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CHAPTER - II

LEGAL FRAME WORK AND COURT PROCESS TO CONTROL CRIME AGAINST WOMEN IN INDIA

“No one shall be subjected to torture or the cruel, inhuman or degrading treatment or punishment”

Article 5, *Universal Declaration of Human Rights* (1948)

AN OVERVIEW

In the previous chapter it has been discussed the problem of increasing trends of crime against women and need for its control. In this chapter, therefore, the focus is on legal frame work and court process to control crime against women in India.

Laws are usually classified into two categories 1) Substantive Law and 2) Procedural Law. Substantive Law determines the right and liabilities of the parties, while procedural law lays down the practice and procedure for enforcement of those rights and liabilities. So far as administration of Criminal Justice is concerned, for example, Indian Penal Code is substantive law. It defines various offences and also prescribes punishment for that. The code of criminal procedure on the other hand is an example of procedural law. It lays down procedure for investigation or inquiry into and trial of various offences and provides machinery for the punishment under the respective criminal law. There are also some special criminal Laws relating to crime against women.

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1 C.K. Makker: Criminal Procedure: N.M. Tripathi Private Ltd.
The study of legal framework has been divided into five sub-headings namely

A. Position of women under Indian Constitution.

B. Substantive laws relating to crime against women under I.P.C and other special criminal legislation.

C. Procedural safeguard and protection to women as victims of crime under Cr. P.C and Evidence Act.

D. Some judge-made laws recognizing rights and protection of women.

E. State Agencies to protect women victim

F. Court system and Court process.

A. POSITION OF WOMEN UNDER INDIAN CONSTITUTION.

We the people of India, having solemnly resolved to constitute India into a sovereign socialist secular2 democratic republic and to secure to all its citizens:

JUSTICE, Social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of property;

And to promote among them all

ETERNITY assuring the dignity of the individual and then unity and integrity of the nation;

2 Inserted by the 42nd Amendment Act, 1976.
In our constituent assembly this twenty-sixth day of November, 1949, do hereby adopt, enact and give to ourselves this constitution 3.

Keeping in view of the discriminative treatment given to women since time immemorial, the framers of the Constitution were conscious enough to incorporate several general as well as specific provisions for upliftment of women and some rights have been guaranteed to the women folk at par with men and under some protective rights women have been given some exclusive benefits and privileges. The schemes and scope of the constitutional provisions relating to women may be discussed under three headings. The Preamble, the Fundamental Rights in part III (Article 12 to 35), and the Directive Principles of State Policy in part IV (Articles 36 to 51-A).

THE PREAMBLE

Preamble is the key to open the minds of the makers and shows the general purpose for which they made several provisions in the constitution 4. It declares the rights and freedoms which the people of India intended to secure to all citizens. It declares in unambiguous terms that it is the people of India who have adopted, enacted and given themselves the Constitution. The preamble wishes to render “equality of status and opportunity” to every man and woman. The preamble assures “dignity of individuals” which again includes the dignity of woman. On the basis of preamble several important enactments have been brought into operation, pertaining to every walk of life—family, succession, guardianship and employment which aim at providing and protecting the status, rights and dignity of women.

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3 Constitutional law of India, by Dr. Durga Das Basu, 7th edition.
4 In Re Beruberi, AIR 1960 SC 845.
THE FUNDAMENTAL RIGHTS

Part – III of the constitution recognizes and confers Fundamental Rights to citizens, applicable in equal measures to men and women and they can be invoked by women for the assertion of their rights.

Article – 14 deals with equality before law and provided that “The State shall not deny to any person equality before law or equal protection of the laws within the territory of India”.

The phrase 'equal protection of the laws' is positive concept and be interpreted to mean subjection to equal law, applying to all in the same circumstances. This Article is the basic feature of the constitution and cannot be destroyed by amendment. Article 14 permits classification and prohibits class legislation. Equality does not mean that all laws are generally applicable to all the people. Classification of people for the purpose of legislation is inevitable and permissible. Such classification must be reasonable, rational and not arbitrary. For example, Muslim women may not get protection under section 125 Cr. P.C. as for Muslim women, a special enactment namely The Muslim Women (Protection of Rights on Divorce) Act, 1986 has been enacted

ARTICLE 15(1) prohibits the state from discrimination on the grounds only of religion race, caste, sex or place of birth or any of them. In other words all laws are to be applied to members of both sexes equally.

ARTICLE 15(2) prohibits the general public and any citizen from discriminating any citizen on the grounds of religion, race, caste, sex, and place of birth or any of them.

5 Act No. 25 of 1986
ARTICLE 15(3) empowers the state to make special laws for women and children.

These articles do not support and direct any particular or matriarchal institutions but, simply says that women should be given equal rights with their counter part. The main object of article 15(3) is based on ‘protective discrimination’ keeping in view, the weak physical condition of women. In Dattaraya Vs. State, the Bombay High Court held that legal provisions to give special maternity relief to women workers, under article 42 of the Constitution does not infringe 15(1). Simultaneously The Maternity Benefit Act, 1961 was enacted and this act only extended to Municipal Corporation, but also to casual workers on daily wage basis. In Yusuf Abdul Aziz Vs. State of Bombay, the validity of Section 497 of the Indian Penal Code was challenged under articles 14 and 15(1) of the constitution, but the Supreme Court upheld the section 497 of IPC as valid by relying upon the mandate of Article 15(3).

ARTICLE 16(1) and (2) provide the general rule that the state shall provide equal opportunities for all citizens in matters relating to employment or appointment to any office under the state. There shall be no discrimination on the grounds of sex, race, religion, caste and place of birth, residence or any of them in providing employment.

ARTICLE 21 lays down that “No person shall be deprived of his life or personal liberty except according to the procedure established by law”. This provision is applicable not only to men but also to the women as well.

ARTICLE 23(1) prohibits traffic in human being and beggar and other forms of

6 AIR 1953 Bombay 311
7 AIR 1954 SC 321
forced labour. "The human beings includes immoral traffic of women and children for immoral or other purposes. To curb the deep rooted social evil of prostitution and give effect to this Article, Parliament has passed **The Immoral Traffic Prevention Act, 1956**. The Act imposes a positive obligation on the state to take all measures to abolish these evil practices. It prohibits, forced labour and bonded labour and beggar, wherein the employer extracts involuntary work without any payment or compels a person to work against his or her will.

**DIRECTIVE PRINCIPLES OF STATE POLICY**

The directive principles are aimed at serving social and economic freedoms by appropriate state action. These ideals are based on the concept of ‘welfare state’ and fix certain goals; social and economic; for immediate attainment by Union and State governments while formulating a policy or enacting a law.

Article 39(1) states that the state shall direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood.

Article 39(d) states that the state shall direct its policy towards securing equal pay for equal work for both men and women. To give effect to this article the state has enacted **The Equal Remuneration Act, 1976**.

Article 39(e) is aimed at protecting the health and strength of workers, both men and women.

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8 Act No. 104 of 1956  
9 Act No. 25 of 1976

In spite of having such a respectful position in our constitution the Indian women are still suffering from social tortures at every stage of their lives and very few women in our country are aware of their rights which is indeed very shocking because women in our country are made to accept torture and violence from their birth to their grave. The enactment of Pre-conception and Pre-natal Diagnostic Technique (Prohibition of Sex Selection) Act, 1994 proves that a girl child is still a curse in our society.

B. SUBSTANTIVE LAWS RELATING TO CRIME AGAINST WOMEN UNDER INDIAN PENAL CODE AND OTHER SPECIAL LEGISLATIONS

Some relevant provisions under Indian Penal Code

294. Obscene acts and songs – whoever, to the annoyance of others –

a) does any obscene act in any public place,

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10 Act No. 53 of 1961
11 Act No. 34 of 1948
12 Act No. 19 of 1976, Received the assent of the president on 09.02.1976 and published in the Gazette of India, Ext. Pt II, S.I, Dt. 09.03.1976.
13 Act No. 21 of 1965
14 Act No. 57 of 1994
b) sings, recites, or utters any obscene song, ballad or words, in or near any public place.

Shall be punished with imprisonment of either description for a term which may extend to three months or with fine, or with both.

15304B. Dowry Death – where the death of a women is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall he called 'dowry death', and such husband or relative shall be deemed to have caused her death.

Explanation – for the purpose of this sub-section 'dowry' shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961\(^\text{16}\).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

312 CAUSING MISCARRIAGE – whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

\(^{15}\) Ins. by Act 43 of 1986

\(^{16}\) Act No. 28 of 1961
Explanation – a woman who causes herself to miscarry, is within the meaning of this section.

**INGREDIENTS OF OFFENCE** – The essential ingredients of the offence under Section 312 are as follows:

1) The woman was with child;
2) Accused caused woman to miscarry;
3) Accused did it voluntarily;
4) It was not caused in good faith for saving the life of woman.

**PROCEDURE**

(i) warrant case – non-cognizable i.e. cannot be arrested without warrant
(ii) Bailable i.e. bail is to be offered
(iii) Triable by Judicial Magistrate, first class or Metropolitan Magistrate following
(iv) Warrant procedure provided in Chapter XIX, Cr. P. Code
(v) Not compoundable.

**313. CAUSING MISCARRIAGE WITHOUT WOMAN’S CONSENT**

Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

**INGREDIENTS OF OFFENCE** – The essential ingredients of the offence under Section 312 are as follows:

1) The woman was with child;
2) Accused caused woman to miscarry;
3) Accused did it voluntarily;
4) It was not caused in good faith for saving the life of woman;
5) The woman did not consent to the miscarriage
PROCEDURE – (i) warrant case – Cognizable i.e. police may arrest without warrant of arrest – (ii) Sessions Procedure i.e. trial in accordance with Chapter XVIII Cr. P. Code – Trial by Court of Session – (iii) Non-bailable i.e. granting of bail is discretionary – (iv) Non-compoundable.

314. Death caused by act done with intent to cause miscarriage. – Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;

If act done without woman’s consent – If the act is done without the consent of the woman, shall be punished either with imprisonment for life, or with the punishment above mentioned.

Explanation – it is not essential to this offence that the offender should known that the act is likely to cause death.

MEDICAL TERMINATION OF PREGNANCY ACT, 1971 VIS-A-VIS SECTION 314, IPC – after the enactment of the Medical Termination of Pregnancy Act, 1971, the provisions of Indian Penal Code relating miscarriage have been subservient to it because of the non-obstante clause in section 3 of the Act which permits abortion/miscarriage by a registered practitioner under certain circumstances namely –

i) Health – when there is danger to the life or risk to the physical or mental health of the woman;

ii) Humanitarian – such as when pregnancy arise from a sex crime like rape or intercourse with a lunatic woman;
iii) Eugenic – where there is substantial risk that the child, if born, would suffer from deformities and diseases – Jacob George Vs. State17

INGREDIENTS OF OFFENCE – The essential ingredients of the offence under Section 314 are as follows :-

1) The woman was with child;
2) Accused did some act with intention to cause hurt to miscarry;
3) Such act resulted in the death of the woman;
4) That act was done without the consent of the woman.

Procedure – Warrant case – Cognizable i.e. police may arrest without any warrant of arrest – Sessions Procedure i.e. trial in accordance with Chapter XVIII, Cr. P. Code – Triable by Court of Session – Non-bailable i.e. granting of bail is discretionary – Non-compoundable

315. Act done with intent to prevent child being born alive or to cause it to die after birth – whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth and does by such act prevent that child from being born alive or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother be punished with imprisonment of either description for a term which may extend to ten years or with fine, or with both.

Ingredients Of Offence – The essential ingredients of the offence under Section 315 are as follows :-

1) The woman was quick with child;

2) Accused caused did some act before the birth of the child;

3) Accused did so with the intention of preventing the child from being born alive or causing it to die after birth;

4) Accused did not act in good faith.

**Procedure** – Warrant case – Cognizable i.e. police may arrest without any warrant of arrest – Sessions procedure i.e. trial in accordance with Chapter XVIII, Cr. P. Code – Triable by Court of Session – Non-bailable i.e. granting of bail is discretionary – Non-compoundable.

**316. Causing death of quick unborn child by act amounting to culpable homicide** – Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Illustration – A knowing that he is likely to cause the death of a pregnant woman, does an act which if it caused the death of the woman, would amount to culpable homicide. The woman is injured, but does not die; but the death of an urban quick child with which she is pregnant is hereby caused. A is guilty of the offence defined in this section.

**Causing death of quick unborn child : ingredients of section 316.** -
The ingredients which would be necessary to establish an offence under Section 316 are –

**Ingredients Of Offence** – The essential ingredients of the offence under Section 312 are as follows :-

1) That the woman was quick with the child;
2) That the accused did an act to cause the death of such child,

3) That the circumstances, under which such act was done, were such as to make the accused quality of culpable homicide, if death had been caused, and

4) That such act did cause the death of the quick unborn child\(^{18}\)

**Procedure** – Warrant case – Cognizable i.e. police may arrest without any warrant of arrest – Sessions procedure i.e. trial in accordance with Chapter XVIII, Cr. P. Code – Triable by Court of Session – Non-bailable i.e. granting of bail is discretionary – Non-compoundable.

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

**366. Kidnapping, abducting or inducing woman to compel her marriage, etc.** – Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description of a term which may extend to ten years and shall also be liable to fine and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely

that she will be forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid.

366A. *Procuration of minor girl* – Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

**Ingredients of offence** – The following are the three principal ingredients of an offence under Section 366A:

i) That a minor girl below the age of 18 years is induced by the accused;

ii) That she is induced to go from any place or to do any act; and

iii) That she is so induced with intent that she may be or knowing that it is likely that she will be forced or seduced to illicit intercourse with another person\(^\text{19}\)

iv) **Procedure** – Warrant case – Cognizable i.e. may arrest without warrant – Sessions procedure i.e. trial in accordance with the provisions contained in Chapter XVIII, Cr. P. Code – Triable by Court of Session – Non-bailable i.e. granting of bail is discretionary – Non-compoundable.

366B. *Importation of girl from foreign country* – Whoever imports into India from any country outside India or from the State of Jammu and Kashmir any girl under the age of twenty-one years with intent she may be, or

\(^{19}\) Ramesh Vs. State AIR 1962 SC 1908: (1963)1 Cr. LJ 16.
knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.

**Ingredients of offence** – The essential ingredients of the offence under Section 366B are as follows:

1) Accused imported a girl in India from outside India including the State of Jammu and Kashmir;
2) The girl imported from below 21 years of age;
3) The girl was imported with the intention that she may be or with the knowledge that she is likely to be forced or seduced to illicit intercourse with some other person.

**Procedure** – Warrant case – Cognizable i.e. may be arrested without warrant – Non-bailable i.e. granting of bail is discretionary – Session procedure i.e. trial under Chapter XVIII, Cr. P. Code – Triable by Court of Session – Non-compoundable.

**370. Buying or disposing of any person as a slave.** – Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

**Ingredients of offence** – The essential ingredients of the offence under section 370 are as follows:

1) Accused imported, exported, removed, bought, sold or disposed of certain person as slave; or
2) Accused accepted, received or detained persons as slave against his/her will.

