ANNEXURES
ANNEXURE – I

EXCERPTS FROM THE UNITED NATIONS CHARTER

Text

We the Peoples of the United Nations Determined to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom.

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace and to bring about by peaceful means and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

2. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without destination as to race, sex language, or religion;

Chapter IX

International Economic and Social Co-operation

Article 55

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote.
(c) Universal respect for, and observance of human rights and fundamental freedoms for all without distinctions as to race, sex language, or religion.

**Article 56**

All Members pledge themselves to take joint and separate action in co-operation with the organisation for the achievement of the purposes set forth in Article 55.

**Chapter X: The Economic and Social Council Functions and Powers**

**Article 62**

2. The Economic and social Council may make recommendations for the purposes of promoting respect for, and observance of, human rights and fundamental freedoms for all.

**Procedure**

**Article 68**

The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions.

**Chapter XII: International Trusteeship System**

**Article 76**

The basic objectives of the trusteeship, in accordance with the purposes of the United Nations laid down in Article 1 of the present charter, shall be (c) to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion and to encourage recognition of the interdependence of the peoples of the world. (d) to ensure equal treatment in, social, economic and commercial matters for all members of the United Nations and their nationals, and also equal treatment for the latter in the administration of justice, without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80.
ANNEXURE – II
EXCERPTS FROM THE UNIVERSAL DECLARATION OF
HUMAN RIGHTS 1948

Text

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights to all members of the human family is the foundation of freedom, justice and peace of in the world whereas the peoples of the United Nations have in the character reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom.

The General Assembly

Proclaims

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Art 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal
protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Art 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by constitution or by law.

Art 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each state, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Art 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
ANNEXURE III

EXCERPTS FROM THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN AND CHILDREN, 1981

The State Parties to the present Convention.

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women.

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex.

Noting that the States Parties to the International Covenants of Human Rights have the obligation to ensure the equal right of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women.

Noting also the resolutions, declaration and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist.

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social,
economic and cultural life of their countries, hampers the growth of the
prosperity of society and the family and makes more difficult the full
development of the potentialities of women in the service of their countries
and of humanity.

*Concerned* that in situations of poverty women have the least access
to food, health, education, training and opportunities for employment and
other needs,

*Convinced* that the establishment of the new international economic
order based on equity and justice will contribute significantly towards the
promotion of equality between men and women,

*Emphasizing* that the eradication of *apartheid*, of all forms of racism,
racial discrimination, colonialism, neo-colonialism, aggression, foreign
occupation and domination and interference in the internal affairs of States
is essential to the full enjoyment of the rights of men and women.

*Affirming* that the strengthening of international peace and security,
relaxation of international tension, mutual co-operation among all States
irrespective of their social and economic systems, general and complete
disarmament, and in particular nuclear disarmament under strict and
effective international control, the affirmation of the principles of justice,
equality and mutual benefit in relations among countries and the realization
of the right of peoples under alien and colonial domination and foreign
occupation to self-determination and independence, as well as respect for
national sovereignty and territorial integrity, will promote social progress
and development and as a consequence will contribute to the attainment of
full equality between men and women.

*Convinced* that the full and complete development of a country, the
welfare of the world and the cause of peace require the maximum
participation of women on equal terms with men in all fields,

*Bearing in mind* the great contribution of women to the welfare of
the family and to the development of society, so far not fully recognized,
the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole.

_Aware_ that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

_Determined_ to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

_Have agreed_ on the following:

**PART I**

**Article 1**

For the purposes of the present Convention, the term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

**Article 2**

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

Article 3

State parties shall take in all fields, in particular in the political, social, economic, and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures these measures shall be
discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

*Article 5*

States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

*Article 6*

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

*Article 8*

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

*Article 11*

1. State Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to work as an inalienable right of all human beings;

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) The right to equal remuneration, including benefits and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

Art 22

The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present convention as fall within the scope of their activities. The Committee may invite the specialised agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

Art 23

Nothing in this Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained.

(a) In the legislation of a state Party; or

(b) In any other International convention, treaty or agreement in force for that State.

Article 24

State Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present convention.
ANNEXURE IV

EXCERPTS FROM THE CONSTITUTION OF INDIA

Art.14. Equality before law. The State shall not deny to any person equality before the law or the equal protection of the laws within the territorially of India.

Art.15. Prohibition of discrimination on grounds of (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. No citizen shall on grounds only of religion race, caste sex place of birth or any of them, be subjected to any disability, ability restriction or condition with regard to – (a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats roads and places of public resort maintained wholly or partly out of state funds or dedicated to the use of the general public.

(1) Nothing in this article shall prevent the state from making any special provision for women and children. (2) Nothing in the article or in clause [2] of Article 29 shall prevent the state from making special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

Art.21. Protection of life and personal liberty: No person shall be deprived of his life of or personal liberty except according to procedure established by law.

Art.22. Protection against arrest and detention in certain cases. (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall be he denied the right to consult and to be defended by a legal practitioner of his choice. (2) Every person who is arrested and detained in custody shall be produced before the nearer Magistrate within a period of twenty four hours
of such arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate and no such person shall be detained in custody beyond the said period without the authority of a Magistrate.

(3)....

(4).....

(5).....

(6)....

(7)....

Art.23. Prohibition of traffic inhuman beings and forced labour.

(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. (2) Nothing in the article shall prevent the state from imposing compulsory service for public purposes and in imposing such service the state shall not make any discrimination on grounds only of religion, race caste or class or any of them.

Directive Principles of State Policy.

Art.39. Certain principles of policy to be followed by the state: the state shall, in particular direct its policy towards securing –

(a) that the citizens, men and women equally have the right to an adequate means to livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

(f) that children are given opportunity and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Art.39A. Equal justice and free legal aid. The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

Fundamental Duties

Art.51A. Fundamental Duties. It shall be the duty of every citizen of India.

(a) ....

(b) ....

(c) ..... 

(d) ..... 

....

to promote harmony and the spirit common brotherhood amongst all the people of India transcending religious linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women.
ANNEXURE V

A GENERAL VIEW OF WOMEN AND CRIMINAL JUSTICE SYSTEM

[Rape, Sexual Harassment, Dowry Death, Cruelty in Marriage, Prostitution]

Patriarchal Society – Social Status of Women

Social Group – Urban, Middle, Lower Class
Traditional Family

Urban Needs
More influential
High Social Status

Middle Class Needs
Powerful/not Powerful
in Society,
Committed to family

Lower Class Needs
Less influential Lower
Social Status

Crime Committed against Women

Not Reported

INPUT (Cases reported or Suspected)

Police Investigation → Improper Investigation

Arrest → Detention

Prosecution → Trial → Pre-sentence → Sentence

CONVICTION

Acquittal

Less severe Punishment

Out of the System

Out of the System
CHAPTER THREE

Changes recommended in the Indian Penal Code, 1860

3.1. Substitution of definition of 'rape' by definition of 'sexual assault'. Not only women but young boys, are being increasingly subjected to forced sexual assaults. Forced sexual assault causes no less trauma and psychological damage to a boy than to a girl subjected to such offence. Boys and girls both are being subjected to oral sexual intercourse too. According to some social activists like Ms Sheela Barse, both young girls and boys are being regularly used for all kinds of sexual acts and sexual perversions in certain tourist centres like Goa - mainly for edification of the foreign tourists. Sakshi have also recommended for widening the scope of the offence in section 375 and to make it gender neutral. Some of the Western countries have already done this. It is also necessary to include under this new definition (sexual assault) not only penile penetration but also penetration by any other part of the body (like finger or toe) or by any other object. Explanation to section 375 has also been substituted by us to say that penetration to any extent whatsoever shall be deemed to be penetration for the purpose of this section. This is so provided for the reason that in the case of children, penetration is rarely complete - for physical reasons. So far as the Exception is concerned, we have retained the existing Exception the only change made being in the matter of age; we have raised the age of the 'wife' from fifteen to sixteen. The age of the person assaulted sexually
referred to in the clause "sixthly" has also been raised to sixteen from fifteen.

