

**EXCERPTS OF RELEVANT
SECTIONS OF OTHER
ACTS/ RULES RELATING TO
WOMEN AND CIRCULARS,
NOTIFICATION AND
LANDMARK JUDGMENTS**

The Factories Act, 1948

Section 19. Latrines and urinals.—

(1) In every factory—

- (a) sufficient latrine and urinal accommodation of prescribed types shall be provided conveniently situated and accessible to workers at all times while they are at factory;
- (b) separate enclosed accommodation shall be provided for male and female workers;
- (c) such accommodation shall be adequately lighted and ventilated, and no latrine or urinal shall, unless specially exempted in writing by the Chief Inspector, communicate with any work room except through an intervening open space or ventilated passage;
- (d) all such accommodation shall be maintained in a clean and sanitary condition at all times;
- (e) sweepers shall be employed whose primary duty it would be to keep clean latrines, urinals and washing places.

(2) In every factory wherein more than two hundred and fifty workers are ordinarily employed—

- (a) all latrine and urinal accommodation shall be of prescribed sanitary types;
- (b) the floors and internal walls, up to a height of 1[ninety centimetres], of the latrines and urinals and the sanitary blocks shall be laid in glazed tiles or otherwise finished to provide a smooth polished impervious surface;
- (c) without prejudice to the provisions of clauses (d) and (e) of sub-section (1), the floors, portions of the walls and blocks so laid or finished and the sanitary pans of latrines and urinals shall be thoroughly washed and cleaned at least once in every seven days with suitable detergents or disinfectants or with both.

(3) The State Government may prescribe the number of latrines and urinals to be provided in any factory in proportion to the numbers of male and female workers ordinarily employed therein, and provide for such further matters in respect of sanitation in factories, including the obligation of workers in this regard, as it considers necessary in the interest of the health of the workers employed therein.

Sec. 22 (2)-

No woman or young person shall be allowed to clean, lubricate or adjust any part of a prime mover or of any transmission machinery while the prime mover or transmission machinery is in

motion, or to clean, lubricate or adjust any part of any machine if the cleaning, lubrication or adjustment thereof would expose the woman or young person to risk of injury from any moving part either of that machine or of any adjacent machinery.

Sec. 27. Prohibition of employment of women and children near cotton-openers.—

No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton opener is at work; " Provided that if the feed-end of a cotton-opener is in a room separated from the delivery end by a partition extending to the roof or to such height as the Inspector may in any particular case specify in writing, women and children may be employed on the side of the partition where the feed-end is situated. tc "Provided that if the feed-end of a cotton-opener is in a room separated from the delivery end by a partition extending to the roof or to such height as the Inspector may in any particular case specify in writing, women and children may be employed on the side of the partition where the feed-end is situated."

Sec. 34. Excessive weights.—

- (1) No person shall be employed in any factory to lift, carry or move any load so heavy as to be likely to cause him injury.
- (2) The State Government may make rules prescribing the maximum weights which may be lifted, carried or moved by adult men, adult women, adolescents and children employed in factories or in any class or description of factories or in carrying on any specified process.

42. Washing facilities.—

- (1) In every factory—
- (b) separate and adequately screened facilities shall be provided for the use of male and female workers;

48. Creches.—

- (1) In every factory wherein more than 1[thirty women workers] are ordinarily employed there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such women.

(2) Such rooms shall provide adequate accommodation, shall be adequately lighted and ventilated, shall be maintained in a clean and sanitary condition and shall be under the charge of women trained in the care of children and Infants.

(3) The State Government may make rules—

(a) prescribing the location and the standards in respect of construction, accommodation, furniture and other equipment of rooms to be provided under this section;

(b) requiring the provision in factories to which this section applies of additional facilities for the care of children belonging to women workers, including suitable provision of facilities for washing and changing their clothing;

(c) requiring the provision in any factory of free milk or refreshment or both for such children;

(d) requiring that facilities shall be given in any factory for the mothers of such children to feed them at the necessary intervals.

66. Further restrictions on employment of women.—

(1) The provisions of this Chapter shall, in their application to women in factories, be supplemented by the following further restrictions; namely:—

(a) no exemption from the provisions of section 54 may be granted in respect of any woman;

(b) no woman shall be 1[required or allowed to work in any factory] except between the hours of 6 A.M. and 7 P.M.: Provided that the State Government may, by notification in the Official Gazette, in respect of 2[any factory or group or class or description of factories,] vary the limits laid down in clause (b), but so that no such variation shall authorize the employment of any woman between the hours of 10 P.M. and 5 A.M.; 3[(c) there shall be no change of shifts except after a weekly holiday or any other holiday.]

(2) The State Government may make rules providing for the exemption from the restrictions set out in sub-section (1), to such extent and subject to such conditions as it may prescribe, of women working in fish-curing or fish-canning factories, where the employment of women beyond the hours specified in the said restrictions is necessary to prevent damage to, or deterioration in, any raw material.

(3) The rules made under sub-section (2) shall remain in force for not more than three years at a time.

70. Effect of certificate of fitness granted to adolescent.—

(1) An adolescent who has been granted a certificate of fitness to work in a factory as an adult under clause (b) of sub-section (2) of section 69, and who while at work in a factory carries a token giving reference to the certificate, shall be deemed to be an adult for all the purposes of Chapters VI and VIII. 1[***] 2[(1A) No female adolescent or a male adolescent who has not attained the age of seventeen years but who has been granted a certificate of fitness to work in a factory as an adult, shall be required or allowed to work in any factory except between 6 A.M. and 7 P.M.: Provided that the State Government may, by notification in the Official Gazette, in respect of any factory or group or class or description of factories,—

(i) vary the limits laid down in this sub-section so, however, that no such section shall authorise the employment of any female adolescent between 10 P.M. and 5 A.M.;

(ii) grant exemption from the provisions of this sub-section in case of serious emergency where national interest is involved.]

71. Working hours for children.—

(4) No child shall be required or allowed to work in any factory on any day on which he has already been working in another factory. 2[(5) No female child shall be required or allowed to work in any factory except between 8 A.M. and 7 P.M.]

79. Annual leave with wages.—

(b) in the case of a female worker, maternity leave for any number of days not exceeding twelve weeks;

80. Wages during leave period.—

(2) The cash equivalent of the advantage accruing through the concessional sale to the worker of foodgrains and other articles shall be computed as often as may be prescribed, on the basis of the maximum quantity of foodgrains and other articles admissible to a standard family. Explanation 1.—“Standard family” means a family consisting of a worker, his or her spouse and two children below the age of fourteen years requiring in all three adult consumption units. Explanation 2.—“Adult consumption unit” means the consumption unit of a male above the age of fourteen years; and the consumption unit of a female above the age of fourteen years and that of a child below the age of fourteen years shall be calculated at the rates of 0.8 and 0.6 respectively of one adult consumption unit.

Sec. 87-Dangerous operations. —

Where the State Government is of opinion that any 1[manufacturing process or operation] carried on in a factory exposes any persons employed in it to a serious risk of bodily injury, poisoning or disease, it may make rules applicable to any factory or class or description of factories in which the 1[manufacturing process or operation] is carried on—

(b) prohibiting or restricting the employment of women, adolescents or children in the 1[manufacturing process or operation];

THE MINES ACT, 1952

[Act, No. 35 of 1952]¹

[15th March, 1952]

PREAMBLE

An Act to amend and consolidate the law relating to the regulation of labour and safety in mines.

BE it enacted by Parliament as follows:--

1. This Act has been extended to Goa, Daman and Diu with Modifications by Regulation 12 of 1962, section 3 and Schedule and to Pondicherry by Act 26 of 1968, section 3 and Schedule.

Section 28 - Weekly day of rest

No person shall be allowed to work in a mine on more than six days in any one week.

Section 29 - Compensatory days of rest

(1) Where in pursuance of action under section 38 or a result of exempting any mine or the persons employed therein the provisions of section 28, any person employed therein is deprived of any of the weekly days of rest for which provision is made in section 28, he shall be allowed, within the month in which such days of rest were due to him or within the two months immediately following that month, compensatory days of rest equal in number to the days of rest of which he has been deprived.

(2) The Central Government may prescribe the manner in which the days of rest for which provision is made in sub-section (1) shall be allowed.

Section 30 - Hours of work above ground

(1) No adult employed above ground in a mine shall be required or allowed to work for more than forty-eight hours in any week or for more than nine hours in any day :

¹ [Provided that, subject to the previous approval of the Chief Inspector, the daily maximum hours specified in this sub-section may be exceeded in order to facilitate the change of shifts.]

(2) The periods of work of any such adult shall be so arranged that, along with his interval for rest, they shall not in any day spread over more than twelve hours, and that he shall not work for more than five hours continuously before he has had an interval for rest of at least half an hour :

² [Provided that the Chief Inspector may, for reasons to be recorded in writing and subject to such conditions as he may deem fit to impose, permit the spread-over to extend over a period not exceeding fourteen hours in any day.]

³ [(3) Persons belonging to two or more shifts shall not be allowed to do work of the same kind above ground at the same time :

Provided that, for the purposes of this sub-section, persons shall not be deemed to belong to separate shifts by reason only of the fact they receive their intervals for rest at different times.]

1. Proviso added by Act 62 of 1959, section 14 (w.e.f. 16-1-1960).

2. Substituted by Act 62 of 1959, section 14, for the proviso (w.e.f. 16-1-1960).

3. Substituted by Act 62 of 1959, section 14, for sub-section (3) (w.e.f. 16-1-1960).

Section 31 - Hours of work below ground

¹[31. Hours of work below ground

(1) No adult employed below ground in a mine shall be allowed to work for more than forty-eight hours in any week or for more than eight hours in any day:

Provided that, subject to the previous approval of the Chief Inspector, the daily maximum hours specified in this sub-section may be exceeded in order to facilitate the change of shifts.

(2) No work shall be carried on below ground in any mine except by a system of shifts so arranged that the period of work for each shift is not spread over more than the daily maximum hours stipulated in sub-section (1).

(3) No person employed in a mine shall be allowed to be present in any part of a mine below ground except during the periods of work shown in respect of him in the register maintained under sub-section (4) of section 48.]

1. Substituted by Act 62 of 1959, section 15, for section 31 (w.e.f. 16-1-1960).

Section 32 - Night shift

¹[32. Night shift

Where a person employed in a mine works on a shift which extends beyond midnight.

(a) for the purposes of sections 28 and 29, a weekly day of rest shall mean in his case a period of twenty-four consecutive hours beginning when his shift ends;

(b) the following day for him shall be deemed to be the period of twenty-four hours beginning when such shift ends, and the hours he has worked after midnight shall be counted in the previous day.]

1. Substituted by Act 62 of 1959, section 16, for Section 32 (w.e.f. 16-1-1960).

Section 33 - Extra wages for overtime

¹[(1) Where in a mine a person works above ground for more than nine hours in any day, or works below ground for more than eight hours in any day or works for more than forty-eight hours in any week whether above ground or below ground, he shall in respect of such overtime work be entitled to wages at the rate of twice his ordinary rate of

wages, the period of overtime work being calculated on a daily basis or weekly basis, whichever is more favourable to him.]

²(2) Where any person employed in a mine is paid on piece rate basis, the time-rate shall be taken as equivalent to the daily average of his full-time earnings for the days on which he actually worked during the week immediately preceding the week in which overtime work has been done exclusive of any overtime, and such time-rate shall be deemed to be the ordinary rate of wages of such person:

Provided that if such person has not worked in the preceding week on the same or identical job, the time-rate shall be based on the average for the days he has worked in the same week excluding the over time or on the daily average of his earnings in any preceding week, whichever is higher.

Explanation.—For the purposes of this section, "ordinary rate of wages" shall have the same meaning as in the Explanation to sub-section (3) of section 9A.]

(4) The Central Government may prescribe the registers to be maintained in a mine for the purpose of securing compliance with the provisions of this section.

1. Substituted by Act 62 of 1959, section 17, for sub-section (1) (w.e.f. 16-1-1960).

2. Substituted by Act 42 of 1983, section 19, for sub-section (2) and (3) (w.e.f. 31-5-1984).

Section 34 - Prohibition of employment of certain persons

¹[34. Prohibition of employment of certain persons

No person shall be required or allowed to work in a mine if he has already been working in any other mine within the preceding twelve hours.]

1. Substituted by Act 62 of 1959, section 18, for section 34 (w.e.f. 16-1-1960).

Section 35 - Limitation of daily hours of work including overtime work

¹[35. Limitation of daily hours of work including overtime work

Save in respect of cases falling within clause (a) and clause (e) of section 39, no person employed in a mine shall be required or allowed to work in the mine for more than ten hours in any day inclusive of overtime.]

1. Substituted by Act 62 of 1959, sec. 19, for section 35 (w.e.f. 16-1-1960).

Section 40 - Employment of persons below eighteen years of age

¹[40. Employment of persons below eighteen years of age

(1) After the commencement of the Mines (Amendment) Act, 1983, no person below eighteen years of age shall be allowed to work in any mine or part thereof.

(2) Notwithstanding anything contained in sub-section (1), apprentices and other trainees not below sixteen years of age, may be allowed to work, under proper supervision, in a mine or part thereof by the manager:

Provided that in the case of trainees, other than apprentices, prior approval of the Chief Inspector or an Inspector shall be obtained before they are allowed to work.

Explanation.-- In this section and in section 43, "apprentice" means an apprentice as defined in clause (a) of section 2 of the Apprentices Act, 1961 (52 of 1961).]

1. Substituted by Act 42 of 1983, section 22, for section 40 (w.e.f. 31-5-1984).

THE BEEDI AND CIGAR WORKERS (CONDITIONS OF EMPLOYMENT) ACT, 1966

[Act, No. 32 of 1966]

[30th November, 1966]

PREAMBLE

An Act to provide for the welfare of the workers in beedi and cigar establishments and to regulate the conditions of their work and for matters connected therewith.

BE it enacted by Parliament in the Seventeenth Year of the Republic of India as follows :--

Section 12 - Latrines and urinals

(1) In every industrial premises, sufficient latrine and urinal accommodation of such types as may be prescribed shall be provided and shall be so conveniently situated as may be accessible to the employees at all times while they are in the industrial premises:

Provided that it shall not be necessary to provide separate urinals in industrial premises where less than fifty persons are employed or where the latrines are connected to a water-borne sewage system.

(2) The State Government may specify the number of latrines and urinals which shall be provided in any industrial premises in proportion to any number of male and female employees ordinarily employed therein, and may provide for such further matters in respect of sanitation in the industrial premises including obligation of the employees in this regard as it may consider necessary in the interest of the health of the persons employed therein.

Section 14 - Creches

In every industrial premises wherein more than¹[thirty] female employees are ordinarily employed, there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such female employees.

(2) Such rooms shall --

- (a) provide adequate accommodation;
- (b) be adequately lighted and ventilated;
- (c) be maintained in a clean and sanitary condition;
- (d) be under the charge of women trained in the care of children and infants.

(3) The State Government may make rules--

- (a) prescribing the location and the standards in respect of construction, accommodation, furniture and other equipment of rooms to be provided under this section.
- (b) requiring the provision in any industrial premises to which this section applies, of additional facilities for the care of children belonging to female employees, including suitable provisions of facilities for washing and changing their clothing;
- (c) requiring the provision in any industrial premises of free milk or refreshment or both for such children;
- (d) requiring that facilities shall be given in any industrial premises for the mothers of such children to feed them at necessary intervals.

1. Substituted by Act 41 of 1993, sec. 4, for "fifty".

Section 17 - Working hours

No employee shall be required or allowed to work in any industrial premises for more than nine hours in any day or for more than forty-eight hours in any week:

Provided that any adult employee may be allowed to work in such industrial premises for any period in excess of the limit fixed under this section subject to the payment of overtime wages if the period of work including overtime work, does not exceed ten hours in any day and in the aggregate fifty-four hours in any week.

Section 18 - Wages for overtime work

(1) Where any employee employed in any industrial premises is required to work overtime, he shall be entitled in respect of such overtime work, to wages at the rate of twice his ordinary rate of wages.

(2) Where the employees in an industrial premises are paid on a piece rate basis, the overtime rate shall be calculated, for the purposes of this section, at the time rates which shall be as nearly as possible equivalent to the daily average of their full time earnings for the days on which they had actually worked during the week immediately preceding the week in which the overtime work has been done.

¹[Explanation.— Where an employee had not worked on any day of the week immediately preceding the week in which the overtime work has been done, any week preceding such week in which he had actually worked shall be taken into account in calculating the overtime rate for the purposes of this sub-section.]

(3) For the purposes of this section, "ordinary rates of wages" means the basic wages plus such allowance, including the cash equivalent of the advantage accruing through the concessional sale to the employees of foodgrains and other articles as the employee is for the time being entitled to but does not include bonus.

(4) The cash equivalent of the advantage accruing through the concessional sale to an employee of foodgrains and other articles shall be computed as often as may be prescribed on the basis of the maximum quantity of foodgrains and other articles admissible to a standard family.

Explanation I.— "Standard family" means a family consisting of the employee, his or her spouse and two children requiring in all three adult consumption units.

Explanation II.— "Adult consumption units" means the consumption unit of a male above the age of fourteen years; and the consumption unit of a female above the age of fourteen years and that of a child shall be calculated at the rate of eight-tenths and six-tenths, respectively, of one adult consumption unit.

1. Inserted by Act 41 of 1993, sec. 5.

Section 19 - Interval for rest

The periods of work for employees in an industrial premises each day shall be so fixed that no period shall exceed five hours and that no employee shall work for more than five hours before he has an interval for rest of at least half an hour.

Section 20 - Spread over

The periods of work of an employee in an industrial premises shall be so arranged that inclusive of his intervals for rest under section 19, they shall not spread over more than ten and a half hours in any day:

Provided that the Chief Inspector may, for reasons to be specified in writing, increase the spread over to twelve hours.

Section 21 - Weekly holidays

(1) Every industrial premises shall remain entirely closed, except for wetting of beedi or tobacco leaves, on one day in the week which day shall be specified by the employer in a notice exhibited in a conspicuous place in the industrial premises and the day so specified shall not be altered by the employer more often than once in three months and except with the previous written permission of the Chief Inspector.

¹[Provided that a copy of every such notice shall be sent to the Inspector having jurisdiction over the industrial premises within two weeks from the date on which such notice is exhibited in the industrial premises.]

(2) Notwithstanding anything contained in sub-section (1), an employee employed in the said premises for wetting of beedi or tobacco leaves on the day on which it remains closed in pursuance of sub-section (1), shall be allowed a substituted holiday on one of the three days immediately before or after the said day.

(3) For a holiday under this section, an employee shall be paid, notwithstanding any contract to the contrary, at the rate equal to the daily average of his total full time earnings for the days on which he had worked during the week immediately preceding

the holiday exclusive of any overtime earnings and bonus but inclusive of dearness and other allowances.

Explanation.— The expression "total full time earnings" shall have the meaning assigned to it in section 27.

1. Added by Act 41 of 1993, sec. 6.

Section 25 - Prohibition of employment of women or young persons during certain hours

No woman or young person shall be required or allowed to work in any industrial premises except between 6 a.m. and 7 p.m.

Section 27 - Wages during leave period

(1) For the leave allowed to him under section 26, an employee shall be paid at the rate equal to the daily average of his total full time earnings for the days on which he had worked during the month immediately preceding his leave exclusive of any overtime earnings and bonus but inclusive of dearness and other allowances.

Explanation 1.—In this sub-section, the expression "total full time earnings" includes the cash equivalent of the advantage accruing through the concessional sale to employees of foodgrains and other articles, as the employee is for the time being entitled to, but does not include bonus.

Explanation II.—For the purposes of determining the wages payable to a home worker during leave period or for the purpose of payment of maternity benefit to a woman home worker, "day" shall mean any period during which such home worker was employed during a period of twenty-four hours commencing at midnight, for making beedi or cigar or both.

(2) An employee who has been allowed leave for not less than four days in the case of an adult and five days in the case of a young person, shall, before his leave begins, be paid wages due for the period of the leave allowed.

Section 41 - Power to exempt

The State Government may, by notification in the Official Gazette, exempt, subject to such conditions and restrictions as it may impose, any class of industrial premises or class of employers or employees from all or any of the provisions of this Act or of any rules made thereunder:

Provided that nothing in this section shall be constructed as empowering the State Government to grant any exemption in respect of any woman employee from any of the provisions of this Act or any rules made thereunder relating to annual leave with wages, maternity benefits, creches, wages, rejection of beedi or cigar and night work.

GUARDIANS AND WARDS ACT, 1890¹

[Act, No. 8 of 1890]

[21st March, 1890]

PREAMBLE

An Act to consolidate and amend the law relating to Guardian and Wards.

WHEREAS it is expedient to consolidate and amend the law relating to guardian and ward; It is hereby enacted as follows:

Section 12 - Power to make interlocutory order for production of minor and interim protection of person and property

(1) The Court may direct that the person, if any, having the custody of the minor, shall produce him or cause him to be produced at such place and time and before such person as it appoints, and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper.

(2) If the minor is a female who ought not to be compelled to appear in public, the direction under sub- section (1) for her production shall require her to be produced in accordance with the customs and manners of the country.

(3) Nothing in this sections shall authorize—

(a) the Court to place a female minor in the temporary custody of a person claiming to be her guardian on the ground of his being her husband, unless she is already in his custody with the consent of her parents, if any, or

(b) any person to whom the temporary custody and protection of the property of a minor is entrusted to dispossess otherwise than by due course of law any person in possession of any of the property.

Section 19 - Guardian not to be appointed by the Court in certain cases

Nothing in this Chapter shall authorize the Court to appoint or declare a guardian of the property of a minor whose property is under the superintendence of a Court of Wards or to appoint or declare a guardian of the person-

(a) of a minor who is married female and whose husband is not, in the opinion of Court, unfit to be guardian of her person; or

²[(b) of a minor, other than a married female, whose father or mother is living and is not, in the opinion of the court, unfit to be guardian of the person of the minor, or.]

(c) of a minor whose property is under the superintendence of a Court of Wards competent to appoint a guardian of the person of the minor.

1. The words "subject to the provisions of this Act with respect to European British subjects" omitted by Act 3 of 1951, section 3 and Schedule

2. Substituted by the Personal Laws (Amendment) Act, 2010 w.e.f. 31.08.2010 for the following :-

"(b) ¹[** *] of a minor whose father is living and is not in the opinion of the Court, unfit to be guardian of the person of the minor; or"

Section 41 - Cessation of authority of guardian

(1) The powers of a guardian of the person cease-

(a) by his death, removal or discharge;

(b) by the Court of Wards assuming superintendence of the person of the ward;

(c) by the ward ceasing to be a minor;

(d) in the case of a female ward, by her marriage to a husband who is not unfit to be guardian of her person or, if the guardian was appointed or declared by the Court, by her marriage to a husband who is not, in the opinion of the Court, so unfit; or

(e) in the case of a ward whose father was unfit to be guardian of the person of the ward, by the father ceasing to be so or, if the father was deemed by the Court to be so unfit, by his ceasing to be so in the opinion of the Court.

(2) The powers of a guardian of the property cease-

(a) by his death, removal or discharge;

(b) by the Court of Wards assuming superintendence of the property of the ward; or

(c) by the ward ceasing to be a minor.

