

A Comprehensive Guide to Women's Legal Rights

Prepared by

Majlis Legal Centre

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Legal Training Workshop

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Introduction

This comprehensive guide to women's legal rights has been prepared to give a basic exposure to students and staff of IIT Kanpur. It forms the resource material for conducting a 3-day workshop on legal rights and addresses a wide spectrum of concerns.

It is meant to help the participants of the workshop to negotiate their rights and understand the remedies available to them when rights are violated. Though most women hesitate to approach courts or the police to enforce their rights, knowledge of law is essential to understand the boundaries of law and to negotiate for securing the rights with the background of law. Written in a simple and lucid language, using a question and answer format, it deals with the entire gamut of rights ranging from the Constitutional scheme of rights and moves on to specific domains such as rights within marriage, violence against women, health and safety, rights under labour laws and other related statutes.

The emphasis is not on exposing the participants to complicated and confusing legal provisions contained in various statutes. Instead the focus is on interpreting the legal provisions in a manner to protect rights and provide simple solutions to the problems faced by women.

The aim of writing this book is to spread legal awareness and accurate information about legal rights to women across class and social hierarchies. It fits into the broader framework of Majlis of spreading legal awareness and making rights accessible.

Flavia Agnes,

Founder, Majlis

31st October, 2018

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1. RIGHTS AND REMEDIES

1. Constitutional Scheme

Introduction

The Constitution is the basic document which governs our rights and lays down the structure by which we are governed. Dr. B.R. Ambedkar is referred to as the Father of the Indian Constitution as he headed the Constituent Assembly and played an important part is including individual and political rights against the state as well as group rights / socio-cultural rights of the marginalized section.

Our constitution is the largest and most detailed in the world. It reflects the Democratic set up of Government.

The Preamble is the soul of the Constitution. It includes the purpose, objectives and policies underlying provisions, in the Constitution. Important words include- Sovereign, Socialist, Secular, Democratic, Republic and Justice, Equality and Fraternity.

The Constitution contains a set of fundamental principles by which our nation is governed. Every law enacted by the government has to be in conformity with the Constitution. It spells out the Fundamental Rights and Duties of citizens.

Directive Principles of State Policy and Universal Adult Franchise are two important parts of the Constitution.

The Constitution creates checks and balances through Separation of Powers and the power of Judicial Review. It stipulates a combination of Federal and Unitary style of government. It provides for an independent Judiciary and Election Machinery. The Constitution offers Single Citizenship to citizens. Emergency Provisions are detailed for extra ordinary situations

Fundamental Rights

Article 14	Equality before law and equal protection of the law Exceptions: Doctrine of Classification
Article 15	No discrimination against any citizen on grounds of religion, race, caste, sex, place of birth. Exceptions: 15 (3) The State can make special provision for women and children
Article 16	Equality of opportunity of all citizens in matters relating to employment to any office under the State
Article 17	Untouchability is abolished and its practice in any form is forbidden
Article 18	Abolition of Titles
Article 19	Freedom - 1a freedom of speech, 1b. Assemble without arms, 1c form association 1d freedom of movement 1e to reside or settle in any part of India. 1g. practice any profession or carry on any occupation
Article 20	Protection on arrest and detention
Article 21	Right to Life and Personal Liberty. It includes right to clean and wholesome environment
Article 22	Rights of arrested Person
Article 23	Right against exploitation. Traffic in human and forced labour
Article 24	Prohibition of employment of children in factories

Directive Principles of State Policy

Article 38 - Promotion of welfare of the people
Article 39 and 39A - Equal Justice and free Legal Aid
Article 40 - Village Panchayat
Article 41 - Right to Work, Educate and Public Assistance
Article 42- Just and human condition of work and maternity
Article 43- Wages of worker and participation in management
Article 44- Uniform Civil Code
Article 45- Free compulsory education for children
Article 46 - Education, economic interest of SC, ST and weaker sections
Article 47- Level of nutrition, standard of living, public health

Article 48 - Agriculture and Animal Husbandry
Article 48A - Improve our environment and safeguard forest
Article 49- Monuments, Places and Objects of National Importance
Article 50 - Separation of Judiciary from Executive
Article 51 - International Peace and Security

What is the Difference between Fundamental Rights and Directive Principles?

If a fundamental right is violated, a citizen who is affected or anyone else in public interest can approach a higher court and get it struck down. The Directive Principles are not binding on the state, but these principles must reflect in all state policies. However, if these are violated, there is no right to go to court and get it strike down.

Which are the important provisions which protect dignity of women?

Article 21 which deals with right to life has been expanded to include the right to Life with Dignity. This provision has been invoked to safeguard the rights of women such as right to divorce, to live a life free from violence and the right to safe abortions.

Article 51A of the Constitution lays down fundamental duties of all citizens. It stipulates that all citizens have a duty to promote harmony and to renounce practices which are derogatory to the dignity of women.

Formal Equality and Substantive Equality

One of the main pillars of the Indian Constitution is the principle of equality. Article 14 guarantees equality before law and equal protection of law to all its citizens. Articles 15 (1) and 16 (2) expand this principle further and prohibit discrimination on the basis of religion, race, caste, sex or place of birth. This ensures that there is no discrimination between men and women, upper castes and lower castes, rich and

poor and all will be treated as equals before the law and will be provided equal protection of law.

Hence, if any law is passed or any action is taken to prevent women from taking up employment in government or public sector undertaking, such law or action by the concerned authority can be struck down by the Supreme Court or a High Court, as being against the Constitutional provisions. Similarly paying women lower salaries for doing the same work even when they are qualified for it, is discriminatory and against the Constitutional guarantee of equality. Similarly not employing dalits or Muslims in certain categories of government jobs would also amount to discrimination.

But most important of all within the scheme of equality are Articles 15(3) (4) and 16 (3) (4) which help to further strengthen the concept of equality by permitting the state to make special provisions for securing the rights of the marginalized sections (women, children, schedule castes and schedule tribes) in order to help them to overcome the discrimination they have suffered for many centuries and to help them to become equal to others. This is called "positive discrimination".

This has helped the state to enact special laws for women and children such as the provisions for maintenance of women and children, protection against domestic and sexual violence, the Maternity Benefits Act, special protection for women under all labour laws, a special law to prevent sexual harassment at workplace, or reservations for women, scheduled castes or scheduled tribes for jobs and in elected bodies. A similarly a law to prevent atrocities against scheduled castes and scheduled tribes does not violate the provision of equality as it is meant to give additional protection to certain backward sections. These are all beneficial legislations meant to improve the status of marginalized people.

Therefore: while discrimination against women has been prohibited, there is nothing to prevent the state from making laws to provide them with extra facilities or for taking precautions to prevent their exploitation or abuse.

Separation of Powers

1. **Legislative:** The Parliament of India is the supreme legislative body. Composed of the President of India and the houses- the Rajya Sabha (Council of States) and the Lok Sabha (House of the People).

2. **Executive:** The Prime Minister of India, as addressed in the Constitution of India, is the chief of the government, chief adviser to the President of India, head of the Council of Ministers and the leader of the majority party in the parliament and leads the executive branch of the Government of India.

3. **Judiciary:** There are various levels of judiciary in India – different types of courts. The Supreme Court of India at the top, followed by High Courts of respective states with district judges sitting in District Courts and Magistrates of Second Class and Civil Judge (Junior Division) at the bottom.

Checks and Balances

The three bodies mentioned in the Constitution act in harmony with one and other. The Legislature has the power to create and change the law, the Judiciary has the power to interpret the law and to ensure that it is within the Constitutional framework and the Executive has the power to put the law into action.

Power of Judicial Review

The judiciary has the power to interpret the Constitution and to review any law passed by the legislature and executive order and to declare it void if it finds that the same is in conflict with the Constitution.

This power is given by Article 32 to the Supreme Court and by Articles 226 and 227 to the High Courts.

Public Interest Litigation and *Habeas Corpus*

What is Public Interest Litigation (PIL)? How can it be used to protect the rights of marginalized people?

Our constitution gives all citizens the right to approach the court when their fundamental rights are violated. But in many instances, the person or class of people whose rights are violated, due to their poverty, illiteracy and socially disadvantaged position cannot approach the court to explain their plight as they lack the knowledge and resources to do so. Many a times social organizations (a local NGO etc.) or a journalist may take the case and write a letter to the Supreme Court or file a petition in the Supreme Court on behalf of the person whose rights are violated. This procedure of allowing any other person or organization to bring the fact of gross violation of rights of a disadvantaged group of persons or an individual is called Public Interest Litigation. The court verifies if it is done for personal gains or to advance a genuine cause. Sometimes the courts have also acted on the basis of a newspaper report and have asked the government to explain the situation. If any violations are noticed by the superior court, strict action will be taken.

What is *Habeas Corpus*? How does this remedy protect the rights of people?

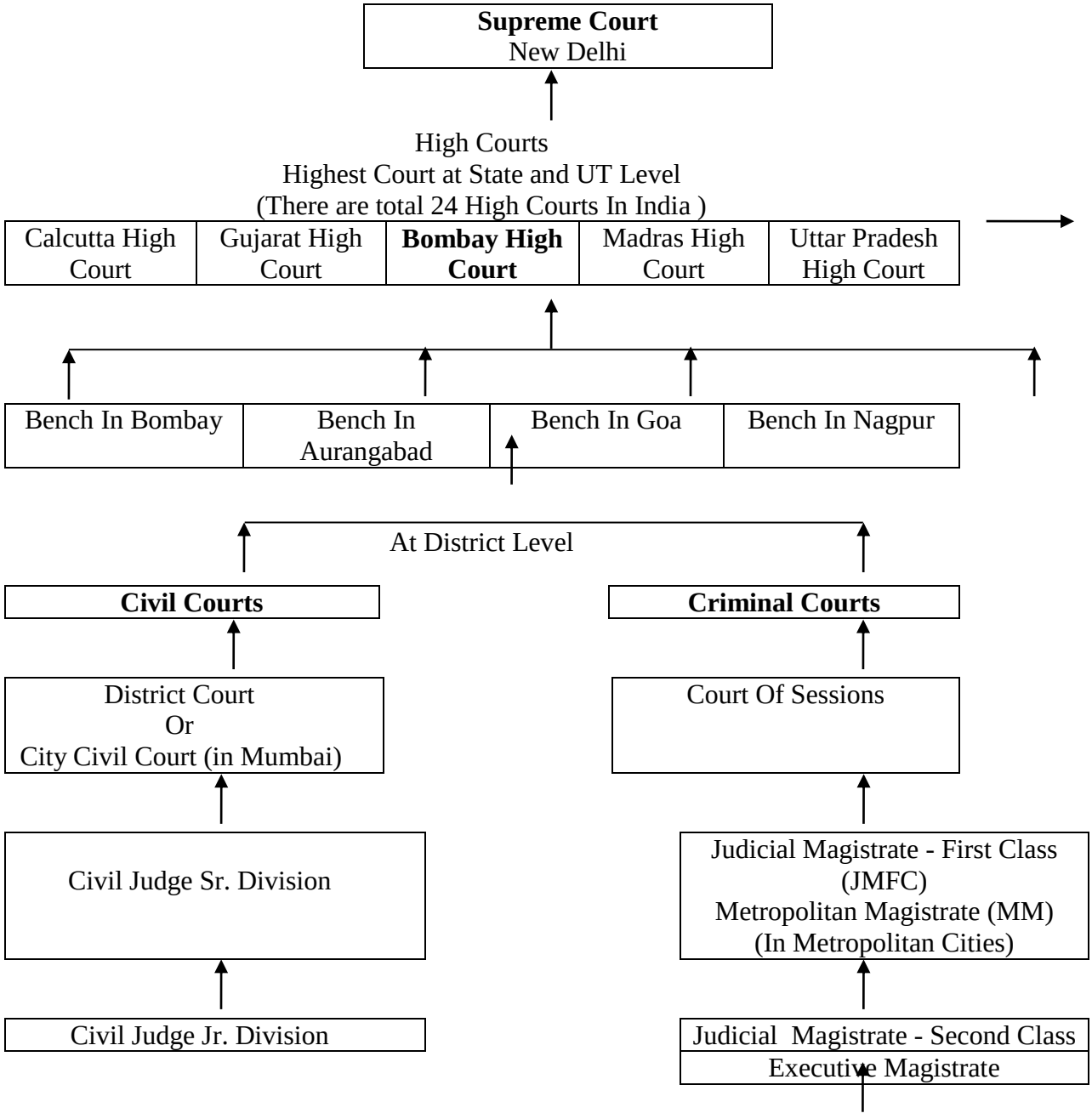
Many a times when a person is arrested by police, the family gets no further news about the person and sometimes the person dies in police custody due to torture. So when details of a person who is arrested by police are not known, the relatives or friends can approach the High Court or the Supreme Court seeking the intervention of the court to direct the police to produce the missing person in court. The exact meaning of these Latin words is "produce the body" and the actual meaning is to produce the person physically in court (or his body if he has been killed in police custody). This is a very powerful weapon in the hands of the people against police atrocities.