3.1.1. We may also mention that in redrafting the section, we have stuck to the existing provision as far as possible. This is for the reason that since these provisions have already been interpreted and elucidated by the decisions of the courts, it is better to stick to them rather than use new expressions and new wording. In drafting clauses (a) to (e) in section 375, we have drawn inspiration from the Criminal Law Western Australia.

3.1.2. Substitution of existing section 375 of the IPC recommended.- We accordingly recommend that the existing section 375 be substituted by the following:

"375. Sexual Assault: Sexual assault means - (a) penetrating the vagina (which term shall include the labia majora), the anus or urethra of any person with -i) any part of the body of another person or ii) an object manipulated by another person except where such penetration is carried out for proper hygienic or medical purposes; (b) manipulating any part of the body of another person so as to cause penetration of the vagina (which term shall include the labia majora), the anus or the urethra of the offender by any part of the other person's body; (c) introducing any part of the penis of a person into the mouth of another person; (d) engaging in cunnilingus or fellatio; or (e) continuing sexual assault as defined in clauses (a) to (d) above in circumstances falling under any of the six following descriptions: First- Against the other person's will. Secondly- Without the other person's consent. Thirdly- With the other person's consent when such consent has been obtained by putting such other person or any person in whom such other person is interested, in fear of death or hurt. Fourthly- Where the other person is a female, with her consent, when the man knows that he is not the husband of such other person and that her consent is given because she believes that the offender is another man to
whom she is or believes herself to be lawfully married. Fifthly- With the consent of the other person, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by the offender personally or through another of any stupefying or unwholesome substance, the other person is unable to understand the nature and consequences of that to which such other person gives consent. Sixthly- With or without the other person's consent, when such other person is under sixteen years of age.

Explanation: Penetration to any extent is penetration for the purposes of this section. Exception: Sexual intercourse by a man with his own wife, the wife not being under sixteen years of age, is not sexual assault."

3.1.2.1. Representatives of Sakshi wanted us to recommend the deletion of the Exception, with which we are unable to agree. Their reasoning runs thus: where a husband causes some physical injury to his wife, he is punishable under the appropriate offence and the fact that he is the husband of the victim is not an extenuating circumstance recognized by law; if so, there is no reason why concession should be made in the matter of offence of rape/sexual assault where the wife happens to be above 15/16 years. We are not satisfied that this Exception should be recommended to be deleted since that may amount to excessive interference with the marital relationship.

3.2. Modification of S.376.- So far as the proposed section 376 is concerned, we are not suggesting any substantial changes except two and adapting the language of the section to accord with the change in section 375. In the light of instances coming before the courts and the instances mentioned in the Note prepared by Sakshi, we have proposed addition of a proviso to sub-section (1) (while treating the existing proviso as the second proviso) providing that where the sexual assault is committed by the father, grandfather or brother, the punishment should
be severe. On the basis of suggestions made by Sakshi, we have also added the words "or any other person being in a position of trust or authority towards the other person" after the words "father, grandfather or brother". The second change suggested by us is in the matter of the age of wife referred to in proposed sub-section (1) as also of the person assaulted in clause (f) of sub-section (2). The age "fifteen" is raised to "sixteen".

3.2.1. The reasons for these changes are: (1) to visit with a severe penalty the near relations and persons in position of trust and authority who more often than not commit the offence of sexual assault on the members of the family or on unsuspecting and trusting young persons. We have in this connection taken note of the extremely odious and debased conduct of the father of the minor girl in the facts highlighted in Sudesh Jakhoo v. K.C.J. and others [1996 (3) AD Delhi 653 = (1996) 62 DLT 563] and (2) to maintain uniformity in the matter of age of wife or any other young person who needs special protection – as sixteen.

3.2.2. Views of "Sakshi" considered.- Though the representatives of Sakshi have suggested that we should delete the second proviso to section 376 (1) and the proviso to section 376 (2) (which confer a discretion upon the court to award a sentence lesser than the minimum punishment prescribed by the sub-sections), we are not satisfied that there are any good reasons for doing so. Any number of situations may arise, which it is not possible to foresee, and which may necessitate the awarding of lesser punishment than the minimum punishment prescribed. Safeguard against abuse is provided by requiring that adequate and special reasons be mentioned in the judgment, for awarding such lesser punishment. Nor is there justification in the criticism that such discretion once conferred is liable to be abused or that it will always be misused to help the accused.
3.2.3. Recasting of section 376 of the IPC recommended.- Accordingly, we recommend that section 376 shall be re-cast as follows:

"376. Punishment for sexual assault - (1) Whoever, except in the cases provided for by sub-section (2), commits sexual assault 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 person subjected to sexual assault is his own wife and is not under sixteen years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

If the sexual assault is committed by a person in a position of trust or authority towards the person assaulted or by a near relative of the person assaulted, he/she shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to life imprisonment 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 minimum punishment prescribed in this sub-section.

(2) Whoever, - (a) being a police officer commits sexual assault - (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 person 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 sexual assault on a person 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 staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution takes advantage of his official position and commits sexual
assault 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 sexual assault on a person in that hospital; or (e) commits sexual assault on a woman knowing her to be pregnant; or (f) commits sexual assault on a person when such person is under sixteen years of age; or (g) commits gang sexual assault, 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 person is subjected to sexual assault 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 sexual assault 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 women or children or a widows' home or an institution called by any other name, which is established and maintained for the reception and care of women 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."

3.3. Amendment of S.376A.- Representatives of Sakshi wanted us to recommend the deletion of section 376A (as well as Exception to section 375). Their logic was this: when a man who causes hurt or any other physical injury to his own wife is liable to be punished for such offence like any other person causing such hurt or physical injury, why should a husband who sexually assaults his wife, who is living...
separately under a decree of separation or under any custom or usage, be not punished like any other person. Section 376A, which provides a lesser punishment to a husband who sexually assaults his own wife living separately in the aforesaid circumstances, they argued, is arbitrary and discriminatory. They say that once section 376A is deleted, the husband in such a case would be punished under section 376(1) which carries higher punishment than section 376A. While we appreciate the force of said argument in the context of the wife who is living separately under a decree of separation or under any custom or usage, we can not at the same time ignore the fact that even in such a case the bond of marriage remains unsevered. In the circumstances, while recommending that this section should be retained on the statute book, we recommend enhancement of punishment under the section.