(3) When for any cause the powers of a guardian cease, the Court may require him or, if he is dead, his representative to deliver as it directs any property in his possession or control belonging to the ward or any accounts in his possession or control relating to any past or present property of the ward.

(4) When he has delivered the property or accounts as required by the Court, the Court may declare him to be discharged from his liabilities save as regards any fraud which may subsequently be discovered.

THE HINDU MINORITY AND GUARDIANSHIP ACT, 1956]¹

[Act, No. 32 of 1956]

[25th August, 1956]

PREAMBLE

An Act to amend and codify certain parts of the law relating to minority and guardianship among Hindus.

Be it enacted by Parliament in the Seventh Year of the Republic of India as follows:-

Section 4 - Definitions

In this Act,—

- (a) "minor" means a person who has not completed the age of eighteen years;
- (b) "guardian" means a person having the care of the person of a minor or of his property or of both his person and property; and includes—
 - (i) a natural guardian,
 - (ii) a guardian appointed by the will of the minor's father or mother,
 - (iii) a guardian appointed or declared by a court, and
 - (iv) a person empowered to act as such by or under any enactment relating to any Court of ward.
- (c) "natural guardian" means any of the guardians mentioned in section 6.

Section 6 - Natural guardians of a Hindu minor

The natural guardians of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are—

(a) in the case of a boy or an unmarried girl—the father, and after him, the mother; provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;

(b) in the case of an illegitimate boy or an illegitimate unmarried girl—the mother, and after her, the father;

(c) in the case of a married girl—

the husband:

Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section—

(a) if he has ceased to be a Hindu, or

(b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi).

Explanation.—In this section the expressions “father” and “mother” do not include a step-father and a step-mother.

Section 7 - Natural guardianship of adopted son

The natural guardianship of an adopted son who is a minor passes, on adoption, to the adoptive father and after him to the adoptive mother.

Section 9 - Testamentary guardians and their powers

(1) A Hindu father entitled to act as the natural guardian of his minor legitimate children, may, by will appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property (other than the undivided interest referred to in section 12) or in respect of both.

- (2) An appointment made under sub-section (1) shall have not effect if the father predeceases the mother, but shall revive if the mother dies without appointing. by will. any person as guardian.
- (3) A Hindu widow entitled to act as the natural guardian of her minor legitimate children, and a Hindu mother entitled to act as the natural guardian of her minor legitimate children by reason of the fact that the father has become disentitled to act as such, may, by will, appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property (other than the undivided interest referred to in section 12) or in respect of both.
- (4) A Hindu mother entitled to act as the natural guardian of her minor illegitimate children may; by will appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property or in respect of both.
- (5) The guardian so appointed by will has the right to act as the minor's guardian after the death of the minor's father or mother, as the case may be, and to exercise all the rights of a natural guardian under this Act to such extent and subject to such restrictions, if any, as are specified in this Act and in the will.
- (6) The right of the guardian so appointed by will shall, where the minor is a girl, cease on her marriage.

LANDMARK JUDGMENTS

- The Supreme Court in **Roxan Sharma vrs Arun Sharma**, lays down very sharp observations and examines various definitions of a 'guardian', 'visitation rights' and tests the issue from the angle of provisions of Hindu Minority & Guardianship Act, 1956 and Guardian & Wards Act, 1890. It was held that in a custody battle between estranged parents, a minor child, who has not completed five years of age, shall be allowed to remain with the mother and in such cases child should not be treated as a "chattel". The court said that under Hindu Minority and Guardianship (HMG) Act, a father can be guardian of the property of the minor child but not the guardian of his person if the child is less than five years old.
- The Supreme Court in **ABC v. The State**, a recent and landmark judgment declared that an unwed mother is not bound to disclose the name of child's father and also, she would have all the rights as a guardian to child under guardianship rights. She need not take father's consent for guardianship rights. It was observed that not only it was necessary to protect the child from social stigma but, also to protect mother's fundamental right. It was certainly an avant-garde verdict on gender equality. The Court emphasized that Section 6(b) of the Hindu Minority and Guardianship Act, 1956 makes specific provisions with respect to natural guardians of illegitimate children, and in this regard gives primacy to the mother over the father.
- In the matter of **Savitaben Lagharbhai Vrs Manji Ramji Chavda, 1983 (1) Civil LJ 111 P-121** it was held that the Hindu Minority and Guardianship Act, 1956 only creates obligation on the parents towards their children and that obligation is required to be discharged properly with care, with love and affection and devotion. If this is not done no society can function.

THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956

[Act, No. 78 of 1956]¹

[21th December, 1956]

PREAMBLE

An Act to amend and codify the law relating to adoptions and maintenance among Hindus.
BE it enacted by Parliament in the Seventh Year of the Republic of India as follows: -

1. The Act has been extended to Dadra and Nagar Haveli by Regulation 6 of 1963, section 2 and Schedule I.

Section 7 - Capacity of a male Hindu to take in adoption

Any male Hindu who is of sound mind and is not a minor has the capacity to take a son or a daughter in adoption:

Provided that, if he has a wife living, he shall not adopt except with the consent of his wife unless the wife has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

Explanation.—If a person has more than one wife living at the time of adoption, the consent of all the wives is necessary unless the consent of any one of them is unnecessary for any of the reasons specified in the preceding proviso.

Section 8 - Capacity of a female Hindu to take in adoption

¹[Any female Hindu who is of sound mind and is not a minor has the capacity to take a son or daughter in adoption:

Provided that, if she has a husband living, she shall not adopt a son or daughter except with the consent of her husband unless the husband has completely and

finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.]

1. Substituted by the Personal Laws (Amendment) Act, 2010 w.e.f. 31.08.2010 for the following :-

"Any female Hindu-

(a) who is of sound mind,

(b) who is not a minor, and

(c) who is not married, or if married, whose marriage has been dissolved or whose husband is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind,

has the capacity to take a son or daughter in adoption."

Section 9 - Persons capable of giving in adoption

(1) No person except the father or mother or the guardian of a child shall have the capacity to give the child in adoption.

⁵[(2) Subject to the provisions of sub-section (4), the father or the mother, if alive, shall have equal right to give a son or daughter in adoption:

Provided that such right shall not be exercised by either of them save with the consent of the other unless one of them has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.]

(3) ⁶[***]

²[(4) Where both the father and mother are dead or have completely and finally renounced the world or have abandoned the child or have been declared by a court of competent jurisdiction to be of unsound mind or where the parentage of the child is not known, the guardian of the child may give the child in adoption with the previous permission of the court to any person including the guardian himself.]

(5) Before granting permission to a guardian under sub-section (4), the court shall be satisfied that the adoption will be for the welfare of the child, due consideration being for this purpose given to the wishes of the child having regard to the age and understanding of the child and that the applicant for permission has not received or agreed to receive and that no person has made or given or agreed to make or give to the applicant any payment or reward in consideration of the adoption except such as the court may sanction.

Explanation.-For the purposes of this section-

(i) the expressions "father" and "mother" do not include an adoptive father and an adoptive father and an adoptive mother; ³[* * *]

⁴[(ia) "guardian" means a person having the care of the person of a child or of both his person and property and includes-

(a) a guardian appointed by the will of the child's father or mother; and

(b) a guardian appointed or declared by a court; and]

(ii) "court" means the city civil court or a district court within the local limits of whose jurisdiction the child to be adopted ordinarily resides.

1. Substituted by Act 45 of 1962, section 3, for "sub-section (3)".

2. Substituted by Act 45 of 1962, section 3, for sub-section (4).

3. The word "and" omitted by Act 45 of 1962, section 3.

4. Inserted by Act 45 of 1962, section 3.

5. Substituted by the Personal Laws (Amendment) Act, 2010 w.e.f. 31.08.2010 for the following :-

"(2) Subject to the provisions of 1[sub-section (3) and sub-section (4)], the father, if alive, shall alone have the right to give in adoption, but such right shall not be exercised save with the consent of the mother unless the mother has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind."

6. Omitted by the Personal Laws (Amendment) Act, 2010 w.e.f. 31.08.2010 for the following :-

"The mother may give the child in adoption if the father is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind."

Section 10 - Persons who may be adopted

No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely:-

- (i) he or she is Hindu;
- (ii) he or she has not already been adopted;
- (iii) he or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption;
- (iv) he or she has not completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption.

Section 11 - Other conditions for a valid adoption

In every adoption, the following conditions must be complied with:-

- (i) if the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son, son's son or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption;

- (ii) if the adoption is of a daughter, the adoptive father or mother by whom the adoption is made must not have a Hindu daughter or son's daughter (whether by legitimate blood relationship or by adoption) living at the time of adoption;
- (iii) if the adoption is by a male and the person to be adopted is a female, the adoptive father is at least twenty-one years older than the person to be adopted;
- (iv) if the adoption is by a female and the person to be adopted is a male, the adoptive mother is at least twenty-one years older than the person to be adopted;
- (v) the same child may not be adopted simultaneously by two or more persons;
- (vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth¹[or in the case of an abandoned child or child whose parentage is not known, from the place or family where it has been brought up] to the family of its adoption:

Provided that the performance of datta homam shall not be essential to the validity of adoption.

1. Inserted by Act 45 of 1962, section 4.

Section 14 - Determination of adoptive mother in certain cases

- (1) Where a Hindu who has a wife living adopts a child, she shall be deemed to be the adoptive mother.
- (2) Where an adoption has been made with the consent of more than one wife, the seniormost in marriage among them shall be deemed to be the adoptive mother and the others to be step-mothers.
- (3) Where a widower or a bachelor adopts a child, any wife whom he subsequently marries shall be deemed to be the step-mother of the adopted child.
- (4) Where a widow or an unmarried woman adopts a child, any husband whom she marries subsequently shall be deemed to be the step-father of the adopted child.

Section 18 - Maintenance of wife

(1) Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her life time.

(2) A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance-

(a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish; or wilfully neglecting her;

(b) if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband;

(c) if he is suffering from a virulent form of leprosy;

(d) if he has any other wife living;

(e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;

(f) if he has ceased to be a Hindu by conversion to another religion;

(g) if there is any other cause justifying her living separately.

(3) A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.

Section 19 - Maintenance of widowed daughter-in-law

(1) A Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained after the death of her husband by her father-in-law:

Provided and to the extent that she is unable to maintain herself out of her own earnings or other property or, where she has no property of her own, is unable to obtain maintenance-

- (a) from the estate of her husband or her father or mother, or
- (b) from her son or daughter, if any, or his or her estate.

(2) Any obligation under sub-section (1) shall not be enforceable if the father-in law has not the means to do so from any coparcenary property in his possession out of which the daughter-in-law has not obtained any share, and any such obligation shall cease on the re-marriage of the daughter-in-law.

Section 21 - Dependants defined

For the purposes of this Chapter "dependants" means the following relatives of the deceased:-

- (i) his or her father;
- (ii) his or her mother;
- (iii) his widow, so long as she does not re-marry;
- (iv) his or her son or the son of his predeceased son or the son of predeceased son of his predeceased son, so long as he is a minor; provided and to the extent that he is unable to obtain maintenance, in the case of a grandson from his father's or mother's estate, and in the case of a great grand-son, from the estate of his father or mother or father's father or father's mother;
- (v) his or her unmarried daughter, or the unmarried daughter of his predeceased son or the unmarried daughter of a predeceased son of his predeceased son, so long as she remains unmarried: provided and to the extent that she is unable to obtain maintenance, in the case of a grand-daughter from her father's or mother's estate and in the case of a great-grand-daughter from the estate of her father or mother or father's father or father's mother;
- (vi) his widowed daughter: provided and to the extent that she is unable to obtain maintenance-
 - (a) from the estate of her husband, or

- (b) from her son or daughter if any, or his or her estate; or
- (c) from her father-in-law or his father or the estate of either of them;
- (vii) any widow of his son or of a son of his predeceased son, so long as she does not remarry: provided and to the extent that she is unable to obtain maintenance from her husband's estate, or from her son or daughter, if any, or his or her estate; or in the case of a grandson's widow, also from her father-in-law's estate;
- (viii) his or her minor illegitimate son, so long as he remains a minor;
- (ix) his or her illegitimate daughter, so long as she remains unmarried.

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The New Simplified "Guidelines Governing Adoption of Children 2015" Along with the Fully Revamped IT Application for Adoption, CARINGS, Become Operational from Today

The new simplified "Guidelines Governing Adoption of Children 2015" notified by the Central Government on 17th July 2015 have come into effective from today. Along with it, the fully revamped IT application for the purpose of adoption of children, CARINGS (Child Adoption Resource Information & Guidance System), has also become operational from today.

The new Guidelines are intended to provide for more effective regulation for adoption of orphan, abandoned and surrendered children and would bring more transparency and efficiency in the adoption system. With the new guidelines, it would become possible for Prospective Adoptive Parents (PAPs) to track the status of their application making the entire system more user friendly.

The completely revamped CARINGS will facilitate the adoption of maximum number of adoptable children and ensure a smoother adoption process by curbing undue delays. For hassle-free adoption, CARINGS will contain a centralized data bank of adoptable children and PAPs. Clear cut timelines for domestic and inter-country adoption have been laid down to ensure early deinstitutionalization of such children.

CARINGS will now facilitate adoption with the help of the following features:

- i) Now, PAPs in India need not approach adoption agencies for registration. The parents can register online and upload relevant documents to determine their eligibility; Parents can directly register online without visiting the adoption agency;
- ii) Home Study Reports are conducted by the adoption agencies and uploaded online;
- iii) There will be online referral to the PAPs followed by visit to adoption agencies;
- iv) In cases of inter-country adoption also, all applications are to be accepted online on CARINGS and requisite documents need to be uploaded in the system;

v)Both in domestic and In international adoption, Post-adoption follow-up shall be posted online In CARINGS;

vi)Real time online report generation facility on periodic basis;

vii)All Specialised Adoption Agencies are connected to CARA online for in-country and inter-country adoption;

viii)Centralized online receipt of application for inter-country adoption at CARA and distribution of applications to Specialised Adoption Agencies (SAAs) by CARA;

ix)Real-time online information of children available in adoption agencies across the country;

x)District Child Protection Units (DCPU) are connected in CARINGS for monitoring adoption programme at the district level;

xi)More streamlined, very transparent adoption programme.

CARINGS would be instrumental to implement, supervise, monitor and evaluate the child adoption programme in the Country in accordance with Guidelines Governing Adoption of Children, 2015 issued by Government of India.

LANDMARK JUDGMENTS

- The High Court of Karnataka in **Neelawwa v Shivawwa 1988 (2) HLR 799** observed that Adopted girl is conferred an entitlement to succeed the property within the meaning of s.8 of Hindu Succession Act despite the fact that the property was owned by the deceased by reason of his adoption.
- In the matter of **Ashoka Naidu v. Raymond AIR 1976 Cal 272**, it was held that after the completion of the age of eighteen, a woman gets the capacity to adopt even though she herself is unmarried. Where after the adoption, she is married, her husband would be step-father and she herself would remain adoptive mother as earlier. Adoption by an unmarried can also take place despite the fact that she is having an illegitimate child.
- The High Court of Bombay in **Dashrath Ramchandra Khairnar vs Pandu Chila Khairnar (1977) 79 BOMLR 426** observed that A married woman has got no right to take in adoption during the subsistence of the marriage. But where the husband has completely and finally renounced the world or he had ceased to be Hindu or some competent court has declared him to be of unsound mind, the wife can adopt.
- In the matter of **Atul Sashikant Mude v. Niranjana Atul Mude, AIR 1998 Bombay 234**, the Court considered the provisions of the Hindu Adoptions and Maintenance Act, 1956 and held that a Court is empowered to pass interim and ad-interim orders of maintenance. It was held that the inclusive definition of the 'maintenance' under the Act would include food, clothing, residence, education, medical attendance and treatment.
- The Supreme Court in the matter of **Mangat Mal (Dead) And Another vs Smt. Punni Devi (Dead) And Others (1995) 6 SCC 88** held that Obligation of the husband to pay expenses cannot be deferred till final adjudication of the suit. Nor can husband avoid obligation to pay further sum to his wife towards medical reimbursement on the ground that the amount of interim maintenance being passed included entire expenses on medical treatment.

THE HINDU MARRIAGE ACT, 1955

[Act, No. 25 of 1955]¹

[18th May, 1955]

PREAMBLE

An act to amend and codify the law relating to marriage among Hindus.

Be It enacted by Parliament In the Sixth Year of the Republic of India as follows:-

1. The Act has been extended to Dadra and Nagar Haveli with effect from 1.7.1965 by Regulation 6 of 1963, section 2 and Schedule I and to Pondicherry with effect from 1.10.1963 with modifications by Regulation 7 of 1963, section 3 and Schedule I.

Section 3 - Definitions

In this Act, unless the context otherwise requires,—

(g) "degrees of prohibited relationship"—two persons are said to be within the "degrees of prohibited relationship"—

- (i) if one is a lineal ascendant of the other; or
- (ii) if one was the wife or husband of a lineal ascendant or descendant of the other ; or
- (iii) if one was the wife of the brother or of the father's or mother's brother or of the grandfather's or grandmother's brother of the other; or
- (iv) if the two are brother and sister, uncle and niece, aunt and nephew, or children of brother and sister or of two brothers or of two sisters;

Explanation.—For the purposes of clauses (f) and (g), relationship includes—

- (i) relationship by half or uterine blood as well as by full blood;

- (ii) illegitimate blood relationship as well as legitimate;
 - (iii) relationship by adoption as well as by blood;
- and all terms of relationship in those clauses shall be construed accordingly.

Section 5 - Conditions for a Hindu marriage

A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely-

- (i) neither party has a spouse living at the time of the marriage;
- ¹ [(ii) at the time of the marriage, neither party-
 - (a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or
 - (b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or
 - (c) has been subject to recurrent attacks of insanity ² [***];]
- (iii) the bridegroom has completed the age of ³[twenty-one years] and the bride, the age of ⁴[eighteen years] at the time of the marriage;
- (iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;
- (v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;

⁵ [***]

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1. Substituted by Act 68 of 1976, section 2, for clause (ii). (w.e.f. 27-5-1976)
 2. The words "epilepsy" omitted by Act 39 of 1999, sec. 2 (w.e.f. 29-12-1999)

3. Substituted by Act 2 of 1978, section 6 and Schedule, for "eighteen years" (w.e.f. 1.10.1978.)
4. Substituted by Act 2 of 1978, section 6 and Schedule, for "fifteen years" (w.e.f. 1.10.1978.)
5. Clause (vi) omitted by Act 2 of 1978, section 6 and Schedule, (w.e.f. 1.10.1978.)

Section 9 - Restitution of conjugal rights

¹[***] When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

²[Explanation.-Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.]

³[***]

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1. The brackets and figure "(1)" omitted by Act 68 of 1976, section 3 (w.e.f. 27-5-1976)
 2. Inserted by Act 68 of 1976, section 3 (w.e.f. 27-5-1976)
 3. Sub-section (2) omitted by Act 68 of 1976, section 3 (w.e.f. 27-5-1976)

Section 10 - Judicial separation

¹[(1) Either party to a marriage, whether solemnised before or after the commencement of this Act, may present a petition praying for a decree for judicial separation on any of the grounds specified in sub-section (1) of section 13, and in the case of a wife also on any of the grounds specified in sub-section (2) thereof, as grounds on which a petition for divorce might have been presented.]

(2) Where a decree for judicial separation has been passed, it shall no longer be obligatory for the petitioner to cohabit with the respondent, but the court may, on the application by petition of either party and on being satisfied of the truth of the statements made in such petition, rescind the decree if it considers it just and reasonable to do so.

1. Substituted by Act 68 of 1976, section 4, for sub-section (1) (w.e.f. 27-5-1976)

Section 13 - Divorce

(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-

¹[(i) has, after the solemnization of the marriage, had voluntary sexual inter-course with any person other than his or her spouse; or

(ia) has, after the solemnization of the marriage, treated the petitioner with cruelty; or

(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or]

(ii) has ceased to be a Hindu by conversion to another religion; or

²[(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation.-In this clause,-

(a) the expression "mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(b) the expression "psychopathic disorder" means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which

results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment; or]

(iv) has³[***] has been suffering from a virulent and incurable form of leprosy; or

(v) has³[***] been suffering from venereal disease in a communicable form; or

(vi) has renounced the world by entering any religious order; or

(vii) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive;⁴[***]

⁵[Explanation.-In this sub-section, the expression "desertion" means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.]

⁶[***]

⁷[(1A) Either party to a marriage, whether solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground-

(i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of⁸[one year] or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or

(ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of⁸[one year] or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.]

(2) A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground,-

(i) in the case of any marriage solemnized before the commencement of this Act, that the husband had married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnization of the marriage of the petitioner:

Provided that in either case the other wife is alive at the time of the presentation of the petition; or

(ii) that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or⁹[bestiality; or]

¹⁰[(iii) that in a suit under section 18 of the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), or in a proceeding under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) (or under the corresponding section 488 of the Code of Criminal Procedure, 1898 (5 of 1898)), a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards;

(iv) that her marriage (whether consummated or not) was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.

Explanation.-This clause applies whether the marriage was solemnized before or after the commencement¹¹of the Marriage Laws (Amendment) Act, 1976 (68 of 1976).

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1. Substituted by Act 68 of 1976, section 7, for the clause (i) (w.e.f. 27-5-1976).
 2. Substituted by Act 68 of 1976, section 7, for the clause iii) (w.e.f. 27-5-1976).
 3. Certain words omitted by Act 68 of 1976, section 7 (w.e.f. 27-5-1976).
 4. The word "or" omitted by Act 44 of 1964, section 2 (w.e.f. 27-5-1976).
 5. Inserted by Act 68 of 1976, section 7 (w.e.f. 27-5-1976).
 6. Clause (viii) and (ix) omitted by Act 44 of 1964, section 2 (w.e.f. 20-12-1964).
 7. Inserted by Act 44 of 1964, section 2 (w.e.f. 20-12-1964).
 8. Substituted by Act 68 of 1976, section 7, for "two years" (w.e.f. 27-5-1976).
 9. Substituted by Act 68 of 1976, section 7 for "bestiality" (w.e.f. 27-5-1976).
 10. Inserted by Act 68 of 1976, section 7 (w.e.f. 27-5-1976).
 11. 27th May, 1976.

Section 13B - Divorce by mutual consent

¹[13B. Divorce by mutual consent

(1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement² of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.]

1. Inserted by Act 68 of 1976, section 8.(w.e.f. 27-5-1976) .

2. 27th May, 1976 .

Section 24 - Maintenance pendente lite and expenses of proceedings

Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable.

¹ ["Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be.".]

1. Inserted by Act 49 of 2001, Section 8 (w.e.f. 24-09-2001).

Section 25 - Permanent alimony and maintenance

(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall ¹ [* * *] pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant, ² [the conduct of the parties and other circumstances of the case], it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, ³ [it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just].