2. Hierarchy of Courts

How are rights enforced?

The rights located in the Constitution and in various laws are enforced by our courts. The courts interpret the laws and apply them to the facts of each case. The Constitution lays down the hierarchy of courts and also the role and functions of each court. The lower courts are divided into civil and criminal. Appeal from a lower court lies with court immediately above it. Most states have a High Court. Appeal from High Courts lie with the Supreme Court which is the highest court in India.

What is the hierarchy of our courts - The following diagram shows the hierarchy of the courts in our country.



3. Explanation of some Legal Terms in Criminal Law

The criminal proceedings start with the filing of a complaint. The power of the police officer to investigate the crime is based on whether the offence is of a serious type or a lesser serious type. Accordingly the offences are categorized as **bailable and non-bailable, cognizable and non-cognizable** and **compoundable and non-compoundable.**

Difference between a bailable and a non-bailable Offence: If a person is arrested for a bailable offence, the police can immediately release him on personal surety. He/she does not have to be produced in court. Non-bailable offences are of a more serious type, which invoke higher punishment (imprisonment for a period of three or more years). In such cases the police does not have the power to grant bail. Serious crimes such as rape, murder, dowry death, cruelty to wives, etc. come within its purview. However, even in these cases, when the accused person is produced before the magistrate, he/she has a right to file an application for bail, and the magistrate has the power to grant him/her bail. If he/she does not have a lawyer the person is entitled to legal aid for the purpose of making this application.

If the person is apprehensive that he will be arrested for a criminal offence, he/she file an application for anticipatory bail in advance and avoid the arrest for a limited period of time. If anticipatory bail is granted, even if an FIR is registered, the police will investigate the matter without arresting the accused.

Difference between Cognizable and Non-cognizable

Offences are also further categorized as cognizable and non-cognizable. The following table provides the difference between these two types of offences

Category	**Cognizable**	**Non-cognizable**
Seriousness of offence	When it is a serious offence	When it is a less serious offence
Police Investigation	Police will investigation	Police can investigate only by the order of a Magistrate

Register for Recording	FIR Register	NC Register
Document copy you will get	FIR (First Information Report)	NC complaint
Arrest	Accused / accomplice will be arrested without a warrant. They can then apply for bail. Bail will be granted at the discretion of the magistrate / judge, depending upon the gravity of the crime, the chances of intimidating the witnesses or the type of influence the accused person has in the area.	Accused / accomplice will not be arrested. Police may call the accused and warn him.
Outcome	The Police will investigate and collect evidence. If there is sufficient evidence, they will file Charge Sheet and trial will commence.	It creates evidence of the harassment the woman is facing.
Jurisdiction	In a cognizable offence the jurisdiction of the police station is immaterial to get a complaint registered under the FIR register.	In order to get a non-cognizable offence registered it is essential to ensure that the crime has taken within the jurisdiction of the police station.

Offences such as rape, sexual harassment of women or violating their modesty, dowry death, abetment to suicide, cruelty to wives, causing grievous hurt, etc. are all cognizable offences, where the police are bound to register the FIR and start the investigations.

If an offence is non-cognizable, then the police cannot start the investigations. The person would have to approach the magistrate court and seek directions for the police to start the investigation. Simple assault, abuse, etc. come within this category.

The main reason why an NC complaint is filed is to create a record (proof) of violence which will help the person in case the person has to file a criminal complaint later. For instance, if the husband is abusive or threatens to throw the wife out of the house, she can approach the police station and register an NC complaint. Later if she want to file for divorce on the ground of cruelty, the NC complaint will provide the proof that the woman was also subjected to cruelty and abuse earlier.

Compoundable and Non-compoundable Offences

The criminal law permits some minor offences to be "compromised" or "settled" between the parties. A detailed list of these is provided under Section 320 of Cr,.PC. These are termed as "compoundable" offences. However, major offences such as rape, murder, decoity, dowry death, cruelty to wives, etc. cannot be compromised between the parties. Only the higher courts, i.e. the concerned High Court or the Supreme Court has the auhority to compound these offences. Hence these are termed as "non-compoundable" offences.

II. RIGHTS WITHIN MARRIAGE

4. Matrimonial Rights of Women

Introduction

In India, upon marriage, women leave their parental homes and live in the home provided by the husband or by his family members. This home is called her matrimonial home. (In fact traditionally it is believed that after marriage a woman has rights only in her husband's home and not in her parental home, though legally the position is now changed and today women have a right of residence in both parental as well as the matrimonial home.)

The contract of marriage creates a legal obligation upon the husband and his family members to provide a shelter and maintenance to the wife. In our society, a woman is perceived as a home maker, in addition to all other roles she may be required to perform. So while women have the burden of managing the house, cooking for the family, raising the children and tending to the sick, their chances of earning an adequate income to support themselves or even the chances of retaining their pre-marriage jobs are constrained. Hence when economic support is withdrawn due to a matrimonial conflict, most women are rendered destitute. The situation becomes dismal when they have the additional burden of caring for their children. Women's right to shelter and maintenance is located within this conceptual framework.

There are various legal provisions which are meant to safeguard the rights of the wife in her husband's home and to ensure that she can live there with dignity and safety. The husband and his family cannot deprive her of these rights. They cannot harass a wife for dowry and inflict violence upon her. If a situation of domestic or sexual violence arises, the wife can avail of legal remedies under criminal as well as civil laws. The wife also has a right to file for divorce and opt out of the marriage. She also has a right to custody of her children.

> *National Insurance Co. Ltd. vs. Minor Deepika* (2009) 6 MLJ 1005 Madras High Court
>
> "The UNICEF in 2000 noted that 'unpaid care work is the foundation of human experience'. The care work is that which is done by a woman as a mother. The woman herself will be the last person to give this role an economic value. But when we are evaluating the loss suffered by the child because her mother died in an accident, we must give a monetary value to the

work of a caregiver, for after all, the home is the basic unit on which our civilized society rests...".

Note: All women, across religions and regions are entitled to the rights discussed below, unless specifically mentioned otherwise.

a. Right to live in the Matrimonial Home

What is a matrimonial home?

When a woman is married, she acquires the right to live in her husband's home. This home becomes the woman's matrimonial home. Even if it is not owned by her husband and is in the name of his parents or siblings, she still has a right to reside in this house and she cannot be thrown out of this house. A widow cannot be thrown out from the house in which she was living with her husband, after her husband's death. It does not matter if the house was not owned by her husband.

The term used in the ***Protection of Women from Domestic Violence Act*** (Domestic Violence Act or DV Act, for short) is "s***hared household***"

A **shared household** is where the woman resides or has resided (i.e. has left or has been thrown out) with the man in a domestic relationship [S. 2(s) of the DV Act].

It does not matter that the shared household is not owned by either the woman or the man i.e. the house is on lease / license or joint family property. This right is protected under S. 17 of the Domestic Violence Act. If she is thrown out the court can pass an order to put her back in the home. The court can also ask the respondent to provide alternative accommodation if the woman does not want to return to a violent home.

How can a woman protect this right?

In order to protect this right, a woman must first believe that by virtue of her marriage, she has acquired a right to reside in her husband's home and she cannot be dispossessed from this home. Most often, women lose their right to their matrimonial home because they themselves do not believe that they have a right to reside there. Even when they are asked to leave the home, they must believe that they have a right

to reside in the home and this right can be protected by law. This is the first step. Only when women believe this, the right can be protected by law.

If there is an apprehension that she will be thrown out of this house, she must approach a magistrate's court under the provisions of the Domestic Violence Act and obtain an order of injunction to restrain her husband or his family members from dispossessing her (throwing her out) from her matrimonial home **(Ss.17, 19 of DV Act)**. This will secure her right of residence in this house. In the event that the husband or his family members violate this order they will be liable for punishment under the Domestic Violence Act. **(S.31 of DV Act)**.

A woman will be deprived of this right only when an alternate accommodation of a permanent nature is provided for her. Until such time, her right to reside in the matrimonial home will be protected by the court.

Caution: The term 'right of residence' cannot be construed to mean ownership rights or right to a share in the property. Women's right to property is discussed under a separate section. In India we do not have a right to matrimonial property which is owned by the husband or his family members. However, despite this limitation, the right of residence is an important right for most women, and this right is protected under the Domestic Violence Act.

b. Right to claim Maintenance for self and children

What is Maintenance?

The law imposes a legal obligation on the husband to provide maintenance to his wife. If he fails to provide for her, the wife can approach the court for an order of maintenance.

The term "maintenance" is the amount required for a decent living, including cost of food, shelter (if the same is not provided by the husband), travel, requirements of health care, educational, extra-curricular and recreational expenses of children, and other sundry expenses.

Who can claim maintenance?

Under our law, the wife, minor children, major children who suffer from physical or mental disabilities, unmarried major daughters and aged parents are entitled to maintenance as they are unable to maintain themselves.

Can the wife claim maintenance for her children along with herself?

Yes, the wife can claim maintenance for herself and her children. If the children are living separately along with their mother, they also have an independent right to claim maintenance from their father.

If a woman is working, can she still claim maintenance?

Even if a woman is working, she can claim maintenance, if her husband's income is substantially more than her income and she is unable to maintain herself or her children from that income. If the husband and wife are earning the same amount, she cannot claim maintenance from him. But in such a situation, women can claim maintenance for their children.

Can a woman who is living with her husband claim maintenance?

Yes, if her husband is not providing her maintenance while she is living in the same house with him, she has a right to claim maintenance.

Can women claim maintenance during divorce?

Yes. If a woman files for divorce, in the same petition, she can also claim interim and permanent maintenance for herself and for her children. Along with this she also needs to make a separate application for interim maintenance which can be taken up at the initial stage and decided so she will start getting some maintenance while her petition for divorce is pending in the court.

If her husband has filed for divorce, as soon as she received the papers, she can immediately file an application for interim maintenance which will be heard and decided first as a preliminary issue.

Is a woman entitled to claim maintenance after her divorce?

Yes. Even after divorce, if she has not received a lump sum amount as alimony, which is adequate to meet her expenses, she can claim maintenance from her husband until she remarries.

If during litigation, the husband agrees to take the wife back will she still be entitled to maintenance?

Usually, in order to prevent an order of maintenance being passed against him, the husband may volunteer to take the wife back or may even file proceedings for "restitution of conjugal rights". If a woman is keen to reconcile with her husband, she may accept this offer, but if there is a history of violence, then she must exercise

caution before accepting it, because once an order is passed dismissing the petition on the ground that the parties have reconciled, it will be difficult for the woman to start the proceedings all over again, as it would be deemed that she has condoned (or forgiven) the husband his earlier acts of cruelty.

Hence, it is advisable to stipulate certain conditions or even keep the proceedings pending in the court for a few months, to ensure that the husband is sincere in his offer of reconciliation and is not doing so only to avoid payment of maintenance, before the earlier petition is withdrawn.

What is the criterion to decide the amount of maintenance?

The amount of maintenance awarded should be sufficient to meet the regular household expenses, children's educational, medical, recreational expenses, to pay the rent of the dwelling house, etc. It should be sufficient to meet the basic needs of a person. Here the standard of life that a person is used to is also taken into consideration. For instance if the husband is very rich and the wife is used to that life style she will be given a higher amount than a person earning a modest income where the wife is used to a modest life. Hence it is important to collect evidence to prove the husband's lifestyle and income such as type of house, area of the house, type of car or two wheeler, property details, trips to foreign countries etc.

The exact amount is decided as per the income of the husband and the needs of the wife and children.

Tips: Many a times, husbands try to show that their earnings are far less than their actual income by showing old salary slips or by hiding their additional income. So it is necessary for the wife to get all the information before approaching the court, and collect the necessary details – recent salary record, bank statements, income from business or from family property, income tax returns etc.

Is it necessary to file for divorce while filing for maintenance?

No. If the woman does not wish to file for divorce, she can make an application only for maintenance. This can be done under the provisions of S.125 Cr.PC or under the Domestic Violence Act without filing for divorce.

5. Rights of Mothers to Custody of Children

Introduction

Right of custody of their children is a very important concern for women facing domestic abuse. Due to the fear of losing custody of their children, many women continue to live in violent relationships and are afraid of taking legal recourse to end the violence. Since earlier the father was considered as the "natural guardian" there is a belief prevalent in society that the children belong to the husband and his family and the woman has no claim over them and that her role is confined to only taking care of them. When women leave their matrimonial home, they are often warned that they will not be able to get custody of their children and further, they will not be even able to meet them. But over years, due to sustained struggle from the women's movement, the law is changed and today the woman is considered as the joint natural guardian of her children and also considered as the primary care taker of her children. The courts also consider that she will be the best suited person to take care of her children. In this section, women's right to custody and the ways in which this right can be secured is explained.

a. Situations where custody of children becomes contentious and precautions which women must take

What right do women, as mothers, have over their children?

