CHAPTER-V
RIGHTS AND STATUS OF VICTIMS OF CRIME WITH SPECIAL FOCUS ON WOMEN AND CHILDREN

"Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm they have suffered."¹

Strange and ironical as it may sound, the administration of criminal justice is not much concerned with the victims of crime except that in a few cases some marginal action is possible to render limited or token help to the victims. The entire focus of the criminal justice system is on the offender; to punish him or to seek his reformation and rehabilitation with all the resources and goodwill available through the courts and other governmental and non-governmental agencies. Efforts are made to understand his personality and the individual and social factors which might have contributed to his criminal behaviour. The victims of the crimes are, on the other hand, ‘the forgotten people in the system’. President Gerald R. Ford sent the following message to the American Congress in 1975:

“For too long, the law has centered its attention more on the rights of the criminal than on the victims of the crime. It is high time we reversed this trend and put the highest priority on the victims and potential victims.”²

Rights of Victims of Crime in Criminal Justice System

The study of existing legal framework in relation to rights of victims of crime reveals that except in the area of providing compensation, very little has been done either statutorily or through schemes to address the entire range of problems faced by victims of crime. No doubt in an adversial system, each attempt is made to deliver justice from the point of view of an accused. Adversial system follows the simple rule of criminal jurisprudence that 10 culprits are justified to be acquitted than the hanging

or prosecution of an innocent one. Indian system of criminal justice is accused-oriented. The rights of victims of crime are often overlooked. Unlike the accused, victims have virtually no rights in criminal proceedings and proceedings are supposedly conducted on their behalf by State agencies. Right from the beginning of a trial till the final conclusion, attempts are made to benefit the accused, sometimes even at the cost of victim’s sentiments. Criminal justice system though pro-accused, gives certain rights to the victims of crime also. But these rights are scattered in various enactments such as Indian Penal Code, Indian Evidence Act and the Criminal Procedure Code. Because of less awareness, most of these rights remain unexercised.

The Criminal Procedure Code, 1973

Before the Code of Criminal Procedure (Amendment) Act, 2008, the word ‘victim’ is not defined, only the legal term ‘the complainant’ is used in the Criminal Procedure Code. By this amendment section 2(wa) has been inserted in the Code of Criminal Procedure which define the term “victim”. According to this provision “victim” means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression “victim” includes his or her guardian or legal heir.

The victim/complainant could set the criminal justice mechanism in motion by giving information to the police which is expected to reduce it into writing. The victim as an informant is entitled to a copy of the First Information Report (FIR) “forthwith, free of cost”. Where the officer-in-charge of a police station refuses to act upon such information, the victim can write to the Superintendent of Police who is then expected to direct investigation into the complaint. If the police do not register the report then victim can give a complaint to a Magistrate, who will in turn examine the complainant on oath and enquire into the case himself/herself or direct investigation by the police before taking cognizance. The victim thereafter does not

---

3 Come into force on 31st December, 2009
4 Section 154(1) of the Code of Criminal Procedure, 1973. This is registered as the first information report (FIR).
5 Section 154(2) of the Code of Criminal Procedure, 1973
6 Section 154(3) of the Code of Criminal Procedure, 1973
7 Section 190 of the Code of Criminal Procedure, 1973
8 Sections 200 and 202 of the Code of Criminal Procedure, 1973
participate in the investigation except by being called to confirm the identity of the accused or the material objects, if any, recovered during the course of investigation.\textsuperscript{9}

A crime is a wrong not only against the individual victim but also against the State. It is because of this consideration that the State, participates in a criminal trial as party against the person accused of crime more particularly if the crime is a cognizable offence. The Public Prosecutor or Assistant Public Prosecutor is the counsel for the State in such trials. The Public Prosecutor or Assistant Public Prosecutor may appear in any court, without any written permission from any authority.\textsuperscript{10} A private counsel can be engaged by the victim who shall assist the Public Prosecutor and can submit written argument after the evidence is closed.\textsuperscript{11} The Magistrate himself, inquiring into or trying any case, can permit the prosecution to be conducted by any person other than police officer below the rank of Inspector but no police officer shall be permitted to conduct the prosecution, who has taken part in the investigation of an offence.\textsuperscript{12} Court may permit the victim to engage an advocate of his choice to assist the Special Public Prosecutor.\textsuperscript{13} Proviso to section 24(8) has been introduced in order to help the victims to give a more active role in the dispensation of criminal justice. In other words, the purpose of the proviso is to have active participation of the victims in the justice delivery system. After all it is the victim who sets the criminal law into motion and it is he who is the affected party. A reading of the said proviso under section 24(8) of the Code of Criminal Procedure would clearly show that the Court concerned can permit the victims to engage an advocate of his choice to assist the prosecution.\textsuperscript{14} Proviso of Section 24(8) Cr. P.C. speaks about the assistance to prosecution. Therefore it implies that the role of the Prosecutor is also to be shared by the victim’s counsel by way of assisting the prosecution even if it is to a limited extent. Proviso to Section 24(8) of Criminal Procedure Code is in other words an expansion of Section 301 of the Criminal Procedure Code. Both proviso under

\textsuperscript{9} Section 9 Evidence Act, 1872. The evidence gathered by means of a test identification parade is relevant and admissible. See also Panchabhai Popotbhai Butani v. State of Maharashtra2010(3)RCR(Criminal)261(Bom)FB

\textsuperscript{10} Section 301(1) of the Code of Criminal Procedure, 1973

\textsuperscript{11} Section 301(2) of the Code of Criminal Procedure, 1973

\textsuperscript{12} Section 302 of the Code of Criminal Procedure, 1973


\textsuperscript{14} Statement of Objects and Reasons of the Code of Criminal Procedure (Amendment) Act, 2008
Section 24(8) and Section 301 Criminal Procedure Code will have to read together. Engaging of an advocate should only mean to have an effective assistance. That is a reason why the word ‘advocate’ has been incorporated under section 24. The definition of a ‘pleader’ is wider which has to be read in the context of section 301 Criminal Procedure Code and the definition of word ‘advocate’ would mean an active participation in the prosecution through a counsel. Therefore in order to appreciate the same this Court will have to look into the object and reasons as well as a simple interpretation of the provisions. The legislature has taken into consideration of section 301 Criminal Procedure Code while introducing the proviso to section 24(8).\textsuperscript{15}

Hence on a reading of Section 301 together with proviso under Section 24(8) Criminal Procedure Code, this Court is of the opinion that they only complimentary with each other by providing more access to an aggrieved party to assist the prosecution. Section 301 of Criminal Procedure Code speaks about the power of the Public Prosecutor to conduct the prosecution. A conjoint reading of Section 301 and 24(8) would make it clear that it is the Public Prosecutor who conducts the case but it does not mean that a lawyer engaged by a victim shall not be allowed to supplement the conducting of the case by the Prosecutor. A lawyer has to render his assistance in three different ways. He has to render assistance to the victims, to the prosecution and an officer of the Court. Therefore this Court is of the opinion that a combined reading of section 301 and proviso under section 24(8) would make it clear that a lawyer can be engaged to argue and in an appropriate case with the permission of the Court to examine the witnesses. Further a reading of the above said provision would show that Section 301 Speaks about the instructing a pleader whereas Section 24(8) proviso speak about engaging a lawyer. Therefore under Section 301 a party can engage a lawyer and conduct the case along with the Public Prosecutor.\textsuperscript{16} Hon’ble Supreme Court in Zahira Habibulla H. Sheikh v. State of Gujarat\textsuperscript{17} noted that a Public Prosecutor is an officer of Court but there are instances in which Public Prosecutor is either not competent or acts only on the instruction given by the State and a Public Prosecutor may not be aware of the facts which the victim is in possession of. A Public Prosecutor is instructed by police and not by victim. In as much as the victim

\textsuperscript{15} Madras High Court discussed in detail the Section 301 and Proviso to section 24(8) in Sathyarani Ponrani v. Samuel Raj dated 07/07/2010
\textsuperscript{16} ibid
\textsuperscript{17} (2004)4 SCC158
seeks to assist prosecution there can not be any prejudice since what is sought to be made is only to assist the prosecution not to replace the prosecution. A Public Prosecutor conducts the case with a sense of detachment whereas the victim is attached to the case. A decision made in a case does not impact a Public Prosecutor which is not the case with the victim who is the affected party. Thus the introduction of proviso to subsection 24(8) is to provide an adequate opportunity to the victim to take part in the criminal proceeding.

Further though the Criminal Procedure Code does not provide legal aid to the victim of a crime, Section 12(1) of the Legal Services Authorities Act, 1987 entitles every person “who has to file or defend a case” to legal services. A victim of crime has a right to legal assistance at every stage of the case subject to the fulfillment of the means test and the ‘prima facie case’ criteria.