**Procedure** – Warrant case Non-Cognizable i.e. cannot be arrest without warrant – Bailable i.e. bail is to be offered – Triable by Judicial Magistrate, first class or Metropolitan Magistrate following Warrant Procedure under Chapter XVIII, Cr. P. Code – Non-compoundable.

**372. Selling minor for purposes of prostitution etc.** - whoever sells, lets to hire, or otherwise disposes of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation I – When a female under the age of eighteen years is sold, let for hire, otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

Explanation II – For the purposes of this section ‘illicit intercourse’ means sexual intercourse between persons not united by marriage or by any union or tie which, through not amounting to a marriage, is recognized by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a quasi marital relation.
Ingredients of offence – The essential ingredients of the offence under Section 372 are as follows:

1) Accused sold, hired or otherwise disposed of a person;
2) The victim was under 18 years of age;
3) He did it with the intent or knowledge of the likelihood that the victim would be engaged or employed for the purpose of either-
   a) prostitution, or
   b) illicit intercourse, or
   c) any act or thing which is unlawful or immoral

Procedure – Warrant case – Cognizable i.e. police may arrest without any warrant of arrest – Sessions Procedure i.e. trial in accordance with Chapter XVIII, Cr. P. Code – Non-bailable i.e. granting of bail is discretionary – Non compoundable – triable by Court of Session.

373. Buying minor for purposes of prostitution, etc – whoever buys, hires or otherwise obtains possession of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation 1. – Any prostitute of any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female under the age of eighteen years shall, until the contrary is proved, be presumed to have obtained possession of such female with intent that she shall be used for the purpose of prostitution.
Explanation – 2. – 'Illicit intercourse' has the same meaning as in section 372.

**Ingredients of offence** – The essential ingredients of the offence under Section 373 are as follows:

1) Accused bought, hired or otherwise obtained possession of a person;

2) Such person was under the age of 18 years;

3) The accused did so with intent or knowing it to be likely that such person shall be used for either prostitution or illicit intercourse or any purpose which is unlawful or immoral.

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

First – Against her will

Secondly – Without her consent.

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

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

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

Sixthly – with or without her consent, when she is under sixteen years of age.

Explanation – Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception – Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

376. PUNISHMENT FOR RAPE - 1) Whoever, except in the case provided for by sub-section, 2) Commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life, or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

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

(2) Whoever –

a) Being a police officer commits rape –

i) Within the limits of the police station to which he is appointed; or

ii) In the premises of any station house whether or not situated in the police station to which he is appointed; or
iii) On a woman in his custody or in the custody of a police officer subordinate to him; or

b) Being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

c) Being on the management or on the self of a jail, remand home or other place of custody established or under any law for the time being in force or of a women’s or children’s institution takes advantages of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

d) Being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

e) Commits rape on a woman knowing her to be pregnant; or

f) Commits rape on a woman when she is under twelve years of age; or

g) Commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine.

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

Explanation 1 – Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.
Explanation 2 – ‘Women’s or children’s institution’ means an institution, whether called an orphanage or a home for neglected woman or children or a widow’s home or by any other name, which is established and maintained for the reception and care of woman or children.

Explanation 3 – ‘Hospital’ means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.

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

Explanation – For the purposes of this section, ‘cruelty’ means

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

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

493. **Cohabitation caused by a man deceitfully inducing a belief of lawful marriage** – Every man who by deceit caused any woman who is not lawfully married to him to believe that she is lawfully married to him and to

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20 Ins. By Criminal Law (Second Amendment) Act, 1983
cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

509. Word, gesture or act intended to insult the modesty of a woman – Whoever, intending to insult the modesty of any woman, utters word, makes any sound or gesture, or exhibits any object, intending that such word of sound shall be heard, or that such gesture of object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Ingredients of offence – The essential ingredients of the offence under section 509 are as follows:-

1) The accused uttered some words, or made some sounds or gesture or exhibited any object or intruded upon the privacy of a woman;

2) The accused must have intended that the words so uttered or the sound or gesture so made or the object so exhibited should be heard or seen respectively by the woman;

3) The accused thereby intended to insult modesty of the woman.

Procedure – Summons case – Cognizable i.e. may be arrested without warrant – Bailable i.e. bail is to be offered – Triable by any Magistrate other than Executive Magistrate following Summons Procedure under Chapter XX, Cr. P. Code – compoundable with the permission of the Court by the woman or whose privacy intruded upon.
3. Punishment for keeping a brothel or allowing premises to be used as a brothel

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

(2) Any person who-

(a) being the tenant, lessee, occupier or person in charge of any premises, uses, or knowingly allows any other person to use, such premises or any part thereof as a brothel, or

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

21 Act No. 104 of 1956
(2A) For the purposes of sub-section (2), it shall be presumed until the contrary is proved, that any person referred to in clause (a) or clause (b) of that sub-section, is knowingly allowing the premises or any part thereof to be used as a brothel or, as the case may be, has knowledge that the premises or any part thereof are being used as a brothel, if,

(a) a report is published in a newspaper having circulation in the area in which such person resides to the effect that the premises or any part thereof have been found to be used for prostitution as a result of a search made under this Act; or

(b) a copy of the list of all things found during the search referred to in clause (a) is given to such person.

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

vii 4. Punishment for living on the earnings of prostitution

(1) Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings prostitution of any other person shall be punishable with imprisonment for a term which may to two years, or with fine which may extend to one thousand rupees, or with both, and where such earnings relate to the prostitution of a child or a minor, shall be punishable with imprisonment for a term of not less than seven years and not more than ten years.
(2) Where any person over the age of eighteen years is proved –

a) to be living with, or to be habitually in the company of, a prostitute; or

b) to have exercised control, direction, or influence over the movements of a prostitute in such a manner as to show that such person is aiding, abetting or compelling her prostitution; or

c) be acting as a tout or pimp on behalf of a prostitute, it shall be presumed, until the contrary is proved, that such person is knowingly living on the earnings of prostitution of another person within the meaning of sub-section (1).

viii 5. Procuring, inducing or taking person for the sake of prostitution

(1) Any person who-

(a) procures or attempts to procure a person, whether with or without his consent, for the purpose of prostitution; or

(b) induces a person to go from any place, with the intent that he may for the purpose of prostitution become the inmate of, or frequent, a brothel; or

(c) takes or attempts to take a person, or causes a person to be taken, from one place to another with a view to his carrying on, or being brought up to carry on prostitution; or

(d) causes or induces a person to carry on prostitution; shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine may extend to two thousand rupees, and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years:
Provided that if the person in respect of whom an offence committed under this sub-section, —

(i) is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life; and

(ii) is a minor; the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years;

(3) An offence under this section shall be triable—

(a) in the place from which a person is procured induced to go, taken or caused to be taken, or from which an attempt to procure or take such person is made; or

(b) in the place to which, he may have gone as a result of the inducement or to which he is taken or caused to be taken or an attempt to take him is made.

ix 6. Detaining a person in premises where prostitution is carried on

(1) Any person who detains any other person, whether with or without his consent, -

(a) in any brothel, or

(b) in or upon any premises with intent that such person may have sexual intercourse with a person who is not the spouse of such person, shall be punishable on conviction, with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine:
Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

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

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

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

(a) withholds from her any jeweler, wearing apparel, money, or other property belonging to her, or

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

(4) Notwithstanding any law to the contrary, no suit, prosecution, or other legal proceeding shall lie against such woman or girl at the instance of the person by whom she has been detained, for the recovery of any jeweler, wearing apparel or other properly alleged to have been lent or supplied to, or for, such woman or girl, or to have been pledged by such woman or girl, or for the recovery of any money alleged to be payable by such woman or girl.
x 7. Prostitution in or in the vicinity of public places

(1) Any person, who carries on prostitution and the person with whom such prostitution is carried on, in any premises,—

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

(b) which are within a distance of two hundred meters of any place of public religious worship, educational institution, hostel, hospital, nursing home, or such other public place of any kind as may be notified in this behalf by the Commissioner of Police or Magistrate in the manner prescribed, shall be punishable with imprisonment for a term which may extend to three months.

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

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

(2) Any person who—

(a) being the keeper of any public place knowingly permits prostitutes for purposes of their trade to resort to or remain in such place; or

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

(c) being the owner, lessor, or landlord, of any premises referred to in sub-section (1), or the agent of such owner, lessor, or landlord, lets the
same or any part thereof with the knowledge that the same or any part thereof may be used for prostitution, or is willfully a party to such use, shall be punishable on first conviction with imprisonment for a term which may extend to three months or with fine which may extend to two hundred rupees, or with both; and in the event of a second or subsequent conviction, with imprisonment for a term which may extend to six months and also with fine which may extend to two hundred rupees, and if the public place or premises happen to be a hotel, the license for carrying on the business of such hotel under any law for the time being in force shall also be liable to be suspended for a period of not less than three months, but which may extend to one year:

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

Explanation—For the purposes of this sub-section, 'hotel' shall have the meaning as in clause (6) of section 2 of the Hotel Receipts Tax Act, 1980\textsuperscript{22}.

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

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

\textsuperscript{22} Act No. 54 of 1930
(5) No such notification shall be issued so as to have effect from a date earlier than the expiry of a period of ninety days after the date on which it is issued.

xii 8. Seducing or soliciting for purpose of prostitution

Whoever, in any public place or within sight of, and in such manner as to be seen or heard from any public place, whether from within any building or house or not—

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

(b) solicits or molests any person, or loiters or acts in such manner as to cause obstruction or annoyance to persons residing nearby or passing by such public place or to offend against public decency, for the purpose of prostitution, shall be punishable on first conviction with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, and in the event of a second or subsequent conviction, with imprisonment for a term which may extend to one year, and also with fine which may extend to five hundred rupees:

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

xii 9. Seduction of a person in custody

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

xiii 14. Offences to be cognizable

Notwithstanding anything contained in the Code of Criminal Procedure, 1973\textsuperscript{23}, any offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of that Code: Provided that, notwithstanding anything contained in that Code,-

(i) arrest without warrant may be made only by the special police officer or under his direction or guidance, or subject to his prior approval;

(ii) when the special police officer requires any officer subordinate to him to arrest without warrant otherwise than in his presence any person for an offence under this Act, he shall give that subordinate officer an order in writing, specifying the person to be arrested and the offence for which the arrest is being made; and the latter officer before arresting the person shall inform him of the substance of the order and, on being required by such person, show him the order;

(iii) any police officer not below the rank of sub-inspector specially authorized by the special police officer may, if he has reason to believe that on account of delay involved in obtaining the order of the special police officer, any valuable evidence relating to any offence under this Act is likely to be destroyed or concealed, or the person who has

\textsuperscript{23} Act No. 2 of 1974.
committed or is suspected to have committed the offence is likely to escape, or if the name and address of such a person is unknown or there is reason to suspect that a false name or address has been given, arrest the person concerned without such order, but in such a case he shall report, as soon as may be, to the special police officer the arrest and the circumstances in which the arrest was made.

iv 15. Search without warrant -

(1) Notwithstanding anything contained in any other law for the time being in force, whenever the special police officer or the trafficking police officer, as the case may be, has reasonable grounds for believing that an officer punishable under this Act has been or is being committed in respect of a person living in any premises and that search of the premises with warrant can not be made without undue delay, such officer may, after recording the grounds of his belief, enter and search such premises without a warrant.

(2) Before making a search under sub-section (1), the special police officer or the trafficking police officer, as the case may be, shall call upon two or more respectable inhabitants (at least one of whom shall be a woman) of the locality in which the place to be searched is situated, to attend and witness the search, and may issue an order in writing to them or any of them so to do:

Provided that the requirement as to the respectable inhabitants being from the locality in which the place to be searched is situated shall not apply to a woman required to attend and witness the search.

(3) Any person who, without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to
have committed an offence under section 187 of the Indian Penal Code. The special police officer or the trafficking police officer, as the case may be, entering any premises under sub-section (1) shall be entitled to remove therefrom all the persons found therein.

(5) The special police officer or the trafficking police officer, as the case may be, after removing the person under subsection (4) shall forthwith produce him before the appropriate Magistrate.

(5A) Any person who is produced before a Magistrate under sub-section (5) shall be examined by a registered medical practitioner for the purposes of determination of the age of such person, or for the detection of any injuries as a result of sexual abuse or for the presence of any sexually transmitted diseases.

Explanation—In this sub-section, 'registered medical practitioner' has the same meaning as in the Indian Medical Council Act, 1956.

(6) The special police officer or the trafficking police officer, as the case may be, and other persons taking part in, or attending and witnessing a search, shall not be liable to any civil or criminal proceedings against them in respect of anything lawfully done in connection with, or for the purpose of the search.

(6A) The special police officer or the trafficking police officer, as the case may be, making a search under this section shall be accompanied by at least two women police officers, and where any woman or girl removed under sub-section (4) is required to be interrogated, it shall be done by

24 Act No. 45 of 1860
25 Act No. 102 of 1956
a woman police officer and if no woman police officer is available, the interrogation shall be done only in the presence of a lady member of a recognized welfare institution or organization.

Explanation—For the purpose of this sub-section and section 17A, 'recognized welfare institution or organization' means such institution or organization as may be recognized in this behalf by the State Government.

(7) The provisions of the Code of Criminal Procedure, 1973, (2 of 1974) shall so far as may be, apply to any search under this section as they apply to any search made under the authority of a warrant issued under section 94 of the said Code.

xv 13. Special police officer and advisory body

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

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

(2A) The District Magistrate may, if he considers it necessary or expedient so to do, confer upon any retired police or military officer all or any of the powers conferred by or under this Act on a special police officer, with respect to particular cases or classes of cases or to cases generally: Provided that no such power shall be conferred on—

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

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

(a) the special police officer of an area shall be assisted by such number of
subordinate police officers (including women police officers wherever
practicable) as the State Government may think fit; and

(b) the State Government may associate with the special police officer a
non-official advisory body consisting of not more than five leading
social welfare workers of that area (including women social welfare
workers wherever practicable) to advise him on questions of general
importance regarding the working of this Act.

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

xvi 16. Rescue of person.

(1) Where a magistrate has reason to believe from information received
from the police or from any other person authorized by the State
Government in this behalf or otherwise, that any person is living, or is
carrying on, or is being made to carry on, prostitution in a brothel, he
may direct a police officer not below the rank of a sub-inspector to enter such brothel, and to remove therefrom such person and produce him before him.

(2) The police officer, after removing the person, shall forthwith produce him before the magistrate issuing the order.

xvii 18. Closure of brothel and eviction of offenders from the premises.

(1) A magistrate may, on receipt of information from the police or otherwise, that any house, room, place or any portion thereof within a distance of two hundred meters of any public place referred to in sub-section (1) of section 7, is being run or used as a brothel by any person or is being used by prostitutes for carrying on their trade, issue notice on the owner, lessor or landlord of such house, room, place or portion or the agent of the owner, lessor or landlord or on the tenant, lessee, occupier of, or any other person in charge of such house, room, place, or portion, to show cause within seven days of the receipt of the notice why the same should not be attached for improper use thereof; and if, after hearing the person concerned, the magistrate is satisfied that the house, room, place, or portion is being used as a brothel or for carrying on prostitution, then the magistrate may pass orders—

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

(b) directing that before letting it out during the period of one year, or in a case where a child or minor has been found in such house, room, place or portion during a search under section 15, during the period of three years, immediately after the passing of the order, the owner,
lessor, or landlord, or the agent of the owner, lessor, or landlord shall obtain the previous approval of the magistrate:

Provided that, if the magistrate finds that the owner, lessor or landlord as well as the agent of the owner, lessor or landlord, was innocent of the improper user of the house, room, place or portion, he may cause the same to be restored to the owner, lessor or landlord, or the agent of the owner, lessor or landlord, with a direction that the house, room, place or portion shall not be leased out, or otherwise given possession of, to or for the benefit of the person who was allowing the improper use therein.

