CHAPTER - 3
CLASSIFICATION OF CRIMES AGAINST WOMEN IN INDIA

“It is not just women who are paying an enormous price for this culture and religious prejudice. We all suffer when women and girls are abused and their needs are neglected. By denying them security and opportunity, we embed unfairness in our society and fail to make the most of the talents of half the population”


1. Introduction

‘Crime against women’ means direct or indirect physical or mental cruelty to women. Woman is subjected to criminal hardships in different forms such as are eve-teasing, molestation, bigamy, fraudulent marriage, enticement of married women, abduction and kidnaping, rape, harassment to women at working place, wife beating, dowry death, female child abuse and abuse of elderly female etc. Almost every woman have gained tolerance towards and have experienced the feeling of being mistreated, trivialized, kept out, put down, ignored, assaulted, laughed at or discriminated against because of her gender. One of the most vulnerable category of woman who is prone to become a victim of crime is the single working woman who reach out to the world, work extra hours, are unable to quit jobs etc. and in addition to such ongoing challenges, the state also lack of infrastructures for single working women who have to leave their families at an early age to work away from home. The most effective strategies that may support women are to organize like minded groups and gather together community resources and public services, including women’s health services. Such approaches enable women

to overcome resignation to the legitimacy of the established order are important factor in the perpetuation of imbalances of power between women and men. If women are to implement their reproductive preferences, then it is essential that their empowerment occur not only within their personal spheres, but also in the broader spheres of the community and the state.²

Women and girls are at risk of different forms of violence at all ages, from prenatal sex selection before they are born through abuse of widows and elderly women. While sexual violence affects women of all ages, the changing nature of women and girls’ relationships (with family members, peers, authorities, etc.) and the different environments (at home, in school, at work, within the community, etc) in which they spend time expose women and girls to specific forms of violence during each phase of their life³.

2. Stages of Women Exploitation and Present Indian Perspective:

Forms of crime against woman have become common globally. Also, apart from the same, the forms of crime have been observed to be equated with the age of the woman. Atrocities range from subjecting woman to the crime of pre-natal sex determination to the rape and murder. Following are different stages of women exploitation -

2.1 Pre-birth stage of women:

At the stage pre-birth, sex selective abortion has been taking place, in many developing countries like India, and it is still considered that a baby girl would be an unmanageable burden over the family in future. Hence, despite several laws and general awareness, woman are subjected to inferior and unequal treatment in all spheres of life and especially in terms of employment wherein they are not paid properly and thus they are economically deprived section of Indian society.

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2.2 Formative years of women:

At this stage, a woman is looked after with ignorance particularly in case of mental and physiological development, education, health care and nutrition. Consequently from the formative stages of development, women remain weak and isolated. Thus, there is a tendency in rural portions of India to over-emphasize on baby boy considering them as an asset and a source to increase income flow.

2.3 Stage of women’s youth:

During this phase, due to several factors including constant ignorance, women are victimized as a result of gruesome acts such as child abuse and trafficking taken up by certain distorted social elements as a lucrative business spread all over the world both for labour and sex to fulfill their selfish menial interests. Therefore, it cannot be denied that the child labour act of 1986 does not bring remarkable positive impact as the majority of child labour in rural India is female.

2.4 The teenage years of women:

At the stage of adolescence, disgraceful form of violence or exploitation is practiced over woman in the form of prostitution, trafficking, early marriage, crime committed against women etc. This is a stage when they become matured and are able to understand the social and economic bondage and being realized this tyranny, they are either compelled to choose prostitution or unintentionally abused for sex. Such acts are practiced and are termed as pedophilia. In addition, being considered as burden, they are thrown out of their house by forcing them to undergo early marriage very often as decided by their family. Sometimes, this results psychologically disorder among them. Moreover, the young women or teenagers are victimized to satisfy a few gangsters by providing sex and beauty.

2.5 Reproductive period of women:

At reproductive age, woman face un-consented abortions, forced pregnancy, delayed abortion and upon resistance they are subjected to
domestic violence. Moreover, at this time, they are sexually, psychological and physically tortured by intimate partner or non-partner also. Consequently failing to rectify her atrocities, she practices homicide. At the time of elderly, she becomes helpless due to absence of workability or sexual beauty. Consequently, they are again ignored and exploited. Thus, the history of women life is a garland of stigma or misery. Unfortunately it is a widely accepted fact that there is no stage at which a woman gets the honour she deserves for playing multiple roles however to the contrary they are let down due to their traditional oppressed life which goes protest free.

Particular groups of women and girls, such as members of racial, ethnic and sexual minorities; HIV-positive women; migrants and undocumented workers; women with disabilities; women in detention and women affected by armed conflict or in emergency settings, are more vulnerable to violence and experience multiple forms of violence on account of compounded forms of discrimination and socio-economic exclusion.

In one way or the other, the perpetrators of violence do include the State and its agents, family members (including husbands), friends, intimate partners or other familiar individuals, and strangers.

Crime against women is rising at an alarming rate globally. The legal recourses available fail to curb high levels of sexual and other violence against women and girls, even as reports of such incidents increased. The execution of laws at the police level is extremely slow and ineffective. In modern world where we talk of a civilized society, women liberty and empowerment, every day the pace of crime against women is rapidly increasing.

The crimes against women can be classified under following heads.

3. **The offences Identified in Indian Penal Code, 1860**
   1. Rape
   2. Kidnapping & Abduction, trafficking and prostitution
   3. Killing for Dowry, Dowry Deaths or their attempts
   4. Mental and Physical Torture
5. Molestation
6. Offences related to Marriage
7. Acid Attacks
8. Honour Killing

4. The offences identified in the Special Laws

While all laws are not gender specific, the provision of law affecting women considerably have been reviewed from time to time and amendments were made to keep pace with the evolving society. The following laws are having special provisions to protect women and their safety:

1. Indecent Representation of Women (Prohibition) Act, 1986
2. The Immoral Traffic (Prevention) Act 1986
3. Dowry Prohibition Act, 1961
5. The Protection of Women from Domestic Violence Act, 2005
6. Information Technology Act 2000
7. The Sexual Harassment of Woman at Workplace (Prevention, Prohibition and Redressal) Act, 2013
8. The Prevention and Protection from Witch Hunting
9. Pre-Conception & Pre-Natal Diagnostic Techniques Act, 1994
10. The Medical Termination of Pregnancy Act, 1971

Now we shall briefly understand about crimes against women under Different section of Indian Penal Code.

3.1 Rape

Supreme Court of India while showing its concern over most heinous crime rape observed “Rape is a crime not only against the person of a woman; it is a crime against the entire society. It destroys the entire psychology of a woman and pusher her into deep emotional crisis Rapes is therefore the most hated crime. It is a crime against basic human rights and is violation of the
victims most cherished rights, namely right of life which includes right to live with human dignity contained in Article 21. Rape for a woman is deathless shame and must be dealt with as a gravest against human dignity; it is violation with violence on the private person of a woman."

Section 375 and 376, 376-A to 376-D IPC are related with the offence of rape, which are amendment by Criminal law (Amendment) Act, 2013. The most important change that has been made is the change in definition of rape under IPC.

Section 375, deals with the definition of Rape, it says that “A man is said to commit “rape” if he- (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven clauses; First.-Against her will, Secondly.-Without her consent, Thirdly.-With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt, Fourthly.-With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married, Fifthly.-With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she

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4 Bodhistava V. Ms Subhadra Chakroborty (1996) 1 SCC 490
5 Inserted by Section 9 of 'The Criminal Law (Amendment) Act, 2013
gives consent, Sixthly.-With or without her consent, when she is under
eighteen years of age, Seventhly.-When she is unable to communicate
consent.”
Explanation 1.-For the purposes of this section, “vagina” shall also include
labia majora;
Explanation 2.-Consent means an unequivocal voluntary agreement when the
woman by words, gestures or any form of verbal or non-verbal
communication, communicates willingness to participate in the specific sexual
act; Provided that a woman who does not physically resist to the act of
penetration shall not by the reason only of that fact, be regarded as consenting
to the sexual activity.
Exception 1.-A medical procedure or intervention shall not constitute rape.
Exception 2.-Sexual intercourse or sexual acts by a man with his own wife, the
wife not being under fifteen years of age, is not rape.”

Basically definition of rape contains two essential ingredients:

1. Sexual Intercourse by a man with a woman, and

2. The sexual intercourse must be under circumstances falling under
   any of the seven clauses of section 375.

In order to file the complaint under rape against a man, it is necessary
to prove that the sexually intercourse was done by the perpetrators is against
the will of the victim or without her consent.

The Supreme Court in Dileep Singh v. State of Bihar\(^6\) observed that
“the will and consent often interlace and an act done against the will of the
person can be said to be an act done without consent, the Indian Penal Code
categorizes these two expressions under separate heads in order to as
comprehensive as possible.”

The Apex Court in State of UP v. Chotey Lal\(^7\) has held that “be that as
it may, in our view, clause Sixth of Section 375 IPC is not attracted since the

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\(^6\) (2005)1SCC 88 (para 14)
\(^7\) (2011)2 SCC 550
prosecutrix has been found to be above 16 years (although below 18 years). In the facts of the case what is crucial to be considered is whether clause First or Second of Section 375 IPC is attracted. The expressions ‘against her will’ and ‘without her consent’ may overlap sometimes but surely the two expressions in clause first and clause second has different connotation and dimension.”

The Courts always followed the test laid down under Section 90 of the IPC for establishing “consent”. Section 90 reads thus: “Consent known to be given under fear or misconception. A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.”

The apex court has clearly stated that the court shall presume that the victim did not consent to the sexual intercourse. In Deepak Vs State of Haryana\(^8\) cited Section 114-A of the Indian Evidence Act. It reads as under:

“In a prosecution for rape under clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause (l), clause (m) or clause (n) 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 such woman states in her evidence before the court. That she did not consent, the court shall presume that she did not consent.”\(^10\)

In order to enable the court to draw presumption as contained in Section 114-A against the accused, it is necessary to first prove the

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8 Indian Penal Code 1860 (Act 65 of 1860), s. 90.
9 Deepak Vs State of Haryana SC (CA) 65 OF 2012
10 Amended by Criminal Law (Amendment ) Act, 2013 (13 of 2013), s. 26
commission of sexual intercourse by the accused on the prosecutrix and second, it should be proved that it was done without the consent of the prosecutrix. Once the prosecutrix states in her evidence that she did not consent to act of sexual intercourse done by the accused on her which, as per her statement, was committed by the accused against her will and the accused failed to give any satisfactory explanation in his defence evidence on this issue, the court will be entitled to draw the presumption under Section 114-A of the Indian Evidence Act against the accused holding that he committed the act of sexual intercourse on the prosecutrix against her will and without her consent. The question as to whether the sexual intercourse was done with or without consent being a question of fact has to be proved by the evidence in every case before invoking the rigour of Section 114-A of the Indian Evidence Act.

According to the Supreme Court even the slightest penetration is sufficient to make out an offence of rape. However depth of penetration is immaterial.

The Supreme Court in Koppula Venkatrao v. State of AP held that “The sine qua non of the offence of rape is penetration, and not ejaculation. Ejaculation without penetration constitutes an attempt to commit rape and not actual rape. Definition of ‘rape’ as contained in Section 375 IPC refers to ‘sexual intercourse’ and the Explanation appended to the section provides that penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. Intercourse means sexual connection.”

The Apex Court in Bantu v. State of U.P. explained the term “rape” and according to the Court, “the offence of rape in its simplest term is the ravishment of a woman, without her consent, by force, fear or fraud, or as the carnal knowledge of a woman by force against her will. ‘Rape’ or ‘Raptus’ is when a man have carnal knowledge of a woman by force and against her will;

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11 (2004)3 SCC 602
12 2008 (2) Crime 264 (SC).
or as expressed more fully, ‘rape is the carnal knowledge of any woman, above the age of particular years, against her will; or of a woman child, under that age, with or against her will’. The essential words in an indictment for rape are rapuit and carnaliter cognovit, but both must be present. In the crime of rape, ‘carnal knowledge’ means the penetration to any the slightest degree of the organ alleged to have been carnally known by the male organ of generation.”

Section 376 deals with the Punishment for Rape. It says that “(1) Whoever, except in the cases provided for in sub-section (2), commits rape shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine. (2) Whoever, being a police officer, commits rape- (i) within the limits of the police station to which such police officer is appointed; or (ii) in the premises of any station house; or (iii) on a woman in such police officer’s custody or in the custody of a police officer subordinate to such police officer; or (b) being a public servant, commits rape on a woman in such public servant’s custody or in the custody of a public servant subordinate to such public servant; or (c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or (d) 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, commits rape on any inmate of such jail, remand home, place or institution; or (e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or (f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or (g) commits rape during communal or sectarian violence; or (h) commits rape on a woman knowing her to be

13 Stephen’s "Criminal Law" 9th Ed. p.262
14 Inserted by Section 9 of ‘The Criminal Law (Amendment) Act, 2013
pregnant; or (i) commits rape on a woman when she is under sixteen years of age; or (j) commits rape, on a woman incapable of giving consent; or (k) being in a position of control or dominance over a woman, commits rape on such woman; or (l) commits rape on a woman suffering from mental or physical disability; or (m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or (n) commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life, and shall also be liable to fine.”

Section 376A deals with Intercourse by a man with his wife during separation

“Whoever commits an offence punishable under sub-section (1) or subsection (2) of section 376 and in the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life, or with death.”

Section 376B deals with Intercourse by public servant with woman in his custody

“Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.”

Section 376C. Intercourse by superintendent of jail, remand home, etc.

15 Indian Penal Code, 1860., s. 376
16 Inserted by Section 9 of ‘The Criminal Law (Amendment) Act, 2013
17 Inserted by Section 9 of ‘The Criminal Law (Amendment) Act, 2013
18 ibid
“Whoever, being- (a) in a position of authority or in a fiduciary relationship; or (b) a public servant; or (c) 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 a women’s or children’s institution; or (d) on the management of a hospital or being on the staff of a hospital, abuses such position or fiduciary relationship to induce or seduce any woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than five years, but which may extend to ten years, and shall also be liable to fine.”

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

“Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person’s natural life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.”

Section 376E. Repeat offenders

“Whoever has been previously convicted of an offence punishable under section 376 or section 376A or section 376D and is subsequently convicted of an offence punishable under any of the said sections shall be

\[\text{Inserted by Section 9 of ‘The Criminal Law (Amendment) Act, 2013} \]

\[\text{ibid} \]
punished with imprisonment for life which shall mean imprisonment for the remainder of that person’s natural life, or with death.”

3.1.1 Rape is a crime against whole Society - The Hon’ble Supreme court in *Pushpanjali Sahu v. State of Orissa*²¹, has held that “Sexual violence is not only an unlawful invasion of the right of privacy and sanctity of a woman but also a serious blow to her honour. It leaves a traumatic and humiliating impression on her conscience, offending her self-esteem and dignity, rape as not only a crime against the person of a woman, but a crime against the entire society. It indelibly leaves a scar on the most cherished possession of a woman i.e. her dignity, honour, reputation and not the least her chastity. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. It is a crime against basic human rights, and is also violative of the victim’s most cherished of the fundamental rights, namely, the right to life contained in Article 21 of the Constitution. 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.”

3.1.2. Awarding Compensation and protect identity of Rape Victim

– The Apex Court in *Delhi Domestic Working Women’s Forum v Union of India and Others*²² suggested with a view to assisting rape victim and laid down the following broad guidelines:

“The complainants of sexual assault cases should be provided with legal representation. It is important to have someone 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

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²¹ 2012 (9) SCC 705
²² 1995 (1) SCC 14
who looked after the complainant’s interests in the police station should represent her till the end of the case.; 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.; 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.; 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.; The advocate shall be appointed by the court, upon application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without undue delay, though, advocates would be authorized to act at the police station before leave of the court was sought or obtained.; In all rape trials anonymity of the victim must be maintained, as far as necessary.; 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.”

3.1.3. Delay in lodging first information report cannot be used as a ritualistic formula for discarding prosecution case and doubting its authenticity –

In Ashok Surajlal Ulke v. State of Maharashtra,23 The prosecutrix was studying in the Zila Parishad School at Mohali, District Gadchiroli. On the day of the incident, the accused met her and enquired as to how she had performed in the Mathematics paper in the examination. On her reply that she had not done too well on which the accused advised her to bring the question paper to his house. She went to his house with her younger brother. They were directed

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23 2011Cri. L.J. 2330 (S.C.)
to go towards the school and accused asked her younger brother to bring some snacks. When he left for the shop, the accused held the hand of the prosecutrix and pushed her towards the verandah of the school and raped her. The shouts of alarm raised by the prosecutrix could not be heard by any one on account of the operating loud speakers all around as it was the day of the Sharda Devi festival.

In instant case the apex court observed that in a case of rape the fact that the FIR had been lodged after a little delay is of very little significance. There can be no doubt that an allegation of rape, and that too of a young child 15 years of age, is a matter of shame for the entire family and in many such cases the parents or even the prosecutrix are reluctant to go to the police to lodge a report and it is only when a situation particularly unpleasant arises for the prosecutrix that an FIR is lodged. In present case father of the prosecutrix waited for three days to see whether Head Master of the school could do something as was assured, only there the FIR is lodged. The doctor also had found nothing to suggest that rape had been committed and was not in a position to give any definite opinion on that account as the medical examination had been conducted after three days since the offence had been committed. The doctor nevertheless found that there was a minor injury on the finger which was about four days old and that the hymen was also missing. Evidence of prosecutrix was corroborated by evidence of prosecution witnesses. No occasion for false implication, hence conviction upheld.

3.1.4. Court cannot disgrace the character of a victim and she cannot be treated as an accomplice – The apex court in State of Punjab v. Gurmit Singh24 has rightly said that “It demonstrates lack of sensitivity on the part of the court by casting unjustified stigmas on a prosecutrix aged below 16 years in a rape case, by overlooking human psychology and behavioral probabilities. An intrinsically wrong approach while appreciating the

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24 1996 (1) Supreme 485.
testimonial potency of the evidence of the prosecutrix has resulted in miscarriage of justice.”

Justice Anand J. has rightly stated that “we must express our strong disapproval of the approach of the trial court and its casting a stigma on the character of the prosecutrix. The observations lack sobriety expected of a Judge. Such like stigmas have the potential of not only discouraging an even otherwise reductant victim of sexual assault to bring forth complaint for trial of criminals, thereby making the society to suffer by letting the criminal escape even a trial. The courts are expected to use self-restraint while recording such findings which have larger repercussions so far as the future of the victim of the sex crime is concerned and even wider implications on the society as a whole-where the victim of crime is discouraged, the criminal encouraged and in turn crime gets rewarded. Even in cases, unlike the present case, where there is some acceptable material on the record to show that the victim was habituated to sexual intercourse, no such inference like the victim being a girl of ‘loose moral character’ is permissible to be drawn from that circumstance alone. Even if the prosecutrix, in a given case, has been promiscuous in her sexual behavior earlier, she has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted by anyone had everyone. No stigma, like the one as cast in the present case should be cast against such a witness by the Courts, for after all it is the accused and not the victim of sex crime who is on trial in the Court.”