Above mentioned rights are rights of every type of victims. But law has also provided special protection to certain sections of the society because of their age, mental and physical conditions. Under Criminal Procedure Code itself some rights have been given to women and children.

**Recording of Statement of Rape Victim at her Place**

To save from the embarrassment of being summoned to the police station, to stop the further humiliation of the victim of rape by the police officers in the police station and avoid to give statements in front of strangers regarding the commission of offence of rape, the statement of rape victim shall be recorded at her residence or at a place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality. Further an investigating police officer can by written order require the attendance before himself of any person who is acquainted with the facts or circumstances of the case, and person is within the limits of the police station. However a person below fifteen years of age, or a woman shall not be required to attend any place other than the place

---

18 Section 304 of the Code of Criminal Procedure, 1973 provides for legal aid only to the accused.
19 Section 12(1)(b) and s.13(1) the Legal Services Authorities Act, 1987 respectively Under S. 12(1)(b) every victim of trafficking in human beings or beggar.
21 Section 160(1), of the Code of Criminal Procedure, 1973
in which such person or woman resides. This provision is intended to give special protection to children and women against the probable indignities and inconveniences that might be caused to them by the abuse of police powers under section 160(1). There is a public policy behind this legislative prescription which keep juveniles and females away from police company except at their residence. These provisions will spare the victims of the agony of visiting police stations and answering inconvenient – obscene in many cases – questions in the presence of unknown persons. While going to attend Court, complainant or witnesses shall not be required to accompany a police officer or shall not be subjected to unnecessary restraint, inconvenience and they are not required to give any type of security except their own bond. This provision safeguards and protects the personal liberty of complainant or witnesses as enshrined in Article 21 of the Constitution.

Search of Place Entered by a Person Sought to be Arrested

Under Section 47 additional search powers are given to the police for affecting arrest. But the proviso to Section 47(2), puts reasonable restrictions on the police when the part of the house to be searched for execution of arrest, is occupied by a pardanashin woman. If any such place is an apartment in the actual occupancy of a female (not being the person to be arrested) who according to custom does not appear in public then such person or police officer before entering such apartment must give notice to such female that she is at liberty to withdraw and must afford her every reasonable facility for withdrawing and may then break open the apartment and enter it.

Power to Compel Restoration of Abducted Females

A search warrant may be issued by District Magistrate or Sub Divisional Magistrate or Magistrate of the first class for search of persons wrongfully confined. An additional special provision has been made to compel restoration of abducted females. This provision is intended to give immediate relief to a woman or a girl abducted or detained for any unlawful purpose. On such a complaint, the concerned

---

22 Proviso to Section 160(1) of the Code of Criminal Procedure, 1973
24 Nandini Satpathy v. P.L. Dhani, 1978 SCC(Cri) 236
25 Section 171 of the Code of Criminal Procedure, 1973
26 Proviso to Section 47(2) of the Code of Criminal Procedure, 1973
27 Section 97 of the Code of Criminal Procedure, 1973
authority may make an order for the immediate restoration of such woman to her liberty or of such female child to her husband, parent, guardian, or other person having the lawful charge on such child and may compel compliance with such order, using such force as may be necessary. An action can only be made upon a complaint on oath of the abduction or unlawful detention of a woman or a female child under the age of eighteen years for any unlawful purpose.  

**Medical Examination of the Victim of Rape**

The crime of rape is a major problem in India as is evident from the reports in the press as well as official statistics. Most of the time accused persons have gone free because of poor evidence gathering and as well as other lacunae in the law. In rape cases, the prosecution can secure a conviction based solely on the testimony of the rape victim, provided the testimony is cogent, consistent and inspiring confidence. But in practice judges and the police give significant weight to the medical examination. Thus medical examination of the accused as well as of the victim of rape plays a crucial role in conviction of the accused. Medical examination of the accused person at the request of police officer and person accused of rape is conducted by registered medical practitioner and the medical examination of female must be made by female medical officer with strict regard to decency. Special provision is inserted in the Criminal Procedure Code so that courts get the accurate and prompt report of the medical examination of the victim of rape. According to this provision, during investigation of the offence of commission of rape or attempt to commit rape, the victim of a rape is proposed to examine her person by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of such a practitioner by any registered medical practitioner. Woman shall be sent to registered medical practitioner with her consent or with the consent of a person who is competent to give consent on her behalf. Such woman shall be sent to registered medical practitioner within 24 hours of the commission of the offence of rape. Such registered medical practitioner shall without delay examine the person of the victim of rape and prepare a report of his examination in detail including name,

---

28 Section 98 of the Code of Criminal Procedure, 1973
29 For details see Sections 53, 53A and 54 of the Code of Criminal Procedure, 1973
address, age, general mental condition and injuries on the person of the woman, reasons for the conclusion arrived, specifically record the consent of the woman or any person competent to give consent on her behalf for medical examination, exact time of commencement and completion of the examination. And registered medical practitioner shall without delay forward this report to the investigating officer who shall forward the report to the Magistrate.\textsuperscript{31} It is binding to attach report of medical examination of the victim of rape must be attached with the investigation report sent by police to the Magistrate.\textsuperscript{32}

\textbf{Investigation to be Completed within 3 Months in Case of Child Victim}

Children are the most vulnerable section of the society due to their immature understanding and weak physical strength. Law has made special provisions for their protection and overall development of their personality. When an offence is committed against the child, it will adversely affect the mental and physical health of the child. In most of the cases police are unable to investigate the case within a period of short span, this inefficiency on the part of police further aggravate the miseries of the child victims specially the victims of rape. To prevent this further victimization, legislature has made the investigation procedure time bound by providing that the investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded by the officer-in-charge of the police station.\textsuperscript{33}

\textbf{Mandatory Judicial Inquiry in Case of an Alleged Rape on a Woman}

Section 176 of the Code of Criminal Procedure has been amended to provide mandatory judicial inquiry in case of custodial rape of a woman.\textsuperscript{34} When rape is alleged to have been committed on any woman while such woman is in the police custody or in any other custody authorized by the Magistrate or the Court, in addition to the inquiry or investigation held by the police, an inquiry shall be held by the

\begin{itemize}
\item \textsuperscript{31} ibid
\item \textsuperscript{32} Section 173(2) (h) of the Code of Criminal Procedure, 1973
\item \textsuperscript{33} Section 173 (1A) of the Code of Criminal Procedure, 1973, it is inserted by the Code of Criminal Procedure (Amendment) Act, 2008.
\item \textsuperscript{34} Section 173 amended by the Code of Criminal Procedure (Amendment) Act, 2005
\end{itemize}

220
Judicial Magistrate, or the Metropolitan Magistrate as the case may be, within whose local jurisdiction the offence has been committed.\textsuperscript{35}

**Inquiry or Trial shall be Completed within a Period of Two Months in Case of Rape**

Supreme Court has consistently maintained that the right to speedy trial is part of guarantee of the fundamental right to life and personal liberty. The Law Commission of India in its ‘Report on Delays and Arrears in Trial Courts’\textsuperscript{36} recommended that a criminal case should be disposed off with in six months.\textsuperscript{37} Right to speedy trial is a fundamental right In every inquiry or trial, the proceedings shall be held as expeditiously as possible.\textsuperscript{38} Keeping in view the Supreme Court judgments and Law Commission report, legislature has amended the Criminal Procedure Code and made a provision that when the inquiry or trial relates to an offence of rape,\textsuperscript{39} the inquiry or trial shall be completed within a period of two months from the date of commencement of the examination of witnesses.\textsuperscript{40}

**Right to In-camera Trial**

The general rule is that every trial must be in open court.\textsuperscript{41} But cases may occur where the requirement of the administration of justice itself may make it necessary for the court to hold a trial in camera.\textsuperscript{42} If a trial is conducted in camera, it would help the victim to give her testimony comfortably. The presence of the public and the media produces a sense of shyness in the mind of the victim and she may not give testimony freely. Trial in camera would not only be in keeping with the self – respect of the victim of the crime and in tune with legislative intent but is also likely to improve the quality of evidence of a prosecutrix because she would not be so hesitant or bashful to depose frankly as she may be in open court, under the gaze of the public. The improved quality of her evidence would assist the courts in arriving at

\textsuperscript{35} Section 173 (1A)(b) of the Code of Criminal Procedure, 1973
\textsuperscript{36} Tiwana, Mandeep Article on ‘Criminal Justice Reforms’ published in The Tribune 8 July, 2006
\textsuperscript{37} See Sections 376 to 376D of the Indian Penal Code (45 of 1860)
\textsuperscript{38} Proviso to Section 309(1) of the Code of Criminal Procedure, 1973 inserted by the Code of Criminal Procedure (Amendment) Act, 2008
\textsuperscript{39} Section 327(1) of the Code of Criminal Procedure, 1973
\textsuperscript{40} Naresh Shridhar Mirajkar v. State of Maharashtra, AIR 1967 SC 221
the truth and sifting truth from falsehood. Legislature has provided that in case of inquiry into and trial of rape or custodial rape shall be conducted in camera and such in camera trial shall be conducted as far as practicable by a woman Judge or Magistrate and presence of woman trial judge will cushion against the insensitive inquisition by the defence counsel which can scar the victim with the feeling of being violated a second time. And it shall not be lawful for any person to print or publish any matter in relation to any such proceedings except with the permission of the court. The law’s response to the needs of victims of rape and other violent crimes against women has been inadequate. In imposing severe and maximum punishments for the offence and shifting the burden of proof, the law fails to address the needs of the victim to be treated with dignity, protection from intimidation, to readily access the justice mechanisms, to legal aid and to rehabilitation. There is yet no provision in the law mandating ‘in-camera’ trials particularly when the victim is a child.