3.3.1. Modification in section 376A of the IPC recommended.- Accordingly, section 376A shall read as follows:

"376A. Sexual assault by the husband upon his wife during separation.- Whoever commits sexual assault upon his wife, who is living separately from him under a decree of separation or under any custom or usage, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years and which may extend to seven years and shall also be liable to fine."

3.4. Amendment of S.376B, 376C and 376D: Having regard to the gravity of these offences, we recommend enhancement of punishment - with a minimum punishment of not less than five years. We have also added an Explanation which will govern all these three sections. The Explanation defines "sexual intercourse" to mean any of the acts mentioned in clauses (a) to (e) of section 375. Explanation to section 375 will however apply even in the case of sexual intercourse as defined by the Explanation to this section.
3.4.1. Modifications in sections 376B, 376C and 376D of the IPC recommended.- Accordingly, section 376B with necessary adaptations and changes, shall read as follows:

"376B. Sexual intercourse by public servant with person in his custody.- Whoever, being a public servant, takes advantage of his/her official position and induces or seduces any person, who is in his/her custody as such public servant or in the custody of a public servant subordinate to him, to have sexual intercourse with him/her, such sexual intercourse not amounting to the offence of sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than five years and 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 five years.

Explanation: "Sexual intercourse" in this section and sections 376C and 376D shall mean any of the acts mentioned in clauses (a) to (e) of section 375. Explanation to section 375 shall also be applicable."

"376C. Sexual intercourse by superintendent of jail, remand home, etc.- Whoever, being the superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution takes advantage of his/her official position and induces or seduces any inmate of such jail, remand home, place or institution to have sexual intercourse with him/her, such sexual intercourse not amounting to the offence of sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than five years and 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 five years.
Explanation 1.- "Superintendent" in relation to a jail, remand home or other place of custody or a women's or children's institution includes a person holding any other office in such jail, remand home, place or institution by virtue of which he/she can exercise any authority or control over its inmates.

Explanation 2.- The expression "women's or children's institution" shall have the same meaning as in Explanation 2 to sub-section (2) of section 376.

376D. Sexual intercourse by any member of the management or staff of a hospital with any woman in that hospital. Whoever, being on the management of a hospital or being on the staff of a hospital takes advantage of his/her position and has sexual intercourse with any person in that hospital, such sexual intercourse not amounting to the offence of sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than five years and 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 five years.

Explanation.- The expression "hospital" shall have the same meaning as in Explanation 3 to sub-section (2) of section 376."

3.5. Insertion of section 376E: This is a wholly new section recommended by us. We have called it the offence of 'unlawful sexual contact'. This section is intended to cover a wide variety of offences including sexual harassment at work place and sexual perversions of the kind mentioned in the note submitted by Sakshi. Sub-section (1) of this new section covers touching, directly or indirectly, with a part of the body or with an object, any part of the body of another person (not being the spouse of such person), with sexual intent and without the
consent of such other person. In case the other person is below sixteen years of age, we have recommended higher punishment. Sub-section (2) is an extension or elaboration of the offence mentioned in sub-section (1), while sub-section (3) deals with a case where such offence is committed on a young person - young person being defined by the Explanation to mean a person below the age of sixteen years. If the offence of unlawful sexual contact is committed on a young person by a person with whom such young person is in a relationship of dependency, the punishment is rigorous imprisonment which may extend to seven years or with fine or with both and in case the offender happens to be the father, grandfather or brother, a still higher punishment is provided for. In the case of a 'young person', consent is treated as irrelevant. (Sections 151, 152 and 153 of the Canadian Criminal Code also contain similar provisions).

3.5.1. Insertion of new section 376E recommended.- We therefore recommend that a new section, namely, section 376E be inserted in the IPC in the following terms: "376E. Unlawful sexual contact (1) Whoever, with sexual intent, touches, directly or indirectly, with a part of the body or with an object, any part of the body of another person, not being the spouse of such person, without the consent of such other person, shall be punished with simple imprisonment for a term which may extend to two years or with fine or with both.

(2) Whoever, with sexual intent, invites, counsels or incites a young person to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites, or touches, with sexual intent, directly or indirectly, with a part of the body or with an object any part of the body of a young person, shall be punished with imprisonment of either description which may extend to three years and shall also be liable to fine.
(3) Whoever being in a position of trust or authority towards a young person or is a person with whom the young person is in a relationship of dependency, touches, directly or indirectly, with sexual intent, with a part of the body or with an object, any part of the body of such young person, shall be punished with imprisonment of either description which may extend to seven years and shall also be liable to fine.

Explanation: "Young person" in this sub-section and sub-section (2) means a person below the age of sixteen years."

3.6. Deletion of section 377: In the light of the change effected by us in section 375, we are of the opinion that section 377 deserves to be deleted. After the changes effected by us in the preceding provisions (sections 375 to 376E), the only content left in section 377 is having voluntary carnal intercourse with any animal. We may leave such persons to their just deserts.

3.7. Amendment of section 509: So far as this section is concerned, the only change we are suggesting is enhancement of punishment. We recommend that the existing section 509 be amended as follows:

"509. Word, gesture or act intended to insult the modesty of a woman: Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object intending that such word or sound shall be heard, or that such gesture or 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 three years and shall also be liable to fine.

3.8. New Section 166A, IPC: The 84th Report of the Law Commission had recommended (para 3.20) that a new section, namely, section 166A, be inserted in the Indian Penal Code. The object behind this new section was to punish a public servant who knowingly disobeys any direction of law prohibiting him from requiring the
attendance at any place of any person for the purpose of investigation into an offence or other matter or knowingly disobeys any other direction of law regulating the manner in which he shall conduct such investigation and which act of his causes prejudice to any person. The representatives of Sakshi with whom we had a discussion, requested that a new section as recommended by 84th Report of the Law Commission be recommended to be inserted in the IPC. This provision must be understood in the light of the fact that in the next chapter, we are recommending several measures with respect to the manner in which the statement of women and children (below 16 years) should be recorded, the place where it should be recorded and so on.

3.8.1. New section 166A of the IPC recommended. Accordingly, we recommend that a new section be introduced in the IPC in the following terms: "166A. Whoever, being a public servant- (a) knowingly disobeys any direction of the law prohibiting him from requiring the attendance at any place of any person for the purpose of investigation into an offence or other matter, or (b) knowingly disobeys any other direction of the law regulating the manner in which he shall conduct such investigation, to the prejudice of any person, shall be punished with imprisonment for a term which may extend to one year or with fine or with both."