1. The words "while the applicant remains unmarried" omitted by Act 68 of 1976, section 18 (w.e.f. 27-5-1976).

2. Substituted by Act 68 of 1976, section 18, for "and the conduct of the parties" (w.e.f. 27-5-1976).

3. Substituted by Act 68 of 1976, section 18, for "It shall rescind the order" (w.e.f. 27-5-1976).

Section 26 - Custody of children

In any proceeding under this Act, the court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible, and may, after the decree, upon application by petition for the purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending, and the court may also from time to time revoke, suspend or vary any such orders and provisions previously made:

¹[Provided that the application with respect to the maintenance and education of the minor children, pending the proceeding for obtaining such decree, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent.]

1. Inserted by Act 49 of 2001, section 9 (w.e.f. 24-9-2001) .

Section 27 - Disposal of property

In any proceeding under this Act, the court may make such provisions in the decree as it deems just and proper with respect to any property presented, at or about the time of marriage, which may belong jointly to both the husband and the wife.

Section 28 - Appeals from decrees and orders

¹ [28. Appeals from decrees and orders

(1) All decrees made by the court in any proceeding under this Act shall, subject to the provisions of sub-section (3), be appealable as decrees of the court made in the exercise

of its original civil jurisdiction, and every such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in the exercise of its original civil jurisdiction.

(2) Orders made by the court in any proceeding under this Act under section 25 or section 26 shall, subject to the provisions of sub-section (3), be appealable if they are not interim orders, and every such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in exercise of its original civil jurisdiction.

(3) There shall be no appeal under this section on the subject of costs only.

(4) Every appeal under this section shall be preferred within a ² [period of ninety days] from the date of the decree or order.

1. Substituted by Act 68 of 1976, section 19, for section 28 (w.e.f. 27-5-1976).

2. Substituted by Act 50 of 2003, section 5, for "period of thirty days" (w.e.f. 23-12-2003).

Section 28A - Enforcement of decrees and orders

All decrees and orders made by the court in any proceeding under this Act shall be enforced in the like manner as the decrees and orders of the court made in the exercise of its original civil jurisdiction for the time being in forced.]

Section 29 - Savings

(1) A marriage solemnized between Hindus before the commencement of this Act, which is otherwise valid, shall not be deemed to be invalid or even to have been invalid by reason only of the fact that the parties thereto belonged to the same gotra or pravara or belonged to different religions, castes or sub-divisions of the same caste.

(2) Nothing contained in this Act shall be deemed to affect any right recognised by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnized before or after the commencement of this Act.

(3) Nothing contained in this Act shall affect any proceeding under any law for the time being in force for declaring any marriage to be null and void or for annulling or dissolving any marriage or for judicial separation pending at the commencement of this Act, and any such proceeding may be continued and determined as if this Act had not been passed.

(4) Nothing contained in this Act shall be deemed to affect the provisions contained in the Special Marriage Act, 1954, (43 of 1954) with respect to marriages between Hindus solemnized under that Act, whether before or after the commencement of this Act.

Section 30 - Repeals

[Rep. by the Repealing and Amending Act, 1960 (58 of 1960), section 2 and First Schedule].

LANDMARK JUDGMENTS

- The Supreme Court in **Dr. N.G. Dastane Vs. Mrs. S. Dastane AIR1975SC1534** held that though the respondent was guilty of cruelty but appellant condoned it and subsequent conduct of respondent was not such as to amount to a revival of original cause of action.
- The High court of Delhi in the matters of **Suman Singh v sanjay singh 2013 DMC 475** held that Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, would not amount to cruelty.
- The Supreme Court in **Jaychandra Vs Aneel Kaur 200 5 DMC 111 SC** held that Cruelty need not be physical, If from conduct of spouse same is established and/or an inference can be legitimately drawn that treatment of spouse is such that it causes apprehension in the mind of other spouse, about his/her mental welfare, then such conduct amounts to cruelty.
- The Supreme Court in **Suman Kapur vs Sudhir Kapur 2008 DMC 774 SC** held that wife being interested in her carrier only and neglecting her matrimonial obligation as a continuous act amounts to cruelty.

THE HINDU SUCCESSION ACT, 1956

[Act, No. 30 of 1956]

[17th June, 1956]

PREAMBLE

An Act to amend and codify the law relating to intestate succession among Hindus.

BE it enacted by Parliament in the Seventh Year of the Republic of India as follows:-

Section 3 - Definitions and interpretations

(1) In this Act, unless the context otherwise requires-

(c) "cognate"-one person is said to be a cognate of another if the two are related by blood or adoption but not wholly through males;

(e) "full blood", "half blood" and "uterine blood"-

(i) two persons said to be related to each other by full blood when they are descended from a common ancestor by the same wife, and by half blood when they are descended from a common ancestor but by different wives;

(ii) two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands;

Explanation.-In this clause "ancestor" includes the father and "ancestress" the mother;

Section 6 - Devolution of interest of coparcenary property

¹ [6 (I). Devolution of interest in coparcenaries property]

(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,-

- (a) by birth become a coparcener in her own right the same manner as the son ;
- (b) have the same rights in the coparceners property as she would have had if she had been a son;
- (c) be subject to the same liabilities in respect of the said coparceners property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

(2) Any property to which a female Hindu becomes entitled by virtue of subsection (1) shall be held by her with the incidents of coparceners ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force in, as property capable of being disposed of by her by testamentary disposition.

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparceners property shall be deemed to have been divided as if a partition had taken place and,--

- (a) the daughter is allotted the same share as is allotted to a son;
- (b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and
- (c) the share of the pre-deceased child of a pre-deceased son or of a predeceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation.-- For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that

would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognize any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt:

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub-section shall affect--

(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or

(b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.

Explanation.--For the purposes of clause (a), the expression "son", "grandson" or "great-grandson" shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005.

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004

Explanation- For the purposes of this section "partition" means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 or partition effected by a decree of a court.]

1. Substituted vide Hindu Succession (Amendment) Act, 2005. Previous text was When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparceners property, his interest in the property shall devolve by survivorship upon the surviving members of the coparceners and not in accordance with this Act: Provided that, if the deceased had left him surviving a female relative

specified in class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparceners property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

Explanation 1.-For the purposes of this section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not. Explanation 2.-Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparceners before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein.

Section 14 - Property of a female Hindu to be her absolute Property

(1) Any property possessed by a Female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.—In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

Section 15 - General rules of succession in the case of female Hindus

(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16.—

- (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;
- (b) secondly, upon the heirs of the husband;
- (c) thirdly, upon the mother and father;
- (d) fourthly, upon the heirs of the father; and
- (e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1),--

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

Section 16 - Order of succession and manner of distribution among heirs of a female Hindu

The order of succession among the heirs referred to in section 15 shall be, and the distribution of the intestates property among those heirs shall take place, according to the following rules, namely:--

Rule 1.—Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry and those including in the same entry shall take simultaneously.

Rule 2.—If any son or daughter of the Intestate had pre-deceased the intestate leaving his or her own children alive at the time of the Intestate's death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the Intestate's death.

Rule 3.—The devolution of the property of the Intestate on the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and in sub-section (2) of section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death.

- The Supreme Court in **M. Yogendra and Ors. Vs. Leelamma N. and Ors. 2010(1) ALLMR(SC) 490**, held that the Act indisputably would prevail over the Hindu Law. It further held that the provisions of Section 8 of the Hindu Succession Act are not retrospective in operation and where a male Hindu died before the Act came into force i.e. where succession opened before the Act. Section 8 of the Act will have no application.

- The Supreme Court in **Anar Devi and Ors. Vs. Parmeshwari Devi and Ors. AIR2006SC3332** held that according to Section 6 of the Act when a coparcener dies leaving behind any female relative specified in Class I of the Schedule to the Act or male relative specified in that class claiming through such female relative, his undivided interest in the Mitakshara coparcenary property would not devolve upon the surviving coparcener, by survivorship but upon his heirs by intestate succession. Explanation 1 to Section 6 of the Act provides a mechanism under which undivided interest of a deceased coparcener can be ascertained and, i.e., that the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not. It means for the purposes of finding out undivided interest of a deceased coparcener, a notional partition has to be assumed immediately before his death and the same shall devolve upon his heirs by succession which would obviously include the surviving coparcener who, apart from the devolution of the undivided interest of the deceased upon him by succession, would also be entitled to claim his undivided interest in the coparcenary property which he could have got in notional partition. The Supreme Court in **R. Mahalakshmi Vs. A.V. Anantharaman and Ors. (2009)9SCC52** held that: "Perusal of the aforesaid provision of law makes it abundantly clear that the daughters who have got married prior to 1989 may not have equal share as that of a son but the daughters who got married after 1989 would have equal share as that of a son. In other words, daughters who got married after 1989 would be treated at par with son having the same share in the property."

THE MARRIED WOMEN'S PROPERTY ACT, 1874

[Act, No. 3 of 1874]

[24 th February, 1874]

PREAMBLE

An Act to explain and amend the law relating to certain married women, for other purposes.

Preamble.— Whereas it is expedient to make such provision as hereinafter appears for the enjoyment of wages and earnings by women married before the first day of January, 1866 , and for insurances on lives by persons married before or after that day:

And whereas by the Indian Succession Act, 1865 (10 of 1865)¹, Sec. 4 , it is enacted that no person shall by marriages acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property, which he or she could have done, if unmarried:

And whereas by force of the said Act all women to whose marriages it applies are absolute owners of all property vested in, or acquired by them, and their husbands do not by their marriage, acquire any interest in such property, but the said Act does not protect such husbands from liabilities on account of the debts of their wives contracted before marriage, and does not expressly provide, for the enforcement of claims by or against such wives;

It is hereby enacted as follows:—

-
1. The relevant provision of the Indian Succession Act, 1925 (39 of 1925).

Section 1 - Short title

This Act may be called the Married Women's Property Act, 1874.

Section 2 - Extent and application

¹ [It extends to the whole of India except the State of Jammu and Kashmir.]

But nothing herein contained applies to any married woman who at the time of her marriage professed the Hindu, Muhammedan, Buddhist, Sikh or Jain religion, or whose husband, at the time of such marriage, professed any of those religions.

And the ²[State Government] may from time to time, by order, either retrospectively from the passing of this Act or prospectively, exempt from the operation of all or any of the provisions of this Act the members of any race, sect or tribe or part of a race, sect or tribe, to whom it may consider it impossible or inexpedient to apply such provisions.

The ²[State Government] may also revoke any such order, but not so that the revocation shall have any retrospective effect.

All orders and revocations under this section shall be published in the Official Gazette.

³[* * * *]

1. Substituted by the Married Women's Property (Extension) Act, 1959 (61 of 1959), Sec. 2 (w.e.f. 1st March, 1960).

2. The original words "G.G. in C" have successively been amended by Act 38 of 1920 the A.O. 1937, and the A.O. 1950 to read as above.

3. The last paragraph rep. by Act 39 of 1925, Sec. 392 and Sch. IX.

Section 3 - Commencement [Repealed]

Rep. by the Repealing Act, 1876 (12 of 1876), Sec. 1 and Schedule.

Section 4 - Married women's earnings to be their separate property

The wages and earnings of any married woman acquired or gained by her after the passing of this Act, in any employment, occupation or trade carried on by her and not by her husband,

and also any money or other property so acquired by her through the exercise of any literary, artistic or scientific skill,

and all savings from and investments of such wages, earnings and property,

shall be deemed to be her separate property, and her receipts alone shall be good discharges for such wages, earnings and property.

Section 5 - Married women may effect policy of insurance

Any married woman may effect a policy of insurance on her own behalf and independently of her husband; and the same and all benefit, thereof, if expressed on the face of it to be so effected, shall enure as her separate property, and the contract evidenced by such policy shall be as valid as if made with an unmarried woman.

Section 6 - Insurance by husband for benefit of wife

¹ [(1) A policy of insurance effected by any married man on his own life, and expressed on the face of it to be for the benefit of his wife, or of his wife and children, or any of them, shall ensure and be deemed to be a trust for the benefit of his wife, or of his wife and children, or any of them, according to the interest so expressed, and shall not, so long any object of the trust remains, be subject to the control of the husbands or to his creditors, or form part of his estate.

When the sum secured by the policy becomes payable, it shall, unless special trustees are duly appointed to receive and hold the same, be paid to the Official Trustee of the ² [State] in which the office at which the insurance was effected is situated, and shall be received and held by him upon the trusts expressed in the policy, or such of them as are then existing.

And in reference to such sum he shall stand in the same position in all respects as if he had been duly appointed trustee thereof by a High Court, under Act No. XVII of 1864³ [to constitute an Office of Official Trustee], Sec. 10.

Nothing herein contained shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of assurance which may have been effected with intent to defraud creditors.

⁴ [(2) Notwithstanding anything contained in Sec 2, the provisions of sub-section (1) shall apply in the case of any policy of insurance such as is referred to therein which effected,—

(a) by any Hindu, Muhammedan, Sikh or Jain—

(i) in Madras, after the thirty-first day of December, 1913, or

(ii) in any other territory to which this Act extended immediately before the commencement of the Married Women's Property (Extension) Act, 1959, after the first day of April, 1923, or

(iii) in any territory to which this Act extends on and from the commencement of the Married Women's Property (Extension) Act, 1959,

(b) by a Buddhist in any territory to which this Act extends, on or after the commencement of the Married Women's Property (Extension) Act, 1959:

Provided that nothing herein contained shall affect any right or liability which has accrued or been incurred under any decree of a competent Court passed—

(i) before the first day of April, 1923, in any case to which sub-clause (i) or sub-clause (ii) of Cl. (a) applies ; or

(ii) before the commencement of the Married Women's Property (Extension) Act, 1959, in any case to which sub-clause (iii) of Cl. (a) or Cl. (b) applies.]

1. Re-numbered as "sub-section (1) of that section by Act 13 of 1923, Sec. 2.

2. The word "Presidency" has been successively amended by the A.O., 1937, the A.O. 1950 and the Adaptation of Laws (No. 2) Order, 1956.

3. See relevant provisions of the Official Trustees Act, 1913 (2 of 1913).

4. Substituted by the Married Women's Property (Extension) Act, 1959 (61 of 1959), Sec. 3 (w.e.f. 1st March, 1960).

Section 7 - Married women may take legal proceedings

A married woman may maintain a suit in her own name for the recovery of property of any description which, by force of the said Indian Succession Act, 1865 (10 of 1866) or of this Act, is her separate property; and she shall have, in her own name, the same remedies, both civil and criminal, against all persons, for the protection and security of such property, as is she were unmarried, and she shall be liable to such suits, processes and orders in respect of such property as she would be liable to if she were unmarried.

Section 8 - Wife's liability for post-nuptial debts

If a married woman (whether married before or after the first day of January, 1866) possesses separate property; and if any person enters into a contract with her with reference to such property, or on the faith that her obligation arising out of such contract will be satisfied out of her separate property, such person shall be entitled to sue her, and to the extent of her separate property, to recover against her whatever he might have recovered in such suit had she been unmarried at the date of the contract and continued unmarried at the execution of the decree :

¹ [Provided that nothing herein contained shall—

(a) entitle such person to recover anything by attachment and sale or otherwise out of any property which has been transferred to a woman or for her benefit on condition that she shall have no power during her marriage to transfer or charge the same or her beneficial interest therein, or

(b) affect the liability of a husband for debts contracted by his wife's agency expressed or implied.]

1. Substituted by Act 21 of 1929, Sec. 2, for the original proviso.

Section 9 - Husband not liable for wife's ante-nuptial debts

A husband married after the thirty-first day of December, 1865 sh all not by reason only of such marriage be liable to the debts of hi s wife contracted before marriage, but the wife sh all be liable to be sued for, and sh all, to the extent of her separate property, be liable to satisfy such debts as if he had continued unmarried;

Provided that nothing contained in this section sh all¹[* * *] invalidate any contract into which a husband may, before the passing of this Act, have entered in consideration of hi s wife's ante-nuptial debts.

THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT, 1986¹

[Act, No. 25 of 1986]

PREAMBLE

An Act to protect the rights of Muslim women who have been divorced by, or have obtained divorce from their husbands and to provide for matters connected therewith, or incidental thereto.

BE it enacted by Parliament in the Thirty-seventh year of the Republic of India as follows:-

1. The Act received the assent of the President of India on May 19, 1986 and was published in the Gazette of India Extra-Ord., Part II, Sec. 1.

Section 1 - Short title and extent

- (1) This Act may be called the Muslim Women (Protection of Rights on Divorce) Act, 1986.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.

Section 2 - Definitions

In this Act, unless the context otherwise requires.--

(a) "divorced woman" means a Muslim woman who was married according to Muslim law, and has been divorced by, or has obtained divorce from her husband in accordance with Muslim law;

(b) "iddat period" means in the case of a divorced woman,--

(i) three menstrual courses after the date of divorce, if she is subject to menstruation; and

(ii) three lunar months after her divorce, if she is not subject to menstruation; and

(iii) if she is enceinte at the time of her divorce, the period between the divorce and the delivery of her child or the termination of her pregnancy, whichever is earlier;

(b) "Magistrate" means a Magistrate of the First Class exercising jurisdiction under the Code of Criminal Procedure, 1973 in the area where the divorced woman resides.

(d) "prescribed" means prescribed by rules made under this Act.

Section 3 - Mahr or other properties of Muslim woman to be given to her at the time of divorce

(1) Notwithstanding anything contained in any other law for the time being in force, a divorced woman shall be entitled to--

(a) a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband;

(b) where she herself maintains the children born to her before or after her divorce, a reasonable and fair provision and maintenance to be made and paid by her former husband for a period of two years from the respective dates of birth of such children;

(c) an amount equal to the sum of mahr or dower agreed to be paid to her at her time of her marriage or at any time thereafter according to Muslim law; and

(d) all the properties given to her before or at the time of marriage or after her marriage by her relatives or friends or the husband or any relatives of the husband or his friends.

(2) Where a reasonable and fair provision and maintenance or the amount of mahr or dower due has not been made or paid or the properties referred to in clause (d) of sub-section (1) have not been delivered to a divorced woman on her divorce, she or any one duly authorised by her may, on her behalf, make an application to a Magistrate for an order for payment of such provision and maintenance, mahr or dower or the delivery of properties, as the case may be.

(3) Where an application has been made under sub-section (2) by a divorced woman, the Magistrate may, if he is satisfied that--

(a) her husband having sufficient means, has failed or neglected to make or pay her within the iddat period a reasonable and fair provision and maintenance for her and the children; or

(b) the amount equal to the sum of mahr or dower has not been paid or that the properties referred to in clause (d) of sub-section (1) have not been delivered to her,

make an order, within one month of the date of the filing of the application, directing her former husband to pay such reasonable and fair provision and maintenance to the divorced woman as he may determine as fit and proper having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of her former husband or, as the case may be, for the payment of such mahr or dower or the delivery of such properties referred to in clause (d) of sub-section (1) to the divorced woman:

Provided that if the Magistrate finds it impracticable to dispose of the application within the said period, he may, for reasons to be recorded by him, dispose of the application after the said period.

(4) If any person against whom an order has been made under sub-section (3) fails without sufficient cause to comply with the order, the Magistrate may issue a warrant for levying the amount of maintenance or mahr or dower due in the manner provided for levying fines under the Code of Criminal Procedure, 1973 (2 of 1974) and may sentence such person, for the whole or part of any amount remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one year or until payment if sooner made, subject to such person being heard in defence and the said sentence being imposed according to the provisions of the said Code.

Section 4 - Order for payment of maintenance

(1) Notwithstanding anything contained in the foregoing provisions of this Act or in any other law for the time being in force, where a Magistrate is satisfied that a divorced woman has not re-married and is not able to maintain herself after the iddat period, he may make an order directing such of her relatives as would be entitled to inherit her property on her death according to Muslim law to pay such reasonable and fair maintenance to her as he may determine fit and proper, having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of such relatives and such maintenance shall be payable by such relatives in the

proportions in which they would inherit her property and at such periods as he may specify in his order:

Provided that where such divorced woman has children, the Magistrate shall order only such children to pay maintenance to her, and in the event of any such children being unable to pay such maintenance, the Magistrate shall order the parents of such divorced woman to pay maintenance to her:

Provided further that if any of the parents is unable to pay his or her share of the maintenance ordered by the Magistrate on the ground of his or her not having the means to pay the same, the Magistrate may, on proof of such inability being furnished to him, order that the share of such relatives in the maintenance ordered by him be paid by such of the other relatives as may appear to the Magistrate to have the means of paying the same in such proportions as the Magistrate may think fit to order.

(2) Where a divorced woman is unable to maintain herself and she has no relative as mentioned in sub-section (1) or such relatives or any one of them have not enough means to pay the maintenance ordered by the Magistrate or the other relatives have not the means to pay the shares of those relatives whose shares have been ordered by the Magistrate to be paid by such other relatives under the proviso to sub-section (1), the Magistrate may, by order direct the State Wakf Board established under section 9 of the Wakf Act, (29 of 1954), or under any other law for the time being in force in a State, functioning in the area in which the woman resides, to pay such maintenance as determined by him under sub-section (1) or, as the case may be, to pay the shares of such of the relatives who are unable to pay, at such periods as he may specify in his order.

Section 5 - Option to be governed by the provisions of Section 125 to 128 of Act 2 of 1974

If, on the date of the first hearing of the application under sub-section (2) of section 3, a divorced woman and her former husband declare, by affidavit or any other declaration in writing in such form as may be prescribed, either jointly or separately, that they would prefer to be governed by the provisions of Sections 125 to 128 of the Code of Criminal Procedure, 1973 (2 of 1974); and file such affidavit or declaration in the Court hearing the application, the Magistrate shall dispose of such application accordingly.

Explanation.— For the purposes of this section, "date of the first hearing of the application" means the date fixed in the summons for the attendance of the respondent to the application.

Section 6 - Power to make rules

(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 foregoing power, such rules may provide for—

(a) the form of the affidavit or other declaration in writing to be filed under Section 5;

(b) the procedure to be followed by the Magistrate is disposing of applications under this Act, including the serving of notices to the parties to such applications, dates of hearing of such applications and other matters;

(c) any other matter which is required 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 may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Section 7 - Transitional provisions

Every application by a divorced woman under Section 125 or under section 127 of the Code of Criminal Procedure, 1973 (2 of 1974), pending before a Magistrate or the commencement of this Act, shall, notwithstanding anything contained in that Code and subject to the provisions of section 5 of this Act, be disposed of by such Magistrate in accordance with the provisions of this Act.

THE MUSLIM PERSONAL LAW (SHARIAT) APPLICATION ACT, 1937¹

[Act, No. 26 of 1937]

[7th October, 1937]

PREAMBLE

2[*****]

2[*****]; It is hereby enacted as follows:--

1. For Statement of Objects and Reasons, see Gazette of India, 1935, Pt. V, P. 136., and for Report of Select Committee, see Gazette of India, 1937, Pt. V, p. 235.

2. The words "in the Provinces of India" omitted by the Adaptation of Laws Order, 1950.

Section 1 - Short title and extent

(2) It extends¹ to the whole of India² [except the State of Jammu and Kashmir]³ [*****]

1. Extended to the Pondicherry by Act 26 of 1968, sec. 3 and Part I, subject to the following modifications:--"Provided that nothing contained in this Act shall apply to the Renoncants of the Union territory of Pondicherry".

