

LEGAL AWARENESS PROGRAMME
By
NATIONAL LEGAL SERVICES AUTHORITY

in collaboration with
NATIONAL COMMISSION FOR WOMEN
&
Knowledge Partner
ALL INDIA REPORTER, NAGPUR

IEC & TRAINING MODULE

For
RESOURCE PERSONS

On
WOMEN AND LAW

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Women & The Constitution

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**IEC & TRAINING MODULE
For RESOURCE PERSONS
ON**

**WOMEN AND THE CONSTITUTION
FUNDAMENTAL RIGHTS**

Training Module

Women and the Constitution – Fundamental Rights

The IEC & Training Module is primarily for Resource Persons of NALSA, as it focuses on particular responsibilities in spreading legal awareness about women and her fundamental rights. This is a part of the Legal Awareness Programme undertaken by National Legal Services Authority in collaboration with National Commission for Women. Resource Persons will find it as a useful source of information & guidance.

The main objective of this IEC & Training Module is to inspire, motivate, cultivate curiosity, shape the opinion and enlighten the Resource Persons on issues concerning women & their fundamental rights.

The overall content consists of provisions that guarantee protection and safeguard guaranteed to women related to their rights. This has been written in an interactive Question Answer style, in a lucid and simple language.

NALSA hopes that the Resource Person will be benefitted immensely by these IEC & Training Modules.

Objective

- *To give an overview of the fundamental rights of women*
- *To familiarize the Resource Persons with the ‘Provisions of the Constitution of India’ that are available to women*
- *To improve the understanding of Resource Persons about the challenges & barriers women confront in accessing and enjoying their rights*

Learning Outcome

The participants (Resource Persons) will be able to completely understand their role & responsibilities in spreading awareness about fundamental rights provided under the Constitution

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“There is no chance for the welfare of the world unless the condition of women is improved. It is not possible for a bird to fly on only one wing”

Swami Vivekanand

CONSTITUTION OF INDIA

Introduction

The Constitution is the supreme law of the land and acts as a basic framework to guide and govern the country. The Preamble of the Constitution, which has been described as the soul and is a reflection of the core constitutional values that embody the Constitution contains the objectives with which the country would function. The primary and most vital of which are the values of socio-economic-political “justice” and “equality” with regard to status and opportunities. To achieve these goals, the State has to ensure that no discrimination of any kind is made amongst people and that the rights of every citizen are safeguarded. Women, who act as the cradle of human progress and civilization, have a significant and crucial role to play in society. Therefore, they ought to be given equal representation in every aspect in the society.

The framers of the Constitution, after due deliberation on the position of the women in Indian society and the treatment meted out to them due to prevailing social norms and customs in the past, tried to ensure that they are accorded the requisite respect owed to them by society and in order to effectuate the same, various provisions were incorporated in the Constitution. Time and again, the Hon’ble Courts have not only upheld the spirit of equality as enshrined in the constitution but have actively defended and vociferously advocated for the rights of women and made amendments to the impugned provisions or inadequate laws. The Constitution of India not only grants basic human rights and equality to women, but also empowers the State to adopt measures of positive discrimination in favour of women to guarantee social, economic, educational and political upliftment.

The Constitution guarantees the fundamental rights, enumerated in Part III encompassing Articles 12 to 35, which are applicable to all the citizens irrespective of their sex and guarantees right to equality, freedom of speech and expression, right against exploitation, freedom of religion, cultural and educational rights and most importantly, right to constitutional remedies in order to effectuate and enforce the aforementioned rights. These provisions guarantee all the rights to women and men equally. Apart from guaranteeing equality before law and equal protection of law to women, there are certain affirmative rights provided under Articles 15, 16, etc. which empower the State to make special provisions for women.

The Directive Principles of State Policy, contained in Part IV of the Constitution, aim at ensuring socio economic justice and consists of all the ideals which the

State should follow and keep in mind while formulating policies and enacting laws for the country. Some of the Directive Principles such as Articles 39 (a)(d), 42, and 45, direct the State to protect human rights of women including the right to equal pay for equal work, the right to health and work in hygienic conditions, the right to maternity benefit and the right to gender justice respectively among many other similar provisions.

Further, the State has introduced reservations for women in various arenas: public employment, with regard to admissions in educational institutions and the political representation among other schemes for their benefits. The Article 243 of the Constitution of India deals with reservation of seats for women in Panchayats.

✦ **Which Articles under the Constitution of India provide for protection and upliftment of women?**

Important Constitutional Provisions for Women at a Glance

Provisions	Safeguards
Article 14	Right to equality
Article 15	Prohibition of discrimination
Article 15(3)	Empowers the State to make special provisions for women to ensure social-economic upliftment and empowerment
Article 16	Equal opportunities in matters relating to employment or appointment of any office under the State
Article 19	Rights regarding freedom to speech and expression, assemble, form associations or unions or co-operative societies, move freely, reside and settle in any part of territory of India and to practise any profession, carry occupation, trade or business
Article 21	Right to Life and Personal Liberty
Article 21-A	Right to free and compulsory education (for all children in the age group of six to fourteen years)
Article 22	Protection against arrest and detention and provides basic guidelines and procedure to be followed for such arrest or detention
Article 23	Prohibits and criminalises human trafficking and forced labour
Article 29 and 30	Under Articles 29 and 30, certain cultural and educational rights are guaranteed

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✦ **What do we mean by Fundamental Rights?**

Fundamental rights are the basic and inalienable rights of every citizen in India irrespective of gender, race, caste, creed, etc. which can be enforced through the Courts against any encroachment by the State i.e. Central Government, State Government, local bodies and other authorities. Articles 12-35 under Part III of the Constitution deal specifically with Fundamental Rights.

These rights are divided under six main heads namely-

- (a) Right to Equality (Articles 14-18),
- (b) Right to Freedom (Articles 19-22),
- (c) Right against Exploitation (Articles 23-24)
- (d) Right to Freedom of Religion (Articles 25-28),
- (e) Cultural and Educational Rights (Articles 29-30) and
- (f) Right to Constitutional Remedies (Articles 32, 226)

✦ **Are there any specific rights for women under the Constitution of India?**

Yes. Following are the specific rights of women guaranteed by the Constitution of India-

- Article 14 which provides right to equality
- Article 15 which provides for prohibition of discrimination
- Article 16 which provides equal employment rights
- Article 19 which enlists freedoms regarding speech, expression, assembly, etc.
- Article 21 which secures right to life and personal liberty
- Article 23 which prohibits forced labour and human trafficking

✦ **Are there any specific legislative enactments for women in India that ensure the protection of their fundamental rights?**

Yes. Following are some of the legislative enactments which are enacted specifically for women :

- The Immoral Traffic (Prevention) Act, 1956
- The Dowry Prohibition Act, 1961
- Protection of Women from Domestic Violence Act, 2005
- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013
- The Maternity Benefit Act, 1961
- The Medical Termination of Pregnancy Act, 1971
- The Indecent Representation of Women (Prohibition) Act, 1986 etc.

✦ **What do we mean by ‘equality before law for women’?**

Article 14 of the Constitution enshrines the concept of ‘equality before law for women’. This Article provides that State should not deny any person equality before the law and equal protection of law in India.

Every person, especially women, have been guaranteed equal opportunities and status irrespective of race, religion, social status, political influence, etc. Women are entitled to equal opportunities and status same as that accorded to men, and any sort of discrimination against them on basis of gender is strictly prohibited. This right also includes equal pay for equal work for men and women.

✦ **What do we mean by prohibition of discrimination on grounds of religion, race, caste, sex or place of birth?**

Article 15 casts a duty upon the State to ensure that no citizen shall be subject to any restriction, condition or disability to access/enter shops, public spaces, wells, tanks, ghats, roads, etc. which is maintained wholly or partially from State funds intended for the general public on the grounds of religion, race, caste, sex or place of birth.

Further, the State has been granted special power under Article 15(3) to make special provisions for the women in certain situations for the larger interest of the community.

✦ **Is there any provision under the Constitution of India for ensuring equal opportunity to women in public appointments?**

Yes. Article 16 of the Constitution provides for equal opportunities for all the citizens in matters of public appointment under the State. There shall be no discrimination whatsoever in matters pertaining to employment or appointment to any office under the State against any citizen on the basis of gender, caste, race, etc. Thus, every woman has a right to public employment as available to her male counterpart and she cannot be denied the same only for the reason of her gender.

✦ **What important rights are ensured by Article 19 of the Constitution of India?**

Article 19 of the Constitution of India provides a set of rights to the citizens which they may exercise subject to reasonable restrictions. These are divided into six heads namely:

Article 19(1)(a) Freedom of speech and expression

Article 19(1)(b) Right to assembly peaceably and without arms

Article 19(1)(c) Right to form associations or unions or co-operative societies

Article 19(1)(d) Right to move freely throughout the territory of India

Article 19(1)(e) Right to reside and settle in any part of territory of India

Article 19(1)(g) Right to practice any profession, or to carry on any occupation, trade or business

✦ What do you mean by ‘freedom of speech and expression’?

Article 19(1)(a) of the Constitution of India provides for freedom of speech and expression, which is the foundation stone for a democratic setup.

This is also considered as the first condition for liberty. Every citizen has complete freedom, though subjected to certain reasonable restrictions as per Article 19 (2), to express herself/himself as per its opinions, freely by speaking, writing, printing, pictures or any other mode whether in political, social or economic front. It is a much needed right of a woman as she had been suppressed by society to express herself freely.

✦ Is the right to assemble peacefully and form associations a fundamental right?

Yes. Article 19 (1)(b) of the Constitution provides the right to assemble peaceably, which includes the right to hold public meetings for education, religion, political or social problems. Such an assembly should be unarmed, peaceful and must not be disruptive in nature as subject to restrictions under Article 19(1)(c) provides freedom to every citizen to form associations, unions or co-operative societies. This is a freedom which ensures that political rights of people are also recognised along with common objectives. These freedoms are subject to restriction under Article 19(4) that public order, morality, sovereignty and integrity of the nation is not compromised.

✦ What do we mean by ‘freedom of movement’?

Article 19(1)(d) and (e) of the Constitution of India guarantees the freedom of movement of citizens. The citizens have the right to move freely throughout the country and to reside in any part of the country which they like subject to basic restrictions under Article 19(5) and (6).

This is a very essential right for women as they have always been restricted by families and societies to move freely. Freedom of movement also include right to travel abroad- A person has freedom to travel without re-

strictions unless there is a procedure and due reason to restrict the same [Maneka Gandhi v. Union of India, AIR 1978 SC 597].

✦ **Is there any specific right under the Constitution regarding ‘freedom of trade and profession’?**

Article 19(1)(g) provides guarantee to all the citizens to practice any profession, carry any occupation, trade or business. This is an economical guarantee to citizens which allows them to earn a livelihood as per their interests though subject to basic restrictions under Article 19(6).

✦ **What is ‘right to life and personal liberty’?**

Article 21 of the Constitution guarantees the right to life and personal liberty of the citizens of India. This Article has recognized a number of rights that includes right to live with dignity, right to die with dignity, right to livelihood, right to clean environment, etc.

“Right to life” does not merely mean animal existence but means something more, namely, the right to live with human dignity. It guarantees a life with dignity that includes all the aspects of life which go to make a person’s life meaningful, complete and worth living.

Dignity also includes protection from sexual harassment and right to work with dignity. A woman also has rights over her body and includes reproductive rights.

✦ **What does ‘right to life and personal liberty’ include?**

Various set of rights are recognized under Article 21 of the Constitution of India and ‘right to life and personal liberty’ has a very vast scope, discussed below-

- Right to Privacy- A person has a right to privacy, freedom from surveillance, right to be let alone, etc.
- Women’s Right to Make Reproductive Choices- It includes women’s right to refuse participation in the sexual activity or alternatively the insistence on the use of contraceptive methods such as undergoing sterilization procedures women’s entitlement to carry a pregnancy to its full term, to give birth and subsequently raise children.
- Right to travel abroad- A person has freedom to travel without restrictions unless there is a procedure and due reason to restrict the same.
- Right against illegal detention- The Supreme Court has laid down detailed guidelines to be followed by the Central and State investigating agencies in all cases of arrest and detention till legal provisions are made in that behalf as preventive measures.
- Right to speedy trial- Every person who is awaiting a trial has a fundamental right under Article 21 to speedy trial

- Various rights have been read into Article 21 that includes pollution free environment, right to health, right to reputation, etc.

✦ **Is the right to education a fundamental right?**

The Constitution (Eighty-sixth Amendment) Act, 2002 inserted Article 21-A in the Constitution of India to provide free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such a manner as the State may, by law, determine. The Right of Children to Free and Compulsory Education (RTE) Act, 2009, which represents the consequential legislation envisaged under Article 21-A, means that every child has a right to full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards.

✦ **What does Article 22 of the Constitution of India deal with?**

Article 22 of the Constitution of India grants protection to the persons who are arrested or detained under the preventive detention law. This Article ensures the right to know the grounds of arrest, legal aid, right to contact family members/relatives etc.

✦ **What are the rights of arrested women?**

There are certain specific provisions regarding the rights of an arrested woman under the Criminal Procedure Code. These specific rights are in consonance with Article 22 of the Constitution of India. Safety of the woman is the priority for the fair trial of the accused for ensuring there has been an amendment made in 2005 to the Criminal Procedure Code, 1973 mentioning an important point relating to women's safety.

Section 46(4) of the Criminal Code governs the arrest of women, particularly mentions that "unless there arises an exceptional circumstance, no woman can be arrested before and after sunset, exceptional circumstances, no woman can be arrested after sunset and before sunrise, during the prevail of such exceptional circumstances a female constable shall by a writing report, must have secured consent of the Judicial Magistrate.

✦ **What is 'right against exploitation'?**

Article 23 of the Constitution deals with the right against exploitation, it provides that all forms of trafficking in human beings, beggars and similar forms of forced labour shall be prohibited, and any violation of this shall be an offence punishable by law. In India, there used to be exploitation of forced bonded labour which was practiced by few sections of society resulting in exploitation of the under privileged. There were other forms of practices in India related to bonded labour and human trafficking, which led to formulation of Article 23.

This Article specifically deals with the protection of women and girls against exploitation in various forms. The age-old practices like devdasi, jogan, etc. were abolished. Article 23 ensures that protection to individuals is available not only against the State but also against private citizens.

✦ **What is ‘freedom of religion’?**

Articles 25 and 26 of the Constitution of India ensure freedom of religion to every citizen in India. Article 25 guarantees every person the freedom of conscience and hence every woman in India has the right to freely profess, practice and propagate any religion.

✦ **Is excluding women from offering prayers in temple Constitutional?**

The temple’s practice of excluding women is unconstitutional. In *Indian Young Lawyers’ Association v. State of Kerala*, it was held that the practice violated the fundamental right to freedom of religion - Article 25(1) of the Constitution - of female worshippers. Rule 3(b) allowed for Hindu denominations to exclude women from public places of worship, if the exclusion was based on custom. It struck down Rule 3(b) of the Kerala Hindu Places of Public Worship Act as unconstitutional.

✦ **Which Article/(s) of the Constitution of India deal with ‘cultural and educational rights’?**

Under Article 29 and Article 30 of the Constitution of India, certain cultural and educational rights are guaranteed. Courts have resolved that sex is a foundation of classification and cannot in total be prohibited. Irrespective of being favourable or unfavourable to women, certain special laws can be prepared in various kinds of cases.

✦ **How can Fundamental Rights be enforced in Court?**

The fundamental rights which are the inviolable rights provided to all the citizens, are enforceable through a specific set of provisions as provided under the Indian Constitution. Articles 32 and 226 provide the power to approach the Supreme Court and High Court respectively for seeking the enforcement of fundamental rights.

Article 32 of Indian Constitution offers a remedy for the implementation of the fundamental rights before the Supreme Court in the form of a Writ. Similarly, Article 226 provides for enforcement of fundamental and other rights before the various High Courts in India.

FAQ's - REALITY CHECK

1. My village does not allow me to draw water from the common well because I belong to a low caste. I have to walk 3 kms every day to fetch water. Does this amount to violation of any of my rights?

Yes, under Article 17 of the Constitution of India "Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.

2. I have completed my degree in Computer Science and applied for jobs in many offices in nearby Districts but I am turned down by almost all of them as I am not a Brahmin. Is it a violation of my fundamental right?

Yes, Article 16 of the Constitution states that no citizen shall on grounds only of religion, race, caste, sex, descent, place of birth, residence, or any of them, be ineligible for or discriminated against in respect of any employment or office under the state.

3. My sister is 12 years old, she along with other girls of the same age are forced to work in a chemical factory. Is this legal?

No, Article 24 of the Constitution of India, prohibits the employment of children under 14 years in hazardous conditions.

4. My daughter got arrested yesterday and the police constables are not ready to give any reason for the same. As a citizen of the country does my daughter have any rights after getting arrested?

Yes, Article 22 of the Constitution of India guarantees the right of every person who is arrested to be informed of the cause of her arrest; secondly, her right to consult and to be defended by a lawyer of her choice. Thirdly, every person arrested and detained in custody shall be produced before the nearest Magistrate within a period of twenty-four hours and shall be kept in continued custody only with Magistrate's authority.

5. The school teachers in my village have been mis-treating the students and many students are now reluctant to go to school. We tried to have a peaceful protest outside the school but were moved by the police force. What freedom do I have as a citizen of India?

Under Article 19 of the Constitution, in such scenarios, you have Freedom of Speech and Expression, Freedom of Assembly, and Freedom to form associations. The Freedom of Speech and Expression includes Right to Peaceful Protest against arbitrary State actions.

6. My mother got arrested for theft 6 months back and she was imprisoned for 1 month and released later for good behaviour. 1 week ago, she was again arrested for the same offence by another police officer. Is it legal?

No, According to Article 20 of the Constitution no person should be prosecuted and punished for the same offence more than once. This is termed as double jeopardy.

7. I hail from Sikkim and I am currently residing in a District near Kolkata where I am being bullied and sometimes beaten if I talk to anybody in my mother tongue in public places. Do I have any fundamental right to protect my culture?

Yes, under Article 29 of the Constitution of India, any section of the citizens residing in the territory of India or in any part thereof having distinct language, script or culture of its own, shall have the right to conserve the same.

8. I had submitted an application to know how the government owned school in my district decides the syllabus for the children and what are the merit criteria. I received a reply that such information cannot be disclosed. Do I have the right to information?

Yes, Right to information has been given the status of a fundamental right under Article 19(1) of the Constitution, under which every citizen has freedom of speech and expression and the right to know how the government works, what roles it play, what its functions are.

LANDMARK JUDGMENTS

1. **Air India v. Nargesh Meerza [AIR 1981 SC 1829]**

The matter invoked the writ jurisdiction of Hon'ble Supreme Court and was previously filed before the National Industrial Tribunals (Khosla Tribunal (1965) and the Mahesh Tribunal (1972)).

The case dealt with the issue of discrimination on the basis of sex on multitude of grounds such as promotional avenues, differential retirement ages, conditions pertaining to termination of the Air hostesses services in cases of pregnancy or marriage (premature retirement age as per regulation 46) and discretionary powers of the Managing Director who under regulation 47 and were answered question pertaining to the aforementioned contentions.

Whether Regulations 46 & 47 are violative of Articles 14, 15, 16 of the Constitution of India and thus ultra vires in whole or part? And whether discretionary powers as enumerated under Regulation 47 can be deemed as being excessive delegation?

The Court held the aforementioned provisions regarding retirement and pregnancy as unconstitutional and thus ordered for them to be struck down along with regulation 47 which was deemed an excessive delegation of powers without any reasonable guidelines to police the same.

2. **Ms. Githa Hariharan v. Reserve Bank of India [AIR 1999 SC 1149]**

The application of the petitioner to the RBI for bonds to be held in the name of the minor son with her signatures as his guardian was sent back with the advisory to either produce the application signed by the father of child or produce a certificate of guardianship from a competent authority in her favour. RBI was of the opinion that the father was the natural guardian of child on the basis of Section 6(a) of the Hindu Minority and Guardianship Act, 1956 (HMGA). The provision stated that the father is the natural guardian of a Hindu minor child and the mother is the guardian "after" the father. Ms. Hariharan challenged the constitutional validity of this provision in the Supreme Court on grounds that it violated the right to equality guaranteed under Articles 14 and 15 of the Indian Constitution.

The Court held that both the father and mother are natural guardians of a minor Hindu child, and the mother cannot be said to be natural guardian only after the death of the father as that would not only be discriminatory but also against the welfare of the child, which is legislative intent of HMGA, 1956.

The case established for the first time that a natural guardian referred to in the HMGA, 1956 can be a father or a mother: whoever is capable of and available for taking care of the child and is deeply interested in the welfare of the child, and that need not necessarily be the father.

3. Miss. C. B. Muthamma v. Union of India [AIR 1979 SC 1868]

Rules regarding seniority and promotion in the Indian Foreign service were challenged before the Apex Court where denial of promotion on the ground of Sex were held to be violative of Articles 15 and 16 of the Constitution of India.

It was held that the Rules relating to seniority and promotion in Indian Foreign Service which make discrimination only on ground of sex is not only unconstitutional but also a hangover of the masculine culture of handcuffing the weaker sex.

4. Ammini E.J. v. Union of India [AIR 1995 Ker 252]

The constitutional validity of Section 10 of the Indian Divorce Act, 1869 which regulated divorce among Christians in India for a century and a quarter was directly challenge on the ground that the provisions in Section 10, so far as it makes adultery also necessary to be established along with cruelty and desertion as a ground for divorce is arbitrary, authoritarian and violative of the fundamental rights guaranteed to them and other similarly situated Christian women under Articles 14, 15 and 21 of the Constitution of India.

Referring to the life of a Christian wife being compelled to live as a wife against her wish, the High Court of Kerala observed, “It will be a humiliating and oppressed life without freedom to remarry and enjoy life in the normal course.

It will be a life without Women’s Right and the Indian Constitution freedom to uphold the dignity of the individual in all respects. The Court quashed the impugned provision as violative of Articles 14, 15 and 21 and ruled that the wife may file for divorce only on the grounds of adultery without any other qualifying offence such as cruelty or desertion.

5. Sheela Barse v. State of Maharashtra [AIR 1983 SC 378]

In this case, a letter from Sheela Barse, a journalist complaining of custodial violence to women prisoners and the assault and torture which they were facing from the police officers while confined in the police lock-ups in the city of Mumbai, was treated as a Writ Petition on the ground that a citizen has a right to know under the Articles 19(1)(a) and 21 of the Indian Constitution.

Simultaneously, the Director of the College of Social Work, Nirmala Niketan, was instructed to interview the women of Mumbai Central Jail who stated in her report that, “all the allegations in the writ petition were true. Apart from this there was no proper system of providing legal assistance to female prisoners.

The court primarily dealt with safety and security of women prisoners, the fundamental rights of the petitioner under Article 19(1)(a) and Article 21 and State’s liability to provide legal assistance to all prisoners in jails.

The Supreme Court issued a notice to the Inspector of Jail to for ‘legal aid organisation’ at High Court and District levels. It was held that there should be

separate lockups for female prisoners and it should be guarded by female police officers only. The Interrogation of the female prisoners should only be done in the presence of female officers only. The person should be informed about the grounds of arrest and provision of bail and it is mandatory that a female suspect is to be checked by a female police officer only (Section 160(1) of CrPC). Women prisoners cannot be arrested after sunset and before sunrise.

6. Vishakha v. State of Rajasthan [AIR 1997 SC 3011]

Bhanwari Dev and her husband were brutally attacked by five men for as revenge for trying to stop the child marriage and was later gang-raped. The police avoided filing complaint due to which investigation and medical examination was delayed. The examiner did not mention any commission of rape in the report but rather mentioned the age of the victim. In the absence of sufficient evidence and support from a local MLA, the accused were acquitted and subsequently a PIL was filed by a women's rights group known as 'Vishakha'. It laid its focus on the enforcement of the fundamental rights of women at the Workplace under the provisions of Articles 14, 15, 19, and 21 of the Constitution of India, it also raised the issue of the need for protection of women from sexual harassment at Workplace.

The Supreme Court laid down guidelines to prevent sexual harassment of working women in places of their work. Gender equality also includes protection from any sort of sexual harassment and right to work with dignity. Hence, detailed guidelines were laid down: Definition of workplace sexual harassment, Duty of the employer to file a complaint, provide assistance to an aggrieved employee, provide a safe workplace environment and spread awareness, Constitution of a Complaint redressal committee and duty of government to widen the scope of these guidelines. The Vishakha guidelines were later on replaced by the Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act, 2013.

7. T. Sudhakar Reddy v. Govt. of Andhra Pradesh [AIR 1994 SC 544]

Reservation of seats for women in local bodies and in educational institutions cannot be taken to mean as discrimination of ground of sex.

The Supreme Court upheld the constitutional validity of proviso of the Andhra Pradesh Co-operative Societies Act, 1964 and of the Rules framed there under relying upon the mandate of Article 15(3) of the Constitution providing for nomination of two women members by the Registrar of the managing committee of the cooperative societies with a right to vote and to participate in the Committee's meeting. The Supreme Court upheld the validity of these provisions on the ground that Article 15(3) of the Constitution permitted the making of special provisions for women.

Knowledge Partner : All India Reporter Pvt Ltd

8. Babulal Parate v. State of Maharashtra [AIR 1961 SC 884]

In this case, the constitutional validity of Section 144, Cr.P.C. was challenged for the first time.

The dispute between two unions of textile workers which led to the imposition of Section 144 which was challenged in the court as being ultra vires the Constitution.

The court while observing the right under Article 19(1)(b) of the Constitution of India to assemble peaceably, hold public meetings and take out public processions stated that “Public order has to be maintained in advance in order to ensure it and, therefore, it is competent to a legislature to pass a law permitting an appropriate authority to take anticipatory action or place anticipatory restrictions on particular kinds of acts in an emergency for the purpose of maintaining public order”,

The court, in its judgement, held that it would be wrong to regard the power under Section 144 as being unlimited or untrammelled and upheld the Constitutionality of the provision

The provisions under Article 19 included the right to hold public meetings for education, religion, political or social problems. Such an assembly should be unarmed, peaceful and must not be disruptive in nature as subject to restrictions under Article 19(3) of the Constitution.

9. Suchita Srivastava v. Chandigarh Administration [AIR 2010 SC 235]

In this case, a 19-20 year old woman whose mental capacity was that of a 9-year-old girl became pregnant as a result of rape while living in government institute for mentally retarded children.

The Punjab & Haryana High Court determined, without the woman’s consent, that it was in her best interests that the fetus should be aborted under Section 3 of the Medical Termination of Pregnancy Act, 1971 (MTP Act) as she did not have the capacity to take care of a child, nor did she have a parent or guardian to look after her.

The Supreme Court stayed the order of the Punjab & Haryana High Court, and held that the right to reproductive choice flows from the right to liberty under Article 21 of the Constitution. It noted that taking away a woman’s choice regarding her own body would amount to infringement of her right to privacy. It further distinguished between mental illness and mental retardation and considered that the woman’s mental retardation did not take away her right to make a decision regarding her reproductive choices. Therefore, it held that a termination of her pregnancy without her consent could not be ordered.

“There is no doubt that a woman’s right to make reproductive choices is also a dimension of ‘personal liberty’ as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman’s right to privacy, dignity and bodily integrity should be respected. This

means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods."

10. Vishal Jeet v. Union of India [AIR 1990 SC 1412]

The petitioner invoked the writ jurisdiction of the Supreme court under article 32 and filed a PIL to seek directions for the establishment of a committee for inquiry against police officials under whose jurisdiction Forced Prostitution as well as Devadasi system and Jogin traditions were flourishing, to rescue and rehabilitate inmates who are victims of flesh trade, to provide protective homes for children of victims and begging children.

The issue before the Hon'ble court was whether the Supreme Court can issue guidelines or not?

The court realized that measures to be taken in that regard should be more preventive rather than punitive. The Apex Court upheld the validity of Immoral Traffic (Prevention) Act, 1956 and observed that trafficking in human beings has been prevalent in India for a long time in the form of selling and purchasing of human beings for prostitution for a price just like that of vegetables.

The enactment of the Suppression of Immoral Traffic in Women & Girls Act, 1956 as per the provisions under Article 23 'Right against exploitation' read along the Article 35 was brought about with the view to inhibit or abolish the immoral traffic in women and girls. Besides the above Act, here are various provisions in the Indian Penal Code such as Sections 366-A (dealing with procurement of minor girl), S. 366-B (dealing with an offence of importation of girl from a foreign country), S. 372 (dealing with selling of minor for purposes of prostitution, etc.) and S. 373 (dealing with the offence of buying minor for purposes of prostitution, etc.). The Juvenile Justice Act, 1986 which provides for the care, protection, treatment, development, and rehabilitation of neglected or delinquent juveniles contains a specific provision namely Section 13 which empowers a police officer or any other person or organization authorized by the State Government in this behalf to take charge of any neglected juveniles and bring them before the Board constituted under this Act which Board under section 15 has to hold an inquiry and make such orders in relation to the neglected juveniles as it may deem fit in changed as "The Immoral Traffic (Prevention) Act, 1956"

In the end, the Hon'ble Court directed the state as well as central government to take appropriate measures, speedy trials, provisions of rehabilitation centres, advisory committees for making suggestions and valuable advice for the eradication of prostitution, devadasi system and jogin traditions, and proper implementation by the government on the suggestions of their respective committees, welfare programs for the care, social welfare, protection, treatment development and rehabilitation of the victims and amendments in existing laws for prevention of sexual exploitation of children.

PRACTICAL CASE SCENARIO**PRACTICAL CASE SCENARIO NO. 1****Articles 14 and 15**

‘Seema’ and ‘Manish’ have been working as stenographers in a company. Both of them have the same work profile and the same working hours. Manish’s salary is Rs 18,000 per month and ‘Seema’ earns Rs. 12,000 per month. ‘Seema’ questioned her employer regarding the reason for unequal payment. The employer said that as Manish is a man, he has better work efficiency.

In the above example, the contention of the employer is incorrect. Constitution of India strictly prohibits gender discrimination and right to equality is enshrined as a fundamental right in India. The act of the employer is also in violation of the provisions of Equal Remuneration Act, 1976 which provides that men and women workers must be paid equal remuneration for equal work. In this case, there is discrimination on the basis of gender and hence, it is in violation of the provisions of the Constitution of India.

‘Seema’ has a right to question and challenge the disparity in remuneration as ‘equal pay for equal work’.

PRACTICAL CASE SCENARIO NO. 2**Articles 14 and 21**

‘Seema’ was married to ‘Manish’ however, both of them were separated and they were not in contact. ‘Seema’ applied for a post in a public organization. The prerequisite condition for applying to the post was the requirement of husband’s consent for wife’s application for public employment.

In the above example, the condition imposed for applying to the post is a discriminatory provision which gave advantages to men and imposed disabilities on women. It is an obstacle to women’s equality and economic justice. This job notification is in violation of Article 14 of the Constitution that specifically provides that right to equality is a fundamental right and Article 21 that provides freedom of a person or personal liberty.

In this case, ‘Seema’ has both the rights, she has the right to equality and personal liberty to make her own decisions and she need not be dependent to seek permission of ‘Manish’ for the same.

PRACTICAL CASE SCENARIO NO. 3**Article 15**

‘Manish’ challenged a service rule passed by a State that preferred women in recruitment to public employment to the extent of 30% of posts. His contention was that the said service rule is in violation of Article 15 of the Constitution that strictly prohibits discrimination on the ground of gender/sex.

In the above example, the contention of ‘Manish’ cannot be entertained as Article 15(3) of the Constitution itself hints at a substantive approach. Its application for giving special facilities to women in the educational field, for giving representation in local bodies and for protection in places of work has a substantive dimension that is to promote gender equality. Making special provision for women in respect of employment or posts under the State is an integral Part of Article 15(3).

PRACTICAL CASE SCENARIO NO. 4

‘Manish’ applied for an admission in an Engineering College. His admission was denied as he scored less marks than the passing criteria of that College. He argued with the College Authorities that his admission was denied not because of scoring less marks but due to reserved seats for women. He further contended that reservation of seats for women in a College is unconstitutional.

In the above example, the contention of ‘Manish’ is invalid. Reservation of some seats in a College for women is not unconstitutional and reservation of seats for women in an educational institution cannot be taken to mean as discrimination on the ground of sex and hence the same cannot hit by Article 15 of the Constitution.

PRACTICAL CASE SCENARIO NO. 5**Articles 14 and 15**

‘Seema’ is engaged by a Private Company and she demanded for the grant of maternity leave as she was six months pregnant. The Manager of the Company refused to grant the maternity leave to ‘Seema’ mentioning that Private Companies are not bound to follow the laws regarding ‘maternity benefit’ to women.

In the above example, the contention of the Manager is baseless. As in India, a woman has the fundamental right to dignity as a mother, and the maternity leave period is a part of the service period under the maternity policy in India. The maternity leave is social insurance. The maternity leave is given for maternal and child health and family support. If a woman who is pregnant is denied maternity leave even by a private company then it shall be in violation of fundamental rights of the woman and also in violation of the provisions of Maternity Benefit Act.

ASSESS YOURSELF: MULTIPLE CHOICE QUESTIONS

1. A girl, aged about 9 years, has been compelled to work in a factory making match boxes. Which Fundamental Right is violated in this case?

- a. Prohibition of employment of children in factories
- b. Right against Exploitation
- c. Right to Equality
- d. Right to Free Technical Education

2. The Fundamental Rights of Constitution of India are conferred on

-
- a. All persons
 - b. Citizen only
 - c. Some to Citizens and some to all persons
 - d. Legal person as may be prescribed by the State Executive

3. Fundamental Rights guaranteed by the Constitution of India can be suspended only by _____

- a. A proclamation of an emergency
- b. An Act passed by the Parliament
- c. An amendment of the Constitution
- d. The judicial decision of the Supreme Court

4. On what ground the restriction on the Fundamental Right to freedom of speech and expression cannot be imposed?

- a. Public interest
- b. Contempt of Court
- c. Friendly relation with foreign State
- d. Public order

5. Article 20 of the Constitution of India, provides 'Protection in respect of conviction for offences' in which of the following clauses?

- a. No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence
- b. No person shall be prosecuted and punished for the same offence more than once

c. No person accused of any offence shall be compelled to be a witness against himself

d. All of the above

6. Article 21 of the Constitution of India provides that no person shall be deprived of his life and personal liberty except according to the _____.

a. Procedure established by law

b. Due process of law

c. Due course of law

d. All of the above

7. Right under Article 20(3) of the Constitution of India is available to _____.

a. Any person

b. All citizens

c. All persons of Indian origin

d. Foreigners

8. Article 16(4) of Constitution of India gives reservation to Backward Class which is ascertained by _____.

a. Caste

b. Socially and educationally backward

c. Poverty, occupation, place of habitation

d. Both b and c

9. Which of the following reasonable restrictions can be imposed on the right guaranteed in Article 19(1)(d) and (e) of the Constitution of India?

a. Defamation and Contempt of Court

b. Sovereignty and Integrity of State

c. Foreign Relations

d. None of the above

10. The right to movement of prostitutes is restricted on the ground of public health and in the interest of public morals, this is _____ of the Constitution of India.

a. Violation of Right to Freedom of Movement as granted to all citizens as guaranteed in Article 19(1) (d)

- b. A reasonable restriction and not a violation of Article 19(1)(d)
- c. Violation of fundamental rights
- d. None of the above

ANSWER KEY									
1	2	3	4	5	6	7	8	9	10
a	c	a	a	d	a	a	d	d	b

**LEGAL AWARENESS PROGRAMME
BY
NATIONAL LEGAL SERVICES AUTHORITY
IN COLLABORATION WITH
NATIONAL COMMISSION FOR WOMEN
&
KNOWLEDGE PARTNER- ALL INDIA REPORTER**

**IEC & TRAINING MODULE
For RESOURCE PERSONS
ON**

**WOMEN AND THE CONSTITUTION
DIRECTIVE PRINCIPLES OF STATE POLICY**

Training Module

Directive Principles of State Policy

The IEC & Training Module is primarily for Resource Persons of NALSA, as it focuses on particular responsibilities in spreading legal awareness about women & Constitution (Directive Principles of State Policy), as a part of Legal Awareness Programme undertaken by National Legal Services Authority in collaboration with Nation Commission for Women. Resource Persons will find it as a useful source of information & guidance.

The main objective of this IEC & Training Module is to inspire, motivate, cultivate curiosity, shape the opinion and enlighten the Resource Persons on issues concerning women & Constitution (Directive Principles of State Policy).

The overall content consists of rights guaranteed to the women. This has been written in an interactive Question Answer style, in a lucid and simple language.

NALSA hopes that the Resource Person will be benefitted immensely by these IEC & Training Modules.

Objective

- *To give an overview of the Scheme made under the Directive Principles of State Policy*
- *To familiarize the Resource Persons with the 'provisions' available to Women Employees*
- *To improve the understanding of Resource Persons about the challenges & barriers women confront in accessing and enjoying their right to work with dignity.*
- *To provide guidance on ways to be carried out to enhance protection of women employees at work places.*

Learning Outcome

The participants (Resource Persons) will be able to completely understand their role & responsibilities in spreading awareness about wages & other benefits provided under the Act.

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“Socially sensitive juristic and economics must undergo qualitative change to put man at the centre of our plan of social transformation. This is the new wave of thinking needed, if our society is to be on the move and not be frozen by orthodoxies of old rights and interests”

- Justice V.R. Krishna Iyer

DIRECTIVE PRINCIPLES OF STATE POLICY

Introduction

The Directive Principles of State Policy (DPSP) embodied in Part IV of the Constitution contains certain obligations upon the State. The Directive Principles according to the chief architect of the Indian Constitution Dr. B.R. Ambedkar, ‘have a great value for they lay down that our ideal is economic democracy’. Thus, the Constitutional ideal is not only political democracy but also economic democracy and the DPSPs strive to fulfil those ideals.

For achieving the socio-economic emancipation of women, the Constitution has formulated the following principles. First, the discrimination is prohibited on the ground of sex, secondly, it empowers the state to make special provisions for women with a view to enabling it to take special care of women in the light of their peculiar physiological, psychological and social position. And, thirdly, the Directive Principles give special directions to the state to do certain things in relation to women. These principles which constitute constitutional philosophy are incorporated in the Constitution in the form of Fundamental rights and Directive Principles. These are the instruments for attaining our national objectives of justice, liberty and equality.

They are the instruments of instructions in the governance of the country. The main intention behind their inclusion in Part IV in the Constitution is that it may form a set of instructions issued to the prospective lawmakers and executives for their guidance for good governance. Part IV enjoys a very high place in the Constitutional scheme as it imposes obligations on the State to take positive actions for creating socio-economic conditions in order to bring about an egalitarian social order with social and economic justice to all.

To ignore Part IV is to ignore the substance provided for in the Constitution, the hopes held out to the Nation and the very ideals on which our Constitution is built. Without faithfully implementing the Directive Principles, it is impossible to achieve the Welfare State as contemplated by the Constitution.

The framers of the Constitution bestowed sufficient time on contemplation of thoughts on the position of women in the Indian social order, which is quite evident from the provisions of the Constitution. There are a number of directives which

show concern for women and children in order to ensure equal justice. A plain reading to these Articles would show the extensive analysis undertaken by the framers in covering almost all the matters including the issues pertaining to labour jurisprudence. They also clarify that the Constitution intended to provide protection to the workers who were not given a fair deal by the society so far, which also include women workers.

Directive Principles of State Policy embodies the major policy goals of a welfare state, while some of the Directive Principles are primarily “women specific”, others concern indirectly or by necessary implication. The Articles that concern women directly and have a special bearing on their status include Articles 38, 39 (a) (d), 42, 44 and 45.

Safeguard Provided for women under the Directive Principles of State Policy

Provision	Explanation
Article 39(a)	The State to direct its policy towards securing for men and women equally the right to an adequate means of livelihood
Article 39(d)	Equal pay for equal work for both men and women
Article 39 A	To promote justice, on a basis of equal opportunity and to provide free legal aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities
Article 41	Right to work with dignity to education and to public assistance in certain cases.
Article 42	The State to make provision for securing just and humane conditions of work and for maternity relief
Article 46	The State to promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation
Article 47	The State to raise the level of nutrition and the standard of living of its people

✦ Whether the State is under obligation to promote the welfare of the people especially women?

As per the constitutional directives enumerated in Article 38 the State is under an obligation to promote the welfare of the people especially women and children by securing and protecting as effectively as possible the social order in which justice, social, economic and political shall pervade all the institutions of life.

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✦ **What steps are taken by the State to secure adequate means of livelihood for both men & women?**

Article 39, by virtue of clause (a) further casts an obligation upon the State to direct its policy towards securing to all the citizens, including men and women equally, the right to adequate means of livelihood. Equal pay for equal work is one such directive principle, enshrined in Article 39(d), which provides that the State shall direct its policy towards ensuring that there is equal pay for equal work for both men and women. The doctrine of 'equal pay for equal work' was propounded as a part of the Directive Principles. The fundamental rights relevant to Article 39(d) are Articles 14 and 16, which pertain to equal protection of laws and equality in matters of public employment respectively.

✦ **How is the implementation of equal remuneration to workers of both sexes done by the State?**

To implement the Directive Principles contained in Article 39 (d) and to meet out the problems in payment of wages, the Parliament enacted Equal Remuneration Act, 1976 with an intention to eliminate discrimination in payment of wages and to ensure equal remuneration to workers of both the sexes for doing same or similar nature of work.

✦ **What are the remedies available against economic exploitation of women under the Directive Principles of State Policy?**

The principles enshrined in Article 38 along with the provisions in Article 39(b) fulfils the basic purpose of securing and protecting as effectively as it may the social order in which justice, social, economic and political welfare of people are ensured along with restructuring the economic order and undertaking steps to distribute the entire material resources of the community, with best interests to serve the common good.

✦ **Whether the opportunities for securing justice are ensured by the State for the Citizens?**

Article 43 provides that the State shall endeavour to secure to all workers, men and women, a living wage and a decent standard of life. Another very important Article of the Directive Principles of State Policy aims at ending the regime of personal and regional laws: "the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of the India. In addition to this, the provisions of Article 39-A secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

✦ **What are the provisions for protection of Legal Rights under Article 39-A?**

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

✦ **What is the contribution of the Legal Service Authorities Act, 1987 in protecting the interest of weaker sections of the society?**

The Legal Services Authorities Act, 1987 was enacted to constitute legal services authorities for providing free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice were not denied to any citizen by reason of economic or other disabilities and to organize Lok Adalats to ensure that the operation of the legal system promoted justice on a basis of equal opportunity. The system of Lok Adalat, which is an innovative mechanism for alternate dispute resolution, has proved effective for resolving disputes in a spirit of conciliation outside the courts and has proven to be imperative mean to reduce the huge pendency in the justice system of the country.

✦ **Whether women are entitled to the right to work with dignity?**

Yes, women are also entitled to the right to work with dignity. Article 41 provides that within the limits of its economic capacity and development, the state shall make effective provision to secure the right to work as fundamental with just and human conditions of work by suitable legislation or economic organization. In any other way in which the worker shall be assured of living wages, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities to the workmen.

✦ **Which are the Social Welfare Schemes undertaken by the Government of India?**

The Social Welfare schemes undertaken by the Government of India in the lines of Article 41 are enumerated below:

- a) Labour and Employment Scheme Employment Assurance Scheme (EAS)
- b) Food for Work Programme
- c) Jawahar Rozgar Yojana
- d) Labour Welfare Fund

- e) Maternity Benefits Scheme
- f) Million Wells Scheme
- g) Mahatma Gandhi National Rural Employment Guarantee Act, 2005
- h) Prime Minister's Rozgar Yojana (PMRY)
- i) Rural Employment Generation Programme (REGP)
- j) Sampoorna Grameen Rozgar Yojana (SGRY)
- k) Scheme for Working Women Hostels
- l) Scheme for Rehabilitation of Bonded Labourers
- m) Support to Training and Employment Programme for Women (STEP)
- n) Swarnjayanti Gram Swarozgar Yojana (SGSY)
- o) Training of Rural Youth for Self-Employment (TRYSEM)

✦ **Whether there is any provision for securing just and humane conditions of work and for maternity relief?**

Women who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatsoever be the nature of their duties, their avocation and the place where they work; they must be provided all the facilities to which they are entitled. Article 42 directs the State to make provisions for securing just and humane conditions of work and for maternity relief. The State has implemented this directive by incorporating health provisions in the Factories Act, Maternity Benefit Act, Beedi and Cigar Workers (Conditions of Employment) Act, etc.

✦ **What is the aim behind enactment of The Maternity Benefit Act, 1961?**

The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear of being victimised for forced absence during the pre or post-natal period. Since Article 42 specifically speaks of "just and humane conditions of work" and "maternity relief, the validity of an executive or administrative action in denying maternity benefit has to be examined on the anvil of Article 42 which, though not enforceable at law, is nevertheless available for determining the legal efficacy of the action complained of.

✦ **How the women is protected against the Sexual Harassment at workplace?**

The enactment of the Sexual Harassment of Women at Workplace Act, 2013 gives you the right to file a complaint against sexual harassment. The law enables a sexually harassed woman employee can put in a written complaint to an Internal Complaints Committee (ICC) at a branch office within a period of 3 months as per the Sexual Harassment Act. This complaint further is taken up by the Local

Complaints Committee (LCC) at a district level, ensuring investigations start regarding the same if proper action has not been taken against the employer. The complaint can also be filed by any of the woman's legal heirs on her behalf or any other person who has written permission given by her to make the complaint.

✦ **What are the initiatives taken by the State to secure and ensure a decent standard of life by workers?**

Article 43 of the Constitution deals with the issue of living wage. Wherein it strives to ensure through the directive principle that the State shall endeavour, inter alia, to secure by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work a living wage condition of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities.

The idea is that every worker shall have a wage which will maintain him in the highest state of industrial efficiency, which will enable him to provide for his family with all the material things which are necessary for their health and physical wellbeing, enough to enable him to qualify to discharge his duties as a citizen. The amount of living wage in money terms will vary among different types of trading activities.

✦ **Which steps are taken to ensure participation of workers in management of undertakings or establishments?**

Article 43A states that the State shall take steps by suitable legislation or in any other way to secure the participation of workers in the management of undertakings, establishments or other organizations engaged in any industry. The constitutional mandate is therefore clear and unambiguous with regard to the management of the enterprise and that it should not be left entirely in the hands of the suppliers of capital but the workers should also be entitled to participate in it.

Article 43A of the Constitution requires the State to take steps to secure the participation of workmen in the management, undertaking and establishments of organizations engaged in any industry. Thus, from being a factor of production, the labour has become a partner in industry. It is a common venture in the pursuit of a desired goal.

✦ **What is the contribution of Uniform Civil Code in recognizing the rights of women in India?**

The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. Article 44 directs the State to secure for citizens a Uniform Civil Code applicable throughout the territory of India. Its particular goal is towards the achievement of gender justice.

Even though the State has not yet made any efforts to introduce a Uniform Civil

Code in India, the judiciary has recognized the necessity of uniformity in the application of civil laws relating to marriage, succession, adoption, divorce, maintenance, etc.

✦ **How is the right of free education for children ensured by the State?**

Article 45 makes provision for free and compulsory education for children, which is now well settled as a fundamental right to the children up to the age of 14 years; it also mandates that facilities and opportunities for higher educational avenues be provided to them. Social justice and economic empowerment are firmly held as fundamental rights of every citizen.

The 86th Constitution Amendment Act, 2002 added Article 21A to the Constitution which requires the State to provide free and compulsory education to all children from the age of six to 14 years.

✦ **What are the measures undertaken by the State for the improvement of public health?**

According to Article 47, it is the Duty of the State to raise the level of nutrition and the standard of living and to improve public health. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

The makers of the Constitution refer both to the goal of health of the public and the attending promotion of healthy practices.

FAQs - REALITY CHECK

1. What is the meaning of Directive Principles of State?

DPSP are an 'instrument of instructions' which are enumerated in Government of India Act, 1935. They seek to establish economic and social democracy in the country.

2. In case of violation of a Directive Principle which court can I approach?

DPSPs are ideals, which are not legally enforceable by the courts for their violation.

3. What is meant by Gandhian principle under the DPSP?

Directive Principles of State Policy are based on Gandhian ideology used to

represent the programme of reconstruction enunciated by Gandhi during the national movement. Like promoting cottage industries on an individual or co-operation basis in rural areas; prohibit the consumption of intoxicating drinks and drugs which are injurious to health etc.

4. What is the importance of DPSP?

Regardless of the non-justiciable nature of DPSPs, a citizen should be aware of them. As stated in Article 37 itself these principles are fundamental in the governance of the country.

5. What is Uniform Civil Code?

Uniform Civil Code places a set of laws to govern personal matters of all citizens irrespective of religion is perhaps the need of the hour and ensuring that their fundamental and Constitutional rights are protected.

6. Is there any provision under the DPSP for equal pay?

Yes, under Article 39 of the Constitution, there shall be no gender discrimination, both men and women should get equal pay for equal work.

7. I belong to a lower class family. Can I avail a free legal aid?

Yes, under Article 39A of the Constitution the State shall promote justice with the aim of administering justice on the basis of equal opportunity, and shall provide free legal aid through any suitable legislation or schemes which State may think fit, or, in any other way, so that it could ensure that the opportunities for securing justice are not denied to any citizen because of economic backwardness or any other kind of disabilities.

8. I am 5 months pregnant. The factory where I work does not have clean toilets. Is there a provision under the Directive principles for better working environment?

Yes, Article 42 talks about Securing just and humane work and maternity relief.

It says that the state shall create some provisions so that the citizens get easy, just and humane conditions for working. It shall also provide maternity relief for the women.

9. My sister and I belong to the Scheduled Tribe, we are not allowed to enter the school on most days by the other students. Sometimes the teachers would not teach us. Can we get protection under the DPSP?

Yes, Article 46 deals with the Protection of SCs, STs, weaker sections from

exploitation. The State shall promote with special care including the educational and economic interests of the weaker sections of the society i.e. the SCs and the STs and shall make provisions to protect them from all forms of exploitation, which includes social injustice.

10. I am a farmer and our village does not have any new facility for farming and this is affecting my livelihood. Is there a provision under DPSP?

Yes, Article 48 talks about scientific agriculture and animal husbandry. It says that the State shall endeavor to organize agriculture and animal husbandry using modern methods and scientific techniques which make people more advanced and help in earning their livelihood easily and State shall take some progressive steps for preserving and improving the existing breeds and prohibiting the slaughter of cows and other cattle.

LANDMARK JUDGMENTS

1. Unni Krishnan, J.P. & Ors. v. State of Andhra Pradesh & Ors. [AIR 1993 SC 217]

The case involved a challenge by certain private professional educational facilities to the constitutionality of state laws regulating capitation fees charged by such institutions.

The Supreme Court held that the right to basic education is implied by the fundamental right to life (Article 21) when read in conjunction with the directive principle on education (Article 41). The Court held that the parameters of the right must be understood in the context of the Directive Principles of State Policy, including Article 45 which provides that the state is to endeavor to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for all children under the age of 14. The Court ruled that there is no fundamental right to education for a professional degree that flows from Article 21. It held, however, that the passage of 44 years since the enactment of the Constitution had effectively converted the non-justiciable right to education of children under 14 into one enforceable under the law. After reaching the age of fourteen, their right to education is subject to the limits of economic capacity and development of the state (as per Article 41).

2. Occupational Health and Safety Association v. Union of India & others [AIR 2014 SC 1469]

The petitioner was a non-profit organization committed towards the health and safety of workers and represented about 130 Coal Fired Thermal Power Plants

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(CFTPP). The predominant concern was the lack of a system for occupational safety or safeguards from health hazards in such industries. They invoked the jurisdiction of the Supreme Court through Article 32, seeking a direction of mandamus to frame guidelines for occupational safety and health regulations. They also sought the establishment of a Committee to monitor the working of thermal power plants, and maintain a check on the health and well-being of its workers while providing compensation.

An interlocutory application was filed by the petitioner respectively one in the year 2005 and the other one in the year 2007 where the serious health issues were highlighted for the workers who were working in different power plants and were suffering for years. Petitioners submitted a report which indicated that most of the workers were suffering from pulmonary function test abnormalities, lung function abnormalities, skin diseases, asthma and so on.

The right to health and medical care of workmen has been viewed as a fundamental right and decided the right to come under Article 21 of the Constitution when read with Articles 39(e), 41, 43 & 48-A. The decision in *Consumer Education & Research Centre and others v. Union of India & Ors.* held that the compulsion of the workman to work in such a hazardous industry ought not to be misused to forsake one's health and vigour.

The Division bench penned that CFTPPs were spread all over the country and it would not be practicable for the Supreme Court to examine whether the standards were being complied with at each such industry. The Court thus deemed it appropriate to assign these issues to High Courts in whose jurisdictions the plants were functioning, to examine them in-depth with the aid and assistance of the respective State Governments and CFTPPs. It would be the role of respective High Courts to examine whether there were effective health delivery mechanisms and periodic evaluation of workers' health.

In conclusion, The Division Bench ordered for a copy of the judgment to be forwarded to the Chief Justices of 18 High Courts to initiate suo motu proceedings in larger interests of workers.

3. Municipal Corporation of Delhi v. Female workers (muster roll) [AIR 2000 SC 1274]

The Municipal Corporation of Delhi granted maternity leave only to its regular female employees and not to the muster-roll women employees of the Corporation. The Muster roll employees claimed maternity benefits under the Act. The Supreme Court while granting the benefits held that "A woman employee, at the time of advanced pregnancy cannot be compelled to undertake hard labour as it would be detrimental to her health and also to the health of the foetus. It is for this reason that it is provided in the Act that she would be entitled to maternity leave for certain periods prior to and after delivery. There is nothing contained in the Act

which entitles only regular women employees to the benefit of maternity leave and not to those who are engaged on casual basis or on muster roll on daily-wage basis.”

It is in the background of the provisions contained in Articles 39, specially 42 and 43 that the claim of the respondents for maternity benefit and the action of the petitioner in denying that benefit has to be scrutinized. Since Article 42 specifically speaks of “just and humane conditions of work” and “maternity relief” the validity of an executive or administrative action in denying maternity benefit has to be examined on the anvil of Article 42 which though, not enforceable at law, is nevertheless available for determining the legal efficacy of the action complained of.

PRACTICAL CASE SCENARIO

PRACTICAL CASE SCENARIO NO. 1

Deepa is an 8 years old girl lives in Bundi village of Madhya Pradesh, where there is no school in the village. Deepa never went to School as her father is not in favour to send her in nearby village for her schooling. Deepa’s mother wants to educate her but her husband is against her education as he did not want to send her in the nearby village. What Deepa and mother should do?

Deepa and her mother should know the provisions provided to her under the constitution of India. According to directive principles of state policy Article 45 provides the State should make an effort for free and compulsory education to every child below the age of 14 years. Deepa should know her right to education provided under Article 21-A of the Constitution.

PRACTICAL CASE SCENARIO NO. 2

Deepa appointed as supervisor in a Steel factory owned by Government of Chattisgarh. Ramesh her colleague also works in the same factory as a supervisor in different department. Ramesh and Deepa appointed at the same time but Deepa’s salary is 5,000 less as she is a woman now in this situation, what should Deepa do?

There are certain principles to be followed by the State Government. The provision of equal pay for equal work under Article 39 (d) the State Government direct its policy towards equal pay for equal work. And avoid discrimination between men and women. Also under Equal Remuneration Act, 1976, Deepa will seek equal pay.

PRACTICAL CASE SCENARIO NO.3

Savitri belongs to scheduled caste and worked as housekeeping department in the Government factory. But few workers treat her differently and allot her more work as she belongs to Scheduled caste. Savitri felt very bad by such behaviour but now she wants justice. What she can do?

Savitri is a human being first and as human being and citizen of India Article 15 protects every citizen from discrimination on the basis of caste, sex, place of birth etc., and also Article 46 also promotes educational and economic interest of the scheduled caste and shall protect them from social injustice and all forms of exploitation.

PRACTICAL CASE SCENARIO NO.4

Savitri is a T.B. patient and belongs to a village where Government doctors did not even bother to check the patients properly and prescribes proper medicines. So Savitri wants to do something, what she will do?

Article 47 recognizes the improvement of public health as one of the primary duties of the state. And public health can be improved by having best doctors, specialist and super specialist. Also, right to health is one of the fundamental rights provided under Article 21 of the constitution of India.

PRACTICAL CASE SCENARIO NO.5

Savitri is a pregnant for seven months and works in a factory. Due to festive season 50 percent of male labours are on leave for a week so the manager asked Sangeeta to lift heavy boxes to shift the boxes to a delivery counter. Savitri ask them to provide maternity leave so the manager sanctioned only one month leave. What she will do?

Article 42 of the Constitution of India directs the State Government to make the provision for securing just and humane condition of work and also direct for maternity relief. Savitri also seeks reliefs under Maternity Benefit Act.

ASSESS YOURSELF: MULTIPLE CHOICE QUESTIONS

1. Gandhian Principle has been enumerated in the Constitution of India under the_____.

- a. Directive Principle
- b. Fundamental Right
- c. Fundamental Duties
- d. Preamble of Constitution

2. Which of the following Directive Principle has similar effect as of Article 14 of Constitution of India, if the State promoted it?

- a. Article 44
- b. Article 39-A
- c. Article 38
- d. Article 41

3. Duty to protect monuments by State is_____.

- a. Directive Principle under Article 49
- b. Fundamental Duty under Article 51-A
- c. Both 1 and 2
- d. None of the above

4. Directive Principle of State Policy is contained in the Constitution of India from _____.

- a. Articles 36 to 51 of Constitution
- b. Articles 35 to 51 of Constitution
- c. Articles 35 to 50 of Constitution
- d. Articles 35A to 51 of Constitution

5. The provision for equal pay equal work is described in which of the following Articles of Constitution of India?

- a. Article 39-A
- b. Article 37

- c. Article 38
- d. Article 39

6. Directive Principles of State Policy aim to create social and economic conditions under which the citizens can lead a good life. They also aim to establish social and economic democracy through a welfare state. The statement is _____

- a. Correct
- b. Incorrect
- c. Partly correct
- d. None of the above

7. To secure a uniform civil code applicable to the entire country is mentioned under _____ of DPSP.

- a. Article 39
- b. Article 40
- c. Article 38
- d. Article 44

8. Protection and improvement of environment and safeguarding of forest and wild life was added under DPSP through _____.

- a. 44th Amendment Act
- b. 42nd Amendment Act
- c. 40th Amendment Act
- d. None of the above

9. The provision for Free Legal Aid is described in which of the following Article of Constitution of India?

- a. Article 39-A
- b. Article 37
- c. Article 38
- d. Article 39

10. Provision for just and humane conditions of work and maternity relief is provided under DPSP. The statement is _____

- a. Correct
- b. Incorrect
- c. Partly correct
- d. None of the above

ANSWER KEY									
1	2	3	4	5	6	7	8	9	10
a	c	a	a	d	a	d	b	a	a

**LEGAL AWARENESS PROGRAMME
BY
NATIONAL LEGAL SERVICES AUTHORITY
IN COLLABORATION WITH
NATIONAL COMMISSION FOR WOMEN
&
KNOWLEDGE PARTNER – ALL INDIA REPORTER**

**IEC & TRAINING MODULE
For Resource Persons
ON
WOMEN AND THE CONSTITUTION
FUNDAMENTAL DUTIES**

Training Module

IEC Material & Training Module

The IEC & Training Module is primarily for Resource Persons of NALSA, as it focuses on particular responsibilities in spreading legal awareness about women and fundamental duties of every citizen towards them. This is the part of the Legal Awareness Programme undertaken by National Legal Services Authority in collaboration with National Commission for Women. Resource Persons will find it as a useful source of information & guidance.

The main objective of this IEC & Training Module is to inspire, motivate, cultivate curiosity, shape the opinion and enlighten the Resource Persons on Fundamental duties of every citizen.

The overall content has been written in an interactive Question Answer style, in a lucid and simple language.

NALSA hopes that the Resource Person will be benefitted immensely by these IEC & Training Modules

Objective

To give an overview of the fundamental duty of every citizen of the country.

Learning Outcome

The participants (Resource Persons) will be able to completely understand their role & responsibilities in spreading awareness about Fundamental Duties of every citizen.

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“Empowerment of women leads to development of a good family, good society and, ultimately, a good nation.”

- Dr. A.P.J. Abdul Kalam

FUNDAMENTAL DUTIES

Introduction

According to a report prepared by India's National Crime Records Bureau (NCRB), one bride was murdered every hour over dowry demands in 2010, a crime has been recorded against women every three minutes in India. Every 60 minutes, two women are raped in this country. Every six hours, a young married woman is found beaten to death, burnt, or driven to suicide. India ranks the worst among G-20 countries with respect to its treatment of women. The list of atrocities against women is so long that we will be exhausted even talking about it. Thus, it is imperative to rise above the degenerations and deviations that had set in in later periods and restore the times in which women were regarded with highest honour, dignity and respect. The Constitution of India, through Article 51A, makes it a Fundamental Duty of every citizen of the country to abide by the Constitution and respect its ideals and institutions of respecting women, ensuring their dignity and working actively towards safeguarding the interests of women. An individual is the fundamental organ of a State and each organ is required to work unitedly to achieve the means of a welfare State. Even if the government is trying to take care of this natural right by formulating various policies, enacting and legislating laws, these are not enough to tackle the problems concerning women's security unless the same is backed by a change in social values and perception as an effective implementation in reality can only be achieved if the society is willing to adopt that change and actively work towards the achievement of said goals and for this reason a strong move to protect the rights of women needs to be led by people engaging of the entire humanity. Gender injustice is a problem that is seen all over the world. But unless there are certain attitudinal changes, the women's right and constitutional values shall remain a far-fetched dream, promising an egalitarian society yet failing on delivering the same in practicality. What are the fundamental duties?

The fundamental duties are a few basic statutory duties or moral obligations upon the citizens however they are not legally enforceable by law as of now but a court may take them into account while adjudicating on a matter. They were incorporated through 42nd Amendment Act, 1976, on the recommendation of Swaran Singh Committee. Being an Indian citizen, certain rights and duties are provided to us. As explained by the Supreme Court in the **Ramlila Maidan Incident v. Home Secretary, 2012 AIR SCW 3660**, “the word “fundamental” is used in two separate senses in our Indian Constitution. When this word is used for rights then it means that these rights are very essential and any law which will violate the fundamental rights will be declared as void. But when this word is used for the

duties then it is used in a normative sense as it sets certain goals before the state which the state should try to achieve.” These duties are for every citizen to abide by the laws and perform his/her legal obligations.

✦ **What are the various fundamental duties provided under Article 51A?**

The various fundamental duties are:

Sub-clauses	Duties
a.	To abide by the Indian Constitution and respect its ideals and institutions, the National Flag and the National Anthem.
b.	To Cherish and follow the noble ideals that inspired the national struggle for freedom.
c.	To uphold and protect the sovereignty, unity, and integrity of India.
d.	To defend the country and render national service when called upon to do so
e.	To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women
f.	To value and preserve the rich heritage of the country’s composite culture
g.	To protect and improve the natural environment including forests, lakes, rivers, and wildlife and to have compassion for living creatures
h.	To develop the scientific temper, humanism and the spirit of inquiry and reform
i.	To safeguard public property and to abjure violence
j.	To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement
k.	To provide opportunities for education to his child or ward between the age of six and fourteen years. This duty was added by the 86th Constitutional Amendment Act, 2002

✦ **What is the scope of fundamental duties?**

The Fundamental duties are obligatory in nature. In *AIIMS Students Union v. AIIMS*, it was held that Fundamental Duties though not enforceable by writ of the court, yet provide a valuable guide and aid to interpretation of constitutional and legal issues. Their scope can be determined through following important points:

- They were incorporated to remind Indian Citizens of their duty towards their society, fellow citizens and the nation, be mindful of nation's interest, and social values, inspire citizens and promote a sense of discipline and commitment among them.
- Any ambiguous statute can be interpreted with the help of fundamental duties.
- The court can consider the law reasonable if it gives effect to any of the fundamental duties. In this way, the court can save such law from being declared as unconstitutional

✦ **What are the features of fundamental duties?**

- Few Fundamental rights are available to foreign nationals as well; however, the fundamental duties are only restricted to the Indians citizens.
- The Fundamental duties have been demarcated further into moral duties and civic duties in order to cherish the noble ideals of freedom struggle and simultaneously and respect the Constitution, National Flag and National Anthem. The fundamental duties are not legally enforceable in nature i.e., without any legal sanction in case of their violation or non-compliance. The Fundamental duties lay down certain responsibilities and duties to be followed by a citizen in order to respect and promote harmony and the spirit of common brotherhood, transcending the barriers of religion, language, etc. and uphold the spiritual values of the nation.

✦ **Are the fundamental duties enforceable in the Court of Law?**

No, but though these Duties are not themselves enforceable in the Courts nor their violation, as such, punishable, nevertheless, a court may take them into account while adjudicating on a matter and also while determining constitutionality of a law.

✦ **Is there any fundamental duty for the protection of women?**

Yes, Article 51A(e) enjoins upon every citizen to renounce practices derogatory to the dignity of women. Our natural obligation to renounce practices derogatory to the dignity of women has been elevated to the status of fundamental duty by the said article.

✦ **Are there any specific enactments for the betterment of women which owe their existence to the provisions of Fundamental Duties?**

Yes, there are various enactments of the Government which punish practices derogatory to the dignity of women and owe their existence to the provisions of Fundamental Duties. Some of them are:

- The Equal Remuneration Act, 1976,
- The Maternity Benefit Act, 1961,
- The Dowry Prohibition Act, 1961 and
- The Immoral Traffic (Prevention) Act, 1956

LANDMARK JUDGMENTS

1. Mr. Vijay Sharma and Mrs. Kirti Sharma v. Union of India [AIR 2008 Bom 29]

The petition was filed under Article 226 of the Constitution of India, whereby the constitutional validity of Sections 2, 3A, 4(5), and 6(c) of the Preconception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 was challenged.

The petitioners had two female children and wanted a third child who was male. Their main contention was that they do not intend to misuse the act. As they already have two female children, they only want to balance their family by bringing a brother to their two female children. According to the petitioners, the married couples who have one male or one female child should be allowed to select the sex of the second child. The Bombay High Court denied such permission and stated the following:

1. There is a severe imbalance of male to female ratio in Indian society;
2. The society does not want a girl child;
3. The society has preference over a male child over a girl child;
4. Such a tendency to allow artificial techniques is the primary factor of the dwindling male to female ratio.
5. Such practices are derogatory and offend the dignity of women;
6. It ignores Article 51A(e) of the Constitution, which states that it shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women.

2. Rajendra Prasad v. Allahabad High Court and another [1998 All LJ 2380]

It was held that committing an offence under sections 304B and 498A amounted to “moral turpitude.” It is the fundamental duty of every citizen “to renounce prac-

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tices derogatory to the dignity of women” as per Article 51A of the Constitution.

3. Indian Young Lawyers Association v. State of Kerala [The Sabarimala Case] [AIR 2018 SC (Supp) 1650]

The Ayyappa temple in Sabarimala region in Kerala has the provision of restricting entry of women of menstruating age (10-15 years of age) into Sabarimala Temple, Kerala.

In this case, there were many issues raised in which it was argued by petitioners that provisions related to the restriction of women entry in temples are unconstitutional as it violates Articles 14, 15, 17, 25, 26 of the Indian Constitution. the practice of excluding women from the temple at Sabarimala is not an essential religious practice. The Court must decline to grant constitutional legitimacy to practices which derogate from the dignity of women and to their entitlement to equal citizenship. It is against Article 51A (e) of the Constitution.

A 4:1 majority held that the temple’s practice of excluding women is unconstitutional. It held that the practice violated the fundamental right to freedom of religion, Article 25(1) of female worshippers. It struck down Rule 3(b) of the Kerala Hindu Places of Public Worship Act as unconstitutional. Rule 3(b) allowed for Hindu denominations to exclude women from public places of worship, if the exclusion was based on ‘custom’.

A review petition in the case was filed before the constitutional bench which referred the matter further to a nine-Judge Bench. In addition to the Sabarimala issue, the nine-Judge Bench would examine larger issues of law like the prohibition of women from entering mosques and temples to genital mutilation among Dawoodi Bohras and the banning of Parsi women who married inter-faith from entering the fire temple.

FAQs- REALITY CHECK

1. Why are fundamental duties important?

The fundamental duties serve as a reminder to citizens that while enjoying their rights, they have also to be quite conscious of duties they owe to their country, their society and to their fellow-citizens.

2. Is violation of fundamental duty a punishable offence?

In case of violation of fundamental duties enshrined in the constitution by a citizen and made a punishable offence under statutory provisions such as Prevention of Insults to National Honour Act, 1971.

3. How many fundamental duties are there under the Constitution of India?

Originally ten in number, the fundamental duties were increased to eleven by the 86th Amendment in 2002, which added a duty on every parent or guardian to ensure that their child or ward was provided opportunities for education between the ages of six and fourteen years.

4. My aunt never sent her children to school and now they are 7 years old. Is there any provision under the Constitution for such a situation?

It is the Fundamental duty of a parent or guardian, to provide opportunities for education to his child, or as the case may be, ward between the age of six to fourteen years.

5. Is standing up for our National Anthem a fundamental duty?

Yes, to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem is the foremost fundamental duty of a citizen.

6. Is Fundamental duties a part of the Constitution of India?

Yes, Article -51A is there in Part-IV-A of the Indian Constitution which states the fundamental duties of the citizens of India.

7. Is there a difference between fundamental rights and fundamental duties?

Yes, fundamental rights are the freedoms guaranteed by the constitution, which can't be taken away from a citizen. Whereas fundamental duties are the moral responsibilities of all the citizens that need to be performed by them in order to achieve prosperity and uphold the unity of the nation.

8. My cousin is a foreign national. She was born and raised in Australia. If she visits India, will the fundamental duties be imposed on her?

No, The Fundamental Duties are confined to Indian citizens only and do not extend to foreigners unlike few Fundamental Rights.

9. Is there any fundamental duty under the Constitution of India where I have to protect my country against any terrorist attack?

Yes, it is the duty of every citizen to defend our country against external enemies. All the citizens are bound to be conscious of any such elements entering

India and also when in need, they should be ready to take up arms to defend themselves.

10. I was visiting Taj Mahal when I saw a few boys trying to carve their names on the walls inside. Is there a fundamental duty as a citizen to preserve such monuments?

Yes, our cultural heritage is one of the noblest and richest, it is also part of the heritage of the earth. Hence it is our duty to protect what we have inherited from the past, preserve it and pass on to the future generations. India is one of the most ancient civilizations of the world.

PRACTICAL CASE SCENARIO

PRACTICAL CASE SCENARIO NO. 1

According to a religious sect, there is a ritual (puja) which can only be done by men above 12 years of age. The ritual consists of rotating a *thali* (plate), which contains a lighted incense stick and chanting mantra (hymns). For years, the ritual has only been done by men of the family. Women are strictly not allowed to conduct the ritual. Two women of the sect filed a PIL against such a ritual. What can the decision of the Court be?

Answer: Such practices are against Article 51A(e) of the Constitution of India. The facts of the case are actually similar to Sabarimala's judgment. The letter and spirit of the Constitution must always prevail over superstitious and discriminatory practices of any religion.

PRACTICAL CASE SCENARIO NO. 2

The Ministry of Home Affairs recently issued a notification by which all the bar dancing and the related activities shall be banned entirely. What is the validity of such a notification?

Answer: The Government cannot issue such an order stating that it is violative of Article 51A(e) of the Constitution. Bar dancing in no way is derogatory against women. There have been many Supreme Court judgments on this point. The recent trend of the Supreme Court has been pro-feminism, and the scope of what practices are derogatory and what is not has changed. Therefore, the Government cannot pass such an order. It may regulate the same by-passing guidelines.