3.9. Views of "Sakshi" for defining 'consent' considered.- Lastly, we may refer to a request of Sakshi to insert the definition of "consent" for the purpose of the aforesaid sections. We are however of the opinion that no such definition is called for at this stage, for the reason that the said expression has already been interpreted and pronounced upon by the courts in India in a good number of cases. Reference in this behalf may be made to page 700 of the Commentary on IPC by Justice Jaspal Singh (First Edition 1998) where it is stated, on the basis of the decisions of the Madras, Punjab and Nagpur High Courts, that "consent
implies the exercise of a free and untrammelled right to forbid or withhold what is being consented to; it always is a voluntary and conscious acceptance of what is proposed to be done by another and concurred in by the former".

CHAPTER FOUR
Changes recommended in the Code of Criminal Procedure, 1973

4.1. Proposals of "Sakshi" relating to the Code of Criminal Procedure.- As stated in chapter two, the representatives of Sakshi have come forward with as many as 14 recommendations proposing amendments to the Code of Criminal Procedure and the Evidence Act. We had mentioned them in the said chapter. We shall now proceed to discuss them.

4.2. Addition of sub-sections (3) to (5) in section 160, CrPC.- The 84th Report of the Law Commission had recommended (paragraphs 3.1 to 3.15) that sub-sections (3) to (7) be added in section 160. Instead of paraphrasing the reasons given in the 84th Report in our own words, it would be appropriate to set out paragraphs 3.11 to 3.15 of that Report here in below:

"IV. Interrogation of female victims of sexual offences.

3.11 Reporting and Investigation.- These matters concern the arrest and detention of women in general. We now deal with certain matters peculiar to women who are victims of sexual offences. Women who have been raped are reluctant to report it, partly because of the embarrassment of discussing the details with male policemen, and partly because of the very fear of even more painful humiliation of being a witness in Court.

They get scared and become confused when, in the strange environment of the Court room, they have to conduct themselves in a manner foreign to their custom and under a restraint not conducive to clear and coherent thought or free expression."
3.12 Investigation by female police - No statutory change recommended.- A woman is often discouraged from pressing a charge of rape or other sexual offence by the fact that she usually encounters only male police and prosecution officers. It is presumably for this reason that it has been suggested that the investigation of such offences should be done by women police officers only.

We would be happy if the questioning of female victims of sexual offences would be done by women police officers only. We are not, however, inclined to recommend a statutory provision in this regard. A mandatory provision to that effect may prove to be unworkable. The number of women police officers in rural areas is very small. Even in urban areas, unless a centralised cell (with the status of a police station) is created for investigation into sexual offences against women, such a provision may not be practicable.

We regard this difficulty as a transient one. An all-out effort for the recruitment of sufficient number of women police officers, who could be drafted for the police duties of interrogation and investigation, should be made.

3.13 Practice to be adopted in metropolitan cities.- Till then, in metropolitan cities or big cities where there are sufficient number of women police officers, a practice should be established that women police officers alone investigate sexual offences and interrogate the victim.

We are, therefore, not in favour of any statutory provision being made in this respect, subject to what we are recommending in the next paragraph.

3.14 Interrogation of child victim of rape Statutory provision recommended. - The practice as suggested above could be adopted in metropolitan areas and big cities. But there is one matter which is of importance for the whole country. It is necessary that in the case of girls
below a certain age - say, below twelve years who are victims of rape, there should be a statutory provision to ensure that the girl must be interrogated only by a woman. A woman police officer would be preferable. But, if a woman police officer is not available, an alternate procedure as detailed below should be followed.

The alternate procedure that we contemplate is this. Where a woman police officer is not available, the officer in charge of the police station should forward a list of questions to a qualified female (we shall suggest details later) who would, after recording the information as ascertained from the child victim, return the papers to the officer in charge of the police station. If necessary, further questions to be put to the child may be sent by the police to the interrogator.

For the present, this procedure may be applied to female victims below 12 years. It could later be utilised for child witnesses in general, if found practicable. The "qualified female" whom we have in mind should be one who is a social worker belonging to a recognised social organisation. If she possesses some knowledge of law and procedure, it would be all the more useful, but that need not be a statutory requirement.

3.15 Amendment of section 160 recommended by insertion of sub-sections (3) to (7).- In view of what is stated above, we would recommend the addition of the following provision - say, as new sub-sections - in section 160 of the Code of Criminal Procedure, 1973:

"(3) Where, under this chapter, the statement of a girl under the age of twelve years is to be recorded, either as first information of an offence or in the course of an investigation into an offence, and the girl is a person against whom an offence under section 354, 354A or 375 of the Indian Penal Code is alleged to have been committed or attempted, the statement shall be recorded either by a female police officer or by a person authorised by such organisation interested in the welfare of women
or children as is recognised in this behalf by the State Government by notification in the official gazette.

(4) Where the case is one to which the provisions of sub-section (3) apply, and a female police officer is not available, the officer in charge of the police station shall, in order to facilitate the recording of the statement, forward to the person referred to in that sub-section a written request setting out the points on which information is required to be elicited from the girl.

(5) The person to whom such a written request is forwarded shall, after recording the statement of the girl, transmit the record to the officer in charge of the police station.

(6) Where the statement recorded by such person as forwarded under sub-section (5) appears in any respect to require clarification or amplification, the officer in charge of the police station shall return the papers to the person by whom it was forwarded, with a request for clarification or amplification on specified matters; and such person shall thereupon record the further statement of the girl in conformity with the request and return the papers to the officer in charge of the police station.

(7) The statement of the girl recorded and forwarded under sub-sections (3) to (6) shall, for the purpose of the law relating to the admissibility in evidence of statements made by any person, be deemed to be a statement recorded by a police officer."

4.2.1. The representatives of Sakshi supported the said recommendation and wanted us to reiterate the same.

4.2.2. The 154th Report of the Law Commission dealt with the above recommendation in paragraphs 6.5 to 6.9. After setting out the aforesaid sub-sections in para 6.5, the 154th Report makes the following comments and recommendation in paragraphs 6.6 to 6.9 of chapter XVIII:
6.6 The origin of this suggestion in its embryonic form can be traced to the Law Commission's Reports on "Rape and Allied Offences" and "Women in Custody".

6.7 The Bill (NCW) has gone beyond the Law Commission's earlier recommendations in that, insisting on the presence of a female police officer. Though the presence of such female officer is useful and necessary, their absence should not lead to delay in the investigation of the offences. Sub-sections (4), (5), (6) and (7) referred to above obligates the officer in charge of the police station to forward the person to a representative of a government, recognised women's organisation and the statement recorded by such person shall be deemed to be a statement recorded by the police officer.

6.8 It may be pointed out that the 1994 Bill does not incorporate the above amendment.

6.9 We are of the opinion that section 160 be amended on the lines suggested above subject to certain modifications. The recommendation made in sub-section (4) of NCW Bill is not practicable having regard to the present condition and dearth of female police officers. It may also not be practicable for the victim or any person interested in her to approach the person mentioned in sub-section (3). Instead, we suggest that sub-section (4) may be amended to the effect that where a female police officer is not available and to contact the person mentioned in sub-section (3) is difficult, the officer in charge of the police station, for reasons to be recorded in writing, shall proceed with the recording of the statement of the victim in the presence of a relative of the victim.

Further, the age of "twelve years" be raised to "eighteen years" in conformity with the Convention on the Rights of the Child.