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

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

Provided that where a conviction under section 3 or section 7 is set aside on appeal on the ground that such house, room, place or any portion thereof is not "being run or used as a brothel, or is not being used by prostitutes for carrying on their trade, any order passed by the trial court under sub-section (1) shall also be set aside.

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

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

The Indecent representation of Women (Prohibition) Act, 1986

2. Definitions.

In this Act, unless the context otherwise requires, -

(c) indecent representation of women' means the depiction in any manner of the figure of a woman, her form or body or any part thereof, in such a way as to have the effect of being indecent, or derogatory to, or denigrating women, or is likely to deprave, corrupt, or injure the public morality or morals;

xxv 3. Prohibition of advertisements containing indecent representation of women

No person shall publish, or cause to be published, or arrange or take part in the publication or exhibition of any advertisement that contains indecent representation of women in any form.

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26 Act No. 60 of 1986, Published in the Gazette of India Pt. II, S. I, No. 74 Dt 23.12.1986, brought into force on 02.10.1987
4. Prohibition! of publication or sending by post of books, pamphlets, etc., containing indecent representation of women. No person shall produce or cause to be produced, sell, let to hire, distribute, circulate, or send by post any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure which contains indecent representation of women in any form.

Provided that noting in this section shall apply to-

(a) any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure -

(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, slide, film, writing, drawing, painting, photography, representation or figure is in the interest of science, literature, art, or learning or other objects of general concern; or

(ii) which is kept or used bona fide for religious purpose; any representation sculptured, engraved, painted or otherwise represented on or in -

(i) any ancient monument within the meaning of the Ancient Monument and Archaeological Sites and Remains Act. 1958\(^{27}\); or

(ii) any temple, or on any car used or the conveyance of idols, or kept or used for any religious purpose; any film in respect of which the provisions of Part II of the Cinematograph Act, 1952\(^{28}\), will be applicable.

xxvi 6. Penalty

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\(^{27}\) Act No. 24 of 1958

\(^{28}\) Act No. 37 of 1952
Any person who contravenes the provisions of section 3 or section 4 shall be punishable on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and in the event of a second or subsequent conviction with imprisonment for a term of not less than six months but which may extend to five years and also with a fine not less than ten thousand rupees but which may extend to one lakh rupees.

xvii 8. Offences to be cognizable and bailable

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under this Act shall be bailable.

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

The Information Technology Act, 2000\textsuperscript{29}

xxviii 67. Publishing of information which is obscene in electronic form

Whoever publishes or transmits or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons; who are likely, having regard to all relevant circumstances, to read, see, or hear the matter contained: or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to five years, and with fine which may extend to one lakh rupees, and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to ten years and also with fine which may extend to two lakh rupees.

\textsuperscript{29} Act No. 21 of 2000
xxix 2. Definitions

(r) "electronic form", with reference to information, means any information generated, sent, received or stored in media, magnetic, optical, computer memory, micro film, computer generated micro fiche or similar device;

THE PRE-NATAL DIAGNOSTIC TECHNIQUES

(REGULATION AND PREVENTION OF MISUSE) ACT, 1994

31 [An act to provide for the prohibition of sex selection, before or after conception and for regulation of pre-natal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of their misuse for sex determination leading to female foeticide and for matters connected therewith or incidental thereto]

32 [3-A. Prohibition of sex selection – No person, including a specialist or a term of specialist in the field of infertility, shall conduct or cause to be conducted or aid in conducting in himself or by any other person, sex selection on a woman or a man or on both or on any tissue, embryo, fluid or gametes derived from either or both of them.

3-B. Prohibition on sale of ultrasound machine, etc. to persons, laboratories, clinic etc. not registered under the Act – No person shall sell any ultrasound machine or imagine machine or scanner or any other equipment capable of detecting sex of the fetus to any genetic Counseling

30 Published in Gazette of India (Extra.) Part II, Section – 1, dated 20th September, 1994, Act No. 57 of 1994.
31 Subs. by Act 14 of 2003, Sec.2.
32 Ins. by Act 14 of 2003, Sec.6.
Centre, Genetic Laboratory, Genetic Clinic or any other person is registered under the Act] Published in Gazette of India (Extra.) Part II, Section – 1, dated 20th September, 1994

**Written consent of pregnant woman and prohibition of communicating sex of fetus**

1) No person referred to in clause (2) of section 3 shall conduct the pre-natal diagnostic procedures unless –

(a) he has explained all known side and after effects of such procedures to the pregnant woman concerned;

(b) he has obtained in the prescribed form her written consent to undergo such procedures in the language which she understands; and

(c) a copy of her written consent obtained under clause (b) is given to the pregnant woman.

33[(2) No person including the person conducting pre-natal diagnostic procedures shall communicate to the pregnant woman concern or her relatives or any other person the sex of the fetus by words, signs, or in any other manner].

**Determination of sex prohibited** – On and from the commencement of this Act, -

a) no Genetic Counseling center or Genetic Laboratory or Genetic Clinic shall conduct or cause to be conducted in its Centre, laboratory or Clinic, pre-natal diagnostic including ultrasonography, for the purpose of determining the sex of a fetus;

33 Subs. by Act 14 of 2003, Sec.8.
b) no person shall conduct or cause to be conducted any pre-natal diagnostic techniques including ultrasonography for the purpose of determining the sex of a fetus.

34[c) no person shall, by whatever means, cause or allow to be cause selection of sex before or after conception]

Cancellation or suspension of registration

1) The Appropriate Authority may suo motu, or on complaint, issue a notice to the Genetic Counseling Centre, Genetic Laboratory or Genetic Clinic to show cause why its registration should not be suspended or cancelled for the reasons mentioned in the notice.

2) If, after giving a reasonable opportunity of being heard to the genetic Counseling center, Genetic Laboratory of Genetic Clinic and having regard to the advice of the Advisory Committee, the Appropriate Authority is satisfied that there has been a breach of the provisions of this Act or the rules, it may, without prejudice to any criminal action that it may take against such Centre, Laboratory or Clinic, suspend its registration for such period as it may think fit or cancel its registration, as the case may be.

3) Notwithstanding anything contained in sub-sections (1) & (2), if the Appropriate Authority is of the opinion that it is necessary or expedient so to do in the public interest, it may, for reasons to be recorded in writing suspend the registration of the Genetic Counseling center, genetic laboratory or Genetic Clinic without issuing any such notice referred to in sub-section (1).

34 Ins. by Act 14 of 2003, Sec.9.
35(22) Prohibition of advertisement relating to preconception and pre-natal determination of sex and punishment for contravention—

(1) No. person, organization, Genetic Counseling Centre, Genetic Laboratory or Genetic Clinic including clinic, laboratory or center having ultrasound machine or imaging machine or scanner or any other technology capable of undertaking determination of sex of the fetus or sex selection shall issue, published, distribute, communicate or cause to be issued, published, distributed or communicated any advertisement, in any form, including internet, regarding facilities of pre-natal determination of sex or sex selection before conception available at such Centre, Laboratory, Clinic or at any other place.

(2) No person or organization including Genetic Counseling Centre, Genetic Laboratory or Genetic Clinic shall issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated any advertisement in any manner regarding pre-natal determination or pre-conception selection of sex by any means whatsoever, scientific or otherwise.

(3) Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees.

Explanation – For the purpose of this section, “advertisement” includes any notice, circular, label, wrapper or any other document including advertisement through internet or any other media in electronic or print form.
and also includes any visible representation made by means of any hoarding, wall painting, signal, sound, smoke or gas.

Offences and penalties –

1) Any medical geneticist, gynecologist, registered medical practitioner or any person who owns a Genetic Counseling Centre, a Genetic laboratory or a Genetic Clinic or is employed in such a Centre, Laboratory or Clinic and renders his professional or technical services to or at such a center, laboratory or Clinic, whether on an honorary basis or otherwise and who contravenes any of the provisions of this Act or rules made there under shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees and on any subsequent conviction, with imprisonment which may extend to five years and with which may extend to fifty thousand rupees.

36) The name of the registered medical practitioner shall be reported by the appropriate authority to the state Medical Council concerned for taking necessary action including suspension of the registration if the charges are framed by the Court and till the case is disposed of and on conviction for removal of his name from the register of the Council for a period of five years for the first offence and permanently for the subsequent offence.

3) Any person who seeks the aid of any Genetic counseling Centre, Genetic laboratory, Genetic Clinic or ultrasound clinic or imaging clinic or of a medical geneticist, gynecologist, sinologist or imaging specialist or registered medical practitioner or any other person for sex selection or for conducting pre-natal diagnostic techniques on any pregnant women for the purpose other than those specified in sub-section (2) of section 4, he shall be punishable with

36 Subs. by Act 14 of 2003, Sec.19.
imprisonment for a term which may extend to three years and with fine which may extend to fifty thousand rupees for the first offence and for any subsequent offence with imprisonment which may extend to five years and with fine which may extend to one lakh rupees.

4) For the removal of doubts, it is hereby provided that the provisions of sub-section (3) shall not apply to the woman who was compelled to undergo such diagnostic techniques or such selection.

37[24. Presumption in the case of conduct of pre-natal diagnostic techniques – Notwithstanding anything contained in the Indian evidence act, 1872\(^{38}\), the Court shall presume unless the contrary is proved that the pregnant woman was compelled by her husband or any other relative, as the case may be, to undergo pre-natal diagnostic technique for the purposes other than those specified in sub-section (2) of section 4 and such person shall be liable for abetment of offence under sub-section (3) of section 23 and shall be punished for the offence specified under that section.

Penalty for contravention of the provisions of the Act or rules for which no specific punishment is provided – whoever contravenes any of the provisions of this Act or any rules made there under, for which no penalty has been elsewhere provided in this Act, shall be punishable with imprisonment for a term which may extend to three months or with fine, which may extend to one thousand rupees or with both and in the case of continuing contravention with an additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

37 Subs. by Act 14 of 2003, Sec.20.
38 Act 1 of 1872
Offence to be cognizable, non-bailable and non-compoundable – every offence under this Act shall be cognizable, non-bailable and non-compoundable.

Cognizance of offences – (1) No court shall take cognizance of an offence under this Act except on a complaint made by –

a) the Appropriate authority concerned, or any officer authorized in this behalf by the Central Government or the State Government, as the case may be, or the Appropriate Authority; or

b) a person who has given notice of the less than\textsuperscript{39} [fifteen days] in the manner prescribed, to the Appropriate Authority, of the alleged offence and of his intention to make a complaint to the Court.

Explanation – For the purpose of this clause, “person” includes a social organization.

(2) No Court other than that of a metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence punishable under this Act.

(3) Where a complaint has been made under clause (b) of sub-section (1), the Court may, on demand by such person, direct the Appropriate Authority to make available copies of the relevant records in its possession to such person.

\textbf{THE DOWRY PROHIBITION ACT, 1961}\textsuperscript{40}

\textit{An Act to prohibit the giving or taking of dowry.}

Definition of “dowry” – In this Act, “dowry” means any property or valuable security given or agreed to be given either directly or indirectly –

(a) by one party to a marriage to the other party to the marriage; or

\textsuperscript{39} Subs. by Act 14 of 2003, Sec.21.

\textsuperscript{40} Act No. 28 of 1961
(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person.

At or before\(41\) [or any time after the marriage]\(42\) [in connection with the marriage of the said parties but does not include] dower or 'mohr' in the case of persons to whom the Muslim Personal Law (Shariat) applies.

\(43\)\(\text{[***]}\)

Explanation II – the expression “valuable security” has the same meaning as in Section 30 of the Indian Penal Code, 1980 (45 of 1960)

**PENALTY FOR GIVING OR TAKING DOWRY** \(44\) [[1]] If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable\(45\) [with imprisonment for a term which shall not be less\(46\) [five years, and with fine which shall not be less than fifteen thousand rupees or the amount of value of such dowry, whichever is more]:

Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than\(47\) [five years].

\(48\)\[[(2)]] Nothing in sub-section (1) shall apply to, or in relation to –

(a) presents which are given at the time of a marriage to the bride (without any demand having been made in that behalf)

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\(41\) Subs. by Act 43 of 1986, vide Section 2 (w.e.f. 19\(^{th}\) November, 1986).

\(42\) Subs. by Act 63 of 1984, vide Section 2(a) for certain words (w.e.f. 2\(^{nd}\) October, 1985).

\(43\) Explanation omitted by Section 2(b), ibid (w.e.f. 2\(^{nd}\) October, 1985)

\(44\) Renumbered as Sub-section (1), by Act 63 of 1984, vide Section 3 (w.e.f 2\(^{nd}\) October, 1985

\(45\) Subs. by Section 3, ibid for certain words (w.e.f. 2\(^{nd}\) October, 1985)

\(46\) Subs. by Act 43 of 1986, vide Section 3(a) (w.e.f. 19\(^{th}\) November, 1986)

\(47\) Subs. by Section 3(b), ibid, (w.e.f. 19\(^{th}\) November, 1986)

\(48\) Ins. By Act 63 of 1984, Section 3 (w.e.f. 2\(^{nd}\) October, 1985)
Provided that such presents are entered in a list maintained in accordance with the rules made under this Act;

(b) presents which are given at the time of a marriage to the bride groom (without any demand having been made in that behalf)

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act;

Provided further that where such presents are made by or on behalf of the bride or any person related to the bride, such presents are of a customary nature and the value thereof is not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given.

WEST BENGAL – In Section 3, for the words “which may extend to” six months, or with fine which may extend to five thousand rupees”, the words “which shall not be less than three months, but may extend to three years or with fine which shall not be less than two thousand rupees, but may extend to ten thousand rupees” shall be substituted49.

50Penalty for demanding dowry – if any person demands, directly or indirectly, from the parents or other relatives or guardians of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months].

49 vide West Bengal Act 35 of 1975, Section 3 (w.e.f. 23-09-1975))
50 Subs. by Act 63 of 1984, section 4 for Section 4 (w.e.f. 2nd October, 1984).
Ban on advertisement – if any person periodical, journal or through any other media, any share in, -

   a) offers, through any advertisement in any newspaper, his property or of any money or both as a share in any business or other interest as consideration for the marriage of his son or daughter or any other relative,

   b) prints or publishes or circulates any advertisement referred to in clause (a) he shall be punished with imprisonment for a term which shall not be less than six months, but which may extend to five years, or with fine which may extend to fifteen thousand rupees:

Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than six months].