A wife, along with her husband, has the right of custody and guardianship over her children. As the primary care taker of her children, she is responsible for their care and protection. Hence she is entitled to their custody and guardianship.

When does the issue of custody of children arise?

The issue of custody of children arises if due to a dispute between the spouses, if either of the parties or both, wish to live separately from each other.

When she is separating from her husband, how can the woman retain the custody of her children?

If she is separating from her husband, the best way to retain custody of the children is for the wife to take the children along with her when she is leaving her matrimonial home. If the children are already residing with the mother, usually interim custody will be retained with the mother, even if the husband approaches the court for custody of the children.

It is important for any one advising the woman (e.g. lawyer, NGO member, counselor etc.) to give women accurate advise regarding this, to avoid unwarranted anxiety about the issue of securing the legal custody of their children later during court proceedings.

Why don't women usually take the children along with them?

This is because women think that if they take their children with them, the husband may file a police complaint against them that they have kidnapped the children. However, the police have no right to do this as she is the mother and hence she is also the natural guardian of her children. A case of kidnapping cannot be filed against a natural guardian.

Is it possible for the woman to take custody of her child after she has left the home?

If a woman h*as not taken her children with her when she is leaving the house, it is possible to take the custody later. This can be done with the help of a member of a local Mahila Mandal / NGO, a social worker, or the local police, soon after she has left the home. If the child left behind is very young and cannot live without the love and care of the mother, or if the woman is breast feeding her child, this must be done at the earliest. If there is a long gap after the woman has left the home, it will not be possible to take custody in this manner, as the child may get used to living with the father and his family and may not wish to come with the mother. In such a situation it is advisable to approach the court for appropriate orders.

Caution: If the child is attached to the husband or his mother and does not wish to come with the mother, it will not be possible to take the custody of the child. Always remember that the child's wishes and wellbeing are the most important factors in matters of custody.

Can the husband file a police complaint against her for kidnapping the child?

No, if the child wants to be with the mother and the mother wishes to have the child with her, the husband cannot file a case of kidnapping against her as she is the natural guardian of the child. However, only the mother alone has a right to take custody of her child. No one else can do it on her behalf, but a support person or a social worker can help her or accompany her. At times the police may refuse to help the woman and may insist on a court order.

The Principle, *the best interest of the child is paramount*

What is the main principle which the courts rely upon while deciding the matter of the custody of children?

The only principle which is applied while deciding the custody of children - ***the best interest of the child is important.*** **(**This principle enshrined in the United Nations Declaration of the Rights of the Child is relied upon by Indian Courts while determining the parental rights for custody of children.) This means the custody must be given to the person who is best suited to take care of the child or to the parent who is the primary caretaker of the child. In the Indian setting, usually this person is the mother.

What factors are considered by the court while deciding the 'best interests of the child'?

The love and care given to the child is the most important factor. The general growth of the child, the child's well-being, progress in school, child's own preference, the atmosphere in the home - these are some of the factors which are considered while deciding the 'best interests of the child'.

Generally, whoever has physical custody of the child at the point of approaching the court usually gets to retain the custody. However, this rule is not rigid and if the situation so demands, custody can be changed from one parent to the other, as per the court order. Usually, if the child is older, while changing the custody, the court will ascertain the views of the child.

Caution: If a woman is facing domestic violence and she is desirous of leaving her matrimonial home to escape from violence, she must be given correct advice that she has a right to take her children along with her, and that she does not require a court order to do this.

Is it true that the law considers the father as the 'natural guardian' of the children and hence his right over the children as superior to that of the mother?

No this is not true. This was the belief earlier. Within the patriarchal family system, the father was considered as the 'head of the family' and the 'natural guardian' of the children. Both the wife and the children belonged to the husband; but gradually this belief changed. Now our law considers both father and mother as equal partners in marriage and also considers them as equal guardians of their children. The father's rights over the child are not superior that of the mother. However, traditional values still prevail and many people still endorse this anti women view and legally incorrect view.

Is it true that the mother's rights over the custody of a child under five years is superior to that of the father?

Yes, this is true. This is because a young child needs the love and care of the mother and hence the law considers that the mother is better equipped to look after a child of tender age. The child may also be breast fed by the mother. Depriving the child of the mother's love and care may cause great trauma and anxiety to the child. In such cases, if the mother is thrown out, the police can help the mother to get immediate custody of the child, to save the child from being subjected to such trauma.

If the mother is employed, will she still be given custody of the child?

This is a general misconception that prevails in society. People feel that if the woman is employed, she will not get custody of the child as she has no time to look after the child and the father's mother may be more suitable to look after the child. But this is not true. The right of the mother is superior to that of the husband's mother. A woman will not be deprived of the custody of the child just because she is working or has a demanding job.

If the father is very affluent and if the mother does not have sufficient means to bring up the child, will she lose custody of the child?

Even if the father is very affluent, a mother will not be deprived of the custody of her child only on this ground. It is usual in our society that the father has better financial resources in most cases, and the woman may have been a housewife all her life. She may not even have the requisite qualifications to earn an adequate income. But this factor alone cannot be taken into consideration while deciding the issue of custody of the child. The one who is able to provide the best love and care for the child will be the only deciding factor. At times people feel that if the mother is unemployed she may not get custody as she does not have the financial resources to bring up the child. However, since the legal obligation to provide for the child is primarily with the father, the fact that the mother does not have sufficient means to provide for the child will not be considered as a major obstacle while awarding her the custody of her child.

So, the bottom line is that it does not matter if the woman is employed or unemployed.

If the husband accuses the wife of committing adultery, will she be entitled to claim custody of her children?

Accusing the wife of adultery or of loose moral character is the usual ploy adopted by the husband or his lawyer to deprive the wife of her right to custody of children

because they are under a misconception that a woman who has committed adultery will not be entitled to custody of her children. But the factual position is that the issue of custody of child will be decided only on who is the main care taker of the child, what kind of environment the mother is able to provide for the well-being of the child and not on whether she has committed any matrimonial fault. Since this ploy is used routinely by lawyers, courts do not give it serious consideration. However, many women get traumatized when they find that such baseless allegations are leveled against them. It is best to ignore these allegations and focus on the core issues regarding custody.

If the mother remarries after her divorce will she lose the custody of her child?

No, if she has been looking after the child well, she will not lose custody when she remarries. When the court decides on the matter of custody, the court will look only at the best interests of the child. The child's wishes will be taken into consideration. If the child is happy with the mother, the mother will not be deprived of the custody of her child upon her remarriage. Even the local (or caste) panchayat or the jamaat cannot force the mother to give up the custody of her child upon her remarriage. If this happens, she must not comply with the order, and instead immediately must file an application for custody under the Domestic Violence Act and protect her rights.

Rights of a non-custodial Parent

If custody of the child is given to one parent, what right does the non-custodial parent have?

It is important that the child has the love and care of both the parents. It is necessary for the healthy upbringing of a child. Hence if one parent is given custody, the other parent will be given the right of access. This means if the child is living with the mother, the child may meet the father on a regular basis i.e. once a week, on a Sunday or once a fortnight during the weekend, etc. Similarly during the holidays, the father will be given some days to spend with the child. Sometimes the holidays are divided equally between the parents. Usually the court issues strict guidelines regarding the timings for access, which both parties must strictly comply with.

What care should the parents take so that the child grows up in a healthy environment?

The parent who has custody of the child must look after the child's physical and emotional needs well so that the child's personality develops well. The educational needs of the child are also an important factor and the parent who has custody must ensure that all educational needs of the child are met according to the standard of life enjoyed by the parents.

6. Protection under the Domestic Violence Act

What is "domestic violence" under the *Protection of Women from Domestic Violence Act*?

The term "domestic violence" under Domestic Violence Act includes physical, emotional, sexual and economic violence **(S.3)**. The following is an explanation of these terms.

Physical violence - beating, kicking, slapping, etc

Emotional violence – abusing, using derogative words, demanding dowry, humiliating her because she does not have children or has only girl children, or because she is not good looking or she has not brought enough dowry, etc or threatening to throw her out of the house or threatening that she will not be provided any money for her or her children's maintenance, etc.

Sexual violence forcing the wife to have sex when she is not in a position to have sex (e.g. during menstruation or soon after delivery/ abortion), forcing her to watch pornography, filming her nude and then circulating these video clips, threatening to bring other women into the house to have sex with them in her presence, forcing the wife to have sex with other men, etc.

Economic abuse means neglecting to maintain the wife, not giving her money for her maintenance, throwing her out of the house and not providing any shelter or maintenance, not retuning her dowry, stridhan or jewellery etc.

The husband has to pay for the woman's regular household expenses and for the children's expenses. If he does not pay her regular maintenance or abandons the wife, it would amount to domestic violence under this Act.

What rights does this Act give women?

The Act gives women the right to live a life free from violence. It protects the right to shelter in the following ways :-

Right to an order of protection: If there is a threat of violence, the woman can get an order of protection, restraining the husband and his family members from committing violence on her. Even if she is living in her own father's house and if she is afraid that the husband may assault her or come to her place of work and

humiliate her, she can ask for a "stop order" (injunction) to restrain him from coming anywhere near her **(S.18)**.

Right to live in the same house: The husband, father-in-law or even the father of a woman / girl cannot throw her out from the house where she is living or has lived **(S.19)**.

Right to claim Maintenance: As explained above, the woman has a right to claim maintenance under this Act **(S.20)**

Right to custody: No one can take away the children from the mother, not even the father. If such a threat is there, she can go to court and get an order to protect her right. If her child is taken away forcibly from her custody she can approach the police or the court to get her child back (**S.21)**.

Right to claim compensation: If the woman has suffered any harm or injury due to domestic violence she has a right to claim compensation for it under the Act **(S.22)**.

Note: The woman has the right to take with her all her belongings i.e. clothes, jewelry, valuables, money etc. This is her ***stridhan***. She can take help to retrieve her belongings from a local NGO, the police or the court. The remedy is also available under **S.19 (8)** of the D.V.Act.

If her husband or in laws do not return her belongings (stridhan) at the time of leaving the home, she can also file a police complaint under section 406 of the IPC.

Against whom can the woman get the orders under this Act?

A woman can get orders under this Act against her husband, father-in-law, brother-in- law etc. She can also get orders against the female relatives of the husband such as mother-in-law or sister-in-law, if they have contributed to causing domestic violence to the woman. Every woman can claim relief under this Act, irrespective of their religion, including Muslims as the Act stipulates that any woman can claim reliefs under this Act.

The Act defines the **Aggrieved Person** in very broad terms as "Any woman/child facing domestic violence from an adult male with whom she shares a domestic relationship and is living/has lived within a shared household **[S.2(a)]**.

Who should a woman approach to file a complaint?

The woman can approach the Protection Officer, a private lawyer, a legal aid lawyer or a local NGO to help her in approaching the court to protect her rights. She can

also go to a police station and the police will refer her to the Protection Officer in the area. If she is injured she can go to a hospital and the hospital will help her to reach the police or the protection officer of the area.

What advice should be given to the woman before she files her complaint?

The woman must be advised that when she is leaving the house where she has lived with her husband or in laws, she must take with her, her belongings and valuables, her children, her documents such as her educational certificates, copy of other documents such as birth or marriage certificate, caste certificate, husband's bank pass book, or bank statement, contract of employment, etc.

Caution: The woman must collect evidence before leaving or filing the complaint to support her statements. This could include medical reports of injuries, earlier complaints to police, etc.

Also documents such as house papers to prove ownership of house, ration card, 7/12 extract as proof of land ownership or income from the land, any other proof to show husband's income etc, are important to prove the husband's income.

Who is a 'Protection Officer' under the Act?

A 'Protection Officer' (PO) is a government officer designated or appointed by the Ministry of Women and Child Development, who is entrusted with the duty of providing all kinds of support to the woman including helping her to approach the court, taking her to a shelter home if she needs shelter, taking her to a hospital if she needs medical help or helping her to access other government schemes to help women.

The total number of Protection Officers in Maharashtra are around 670. This number includes the officers who are designated as Protection Officers as well as those specially appointed as Protection Officers.

How to approach a court for an order?

Each time a woman is beaten and she approaches the Protection Officer, a Domestic Incident Report (**DIR-Form I**) is prepared. This provides a proof of domestic violence.

If the woman has gone directly to a private lawyer, then the lawyer will prepare a detailed application and also an application for interim reliefs. In such case there is no need to approach a protection officer and obtain a DIR.

If she has any evidence then that can also be mentioned (for instance if earlier a police complaint was filed by her or if she has gone to the hospital when she was injured due to the beating, etc.) All proofs of husband's income can be attached if the woman is seeking an order of maintenance under the DV Act.

