substance onto a person's body "with the intention to disfigure, maim, torture, or kill." Acid attacks are usually directed at a victim's face which burns the skin causing damage and often exposing or dissolving bone. Sulfuric acid and nitric acid are most commonly used for acid attacks. Hydrochloric acid is also used, but is less damaging. Acid attacks can lead to permanent scarring, blindness, as well as social, psychological and economic difficulties.
The Indian legislature has now regulated the sale of acid. Compared to women throughout the world, women in India are at a higher risk of being victims of acid attacks. At least 72% of reported acid

attacks in India have involved women. India has been experiencing an increasing trend of acid attacks over the past decade.
In 2010, there was a high of 27 reported cases of chemical assaults. Scholars believe that acid attacks in India are being under-reported. 34% of acid attacks in India have been determined to be related to rejection of marriage or refusal by a women of sexual advances. 20% of acid attacks have been determined to be related to land, property, and/or business disputes. Acid attacks related to marriage are often spurred by dowry disagreements.

## 11 ABDUCTION

| Year | Reported abductions |
|---|---|
| 2008 | 22,939 |
| 2009 | 25,741 |
| 2010 | 29,795 |
| 2011 | 35,565 |
| 2012 | 38,262 |

Incidents of reported kidnappings and abductions of women increased 7.6% from 2011 to 2012. Uttar Pradesh had 7,910 cases, accounting for 22.2% of the total of cases nationwide.

*******

## INTERNATIONAL - COMMITMENTS.

The Philippines has made leaps in advancing gender equality and promoting the empowerment of women. It is the only country in Asia to fully close the gender gap in education and health and one of only eight countries in the world to do so. The 2010 Global Gender Gap Report of the World Economic Forum affirms these facts and the other fact that it has closed 77 percent of its gender gap, ranking 9th in the world. In 2009, the government ratified a landmark legislation for gender equality known as the Magna Carta of Women (MCW) which only established further its thrust to protect and promote Filipino women's human rights as it continues to institutionalize gender concerns in the mainstream development process.

## DIFFERENT INTERNATIONAL CONVENTIONS –

## 1 HAGUE CONVENTION OF 1902

| Hague Convention of 1902 relating to the settlement of guardianship of minors | |
|---|---|
| **Drafted** | 12 June 1902 |
| **Location** | The Hague |
| **Effective** | 30 july 1904 |
| **Parties** | 7 (Belgium, Italy, Luxembourg, Poland, Portugal, Romania and Spain) |
| **Depositary** | Government of the Netherlands |
| **Language** | French |

Commonly referred to as the "Guardianship Convention", the **Convention of 1902 relating to the settlement of guardianship of minors,** along with the other Conventions in 1902, was the Hague Conference's first effort at addressing international family law. Within a few decades it was the only

family law Convention to retain any currency. It was also the only family law treaty that was expressly preserved and revived in the Treaty of Versailles and other postWorld War I peace treaties. The Guardianship Convention was written only in French and, with the Boll case, is the only Convention of the Hague Conference to ever be the principal subject of interpretation before a court with worldwide jurisdiction.

## 2 MONTEVIDEO CONVENTION, 1933

The **Montevideo Convention on the Rights and Duties of States** was a treaty signed at Montevideo, Uruguay, on December 26, 1933, during the Seventh International Conference of American States. The Convention codified the declarative theory of statehood as accepted as part of customaryinternational law. At the conference, United States President Franklin D. Roosevelt and Secretary of State Cordell Hull declared the *Good Neighbor Policy*, which opposed U.S. armed intervention in inter-American affairs. The convention was signed by 19 states. The acceptance of three of the signatories was subject to minor reservations. Those states were Brazil, Peru and theUnited States.
The convention became operative on December 26, 1934. It was registered in *League of Nations Treaty Series* on January 8, 1936.

## 3 UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR), 1948

| | |
|---|---|
| **Created** | 1948 |
| **Ratified** | 16 December 1949 |
| **Purpose** | Human rights |

The **Universal Declaration of Human Rights** (**UDHR**) is a declaration adopted by the United Nations General Assembly on 10 December 1948 at the Palais de Chaillot, Paris. The Declaration arose directly from the experience of the Second World War and represents the first global expression of rights to which allhuman beings are inherently entitled. The full text is published by the United Nations on its website.
The Declaration consists of thirty articles which have been elaborated in subsequent international treaties, regional human rights instruments, national constitutions, and other laws. The International Bill of Human Rights consists of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols. In 1966, the General Assembly adopted the two detailed Covenants, which complete the International Bill of Human Rights. In 1976, after the Covenants had been ratified by a sufficient number of individual nations, the Bill took on the force of international law.

## 4 THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW), 1979 -

The Convention on the Elimination of all Forms of Discrimination Against Women (**CEDAW**) is an international treaty adopted in 1979 by the United Nations General Assembly. Described as an international bill of rights for women, it was instituted on 3 September 1981 and has been ratified by 189 states. An international bill of rights for women. Consisting of a preamble and 30 articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.

## 5 THE CONVENTION FOR THE SUPPRESSION OF THE TRAFFIC IN PERSONS AND OF THE EXPLOITATION OF THE PROSTITUTION OF OTHERS , 1949

The **Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others** is a resolution of the UN General Assembly. The preamble states:
*"Whereas prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community"*
It was approved by the General Assembly on 2 December 1949 and came into effect on 25 July 1951. As at December 2013, 82 states were party to the convention (see map). An additional 13 states had signed the convention but had not yet ratified it.
The Convention supersedes a number of earlier conventions that covered some aspects of forced prostitution. Signatories are charged with three obligations under the 1949 Convention: prohibition of trafficking, specific administrative and enforcement measures, and social measures aimed at trafficked persons. The 1949 Convention presents two shifts in perspective of the trafficking problem in that it views prostitutes as victims of the procurers, and in that it eschews the terms "white slave traffic" and "women," using for the first time race- and gender-neutral language. To fall under the provisions of the 1949 Convention, the trafficking need not cross international lines.

## 6 EQUAL REMUNERATION CONVENTION, 1951

| | |
|---|---|
| **Date of adoption** | 29 June 1951 |
| **Date in force** | 23 May 1953 |
| **Classification** | Equal Remuneration Women |
| **Subject** | Equality of Opportunity and Treatment |
| **Previous** | Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 |
| **Next** | Holidays with Pay (Agriculture) Convention, 1952 |

The **Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value**, or **Equal Remuneration Convention** is the 100th International Labour Organization Convention and the principal one aimed at equal remuneration for *work of equal value* for men and women. States parties may accomplish this through legislation, introduction of a system for wage determination and/or collective bargaining agreements. It is one of 8ILO fundamental conventions. As of 2015, the convention had been ratified by 172 out of 186 ILO members.

## 7 CONVENTION ON THE NATIONALITY OF MARRIED WOMEN, 1957

The **Convention on the Nationality of Married Women** is an international convention passed by the United Nations General Assembly in 1957. It entered into force in 1958 and as of 2013 it has 74 state parties. Before the *Convention on the Nationality of Married Women*, no legislation existed to protect married women's right to retain or renounce national citizenship in the way that men could. Women's rights groups recognized a need to legally protect the citizenship rights of women who married someone from outside their country or nationality. The League of Nations, the international organization later succeeded by the United Nations, was lobbied by women's rights groups during

the early 20th century to address the lack of international laws recognizing married women's rights of national citizenship. The Conference for the Codification of International Law, held at The Hague in 1930, drew protests from international women's rights groups, yet the League declined to include legislation enforcing married women's nationality rights. The League took the position that it was not their role, but the role of member states, to deal with equality between men and women.
The International Women's Suffrage Alliance (IWSA, later renamed the International Alliance of Women) launched a telegram campaign in 1931 to pressure the League of Nations to address the lack of legislation. Women from around the world sent telegrams to the League of Nations as a protest. The League made the concession of creating an unfunded Consultative Committee on Nationality of Women.
The Pan-American Conference in Montevideo passed a *Convention on the Nationality of Married Women* in 1933. It was passed by the Pan American Conference at the same time as the *Treaty on the Equality of Rights Between Men and Women*. These were the first pieces of international law to "explicitly set sexual equality as a principle to be incorporated into national legislation" which was required of countries ratifying the convention and treaty. Lobbying by the American National Women's Party has been credited with this legislation. However, neither the International Labour Organization (ILO) nor the League of Nations passed any legislation on the issue during the interwar years.

## 8 INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966
entry into force 23 March 1976, in accordance with Article 49
Preamble
The States Parties to the present Covenant,
Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,
Recognizing that these rights derive from the inherent dignity of the human person,
Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,
Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,
Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

## 9 THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR), 1966

The **International Covenant on Economic, Social and Cultural Rights** (**ICESCR**) is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966, and in force from 3 January 1976. It commits its parties to work toward the granting of economic, social, and cultural rights (ESCR) to the Non-Self-Governing and Trust Territories and individuals, including labour rights and the right to health, the right to education, and the right to an adequate standard of living. As of 2015, the Covenant has 164 parties. A further six countries, including the United States, have signed but not ratified the Covenant.

The ICESCR is part of the Declaration on the Granting of Independence to Colonial Countries and Peoples, International Bill of Human Rights, along with the Universal Declaration of Human Rights (UDHR) and theInternational Covenant on Civil and Political Rights(ICCPR), including the latter's first and second Optional Protocols.
The Covenant is monitored by the UN Committee on Economic, Social and Cultural Rights.

**CONCLUSION-**

**The Criminal Law Amendment Bill 2013 — Penalising 'Peeping Toms' and Other Privacy Issues**

The pending amendments to the Indian Penal Code, if passed in their current format, would be a huge boost for individual physical privacy by criminalising stalking and sexually-tinted voyeurism and removing the ambiguities in Indian law which threaten the privacy and dignity of individuals.
Privacy, crime, and safety of women are intricately linked in any legal system. An essential part of the security of citizens is the safety of their privacy and personal information. If any legal system does not protect the privacy — both of body and of information — of its people, there will always be insecurity in such a system. With the recent debates on women's safety, several crucial privacy and security issues have been raised, such as the criminalization of voyeurism and stalking, which is a huge boost for privacy rights of citizens in India, and it is hopeful that the government will continue the trend of considering privacy issues along when addressing security concerns for the state.

********

Renaissance Law College

**UNIT-II MAJOR HARDSHIPS TO WOMAN AND INDIAN LAWS**

**RAPE-**

**I) Rape-** *The rape laws of the country were amended in the year 2013 after the Justice J.S. Verma Committee Report, to address the prevalent inadequacies. This paper analyses in detail, the provisions of the amended Section 375 of the Indian Penal Code. It discusses important concepts like consent, will, submission, minority, misrepresentation, fraud etc.*

Rape: Meaning

The word rape is derived from the Latin term *rapio,* which mean 'to seize'. Thus rape literally means a forcible seizure. It signifies in common terminology, "as the ravishment of a woman without her consent, by force, fear, or fraud" or "the carnal knowledge of a woman by force against her will." In other words, rape is violation with violence of the private person of a woman.

Rape for a woman is deathless shame and must be dealt with as the gravest against human dignity . On the basis of this principle the offence of rape is defined by section 375 of the Indian Penal Code .

According to this section a man is said to commit rape who , except in the case of sexual intercourse by a man with his own wife not being under fifteen years of age , has sexual intercourse with a woman under the circumstances falling under any of the six following categories :-

Firstly :- Against her will .

Secondly :- Without her consent .

Thirdly :- With her consent , when her consent has been obtained by putting her or any person in whom she is interested , in fear of death or of hurt .

Fourthly :- With her consent , when the man knows that he is not her husband , and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married .

Fifthly :- With her consent , when , at the time of giving such consent , by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or any unwholesome substance , she is unable to understand the nature and consequences of that to which she gives consent .

Sixthly :- With or without her consent , when she is under sixteen years of age .

It has also been explained by the section that penetration is sufficient to constitute the offence of rape . It has been pointed out by the different Hon'ble Courts in several cases that mere or slightest penetration is sufficient and penetration of the whole male genital organ or emission of semen is not necessary . In fact penetration is the *sine qua non* for an offence of rape .

From the definition given above , it is clear that rape is forcible ravishment of a woman , and the essence of the offence consists in the act being done against the will or without the consent of the woman. In the case of Phul Singh v State of Haryana , Hon'ble Supreme Court of India described that the offence of rape is the violation , with violence , of the private person of a woman .

**II) Role of consent in rape-** Section 90 of the Indian Penal Code includes definition of consent for the purpose of the code . Section 90 says that a consent is not such a consent as is intended by any section of this code if the consent is given by a person under fear of injury , or under a misconception of fact , or if the consent is given by a person who , from unsoundness of mind , or intoxication , is unable to understand the nature and consequences of that act to which consent is given , or when the consent is given by a person who is under twelve years of age . But section 90 can not be construed as an exhaustive definition of consent in contrast with the offence of rape.

In addition to section 90 of the IPC , Section 375 provides one more ground to the effect that the consent given by a woman under sixteen years of age is no consent .

The will and consent often overlap . An act done with the will of a person can be said to be an act done with consent . In the purview of the offence of rape , consent means , legal consent or free

Renaissance Law College

willful consent given by a woman of more than sixteen years of age who is capable of understanding the nature of sexual intercourse and it's consequences.

**III) Critical discussion of the law of consent as defence with reference to rape Cases-** Rape is an accusation which can easily be made and hard to be proved and harder to be defended by the party concerned , though never so innocent. Yet the question of consent is really a matter of defence and it is for the accused to place materials to show that there was free consent and the girl was not under sixteen years of age. The accused can take the defence that he did sexual intercourse with the woman not being under sixteen years of age and with the free and willful consent of the woman .

Free consent occurs when the woman is capable of knowing the nature of the act and thus legally able, being above sixteen years of age , to give rational consent being aware of it's nature and circumstances .

But under section 114A of the Indian Evidence Act , in a prosecution for rape under clause (a) ,i.e., when a police officer commits rape within the limits of the police station , (b) ,i.e., rape committed by a public servant , or clause (c) ,i.e., rape committed by a man on the management of or custodian of jail , remand home , place or institution , or clause (d) ,i.e., rape committed by a man on the management of hospital , or clause (e) ,i.e., rape committed by a man on a woman knowingly that she is pregnant , or clause (g) ,i.e., gang rape , of section 376 of the IPC , where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the court that she did not consent , the court shall presume that she did not consent . And so in that event the onus of proof shifts upon the accused to rebut the presumption of non-consent .

For determination of the presence of consent of the prosecutrix in a case of rape , the accused can show that there was free and willful consent by the following practical circumstances as defence , such as ,---

i) written communication of the prosecutrix,
ii) admission of the prosecutrix to the effect that she had consent .
iii)absence of any injury in the body of prosecutrix, and
iv) absence of sign of struggle or vehement resistance offered by the prosecutrix.

It may be kept in mind that sexual intercourse without consent does not label a charge of rape against the husband when the wife is above fifteen years of age but below sixteen years of age .

**IV) When a person can be said to have committed rape upon his own wife-**Exception to section 375 provides in negative language that sexual intercourse with the wife , being under fifteen years of age , by her husband , is the offence of rape within the purview of this section . and in that event consent given by the wife for sexual intercourse is not legal consent . This provision is based on the policy of law to protect the children of immature age against sexual intercourse . This is known also as statutory rape by the husband . So when a husband does sexual intercourse with his wife under fifteen years of age , with or without consent , he can be said to have committed rape upon his own wife **.**

**V) SECTION 375: ANALYSIS OF PROVISIONS RELATING TO RAPE**

In the Indian Penal Code, Section 375 defines rape.

Taking note of the inadequacy of law of rape and its failure to safeguard the rights of the innocent victims against the heinous crime, the Parliament in 1983 and 2013 extensively amended the law of rape so as to make the law more realistic.

Old Provision

"375. Rape. A man is said to commit" rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:-

First.- Against her will.

Secondly.- Without her consent.

Renaissance Law College

Thirdly.- With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.
Fourthly.- With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
Fifthly.- With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.
Sixthly.- With or without her consent, when she is under sixteen years of age.
Explanation.- Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.
Exception.- Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape."
After Amendment
A man is said to commit "rape" if he-—
penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any ~ of body of such woman or makes her to do so with him or any other person; or
applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:—
First.—Against her will. Secondly.—Without her consent.
Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.
Fourthly.—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
Fifthly.—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome Substance, she is unable to understand the nature and consequences of that to which she gives consent.
Sixthly.—With or without her consent, when she is under eighteen years of age.
Seventhly.—When she is unable to communicate consent.
Explanation I.—For the purposes of this section, "vagina" shall also include labia majora.
Explanation 2.—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:
Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.
Exception I.—A medical procedure or intervention shall not constitute rape.
Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.'

Renaissance Law College

**Ingredients**

This section consists of the following:

1. Sexual intercourse by a man with a woman.
2. The sexual intercourse must be under the circumstances falling under any of the seven clauses of section 375.

Sexual Intercourse

A very important case that led to definite amendments in the section is ***Sakshi v. Union of India and Ors. (the Union of India, the Ministry of Law and Justice and the New Delhi Commissioner of Police)***. Sakshi, an NGO focusing on violence against women, petitioned the Supreme Court of India to declare that "rape" under India's criminal rape law (Indian Penal Code, or "IPC", section 375) includes all forms of forcible penetration. Sakshi claimed that the current interpretation of the law, limited rape to forcible penile/vaginal penetration only. The prosecution submitted that Section 375 IPC should be interpreted in the current scenario, especially in regard to the fact that child abuse has assumed alarming proportion in recent times. The words 'sexual intercourse' in Section 375 IPC should be interpreted to mean all kinds of sexual penetration of any type of any orifice of the body and not the intercourse understood in the traditional sense. The words 'sexual intercourse' having not been defined in the Penal Code, there was no impediment in the way of the Court to give it a wider meaning so that the various types of child abuse may come within its ambit and the conviction of an offender may be possible under Section 376 IPC. Sexual abuse of children, particularly minor girl, children by means and manner other than penile/vaginal penetration is common and may take the form of penile/anal penetration, penile/oral penetration, finger/vaginal penetration or object/ vaginal penetration. It is submitted that by treating such forms of abuse as offenses falling under Section 354 IPC or 377 IPC, the very intent of the amendment of Section 376 IPC by incorporating Sub-section 2(f) therein is defeated. The said interpretation is also contrary to the contemporary understanding of sexual abuse and violence all over the world.

The Court upheld the existing definition of rape as forcible penile/vaginal penetration only, refusing to include other forms of penetration within the ambit of rape as defined under IPC. The Court's decision called on the Parliament of India to change the law, stating: "The suggestions made by the petitioners [Sakshi] will advance the cause of justice and are in the larger interest of society. The cases of child abuse and rape are increasing at alarming speed and appropriate legislation in this regard is, therefore, urgently required. We hope and trust that the Parliament will give serious attention to the points highlights by the petitioner and make appropriate legislation with all the promptness which it deserves."

During the Sakshi case, the Court ordered the Law Commission of India to examine and respond to the issues that Sakshi raised. This exercise culminated in the 172nd Report of the Law Commission of India (on review of rape laws, March 2000). The Report suggested that the offence of "rape" be substituted by "sexual assault," making the offence gender-neutral and applicable to a range of sexual offences other than forcible penile/vaginal penetration.

As of today, the rape law in India under section 375 stands amended and includes all forms of sexual assault and is not just limited to penile/vaginal intercourse or heterosexual intercourse.

Circumstances falling under the seven clauses

A man is guilty of rape if he commits sexual intercourse with a woman either against her will or without her consent as enumerated under clauses *firstly* to *seventhly* of section 375 IPC.

1.Against her will:

The word 'will' implies the faculty of reasoning power of mind that determines whether to do an act or not. There is a fine distinction between an act done 'against the will' and 'an act done without consent.' Every act done 'against the will' is obviously 'without the consent.' But every act 'without the consent' is not 'against the will.' Clause (1) of this section applies where the woman is in



Renaissance Law College

possession of her senses and therefore, capable of consenting. In *State of Uttar Pradesh v. Chottey Lal,* the Supreme Court explained that the expression 'against her will'would ordinarily mean that the intercourse was done by a man with a woman despite her resistance and opposition.

In *State of Punjab v. Gurmit Singh,* a young girl below the age of 16 years was abducted from her school by the three accused in a car, and she was threatened with death if she raised an alarm. Despite her refusal she was made to drink liquor. Then she was raped by each one of them in turn under the threat of being killed if she persisted in raising an alarm. Due to the threat she kept quite. After repeatedly committing sexual assault on her, they left her the next morning near the place from where she had been abducted. Surprisingly, the additional judge, Ludhiana acquitted all the accused on both counts of abduction and rape disbelieving the version of prosecutrix regarding rape and because of delay in FIR. Allowing the State appeal, and holding the accused persons liable for rape since at no point of time the prosecutrix willingly cooperated with the act, the Apex Court held that the sexual intercourse was against her will for which the accused are liable for committing rape under section 376, IPC.

In addition to this, the Apex Court laid down the following guidelines for trial in such cases:

- Delay in lodging FIR is not material when properly explained.
- Testimony of victim in cases of sexual assault is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the Court should find no difficulty in convicting the accused on prosecutrix's testimony alone.
- Trial of sexual offences should be *in camera* and invariably by a lady judge whenever available.
- Court must restrain making observations that probably the prosecutrix is a girl of loose moral character.
- Court is under an obligation to see that prosecutrix is not unnecessarily harassed and humiliated in cross-examination in case of rape trial.