WEST BENGAL – In Section 4, - (a) after the words "bride or bridegroom" the words "or from any other person" shall be inserted;

   (b) for the words "which may extend to six months, or with fine which may extend to five thousand rupees "the words" which shall be less than three months, but may extend to three years or with fine which shall not be less than two thousand rupees, but may extend to ten thousand rupees" shall be substituted;

   (c) for the proviso, the following provisions shall be substituted, namely:- "Provided that no Court shall take cognizance of any offence under this section expect on a complaint made by any aggrieved party or his parents or by any other person with the previous sanction of the authority specified by the State Government in this behalf:

51 Ins. By Act 43 of 1986, vide Section 4 (w.e.f. 19th November, 1986)
Provided further that no such previous sanction shall be necessary for taking cognizance on a complaint made by such organization for social welfare with a minimum standing of five years as may be specified by the State Government by notification in the official Gazette or by person duly authorized by such organization

(d) After Section 4, the following section shall be inserted, namely:-

"4-A. penalty for depriving any party of the rights and privileges of marriage –
(1) If after the marriage, any party to the marriage with or without assistance of his parents or guardians deprives the other party of the rights and privileges of marriage, or tortures or refuses to maintain the said other party for non-payment of dowry before, during or after marriage, he shall be punishable with imprisonment which shall not be less than three months, but may extend to one year or with fine which shall not be less than two thousand rupees, but may extend to five thousand rupees, or with both.

(2) The provisions of this section shall be in addition to, and not in derogation of, any provisions on the subject contained in any other law for the time being in force". [Vide West Bengal Act 35 of 1975, Section 4 (w.e.f. 23-9-1975)]

Agreement for giving or taking dowry to be void – any agreement for the giving or taking of dowry shall be void


(a) no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence under this Act;

52 Subs. by Act 63 of 1984, Section 6, for Section 7 (w.e.f. and October, 1985).
(b) no Court shall take cognizance of an offence under this except upon

(i) its own knowledge or a police report of the facts which constitute such offence, or

(ii) a complaint by the person aggrieved by the offence or a parent or other relative of such person, or by any recognized welfare institution or organization,

(c) it shall be lawful for a Metropolitan Magistrate or a Judicial Magistrate of the First Class to pass any sentence authorized by this Act on any person convicted of any offence under this Act.

Explanation – for the purposes of this sub-section, “recognized welfare institution or organization” means a social welfare institution or organization recognized in this behalf by the Central or State Government


53[(3) Notwithstanding anything contained in any law for the time being in force, a statement made by the person aggrieved by the offence shall not subject such person to a prosecution under this Act]

WEST BENGAL – In Section 7, - (a) after the words and figures “Code of Criminal Procedure, 1898 (5 of 1898), the words and figures “Code of Criminal Procedure, 1973 (2 of 1974)”, shall be substituted;

(b) for the words “Presidency Magistrate or a Magistrate of the First Class” in the two place where they occur, the words “Metropolitan Magistrate or a Judicial Magistrate of the First Class” shall be substituted;

53 Ins. By Act 43 of 1986, Section 6 (w.e.f. 19th November, 1986).
(c) in clause (d), for the words “one year from the date of offence” the words “three years from the date of the offence” shall be substituted.\textsuperscript{54}.

\textsuperscript{54} Vide West Bengal Act 35 of 1975, Section 6 (w.e.f. 23-9-1975).

\textsuperscript{55} Subs. by Act 63 of 1984, Section 7, for Section 8 (w.e.f. 2\textsuperscript{nd} October, 1985).

\textsuperscript{56} Section 8-A and 8-B, inserted by Act 43 of 1986, vide Section 8 (w.e.f. 19\textsuperscript{th} November, 1986)

8 Offences to be cognizable for certain purposes and to be bailable and non-compoundable – (1) The Code of Criminal Procedure, 1973 (2 of 1974) shall apply to offences under this act as if they were cognizable offences –

(a) for the purposes of investigation of such offences; and

(b) for the purposes of matters other than -

(i) matter referred to in Section 42 of that Code; and

(ii) the arrest to a person without a warrant or without an order of a Magistrate.

(2) Every offence under this Act shall be bailable and non-compoundable.

8-A. Burden of proof in certain cases – where any person is prosecuted for taking or abetting the taking of any dowry under Section 3, or the demanding of dowry under section 4, the burden of proving that he had not committed an offence under those sections shall be on him.

C. PROCEDURAL SAFEGUARD AND PROTECTION TO WOMEN AS VICTIMS OF CRIME UNDER CRIMINAL PROCEDURE CODE AND INDIAN EVIDENCE ACT OF 1872.

THE CODE OF CRIMINAL PROCEDURE is mainly an adjective law of procedure. The object of a Code Criminal Procedure is to provide a machinery
for the punishment of offenders against the substantive criminal law, e.g., the Indian Penal Code. In fact, the two codes are to be read together. Some terms are specially defined in criminal procedure code, but in the absence of such definition, the definition set out in the definition set out in the Indian Penal Code are to be adopted [s. 2(y)].

Section 4 of the Code lays down that -i) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried ,and otherwise dealt with according to the provisions hereinafter contained.

ii) All offences under any other law shall be investigated, inquire into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

Section 51 (2) lays down that whenever a female person is arrested then she will be searched by another female with strict regard to decency.

Section 125 of the Code lays down that if any person having sufficient means neglects or refuses to maintain his wife, children or his old parents (unable to maintain himself or herself) then the magistrate of 1st class may upon proof direct such person to make monthly allowance to those mentioned above at such a monthly rate as the magistrate from time to time direct. The term "wife" includes a woman who has been divorced by her husband and has not remarried again. But no wife shall be entitled for such allowance if she is living in adultery ,or she refuses to live with his husband without sufficient reasons, or they are living separately by mutual consent.

Section 198 of the Code lays down that —i) No court shall take cognizance of an offence punishable under chapter XX of the Indian Penal Code.
Code (45 of 1860), except upon a complain made by some person aggrieved by the offence:

Provided that—

a) Where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the court, make a complaint on his or her behalf;

b) Where such person is the husband and he is serving in any of the armed forces of the union under conditions which are certified by his commanding officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, some other person authorized by the husband in accordance with the provision of sub-section (4) may make a complaint on his behalf;

c) Where the person aggrieved by an offence punishable under section 494 or 495 of the Indian penal code (45 of 1860), is the wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father's or mother's brother or sister [or, with the leave of the court, by any other person related to her by blood, marriage or adoption].

2) For the purpose of sub-section (1), no person other than the husband of the woman shall be deemed to be aggrieved by any offence punishable under section 497 or section 498 of the said code:

Provided that in the absence of the husband, some person who had care of the woman on his behalf at the time when such offence was committed may, with the leave of the court, make a complain on his behalf.
3) When in any case falling under clause (a) of the proviso to sub-section (1), the complaint is sought to be made on behalf of a person under the age of eighteen years or a lunatic by a person who has not been appointed or declared by a competent authority to be the guardian of the person or lunatic and court is satisfied there is a guardian so appointed or declared, the court shall, before granting the application for leave, cause notice to be given to such guardian and give him a reasonable opportunity of being heard.

4) The authorization referred to in clause (b) of the proviso to sub-section (1), shall be in writing, shall be signed or otherwise attested by the husband, shall contain a statement to the effect that he has been informed of the allegations upon which the complaint is to be founded, shall be countersigned by his commanding officer, and shall be accompanied by a certificate signed by that officer to the effect that leave of absence for the purpose of making a complaint in person cannot for the time being be granted to the husband.

5) Any document purporting to be such an authorization and complying with the provision of sub-section (4), and document purporting to be a certificate required by that sub-section shall, unless the contrary is proved, to be presumed to be genuine and shall be received in evidence.

6) No court shall take cognizance of an offence under section 376 of the Indian Penal code (45 of 1860), where such offence consists of sexual intercourse by a man with his wife, the wife being under fifteen years of age, if more than one year has elapsed from the date of the commission of the offence.

7) The provision of this section apply to the abetment of, or attempt to commit, an offence as they apply to the offence.
Section 198A lays down that — No court shall take cognizance of an offence punishable under section 498A of the Indian Penal Code (45 of 1860) except upon a police report of facts which constitute such offence or upon a complaint made by the person aggrieved by her father, mother, brother, sister, or by her father’s or mother’s brother or sister or, with the leave of the court, by any other person related to her by blood, marriage or adoption.

The Indian Evidence Act of 1872 lays down certain provisions which are specially regarding women.

Section 50 of the act lays down that — when the court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact.

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, or in prosecutions under sections 494, 495, 497 or 498 of the Indian Penal Code.

Section 113 — A lays down that when it is shown that a woman has committed suicide within a period of seven years from the date of her marriage and her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all other circumstances of the case, that such suicide had been abetted by them.

Explanation — for the purposes of this section, "cruelty" shall have the same meaning as in section 498-A of the Indian Penal Code (45 of 1860).
Section 113 - B lays down the presumption as to dowry death—When
the questions whether a person has committed the dowry death of a woman and
it is shown that soon before her death such woman had been subjected by such
person to cruelty or harassment for, or in connection with, any demand for
dowry, the court shall presume that such person had committed the dowry
death.

Explanation— for the purpose of this section, 'dowry death' shall have the same
meaning as in Section 304-B of the Indian Penal Code (45 of 1860).

Section 114-A has laid down the presumption as to absence of consent
in certain prosecution for rape—In a prosecution for rape under clause (a) or
clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) of
section 376 of the Indian Penal Code, where sexual intercourse by the accused
is proved and the question is whether it was without the consent of the woman
alleged to have been raped and she states in her evidence before the court that
she did not consent, the court shall presume that she did not consent.

Section 122 has laid down that no person who is or has been married,
shall be compelled to disclose any communication made to him during marriage
by any person to whom he is or has been married; nor shall he be permitted to
disclose any such communication, unless the person who made it, or his
representative in interest consents, except in suits between married persons, or
proceedings in which one married person is prosecuted for any crime committed
against the other.

Amendment Of Section 146 — In section 146 of the Indian Evidence
Act, 1872 after clause (3), the following proviso has been inserted, namely:-
"Provided that in a prosecution for rape or attempt to commit rape, it shall not be permissible to put questions in the cross examination of the prosecutrix as to her general immoral character."

The Indian Evidence Act was amended in, 2002. There are other general sections which also applies in various circumstances regarding women related offences.

D. I. SOME JUDGE MADE LAWS RECOGNIZING RIGHTS AND PROTECTION OF WOMEN.

1) Dinesh @ Buddha vs. State of Rajasthan58, (Prohibition of mentioning names of rape victims in the Court Judgment)

In a case involving a rape of an eight year old girl, the Court, to protect the victim from social ignominy, specifically ordered the courts to restrain themselves from mentioning the name of the victim in their judgments. It observed that sexual violence apart from being a dehumanizing act is an unlawful intrusion on the right of privacy and sanctity of a female.

The Court while delivering judgment opined:

"The Courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitized judge, in our opinion, is a better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos."

Regarding the identity of the rape victim, the Court made an important observation:

58 AIR 2006 SC 1267
"We do not propose to mention name of the victim. Section 228A of IPC makes disclosure of identity of victim of certain offences punishable. Printing or publishing name of any matter which may make known the identity of any person against whom an offence under Sections 376, 376A, 376B, 376C or 376D is alleged or found to have been committed can be punished. True it is, the restriction, does not relate to printing or publication of judgment by High Court or Supreme Court. But keeping in view the social object of preventing social victimization or ostracism of the victim of a sexual offence for which Section 228A has been enacted, it would be appropriate that in the judgments, be it of this Court, High Court or lower Court, the name of the victim should not be indicated. We have chosen to describe her as 'Victim' in the judgment."

2) Sakshi vs. Union of India59, (Guidelines for dealing with cases of sexual/child abuse)

The present case was a Public interest litigation filed by Sakshi, a woman organization to widen the meaning of 'rape'. The contention of petitioner organization that the existing trend of respondent authorities to treat sexual violence, other than penile/vaginal penetration as lesser offences falling under either section 377 or 354 IPC and not as a sexual violence under Section 375/376 IPC was without any justification and was contrary to contemporary understanding of sexual abuse. Hence, it denies majority of women and children access to adequate redress in violation of Article 14 and 21. However, the Supreme Court rejected the contention.

In the petition, the other aspect which was highlighted and needed consideration relates to providing protection to a victim of sexual abuse at the time of recording his statement in court.

59 AIR 2004 SC 3566
Concerned by the monstrous growth of the incidents of child sexual abuse, the Court held:

"The whole inquiry before a Court being to elicit the truth, it is absolutely necessary that the victim or the witnesses are able to depose about the entire incident in a free atmosphere without any embarrassment. Section 273 Cr.P.C. merely requires the evidence to be taken in the presence of the accused. The Section, however, does not say that the evidence should be recorded in such a manner that the accused should have full view of the victim or the witnesses."

The Court cautioned that:

"The mere sight of the accused may induce an element of extreme fear in the mind of the victim or the witnesses or can put them in a state of shock. In such a situation he or she may not be able to give full details of the incident which may result in miscarriage of justice. Therefore, a screen or some such arrangement can be made where the victim or witnesses do not have to undergo the trauma of seeing the body or the face of the accused. Often the questions put in cross-examination are purposely designed to embarrass or confuse the victims of rape and child abuse. The object is that out of the feeling of shame or embarrassment, the victim may not speak out or give details of certain acts committed by the accused. It will, therefore, be better if the questions to be put by the accused in cross-examination are given in writing to the Presiding Officer of the Court, who may put the same to the victim or witnesses in a language which is not embarrassing. There can hardly be any objection to the other suggestion given by the petitioner that whenever a child or victim of rape is required to give testimony, sufficient breaks should be given as and when required."
The Court referred to the case of State of Punjab vs. Gurmit Singh.\textsuperscript{60} in which it gave a direction to hold the trial of rape cases in camera. It was also pointed out that such a trial in camera would enable the victim of crime to be a little comfortable and answer the questions with greater ease and thereby improve the quality of evidence of a prosecutrix because there she would not be so hesitant or bashful to depose frankly as she may be in an open court, under the gaze of the public. It was further directed that as far as possible trial of such cases may be conducted by lady Judges wherever available so that the prosecutrix can make a statement with greater ease and assist the court to properly discharge their duties, without allowing the truth to be sacrificed at the altar of rigid technicalities.

Finally the Court laid the following guidelines for dealing with cases of sexual/child abuse as under:

(1) The provisions of Sub-section (2) of Section 327 Cr.P.C. shall, in addition to the offences mentioned in the sub-section, would also apply in inquiry or trial of offences under Sections 354 and 377 IPC.

(2) In holding trial of child sex abuse or rape:

(i) a screen or some such arrangements may be made where the victim or witnesses (who may be equally vulnerable like the victim) do not see the body or face of the accused;

(ii) the questions put in cross-examination on behalf of the accused, in so far as they relate directly to the incident should be given in writing to the Presiding Officer of the Court who may put them to the victim or witnesses in a language which is clear and is not embarrassing;

\textsuperscript{60} AIR 1996 SC 1393.
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(iii) the victim of child abuse or rape, while giving testimony in court, should be allowed sufficient breaks as and when required.

These directions are in addition to those given in State of Punjab v. Gurmit Singh.