### Right to Compensation

Section 357, 357A of the Code of Criminal Procedure, 1973 and section 5 of the Probation of Offenders Act, 1958 provides for order to pay compensation to the victims of crimes. These sections are discussed in detail in chapter IV of the research work.

### Right of Appeal in Case of Order of Acquittal of an Accused Person

The victim’s right of participation in the post-trial stage of the proceedings stands on a better footing. Appeal against an order of acquittal is an extraordinary remedy. If an order of acquittal is passed in any case instituted upon complaint and the High Court on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present an appeal to the High Court. An appeal from an order of acquittal in a case instituted

---

43 Gurmeet Singh v. State of Punjab 1996(2) SCC 384
44 Section 327(2) of the Code of Criminal Procedure, 1973
45 Second Proviso to Section 327(2) of the Code of Criminal Procedure, 1973 inserted by the Code of Criminal Procedure (Amendment) Act, 2008
46 Section 327(2) of the Code of Criminal Procedure, 1973
47 Section 376(2) prescribes a minimum sentence of 10 years and a maximum sentence of life imprisonment for certain severe forms of rape.
48 Section 114A, Evidence Act 1872 raises a presumption as to the absence of consent where the woman raped says in her evidence before the court that she did not consent.
49 An attempt is being made through a PIL in the Supreme Court (Sakshi v. Union of India (2001)10 SCC732) to get the legislature to remedy this lacuna.
50 Inserted by the Code of Criminal Procedure (Amendment) Act, 2008
51 Section 378(4) of the Code of Criminal Procedure, 1973
upon a complaint must be presented within 30 days from the grant of special leave to
appeal.\textsuperscript{52} The right of a victim’s near relative, who was not a party to the proceedings,
to file a Special Leave Petition under Article 136 of the Constitution in the Supreme
Court challenging an order of acquittal by the High Court was expressly recognized
by a Constitution Bench in P.S.R. Sadhanantham v. Arunachalam.\textsuperscript{53} In case of Ram
Singh @ Chhaju v. State of Himachal Pradesh,\textsuperscript{54} victim was raped by two persons,
trial court acquitted the accused persons. Because of defective investigation, blood
stained clothes were not sent for chemical examination by Police. The apex court held
that failure of investigating agency can not be a ground to discredit the testimony of
the victim. The victim had no control over the investigating agency and the
negligence, if any, of the investigating officer could not affect the creditability of the
statement of PW. On the basis of the evidence on record, the conviction of the
appellant can be sustained. Court further held that Appellate Court has full power to
review, re-appreciate and reconsider the evidence upon which the order of acquittal is
founded; the Code of Criminal Procedure, 1973 puts no limitation, restriction or
condition on exercise of such power.

The general principle is that the appeal shall not lie from any judgment or
order of a criminal court except as provided by the Code or by any other law for the
time being in force.\textsuperscript{55} Therefore it is necessary to bear in mind that an appeal is a
creature of statute and there is no inherent right of appeal.\textsuperscript{56} But the victim\textsuperscript{57} have a
right to prefer an appeal against any order passed by the court acquitting the accused
or convicting for a lesser offence or imposing inadequate compensation, and such
appeal shall lie to the Court to which an appeal ordinarily lies against the order of
conviction of such Court.\textsuperscript{58} This provision can act as a deterrent against frequent
instances of collusion between the prosecution and the accused.

\textsuperscript{52} Article 114 (b) of the Limitation Act, 1963
\textsuperscript{53} (1980) 3 SCC 141.
\textsuperscript{54} 2010(1) RCR (Criminal) SC 851
\textsuperscript{55} Section 372 of the Code of Criminal Procedure, 1973
\textsuperscript{56} see observations of Supreme Court in Akalu Ahir v. Ramdeo Ram, (1973) 2 SCC 583
\textsuperscript{57} Definition of word Victim is given under section 2(wa) which is inserted in Code of Criminal
Procedure by the Code of Criminal Procedure (Amendment) Act, 2008. According to this
provision “victim” means a person who has suffered any loss or injury caused by reason of the
act or omission for which the accused person has been charged and the expression “victim”
includes his or her guardian or legal heir.
\textsuperscript{58} Proviso to Section 372 of the Code of Criminal Procedure, 1973 inserted by the Code of
Criminal Procedure (Amendment) Act, 2008
Relaxation in Time Limit for Taking Cognizance of Matrimonial Offences

Statutes of limitation shut out belated and dormant claims in order to save the accused from unnecessary harassment. Bar of limitation to take cognizance of offence is not absolute.\(^5^9\) Wherever section 468 is applicable court must consider applicability of section 473 and condone the delay having regard to explanation for delay and interest of justice. Matrimonial offences relating to cruelty of husband on wife are in the nature of continuing offences to which bar of section 468 can not be applied in the interest of justice.\(^6^0\) In Arun Vyas v Anita Vyas\(^6^1\) the Supreme Court held that cruelty is a continuing offence and hence every act of cruelty would be a new starting point of limitation under section 472, Criminal Procedure Code. However, in cases of cruelty falling under section 498-A, the court should take cognizance of the offence even after the limitation period if the facts so warrant by placing reliance on section 473, Criminal Procedure Code, which provides that courts may take cognizance of an offence even beyond the limitation period in the interests of justice. The apex court held that if the woman is oppressed and interest of justice demand that court should protect the oppressed and punish the oppressor. It also observed that courts should construe liberally the provisions of section 473, Criminal Procedure Code, in favour of a wife who is subjected to cruelty.

Right of Prosecution for Offences against Marriage

Court shall not take cognizance of an offence punishable under Chapter XX of the Indian Penal Code except upon a complaint made by the person aggrieved by the offence.\(^6^2\) Chapter XX of Indian Penal Code contains six types of offences relating to marriage. They are deceitful cohabitation by man,\(^6^3\) bigamy,\(^6^4\) bigamy with concealment of former marriage,\(^6^5\) fraudulently going through marriage ceremony without lawful marriage,\(^6^6\) adultery\(^6^7\) and enticing etc. a married woman.\(^6^8\) But if a person is under the age of eighteen years or is an idiot or a lunatic, or is from sickness  

\(^{59}\) For details see Section 468 of the Code of Criminal Procedure, 1973
\(^{60}\) Vanka Radhamahalhari v. Vanka Reddy and others (1993) 3 SCC p. 4
\(^{61}\) AIR 1999 SC 3100
\(^{62}\) Section 198(1) of the Code of Criminal Procedure, 1973
\(^{63}\) Section 493 of Indian Penal Code, 1860
\(^{64}\) Section 494 of Indian Penal Code, 1860
\(^{65}\) Section 495 of Indian Penal Code, 1860
\(^{66}\) Section 496 of Indian Penal Code, 1860
\(^{67}\) Section 497 of Indian Penal Code, 1860
\(^{68}\) Section 498 of Indian Penal Code, 1860

224
or infirmity unable to make a complaint, or is a woman who according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the court, make a complaint on his or her behalf.\textsuperscript{69}

The provisions of this section apply to the abetment of, or attempt to commit, an offence as they apply to the offence.\textsuperscript{70} Court shall not take cognizance of an offence punishable under section 498A of the Indian Penal Code except upon a police report of facts which constitute the offence or upon a complaint made by the aggrieved wife or by her father, mother, brother, sister or by her father’s or mother’s brother or sister or, with the leave of the court, by any person related to her by blood, marriage or adoption.\textsuperscript{71} The object behind these provisions is to prevent strangers from interfering in family life when the aggrieved family members themselves are unwilling to agitate against any alleged wrong. If power is given to persons other than the aggrieved to initiate criminal proceedings in respect of any of the above-said offences there is considerable risk of mischievous intrusion and interference by outsiders in private family life.