In the end, it must be clearly stated as to what type of remedies she is seeking (e.g. protection, maintenance, residence, custody of child, etc.)

How long will it take to obtain an Order?

This Act is supposed to provide quick reliefs. The court dates are given at short intervals. It is possible to get an interim order within a month of filing the proceedings. Though the final orders are supposed to be given within 60 days, due to technical difficulties and workload of the court, this does not usually happen. But the final order can be expected within one year of filing and an interim order can be expected at least within two months.

III. Violence Against Women & Children

7. Dowry Harassment and Cruelty Against Wives

What is the meaning of Dowry?

Section 2 of the ***Dowry Prohibition Act*** (DPA), 1961 defines "dowry" as any cash, jewelry, valuables, or property which the husband or his family members demand from the bride's parents at the time of marriage, as a consideration of marriage. This term also includes demands made subsequent to the marriage from the bride or her parents.

Is demanding dowry an offence?

Yes, it is a serious offence under the ***Dowry Prohibition Act***, 1961. It is punishable with a minimum of five years' imprisonment and a fine of Rs.15, 000/- or equal to the value of the dowry demanded or paid.

Who can register a complaint under this Act?

The woman herself, her parents, the police, Dowry Prohibition Officer appointed under S.8-B of the Act, or even a non-governmental organization on behalf of the woman, can register a complaint.

Which are the Provisions Related to Dowry Related Violence in the Indian Penal Code (IPC)?

After the anti-dowry in early 1980 several women's organisations demanded stringent punishment for husbands and their family members if they caused any dowry related violence to a newly married bride. If a woman died in her matrimonial home within seven years under unnatural or suspicious circumstanced, a special legal provision was incorporated which is termed as **S.304B – Dowry Death**. If a

woman committed suicide due to harassment for dowry within seven years of her marriage, **S.306 of IPC-Abetment to Suicide** can be invoked. If the woman was harassed for dowry or was treated with cruelty, **S.498A** can be invoked. In this case, there is no limitation of seven years after marriage. If her stridhan is not returned to her, **S.406** can be invoked, along with S.498A. The following table indicates the punishment that can be awarded under these sections.

IPC Sections	**Description of Offence**	**Maximum Punishment**	**Minimum Punishment**
S.304-B	Dowry Death	Life Imprisonment	7 years
S.306	Abetment to Suicide	10 Years	-----
S.498-A	Cruelty to Wives	3 Years	-----
S.406	Criminal Misappropriation of Trust	3 Years	-----

Despite widespread campaigns against dowry and the stringent laws, why has the menace grown?

In our society the social status awarded to the girl's family is much lower than that awarded to the groom's family. Since the need to get the daughters married is overwhelming, the bride's family is not able to refuse the demand for dowry at the time of marriage. They fear that if they don't give dowry, their daughters won't get married. So the parents of the bride prefer to meet the demands of the groom's family in order to get their daughters married, as having an unmarried daughter at home is considered a social stigma.

What is the remedy?

The problem is not with the gifts which are given to the bride from her parents or from her husband's family. The problem is that the woman does not have control

over these items and they area considered as the property of the husband and his family. This attitude must be changed. Girls must be advised that the gifts given at the time of marriage are her exclusive property and if she has been forced to leave the matrimonial home due to domestic violence, she has a right to take these with her.

What precautionary measures must be taken at the time of marriage?

The girl's parents must take the following precautions at the time of their daughter's marriage to secure her future:

- The girl and her family members must refuse the marriage proposal from a groom or his family members if they make demands for dowry at the time of marriage negotiations.
- The parents are free to give gifts to their daughter at the time of marriage out of love and affection for her. The gifts given by relatives, friends and even by the husband or his relatives belong exclusively to the bride, and constitutes her stridhan. A list of these gifts received at the time of marriage must be made and the bride, the groom and their parents must sign this document and it must be kept safely with the girl's family or a trusted friend, so that there is no dispute regarding the gifts received as stridhan later.
- If after the marriage is arranged, valuables or cash is demanded as dowry or gifts, the marriage preparations must be stopped and a complaint under the Dowry Prohibition Act must be immediately be registered. (See the later section regarding property rights of women for a further discussion on this issue.)
- Rather than cash gifts, relatives must be encouraged to give cheques in favour of the girl at the time of marriage and this should be deposited either in her own separate account or in a joint account in the name of the bride and the groom.
- All valuables and jewelry which belongs to the bride must be kept in a locker which is in her exclusive name or which is in the joint names of herself and the groom, which she has the right to operate.

- If after marriage the girl is harassed for more dowry, she must communicate this to her parents through letters or emails. The parents of the girl may meet the groom and his family members to sort out the differences and if they cannot be resolved, the girl must be given a choice to return to her parents' home.
- In the event that the bride is thrown out of her matrimonial home, she must take with her all her jewelry and valuables.
- In case this is not possible, at the time of leaving or soon thereafter, she must lodge a complaint to the police mentioning the fact of harassment for dowry and also give the police a list of valuables that are left behind in the husband's home. The police can register a case under the Dowry Prohibition Act as well as under S.498A and S.406 of IPC and help the girl to immediately retrieve her belongings and valuables from the husband's residence. (These IPC provisions are discussed later in this section.)
- If at this stage no compromise is possible the girl can also initiate proceedings under the Domestic Violence Act for her civil rights such as maintenance, residence, return of belongings etc.

What is Stridhan?

The gifts given to the bride out of love and affection by her parents or relatives constitute her stridhan. The gifts given to the bride by her husband and/or his relatives also constitute her stridhan. The term "Stridhan" means a woman's property and she has exclusive control over it. Even if it is kept with her husband or his parents, when a woman demands it, it must be given back to her.

How can a woman claim her Stridhan if it is in the possession of her husband or in-laws?

In many families, the stridhan property is kept in the custody of the mother-in-law or the husband. If they refuse to give it back to her, when she demands, or when she is leaving the matrimonial home, it is an offence under **S.406 of IPC - *Criminal Misappropriation of Trust***. If the woman lodges a complaint with the police, the

police will immediately call the husband / his family members to the police station and request them to return the jewelry and valuables. If they refuse, the police will file a case under S.406 of IPC and arrest them and also get an order to search and seize the valuables from the premises or bank lockers etc.

Criminal complaint against husband and/or in-laws for causing cruelty

What is cruelty to a wife under the Criminal Law?

Section 498A of IPC defines cruelty as follows: If a husband or his relatives, harass a woman for dowry, or cause any physical or mental harassment which causes harm to her life, limb or sanity, it amounts to cruelty.

Is it a serious offence?

Yes. It is a serious offence. Though the maximum punishment is only three years, the offence is cognizable, non-bailable and non-compoundable. The police have the power of immediate arrest, even without a court warrant. This causes a great deal of humiliation to the husband and his family members. Once filed, the complaint cannot be withdrawn easily. It can only be quashed by the High Court. Once a complaint under this section is filed, it is difficult to reconcile the marriage.

Can this section be used to address general physical and mental cruelty inflicted on a married woman?

Yes. This section can be used for dowry related harassment as well as for any physical or emotional harassment caused to the wife as it can be seen from the definition of this provision.

Section 498-A: Husband or relatives of husband of a woman subject her to cruelty. - 'Whoever, being husband or the relative of the husband of a woman,

subjects such women 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 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 heath, 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 in on account of failure by her or any person related to her to meet such a demand.

What are the problems faced by women to register cases under this Section?

Usually the police refuse to register cases under this section unless specific allegations of dowry demands are included in the complaint. But now slowly this misconception is changing. But even now, the police do not register the case straight away. The couple is first sent for counseling, and the police only registers the complaint if the dispute is not resolved.

How can cruelty be proved?

Cruelty can be proved in various ways such as complaints to the police, medical records, letters written to her parents by the girl, phone calls, phone messages, statements of friends or neighbours, etc.

Is forced sex in marriage (marital rape) within the purview of this section?

Yes, forced sex amounts to sexual violence and is included within the term, "cruelty". So forced sex will come within the purview of this section and if there are any such complaints of this nature, the police must immediately file the complaint and arrest the husband. (Though S.498A does not specifically define sexual violence as cruelty, but uses broader general term as 'any physical or mental harassment which causes harm to her life, limb or sanity', rape / sexual violence would come within its scope.)

8. Rape & Sexual Offences Under IPC

(As Amended by the Criminal Law Amendment Act, 2013)

Mathura, the Catalyst of the anti-rape campaign in India

Mathura, a 16-year-old poor, orphan, illiterate tribal girl, was raped by two policemen within a police compound in Desai Ganj, a small village in Chandrapur District of Maharashtra. She was brought to the police station in the evening of 26 March 1972, on a complaint filed by her own brother that she had eloped with her lover. At 10.00 pm at night, while her relatives were waiting outside, after the interrogation, two policemen on duty, Tukaram and Ganpat, took her to a toilet within the compound of the police station and raped her. When the relatives called out to her, she came out in a distorted state with a torn saree and informed them that the policemen had raped her. Hearing the commotion, people gathered and due to their pressure a case of rape was registered. The medical report revealed that there were no marks of injury on her body and that the vagina admitted two fingers easily, which implied that she was 'habituated to sexual intercourse'. Her age was stated as being between 14 and 16 years.

The sessions judge, Chandrapur, on 1 June, 1974 acquitted the policemen on the ground that since there were no marks of injury, Mathura must have consented. He labeled her a "shocking liar" whose evidence was "filled with falsehood". The judge concluded that though sexual intercourse with the policemen was proved, there was a 'world of difference between "sexual intercourse and rape".

In appeal, based on the same evidence, the Nagpur Bench of the Bombay High Court reversed the judgment and convicted the accused to rigorous imprisonment for five

years and held that "passive or helpless surrender induced by threats or fear cannot be equated with 'free consent". However, in appeal, the Supreme Court, in September, 1978, reversed this judgment, upheld the judgment of the Sessions Court and acquitted the accused on the ground that absence of injuries implies consent.

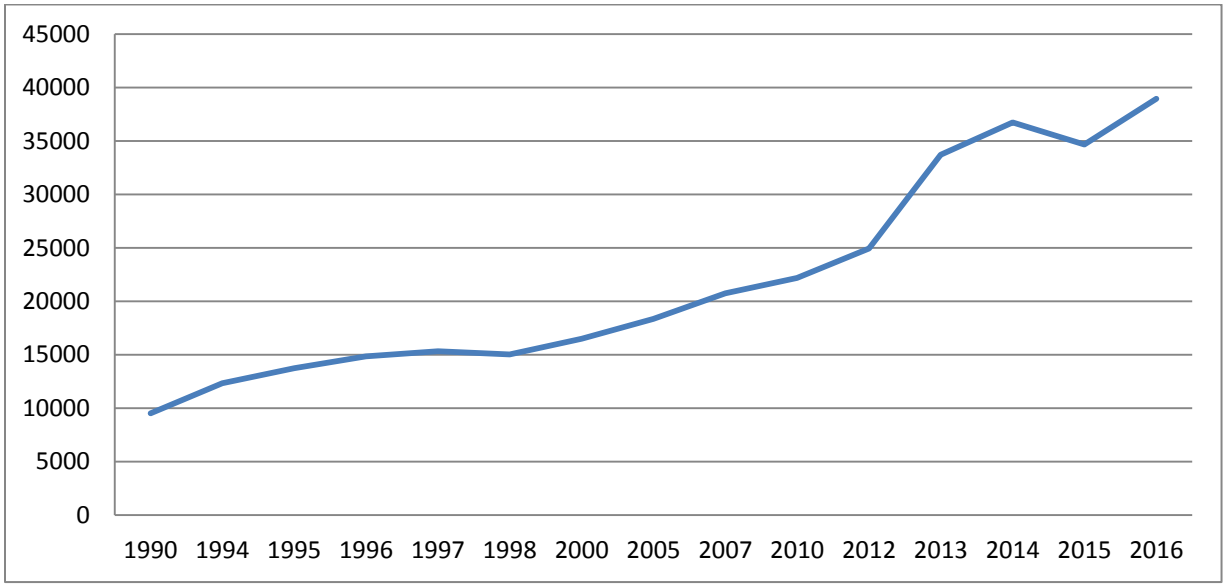
The judgment shocked some law teachers, who wrote an open letter to the Chief Justice of India condemning it as they felt it would "snuff out all hopes of justice for millions of Mathura's in the country" in 1979. This open letter gave birth to the anti-rape campaign in India and resulted in amendments to the rape laws in 1983.