ASSESS YOURSELF: MULTIPLE CHOICE QUESTIONS

1. Which of the following Fundamental Duty was introduced by the Constitution (Eighty-sixth Amendment) Act?

- a. It is the duty of a parent or guardian to provide opportunities for education to his child or as the case may be, ward, between the age of six and fourteen years.
- b. To safeguard public property and abjure violence.
- c. To strive towards excellence in all spheres of individual and collective activity rises to higher levels of endeavor and achievement.
- d. None of the above.

2. How many Fundamental Duties were incorporated by Constitution (Eighty sixth Amendment) Act, 2002?

- a. 3
- b. 2
- c. 4
- d. 1

3. How many Fundamental Duties were originally there in Article 51A of the Constitution of India?

- a. 11
- b. 10
- c. 9
- d. 12

4. Fundamental Duties contained in Article 51A of the Constitution of India are _____.

- a. Enforceable when some Fundamental Right has been violated
- b. Enforceable per se even there is no statute making such duty a legal Duty
- c. Not enforceable in the absence of Statute making such duty a legal Duty
- d. Not enforceable but nevertheless they are fundamental in the governance

5. The Fundamental duties are intended to serve as a reminder to _____.

- a. The Judiciary to administer justice properly
- b. Every citizens to observe basic norms of democratic conduct

- c. The State to perform duties conferred by the Constitution
- d. The Legislature wing to make laws for the welfare of the State

6. Which among the following is a fundamental duty under the Constitution?

- a. To defend the country and render national service when called upon to do so
- b. To value and preserve the rich heritage of our composite culture;
- c. To protect and improve the natural environment including forests, lakes, rivers, wildlife and to have compassion for living creatures;
- d. All of the above

7. _____ are the legal responsibilities bestowed upon the citizens to perform.

- a. Fundamental rights
- b. Fundamental duties
- c. Directive Principles
- d. Writs

8. Fundamental duties consist of _____.

- a. Moral duties
- b. Civil duties
- c. Both (a) and (b)
- d. None of the above

9. Which among the following are not a part of the fundamental duties?

- a. Citizens to be penalized/punished by the Parliament for any non-compliance with or refusal to observe any of the duties.
- b. Duty to pay taxes
- c. Both (a) and (b)
- d. None of the above

10. To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women is one of the fundamental duties. The statement is _____.

- a. Correct

- b. Incorrect
- c. Partly correct
- d. None of the above

ANSWER KEY									
1	2	3	4	5	6	7	8	9	10
a	d	b	c	c	d	b	c	c	a

**LEGAL AWARENESS PROGRAMME
BY
NATIONAL LEGAL SERVICES AUTHORITY
IN COLLABORATION WITH
NATIONAL COMMISSION FOR WOMEN
&
KNOWLEDGE PARTNER- ALL INDIA REPORTER**

**IEC & TRAINING MODULE
For RESOURCE PERSONS
ON**

**WOMEN AND THE CONSTITUTION
CONSTITUTIONAL REMEDIES**

Training Module

Women and the Constitution – Constitutional Remedies

The IEC & Training Module is primarily for Resource Persons of NALSA, as it focuses on particular responsibilities in spreading legal awareness about women and Constitutional remedies. This is the part of the Legal Awareness Programme undertaken by National Legal Services Authority in collaboration with National Commission for Women. Resource Persons will find it as a useful source of information & guidance.

The main objective of this IEC & Training Module is to inspire, motivate, cultivate curiosity, shape the opinion and enlighten the Resource Persons on issues concerning women & remedies available to her.

The overall content consists of provisions that guarantee protection and safeguard guaranteed to women in form of remedies. This has been written in an interactive Question Answer style, in a lucid and simple language.

NALSA hopes that the Resource Person will be benefitted immensely by these IEC & Training Modules

Objective

- *To give an overview of the safeguard measures enacted for women under the Constitution of India*
- *The writs have been among the great safeguards provided by the Constitution for upholding the rights and liberties of the people*
- *The expression 'prerogative writ' refers to the extra-ordinary writs granted by the Sovereign, as fountain of justice, on the ground of inadequacy of original legal remedies*
- *High Courts have powers under Article 226 and the Supreme Court has the similar power provisioned under Article 32 of the Constitution of India*

Learning Outcome

The participants (Resource Persons) will be able to completely understand their role & responsibilities in spreading awareness about Constitutional remedies available to women under the Constitution.

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WOMEN AND THE CONSTITUTION - CONSTITUTIONAL REMEDIES

INTRODUCTION

A very significant aspect of the Constitution of India is the jurisdiction it confers on the Supreme Court and the High Courts to issue writs in case of violation of any fundamental right. In fact, this provision of 'Constitutional remedy' has been described as 'Heart and Soul' of the Indian Constitution by Dr. B. R. Ambedkar. The writs have been among the great safeguards provided by the Constitution for upholding the rights and liberties of the people. The expression 'prerogative writ' refers to the extraordinary writs granted by the Sovereign, as fountain of justice, on the ground of inadequacy of original legal remedies.

High Courts have powers under **Article 226** and the Supreme Court has the similar power provisioned under **Article 32** of the Constitution of India. When the laws are inconsistent with or in derogation of the fundamental rights, which are conferred by Part III of the Constitution, they shall be declared void as per judgement and analysis of the courts, the Courts have the power to adjudge the Constitutional validity of all laws.

Article 32 provides the right to an individual to directly approach the Supreme Court for enforcement of fundamental rights invoking Writ Jurisdiction of the Supreme Court. Furthermore, the writs are generally summoned against the state and are issued when PILs are recorded. The Writ Jurisdiction which are presented by the Constitution, however, have privilege controls and are optional in nature but then they are unbounded in its breaking points. The carefulness, in any case, is practiced on legitimate standards.

Hence, obviously immense forces are vested with the Judiciary to control a managerial activity when it encroaches fundamental privileges of the subjects or when it goes past the soul of Grundnorm of our nation i.e., Constitution of India. It guarantees the Rule of Law and appropriate check and equalizations between the three organs of our democracy operating on a vote-based framework. The rationality of writs is very much synchronized in our Constitutional arrangements to guarantee that privileges of nationals are not smothered by a self-assertive authoritative or Judicial activity.

WRITS AT A GLANCE

Writs	Meaning of writ	Purpose of issuance
Habeas Corpus	To have the corpus or bring the body	By issuing this writ the Court orders the person detaining another person to produce the detainee before the Court to enable it to examine the legality of detention
Mandamus	A command or an order	It is used for public purpose and to compel the performance of public duties. It is in the nature of command requiring any specific act to be done or not to be done by any person holding office
Prohibition	To prohibit	It is issued by a superior Court to an inferior Court or Tribunal to prevent it from assuming jurisdiction which is not vested in it. A writ can be issued against a Judge of an inferior Court if that Judge is interested in that case or is biased
Certiorari	To review	It is issued by the High Court or the Supreme Court to an inferior Court or a body exercising judicial or quasi-judicial functions to remove the proceedings from such Court or body for investigating legality of the proceedings
Quo-Warranto	To question the authority?	A holder of an office is called upon to show to the Court under what authority he holds the office. If the Court finds that the holder of the office has no valid title it will oust the person by issuing this writ

CONSTITUTIONAL REMEDIES AT A GLANCE

Fundamental Rights can be enforced through Articles 32 and 226	Article 32 deals with enforcement of fundamental rights before the Supreme Court	Article 226 deals with enforcement of rights before the High Courts
Five writs are provided for enforcement of fundamental rights	Habeas Corpus Writ issued for illegal detention, confinement and arrest	Mandamus Writ issued to direct any Government, Inferior Court, Tribunal, etc. to do an act or to
Certiorari Writ issued to an inferior Court to check the validity of judicial acts	Prohibition Writ issued to prevent transgression of powers by Lower Court	Quo-warranto Writ issued to check authority and validity of a person occupying public

✦ Is the right to constitutional remedy a fundamental right?

Article(s) 32 and 226 of the Constitution, are the Fundamental Right and functions as an effective machinery for the enforcement of other Fundamental Rights. This Article provides that if the fundamental right of an individual is taken away or abridged by the State or any statute, a person can directly move to the Supreme Court (or High Court under **Article 226**) for the enforcement of his/her Fundamental Right. This right is available equally to men as well as to women.

✦ What are Writs?

A Writ is a formal written order which directs one to act or abstain from acting in a particular way. **Article(s) 32 and 226** of Constitution of India, deal with writ jurisdiction of Supreme Court and High Court, writs are designed to enforce fundamental rights and to review the administrative actions. The Constitution also provides for public interest litigations which can be filed for any matter where the interest of public at large is affected. Whenever a fundamental right of a person is violated or infringed, he may approach a High Court or Supreme Court for redressal of his grievance.

✦ **How many types of Writs are there?**

There are five types of Writs through which a person can seek remedy from High Court or Supreme Court.

- HABEAS CORPUS
- MANDAMUS
- CERTIORARI
- PROHIBITION
- QUO-WARRANTO

✦ **What is 'Writ of Habeas Corpus'?**

Meaning

- The term Habeas Corpus means 'To have the body'

General Principle

- This Writ is used when a person is detained, confined or imprisoned illegally
- Any person who has been arrested or detained without following due procedure like without warrant, reasons, or is not presented before Magistrate within time frame, then such a person has remedy to approach the Court for Writ of Habeas Corpus
- If the detention is found to be illegal, the Court may order release of such person

✦ **Who may file the Writ of Habeas Corpus?**

The Writ can also be exercised against private persons when a person has illegally or without any authority detained or confined some other person. An individual can be a minor wife, child, or as the situation may be, and the affected person, himself or through his representative, family or any other person, seeks relief.

✦ **How a Writ of Habeas Corpus is filed?**

- An application for habeas corpus can be made by any person on the behalf of the prisoner/detenué as well as the prisoner/detenué himself;
- A letter to the Judge mentioning illegalities committed on prisoners in jail can be admitted;

- Courts can also act suo motu in the interests of justice on any information received by it from any quarter/source.

✦ **What is the Writ of Mandamus and when can it be claimed?**

Meaning

- The Writ of Mandamus means 'To command' i.e. to order,

General Principle

- It is a command issued by the Supreme Court or High Court to direct any Government, inferior Court, Tribunal, Public authority, Corporation or any other person having public duty, to do an act or to abstain from doing an act
- Person, against whom the Writ is claimed, should have a duty to do something as imposed by Constitution, a statute, common law or by rules having force of law. Such an authority may have administrative, legislative, judicial or quasi-judicial functioning
- For instance, if any public authority abstains from doing something, which by law or rules he is bound to do, then in such cases, a person affected may approach the Court for enforcement of such duty
- The existence of an alternate remedy is not an absolute bar in this writ; however the person claiming must have legal right to compel performance.

✦ **What are the necessary conditions for issuance of 'Writ of mandamus'?**

- Error of jurisdiction- Lack or excess of jurisdiction
- Violation of the principle of natural justice- Principles of rule against bias and rule of audi alteram partem
- Error of law apparent on the face of record

✦ **What is the Writ of Certiorari and when can it be claimed?**

Meaning

- The Writ of Certiorari means 'To certify' or 'To certain'

General Principle

- Writ of certiorari is issued by a Superior Court to remove the proceedings from the inferior Court or Tribunal or body exercising a judicial or quasi-judicial function.
- The Supreme Court or High Court may transfer the matter to Inferior Court or to some other superior authority for proper consideration or to quash the order/judgment which has already been passed by Inferior Court.

- It acts as a direction to Inferior Court asking them to function within the limits of jurisdiction assigned to them and to prevent them from acting in excess of it.
- Prerequisite to claim relief is that there must be an error of jurisdiction by the inferior/lower Court or prima facie violation of principles of natural justice i.e. biased-ness or lack of opportunity.
- Most effective remedy to right the wrong of a Lower Court.

✦ In which ways a 'Writ of Certiorari' is issued?

It cannot be issued against purely administrative or ministerial orders and that it can only be issued against judicial or quasi-judicial orders.

1. Either without any jurisdiction or in excess
2. In violation of the principles of Natural Justice
3. In opposition to the procedure established by law
4. If there is an error in judgment on the face of it

✦ What are the necessary conditions for issuance of 'Writ of Certiorari'?

1. Anybody of persons
2. Having legal authority
3. To determine questions affecting the rights of subjects
4. Having the duty to act judicially
5. Act in excess of legal authority

✦ What are the grounds for issuance of 'Writ of Certiorari'?

1.	Error of Jurisdiction	Lack of Jurisdiction
2.	Excess of Jurisdiction	a. Abuse of Jurisdiction b. Error of law apparent on the face of the record c. Violation of Principles of Natural Justice

✦ What is the Writ of Prohibition and when can it be claimed?

Meaning

- The Writ of Prohibition as the word suggests, means 'To Prohibit'

General Principle

- Through this Writ, the Supreme Court or High Court prevents the inferior Court from transgressing/ crossing its powers. This is issued by a Superior Court to an inferior Court or tribunal or body, to prevent it from usurping jurisdiction,

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which is not legally vested in it or to stop it from violating principles of Natural Justice

- This Writ is issued during the pendency of the proceedings unlike certiorari, which is issued after completion of proceedings
- Prohibition Writ relies on the principle of 'prevention is better than cure' and restrains the inferior court before reaching finality.

✦ **What are the grounds of issuance of Writ of Prohibition?**

1. Violation of the Principles of Natural Justice
2. Absence or Excess of Jurisdiction
3. Unconstitutionality of a Statute
4. Infraction of Fundamental Rights

✦ **What is the Writ of Quo-Warranto and when can it be claimed?**

Meaning

- A Writ of Quo-Warranto means 'By what authority'

General Principle

- It is issued to check the suitability of a candidate for appointment in a public office
- Any person who without any authorization occupies a public office, then the Court may ask him/her as to by what authority he claim that position. He is required to justify his sitting/ position and if the occupation is found to be unauthorized, then the Court may vide a judicial order, oust/remove the person from such position and in certain situations even instate the person authorized to occupy it
- Through this Writ, judiciary is empowered to control executive action in matter of appointment to public office against relevant statutory provisions.

✦ **What are the necessary conditions for issuance of Writ of Quo-Warranto?**

1	The office must be public and it must be created by a statute or by the Constitution itself
2	The office must be a substantive one and not merely the function or employment of a servant at the will and during the pleasure of another
3	There has been a contravention of the Constitution or a statute or statutory instrument, in appointing such person to that office
4	The claim should be asserted on the office by the public servant i.e. respondent

FAQs- REALITY CHECK

1. My mother has been detained in the prison, if I want a public official to deliver her in front of the Court and provide valid reasons for her detention, which Writ can I file?

You can file the writ of Habeas Corpus. It is a writ that is enforced in order to protect the fundamental rights and liberty of an individual against unlawful detention.

2. Seema, my daughter was taken into police custody and was presented in the Court. She was neither given any lawyer, nor was given a right to present her case. Can I get the case transferred to another court?

Yes, by issuing the writ of Certiorari, a suit can move from an inferior court to a superior court. The writ of Certiorari can be issued when a subordinate court acts illegally and violates the rules of natural justice.

3. My sister was arrested while she was studying in SIS College, Mumbai. The Principal of the college informed my father about the arrest. For months, the whereabouts of my sister was not told to my family. What can I do in such a situation?

You can file a Writ of Habeas Corpus against unlawful detention.

4. 2 weeks ago I went to a police station to file a complaint. The police officer in-charge did not register my complaint. What remedy do I have?

You can file a Writ of Mandamus and the Court can compel him to register your complaint.

5. When can I file a Writ of Mandamus?

If your legal right has been infringed you can file a Writ of Mandamus.

6. One of my colleagues has not cleared the Civil services exam and yet he poses as a police officer. What can be done in such a situation?

If he is not qualified and has illegally taken possession of the office of a police officer, the Court can issue the Writ of Quo Warranto and challenge this possession.

7. My friend is a police officer and he has a special interest in a robbery case in our district as he knows the accused personally. Can he be removed from the case?

Yes, a Writ of prohibition can be filed if he is doing something which exceeds his jurisdiction or acts contrary to the rule of natural justice.

8. In case of error or abuse of jurisdiction which Writ can be filed?

The Writ of Certiorari.

9. What is Writ of Quo Warranto?

The Writ of Quo Warranto (by what warrant) is issued to inquire about the legality of a claim by a person or authority to act in a public office, which he or she is not entitled to.

LANDMARK JUDGMENTS**1. Hussainara Khatoon v. Home Secretary, State of Bihar [AIR 1979 SC 1369]**

The present case is a landmark judgment on the speedy trial of cases that came to be recognized as a fundamental right of every accused person. It is a facet of the rightful administration of justice. The Constitutional obligation upon the State to undertake the protection of rights of individuals under Article 21 is inclusive of the duty to ensure there is a speedy trial of cases. It also ensures the right to access free legal services to the poor as an essential part of Article 21 of the Constitution.

The writ petition was filed before the Court for the hearing of the release of under-trial prisoners in the state of Bihar. The state of Bihar was directed to file a revised chart showing a year wise break-up of the under-trial prisoners after dividing into two broad categories viz. minor offenses and major offenses that were not carried out.

The Court directed the under-trial prisoners whose names and particulars were given in the list filed by Mrs. Hingorani to be released forthwith as continuance of their detention is illegal and in violation of their fundamental right under Article 21 of the Constitution because they have been in jail for a duration exceeding the maximum term that they should have been convicted for. The Court also realized the plight of under-trial prisoners who are for most times, unaware of their right to obtain release on bail or due to poverty, are unable to engage a lawyer. For this, the need for an adequate and comprehensive legal service program was called for.

2. Dr. Upendra Baxi And Ors. (I) v. State of U.P. And Ors. [AIR 1987 SC 191]

The case is related to a Protective Home in Agra where abandoned women and girl children were kept, leading inhuman life to the extent of having no clothes to wear. Some of them were suffering from diseases and were being kept along with the healthy girls. Moved by these pathetic conditions two law professors, Upendra Baxi and Lothika Sarkar of Delhi University filed a PIL, seeking court's directions to the State Government to protect the basic human rights of the inmates of the protective home at Agra which was established under the provisions of the Suppression of Immoral Traffic in Women and Girls Act 1956.

The Supreme Court through Justice Bhagwati made an order giving various directions in order to ensure that the inmates of the Protective Home at Agra do not continue to live in inhuman and degrading conditions and that the right to live with dignity enshrined in **Article 21** of the Constitution is made real and

meaningful for them. He gave certain directions to the State government running the home, on the treatment meted out to the girl children and women in the Home and with regard to the adequate toilet facilities, hospital facilities and for providing proper clothing to the inmates.

3. People's Union for Democratic Rights and Others v. Union of India & Others [AIR 1982 SC 1473]

In this case, a complaint was filed alleging violation of **Article 24** of the Constitution (which prohibits employing children below the age of 14 years in hazardous employment) on behalf of child labourers employed in construction work in Delhi. Working at a feverish pace, often far beyond the working hours fixed by laws without the minimum daily wages due to them living in hovels, the children dying of malnutrition frequently becoming victims of accidents, these workers were forced to complete the ASIAD projects in time. The terrible working and living conditions to which these workers were subjected were first brought to public notice by a fact-finding team of the People's Union for Democratic Rights (PUDR) which visited some of the major sites and interviewed the workers as well as their employers.

The People's Union for Democratic Rights followed this up by filing a writ petition before the Supreme Court on November 16, 1981, by way of PIL in order to issue observance of the provisions of various labour laws in relation to the workers employed in the construction work of the ASIAD-82 projects.

The court by its decision upheld the right of a poor worker to directly approach the Supreme Court under **Article 32** of the Constitution of India for the enforcement of rights created under various labour laws and particularly under the provisions of Contract Labour (Regulation and Abolition) Act, 1970, Interstate Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1977, Equal Remuneration Act, 1976, Employment of Children Act, 1970 and Minimum Wages Act, 1948. The Supreme Court extended the scope of the meaning of **Article 21** of the Constitution (right to life) to include the right to livelihood along with the 'right to live with basic human dignity'.

4. Bandhua Mukti Morcha v. Union of India & Ors. [AIR 1984 SC 802]

The petitioner Bandhua Mukti Morcha is an NGO which works for the welfare of the people. While they were conducting a survey, they found some

stone quarries in Faridabad where the workmen were operating in extremely dangerous situations. The working conditions were very unhygienic and unsuitable for these workers who had come from different parts of the country to work here.

The petitioner wrote a letter to Justice Bhagwati regarding the workplace and working conditions of those workmen. This letter was taken as a writ petition under **Article 32** of the constitution and a commission was made to enquire about the allegations put forth by the petitioner. The allegations were proved right as per the findings of the commission and there was infringement of the rights of the labourers.

In the judgment, the Court discussed the importance of protecting children's rights to education, health, and development in ensuring India's progress as a democracy. While recognizing that child labor could not be abolished immediately due to economic necessity, the Court found that pragmatic steps could be taken to protect and promote the rights of children in the poverty-stricken and vulnerable populations of Indian society.

PRACTICAL CASE SCENARIO**PRACTICAL CASE SCENARIO NO. 1**

Anjali was recruited as a subject expert under Zilla Parishad School Wardha from women category. It was specifically mentioned under the appointment letter that she was appointed for Wardha only. But after a few years of her joining, Government declared it as surplus and she along with some other employees transferred to Jalgaon. But one year later she came to know that there a post vacant in Wardha and she applied for transfer as she had a very small baby and her mother in law was not well. In the meanwhile a male candidate got transferred to Wardha and Anjali's transfer application was dismissed. What remedy is available with Anjali?

Anjali is appointed under women category and in her appointment letter it is specifically mentioned that she is appointed for Wardha only. But she was transferred to Jalgaon. Anjali can file a writ petition under **Article 226** to the High Court for issuance of transfer order in her favour under the writ of Mandamus.

PRACTICAL CASE SCENARIO NO. 2

'Seema' who is employed as a teacher in a privately managed aided school in the State of Haryana. She was paid less salary and dearness allowance as paid to the teachers employed in Government Schools. She challenged it by filing a Writ Petition. It was contended by the Authorities that 'equal pay for equal work' is not a fundamental right and hence a writ petition cannot be filed.

In the above example, the contention of the authorities is incorrect and baseless. The principle of 'equal pay and equal work', though not a fundamental right, is certainly a constitutional goal and therefore, capable of enforcement through constitutional remedies under **Article 32** of the Constitution of India.

PRACTICAL CASE SCENARIO NO. 3

Azra was married to Aasif Khan at the age of 20 years on 10th August 2005. After 15 years they had some arguments with each other and Aasif divorced her through talaq-e-biddat (Triple Talaq). She had never gone to school and she is not aware of any legal provisions. Is there any remedy for her under Constitution of India?

Azra may file a writ petition to the High Court under **Article 226** of the Constitution of India, triple talaq is illegal and it infringes the **Article(s) 14, 15, 21 and 25** of the Constitution. Triple talaq is a practise which gives a man the right to divorce a wife by uttering talaq three times in one sitting without wife's consent. Supreme Court in one of the leading judgment of Shayara Bano v. Union of India (AIR 2017 SC 4609) declared triple talaq as unconstitutional.

PRACTICAL CASE SCENARIO NO. 4

Aman has a business of tours and travels, but he was actually involved in business of illegal business of pistol selling without a license. Anjali his wife did not know anything about it. On 10th August 2020 police arrested Aman and two days later Anjali was also arrested for concealing the facts and being involved in illegal business. Is there any remedy available with Anjali?

Anjali is innocent as she was unaware of the illegal business her husband was carrying and the police have illegally detained her. She can file a writ petition under **Article 226** of the Constitution before the High Court.

ASSESS YOURSELF: MULTIPLE CHOICE QUESTIONS

1. Which of the following Writs is issued by an appropriate judicial body in order to free a person who has been illegally detained?

- a. Prohibition
- b. Habeas Corpus
- c. Certiorari
- d. Quo-Warranto

2. Mandamus is a prerogative Writ, it lies against _____.

- a. Parliament not to enact on a particular subject
- b. Anyone to enforce a contractual obligatory
- c. A public authority to restrain it from acting under a law which has been declared unconstitutional
- d. A company

3. Certiorari is a prerogative Writ issued to _____.

- a. Stop inferior courts from violating the principles of natural justice only
- b. A judicial body on the ground of wants or excels of jurisdiction or violation of the principles of natural justice
- c. Compel some public authority to perform some duty
- d. None of these

4. The Supreme Court and the High Courts have power to issue prerogative Writs, it is _____.

- a. Not clear so far
- b. Not permissible for the Supreme Court to admit a petition without a certificate from the High Court
- c. A mandatory condition that a petitioner must approach a High Court first
- d. Permissible for the Supreme Court to entertain a petition

5. Prohibition and Certiorari are Writs issued against _____.

- a. Government
- b. Individuals

- c. Courts
- d. Legislature

6. Writ of certiorari is issued _____.

- a. After the decision is given by the Inferior Court or Tribunal
- b. Before the decision is given by the Inferior Court or Tribunal
- c. In both the conditions stated above
- d. None of the above condition

7. When a Writ is issued to an Inferior Court or Tribunal from exceeding its jurisdiction or acting contrary to the rules of natural justice it is called a Writ of _____.

- a. Prohibition
- b. Quo-warranto
- c. Certiorari
- d. Mandamus

8. In the Indian Constitution, the power to issue a writ of Habeas Corpus is vested with _____.

- a. The Supreme Court and High Courts
- b. The Supreme Court only
- c. The High Court only
- d. The Subordinate Courts

9. Under the Writ of Mandamus, the Court can _____.

- a. Ask the person to be produced
- b. Order to transfer the case from one Court to another
- c. Ask to let a person free for a temporary period
- d. Direct the Government to do or not to do a thing

10. The High Court has the power to issue writs under _____.

- a. Article 227
- b. Article 226
- c. Article 225
- d. Article 224

ANSWER KEY									
1	2	3	4	5	6	7	8	9	10
b	c	b	d	c	a	c	a	d	b

PART - B

Women & Family Law

**LEGAL AWARENESS PROGRAMME
BY
NATIONAL LEGAL SERVICES AUTHORITY
IN COLLABORATION WITH
NATIONAL COMMISSION FOR WOMEN
&
KNOWLEDGE PARTNER - ALL INDIA REPORTER**

**IEC & TRAINING MODULE
For Resource Persons
ON**

**FAMILY LAW
MARRIAGE & DIVORCE**

Training Module**MARRIAGE & DIVORCE**

The IEC & Training Module is primarily for Resource Persons of NALSA, as it focuses on particular responsibilities in spreading legal awareness about the various personal laws dealing with Marriage and Divorce. This is part of the Legal Awareness Programme undertaken by the National Legal Services Authority in collaboration with the National Commission for Women. Resource Persons will find it as a useful source of information & guidance.

The main objective of this IEC & Training Module is to inspire, motivate, cultivate curiosity, shape the opinion, and enlighten the Resource Persons on various enactments dealing with Marriage and Divorce.

The overall content has been written in an interactive Question Answer style, in a lucid and simple language.

NALSA hopes that the Resource Person will be benefitted immensely by these IEC & Training Modules.

Objective

To give an overview of the Scheme made under The Hindu Law, The Muslim Law, The Parsi Law, The Christian Law, the Special Marriage Act concerning Marriage and Divorce.

Learning Outcome

The participants (Resource Persons) will be able to completely understand their role & responsibilities in spreading awareness about the Marriage and Divorce provisions under various enactments.

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FAMILY LAW: MARRIAGE AND DIVORCE

India being a secular country has a wide range of religions that are practiced freely. Each community has its own family law. Hindus, have their separate family laws so have the Muslims. Christians, Parsis, and Jews too have their own separate family laws.

People solemnize marriages in accordance with religious rituals and ceremonies, which are mostly codified by statutory personal laws. Therefore, the matrimonial laws in India, including laws on marriage, divorce and other connected issues, are essentially governed by the personal laws of the parties depending on their religion:

- Hindu: Hindu Marriage Act, 1955.
- Muslim: Muslim marriage is a contract under Muslim law.
- Christian: Indian Christian Marriage Act, 1872 and the Divorce Act, 1869.
- Parsi: Parsi Marriage and Divorce Act, 1936.

In India, we have another aspect of family law, which can come into operation if parties choose to be governed by it. Any two persons belonging to any community or nationality may opt to marry under the Special Marriage Act, 1954. This is a civil legislation and parties from all religions, caste or community can elect to marry and get divorced according to the provisions of the Act. There is a uniform family law applicable to both persons, though they profess different faiths, once they marry under the Act.

Under the Constitution of India, all aspects of personal law are in the concurrent list (Entry 5). Both Parliament and the state legislatures have power to legislate in respect of them. Apart from legislation relating to Muslim wakfs and Hindu endowments, state legislatures have not exercised this power to any appreciable extent. The entire codified Hindu law has been enacted by the Union Parliament, though some state legislature have made some modifications; for instance, the Uttar Pradesh enactment, the Hindu Marriage (the Uttar Pradesh Sanshodhan) Adhinyam, 1962 has made, inter alia, cruelty a ground of divorce. This may be deemed to be superseded by the Marriage Laws (Amendment) Act 1976, which made cruelty a ground of divorce. The Shariat Act, 1937 and the Dissolution of Muslim Marriage Act, 1939; were passed by Central legislature. So were the Parsi Marriage and Divorce Act, 1936; the Christian Marriage Act, 1872 and the Indian Divorce Act, 1869 and several Hindu personal law reform enactments before independence.

Marriage

✦ Introduction

India is the only country in the world that permits persons belonging to different religions to follow their own personal laws based on religion. Therefore, in respect of personal matters like marriage, divorce, succession and maintenance, different personal laws are followed, depending on the religion of the person, which give rise to different marriage laws, succession laws and divorce laws, applicable to different religions like Hindusim, Islam, Christianity and Parsis. Thus, the Hindus are governed by the Hindu Marriage Act, 1955, the Muslims are governed by the tenets of Holy Quran, the Christians are governed by the Christian Marriage Act, 1872 and Parsis are governed by Parsi Marriage and Divorce Act of 1936 other laws. In addition, there exists a secular law providing for a civil form of marriage known as the Special Marriage Act, 1954. This can be availed by the persons domiciled in India regardless of their faith.

Laws relating to marriage have been clearly codified in different Acts that are applicable to people of a different religion. These acts are:

1. The Converts' Marriage Dissolution Act, enacted during 1866
2. The Indian Divorce Act, enacted in 1869
3. The Indian Christian Marriage Act, enacted during 1872
4. The Kazis Act, enacted during 1880
5. The Anand Marriage Act, enacted in 1909
6. The Indian Succession Act, enacted during 1925
7. The Child Marriage Restraint Act, enacted in 1929
8. The Parsi Marriage and Divorce Act, enacted in 1936
9. The Dissolution of Muslim Marriage Act, enacted during 1939
10. The Special Marriage Act, enacted during 1954
11. The Hindu Marriage Act, enacted during 1955
12. The Foreign Marriage Act, enacted in 1969 and
13. The Muslim Women (Protection of Rights on Divorce) Act, enacted in 1986.

HINDU MARRIAGE ACT, 1955

The Hindu Marriage Act was enacted by Parliament in 1955 to amend and to codify marriage law amongst Hindus as well as regulating the institution of marriage (including validity of marriage and conditions for invalidity). The Act also regulates other aspects of personal life among Hindus. It provides guidance for Hindus to be in a systematic marriage bond.

Knowledge Partner : All India Reporter Pvt Ltd

✦ To Whom does the Hindu Marriage Act apply?

The Act applies to [Section 2] :

- a. Any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samam,
- b. Any person who is a Buddhist, Jaina or Sikh by religion, and
- c. Any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

The expression “Hindu” will also include any person who, though not a Hindu by religion is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in Section 2.

✦ Who are Hindus, Buddhists, Jainas or Sikhs?

The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be:

- a. any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion;
- b. any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged; and
- c. any person who is a convert or re-convert to the Hindu, Buddhist, Jaina or Sikh religion.

✦ To whom Hindu Marriage Act does not apply?

- a. to converts from the Hindu to the Mohammedan faith;
- b. to the Hindu converts to Christianity;
- c. to the illegitimate children of a Hindu father by Christian mother and who are brought up as Christians;
- d. to the members of any Scheduled tribe within the meaning of clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

✦ Is Hindu marriage a Sacrament or a Contract?

As defined by Paras Diwan, “It has the semblance of both. It has a semblance of a contract as consent is of some importance; it has semblance of a sacrament as in most marriages a sacramental ceremony is still necessary.”

✦ **What are conditions for a valid Hindu marriage as provided by the Hindu Marriage Act, 1955?**

Section 5 of The Hindu Marriage Act specifies that certain conditions that have to be complied for solemnization of a marriage:

- a. The persons getting married must be unmarried or must not have a living spouse from their previous marriage.
- b. The legal age for a woman is 18 years and for a man is 21 years.
- c. The sanity of mind is necessary for both the parties and they must be capable to give their consent to the marriage freely.
- d. The persons getting married must be mentally fit for the marriage i.e. they must not be suffering from any mental illness.
- e. Both the bride and groom should not be 'sapindas' of each other except if it is allowed under their respective custom or usage.

✦ **What are void and voidable Hindu Marriages?**

A marriage may be declared void if:

- a. Either party is under age. The bridegroom should be of 21 years of age and the bride of 18 years.
- b. Either party is not of a Hindu religion. Both the bridegroom and the bride should be of the Hindu religion at the time of marriage.
- c. Either party is already married. The Act expressly prohibits polygamy. A marriage can only be solemnized if neither party has a living spouse at the time of marriage.
- d. The parties are sapindas or within the degree of prohibited relationship.

A marriage may later be voidable (annulled) if:

- a. Either party is impotent, unable to consummate the marriage, or otherwise unfit for the procreation of children.
- b. One party did not willingly consent. In order to consent, both parties must be of sound mind and capable of understanding the implications of marriage. If either party suffers from a mental disorder or recurrent attacks of insanity or epilepsy, then that may indicate that consent was not (or could not be) given. Likewise, if consent was forced or obtained fraudulently, then the marriage may be voidable.
- c. The bride was pregnant by another man other than the bridegroom at the time of the marriage.

✦ **What are the customary ceremonies required for a valid Hindu marriage?**

Section 7 of the Hindu Marriage Act recognizes that there may be different, but equally valid ceremonies and customs of marriage. As such, Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either the bride or the groom. These rites and ceremonies include the Saptapadi.

✦ **How is a Hindu Marriage registered?**

A marriage cannot be registered unless the following conditions are fulfilled:

- a. a ceremony of marriage has been performed; and
- b. the parties have been living together as husband and wife.

In addition, the parties must have been residing within the district of the Marriage Officer for a period of not less than 30 days immediately preceding the date on which the application is made to him for registration.

Further, Section 8 of the Hindu Marriage Act allows the State Government to make rules for the registration of Hindu marriages in the particular State, especially with respect to recording the particulars of marriage as may be prescribed in the Hindu Marriage Register. Registration provides written evidence of marriage. And therefore, the Hindu Marriage Register should be open for inspection at all reasonable times (allowing anyone to obtain proof of marriage) and should be admissible as evidence in a court of law.

Any person contravening any rule made in this behalf will be punishable with fine which may extend to Rs. 25.

MUSLIM MARRIAGE

As per Mulla, Marriage (*nikah*) is defined to be contract which has for its object the procreation and the legalizing of children.

The Muslim law has been derived from various codified and uncoded sources such as, Quran, Ijma, Qiyas, customs, urf, precedents, equity and various legislations. There are 4 major sunni schools of thoughts: hanifa, hanabli, maliki and shafai. These four schools recognize each other's validity and they have interacted in legal debate over the centuries. In India, Hanifa school of Islamic law is dominant.

✦ **What is the definition of Marriage under Muslim Law?**

A marriage under Muslim law is the legal contract between a bride and bridegroom; the contract of Islamic marriage. Nikah is an Arabic term used for marriage which means contract. The Quran specifically refers to marriage as "Mithaqun Ghalithun", which means "a strong agreement".

Nikah is a contract that results in the man and woman living with each other and supporting each other within the limits of what has been laid down for them in terms of rights and obligations.

Ibn Uthaimen takes an even more comprehensive view of the institution of marriage in his definition, “It is a mutual contract between a man and a woman whose goal is for each to enjoy the other, become a pious family and a sound society”.

✦ **What are the essential conditions of Nikah?**

Only on the fulfillment of the following conditions a man and a woman are proclaimed as husband and wife and can live together and carry on their marital duties. These are:

- a. A Muslim marriage mandates a proposal ‘Ijab’ from one party and acceptance ‘Qubul’ from the other side.
- b. The proposal and acceptance must both be expressed at one meeting. The acceptance must be corresponding to what is being offered. The marriage must be effectively immediate. If the Wali says I will marry her to you after two months, there is no marriage.
- c. The parties must be legally competent i.e., they must be sane and adults.
- d. There must be two male or one male and two female witnesses, who must be sane and adult Mahomedan present and hearing during the marriage proposal and acceptance (which is not needed in Shia Law).
- e. Neither writing nor any religious ceremony is needed.

✦ **What is Mahr?**

Mahr is the consideration for the contract of marriage between the parties. It may be in the form of money and/or goods given by the Bridegroom to the Bride in consideration for the marriage. It is an essential element of Muslim marriage and is exclusively reserved for the use of the female partner. Payment of Mahr could be immediate (prompt), or deferred.

✦ **What is the rule regarding Witnesses in a muslim marriage?**

According to Islamic law, a witness should be sane, adult and reliable. This requirement is gender/faith neutral. Hence, the Muslim Marriage Certificate requires to be witnessed by ‘two adult witnesses of good character’.

- 2 men can be the witness.
- 1 man and 2 women can be the witness.

- Only women, people of unsound mind and minors cannot be the witness.

✦ **What is meant by Sahih?**

Sahih means valid marriage. A valid marriage is one which is constituted in accordance with the essential conditions prescribed earlier. It confers upon the wife; the right of dower, maintenance and residence, imposes on her obligation to perform her spousal duties with him and observe iddat.

✦ **What are the effects of a Valid Marriage?**

- The cohabitation between the husband and the wife becomes lawful.
- The children born out of a valid marriage are legitimate and they have the right to inherit their parent's properties.
- Mutual rights of inheritance between husband and wife are established. That is to say, after the death of the husband, the wife is entitled to inherit the husband's properties and after the wife's death, husband may also inherit her properties.
- Prohibited relationships for purposes of marriage are created between the husband and wife and each of them is prohibited to marry the relations of the other within prohibited degrees.
- The wife's right to claim dower is fully established just after the completion of marriage.
- The marriage gives to the wife also the right of maintenance from her husband with immediate effect.
- After the dissolution of the marriage, the widow or the divorced wife is under an obligation to observe the Iddat, during which she cannot remarry.

✦ **What is the Irregular Marriage or Fasid?**

Fasid means Irregular Marriage. It springs from cases which render the marriage irregular only so long as the cause which creates a bar and the moment these bars are removed the incapacity ends and the marriage becomes valid and binding. These unlawful unions are:

- Marrying a fifth wife.
- Marrying a woman undergoing iddat.
- Marrying a non-Muslim.
- Absence of proper witnesses.
- Woman going for a second marriage even after the existence of the first marriage.

- Marrying pregnant women.
- Marrying during pilgrimage.
- Marrying own divorced wife.

An irregular marriage has no legal effect before consummation but when consummated give rise to several rights and obligations.

✦ What is meant by Batil?

Batil means void marriage. A marriage which is unlawful from its beginning. It does not create any civil rights or obligations between the parties. The offspring of a void marriage is illegitimate. They are outcome of:

- a. Marriage through forced consent.
- b. Plurality of husband.
- c. Marriage prohibited on the ground of consanguinity.
- d. Marriage prohibited on the ground of affinity.
- e. Marriage prohibited on the ground of fosterage

✦ What is Muta Marriage?

The term means 'Pleasure Marriage'. It is a temporary agreement for a limited time period, upon which both the parties agreed. There is no prescribed minimum or maximum time limit, it can be for a day, a month or year(s). The marriage dissolves itself after the expiration of the decided period,

However, if no such time limit was expressed or written, the marriage will be presumed permanent. This type of marriage is prohibited by the Sunni Muslims.

✦ How is a marriage registered under Muslim Law?

Registration of marriage in Muslims is compulsory and mandatory, as a Muslim marriage is treated as a civil contract. According to **Section 3** of Muslim Marriages Registration Act, 1981, every marriage contracted between Muslims shall be registered within 30 days from the conclusion of the Nikah Ceremony. Nikahnama is a type of legal document in Muslim marriages which contains the essential conditions/details of the marriage.

✦ What are the particulars of a Nikahnama?

According to the Muslim Marriages Registration Act, 1981, a Nikahnama contains:

- Place of marriage (with sufficient particulars to locate the Place.)
- Full name of the bridegroom

- Age
- Address
- Full name of bridegroom's father
- Whether father is alive or dead
- Civil condition of the bridegroom at the time of marriage whether – Un-married Widower Divorced Married, and if so, how many wives are alive
- Signature or thumb impression of the bridegroom/Vakil/ Guardian according as the Nikah was performed in person by the bridegroom or through his Vakil or Guardian
- Full name of Nikah-Khan (that is the person conducting the Nikah Ceremony.)
- Signature of the Nikah-Khan (i.e person conducting the Nikah Ceremony with date.)
- Amount of dower fixed
- Manner of payment of dower
- Name of witnesses with parentage, residence and address

SPECIAL MARRIAGE ACT, 1954

The Special Marriage Act deals with inter-caste and inter-religion marriages. Inter caste marriage is a marriage between people of two different castes. The Act is a special law enacted to provide for a unique form of marriage by registration wherein the parties to the marriage do not have to renounce their religion.

✦ What is the applicability of the Act?

The Act is applicable to all, i.e., Hindus, Muslims, Christians, Sikhs, Jains, and Buddhists marriages. This Act applies not only to Indian citizens who belong to different castes and religions but also to Indian nationals who live abroad.

✦ What are the requirements under the Act?

The fundamental requirement under this Act for a valid marriage is the consent of both parties to the marriage. Other conditions to qualify for a marriage under this Act are:

- a. The bridegroom must be at least 21, and at the time of the marriage, the bride must be at least 18 years of age.

- b. At the time of their marriage, both parties must be unmarried and should not have any living spouse.
- c. The parties should be mentally fit, i.e., they must be sane at the time of marriage.
- d. They should not be related to themselves through blood relationships.

✦ **How is a marriage registered under the Special Marriage Act in India?**

The procedure applies for a marriage under the Special Marriage Act:

1. The applicants must fulfill all the requirements given under the Act.
2. Application to Marriage Officer
3. Public Notice and Objection

Application to the Marriage Officer:

The district jurisdiction may be invoked in which either of the two parties has a permanent residence (must live there for at least 30 days prior to the notice being submitted). To apply, reach the chosen district marriage officer (either the intending husband or the intending wife resides). The application should be written in accordance with the format set out in the Second Schedule.

Public Notice and Objections:

On receipt of duly signed application by the marriage officer, he will issue a 30-day public notice to raise objections to the intended marriage if any. The objections generally relate to non-compliance with the conditions referred to in Section 4. If the conditions are duly met and no such objections are raised, a marriage certificate should be entered in the Marriage Certificate Book. Here, both the intending parties and the witnesses are required to sign.

The marriage under this Act can be said to be duly solemnized and registered after having completed all of the above steps.

✦ **What are the documents needed on the day of solemnization of marriage?**

The following documents are needed along with 3 witnesses on the day of solemnization:

1. Proof of Age
2. Address Proof
3. Affidavit with regard to Marital Status

4. Non-Relationship between the parties within the degree of prohibition.
5. Passport size Photos.

✦ **What are the powers granted to the Marriage Officer?**

In receiving an objection, marriage officers are granted the following rights:

- Summoning and enforcing witnesses' attendance.
- Examining the witnesses on oath.
- Demanding documents to produce.
- Demanding the evidence on affidavits.
- Issue of commissions for the witness scrutiny.

✦ **What will happen to all the unreasonable objections?**

If the marriage officer believes that the objections received is not reasonable and is not made in good faith, the person making the objection may be on the receiving end of objective costs of up to Rs. 1,000. The sum received will be awarded to the parties of the proposed marriage for this purpose.

✦ **When is a marriage solemnized under the Act?**

After clearing objections, if any filed, the marriage may be solemnized at the expiry of 30 days. The notice is valid for 3 months. Before the marriage is solemnized, the parties and three witnesses should sign declarations in the prescribed form in the presence of the marriage officer. The marriages can be solemnized either within a reasonable distance from the office of the marriage officer or at such other places as the parties may wish.

✦ **What is meant by 'Registration of Marriage Celebrated in Other Forms'?**

Any marriage celebrated, with the exception of those solemnized in accordance with these provisions, may be registered by a marriage officer under Chapter III of the Act, subject to the condition that a marriage ceremony has been conducted for the parties under any of the Acts and that the couple has since led a marital life. Besides that, the conditions for the conduct of marriage specified in this Act shall apply.

✦ **When is a marriage void under the Act?**

Any marriage solemnized under this Act shall be null and void, if:

- a. Any of the conditions specified under section 4 has not been fulfilled, or
- b. The respondent was impotent at the time of the marriage and at the time of the institution of the suit.

✦ When is a marriage voidable under the Act?

A voidable marriage can be annulled by a decree of nullity if:

- a. The marriage has not been consummated owing to the wilful refusal of the respondent to consummate the marriage, or
- b. The wife was at the time of the marriage pregnant by some person other than the husband, or
- c. The consent of either party to the marriage was obtained by coercion or fraud, as defined in the Indian Contract Act, 1872 (9 of 1872).

CHRISTIAN MARRIAGE

There are a number of enactments in India that deal with Christian marriages and matrimonial causes. They are:

- a. The Indian Christian Marriage Act, 1872,
- b. The Marriages Validation Act, 1892,
- c. The Cochin Christian Civil Marriage Act, 1905,
- d. The Indian Matrimonial Causes (War Marriages) Act, 1948,
- e. The Converts Marriage Dissolution Act, 1866, and
- f. The Indian Divorce Act, 1869.

✦ Who can solemnize a Christian marriage under the Christian Marriage Act, 1872?

A Christian Marriage can be solemnized by any person who has received episcopal ordination. And it should be solemnized according to the rules of the Church of which he is a minister.

- a. by any Clergyman (a male priest especially in a church) of the Church of Scotland given that such a marriage is solemnized according to the rules, rites, ceremonies, and customs of the Church of Scotland
- b. by a Minister of Religion licensed under this Act
- c. in the presence of a Marriage Registrar appointed under this Act
- d. by any person licensed under this Act to grant certificates of marriage between Indian Christians

✦ Is there any time provided for solemnizing marriage under the Act?

Yes, all marriage under this Act shall be solemnized between the stretch of 6 a.m. in the morning and 7 p.m. in the evening.

✦ **Is there any place provided for solemnizing marriage under the Act?**

Yes, no Clergyman of the Church of England can solemnize a marriage in any place other than a church unless there is no church within five miles distance by the shortest road from such place or unless he has received a special license that authorizes him to do so under the hand and seal of the Anglican Bishop of the Diocese or his Commissary.

✦ **What is the 'Notice of intended marriage' under the Act?**

Whenever a marriage is intended to the solemnized one of the persons intending marriage shall give notice in writing. The notice should be in accordance with the form contained in the First Schedule and to be sent to the Minister of Religion whom he/she desires to solemnize the marriage. The notice shall therein include the following details:

- a. the first name, last name and the profession of each of the persons intending to get married
- b. the place of residence of each of them
- c. the time during which each has lived there
- d. the church or area dwelling in which the solemnizing of the marriage is to take place.

✦ **How is such notice published?**

Once the notice is delivered to the Minister of Religion, he shall affix the notice in some conspicuous part of the Church.

✦ **What if one party to the marriage is a minor?**

When one of the parties intending to get married is minor, the Minister is required to send the notice to the Marriage Registrar of the district within 24 hours. And, if there are more than 1 Registrar of such district, he should send it to the Senior Marriage Registrar.

✦ **What are the conditions for certification of marriages of Indian Christians?**

1. The age of the man who wants to be married will not be under 21 years of age and the age of the woman who wants to be married shall not be under 18 years of age.
2. Neither of the parties intending to be married shall have a wife or husband still living.
3. Two credible witnesses are to be present at the time of marriage.

PARSI MARRIAGE

A ‘Parsi’ means a Parsi Zoroastrian. The Parsi Marriage is also regarded as a contract though a religious ceremony of Ashirvad is necessary for its validity. ‘Ashirvad’ literally means blessings. A prayer or divine exhortation to the parties to observe their marital obligations with faith. Parsi Marriage and Divorce Act 1936 governs the marriage and divorce of people belonging to the community.

✦ When is the marriage not valid under Parsi Law?

- Marriage is not valid if both the contracting parties are related to each other in any of the degrees of consanguinity i.e. people descended from the same ancestors.
- In Parsi Law, a marriage is not valid if it is not solemnized by the priest in presence of two Parsi witnesses.
- A marriage will not be considered if the male is not 21 years old and the female has not completed 18 years of age.

Even if the marriage is not valid as per the points given above, any child of such marriage who would have been legitimate had the marriage been valid, shall be legitimate.

LANDMARK JUDGMENTS

1. Abdul Rahim v. Padma [AIR 1982 Bom 341]

In this case, the husband was Muslim and the wife was Hindu. They were married in another country under the British Marriage Act (BML) prior to the enactment of Foreign Marriage Act (FMA) in 1966. After that, they came to India. At the time of the divorce, it was observed that FMA is a complete code in itself and applies to marriages solemnized abroad. Thus, it was held that the present case shall be governed by section 18 (1) of FMA read along the relevant provisions of Special Marriage Act (SMA) and the Islamic methods of talaq shall not be applicable. In this case, FMA was applied retrospectively. If a marriage is finalized as per Foreign Marriage Act or Special Marriage Act, then personal laws are not applicable and the process of divorce has to be through the respective Acts only.

2. Biswanath v. Anjali Mitra [AIR 1975 Cal 45]

In this case, the marriage of a couple married under the Special Marriage Act, 1954 was dissolved in 1958. The divorced wife re-married another man within 1 year of the divorce. The question arose before the courts whether the second marriage is valid or not. As per section 30 of the Special Marriage Act, 1954, it is mandatory to wait for 1 year after the earlier marriage is dissolved. The said Court held

that the second marriage was void. In simple words, any person who obtains a divorce under the Special Marriage Act has to wait for 1 year to remarry.

3. Lakhmi Sanyal v. Sachit Kumar Dhar [AIR 1972 SC 2667]

In this case, the question was whether the marriage was void due to lack of consent of the bride. It was held by the Supreme Court that consent is not required when the marriage is solemnized by the provisions of Section 5(1) of the Indian Christian Marriage Act, 1872. Here, the marriage was solemnized by a person who has received episcopal ordination, provided that the marriage is solemnized according to the rules, rites and ceremonies and customs of the Church of which he is a Minister. In this case, the High Court of Calcutta held that the consent of parents as per section 19 of the Indian Christian Marriage Act, 1872 was not necessary.

4. Molly Joseph v. George Sebastian [AIR 1997 SC 109]

The case was regarding nullity of a marriage. It was held that a marriage cannot be nullified by the Ecclesiastical Courts (Church Court, in simple language), after the Indian Divorce Act came into force. It was held by the Supreme Court that the Ecclesiastical Courts cannot decide on the matters that are within the realm of the Courts as per the statute.

5. Santi Deb Berma v. Kanchan Prava Devi [AIR 1991 SC 816]

In this case, the husband was convicted of bigamy by the lowest court. After appeals in the Sessions court and High Court, the appeal came before the Supreme Court. The Supreme Court acquitted the husband of bigamy and stated that a conviction under Section 494 of the Indian Penal Code (bigamy) can only be sustained after actual proof of the ceremonies necessary under the Hindu Marriage Act in second marriage solemnized by the respondent as alleged by the complainant is proved. Therefore, Saptapadi is an important ceremony which has to be proved to establish that second marriage has been performed by the accused if the offence of bigamy has to be proved.

6. Shafin Jahan v. Asokan K.M. [AIR 2018 SC 1933]

Popularly known as the Hadiya Case, in this judgement, the Court upheld an individual's right to marry a person of one's own choice as well as the right to choose a religion. The Court noted that expression of choice was a fundamental right under Articles 19 and 21 of the Constitution, and formed an essential component of the exercise of liberty and autonomy. These constitutionally protected freedoms fell under the umbrella of Article 21, including the ability to take decisions on aspects which define one's personhood and identity. Justice Chandrachud's opinion reaffirmed the idea that the choice of marital partner would fall within the sphere of the right to privacy.

7. Mohd. Ahmed Khan v. Shah Bano Begum [AIR 1985 SC 945]

It is a landmark judgment of the Supreme Court whereby it was stated that section 125 of the Code of Criminal Procedure applies to all persons irrespective of religion. It was contended that the aforementioned section did not apply to Islam. The Supreme Court negated the condition and made section 125 religion neutral. It was stated that the husband is bound to maintain his wife, irrespective of what was mentioned in the personal Islamic law.

8. Shayara Bano v. Union of India [AIR 2017 SC 4609]

One of the landmark judgments of the modern times. It was held by the Supreme Court that the custom of Islam of Triple Talaq is against the constitution and hence was struck off as 'unconstitutional'. In simple words, the system of pronouncing talaq by uttering 'Talaq' three times has been removed as a means of divorce. (Talaq e biddat). It is a landmark judgement as the Supreme Court had to decide the rights of women and the intervention of the State in religious and customs of a religion.

9. Cyrus Rohinton Shroff v. Anahita Cyrus [2019]

Under Section 39 of the Parsi Marriage and Divorce Act, 1936, alimony pendente lite can be ordered to be paid either by the husband or the wife. In this case, the husband was ordered to pay Rs. 20,000 monthly to his wife as alimony pendente lite as the wife was unemployed and did not have any source of income as support.

10. Banoo Jal Daruwalla v. Jal C. Daruwalla [AIR 1964 Bom 124]

Section 42 of the Parsi Marriage and Divorce Act was construed. It was said that the Court does not have to deal with the questions of title to property and questions arising between husband and wife as co-owners, except only in respect of joint properties presented at or about the time of marriage. Questions of title to property and questions arising between husband and wife as co-owners, other than those so excepted, had to be disposed of by the ordinary civil courts.

PRACTICAL CASE SCENARIO**PRACTICAL CASE SCENARIO NO.1**

Zeenat is married to Abdul. At the time of divorce, Abdul returns the Dower but refuses to maintain Zeenat. He says that there is no provision for paying maintenance under Islamic Law. What remedies does Zeenat have?

Answer: Zeenat has the remedy of filing a case under Section 125 of the Code of Criminal Procedure. Under the Code of Criminal Procedure, the husband is bound to pay maintenance to the wife irrespective of religion. Section 125 applies to Muslims as well.

PRACTICAL CASE SCENARIO NO.2

Rehman is a Muslim. He belongs to the Sunni sect. He marries Sumaiya. After the marriage, he claims that the marriage is void as there were no witnesses to the marriage. Is the contention of Rehman correct?

Answer: No, the contention of Rehman is not correct. Even though two witnesses are necessary to make a marriage valid, a marriage without witnesses is not void. It is only irregular. Irregular marriage stands at a different footing than void marriages. For the Shia sect, no witnesses are necessary.

PRACTICAL CASE SCENARIO NO.3

Shreya and Saurabh are married as per the Hindu Marriage Act, 1955. After three years of marriage, Shreya develops a condition called Leprosy. Saurabh wishes to divorce her on this condition. Is this a valid ground for divorce?

Answer: No, it is not a valid ground for divorce now. It was a valid ground before 2019. In the year 2019, the word 'Leprosy' was removed as a ground for divorce.

PRACTICAL CASE SCENARIO NO.4

Anushka marries Viraj in the year 2019. After marriage, they started altercating all the time. Both want a divorce in a month of the marriage. They both apply to the court? What will be the decision of the court?

Answer: The court will reject the petition. Under Section 14 of the Hindu Marriage Act, 1955, no petition for divorce can be presented within one year of mar-

riage. Therefore, in normal conditions, like the one mentioned in the factual question, the court will reject the petition of marriage. Only in extreme cases, the petition is allowed.

PRACTICAL CASE SCENARIO NO.5

Suresh and Maya want to get married. They get married as per the Special Marriage Act. After three years of marriage, Maya wants to get a divorce from Suresh. Suresh denies that they were ever married (To relieve himself from paying maintenance). He states that Saptapadi, which is the sine qua non of any marriage, was not performed. Is Suresh's contention valid?

Answer: No, the contention of Suresh is not valid. As the marriage is solemnized as the Special Marriage Act, 1955, and not the Hindu Marriage Act, there is no need for Saptapadi. Saptapadi is only necessary when the marriage is as per the Hindu Marriage Act.

PRACTICAL CASE SCENARIO NO.6

Arundhati and Gopal are married under the Special Marriage Act. After three years of marriage, Gopal left for work and has not returned for a continuous period of 18 months. Can Arundhati get divorce against Gopal for a reason mentioned above?

Answer: No, Arundhati cannot get a divorce for the above reason. The desertion must be for a continuous period of not less than two years immediately preceding the presentation of the petition. As it has been only 18 months, no petition shall be entertained by the court. If she waits for an additional six months, then she can file a petition.

PRACTICAL SITUATION SCENARIO NO. 7

Rachel and Ross want to get married under the Indian Christian Marriage Act, 1872. They are both Christians. They are both deciding the time of solemnizing the marriage. Is there any time period given in the Act?

Answer: According to Section 10 of the Act, the time for solemnizing a marriage under the Act is between the hours of six in the morning and seven in the evening. There are some exceptions, but they depend upon the Clergyman. (Whether he is from the Church of England, Rome, Scotland).

PRACTICAL SITUATION SCENARIO NO. 8

Chandler and Monica want to get married as per the Indian Christian Marriage Act, 1872. Chandler is Christian, and Monica is Jewish. Chandler states that they cannot get married as per the Act, as both of the parties are not Christian. Can they get married under the aforementioned Act? Is the contention of Chandler valid?

Answer: No, the contention of Chandler is not valid. For the Indian Christian Marriage Act, 1872 to be applicable, only one of the parties needs to be a Christian.

PRACTICAL QUESTION SCENARIO NO. 9

Arzoo and Abad are two Parsis. Abad is already married to Afaan. The priest solemnizing the marriage knows that Abad is already married to Afaan, and yet he is again marrying to Arzoo. Afaan is still alive. Is the priest liable under the Parsi Marriage and Divorce Act, 1938?

Answer: Yes, the priest is criminally liable under the Parsi Marriage and Divorce Act, 1938. According to Section 11 of the Act, if any priest who knowingly or willfully solemnizes such marriage is punishable with simple imprisonment up to six months or fine up to two hundred rupees or both. In this case, as the priest knew about the earlier marriage of Abad, he is liable under Section 11 of the Act.

PRACTICAL QUESTION SCENARIO NO. 10

Dadar is married to Alma. Alma refuses to consummate the marriage in the first six months of marriage. Dadar wishes to obtain a divorce for the above-ground under the Parsi Marriage and Divorce Act, 1936. Can Dadar obtain a decree for divorce?

Answer: No, Dadar cannot obtain a decree for divorce under the Parsi Marriage and Divorce Act, 1936. For obtaining a decree of divorce for the above ground, the refusal to consummate the marriage must be not less than one year from the date of marriage. The same is given in Section 32 of the said Act. Therefore, if Alma refuses to consummate the marriage for a year from the date of marriage, then Dadar can move the court for divorce, not before that.

FAQs- REALITY CHECK**1. I am a Parsi woman, my age is 17 years. Can I get married under the Parsi Marriage Act?**

No, 18 years is the minimum age requirement for a bride under Parsi Law and for a bridegroom it's 21 years.

2. I have married as per the Parsi marriage Act but haven't gotten it registered? Is registration of marriage under the Parsi Marriage and Divorce Act, 1936 compulsory?

Yes, it is compulsory. There are penalties for not registering. (Sections 6 to 10 and 12 to 16.) However, it is provided that the marriage is not considered invalid solely by reasons of the fact that it was not certified or that certificate was not sent to the Registrar or the certificate was defective, irregular or incorrect.

3. I am a Christian and not baptized. Can I get married as per the provisions of the Indian Christian Marriage Act, 1872?

Yes, you can get married as per the Indian Christian Marriage Act, 1872. There is no such requirement of being baptized.

4. I am a Hindu but my wife is a Christian. Can I get married as per the provisions of the Indian Christian Marriage Act, 1872?

Yes, you can get married as per the said Act. Only one person needs to be a Christian and your wife is, so you can get married.

5. I am a Hindu and my husband was also a Hindu. He got converted into Christianity. Am I automatically divorced?

No, you are not automatically divorced. If you desire for a divorce, conversion of religion is a statutory ground for divorce under Section 13 of the Hindu Marriage Act, 1955.

6. I am a Hindu woman and I was married to a Hindu man under the provisions of Hindu Marriage Act. I want to file for a divorce. Where should I do so?

You can present the petition to the following courts: -

- a) Where the marriage was solemnized;
- b) Where your husband is living at the time of presentation of the petition;
- c) Where you two last resided;
- d) Where you are residing now;

7. My husband and I were married under the Special Marriage Act. I want a divorce. But I am afraid that all the intimate secrets shall be out if I go to the Court. What should I do?

You do not need to worry because as per Section 33 of the Special Marriage Act, all proceedings are *in camera* and nothing is printed without the permission of the court. So, if you apply to the court not to publish the judgment, then the court shall not permit any person to publish anything related to your matter. Therefore, without any hesitation, you should go to the court and apply for divorce if you want one.

8. My husband and I were married under the Special Marriage Act. We want a mutual divorce. Only five months have passed since our marriage. Can we apply for divorce?

No, you cannot. You can only apply for divorce by mutual consent when at least one year has passed since your marriage. Therefore, you have to wait for an additional 7 months.

9. I am a Muslim woman. I got divorced by my husband. He refuses to maintain me. What should I do?

You should file a petition under Section 125 of the Code of Criminal Procedure. It is applicable to everyone irrespective of the religion.

10. I am a Muslim woman. I got divorced by my husband by Talaq-e-Biddat (Triple Talaq) on 20th July 2020. What should I do?

Triple Talaq or Talaq-e-biddat is now prohibited. The Muslim Women (Protection of Rights On Marriage) Act, 2019 is an Act to protect the rights of married Muslim women and to prohibit divorce by pronouncing talaq by their husbands and to provide for matters connected therewith or incidental thereto. You are still married; you can go to the police station and file a complaint against your husband.

ASSESS YOURSELF- MULTIPLE CHOICE QUESTIONS

1. _____ deals with the marriage between Christians in India.

- a. Indian Christian Marriage Act, 1872.
- b. Indian Divorce Act, 1869
- c. Special Marriage Act, 1954
- d. Personal unwritten law

2. Which of the following are conditions of a valid marriage under Indian Christian Marriage Act, 1872?

- a. The age of the groom must be at least 21
- b. Neither of the parties must have a husband or wife living
- c. There must be at least two credible witnesses
- d. All of the above

3. _____ has been held unconstitutional by the Supreme Court.

- a. Talaq e Biddat
- b. Talaq e Tafweez
- c. Talaq Ahasan
- d. All of the above

4. _____ are types of Dower under Muslim Law.

- a. Prompt Dower
- b. Deferred Dower
- c. Both (a) and (b)
- d. Past Dower

5. _____ contains the conditions of a valid Hindu Marriage, under the Hindu Marriage Act, 1955.

- a. Section 3
- b. Section 5
- c. Section 7
- d. Section 9

6. _____ ceremonies are essential for a valid marriage under the Hindu Marriage Act, 1955.

- a. Saptapadi

- b. Kanyadan
- c. Mangal sutra and garland exchange
- d. All of the above

7. A notice must be sent to the Marriage Registrar where at least one of the parties to the marriage has resided for a period of not less than _____.

- a. 7 days
- b. 10 days
- c. 15 days
- d. 30 days

8. A new notice must be sent in case the marriage is not solemnized within _____ from the date on which the notice is given to the Marriage Officer.

- a. 1 month
- b. 3 months
- c. 6 months
- d. 12 months

9. _____ is the age of consent for men under Parsi Marriage and Divorce Act, 1936.

- a. 18
- b. 21
- c. 24
- d. No such age is prescribed

10. A Parsi is not subject to anti Bigamy laws. The statement is _____.

- a. True
- b. False
- c. Depends
- d. None of the above

ANSWER KEY									
1	2	3	4	5	6	7	8	9	10
a	d	a	c	b	a	d	b	b	b

FAMILY LAW : DIVORCE**✦ What are the grounds of divorce available to both husband & wife against each other under the Hindu Marriage Act, 1955?**

The Hindu Marriage Act, 1955 recognizes nine grounds of divorce which are available to both the spouses under Section 13. If after the solemnization of the marriage either of the spouse:

- a. had voluntary sexual intercourse with any other person, or
- b. has treated the spouse with cruelty, or
- c. has deserted the spouse for a continuous period of not less than two years immediately preceding the presentation of the divorce petition, or
- d. has ceased to be a Hindu by conversion to another religion, or
- e. has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind that the spouse cannot reasonably be expected to live with the spouse, or
- f. has been suffering from venereal disease in a communicable form, or
- g. has renounced the world by entering any religious order.

✦ What are the grounds of divorce available to wife under the Hindu Marriage Act, 1955?

Under Section 13(2) wife alone can seek divorce on the following grounds:

- a. Polygamous marriage of the husband which had taken place before the present law was enacted.
- b. Acts of Rape, Sodomy or Bestiality by the husband.
- c. Non-Resumption of Cohabitation after a Decree/Order of Maintenance
- d. Wife who was married before she was 15 years old decides to repudiate the marriage after attaining the age of 15 years but before attaining the age of 18 years.

✦ Whether a divorce can be sought by mutual consent between husband & wife?

Yes, in case the couple decides mutually, they can seek divorce under Section 13-B of the Hindu Marriage Act, 1955. They can approach a Court for decree of divorce by mutual consent.

1. A petition under this provision can be filed after the parties have lived separate from each other for a period of at least a year. A decree is not passed immediately.

2. The parties have to wait for a period of six months. They are free to withdraw the petition during this period.

3. The Court passes a decree of divorce, if the parties move the Court for passing decree not earlier than six months after the date of the presentation of the petition and not later than eighteen months after the said date.

✦ **What are the grounds for divorce available to the Muslim wife under The Dissolution of Muslim Marriages Act, 1939?**

The Right for divorce by a Court's decree is exclusively available to Muslim wife by The Dissolution of Muslim Marriages Act, 1939 on the following grounds:

1. Physical and mental cruelty;
2. Husband unheard of for a period of four years;
3. Failure to pay maintenance for a period of two years;
4. husband sentenced to a term of imprisonment for a period of seven years or more;
5. Failure to perform matrimonial obligations for a period of three years;
6. Insanity of husband;
7. Impotency of husband;
8. Venereal disease;
9. Option of puberty.

✦ **Whether Muslim law recognises extra judicial divorce?**

After the practice of triple talaq (talaq-e-biddat) by Muslim husbands was declared to be unconstitutional by the Supreme Court of India, a law was enacted which criminalises the act of such talaq i.e., the Muslim Women (Protection of Rights on Marriage) Act, 2019. The question regarding the validity of the Act is pending before the Supreme Court.

✦ **What are the grounds available for divorce under the Indian Divorce Act for Christians?**

Following grounds of divorce are recognised by the Indian Divorce Act.

1. Adultery;
2. Conversion to another religion;
3. Unsoundness of mind;
4. Venereal disease in a communicable form;
5. Unheard of for a period of seven years;
6. Wilful refusal to consummate the marriage;
7. Non-compliance with a decree for restitution of conjugal rights;
8. Desertion for at least two years;
9. Cruelty.

✦ **What are the additional grounds on the basis of which wife can seek divorce under the Indian Divorce Act?**

In addition, a wife can also present a petition for the dissolution of her marriage on the ground that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality.

✦ **What grounds are available for Parsi to seek divorce under the Parsi Marriage and Divorce Act, 1936?**

The law recognises following grounds of divorce:

1. Non-consummation of the marriage within one year after its solemnization owing to the wilful refusal of the spouse.
2. Insanity
3. That the wife was at the time of marriage pregnant by some other person other than the husband.
4. Adultery
5. Cruelty
6. That the defendant has since the marriage voluntarily caused grievous hurt to the plaintiff or has infected the plaintiff with venereal disease or, where the defendant is the husband, has compelled the wife to herself to prostitution.
7. Imprisonment for seven years or more.

✦ **Explain adultery as ground for divorce under Indian Personal laws.**

In the Oxford Dictionary 'adultery' is defined as the voluntary sexual intercourse of a married person with one of the opposite sex, whether married or not. Adultery is defined as the willing sexual intercourse between a husband or a wife, with one of opposite sex, while the marriage subsists.

1) Adultery is a ground of divorce under Hindu Marriage Act, 1955, Special Marriage Act, 1954, Indian Divorce Act, 1869 and the Parsi Marriage and Divorce Act, 1936.

2) Under the Dissolution of Muslim Marriages Act, 1939 adultery as such is not a ground of divorce but husband's association with women of evil repute or his leading an infamous life is a ground of divorce, though it is considered to amount to cruelty under the Act it is something akin to living in adultery.

✦ **Is cruelty a valid ground for Divorce under Personal Laws in India?**

Cruelty is a ground of divorce as well as judicial separation under the Hindu Marriage Act, 1955, the Special Marriage Act, 1954 and the Parsi Marriage and Divorce Act, 1936.

Under the Parsi law, if behaviour of defendant is such as to render, in the judgment of the court, improper to compel the other party to live with the spouse, divorce may be obtained on the basis of husband's cruelty.

✦ **Which acts/events can be termed as 'cruelty'? What are the different kinds of cruelty?**

Cruelty is a conduct of such a character as to have caused danger to life or health, bodily or mental give rise to reasonable apprehension of such danger.

1. Physical cruelty: - Causing of grievous hurt under the Parsi Marriage and Divorce Act, 1936 and habitual assaults under the Dissolution of Muslim Marriages Act, 1939 are grounds of divorce.

2. Mental cruelty: - Under the Dissolution of Muslim Marriages Act, 1939, cruelty has been defined in very broad terms; Section 2 (viii) (a) uses the words cruelty of conduct even if such conduct does not amount to physical ill-treatment.

✦ **Explain desertion as ground for Divorce under Indian Personal Laws?**

Under most of the Indian statutes' desertion is a ground for divorce or judicial separation or for both.

1. The Special Marriage Act, 1954 and the Hindu Marriage Act, 1955 contain an identical provision, and desertion is a ground for both desertion of marriage and judicial separation.

2. Earlier under the Indian Divorce Act, 1869 desertion as such was not a ground of divorce for either spouse. Position has been changed by the Indian Divorce (Amendment) Act, 2001 as both adultery and desertion are separate grounds for divorce.

3. Under the Parsi Marriage and Divorce Act, 1936 two years desertion is a ground for divorces as well as judicial separation. Section 2(iv) of the Dissolution of Muslim Marriage Act, 1939 does not recognize desertion as such as a ground of divorce.

✦ **Whether failure to perform marital obligation is a ground for seeking divorce under Muslim Law?**

Clause 4 of Section 2 of the Dissolution of Muslim Marriage Act, 1939 lays down that if the husband has failed to perform without reasonable cause, his marital obligation for a period of three years, the wife is entitled to seek divorce.