\textbf{The Indian Evidence Act, 1872}

In Indian Evidence Act, the victim especially the women victim has been conferred with favorable privileges, in which certain presumptions are automatically taken in favour of the victim. The burden of proof is on the accused to rebut these presumptions. These are as follows:-

\textbf{Presumption as to Abetment of Suicide by a Married Woman}

The provision regarding presumption as to abetment of suicide by a married woman was inserted in the Indian Evidence Act \textsuperscript{72} as the dowry deaths have appeared like a wave. Killing takes place inside the protection of a home. Independent and outside evidence is generally not available. The members of the husband’s family are not likely to depose against him. There is nobody at the moment to record the women’s declaration. Peril originates from her own husband whom she was married with all the fanfare of religious ceremony and whom she has been trusting all along as her protector. When the protector himself becomes the cause of his wife’s drowning,

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{69} Proviso (a) to Section 198(1) of the Code of Criminal Procedure, 1973
\item \textsuperscript{70} Section 198(7) of the Code of Criminal Procedure, 1973
\item \textsuperscript{71} Section 198-A of the Code of Criminal Procedure, 1973
\item \textsuperscript{72} By the Criminal Laws (Second Amendment) Act, 1983
\end{itemize}
\end{footnotesize}
her cries are likely to remain unheard like those of ship-wrecked marines in the empty vastness of the ocean. When this is taken in the light of the principle of criminal courts that every accused is presumed to be innocent until his guilt is established beyond a reasonable doubt, it becomes very difficult for the courts to convict the accused. The whole burden of proof is upon the prosecution side. A little lacuna here or there and the accused family get the benefit of doubt. Circumstances loudly demand that there should be some burden of proof on the family in whose home a young married woman is lost by burning or otherwise. Some burden will naturally fall upon them to make their position clear if an adverse presumption is drawn against them. The new section creates a presumption against the husband and his family. As per this section, “when the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide with in a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relatives of her husband.”74

Deceased harassed by husband and his family – Suicide by wife within 7 years of marriage – A presumption can be drawn that husband and his family members abetted or instigated her to commit suicide. Appellants convicted for the offences under section 306, 498A/34, Indian Penal Code. Husband directed to deposit Rs.2 lacs as compensation and his sentence reduced to the period already undergone.75

Presumption as to Dowry Death

This presumption is inserted in Indian Evidence Act76 and to be read with section 304B of Indian Penal Code, 1860. Though basic burden is on the prosecution to establish the requirements for the application of the presumption, e.g., that the

73 How difficult it is to prove their guilt in the absence of this presumption can be seen in cases like: Som Nath v. State of Haryana AIR 1980 SC 1226; Yaswant v. State of Maharashtra AIR 1980 SC, 1270.
74 Section 113A of the Indian Evidence Act, 1872 and ‘Cruelty’ shall have the same meaning as in Section 498-A of Indian Penal Code, 1860.
75 Rajiv Narula v. State, 2010(6) RCR (Criminal )1483.
76 Section 113B of Indian Evidence Act, 1872, Inserted by the Criminal Laws (Second Amendment) Act, 1983 This Section provides that “When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with any demand for dowry. The court shall presume that such person had caused the dowry death.
incident took place within seven years of marriage. Where the prosecution established the ingredients of dowry death under section 304B of Indian Penal Code, it was held that onus was on the accused to rebut the presumption under section 113B. In other case of dowry death, bride committing suicide by hanging within 34 days of marriage at matrimonial home. There was no evidence that accused husband was putting pressure on deceased to arrange Rs. 50,000. Presumption rightly drawn that accused committed dowry death of his wife. Accused failed to refute the presumption and conviction of accused under section 304B of Indian Penal Code was upheld by the court. For the purposes of this section “Dowry Death” shall have the same meaning as in Sec 304-B pf the Indian Penal Code, 1860.

Presumption of Legitimacy

The presumption of legitimacy is a presumption of law, not a mere inference to be drawn from a process of logical reasoning from the fact of marriage and birth or conception during wedlock. It is a presumption founded upon public policy which requires that every child born during wedlock shall be deemed to be legitimate unless the contrary is proved. This presumption is of conclusive nature. According to this presumption the fact that any person was born during the continuance of valid marriage between his mother and any man, or within two hundred eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when it could have begotten.

Presumption as to Absence of Consent in Certain Prosecutions for Rape

The alarming frequency of crimes against women led the parliament to enact the Criminal Law (Amendment) Act, 1983 to make the law relating to rape more realistic. Sections 375 and 376 of Indian Penal Code were amended and certain more penal provisions were incorporated for punishing police custodians who molest women under their custody or care. Section 114A was added to the Evidence Act for drawing a conclusive presumption as to the absence of consent in certain prosecutions
for rape. The Criminal Procedure Code was also amended to provide for camera trial. The effect of the new provision is that where the question before the court is whether an intercourse between a man and a woman was with or without consent and the woman states in the court that it was against her consent, the court would presume that there was no consent. The burden of proof shifted to the accused. If accused is not able to prove that there was a consent, he becomes guilty. The requirements of the presumption are:

1. It is a proven fact that there has been intercourse;
2. The question is whether it was with or without consent;
3. The woman states before the court that she had not consented.

The amendment became necessary partly because of the growing incidence of rape and partly because of the sensational acquittal in Mathura rape case. If the present presumption had been in force at the time of decision of Mathura’s case, as soon as the girl had stated before the court that she had not consented, the whole burden of proving her consent would have shifted to the accused persons. If they had not been able to produce evidence of her consent, their conviction would have been sustained. A parallel provision strengthening this presumption is enshrined under section 146 read with 149 of the Indian Evidence Act, whose combined effect make it clear that the court can ask any question during cross examination except the one that ‘woman raped was generally of immoral character’. A provision has also been added to section 149 to help the women victim from being asked the questions about her immoral character.

No Unnecessary Questioning Regarding Past Character of Victim

In Delhi Domestic Working Women’s Forum v. Union of India, the Supreme Court observed that the victims invariably find the trial of an offence of rape a traumatic experience. The experience of giving evidence in court has been negative and destructive and the victims often expressed that they considered the ordeal of facing cross-examination in the criminal trial to be even worse than the rape itself. Keeping in view the observation of the apex court, legislature has amended the

---

84 See Tukaram v. State of Maharashtra, (1979) 2 SCC 143
85 1995(1)SCC 14
Evidence Act, thereby giving protection to a victim of rape from unnecessary questioning about her past character.86

**The Indian Penal Code, 1860**

Some sections of the society are vulnerable due to their age, mental condition or physical strength. It is the duty of a welfare state to protect these sections of the society. Article 15(3) of the Constitution provides that ‘Nothing in this article shall prevent the state from making any provision for women and children’. Further article 39(c) provides that the tender age of children is not abused. Clause (f) of article 39 stipulates that children are to be given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that youth should be protected against exploitation and against moral and material abandonment. Following provisions of the Indian Penal Code gives protection specially to women and children.

**Bar to Disclose the Identity of the Victim of Certain Offences**

Section 228-A has been inserted by the Criminal Law (Amendment) Act, 1983, with a view to protect identity of rape victims from public glare. In our country, the stigma attached to a rape victim is much more than the stigma attached to a person accused of rape. There have been instances, where sensitive cases have been sensationalized to the detriment of the rape victims. In order to protect their interest, this section has been enacted which makes the publishing or revealing the identity of any rape victim an offence. However, proceedings of police officials in charge of investigation and a publishing or printing of judgments of High Courts or the Supreme Court is excluded from the provisions of this section. The section also protects publication made with the consent of the victim in writing or the guardian of the victim, where the victim is a minor or a person of unsound mind. But, even such authorization shall be given only to a recognized social welfare institution.

The Supreme Court, keeping in view the legislative intent of section 228A and the social victimization and ostracisation of the victim of sexual assault on occasions

---

more than one, has advised the High Courts and lower courts not to indicate the name of the victim of sexual assault in their judgments even though the statutory restriction is not applicable to printing or publication of their judgments.

**Stringent Provision in Case of Dowry Deaths**

It is a very pathetic paradox of our contemporary times that on the one hand, marriage is a very cherished and fond dream of a man and his family and yet on the other, the most cruel and heinous crime, brutal death of a bride within the four walls of the matrimonial home culminates from it. This has become such a menacing reality that Parliament had to make dowry related death as crime. In view of this, a new section 304B has been inserted in the Indian Penal Code in the year 1986. According to this section where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within 7 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 relatives 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 caused her death. This section prescribes a minimum sentence of seven years of imprisonment that may extend to imprisonment for life in case of dowry death.

