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## READING MATERIAL

Volume - 1

# TRAINING OF EMPANELLED LAYERS IN JHARKHAND ON VIOLENCE AGAINST WOMEN & VIOLENCE AGAINST CHILD

19<sup>th</sup> & 20<sup>th</sup> September, 2015 (Saturday & Sunday)  
at Jamshedpur

Organized by  
Jharkhand State Legal Services Authority (JHALSA)  
in association with  
Lawyer's Collective Women's Rights Initiative, (LCWRI)  
&  
District Legal Services Authority, Jamshedpur

This Reading Material is also available on official website of JHALSA "[www.jhalsa.org](http://www.jhalsa.org)"

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Date : 19<sup>th</sup>-20<sup>th</sup> September, 2015 (Saturday-Sunday)

Venue : Civil Court, Jamshedpur

*Organised by :*

**JHARKHAND STATE LEGAL SERVICES AUTHORITY**

in association with

**LAWYERS COLLECTIVE WOMEN'S RIGHTS INITIATIVE (LCWRI)**

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**DISTRICT LEGAL SERVICES AUTHORITY, JAMSHEDPUR**

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# CONTENTS

## VOLUME - I

### SPEECHES

1. Address By Hon'ble Mr. Justice P. Sathasivam, Chief Justice of India  
At The Book Release Function  
Organised By – Lawyers' Collective Women's Rights Initiative ..... 1

### BARE ACTS

2. The Protection of Women from Domestic Violence Act, 2005 ..... 9
3. The Protection of Children from Sexual Offences Act, 2012 ..... 21
4. This Sexual Harassment of Women at Workplace  
(Prevention, Prohibition And Redressal) Act, 2013 ..... 37
5. The Criminal Law (Amendment) Act, 2013..... 50

## VOLUME - 2

### JUDGMENTS

6. AIR India Vs. Nergesh Meerza and Ors..... 67
7. Danial Latifi & Anr.Vs. Union Of India ..... 102
8. Shabnam Hashmi Vs. Union of India (UOI) and Ors..... 116
9. Vishaka and others Vs. State of Rajasthan and Others..... 122
10. V.D. Bhanot Vs. Savita Bhanot..... 130
11. D.Velusamy vs D. Patchaiammal ..... 134
12. Indra Sarma Vs.V.K.V. Sarma ..... 140
13. S.R. Batra and Anr.Vs. Smt. TarunaBatra ..... 160
14. K. Srinivas Rao Vs. D.A. Deepa..... 165
15. Lalita Kumari Vs. Govt. of U.P. and Ors..... 177
16. Arnesh Kumar Vs. Respondent: State of Bihar ..... 215
17. Apparel Export Promotion Council Vs.A.K. Chopra ..... 222

## **VOLUME - 3**

### **ARTICLES / REPORTS**

18.	Monitoring Guidelines for NCPCR / SCPCR for Roles and Functions of Various Stakeholders .....	235
19.	Monitoring Guidelines for NCPCR / SCPCR for Roles and Functions of Various Stakeholders .....	281
20.	Bringing Rights Home: Review of the Campaign for a Law on Domestic Violence in India .....	322
21.	Concern for the Dead, Condemnation for the Living : Indira Jaising .....	335
22.	Standard Practice Directions for the Effective Implementation of the Protection of Women from Domestic Violence Act, 2005.....	342

## **VOLUME - 4**

### **MISCELLANEOUS**

23.	Amicus Brief .....	359
24.	Impleadment Application filed by Icwri in the case of .....	503
25.	A Brief synopsis of the new offences/procedures recommended by the Justice Verma committee on amendments to criminal law .....	512

# **SPEECHES**



**ADDRESS BY HON'BLE MR. JUSTICE P. SATHASIVAM,  
CHIEF JUSTICE OF INDIA AT THE BOOK RELEASE  
FUNCTION ORGANISED BY – LAWYERS' COLLECTIVE  
WOMEN'S RIGHTS INITIATIVE**

At the outset, I extend my warm felicitation to all the luminaries present in this august gathering. It gives me great pleasure in releasing the two books titled *“Locating the Survivor in the Indian Criminal Justice System: Decoding the law”* and *“Engaging with the Criminal Justice System: A Guide for Survivors of Sexual Violence”* compiled by the Lawyers' Collective Women's Rights Initiative Organization. The release of the publication is timelier than ever before.

**Dispel ignorance; make rights an enduring asset**

Rights are the most cherished and enduring assets of each individual. It loses its value if the individuals are oblivious of the significance of their rights that are bestowed on them. Women across the globe face harassment in one form or the other from the society although they have the same rights as their male counterpart. One of the main reasons, attributed to this state of affair is due to ignorance about their guaranteed rights. Achieving cultural maturity through education and awareness of rights is the necessary approach to bring in the required change.

**Popularize the Handbooks**

These two books endeavor to enlighten the rights of the women folks of our country and also highlight the protection guaranteed under the various schemes of law. I had the occasion to flip through the pages of these two books beforehand and I will have to admit that the research work put in by the Lawyers' Collective Women's Rights Initiative Organization is noteworthy, and deserves deep appreciation. Moreover the style adopted in these books is one of articulating complex provisions of the law in simple English that is easily comprehensible. I am confident that these books will serve as the mode and medium of access to our composite justice system. I take this occasion to also suggest that publishing these books in vernacular or all Indian languages and circulating among the public at nominal cost will go a long way in achieving its objective.

**The Ideal versus Ground Reality**

An analysis of the National Crime Records Bureau data for 2010-2012 shows that the rate of conviction for all major IPC crimes against women has declined. The conviction rate for rape has declined from 26.6 in 2010 to 24.2 in 2012; for molestation, from 29.7 to 24 in the same period; and for eve teasing, from 52.8 in 2010 to 36.9 in 2012. This low conviction rate points to women/prosecutrix dropping out during the trial proceedings due to re-victimization. These disturbing trends point to the inconvenient truth that gender equality and social justice remain an ideal. On the other hand, crimes such as rape, sexual assault, acid attacks, honour killing and dowry deaths are the ground realities.

**Spread awareness on rights and on the consequences of legal infringements**

Observing this disheartening scenario, the Code of Criminal Procedure and the Indian Penal Code has been specifically amended by recent amendment dated 03.02.2013 in order to advance the safeguards for women in such circumstances. These two books compiled by the Lawyers' Collective Women's Rights Initiative has precisely or finely carved out or broken down the appropriate provisions in a meticulous manner and catalogued it in a stage-wise mode the process from filing of FIR to right of the victim for compensation and highlighted the various rights guaranteed under the criminal law. These books will be very helpful to the victims of such crimes besides being informative to all people in general. I believe that if more people are aware of the



prevailing laws and the consequence of their violations, there will be lesser infringement of the same. As adequate deliberation is already undertaken about the provisions in the Criminal Law (Amendment) Act, 2013, I wish not to focus on the same subject once again.

### **Stakeholders' Role and Responsibility**

Apart from the efforts by the legislature, the role of lawyers, judges, and police is inevitable if the real cause of the provisions enumerated is to be enforced. With no implementation by these stakeholders, the provisions in the recent criminal amendment act will be rendered infructuous.

In an epoch making decision in Delhi Domestic Working Women's Forum vs. UOI and others, (1995) 1 SCC 14, the Supreme Court issued guidelines for providing legal assistance in rape cases. The major directions worth recalling are:

- a) Complainants of sexual assault cases should be provided with legal representation. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station represents her till the end of the case.
- b) Legal assistance will have to be provided at the police station since the victim will be in a distressed state. Guidance and support of a lawyer at this stage would be of great assistance to her.
- c) Police should inform her of her right to representation.
- d) A list of advocates willing to act in these cases should be kept at the police station for victims.

Recent instances of detention of victims of sexual assault in police stations and suicide attempts post trauma is disturbing to say the least; and reaffirms the need for pro-active role of legal services authorities in reaching out to the girls and women in need of quick and quality legal aid and assurance.

The need of the hour is to redouble our efforts and provide legal services to the women through a more targeted approach. Every State Legal Services Authorities must undertake this task by reaching out to women in despair. This will be a great challenge owing to various obstacles. But it is also an opportunity which requires creative solutions and better coordination among legal professionals, NGOs and State Legal Services Authorities.

### **ROLE OF COURTS**

Apart from State Legal Services Authorities, the judiciary being the institution providing legal services has a critical role in safeguarding the rights of the victim. It is my firm belief that courts and judges throughout India must continue to play a progressive, dynamic, creative and proactive role for social, economic and cultural transformation.

Here it is apt to quote Justice Krishna Iyer,

***"The fight is not for woman's status but for human worth. The claim is not to end inequality of women but to restore universal justice".***

Thus, judges must try to ensure that legal system is gender just and fair. While deciding cases, Courts have a constitutional duty to not shut their eyes to the reality of prevailing patriarchy. Delay in registering the FIR in rape cases does not necessarily have to lead to doubt the veracity of the complaint made by the victim.

Likewise, the Courts in numerous occasions have held that the sole testimony of the prosecutrix is sufficient for conviction without corroboration of evidence if the statement is credible and beyond any shadow of doubt. I assure the audience, the general public and the British

High Commissioner that our judicial system is well developed. While protecting the victim there are several safeguards for the alleged accused as well. When the Nirbhaya case was heard by the Division Bench of the Delhi High Court many petitions were filed in the Supreme Court, on behalf of the accused. Ultimately we directed the High Court to postpone the hearing for two weeks because we asked the prosecution to translate all the materials into Hindi, which is the language familiar to the accused and supply the copies to them. Thereafter we directed the High Court to proceed further.

Today the call is for a gender sensitive approach. Courts have a role in giving such an interpretation to beneficial and welfare legislation which serves to ameliorate the status and conditions of women in our society. There have been many instances when the Apex Court of our country, being the guardian of fundamental rights, has taken suo moto action against such crimes. The gang rape of a 20 year old woman in Subalpur Village in the State of West Bengal is one such incident in the recent past. This case was an incident of epitome of aggression against women, wherein a young girl was gang raped on the orders of community panchayat as the punishment for having a relationship with a man from a different community. As absurd as it may sound but that is the reality in our contemporary society. The courts are required to be more vigilant and sensitive to such crimes and issue suitable orders at appropriate time for safeguarding the interest of women in our society. Likewise, aggression against women in riot areas is another recurring crime, which the concerned State governments must take it seriously and should take the necessary steps for prevention.

Another vital aspect wherein the Courts exercise its discretionary powers is at the stage of awarding compensation to the victim of the crime. It is true no compensation can be adequate nor can it be of any respite for the victim but if the State fails in protecting such serious violation of a victim's fundamental right, the State is duty bound to provide compensation, which may help in the victim's rehabilitation. The humiliation or the reputation that is snuffed out cannot be recompensed but then monetary compensation will at least provide some strength and solace. Thus, the Courts must take into account all these aspects before awarding the appropriate compensation. The difficult task before courts is to harmonize gender equality with gender differentiation in order to ensure gender justice in its truest sense. This requires careful balancing and must depend on facts and circumstances of each case.