3. The words "excluding the North-West Frontier Province" omitted by the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948.

Section 2 - Application of Personal law to Muslims

Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law. marriage, dissolution of marriage, including *talaq, ila, zihar, lian, khula and mubaraat*, maintenance, dower, guardianship, gifts, trusts and trust properties, and *wakfs* (other than charities and charitable institutions and charitable and

religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (*Shariat*).

Section 3 - Power to make a declaration

(a) that he is a Muslim, and

(c) that he is a resident of¹[the territories to which this Act extends].

²[the provisions of this section], and thereafter the provisions of section 2 shall apply to the declarant and all his minor children and their descendants as if in addition to the matters enumerated therein adoption, wills and legacies were also specified.

2. Substituted by Act 16 of 1943, sec. 2, for "this Act"

Section 4 - Rule-making power

(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:--

(b) for prescribing the fees to be paid for the filing of declarations and for the attendance at private residences of any person in the discharge of his duties under this Act; and for prescribing the times at which such fees shall be payable and the manner in which they shall be levied.

¹[(4) Every rule made by the State Government under this Act shall be laid, as soon as it is made, before the State Legislature.]

1. Inserted by Act 20 of 1983.

Section 5 - Dissolution of marriage by Court in certain circumstances

[Repealed by the Dissolution of Muslim Marriages Act, 1939 (8 of 1939), sec. 6.]

Section 6 - Repeals

1[(The undermentioned provisions] of the Acts and Regulations mentioned below shall be repealed in so far as they are inconsistent with the provisions of this Act, namely:--

(2) Section 16 of the Madras Civil Courts Act, 1873 (3 of 1873);

2[* * * * *]

(5) Section 5 of the Punjab Laws Act, 1872 (4 of 1872);

(7) Section 4 of the Ajmere Laws Regulation, 1877 (Reg. 3 of 1877).

1. Substituted by Act 16 of 1943, sec. 3, for "Provisions".

THE INDIAN CHRISTIAN MARRIAGE ACT, 1872

[Act No. 15 of 1872]

[18th July, 1872]

PREAMBLE

An Act to consolidate and amend the law relating to the solemnization in India of the marriages of Christians.

Whereas it is expedient to consolidate and amend the law relating to the solemnization in India of the marriages of persons professing the Christian religion;

It is hereby enacted as follows:--

Section 10 - Time for solemnizing marriage

Every marriage under this Act shall be solemnized between the hours of six in the morning and seven in the evening:

Exceptions.--Provided that nothing in this section shall apply to--

- (1) a Clergyman of the Church of England solemnizing a marriage under a special license permitting him to do so at any hour other than between six in the morning and seven in the evening, under the hand and seal of the Anglican Bishop of the Diocese or his Commissary, or
- (2) a Clergyman of the Church of Rome solemnizing a marriage between the hours of seven in the evening and six in the morning when he has received a general or special license in that behalf from the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is so solemnized, or from such person as the same Bishop has authorized to grant such license,¹[or
- (3) a Clergyman of the Church of Scotland solemnizing a marriage according to the rules, rites, ceremonies and customs of the Church of Scotland].

1. Inserted by Act 2 of 1891, section 2.

Section 11 - Place for solemnizing marriage

No Clergyman of the Church of England shall solemnize a marriage in any place other than a church¹[where worship is generally held according to the forms of the Church of England],

unless there is no ¹[such] church within five miles distance by the shortest road from such place, or

unless he has received a special license authorizing him to do so under the hand and seal of the Anglican Bishop of the Diocese or his Commissary.

Fee for special license.--For such special license, the Registrar of the Diocese may charge such additional fee as the said Bishop from time to time authorizes.

1. Inserted by section 3, *ibid*.

Section 19 - Consent of father, or guardian, or mother

The father, if living, of any minor, or, if the father be dead, the guardian of the person of such minor, and, in case there be no such guardian, then the mother of such minor, may give consent to the minor's marriage,

and such consent is hereby required for the same marriage, unless no person authorized to give such consent be resident in India.

Section 25 - Solemnization of marriage

After the issue of the certificate by the Minister, marriage may be solemnized between the persons therein described according to such form or ceremony as the Minister thinks fit to adopt:

Provided that the marriage be solemnized in the presence of at least two witnesses besides the Minister.

Section 26 - Certificate void if marriage not solemnized within two months

Whenever, a marriage is not solemnized within two months after the date of the certificate issued by such Minister as aforesaid, such certificate and all proceedings (if any) thereon shall be void,

and no person shall proceed to solemnize the said marriage until new notice has been given and a certificate thereof issued in manner aforesaid.

THE FOREIGN MARRIAGE ACT, 1969

[Act, No. 33 of 1969]

[31st August, 1969]

PREAMBLE

An Act to make provision relating to marriages of citizens of India outside India.

Be it enacted by Parliament in the Twentieth Year of the Republic of India as follows:—

Section 13 - Place and form of solemnization

(1) A marriage by or before a Marriage Officer under this Act shall be solemnized at the official house of the Marriage Officer with open doors between the prescribed hours in the presence of at least three witnesses.

(2) The marriage may be solemnized in any form which the parties may choose to adopt:

Provided that it shall not be complete and binding on the parties unless each party declares to the other in the presence of the Marriage Officer and the three witnesses and in any language understood by the parties,— "I, (A) take the (B), to be my lawful wife (or husband)":

Provided further that where the declaration referred to in the preceding proviso is made in any language which is not understood by the Marriage Officer or by any of the witnesses, either of the parties shall interpret or cause to be interpreted the declaration in a language which the Marriage Officer, or, as the case may be, such witness understands.

Section 15 - Validity of foreign marriages in India

Subject to the other provisions contained in this Act, a marriage solemnized in the manner provided in this Act shall be good and valid in law.

Section 18 - Matrimonial reliefs to be under Special Marriage Act, 1954

(1) Subject to the other provisions contained in this section, the provisions of Chapters IV, V, VI and VII of the Special Marriage Act, 1954 (43 of 1954) shall apply in relation to marriages solemnized under this Act and to any other marriages solemnized in a foreign country between parties of whom one at least is a citizen of India as they apply in relation to marriages solemnized under that Act.

Explanation.—In its application to the marriages referred to in this sub-section, section 24 of the Special Marriage Act, 1954 (43 of 1954) shall be subject to the following modifications, namely:—

(i) the reference in sub-section (1) thereof to clauses (a), (b), (c) and (d) of section 4 of that Act shall be construed as a reference to clauses (a), (b), (c) and (d) respectively of section 4 of this Act, and

(ii) nothing contained in section 24 aforesaid shall apply to any marriage—

(a) which is not solemnized under this Act; or

(b) which is deemed to be solemnized under this Act by reason of the provisions contained in section 17:

Provided that the registration of any such marriage as is referred to in sub-clause (b) may be declared to be of no effect if the registration was in contravention of subsection (2) of section 17.

(2) Every petition for relief under Chapter V or Chapter VI of the Special Marriage Act, 1954 (43 of 1954) as made applicable to the marriages referred to in sub-section (1), shall be presented to the district court within the local limits of whose ordinary civil jurisdiction—

(a) the respondent is residing at the time of the presentation of the petition; or

(b) the husband and wife last resided together; or

(c) the petitioner is residing at the time of the presentation of the petition, provided that the respondent is at that time residing outside India.

Explanation.--In this section, "district court" has the same meaning as in the Special Marriage Act, 1954 (43 of 1954)

(3) Nothing contained in this section shall authorise any court--

(a) to make any decree of dissolution of marriage, except where--

(i) the parties to the marriage are domiciled in India at the time of the presentation of the petition; or

(ii) the petitioner, being the wife, was domiciled in India immediately before the marriage and has been residing in India for a period of not less than three years immediately preceding the presentation of the petition;

(b) to make any decree annulling a voidable marriage, except where--

(i) the parties to the marriage are domiciled in India at the time of the presentation of the petition; or

(ii) the marriage was solemnized under this Act and the petitioner being the wife, has been ordinarily resident in India for a period of three years immediately preceding the presentation of the petition;

(c) to make any decree of nullity of marriage in respect of a void marriage, except where; --

(i) either of the parties to the marriage is domiciled in India at the time of the presentation of the petition; or

(ii) the marriage was solemnized under this Act and the petitioner is residing in India at the time of the presentation of the petition,

(d) to grant any other relief under Chapter V or Chapter VI of the Special Marriage Act, 1954 (43 of 1954) except where the petitioner is residing in India at the time of the presentation of the petition.

(4) Nothing contained in sub-section (1) shall authorise any court to grant any relief under this Act in relation to any marriage in a foreign country not solemnized under it, if the grant of relief in respect of such marriage (whether on any of the grounds specified in the Special Marriage Act, 1954 (43 of 1954) or otherwise is provided for under any other law for the time being in force.

Section 19 - Punishment for bigamy

(1) Any person whose marriage is solemnized or deemed to have been solemnized under this Act and who, during the subsistence of his marriage, contracts any other marriage in India shall be subject to the penalties provided in section 494 and section 495 of the Indian Penal Code, 1860 (45 of 1860) and the marriage so contracted shall be void.

(2) The provisions of sub-section (1) apply also to any such offence committed by any citizen of India without and beyond India.

Section 20 - Punishment for contravention of certain other conditions for marriage

Any citizen of India who procures a marriage of himself or herself be solemnized under this Act in contravention of the condition specified in clause (c) or clause (d) of section 4 shall be punishable—

(a) in the case of a contravention of the condition specified in clause (c) of section 4, with simple imprisonment which may extend to fifteen days or with the fine which may extend to one thousand rupees, or with both; and

(b) in the case of a contravention of the condition specified in clause (d) of section 4, with simple imprisonment which may extend to fifteen days or with fine which may extend to one thousand rupees, or with both.

THE SPECIAL MARRIAGE ACT, 1954

[Act, No. 43 of 1954]¹

[9th October, 1954]

PREAMBLE

An Act to provide a special form of marriage in certain cases, for the registration of such and certain other marriages and for divorce.

BE it enacted by Parliament in the Fifth Year of the Republic of India as follows:--

-
1. The Act has been extended to Dadra and Nagar Haveli by Reg. 6 of 1963, Section 2 and Schedule I and to Pondicherry by Reg. 7 of 1963, Section 3 and Schedule I.
-

Section 4 - Conditions relating to solemnization of special marriages

Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under this Act, if at the time of the marriage the following conditions are fulfilled, namely:--

(a) neither party has a spouse living;

¹[(b) neither party--

(i) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

(ii) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

(iii) has been subject to recurrent attacks of insanity²[***];]

(c) the male has completed the age of twenty-one years and the female the age of eighteen years;

³[(d) the parties are not within the degrees of prohibited relationship:

Provided that where a custom governing at least one of the parties permits of a marriage between them, such marriage may be solemnized, notwithstanding that they are within the degrees of prohibited relationship; and]

⁴(e) where the marriage is solemnized in the State of Jammu and Kashmir, both parties are citizens of India domiciled in the territories to which this Act extends].

⁵[Explanation.--In this section, "custom", in relation to a person belonging to any tribe, community, group or family, means any rule which the State Government may, by notification in the Official Gazette, specify in this behalf as applicable to members of that tribe, community, group or family:

Provided that no such notification shall be issued in relation to the members of any tribe, community, group or family, unless the State Government is satisfied--

(i) that such rule has been continuously and uniformly observed for a long time among those members;

(ii) that such rule is certain and not unreasonable or opposed to public policy; and

(iii) that such rule, if applicable only to a family, has not been discontinued by the family.]

1. Substituted by Act 68 of 1976, Section 21, for clause (b) (w.e.f. 27-5-1976).

2. The words "or epilepsy" omitted by Act 39 of 1999 (w.e.f. 29-12-1999).

3. Substituted by Act 32 of 1963, Section 2, for clause (d) (w.e.f. 22-9-1963).

4. Substituted by Act 33 of 1969, Section 29, for clause (e) (w.e.f. 31-8-1969).

5. Inserted by Act 32 of 1963, Section 2 (w.e.f. 22-9-1963).

Section 12 - Place and form of solemnization

(1) The marriage may be solemnized at the office of the Marriage Officer, or at such other place within a reasonable distance therefrom as the parties may desire, and upon such conditions and the payment of such additional fees as may be prescribed.

(2) The marriage may be solemnized in any form which the parties may choose to adopt:

Provided that it shall not be complete and binding on the parties unless each party says to the other in the presence of the Marriage Officer and the three witnesses and in any language understood by the parties,--"I, (A), take the (B), to be my lawful wife (or husband)."

Section 21 - Succession to property of parties married under Act

Notwithstanding any restrictions contained in the Indian Succession Act, 1925 (39 of 1925), with respect to its application to members of certain communities, succession to the property or any person whose marriage is solemnized under this Act and to the property of the issue of such marriage shall be regulated by the provisions of the said Act and for the purposes of this Act shall have effect as if Chapter III of Part V (Special Rules for Parsi section that Intestate) had been omitted therefrom.

Section 22 - Restitution of conjugal rights

When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply by petition to the district court for restitution of conjugal rights, and the court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

¹[Explanation.--Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.]

1. Inserted by Act 68 of 1976, Section 23 (w.e.f. 27-5-1976).

Section 23 - Judicial separation

(1) A petition for judicial separation may be presented to the district court either by the husband or the wife,—

(a) on any of the grounds specified¹[in sub-section (1)]²[and sub-section (1-A)] of section 27 on which a petition for divorce might have been presented; or

(b) on the ground of failure to comply with a decree for restitution of conjugal rights,

and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree judicial separation accordingly.

(2) Where the court grants a decree for judicial separation, it shall be no longer obligatory for the petitioner to cohabit with the respondent, but the court may, on the application by petition of either party and on being satisfied of the truth of the statements made in such petition, rescind the decree if it considers it just and reasonable to do so.

1. Substituted by Act 29 of 1970, Section 2, for certain words (w.e.f. 12-8-1970).

2. Substituted by Act 68 of 1976, Section 24 (w.e.f. 27-5-1976).

Section 27 - Divorce

¹ [(1)] Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the district court either by the husband or the wife on the ground that the respondent—

² [(a) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

(b) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or]

(c) is undergoing a sentence of imprisonment for seven years or more for an offence as defined in the Indian Penal Code (45 of 1860);

³ [***]

(d) has since the solemnization of the marriage treated the petitioner with cruelty; or

⁴ [(e) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation.--In this clause,--

(a) the expression "mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(b) the expression "psychopathic disorder" means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the respondent, and whether or not it requires or is susceptible to medical treatment; or

(f) has been suffering from venereal disease in a communicable form]; or

(g) has ⁵ [***] been suffering from leprosy, the disease not having been contacted from the petitioner; or

(h) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of the respondent if the respondent had been alive;⁶ [***]

² [Explanation.--In this sub-section, the expression "desertion" means desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly;] ⁵ [***]

⁸ [***]

² [(1A) A wife may also present a petition for divorce to the district court on the ground,--

(i) that her husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality;

(ii) that in a suit under section 18 of the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), or in a proceeding under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) (or under the corresponding section 488 of the Code of Criminal Procedure, 1898) (5 of 1898), a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards.]

⁹ [(2) Subject to the provisions of this Act and to the rules made thereunder, either party to a marriage, whether solemnized before or after the commencement of the Special Marriage (Amendment) Act, 1970 (29 of 1970), may present a petition for divorce to the district court on the ground--

(i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or

(ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.]

1. Section 27 renumbered as sub-section (1) thereof by Act 29 of 1970, Section 3 (w.e.f. 12-8-1970).

2. Substituted by Act 68 of 1976, Section 27, for clauses (a) and (b).

3. Proviso omitted by Act 68 of 1976, Section 27 (w.e.f. 27-5-1976).

4. Substituted by Act 68 of 1976, Section 27, for clauses (e) and (f) (w.e.f. 27-5-1976).

5. Certain words omitted by Act 68 of 1976, Section 27 (w.e.f. 27-5-1976).

6. The word "or" omitted by Act 29 of 1970, Section 3 (w.e.f. 12-8-1970).

7. Inserted by Act 68 of 1976, Section 27 2 (w.e.f. 27-5-1976).

8. Clauses (i) and (j) omitted by Act 29 of 1970, Section 3 (w.e.f. 12-8-1970).

9. Inserted by Act 29 of 1970, Section 3 (w.e.f. 12-8-1970).

Section 27A - Alternative relief in divorce proceedings

¹[27A. Alternative relief in divorce proceedings

In any proceeding under this Act, on a petition for dissolution of marriage by a decree of divorce, except insofar as the petition is founded on the ground mentioned in clause (h) of subsection (1) of section 27, the court may, if it considers it just so to do having regard to the circumstances of the case, pass instead a decree for judicial separation.]

1. Inserted by Act 68 of 1976, Section 28 (w.e.f. 27-5-1976).

Section 28 - Divorce by mutual consent

(1) Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the district court by both the parties together on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2)¹[On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months] after the said date, if the petition is not withdrawn in the meantime, the district court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized under this Act, and that the averments in the petition are true, pass a decree declaring the marriage to be dissolved with effect from the date of the decree.

1. Substituted by Act 68 of 1976, Section 29, for certain words (w.e.f. 27-5-1976).

Section 29 - Restriction on petitions for divorce during first one year after marriage

(1) No petition for divorce shall be presented to the district court

¹ [unless at the date of the presentation of the petition one year has passed] since the date of entering the certificate of marriage in the Marriage Certificate Book:

Provided that the district court may, upon application being made to it, allow a petition to be presented ² [before one year has passed] on the ground that the case is one of exceptional hardship suffered by the petitioner or of exceptional depravity on the part of the respondent, but if it appears to the district court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the district court may, if it pronounces a decree, do so subject to the condition that the decree shall not have effect until after the ³ [expiry of one year] from the date of the marriage or may dismiss the petition, without prejudice to any petition, which may be brought after the ⁴ [expiration of the said one year] upon the same, or substantially the same, facts as those proved in support of the petition so dismissed.

(2) In disposing of any application under this section for leave to present a petition for divorce before the ⁵ [expiration of one year] from the date of the marriage, the district court shall have regard to the interests of any children of the marriage, and to the question whether there is a reasonable probability of a reconciliation between the parties before the expiration of the ⁶ [said one year].

1. Substituted by Act 68 of 1976, Section 30, for certain words (w.e.f. 27-5-1976).

2. Substituted by Act 68 of 1976, Section 30, for "before three years have passed" (w.e.f. 27-5-1976).

3. Substituted by Act 68 of 1976, Section 30, for "expiry of three years" (w.e.f. 27-5-1976).

4. Substituted by Act 68 of 1976, Section 30, for "expiration of the said three years" (w.e.f. 27-5-1976).

5. Substituted by Act 68 of 1976, Section 30, for "expiration of the three years" (w.e.f. 27-5-1976).

6. Substituted by Act 68 of 1976, Section 30, for "said three years" (w.e.f. 27-5-1976).

Section 30 - Re-marriage of divorced persons

Where a marriage has been dissolved by a decree of divorce; and either there is no right of appeal against the decree or if there is such a right of appeal, the time for appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed,¹[***] either party to the marriage may marry again.

1.The words "and one year has elapsed thereafter but not sooner" omitted by Act 68 of 1976, Section 31 (w.e.f. 27-5-1976).

Section 36 - Alimony pendente lite

Where in any proceeding under Chapter V or Chapter VI it appears to the district court that the wife has no independent income sufficient for her support and the necessary expenses of the proceeding, it may, on the application of the wife, order the husband to pay to her the expenses of the proceeding, and weekly or monthly during the proceeding such sum as having regard to the husband's income, it may seem to the court to be reasonable.

¹ [Provided that the application for the payment of the expenses of the proceeding and such weekly or monthly sum during the proceeding under Chapter V or Chapter VI, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the husband.]

1.Inserted by Act 49 of 2001,Section 6(w.e.f. 24-9-2001).

Section 37 - Permanent alimony and maintenance

(1) Any court exercising jurisdiction under Chapter V or Chapter VI may, at the time of passing any decree or at any time subsequent to the decree, on application made to it for the purpose, order that the husband shall secure to the wife for her maintenance and support, if necessary, by a charge on the husband's property such gross sum or such monthly or periodical payment of money for a term not exceeding her life, as, having regard to her own property, if any, her husband's property and ability¹ [the conduct of the parties and other circumstances of the case], it may seem to the court to be just.

(2) If the district court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as it may seem to the court to be just.

(3) If the district court is satisfied that the wife in whose favour an order has been made under this section has re-married or is not leading a chaste life,² [it may, at the instance of the husband vary, modify or rescind any such order and in such manner as the court may deem just.]

1.Substituted by Act 68 of 1976,Section 36, for "and the conduct of the parties"(w.e.f. 27-5-1976).

2.Substituted by Act 68 of 1976,Section 36, for "it shall rescind the order"(w.e.f. 27-5-1976).

Section 38 - Custody of children

In any proceeding under Chapter V or Chapter VI the district court may, from time to time, pass such interim orders and make such provisions in the decree as it may seem to it to be just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes wherever possible, and may, after the decree, upon application by petition for the purpose, make, revoke, suspend or vary, from time to time, all such orders and provisions with respect to the custody, maintenance and

education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending.

¹ [Provided that the application with respect to the maintenance and education of the minor children, during the proceeding, under Chapter V or Chapter VI, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent.]

1. Inserted by Act 49 of 2001, Section 7 (w.e.f. 24-9-2001).

THE FAMILY COURTS ACT, 1984

[Act, No. 66 of 1984]

[14th September, 1984]

PREAMBLE

An Act to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of disputes relating to marriage and family affairs and for matters connected therewith.

BE it enacted by Parliament in the Thirty-fifth Year of the Republic of India as follows:--

Section 1 - Short title, extent and commencement

(1) This Act may be called the Family Courts Act, 1984.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date ¹as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different States.

1. Came into force in-RAJASTHAN-on 19-11-1985, vide No. 79/17/85, dated 18th November, 1985, Gazette of India, Pt. II, Section 1.

UTTAR PRADESH-on 2-10-1986, vide No. 79/11/86, dated 4th September, 1986, Gazette of India, Pt. II, Section 1.

TAMIL NADU-on 2-10-1986, vide No. 79/8/86, dated 18th September, 1986, Gazette of India, Pt. II, Section 1.

UNION TERRITORY OF DELHI-on 19-11-1986, vide S.O. 863(E), dated 18th November, 1986, Gazette of India, Extra., Pt. II Section 3 (ii).