2.Without her consent:

The essence of rape is the absence of consent. Consent means an intelligent, positive concurrence of the 'will' of the woman. The policy behind the exemption from liability in the case of consent is based on the principle that a man is the best judge of his or her own interest, and if a man (includes woman) decides to suffer a harm voluntarily, he or she cannot complain of it when it comes about.

According to Explanation 2, consent means an unequivocal voluntary agreement when the person by words, gestures or any form of non-verbal communication, communicates willingness to participate in the specific sexual act. Thus, to absolve a person of criminal liability, consent must be given freely and it must not be obtained by fraud or by mistake or under a misconception of fact. This clause operates where a woman is unresponsive whether because of the influence of drink or drugs or any other cause, or is so imbecile that she is incapable of giving any rational consent. Consent of the woman has to be obtained prior to the act.

The burden of proof: In case of charge of rape the onus lies upon the prosecution to prove that the sexual intercourse was without the consent or against the will of the woman. It would not be necessary for the defence to prove that the sexual intercourse was with the consent of the woman.

*Consent obtained by misrepresentation, fraud or under mistake is no consent:*

Consent obtained by misrepresentation, fraud or under mistake is no consent. In *Queen v. Flattery,* the accused was charged for rape upon a 19-year-old girl. The girl who had ill health and was subject to fits, visited the accused's clinic along with her mother and sought his advice for treatment. The accused, after examining the girl, advised her to have a surgical operation, to which she consented, and under pretence of performing it, had sexual intercourse with the girl. It was held that the girl's consent would not excuse the accused from conviction as it was given under a mistake of fact. There was a misconception as to the nature of the act and whatever consent was given by the girl was for the purposes of surgical operation and not for sexual intercourse.

Renaissance Law College

In *Williams*, the accused was a choirmaster who had sexual intercourse with his 16-year-old student making her believe that he is performing a surgical operation to improve her singing voice. Consent was vitiated by fraud and it was obtained under a misconception, thus, he was held guilty of rape.
In these cases it is the non-consent to sexual intercourse rather than the fraud of the doctor or the choirmaster that makes the offence rape.
Therefore, in *Moti Ram* and *Linekar,* it was held that if a woman were willing to have sexual intercourse for monetary consideration, the fact that the consideration was found to be fictitious would not vitiate the consent. Since there was consent on the part of the prosecutrix for sexual connection, the accused persons are not liable for rape. It would amount only to breach of contract.
*Consent to intercourse on the assumption of false promise to marry:*
Where a woman consents to sexual intercourse under the assumption of a promise to marry, the falsity of the promise doesn't *ipso facto* vitiate consent. It depends on whether the accused's promise was false from its inception or not.
In *Dileep Singh v. State of Bihar,* the appellant was charged and convicted under section 376, IPC for committing rape of a minor girl. The victim alleged that the accused forcibly raped her and later consoled her that he would marry her. Accordingly on account of the promise for marriage made by him, she agreed to have sexual relations with him. After she became pregnant, she revealed the matter to her parents but efforts made by the father to establish marital tie failed. She was then constrained to file the complaint. Although the trial court and High Court convicted the accused, the Supreme Court set it aside. It said:
"Consent given by a woman believing the man's promise to marry her would fall within the expression 'without her consent' *vide* clause (ii) to section 375 IPC, only if it is established that from the very inception the man never really intended to marry her and the promise was a mere hoax. When prosecutrix had taken a conscious decision to participate in the sexual act only on being impressed by the accused's promise to marry her and the accused's promise was not false from its inception with the intention to seduce her to sexual act, clause (ii) to section 375, IPC is not attracted and established."
In *Uday v. State of Karnataka,* accused expressed love and promised to marry the prosecutrix on a later date. Prosecutrix was quite aware that they belonged to different castes and proposal of their marriage would be opposed by their family members. Yet the prosecutrix started cohabiting with the accused consciously and became pregnant. On the charge of rape the Court held that the consent given by the prosecutrix for cohabitation cannot be said to be given under misconception of fact. She had freely, voluntarily and consciously consented to have sexual intercourse with the appellant not only on behalf of promise of marriage but because of their deep love for each other. Hence the appellant was not held liable to be convicted for an offence of rape under section 376, IPC.
However these were earlier positions. The Supreme Court has taken different views to such situations now.
In *Pradeep Kumar Verma v. State of Bihar,* it was held that in case of a representation deliberately made by the accused with a view to elicit the assent of victim without having intention to marry her, will vitiate the consent given by the victim. It was also observed that if on the facts it is established that at the very inception of the making of the promise the accused did not really entertain the intention of marrying the victim and the promise to marry held out by him was a mere hoax, the consent ostensibly given by the victim will be of no avail to the accused to exculpate him from the ambit of section 375 clause second. Such representation would only vitiate the consent.
*Consent and submission- distinguished:*
A woman is said to consent only when she freely agrees to submit herself, while in free and unconstrained possession of her physical and moral power to act in a manner she wanted. Consent may be either expressed or implied depending upon the nature and circumstances of the case.

Renaissance Law College

However, there is a difference between consent and submission. An act of helpless resignation in the face of inevitable compulsions is not consent in law.

In *Rao Harnam Singh, Sheoji Singh v. State,* Kalu Ram, tenant of the accused was required to provide his wife aged 19 years to satisfy the carnal lust of the accused Rao Harnam Singh and his guests on the eve of entertainment party arranged on the occasion of transfer of Ch. Mauji Ram, Dy. Superintendent, Jail, Gurgaon. The girl protested vehemently against this outrageous demand, but under pressure of her husband, was induced to surrender. Three accused persons- Rao harnam Singh, Ch. Mauji Ram and Balbir Singh ravished her during the night and she died almost immediately. Her shrieks were heard by some advocate living in the neighbourhood. Refuting the defence contention, that the girl was a consenting party and she surrendered her body to the three persons willingly and with approval of her husband, the High Court while holding the accused liable for the offence of rape distinguished between 'consent' and 'submission':

1. A mere act of helpless resignation in the face of inevitable compulsion, quiescence, non-resistance, passive giving in, when volitional faculty is either clouded by fear or vitiated by duress, cannot be deemed to be 'consent' as understood in law.
2. Consent on the part of a woman as a defence to an allegation of rape, requires voluntary participation, not only after the exercise of intelligence, based on the knowledge, of the significance and moral quality of the act, but after having freely exercised a choice between resistance and assent.

- Submission of her body under the influence of fear or terror is no consent. Although each consent involves a submission, the converse does not follow and a mere act of submission does not involve consent.

1. A woman is said to consent, only when she freely agrees to submit herself, while in free and unconstrained possession of her physical and moral power to act in the manner she wants. Consent implies the exercise of a free and unhampered right to forbid or withhold what is being consented to; it always is a voluntary and conscious acceptance of what is proposed to be done by another and concurred in by the former.

3. Consent procured by putting the woman under fear of death or hurt is no consent in law:

Clause (3) to section 375 IPC asserts that consent of the woman in order to exonerate the accused of the charge of rape must be given freely and voluntarily without any fear of death or injury. In such a case the consent obtained will not be a valid consent. The scope of the clause has been widened by the Criminal Law (Amendment) Act 1983 by the insertion of the words "or any person in whom she is interested" after the words "putting her" in fear of death or hurt in the clause. Now it reads "With the other person's consent when such consent has been obtained by putting such other person or any person whom such other person is interested, in fear of death or of hurt." So now, the fear of death or hurt could be towards her children, husband or parents also.

In *State of Maharashtra v. Prakash,* the Apex Court held that where a police constable and businessman had sexual intercourse with a rustic woman by beating her husband and threatening to put him in police remand, the act falls under clause (3) of section 375 IPC. Suggestion that the victim had consented to intercourse willingly is ruled out for the offence of rape. It is not necessary that there should be actual use of force; a threat to use of force is sufficient.

A criticised judgment of the Supreme Court in this regard was *Tukaram v. State of Maharashtra* popularly known as Mathura rape case. Mathura, an 18-year-old Harijan orphan girl was called to the police station on an abduction report filed her brother at the police station- Desaui Ganj in Maharashtra on 26th March 1972. When they were about to leave the police station, Mathura was kept back at the police station in the late hours of the night by one of the constables, Ganpat, who was on duty. She was taken to a toilet and raped. After him, another constable Tukaram tried to rape her but being too heavily drunk, did not succeed. None of the two accused were held guilty for the following reasons:

Renaissance Law College

1. There were no marks of injury on her person which show that the whole affair was a peaceful one and that the story of stiff resistance having been put up by the girl is all false.
2. The girl was not subject to any fear that must have led her to submit to the act.
3. The girl was not alone when Ganpat ordered her to stay and she could have resisted and appealed to her brother. Her conduct in meekly following Ganpat and allowing him to have his way with her to the extent of satisfying his lust in full, made them feel that the consent in question was not a consent which could be brushed aside as passive submission.

The judgment of the Supreme Court was widely criticised both inside and outside the Parliament as an extraordinary decision sacrificing human rights and a disgrace on women under the law and the Constitution.

Subsequent decisions of the Supreme Court tried to atone for what it had decided in the Mathura case.

In *Balwant Singh v. State of Punjab,* the victim aged 19/20 years was forcibly taken in a car by the five accused persons and raped by each in a grove on the canal bank. She was found lying unconscious under a banana tree near the canal bridge by her father. She was medically examined and the report specified that she was raped by more than one person. It was held by the court that the absence of injuries on back of prosecutrix does not make the prosecution case unbelievable. The accused were five in number and the prosecutrix was a girl of 19/20 years. She was not expected to offer such resistance as would cause injuries to her.

4. Consent accorded under a misconception that the person is husband of the woman is not a valid consent:

Consent given by a woman to a person for intercourse believing the person to be her husband whereas in fact, he is not her husband, is no consent in law. In such a situation the person knows the fact of deception, and pretends to be the husband of the woman.

In *Bhupinder Singh v. Union Territory of Chandigarh,* the complainant Manjit Kaur married the accused Bhupinder Singh, who she had met through work, in 1990 and started cohabiting with him in Chandigarh. She became pregnant but accused got the foetus aborted in 1991. When she was pregnant again in 1994, she met her husband's two friends who told her that he was already married and had children from his first wife. On being confronted her husband left her on the pretence of work and did not turn up even after she gave birth to a daughter. She made a complaint and he was held guilty of rape because prosecutrix married accused without knowledge of his first marriage. The consent for cohabitation was given under the belief that the accused was her husband. It was also held that delay in lodging complaint by prosecutrix couldn't in any event wash away the offence because there was no consent. Therefore, the Supreme Court refused to interfere with the order of conviction passed by the High Court.

5. Consent procured by a woman of unsound mind or under influence of intoxication etc.:

Clause (5) of section 375 IPC was added vide the Criminal Law (Amendment) Act of 1983. The object of the new clause was to protect and safeguard the interest of the woman who accords consent for sexual intercourse without knowing the nature and consequences of the act by reason of unsoundness of mind or under the influence of stupefying or unwholesome substance or intercourse with a defective. In such cases it is presumed that the consent of the woman is not free and voluntary to exonerate the accused of the charge of rape.

In *Tulshidas Kanolkar v. State of Goa,* the accused had sexual intercourse, repeatedly with a woman who was incapable of comprehending the vicissitudes of the act. Consequently the girl became pregnant. The additional session judge, holding the accused liable for rape under section 376 imposed a sentence of ten years of rigorous imprisonment along with fine of Rs. 10000. However the High Court in appeal reduced the sentence to seven years and the appellant went in appeal against his conviction. The Apex Court dismissed the appeal and held that for constituting consent there must be exercise of intelligence based on knowledge of the significance and moral effect of the act

Renaissance Law College

and criticised the High Court for reducing the sentence to seven years where it should not have interfered.

6. Consent of a girl under 18 not valid in law:

Sexual intercourse with a woman with or without her consent when she is below 18 years of age amounts to rape. A woman under 18 is considered incapable of giving consent for sexual intercourse. The age of consent was raised from 16 to 18 by the Criminal Law (Amendment) Act of 2013.

The Apex Court in *Harpal Singh,* held that even if the girl of 14 is a willing party and invited the accused to have sexual intercourse with her, the accused would be liable for rape under this clause

In *Mana Ramchandra Jadhav v. State of Maharashtra,* the prosecutrix left her mother's house and joined the accused because her mother had turned down the proposal of her marriage with the accused on the ground that she was too young. While she was with the accused he had sexual intercourse with her against her will. The act of intercourse with the prosecutrix will be covered under this clause.

Exception to section 375:

"Exception 2.- Sexual intercourse or sexual acts by a man with his own wife, the wife not being under sixteen years of age, is not sexual assault."

Since child marriage in India is not yet void and is only voidable, such a check was necessary to restrain men from taking advantage of their marital rights prematurely. No man can be guilty of rape on his own wife when she is over 15 years of age on account of the matrimonial consent that she has given.

In *Bishnudayal v. State of Bihar*, where the prosecutrix, a girl of 13 or 14, who was sent by her father to accompany the relatives of his elder daughter's husband to look after her elder sister for some time, was forcibly 'married' to the appellant and had sexual intercourse with her, the accused was held liable for rape under section 376.

However under section 376 B, IPC sexual intercourse with one's own wife without her consent under a decree of judicial separation is punishable by 2 to 7 years imprisonment.

********

**SEXUAL HARASSMENT OF WORKING WOMEN IN WORKPLACE-**

I) **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013-**

The **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013** is a legislative act in India that seeks to protect women from sexual harassment at their place of work. It was passed by the Lok Sabha (the lower house of the Indian Parliament) on 3 September 2012. It was passed by the Rajya Sabha (the upper house of the Indian Parliament) on 26 February 2013. The Bill got the assent of the President on 23 April 2013. The Act came into force from 9 December 2013. This statute superseded the Vishakha Guidelines for prevention of sexual harassment introduced by the Supreme Court of India. It was reported by the International Labour Organization that very few Indian employers were compliant to this statute. Most Indian employer's have not implemented the law despite the legal requirement that any workplace with more than 10 employees need to implement it. The government has threatened to take stern action against employers who fail to comply with this law.

II) **Preamble and background-**

The introductory text of the Act is:

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

Renaissance Law College

WHEREAS sexual harassment results in violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment;

AND WHEREAS the protection against sexual harassment and the right to work with dignity are universally recognised human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India;

AND WHEREAS it is expedient to make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace.

**III) Background and provisions-**

The Act will ensure that women are protected against sexual harassment at all the work places, be it in public or private. This will contribute to realisation of their right to gender equality, life and liberty and equality in working conditions everywhere. The sense of security at the workplace will improve women's participation in work, resulting in their economic empowerment and inclusive growth.

The Act uses a definition of sexual harassment which was laid down by the Supreme Court of India in Vishaka v. State of Rajasthan (1997). Article 19 (1) (g) of the Indian Constitution affirms the right of all citizens to be employed in any profession of their choosing or to practice their own trade or business. Vishaka v. State of Rajasthan established that actions resulting in a violation of one's rights to 'Gender Equality' and 'Life and Liberty' are in fact a violation of the victim's fundamental right under Article 19 (1) (g). The case ruling establishes that sexual harassment violates a woman's rights in the workplace and is thus not just a matter of personal injury.

Under the Act, which also covers students in schools and colleges as well as patients in hospitals, employers and local authorities will have to set up grievance committees to investigate all complaints. Employers who fail to comply will be punished with a fine of up to 50,000 rupees.

The legislative progress of the Act has been a lengthy one. The Bill was first introduced by women and child development minister Krishna Tirath in 2007 and approved by theUnion Cabinet in January 2010. It was tabled in the Lok Sabha in December 2010 and referred to the Parliamentary Standing Committee on Human Resources Development. The committee's report was published on 30 November 2011. In May 2012, the Union Cabinet approved an amendment to include domestic workers. The amended Bill was finally passed by the Lok Sabha on 3 September 2012. The Bill was passed by the Rajya Sabha (the upper house of the Indian Parliament) on 26 February 2013. It received the assent of the President of India and was published in the Gazette of India, Extraordinary, Part-II, Section-1, dated 23 April 2013 as Act No. 14 of 2013.

**IV) Major Features**

**The Act defines sexual harassment at the work place and creates a mechanism for redressal of complaints. It also provides safeguards against false or malicious charges.**

- The Act also covers concepts of 'quid pro quo harassment' and 'hostile work environment' as forms of sexual harassment if it occurs in connection with an act or behaviour of sexual harassment.
- The definition of "aggrieved woman", who will get protection under the Act is extremely wide to cover all women, irrespective of her age or employment status, whether in the organised or unorganised sectors, public or private and covers clients, customers and domestic workers as well.

- While the "workplace" in the Vishaka Guidelines is confined to the traditional office set-up where there is a clear employer-employee relationship, the Act goes much further to include organisations, department, office, branch unit etc. in the public and private sector, organized and unorganized, hospitals, nursing homes, educational institutions, sports institutes, stadiums, sports complex and any place visited by the employee during the course of employment including the transportation. Even non-traditional workplaces which involve tele-commuting will get covered under this law.
- The Committee is required to complete the inquiry within a time period of 90 days. On completion of the inquiry, the report will be sent to the employer or the District Officer, as the case may be, they are mandated to take action on the report within 60 days.
- Every employer is required to constitute an Internal Complaints Committee at each office or branch with 10 or more employees. The District Officer is required to constitute a Local Complaints Committee at each district, and if required at the block level.
- The Complaints Committees have the powers of civil courts for gathering evidence.
- The Complaints Committees are required to provide for conciliation before initiating an inquiry, if requested by the complainant.
- The inquiry process under the Act should be confidential and the Act lays down a penalty of Rs 5000 on the person who has breached confidentiality.
- The Act requires employers to conduct education and sensitisation programmes and develop policies against sexual harassment, among other obligations.
- Penalties have been prescribed for employers. Non-compliance with the provisions of the Act shall be punishable with a fine of up to  50,000. Repeated violations may lead to higher penalties and cancellation of licence or registration to conduct business.
- Government can order an officer to inspect workplace and records related to sexual harassment in any organisation.

## V) Penal Code

*Criminal Law (Amendment) Act, 2013*-Through the Criminal Law (Amendment) Act, 2013, Section 354 was added to the Indian Penal Code that stipulates what consists of a sexual harassment offence and what the penalties shall be for a man committing such an offence. Penalties range from one to three years imprisonment and/or a fine. Additionally, with sexual harassment being a crime, employers are obligated to report offences.

## VI) Criticism-

Brinda Karat, serving in the Rajya Sabha as a Communist Party of India (Marxist) member for West Bengal initially complained that the Bill does not cover women in the armed forces and excludes women agricultural workers, "a gross injustice to agricultural workers who are the single largest female component of work force in the country." However, the final bill includes the clause "No woman shall be subjected to sexual harassment at any workplace" (clause 3.1), and is considered to have addressed those concerns. In the May 2012 draft Bill, the burden of proof is on the women who complain of harassment. If found guilty of making a false complaint or giving false evidence, she could be prosecuted, which has raised concerns about women being even more afraid of reporting offences. Before seeing the final version of the bill, lawyer and activist Vrinda Grover said, "I hope the Bill does not have provisions for penalizing the complainant for false complaints. This is the most under-reported crime. Such provision will deter a woman to come forward and complain." Zakia Soman, a women's rights campaigner at ActionAid India said that "it helps to have a law and we welcome it, but the crux will lie in its implementation once it is enacted."
Manoj Mitta of The Times of India complained that Bill does not protect men, saying it "is based on the premise that only female employees needed to be safeguarded." Nishith Desai Associates, a law group, wrote a detailed analysis that included concerns about the role of the employer in sexual

harassment cases. They called out the fact that there is no stipulated liability for employers in cases of employee-to-employee harassment, something upheld in many other countries. They also viewed the provision that employers are obligated to address grievances in a timely manner at the workplace as problematic because of potentially uncooperative employees. Furthermore, the law requires a third-partynon-governmental organisation to be involved, which could make employers less comfortable in reporting grievances, due to confidentiality concerns.
Compliance to this statute has so far been left to the vagaries of the employers and government has not taken any significant step to enforce the law so far. For example, 6 months after the law came into effect, the state in UP remained dreadful as women could not participate in the workforce due to sexual harassment.

********

**INDECENT REPRESENTATION OF WOMEN-**

**I) THE INDECENT REPRESENTATION OF WOMEN PROHIBITION) ACT, 1986- (NO. 60 OF 1986)**

*An Act to prohibit indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner and for matters connected therewith or incidental thereto.*

Be it enacted by Parliament in the Thirty-seven Year of the Republic of India as follows:-

**1. Short title, extent and commencement.-** (1) This Act may be called the Indecent Representation of Women (Prohibition) Act, 1986.
(2) It extends to the whole of India, except the State of Jammu and Kashmir.
(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.- In this Act, unless the context otherwise requires,-
"advertisement" includes any notice, circular, label, wrapper or other document and also includes any visible representation made by means of any light, sound, smoke or gas;
"distribution" includes distribution by way of samples whether free or otherwise;
"indecent representation of women" means the depiction in any manner of the figure of a woman; her form or body or any part thereof in such way as to have the effect of being indecent, or derogatory to, or denigrating women, or is likely to deprave, corrupt or injure the public morality or morals;
"label" means any written, marked, stamped, printed or graphic matter, affixed to, or appearing upon, any package;
"package" includes a box, a carton, tin or other container;
"prescribed" means prescribed by rules made under this Act.