In the given case when the girl came out of a school wherein she had been going for her matriculation examination and was on her way to home when she was forcibly taken into a car by the accused persons and then they took her to a lonely place and raped her one by one in the day as well as night. During the incident she was also made to drink liquor, being termed as juice by the accused person, even after resistance. She was left at the venue of her examination after the incident on the next morning. On this day she narrated
the whole story to her mother and the case was reported to the police next day as her father came late from the farm on the next day of occurrence of the incident.

On corroboration the Court insisted that non-corroboration of a prosecutrix testimony is not fatal for the conviction of the accused and stated that, “The Court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused.”

The Apex Court in State of U.P. v. Chhotey Lal25 observed that “a woman who is victim of sexual assault is not an accomplice to the crime. Her evidence cannot be tested with suspicion as that of an accomplice. As a matter of fact, the evidence of the prosecutrix is similar to the evidence of an injured complainant or witness. The testimony of prosecutrix, if found to be reliable, by itself, may be sufficient to convict the culprit and no corroboration of her evidence is necessary. In prosecutions of rape, the law does not require corroboration. The evidence of the prosecutrix may sustain a conviction. It is only by way of abundant caution that court may look for some corroboration so as to satisfy its conscience and rule out any false accusations.”

The Supreme Court commented that ours is a conservative society and, therefore, a woman and more so a young unmarried woman will not put her reputation in peril by alleging falsely about forcible sexual assault. In examining the evidence of the prosecutrix the courts must be alive to the conditions prevalent in the Indian society and must not be swayed by beliefs in other countries. The courts must be sensitive and responsive to the plight of the female victim of sexual assault. Society’s belief and value systems need to be kept uppermost in mind as rape is the worst form of woman’s oppression. A forcible sexual assault brings in humiliation, feeling of disgust, tremendous

embarrassment, sense of shame, trauma and lifelong emotional scar to a victim and it is, therefore, most unlikely of a woman, and more so by a young woman, roping in somebody falsely in the crime of rape. The stigma that attaches to the victim of rape in Indian society ordinarily rules out the leveling of false accusations. An Indian woman traditionally will not concoct an untruthful story and bring charges of rape for the purpose of blackmail, hatred, spite or revenge.

3.1.5. No Disclosure of name of the Rape Victim

As per Section 228-A of Indian Penal Code, 1860 “a person is liable to be punished if he prints or publishes the name or any matter which may identify any person whom rape has been committed or alleged to have been committed under section 376, 376A, 376B, 376 C, and 376 D.” The protection under section 228-A is available to the rape victim so that she doesn’t become subject to the public disrespect and social stigma. The apex court in State Of Karnataka v. Puttaraja,26 pointed out that “in view the social object of preventing social victimization or ostracism of the victim of a sexual offence for which Section 228-A 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.”

3.1.6. Right to refuse sexual intercourse has full play in case of every woman -

The Apex Court in Narender kumar v. State (NCT of Delhi)27 observed that “even in cases where there is some material to show that the victim was habituated to sexual intercourse, no inference of the victim being a woman of ‘easy virtues’ or women of ‘loose moral character’ can be drawn. Such a woman has a right to protect her dignity and cannot be subjected to rape only for that reason. She has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for

26 2003 (8) Supreme 364
27 AIR 2012 SC 2281.
being sexually assaulted by anyone and everyone. Merely because a woman is of easy virtue, her evidence cannot be discarded on that ground alone rather it is to be cautiously appreciated.”

3.1.7. Two Fingers test violates right of Survivors.-

The Supreme court in *Lillu alias Rajesh and another v. State of Haryana*,

28 observed that “In view of International Covenant on Economic, Social, and Cultural Rights 1966; United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985, rape survivors are entitled to legal recourse that does not retraumatize them or violate their physical or mental integrity and dignity. They are also entitled to medical procedures conducted in a manner that respects their right to consent. Medical procedures should not be carried out in a manner that constitutes cruel, inhuman, or degrading treatment and health should be of paramount consideration while dealing with gender-based violence. The State is under an obligation to make such services available to survivors of sexual violence. Proper measures should be taken to ensure their safety and there should be no arbitrary or unlawful interference with his privacy. Thus, undoubtedly, the two finger test and its interpretation violate the right of rape survivors to privacy, physical and mental integrity and dignity. Thus, this test, even if the report is affirmative, cannot ipso facto, be given rise to presumption of consent.”

3.1.8. Gang Rape-

Explanation 1 to section 376 (2) (g), IPC defined a species of rape i.e. gang rape. Where there were two persons involved, they were guilty of the offence of committing gang rape.

Can the conviction be set aside because the medical report did not indicate the number of persons who had raped? Answering this question in an appeal, the apex court in *Balwant Singh V. State of Punjab*,

29 observed that “We do not think that on medical examination it is possible to say about the

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28 AIR 2013 SC 1784
29 1987 (2) SCC 27
number of person committing rape on a girl and accordingly in the report the lady doctor has not expressed any opinion in this regard. The evidence of the prosecutrix that all the appellants had committed rape on her is not inconsistent with the medical report.”

In Promod Mahto V. State of Bihar\(^\text{30}\) four persons forced entry into a house. They were charged with raping a young unmarried girl. Medical evidence supported the fact of rape. The conviction of all of them was upheld without it being necessary, to show whether all of them or which of them participated in the crime. The Apex Court stated that “The explanation has been introduced by the legislature with a view of effectively deal with the growing menace of gang rape. In such circumstances it is not necessary that the prosecution should adduce clinching proof of a completed act of rape by each one of the accused on the victim or on each one of the victims where there is more than one in order to find the accused guilty of gang rape and convict them under section 376 IPC.”

In Pradeep Kumar V. Union Adm. Chandigarh\(^\text{31}\) it was laid down by the Supreme Court that “to bring the offence of rape in the category of gang rape it is necessary to prove that more than one person had acted in concert with common intention to commit rape on victim. That more than one accused had acted in concert in commission of crime of rape with predetermined plan, prior meeting of minds and with the element of participation in action. It may also be in a plan formed suddenly at the time of commission of offence which is reflected by element of participation in action. That in furtherance of such common intention one or more person of the group actually committed offence of rape on victim or victims.”

In this case prosecutrix stated that accused reached spot after rape had been committed. Mere presence of appellant accused at spot is insufficient to prove gang rape.

\(^{30}\) 1989 (2) SCC 672

\(^{31}\) 2006 (10) SCC 608
Recent cases of Gang rape

Haryana Gang Rape case of Nepali women\textsuperscript{32} - A fast-track court in Haryana’s Rohtak sentenced seven men to death for raping and murdering a 28-year-old Nepali woman. Additional district and Sessions Judge Seema Singhal called the case a rarest of rare while announcing her judgment. The case hit international headlines and drew comparisons with the rape and murder of Nirbhaya in Delhi because of its brutality and the involvement of a minor. The mentally challenged woman had come to Rohtak for treatment when she was raped and murdered brutally. The Rohtak victim’s body was found there days after she went missing on February 1, 2015 with blades, stones, condoms and pieces of a stick stuffed in her private parts. “People consider women as weak creatures,” Singhal said. “...I can hear cries of women falling prey to crimes. This is a male-dominated society that believes women can be suppressed. Men, who commit such crimes, should be ashamed of their acts.”

The Mumbai gang rape\textsuperscript{33}, also known as the Shakti Mills gang rape, refers to the incident in which a 22-year-old photojournalist, who was interning with an English-language magazine in Mumbai, was gang-raped by five persons, including a juvenile, when she had gone to the deserted Shakti Mills compound, near Mahalaxmi in South Mumbai, with a male colleague on an assignment on 22 August 2013. The accused had tied up the victim’s colleague with belts and raped her. The accused took photos of the victim during the sexual assault, and threatened to release them to social networks if she reported the rape. Later a call centre employee reported that she too had been gang raped, on 31 July 2013.

On 21 March, the Mumbai sessions court awarded life sentences to four of the accused in the telephone operator case. Principal Sessions judge

\textsuperscript{32} http://timesofindia.indiatimes.com/india/Nirbhaya-II-7-rapist-killers-get-death-sentence/articleshow/50274506.cms (Last Visited on 2nd February 2016)

\textsuperscript{33} https://en.wikipedia.org/wiki/2013_Mumbai_gang_rape (Last Visited on 2nd February 2016)
Shalini Phansalkar-Joshi said, “The manner in which the offence was committed reflects the depravity of the accused. The crime was not an impulsive act, but the premeditated outcome of a criminal conspiracy. They sexually ravished the girl and left her in a pathetic state. A proper signal has to be sent out to society. Even if in this case the accused are not reformed, others like them will be deterred. In some cases, mercy is justified. But in this case it would be misplaced and would be a mockery of justice”.

Following the conviction of the three repeat offenders (Vijay Jadhav, Qasim Bengali, and Mohammed Salim Ansari) in the both gang rapes, on 4 April prosecutor Nikam moved an application to add charges against them under section 376E of the IPC, which provides for the death sentence for repeated rape convictions. Demanding the death penalty, Nikam told the court, “The accused are sex-starved goons in shape of humans. They deserve maximum sentence. Any leniency shown to the accused would be a mockery of justice. Their crime has shocked collective consciousness.”

On 4 April 2014, the court awarded the death penalty to the three repeat offenders in the photojournalist rape case. This was the first time that rapists in India were given death sentences under section 376E of the IPC. Siraj Khan, the other convict in the photojournalist case, was sentenced to life imprisonment.

Awarding the death penalty, the judge stated, “Mumbai gang-rape accused has least respect for law. They don’t have potential for reformation as per facts of case. The suffering that gang-rape survivor and her family has undergone is unparalleled. Mumbai gang-rape accused was emboldened since law enforcing agencies hadn’t caught them. If this is not the case where death sentence prescribed by law is not valid, which is? Exemplary and rarest of rare punishment is required in the case.” The judge further added that the crime violated all rights of the survivor. Joshi further observed, “The gang-rape accused were not only enjoying the act of sexual assault but also the survivor’s helplessness. It was executed in the most gruesome manner with no mercy or
show of human dignity to the survivor. The accused were acting in pursuance of criminal conspiracy as judicially proved. The defence argued that the convicts were “deprived of basic fundamental rights” and that their poor socioeconomic status should be taken into consideration. However, citing judgments by the Supreme Court, the judge stated that “Conviction cannot be dependent on the social and the economic status of the victim or the accused and the race, caste, creed of the accused cannot be taken into consideration.” Joshi ruled, “Depravity of their character is reflected from the fact that the accused enjoyed the act. They did not commit the crime under any duress or compulsion. They had enjoyed the act. This was a case, where the accused were completely unprovoked. The judge also rubbished the defence’s claims that the victims had suffered no physical injuries. The judge further ruled, “This court had an opportunity to understand the trauma as she recalled them at the time of her testimony in the court. Questions like whether she has suffered any injuries are irrelevant and her trauma cannot be overlooked. Her testimony and her mother’s deposition in the court clearly tell how heinous the crime was.” Rejecting the accused plea for leniency, the judge rule, “A defenseless, harmless victim was raped by the accused unprovoked ... This did not happen because of some momentary lapse.” Applauding the victim for her courage, the court observed, “This case would have also gone unreported if the victim had not come ahead and complained to the police. She took a bold step and lodged the complaint. Because of her, this and the other crime [the telephone operator case] came to light.”

**Delhi Gang Rape case**³⁴ (Nirbhaya Case) - A young girl was returning home with a male friend after watching a movie. They boarded a bus and soon figured out that something was wrong. The six people on board,

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including the driver knocked the boy unconscious with an iron rod and then raped her one at a time. They shoved an iron rod in her vagina, severely damaging her intestines, abdomen and genitals. Finally, they threw the boy and the woman out of the bus, and drove away.

The woman was rushed to the hospital and the men were arrested within 24 hours. Eventually, the woman succumbed to her injuries, and the men immediately went on trial. While on trial, one of the accused committed suicide in jail. The remaining five were subsequently charged for rape and murder. The four adults were granted a death penalty, while the minor was sent to a reform facility for three years. The Additional Sessions Judge Yogesh Khanna, pronouncing the death sentence has observed “These are the times when gruesome crimes against women have become rampant and courts cannot turn a blind eye to the need to send a strong deterrent message to the perpetrators of such crimes. The increasing trend of crimes against women can be arrested only once the society realize that there will be no tolerance from any form of deviance against women and more so in extreme cases of brutality such as the present one and hence the criminal justice system must instill confidence in the minds of people especially the women. The crime of such nature against a helpless woman, per se, requires exemplary punishment. I may leave here while saying that the gravity of the incident depicts the hair rising beastly and unparalleled behaviour. The subjecting of the prosecutrix to inhuman acts of torture before her death had not only shocked the collective conscience but calls for the withdrawal of the protective arm of the community around the convicts. This ghastly act of the convicts definitely fits this case in the bracket of rarest of rare cases.”

3.1.9. All persons abetting rape convicted for gang rape – in Pramod Mahto and Ors. v State Of Bihar The facts of the case were that the four appellants and one Umesh Mahto besides 11 others who were acquitted were charged under Sections 380 and 376 read with Section 149 IPC for

35 AIR 1989 SC 1475
having entered the house of the victims and committing rape on them and thereafter removing cash and valuables from the house on the night of 16/17 of March, 1984. The prosecution case was that while accused Nos. 6 to 16 stood outside the house, accused Nos. 1 to 5 entered the house through the roof after dismantling a portion of it and thereafter accused Nos. 1 to 4 committed rape on the victims while accused Umesh Mahto stood guard over them with a gun in his hands in order to overawe them and make them submit to the rape committed on them without protest.

In this case the SC upheld the conviction of the four accused though it did not change the punishment of life imprisonment on the primary accused and the last accused, who pointed gun towards the victims so that they could submit and did not raise alarm, was punished with only two years of rigorous imprisonment by the High Court. Sentence of other three accused were reduced from life imprisonment to ten years rigorous imprisonment.

Herein only this could be proved that the rape was committed on one unmarried girl and medical evidence did not show that the married women were also subjected to rape by the accused persons. The Court observed that once it was established that the appellants had acted in concert and entered the house of the victims and thereafter raped the said victim, then all of them would be guilty under Section 376 IPC in terms of Explanation I to Clause (g) of Sub-section (2) of Section 376 IPC irrespective of whether she had been raped by one or more them.

The Court further observed that “this Explanation had been introduced by the legislature with a view to effectively deal with the growing menace of gang rape. Further, in such circumstances, it is not necessary that the prosecution should adduce clinching proof of a completed act of rape by each one of the accused on the victim or on each one of the victims where there are more than one in order to find the accused guilty of gang rape and convict them under Section 376 IPC.”

3.1.10. Incest rape –
The Apex Court in *Neel Kumar v. State of Haryana*, both wherein the appellant accused allegedly committing rape upon his 4 years old daughter, thereafter murdering her. FIR lodged by the wife of the appellant giving complete version regarding criminal acts, rape as well as murder of child. However, incriminating circumstances enumerated by the trial court were –

a) The victim was in the custody of accused.

b) No explanation from the side of this accused as to how such severe injuries were suffered by the victim and how she met with death as these facts were in his special knowledge alone.

c) Non information of the crime by the accused to the police or other members of the family.

d) Recovery of the blood stained clothes of the victim and the accused from the possession of accused on his disclosure statement.

e) Presence of blood on the clothes of the accused and no explanation thereof.

f) Abscondence of the accused after the occurrence.

g) Strong motive against the accused for murder as charges of rape were being raised against him.

It was held by the apex court that on evidence available on record, the courts below rightly took view that section 106 of Indian Evidence Act 1872, was fully applicable. The court further held that recovery of incrementing material upon appellant’s disclosure statement duly proved is a very positive circumstance against him.

3.1.11. Conviction can be founded on the testimony of the prosecutrix alone – In *State of Himachal Pradesh v Asha Ram*, the SC herein showed displeasure and dismay over the way the High Court dealt casually with such a grave offence, as in the given case, overlooking the alarming and shocking increase of sexual assault on the minor girls. In this

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36 2012 (5) SCC 766
37 AIR 2006 SC 381
case the accused was father of the prosecutrix. The Court averred herein that “There can never be more graver and heinous crime than the father being charged of raping his own daughter. He not only delicts the law but it is a betrayal of trust. The father is the fortress and refuge of his daughter in whom the daughter trusts. Charged of raping his own daughter under his refuge and fortress is worst than the gamekeeper becoming a poacher and treasury guard becoming a robber.”

The facts of this case “shocked the judicial conscience.” The respondent-accused Asha Ram was married and out of the wedlock they had three daughters and two sons. The accused was having strained relations with his wife and was living separately. His wife was living in some servant quarters with one of the daughters and two sons. Accused was living in the accommodation allotted to him in the servant quarters attached to Raj Bhawan with the other two daughters namely Kumari Uma and Kumari Seema (prosecutrix). On the fateful night the accused returned home at about 12.30 AM and went to the room where his daughters Uma and Seema were sleeping. He asked Kumari Seema to serve him the dinner. On being asked, the prosecutrix went to the kitchen and brought the food to the room of the accused. The accused is alleged to have bolted the door of his room from inside and after switching off the light asked Kumari Seema to sleep in the same room. He then forcibly committed rape on her and even the pleadings of the prosecutrix went unheard by him, and when she tried to raise alarm her mouth was gagged, pleaded with the accused that she is his daughter but he turned a deaf ear and forcibly committed sexual intercourse with her. It is further alleged that when she tried to raise cries, her mouth was gagged by the accused with a piece of cloth. She narrated the entire occurrence to her sister Uma. On the following morning they went to their mother to inform her about the occurrence after which a complaint was registered under Section 376 IPC and accordingly a charge was framed.
The SC upheld the conviction and held that, “it is now well settled principle of law that conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. The evidence of a prosecutrix is more reliable than that of an injured witness. The testimony of the victim of sexual assault is vital unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is also well settled principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. … Even minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case.”