### **ROLE OF LEGAL PROFESSIONALS**

The paradigm of women and law has elements of continuity and change. While the legislatures and courts continue their efforts to address new challenges emerging from changing dynamics of our social fabric, the role of legal professionals is foremost in rendering legal services. Lawyers must participate in legal literacy camps, spread legal awareness and offer their time and expertise as legal aid counsels. The role of prosecutors and defence counsels is to assist the judges in arriving at the truth. They must conduct the cases without any bias against any sex and adopt a sensitive approach in examining, cross-examining, exhibiting evidence etc. They must remember that the central role of legal profession is to promote the administration of justice.

The role of women lawyers becomes more vital in matters such as those involving domestic violence, gender discrimination, child abuses and other violence related to women and children, since women have greater empathy, understanding and acceptance among the victims. I firmly believe that enhancing the role of women in the legal profession is very essential.

Immediately after assuming the office of the Chief Justice of India, my first work was to write a letter to all the Chief Justices. In that letter, I emphasized that whenever you [the Chief Justices] fill up vacancies, you must give greater representation to women, backward community persons as well as SC / ST persons and minority communities. In order to attract candidates, I requested the Chief Justices to exercise some "concessions." I then received a letter asking what

type of “concessions” can we give, to which I suggested that if a woman candidate is not available as required you [the Chief Justices] can relax norms such as those related to last drawn salary, or if her cases have not been sufficiently published or reported – the minimum number of cases handled by her be considered sufficient. We are now getting several names, some of whom are under consideration and some who have been already considered.

**ROLE OF POLICE**

The problem area of investigation of crimes against women is reflected in the statistics. As already asserted, there is drop in conviction rate as opposed to increasing crime rate. A lot needs to be done to improve the functioning of the police and its machinery of crime investigation. Women’s experiences have brought these inadequacies into sharp focus. Some States have set up Women’s Cells in some police stations. I take this occasion to implore upon all States to implement the same at the earliest.

Police personnel are the important link between legal aid committees and women victims. They perform a dual role of informing the victim of her right to legal aid and further intimate the legal aid committee. Thus, co-operation among them is paramount for rendering effective justice. Thus, legal services can be a tool for women empowerment provided all the above institutions play their role dutifully and proactively.

**FINAL REMARKS**

The human rights of women are inalienable, integral and indivisible part of universal human rights. Thus, full and equal participation of women in political, civil, economic, social and cultural life at the national, regional and international levels, and the eradication or elimination of all forms of discrimination on the ground of sex should be the priority of each one of us.

Although, through law, women have indeed, over the years, secured for themselves many entitlements, but so far they have not been able to defend themselves from crimes committed against them due to societal prejudices.

Women empowerment is fundamental to create a culture of justice and translate the rhetoric of gender equality into action. Judiciary and members of legal profession have a role to play in ensuring that women are treated with dignity, that they have equal access to justice and that the outcome for them is one of the true equality.

In the proposal or recommendations submitted by the Lawyers Collective organization on developing the service delivery framework for rape survivors, many valuable suggestions have been projected, which will help in ending re-victimization. After all, it is only with constant thinking and deliberations, we can ensure that statutes do not remain mere statutes, but evolve into a legal system responsive and sensitive enough to meet the challenges of present times with an eye on future.

Before I wind up my address, I desire to give a word of praise for all such organizations like the Lawyers Collective Women’s Rights Initiative, which work tirelessly in the movement for protection of human rights and ultimately shapes the future of our country from the bottom-up or the grassroots. I record my appreciation for the critical role that your organization is playing in the progress of our country. My gratitude to all of you for giving me the privilege of being part of this movement for sensitization of women folks in our country. Thank you.

□□□

# **Bare Acts**





# भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given in this Part in order that it may be filed as a separate compilation.

**MINISTRY OF LAW AND JUSTICE**

(Legislative Department)

*New Delhi, the 14th September, 2005/Bhadra 23, 1927 (Saka)*

The following Act of Parliament received the assent of the President on the 13th September, 2005, and is hereby published for general information.—

## **THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005**

No. 43 of 2005

[13th September, 2005]

An Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows :—

### **CHAPTER I**

#### **PRELIMINARY**

- (1) This Act may be called the Protection of Women from Domestic Violence Act, 2005.  
(2) It extends to the whole of India except the State of Jammu and Kashmir.  
(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
- En this Act, unless the context otherwise requires,—

- (a) "aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;
- (b) "child" means any person below the age of eighteen years and includes any adopted, step or foster child;
- (c) "compensation order" means an order granted in terms of section 22;
- (d) "custody order" means an order granted in terms of section 21;
- (e) "domestic incident report" means a report made in the prescribed form on receipt of a complaint of domestic violence from an aggrieved person;
- (f) "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in shared household when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;
- (g) "domestic violence" has the same meaning as assigned to it in section 3;
- (h) "dowry" shall have the same meaning as assigned to it in section 2 of the Dowry Prohibition Act, 1961;
- (i) "Magistrate" means the Judicial Magistrate of the first class, or in the case may be, the Metropolitan Magistrate, exercising jurisdiction under the Code of Criminal Procedure, 1973 in the area where the aggrieved person resides or the domestic violence is alleged to have taken place;
- (j) "medical facility" means such facility as may be notified by the State Government to be medical facility for the purposes of this Act;
- (k) "monetary relief" means the compensation which the Magistrate may order the respondent to pay to the aggrieved person, at any stage during the hearing of an application seeking any relief under this Act, to meet the expenses incurred and the losses suffered by the aggrieved person as a result of the domestic violence;
- (l) "notification" means a notification published in the Official Gazette and the expression "notified" shall be construed accordingly;
- (m) "prescribed" means prescribed by rules made under this Act;
- (n) "Protection Officer" means an officer appointed by the State Government under subsection of section 8;
- (o) "protection order" means an order made in terms of section 18;
- (p) "residence order" means an order granted in terms of sub-section (1) of section 16;
- (q) "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act;
- Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner;
- (r) "service provider" means an entity registered under sub-section (1) of section 10;
- (s) "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent

and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household;

- (t) “shelter home” means any shelter home as may be notified by the State Government to be a shelter home for the purposes of this Act.

## CHAPTER II

### DOMESTIC VIOLENCE

3. For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it—

- (a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
- (b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
- (c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (A); or
- (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

*Explanation 1.*—For the purposes of this section,—

- (i) “physical abuse” means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;
- (ii) “sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;
- (iii) “verbal and emotional abuse” includes—
- (a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and
- (b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.
- (iv) “economic abuse” includes—
- (a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;



- (b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person, and
- (c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

*Explanation II.*—For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes “domestic violence” under this section, the overall facts and circumstances of the case shall be taken into consideration.

### CHAPTER III

#### POWERS AND DUTIES OF PROTECTION OFFICERS, SERVICE PROVIDERS, ETC.

4. (1) Any person who has reason to believe that an act of domestic violence has been, or is being, or is likely to be committed, may give information about it to the concerned Protection Officer.  
(2) No liability, civil or criminal, shall be incurred by any person furnishing in good faith of information for the purpose of sub-section
5. A police officer, Protection Officer, service provider or Magistrate who has received a complaint of domestic violence or is otherwise present at the place of an incident of domestic violence or when the incident of domestic violence is reported to him, shall inform the aggrieved person—
  - (a) of her right to make an application for obtaining a relief by way of a protection order, an order for monetary relief, a custody order, a residence order, a compensation order or more than one such order under this Act;
  - (b) of the availability of services of service providers;
  - (c) of the availability of services of the Protection Officers;
  - (d) of her right to free legal services under the Legal Services Authorities Act, 1987;
  - (e) of her right to file a complaint under section 49BA of the Indian Penal Code, wherever relevant:

Provided that nothing in this Act shall be construed in any manner as to relieve a police officer from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.

6. If an aggrieved person or on her behalf a Protection Officer or a service provider requests the person in charge of a shelter home to provide shelter to her, such person in charge of the shelter home shall provide shelter to the aggrieved person in the shelter home.
7. If an aggrieved person or, on her behalf a Protection Officer or a service provider requests the person in charge of a medical facility to provide any medical aid to her, such person in charge of the medical facility shall provide medical aid to the aggrieved person in the medical facility.
8. (1) The State Government shall, by notification, appoint such number of Protection Officers in each district as it may consider necessary and shall also notify the area

or areas within which a Protection Officer shall exercise the powers and perform the duties conferred on him by or under this Act.

- (2) The Protection Officers shall as far as possible be women and shall possess such qualifications and experience u may be prescribed.
- (3) The terms and conditions of service of the Protection Officer and the other officers subordinate to him shall be such as may be prescribed.

9. (1) It shall be the duty of the Protection Officer—

- (a) to assist the Magistrate in the discharge of his functions under this Act;
- (b) to make a domestic incident report to the magistrate, in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence, and forward copies thereof to the police officer in charge of the police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service providers in that area;
- (c) to make an application in such farm and in such manner as may be prescribed to the Magistrate, if the aggrieved person so desires, claiming relief for issuance of a protection order;
- (d) to ensure that the aggrieved person is provided legal aid under the Legal Services Authorities Act,1987 and make available free of cost the prescribed form in which a complaints to be made;
- (e) to maintain a list of all service providers providing legal aid or counselling, shelter homes and medical facilities in a local area within the jurisdiction of the Magistrate;
- (f) to make available a safe shelter home, if the aggrieved person so requires and forward a copy of his report of having lodged the aggrieved person in a shelter home to the police station and the Magistrate having jurisdiction in the area where the shelter home is situated;
- (g) to get the aggrieved person medically examined, if she has sustained bodily injuries and forward a copy of the medical report to the police station and the Magistrate having jurisdiction In the area where the domestic violence is alleged to have been taken place;
- (h) to ensure that the order for monetary relief under section 20 is complied with and executed, in accordance with the procedure prescribed under the Code of Criminal Procedure, 1913;
- (i) to perform such other duties as may be prescribed.

(2) The Protection Officer shall be under the control and supervision of the Magistrate, and shall perform the duties imposed on him by the Magistrate and the Government by, or under, this Act.

10. (1) Subject to such rules as may be made in this behalf, any voluntary association registered under the Societies. Registration Act, 1860 or a company registered under the Companies Act, 1956 or any other law for the time being in force with the objective of protecting the rights and interests of women by any lawful means including providing of legal aid, medical, financial or other assistance shall register itself with the Slate Government as a service provider for the purposes of this Act.

(2) A service provider registered under sub-section (1) shall have the power to—

- (a) record the domestic incident report in the prescribed form if the aggrieved person so desires and forward a copy thereof to the Magistrate and the Protection Officer having jurisdiction in the area, where the domestic violence took place;
  - (b) get the aggrieved person medically examined and forward a copy of the medical report to the Protection Officer and the police station within the Local limits of which the domestic violence took place;
  - (c) ensure that the aggrieved person is provided shelter in a shelter borne, if she so requires and forward a report of the lodging of the aggrieved person in the shelter home to the police station within the local limits of which the domestic violence took place.
- (3) No suit, prosecution or other legal proceeding shall be against any service provider or any member of the service provider who is, or who is deemed to be, acting or purporting to act under this Act. for anything which is in good faith done or intended to be done in the exercise of powers or discharge of functions under this Act towards the prevention of the commission of domestic violence.
11. The Central Government and every State Government, shall lake all measures to ensure that—
- (a) the provisions of this Act are given wide publicity through public media including the television, radio and the print media at regular intervals;
  - (b) the Central Government and Stale Government officers including the police officers end the members, of the Judicial services are given periodic sensitization and awareness training on the issues addressed by this Act;
  - (c) effective co-ordination between the services provided by concerned Ministries and Departments dealing with law, home affairs including law and order, health and human resources to address issues of domestic violence is established and periodical review of the same is conducted;
  - (d) protocols for the various Ministries concerned with the delivery of services to women under this Act including the courts are prepared and put in place.