**Abetment of Suicide of Child**

If any person under 18 years of age commits suicide whoever abets the commission of such suicide shall be punished with death or imprisonment for life or imprisonment for a term not exceeding 10 years and shall also be liable to fine.

**Protection to the Unborn, Newborn or Other Children from being Killed or Abandoned**

The offences relating to children include causing of miscarriage, injuries to unborn children, abandonment and exposure of infants and concealment of births and disposal of dead bodies of children. These provisions are for the protection of

---

88 For detail see Dowry Prohibition Act, 1961
89 Section 305 of the Indian Penal Code, 1860
90 See Sections 312-318 of the Indian Penal Code, 1860
children. In our country where birth of a girl child is still considered a curse and a burden, female foeticide and female infanticide is very high. Such types of provisions in form of protection are desirable.

**Assault or Criminal Force to Woman with Intent to Outrage her Modesty**

If any person assaults or uses criminal force to any woman with intention to outrage or with knowledge that it would outrage her modesty, he shall be punished with imprisonment for 2 years or fine or both. There was a commission of digital rape, a girl child was sexually abused by the accused. Court considers that inadequacy of law on the subject has prevented trial court from awarding of sentences greater than imprisonment of 2 years. Law Commission of India in its 172nd report urged to parliament for change in the definition of rape with broad definition of sexual assault and there is need for amendment to Indian Penal Code. Innocent and tender children are sexually abused through variety of means one such mean is inserting of finger into private parts. Such type of incidents leave deep scar on psyche of child and has such a potential as to adversely affect emotional and mental development of the child.

**Kidnapping and Abduction**

The object of these sections is to protect minor children, person of unsound mind and woman in case of abduction from being seduced, harmed or otherwise exploited by others. Punishment for kidnapping is 7 years and fine. There is enhanced punishment for Kidnapping or maiming a minor for purposes of begging, Kidnapping or abduction in order to murder, Kidnapping for ransom, etc., Kidnapping, abducting or inducing woman to compel her marriage, Procuration of minor girl, Importation of girl from foreign country, Kidnapping or abducting in order to subject person to grievous hurt, slavery, unnatural lust.

**Sale or Purchase of Minors for Immoral Purposes**

Section 372 provides punishment for selling a person under the age of 18 years of either sex for the purpose of prostitution, illicit intercourse or for any other

---

91 With a view to preventing misuse of sex-determination techniques for the purpose of pre-natal determination leading to female foeticide, the Parliament in 1994 enacted the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994.
92 Section 354 of the Indian Penal Code, 1860
93 Tara Dutt v. State, 2010(6) RCR (Criminal ) 1797.
94 For more detail see Sections 359-369 of Indian Penal Code, 1860
immoral purpose, while section 373 provides punishment for a person who buys such a minor person.

**Sexual Offences against Women and Children**

In Indian society, chastity of woman is paramount consideration and virginity of a girl is paramount consideration in marriage. The whole family is socially ostracized, with both the girl and her family put to considerable shame and humiliating situation, once a girl victim of rape and loses her virginity. Whenever there is an act of ravishment of woman, civilization takes one step backward. Rape is forcible ravishment of a woman. The word ‘rape’ is derived from a latin term ‘rapio’, which means to seize. Therefore, rape means sexual intercourse with a woman without her consent by force, fear, or fraud. In other words, rape is a violence of the private person of a woman. It is an outrage by all canons. A rapist not only violates the victim’s personal integrity but leaves indelible marks on the very soul of the helpless female. Rape is defined under Section 375 of Indian Penal Code 1860. Punishment for rape is given under section 376 of IPC. The Section consists of two clauses. The 1st clause is in respect of rape generally. 2nd clause deals with instances of custodial rape. According to the 1st clause of the section, a person who is convicted of rape shall be punished with imprisonment of either description for a term which shall not be less than 7 years, but which may be life or for a term which may extend to 10 years and fine. If the woman raped is the wife of the man who is below 15 years, but above 12 years of age, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both. Under 2nd clause minimum imprisonment is 10 years for custodial rape. After the landmark judgment of Supreme Court in Mathura Rape Case, a number of substantial changes were introduced in the year 1983. The legal provisions of both the substantive and the procedural laws were amended to provide proper justice to the woman victim. The purview of this offence was widened by legislation in the year 1983 by inserting Sections 376-A to 376-D. A full fledge concept of custodial rape emerged from this amendment. Sections 376-A to 376-D relates to cases where the woman with whom

---

95 Phul Singh v. State of Haryana, AIR 1980 SC 240  
96 State of Maharashtra v. Rajendra J. Gandhi, (1997) 8 SCC 150  
97 For details see Section 375 of IPC, 1860.  
98 Tukaram Vs. State of Maharashtra AIR 1979 SC 185
sexual intercourse has been committed has consented but she had consented in such circumstances that could not have withheld her consent. Under section 376A if a man has sexual intercourse with his own wife during separation he shall be punished for 2 years imprisonment and shall also be liable to fine. Punishment is for 5 year if a Public Servant, Superintendent of Jail, remand home, etc., any member of the management or staff of the hospital has sexual intercourse with any woman not amounting to offence of rape.\textsuperscript{99}

In State of Punjab v. Gura Singh,\textsuperscript{100} accused committed rape on a girl aged 6 years. Inconsistencies in the statement made by the prosecutrix but there was no inconsistency regarding the fact that rape was committed upon her by the accused. Accused was convicted and sentenced to 10 years RI and to pay fine of Rs. 25,000/- And Court further held that in rape cases hyper –technical irregularities during trial can be safely ignored and a practical view that ensures justice to the victim, requires to be taken. Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and the victim belong. In number of cases Supreme Court directed to give protection and assistance to the victims of rape. Landmark judgment of the apex court in this regard is Delhi Domestic Working Women’s Forum v. Union of India & Ors,\textsuperscript{101} in which Supreme Court, highlighted the ordeals of victims of rape and defects in the present criminal law system vis-à-vis victims of rape and outlined a set of broad parameters to assist them. They are:

1. 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 the court, but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, counseling through medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked

\textsuperscript{99} For details see Sections 376A– to 376-D of Indian Penal Code, 1860
\textsuperscript{100} 2009(3) RCR (Criminal) Punjab and Haryana high Court (DB)p.278
\textsuperscript{101} (1995) 1 SCC 14.
after the complainant’s interests in the police station, represents her till the end of the case;

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

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

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

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

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

(7) It is necessary having regard to the directive principles contained under art 38(1) of the Constitution of India, to set up criminal injuries compensation board. Rape victims frequently incur substantial financial loss. Some, for example are too traumatized to continue in employment;

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

The court also directed the National Commission for Women (NCW) to formulate such a scheme within six months from the date of judgment (i.e October 19, 1996).

and the Union of India to examine it and to take necessary steps for its implementation.\textsuperscript{103} However, neither the NCW not the Union of India has taken any steps in formulating the recommended scheme. Nevertheless, the Supreme Court, in the absence of compensatory scheme has resorted to public law remedies to compensate victims of rape.\textsuperscript{104}

**Offences Relating to Marriage**

Chapter XX, IPC, deals with offences relating to marriage. There is growing opinion amongst a section of people that marriage and the relation of spouses within the marriage is in realm of personal lives and the State should not interfere in this regard. However in India, a wide variety of deceitful practices were found to exist, affecting marriage and marital relations, which necessitated turning them into penal offences. Given the nature of gender discrimination prevalent in the Indian society, most often it is women who are victims of offences relating to marriage.\textsuperscript{105}

Section 493 stipulates that the deception caused by the man should lead the woman to believe that she is lawfully married to him and she should have sexual intercourse with him in that belief. Thus, mere deception on the part of the man is not sufficient. It envisages the case when a man deceitfully induces a woman to have sexual intercourse with him causing her to believe that is lawfully married to her.\textsuperscript{106} Punishment for this offence is 10 years and fine.

Section 498 deals with criminal elopement or seduction. The first essential ingredient of this offence is the act of ‘taking or enticing away’ a married woman. And taking away or the enticing of the woman should be from the control of her husband or persons such as parents, parents-in-law etc. taking care of her on behalf of the husband. There must be intention to have illicit intercourse. Punishment for criminal elopement is 2 year imprisonment or fine or both. This section punishes not only the ‘taking or enticing away’ of a married woman, but also punishes those who

\textsuperscript{103} For further comments see KI Vibhute, ‘Victims of Rape and their Right to Live with Human Dignity and to be Compensated; Legislative and Judicial Responses in India’, Journal of the Indian Law Institute, 1999 Vol. 41, p 222.

\textsuperscript{104} Chairman, Rly Board V Chandrima Das (2000) 2 SCC 465.