- MAHARASHTRA-on 1-12-1986, vide S.O. 944, (E), dated 5th December, 1986, Gazette of India, Extra., Pt. II, section 3(ii).
- UNION TERRITORY OF ANDAMAN AND NICOBAR ISLANDS-on 19-11-1986, vide No. 79/22/86, dated 19th November, 1986, Gazette of India, Extra., Pt. II, Section 1.
- UNION TERRITORY OF PONDICHERRY-on 1-5-1987, vide G.S.R. 459 (E), dated 29th April, 1987, Gazette of India, Extra., Pt. II, Section 3(i).
- MADHYA PRADESH-on 19-11-1986, vide No. 79/6/86, dated 14th November, 1986, Gazette of India, Extra., Pt. II, Section 1.
- SIKKIM-on 2-10-1987, vide No. 79/20/86, dated 14th September, 1987, Gazette of India, Extra., Pt. II, Section 1.
- KARNATAKA-on 25-5-1987, vide G.S.R. 695 (E), dated 15th May, 1987, Gazette of India, Extra., Pt. II, Section 3(i).
- ORISSA-on 1-5-1989, vide S.O. 321, (E), dated 27th April, 1989, Gazette of India, Extra, Pt. II, Section 3(ii).
- GOA-on 16-4-1990, vide S.O. 328(E), dated 12th April, 1990, Gazette of India, Extra., Pt. II, Section 3(ii).
- KERALA-on 21-10-1989, vide No. 79/5/86, dated 17th October, 1989, Gazette of India, Extra., Pt. II, Section 1.
- WEST BENGAL-on 1-11-1991, vide No. 79/12/86, dated 1st November, 1991, Gazette of India, Extra., Pt. II, Section 1.
- ASSAM-on 2-10-1991, vide No. 79/2/86, dated 30th November, 1991, Gazette of India, Extra., Pt. II, Section 1.
- BIHAR-on 10-12-1991, vide S.O. 838 (E), dated 6th December, 1991, Gazette of India, Extra. Pt. II, Section 3(ii).
- MANIPUR-on 3-2-1992, vide S.O. 91(E), dated 30th January, 1992, Gazette of India, Extra., Pt. II, Section 3(ii).
- HARYANA-on 2-11-1992, vide G.S.R. 748 (E), dated 24th October, 1992, Gazette of India, Extra., Pt. II, Section 3(ii).
- Mizoram-on-30-03-2009, vide S.O. 2196 (E), dated 27th August, 2009., Gazette of India, Extra., Pt. II. section 3(ii).

Section 2 - Definitions

In this Act, unless the context otherwise requires,—

- (a) Judge" means the Judge or, as the case may be, the Principal Judge, Additional Principal Judge or other Judge of a Family Court;
- (b) notification" means a notification published in the Official Gazette;
- (c) prescribed means prescribed by rules made under this Act;
- (d) Family Court" means a Family Court established under section 3;
- (e) all other words and expressions used but not defined in this Act and defined in the Code of Civil Procedure, 1908 (5 of 1908) shall have the meanings respectively assigned to them in that Code.

Section 3 - Establishment of Family Courts

(1) For the purpose of exercising the jurisdiction and powers conferred on a Family Court by this Act, the State Government, after consultation with the High Court, and by notification,—

- (a) shall, as soon as may be after the commencement of this Act, established for every area in the State comprising of city or town whose population exceeds one million, a Family Court;
- (b) may establish Family Courts for such other areas in the State as it may deem necessary.

(2) The State Government shall, after consultation with the High Court, specify, by notification, the total limits of the area to which the jurisdiction of a Family Court shall extend and may, at any time, increase, reduce or alter such limits.

Section 4 - Appointment of Judges

- (1) The State Government may, with the concurrence of the High Court, appoint one or more persons to be the Judge or Judges of a Family Court.
- (2) When a Family Court consists of more than one Judge,--
 - (a) each of the Judges may exercise all or any of the powers conferred on the Court by this Act or any other law for the time being in force;
 - (b) the State Government may, with the concurrence of the High Court, appoint any of the Judges to be the Principal Judge and any other Judge to be the Additional Principal Judge;
 - (c) the Principal Judge may, from time to time, make such arrangements as he may deem fit for the distribution of the business of the Court among the various Judges thereof;
 - (d) the Additional Principal Judge may exercise the powers of the Principal Judge in the event of any vacancy in the office of the Principal Judge or when the Principal Judge is unable to discharge his functions owing to absence, illness or any other cause.
- (3) A person shall not be qualified for appointment as a Judge unless he--
 - (a) has for at least seven years held a judicial office in India or the office of a member of a Tribunal or any post under the Union or a State requiring special knowledge of law; or
 - (b) has for at least seven years been an advocate of a High Court or of two or more such Courts in succession; or
 - (c) possesses such other qualifications as the Central Government may, with the concurrence of the Chief Justice of India, prescribe.
- (4) In selecting persons for appointment as Judges,--
 - (a) every endeavour shall be made to ensure that persons committed to the need to protect and preserve the institution of marriage and to promote the welfare of

children and qualified by reason of their experience and expertise to promote the settlement of disputes by conciliation and counselling are selected; and

(b) preference shall be given to women.

(5) No person shall be appointed as, or hold the office of, a Judge of a Family Court after he has attained the age of sixty-two years.

(6) The salary or honorarium and other allowances payable to, and the other terms and conditions of service of a Judge shall be such as the State Government may, in consultation with the High Court, prescribe.

Section 5 - Association of social welfare agencies, etc.

The State Government may, in consultation with the High Court, provide, by rules, for the association, in such manner and for such purposes and subject to such conditions as may be specified in the rules, with a Family Court of--

(a) institutions or organisations engaged in social welfare or the representatives thereof;

(b) persons professionally engaged in promoting the welfare of the family;

(c) persons working the field of social welfare; and

(d) any other person whose association with a Family Court would enable it to exercise its jurisdiction more effectively in accordance with the purposes of this Act.

Section 6 - Counsellors, officers and other employees of Family Courts

(1) The State Government shall in consultation with the High Court, determine the number and categories of counsellors, officers and other employees required to assist a Family Court in the discharge of its functions and provide the Family Court with such counsellors, officers and other employees as it may think fit.

- (2) The terms and conditions of association of the counsellors and the terms and conditions of service of the officers and other employees, referred to in sub-section (1), shall be such as may be specified by rules made by the state government.

Section 7 - Jurisdiction

- (1) Subject to the other provisions of this Act, a Family Court shall--
- (a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the explanation; and
 - (b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

Explanation.--The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:--

- (a) suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;
- (b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;
- (c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;
- (d) a suit or proceeding for an order or injunction in circumstance arising out of a marital relationship;
- (e) a suit or proceeding for a declaration as to the legitimacy of any person;
- (f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise-

(a) the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment.

Section 8 - Exclusion of jurisdiction and pending proceedings

Where a Family Court has been established for any area,—

(a) no district court or any subordinate civil court referred to in sub-section (1) of section 7 shall, in relation to such area, have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the Explanation to that sub-section;

(b) no magistrate shall, in relation to such area, have or exercise any jurisdiction or power under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);

(c) every suit or proceeding of the nature referred to in the Explanation to sub-section (1) of section 7 and every proceeding under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974),—

(i) which is pending immediately before the establishment of such Family Court before any district court or subordinate court referred to in that sub-section or, as the case may be, before any magistrate under the said Code; and

(ii) which would have been required to be instituted or taken before such Family Court if, before the date on which such suit or proceeding was instituted or taken, this Act had come into force and such Family Court had been established

shall stand transferred to such Family Court on the date on which it is established.

Section 9 - Duty of Family Court to make efforts for settlement

(1) In every suit or proceeding, endeavour shall be made by the Family Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement in respect of the subject-matter of the suit or proceeding and for this purpose a Family Court may, subject to any rules made by the High Court, follow such procedure as it may deem fit.

(2) If, in any suit or proceeding, at any stage, it appears to the Family Court that there is a reasonable possibility of a settlement between the parties, the Family Court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect such a settlement.

(3) The power conferred by sub-section (2) shall be in addition to, and not in derogation of any other power of the Family Court to adjourn the proceedings.

Section 10 - Procedure generally

(1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings [other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)] before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil court and shall have all the powers of such court.

(2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) or the rules made thereunder, shall apply to the proceedings under Chapter IX of that Code before a Family Court.

(3) Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by one party and denied by the other.

Section 11 - Proceedings to be held in camera

In every suit or proceedings to which this Act applies, the proceedings may be held in camera if the Family Court so desires and shall be so held if either party so desires.

Section 12 - Assistance of medical and welfare experts

In every suit or proceedings, it shall be open to a Family Court to secure the services of a medical expert or such person (preferably a woman where available), whether related to the parties or not, including a person professionally engaged in promoting the welfare of the family as the court may think fit, for the purposes of assisting the Family Court in discharging the functions imposed by this Act.

Section 13 - Right to legal representation

Notwithstanding anything contained in any law, no party to a suit or proceeding before a Family Court shall be entitled, as of right, to be represented by a legal practitioner

Provided that if the Family Court considers it necessary in the interest of justice, it may seek the assistance of a legal expert as *amicus curiae*.

Section 14 - Application of Indian Evidence Act, 1872

A Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872 (1 of 1872).

Section 15 - Record of oral evidence

In suits or proceedings before a Family Court, it shall not be necessary to record the evidence of witnesses at length, but the Judge, as the examination of each witness proceeds, shall record or cause to be recorded, a memorandum of the substance of what the witness deposes, and such memorandum shall be signed by the witness and the Judge and shall form part of the record.

Section 16 - Evidence of formal character on affidavit

(1) The evidence of any person where such evidence is of a formal character, may be given by affidavit and may, subject to all just exceptions, be read in evidence in any suit or proceeding before a Family Court.

(2) The Family Court may, if it thinks fit, and shall, on the application of any of the parties to the suit or proceeding summon and examine any such person as to the facts contained in his affidavit.

Section 17 - Judgment

Judgment of a Family Court shall contain a concise statement of the case, the point for determination, the decision thereon and the reasons for such decision.

Section 18 - Execution of decrees and orders

(1) A decree or an order [other than an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)], passed by a Family Court shall have the same force and effect as a decree or order of a Civil Court and shall be executed in the same manner as is prescribed by the Code of Civil Procedure, 1908 (5 of 1908) for the execution of decrees and orders.

(2) An order passed by a Family Court under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) shall be executed in the manner prescribed for the execution of such order by that Code.

(3) A decree or order may be executed either by the Family Court which passed it or by the other Family Court or ordinary civil court to which it is sent for execution.

Chapter V - APPEAL AND REVISION

Section 19 - Appeal

(1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law, an appeal shall lie from every judgment or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law.

(2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties¹[or from an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) before the commencement of the Family Courts (Amendment) Act, 1991.]

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment or order of a Family Court.

¹[(4) The High Court may, of its own motion or otherwise, call for and examine the record of any proceeding in which the Family Court situate within its jurisdiction passed an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) for the purpose of satisfying itself as to the correctness, legality or propriety of the order, not being an interlocutory order, and, as to the regularity of such proceeding.]

²[(5)] Except as aforesaid, no appeal or revision shall lie to any court from any judgment, order or decree of a Family Court.

²[(6)] An appeal preferred under sub-section (1) shall be heard by a Bench consisting of two or more Judges.

1. Inserted by Act 59 of 1991, section 2 w.e.f. 28-12-1991.
2. Sub-sections (4) and (5) re-numbered as sub-sections (5) and (6) respectively by Act 59 of 1991, section 2 w.e.f. 28-12-1991.

Section 20 - Act to have overriding effect

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Section 21 - Power of High Court to make rules

- (1) The High Court may, by notification in the Official Gazette, make such rules as it may deem necessary for carrying out the purposes 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) normal working hours of Family Courts and holding of sittings of Family Courts on holidays and outside normal working hours;
 - (b) holding of sittings of Family Courts at places other than their ordinary places of sitting;
 - (c) efforts which may be made by, and the procedure which may be followed by, a Family Court for assisting and persuading parties to arrive at a settlement.

Section 22 - Power of the Central Government to make rules

(1) The Central Government may, with the concurrence of the Chief Justice of India, by notification, make rules prescribing the other qualifications for appointment of Judge referred to in clause (c) of sub-section (3) of section 4.

(2) Every rule made under this Act by the Central Government 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.

Section 23 - Power of the State Government to make rules

(1) The State Government may, after consultation with the High Court, by notification, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the provisions of sub-section (1) such rules may provide for all or any of

(a) the following matters, namely:--

(b) the salary or honorarium and other allowances payable to, and the other terms and conditions of Judges under sub-section (6) of section 4; the terms and conditions of association of counsellors and the terms and conditions of service of the officers and other employees referred to in section 6;

(c) payment of fees and expenses (including travelling expenses) of medical and other experts and other persons referred to in section 12 out of the revenues of the State Government and the scales of such fees and expenses;

(d) payment of fees and expenses of legal practitioners appointed under section 13 as amicus curiae out of the revenues of the State Government and the scales of such fees and expenses;

(e) any other matter which is required to be, or may be, prescribed or provided for by rules.

(3) Every rule made by a State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature.

THE ORISSA URBAN POLICE ACT, 2003, ORISSA ACT 8 OF 2007

Sec 17- It shall be the duty of every police officer to -

(v) prevent eve-teasing and harassment of women in public places or otherwise;

(viii) behave with all the members of the public with due decorum and courtesy, particularly so in dealing with women and children, where strict regard should be paid to decency and reasonable gentleness;

Sec 47- Whenever it appears to the Commissioner-

(c) that such person-

(v) has been habitually passing indecent remarks on women and girls, or teasing them by overtures,

forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property, the Commissioner may, by order in writing duly served on such person, or by beat of drum or otherwise as he thinks fit, direct such person to so conduct himself as shall seem necessary in order to prevent alarm, harm and violence or to remove himself outside the area of the Commissionerate or any part thereof, by such route and within such time as the Commissioner may specify and not to enter or return to such area or part thereof, as the case may be, from which he was directed to remove himself .

Explanation.-A person, who during a period within one year immediately preceding the commencement of an action under this section has been found, on not less than three occasions, to have committed or to have been involved in any of the acts referred to in this section, shall be deemed to have habitually committed that act.

THE ODISHA PREVENTION OF WITCH - HUNTING ACT, 2014

2. In this Act, unless the context otherwise requires, —

(a) “Witch” means a woman, locally known as “Dahani”, “Dayan” or otherwise, who has been identified by any person or persons believing her to be in possession of, or is having, any evil power for causing any harm to any person or his property.

(b) “Witch craft” means use of supernatural or magical power with evil intention to call up spirit or cast spell or discover the whereabouts of stolen goods and includes such other similar practices which are locally known as ‘Guni’, ‘Jhada phunka’, ‘Cot Bidya’, ‘Bata Bidya’, ‘Kula Bidya’, ‘Nakha Darpana’ or by any other name;

(c) “Witch-doctor” means a person who claims to be a Gunia, Tantrik, Kalisi or by any other name called and claims or is believed to be having supernatural or magical power to control or to cure a witch or by performing rituals to free a woman from evil spirit or bless a woman with a child or performs any ritual on behalf of any person with an intention to harm a person;

(d) “Witch- hunting” means any act of omission, commission or conduct on the part of any person,—

(i) identifying, accusing or defaming a woman as a witch, or

(ii) harassing, harming or injuring such woman whether mentally or physically or damaging her property.

4. Penalty for witch hunting- (1) Whoever, except in the cases provided for in sub-section (2), commits witchhunting, or abets, or provokes for witch hunting, shall be punishable with imprisonment for a term which may extend to three years or with fine but which shall not be less than one thousand rupees or with both.

(2) Whoever forces any woman, branding her as witch, to drink or eat any inedible substance or any other obnoxious substance or parade her with painted face or body or commits any similar acts which is derogatory to human dignity or displaced from her house, shall be punishable with imprisonment for a term which shall not be less than one year but may extend to five years and with fine.

THE INDIAN PENAL CODE 1860

Section 100

100. When the right of private defence of the body extends to causing death

The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:

1. Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;
2. Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;
3. An assault with the intention of committing rape;
4. An assault with the intention of gratifying unnatural lust;
5. An assault with the intention of kidnapping or abducting;
6. An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.
7. 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.

Section 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, 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, or
- c. fails to record any information given to him under sub-section (1) 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 376D, 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.]

Section 228A

228A. Disclosure of identity of the victim of certain offences etc.—

(1) Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under section 376, section 376A, section 376B, section 376C, section 376D or section 376E is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

(2) Nothing in sub-section (1) extends to any printing or publication of the name or any matter which may make known the identity of the victim if such printing or publication is—

(a) by or under the order in writing of the officer-in-charge of the police station or the police officer making the investigation into such offence acting in good faith for the purposes of such investigation; or

(b) by, or with the authorisation in writing of, the victim; or

(c) where the victim is dead or minor or of unsound mind, by, or with the authorisation in writing of, the next of kin of the victim:

Provided that no such authorisation shall be given by the next of kin to anybody other than the chairman or the secretary, by whatever name called, of any recognised welfare institution or organisation.

Explanation

For the purposes of this sub-section, "recognised welfare institution or organisation" means a social welfare institution or organisation recognised in this behalf by the Central or State Government.

(3) Whoever prints or publishes any matter in relation to any proceeding before a court with respect to an offence referred to in sub-section (1) without the previous permission of such Court shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

Explanation

The printing or publication of the judgment of any High Court or the Supreme Court does not amount to an offence within the meaning of this section.]

Section 292

292. Sale, etc., of obscene books, etc. _

[(1) For the purposes of subsection (2), a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt person, who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it].

[(2)] Whoever-

(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or

(b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or

(c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or

(d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or

(e) offers or attempts to do any act which is an offence under this section,

shall be punished ¹⁴⁰[on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and also with fine which may extend to five thousand rupees].

[Exception- This section does not extend to-

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

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

(ii) which is kept or used bona fide for religious purposes;

(b) any representation sculptured, engraved, painted or otherwise represented on or in-

(i) any ancient monument within the meaning of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), or

(ii) any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.]

Section 293

293. Sale, etc., of obscene objects to young person

Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in the last preceding section, or offers or

attempts so to do, shall be punished¹⁴⁰ [on first conviction with imprisonment of either description for a term which may extend to three years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to seven years, and also with fine which may extend to five thousand rupees.

Section 294

294. Obscene acts and songs

Whoever, to the annoyance of others-

(a) does any obscene act in any public place, or

(b) sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Section 304B

[304B. Dowry death.—

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death. Explanation.— For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

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

Section 312

312. Causing miscarriage

Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with

imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with Imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation- A woman who causes herself to miscarry, is within the meaning of this section.

Section 313

313. Causing miscarriage without woman's consent

Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with ¹⁰⁴[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 314

314. Death caused by act done with intent to cause miscarriage.—

Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; If act done without woman's consent.— And if the act is done without the consent of the woman, shall be punished either with [imprisonment for life], or with the punishment above mentioned.

Explanation.—It is not essential to this offence that the offender should know that the act is likely to cause death.

Section 315

315. Act done with intent to prevent child being born alive or to cause it to die after birth

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

Section 316

316. Causing death of quick unborn child by act amounting to culpable homicide.—

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

Illustration-

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

CLASSIFICATION OF OFFENCE Punishment—Imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

Section 317

317. Exposure and abandonment of child under twelve years, by parent or person having care of it

Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation- This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure.

Section 354

354. Assault or criminal force to woman with intent to outrage her modesty.

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

Section 354A

A man committing any of the following acts—

1. physical contact and advances involving unwelcome and explicit sexual overtures; or
1. a demand or request for sexual favours; or
2. showing pornography against the will of a woman; or
3. making sexually coloured remarks, shall be guilty of the offence of sexual harassment.

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.

2. 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.

Section 354B

354 B. Assault or use of criminal force to woman with intent to disrobe
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.

Section 354C

354C. Voyeurism

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.

Explanations

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.

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.

Section 354D.

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.¹.

Section 366A

366A. Procuration of minor girl

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

Section 366B

366B. Importation of girl from foreign country

Whoever imports into ¹⁶¹[India] from any country outside India ¹[or from the State of Jammu and Kashmir] any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, [***] shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.

Section 372

372. Selling minor for purposes of prostitution, etc

Whoever sells, lets to hire, or otherwise disposes of any ¹⁶⁴[person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be] employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall be liable to fine.

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

Explanation II- For the purposes of this section "illicit intercourse" means sexual intercourse between persons not united by marriage or by any union or tie which, though not amounting to a marriage, is recognized by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a quasi-marital relation.

Section 373

373. Buying minor for purposes of prostitution, etc

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

[Explanation I]-Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female under the age of eighteen years shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.

Explanation II- "Illicit intercourse" has the same meaning as in section 372.]

Section 375

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

(First) — Against her will

(Secondly) — Without her consent.

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

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

(Fifthly) — With her consent, when, at the time 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 sixteen years of age.

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

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

Section 376

376. Punishment for rape

(1) Whoever, except in the cases provided for by subsection (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

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

(2) Whoever,-

(a) being a police officer commits rape-

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

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) on a woman in his custody or in the custody of a police officer subordinate to him; or

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

(c) being on the management or on the 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 woman's or

children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

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

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

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

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

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

Explanation 1- Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.

Explanation 2- "Women's or children's institution" means an institution, whether called an orphanage or a home for neglected woman or children or a widows' home or by any other name, which is established and maintained for the reception and care of woman or children.

Explanation 3- "Hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring, medical attention or rehabilitation.]

Section 376A

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

Section 376B

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.

Section 376C

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.

Section 376D.

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.

Section 376E

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

Section 377

377. Unnatural offences

Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with ¹⁵²[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation- Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

Section 493

493. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.—Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be

punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 494

494. Marrying again during lifetime of husband or wife

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

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

Section 495

495. Same offence with concealment of former marriage from person with whom subsequent marriage is contracted

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

Section 496

496. Marriage ceremony fraudulently gone through without lawful marriage

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

Section 497

497. Adultery

Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall be punishable as an abettor.

Section 498

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

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

Section 498A.

498A. Husband or relative of husband of a woman subjecting her to cruelty

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

Explanation- For the purpose of this section, "cruelty" means-

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

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

Section 509

509. Word, gesture or act intended to insult the modesty of a woman

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

CODE OF CRIMINAL PROCEDURE, 1973

Section 26

26. Courts by which offences are triable.

Subject to the other provisions of this Code,-

(a) Any offence under the Indian Penal Code (45 of 1860) may be tried by-

(i) the High Court, or

(ii) the Court of Session, or

(iii) any other court by which such offence is shown in the First Schedule to be triable;

¹["Provided that any ["offence under section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code"] (45 of 1860) shall be tried as far as practicable by a Court presided over by a woman."]

(b) Any offence under any other law shall, when any court is mentioned in this behalf in such law, be tried by such court and when no court is so mentioned, may be tried by.

(i) the High Court, or

(ii) any other court by which such offence is shown in the First Schedule to be triable.

Section 47

47. Search of place entered by person sought to be arrested.-

(2) If ingress to such place cannot be obtained under sub-section (1), it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police officer to enter such place and search therein, and in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance;

Provided that, if any such place is an apartment in the actual occupancy of a female (not being the person to be arrested) who, according to custom, does not appear in public, such person or police officer shall, before entering such apartment, give notice to such female that she is at

liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

Section 51

51. Search of arrested person.

(2) Whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency.

Section 53

53. Examination of accused by medical practitioner at the request of police officer.-

2) Whenever the person of a female is to be examined under this section, the examination shall be made only by, or under the supervision of, a female registered medical practitioner.

Explanation.- In this section and in section 54, "registered medical practitioner" means a medical practitioner who possesses any recognized medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956,(102 of 1956) and whose name has been entered in a State Medical Register.