## CHAPTER IV

### PROCEDURE FOR OBTAINING ORDERS OF RELIEFS

12. (1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act
- Provided that before passing any order on such application, the Magistrate shall take Into Consideration any domestic incident report received by him from the Protection Officer or the service provider.
- (2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:
- Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off

against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

- (3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.
- (4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.
- (5) The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.
- 13.** (1) A notice of the date of hearing fixed under section 12 shall be given by the Magistrate to the Protection Officer, who shall get it served by such means as may be prescribed on the respondent, and on any other person, as directed by the Magistrate within a maximum period of two days or such further reasonable time as may be allowed by the Magistrate from the date of its receipt.
- (2) A declaration of service of notice made by the Protection Officer in such form as may be prescribed shall be the proof that such notice was served upon the respondent and on any other person as directed by the Magistrate unless the contrary is proved.
- 14.** (1) The Magistrate may, at any stage of the proceedings under this Act, direct the respondent or the aggrieved person, either singly or jointly, to undergo counselling with any member of a service provider who possess such qualifications and experience in counselling as may be prescribed.
- (2) Where the Magistrate has issued any direction under sub-section (1), he shall fix the next date of hearing of the case within a period not exceeding two months.
- 15.** In any proceeding under this Act, the Magistrate may secure the services of such person preferably a woman, whether related to the aggrieved person or not, including a person engaged in promoting family welfare as he thinks fit, for the purpose of assisting him in discharging his functions.
- 16.** If the Magistrate considers that the circumstances of the case so warrant, and if either party to the proceedings so desires, he may conduct the proceedings under this Act in camera.
- 17.** (1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficiaries interest in the same.
- (2) The aggrieved person shall not be evicted or excluded from the shared household of any part of it by the respondent save in accordance with the procedure established by law.
- 18.** The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from—
- (a) committing any act of domestic violence;
- (b) aiding or abetting in the commission of acts of domestic violence;
- (c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;

- (d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;
  - (e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;
  - (f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;
  - (g) committing any other act as specified in the protection order.
- 19. (1)** While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order—
- (a) restraining the respondent From dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;
  - (b) directing the respondent to remove himself from the shared household;
  - (c) restraining the respondent or any of his relatives from entering any ion of the shared household in which the aggrieved person resides;
  - (d) restraining the respondent from alienating or disposing off the shared
  - (e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or
  - (f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:  
  
Provided that no order under clause (b) shall be passed against any person who is a woman.
- (2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or lo provide for the safety of the aggrieved person or any child of such aggrieved person.
- (3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.
- (4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 and shall be dealt with accordingly.
- (5) While passing an order under sub-section (1) sub-section (2) or sub-section (7) the court may also pass an order directing the officer in charge of the nearest police station to give protection to the aggrieved, person or to assist her or the person making an application on her behalf in the implementation of the order.
- (6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the. financial needs and resources of the parties.

- (7) The Magistrate may direct the officer in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.
  - (8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to.
- 20.** (1) While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but not limited to,—
- (a) the loss of earnings;
  - (b) the medical expenses;
  - (c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and
  - (d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 or any other law for the time being in force.
- (2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.
  - (3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.
  - (4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the officer in charge of the police station within the local limits of whose jurisdiction the respondent resides.
  - (5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).
  - (6) UPON THE failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.
- 21.** Notwithstanding anything contained in any other law for the time being in force, the Magistrate may, at any stage of hearing of the application for protection order or for any other relief under this Act grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent:
- Provided that if the Magistrate is of the opinion that any visit of the respondent may be harmful to the interests of the child or children, the Magistrate shall refuse to allow such visit.
- 22.** In addition to other reliefs as may be granted under this Act, the Magistrate may, on an application being made by the aggrieved person, pass an order directing the respondent

- to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent.
- 23.** (1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.
- (2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as maybe prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.
- 24.** The Magistrate shall, in all cases where he has passed any order under this Act order that a copy of such order, shall be given free of cost, to the parties to the application, the police officer in-charge of the police Station in the jurisdiction of which the Magistrate has been approached, and any service provider located within the local limits of the jurisdiction of the court and if any service provider has registered a domestic incident report, to that service provider.
- 25.** (1) A protection order made under section 18 shall be in force till the aggrieved person applies for discharge.
- (2) If the Magistrate, on receipt of an application from the aggrieved person or the respondent, is satisfied that there is a change in the circumstances requiring alteration, modification or revocation of any order made under this Act. he may, for reasons to be recorded in writing pass such order, as he may deem appropriate.
- 26.** (1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before OR after the commencement of this Act.
- (2) Any relief referred 10 in sub-section (1) may be sought for in addition ID and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.
- (3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act. she shall be bound to inform the Magistrate of the grant of such relief.
- 27.** (1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which—
- (a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or
- (b) the respondent resides or carries on business or is employed; or
- (c) the cause of action has arisen,
- shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.
- (2) Any order made under this Act shall be enforceable throughout India.
- 28.** (1) Save as otherwise provided in this Act, all proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and offences under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973.

- (2) Nothing in sub-section (1) shall prevent the court from laying down its own procedure for disposal of an application under section 12 or under sub-section (2) of section 23.
29. There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be whichever is later.

## CHAPTER V

### MISCELLANEOUS

30. The Protection Officers and members of service providers, while acting or purporting to act in pursuance of any of the provisions of this Act or any rules or orders made thereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.
31. (1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.
- (2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.
- (3) While framing charges under sub-section (1), the Magistrate may also frame charges under section 498A of the Indian Penal Code or any other provision of that Code or the Dowry Prohibition Act, 1961, as the case may be, if the facts disclose the commission of an offence under those provisions.
32. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offence under sub-section (1) of section 31 shall be cognizable and non-bailable.
- (2) Upon the sole testimony of the aggrieved person, the court may conclude that an offence: under sub-section (1) of section 31 has been committed by the accused.
33. If any Protection Officer fails or refuses to discharge his duties as directed by the Magistrate in the protection order without any sufficient cause, he shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.
34. No prosecution or other legal proceeding shall lie against the Protection Officer unless a complaint is filed with the previous sanction of the State Government or an officer authorised by it in this behalf.
35. No suit, prosecution or other legal proceeding shall lie against the Protection Officer for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act or any rule or order made thereunder.
36. The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
- (a) the qualifications and experience which a Protection Officer shall possess under sub-section (2) of section 8;



- (b) the terms and conditions of service of the Protection Officers and the other officers subordinate to him, under sub-section (3) of section 8;
  - (c) the form and manner in which a domestic Incident report may be made under clause (b) of sub-section (1) of section 9;
  - (d) the form and the manner in which an application for protection order may be made to the Magistrate under clause (c) of sub-section (1) of section 9;
  - (e) the form in which a complaint is to be filed under clause (d) .of sub-section (1) of section 9;
  - (f) the other duties to be performed by the Protection Officer under clause (i) of sub-section (1) of section 9;
  - (g) the rules regulating registration of service providers under sub-section (1) of section 10;
  - (h) the form in which an application under sub-section (1) of section 12 seeking reliefs under this Act may be made and the particulars which such application shall contain under sub-section (3) of that section;
  - (i) the means of serving notices under sub-section (1) of section 13;
  - (j) the form of declaration of service of notice to be made by the Protection Officer under sub-section (2) of section 13;
  - (k) the qualifications and experience in counselling which a member of the service provider shall possess under sub-section (7) of section 14;
  - (l) the form in which an affidavit may be filed by the aggrieved person under sub-section (2) of section 23;
  - (m) any other matter which has to be, or may be, prescribed.
- (3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses, agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case maybe; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

BRAHM AVTAR AGRAWAL,  
Addl. Secretary to the Govt, of India.

  
सत्यमेव जयते

# भारत का राजपत्र The Gazette of India

असाधारण

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PART II — Section 1

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।  
Separate paging is given in this Part in order that it may be filed as a seprate compilation.

**MINISTRY OF LAW AND JUSTICE**

(Legislative Department)

*New Delhi, the 20th June, 2012/Jyaistha 30,1934 (Saka)*

The following Act of Parliament received the assent of the President on 19th June, 2012, the and is hereby published for general information:—

## **THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012**

[No. 32 OF 2012]

[19th June, 2012]

An Act to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto.

WHEREAS clause (3) of article 15 of the Constitution, inter alia, empowers the State to make special provisions for children;

AND WHEREAS, the Government of India has acceded on the 11th December, 1992 to the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations, which has prescribed a set of standards to be followed by all State parties in securing the best interests of the child;

AND WHEREAS it is necessary for the proper development of the child that his or her right to privacy and confidentiality be protected and respected by every person by all means and through all stages of a judicial process involving the child;

AND WHEREAS it is imperative that the law operates in a manner that the best interest and well being of the child are regarded as being of paramount importance at every stage, to ensure the healthy physical, emotional, intellectual and social development of the child;

AND WHEREAS the State parties to the Convention on the Rights of the Child are required to undertake all appropriate national, bilateral and multilateral measures to prevent—

- (a) the inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) the exploitative use of children in prostitution or other unlawful sexual practices;
- (c) the exploitative use of children in pornographic performances and materials;

AND WHEREAS sexual exploitation and sexual abuse of children are heinous crimes and need to be effectively addressed.

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

## CHAPTER I

### PRELIMINARY

1. (1) This Act may be called the Protection of Children from Sexual Offences Act, 2012.  
(2) It extends to the whole of India, except the State of Jammu and Kashmir.  
(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
2. (1) In this Act, unless the context otherwise requires, —
  - (a) "aggravated penetrative sexual assault" has the same meaning as assigned to it in section 5;
  - (b) "aggravated sexual assault" has the same meaning as assigned to it in section 9;
  - (c) "armed forces or security forces" means armed forces of the Union or security forces or police forces, as specified in the Schedule;
  - (d) "child" means any person below the age of eighteen years;
  - (e) "domestic relationship" shall have the same meaning as assigned to it in clause (1) of section 2 of the Protection of Women from Domestic Violence Act, 2005;
  - (f) "penetrative sexual assault" has the same meaning as assigned to it in section 3;
  - (g) "prescribed" means prescribed by rules made under this Act;
  - (h) "religious institution" shall have the same meaning as assigned to it in the Religious Institutions (Prevention of Misuse) Act, 1988;
  - (i) "sexual assault" has the same meaning as assigned to it in section 7;
  - (j) "sexual harassment" has the same meaning as assigned to it in section 11;
  - (k) "shared household" means a household where the person charged with the offence lives or has lived at any time in a domestic relationship with the child;
  - (l) "Special Court" means a court designated as such under section 28;
  - (m) "Special Public Prosecutor" means a Public Prosecutor appointed under section 32.
- (2) The words and expressions used herein and not defined but defined in the Indian Penal Code, the Code of Criminal Procedure, 1973, the Juvenile Justice (Care and

Protection of Children) Act, 2000 and the Information Technology Act, 2000 shall have the meanings respectively assigned to them in the said Codes or the Acts.