✦ **Whether Insanity is ground for divorce under the Indian Personal Laws?**

1. Insanity is a ground of divorce as well as of judicial separation both under the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 and the language of both the clauses is identical.
2. Under the Dissolution of Muslim Marriage Act, 1939, two years insanity of the husband is a ground on which wife can seek divorcee.
3. Under the Indian Divorce Act, 1869, insanity is neither a ground for divorce nor for judicial separation.
4. Under the Parsi Law, pre-marriage insanity and post-marriage insanity are two separate grounds for divorce.
5. Under the Parsi Marriage and Divorce Act, 1936, concept of voidable marriage is not recognized, pre-marriage insanity is a ground for divorce.

LANDMARK JUDGMENTS

1. Smt. Suresta Devi v. Om Prakash [AIR 1992 SC 1904]

In this case, Hon'ble Supreme court decided the issue of the validity of a decree of dissolution of marriage by mutual consent and whether a party to a petition for divorce by mutual consent under Section 13-B of the Hindu Marriage Act, 1955 ('Act') can unilaterally withdraw the consent or whether the consent once given is irrevocable.

The Court firstly defined the expression 'living separately' and held that section 13-B is in parimateria with Section 28 of the Special Marriage Act, 1954. Sub-section (1) of Section 13-B requires that the petition for divorce by mutual consent must be presented to the court jointly by both the parties and specifies 3 requirements for the same: living separately for a period of one year; have not been able to live together; and have mutually agreed that marriage should be dissolved.

2. Anil Kumar Jain v. Maya Jain [AIR 2010 SC 229]

The general principle is that the divorce by mutual consent shall be granted only after a waiting period of 6 months. This rule is a protection to the spouse from fraudulent or deceptive representation before the court about the consent to obtain decree.

However, in appropriate cases in exercise of its extraordinary powers under Article 142 of the Constitution, the Supreme court and no other High court or Civil court can grant relief to the parties without waiting for the statutory period of 6 months to do complete justice to the parties.

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3. Suman kapur v. Sudhir kapur [AIR 2009 SC 589]

It was observed by the Supreme Court that, the expression 'cruelty' as a ground of dissolution of marriage includes both physical and mental cruelty and may be defined as wilful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to reasonable apprehension in mind of other spouse that it is not safe for him or her to continue matrimonial relationship with the other spouse.

It was further held that physical violence is not essential to constitute cruelty. The conduct of the spouse complained of, should be such that one spouse cannot reasonably be expected to live with the other spouse.

4. Kochn Mohammad Kunju Ismail v. Mohammad Kadeja Umma [AIR 1959 Ker 151]

The Kerala High Court said that Muslim wife could obtain divorce from her husband if he had failed to maintain her for a period of two years or more, irrespective of the fact whether his failure arose out of his wilful neglect or inability to provide maintenance to her.

The court added, it was absolutely immaterial whether the failure to maintain arose due to his poverty, failing health, loss of work, imprisonment or any other cause whatsoever.

PRACTICAL CASE SCENARIO**PRACTICAL CASE SCENARIO NO. 1**

Sanjay and Sarika file a joint petition praying for a decree of divorce by mutual consent under the Hindu marriage Act, 1955. Six months later second motion was filed by Sarika alone as Sanjay refused to join him. Will divorce be granted to Sarika?

Divorce will not be granted to Sarika. Because once a party decides to have a second thought and on reflection, backs off, the court concerned cannot compel the defaulting party to give its consent.

PRACTICAL CASE SCENARIO NO. 2

Sanjay and Sarika married as per Hindu Marriage Act, 1955. After 4 years of their marriage Sarika came to know that Sanjay is already married to Rani two year before their marriage. What relief will Sarika get?

Sarika can file a divorce petition under Section 13 (2) on the ground that the husband is already married before the commencement of their marriage and the other wife is alive at the time of solemnization of their marriage.

PRACTICAL CASE SCENARIO NO. 3

Aasif and Afreen, both Muslims, get married under the classical Muslim law and then get registered their marriage in Special Marriage Act, 1954. A year later Aasif pronounces Talaq on his wife Afreen and gets married a second time. Does Aasif has the right of talaq?

In the above situation, as the marriage is registered under special marriage Act, the right to talaq is not available to Aasif and as the right to talaq is not available the second marriage performed by Aasif is void.

PRACTICAL CASE SCENARIO NO. 4

Rustom and Zarin both are Parsi, married as per the Parsi Marriage and Divorce Act, 1936. After few days of their marriage, Zarin realized that Rustom is not properly fit and suffering from mental disorder and she also found doctors file

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in which it is clearly mentioned that he is suffered from long term mental disorder due to which he will not able to consummate even after 1 year of marriage. Can Zarin ask for divorce?

According to Section 32, The Parsi Marriage and Divorce Act, 1936, Mental illness is one of the grounds for seeking divorce. So, Zarin can file a divorce petition and ask for divorce.

PRACTICAL CASE SCENARIO NO. 5

Jenita and Edward married as per the Indian Christian Marriage Act, 1872. After a few months of their marriage Jenita realised that Edward is suffering from a psychiatric disorder from the last few years due to which his mental status has been disturbed and after certain treatment the doctor certified that the mental status of Edward is incurable. In such a situation what are the options available to Jenita?

Christian marriage in India can be dissolved under the Indian Divorce Act of 1869. Jenita can seek divorce on the ground of mental illness which is one of the conditions for seeking divorce as provided in the Indian Divorce Act of 1869.

FAQs-REALITY CHECK**1. I was married according to the provisions of Hindu Law, and now I want a divorce within a year of marriage. Can I file a petition for divorce?**

No, as provided under Section 14 of the Hindu Marriage Act, 1955, no petition for divorce can be filed within one year of the marriage. But in exceptional circumstances, such as if the matter is related to bigamy, and where the consent of the spouse was taken through misrepresentation, fraud, undue influence etc. The petition can be filed before the expiry of one year.

2. My husband has been missing for the last 7 years and neither I nor my family members or friends or relatives got any news about him being alive or dead. Can I approach the Court for divorce?

Yes. According to Section 13 (2) of the Hindu Marriage Act, 1955 a wife can ask for divorce if her husband 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 such as family friend's relatives etc.

3. Me and my husband have mutually consented to get a divorce. How much time will it take to get the divorce?

In case of divorce by mutual consent of the spouses, 6 months from the date of filing. It is possible to get divorce before six months. Recently, the Honourable Supreme Court in *Amardeep Singh v. Harveen Kaur* made a notable observation by holding that the 6 months waiting period as considered under Section 13-B(2) of the Act is not mandatory.

4. I am a Muslim women and I was divorced at the time of pregnancy. What will be my iddat period?

The iddat period is the period between the divorce and the delivery of her child or the termination of her pregnancy, whichever is earlier.

5. I am a Muslim and my husband converted to Hindu religion. Can I seek divorce under dissolution of Muslim Marriage Act?

No. As per Dissolution of Muslim Marriage Act, 1939 conversion of husband to some other faith is not a ground of divorce.

6. Me and my husband have been living separately for the past 2 years. Can we seek divorce by mutual consent under Divorce Act, 1869?

Yes, the minimum period of separation required for divorce by mutual consent under Divorce Act is 2 years.

7. I am a Parsi and got married as per the Parsi Law. My husband willfully refused to consummate our marriage even after a year of solemnization of marriage. What legal recourse do I have?

You can seek divorce on the ground that the marriage has not been consummated even after a year of marriage due to wilful refusal by your husband.

8. My husband is undergoing a sentence of imprisonment for 7 years for the offence of culpable Homicide under Section 304 of IPC. He has already completed one year of his punishment. Can I as a Parsi wife get divorce on this ground under the Parsi Marriage and Divorce Act, 1936?

Yes, under Section 32 of the Parsi Marriage and Divorce Act, 1936, this is one of the grounds of divorce on which either spouse may seek divorce.

9. I am a Christian woman and my husband has been having an extra marital affair and physical relationship with his colleague for the past two years. What relief can I seek?

You may seek divorce on the ground of Adultery provided under Section 10(1) of the Divorce Act of 1869.

ASSESS YOURSELF: MULTIPLE CHOICE QUESTIONS

1. Which of the following grounds is available only to wife for seeking divorce under the Hindu Marriage Act?

- a. Adultery
- b. Desertion
- c. Change of religion
- d. Option of puberty

2. In case of desertion the wife has to prove which of the following facts?

- a. The husband has abandoned her
- b. That he has done so without any reasonable cause and against her wish and without her consent
- c. That he has willfully neglected her
- d. All of the above

3. Which of the following is not the ground for divorce under Hindu Marriage Act, 1955?

- a. Apostasy
- b. Insanity
- c. Venereal Disease
- d. Epilepsy

4. Which of the following is not available to a Muslim wife to seek dissolution of marriage?

- a. Option of puberty
- b. Impotency of husband
- c. Cruelty by husband
- d. Husband has changed the religion

5. A divorced Muslim wife, unable to maintain herself, is entitled to be maintained by her former husband?

- a. Only during the period of iddat
- b. For the period till she remarries or dies
- c. Only during the period of iddat provided that the marriage has been consummated
- d. Only during the period of iddat but where no mahr has been paid

6. Talaq which cannot be revoked after pronouncement, is called

- a. Talaq-UI- Bain
- b. Talaq-UI Tafweez
- c. Talaq-UI- Biddat
- d. Talaq UI-Sunnat

7. A woman married under The Indian Christian Marriage Act of 1872 can seek dissolution of her marriage under the _____.

- a. Indian Divorce Act of 1869
- b. Christian Marriage Act
- c. Special Marriage Act
- d. None of the above

8. Grounds available to Christian wife for dissolution of marriage

- a. Adultery
- b. The spouse ceased to be Christian by conversion to another religion
- c. The spouse has been incurably of unsound mind for a continuous period of not less than two years immediately preceding the presentation of the petition
- d. All of the above

9. What is the relief in the ground of Non-Consummation within 1 year of marriage after solemnization?

- a. Void
- b. Divorce
- c. No relief
- d. All of the above

10. If the wife is pregnant before marriage with other man and the husband is ignorant at the time of marriage, the divorce case has to be filed within _____ of the date of marriage.

- a. Six Months
- b. Nine months
- c. One year
- d. Two years

ANSWER KEY									
1	2	3	4	5	6	7	8	9	10
d	d	d	d	b	c	a	d	b	d

**LEGAL AWARENESS PROGRAMME
BY
NATIONAL LEGAL SERVICES AUTHORITY
IN COLLABORATION WITH
NATIONAL COMMISSION FOR WOMEN
&
KNOWLEDGE PARTNER - ALL INDIA REPORTER**

**IEC & TRAINING MODULE
For Resource Persons
ON
FAMILY LAW
WOMEN AND RIGHT TO MAINTENANCE**

Training Module

WOMEN AND RIGHT TO MAINTENANCE

The IEC & Training Module is primarily for Resource Persons of NALSA, as it focuses on particular responsibilities in spreading legal awareness about the Right to maintenance granted to Women. This is the part of the Legal Awareness Programme undertaken by the National Legal Services Authority in collaboration with the National Commission for Women. Resource Persons will find it as a useful source of information & guidance.

The main objective of this IEC & Training Module is to inspire, motivate, cultivate curiosity, shape the opinion and enlighten the Resource Persons on various enactments granting Maintenance to women.

The overall content has been written in an interactive Question Answer style, in a lucid and simple language.

NALSA hopes that the Resource Person will be benefitted immensely by these IEC & Training Modules.

Objective

- 1. To give an overview of the Scheme made under The Hindu Law, The Muslim Law, The Parsi Law, The Christian Law, the Special Marriage Act and Cr.P.C. concerning the maintenance.*
- 2. To familiarize the Resource Persons with the 'Maintenance' available to Women under various enactments.*
- 3. To improve the understanding of Resource Persons about the challenges & barriers women confront in accessing maintenance.*

Learning Outcome

The participants (Resource Persons) will be able to completely understand their role & responsibilities in spreading awareness about the maintenance provisions under various enactments.

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FAMILY LAW : WOMEN AND RIGHT TO MAINTENANCE**a. What is meant by maintenance?**

The dictionary meaning of the term maintenance is support or sustenance. The term maintenance is not defined in the marriage laws of any of the religious communities. But the entitlement of claiming maintenance is certainly based on the assumption that the claimant doesn't have the sufficient means to support herself. In simple words, maintenance means the support, mainly financial, which one person, who is bound by law to do so, gives to another for his/ her living when they are unable to sustain financially on their own.

Maintenance can be granted to a woman during the divorce proceedings as well as post-divorce. It is paid by the husband either on a monthly basis or in a lump sum so that the wife can avail the basic amenities of life such as food, clothing, shelter, etc. The concept of maintenance aims at putting the wife back to the same position of comfort and lifestyle as she was at the time when her marriage existed.

There is no fixed amount of maintenance. Depending on the facts and circumstances, maintenance can be claimed under the personal laws as well as under the Code of Criminal Procedure, 1973 or the Protection of Women from Domestic Violence Act, 2005.

As defined under the Hindu Adoptions and Maintenance Act, maintenance includes provision for food, clothing, residence, education, medical attendance and treatment. In the case of an unmarried daughter, it includes the reasonable marriage expenses also.

Please note that under different provisions, a husband or aged father or son may be entitled to claim maintenance. Here provisions are explained with reference to wives, mothers and daughters only.

HINDU LAW

The various provisions dealing with maintenance under Hindu Law are:

- a. Provisions under Code of Criminal Procedure, 1973.
- b. Provisions under the Hindu Marriage Act, 1955.
- c. Provisions under the Hindu Adoptions and Maintenance Act, 1956.
- d. Provisions under the Protection of Women from the Domestic Violence Act, 1973.

✦ Who is entitled to Maintenance?

Under the Hindu Maintenance Act, the following persons are entitled to maintenance:

- b. the wife,
- c. widowed daughter-in-law,
- d. children,
- e. elderly parents and
- f. other dependents as defined under the relevant provisions.

In case of divorce, the wife has a right to claim maintenance from her husband when she is unable to maintain herself financially. And, the fact whether the wife is working and earns some income or not, does not affect her right to claim maintenance from her husband.

According to Section 24 of Hindu Marriage Act, 1956 a wife's application for maintenance includes her maintenance as well as that of her children.

✦ What are various types of Maintenance entitled to a Hindu woman by Law?

Under the Hindu maintenance laws, there are 2 types of maintenance that can be claimed by the wife:

- a. Interim Maintenance
- b. Permanent Maintenance

✦ What is Interim Maintenance?

When the wife files a maintenance petition, the court may award her interim maintenance that the husband must pay from the date on which the application was filed by the wife.

It is also known as Maintenance *Pendente Lite* and is paid so that the wife can pay for the legal expenses incurred by her.

Interim maintenance is awarded by the court if the wife has absolutely no source of income to maintain herself.

There are no laws that lay down the amount of this type of maintenance and it is completely upon the discretion of the court to determine how much maintenance is sufficient for the wife to sustain during the proceedings.

✦ What are the factors that the Court will consider while granting interim maintenance?

The factors that are taken into consideration by the Courts for granting interim maintenance have been reiterated by the Delhi High Court in the case of *Manpreet Singh Bhatia v. Sumita Bhatia*, 20/10/2016:

- a. The reasonable needs of the spouse claiming maintenance
- b. The status of the parties
- c. The independent income and property possessed by the spouse claiming maintenance
- d. The number of persons the spouse providing maintenance has to maintain apart from the claimant
- e. The lifestyle that spouse claiming maintenance used to enjoy in her matrimonial home
- f. The liabilities of the spouse providing maintenance
- g. The provisions of the basic necessities of the spouse claiming maintenance such as food, shelter, clothing, medical needs, etc.
- h. The payment capability of the spouse providing maintenance
- i. The Court may use its discretion when all specific sources of income of the spouse providing maintenance are undisclosed
- j. The spouse paying maintenance must discharge the cost of litigation of the divorce proceedings
- k. The amount awarded under Section 125 is adjustable against the amount awarded under Section 24 of the Hindu Marriage Act, 1955. The Delhi High Court further stated that the Court must grant interim maintenance in appropriate cases as a discharge of judicial duty so as to ensure that the indigent spouse doesn't suffer at the hands of the affluent spouse.

✦ What is Permanent Maintenance?

Permanent maintenance is paid by the husband to his wife in case of divorce, and the amount is determined through a maintenance petition.

Section 25 of the Hindu Marriage Act, 1956 states that the court can order the husband to pay maintenance to his wife in the form of a lump sum or monthly amount for her lifetime. However, the wife may not be eligible for maintenance if there are any changes in her circumstances.

✦ What is the amount of Maintenance?

Under **Section 25 of the Hindu Marriage Act**, a Court can, at the time of passing a decree of divorce etc. order the husband to pay to the wife for her maintenance and support, a gross lump sum or monthly or periodical sum. It is payable till the lifetime of the applicant or till the applicant remarries.

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✦ **For how long is a woman entitled to claim Maintenance from her husband?**

Under Section 18 of the Hindu Adoptions and Maintenance Act, 1956, a Hindu wife, is entitled to be maintained by her husband during her lifetime.

✦ **What are the grounds on which a Hindu Women can claim Maintenance?**

A Hindu wife is entitled to live separately from her husband without forfeiting her claim to maintenance, if:

- a. he is guilty of desertion, that is to say, he has abandoned her without reasonable cause and without her consent or against her wish, or of wilfully neglecting her;
- b. 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. he has any other wife living;
- d. he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;
- e. he has ceased to be a Hindu by conversion to another religion;
- f. there is any other cause justifying her living separately;

✦ **When is a Hindu Women not entitled to separate residence and Maintenance?**

In following situations, the wife is barred from claiming separate residence and maintenance, if she:

- a. has indulged in adulterous relationship or is unchaste, or
- b. ceases to be a Hindu by conversion to another religion

It is also important to note here that in order to be entitled for the relief, the marriage must be a valid marriage. In other words, if the marriage is illegal then the matrimonial relationship between the husband and wife is non-existent and therefore no right of maintenance accrues to the wife. However, in particular cases the presumption of marriage is given more weightage and the bars to maintenance are removed. Further, under if the husband is ready to cohabit with the wife, generally, the claim of the wife is defeated.

✦ **What is the nature of relief granted as Maintenance?**

The relief of maintenance is considered an ancillary relief and is available only upon filing for the main relief like divorce, restitution of conjugal rights or judicial separation etc.

✦ Who has the burden of Proof under the Act?

When the wife files a maintenance petition, the burden to declare his income shifts to the husband, who has the right to defend the maintenance petition.

✦ Can Maintenance only be claimed after seeking divorce?

No, the right of a married woman to reside separately and claim maintenance, even if she is not seeking divorce or any other major matrimonial relief has been recognised in Hindu law alone. The Act envisages certain situations in which it may become impossible for a wife to continue to reside and cohabit with the husband but she may not want to break the matrimonial tie for various reasons ranging from growing children to social stigma. Thus, in order to realise her claim, the Hindu wife must prove that one of the situations (in legal parlance 'grounds') as stated in the Act, exists. Thus, a Hindu wife is entitled to reside separately from her husband without forfeiting her right of maintenance under the Hindu Adoptions and Maintenance Act, 1956.

✦ Who are the other dependents who can claim maintenance under the Act?

Apart from a wife, other relations in which there is economic dependency are also considered to be entitled to maintenance by the Hindu Adoptions and Maintenance Act, 1956. They are:

- A widowed daughter-in-law is entitled maintenance from her father-in-law to the extent of the share of her deceased husband in the said property.
- The minor children of a Hindu, whether legitimate or illegitimate, can claim maintenance from their parents.
- The aged and infirm parents of a Hindu can claim maintenance from their children.
- The term parent here also includes an issueless stepmother.

✦ What is the Quantum of Maintenance provided under the Act?

The means and capacity of a person against whom the award has to be made should be taken into consideration for determining the quantum of maintenance. In fact, in case of the husband, it is not only the actual earning, but also his potential earning capacity, which must be considered i.e., there is a presumption that every able-bodied person has a capacity to earn and maintain his wife. The income of the husband is a significant factor to be considered by the court in fixing the quantum of maintenance. It is disposable income and not the gross income, which is to be considered.

Section 23(2) of Hindu Adoptions and Maintenance Act, 1956 states the factors to be considered in determining the amount of maintenance payable to the wife, children and aged parents, and they are as follows:

- the position of and status of the parties,
- the reasonable wants of the claimant,
- the claimant, if living separately, is justified in claiming compensation or not,
- the value of the claimant's property and the income derived from such property or any other source,
- the number of persons entitled to maintenance under the Act.

✦ Can there be modification in the amount of Maintenance?

Yes, the maintenance provided, can be modified, suspended or cancelled if:

- the change in circumstances so demand, or
- the claimant has remarried or is proved unchaste, or
- there is resumption of cohabitation after judicial separation.

✦ How can a woman claim Maintenance under Hindu Law?

A wife is required to file a maintenance petition in a family court which has appropriate jurisdiction to deal with the matter.

The maintenance petition must be filed with the assistance of an advocate in India and must contain all the requisite facts and remedy sought from the court. The wife, being eligible under Section 12 of the Legal Services Authorities Act, 1987, can avail free legal services for filing her maintenance petition.

The maintenance petition is filed with some necessary documents like an affidavit, documents relating to the income of both, the husband and wife, etc.

MUSLIM LAW

Maintenance is also termed as *Nafaqa* in Muslim Law. The word *Nafaqa* means food, daily expenditure and lodging. A Muslim marriage is construed as a contract, an agreement that is made between the parties to the marriage (nikah) which prescribes the rights and duties of both husband and wife. In this agreement, the wife can stipulate some conditions for the husband and in case of breach of such conditions; she has a right to live separately and is also eligible to receive maintenance. The three sources from which the right to maintenance of a Muslim woman emanates:

1. Muslim Personal Law.
2. Section 125, CrPC.
3. The Muslim Women (Protection of Rights on Divorce) Act, 1986.

✦ When is a Muslim Women entitled to maintenance?

The right to maintenance of a Muslim woman is absolute and not conditional on whether she can maintain herself or not. A divorced Muslim woman is entitled to maintenance as per the provisions of Muslim Women (Protection of Rights on Divorce) Act, 1986. The Act states that a divorced Muslim woman is entitled to maintenance in the following cases:

- a. During the iddat period, reasonable and fair maintenance has to be paid to the wife. Mahr agreed at the time of marriage has to be given back
- b. When the woman had to maintain herself and her children, maintenance has to be paid for a period of 2 years. If the child is born after the divorce, then the 2-year period begins from the child's date of birth
- c. The amount of Mahr or dower agreed at the time of marriage or after the marriage has to be paid to the wife
- d. All property was given to her by her relatives, friends or husband before, at the time or after.

✦ When is a Muslim Women not entitled to Maintenance?

A Muslim woman cannot claim maintenance from her husband in the following cases:

- a. She has not attained puberty.
- b. She has abandoned her husband
- c. Where she elopes with some other man.
- d. In a case where she disobeys the reasonable commands of her husband.
- e. Refuse free access to the husband at all reasonable times.
- f. Never visited his house.
- g. Abandon conjugal home without reasonable reasons.

✦ Who has to pay for Maintenance?

Under Muslim law, the obligation of maintenance is not solely upon the husband, which is the case with the other personal laws, but also upon the consanguine relatives. If the woman has no such relatives or such relatives do not have the means to maintain her and she is also not able to maintain herself, then the court can direct the State Wakf Board to maintain her.

✦ What is the quantum of Maintenance?

The quantum of maintenance is not prescribed under any personal law. The court decides the quantum on the basis of the financial condition of husband and wife and any other circumstances relevant to the case.

The Shia Law decides the quantum of maintenance by taking into consideration the requirements of the wife. The Shafei Law determines the quantum of maintenance by the post of the husband. Thus, the basis of determination of the quantum of maintenance is different for different sub-castes of Muslims.

CHRISTIAN LAW

A Christian woman can claim maintenance from her spouse through criminal proceeding or/and civil proceeding. Interested parties may pursue both criminal and civil proceedings, simultaneously, as there is no legal bar to it. In criminal proceedings, the religion of the parties does not matter at all, unlike in civil proceedings.

If a divorced Christian wife cannot support herself in the post divorce period, she can claim maintenance under Section 37 of the Indian Divorce Act, 1869. She can apply for alimony/ maintenance in a civil court or High Court and, husband will be liable to pay her alimony such sum, as the court may order, till her lifetime. The wife can claim for maintenance if she can prove that she is a divorced or judicially separated wife.

✦ Who can claim maintenance?

Under the Christian law, unlike the Hindu and Parsi laws, only the divorced or judicially separated or divorced wife can claim for maintenance from the husband. There is no provision for the husband to claim for maintenance.

✦ Who will the Divorce Act be applicable to?

The Indian Divorce Act, 1869 which is only applicable to those persons who practice the Christianity religion inter alia governs maintenance rights of a Christian wife. The provisions are the same as those under the Parsi law and the same considerations are applied in granting maintenance, both alimony pendente lite and permanent maintenance.

✦ What is the Quantum of Maintenance under the Act?

While passing a decree under the act, the Court can order the husband to pay a gross sum of money, or a periodically payable sum of money for any term not exceeding her own life. The amount payable is decided after considering the wife's fortune (if any), ability of the husband, and the conduct of the parties (**Section 37**). For that purpose, the Court can cause a proper instrument to be executed by all necessary parties.

✦ Can the order granting maintenance by the Court be modified?

Yes, the order can be discharged or modified if there is any change in the circumstances. It can also be modified if the husband becomes unable to make such payments of maintenance (**Section 37**)

PARSI LAW

Under the Parsi law, both wife and the husband can claim for maintenance. The claimant has to prove that he/she is not able to maintain himself/herself. This claim for maintenance can be through criminal proceedings or/ and civil proceedings. Interested parties may pursue both criminal and civil proceedings, simultaneously as there is no legal bar to it. In the criminal proceedings the religion of the parties doesn't matter at all, unlike the civil proceedings.

✦ What are the types of maintenance a Parsi woman is entitled to?

The Parsi women are entitled to both alimony pendente lite i.e., interim maintenance and permanent maintenance.

✦ Is there any maximum amount for interim maintenance?

Yes, the maximum amount that can be decreed by a Court as alimony during the time a matrimonial suit is pending in court is one-fifth of the husband's net income.

✦ When is a woman not entitled to maintenance under the Act?

If she is found to be unchaste or remarries.

✦ When is a Parsi woman entitled to maintenance?

A Court can, at the time of passing a decree or at any subsequent point of time, order the husband to pay a lump sum or a periodical sum for her maintenance.

✦ When is she not entitled to maintenance?

An unchaste wife becomes disentitled to maintenance.

✦ What is the quantum of maintenance?

Section 40 of Parsi Marriage and Divorce Act says that the defendant shall pay to the plaintiff 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 plaintiff as having regard to the defendant's own income and other property, if any, the income and other property of the plaintiff, the conduct of the parties and other circum-

stances 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 movable or immovable property of the defendant.

✦ **Can the maintenance awarded by the Court be modified?**

Yes, the permanent maintenance awarded can be modified, suspended or cancelled if the claimant has remarried or is proved to be unchaste. The Court if it is satisfied it may, at the instance of either party, vary, modify or rescind any such order in such manner as the Court may deem just and if the Court is satisfied that the party in whose favour, an order has been made under this section has remarried or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he had sexual intercourse with any woman outside wedlock, 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.

✦ **What if the husband refuses to pay maintenance under Parsi Law?**

If the Husband refuses to pay maintenance, the wife can inform the court and the Court will direct the husband to pay. But if the Husband still refuses to pay even after the order of the court, the court can then sentence the Husband to imprisonment unless he agrees to pay. The Husband can be detained in the jail so long as he does not pay.

SPECIAL MARRIAGE ACT, 1954

- Under Section 37 of the Act, a Court can, while passing a decree, order the husband to pay to the wife for her maintenance and support, if necessary, a gross sum or a monthly or periodical payment of money.
- The payment can be secured by a charge on the husband's property, if the Court thinks it necessary. Maintenance can be made payable for a term not exceeding the lifetime of the wife.
- The amount is determined having regard to her own property, if any, her husband's property and ability, the conduct of the parties and other circumstances of the case.

CODE OF CRIMINAL PROCEDURE, 1973

Who can claim maintenance?

Section 125 of Cr.P.C. deals with "Order for maintenance of wives, children and parents". The provision applies irrespective of religion of the persons concerned. The following persons can claim and get maintenance :

- a. A wife, unable to maintain herself can claim maintenance from her husband who neglects to maintain her in spite of having sufficient means. A divorced wife is also covered in the provision.
- b. A legitimate or illegitimate minor daughter, whether married or not, unable to maintain herself can claim maintenance from her father who neglects to maintain her in spite of having sufficient means.
- c. A legitimate or illegitimate daughter, (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain herself, can claim maintenance from her father who neglects to maintain her in spite of having sufficient means.
- d. A mother, unable to maintain herself, can claim maintenance from her son or daughter, who neglects to maintain her in spite of having sufficient means.

✦ What are the conditions for claiming maintenance?

A wife can claim and get maintenance from her husband in the following conditions:

- a. She is divorced by her husband, or
- b. Obtained divorce from her husband, and
- c. She has not remarried, and
- d. She is not able to maintain herself.

✦ When is a wife not entitled to claim maintenance?

A wife cannot claim and get maintenance from her husband in the following conditions:

- a. Wife living in adultery, or
- b. Refuses to live with husband without any valid reasons, or
- c. Living separately by mutual consent.

✦ What are the essential conditions for granting maintenance?

There are some essential conditions which should be fulfilled for claiming and granting maintenance:

- a. Sufficient means for maintenance are available.
- b. Neglect or refusal to maintain after the demand for maintenance.
- c. The person claiming maintenance must be unable to maintain himself/herself.
- d. Quantum of maintenance depends on the standard of living.

Maintenance can also be claimed under the Protection of women from Domestic Violence Act, 2005 under given circumstances.

LANDMARK JUDGMENTS**1. Divyananda v. Jayarai [1984 Cri LJ (NOC) 10 Mad]**

Two Roman Catholic entered into Suyamaryadhai form of marriage and lived together as husband and wife for a period of 5 months in the course of which the wife conceived a child. The Court rejected the petition of the woman for compensation under section 125 of Cr.P.C. as she was not a legally wedded wife.

The Court held that being Christian, their marriage in accordance to Hindu customs without any conversion was void ab-initio and hence the woman was not a wife in the eye of law. As such the woman could not claim maintenance under Section 125 of, although her children, though illegitimate, would be entitled to maintenance under Section 125.

2. Danial Latifi v. Union of India [AIR 2001 SC 3958]

The case challenged the validity of the Muslim Women (Protection of Rights on Divorce) Act, 1986.

The court observed that divorced Muslim woman who has not remarried and who is not able to maintain herself after Iddat period can proceed as provided under section 4 of the Act against her relatives who are liable to maintain her in proportion to the properties which they inherit on her death according to Muslim Law from such divorced woman including her children and parents. If any of the relatives are unable to pay maintenance, the Magistrate may direct the State Wakf Board established under the Act to pay such maintenance. The provisions of the act are not in conflict with the Articles 14, 15 and 21 of the Constitution of India.

It was held to be constitutionally valid, and though the maintenance has to be paid within the iddat period, it must be enough to maintain her for her whole life.

3. D. Krishna PrasadaRao v. K. Jayashri [AIR 1986 AP 126]

In this case, a father's obligation to maintain the Children was examined.

The Section 20 of Hindu Adoption & Maintenance Act casts an absolute obligation on the part of the parent regarding maintenance. The language employed in Section 20 imposes a duty on the part of the parent though it purports to preserve a right to the child.

Hence, in the present case, it was held that the burden is on the parent to establish in an action brought for maintenance, that there is no default on his or her part. Where the father had initially set up family at a Town, even assuming that his wife and children were unwilling to come back, to native village where the father had shifted, omission of the father to take steps to bring the children to the native village or send money for their maintenance clearly established the default on the part of the father and thus attract the liability under Section 20 towards the children.

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4. Mumtazben Jushabhai Sipahi v. Mahebubkhan Usman Khan Pathan & another [1999 Cri LJ 888 (Guj)]

The question before the court was: whether a Muslim Women could claim maintenance from her former husband either under provisions of Ss. 125 to 128 of Code or under S. 3 of Muslim Women Act (1986) even after “Talaq”.

It was observed that, under Section 4 of the Muslim Women Act, a divorced woman is entitled to get maintenance from her relatives such as her children or parents or from Wakf Board if she is not able to maintain herself after the iddat period from the provision and maintenance made and paid by her former husband.

It was held that there is no provision in the Muslim Women Act which nullifies the orders passed by the Magistrate under Section 125 or 127 of the Cr.P.C. ordering the husband to pay maintenance to the divorced woman or take away the rights vested which are crystallized by the orders passed under Section 125 or 127 of the Cr.P.C.

5. Dayali Sukhlal Sahu v. Smt. Anju Bai Santosh Sahu [AIR 2010 Chh 80]

In this case, the court dealt with the issue regarding the obligation of the father-in-law to maintain the daughter-in-law.

The Court observed that, under Section 19 of Hindu Adoption & Maintenance Act, one of the conditions for the father-in-law to maintain the daughter-in-law is that the daughter-in-law should be unable to maintain herself from the estate of her parents.

It was further discussed that clear finding is necessary as to whether her parents have sufficient estate to maintain her and in what circumstances, she is unable to maintain herself or by her parents. For this purpose, parents of daughter-in-laws are required to be heard. This is possible if they are made parties to the suit. In their absence any finding will not bind them.

In the cases where the daughter-in-law can maintain herself through the estate of her parents, the question of obligation of the father-in-law does not arise. It is also to be found whether there is any coparcenary property in the hands of the father-in-law from which the daughter in-law is being deprived of her share.

6. Mohd. Ahmed Khan v. Shah Bano Begum & other [AIR 1985 SC 945]

The appellant, a Muslim, was married in 1932 and in 1975 was driven out of the matrimonial home. The respondent filed a petition under Section 125, Cr.P.C. in April 1978 against the appellant claiming maintenance at the rate of Rs. 500 per month.

Dismissing the husband's appeal with costs and adding that it would be open to the respondent to make an application under Section 127(1) of the code for increasing the allowance of maintenance granted to her on proof of a change in the circumstances as envisaged by that Section.

The Supreme Court held that Section 125 was applicable to all irrespective of their religion. Clause (b) of Section 125(1) contains no words of limitation so as to justify exclusion of Muslim women.

PRACTICAL CASE SCENARIO

PRACTICAL CASE SCENARIO NO.1

Seema & Manish have been living separately for the last six months. Rita is their daughter who resides with Seema. Manish was paying Seema Rs.20,000 per month maintenance, this was decided by both of them mutually. From the last two months, Manish has not paid Seema maintenance and is insisting her to come back and reside with him. Because of some differences Seema is not ready to live with Manish. Whether Seema is entitled to seek maintenance from Manish, without seeking divorce under Hindu Law?

Yes, the right of a married woman to reside separately and claim maintenance, even if she is not seeking divorce or any other major matrimonial relief has been recognised in Hindu law. Therefore, Seema is entitled to reside separately from her husband Manish without forfeiting her right of maintenance under the Hindu Adoptions and Maintenance Act, 1956.

PRACTICAL CASE SCENARIO NO.2

Razaq gave Talaq to Heena. Heena is left all alone as she is not supported by her father or any relative. Razaq paid her maintenance for initial three months of iddat. Heena's father & relatives are insisting Razaq to pay Heena maintenance. Razaq claims that he is not liable to maintain her after iddat period. What remedy does Heena has under Muslim law?

Under the Muslim law, Heena is entitled to have a reasonable and fair provision and maintenance from her former husband Razaq, and Razaq must do so within the period of iddat and also after it. In case if not granted maintenance Heena can approach the Wakf board for grant of maintenance, if she fails to get maintenance from her husband, she can claim it from relatives failing which, from the Waqf Board.

PRACTICAL CASE SCENARIO NO.3

Taufiq has been married to Sana for the last 3 years. One fine day, Taufiq married his colleague Maria and told Sana that he got married for the second time as Sana was not ready to have children. Taufiq further asked Sana to leave the house. Sana left and is presently living with her brother. Whether Sana is entitled to seek maintenance from Taufiq when she is denied that status of wife by him?

Yes, Sana still being the wife of Taufiq, is entitled to seek maintenance from him under Section 125, Cr.P.C. All obligations of maintenance, however, will end with her remarriage and no claims for maintenance can be entertained afterwards.

PRACTICAL CASE SCENARIO NO.4

Christy and her husband are heading for divorce. Her husband is paying her maintenance of Rs. 5000 as Christy is unable to maintain herself. Christy is concerned about her security after divorce as this amount won't be enough for her till lifetime. Whether there are any remedies available for her?

Under Section 37 of the Indian Divorce Act, 1869, Christy can apply for alimony/maintenance in a civil court or High Court and her husband will be liable to pay her alimony such sum, as the court may order, till her lifetime.

PRACTICAL CASE SCENARIO NO.5

Ashrin is a Parsi woman seeking divorce from her husband Zeeshan and is residing separately. Ashrin is a school teacher. Ashrin & Zeeshan's son is also residing with Ashrin. Ashrin is facing financial crunch and wants to claim maintenance from her husband. Zeeshan is not ready to give anything as maintenance, as according to him Ashrin is a working woman. Whether Ashrin is entitled to maintenance during the matrimonial suit?

Yes, as the Parsi Marriage and Divorce Act, 1936 recognizes the right of wife to maintenance-both alimony pendente lite and permanent alimony. The maximum amount that can be decreed by Court as alimony during the time a matrimonial suit is pending in court, is one-fifth of the husband's net income.

PRACTICAL CASE SCENARIO NO.6

At the age of 65 years, Sheena is divorced by her husband Qutubuddin. Sheena is presently in a helpless situation and is living in a Mosque. Sheena at this age wants to seek maintenance, who is the right person to maintain her?

Sheena can seek maintenance from her husband Qutubuddin under Section 125, Cr.P.C. She can also claim maintenance under Women (Protection of Rights on Divorce) Act, 1986, from her husband, if not granted maintenance can approach the Wakf board for relief.

FAQs- REALITY CHECK

1. I was a Hindu by birth, but I got converted into a Muslim after my divorce. Can I claim maintenance from my ex-husband?

No, as you cease to be a Hindu you are not eligible for maintenance from your ex-husband.

2. I am a Hindu and my husband used to ill treat me for many years. I got divorced 4 weeks back. Am I entitled for maintenance?

Yes, as per Hindu Adoptions and Maintenance Act, 1956, you can claim maintenance if your husband has treated you with cruelty.

3. I am a divorced Christian woman aged 39 years. Till when can I receive maintenance?

If you do not remarry, you will receive maintenance till your lifetime according to Sec.37 of the Indian Divorce Act, 1869.

4. My ex-husband and I are both Parsi. My husband is reluctant to give maintenance since our divorce. What remedies do I have?

Parsis can claim maintenance from the spouse through criminal proceedings or/and civil proceedings. Interested parties may pursue both criminal and civil proceedings, simultaneously as there is no legal bar to it. In the criminal proceedings, the religion of the parties doesn't matter at all unlike the civil proceedings.

5. My husband passed away 4 weeks back, to whom could I claim maintenance?

You are entitled to claim maintenance from your father-in-law to the extent of the share of your deceased husband in the said property.

6. I am a Parsi woman. My husband and I have been divorced for 6 months. My husband is refusing to do give maintenance. What can I do?

If the Husband refuses to pay maintenance, you can inform the court that the husband is refusing to pay maintenance, even after the order of the court. The

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court can then sentence the husband to imprisonment unless he agrees to pay. The husband can be detained in the jail so long as he does not pay.

7. I am a Mohammedan girl and I eloped with my boyfriend after getting married. Can I claim maintenance from my former husband?

No, under the Muslim Law if a girl elopes with another man she is not entitled for maintenance.

8. 2 months after my marriage, my husband and I discovered we are in a prohibited relationship according to Hindu law. We got divorced later. Can I claim maintenance?

No, If the marriage is illegal then the matrimonial relationship between the husband and wife is non-existent and therefore no right of maintenance accrues to the wife.

9. I had my Nikah 6 months back. Since then, my husband and I haven't consummated the marriage. I have asked for a divorce. Will I be eligible for maintenance?

Yes, if the marriage cannot be consummated because of illness of the husband the wife can claim maintenance.

[ASSESS YOURSELF- MULTIPLE CHOICE QUESTIONS]

1. There is no provision in Hindu Marriage Act to grant maintenance pending final disposal of a proceeding under the Act. This statement is _____.

- a. Correct
- b. Incorrect
- c. Partly Correct
- d. None of the above

2. A Muslim widow is entitled to maintenance_____.

- a. For one year
- b. For two years
- c. During the period of Iddat
- d. None of the above

3. What are the different types of maintenance?

- a. Interim maintenance
- b. Maintenance pendente lite
- c. Permanent maintenance
- d. All of the above

4. Under the Muslim Law, the persons entitled to maintenance are_____.

- a. Wife
- b. Children
- c. Grandchildren
- d. All of the above

5. Under Section 19 of the Hindu Adoptions and Maintenance Act, 1956, from whom a Hindu woman, after the death of her husband, may claim maintenance?

- a. Brother-in-law
- b. Son or daughter
- c. Father-in-law
- d. Mother-in-law

6. Maintenance _____ be refused on the ground of unchastity of widow

- a. Can
- b. Cannot
- c. Sometimes
- d. Depends on the Court

7. According to Hindu Law, under what circumstances is the wife entitled to live separately from her husband without forfeiting her claim to maintenance?

- a. Husband has any other wife living
- b. Wife is unchaste
- c. She ceased to be Hindu by conversion
- d. All of the above

8. A Christian woman can claim maintenance from her spouse through _____

- a. Criminal proceeding
- b. Civil proceeding
- c. Both (a) and (b)
- d. None of the above

9. The Parsi Marriage and Divorce Act, 1936 recognizes the right of wife to maintenance-both alimony pendente lite and permanent alimony. The statement is _____

- a. Correct
- b. Incorrect
- c. Partly Correct
- d. None of the above

10. According to The Parsi Marriage and Divorce Act, 1936, the maximum amount that can be decreed by court as alimony during the time a matrimonial suit is pending in court, is _____ of the husband's net income.

- a. One-fifth
- b. Two-third
- c. One-fourth
- d. Half

ANSWER KEY									
1	2	3	4	5	6	7	8	9	10
b	c	d	d	c	b	a	c	a	a

**LEGAL AWARENESS PROGRAMME
BY
NATIONAL LEGAL SERVICES AUTHORITY
IN COLLABORATION WITH
NATIONAL COMMISSION FOR WOMEN
&
KNOWLEDGE PARTNER - ALL INDIA REPORTER**

**IEC & TRAINING MODULE
for Resource Persons
ON**

**FAMILY LAW
JUDICIAL SEPARATION**

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FAMILY LAW : JUDICIAL SEPARATION

INTRODUCTION

In our Society, marriage is considered as a sacrament. It is an irrevocable relationship between husband and wife established through rituals and customs.

A marriage ceremony is considered to be one of the most essential and auspicious arrangements between a man and a woman. The religious duties of marriage, according to Hindu religion is that of a permanent connection between the husband and the wife which is unbreakable and endless in nature, valid not only for the present lifetime but for the next lifetimes to come in the future. This ceremony is thus performed with utmost religious practices and rituals.

With time, if the spouses start having a bitter relationship, the marriage starts to fail. To save the failed marriage from the divorce there is a provision for judicial separation under the Hindu law where the parties have the chance to reconcile.

Judicial Separation means, to give some time to both husband and wife for self-analysis of a disturbed married life. Law gives a chance to both the husband and wife to rethink about the failures in their relationship while at the same time guiding them to live separately. By doing this, the law allows them the independence to think about their future path and it is the last option available to both the spouses for the legal breakup of the marriage.

HINDU LAW**✦ Under Hindu Law what is the provision for judicial separation?**

Section 10 of the Hindu Marriage Act, 1955 provides the Judicial Separation for husband as well for the wife, who is lawfully married under the Hindu Marriage Act, 1955.

✦ What is the difference between Divorce and Judicial Separation?

Sr. No.	JUDICIAL SEPARATION	DIVORCE
1	Judicial separation implies temporary suspension of marriage.	Divorce brings an end to the marriage
2	A single petition can be filed at any time post marriage	Petition can be filed only after completion of one year of marriage.
3	There is a possibility of reconciliation.	There is no possibility of reconciliation.
4	There is only one stage of judgment and if the grounds are satisfied, decree is granted.	Judgment in case of divorce is a two-step process. Firstly, reconciliation and then divorce.
5	In case of judicial separation parties cannot remarry after the passage of decree.	In case of divorce parties can remarry once decree in favor of divorce is passed.

✦ What are the grounds for judicial separation?

It has been provided under Section 10 of the Hindu Marriage Act that the parties to a marriage can file a decree for judicial separation on the following grounds:

- **Adultery [Section 13 (1)(i)]:** Either of the spouses is being cheated upon by another spouse. It means that when any of the party to a marriage voluntarily had a sexual intercourse with any person other than his/her spouse, the aggrieved party can seek for the relief.
- **Cruelty [Section 13 (1)(i-a)]:** Either of the spouse or both are cruel for one another. When a party to marriage treats the other party with cruelty after the marriage has been solemnized, the aggrieved party can file a petition on the ground of cruelty.
- **Desertion [Section 13 (1)(i-b)]:** If the spouse left the other spouse for any reason without informing him/her for a period not less than 2 years before filing the petition by another spouse, desertion gives a right to claim relief of judicial separation for the aggrieved party.

- **Forced Conversion of Religion [Section 13(1)(ii-i)] :** Either of the spouses is forcing the other one to change and convert his/her religion. Or one of the spouse gets converted into any other religion other than Hindu, then the other spouse can file for judicial separation.
- **Unsound Mind [Section 13(1)(iii)]:** If any spouse in a marriage is suffering from any mental disease, which is difficult to live for the other spouse with the sufferer. The other spouse can claim relief from judicial separation.
- **Venereal Disease[Section 13(1)(v)]:** If any party to a marriage or a spouse has any type of disease which is incurable and communicable and the spouse does not know about the fact at the time of marriage, then it could be a valid ground for the spouse to file petition for judicial separation. Diseases like HIV, AIDS, Genital Herpes, Syphilis etc.
- **Renunciation of the World[Section 13(1)(vi)]:** In Hindu law, by renouncing the world means “Sannyasa”. Renunciation from the world conveys that the person has given up the world and leading a holy life. If a spouse renounces the world to live a holy life, his/her partner can file for judicial separation.
- **Civil Death [Section 13(1)(vii)]:** If a person is not found for 7 or more years and their relatives or any other person have not heard from him/her or it is believed that he/she may be dead. Here, the other spouse can file for judicial separation.

✦ **What are the grounds for judicial separation exclusively for women?**

- **Bigamy [Section 13(2)(i)] :** If the husband had married before the commencement of the Act and after the commencement of the Act has again remarried; either of the wives can present a suit for judicial separation provided the other wife is alive at the time of presentation of the petition.
- **Rape, Sodomy or Bestiality [Section 13(2)(ii)]:** If a man is guilty of offense like rape, sodomy or bestiality, the wife can present a petition for judicial separation.
- **Marriage before the age of fifteen years [Section 13(2)(iv)]:** If the marriage of women was solemnized before attaining 15 years of age, on her attainment of 15 years she could repudiate it but before attaining the age of 18 years.

✦ **Can the parties resume cohabitation after the petition for judicial separation has been filed?**

Since a decree for judicial separation is a judgment in rem, if the parties want to resume cohabitation, it is necessary for them to get the order of judicial separation annulled by the court. Normally, the court rescinds the degree on presentation of the petition by consent of both the parties.

✦ Where can the petition for judicial separation be filed?

A petition for divorce or judicial separation can be filed in a district court within the jurisdiction of whose:

- The marriage was solemnized.
- The respondent, at the time of presentation of petition, resides.
- The parties to marriage last resided together.
- The petitioner is residing, in case the respondent is outside territory of India.

✦ What are the contents of the petition of judicial separation?

Under order VII, Rule 1 of CPC every petition for divorce or judicial separation must contain:

- The place and date of marriage
- Affidavit of being a Hindu
- Name, status, and domicile of husband and wife
- Name of children, their sex, and date of birth
- Full particulars of any litigation filed before the presentation of the petition for divorce
- Evidence of the grounds for divorce or judicial separation. For example- in case of cruelty, specific act of cruelty, medical report, place of cruelty, etc.

After filing of the petition, the other party is summoned. Both the parties are required to furnish evidence to strengthen their claim. After furnishing of evidence is over, the judge hears the argument of each side and passes a decree. Appeals against the decision of the lower court can be made in a higher court.

MUSLIM LAW

There is no such provision for judicial separation under the Dissolution of Muslim Marriage Act, 1939 or the Muslim Women (Protection of Rights on Marriage) Act, 1986, etc. However, the Supreme Court of India has observed that all the grounds which are available to Muslim women for divorce, shall also be available for the judicial separation.

✦ What are the grounds for judicial separation under Muslim law for wives?

- **Absence of the husband:** - When a Muslim wife does not know where about the husband for the last four years.

- **Failure of husband to provide maintenance:** When a husband is failed to provide maintenance to his wife from the last two year.
- **Imprisonment of Husband:** When a husband has been sentenced of imprisonment for seven years or more.
- **Failure to perform to martial obligation:** When a husband fails to perform martial obligation in between the families.
- **Impotency of husband:** If the husband was impotent at the time of marriage and continues to be so.
- **Insanity, venereal disease:** If the husband is having been insane for a period of two years or suffering from or venereal disease.
- **Repudiation of marriage by wife:** If she having been given in marriage by her father or other guardian before the attaining the age of fifteen year, repudiated the marriage before 18 years and marriage is not consummated. She is able to seek for Judicial Separation.
- **Option of Puberty:** Option of puberty is the right of a minor boy or girl whose marriage has been contracted through a guardian to repudiate or confirm the marriage on attaining the age of puberty. Under this obligation a boy or girl has the option of repudiating the marriage.
- **Cruelty of Husband:** Judicial Separation may also be claimed by the Muslim wife if the husband treats her with cruelty.

PARSILAW

✦ What are the grounds for judicial separation under Parsi law?

According to Section 34 of The Parsi Marriage and Divorce Act, 1936, the husband and wife, both are entitled to get judicial separation decree on the same grounds on which a decree of divorce could be obtained. The grounds are:

- The marriage has not been consummated within one year after its solemnization owing to the wilful refusal of the defendant to consummate it;
- The defendant at the time of the marriage was of unsound mind and has been habitually so up to the date of the suit
- The defendant was at the time of marriage pregnant by some person other than the plaintiff
- The defendant has since the marriage committed adultery or fornication or bigamy or rape or an unnatural offence
- The defendant has since the marriage voluntarily caused grievous hurt to the plaintiff or has infected the plaintiff with venereal disease or, where the defendant is the husband, has compelled the wife to submit herself to prostitution

- The defendant is undergoing a sentence of imprisonment for seven years or more for an offence as defined in the Indian Penal Code
- The defendant has deserted the plaintiff for at least 3 years
- The defendant has ceased to be a Parsi

✦ Which Act governs the divorce for Christians in India?

The Indian Divorce Act, 1869 regulates the law relating to divorce of persons professing the Christian religion and also other matrimonial clauses. This Act is applied if one of the parties to the proceedings is a Christian.

✦ What are the grounds for judicial separation under the Indian Divorce Act, 1869?

According to Section 22 of the Act, a husband or wife may obtain a decree of judicial separation on the grounds of:

- Adultery
- Cruelty
- Desertion for a period of two years or more

✦ Under the Divorce Act, 1869 where can the petition for judicial separation be filed?

According to Section 23 of Divorce Act 1869, application for judicial separation on any one of the grounds aforesaid, may be made by either husband or wife by petition to the District Court or the High Court.

✦ What is the status of the wife after the decree of judicial separation has passed?

- According to Section 24 of the Indian Divorce Act, 1869, wife shall, from the date of the sentence, and whilst the separation continues, be considered as unmarried with respect to property of every description, which she may acquire, or which may come to or devolve upon her.
- Such property may be disposed of by her in all respects as an unmarried woman, and on her decease the same shall, in case she dies intestate, go as the same would have gone if her husband had been then dead.

✦ When can the decree of judicial separation get reversed?

- According to Section 26 of the Indian Divorce Act, 1869, any husband or wife, upon the application of whose wife or husband, as the case may be, a decree

of judicial separation has been pronounced, may, at any time thereafter, present a petition to the Court by which the decree was pronounced, praying for a reversal of such decree,

- On the ground that it was obtained in his or her absence, and that there was reasonable excuse for the alleged desertion, where desertion was the ground of such decree.

FAQs- REALITY CHECK

1. If I file for judicial separation, do I have to move to another house?

No, it is not necessary that one of the spouse has to stay at different place. They can reside under a common roof. Only their conjugal duties towards each other come to an end.

2. If I am judicially separated from my husband, will I still be called as his wife or will I be referred as a divorcee?

Your status would remain as married, as judicial separation is not same as divorce.

3. I am a Christian by religion and my husband has been living separately since 2 years 3 months. Can I file for judicial separation in the court?

Yes, according to Section 22 of the Indian Divorce Act, 1869 you can file for judicial separation on the ground of desertion.

4. Can I file for a divorce while during the period of judicial separation?

Yes, you can file a petition for divorce after the pronouncement of decree of judicial separation but, where judicial separation has been taken any time within 12 months of marriage, a petition for divorce can be presented only after one year of marriage.

5. My husband and I are Parsi but within 2 months of our marriage my husband converted himself into a Hindu. Can I file a petition for judicial separation?

Yes, under Section 34 of The Parsi Marriage and Divorce Act, 1936 you can file for judicial separation.

6. If I file for judicial separation under the Indian Divorce Act, 1869, does that imply that I am divorced and I do not have to file for divorce later?

No, the decree for judicial separation does not have any other effect and cannot lead to a decree for total dissolution of marriage while the former spouse lives.

7. I am Muslim by religion and I don't know the whereabouts of my husband since 4 year. Can I file for dissolution of marriage?

Yes, desertion is one of the grounds for dissolution of marriage and hence you can file a petition.

8. I am a Hindu and I had filed a petition for judicial separation and I was living separately for last eight months. One evening my husband tried to have physical relationship with me. Is it a punishable offence?

Yes, in case husband tries to establish physical relationship with you during the period of judicial separation he will be charged under Sec.376(A) of the IPC, wherein he will be punished with imprisonment up to 2 years and a fine.

9. My husband alleged me for having illicit relationship with his brother, which is not true. He has spread a word in the neighbourhood that I am a woman of bad character. Can I file a petition for judicial separation?

Yes, imputation of unchastity on the wife is a reasonable cause to seek decree of judicial separation.

10. My husband and I had a Parsi wedding in the year 2018. There is no physical relationship between my husband and me. Can I file for judicial separation?

Yes, under Section 34 of The Parsi Marriage and Divorce Act, 1936 you can file for judicial separation.

LANDMARK JUDGMENTS**1. Manisha Tyagi v. Capt. Deepak Kumar [AIR 2010 SC 1042]**

Marriage between the parties was solemnized as per the Hindu rites at New Delhi on 17.11.1991. For a short period after the marriage, the couple stayed at Meerut where the husband was posted as a Captain in the Indian Army. Mutual cohabitation of the parties seems to have come to an end on 30.12.1992. They had been living separately since 31.12.1992. They had a daughter who was born on 2.6.1993. On 24.11.1993, the husband filed a petition under Section 13 of the Hindu Marriage Act for dissolution of the marriage. The husband mentioned numerous instances for the divorce petition. He described the wife as quarrelsome, rude and ill-mannered. He had gone to the extent of terming his wife to be schizophrenic, making his life a living hell. The husband then complained that the wife has been making baseless complaints to his superiors. This has affected his career prospects in the Army.

The appellate court came to the conclusion that both the parties had made extremely serious allegations, and adopted a middle path by granting a decree of judicial separation under Section 10 of the Hindu Marriage Act, so that the parties might ponder over their differences and re-unite, for the welfare of their daughter. The subsequent appeal before the Division Bench of the Punjab and Haryana High Court resulted in decree of divorce granted to the husband; however, the Supreme Court set aside the Division Bench's order by restoring the single Judge order of granting judicial separation.

2. Narayan Ganesh Dastane v. Sucheta Narayan Dastane [AIR 1975 SC 1534]

The appellant asked for annulment of his marriage by a decree of nullity under Section 12(1)(c) of The Hindu Marriage Act, 25 of 1955, on the ground that his consent to the marriage was obtained by fraud. Alternatively, he asked for divorce under Section 13(1)(ii) on the ground that the respondent was incurably of unsound mind for a continuous period of not less than three years immediately preceding the presentation of the petition. Alternatively, the appellant asked for judicial separation under Section 10(1)(b) on the ground that the respondent had treated him with such cruelty as to cause a reasonable apprehension in his mind that it would be harmful or injurious for him to live with her.

The Court granted to the appellant special leave to appeal, limited to the question of judicial separation on the ground of cruelty. Stating that "We are not concerned with the question whether the appellant's consent to the marriage was obtained by fraud or whether the respondent had been of unsound mind for the requisite period preceding the presentation of the petition".

3. K.A. Lyngdoh v. U.J. Pakem [AIR 1987 Gau 69]

The petitioner, Kilbert Latam, deposed that she married the respondent in 1967 thereafter they cohabited and lived together as husband and wife for about 12 years and had 7 children. Since 1979, the respondent deserted her and the children and, very often, threatened to hurt and burn her house whenever she met him, her life was made miserable and unsafe wherefore she had to leave her village and come to stay at Jowai town. where also whenever the respondent came, he used to threaten her; and for such bad and evil behaviour, she had to file the petition for divorce as she felt that it was no longer safe to live with him.

The Court held that driving a wife away from the matrimonial home and forcing her to live separately is a clear case of cruelty.

4. K.A. Philip v. Susan Jacob and others [AIR 2001 Ker 195]

The petitioner married the first respondent on 23.2.1976 in accordance with the religious rites and ceremonies prevailing in the Christian community. After the marriage, they lived together as man and wife at the residence of the petitioner at Adoor till July 1977 when the first respondent left the matrimonial home and started residing at her house at Thiruvananthapuram. The carnal copulation between the petitioner and the first respondent was only for a period of one month and thereafter the petitioner became totally incapable of performing sexual intercourse with the first respondent.

It was subsequently revealed that the 2nd respondent (brother-in-law) was having illicit connection with the first respondent and the first respondent was his concubine long prior to their marriage. The marriage was arranged by the second respondent only to perpetuate the illegal connection with the first respondent. After the marriage, the first respondent used to go to Thiruvananthapuram once in a fortnight against the will of the petitioner to facilitate and indulge in sexual intercourse with the 2nd respondent at Thiruvananthapuram.

Therefore, the petitioner sought for a decree of divorce or in the alternative for a decree of judicial separation.

However, the petitioner has not succeeded in proving that the first respondent is living in adultery and there is absolutely no evidence to prove the cruelty also, thus, the court did not grant a decree of divorce but only judicial separation.

5. Bai Fatma Alauddin v. Mumna Miranji Haji [AIR 1957 Bom 107]

Wife filed a suit against the respondent, husband for a dissolution of her marriage under Section 2 of the Saurashtra Dissolution of Muslim Marriages Act, No.

XXVI of 1952, the grounds for the dissolution allegedly being that pertaining to cruelty. The complainant was treated cruelly, and was not treated equitably in accordance with the injunctions of the Koran, and that the defendant had neglected or had failed to provide for her maintenance for a period of two years prior to the suit.

The parties were Mohammedan and were married some time in about 1946-47 and they lived together for about two or three years, after which the plaintiff went to live with her parents. The husband's defence was that he had made attempts to bring back the plaintiff to his house and that the plaintiff had, without any justifiable reason, refused to come and live with him, that he had not neglected nor had failed to provide for her maintenance for a period of two years nor he treated her cruelly. The husband further extended that there was no truth in the allegation levelled by the wife and that he did treat her equitably in accordance with the injunctions of the Koran.

The Court held that there were sincere attempts by the husband to induce the plaintiff to return to him and to discharge her marital obligations but she has consistently spurned his attempts and has refused to return, She had no justifiable cause to refuse to live with the defendant and if in these circumstances the defendant did not send her money for maintenance, it could not be said that he had neglected or failed to provide for her maintenance within the meaning of Section 2 (ii) of the Act.

PRACTICAL CASE SCENARIO

PRACTICAL CASE SCENARIO NO. 1

Seema and Manishare married for 5 years and they are happy with their family. One day, Manish remarried another woman Kavita without the consent of Seema. Kavita also did not have any idea that Manish is already married. Seema can file a petition for judicial separation.

PRACTICAL CASE SCENARIO NO. 2

Katherine and Anthony were married for 2 years. Anthony had an illicit relationship with Katherine's sister. On finding out that Anthony has committed adultery, Katherine has been living separately. Katharine can file for judicial separation under the Indian Divorce Act, 1869.

PRACTICAL CASE SCENARIO NO. 3

Saleem and Mumtaaz got married in the year 2000. Since 2001 Saleem is in prison for the offence of robbery. It's been 8 years now. Mumtaaz can file for dissolution of marriage under the Dissolution of Muslim Marriages Act, 1939.

PRACTICAL CASE SCENARIO NO. 5

Anthony after 6 months of marriage with Katharine started abusing her and did not provide her proper food in the house. He drove Katharine out of the village and threatened her that if she ever came back, he will kill her. Driving wife from the matrimonial home and forcing her to live separately is a clear case of cruelty. Thus, Katherine can file a petition for judicial separation under the Indian Divorce Act, 1869.

PRACTICAL CASE SCENARIO NO. 6

Seema and Manish were married for 7 months when Seema decided to get converted into a Christian. Manish can file for judicial separation under Hindu Law.

[ASSESS YOURSELF- MULTIPLE CHOICE QUESTIONS]

1. _____ of the Hindu Marriage Act, 1955 provides for Judicial Separation to both the spouses.

- a. Section 8
- b. Section 9
- c. Section 10
- d. Section 11

2. Which among the following is not a ground for judicial separation?

- a. Adultery
- b. Cruelty
- c. Desertion
- d. None of the above

3. According to Section 23 of Divorce Act 1869, a wife or husband may file a petition for dissolution of marriage before the District Court only. The statement is _____.

- a. Correct
- b. Incorrect
- c. Partly correct
- d. None of the above

4. In case of judicial separation there is no possibility of reconciliation. The statement is _____.

- a. Correct
- b. Incorrect
- c. Partly correct
- d. None of the above

5. Every petition for divorce or judicial separation must contain _____.

- a. The place and date of marriage
- b. Affidavit of being a Hindu
- c. Name, status, and domicile of husband and wife
- d. All of the above

6. _____ deals with the situations in which Muslim women in India can obtain divorce.

- a. The Indian Divorce Act, 1869
- b. The Dissolution of Muslim Marriages Act, 1939
- c. The Hindu Marriage Act, 1954
- d. None of the above

7. _____ of The Parsi Marriage and Divorce Act, 1936 mentions judicial separation?

- a. Section 30
- b. Section 31
- c. Section 34
- d. Section 33

8. Which of the following is a ground for judicial separation under the Indian Divorce Act, 1869?

- a. Adultery
- b. Impotency
- c. Rape
- d. All of the above

9. Which among the following amounts to cruelty as a ground for divorce?

- a. Attempt to commit suicide
- b. Drunkenness
- c. Impotency
- d. All of the above

10. The notion of cruelty under the Hindu Marriage Act, 1955 cannot be imported into Parsi matrimonial law. The statement is _____.

- a. Correct
- b. Incorrect
- c. Partly correct
- d. None of the above

ANSWER KEY									
1	2	3	4	5	6	7	8	9	10
c	d	a	b	d	b	c	a	d	a

**LEGAL AWARENESS PROGRAMME
BY
NATIONAL LEGAL SERVICES AUTHORITY
IN COLLABORATION WITH
NATIONAL COMMISSION FOR WOMEN**

**IEC & TRAINING MODULE
For Training the Trainers
ON**

**FAMILY LAW
WOMEN AND PROPERTY RIGHTS**

IEC Material & Training Module

The IEC & Training Module is primarily for Resource Persons of NALSA, as it focuses on particular responsibilities in spreading legal awareness about women and her property rights. This is part of the Legal Awareness Programme undertaken by National Legal Services Authority in collaboration with Nation Commission for Women. Resource Persons will find it as a useful source of information & guidance.

The main objective of this IEC & Training Module is to inspire, motivate, cultivate curiosity, shape the opinion and enlighten the Resource Persons on issues concerning women & her property rights.

The overall content consists of provisions that guarantee protection and safeguard guaranteed to women related to her property rights. This has been written in an interactive Question Answer style, in a lucid and simple language.

NALSA hopes that the Resource Person will be benefitted immensely by these IEC & Training Modules

Objective

- *To give an overview and to spread awareness regarding property rights of women*
- *There are various legislative measures that intends to ensure equal rights, to counter social discrimination and various forms of violence against women*
 - *To familiarize the Resource Persons with the ‘various legal provisions’ that are available to women regarding their property rights*
- *To improve the understanding of Resource Persons about the challenges & barriers women confront in accessing and enjoying their rights*

Learning Outcome

The participants (Resource Persons) will be able to completely understand their role & responsibilities in spreading awareness about property rights of women

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WOMEN AND PROPERTY RIGHTS

Introduction

The property rights of the Indian woman get determined depending on which religion and religious school she follows, if she is married or unmarried, which part of the country she comes from. Hindus, Sikhs, Buddhists and Jains are governed by one code of property rights codified only as recently as the year 1956, while Christians are governed by another code and the Muslims have not codified their property rights, neither the Shias nor the Sunnis.

Not only that the customary rules of law regarding right to property, discriminated against women, but laws enacted by modern legislatures too, to a large extent discriminated against women. Over a period of time, the law is also evolving with changing times and the discrimination is being removed. The Supreme Court of India has ruled that daughters have equal rights to Hindu family property.

Property rights of Hindu women also vary depending on the status of the woman in the family and her marital status: whether the woman is a daughter, married or unmarried or deserted, wife or widow or mother. It also depends on the kind of property one is looking at: whether the property is hereditary/ ancestral or self-acquired, land or dwelling house or matrimonial property.

In Islamic law a woman's identity is not extinguished in her husband when she marries. Thus, she retains control over her goods and properties. She has a right to the same maintenance he gives to his other wives, if any, and may take action against him in case he discriminates against her.

The laws of succession for Christians and Parsis are laid down in the Indian Succession Act, 1925 (ISA). Sections 31 to 49 deal with Christian Succession and Sections 50 to 56 deals with Succession for Parsis. Prima facie the property rights of the Parsis are quite gender just. Basically, a Parsi widow and all her children, both sons and daughters, irrespective of their marital status, get equal shares in the property of the intestate while each parent, both father and mother, get half of the share of each child.

Self-acquired property is devolved through Will and ancestral property devolves through inheritance.

One can inherit property in two ways-

- Testamentary or
- Intestate

Testamentary implies the property is being inherited by virtue of the deceased person's will. A will is a legal document that sets forth a person's wish regarding the distribution of his or her assets. A will trumps all succession laws. In other words, if someone chooses to divide their assets unequally among their Hindu children, then the will's wishes will be followed.

When a person dies without leaving a will that means they are intestate. In this situation, their assets would be divided as per the law governing the religion of the deceased at the time of his or her death.

When the property passes intestate, then it is based on the rules of inheritance which provides the classes of heirs who would be given priority over another when the property is inherited.

Important Constitutional Provisions for Women Related to Property Rights

Provisions	Safeguards
Article 14	Right to equality
Article 15	Prohibition of discrimination
Article 21	Right to Life and Personal Liberty

Constitution of India has a substantially elaborate framework to ensure equality amongst its citizens. It not only guarantees equality to all persons, under Article 14 as a fundamental right, but also expands on this in the subsequent Articles, to make room for affirmative action and positive discrimination.

Article 15 of the Constitution of India goes on to specifically lay down prohibition of discrimination on any arbitrary ground, including the ground of gender, as also the parameters of affirmative action and positive discrimination.

The Courts in India take a very vast definition of fundamental right to life under Article 21 of the Constitution as an umbrella provision. This Article includes right to everything which would make life meaningful and which prevent it from making it a mere existence. Hence, right to food, water, health, right to shelter/ housing etc. all are covered under Article 21.

Since there is no Uniform Civil Code in India, every religion is governed by its own laws. Hindus, Buddhists, Jains and Sikhs are governed by one set of laws, i.e. the Hindu Succession Act; Christians, Parsis, Jews are governed by another, i.e. the Indian Succession Act; Muslims are governed by religious laws of the sect to which they belong. Thus, there is no single body of law relating to property rights in India.

Frequently Used Words and its Meanings

Movable property	It includes jewellery, car, clothing etc.
Immovable property	As per Section 3(26) of the General Clauses Act 1897, “immovable property” “shall include land, benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth

Property rights	These are the claims to property that are legally and socially recognized and enforceable by external legitimized authority
Right to own property	Article 17 of the Universal Declaration of Human Rights (UDHR) enshrines the right to property as- (1) Everyone has the right to own property alone as well as in association with others (2) No one shall be arbitrarily deprived of his or her property
Women's property rights	These are the property and inheritance rights that are enjoyed by a woman. The patterns and rights of property ownership varies from religion to religion in India
Testamentary succession	It refers to succession resulting from a legally executed testament, also known as the right of inheritance. The succession is fixed and determined at the time of a decedent's death
Intestate Succession	It refers to the distribution of property among heirs when a person dies without leaving a valid Will
Will or Testament	It is a legal document that expresses the wish of the owner of property as to how it is to be distributed after his death
Coparcenary [Among Hindus]	A coparcenary is a legal institution consisting of three generations of male and female heirs in the family. Every member of a Hindu family, on birth, becomes a member of the coparcenary
Legal Heir	A legal heir is a person who is determined to succeed to the estate of an ancestor who died intestate

WOMEN AND RIGHT TO PROPERTY

Property Rights of Hindu Woman

✦ By which Code the property rights of Hindus, Sikhs, Buddhists and Jains are governed?

The property of Hindus, Sikhs, Buddhists and Jains are governed by the Hindu Succession Act, 1956. The Hindu Succession Act enacted in 1956 was the first law to provide a comprehensive and uniform system of inheritance among Hindus and to address gender inequalities in the area of inheritance.

✦ On what grounds are the property rights of a Hindu woman based?

The property rights of the Hindu women are highly fragmented on the basis of several factors apart from those like religion and the geographical region. Property rights of Hindu women also vary depending on the status of the woman in the family and her marital status: whether the woman is a daughter, married or unmarried or deserted, wife or widow or mother. It also depends on the kind of property one is looking at: whether the property is hereditary/ ancestral or self-acquired, land or dwelling house or matrimonial property.

✦ How the shares of a woman are divided under the Hindu Succession Act, 1956?

- The Hindu Succession (Amendment) Act, 2005, amended Section 6 of the Hindu Succession Act, 1956, allowing daughters of the deceased equal rights with sons
- A mother, widow, daughter along with the son, takes equal share of the property of deceased coparcener
- On the death of a mother her daughter also inherits her property

✦ What are the rights of daughters in the property of their Hindu Parents?

In 2005, the Hindu Succession Act, 1956, was amended to give daughters an equal share in parental property. If it is an ancestral property then a daughter has a share in it by her birth and if the property is self-acquired of parents, then it shall be distributed according to the provisions of the Will.

✦ What are the rights of Hindu married daughters in their parent's property?

A married daughter has no right to shelter in her parents' house. However, a married daughter has a right of residence if she is deserted, divorced or widowed.

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✦ Who is a Coparcenary?

A coparcenary is a legal institution consisting of three generations of male and female heirs in the family. Every member of a Hindu family, on birth, becomes a member of the coparcenary. This means that no person's share in ancestral property can be determined with certainty. It diminishes on the birth of a member and enlarges on the death of a member.

✦ What do you mean by 'Streedhan'?