Section 53A

53 A. Examination of person accused of rape by medical practitioner. –

(1) When a person is arrested on a charge of committing an offence of rape or an attempt to commit rape and there are reasonable grounds for believing that an examination of this person will afford evidence as to the commission of such offence, it shall be lawful for a registered medical practitioner employed in a hospital run by the Government or by a local authority and in the absence of such a practitioner within the radius of sixteen kilometers from the place where the offence has been committed by any other registered medical practitioner, acting at the request of a police officer not below the rank of a sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the arrested person and to use such force as is reasonably necessary for that purpose.

(2) The registered medical practitioner conducting such examination shall, without delay, examine such person and prepare a report of his examination giving the following particulars, namely:-

- (i) the name and address of the accused and of the person by whom he was brought,
- (ii) the age of the accused,
- (iii) marks of injury, if any, on the person of the accused,
- (iv) the description of material taken from the person of the accused for DNA profiling, and”.
- (v) other material particulars in reasonable detail.

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

(4) The exact time of commencement and completion of the examination shall also be noted in the report.

(5) The registered medical practitioner shall, without delay, forward the report of the investigating officer, who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section.]

Section 97.

97. Search for persons wrongfully confined

If any District Magistrate, Sub-divisional Magistrate or Magistrate of the first class has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue, a search-warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person, if found, shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper.

Section 98

98. Power to compel restoration of abducted females. Upon complaint made on oath of the abduction or unlawful detention of a woman, or a female child under the age of eighteen years, for any unlawful purpose, a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.

Section 125

125. Order for maintenance of wives, children and parents.

(1) If any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself,

(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct :

Explanation.-For the purposes of this Chapter,-

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) Such allowance shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance. (3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowances remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made: Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due : Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation.-If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No Wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

Section 126

126. Procedure.

(1) Proceedings under section 125 may be taken against any person in any district-

(a) where he is, or (b) where he or his wife, resides, or

(c) where he last resided with his wife, or as the case may be, with the mother of the illegitimate child.

(2) All evidence in such proceedings shall be taken in the presence of the person against whom an order for payment of maintenance is proceed to be made, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed for summons-cases:

Provided that if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is wilfully avoiding service, or wilfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case ex parte and any order so made may be set aside for good cause shown on an application made within three months from the date thereof subject to such terms including terms as to payment of costs to the opposite party as the Magistrate may think just and proper.

(3) The Court in dealing with applications under section 125 shall have power to make such order as to costs as may be just.

Section 127

127. Alteration in allowance.

(1) On proof of a change in the circumstances of any person, receiving, under section 125 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife, child, father or mother, as case may be, the Magistrate may make such alteration in the allowance he thinks fit :

provided that if he increases the allowance, the monthly rate of five hundred rupees in the whole shall not be exceeded.

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

(3) Where any order has been made under section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that-

(a) the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage;

(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order,-

(i) in the case where, such sum was paid before such order, from the date on which such order was made,

(ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman;

(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to maintenance after her divorce, cancel the order from the date thereof.

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom a monthly allowance has been ordered to be paid under section 125, the Civil Court shall take into account the sum which has been paid to, or recovered by, such person as monthly allowance in pursuance of the said order.

Section 128

128. Enforcement of order of maintenance. A copy of the order of maintenance shall be given without payment to the person in whose favour it is made, or to his guardian, if any or to the person to whom the allowance is to be paid ; and such order may be enforced by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the allowance due.

Section 154

• **Section 154:-** Provided that if the information is given by the woman against whom an offence under section 326A, section 326B, Section 354, Sec-A Section 354-B, Section 354C, Sec-354D, Sec-376, Sec-376A Sec- 376 B Sec-376C, Sec-376D, Sec-376E or section 509 of the Indian Penal Code is alleged have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer.

Section 160

160. Police Officer's power to require attendance of witnesses.

(1) Any police officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required:

Provided that no male person 1["under the age of fifteen years or above the age of sixty-five years or a woman or a mentally or physically disabled person"] shall be required to attend at any place other than the place in which such male person or woman resides.

(2) The State Government may, by rules made in this behalf, provide for the payment by the police officer of the reasonable expenses of every person, attending under sub-section (1) at any place other than his residence.

Section 161

161. Examination of witnesses by police.

(1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer truly all questions relating to such case Put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.

"Provided further that the statement of a woman against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code is alleged to

have been committed or attempted shall be recorded, by a woman police officer or any woman officer.”.]

Section 164

• Section 164:- In cases punishable under Sec-354, Sec- 354A, Sec- 354B, Sec- 354AC, Sec- 354D, sub-sec (I) or sub-sec (2) of sec 376, sec-376A Sec-376 B Sec-376C, Sec-376D, Sec-376E or section 509 of the Indian Penal Code, the Judicial Magistrate shall record the statement of the person against whom such offence has been committed in the manner prescribed in sub-se (5), as soon as the commission of the offence is brought to the notice of the police Contd.. Provided that if the person making the statement is temporarily or permanently mentally or physically disabled, the Magistrate shall take the assistance of interpreter and the same shall be video graphed.

Section 173.

173. Report of police officer on completion of investigation.

(1) Every investigation under this Chapter shall be completed without unnecessary delay.

(2) (i) as soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating-

(a) the names of the parties;

(b) the nature of the information;

(c) The names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under section 170.

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any by whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed under section 158, the report, shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report-

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witness.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the sub-matter of the proceeding or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).

(8) Notwithstanding in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed and the provisions of sub-section (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).

Section 174

174. Police to enquire and report on suicide, etc.

(1) When the officer in charge of a police station or some other police officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any); such marks appear to have been inflicted.

(2) The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

(3) When-

(i) the case involves suicide by a woman within seven years of her marriage ;or

(ii) the case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman ;or

(iii) the case relates to the death of a woman within seven years of her marriage and any relative of the woman has made a request in this behalf; or

(iv) there is any doubt regarding the cause of death; or

(v) the police officer for any other reason considers it expedient so to do, he shall, subject to such rules as the State Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the State Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

(4) The following Magistrates are empowered to hold inquests, namely, any District Magistrate or Sub-divisional Magistrate and any other Executive Magistrate specially empowered in this behalf by the State Government or the District Magistrate.

Section 176.

176. Inquiry by Magistrate into cause of death.

(1) [***]When the case is of the nature referred to in clause (i) or clause (ii) of sub-section (3) of section 174], the nearest Magistrate empowered to hold inquests shall, and in any other case mentioned in sub-section (1) of section 174, any Magistrate so empowered may hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police officer; and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence.

[(1A) Where,-

(I) any person dies or disappears, on

(II) rape is alleged to have been committed on any woman, while such person or woman is in the custody of the police or in any other custody authorised by the Magistrate or the Court, under this Code in addition to the enquiry or investigation held by the police, an inquiry shall be held by the Judicial Magistrate or the Metropolitan Magistrate, as the case may be, within whose local jurisdiction the offence has been committed.]

(2) The Magistrate holding such inquiry shall record the evidence taken by him in connection therewith in any manner hereinafter prescribed according to the circumstances of the case.

(3) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the causes of his death, the Magistrate may cause the body to be disinterred and examined.

(4) Where an inquiry is to be held under this section, the Magistrate shall, wherever practicable, inform the relatives of the deceased whose names and addresses are known, and shall allow them to remain present at the inquiry.

³[(5) The Judicial Magistrate or the Metropolitan Magistrate or Executive Magistrate or police officer holding an inquiry or investigation, as the case may be, under sub-section (1A) shall, within twenty-four hours of the death of a person, forward the body with a view to its being examined to the nearest Civil Surgeon or other qualified medical man appointed in this behalf by the State Government, unless it is not possible to do so for reasons to be recorded in writing.]

Explanation – In this section, the expression “relative” means parents, children, brothers, sisters and spouse.

Section 174

174. Police to inquire and report on suicide, etc.

(1) When the officer in charge of a police station or some other police officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighborhood shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

(2) The report shall be signed by such police officer and other persons, or by so many of them as concur therein and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

(3) [When

(i) the case involves suicide by a woman within seven years of her marriage: or

(ii) the case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman; or

(iii) the case relates to the death of a woman within seven years of her marriage and any relative of the woman has made a request in this behalf, or

(iv) there is any doubt regarding the cause of death; or

(v) the police officer for any other reason considers it expedient so to do, he shall], subject to such rules as the State Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the State Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

(4) The following Magistrates are empowered to hold inquests, namely, any District Magistrate or Sub-divisional Magistrate and any other Executive Magistrate specially empowered in this behalf' by the State Government or the District Magistrate.

Section 197

197. Prosecution of Judges and public servants.

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty no court shall take cognizance of such offence except with the previous sanction-

[*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 376D or section 509 of the Indian Penal Code.”.]

(a) In the case of it person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) In the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

¹[Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression “State Government” occurring therein, the expression “Central Government” were substituted.

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union whole acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of subsection (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, whenever they may be serving, and thereupon the provisions of that sub-section will apply as if lot the expression “Central Government” occurring therein, the expression “State Government were substituted.

²[(3A) Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.]

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the court before which the trial is to be held.

1. Added by Act 43 of 1991, sec. 2 (w.e.f. 2-5-1991)
2. Ins. by Act 43 of 1991, sec. 2 (w.e.f. 2-5-1991)
3. Inserted by Section 18 of "The Criminal Law (Amendment) Act, 2013"

Section 198

198. Prosecution for offences against marriage.-

(1) No Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence:

Provided that-

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

(b) where such person is the husband and he is serving in any of the Armed Forces of the Union under conditions which are certified by his Commanding Officer as precluding him from obtaining

leave of absence to enable him to make a complaint in person, some other person authorized by the husband in accordance with the provisions of sub-section (4) may make a complaint on his behalf;(c) where the person aggrieved by an offence punishable under section 494 of the Indian Penal Code(45 of 1860) is the wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father's or mother's brother or sister.

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

Provided that in the absence of the husband, some person who had care of the woman on his behalf at the time when such offence was committed may, with the leave of the Court, make a complaint on his behalf.

(3) When in any case falling under clause (a) of the proviso to sub-section (1), the complaint is sought to be made on behalf of a person under the age of eighteen years or of a lunatic by a person who has not been appointed or declared by a competent authority to be the guardian of the person of the minor or lunatic, and the Court is satisfied that there is a guardian so appointed or declared, the Court shall, before granting the application for leave, cause notice to be given to such guardian and give him a reasonable opportunity of being heard.

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

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

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

(7) The provisions of this section apply to the abetment of, or attempt to commit, an offence as they apply to the offence.

Section 198A

198A. Prosecution of offences under section 498A of the Indian Penal Code.

No Court shall take cognizance of an Offence Punishable section 498A of the Indian Penal Code except upon a police report of facts which constitute such offence or Upon a complaint made by the person aggrieved by the offence or by her father, mother, brother, sister or by her father's or mother's brother or sister or, with the leave of the Court, by any other person related to her by blood, marriage or adoption.

Section 198B

• Section-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.

Section 273

273. Evidence to be taken in presence of accused.

Except as otherwise expressly provided all evidence taken in the course of the other proceeding shall be taken in the presence of the accused or, when his personal attendance is dispensed with, in the presence of his pleader.

[“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.”.]

309. Power to postpone or adjourn proceedings.

2[“(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 376D 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.”.]

(2) If the court after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:

Provided further that when witnesses are in attendance no adjournment or postponement shall be granted, without examining them, except for, special reasons to be recorded in writing:

¹[Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.]

Explanation-1.If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Explanation 2.The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused.

1. Ins. by Act 45 of 1978, Sec. 24 (w.e.f. 18-12-1978).

2. Inserted by Section 21 of "The Criminal Law (Amendment) Act, 2013"

Section 327

327.Court to be open

(2) Notwithstanding anything contained in sub-section (1), the inquiry into and trial of rape or an offence under section 376, section 376A, section 376B, section 376C or section 376D of the Indian Penal Code shall be conducted in camera: Provided that the presiding judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain in, the room or building used by the court.

(3)Where any proceedings are held under sub-section (2), it shall not be lawful for any person to print or publish any matter in relation to any such proceedings, except with the previous permission of the court.]

Section 357B

• Section-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 376D of the Indian Penal Code.

Section 376C

• Section- 376C:- All hospital, public or private, whether run by the Central Government the State Government, local bodies or any other person , shall immediately, provide the section 326A, 376, 376A, 376B, 376C, 376D or section 376E of the IPC, and shall immediately inform the police.

POLICE CIRCULAR NO. 212/CB, Dated 4-5-1973

The evil of trafficking in women and girls is rapidly increasing in towns and villages of the State. It is also the duty of police to curb this crime. In order to achieve maximum efficiency in this regard the suppression of Immoral Traffic Act, 1956 has been enforced in this State in the year 1960 after framing of the rules. The Government as per the Notification No. 42050/P. and No. 42063, dated 24-11-1972 has authorized District Superintendents of Police, Senior-most Additional S.P., D.S.P. and A.S.P. (Senior-most) to act as special police officers under section 13 (i) of the Act throughout the district, and S.D.P.O. in their respective subdivisions and authorizing Circle Inspectors of Police and Sub-inspector of Police within their jurisdictions to assist such special police officer. This has already been communicated to all concerned vide this officer letter No.25768, dated 30-12-1972.

It is now therefore necessary that a systematic approach and action of police work be made to deal with such crime. So it is proposed to form a Vice-Squad in C.I.D., C.B. consisting of One D.S.P. One Inspector, Two S.Is. Two W.S.I., Two A.S.Is., Eight Constables, One Typist and One Steno. S.I. to deal with such cases in the State. The Proposal has been sent to Government for extra staff, but for the present one Vice-Squad has been formed in C.I.D., C.B., consisting of one D.S.P., One Inspector, Two S.Is., Two W.S.I., One A.S.I. and Two constables from the existing strength, till the Government sanction is received.

- (i) It is the function of Vice-Squad to make a systematic study and analyse factors responsible for such social evil by touring in the districts. It will devise effective preventive methods in the affected areas in the State after a careful survey of the extent and nature of the problem.
- (ii) It will collect statistics regarding illicit traffic in women and girls relating to the State under following heads:-
 - (a) Social workers interested in enforcement of the S.I.T. Act. 1956.
 - (b) Prostitutions, Pimps, residential addresses of call girls and their modus operandi and unholy associations/brothels with their telephone numbers. A separate cell managed by this Squad shall function in crime record office of Crime Branch where papers relating to these caterogies shall be filed and individuals separately indexed. A chronological record (History Sheet) with note of periodical checking for each individual should be maintained.
 - (c) The Vice Squad shall pass information to the special police offices concerned in the districts if the same has not come to their notice. The special police officers shall submit every quarter a review

under the following heads regarding work done by them to the S.P., C.I.D., Crime Branch and who in turn shall consolidate and incorporate information under the S.I.T. Act for the quarter and the review shall be submitted to Government:-

- (a) Number of prosecutions launched for exposing person on a public street.
- (b) Number of brothel keepers prosecuted.
- (c) Number of pimps prosecuted.
- (d) Number of prostitutes prosecuted.
- (e) Number of prosecutions launched under Section 7 of the S.I.T. Act.
- (f) Number of minors rescued and how placed.
- (g) Number of prostitutes sent to protective and aftercare home.
- (h) Number of persons from whom security under Section 12 of the S.I.T. act has been taken.
- (i) Action under Section 13 of the Act.
- (j) A brief note on the help received from social workers.
- (k) Any special difficulties encountered by the special police officers in the task and in the enforcement of the S.T. Act.

As such all the districts, Ss.P. are enjoined hereby to submit quarterly review in the above noted pro forma in the 1st week of each quarter.

R.K. Padhi,
Inspector-General of Police

POLICE CIRCULAR ORDER NO. 273/1991

SUBJECT:-----Procedure for disposal of petitions, containing allegations of Atrocities, offences under the P.C.R. Act and dowry offences.

The procedure so far adopted in disposal of the petition containing allegations of atrocities on the S.C./S.T. offences under the P.C.R. Act as well as dowry offences, received in the office of the D.I.G. of Police, H.A. & D.D., as well as in the offices of District Ss.P. has been time consuming and, therefore, needs to be streamlined with a view to reducing the response time of police and providing satisfaction to the aggrieved sections of the society.

(a) Petitions received in H.A. & D.D. Establishment

As soon as such petitions are entrusted to the officers of HADD establishment. They should at once verify from the S.R. section of their office if any case has been registered in this regard. If not the petitions should be taken up for enquiry. In case of petitions relating to Atrocities on S.C./S.T. or P.C.R. Act offences the E.Os. should proceed at once to the spot and enquire locally from both parties as well as local dignitaries. In case of petitions relating to dowry offences, the enquiring Officers should proceed first to the petitioner to examine him/her and other witnesses regarding the allegations and then proceeded to the village/place of the in-laws and verify about the allegations. The enquiry should be brief and to the point to ascertain if any offence is revealed prime facie. If so, the E.O. should proceed to the concerned Police station and direct the O.I.C. of the P.S. shall register a case and proceed with the investigation. The O.I.C. of the P.S. should send a message to the D.I.G., H.A. & D.D. and to District S.P. that a case has been registered indicating case reference. After ensuring this the E.O. of H.A. & D.D. Establishment shall return back to office and submit a brief enquiry report. However if the allegation is proved baseless or does not merit any action, a detailed report should be submitted by the E.O. on return. If and when investigation of such a case is to be taken over by an officer of H.A. & D.D. Establishment, the D.I.G. , H.A. & D.D. will issued Range Order and also send a signal, on receipt of which the District S.P. will forthwith issue corresponding D.O. authorizing the concerned officer of H.A. & D.D. Estt. To take up the investigation. Such Officer shall immediately intimate the former I.O. (of the district police) about the date on which he will take over investigation, and the I.O. shall take steps to hand over the up-to-date case records to him on that day without fail.

ODISHA POLICE

CRIME BRANCH

CRIMINAL INVESTIGATION DEPARTMENT

POLICE CIRCULAR ORDER 343 /2013

No. 27143/SR 'W'

Date 30.06.2013

To

All district SsP/DCsP Bhubaneswar & Cuttack/SsRP, Cuttack/Rourkela

Sub: Standard Operating Procedure (SOP) for investigation of Crime against women

INTRODUCTION

Crime against women in general and rape in particular need our closest attention. In order to improve the quality of investigation and to secure a better conviction rate, a Standard Operating Procedure (SOP) is hereby prescribed which must be scrupulously followed by all concerned.

1. REGISTRATION OF FIR

No Technicality should be allowed to come in the way of prompt registration of offences against women. As soon as information about such offences is received. FIR must be recorded in accordance with the provisions of Sec 154 CrPC. FIR, being an important document should be drawn up with greatest care and caution, incorporating all material information / facts which are directly connected with the crime or are likely to form important evidence. The victim can lodge FIR in any police station of the State and subsequently it can be transferred to the concerned PS for investigation. Proviso to Section 154 CrPC provides that information pertaining to offences given by woman victims shall be recorded by a woman Police Officer or any woman officer.

2.

INVESTIGATION

(a) Investigating Officers

As far as possible, investigation of crime against women shall be conducted by a women officer. Whenever necessary, investigating team should be formed, consisting of three to four police personnel of whom one should be designated as Chief IO. There should be at least one lady officer in the team. Rape case should usually be investigated by the IIC or the senior S.I.

(b) Handling of victim

- (i) The victim should be dealt with utmost sympathy and sensitivity. Behavior towards the victim should be extremely courteous. No embarrassing or indecent questions should be put to the victim. NGOs can be of immense help in extricating the victim from trauma and preparing her to cooperate with the investigation. Care should be taken to secure dignity and prevent embarrassing situation to the victims.
- (ii) While talking to the victim, her psychology should be observed carefully and information elicited in such a manner that she remains calm and composed. Proper account of the incident should be recorded in plain and simple language as early as possible in the informant's own words. If the complainant, while making oral report suspects or alleges against a particular person, the ground on which such suspicion is based should be ascertained.
- (iii) The victim should not be called to the Police Station. The I.O. should visit her home in plain clothes for ascertaining facts in presence of her relatives/family members. As per section 157(b) CrPC, the statement of the victim should be recorded at the residence of the victim or in the place of her choice by a woman police officer in the presence of parents or guardians or near relatives or a social worker of the locality.
- (iv) Efforts should be made to get the statement of victim recorded u/s 164 CrPC, whenever expedient and necessary, Videography must be carried out during the recording of her statement.
- (v) The victim as well as the accused persons(s) should be sent for medical examination after filling of the medical examination form by the I.O. immediately.
- (vi) A rape victim above 18 years of age can be examined only after a written consent from her parents/guardians.

- (vii) As far as possible, the victim should be medically examined only by a lady doctor.
- (viii) As per section 164A CrPC, whenever it is proposed to get the person of the woman with whom rape is alleged or attempted to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of such a practitioner, by any other registered medical practitioner, with the consent of such women or of a person competent to give such consent on her behalf and such women shall be sent to such registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence.

(c) Inspection of the Scene of Crime

- (i) It shall be the foremost duty of the I.O. to safeguard the scene of crime so that available clues are not disturbed.
- (ii) Inspection and collection of valuable clues from the scene of crime plays a vital role in the successful investigation and prosecution of a case. The scene of crime should be thoroughly inspected clockwise and all out efforts should be made to collect maximum evidence from the spot. Scientific Team must be summoned to lift finger/foot prints and other suspect items i.e. hair, blood, semen, body fluid, ornaments etc. found at the spot.
- (iii) Exhibits collected/lifted should be properly packed/preserved, sealed and sent to FSL for chemical analysis as quickly as possible. In this connection, instruction vide CB Circular no. 1/92 dated 02.11.92 for dispatch of exhibits to the FSL must be followed scrupulously.
- (iv) It is imperative that the scene of crime is photographed from all angles.
- (v) Spot Map of the place of occurrence is an important document. It must be drawn properly, indicating distance between items found at the spot. The position of witnesses if any, must be shown.
- (vi) Requirement for DNA analysis should be also kept in mind in befitting cases.

3. SUPERVISION OF RAPE CASES

Supervision should preferably be done by SP or Addl. S.P. in districts with large number of such cases, a Dy. S.P. may supervise. It is desirable that in Dy. S.P. supervised cases, SP monitors the progress of investigation closely. Supervision of such cases should be

thorough and comprehensive. In this connection, attention is invited to Crime Branch Circular no. 1/92 dated 2.11.92 wherein reasons for acquittal in rape cases and remedial measures have been suggested.

4. INVESTIGATION

a) When suspect is known to the victim

- (i) Rebuttal or corroboration of facts, as alleged by victim, is to be done after carefully examining the whole circumstances and by continuously keeping the trauma of victim in mind.
- (ii) Help of experienced police officer can be taken in interrogation of suspect.
- (iii) Suspect should be sent for medical examination along with injury sheet mentioning injury, scratch, bruise or nail mark etc found on his body.
- (iv) Personal clothes of the accused worn at the time of crime should be seized and sent to FSL for examination.
- (v) The accused should be medically examined to prove his physical capacity for committing the alleged crime.
- (vi) Documentary proof of age of accused as well as victim should be collected and ossification tests done, if proof of age is not otherwise available.

b) When suspect is not known

- (i) Description of accused should be ascertained from the victim and portrait of the suspect should be prepared immediately at SCRB and circulated.
- (ii) A message should be flashed on wireless for look out of the accused.
- (iii) Local secret/ open enquiries should be conducted for the suspect.
- (iv) When accused is arrested, he should immediately be sent to judicial custody for test identification. It shall also be ensured that face of the accused is covered, while being taken to the court for production.

c) Collection of other evidence

- (i) Witness, who reached the spot of the incident on hearing shouts of the victim, if any, must be examined and their statements recorded.