## CHAPTER II

### SEXUAL OFFENCES AGAINST CHILDREN

#### A.—PENETRATIVE SEXUAL ASSAULT AND PUNISHMENT THEREFOR

3. A person is said to commit "penetrative sexual assault" if—
  - (a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or
  - (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
  - (c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or
  - (d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.
4. Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine.

#### B.—AGGRAVATED PENETRATIVE SEXUAL ASSAULT AND PUNISHMENT THEREFOR

5. (a) Whoever, being a police officer, commits penetrative sexual assault on a child —
  - (i) within the limits of the police station or premises at which he is appointed; or
  - (ii) in the premises of any station house, whether or not situated in the police station, to which he is appointed; or
  - (iii) in the course of his duties or otherwise; or
  - (iv) where he is known as, or identified as, a police officer; or
- (b) whoever being a member of the armed forces or security forces commits penetrative sexual assault on a child—
  - (i) within the limits of the area to which the person is deployed; or
  - (ii) in any areas under the command of the forces or armed forces; or
  - (iii) in the course of his duties or otherwise; or
  - (iv) where the said person is known or identified as a member of the security or armed forces; or
- (c) whoever being a public servant commits penetrative sexual assault on a child; or
- (d) whoever being on the management or on the staff of a jail, remand home, protection home, observation home, or other place of custody or care and protection established by or under any law for the time being in force, commits penetrative sexual assault on a child, being inmate of such jail, remand home, protection home, observation home, or other place of custody or care and protection: or

- (e) whoever being on the management or staff of a hospital, whether Government or private, commits penetrative sexual assault on a child in that hospital; or
- (f) whoever being on the management or staff of an educational institution or religious institution, commits penetrative sexual assault on a child in that institution; or
- (g) whoever commits gang penetrative sexual assault on a child.  
Explanation—when a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang penetrative sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or
- (h) whoever commits penetrative sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or
- (i) whoever commits penetrative sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or
- (j) whoever commits penetrative sexual assault on a child, which—
  - (i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (b) of section 2 of the Mental Health Act, 1987 or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently: or
  - (ii) in the case of female child, makes the child pregnant as a consequence of sexual assault:
  - (iii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; or
- (k) whoever, taking advantage of a child's mental or physical disability, commits penetrative sexual assault on the child; or
- (l) whoever commits penetrative sexual assault on the child more than once or repeatedly; or
- (m) whoever commits penetrative sexual assault on a child below twelve years; or
- (n) whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child; or
- (o) whoever being, in the ownership, or management, or staff, of any institution providing services to the child, commits penetrative sexual assault on the child: or
- (p) whoever being in a position of trust or authority of a child commits penetrative sexual assault on the child in an institution or home of the child or anywhere else; or
- (q) whoever commits penetrative sexual assault on a child knowing the child is pregnant; or
- (r) whoever commits penetrative sexual assault on a child and attempts to murder the child; or

- (s) whoever commits penetrative sexual assault on a child in the course of communal or sectarian violence; or
  - (t) whoever commits penetrative sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or
  - (u) whoever commits penetrative sexual assault on a child and makes the child to strip or parade naked in public, is said to commit aggravated penetrative sexual assault.
6. Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.

**C.—SEXUAL ASSAULT AND PUNISHMENT THEREFOR**

7. Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.
8. Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.

**D.—AGGRAVATED SEXUAL ASSAULT AND PUNISHMENT THEREFOR**

9. (a) Whoever, being a police officer, commits sexual assault on a child—
- (i) within the limits of the police station or premises where he is appointed, or
  - (ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or
  - (iii) in the course of his duties or otherwise; or
  - (iv) where he is known as, or identified as a police officer; or
- (b) whoever, being a member of the armed forces or security forces, commits sexual assault on a child—
- (i) within the limits of the area to which the person is deployed; or
  - (ii) in any areas under the command of the security or armed forces; or
  - (iii) in the course of his duties or otherwise; or
  - (iv) where he is known or identified as a member of the security or armed forces; or
- (c) whoever being a public servant commits sexual assault on a child; or
- (d) whoever being on the management or on the staff of a jail, or remand home or protection home or observation home, or other place of custody or care and protection established by or under any law for the time being in force commits sexual assault on a child being inmate of such jail or remand home or protection home or observation home or other place of custody or care and protection, or
- (e) whoever being on the management or staff of a hospital, whether Government or private, commits sexual assault on a child in that hospital; or
- (f) whoever being on the management or staff of an educational institution or religious institution, commits sexual assault on a child in that institution; or

- (g) whoever commits gang sexual assault on a child.  
Explanation.— when a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or
- (h) whoever commits sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or
- (i) whoever commits sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or
- (j) whoever commits sexual assault on a child, which—
  - (i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (1) of section 2 of the Mental Health Act, 1987 or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; or
  - (ii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; or
- (k) whoever, taking advantage of a child's mental or physical disability, commits sexual assault on the child; or
- (l) whoever commits sexual assault on the child more than once or repeatedly; or
- (m) whoever commits sexual assault on a child below twelve years; or
- (n) whoever, being a relative of the child through blood or adoption or marriage or guardianship or in foster care, or having domestic relationship with a parent of the child, or who is living in the same or shared household with the child, commits sexual assault on such child; or
- (o) whoever, being in the ownership or management or staff, of any institution providing services to the child, commits sexual assault on the child in such institution; or
- (p) whoever, being in a position of trust or authority of a child, commits sexual assault on the child in an institution or home of the child or anywhere else; or
- (q) whoever commits sexual assault on a child knowing the child is pregnant; or
- (r) whoever commits sexual assault on a child and attempts to murder the child; or
- (s) whoever commits sexual assault on a child in the course of communal or sectarian violence; or
- (t) whoever commits sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or
- (u) whoever commits sexual assault on a child and makes the child to strip or parade naked in public, is said to commit aggravated sexual assault.

10. Whoever, commits aggravated sexual assault shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

**E.—SEXUAL HARASSMENT AND PUNISHMENT THEREFOR**

- 11.** A person is said to commit sexual harassment upon a child when such person with sexual intent,—
- (i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or
  - (ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or
  - (iii) shows any object to a child in any form or media for pornographic purposes; or
  - (iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or
  - (v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or
  - (vi) entices a child for pornographic purposes or gives gratification therefor.

Explanation —Any question which involves "sexual intent" shall be a question of fact.

- 12.** Whoever, commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

**CHAPTER III**

**USING CHILD FOR PORNOGRAPHIC PURPOSES AND PUNISHMENT THEREFOR**

- 13.** Whoever, uses a child in any form of media (including programme or advertisement telecast by television channels or internet or any other electronic form or printed form, whether or not such programme or advertisement is intended for personal use or for distribution), for the purposes of sexual gratification, which includes—
- (a) representation of the sexual organs of a child;
  - (b) usage of a child engaged in real or simulated sexual acts (with or without penetration);
  - (c) the indecent or obscene representation of a child.

*shall be guilty of the offence of using a child for pornographic purposes.*

*Explanation.—* For the purposes of this section, the expression "use a child" shall include involving a child through any medium like print, electronic, computer or any other technology for preparation, production, offering, transmitting, publishing, facilitation and distribution of the pornographic material.

- 14.** (1) Whoever, uses a child or children for pornographic purposes shall be punished with imprisonment of either description which may extend to five years and shall also be liable to fine and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also be liable to fine.
- (2) If the person using the child for pornographic purposes commits an offence referred to in section 3, by directly participating in pornographic acts, he shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.



- (3) If the person using the child for pornographic purposes commits an offence referred to in section 5, by directly participating in pornographic acts, he shall be punished with rigorous imprisonment for life and shall also be liable to fine.
  - (4) If the person using the child for pornographic purposes commits an offence referred to in section 7, by directly participating in pornographic acts, he shall be punished with imprisonment of either description for a term which shall not be less than six years but which may extend to eight years, and shall also be liable to fine.
  - (5) If the person using the child for pornographic purposes commits an offence referred to in section 9, by directly participating in pornographic acts, he shall be punished with imprisonment of either description for a term which shall not be less than eight years but which may extend to ten years, and shall also be liable to fine.
15. Any person, who stores, for commercial purposes any pornographic material in any form involving a child shall be punished with imprisonment of either description which may extend to three years or with fine or with both.

## CHAPTER IV

### ABETMENT OF AND ATTEMPT TO COMMIT AN OFFENCE

16. A person abets an offence, who—
- First.*— Instigates any person to do that offence; or
  - Secondly.*— Engages with one or more other person or persons in any conspiracy for the doing of that offence, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that offence; or
  - Thirdly.*— Intentionally aids, by any act or illegal omission, the doing of that offence.
- Explanation I.*—A person who, by wilful misrepresentation, or by wilful concealment of a material fact, which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure a thing to be done, is said to instigate the doing of that offence.
- Explanation II.*—Whoever, either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.
- Explanation III.*—Whoever employ, harbours, receives or transports a child, by means of threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position, vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of any offence under this Act, is said to aid the doing of that act.
17. Whoever abets any offence under this Act, if the act abetted is committed in consequence of the abetment, shall be punished with punishment provided for that offence.
- Explanation.*—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy or with the aid, which constitutes the abetment.
18. Whoever attempts to commit any offence punishable under this Act or to cause such an offence to be committed, and in such attempt, does any act towards the commission of the offence, shall be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence or with fine or with both.