"Streedhan" means the properties gifted to a Hindu woman at the time of marriage by both sides of the family and by relatives and friends.

✦ What does Section 6 of the Hindu Succession Act deal with?

Section 6 of the Hindu Succession Act provides that on the death of a member of a coparcenary, the property devolves upon his mother, widow and daughter, along with his son, by testamentary or intestate succession and not by survivorship. This rule confers on the women an equal right with the male member of the coparcenary.

✦ What are the laws of devolution of property in Hindu Law?

- Sections 8 and 9 of the Hindu Succession Act, 1956, deal with the devolution of property in case of the death of a male
- Sections 15 and 16 deal with the devolution of property in case a woman dies
- The order of succession in the event of a woman's death gives the heirs of her husband a preference to her own parents
- In case of a man, his relatives get to inherit the property.

✦ Whether a Hindu woman is an absolute owner of her property?

Section 14 of the Hindu Succession Act, 1956, declares, "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." This makes women absolute owners of their properties.

✦ What was the aim of the Hindu Succession (Amendment) Act, 2005?

The Hindu Succession (Amendment) Act, 2005 came into force from 9th September, 2005. The Amendment Act removes gender discriminatory provisions in the Hindu Succession Act, 1956 and gives the following rights to daughters-

- The daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son;
- The daughter has the same rights in the coparcenary property as she would have had if she had been a son;
- The daughter shall be subject to the same liability in the said coparcenary property as that of a son;
- The daughter is allotted the same share as is allotted to a son;

In a recent landmark judgment delivered in the case of *Vineeta Sharma v. Rakesh Sharma*, 11th Aug, 2020, the Supreme Court has made it clear that-

The change made in 2005 to Section 6 of the Hindu Succession Act, 1956 confers status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities.

The rights can be claimed by the daughter born earlier with effect from 9.9.2005. Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2005.

✦ Can a woman purchase and/or own property in her own right?

Yes, there is no bar on a woman to acquire property whether through an inheritance (i.e. ancestral property) or purchasing property herself in her name. She is the full owner of it unless she decides to share it with someone.

✦ What are the rights of a Hindu woman over gifted and willed property?

A woman has full rights over any property that she has earned or that has been gifted or willed to her, provided she has attained majority. She is free to dispose off these by sale, gift or will as she deems fit.

✦ What are the rights of a Hindu married woman over her property?

- She has exclusive right over her individual property. She is the sole owner and manager of her assets whether earned, inherited or gifted to her.
- A married woman is also entitled to support and shelter from her husband, or if her husband belongs to a joint family, then from the joint family.

✦ What would be the share of a Hindu married woman in case of partition of joint family property?

Upon partition of a joint family estate, between her husband and his sons, she is entitled to a share equal to as any other person. In case of death of her husband,

she is entitled to an equal share of his portion, together with her children and his mother.

✦ What are the property rights of a Hindu mother?

- A mother is entitled to maintenance from children who are not dependents;
- She is a Class I heir; which means that a mother will be given priority in case of division of property;
- A widowed mother has a right to take a share equal to the share of a son if a partition of joint family estate takes place among the sons;
- All property owned by her may be disposed by sale, will or gift as she chooses;
- A woman dies intestate; her children inherit equally, regardless of their gender.

Property Rights of Muslim Woman

✦ What is Islamic Law of Inheritance?

Islamic scheme of inheritance discloses three features, which are markedly different from the Hindu law of inheritance:

- The Koran gives specific shares to certain individuals
- The residue goes to the agnatic heirs and failing them to uterine heirs and
- Bequests are limited to one-third of the estate, i.e., maximum one-third share in the property can be willed away by the owner.

✦ What are the Property Rights of a Muslim Woman?

The husband and the wife, being equal, are entitled to inherit from each other-

- Some near females and cognates are also recognized and enumerated as heirs.
- The parents and certain other ascendants are made heirs even where there are descendants.
- The newly created heirs are given specific shares. They are called sharers.
- The newly created heirs inherit the specified shares along with customary heirs, and not to their exclusion.
- Share of a daughter is half of the Son's share.

✦ What is 'Mahr'?

Mahr is a sum of money or other property which the wife is entitled to get from the husband on marriage is called 'mahr'. It can be fixed before or at the time of marriage.

✦ What are the property rights of daughters born to a Muslim?

- Daughter's share is equal to one half of the son's, in inheritance;
- She has full control over this property and she can dispose of her property according to her wish.
- A woman may receive gifts from those whom she would inherit from and here the gift is a means of circumventing the inheritance laws of 1/3rd of a man's share, according to Muslim law.
- Daughters have rights of residence in parent's houses, until they are married.
- In case of divorce, charge for maintenance reverts to her parental family after the iddat period (approximately 3 months).

✦ What are the property rights of Muslim Wives?

- She retains control over her goods and properties.
- In the case of divorce, 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 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 and liability of Muslim husband to pay maintenance is not consigned to iddat period.
- She has a right to mahr according to the terms of the contract agreed to at the time of marriage.

✦ What are the rights of inheritance of a Muslim Wife?

- She will inherit from her husband to the extent of 1/8th if there are children or 1/4th if there are none
- If there is more than one wife, the share may diminish to 1/16th
- In circumstances, where there are no sharers in the estate as prescribed by law, the wife may inherit a greater amount by Will
- A Muslim may dispose of 1/3rd of his property by Will, though not to a sharer in the inheritance.

✦ What are the property rights of Mothers under Islam?

- If the mother is divorcee or widow then in that case she is entitled to maintenance from her children.
- Her property is to be divided according to the rules of Muslim law.
- She is entitled to inherit 1/6th of her deceased child's estate.

Property rights of a Christian woman

✦ Under which legislative enactment a Christian woman may claim her share in the property of her father?

A Christian woman can claim a share of the father's property under Section 37 of the Indian Succession Act, 1925.

✦ Which Sections of Indian Succession Act, 1925 deal with Christian Succession?

Sections 31 to 49 deal with Christian Succession.

✦ What are the shares in property of a Christian woman?

- A Christian widow is entitled to 1/3rd of her husband's property;
- All children whether son or daughter gets the equal share in the remaining property;
 - Where a daughter or a son is dead his/her children become entitled to their parents' share in the property
 - The child in the womb also gets the equal share in the property;
 - Mother and Father are not entitled to inherit the property of a son or a daughter if the Son or Daughter is survived by his/ her own children or grandchildren.

✦ What are the property rights of a daughter born in a Christian family?

- She inherits equally with her brothers and sisters to her parent's estate.
- She is entitled to shelter, maintenance before marriage.
- She has absolute rights over her personal property, upon attaining majority.

✦ What are the property rights of a Christian wife?

- On death of her husband, she is entitled to a 1/3rd share of his property,
- Rest is being divided among the children equally.
- She must inherit a minimum of Rs.5000/- from her husband's estate.

✦ What are the rights of a mother in a Christian family?

She is not entitled to maintenance from her children. In case any of her children dies without spouse or living children she may inherit 1/4th of the estate.

Property rights of Parsi woman

✦ By which Act Parsi women are governed?

Parsi women are governed by the Indian Succession Act, 1925. Sections 50 to 56 deal with Succession for Parsis.

✦ What is the share of Parsi woman in the property?

- A Parsi widow and all her children, both sons and daughters, irrespective of their marital status, get equal shares in the property of the intestate.
- Each parent, both father and mother, get half of the share of each child.

FAQs–REALITY CHECK

1. What is the meaning of right of inheritance?

The right of inheritance is primarily a transfer of the individual's property, debts, titles, rights, and obligations to another individual upon the death of that person.

2. I am a Hindu and my husband died 2 months back without any Will. Will I get a share in the property even though there is no will?

Yes, in situations where the person dies intestate i.e., without creating a will then that person's property is transferred among his legal heirs by the applicable laws of intestate succession.

3. I am Mohammedan and I have 3 wives. If I die, will all the wives be entitled to a share in the property?

Yes, under the Muslim Personal Law (Shariat) Application Act, 1937, multiple wives are entitled for a share in their husband's property. A divorced wife is also entitled but only if the Iddat period is not over.

4. I am a Hindu aged 64 years. I have a husband and a son and no other family member or relative. If I die, who will get my property?

According to the Hindu Succession Act, 1956, if you die without making a Will, then your property shall devolve upon the son and the husband equally.

5. I am a Hindu and I have two sons and a daughter. My husband passed away 3 weeks back. Since then, my sons have been arguing over the property of their father. Will I get any share in the property?

Yes, the property of a Hindu male dying intestate, or without a will, would be divided equally amongst the Class I heirs i.e., sons, daughters, widow.

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6. I am a Parsi widow, and my husband died last month. I am 7 months pregnant. Will my child get a share in my late husband's property?

Yes, According to Indian Succession Act, whoever is actually born in the life-time of the deceased Parsi person or at the date of his death only conceived in the womb and subsequently born alive, is considered.

7. I am a Muslim by birth. My father died 2 years back but I have a stepmother. If I die, will she be entitled to my property?

No, under the Muslim Personal Law (Shariat) Application Act, 1937, step-mother or illegitimate mother not entitled.

8. I am a Christian by religion and my husband died in an accident 5 months ago. I have two sons. What will be the division of the property?

As per Indian Succession Act, if the deceased has left behind both a widow and sons, you will get one-third share in his estate while the remaining two-thirds will go to your sons.

9. I am a Parsi woman and my first husband died 1 month back. I remarried to another man a year ago. Will I be entitled to share in the property of my ex-husband?

No, where a widow or widower of any relative marrying again during the life-time of the intestate Parsi, such widow or widower is not entitled to receive any share in the property of the deceased Parsi.

10. I am a Christian aged 67 years. In case of the death of my husband without a will, would his movable property also get divided along with his immovable property?

Yes, Moveable assets of a deceased person are also divided. These include deposits in the bank, furniture, jewellery, vessels etc.

11. Do my children have the same rights as my brother's children to property we inherited from a parent?

While you are alive, your children have no claim to their grandparents' property. But in the event of your death, grandchildren from a son or a daughter will have the same rights to their grandparents' property.

12. If I'm adopted, will I enjoy the same rights regarding my parents' property?

An adopted child, male or female, enjoys the same rights in relation to their

adoptive parents' property. However, they hold no right to any property belonging to their biological parents.

LANDMARK JUDGMENT

1. **Narshimhamurthy v. Sushilabilla [AIR 1996 SC 1826]**

NarasojiRao died intestate leaving behind him the appellant, an only son, and the respondents, three daughters. After action at the latter's behest for partition, the Court granted a preliminary decree for partition in equal shares of the Schedule-A properties which included 'the dwelling house of Narasoji Rao'. The appellant canvassed its illegality and impartibility of the dwelling house, by operation of Section 23 of the Hindu Succession Act, 1956.

The only question argued before the court was: whether the dwelling house is partible, when NarasojiRao left behind his only son and three daughters? That the house is a dwelling house is not in dispute.

The Supreme Court in its judgment held that the female heirs right to claim partition of the dwelling house of a Hindu dying intestate under Section 23 of the Hindu Succession Act will be deferred or kept in abeyance during the lifetime of even a sole surviving male heir of the deceased until he chooses to separate his share or ceases to occupy it or lets it out. But the female heir shall be entitled to a right of residence therein. Provided that where such female heir is a daughter, she shall be entitled to a right of residence in the dwelling house only if she is unmarried or has been deserted by or has separated from her husband or is a widow.

2. **Pratap Singh v. Union of India [AIR 1985 SC 1695]**

Amar Singh was the owner of certain agricultural lands. He died leaving behind him two widows named JagirKaur and HarKaur and the petitioner as his adopted son. Under an arrangement, each of the two widows had been given one-third share in the Lands in Lieu of their right of maintenance. HarKaur surrendered her one third share in favour of the petitioner and it was mutated in his favour. The petitioner filed a suit against JagirKaur for obtaining a declaration that she had no right, title or interest of any sort in the lands belonging to the deceased. A compromise decree was passed on July 18, 1945 under which JagirKaur could retain the one third share in the Lands in question in lieu of her maintenance and on her death the petitioner could get possession of the same.

The Court found that Section 14(1) of Hindu Succession Act was enacted to address the problem faced by the Hindu women who were unable to claim absolute interest in property inherited from their husbands, but rather, who could only enjoy these properties with the restrictions attached to widow's estates under the Hindu law.

3. Kamawati v. Digbijai Singh [1922 (24) Bom LR 626]

The suit was instituted by the appellant, as the sister's daughter of one Kunwar Randhir Singh Sahib, deceased, to recover from the respondent (who, as his surviving brother, was in possession of his estate) a one-twelfth share of that estate. To this one-twelfth share the appellant would be entitled to succeed under the provisions of the Indian Succession Act. This would be so, Kunwar Randhir Singh having died a Christian, and the Act accordingly regulating the succession to his estate.

It was held by the Privy Council that the old law ceases to be applicable with regard to inheritance i.e., succession as cases preceded the Indian Succession Act and cannot modify or interpret it. The matter before the court was: Was the late owner of this estate, or was he not, a Hindu? If he was, the Mitakshara law would apply. If he was a Christian the Indian Succession Act would apply. The facts presented prove beyond doubt that Kunwar Randhir Singh in his later portion of life was a Christian and died as a Christian. The converted Christians will not be governed by old law i.e. his previous religion but only by Indian Succession Act, 1925.

4. Balchand Jairamdas Lalwant v. Nazneen Khalid Qureshi [2018 SCC Online Bom 307]

The Bombay High Court whilst discussing the issue on whether a Hindu who had converted to Islam was disqualified to receive property of the father who dies intestate had held that when deciding the inheritance, the religion of the person at the time of birth has to be taken into account and therefore, a Hindu convert is entitled to her father's property on the father dying intestate.

The High Court discussed the provisions of Sections 2 and 26 of the Succession Act and stated that the two provisions have to be read together and not in isolation. On a reading of the two provisions, the Court was of the view that a convert himself or herself is not excluded from the application of the Succession Act.

PRACTICAL CASE SCENARIO**PRACTICAL CASE SCENARIO NO. 1**

Rajkamal Mehta died in a car accident. After this, Ram, son of Rajkamal Mehta has transferred the whole property in his own name. He asked his mother, Janki Devi i.e., wife of Rajkamal Mehta and Sulochna, unmarried sister, i.e., daughter of Rajkamal Mehta to leave the house as he claims to be the owner of the property. Whether Sulochna & Janki Devi has no right in the property of Rajkamal Mehta?

Under the Hindu Succession Act, 1956, a mother, widow, daughter along with the son, take equal share of a person's property on his death. Therefore, Sulochna & Janki Devi have equal share in Rajkamal Mehta's property.

PRACTICAL CASE SCENARIO NO. 2

John Martin, aged 80 years, died of cancer. He is survived by his wife Rose, aged 75 years, their son Krish aged 45 years and a daughter Lily aged 35 years. Krish is not ready to give any share to his mother Rose. He wants to divide the share equally among himself and his sister Lily. Lily on the other hand wants her mother to get the entitled share. Guide Lily explaining the entitlement of shares among the three of them.

A Christian widow is entitled to 1/3rd of her husband's property. All children whether son or daughter get the equal share in the remaining property. Therefore, Rose is entitled to 1/3rd of her husband's property and the rest of the property is to be divided among Lily and Krish equally.

PRACTICAL CASE SCENARIO NO. 3

Mr. Bawa owns a restaurant along with his elder son Boman and his other two sons Josh & Fali were yet to start working in the Restaurant. After the death of Mr. Bawa, Boman declared himself to be the owner of the restaurant, as he assisted his father in the business. Boman asked his younger brothers to find some other job for them as the restaurant belongs to him. Boman also threw his mother Pari outside the house. Whether Pari, being wife of Mr. Bawa, entitled to have any share in his property?

In the present case, the family is Parsi. Parsis are governed by the Indian Succession Act, 1925. According to that, a Parsi widow and all her children get equal shares in the property of the person who has died without making a will. Therefore, Pari and all her other sons are equally entitled to the property. Boman cannot deny them their share.

PRACTICAL CASE SCENARIO NO. 4

Yogi family is a Hindu Joint Family. The family is willing to do partition of their property. Karta has decided to divide the property among his three sons only and is of the opinion that daughters have no right in the property. Whether daughters are entitled to any share in the property?

Yes, a daughter has a similar right like son to claim partition of coparcenary property. Therefore, in the present case, daughters of the Yogi Family are also entitled to the equal share like that of their brothers.

PRACTICAL CASE SCENARIO NO. 5

Zen Family is a Christian joint family comprising of Mr. & Mrs. Mark Zen, their children Suzy & Lizzy, Parents of Mark Mr. & Mrs. Jade Zen. They all live in Mark's self - occupied house property. Mark & his wife died in a plane crash. Who will be the owner of the house property after them?

According to Indian Succession Act, 1925, Mother and Father are not entitled to inherit the property of a Son or a Daughter if the Son or Daughter is survived by his/ her own children or grandchildren. Therefore, children of Mr. & Mrs. Mark, Suzy & Lizzy are the rightful owners of the property.

ASSESS YOURSELF: MULTIPLE CHOICE QUESTIONS

1. According to the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu Family governed by the Mitakshara Law, the daughter has also become a coparcener like son. This statement is _____.

- a. Correct
- b. Incorrect
- c. Partly correct
- d. None of the above

2. According to the Hindu Succession (Amendment) Act, 2005, married daughter is a _____.

- a. Coparcenary like a son
- b. Not a coparcenary
- c. Has no right
- d. None of the above

3. If a Muslim man marries during an illness and subsequently dies of that medical condition without brief recovery or consummating the marriage, his widow has _____right of inheritance.

- a. One- third
- b. Two-third
- c. One-fifth
- d. No

- 4. Succession among Christians is governed by the _____**
- Indian Christian Marriage Act of 1872
 - Guardians and Wards Act 1890
 - Indian Succession Act of 1925
 - None of the above
- 5. According to the Hindu Succession Act, 1956, if a male member of a Mitakshara coparcenary dies intestate leaving behind a female heir mentioned under Class I, the property would _____.**
- Not devolve as per the Rule of Survivorship
 - Devolve according to the provisions of Hindu Succession Act
 - Devolve and provide specific share to female heir
 - All of the above
- 6. Under Shia Law, a childless widow is entitled to get her share _____ in the inheritance only from the movable property left by her deceased Husband.**
- 1/3rd
 - 1/4th
 - 1/10th
 - None of the above
- 7. Parsi Laws of Inheritance dictate that any non-Parsi woman who is the wife, or widow, of a Parsi man cannot receive inheritance from their husbands. This statement is _____.**
- Correct
 - Incorrect
 - Partly correct
 - None of the above
- 8. According to Indian Succession Act, if the deceased Christian male has left behind both a widow and lineal descendants, she will get _____ share in his estate.**
- One-fifth
 - One-third
 - One-fourth
 - Half

9. Under Muslim law, no widow is excluded from the succession. This statement is_____.

- a. Correct
- b. Incorrect
- c. Partly correct
- d. None of the above

10. _____ of the Hindu Succession Act 1956, makes the woman an absolute owner of her stridhan so that it could be disposed of by her in any way she likes.

- a. Section 12
- b. Section 13
- c. Section 14
- d. Section 15

ANSWER KEY									
1	2	3	4	5	6	7	8	9	10
a	a	d	c	d	b	a	b	a	c

**LEGAL AWARENESS PROGRAMME
BY
NATIONAL LEGAL SERVICES AUTHORITY
IN COLLABORATION WITH
NATIONAL COMMISSION FOR WOMEN**

**IEC & TRAINING MODULE
For Training the Trainers
ON**

**FAMILY LAW
PROTECTION OF WOMEN FROM
DOMESTIC VIOLENCE ACT, 2005**

IEC Material & Training Module

The IEC & Training Module is primarily for Resource Persons of NALSA, as it focuses on particular responsibilities in spreading legal awareness about women and prevention of domestic violence against her. This is part of the Legal Awareness Programme undertaken by National Legal Services Authority in collaboration with National Commission for Women. Resource Persons will find it as a useful source of information & guidance.

The main objective of this IEC & Training Module is to inspire, motivate, cultivate curiosity, shape the opinion and enlighten the Resource Persons on issues concerning women and violence against her.

The overall content consists of provisions that guarantee protection and safeguard guaranteed to women related to their rights and remedies available. This has been written in an interactive Question Answer style, in a lucid and simple language.

NALSA hopes that the Resource Person will be benefitted immensely by these IEC & Training Modules

Objective

- *To give an overview and to spread awareness regarding rights of women under Domestic Violence Act*
- *Domestic Violence Act intends to spread awareness to counter social discrimination and to curb various forms of violence against women*
- *To familiarize the Resource Persons with the 'various legal provisions' that are available to women regarding their rights against domestic violence*
- *To improve the understanding of Resource Persons about the challenges & barriers women confront in accessing and enjoying their rights*

Learning Outcome

The participants (Resource Persons) will be able to completely understand their role & responsibilities in spreading awareness about rights of women against domestic violence

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FAMILY LAW : THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

INTRODUCTION

For every human being, home fulfills the basic need of safety – shelter. For women, this very house can be a threat to their safety, dignified living, in fact, sometimes, a threat to their very existence. The threat is so grave that the legislature has been compelled to enact a special legislation for their protection the Protection of Women from Domestic Violence Act, 2005 (PWDV Act).

Even before enactment of the PWDV Act, remedies were available under the penal laws of the country to deal with domestic violence. But the same were not efficacious. The preamble to the Act states that it is “An Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and formatters connected therewith or incidental thereto.”

This legislation was brought into force as an attempt to translate into reality the Constitutional guarantee of gender equality and right to live with dignity. The Act seeks to achieve this objective by-

- Defining “domestic violence” and connected terms
- Providing machinery to file reports and complaints regarding domestic violence
- Conferring powers on the Court to pass orders for protection of the victims of domestic violence and also for adequately compensating them
- The Act is a piece of civil legislation

✦ What is the meaning assigned to the term “domestic violence” in the Protection of Women from Domestic Violence Act, 2005?

The term is defined in Section 3 of the Act. According to this definition, “domestic violence” can be in the nature of physical, sexual, verbal and emotional or economic abuse. It can be an act, omission or commission.

✦ What are the types of ‘Domestic Violence’?

- a. Physical abuse
- b. Economic abuse
- c. Sexual abuse
- d. Verbal and emotional abuse

✦ What does 'physical abuse' consist of?

"Physical abuse" consists of any act or conducts which causes bodily pain, harm or danger to life, limb, or health or impair the health or development of the aggrieved person. Use of criminal force or assault etc. also amounts to physical abuse. For e .g. severe beating, causing injury with a weapon.

✦ What is 'sexual abuse'?

"Sexual abuse" refers to conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman. It comprises of forced sexual intercourse, compelling to watch pornographic material etc.

✦ Define 'verbal and emotional abuse'?

It includes-

- a. Insults, ridicule, humiliation, name calling and insults or ridicule especially with regard to not having a child or a male child; and
- b. Repeated threats to cause physical pain to any person in whom the aggrieved person is interested;

For e.g., repeatedly humiliating wife in the presence of outsiders

✦ What does 'economic abuse' comprise of?

It includes-

- a. Depriving the woman of all sorts of financial resources to which she is legally entitled or which she requires out of necessity for running the household, taking care of the children etc.
- b. Alienation of the movable or immovable assets in which she has interest
- c. Prohibiting the aggrieved woman or putting restriction on her to continue the use of resources or facilities.

✦ Give an example of an act of 'economic abuse' towards a woman?

Courts have interpreted that not giving food to the aggrieved person, interfering with the aggrieved person's ability to get an employment, forcing a woman to leave her job etc. as a form of economic abuse.

For example- A marriage hall, earlier managed by deceased husband of a widow, is taken away from her by her in-laws and she is deprived of the only source of earning available to her after death of her husband. It amounts to 'economic abuse' and is an act of domestic violence. [Smt. Sapna Wd/O Nilesh Patel v. Pravin Ishwarbhai Patel & others, Bombay High Court on 3rd May, 2019]

✦ Who can be an “aggrieved person” under the Act?

‘Aggrieved person’ means any woman who is, or has been, in a domestic relationship with the respondent i.e., the person against whom she is filing complaint under the Act and who alleges to have been subjected to any act of domestic violence by the respondent. Thus, following are the two essential conditions—

- The woman must be in a “domestic relationship” with the respondent
- She must make an allegation that she has been subjected to an act of domestic violence by the respondent.

A wife can be an “aggrieved person even after judicial separation [Krishna Bhatacharjee v. Sarathi Chaudhuri, 2016 Cri LJ 330 (SC)]

✦ What is meant by ‘domestic relationship’?

Relationship between two persons is treated as “domestic relationship” if they who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.

✦ What are the essential ingredients of a ‘domestic relationship’?

The essential ingredients of a “domestic relationship” are-

- Living together in a shared household and
- Being related by consanguinity, marriage or through a relationship in the nature of marriage, adoption, or being a members of a family living together as a joint family

✦ What does the statutory definition of ‘domestic relationship’ include?

The definition of ‘domestic relationship’ in Section 2(f) of the Act includes not only the relationship of marriage but also a relationship ‘in the nature of marriage’. However, all live in relationships will not amount to a ‘relationship in the nature of marriage’.

✦ What are the essential requirements for establishing ‘domestic relationship’?

In *D. Velusamy v. D. Patchaimmal*, AIR 2011 SC 479: The Supreme Court has held that the following requirements (common law marriage requirements) must be fulfilled and the parties must have lived together in a ‘shared household’ for their relationship to qualify as a “domestic relationship”-

- The couple must hold themselves out to society as if they are spouses.
- They must be of legal age to marry

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- They must be otherwise qualified to enter into a legal marriage, including being unmarried
- They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

✦ **What are the important factors to determine whether a particular relationship is a relationship of marriage or not?**

In *Indra Sharma v. VKV Sharma*, AIR 2006 SC 2522, the Supreme Court has specified the following factors to be considered for determining-

- Duration and period of relationship
- Shared household
- Pooling of resources and financial arrangements
- Sexual relationship, children
- Socialization in public
- Intention and conduct of parties

Thus, wives, mothers, daughters, daughters-in-law, live-in partners, all are protected under the Act.

✦ **Who is called as a “respondent” under this Act?**

The term ‘respondent’ is defined in the Act to mean any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act.

However, in *Heeral P. Harsora v. Kusum N. Harsora*, AIR 2016 SC 4774, the Supreme Court has observed that “if ‘respondent’ is to be read as only an adult male person, it is clear that women who evict or exclude the aggrieved person are not within its coverage, and if that is so, the object of the Act can very easily be defeated by an adult male person not standing in the forefront, but putting forward female persons who can therefore evict or exclude the aggrieved person from the shared household. This again is an important indicator that the object of the Act will not be sub-served by reading ‘adult male person’ as ‘respondent’. The Court declared that the words ‘adult male’ in Section 2(q) of the 2005 Act will stand deleted since these words do not square with Article 14 of the Constitution of India.” The effect of this judgment is that relief under the Act can be sought against women and minors also.

✦ **What does a “shared household” mean?**

It means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent. It includes tenanted household or a house which belongs to joint family of which the respondent is a member.

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✦ **Discuss the procedure for filing complaint or giving information regarding domestic violence?**

- The aggrieved person herself or any person who has reason to believe that an act of domestic violence has been committed or is likely to be committed can give information about the same to a protection officer or service provider or the police; Or
- An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under the Act;
- The Magistrate fixes the first date of hearing. Ordinarily this date is not beyond three days from the date of receipt of the application by the Court
- The Magistrate must make an effort to dispose of every such application within a period of sixty days from the date of its first hearing;
- The Magistrate may direct the respondent or the aggrieved person to undergo counseling either jointly or singly;
- Any relief available under this Act may also be sought in any legal proceeding, before a Civil Court, Family Court or a Criminal Court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

✦ **Discuss the rights available to aggrieved person under the Act?**

Right to reside in a shared household: An attempt is always made to make a woman submit to acts of violence by threatening her to be disposed or evicted from the house. The Act protects her by empowering the Court to pass an order restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household.

✦ **Discuss the remedies available to aggrieved person under the Act?**

- The Court may direct the respondent to remove himself from the shared household;
- The respondent or any of his relatives can be restrained from entering any portion of the shared household in which the aggrieved person resides;
- The respondent can also be restrained from alienating or disposing off the shared household or encumbering the same;
- The respondent can be restrained from renouncing his rights in the shared household except with the leave of the Magistrate;
- In the alternative, the Court can direct the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require.

- However, no such order can be passed against a woman.

✦ **What protection orders can be passed by the Court in favour of the aggrieved person?**

Under the protection order, the Court may prohibit the respondent from-

- Committing any act of domestic violence
- Aiding or abetting in the commission of acts of domestic violence
- Entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person
- Attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact
- Alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her Stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate
- Causing violence to the dependents, other relatives or any person who give the aggrieved person assistance from domestic violence
- Committing any other act as specified in the protection order

✦ **What 'Monetary reliefs' are available to an aggrieved person under the Act?**

The Court can direct the respondent to pay monetary relief to the aggrieved person. Such payment is made to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence. It includes the following but is not restricted to the same that is to say, there may be other heads also covered in this order:

- The loss of earnings
- The medical expense
- The loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person, and
- The maintenance for the aggrieved person as well as her children, if any.

✦ **To whom the Act confers power to pass 'custody orders' of children?**

Children are the worst sufferers in matrimonial litigation. With a view to minimizing hardship to the children, this Act confers power on the Court to grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf.

If necessary, the arrangements for visit to such child or children by the respondent are also specified in such orders. If the Magistrate is of the opinion that any visit of the respondent may be harmful to the interests of the child or children, he refuses to allow such visit.

✦ **What do you mean by ‘conducting proceedings in-camera’?**

The ‘in-camera proceeding’ may be defined as the proceeding that is carried out in private, in the absence of the public and the press. Such proceedings are conducted through video conferencing to safeguard the privacy and protection of the accused.

✦ **When can the matrimonial litigation proceedings be conducted in-camera under the Act?**

Like other matrimonial litigation, proceedings under this Act can also be conducted in camera if -

- a. The Magistrate considers that the circumstances of the case so warrant, and
- b. If either party to the proceedings so desires.

✦ **When can compensation orders be passed by the Court under the Act?**

In addition to the above mentioned reliefs, the Magistrate can pass an order for payment of compensation. By such order the respondent can be directed to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent. Such an order can be passed on an application made by the aggrieved person.

✦ **What is an ‘ex parte order’?**

The Court may pass an ex-parte order; this order is mainly a direction, command to restrain, granted after hearing only one party in matters of ‘urgency’, without a notice to the other parties involved.

✦ **What is an ‘interim order’?**

Interim order refers to an order issued by a Court during the pendency of the litigation. It is generally issued by the Court to ensure Status quo.

✦ **When can ex parte and interim orders be passed by the Court under the Act?**

Ex parte and interim orders may be passed by the Court to protect the aggrieved person on the basis of affidavit sworn by that person regarding commission or likelihood of commission of domestic violence.

✦ **What are the consequences of ‘breach of protection order’ of the Court?**

A breach of protection order, or of an interim protection order, by the respondent is an offence under the Act. The offence is punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

FAQ's - REALITY CHECK

1. My husband beats me daily saying that I don't cook tasty food. Does it amount to domestic violence'?

Yes. Beating or hitting wife for any reason amounts to ‘physical and mental abuse’ and hence the act of your husband falls under ‘domestic violence’.

2. My husband is insisting me to demand a car from my parents. On my refusal to demand the same, my husband stopped to give me household expenses. Is his act falls under the ambit of domestic violence'?

Yes. Refusing to give household expense to wife is an economic abuse and his act falls under the ambit of Domestic Violence.

3. If by mistake I put less sugar in tea, my in-laws verbally abuse me and ask me to die. Is this domestic violence?

Yes. Domestic Violence includes causing any harm or injury to the safety, life, health or well-being of the aggrieved woman by committing any physical, sexual, verbal or economic abuse.

4. My husband always insults me in front of his friends saying that my wife is so fat and ugly that I don't want her to accompany me anywhere. Does this amount to domestic violence?

Yes. The act of your husband is unreasonable and he is abusing you verbally in front of his friends is definitely an act of domestic violence.

5. My husband insists me to watch pornography even if I refuse. Is it a domestic violence?

Yes, his act amounts to sexual abuse. The Courts have recognized various forms of sexual abuse, such as forced sexual intercourse, demands to indulge in oral sex or watch pornography.

6. My husband insists me to take divorce from him, otherwise he will commit suicide. Is it a domestic violence?

Yes. Verbal and emotional abuse can also take place in several forms such as name calling, threatening to commit suicide as a method of coercion etc.

7. I am a receptionist in a private company and my in-laws insist me to leave my job. Will their act fall under the scope of ‘domestic violence’?

Yes. Interference in your ability to get an employment, forcing you to leave your job etc. is the form of economic abuse.

8. My husband never allows me to go out for shopping and never gives me any money to buy clothes and other essentials for myself. Will it amount to domestic violence?

Yes. Prohibiting the aggrieved woman or putting restriction on her to continue the use of resources or facilities, it amounts to economic abuse.

9. What all rights and remedies are available to me under the Domestic Violence Act?

Domestic Violence Act is a civil law and focuses on the reliefs given to the aggrieved woman such as compensation, protection, right to residence in the “shared household”.

10. What is the aim of the ‘Domestic Violence Act’?

Domestic Violence Act protects the rights of women guaranteed to them under the Constitution of India.

LANDMARK JUDGMENTS

1. Satish Chander Ahuja v. Sneha Ahuja [AIR Online 2020 SC 784]

The Supreme Court in this case overruled the earlier judgment in *S. R. Batra v. Taruna Batra*, pertaining to the right of residence available to a woman seeking protection from domestic violence and held that the term ‘shared household’ found in Section 2(s) of the Domestic Violence Act were required to be interpreted in accordance with the plain meaning of the statute. Further, being so construed, it would include any household in which the victim was residing at the relevant time, irrespective of the person in whom title vested.

The Apex Court has clearly ruled that a wife is also entitled to claim a right to residence in a shared household belonging to relatives of the husband.

2. Lalita Toppo v. State of Jharkhand & Anr. [AIR 2018 SC (Supp) 2583]

The Supreme Court has categorically held that maintenance can be claimed under the provisions of the Protection of Women from Domestic Violence Act, 2005 (Domestic Violence Act) even if the claimant is not a legally wedded wife despite an order of the Jharkhand High Court, which held that Section 125 CrPC does not provide for the grant of maintenance to a woman who is not legally married to the person to whom such maintenance is claimed.

The Bench explained that the provisions contained in Section 3(a) of the Domestic Violence Act, 2005 which defines the term “domestic violence” also constitutes “economic abuse” as domestic violence. The Court further opined that under the provisions of the Domestic Violence Act, the victim i.e. estranged wife or live-in-partner would be entitled to more relief than what is contemplated under Section 125 of the CrPC i.e. to a shared household also.

3. Sandhya Wankhede v. Manoj Bhimrao Wankhede [AIR 2011 SC (Criminal) 567]

In this case, an important issue was dealt with, i.e. the definition of the term ‘respondent’ as defined under Section 2(q) of the Domestic Violence Act. A ‘respondent’ is defined as any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act.

The Supreme Court in the aforementioned case put to rest the issue by holding that the proviso to Section 2(q) does not exclude female relatives of the husband or male partner from the ambit of a complaint that can be made under the provisions of the Domestic Violence Act. Therefore, complaints are not just maintainable against the adult male person but also the female relative of such adult male.

4. Krishna Bhattacharjee v. Sarathi Choudhury and another [2016 Cri LJ 330 (SC)]

The Apex Court while elucidating on the duty of Courts while deciding complaints under the Domestic Violence Act stated that:

- It is the duty of the Court to scrutinize the facts from all angles whether a plea advanced by the respondent to nullify the grievance of the aggrieved person is really legally sound and correct.
- The principle “justice to the cause is equivalent to the salt of the ocean” should be kept in mind. The Court of Law is bound to uphold the truth which sparkles when justice is done.
- Before throwing a petition at the threshold, it is obligatory to see that the person aggrieved under such a legislation is not faced with a situation of non-

adjudication, for the 2005 Act as we have stated is a beneficial as well as assertively affirmative enactment for the realization of the constitutional rights of women and to ensure that they do not become victims of any kind of domestic violence.

5. Vimlaben Ajitbhai Patel v. Vatslaben Ashokbhai Patel and Ors., [AIR 2008 SC 2675]

In this case, the Court held that when it comes to maintenance of the wife under the Domestic Violence Act read with the Hindu Adoption and Maintenance Act, 1956, it is the personal obligation of the husband to maintain his wife. Property of the mother-in-law can neither be subject matter of attachment nor during the lifetime of the husband can his personal liability to maintain his wife be directed to be enforced against such property.

PRACTICAL CASE SCENARIO

PRACTICAL CASE SCENARIO NO. 1

Sameer, the husband of Charushila is trying to drive her away from their home. Charushila has filed an application against her husband under the Protection of Women from Domestic Violence Act. The Court can pass an order restraining Sameer from driving Charushila out of their shared household. The Court may even direct the respondent to remove himself from the shared household.

PRACTICAL CASE SCENARIO NO. 2

Sameer is trying to injure Charushila (his wife) and their children and his presence in the house is making life of Charushila and their children unsafe. What is the remedy available with Charushila?

Charushila can file an application under the Domestic Violence Act before the Court. The Court can pass an order directing Sameer to remove himself from the house. The respondent or any of his relatives can be restrained from entering any portion of the shared household in which the aggrieved person resides.

PRACTICAL CASE SCENARIO NO. 3

Sameer is an alcoholic and he drinks daily. After drinking he hits Charushila (his wife) and children on a regular basis. Neighbours have tried to intervene but Sameer abuses them as well. What can Charushila do?

She can file an application to the Court against Sameer mentioning the domestic violence that he is doing on regular basis. The Court may order for separate ar-

rangements for residing in the shared household for Charushila and children. Sameer and his relatives can be restrained from entering that portion of the house in which Charushila is residing with her children.

PRACTICAL CASE SCENARIO NO. 4

Sameer is pressurizing Charushila to take divorce from him and go away from their shared household. However, Charushila is unwilling to give divorce and wants to reside in the same household. The house is owned by Sameer and there are indications that he may sell off the house or mortgage it which will adversely affect interests of Charushila. What can Charushila do in this case?

She may approach the Court. The Court can pass an order restraining Sameer from disposing off or encumbering the house property. Sameer can also be restrained from alienating or disposing off the shared household or encumbering the same. He can be restrained from renouncing his rights in the shared household except with the leave of the Magistrate.

PRACTICAL CASE SCENARIO NO. 5

Sameer is pressuring Charushila to get money from her parents otherwise he will take divorce from her. However, Charushila is unable to get money from her parents and she is unwilling to give divorce and wants to reside in the same household. The house is a joint family property. There are indications that Sameer can deprive Charushila of the property by relinquishing his share in favour of others. What can Charushila do in this case?

Charushila can move to the Court and file a suit for injunction. If the house is a joint family property, then Sameer can be restrained from relinquishing his share. The Court can direct the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require.

ASSESS YOURSELF: MULTIPLE CHOICE QUESTIONS

1. A wife can claim maintenance under the Protection of Women against Domestic Violence Act, 2005. This statement is _____.

- a. Correct
- b. Incorrect
- c. Partly correct
- d. None of the above

2. Maintenance is an amount payable by the husband to his wife who is unable to maintain herself during _____.

- a. Subsistence of marriage
- b. Upon separation
- c. On divorce
- d. All of the above

3. If at the time of filing of petition, the wife had already been divorced, there _____ be a domestic relationship.

- a. Can
- b. Cannot
- c. May be at discretion of the Court
- d. None of the above

4. In accordance with the proviso to the Section 2(q) of the Protection of Women from Domestic Violence Act, 2005, indicates that _____ may also file a complaint against a relative of the husband or the male partner.

- a. An aggrieved wife
- b. A female living in a relationship in the nature of marriage
- c. Both a and b
- d. None of the above

5. Under the Domestic Violence Act the first per-condition is that the applicant must be an aggrieved person is a person defined in _____ of the Act.

- a. Section 2(a)
- b. Section 2(b)

- c. Section 2(q)
- d. None of the above

6. Protection of Women from Domestic Violence Act, 2005 is a secular law applicable to all women in India who are aggrieved and are victim of domestic violence. This statement is _____.

- a. Correct
- b. Incorrect
- c. Partly correct
- d. None of the above

7. Protection of Women from Domestic Violence Act, 2005, provides a remedy under _____ protecting women from domestic violence.

- a. Criminal Law
- b. Civil Law
- c. Both a and b
- d. None of the above

8. Temporary residence so includes a place where an aggrieved person was compelled to reside in view of commission of domestic violence. This statement is _____.

- a. Correct
- b. Incorrect
- c. Partly correct
- d. None of the above

9. Protection of Women from Domestic Violence Act, 2005, has been enacted keeping in view the rights guaranteed under _____ of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victim of domestic violence and to prevent the occurrence of domestic violence in society.

- a. Article 14
- b. Article 15
- c. Article 21
- d. All of the above

10. _____ of the Protection of Women from Domestic Violence Act, 2005, has guaranteed right to residence to an aggrieved person in the share household of the respondent.

- a. Section 11
- b. Section 15
- c. Section 19
- d. None of the above

ANSWER KEY									
1	2	3	4	5	6	7	8	9	10
a	d	a	c	a	a	b	a	d	c

**LEGAL AWARENESS PROGRAMME BY
NATIONAL LEGAL SERVICES AUTHORITY IN COL-
LABORATION WITH NATIONAL COMMISSION FOR
WOMEN
KNOWLEDGE PARTNER-ALL INDIA REPORTER**

**IEC & TRAINING MODULE
For RESOURCE PERSONS
ON
FAMILY LAW
THE DOWRY PROHIBITION ACT, 1961**

Training Module**The Dowry Prohibition Act, 1961****IEC Material & Training Module**

The IEC & Training Module is primarily for Resource Persons of NALSA, as it focuses on particular responsibilities in spreading legal awareness about women and the various enactments framed specifically for them by the mandate of the Constitution, such as Dowry Prohibition Act, 1961, as a part of Legal Awareness Programme undertaken by National Legal Services Authority in collaboration with National Commission for Women. Resource Persons will find it as a useful source of information & guidance.

The main objective of this IEC & Training Module is to inspire, motivate, cultivate curiosity, shape the opinion and enlighten the Resource Persons on issues concerning dowry [Dowry Prohibition Act, 1961].

The overall content has been written in an interactive Question Answer style, in a lucid and simple language.

NALSA hopes that the Resource Person will be benefitted immensely by these IEC & Training Modules.

Objective

- *To actively work for creating a dowry free society without adversely affecting the institution of marriage, family structure and implication of innocents.*
- *To create awareness about current dowry/cruelty/harassment related laws and their detrimental effects on family members including husband, wife, their children and relatives.*
- *To provide legal awareness to families from weaker and needy sections of society.*

Learning Outcome

- *Legal awareness regarding the provisions of the Dowry Prohibition Act.*
- *Training participants (Resource Persons) in spreading awareness about the provisions of Dowry Prohibition Act.*

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“There is an urgent need to tackle the ills of society against women through active participation of all -men, women, society, governments. It is imperative to make women empowerment a people’s movement.”

- Sushma Swaraj

Introduction

“Dowry” is a common term in Indian households. This practice has become a parasite for the Indian society and has eroded the beautiful institution of marriage. It is not a new trend but has been practised as a custom from ages, and is so deep rooted in the Indian society that it is still far from eradication. Several laws have been enacted to prohibit the practice of dowry, but the legal clutches are weaker than the ambit of the practice of dowry. India reports a high rate of dowry death per year and our society needs to be aware of various laws which prohibit the practice of dowry.

The Dowry Prohibition Act, 1961

The Dowry Prohibition Act was enacted on May 1, 1961. The act was intended to prevent the giving or receiving of a dowry. The term dowry under the Act includes property, goods, or money given by either party to the marriage, by the parents of either party, or by anyone else in connection with the marriage. The Dowry Prohibition Act applies to persons of all religions in India.

The original text of the Dowry Prohibition Act was widely criticized for being ineffective in curbing the practice of dowry. Moreover, specific forms of violence against women continued to be linked to a failure to meet dowry demands. As a result, need was felt for amendment of the provisions of the Act and therefore in 1984, presents given to a bride and groom at the time of a marriage were brought into scrutiny. A rule was made according to which a list was to be maintained describing each gift, its value, the identity of the person giving it, and the person’s relation to either party to the marriage. The act and all other relevant provisions of the Indian Penal Code were further amended to protect female victims of dowry-related violence. Another layer of legal protection was provided in 2005 under the Protection of Women from Domestic Violence Act.

Amendments were also made to the minimum and maximum punishments for giving and receiving dowry and a penalty was introduced for demanding dowry or advertising offers of money or property in connection with a marriage. The Indian Penal Code was also modified in 1983 to establish specific crimes of dowry-related cruelty, dowry death, and abetment of suicide. These enactments punished violence against women by their husbands or their relatives when proof of dowry demands or dowry harassment could be shown. Even after all these revisions, the practice of dowry and dowry-related violence still occurs in varying degrees within several communities and socioeconomic groups of India.

Important provisions under the Act at a glance

Sr. No.	Sections	Provisions
1	Section 2	Definitions of 'dowry'
2	Section 3	Penalty for giving or taking dowry
3	Section 4	Penalty for demanding dowry
4	Section 4-A	Ban on advertisement
5	Section 5	Agreement of giving or taking dowry to be void
6	Section 6	Dowry to be for the benefit of the wife or her heirs.
7	Section 7	Cognizance of offences.
8	Section 8	Offences to be cognizable for certain purposes and to be non-bailable and non-compoundable.
9	Section 8-A	Burden of proof in certain cases.
10	Section 8-B	Dowry Prohibition Officers.

✦ **What are the objectives of the Act?**

- To promote marital and family harmony.
- To actively work for creating a dowry free society without adversely affecting the institution of marriage, family structure and implication of innocents.
- To provide a platform for fighting against misuse of dowry laws.
- To create awareness about current dowry/cruelty/harassment related laws and their detrimental effects on family members including husband, wife, their children and relatives.

✦ **What is prohibited under the Act?**

The Dowry Prohibition Act of 1961 is an Act which prohibits the giving or taking of dowry. Further, any agreement for the giving or taking of dowry shall be void according to **Section 5**.

✦ **What is the definition of Dowry?**

According to **Section 2** of the Act, dowry means any property or valuable security given or agreed to be given either directly or indirectly:

- by one party to a marriage to the other party to the marriage; or
- by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person;
- at or before or any time after the marriage in connection with the marriage of said parties.

✦ **Does the definition of dowry include ‘mahr’?**

No, it does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies. [Section 2]

✦ **Are presents also considered as a dowry under the Act?**

No, the following presents given at the time of marriage are not considered as dowry [Section 3(2)] :

- a. Presents given to the bride without any demand having been made on that behalf.
- b. Presents given to the bridegroom without any demand having been made on that behalf.

But, there are two requirements which needs to be fulfilled:

- a. such presents should be entered in a list maintained in accordance with the rules made under this Act.
- b. presents made by or on behalf of the bride or any related person to the bridegroom should not be excessive having regard to the financial status of the person giving it.

✦ **What are the Rules in Accordance with which lists of Presents are to be maintained?**

Rule 2 of the Dowry Prohibition (Maintenance of Lists of Presents to the Bride and Bridegroom) Rules, 1985 provides that, such list:

- a. be prepared at the time of the marriage or as soon as possible after the marriage;
- b. shall be in writing;
- c. shall be signed by both the bride and the bridegroom;
- d. \shall contain,
 - i. a brief description of each present;
 - ii. the approximate value of the present;
 - iii. the name of the person who has given the present; and
 - iv. where the person giving the present is related to the bride or bridegroom, a description of such relationship.

✦ **If a person other than the woman who is getting married has already received the dowry what then?**

Where any dowry is received by any person other than the woman in connection with whose marriage it is given, that person will transfer it to the woman [Section 6(1)] :

If the dowry was received before marriage	within 3 months after the date of marriage
If the dowry was received at the time of or after the marriage	within 3 months after the date of its receipt
If the dowry was received when the woman was a minor	within three months after she has attained the age of eighteen years pending such transfer, shall hold it in trust for the benefit of the woman

✦ **What will happen, if the women entitled to dowry under Section 6 dies before claiming it?**

Where the woman entitled to any property under section 6(1) dies before receiving it, the heirs of the woman will be entitled to claim it from the person holding it for the time being [Section 6(3)] :

- a. if she has no children, it will be transferred to her parents, or
- b. if she has children, it will be transferred to them. And until the transfer is pending, the amount will be held in trust for such children.

Section 6 (3A) further provides that where a person convicted for failure to transfer any property as required has not, before his conviction under that subsection, transferred such property to the women entitled or, her heirs, parents or children, the Court shall, in addition to awarding punishment, direct, that person to transfer the property,

If such a person still fails to comply with the direction within the period so specified, an amount equal to the value of the property may be recovered from him as if it were a fine imposed by such Court and paid to such woman, as the case may be, her heirs, parents or children.

✦ **What are the various penalties provided under the Act?**

Taking or abetting to give or take dowry [Section 3(1)]	Imprisonment for a term which shall not be less than 5 years, and with the fine which shall not be less than Rs. 15,000 or the amount of the value of such dowry, whichever is more. For adequate and special reasons imprisonment can be awarded for a term of less than 5 years.
Demanding dowry [Section 4]	Imprisonment for a term which shall not be less than 6 months but which may extend to 2 years and with fine which may extend to Rs. 10,000. For adequate and special reasons imprisonment can be extended for a term of less than 6 months.
Advertisement of dowry in any form for the marriage of one's son or daughter or any relative [Section 4-A]	Imprisonment for a term which shall not be less than 6 months, but which may extend to 5 years, or with fine which may extend to Rs. 15,000 For adequate and special reasons imprisonment can be extended for a term of less than 6 months.
Failure to transfer any property as required by Section 6(1),(3) within the specified time limit as prescribed [Section 6(2)]	Imprisonment for a term which shall not be less than 6 months, but which may extend 2 years or with fine which shall not be less than Rs. 5,000, but which may extend to Rs. 10,000 or with both.

✦ Who can take Cognizance of offences under the Act?

No, Court inferior to that of a Metropolitan magistrate or a Judicial Magistrate of the first class shall try any offence under this Act. [Section 7]

✦ Who can file a complaint under the Dowry Prohibition Act?

- a. The Court on its accord or on a police report of the facts which constitute such offence, or
- b. A complaint by the person aggrieved by offence or a parent or other relative of such person, or by any recognized welfare institution or organization:

✦ Are the offences under the Act bailable and compoundable?

No, every offence under this Act shall be non-bailable and non-compoundable [Section 8(2)]. And the provisions of Code of Criminal Procedure will apply to them as if they were cognizable offences:

- a. for the purpose of investigation of such offences; and
- b. for the purpose of matters other than: matters referred to in Section 42 of that Code, and the arrest of a person without a warrant or without an order of a Magistrate.

✦ Who has the Burden of proof under the Act?

The burden of proof will be on the person who is being prosecuted for taking or abetting the taking of any dowry under Section 3, or the demanding of dowry under Section 4, proving that he is not guilty of the offence. [Section 8-A]

✦ Who are the Dowry Prohibition Officers and what are their powers and functions?

The officer or officers appointed by the State Government to perform the following functions [Section 8-B]:

- a. to see that the provisions of this Act are complied with;
- b. to prevent, as far as possible, the taking or abetting the taking of, of the demanding of, dowry;
- c. to collect such evidence as may be necessary for the prosecution of persons committing offences under the Act; and
- d. to perform such additional functions as may be assigned to him by the State Government, or as may be specified in the rules made under this Act.

The Dowry Prohibition Officer shall have all the powers of a police officer and shall exercise such powers subject to such limitations and conditions as may be specified by rules made under this Act. The Jurisdiction of such officers will be determined by the Government appointing them.

✦ **Who can be appointed under the advisory board and what will be their function?**

The State Government can appoint an advisory board to advise and assist the Dowry Prohibition Officer. The board will consist of not more than five social welfare workers (out of whom at least two shall be women) from the area in respect of which such Dowry Prohibition Officer exercises jurisdiction [Section 8-B(4)].

LANDMARK JUDGMENTS

1. Narayanamurthy v. State of Karnataka [AIR 2008 SC 2377]

The case was regarding payment and demand of dowry by the husband and the relatives. It was held by the Supreme Court that, in order to be excluded from meaning of “dowry” such customary presents:

a. Should not be expensive having regard to the financial status of the giver of those presents; and

b. They should be entered in a list maintained in accordance with the Rules made under the Dowry Prohibition Act, 1961.

2. Surinder Singh v. State of Haryana [AIR 2014 SC 817]

The case was regarding demand and harassment of the wife for not providing enough dowry. The Supreme Court held that the definition given in the Dowry Prohibition Act, 1961 is a comprehensive and wide definition which covers almost all forms of dowry. It covers all forms of dowry for the period before, at and after the marriage takes place.

3. Vinod Kumar Sethi v. State of Punjab [AIR 1982 P & H 372]

The following was held by the High Court of Punjab and Haryana “It calls for pointed notice that the Dowry Prohibition Act, does not, in any way, bar the traditional giving of presents at or about the time of the wedding, which may be willing and affectionate gifts by parents and close relations of the bride to her. Such presents or dowry given by the parents is, therefore, not at all within the definition of the aforesaid statute. A voluntary and affectionate giving of dowry and traditional presents would thus be plainly out of the ambit of the particular definition under the Act and once that is so the rest of the provisions thereof would be equally inapplicable.”

4. Shobha Rani v. Madhukar Reddi [AIR 1988 SC 121]

The question before the Supreme Court was whether demand for dowry amounts to ‘cruelty’ or not. Is demand for dowry sufficient to grant divorce. The Supreme Court observed the following:

Bearing in mind the proper approach to matrimonial offence, we are satisfied that the facts and circumstances brought out by the appellant in this case do justify an inference that there was demand for dowry. The demand is prohibited under law. That by itself is bad enough. That, in our opinion, amounts to cruelty entitling the wife to get a decree for dissolution of marriage.

In simple words, a demand for dowry is sufficient to constitute ‘cruelty’ and also to get a decree for dissolution of marriage.

5. **S. Gopal Reddy v. State of Andhra Pradesh [AIR 1996 SC 2184]**

It was held by the Supreme Court that the demand, even if made before the marriage, amounts to an offence under Section 4 of the Dowry Prohibition Act, 1961. In this case, the court held that under Section 4 of the Act, mere demand of dowry is sufficient to hold an accused under the offence and that any demand of money, property or valuable security received from the bride or her parents or other relatives by the bridegroom or his parents or vice versa would fall within the mischiefs of dowry under the Act. Marriage under this Act shall also include proposed marriage and also more particularly when the non-fulfillment of the demand of dowry leads to the consequence of the marriage not taking place at all.

PRACTICAL CASE SCENARIO

PRACTICAL CASE SCENARIO NO. 1

Pooja is a married woman. Her husband is harassing her for the payment of dowry. Her brother, Ravi went to file an FIR to the police station. The station inspector of the police station told him that he could not file a complaint directly. Only Pooja can file an FIR or complaint under the Dowry Prohibition Act. Is the contention of the police officer correct?

Answer: No, the contention of the police officer is not correct. A complaint or an FIR can also be filed by the relative of the person being aggrieved. The following persons can file a complaint or FIR:

- a. The aggrieved person;
- b. Parents of the aggrieved person;
- c. Any other relative of the aggrieved person.

PRACTICAL CASE SCENARIO NO. 2

Anisha is a married woman. Her husband is harassing her for the payment of dowry. She filed a criminal case under the Dowry Prohibition Act. While the hearing was continuing, the husband apologized to her unconditionally and promised that the same would never happen again. After the apology, Anisha wants to compound the case. Can she compound the offence?

Answer: No, Anisha cannot withdraw the case. As per Section 8 (2) of the Dowry Prohibition Act, 1961, all the offenses given in the Act are non-compoundable. When an offense is non-compoundable, it cannot be taken back.

PRACTICAL CASE SCENARIO NO. 3

Khyati is a married woman. Her husband is harassing her for the payment of dowry. Already Rs. 5 lakhs has been given as dowry. But the husband still wants an additional amount of Rs. 2 lakhs. Khyati has decided to file a criminal case against him under the Dowry Prohibition Act, 1961. On whom shall the burden of proof lie?

Knowledge Partner : All India Reporter Pvt Ltd

Answer: The burden of proof shall lie on the husband. He shall have to prove that he did not take any dowry under Section 3, and also, he did not demand additional dowry under Section 4. Usually, the burden of proof is on the prosecution, but section 8A (which was added in the year 1986) states that the burden of proof shall be reversed in dowry cases.

PRACTICAL CASE SCENARIO NO. 4

Raghuveer is a prosperous businessman. He is proud of his business and connections. He has a daughter called Urvashi. He publishes in a leading newspaper that whosoever marries his daughter shall get 50% shares of his company. Has he committed any offense?

Answer: Yes, he has committed an offence under Section 4A of the Dowry Prohibition Act, 1961. In this section, it is clearly stated that advertisements, like the one given in the factual case, are an offence. It does not matter whether it is published from the groom's side or the bride's side. The punishment for the same is a minimum of 6 months imprisonment, which may extend to 5 years or with fine, which may extend to Rs. 15,000.

Even the newspaper editor shall be liable under this Section.

PRACTICAL CASE SCENARIO NO. 5

Amit is a young unmarried man. He met a girl named Sakshi through a matrimonial website. After that, he met her parents. The parents started demanding presents and gifts from Amit in consideration of the proposed marriage. Amit refused the same and stated that dowry is prohibited. The parents and Sakshi stated that dowry is only applicable when the groom's or boy's family demands valuable security. Is the contention of Sakshi and her family correct?

Answer: No, the contention is wrong. Dowry Prohibition Act applies to both genders. As per Section 2 of the Act, 'Dowry' means any property or valuable security given or agreed to be given either directly or indirectly:

- a. by one party to a marriage to the other party to the marriage; or
- b. by the parents of either party to a marriage or by any other person, to either party to the marriage or any other person; at or before [or any time after the marriage] [in connection with the marriage of the said parties, but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

As can be seen from the above definition, there is no mention of the groom or bride. Therefore, a demand from the girl's side is also incorrect and criminal, and they shall be liable under Section 4 of the said Act.

FAQ-REALITY CHECK**1. Can immovable property also come under the ambit of dowry?**

Yes, both immovable and movable property given or agreed to be given directly or indirectly by one party to marriage (parents, relatives etc.) to another party to marriage is dowry.

2. My in-laws have been asking for a scooter to my parents stating that it will be convenient for me and my husband to commute. Does this amount to dowry?

Yes, any demands made during or after the marriage, to the bride's parents / relatives amounts to dowry.

3. A sum of money was paid by my father during my marriage to the groom for the purchase of a piece of land in the joint name me and my would be husband. Will this amount to dowry?

No, there was no demand made to the father. His act is voluntary in nature.

4. While the marriage ceremony was taking place the groom's father handed over a list of ornaments to my father, stating that all the ornaments should be ordered as soon as possible. Does this amount to dowry?

Yes, the furnishing of a list of ornaments and other household articles such as refrigerator, furniture, electrical appliances, etc., at the time of the settlement of the marriage amounts to demand of dowry within the meaning of section 2 of the Dowry Prohibition Act, 1961.

5. After 5 weeks of marriage my husband demanded a car from my father. My father could not fulfill the demand due to the financial crunch. Later my husband and mother-in-law started taunting me on various occasions. Does this amount to dowry?

Yes, the amount was being demanded in connection with the marriage and it was a demand for dowry though it was demanded after the marriage.

6. An agreement was made between my father and the groom's father regarding the ornaments to be given during my marriage. My father could not fulfill the agreement and my father-in-law sued him. Will my father be arrested?

No, any agreement for the giving or taking of dowry is void.

7. There was an advertisement in the newspaper stating "If you marry my daughter, I will give you Rs.10,000 cash". Is this legal?

No, printing or advertising any such ads is a punishable offence under the Dowry Prohibition Act, 1961.

8. What is the punishment for demanding dowry under the Dowry Prohibition Act?

If any person demands directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine which may extend to ten thousand rupees.

9. My family demanded dowry during marriage but on non-fulfilment of the demand, they did not ask for dowry again. Is demanding dowry itself an offence?

Yes, any kind of demand related to assets with relation to marriage amounts to dowry and demanding dowry itself is an offence.

10. My daughter before being set on fire by her in-laws had written a letter to me that she was being ill-treated, harassed and threatened of dire consequences for non-satisfaction of demand for dowry. Will the in-laws be penalized?

Yes, under Section 4 of the Dowry Prohibition Act 1961, the in-laws will be penalized.

[ASSESS YOURSELF: MULTIPLE CHOICE QUESTIONS]

1. _____ is the maximum imprisonment under the Dowry Prohibition Act, 1961.

- a. 6 months
- b. 1 year
- c. 3 years
- d. 5 years

2. _____ can be liable under the Dowry Prohibition Act, 1961.

- a. Husband and the relatives
- b. Wife and the relatives
- c. Both (a) and (b)
- d. None of the above

3. Dowry Prohibition Act does not apply to _____.

- a. Muslim Personal law
- b. Hindu Personal law
- c. Buddhist Personal Law
- d. All of the above

4. Where any dowry is received by any person other than the woman in connection with whose marriage it is given, that person shall transfer it to the woman if the dowry was received before marriage, within _____ after the date of its receipt.

- a. 3 months
- b. 6 months
- c. 1 month
- d. 1 year

5. _____ is empowered to take cognizance under the Dowry Prohibition Act.

- a. Metropolitan Magistrate
- b. Judicial Magistrate First Class
- c. Both (a) and (b)
- d. Judicial Magistrate Class II

6. The offences under the Dowry Prohibition Act, 1961 shall be _____.

- a. Cognizable
- b. Non-cognizable
- c. Bailable
- d. Both (a) and (c)

7. Every offence under the Dowry Prohibition Act, 1961 shall be _____.

- a. Non – bailable
- b. Non – compoundable
- c. Cognizable
- d. All of the above

8. The burden of proof under the Dowry Protection Act, 1961 shall be on _____.

- a. The aggrieved person
- b. The prosecution
- c. The person against whom a case has been filed
- d. Any of the above

9. _____ is empowered to appoint Dowry Prohibition Officers.

- a. Central Government
- b. State Government
- c. Either (a) or (b)
- d. Both (a) and (b)

10. _____ is/are the powers/power of the Dowry Prohibition Officers.

- a. To see that the provisions of this Act are complied with
- b. To prevent the taking or abetting the taking of, or the demanding of dowry
- c. To collect such evidence as may be necessary for the prosecution of persons committing offences under the Act
- d. All of the above

ANSWER KEY									
1	2	3	4	5	6	7	8	9	10
d	c	a	a	c	a	d	c	b	d

PART - C

Women & Labour Laws

**LEGAL AWARENESS PROGRAMME
BY
NATIONAL LEGAL SERVICES AUTHORITY
IN COLLABORATION WITH
NATIONAL COMMISSION FOR WOMEN
&
KNOWLEDGE PARTNER - ALL INDIA REPORTER**

**IEC & TRAINING MODULE
For Resource Persons
ON**

**LABOUR LAWS
THE FACTORIES ACT, 1948**

Training Module**IEC Material and Training Module for Training the Trainers**

The IEC & Training Module is primarily for Resource Persons of NALSA, as it focuses on particular responsibilities in spreading legal awareness about Women & Labour Laws (Factories Act, 1948). This is part of the Legal Awareness Programme undertaken by National Legal Services Authority in collaboration with National Commission for Women. Resource Persons will find it as a useful source of information & guidance.

The main objective of this IEC & Training Module is to inspire, motivate, cultivate curiosity, shape the opinion and enlighten the Resource Persons on issues concerning Women & Labour Laws (Factories Act, 1948).

The overall content consists of provisions that guarantee protection and safeguard to women workers under the Factories Act.

This has been written in an interactive Question Answer style, in a lucid and simple language.

NALSA hopes that the Resource Person will be benefitted immensely by these IEC & Training Modules

Objective

- *To give an overview of the safeguard measures enacted for women under the Factories Act*
- *The primary objective is to protect women workers employed in the factories against industrial and occupational hazards*
- *To familiarize the Resource Persons with the 'Provisions of the Factories Act' that are available to Women Employees*
- *To improve the understanding of Resource Persons about the challenges & barriers women confront in accessing and enjoying their rights*
- *To provide guidance on ways to be carried out to enhance protection of women employees and guarantee their safeguard.*

Learning Outcome

The participants (Resource Persons) will be able to completely understand their role & responsibilities in spreading awareness that guarantees protection and safeguard to women workers under the Factories Act.

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“Feminism isn’t about making women stronger. Women are already strong; it’s about changing the way the world perceives that strength”

- G. D. Anderson

THE FACTORIES ACT, 1948

INTRODUCTION

The provisions of Labour Laws are applicable to workers engaged through a ‘contract’ of employment. Workers are being discriminated and exploited and therefore, a need arose for enactment of the labour laws for their protection and security. Working women in factories form a major part of the society, and due to the existing discriminations in the society they need special protection.

The Factories Act aims to consolidate and amend the law regulating labours in factories to safeguard their interests. This Act deals with regulation of employment in dangerous occupations/employments, prohibition of night work, restriction on carriage of heavy loads, social security, provision of crèches and other welfare facilities etc. In general, the Act has been primarily promulgated to provide safety measures and to promote the health and welfare of workers, as well as protection from occupational hazard of workers employed in factory. Act is hence within the authority of Central government to enact laws. The Act was drastically amended in 1987 whereby safeguards against use and handling of hazardous Substances and procedures for setting up hazardous industries were laid down. The Act aims at protecting workers employed in factories from unfair exploitation by their employers

✦ Which types of establishments are covered under the Factories Act?

Section 2(m) of the Factories Act, 1948 defines the term ‘factory’. The Act defines that in any premises if 10 or more workers are engaged in a manufacturing process with aid of power or if 20 or more workers are engaged in the manufacturing process without aid of power such premises will be covered under the Factories Act, 1948.

✦ Who is a ‘worker’ according to the Factories Act?

According to Section 2(1)(1) of the Factories Act, 1948 a “worker” means a person who is-

- Employed, directly or by/ through any agency-
- The employer also includes a contractor [with or without the knowledge of the principal employer], with or without any remuneration
- In any manufacturing process, or
- In cleaning any part of the machinery or

- Premises used for a manufacturing process, or
- In any other kind of work incidental to, or connected with, the manufacturing process,
- It does not include any member of the armed forces of the Union

✦ What are the objectives of the Factories Act?

✦ Welfare:

- Adequate facilities for washing, sitting and storing extra clothes not needed during the working hours.
- If a worker has to work in standing position, sitting arrangement to take short rests should be provided.
- Adequate First aid boxes should be provided and maintained.

✦ Facilities in case of large factories:

- Creches are to be provided if 50 or more women workers are employed.
- Safety measures

✦ Working hours:

- Overtime wages are double the rate of wages payable.
- Overtime should not exceed 60 hours in a week and total overtime hours in a quarter should not exceed 50.

✦ Legal Provisions under Factories Act for women- A glance

Sr. No.	Sections	Legal Provisions
1	Section 22 (2)	No woman shall be allowed to clean, lubricate or adjust any part of a prime-mover or of any transmission machinery while in motion, or to clean, lubricate or adjust if it would expose her to risk of injury
2	Section 27	Woman worker should not be employed in any part of the factory for pressing cotton in which a cotton-opener is at work
3	Section 34	(1) No person shall be employed in a 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 women employed in factories

Sr. No.	Sections	Legal Provisions
4	Section 48 (1)	In every factory wherein more than fifty women workers are employed there should be provided and maintained a suitable room for the use of children under the age of six years of such women
5	Section 66 (1) (b)	Women is not allowed to work during the night hours from between 10 P.M. and 5 A.M. Factories Act 1948, shall allow women to work in between the hours of 6 A.M. and 7 P.M. only
6	Section 79 (1) (b)	A female worker, shall be granted maternity leave for any number of days not exceeding twelve weeks

✦ **Does the Factories Act provide for a maternity leave to a woman worker with wages?**

Yes, according to Section 79 (1) (b) of the Factories Act, 1948, every female worker shall be entitled to a maternity benefit for any number of days not exceeding twelve weeks.

The Maternity Benefit Amendment Act, 2017 has increased the duration of paid maternity leave available for women employees from the existing 12 weeks to 26 weeks

✦ **Are there any special facilities for women prescribed under the Factories Act, 1948?**

Yes, there are special facilities for women under the Act, which are mentioned below-

- Urinal facilities [Section 19] : Separate conservancy facilities are provided to women workers under the Factories Act, 1948. The Act makes it obligatory for every factory to maintain an adequate number of latrines and urinals for women workers.
- Prohibition of hazardous occupation [Section 22] : The Factories Act, 1948 prohibits employment of women in dangerous occupations. The Act also prohibit the employment of women in pressing cotton where a cotton opener is at work
- Washing and bathing facilities [Section 42(1)(b)] : Separate facilities washing and bathing are provided for women workers under the Factories Act.
- Crèches [Section 48] : A crèche is a nursery and it is a place where babies of working mothers are taken care of while the mothers are at work.

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Rooms shall provide adequate accommodation, and shall be adequately lighted and ventilated.

- Hours of work [Section 66]: Under the Factories Act, 1948, the daily hours of work of adult workers have been fixed at 9 hours. In case of women workers there shall be no change of shifts except after a weekly holiday or any other holiday

✦ **Are there any special amenities/ services for women workers in a factory?**

Yes, a factory must comply with the following rules-

- Location : Prescribing the location and the standards in respect of construction, accommodation, furniture and other equipment of rooms to be provided to be used as crèches
- Child Care Provisions : Requiring the provision in factories for the care of children belonging to women workers, including suitable provisions for facilities such as washing and changing their clothing
- Milk and refreshments : Requiring the factories to provide free milk or refreshment or both for such children
- Feeding intervals : Requiring the factories to provide facilities for working mothers to feed their children at necessary intervals.

✦ **How has the Indian Constitution shaped the need for providing safeguards to women in factories?**

Constitutional provisions for safeguard of women

Article	Provision
Article 14	Right to social equality for all genders
Article 15	Right to social equality in terms of employment
Article 15(3)	Empowers the State to make special provisions for women in order to promote and preserve the strength and vigor of the race
Article 16	Equal opportunities for all citizens in matters relating to employment or appointment in any office under the State
Article 21	Right to Life and Personal Liberty in the context of providing a pregnant woman all the required facilities along with protection of her employment
Article 42	Right to just and humane conditions of work and maternity relief
Article 46	Right to improvement in employment opportunities and conditions of working women

✦ **Are there any restrictions on working hours of a woman in a factory?**

Yes. A woman worker cannot be employed beyond 6 AM to 7 PM. The State Government can grant exemption to any factory from such provisions but in no case a woman can be permitted to work during 10 PM to 5 AM. Shift change can be done only after weekly or other holiday and not in between.

✦ **Are there any specific provisions under the Factories Act for night shifts of woman?**

Yes. Following provisions can be considered as important under the Act relating to the night shifts of the Women.

- Section 66 of the Factories Act prohibits night shifts for woman.
- The Madras High Court in *Vasantha R. v. Union of India*, 2000, declared the provisions of Section 66(1)(b) which prohibits employment of women except between the hours of 6 A.M. and 7 P.M., as unconstitutional and violative of Articles 14, 15 and 16 of the Constitution.
- Factories Act has been proposed to be amended to allow night shift for women workers.
- The Government has decided to amend Section 66 of the Factories Act, 1948 to allow employment of women workers between 7:00 PM and 6:00 AM.
- The employer has to ensure occupational safety and adequate protection to the women workers.