- (ii) Persons to whom the victim might have narrated the incident just after the occurrence should be examined and cited as witnesses.

5. REHABILITATION OF THE VICTIM

- (i) Female victim needs help in rehabilitation. Rehabilitation has to be in four folds i.e. physical, mental, psychological and social.
- (ii) Victim is likely to suffer social stigma and possible alienation from the family. Necessary counseling to her and her family members should be provided.
- (iii) Victim is entitled to compensation under "The Odisha Victim Compensation Scheme 2012" as amended vide Govt. of Odisha, Home Department, Notification No. 49915/CDHR dt. 27.12.2012 and 21390/C&HR dt. 13.06.2013. Victim should be apprised of the provision of this scheme for getting compensation.

6. HANDLING OF MEDIA

Sex offences attract wide media and public attention. While briefing media about sex crimes, identity of victim should not be disclosed. Under no circumstance, the victim should be produced before the media. Only authorized officers should brief the media.

7. CHARGE SHEET AND TRIAL

- (i) As far as possible, charge sheet should be filed in the court within a period of 60 days since the date of registration of the case.
- (ii) If the investigation has to extend beyond a period of 60 days for genuine reasons, written permission for the same must be obtained from the SP of the district/establishment. SP shall accord such permission only after examining the reasons of delay and not in a routine manner. In this connection PCO 338/2013 may please be referred to.
- (iii) Views and opinions of PP/APP may be taken, whenever felt necessary, before filing of charge sheet.

- (iv) One officer should be appointed as Holding IO to monitor the progress of trial of the case. Ideally, he should be the IO of the case. He shall submit Progress Report on each date of trial which should be put up to the Supervising Officer or the SP.
- (v) In sensitive cases, Special Counsel can be engaged to conduct trial of the case for which SP may submit a proposal alongwith consent letter of the lawyer containing terms and conditions of appointment, to the CID, Crime Branch.
- (vi) Presence of witnesses should be ensured in the court, as and when summoned. Service of summons should be monitored.
- (vii) During trial, safety and security of the victim and witnesses should be ensured.

(Prakash Mishra)
Director General of Police
Odisha, Cuttack

Memo No. 27144/SR 'W' Date 30.06.2013

Copy to Additional DG of Police, HRPC, Cuttack/Commissioner of Police, Bhubaneswar-Cuttack, Bhubaneswar/ IGP, Railways, Cuttack/ All Range IsGP/DIsG of Police, Odisha for information please.

(B.K. Sharma)
Additional Director General of Police
CID-Crime, Odisha

POLICE CIRCULAR ORDER NO. 336/2013

WOMAN AND CHILD CELLS. HELPLINE AND PROTECTION PCR VANS

To facilitate an integrated and an improved response of the police to crimes against women and children, it has been decided to set up the following in each police district of the State. The details have been finalized in a meeting with the Commissioner-cum-Secretary to the Government of Odisha, W & CD Department and the Hon'ble Chairperson of the Odisha State Mahila Commission.

WOMAN AND CHILD CELLS:

1. Each Police district in the State will have a Women and Child Cell which will supervise the response of all the Police Stations of that district to all kinds of crime/complaints relating to women and children. This will function under the overall control of the district SP assisted by the DSP HRPC (who has also been recently designated as Chairman of the Special Juvenile Police Unit). The SP may entrust enquiry/investigation of important matters/cases to this cell. This Cell will comprise:

- i) An Inspector of Police (preferably a lady)
- ii) A SI/ ASI of police (preferably a lady) and
- iii) 4 Constables of whom at least two will be lady Constables.

The Government is being requested to sanction extra posts for these. However, pending such sanction, the posts will be manned by redistribution. Orders for this are being issued separately.

2. The District Protection Officer, appointed by the Government under the Domestic Violence Act, 2005, will be a member of the aforesaid District Women and Child Cell. This will help in developing a better interface between the police and the District Protection Officer and also help in implementation of the Domestic Violence Act, 2005.
3. A Standard Operating Procedure for the aforesaid Women and Child Cells will be prepared and circulated soon by the State police Headquarters.
4. The AIHTU, wherever it is in existence, will be tagged to the said District Women and Child Cell for more effective co-ordination.
5. The District HRPC will therefore now have two cells i.e. the Women and Child Cell under the Women Inspector of Police and the SC&ST Cell under another officer. Both the Cells

will function under the DSP HRPC (who has been recently designated as head of the Special Juvenile Police Unit) under the overall Command and Control of the district Sp, They will supervise the work of the Mahila and Sishu Desks at the police stations and the Mahila Police Stations (wherever they exist).

WOMAN HELPLINE:

6. There will be a dedicated "Women Helpline" with toll free telephone number "181". All calls made by the public to "181" will land at the District Women & Child Cell of the respective district where at least one Constable will be present round the Clock. In due course, call logging systems "Dial 1B1" will be provided to these cells. Adequate publicity will be given to this facility.
7. The BSNL authorities as well as other operators have to be contacted in this regard. Necessary liaison with them for this is being taken up by the State police Headquarters and the HRPC.
8. The Inspector of the Women and Child Cell will be fully responsible for ensuring that all calls received to this number are properly answered and responded to. A log of all action taken will be maintained and weekly reports in a prescribed format will be put up to the sp on each Monday.

WOMAN AND CHILD PROTECTION PCR VANS:

9. This Cell will be provided with a vehicle and necessary staff by the District police for functioning of a women and child Protection PCR Van which will attend to all urgent calls received from women in distress. A component of lady staff in this PCR van is mandatory. This will be in addition to the normal response of the Police Stations to such calls. Wherever AIHTU vehicles are available, they will be used till alternate arrangements are made. The words "Women and Child Protection PCR Van" will be painted on this vehicle. In the meantime this requirement of vehicle and this staff will be projected to the Government also.
9. This will initially be made functional in UPD Bhubaneswar, UPD Cuttack and the police districts of Rourkela, sambalpur, Puri, Berhampur, Raygada, Balasore and Anqul.

All these have to be implemented at the earliest and in the right earnest.

**DG and IG of Police, Orissa,
Cuttack**

THE INDIAN EVIDENCE ACT 1872

Section 53 A

53A. Evidence of character or previous sexual experience not relevant in certain cases. - 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 (45 of 1860) 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.

Section 112

112. Birth during marriage, conclusive proof of legitimacy.—The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

Section 113A

113A. Presumption as to abetment of suicide by a married woman.

When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Presumption as to abetment of suicide by a married woman.—

When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other

circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband."

Explanation.—For the purposes of this section, "cruelty" shall have the same meaning as in section 498A of the Indian Penal Code (45 of 1860).]

Section 113B

113B. Presumption as to dowry death.—When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death. Explanation.—For the purposes of this section, "dowry death" shall have the same meaning as in section 304B, of the Indian Penal Code, (45 of 1860).]

Section 114A

114A. Presumption as to absence of consent in certain prosecutions for rape.—In a prosecution for rape under clause(a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) of section 376 of the Indian Penal Code, (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.

Section 120

120. Parties to civil suit, and their wives or husbands. Husband or wife of person under criminal trial.—In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

Section 122

122. Communications during marriage.—

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

Section 146

146. Questions lawful in cross-examination.—When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend—

(1) to test his veracity,

(2) to discover who he is and what is his position in life, or

(3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture: 1[Provided that in a prosecution for rape or attempt to commit rape, it shall not be permissible to put questions in the cross-examination of the prosecutrix as to her general immoral character.

THE PROHIBITION OF CHILD MARRIAGE ACT, 2006

[Act No. 6 of 2007]

[10th January, 2007]

PREAMBLE

An Act to provide for the prohibition of solemnisation of child marriages and for matters connected therewith or incidental thereto.

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

Section 1 - Short title, extent and commencement

(1) This Act may be called the Prohibition of Child Marriage Act, 2006.

(2) It extends to the whole of India except the State of Jammu and Kashmir; and it applies also to all citizens of India without and beyond India:

Provided that nothing contained in this Act shall apply to the Renoncants of the Union territory of Pondicherry.

(3) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different States and any reference in any provision to the commencement of this Act shall be construed in relation to any State as a reference to the coming into force of that provision in that State.

1. Effective from 01.11.2007 as per Notification No. SO1850(E) Dated 30.10.2007

Section 2 - Definition

In this Act, unless the context otherwise requires,--

(a) "child" means a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age;

(b) "child marriage" means a marriage to which either of the contracting parties is a child;

(c) "contracting party", in relation to a marriage, means either of the parties whose marriage is or is about to be thereby solemnised;

(d) "Child Marriage Prohibition Officer" includes the Child Marriage Prohibition Officer appointed under sub-section (1) of section 16;

(e) "district court" means, in any area for which a Family Court established under section 3 of the Family Courts Act, 1984 (66 of 1984) exists, such Family Court, and in any area for which there is no Family Court but a city civil court exists, that court and in any other area, the principal civil court of original jurisdiction and includes any other civil court which may be specified by the State Government, by notification in the Official Gazette, as having jurisdiction in respect of the matters dealt with in this Act;

(f) "minor" means a person who, under the provisions of the Majority Act, 1875 (9 of 1875) is to be deemed not to have attained his majority.

Section 3 - Child marriages to be voidable at the option of contracting party being a child

(1) Every child marriage, whether solemnised before or after the commencement of this Act, shall be voidable at the option of the contracting party who was a child at the time of the marriage:

Provided that a petition for annulling a child marriage by a decree of nullity may be filed in the district court only by a contracting party to the marriage who was a child at the time of the marriage.

(2) If at the time of filing a petition, the petitioner is a minor, the petition may be filed through his or her guardian or next friend along with the Child Marriage Prohibition Officer.

(3) The petition under this section may be filed at any time but before the child filing the petition completes two years of attaining majority.

(4) While granting a decree of nullity under this section, the district court shall make an order directing both the parties to the marriage and their parents or their guardians to return to the other party, his or her parents or guardian, as the case may be, the money, valuables, ornaments and other gifts received on the occasion of the marriage by them from the other side, or an amount equal to the value of such valuables, ornaments, other gifts and money:

Provided that no order under this section shall be passed unless the concerned parties have been given notices to appear before the district court and show cause why such order should not be passed.

Section 4 - Provision for maintenance and residence to female contracting party to child marriage

(1) While granting a decree under section 3, the district court may also make an interim or final order directing the male contracting party to the child marriage, and in case the male contracting party to such marriage is a minor, his parent or guardian to pay maintenance to the female contracting party to the marriage until her remarriage.

(2) The quantum of maintenance payable shall be determined by the district court having regard to the needs of the child, the lifestyle enjoyed by such child during her marriage and the means of income of the paying party.

(3) The amount of maintenance may be directed to be paid monthly or in lump sum.

(4) In case the party making the petition under section 3 is the female contracting party, the district court may also make a suitable order as to her residence until her remarriage.

Section 5 - Custody and maintenance of children of child marriages

(1) Where there are children born of the child marriage, the district court shall make an appropriate order for the custody of such children.

(2) While making an order for the custody of a child under this section, the welfare and best interests of the child shall be the paramount consideration to be given by the district court.

(3) An order for custody of a child may also include appropriate directions for giving to the other party access to the child in such a manner as may best serve the interests of the child, and such other orders as the district court may, in the interest of the child, deem proper.

(4) The district court may also make an appropriate order for providing maintenance to the child by a party to the marriage or their parents or guardians.

Section 6 - Legitimacy of children born of child marriages

Notwithstanding that a child marriage has been annulled by a decree of nullity under section 3, every child begotten or conceived of such marriage before the decree is made, whether born before or after the commencement of this Act, shall be deemed to be a legitimate child for all purposes.

Section 7 - Power of district court to modify orders issued under section 4 or section 5

The district court shall have the power to add to, modify or revoke any order made under section 4 or section 5 and if there is any change in the circumstances at any time during the pendency of the petition and even after the final disposal of the petition.

Section 8 - Court to which petition should be made

For the purpose of grant of reliefs under sections 3, 4 and 5, the district court having jurisdiction shall include the district court having jurisdiction over the place where the defendant or the child resides, or where the marriage was solemnised or where the parties last resided together or the petitioner is residing on the date of presentation of the petition.

Section 9 - Punishment for male adult marrying a child

Whoever, being a male adult above eighteen years of age, contracts a child marriage shall be punishable with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees or with both.

Section 10 - Punishment for solemnising a child marriages

Whoever performs, conducts, directs or abets any child marriage shall be punishable with rigorous imprisonment which may extend to two years and shall be liable to fine which may extend to one lakh rupees unless he proves that he had reasons to believe that the marriage was not a child marriage.

Section 11 - Punishment for promoting or permitting solemnization of child marriages

(1) Where a child contracts a child marriage, any person having charge of the child, whether as parent or guardian or any other person or in any other capacity, lawful or unlawful, including any member of an organisation or association of persons who does any act to promote the marriage or permits it to be solemnised, or negligently fails to prevent it from being solemnised, including attending or participating in a child marriage, shall be punishable with rigorous imprisonment which may extend to two years and shall also be liable to fine which may extend up to one lakh rupees:

Provided that no woman shall be punishable with imprisonment.

(2) For the purposes of this section, it shall be presumed, unless and until the contrary is proved, that where a minor child has contracted a marriage, the person having charge of such minor child has negligently failed to prevent the marriage from being solemnised.

Section 12 - Marriage of a minor child to be void in certain circumstances

Where a child, being a minor--

(a) is taken or enticed out of the keeping of the lawful guardian; or

(b) by force compelled, or by any deceitful means induced to go from any place;

or

(c) is sold for the purpose of marriage; and made to go through a form of marriage or if the minor is married after which the minor is sold or trafficked or used for immoral purposes, such marriage shall be null and void.

Section 13 - Power of court to issue injunction prohibiting child marriages

(1) Notwithstanding anything to the contrary contained in this Act, if, on an application of the Child Marriage Prohibition Officer or on receipt of information through a complaint or otherwise from any person, a Judicial Magistrate of the first class or a Metropolitan Magistrate is satisfied that a child marriage in contravention of this Act has been arranged or is about to be solemnised, such Magistrate shall issue an injunction against any person including a member of an organisation or an association of persons prohibiting such marriage.

(2) A complaint under sub-section (1) may be made by any person having personal knowledge or reason to believe, and a non-governmental organisation having reasonable information, relating to the likelihood of taking place of solemnisation of a child marriage or child marriages.

(3) The Court of the Judicial Magistrate of the first class or the Metropolitan Magistrate may also take suo motu cognizance on the basis of any reliable report or information.

(4) For the purposes of preventing solemnisation of mass child marriages on certain days such as Akshaya Trutiya, the District Magistrate shall be deemed to be the Child Marriage Prohibition Officer with all powers as are conferred on a Child Marriage Prohibition Officer by or under this Act.

(5) The District Magistrate shall also have additional powers to stop or prevent solemnisation of child marriages and for this purpose, he may take all appropriate measures and use the minimum force required.

(6) No injunction under sub-section (1) shall be issued against any person or member of any organisation or association of persons unless the Court has previously given notice to such person, members of the organisation or association of persons, as the case may be, and has offered him or them an opportunity to show cause against the issue of the injunction:

Provided that in the case of any urgency, the Court shall have the power to issue an interim injunction without giving any notice under this section.

(7) An injunction issued under sub-section (1) may be confirmed or vacated after giving notice and hearing the party against whom the injunction was issued.

(8) The Court may either on its own motion or on the application of any person aggrieved, rescind or alter an injunction issued under sub-section (1).

(9) Where an application is received under sub-section (1), the Court shall afford the applicant an early opportunity of appearing before it either in person or by an advocate and if the Court, after hearing the applicant rejects the application wholly or in part, it shall record in writing its reasons for so doing.

(10) Whoever knowing that an injunction has been issued under sub-section (1) against him disobeys such injunction shall be punishable with imprisonment of either description for a term which may extend to two years or with fine which may extend to one lakh rupees or with both:

Provided that no woman shall be punishable with imprisonment.

Section 14 - Child marriages in contravention of injunction orders to be void

Any child marriage solemnised in contravention of an injunction order issued under section 13, whether interim or final, shall be void *ab initio*

Section 15 - Offences to be cognizable and non-bailable

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

Section 16 - Child Marriage Prohibition Officers

- (1) The State Government shall, by notification in the Official Gazette, appoint for the whole State, or such part thereof as may be specified in that notification, an officer or officers to be known as the Child Marriage Prohibition Officer having jurisdiction over the area or areas specified in the notification.
- (2) The State Government may also request a respectable member of the locality with a record of social service or an officer of the Gram Panchayat or Municipality or an officer of the Government or any public sector undertaking or an office bearer of any non-governmental organisation to assist the Child Marriage Prohibition Officer and such member, officer or office bearer, as the case may be, shall be bound to act accordingly.
- (3) It shall be the duty of the Child Marriage Prohibition Officer—
- (a) to prevent solemnisation of child marriages by taking such action as he may deem fit;
 - (b) to collect evidence for the effective prosecution of persons contravening the provisions of this Act;
 - (c) to advise either individual cases or counsel the residents of the locality generally not to indulge in promoting, helping, aiding or allowing the solemnisation of child marriages;
 - (d) to create awareness of the evil which results from child marriages;
 - (e) to sensitize the community on the issue of child marriages;
 - (f) to furnish such periodical returns and statistics as the State Government may direct; and

(g) to discharge such other functions and duties as may be assigned to him by the State Government.

(4) The State Government may, by notification in the Official Gazette, subject to such conditions and limitations, invest the Child Marriage Prohibition Officer with such powers of a police officer as may be specified in the notification and the Child Marriage Prohibition Officer shall exercise such powers subject to such conditions and limitations, as may be specified in the notification.

(5) The Child Marriage Prohibition Officer shall have the power to move the Court for an order under sections 4, 5 and 13 and along with the child under section 3.

Section 17 - Child Marriage Prohibition Officers to be public servants

The Child Marriage Prohibition Officers shall be deemed to be public servants within the meaning of section 21 (45 of 1860) of the Indian Penal Code.

Section 18 - Protection of action taken in good faith

No suit, prosecution or other legal proceedings shall lie against the Child Marriage Prohibition Officer in respect of anything in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

Section 19 - Power of State Government to make rules

(1) The State Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) Every rule made under this Act shall, as soon as may be after it is made, be laid before the State Legislature.

Section 20 - Amendment of Act No. 20 of 1955

In the Hindu Marriage Act, 1955, in section 18, for clause (a), the following clause shall be substituted, namely:--

"(a) in the case of contravention of the condition specified in clause (iii) of section 5, with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees, or with both".

Section 21 - Repeal and savings

(1) The Child Marriage Restraint Act, 1929 (19 of 1929) is hereby repealed.

(2) Notwithstanding such repeal, all cases and other proceedings pending or continued under the said Act at the commencement of this Act shall be continued and disposed of in accordance with the provisions of the repealed Act, as if this Act had not been passed.

WOMEN & CHILD DEVELOPMENT DEPARTMENT

NOTIFICATION

The 19th September 2009

S.R.O. No. 392/2009—In exercise of the powers conferred under Section 19 of the Prohibition of Child Marriage Act, 2006, (Act No. 6 of 2007), the State Government do hereby make the following rules, namely :—

1. Short title and commencement—(1) These rules may be called the Orissa Prohibition of Child Marriage Rules, 2009.

(2) They shall come into force on the date of their publication in the *Orissa Gazette*.

2. Definitions—(1) In these rules unless the context otherwise requires,—

(a) “Act” means the Prohibition of Child Marriage Act, 2006 (Act 6 of 2007);

(b) “Form” means Form appended to these rules;

(c) “Police Officer” means an officer in the State Police;

(d) “Section” means a Section of the Act;

(e) “State Government” means the Government of Orissa.

(2) The words and expressions used in these rules but not defined shall have the meanings respectively assigned to them in the Act.

3. Duties and functions of Child Marriage Prohibition Officer in addition to the duties and functions assigned to a Child Marriage Prohibition Officer under Clauses (a) to (g) of sub-section (3) of Section 16 of the Act, it shall be the duty of every Child Marriage Prohibition

Officer—

(a) to act immediately upon any information of the solemnization of any child marriage that may be received through any mode of communication including writing or oral i.e. through a letter, telephone, telegram, e-mail, etc. or by any other means to initiate all necessary action

- (b) to furnish quarterly return and statistics to the Chief Child Marriage Prohibition Officer in Form I;
- (c) to file petition for annulling a child marriage in the district court, if the petitioner is a minor;
- (d) to file petition before the district court to pay maintenance to the female contracting party of the marriage until her re-marriage; and
- (e) to file petition to the district court for the custody and maintenance of children of the child marriage

4. Method of appointment, duties and functions of Chief Child Marriage Prohibition

Officer—(1) The State Government shall, by notification in the official Gazette, designate a senior officer of the Women and Child Development Department as the Chief Child Marriage Prohibition Officer to administer and co-ordinate the work relating to Child Marriage Prohibition throughout the State.

(2) The Chief Child Marriage Prohibition Officer shall co-ordinate the work of Child Marriage Prohibition Officers and shall be responsible for the proper performance of the Child Marriage Prohibition work in the State.

(3) The Chief Child Marriage Prohibition Officer shall be responsible for the preparation and submission of an Annual Report on the progress of implementation of the Act and related matters and such statistics as may be required from time to time by the State Government.

(4) In addition to the general duties of monitoring and supervision of the implementation of the provisions of the Act it shall be the duty of the Chief Child Marriage Prohibition Officer—

- (a) to exercise general control, superintendence and direction over all the Child Marriage Prohibition Officers so far as the implementation of the Act and rules are concerned;
- (b) to review periodically the functioning of Child Marriage Prohibition Officers across the State;
- (c) to cause an annual status report on Child Marriage to be submitted to the State Government;
- (d) to formulate schemes and programmes for creating awareness sensitizing the community and organize training to functionaries of the concerned departments;
- (e) to discharge such other functions and duties as may be assigned to him by the State Government;

(f) to convene an annual review and strategy conference on prevention of child marriage; and

(g) to cause publication and circulation of the Act and rules in Oriya and English.

5. Nodal Officer—(1) The District Collector shall be the Nodal Officer at the district level for the purpose of implementation of the Act.

(2) The District Collector shall periodically review the implementation of the Act within the respective district and take all necessary measures for the proper and effective implementation of the Act.

6. Procedure for conducting enquiry—(1) A complaint/information to the Child Marriage Prohibition Officer may be filed/given by any person in any form, written, phone, e-mail, etc;

(2) On receipt of a complaint/information under sub-rule (1) of this rule, the Child Marriage Prohibition Officer shall record it in Form II and conduct a brief enquiry;

(3) For the conduct of enquiry under sub-rule(2) of this rule, he shall have the powers of a Police Officer under the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), for the purpose of investigation, summoning of parties and witnesses, recording of statement, etc., for discharging his duties under the Act;

(4) Officers in charge of Police Station shall provide all such assistance to the Child Marriage Prohibition Officer in order to carry out his duties under the Act and rules; and

(5) Every Child Marriage Prohibition Officer shall submit his report in Form III to the concerned Judicial Magistrate of the First Class or the Chief Judicial Magistrate with his enquiry report.