4.2.3. Reiteration of the recommendations made in the 154th Report.- On a consideration of all the relevant facts and the realities of life, we too are of the opinion that the procedure indicated in the sub-
sections (4), (5) and (6) is too involved besides being impracticable. Implementation of the several steps mentioned in the said sub-sections (4) to (6) would indeed result in unnecessary harassment to the victim of the offence or to the complainant, as the case may be. We are inclined to agree with the opinion expressed in para 6.9 of the 154th Report of the Law Commission in this behalf. We have however changed the language of sub-section (3) by including a woman government officer. Changes are also called for in the light of the amendments effected by Act 43 of 1983 and also in the light of the recommendations made by us in paras 3.2 and 3.5 (substitution of the offence in section 375 and the addition of section 376E).

4.2.3.1. Insertion of sub-sections (3) & (4) in section 160 of the Code of Criminal Procedure, 1973. Accordingly, we recommend that the following two sub-sections be inserted in section 160 of the Code of Criminal Procedure:

"(3) Where under this chapter, the statement of a female is to be recorded either as first information of an offence or in the course of an investigation into an offence and she is a person against whom an offence under sections 354, 375, 376, 376A, 376B, 376C, 376D, 376E or 509 of the Indian Penal Code is alleged to have been committed or attempted, the statement shall be recorded by a female police officer and in case a female police officer is not available, by a female government servant available in the vicinity and in case a female government servant is also not available, by a female authorised by an organisation interested in the welfare of women or children.

(4) Where in any case none of the alternatives mentioned in sub-section (3) can be followed for the reason that no female police officer or female government servant or a female authorised by an organisation interested in the welfare of women and children is available, the officer in charge of the police station shall, after recording the reasons in writing,
proceed with the recording of the statement of such female victim in the presence of a relative of the victim."

4.3. Substitution of the proviso to sub-section (1) of section 160.- Sub-section (1) of section 160 deals with the power of a police officer to require the attendance of witnesses who appear to be acquainted with the facts and circumstances of the case being investigated by him. It also casts an obligation upon the person so required to attend. The proviso as it now stands, however, says that "no male person under the age of 15 years or woman shall be required to attend at any place other than the place in which such male person or woman resides". We recommend raising the age from 15 years mentioned in the said proviso to 16 years.

4.3.1. Consideration of the view of "Sakshi" regarding presence of a relative or a friend or a social worker during the investigation.- At this stage, we may deal with another suggestion put forward by Sakshi to provide that even where the statement of a male person under the age of 16 years or of a female is recorded by a police officer during the course of investigation, a relative or a friend or a social worker of the choice of such male person below 16 years or the woman, as the case may be, shall be allowed to be present throughout the period during which the statement is recorded. We are inclined to agree with this suggestion, particularly in the light of the decision of the Supreme Court in Nandini Satpathy v. P.L. Dani (AIR 1978 SC 1025).

4.3.2. Substitution of the proviso to sub-section (1) of section 160 recommended.- Accordingly, we recommend that the proviso to sub-section (1) of section 160 be substituted to read as below:

"Provided that no male person under the age of 16 years or woman shall be required to attend at any place other than the place in which such male person or woman resides. While recording the statement, a relative or a friend or a social worker of the choice of the person whose statement is being recorded shall be allowed to remain present. The
relative, friend or social worker so allowed to be present shall not interfere with the recording of statement in any manner whatsoever."

4.4. Insertion of a new section, namely section 164A in the Code of Criminal Procedure.- The 84th Report of the Law Commission had recommended insertion of such a provision in paragraphs 4.8 to 4.11 of chapter 4. The reasons for such a provision and the provision suggested are the following:

"III. Examination of the victim 4.8 Section 164A, CrPC (To be added).- We next deal with the victim. In many cases, the report of the medical examiner as to the examination of the female victim is also found to be somewhat cursory and does not give adequate information about the material particulars which are necessary for an adjudication as to the various ingredients of section 375. Further, it is sometimes noticed that the medical examination report is not sent promptly to the investigating officer. As a result, the possibility of tampering with the report remains.

In our opinion, the report of the examination of the victim in a case of rape should (besides containing the usual formal particulars) deal specifically with - (i) the age of the victim, (ii) the question whether the victim was previously used to sexual intercourse, (iii) injuries to the body of the victim, (iv) general mental condition of the victim, and (v) other material particulars in reasonable detail.

It is also necessary that the report should note the time of examination and be sent without delay to the investigating officer. It is very important that the report should state reasons for the conclusions recorded.

4.9 Need for legislative provisions.- Ordinarily, such matters are left to be dealt with by executive instructions. However, having regard to the importance of the subject, it would be proper to insert in the Code of Criminal Procedure, at an appropriate place, a provision
incorporating the guidelines that we have suggested above. In the light of the practical working of the provision, further improvements could be made in the relevant provisions.

7.3. Changes recommended in the Code of Criminal Procedure, 1973

7.3.1. Insertion of sub-sections (3) and (4) in section 160 of the Code of Criminal Procedure, 1973.- We recommend that the following two sub-sections be inserted in section 160 of the Code of Criminal Procedure:

"(3) Where under this chapter, the statement of a female is to be recorded either as first information of an offence or in the course of an investigation into an offence and she is a person against whom an offence under sections 354, 375, 376, 376A, 376B, 376C, 376D, 376E or 509 of the Indian Penal Code is alleged to have been committed or attempted, the statement shall be recorded by a female police officer and in case a female police officer is not available, by a female government servant available in the vicinity and in case a female government servant is also not available, by a female authorised by an organisation interested in the welfare of women or children.

(4) Where in any case none of the alternatives mentioned in sub-section (3) can be followed for the reason that no female police officer or female government servant or a female authorised by an organisation interested in the welfare of women and children is available, the officer in charge of the police station shall, after recording the reasons in writing, proceed with the recording of the statement of such female victim in the presence of a relative of the victim." (paragraphs 4.2.3 & 4.2.3.1, supra)

7.3.2. Modification of the proviso to sub-section (1) of section 160.- We recommend raising the age mentioned in the proviso to sub-section (1) of section 160 from fifteen years to sixteen years. (paragraph 4.3, supra)
7.3.3. Substitution of the proviso to sub-section (1) of section 160 recommended.- We recommend that in addition to the above modification, the proviso to sub-section (1) of section 160 be substituted to read as follows: "Provided that no male person under the age of 16 years or woman shall be required to attend at any place other than the place in which such male person or woman resides. While recording the statement, a relative or a friend or a social worker of the choice of the person whose statement is being recorded shall be allowed to remain present. The relative, friend or social worker so allowed to be present shall not interfere with the recording of statement in any manner whatsoever." (paragraphs 4.3.1 & 4.3.2, supra)

7.3.4. Insertion of a new section, namely, section 164A in the Code of Criminal Procedure, 1973.- We recommend that the following section 164A be inserted in the Code of Criminal Procedure:

"164A. (1) Where, during the stage when any offence under section 376, section 376A, section 376B, section 376C, section 376D or section 376E is under investigation and it is proposed to get the victim examined by a medical expert, such examination shall be conducted by a registered medical practitioner, with the consent of the victim or of some person competent to give such consent on his/her behalf. In all cases, the victim should be sent for such examination without any delay.