**CHAPTER V**

**PROCEDURE FOR REPORTING OF CASES**

- 19.** (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any person (including the child), who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to,—
- (a) the Special Juvenile Police Unit, or
  - (b) the local police.
- (2) Every report given under sub-section (1) shall be—
- (a) ascribed an entry number and recorded in writing;
  - (b) be read over to the informant;
  - (c) shall be entered in a book to be kept by the Police Unit.
- (3) Where the report under sub-section (1) is given by a child, the same shall be recorded under sub-section (2) in a simple language so that the child understands contents being recorded.
- (4) In case contents are being recorded in the language not understood by the child or wherever it is deemed necessary, a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, shall be provided to the child if he fails to understand the same.
- (5) Where the Special Juvenile Police Unit or local police is satisfied that the child against whom an offence has been committed is in need of care and protection, then, it shall, after recording the reasons in writing, make immediate arrangement to give him such care and protection (including admitting the child into shelter home or to the nearest hospital) within twenty-four hours of the report, as may be prescribed.
- (6) The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Child Welfare Committee and the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard.
- (7) No person shall incur any liability, whether civil or criminal, for giving the information in good faith for the purpose of sub-section (1).
- 20.** Any personnel of the media or hotel or lodge or hospital or club or studio or photographic facilities, by whatever name called, irrespective of the number of persons employed therein, shall, on coming across any material or object which is sexually exploitative of the child (including pornographic, sexually-related or making obscene representation of a child or children) through the use of any medium, shall provide such information to the Special Juvenile Police Unit, or to the local police, as the case may be.
- 21.** (1) Any person, who fails to report the commission of an offence under sub-section (1) of section 19 or section 20 or who fails to record such offence under sub-section (2) of section 19 shall be punished with imprisonment of either description which may extend to six months or with fine or with both.
- (2) Any person, being in-charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub-section (1)

- of section 19 in respect of a subordinate under his control, shall be punished with imprisonment for a term which may extend to one year and with fine.
- (3) The provisions of sub-section (1) shall not apply to a child under this Act.
22. (1) Any person, who makes false complaint or provides false information against any person, in respect of an offence committed under sections 3, 3, 7 and section 9, solely with the intention to humiliate, extort or threaten or defame him, shall be punished with imprisonment for a term which may extend to six months or with fine or with both.
- (2) Where a false complaint has been made or false information has been provided by a child, no punishment shall be imposed on such child.
- (3) Whoever, not being a child, makes a false complaint or provides false information against a child, knowing it to be false, thereby victimising such child in any of the offences under this Act, shall be punished with imprisonment which may extend to one year or with fine or with both.
23. (1) No person shall make any report or present comments on any child from any form of media or studio or photographic facilities without having complete and authentic information, which may have the effect of lowering his reputation or infringing upon his privacy.
- (2) No reports in any media shall disclose, the identity of a child including his name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to disclosure of identity of the child:
- Provided that for reasons to be recorded in writing, the Special Court, competent to try the case under the Act, may permit such disclosure, if in its opinion such disclosure is in the interest of the child.
- (3) The publisher or owner of the media or studio or photographic facilities shall be jointly and severally liable for the acts and omissions of his employee.
- (4) Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be liable to be punished with imprisonment of either description for a period which shall not be less than six months but which may extend to one year or with fine or with both.

## CHAPTER VI

### PROCEDURES FOR RECORDING STATEMENT OF THE CHILD

24. (1) The statement of the child shall be recorded at the residence of the child or at a place where he usually resides or at the place of his choice and as far as practicable by a woman police officer not below the rank of sub-inspector.
- (2) The police officer while recording the statement of the child shall not be in uniform.
- (3) The police officer making the investigation, shall, while examining the child, ensure that at no point of time the child come in the contact in any way with the accused.
- (4) No child shall be detained in the police station in the night for any reason.
- (5) The police officer shall ensure that the identity of the child is protected from the public media, unless otherwise directed by the Special Court in the interest of the child.
25. (1) If the statement of the child is being recorded under section 164 of the Code of Criminal Procedure, 1973 (herein referred to as the Code), the Magistrate recording such

statement shall, notwithstanding anything contained therein, record the statement as spoken by the child:

Provided that the provisions contained in the first proviso to sub-section (1) of section 164 of the Code shall, so far it permits the presence of the advocate of the accused shall not apply in this case.

- (2) The Magistrate shall provide to the child and his parents or his representative, a copy of the document specified under section 207 of the Code, upon the final report being filed by the police under section 173 of that Code.
26. (1) The Magistrate or the police officer, as the case may be, shall record the statement as spoken by the child in the presence of the parents of the child or any other person in whom the child has trust or confidence.
- (2) Wherever necessary, the Magistrate or the police officer, as the case may be, may take the assistance of a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, while recording the statement of the child.
- (3) The Magistrate or the police officer, as the case may be, may, in the case of a child having a mental or physical disability, seek the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed, to record the statement of the child.
- (4) Wherever possible, the Magistrate or the police officer, as the case may be, shall ensure that the statement of the child is also recorded by audio-video electronic means.
27. (1) The medical examination of a child in respect of whom any offence has been committed under this Act, shall, notwithstanding that a First Information Report or complaint has not been registered for the offences under this Act, be conducted in accordance with section 164A of the Code of Criminal Procedure, 1973.
- (2) In case the victim is a girl child, the medical examination shall be conducted by a woman doctor
- (3) The medical examination shall be conducted in the presence of the parent of the child or any other person in whom the child reposes trust or confidence.
- (4) Where, in case the parent of the child or other person referred to in sub-section (J) cannot be present, for any reason, during the medical examination of the child, the medical examination shall be conducted in the presence of a woman nominated by the head of the medical institution.

## **CHAPTER VII**

### **SPECIAL COURTS**

28. (1) For the purposes of providing a speedy trial, the State Government shall in consultation with the Chief Justice of the High Court, by notification in the Official Gazette, designate for each district, a Court of Session to be a Special Court to try the offences under the Act:

Provided that if a Court of Session is notified as a children's court under the Commissions for Protection of Child Rights Act, 2005 or a Special Court designated for similar purposes under any other law for the time being in force, then, such court shall be deemed to be a Special Court under this section.

- (2) While trying an offence under this Act, a Special Court shall also try an offence [other than the offence referred to in sub-section (1)], with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.
- (3) The Special Court constituted under this Act, notwithstanding anything in the Information Technology Act, 2000, shall have jurisdiction to try offences under section 67B of that Act in so far as it relates to publication or transmission of sexually explicit material depicting children in any act, or conduct or manner or facilitates abuse of children online.

29. Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit to offence, as the case may be unless the contrary is proved.

30. (1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

*Explanation* —In this section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.

31. Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Sessions and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor.

32. (1) The State Government shall, by notification in the Official Gazette, appoint a Special Public Prosecutor for every Special Court for conducting cases only under the provisions of this Act.

(2) A person shall be eligible to be appointed as a Special Public Prosecutor under sub-section (1) only if he had been in practice for not less than seven years as an advocate.

(3) Every person appointed as a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 and provision of that Code shall have effect accordingly.

## CHAPTER VIII

### PROCEDURE AND POWERS OF SPECIAL COURTS AND RECORDING OF EVIDENCE

33. (1) A Special Court may take cognizance of any offence without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts.

(2) The Special Public Prosecutor, or as the case may be, the counsel appearing for the accused shall, while recording the examination-in-chief, cross-examination or re-examination of the child, communicate the questions to be put to the child to the Special Court which shall in turn put those questions to the child.

- (3) The Special Court may, if it considers necessary, permit frequent breaks for the child during the trial.
- (4) The Special Court shall create a child-friendly atmosphere by allowing a family member, a guardian, a friend or a relative, in whom the child has trust or confidence, to be present in the court
- (5) The Special Court shall ensure that the child is not called repeatedly to testify in the court.
- (6) The Special Court shall not permit aggressive questioning or character assassination of the child and ensure that dignity of the child is maintained at all times during the trial.
- (7) The Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial:

Provided that for reasons to be recorded in writing, the Special Court may permit such disclosure, if in its opinion such disclosure is in the interest of the child.

*Explanation.*—For the purposes of this sub-section, the identity of the child shall include the identity of the child's family, school, relatives, neighbourhood or any other information by which the identity of the child may be revealed.

- (8) In appropriate cases, the Special Court may, in addition to the punishment, direct payment of such compensation as may be prescribed to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child.
  - (9) Subject to the provisions of this Act, a Special Court shall, for the purpose of the trial of any offence under this Act, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session, and as far as may be, in accordance with the procedure specified in the Code of Criminal Procedure, 1973 for trial before a Court of Session.
- 34.** (1) Where any offence under this Act is committed by a child, such child shall be dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000.
- (2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination.
  - (3) No order made by the Special Court shall be deemed to be invalid merely by an subsequent proof that the age of a person as determined by it under sub-section (2) was not the correct age of that person.
- 35.** (1) The evidence of the child shall be recorded within a period of thirty days of the Special Court taking cognizance of the offence and reasons for delay, if any shall be recorded by the Special Court.
- (2) The Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence.
- 36.** (1) The Special Court shall ensure that the child is not exposed in any way to the accused at the time of recording of the evidence, while at the same time ensuring that the accused is in a position to hear the statement of the child and communicate with his advocate.

(2) For the purposes of sub-section (1), the Special Court may record the statement of a child through video conferencing or by utilising single visibility mirrors or curtains or any other device.

37. The Special Court shall try cases in camera and in the presence of the parents of the child or any other person in whom the child has trust or confidence:

Provided that where the Special Court is of the opinion that the child needs to be examined at a place other than the court, it shall proceed to issue a commission in accordance with the provisions of section 284 of the Code of Criminal Procedure, 1973.

38. (1) Wherever necessary, the Court may take the assistance of a translator or interpreter having such qualifications, experience and on payment of such fees as may be prescribed, while recording the evidence of the child.

(2) If a child has a mental or physical disability, the Special Court may take the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed to record the evidence of the child.

**CHAPTER IX**

**MISCELLANEOUS**

39. Subject to such rules as may be made in this behalf, the State Government shall child to take prepare guidelines for use of non-governmental organisations, professionals and experts or persons having knowledge of psychology, social work, physical health, mental health and child development to be associated with the pre-trial and trial stage to assist the child.

40. Subject to the proviso to section 301 of the Code of Criminal Procedure, 1973 the family or the guardian of the child shall be entitled to the assistance of a legal counsel of their choice for any offence under this Act :

Provided that if the family or the guardian of the child are unable to afford a legal counsel, the Legal Services Authority shall provide a lawyer to them.

41. The provisions of sections 3 to 13 (both inclusive) shall not apply in case of medical examination or medical treatment of a child when such medical examination or medical treatment is undertaken with the consent of his parents or guardian.

42. Where an act or omission constitute an offence punishable under this Act and also under any other law for the time being in force, then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment only under such law or this Act as provides for punishment which is greater in degree.

43. The Central Government and every State Government, shall take all measures to ensure that—

(a) the provisions of this Act are given wide publicity through media including the television, radio and the print media at regular intervals to make the general public, children as well as their parents and guardians aware of the provisions of this Act;

(b) the officers of the Central Government and the State Governments and other concerned persons (including the police officers) are imparted periodic training on the matters relating to the implementation of the provisions of the Act.

44. (1) The National Commission for Protection of Child Rights constituted under section 3, or as the case may be, the State Commission for Protection of Child Rights constituted

under section 17, of the Commissions for Protection of Child Rights Act, 2005, shall, in addition to the functions assigned to them under that Act, also monitor the implementation of the provisions of this Act in such manner as may be prescribed.

- (2) The National Commission or, as the case may be, the State Commission, referred to in sub-section (1), shall, while inquiring into any matter relating to any offence under this Act, have the same powers as are vested in it under the Commissions for Protection of Child Rights Act, 2005
- (3) The National Commission or, as the case may be, the State Commission, referred to in sub-section (1), shall, also include, its activities under this section, in the annual report referred to in section 16 of the Commissions for Protection of Child Rights Act, 2005.
- 45.** (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—
- (a) the qualifications and experience of, and the fees payable to, a translator or an interpreter, a special educator or any person familiar with the manner of communication of the child or an expert in that field, under sub-section (4) of section 19; sub-sections (2) and (3) of section 26 and section 38;
- (b) care and protection and emergency medical treatment of the child under sub-section (5) of section 19;
- (c) the payment of compensation under sub-section (8) of section 33;
- (d) the manner of periodic monitoring of the provisions of the Act under sub-section (1) of section 44.
- (3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.
- 46.** (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for removal of the difficulty:
- Provided that no order shall be made under this section after the expiry of the period of two years from the commencement of this Act.
- (2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.