**3.Prohibition of advertisements containing indecent representation of Women.-** No person shall publish, or cause to be published, or arrange or take part in the publication or exhibition of, any advertisement which contains indecent representation of women in any form.

**4.Prohibition of publication or sending by post of books, pamphlets, etc; containing indecent representation of women.-** No person shall produce or cause to be produced, sell , let to hire, distribute, circulate or send by post any book, pamphlet, paper, slide, film, writing, drawing,

Renaissance Law College

painting, photograph , representation or figure which contains indecent representation of women in any form:
Provided that noting in this section shall apply to-

(a) any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure –
(i) the publication of which is proved to be justified as justified as being for the public good on the ground that such book, pamphlet, paper, slide , film, writing, drawing, painting, photography, representation or figure is in the interest of science, literature, art, or learning , art, or learning or other objects of general concern; or
(ii) which is kept or used bona fide for religious purpose;
any representation sculptured, engraved, painted or otherwise represented on or in –
(i) any ancient monument within the meaning of the Ancient Monument and Archaeological Sites and Remains Act, 1958 (24 of 1958); or
(ii) any temple, or on any car used or the conveyance of idols, or kept or used for any religious purpose;
any film in respect of which the provisions of Part II of the Cinematograph Act, 1952 (37 of 1952), will be applicable.

**5. Powers to enter and search.-** (1) Subject to such rules as may be prescribed, any Gazetted Officer authorized by the State Government may, within the local limits of the area for which he is so authorized:-
enter and search at all reasonable times, with such assistance, if any , as he considers necessary, any place in which he has reason to believe that an offence under this Act has been or is being committed;
seize any advertisement or any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure which he has reason to believe contravenes any of the provisions of this Act;
examine any record, register, document or any other material object found in any place mentioned in Cl.(a) and seize the same if he has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act.

Provided that no entry under this sub-section shall be made into a private dwelling-house without a warrant:

Provided further that the power of seizure under this sub-section may be exercised in respect of any document, article or thing which contains any such advertisement, including the contents, if any, of such document, article or thing if the advertisement cannot be separated by reason of its being embossed or otherwise from such document, article or thing without affecting the integrity, utility or saleable value thereof.
(2)The provisions of the Code of Criminal Procedure, 1973(2 of 1974), shall, so far as may be, apply to any search or seizure made under the authority of a warrant issued under Sec.94 of the said Code.
(3)where any person seizes anything under Cl.(b) or Cl.(c) of sub section (1), he shall, as soon as may be, inform the nearest Magistrate and take his orders as to the custody thereof.

**6.Penalty.-** Any person who contravenes the provisions of Sec 3 or Sec 4 shall be punishable on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and in the event of a second or subsequent conviction with imprisonment for term of not less than six months but which may extend to five

Renaissance Law College

years and also with a fine not less than ten thousand rupees but which may extend to one lakh rupees.

**7.Offences by companies.-** (1) 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 accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

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

Explanation – For the purpose of this section.-

"company" means any body corporate and includes a firm or other association of individuals; and

"director", in relation to a firm, means a partner in the firm.

**8. Offences to be cognizable and bailable.-**(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2of 1974) , an offence punishable under this Act shall be bailable.

(2) An offence punishable under this Act shall be cognizable.

**9. Protection of action taken in good faith.-** No suit, prosecution or other legal proceeding shall lie against the Central Government or any State Government or any officer of the Central Government or any State Government for anything which is in good faith done or intended to be done under this Act.

**10. Power to make rules.-**(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the manner in which the seizure of advertisement or other articles shall be made, and the manner in which the seizure list shall be prepared and delivered to the person from whose custody any advertisement or other article has been seized;

any other matter which is required to be, or may be, prescribed.

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

********

Renaissance Law College

**UNIT-III PARTICULAR AND GENERAL OFFENCES**

**DOWRY DEATH-**

**Dowry Deaths in India!**

**Dowry deaths** are deaths of young women who are murdered or driven to suicide by continuous harassment and torture by husbands and in-laws in an effort to extort an increased dowry.

Dowry deaths are found in India, Pakistan, Bangladesh, and Iran. India reports the highest total number of dowry deaths with 8,391 such deaths reported in 2010, 1.4 deaths per 100,000 women. Adjusted for population, Pakistan, with 2,000 reported such deaths per year, has the highest rate of dowry death at 2.45 per 100,000 women. Dowry death is considered one of the many categories of violence against women, alongside rape, bride burning, eve teasing, andacid throwing.

*The first campaign of the contemporary feminist movement was against dowry. Dowry is the sum of all the money as well as other items such as jewellery, car, furniture, and house, etc., given by the bride's family to the groom and his family. It was in Hyderabad in 1975 that the Progressive Organization of Women organized formal protests against dowry.*

These protests were not allowed to grow into full-fledged campaigns because of the imposition of the Emergency in 1975. After the Emergency was lifted in 1977, a new movement against dowry started in Delhi. This movement focused upon the violence inflicted upon women for dowry, including bride burning and abetment to suicide.

Death of young married women within the family had long been treated as "accidental" and recorded as "suicides". The women's movement drew the link between demands for dowry and the deaths. They demanded re-categorizations of such deaths as "murder" and not "suicide".

Delhi has remained the place for sustained agitation against dowry and related issues. This may be because Delhi has witnessed a high number of dowry deaths and dowry harassment cases. There have been protests and movements against dowry demand and dowry deaths in many states across India.

The Mahila Dakshata Samiti was the first women's organization in Delhi's contemporary feminist movement to take up the issue of dowry harassment and dowry deaths. In June 1979, another women's organization, Stri Sangharsh drew public attention to the problem of dowry and dowry-related crimes by organizing a demonstration against the death of Tarvinder Kaur, who had given a dying statement blaming her in-laws for killing her, as her parents could not fulfill their ever-increasing demands for dowry.

This demonstration gained wide, publicity, and resulted, in a number of demonstrations against dowry deaths, including a large demonstration led by the Nari Raksha Samiti (Women's Rescue Committee). These demonstrations sparked off public debates on dowry and dowry-related crimes.

Death of women by fire (doused in kerosene and set on fire) was termed suicide, and many of these cases were not reported. Even suicides were not considered to be the result of harassment for dowry. These deaths were neither investigated nor categorized by the authorities.

They were considered to be private family affairs, and authorities did not interfere in such family matters. But as a result of the demonstrations and agitations in Delhi and other parts of the country, this problem was brought to the attention of the authorities as well as the public. This made the public realize that many official female suicides were, in fact, deaths due to dowry harassments.

There was an increase in the number of complaints with the police against dowry harassment. Feminist organizations tried to help by recording the dying declaration of women, testimonies of family members, and encouraged friends and neighbors to come forward with their testimonies and evidence.

Feminist groups devised strategies to increase public awareness regarding the problem of dowry, dowry harassment, and dowry deaths. This included organizing debates, public demonstrations and

enacting street plays. Manushi, a Delhi-based feminist magazine, organized a number of public meetings. People, both women and men, were encouraged to make a pledge that they would neither take nor give dowry.
The government passed a law against dowry and related crimes in 1980. This law declared/treated abetment to suicide arising from of dowry demands as a special crime. It made a police investigation into the death of any woman within five years of marriage mandatory.
However, though the law recognized that dowry harassment could be construed as abetment, it did not specify the kinds of evidence that could be used to prove harassment, nor did it make abetment a cognizable (liable to be judicially examined or tried) offence. In 1982, the first positive judgment of this law took place. A Delhi Sessions Court magistrate found two people guilty of dowry murder and sentenced them to death. In 1983, the Delhi High Court reversed this judgment.
There were widespread protests and demonstrations against this judgment. In 1985, the Supreme Court upheld the verdict, but converted the verdict from death sentence to life imprisonment. In the same year, the Criminal Law (Second Amendment) Act was passed. This made cruelty to a wife a cognizable, non-bailable offence, punishable by up to three years imprisonment and fine.
The Act also redefined cruelty to include mental as well as physical harassment. Section 113-A of the Evidence Act was also amended to enable the court to draw an inference of abetment to suicide. Technically, this shifted the burden of proof and thus lessened the burden upon the complainant. The Act also amended Section 174 of the Criminal Procedure Code, which makes a postmortem of the body of a woman who dies within seven years of marriage compulsory.
In spite of these laws being passed, it has been difficult to secure convictions for dowry deaths. Hearsay evidence is not enough to be accepted as evidence for conviction. Women themselves hesitate to bring charges against their husbands and in-laws. Moreover, postmortem reports need not necessarily show evidence of murder.
It is difficult to prove that kerosene burns are the result of intention to murder. Moreover, there are still many loopholes in the laws regarding dowry, and most culprits manage to get away without detection. Feminists discovered that though they could muster massive public support for campaigns against certain crimes against women, it was very difficult to get the support of the legal system for their efforts

**CONCLUSION -** Most dowry deaths occur when the young woman, unable to bear the harassment and torture, commits suicide. Most of these suicides are by hanging, poisoning or by fire. Sometimes the woman is killed by setting herself on fire; this is known as "bride burning", and sometimes disguised as suicide or accident. Death by burning of Indian women have been more frequently attributed to dowry conflicts In dowry deaths, the groom's family is the perpetrator of murder or suicide.
India has by far the highest number of dowry related deaths in the world according to Indian National Crime Record Bureau. In 2012, 8,233 dowry death cases were reported across India. This means a bride was burned every 90 minutes, or dowry issues cause 1.4 deaths per year per 100,000 women in India. For contextual reference, the United Nations reports a worldwide average female homicide rate of 3.6 per 100,000 women, and an average of 1.6 homicides per 100,000 women forNorthern Europe in 2012. Although India's dowry death rate per 100,000 is lower than equivalent rate for Pakistan and Bangladesh, it is a significant social issue in India.
According to a 1996 report by Indian police, every year it receives over 2,500 reports of bride-burning. The Indian National Crime Records Bureau (NCRB) reports that there were about 8331 dowry death cases registered in India in 2011. Incidents of dowry deaths during the year 2008 (8172) have increased by 14.4 per cent over 1998 level (7146), while India's population grew at 17.6% over the 10-year period. The accuracy of these figures have received a great deal of scrutiny from critics who believe dowry deaths are consistently under-reported.

Dowry deaths in India is not limited to Hindus or any specific religion. The ratio of dowry deaths are about the same as the ratio of population in India by religions.

**Prohibition**

The *Dowry Prohibition Act* 1961, prohibits the request, payment or acceptance of a dowry, "as consideration for the marriage", where "dowry" is defined as a gift demanded or given as a precondition for a marriage. Gifts given without a precondition are not considered dowry, and are legal. Asking or giving of dowry can be punished by an imprisonment of up to six months, or a fine of up to 5000 (US$75, £53 or A$100). It replaced several pieces of anti-dowry legislation that had been enacted by various Indian states. Murder and suicide under compulsion are addressed by India's criminal penal code.

Indian women's rights activists campaigned for more than 40 years to contain dowry deaths, such as the *Dowry Prohibition Act* 1961 and the more stringent Section 498a of Indian Penal Code (enacted in 1983). Under the *Protection of Women from Domestic Violence Act 2005* (PWDVA), a woman can put a stop to the dowry harassment by approaching a domestic violence protection officer

********

**ASSAULT**

Legal provisions regarding Assault under section 351 of Indian Penal Code, 1860.

**I) Assault:**

As per Tomlins Law Dictionary, assault is "An attempt with force and violence, to do corporal hurt to another as by striking at him with or without a weapon. But no words whatsoever, be they ever so provoking can amount to an assault, notwithstanding the many ancient opinions to the contrary".

An assault is (a) an attempt unlawfully to apply any of the least actual force to the person of another directly or indirectly; (b) the act of using a gesture towards another, giving him reasonable grounds to believe that the person using that gesture meant to apply such actual force to his person as aforesaid; (c) the act of depriving another of his liberty, in either case, without the consent of the person assaulted, or with such consent if it is obtained by fraud.

Section 351 of the Indian Penal Code provides that: "Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

**II) Explanation:-**

Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

**III) Illustrations:**

a) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.

b) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

c) A takes up a stick, saying to Z, "I will give you a beating". Here, though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault."

**IV) ESSENTIALS OF ASSAULT-**

The essential ingredients of an assault are:
1) That the accused should make a gesture or preparation to use criminal force;
2) Such gesture or preparation should be made in the presence of the person in respect of whom it is made;
3) There should be intention or knowledge on the part of the accused that such gesture or preparation would cause apprehension in the mind of the victim that criminal force would be used against him;
4) Such gesture or preparation has actually caused apprehension in the mind of the victim, of use of criminal force against him.

Assault is generally understood to mean the use of criminal force against a person, causing some bodily injury or pain. But, legally, 'assault' denotes the preparatory acts which cause apprehension of use of criminal force against the person. Assault falls short of actual use of criminal force. An assault is then nothing more than a threat of violence exhibiting an intention to use criminal force accompanied with present ability to effect the purpose.

According to Section 351 of the Code, the mere gesture or preparation with the intention of knowledge that it is likely to cause apprehension in the mind of the victim, amounts to an offence of assault. The explanation to Section 351 provides that mere words do not amount to assault, unless the words are used in aid of the gesture or preparation which amounts to assault.

The apprehension of the use of criminal force must be from the person making the gesture or preparation, but if it arises from some other person it would not be assault on the part of that person, but from somebody else, it does not amount to assault on the part of that person.

**V) INSTANCES OF ASSAULT-**

The following have been held to be instances of assault:
i) Lifting one's lota or lathi
ii) Throwing brick into another's house
iii) Fetching a sword and advancing with it towards the victim
iv) Pointing of a gun, whether loaded or unloaded, at a person at a short distance
v) Advancing with a threatening attitude to strike blows.

Though mere preparation to commit a crime is not punishable, yet preparation with the intention specified in this section amounts to an assault.

**VI) CONCLUSION-**

Another essential requirement of assault is that the person threatened should be present and near enough to apprehend danger. At the same time there must have been present ability in the assailant to give effect to his words or gestures.

If a person standing in the compartment of a running train, makes threatening gesture at a person standing on the station platform, the gesture will not amount to assault, for the person has no present ability to effectuate his purpose.

The question whether a particular act amounts to an assault or not depends on whether the act has caused reasonable apprehension in the mind of the person that criminal force was imminent. The words or the action should not be threat of assault at some future point in time. The apprehension of use of criminal force against the person should be in the present and immediate.

The gist of the offence of assault is the intention or knowledge that the gesture or preparations made by the accused would caused such effect upon the mind of another that he would apprehend that criminal force was about to be used against him. Illustration (b) to Section 351 exemplifies that although mere preparation to commit a crime is not punishable yet preparation with intention specified in Section 351 amounts to assault.

The offence under Section 351 is **non-cognizable, bailable, compoundable, and triable by any Magistrate.**

********

**UNNATURAL OFFENCES –**

**I) Unnatural offences**

Unnatural offences are covered in IPC under section 377. Section 377 of the IPC states that " whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall be liable to fine". As per the explanation provided under this section penetration is sufficient to constitute the carnal intercourse. This section corresponds to the offences of sodomy and bestiality under the English law. As evident from the language of this section, consent is wholly immaterial in the case of unnatural offences and the party consenting would be equally liable as an abettor. This section is very vague as what is against the order of nature is not possible to define objectively. What is natural and what is not is a subject of debate and has led to much confusion. As per this section homosexuality is construed as an unnatural offence as it is considered to be against the order of nature. This has led to many controversies and has led to questions regarding the constitutional validity of this section. Thus, in order to determine the constitutional validity of this section and the reasons for its incorporation in the IPC it is important to look at its historical basis.

The various ingredients of this offence can be understood as follows:

- "Voluntarily": This requires that the unnatural offence must be accompanied by intention.
- "has carnal intercourse": This requires that the act is committed (actus reus); mere intention is not sufficient.
- "Against the order of nature": This part is subject to various interpretations by the court. The Court in Khanu vs Emperor laid down that, "*the natural object of sexual intercourse is that there should be the possibility of conception of human beings..*' The court then defined sexual intercourse as "*the temporary visitation of one organism by a member of the other organism, for certain clearly defined and limited objects*". Thus any sexual activity the natural object of which is not conception is against the order of nature. This section was read by courts to criminalize bestiality, child sexual abuse and consensual homosexual intercourse. The section as interpreted by the courts from time to time initially punished only anal sex as unnatural. Slowly cases such as Khanu vs Emperor also held oral sex as unnatural. The present interpretations have even covered penile penetration of other artificial orifices like between the thighs or folded palms as unnatural.

**II) History of the legislation**

The Indian Penal Code was drafted by Lord Macaulay and was introduced in 1861 during the British time. Thus, it has been largely influenced by the British laws. What was considered crime in Britain at that time was also been made crime under IPC to a large extent. "Acts of sodomy were penalized by hanging under the Buggery Act of 1533 which was re-enacted in 1563 by Queen Elizabeth I, after which it became the charter for the subsequent criminalisation of sodomy in the British colonies". Thus, Section 377 of Indian Penal Code derives its origin from the Buggery Act of 1533. It is important to note here that this law has not been amended by Parliament ever since its enactment. This law is based on Judeo-Christian moral and ethical standards which conceive of sex on purely functional terms, that is, for procreation and on this basis homosexuality is considered as unnatural and against the order of nature.

For the purpose of implementation of Section 377 it becomes important to determine what is natural and what is unnatural. Also, it becomes necessary to determine whether homosexuality is against the order of nature or not.

Renaissance Law College

**III) Natural v. unnatural**

The Black's law dictionary define natural as (1) "A fundamental quality that distinguishes one thing from another; the essence of something. (2) Something pure or true as distinguished from something artificial or contrived. (3) The basic instincts or impulses of someone or something". To determine what is natural, functional basis is cited which basically means that every instrument or organ of the body has a particular function to perform, and therefore, using such an organ for a purpose inconsistent with its principal function is unnatural. As per this logic, every form of sex other than penile vaginal will be considered as unnatural. The same logic is used to denounce anything other than procreative sex as unnatural. This logic though prima facie illogical has been endorsed by courts in various cases. In *Khanu v Emperor* it was held that "the natural object of carnal intercourse is that there should be the possibility of conception of human beings, which in the case of coitus per os is impossible". The courts in India have interpreted the term "carnal intercourse against the order of nature" so broadly that it now includes from oral and anal sex to penetration into artificial orifices such as folded palms or between thighs. Such a wide application of section 377 where the language itself is not very clear has led to arbitrary application of the law and thus questions were raised regarding the constitutional validity of this section. Apart from this, section 377 clearly makes homosexuality illegal on the ground that it is against the order of nature. This has also led to various controversies in view of recognition of right to freedom as a fundamental human right, it is considered world over that criminalization of homosexual acts is a clear violation of right to privacy. In view of arbitrariness of section 377 and violation of basic fundamental rights the constitutional validity of this section was challenged in the court.

**IV) Constitutional validity**

The constitutional validity of section 377 was challenged in the Delhi High Court in the case of *Naz Foundation v Government of Delhi & Ors.* In this case it was argued that s 377 on account of coverning consensual sexual intercourse between two adults in private, is violative of the fundamental rights guaranteed in Articles 14, 15, 19 and 21 of the Constitution. It was also contended that Article 21 can be curtailed only in case of compelling state interest which is missing in this case. The petitioner also contended that the legislative intent behind section 377 is based on stereotypes that are outmoded and have no historical or logical backing. They also argued that the expression "sex" as used in Article 15 also includes "sexual orientation" and thus according to Article 15 there can be no discrimination on the basis of sexual orientation. Broadly they prayed before the court that section 377 of IPC should be declared *ultra vires* to the constitution, insofar it criminalizes consensual sexual acts of adults.

The two wings of Union of India filed completely counter affidavit in this case. The Ministry of Home Affairs sought to justify the retention of section 377 on the grounds of public health, public disapproval, and social disgust of the act. On the other hand, The Ministry of Health & Family Welfare supported the claim of petitioners stating that the presence of section 377 in the statute book has hampered the HIV/AIDS prevention efforts and that its deletion would help in treating homosexuals suffering from HIV/AIDS.

The Delhi High Court rejected the contention of Ministry of Home Affairs on the ground that popular morality or public disapproval cannot be a valid ground for restricting the right under Article 14 and 21. The court stated that if there is any type of morality that can pass the test of compelling state interest, it must be constitutional morality and not public morality. India is a land of unity in diversity and our constitution drafters recognised this idea and incorporated it in our constitution in the form of various articles which recognises, protects and celebrates diversity. Section 377 of IPC by criminalising homosexuals only on account of their sexual orientation violates the constitutional morality. In the end, court accepted all the contentions of the petitioners and declared the part of

Renaissance Law College

section 377 *ultra vires* which criminalised consensual sexual acts of adults in private. However, the court also ruled out that the provisions of section 377 will still continue to govern non-consensual penile non-vaginal sex involving minors.

This order of the Delhi High Court was challenged before the Supreme Court in the case of*Suresh Kumar koushal and another v Naz Foundation & others* by groups of religious bodies and individuals including the All India Muslim Personal Law Board, the Apostolic Churches Alliance and the Utkal Christian Council. They contended that section 377 was enacted by the legislature to protect social values and morals. The Supreme Court accepted this contention and set aside the order of the High court. The court stated that every legislation enacted by the Parliament or State legislature carries with it a presumption of constitutionality. This principal also applies to pre-constitutional laws. If no amendment is made to a particular law it may suggest that the legislature deems it fit and leave the law as it is. Post-independence almost 30 amendments in the IPC have been made in the IPC including amendments in the chapter of sexual offences under which unnatural offences fall. "However, the Legislature has chosen not to amend the law or revisit it. This shows that Parliament, which is undisputedly the representative body of the people of India, has not thought it proper to delete the provision". The court ultimately declared section 377 to be constitutionally valid. However, the court left it opens for the Legislature to delete or amend the law.