An important aspect of the amendment was that custodial rape (rape in police custody, prisons, etc.) was made into an aggravated form of sexual crime warranting severe punishment of a minimum of 10 years. The Supreme Court ruling had highlighted the fact that in a rape trial it is extremely difficult for a woman to prove that she did not consent "beyond all reasonable doubt" as was required under the criminal law. The major demand of the campaign was that the onus of proving consent should shift from the prosecution to be accused. Accordingly, the "burden of proof" regarding consent was shifted for cases of custodial rape. Since then there have also been several changes in criminal procedures, police manuals, etc. which have given strict guidelines that women cannot be arrested at night and that they cannot be retained in police custody at night. But the stringent provisions did not have the desired impact of reducing the incidents of rape in the country as the following graph reveals.

Reported Cases of Rapes in India 1990 - 2016

1990	1994	1995	1996	1997	1998	2000	2005	2007	2010	2012	2013	2014	2015	2016
9,518	12,351	13,754	14,846	15,330	15,031	16,496	18,359	20,737	22,172	24,923	33,707	36,735	34,651	38,947

Reported Cases of Rape



In 2013 after the Nirbhaya incident and the widespread protests that followed, the criminal law dealing with sexual offences was amended and the definition of rape was widened to include non peno-vaginal penetration. Also many new offences were included such as stalking, Voyeurism, etc.

Definitions of 'sexual offence' under the Indian Penal Code (IPC)

Outraging modesty

S. 354 states that if a man assaults or uses criminal force on any woman with the intention of outraging her modesty or knowing that it is likely to outrage her modesty, then he shall be punished under this section.

Sexual Harassment

S. 354A states that if a man makes physical contact and advances, demands or requests for sexual favours, shows pornography against the will of a woman or makes sexually coloured remarks, then he shall be punished under this section.

Disrobing

S. 354B states that if a man assaults or uses criminal force against a woman with the intention of disrobing her or compels her to be naked, he shall be punished under this section.

Voyeurism

S. 354C states that if a man watches or captures the image of a woman in a private act or disseminates such an image, he shall be punished under this section. A private act includes an act where the victim does not expect to be observed by the man or any other person at his behest.

If the victim consents to the capture of the image but not to dissemination, then such dissemination shall be punishable.

Stalking

S. 354D states that if a man follows or contacts (or attempts) a woman despite a clear indication of disinterest by her, or monitors the use of internet, email or other electronic communication by her, then he shall be punished under this section.

Rape

S. 375 includes:

- Penetration of the penis, to any extent, into the vagina, mouth, urethra or anus of a woman or if he makes her to do so with him or any other person; or
- Insertion to any extent, any object or a part of the body other than the penis, into the vagina, the urethra or anus of a woman or if he makes her to do so with him or any other person; or
- Manipulation of any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any body part or if he makes her do so with him or any other person; or
- If he applies his mouth to her vagina, anus, urethra or makes her to do so with him or any other person.

The above acts amount to rape if they are committed without the consent and against the will of the woman.

Even if the consent of the woman is given to the above acts, it will amount to rape under the following circumstances:

- When consent has been obtained by putting her or any person in whom she is interested, in fear of death or hurt.
- When the man knows that he is not her husband and she gives consent because she believes him to be her husband.
- When she is unable to understand the nature and consequence of the act to which consent is given due to intoxication, administration of any stupefying or wholesome substance or due to certain mental unsoundness wherein she is unable to understand the act to which she gives her consent.

S. 376 (2) states that under the following circumstances the offence of rape shall also be committed and the punishment prescribed for the same is more stringent.

By Police Officers
By Public Servants
By Armed Forces
By Management or staff of a jail, remand home, women or children's institute
By Management or staff of hospitals
By a relative, guardian or teacher or a person in a position of trust and authority
During communal or sectarian violence
Rapes a woman, knowing her to be pregnant
Rapes a woman below 16 years
Rapes a woman who is incapable of giving consent
Rapes a woman over whom he is in a position of control or dominance

Causes grievous bodily harm, maims, disfigures, endangers the life of the woman
Rapes her repeatedly

Injury which causes the death of the woman or causes the woman to be in a persistent vegetative state

S.376A states that during the commission of the offence of rape, if a man inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state, then such an act shall be punishable with a stringent punishment.

Sexual Intercourse by husband upon his wife during separation

S. 376B states that if a husband, living separately (with or without a decree of separation) from his wife has sexual intercourse with his wife, without her consent shall be punished with a stringent punishment.

Sexual Intercourse by a person in authority

S. 376C states that if a man who is in a position of authority or fiduciary relationship with a woman or public servant or superintendent /manager of a jail, remand home or other place of custody or management / staff of a hospital, abuses his position or seduces a woman under his charge or in his premises to have sexual intercourse with him, then he shall be punished for the offence of rape, with a stringent punishment.

Gang Rape

S. 376D states that whenever a woman is raped by two or more persons constituting a group or acting in furtherance of a common intention, then each person is said to have committed the offence of rape and shall be liable to be punished with a stringent punishment.

Repeat Offenders

S. 376E states that if a man has been previously convicted for an offence under Ss. 376, 376A or 376D then such person shall be punished with a stringent punishment.

Word, gesture or act intended to insult the modesty of a woman

S. 509 states that if a man utters any word, sound, gesture, exhibits any object with the intention that it is heard or seen or intrudes the privacy of a woman, then he shall be punished under this section.

*****Abetment and Attempt to commit the above offences is also punishable and is covered above.

Confidentiality to be maintained by Media

It shall not be lawful for any person to print or publish any matter in relation to proceedings under Ss. 376, 376A, 376B, 376C, 376D, 376E except with the previous permission of the Court. S. 327 (3) Cr.PC.

Addressing Biases, Clearing Misconceptions and Understanding Precautionary Measures

"It is not your fault" In our society, if a woman or child is raped, she is treated as an accused and made to suffer. She is made to feel that it is her own fault that she got raped. Her character, conduct, the way she dresses, her past sexual history, etc. become suspect and she is blamed for the crime that is committed on her. Due to the stigma attached to rape, the family is afraid of reporting it to the police. There is also the fear that reporting the crime will diminish the chances of the girl getting married and that the entire family will be humiliated and ostracized. This is all the more true if the girl is poor or from a backward caste. Hence as change agents it is important for us to spread the message that it is not the fault of the victim that she is raped.

If we are aware of our rights, understand the procedures and take precautions, the trauma faced by a victim / survivor during investigation and trial of a rape case will be reduced.

Preserve all evidence: As far as possible, the victim should not have a bath or wash herself or wash the clothes that she was wearing at the time of the offence. It is very difficult to do this because the natural instinct after rape is

to clean one's self and also wash the clothes to wipe out the feeling of violation that the offence of rape brings about. The place where the crime was committed also must not be disturbed. This is important to collect the evidence to prove rape.

Do not delay filing the FIR: Due to the stigma attached to the offence, the family takes time to consider whether to report the offence to the police or to hush up the matter. There are several levels of consultations take place within the family and even at the community level. The social status of the rapists or his connection with authorities also matter. If the rapist is wealthy, or has high social standing, and the victim is from a poor family, there will be a great reluctance to report the crime. Similarly if he is a relative or a neighbor, there will be reluctance. Due to this sometimes cases are filed even after many days.

Caution: Delay in filing the complaint will result in loss of crucial evidence and due to this it may be difficult to prove the case in court later.

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Go to a hospital directly and start treatment: Instead of going to the police station, the victim can to directly to the hospital and get immediate medical treatment. This will help not only to preserve crucial evidence against the accused but avert any infectious or dangerous disease and avert pregnancy. Parents, relatives, friends, social workers etc may accompany the victim for the medical examination. The FIR can be lodged from the hospital itself.

Anyone can get raped. It can happen anywhere – There is a general belief that rape is committed only by strangers in lonely places and dark corners. But the statistics for Maharashtra for 2012 reveal that 94% of the reported cases are by known persons. Fathers, step fathers, uncles, grandfathers, brothers, brother-in-law, other relatives, neighbors, teachers, doctors, police, boyfriends, his friends, etc. are known to commit rape. [Even husbands commit rape, but this does not get recorded as rape, but it can be filed as an offence under S.498-A IPC - *cruelty to wives* – discussed later in the next session.]

All rapes are not violent specially those committed by known persons Many times the fact that a young girl is raped is detected only when she is about 5-6 months pregnant. When she approaches the hospital to find out why she has missed her menstrual period, the fact that the child is raped is detected. So be alert.

Penetration by Penis into vagina is not important to prove rape: After the recent amendment to rape laws, it is not important to prove penetration of the penis into the vagina. All other sexual activity such as inserting fingers, or objects such as rods, sticks etc. into the vagina, anus or inserting penis into anus or mouth (oral sex) also constitutes rape. (The legal definitions are discussed in detail later)

The Victim need not go to the Police Station to lodge FIR, a relative, friend or social worker can lodge it: The victim may be traumatized after the rape or she may be injured or she may be very scared to go to the police station and narrate the incident to the police.

Remember – there is no need for a victim to go to a police station personally to lodge the FIR. It can be lodged by any person on her behalf. This is the law and you must insist that the police will follow this and not force the victim to come to the police station to lodge the FIR if she is reluctant to do so

Her statement can be recorded later at her home or any other place where she is comfortable.

Creating Awareness about Sexual Offences: The new amendment to rape laws have listed out many types of sexual offences and mentioned different body parts. We must also familiarize ourselves with pronouncing the names sexual organs such as i.e. breasts, vagina, buttocks, thighs, anus, penis etc.. We usually feel embarrassed to utter these words and there is a cultural barrier against naming sexual organs. But under the new law it is very important to describe the offence accurately by naming the concerned body part while recording an FIR. We cannot use general terms such as *izzat loota* or *galat kaam kiya*.

We should also teach our children to be aware of their body parts, and how to protect themselves against sexual abuse and give confidence to them to report it to their care takers (teachers, parents, etc.) when they are sexually abused. Only then will the stigma attached to rape will be reduced.

Respect the sexual choices made by young women: Many times when a young girl has an affair with a boy and the parents do not approve of it, the girl runs away with the boy. Although the parents are aware that the girl has gone with her own choice, they file a complaint against the boy for kidnapping and rape and get him arrested. When the girl is brought back she is

pressurized into accepting the wishes of the parents and agrees to marry the boy of her choice. Sometimes the girl refuses to accept the choice of their parents and insists on marrying the boy of her own choice and prefers to stay at a shelter home until she becomes major and is able to marry the boy. Such cases tend to get categorized as "false cases" through no fault of the girl and due to this all girls become suspect when they wish to file a case of rape. So avoid filing such cases. This defeats the purpose for which we are all fighting - to protect the dignity of women.

A scheme for financial assistance and other support to Rape Victims: Recently the National Legal Services Authority has drafted a comprehensive scheme for compensation to rape survivors. All state governments are bound to adopt the scheme drafted by Central Government

Support to Victims during Investigation and Trial: After recent amendments, a government official can be designated as a support person to help the victim during the procedures of investigation and trial. This person can be a government officer from the department of Women and Child Development or an NGO member working with the government. The victim can also have her own lawyer. If she has no financial resources, she can ask the state to provide her a lawyer from the legal aid panel.

9. Protection of Children from Sexual Offences Act, 2012
(POCSO)

In 2012 a special law was passed to provide protection to children who are victims of sexual abuse. This acts additional safeguard to the child during the criminal trial and provides for protection and rehabilitation of the victim. This Act protects both male and female children who are under 18 years of age. Similarly, any adult, male or a female can be the accused person under this Act. The Act provides a wide definition of sexual abuse and non-vaginal penetration and insertion of objects into the mouth, vagina, anus or urethra of the child amounts to sexual abuse under the Act. This Act does not use the word 'rape' to describe sexual violence.

Penetrative Sexual Assault
S. 3: Insertion, penetration, manipulation with the penis, any body part, or any object into the vagina, mouth, urethra or anus of a child.

Aggravated Penetrative Sexual Assault

S. 5: ‘person in authority’ and/or if additional harm and injury is committed.

Sexual Assault
S. 7: touching a child with sexual intent (non-penetrative). Touching vagina, penis, anus, breast or any physical contact with the child with sexual intention

Aggravated Sexual Assault
S. 9: ‘person in authority’ and/or if additional harm and injury is committed

Sexual Harassment
S. 11: Word, sound, gesture, exhibiting any body part, showing pornography with sexual intent. Making a child exhibit any body part, stalking the child, threatening the use of pornographic media

Pornography
S. 13 use of a child for pornographic purposes.
S. 15 storing pornographic media of a child for commercial use

Abetment
S.16: instigating a person to commit an offence, getting involved in a conspiracy or aiding the commission of an offence

Attempt
S.18: attempt to commit any of the above

Mandatory Reporting
S.19 (1): any person who has knowledge of sexual offence committed or likely to be committed on a child
S.20: management and staff of media, hotels, lodges, hospitals, clubs, studios and photographic facilities
S.21: Failure to report or record is punishable
S.21 (3): However, a child who fails to report not punished.