7. Production of Document—It is the duty of the accused party to furnish the relevant document to the satisfaction of the court to prove that the none of the parties in the marriage is a child as defined in Clause (a) of Section 2 of the Act.

[No. 16217—G.O.(P)]

By order of the Governor
SUBHASHREE NANDA
Under-Secretary to Government

THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

[Act No. 32 of 2012]

[19th June, 2012]

PREAMBLE

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:--

Section 1 - Short title, extent and commencement

- (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.

Section 2 - Definitions

- (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 (f) of section 2 of the Protection of Women from Domestic Violence Act, 2005(43 of 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(41 of 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(45 of 1860), the Code of Criminal Procedure, 1973(2 of 1974), the Juvenile Justice (Care and Protection of Children) Act, 2000(56 of 2000) and the Information Technology Act, 2000(21 of 2000) shall have the meanings respectively assigned to them in the said Codes or the Acts.

Section 3 - Penetrative sexual assault

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.

Section 4 - Punishment for penetrative sexual assault

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.

Section 5 - Aggravated penetrative sexual assault

- (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(14 of 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.

Section 6 - Punishment for aggravated penetrative sexual assault

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.

Section 7 - Sexual assault

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.

Section 8 - Punishment for sexual assault

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.

Section 9 - Aggravated sexual assault

- (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 (l) of section 2 of the Mental Health Act, 1987(14 of 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.

Section 10 - Punishment for aggravated sexual assault

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.

Section 11 - Sexual harassment

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.

Section 12 - Punishment for sexual harassment

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.

Section 13 - Use of child for pornographic purposes

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.

Section 14 - Punishment for using child for pornographic purposes

- (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.

Section 15 - Punishment for storage of pornographic material involving child

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.

Section 16 - Abetment of an offence

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.

Section 17 - Punishment for abetment

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.

Section 18 - Punishment for attempt to commit an offence

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.

Section 19 - Reporting of offences

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973(2 of 1974), 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).

Section 20 - Obligation of media, studio and photographic facilities to report cases

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.

Section 21 - Punishment for failure to report or record a case

(1) Any person, who fails to report the commission of an offence under subsection (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 (7) shall not apply to a child under this Act.

Section 22 - Punishment for false complaint or false information

(1) Any person, who makes false complaint or provides false information against any person, in respect of an offence committed under sections 3, 5, 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.

Section 23 - Procedure for media

(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.

Section 24 - Recording of statement of a child

(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.

Section 25 - Recording of statement of a child by Magistrate

- (1) If the statement of the child is being recorded under section 164 of the Code of Criminal Procedure, 1973(2 of 1974) (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.

Section 26 - Additional provisions regarding statement to be recorded

- (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.

Section 27 - Medical examination of a child

(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 of 1974).

(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 (3) 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.

Section 28 - Designation of Special Courts

(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(4 of 2006) 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(2 of 1974), be charged at the same trial.

(3) The Special Court constituted under this Act, notwithstanding anything in the Information Technology Act, 2000(21 of 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.

Section 29 - Presumption as to certain offences

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 the offence, as the case may be unless the contrary is proved.

Section 30 - Presumption of culpable mental state

(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.

Section 31 - Application of Code of Criminal Procedure, 1973 to proceedings before a Special Court

Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973(2 of 1974) (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.

Section 32 - Special Public Prosecutors

- (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 (7) 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 (a) of section 2 of the Code of Criminal Procedure, 1973(2 of 1974) and provision of that Code shall have effect accordingly.

Section 33 - Procedure and powers of Special Court

- (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(2 of 1974) for trial before a Court of Session.

Section 34 - Procedure in case of commission of offence by child and determination of age by Special Court

(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(56 of 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 any subsequent proof that the age of a person as determined by it under sub-section (2) was not the correct age of that person.

Section 35 - Period for recording of evidence of child and disposal of case

(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.

Section 36 - Child not to see accused at the time of testifying

(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.

Section 37 - Trials to be conducted in camera

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(2 of 1974).

Section 38 - Assistance of an interpreter or expert while recording evidence of child

(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.

Section 39 - Guidelines for child to take assistance of experts, etc

Subject to such rules as may be made in this behalf, the State Government shall 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.

Section 40 - Right of child to take assistance of legal practitioner

Subject to the proviso to section 301 of the Code of Criminal Procedure, 1973(2 of 1974) 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.

Section 41 - Provisions of sections 3 to 13 not to apply in certain cases

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.

Section 42 - Alternative punishment

¹[Where an act or omission constitutes an offence punishable under this Act and also under sections 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376, 376A, 376C, 376D, 376E or section 509 of the Indian Penal Code (45 of 1860), 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 under this Act or under the Indian Penal Code as provides for punishment which is greater in degree.]

1. Substituted by the Criminal Law (Amendment) Act, 2013 (Act No. 13 of 2013) w.e.f. 03.02.2013 for the following : -

"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."

Section 42A - Act not in derogation of any other law

¹[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 and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency.]

1. Inserted by the Criminal Law (Amendment) Act, 2013 (Act No. 13 of 2013) w.e.f. 03.02.2013.

Section 43 - Public awareness about Act

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.

Section 44 - Monitoring of implementation of Act

(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(4 of 2006), 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(4 of 2006).

(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(4 of 2006).

Section 45 - Power to make rules

(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.

Section 46 - Power to remove difficulties

(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 Information Technology Act, 2000

Sec. 67 - Punishment for publishing or transmitting obscene material in electronic form. –

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

Sec 67A - Punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form. –

Whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees 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 with fine which may extend to ten lakh rupees.

NATIONAL POLICY FOR THE EMPOWERMENT OF WOMEN, 2001

Introduction

The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favour of women. Within the framework of a democratic polity, our laws, development policies, Plans and programmes have aimed at women's advancement in different spheres. From the Fifth Five Year Plan (1974-78) onwards has been a marked shift in the approach to women's issues from welfare to development. In recent years, the empowerment of women has been recognized as the central issue in determining the status of women. The National Commission for Women was set up by an Act of Parliament in 1990 to safeguard the rights and legal entitlements of women. The 73rd and 74th Amendments (1993) to the Constitution of India have provided for reservation of seats in the local bodies of Panchayats and Municipalities for women, laying a strong foundation for their participation in decision making at the local levels.

3. India has also ratified various international conventions and human rights instruments committing to secure equal rights of women. Key among them is the ratification of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in 1993.

4. The Mexico Plan of Action (1975), the Nairobi Forward Looking Strategies (1985), the Beijing Declaration as well as the Platform for Action (1995) and the Outcome Document adopted by the UNGA Session on Gender Equality and Development & Peace for the 21st century, titled "Further actions and initiatives to implement the Beijing Declaration and the Platform for Action " have been unreservedly endorsed by India for appropriate follow up.

5. The Policy also takes note of the commitments of the Ninth Five Year Plan and the other Sectoral Policies relating to empowerment of Women.

6. The women's movement and a wide-spread network of non-Government Organisations which have strong grass-roots presence and deep insight into women's concerns have contributed in inspiring initiatives for the empowerment of women.

However, there still exists a wide gap between the goals enunciated in the Constitution, legislation, policies, plans, programmes, and related mechanisms on the one hand and the situational reality of the status of women in India, on the other. This has been analyzed

extensively in the Report of the Committee on the Status of Women in India, "Towards Equality", 1974 and highlighted in the National Perspective Plan for Women, 1988-2000, the Shramshakti Report, 1988 and the Platform for Action, Five Years After- An assessment"

6. Gender disparity manifests itself in various forms, the most obvious being the trend of continuously declining female ratio in the population in the last few decades. Social stereotyping and violence at the domestic and societal levels are some of the other manifestations. Discrimination against girl children, adolescent girls and women persists in parts of the country.
7. The underlying causes of gender inequality are related to social and economic structure, which is based on informal and formal norms, and practices.
8. Consequently, the access of women particularly those belonging to weaker sections including Scheduled Castes/Scheduled Tribes/ Other backward Classes and minorities, majority of whom are in the rural areas and in the informal, unorganized sector – to education, health and productive resources, among others, is inadequate. Therefore, they remain largely marginalized, poor and socially excluded.

Goal and Objectives

The goal of this Policy is to bring about the advancement, development and empowerment of women. The Policy will be widely disseminated so as to encourage active participation of all stakeholders for achieving its goals. Specifically, the objectives of this Policy include

1. Creating an environment through positive economic and social policies for full development of women to enable them to realize their full potential.
2. The de-jure and de-facto enjoyment of all human rights and fundamental freedom by women on equal basis with men in all spheres – political, economic, social, cultural and civil .
3. Equal access to participation and decision making of women in social, political and economic life of the nation
4. Equal access to women to health care, quality education at all levels, career and vocational guidance, employment, equal remuneration, occupational health and safety, social security and public office etc.

Strengthening legal systems aimed at elimination of all forms of discrimination against women

6. Changing societal attitudes and community practices by active participation and involvement of both men and women.
7. Mainstreaming a gender perspective in the development process.
8. Elimination of discrimination and all forms of violence against women and the girl child; and
9. Building and strengthening partnerships with civil society, particularly women's organizations.

Policy Prescriptions

Judicial Legal Systems

Legal-judicial system will be made more responsive and gender sensitive to women's needs, especially in cases of domestic violence and personal assault. New laws will be enacted and existing laws reviewed to ensure that justice is quick and the punishment meted out to the culprits is commensurate with the severity of the offence.

1. At the initiative of and with the full participation of all stakeholders including community and religious leaders, the Policy would aim to encourage changes in personal laws such as those related to marriage, divorce, maintenance and guardianship so as to eliminate discrimination against women.
2. The evolution of property rights in a patriarchal system has contributed to the subordinate status of women. The Policy would aim to encourage changes in laws relating to ownership of property and inheritance by evolving consensus in order to make them gender just.

Decision Making

1. Women's equality in power sharing and active participation in decision making, including decision making in political process at all levels will be ensured for the achievement of the goals of empowerment. All measures will be taken to guarantee women equal access to and full participation in decision making bodies at every level, including the legislative, executive, judicial, corporate, statutory bodies, as also the advisory Commissions, Committees, Boards, Trusts etc. Affirmative action such as reservations/quotas, including in higher legislative bodies, will be considered when whenever necessary on a time bound basis. Women-friendly personnel policies will also be drawn up to encourage women to participate effectively in the developmental process.

Government of Orissa

Home Department

NOTIFICATION

Dated, Bhubaneswar, the

No. 34984/26p. Jurisdictions, duties and responsibilities of Mahila police station sanctioned at Bhubaneswar.

The following instructions are issued with a view to bringing uniformity in the composition, jurisdiction and responsibility of the newly functional mahila police station in the state i. es at Bhubaneswar.

1. Jurisdiction

The jurisdiction of the above mentioned mahila police station will be co-terminous with the jurisdiction of all the police stations of the District concerned. The Deputy superintendent of police of the District Headquarters or sub-Division will be the immediate supervising officer of the mahila police station. The concerned District Superintendent of police will be in over all charge of discipline and supervisory control of the police station staff.

2. Duties

Registration, investigation and enquiry of the following types of cases related to women and children

1. Cases of dowry death
2. Cases of dowry torture.
3. Cases of nondowry torture.
4. Cases of raps.
5. Cases of kidnapping/abduction.
6. Cases of outraging of modesty of women.
7. Cases of ove-teasing.
8. Inquiry into all detitions preferred by women or on behalf of women.
9. Counseling between women.
10. Perform security duties in major bandobasts like pds visit, c.ms visit etc.

11. Provide guard and escort for females prisoners

Bhubaneswar cases of the above mentioned nature are registered at the parent police stations, s.p./addl. s.p. may pass orders for their transfer to the mahila p.s. for investigation.

3. Duty

All mahila stations will function in two main shifts and one night shift. 40% of the staff of the mahila police station will be available for duty from 7.30 A.M. to 1.30 P.M. and other 40% will be on duty from 1.30 A.M. to 8 P.M.

and the remaining 20% of the staff should be on duty from 8 P.M. to 7.30 P.M.

The inspector should normally be available in the police station from 3.30 A.M. to 3 P.M. Either the s.r. of police or the A.S.I. will be in-charge of the main shifts unless otherwise ordered by the inspector of police. The night shift will have a minimum of three women constables for guarding women prisoners and to attend to emergency calls.

The District S.P. should look into activities and performance of mahila P.S. personnel. All senior police officers should instruct/advise the mahila police station staff regarding law and order problems and their special responsibilities from time to time.

Accessories and equipment like jeep, V.H.F set, telephone etc. will be made available to the above Mahila Police Station on development basis without extra budgetary allocation.

By order of the Governor,
Tarunkant Mishra,
Principal Secretary to Government.

LANDMARK JUDGMENTS RELATING TO WOMEN:

- The Supreme Court of India in '**State of Punjab v. Gurmit Singh**,' laid down the guidelines to be followed while holding trial of rape. The court observed that the expression that the inquiry into and trial of rape "shall be conducted in camera" as occurring in Sub-section (2) of Section 327 Cr. P.C. is not only significant but very important. It casts a duty on the Court to conduct the trial of rape cases etc. invariably "in camera". The Courts are obliged to act in furtherance of the intention expressed by the legislature and not to ignore its mandate and must invariably take recourse to the provisions of Section 327(2) and (3) Cr. P.C. and hold the trial of rape cases in camera. It would enable the victim of crime to be a little comfortable and answer the questions with greater ease in not too familiar a surroundings. Trial in camera would not only be in keeping with the self respect of the victim of crime and in tune with the legislative intent but is also likely to improve the quality of the evidence of a prosecutrix because she would not be so hesitant or bashful to depose frankly as she may be in an open court, under gaze of public. The improved quality of her evidence would assist the courts in arriving at the truth and sifting truth from falsehood. The court further directed the High Courts to draw the attention of the trial courts to the amended provisions of Section 327 Cr. P.C. and to impress upon the Presiding Officers to invariably hold the trial of rape cases in camera, rather than in the open court as envisaged by Section 327(2) Cr. P.C.
- The Supreme Court in **Om Prakash Vs. State of U.P. (2006)9SCC787** held that a rape accused could be convicted on the sole evidence of the victim. It was observed that it is settled law that the victim of sexual assault is not treated as accomplice and as such, her evidence does not require corroboration from any other evidence including the evidence of a doctor. It was further observed that there was no apparent reason for a married woman to falsely implicate the accused after scattering her own prestige and honour.
- The Supreme Court had a similar view in **Moti Lal Vs. State of M.P. (2008)11SCC20** and thus held that if evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars.

- The Supreme Court in **Mrs. Mary Roy Etc. v. State Of Kerala & Ors, 1986 AIR SC 1011** held that Christian women are entitled to have an equal share in their father's property.
- In the matter of **Dhannulal and ors. V. Ganeshram (08.04.2015)** and ors it was held by the division bench that continuous cohabitation of a couple together that is, 'live-in relationship' would raise the presumption of marriage unless otherwise proven.
- The Supreme Court in **Laxmi v. Union of India (2014) 4 SCC 427** gave directions to Home Secretary, Ministry of Home Affairs associating the Secretary, Ministry of Chemical & Fertilizers to convene a meeting of the Chief Secretaries/concerned Secretaries of the State Governments and the Administrators of the Union Territories to curb and restrict the sale of acid throughout the country.
- The Supreme Court in the case of **Mohd. Ahmed Khan v. Shah Bano Begum, (1985 SCR (3) 844)** Ruled in favour of Shah Bano and ordered maintenance from her ex-husband under Section 125 of the Criminal Procedure Code (with an upper limit of Rs. 500 a month) like any other Indian woman.
However, the Muslim Women (Protection of Rights on Divorce) Act, 1986 has been seen as making an attempt to dilute the effects of this judgment. The Act was seen as discriminatory as it denied divorced Muslim women the right to basic maintenance which women of other faiths had recourse to under secular law.
- The Supreme Court in **Shabana Bano Vs. Imran Khan (2009)1SCC666** held that a Muslim divorced woman is entitled to claim maintenance from her husband under Section 125, Cr. P.C. after expiry of period of iddat also— as long as she does not remarry.—
- The Supreme Court in **Delhi Domestic Working Women's Forum v. Union of India, 1995 SCC (1) 14** pointed out the defects of the existing system while dealing with rape victims, issuing 8 broad parameters while assisting victims of rape.
- A Constitutional Bench of the Supreme Court in **Daniel Latifi v. Union of India, 2001 (7) SCC 740** held that liability of Muslim husband to his divorced wife arising under Section 3(1) (a) of the Act to pay maintenance is not confined to iddat period. It was held that a Muslim husband is liable to make reasonable and fair provision for the future of the divorced wife which obviously includes her maintenance as well. Such a reasonable and

fair provision extending beyond the iddat period must be made by the husband within the iddat period in terms of Section 3(1) (a) of the Act.

- A Division Bench of the Supreme Court **Lata Singh v. State of Uttar Pradesh, 2006 (6) SCALE 583** held that there is no bar to inter-caste marriage under the Hindu Marriage Act, and that since there was no dispute about the petitioner being a major, "she was free to marry anyone she likes or live with anyone she likes". The court further directed the administration and police authorities throughout the country to ensure that if any boy or girl who is a major enters into an inter-caste or inter-religious marriage with a woman or man who is a major, the couple are not harassed or subjected to threats and violence. The police should institute criminal proceedings against persons who threaten, harass, commit or instigate acts of violence on people who decide on inter-caste or inter-religious marriages.
- The Supreme Court in **Seema v. Ashwani Kumar, AIR 2006 S.C 1158** directed the State Governments and the Central Government that marriages of all persons who are citizens of India belonging to various religious denominations should be made compulsorily registerable in their respective States where such marriages are solemnized.
- The Supreme Court in **Dr. Upendra Baxi & Ors. v. State of Uttar Pradesh, AIR 1987 SC 191** treated a letter as a Writ Petition wherein The Petitioners had pointed out that the conditions in which girls were living in the Government Protective Home at Agra were abominable and they were being denied their right to live with basic human dignity by the State of Uttar Pradesh which was running the Protective Home. The court issued several directions to the State Government for better administration of protective homes, such as proper ventilation, mosquito nets and cooking gas provisions. The Superintendent of the Protective Home was directed to take care that no woman or girl is detained in the Protective Home without due authority and process of law.
- The Supreme Court in **Budhadev Karmaska Vs. State of West Bengal, [2011]10SCR577** constituted a panel on sex workers and directed that Central Government shall provide Rupees 10,00,000/-, each State Government a sum of Rupees 5,00,000/- and each Union Territory Rupees 2,00,000/- to Panel and Unless some accommodation was provided, Panel would not be able to function properly and effectively. Further Directions were issued that portion of Indian Law Institute Building in occupation of Central Government

be allotted forthwith to Panel and Secretarial assistance and services of office attendants and other staff should also be made available by Central Government. It was further observed that if an incident of involvement of family of girl pushing her into sex racket came to notice of anyone concerned including NGOs, authorities, etc., such incident be reported to Executive Chairman/Secretary of State Legal Services Authority. All State Legal Services Authorities should provide a helpline number to NGOs and to State machinery as well as to sex workers and victims of sex trade who were in distress and who were compelled to continue with sex trade. Proper effective scheme should be prepared for sex workers who voluntarily wanted to leave sex trade. There should no condition that rescued sex workers must stay in a corrective home.

- **Air India v. Nargesh Meerza AIR 1981 SC 1829**

The impugned conditions of service compelled an air hostess to retire from service in any of the three contingencies viz. on marriage if it took place within four years of service, on first pregnancy, or on attaining the age of 35 years. The Supreme Court approved the first condition prohibiting marriage for four years. The other two conditions of service were struck down, rejecting the argument of the airlines that "a woman after bearing children becomes weak in physique or in her constitution".

It was held that after having taken the AH in service and after having utilized her services for four years, to terminate her service by the Management if she becomes pregnant amounts to compelling the poor AH not to have any children and thus interfere with and divert the ordinary course of human nature. It seems to us that the termination of the services of an AH under such circumstances is not only a callous and cruel act but an open insult to Indian womanhood — the most sacrosanct and cherished institution. We are constrained to observe that such a course of action is extremely detestable and abhorrent to the notions of a civilized society. Apart from being grossly unethical, it smacks of a deep-rooted sense of utter selfishness at the cost of all human values. Such a provision, therefore, is not only manifestly unreasonable and arbitrary but contains the quality of unfairness and exhibits naked despotism and is, therefore, clearly violative of Article 14 of the Constitution.

Similarly, as regards the condition that an air hostess would retire on attaining the age of 35 years, the Supreme Court held that the argument that AHs should be young and attractive and should possess pleasing manners seems to suggest that AHs should by their sweet smiles and pleasant behavior entertain and look after the passengers which cannot be done by women of older age. This argument seems to us to be based on pure speculation and an artificial understanding of the qualities of the fair sex and, if we may

say so, it amounts to an open insult to the institution of our sacred womanhood. Such a morbid approach is totally against our ancient culture and heritage as a woman in our country occupies a very high and respected position in the society as a mother, a wife, a companion and a social worker. It is idle to contend that young women with pleasing manners should be employed so as to act as show pieces in order to cater to the varied tastes of the passengers when in fact older women with greater experience and goodwill can look after the comforts of the passengers much better than a young woman can. Even if the Corporation had been swayed or governed by these considerations, it must immediately banish or efface the same from its approach. More particularly such observations coming from a prestigious corporation like A.I. appear to be in bad taste and is proof positive of denigration of the role of women and a demonstration of male chauvinism and verily involves nay discloses an element of unfavourable bias against the fair sex which is palpably unreasonable and smacks of pure official arbitrariness.

- **C. B. Muthamma v. Union of India and others 1979 AIR 1868**

It was observed by the Apex court that "... sex prejudice against the Indian womanhood pervades the service rules even a third of a century after Freedom. There is some basis for the charge of bias in the rules and this makes the ominous indifference of the executive to bring about the banishment of discrimination in the heritage of service rules. If high officials lose hopes of equal justice under the rules, the legal lot of the little Indian, already priced out of the expensive judicial market, is best left to guess."

The court further observed that If a woman member shall obtain the permission of Government before the marriage, the same risk is run by Government if a male member contracts a marriage. If the family and domestic commitments of a woman member of the service is likely to come in the way of efficient discharge of duties, a similar situation may well arise in the case of a male member. If a married man has a right, a married woman, other things being equal, stands on no worse footing. Freedom is indivisible, so is justice."

The High Court of Delhi in **State through Reference Vs. Ram Singh & Ors. AND Pawan Kumar Gupta Vs State (Nirbhaya Case) 212(2014)DLT99** has referred to Various decisions of the Hon'ble Apex Court where the term 'Rarest of Rare' case has not only been defined but has also been categorically explained to apply this concept where the case need be and also what is defined as mitigating and aggravating circumstances thereby bringing Nirbhaya Case within the Ambit of Rarest of Rare case Principle and how this case perfectly fits to be called as the Rarest of Rare case and convicted all the accused including the Juvenile who was sent to the Juvenile Shelter Home.