The Naz foundation has filed a curative petition challenging this judgement of Supreme Court. The matter is sub judice before the Supreme Court. However, as of now, section 377 is constitutionally valid and homosexuality is treated as an unnatural offence. Since, this section is operative as of now it becomes pertinent to see the sentencing policy in cases of unnatural offence.

**V) Legal battle surrounding Section 377 of IPC**

As per the data homosexuals have suffered and have been targeted the most during the implementation of this section. This led to a legal battle to decide the fate of this section.

The legal battle surrounding this section started with the petition by Naz Foundation before the High Court of Delhi. The Delhi High court in Naz Foundation v NCT of Delhi read down the section to not to apply to consensual private sexual acts but still be applicable to non-consensual acts. Thus the effect of the decision was that homosexual acts are not illegal.

But this judgment was reversed by the Supreme Court in Suresh Kumar Koushal[3]judgment which upheld the constitutional validity of section 377 and recriminalized consensual private sexual acts against the order of nature.

**VI)`A wife can file a case against her husband under section 377**

In the words of the SC *"the Section 377 IPC does not criminalize a particular people or identity or orientation. It merely identifies certain acts which if committed would constitute an offence. Such a prohibition regulates sexual conduct regardless of gender identity and orientation."* Thus section 377 covers homosexuals and heterosexuals alike and the carnal intercourse against the order of nature among heterosexuals would be punished in the same manner.

A wife can file a case against her husband for unnatural sexual offences under section 377 of IPC. As the section punishes sexual intercourse against the order of nature irrespective of the sexual orientation or gender identity of the individuals, thus even if such acts are done by heterosexual couples; they can be punished under section 377. Further even if the victim consented (irrespective of the age) to the act then also the offender can be punished under this section. The consent is immaterial for the application of section 377 and an unlawful act cannot be legitimized by the consent of the victim.

A number of cases have come up where either the wife or the girlfriend has filed a case against her partner for unnatural sexual acts under section 377. A woman in her twenties kept a record of anal and oral sex with her husband and then filed for divorce. Another woman filed a case under section



Renaissance Law College

377 against the person with whom she had been into extra-marital relationship; when her relationship was disclosed to her husband.

The legislation is both useful as well as capable of misuse. It is useful in the sense that since marital rape is not an offence in India, so the Indian women would have a way out to get their husbands punished when they perform unnatural sexual acts on them. This section would act as a tool in the hands of Indian married women suffering under their cruel husbands.

On the other hand section 377 is also capable of huge misuse as consent is an irrelevant criterion to judge the application of this section. Thus the complainant's consent to the unnatural sexual act would not save the person from going to jail.

[1] Khanu v. Emperor , AIR 1925 Sind 286

[2] Naz Foundation (India) Trust v. Government of NCT of Delhi and Ors. [Writ Petition (Civil) No. 4755 of 2001]

[3] Suresh Kumar Koushal & Ors. v. Naz Foundation (India ) Trust & Ors.[Special Leave Petition (Civil) No. 15436 of 2009]

## VII) Sentencing policy

The punishment in case of unnatural offences is as severe as that of rape. Unnatural offences cover all form of penetration other than penile vaginal and consent is immaterial in case of unnatural offences. The punishment may extend to imprisonment for life or imprisonment up to ten years and fine. In *Norshiwan Irani*, it was held that in case of offences made punishable under section 377, it is necessary that penetration, however little, must be proved strictly.

The age of the accused is a determining factor while giving punishment. In the case of *Raju v State of Haryana*, the appellant who was 20/21 years old was found guilty of committing sodomy upon a female of 9 years and sentenced to three years imprisonment. The court taking into consideration the nature of the offence and age of the appellant held that the accused should be kept in an environment of institution other than jail to ponder and repent over his perversity. Along with age, chances of reformation of accused are also an important factor in determination of sentence. In *Amit v State of UP*, the accused committed unnatural sex with a minor girl of aged 3 years and later killed him. The trial court imposed death penalty for the offence of murder. The Supreme Court converted the death sentence of the accused into imprisonment for life on the ground that accused was a young person aged about 28 years only. Also, there was no evidence to show that he had committed similar offences before and there was also nothing on evidence to show that he is likely to repeat similar crimes in future. The court held that given a chance, he may reform over a period of years.

The intention of the accused is also a determining factor while giving punishment. Also, the age of the victim plays a role while convicting. In the case *of Ou v The State of Maharashtra*, the accused tried to penetrate inside a 14 months old child. The complete penetration did not happen because the child cried out in pain which was heard by outsiders and also her mother in the adjoining house and they prevented further harm. The intention to commit the act was clearly seen in this case. The court also stated that "the extremely tender age of the child makes the acts of the accused even more deplorable calling for stringent punishment". The accused was sentenced to life imprisonment by the lower courts. However, the Supreme Court modified the punishment and reduced it to 10 years because the act of the accused was stopped in between and there was no complete penetration.

Consent is wholly immaterial in the determination of offence; however, in some cases it works as a mitigating factor. In the case of *Fazal Rab Choudhary*, to men were engaged in a consensual relationship. The lower courts sentenced the accused to a rigorous imprisonment of three years. The accused filed a special leave petition in the Supreme Court demanding reduction of sentence. In this case, there was no force used and the act was consensual. The court held that in judging the depravity of the action for determining quantum of sentence, all aspects of the matter including the nature of the offence and whether any force was used by the accused must be taken into account.

Renaissance Law College

In *Chittranjan Das v State of Uttar Pradesh*, the accused who was a highly qualified individual suffering from mental aberration committed the offence of sodomy. The Supreme Court while confirming the conviction reduced the sentence to a period of two months in view of loss of service as a result of conviction of the appellant.

Thus, while convicting an accused under section 377 of IPC all the factors are taken into account which includes nature of the crime, age of the victim and accused, chances of reformation, consequence of the conviction, consent of the victim.

**VI) Proposal for reform**

As already stated above, the language of the section 377 is very vague and arbitrary. It is impossible to determine what the order of nature is and what is not. In view of such vagueness, homosexuality has also been treated as against the order of nature. The judgement given by the Delhi High Court in Naz foundation case was a very laudable judgement. I would suggest reforms on the line of Delhi High Court judgement but with a different reasoning. Delhi High Court judgement essentially ruled out that parts of section 377 are unconstitutional as they violate articles 14, 15 and 21 of the constitution. The Delhi High Court never stated that homosexuality is not against the order of nature; it rather stated that section 377 violates the fundamental rights of same sex adults who have consensual relationship. I would suggest that section 377 should be struck down as a whole as the term order of nature is very arbitrary and vague and its meaning is not capable of being made certain. In cases of sexual acts such as paedophilia and bestiality, new provisions should be enacted. The scope of Section 375 should be enlarged so as to include sexual assaults against both boys and girls and the meaning of penetration should be enlarged so as to include forms of penetration other than penile vaginal. In the case of minors, section 377 is ineffective as penetration is required to constitute offence under it. Parliament has however enacted Protection of Children from Sexual Offences Act, 2012 which also covers sexual abuse against children.

********

Renaissance Law College

## UNIT-IV SPECIAL OFFENDING ACT

### IMMORAL TRAFFICKING-

**Introduction**

**Bill No. 58 of 1954**

With a view to implement International Convention signed at New York on the 9th May, 1950, " THE SUPPRESSION OF IMMORAL TRAFFIC IN WOMAN AND GIRLS BILL, 1950" was introduced in the Lok Sabha on the 20th December, 1954, by the then Minister K.N. Katju.

**STATEMENT OF OBJECTS AND REASONS[2]:**

1. In 1950 the Government of India ratified an International Convention for the Suppression of Immoral Traffic in Persons and the Exploitation of the Prostitution of others. Under Article 23 of the Convention, traffic in human beings is prohibited and any contravention of the prohibition is an offence punishable by law. Under Article 35 such a law has to be passed by Parliament as soon as may be after the commencement of the Constitution.
2. Legislation on the subject of suppression of immoral traffic does exist in a few States but the laws are neither uniform nor do they go far enough. In the remaining States there is no bar on the subject at all.
3. In the circumstances it is necessary and desirable that a Central law should be passed which will not only secure uniformity but also would be sufficiently deterrent for the purpose. But a special feature of the Bill is that it provides that no person or authority other than the State Government shall establish or maintain any protective home except under a license issued by the State Government. This will check the establishment of homes which are really dens for prostitution."

**REPORT OF SELECT COMMITTEE:**

The Select Committee submitted "THE SUPPRESSION OF IMMORAL TRAFFIC IN WOMEN AND GIRLS BILL, 1956 (58A of 1956) along with its Report dated 20/11/1956 to the Lok Sabha on the 21st November, 1956.

**PRINCIPAL ACT**

The Suppression of Immoral Traffic in Women and Girls Bill, 1954 as amended by the Select Committee vide its Bill No.58 of 1956 and as passed by Parliament received the assent of the President and soon thereafter became an Act of Parliament under the Short title and Number "THE SUPPRESSION OF IMMORAL TRAFFIC IN WOMEN AND GIRLS ACT, 1956 (104 of 1956)" on the 31st December, 1956.

Sections 2 to 25 of the Act came into force in the whole of India on the Ist May, 1958, vide the Central Government's Notification No.GSR 269 dated 14/4/1958.

The Act was extended,-

a. to the Union Territory of Dadra and Nagar Haveli by Section 2/Sch. I of the Dadra Nagar Haveli (Laws) Regulation, 1963 (6 of 1963);
b. to the Union Territory of Goa, Daman and Diu by Section 2/Sch.of the Goa, Daman and Diu (Laws) No.2 Ordinance, 1963 (11 of 1963); and
c. to the Union Territory of Pondicherry by the Pondicherry (Extension of Laws) Act, 1968 (28 of 1968).

### PROSTITUTION IN INDIA-

In India, prostitution (the exchange of sexual services for money) itself is not illegal, but a number of related activities, including soliciting in a public place, kerb crawling, owning or managing a brothel, prostitution in a hotel, pimping andpandering, are crimes. Prostitution is legal only if carried out in private residence of a prostitute or others.

Legal status

The primary law dealing with the status of sex workers is the 1956 law referred to as The Immoral Traffic (Suppression) Act (SITA). According to this law, prostitutes can practise their trade privately but cannot legally solicit customers in public. A BBC article, however, mentions that prostitution is illegal in India; the Indian law does not refer to the practice of selling one's own sexual service as "prostitution". Clients can be punished for sexual activity in proximity to a public place. Organised prostitution (brothels, prostitution rings, pimping, etc.) is illegal. As long as it is done individually and voluntarily, a woman (male prostitution is not recognised in any law in India but even consensual anal intercourse is illegal under section 377 of the Indian Penal Code) can use her body in exchange for material benefit. In particular, the law forbids a sex worker to carry on her profession within 200 yards of a public place. Unlike as is the case with other professions, sex workers are not protected under normal labour laws, but they possess the right to rescue and rehabilitation if they desire and possess all the rights of other citizens.

In practice SITA is not commonly used. The Indian Penal Code (IPC) which predates the SITA is often used to charge sex workers with vague crimes such as "public indecency" or being a "public nuisance" without explicitly defining what these consist of. Recently the old law has been amended as The Immoral Traffic (Prevention) Act or PITA. Attempts to amend this to criminalise clients have been opposed by the Health Ministry, and has encountered considerable opposition. In a positive development in the improvement of the lives of female sex workers in Calcutta, a state-owned insurance company has provided life insurance to 250 individuals.

Over the years, India has seen a growing mandate to legalise prostitution, to avoid exploitation of sex workers and their children by middlemen and in the wake of a growing HIV/AIDS menace.

Renaissance Law College

**Immoral Traffic (Prevention)Act, 1956.**

[30th. December, 1956.]

An Act to provide in pursuance of the International Convention signed at New York on the 9th day of May, 1950, for [2][the Prevention of immoral traffic].

Be it enacted by Parliament in the Seventh Year of the Republic of India as follows:-

1. **Short title, extent and commencement** - (1) This Act may be called [3][the Immoral Traffic (Prevention)]Act, 1956.
   (2) It extends to the whole of India.
   (3) This section shall come into force at once; and the remaining provisions of this Act shall come into force on such date[4] as the Central Government may, by notification in the Official Gazette, appoint.
2. **Definitions.** - In this Act, unless the context otherwise requires -
   (a) "brothel" includes any house room, [ conveyance] or place or any portion of any house, room, [ conveyance] or place, which is used for purposes [ of sexual exploitation or abuse] for the gain of another person or for the mutual gain of two or more prostitutes;
   [(aa) "child" means a person who has not completed the age of sixteen years;]
   [[(b)]" corrective institution" means an institution, by whatever name called (being an institution established or licensed as such under section 21), in which [persons], who are in need of correction, may be detained under this Act, and includes a shelter where [undertrials] may be kept in pursuance of this Act;]
   [5]X X X X X
   [(c) "magistrate" means a magistrate specified in the second column of the Schedule as being competent to exercise the powers conferred by the section in which the expression occurs and which is specified in the first column of the Schedule;]

[7][(ca) "major" means a person who has completed the age of eighteen years;
(cb) "minor" means a person who has completed the age of sixteen years but has not completed the age of eighteen years;]
(d) "prescribed" means prescribed by rules made under this Act;
X X X X X
[ (f) "prostitution" means the sexual exploitation or abuse of persons for commercial purposes, and the expression "prostitute" shall be construed accordingly;]
(g) "protective home" means an institution by whatever name called (being an institution established or licensed as such under Section 21), in which [11][persons], who are in need of care and protection, may be kept under this Act [12][and where appropriate technically qualified persons, equipment and other facilities have been provided], but does not include-

i. a shelter where [undertrials] may be kept in pursuance of this Act, or
ii. a corrective institution;]

(h) "public place" means any place intended for use by, or accessible to, the public and includes any public conveyance;
(i) "special police officer" means a police officer appointed by or on behalf of the State Government to be in charge of police duties within a specified area for the purpose of this Act;
[(i) "trafficking police officer" means a police officer appointed by the Central Government under sub-section (4) of section 13.

3. **Punishment for keeping a brothel or allowing premises to be used as a brothel.** (1) Any person who keeps or manages, or acts or assists in the keeping or management of, a brothel shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees.
(2) Any person who-

a. being the tenant, lessee, occupier or person in charge of any premises, uses, or knowingly allows any other person to use, such premises or any part thereof as a brothel, or
b. being the owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof is intended to be used as a brothel, or is wilfully a party to the use of such premises or any part thereof as a brothel, shall be punishable on first conviction with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which may extend to five years and also with fine.

[(2A) For the purposes of sub-section (2) it shall be presumed until the contrary is proved, that any person referred to in clause(a) or clause(b) of that sub-section, is knowingly allowing the premises or any part thereof to be used as a brothel or, as the case maybe, has knowledge that the premises or any part thereof are being used as a brothel, if, -

a. a report is published in a newspaper having circulation in the area in which such person resides to the effect that the premises or any part thereof have been found to be used for prostitution as a result of a search made under this Act; or
b. a copy of the list of all things found during the search referred to in clause (a) is given to such person].

(3) Notwithstanding anything contained in any other law for the time being in force, on conviction of any person referred to in clause (a) or clause (b) of sub-section (2) of any offence under that sub-section in respect of any premises or any part thereof, any lease or agreement under which such premises have been leased out or are held or occupied at the time of the commission of the offence, shall become void and inoperative with effect from the date of the said conviction.

Renaissance Law College

4. **Punishment for living on the earnings of prostitution.** - (1) Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of [any other person] shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both [and where such earnings relate to the prostitution of a child or a minor, shall be punishable with imprisonment for a term of not less than seven years and not more than ten years].
[(2) Where any person over the age of eighteen years is proved -
a. to be living with, or to be habitually in the company of, a prostitute; or
b. to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that such person is aiding, abetting or compelling her prostitution; or
c. to be acting as a tout or pimp on behalf of a prostitute,
it shall be presumed, until the contrary is proved, that such person is knowingly living on the earnings of prostitution of another person within the meanings of Sub-section (1).]

**5. Procuring, including or taking person for the sake of prostitution.** -
(1) Any person who -
. procures or attempts to procure a [person], whether with or without his consent, for the purpose of prostitution; or
a. includes a [person]to go from any place, with the intent that he, may for the purpose of prostitution become the inmate of or frequent, a brothel; or
b. takes or attempts to take a [person], or causes a [ person] to be taken, from one place to another with a view to his carrying on or being brought up to carry on prostitution; or
c. causes or induces a [person] to carry on prostitution;
[ shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years :
Provided that if the person of whom an offence committed under this sub-section,-
iv. is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life; and
v. is a minor, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years].
X X X X X
(3) An offence under this section shall be triable -
f. in the place from which a [1][person]is procured, induced to go, taken or caused to be taken or from which an attempt to procure or take such [1][person] is made; or
g. in the place to which he may have gone as a result of the inducement or to which he is taken or caused to be taken or an attempt to take him is made.

6. **Detaining a person in premises where prostitution is carried on.** -
(1) Any person who detains [2][any other person, whether with or without his consent], -
a. in any brothel, or
b. in or upon any premises with intent [2][that such person may have sexual intercourse with a person who is not the spouse of such person]
shall be punishable [on conviction, with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine :
Provided that the court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than seven years].

[(2) Where any person is found with a child in a brothel, it shall be presumed, unless the contrary is proved, that he has committed an offence under sub-section (1).

(2A) Where a child or minor found in a brothel, is on medical examination, detected to have been sexually abused, it shall be presumed unless the contrary is proved, that the child or minor has been detained for purposes of prostitution or, as the case may be, has been sexually exploited for commercial purposes].

(3) A person shall be presumed to detain a woman or girl in a brothel or in or upon any premises for the purpose of sexual intercourse with a man other than her lawful husband, if such person, with intent to compel or induce her to remain there, -

c. withholds from her any jewellery, wearing apparel, money or other property belonging to her, or

d. threatens her with legal proceedings if she takes away with her any jewellery, wearing apparel, money or other property lent or supplied to her by or by the direction of such person.

(4) Notwithstanding any law to the contrary, no suit, prosecution or other legal proceeding shall lie against such woman or girl at the instance of the person by whom she has been detained, for the recovery of any jewellery, wearing apparel or other property alleged to have been lent or supplied to or for such woman or girl or to have been pledged by such woman or girl or the recovery of any money alleged to be payable by such woman or girl.

7. **Prostitution in or in the vicinity of public places.** [(1) Any [person], who carries on prostitution and the person with whom such prostitution is carried on, in any premises,-

a. which are within the area or areas notified under sub-section (3), or

b. which are within a distance of two hundred metres of any place of public religious worship, educational institution, hostel, hospital, nursing home or such other public place of any kind as may be notified in this behalf by the Commissioner of Police or Magistrate in the manner prescribed,

shall be punishable with imprisonment for a term which may extend to three months].

[ (1A) Where an offence committed under sub-section (1) is in respect of a child or minor, the person committing the offence shall be punishable with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in the judgement impose a sentence of imprisonment for a term of less than seven years].

(2) Any person who-

c. being the keeper of any public place knowingly permits prostitution for purposes of their trade to resort to or remain in such place; or

d. being the tenant, lessee, occupier or person in charge of any premises referred to in sub-section (1) knowingly permits the same or any part thereof to be used for prostitution; or

e. being the owner, lessor or landlord, of any premises referred to in sub-section (1) or the agent of such owner, lessor or landlord, lets the same or any part thereof may be used for prostitution, or is wilfully a party to such use,

shall be punishable on first conviction with imprisonment for a term which may extend to three months or with fine which may extend to two hundred rupees, or with both, and in the event of a second or subsequent conviction with imprisonment for a term which may extend to six months and also with fine [which may extend to two hundred rupees, and if the public place or premises happen to be a hotel, the license for carrying on the business of such hotel under any law for the time being in force shall also be liable to be suspended for a period of not less than three months but which may extend to one year:

Provided that if an offence committed under this sub-section is in respect of a child or minor in a hotel, such license shall also be liable to be cancelled.

Renaissance Law College

Explanation.- For the purposes of this sub-section, "Hotel" shall have the meaning as in clause (6) of Section 2 of the Hotel-Receipts Tax Act, 1980 (54 of 1980)].

[(3) The State Government may, having regard to the kinds of persons frequenting any area or areas in the State, the nature and the density of population therein and other relevant considerations, by notification in the Official Gazette, direct that prostitution shall not be carried on in such area or areas as may be specified in the notification.

(4) Where a notification is issued under sub-section (3) in respect of any area or areas, the State Government shall define the limits of such area or areas in the notification with reasonable certainity.

(5) No such notification shall be issued so as to have effect from a date earlier than the expiry of a period of ninety days after the date on which it is issued.