THE SCHEDULE

[See section 2(c)]

ARMED FORCES AND SECURITY FORCES CONSTITUTED UNDER

- (a) The Air Force Act, 1950(45 of 1950);
- (b) The Army Act, 1950 (46 of 1950);
- (c) The Assam Rifles Act, 2006 (47 of 2006);
- (d) The Bombay Home Guard Act, 1947(3 of 1947);
- (e) The Border Security Force Act, 1968 (47 of 1968);
- (f) The Central Industrial Security Force Act. 1968(50 of 1968);
- (g) The Central Reserve Police Force Act 1949 (66 of 1949);
- (h) The Coast Guard Act, 1978 (30 of 1978);
- (i) The Delhi Special Police Establishment Act, 1946 (25 of 1946);
- (j) The Indo-Tibetan Border Police Force Act, 1992 (35 of 1992);
- (k) The Navy Act, 1957 (62 of 1957);
- (l) The National Investigation Agency Act, 2008 (34 of 2008);
- (m) The National Security Guard Act, 1986 (47 of 1986);
- (n) The Railway Protection Force Act, 1957 (23 of 1957);
- (o) The Sashastra Seema Bal Act, 2007 (53 of 2007);
- (p) The Special Protection Group Act, 1988 (34 of 1988);
- (q) The Territorial Army Act, 1948 (56 of 1948);
- (r) The State police forces (including armed constabulary) constituted under the State laws to aid the civil powers of the State and empowered to employ force during internal disturbances or otherwise including armed forces as defined in clause (a) of section 2 of the Armed Forces (Special Powers) Act, 1958 (28 of 1958).

V. K. BHASIN,

Secretary to the Govt, of India.

  
समृद्धिमेव जगते

# भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given in this Part in order that it may be filed as a separate compilation.

**MINISTRY OF LAW AND JUSTICE**

**(Legislative Department)**

*New Delhi, the 23rd April, 2013/Vaisakha 3, 19155 (Saka)*

The following Act of Parliament received the assent of the President on the 22nd April, 2013, and is hereby published for general information:-

## **THIS SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013**

**(No. 14 of 2013)**

[22nd April, 2013]

An Act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.

WHEREAS sexual harassment results in violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment;

AND WHEREAS the protection against sexual harassment and the right to work with dignity are universally recognised human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India.



establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf;

- (ii) in any workplace not covered under sub-clause (i), any person responsible for the management, supervision and control of the workplace.

Explanation. —For the purposes of this sub-clause "management" includes the person or board or committee responsible for formulation and administration of policies for such organisation;

- (iii) in relation to workplace covered under sub-clauses (i) and (ii), the person discharging contractual obligations with respect to his or her employees;

- (iv) in relation to a dwelling place or house, a person or a household who employs or benefits from the employment of domestic worker, irrespective of the number, time period or type of such worker employed, or the nature of the employment or activities performed by the domestic worker;

(h) "Internal Committee" means an Internal Complaints Committee constituted under section 4;

(i) "Local Committee" means the Local Complaints Committee constituted under section 6;

(j) "Member" means a Member of the Internal Committee or the Local Committee, as the case may be;

(k) "prescribed" means prescribed by rules made under this Act;

(l) "Presiding Officer" means the Presiding Officer of the Internal Complaints Committee nominated under sub-section (2) of section 4;

(m) "respondent" means a person against whom the aggrieved woman has made a complaint under section 9;

(n) "sexual harassment" includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:—

(i) physical contact and advances; or

(ii) a demand or request for sexual favours; or

(iii) making sexually coloured remarks; or

(iv) showing pornography; or

(v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;

(o) "workplace" includes —

(i) any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society;

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

- (iii) hospitals or nursing homes;
  - (iv) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;
  - (v) any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey;
  - (vi) a dwelling place or a house;
  - (p) "unorganised sector" in relation to a workplace means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.
3. (1) No woman shall be subjected to sexual harassment at any workplace.
- (2) The following circumstances, among other circumstances, if it occurs or is percent in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment: -
- (i) implied or explicit promise of preferential treatment in her employment; or
  - (ii) implied or explicit threat of detrimental treatment in her employment; or
  - (iii) implied or explicit threat about her present or future employment status; or
  - (iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or
  - (v) humiliating treatment likely to affect her health or safety.

## CHAPTER II

### CONSTITUTION OF INTERNAL COMPLAINTS COMMITTEE

4. (1) Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the "Internal Complaints Committee":
- Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.
- (2) The Internal Committee shall consist of the following members to be nominated by the employer, namely: —
- (a) a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees:
- Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section (1):
- Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organisation;

- (b) not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;
- (c) one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment:

*Provided that at least one-half of the total Members so nominated shall be women.*

- (3) The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer.
- (4) The Member appointed from amongst the non-governmental organisations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer, as may be prescribed.
- (5) Where the Presiding Officer or any Member of the Internal Committee,—
  - (a) contravenes the provisions of section 16; or
  - (b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or
  - (c) he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or
  - (d) has so abused his position as to render his continuance in office prejudicial to the public interest,

such Presiding Officer or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.

### CHAPTER III

#### CONSTITUTION OF LOCAL COMPLAINTS COMMITTEE

- 5. The appropriate Government may notify a District Magistrate or Additional District Notification Magistrate or the Collector or Deputy Collector as a District Officer for every District to exercise powers or discharge functions under this Act.
- 6.
  - (1) Every District Officer shall constitute in the district concerned, a committee to be known as the "Local Complaints Committee" to receive complaints of sexual harassment from establishments where the Internal Complaints Committee has not been constituted due to having less than ten workers or if the complaint is against the employer himself.
  - (2) The District Officer shall designate one nodal officer in every block, taluka and tahsil in rural or tribal area and ward or municipality in the urban area, to receive complaints and forward the same to the concerned Local Complaints Committee within a period of seven days.
  - (3) The jurisdiction of the Local Complaints Committee shall extend to the areas of the district where it is constituted.
- 7.
  - (1) The Local Complaints Committee shall consist of the following members to be nominated by the District Officer, namely:—

- (a) a Chairperson to be nominated from amongst the eminent women in the field of social work and committed to the cause of women;
- (b) one Member to be nominated from amongst the women working in block, taluka or tehsil or ward or municipality in the district;
- (c) two Members, of whom at least one shall be a woman, to be nominated from amongst such non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment, which may be prescribed:

Provided that at least one of the nominees should, preferably, have a background in law or legal knowledge:

Provided further that at least one of the nominees shall be a woman belonging to the Scheduled Castes or the Scheduled Tribes or the Other Backward Classes or minority community notified by the Central Government, from time to time;

- (d) the concerned officer dealing with the social welfare or women and child development in the district, shall be a member ex officio.
- (2) The Chairperson and every Member of the Local Committee shall hold office for such period, not exceeding three years, from the date of their appointment as may be specified by the District Officer.
- (3) Where the Chairperson or any Member of the Local Complaints Committee—
- (a) contravenes the provisions of section 16; or
  - (b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or
  - (c) has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or
  - (d) has so abused his position as to render his continuance in office prejudicial to the public interest,

such Chairperson or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.

- (4) The Chairperson and Members of the Local Committee other than the Members nominated under clauses (b) and (d) of sub-section (1) shall be entitled to such fees or allowances for holding the proceedings of the Local Committee as may be prescribed.
8. (1) The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the State Government grants of such sums of money as the Central Government may think fit, for being utilised for the payment of fees or allowances referred to in sub-section (4) of section 7.
- (2) The State Government may set up an agency and transfer the grants made under sub-section (1) to that agency.
- (3) The agency shall pay to the District Officer, such sums as may be required for the payment of fees or allowances referred to in sub-section (4) of section 7.
- (4) The accounts of the agency referred to in sub-section (2) shall be maintained and audited in such manner as may/in consultation With the Accountant General of the Stale, be prescribed and the person holding the custody of the accounts of the agency

shall furnish, to the State Government, before such date, as may be prescribed, its audited copy of accounts together with auditors' report thereon.

## CHAPTER IV

### COMPLAINT

9. (1) Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:

Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing:

Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

- (2) Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section.

10. (1) The Internal Committee or, as the case may be, the Local Committee, may, before initiating an inquiry under section 11 and at the request of the aggrieved woman take steps to settle the matter between her and the respondent through conciliation.

Provided that no monetary settlement shall be made as a basis of conciliation.

- (2) Where a settlement has been arrived at under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall record the settlement so arrived and forward the same to the employer or the District Officer to take action as specified in the recommendation.

- (3) The Internal Committee or the Local Committee, as the case may be, shall provide the copies of the settlement as recorded under sub-section (2) to the aggrieved woman and the respondent.

- (4) Where a settlement is arrived at under sub-section (1), no further inquiry shall be conducted by the Internal Committee or the Local Committee, as the case may be.

11. (1) Subject to the provisions of section 10, the Internal Committee or the Local inquiry Committee, as the case may be, shall, where the respondent is an employee, proceed to make complaint inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code, and any other relevant provisions of the said Code where applicable:

Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the



respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police:

Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.

- (2) Notwithstanding anything contained in section 509 of the Indian Penal Code, the court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of section 15.
- (3) For the purpose of making an inquiry under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of the following matters, namely:—
  - (a) summoning and enforcing the attendance of any person and examining him on oath;
  - (b) requiring the discovery and production of documents; and
  - (c) any other matter which may be prescribed. (4) The inquiry under sub-section (1) shall be completed within a period of ninety days.

## CHAPTER V

### INQUIRY INTO COMPLAINT

12. (1) During the pendency of an inquiry, on a written request made by the aggrieved woman, the Internal Committee or the Local Committee, as the case may be, may recommend to the employer to
  - (a) transfer the aggrieved woman or the respondent to any other workplace; or
  - (b) grant leave to the aggrieved woman up to a period of three months; or
  - (c) grant such other relief to the aggrieved woman as may be prescribed.
- (2) The leave granted to the aggrieved woman under this section shall be in addition to the leave she would be otherwise entitled.
- (3) On the recommendation of the Internal Committee or the Local Committee, as the case may be, under sub-section (1), the employer shall implement the recommendations made under sub-section (1) and send the report of such implementation to the Internal Committee or the Local Committee, as the case may be.
13. (1) On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.
- (2) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.

(3) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be—

- (i) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;
- (ii) to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of section 15:

Provided that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman:

Provided further that in case the respondent fails to pay the sum referred to in clause (ii), the Internal Committee or, as the case may be, the Local Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

(4) The employer or the District Officer shall act upon the recommendation within sixty days of its receipt by him.

14. (1) Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or the District Officer, as the case may be, to take action against the woman or the person who has made the complaint under sub-section (1) or sub-section (2) of section 9, as the case may be, in accordance with the provisions of the service rules applicable to her or him or where no such service rules exist, in such manner as may be prescribed:

Provided that a mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant under this section:

Provided further that the malicious intent on part of the complainant shall be established after an inquiry in accordance with the procedure prescribed, before any action is recommended.

(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness or the District Officer, as the case may be, to take action in accordance with the provisions of the service rules applicable to the said witness or where no such service rules exist, in such manner as may be prescribed.