False complaint or False information
S. 22 (1) & (3): To humiliate, extort, threaten, defame or victimize
S. 22 (2): However a child who makes a false complaint or gives false information is not be punished
S.19 (7): Any person giving information in good faith shall not suffer any civil or criminal liability

Confidentiality by Media

S.23 (1) (2): Identity of the child includes the family's identity, school, relatives, neighbourhood and other information.

Report or comment that may lower the child's reputation and infringe her/his privacy.

Reporting of the Offence

First Information Report (FIR)

Information can be given by any person *S. 154 Cr.PC*

- Shall be recorded in writing *S. 154 Cr.PC*
- Shall be read over to the informant *S. 154 Cr.PC*
- Shall be given a copy free of cost *S. 154 Cr.PC*
- If reported by the victim, it shall be recorded by a woman police officer or any woman officer *S. 154 Cr.PC*
- In the presence of an interpreter or translator, when required *S. 154 Cr.PC*
    - Failure to record an FIR it a cognizable offence *S. 166 A (c) IPC* **Victim Statement**
    - Shall be recorded by a woman police officer or any woman officer
    - Shall be recorded at a place where the victim is comfortable
    - If shall be recorded in the presence of a person whom the victim trusts
    - Different language, an interpreter or translator may be called
    - List of interpreters and translators are available with DCPU.
    - It may be video recorded

Additional Points under POCSO Act:

- The police officer shall not be below the rank of sub inspector *S. 24*
- The police officer shall not be in uniform. *S. 24 (2)*
- The child shall not come in contact with the accused *S. 24 (3)*
- The child shall not be detained in the police station at night *S. 24 (4)*
- The police shall share his name, designation, address, telephone number as well as the details of his supervising officer with the informant. *Rule 4 (1)*
- The statement of the child may also be recorded under S. 164 Cr.PC *S. 25*
- It shall be recorded in simple language

Medical Examination and Treatment

- Medical Examination shall be conducted within 24 hours of recording the offence, preferably by a woman doctor *S. 164 A Cr.PC*

- Non treatment of a victim by a Hospital is an offence punishable with imprisonment for a term which may extend to one year or fine or both under *S. 166B Cr. PC*
- If the child victim is female then the medical examination **shall** be conducted by a woman doctor *S. 27 (2)*
- A parent or any person who the child trusts shall be present at the time of medical examination *S. 27 (3)*
- All medical practitioners (public or private) shall provide medical care and treatment without demanding any legal documentation from the victim *Rule 5 (3)*

Child Welfare Committee and POCSO Act

- The Police shall report to the CWC every First Information Report registered under the Act within 24 hours of recording the same. *S.19 (6)*
- The Police shall produce a child, who is a victim under the Act before the CWC within 24 hours of recording an FIR, under the following circumstances: *Rule 4 (3)*
- if an offence is committed or likely to be committed by a person living in the same or shared household with the child or
- if the child is living in a child care institution and is without parental support or
- if the child is found to be without any home and parental support.

Role of Support Person

Rule 4 (7): The CWC, on receiving a report under sub-section (6) of section 19 of the Act or on the basis of its assessment under sub-rule (5), and with the consent of the child and his parent or guardian or other person in whom the child has trust and confidence, ***may provide a support person to render assistance to the child through the process of investigation and trial.***

Such support person may be a person or organisation working in the field of child rights or child protection, or an official of a children's home or shelter home having custody of the child, or a person employed by the DCPU:

4 (12) The information to be provided by the SJPU, local police, **or support person,** to the child and his parents or guardian or other person in whom the child has trust and confidence, includes but is not limited to the following:

i. the availability of public and private emergency and crisis services;
ii. the procedural steps involved in a criminal prosecution;
iii. the availability of victims' compensation benefits;

iv. the status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation;
v. the arrest of a suspected offender;
vi. the filing of charges against a suspected offender;
vii. the schedule of court proceedings that the child is either required to attend or is entitled to attend;
viii. the bail, release or detention status of an offender or suspected offender;
ix. the rendering of a verdict after trial; and
x. the sentence imposed on an offender.

Special Courts

- Cases of offences committed under this Act shall be tried in a Special Court which shall have all the powers of a Court of Sessions. S.28 (1) S. 33 (9)
- Every Special Court shall have a Special Public Prosecutor with a minimum experience of 7 years as an advocate. S.32 (1) & (2)

Examination of the Victim in Special Court

- Questions by the Judge: S.33 (2)
- Aggressive Questioning: S.33 (6)
- Assistance of Translator or Interpreter:S.38 (1)
- Children with Special Needs: S. 38 (2).
- No exposure to the Accused: S. 36 (1) & (2)
- Frequent Breaks: S.33 (3)
- Trial *In Camera*: S.37.
- Presence of Persons who the child trusts: S.33 (4)
- Child Victim should not be called repeatedly: S.33 (5)

IV. WOMEN'S HEALTH AND SAFETY

10. MEDICAL TERMINATION OF PREGNANCY ACT

Background of the Act

The MTP Act, passed by Parliament in 1971to permit legalized abortions. Prior to 1971, abortion was criminalized under Section 312 of the Indian Penal Code, 1860, except in cases where the procedure was necessary to save the woman's life. The Shah Committee, appointed by the Government of India, carried out a comprehensive review of socio-cultural, legal and medical aspects of abortion, and in 1966 recommended legalizing abortion to protect women's health and lives on both compassionate and medical grounds. It was also viewed as a population control measure. The term "Medical Termination of Pregnancy" (MTP) was used to counter opposition from socio-religious groups who were averse to abortion.

How are women's reproductive rights protected?

Women's reproductive rights are protected under the Constitution. The right to live under Article 21 include the right to live in dignity which is inclusive of women's reproductive rights (i.e. the right to become pregnant, to bear children, to decide the number of children, the right to have an abortion, to use or not use contraceptives, to be or not to be sterilized, to be or not to be a parent, etc.). A mother's right to preserve her own health is superior to the right of an unborn child.

Do women in India have a right to a legal abortion?

Yes women in India do have the right to legal abortion. In many countries women had to struggle very hard to get this right. But in India, a law was passed in 1971, the Medical Termination of Pregnancy (MTP) Act to secure for women the right to have legal and safe abortions in public hospitals. This was done to curb the practice of illegal abortions which were carried on rampantly by non-medical professionals at a great risk to women's health.

What is an abortion?

Abortion is a medical procedure of removing the foetus from the uterus of a woman who is pregnant if she wishes not to have the child. This procedure must be carried out only by registered medical practitioners who are authorized to do it under the MTP Act and if not done in a proper condition it poses a risk to the woman's life.

What are the conditions under which a pregnancy can be terminated?

Pregnancy can be terminated in the first trimester (within 12 weeks) if a doctor is of the opinion that it is safe for the woman to undergo an abortion. Beyond 12 weeks and up to 20 weeks, the opinion of two doctors is required to perform the abortion. Beyond that a pregnancy cannot be terminated as it is very risky and may cause harm or even death to the pregnant mother. Hence it can be performed only in an extreme situation when it is necessary to abort the foetus to save the life of the mother. [S.3 (2) (a and b)]

While deciding whether or not to perform the abortion, the doctors must ascertain the risk of harm to the health of the pregnant mother. The doctors' permission to perform the abortion must be recorded in writing.

Whose consent is required for terminating pregnancy?

If the woman is a major, i.e. above 18 years, she can consent to the abortion herself. If it is a child below 18 years or the person is incapable of giving valid consent (if the person is of unsound mind) the consent of the guardian is required. The consent of the husband is not required to undergo an abortion.

Can the authorities disclose information about the woman who undergoes abortion under the Act?

No, the doctors or the hospital authority cannot disclose to the public any information about the woman who undergoes termination of her pregnancy. This information has to be kept confidential. [S.7 (1) (c)]

11. Pre-Conception and Pre-Natal Diagnostic Techniques (Regulation) Act (PCPNDT) 1994

Why is the female foetus aborted in our society?

Indian society carries within it a tradition of male preference. The great urge to have boys coupled with a high cost of living has led to a rise in sex-selective abortions. Unfortunately, provisions of the MTP Act are frequently abused in that many families invoke the Act to help them in carrying out abortions of female fetuses after conducting tests to determine the sex of the child using modern technology such as sonography. The age old preference to have sons received a new boost due to this and gradually resulted in a skewed sex ratio.

This Act was amended in 2002 and even pre-conception techniques used / advertised to select the sex of the foetus even before conception was banned.

What has the government done to curb this trend?

In order to curb this trend, in 1994, Government passed a new law, known as the Pre Conception and Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (PCPNDT Act for short). Since these tests are important to detect foetal abnormalities and genetic defects the tests could not be banned, they could only be regulated. Now the tests can be done only under very strict conditions and they cannot be used for the purpose of identifying and disclosing the sex of the unborn foetus.

In order to curb the practice, it has now become necessary to register all sonography machines and also necessary to display very clearly that the hospital or the clinic does not disclose the sex of the unborn foetus.

What is the punishment for misusing the provisions of this Act?

Performing such tests is punishable by upto 3 years of imprisonment and a fine of upto Rs.10,000/- for the first offence and upto five years of imprisonment and a fine of upto Rs.50,000/- for the subsequent offence. Any doctor doing such a test is also liable to have his license for medical practice suspended for two years for the first offence and permanently after the second offence. (S.23).

Monitoring of Genetic Counseling Centres

The PCPNDT Act provides for regulation of genetic counseling centers, genetic laboratories and genetic clinics and also regulates pre-natal diagnostic procedures. The medical professional running the genetic center has to be registered under the PCPNDT Act.

1 It allows the use of prenatal diagnostic techniques for the purpose of specific genetic abnormalities or disorders only and to put down a prohibition on the use of these techniques for determining the sex of the fetus by any such person under the Act.

2 The Act also prohibits any kind of advertisements on pre-conception and pre-natal sex determination of fetus or sex selection of fetus is prohibited. The Act provides for three years imprisonment and fine up to ten thousand rupees as punishment in contravention of the Act

3 and representatives of women's welfare organization to exercise the power and performs the functions conferred on the board under the Act

What is regulation applied on this centers?

The regulations applied on these centers are as follows

1. No Genetic Counseling Centre, Genetic Laboratory or Genetic Clinic unless registered under this Act, shall conduct or associate with, or help in, conducting activities relating to pre-natal diagnostic techniques;
2. No Genetic Counseling Centre, Genetic Laboratory or Genetic Clinic shall employ or cause to be employed any person who does not possess the prescribed qualifications;
3. No medical geneticist, gynecologist, pediatrician, registered medical practitioner or any other person shall conduct or cause to be conducted or aid in conducting by himself or through any other person, any pre-natal diagnostic techniques at a place other than a place registered under this Act.

Is there any provision where this genetic counseling centers need to be registered?

Yes all the genetic centers need to be registered under section No person shall open any Genetic Counseling Centre, Genetic Laboratory or Genetic Clinic, including clinic, laboratory or center having ultrasound or imaging machine or scanner or any other technology capable of undertaking determination of sex of fetus and sex selection, or render services to any of them, after the commencement of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002 unless such Centre, Laboratory or Clinic is duly registered under the Act.]

Is any person given authority to select the sex of the fetus?

No person can select the sex of the fetus 3A. Prohibition of sex selection.—No person, including a specialist or a team of specialists in the field of infertility, shall conduct or cause to be conducted or aid in conducting by himself or by any other

person, sex selection on a woman or a man or on both or on any tissue, embryo, conceptus, fluid or gametes derived from either or both of them

What are the authorities which control the function of this genetic counseling centers?

The Central Government shall constitute a Board to be known as the Central Supervisory Board to exercise the powers and perform the functions conferred on the Board under this Act

The Board shall have the following functions, namely:—

(i) to advise the Central Government on policy matters relating to use of pre-natal diagnostic techniques, sex selection techniques and against their misuse;

(ii) to review and monitor implementation of the Act and rules made thereunder and recommend to the Central Government changes in the said Act and rules;

(iii) to create public awareness against the practice of pre-conception sex selection and pre-natal determination of sex of foetus leading to female foeticide;

(iv) to lay down code of conduct to be observed by persons working at Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics;

(v) to oversee the performance of various bodies constituted under the Act and take appropriate steps to ensure its proper and effective implementation;

Is there any search and seize provision under the Act?

Yes there is provision under section 30:

(1) If the Appropriate Authority has reason to believe that an offence under this Act has been or is being committed at any Genetic Counseling Centre, Genetic Laboratory, Genetic Clinic or any other place, such Authority or any officer authorized in this behalf may, subject to such rules as may be

prescribed, enter and search at all reasonable times with such assistance, if any, as such Authority or officer considers necessary, such Genetic Counseling Centre, Genetic Laboratory, Genetic Clinic or any other place and examine any record, register, document, book, pamphlet, advertisement or any other material object found therein and seize and seal the same if such Authority or officer has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act.