3) The Chairman, Railway Board & Ors. v. Mrs. Chandrima Das & Ors.,
(Offence of rape is violation of fundamental right to life under Article 21 and foreign citizens are entitled to protection)

Mrs. Chandrima Das, a practicing advocate of the Calcutta High Court, filed a petition under Article 226 of the Constitution against the Chairman, Railway Board and several other government officials claiming compensation for the victim, Smt. Hanuffa Khatoon, a Bangladeshi national who was gang-raped by many including employees of the Railways in a room at Yatri Niwas at Howrah Station of the Eastern Railway. She also claimed several other reliefs including a direction to the respondents to eradicate anti-social and criminal activities at Howrah Railway Station.

The High Court had awarded a sum of Rs, 10 lacs as compensation for Smt. Hanuffa Khatoon as the High Court was of the opinion that the rape was committed at the building (Rail Yatri Niwas) belonging to the Railways and was perpetrated by the Railway employees.

In the appeal before the Supreme Court, issues contended were, inter alia-

a) that the Railways would not be liable to pay compensation to Smt. Hanuffa Khatoon who was a foreigner and was not an Indian national.

b) that commission of the offence by the person concerned would not make the Railway or the Union of India liable to pay compensation to the victim of the

61 AIR 2000 SC 988
offence. It is contended that since it was the individual act of those persons, they alone would be prosecuted and on being found guilty would be punished and may also be liable to pay fine or compensation, but having regard to the facts of this case, the Railways, or, for that matter, the Union of India would not even be vicariously liable.

c) that for claiming damages for the offence perpetrated on Smt. Hanuffa Khatoon, the remedy lay in the domain of Private Law and not under Public Law and, therefore, no compensation could have been legally awarded by the High Court in a proceeding under Article 226 of the Constitution.

The Court dealt with all these issues meticulously. So far the first one is concerned, it referred to several provisions of UNDHR, UN Charter, and Declaration on the Elimination of Violence against Women and observed:

"The International Covenants and Declarations as adopted by the United Nations have to be respected by all signatory States and the meaning given to the above words in those Declarations and Covenants have to be such as would help in effective implementation of those Rights. The applicability of the Universal Declaration of Human Rights and principles thereof may have to be read, if need be, into the domestic jurisprudence.

......The word "LIFE" has also been used prominently in the Universal Declaration of Human Rights, 1948.62 The Fundamental Rights under the Constitution are almost in consonance with the Rights contained in the Universal Declaration of Human Rights as also the Declaration and the Covenants of Civil and Political Rights and the Covenants of Economic, Social and Cultural Rights, to which India is a party having ratified them. That being so, since "LIFE" is also recognized as a basic human right in the Universal

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62 Art. 3 of Universal Declaration of Human Rights.
Declaration of Human Rights, 1948, it has to have the same meaning and interpretation as has been placed on that word by this Court in its various decisions relating to Article 21 of the Constitution. The meaning of the word "life" cannot be narrowed down. According to the tenor of the language used in Article 21, it will be available not only to every citizen of this Country, but also to a "person" who may not be a citizen of the country. Thus, they also have the right to live, so long as they are here, with human dignity, just as the State is under an obligation to protect the life of every citizen in this country, so also the State is under an obligation to protect the life of the persons who are not citizens.

On the second point, the Court rejected the argument of Sovereign immunity and further observed:

"The theory of Sovereign power which was propounded in Kasturi Lal's case has yielded to new theories and is no longer available in a welfare State. It may be pointed out that functions of the Govt. in a welfare State are manifold, all of which cannot be said to be the activities relating to exercise of Sovereign powers. The functions of the State not only relate to the defence of the country or the administration of Justice, but they extend to some other spheres as, for example, education, commercial, social, economic, political and even marital. These activities cannot be said to be related to Sovereign power."

Referring to several earlier decisions of the Court, on the last point it further held:

......"the contention that Smt. Hanuffa Khatoon should have approached the Civil Court for damages and the matter should not have been considered in a petition under Article 226 of the Constitution, cannot be accepted. Where public

63 AIR 1965 SC 1039
functionaries are involved and the matter relates to the violation of Fundamental Rights or the enforcement of public duties, the remedy would still be available under the Public Law notwithstanding that a suit could be filed for damages under Private Law."

4) Shri Bodhisattwa Gautam v. Miss Subhra Chakraborty64, *(Rape amounts to violation of the Fundamental Right guaranteed to a woman under Article 21 of the Constitution)*

In this case the accused induced the complainant and cohabited with her giving her false assurance of marriage. He had also gone through certain marriage ceremony with knowledge that it was not valid marriage and thereby dishonestly made complainant to believe that she was lawfully married wife of accused. The accused even committed offence of miscarriage by compelling complainant to undergo abortion twice against her free will. The Court ruled that it had the power to award interim compensation to the victim of rape before final conviction of the offender.

**The Court observed:**

"This Court, as the highest Court of the country, has a variety of jurisdiction. Under Article 32 of the Constitution, it has the jurisdiction to enforce the Fundamental Rights guaranteed by the Constitution by issuing writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-Warranto and Certiorari. Fundamental Rights can be enforced even against private bodies and individuals. Even the right to approach the Supreme Court for the enforcement of the Fundamental Rights under Article 32 itself is a Fundamental Right. The jurisdiction enjoyed by this Court under Article 32 is very wide as this Court,

64 AIR 1996 SC 922.
while considering a petition for the enforcement of any of the Fundamental Rights guaranteed in Part III of the Constitution, can declare an Act to be ultra vires or beyond the competence of the legislature and has also the power to award compensation for the violation of the Fundamental Rights."

The Court further observed:

"Rape is thus not only a crime against the person of a woman (victim), it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. It is only by her sheer will power that she rehabilitates herself in the society which, on coming to know of the rape, looks down upon her in derision and contempt. Rape is, therefore, the most hated crime. It is a crime against basic human rights and is also violative of the victim's most cherished Fundamental Right, namely, the Right to Life contained in Article 21. To many feminists and psychiatrists, rape is less a sexual offence than an act of aggression aimed at degrading and humiliating women. The rape laws do not, unfortunately, take care of the social aspect of the matter and are inept in many respects."

5) Delhi Domestic Working Women's Forum v. Union of India65, (Direction in handling rape victims)

In this case, women domestic servants subjected to indecent physical assault by army personnel in train. A writ petition filed by women's forum to expose pathetic plight of such victims. The Court gave certain directions to deal with such victims. It also called upon the National Commission for Women to engage itself in drafting scheme providing relief to victims of such cases. It also urged the Union of India to take necessary steps subsequently as regards

framing scheme for compensation and rehabilitation to ensure justice to victims of such crimes of violence.

**The Court held:**

"It is rather unfortunate that in recent times, there has been an increase in violence against women causing serious concern. Rape does indeed pose a series of problems for the criminal justice system. There are cries for harshest penalties, but often times such crimes eclipse the real plight of the victim. Rape is an experience which shakes the foundations of the lives of the victims. For many, its effect is a long-term one, impairing their capacity for personal relationships, altering their behaviour values and generating and less fears. In addition to the trauma of the rape itself, victims have had to suffer further agony during legal proceedings."

**This Court further observed as under:**

"The defects in the present system are: Firstly, complaints are handled roughly and are not even such attention as is warranted. The victims, more often than not, are humiliated by the police. The victims have invariably found rape trials a traumatic experience. The experience of giving evidence in court has been negative and destructive. The victims often say, they considered the ordeal to be even worse than the rape itself. Undoubtedly, the court proceedings added to and prolonged the psychological stress they had to suffer as a result of the rape itself.

In this background, it is necessary to indicate the broad parameters in assisting the victims of rape.

1. The complainants of sexual assault cases should be provided with legal representation. It is important to have some one who is well-acquainted with the criminal justice system. The role of the victim's advocate would not
only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counseling or medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant’s interests in the police station represent her till the end of the case.

2. Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station, the guidance and support of a lawyer at this stage and whilst she was being questioned would be of great assistance to her.

3. The police should be under a duty to inform the victim of her right to representation before any questions were asked of her and that the police report should state that the victim was so informed.

4. A list of advocates willing to act in these cases should be kept at the police station for victims who did not have a particular lawyer in mind or whose own lawyer was unavailable.

5. The advocate shall be appointed by the court, upon application by the police at the earliest convenient movement, but in order to ensure that victims were questioned without undue delay, advocates would be authorized to act at the police station before leave of the court was sought or obtained.

6. In all rape trials anonymity of the victims must be maintained, as far as necessary.

7. It is necessary, having regard to the Directive Principles contained under Article 38(1) of the Constitution of India to set up Criminal Injuries...
Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example, are too traumatized to continue in employment.

8. Compensation for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of the child if this occurred as a result of the rape.

In the present situation, the third respondent will have to evolve such scheme as to wipe out the fears of such unfortunate victims. Such a scheme shall be prepared within six months from the date of this judgment. Thereupon, the Union of India, will examine the same and shall take necessary steps for the implementation of the scheme at the earliest."

6) State of Himachal Pradesh v. Raghubir Singh66, (Sole testimony of the prosecutrix in a rape case)

This was a case of rape of a minor girl aged 7/8 years. Medical examination confirmed sexual assault on body of prosecutrix. The Court found prosecutrix statement to be truthful and reliable and amply corroborated by evidence of father and medical evidence. It held, conviction can be recorded on sole testimony of prosecutrix if her evidence inspires confidence and there is absence of circumstances which militates against her veracity.

It observed:

"There is no legal compulsion to look for corroboration of the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the

prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate her veracity. In the present case the evidence of the prosecutrix is found to be reliable and trustworthy. No corroboration was required to be looked for, though enough was available on the record. The medical evidence provided sufficient corroboration."

Public resort, public means, roads, temples, water sources, tanks, bathing ghats, etc., entry into educational institutions or pursuits of avocation or profession which are open to all and by reason of birth they suffer from social stigma. Untouchability and birth as a scheduled caste are thus intertwine root causes. Untouchability, therefore, is founded upon prejudicial hatred towards Dalits as in independent institution. It is an attitude to regard Dalits as pollutants, inferiors and out-castes. It is not founded on mense rea. The practice of untouchability in any form is, therefore, a crime against the Constitution. The Act also protects civil rights of Dalits. The abolition of untouchability is the arch of the Constitution to make its preamble meaningful and to integrate the Dalits in the national mainstream."

II. SOME JUDGE MADE LAWS REGARDING PROTECTION FOR VICTIM'S WITNESS

1) State of Andhra Pradesh Vs. Rayappa and Others\textsuperscript{67}, (EVIDENCE OF INTERESTED WITNESS)

The Supreme Court overruled the judgment of the High Court of Andhra Pradesh which acquitted all the accused persons in connection with a murder discarding the evidence of the two close relatives of the deceased considering them to be 'interested witnesses'.

\textsuperscript{67} (2006) 4 SCC 512.
The SC held:

"By now it is a well-established principle of law that testimony of a witness otherwise inspiring confidence cannot be discarded on the ground that he being a relation of the deceased is an interested witness. A close relative who is a very natural witness cannot be termed as an interested witness. The term interested postulates that the person concerned must have some direct interest in seeing the accused person being convicted somehow or the other either because of animosity or some other reasons.

On the contrary it has now almost become a fashion that the public is reluctant to appear and depose before the Court especially in criminal case because of varied reasons. Criminal cases are kept dragging for years to come and the witnesses are a harassed lot. They are being threatened, intimidated and at the top of all they are subjected to lengthy cross-examination. In such a situation, the only natural witness available to the prosecution would be the relative witness. The relative witness is not necessarily an interested witness. On the other hand, being a close relation to the deceased they will try to prosecute the real culprit by stating the truth. There is no reason as to why a close relative will implicate and depose falsely against somebody and screen the real culprit to escape unpunished. The only requirement is that the testimony of the relative witnesses should be examined cautiously.

It also held that non-examination of independent witnesses, in such a situation, would be no ground to discard the otherwise creditworthy testimony of available witnesses, which inspires confidence.
In one of the most high profile criminal case in the recent past, the Best Bakery case, both the fast track court as well as the High Court of Gujarat acquitted all 21 persons accused for insufficient evidence after 37 out of 73 witnesses, including key witness Zaheera Sheikh, turned hostile. Although at that time, reasonable suspicion was raised that witnesses were being threatened or coerced, however, no steps were taken by public prosecutor to protect star witness and no request was made by public prosecutor to hold trial in a camera. The incident that took place in Vadodara in March 2002, 14 persons lost their lives during public riots; yet the trials that followed could not convict anyone for these murders. Later on, in an application to the SC, Zaheera alleged that she was threatened and intimidated not to tell the truth before the trial court and prayed for the re-trial of the case outside Gujarat. In a unique judgment, the Supreme Court directed the Bombay High Court for retrial in a competent court under it's jurisdiction of and appointment of another public prosecutor. Though the SC has held Zaheera for perjury recently but it is an undeniable fact that the change of the venue of trail witnessed Mumbai court handing over life sentence to 9 accused who walked out scot free earlier.

The Court came down heavily on the manner the trial was conducted with the witnesses virtually left defenceless against external pressure and also the reasoning of the High Court, which turned down Zahira's appeal for refusing re-trial of the case.

It observed:

"The Courts have to take a participatory role in a trial. They are not expected to be tape recorders to record whatever is being stated by the witnesses. Section
311 of the Code and Section 165 of the Evidence Act confer vast and wide powers on Presiding Officers of Court to elicit all necessary materials by playing an active role in the evidence collecting process.

......The Court cannot afford to be wishfully or pretend to be blissfully ignorant or oblivious to such serious pitfalls or dereliction of duty on the part of the prosecuting agency. The prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system, and Courts could not also play into the hands of such prosecuting agency showing indifference or adopting an attitude of total aloofness"

With respect to decision of the High Court, it further observed:

"The entire approach of the High Court suffers from serious infirmities, its conclusions lopsided and lacks proper or judicious application of mind. Arbitrariness is found at large on the approach as well as the conclusions arrived at in the judgment under challenge, in unreasonably keeping out relevant evidence from being brought on record ...If the investigation was faulty, it was not the fault of the victims or the witnesses.... In the case of a defective investigation the Court has to be circumspect in evaluating the evidence and may have to adopt an active and analytical role to ensure that truth is found by having recourse to Section 311 or at a later stage also resorting to Section 391 instead of throwing hands in the air in despair. It would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.

....... In the background of principles underlying Section 311 and Section 391 of the Code and Section 165 of the Evidence Act it has to be seen as to whether
the High Court's approach is correct and whether it had acted justly, reasonably and fairly in placing, premiums on the serious lapses of grave magnitude by the prosecuting agencies and the Trial Court, as well. There are several infirmities which are tell tale even to the naked eye of even an ordinary common man. The High Court has come to a definite conclusion that the investigation carried out by the I.O. was and should have been per se sufficient justification to direct a re-trial of the case. There was no reason for the High Court to come to the further conclusion of its own about false implication without concrete basis and that too merely on conjectures."

The concern of the Supreme Court was captured in the following words:

"...... Criminal trials should not be reduced to be the mock trials or shadow boxing or fixed trials. Judicial Criminal Administration System must be kept clean and beyond the reason of whimsical political wills or agendas and properly insulated from discriminatory standards or yardsticks of the type prohibited by the mandate of the Constitution.