15. for the purpose of determining the sums to be paid to the aggrieved woman under clause (ii) of sub-section (3) of section 13, the Internal Committee or the Local Committee, as the case may be, shall have regard to—

- (a) the mental trauma, pain, suffering and emotional distress caused to the aggrieved woman;
- (b) the loss in the career opportunity due to the incident of sexual harassment;



- (f) make available such information to the Internal Committee or the Local Committee, as the case may be, as it may require having regard to the complaint made under sub-section (1) of section 9;
- (g) provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code or any other law for the time being in force;
- (h) cause to initiate action, under the Indian Penal Code or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place;
- (i) treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;
- (j) monitor the timely submission of reports by the Internal Committee.

## **CHAPTER VII**

### **DUTIES AND POWERS OF DISTRICT OFFICER**

- 20.** The District Officer shall,—
- (a) monitor the timely submission of reports furnished by the Local Committee;
  - (b) take such measures as may be necessary for engaging non-governmental organisations for creation of awareness on sexual harassment and the rights of the women.

## **CHAPTER VIII**

### **MISCELLANEOUS**

- 21.** (1) The Internal Committee or the Local Committee, as the case may be, shall in calendar year prepare, in such form and at such time as may be prescribed, an annual report and submit the same to the employer and the District Officer.
- (2) The District Officer shall forward a brief report on the annual reports received under sub-section (1) to the State Government.
- 22.** The employer shall include in its report the number of cases filed, if any, and their disposal under this Act in the annual report of his organisation or where no such report is required to be prepared, intimate such number of cases, if any, to the District Officer.
- 23.** The appropriate Government shall monitor the implementation of this Act and maintain data on the number of cases filed and Disposed of in respect of all cases of sexual harassment at workplace.
- 24.** The appropriate Government may, subject to the availability of financial and other resources,—
- (a) develop relevant information, education, communication and training materials, and organise awareness programmes, to advance the understanding of the public of the provisions of this Act providing for protection against sexual harassment of woman at workplace,
  - (b) formulate orientation and training programmes for the members of the Local Complaints Committee.
- 25.** (1) The appropriate Government, on being satisfied that it is necessary in the Power to call public interest or in the interest of employees at a workplace to do so, by order in writing,—

- (a) call upon any employer or District Officer to furnish in writing such information relating to sexual harassment as it may require;
- (b) authorise any officer to make inspection of the records and workplace in relation to sexual harassment, who shall submit a report of such inspection to it within such period as may be specified in the order.
- (2) Every employer and District Officer shall produce on demand before the officer making the inspection all information, records and other documents in his custody having a bearing on the subject matter of such inspection.
- 26.** (1) Where the employer fails to —
- (a) constitute an internal Committee under sub-section (/) of section 4;
- (b) take action under sections 13, 14 and 22; and
- (c) contravenes or attempts to contravene or abets contravention of other Act. provisions of this Act or any rules made thereunder,
- he shall be punishable with fine which may extend to fifty thousand rupees.
- (2) If any employer, after having been previously convicted of an offence punishable under this Act subsequently commits and is convicted of the same offence, he shall be liable to —
- (i) twice the punishment, which might have been imposed on a first conviction, subject to the punishment being maximum provided for the same offence:
- Provided that in case a higher punishment is prescribed under any other law for the time being in force, for the offence for which the accused is being prosecuted, the court shall take due cognizance of the same while awarding the punishment;
- (ii) cancellation, of his licence or withdrawal, or non-renewal, or approval, or cancellation of the registration, as the case may be, by the Government or local authority required for carrying on his business or activity.
- 27.** (1) No court shall take cognizance of any offence punishable under this Act or any rules made thereunder, save on a complaint made by the aggrieved woman or any person authorised by the Internal Committee or Local Committee in this behalf.
- (2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.
- (3) Every offence under this Act shall be non-cognizable.
- 28.** The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.
- 29.** (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.
- (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
- (a) the fees or allowances to be paid to the Members under sub-section (7) of section 4;
- (b) nomination of members under clause (c) of sub-section (1) of section 7;
- (c) the fees or allowances to be paid to the Chairperson, and Members under sub-section (4) of section 7;

- (d) the person who may make complaint under sub-section (2) of section 9;
  - (e) the manner of inquiry under sub-section (1) of section 11;
  - (f) the powers for making an inquiry under clause (c) of sub-section (2) of section 11;
  - (g) the relief to be recommended under clause (c) of sub-section (1) of section 12;
  - (h) the manner of action to be taken under clause (i) of sub-section (3) of section 13;
  - (i) the manner of action to be taken under sub-sections (1) and (2) of section 14;
  - (j) the manner of action to be taken under section 17;
  - (k) the manner of appeal under sub-section (1) of section 18;
  - (l) the manner of organising workshops, awareness programmes for sensitising the employees and orientation programmes for the members of the Internal Committee under clause (c) of section 19; and
  - (m) the form and time for preparation of annual report by Internal Committee and the Local Committee under sub-section (1) of section 21.
- (3) Every rule made by the Central Government under this Act shall be laid as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.
- (4) Any rule made under sub-section (4) of section 8 by the State Government shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.
- 30.** (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty:
- Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Act.
- (2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

PK. MALHOTRA,  
*Secy, to the Govt, of India*



# भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।  
Separate paging is given in this Part in order that it may be filed as a seprate compilation.

## MINISTRY OF LAW AND JUSTICE

(Legislative Department)

*New Delhi, the 2nd April, 2013/Chaitra 12, 1935 (Saka)*

The following Act of Parliament received the assent of the President on the 2nd April, 2013, and is hereby published for general information:-

## THE CRIMINAL LAW (AMENDMENT) ACT, 2013

No. 13 OF 2013

[2nd April, 2013]

### CHAPTER I

#### PRELIMINARY

1. (1) This Act may be called the Criminal Law (Amendment) Act, 2013.
- (2) It shall be deemed to have come into force on the 3rd day of February, 2013.

### CHAPTER II

#### AMENDMENTS TO THE INDIAN PENAL CODE

2. In the Indian Penal Code (hereafter in this Chapter referred to as the Penal Code), in section 100, after clause Sixthly, the following clause shall be inserted, namely:-

"Seventhly. - An act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act."

3. After section 166 of the Penal Code, the following sections shall be inserted, namely:—

"166A. Whoever, being a public servant,—

- (a) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or
- (b) knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation,
- (c) fails to record any information given to him under sub-section (J) of section 154 of the Code of Criminal Procedure, 1973, in relation to cognizable offence punishable under section 326A, section 326B, section 354, section 354B, section 370, section 370A, section 376, section 376A, section 376B, section 376C, section 3760, section 376E or section 509, shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine.

166B. Whoever, being in charge of a hospital, public or private, whether run by the Central Government, the State Government, local bodies or any other person, contravenes the provisions of section 357C of the Code of Criminal Procedure, 1973, shall be punished with imprisonment for a term which may extend to one year or with fine or with both."

4. In section 228A of the Penal Code, in sub-section (1), for the words, figures and letters "offence under section 376, section 376A, section 376B, section 376C or section 3760", the words, figures and letters "offence under section 376, section 376A, section 376B, section 376C, section 3760 or section 376E" shall be substituted.

5. After section 326 of the Penal Code, the following sections shall be inserted, namely:-

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

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

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

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

*Explanation 1.*-For the purposes of section 326A and this section, "acid" includes any substance which has acidic or corrosive character or burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability.

*Explanation 2.*-For the purposes of section 326A and this section, permanent or partial damage or deformity shall not be required to be irreversible.'

6. In section 354 of the Penal Code, for the words "shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both", the



words "shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine" shall be substituted.

7. After section 354 of the Penal Code, the following sections shall be inserted, namely:-

'354A.(1) A man committing any of the following acts-

- (i) physical contact and advances involving unwelcome and explicit sexual overtures; or
  - (ii) a demand or request for sexual favours; or
  - (iii) showing pornography against the will of a woman; or
  - (iv) making sexually coloured remarks, shall be guilty of the offence of sexual harassment.
- (2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.
- (3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

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

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

*Explanation 1.*-For the purpose of this section, "private act" includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.

*Explanation 2.*-Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.

354D.(1) Any man who—

- (i) follows a woman and contacts, or attempts\_ to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or
  - (ii) monitors the use by a woman of the internet, email or any other form of electronic communication,
- commits the offence of stalking:

Provided that such conduct shall not amount to stalking if the man who pursued it proves that-

- (i) it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or
- (ii) it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or
- (iii) in the particular circumstances such conduct was reasonable and justified.

(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.'

8. For section 370 of the Penal Code, the following sections shall be substituted, namely:-

'370.(1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by—

*First.*— using threats, or

*Secondly.* —using force, or any other form of coercion, or

*Thirdly.* —by abduction, or

*Fourthly.*—by practising fraud, or deception, or

*Fifthly.* —by abuse of power, or

*Sixthly.*—by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

*Explanation 1.*-The expression "exploitation" shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

*Explanation 2.*-The consent of the victim is immaterial in determination of the offence of trafficking.

(2) Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.

(3) Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(4) Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

(5) Where the offence involves the trafficking of more than one minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine.

(6) If a person is convicted of the offence of trafficking of minor on more than one occasion, then such person shall be punished with imprisonment for life, which shall

mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

- (7) When a public servant or a police officer is involved in the trafficking of any person then, such public servant or police officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

370A. (1) Whoever, knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine.

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

9. For sections 375,376, 376A, 376B, 376C and 376D of the Penal Code, the following sections shall be substituted, namely:-

'375. A man is said to commit "rape" if he—

- (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
- (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling

under any of the following seven descriptions:

*First.*—Against her will.

*Secondly.*—Without her consent.

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

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

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

*Sixthly.*—With or without her consent, when she is under eighteen years of age.

*Seventhly.* —When she is unable to communicate consent.

*Explanation 1.*-For the purposes of this section, "vagina" shall also include labia majora.

*Explanation 2.*-Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

*Exception 1.*-A medical procedure or intervention shall not constitute rape.

*Exception 2.*-Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.'

376. (1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever,—

- (a) being a police officer, commits rape-
  - (i) within the limits of the police station to which such police officer is appointed; or
  - (ii) in the premises of any station house; or
  - (iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or
- (b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or
- (c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or
- (d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or
- (e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or
- (f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or
- (g) commits rape during communal or sectarian violence; or
- (h) commits rape on a woman knowing her to be pregnant; or
- (i) commits rape on a woman when she is under sixteen years of age; or
- (j) commits rape, on a woman incapable of giving consent; or
- (k) being in a position of control or dominance over a woman, commits rape on such woman; or
- (l) commits rape on a woman suffering from mental or physical disability; or
- (m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or

(n) commits rape repeatedly on the same woman,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

*Explanation.*-For the purposes of this sub-section,-

(a) "armed forces" means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;

(b) "hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;

(c) "police officer" shall have the same meaning as assigned to the expression "police" under the Police Act, 1861;

(d) "women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.

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

376B. Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.

*Explanation.*-In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375.

376C. Whoever, being—

(a) in a position of authority or in a fiduciary relationship; or

(b) a public servant; or

(c) superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force, or a women's or children's institution; or

(d) on the management of a hospital or being on the staff of a hospital,

abuses such position or fiduciary relationship to induce or seduce any woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than five years, but which may extend to ten years, and shall also be liable to fine.