✦ **Can a State Government make any specific rules related to night shifts of women workers?**

Yes, the State Government of Madras has in the notification lists down the following health, safety and security measures:

- Transportation facility from residence accompanied by security guards in vehicles with CCTV cameras.
- Healthy and hygienic working conditions
- Women workers shall be engaged in a batch of not less than 10 women. The total number of women workers in night shift shall not be less than 2/3 of the total strength.
- During night shift, not less than 1/3 of the supervisor shift in charge or other supervisory staff shall be women.
- The employer shall appoint not less than two female wardens per night shift who shall work as Special Welfare Assistants.
- Boarding and Lodging, if made any, the same shall be kept exclusively for women.
- Proper lighting and CCTV coverage to be ensured not just inside the factory but also surrounding the factory.

- If a woman is rotated from a day shift to night shift, or vice-versa, that women should at least be given 12 hours of the rest between the switch.
- Appropriate medical facilities shall be made available such as necessary telephone connections.
- Sufficient number of rest rooms to be provided. Separate canteen facility to be provided for women workers

✦ **Is there any provision for a girl child under the Factories Act?**

According to an amendment to the Factories Act, in 1957 clause (5) was inserted to Section 71 which provides that a female child can work only between 8 A.M. to 7 P.M. No female child shall be required or allowed to work in any factory except between 8 A.M. and 7 P.M.

✦ **Are there any specific rules related to crèches for women in a factory?**

Yes. Section 48(1) of the Factories Act deals with crèches in factories where there is more than 30 women workers. There shall be provided and maintained a suitable room or rooms for use of children under the age of 6 years of such women.

Crèches to be adequately lighted and ventilated and to be under the charge of trained women. Rooms for use of children shall provide adequate accommodation, shall be adequately lighted and ventilated. Further they 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 [Section 48(2)].

✦ **Can the State Government prescribe rules to a factory regarding rooms for women workers?**

Yes. The State Government may make rules prescribing the location and the standards in respect of construction, accommodation, furniture and other equipment of rooms for use of children.

It may also make rules for the provision of additional facilities for the care of children belonging to women workers, including suitable provision of facilities-washing and changing their clothing, free milk or refreshment or both for the children, and for the mothers of children to feed them at the necessary intervals.

✦ **When a welfare officer is to be appointed in a factory?**

According to Section 49 of the Factories Act, there is a requirement of a welfare officer in factories employing 500 or more workers, duties, qualifications and conditions of service to be prescribed by the State Government.

✦ **Even if a factory employs over 500 workers only for a few months in the year and not continuously, the occupier shall employ the prescribed number of welfare officers. What are the powers of an inspector under the Factories Act?**

According to Section 9 of the Factories Act, an inspector may exercise any of the following powers within the local limits for which he is appointed:

1. He can enter any place which is used or which, he has reasons to believe, is used as factory,
2. He can make examination of the premises, plant, machinery etc.
3. Inquire into accidents or dangerous occurrence.
4. He can require the production of any prescribed register or any other document relating to the factory,
5. Seize or take copies of any register, record or other document or any portion, as he may consider necessary.
6. Direct the occupier that any premise or any part or anything lying herein is left undisturbed.
7. Take measurement and photographs and make such recordings as considers necessary for the purpose of any examination.
8. In case of any article, substance found in any premise, which can cause danger to health and safety of the workers.
9. Exercise such other powers as may be prescribed.

✦ **What is the system of reporting of occupational diseases in the Factories?**

According to Section 89 of the Factories Act, where any workers in a factory contacts any notifiable disease, the Manager of the factory shall send a notice to inspector of factories.

✦ **What actions are initiated against the management for violation of the provisions of the Factories Act?**

- The inspectors visit the factories and violations of the provisions of the Act and the Rules framed there under are brought to the notice of the occupier/manager for taking necessary action
- particularly when building, machineries and equipment are likely to lead conditions detrimental to the health and safety of the workers.
- The inspectors also have power to prohibit employment on account of serious hazards, initially for a period of three days.
- The occupier is directed to remove the hazard before re-employing the workers.
- In case the occupier/manager do not abide by the written order issued by the inspector, prosecution is initiated for the violation of any of the provisions of Act and Rules (Powers of Inspectors are given in Sections 9, 40-A and Section 87-A).

✦ **What are the provisions of the Factories Act regarding appointment of Safety Officers?**

Big factories are required to appoint Safety Officers. A factory employing one thousand or more workers is required to appoint one or more Safety Officers only if the State Government directs the occupier to do so.

✦ **Are there any guidelines under the Factories Act to ensure health of the workers?**

The following guidelines are provided under the Factories Act to promote the health of the workers:

- a. To keep its premises in a clean state;
- b. To dispose of wastes and effluents,
- c. To maintain adequate ventilation and reasonable temperature;
- d. To prevent accumulation of dust and fume;
- e. To avoid over-crowding;
- f. To provide sufficient lighting, drinking water, latrines and urinals.

✦ **Are there any specific provisions under the Factories Act, related to hazardous process/ operations?**

Special provisions relating to hazardous processes have been envisaged under Chapter IVA of the Factories Act, 1948. This chapter was inserted by the Factories (Amendment) Act, 1987 and consists of Sections 41 A to 41 H.

✦ **What is the liability of the occupier/ manager if there is any contravention with the laws of the Factories Act?**

Section 92 of the Factories Act, states that in case there is any kind of contravention with the provisions of the Act, then the occupier and the manager of the factory will be held equally responsible.

They will be punishable with imprisonment upto 2 years and fine upto Rs. 1 lakhs. In case, they continue the breach, they will be punishable with Rs. 1 thousand each day of the continuing breach.

✦ **Is there any provision under the Factories Act that deals with 'worker's offenses'?**

Yes, Section 97 of the Factories Act, states that if any worker working in the factory contravenes with the rules or provisions of the Act, creating liabilities for other workers, will be punishable with a fine of at least Rs.500.

✦ **Does the Factories Act contain any provision of penalty for obstructing an inspector?**

Yes, Section 95 of the Factories Act provides that whoever obstructs an Inspector in the exercise of any power conferred on him by or under this Act, or fails to produce on demand by an Inspector, then that person will be punishable with imprisonment upto 6 months or fine upto Rs. 10 thousand or both.

This also applies to the cases where a person prevents any worker in a factory from appearing before or being examined by an Inspector.

✦ **Is there any provision for punishment to the occupier/ manager under the Factories Act?**

Yes. Section 102 of the Factories Act deals with 'Power of Court' to make orders, this Section states the powers of the Courts in case any Manager does any offense under the Act. The Court along with punishing the offenders can take steps in remedying the situation.

✦ **Who is responsible for enforcing the provisions of the Factories Act and the rules there under?**

Assistant Directors (ISH) are responsible for enforcement of aforesaid provisions, in the district(s) assigned to them under overall supervision of Director (ISH).

✦ **To whom a complaint can be made if there is non-compliance of statutory provisions of the Factories Act?**

A formal written complaint can be made to the Directorate of Industrial Safety & Health (DISH), Labour Department, Govt. of NCT of Delhi.

✦ **What procedure should be followed by the factory if there is an accident?**

If there is an accident involving bodily injuries and absence of a worker(s), the factory management is required to send a notice. In case of a fatal injury the notice must be sent within 12 hours and in case of non-fatal injury the notice must be sent within 24 hours to Directorate of Industrial Safety & Health (DISH).

FAQs – REALITY CHECK

1. An employer is insisting a woman employee to work during night shifts without her willingness for it. Is she bound to follow his orders?

No, an employer cannot insist a woman employee to work during night shifts. It is important that, if so, there shall be given free consent for the same.

2. My manager have ordered and insisted me to lift heavy loads which exceed 40 kgs. When I conveyed my physical incapacity, he asked me to quit the job. What should I do?

According to Section 34 of the Factories Act you cannot be pressurized to lift any load heavy as to be likely to cause him injury. You can make a complaint to the inspector.

3. At an establishment-factory, 55 women workers are employed without facilitating them with Crèches for children. What is the remedy?

You can make a complaint to the welfare officer or an inspector in the factory as the maximum number of workers allowed is not more than thirty.

4. I am being insisted by the Manager of my factory to clean the stationary parts of a machine and the machine as a whole was in motion. Was the Manager's act legal?

No, the Manager's Act was illegal, even stationary parts of the machine could not be cleaned by a woman if the machinery as a whole is in motion.

5. In my factory we do not have separate toilets for men and women workers. Is there a remedy?

Yes, you can make a complaint to the inspector. Not having separate toilets for men and women workers is a violation of Section 19 of the Factories Act.

6. My employer asked me to work in pressing cotton section. Am I bound to follow his instructions?

No, female workers are prohibited from working in a dangerous occupation, from pressing cotton where a cotton-opener is at work.

7. Does law allow woman worker to work in night shift, in any case?

Yes, the factory has to take prior permission from Appropriate Government but in this case also no female worker is allowed to do work during 10.00 P.M. to 5.00 A.M.

8. Is there any provision of maternity leave for me under the Factories Act?

Yes, according to Section 79 of the Factories Act you can get a maternity leave up to 12 weeks. Whereas, this timeperiod of 12 weeks has been extended to 26 weeks by Maternity Benefit Amendment Act, 2017.

LANDMARK JUDGMENTS**1. B. N. Gamadia v. Emperor [(1925) 27 BOM LR 1405]**

Section 27 of the Factories Act, 1948 prohibits employment of women and children near cotton opener. In this case the court held that provisions of Section 20 of the Factories Act, 1948, are not fulfilled if the partition is made in a room a door made between the two portions of the room and that of the door is shut and opens at a particular time, or if it is not locked then some preventive action being taken to prevent its being opened by a woman or child who desire to get into the press room or prohibited area. The Bombay High Court stated that it is in violation of provisions of the Factories Act. The Act prescribes specific provisions for women safety and the same must be complied with.

2. In Triveni K. S. and Others v. Union of India and others [2002 Lab IC 1714 (AP)]

Section 66(1)(b) of the Factories Act, 1948 was challenged to be discriminatory on the basis of sex. The High Court held that women should not be employed for their own safety and welfare even during the night was an ideology of an erstwhile age that was out of tune with modern requirements for equality, especially between sexes. With regard to an exception provided to the fishing and canning industry, this was postulated that it would seem a ludicrous assertion those women in these sectors would be completely safe but still not safe in the textile industry. Consequently, Section 66(1)(b) of the Act was ruled unconstitutional by the High Court and proclaimed that females in the fishing industry should also be given more or less the same protection as some of those provided for.

3. Anuj Garg v. Hotel Association of India [AIR 2008 SC 663]

Section 30 of the Punjab Excise Act has been challenged. The Section prohibited the employment of any man under the age of 25 years and any woman, in any part of an establishment in which liquor or any other intoxicating drug was being consumed.

The Court *prima facie* observed that the challenged provision was a pre-constitution law i.e., the Section had come into force before Article 14 and Article 15 (sex equality) was guaranteed as a fundamental right under the Constitution of India.

In this case the Supreme Court of India upholds philosophy of the sex equality and promotes for equal opportunities at workplace for women. This case is a step forward in recognizing sex equality and eliminating old cultural norms embodied in different statutes that confirm patriarchal values.

4. Vasantha R. v. Union of India [(2001) ILLJ 843 Mad]

Smt. R. Vasantha is employed in the mills and she is willing to work during day time or at night time on shift basis, depending on the workload. She was informed that the management will render dormitories for comfortable stay and food within the factory premises, transport if necessary and other facilities to enable the women employees to work in the night shifts. However, due to the operation of Section 66(1)(b) of the Factories Act, 1948, a woman employee, is unable to carry on her chosen employment between 7.00 P.M. and 6.00 A.M. Hence, she had challenged Section 66(1)(b) of the Factories Act, 1948.

According to Section 66(1)(b) of the Factories Act women can work in factories only between 6 AM and 7 PM though, such hours to be extended with a notification by the relevant State Government, but only to 5AM and 10 PM for any factory or class of factories. In this case the provisions of Section 66(1)(b) of the Factories Act, 1948 held to be unconstitutional on the ground of the same being violative of Articles 14, 15 and 16 of the Constitution of India.

5. Mahila Utkarsh Trust v. Union of India [2014 Lab IC 611 (Guj)]

Special Civil Applications were filed to challenge the validity of Section 66(1)(b) of the Factories Act, 1948 and its proviso, as infringing upon Articles 14, 15, 16, 19(1) (g) and 21 of the Constitution of India. The impugned Section prohibits engagement of women in any gainful employment between 7.00 PM to 6.00 AM.

Court issued directions directing all employers to ensure adequate measures for the safety and security of female employees working in the night shift, including transportation, medical and crèche facilities. The employer is required to inform the State authorities of their intention to employ women in night shifts, and this shall only be permitted after due inspection by the State. The judgment of the Hon'ble High Court seeks to establish parity in the right to employment between men and women. It underlines the duty of the State to ensure security.

PRACTICAL CASE SCENARIO**PRACTICAL CASE SCENARIO NO. 1**

Sangeeta resident of Nagpur and is employed in a food packaging factory situated at Saoner since last two years, is well experienced and efficient employee. Sangeeta's travelling time to factory is approximately one hour. Due to high demand of products in festive season, the employer had ordered overtime for all the workers to work in double shifts, consequently, Sangeeta's shift prolonged till 12 midnight. Sangeeta refuses to work for such shift, but the owner insisted her to work or else she is directed to leave the job.

What remedy Sangeeta has in such situation?

One of the objectives of the Factories Act, 1948 is safety welfare of women. Section 66(1)(b) of the Factories Act, 1948 provides that the women are allowed to work in any factory between the hours of 6 AM. To 7 PM. So, Sangeeta is not supposed to work after the permitted time that is 7 PM. and the owner cannot force any women employee to work beyond the permitted time.

PRACTICAL CASE SCENARIO NO. 2

Sangeeta is working in a cotton mill since last 10 years. She handles the spinning machines from the first day of her job. The Manager asked her to lubricate and adjust some parts of the machine while the machine was moving as it was not working properly. Sangeeta refused fearing for her safety but the owner forced her to do so. Sangeeta did as per the instructions of Manager and lost her right-hand thumb permanently.

What is the remedy available with Sangeeta in the given situation?

Sangeeta should have refused to lubricate and adjust the machine while is moving. According to Section 22(2) of the Factories Act, 1948, women are not allowed to lubricate or adjust any part of a prime mover while it is in motion. The Manager is not authorized to direct acts which are not allowed under the Factories Act. As Sangeeta is permanently injured, she may claim compensation. The occupier and manager of the factory shall be guilty of an offence and punishable with imprisonment for a term which may extend to two years or with fine which may extend to One lakh rupee or with both.

PRACTICAL CASE SCENARIO NO. 3

Sangeeta, a woman worker, has children aged 2 & 4 years. The employer has not provided the crèches facility irrespective of 50 women workers being employed and has also denied the responsibility and obligation to do so.

What Sangeeta can do in such situation?

Section 48(1) of the Factories Act deals with the necessity of crèches in factories where there are more than 30 women workers. There shall be provided and maintained a suitable room or rooms for use of children under the age of 6 years of such women.

There are other requirements related to crèches i.e., it is to be adequately lighted and ventilated and to be under the charge of trained women. Rooms for use of children shall provide adequate accommodation, shall be adequately lighted and ventilated. Further they 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 [Section 48(2)].

PRACTICAL CASE SCENARIO NO. 4

Sangeeta is aged about 25 years and she works in a flour mill factory situated in Nagpur. Due to festive season most of the male workers are on leave for a week so the Manager asked Sangeeta to lift 50 kgs. of wheat Sack from storage to grinding area. On first day Sangeeta refused saying that she has a back-pain but next day also the Manager asked her for the same. The Manager threatened Sangeeta to fire her.

What should Sangeeta do?

Section 34 of the Factories Act prohibits a woman to lift heavy loads specifically beyond 30 kgs. The factory is situated in Nagpur that comes in Maharashtra; the State Government allows only 30 kgs. by an adult woman under the Maharashtra Factory Rules, 1975. So, Sangeeta is correct in refusing the lifting the wheat sack and she can file a complaint to the inspector.

PRACTICAL CASE SCENARIO NO. 5

Sangeeta is a worker in a cotton factory. Her work was to deliver cotton from storage department to cotton processing unit. The labours working in the processing unit were on strike and the owner of the factory asked Sangeeta for pressing cotton in which the cotton opener is at work and feed-end of a cotton-opener is not in a room separated from the delivery end. Sangeeta refused to work citing lack of experience and fearing her safety. The owner threatened her to fire her from the job.

What remedy is available to Sangeeta?

Section 27 of the Factories Act, 1948, specially provides that woman and children working in any part of factory are not allowed to work for pressing cotton in which cotton opener is work. So, the employer cannot force any women and children for pressing cotton where cotton opener is at work and delivery end is in the same room. Sangeeta can take an action against the Manager of the Factory by complaining to the inspector.

PRACTICAL CASE SCENARIO NO. 6

Sangeeta a female worker in a factory that is situated in a small village near Pune and there were more than 300 male workers. There were only three tin shaded common urinal/ latrine for male and female workers. Sangeeta is not comfortable to use the same as there was no separate toilet and the doors were also defective (unable to shut) and she asked her employer to provide proper urinals/ Latrines. But the owner of the factories refused to do so.

What Sangeeta can do in such situation?

Proper urinals and Latrines are the basic needs of an employee especially for

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women. Section 19 of the Factories Act, states that separate and enclosed sanitation facilities are must for workers. It shall be conveniently accessible so it is the responsibility of the owner of the Factory to provide proper facilities to the employees as prescribed under the Factories Act, 1948.

ASSESS YOURSELF: MULTIPLE CHOICE QUESTIONS

1. According to Section 66(1)(b) of the Factories Act, 1948 women are permitted to work in any factory between _____.

- a. 6 AM and 7 PM
- b. 8 AM and 5 PM
- c. 10 AM and 8 PM
- d. None of the above

2. Any Factory employing more than _____ women worker shall provide and maintain suitable room/rooms for use of children under the age of 6 years of such worker (woman).

- a. 40
- b. 50
- c. 60
- d. 80

3. According to Factories Act, 1948, there shall be no change of shifts for women workers in a factory except there is _____.

- a. A weekly holiday
- b. Extra wage
- c. A monthly compensation
- d. None of the above

4. _____ of the Factories Act prevents women from lifting, carrying or moving excessive weight which is likely to cause injury.

- a. Section 22
- b. Section 32
- c. Section 34
- d. Section 48

5. In case of any contravention of any of the provisions of the Factories Act, 1948 Act, the occupier and manager of the factory shall be guilty of an offence and punishable with imprisonment for a term which may extend to _____.

- a. One year
- b. Two years
- c. Three years
- d. Five years

6. Employment of women near cotton opener is prohibited under _____ of the Factories Act, 1948.

- a. Section 22
- b. Section 27
- c. Section 42
- d. Section 48

7. Section 19 of the Factories Act, 1948, states that every factory where more than _____ workers are employed, the floors and internal walls, up to a height of ninety centimeters, 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 is necessary.

- a. 100
- b. 200
- c. 250
- d. 300

8. The Factories Act, 1948, empowers the State Government to prohibit employment of women in dangerous operations. This statement is _____.

- a. Correct
- b. Incorrect
- c. Partly corrects
- d. None of the above

9. According to Section 48 of the Factories Act there is a requirement of a Crèches for worker's children who are below the age of _____.

- a. 2 years
- b. 4 years

- c. 5 years
- d. 6 years

10. The maximum permissible hours of work for women are _____ per week in factories.

- a. 48
- b. 52
- c. 60
- d. 65

ANSWER KEY									
1	2	3	4	5	6	7	8	9	10
a	b	a	c	b	c	c	a	d	a

**LEGAL AWARENESS PROGRAMME
BY
NATIONAL LEGAL SERVICES AUTHORITY
IN COLLABORATION WITH
NATIONAL COMMISSION FOR WOMEN
&
KNOWLEDGE PARTNER - ALL INDIA REPORTER**

**IEC & TRAINING MODULE
For Resource Persons
ON**

**LABOUR LAWS
THE MATERNITY BENEFIT ACT, 1961**

Training Module

IEC Material & Training Module

The IEC & Training Module is primarily for Resource Persons of NALSA, as it focuses on particular responsibilities in spreading legal awareness about women & Labour Laws (The Maternity Benefit Act, 1961), as a part of Legal Awareness Programme undertaken by National Legal Services Authority in collaboration with National Commission for Women. Resource Persons will find it as a useful source of information & guidance.

The main objective of this IEC & Training Module is to inspire, motivate, cultivate curiosity, shape the opinion and enlighten the Resource Persons on issues concerning women & labour laws (The Maternity Benefit Act 1961).

The overall content consists of Maternity Benefits guaranteed to the Women Employee. This has been written in an interactive Question Answer style, in a lucid and simple language.

NALSA hopes that the Resource Person will be benefitted immensely by these IEC & Training Modules.

Objective

- *To provide an overview of the Scheme made under the Maternity Benefit Act, 1961; Maternity Benefit Amendment Act, 2017 and rules thereunder.*
- *To familiarize the Resource Persons with the 'Maternity Benefits' available to Women Employees*
- *To improve the understanding of Resource Persons about the challenges & barriers women confront in accessing and enjoying their maternity benefits*
- *To provide guidance on ways to be carried out to enhance protection of women employees in availing maternity benefits*

Learning Outcome

The participants (Resource Persons) will be able to completely understand their role & responsibilities in spreading awareness about maternity benefits provided under the Act.

THE MATERNITY BENEFIT ACT, 1961

Introduction

The Maternity Benefit Act, 1961 is a social justice legislation that protects the employment of women at the time of her maternity. It entitles women employees to 'maternity benefit' which is fully paid wages during the absence from work in order to take care of their child and shall be construed as true manifestation of women's right to health.

The Act is an important part of legislation for every woman employee, whether working in an establishment such as factory, mines, plantation, shops or in establishments of the Central or the State Governments. These benefits are not only advantageous to the woman but are also essential to bring about a reduction in infant mortality rates in the country and also benefits the management by reducing absenteeism of the female workforce. It also allows women to give their undivided attention to their jobs.

The first piece of legislation enacted to provide maternity benefit to women was in 1929 in the State of Bombay and since then this right to maternity benefit has been established as a basic right of a working woman. Thereafter, under the Constitution of India 1950, **Article 42** has obligated the State to make provision for securing just and humane conditions of work and for maternity relief. Further, **Article 39(e) & (f)** of the Constitution of India provides that the State shall, in particular, direct its policy towards securing that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; and that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

The Maternity Benefit Act, 1961 aims to provide all the facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honorably, peaceably, undeterred by the fear of being victimized for forced absence during the pre or post-natal period."

✦ What are Maternity Benefits aimed at?

Maternity Benefits are aimed to protect the dignity of motherhood by providing for the full and healthy maintenance of women and her child when she is not working.

✦ Why is maternity leave important for any woman employee?

Women's ties with pregnancy and child rearing and the failure of employers and

policy makers to deal consistently with this issue worsen the difficulties women face in the economy. Women continue to have the primary responsibility for housework and childcare, even when they have extremely demanding jobs. Few employers provide help with childcare, flexible work hours to accommodate children's needs, or paid maternity leaves. Women in blue-collar work as well as clerical jobs face rigid time schedules, low pay, and virtually no recognition or help from employers for their family responsibilities.

✦ How has the Indian Constitution shaped the need for providing maternity benefits?

Article	Provision
Article 14	Right to social equality for all genders
Article 15	Right to social equality in terms of employment
Article 15(3)	Empowers the State to make special provisions for women in order to promote and preserve the strength and vigor of the race
Article 16	Equal opportunities for all citizens in matters relating to employment or appointment in any office under the State
Article 21	Right to Life and Personal Liberty in the context of providing a pregnant woman all the required facilities along with protection of her employment
Article 42	Right to just and humane conditions of work and maternity relief
Article 46	Right to improvement in employment opportunities and conditions of working women

✦ Is there any recent amendment to the Maternity Benefit Act, 1961?

The Maternity (Amendment) Bill, 2017, an amendment to the Maternity Benefit Act, 1961, was passed in Rajya Sabha on August 11, 2016, in Lok Sabha on March 09, 2017, and received an assent from President of India on March 27, 2017.

✦ What are the recent amendments to the Act?

The Key amendments are as follows:

- **Increased Paid Maternity Leave:** The Maternity Benefit Amendment Act has increased the duration of paid maternity leave available for women

employees from the existing 12 weeks to 26 weeks. Under the Maternity Benefit Amendment Act, this benefit could be availed by women for a period extending up to a maximum of 8 weeks before the expected delivery date and the remaining time can be availed after childbirth. For women who are having 2 or more surviving children, the duration of paid maternity leave shall be 12 weeks (i.e., 6 weeks before and 6 weeks after expected date of delivery).

- **Maternity leave for adoptive and commissioning mothers:** Maternity leave of 12 weeks to be available to mothers adopting a child below the age of three months from the date of adoption as well as to the “commissioning mothers”. The commissioning mother has been defined as the biological mother who uses her egg to create an embryo planted in any other woman.
- **Work from Home option:** The Maternity Benefit Amendment Act has also introduced an enabling provision relating to “work from home” for women, which may be exercised after the expiry of the 26 weeks’ leave period. Depending upon the nature of work, women employees may be able to avail this benefit on terms that are mutually agreed with the employer.
- **Crèche facility:** The Maternity Benefit Amendment Act makes crèche facility mandatory for every establishment employing 50 or more employees. Women employees would be permitted to visit the crèche 4 times during the day (including rest intervals).
- **Educate Women:** The 2017 Amendment Act makes it mandatory for employers to educate women about the maternity benefits available to them at the time of their appointment.

✦ Important Provisions of Maternity Benefit Act at a Glance

Sr. No	Section	Heading
1	Section 4	Employment of, or work by woman prohibited during certain period
2	Section 5	Right to payment of maternity benefit
3	Section 5A	Continuance of payment of maternity benefit under certain cases
4	Section 5B	Payment of maternity benefit in certain cases
5	Section 6	Notice of claim for maternity benefit and payment thereof

Sr. No	Section	Heading
6	Section 7	Payment of maternity benefit in case of death of a woman
7	Section 8	Payment of medical bonus
8	Section 9	Leave for miscarriage
9	Section 9A	Leave with wages for tubectomy operation
10	Section 10	Other Leaves
11	Section 11	Nursing Breaks
12	Section 12	Dismissal during absence of pregnancy
13	Section 13	No deduction of wages in certain cases
14	Section 14	Appointment of Inspectors
15	Section 15	Powers & Duties of Inspectors
16	Section 16 and 17	'Inspectors to be public servants' & 'Powers of Inspectors'
17	Section 18	Forfeiture of maternity benefits
18	Section 21	Penalty for contravention of Act by employer
19	Section 22	Penalty for obstructing Inspectors

✦ What is the object of the Maternity Benefit Act?

- The Maternity Benefit Act is intended to achieve the object of doing social justice to women
- It is enacted to regulate the employment of women for certain periods before and after child birth and also provides certain additional benefits.
- This Act enables the women worker to subsist, to make up her dissipated energy, nurse her child, preserve her efficiency as a worker and maintain the level of her previous efficiency and output.

✦ Important Definitions under the Act at a Glance

Sections	Nominal Heading	Definition
Section 2(ba)	Commissioning mother	A biological mother who uses her egg to create an embryo implanted in any other woman;
Section 3(d)	Employer	It means:

Sections	Nominal Heading	Definition
		<ul style="list-style-type: none"> i. in relation to an establishment which is under the control of the government a person or authority appointed by the government for the supervision and control of employees or where no person or authority is so appointed, the head of the department; ii. in relation to an establishment under any local authority, the person appointed by such authority for the supervision and control of employees or where no person is so appointed, the chief executive officer of the local authority; iii. in any other case, the person who, or the authority which, has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to any other person whether called a manager, managing director, managing agent, or by any other name, such person;
Section 3(e)	Establishment	<p>It means:</p> <ul style="list-style-type: none"> a. a factory; b. a mine; c. a plantation; d. an establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performance; e. an establishment to which the provisions of this Act have been declared under sub-section (1) of section 2 to be

Sections	Nominal Heading	Definition
		applicable;
Section 3(g)	Inspector	An Inspector appointed under section 14;
Section 3(h)	Maternity benefit	The payment referred to in sub-section (1) of section 5;
Section 3(ha)	Medical termination of pregnancy	The termination of pregnancy permissible under the provisions of Medical Termination of Pregnancy Act, 1971
Section 3(j)	Miscarriage	Expulsion of the contents of a pregnant uterus at any period prior to or during the twenty-sixth week of pregnancy but does not include any miscarriage, the causing of which is punishable under the Indian Penal Code (45 of 1860)
Section 3(n)	Wages	<p>All remuneration paid or payable in cash to a woman, if the terms of the contract of employment, express or implied, were fulfilled and includes:</p> <ol style="list-style-type: none"> 1. such cash allowances (including dearness allowance and house rent allowances) as a woman is for the time being entitled to, 2. incentive bonus, and 3. the money value of the concessional supply of food grains and other articles but does not include: <ol style="list-style-type: none"> a. any bonus other than incentive bonus; b. over-time earnings and any deduction or payment made on account of fines; c. any contribution paid or payable by the employer to any pension fund or provident fund or for the

Sections	Nominal Heading	Definition
		benefit of the woman under any law for the time being in force; and d. any gratuity payable on the termination of service;
Section 3(o)	Woman	A woman employed, whether directly or through any agency, for wages in any establishment.

✦ **What does ‘Maternity Benefit’ mean under the Act?**

According to **Section 3(h) and 5(1)** of the Act, maternity benefit is the benefit entitled to a pregnant woman at the rate of the average daily wage for the period of her actual absence immediately preceding and including the day of her delivery and for the six weeks immediately following the day.

Average Daily Wage	<ul style="list-style-type: none"> • The period of three calendar months immediately preceding the date from which she absents herself on account of maternity, or • The minimum rate of wage fixed or revised under the Minimum Wages Act, 1948, or • Ten rupees a day, whichever is higher.
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According to **Section 5(2)**, only the woman employee who has actually worked for a period of not less than 80 days in the 12 months immediately preceding the date of her expected delivery will be entitled to benefit. Such qualifying days of work are not for the woman who has immigrated into the State of Assam and was pregnant at the time of the immigration.

✦ **What is the period for which maternity leave is allowed?**

After the amendment to the Act in 2017, the period of maternity leave has been extended from 12 weeks to 26 weeks for the women working in the private sector. This benefit could be availed by women for a period extending up to a maximum of 8 weeks before the expected delivery date and the remaining time can be availed after childbirth.

For women who are having 2 or more surviving children, the duration of paid maternity leave shall be 12 weeks (i.e., 6 weeks before and 6 weeks after the expected date of delivery).

✦ **What happens when women die during the maternity leave period?**

According to **Section 5(3)**, where a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death. And, where the woman dies leaving behind the child, the employer shall be liable for the maternity benefit for that entire period but if the child also dies during the said period, then, for the days up to and including the date of the death of the child.

✦ **Whom does the Maternity Benefit Act apply to?**

The benefits under the Act apply to 'every woman'. **Section 3(o)** defined every woman employee to include women:

- whether employed directly or through a contractor,
- who has actually worked in the organization for a minimum 80 days period in the last year immediately preceding the date of her expected delivery is eligible for the Maternity Benefits?

In order to calculate the number of days on which a woman has actually worked during the preceding 12 months, the days on which she has been laid off or was on holidays with wages shall also be calculated.

✦ **To whom Maternity Benefit Act does not apply?**

The Act does not apply to any such factory/other establishment to which the provisions of the Employees' State Insurance Act are applicable for the time being.

But, where the factory/establishment is governed under the Employees State Insurance Act, and the woman employee is not qualified to claim maternity benefit under section 50 because her wages exceed Rs. 3000 p.m. (or any other amount specified under section 2(9) of the Act) or for any other reason, then such woman employees will be entitled to claim maternity benefit under this Act until they become qualified to claim maternity benefit under the ESI Act.

✦ **To which work places does the Maternity Benefit Act apply?**

According to **Sections 2 and 3 (e)** of the Act, it applies to:

- all organizations including the factories, plantations, mines, government organizations, legislative organizations, shops, or any other organization that is centered by the central government.
- any establishment wherein persons are employed for exhibition of equestrian, acrobatic and other performances and also to any shops or establishments under any other law relating to shops or establishments in the State.

Where 10 or more people are employed in the preceding 12 months.

✦ What is considered as 'Prohibition of Work' under the Maternity Benefit Act?

The Maternity Benefit provisions ensure that pregnancy is not only honoured but the growth and development of the foetus doesn't suffer due to nature of work performed by mother.

According to **Section 4**, no women will work and no employer can employ a woman in any establishment during the 6 weeks immediately following the day of her delivery, [miscarriage or medical termination of pregnancy].

A pregnant woman will not be given work:

- a. which is of an arduous nature, or
- b. which involves long hours of standing, or
- c. which in any way is likely to interfere with her pregnancy or the normal development of the fetus, or
- d. which is likely to cause her miscarriage or will adversely affect her health.

Such prohibition will be for the period of:

- a. 1 month immediately preceding the period of six weeks, before the date of her expected delivery;
- b. any period during the said period of 6 weeks for which the pregnant woman does not avail of leave of absence under Section 6.

✦ What is the 'Notice of claim' for maternity benefit?

According to **Section 6**, every woman who is entitled and wants to avail the maternity benefit will give notice in writing (in the prescribed form) to her employer, which may be given during the pregnancy or as soon as possible, after the delivery. The notice should state:

- a. that the maternity benefit may be paid to her or to her nominee (to be specified in the notice);
- b. that she will not work in any establishment during the period for which she receives maternity benefit; and
- c. that she will be absent from work from such date (to be specified by her), which shall not be earlier than 6 weeks before the date of her expected delivery.

On receipt of the notice, the employer shall permit such woman to absent herself from work after the day of her delivery. The failure to give notice, however, does not disentitle the woman to the benefit of the Act.

The notice so provided will be in the following prescribed format: **[Rule 5(1)]**

<p>To _____ (name of establishment)</p> <p>I _____ (name of woman) wife/ daughter of _____ employed as _____ at _____ (name of mine or circus), hereby give notice that I expect to be confined within six weeks next following from the date of this notice/ have given birth to a child on _____ (date) and shall be absent from work from _____ (date). I shall not work in any establishment during the period for which I receive maternity benefit.</p> <p>2. For the purpose of section 7, I hereby nominate _____ (here enter name and address of the nominee) to receive maternity benefit and/ or any other amount due to me under the Act in case of my death.</p> <p>Signature of thumb impression of woman _____</p> <p>Date _____</p> <p>Signature of an Attester in case the woman is not able to sign and affix thumb impression _____</p>
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✦ **What are the other important benefits available to women under the Act?**

Leave	26 weeks not more than 8-6 weeks before the delivery and rest after the delivery
Remuneration	Average daily wage for the period of her actual absence immediately preceding and including the day of her delivery and for the six weeks immediately following that day
Leave for Miscarriage or medical termination of pregnancy [Section 9]	<ul style="list-style-type: none"> • On the production of the prescribed proof, • Leave with wages at the rate of maternity benefit, • For a period of 6 weeks immediately following the day of her miscarriage or medical termination of pregnancy.
Leave for Tubectomy Operation [Section 9A]	<ul style="list-style-type: none"> • On production of prescribed proof, • Entitled to leave with wages at the rate of maternity benefit • For a period of 2 weeks immediately following the day of operation.

Leave for Illness [Section 10]	<ul style="list-style-type: none"> • Leave for a maximum period of 1 month with wages at the rate of maternity benefit • In case of illness arising out of pregnancy, delivery, premature birth of child, miscarriage or medical termination of pregnancy or tubectomy operation.
Leave to Adoptive and Commissioning Mothers [Section 5(4)]	<ul style="list-style-type: none"> • The adopting mother of a child below the age of 3 months and the Commissioning mother • Both entitled to 12 weeks' leave after the production of prescribed notice and proof.
Nursing Break [Section 11]	Two breaks of the prescribed duration for nursing the child until the child attains the age of 15 months.
Medical Bonus [Section 8]	<ul style="list-style-type: none"> • A Medical bonus of Rs. 1000, if no pre-natal confinement, and • Post-natal care shall be provided by the employer free of charge. • The Central Government may increase the medical bonus to the maximum of 25,000 before every 3 years.
Mandatory Creche facility [Section 4(1), Inserted by 2017 Amendment]	<ul style="list-style-type: none"> • For every establishment employing 50 or more employees, and • Permission to the women employees to visit the crèche 4 times during the day (including rest intervals).
Work from Home [Section 4, Inserted by 2017 Amendment]	<ul style="list-style-type: none"> • On terms that are mutually agreed with the employer, depending upon the nature of work. • "Work from home" provision for women, which may be exercised after the expiry of the 26 weeks leave period.
Mandatory Educating Women [Inserted by 2017 Amendment]	Employers to educate women about the maternity benefits available to them at the time of their appointment.

➤ **What is the amount of 'Medical Bonus' entitled to women under the Act?**

According to **Section 8**, every woman employee who is entitled to maternity benefit shall also be entitled to a medical bonus of Rs. 1000 if no pre-natal confinement and post-natal care will be provided by the employer free of charge.

✦ **Is Woman employee entitled to leave for miscarriage or medical termination of pregnancy?**

Yes, as per Section 9, a woman on production of prescribed proof, will be entitled to leave with wages at the rate of maternity benefit, for a period of 6 weeks immediately following the day of her miscarriage or medical termination of pregnancy. The prescribed proof will be production of certificate of Miscarriage.

As per Section 3(ha), Medical termination of pregnancy is the termination of pregnancy permissible under the provisions of Medical Termination of Pregnancy Act, 1971.

According to Section 3(j), Miscarriage is expulsion of the contents of a pregnant uterus at any period prior to or during the twenty-sixth week of pregnancy but does not include any miscarriage, the causing of which is punishable under the Indian Penal Code.

✦ **Is a woman employee entitled to leave for a tubectomy operation?**

Yes, according to Section 9A, if a woman has gone through a tubectomy operation, on production of prescribed proof, she will be entitled to leave with wages at the rate of maternity benefit for a period of 2 weeks immediately following the day of operation.

✦ **Is women employee entitled to 'leave for Illness'?**

Yes, Section 10 of the Act prescribes leave for a maximum period of 1 month with wages at the rate of maternity benefit are allowable in case of illness arising out of pregnancy, delivery, premature birth of child, miscarriage or medical termination of pregnancy.

✦ **Does the Act mandate the employer to provide 'Creche Facility'?**

Yes, Section 11A mandates establishment of creche facilities.

- Every establishment to which the Act is applicable and has 50 or more employees must establish a Creche facility near/at the workplace site or in the beneficiaries' neighbourhood,
- Such Creche can be established either separately or along with common facilities. Further, the woman availing the facility will be entitled at least four visits a day to the creche, including the interval for rest.
- Such facility is proposed to be extended to children of the age group of 6 months to 6 years of all employees including temporary, daily wage, consultant and contractual personals.

✦ **What are the specifications of the Crèche at workplace?**

The crèche should be made of concrete with a minimum space of 10-12 sq. ft. per child, with ventilation, drinking water and with no unsafe places such as open drains, pits, garbage bins near the center. It will be open preferably for 8-10 hours and in case, the establishment has day and night shift, then the crèche should also run-in shifts.

✦ **What facilities should be provided in the Crèche at workplace?**

The following facilities will be included in the crèche facility:

- A guard, who should have undergone police verification.
- Ramps and handrails.
- One supervisor per crèche.
- A minimum of one trained worker for every 10 children who are under three years of age.
- A minimum of one trained worker for every 20 children above the age of three.
- No plumbers, drivers, and electricians and other outside persons should be allowed inside the crèche when children are present.
- A Crèche monitoring committee should be formed having representations from among crèche workers, parents, and administration.
- Forming a grievance redressal committee for inquiring into instances of sexual abuse.

✦ **Is the employer under obligation to educate women employees about their medical benefits?**

Yes, it is the duty of every employer to intimate in writing and electronically to every woman at the time of their appointment, all the benefits available to her under the Maternity Benefit Act.

✦ **What happens to the maternity benefit in case of death of a woman?**

According to **Section 7**, if a woman entitled to maternity benefit or any other amount under this Act, dies before receiving such maternity benefit, the employer shall pay such benefit or amount to the person nominated by the woman in the notice given under section 6 and in case there is no such nominee, to her legal representative.

✦ **What are the Rights of the Women Employees under the Act?**

The important rights guaranteed to woman under the Act are:

- To make a complaint to the Inspector and claim the amount of maternity benefit improperly withheld by the employer.

- To appeal against an order of the employer depriving her of the maternity benefit or medical bonus or dismissing or discharging her from service, to the competent authority, within 60 days of the service of such order.

✦ **What are the obligations of the employers under the Act?**

- To pay maternity benefit and/or medical bonus as per Sections 7 and 8;
- To allow nursing breaks, in accordance with Section 11 of the Act;
- To not to engage pregnant women in contravention of Section 4; and
- To not to dismiss, discharge or make deductions from the wages of a pregnant woman employee during the period of maternity leave as per provisions under Sections 12 and 13.

✦ **Does the Act provide for absolute prohibition on dismissal of woman worker?**

No, Act provides for prohibition on dismissal of woman from employment for absence from work in accordance with the provisions of this Act i.e. For the reason of pregnancy, childbirth, and related illness. But such woman can be dismissed even during maternity period if pending disciplinary action has been finalized and is found guilty of gross misconduct. The employer may be order in writing communicated to the woman, deprive her of the maternity benefit or medical bonus or both.

✦ **Is Maternity Benefit Act prejudicial to the interest of employer?**

No, the Act is not prejudicial to the interest of employer. But it is a notable fact that, The Maternity Benefit Act, 1961 and 2017 Amendment to the said law entrusts employer with social, legal and financial obligation. It may be fairly argued that such obligations may discourage an employer from appointing a woman employee to whom maternity benefit will have to be availed. To prevent such failure of basic rational of the law, it is suggestive that government may share financial responsibility along with the employer as is observed in other social security legislations and the policy for the same.

✦ **What are the authorities under the Act and what are they responsible for?**

- According to Section 14, if needed, the appropriate Government, by notification in the Official Gazette, will appoint such number of persons as the Inspectors under the Act as thinks fit.
- The Government itself will determine the local limits of the jurisdiction within which such inspectors will exercise their functions.
- According to Section 16, every Inspector appointed under this Act shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code.

✦ What are the powers and duties of Inspectors?

According to **Section 15**, the Inspector is empowered to:

- a. enter at all reasonable times any premises or place where women are employed or work and examine any register, records, and notices required to be kept under this Act. And for doing so he can take the assistance of any person in the service of the government or any local or other public authority, as he thinks fit;
- b. examine any employ of the establishment in any premises or place but no person can be compelled to answer any question or give any evidence tending to incriminate himself;
- c. require the employer to give information regarding the names and addresses of women employed, payments made to them and applications or notices received from them under this Act;
- d. take copies of any registers and records or notices or any portions thereof;

✦ When and how the complaint about non-payment is to be filed to the Inspector?

According to **Section 17 (2)**, if a woman or her legal representative can claim that:

- the payment of the maternity benefit or any other amount to which she is entitled under this Act has been wrongfully withheld, or
- her employer has discharged or dismissed her during or on account of her absence can make a complaint to the Inspector.

✦ What is the format of the complaint, if made by Employee?

A Complaint, if made by the employee herself will be in the following prescribed form: [**Rule 10**]

<p>To</p> <p>The Inspector,</p> <p>(Under the Maternity Benefit Act, 1961)</p> <p>Sir,</p> <p>I _____ (name of woman) employed in _____ (name and full address of 3[mine or circus]) having fulfilled the conditions laid down in the Maternity Benefit Act, 1961 and the Rules thereunder, am entitled to Rs. _____ being maternity benefit and/ or Rs. _____ being the medical bonus and/ or Rs. _____ being wages for leave due under 2[section 9 or 9A] 10 but the same has been improperly withheld by the employer. He</p>
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may, therefore, be directed to pay the amount to me.

Date _____ Signature or thumb impression of the woman.

Date _____ Signature of an Attester in case the woman is unable to sign and affixes thumb impression. Full address of the woman.

✦ What is the format of the complaint, if made by the Nominee/Legal Representative?

The Complaint if made by the Nominee or the legal representatives of the Employee on account of her death, will be in the following prescribed form: **[Rule 10]**

To

The Inspector

(Under the Maternity Benefit Act, 1961)

I, _____ (name), a person nominated under section 6 by or a legal representative of _____ (name of woman) employed in _____ (name and full address of mine or circus) have to complain that the said woman having fulfilled the conditions laid down in the Maternity Benefit Act, 1961 and the Rules thereunder is entitled to Rs. _____ being maternity benefit and/ or Rs. _____ being the medical bonus and/ or Rs. _____ being wages for leave due under 2[section 9 or 9A] or 10 but the same has been improperly withheld by the employer. He may, therefore, be directed to pay the amount to me.

Date _____ Signature or thumb impression of the nominee/ legal representative

Date _____ Signature of an Attester in case the nominee/ legal representative is unable to sign and affixes thumb impression.

Full address of the nominee/legal representative.

✦ Is the Inspector empowered to direct payments under the Act?

Yes, **Section 17 (1)** prescribes that the Inspector on receipt of a complaint or on his own accord, make an inquiry, and if satisfied, may:

- direct the payment to be made in accordance with his orders where payment has been wrongfully withheld,
- pass such orders as are just and proper according to the circumstances of the case.

✦ Can there be an Appeal against the order of the Inspector?

According to **Section 17 (3)**, any person, who is aggrieved by the decision of the Inspector may, within 30 days from the date on which such decision is communicated, appeal to the prescribed authority.

The decision of the prescribed authority where an appeal has been preferred, or of the Inspector where no such appeal has been preferred, shall be final.

✦ What is the format of the appeal?

The appeal under this section will be in the following format: **[Rule 11]**

To
Sir,
Shri _____, Inspector, having directed under sub-section (2) of section 17 to pay the maternity benefit or other amount being _____ (nature of amount) to which _____ (name of woman) is said to be entitled, I prefer this appeal under sub-section (3) of section 17. In view of the facts mentioned in the memorandum attached hereto and other documents filed herewith it is submitted that the woman is not entitled to the maternity benefit or the said amount and hence the decision of the Inspector in this behalf, copy of which is enclosed, may be set aside.

Date _____ Signature of aggrieved person.

Full address _____

✦ Can the Maternity Benefit be forfeited?

According to **Section 18**, if a woman works in any other establishment after she has been granted a maternity benefit by her employer, she will have to forfeit her claim to the maternity benefit for such a period.

✦ What are the Penalties for Contravention under the Act?

- a. According to **Section 21**, every employer responsible for the non-payment of benefit or dismissal or discharge of a woman as provided under the Act, can be punished with imprisonment for not less than 3 months which can be extended up to a year and a fine for not less than Rs. 2000 up to Rs. 5000.
- b. According to **Section 22**, any person who fails to produce on demand by the Inspector any register or document in his custody kept in pursuance of this Act, or conceals or prevents any person from appearing before an Inspector shall be punishable with imprisonment which may extend to 1 year, or with fine which may extend to Rs. 5,000, or with both.

✦ Who can take Cognizance of offences under the Act?

Section 23 prescribes that:

- any aggrieved woman, or
- an office-bearer of a trade union registered under the Trade Unions Act of which such woman is a member, or

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- a voluntary organization registered under the Societies Registration Act, or
- an Inspector

may file a complaint regarding the commission of an offence under this Act in any court of competent jurisdiction within one year from the date on which the offence is alleged to have been committed.

As per **Section 23(2)**, no court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence under this Act.

✦ **Can any establishment be exempted under the Act?**

Yes, **Section 26** states that if the appropriate government is satisfied that an establishment or a class of establishments are providing benefits which are not less favorable than those provided in this Act, may, by notification in the Official Gazette, exempt such establishments from the operation of all or any of the provisions of this Act.

FAQ'S - REALITY CHECK

1. If a woman employee adopts 4 months old child, will she be entitled to maternity leave?

No, only a woman adopting a child under the age of 3 months is entitled to leave under the Act.

2. Does Maternity Benefit Act provide maternity leave to a woman employee who is a surrogate mother?

Yes, even a surrogate mother / commissioning mother is entitled to maternity leave and benefits up to 180 days or 26 weeks.

3. What is the time period of maternity leave available in case of third child?

No, only women who are having their first 2 babies are entitled to 26 weeks leave. You will be entitled to 12 weeks leave.

4. What are the provisions to nurse the child after 24 weeks of maternity leave?

Yes, woman employee is entitled to two breaks of the prescribed duration for nursing the child until the child attains the age of 15 months.

5. Can a woman employee avail for leave benefit in case of miscarriage?

Yes, on the production of the prescribed proof, she will be allowed a leave for a period of 6 weeks immediately following the day of the miscarriage.

6. What is the leave available in case of termination of pregnancy?

Yes, on the production of the prescribed proof, said employee will be allowed a leave for a period of 6 weeks immediately following the day of the miscarriage.

7. Is an employee entitled to paid leave in case of tubectomy operation?

Yes, on production of prescribed proof, you are entitled to leave with wages at the rate of maternity benefit for a period of 2 weeks immediately following the day of operation.

8. Does Maternity Benefit Act apply only to married woman employee?

No, Maternity Benefit Act does not specify entitlement of benefits in light of marital status of the woman employee. Irrespective of social norms, provisions specify application of this Act with respect to only prenatal & post-natal legal rights of such employee.

LANDMARK JUDGMENTS

1. Dr. Rachna Chaurasiya v. State of U.P. and others. [2017 (6) ALJ 454]

The Division Bench of the Allahabad High Court directed the State Government to grant maternity leave to all females with full pay of 180 days, irrespective of nature of employment, i.e., permanent, temporary/ad hoc or contractual basis. State respondent was further directed to grant Child Care Leave of 730 days to all female employees, who are appointed on a regular basis, contractual basis, ad hoc or temporary basis having minor children with the rider that the child should not be more than 18 years of age or older.

2. Rasitha C.H. v. State of Kerala &Anr. [WP(C). No. 5507 of 2018]

The Kerala High Court recently reiterated that women-employees are entitled to maternity leave, regardless of whether their employment is contractual or otherwise. Allowing a petition filed by 35-year-old Rasitha, who was denied maternity leave by the Calicut University on the ground that the terms of her contract did not envision the grant of such leave, Justice A Muhamed Mustaq held,

“The maternity benefit is not merely a statutory benefit or a benefit flowing out of an agreement. This court consistently held that it is attached with the dignity of a woman.... it was held that a woman employee cannot be denied maternity benefits merely because her status is a contractual employee. Therefore, the Uni-

versity is bound to grant such benefits notwithstanding anything contained in the agreement of contract.”

In view of these observations, the Court allowed Rasitha’s plea and directed the Calicut University to pay maternity benefits due to the Rasitha, as applicable in the case of other employees of the University, within two months.

3. Anshu Rani v. State of U.P. [2019 (5) ALJ 286]

In the instant case, the Petitioner prayed for directing the Respondent District Basic Education Officer to grant her maternity leave with honorarium. The Respondent authority in the case had granted the Petitioner maternity leave for 90 days instead of 180 days. Aggrieved by the same, the Petitioner filed the writ petition wherein the respondent has averred that maternity leave was rightly granted only for a period of 90 days in view of the Government Orders dated 20.11.2017 and 3.1.2018.

The Petitioner on the other hand has contended that she is entitled for the benefit of the provisions contained in the Maternity Benefit Act, 1961 as has been amended by Maternity Benefit (Amendment) Act, 2017 and in view of the amendment any order contrary to the same is liable to be ignored.

The High Court of Allahabad allowed the petition while directing the Respondent authority to grant 180 days of maternity.

4. Air India v. Nargesh Meerza [AIR 1981 SC 1829]

One of the landmark case in which, Air India Corporation (AIC) Act and Indian Airlines Corporation (IAC) Act formulated certain regulations between the conditions of retirement and termination of service pertaining to air hostesses (AH) and those of male pursers (MP) forming part of the same cabin crew and performing similar duties. These conditions were that an AH under AIC retired from service in case of ‘first pregnancy’. The Court held it to be “grossly unethical” and as smacking of “deep rooted sense of utter selfishness at the cost of all human values” as compelling to terminate services if a woman becomes pregnant would amount to forbidding her not to have any children. It has been stated that mere pregnancy should not be considered to be a disability but a natural outcome of marriage and any distinction made on the ground of pregnancy is extremely unreasonable and manifestly arbitrary.

5. B. Shah v. Presiding Officer, Labour Court, Coimbatore [AIR 1978 SC 12]

In this case, the question was whether in calculation of the maternity benefit for a period covered by Section 5 Sundays being a wage-less holiday should be excluded? The Apex Court ruled that Sunday must also be included and read in light of Article 42 stating that the Constitution was intended to enable the woman

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worker not only to subsist but also to make up her dissipated energy, nurse her child, preserve her efficiency as a worker and maintain the level of her previous efficiency and output.

6. Municipal Corporation of Delhi v. Female Workers (muster roll) [AIR 2000 SC 1274]

The facts that gave rise to present appeal was that the Municipal Corporation of Delhi granted maternity leave only to its regular female employees and not to the muster-roll women employees of the Corporation. The Muster roll employees claimed for maternity benefit under the Act. The Supreme Court while granting the benefits held that “A woman employee, at the time of advanced pregnancy cannot be compelled to undertake hard labour as it would be detrimental to her health and also to the health of the foetus. It is for this reason that it is provided in the Act that she would be entitled to maternity leave for certain periods prior to and after delivery. There is nothing contained in the Act which entitles only regular women employees to the benefit of maternity leave and not to those who are engaged on casual basis or on muster roll on daily-wage basis.”

7. Manisha Priyadarshini v. Aurobindo College [AIR Online 2020 Del 649]

The petitioner was working as an ad-hoc Assistant Professor in an affiliated college requested the College for grant of maternity leave along with all other eligible benefits under the Maternity Benefit Act, 1961. But the college did not respond to her request. She reiterated her request, seeking permission to proceed on maternity leave and was blessed with a daughter prematurely shortly after. When she reported to the college for joining her duties, the college informed her that she was terminated from service. The Court directed the College to reinstate the Professor within one week, and also imposed a cost of ` 50,000 for wrongful termination. The Court further held that the Act of the college is “violative of the basic principle of equality in the eyes of law. It would also tantamount to depriving her of the protection assured under Article 21 of the Constitution of India of her right to employment and protection of her reproductive rights as a woman. Such a consequence is therefore absolutely unacceptable and goes against the very grain of the equality principles enshrined in Articles 14 and 16”

8. Pooja Jignesh Doshi v. State of Maharashtra and another [2015]

The petitioner chose to be a surrogate mother and gave birth to a baby girl. She sought maternity leave to take care of the surrogate child, which was denied on the ground that the Leave Rules and the policy governing the Rules do not permit maternity leave for a surrogate child. The Court held that even in case of birth by surrogacy the parents who have lent the ova and the sperm would be entitled to

avail leave. The mother being entitled to maternity leave and the father to paternity leave.

9. Rakhi P. V. and others v. State of Kerala & another [2018 Lab IC (NOC) 133 (Ker)]

The Court clarified that a woman employee cannot be denied maternity benefits merely because her status is a contractual employee. And held that a woman cannot be compelled to choose between motherhood and employment.

PRACTICAL CASE SCENARIO

PRACTICAL CASE SCENARIO NO. 1

Seema was initially appointed to the post of Anudeshak / instructor teacher on 20.08.2015. An application dated 26.9.2018 was submitted by her before the Block Education Officer as well as the District Basic Education Officer, Bijnor to grant her maternity leave from 1.10.2018 to 31.3.2019. But, the District Basic Education Officer, Bijnor granted maternity leave to the petitioner only for 90 days, i.e., 1.10.2018 to 29.12.2018 with honorarium. The request was made by Seema to grant her maternity leave for 180 days, according to the Maternity Benefit Act, 1961, but there was no response. What remedy does Seema have?

Answer: Women who constitute almost half of the segment of our society have to be honored and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work; they must be provided all the facilities to which they are entitled. The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honorably, peaceably, undeterred by the fear of being victimized for forced absence during the pre or post-natal period. The Maternity Benefit Amendment Act 2017 has increased the duration of paid maternity leave available for women employees from the existing 12 weeks to 26 weeks. Thus, Seema is entitled to a paid maternity leave of 180 days.

PRACTICAL CASE SCENARIO NO. 2

Seema used to work in The Municipal Corporation of Mumbai, which used to grant maternity leave only to its regular female workers and not to the female workers on daily wage. Seema was 7 months pregnant and could not get a leave as she was a daily wage earner. Daily wage female workers raised a demand for grant of maternity leave and the union concerned supported their cause. But the Corporation contended that the benefits contemplated by the Maternity Benefit

Act, 1961 could be extended only to work women in an “industry” and not to the daily wage women employees of the Municipal Corporation. What can be done in such a situation?

Answer: A woman employee, at the time of advanced pregnancy cannot be compelled to undertake hard labour as it would be detrimental to her health and also to the health of the foetus. It is for this reason that it is provided in the Maternity Benefit Act, 1961 that she would be entitled to maternity leave for certain periods prior to and after delivery. There is nothing contained in the Act which entitles only regular women employees to the benefit of maternity leave and not to those who are engaged on a casual basis or on a muster roll on a daily-wage basis. Thus, Seema is entitled to maternity leave even though she is a daily wage earner.

PRACTICAL CASE SCENARIO NO: 3

Seema and her husband could not have children even after 7 years of marriage and so they decided to adopt a baby boy. Seema has been working in LNT Factory for 3 years. She decided to legally adopt a newborn child on 10.08.2019 and had put in an application for maternity leave. Her maternity leave was not accepted as the employer stated it is an adopt child and only a pregnant woman is entitled to maternity leave. What remedy does Seema have?

Answer: According to Section 5(4) of The Maternity Benefit (Amendment) Act, 2017, a woman who legally adopts a child below the age of three months or a commissioning mother shall be entitled to maternity benefit for a period of twelve weeks from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be.

PRACTICAL CASE SCENARIO NO: 4

Seema had delivered a baby boy in the month of July 2019 and resumed back to work in the month of November 2019. She was not allowed to take the second break to feed her baby. What remedy does Seema have?

Answer: Under Section 11 of the Maternity Benefit Act, 1961, Every woman who has delivered a child and returns to duty after such delivery shall, in addition to the interval for rest allowed to her, be allowed in the course of her daily work two breaks of the prescribed duration for nursing the child until the child attains the age of fifteen months. Thus, under Section 11 of the Act Seema is allowed two breaks for nursing her child.

PRACTICAL CASE SCENARIO NO: 5

Seema was working as an ad-hoc Assistant Professor in Nagpur University College. She had requested the College for grant of maternity leave along with all other eligible benefits under the Maternity Benefit Act, 1961, From 14.05.2018 till 24.09.2018. But the college did not respond to her request.

She again submitted her request on 18.05.2018, seeking permission to proceed on maternity leave from 21.05.2018 onwards. On 03.06.2018, Seema was blessed with a baby boy prematurely. However, on 24.09.2018, when she reported to the college for joining her duties, College informed her on 28.09.2018, that there was no question of her joining back on duty as she was terminated from service. What remedy does Seema have?

Answer: Under the Maternity Benefit Act, Section 12 an employer cannot dismiss a woman for taking maternity leave and cannot serve a termination notice to a woman on maternity leave which expires before the maternity leave ends. Also, an employer can't change the terms of service to the woman's disadvantage during her maternity leave.

PRACTICAL CASE SCENARIO NO: 6

Female workers on the muster roll, engaged by the Municipal Corporation of a State, raised a demand for grant of maternity leave which was made available only to regular female workers but was denied to them on the ground that their services were not regularized and, therefore, they were not entitled to any maternity leave. Whether the female workers working on Muster Roll should be given any maternity benefit?

Answer: Status of employment is not a criteria to get maternity benefit. A woman employee, at the time of advanced pregnancy cannot be compelled to undertake hard labour as it would be detrimental to her health and also to the health of the foetus and it is for this reason that it is provided in the Act that she would be entitled to maternity leave for certain periods prior to and after delivery. There is nothing contained in the Act which entitles only regular women employees to the benefit of maternity leave and not to those who are engaged on a casual basis or on muster roll on daily-wage basis.

ASSESS YOURSELF: MULTIPLE CHOICE QUESTIONS

1. Maternity Benefit Act, 1961, aims to regulate the employment of women employees in certain establishments for certain periods before and after child birth and provides for maternity and certain other benefits.

This statement is _____.

- a. Correct
- b. Incorrect
- c. Partly correct
- d. None of the above

2. Maternity Benefit Act, 1961, is applicable to _____ including those belonging to Government.

- a. Every factory
- b. Every mine
- c. Every plantation
- d. All of the above

3. The Maternity Benefit Act, 1961, is also applicable to _____.

- a. Every shop
- b. An establishment wherein 10 or more persons are employed or were employed
- c. Both a and b
- d. None of the above

4. The maximum period for which any woman shall be entitled to maternity benefit shall be _____, according to the Maternity Benefit Act, 1961.

- a. 12 weeks
- b. 10 weeks
- c. 15 weeks
- d. None of the above

5. According to the Maternity Benefit Act, 1961, who among the following is entitled to Maternity Benefit?

- a. Every woman employee, employed directly who has actually worked in the establishment for a period of at least 80 days during the 12 months immediately preceding the date of her expected delivery.
- b. Every woman employee employed through a contractor, who has actually worked in the establishment for a period of at least 80 days during the 12 months immediately preceding the date of her expected delivery.
- c. Both a and b
- d. All of the above

6. Leave for a maximum period of _____ with wages at the rate of maternity benefit are allowable in case of illness arising out of pregnancy, delivery, premature birth of child, miscarriage or medical termination of pregnancy or tubectomy operation.

- a. 3 months
- b. 6 months
- c. 1 month
- d. All of the above

7. Important obligations of 'employers' under the Maternity Benefit Act, 1961, are _____.

- a. To pay maternity benefit and/or medical bonus and allow maternity leave and nursing breaks to the woman employees
- b. Not to dismiss or discharge a pregnant woman employee during the period of maternity leave
- c. Both a and b
- d. None of the above

8. Under Maternity Benefit Act, 1961, the woman has right to appeal against an order of the employer depriving her of the maternity benefit or medical bonus or dismissing or discharging her from service, to the competent authority, within _____ of the service of such order.

- a. 15 days
- b. 10 days
- c. 30 days
- d. 60 days

9. Which of the following Section of Maternity Benefit Act, 1961, provides 'Penalty for contravention of Act by employer'?

- a. Section 19
- b. Section 20
- c. Section 21
- d. None of the above

10. The 'penalty' imposed under Maternity Benefit Act, 1961, is _____.

- a. Imprisonment upto one year
- b. Fine upto Rs. 5000
- c. Both a and b
- d. None of the above

ANSWER KEY									
1	2	3	4	5	6	7	8	9	10
a	d	c	a	c	c	c	d	c	c

**LEGAL AWARENESS PROGRAMME
BY
NATIONAL LEGAL SERVICES AUTHORITY
IN COLLABORATION WITH
NATIONAL COMMISSION FOR WOMEN
&
KNOWLEDGE PARTNER - ALL INDIA REPORTER**

**IEC & TRAINING MODULE
For Training the Trainers
ON**

**LABOUR LAWS
THE SEXUAL HARASSMENT OF WOMEN AT
WORKPLACE (PREVENTION, PROHIBITION AND
REDRESSAL) ACT, 2013**

IEC Material & Training Module

The IEC & Training Module is primarily for Resource Persons of NALSA, as it focuses on particular responsibilities in spreading legal awareness about women & Labour laws [The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013] as a part of Legal Awareness Programme undertaken by National Legal Services Authority in collaboration with National Commission for Women. Resource Persons will find it as a useful source of information & guidance.

The main objective of this IEC & Training Module is to inspire, motivate, cultivate curiosity, shape the opinion and enlighten the Resource Persons on issues concerning women & labour laws [The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013]

The overall content consists of what behavior of a person towards a woman falls within the ambit of sexual harassment at workplace. This has been written in an interactive Question Answer style, in a lucid and simple language.

NALSA hopes that the Resource Person will be benefitted immensely by these IEC & Training Modules.

Objective of the Act:

- *For all employers to develop and implement a policy for prevention of sexual harassment at the workplace and make it a safe place for work.*
- *To evolve a permanent mechanism for the prevention and redressal of sexual harassment cases and other acts of gender-based violence at the workplace.*
- *To follow and implement the Act enjoining all employers to constitute an “Internal Complaints Committee” and lay down guidelines for redressal of complaint related to sexual harassment of Women at the workplace.*

Learning Outcome

- *The participants (Resource Persons) will be able to completely understand their role & responsibilities in spreading awareness about behavior constituting of sexual harassment provided under the Act*

THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

INTRODUCTION

Sexual Harassment at the Workplace has remained one of the central concerns of the women's movement in India since the early 80s. Women have commonly been a victim of sexual harassment at workplace. The fundamental right to carry on any occupation, trade or business or profession depends on the availability of a 'safe' working environment. When the work place is unsafe and working environment is abusive or hostile, it infringes right to carry on employment. This violates the freedom to work of both the victim and other female employees. These offences could range from uttering a word or sound, making a gesture or committing an act, all intended to insult a woman.

The voices against sexual harassment at workplaces have since grown stronger. Specially after the popularity gained by the recent #Metoo Movements across Globe. The Ministry of Women and Child Development has set up what it calls the Sexual Harassment electronic-Box (SHe-Box), an online complaint system for registration of complaints related to sexual harassment at workplace. The SHe-Box was launched on July 24, 2017, and received 107 complaints up to February 2018, in just 7 months. We need to further empower women till each and every such act of sexual harassment at the workplace is brought to light and there is no more fear among women to speak up.

✦ Constitutional Safeguards Against Sexual Harassment at Workplace

Women in India are recognized and granted protection under the Constitution of India. The preamble to the Constitution, inter alia, guarantees social, economic, and political justice, equality of status, opportunity, and the dignity of the individual. Notwithstanding these avenues of protection, for a long time, working Indian women did not practically receive the protections granted under the Constitution and national or state legislations.

Sexual harassment at workplace is considered violation of women's right to equality, life and liberty. As enshrined in the Preamble of the Constitution of India, equality of status and opportunity must be secured for all its citizens; equality of every person under the law is guaranteed by Article 14 of the Constitution of India. A safe workplace is therefore a woman's legal right. Indeed, the Constitutional doctrine of equality and personal liberty is contained in Articles 14, 15 and 21 of the Constitution of India. Sexual harassment creates an insecure and hostile work environment, which discourage women's participation in work, thereby adversely affecting their social and economic empowerment and the goal of inclusive growth. With this idea the legislature formulated the Sexual Harassment of Women

at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

✦ **The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013**

The Act recognizes that sexual harassment constitutes a violation of fundamental rights of women and their right to life and to live with dignity and carry on any profession, trade, or business in an environment free from sexual harassment. PoSH Law affects all of India and is not gender neutral — it only protects women.

After 16 years of Vishakha case, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“the PoSH Act”) was enacted with the objective to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matter connected therewith or incidental thereto.

✦ **Important Provisions of Sexual Harassment of Women at Workplace Act at a Glance**

Sr. No	Section	Heading
1	Section 3	Prevention of sexual harassment
2	Section 4	Constitution of Internal Complaint Committee
3	Section 5	Notification of District Officer
4	Section 6	Constitution and Jurisdiction of Local Committee
5	Section 7	Composition tenure and other terms and conditions of Local Committee
6	Section 8	Grants and audit
7	Section 9	Complaint of sexual harassment
8	Section 10	Conciliation
9	Section 11	Inquiry into complaint
10	Section 12	Action during pendency of inquiry
11	Section 13	Inquiry report
12	Section 14	Punishment for false or malicious complaint and false evidence
13	Section 15	Determination of compensation
14	Section 16	Prohibition of publication or making known contents of complaint and inquiry proceedings

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15	Section 17	Penalty for publication or making known contents of complaint and inquiry proceedings
16	Section 18	Appeal
17	Section 19	Duties of employer
18	Section 20	Duties and powers of District Officer
19	Section 21	Committee to submit annual report
20	Section 22	Employer to include information in annual report
21	Section 23	Appropriate Government to monitor implementation and maintain data
22	Section 24	Appropriate Government to take measures to publicize the Act
23	Section 25	Power to call for information and inspection of records
24	Section 26	Penalty for non-compliance with provisions of Act
25	Section 27	Cognizance of offence by courts
26	Section 28	Act not in derogation of any other law
27	Section 29	Power of appropriate Government to make rules
28	Section 30	Power to remove difficulties

✦ What constitutes as sexual harassment at workplace?

It includes unwelcome sexually tinted behavior, whether directly or by implication, such as:

- Physical contact and advances.
- Demand or request for sexual favors.
- Making sexually coloured remarks.
- Showing pornography.
- Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

✦ What was the Vishakha v. State of Rajasthan case?

- In 1992, Bhanwari Devi a social worker in Rajasthan was brutally gang raped by a number of gujjar men, because she had tried to stop a child marriage.
- Bhanwari Devi was determined to get justice and lodged a case against the offenders. However, the accused was acquitted by a trial court.

- This appalling injustice, together with the fighting spirit of Bhanwari Devi, inspired several women's groups and NGOs to file a petition in the Supreme Court under the collective platform of Vishakha.

✦ What are the important guidelines provided by the Supreme Court in Vishakha Case?

- The Supreme Court for the first time, acknowledged the glaring legislative inadequacy and acknowledged workplace sexual harassment as a human rights violation.
- In framing the Vishakha Guidelines, the Supreme Court placed reliance on the Convention on Elimination of All Forms of Discrimination against Women, adopted by the General Assembly of the United Nations, in 1979, to which India was a signatory.
- The Vishakha Guidelines were issued under Article 32 of the Constitution, and consequently, a legislative framework on the subject was drawn-up and enacted, which had the effect of law and was made mandatory for every organization, both in the private and government sector.
- Through this case, the Supreme Court of India created legally binding guidelines basing it on the Right to Equality and Dignity accorded under the Indian Constitution as well as by the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

These guidelines included:

- An inclusive definition of sexual harassment at workplace.
- Shifted accountability from individuals to institutions.
- Prioritized prevention of every such act of harassment in all its forms.
- An innovative redress mechanism was set up to redress the grievances.

✦ Which fundamental rights of women are violated by the acts of sexual harassment?

Sexual harassment clearly violates the following fundamental rights of a woman:

- Equality under **Article 14** which is Equality before law
- **Article 15** which is Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
- Right to life and liberty under **Article 21**
- right to practice any profession and carry on any occupation, trade or business which is under **Article 19(1)(g)**
- Right to safe environment free from sexual harassment under **Section 19(a)** of the PoSH Act, 2013, read with **Article 19(1)(g)** of the Constitution.

✦ **Is sexual harassment dealt with under Indian Penal Code?**

Yes. In 2013, substantial changes were made in the way sexual harassment was viewed within the criminal justice system in India. The Criminal Law Amendment Act of 2013, which commenced on April 3, 2013, included Section 354A of the Indian Penal Code, 1860 that defined sexual harassment.

The India Penal Code, 1860 defines the term sexual harassment and related offences and put forth punishments for the same:

Sr. No	Section	Provisions
1	Section 354A	Sexual harassment is: unwelcome physical contact and advances, including unwanted and explicit sexual overtures, a demand or request for sexual favors, showing someone sexual images (pornography) without their consent, and making unwelcome sexual remarks. Punishment: Up to three years in prison, and a fine.
2	Section 354B	Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.
3	Section 354C	Watching or capturing images of a woman without her consent (voyeurism). Punishment: First conviction: one to three years in prison and a fine. More than one conviction: three to seven years in prison and a fine.
4	Section 354D	Following a woman and contacting her or trying to contact her despite her saying she does not want contact. Monitoring a woman using the Internet or any other form of electronic communication (stalking). Punishment: First conviction up to three years in prison and a fine. More than one conviction up to five years in prison and a fine.