\textsuperscript{105} PSA Pillai’s Criminal Law KI Vibhute, 10th edition 2008 LexisNexis Butterworths Wadhwa, Nagpur p.751

\textsuperscript{106} Moinside Kutty Haji v Kunhikoya and others AIR 1987 Ker. 184
‘conceal or detain’ a married woman with the intention that should have illicit intercourse with any person.

**Cruelty by Husband and/or his Relatives**

Chapter XX-A containing only one section 498-A dealing with cruelty of a woman by her husband or his relatives to coerce her and her parents to meet the material greed of dowry.\(^ {107}\) The object of adding this section is to punish the husband and the relatives of the husband who torture and harass a woman with a view to coerce her or any person related to her to meet any unlawful demand or derive the woman to commit suicide. Punishment for this offence may extend 3 years of imprisonment and fine. Legislative intention to insert this provision to Indian Penal Code is to prevent harassment to a woman who enters into a marital relationship with a person and later on becomes a victim of greed for money.\(^ {108}\)

In Bolla Sivanagi Reddy v. State of Andhra Pradesh\(^ {109}\) accused ill-treated his wife on account of dowry and also assaulted her. Evidence of wife with regard to such allegations corroborated by other witnesses—it can be said that ingredients of section 498-A, Indian Penal Code have been established by the prosecution. Accused convicted for harassing her wife on account of dowry. Both children of parties were studying. Accused is aged about 50 years. If sentence of imprisonment is not modified, children of accused, who are upcoming of their life will be victims—particularly daughter, who is to be married in near future, will be indirect victim due to quarrels between parties. Court directed husband to pay compensation of Rs.1,00,000/- in addition to maintenance of Rs.3000/- p.m. which he was already paying and sentence of imprisonment is modified to period already undergone.

**Word, Gesture or Act Intended to Insult the Modesty of a Woman**

When any person with intention to insult the modesty of any woman, utters any word, makes any gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or

---

\(^ {107}\) Section 498A of Indian Penal Code, 1860 is inserted by the Criminal Law (2nd Amendment) Act, 1983.

\(^ {108}\) Reema Aggarwal v Anupam and others AIR 2004 SC 1418

\(^ {109}\) 2010 Cri.L.J.8, Andhra Pradesh High Court
intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine or both.\textsuperscript{110}

**The Juvenile Justice (Care and Protection of Children) Act, 2000**

The Constitution has in several provisions including Article 15(3), Article 24, Article 41(e) and (f), 45, 47 impose on the State a primary responsibility of ensuring that all the needs of children are met and that their basic human rights are fully protected. Besides provisions for the protection of rights of the child in the Constitution, on International level also the General Assembly of the United Nations has adopted the Convention on the Rights of the Child on the 20\textsuperscript{th} November, 1989 and this Convention has prescribed a set of standards to be adhered to by all state parties in securing the best interests of the child. Further the Convention on the Rights of the Child emphasis’s social reintegration of child victims, to the extent possible, without resorting to judicial proceedings. And the Government of India has ratified the Convention on the 11\textsuperscript{th} December, 1992, so it is expedient to re-enact the existing law relating to juveniles bearing in mind the standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990) and all other relevant international instruments.

A review of the working of the Juvenile Act, 1986 would indicate that much greater attention is required to be given to children in conflict with law or those in need of care and protection. The justice system as available of adults is not considered suitable for being applied to a juvenile or the child or any one on their behalf including the police, voluntary organizations, social workers, or parents and guardians, throughout the country. The present Act consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment.

\textsuperscript{110} Section 509 of the Indian Penal Code, 1860
The object of the Act is not to punish the juvenile but to rehabilitate him or her, be it a delinquent juvenile or neglected juvenile. Juvenile in conflict with law and child in need of care and protection are defined under the Act. Elaborate provisions are given under the Act for the delinquent juveniles or neglected juveniles. Such as Observation Homes and Special homes are established under Section 8 and 9 respectively for the Juvenile in conflict with law.

Children in Conflict with Law

The State Government may, by notification in the Official Gazette, constitute for every district one or more Juvenile Justice Boards for exercising the powers and discharging the duties conferred or imposed on such Boards in relation to juveniles in conflict with law. And this Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of the first class, as the case may be, and two social workers of whom at least one shall be a woman. The Magistrate on the Board shall be designated as the principal magistrate. Such Magistrate must have special knowledge or training in child psychology or child welfare. No social worker shall be appointed as a member of the Board unless he has been actively involved in health, education or

---

111 Section 2(1) “Juvenile in Conflict with Law” means a Juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence.

112 Section 2(d) “child in need of care and protection” means a child.

i) who is found without any home or settled place or abode and without any ostensible means of subsistence,

ia) who is found begging or who is either a street child or a working child

ii) who resides with a person (whether a guardian of the child or not) and such person-

a) has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out, or

b) has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person.

iii) who is mentally or physically challenged or ill children or children suffering from terminal diseases or incurable diseases having no one to support or look after

iv) who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child,

v) who does not have parent and no one is willing to take care of or whose parents have abandoned him or who is missing and run away child and whose parents cannot be found after reasonable injury,

vi) who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse of illegal acts,

vii) who is found vulnerable and is likely to be inducted into drug abuse or trafficking,

viii) who is being or is likely to be abused for unconscionable gains,

ix) who is victim of any armed conflict, civil commotion or natural calamity

113 Section 4(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000

114 Section 4(2) of the Juvenile Justice (Care and Protection of Children) Act, 2000
welfare activities pertaining to children for at least seven years.\textsuperscript{115} The terms of the office of the members of the Board and the manner in which such member may resign shall be such as may be prescribed by the notification of the State Government.\textsuperscript{116}

The Act further provides that the appointment of any member of the Board may be terminated after holding inquiry, by the State Government if-

i. He has been found guilty of misuse of power vested under this Act.

ii. He has been convicted of an offence involving moral turpitude.

iii. He fails to attend the proceedings of the Board for consecutive three months without any valid reason or he fails to attend less than three-fourth of the sittings in a year.\textsuperscript{117}

A child in conflict with law can be produced before an individual member of the Board, when the Board is not sitting.\textsuperscript{118}

The Board constituted in this regard is empowered to deal exclusively with all proceedings under this Act, relating to juvenile in conflict with law and the powers conferred on the Board by or under this Act also be exercised by the High Court and the Court of Session, when the proceedings comes before them in appeal, revision or otherwise.\textsuperscript{119}

When a juvenile or the child is brought before the Magistrate not empowered to exercise the powers of a Board under this Act, the Magistrate shall without any delay record such opinion and forward the juvenile or the child, and the record of the proceedings to the competent authority such competent authority shall hold the inquiry.\textsuperscript{120}

A claim of juvenility may be raised before any Court and at any stage of the proceedings even after final disposal of the case.\textsuperscript{121}

\textsuperscript{115} Section 4(3) of the Juvenile Justice (Care and Protection of Children) Act, 2000
\textsuperscript{116} Section 4(4) of the Juvenile Justice (Care and Protection of Children) Act, 2000
\textsuperscript{117} Section 4(5) of the Juvenile Justice (Care and Protection of Children) Act, 2000
\textsuperscript{118} Section 5 of the Juvenile Justice (Care and Protection of Children) Act, 2000
\textsuperscript{119} Section 6 of the Juvenile Justice (Care and Protection of Children) Act, 2000
\textsuperscript{120} Section 7 of the Juvenile Justice (Care and Protection of Children) Act, 2000
\textsuperscript{121} Proviso to Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000, inserted by Juvenile Justice (Care and Protection of Children) Amendment Act, 2006
Observation Homes

The State Government may establish and maintain either by itself or under an agreement with voluntary organizations, observation homes in every district or a group of districts, for the temporary reception of any juvenile in conflict with law during the pendency of any inquiry. If the State Government is of opinion that any institution other than a home established or maintained under the Act, is fit for the temporary reception of juvenile in conflict with law during the pendency of any inquiry, it may certify such substitution as an observation home. The State Government may, frame rules for the management of observation homes, and the manner in which, the certificate of an observation home may be granted or withdrawn. Every juvenile who is not placed under the charge of parent or guardian and is sent to an observation home shall be initially kept in a reception unit of the observation home for preliminary inquiries, care and classification for juveniles according to his age group, giving due considerations to physical and mental status and degree of the offence committed.122

Special Homes

The State Government may establish and maintain either by itself or under an agreement with voluntary organizations, special homes in every district or a group of districts, for reception and rehabilitation of juvenile in conflict with law. If the State Government thinks that any institution other than a home established or maintained under the Act is fit for the reception of juvenile in conflict with law to be sent there, it may certify such institution as a special home. The State Government may frame rules for the management of special homes, including the standards and various types of services to be provided by them which are necessary for re-socialisation of a juvenile, and the circumstances under which and the manner in which, the certification of a special home may be granted or withdrawn. Such rules may also provide for classification and separation of juvenile in conflict with law on the basis of age and the nature of offences committed by them and his mental and physical status.123