3.1.12. Digital Rape – Court recommends changes in law

In the Leading case of State v. Pahlad38, The trial court while convicting the accused has stated that “Here, I may observe that the prosecutrix is a victim of Digital Rape that is manual manipulation of clitoris, vulva, vagina, or anus for purpose of sexual arousal and stimulation by use of fingers, sticks, bottles, objects etc. The Courts cannot extend the definition of rape so as to include all forms of penetration such as penile/ vaginal penetration, penile/ oral penetration, penile/ anal penetration, finger/ vaginal and finger/ anal penetration and object/ vaginal penetration” as observed by the Hon’ble Supreme Court in the case of Shakshi Vs. Union of India,39 observed that “….the definition of rape in Section 375 cannot be enlarged so as to include all forms of penetration such as penile/ vaginal penetration, penile/ oral penetration, penile/ anal penetration, finger/ vaginal and finger/ anal penetration and object/ vaginal penetration, as it may violate the

38 FIR No. 155/11, PS Keshav Puram
39 2004 Cri.L.J. 2991
guarantee enshrined in Article 20 (1) of the Constitution of India which says that no person shall be convicted of any offence except for violation of law in force at the time of the commission of the act charges as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence…” There is growing demand world over for inclusion of Digital Rape/ Male Rape/ Oral Rape/ Anal & Rectal Rape within the definition of Rape and the fact that it is the cases like the present one which sometimes reflects the Institutional helplessness in appropriately dealing with the crime on account of the lag in law. Section 377 Indian Penal Code to a large extent does cover case of carnal intercourse committed by a person against the order of nature but technically its applicability is limited and by operation it becomes difficult to include certain category of cases where the offence has been committed by the offender on another with an object. It is only to cover all kinds of penetrations without a person’s consent in any manner, that the need for a re-look at the existing laws has been necessitated. The present case is an eye opener and it is time that the Legislature take a serious note of the extent of depravation which exists in the Indian Urban Society, victims of which are usually small children and senior citizens being easy targets; the cause of which could be the X-rated material easily available in the market and internet. This case sounds a wakeup call for the Indian Legislators to step in and think about having a re-look at the definition of Rape so as to specifically include the instances of Digital Rape/ Male Rape/ Anal Rape and make the offence Gender Neutral or to formulate a separate exhaustive legislation covering all categories cases of sexual assault.

While directing that the victim be lodged at an Old Age Home at Dwarka in October 2011, it had also directed that she be paid old-age pension which, however, has not been released yet owing to red tape. “It is unfortunate that the Government red-tapism spares none, not even a senior citizen destitute. The case of a destitute who is a victim of an aggravated sexual
assault is required to be treated at priority at all levels in the government and the insensitivity of the system is appalling,” the court noted.

3.1.13. Custodial rape - Custodial rape is a form of rape which takes place while the victim is “in custody” and constrained from leaving, and the rapist or rapists are an agent of the power that is keeping the victim in custody. When it happens in prison, it is known as prison rape. While some definitions of custodial rape define it as taking place in a state-owned institution, and perpetrated by a state agent, the term more generally refers to any situation where the power of a state agent is used to enable rape; thus, when prisoner-on-prisoner rape happens as a result of neglect by the prison authorities, it may be considered custodial rape.

In a recent case,\(^\text{40}\) The CBI has filed charges of custodial rape against seven policemen from the Udumalpet police station in Tirupur district for the custodial rape and torture of a 49-year-old woman, in division bench in Madras High Court. On 11 August, 2014 the woman was picked up by the police in connection with the murder of her landlady in the Udumalpet area but was apparently officially listed as a detainee only on 14 August, 2014. During the intervening time she was subjected to torture and rape by the police, her daughter was quoted as saying in a Deccan Chronicle report.

According to the reports, the victim’s daughter Raja Kumari alleged that the police brutally tortured her mother when they kept her in illegal custody, try to force a confession from her.

The woman’s daughter has alleged the police made her mother strip to her underwear and hung her upside down and beat her up. They also inserted a lathi into her private parts, she alleged.

Her case was first heard by Justice V Ramasubramanian on 24 September, 2014 who transferred the case to the division bench. The court also ordered Rs 2 lakh compensation to be paid to the victim by the state. When the

court ordered the suspension of the accused policemen pending a probe into the incident, the Home Secretary and ADGP (Prisons) filed an appeal before the vacation bench of the Madras High Court seeking an interim stay on a CBI probe but it was rejected by the court.

In *Tukaram vs. State of Maharashtra*[^41] the apex court judgment came up with a judgment which leads to turning point in women rights movement in India, as it led to just greater awareness of women’s legal rights issue, oppression, and patriarchal mindsets. A number of women’s organizations soon came forth across India. Previously, rape misjudgments or acquittals would go unnoticed, but in the following years, women’s movement against rape gathered force and organization supporting rape victims and women’s rights advocates came to the fore. In the present case Mathura was a young orphan tribal girl living with one of her two brothers. She was a *dalit*. The incident is suspected to have taken place on 26 March 1972; she was between 14 to 16 years at that time. Mathura occasionally worked as a domestic help with woman named Nushi. She met Nushi’s nephew named Ashok who wanted to marry her, but her brother did not agree to the union and went to the local police station to lodge a complaint claiming that his sister, a minor, was being kidnapped by Ashok and his family members. After receiving the complaint the police authority brought Ashok and his family members to the police station. Following general investigation Mathura, her brother, Ashok and his family members were permitted to go back home. However, as they were leaving, Mathura was asked to stay behind while her relatives were asked to wait outside. Mathura was then raped by the two policemen. When her relatives and the assembled crowd threatened to burn down the police station, the two accused policemen, Ganpat and Tukaram, reluctantly agreed to file a panchnama.

The case came for hearing on 1 June 1974 in the session’s court. The judgment returned found the defendants not guilty. It was stated that because

[^41]: AIR 1979 SC 185
Mathura was ‘habituated to sexual intercourse,’ her consent was voluntary; under the circumstances only sexual intercourse could be proved and not rape. On appeal the Nagpur bench of the Bombay High Court set aside the judgment of the Sessions Court, and sentenced the accused to one and five years imprisonment respectively. The Court held that passive submission due to fear induced by serious threats could not be construed as consent or willing sexual intercourse.

However, in September 1979 the Supreme Court of India justices Jaswant Singh, Kailasam and Koshal in their judgement reversed the High Court ruling and again acquitted the accused policemen. The Supreme Court held that Mathura had raised no alarm; and also that there were no visible marks of injury on her person thereby suggesting no struggle and therefore no rape. The judge noted, “Because she was used to sex, she might have incited the cops (they were drunk on duty) to have intercourse with her”.

The judgement went largely unnoticed until September 1979, when law professors Upendra Baxi, Raghunath Kelkar and Lotika Sarkar of Delhi University and Vasudha Dhagamwar of Pune wrote an open letter to the Supreme Court, protesting the concept of consent in the judgment. “Consent involves submission, but the converse is not necessarily true...From the facts of case, all that is established is submission, and not consent...Is the taboo against pre-marital sex so strong as to provide a license to Indian police to rape young girls.” Spontaneous widespread protests and demonstrations followed by women’s organizations who demanded a review of judgement, receiving extensive media coverage. However, the courts ruled that there was no locus standi in the case to rule in favour to Mathura. Eventually this led to Government of India amending the rape law.

The Criminal Law (Second Amendment) Act 1983 (No. 46) made a statutory provision in the face of Section 114 (A) of the Indian Evidence Act, which states that “if the victim says that she did not consent to the sexual intercourse, the Court shall presume that she did not consent as a rebuttable
presumption.” New laws were also enacted following the incident. The Section 376 (punishment for rape) of the Indian Penal Code underwent a change with the enactment and addition of Section 376(A) to Section 376(D), which made custodial rape punishable. Besides defining custodial rape, the amendment shifted the burden of proof from the victim to the accused once intercourse was established; it also added provisions for in-camera trials, the prohibition on the victim identity disclosure, and tougher sentences.42

The Supreme Court in Bharwada Bhonginbhai Hirjibhai v. State of Gujarat43 has held that “taking note of the fact that in India, unlike the accident, a disclosure of rape is likely to ruin the prospect of the girl’s rehabilitation in a society for all times to come and unless her story is painfully true, she would not have taken such a grave risk merely to malign the accused. Moreover in cases of rape, particularly custodial rape, it is very difficult to get any independent evidence to corroborate the testimony of the prosecutrix.”

This kind of rape was made more punishable than rape committed by other person not having any custody over the woman. This is based on the theory that “If protector himself eats the crops of field, then no one can protect those crops.” Here a person in doing a double wrong; firstly he is omitting the duty to protect the woman, and secondly committing the offence of the rape, so it is necessary to give him severe punishment.

3.2 Kidnapping & Abduction for different purposes, trafficking and prostitution

Under the Indian Penal Code, 1860 Kidnapping, Abducting or Inducing Woman with the intent to compel her for Marriage is an offence. Section 366 of the code deals with such offence it read as under:

Section 366 deals with kidnapping, abducting or inducing woman to compel her marriage, etc.

42 https://en.wikipedia.org/wiki/Mathura_rape_case (Last Visited on February, 05 2016)
43 (1983) 3 SCC 753
“Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that 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 for 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 she will be, forced or seduced to illicit intercourse with another person shall be punished as aforesaid.”

It shows that to constitute the offence under this section, there must be kidnapping or abducting of woman with intent that:

1. Woman in question may be compelled to marry any person against her will, or
2. She may be compelled or seduced to illicit sexual intercourse, or
3. She may be forced or induced to illicit sexual relationship by means of criminal intimidation.

However it is immaterial whether the woman in question is married or not. This section makes kidnapping and abduction of a woman with the intention of forcibly marrying or having sexual intercourse with her a cognizable offence. The question whether a woman was kidnapped or not depends upon her age and the presence of other circumstances.

If a girl is eighteen or over, she can only be abducted and not kidnapped but if she is under eighteen, she can be kidnapped as well as abducted if the taking is by force or the taking or enticing is by deceitful means. Where a girl over 18 years of age and as such sui juris (able to make contracts and act in her own) desired to live with her husband and went to him, no change of abduction could be maintained against the husband.44

44 Lalita Prasad V. State of M.P. (1979) Cr.L.J. 867
Mere finding that the accused abducted the woman is not sufficient for sustaining conviction under section 366 IPC. Further finding that the accused abducted the woman for any of the purposes mentioned in section 366 IPC is necessary.

3.2.1 Against Her Will

In *Khadil-Ur-rehman case* it was held that “the expression ‘against her will’ connotes that the act was done not only without consent of the woman but in spite of her opposition to the doing of it.”

3.2.2 Kidnapping to compel marriage and proof of abduction

In *Kuldeep K. Mahto v. State of Bihar* the apex court observed that “as per the prosecution, the accused forced the prosecutrix in a tempo to the point of dagger and took her away and committed rape on her against her will. There is no evidence to show that the accused kidnapped her with the intention to marry against her wishes. The evidence of the doctor proved that the prosecutrix was not below 18 years. The doctor found no injuries on her person or any portion of the private part of the prosecutrix party to sexual intercourse and therefore, the conviction of the accused was not sustainable.”

In *Shyam & another v. State of Maharashtra*, the prosecutrix was a grown-up girl, though she had not touched 18 years of age. She claimed during trial that she was kidnapped under threat. The evidence produced during trial showed that she was seen going on the bicycle of the accused. The Hon’ble Supreme Court noted that “it was not unknown to her with whom she was going and therefore, it was expected of her then to jump down from the bicycle or put up the struggle and in any case raise an alarm to protect herself. As no such steps were taken by her, the Hon’ble Supreme Court felt that she was a willing party to go with the appellants of her own and, therefore, there was no taking out of the guardianship.” The appellants were acquitted of the charge under Section 366 of IPC.

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45 1933 (11) Rang. 213
46 AIR 1998 SC 694
47 1995 Criminal Law General 3974.
In *State of Karnataka v. Sureshbabu*\(^48\), it was found that the girl went with the accused voluntarily. It was held by the Hon’ble Supreme Court that “the requirement of Section 366 of IPC is that taking or enticing away a minor out of the keeping of the lawful guardianship was an essential ingredient of the offence of kidnapping. It was held that in such a case, it is difficult to held that the accused had taken her away from the keeping of her lawful guardian and something more has to be shown in a case of this nature, like inducement.”

In *Mahabir v. State*\(^49\), the appellant and the prosecutrix were known to each other. The appellant took the prosecutrix to a place outside Delhi where they stayed for about fifteen days and had sexual intercourse with each other. The appellant was convicted under Sections 366 and 376 of I.P.C. the Hon’ble judge has noticed that she had gone to Railway Station and stood there with the appellant who also went to purchase tickets and then she had travelled with him in a compartment shared by other persons. She had then gone to a house in a *tonga* and yet she did not lodge any protest and made no attempt to flee despite having ample time and opportunity. The learned Single Judge noted that on the day of reckoning, she surely had crossed mark of sixteen years and since she was all along a willing party, the appellant was acquitted of both the charges against him. Thus, despite the prosecutrix being less than eighteen years of age, the appellant was acquitted not only of charge under Section 376 but also of the charge under Section 366 of I.P.C.

### 3.2.3 Seduction

In *Ramesh v. The State Of Maharashtra*\(^50\), the Supreme Court observed that the expression ‘seduce’ is used in two senses. It is used in its ordinary and narrow sense as inducing a woman to stray from the path of virtue for the first time: it is also used in the wider sense of inducing a woman to submit to illicit intercourse at any time or on any occasion. The verb ‘Seduced’ as mentioned in the section 366 is properly applicable to the first act of illicit intercourse,

\(^48\) 1994 Cr. L.J. 1216(1)
\(^49\) 55(1994) DLT 428.
\(^50\) 1962 (64) Bom. LR 780.
unless there is proof of a return to chastity on the part of the girl since the first act.

Section 366-A. Procreation of minor girl

For the purpose of prostitution, the procreation of minor girl from one part of India to another part is termed crime under Section 366-A on the Indian penal code, 1860. It reads as under:

“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.”

Section 366-B. 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 that she may be, or 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.”

3.2.4 Age of the prosecutrix

In Shakeel alias Pappoo v. State of Uttar Pradesh\(^{51}\) the apex court held that “the age of prosecutrix was 14 years at the time of incident not proved while test report suggested her age about 40 years and further she had willingly gone with accused without making complaints to anybody on way thus no offence is made out and as such conviction is liable to set aside.”

In Mohandas Suryavanshi v. State of Madhya Pradesh\(^ {52}\) it was held that “the Consent of a minor prosecutrix does not matter if she was taken to separate places for making sexual intercourse away from her lawful guardians, her name as different in FIR does not matter as it was her pet

\(^{51}\) 2000 Cr LJ 153 (All)
\(^{52}\) 1999 Cr LJ 3451 (MP)
name, under such circumstances accused is guilty of kidnapping and raping a
minor for days long.”

**Section 370** deals with **Trafficking of Person** – this section deals with
the offence of trafficking of a person from one place to another place
without the consent of the person or by using threat, force, by deception or by
abducting or practising fraud on the person or by inducement etc. for the
purpose of exploitation of the human being. Under this section both the parties
to the crime; trafficker as well as who receives the person for their exploitation
is guilty of the crime under section 370 of IPC.

In *Bandhua Mukti Morcha vs Union Of India & Others,* Justice
Bhagwati, has very aptly Described the pathetic condition of bonded labourers
in the following words:- They are non-beings, exiles of civilization, living a
life worst than that of animals, for the animals are at least free to roam about
as they like and they can plunder or grab food whenever they are hungry but
these out castes of society are held in bondage, robbed of their freedom and
they are consigned to an existence where they have to live either in hovels or
under the open sky and be satisfied with whatever little unwholesome food
they can manage to get inadequate though it be to fill their hungry stomachs.
Not having any choice, they are driven by poverty and hunger into a life of
bondage a dark bottomless pit from which, in a cruel exploitative society, they
cannot hope to be rescued.

**370A** deals with the exploitation of a **Trafficked person**

“(1) Whoever, knowingly or having reason to believe that a minor has
been trafficked, engages such minor for sexual exploitation in any manner,
shall be punished with rigorous imprisonment for a term which shall not be
less than five years, but which may extend to seven years, and shall also be
liable to fine.

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53 Inserted by Section 8 of The Criminal Law (Amendment) Act, 2013.
54 1984 SCR (2) 67
55 Supra note 53.
(2) Whoever, knowingly by or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than three years, but which may extend to five years, and shall also be liable to fine.

Thus the distinction between Sub-section (1) and Sub-section (2) of section 370-A is that Sub-section (1) punishes the offence of exploitation of a trafficked minor while Sub-section (2) deals with exploitation of a trafficked person whether a minor or major.”

Trafficking is defined “A trade in something that should not be traded in for various social, economic or political reasons. Thus we have terms like drug trafficking, arms trafficking and human trafficking. The concept of human trafficking refers to the criminal practice of exploiting human beings by treating them like commodities for profit. Even after being trafficked victims are subjected to long term exploitation.”

Section 372 deals with 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 be liable to fine.”

This section is applies to persons below eighteen years of age. ‘Person’ includes male and female. It applies to married or an unmarried female even where such female prior to sale or purchase was leading an immoral life.56

The Devdasi Custom in which minors are dedicated to the service of a temple as dasis amounts to a disposal of such minors, knowing it to be likely

56 Ismail Rustom Khan, 1906 (8) Bom. L.R. 236.
that they will be used for the purpose of prostitution, within the meaning of this section.  

Section 373 deals with 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, of knowing it to be likely that such person will at any age be employed or used for any 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.”

In Emperor vs Banubai Ardesir Irani the court observed that There is no doubt that according to the construction of the language it is necessary that the accused person should be a prostitute or should be keeping or managing a brothel at the time he or she obtains possession of a girl in order that the presumption should take effect.

The Bombay High court in Emperor vs Bhagchand Jasraj Marwadi case has held that it is not necessary in order to constitute the offence that possession of the minor girl should be obtained from a third person; in dealing with what amounts to possession the learned Sessions Judge did not in terms explain to the jury the meaning of the word “possession” in the section, but he drew their attention to the prosecution evidence, which showed that the girl had been in the complete control of the accused for a period of about a week, and he said that if the jury accepted that evidence they could convict the accused of having obtained possession of the girl.

In Emperor vs Gordhan Kalidas the Bombay high court has clearly explain that Section 373 in terms deals with obtaining possession, and not

57 Basava, 1891 (15) Mad. 75.
58 1942 (45) Bom. L.R. 281.
59 1934 (36) Bom. L.R. 379
60 (1941) 43 BOMLR 847
merely with obtaining possession from a third person, and to say that because an offence under Section 372, which is aimed at disposing of a girl, necessarily involves two parties to the transaction, therefore Section 373, which is aimed at obtaining possession, it is not necessary that it involves two parties.

In *Emperor vs Vithabai Sukha*\(^{61}\) justice Madgavkar, J. has said that The law does not specify the nature of the possession, nor its duration, nor intensity. It merely are specifies the object, namely, prostitution or illicit intercourse. Whether, in each case, the possession is such as to be consistent with the purpose or intention or knowledge of prostitution or illicit intercourse. This is the only test which in law is necessary and sufficient.

Possession implies some sort of control. Where a girl elopes with another on her own accord and there is nothing to show that she cannot leave him at any moment, the man cannot be said to have possession of the girl.\(^{62}\)

### 3.3. Killing for Dowry, Dowry Deaths or their attempts

Unnatural death of a married woman where motive for want of dowry is existing and such death is taking place within 7 years from the date of marriage is called dowry death.

There is a provision relating dowry death in the section 304(B) under Indian Penal Code. This section was inserted in the Penal Code by an amendment in 1986. Sub-Section (1) of this section defines dowry death.