Important Definitions under the PoSH Act at a Glance:

Sections	Nominal Heading	Definition
Section 2(a)	Aggrieved Woman	<p>a. In relation to a workplace: A woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent;</p> <p>b. In relation to dwelling place or house: A woman of any age who is employed in such a dwelling place or house.</p> <p>c.</p>
Section 2(b)	Appropriate Government	<p>In relation to a workplace which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly:</p> <p>a. by the Central Government or the Union territory administration, the Central Government;</p> <p>b. by the State Government, the State Government;</p> <p>(ii) in relation to any workplace not covered under sub-clause (i) and falling within its territory, the State Government;</p>
Section 2(e)	Domestic worker	A woman who is employed to do the household work in any household for remuneration whether in cash or kind, either directly or through any agency on a temporary, permanent, part time or full time basis, but does not include any member of the family of the employer;
Section 2(f)	Employee	A person employed at a workplace for any work on regular, temporary, ad hoc or daily wage basis, either directly or through an agent, including a contractor, with or, without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied and

		includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name;
Section 2(n)	Sexual Harassment	<p>It includes unwelcome sexually tinted behavior, whether directly or by implication, such as:</p> <ul style="list-style-type: none"> a. Physical contact and advances. b. Demand or request for sexual favors. c. Making sexually coloured remarks. d. Showing pornography. e. Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.
Section 2(o)	Workplace	<p>It includes:</p> <ul style="list-style-type: none"> a. any department, organization, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society; b. any private sector organization or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organization, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service; c. hospitals or nursing homes; d. any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;

		e. any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey; f. a dwelling place or a house;
Section 2(p)	Unorganized sector	In relation to a workplace means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.

✦ **Can a complaint be filed on behalf of the aggrieved woman?**

Yes. According to Section 9(2) of the PoSH Act, 2013, if the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death, her legal heirs or such other person can file a complaint.

✦ **What are the forms of workplace harassment?**

Generally, workplace sexual harassment refers to two common forms of inappropriate behaviour:

Quid Pro Quo (literally 'this for that')

- Implied or explicit promise of preferential/detrimental treatment in employment
- Implied or explicit threat about her present or future employment status

Hostile Work Environment

- Creating a hostile, intimidating or an offensive work environment
- Humiliating treatment likely to affect her health or safety.

✦ **Can defamation amount to sexual harassment under the Act?**

Sexual harassment of women at work place can be pleaded under defamation as it leads to - Imputation as to the character of a woman employee's personal relationships; or Imputation as to the professional efficiency and conduct of the employee; or Imputation as to her chastity etc.; Imputation as to her eligibility, qualifications, and her efforts to get at any position in public life.

✦ **What is an Internal Committee under the PoSH Act?**

The PoSH Act under Section (4) requires an employer to set up an 'internal committee' ('IC') at each office or branch.

Failure to constitute the IC would lead to imposition of a fine under the PoSH Act.

✦ **How is the Internal Committee constituted?**

Presiding officer:	Women working at senior level as employee; if not available then nominated from other offices or administrative of the workplace.
2 Members (minimum)	From amongst employees committed to the cause of women/ having legal knowledge/experience in social work
Members	From amongst NGO/associations committed to the cause of women or a person familiar with the issue of Sexual Harassment

✦ **What is the Local Complaints Committee (LCC)?**

The District Officer under **Section 7** of PoSH Act 2013, will constitute an LCC in every district so as to enable women in the unorganized sector or small establishments to work in an environment free of sexual harassment.

✦ **How is the Local Complaints Committee constituted?**

Chairperson	Nominated from amongst the eminent women in the field of social work and committed to the cause of women
Member	Nominated from amongst the women working in the block, taluka or tehsil or ward or municipality in the district
2 Members	Nominated from amongst such NGO/associations/ persons committed to the cause of women or familiar with the issues relating to sexual harassment, provided that:

	<ul style="list-style-type: none"> • At least one must be a woman • At least one must have a background of law or legal knowledge
Ex Officio member	The concerned officer dealing with social welfare or women and child development in the district

✦ **What are the powers of the Internal Complaint committee /Local Complaints Committee under PoSH Act?**

According to **Section 11(3)**, the Internal Complaints Committee and Local Complaints Committee will, while inquiring into a complaint of workplace sexual harassment, have the same powers as vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of:

1. Summoning and enforcing the attendance of any person and examining him on oath;
2. Requiring the discovery and production of documents; and
3. Any other matter which may be prescribed.

✦ **What is conciliation?**

Conciliation is basically an informal method of resolving complaints before the complaint escalates into a fully blown formal inquiry.

✦ **When is conciliation initiated?**

After a complaint of sexual harassment has been lodged, the aggrieved woman may request the IC to resolve the matter by conciliating between the parties before commencement of the inquiry proceedings.

✦ **How are monetary settlements processed?**

Monetary settlement should not be made as a basis of conciliation. Once the settlement has been arrived at, the IC or the LC (as the case may be) shall record the settlement arrived at and thereafter provide copies of the settlement to the aggrieved woman as well as the respondent.

✦ **What is the conciliation procedure under Section 10 of PoSH Act 2013?**

Before initiating action on a complaint, the IC on the request of the aggrieved woman, can make efforts to settle the matter between the parties through conciliation by bringing about an amicable settlement.

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Once a settlement has been arrived at, the IC shall proceed with an inquiry under the PoSH Act.

✦ **What action can be taken by the Internal Complaint committee / Local Complaints Committee during the pendency of an inquiry?**

Action can be taken on a written request made by the aggrieved woman to the Internal Committee or the local Committee, as the case maybe.

The committee may recommend to the employer to:

- a. Transfer the aggrieved woman or the respondent to any other workplace; or
- b. Grant leave to the aggrieved woman up to a period of three months; or
- c. Grant such other relief to the aggrieved woman as may be prescribed.

✦ **How is compensation determined and paid under PoSH Act?**

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

- a. The mental trauma, pain, suffering and emotional distress caused to the aggrieved woman;
- b. The loss in the career opportunity due to the incident of sexual harassment;
- c. Medical expenses incurred by the victim for physical or psychiatric treatment;
- d. The income and financial status of the respondent;
- e. feasibility of such payment in lump sum or in installments.

✦ **What are the confidentiality criteria for sexual harassment matters?**

Recognizing the sensitivity attached to matters pertaining to sexual harassment, the PoSH Act **Section 16** attaches significant importance to ensuring that the complaint and connected information are kept confidential.

The PoSH Act specifically stipulates that information pertaining to workplace sexual harassment shall not be subject to the provisions of the Right to Information Act, 2005.

It prohibits dissemination of the contents of the complaint, the identity and addresses of the complainant, respondent, witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the IC/LC and the action taken to the public, press and media in any manner.

However, the Act allows dissemination of information pertaining to the justice that has been secured to any victim of sexual harassment, without disclosing the name, address, identity or any other particulars which could result in the identification of the complainant or the witnesses.

Disclosure of the justice secured could deter other individuals from engaging in acts of sexual harassment, but instill in the minds of employees and public that the employer is serious about providing a safe work environment and harbours zero tolerance for any form of sexual harassment at the workplace.

✦ **What are the duties of an employer under the PoSH Act?**

Under **Section 19** of the Act, every employer shall:

- a. Provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace;
- b. Display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting, the Internal Committee under sub-section (1) of section 4;
- c. Organize workshops and awareness programmes at regular intervals for sensitizing the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;
- d. Provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry;
- e. Assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;
- f. Make available such information to the Internal Committee or the Local Committee, as the case be;
- g. Provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code or any other law for the time being in force;
- h. cause to initiate action, under the Indian Penal Code or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place;
- i. treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;
- j. monitor the timely submission of reports by the Internal Committee.

✦ **What are the duties and powers of a District Officer?**

The District Officer under **Section 20** shall:

- a. Monitor the timely submission of report furnished by the Local Committee;

- b. Take such measures as may be necessary for engaging non-governmental organizations for creation of awareness on sexual harassment and the rights of the women.

✦ **What information does the Employer have to include in the annual report?**

Under **Section 22**, the employer shall include in its report the number of cases filed, if any, and their disposal under the Act in the annual report of his organization or where no such report is required to be prepared, intimate such number of cases, if any, to the District Officer.

✦ **What are the various offences and penalties provided under the Act?**

The Act specifically states the following to be offences under the Act:

- a. Sexual Harassment in any form;
- b. False or malicious complaint and false evidence;
- c. Publication or making known contents of complaint and inquiry proceedings;
- d. Non-compliance with the provisions of the Act (**Section 26**).

Punishment to	For	Penalty
Employer	If he fails to: <ol style="list-style-type: none"> a. constitute an Internal Committee under sub-section (1) of section 4; b. take action under sections 13, 14 and 22; and c. contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made there under 	Fine which may extend to Rs. 50,000.
Employer	Subsequent Conviction	<ul style="list-style-type: none"> • Twice the punishment, or • Higher punishment is provided for the same offence under any other Act

✦ **What is the cognizance of offences under the Act?**

According to Section 27 (1), only the following persons are empowered to take cognizance of any offence punishable under the Act or any rules made there under:

- a. the aggrieved woman or
- b. any person authorized by the Internal Committee or Local Committee in this behalf.

Clause (3) mandates that every offence under this Act shall be non-cognizable. And no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act (Clause 2).

FAQ'S- REALITY CHECK

1. Since the day I joined ASD office, the manager is discussing vulgar jokes repeatedly, disregarding all my requests to stop and continued the same even after conveying the discomforts caused. Does this fall under the ambit of harassment at the workplace?

Yes, making sexually suggestive remarks or serious or repeated offensive remarks, such as teasing related to a person's body or appearance or Offensive comments or jokes all are covered under the definition of sexual harassment and you should complaint to the Internal Committee of the office immediately.

2. My manager at ABC bank has been sharing vulgar emoticons every night on WhatsApp, as a joke. I am extremely uncomfortable with such behavior. Does this amount to sexual harassment?

Yes, displaying sexually suggestive objects or pictures, cartoons, calendars or posters; Making or using derogatory comments, comments about a person's body or dress, slurs, epithets or sexually suggestive jokes amounts to sexual harassment.

3. I am an employer at AZN Company. Am I obliged to mention previous year's sexual harassment case in annual report?

Yes, as an employer you should include in your report the number of cases filed, if any, and their disposal under the Act in the annual report of the organization.

4. In the month of August 2019, I was suffering from anxiety issues and high BP issues as I was always scared to go to the office because my manager used to touch me or pass vulgar comments which made me very

uncomfortable. I had to take anti-anxiety medicines and sometimes I had to take an off due to a lot of stress. Medical bills and unpaid leaves affected my finances for two months. Will this be considered under the criteria of compensation?

Yes. Under Section 15 of PoSH Act these criteria will be considered for determining the sums to be paid to the aggrieved woman.

5. I was sexually harassed at my work place last month by my manager. But I was scared to come forward as I did not want the whole company to know about it. Can I complain without the fear of getting my name disclosed?

Yes. There is a very important provision under PoSH Act regarding the confidentiality of the complainant and the proceedings. Breach of the duty to maintain confidentiality is a punishable offence.

6. I am the manager of DLF Company and one of my employees has filed a frivolous sexual harassment complaint against me as a revenge on not receiving the employee of the year award. What disciplinary action can be taken against her?

The statute provides for various disciplinary actions like written apology, warning, reprimand, censure, withholding of promotion, withholding of pay rise or increments, terminating her from service, undergoing a counseling session etc.

7. I have filed a complaint against my manager for sexual harassment. The inquiry is still pending and I have to face my manager daily and this is extremely uncomfortable for me. Is there any provision where I can work without any pay cut?

Yes, as per Section 12 of the PoSH Act, during the pendency of an inquiry on a written request made by you, the Internal Committee or the local Committee, as the case may be, may recommend to the employer to—

- a. Transfer you or the respondent to any other workplace; or
- b. Grant leave to you up to a period of three months.

8. Can I file an appeal against the recommendations of the Internal Committee?

Yes, as an aggrieved person you can file an appeal within a period of 90 days from the recommendation.

9. Which court can try offences under PoSH Act?

No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

LANDMARK JUDGMENTS**1. Vishakha v. State of Rajasthan and Ors. [AIR 1997 SC 3011] (Bhanwari Devi Case)**

In 1992 a lower caste social worker for the women's development programme in Rajasthan named Bhanwari Devi who was trying to stop a child marriage in her village was allegedly gang-raped by five men of the upper-class community. She went to the police station to lodge a complaint against the offenders but no thorough investigation was launched.

The Issue raised was, whether the employer has any responsibility in cases of sexual harassment by its employee or to its employees at a workplace?

The Supreme Court held that the sexual harassment of a woman at a workplace would be violative of her fundamental rights of gender equality and right to life and liberty under Articles 14, 15, 19 and 21 of the Indian Constitution. The court concluded that such an Act would be considered as a violation of women's human rights.

2. Apparel Export Promotion Council v. A.K. Chopra [AIR 1999 SC 625]

The allegations which had been made in this case, were A. K. Chopra, P.S. To Chairman, APEC had tried to assault Ms. Suchitra Vishnoi, Clerk-cum-Typist physically. This assault is alleged to have taken place in Taj Palace Hotel. The allegation was that Ms. Suchitra Vishnoi was taken to a room on the pretext of taking dictation from the Chairman of the Apparel Export Promotion Council. In the deposition of Ms. Suchitra Vishnoi, no part of that evidence discloses that A. K. Chopra even managed to make the slightest physical contact with the lady. The entire deposition relates that A. K. Chopra tried to touch her.

The instant case is, therefore, one in which there is no evidence at all of any kind of molestation or assault on the person of Ms. Suchitra Vishnoi.

The Supreme Court had held that there had to be some evidence before the Enquiry Officer for it to come to the conclusion that the allegations made are true; that such an event or a thing actually happened.

3. Shanta Kumar v. Council of Scientific and Industrial Research (CSIR) & Ors. [2018 CRI L J 1697 (DEL)]

When the petitioner was working in the laboratory, the respondent entered, stopped all the machines and pushed her out of the laboratory and locked it. The petitioner alleged that the respondent used derogatory language. The committee examined the complaint and concluded that the nature of the complaint was not sexual in nature but administrative and managerial. The impugned report was accepted by the Disciplinary Authority and was under challenge.

A writ petition was filed before the Delhi High Court by Shanta Kumar challenging the proceedings of the Complaint Committee and the order of the Disciplinary Authority exonerating the Respondent of the sexual harassment charges made against him.

The petitioner contended that the report of the Complaint Committee lacked application of mind. It was contended that the respondent had touched the petitioner's arm and any unwelcome physical contact would amount to sexual harassment.

The Delhi High Court held that any physical contact or advance would be sexual harassment provided it is made in the context of a sexually oriented behavior. A mere accidental touch, even if unwelcome would not amount to sexual harassment. In the instant matter, the incident would not qualify as sexual harassment even if it were derogatory in nature.

4. Ruchika Singh Chhabra v. M/s. Air France India and Anr. [2018 (5) ADR 204]

The facts of the case are that Ruchika Singh Chhabra joined Air France in the year 2001 as Commercial Assistant. She alleges to having become victim of sexual harassment by a certain employee, Stanislas Brun, a French National, currently serving as Managing Director of Air France, who was transferred to India as Marketing Manager, Cargo (India, Nepal and Bhutan) in 2013. Ruchika alleges being harassed by Brun on multiple occasions and cited several incidents supporting her averment that she was subjected to repeated sexual advances in spite of her repeated or express refusal.

The ruling by the Delhi High Court in case will require the companies to review the constitution of their Internal Complainants Committee ("ICC"). The court held if the appointment of the external member for the ICC is not in accordance with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("PoSH Act"), the proceedings so conducted by such ICC are invalid. It is important that the external member (for the ICC) appointed by a company/ employer should be an

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independent person and there should not be any conflict of interest between the external member so appointed and other services she may provide to the employer.

5. Punita K. Sodhi v. Union of India & Ors. [2010 (172) DLT 409]

Dr. Punita Sodhi, a highly qualified eye specialist, worked as Assistant Professor in Ophthalmology at Lady Harding Medical College (LMC) under the Ministry of Health & Family Welfare (MHFW). Upon qualifying she joined the Council for Scientific & Industrial Research at Safdarjung Hospital where she eventually came to work under Dr. K.P.S. Malik (HOD).

That is where her troubles and her case began. Dr. Malik was aware that Dr. Sodhi's husband was on an outstation job. According to her, on one pretext or another Dr. Malik looked for opportunities to get close to her, which included calling her to assist in surgeries when it wasn't required. In his ongoing attempt to make her life uncomfortable, Dr. Malik adopted several ways to harass Dr. Sodhi. He issued false memos about her work, sought her termination, gave wide circulation of his views to senior staff members and even accused her of negligence in the case of a patient whom she had in fact cured. In 2007, Dr. Malik clearly crossed the line and Dr. Sodhi filed a complaint of sexual harassment to the Medical Superintendent.

In 2010, the High Court of Delhi endorsed the view that sexual harassment is a subjective experience and for that reason held "We therefore prefer to analyze harassment from the complainant's perspective. A complete understanding of the complainant's view requires an analysis of the different perspectives of men and women. Conduct that many men consider unobjectionable may offend many women. Men tend to view some forms of sexual harassment as harmless social interactions to which only overly-sensitive women would object. The characteristically male view depicts sexual harassment as comparatively harmless amusement. Men, who are rarely victims of sexual assault, may view sexual conduct in a vacuum without a full appreciation of the social setting or the underlying threat of violence that a woman may perceive."

6. Medha Kotwal Lele v. Union of India [2004 AIR SCW 7454]

The women's rights groups, together with others, petitioned the Court highlighting a number of individual cases of sexual pestering and arguing that the Vishakha Guidelines were not being efficiently put into practice. The petitioners contended that, in spite of the guidelines, women continued to be beleaguered in the workplace as the Vishakha Guidelines were being infringed in both substance and spirit by state functionaries who pester

women workers via legal and extralegal means, making them suffer and by insulting their pride.

The Apex Court stated, “the Vishakha Guidelines had to be implemented in form, substance and spirit in order to help bring gender parity by ensuring women can work with dignity, decency and due respect. It noted that the Vishakha Guidelines require both employers and other responsible persons or institutions to observe them and to help prevent sexual harassment of women.”

7. Chairman, Railway Board v. Chandrima Das [AIR 2000 SC 988]

A writ petition was filed against the state and its instrumentality seeking compensation to a victim of rape committed by its employees (railway employees). The petition also sought other reliefs including the eradication of anti-social and criminal activities at the railway station. The Supreme Court held that, physical violence at the hands of government employees who outraged the modesty of women violates the right to dignity of women.

PRACTICAL CASE SCENARIO

PRACTICAL CASE SCENARIO NO. 1

Seema is a Chartered Accountant who has been working as an assistant auditor at Anand and Amar Associates in Mumbai since 2015. C.A Manish is one of the directors of the organization and has always advocated for the cause of human rights. During an official field visit to Dehradun for 2 days, Mr. Manish finds an opportunity to be alone with Seema and makes a physical advance. Despite her protests, he forces himself on her while giving lurid and sexually explicit details of his relationships, both past and present, with women. When she chastises him and threatens to make his behaviour public, he threatens to destroy her career.

Mr. Manish's physical advances and sexual conversation led to harassment for Seema and Mr. Manish is taking undue advantage of his position and power.

PRACTICAL CASE SCENARIO NO. 2

Seema is a daily wage labourer working at a construction site. Every day at lunch time, Seema sits under the shade of the tree to feed her 11 months old baby. She finds Manish, a worker, staring at her from the distance. Seema feels uncomfortable and asks Manish to stay away from her while she's feeding the baby. However, Manish persists and always finds a place near her. The group of fellow

construction workers now constantly catcall and whistle at Seema every time she walks their way to refill the cement or mortar. When she questions them, they tell her they are only joking amongst themselves.

Ogling, stalking and gossiping against Seema constitutes a form of workplace sexual harassment and can trigger symptoms of depression and anxiety among Seema.

PRACTICAL CASE SCENARIO NO. 3

Seema is a young and a very intelligent team leader working in an Insurance Company. Seema stays back at work late one evening with her colleague Manish to complete work for an important presentation. Manish offers to buy Seema dinner and later drop her home since it's been a long day. After dinner, Manish proposes to Seema that he would like her to spend the night with him. Seema refuses politely but firmly and goes home. Next evening, Manish repeats his request and on Seema's refusal, threatens her that if she doesn't give-in, he will tell everyone that she made a pass at him.

Manish's threat to Seema that if she does not agree to his 'request' for a sexual favour, he will in return smear her character at the workplace as a person who wants to use sexual favours to her advantage constitutes quid pro quo form of sexual harassment. Manish's behaviour is unwelcome, sexual, and has a negative impact on Seema.

PRACTICAL CASE SCENARIO NO. 4

Seema works in a garment factory in Nagpur. Manish is Seema's supervisor, and often tries to touch her on one or the other pretext like he tries to touch her hand while she is writing in order to show how it's written. Seema is very uncomfortable with his behaviour. Her colleagues at the workplace ridicule Seema and mock her for the 'special treatment' by her supervisor. They often gossip about her and Manish being a couple.

The physical touching by Manish is undesirable and sexual in nature. The gossip, which is based on Manish's behaviour towards Seema at the workplace, is creating a hostile work environment for Seema

PRACTICAL CASE SCENARIO NO. 5

Seema is employed as a domestic worker where she is expected to take care of all the household activities, other than cooking. Most of the days, the lady of the house leaves early. Seema is therefore left alone in the house with a male member of the household, Manish. Seema finds Manish constantly staring at her when he is at home and often walks around the house wrapped in nothing but a towel which makes her very uncomfortable. On one occasion, while she was sweeping, Manish brushed his arm against her butt. When she protested that she would complain to the lady of the house, he threatened to accuse her of stealing, and that he would ensure that she loses her job.

His behaviour occurring in a matrix of power, is unwelcome, sexual and has a negative impact on Seema.

PRACTICAL CASE SCENARIO NO. 6

Manish and Seema are part of a business development team at an organization. Seema reports to Manish. Manish constantly tells Seema that they should go out somewhere after work hours, perhaps for a late-night movie or dinner. Seema is uncomfortable but smiles and says she is busy most often. One day, Manish tells Seema that if she turns down his request again, her ratings will go down at the monthly review and she will not receive the employee of the month award.

Manish is using his power and position to get sexual favours which amounts to sexual harassment.

PRACTICAL CASE SCENARIO NO. 7

Dr. Seema is a Neurosurgeon at the Grace hospital. She has refused an offer made by a Senior colleague, Dr. Manish for a relationship. Dr. Seema has kept quiet about this experience, but thanks to the rumor-mongering by Dr. Manish, she has acquired a reputation of being a woman of 'easy virtue'. Now few other doctor-colleagues are subjecting her to repeated advances.

Dr. Seema's refusal to the sexual advances of her colleagues, leads to her being subjected to rumors, gossip, character assassination, unwelcome sexual advances. This constitutes Hostile Work Environment form of workplace Sexual Harassment.

ASSESS YOURSELF: MULTIPLE CHOICE QUESTIONS

1. Incidents that occur at retirement parties and office socials or in training are not considered sexual harassment at workplace as they did not take place during working hours. The statement is _____.

- a. Correct
- b. Incorrect
- c. Partly correct
- d. None of the above

2. Calling a female co-worker “Sexy”, “Ravishing” or “Bomb” _____.

- a. Amounts to verbal abuse
- b. Does not amount to verbal abuse
- c. Depends on the rules of the company
- d. None of the above

3. Which among the following amounts to sexual harassment?

- a. Being forcibly kissed or hugged
- b. Gender based insults and/or sexist remarks
- c. Eve-teasing
- d. All of the above

4. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was enacted to ensure _____.

- a. Safe working spaces for women
- b. To build enabling work environments that respect women’s right to equality of status and opportunity.
- c. Both (a) and (b)
- d. None of the above

5. What are the powers/duties of the Internal Committee?

- a. Summoning and enforcing the attendance of any person and examining him on oath;
- b. Requiring the discovery and production of documents
- c. Both (a) and (b)
- d. None of the above

6. Humiliating treatment likely to affect a woman’s health or safety is termed as _____.

- a. Quid Pro Quo
- b. Hostile Work Environment

- c. Both (a) and (b)
- d. None of the above

7. Sexual harassment is defined under _____ of PoSH Act.

- a. Section 2(h)
- b. Section 2(b)
- c. Section 2(j)
- d. Section 2(n)

8. Under Section 10 PoSH Act, aggrieved women can make a request for _____.

- a. Mediation
- b. Conciliation
- c. Arbitration
- d. All of the above

9. During the pendency of an inquiry on a written request made by the aggrieved woman, the Internal Committee or the local Committee, can request the employer to _____.

- a. Grant leave to the aggrieved woman up to a period of three months
- b. Grant leave to the aggrieved woman up to a period of six months
- c. Grant leave to the aggrieved woman up to a period of nine months
- d. Grant leave to the aggrieved woman up to a period of ten months

10. Which among the following determine the amount of compensation under Section 15 of PoSH Act?

- a. The mental trauma, pain, suffering and emotional distress caused to the aggrieved woman
- b. The loss in the career opportunity due to the incident of sexual harassment
- c. Medical expenses incurred by the victim for physical or psychiatric treatment
- d. All of the above

ANSWER KEY									
1	2	3	4	5	6	7	8	9	10
a	a	d	c	c	b	d	b	a	d

**LEGAL AWARENESS PROGRAMME
BY
NATIONAL LEGAL SERVICES AUTHORITY
IN COLLABORATION WITH
NATIONAL COMMISSION FOR WOMEN
&
KNOWLEDGE PARTNER - ALL INDIA REPORTER**

**IEC & TRAINING MODULE
For Resource Persons
ON
LABOUR LAWS
THE EQUAL REMUNERATION ACT, 1976**

Training Module

IEC Material & Training Module

The IEC & Training Module is primarily for Resource Persons of NALSA, as it focuses on particular responsibilities in spreading legal awareness about women & Labour laws (The Equal Remuneration Act, 1976), as a part of Legal Awareness Programme undertaken by National Legal Services Authority in collaboration with National Commission for Women. Resource Persons will find it as a useful source of information & guidance.

The main objective of this IEC & Training Module is to inspire, motivate, cultivate curiosity, shape the opinion and enlighten the Resource Persons on issues concerning women & labour laws (The Equal Remuneration Act, 1976).

The overall content consists of The Equal Remuneration Act, 1976 guaranteed to the Women Employee. This has been written in an interactive Question Answer style, in a lucid and simple language.

NALSA hopes that the Resource Persons will be benefitted immensely by these IEC & Training Modules.

Objective

- *To give an overview of the Scheme made under The Equal Remuneration Act, 1976.*
- *To familiarize the Resource Persons with the 'Equal Remuneration' available to Women Employees.*
- *To improve the understanding of Resource Persons about the challenges & barriers women confront for the payment of equal remuneration to men and women workers.*
- *To provide guidance for the prevention of discrimination, on the ground of sex, against women in the matter of employment and remuneration.*
- *The participants (Resource Persons) will be able to completely understand their role & responsibilities in spreading awareness about equal remuneration and redressal authorities provided under the Act.*

“I am uncompromising in the matter of woman’s rights. In my opinion she should labour under no legal disability not suffered by man. I should treat daughters and sons on an equal footing of perfect equality.”

- Mahatma Gandhi

THE EQUAL REMUNERATION ACT, 1976

INTRODUCTION

A civilized society is not built on the foundation of discrimination between individuals in any form. In light of human rights and human dignity the concept of justice, equality and opportunity shall be applicable irrespective of consideration towards gender of the beneficiary. Inadvertently, this has led to a centuries driven battle of gender justice and the prime contributing factor to this struggle is psyche and consciousness of society since ancient time. Denial or limitation of equality of rights to women as to men is unjust and constitutes an offence against human dignity which includes equal protection in employment and professional advancement. As law is an instrument of social change, the goal of achieving social, economic, political equality may seem to be reality for women. With special recognition of obligation under Universal Declaration of Human Rights (UDHR), 1948, several legal rights and protections have been provided for women.

The Constitution of India emphasizes that a true democracy requires not only equality but also justice. The idea of economic justice means that there will be no distinction between men and women from the stand point of economic value. It means equality of rewards for equal work. Everyone should get his just reward in return of his labour. The concept of equal pay for equal work is one of the Directive Principles of State Policy enshrined under Article 39 (d) of the Constitution of the India which envisages that the State shall, in particular, direct its policy towards securing that there is equal pay for equal work for both men and women. The principal implies that where all things are equal, that is, where all relevant considerations are the same, persons holding identical posts/responsibilities shall not be treated differently in matter of their pay merely because they belong to different departments. Laws relating to equal pay, hence, deal with eliminating such gender-based discrimination. Hence, relevance of Arts 14, 15 and 16 is of utmost importance.

The Equal Remuneration Act, 1976 was enacted to comply with these Directive Principles. It not only provides for securing equality of status and opportunity by prohibiting discrimination by the state/employer on grounds of gender, it also provides for termination of all sorts of inequalities which result from inequalities of wealth and opportunity.

When individuals are entitled to the same rights, same privilege and same im-

munities & are entrusted with same nature of responsibilities, the concept of equality is fairly applicable. Equality among similarly situated with reference to reasonable restrictions and valid classification is a key. There is always a tendency to pay low wages to women workers as compared to men for the same kind of work. Physical capacities of men and women may differ. Social, economic, religious, domestic aspects of women's life may serve as obstacles but legislative approach towards woman shall always aim at due implementation of constitutional goals. Equal Remuneration Act, 1976 is without any doubt a great initiative taken by the Government to address this important issue of gender equality.

Labour Reforms

The Code on Wages, 2019 amalgamate, simplify and rationalize the relevant provisions of the following four central labour enactments relating to wages, namely:

- (a) The Payment of Wages Act, 1936;
- (b) The Minimum Wages Act, 1948;
- (c) The Payment of Bonus Act, 1965; and
- (d) The Equal Remuneration Act, 1976

✦ What is the object of the Act?

The object of this Act is to provide for the payment of equal remuneration to men and women workers and for the prevention of discrimination, on the ground of sex, against women in the matter of employment and condition of employment such as remuneration, promotions, transfers as well as trainings; welfare schemes: bonus, provident fund, gratuity, pension, and annual increment and benefits: weekly holiday, earned leave, casual leave, maternity leave, medical leave, insurance against accident.

✦ What is “Remuneration” according to the Act?

Remuneration means the basic wage or salary and any additional emoluments whatsoever payable, either in cash or in kind, to a person employed in respect of employment or work done in such employment, if the terms of the contract of employment, express or implied, were fulfilled.

✦ When it can be said that “work of similar nature” is done by women & men?

Work of a similar nature means work in respect of which the skill, efforts and responsibilities required are the same, when performed under similar working conditions, by a man or a woman and the differences, if any, between the skill, effort and responsibility required of a man and those required of a woman are not of practical importance in relation to the terms and conditions of employment.

✦ **What are the general causes of discrimination?**

- Patriarchal approach
- Socio economic background of a woman
- Prejudices and stereotypes
- Traditional job evaluation methods
- Remuneration systems
- Consideration of woman's income as mere supplement to male's income
- Poor Bargaining/ negotiating power
- Ignorance and Lack of awareness about the law

✦ **Important Provisions**

Sr. No.	Provision	Nominal Heading
1	Section 4	Duty of employer to pay equal remuneration to men and women workers for same work or work of a similar nature
2	Section 5	No discrimination to be made while recruiting men and women workers
3	Section 6	Advisory committee
4	Section 7	Power of appropriate government to appoint authorities for hearing and deciding claims and complaints
5	Section 8	Duty of employer to maintain register
6	Section 9	Inspectors
7	Section 10	Penalties
8	Section 11	Offences by Companies
9	Section 12	Cognizance & trial of offences
10	Section 14	Power of Central Government to give directions

✦ **What is the procedure of taking cognizance under the Equal Remuneration Act, 1976?**

According to Section 12 of the Equal Remuneration Act, 1976, no court inferior to that of:

- a) Metropolitan Magistrate;
- b) Judicial Magistrate of the First class;

shall try any offence punishable under this Act. No court has the authority to take cognizance of any of an offence punishable under this Act except: -

- a) The court in its own knowledge;
- b) A complaint is made by the appropriate Government or an officer authorized by it in this behalf;
- c) An aggrieved person makes a complaint of an offence under this Act;
- d) A complaint is made by a recognized welfare institution or organization.

In simple words, the power of taking cognizance is wide. It can also be taken *suo motu* by the court.

✦ **What are the duties of the employers under the Equal Remuneration Act, 1976?**

Under Section (4) of the act the duties of the employers are as follows: -

- a) No employer shall pay to any worker, employed by him in an establishment or employment, remuneration, cash or in kind at rates less favorable than those at which he pays remuneration to the workers of the opposite sex for performing the same work or work of a similar nature.
- b) The rate of remuneration of any worker will not be reduced to avoid complying with Section 4(1).
- c) In respect of any establishment, the rates of remuneration payable before the commencement of the Act for men and women for same or similar nature work is different only on the ground of sex, then the highest of the rates will be payable after the commencement of the Act.

✦ **What will happen if there is an inconsistency between the Equal Remuneration Act, 1976 and any other statute? What shall prevail?**

According to Section 3 of the Equal Remuneration Act, 1976, this Act shall have an overriding effect on the following: -

- a) Any other law;
- b) Any award (arbitral or otherwise)
- c) Agreement or contract of service (whether made before or after the commencement of this Act)

✦ **Who implements The Equal Remuneration Act, 1976?**

Labour being the subject matter of concurrent list under Schedule VII of Indian Constitution, the enactment & implementation of Equal Remuneration Act, 1976 is done by the Central Government & the State Government, subject to certain matters being reserved for the Centre.

✦ **What is the procedure for implementation of the provisions of Equal Remuneration Act, 1976 by the Central Government?**

The enforcement of Equal Remuneration Act, 1976 is entrusted to the Chief Labour Commissioner (Central) who heads the Central Industrial Relations Machinery (CIRM). An employment carried on by or under the authority of the Central Government or a railway administration, or in relation to a banking company, a mine, oil field or major port or any corporation established by or under a Central Act.

✦ **How are the provisions of Equal Remuneration Act, 1976 implemented by the State Government?**

The enforcement of the provisions of the Employees Remuneration Act, 1976 is done by the officials of the State Labour Department in the case of employments where the State Government is appropriate authorities. The Central Government monitors the implementation of the provisions of the Equal Remuneration Act, 1976 by the State Governments.

✦ **Which are the authorities appointed for enforcement of provisions of Employees Remuneration Act, 1976?**

- a) Chief Labour Commissioner (Central) who heads the Central Industrial Relations Machinery (CIRM).
- b) Labour Enforcement Officers as Inspectors – Compliance by employers
- c) Assistant Labour Commissioners – hearing on complaints
- d) Regional Labour Commissioners – Appellate authority for Assistant Labour Commissioners

✦ **What is the role of the Advisory Committee?**

A Central Advisory Committee has been set up at the Centre under the Act to advise the Government on providing increasing employment opportunities for women and generally reviewing the steps taken for effective implementation of the Act.

✦ **What are offences and penalties under the act:**

1. Employer omits /Fails to maintain register/Produce the register and other relevant documents/Give evidence/Give any information: Maximum fine Rs 10,000 OR Maximum Imprisonment: 1 month or Both.

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2. Employer Makes: Any recruitment in contravention of provision of The Equal Remuneration Act, 1976, Any payment of remuneration of unequal rates for same work or work of similar nature/Any discrimination between men and women/An omission to carry out directions made by the appropriate Government— fine Rs. 10,000 to Rs. 20,000 OR Imprisonment : 3 Months to 1 year or Both (Note : Maximum period of 1 year shall be replaced by 2 years for the 2nd, 3rd& 4th offence)
3. Failure to produce the register or any other documents or to give any information to the Labour Inspector- Fine upto Rs 500

✦ **Can a company commit an offence under the Equal Remuneration Act, 1976? If yes, what is the liability of the company and its officers?**

Yes, a company can commit an offence under the Equal Remuneration Act, 1976. It is given in section 11 of the Act. The following is the liability: -

- a. Every officer who was in charge of the company; or
- b. Every officer who was responsible to the company;

For the conduct of the business of the company (at that time), will be held to be guilty of the offence and shall be liable to be proceeding against. There is an exception clause attached to it as well. If the officer or the person responsible proves that: -

- a. The offence or the act was committed without his knowledge; or
- b. He/she had exercised all due diligence to prevent the commission of such offence.

If the officer proves any of the above, he shall not be liable. The above provision is in tune with the principles of natural justice which states that a person cannot be held responsible for an act which he did not know of or did his best to prevent it.

When it is proved that the offence was committed in the consent or plotting of the following: -

- a) Director
- b) Manager
- c) Secretary
- d) Any other officer of the company

then such person shall be liable and proceeded against and punished accordingly.

✦ **Is ERA 1976 prejudicial to the interest of employer?**

No, the legislation is a beneficial legislation and does not affect the rights of employer at all. Employer is entrusted with the fulfillment of his social and legal responsibility towards worker, women in particular and society at large. Non-compliance of provisions shall give rise to criminal liability.

FORM B: CLAIM UNDER SECTION 7(1)(b) OF THE EQUAL REMUNERATION ACT, 1976

CLAIM UNDER SECTION 7(1)(b) OF THE EQUAL REMUNERATION ACT, 1976

(To be submitted in triplicate)

[Rule 4(1)]

To

The authority appointed under sub-section (1) of section 7.

A..... Petitioner(s)

..... Full address

Versus

B..... Opposite party

..... Full address

The petitioner(s) above named states / state as follows: -

(1) The petitioner(s) was / were / is / are employed from.....to.....as.....(category) in (Name of the establishment) of Shri / Messrs..... (Name of the employer and address).

(2) The opposite party is the employer within the meaning of clause (c) of section 2 of the Equal Remuneration Act, 1976 (25 of 1976).

(3) The petitioner(s) was / were / has / have not been paid wages at rates equal to those of workers of the opposite sex for the same work or work of a similar nature for the period from..... to.....

(4) The petitioner(s) was / were / has / have been paid wages at the rate of Whereas workers of the opposite sex for the same work or work of a similar nature were paid/ have been paid at the rate ofduring the said period.

(5) The petitioner(s) estimates / estimate the value of relief sought by him/them at Rs... [Rupees..... (in words)]

(6) The petitioner(s), therefore, prays / pray that the authority may be pleased to decide the claim set out above and pass such order or orders thereon as it may deem fit and proper.

(7) The petitioner(s) begs / beg leave to amend or add to or make alterations in the petition, if and when necessary, with the permission of the authority.

The petitioner(s) does / do solemnly declare that the facts stated in this petition

are true to the best of his/her/their knowledge, belief and information.

Signature(s)/thumb impression(s) of the petitioner(s)

I have been duly authorized in writing by [here inserts the name of worker(s) to appear and act on his / her / their behalf.]

Signature of the legal practitioner/official of a registered Trade Union duly authorized

Station

Date

✦ **Who is empowered to make rules under the Equal Remuneration Act, 1976?**

The Central Government has been given the power to make rules for making this Act more effective. It can do so by issuing a notification. In simple words, the power to make rules has been delegated by the legislature to the Central Government.

The rule must be laid, as soon as possible, before the Rajya Sabha and the Lok Sabha, while they are in session. The Legislature may accept, ratify the rule, reject it completely or modify it accordingly. After such acceptance, rejection or modification, the accepted, rejected or the modified rule shall only apply. This provision has been added to put a check on the delegated powers of the Central Government and is not abused.

✦ **To which special cases the Equal Remuneration Act, 1976 does not apply to?**

Section 15 of the said Act states that nothing given in the Equal Remuneration Act, 1976 shall be applicable to: -

- a) Where certain terms and conditions are made to comply with the requirements of any law for giving special treatment to women; or
- b) Give any special treatment accorded to women in connection with: -
 - i. The birth or expected birth of a child; or
 - ii. The terms and conditions relating to retirement, marriage or death or to any provision made in connection with the retirement, marriage or death

In simple words, where the above matters are dealt with, the Equal Remuneration Act, 1976 does not apply. It paves way to any other law or contractual obligation.

✦ **What are the consequences in case any employer fails to comply with the norms provided under the Act?**

In case, any employer fails to comply with the norms provided under Section 10 of the Act which specifies the following:-

- a. Fails to maintain a register;
- b. Fails to produce the register when required;
- c. Refuses or omits to give evidence as per requisitions;
- d. Refuses to give any information;
- e. Makes any recruitment in contravention of the provisions of this Act;
- f. Makes payments at unequal rates;
- g. Makes any discrimination on the basis of sex;
- h. Fails to carry out any direction as mentioned in the Act;

Then, the employer shall be punishable with at least a fine of 10,000, which may extend till 20,000 or imprisonment, not less than 3 months, which may extend to one year. In case of more than one offence, the punishment will increase, accordingly.

FORMA: - COMPLAINT UNDER CLAUSE 7(1)(a) OF THE EQUAL REMUNERATION ACT, 1976

COMPLAINT UNDER CLAUSE 7(1)(a) OF THE EQUAL REMUNERATION ACT, 1976

[To be submitted in triplicate] [Rule 3(1)]

To

The authority appointed under sub-section (1) of section 7.

..... (Address)

A..... Complainant(s)

..... Full address

Versus

B..... Opposite party

..... Full address

The complainant(s) begs / beg to complain that the opposite party has been guilty of a contravention(s) of the provisions of the Equal Remuneration Act, 1976 (25 of 1976) as shown below:-

[Here set out briefly the particulars showing the manner in which the alleged contravention(s) has / have taken place and the grounds supporting the complaint.]

The complainant(s) accordingly prays / pray that the authority..... may be pleased to decide the complaint set out above and pass such order or orders

thereon as it may deem fit and proper.

The number of copies of the complaint (along with its annexures) as required under sub-rule (1) of rule 3 of the Equal Remuneration Rules, 1976 are submitted herewith.

The complainant(s) does / do solemnly declare that the facts stated in this complaint are true to the best of his/her/their knowledge, belief and information.

Signature(s) / thumb impression(s) of the complainant(s)

I have been duly authorized in writing.....

by [here insert the name of the worker(s)], to appear and act on his/her/their behalf.

Signature of the legal practitioner/official of a Registered Trade Union duly authorized

Station

Date

FAQs – REALITY CHECK

1. I am a woman, employed as a clerk at a School, there is a disparity of Rs. 1000 in payment paid to me as compared to my colleague who also joined at the same time as mewhile the nature of duties and responsibilities are same. Whether the Employer is liable to pay me the same amount?

Yes, an employer is responsible for Payment of equal wages to the male and female workers, performing the same work or work of a similar nature.

2. Is it advisable to approach a social worker in case I need help to file complaint?

Yes, a social worker or any welfare organization can help you to file a complaint.

3. Where to file complaint against the employer?

Complaint can be made to the Judicial Magistrate First Class or also to the Authority established under this Act or any social welfare organization or for that matter.

4. What is the remedy to worker in case of denial of payment of wages by employer due to non-enrollment of name of said worker in register?

Every employer should maintain the register. It is mandatory under this Act. Such worker shall can file a complaint to the Magistrate.

5. Husband and wife both work at the construction site and are engaged in similar work. But husband is paid Rs.200 & I am paid Rs.150 as daily wage. Preliminary questioning by worker to employer revealed that gender is a basis for such disparity.

An employer cannot discriminate on the basis of sex. Wife-woman worker is also entitled the same amount as husband. She can file a complaint & employer will be penalized for it.

LANDMARK JUDGMENTS**1. Mackinnon Mackenzie and Co. Ltd. v. Audrey D' Costa [AIR 1987 SC 1281]**

Under the given Act, the phrase “Same work or work of a similar nature” is used. It causes plenty of confusion and hence leads to litigation.

The Supreme Court clarified the meaning of the phrase. When it has to be checked whether a particular work is the same or similar to other work, it can be determined on the three conditions:

- a) The Authority has to take a broad view of the similarity;
- b) The Authority has to check whether the difference in work is of practical importance or not;
- c) The difference between the works must be practical and not theoretical.

2. State of West Bengal v. Madan Mohan Sen [1994 ALL MR Online 262 (SC)]

The main issue, in this case, was the difference in pay between “Aragamies” and fire fighters. Aragamies are the civil emergency staff. They usually are women. Fire fighters are usually men.

The Supreme Court held that even though the academic qualifications and physical requirements are similar for both the jobs, it cannot be said that they perform similar duties, functions, and responsibilities as firemen. Therefore, the same scale of pay cannot be granted to both of them. There is a significant difference in the work they do, and so the pay-scale cannot be similar.

3. Smt. Bimla Rani and others v. Appellate Authority Equal Remuneration Act, 1976 [2005 (104) FLR 34]

In this case, the issue was regarding difference in pay between the ‘Packing Cleaners’ and ‘Packers.’ The former were usually women and the latter were usually men. The defendant employer said that the educational qualification was different the work and their designation was also different.

The Delhi High Court said that the designation and name of the post was absolutely irrelevant. The main issue will always be the nature of the job. It was held that the nature of the job is similar between both the Packers and the Packing Cleaners and therefore equal pay must be given to them.

4. Air India Cabin Crew Association v. Yeshawinee Merchant and others [AIR 2004 SC 187]

In this case, it was held that compulsory retirement of air hostess and the option to go for ground duties up to the age of 58 years is not violative of section 5 of the Equal Remuneration Act, 1976.

A service condition giving a special treatment to women is saved by Clause (a) of section 15 of the Equal Remuneration Act. The term and condition of age of retirement settled in course of industrial adjudication by air hostesses through their associations is a term and condition of their employment fixed in accordance with the adjudicatory machinery provided in Industrial Law. It gives them a special treatment as found by them to be favorable to them.

It was held that there is nothing objectionable for the air hostess to agree for a lower retirement age from flight duties with the option for ground duties after the age of 50 years up to the age of 58 years.

5. Air India v. Nagesh Meerza [AIR 1981 SC 1829]

It was held in this case that section 16 clearly authorizes restrictions regarding remuneration to be paid by the employer if a declaration under it is made by the appropriate government that there shall be a difference in remuneration payable to the men and women based on a factor other than sex.

6. Dharwada Dist. PWD Employees Assn. v. State of Karnataka [AIR 1990 SC 883]

In this case, it was held that the Equal Remuneration Act, 1976 is enacted for the purpose of payment of equal remuneration to men and women workers for the same work or a work of a similar nature and for the prevention of discrimination on grounds of sex.

7. Mrs. Raghubans v. State of Punjab [AIR 1972 P & H 117]

In this case, a government order which declared women as ineligible for the post of a work in a men's jail was held not violative of Article 15(1) of the Constitution which does not permit discrimination on the ground of sex, for the reason that if a woman was employed as a warden, her position would become worst and hazardous while ensuring and maintaining discipline over habitual offenders kept in jail. It is submitted that this discrimination seems to be reasonable because it involved the physical safety of woman.

8. Govt. of A.P. v. P.B. Vijay Kumar [AIR 1995 SC 1648]

Hon'ble Supreme Court upheld the constitutional validity of sex-based reservation in the public employment.

9. State of U. P. v. J. P. Chaurasia [AIR 1989 SC 19]

Hon'ble Supreme Court held that different scale of pay in the same cadre of person doing similar work can be fixed if there is a difference in the nature of identical work. Work done and difference as regards to reliability and responsibility.

10. K.R. Gopinath Nair v. Senior Inspector cum Sales Tax Officer of Cooperative Societies Ltd. [AIR 1987 Ker 167]

Kerala High Court upheld the constitutional validity of the provisions of Section 28A of Kerala Co-operative Societies Act providing for reservation of seats for women in the committee of every society, the Kerala High Court said that special measures for women have been recognized in Article 15 read with Article 38 of the Constitution.

PRACTICAL CASE SCENARIO**PRACTICAL CASE SCENARIO NO. 1**

Geeta aged, 25 years, is employed in a factory along with 3 woman and 10 male workers where all of them perform similar nature of work. And the Equal Remuneration Act, 1976 is applicable. Irrespective of this, Geeta and the other 2 women are paid considerably less than the other 10 men. What are the remedies available with Geeta and the other two women?

Answer: The first remedy they have is to reach out to the employer and explain to him the quandary. It is always better to handle the situation internally than reaching out to the courts. If the employer refuses, then following remedies are available with them: -

- a) File a complaint with the Metropolitan Magistrate/Judicial Magistrate First Class of that area;
- b) File a complaint to the Inspector appointed by the Appropriate Government, if any.
- c) File a complaint with the Authority appointed by the appropriate Government under section 7.
- d) File a complaint with the National Human Rights Commission.

PRACTICAL CASE SCENARIO NO. 2

Aishwarya is a woman who is working as an accountant in a private manufacturing firm. The employer only maintains the register and accounts digitally. He does not maintain offline registers. The time, origin, destination, date, etc. are not recorded and cannot be referenced later. What remedies does Aishwarya have?

Answer: According to section 8 of the Equal Remuneration Act, 1976, every employer is entitled to maintain such registers and other documents in relation to the workers employed by him as may be prescribed. But the above section can be read with section 7 of the Information Technology Act, 2000. As per the aforementioned section, if records are maintained electronically, the requirement is satisfied. But, as the time, origin, destination, date, etc., are not properly recorded,

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the employer has defaulted under Section 8, and therefore, Aishwarya has the right to file a complaint.

PRACTICAL CASE SCENARIO NO. 3

Arundhati is a teacher in a pre-primary private school. There is another male teacher appointed. Both of them have similar work. Arundhati is paid less as compared to the male teacher. She complained about this to the employer. The employer said that the male teacher is a Master in Education (MEd), and Arundhati is only Bachelor in Education and is also more experienced. What remedies does Arundhati have?

Answer: Arundhati does not have any remedy as the male candidate is more qualified and experienced and therefore entitled to higher pay. The same was held in the *Government of West Bengal v. Tarun Roy* [(2004) 1 SCC 347].

PRACTICAL CASE SCENARIO NO. 4

Preety and Shivam are appointed as receptionists in an office. They are paid Rs 15,000 per month. But Shivam is given a quarter to stay, and the company directly pays his transport bills. Preety approaches the employer, but the employer dismisses her, stating that they are paid equally, and he has not broken any law. Is the employer correct in his assumption?

Answer: No, the employer is wrong in making his assumption. According to section 2(g) the remuneration includes monetary as well as any other additional emoluments whatsoever payable, either in cash or in kind. As giving a quarter to live and payment of transport bills comes under the term 'kind', the employer is breaching the provisions of the Equal Remuneration Act.

PRACTICAL CASE SCENARIO NO. 5

Shwetha and Arun are a married couple. They are appointed as journalists in a leading newspaper agency. There is a significant difference in pay between them. What offense has the employer committed?

Answer: Assuming both Shwetha and Arun have similar nature of work, the employer has infringed section 5 of the Equal Remuneration Act, 1976. The employer is punishable under section 10 (2) (a), for which the punishment is fine which shall not be less than Rs 10,000 but which may extend to Rs 20,000 or with imprisonment for a term which shall not be less than 3 months but which may

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extend to one year or with both for the first offense, and with imprisonment to two years for the second and subsequent offenses.

PRACTICAL CASE SCENARIO NO. 6

Vidhya works as an engineer in a law firm. She is paid far less as compared to other engineers. The employer dismissed her when she took that complaint to him. Can Vidhya have the employer arrested immediately?

Answer: No, Vidhya cannot have the employer arrested as all the offenses mentioned in the Equal Remuneration Act, 1976, are bailable and non-cognizable. It is given in the Code of Criminal Procedure that if any offense for any other Acts is punishable with imprisonment for less than 3 years or with fine only, then the offense shall be non-cognizable and bailable

ASSESS YOURSELF: MULTIPLE CHOICE QUESTIONS

- 1. _____ is empowered to take cognizance for the offences under the Equal Remuneration Act, 1976.**
 - a) Metropolitan Magistrate
 - b) Judicial Magistrate First Class
 - c) Both (a) and (b)
 - d) None of the above

- 2. Equal Remuneration Act, 1976 is applicable to _____.**
 - a) Every factory
 - b) Every fine
 - c) Every plantation
 - d) All of the above

- 3. _____ is the maximum imprisonment that can be awarded under the Equal Remuneration Act, 1976.**
 - a) 2 years
 - b) 1 year
 - c) 6 months
 - d) 3 months

- 4. The Equal Remuneration Act, 1976 is applicable to _____.**
 - a) Company
 - b) Partnership
 - c) Limited Liability Partnership
 - d) All of the above

- 5. The JMFC or the Metropolitan Magistrate can take cognizance of the offence _____.**
 - a) Suo moto
 - b) Complaint made by the Appropriate Government
 - c) Complaint made by the aggrieved person
 - d) All of the above

6. _____ is empowered to make rules under the Equal Remuneration Act, 1976.

- a) State Government
- b) Central Government
- c) Appropriate Government
- d) Any of the above

7. Nature of the Equal Remuneration Act, 1976 is _____.

- a) Overriding over other Acts
- b) Does not override the other Acts
- c) Discretionary
- d) None of the above

8. The offences mentioned in the Equal Remuneration Act, 1976 are _____.

- a) Bailable and Cognizable
- b) Non-bailable and non-cognizable
- c) Non-cognizable and bailable
- d) Non cognizable and non-bailable

9. The Equal Remuneration Act, 1976:

- a) Extends to whole of India
- b) Extends to whole of India except the State of Jammu and Kashmir
- c) Extends to whole of India except the State of Nagaland
- d) None of the above

10. The Equal Remuneration Act, 1976 is applicable only in the cases where women are discriminated.

- a) The statement is true
- b) The statement is false
- c) The statement is dependent upon the State in which the law is applicable
- d) None of the above

ANSWER KEY									
1	2	3	4	5	6	7	8	9	10
c	d	a	d	d	b	a	c	a	b

PART - D

Women & Criminal Law

**LEGAL AWARENESS PROGRAMME
BY
NATIONAL LEGAL SERVICES AUTHORITY
IN COLLABORATION WITH
NATIONAL COMMISSION FOR WOMEN
&
KNOWLEDGE PARTNER - ALL INDIA REPORTER**

**IEC & TRAINING MODULE
For Resource Persons
ON**

**CRIMINAL LAW
CRIMES AGAINST WOMEN**

LAW OF CRIMES

About the Law of Crimes – Crimes against Women

IEC Material & Training Module

The IEC & Training Module is primarily for Resource Persons of NALSA, as it focuses on particular responsibilities in spreading legal awareness about combating violence against women, as a part of Legal Awareness Programme undertaken by National Legal Services Authority in collaboration with National Commission for Women. Resource Persons will find it as a useful source of information & guidance.

The main objective of this IEC & Training Module is to inspire, motivate, cultivate curiosity, shape the opinion and enlighten the Resource Persons on issues concerning women & crime against them.

The overall content discusses about the crimes against the women and what are their rights. This has been written in an interactive Question Answer style, in a lucid and simple language.

NALSA hopes that the Resource Person will be benefitted immensely by these IEC & Training Modules.

Objective

- *To give an overview of the crimes that take place against women*
- *To highlight the position of women under the Indian Laws*
- *To familiarize the Resource Persons with the rights available to Women*
- *To improve the understanding of Resource Persons about the challenges & barriers women confront in accessing the criminal justice system*
- *To provide guidance on ways to be carried out to enhance protection of women against crime*

Learning Outcome

- *The participants (Resource Persons) will be able to completely understand their role & responsibilities in spreading awareness about crimes against women under Indian Penal Code,*

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“That country and that nation that does not respect women have never become great, nor ever be in future”

– Swami Vivekananda

LAW OF CRIMES - CRIMES AGAINST WOMEN

Introduction

Crimes against women are not considered from only physical point of view but also sociological aspect. There are records of women raped, beaten, abducted, and given humiliating treatment. Women have been subjected to socio-economic and culture deprivations for such a long time that there are a general indifference and lack of awareness of crimes against them. At least one out of three women has been beaten, forced into sex, or abused during her lifetime, according to a study based on 50 surveys from around the world.

Violence against women is not a new phenomenon. Women have suffered the domestic, public, physical as well as emotional and mental violence against them, which affects her status in the society on a larger extent. The statistics of increasing crime against women is terrifying, where women are subjected to violent attacks from her cradle to the grave i.e., feticide, infanticide, medical neglect, child marriages, bride burning, sexual abuse of girl child, forced marriages, rapes, prostitution, sexual harassment at home as well as work places etc. In all the above cases woman is considered as aggrieved person. The advancement of technology has changed the phase of the world. From the invention of computers and mobile phones to laptops, tablets, and smartphones, etc. technology is changing day by day. Technology has given us the convenience and life. But there is a dark side to it too, it has not changed the status of woman in the society. With each passing day these Crimes against women are on the rise. Women are subject to online cruelty which includes threats, stalking, voyeurism, body shaming, revenge porn; child abuse etc. there is an infinite list to the same.

On most occasions, the abuser was a member of the woman's family or someone known to her. Social indicators such as female infanticide rates, maternal mortality rate and overall child sex ratio besides the obvious statistics found in crime reports are telling signs of this misfit beneath the image of a new age democracy. The National Crime Records Bureau publishes an annual report titled “Crime in India”. The report for 2020 provides us with the latest status update of crime records in tune with the above provisions on women-related violence. A total of 3,71,503 cases of crime against women have been reported in 2020. It is also time for us to think about the psychological impact the woman has when she goes through crimes that are committed against her.

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No nation can be called as a truly developed nation until and unless the women in that country felt safe and secure. The ever growing rate in the crimes being committed against women in India is an alarm to the Government to make laws more stringent and to punish the wrong doers. It is either that we become good citizens or it should be that we punish the offender.

✦ **How are the women protected against various crimes in India?**

A woman can be a victim of any of the crimes mentioned under The Indian Penal Code, 1860, but there are certain crimes that are specifically against the woman hence they are categorized as the crimes against women. The IPC lays down the provisions to penalize the culprit for such heinous offences against women. The various sections under IPC dealing with these crimes are;

- Murder, Dowry death, Abetment of Suicide, etc. (Sections 302, 304-B and 306)
- Cruelty by husband or his relatives (Section 498-A)
- Rape (Section 375)
- Attempt to commit rape (Section 376)
- Outraging the modesty of women (Section 354)
- Sexual harassment (Section 354-A)
- Word, gesture or act intended to insult the modesty of a woman (Section 509)
- Acid Attack (Sections 326-A and 326-B)
- Assault on women with intent to disrobe a woman (Section 354-B)
- Voyeurism (Section 354-C)
- Stalking (Section 354-D)

OFFENCES AGAINST MARRIED WOMAN

✦ Which actions against a married woman are said to constitute an offence under the Indian Penal Code?

- Murder, Dowry Death [Sections 302, 304-B of the IPC read with 113-B of Indian Evidence Act]
- Abetment to suicide [Section 306 of IPC read with 113-B of Indian Evidence Act]
- Cruelty by Husband or his relatives [Section 498-A of the IPC]

✦ What is understood by the Dowry System in India?

The dowry custom in India refers to the system where bride's family gives gifts to the bridegroom, his parents, or his relatives as a pre-condition for the marriage. The Dowry Prohibition Act, 1961 defined the term dowry under Section 2, where it states that Dowry is a demand for property or a valuable security having a nexus with the marriage i.e., it is a consideration from the side of the bride's parents or relatives to the groom or his parents or relative of the groom, for agreeing to marry the bride.

Dowry is considered a major contributor towards observed violence against women in India. Some of these offences include physical violence, emotional abuses, and even murder of brides and young girls prior to or post marriage. The predominant types of dowry crimes relate to cruelty (which includes torture and harassment), domestic violence (including physical, emotional, economic and sexual assault), abetment to suicide and dowry death (including, issues of bride burning and other forms of murder).

✦ What happens, if a woman is killed for non-fulfillment of demand of dowry and cruelty is meted upon her while such demands are made?

After marriage, some families demand more dowry and when it is not fulfilled—either because of the inability of the bride's family or the denial of the bride herself, the groom and his family abuse and kill the bride. The Indian Penal Code under Section 304-B of the IPC penalizes dowry death.

304-B of IPC defines 'Dowry Death' as, "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".

Here the term “Dowry” shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961.

This Section when read with Section 113-B of the Indian Evidence Act states that if a woman dies within seven years of marriage due to burns or any bodily injury, and it is known or there is an assumption that just before her death she was mentally or physically harassed by husband or her in-laws or anyone closely related to them for extorting dowry, then such death will be considered as Dowry Death.

✦ **What are the necessary ingredients of the offence that helps in understanding whether the death is a dowry death or not?**

In order to establish a charge under Section 304-B of the IPC, the following five ingredients of the offence must be established:

- The death of a woman must be caused by burn or any other bodily injury, which would not have caused in a routine course of living
- Such death must occur within the period of 7 years of marriage
- The woman should have been subjected to cruelty or harassment by her husband or any relative of her husband
- Such cruelty or harassment should necessarily be in connection with demand for dowry
- Such cruelty or harassment is shown to have been meted out to the woman soon before her death

For the prosecution to prove that the woman died under unnatural circumstances and that her husband or in-laws or his relatives were involved in it, the above-mentioned ingredients need to be necessarily proved.

✦ **What happens if a woman is harassed for dowry and she commits suicide?**

Suicide including attempt to commit suicide is not a crime under Indian Penal Code (IPC), however an abetment to commit suicide is a punishable offence under Section 306 of the IPC.

Section 306— Abetment of suicide states that, “if any person commits suicide, whoever abets the commission of such suicide, 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 306 when read with Section 113-B of The Indian Evidence Act dis-

cusses that when a woman commits suicide within seven years of her marriage and it is seen that she was harassed before her death, then it is presumed that the suicide was abetted by the husband or his close relative, hence an offence against husband or relative can be registered.

✦ **What are the essential ingredients that help in understanding whether the woman has committed suicide due to dowry harassment or not?**

To establish an offence of abetment to commit suicide due to dowry harassment following must be proved;

- The woman committed suicide
- Such death must occur within the period of 7 years of marriage
- The woman should have been subjected to cruelty or harassment by her husband or any relative of her husband
- Such cruelty or harassment should necessarily be in connection with demand for dowry

Section 306 has a wider outreach; it is immaterial under this provision whether the harassment took place “soon before the death” or not as is a pre-requisite under Section 304-B of the IPC.

✦ **What is the meaning of the term ‘cruelty’ meted out by the husband or his relatives upon wife during the course of their marriage?**

Section 498-A of the IPC provides that, “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”.

Elaborating further, “cruelty” means—

- 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
- 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;
- The expression “cruelty” is a wide term that includes, inflicting physical or mental harm to the body or health of the woman and indulging in acts of harassment with a view to coerce her or her relations to meet any unlawful demand for any property or valuable security. Harassment for dowry falls within the sweep of latter limb of the section.

✦ **What are the circumstances or incidences against a wife that establish ‘cruelty’?**

Cruelty is an essence of Section 498-A; it prevents husband or relative of husband of a woman from subjecting her to cruelty. To bring out an offence under this Section, the prosecution must prove:

- That the victim was a married lady
- That she has been subjected to cruelty by her husband or the relatives of husband
- That such cruelty consisted of harassment of women to force her for certain demands or
- A willful conduct by husband on his relatives which drove her to commit suicide or to injure herself grievously
- Such cruelty may be mental or physical in nature

Cruelty is a continuing offence. The law through this provision tries to prevent offences being committed within the four walls of a matrimonial home, where outsiders have no easy access.

SEXUAL OFFENCES AGAINST WOMEN

✦ **What are sexual offences against women?**

Sexual offences constitute altogether different kind of crimes which is a result of perverse mind. Besides being an inhumane act, sexual offences are the unlawful intrusion on the right of privacy and sanctity of a woman. It degrades and humiliates a woman, affecting her physically, psychologically and socially.

✦ **Which acts or events qualify as sexual harassment of women?**

Following are the offences which qualify as sexual offences against women;

- Rape [Sections 375 & 376]
- Gang Rape [Section 376-D]
- Outraging the Modesty of Women [Section 354]
- Sexual Harassment [Section 354-A]
- Insulting the Modesty of Women [Section 509] etc.

✦ **What is meant by Rape?**

Section 375, IPC defines Rape, a man is said to commit “rape” if he—

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of

a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

Under the circumstances falling under any of the following seven descriptions:

First, Against her will.

Secondly, Without her consent.

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

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

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

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

Seventhly. When she is unable to communicate consent.

Explanation 1. For the purposes of this section, “vagina” shall also include labia majora.

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

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

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

✦ What is the legal position of the offence of rape after the Criminal Law (Amendment) Act, 2013?

The Criminal Law (Amendment) Act, 2013 widened the definition of “Rape” to include acts other than forcible peno-vaginal penetration or sexual intercourse. The amended Section 375 includes;

- forcible penetration by the man of his penis,
- any part of his body or any object into the vagina, mouth, urethra or anus of a woman or making her do so with him or any other person;
- manipulation of any part of the body of a woman so as to cause penetration into the vagina, urethra or anus of a woman or making her do so with him or any other person; and
- applying his mouth to the vagina, anus or urethra of a woman or making her to do so with him or any other person

There were other changes introduced by the 2013 amendments, including the introduction of sections, Ss.376-A, 376-B, 376-C, 376-D, 376-E to the IPC.

✦ **What are the changes that have been brought through the Criminal Law (Amendment) Act, 2018 with respect to the Rape Laws in India?**

The following changes have been brought in vide the Criminal Law (Amendment) Act, 2018;

- Punishment for the rape of a woman to be a minimum ten years' rigorous imprisonment which may extend to imprisonment for life. (Section 376(1)). Thus, the quantum of punishment has increased from a minimum of seven years to a minimum of ten years.
- Punishment for rape on a woman under sixteen years of age has been added by the amendment. Punishment in such cases has to be rigorous imprisonment of a minimum twenty years which may extend to life imprisonment. (Section 376(3))
- Punishment for rape on a woman under twelve years of age has also been added by the amendment. The punishment in such cases is defined as a minimum twenty years' rigorous imprisonment which may extend to imprisonment for life, or a sentence of death. (Section 376-AB)

Thus, for the first time, death penalty has been introduced for the offence of rape, where the woman is under 12 years of age.

In addition to this, a fine may also be levied, which will be just and reasonable to cover the medical expenses and rehabilitation of the victim, and will be paid to her.

✦ **What is the meaning of 'Gang rape'?**

A national outrage due to the gang rape of a medical student in Delhi in 2012 led to revamping of Criminal Justice System. It led to Insertion of a provision for gang rape vide Criminal Law (Amendment) Act, 2013. As per newly inserted Section 376-D in the IPC, when a woman is raped by more than one person acting in furtherance of a common intention, they commit Gang Rape on her. The cohesion or meeting of minds between the accused persons is a necessary re-

quirement to establish the joint liability of gang rape.

For this heinous crime each of the accused shall be liable for the offence of rape individually and shall be punished with rigorous imprisonment for not less than twenty years which may extend to lifetime imprisonment and fine.

✦ **What provisions related to Gang Rape have been added vide Criminal Law (Amendment) Act, 2018?**

Sections 376-DA and 376-DB have been added by the amendment which deal with punishment for gang rape on a woman under sixteen years and twelve years respectively.

The minimum punishment in such cases has been increased to imprisonment of life. However, for gang rape on a woman under twelve years of age, a sentence of death penalty can be imposed.

In addition to this, a fine may also be levied, which will be just and reasonable to cover the medical expenses and rehabilitation of the victim, and will be paid to her.

✦ **How can a woman know that her modesty has been outraged?**

Section 354 of the IPC discusses about the outrage to the female modesty, where it states that, “Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will there by outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine”.

The intent of this provision is to protect a woman against any sort of indecent behaviour which is offensive to the morality of a common person, for example, slapping a woman on her butt, asking her for sexual favours, disrobing her, etc. These offences are not against an individual alone but also against the public morals and the society in general.

✦ **What are the essential characteristics that establish the offence of outraging the modesty of a woman?**

The following are the essential of the offence under Section 354, IPC-

- that the person assaulted must be a woman
- that accused must have used criminal force on her
- that the criminal force must have been used on the women with an intent to outrage her modesty.

✦ **How is the offence of ‘Sexual Harassment’ defined under the Criminal Law (Amendment) Act, 2013?**

The Criminal Law (Amendment) Act of 2013 for the first time statutorily defined the term “Sexual Harassment” under Section 354-A. This provision has its origin in the famous judgment of Supreme Court of India where Vishakha Guidelines given by the Supreme Court of India in *Vishakha v. State of Rajasthan* [AIR 1997 SC 3011] were issued by it to prevent sexual harassment of women at workplace.

Section 354-A provides that a man shall be guilty of sexual harassment against women in following situations

- Makes physical contact, gropes and unwelcome, explicit sexual overtures
- Demands or request for sexual favours
- Shows pornography against the will of a woman
- Makes sexually remarks on woman

This is a gender specific offence where only a man can be punished under the provision.

✦ **What further changes were brought in the laws governing sexual harassment vide the Criminal Law (Amendment) Act, 2013?**

The Vishakha Case Guidelines along with insertion of Section 354-A vide the Criminal (Amendment) Act, 2013, led to introduction of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

✦ **What are the important facets of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (PoSH Act)?**

This Act broadened the definition of the term ‘sexual harassment’ and laid down several provisions for its prevention and redress:

- Provide a safe working environment at the workplace
- Form an Internal Compliance Committee and monitor its duties/procedures
- Organise workshops for raising awareness about rights, safety and security of women
- Publicise the penal consequences and penal action for sexual harassment at workplace
- Submit an annual report on the cases filed, and actions taken therein

For the first time in comparison to any other law, the PoSH Act provides for the

protection of regular/temporary/ad hoc-daily wage employees, whether for remuneration or not and can also include volunteers if need be. This Act also covers domestic workers. Hence this new enactment has tried to comprehensively cover working women from all the sectors and strata of the society including ones belonging to organized as well as unorganized sectors.

✦ **What is the meaning of insult to the modesty of a woman?**

When an assault or criminal force is used or exercise upon a woman with intent to outrage her modesty an offence under Section 354 is made out. However, acts which are done intending to insult the modesty of a woman which may not necessarily involve any physical advances or actions are brought within a separate provision of Section 509 of IPC.

It states that, – “Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years, and also with fine”.

This provision tries to deter any kind of insult to a woman’s modesty whether by any word, gesture or act or by intruding upon the privacy of such woman.

✦ **What are the necessary requirements to constitute an offence under Section 509 of the IPC?**

Essential requirements under Section 509 of the IPC are-

- An intention to insult the modesty of a woman;
- The insult must be caused either by intruding upon the privacy of a woman; or
- by making any gesture or sound, uttering any word or exhibiting any object

OTHER NEWLY ADDED OFFENCES UNDER THE CRIMINAL LAW (AMENDMENT) ACT, 2013

The Criminal Law (Amendment) Act, 2013 was introduced as an aftermath of the heinous ‘Nirbhaya Case’ passed in 2013, This Act provides for amendment of Indian Penal Code, Indian Evidence Act, and Code of Criminal Procedure, 1973 on laws related to sexual offences. Following new offences were added via this Act

- Acid Attack [Sections 326-A & 326-B]
- Attempt to Acid attack [326-B]

- Disrobing a Woman (Stripping) [Section 354-B]
- Voyeurism [Section 354-C]
- Stalking [Section 354-D]

✦ **What does Acid Attack mean?**

An acid attack is a form of violence against women, where the perpetrator throws acid on a person/victim in order to deface or kill them. As acid melts flesh and even the bones of a person, it causes an unparalleled degree of pain to the victim and leaves her mutilated and scarred and can also create permanent disabilities such as blindness.