Provided that if the victim happens to be a female, the medical examination shall be conducted by a female medical officer, as far as possible.

(2) The registered medical practitioner to whom the victim is forwarded shall without delay examine the person and prepare a report specifically recording the result of his examination and giving the following details: (i) the name and address of the victim and the person by whom he/she was brought, (ii) the age of the victim, (iii) marks of
injuries, if any, on the person of the victim, (iv) general mental condition of the victim and (v) other material particulars, in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The report shall specifically record that the consent of the victim or of some person competent to give such consent on his/her behalf to such examination had been obtained.

(5) The exact time of commencement and completion of the examination shall also be noted in the report, and the registered medical practitioner shall without delay, forward the report to the investigating officer, who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section.

(6) Nothing in this section shall be construed as rendering unlawful any examination without the consent of the victim or any person competent to give such consent on his/her behalf." (paragraphs 4.5.1 and 4.5.2, supra)

7.3.5. Insertion of new section 53A in the Code of Criminal Procedure recommended.- The proposed section 53A shall read as follows:

"53A. (1) When a person accused of any of the offences under sections 376, 376A, 376B, 376C, 376D or 376E or of an attempt to commit any of the said offences, is arrested and an examination of his/her person is to be made under this section, he/she shall be sent without delay to the registered medical practitioner by whom he/she is to be examined.

(2) The registered medical practitioner conducting such examination shall without delay examine such person and prepare a report specifically recording the result of his examination and giving the following particulars: (i) the name and address of the accused and the person by whom he was brought, (ii) the age of the accused, (iii) marks
of injury, if any, on the person of the accused, and (iv) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The exact time of commencement and completion of the examination shall also be noted in the report, and the registered medical practitioner shall, without delay, forward the report to the investigating officer, who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of subsection (5) of that section." (paragraph 4.6.2, supra)

7.3.6. Consequential amendments in the First Schedule to the Code of Criminal Procedure, 1973 recommended.- Consequent upon the proposed amendments in the IPC, the existing entries in respect of sections 376 to 376D, 377 and 509 will have to be substituted and entry in respect of new section 376E, IPC will have to be inserted as under:

<table>
<thead>
<tr>
<th>Section</th>
<th>Offence</th>
<th>Sentence</th>
<th>Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>376</td>
<td>Sexual assault</td>
<td>Imprisonment for life or imprisonment for 10 years and fine</td>
<td>Ditto Non-Court of bailable Sessions</td>
</tr>
<tr>
<td></td>
<td>by a man on his own wife being under 16 years of age.</td>
<td>Imprisonment for 3 years and fine</td>
<td>Non-cognizable Ditto Ditto</td>
</tr>
<tr>
<td></td>
<td>Sexual assault committed by a person in a position of trust or authority towards the person assaulted or by a near</td>
<td>Imprisonment for life and fine</td>
<td>Cognizable Non-bailable Ditto</td>
</tr>
</tbody>
</table>
relative of the person assaulted.

Sexual assault by a police officer or by a public servant or by a person being on the management or on the staff of a jail, remand home or other place of custody or women's or children's institution or by a person on the management or on the staff of a hospital, taking advantage of his official position.

376A Sexual assault by the husband upon his wife during separation.

376B Sexual intercourse by public servant with person in his custody.
376C Sexual intercourse by Superintendent of jail, remand home etc.

376D Sexual intercourse by any member of the management or staff of a hospital with any woman in that hospital.

376E Unlawful sexual intercourse with a young person. Imprisonment for 2 years, non-bailable. If information relating to the commission of the offence is given to an Officer-in-charge of a Police Station by the person aggrieved by the offence or by any person related to her/him by blood, or adoption or if there is no such relative, by any public servant belonging to such class or
<table>
<thead>
<tr>
<th>Unlawful sexual contact by a person in a position of trust or authority towards a young person.</th>
<th>Imprisonment for 7 years and fine</th>
<th>Ditto</th>
<th>Non-bailable</th>
<th>Court of Session</th>
</tr>
</thead>
<tbody>
<tr>
<td>377 Delete</td>
<td>509 Uttering any word or making any gesture intended to insult the modesty of a woman etc.</td>
<td>Delete</td>
<td>Simple imprisonment for 3 years and fine</td>
<td>Delete</td>
</tr>
<tr>
<td>category as may be notified by the State Government in this behalf</td>
<td></td>
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</tbody>
</table>

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ANNEXURE VII

DRAFT BILL OF THE PROHIBITION OF IMMORAL TRAFFIC AND EMPOWERMENT OF SEXUAL WORKERS

1. Statement of Objects and Reasons
2. Title, Application and Commencement
3. Definitions
4. Rights of Sex Workers and Duties of Brothel-keepers
   (i) Right to safe conditions of work
   (ii) Right to refuse on certain grounds
   (iii) Duty to ensure safe conduct
   (iv) Duty to provide safe workplace
   (v) Right to medical assistance
   (vi) Right to claim damages in case of injuries
   (vii) Right on incapacitation due to S.T.D.
   (viii) Rights against customers
5. Special Tribunal and Procedure
   (i) Special Court for processing complaints
   (ii) Procedure for processing complaints
   (iii) Settlement outside litigation
   (iv) Award to be final
6. Welfare Fund for Sex Workers and their Children
7. Offences:
   (i) Punishment for trafficking
   (ii) Punishment for trafficking of children
   (iii) Attempt and abetment punished
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8. Advisory Committees and NGO involvement in enforcement
9. Powers of State Government to frame Rules
10. Repeal and Savings
    Statement of Objects and Reasons

    An increasingly dominant perspective in public discourse on prostitution in recent times reflects the concern for women’s rights. It is argued that women should have the option to choose sexual work without
being exploited by intermediaries and in conditions of occupational safety and security. Today, the society looks down upon prostitutes and penalizes them along with traffickers and sexual exploiters. The interests which appear to deserve legal protection in the business of prostitution are those of the public and of the prostitutes themselves. While law should severely punish people involved in immoral trafficking and those indulging in child prostitution, it should de-criminalise totally the voluntary sexual work of prostitutes (prostitution is a legitimate activity even today) equating it with any other manual labour. This view, though apparently obnoxious to contemporary public morals, is said to be the only sensible position which law can adopt if it intends to empower the women involved and to effectively regulate the health risks of prostitutes, their customers and of the public at large. In international circles this view is known as the “prostitutes’ rights approach”.