**304B deals with meaning and punishment of Dowry Death**\(^{63}\).

“(1) Where the death of a woman 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 be called dowry death, and such husband or relative shall be deemed to have

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\(^{61}\) (1928) 30 BOMLR 613

\(^{62}\) Jateendra Mohan das, (1937) 2 Cal. 107

\(^{63}\) Ins. by Act 43 of 1986, sec. 10 (w.e.f. 19-11-1986).
caused her death. (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.”

In order to draw relevance of Section 304B of I.P.C., the following conditions must be established:-

“Death must be caused by burns or bodily injury or it must occur otherwise within seven years of marriage and it must be shown that soon before her death the woman was subjected to cruelty or harassment by her husband or any relative of her husband in connection with any demand for dowry.”

The definition of dowry should be same as mentioned in section 2 of Dowry Prohibition Act, 1961. Another important feature of this section, which can be said to be a departure from the normal feature of the code, is that a minimum of not less than 7 years imprisonment is prescribed but this may extend to imprisonment for life.

3.3.1 Applicability

In Vadde Rama Rao v. State of Andhra Pradesh, the Andhra Pradesh High Court observed that “in its real import, section 304B of the Indian Penal Code would be applicable if cruelty or harassment was inflicted by the husband on any of his relative for, or in connection with demand for dowry, immediately preceding the death by bodily injury or by burning. In short she should have died in abnormal circumstances within seven years of the marriage. In such circumstances the husband or the relative, as the case may be, will be deemed to have caused her death and will be liable to punishment.”

3.3.2 Burden of Proof

The Supreme Court in Satvir Singh v. State of Punjab, observed that “the prosecution under section 304B of Indian Penal Code cannot escape from the burden of proof that the harassment to cruelty was related to the
demand for dowry and such was caused ‘soon before her death’. The word ‘dowry’ has to be understood as it is defined in section 2 of the Dowry Prohibition Act, 1961. Thus, there are three occasions related to dowry, i.e., before marriage, at the time of marriage and at an unending period. The customary payment in connection with the birth of child or other ceremonies, are not involved within ambit of dowry.”

3.3.3 Close relation of the husband cannot be roped in the offence:
In Patil Paresh Kumar Jayanti Lal v. State of Gujarat\textsuperscript{66} the Gujarat high court ruled that “where the evidence revealed that accused husband killed deceased wife for not satisfying his dowry demand but nothing on record to show involvement of co-accused in-laws with the offence committed by the accused, co-accused in-laws are not guilty of offence under sections 304B.”

In Prema S. Rao v. Yadla Srinivasa Rao\textsuperscript{67}, the Supreme Court ruled that “to attract the provisions of section 304B, one of the main ingredients of the offence which is required to be established is that “soon before her death” she was subjected to cruelty and harassment “in connection with the demand of dowry.”

In Kaliyaperumal v. State of Tamil Nadu\textsuperscript{68}, the Supreme Court in its detailed judgment observed that “the expression ‘soon before her death’ used in the substantive section 304B, I.P.C. and section 113B of the Evidence Act is present with the idea of proximity text. No definite period has been indicated and the expression ‘soon before her death’ is not defined. The determination of the period which can come within the term ‘soon before’ is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression ‘soon before would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live-link between the effects of cruelty based on dowry demand

\textsuperscript{66} 2000 Cr. L.J. 223 (Guj).
\textsuperscript{67} AIR 2003 SC 11
\textsuperscript{68} AIR 2003 SC 3828
and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence.”

3.3.4 Dowry Death – Presumption under section 113-B of Evidence act, 1872- Where Can be:

The Supreme court in Manohar Lal vs State Of Haryana\(^{69}\), has ruled that the presumption shall be raised only on proof of the following essentials:

1. The question before the court must be whether the accused has committed the dowry death of a woman.
2. The woman was subjected to cruelty or harassment by her husband or his relatives.
3. Such cruelty or harassment was for, or in connection with, any demand for dowry.
4. Such cruelty or harassment was soon before her death.
5. Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

Section 113-B of the Evidence Act is also relevant for the case at hand.

In Bansi Lal v State of Haryana\(^{70}\), The Supreme Court observed that “in Section 113B of the Indian Evidence Act, 1872 the legislature in its wisdom has used the word ‘shall’ thus, making a mandatory application on the part of the court to presume that death had been committed by the person who had subjected her to cruelty or harassment in connection with or demand of dowry. It is unlike the provisions of Section 113A of the Evidence Act where discretion has been conferred upon the court wherein it had been provided that court may presume to abatement of suicide by a married woman. Therefore, in view of the above, onus lies on the accused to rebut the presumption and in case of Section 113B relatable to Section 304 IPC; the onus to prove shifts exclusively and heavily on the accused.”

\(^{69}\) AIR 2014 SC 2555.
\(^{70}\) AIR 2011 SC 691
3.3.5 Circumstantial evidence in Dowry Death

In *N.V. Satyanandam v. Public Prosecutor, AP High Court*71, The Supreme Court held that “in dowry death cases and in most of such offences direct evidence is hardly available and such cases are usually proved by circumstantial evidence. This section as well as section 113B of the Evidence Act enact a rule of presumption, i.e., if death occurs within seven years of marriage in suspicious circumstances. This may be caused by burns or any other bodily injury. Thus, it is obligatory on the part of the prosecution to show that death occurred within seven years of marriage. If the prosecution would fail to establish that death did not occur within seven years of marriage, this section will not apply.”

The Apex Court in *Sharad Bindhi Chand Sarda v. State of Maharashtra*72 laid down the five golden principles regarding Circumstantial evidence which are as follows:

1. The circumstances from which the conclusion of guilt is to be drawn should be fully established;
2. The facts so established should be consistent with the hypothesis of guilt and the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
3. The circumstances should be of a conclusive nature and tendency;
4. They should exclude every possible hypothesis except the one to be proved; and
5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

These five golden principles constitute the panchsheel of the proof of a case based on circumstantial evidence and in the absence of a *corpus delicti*.

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71 AIR 2004 SC 1708.
72 AIR 1984 SC 300
3.3.6 Standard of Evidence - To prove beyond reasonable doubt.

The Supreme Court in Nepal Singh v. State of Haryana\textsuperscript{73}, explained that doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favorite other than truth. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

In Pawan Kumar vs. State of Haryana\textsuperscript{74}, it was observed that “It is true, as argued by learned counsel for the appellants, that in criminal jurisprudence benefit of doubt is extendable to the accused. But that benefit of doubt would arise in the context of the application of penal law, and in the facts and circumstances of a case. The concept of benefit of doubt has an important role to play but within the confines of the stringency of laws. Since the cause of death of a married woman was to occur not in normal circumstances but as a dowry death, for which the evidence was not so easily available, as it is mostly confined within the four walls of a house, namely the husband’s house, where all likely accused reside. Hence the aforesaid amendments brought in the concept of deemed to dowry death by the husband or the relatives, as the case may be. This deeming clause has a role to play and cannot be taken lightly and ignored to shield an accused, otherwise the very purpose of the amendment will be lost. Of course, the prosecution has to prove the ultimate essential ingredients beyond all reasonable doubt after raising the initial presumption of deemed dowry death.”

3.3.7 Meaning of Dowry Death

\textsuperscript{73} AIR 2009 SC 2913.  
\textsuperscript{74} AIR 2001 SC 1324
The Supreme Court in *Baljit Singh v. State of Haryana*75, has observed that “in perusal of section 304B clearly shows that if a married woman dies 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 in connection with demand for dowry, such death shall be called dowry death and such husband or relative shall be deemed to have caused the death.”

### 3.3.8 Cruelty and Harassment

The High court of Allahabad in *Premwati v. State of Uttar Pradesh*76 has ruled that “the offence under section 304B of the Indian Penal Code is triable by the Court of Session. It is a cognizable and non-bailable offence. The minimum punishment for the offence is seven years imprisonment which may extend to life imprisonment. Section 304B applies not only when death is caused by her husband or in-laws but also when death occurs unnaturally whoever might have caused it. The section will apply whenever the occurrence of death is preceded by cruelty or harassment by husband or in-laws for dowry and death occurs in unnatural circumstances. It may be emphasised that occurrence of death in such circumstances is enough though death might not have been in fact caused by the husband or in-laws. Thus the intention behind the section is to fasten death on the husband or in-laws though they did not in fact caused the death. Thus a fiction has been created. It is because in these circumstances, the misery and agony created thereby which compels the unfortunate married woman to end her life.”

In *Bachi devi v. State of Haryana*77, A demand for motorcycle for doing business was made by husband months after marriage. Deceased wife was harassed by the accused and mother in law after refusal to meet demand. Being fed up by the harassment deceased wife committed suicide by hanging himself from a ceiling fan in appellant’s house. It was held that demand for

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75 AIR 2004 SC 1714.  
76 1991 Cr LJ 263.  
77 (2011) 4 SCC 427
property or valuable security, directly or indirectly, has a nexus with marriage, in our opinion, such demand would constitute ‘demand for dowry’; the cause or reason for such demand being immaterial. Therefore demand for purchase of motorcycle was made within two months of the marriage and was a demand towards ‘dowry’ and when this demand was not met, deceased wife was maltreated and harassed continuously which led her to take extreme step of finishing her life.

3.3.9 Unnatural death

The Supreme Court Observed in *Shanti v. State of Haryana* that in-laws persisted with the dowry demands on married woman and it come out from the findings that the woman was killed and her body was cremated without informing her relatives and family. The Apex Court held that “if it was natural death, there was no need for the appellants to act in such unnatural manner and cremate the body in great and unholy haste without even informing the parents. In the result it was an unnatural death, either homicidal or suicidal. But even assuming that it is a case of suicide even then it would be death which had occurred in unnatural circumstances. Even in such a case, section 304B is attracted and this position is not disputed. Therefore, the prosecution has established that the appellants have committed an offence punishable under section 304B beyond all reasonable doubts.”

3.3.10 Abetment of Suicide:

Those who assist and encourage the act of suicide by the hand of the person himself, who commits the suicide, may be punished under section 306 of Indian Penal Code. In *State of Punjab v Iqbal Singh* Mohinder Kaur, the deceased was educator whereas her husband Iqbal Singh was a clerk in Punjab State Electricity Board. Relationship between wife and husband were strained over dowry even to the extent that the wife had sought to police protection apprehending danger to her life. A divorce deed was also executed on 31,

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78 AIR 1991 SC 1226.
79 AIR 1991 SC 1532
December 1977 but it was not acted upon. Efforts by the wife to get herself transferred to some other school were also failed by the husband and pressure for dowry was stepped on death of wife’s father. On 7th June 1983 Mohinder Kaur has killed herself and her three children at the residence of her husband. She has set ablaze herself and her children as she must have been thought regarding the fate of her children after her death. However before killing herself she had left a suicide note stating that her husband was demanding Rs. 35,000 to 40000 by way of additional dowry and was ill treating her. She has also accused her mother in law and sister in law of ill treating her and her children and in past attempted to kill her by pouring kerosene oil and now she was fed up on account of the beating and has therefore decided to put an end to her life and that of her children.

It was held that the husband was responsible for creating circumstances which provoked or forced his wife to commit suicide and he was therefore liable to be convicted under section 306.

In *Girija Shanker v. State of M.P.* 80 One Dinesh was married with Urmila sometimes after the marriage Urmila was being abused by her husband and in-laws, who had in fact started searching for another bride for Dinesh. She was made to strove and works like a bonded labour and also subjected to mental and physical torture. One day her dead body was found in a well situated at a distance of about a furling from the house of appellants. The three were tried under Section 302 and alternatively, under section 306. I. P. C., They were found guilty under section 306, I.P.C. The court held that it is not necessary that instigation should be only in words and may not be by conduct direct evidence of any instigation or aid is not necessary. It is a matter which can be deduced from the circumstances. In this case maltreatment and starvation coupled with a search for another bride for their son was proved and therefore appellants were guilty of abetment of suicide.

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80 1989 Cri. L.J. 242 (MP)
In *Praven Pradhan v. state of Uttaranchal and another*\(^8\) it was observed that in a case under Section 306/107 IPC, establishment and attribution of mens rea on the part of the accused which caused him to incite the deceased to commit suicide is of great importance. The cruelty shown towards the deceased in such cases must be of such magnitude, that it would in all likelihood, drive the deceased to commit suicide. The utterances of a few harsh words on one occasion, for that matter a suggestion being made with the intention of improving work, does not amount to harassment/cruelty of such intensity, that it may be termed as abetment to commit suicide.

### 3.4 Cruelty, both mental and physical:-

Criminal law in India recognizes both mental and physical torture as cruelty. However, the concept of cruelty varies from case to case, depending on the social and economic status of individuals. Whether a woman was subjected to cruelty or not, is also decided based on various factors, such as:

- Matrimonial relationship between a woman and her husband.
- Cultural background and temperament of the couple.
- Status of life.
- Status of health.
- Level of interaction between the husband and wife.

Further, all types of harassment does not amount to cruelty. In order to be considered cruelty under the Indian laws, harassment must be commissioned with an intention to pressurize to meet an unlawful demand, such as get more dowry or money from the wife.

Section 498-A of the Indian Penal Code, introduced by the Criminal Law (Second Amendment) Act, 1983, aims to ensure that women are protected from cruelty.

Section 498A deals with the offence of cruelty by husband or relatives of husband

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\(^8\) 2012 IV Cri. L.J. 4925 (SC)
“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.”

The Language and purpose of the provision under section 498-A clearly speaks of past conduct which drives a woman to commit suicide at a later date. The construction of this section clearly discloses that if a cruelty within the meaning of section 498-A, I.P.C. committed on a married woman drives her to commit suicide or to cause grave injury or danger to life, limb or health, the person guilty of such willful conduct is liable to punishment. The act of suicide or causing grave injury or danger to her life is meant as a result of the past events.82

3.4.1 Constitution Validity of Section 498-A

In Inder Raj Malik v. Mrs. Sunita Malik83 it was contended that Section 498-A, IPC is ultra virus in view of the Article 14 and Article 20(2) of the constitution of India 1950. There is dowry prohibition Act which also deals with this type of cases, therefore, both statute together create a situation commonly known as the double jeopardy. But in the present case Delhi High Court negative this contention and held that “section 498 A of Indian Penal Code does not create any situation for double jeopardy. That provision is distinguishable from section 4 of the Dowry Prohibition Act because in the latter mere demand of dowry of punishable and existence of element of cruelty is not necessary. Section 498A Indian Penal Code deals with aggravated form of the offence. It, inter alia, punishes such demands of property or valuable security from the wife or her relative as are coupled with cruelty, to her.”

3.4.2 Meaning of Cruelty

It was held by the Delhi High Court in Inder Raj Malik v. Mrs. Sunita Malik84 that “where it is alleged by the complainant that she was being continuously threatened that her son would be taken away unless she met the

83 1986 CriLJ 1510
84 Ibid
demands of the accused by way of compell[ing her parents to sell their property. Prima facie such threats come within the purview of section 498-A Indian Penal Code which says that when the husband or the relative of a husband of a woman subject 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. The word ‘cruelty’ is defined in the Explanations which, inter alia, says that harassment of a woman with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security is cruelty. In the present case, as the allegations of the complainant are, she was harassed to meet the demands of the accused even by compelling her parents to sell their immovable property.”

In *S. Hanumantha Rao v. S. Ramani* 85, the Supreme Court considered the meaning of cruelty in the context of the provisions under Section 13 of the Hindu Marriage Act, 1955 and observed that:

“Mental cruelty broadly means, when either party causes mental pain, agony or suffering of such a magnitude that it severs the bond between the wife and husband and as a result of which it becomes impossible for the party who has suffered to live with the other party. In other words, the party who has committed wrong is not expected to live with the other party.”

In *Mohd. Hoshan v. State of A.P.* 86, the Supreme Court while dealing with the similar issue held that mental or physical torture should be “continuously” practiced by the accused on the wife. The Court further observed as under:

“Whether one spouse has been guilty of cruelty to the other is essentially a question of fact. The impart of complaints, accusations or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the individual victim concerned, the social background, the environment, education etc. Further, mental cruelty varies from person to

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85 AIR 1999 SC 1318  
86 (2002) 7 SCC 414
person depending on the intensity of sensitivity and the degree of courage or
endurance to withstand such mental cruelty. In other words, each case has to
be decided on its own facts to decide whether the mental cruelty was
established or not.”

3.4.3 Demand for Dowry and Ill-treatment

In *Shobha Rani v. Madhukar*\(^87\), the wife appeal for divorce on the
ground of constant demand made on her by her husband and in-laws. The
High Court took the view that there was nothing wrong in these demands as
money was needed by the husband for his personal use and in such a case wife
should extend help. Repealing the judgment, the Supreme Court held that
demand for dowry is prohibited under the law. That itself was enough.

In *Adarsh Parkash v. Sarita*\(^88\), the husband and his parents were greedy
people. Their desire for dowry was greedy. They went on demanding dowry
even after two years of marriage, and since the parents of wife could not meet
these, they started ill-treating her with a view to coercing her parents to give
dowry. The Delhi High Court held that this amounted to cruelty.

In *State of Punjab v. Daljit Singh*\(^89\), The Punjab and Haryana High
Court observed that “Demand for money after four years of marriage for a
specific purpose, no where related to marriage demand but causing of
harassment to deceased wife so much so that she was bound to end her life is
sufficient for conviction under section 498A.”

3.4.4 Drunkenness

The Delhi High Court in *Rita v. Brij Kishore*\(^90\) observed that “no doubt
drinking is a constituent of culture all over the world, and is almost a cult in
certain societies. Yet, even here as elsewhere a habit of excessive drinking is a
vice and cannot be considered a reasonable wear and tear of married life. No
reasonable person marries to bargain to endure habitual drunkenness, a

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\(^{87}\) AIR 1988 SC 121

\(^{88}\) AIR 1987 Del 203.

\(^{89}\) 1999 Cr LJ 2723 (P&H)

\(^{90}\) AIR 1984 Del 291.
disgusting conduct. And yet it is not an independent ground of any matrimonial relief in India. But it may constitute treatment with cruelty, if indulged in by a spouse and continued, in spite of remonstrance, by the other. It may cause great anguish and distress to the wife who never suspected what she was bargaining for and may sooner or later find living together not only miserable but unbearable. If it was so, she may leave him and may, apart from cruelty, even complain of constructive desertion.”

3.4.5 Purpose of Section 498-A

In B.S. Joshi v. State of Haryana\(^{91}\), it was held that “Section 498A was added with a view to punishing husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hyper-technical view would be counterproductive and would act against interests of women and against the object for which the provision was added. There is every likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent woman from settling earlier. That is not the object of Section 498A of I.P.C.”