Despite several instances of acid attacks in India, there were no specific law that dealt with this crime. Prior to the amendments in 2013, such cases were registered under various sections of the Indian Penal Code (IPC) that dealt with hurt, attempt to murder, murder and grievous hurt by corrosive substances.

✦ **How has Acid Attack been incorporated vide the Criminal (Amendment) Act, 2013?**

The Criminal Law (Amendment) Act, 2013 incorporated Sections 326-A and 326-B with an intention of creating specific provisions for punishment in the case of acid attack.

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

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

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

This provision focuses on voluntarily causing grievous hurt by using acid. In view of this section, whosoever causes permanent or partial damage or burns, disfigures or disables any part of the body of a person or causes grievous hurt by throwing or administering acid with an intention to cause such injury or hurt will be punished with imprisonment of at least ten years which may extend to life imprisonment with fine.

Section 326-B has more legislative focus on the act of throwing or attempting to throw acid with the intention of causing grievous hurt. The punishment under

this section is imprisonment of not less than five years with fine which may extend up to seven years. Fine shall be just and reasonable to meet medical expenses for treatment of victim.

The offence is no longer gender-neutral, only a man can commit the offence on a woman.

✦ **What are the guidelines given by the Supreme Court of India in the case of *Laxmi v. Union of India* [AIR Online 2013 SC 223]?**

In this case, the Apex Court issued multiple directions including the one for the regulation of sale of acid to States and UTs. It prohibited over-the-counter sale of acid and prevented the sale of acid to any person below 18 years of age.

The Court gave powers to the Sub-Divisional Magistrate to confiscate undeclared stocks of acid and gave powers to them for suitably fining such sellers.

The Apex Court addressed the problem of compensation, where it held that Section 357-A of the Criminal Procedure Code provides for the preparation of a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of crime and who require rehabilitation. The Supreme Court further directed that acid attacks victims shall be paid compensation of at least Rs. 3 Lakh by the concerned State Government/UT as aftercare and rehabilitation cost.

✦ **What is understood by the term “Disrobing a Woman” (Stripping) as per the IPC?**

Section 354-B of the IPC Section penalizes the offence of assaulting or using criminal force to a woman or abetting any such act with an intention to disrobe or compel her to be naked, with a punishment of not less than three years which may extend to seven years, with a fine.

Section 354-B states that, “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”.

It is a gender specific offence i.e., only a man can be punished under this section for an offence committed against a woman. The immediate implication of this provision is that use of force with an intention to disrobe a woman or make her naked will no longer amount to outraging the modesty of a woman, but will attract a more stringent punishment under this section.

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✦ What does Voyeurism mean?

The word 'voyeurism' means appeasement derived from observing the genital or sexual acts of others, usually secretly. This provision is divided in two different parts. Firstly, when a person watches or captures image of a woman engaging in some private act and secondly, when the person disseminates or spread such images.

As per Section 354-C of the Indian Penal Code 1860, "Voyeurism is when 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".

The offence is no longer gender-neutral, only a man can commit the offence on a woman.

✦ What is meant by the offence of Stalking?

Stalking means the act or instance of following another person stealthily, or following or loitering around another person to annoy or harass that other person or to do a further crime.

The definition as mentioned under Section 354-D of the IPC has been broken down into clauses, The exclusion clause and the following sentence has been removed "or watches or spies on a person in a manner that results in a fear of violence or serious alarm or distress in the mind of such person, or interferes with the mental peace of such person, commits the offence of stalking". Punishment for the offence has been changed; a man committing the offence of stalking would be liable for imprisonment up to three years for the first offence, and shall also be liable to fine and for any subsequent conviction would be liable for imprisonment up to five years and with fine.

The offence is no longer gender-neutral, only a man can commit the offence on a woman.

✦ How have the Amendments to Criminal Laws proved to be beneficial?

- The Criminal Law (Amendment) Acts of 2013 and 2018 have brought significant changes in the criminal law of the country.

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- These amendments have the objective of making anti-rape laws more severe so as to decrease the rate of crime. These Acts intends to shield the women from a horrifying offense i.e. sexual assault.
- As the wrongdoing rate of committing sexual assault has expanded with legitimately relative merciless of people over the years it became imperative to bring in reforms in the criminal laws and protect women.
- Earlier in most of the rape cases, matter went unreported and the lack of legal merit, social reasons has been the reason which created hindrances for the victim to access justice. But after doing relevant changes in these penal laws Government of India has sought to provide welfare for all the women and increased feeling of safety as a step towards women empowerment.
- The time frame of investigation and appeal, if implemented properly, can bring down the crime rate. However, these amendments need to be supplemented with other changes in the criminal justice system for overall effective results.

KEY ELEMENTS OF 2013 CRIMINAL AMENDMENT ACT

Sr. No	SECTION INSERTED/AMENDED	NATURE OF CHANGE MADE
1.	Sections 375, 376, 376-A, 376-B were amended and added	Word RAPE substituted by words "SEXUAL ASSAULT". Made section and offence gender neutral and increasing the scope of the offence.
2.	Sections 326-A and 326-B IPC were added	Making Acid Attack a specific offence
3.	Sections 354 and 509, IPC were amended	Punishments were enhanced making outraging modesty of women more serious offences under IPC
4.	Sections 154, 160 and 161 of Cr.PC were amended	More protection to victims under 18 years and victims over 65 years (both male as well as female victims)
5.	Section 53-A inserted in Indian Evidence Act	Evidence of character of victim or his previous character shall not be questioned and relevant to the case.

KEY ELEMENTS OF 2018 CRIMINAL AMENDMENT ACT

Sr. No.	SECTION INSERTED/AMENDED	NATURE OF CHANGE MADE
1.	Section 376 was amended	Minimum Punishment for raping a women was increased from 7 years to 10 years.
2.	Sections 376-AB and 376-DA were inserted	Minimum punishment for raping(girl below 12 years) and gang raping(below 16 years) was enhanced to be 20 years which could be extendable to life imprisonment or death.
3.	Section 376-DB was inserted	Punishment for gang raping a girl below 12 years of age shall now be punishable with life imprisonment.
4.	Section 53 of Indian Evidence Act was amended	Investigation and trial to be completed within 2 months and appeals to be disposed off within 6 months.

THINGS TO DO IF YOU ARE A VICTIM**★ What can a woman do if she is faces any of the above mentioned offences?**

The woman, who faces any of the offences as mentioned above can immediately approach a police station and file a First Information Report (FIR) against the culprit.

The woman or her guardian can also approach Legal Services Authorities, Non-governmental Organization or a lawyer for seeking help in getting justice against the perpetrator, as these people will help the victim and her family by guiding through a proper channel.

★ What is an FIR?

First Information Report (FIR) is a written document which is prepared when the police first receive information about the commission of a crime. The FIR is filed under Section 154 of the Code of Criminal Procedure.

It contains the details of the informant, the details of the crime, and the date and time it was committed according to the informant. An FIR is the first step towards any sort of criminal activity. It triggers the criminal justice machinery of the State into motion. If you want to report a crime and initiate criminal proceedings by the police, the first step is to file an FIR.

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The FIR should be based on a factual happening to which the informant is a witness or should be based on some evidence which the informant has. It should not be based on vague or hearsay communication which the informant may have received.

✦ **How to report an incident of violence to the police:?**

- Lodge an FIR at the nearest police station.
- It can be filed by the victim, a witness to the crime, a police officer, or anyone who has knowledge of the crime.
- Once an FIR is registered, the police is duty bound to start the investigation of the case.
- No police officer can refuse to register an FIR, if the offence being reported occurred outside their police station's jurisdiction. S/he is bound to register the FIR (this is called a zero FIR) and forward it to the concerned police station.
- For lodging FIR, information can be given orally or in writing to the police officer who will write it in simple language as close as possible to your own words.
- An FIR for any of the gender-based sexual offences under Sections 326-A, 326-B, 354, 354-B, 370-A, 376, 376-A, 376-B, 376-C, 376-D, 376-E or 509 of the IPC must be recorded by a woman police officer if an aggrieved woman gives information herself.
- If the victim is mentally or physically disabled (even temporarily), the FIR must be recorded at her residence or location of her choice in the presence of an interpreter/special educator, and it must be video graphed.
- A copy of the FIR will be provided free of cost to the informant.

✦ **What if the Police refuse to register the FIR?**

- Send information about the crime in writing to the District Superintendent of Police (SP) by registered post, if the information discloses the commission of a cognizable offence, the SP may investigate the case or order investigation by a junior officer.
- Complain to the Magistrate if the SP does not take action. The Magistrate can inquire into the case, or ask for an investigation by the police or any other person s/he thinks fit.
- If you are a female victim of a sexual offence, you can file an FIR against the police officer concerned for refusal to register your complaint under Section 166-A (c) of the IPC.

- Can also file a private complaint in the court of the magistrate and request the court directions for the registration of an FIR.

✦ **How are the rights of women protected under the Criminal Justice System of India?**

- **Registering an FIR is mandatory for the police**

A woman can file an FIR at the nearest police station. No police officer can refuse to register an FIR, if the offence being reported occurred outside their police station's jurisdiction. S/he is bound to register the FIR (this is called a zero FIR) and forward it to the concerned police station.

- **Right to privacy while recording statement**

Under section 164 of the Criminal Procedure Code, a woman who has been raped can record her statement before the district magistrate when the case is under trial, and no one else needs to be present. Alternatively, she can record the statement with only one police officer and woman constable in a convenient place that is not crowded and does not provide any possibility of the statement being overheard by a fourth person. The cops have to, by law, upkeep the woman's right to privacy.

- **Time doesn't matter**

The police cannot refuse to register an FIR even if a considerable period of time has elapsed since the incident of rape or molestation took place. If the police tell you that they can't lodge your FIR since you didn't report it earlier, do not concede.

- **Complaint can be filed via e-mail**

If, for some reason, a woman can't go to the police station, she can send a written complaint through an email or registered post addressed to a senior police officer of the level of Deputy Commissioner or Commissioner of Police. The police can then come over to the residence of the victim to take her statement.

- **Police can be punished for not lodging a complaint**

A rape victim can register her police complaint from any police station under the Zero FIR ruling by Supreme Court. The Criminal Law (Amendment) Act, 2013 also has provisions for punishment of public servants who refuse to register complaints of sexual assault victims.

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- **No arrests after sunset**

According to a Supreme Court ruling, a woman cannot be arrested after sunset and before sunrise. Even if there is a woman constable accompanying the officers, the police can't arrest a woman at night. In case the woman has committed a serious crime, the police have to get it in writing from the magistrate explaining why the arrest is necessary during the night.

- **A woman can't be called to the police station**

Women cannot be called to the police station for interrogation under Section 160 of the Criminal Procedure Code. This law provides Indian women the right of not being physically present at the police station for interrogation. "The police can interrogate a woman at her residence in the presence of a woman constable and family members or friends as per the guideline of the Supreme Court

- **Identity of the victim of sexual offences are protected**

Under no circumstances can the identity of a rape victim be revealed. Neither the police nor media can make known the name of the victim in public. Section 228-A of the Indian Penal Code makes the disclosure of a victim's identity a punishable offense. Printing or publishing the name or any matter which may make known the identity of a woman against whom an offense has been committed is punishable. This is done to prevent social victimization or ostracism of the victim of a sexual offense. Even while a judgment is in progress at the high court or a lower court, the name of the victim is not indicated, she is only described as 'victim' in the judgment.

- **Conducive atmosphere for women employees**

It is the duty of every employer to create a Sexual Harassment Complaints Committee within the organization for redressal of such complaints. According to a guideline issued by the Supreme Court, and the Prevention of Sexual Harassment at the Workplace Act, 2012 it is mandatory for all firms, public and private, to set up these committees to resolve matters of sexual harassment. It is also necessary that the committee be headed by a woman and comprise 50% women as members. Also, one of the members should be from a women's welfare group.

The Indian Penal Code provisions with punishments for women at a glance:

Sections	Offence	Punishment
Section 304-B	Dowry Death	This offence is punishable with a minimum sentence of imprisonment for seven years and maximum imprisonment for life

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Sections	Offence	Punishment
Section 306	Abetment to Suicide	Read with Section 113 of the Indian Evidence Act – imprisonment of either description for a term which may extend to ten years and shall also be liable to fine
Section 326-A	Acid attack	Imprisonment not less than ten years but which may extend to imprisonment for life and with fine which shall be just and reasonable to meet the medical expenses and it shall be paid to the victim
Section 326-B	Attempt to Acid attack	Imprisonment not less than five years but which may extend to seven years, and shall also be liable to fine
Section 354	Outraging the Modesty of Women	To be punished with an imprisonment of not less than one year which may extend upto five years with fine.
Section 354-A	Sexual Harassment	Rigorous imprisonment up to three years, or with fine, or with both in case of offence described in clauses (i), (ii) or (iii) Imprisonment up to one year, or with fine, or with both in other cases
Section 354-B	Disrobing a woman	Imprisonment not less than three years but which may extend to seven years and with fine.
Section 354-C	Voyeurism	In case of first conviction, imprisonment not 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.
Section 354-D	Stalking	Imprisonment not less than one year but which may extend to three years, and shall also be liable to fine
Section 375	Rape	Section 376(1) provides a minimum sentence of seven years of imprisonment that may extend to life imprisonment and fine. Section 376(2) provides punishment not less than ten years of imprisonment but may extend to imprisonment for life or death or fine.

Sections	Offence	Punishment
Section 376-D	Gang Rape	Each of the perpetrators shall be liable for the offence of rape and shall be punished with rigorous imprisonment for not less than twenty years which may extend to lifetime imprisonment and fine.
Section 498-A	Cruelty by Husband or his relatives	Imprisonment for a term which may extend to three years and shall be liable to fine
Section 509	Insulting the Modesty of Women	simple imprisonment for a term which may extend to three years with fine.

FAQ's – REALITY CHECK

1. I got my Covid-19 test done, where the technician at the lab took my vaginal swab for testing, stating that this is the most appropriate way of testing for corona virus. I am suspicious about this act. What should I do now?

You can file a FIR at the nearest police station, where the police will book him under Section 354 of the IPC for outraging your modesty and for rape under Section 375 of IPC as the Lab technician has made grave sexual advances towards you.

2. While going to a market, two boys came, pulled my saree off, groped me and ran away. I don't know their names but can recognize them by their face. What should I do?

You should immediately file an FIR at the nearest police station, where they will be charged under Section 354 of the Indian Penal Code for outraging your modesty. This is a cognizable and non-bailable offence hence the perpetrators would be arrested immediately once they are recognized and identified by you.

3. I am a 24 years old married woman. I was beaten up and sent back to my parent's home within a year of marriage because I did not bring fridge and TV as per my husband's wish. What should I do?

You can seek a civil remedy of compensation, monetary orders, residence orders and protection orders against your husband and in-laws under the Protection

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of Women from Domestic Violence Act, 2005 for physically and mentally harassing you to bring dowry while you can also file an FIR under S. 498-A of the Indian Penal Code for seeking criminal liability against them.

4. My neighbour died within 5 years of marriage, later it was found out that her sister-in-law beat her up regularly for not bringing cash and jewellery from the house of her parents. I want to know whether it was a suicide or murder. What can be done about it?

This seems to be the case of Dowry Death. You should ask her guardian or next of kin to immediately file an FIR under S. 304-B of the Indian Penal Code, as your neighbour has died within seven years of marriage. It is a matter of investigation whether it was a murder or suicide due to dowry harassment or some other reason.

5. My 2 years old daughter was touched in-inappropriately by her male dance teacher in the school auditorium. What can I do about it?

Firstly, you need to file a written complaint in front of the school principal informing them about the mis-happenings in their school. Secondly you can file an FIR in the nearest police station as the sports teacher has outraged the modesty of the child under S. 354 of the Indian Penal Code and will also be charged under the Prevention of Children from Sexual Offences Act for sexual assault.

6. I am a 20 years old boy. I received inappropriate photographs of a female friend from one of my college-mates. Am I committing a crime?

Ans: No, receiving the content does not make you liable, but you should delete them immediately and not spread the photos that you have received. You can ask your female friend to lodge an FIR for voyeurism under Section 354-C of IPC.

7. I saw my team leader being called to the office conference room, where the Human Resource Manager kept touching the team leader continuously on her shoulder and back, although I could not hear the conversation between them. Is there a legal provision through which I can stop him?

Ans: This is a case of sexual harassment at work place. You can inform the Internal Complaints Committee formed by your organization for redressal.

8. My in-laws have been verbally abusing me and not letting me go to my parent's home since last one year as they have not given 10 Tolas of gold in the marriage. What do I do?

Ans : You need to request them to stop abusing you and also let you go to your

parent's home. In case their abuse continues, you can file an FIR against them under Section 498-A of the IPC, as you are being a victim of mental cruelty. You can also get a protection order under the Protection of Women from Domestic Violence Act, 2005.

9. While coming home from the school, I am being followed by an unknown guy, who keeps going around my cycle and tries to talk to me. I am scared of him. What should I do?

Ans : File an FIR against him at the nearest Police Station as he is stalking you, which is an offence under Section 354-D.

10. My younger sister was bullied, harassed and her clothes were torn outside her college hostel 4 months ago, when the new session of college started. Do I have any legal course after so many months?

Ans : Yes, you can either make an official complaint in front of the Internal Complaints Committee of her College informing them about the incidence or you can file an FIR at the nearest police station against her perpetrators as their action of tearing her clothes is an offence under Section 354-B of the IPC.

LANDMARK JUDGMENTS

1. Mukesh & Anr. v. State of NCT of Delhi [2017 Cri LJ 4365 SC]

Facts: The devilish manner of gang rape, in which deceased was assaulted, the rod inserted in her private parts and the acts of the accused to destroy the evidence has shocked the conscience of society.

Judgment: Accused persons found guilty of offences which are brutal, diabolic and barbaric in nature and falls within category of rarest of rare cases hence sentence of death penalty, proper.

This case is famously known as the "Nirbhaya Case". It led to national level outrage and brought to forefront the issues concerning women safety in India in general and National Capital Territory of Delhi in particular.

The Nirbhaya case led to institution of Justice JS Verma Committee to bring in reforms in the Criminal Justice System of India which in turn led to impending historical amendments to the Criminal Laws. Thus, came into being the landmark 2013 Criminal Amendment Act which increased the scope and the ambit of the laws relating to Rape, consent, Concept of who should be considered as Juvenile, Evidence Act, Criminal Procedure Code.

The concept of Zero FIR was introduced by this Committee. Zero FIR is a

way by which the victim can lodge a FIR in any police station irrespective of the barriers of jurisdiction. The police officer under this provision is duty bound to lodge the complaint.

2. Priya Patel v. State of Madhya Pradesh [2006 Cri LJ SC 3627]

Facts: The prosecutrix was returning home after her sports meet and the husband of the appellant met her at the railway station and told her that her father has sent him to pick her. He took her to his house and raped. During the commission of rape, appellant (the wife) entered the room and prosecutrix asked for the help but instead of saving her, the appellant slapped her and closed the door and left the place of the incident. The accused husband was charged under Section 376, IPC whereas the appellant wife was charged for commission of offence punishable under Section 376(2)(g), IPC.

The appellant wife challenged the legality of the charge framed against her under Section 376(2)(g), IPC on the ground that since a woman cannot commit rape and so cannot be convicted for commission of ‘gang rape’.

Judgment: The court held that a woman cannot be said to have an intention to commit rape. Therefore, the appellant cannot be prosecuted for alleged commission of an offence punishable under Section 376(2)(g).

3. Tukaram v. State of Maharashtra [AIR 1979 SC 185]

Facts: Mathura, a Harijan girl developed intimacy with a boy, Ashoka. Her brother lodged a report in the Police Station that Mathura had been kidnapped by Ashok. After sometime, Mathura was brought to the Police Station and statement was recorded. Since, it was late at night, so there were two constables (appellants) present at the police station at the time. The appellants asked Mathura to stay at the police station and asked her companions to wait outside. One of the appellants took her into the washroom and light a torch focusing on her private parts and thereafter dragged her and raped in spite of her protests. Then, the other appellant came and wanted to rape her but couldn't as he was highly intoxicated. Since, all the lights of the police station was off and nothing was visible, the companions of Mathura called her name and shortly afterwards, Mathura emerged out of the police station and alleged that one of the constables had raped her. The crowd became aggressive and so, her FIR was lodged on behalf of her statement. Doctor's report stated that there was no injury on the body of Mathura. Her hymen revealed old ruptures. The appellants contended that since there was no direct evidence about the nature of the consent of the girl to the alleged act of sexual intercourse, it can be inferred from the available circumstances that she did this with her passive submission.

Judgment: The court held that no marks of injury was found on the body of the girl after the incident and this indicates that the intercourse was a peaceful affair

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and the story made by the girl was fictitious. Therefore, no offence is brought against the appellants.

This case is popularly known as 'Mathura Rape Case'. After this case, it was interpreted by the Apex Court in many cases that to constitute the offence of rape, it is not important that there must be some injury on the body of the victim.

4. Rupan Deol Bajaj & Anr. v. K.P.S. Gill & Anr. [AIR 1996 SC 309]

Facts: The petitioner was an IAS Officer and accused was DGP, Punjab. The petitioner was invited to a party where the accused was also present. The accused asked the petitioner to come and sit next to him and when she went to sit, he pulled the chair closer to him and the petitioner was surprised by this act and she pulled her chair back to original place and again he pulled the chair closed to him. The petitioner asked him to leave but he again asked petitioner to accompany him in a commanding voice. She got apprehended and frightened and immediately pulled her chair back and turned to get out. At this point, the accused slapped the butt of the petitioner in the presence of all the guests which was very embarrassing for her. She filed an FIR against him.

Judgment: The High Court quashed the FIR and held that the act was covered under Section 95, IPC.

The Supreme Court disagreed with the High Court and held that quashing FIR is illegal and Section 95, IPC is not at all applicable. The court further added that when an offence relates to the modesty of women, it could not be trivial under any circumstance. Therefore, the accused was held liable under Section 354, IPC.

5. Raju Pandurang Mahale v. State of Maharashtra [2004 Cri LJ 1441 SC]

Facts: The accused brought the victim to the house of co-accused on a false pretext. They confined her in the house and brought liquor which she was forced to drink. The victim was then disrobed and her nude photographs were taken.

Judgment: The Supreme Court held that the accused was guilty under Section 354, IPC as their acts were affront on the normal sense of feminine decency.

6. State of Punjab v. Major Singh [AIR 1963 SC 63]

Facts: In this case, the accused had caused injuries to the vagina of a seven and a half months old child by fingering.

Judgment: It was held that the accused was liable for outraging the modesty of the child under Section 354, IPC. The court further added that the essence of a woman's modesty is her sex. Young-old, intelligent or imbecile, awake or sleeping; women possesses a modesty capable of being outraged.

7. Laxmi v. Union of India [AIR 2015 SC 3662]

Facts: A jilted neighbour threw acid on a unsuspecting girl while she was going to her tuitions.

Judgment: The Court famously ordered to “Stop Acid attacks, regulate and restrict the sale of acid”. Further the Apex Court held that Section 357-A of Indian Penal Code provides for the preparation of a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of crime and who require rehabilitation. The Apex Court direct that the acid attacks victims shall be paid compensation of at least Rs. 3 Lakh by the concerned State Government/UT as the aftercare and rehabilitation cost.

8. Ramkripal v. State of Madhya Pradesh [2007 AIR SCW 2198]

The Supreme Court of India defined modesty by laying down that the ‘essence of a woman’s modesty is her sex’.

9. Ram Kumar v. State of MP [1998 Cri LJ 953(MP)]

Facts: The wife committed suicide after being married to the accused for twenty years.

Judgment: Even when the wife committed suicide after twenty years of marriage but there is evidence that prior to suicide by the wife the husband threatened her, forced her to divorce and treated her with cruelty it is held that cruel conduct of husband provoke the wife to commit suicide husband was found guilty under section 306 of IPC.

10. Rameshwar v. State of Haryana [1984 Cri LJ 786 (P&H)]

Fact: The accused caught hold of a married woman and tried to open the string of a salwar with a view to committing rape on her but being hit by the woman with the kulhari he fled away.

Judgment: It was held that he could not be convicted under section 376 511 as his action did not show a determination to have sexual intercourse at all events and in spite of resistance.

11. Apparel export Promotion Council v. A. K. Chopra [AIR 1999 SC 625]

Judgment: The Supreme Court of India held that an attempt to molest would also amount to sexual harassment. Outrageous behavior is sufficient to constitute sexual harassment and actual assault or touch is not necessary to prove it.

12. Bhupendra Singh v. UT of Chandigarh [2008 Cri LJ 3546 SC]

Facts: Consent given on the belief that the accused is her husband.

Judgment: If a woman has given consent on belief that the accused is her husband then it will cover the case of prosecutrix who had married the accused without being aware of his first marriage full stop the accused husband in such a case will be guilty of rape.

13. Joseph Shine v. Union of India [AIR 2018 SC 4898]

Facts: Age old Victorian Law on Adultery was basically gender biased. The wife was believed to be the property of the husband, a thing to be owned and possessed.

Judgment: Supreme Court struck down the age-old Victorian law as being gender biased and hence violative of Article 14 and Article 15(3) of the Indian Constitution. This act when considered as an offence gives the right to the husband to own the sexual relationship. Thus on a louder note of analysis, this section was never and could never have been in the favor of women.

14. Manish Kathuria v. Ritu Kohli [C.C.No. 14616/2014]

Facts: this is the first ever case of cyber stalking in India to have been reported and action was initiated. Victim (Ritu Kohli) complained against the offender (Manish Kathuria) for using her identity to chat over the internet, as well as giving away her address and using obscene language. The offender had managed to leak her contact details as well. This led to frequent calls at odd hours. Consequently, the police and the cyber cell managed to trace the IP address, and the offender was finally arrested.

Judgment: Section 354-D was added which now considers cyber stalking as an offence punishable under IPC. As well as added section 66-A to Information and Technology Act, which punishes the offender. This came to the aid of a women victim when Section 509 of IPC was silent on the fact that modesty of a woman could be destroyed even through internet.

15. Shyam Singh v. State of Haryana [(2018) 18 SCC 34]

In this landmark judgment, the Hon'ble Supreme Court held that the statement and the testimony of the victim in rape cases is very important and vital to the case. If there is no need to corroborate her evidence, then the courts should place more importance to her testimony and not try to find loopholes in her testimony for no reason. If the courts and the law try to find unnecessary corroboration to her testimony, the court shall only add to the injury and the insult already caused to the victim.

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PRACTICAL CASE SCENARIO**PRACTICAL CASE SCENARIO NO: 1**

Aradhana, while going to tuition classes, used to be followed by Sameer and his friends. He started forcing Aradhana to marry him, which she refused. This infuriated Sameer and the next day he threw acid on her, burning her hands and face completely.

Answer: Sameer in this case has voluntarily caused Aradhana grievous hurt by use of acid hence liable under Section 326-A of the Indian Penal Code.

PRACTICAL CASE SCENARIO NO: 2

Sameer touched private parts of a seven-month-old child and tried to man-handle her. The incidence was witnessed by Aradhana, mother of the child.

Answer: Even though the child is of a tender age and could not feel any outrage, yet the action on the part of Sameer shows his intention of outraging the modesty of the child under Section 354 of the Indian Penal Code.

PRACTICAL CASE SCENARIO NO: 3

Sameer a doctor on the pretext of curing Aradhana of her illness insists on sexual intercourse, where the non-suspecting patient Aradhana submits to him.

Answer: Here Sameer has committed rape under Section 375 of the Indian Penal Code on Aradhana as Sameer was in a fiduciary relationship with his patient, where she believed him to be giving her an appropriate treatment for her illness.

PRACTICAL CASE SCENARIO NO: 4

Aradhana's father gifted her a plot which belonged to him. Sameer, Aradhana's husband started pressurizing her to transfer the land on his name. When Aradhana resisted she was thrown out of the house on the road and sent back to her parent's house.

This is an example of cruelty against Aradhana under Section 498-A IPC and under PWDV Act, 2005.

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PRACTICAL CASE SCENARIO NO: 5

After a routine swimming practice at a renowned swimming pool, Aradhana goes to the lady's changing room. While taking a shower, she notices a hidden camera placed near the ceiling lights.

Answer: Here Aradhana has been a victim of voyeurism under Section 354-C of the IPC because she was being seen through the camera by the accused while she was engaging in a private act of taking a shower.

PRACTICAL CASE SCENARIO NO: 6

Aradhana married Sameer as per the Hindu traditions, after 5-6 months of their marriage Sameer, her sister-in-law and mother-in-law started taunting Aradhana for bringing less dowry. They started demanding several things from her which was not fulfilled by her. Gradually the torture on her increased so much that the mother-in-law hit her with a sharp blade on her forehead causing a deep cut over there while hitting her with a broom. The wife was unable to tolerate the ill-treatment by her husband and her in-laws, as a result, she committed suicide by consuming naphthalene balls and died.

Answer: Here Aradhana was harassed by her in laws for bringing less dowry and she died within 1 year of marriage, hence under Section 113 of the Evidence Act, it will be presumed as Dowry Death which was abetted by her husband and in-laws.

PRACTICAL CASE SCENARIO NO: 7

Sameer and Aradhana got married ten years ago. They have started residing separately since last one year due to frequent fights between them. One day Sameer goes to meet Aradhana, overpowers her and has sexual intercourse with her, without her consent.

Answer: Here, Sameer has committed rape on his wife under Section 375 of the Indian Penal Code.

PRACTICAL CASE SCENARIO NO: 8

Two days after the marriage Sameer's mother started asking his wife Aradhana to bring furniture and a car as dowry from her parent's house. Aradhana was beaten up with a rod, when she did not agree to these demands

Answer: In this example cruelty is being committed against Aradhana under Section 498-A of the IPC

ASSESS YOURSELF: MULTIPLE CHOICE QUESTIONS

1. As per the Indian Penal Code, which one of the following can be called as rape?

- a. Husband has a sexual intercourse with a minor wife
- b. An adult couple in a live-in relationship has sexual intercourse
- c. Both a and b
- d. Neither a nor b

2. A married woman is abused and harassed by her sister-in-law for not giving her the jewellery, she got from her parents during her marriage, it will amount to _____.

- a. Harassment
- b. Cruelty
- c. Psychological impairment
- d. None of the above

3. A woman celebrates her fifth marriage anniversary and thereafter she is found dead after falling from her apartment on 10th floor. What offence can be made out against the husband under these circumstances?

- a. Abetment of suicide
- b. Dowry Death
- c. Both a and b
- d. Neither a nor b

4. Sakshi, a teenager while playing with her Rahul, Mayank and Surabhi was hit on a private part deliberately by Rahul, what offence was committed by him?

- a. Rape
- b. Sexual harassment
- c. Outraging the modesty of woman
- d. All of the above

5. Two men found a woman working in an agricultural field. They took her to a hay stack and started forcing themselves upon her. One of them raped her while the other held her arms and prevented her from running away. They will be charged for

- a. Rape
- b. Outraging the modesty of a woman
- c. Sexual Harassment
- d. Gang rape

6. Suhana was sleeping with her younger sister Ahana when their father in a fit of rage threw a bottle of acid on them. He has committed _____.

- a. A mistake
- b. A tortious act
- c. Acid attack
- d. The father has not committed any offence

7. Shikha went to a multi-brand store to buy clothes for her birthday. While trying new dresses, Shikha noticed camera in the changing room. What criminal complaint can she make of?

- a. Stalking
- b. Voyeurism
- c. Breach of trust
- d. No criminal offence is made out

8. Ishika has been receiving whatsapp messages from Rakesh for last three months, where he is trying to attract her attention by making tall claims of having a lot of property and how she will be happy with him if she marries him. He also threatens her with dire consequences if she does not agree for the marriage. Ishika is fed up of these messages and wants to complain about it to the police. What offence can be made out against Rakesh?

- a. Cyber Bullying
- b. Voyeurism
- c. Stalking
- d. None of the above

9. Rishi and Krishi take inappropriate photographs and videos of their Professor Vandana while she is taking post-graduation classes. She has a right to approach the police and complain about_____.

- a. Outraging the modesty of a woman
- b. Insulting the woman
- c. Stalking
- d. Voyeurism

ANSWER KEY								
1	2	3	4	5	6	7	8	9
a	b	c	c	d	c	b	c	d

**LEGAL AWARENESS PROGRAMME
BY
NATIONAL LEGAL SERVICES AUTHORITY
IN COLLABORATION WITH
NATIONAL COMMISSION FOR WOMEN**

**IEC & TRAINING MODULE
For Resource Persons
ON**

**CRIMINAL LAW
CRIMES AGAINST WOMEN**

**PROTECTION OF CHILDREN FROM
SEXUAL OFFENCES ACT, 2012 [POCSO]**

Training Module**IEC Material & Training Module****Protection of Children from Sexual Offences Act, 2012 [POCSO]**

The IEC & Training Module is primarily for Resource Persons of NALSA, as it focuses on particular responsibilities in spreading legal awareness about the provisions of Protection of Children from Sexual Offences Act, 2012. This is the part of the Legal Awareness Programme undertaken by the National Legal Services Authority in collaboration with the National Commission for Women. Resource Persons will find it as a useful source of information & guidance.

The main objective of this IEC & Training Module is to inspire, motivate, cultivate curiosity, shape the opinion and enlighten the Resource Persons on important provisions under the Protection of Children from Sexual Offences Act, 2012.

The overall content has been written in an interactive Question Answer style, in a lucid and simple language.

NALSA hopes that the Resource Person will be benefitted immensely by these IEC & Training Modules.

Objective

- 1. To give an overview of the Scheme made under the Protection of Children from Sexual Offences Act, 2012.*
- 2. To familiarize the Resource Persons with important provisions concerning the 'Protection' available to Children under the Act.*
- 3. To improve the understanding of Resource Persons about the challenges & barriers in the implementation of the provisions of the Act.*

Learning Outcome

The participants (Resource Persons) will be able to completely understand their role & responsibilities in spreading awareness about the Protection of Children from Sexual Offences Act, 2012.

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“History will judge us by the difference we make in the everyday lives of children.”

—Nelson Mandela

Crimes against Women - Protection of Children from Sexual Offences Act, 2012 [POCSO]

Introduction

Childhood should be carefree, playing in the sun; not living a nightmare in the darkness of the soul. Sexual abuse of children is one of the biggest crimes against humanity at large. It shakes the human consciousness and affects the normal healthy growth of a child. It can lead to grave physical and psychological effects on the body and mind of a child and

India has one of the largest populations of children in the world, according to Census data from 2011; India has a population of 472 million children below the age of eighteen. Child sexual abuse laws in India have been enacted as part of the child protection policies of India. The Protection of Children from Sexual Offences Act, 2012 [POCSO] has been enacted to tackle with the increasing sexual abuse against children in form of abuses like rape, pornography, various forms of penetration and criminalises acts of immodesty against children too.

● Protection of Children from Sexual Offences Act, 2012

The Protection of Children from Sexual Offences Act, 2012 received the President's assent on 19th June, 2012 and was notified in the Gazette of India on 20th June, 2012. It is an important piece of legislation for proper development of a child so that his or her right to privacy and confidentiality will be protected and respected by every person by all means and through all stages of judicial process involving a child.

The Act was amended in 2019, to make provisions for enhancement of punishments for various offences so as to deter the perpetrators and ensure safety, security and dignified childhood for a child.

✦ Who is a child as defined under the Act?

The Act defines a child as any person below eighteen years of age.

✦ What is Child Sexual Abuse?

According to a report by the World Health Organization (WHO) child sexual abuse is, 'inappropriate sexual behavior with a child' and 'involving a child in sexual activity that he or she doesn't fully comprehend, is unable to give informed consent to, or that violates the laws and social taboos of society. It includes the following:

- Fondling a child's genitals
- Making the child fondle the adult's genitals
- Intercourse, incest, rape, sodomy, exhibitionism and sexual exploitation
- Inducement or coercion of a child in unlawful activity.
- The exploitative use of child in prostitution or other unlawful sexual practices
- The exploitative use of children in pornographic performances and materials.

✦ What are the objectives of the Act?

The Act was enacted:

1. To keep in consonance with the safeguard provided by the Constitution for protection of children under Article 15(3).
2. To adopt the mandate provided by 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 States.
3. To protect children from offenses of sexual assault, sexual harassment, and pornography and provide for the establishment of Special Courts for the trial of such offenses and for matters connected therewith.
4. To protect and respect the Right to Privacy and confidentiality of a child by every person by all means and through all stages of a judicial process involving the child.
5. To ensure the healthy physical, emotional, intellectual, and social development of the child.
6. To effectively address heinous crimes against children such as sexual exploitation and sexual abuse.

✦ What does the United Nation's Convention on the Rights of the Child mandate?

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.

✦ What were the reasons for enactment of the POCSO Act, 2012?

The most important reason for the enactment of POCSO was the inadequacy of Indian Penal Code and absence of any stringent legislation for effectively addressing and tackling heinous crimes such as sexual exploitation and sexual abuse of children. POCSO was established to protect the children from offences of sexual assault, aggravated sexual assault, sexual harassment and child pornography and to facilitate adequate legal machinery by establishing special courts for trial of such offences and matters incidental connected with child sexual abuse crimes.

✦ What are the salient features of the Act?

- The Act is gender neutral and regards the welfare of the child as a matter of paramount importance at every stage so as to ensure the healthy physical, emotional, intellectual and social development of the child.
- The Act defines a child as any person below eighteen years of age, and regards the best interests and well-being of the child as being of paramount importance at every stage, to ensure the healthy physical, emotional, intellectual and social development of the child.
- It defines different forms of sexual abuse, including penetrative and non-penetrative assault, as well as sexual harassment and pornography, and deems a sexual assault to be "aggravated" under certain circumstances, such as when the abused child is mentally ill or when the abuse is committed by a person in a position of trust, like a family member, police officer, teacher, or doctor.

- People who traffic children for sexual purposes are also punishable under the provisions relating to abetment in the Act. The Act prescribes stringent punishment graded as per the gravity of the offence, with a maximum term of rigorous imprisonment for life, and fine.
- It defines “child pornography” as any visual depiction of sexually explicit conduct involving a child which include photograph, video, digital or computer generated image indistinguishable from an actual child, and image created, adapted, or modified, but appear to depict a child;

✦ **What is a Sexual Assault?**

According to Section 7 of the Act, touching the vagina, penis, anus, or breast of the child or making the child touch the vagina, penis, anus, or breast of such person or any other person, or doing any other act with sexual intent which involves physical contact without penetration is sexual assault.

✦ **Who can be held liable for Aggravated sexual Assault?**

If the following persons commit sexual assault on a child:

- a. A police officer; or
- b. A member of the armed forces or security forces; or
- c. A public servant; or
- d. The management or on the staff of a jail, or remand home or protection home or observation home, or other places 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 an inmate of such jail or remand home or protection home or observation home or another place of custody or care and protection; or
- e. The management or staff of a hospital, whether Government or private, commits sexual assault on a child in that hospital; or
- f. 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.

And whoever:

- a. takes advantage of a child’s mental or physical disability commits sexual assault on the child; or
- b. commits sexual assault on the child more than once or repeatedly; or
- c. commits sexual assault on a child below 12 years; or
- d. 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 a household with the child, commits sexual assault on such child; or
- e. 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
- f. 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
- g. commits sexual assault on a child knowing the child is pregnant; or
- h. commits sexual assault on a child and attempts to murder the child; or
- i. commits sexual assault on a child in the course of communal or sectarian violence; or
- j. commits sexual assault on a child and who has been previously convicted of having committed any offense under this Act or any sexual offense punishable under any other law for the time being in force; or
- k. commits sexual assault on a child and makes the child to strip or parade naked in public, is said to commit aggravated sexual assault.

✦ **What constitutes Aggravated sexual assault?**

Such sexual assault would have been done:

- a. using deadly weapons, fire, heated substance or corrosive substance; or
- b. causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or
- c. 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 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

✦ **What constitutes Aggravated Penetrative sexual assault?**

- Penetrative sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child.
- Any such assault on a child, which:

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- a. 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 or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; or
- b. in the case of a female child, makes the child pregnant as a consequence of sexual assault;
- c. 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.

✦ **Who are the persons that can be responsible for Aggravated penetrative sexual assault?**

The following persons will be responsible for aggravated penetrative sexual assault:

- a. A police officer or a member of the armed forces or security forces [Section 5(a),(b)]
- b. A public servant; [Section 5(c)]
- c. The management or on the staff of a jail, remand home, protection home, observation home, or other places 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 an inmate of such jail, remand home, protection home, observation home, or other places of custody or care and protection; [Section 5(d)]
- d. The management or staff of a hospital, whether Government or private, commits penetrative sexual assault on a child in that hospital; [Section 5(e)]
- e. The management or staff of an educational institution or religious institution commits penetrative sexual assault on a child in that institution. [Section 5(f)]

✦ **Does gang penetrative sexual assault on a child amount to aggravated penetrative sexual assault?**

Yes, 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. [Section 5(f)]

✦ What constitutes sexual harassment of a child?

When any person with sexual intent does the following will be said to sexually harassing a child: [Section 11]

- a. utters any word or makes any sound/gesture or exhibits any object or part of the body with the intention that it shall be seen by the child; or
- b. makes a child exhibit any part of his body so as it is seen by any other person; or
- c. shows any object in any form or media for pornographic purposes to a child; or
- d. follows/watches/contacts a child either directly or through any other means; or
- e. threatens to use, in any form of media, a real or fabricated depiction through any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or
- f. entices a child for pornographic purposes.

✦ Who can be liable for using a child for pornographic purposes?

Section 13 of the Act provides that a person will be said to be using a child for pornographic purpose, if he involves 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, for the purposes of sexual gratification, including:

- 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 the child.

✦ Who is said to abet an offence under the Act?

Any person who: [Section 16]

- a. Instigates any person to do any offence under the Act; or
- b. Engages with any person or persons in any conspiracy for the doing of that offence; or
- c. Intentionally aids, by any act or illegal omission, the doing of that offence.

It also includes any person who:

- a. By willful misrepresentation, or concealment of a material fact, which he is bound to disclose, voluntarily causes or procures a thing to be done.

- b. Either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act.
- c. Employs, 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.

✦ **To Whom are the offences under the Act reported?**

Section 19 provides that whoever has knowledge or apprehension that an offence under this Act has been committed, shall inform it to:

- a. the Special Juvenile Police Unit, or
- b. the local police.

✦ **How are offences reported under the Act?**

Every report of an offence under the Act, shall be: [Section 19]

- 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.

Further, the Special Juvenile Police Unit or local police on being satisfied that the child against whom an offence has been committed is in need of care and protection, will, 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 24 hours of the report.

The Special Juvenile Police Unit or local police shall also, without unnecessary delay but within a period of 24 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.

✦ **Can a child report a crime under the Act?**

Yes, a child can report a crime under the Act and the same will be recorded in a simple language so that the child understands contents being recorded. And in case contents are being recorded in the language not understood by the child a translator or an interpreter, shall be provided to the child if he fails to understand the same.

✦ **What is the obligation of media, studio and photographic facilities under the Act?**

It is the obligation of any personnel of the media or hotel or lodge or hospital or club or studio or photographic facilities, by whatever name called, on coming across any material or object which is sexually exploitative of the child, to inform it to the Special Juvenile Police Unit or to the local police, as the case may be. [Section 20]

✦ **Is there any procedure laid down for the media while reporting the cases under the Act?**

Yes, the following are the obligations on the media while reporting a case under the Act [Section 23] :

a. Not to make any report or present comments on any child without having complete and authentic information, which may have the effect of lowering his reputation or infringing upon his privacy.

b. Not to 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. But 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.

✦ **What are the various offenses and the punishment for their contravention under the Act?**

Offence	Punishment
Penetrative sexual assault [Section 4]	Imprisonment of either description for a term which shall not be less than 7 years but which may extend to imprisonment for life, and shall also be liable to fine.
Aggravated penetrative sexual assault [Section 6]	Rigorous imprisonment for a term which shall not be less than 10 years but which may extend to imprisonment for life and shall also be liable to fine.
Sexual Assault [Section 8]	Imprisonment of either description for a term which shall not be less than 3 years but which may extend to 5 years, and shall also be liable to fine.

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Offence	Punishment
Aggravated sexual assault [Section 10]	Imprisonment of either description for a term which shall not be less than 5 years but which may extend to 7 years, and shall also be liable to fine.
Sexual Harassment [Section 12]	Imprisonment of either description for a term which may extend to 3 years and shall also be liable to fine.
Using a child for pornographic purposes [Section 14 (1)]	<ul style="list-style-type: none"> • Imprisonment of either description which may extend to 5 years and shall also be liable to fine • On subsequent conviction with imprisonment of either description for a term which may extend to 7 years and also be liable to fine.
Person using the child for pornographic purposes commits penetrative sexual assault on him [Section 14 (2)]	Imprisonment of either description for a term which shall not be less than 10 years but which may extend to imprisonment for life, and shall also be liable to fine.
Person using the child for pornographic purposes commits aggravated penetrative sexual assault [Section 14 (3)]	Rigorous imprisonment for life and shall also be liable to fine,
Person using the child for pornographic purposes commits Sexual Assault [Section 14 (4)]	Imprisonment of either description for a term which shall not be less than 6 years but which may extend to 8 years, and shall also be liable to fine.
Person using the child for pornographic purposes commits aggravated sexual assault [Section 14 (5)]	Imprisonment of either description for a term which shall not be less than 8 years but which may extend to 10 years, and shall also be liable to fine.

Offence	Punishment
Person who stores for commercial purposes any pornographic material in any form involving a child [Section 15]	Imprisonment of either description which may extend to 3 years or with fine or with both.
Abetment [Section 17]	Punishment as provided for that offence
Attempt to commit an offence [Section 18]	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.
Any person on failure to report or record a case [Section 21 (1)]	Imprisonment of either description which may extend to 6 months or with fine or with both
Any person, in-charge of any company or an institution who fails to report the commission of an offence [Section 21 (2)]	Imprisonment for a term which may extend to one year and with fine.
Any person, making false complaint or providing false information, solely with the intention to humiliate, extort or threaten or defame the other person [Section 22 (1)]	Imprisonment for a term which may extend to 6 months or with fine or with both
False complaint or false information provided by a child [Section 22 (2)]	No punishment shall be imposed on such child
Any child making a false complaint or providing false information against a child, knowing it to be false, thereby victimising such child [Section 22 (3)]	Imprisonment which may extend to one year or with fine or with both.

Offence	Punishment
Any person who contravenes provision under Section 23(1),(2), along with the publisher and owner of the media [Section 23(4)]	Imprisonment of either description for a period which shall not be less than 6 months but which may extend to one year or with fine or with both
A person on being found guilty of an act or omission constitute an offence punishable under this Act and also under any other law for the time being in force [Section 42]	Punishment which is greater in degree.

✦ **What are the obligations of a police officer while recording the statements of a child under the Act?**

The police officer to ensure [Section 24] :

- a. To record the statement at the residence of the child or at the place convenient to the child.
- b. The statement to be recorded and as far as possible by a woman police officer not below the rank of sub-inspector.
- c. He is not in uniform while recording the statement of the child.
- d. At no point of time the child comes in contact with the accused.
- e. No child to be detained in the police station during night for any reason.
- f. The identity of the child is protected from the public media, unless otherwise directed by the Special Court in the interest of the child.

✦ **Are there any additional precautions to be kept in mind while recording the statement of a child?**

Yes, the Magistrate or the police officer recording the statement of the child shall [Section 26] :

- a. Record the statement as spoken by the child in the presence of his parents or any other person in whom the child has trust.
- b. If needed, may take the assistance of a translator or an interpreter, while recording the statement of the child.
- c. In 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, to record the statement of the child.

- d. If possible, will ensure that the statement of the child is also recorded by audio-video electronic means.

✦ **How is the Medical examination of a victim child conducted under the Act?**

a. If a First Information Report or complaint has not been registered for the offences under this Act, be conducted in accordance with Section 164-A of the Code of Criminal Procedure, 1973.

b. In case of a girl child, the medical examination shall be conducted by a woman doctor.

c. Such examinations will be conducted in the presence of the parent or any other person the child trusts.

d. In case the parent or other person referred above cannot be present during the medical examination, the medical examination shall be conducted in the presence of a woman nominated by the head of the medical institution.

✦ **Where the cases under the Act will be tried?**

In order to provide a speedy trial, the State Government will in consultation with the Chief Justice of the High Court designate for each district, a Court of Session to be a Special Court to try the offences under the Act. [Section 28]

✦ **What is 'presumption' under the Act?**

The Court presumes:

- a. that a person who is prosecuted for committing or abetting to commit any offence under Sections 3,5,7 and section 9 of this Act, has committed or abetted to commit the offence, unless the contrary is proved. [Section 29]
- b. that for any offence under this Act which requires a culpable mental state on the part of the accused, the existence of such mental state, unless the contrary is proved. [Section 30(1)]

✦ Who are the Special Public Prosecutors under the Act?

- The person appointed by the State Government for every Special Court for conducting cases only under the provisions of this Act.
- Who has been in practice for not less than 7 years as an advocate.
- He shall be deemed to be a Public Prosecutor within the meaning of clause (u) of Section 2 of the Code of Criminal Procedure, 1973.

✦ Who can take cognizance of offence under the Act?

A Special Court upon receiving a complaint of commission of an offence, or upon a police report may take cognizance of any offence.

✦ What are the procedures to be followed by the Special Court while dealing with offences under the Act?

- Any person 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.
- The Court may, if it considers necessary, permit frequent breaks for the child during the trial.
- The Court shall create a child-friendly atmosphere by allowing a family member to be present in the court.
- The Court will ensure that the child is not called repeatedly to testify in the court.
- The Court will 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.
- The Court will ensure that the identity of the child is not disclosed at any time during the course of investigation or trial. But, reasons to be recorded in writing, the Court may permit such disclosure, if in its opinion such disclosure is in the interest of the child.
- The Court may if it feel necessary, in addition to the punishment, direct compensation to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child.

✦ **Is there any period for recording evidence of a child prescribed under the Act?**

Yes, the evidence of the child shall be recorded within a period of 30 days of the Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court.

And 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 35]

✦ **Can a child take assistance from a legal practitioner?**

Yes, according to Section 40, it is the Right of a child to take assistance of a legal practitioner. Subject to the proviso to Section 301 of the Cr.P.C. 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. But, 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 40]

In addition all that is mentioned above, can also discuss:

- Interplay between POCSO and the IPC provisions which overlap
- Instances where POCSO may be misused by family members where teenage romance is involved.
- How to navigate instances of child sexual abuse when the perpetrator is a family member, as is often the case.
- Are there any special child helpline units/agencies who can assist a child who is facing sexual abuse?
- What mechanisms exist for rehabilitation for the child, in addition to the penal consequences to the perpetrator?

Child-Friendly Procedures to be adopted by all organizations under POCSO Act

Section 19: Special Juvenile Police Unit/Local Police and the Magistrate

- Anyone including a child can report an offence to Special Juvenile Police Unit (SJPU)/local police.
- All individuals and institutions including schools, colleges, hospitals, hotels, clubs, studio, photographic facilities and media houses are under obligation to report cases of child abuse as soon as they come to know of it (u/s 20).
- The police must record the statement of the child in a simple language so that the child can understand what is being recorded and provide translator or interpreter, if found necessary.
- SJPU/local police has to provide care and protection to the child.
- Make immediate arrangements to take the child to the nearest hospital for medical examination and admit the child into a shelter home if found necessary.
- Report the matter within 24 hours to Child Welfare Committee (CWC) and Special Court (u/s 19(6)).
- A woman sub-inspector should record the child's statement preferably at the residence of child or at a place where child usually resides or at the place of child's choice (u/s 24 (1)).
- Police must be in plain clothes while working with victims of child sexual abuse (u/s 24 (2)).
- The police officer must ensure, during investigation that the child, at no point of time, comes in contact with the accused (u/s 24 (3)).
- A child cannot be kept overnight in the police station (u/s 24 (4)).
- The police officer shall ensure that the identity of the child is protected from the public media (u/s 24 (5)).
- SJPU/local police to produce the child before the CWC as per Rule 4 (3).

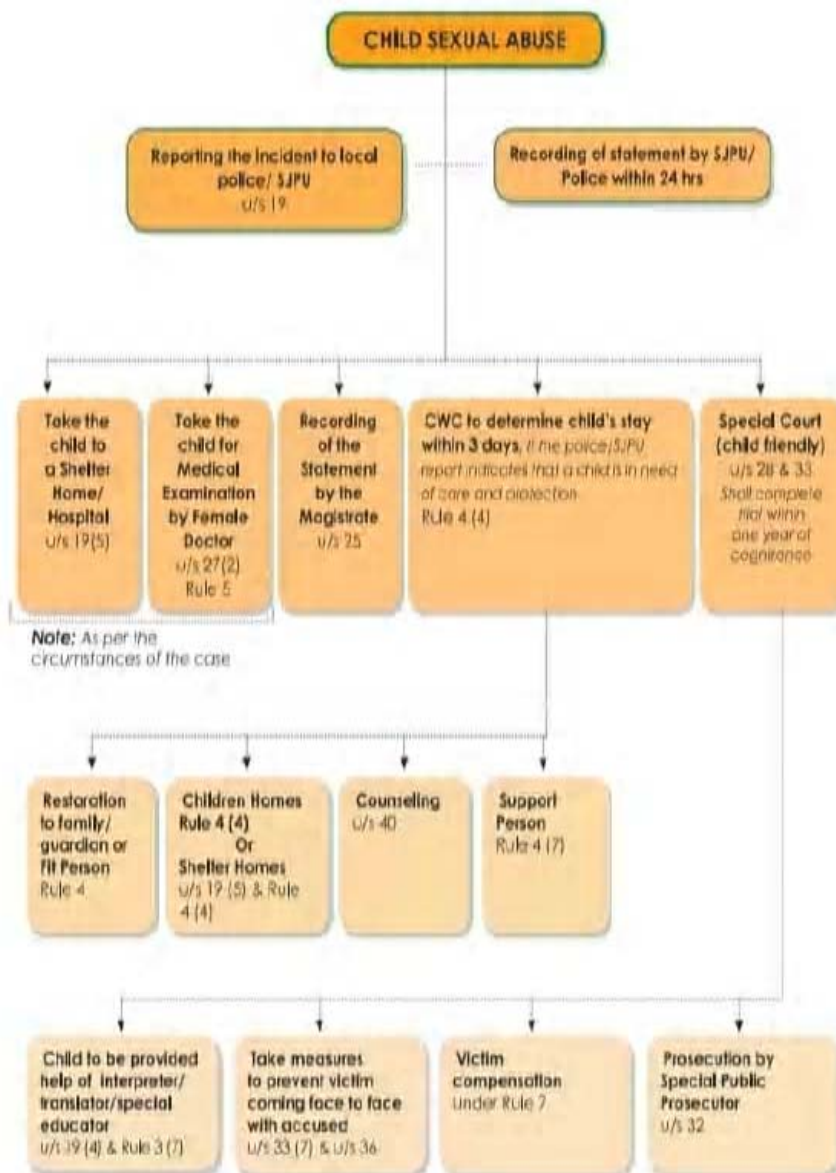
Medical/Legal/Media and other facilities:

- A female victim can be examined only by a female doctor or in the presence of a woman nominated by the head of the medical institute (u/s 27 (2)).
- The child and her/his family are entitled to free legal aid through Legal Services Authority (Rule 4 & u/s 40).
- Media to strictly follow procedure (u/s 23).

Section 33: Special Court

- 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 (u/s 33 (4)). Statement of child to be recorded as spoken by the child (u/s 26 (1)).
- Ensure that child is not called repeatedly to testify in the court (u/s 33 (5)).
- Not permit aggressive questioning or character assassination of child and ensure that the dignity of the child is maintained (u/s 33 (6)).
- Ensure that the identity of child is not disclosed (u/s 33 (7)).
- Assistance of special educators to children having mental and physical disability (26 (3)).
- Statement may be recorded by audio-visual means (video conferencing) (u/s 26 (4)).
- In-camera trials are mandatory which means that only persons connected to the case will be allowed in the court room (u/s 32).
- Child's evidence will be recorded within 30 days of the court taking cognizance of the offence and in the presence of parents of child or any other person in whom child has trust or confidence.
- Trial shall be completed as far as possible within one year (u/s 35 (2)).
- Grant interim compensation to be paid to the victim during pendency of the case.
- Juvenile Justice (Care and Protection of Children) Act, 2015 will apply if the sexual offence has been committed by a person who was below the age of 18 years at the time of alleged offence (u/s 34).
- Ensure that the child does not see the accused at the time of testifying (u/s 36).
- Services of professionals and experts can be taken in pre-trial and trial stage to assist the child in recording of evidence (u/s 38).

Flow Chart of Processes Under POCSO Act



LANDMARK JUDGMENTS**1. Independent Thought v. Union of India [AIR 2017 SC 4904]**

Independent Thought, one of the leading NGOs which deals with the child rights, had filed a public interest litigation in the Supreme Court of India. It challenged the constitutional validity of exception 2 to section 375 (Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape) of the Indian Penal Code. The following issues were raised:

- a. Whether sexual intercourse between a husband and wife, where she is between 15 and 18 years of age would amount to rape?
- b. Whether section 375, exception 2 is violative of fundamental rights of a girl child?

The Supreme Court held that the exception 2 in section 375 is violative of Articles 14, 15 and 21 of the Constitution of India and also the provisions of Protection of Children from Sexual Offences Act in context of the age of consent.

2. Imran Shamim Khan v. State of Maharashtra [2019]

The case was regarding a Class III student, who refused to go to her mother's house as she complained that the accused had sexually assaulted her twice. In this case, the High Court held that even if a minor survivor in a sexual assault case turns hostile, POCSO Act, 2012, being a Special Law, presumes the guilt of the accused unless he proves his innocence beyond reasonable doubt.

3. Ms. Eera Through Dr. Manjula v. State (Government of NCT of Delhi) [AIR 2017 SC 3457]

In the instant case rape was committed on a woman of 38 years of age but she was suffering from Cerebral Palsy and therefore, though she was biologically 38 years of age, yet her mental age was around 6 to 8 years. It was contended that the mental age of the victim must be taken into consideration and not the physical age. The contention was rejected by the Supreme Court by stating that such interpretation of 'age' would create confusion. Therefore, it was held that only biological age can be a factor under the POCSO Act, 2012 and not 'mental age'.

4. Exploitation of Children in the State of Tamil Nadu v. Union of India [AIR 2017 SC 2546]

In this case, the PIL was instituted upon a letter by the NGO. Following guidelines were issued by the Supreme Court:

- a. The definition of 'child' under Section 2(14) of the Juvenile Justice Act should not be interpreted as an exhaustive definition.
- b. The Union Government and the governments of the States and Union Territories must ensure that the process of registration of all child care institutions is completed positively by 31st December, 2017 with the entire data being confirmed and validated. The information should be available with all the concerned officials.
- c. The governments of the States and Union Territories should draw up plans for full and proper utilization of grants (along with expenditure statements) given by the Union Government.
- d. It is imperative that the Union Government and the governments of the States and Union Territories must concentrate on rehabilitation and social re-integration of children in need of care and protection.
- e. Social audits must be conducted by the respective authorities.

5. Alakh Alok Srivastava v. Union of India [2020]

The following guidelines were issued by the Supreme Court in the above case:

- a. The Special Courts must try and dispose of the cases related to POCSO. The presiding officers must be sensitized in the matters of child protection and psychological response.
- b. Unnecessary adjournments must not be granted by the Special Courts and the cases must be disposed of in a time bound manner or within a specific time frame under the Act.
- c. The Chief Justices of the High Courts are requested to constitute a Committee of three Judges to regulate and monitor the progress of trials under the POCSO Act.
- d. The Director General of Police must constitute a Special Task Force which shall ensure that the investigation is properly conducted and witnesses are produced on the dates fixed before the trial courts.
- e. Adequate steps must be taken by the High Courts to provide a child friendly atmosphere in the Special Courts keeping in view the provisions of the POCSO Act so that the spirit of the Act is observed.

PRACTICAL CASE SCENARIO

PRACTICAL CASE SCENARIO NO. 1

Maya works in a hotel as a waitress. She gets to know that the owner of the hotel uses the rooms to make child pornography video. Both male as well as female children are used for making such videos. Maya turns a blind eye to this and does nothing. What offense has she committed?

Answer: Maya is liable under Section 20 of the POCSO Act. According to Section 20, any personnel of the media/hotel/lodge/hospital/club/studio shall, on coming across any material or object which is sexually exploitative of the child 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.

PRACTICAL CASE SCENARIO NO. 2

Manisha is a girl 19 years of age. She has a younger sister of 16 years. To blackmail a boy of the sister's class, she files a complaint under Section 7 of the POCSO Act. Has she committed an offense under the POCSO Act?

Answer: Yes, Manisha has committed an offense under Section 22 of the POCSO Act.

Making a false complaint or providing false information against any person, in respect of an offense committed under Sections 3, 5, 7 and 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 6 months or with fine or with both.

Secondly, whoever, not being a child, makes a false complaint or provides false information against a child, knowing it to be false, thereby victimizing 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. She will be liable under Section 22(3) of the POCSO Act.

PRACTICAL CASE SCENARIO NO. 3

Ananya is a woman of 25 years. She is a kindergarten teacher. It comes to her knowledge that one of her female students is being sexually assaulted by her step father. What remedies does Ananya have?

Answer: Under Section 19 of the Act, it is the duty of Ananya to report the offense to the following:

- a. Special Juvenile Police Unit; or
- b. The local police

In simple words, Ananya must file a complaint with any of the above bodies.

PRACTICAL CASE SCENARIO NO. 4

Pallavi is a mother of a girl child of 7 years. It comes to her knowledge that her daughter's teacher is molesting her daughter. She files a complaint under Section 5 of the POCSO Act. The police officer wishes to take a statement from Pallavi's daughter. He calls Pallavi and her daughter to the police station. Has the police officer breached any statutory provision of the POCSO Act?

Answer: Yes, the police officer has breached Section 24 of the POCSO Act. According to Section 24 of the Act, the statement of the child must be recorded:

- a. At the residence of the child;
- b. At a place where he/she usually resides;
- c. At the place of his/her choice.

Secondly, as far as practicable, the statement must be recorded by a woman police officer not below the rank of sub-inspector.

PRACTICAL CASE SCENARIO NO. 5

Yasmine, a 17 years old girl is sexually assaulted by a man of 28 years of age. The offense alleged comes under the purview of Section 7 of the Act. The accused contends before the court that the burden of proof is on the

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prosecution to prove that he has committed the offense. Is his contention correct?

Answer: No, the contention of the accused person is incorrect. As per Section 29 of the POCSO Act, when a person is 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. In simple words, the burden of proof is upon the accused and not the prosecution/victim/complainant.

FAQ's: Reality Check

1. I am 14 years old and made a complaint against my teacher for sexual assault. But later realized that it was not sexual assault. My teacher was just patting me on the back. Will I be punished for false complaint under the POCSO Act?

No, according to Section 22(2) no punishment shall be imposed on any child for a false complaint or false information provided under the Act.

2. I am 16 years old and made a complaint against my classmate for sexually assaulting me because I didn't like him. Will I be punished under the Act?

Yes, false complaint or providing false information against a child, knowing it to be false, is punished under Section 22(3) of the Act with imprisonment which may extend to one year or with fine or with both.

3. My teacher and my mom got into a fight and later just to in order to humiliate my teacher my mom pressed charges against him for sexually assaulting me. Will my mom be punished under the Act?

Yes, 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. [Section 22(1)]

4. I work as a Peon in an educational institute and I saw a teacher of the institute sexually assaulting a student roughly 14-15 years of age but did nothing. Will I be punished under the POCSO Act?

Yes, any person, who fails to report the commission of an offence will be punished with imprisonment of either description which may extend to six months or with fine or with both. [Section 21]

5. I am a Journalist and recently I published a report on child abuse at a correctional facility which unintentionally disclosed the identity of the chil-

dren including their name, address, family details, etc. Have I committed any offence?

Yes, Section 22 (2) of the POCSO Act prohibits disclosure of personal information of a child unless with special permission of the Court. You will 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.

ASSESS YOURSELF: MULTIPLE CHOICE QUESTIONS

1. The POCSO Act makes the following bodies responsible for the implementation of the provisions of the Act:

- a. Local authorities and civic bodies
- b. State Commissions for Protection of Child Rights
- c. Police and the judiciary
- d. State legislatures

2. Who is empowered to appoint Special Public Prosecutors under the Act?

- a. State Commissions for Protection of Child Rights
- b. The Special Courts
- c. The Central Government
- d. The State Government

3. Which Court will be designated as a Special Court under Section 28 for providing a speedy trial under the Act?

- a. Court of Judicial Magistrate First Class
- b. Court of Session
- c. Both (a) and (b)
- d. None of the above.

4. Who will have the Burden of Proof in an offence committed or admitted under Sections 3, 5, 7 and 9 of the Act?

- a. The person alleging the offence
- b. The Public prosecutor
- c. The person who has been accused of committing the offence
- d. None of the above

5. Uttering any word or making any sound, or gesture with sexual intention that such word or sound shall be heard by the child amounts to sexual harassment. This statement is:

- a. True
- b. False
- c. Partly true
- d. Partly False

6. Any question which involves “sexual intent” shall be a

- _____.
- a. Question of Law
 - b. Question of fact
 - c. Question of Law as well as fact
 - d. None of the above

7. “Child pornography” is defined under the Act as:

- a. Any visual depiction of sexually explicit conduct involving a child
- b. It include photograph, video, digital or computer generated image indistinguishable from an actual child
- c. Image created, adapted, or modified, but appear to depict a child
- d. All of the above

8. “Child sex abuse includes:

- a. Inducement or coercion of a child in unlawful activity.

- b. The exploitative use of child in prostitution or other unlawful sexual practices
- c. The exploitative use of children in pornographic performances and materials.
- d. All of the above

9. “Aggravated sexual assault” against a child can be by:

- a. Sexual assault by a Police Officer
- b. Sexual assault by a Army Officer
- c. Both (a) and (b)
- d. None of the above

10. When a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, it will be:

- a. Sexual assault
- b. Sexual harassment
- c. Aggravated sexual assault
- d. All of the above

ANSWER KEY									
1	2	3	4	5	6	7	8	9	10
c	d	b	c	a	b	d	d	c	c

In addition to the laws discussed above, some other special legislations which have an impact on women, and can be abused:

- Immoral Traffic (Prevention) Act – when misused against sex workers who are voluntary in the profession, and have a legal right to be so
 - Trafficking of children – provisions under the ITPA and IPC to protect them in such a situation
 - The office of abortion, and the exceptions to it under the Medical Termination of Pregnancy Act which recognizes agency of the woman with respect to abortion
 - The offence of female foeticide, and the protection and safeguards surrounding that
 - Honour killings – of women who marry outside caste, religion or to same sex partners – and the laws protecting them
-

PART - E

Women & Reproductive Health Rights

**LEGAL AWARENESS PROGRAMME
BY
NATIONAL LEGAL SERVICES AUTHORITY
IN COLLABORATION WITH
NATIONAL COMMISSION FOR WOMEN
&
KNOWLEDGE PARTNER - ALL INDIA REPORTER**

**IEC & TRAINING MODULE
For Resource Persons
ON
WOMEN & THE REPRODUCTIVE HEALTH RIGHTS
THE MEDICAL TERMINATION OF
PREGNANCY ACT, 1971**

About the Medical Termination of Pregnancy Act, 1971**IEC Material & Training Module**

The IEC & Training Module is primarily for Resource Persons of NALSA, as it focuses on particular responsibilities in spreading legal awareness about Women & Reproductive Health Rights (The Medical Termination of Pregnancy Act, 1971), as a part of Legal Awareness Programme undertaken by National Legal Services Authority in collaboration with National Commission for Women. Resource Persons will find it as a useful source of information & guidance.

The main objective of this IEC & Training Module is to inspire, motivate, cultivate curiosity, shape the opinion and enlighten the Resource Persons on issues concerning women and Reproductive Health Rights (The Medical Termination of Pregnancy Act, 1971).

The overall content consists of grounds for termination of pregnancy and who can conduct the procedure. This has been written in an interactive Question Answer style, in a lucid and simple language.

NALSA hopes that the Resource Persons will be benefited immensely by these IEC & Training Modules.

Objective

- *To give an overview of the Scheme made under the Medical Termination of Pregnancy Act, 1971.*
- *To improve the understanding of Resource Persons about the challenges & barriers women confront in accessing and enjoying their pregnancy.*

Learning Outcome

The participants (Resource Persons) will be able to completely understand their role and responsibilities in spreading legal awareness about Medical Termination of Pregnancy provided under the Act.

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THE MEDICAL TERMINATION OF PREGNANCY ACT, 1971**Introduction**

Today, the debate on legalizing abortion continues across the world and at least 26 countries has prohibited abortion altogether. Advancement of the rights of women has been the concern of the world community since the end of the Second World War. In this background the focus of work of the United Nations (UN) since its inception has been the advancement of women in general. This can be gathered from the Preamble and different Articles of the UN Charter for e.g., Articles 1 and 8 stress on the equality of men and women in achieving international co-operation in solving international problems. Article 13 of the UN Charter lays emphasis upon “promoting international co-operation in the economic, social, cultural, educational and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. For the promotion of status of women in various fields and to eliminate discrimination against women, two organs were established under the UN system namely:

1. The Commission on the Status of Women; and
2. The Commission on the Elimination of Discrimination Against Women

The Commission on the Status of Women was primarily concerned (1) with the improvement of the status of women in law, particularly private law and (2) with the advancement in women’s enjoyment of their right to education, employment and health care. With Health care the important aspect of a woman’s life i.e., Pregnancy followed by motherhood comes up. She is the one who conceives and nurtures the unborn baby in her womb and after the birth motherhood follows for lifetime. Earlier she had no say in deciding whether she wants to be a mother or not. With the advent of feminism, the women have become aware of their rights. Women have now started taking their own decisions relating to their life and body.

This women liberation movement has led towards the highly debated Anti and Pro-abortion Rights. The Feminist and the women liberation movement that sparked in the 1950’s and 60’s in the USA, gained momentum, leading towards the highly debated Anti and Pro-abortion Rights.

In India, prior to 1971, till the passing of Medical Termination of Pregnancy Act, the law of abortion in India was contained in the provisions of **Sections 312 to 316** of Indian Penal Code. They were strict and punitive in nature. Abortion

was made a crime for which the mother as well as the abortionist could be punished and the only exception was in order to save the life of the mother. This strict law led to many illegal abortions breaching the law.

It is estimated that 15.6 million abortions take place in India every year. A significant proportion of these are expected to be unsafe. Unsafe abortion is the third largest cause of maternal mortality leading to death of 10 women each day and thousands more facing morbidities.

On these bases, in 1969, Medical Termination of Pregnancy bill was introduced in Rajya Sabha and Lok Sabha and passed by Indian Parliament in August, 1971. The Medical Termination of Pregnancy Act, 1971 (MTP Act) was implemented from April, 1972. Implemented rules and regulations were again revised in 1975 to eliminate time consuming procedures for the approval of the place and to make services more readily available.

● **The Medical Termination of Pregnancy Act, 1971**

The Preamble of the Act states “an Act to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto”. The preamble is clear in stating that termination of pregnancy would be permitted in certain cases only.

The Act, consisting of only eight Sections, is a landmark in the history of social legislation. The object of the Act, besides the elimination of the high incidence of illegal abortions, is perhaps to confer on the woman the right to privacy, and the right to decide about her own body. Another important feature of the Act is to encourage a reduction in the rate of population growth by permitting termination of an unwanted pregnancy of a married woman on the ground that a contraceptive device failed. The Act provides for termination of pregnancy by a registered medical practitioner only. The MTP (Amendment) Bill, 2020 amends the Medical Termination of Pregnancy Act, 1971. Thus, there is avoidable wastage of the mother's health, strength and sometimes life. The proposed measures which seek to liberalize certain existing provisions relating to termination of pregnancy has been conceived:

- As a health measure when there is danger to life or risk to physical or mental health of the woman;
- On humanitarian grounds when pregnancy arises from sex crime like rape or intercourse with a lunatic woman;
- Eugenic grounds when there is substantial risk that the child, if born, would suffer from deformities and diseases.