*Explanation 1.*-In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375.

*Explanation 2.*-For the purposes of this section, Explanation 1 to section 375 shall also be applicable.

*Explanation 3.*-"Superintendent", in relation to a jail, remand home or other place of custody or a women's or children's institution, includes a person holding any other office in such jail, remand home, place or institution by virtue of which such person can exercise any authority or control over its inmates.

*Explanation 4.*-The expressions "hospital" and "women's or children's institution" shall respectively have the same meaning as in Explanation to sub-section (2) of section 376.

376D. Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine:

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

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

376E. Whoever has been previously convicted of an offence punishable under section 376 or section 376A or section 3760 and is subsequently convicted of an offence punishable under any of the said sections shall be punished with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death.'

10. In section 509 of the Penal Code, for the words "shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both", the words "shall be punished with simple imprisonment for a term which may extend to three years, and also with fine" shall be substituted.

### **CHAPTER III**

#### **AMENDMENTS TO THE CODE OF CRIMINAL PROCEDURE, 1973**

11. In the Code of Criminal Procedure, 1973 (hereafter in this Chapter referred to as the Code of Criminal Procedure), in section 26, in the proviso to clause (a), for the figures and letters "offence under section 376 and sections 376A to 3760 of the Indian Penal section 376B, section 376C, section 3760 or section 376E of the Indian Penal Code" be substituted.

12. In section 54A of the Code of Criminal Procedure, the following provisos shall be inserted, namely:-

"Provided that, if the person identifying the person arrested is mentally or physically disabled, such process of identification shall take place under the supervision of a Judicial Magistrate who shall take appropriate steps to ensure that such person identifies the person arrested using methods that person is comfortable with:

Provided further that if the person identifying the person arrested is mentally or physically disabled, the identification process shall be videographed."

13. In section 154 of the Code of Criminal Procedure, in sub-section (1), the following provisos shall be inserted, namely:-



in-chief, as specified in section 137 of the Indian Evidence Act, 1872 such that the maker of the statement can be cross-examined on such statement, without the need for recording the same at the time of trial."

17. In section 173 of the Code of Criminal Procedure, in sub-section (2), in sub-clause (h) of clause (1), for the words, figures and letter "or 3760 of the Indian Penal Code", the words, figures and letters" 3760 or section 376E of the Indian Penal Code" shall be substituted.
18. In section 197 of the Code of Criminal Procedure, after sub-section (J), the following Explanation shall be inserted, namely:-

"*Explanation.*-For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376, section 376A, section 376C, section 376E or section 509 of the Indian Penal Code."
19. After section 198A of the Code of Criminal Procedure, the following section shall be inserted, namely:-

"198B. No Court shall take cognizance of an offence punishable under section 376B of the Indian Penal Code where the persons are in a marital relationship, except upon prima facie satisfaction of the facts which constitute the offence upon a complaint having been filed or made by the wife against the husband."
20. In section 273 of the Code of Criminal Procedure, before the Explanation, the following proviso shall be inserted, namely:-

"Provided that where the evidence of a woman below the age of eighteen years who is alleged to have been subjected to rape or any other sexual offence, is to be recorded, the court may take appropriate measures to ensure that such woman is not confronted by the accused while at the same time ensuring the right of cross-examination of the accused."
21. In section 309 of the Code of Criminal Procedure, for sub-section (1), the following sub-section shall be substituted, namely:-

"(1) In every inquiry or trial the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded:

Provided that when the inquiry or trial relates to an offence under section 376, section 376A, section 376B, section 376C or section 376E of the Indian Penal Code, the inquiry or trial shall, as far as possible be completed within a period of two months from the date of filing of the charge sheet."
22. In section 327 of the Code of Criminal Procedure, in sub-section (2), for the words, figures and letter "or section 3760 of the Indian Penal Code", the words, figures and letters "section 3760 or section 376E of the Indian Penal Code" shall be substituted.
23. After section 357A of the Code of Criminal Procedure, the following sections shall new sections be inserted, namely:-

"357B. The compensation payable by the State Government under section 357A shall be in addition to the payment of fine to the victim under section 326A or section 3760 of the Indian Penal Code.

357C. All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under section 326A,



376A, 376B, 376C, 376D or section 376E of the Indian Penal Code, and shall immediately inform the police of such incident.”.

**24.** In the First Schedule to the Code of Criminal Procedure, under the heading "I.-OFFENCES UNDER THE INDIAN PENAL CODE",—

(a) after the entries relating to section 166, the following entries shall be inserted, namely:—

1	2	3	4	5	6
"166A	Public servant disobeying direction under law.	Imprisonment for minimum 6 months which may extend to 2 years and fine.	Cognizable	Bailable	Magistrate of the first class.
166B	Non-treatment of victim by hospital	Imprisonment for 1 year or fine or both	Non-cognizable	Bailable	Magistrate of the first class";

b) after the entries relating to section 326, the following entries shall be inserted, namely:—

1	2	3	4	5	6
"326A	Voluntarily causing grievous hurt by use of acid, etc.	Imprisonment for not less than 10 years but which may extend to imprisonment for life and fine to be paid to the victim.	Cognizable	Non-Bailable	Court of Session
326B	Voluntarily throwing or attempting to throw acid	Imprisonment for 5 years but which may extend to 7 years and with fine.	Non-cognizable	Non-Bailable	Court of Session.";

(c) for the entries relating to section 354, the following entries shall be substituted, namely:—

1	2	3	4	5	6
"354	Assault or use of criminal force to woman with intent to outrage her modesty.	Imprisonment of 1 year which may extend to 5 years, and with fine.	Cognizable	Non-Bailable	Any Magistrate
354A	Sexual harassment of the nature of unwelcome physical contact and advances or a demand or request for sexual favours, showing pornography.	Imprisonment which may extend to 3 years or with fine or with both.	Cognizable	Bailable	Any Magistrate
	Sexual harassment of the nature of making sexually coloured remark.	Imprisonment which may extend to 1 year or with fine or with both.	Cognizable	Bailable	Any Magistrate
354B	Assault or use of criminal force to woman with intent to disrobe	Imprisonment of not less than 3 years but which may extend to 7 years and with fine.	Cognizable	Non-Bailable	Any Magistrate

1	2	3	4	5	6
354C	Voyeurism	Imprisonment of not less than 1 year but which may extend to 3 years and with fine for first conviction.	Cognizable	Bailable	Any Magistrate
		Imprisonment of not less than 3 years but which may extend to 7 years and with fine for second or subsequent conviction	Cognizable	Non-bailable	Any Magistrate
354D	Stalking	Imprisonment up to 3 years and with fine for first conviction.	Cognizable	Bailable	Any Magistrate
		Imprisonment up to 5 years and with fine for second or subsequent conviction.	Cognizable	Non-bailable	Any Magistrate

(d) for the entries relating to section 370, the following entries shall be substituted, namely :—

1	2	3	4	5	6
"370	Trafficking of person	Imprisonment of not less than 7 years but which may extend to 10 years and with fine.	Cognizable	Non-Bailable	Court of Session
	Trafficking of more than one person.	Imprisonment of not less than 10 years but which may extend to imprisonment for life and with fine.	Cognizable	Non-Bailable	Court of Session
	Trafficking of a minor	Imprisonment of not less than 10 years but which may extend to imprisonment for life and with fine.	Cognizable	Non-bailable	Court of Session
	Trafficking of more than one minor	Imprisonment of not less than 14 years but which may extend to imprisonment for life and with fine.	Cognizable	Non-bailable	Court of Session
	Person convicted of trafficking of minor on more than one occasion.	Imprisonment for life which shall mean the remainder of that person's natural life and with fine.	Cognizable	Non-bailable	Court of Session

1	2	3	4	5	6
370A	Exploitation of a trafficked child	Imprisonment of not less than 3 years but which may extend to 7 years and with fine.	Cognizable	Non-bailable	Court of Session
	Exploitation of a trafficked person	Imprisonment of not less than 3 years but which may extend to 5 years and with fine.	Cognizable	Non-bailable	Court of Session";

(e) for the entries relating to sections 376, 376A, 376B, 376C and 376D, the following entries shall be substituted, namely :—

1	2	3	4	5	6
"376	Rape.	Rigorous imprisonment of not less than 7 years but which may extend to imprisonment for life and with fine.	Cognizable	Non-Bailable	Court of Session
	Rape by a police officer or a public servant or member of armed forces or a person being on the management or on the staff of a jail, remand home or other place of custody or women's or children's institution or by a person on the management or on the staff of a hospital, and rape committed by a person in a position of trust or authority towards the person raped or by a near relative of the person raped.	Rigorous imprisonment of not less than 10 years but which may extend to imprisonment for life which shall mean the remainder of that person's natural life and with fine.	Cognizable	Non-Bailable	Court of Session
376A	Person committing an offence of rape and inflicting injury which causes death or causes the woman to be in a persistent vegetative state.	Rigorous imprisonment of not less than 20 years but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life or with death	Cognizable	Non-bailable	Court of Session
376B	Sexual intercourse by husband upon his wife during separation.	Imprisonment for not less than 2 years but which may extend to 7 years and with fine.	Cognizable (but only on the complaint of the victim)	Bailable	Court of Session.

1	2	3	4	5	6
376C	Sexual intercourse by a person in authority	Rigorous imprisonment for not less than 5 years but which may extend to 10 years and with fine.	Cognizable	Non-bailable	Court of Session
376D	Gang rape	Rigorous imprisonment for not less than 20 years but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life and with fine to be paid to the victim.	Cognizable	Non-bailable	Court of Session
376E	Repeat offenders	Imprisonment for life which shall mean imprisonment for the remainder of that person's natural life or with death.	Cognizable	Non-bailable	Court of Session";

(f) in entry relating to section 509, in column 3, for the words "Simple imprisonment for one year, or fine, or both," the words and figure "Simple imprisonment for 3 years and with fine " shall be substituted.

## CHAPTER IV

### AMENDMENTS TO THE INDIAN EVIDENCE ACT, 1872

25. After section 53 of the Indian Evidence Act, 1872 (hereafter in this Chapter referred to as the Evidence Act), the following section shall be inserted, namely:-

"53A. In a prosecution for an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code or for attempt to commit any such offence, where the question of consent is in issue, evidence of the character of the victim or of such person's previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent."

26. For section 114A of the Evidence Act, the following section shall be substituted, namely:-

'114A. In a prosecution for rape under clause (a), clause (b), clause (c), clause (d), clause (e), clause (j), clause (g), clause (h), clause (l), clause (i), clause (k), clause (l), clause (m) or clause (n) of sub-section (2) of section 376 of the Indian Penal Code, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent.

*Explanation.*-In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375 of the Indian Penal Code.'

27. For section 119 of the Evidence Act, the following section shall be substituted, namely:-





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**"NYAYA SADAN"**

**JHARKHAND STATE LEGAL SERVICES AUTHORITY (JHALSA)**

Near A.G. Office, Doranda, Ranchi

Phone : 0651-2481520, Fax : 0651-2482397

Email : [jhalsaranchi@gmail.com](mailto:jhalsaranchi@gmail.com)

Website : [www.jhalsa.org](http://www.jhalsa.org)