(2) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to searches and seizures shall, so far as may be, apply to every search or seizure made under this Act

V. Women's Rights under Labour Laws

Introduction

The Constitution of India mandates that women must be treated as equals and prohibits any discrimination against women in all areas, including education, vocational training, skill development and employment. In order to ensure that women get a fair and adequate opportunity of employment, the constitution also mandates reservation for women in educational institutions and in employment in the public sector.

Our Constitution also protects the rights of women workers by ensuring that their health and safety is duly protected in the course of employment, particularly those of pregnant women and breast feeding mothers. The Constitution also safeguards the dignity of women workers and ensures that they are provided a safe working environment free of sexual harassment.

In order to fulfill the Constitutional mandate all labour laws contain special provisions regarding the health and safety of women workers by regulating their working hours and by reducing the burden women have to carry. In order to ensure equality the law also mandates that both men and women will be paid the same wages for the same or similar type of work. Recently, a special law has been enacted to protect women against sexual harassment at the workplace. The rights of women under different labour laws are discussed in this section.

a. Special Protection to Women under the Labour Laws

What are the special laws which are enacted to provide adequate protection to women workers?

The following laws are specially enacted to provide further protection to women workers:-

- The Equal Remuneration Act;
- The Maternity Benefits Act; and
- The Protection of women from Sexual Harassment Act.

(Also included is the Minimum Wages Act)

They are applicable only to women and have been enacted to provide special protection and safety for the special needs of women.

Does enacting special law for women amount to discrimination?

No, enacting special laws for women does not amount to "discrimination".

The power to enact special laws for women is given to the legislature under Article 15 (3) of the Constitution which stipulates that providing for additional safeguards to women is not discriminatory but will enhance the principle of equality, as it will help women to overcome the wrongs they have suffered for centuries.

12. Equal Remuneration Act, 1976

How does the Equal Remuneration Act safeguard women's Rights?

Under the provisions of this Act, every employer is under a legal obligation to pay the same wages for men and women if they perform the same work or work of a similar nature. Even if it is being performed at different places, the salary has to be the same. An employer cannot discriminate against women while recruiting unless employment of women is prohibited or restricted by law. Thus, in matters of recruitment, promotions, training and transfer, the employer is prohibited from discriminating against women.

Who is responsible for ensuring that the provisions of the Act are strictly followed?

The responsibility of ensuring that the provisions of the Act are strictly followed and also that there is no discrimination between men and women in the sphere of recruitment, promotions and training lies with the employer. It is also the responsibility of the employer to maintain proper registers, documents or muster rolls, etc. which can be scrutinized by the labour officer of the district. Any woman who faces discrimination in these aspects can file a complaint before the labour officer of her area.

13. Maternity Benefits Act 1961

Background of the Act

A maternity benefit Act stipulates that every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit, which is the amount payable to her at the daily wage rate for the period of her actual absence. There is need for maternity benefits so that a woman is to be able to give quality time to her child without having to worry about whether she will lose her job and her source of income.

This Act was enacted on 12th December 1961, to regulate the employment of women in certain establishment for certain period before and after child-birth and to provide for maternity benefit and certain other benefits.

Why maternity leave is important for any women employee?

Women's ties with pregnancy and child rearing and the failure of employers and policymakers to deal consistently with this issue exacerbate the difficulties women face in the economy. Women continue to have the primary responsibility for housework and childcare, even when they have extremely demanding jobs. Few

employers provide help with childcare, flexible work hours to accommodate children's needs, or paid maternity leaves. Women in blue-collar work as well as clerical jobs face rigid time schedules, low pay, and virtually no recognition or help from employers for their family responsibilities

Which all establishments are included by government?

All the establishments are included by government which is under government authority or not. The benefit of the act is provided to all establishment be it mining, plantation and factory. This establishment also includes all the persons are employed for the exhibition of equestrian, acrobatics and other performances.

How are the leave provided under this act?

	Maternity benefit Act 1961
Leave	26 weeks not more than 8 weeks
Remuneration	Average daily wage shall be paid for the period of her actual absence immediately preceding and including the day of her delivery and for the six weeks immediately following that day.
Additional Benefits	(i)Medical Bonus – 3,500 Rupees if no pre-natal confinement and post-natal care is provided for by the employer free of charge; (ii) Nursing Breaks; Crèche Facilities; and (iii) Four visits a day to the crèche, including the interval for rest.

Does the act apply to miscarriage and mother adopting a child also?

In case of miscarriage, a woman shall, on production of such proof as may be prescribed, be entitled to leave with wages at the rate of maternity benefit for a period of six weeks immediately following the day of her miscarriage.

In case of the mother adopting child below age of three months shall be provided with leave of 12 weeks.

Can any employer dismiss the employ during her leave for pregnancy or deny working from home?

Where a woman absents herself from work in accordance with the provisions of this Act, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence or to give notice of discharge or dismissal on such a day that the notice will expire during such absence, or to vary to her disadvantage any of the conditions of her service.

Also with latest amendments a women is allowed to work from home if nature of work is such where women and employee agree on her condition working from home.

14. Sexual Harassment at Work Place (Prevention, Prohibition and Redressal) Act, 2013

The Sexual Harassment at Workplace Act of 2013 is a special Legislation aiming towards providing a safe and hostile free environment at work to women.

- An effective implementation of the Act will contribute to the realization of their right to gender equality, life and liberty, 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 is gender specific to only women.

EVOLUTION :

- Bhanwari Devi, a social worker from Rajasthan, During her work, she prevented the marriage of a one year girl in the community. The issue was reported to the local complaints committee and no action was taken. Bhanwari Devi was however subsequently gangraped by those are men.
- Vishaka Judgement and SC Guidelines: In the absence of a specific law in India, the Supreme Court, in the Vishaka Judgment, laid down certain guidelines making it mandatory for every employer to provide a mechanism to redress grievances pertaining to workplace sexual harassment.
- **Who is it Applicable to?**

  It Extends to the whole of India. It applies to both the Organised and unorganized sectors in India.
- **What constitutes "Sexual harassment"?**

  As per the POSH Act, 'sexual harassment' includes unwelcome sexually tinted behaviour, whether directly or by implication, such as (i) physical contact and advances, (ii) demand or request for sexual favours, (iii) making sexually coloured remarks, (iv) showing pornography, or (v) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

Dr. Punita K. Sodhi v. Union of India & Ors. W.P. (C) 367/2009 & CMS 828, 11426/2009

In 2010, the High Court of Delhi upheld the view that sexual harassment is a subjective experience and for that reason held "A complete understanding of the complainant's view requires... an analysis of the different perspectives of men and women. Conduct that many men consider unobjectionable may offend many women... Men tend to view some forms of sexual harassment as "harmless social interactions to which only overly-sensitive women would object. The characteristically male view depicts sexual harassment as

comparatively harmless amusement.... Men, who are rarely victims of sexual assault, may view sexual conduct in a vacuum without a full appreciation of the social setting or the underlying threat of violence that a woman may perceive."

- **How to Identify "WORKPLACE"?**

  Work place has to be understood in a wider connotation and not looked in a pedantic approach. In

  Saurabh Kumar Mallick v. Comptroller & Auditor General of India, The word " Work place" has been objectively defined. The test laid down includes 1)Proximity from the place of work; 2)Control of the management over such a place/residence where the working woman is residing; and 3) Such a residence has to be an extension or contiguous part of the working place.

- **What are my Reliefs?**

  The Complainant has the option to file a written complaint to ICC/LCC. Either she can demand an enquiry into the matter or choose to conciliate. In case of the former, the Complaints committee has to conduct a detailed investigation within the workplace and declare their judgement along with the recommendations to the employer.

  The Complaints Committee has the discretion to suggest the penalties after having heard both the parties.

  Any aggrieved Party also has a right to appeal against the order of the ICC/LCC for further reliefs under this Act.

- **Where should the complaint be filed?**

  An important feature of the POSH Act is that it envisages the setting up of a grievance redressal forum.

  INTERNAL COMPLAINTS COMMITTEE – ORGANISED SECTOR

The POSH Act requires an employer to set up an 'internal complaints committee' ("ICC") at each office or branch, of an organization employing 10 or more employees, to hear and redress grievances pertaining to sexual harassment

LOCAL COMPLAINTS COMMITTEE - UNORGANISED SECTOR.

At the district level, the Government is required to set up a 'local complaints committee' ("LCC") to investigate and redress complaints of sexual harassment from the unorganized sector or from establishments where the ICC has not been constituted on account of the establishment having less than 10 employees or if the complaint is against the employer.

DO'S OF COMPLAINT COMMITTEE	DON'T'S OF COMPLAINT COMMITTEE
1) Use a cheerful, comfortable, airy room for meetings. 2)Ensure that your body language communicates complete attention to the complainant and the accused. 3)Treat the complainant with respect. 4)Discard pre-determined notions of how a victim or accused should look or behave. Beware of stereotypes. 5)All sexual crimes are committed in private, so there may not be any eyewitnesses. 6)Consult the complainant for	1)Do not get aggressive. 2)Do not insist on a detailed description of harassment. This could increase the complainant's trauma. 3)Do not allow interruptions during deposition. 4)Do not try and determine the impact of the harassment on the complainant. Let the complainant determine it. Help the complainant, if necessary. 5)Do not discuss the complaint in the presence of others. 6)Remember, this is a human

punitive action. 7)If the management does not accept the recommended action, it should give three valid reasons. 8) Help the complainant regain his/her self-respect	rights issue, therefore, (a) do not give too much weight age to intention, focus on the impact, and (b) 'proof beyond reasonable doubt' is not required, a strong probability is sufficient.

15. Minimum Wages Act 1948

Background of The Act:

The Indian Constitution has defined a 'living wage' that is the level of income for a worker which will ensure a basic standard of living including good health, dignity, comfort, education and provide for any contingency. However, to keep in mind an industry's capacity to pay the constitution has defined a 'fair wage'.[1] Fair wage is that level of wage that not just maintains a level of employment, but seeks to increase it keeping in perspective the industry's capacity to pay.

What age group people are allowed to work under labor law?

The "adolescent" means a person who has completed his/her fourteenth year of age but has not completed eighteenth year and "adult" means a person who has completed eighteen years.

What minimum wages have to be paid?

(1) Any minimum rate of wages fixed or revised by the appropriate Government in respect of scheduled employments under section 3 may consist of-

(i) a basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate Government may direct, to accord as nearly as practicable with the variation in the cost of living index number applicable to such workers (hereinafter referred to as the "cost of living allowance"); or

(ii) a basic rate of wages with or without the cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concessional rates, where so authorized; or

(iii) An all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.

How does government revise the wages and circulate the same detail?

The government would revise the wages and circulate in the following manner:

(a) appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision, as the case may be, or

(b) By notification in the Official Gazette, publish its proposals for the information of persons likely to be affected thereby and specify a date, not less than two months from the date of the notification, on which the proposals will be taken into consideration.

What punishments can be imposed upon the employer who has not followed the law under the said act?

Any employer who— (a) Pays to any employee less than the minimum rates of wages fixed for that employee's class of work, or less than the amount due to him under the provisions of this Act or (b) Contravenes any rule or order made under section 13 shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both:

VI. OTHER ACTS

16. The Schedule Caste and Scheduled Tribes (Prevention of Atrocities) Act

What is the objective of this Act?

It was enacted to prevent the commission of offences of atrocities against the members of Scheduled Castes and Tribes and to provide for Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offenses.

The Act Protects the Marginalized Communities against discrimination and atrocities. For example footwear garlands, parading them naked, dumping garbage at premises owned by SC/ST. Further it also provides rehabilitation to the victims of such offences and discrimination by providing an equal opportunity in the field of education and employment.

Who can file a complaint?

Any scheduled caste or scheduled tribe who is identified accordingly under the law. He/She should be aggrieved and experienced physical. Mental, psychological, emotional or monetary harm or harm to his property as a result of the commission of any discrimination or atrocities. Any relative, legal guardian and legal heirs of the victim are also protected under the law.

What reliefs can be sought?

He /She can be protected from social disabilities such as denial of

- access to certain public places,
- to use the customary passage without being boycotted,
- personal atrocities like forceful drinking or eating of inedible food,
- sexual exploitation of SC/ST,

- Bodily injury etc.
- One can also be protected from atrocities affecting the properties, malicious prosecution, political disabilities and economic exploitation.

Where can they file a complaint?

The SC and ST Act, 1989, empowers the state government to set up special courts and exclusive special courts in every district to dispose off within 2 months or as far as possible from the date of filing chargesheet. The Act also provides a right to appeal in case of being aggrieved by the order of the Special court and Exclusive Special Court. The State government also is empowered to ensure effective implementation of the Act.