...... This appears to be a case where the truth has become a casualty in the trial. We are satisfied that it is fit and proper case, in the background of the nature of additional evidence sought to be adduced and the perfunctory manner of trial conducted on the basis of tainted investigation a re-trial is a must and essentially called for in order to save and preserve the justice delivery system unsullied and unscathed by vested interests. We should not be understood to have held that whenever additional evidence is accepted, re-trial is a necessary corollary. The case on hand is without parallel and comparison to any of the case where even such grievances were sought to be made. It stands on its own as an exemplary one, special of its kind, necessary to prevent its recurrence. It is normally for the Appellate Court to decide whether the
adjudication itself by taking into account the additional evidence would be proper or it would be appropriate to direct a fresh trial, though, on the facts of this case, the direction for re-trial becomes inevitable.”

III. SUPREME COURT GUIDELINES ON SEXUAL HARASSMENT AT WORKPLACE

The Supreme Court's judgment in Visakha's case is a landmark for more than one reason. Not only was sexual harassment at the workplace recognized under the Indian jurisprudence as a crucial problem faced by women workers, it also set out detailed guidelines for prevention and redressal of this malaise. The judgment was delivered by J.S. Verma, CJ, on behalf of Sujata Manohar and B.N. Kirpal, JJ., on a writ petition filed by 'Vishaka' - a non-governmental organization working for gender equality by way of PIL seeking enforcement of fundamental rights of working women under Article 21 of the Constitution. The immediate cause for filing the petition was the alleged brutal gang rape of a village-level social worker of Rajasthan who tried to stop a child marriage taking place in her village.

Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognized basic human right. The common minimum requirement of this right has received global acceptance. The International Conventions and norms are, therefore, of great significance in the formulation of the guidelines to achieve this purpose.

In view of this and the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at

Visakha Vs. State of Rajasthan, AIR 1997 SC 3011
work places, the Supreme Court in this case incorporated various provisions of 'Convention on the Elimination of All Forms of Discrimination against Women' into the Indian law laying down the guidelines and norms specified hereinafter for due observance at all work places or other institutions, until a legislation is enacted for the purpose. This was done in exercise of the power available under Article 32 of the Constitution for enforcement of the fundamental rights and it is further emphasized that this would be treated as the law declared by this Court under Article 141 of the Constitution.

The guidelines and norms pre-scribed herein are as under:

Having regard to the definition of 'human rights' in Section 2(d) of the Protection of Human Rights Act, 1993.\textsuperscript{70}

Taking note of the fact that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in work places and that enactment of such legislation will take considerable time.

It is necessary and expedient for employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women:

\textbf{1) Duty of the Employer or other responsible persons in work places and other institutions:}

It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution,
settlement or prosecution of acts of sexual harassment by taking all steps required.

2) Definition:

For this purpose, sexual harassment, includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

a) physical contact and advances;
b) a demand or request for sexual favours;
c) sexually coloured remarks;
d) showing pornography;
e) any other unwelcome physical, verbal or non-verbal, conduct of sexual nature.

Where any of these acts is committed in circumstances where under the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in Government, public or private enterprise such can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

3) Preventive steps:

All employers or persons in charge or work place whether in the public or private sector should take appropriate steps to prevent sexual harassment.
Without prejudice to the generality of this obligation they should take the following steps:-

a) Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.

b. The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

c. As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial employment (Standing Orders) Act, 1946.\(^{71}\)

d. Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

4) **Criminal Proceedings:**

Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

In particular, it should ensure that victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

\(^{71}\) Act No. 20 of 1946 as amended by Acts No. 3 of 1951, 36 of 1956, 16 of 1961 and 39 of 1963.
5) **Disciplinary Action:**

Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

6) **Complaint Mechanism:**

Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.

7) **Complaints Committee:**

The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special counselor or other support service, including the maintenance of confidentiality.

The Complaints Committee should be headed by a woman and not less than half of its member should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.

The Complaints Committee must make an annual report to the Government department concerned of the complaints and action taken by them.
The employers and person in charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government department.

8) **Workers' Initiative:**

Employees should be allowed to raise issues of sexual harassment at workers' meeting and in other appropriate forum and it should be affirmatively discussed in Employer-Employee Meetings.

9) **Awareness:**

Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.

10) **Third Party Harassment:**

Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person in charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

11) The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in Private Sector.

12) These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993.
The court ordered that:

"......the above guidelines and norms would be strictly observed in all work places for the preservation and enforcement of the right to gender equality of the working women. These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field."

IV. JUDGE-MADE LAW ON TRAFFICKING OF MINOR GIRLS

Prerana Vs. State of Maharashtra & Ors72.

Salient aspects of the judgment:

• Children rescued from brothels should be treated as "children in need of care and protection" under the Juvenile Justice (Care and protection of children) Act, 2000;

• A lawyer representing the accused should not represent the victims;

• A parallel was drawn between the Immoral (Traffic) Prevention Act and the Juvenile Justice (Care and protection of children) Act, 2000;

Facts:

i) This is a judgment from the High Court of Bombay. This petition was filed following the release of minor girls to the custody of certain persons, pretending to be legal guardians of the rescued victims but represented in Court by the same lawyers representing the accused in the same case. Following a raid and rescue operation from a red light area, several young girls and children were rescued, and the perpetrators were arrested.

ii) During the pendency of these proceedings, the girls who were found to be less than 18 years of age were kept in an observation home. A lawyer filed

72 (2003) 2 Mah LJ 105
an application stating that these children should be released on the ground that they had not committed any offence and therefore could not be detained. This lawyer was also the lawyer for the accused. On his application, the children were released.

iii) Prerana, a NGO working with rescued victims/ survivors of prostitution, filed a petition in the High Court as they apprehended that these children would be handed over to the accused and also that there was a clear case of conflict of interest as far as the lawyer was concerned.

In this background, the High Court passed an Order in which it gave the following directions:

**Held:**

1) No Magistrate can exercise jurisdiction over any person under 18 years of age irrespective of the fact whether that person is a juvenile in conflict with the law or a child in need of care and protection, as defined by Sections 2(1) and 2(d) of the **Juvenile Justice (Care and Protection of Children) Act, 2000**. At the first possible instance, the Magistrates must take steps to ascertain the age of a person who seems to be under 18 years of age. When such a person is found to be under 18 years of age, the Magistrate must transfer the case to the Juvenile Justice Board if such person is a juvenile in conflict with the law, or to the Child Welfare Committee if such a person is a child in need of care and protection.

2) A Magistrate before whom either persons rescued under the **Immoral Traffic (Prevention) Act, 1956** or having been found soliciting in a public place are produced, should, under Section 17(2) of the said Act, have their ages ascertained the very first time they are produced before him. When such
a person is found to be under 18 years of age, the Magistrate must transfer the case to the Juvenile Justice Board if such person is a juvenile in conflict with law, or to the Child Welfare Committee if such person is a child in need of care and protection.

3) Any juvenile rescued from a brothel under the Immoral Traffic (Prevention) Act, 1956 or found soliciting in a public place should only be released after an inquiry has been completed by the Probation Officer.

4) The said juvenile should be released only to the care and custody of a parent/guardian after such parent/guardian has been found fit by the Child Welfare Committee to have the care and custody of the rescued juvenile.

5) If the parent/guardian is found unfit to have the care and custody of the rescued juvenile, the procedure laid down under the Juvenile Justice (Care and Protection of Children) Act, 2000\(^73\) should be followed for the rehabilitation of the rescued child.

6) No advocate can appear before the Child welfare Committee on behalf of a juvenile produced before the Child welfare Committee after being rescued under the Immoral traffic (Prevention) Act, 1956 or found soliciting in a public place. Only the parents/guardian of such juvenile should be permitted to make representations before the Child welfare Committee through themselves or though an advocate appointed for such purpose.

7) An advocate appearing for a pimp or brothel-keeper is barred from appearing in the same case for the victims rescued under the Immoral Traffic (Prevention) Act, 1956.

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73 Act No. 56 of 2000, enforced W.B.F 1/04/2001 vide S.O. 177(E) dt. 28/02/2001 published in the Gazette of India, Extraordinary, P.T. II, Sec. 3(i), No. 88, dt. 1/03/2001
I) State of Punjab Vs. Gurmit Singh & Ors

Salient aspects of the judgment:

- Established that in camera trials are mandatory in rape cases
- Recognized that a delay in filing the FIR is not fatal to the case of the prosecution, given the social context of the crime of rape, and the circumstances the victim has to go through as a consequence of such crime.

Facts in brief:

i) The complainant, a young girl of sixteen years, who was kidnapped and repeatedly gang raped by the accused, disclosed the fact to her mother much later.

ii) The medical examination revealed that there was a very strong possibility that the complainant had been raped; however, there was also the probability that she was habituated to sexual intercourse. The accused, as well as police, took this to contained that the complainant had indulged in sexual intercourse with them with her free will and consent. The trial court accepted this contention, and observing that in view of the fact of the prosecutix’s promiscuous character, and that she was the only witness to the alleged crime, acquitted the accused.

Held:

1) This is a case where the Supreme Court set aside the acquittal, convicted the accused, and held that holding these trials “in camera” were mandatory in such cases. It was also strongly suggested that hearings should be conducted by lady judges as far as possible.

(1996) 2 SCC 384
2) With respect to the treatment of the complain, by defence counsel, the Court specifically directed that the courts must not sit as "silent spectators" during cross-examination; rather, they must ensure that cross-examination is not made a means of harassment or cause humiliation to the victim of a crime.

3) The court was careful to take into account the social context of the complainant in dealing with the issue of delay in reporting. It held: "The courts cannot overlook the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family...The conduct of the prosecutrix ...appear to be most natural. The trial court overlooked that a girl, in a tradition-bound non-permissive society in India, would be extremely, reluctant even to admit that the incident which is likely to reflect upon her chastity had occurred, being conscious of the danger of being ostracized by the society or being looked down on by the society. Her not informing the teachers of her friends at the examination center under the circumstances can not detract from her reliability".

4) The Court advised the lower judiciary that, even if the victim girl is shown to be habituated to sex, the Court should not describe her to be of a bad or immoral character.

VI) JUDGE-MADE LAW REGARDING EXAMINATION OF VICTIM IN RAPE CASES

Sheba Abidi Vs. State & Anr75.

75 113 (2004) DTL 125
Salient Aspects of the Judgment:

• Justified the presence of a support person with a victim of child sexual abuse or rape during testifying in Court, with sufficient breaks, as and when required.

• Presiding Judge should himself, in his own language, put the questions of the accused to the victim, in such a manner that no trauma, harassment, or embarrassment is caused to the victim.

• Presiding Judge must ensure that the victim is examined in a congenial, cordial, and friendly atmosphere, and all necessary equipment(s) and testimonial aids shall be arranged for by the prosecution.

• Such protection is to be available not only to the victim, but also to witnesses who may equally vulnerable.

Facts in brief:

i) The son of the petitioner was being sexually abused by his teacher at school over a considerable period of time, and due to this, developed Post Trauma Street Disorder. A psychotherapist opined that exposure of the victim to the perpetrator of the abused would only exacerbate his critical condition.

ii) The accused contended that the mother of the victim who was a prosecution witness, should not be permitted to be present as a support person. It was also contended that the right of the accused to cross-examine the victim should not be defeated or frustrated in any way.

Held:

1) The presence of a support person with the victim of child abuse or rape at the time of his testimony in Court with sufficient breaks as and when...
required is fully justified. In the absence of a support person, a child of tender age may not be able to say anything. The objection of learned counsel the accused that the support person should not be a prosecution witness himself has some substance and as such in the present case, instead of the mother, who is a prosecution witness, the father of the child can be permitted to be a support person.

2) The question as to whether the child witness in the present case should be allowed to be examined by keeping him behind a screen or through closed circuit television can be left to the discretion of the Trial Judge in as much as times the equipment required for examination of witness through closed circuit television may not be readily available and returning the witness without examination may be not be deemed fit by Trial Judge.

3) In view of the facts and circumstances of the case and in the light of the Apex Court Judgment in *Sakshi Vs. Union of India and Ors*, this Court has no hesitation in concluding that the time has now come when the Courts should firmly step in to prevent harassment and humiliation of the witnesses and victims of sexual abuse in the course of their cross-examination on Courts.

4) The spate of questions put to them in cross-examination which sometimes cross the limits of decency even makes them re-live the whole incident. This appears to be a major factor which prompts numerous victims of such crimes to recede from their statements for fear of humiliation. It happens in spite of holding of a trial in camera because the presence of the prosecutor, defence counsel, accused as well as staff is unavoidable.

76 Ibid pp 59
5) The directions given by the Apex Court in *Sakshi Vs. Union of India*\textsuperscript{77} have to be applied not only to the victims of child sex abuse or rape but some witnesses also who may be equally vulnerable like a child victim. In appropriate cases, the Courts may apply these directions to the victims or witnesses of other sexual offences also if it appears that they are vulnerable to mental pressure of Court proceedings.

6) The father of the child would be the support person who will remain present at the time of the examination/cross examination of the child. The questions to be put by the defence counsel in cross examination would be handed over to the learned presiding Judge, who would put them to the child witness in his own language ensuring that the child does not suffer any further trauma. Further questions may also be allowed to both the sides after the cross examination of the child is over so that the clarifications, if required, are obtained. The testimonial aids may also be permitted so that the child can express himself freely and meaningfully.

7) The learned Trial Judge may also consider the feasibility of examining the child witness in his Chamber so that the child is not overawed by the Court atmosphere. The presiding judge must ensure that the child victim is examined in a congenial, cordial and friendly atmosphere. It would be better if the evidence is required in post-lunch session at the end of Board when other cases are over and court is less crowded. This Court need not sat that necessary equipment/gadgets for compliance of directions have to be arranged by the prosecution.

8) A copy of this order be circulated to all the officers of District Judiciary so that these directions are followed while examining the victims/witnesses of sex abuse or rape and especially when the victim or witness is a child.

\textsuperscript{77} Ibid Pp 59
E. STATE AGENCIES TO PROTECT WOMEN VICTIM

a. **The National Commission for women Act 1990:**

This is an act to constitute a National Commission for women and to provide for matters connected therewith or incidental thereto. The act came into force on 31/01/1992.

This act provides that the central government shall constitute a body to be known as national commission for women which shall consist of:

a) A chairperson to be nominated by Central Government

b) Five members to be nominated by Central Government.

c) A member secretary to be nominated by Central government.

The chairperson and every member shall hold office ordinarily for such period, not exceeding three years as may be specified by Central Government in this behalf.

**Functions of the Commission:**

1. a) Investigate and examine all matters relating to the safeguards providing for women under the constitution and other laws.

b) Present to the Central Government annually and at such other times, report upon the working of those safeguards.

c) Make in such reports recommendations for the effective implementation of those safeguards for improving the conditions of women by the union or any state.

d) Review from time to time, the existing provisions of the constitution and other laws affecting women and recommended amendments thereto so as to suggest remedial measures to meet any lacuna, inadequacies on short comings in such legislation.