When a juvenile in conflict with law is apprehended by the police, he has to be placed under the charge of the special juvenile police unit or the designated police

---

122 Section 8 of the Juvenile Justice (Care and Protection of Children) Act, 2000
123 Section 9 of the Juvenile Justice (Care and Protection of Children) Act, 2000
officer who shall produce the juvenile before the Board without any loss of time but within a period of twenty-four of his apprehension excluding the time necessary for the journey, from the place where the juvenile was apprehended, to the Board and the juvenile in conflict with law shall not be placed in a police lockup or lodged in a jail.124

Any person in whose charge a juvenile is placed in pursuance of the Act, shall be responsible for his maintenance, and the juvenile shall continue in his charge for the period stated by competent authority, notwithstanding that he is claimed by his parents or any other person.125

When any juvenile is arrested, the officer in charge of police station or the special juvenile police unit to which the juvenile is brought, as soon as may be after the arrest, has inform the parent or guardian of the juvenile about his arrest and direct him to be present at the Board before which the juvenile will appear and he has also to inform the probation officer of such arrest to enable him to obtain information regarding the antecedents and family background of the juvenile.126

Where a juvenile in conflict with law is produced before a Board, the Board shall hold an inquiry in a period of four months from the date of its commencement, unless the period is extended by the Board having regard to the circumstances of the case and in special cases after recording the reasons in writing for such extension. The Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall review the pendency of cases of the Board at every six months and shall direct the Board to increase the frequency of its sittings or may cause the constitution of additional Boards.127

Where a Board is satisfied on inquiry that a juvenile has committed an offence, then the Board may, if it thinks so fit,-

(a) allow the juvenile to go home after advice or admonition following appropriate inquiry against and counseling to the parent or the guardian and the juvenile;

124 Section 10 of the Juvenile Justice (Care and Protection of Children) Act, 2000
125 Section 11 of the Juvenile Justice (Care and Protection of Children) Act, 2000
126 Section 13 of the Juvenile Justice (Care and Protection of Children) Act, 2000
127 Section 14 of the Juvenile Justice (Care and Protection of Children) Act, 2000
(b) direct the juvenile to participate in group counseling and similar activities;
(c) order the juvenile to perform community service;
(d) order the parent of the juvenile or the juvenile himself to pay a fine, if he is over fourteen years of age and earns money;
(e) direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety, as the Board may require for the good behaviour and well-being of the juvenile for any period not exceeding three years;
(f) direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behaviour and well-being of the juvenile for any period not exceeding three years;
(g) make an order directing the juvenile to be sent to a special home for a period of three years.

The Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case it is expedient so to do, for reasons to be recorded reduce the period of stay to such period as it thinks fit. The Board before passing an order shall take into consideration the findings of the social investigation report on juvenile submitted by a probation officer or a recognized voluntary organization. Where an order under clause (d), clause (e) or clause (f) above is made, the Board may in the interest of the juvenile and of the public, make an order that the juvenile in conflict with law shall remain under the supervision of a probation officer named in the order during such period, not exceeding three years as may be specified therein. But if at any time afterwards, it appears to the Board on receiving a report from the probation officer or otherwise, that the juvenile in conflict with law has not been of good behaviour during the period of supervision or that the fit institution under whose care the juvenile was placed is no longer able or willing to ensure the good behaviour and well-being of the juvenile it may, after making such inquiry as it deems fit, order the juvenile in conflict with law to be sent to a special home. The Board shall explain to the juvenile and the parent, guardian or other fit person or fit institution, as the case may be, the terms and conditions of the supervision order and shall forthwith furnish
one copy of the supervision order to the juvenile, the parent, guardian or other fit person or fit institution, as the case may, the sureties, if any, and the probation officer.\textsuperscript{128}

Juvenile in conflict with law shall not be sentenced to death or life imprisonment, or committed to prison in default of payment of fine or in default of furnishing security. Where a juvenile who has attained the age of sixteen years has committed an offence and the Board is satisfied that the offence committed is of so serious in nature or that his conduct and behaviour have been such that it would not be in his interest or in the interest of other juvenile in a special home to send him to such special home the Board may order the juvenile in conflict with law to be kept in such place of safety and in such manner as it thinks fit and shall report the case for the order of the state Government. On receipt of a report from a Board the State Government may make such arrangement in respect of the juvenile as it deems proper and may order such juvenile to be kept under protective custody at such place and on such conditions as it thinks fit provided that the period of detention so ordered shall not exceed the maximum period of imprisonment to which the juvenile could have been sentenced for the offence committed.\textsuperscript{129}

The provisions of the Chapter VIII of the Code of Criminal Procedure\textsuperscript{130} shall not be applicable on juvenile. Juvenile can not be charged with or tried for any offence together with a person who is not a juvenile.\textsuperscript{131}.

A juvenile who has committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification, if any, attaching to a conviction of an offence under such law.\textsuperscript{132}

All proceedings in respect of a juvenile pending in any court at the commencement of this Act, shall be continued in that court, and if the court finds that the juvenile has committed an offence, it shall record such findings and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board passing appropriate orders in respect of the juvenile in accordance with the provisions

\begin{itemize}
  \item \textsuperscript{128} Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2000
  \item \textsuperscript{129} Section 16 of the Juvenile Justice (Care and Protection of Children) Act, 2000
  \item \textsuperscript{130} Deals with Security for Keeping the Peace and for Good Behaviour
  \item \textsuperscript{131} Section 17&18 of the Juvenile Justice (Care and Protection of Children) Act, 2000 respectively.
  \item \textsuperscript{132} Section 19 of the Juvenile Justice (Care and Protection of Children) Act, 2000
\end{itemize}
of this Act. The Board may for any adequate and special reason to be mentioned in the order review the case and pass appropriate order in the interest of such juvenile.  

Newspapers, magazines, news-sheet or visual media have been prohibited to disclose the name, address or school or any other particulars calculated to lead to the identification of the juvenile in conflict with law or a child in need of care and protection nor they can publish any picture of such juvenile. Any person who contravenes this provision shall be punishable with fine up to one thousand rupees.  

Any police officer may taken charge without warrant of a juvenile in conflict with law who has escaped from a special home or an observation home or from the care of a person under whom he was placed, and shall be sent back to the special home or the observation home or that person, as the case may be, and no proceeding shall be instituted in respect of the juvenile by reason of such escape, but the special home, or the observation home or the person may, after giving the information to the Board which passed the order in respect of the juvenile, take such steps in respect of the juvenile as may be deemed necessary.  

Whoever, assaults, abandons, express or willfully neglects the juvenile or causes or procures him to be assaulted, abandoned exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both. In State v. Rameez, FIR was registered against policemen under sections 5(2),5(3) and 23 of the Act. In this case Delhi High Court held that physical and sexual abuse of juveniles in police station were certainly not acts performed by policemen in the course of their official duty - Statements by juveniles disclosed the commission of cognizable offences by policemen concerned. There can not be any question of State trying to defend such policemen. Court gives direction to area DCP to transfer investigation to any independent agency.  

Section 24 provides whoever employs or uses any juvenile or the child for the purpose or causes any juvenile to beg shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine. Sub-section (2)

---

133 Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000
134 Section 21 of the Juvenile Justice (Care and Protection of Children) Act, 2000
135 Section 22 of the Juvenile Justice (Care and Protection of Children) Act, 2000
136 Section 23 of the Juvenile Justice (Care and Protection of Children) Act, 2000
137 2010(6)RCR(Criminal)782 (Delhi)
of the Section 24, Whoever, having the actual charge of, or control over, a juvenile or the child abets the commission of the offence punishable under sub-section (1), shall be punishable with imprisonment for a term which may extend to one year and shall also be liable to fine.