- **Protection of witnesses and victims** The SC and ST Act, 1989 has laid down all the rights of the victims and witnesses, in order to curb such violence. It also aims at encouraging its reporting for fair and just implementation of law.
- **Crimes Against SC and ST :** Violence against SC/ST is very nuanced in nature, so it is difficult to separate atrocities against SC/ST from law and order problems. So in many instances, the case is registered under IPC or CrPC than PoA

Atrocities are in various forms such as cow vigilantism (most dalits are in the occupation of leather making hides of the cow), honour killing, social boycott (Khap Panchayat), caste clashes, discrimination in Universities (Rohit Vemula case). Though the SC ST Prevention of Atrocities Act is very stringent, most cases end in acquittal due to police lethargy and due to destruction of evidence of the crime. Also eye witnesses do not come forward to testify against powerful upper caste men.

Examples of Atrocities in Independent India

- **Kizhavenmani, Tamil Nadu (1958)** in which 44 SCs were burnt to death in a confined building because SC agricultural labourers sought a little raise in their very low wages. The high court acquitted all the accused.

- **Karamchedu, Andhra Pradesh, 1984:** Five SCs were massacred. The trial court convicted many of the accused. The high court acquitted all. The Supreme Court upheld the trial court judgment – a clear **example that acquittals do not mean false cases.**
- **Tsunduru, Andhra Pradesh, 1991:** Eight SCs were massacred. The trial court convicted the accused in 2007. The high court acquitted them in 2014. The Supreme Court has admitted a special leave petition (SLP) of the surviving victims and survivors of victims.
- Six cases of **Bihar** including the **Bathani Tola (1996) and Laxmanpur Bathe (1997).** In most of these, the trial court convicted the accused. In all of these, the high court acquitted the accused. Appeals are pending in the Supreme Court.
- **Kambalapalli, Karnataka.** The prime witness in this case, who is the sole survivor and head of the family whose other members were massacred, turned "hostile" due to a threat of life, resulting in the acquittal of all the accused.

Sexual Violence on Dalit Women

Rape, murder, and maiming of dalit women by upper caste men, as retaliation for aspirations of the community for economic and social progress, still continues in the villages and towns of independent India. Lower caste women are raped as part of caste customs and village traditions and are forced to have sex with upper caste landlords and the police. Rape is often used as a form of retaliation to suppress movements demanding payment of minimum wages.

These are not isolated incidents but routine occurrences. One hears of several such examples of maintaining the social hierarchy of gendered citizenship. For instance, during the period of 1,300 days from Dec 7, 2003 to June 30, 2007, 1,217 gang rapes were reported in the Madhya Pradesh as per the State Assembly records. Out of these, 362 cases were of women from scheduled castes, 310 were of women from scheduled tribes, and 381 were of women from other backward castes.

An example of this social hierarchy of gendered citizenship through which rights get constituted, is that while the Constitution empowered women through reservations to local panchayats by enacting the 73rd and 74th amendments to the Constitution, newspapers continue to carry reports of dalit women *sarpanches* (panchayat heads) being paraded naked and humiliated for holding these positions. Rape of dalit women continues to be a common occurrence with around 1172 dalit women having been raped during the year 2005, as reflected in the statistics compiled by the National Crime Record Bureau.

Another report revealed that rape of Dalit women in Gujarat rose by 500 per cent since 2001 over the last 13 years, reaching a high point in 2014. While in 2001 only 14 Dalit women reported rape, in 2014 there were 74 Dalit women who reported rape and their cases were registered under the provisions of the Indian Penal Code and Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act (popularly referred to as 'Atrocities Act').

While most of these violations go unchecked, the gruesome killing of a dalit woman along with her seventeen year old daughter and two sons, in Khairlanji village in Bhandara district of Maharashtra in September 2006, made national headlines when six people were convicted with death penalty and two with a sentence of life imprisonment by the sessions judge at Bhandara in September, 2008. This was a major landmark victory for dalit and human rights activists. Despite this, it is clear that issues concerning both gender and caste were invisibalised in the judicial discourse. As far as caste issues are concerned, the accused were charged with murder under section 302 of the IPC, but were acquitted of charges under Atrocities Act. The activists felt that this glossed over the atrocities committed upon citizens solely due to their caste positions. In August 2010, the Nagpur Bench of Mumbai High Court upheld the Session's Court ruling which had termed the atrocities as mere criminal acts committed out of human rage, leading to a non-application of the provisions of Atrocities Act.

The invisibalisation of gender occurred when the courts negated the sexual abuse of the women. Despite the fact that preliminary investigations revealed that the mother,

Surekha and the daughter Priyanka were sexually abused prior to their killings, the sexual violence inflicted upon the two women did not receive due judicial recognition both at the Sessions Court as well as the High Court. This despite the fact that the body of Priyanka was found stripped of all clothes. The High Court concluded that since revenge was the motive, there was no intention on the part of the accused to insult the deceased women or to dishonour or outrage their modesty. While both gender and caste were invisibalised, only the crime of murder which comes within the ambit of Section 302 of the IPC was upheld. While the Sessions Court declared that it was a rarest of rare case warranting death penalty, at the High Court level even the 'rarest of rare' crime was further diluted into an ordinary murder warranting only life imprisonment.

As this case highlights, while the sexual brutalities committed on dalit and tribal women are on the increase, rape and sexual abuse of lower caste and marginalized women are seldom examined within the matrix of the intersectionality of caste and gender. The reported cases constitute only the tip of the iceberg as a large number of cases do not even get recorded. Even those reported and charge sheeted seldom result in conviction. The Khairlanji verdict is a rare judicial occurrence. A combination of factors contributes to this dismal state of affairs. Non accessibility of the justice delivery system to marginalised communities due to factors of poverty, illiteracy and fear of the police is one contributory factor. Institutional bias of state agencies against dalits, leading to biased and callous investigation and prosecution is another. Retraction by eye witnesses from the higher castes is yet another factor. The caste and gender bias in courts of law is a further contributing factor.

17. NATIONAL COMMISSION FOR WOMEN

The National Commission for Women (NCW) is a statutory body established in January 1992 under the 1990 National Commission for Women Act. It's mandate is to advise the government on all policy matters concerning women, to review

legislations and to intervene or initiate proceedings in the Supreme Court on matters concerning women.

Functions of the Commission

1) The commission shall perform all or any of the following functions, namely :-

a. Investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws;
b. present to the Central Government, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguard;
c. make in such reports recommendations for the effective implementation of those safeguards for the improving the conditions of women by the Union or any state;
d. review, from time to time, the exiting provisions of the Constitution and other laws affecting women and recommend amendments thereto so as to suggest remedial legislative measures to meet any lacunae, inadequacies or shortcomings in such legislations;
e. take up cases of violation of the provisions of the Constitution and of other laws relating to women with the appropriate authorities;
f. look into complaints and take suo moto notice of matters relating to:-
    i. deprivation of women's rights;
    ii. non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development;
    iii. non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women, and take up the issues arising out of such matters with appropriate authorities;
g) call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and identify the constraints so as to recommend strategies for their removal;

h) undertake promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres and identify factors responsible for impeding their advancement, such as, lack of access to housing and basic services, inadequate support services and technologies for reducing drudgery and occupational health hazards and for increasing their productivity;

i) participate and advice on the planning process of socio-economic development of women;

j) evaluate the progress of the development of women under the Union and any State;

k) inspect or cause to inspected a jail, remand home, women's institution or other place of custody where women are kept as prisoners or otherwise and take up with the concerned authorities for remedial action, if found necessary;

l) fund litigation involving issues affecting a large body of women;

m) make periodical reports to the Government on any matter pertaining to women and in particular various difficulties under which women toil;

n) Any other matter which may be referred to it by Central Government.

2) The Central Government shall cause all the reports referred to in clause (b) of sub-section (1) to be laid before each House of Parliament along with memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any such recommendations.

Powers of the Commission

While conducting investigations, the Commission has the powers of a civil court to summon any person, examine the person on oath, discovery and production of document, to receive evidence on affidavits, requisition public record and issue commissions for examination of witnesses and documents

Working of the Commission

The Commission processes the complaints received verbally or in writing. It also takes into account suo moto (on its own) notice of cases related to women. The complaints received relate to various categories of crimes against women such as domestic violence, harassment, dowry, torture, murder, kidnapping/abduction, complaints against NRI marriages, desertion, bigamy, rape, police harassment, brutality, cruelty by husband, deprivation of rights, gender discrimination, sexual harassment at workplace and so on.

The complaints are acted upon in the following manner:

- Specific cases of police apathy are sent to the police authorities for investigation and cases are monitored.
- Family disputes are resolved or compromises struck through counselling.
- Disaggregated data are made available to various state authorities to facilitate action.
- In sexual harassment complaints, the concerned organizations are urged to expedite cases and the disposal is monitored.
- For serious crimes, the Commission constitutes an Inquiry Committee to provide immediate relief and justice to the victims of violence and atrocities.

Strategies of the Commission

In keeping with its mandate, the Commission evolved the following strategies to improve upon the status of women and women development:

- Economic empowerment through building up skills and securing access to gainful employment.
- Political empowerment through awareness, training and mobilization for equitable representation in all fora.
- Prevention of violence and discrimination against women inside and outside the home through legal reform and sensitive enforcement.
- Amelioration of conditions of disadvantaged women, such as:

a) Physically challenged women including those who are visually disabled or mentally affected.
b) Socially challenged women including Muslim women, women from Scheduled Caste and Scheduled Tribes, widows and prostitutes.
c) Prevention of indecent representation of women in the media through legal and social sanctions.

Achievements

- Prepared Gender Profiles of all states and UTs except Lakshadweep.
- Took up women related issues and was proactive in Parivarik Mahila Lok Adalats.
- Reviewed laws such as Dowry Prohibition Act, 1961, PNDT Act 1994, Indian Penal Code 1860 and the National Commission for Women Act, 1990 to make them more stringent and effective.
- Organized workshops / consultations etc.

Parivarik Mahila Lok Adalats

The National Commission of Women has evolved an innovative concept of Parivarik Mahila LokAdalat (PMLA), which supplements the efforts of the District Legal Service Authority (DLSA) for redressal and speedy disposal of the matters related to marriage and family affairs pending in various courts. The Parivarik Mahila LokAdalat functions on the model of the Lok Adalat. The Commission provides financial assistance to NGOs or State Women Commissions or State Legal Service Authority to organize the Parivarik Mahila Lok Adalat. The objectives of Parivarik Mahila Lok Adalat are as follows:

- To provide speedy and cost free dispensation of justice to women.
- To generate awareness among the public regarding conciliatory mode of dispute settlement.

- To gear up the process of organizing the Lok Adalats and to encourage the public to settle their disputes outside the formal set-up.
- To empower public especially women to participate in justice delivery mechanism.

Issues around working of NCW

The Major Issues around working of the National Commission for Women are as follows:

- NCW's functions are dependent on the grants offered by the central government. Financial assistance provided to the Commission is inadequate to meet its needs.
- NCW's members are appointed by the government and the commission does not have power to select its own members.
- NCW lacks concrete legislative power. It enjoys power only to recommend amendments and submit reports.
- The recommendations of the NCW are not binding on the Union or state governments.
- Often it takes action only of the issues are brought to light. Unreported cases of suppression and oppression are generally ignored by the Commission.
- NCW's jurisdiction is not operative in Jammu and Kashmir.

Drawbacks

- It has no actual legislative powers. It only has the powers to suggest amendments and submit reports which are not obligatory on state or Union Governments.
- It does not have the power to choose its own members. The power selecting members is vested with the Union Government and the nature of country's volatile political scenario tends the commission to be politicized.
- It is reliant on financial assistance from the Union Government and this could compromise the independence of the Commission.

About Majlis

Our Motto: ***Transforming Victims into Survivors***

> "Transforming a victim into a survivor is a long drawn process. It is not a matter of merely changing the vocabulary, while keeping intact an oppressive system which constantly re-victimizes her, causes her extreme trauma and brings her down several notches in the social ladder from where she was, prior to the abuse. She becomes a survivor only when she emerges stronger for having walked through this intimidating system, with someone extending a helping hand, and in the process transforms the system itself, rendering it more humane. It is our hope that having responded to their needs, we helped each of them to overcome their vulnerabilities, and attain their goals and aspirations, beyond their 'case' and become survivors."

Our Programs

Litigation & Socio-Legal Support helps survivors of sexual and domestic violence access justice and avail of services they are entitled to. We ensure that the dignity of the victim is maintained at all times.

Policy Interventions and Public Campaigns to place women's rights on the public policy agenda.

Training and Awareness to State and Community

• Implementation of Laws Training Judiciary, Police, Medical Officers, Protection Officer and Public Administration.

• 'Know your Rights' for organizations, colleges, schools and community

• Para Legal Understanding for Social Workers (PLUS)

• Protection from Sexual Harassment at Workplace a program to help organizations implement the policy and help the Internal Committee.