It is reported that Australia, Netherlands and Germany have adopted policies to develop a legal regime reflecting the prostitutes’ rights approach. This approach is being canvassed in some agencies of the United Nations, by associations of prostitutes, and even by the WHO. According to a paper prepared for the WHO, a major concern in prevention of AIDS is “how to enable prostitutes to avoid becoming infected, and if they already are infected, to avoid passing the virus on to their clients and other sex partners”. The Global Programme on AIDS is said to be evolving certain guidelines on the basic premise “that in order for prostitutes to be able to protect themselves from HIV infection, AIDS, and other sexually transmitted diseases, they must safe working conditions, including the right to turn down abusive or unco-operative clients, and the right to refuse to engage in practices likely to transmit HIV and other STD, including any penetrative sex performed without a condom”. The Global Programme on AIDS of WHO has therefore urged governments to review the impact of existing laws and policies in the ability of prostitutes to protect themselves
and their partners from HIV and other STD. They are urged by WHO experts to repeal existing prostitution laws, de-criminalise the activity and extend occupational safety and health regulations which govern the workplace to prostitution business as well!

The Draft Bill is proposed for public discussion so that the best possible legislative policy can be evolved on the subject promoting women’s rights and preventing serious health risks to people involved. It is unnecessary to discuss the pros and cons of the Prostitutes’ rights approach as there are valid arguments in support and against it. For legislation, it is a matter of public opinion, a question of adopting the lesser evil and a method for getting better results in enforcement. Health is indeed a major concern and if the existing laws are posing a serious risk, there is every reason to change the policy however unacceptable it be on moral grounds. Similarly, sexual autonomy for women is an aspect of women’s rights. If prostitution perse is legitimate, then why not the activities associated with it is so regulated as not to victimize the women? If the prosperous flesh trade growing under the cover of corruption and secrecy and now under a privatized/globalised economy, were to be brought under some effective control, the best strategy in the given circumstances appear to be to bring it to the surface, make the trade uneconomical and regulate it under a rights regime where the victims are empowered to be their own policemen. Hence the bill.

1. Title, Application and Commencement

(i) This Act may be called “The Prohibition of Immoral Traffic and Empowerment of Sexual Workers Bill, 1993.”

(ii) The Act extends to the whole of India.
(iii) The Act shall come into force on such day as notified by the Central Government in the Official Gazette.
2(a) Immoral Trafficking means and includes buying, selling or procuring women and children for sexual abuse, prostitution or such other forms of sexual exploitation.

Explanation

(i) Causing a child or woman to be so abused, prostituted or exploited by force, fraud, deceit, undue influence, or misrepresentation is trafficking within the meaning of this Section. (ii) Fake marriage and dedication of girls which compel them to give up their dignity even if done ostensibly for religious purposes would amount to trafficking under this Section.

(b) ‘Sex Worker’ means a woman who has taken to prostitution voluntarily and is doing the activity as an occupation.

(c) Prostitution means sexual intercourse for monetary consideration or for consideration measurable in monetary terms. Sexual activity short of copulation would also amount to prostitution.

Explanation

Any agent of the brothel-keeper is deemed to be a brothel-keeper for the purposes of this Act. (i) Collective or Union means association of sex workers established for purposes of protecting their rights and for rehabilitation of sex workers under this Act. (ii) Prescribed means as prescribed under this Act and under the Rules framed thereunder.
Every sex worker has the right to demand from the customer as well as the brothel-keeper safe and hygienic conditions of work and reasonable remuneration for her services in Prostitution.

4. Right to refuse on certain grounds

A sex worker shall be entitled to refuse to entertain any customer on grounds of health, safety or hygiene and no brothel-keeper or customer shall force such woman to do so.

5. Duty to ensure safe conduct

(a) Every brothel-keeper has a legal duty to seek and obtain the health-status of customers visiting the brothel particularly in respect of sexually-transmitted diseases and to disclose such information to the woman entertaining such customer. (b) Every sex worker shall have the right to insist on the customer wearing condoms and no such woman shall be forced to participate in sexual activity with any customer who refuses to wear such condoms.

6. Duty to Provide Safe Work Place

Every sex worker has the right to demand hygienic environment and necessary sanitary facilities provided to her by the brothel keeper.

7. Right to Medical Assistance

(a) Every brothel keeper has a legal duty to provide medical treatment to the sex worker in the brothel. Every sex worker is entitled to seek monthly medical check-up at the expense of the brothel-keeper from a registered medical practitioner. (b) If and when a sex worker becomes pregnant while continuing to be in the brothel, she is entitled to refuse sexual activity with any customer and can refuse to abort her pregnancy. In such an event, she has the right to get her reasonable medical expenses for delivery and for three months thereafter from the brothel-keeper.
6. Right to Claim Damages in Case of Injuries

Every sex worker has the right to seek damages as prescribed under the Rules from the brothel-keeper for injuries suffered as a consequence of violation of her rights under the Act.

9. Right on Incapacitation Due to S.T.D.

Every sex worker or a union on her behalf will have the right to receive from the brothel-keeper a sum of not less than rupees one lakh in case she contacts in the course of her occupation any of the diseases given in the Schedule to the Act.

10. Rights Against Customers

Without prejudice to her rights against the brothel-keeper, every sex worker will have the right to claim damages against a customer who: (a) Physically tortures or sexually abuses her including unnatural intercourse, intercourse after being refused and intercourse after getting intoxicated. (b) Knowingly transmits diseases given in the Schedule to this Act; (c) Wilfully suppresses information which he has a duty to disclose under the Act; Refuses to practise safe sexual conduct including use of condom; and Refuses to pay either partly or fully the amount agreed to as consideration for the sexual activity.

CHAPTER 3. SPECIAL TRIBUNAL AND PROCEDURE

11. Special Tribunal for Processing Complaints

(a) The State Government shall set up a special tribunal in every metropolitan area with powers of a civil judge under the Civil Procedure code, 1908 to receive and settle expeditiously complaint under the Act. (b) Complaints on behalf of the Sex worker may be filed either by herself or by the trade union of which she is a member. Subject to the
consent of the tribunal, such complaints may also be filed by a voluntary agency working in the State for women's welfare.

12. Procedure for Processing Complaints

(a) The procedure for filling and processing complaints before the tribunal set up under the act shall be as nearly as possible to that prescribed for District Forum under the consumer Protection Act, 1986. (b) The State Government may from time to time prescribe under Rules such modifications in procedure for easy access to the tribunal and expeditious settlement of disputes. (c) There shall be no court fee payable for claims for damages filed under the Act. (d) It shall be the duty of the Commission for Women and/or the Legal Aid Authority of the State to arrange for proper legal assistance free of charge to women sex workers both before the tribunal and outside. (e) When damages are awarded by the tribunal it shall be the duty of the Commission for women and/or the Legal Aid Authority to take all necessary steps to get the sum paid to the sex worker without delay and expense. (f) The tribunal shall have the power to grant interim compensation to the complainant pending final settlement of the claim. (g) The tribunal will have the power to get the substance of the complaint and the nature of settlement arrived at published in stated newspapers at the expense of the brothel-keeper or the customer as the case may be a part of the settlement.

13. Settlement Outside Litigation

A complaint can also be settled through mediation at the instance of the union, the legal aid authority or the Commission for Women either before its filing in the special tribunal or afterwards with the permission of the tribunal.
14. Award to be Final

The award given by the tribunal shall be final and shall not be called in question in any court, excepting when a reference is made to the High Court by the tribunal itself.