3.4.6 Section 498 A and section 113 of Evidence Act

In Krishan Lal v. Union of India\(^{92}\), it was observed by the Supreme Court that “Section 498A of the Indian Penal Code or section 113A of the Indian Evidence Act has not introduced invidious classification qua the treatment of a married woman by her husband or relatives of her husband in relation to the other offenders. On the other hand, such women form a class apart whom from those who are married more than seven years earlier to the commission of such offence, because, with the passage of time after marriage and birth of children, there are remote chances of treating a married woman with cruelty by her husband or his relatives. Thus, the classification is reasonable and has close nexus with the object sought to be achieved, i.e.,

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\(^{91}\) AIR 2003 SC 1386.

\(^{92}\) 1994 Cr LJ 3472.
eradication of the evil of dowry in the Indian social set-up and to ensure that the married women live with dignity at their matrimonial homes.”

3.4.7 Whether Crime committed under section 498 A I.P.C. is Compoundable

Generally in ordinary circumstances the offence under Section 498-A of Indian Penal Code, 1860 is not statutorily compoundable. In Thathapedi Venkatalakshmi v. State of A.P.\(^93\), the Andhra High court held that the offence involved in the present revision is one u/S. 498-A IPC. This section as introduced by Act 46 of 1983 on account of the increasing number of dowry deaths and cases of cruelty meted out to the married women at the hands of their husbands and in laws. Though in the instant case, the wife made a report to the police regarding the cruelty meted out to her at the hands of her husband, the parties had some reconciliation, there were talks for settlement, and there was agreement between the spouses to lead a harmonious matrimonial life. Since the basic object of any matrimonial law is to facilitate a happy and harmonious matrimonial life between the spouses through different circumstances they approached the Court the permission sought for to compound the offence u/S. 498-A IPC pursuant upon the settlement and understanding between the spouses to amicably live together with, harmony can be accorded by this Court u/S. 482 Cr.P.C. Keeping, therefore, in view the larger interests of the parties and to secure the ends of justice the Court below is directed by exercising powers u/S. 482 Cr.P.C. to accord permission to compound the offence after examining the parties in Court and after satisfying about the voluntary nature of the settlement and the consequent filing of the Petition in question for purposes of compounding the offence.

3.4.8 Whether Close relatives of husband were involved –

The Supreme Court in Kans Raj v. State of Punjab\(^94\) observed that “in the matter of dowry death the close relations of the husband cannot be roped in

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\(^93\) 1991 CriLJ 749
\(^94\) AIR 2000 SC 2324.
the case only on the ground of being close relative of the husband of
the deceased. For the fault of the husband, the in-laws or the other
relations cannot, in all cases, be held to be involved in the demand of
dowry. In cases where such accusations are made, the overt acts
attributed to persons other than husband are required to be proved
beyond reasonable doubt. By mere conjectures and implications
such relations cannot be held guilty for the offence relating to
dowry deaths. A tendency has, however, developed for roping
in all relations of the in-laws of the deceased wives in the matters of
dowry deaths which, if not discouraged, is likely to affect the case of
the prosecution even against the real culprits. In their over
enthusiasm and anxiety to seek conviction for maximum people,
the parents of the deceased have been found to be making efforts for
involving other relations which ultimately weaken the case of the
prosecution even against the real accused.”

3.5 Molestation

Section 354 deals with offence of 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 shall not
be less than one year but which may extend to five years, and shall also be liable
to fine.”

3.5.1 The essential ingredient of Section 354, I.P.C. is –

The Supreme Court in Raju Pandurang Mahale v. State of
Maharashtra has defined what constitutes an outrage to female modesty.
The apex court observed that “the essence of a woman’s modesty is her sex.
The culpable intention of the accused is the crux of the matter. The reaction
of the woman is very relevant, but its absence is not always decisive. Modesty in
this section is an attribute associated with female human beings as a class. It is

95 The Criminal Law (Amendment) Act, 2013, s. 6.
96 AIR 2004 SC 1677
a virtue which attaches to a female owing to her sex. The act of pulling a woman, removing her sari, coupled with a request for sexual intercourse, is such as would be an outrage to the modesty of a woman; and knowledge, that modesty is likely to be outraged, is sufficient to constitute the offence without any deliberate intention having such outrage alone for its object.”

In *Ram Kripal v. State of Madhya Pardesh* 97, The Supreme Court observed that the essential ingredients of offence under Section 354 IPC are:

(a) That the assault must be on a woman.
(b) That the accused must have used criminal force on her.
(c) That the criminal force must have been used on the woman intending thereby to outrage her modesty.

In *State of Punjab vs. Major Singh* 98, a question arose whether a female child of seven and a half months could be said to be possessed of ‘modesty’ which could be outraged. In answering the above question Mudholkar J., who along with Bachawat J. spoke for the majority, held that when any act done to or in the presence of a woman is clearly suggestive of sex according to the common notions of mankind that must fall within the mischief of Section 354 IPC. Needless to say, the ‘common notions of mankind’ referred to by the learned Judge have to be gauged by contemporary societal standards. The other learned Judge (Bachawat J.) observed that the essence of a woman’s modesty is her sex and from her very birth she possesses the modesty which is the attribute of her sex.

The Supreme Court in *Rupan Deol Bajaj v. K.P.S. Gill* 99, held that “the alleged act of Mr. Gill in slapping Mrs. Bajaj on her posterior amounted to ‘outraging of her modesty’ for it was not only an affront to the normal sense of feminine decency but also an affront to the dignity of the lady ‘sexual overtones’ or not, notwithstanding.”

97 2007 II Cri. L.J. 2302
98 AIR 1967 SC 63
99 AIR 1996 SC 309.
354A\textsuperscript{100}. “(1) a man committing any of the following acts -

i physical contact and advances involving unwelcome and explicit sexual overtures; or

ii a demand or request for sexual favours; or

iii showing pornography against the will of a woman; or

iv Making sexually coloured remarks, shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.”

354B\textsuperscript{101}. “Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.”

354C\textsuperscript{102}. “Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.”

\textsuperscript{100}\textsuperscript{100} Inserted by Section 7 of “The Criminal Law (Amendment) Act, 2013

\textsuperscript{101}\textsuperscript{101} Ibid

\textsuperscript{102}\textsuperscript{102} Ibid
354D\(^{103}\). “(1) any man who - (i) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or
(ii) Monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking:
Provided that such conduct shall not amount to stalking if the man who pursued it proves that - (i) it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or
(ii) it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or
(iii) in the particular circumstances such conduct was reasonable and justified.
(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.”

3.6. Offences related to Marriage

Section 493 deals with Cohabitation caused by a man deceitfully inducing a belief of lawful marriage

“Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to 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.”

3.6.1 Deception in marriage –

The offence here made punishable is committed when a man whether married or unmarried induces a woman to become as she thinks his wife but in

\(^{103}\) *ibid*
reality his concubine. The form of the marriage ceremony depends on the race or religion to which the persons contracting the marriage may belong. Where races are mixed as in India and religion may be changed or dissembled this offence may be committed by a person falsely causing a woman to believe that he is of the same race or creed as herself and thus inducing her to contract a marriage in reality unlawful but which according to the law under which she lives is valid Suppose a person half English half Asiatic by blood calls himself a Mohammedan or a Hindu and by this deception causes a Mohammedan or Hindu woman to go through the ceremony of marriage in a form which she deems valid and to cohabit with him he has committed this offence. A man who deceives a woman into the belief that a certain ceremony which he causes to be performed by some accomplice constitutes a valid marriage and thus induces the woman to cohabit with him may be punished under this Section.104

In Bodhisattva Gautam v. Subhra Chakraborty105, the Supreme Court observed that “the accused not only induced the complainant and cohabited with her, giving her a false assurance of marriage but also fraudulently gave through certain marriage ceremony with knowledge that was not a valid marriage and thereby dishonestly made the complaint to believe that she was a lawfully married wife of the accused. The way the accused exploited the complainant and abandoned her is nothing but an act of grave cruelty as the same has caused serious injury and danger to the complainant’s health both mentally and physically.”

In Moideen Kutty Haji v. Kunhikoya106, The Kerala High Court observed that “Section 493, I.P.C., is one of the offences relating to marriage. The section does not penalize mere cohabitation or sexual intercourse with a woman who is not lawfully married to him. The section is attracted only when certain other ingredients are also associated therewith. The section envisages the case when a man deceitfully induces a woman to have sexual intercourse

104 Margan and Macpharson’s Penal code, p. 432
105 AIR 1996 SC 922.
106 AIR 1987 Ker 184.
with him causing her to believe that she is lawfully married to him. The essence of the section is therefore the deception caused by a man on a woman, in consequence of which she is led to believe that she is lawfully married to him while, in fact, they are not lawfully married. In order to establish deception there must first be allegations that the accused falsely induced her to believe that she is legally wedded to him. In the complaint in this case there is no allegation of any such deception or inducement. In a case where both the man and woman fully knew that they are not husband and wife and no ceremony of marriage look place between them, there is no question of one of them believing otherwise. Even if the entire allegations in the complaint are taken as true the section is not being attracted. The allegation is that though they are not husband and wife they had sexual union during late hours in the night for a pretty long time. What is alleged in the complaint is only a promise to marry in future. The strange part of it is, there is the further allegation that one day they went for registering the marriage, but the petitioner ran away from there and even thereafter she was submitting herself to him regularly for liaison. The facts cannot at any rate attract Section 493, I.P.C.”

Section 494 deals with the offence of marrying again during lifetime of husband or wife

“Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception.—This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as
being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.”

This Section makes bigamy an offence in cases of all persons living in India irrespective of religion of either sex, namely, Christians, Parsis, Hindu, except Muslim males, etc. In the case of Muslims however, a distinction is drawn between a male and a female, as Muslim personal law permits polygamy for males (upto four wives) but insist on monogamy for females.

In S. Radhika Sameena v. SHO, Habeebnagar Police Station\textsuperscript{107}, The Andhra Pradesh High Court held that “having married under the Special Marriage Act, if a person again contracts a second marriage; he shall be deemed to have committed an offence under Section 494 or 495 Indian Penal Code. Therefore, a person married under the Special Marriage Act commits bigamy if he marries again during the lifetime of his spouse, and it matters not what religion he professes at the time of the second marriage. The Special Marriage Act clearly only contemplates monogamy and a person married under the Act cannot escape from its provisions by merely changing his religion.”

In Dr.Surajmani Stella Kujur v. Durga Charan Hansdah & Anr\textsuperscript{108}, the Supreme Court observed that “the appellant has, relied upon an alleged custom in the Tribe which mandates monogamy as a rule. It is submitted that as the respondent has solemnized a second marriage during the subsistence of the first marriage with the appellant, the second marriage being void, the respondent is liable to be prosecuted for the offence punishable under Section 494 of the Indian Penal Code. No custom can create an offence as it essentially deals with the civil rights of the parties and no person can be convicted of any offence except for violation of law in force at the time of

\textsuperscript{107} 1997 Cr LJ 1655 (AP)
\textsuperscript{108} AIR 2001 SC 938.
commission of the act charged. The appellant has not referred to any alleged
custom having the force of law which prohibits the solemnization of second
marriage by the respondent and the consequences thereof. It may be
emphasized that mere pleading of a custom stressing for monogamy by itself
was not sufficient unless it was further pleaded that second marriage was void
by reason of its taking place during the life of such husband or wife. In order
to prove the second marriage being void, the appellant was under an obligation
to show the existence of a custom which made such marriage null, ineffectual,
having no force of law or binding effect, incapable of being enforced in law or
non-est.”

In Gopal Lal v. State of Rajasthan, The Supreme Court affirmed its
view that “The combined effect of section 17 of the Hindu Marriage Act and
section 494 I.P.C. is that when a person contracts a second marriage after the
coming into force of the said Act while the first marriage is subsisting, such a
person commits the offence of bigamy.” Section 17 of the Hindu Marriage
Act, 1955 makes it absolutely clear that the provision has to be read in
harmony and conjunction with the provisions of section 494 I.P.C., the
essential ingredients of which are:

1. That the accused spouse must have contracted the first marriage.
2. that while the first marriage was subsisting the spouse concerned must
   have contracted a second marriage, and
3. that both the marriages must be valid in the sense that the necessary
   ceremonies required by the personal law governing the parties had
   been duly performed and
4. The second marriage must have become void by virtue of the fact that
   it had taken place in the life time of one of the spouses.

Where a spouse contracts a second marriage while the first marriage is
still subsisting, the spouse would be guilty of bigamy under section 494, I.P.C.
if it is proved that the second marriage was a valid one in the sense that the

109 AIR 1979 SC 713
necessary ceremonies required by law or by custom have been actually performed. The voidness of the marriage under section 17 of the Hindu Marriage Act is in fact one of the essential ingredients of section 494 because the second marriage will became void only because of the provisions of section 17 of the Hindu Marriage Act. Therefore, the contention that the second marriage being void section 494 I.P.C. will have no application is not correct.

In Bhaurao Shankar Lokhande and Anr. v. State of Maharashtra & Anr.\textsuperscript{110}, This Supreme Court while considering the question of bigamy qua the provisions of Section 17 observed as follows:

Section 17 provides that any marriage between two Hindus solemnized after the commencement of the Act is void if at the date of such marriage either party had a husband or wife living and that the provisions of S. 494 and 495 I.P.C. shall apply accordingly. The marriage between two Hindus is void in view of s. 17 if two conditions are satisfied:

1. The marriage is solemnized after the commencement of the Act;
2. At the date of such marriage, either party had a spouse living.

In Kanwal Ram And Ors vs The Himachal Pradesh Admn\textsuperscript{111}, The Supreme Court observed that Section 17 of the Hindu Marriage Act requires that the marriage must be properly solemnized in the sense that the necessary ceremonies required by law or by custom must be duly performed. Once these ceremonies are proved to have been performed the marriage becomes properly solemnized and if contracted while the first marriage is still subsisting the provisions of Section 494 will apply automatically.

**3.6.2 Conversion of Religion doesn’t give license to commit bigamy**

The Supreme Court in Sarla Mudgal v. Union of India\textsuperscript{112}, has ruled that change of religion does not permit a person to defeat the provision of law and give license to commit bigamy. The Court held that when one or the other

\textsuperscript{110} AIR 1965 SC 1564
\textsuperscript{111} AIR 1966 SC 614
\textsuperscript{112} AIR 1995 SC 1531
spouse, i.e., husband or wife renounces his or her religion and embraces other religion in order to marry again during the life time of the former spouse section 494, I.P.C. is attracted.

The four petitions under Article 32 of the constitution have been disposed of together since they relate to common question of contracting a second marriage by a Hindu Husband after embracing Islam. The question for consideration before the court was:

1. Whether a Hindu husband, married under Hindu law, by embracing Islam, can solemnize second marriage?

2. Whether such a marriage without having the first marriage dissolved under law, would be a valid marriage qua the first wife who continue to be Hindu?

3. Whether the apostate husband would be guilty of the offence under Section 494 of the Indian Penal Code (IPC)?

After examining a number of cases in which similar issues were involved the court said “A marriage celebrated under a particular personal law cannot be dissolved by the application of another personal law to which one of the spouse’s converts and the other refuses to do so. Where a marriage takes place under Hindu Law the parties acquire a status and certain rights by the marriage itself under the law governing the Hindu Marriage and if one of the parties is allowed to dissolve the marriage by adopting and enforcing a new personal law, it would tantamount to destroying the existing rights of the other spouse who continues to be Hindu. We, therefore, hold that under the Hindu Personal Law as it existed prior to its codification in 1955, a Hindu marriage continued to subsist even after one of the spouses converted to Islam. There was no automatic dissolution of the marriage.”

Begum\textsuperscript{113}, the Supreme Court held that “The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. There is no evidence of any official activity for framing a common civil code for the country. A belief seems to have gained ground that it is for the Muslim community to take a lead in the matter of reforms of their personal law. A common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. No community is likely to bell the cat by making gratuitous concessions on this issue. It is the State which is charged with the duty of securing a uniform civil code for the citizens of the country and, unquestionably; it has the legislative competence to do so. A counsel in the case whispered, somewhat audibly, that legislative competence is one thing, the political courage to use that competence is quite another. We understand the difficulties involved in bringing persons of different faiths and persuasions on a common platform. But, a beginning has to be made is the Constitution is to have any meaning. Inevitably, the role of the reformer has to be assumed by the courts because; it is beyond the endurance of sensitive minds to allow injustice to be suffered when it is so palpable. But piecemeal attempts of courts to bridge that gap between personal laws cannot take the place of a common Civil Code. Justice to all is a far more satisfactory way of dispensing justice than justice from case to case.”

Section 495 deals with same offence with concealment of former marriage from person with whom subsequent marriage is contracted

“Whoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

The Main Ingredient of this section is as follows-
1. The accused had already been married to some person;

\textsuperscript{113} AIR 1985 SC 945
2. The said marriage was legal;
3. The person to whom the accused was married was alive;
4. The accused married another person;
5. The accused when marrying the second time concealed from the person whom the accused married the fact of the first marriage.

Section 496 deals with Marriage ceremony fraudulently gone through without lawful marriage

“Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

In Kailash Singh Parihar v. Priti Parihar\textsuperscript{114}, the Rajasthan High Court observed that the accused entered into the second marriage during the pendency of a special appeal against a decree of divorce in violation of section 15 of the Hindu Marriage Act, 1955. It was held that since the fact of pendency of the appeal was not kept secret from the girl or her parents, the act of the accused cannot be said to be dishonest or fraudulent and hence, Section 496, I.P.C. is not attracted.

Distinction between Section 493 and 496 –

In S. Natarajan v. Shelly\textsuperscript{115}, The Madras high Court Held that The ingredients necessary to constitute an offence under Section 493 I.P.C. will be three-fold: (1) The accused caused the woman in question to believe that she was lawfully married to him; (2) that the accused induced that woman to cohabit or have sexual intercourse with him under that belief and (3) that the accused caused such belief by deceit. Essentially the offence under Section 493 I.P.C. consists in giving a false assurance of the marriage to a woman and thereby procuring sexual intercourse with her. The difference between this offence and the offence under Section 496 I.P.C. is that in the latter offence, a

\textsuperscript{114} 1982 Cri.L.J. 1005
\textsuperscript{115} II (1991) DMC 217
ceremony is fraudulently gone through knowing that such ceremony was not lawful. The ingredients necessary for the latter offence is three-fold: (1) That the accused went through the ceremony of marriage; (2) that when he went through such ceremony, he knew that he was not thereby lawfully married to the complainant; and (3) that he did it dishonestly or with a fraudulent intention.

Section 498 deals with Enticing or taking away or detaining with criminal intent a married woman

“Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

In Alamgir & another v. The State Of Bihar116, The Supreme Court held that Section 498, I.P.C. deals the offence of Criminal Elopement and it requires the following three essential ingredients:-

1. The offender must take or entice away or conceal or detain the wife of another person from such person or from any other person having the care of her on behalf of the said person.
2. He must know or has reason to believe that the woman is the wife of another person; and
3. Such taking, enticing, concealing or detaining of the woman must be with intent that she may have illicit intercourse with any person.