**Children in Need of Care and Protection**

**Child Welfare Committee**

The State Government may, by notification in Official Gazette, constitute for every district one or more Child Welfare Committees for exercising the powers and discharge the duties conferred on such committees in relation to child in need of care and protection. Such Committee shall consist of a Chairperson and four other members as the State Government may think fit to appoint, of whom at least one shall be a woman and another, an expert on matters concerning children. The appointment of any member of the Committee may be terminated after holding inquiry by the State Government, if-

- He has been found guilty of misuse of power vested under this Act.
- He has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or he has not been granted full pardon in respect of such offence;
- He fails to attend the proceedings of the Board for consecutive three months without any valid reason or he fails to attend less than three-fourth of the sittings in a year. And the Committee shall function as a Bench of Magistrate and shall have the powers conferred by the Code of Criminal Procedure, 1973 on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the first class.\(^{138}\)

**Procedure etc., in relation to Committee**

The Committee shall meet at such times and shall observe such rules of procedure in regard to the transaction of business at its meetings, as may be prescribed and a child in need of care and protection may be produced before an individual member for being placed in safe custody or otherwise when the Committee

---

\(^{138}\) Section 29 of the Juvenile Justice (Care and Protection of Children) Act, 2000
is not in session. In the event of any difference of opinion among the members of the Committee at the time of any interim decision, the opinion of the majority shall prevail but where there is no such majority the opinion of the Chairperson shall prevail. An order made by the Committee shall not be invalid by reason only of the absence of any member during any stage of the proceeding.  

The Committee shall have the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs and protection of human rights. Where a Committee has been constituted for any area, such committee shall have the power to deal exclusively with all proceedings under this Act relating to children in need of care and protection.  

Children in need of care and protection can be produced before the Committee by one of the following persons:-

(i) any police office or special juvenile police unit or a designated police officer;
(ii) any public servant;
(iii) childline, a registered voluntary organization or by such other voluntary organization or an agency as may be recognized by the State Government;
(iv) any social worker or a public spirited citizen authorized by the State Government; or
(v) by the child himself.

Child shall be produced before the committee within a period of twenty four hours excluding the time necessary for the journey. The State Government may make rules consistent with this Act to provide for the manner of making the report to the police and to the committee and the manner of sending and entrusting the child to children’s home pending the inquiry.

On receipt of a report under section 32, the Committee shall hold an inquiry in the prescribed manner and the Committee, on its own or on the report from any

139 Section 30 of the Juvenile Justice (Care and Protection of Children) Act, 2000
140 Section 31 of the Juvenile Justice (Care and Protection of Children) Act, 2000
141 This is also a Fundamental Right under Article 22 of the Constitution.
142 Section 32 of the Juvenile Justice (Care and Protection of Children) Act, 2000
person or agency as mentioned in sub-section (1) of section 32, may pass an order to
send the child to the children’s home for speedy injury by a social worker or child
welfare officer. The inquiry under this section shall be completed within four months
of the receipt of the order or within such shorter period as may be fixed by the
Committee provided that the time for the submission of the inquiry report may be
extended by such period as the Committee may, having regard to the circumstances
and for the reasons recorded in writing, determine. The State Government shall
review the pendency of cases of the Committee at every six months and shall direct
the committee to increase the frequency of its sittings or may cause the constitution of
additional Committees.143 After the completion of the inquiry if the Committee is of
the opinion that the said child has no family or ostensible support, it may allow the
child to remain in the children’s home or shelter home till suitable rehabilitation is
found for him or till he attains the age of eighteen years.144

Children’ Homes

The State Government may establish and maintain either by itself or in
association with voluntary organizations, children’s homes, in every district or group
of districts, as the case may be, for the reception of child in need of care and
protection during the pendency of any inquiry and subsequently for their care,
treatment, education, training, development and rehabilitation. The State Government
may by rules made under this Act provide for the management of children’s homes
including the standards and the nature of services to be provided by them and the
circumstances under which, and the manner in which, the certification of a children’s
home or recognition to a voluntary organization may be granted or withdrawn.145

All institutions whether State Government run or those run by voluntary
organizations for children in need of care and protection shall be registered under the
Act.146

Shelter Homes

State Governments have been empowered to recognize reputed and capable
voluntary organizations and provide them assistance to set up and administer shelter

143 Substituted by the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006
144 Section 33 of the Juvenile Justice (Care and Protection of Children) Act, 2000
145 Section 34 of the Juvenile Justice (Care and Protection of Children) Act, 2000
146 Inserted by the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006
homes for juveniles or children. These shelter homes shall function as drop-in-centres for the children in the need of urgent support.¹⁴⁷

Restoration of and protection to a child shall be the prime objective of any children’s home or the shelter home. The Children’s home or a shelter home, as the case may be, shall take such steps as are considered necessary for the restoration of and protection to a child deprived of his family environment temporarily or permanently where such child is under the care and protection of a children’s home or a shelter home, as the case may be. The Committee shall have the powers to restore any child in need of care and protection to his parent, guardian, fit person or fit institution, as the case may be, and give them suitable directions. For the purposes of this section “restoration of child” means restoration to- (a) parents; (b) adopted parents; (c) foster parents; (d) guardian; (e) fit person; (f) fit institution.¹⁴⁸

Rehabilitation and Social Reintegration

Section 40 provides that the rehabilitation and social reintegration of a child shall begin during the stay of the child in a children’s home or special home and the rehabilitation and social reintegration of children shall be carried out alternatively by (i) adoption (ii) foster care (iii) sponsorship, and (iv) sending the child to an after-care organization.

Adoption¹⁴⁹

The primary responsibility for providing care and protection to children shall be that of his family. Adoption shall be resorted to for the rehabilitation of the children who are orphan, abandoned or surrendered through such mechanism as may be prescribed. In keeping with the provisions of the various guidelines for adoption issued from time to time by the State Government, the Board shall be empowered to give children in adoption and carry out such investigations as are required or giving children in adoption in accordance with the guidelines issued by the State Government from time to time in this regard. The children’s homes and the institutions run by State Government or a voluntary organization for children in need of care and protection who are orphan, abandoned or surrendered shall ensure that these children are declared free for adoption by the Committee and all such cases shall

¹⁴⁷ Section 3 of the Juvenile Justice (Care and Protection of Children) Act, 2000
¹⁴⁸ Section 39 of the Juvenile Justice (Care and Protection of Children) Act, 2000
¹⁴⁹ Section 41 of the Juvenile Justice (Care and Protection of Children) Act, 2000
be referred to the adoption agency in that district for placement in accordance with the
guideline notified by the State Government.

Child shall not be offered for adoption-

- until two members of the Committee declare the child legally free for
placement in the case of abandoned children.
- till the two months period for reconsideration by the parent is over in the case
of surrendered children.
- without his consent in the case of a child who can understood and express his
consent.

The Court may allow a child to be given in adoption-

- to a person irrespective of marital status; or
- to parents to adopt a child of same sex irrespective of the number of living
biological sons or daughters.
- to childless couples.

Foster Care

The foster care may be used for temporary placement of those infants who are
ultimately to be given for adoption. In foster care, the child may be placed in another
family for a short or extended period of time, depending upon the circumstances
where the child’s own parent usually visit regularly and eventually after the
rehabilitation, where the children may return to their own homes. The State
Government may make rules for the purposes of carrying out the scheme of foster
care programme of children.150

Sponsorship

The sponsorship programme may provide supplementary support to families,
to children’s homes and to special homes to meet medical nutritional, educational and
other needs of the children with a view to improving their quality of life. The State
Government may make rules for the purposes of carrying out various schemes of
sponsorship if children, such as individual to individual sponsorship, group
sponsorship or community sponsorship.151

150 Section 42 of the Juvenile Justice (Care and Protection of Children) Act, 2000
151 Section 43 of the Juvenile Justice (Care and Protection of Children) Act, 2000
After-care organization

The State Government may, by rules made under this Act, provide-

(a) for the establishment or recognition of after-care organizations and the functions that may be performed by them under this Act;

(b) for a scheme of after-care programme to be followed by such after-care organizations for the purpose of taking care of juveniles or the children after they leave special homes, children homes and for the purpose of enabling them to lead an honest, industrious and useful life;

(c) for the preparation or submission of a report by the probation officer or any other officer appointed by that Government in respect of each juvenile or the child prior to his discharge from a special home, children’s home, regarding the necessity and nature of after-care of such juvenile or of a child, the period of such after-care, supervision thereof and for the submission of report by the probation officer or any other officer appointed for the purpose, on the progress of each juvenile or the child;

(d) for the standards and the nature of services to be maintained by such after care organizations;

(e) for such other matters as may be necessary for the purpose of carrying out the scheme of after-care programmed for the juvenile or the child;

It is provided that any rule made under this section shall not provide for such juvenile or child to stay in the after-care organization for more than three years and further provided that a juvenile or child over seventeen years of age but less than eighteen years of age, would stay in the after-care organization till he attains the age of twenty years.\(^{152}\)

The State Government may make rules to ensure effective linkages between various governmental, non-governmental, corporate and other community agencies for facilitating the rehabilitation and social reintegration of the child.\(^{153}\)

\(^{152}\) Section 44 of the Juvenile Justice (Care and Protection of Children) Act, 2000

\(^{153}\) Section 45 of the Juvenile Justice (Care and Protection of Children) Act, 2000