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78 Act No. 20 of 1990

79 Notification No. S.O. 99(E) dated 31/01/1992

80 The National Commission for women was constituted on 31/01/1992
Take up the cases of violation of provisions of the constitution and of other laws relating to women with the appropriate authorities.

f) Look into complaints and take suomoto notice of matters relating to (i) deprivation of women’s right (ii) Non-implementation of laws enacted to provide protection for women and also to achieve the objective of equality and development, (iii) non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardship and take up the issues arising out of such matters with appropriate authorities.

g) Undertake promotional and educated research so as to suggest ways of ensuring, due representation of women in all spheres and identify factors responsible for impeding their advancement.

h) Participate and advise on the planning process of socio-economic development of women.

i) Evaluate the progress of the development of women under the union and any state.

j) Inspect or cause to be inspected a jail, remand home, women’s institution or other place of custody where women are kept as prisoner

k) Fund litigation involving issues affecting a large body of women.

l) Make periodical reports to the Government or any matter pertaining to women and in particular various difficulties under which women toil

m) Any other matter, which may be referred to it by the Central Government.

b. The West Bengal Commission for women Act, 199281:

This is an Act passed by the West Bengal Legislative Assembly to provide for the constitution of a state level commission for women and for matters connected therewith or incidental thereto.

81 Act No. 12 of 1992
Section 3 of said Act provides that the state Government shall constitute West Bengal Commission for women and the commission shall consist of:

a) (i) A Chairperson

(ii) A Vice Chairperson, to be nominated by the State Government.

b) Nine members to be appointed by State Government of whom at least

i) One shall be a member of a schedule caste and

ii) One shall be a member of a schedule tribe.

c) An officer of the State Government who shall be the member secretary

the Chairperson or the Vice-Chairperson or a member other than member secretary shall hold office ordinarily for such period not exceeding three years as may be specified by State Government in this behalf.

**Function of the Commission**

The West Bengal Commission for women shall perform all or any of the followings:

a) Investigate and examine all matters relating to the safeguards provided for women under the constitution of India and other laws and recommended steps to be taken by the State Government for effective implementation of such safeguards.

b) Review the existing provisions of constitution and other laws affecting women and recommended amendments thereto as to suggest remedial legislative measures to meet any lacunae, inadequacies or shot coming in such legislations.

c) Look into complaints and take suomoto notice of matters relating to:

(i) deprivation of women's right.

(ii) non-implementation of laws enacted to provide protection to women

82 Section 11 of said Act.
(iii) non-compliance of policy decision, guidelines as instruction aimed at mitigating, hardship and ensuring before and providing relief to women and taken up issues arising out of such matters with appropriate authorities.

d) call for special studies or investigation 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.

e) Evaluate the progress of advancement of women in the state.

f) Visit Jail, destitute girl's home, women's institution on other place of custody were women are kept as prisoner or otherwise and take up with the concerned authorities such matters for remedial action as may be necessary.

g) any other matters which may be referred to it by the State Government.

2. The State Government may consult the commission on policy matters affecting women.

3. The commission shall while investigation any matter referred to in clause (a) and (b) above have all the power of a Civil Court under C.P.C while trying a suit and in particular in respect of summering witness, discovery and production of any document, receiving evidence on affidavits and any other matters while may be prescribed.

4. The Commission shall present to the State Government every six months and at such other times on the Commission may deem fit reports of it's activities together with it's recommendations and the State Government shall cause them to be laid before the State legislative as soon as possible along with a memorandum explaining the action taken or proposed to be taken on the recommendations and the reasons for non- acceptance, if any, of any of such recommendations.
F. COURT SYSTEM AND COURT PROCESS

Legal framework of courts: one of the notable feature of Indian constitution is the distribution of power between the state and the center. Article 246 read with seventh schedule deals with the distribution of legislative power.

The police, the administration of justice, prison and the like have been placed in the state list, criminal law and criminal procedure are on the concurrent list and the constitution and organization of the Supreme Court and High Courts have been placed in the central list.

Section 9 and 10 of the code of criminal procedure provide for the constitution of Courts of Session and Sections 11, 12, 13, 16, 17 and 18 incorporate provision for constitution of judicial Magistrates and Metropolitan Magistrates respectively. Compoundable Criminal offences can be referred and to be disposed of through Look Adalat under Legal Service Authorities Act.

Power and jurisdictions of courts: Under the code of criminal procedure the power of the courts (Section 28 and 29) are as follows:

Section 28(i) High Court: any sentence authorized by law.

Section 28(ii) Session and Additional Sessions judge: any sentence authorized by law except that a death sentence shall be subject to confirmation by the H.C. 28(iii) Assistant Sessions Judges: any sentence authorized by law except sentence of death or imprisonment for life or of imprisonment for a term exceeding ten years. 29(i) Chief Judicial Magistrate/Metropolitan Magistrate: any sentence authorized by law except a
sentence of death, or of imprisonment for life or of imprisonment for a term exceeding seven years.

Section 29(ii) Magistrate of the first class: sentence of imprisonment not exceeding three years or of fine not exceeding five thousand rupees or both.

As far as organization set up of the Courts are concerned, arrangement appears to be satisfactory. Now let us see the working of Criminal Courts which are dealing with crime relating to victim women and the constraints under which they are working.

**Hierarchy of Criminal Courts**

```
Supreme Court
   |   
High Courts
   |   
Session Courts
   |   
(Session Judge, Additional Session Judge)
   |   
Assistant Sessions
   |   
Chief Metropolitan Magistrate
   |   
(Additional Chief Metropolitan Magistrate)
   |   
Metropolitan Magistrate
   |   
Additional Chief Judicial Magistrate
   |   
Judicial Magistrates of First Class
```
Sentences which may be passed by the Criminal Courts (ss. 28 and 29)

<table>
<thead>
<tr>
<th>Court</th>
<th>Sentencing Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supreme Court or High Court</td>
<td>Any sentence authorized by law</td>
</tr>
<tr>
<td>Sessions Judge or Additional Session Judge</td>
<td>Any sentence authorized by law-sentence of death is subject to confirmation by High Court.</td>
</tr>
<tr>
<td>Assistant Sessions Judge</td>
<td>Imprisonment up to 10 years or/and fine</td>
</tr>
<tr>
<td>Chief Judicial Magistrate or Chief Metropolitan Magistrate</td>
<td>Imprisonment up to 7 years or/and fine up to Rs.5,000/-</td>
</tr>
<tr>
<td>Judicial Magistrate of Class 1 or Metropolitan Magistrate</td>
<td>Imprisonment up to 3 years or/and fine up to Rs.5,000/-</td>
</tr>
</tbody>
</table>

**The court process**: according to pending figures, criminal cases relating to crime against woman in Sessions Courts of West Bengal is not so alarming. However, the pendency of such cases in Magisterial Courts certainly needs scrutiny.

Various factors are responsible for large number of pending cases relating to crime against woman in different Courts. This raise certain issue relating to working conditions of the courts, working load vis-à-vis strength of the staff, non-computerization, co-operation from investigation, prosecution, defence, low budge and others.

**The infrastructure**: it is an undisputed fact that the human efficiency to a great deal depends upon the setting and other associated conditions in which an individual is working.

Courts of Sessions and Magisterial Courts in West Bengal are mostly located in old dilapidated building. Some of the courts are running in rented
accommodation. During peak hours court buildings are being over crowded and many Court buildings corridors adjacent to court rooms are occupied by the stall vendors and 'Sherestra' (office) of Mohori, Advocate with no screen between them and the courts. Law Clerks and advocates have occupied either the corridor of the building or the open space or court verandah in and around the building. The location and physical conditions of most of the courts are found to be least satisfactory in West Bengal.

**Space and seating facilities**: it is observed that in majority of the cases, the court rooms are not spacious. Logically the physical space provided at a public office should be determined on the basis of the number of members of public visiting office. In West Bengal most of the Magistrate Courts are housed in small rooms and these rooms are highly inadequate to accommodate visitors, especially during the pre-lunch session. The allocation of space appears to have been done on the basis of status or level of the Courts rather than of an functional requirements of space and the convenience to the public.

Closely linked with the availability of space is the provision of seating facilities. Civility demands that a visitor should be provided a chair to seat. Especially, court visitors also include a number of respectable people appearing as witness despite of all personal inconvenience. If a seat is not provided no cooperation can be expected from them in future. Most of the Courts in West Bengal have inadequate seating facilities for the visitors including witnesses and near relatives of the victim.

Over crowding of the court premises by curious court visitors in case of trial of victim woman specially in case of trial of sexual offence cases is the general rule. On many occasions, the presiding officer has to order the peon to
turn those visitors out, who are not connected with the cases being heard. In spite of specific provision of Cr.P.C., in-camera trial has not been followed in most of such cases. The shortage of space and seating facility inside the court room even cause the tampering with prosecution witnesses and it may be a cause for low level of co-operation by public witnesses and public witnesses do not appear or hesitate to appear in court for such reason.

**Filing system**: the smoothness and efficiency of any system depends much upon how its records are maintained. Without going into the details about maintenance of records in courts at this stage, the availability of file, almirah/cabinet is required to be considered. Most of the criminal courts have only 2/3 almirah and due to inadequate almirah case records are stacked in corner of court room, office room or even on the platform where P.O. uses to take seat. Due to such inadequate arrangement and mishandling in many cases order sheet and important papers and documents lying in case record are mutilated/torned and ultimately caused denial of justice to the victim.

**Staff pattern**: while discussing any organization, its staffing pattern, its hierarchy and work distribution became as important as the organization itself. Most of the Fast Track Sessions Courts are run by one B.C., one peon and one stenographer and Magistrate courts are run by one Bench Clerk from U.D.C. and one second bench clerk from lower Division Clerk and one Peon, who are dealing with cases of victim. Stenographers are not provided to the Magistrates in West Bengal.

**Judicial/Presiding Officer**: the position and role of a Judicial officer i.e. P.O. hardly needs elaboration. He represents the hub of the judicial administration. In West Bengal the area jurisdiction of the court of Magistrate dealing with criminal cases including cases where victim is woman is police
station wise. But in case of criminal cases which are triable by the Court of
Sessions, it is police district wise and District Judge, who after commitment
use to transfer cases in the Sadar (district headquarter) or the sub-divisions
keeping in mind the convenience of litigants.

The role of judicial officers discussed in relation to the problem of delay
call for the consideration of the total working hours at his disposal, adherence
to time norms and their optimal utilization. The court hours are from 10:00
am. to 5:00 pm. on all working days with half an hour lunch break from 1:30
pm. to 2:00 pm.

To achieve best result from presiding officers, High Court at Calcutta
has set up target to the judicial officers and quarterly performance report and
annual performance report by the District judges and Zonal Judges of High
Courts have been prescribed.

For the purpose of assessment of performance of Judicial Officers units
have been prescribed as follows for Magistrates of all class.

1) Cases under IPC and other major Acts :-
   i) Contested: 4 Units
   ii) Uncontested: 1 Unit

2) Private complaints (summon cases)
   a) Dismissed under Section 203/204 Cr.P.C: 1/2 unit
   b) Contested after full trial: 3 units
   c) Compounding of offence/dismissed for default : Nil.

3) Private complaints (warrant cases)
   a) Dismissed Under Section 203 Cr.P.C: 1/2 unit
   b) Discharged Under Section 245 Cr.P.C: 1 unit
c) Contested after full trial: 4 units
d) Uncontested/compromise: 1/4 unit

4) Petition Under Section 125 Cr.P.C
   a) Contested: 4 units
   b) Uncontested: 1 unit

5) Petty cases under police Act, etc.
   a) Contested: 1 unit
   b) Uncontested: 1/4 unit

6) Summary trial (whether contested or not): ½ unit.

7) Bail application under Section 437 Cr.P.C during investigation: 1/4 unit.

8) Any other cases not provided for
   a) Contested: 1 unit
   b) Uncontested: ½ unit

9) Annual inspection of own court: 5 unit

10) Inspection of Jail: 1 unit

11) Departmental enquiry: 4 unit

12) T.I parade: 2 unit

13) Recording of
   a) Confessional statement Under Section 164 Cr. P.C: 2 unit
   b) Statement of witnesses Under Section 164 Cr.P.C: 1 unit.
Following gradations have been fixed for Magistrates by High Court in Calcutta under whose Supervision trial Courts are acting.

Below 64 units per month i.e. 3.2 units per day - Inadequate

64 units to 74 units i.e. 3.2 units and above/day – Adequate

75 units to 84 units i.e. 3.75 units and above/day – Good

85 units and above i.e. 4.25 and above/day – Very good.

To encourage judicial officers in West Bengal it has also been provided in that notification that officers graded “very good” uniformly or frequently as “outstanding” may be considered for good posting out of turn.

Majority are of the view that more importance are required to be given for contested disposal and extra unit should be awarded in cases of disposal of crime where victim is woman.

**Bench clerk and other staffs:** while among the subordinate staff in a court, the importance of one cannot be properly compared with the other. Bench clerk occupies a key position and he can be equated with court assistant. He uses to write routine orders, makes entry in diary, cause list, court fee register, etc.

It has become open secret that bench clerks in most of the Magistrate court and also in some cases in Sessions Courts are accepting illegal gratification taking advantage of congestion of dairy and on other grounds staff concerned uses to take illegal gratification in order to give some illegal advantages to the accused persons, this includes fixing for long date, inspection of case records without following proper procedure and for some other reasons. It can be stopped to some extent if dates of all important cases
be declared in open court and procedure for inspection of case record be simplified.

**Steno**: steno plays an important role in the functionary of the court. His role consists of typing statements, orders, judgments dictated by the Judicial Officers. In West Bengal steno is not provided to the Magistrates which is an important factor for lesser output. At least one steno is required to be provided to all Judicial Magistrates of West Bengal who are dealing with the cases where victim is woman.

**Peon/orderly**: the duties of the peon range from calling cases to attending judicial officer in his chamber. They also regulate the entry of visitors to the court to avoid over crowding.

Though peons are at the lowest rung of the court hierarchy, they seem to be quite important in a different way. In almost in all the courts peons are being engaged by other staffs for collecting bribe from litigants.

In this context it can be suggested that in place of existing open performance report, rule for confidential performance report of the staffs are required to be introduced without delay.

**Police, prosecution, defence etc.**: delay in disposal of cases relating to crime against woman is not a single-dimensional problem. It is a multidimensional problem involving the police, the prosecution, the defence, witnesses and the accused, beside the court. The court is a fitting place to study force in action and assess their respective share in the delay in the disposal of cases.

G.R.O. office plays an important role at investigation stage. In most of the courts building it has been seen that court 'malkhana' (room for keeping
seized articles), where seized 'alamats' (seized articles) are supposed to be kept are in a bad condition. In many courts of West Bengal it is found that there is no court 'malkhana' for keeping seized 'alamat', which is highly prejudicial to the victim complaint as during trial seized and exhibited 'alamats' are brought form police station malkhana at the discretion of police, which is not desirable for fair trial.

**Role of public prosecution** : at the trial stage of a criminal case the representative of the state i.e. the prosecutors appear on the scene. In almost every court of sessions and Magistrate, one prosecutor is supposed to be attached. The decision in a case very much depends upon the efforts of the prosecution.

As per provision of Section 25 Cr.P.C State Government appoints assistant public prosecutor in every district for conducting prosecutions in the courts of Magistrates, where no assistant public prosecutors is available for the purpose of any particular case, the District Magistrate may appoint any other person to be assistant public prosecutor in charge of that case.