CHAPTER 4. WELFARE FUND FOR SEX WORKERS AND THEIR CHILDREN

15. Welfare Fund for Sex Workers:

(a) Every State Government shall create a welfare fund for the benefit or rehabilitation of sex workers and of their children. (b) The Fund which shall be administered by the Department of Women and Child Development of the State Government according to the rules framed for the purpose will receive grants from the Central and State Governments as well as from private trusts, foundations and charitable institutions. Tribunals set up under the Act will also have authority to order payment of part of the compensation or costs awarded to the Fund whenever considered appropriate.

16. Children of sex workers to get support from Fund:

Children of sex workers will be entitled to receive free medical and educational services from out of the Fund till they attain the age of eighteen years. The collectives (Unions of sex workers), the State Commission for Women and voluntary agencies working for women’s welfare will have the right to intervene on behalf of children of sex workers to get their entitlements under this provision.

CHAPTER 5. OFFENCES

17. Punishment for Trafficking:

Trafficking on women is punishable with imprisonment which may extend to seven years and with fine.
Providing that on conviction for a second or subsequent time, the offence will carry a minimum imprisonment of ten years and fine of not less than rupees five lakhs.

18. Punishment for trafficking of children:

Persons involved directly or indirectly in the trafficking of children shall be liable for imprisonment, which may extend to ten years and with fine.

Provided that on conviction for a second or subsequent time, the offence will carry a minimum imprisonment for life and fine of not less than rupees ten lakhs.

19. Attempt and Abetment also punished:

Persons who abet or attempt in trafficking of children shall be liable to be punished with imprisonment which may extend to five years and with fine.

Explanation:

(i) When a person not being the parent or lawful guardian, is found having the custody of a child under circumstances which tend to make a reasonable person believe that the child is about to be sexually abused, it may be presumed as attempt under this section.

(ii) When a person not being the parent or lawful guardian, is found taking a child out of the country may also be presumed to have committed the offence of attempt under this section even if the taking is after an apparent marriage with that child.

20. Presumptions in prosecutions under the Act:

(a) In a prosecution for trafficking under the Act, the Court may presume on production of prima facie evidence, that the accused got involved with the woman or child as the case may be for purposes of
trafficking. (b) The court will be justified in raising the above presumption in situations such as the following:

(i) Where the mother-tongue of the accused is different from that of the victim or where the woman’s language is different from that spoken in the city where trafficking took place;
(ii) Where the woman is wrongly confined in a brothel;
(iii) Where an adult person lives on the earnings of a sex worker;
(iv) Where the sex worker’s jewelry or other property are withheld from her while in a brothel; and
(v) Where a sex worker is not allowed to leave the brothel.

CHAPTER 6. MISCELLANEOUS PROVISIONS

21. Advisory Committees and NGO Involvement in Enforcement

(a) The State Commission for women and voluntary organizations specially empowered by the State Commission for Women will be entitled to assist and monitor the investigation of offences under this Act. (b) Every State Government shall constitute a special enforcement cell in the police with as many women officers as possible for investigation of offences under the Act. (c) Every State Government shall constitute an advisory committee for effective implementation of the provisions of the Act with the Chairperson of the State Commission for women as the Chairperson of the Committee and representatives of collectives of sex workers and women’s welfare organizations as its members.

22. Powers of State Government to Frame Rules

(a) The State Government shall frame rules under different sections of the Act consultation with the State National Commission for women and the Advisory Committee constituted under the Act. (b) Rules required to be framed under the Act includes.
i) the norms and procedures for registration of collectives under Section 2(i);

ii) the procedure for receipt and processing of petitions under section 12(b);

iii) the procedure for administering the Welfare Fund under Section 15(b);

(c) Rules framed under the Act shall be placed in the next session of the legislature for its approval.

23. Repeal and Savings

(a) This Act when notified will repeal the Prevention of Immoral Traffic Act, 1956. (b) Prosecutions already initiated under the 1956 Act will however continue and such cases will be dealt with and disposed of according to the provisions of that Act only.
ANNEXURE – VIII
QUESTIONNAIRE

WOMEN AND CRIMINAL JUSTICE SYSTEM WITH SPECIAL REFERENCE TO PONDICHERRY
(with reference to rape, dowry death, cruelty in marriage, sexual harassment, Prostitution)

1. In spite of many amendments and making special laws for women, crime against women is increasing Why?.

(a) Investigation not done properly.
(b) Social Problem not to be dealt by law.
(c) Male Supremacy
(d) Defect in the laws
(e) People unaware of existence of special laws
(f) Any other reason.

2. Does the police find it difficult to collect the evidence because these crimes are committed in privacy?

(a) Difficult
(b) Not difficult can be proved by circumstantial evidence
(c) Any other reason.

3. (i) Whether investigation of these crimes to be done by only women police offers?

(a) Yes
(b) Not mandatory
(c) Preferable

(ii) What other modalities are to be adopted?

(a) Scientific investigation
(b) Psychiatrist
(c) Social Workers
(d) Any other reason.

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4. Is there any necessity for creation of Special Police Cell?
   (a) Yes
   (b) Not required
   (c) Preferred

5. Should there be Special Courts consisting of Women Judges?
   (a) Yes
   (b) Not required
   (c) Preferred

6. Whether creation of more (A) ‘All Women Police Station’, (B) Shelter Homes and (C) Short Stay Homes required?
   (A) **All Women Police Station**
      (i) Yes
      (ii) Not required
      (iii) More in rural area/urban area
   (B) **Shelter Homes**
      (i) Yes
      (ii) Not required
      (iii) More in rural area (only temporary relief).
   (C) **Short Stay Homes**
      (i) Yes
      (ii) Not required.
      (iii) More in rural/urban areas.

7. Imposing severe penalty like minimum sentence – 7 to 10 years, death penalty for these offenses. Can it have any deterrent effect?

**Rape:**

(a) Yes.
(b) No – Judges would prefer to acquit than to impose a severe punishment.
(c) Rigorous/Stringent Punishment with no mercy petition.
(d) Reformation required.
Dowry Death:

(a) Yes.
(b) No.
(c) Rigorous.
(d) Reformation required.

Cruelty in Marriage:

(a) Yes.
(b) No.
(c) Rigorous.
(d) Reformation required.

Sexual Harassment:
(fine, imprisonment)

(a) Yes.
(b) No.

Prostitution:
(fine, imprisonment with a minimum of 5 to 7 years)

(a) Yes.
(b) No.

8. Wide Publicity is given to these offenses in News Papers and other media. Is it required?

(a) Required.
(b) Not required.
(c) Not to be made sensational.

9. Is participation of Public/activities group required at investigation trial stage?

(a) Yes.
(b) No.
(c) to some extent.

10. Should the proceedings be conducted in camera?

(a) Yes
(b) No.
11. Is Shifting the burden of proof required for offenses of Rape, Dowry Death, Sexual Harassment necessary?

(a) Yes – there is practical difficulty of prosecution in obtaining direct evidence.
(b) No – certain limited presumption to be raised.
(c) Will be misused by Police – Easy to book culprits.
(d) Against the elementary principles of criminal justice i.e., presumption of innocence of the accused.
(e) to be decided by judge according to the case.
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