It is clear that if the intention of illicit intercourse is not proved the presence of the first two ingredients would not be enough to sustain the charge tinder s. 498. It is only if the said intention is proved that it becomes necessary to consider whether the two other ingredients are proved or not.

116 AIR 1959 SC 436
In *Rati Ram v. The Crown*\textsuperscript{117}, it was held there that to constitute an offence under Section 498, it is not necessary that a woman should be physically restrained or that she should be actively prevented from the exercise of her free will or action. The gravamen of the offence consists in depriving the husband of his proper control over his wife for the purposes specified in Section 498, and a detention occasioning such deprivation may be brought about by means other than mere physical constraint, e.g., even by the influence of allurements or persuasion.

In the case of *Sundara Das Tevan*\textsuperscript{118}, the Court expressed the opinion that physical constraint of the wife is not an essential of the offence made punishable by Section 498 of I.P.C. The words of the section ‘conceals or detains’ may be and were, we think, intended to be applied to the enticing or inducing a wife to withhold or conceal herself from her husband, and assisting her to do so as well as to physical restraint or prevention of her will or action. Depriving the husband of his proper control over his wife, for the purpose of illicit intercourse, is the gist of the offence, just as it is of the offence of taking away a wife under same section, and a detention occasioning such deprivation may be brought about simply by the influence of allurements and blandishment.

### 3.7 Acid Attacks (326 A-B IPC)

326A\textsuperscript{119} - “Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine: Provided that such fine shall be just and reasonable to meet the medical

\textsuperscript{117} AIR 1923 Lah. 45
\textsuperscript{118} 1868(4) M.H.C.R. 20
\textsuperscript{119} Inserted by Section 5 of 'The Criminal Law (Amendment) Act, 2013.
expenses of the treatment of the victim: Provided further that any fine imposed under this section shall be paid to the victim.”

326B. “Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.”

In Sachin Jana Vs. State of West Bengal, the Supreme Court observed that “a case involving acid attack which had caused disfigurement of the victim, the Supreme Court applied Section 307 IPC (Attempt to murder) read with Section 34 on the basis that to justify a conviction under Section 307 it was not essential that ‘bodily injury capable of causing death was inflicted’. The Section made a distinction between the act of the accused and its result. Therefore it was not necessary that the injury actually caused to the victim should be sufficient under ordinary circumstances to result in death. The court is only required to see whether the act, irrespective of its result, was done with the intention or knowledge mentioned in Section 307. It was sufficient if there was intent coupled with an overt act in execution thereof.”

Recent Incidence of Acid Attack

A woman from Kerala’s Kannur is battling for life at a hospital in Mangaluru after a man dressed as Santa Claus threw acid on her on Christmas Eve. The attack left the woman blinded. The 47-year-old, mother of two, was on her way to the church to attend the midnight mass in Kannur on December 24 when she was attacked. She was accompanied by her parents and two sons. Her younger son, 7, who was in her arms at the time also received burn injuries and is in the Intensive Care Unit of the hospital. The police have

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120 Ibid
121 (2008) 3 SCC 390
arrested one person who is believed to be the attacker. The man was reportedly known to the woman and allegedly attacked her after she spurned his advances.\textsuperscript{122}

A doctor and his friend were arrested while two juveniles were detained in connection with the acid attack on a 30-year old woman doctor. Arvind Yadav, a batch mate of the victim, along with his friend Vaibhav hatched the plan to throw acid on Amrita Kaur. Police said Amrita had turned town Yadav’s marriage proposal and got engaged to another man eight months ago.

Amrita Kaur, the doctor employed with an Employees State Insurance (ESI) hospital in the national capital, suffered burn injuries after two motorcycle-borne assailants hurled acid at her Tuesday morning at a crowded market in west Delhi’s Rajouri Garden area. Both the accused were arrested. They had hired two minors to throw acid on the woman doctor. Both the juveniles have been detained.\textsuperscript{123}

A Russian woman was attacked with acid by her landlord’s son at Varanasi in Uttar Pradesh. Darya Yurieva, 23, who is from Moscow, had been in India for about four months. The man threw a bottle of acid on the woman after an argument. The two, the police said, had recently travelled together to Ladakh and were believed to be involved. The woman was taken to hospital by her landlord. The Supreme Court has repeatedly warned state authorities to enforce restrictions on the sale of acid, but campaigners say it remains easy to purchase and inexpensive.\textsuperscript{124}

\textbf{3.8 Honour Killing}

An honor killing or shame killing is the homicide of a member of a family by other members, due to the perpetrators’ belief that the victim has


\textsuperscript{123} http://www.firstpost.com/fwire/two-arrested-for-acid-attack-on-woman-doctor-2015871.html (Visited on 10th February, 2016)

brought shame or dishonor upon the family, or has violated the principles of a community or a religion, usually for reasons such as refusing to enter an arranged marriage, being in a relationship that is disapproved by their family, having sex outside marriage, becoming the victim of rape, dressing in ways which are deemed inappropriate, engaging in non-heterosexual relations or renouncing a faith.\(^{125}\)

Honor killings have been described as “chillingly common in villages of Haryana dominated by the lawless ‘khap panchayats’ (caste councils of village elders)”. In a landmark judgment in March 2010, Karnal district court ordered the execution of five perpetrators of an honor killing in Kaithal, and imprisoning for life the khap (local caste-based council) chief who ordered the killings of Manoj Banwala (23) and Babli (19), a man and woman of the same clan who eloped and married in June 2007. Despite having been given police protection on court orders, they were kidnapped; their mutilated bodies were found a week later in an irrigation canal.\(^{126}\)

In 2013, a young couple who were planning to marry were murdered in Garnauthi village, Haryana, due to having a love affair. The woman, Nidhi, was beaten to death and the man, Dharmender, was dismembered alive. People in the village and neighboring villages approved of the killings.\(^{127}\)

In *Arumugam Servai v. State of Tamilnadu*\(^ {128}\), The Supreme Court observed and directed as follows:

“\(^{125}\)https://en.wikipedia.org/wiki/Honor_killing#India (Visited on 10 February 2016)

\(^{126}\)http://www.abc.net.au/news/2010-03-31/five-to-be-executed-for-honour-killings/386540 (Visited on 10 February 2016)


\(^{128}\)(2011)6 SCC 405

“We have in recent years heard of Khap Panchayats which often pass decree or encourage honour killings or other atrocities in an institutionalised way on boys and girls of different castes and religion, who wish to get married or have been married, or interfere with the personal lives of people. We are of the opinion that this is wholly illegal and has to be ruthlessly stamped out. There is nothing honourable in honour killing or other atrocities and, in fact, it
is nothing but barbaric and shameful murder. Other atrocities in respect of personal lives of people committed by brutal, feudal-minded persons deserve harsh punishment. Only in this way can we stamp out such acts of barbarism and feudal mentality. Moreover, these acts take the law into their own hands, and amount to kangaroo courts, which are wholly illegal. Hence, we direct the administrative and police officials to take strong measures to prevent such atrocious acts. If any such incidents happen, apart from instituting criminal proceedings against those responsible for such atrocities, the State Government is directed to immediately suspend the District Magistrate/Collector and SSP/SPs of the district as well as other officials concerned and charge-sheet them and proceed against them departmentally if they do not (1) prevent the incident if it has not already occurred but they have knowledge of it in advance, or (2) if it has occurred, they do not promptly apprehend the culprits and others involved and institute criminal proceedings against them, as in our opinion they will be deemed to be directly or indirectly accountable in this connection.”

In July 2006, the Supreme Court of India termed the practice an act of barbarism. It ordered the police across the country to take stern action against those resorting to violence against young men and women of marriageable age who opted for inter-caste and inter-religions marriages. In the case of Lata Singh Vs State of Uttar Pradesh and others 129 the apex court directed: “In our opinion, such acts of violence or threats or harassment are wholly illegal and those who commit them must be severely punished. This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple are not harassed by any one nor subjected to threats or acts of violence, and anyone who gives such threats or harasses or commits

129 2007 (1) GLH 41
acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law.”.

The Supreme Court in Bhagwandas v. State (Govt of NCT) Delhi\(^{130}\) has held that “honour killings, for whatever reason, come within the category of rarest of rare cases deserving death punishment. It is time to stamp out these barbaric, feudal practices which are a slur on our nation. This is necessary as a deterrent for such outrageous, uncivilized behaviour. All persons who are planning to perpetrate honour killings should know that the gallows await them.”

4. The offences identified under the Special Laws

The Constitution of India provides for special treatment of women, guarantees equality and prohibits discrimination. Women continue to be treated as the single largest under-privileged group in India. In such a context the role of justice is specially vital and important\(^{131}\). The government of India has been strengthening various laws focused on women. While all laws are not gender specific, the provision of law affecting women considerably have been reviewed from time to time and amendments were made to keep pace with the evolving society. The following laws are having special provisions to protect women and their safety:

4.1 Indecent Representation of Women (Prohibition) Act, 1986\(^{132}\)

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

The main object of this new act beside existing laws relating to obscenity in Sec. 292, 293 and 294 of the Indian Penal Code is growing body of indecent representation of women or references to women in publications,

\(^{130}\) (2011)6 SCC 396


\(^{132}\)Indecent Representation of Women (Prohibition) Act, 1986 (Act No. 60 of 1986)
particularly advertisements, etc. which have the effect of denigrating women and are derogatory to women. Though there may be no specific intention, these advertisements, publications, etc. have an effect of depraving or corrupting persons. It is, therefore, felt necessary to have a separate legislation to effectively prohibit the indecent representation of women through advertisements, books, pamphlets, etc.

**The salient features of the Act:**

(a) Indecent representation of women has been defined to mean 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.\(^{133}\)

(b) No person shall publish, or cause to be published, or arrange or take part in the publication or exhibition of, any advertisement which contains indecent representation of women in any form.\(^{134}\)

(c) 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\(^{135}\) -

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

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

i. which is kept or used bona fide for religious purpose;

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\(^{133}\) *Ibid*, s. 2(c)  
\(^{134}\) *Ibid*, s. 3  
\(^{135}\) *Ibid*, s. 4
ii. any representation sculptured, engraved, painted or otherwise represented on or in –
   i  any ancient monument within the meaning of the Ancient Monument and Archaeological Sites and Remains Act, 1958 (24 of 1958); or
   ii any temple, or on any car used or the conveyance of idols, or kept or used for any religious purpose;
iii. Any film in respect of which the provisions of Part II of the Cinematograph Act, 1952 (37 of 1952), will be applicable.

(b) If any person contravenes the provisions of Section 3 and 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 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.\(^\text{136}\)

In 2012, the Ministry of Women and Child Development proposed “The Indecent Representation of Women (Prohibition) Amendment Bill, 2012” that has yet to be passed. The amendment seeks to widen the scope of the Act to cover new forms of communication such as the internet, satellite based communication, cable television etc.

### 4.2 The Immoral Traffic (Prevention) Act 1986

In 1950 the Government of India endorsed the International Convention for the Suppression of Immoral Traffic in Persons and the Exploitation of the Prostitution of others. In 1956 India passed the Suppression of Immoral Traffic in Women and Girls Act, 1956. The act was further amended and changed in 1986, resulting in the Immoral Traffic Prevention Act also know as PITA. PITA only discusses trafficking in relation to prostitution and not in relation to other purposes of trafficking such as

\(^{136}\) *Ibid, s. 6*
domestic work, child labour, organ harvesting, etc. The following is an outline of the provisions in this law that pertains to children below the age of 18.  

The act defines child as any person who has not completed eighteen years. The first section of the act has provisions that outline the illegality of prostitution and the punishment for owning a brothel or a similar establishment, or for living of earnings of prostitution as is in the case of a pimp.

The main points of the PITA are as follows:  

1. **Sex Workers:** A prostitute who seduces or solicits shall be prosecuted. Similarly, call girls can not publish phone numbers to the public. (Section 8).
2. **Sex worker also punished for prostitution near any public place or notified area.** (Section 7)
3. **Clients:** A client is guilty of consorting with prostitutes and can be charged if he engages in sex acts with a sex worker within 200 yards of a public place or “notified area”. (Section 7)
4. **The client may also be punished if the sex worker is below 18 years of age.** (From 7 to 10 years of imprisonment, whether with a child or a minor, Section 7)
5. **Pimps and babus:** Babus or pimps or live-in lovers who live off a prostitute’s earnings are guilty of a crime. Any adult male living with a prostitute is assumed to be guilty unless he can prove otherwise. (Section 4)
6. **Brothel:** Landlords and brothel-keepers can be prosecuted, maintaining a brothel is illegal. (Section 3)
7. **Detaining someone at a brothel for the purpose of sexual exploitation can lead to prosecution.** (Section 6). Prostitution in a hotel is also a criminal offence.

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8. Procuring and trafficking: A person procures or an attempt to procure anybody is liable to be punished. Also a person who moves a person from one place to another, (human trafficking), can be prosecuted similarly. (Section 5)

9. Rescued Women: The government is legally obligated to provide rescue and rehabilitation in a “protective home” for any sex worker requesting assistance. (Section 21)

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

In 2006, the Ministry of Women and Child Development proposed an amendment bill that has yet to be passed. The amendment does not really concern any of the provisions related to the child but has many important consequences for the right of women sex workers.

4.3 Dowry Prohibition Act, 1961\textsuperscript{139}

The first legislative enactment relating to dowry was The Dowry Prohibition Act, 1961 and this legislation came into force from July 1, 1961. It marked the beginning of a new legal framework of dowry harassment laws effectively prohibiting the demanding, giving and taking of dowry. Although providing dowry is illegal, it is still common in many parts of India for a husband to seek a dowry from the wife’s family and in some cases, this result in a form of extortion and violence against the wife.

Important Sections of the Dowry Prohibition Act, 1961 are as follows:

- Meaning of ‘dowry’.\textsuperscript{140}

\textsuperscript{139} The Dowry Prohibition Act, 1961 (Act No. 28 of 1961)  
\textsuperscript{140} Ibid, s. 2
“any property or valuable security given or agreed to be given either directly or indirectly by one party to a marriage to the other party to the marriage; or 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 or any time after the marriage in connection with the marriage of said parties but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.”

**Sentence for giving or taking dowry.** 141

(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 with imprisonment for a term which shall not be less than five years, and with the fine which shall not be less than fifteen thousand rupees or the amount of the 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 five years. Nothing in this section shall apply to or, in relation to presents which are given at the time of a marriage to the bride (without nay demand having been made in that behalf) and such presents are entered in list maintained in accordance with rule made under this Act. Presents which are given at the time of marriage to the bridegroom (without any demand having been made in that behalf) and also such presents are entered in a list maintained in accordance with rules made under this Act. also 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.

**Punishment for demanding dowry.** 142

If any person demands directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom as the case may be, any dowry,

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141 *Ibid.*, s. 3
142 *Ibid.*, s. 4
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.

**Ban on advertisement.**\(^{143}\)

If any person offers, through any advertisement in any newspaper, periodical, journal or through any other media any share in 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, prints or publishes or circulates any advertisement, he shall be punishable 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.

**Agreement for giving or taking dowry to be void:**\(^{144}\)

All agreement which is done for the purpose of giving or taking dowry shall be void.

**Dowry to be for the benefit of the wife or successor:**\(^{145}\)

(1) Where any dowry is received by any person other than the woman in connection with whose marriage it is given, that person shall transfer it to the woman, if the dowry was received before marriage, within three months after the date of marriage; or if the dowry was received at the time of or after the marriage within three months after the date of its receipt; or if the dowry was received when the woman was a minor, within three months after she has attained the age of eighteen years, and pending such transfer, shall hold it in trust for the benefit of the woman.

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143 Ibid, s. 4A  
144 Ibid, s. 5  
145 Ibid, s. 6
(2) If any person fails to transfer any property as required by sub-section (1) within the time limit specified therefor or as required by sub-section (3), he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend two years or with fine which shall not be less than five thousand rupees, but which may extend to ten thousand rupees or with both.

(3) Where the woman entitled to any property under sub-section (1) dies before receiving it, the heirs of the woman shall be entitled to claim it from the person holding it for the time being:

If she has no children, be transferred to her parents, or if she has children, be transferred to such children and pending such transfer, be held in trust for such children.

(3-A) Where a person convicted under sub-section (2) for failure to transfer any property as required by sub-section (1) or sub-section (3) has not, before his conviction under that sub-section, transferred such property to the women entitled thereto or, as the case may be, her heirs, parents or children, the Court shall, in addition to awarding punishment under that sub-section, direct, by order in writing, that such person shall transfer the property to such woman, or as the case may be, her heirs, parents or children within such period as may be specified in the order, and if such person fails to comply with the direction within the period so specified, an amount equal to the value of the property may be recovered from him as if it were a fine imposed by such Court and paid to such woman, as the case may be, her heirs, parents or children.

(4) Nothing contained in this section shall affect provisions of Sec. 3 or Sec. 4.

**Burden of proof:**

Where any person is put on trial for taking or abetting the taking of any dowry under Sec. 3, or the demanding of dowry under Sec. 4, the burden of

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146 *Ibid, s. 8A*
proving that he had not committed an offence under those sections shall be on him.

Despite protest by women’s organizations, serious activism, legal amendments, special police cells for women, media support and heightened awareness of dowry being a crime, the practice continues unabated on a massive scale. Section 304 B was introduced in the I. P. C., 1860 in order to strictly deal with and punish the crime of Dowry Death. The insertion of the provision in the Indian Penal Code was for providing for a more stringent offence. Despite every stigma, dowry continues to be the signature of marriage. Dowry is a complicated phenomenon in the Indian society and it cannot be eradicated by simple legislative measures. It is an accepted fact dowry is not an easy problem to be eliminated. However such a social menace can be combated with effective strategic measures that would protect the dowry of the Indian bride and would allow such dowry to be treated as her exclusive property.

In 2010, the Ministry of Women and Child Development proposed an amendment bill in order to provide more teeth to dowry-prevention laws; but the Dowry Act in its present form is here to stay for now. The government had dropped amendments to the Dowry Prohibition Act, 1961 proposed by the National Commission for Women. “The NCW had recommended certain amendments in Dowry Prohibition Act. However, the ministry has taken a considered view on the matter and decided to drop the amendment proposed by NCW in the present form after taking into account the comments of the high level committee on the status of women and the ministry of home affairs,” women and child development minister Maneka Gandhi said in Lok Sabha.147

4.4 Commission of Sati (Prevention) Act, 1987148

The Act provides for the more effective prevention of the commission of sati and its glorification and for matters connected with or related to. Whereas sati or the burning or burying alive of widows or women is revolting to the feelings of human nature and nowhere enjoined by any of the religions of India as an imperative duty, and whereas it is necessary to take more effective measure to prevent the commission of sati and its glorification.

The Main sections of the Act are as follows:-

Attempt to commit sati.

“Whoever attempts to commit sati and does any act towards such commission shall be punishable with imprisonment for a term which may extend to one year or with fine or with both. Provided that the Special Court trying an offence under this section shall, before convicting any person, take into consideration the circumstances leading to the commission of the offence, the act committed, the state of mind of the person charge of the offence at the time of the commission of the act and all other relevant factors.”