8. **Seducing or soliciting for purpose of prostitution.** - Whoever, in any public place or within sight of, and in such manner as to be seen or heard from, any public place, whether from within any building or house or not -

a. by words, gestures, wilful exposure of her person (whether by sitting by a window or on the balcony of a building or house or in any other way), or otherwise tempts or endeavours to tempt, or attracts or endeavours to attract the attention of, any person for the purpose of prostitution; or

b. solicits or molests any person, or loiters or acts in such manner as to cause obstruction or annoyance to persons residing nearby or passing by such public place or to offend against public decency, for the purpose of prostitution,

shall be punishable on first conviction, with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, and in the event of a second or subsequent conviction, with imprisonment for a term which may extend to five hundred rupees, and also with fine which may extend to five hundred rupees :

[ Provided that where an offence under this section is committed by a man he shall be punishable with imprisonment for a period of not less than seven days but which may extend to three months.

**9. Seduction of a person in custody.** - [2]X X X X Any person who [3][having the custody, charge or care of, or a position of authority over any [4][person], causes or aids or abets the seduction for prostitution of that [4][person] [5][shall be punishable on conviction with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine: Provided that the court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than seven years].

**[10.** [ Release on probation of good conduct or after due admonition]. Rep. by Suppression of Immoral Traffic in Women and Girls (Amendment) Act, 1986 (44 of 1986), s. 13 (w.e.f. 26-1-1987).

10A. Detention in a corrective institution. (1) Where-

a. a female offender is found guilty of an offence under Section 7 or section 8, and

b. the character, state of health and mental condition of the offender and the other circumstances of the case are such that it is expedient that she should be subjected to detention for such term and such instruction and discipline as are conducive to her correction,

it shall be lawful for the court to pass, in lieu of a sentence of imprisonment, an order for detention in a corrective institution for such term, not being less than two years and not being more than five years, as the court thinks fit :

Provided that before passing such an order -

i. the court shall give an opportunity to the offender to be heard and shall also consider any representation which the offender may make to the court as to the suitability of the case for

treatment in such an institution, as also the report of the probation officer appointed under the Probation of Offenders Act, 1958 (20 of 1958); and

ii. the court shall record that it is satisfied that the character, state of health and mental condition of the offender and the other circumstances of the case are such that the offender is likely to benefit by such instruction and discipline as aforesaid.

(2) Subject to the provisions of sub-section (3), the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to appeal, reference and revision and of the Limitation Act 1963 (36 of 1963), as to the period within which an appeal shall be filed, shall apply in relation to an order of detention under sub-section (1) as if the order had been a sentence of imprisonment for the same period as the period for which the detention was ordered.

(3) Subject to such rules as may be made in this behalf, the State Government or authority authorised in this behalf may, at any time after the expiration of six months from the date of an order for detention in a corrective institution if it is satisfied that there is a reasonable probability that the offender will lead a useful and industrious life, discharge her from such an institution, without condition or with such conditions as may be considered fit, and grant her a written license in such form as may be prescribed.

(4) The conditions on which an offender is discharged under sub-section (3) may include requirements relating to residence of the offender and supervision over the offender's activities and movements.

11. **Notification of address of previously convicted offenders.** - (1) When any person having been convicted -

a. by a court in India of an offence punishable under this Act or punishable under Section 363, Section 365, Section 366, Section 366A, Section 366B, Section 367, Section 368, Section 370, Section 371, Section 372 or Section 373 of the Indian Penal Code (45 of 1860), with imprisonment for a term of two years or upwards; or

b. by a court or tribunal in any other country of an offence which would, if committed in India, have been punishable under this Act or under any of the aforesaid sections with imprisonment for a life term,

is within a period of five years after release from prison, again convicted of any offence punishable under this Act or under any of those sections with imprisonment for a term of two years or upwards by a court, such court may, if it thinks fit, at the time of passing the sentence of imprisonment on such person, also order that his residence, and any change of, or absence from such residence after release be notified according to rules made under Section 23 for a period not exceeding five years from the date of expiration of that sentence.

(2) If such conviction is set aside on appeal or otherwise, such order shall become void.

(3) An order under this section may also be made by an Appellate Court or by the High Court when exercising its powers or revision.

(4) Any person charged with a breach of any rule referred to in sub-section (1) may be tried by a Magistrate of competent jurisdiction in the district in which the place last notified as his residence is situated.

12. **[Security for good behaviour from habitual offenders.]** Rep. by the Suppression of Immoral Traffic in Women and Girls (Amendment) Act, 1986 (44 of 1986) s. 13 (w.e.f. 26-1-1987).

13. **Special police officer and advisory body.** - (1) There shall be for each area to be specified by the State Government in this behalf a special police officer appointed by or on behalf of that government for dealing with offences under this Act in that area.

[(2) The special police officer shall not be below the rank of an Inspector of Police.

(2A) The District Magistrate may if he considers it necessary or expedient so to do, confer upon any retired police or military officer all or any of the powers conferred by or under this Act on a special

Renaissance Law College

police officer, with respect to particular cases or classes of cases or to cases generally : Provided that no such power shall be conferred on -

a. a retired police officer unless such officer, at the time of his retirement, was holding a post not below the rank of an inspector;
b. a retired military officer unless such officer, at the time if his retirement, was holding a post not below the rank of a commissioned officer].

(3) For the efficient discharge of his functions in relation to offences under this Act-

c. the special police officer of an area shall be assisted by such number of subordinate police officers (including women police officers wherever practicable) as the State Government may think fit; and
d. the State Government may associate with the special police officer a non-official advisory body consisting of not more than five leading social welfare workers of that area (including women social welfare workers wherever practicable) to advise him on questions of general importance regarding the working of this Act.

[(4) The Central Government may, for the purpose of investigating any offence under this Act or under any other law for the time being in force dealing with sexual exploitation of persons and committed in more than one State, appoint such number of police officers as trafficking police officers and they shall exercise all the powers and discharge all the functions as are exercisable by special police officers under this Act with the modification that they shall exercise such powers and discharge such functions in relation to the whole of India].

14. **Offences to be cognizable.** - Notwithstanding anything contained in [1][ the Code of Criminal Procedure, 1973 ( 2 of 1974)] any offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of that Code:
Provided that, notwithstanding anything contained in that Code,-

i. arrest without warrant may be made only by special police officer or under his direction or guidance, or subject to his prior approval;
ii. when the special police officer requires any officer subordinate to him to arrest without warrant otherwise than in his presence any person for an offence under this Act, he shall give that subordinate officer an order in writing, specifying the person to be arrested and the offence for which the arrest is being made; and the latter officer before arresting the person shall inform him of the substance of the order and, on being required by such person, show him the order;
iii. any police officer not below the rank of [2][ sub-inspector] specially authorised by the special police officer may, if he has reason to believe that on account of delay involved in obtaining the order of the special police officer, any valuable evidence relating to any offence under this Act is likely to be destroyed or concealed, or the person who has committed or is suspected to have committed the offence is likely to escape, or if the name and address of such a person is unknown or there is reason to suspect that a false name or address has been given, arrest the person concerned without such order, but in such a case he shall report, as soon as may be, to the special police officer the arrest and the circumstances in which the arrest was made.

15. **Search without warrant.** - (1) Notwithstanding anything contained in any other law for the time being in force, whenever the special police officer [ or the trafficking police officer, as the case may be,] has reasonable grounds for believing that an offence punishable under this Act has been or is being committed in respect of a [ person] living in any premises, and that search of the premises with warrant cannot be made without undue delay, such officer may, after recording the grounds of his belief, enter and search such premises without a warrant.
(2) Before making a search under sub-section (1), the special police officer [ or the trafficking police officer, as the case may be,] shall call upon two or more respectable inhabitants (at least one of whom shall be a women) of the locality in which the place to be searched is situated, to attend and witness the search, and may issue an order in writing to them or any of them so to do :

Renaissance Law College

[Provided that the requirement as to the respectable inhabitants being from the locality in which place to be searched is situate shall not apply to a woman required to attend and witness the search].
(3) Any person who, without reasonable cause, refuses or neglects, to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code (45 of 1860).
[(4) The special police officer or the trafficking police officer, as the case may be, entering any premises under sub-section(1 ) shall be entitled to remove therefrom all the persons found therein].
(5) The special police officer [1][or the trafficking police officer, as the case may be ,] after removing [5][ the [2][person]] under Sub-section (4) shall forthwith produce him before the appropriate Magistrate.
[(5A) Any person who is produced before a Magistrate under sub-section (5), shall be examined by a registered medical practitioner for the purposes of determination of the age of such person, or for the detection of any injuries as a result of sexual abuse or for the presence of any sexually transmitted diseases.
Explanation.- In this sub-section, "registered medical practitioner " has the same meaning as in the Indian Medical Council Act, 1956 (102 of 1956)].
(6) The special police officer [or the trafficking police officer, as the case may be,] and other persons taking part in , or attending, and witnessing a search shall not be liable to any civil or criminal proceedings against them in respect of anything lawfully done in connection with, or for the purpose of the search.
[(6A) The special police officer or the trafficking police officer, as the case may be, making a search under this section shall be accompanied by at least two women police officers, and where any women or girl removed under sub-section (4) is required to be interrogated, it shall be done by a woman police officer and if no woman police officer is available, the interrogation shall be done only in the presence of a lady member of a recognised welfare institution or organisation.
Explanation .- For the purposes of this sub-section and section 17A, "recognised welfare institution or organisation " means such institution or organisation as may be recognised in this behalf by the State Government.]
[ (7) The provisions of the Code of Criminal Procedure, 1973, (2 of 1974) shall so far as may be apply to any search made under this section as they apply to any search under the authority of a warrant issued under section 94 of the said Code].
[ 16. Rescue of person.- (1) Where a magistrate has reason to believe from information received from the police or from any other person authorised by the State Government in this behalf or otherwise, that [any person is living, or is carrying on or is being made to carry on, prostitution in a brothel,] he may direct a police officer not below the rank of a sub-inspector to enter such brothel, and to remove therefrom such [person] and produce him before him.
(2) The police officer, after removing the [3][person], shall forthwith produce him before the magistrate issuing the order.
[17.A Conditions to be observed before placing persons rescued under section 16 to parents or guardians.- Notwithstanding anything contained in sub-section (2) of section 17, the magistrate making an inquiry under section 17 may, before passing an order for handing over any person rescued under section 16 to the parents, guardian or husband, satisfy himself about the capacity or genuineness of the parents, guardian or husband to keep such person by causing an investigation to be made by a recognised welfare institution or organisation.]

Closure of brothel and eviction of offenders from the premises.- (1) A magistrate may, on receipt of information from the police or otherwise, that any house , room, place or any portion thereof within a distance of [3][two hundred meters] of any public place referred to in sub-section (1)

Renaissance Law College

of section 7, is being run or used as a brothel by any person or is being used by prostitutes for carrying on their trade, issue notice on the owner, lessor or landlord of such house, room, place, portion or the agent of the owner, lessor or landlord or on tenant, lessee, occupier of, or any other person in charge of such house, room, place, or portion, to show cause within seven days of the receipt of the notice why the same should not be attached for improper uses thereof; and if, after hearing the person concerned, the magistrate is satisfied that the house, room, place or portion is being used as a brothel or for carrying on prostitution, then the magistrate may pass orders -

. directing eviction of the occupier within seven days of the passing of the order from the house, room, place or portion;

a. directing that before letting it out during the period of one year [1][, or in a case where a child or minor has been found in such house, room, place or portion during a search under section 15, during the period of three years,] immediately after the passing of the order, the owner, lessor or landlord or the agent of the owner, lessor or landlord shall obtain the previous approval of the magistrate : Provided that, if the magistrate finds that the owner, lessor or landlord as well as the agent of the owner, lessor or landlord, was innocent of the improper user of the house, room, place or portion, he may cause the same, to be restored to the owner, lessor or landlord, or the agent of the owner, lessor or landlord, with a direction that the house, room, place or portion shall not be leased out, or otherwise given possession of, to or for the benefit of the person who was allowing the improper user therein.

(2) A court convicting a person of any offence under section 3 or section 7 may pass orders under sub-section (1), without further notice such person to show cause as required in that sub-section.

(3) Orders passed by the magistrate or court under sub-section(1) or sub-section(2) shall not be subject to appeal and shall not be stayed or set aside by the order of any court, civil or criminal and the said orders shall cease to have validity after the [2][expiry of one year or three years , as the case may be.]

b. Provided that where a conviction under section 3 or section7 is set aside on appeal on the ground that such house, room, place or any portion thereof is not being run or used as a brothel or is not being used by prostitutes for carrying on their trade, any order passed by the trial court under sub-section (1) shall also be set aside.

(4) Notwithstanding anything contained in any other law for the time being in force, when a magistrate passes an order under sub-section (1), or a court passes an order under sub-section (2), any lease or agreement under which the house, room, place or portion is occupied at the time shall become void and inoperative.

(5) When an owner, lessor or landlord, or the agent of such owner, lessor or landlord fails to comply with a direction given under clause (b) of sub-section (1) he shall be punishable with fine which may extend to five hundred rupees or when he fails to comply with a direction under the proviso to that sub-section, he shall be deemed to have committed an offence under clause (b) of sub-section (2) of section 3 or clause (c) of sub-section (2) of section 7, as the case may be, and punished accordingly.

[ 19. Application for being kept in a protective home or provided home or provided care and protection by court.- (1) A [2][person] who is carrying on or is being made to carry on prostitution, may make an application to the magistrate within the local limits of whose jurisdiction he is carrying on, or is being made to carry on prostitution, for an order that he may be -

c. kept in a protective home, or
d. provided care and protection by the court in the manner specified in sub-section (3).

(2) The Magistrate may, pending inquiry under sub-section (3), direct that the [person] be kept in such custody as he may consider proper, having regard to the circumstances of the case.

(3) If the magistrate, after hearing the applicant and making such inquiry as he may consider necessary, including an inquiry by a probation officer appointed under the Probation of Offenders

Renaissance Law College

Act, 1958 (20 of 1958), into the personality, conditions of home and prospects of rehabilitation of the applicant, is satisfied that an order should be made under this section, he shall, for reasons to be recorded, make an order that the applicant be kept, -

v. in a protective home, or
vi. in a corrective institution, or
vii. under the supervision of a person appointed by the magistrate, for such period as may be specified in the order].

20. Removal of prostitute from any place.- (1) A magistrate on receiving information that any [1][person] residing in or frequenting any place within the local limits of his jurisdiction is a prostitute, may record the substance of the information received and issue a notice to such [1][person] requiring him to appear before the magistrate and show cause why he should not be required to remove himself from the place and be prohibited from re-entering it.
(2) Every notice issued under sub-section (1) shall be accompanied by a copy of the record aforesaid, and the copy shall be served along with the notice on the [1][person] against whom the notice is issued.

(3) The magistrate shall after the service of the notice referred to in sub-section (2), proceed to inquire into the truth of the information received, and after giving the[1][person] an opportunity of adducing evidence, take such further evidence as he thinks fit, and if upon such inquiry it appears to him that such [1][person] is a prostitute and that it is necessary in the interests of the general public that such [1][person] should be required to remove himself therefrom and be prohibited from re-entering the same, the magistrate shall, by order in writing communicated to the [person] in the manner specified therein, require him after a date (to be specified in the order) which shall not be less than seven days from the date of the order, to remove himself from the place to such place whether within or without the local limits of his jurisdiction, by such route or routes and within such time as may be specified in the order and also prohibit from re-entering the place without the permission in writing of the magistrate having jurisdiction over such place.

(4) Whoever -

. fails to comply with an order issued under this section, within the period specified therein, or whilst an order prohibiting him from re-entering a place without permission is in force, re-enters the place without such permission, or

a. knowing that any [person] has, under this section, been required to remove himself from the place and has not obtained the requisite permission to re-enter it, harbours or conceals such [person] in the place,

shall be punishable with fine which may extend to two hundred rupees and in the case of continuing offence with an additional fine which may extend to twenty rupees for every day after the first during which he has persisted in the offence.

21. **Protective Homes**. - (1) The State Government may in its discretion establish [2][as many protective homes and corrective institutions under this Act as it thinks fit and such homes and institutions], when established, shall be maintained in such manner as may be prescribed.
(2) No person or authority other than the State Government shall after the commencement of this Act, establish or maintain any [2][protective home or corrective institution] except under and in accordance with the conditions of, a license issued under this section by the State Government.
(3) The State Government may, on application made to it in this behalf by a person or authority, issue to such person or authority a license in the prescribed form for establishing and maintaining or, as the case may be, for maintaining a [1][protective home or corrective institution] and a license so issued may contain such conditions as the State Government may think fit to impose in accordance with the rules made under this Act :
Provided that any such condition may require that the management of the [protective home or corrective institution] shall, wherever practicable, be entrusted to women :

Renaissance Law College

Provided further that a person or authority maintaining any protective home at the commencement of this Act shall be allowed a period of six months from such commencement to make an application for such license :

[2][Provided also that a person or authority maintaining any corrective institution at the commencement of the Suppression of Immoral Traffic in Women and Girls (Amendment) Act, 1978 (46 of 1978), shall be allowed a period of six months from such commencement to make an application for such license].

(4) Before issuing a license the State Government may require such officer or authority as it may appoint for this purpose, to make a full and complete investigation in respect of the application received in this behalf and report to it the result of such investigation and in making any such investigation the officer or authority shall follow such procedure as may be prescribed.
(5) A license, unless sooner revoked, shall remain in force for such period as may be specified in the license and may, on application made in this behalf at least thirty days before the date of its expiration, be renewed for a like period.

(6) No license issued or renewed under this Act shall be transferable.

(7) Where any person or authority to whom a license has been granted under this Act or any agent or servant of such person or authority commits a breach of any of the conditions thereof or any of the provisions of this Act or of any of the rules made under this Act, or where the State Government is not satisfied with the condition, management or superintendence of any [protective home or corrective institution], the State Government may, without prejudice to any other penalty which may have been incurred under this Act, for reasons to be recorded, revoke the license by order in writing: Provided that no such order shall be made until an opportunity is given to the holder of the license to show cause why the license shall not be revoked.

(8) Where a license in respect of a [protective home or corrective institution] has been revoked under the foregoing sub-section such protective home shall cease to function from the date of such revocation.
(9) Subject to any rules that may be made in this behalf, the State Government may also vary or amend any license issued or renewed under this Act.
[(9A) The State Government or an authority authorised by it in this behalf may, subject to any rules that may be made in this behalf, transfer an inmate of a protective home to another protective home or to a corrective institution or an inmate of a corrective institution to another corrective institution or to a protective home, where such transfer is considered desirable having regard to the conduct of the person to be transferred, the kind of training to be imparted and other circumstances of the case: Provided that., -

b. no [person] who is transferred under this sub-section shall be required to stay in the home or institution to which he is transferred for a period longer than he was required to stay in the home or institution from which he was transferred;
c. reasons shall be recorded for every order of transfer under this sub-section].

(10) Whoever establishes or maintains a [protective home or corrective institution] except in accordance with the provisions of this section, shall be punishable in the case of a first offence with fine which may extend to one thousand rupees and in the case of second or subsequent offence with imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees, or with both.

Renaissance Law College

[1][**21A. Production of records**. - Every person or authority who is licensed under sub-section (3) of section 21 to establish or maintain, or as the case may be, for maintaining, a protective home or corrective institution shall, whenever required by a court, produce the records and other documents maintained by such home or institution before such court].

22. **Trials**. - No court inferior to that of [2][a Metropolitan Magistrate or a Judicial Magistrate of the first class] shall try any offence under section 3, section 4, section 5, section6, section 7 or section 8.

[**22A. Power to establish Special Courts**.- (1) If the State Government is satisfied that it is necessary for the purpose of providing for speedy trial of offences under this Act in any district or metropolitan area, it may, by notification in the Official Gazette and after consultation with the High Court, establish one or more Courts of Judicial Magistrates of the first class, or as the case may be, Metropolitan Magistrates, in such district or metropolitan area.

(2) Unless otherwise directed by the High Court, a court established under sub-section (1) shall exercise jurisdiction only in respect of cases under this Act.

(3) Subject to the provisions of sub-section (2), the jurisdiction and powers of the presiding officer of a court established under sub-section (1) in any district or metropolitan area shall extend throughout the district or the metropolitan area, as the case may be.

(4) Subject to the foregoing provisions of this section a court established under sub-section (1) in any district or metropolitan area shall be deemed to be a court established under sub-section (1) of section 11, or as the case may be, sub-section (1) of section 16, of the Code of Criminal Procedure 1973 (2 of 1974), and the provisions of the Code shall apply accordingly in relation to such courts. *Explanation*- In this section, "High Court" has the same meaning as in clause (e) of section 2 of the Code of Criminal Procedure 1973 (2 of 1974)].

[**22AA. Power of Central Government to establish special courts**.-
(1) If the Central Government is satisfied that it is necessary for the purpose of providing for speedy trial of offences under this Act and committed in more than one state, it may, by notification in the Official Gazette and after consultation with the High Court concerned, establish one or more courts of Judicial Magistrates of the first class or Metropolitan Magistrates for the trial of such offences.
(2) The provisions of section 22A, shall so far as may be, apply to the courts established under sub-section (1) as they apply to courts established under that section].

**22B. Power of Court to try cases summarily**.- Notwithstanding anything contained in the Code of Criminal Procedure 1973 ( 2 of 1974), the State Government may, if it considers it necessary so to do, direct that offences under this Act shall be tried in a summary way by a magistrate [including the presiding officer of a court established under sub-section (1) of Section 22A] and the provisions of Sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial : Provided that in the case of any conviction in a summary trial under this section it shall be lawful for the magistrate to pass a sentence of imprisonment for a term not exceeding one year : Provided further that when at the commencement of, or in the course of a summary trial under this section, it appears to the magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the magistrate shall, after hearing the parties, record an order to that effect and, thereafter, recall any witness, who may have been examined and proceed to hear or re-hear the case in the manner provided by the said Code].