Under provision of Section 24 Cr.P.C State Government appoints public prosecutor and may also appoint one or more additional public prosecutors for the district and District Magistrate shall in consultation with Sessions Judge, prepare a panel of name of persons, who are in his opinion fit to be appointed as public prosecutors or additional public prosecutors for the district. A person shall be eligible to be appointed for the said post if he has been in practice as an Advocate for not less than seven years. Power has also been conferred upon Central and State Government to appoint advocate having not less than ten years practicing experience to appoint as a special public prosecutor.
It is unfortunate that it is found in most of the cases public prosecutors acted in a casual manner and the spirit with which the public prosecutors dealing with the cases is somewhat disappointing. It appears as if the prosecutors are just meeting a formality associated with the case. They are not often found to argue a case with the zest as found in a defence lawyer.

It has also been alleged that though the appoint of Assistant public prosecutors are being made in West Bengal by the Public Service Commission but appointment of Additional public prosecutors are not made in a systematic or scientific manner. For upgrading the quality of prosecutors proper training is required to be given and selection must be transparent. Training in criminology, expeditions disposal of criminal cases, special skills and techniques for securing conviction should be imported to them. For selection of talented prosecutors, they should be selected from Indian prosecution service as like as the IAS officers. They shall be appointed in different wings of CBI and other allied services. All relevant law books, law journals should be provided to the prosecutors at nominal cost and good promotion scheme assistant public prosecutor to additional prosecutor and public prosecutor should be framed to encourage talented prosecutors and assessment report should be introduced to assess number of conviction.

An assistant public prosecutor is generally a full time employee but they are serious defaulters. They hardly spend more than Three–four hours in the court, with which he is attached. To maintain punctuality and attendance, attendance register should be maintained by appropriate authority.
System aberration: in the 'ejlash' (court room) it is common experience that on most occasions witnesses are not being asked to take oath practically due to work load of peon or for any other reason before deposing.

Statement of witnesses are recorded in English but in a very few cases recorded statement is read over and explained in the language of witnesses to the witnesses concerned.

It is found that most of the courts in West Bengal are running with the shortage of staff. This shows mismanagement prevailing in the officers of the courts. Directly or indirectly it can be yet another source of delay. In this context it would not be out of context to say that computerization is badly needed for court affairs in West Bengal.

Procedure relating to disposal of criminal cases including crime against women: In our society nature of crime against woman has remained the same, though it's forms and modus operandi have considerably changed. But criminal law, both substantive and procedural have remain unchanged except for few amendments on new legislative pieces to deal with special crime situations. Consequently, inordinate delays are experienced at every stage of their implementation. Moreover, conviction rate is very low. Finally, due to non-accessibility on various reasons a large number of crime against woman remains unreported.

Is the criminal justice system itself responsible for such delay or is there something wrong with the organization and working of law enforcement agencies or whether entire criminal justice procedure is faulty? To answer these questions satisfactorily overall study needs to be conducted.
India like many former British Colonies inherited the common law system. This system positively provides greater safeguards for the innocent and is rather inclined towards perfection. Despite its numerous merits, the common system has come under criticism and has been held responsible for delay and lower rate of conviction and system is also inaccessible to a section of society. Even the supports of the system seems to agree that too many checks and over checks along with intricate procedure, are the characteristics of the system. In the experience of many, these provisions meant for a good often exploited by the accused and others. As an alternating to the system some have advocated the "continental" or "inquisitorial" legal system. The spirit of the common law system relating to procedure governing trial of most of the criminal cases has been embodied in the code of criminal procedure of 1973. except when provided otherwise. The code governs all the procedures relating to criminal cases. The code comprising 484 sections is divided into thirty seven chapters, also appended are two schedules. Comprehending the power of the police officers, the code makes provisions for investigation of cases and arrest of persons. While the code envisages the constitution of courts of criminal adjudication, it also prescribe the power and jurisdiction of courts. The code allow certain types of trials and also lay down their detailed procedure along with provisions for appeals, revisions and review. For the smooth processing of the cases provision for processes to compel appearance of person have been made. In consonance with the principles of common law that an accused person is innocent till proved guilty, the provision relating to bail procedure for certain categories of crime have been laid down in the code. The first schedule describes crime under IPC., punishment for them classification of cognizable and non cognizable, bailable and non bailable cases and also the courts which have the powers to try different crimes. The second schedule contains certain formats for different types of warrants summons and bail bonds etc.
Cases in sessions court:

a) These cases includes the cases for which the court of sessions have original jurisdiction or in other words these cases can be understood in terms of sessions trials. Chapter XVII of Cr. P.C deals with sessions trials. Sessions cases normally do not directly go to the court of sessions, instead they are filed in a Magistrate's Court which has the jurisdiction of the P.S. in the area of which the crime is committed. The Magistrate after going through the materials if thinks fit for trial by session, commits the case to the court of session. It is worthwhile to note that according to old Cr.P.C the Magistrate could have committed the case to sessions only after recording of prosecution evidence which used to be recorded all over again by court of session. To reduce delay in sessions trials and to lessen the workload in Magistrate courts, present code has done away with the recording of evidence by the committing Magistrate.

b) Revision : Chapter XXX of the Cr.P.C. deals with revision of criminal cases by court of sessions and High Courts.

c) Appeal : the common law system is famous for it's checks and balance in the decision of one authority. The right to appeal signifies that spirit. Chapter XXIX of the Cr.P.C. lays down procedure relating to appeals.

**Cases in Magistrate Courts** : The cases in Magistrate Courts are broadly classified under following categories :-

a) Police challan : when a crime is committed it is reported to police. Police then started investigation and after completion of investigation police submitted charge sheet Under Section 173 Cr.P.C. before Magistrate. These cases are called police challan cases.
b) **Complaint cases**: in some cases, the police fails or refuses to take action of the crime committed when aggrieved party prefers to file a case directly in the court. Such cases filed in the court directly are classified as complainant cases, chapter XV of the Cr.P.C. lays down the procedure for complainants to Magistrate.

**Trials**: depending upon the nature of a crime and its gravity different trial procedures have been provided in the Cr.P.C. These trial procedure ranges from very summary trials to warrant trials. One of the advantages of providing for different trial procedure is to reduce the life of certain trials thereby keeping down the pendency list.

a) **Summary trials**: chapter XXI of the Cr.P.C. lays down procedure regarding summary trials. Under this chapter any C.J.M. or J.M. empowered in this behalf by High Court can summarily dispose of certain type of pretty offences. Under Section 261 Cr.P.C. a second class Magistrate is also be empowered to adopt summary procedures of certain trials.

b) **Summon trials**: some of the less serious cases can be disposed of by Magisterial Courts by way of summon trial procedure under chapter XX of Cr.P.C non cognizable crimes are not registered by the police in the FIR, instead are recorded in daily diary. No formal investigation report or challan are required to be submitted in warrant trials. In summons trials it is not necessary to frame a formal charge. Also the evidence against the accused is recorded in substance. After recording of evidence the Magistrate may either acquit or convict the accused as the case may be. It has been observed that summon cases take relatively less time to get decided, but not warrant cases.
c) **Warrant trials**: warrant trials are a little more complicated than summary trials or summons trials. Chapter XIX of Cr.P.C deals with warrant cases by Magistrate. In warrant case after police investigation a challan is prepared and presented to the court under section 173 Cr.P.C. After submission of charge sheet, on the day of first appearance of accused, he is supplied with copies of police report, F.I.R., statement of witnesses in compliance with the provisions of Section 207 Cr.P.C. In the next stage, the Magistrate can give opportunity of being heard and if he feels that charge against the accused is groundless, he can discharge the accused otherwise, he may proceed to frame charges. Once the charge is framed, accused is asked to plead guilty or to defend himself. If accused pleads guilty to the charge, he is convicted, otherwise next stage i.e. recording of prosecution evidence follows. When recording of prosecution evidence is concluded, statement of accused is recorded Under Section 313 Cr.P.C. If the accused wishes to present evidence in his defence, the witnesses are summoned at his request and deposition recorded. Thereafter, the final arguments are heard from both side and judgment is pronounced. Normally in cases of conviction, the arguments on the point of sentence are heard and order of sentence are passed in open court.

The trial of complaint does not differ much from that of a case filed by the police. The only major difference is that after receiving the complaint the presiding officer records some evidence to substantiate the complaint before taking any other step. Such evidence in common parlance is called pre charge evidence. This is applicable to a warrant trial.

**Progress of cases**: in criminal court any case including crime against woman passes through different stages like appearance of accused supply of
copies to the accused, framing of charges, recording of prosecution evidence, recording of statement of accused under Section 313 Cr.P.C. defence evidence, final arguments and judgment. The story does not end there. Either the accused or to prosecution can prefer an appeal or revision against the court decision. After filing of appeal or revision, it is considered by the court and if admitted, a notice to the opposite party is issued and lower court record is called for. Once lower court record is supplied the arguments are heard and finally orders are passed. The whole process is time consuming.

**Case institution**: the outcome of criminal case depends much upon the investigation. After completion of investigation, a report Under Section 173 Cr.P.C. is prepared and a challan is presented to the court. West Bengal Amendment Act of Section 167(5) Cr.P.C. provides that in respect of any case triable by a Magistrate as a summon case, the investigation is not concluded within a period of six months or any case exclusively triable by a court of session or a case under chapter XVIII of the I.P.C., the investigation is not concluded within a period of three years or any case other than those mentioned above the investigation is not concluded within a period of two years from the date on which the accused was arrested or made his appearance, the Magistrate shall make an order stopping further investigation into the offence and shall discharge the accused unless Magistrate for special reason extend the period.

The state of West Bengal amendment of sub-clause (5) of Cr.P.C. however raises certain important question for consideration both by the members of the legislature and also by the members of the Bench and the Bar.
When ordinarily, there is no time limit for completion of investigation in other states, there is radical departure in the state amendment so far as original sub-clause (5) of Section 167 is concerned. It is not at all a new story that existing police investigation system is far from satisfactory and without blaming the machinery it can safely stated that want of sufficient man power, absence of required infrastructure and lack of sufficient cooperation from the medical and other Government agency, investigation in case of criminal offences are always time killing and the result is not at all satisfactory.

In the background of existing police investigation system the state amendment under consideration poses a threat to the administration of criminal justice system only because the victim of a criminal offence would suffer and would never get justice for no latches of her own, but for the insufficiency of the investigation system and also for the state amendment. It has observed that in a number of cases investigation agencies are not in a position to submit final report even within a span of 5 years the reason may be some time for want of collection of P.M. (post-mortem) report or report from Government expert or for pre-occupation of the investigation officer in the matter of maintaining law and order duty. By the said amendment an accused of a grave and heinous crime would be free from all accusations without facing a trial simply on the ground of non-filing of charge sheet within the period fixed by the state amendment. Accordingly, state amendments as stated above is no doubt radical but it totally ignored real intention of the investigation agency for non-compliance of their obligation.

Complaint cases by their nature are filed directly in the court, depending on the urgency and interest shown by the complainant.
First appearance: when a case is instituted in the court, after being registered, the accused is summoned through warrant or summons issued under Section 204 Cr.P.C. He is supplied with copies of necessary documents under Section 207 Cr.P.C.

Pre-charge evidence: As is known this stage is specific to only complain cases when complaint is made to examine the complainant and the witness present, if any on oath and the substance of such examination has to be reduced in writing. This part of the proceeding is usually called pre-charge evidence. If after such examination reasonable grounds are made out, the complaint is proceed further like any other trial.

Charge: in a police report or complaints, an accused is merely reported to have committed or attempted certain offences, it is only in the court that definite charges are made against him. Chapter XVII of the Cr.P.C deals with the charge exclusively. Based on the evidence on record, arguments on charge are heard from both sides and charges are framed and after framing charges, the accused is asked either to plead guilty, in which case he is convicted or to defend himself in which case the prosecution evidence is recorded. In some cases if, after hearing arguments and going through the evidence on record no reasonable grounds are made out to proceed against the accused then he is discharged.

Prosecution evidence: It is well known that successful prosecution in criminal cases depends upon the corroboration of facts as shown in the statements of witnesses. Since human memory fades away with time, undue delay in the recording of prosecution evidence may greatly undermine its value.
Statement of the accused: The stage which follows after prosecution evidence, is the recording of the statement of the accused. Usually this statement is recorded to know the opinion of the accused in respect of incriminating evidence, that has come against accused person and if he wants to produce any evidence in his defence. This recording of statement of accused under section 313 Cr.P.C. is more or less has become a mechanical process.

Defence evidence: In criminal cases, unlike in civil cases, the practice of producing evidence in defence does not seem to be popular simply because in criminal case under common system, the accused is presumed to be innocent and most of the cases, full burden is upon prosecution to prove that accused is guilty and accused is under no obligation to prove that he is not guilty.

Final argument: The statement stage is perhaps the most crucial stage in a criminal case before the delivery of judgment. In this stage both the parties are required to sum up their case before the court either orally or in writing on in both.

Judgment: it is the judgment of the court in a case which decides guilt or innocence. Section 353 Cr.P.C lays down that judgment should be passed immediately after the termination of trial proceedings or at some subsequent time of which notice shall be given to parties or to their pleaders. Normally in case of acquittal, judgment delivered in single day but in case of conviction, after the delivery of judgment, the sentencing part of judgment is passed at a later stage.

Appeals/revision: appeals or revision are the remedies available to the parties, who are not satisfied with the order of the lower court. Chapter
XXIX and XXX Cr.P.C deal with procedures in appeal and revisions. Generally, appeals against the order of Magistrates are heard by a sessions or Additional Sessions Judge.

The procedure for filing appeal or revision is quite simple. Grounds of appeal along with certified copy of judgment/order of lower court is to be filed before appellate court. On hearing appeal may be admitted or rejected. Once the appeal is admitted notice to the other party is issued and if necessary, lower court record is called for. Then with prior notice, arguments from both party are heard and the petition is disposed of. In other words, unlike trials, appeals or revisions do not entail many steps for their processing.

After the pronouncement of judgment by a lower court, it takes some time to prepare a petition for going in appeal. To meet this contingency a reasonable period is allowed within which appeal can be moved. Appeal can also be prepared beyond statutory period subject to provision of limitation Act.

FINDINGS:

In this chapter following points have been identified regarding legal framework and court process to control crime against woman:

(i) Constitution of India in Part-III and Part-IV provides some protective rights of the women as ground norm developing a legal structure to combat crime against women.

(ii) Indian Penal Code provides specific provisions as substantive law regarding crime against woman, such as Section-294, 304B, 312-316, 354, 366, 366A, 366B, 370, 372, 375, 376, 498A, 493, 509, etc.

(iii) Among the other substantive provision regarding crime against woman dealt with are The Immoral Traffic (Prevention) Act. 1956, The Indecent

(iv) Procedural safeguard to protect women as victim of crime under Cr.P.C. and Indian Evidence Act have been examined. These are section 4, 52, (2), 125, 198, 198A of Cr.P.C and Section 50, 113A, 113B, 114A, 122, 146 of Indian Evidence Act

(v) Interpretation by our apex court and different High Courts developed some judge-made laws recognizing rights and protection of woman in the areas of rape victims, sexual abuse, sexual harassment, at work place, protection of victim witness, in camera trials etc.


(vii) Study also focused on court system, hierarchy of criminal court and its power, infrastructure of courts and procedure relating to trial of cases in respect of crime against woman.