Abetment of Sati.\(^\text{150}\)

(1) Whoever commits sati, if any person abets the commission of such sati, either directly or indirectly, shall be punishable with death or sentence for life and shall also be liable to fine.

(2) If any person attempts to commit sati, whoever abets such attempt, either directly or indirectly, shall be punishable with imprisonment for life and shall also be liable to fine.

Explanation. –

For the purposes of this section, following acts shall be deemed to be an abetment, that is:

(a) any inducement to a widow or woman to get her burnt or buried alive along with the dead body of her husband or with any other relative or with any item, thing or thing related with the husband or such relative, irrespective of

\(^\text{149}\) Ib\(\text{id}, \text{s. 3}\)

\(^\text{150}\) Ib\(\text{id}, \text{s. 4}\)
whether she is in a fit state of mind or is labouring under a state of intoxication or stupefaction or other cause impeding the exercise of her free will;

(b) making a widow or woman believe that the commission of sati would result in some spiritual benefit to her or her deceased husband or relative or the general well being of the family;

(c) encouraging a widow or woman to remain fixed in her resolve to commit sati and thus instigating her to commit sati;

(d) participating in any procession in connection with the commission of sati or aiding the widow or woman in her decision to commit sati by taking her along with the body of her deceased husband or relative to the cremation or burial ground;

(e) being present at the place where sati is committed as an active participant to such commission or to any ceremony connected with it;

(f) preventing or obstructing the widow or woman from saving herself from being burnt or buried alive;

(g) obstructing, or interfering with, the police in the discharge of its duties of taking any steps to prevent the commission of sati.

**Sentence for glorification of sati.**

“Whoever does any act for the glorification of sati shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and with fine which shall not be less than five thousand rupees but which may extend to thirty thousand rupees.”

**4.5 The Protection of Women from Domestic Violence Act, 2005**

An Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters related with or incidental to. The incident of domestic violence is commonly prevalent but has remained largely invisible in the public domain. At present, where a woman is subjected to

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151 *Ibid*, s. 5
152 The Protection of Women from Domestic Violence Act, 2005, [No. 43 OF 2005]
cruelty by her husband or his relatives, it is a crime under Section 498A of the Indian Penal Code, 1860. As a result of that, a law is proposed keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution to grant for a remedy under the civil law which is intended to protect the women from being sufferers of domestic violence and to prevent the incidence of domestic violence in the society.

**Definition of domestic violence -**

“Any act, omission or commission or conduct of the respondent shall constitute domestic violence when it harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or has the effect of threatening the aggrieved person or any person related to her by any conduct; or otherwise injures or causes harm, whether physical or mental, to the aggrieved person.”

**Scope of the Act**

To provide protection to the wife or female live-in partner from domestic violence at the hands of the husband or male live-in partner or his relatives, the law also extends its protection to women living in a household such as sisters, widows or mothers.

**The salient features of the Protection from Domestic Violence Act, 2005 are as follows:**

- It seeks to cover women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or a relationship in the nature of marriage, or adoption; in addition relationship with family members living

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153 *Ibid*, s. 3
together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with are entitled to get legal protection under the proposed Act.

- “Domestic violence” includes actual abuse or the threat of abuse that is corporeal, sexual, spoken, emotional and financial. Pestering by way of dowry demands to the woman or her relatives would also be covered under the definition.

- One of the most significant characteristics of the Act is the woman’s right to secure accommodation. The Act provides for the woman’s right to live in the marital or joint household, whether or not she has any rights in the household. This right is secured by a residence order, which is passed by a court. These residence orders cannot be passed against anyone who is a woman.

- The other relief envisaged under the Act is that of the power of the court to pass protection orders that stop the abuser from assisting or performing an act of domestic violence or any other specific act, entering a workplace or any other place frequented by the abused, attempting to communicate with the sufferer, dividing any assets used by both the parties and causing violence to the victim, her relatives and others who provide her assistance from the domestic violence.

- The Act provides appointment of Protection Officers and NGOs to provide help to the woman with respect to medical check-up, legal aid, safe asylum, etc.

- The Act provides for violation of protection order or temporary protection order by the respondent as a cognizable and non-bailable offence punishable with sentence for a term which may extend to one year or with fine which may extend to twenty thousand rupees or with both. Similarly, non-compliance or discharge of duties by the Protection Officer is also sought to be made an offence under the Act with similar punishment.
4.6 Information Technology Act 2000\textsuperscript{155}

Cybercrime against women is on an alarming stage and it may pose as a major threat to the security of a person as a whole. In India the term “cybercrime against women” includes sexual crimes and sexual abuses on the internet. India is considered as one of the very few countries to enact IT Act 2000 to combat cybercrimes; This Act widely covers the commercial and economic crimes which is clear from the preamble of the IT Act. Most of the cases related to cyber crime against women reported to the police comes within the ambit of Section 67 (Publishing or transmitting obscene material in electronic form) of the Information Technology Act 2000 that is very much clear from the following case study.

\textit{Dr. L. Prakash v. Superintendent}\textsuperscript{156} In this case the accused was an orthopedic surgeon forced women to perform sexual acts and later on upload and sale these videos as adult entertainment materials worldwide. He was charged under section 506, 367 and 120-B (criminal conspiracy) of the IPC and Section 67 of Information Technology Act, 2000 (which dealt with obscene publication in the internet). He was sentenced for life imprisonment and a pecuniary fine of Rupees 1, 25,000 under the Immoral Trafficking (Prevention) Act, 1956.

\textit{Ritu Kohli Case}\textsuperscript{157} was India’s first case of cyber stalking, in this case Mrs. Ritu Kohli made a complained to police against a person, who was using her identity to chat over the Internet at the website http://www.micro.com/, mostly in Delhi channel for four consecutive days. Mrs. Kohli further complained that the person was chatting on the Net, using her name and giving her address and was talking obscene language. The same person was also deliberately giving her phone number to other chatters encouraging them to call Ritu Kohli at odd hours. Consequently, Mrs. Kohli received almost 40

\textsuperscript{155} The Information Technology Act, 2000 (Act No 21 of 2000)
\textsuperscript{156} (2008) 3 MLJ (Cri) 578
calls in three days mostly on add hours. The said call created a havoc in personal life of the complainant consequently IP addresses was traced and police investigated the entire matter and ultimately arrested the offender. A case was registered under the section 509, of IPC and thereafter he was released on bail. This is first time when a case of cyber stalking was reported. Similar to the case of email harassment, Cyber stalking is not covered by the existing cyber laws in India. It is covered only under the ambit of Section 72 of the IT Act that perpetrator can be booked remotely for breach of confidentiality and privacy. The accused may also be booked under Section 441 of the IPC for criminal trespass and Section 509 of the IPC again for outraging the modesty of women.

State of Tamil Nadu v. Suhas Katti\textsuperscript{158} In this case the accused Katti posted obscene, defamatory messages about a divorced woman in the yahoo message group and advertised her as a solicit for sex. This case is considered as one of the first cases to be booked under the I. T. Act, 2000. He was convicted under section 469, 509 of Indian Penal Code (IPC) and 67 of the IT Act 2000 and was punished for 2 years rigorous imprisonment and fine. Above mentioned cases were considered first time under the ambit of IT Act. Apart from these cases there are few basic cybercrimes that basically happens to the Indian women in the cyberspace such as harassment via e-mail, cyber-stalking, cyber defamation, morphing, email spoofing, hacking, cyber pornography and cyber sexual defamation, cyber flirting and cyber bullying.

4.7 The Sexual Harassment of Woman at Workplace (Prevention, Prohibition and Redressal) Act, 2013\textsuperscript{159}

In 1997, the Hon’ble Supreme Court of India, in Vishaka and Ors v. State of Rajasthan & Others\textsuperscript{160} (“Vishaka Judgment”) recognized the gravity of sexual pestering of the working women at the workplaces and laid down

\textsuperscript{158} (2004) also available at www.naavi.org/cl_editorial_04/suhas_katti_case.htm
\textsuperscript{159} The Sexual Harassment of Woman at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act No. 14 of 2013).
\textsuperscript{160} AIR1997SC3011
guidelines making it mandatory for employers to put a stop to the commission of acts of sexual pester ing and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment. The guidelines issued by the Apex Court were treated as law declared by the Hon’ble Supreme Court under Article 141 of the Constitution of India. It was held by the Apex Court that the guidelines framed by the highest Court would be stringently observed in all work places for the prevention and enforcement of the right to gender parity of the working women. In 2013, after a span of 16 years, India finally enacted The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 that seeks to shield women from sexual harassment at their place of work. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters associated with or related to.

While sexual harassment results in contravention of the fundamental rights of a woman to parity under articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under article 21 of the Constitution and right to practice any profession or to carry on whichever occupation, trade or business which includes a right to a safe environment free from sexual harassment, and whereas the protection against sexual harassment and the right to work with dignity are universally recognised human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India, and whereas it is expedient to make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace.

It is highly required that women are protected against sexual harassment at all the work places, be it in public or private. This essentially will contribute to the understanding of their right to gender equality, liberty
and moreover, equality in their working conditions. The sense of security at the workplace/study place will improve women’s participation in overall progress, resulting in their economic empowerment and inclusive growth as whole.

The Act has adopted the definition of ‘sexual harassment’ from Vishaka Judgment and the term sexual harassment includes “any unwelcome acts or behaviour (whether directly or by implication) such as physical contact and advances, demand or request for sexual favours, making sexually coloured remarks, showing pornography or any other unwelcome physical, verbal or non-verbal conduct of sexual nature”.

In Apparels Export Promotion Council v. A.K. Chopra161, the Apex Court while deciding an issue whether the act of a superior officer (wherein such superior officer tried to molest his junior woman employee) would amount to sexual harassment, the Court relied on the definition of the term ‘sexual harassment’ laid down by the Supreme Court in the Vishaka Judgment (which is similar to the definition of the Sexual Harassment provided in the Act) held that “the act of the respondent was unbecoming of good conduct and behavior expected from a superior officer and undoubtedly amounted to sexual harassment...”.

The Act has in fact sought to widen the scope of the guidelines issued by the Supreme Court by bringing within its ambit (amongst other things) a “domestic worker”162 defined to mean a woman who is employed to do the household work in any household for remuneration whether in cash or kind, either directly or through any agency on a temporary, permanent, part time or full time basis, but does not consist of any member of the family of the employer.

161 AIR1999SC625
162 The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act No. 14 of 2013). s. 2e
The Act has defined “sexual harassment”\textsuperscript{163} to include any one or more of the following unwelcome acts or behaviour namely:

(i) Physical touch and advances;
(ii) A demand for sexual favors;
(iii) Making sexually coloured comments;
(iv) Showing porn videos; or
(v) Any other unwelcome corporal, spoken or non-verbal behavior of sexual nature.

Further, the following may also amount to sexual harassment:

(i) Implied or explicit promise of special treatment;
(ii) Implied or explicit threat of unfavorable treatment;
(iii) Implied or explicit threat about present or future employment status;
(iv) Interference with work or creating an intimidating or offensive or hostile work environment; or
(v) Humiliating treatment likely to affect health or safety.

The term “employee”\textsuperscript{164} includes regular, temporary, ad hoc, daily wage employees and persons who are working on a voluntary basis i.e. without remuneration. The term also includes contract workers, probationers, and trainees.

The Act defines “aggrieved woman”\textsuperscript{165} to mean:

(i) in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent;
(ii) in relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house.

As per the Act, workplace includes\textsuperscript{166}:

\begin{itemize}
\item \textsuperscript{163} Ibid. s. 2n
\item \textsuperscript{164} Ibid. s. 2f
\item \textsuperscript{165} Ibid. s. 2a
\item \textsuperscript{166} Ibid. s. 2o
\end{itemize}
(i) any department, organization, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society;

(ii) any private sector organization or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organization, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;

(iii) hospitals or nursing homes;

(iv) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;

(v) any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey;

(vi) a dwelling place or a house.

The Act provides that no woman shall be subjected to sexual pestering at any workplace. This section further provides the circumstances which if present or connected with any act or behaviour of sexual harassment may amount to sexual harassment such as implied or expressed promise to preferential treatment or implied or explicit threat of unfavourable treatment in her employment, implied or explicit threat about her present or future employment, interference with work or creating an intimidating or offensive or hostile work environment, humiliating treatment likely to affect health or safety of a woman.\(^{167}\)

\(^{167}\) *Ibid.* s. 3
Internal Complaints Committee
The Act contemplates the establishment of Internal Complaints Committee\(^\text{168}\) ("ICC") at the workplace and Local Complaints Committee\(^\text{169}\) ("LCC") at district and block levels. A District Officer i.e. District Collector or Deputy Collector shall be responsible for facilitating and monitoring the activities under the Act.\(^\text{170}\)

Every workplace employing ten or more employees is requisite to constitute an ICC. The ICC is required to consist of at least four members, and its presiding officer is required to be a woman employed at a senior level. Provisions have been made in case no senior woman employee is available, to nominate a woman presiding officer from another office, administrative unit, workplace, or organization. Further, one half of the members must be women. LCCs are to be set up by the appropriate government which shall receive complaints in respect of establishments that do not have ICCs on account of having fewer than 10 employees and to receive complaints from domestic workers.

Steps involved in the Complaint Process

1st Step
A complaint is to be made in writing by an aggrieved woman within 3 months of the date of the incident. The time limit may be extended for a further period of 3 months if, on account of certain circumstances, the woman was prevented from filing the complaint. If the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death, her legal heirs may do so.

2nd Step
Upon receipt of the complaint, the ICC or LCC must proceed to make an inquiry in accordance with the service rules applicable to the respondent or in their absence, in accordance with rules framed under the Act.

\(^{168}\) Ibid. s. 4
\(^{169}\) Ibid. s. 6
\(^{170}\) Ibid. s. 5
3rd Step

The inquiry must be completed within a period of 90 days. In case of a complaint by a domestic worker, if in the opinion of the LCC a prima facie case exists, the LCC is required to forward the complaint to the police to file a case under the relevant provisions of the Indian Penal Code.

4th Step

Where the ICC finds that the allegations against the respondent are proven, it must submit a report to the employer to: (i) take action for sexual harassment as a misconduct in accordance with the provisions of the applicable service rules or where no service rules exist, in accordance with rules framed under the Act; (ii) to deduct from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs.

5th Step

The employer must act on these recommendations within 50 days.

Scope for Conciliation and Settlement

Before initiating an inquiry, the ICC or LCC may, at the request of the aggrieved woman, take steps to arrive at a settlement between the parties. However, no monetary settlement can be made as the basis of such conciliation.

In case the ICC or LCC is of the view that a malicious or false complaint has been made, it may recommend that a penalty be levied on the complainant in accordance with the applicable service rules. However, an inquiry must be also made. Mere inability to substantiate a complaint will not attract action under this provision.

Penalties

Where the employer fails to abide by the provisions of the Act, he shall be likely to be punished with a fine which may extend to Rs. 50,000. In case

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171 Ibid. s. 10(1)
172 Ibid. s. 14
173 Ibid. s. 26
of a second or subsequent conviction under this Act, the employer may be punished with twice the punishment prescribed or by cancellation of his license or withdrawal of his registration.

4.8 The Prevention and Protection from Witch Hunting

India is a land where the women are treated as symbol or are considered as a token of their community, family, caste and all other diverse divisions. Where people on one hand worship them in name of Goddesses on the other hand kill them considering them witch. This practice of killing is not new for Indian society rather it has its deep roots in history. Initially when the concept of witch was discussed people thought of ugly women with a broom who can fly, who can disappear. Now the concept has changed a bit, witch now denotes women who acquire supernatural powers and are indulged in evil practices which are omen. It is believed that they are associated to negative energy and for their betterment and for enhancing their power they kill innocent members of society. The may be called in different names as ‘Chudail’, ‘Dayan’, ‘Tohni’, etc. but the zest is that they possess supernatural powers which they use to hamper others. Therefore Witch Hunting is a process of killing these people in order to protect the society from being harmed by them. In name of witch hunting people kill innocent women, rape them, to acquire their property and some time it is being used as a tool for vengeance.

There is no specific and particular national level legislation that penalises Witch hunting hence the provisions under the Indian Penal Code 1860 can be used as an alternative for the victim. The different sections invoked in such cases are Sec.302 which charge for murder, Sec307 attempt for murder, Sec 323 hurt, Sec 376 which penalizes for rape and Sec. 354 which deals with outraging a woman’s modesty. Therefore, there is an immediate need for enacting a National Law on witch hunting.
Apart from the provisions under Indian Penal Code different states have come up with different legislation to tackle the problem of witch hunting\textsuperscript{174}.

- Bihar though being most backward was the first state in India to pass a law against witch hunting in the year 1999, which was named “Prevention of Witch (Dayan) Practices Act.”
- Jharkhand followed it and established “Anti Witchcraft Act” in 2001 to protect women from inhuman treatment as well to provide victim legal recourse to abuse. Basically Section 3, 4, 5 and 6 of the concerned Act talks about the punishment which will be granted if any one identify someone as witch, tries to cure the witch and any damages caused to them. Whereas Section 7 states the procedure for trial.
- Chhattisgarh government passed a bill in 2005 named “Chhattisgarh Tonhi Pratama Bill”, which was established to prevent atrocities on women in name of Tonhi.
- In a bid to protect women from being branded witch through the prevailing hunting and other similar practices, the Odisha Assembly unanimously passed the Odisha Prevention of Witch-Hunting Bill, 2013 with provisions of imprisonment up to seven years and penalty for offenders\textsuperscript{175}.
- The Rajasthan state assembly passed the Rajasthan Prevention Of Witch-Hunting Bill, 2015. The bill provisions up to a five-year jail term and at least Rs 50,000 fine for harassing a woman after branding her as witch. A person who claims to be a “witch doctor” and performs any ritual to free a woman from evil spirits would serve up to seven years in jail and pay at least Rs 50,000 as penalty. If the woman dies due to witch-hunting, the accused would be sentenced for minimum

\textsuperscript{174} http://blog.ipleaders.in/laws-which-prevent-witch-hunting-in-india/ (Visited on 12 February, 2016)

\textsuperscript{175} http://www.firstpost.com/fwire/odisha-passes-anti-witch-hunting-bill-1269729.html (Visited on 12 February, 2016)
seven years or up to life imprisonment and/or fined a minimum of Rs 1 lakh. Every offence under the bill shall be cognizable and non-bailable. The state government can also impose a collective fine on residents of an area where the crime is committed.176

- Assam state legislature has passed Assam Witch Hunting (Prohibition, Prevention and Protection) Bill, 2015. This law was prepared in order to reign in the rising incidents of witch hunting cases across the state. It was prepared in lines with the spirit of universal declaration of human rights, crimes in witch hunting cases cause gross violation of basic human rights.177

It aims to eliminate the superstition from society by making such offences under the Act as non-bailable, non-compoundable and cognizable. Prohibit any person from calling, identifying or defaming any other person as witch by words, signs, conducts or indications. Stringent Punishment: If anybody found guilty, the act imposes up to 7 years of jail and fine up to 5 lakh rupees. This provision will come as per Section 302 of the Indian Penal Code (IPC). Proposes sentence of 3 years imprisonment if anybody blames a person for natural disasters in a particular locality such as floods, droughts, illness or any death. Special Courts: Special courts will be set up in consultation with the high court for trial of such offences.