**23. Power to make rules**.- (1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for -

the notification of any place as a public place;

Renaissance Law College

[(b) the placing in custody of persons for whose safe custody orders have been passed under sub-section (1) of section 17 and their maintenance;]
[(bb) the discharge of an offender under sub-section (3) of Section 10A from a corrective institution and the form of license to be granted to such offender;]
[(c) the detention and keeping in protective homes or, as the case may be, in corrective institutions of [persons] under this Act and their maintenance;]

d. the carrying out of the provisions of section 11 regarding notification of residence or change of or absence from residence by released convicts;
e. the delegation of authority to appoint the special police officer under sub-section (1) of section 13;
f. the carrying into effect of the provisions of section 18;
g. (i) the establishment, maintenance, management and superintendence of protective homes and corrective institutions under Section 21 and the appointment, powers and duties of persons employed in such homes or institutions;

ii. the form in which an application for a license may be made and the particulars to be contained in such application;
iii. the procedure for the issue or renewal of a license, the time within which such license shall be issued or renewed and the procedure to be followed in making a full and complete investigation in respect of an application for a license;
iv. the form of license and the conditions to be specified therein;
v. the manner in which the accounts of a protective home and a corrective institution shall be maintained and audited;
vi. the maintenance of registers and statements by a licensee and the form and such registers and statements;
vii. the care, treatment, maintenance, training, instruction, control and discipline of the inmates of protective homes and corrective institutions;
viii. the visits to and communication with such inmates;
ix. the temporary detention of [persons] sentenced to detention in protective homes or in corrective institutions until arrangements are made for sending them to such homes or institutions;
x. the transfer of an inmate from -

a. one protective home to another or to a corrective institution,
b. one corrective institution to another or to a protective home, under sub-section (9A) of section 21;

the transfer in pursuance of an order of the court from a protective home or a corrective institution to a prison of a [2][person] found to be incorrigible or exercising bad influence upon other inmates of the protective home or the corrective institution and the period of his detention in such prison;

the transfer to a protective home or corrective institution of [2][persons] sentenced under Section 7 or Section 8 and the period of their detention in such home or institution;

the discharge of inmates from a protective home or corrective institution either absolutely or subject to conditions, and their arrest in the event of breach of such conditions;

the grant of permission to inmates to absent themselves for short periods;

the inspection of protective homes and corrective institutions and other institutions in which [persons] may be kept, detained and maintained;]

any other matter which has to be, or may be, prescribed.

(3) In making any rule under clause (d) or clause (g) of Sub-section (2) the State Government may provide that a breach thereof shall be punishable with fine which may provide that breach thereof shall be punishable with fine which may extend to two hundred and fifty rupees.

(4) All rules made under this Act shall. as soon as may be, after they are made, be laid before the State Legislature.

Renaissance Law College

24. **Act not to be in derogation of certain other Acts.**- Nothing in this Act shall be construed to be in derogation of the provisions of the Reformatory Schools Act, 1897 (8 of 1897), or any State Act enacted in modification of the said Act or otherwise, relating to juvenile offenders.

25. **Repeal and savings.**-(1) As from the date of the coming into force in any State of the provisions other than Section 1 of this Act, all State Acts relating to suppression of immoral traffic in [persons] or to the prevention of prostitution, in force in that State immediately before such date shall stand repealed.
(2) Notwithstanding the repeal by this Act of any State Act referred to in sub-section (1), anything done or any action taken (including any direction given, any register, rule or order made, any restriction imposed) under the provisions of such State Act shall in so far such thing or action is not consistent with the provisions of this Act be deemed to have been done or taken under the provisions of this Act as if the said provisions were in force when such thing was done or such action was taken and shall continue in force accordingly until superseded by anything done or any action taken under this Act.
*Explanation*.- In this section the expression "State Act" includes a "Provincial Act".

**[THE SCHEDULE -** [See Section 2(c)]

| Section | Magistrate competent to exercise the powers |
|---|---|
| 7(1) | District Magistrate |
| 11(4) | Metropolitan Magistrate or Judicial Magistrate of the first class. |
| 15(5) | Metropolitan Magistrate, Judicial Magistrate of the first class, District Magistrate or Sub-Divisional Magistrate. |
| 16 | Metropolitan Magistrate, Judicial Magistrate of the first class, District Magistrate or Sub-Divisional Magistrate. |
| 18 | District Magistrate or Sub-Divisional Magistrate. |
| 19 | Metropolitan Magistrate, Judicial Magistrate of the first class, District Magistrate or Sub-Divisional Magistrate. |
| 20 | District Magistrate, Sub-Divisional Magistrate or any Executive Magistrate specially empowered by the State Government. |
| 22B | Metropolitan Magistrate or Judicial Magistrate of the first class.] |

**Immoral Traffic (Prevention) Act - ITPA**

The Immoral Traffic (Prevention) Act or ITPA is a 1986 amendment of legislation passed in 1956 as a result of the signing by India of the United Nations' declaration in 1950 in New York on the suppression of trafficking. The act, then called the All India Suppression of Immoral Traffic Act (SITA), was amended to the current law. The laws were intended as a means of limiting and eventually abolishing prostitution in India by gradually criminalising various aspects of sex work. The main points of the PITA are as follows:

- Sex Workers: A prostitute who seduces or solicits shall be prosecuted. Similarly, call girls can not publish phone numbers to the public. (imprisonment up to 6 months with fine, point 8) Sex worker also punished for prostitution near any public place or notified area. (Imprisonment of up to 3 months with fine, point 7)
- Clients: A client is guilty of consorting with prostitutes and can be charged if he engages in sex acts with a sex worker within 200 yards of a public place or "notified area". (Imprisonment of up to 3 months, point 7) The client may also be punished if the sex worker is below 18 years of age. (From 7 to 10 years of imprisonment, whether with a child or a minor, point 7)

- Pimps and babus: *Babus* or pimps or live-in lovers who live off a prostitute's earnings are guilty of a crime. Any adult male living with a prostitute is assumed to be guilty unless he can prove otherwise. (Imprisonment of up to 2 years with fine, point 4)
- Brothel: Landlords and brothel-keepers can be prosecuted, maintaining a brothel is illegal. (From 1 to 3 years imprisonment with fine for first offence, point 3) Detaining someone at a brothel for the purpose of sexual exploitation can lead to prosecution. (Imprisonment of more than 7 years, point 6) Prostitution in a hotel is also a criminal offence.
- Procuring and trafficking: A person procures or attempts to procure anybody is liable to be punished. Also a person who moves a person from one place to another, (human trafficking), can be prosecuted similarly. (From 3 to 7 years imprisonment with fine, point 5)
- Rescued Women: The government is legally obligated to provide rescue and rehabilitation in a "protective home" for any sex worker requesting assistance. (Point 21)

Public place in context of this law includes places of public religious worship, educational institutions, hostels, hospitals etc. A "notified area" is a place which is declared to be "prostitution-free" by the state government under the PITA. Brothel in context of this law, is a place which has two or more sex workers (2a). Prostitution itself is not an offence under this law, but soliciting, brothels, madams and pimps are illegal.

**The Immoral Traffic (Prevention) Amendment Bill, 2006**

The Bill was introduced in the Lok Sabha on May 22, 2006. The Bill has been referred to the Parliamentary Standing Committee on Human Resource Development (Chairperson: Shri Janardan Dwivedi).

***Highlights of the Bill***

The Immoral Traffic (Prevention) Amendment Bill, 2006 amends the Immoral Traffic (Prevention) Act, 1956 to combat trafficking and sexual exploitation for commercial purposes.

The Bill deletes provisions that penalised prostitutes for soliciting clients. It penalises any person visiting a brothel for the purpose of sexual exploitation of trafficked victims.

All offences listed in the Bill would be tried in camera, i.e., the public would be excluded from attending the trial.

The term “trafficking in persons” has been defined with a provision for punishing any person who is guilty of the offence of trafficking in persons for the purpose of prostitution.

The Bill constitutes authorities at the centre and state level to combat trafficking.

***Key Issues and Analysis***

While prostitution is not an offence, practicing it in a brothel or within 200 m of any public place is illegal. There seems to be a lack of clarity on whether prostitution ought to be a legitimate way of earning a living if entered into by choice.

Penalising clients who visit prostitutes could drive this sector underground, preventing legal channels of support to victims of trafficking.

This Bill punishes trafficking for the purpose of prostitution. Trafficking for other purposes (such as bonded labour and domestic work) are not covered by the Bill.

The rank of special police officer, who would enforce the Act, is lowered from Inspector to Sub-Inspector. Such powers delegated to junior officers could lead to greater harassment.

The Bill constitutes authorities at the centre and state level to combat trafficking. However, it does not elaborate on the role, function and composition of these authorities.

********

**FEMALE FOETICIDE-**

Female foeticide in India

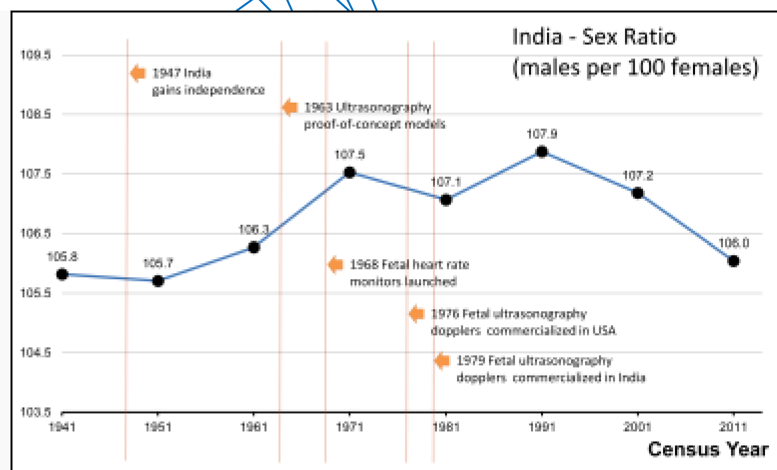
**Female foeticide in India** is the act of killing a female foetus outside of the legal channels of abortion. It occurs in India for assumed cultural reasons that span centuries.

The frequency of female foeticide in India is assumed to be an estimation derived from its high birth sex ratio, that is the ratio of boys to girls at birth. The natural ratio is assumed to be between 103 to 107, and any number above it is considered as suggestive of female foeticide. According to the decennial Indian census, the sex ratio in the 0 to 6 age group in India has risen from 102.4 males per 100 females in 1961, to 104.2 in 1980, to 107.5 in 2001, to 108.9 in 2011.[2]

The child sex ratio is within the normal natural range in all eastern and southern states of India, but significantly higher in certain western and particularly northwestern states such as Punjab, Haryana and Jammu & Kashmir (118, 120 and 116, as of 2011, respectively). The western states of Maharashtra and Rajasthan 2011 census found a child sex ratio of 113, Gujarat at 112 and Uttar Pradesh at 111.

The Indian census data suggests there is a positive correlation between abnormal sex ratio and better socio-economic status and literacy. This may be connected to the dowry system in India where dowry deaths occur when a girl is seen as a financial burden. Urban India has higher child sex ratio than rural India according to 1991, 2001 and 2011 Census data, implying higher prevalence of female foeticide in urban India. Similarly, child sex ratio greater than 115 boys per 100 girls is found in regions where the predominant majority is Hindu, Muslim, Sikh or Christian; furthermore "normal" child sex ratio of 104 to 106 boys per 100 girls are also found in regions where the predominant majority is Hindu, Muslim, Sikh or Christian. These data contradict any hypotheses that may suggest that sex selection is an archaic practice which takes place among uneducated, poor sections or particular religion of the Indian society.

There is an ongoing debate as to whether these high sex ratios are only caused by female foeticide or some of the higher ratio is explained by natural causes. The Indian government has passed Pre-Conception and Pre-Natal Diagnostic Techniques Act (PCPNDT) in 1994 to ban and punish prenatal sex screening and female foeticide. It is currently illegal in India to determine or disclose sex of the foetus to anyone. However, there are concerns that PCPNDT Act has been poorly enforced by authorities.




Male to female sex ratio for India, based on its official census data, from 1941 through 2011. The data suggests the existence of high sex ratios before and after the arrival of ultrasound-based prenatal care and sex screening technologies in India.

Female foeticide has been linked to the arrival, in the early 1990s, of affordable ultrasound technology and its widespread adoption in India. Obstetric ultrasonography,

Renaissance Law College

either transvaginally or transabdominally, checks for various markers of fetal sex. It can be performed at or after week 12 of pregnancy. At this point, 3/4 of fetal sexes can be correctly determined, according to a 2001 study.[22] Accuracy for males is approximately 50% and for females almost 100%. When performed after week 13 of pregnancy, ultrasonography gives an accurate result in almost 100% of cases.

**Availability**

Ultrasound technology arrived in China and India in 1979, but its expansion was slower in India. Ultrasound sex discernment technologies were first introduced in major cities of India in 1980s, its use expanded in India's urban regions in 1990s, and became widespread in 2000s.

**THE REASONS FOR KILLING FEMALE FETUSES AREN'T QUITE AS DIVERSE AS ONE MAY EXPECT-**

- **"Male Children are a Better Investment."** The main reason is the idea that the male offspring will better support the family. Since sons are seen as the main source of income, even though today, women have many career options, the common misconception still remains that it is the male who will help run the house and look after his parents, while women are viewed as being like cargo, something to be shipped off to another household.
- **"Female Children Are a Gamble."** In India, the age-old dowry system puts a damper on the spirits of those who are blessed with a girl child. When a girl is born, the parents begin to calculate the expense of her future marriage, the lump sum that will paid to the future groom's family. They worry that currency may depreciate and inflation may skyrocket. Because of this, the birth of a girl is seen as a tragedy waiting to happen.
- **Women Don't Have Status in Society.** As a result of institutional and cultural sexism, female children and adults have less power, status, rights, and money. Even as adults, it's harder for females to take care of or make decisions for themselves. Centuries of repression have made inferiority second nature to most women who have been taught the role of the meek, submissive, docile wife who works relentlessly to cater to the whims of her husband. Female feticide often happens with the explicit consent of the mother. Even the mothers-to-be agree to this misdeed out of an inherited cultural bias and a sense of duty to the family.
- **Foul Medical Ethics.** With the legalization of abortion in India, illegal sex determination and termination of pregnancies have become everyday realities. Professionals in the medical field are only too glad to help parents realize their dream of a healthy baby boy. Female feticide is openly discussed in the medical profession and many pin boards outside clinics have advertisements for abortion that read, "Pay Rs. 500 [$10 US] today to save the expense of Rs. 500 000 [$10,000 US] in the future." The cost of an abortion is nothing compared to the expense of having a child, especially a girl.
- **Industrial Growth.** Industrialization of the health sector has further established the practice of sex selective abortion. With the advent of CVS, amniocentesis, and ultrasound, sex determination of the fetus has become much easier. These manufacturers of high-tech equipment and gadgets benefit from the preference for male children. Many hospitals are known to sign long-term contracts with the firms involved in the production of these types of machines. Often, a healthy percentage of the profit is shared with the hospital, and both parties enjoy the fruits of rewarding a death sentence.

Laws and regulations

India passed its first abortion-related law, the so-called Medical Termination of Pregnancy Act of 1971, making abortion legal in most states, but specified legally acceptable reasons for abortion such as medical risk to mother and rape. The law also established physicians who can legally provide the procedure and the facilities where abortions can be performed, but did not anticipate female foeticide based on technology advances. With increasing availability of sex screening technologies in India through the 1980s in urban India, and claims of its misuse, the Government of India passed

the Pre-natal Diagnostic Techniques Act (PNDT) in 1994. This law was further amended into the Pre-Conception and Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) (PCPNDT) Act in 2004 to deter and punish prenatal sex screening and female foeticide. However, there are concerns that PCPNDT Act has been poorly enforced by authorities.

The impact of Indian laws on female foeticide and its enforcement is unclear. United Nations Population Fund and India's National Human Rights Commission, in 2009, asked the Government of India to assess the impact of the law. The Public Health Foundation of India, an premier research organization in its 2010 report, claimed a lack of awareness about the Act in parts of India, inactive role of the Appropriate Authorities, ambiguity among some clinics that offer prenatal care services, and the role of a few medical practitioners in disregarding the law. The Ministry of Health and Family Welfare of India has targeted education and media advertisements to reach clinics and medical professionals to increase awareness. The Indian Medical Association has undertaken efforts to prevent prenatal sex selection by giving its members *Beti Bachao* (save the daughter) badges during its meetings and conferences. However, a recent study by Nandi and Deolalikar (2013) argues that the 1994 PNDT Act may have had a small impact by preventing 106,000 female foeticides over one decade.

According to a 2007 study by MacPherson, prenatal Diagnostic Techniques Act (PCPNDT Act) was highly publicized by NGOs and the government. Many of the ads used depicted abortion as violent, creating fear of abortion itself within the population. The ads focused on the religious and moral shame associated with abortion. MacPherson claims this media campaign was not effective because some perceived this as an attack on their character, leading to many becoming closed off, rather than opening a dialogue about the issue. This emphasis on morality, claims MacPherson, increased fear and shame associated with all abortions, leading to an increase in unsafe abortions in India.

The government of India, in a 2011 report, has begun better educating all stakeholders about its MTP and PCPNDT laws. In its communication campaigns, it is clearing up public misconceptions by emphasizing that sex determination is illegal, but abortion is legal for certain medical conditions in India. The government is also supporting implementation of programs and initiatives that seek to reduce gender discrimination, including media campaign to address the underlying social causes of sex selection.

**The Long-Term Consequences of Aborting Female Fetuses**

As Newton's Third Law of Motion states, "For every action, there is an equal and opposite reaction." The after-effects of the genocide of female feticide are far-reaching. Blinded by their desire for male children, the majority of parents are ignorant of the disaster they unwittingly invite by indulging in female feticide.

- **Skewed Sex Ratio:** In India, the number of girls is declining with each passing decade. From 962 and 945 girls for every 1000 boys in the years 1981 and 1991 respectively, the ratio plummeted to a low of 914 girls born for 1000 boys in 2011. In China, the ratio is an alarming 100 girls for 118 boys (or 848 girls for 1000 boys). These are just two examples of nations trapped in vicious abortion cycles, but there are many other countries struggling with skewed sex ratios, as well. See below for more statistics from other countries.
- **Female/Women Trafficking:** The steep decline in the number of girls makes them scarce for the teaming number of males eligible for marriage. As a result, illegal trafficking of women has become commonplace in many regions. Women, often young girls who've just crossed the threshold of puberty, are compelled to marry. Many young girls are kidnapped from their parents and sold to the highest bidder. Child marriages and pregnancies have a devastating consequence. When a region participates in the trade of its female population, the present and future psychological cost is alarming.
- **Increase in Rape and Assault:** Once women become an endangered species, the instances of rape, assault, and violence become widespread. When there are fewer available females, the surviving

ones will be faced with the reality of handling a society driven by a testosterone high. The legal system may offer protection and, as is the situation today, many crimes may not ever surface for fear of isolation, humiliation, and punishment on the girl's part.

- **Population Decline:** With no mothers to bear children (male or female), there will be fewer births, leading to a decline in population. Though population control is currently the goal of many nations like China and India, a total wipeout of one sex is not the way to achieve this target.

**Is an Imbalance in the Number of Females Born a Real Problem?**

Yes, indeed. When calculated for the entire population, the widespread disparity is more visible and alarming and may prove critical for the country's development in political, economic, and emotional spheres. The sex ratios of other countries are listed below:
Vietnam: 892 females /1000 males
South Korea: 934 females /1000 males
USA: 962 females /1000 males
Canada: 943 females /1000 males
UK: 952 females /1000 males
Sri Lanka: 961 females /1000 males

**Response from others**

Increasing awareness of the problem has led to multiple campaigns by celebrities and journalists to combat sex-selective abortions. Aamir Khan devoted the first episode "Daughters Are Precious" of his show *Satyamev Jayate* to raise awareness of this widespread practice, focusing primarily on Western Rajastan, which is known to be one of the areas where this practice is common. Its sex ratio dropped to 883 girls per 1,000 boys in 2011 from 901 girls to 1000 boys in 2001. Rapid response was shown by local government in Rajastan after the airing of this show, showing the effect of media and nationwide awareness on the issue. A vow was made by officials to set up fast-track courts to punish those who practice sex-based abortion. They cancelled the licences of six sonography centres and issued notices to over 20 others.
This has been done on the smaller scale. Cultural intervention has been addressed through theatre. Plays such as 'Pacha Mannu', which is about female infanticide/foeticide, has been produced by a women's theatre group in Tamil Nadu. This play was showing mostly in communities that practice female infanticide/foeticide and has led to a redefinition of a methodology of consciousness raising, opening up varied ways of understanding and subverting cultural expressions.
The Mumbai High Court ruled that prenatal sex determination implied female foeticide. Sex determination violated a woman's right to live and was against India's Constitution.
The *Beti Bachao*, or Save girls campaign, has been underway in many Indian communities since the early 2000s. The campaign uses the media to raise awareness of the gender disparities creating, and resulting from, sex-selective abortion. Beti Bachao activities include rallies, posters, short videos and television commercials, some of which are sponsored by state and local governments and other organisations. Many celebrities in India have publicly supported the Beti Bachao campaign.

**Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994** is an Act of the Parliament of India enacted to stop female foeticides and arrest the declining sex ratio in India. The act banned prenatal sex determination.
This process began in the early 1990s when ultrasound techniques gained widespread use in India. There was a tendency for families to continuously produce children until a male child was born.[1] Foetal sex determination and sex selective abortion by medical professionals has today grown into a Rs. 1,000 crore industry (US$ 244 million). Social discrimination against women and apreference for sons have promoted female foeticide in various forms skewing the sex ratio of the country towards men.[2] According to the decennial Indian census, the sex ratio in the 0-6 age group

in India went from 104.0 males per 100 females in 1981, to 105.8 in 1991, to 107.8 in 2001, to 109.4 in 2011. The ratio is significantly higher in certain states such as Punjab and Haryana (126.1 and 122.0, as of 2001).[3]

Objectives[edit]

The main purpose of enacting the act is to ban the use of sex selection techniques before or after conception and prevent the misuse of prenatal diagnostic technique for sex selective abortion.

Salient features

Offences under this act include conducting or helping in the conduct of prenatal diagnostic technique in the unregistered units, sex selection on a man or woman, conducting PND test for any purpose other than the one mentioned in the act, sale, distribution, supply, renting etc. of any ultra sound machine or any other equipment capable of detecting sex of the foetus. Main provisions in the act are...

1. The Act provides for the prohibition of sex selection, before or after conception.
2. It regulates the use of pre-natal diagnostic techniques, like ultrasound and amniocentesis by allowing them their use only to detect :
   1. genetic abnormalities
   2. metabolic disorders
   3. chromosomal abnormalities
   4. certain congenital malformations
   5. haemoglobinopathies
   6. sex linked disorders.
3. No laboratory or centre or clinic will conduct any test including ultrasonography for the purpose of determining the sex of the foetus.
4. No person, including the one who is conducting the procedure as per the law, will communicate the sex of the foetus to the pregnant woman or her relatives by words, signs or any other method.
5. Any person who puts an advertisement for pre-natal and pre-conception sex determination facilities in the form of a notice, circular, label, wrapper or any document, or advertises through interior or other media in electronic or print form or engages in any visible representation made by means of hoarding, wall painting, signal, light,sound, smoke or gas, can be imprisoned for up to three years and fined Rs. 10,000.

**Compulsory registration**

The Act mandates compulsory registration of all diagnostic laboratories, all genetic counselling centres, genetic laboratories, genetic clinics and ultrasound clinics.[1]

Amendment in 2003

Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (PNDT), was amended in 2003 to The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition Of Sex Selection) Act (PCPNDT Act) to improve the regulation of the technology used in sex selection.

Implications of the amendment are

1. Amendment of the act mainly covered bringing the technique of pre conception sex selection within the ambit of the act
2. Bringing ultrasound within its ambit
3. Empowering the central supervisory board, constitution of state level supervisory board
4. Provision for more stringent punishments
5. Empowering appropriate authorities with the power of civil court for search, seizure and sealing the machines and equipments of the violators
6. Regulating the sale of the ultrasound machines only to registered bodies

## MEDICAL TERMINATION OF PREGNANCY ACT, 1971

[1Oth August, 1971]
An Act to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto
Be it enacted by Parliament in the Twenty-second Year of the Republic of India as follows:
**1. Short title. extent and commencement.-**
(1) This Act may be called the Medical Termination of Pregnancy Act, 1971.
(2) It extends to the whole of India except the State of Jammu and Kashmir.
(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
**3. When pregnancies may be terminated by registered medical practitioners. -**
(1) Not with standing anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not guilty of any offence under that Code or under any other law for the time being in force, if any under that pregnancy is terminated by him in accordance with the provisions of this Act.
(2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner.-
(a) where the length of the pregnancy does not exceed twelve weeks if such medical practitioner is, or
(b) Where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are, of opinion, formed in good faith, that,-
(i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health , or
(ii) there is a substantial risk that If the child were born. it would suffer from such physical or mental abnormalities as to be seriously handicapped.
**Explanation 1.-** Where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.
**Explanation 2.-**Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.
(3) In determining whether the continuance of pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken of the pregnant woman's actual or reasonable foreseeable environment.
(4) (a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years. is a lunatic shall be terminated except with the consent in writing of her guardian.
(b) Save as otherwise provided in CI.(a), no pregnancy shall be terminated except with the consent of the pregnant woman.
**4. Place where pregnancy may be terminated.-**
No termination of pregnancy shall be made in accordance with this Act at any place other than,-
(a) a hospital established or maintained by Government, or
(b) a place for the time being approved f6r the purpose of this Act by Government.
**5. Sections 3 and 4 when not to apply.-**
(1) The provisions of Sec.4 and so much of the provisions of sub-section -(2) of Sec. 3 as relates to the length of the pregnancy and the opinion of not less than two registered medical the termination of a pregnancy by the registered medical practitioner in case where he is of opinion, formed in good

Renaissance Law College

faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman.

(2) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), the termination of a pregnancy by a person who is not a registered medical practitioner shall be an offence punishable under that Code, and that Code shall, to this extent. stand modified.

**Explanation.-**For the Purposes of this section, so much of the Provisions of Cl.
(d) of Sec 2 as relate to the possession, by a registered medical practitioner, of experience or training in gynecology and obstetrics shall not apply.

**6. Power to make rules.-**

(1) 'The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the forgoing power, such rules may provide for all or any of the following matters, namely :

(a) the experience or training, or both, which a registered medical practitioner shall have if he intends to terminate any pregnancy under this Act ; and

(b) such other matters as are required to be or may be, provided by rules made under this Act.

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

**7. Power to make regulations.-**

(1) The State Government may, by regulations,-

(a) require any such opinion as is referred to in sub-section (2) of Sec. 3 to be certified by a registered medical practitioner or practitioners concerned in such form and at such time as be specified in such regulations , and the preservation or disposal of such certificates ;

(b) require any registered medical practitioner, who terminates a pregnancy to give intimation of such termination and such other information relating to the termination as may be specified in such regulations;

(c) prohibit the disclosure, except to such Persons and for such purposes as may be specified in such regulations, of intimations given or information furnished in pursuance of-such regulations.

(3) The intimation given and the information furnished in Pursuance of regulations made by virtue of CI.(b)of sub-section (1) shall be given or furnished, as the case may be, to the Chief Medical Officer of the State.

(4) Any person who willfully contravenes or willfully fails to comply with the requirements of any regulation made under sub-section (1) shall be liable to be punished with fine which may extend to one thousand rupees.

**8. Protection of action taken in good faith.-**

No suit or other legal proceedings shall lie against any registered medical practitioner for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.

********

Renaissance Law College

**KIDNAPPING AND ABDUCTION – NATIONAL PROTECTIONS.**

Kidnapping and abduction are particular types of offences under the law of crime. Under these offences, a person is taken away secretly or forcible without his consent or without the consent of authorised guardian. Under kidnapping a person is kidnapped from lawful custody. Under section 359 of IPC, there are two types of kidnapping :-

1. Kidnapping from India.
2. Kidnapping from lawful guardianship.

Section 360 : defines that kidnapping from India and section 361 defines that kidnapping from lawful guardian ship. The offence of abduction is defined under section 362 of IPC.

1. KIDNAPPING FROM INDIA:

Section 360 says that whoever conveys any person beyond the limit of India without the consent of that person or of any person legally authorised to consent on behalf of that person, is said to kidnap that person from India. Age limit is immaterial. This has two essentials :

(i) Convey any person beyond the limits of India.

(ii) Such conveying must be without the consent of that person or of the person legally authorised to give consent on behalf of that person.

2. KIDNAPPING FROM LAWFUL GUARDIANSHIP: SEC.361

Sec. 361 says that whoever takes or entices any minor under sixteen years of age if a male or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardianship of such minor or person of unsound mind, without the consent of such guardian is said to kidnap such minor or person from lawful guardianship. The word lawful guardian here mans any person lawfully interested with care or custody of such minor or other person.

3. EXCEPTIONS:- There is one exception of this section, this section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith, believes himself to be entitled the lawful custody of such child unless such act is committed for an immoral or unlawful purpose.

Take or entice away :- Take away or entice away means to induce a person for going to another place. The object of this Sec. Is to protect minor children from being reduced ( to corrupt) for improper purpose.

Guadian consent :- The kidnapping must be without the consent of the guardian. The consent may be expressed or implied. Thus, to attract this sec. there must be taking or enticing away any minor or unsound mind person out of lawful guardianship.

ABDUCTION

Section 362 says that whoever by force compels or by any deceitful induces any person to go from any place, is said to abduct that person. This section may read with section 364, 365 and 360.

This section contains two essentials for the offence of abduction :-

1. Forcible compulsion or inducement by deceitful means.
2. The object of such compulsion or inducement must be going of a person from any place. Thus abduction is an offence under sec.362. If by force a person compels or even by fraudulent means induce any other person to go from any place taken is called abduction.

**PUNISHMENT FOR KIDNAPPING UNDER SEC. 363 :**

Whoever kidnaps any person from India or from Lawful guardianship shall be punished with imprisonment or either description for a term which may extend to seven years and shall be liable to fine.

**DIFFERENCE BETWEEN KIDNAPPING AND ABDUCTION:**

| | KIDNAPPING | ABDUCTION |
|---|---|---|
| 1. | It is committed only in respect of A minor under 16 years of age if A male and 18 years of age if a Female, or a person of unsound mind. | It is committed in respect of any person of any age. |
| 2. | In kidnapping consent of the Person enticed is immaterial. | Consent of the person removed, if Freely and voluntarily given, Condones the offence. |
| 3. | In kidnapping the intention of The offender is irrelevant. | In abduction intention is a very Important factor. |
| 4. | It is not a continuing offence. The Offence is completed as soon as The minor is removed from the Custody of his or her guardian. | It is a continuing offence. A person is being abducted both when he is first taken from one Place to and also when he is Removed from one place to Another |

********

Renaissance Law College

## UNIT-V CRUELTY AND VIOLENCE

**CRUELTY**

**Section 498 A of IPC-**Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

**Explanation**

For the purposes of this section, "cruelty" means-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]

Related Cases / Recent Cases / Case Laws

- K Ravi Kumar v State of Karnataka, Criminal Appeal Jurisdiction, Criminal Appeal No. 2494 OF 2014, Supreme Court of India judgement dated November 28, 2014
- K Srinivas v K Sunita, Civil Appeal Jurisdiction, Civil Appeal No 1213 OF 2006, Supreme Court of India judgement dated November 19, 2014

**II) Introduction**

Sometime back, there was a news item in the papers of a young girl who was burnt alive by her father and brother brutally just because she had refused to marry the person chosen by her family. This is the state of affairs of our nation today where countless number of women are being killed in the name of dowry, honour, domestic violence and what not. According to the 2012 statistics by the National Crime Records Bureau, 8233 incidences of dowry deaths were reported under section B of the Indian Penal Code (IPC) and 106527 incidences of cruelty by husband or his relatives under section 498 A of IPC. India's constitution guarantees protection to live a life of dignity and respect to all its citizens, specially the marginalized one's by virtue of Article 15. Also, India has ratified International Conventions like Convention for Elimination of all forms of Discrimination against Women (CEDAW). Hence, India made special provisions for women to address this inequality. Legislations like Sections 113 B, 498A & 304B of the Indian Penal Code, 1860, Dowry Prohibition Act (DPA), Protection of Women against Domestic Violence (PWDVA) address violence against women. These also lay the position that the institutions of marriage and family are not insulated from state interventions, particularly where there is violence against women within such institutions.

**III) Necessity for Section 498A**

During the 1980s, dowry deaths were steadily rising in India. Dowry death is the murder of a young woman; committed by the in-laws, upon non-fulfilment of their coercive demands for money, articles or property, commonly called as dowry. Cases of cruelty by husband and relatives of the husband culminating into suicide/ murder of innocent helpless women though constitute only a small but a gruelling fraction of cases involving cruelty. With the increasing number of dowry deaths in India, need arose to address the matter in an effective way. Organizations across the country pressurized and urged the government to provide legislative protection to women against domestic violence and dowry. The objective was to allow the state to intervene rapidly and prevent the murders of young girls who were unable to meet the dowry demands of their in-laws. With this object, the Government of India amended the Indian Penal Code, 1860 (IPC) by way of the Criminal Law (Second Amendment) Act, 1983 and inserted a new section 498 (A) under Chapter XX-A, *Of Cruelty By Husband Or Relatives Of Husband* on 26th December, 1983. The amendment focuses not only on dowry deaths but also cases of cruelty to married women by their in-laws. Section 498 (A) IPC is the only section in the IPC that recognizes domestic violence against women as a crime.

Renaissance Law College

Subsequent amendments were also made in the Code of Criminal Procedure, 1973 (CrPC) and the Indian Evidence Act, 1972 (IEA) by the same amendment on order to effectively deal with cases of dowry deaths and cruelty to married women by the husband, in laws and relatives.

**IV) Ingredients of Section 498 A**

*"498A. Husband or relative of husband of a woman subjecting her to cruelty–Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.* Explanation.-*For the purpose of this section, "cruelty" means- (a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."* The basic essentials to attract this section are: a) The woman must be married b) She must be subjected to cruelty or harassment; and c) Such cruelty or harassment must have been shown either by husband of the woman or by the relative of her husband A bare glance of the section shows that the word 'cruelty' covers any or all of the following elements: (i) Any 'willful' conduct which is of such a nature as is likely to drive the woman to commit suicide; or (ii) any 'willful' conduct which is likely to cause grave injury to the woman; or (iii) any 'willful' act which is likely to cause danger to life, limb or health whether physical or mental of the woman Also, criminality attached to word 'harassment' is free of 'cruelty' and punishable in the following instances: (i) Where the harassment of the woman is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or (ii) Where the harassment is on account of failure by her or any persons related to her to meet such demand It is evident that neither every cruelty nor harassment has criminal culpability for the purposes of Section 498-A. In cases of physical violence and infliction of injury likely to cause grave injury or danger to life, limb or health, the facts speak for themselves. So, we can see that, this law deals with four types of cruelty: (i) Any conduct that is likely to drive a woman to suicide, (ii) Any conduct which is likely to cause grave injury to the life, limb or health of the woman, (iii)Harassment with the purpose of forcing the woman or her relatives to give some property, or (iv)Harassment because the woman or her relatives are either unable to yield to the demand for more money or do not give some share of the property.

**V) The nature of the offence under Section 498 A is:**

- **Cognizable**: Offences are divided into cognizable and non-cognizable. By law, the police are duty bound to register and investigate a cognizable offence. 498A is a cognizable offence.
- **Non-Bailable**: There are two kinds of offences, bailable and non-bailable. 498A is non bailable. This means that the magistrate has the power to refuse bail and remand a person to judicial or police custody.
- **Non-Compoundable**: A non-compoundable case, e.g. Rape, 498A etc, cannot be withdrawn by the petitioner. The exception is in the state of Andhra Pradesh, where 498A was made compoundable.

Working of Section 498A- Developments

The Supreme Court in *Suvetha v. State By Insp.Of Police & Anr.* held that: Clause (a) deals with aggravated forms of cruelty which cause grave injury. Firstly, wilful conduct of such a grave nature as is likely to drive the woman to commit suicide falls within the ambit of clause (a). The second limb of clause (a) lays down that willful conduct which causes grave injury or danger to life, limb or health (whether mental or physical) of the woman is to be regarded as 'cruelty'. Dowry related harassment is within clause (b) of the Explanation. When the FIR coupled with the statement of the victim woman discloses cruelty of grave nature falling within clause (a), the police officer has to act

Renaissance Law College

swiftly and promptly especially if there is evidence of physical violence. In the first instance, proper medical aid and the assistance of counsellors shall be provided to the aggrieved woman and the process of investigation should start without any loss of time. A punishment extending to 3 years and fine has been prescribed. The expression 'cruelty' has been defined in wide terms so as to include inflicting physical or mental harm to the body or health of the woman and indulging in acts of harassment with a view to coerce her or her relations to meet any unlawful demand for any property or valuable security. Harassment for dowry falls within the sweep of latter limb of the section. Creating a situation driving the woman to commit suicide is also one of the ingredients of 'cruelty'. The offence under S. 498A is cognizable, non-compoundable and non-bailable. In the case of *Ramesh Dalaji Godad v. Sate of Gujrat*; the Supreme Court held that to prove that cruelty was caused under Explanation a) of S.498A IPC it is not important to show or put forth that the woman was beaten up- abusing her verbally, denying her conjugal rights or even not speaking to her properly would fall into the ambit of mental cruelty. The Supreme Court in another case[3] stated that "Consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb, or health, whether mental or physical of the woman is required to be established in order to bring home the application of Section 498A IPC".

**VI) Related provisions-**

To properly understand the working of this section, following provisions also need to be discussed:

1. ***Section 113-B of the Indian Evidence Act, 1872***

"113-B: Presumption as to dowry death-When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death. Explanation-For the purpose of this section `dowry death' shall have the same meaning as in Section have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860)." This is a presumptive section which got inserted in the Evidence Act by Criminal Law (Second Amendment) Act, 1983 side by side the insertion of Section 498A to the IPC. The period of operation of this section is seven years. Hence, under this section a presumption arises when a woman committed suicide within a period of seven years from the date of marriage.

2. ***Section 306 of the Indian Penal Code***

"306: Abetment of suicide.—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine." The Supreme Court *in Sushil Kumar Sharma v. Union of India And Ors* said that: The basic difference between the two Section i.e. Section 306 and Section 498A is that of intention. Under the latter, Cruelty committed by the husband or his relations drag the women concerned to commit suicide, while under the former provision suicide is abetted and intended. Consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical of the woman is required to be established in order to bring home the application of Section 498A IPC. Cruelty has been defined in the explanation for the purpose of Section 498A. It is to be noted that Sections 304-B and 498A, IPC cannot be held to be mutually inclusive. These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the Sections and that has to be proved. The explanation to Section 498A gives the meaning of `cruelty'. In Section 304- Be there is no such explanation about the meaning of `cruelty'. But having regard to common background to these offences it has to be taken that the meaning of `cruelty' or `harassment' is the same as prescribed in the Explanation to Section 498A under which `cruelty' by itself amounts to an offence. In another case of *State of Himachal Pradesh v. Nikku Ram and Ors*., while interpreting the provisions of Section 304-B, 498-A, 306 and 324 IPC the Apex Court observed that harassment to constitute cruelty under

Section 498A explanation (b) must have nexus with the demand of dowry and if this is missing the case will fall beyond the scope of Section 498A. Pre-condition for attracting the provisions of Section 498A is the demand and if the demand is missing and the cruelty is for the sake of giving torture to the woman without any nexus with the demand then such a cruelty will not be covered under explanation (b) under Section 498A IPC. It may be a cruelty under Hindu Marriage Act as held by Supreme Court in the case of *Shobha Rani v. Madhukar Reddi,* Apex Court observed that cruelty under Section 498A IPC is distinct from the cruelty under the Hindu Marriage Act which entitles the wife to get a decree for dissolution of marriage.

VII) Development of Section 498 A

The section was enacted with the aim to protect women from dowry harassment and domestic violence. However, more recently, its misuse has become an everyday affair. The Supreme Court, hence, in the landmark case of *Sushil Kumar Sharma v. Union of India* condemned this section as 'Legal Terrorism'. Since cruelty is a ground for divorce under section 13 (1) (ia) of Hindu marriage Act, 1955. Wives often use this provision in order to threaten husbands. In another case of *Preeti Gupta v. State of Jharkhand*, the Supreme Court observed that "serious relook of the entire provision is warranted by the Legislature. It is a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over-implication is also reflected in a very large number of cases". Even an innocent person accused under S.498A IPC, does not get the chance of getting quick justice owing to the offence being non-bailable and cognizable. We well know that 'justice delayed is justice denied', hence came the 243rd report of Law commission on section 498A of IPC laying down various changes ought to be made in order to remove the flaws of this section and its misuse. A strict law in this regard needs to be passed by the parliament in order to punish those who act malafidely and tries to misguide the system of law. Law commission in its 243rd report opined that the Section along with its allied Cr.PC provisions shall not act as an instrument of oppression and counter-harassment.

********

**DOMESTIC VIOLENCE AGAINST WOMEN**

**Domestic violence in India** includes any form of violence suffered by a person from a biological relative, but typically is the violence suffered by a woman by male members of her family or relatives. According to a National Family and Health Survey in 2005, total lifetime prevalence of domestic violence was 33.5% and 8.5% for sexual violence among women aged 15-49. The instance of violence was reported to be lowest among Buddhist and Jain women, and highest among Muslim women in India. A 2014 study in The Lancet reports that the reported sexual violence rate in India is among the lowest in the world, the large population of India means that the violence affects 27·5 million over women their lifetime.

The 2012 National Crime Records Bureau report of India states a reported crime rate of 46 per 100,000, rape rate of 2 per 100,000, dowry homicide rate of 0.7 per 100,000 and the rate of domestic cruelty by husband or his relatives as 5.9 per 100,000These reported rates are significantly smaller than the reported intimate partner domestic violence rates in many countries, such as the United States (590 per 100,000) and reported homicide (6.2 per 100,000 globally), crime and rape incidence rates per 100,000 women for most nations tracked by the United Nations.