- The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 to ensure more stringent provisions for prevention of Atrocities against Scheduled Castes and the Scheduled Tribes will be enforced from January 26, 2016178.

The key features of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, is also deals with prevention and punishment for perpetrating witchcraft atrocities and touching or using words, acts or gestures of a sexual nature against members of Scheduled Castes and Scheduled Tribe.

All these acts not only prohibit one from directly hampering a woman but also punish the one who instigates other to harm them, to displace her from the house place and property. At the same time it is punishable if due to torture a woman commits suicide.

4.9 Pre-Conception & Pre-Natal Diagnostic Techniques Act, 1994

Sex preference is a deep rooted problem in India. Families who selective against girl children choose to abort the child before it is born. The boy child is preferred since he will carry on the family name, provides for the elders and is not a burden on the family at the time of marriage. In 1994 the Government of India in an attempt to stop female foeticide passed the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act. The main purpose of enacting the act is to forbid the use of sex selection practices before or after conception and prevent the abuse of prenatal diagnostic technique for sex selective abortion. Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (PNDT), was amended in 2003 to The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition Of Sex Selection) Act (PCPNDT Act) to improve the regulation of the technology used in sex selection.

Main Provisions of the act as follows:-

1. Embryo means “a developing human organism after fertilization till the end of eight weeks”.  

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180 Ibid. s. 2(bb)
2. **Foetus** means “a human organism during the period of its development beginning on the fifty seventh day following fertilization or creation and ending at the birth.”\(^{181}\)

3. **Sex selection** means “any procedure, technique, test or administration or prescription or provision of anything for the purpose of ensuring or increasing the probability that an embryo will be of a particular sex.”\(^{182}\)

4. **Section 3(a)** means and includes that “no person, including a specialist or a team of specialists in the field of infertility, shall conduct or cause to be conducted or aid in conducting by himself or by any other person, sex selection on a woman or a man or on both or on any tissue, embryo, conceptus, fluid or gametes derived from either or both of them.”\(^{183}\)

5. Section 3 (b) of the Act states that “no person shall sell any ultrasound machine or imaging machine or scanner or any other equipment capable of detecting sex of foetus to any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or any other person not registered under the Act.”\(^{184}\)

6. Section 5(2) of the act says that “no person including the person conducting pre-natal diagnostic procedures shall communicate to the pregnant woman concerned or her relatives or any other person the sex of the foetus by words, signs or in any other manner.”\(^{185}\)

7. Section 6 of the act prohibits the determination of sex of the fetus. It states that “No Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic or person shall conduct or cause to be conducted in its Centre, Laboratory or Clinic, pre-natal diagnostic techniques including ultrasoundography, for the purpose of determining the sex of a foetus or by whatever

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\(^{181}\) Ibid. s. 2(bc)
\(^{182}\) Ibid. s. 2(o)
\(^{183}\) Ibid. s. 3(a)
\(^{184}\) Ibid. s. 3(b)
\(^{185}\) Ibid. s. 5(2)
means, cause or allow to be caused selection of sex before or after conception.”

9. Punishment for the crime committed under the act. “any medical geneticist, gynaecologist, registered medical practitioner or any person who owns a Genetic Counselling 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 Centre, Laboratory or Clinic, whether on an honorary basis or otherwise, and who contravenes any of the provisions of this Act or rules made thereunder shall be punishable with Act, 1994 & Amendments imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees and on any subsequent conviction, with imprisonment which may extend to five years and with fine which may extend to fifty thousand rupees.”

4.9.1 Practice of Female Infanticide

In the leading case of Centre for Enquiry into Health & Allied Themes (CEHAT) and others v. Union of India and others, the supreme court observed that “it is unfortunate that for one reason or the other, the practice of female infanticide still prevails despite the fact that the gentle touch of a daughter and her voice has a soothing effect on the parents. One of the reasons may be the marriage problems faced by the parents coupled with the dowry demand by the so-called educated and/or rich persons who are well placed in the society. The traditional system of female infanticide whereby the female baby was done away with after birth by poisoning or letting her choke on husk continues in a different form by taking advantage of advanced medical techniques. Unfortunately, developed medical science is misused to get rid of a girl child before birth. Knowing full well that it is immoral and unethical as well as it may amount to an offence; foetus of a girl child is aborted by qualified and unqualified doctors or compounders. This has affected overall

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186 Ibid. s. 23
187 (2001) 5 Supreme Court Cases 577
sex ratio in various States where female infanticide is prevailing without any hindrance.”

In CEHAT and Others v. Union of India\(^{188}\), Justice Shah J. has said that “it is an admitted fact that in Indian Society, discrimination against girl child still prevails, may be because of prevailing uncontrolled dowry system despite the Dowry Prohibition Act, as there is no change in the mindset or also because of insufficient education and/or tradition of women being confined to household activities. Sex selection/sex determination further adds to this adversity. It is also known that number of persons condemn discrimination against women in all its forms, and agree to pursue, by appropriate means, a policy of eliminating discrimination against women, still however, we are not in a position to change mental set-up which favours a male child against a female. Advance technology is increasingly used for removal of foetus may or may not be seen as commission of murder, but it certainly affects the sex ratio. The misuse of modern science and technology by preventing the birth of girl child by sex determination before birth and thereafter abortion is evident from the 2001 Census figures which reveal greater decline in sex ratio in the 0-6 age group in States like Haryana, Punjab, Maharashtra and Gujarat, which are economically better off. Despite this, it is unfortunate that law which aims at preventing such practices are not implemented and, therefore, Non-Governmental Organisations are required to approach this Court for implementation of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 renamed after amendment.”

The latest order issued by the Hon’ble High Court, where the High Court of Punjab and Haryana at Chandigarh, took suo-moto cognizance of a newspaper report about Sex Determination kits entering in the State. According to the High Court these kits were a massive blow to the hard work done by the State to improve sex ratio, being worried by the declining child

\(^{188}\) (2003) 8 Supreme Court Cases 398
sex ratio in the State and to restrain the social menace of pre-natal sex selection and sex determination, the High Court on its own motion, issued notices to Central and State Government. Perusal of the affidavits filled by the Governments in response thereto revealed that PNDT wing of the Ministry of Health and Family Welfare was completely aware about accessibility of such Sex Determination kits in the grey bazaar. What was found to the satisfaction of the High Court was that Government itself was also worried and concerned about the same and had taken successful and satisfactory steps to block them and to create general understanding and sensitization on the topic so that the objective and responsibility of the Government, as affirmed in its affidavit, to curb pre-natal sex selection and sex determination is realized. This decision illustrates that human ingenuity in evolving new techniques knows no bounds when it comes to gender discrimination and elimination of female foetuses. Determined efforts on the part of all the three wings of the Government - legislative, executive and judiciary alone can check such unpardonable crimes. Their acting together and in harmony is of importance.  

This is one more Public Interest Litigation instituted by a social activist Mr. Gaurav Goyal under Article 226 of Constitution of India; again, when large numbers of female foetuses were recovered from the 20 feet deep septic tank at Buala Nursing Home, Pataudi, district Gurgaon in Haryana. On the instructions of High Court, administrative inquiry was commencing in 250 prohibited eliminations of female foetuses. In the said investigation four Medical officers were found guilty. The State Government on the other hand dragged its feet in taking suitable action against those officers, that's why the Court directed the State to speed up the proceeding and complete the same within six months and to take suitable action against all those found to be responsible. What was found to be more shocking by the High Court in this case was that, though a statuary notification appointing Civil Surgeon of the

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189 Court on its own motion v. State of Punjab and others, Civil Writ Petition No. 17964 of 2007
district as Appropriate Authority under the Act was issued on 24 October 1997, it was not published in Official Gazette on account of official lack of concern till this Writ Petition came for hearing in the year 2009, i.e. after the lapse of 12 years, which, as observed by the High Court, “adversely reflected upon the official machinery of the State Government charged with the responsibility of implementing an important legislation like PCPNDT Act. It is regrettable that for a period of over 12 years non publication of the Notification never came to the notice of the concerned authorities. To say the least, it is a classic example of total apathy and inaction on the part of State Government in implementation of this significant piece of social legislation. What is sad is that even in 2007 that is 60 years after independence, the illegal, inhuman and immoral practice of eliminating female foetuses is continuing unabated on such a large scale despite this Act being in existence since 1994.”

4.9.2 Constitutional Validity of the Act

In *Vinod Soni and Anr. v. Union of India* the legality of the Act was challenged on the argument that the provisions of the Act are unconstitutional of Article 21 of the Constitution of India. A very appealing argument was advanced in this case by the appellant that the right to life guaranteed under Article 21 of the Constitution includes right to personal liberty which in turns includes the liberty of choosing the sex of the children and to determine the nature of the family. Therefore, it was asserted that the couple is entitled to undertake any such medical course of action which provides for determination or selection of sex. The High Court however exposed the fallacy of this argument by observing that, “right to personal liberty cannot be expanded by any stretch of imagination to liberty to prohibit to coming into existence of a female or male foetus which shall be for the nature to decide.” After making reference to the decisions of the Supreme Court, which explain that Article 21

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191 2005 CriLJ 3408
includes the right to food, clothing, decent environment and even protection of cultural heritage, the High Court held that “these rights, even if, further expanded to the extremes of the possible elasticity of the provisions of Article 21, cannot include right to selection of sex, whether preconception or post-conception.” It was observed by the High Court that “this Act is factually enacted to further the right of the child to full development as given under Article 21. A child conceived is, therefore, entitled under Article 21 to full development, whatever be the sex of that child.”

“The conception is a physical phenomenon. It need not take place on copulation of every capable male and female. Even if both are competent and healthy to give birth to a child, conception need not necessarily follow. That being a factual medical position, claiming right to choose the sex of a child which is come into existence as a right to do or not to do something which cannot be called a right. The right to personal liberty cannot expand by any stretch of imagination, to liberty to prohibit coming into existence of a female foetus or male foetus which shall be for the Nature to decide. To claim a right to determine the existence of such foetus or possibility of such foetus come into existence, is a claim of right which may never exist. Right to bring into existence a life in future with a choice to determine the sex of that life cannot in itself to be a right.” The High court of Bombay held that, the petition does not make even a prima facie case for violation of Article 21 of the Constitution of India.

The PC & PNDT Act is one of the most comprehensive and well thought out laws in the country. To say a little about the amendments that have given this Act the present shape, it is after the intervention of the Hon’ble Supreme Court in CEHAT, MAUSAM & Dr. Sabu George v. Union of India and Ors.\textsuperscript{192} that the law had been considerably overhauled to bring within purview the changing technologies. The truth today is that this brilliant piece of legislation is far from being implemented in its true spirit and purpose. In

\textsuperscript{192} AIR 2003 SC 3309
fact the first ever conviction leading to imprisonment of an offender (Dr Anil Sabsani, a radiologist, was jailed for two years) under the present Act in the entire country took place in March 2005, 12 years after the Act came out in 1994.

4.10 The Medical Termination of Pregnancy Act, 1971

The Indian Penal Code provided for abortion U/S 312-318, wherein abortion was a crime, for which the mother as well as the abortionist could be punished except where it had to be induced to save the life of the mother. This strict law was being observed in the breach all over the country, resulting in the untimely death of many young pregnant women. The said Act was therefore passed in order to liberalise the active provisions relating to the termination of pregnancy so as to save the pregnant women’s life, Health and strength. It underwent two amendments: in 2002 and in 2005.

The preamble of the act is very clear states that termination of pregnancy would be permitted in certain cases. The cases in which the termination is permitted are elaborated in the Act itself. Moreover, only registered medical practitioners who possess any recognize medical qualification and who has such experience or training in gynecology and Obstetrics is permitted to conduct the termination of pregnancy. Also other matters connected there with the incidental thereto are incorporated, for example, the question of consent of termination of pregnancy, the place where the pregnancy could be terminated, the power to make rules and regulations in this behalf.

The main Provisions of the act as follows:-

1. Registered medical practitioner means “a medical practitioner who possesses any recognised medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956”, whose name has been entered in a State Medical Register and who has such experience or training in

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193 The Medical Termination Of Pregnancy Act, 1971 (Act No. 34 of 1971)
gynecology and obstetrics as may be prescribed by rules made under this Act.”

2. When Pregnancies may be terminated by registered medical practitioners.- A pregnancy may be terminated by a registered medical practitioner, “where the length of the pregnancy does not exceed twelve weeks if such medical practitioner is, or where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are of opinion, formed in good faith, that, the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury physical or mental health or there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.”

3. No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a lunatic, shall be terminated except with the consent in writing of her guardian.

4. No pregnancy shall be terminated except with the consent of the pregnant woman.

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

6. No termination of pregnancy shall be made in accordance with this Act at any place other than a hospital established or maintained by Government or a place for the time being approved for the purpose of this Act by Government.

4.10.1 Overriding effect
The MTP Act has been given overriding effect by section 5(2). The act creates a specific offence where pregnancy is terminated by an unregistered medical practitioner. This is an independent offence and shall not affect the provisions of the Indian Penal Code dealing with the offence of causing miscarriage.

The act aims to give protection to the physical and mental health of a pregnant woman and also to the child in the womb. But the problem is more of female foeticide and abortion in illegal manner.

In *Nand Kishore Sharma v. Union of India*\(^{200}\), The Rajasthan High Court observed that “the object of the Act being to save the life of the pregnant woman or relieve her of any injury to her physical and mental health, and no other thing, it would appear the Act is rather in consonance with Article 21 of the Constitution of India than in conflict with it. While it may be debatable as to when the foetus comes to life so as to attract Article 21 of the Constitution of India, there cannot be two opinion that where continuance of pregnancy is likely to involve risk to the life of the pregnant woman or cause grave injury to her physical and mental health, it would be in her interest to terminate the pregnancy.”

The provisions regarding the termination of pregnancy in the I.P.C. which were enacted about a century ago were drawn up in keeping with the then British Law on the subject. Abortion was made a crime for which the mother as well as the abortionist could be punished except where it had to be induced in order to keep the life of the mother. It has been stated that this very strict law has been observed in the breach in a very large number of cases all over the country. Furthermore, most of these mothers are married women, and are under no particular necessity to conceal their pregnancy.

With Sections 312 and 315, IPC, it would appear that the object of the Act was to make the provisions relating to termination of pregnancy stringent and effective rather than to permit blatant termination of pregnancy. Since

\(^{200}\) AIR 2006 Raj. 166.
Object of MTP Act is to save life of pregnant woman, it is in consonance with article 21 of constitution of India.

4.11 The Prohibition of Child Marriage Act, 2006

Child marriage is an age-old practice that has both social and religious sanction and cuts across all sections of society. Recognising child marriage as a social evil, the Child Marriage Restraint Act (CMRA) 1929, popularly known as the Sharda Act, prohibited child marriages of girls below the age of 15 years and of boys below the age of 18. This law applied to all citizens of India. In 1978, the law was amended to make it more effective and raise the minimum age of marriage by three years i.e. from 15 to 18 years in case of girls and from 18 to 21 years in case of boys. The amended law came to be known as the Child Marriage Restraint Act, 1929. However, despite the law, child marriages continued to take place. There are many marriages in which both the girl and the boy are children. In others the girls are children/minors who are married off to much older men, or sometimes even sold into marriage. In yet another attempt to deal with the problem, the government passed The Prohibition of Child Marriage Act, 2006. The Act provide for the prohibition of solemnisation of child marriages and for matters associated with or related to.

The Important provisions of the act are as follows:

1. Child marriage is an offence punishable with rigorous detention, which may extend to two years, or with fine up to Rs. One Lakh or both. Courts can issue injunctions prohibiting solemnisation of child marriages.

2. Crimes under the Act are cognizable and non-bailable.

3. Whoever performs conducts or directs or abets any child marriage.

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201 The Prohibition Of Child Marriage Act, 2006 (6 of 2007)  
204 Ibid. s. 15
4. A male adult above 18 years marrying a child.\(^{206}\)

5. Any person having charge of the child, including\(^{207}\) –
   a) parent or guardian,
   b) Any member of organization or association, promoting, permitting, participating in a child marriage or failing to prevent it.

6. Child Marriages are voidable and can be annulled.\(^{208}\)

7. The annulment of child marriage can be sought within a period of 2 years after the child who was a party to the marriage has attained majority.\(^{209}\)

8. Only the children in the marriage themselves can file a petition for voidability or annulment of marriage. And if the petitioner is a minor as per PCMA, the petition can be filed through a guardian or the next best friend of the married child (who must be an adult of 18 years or more), along with the Child Marriage Prohibition Officer (CMPO).\(^{210}\)

9. The District Court can grant nullity of marriage. The District Court includes the Family Court and Principal Civil Court of Original Jurisdiction, and any other civil court specified by the State Government.\(^{211}\)

10. Under certain circumstances, child marriages can be declared null and void by the Courts. These include:
   a) where a marriage has been solemnized despite an injunction order passed under section 13 to prevent the child marriage from taking place.\(^{212}\)

\(^{205}\) Ibid. s. 10
\(^{206}\) Ibid. s. 9
\(^{207}\) Ibid. s. 11
\(^{208}\) Ibid. s. 3(1)
\(^{209}\) Ibid. s. 3(3)
\(^{210}\) Ibid. s. 3(2)
\(^{211}\) Ibid. s. 3(2)(e)
\(^{212}\) Ibid. s. 14
b) where the child is taken away from their lawful guardian by enticement, force or use of deceitful means.\textsuperscript{213}

c) when the child is sold or trafficked for purpose of marriage or through marriage.\textsuperscript{214}

11. The CMPO is empowered to provide support and all possible aid including medical and legal aid to children affected by child marriages.\textsuperscript{215}

12. The adult husband must pay maintenance to the minor girl until her re-marriage. In case the husband is a minor at the time of marriage, his guardian will pay maintenance.\textsuperscript{216}

13. Children born from a child marriage are entitled to custody and maintenance because the law considers such children legitimate for all purposes even after the marriage has been annulled.\textsuperscript{217}

14. A District Court is empowered to add to, modify or revoke any order relating to maintenance and custody of children born from a child marriage.\textsuperscript{218}

\textsuperscript{213} Ibid. s. 12(a&b)  
\textsuperscript{214} Ibid. s. 12(c)  
\textsuperscript{215} Ibid. s. 16(3)(g)  
\textsuperscript{216} Ibid. s. 4(1)  
\textsuperscript{217} Ibid. s. 5 & 6  
\textsuperscript{218} Ibid. s. 7