Domestic violence is currently defined in India by the Protection of Women from Domestic Violence Act of 2005. According to Section 3 of the Act, "any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it:

Renaissance Law College

1. harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
2. harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
3. has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or
4. otherwise injures or causes harm, whether physical or mental, to the aggrieved person."

Jammu and Kashmir, which has its own laws, has enacted in 2010 the Jammu and Kashmir Protection of Women from Domestic Violence Act, 2010.

**2006 NFHS survey report on domestic sexual violence**

The National Family Health Survey of India in 2006 estimated the lifetime prevalence of sexual violence among women aged 15-49, including instances of marital rape in India. The study included in its definition of "sexual violence" all instances of a woman experiencing her husband "physically forcing her to have sexual intercourse with him even when she did not want to; and, forcing her to perform any sexual acts she did not want to". The study sampled 83,703 women nationwide, and determined that 8.5% of women in the 15-49 age group had experienced sexual violence in their lifetime. This figure includes all forms of forced sexual activity by husband on wife, during their married life, but not recognized as marital rape by Indian law.

The 2006 NFHS study reported sexual violence to be lowest against women in the 15-19 age group, and urban women reporting 6% lifetime prevalence rate of sexual violence, while 10% of rural women reported experiencing sexual violence in their lifetime.[14] Women with ten years of education experienced sharply less sexual violence, compared to women with less education.

By religion, Buddhist and Jain women reported the lowest prevalence of sexual violence in their lifetime (3 and 4 percent), while 5% of Sikh women, 6% of Christian women and 8% of Hindu women reported experiencing sexual violence. The highest prevalence rate (11%) of lifetime sexual violence was reported by Muslim women.

**Forms**

It includes rape, sexual assault, insult to modesty, kidnapping, abduction, cruelty by intimate partner or relatives, trafficking, persecution for dowry, dowry deaths, indecency, and all other crimes listed in Indian Penal Code.

**Physical violence, Emotional abuse, Sexual assault, Honor killing, Dowry-related abuse and deaths, Religion, Dynamics, Patriarchal social structure, Dowry system Under-reporting of domestic violence.**

**Other-**Other factors outside culture that demonstrate differences in domestic violence prevalence and gender disparities in India include socioeconomic class, educational level, and family structure beyond the patriarchal framework.

**Effects**

Women suffer many types of physical and emotional abuse as a result of illegal actions taken within the private home, and those who have experienced some form of domestic violence tend to have greater long-term mental disorders and drug dependencies than those who do not. In India, reducing domestic violence is imperative not only from an ethical and human rights perspective but also because of obvious instrumental and immediate health benefits that would be gained from such reduction.

**Health**

Serious health problems often result from physical, emotional, and sexual forms of domestic violence. Physical health outcomes include: Injury (from lacerations to fractures and internal organs

injury), Unwanted Pregnancy, Gynaecological problems, STDs including HIV, Miscarriage, Pelvic inflammatory disease, Chronic pelvic pain, Headaches, Permanent disabilities, Asthma, Irritable bowel syndrome, Self-injurious behaviours (smoking, unprotected sex) Mental health effects can include depression, fear, anxiety, low self-esteem, sexual dysfunction, eating disorders, obsessive-compulsive disorder, or post traumatic stress disorder. Fatal effects can include suicide, homicide, maternal mortality, or HIV/AIDS.

Negative public health consequences are also strongly associated with domestic violence. Social and economic costs have been identified as direct results of these public-health consequences, and it is argued that these justify state action to act in the interest of the public to reconcile these costs (specifically including costs such as worker earnings and productivity, public healthcare, and costs associated with the criminal justice system).

**Women's agency**

The act of domestic violence towards women is a human rights violation as well as an illegal act under Indian law. It is therefore widely considered a threat to women's agency through any lens, and there is a growing recognition in many Indian regions that the nation can reach a higher potential through obtaining greater social and economic capital than by reducing women's participation in society. Domestic violence is one of the most significant determinants of this denial. Greater gender equality through greater women's agency cannot be achieved if basic health needs are not being met and if cultural biases that allow for domestic violence in India persist.

**ender discrimination under law**

The Domestic Violence Act of 2005 has been used to prosecute domestic violence cases, but activists state that it discriminates against men. In Karnataka, for example, the act cannot be used against women. The Delhi High Court clarified that the Act could also be used to prosecute women.

**Consequences of Violence Against Women**

*Battered women have tendency to remain quiet, agonised and emotionally disturbed after the occurrence of the torment. A psychological set back and trauma because of domestic violence affects women's productivity in all forms of life. The suicide case of such victimised women is also a deadly consequence and the number of such cases is increasing.

*A working Indian woman may drop out from work place because of the ill-treatment at home or office, she may lose her inefficiency in work. Her health may deteriorate if she is not well physically and mentally. Some women leave their home immediately after first few atrocious attacks and try to become self-dependent. Their survival becomes difficult and painful when they have to work hard for earning two meals a day. Many such women come under rescue of women welfare organizations like Women Welfare Association of India (WWAI), Affus Woman Welfare Association (AWWA) and Woman's Emancipation and Development Trust (WEDT). Some of them who leave their homes are forcefully involved in women trafficking and pornography. This results in acquiring a higher risk of becoming a drug addict and suffering from HIV/AIDS. Some of course do it by their choice.

*One of the severe effects of domestic violence against women is its effect on her children. It is nature's phenomenon that a child generally has a greater attachment towards the mother for she is the one who gives birth. As long as the violence subjected to the mother is hidden from the child, he/she may behave normally at home. The day when mother's grief and suffering is revealed, a child may become upset about the happening deeply. Children may not even comprehend the severity of the problem. They may turn silent, reserved and express solace to the mother. When the violence against women is openly done in front of them since their childhood, it may have a deeper and gruesome impact in their mindset. They get used to such happenings at home, and have a tendency to reciprocate the same in their lives. It's common in especially in rural homes in India which are victimised by the evil of domestic violence.

*In cases of Intimate Partner Violence (IPV), violence against women leads them to maintain a distance from their partner. Their sexual life is affected adversely. Many of them file for divorce and seek separation which again affects the life of children. Some continue to be exploited in lack of proper awareness of human rights and laws of the constitution.

**“PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005”**

**[No. 43 OF 2005]**

[September 13, 2005]

An Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto

Be it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:-

Prefatory Note-Statement of Objects and Reasons.-Domestic violence is undoubtedly a human right issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General Recommendation No. XII (1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family.

2. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under Section 498-A of the Indian Penal Code. The civil law does not however address this phenomenon in its entirety.

3. It is, therefore, proposed to enact a law keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.

4. The Bill, inter alia, seeks to provide for the following:-

(i) It covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage or adoption. In addition, relationships with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to legal protection under the proposed legislation. However, whereas the Bill enables the wife or the female living in a relationship in the nature of marriage to file a complaint under the proposed enactment against any relative of the husband or the male partner, it does not enable any female relative of the husband or the male partner to file a complaint against the wife or the female partner.

(ii) It defines the expression “domestic violence” to include actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

(iii) It provides for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate.

(iv) It empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence.

(v) It provides for appointment of Protection Officers and registration of non-governmental organisations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe shelter, etc.

5. The Bill seeks to achieve the above objects. The notes on clauses explain the various provisions contained in the Bill.

——————–

**1. Received the assent of the President on September 13, 2005 and published in the Gazette of India Extra, Part II, section 1 dated 14th September 2005, pp. 1-12, No. 49**

(1) This Act may be called the Protection of Women from Domestic Violence Act, 2005.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date1 as the Central Government may, by notification in the Official Gazette, appoint.

**2. Definitions.**

In this Act, unless the context otherwise requires,—

(a) "aggrieved person" 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 by the respondent;

(b) "child" means any person below the age of eighteen years and includes any adopted, step or foster child;

(c) "compensation order" means an order granted in terms of section 22;

(d) "custody order" means an order granted in terms of section 21;

(e) "domestic incident report" means a report made in the prescribed form on receipt of a complaint of domestic violence from an aggrieved person;

(f) "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;

(g) "domestic violence" has the same meaning as assigned to it in section 3;

(h) "dowry" shall have the same meaning as assigned to it in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961);

(i) "Magistrate" means the Judicial Magistrate of the first class, or as the case may be, the Metropolitan Magistrate, exercising jurisdiction under the Code of Criminal Procedure, 1973 (2 of 1974) in the area where the aggrieved person resides temporarily or otherwise or the respondent resides or the domestic violence is alleged to have taken place;

(j) "medical facility" means such facility as may be notified by the State Government to be a medical facility for the purposes of this Act;

(k) "monetary relief" means the compensation which the Magistrate may order the respondent to pay to the aggrieved person, at any stage during the hearing of an application seeking any relief under this Act, to meet the expenses incurred and the losses suffered by the aggrieved person as a result of the domestic violence;

(l) "notification" means a notification published in the Official Gazette and the expression "notified" shall be construed accordingly;

(m) "prescribed" means prescribed by rules made under this Act;

(n) "Protection Officer" means an officer appointed by the State Government under sub-section (1) of section 8;

(o) "protection order" means an order made in terms of section 18;

(p) "residence order" means an order granted in terms of sub-section (1) of section 19;

(q) "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner.

(r) "service provider" means an entity registered under sub-section (1) of section 10;

(s) "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.

(t) "shelter home" means any shelter home as may be notified by the State Government to be a shelter home for the purposes of this Act.

**3. Definition of domestic violence.—**

For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it—

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

**Explanation I.**—For the purposes of this section,—

(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) "verbal and emotional abuse" includes—

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) "economic abuse" includes—

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

**Explanation II.**—For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration.

**4. Information to Protection Officer and exclusion of liability of informant.—**

(1) Any person who has reason to believe that an act of domestic violence has been, or is being, or is likely to be committed, may give information about it to the concerned Protection Officer.

(2) No liability, civil or criminal, shall be incurred by any person for giving in good faith of information for the purpose of sub-section (1).

**5. Duties of police officers, service providers and Magistrate.—**

A police officer, Protection Officer, service provider or Magistrate who has received a complaint of domestic violence or is otherwise present at the place of an incident of domestic violence or when the incident of domestic violence is reported to him, shall inform the aggrieved person—

(a) of her right to make an application for obtaining a relief by way of a protection order, an order for monetary relief, a custody order, a residence order, a compensation order or more than one such order under this Act;

(b) of the availability of services of service providers;

(c) of the availability of services of the Protection Officers;

(d) of her right to free legal services under the Legal Services Authorities Act, 1987 (39 of 1987);

(e) of her right to file a complaint under section 498A of the Indian Penal Code (45 of 1860), wherever relevant:

Provided that nothing in this Act shall be construed in any manner as to relieve a police officer from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.

**6. Duties of shelter homes.—**

If an aggrieved person or on her behalf a Protection Officer or a service provider requests the person in charge of a shelter home to provide shelter to her, such person in charge of the shelter home shall provide shelter to the aggrieved person in the shelter home.

**7. Duties of medical facilities.—**

If an aggrieved person or, on her behalf a Protection Officer or a service provider requests the person in charge of a medical facility to provide any medical aid to her, such person in charge of the medical facility shall provide medical aid to the aggrieved person in the medical facility.

**8. Appointment of Protection Officers.—**

(1) The State Government shall, by notification, appoint such number of Protection Officers in each district as it may consider necessary and shall also notify the area or areas within which a Protection Officer shall exercise the powers and perform the duties conferred on him by or under this Act.

(2) The Protection Officers shall as far as possible be women and shall possess such qualifications and experience as may be prescribed.

(3) The terms and conditions of service of the Protection Officer and the other officers subordinate to him shall be such as may be prescribed.

**9. Duties and functions of Protection Officers.—**

(1) It shall be the duty of the Protection Officer—

(a) to assist the Magistrate in the discharge of his functions under this Act;

(b) to make a domestic incident report to the Magistrate, in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence and forward copies thereof to the police officer in charge of the police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service providers in that area;

(c) to make an application in such form and in such manner as may be prescribed to the Magistrate, if the aggrieved person so desires, claiming relief for issuance of a protection order;
(d) to ensure that the aggrieved person is provided legal aid under the Legal Services Authorities Act, 1987 (39 of 1987) and make available free of cost the prescribed form in which a complaint is to be made;
(e) to maintain a list of all service providers providing legal aid or counselling, shelter homes and medical facilities in a local area within the jurisdiction of the Magistrate;
(f) to make available a safe shelter home, if the aggrieved person so requires and forward a copy of his report of having lodged the aggrieved person in a shelter home to the police station and the Magistrate having jurisdiction in the area where the shelter home is situated;
(g) to get the aggrieved person medically examined, if she has sustained bodily injuries and forward a copy of the medical report to the police station and the Magistrate having jurisdiction in the area where the domestic violence is alleged to have been taken place;
(h) to ensure that the order for monetary relief under section 20 is complied with and executed, in accordance with the procedure prescribed under the Code of Criminal Procedure, 1973 (2 of 1974);
(i) to perform such other duties as may be prescribed.
(2) The Protection Officer shall be under the control and supervision of the Magistrate, and shall perform the duties imposed on him by the Magistrate and the Government by, or under, this Act.

**10. Service Providers.—**

(1) Subject to such rules as may be made in this behalf, any voluntary association registered under the Societies Registration Act, 1860 (21 of 1860) or a company registered under the Companies Act, 1956 (1 of 1956) or any other law for the time being in force with the objective of protecting the rights and interests of women by any lawful means including providing of legal aid, medical, financial or other assistance shall register itself with the State Government as a service provider for the purposes of this Act.
(2) A service provider registered under sub-section (1) shall have the power to—
(a) record the domestic incident report in the prescribed form if the aggrieved person so desires and forward a copy thereof to the Magistrate and the Protection Officer having jurisdiction in the area where the domestic violence took place;
(b) get the aggrieved person medically examined and forward a copy of the medical report to the Protection Officer and the police station within the local limits of which the domestic violence took place;
(c) ensure that the aggrieved person is provided shelter in a shelter home, if she so requires and forward a report of the lodging of the aggrieved person in the shelter home to the police station within the local limits of which the domestic violence took place.
(3) No suit, prosecution or other legal proceeding shall lie against any service provider or any member of the service provider who is, or who is deemed to be, acting or purporting to act under this Act, for anything which is in good faith done or intended to be done in the exercise of powers or discharge of functions under this Act towards the prevention of the commission of domestic violence.

**11. Duties of Government.—**

The Central Government and every State Government, shall take all measures to ensure that—
(a) the provisions of this Act are given wide publicity through public media including the television, radio and the print media at regular intervals;
(b) the Central Government and State Government officers including the police officers and the members of the judicial services are given periodic sensitization and awareness training on the issues addressed by this Act;

(c) effective co-ordination between the services provided by concerned Ministries and Departments dealing with law, home affairs including law and order, health and human resources to address issues of domestic violence is established and periodical review of the same is conducted;
(d) protocols for the various Ministries concerned with the delivery of services to women under this Act including the courts are prepared and put in place.

**12. Application to Magistrate.—**

(1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:
Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.

(5) The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.

**13. Service of notice.—**

(1) A notice of the date of hearing fixed under section 12 shall be given by the Magistrate to the Protection Officer, who shall get it served by such means as may be prescribed on the respondent, and on any other person, as directed by the Magistrate within a maximum period of two days or such further reasonable time as may be allowed by the Magistrate from the date of its receipt.

(2) A declaration of service of notice made by the Protection Officer in such form as may be prescribed shall be the proof that such notice was served upon the respondent and on any other person as directed by the Magistrate unless the contrary is proved.

**14. Counseling.—**

(1) The Magistrate may, at any stage of the proceedings under this Act, direct the respondent or the aggrieved person, either singly or jointly, to undergo counselling with any member of a service provider who possess such qualifications and experience in counseling as may be prescribed.

(2) Where the Magistrate has issued any direction under sub-section (1), he shall fix the next date of hearing of the case within a period not exceeding two months.

**15. Assistance of welfare expert.—**

In any proceeding under this Act, the Magistrate may secure the services of such person, preferably a woman, whether related to the aggrieved person or not, including a person engaged in promoting family welfare as he thinks fit, for the purpose of assisting him in discharging his functions.

**16. Proceedings to be held in camera.—**

If the Magistrate considers that the circumstances of the case so warrant, and if either party to the proceedings so desires, he may conduct the proceedings under this Act in camera.

**17. Right to reside in a shared household.—**

(1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.
(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.

**18. Protection orders.—**

The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from—
(a) committing any act of domestic violence;
(b) aiding or abetting in the commission of acts of domestic violence;
(c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;
(d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;
(e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;
(f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;
(g) committing any other act as specified in the protection order.

**19. Residence orders.—**

(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order—
(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;
(b) directing the respondent to remove himself from the shared household;
(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;
(d) restraining the respondent from alienating or disposing of the shared household or encumbering the same;
(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or
(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:
Provided that no order under clause (b) shall be passed against any person who is a woman.
(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.
(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.
(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.
(5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the court may also pass an order directing the officer-in-charge of the nearest police station to give protection to

the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

(7) The Magistrate may direct the officer-in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.

(8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to.

**20. Monetary reliefs.—**

(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include but is not limited to—

(a) the loss of earnings;

(b) the medical expenses;

(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

(4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in-charge of the police station within the local limits of whose jurisdiction the respondent resides.

(5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

**21. Custody orders.—**

Notwithstanding anything contained in any other law for the time being in force, the Magistrate may, at any stage of hearing of the application for protection order or for any other relief under this Act grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent:

Provided that if the Magistrate is of the opinion that any visit of the respondent may be harmful to the interests of the child or children, the Magistrate shall refuse to allow such visit.

**22. Compensation orders.—**

In addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent.

**23. Power to grant interim and ex parte orders.—**

(1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.
(2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.

**24. Court to give copies of order free of cost.—**

The Magistrate shall, in all cases where he has passed any order under this Act, order that a copy of such order, shall be given free of cost, to the parties to the application, the police officer-in-charge of the police station in the jurisdiction of which the Magistrate has been approached, and any service provider located within the local limits of the jurisdiction of the court and if any service provider has registered a domestic incident report, to that service provider.

**25. Duration and alteration of orders.—**

(1) A protection order made under section 18 shall be in force till the aggrieved person applies for discharge.
(2) If the Magistrate, on receipt of an application from the aggrieved person or the respondent, is satisfied that there is a change in the circumstances requiring alteration, modification or revocation of any order made under this Act, he may, for reasons to be recorded in writing pass such order, as he may deem appropriate.

**26. Relief in other suits and legal proceedings.—**

(1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.
(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.
(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

**27. Jurisdiction.—**

(1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which—
(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or
(b) the respondent resides or carries on business or is employed; or
(c) the cause of action has arisen,
shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.
(2) Any order made this Act shall be enforceable throughout India.

**Section 28 – Procedure.**

(1) Save as otherwise provided in this Act, all proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and offences under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).
(2) Nothing in sub-section (1) shall prevent the court from laying down its own procedure for disposal of an application under section 12 or under sub-section (2) of section 23.

**29- Appeal.**

There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later.

**30. Protection Officers and members of service providers to be public servants.—**

The Protection Officers and members of service providers, while acting or purporting to act in pursuance of any of the provisions of this Act or any rules or orders made thereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

**31. Penalty for breach of protection order by respondent.—**

(1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

(2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.

(3) While framing charges under sub-section (1), the Magistrates may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions.

**32. Cognizance and proof.—**

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offence under sub-section (1) of section 31 shall be cognizable and non-bailable.

(2) Upon the sole testimony of the aggrieved person, the court may conclude that an offence under sub-section (1) of section 31 has been committed by the accused.

**33. Penalty for not discharging duty by Protection Officer.—**

If any Protection Officer fails or refuses to discharges his duties as directed by the Magistrate in the protection order without any sufficient cause, he shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

**34. Cognizance of offence committed by Protection Officer.**

No prosecution or other legal proceeding shall lie against the Protection Officer unless a complaint is filed with the previous sanction of the State Government or an officer authorised by it in this behalf.

**35. Protection of action taken in good faith.—**

No suit, prosecution or other legal proceeding shall lie against the Protection Officer for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act or any rule or order made thereunder.

**36. Act not in derogation of any other law.—**

The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.

**37. Power of Central Government to make rules.—**

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

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the qualifications and experience which a Protection Officer shall possess under sub-section (2) of section 8;

(b) the terms and conditions of service of the Protection Officers and the other officers subordinate to him, under sub-section (3) of section 8;

(c) the form and manner in which a domestic incident report may be made under clause (b) of sub-section (1) of section 9;
(d) the form and the manner in which an application for protection order may be made to the Magistrate under clause (c) of sub-section (1) of section 9;
(e) the form in which a complaint is to be filed under clause (d) of sub-section (1) of section 9;
(f) the other duties to be performed by the Protection Officer under clause of sub-section (1) of section 9;
(g) the rules regulating registration of service providers under sub-section (1) of section 10;
(h) the form in which an application under sub-section (1) of section 12 seeking reliefs under this Act may be made and the particulars which such application shall contain under sub-section (3) of that section;
(i) the means of serving notices under sub-section (1) of section 13;
(j) the form of declaration of service of notice to be made by the Protection Officer under sub-section (2) of section 13;
(k) the qualifications and experience in counselling which a member of the service provider shall possess under sub-section (1) of section 14;
(l) the form in which an affidavit may be filed by the aggrieved person under sub-section (2) of section 23;
(m) any other matter which has to be, or may be, prescribed.
(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

********