✦ What are the salient features of the MTP Act?

- It indicates when pregnancy could be terminated i.e., upto 24 weeks of pregnancy.
- It specifies other conditions for safe termination of pregnancy.
- It indicates that only a qualified registered medical practitioner as defined under the Act, could terminate the pregnancy and relied upon the Indian Penal Code for punishment if conducted by any other.
- It also provides that such termination of pregnancy could be done only in a place established, maintained or approved by the Government.

✦ Important provisions of Medical Termination of Pregnancy Act, 1971 at a glance

Sr. No.	Section	Heading
1	Section 3	When Pregnancies may be terminated by registered medical practitioners
2	Section 4	Place where pregnancy may be terminated
3	Section 5	Sections 3 and 4 when not to apply
4	Section 6	Power to make rules
5	Section 7	Power to make regulations
6	Section 8	Protection of action taken in good faith

✦ Who is a registered Medical Practitioner under the MTP Act, 1971?

Registered medical practitioner (Section 2(d))	<p>A medical practitioner who possesses any recognized medical qualification as defined in Cl.(h) of Section 2 of the Indian Medical Council Act, 1956 (102 of 1956)</p> <p>Whose name has been entered in a State Medical Register, and</p> <p>Who has such experience or training in gynecology and obstetrics as may be prescribed by rules made under this Act</p>
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✦ When can a Medical Practitioner terminate a pregnancy?

According to **Section 3** of the MTP Act a pregnancy may be terminated by a registered Medical Practitioner.

- a. Where the length of the pregnancy does not exceed 20 weeks if such medical practitioner is, or
- b. Where the length of the pregnancy exceeds 20 weeks but does not exceed 24 weeks, if not less than 2 registered medical practitioners are of opinion, formed in good faith that:
 - The continuance of the pregnancy would involve a risk to the life of the pregnant woman; or
 - A risk of grave injury to her physical or mental health; or
 - If the pregnancy is caused by rape or shall be presumed to constitute a grave injury;
 - There exists a substantial risk that, if the child were born it would suffer from some physical or mental abnormalities so as to be seriously handicapped; or
 - Failure of any device or method used by the married couple for the purpose of limiting the number of children the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury;
 - Risk of injury to the health of the pregnant woman by the reason of her actual or reasonably foreseeable environment.

✦ Is consent necessary for termination of pregnancy?

Yes. As per the provisions of MTP Act, consent is mandatory.

✦ Whose consent would be necessary for termination of pregnancy?

Section 3(4) of MTP Act clarifies as to whose consent would be necessary for termination of pregnancy.

No pregnancy of a woman, who has not attained the age of 18 years, or who having attained the age of 18 years, is a mentally ill person, shall be terminated except with the consent in writing of her guardian.

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

- The consent of the woman is the essential factor for termination of her pregnancy.
- The husband's consent is irrelevant. Therefore, if the woman wants an abortion but her husband objects to it, the abortion can still be done.

- However, the consent of the guardian is needed in the case of minors or mentally ill persons.

✦ Whose opinion is required for termination of pregnancy?

- The MTP Act states that for terminations up to 12 weeks, the opinion of a single Registered Medical Practitioner is required and
- For terminations between 12 and 20 weeks the opinion of two Registered Medical Practitioners is required.

✦ Where can the pregnancy be terminated?

Section 4 specifies the place where, under MTP Act, a pregnancy can be terminated. No termination of pregnancy shall be made in accordance with this Act at any place other than:

- a. A hospital established or maintained by Government, or
- b. A place for the time being approved for the purpose of this Act by the Government or a District Level Committee constituted by that Government with the Chief Medical Officer or a District Health Officer as the Chairperson of the said Committee.

✦ When will termination of pregnancy amounts to an offence under the Act?

Section 5 of the Act specifies that notwithstanding anything contained in the Indian Penal Code (Code), the termination performed by any person who is not a registered medical practitioner under the Act will constitute an offence and punishable under the Code and the Code will stand modified in this respect. As the MTP Act provides no specific penalties as such in this respect the following tabular representation of offences and penalties given under the Code will be helpful:-

Sr. No.	Section under IPC	Offence, Punishment/Penalties
1	Section 312	Causing miscarriage:- Para 1- Offence is non-cognizable, non-bailable and non-compoundable. Triable by Magistrate of First Class Punishment- 3 Yrs. imprisonment or fine or both Para 2- Offence is non-cognizable, bailable and non-compoundable. Triable by Magistrate of First Class Punishment- 7 Yrs. imprisonment and fine

Sr. No.	Section under IPC	Offence, Punishment/Penalties
2	Section 313	Causing miscarriage without woman's consent Offence is Cognizable, non-bailable and non-compoundable. Triable by Court of Session Punishment- Life Imprisonment or Imprisonment for 10 Yrs. and Fine
3	Section 314	Death caused by act done with intent to cause miscarriage Para 1- Offence is Cognizable, non-bailable and non-compoundable. Triable by Court of Session Punishment- Imprisonment for 10 Years and fine Para 2- Offence is Cognizable, Non-bailable and Non-compoundable. Triable by Court of Session Punishment- Imprisonment for Life or as above
4	Section 315	Act done with intent to prevent child being born alive or to cause it to die after birth Offence is Cognizable, Non-bailable and Non-compoundable Triable by Court of Session Punishment- Imprisonment for Life or Fine or both
5	Section 316	Causing death of quick unborn child by act amounting to culpable homicide Offence is Cognizable, Non-bailable and Non-compoundable Triable by Court of Session Punishment- Imprisonment for 10 Years and Fine

✦ **Are there any recent amendments to the Medical Termination of Pregnancy Act?**

Yes, the Medical Termination of Pregnancy Act of 1971 was amended recently by The Medical Termination of Pregnancy (Amendment) Bill, 2020

✦ **What are the features of The Medical Termination of Pregnancy (Amendment) Act, 2021?**

- The Medical Termination of Pregnancy (Amendment) Act, 2021 provides mandatory requirement of an opinion from one medical practitioner for termination of pregnancy up to 20 weeks of gestation and introducing the requirement of opinion from two medical practitioners for termination of pregnancy up to 20 to 24 weeks of gestation.

- The amended Act increased the upper gestation limit from 20 to 24 weeks for special categories of women such as vulnerable women including survivors of rape, victims of incest and others such as differently-abled women and minors.

- Under the amendment, the upper gestation limit will not apply in cases of substantial fetal abnormalities diagnosed by the Medical Board.

- The name and other details of the woman whose pregnancy has been terminated shall not be revealed except to a person authorized by the law.

✦ **Whether recent amendment has added any offences to the MTP Act, 1971?**

Yes, as per **Section 5-A(2)** in case the details of the woman whose pregnancy has been terminated under the MTP Act are revealed to any person except the person authorized by law then such person who contravenes this provision stipulated under **Section 5-A(1)** shall be punishable with imprisonment which may extend to **one year** or with fine or with both.

✦ **Is 'Medical Board' required to be constituted under the Medical Termination of Pregnancy (Amendment) Act, 2021?**

Yes, under the present Act 2021, every State Government is required to constitute a Medical Board. These Medical Boards will consist of the following members:

- A gynecologist
- A pediatrician
- A radiologist or Sonologist
- Any other number of members, as may be notified by the state government or Union territory in Official Gazette

FAQ's – REALITY CHECK

1. I am already a mother of two children, a son and a daughter and now I am pregnant again. My husband is a security guard and we cannot afford the expenses of one more family member so can I legally get an abortion done?

Yes, if the expense of the child cannot be borne by the family and which can completely hamper his nourishment in the future you can get an abortion but only if you have not exceeded 20 weeks from the date of pregnancy.

2. I got tested and my doctor stated that there are 90% chances that my child will be born with cerebral palsy. The tests show very less brain and hand activity. Can I get an abortion done?

Yes, with the consultation and approval of two registered medical practitioners you can get an abortion looking at the scenario that the child, if born, will have permanent physical and mental disabilities.

3. My neighbour is 16 years old and she is pregnant. The pregnancy is against her will and if not terminated she would suffer traumatic and psychological shock. Can she get an abortion?

Yes, if the registered medical practitioner on examination finds that the termination would not affect the girl's life and safety.

4. I have a 13 years old daughter who was raped by one of her cousins on several occasions and is now 26 weeks pregnant. I have consulted a doctor who stated that my daughter is physically incapable of carrying a child. Can I get her pregnancy terminated?

Yes, if the medical board claims that there is a greater risk to the pregnant girl's life if it is continued, then termination is possible.

5. I am 17 years old and I had eloped from my district and married a man from another district. 2 weeks back I discovered I was 27 weeks pregnant. I am not ready to have a child. Can I terminate the pregnancy?

No, unless there is any risk to you or your child the termination of a 27 weeks old fetus is not permissible.

6. I have a 19 years old daughter who suffers from mild to moderate mental retardation and is 32 weeks pregnant. In consultation with the medical board, it is observed that if the pregnancy were continued, the fetus would suffer severe cognitive and motor impairment even after surgery. Can the pregnancy be terminated?

Yes, if the board is satisfied that on continuing the pregnancy the child will not be in a good state the pregnancy can be terminated.

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LANDMARK JUDGMENTS**1. Krupa Prolifers v. State of Kerala [WP(C).No.37463 of 2008]**

The petitioner, a registered educational and charitable Trust, with the help of media, such as television, newspapers, weeklies, magazines etc., states that the Pharmaceutical Company, respondent herein, is promoting abortion among women, by advertising that the use of the tablet named “I-pill” within 72 hours of fertilization will prevent pregnancy and also giving assurance that it will be available from any Medical Store without the prescription of a medical practitioner. It is vehemently argued that the law in this regard, especially, the Medical Termination of Pregnancy Act, 1971 allows/permits only registered medical practitioners to terminate the pregnancy of a woman, that too, in unavoidable circumstances, that too, in accordance with the provisions of the Act. It is submitted that the availability of these types of tablets, without any restriction, would adversely affect the younger generation of the nation and in the long run, it would destroy morality and the society will fall into anarchy.

Court held that the tablet I-pill manufactured by the respondent is only a contraceptive pill and does not cause abortion; the apprehension of the petitioner is misconceived. Though the individual morality concept is based on religious faith which may prohibit even contraceptive measures, the court cannot go into it. Since the I-pill is only a contraceptive pill meant for preventing fertilization and not meant for causing abortion, the writ petition was dismissed as devoid of merits.

2. Suchita Srivastava & Anr. v. Chandigarh Administration [AIR 2010 SC 235]

Suchita Shrivastava had become pregnant as a result of an alleged rape that took place while she was an inmate at a government-run welfare institution located in Chandigarh. After the discovery of her pregnancy, the Chandigarh Administration, which is the respondent in this case, had approached the High Court seeking approval for the termination of her pregnancy, keeping in mind that in addition to being mentally retarded she was also an orphan who did not have any parent or guardian to look after her or her prospective child. But the petitioner had expressed her willingness to bear a child.

The Court held that the victim’s pregnancy cannot be terminated without her consent and proceeding with the same would not have served her ‘best interests’. Proceeding with an abortion at such a late stage (19-20 weeks of gestation period) poses significant risks to the physical health of the victim.

3. Dr. Mangla Dogra & others v. Anil Kumar Malhotra & others [2012 AIR CC 1401 (P&H)]

The marriage between Anil Kumar Malhotra and Seema Malhotra was solemnized on 17.4.1994. Out of the wedlock, a baby boy was born on 14.2.1995. Due to the hostilities and strained relations between the parties, Seema Malhotra along with her minor son had been staying with her parents at Chandigarh since 1999. Seema Malhotra filed an application under Section 125 Cr.P.C. claiming maintenance from the husband, Anil Kumar Malhotra. On 9.11.2002, during the pendency of the application under Section 125 Cr. P. C., with the efforts of the Lok Adalat, Chandigarh, she agreed to accompany the husband. On 2.1.2003, Anil Kumar Malhotra came to know that Seema Malhotra had conceived. Seema Malhotra did not want to continue with the pregnancy and she wanted to get the fetus aborted, as despite their living together, the differences between them persisted. However, she was adamant to get the fetus aborted but the husband refused. The husband filed a suit for a mandatory injunction restraining the wife from getting the fetus aborted. The MTP was done by Dr. Mangla Dogra assisted by Dr. Sukhbir Grewal as Anesthetist. The husband filed a civil suit for the recovery of Rs. 30 lacs towards damages on account of mental pain, agony and harassment against the wife, Seema Malhotra, her parents, brother, Dr. Mangla Dogra and Dr. Sukhbir Grewal for getting the pregnancy terminated illegally.

The Punjab and Haryana High Court ruled that consent is required only of the woman undergoing MTP, and the husband cannot force his wife to continue a pregnancy.

In *Murugan Nayakkar v. Union of India & Ors.* W.P. (C) No. 749/2017, the Apex Court allowed the termination of 32-weeks old pregnancy of a 13-years-old rape victim holding, “Considering the age of the petitioner, the trauma she has suffered because of the sexual abuse and the agony she is going through at present and above all the report of the Medical Board constituted by this Court, we think it appropriate that termination of pregnancy should be allowed.”

However, in *Savita Sachin Patil v. Union of India* the Court rejected termination of a 27-weeks pregnancy. The Medical Board gave a finding that there was no physical risk to the mother but the fetus had severe physical anomalies. The Court then did not permit termination on the ground, based on the Medical Board Report.

PRACTICAL CASE SCENARIO

PRACTICAL CASE SCENARIO NO. 1

Seema was 22 years old when she realized she was 26 weeks pregnant. She approached the Bombay High Court seeking permission to abort her fetus that was diagnosed with congenital heart defect. Can the Court allow her plea?

Answer: As per Section 3(2)(b)(ii) the termination is allowed only when the registered medical practitioner/s are of the opinion that if child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped. The High Court turned down the plea, arguing that if born, the fetus would not suffer from any such serious handicap as mentioned in the MTP Act. As a result, Seema's pregnancy could not be terminated.

PRACTICAL CASE SCENARIO NO. 2

Seema was 16 years old when she was raped in the year 2011. As a result, she became pregnant. She even tried to commit suicide by consuming rat kill poison but was unsuccessful. In the year 2012, she approached the Gujarat High Court for abortion of her 24 weeks fetus, will she succeed?

Answer: Yes, she will succeed. Section 3(2)(b)(i) of the MTP Act makes it clear that when the two medical practitioners (as it is 24 weeks fetus) are of the opinion that continuation of pregnancy will lead to grave injury to the victim's physical or mental health, her pregnancy be terminated. Accordingly, the High Court granted permission, citing that the continuation of the pregnancy may result in a grave injury to her mental health.

PRACTICAL CASE SCENARIO NO. 3

Seema, a 27 years old rape victim approached the Supreme Court seeking permission to terminate her 28-weeks pregnancy, as the fetus was detected with Anencephaly, a condition whereby most part of the brain, skull and scalp is missing. Will Seema get justice?

Answer: The medical board, after having examined her on the directions of the Supreme Court, declared that the woman's life was in danger. Here Section 3(2B) of the amended MTP Act will come to Seema's rescue where in such termination is necessitated by the diagnosis of any of the substantial fetal abnormalities diagnosed by a Medical Board constituted under sub-section (2D) of Section 3 of amended MTP Act. The Apex Court then conferred her justice by granting her permission to abort the fetus.

PRACTICAL CASE SCENARIO NO. 4

Seema, a 36 years old woman in her 30th week of pregnancy approached the Supreme Court for permission to abort her fetus that was found to be suffering from Down Syndrome. How will the Court handle the situation?

Answer: The Hon'ble Court will take the help of a Medical Board constituted under Section 3(2D) of the amended MTP Act. As per Section 3(2B) the length of the pregnancy will not be a bar for denial of termination of the pregnancy but only in exceptional cases. The opinion as to whether the given situation falls in the exception or not a Medical Board needs to be constituted. Finally, the Court decides the matter on the opinion of the Board. In this case after the medical board appointed by the Court advised against an abortion, the Apex Court denied her permission to terminate the pregnancy, citing that the baby could be "born alive" if the pregnancy was allowed to continue, while admitting that it was "very sad for a mother to bring up a mentally retarded child". The fetus was detected with a rare abnormality called the Arnold-Chiari malformation, where the brain and spinal cord connect. But the Medical Board did not find it an exceptional case involving substantial fetal abnormalities to allow its termination.

PRACTICAL CASE SCENARIO NO. 5

Seema, an HIV-positive destitute rape victim approached the Patna High Court with a plea to terminate her pregnancy. After the High Court turned down the plea, saying that "it was a compelling responsibility of the state to keep the child alive", will she succeed in the Supreme Court?

Answer: Yes, she will succeed in the Apex Court. The Explanation 2 of Section 3 of the Amended MTP Act makes it clear that when the pregnancy is the result of rape then the anguish caused by such pregnancy is presumed to constitute grave injury to the mental health of the pregnant woman. The Apex Court appointed an AIIMS medical board to examine her. It stated that "a woman, who has already become destitute, being sexually assaulted and suffering from a serious ailment, should not go through further suffering. The quintessential purpose of life is the dignity of life and all efforts are to be made to sustain it". The Apex Court then granted permission to abort the 26-weeks old fetus relying upon the opinion of the board.

ASSESS YOURSELF: MULTIPLE CHOICE QUESTIONS

1. Natural abortion may occur due to which of the following reasons?

- a. Bad health of the mother
- b. Shock
- c. Accident
- d. All of the above

2. Medical Termination of Pregnancy (MTP) is a maternal health care measure, which helps to avoid the maternal mortality and morbidity resulting from illegal abortions. The statement is _____.

- a. Correct
- b. Incorrect
- c. Partly correct
- d. None of the above

3. Medical termination of pregnancy bill was introduced in Rajya Sabha and Lok Sabha and passed by Indian Parliament in August _____.

- a. 1973
- b. 1972
- c. 1971
- d. 1970

4. A medical practitioner is defined under _____ of the MTP Act, 1971.

- a. Section 2(a)
- b. Section 2(b)
- c. Section 2(c)
- d. Section 2(d)

5. The MTP Act, 1971 does not permit termination of pregnancy after _____.

- a. 18 weeks
- b. 20 weeks

- c. 25 weeks
- d. 30 weeks

6. Allopathic doctors who are duly registered with the State Medical Council are not authorized to do abortion. The statement is _____.

- a. Correct
- b. Incorrect
- c. Partly correct
- d. None of the above

7. What are the key features of the Medical Termination of Pregnancy Act, 1971?

- a. It indicates when pregnancy could be terminated
- b. It specifies the indications when termination of pregnancy could be done
- c. It indicates that termination of pregnancy could be done only in a place established, maintained or approved by the Government
- d. All of the above

8. _____ specifies the place where, under MTP, a pregnancy can be terminated.

- a. Section 3
- b. Section 4
- c. Section 5
- d. Section 6

9. The Medical Termination of Pregnancy (Amendment) Bill, 2020 the Medical Board should consist of _____.

- a. A gynecologist
- b. A pediatrician
- c. A radiologist
- d. All of the above

10. According to The Medical Termination of Pregnancy (Amendment) Bill, 2020 who can opt for an abortion at 24 weeks and beyond?

- a. Rape survivor
- b. Pregnancy caused as result of incest
- c. Differently abled woman
- d. All of the above

ANSWER KEY									
1	2	3	4	5	6	7	8	9	10
d	a	c	d	b	b	d	b	d	d

**LEGAL AWARENESS PROGRAMME
BY
NATIONAL LEGAL SERVICES AUTHORITY
IN COLLABORATION WITH
NATIONAL COMMISSION FOR WOMEN
&
KNOWLEDGE PARTNER - ALL INDIA REPORTER**

**IEC & TRAINING MODULE
For Resource Persons
ON
WOMEN & REPRODUCTIVE HEALTH RIGHTS
PRE-CONCEPTION AND THE PRE-NATAL
DIAGNOSTIC TECHNIQUE
(PROHIBITION OF SEX SELECTION)
ACT, 1994 [PCPNDT]**

Training Module**IEC Material & Training Module**

The IEC & Training Module is primarily for Resource Persons of NALSA, as it focuses on particular responsibilities in spreading legal awareness about women and their Reproductive Health Rights (Pre-Natal Diagnostic Technique (Regulation and prevention of Misuse) Act, 2002), as a part of Legal Awareness Programme undertaken by National Legal Services Authority in collaboration with Nation Commission for Women. Resource Persons will find it as a useful source of information & guidance.

The main objective of this IEC & Training Module is to inspire, motivate, shape the opinion and enlighten the Resource Persons on issues concerning Women & their Reproductive Health Rights [Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994].

The overall content consists of various reproductive health rights guaranteed to women in general. This has been written in an interactive Question Answer style, in a lucid and simple language.

NALSA hopes that the Resource Person will be benefitted immensely by these IEC & Training Modules.

Objective

- *To give an overview of the Scheme made under the Pre-Natal Diagnostic Technique Act, 1994*
- *To familiarize the Resource Persons with the 'Reproductive health Rights' available to every Women*
- *To improve the understanding of Resource Persons about the challenges & barriers women confront in accessing and enjoying their Reproductive health Rights*

Learning Outcome

- *Legal awareness regarding the provisions of the Pre-Natal Diagnostic Technique Act, 1994*
- *Training participants (Resource Persons) in spreading awareness about the women's reproductive health rights in general*

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PRE-CONCEPTION AND THE PRE-NATAL DIAGNOSTIC TECHNIQUE (PROHIBITION OF SEX SELECTION) ACT, 1994 [PCPNDT]

Introduction

India has followed 'patriarchy' for ages. A son was considered necessary to carry on the lineage of the family while a girl child was considered a curse. Naturally the couple looks forward to the birth of male child. Unfortunately, in some parts of India the family desperately wait for the male child and for that it tries to find out the sex of the foetus and if it is a female foetus it is aborted. Although the Constitution of India in its Part III on Fundamental Rights prohibits discrimination on the basis of sex, gender-based discrimination is widely prevalent phenomenon in Indian society. Historically discrimination on the basis of sex occurred in various forms whereby women have been subjugated in every Strata of societal existence. A new addition to it is the misuse of technology for determination and formula for sex selection. What is more serious here is the new form of discrimination by total elimination of female foetus and not to allow her to take birth. This has resulted in the imbalance in the child sex ratio.

According to the 2011 census, in the age group 0-6 years, the gender ratio is 914 girls to 1000 boys which is the lowest gender ratio recorded since India's independence. A girl child is thought of as a liability which the people still want to dispose of completely so that the burden can be eliminated at its very inception. "May you be the mother of a hundred sons!", we all must be familiar with this saying and if we analyze the phrase, we will understand the root cause of the popularity of sex determination tests in India. The strong son-preference that has the sanction of religion, tradition, and culture, though declining but still is far from complete eradication. In 1988, the State of Maharashtra became the first in the country to ban pre-natal sex determination through the enactment of the 'Maharashtra Regulation of Prenatal Diagnostics Techniques Act'. At the national level, the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act (PC & PNDT Act) was enacted on September 20, 1994. The main objective of enactment is to ban the use of sex selection techniques before or after conception and prevent the misuse of a prenatal diagnostic technique for sex-selective abortion. It is an important tool for addressing sex selective eliminations and safeguard the girl child.

● Reproductive Health Rights of Women

United Nations 1994 International Conference on Population and Development (ICPD) explains: in para 7.3 of the ICPD Programme of action "Reproductive rights embrace certain human rights that are already recognized in national

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laws, international human rights documents and other consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence.”

In India, Women’s sexual and reproductive health is related to various fundamental human rights guaranteed by the Constitution of India, including the Rights to:

- Life
- Liberty
- Health
- Reproductive Health Rights
- Marriage Rights Privacy
- Equality and Non-Discrimination
- Rights against human rights violation
- Free from Torture or Other Cruel, Inhuman, or Degrading Treatment
- Free from Sexual and Gender-Based Violence
- Education and Information
- Access to technological changes

These rights are understood only in the context of selective issues like child marriage, female feticide, sex selection and menstrual health and hygiene issues. The recognition of sexual and reproductive rights of women as a whole still remains negligible in the country. There are still various issues that need serious consideration, a few of them are:

- Unsafe abortions: Only 22% of abortions are done through public or private health facilities.
- Lack of access to safe abortion clinics, particularly public hospitals, stigma and attitudes toward women, especially young, unmarried women seeking abortion.
- The law does not accommodate non-medical concerns over the Economic costs of raising a child, effects on Career Decisions, or any other personal considerations, etc.

✦ The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse Act, 2002)

The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse Act, 2002) is an Act to provide for the regulation of the use of pre-natal diagnostic

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techniques for the purpose of detecting genetic or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of the misuse of such techniques for the purpose of pre-natal sex determination leading to female feticide; and, for matters connected therewith or incidental thereto.

✦ Important Provisions of Pre-conception and Pre-natal Diagnostic Technique Act at a Glance

Sr. No.	Section	Heading
1	Section 3	Regulation of Genetic Counselling Centers, Genetic Laboratories and Genetic Clinics
2	Section 4	Regulation of prenatal diagnostic techniques
3	Section 5	Written consent of pregnant woman and prohibition of communicating the sex of foetus
4	Section 6	Determination of sex prohibited
5	Section 7-16	Central Supervisory Board
6	Section 17	Appropriate Authority and Advisory Committee
7	Section 18	Registration of Genetic Counselling Centers, Genetic Laboratories or Genetic Clinics
8	Section 19	Certificate of registration
9	Section 20	Cancellation or suspension of registration
10	Section 22-28	Offences and Penalties
11	Section 29-34	Miscellaneous Provisions

✦ Important Definitions under the Act at a Glance:

Sections	Nominal Heading	Definition
Section 2(c)	Genetic Counselling Centre	An institute, hospital, nursing home, or any place, by whatever name called, which provides for genetic counselling to patients;
Section 2(d)	Genetic Clinic	A clinic, institute, hospital, nursing home, or any place, by whatever name called, which is used for conducting pre-natal diagnostic procedures;
Section 2(e)	Genetic Laboratory	A laboratory that includes a place where facilities are provided for conducting

Sections	Nominal Heading	Definition
		analysis or tests of samples received from the Genetic Clinic for prenatal diagnostic tests;
Section 2(f)	Gynecologist	A person who possesses a post-graduate qualification in gynecology and obstetrics;
Section 2(g)	Medical Geneticist	A person who possesses a degree or diploma or certificate in medical genetics in the field of pre-natal diagnostic techniques or has experience of not less than two years in such field after obtaining: any one of the medical qualifications recognized under the Indian Medical Council Act, 1956; or a post-graduate degree in biological sciences;
Section 2(h)	Pediatrician	A person who possesses a post-graduate qualification in pediatrics.
Section 2(i)	Pre-natal Diagnostic Procedures	All gynecological or obstetrical or medical procedures such as ultrasonography foetoscopy, taking or removing samples of amniotic fluid, chorionic villi, blood or any tissue of a pregnant woman for being sent to a Genetic Laboratory or Genetic Clinic for conducting pre-natal diagnostic test.
Section 2(j)	Pre-natal Diagnostic Techniques	All pre-natal diagnostic procedures and pre-natal diagnostic tests.
Section 2(k)	Pre-natal Diagnostic Test	Ultrasonography or any test or analysis of amniotic fluid, chorionic villi, blood or any tissue of a pregnant woman conducted to detect genetic or metabolic disorders or chromosomal abnormalities or congenital anomalies or haemoglobinopathies or sex-linked diseases.

Sections	Nominal Heading	Definition
Section 2(m)	Registered Medical Practitioner	A medical practitioner who possesses any recognized medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956, and whose name has been entered in a State Medical Register

✦ What are the Objectives of the PCPNDT Act?

The Act was enacted to ban the use of sex selection techniques after conception and prevent the misuse of prenatal diagnostic techniques for sex-selective abortions.

✦ What are the regulations provided under the Act regarding Genetic Counselling Centers, Genetic Laboratories, and Genetic Clinics?

- According to Section 3(1), unless already registered under this Act, no Genetic Counselling Centre/Laboratory/Clinic can conduct activities relating to pre-natal diagnostic techniques;
- Clause (2) provides that no Genetic Counselling Centre/Laboratory/Clinic can employ any person who does not possess the prescribed qualifications under the Act.
- As per Clause (3) no medical professional (may it be geneticist, gynecologist, pediatrician) or any other person will conduct by himself or through any other person, any pre-natal diagnostic techniques at a place other than a place registered under this Act.

✦ What are the regulations regarding the use of pre-natal diagnostic techniques?

According to Section 4, only the Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic will be used by any person for conducting pre-natal diagnostic techniques. The only exception to the above is for detecting [**Clause 2**]:

- genetic abnormalities
- metabolic disorders
- chromosomal abnormalities
- certain congenital malformations
- hemoglobinopathies

- sex-linked disorders

And no such techniques shall be used unless the person qualified to do so is satisfied about the following [Clause 3]:

- age of the pregnant woman is above thirty-five years;
- the pregnant woman has undergone two or more spontaneous abortions or fetal loss;
- the pregnant woman had been exposed to potentially teratogenic agents such as drugs, radiation, infection or chemicals;
- the pregnant woman has a family history of mental retardation or physical deformities such as spasticity or any other genetic disease;
- any other condition as may be specified by the Central Supervisory Board;

Further, according to Clause (4), no one will encourage pregnant women to get the prenatal diagnosis done on her except for the purpose specified in clause (2).

✦ What are the duties of a medical practitioner under the Act?

Section 5(1) has made it the duty of every medical practitioner to:

- a. explain all known side and after-effects of such procedures to the pregnant woman concerned
- b. obtain her written consent in the prescribed form to undergo such procedures in the language which she understands
- c. give the pregnant woman a copy of her written consent obtained under clause (b).

Further, no person conducting such a diagnostic can communicate, either to the pregnant woman concerned or her relatives, the sex of the fetus by words, signs, or in any other manner [Section 5(2)].

✦ Is ultrasonography of pre-natal diagnosis permitted?

No. According to Section 6, any prenatal diagnostic techniques including ultrasonography for the purpose of determining the sex of a fetus is prohibited under the Act.

✦ Can a pregnant woman be compelled by her family to undergo pre-natal diagnostic tests?

No. Any compelling act by the family of the pregnant woman forcing her to undergo pre-natal diagnostic test is punishable under section 23(3).

✦ **Can the court ‘Presume’ such compulsion in the case of conduct of pre-natal diagnostic techniques in the absence of any evidence?**

According to Section 24, the court will automatically presume (unless the contrary is proved) that the pregnant woman has been compelled by her husband or the relative to undergo pre-natal diagnostic technique and such person shall be liable for abetment of offence under section 23(3) and shall be punishable accordingly.

✦ **What is the period for which the records are to be maintained by the Genetic Counselling Centre/Laboratory/Clinic under the Act?**

All records, charts, forms, reports, consent letters and all other documents required to be maintained under this Act and the rules shall be preserved for a period of 2 years or for such period as may be prescribed. But, if any criminal or other proceedings are instituted against any Genetic Counselling Centre/Laboratory/Clinic, the records and all other documents of such Centre/Laboratory/Clinic shall be preserved till the final disposal of such proceedings. Section 29

✦ **What are the various Authorities created under the Act?**

The implementing authorities under the Act are:

- a. Central Supervisory Board (CSB).
- b. State Supervisory Board (SSB) and Union Territory Supervisory Board (UTSB).
- c. State Advisory Committee (SAC) and Union Territory Advisory Committee (UAC).
- d. Appropriate Authority (AA) for the whole or any part of the State/Union Territory.
- e. Advisory Committees (AC) for designated areas.

✦ **How is Central Supervisory Board constituted?**

Central Supervisory Board (CSB):

According to **Section 7** of the Act, the Central Supervisory Board is the main Supervisory body to exercise the powers and perform the functions conferred on it under this Act.

Clause (2) states that the Board will consist of :

Sub-Clause	Members	Appointment
a.	Chairman, ex officio	Minister in charge of the Ministry or Department of Family Welfare;
b.	Vice-Chairman, ex officio	Secretary to the Government of India in charge of the Department of Family Welfare;
c.	Three members	Appointed by the Central Government to represent the Ministries of Central Government in charge of Woman and Child Development and of Law and Justice, ex officio;
d.	Director-General of Health Services	of the Central Government, ex officio;
e.	Ten members	Appointed by the Central Government, two each from amongst: a. eminent medical geneticists; b. eminent gynecologists and obstetricians; c. eminent pediatricians; d. eminent social scientists; and e. representatives of women welfare organizations;
f.	Three women Members of Parliament	Two elected by the House of the People and one by the Council of States;
g.	Four members	<ul style="list-style-type: none"> ● Appointed by the Central Government by rotation to represent the States and the Union territories [two in the alphabetical order and two in the reverse alphabetical order]. ● No appointment under this clause shall be made except on the recommendation of the State Government or the Union territory.
h.	An officer [not below the rank of a Joint Secretary or equivalent of the Central Government]	In charge of Family Welfare, who shall be the Member-Secretary, ex officio;

✦ What is the office term of the members?**Term of office of members:**

Section 8 provides that all members except ex officio members:

- a. Appointed under clause (e) or (f), shall hold office for three years; and
- b. Appointed under clause (g), shall hold office for one year.

✦ Can members be disqualified from appointment?**Disqualifications for appointment as member [Section 14] :**

A person shall be disqualified for being appointed as a member if, he:

- a. has been convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government, involves moral turpitude; or
- b. is an un-discharged insolvent; or
- c. is of unsound mind and stands so declared by a competent court; or
- d. has been removed or dismissed from the service of the Government or a Corporation owned or controlled by the Government; or
- e. has in the opinion of the Central Government, such financial or other interest in the Board as is likely to affect prejudicially the discharge by him of his functions as a member; or
- f. has, in the opinion of the Central Government, been associated with the use or promotion of pre-natal diagnostic technique for determination of sex.

✦ What are the Functions of the Central Supervisory Board?**Functions of the Board:**

Section 16 provides that the Board shall have the following functions:

- a. to advise the Government on policy matters relating to use of pre-natal diagnostic techniques;
- b. to review implementation of the Act and the rules made thereunder and recommend changes in the said Act and rules to the Central Government;
- c. to create public awareness against the practice of pre-natal determination of sex and female feticide;
- d. to lay down code of conduct to be observed by persons working at Genetic Counselling Centers, Genetic Laboratories and Genetic Clinics;
- e. any other functions as may be specified under the Act.

✦ Who is Appropriate Authority under the PCPNDT Act?

Appropriate Authority:

Section 17 authorizes the State and the Central Government to appoint one or more Appropriate Authorities for each of the State and Union territories for the purposes of this Act.

The officers appointed as Appropriate Authorities will be [**Clause 3**] :

When appointed for the whole of the State or the Union territory	Above the rank of Joint Director of Health and Family Welfare
When appointed for any part of the State or the Union territory	Other rank as the State Government or the Central Government, as the case may be, may deem fit.

✦ What are the functions and powers of the Authority?

The following are the functions of the authority [**Clause 4**] :

- a. to grant, suspend or cancel registration of a Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic;
- b. to enforce standards prescribed for the Genetic Counselling Centre, Genetic Laboratory and Genetic Clinic;
- c. to investigate complaints of breach of the provisions of this Act or the rules made thereunder and take immediate action; and
- d. to seek and consider the advice of the Advisory Committee, constituted under sub-section (5), on application for registration and on complaints for suspension or cancellation of registration.
- e. to take appropriate legal action against the use of any sex selection technique by any person at any place, suo motu or brought to its notice and also to initiate independent investigations in such matter;
- f. to create public awareness against the practice of sex selection or pre-natal determination of sex;
- g. to supervise the implementation of the provisions of the Act and rules;
- h. to recommend to the CSB and State Boards modifications required in the rules in accordance with changes in technology or social conditions;
- i. to take action on the recommendations of the Advisory Committee made after investigation of complaint for suspension or cancellation of registration.

✦ What is the Additional Power of Appropriate Authority?

a) The Appropriate Authority has the power to search and seize the records maintained by the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic if it has reason to believe that any offence under the Act has been committed by such Centre or Laboratory or Clinic under Section 30. Such search and Seizure will be carried out as per the provisions of Criminal Procedure Code, 1973.

✦ What is the role of Advisory committee?

Advisory Committee:

Section 17(5) authorizes the Central Government and the State Government to constitute an Advisory Committee for each Appropriate Authority to aid and advise them in the discharge of their functions. The Government itself will appoint one of the members of the Advisory Committee to be its chairman.

The following are the members of the Advisory Committee [**Clause 6**] :

Three medical experts	Who will be gynecologists, obstetricians, pediatricians and medical geneticists;
One	Legal expert
One Officer	To represent the department dealing with information and publicity of the State Government or the Union territory
Three eminent social workers	Not less than one shall be from amongst representatives of women's organizations

Any person who has been associated with the use or promotion of pre-natal diagnostic technique for determination of sex cannot be appointed as a member of the Advisory Committee.

✦ What are the Rules regarding the registration of Genetic Counselling Centers, Genetic Laboratories or Genetic Clinics under PCPNDT Act?

Section 18 makes registration of all the Genetic Counselling Centers, Genetic Laboratories and Genetic Clinics after the commencement of this Act unless already registered.

✦ What is the procedure for registration of Genetic Counselling Centers, Genetic Laboratories and Genetic Clinics?

The following are the steps of registration:

a. Application for registration in the prescribed form to the Appropriate Authority;

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- b. Inquiry by the Appropriate Authority;
- c. Opportunity to the parties of being heard on the matter;
- d. Seek advice from Advisory Committee

✦ **When would the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic receive the certificate of registration?**

Section 19 provides that the Appropriate Authority after holding an inquiry and after being satisfied that the applicant has complied with all the requirements of this Act will grant a certificate of registration to the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, as the case may be.

But, if the Appropriate Authority is not satisfied with the application, it shall, for reasons to be recorded in writing, reject the application for registration. **[Clause 2]**

The certificate of registration is subject to renewal on payment of such fees as may be prescribed. **[Clause 3]**

Clause 4 makes it mandatory to display the certificate of registration by the registered Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic in a conspicuous place at its place of business.

The Appropriate Authority is empowered to *suo motu*, or on complaint, issue a notice to the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic to show cause why its registration should not be suspended or cancelled for the reasons mentioned in the notice. **[Section 20(1)]**

✦ **Can the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic go in appeal against the suspension or cancellation order of the Appropriate Authority passed under Section 20?**

Yes, as per Section 21 the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic may within a period of thirty days from the date of receipt of such order prefer an appeal against such order to-

- a. the Central Government, where the appeal is against the order of Central Appropriate Authority; or
- b. the State Government, where the appeal is against the order of State Appropriate Authority in the prescribed manner.

✦ **What are the various offenses and related penalties under the Act?**

The Act categorizes various activities as an offense such as:

- a. conducting or helping in the conduct of prenatal diagnostics in the unregistered units,

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- b. sex selection on a man or woman,
- c. conducting PND test for any purpose other than the one mentioned in the Act,
- d. not keeping proper records of the patients diagnosed,
- e. sale, distribution, supply, renting, etc. of any ultrasound machine or any other equipment capable of detecting sex of the foetus.

Punishment For	To whom?	Penalty
Advertisement relating to pre-natal determination of sex [Section 22]	Any Person	Imprisonment for a term which may extend to 3 years and with fine which may extend to Rs. 10,000/-
Contravention of any provision of the Act [Section 23(1)]	Medical geneticist, gynecologist, registered medical practitioner or any person who owns a Genetic Counselling Centre, a Genetic Laboratory or a Genetic Clinic or is employed in such a Centre, Laboratory or Clinic	Imprisonment for a term which may extend to 3 years and with fine which may extend to Rs. 10,000/-.
Seeking the aid of Genetic Counselling Centre/ Laboratory/Clinic or of a medical geneticist, gynecologist or registered medical practitioner for conducting pre-natal diagnostic techniques on any pregnant woman [Section 23(3)]	Any person including the pregnant woman herself	Imprisonment for a term which may extend to 3 years and with fine which may extend to Rs. 50,000/-
Subsequent Contravention [Section 23(1),(3)]	Any of the above	Imprisonment which may extend to 5 years and with fine which may extend to Rs. 1,00,000/-.
Contravention of any provisions or rules under	Any person	Imprisonment for a term which may extend to 3

Punishment For	To whom?	Penalty
the Act for which no penalty has been provided under the Act [Section 25]		months or with fine, which may extend to Rs. 1000/- or with both Continues contravention: additional fine which may extend to Rs. 500/- for every day of such contravention
Offences punishable under the Act committed by a company [Section 26]	Every person who, at the time the offence was in charge of the company for the conduct of the business (Unless he proves that it was without his knowledge), as well as the company	Punishment according to the offence

Further, the name of the registered medical practitioner who has been convicted by the court under Section 23(1), shall be reported by the Appropriate Authority to the respective State Medical Council for taking necessary action including the removal of his name from the register or the Council for a period of 2 years for the first offence and permanently for the subsequent offence. [Section 23(2)]

✦ Who can take Cognizance of Offences under the Act?

According to Section 27, every offence under this Act shall be cognizable, non-bailable and non-compoundable.

Section 28 authorizes no court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class to try any offence punishable under this Act and only the following people to make a complaint of an offence under the Act to the Court:

- a. the Appropriate Authority concerned, or any officer authorized in this behalf by the Central Government or State Government, as the case may be; or
- b. a person who has given notice of not less than 30 days in the manner prescribed, to the Appropriate Authority, of the alleged offence and of his intention to make a complaint to the court.

FAQ's – REALITY CHECK

1. I am pregnant and my in-laws are pressurizing me to know the sex of the child because they want a grandson. Can I determine the sex of the child in my womb?

No, determining the sex of a foetus is a punishable offence under the Pre-Natal Diagnostic Technique Act.

2. I am pregnant and already have 2 sons, now I want a daughter to complete my family. Can I get to know the sex of the child as the Prenatal Act only protects female foeticide?

No, not just female foeticide but all types of sex selection and determination is banned under the PCPNDT Act.

3. While I was at the Gynecologist's the staff they're on being repeatedly asked by my in-laws regarding the sex of the child, through sign told them that it's going to be a girl. Now they want me to abort the child. What should I do?

You can file a written complaint to the Central Supervisory Board (CSB) against the staff as well as your in-laws. Sex determination is a criminal offence which is penalized with imprisonment for a term which may extend to 3 years and with fine which may extend to Rs. 10,000. Both the staff and your in-laws can be penalized under the Act.

4. I asked my gynecologist about the sex of my unborn child and she pointed to the color blue. Is it an offence under the Act?

Yes, according to section 5 no person can communicate the sex of the foetus either by words, signs, or in any other manner.

LANDMARK JUDGMENTS**1. Centre for Enquiry into Health & Allied Themes and other v. Union of India [AIR 2003 SC 3309]**

In this case, a Public Interest Litigation was filed under Article 32 of the Constitution by Centre for Enquiry into Health and Allied Themes (CEHAT) for proper implementation of the Act.

The Court accepting the contentions of the petitioners provided various directions to the Central Government, the State Governments and UT Administrations, the Central Supervisory Board (CSB) as well as Appropriate Authorities. Some of those directions were:

- The Central Government is directed to create public awareness against the practice of prenatal determination of sex and female foeticide through appropriate releases/programmes in the electronic media. This shall also be done by the Central Supervisory Board (“CSB” for short) as provided under Section 16(iii) of the PNDT Act.
- CSB to review and monitor the implementation of the Act [Section 16(ii)].
- CSB to issue directions to all State/UT Appropriate Authorities to furnish quarterly returns to CSB giving a report on the implementation and working of the Act.
- All State Governments/UT Administrations are directed to appoint by notification, fully empowered Appropriate Authorities at district and sub-district levels and also Advisory Committees to aid and advise the appropriate authorities in discharge of their functions [re Section 17(5)].
- All State/UT appropriate authorities were directed to furnish quarterly returns to CSB giving a report on the implementation and working of the Act. These returns should inter alia contain specific information about survey of bodies specified in Section 3 of the Act; registration of bodies specified in Section 3 of the Act including bodies using ultrasound machines; etc.

2. Hemanta Rath v. Union of India [AIR 2008 Ori 71]

In Spite of the detailed directions by the Court in CEHAT case, various States did not take any step for effective implementation of the Act and once again a PIL was filed by an activist for proper implementation of the Act in the Orissa High Court.

The contention raised in the petition was that there was total inaction both on part of the Central and State Government in implementing the provisions of the Act. The appointment of Appropriate Authorities as contemplated under section 17 (1) of the Act had not been made and the State Advisory Committee as per Section 17 (5) of the Act had not been constituted and without constitution of such

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Appropriate Authority and Advisory Committee, provisions of Section 28 became nugatory as under Section 28, a court can take cognizance of the offence only on a complaint made by the Appropriate Authority.

The Centre in its reply blamed the State of Orissa for its negligence in implementation. The State of Orissa enlisted various measures taken by it for awareness generation and sensitization about provisions of the Act. After referring to the Object of the Act and Constitutional principles, the High Court stressed, on both the statutory and Constitutional obligation of the State, to implement the provisions of the Act.

The High Court gave explicit directions to the State Government to appoint Appropriate Authority and Advisory Committee within 6 weeks and further directed the Committee to take strict measures to implement the provisions of the Act.

3. Court on its own v. State of Punjab [AIR 2008 (NOC) 922 (P&H)]

The High Court of Punjab and Haryana at Chandigarh, took suo motu cognizance of a newspaper report about Sex Determination kits entering in the State.

According to the High Court these kits were a huge blow to the efforts by the State to improve sex ratio. Being alarmed by the declining child sex ratio in the State and to curb the social menace of pre-natal sex selection and sex determination, the High Court on its own motion, issued notices to Central and State Government. And perusal of the affidavits filled by the Governments in response thereto revealed that PNDT wing of the Ministry of Health and Family Welfare was fully conscious about availability of such Sex Determination kits in the grey market.

What was found to the satisfaction of the High Court was that Government itself was also worried and concerned about the same and had taken effective and adequate steps to block them and to create general awareness and sensitization on the subject so that the laudable object and mission of the Government, as Stated in its affidavit, to curb pre-natal sex selection and sex determination is realized.

4. Vinod Soni v. Union of India [2005 CriLJ 3408]

In this case the validity of the Act was challenged on the ground that the provisions of the Act are violative of Article 21.

An important argument of the Petitioner was that the right to life guaranteed under Article 21 of the Constitution includes right to personal liberty which in turns includes the liberty of choosing the sex of the offspring and to determine the nature of the family.

The High Court however exposed the fallacy of this argument by observing that, “right to personal liberty cannot be expanded by any stretch of imagination to prohibit the coming into existence of a female or male foetus which shall be for nature to decide.”

After making reference to the decisions of the Supreme Court, which explain that Article 21 includes the right to food, clothing, decent environment and even protection of cultural heritage, the High Court held that “these rights, even if, further expanded to the extremes of the possible elasticity of the provisions of Article 21, cannot include right to selection of sex, whether pre-conception or post-conception.”

5. M/s. Malpani Infertility Clinic Pvt. Ltd. & others v. Appropriate Authority, PNDT Act & others [AIR 2005 Bom 26]

A Writ Petition was filed by M/s. Malpani Infertility Clinic Pvt. Ltd. in the High Court of Bombay, against the order passed by Appropriate Authority suspending the registration of Petitioner’s Diagnostic Centre under the PCPNDT Act was challenged.

The main contention raised was that show cause notice, as contemplated (Section 20 (1)), an opportunity of hearing as contemplated (Section 20(2)) and sufficient reasons as required (Section 20(3)) under the Act, were not given to Petitioners before taking the action of suspending registration; hence the order was bad as per law.

However, considering specific facts of the case, the High Court rejected this contention. It was pointed out that Petitioners was one of the Respondent in Writ Petition filed by CEHAT and had filed an affidavit therein defending the sex determination tests on the ground of ‘family balancing’. Though subsequently the Petitioners had filed another affidavit tendering apology, they knew that they were prosecuted for criminal offence under the provisions of the Act.

It was held that, as Appropriate Authority has, after referring to that criminal prosecution issued the order of suspension, there was sufficient notice to Petitioners and there was also sufficient mention of the reasons by the Appropriate Authority in suspension order. It was further held that, “when the reasons are required to be given in writing it is not necessary that there ought to be a detailed discussion.”

6. Dr. Preetinder Kaur and others v. State of Punjab and others [2011 Cri LJ 876]

A Writ Petition was filed questioning the competency of the authority which initiated criminal prosecution against the Petitioner for violation of Section 3(a) punishable under Section 23 of the Act.

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It was contended that the Act contemplated the proceeding to be initiated in particular fashion on a complaint by the Appropriate Authority, but the said procedure had not been followed. The person who had filed the complaint had never been authorized by the Appropriate Authority for taking any action; therefore, the entire trial which was in progress before the Magistrate was vitiated.

The High Court rightly rejected this contention by giving broader interpretation to Section 28 of the Act. It was held that Section 28 does not narrow down the class of persons who can initiate action. On the other hand, as any legislation intending to prevent a social evil, it allows for a fairly large body of persons to set the law in motion.

7. Qualified Private Medical Practitioners and Hospitals Associations v. State of Kerala [2006 (4) KarLJ 81]

The Court while considering the object of the Act and provisions under Sections 4(1) and 22 of the Act, it was held that, “Appropriate Authorities are competent to ensure due compliance of the Act from all persons, at all places and at all institutions, whether registered or unregistered under the Act, where the ultra-sound scanning device is installed.”

8. Dr. Mrs. Suhasini Umesh Karanjakar v. Kolhapur Municipal Corporation [2011(4) AIR Bom R 326]

While considering declining sex-ratio in Maharashtra from 913 in 2001 to 883 in 2011, the Court provided strict directions for expedite disposal of the pending cases under the Act with utmost priority, preferably within one year.

The Court held that, words “any other material object” used in Section 30 of the Act and Explanation (2) to Rule 12 clearly provide that Appropriate Authority is empowered to seize and seal ultra-sound machines, other machines and equipment capable of aiding or assisting in sex-selection.

PRACTICAL CASE SCENARIO

PRACTICAL CASE SCENARIO NO. 1

A married couple want to file a writ before the Court for the enforcement of their right to personal liberty as a citizen of India, guaranteed under Article 21 of the Constitution, which according to them includes the liberty of choosing the sex of the child. Is this argument valid?

Answer: No, the Right to Personal Liberty cannot be expanded by any stretch of imagination to prohibit the coming into existence of a female or male foetus which shall be for nature to decide. These rights, even if, further expanded to the extremes of the possible elasticity of the provisions of Article 21, cannot include right to selection of sex, whether preconception or post-conception.

PRACTICAL CASE SCENARIO NO. 2

A married couple having two female children and were desirous of having a male child, filed a writ petition challenging the constitutionality of the PCPNDT Act on the ground that it violates principle of 'equality of law' enshrined in Article 14. According to them, the provisions of the Medical Termination of Pregnancy Act, 1972 (MTP Act), allows termination of pregnancy under certain circumstances and hence there is no reason to impose a blanket ban on determination of sex at preconception stage. If anguish caused by unwanted pregnancy is recognized as ground for termination of the pregnancy under MTP Act, why under PCPNDT Act anguish caused to a mother who conceives a female or male child for the second or third time is not considered and thus there is discrimination between two women situated in similar position and hence Act violates Article 14 of the Constitution. Is the argument valid?

Answer: No, there can be no comparison between the two legislations: viz., MTP Act and PCPNDT Act. The object of both the Acts differs. MTP Act does not deal with sex selection before or after conception. Anguish of a mother who does not want to bear a child of a particular sex cannot be equated with a mother who wants to terminate the pregnancy not because of the sex of child but for other circumstances. There is no question of discriminatory and violative of Article 14 of the Constitution.

PRACTICAL CASE SCENARIO NO. 3

An association of hospitals of a State had sought declaration that the laboratories and clinics which do not conduct pre-natal diagnostic tests using ultrasonog-

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raphy will not come within the purview of the Act and the Authorities under the Act should not insist for registration of all ultrasound scanning centers irrespective of the fact as to whether they are conducting ultra-sonography or not.

Answer: Though registration under the Act will be compulsory only for genetic counseling centers, genetic clinics and genetic laboratories which are used for conducting any pre-natal diagnostic procedure or pre-diagnostic steps. But it does not mean that such clinics do not come within the purview of the provisions of the Act. Considering the Provisions of Section 4(1) and Section 22 of the Act and keeping in mind the object of the Act to prevent misuse of any pre-natal diagnostic techniques, authorities are free to conduct inquiries or inspection at any place where such device is available and can take action under the Act in case any person or institution is indulging in activities contrary to the provisions of the Act, irrespective of the fact that such an institute is registered or not under the Act.

PRACTICAL CASE SCENARIO NO. 4

An Infertility Clinic challenged the competency of the authority which initiated criminal prosecution against them for violation of Section 3(a) punishable under section 23 of the Act. It was contended that the Act contemplated the proceeding to be initiated in particular fashion on a complaint by the Appropriate Authority, but the said procedure had not been followed. The person who had filed the complaint had never been authorized by the Appropriate Authority for taking any action; therefore, the entire trial which was in progress before the Magistrate was vitiated. Are only competent persons allowed to file a complaint under the Act?

Answer: Yes, but a broader interpretation has been given to meaning of competent authority under Section 28 of the Act. In many cases it has been held by the Court that Section 28 does not narrow down the class of persons who can initiate action. On the other hand, as any legislation intended to prevent a social evil, it allows for a fairly large body of persons to set the law in motion. Apart from the Appropriate Authority, an Officer authorized by the Central or State Government can also file a complaint. He can also be a person authorized by the Appropriate Authority itself. As per the Explanation contained under Section 28, the expression 'person' includes even a social organization. The various categories of persons which are set out under Section 28 give authority to a wide range of persons who can initiate the action under the Act.

PRACTICAL CASE SCENARIO NO: 5

Dr. Seema issued a petition where she prayed for quashing of the FIR lodged against her under provisions of IPC read with the provisions of PCPNDT Act. The allegation in FIR was to the effect that in a sting operation shown on television it was revealed that Seema was engaged in performing abortions in her hospital in collusion with other doctors who determined the sex of the foetus by conducting ultrasound tests. Her contention was that no offence under the Act was disclosed as the FIR itself mentioned that sex determination of the woman had already been conducted elsewhere and she only agreed to perform the operation to terminate the pregnancy. Does the sex selection prohibition under the Act is only confined to sex determination?

Answer: No, a detailed consideration of the Object, Reasons and provisions of the Act makes it clear that sex selection prohibited under the Act cannot be confined only to the determination of the sex of foetus but includes all the steps taken by the person or by the specialist either himself or by any other person in facilitating sex selection leading to elimination of female foetuses.

ASSESS YOURSELF: MULTIPLE CHOICE QUESTIONS

1. The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act was enacted to ban the use of sex selection techniques after conception and prevent the misuse of prenatal diagnostic techniques for sex-selective abortions. The Statement is _____.

- a. Correct
- b. Incorrect
- c. Partly Correct
- d. None of the above.

2. What does a Pre-Natal Diagnostic technique mean?

- a. Sonography
- b. Ultrasonography
- c. Analysis of amniotic fluid
- d. All pre-natal diagnostic procedures and pre-natal diagnostic tests.

3. According to Section 3(1), unless already registered under this Act, no _____ can conduct activities relating to pre-natal diagnostic techniques.

- a. Hospital
- b. Genetic Counselling Centre/Laboratory/Clinic
- c. Pathology Lab
- d. None of the above

4. Section 4 mandates that only the Genetic Counselling Centre/Laboratory/Clinic will be used by any person for conducting pre-natal diagnostic techniques. The only exception to the above is for detecting?

- a. Genetic abnormalities
- b. Metabolic disorders
- c. Chromosomal abnormalities
- d. All of the above.

5. Section 4(3) requires Pre-Natal Diagnostic technique shall be used unless the person qualified to do so is satisfied that the age of the pregnant woman is above_____.

- a. Forty years
- b. Eighteen years
- c. Thirty-five years
- d. There is no age limit

6. What are the duties of a Medical Practitioner under the Act?

- a. To explain all the side and after-effects of such procedures to the pregnant woman concerned;
- b. To obtained in the prescribed form her written consent to undergo such procedures in the language which she understands; and
- c. To give the pregnant woman a copy of her written consent obtained above.
- d. All of the above

7. What is the punishment provided under Section 22 for advertisement relating to pre-natal determination of sex under the Act?

- a. Imprisonment for a term which may extend to 3 years and with fine which may extend to Rs. 10,000
- b. Imprisonment for 3 years only
- c. A fine of Rs. 50,000
- d. There is no fine

8. What is the punishment prescribed under section 23 of the Act for Subsequent Contravention?

- a. Imprisonment for a term which may extend to 3 years and with fine which may extend to Rs. 10,000
- b. Imprisonment for a term which may extend to 5 years and with fine which may extend to Rs. 50,000
- c. Imprisonment for a term which may extend to 4 years and with fine which may extend to Rs. 20,000
- d. Imprisonment for a term which may extend to 5 years and with fine which may extend to Rs. 10,000

9. According to Section 27, every offence under this Act shall be:

- a. Cognizable,
- b. Non-bailable
- c. Non-compoundable
- d. All of the above

10. Only the following people can make a complaint of an offence under the Act to the Court:

- a. The Appropriate Authority concerned, or any officer authorized in this behalf by the Government;
- b. Any person who has given notice of not less than 30 days in the manner prescribed, to the Appropriate Authority.
- c. Both (a) and (b)
- d. None of the above

ANSWER KEY									
1	2	3	4	5	6	7	8	9	10
a	d	b	d	c	d	a	b	d	c

PART - F

Women In Custody

**LEGAL AWARENESS PROGRAMME
BY
NATIONAL LEGAL SERVICES AUTHORITY
IN COLLABORATION WITH
NATIONAL COMMISSION FOR WOMEN
&
KNOWLEDGE PARTNER - ALL INDIA REPORTER**

**IEC & TRAINING MODULE
For Resource Persons
ON**

WOMEN IN CUSTODY

IEC Material & Training Module

The IEC & Training Module is primarily for Resource Persons of NALSA, as it focuses on responsibilities in spreading legal awareness about rights of women in custody as a part of Legal Awareness Programme undertaken by National Legal Services Authority in collaboration with National Commission for Women. Resource Persons will find it as a useful source of information & guidance.

The main objective of this IEC & Training Module is to inspire, motivate, cultivate curiosity, shape the opinion and enlighten the Resource Persons on issues concerning relating to criminal procedural laws.

The overall content consists of Rights guaranteed to women suspects, arrestees and prisoners. This has been written in an interactive Question Answer style, in a lucid and simple language.

NALSA hopes that the Resource Person will be benefitted immensely by these IEC & Training Modules.

Objective

To give an overview of all the Right to effective access to information and all legal provisions regulating conditions of detention; Right to consult or to be defended by a legal practitioner of prisoner's choice; Right to access to agencies such as State Legal Service Boards or similar organizations providing legal services; Right to communicate with prison administration, appropriate Government and judicial authorities, as the case may be, for redressal of violation of any or all of prisoner's rights and for redressal of grievances.

Learning Outcome

The participants (Resource Persons) will be able to completely understand their role & responsibilities in spreading awareness about rights available to woman in custody provided under various laws.

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“It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.”

– Nelson Mandela

WOMEN IN CUSTODY

Introduction

Women prisoners have many rights. They cannot be debarred from their basic human rights and freedoms guaranteed by the Constitution of India. The Supreme Court in the case of *Sunil Batra v. Delhi Administration*, AIR 1980 SC 1579 held that “whether inside prison or outside, a person shall not be deprived of his guaranteed freedom save by methods ‘right, just and fair’”. There are several rights of women prisoners which are provided by different committees appointed for prison reforms by the United Nations. These rights must be incorporated in the Prison Act, 1894. Since Prisons is a State subject under Entry 4 of the State Subjects List of the Seventh Schedule to the Constitution of India.

As per the State List provided in the Seventh Schedule of Indian Constitution, all issues related to prisons, reformatories, and institutions of a like nature, and persons detained therein; arrangements with other States for the use of prisons and other institutions come under the domain of State Governments. The rules of incarceration are determined by following laws:

- The Indian Penal Code, 1860
- The Prison Act, 1894
- The Prisoner’s Act, 1900
- The Identification of Prisoner’s Act, 1920
- The Exchange of Prisoner’s Act, 1948
- The Transfer of Prisoner’s Act, 1950
- The Prisoner (Attendance in Court) Act, 1955
- The Probation of Offenders Act, 1958
- The Code of Criminal Procedure, 1973
- The Repatriation of Prisoner’s Act, 2003
- The Model Prison Manual, 2016

BAILABLE AND NON-BAILABLE OFFENCES

The offences and their punishments have been given under Indian Penal Code, 1860 (hereinafter referred as IPC) and the procedure for the same has been given in the Code of Criminal Procedure, 1973 (hereinafter referred as Cr.P.C.). Under

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Cr.P.C., the offences have been mainly classified under two heads- bailable and non-bailable offences

✦ What is an offence?

Any act which is deemed as an offence by any law is an offence. Any act which causes a violation of the rights of others or causes harm to others and is so dangerous that also affects the society at large is designated as offence. **Section 2(n)** of Cr.P.C. defines an offence as: “Offence” means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made.

✦ What is Bail?

Bail is an instrument which is used to ensure the presence of an accused whenever required by the court. Cr.P.C. does not define the term Bail, but essentially, Bail is an agreement in which an accused person makes a written undertaking to the court to appear before it whenever required and comply with any conditions set out in the agreement. He/she also assures to forfeit a specified sum of money if the person fails to comply with any terms and conditions of the agreement.

✦ What do you mean by bailable and non-bailable offences?

Section 2(a) of Cr.P.C. defines bailable offences as the offence that has been shown in the First Schedule as bailable or which is made bailable by any other law for the time being in force. The first schedule of the Cr.P.C. is divided into two parts wherein the first part deals with the offences given under IPC and the second part deals with the offences under other laws. As per the last item of the First Schedule, an offence in order to be bailable would have to be an offence which is punishable with imprisonment for less than three years or with fine only.

Some of the common bailable offences are: Simple Hurt (**Section 337**, IPC), Bribery (**Section 171-E**, IPC), Public Nuisance (**Section 290**, IPC), Death by Rash or Negligent Act (**Section 304-A**, IPC).

Section 2(a) of Cr.P.C., non-bailable offence includes all those offences which are not included in bailable offence in the First Schedule. Further, the First Schedule in its Second part at its end has defined non-bailable offence as the offences which are punishable with death, imprisonment of life or imprisonment for more than seven years.

✦ What is the right to be released on bail?

Section 50 of Cr.P.C. whenever a person is arrested without warrant, it is the duty of the police officer to communicate the full detail of the offence for which the person is arrested. Also, if the offence for which the person is arrested is a bailable one, it is the duty of the police to inform that he is entitled to be released on bail after giving surety.

As per **Section 436** of Cr.P.C., whenever a person accused of a bailable offence is arrested without warrant and is prepared to give bail, such person shall be released on bail. The discretion to decide the bail amount is with the Court or with the officer.

✦ How to obtain bail or Procedure for bail?

In order to apply for a bail in the case of a bailable offence, the person needs to fill a form of bail i.e., Form No. 45 which is given in the first schedule and apply for bail and the Court will have to grant bail.

✦ How can I get bail in a non-bailable offence?

A person accused of a non-bailable offence doesn't have right to be released on bail, but the bail can be granted at the discretion of the court, subject to certain conditions given in **Section 437** of Cr.P.C..

If a person is arrested on accusation of commission of any non-bailable offence, then the person will not be released on bail if there appears a reasonable ground that the person is guilty of an offence punishable with death or imprisonment of life. A person accused with an offence punishable with death or imprisonment of life can be released on bail if the person is below the age of sixteen years. If at any stage of investigation, it appears to the Court that there are reasonable grounds for believing that the person has not committed a non-bailable offence, the person may be released on bail at the discretion of Court on execution of a bond.

In a case a person is accused with commission or abetment or conspiracy or attempt to commit any offence against state or with offences affecting human body or with offences against property may be released on bail, but the Court may impose conditions that it deems necessary in order to ensure that the person shall Attend the Court in accordance with the conditions of the bond executed.

IN THE COURT OF __, ADDITIONAL DISTRICT AND SESSION JUDGE,
__ COURTS, _

IN THE MATTER OF:

LMN, _____, Son of _____ Years of Age, Working as
_____ Residing at _____
..... Petitioner

v.

State of _____ Through PQR, Son of _____, _____ Years of age,
Working as _____ Residing at _____
..... Respondent

FIR No.: _____ U/S.: _____

P.S.: _____

APPLICATION UNDER SECTION 439 OF THE CODE OF CRIMINAL
PROCEDURE, 1973 FOR GRANT OF BAIL

Most Respectfully Show:

1. That the present application under section 439 of the Code of Criminal Procedure 1973 is being filed by the Petitioner for seeking grant of bail in FIR No. __ registered at Police Station _____. The present petition is being moved as the Petitioner has been arrested on _____ (give date) in connection with the said FIR. The petitioner is now in judicial/police custody.
2. That the Petitioner is innocent and is being falsely implicated in the above said case as he has nothing to do with the matter.
3. That the Petitioner is a law abiding citizen of India. The petitioner is gainfully carrying on the business of _ at_. (Give details)
4. That the Petitioner is a responsible person and is living at the above mentioned address.
5. (Give all other relevant facts, which have led to the arrest or which show the petitioner's innocence or disassociation with the alleged offence supposed to have been committed)
6. That the Petitioner is innocent and no useful purpose would be served by keeping him under custody and this is a fit case for grant of bail. (It would be pertinent to mention as to the stage of investigation or in case the charge sheet has been filed, whether charges have been imposed, evidence has started, the length of the list of witnesses cited by the prosecution etc. as these would all be mitigating circumstances)
7. That the Petitioner undertakes to abide by the conditions that this Honorable Court may impose at the time of granting bail to the Petitioner and further undertakes to attend the trial on every date of hearing.

8. That the Petitioner has not filed any other similar petition before this or any other Honorable Court for grant of bail in case of the present FIR. (Or give details and results of earlier applications)

PRAYER:

In view of the above stated facts and circumstances it is most respectfully prayed that this Hon'ble Court may be pleased to

a. Grant bail to the Petitioner in connection with FIR No. _____ registered under section _____, for the offence of _____ (give sections) at Police Station _____ (give place).

b. Pass any other such order as this Honorable Court may deem fit and proper in the interest of justice.

LMN.....Petitioner

Through

ABC.....Counsel

Place:

Dated:

✦ What do you mean by anticipatory bail and how to get it?

In case a person is of the apprehension that he might be arrested on the accusation of a non-bailable offence, he can apply to High Court or Court of Session for bail under **Section 438** of Cr.P.C.. The grant of bail will be on the discretion of the Court subject to certain conditions, including conditions that the person shall:

- Make himself available for interrogation by Police Officer as and when required.
- Not make any inducement, threat or promise to any person so as to deter him from disclosing any material facts to the Court or any police officer.
- Not leave India without prior permission of the Court.

✦ How to obtain Anticipatory Bail or Procedure for Anticipatory bail?

In order to apply for Bail under **Section 437** or **Section 438** of Cr.P.C., the accused is required to fill the Form No. 45 given in the First Schedule and apply for bail. After that, it will be the discretion of the Court whether it grants or rejects the application for bail.

✦ Application for Bail

- For non-bailable offence one has to move an application setting out the grounds for the grant of bail. In case the court is convinced that bail should be

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granted it passes the order after hearing the arguments. At that stage one has to fill in the bail bond duly signed by the surety and to be filled through his advocate. In case the accused is before the court, he is set at liberty in the court itself and in case the accused is under detention in the jail, orders of grant of bail are sent to the concerned jail.

- To get oneself released on bail in bailable or non-bailable offences one has to file the bail bond. The bail bond is filed by the surety who takes the responsibility for producing the accused person in the court or before the investigating agency. Any person who has the capacity, control and competence to produce the accused in case of non-appearance or to pay the amount of the surety can be accepted by the court for the purpose.

✦ **Is the amount of Bond for bail fixed?**

No, as per **Section 440** the amount of every bond executed shall be fixed with due regard to the circumstances of the case.

✦ **Can bail be cancelled?**

As per **Section 439(2)** of Cr.P.C. a High Court or Court of Session may direct that any person who has been released on bail be arrested and commit him to custody on an application filed by the complainant or the prosecution.

✦ **Is there a special provision for women under trial especially relating to bail?**

Yes, **Section 437 (1)** proviso provides that women can be released on bail in case of non bailable offence. This is to ensure that women are not held in prison for long periods as such confinement may have other more harmful consequences.

RIGHTS OF ARRESTED PERSON

Every human is born with certain basic rights that he is entitled to for instance, right to live and right to freedom etc. Similarly, every citizen of every country is presented with certain rights that are absolutely fair without any prejudice in the spirit of common brotherhood and conscience like the right to life, right to equality, right to freedom, right to education, right to equality, right to freedom of religion and many more.

However, the same rights of a person can get surrendered if the person gets detained/ arrested for committing a crime. Although an arrested person too has certain rights that explained below.

The legal system in India is established on the platform of “innocent till proven guilty”. An unlawful arrest of an individual can be a violation of **Article 21** of the Indian Constitution that states, “no human shall be denied of his right to life and personal liberty except if established by law” which means that the process must be fair, clear and not arbitrarily or oppressive.

★ What are the different rights of an arrested person?

● Right to know the grounds of arrest

Sr. No	Provision	Law	Right
1	Article 22(1)	Constitution of India	No police official can arrest any individual without informing the accused the reason/ ground of his detainment/ arrest.
2	Section 50	Code of Criminal Procedure	Every police official with authority to arrest someone without a warrant must inform the person getting arrested about the crime for which he is arrested and other relevant grounds for the arrest. This is the duty of the police official which he cannot refuse.
3	Section 50A	Code of Criminal Procedure	The person/ police official arresting a person to inform of the arrest to any of his relatives or even friends who may have interest in the same.
4	Section 55	Code of Criminal Procedure	Where a police official authorizes his junior to arrest a person without a warrant, the junior official must notify the arrested person of the order of delegation that is given which must also mention the crime and the grounds of arrest.
5	Section 75	Code of Criminal Procedure	The police official executing the warrant must notify the substance to the arrested person and furnish the warrant of the arrest when required.

- **Right to be produced before the Magistrate without unnecessary delay**

Article 22(2) of the Indian Constitution stipulates that the police official making an arrest must produce the arrested person before the Magistrate within 24 hours of the arrest failing to do so would make him liable for wrongful detention.

Section 55 of Cr.P.C. states that in case a police official is making an arrest without a warrant, then he must produce the person arrested without any unnecessary delay before the Magistrate with jurisdiction or before a police officer in charge of the police station, depending upon the conditions of the arrest.

Section 76 of Cr.P.C. states that the arrested person must be produced in court within 24 hours of his arrest, the same can exclude the time duration which is required for the journey from the place of arrest to the Magistrate Court.

- **Right to be released on bail**

Section 50 (2) of Cr.P.C. provides that the arrested person has the right to get released on bail by making arrangement for the sureties or just inform him of his right when arrested without a warrant for an offence other than a non-cognizable offence.

- **Right to a fair and just trial**

The legal provision regarding the right to a fair and just trial can be extracted from the Indian Constitution as well as a lot of Supreme court and High court judgments since no specified law has been stipulated in this regard.

Article 14 of the Indian Constitution states that “every individual is equal before the law” which means that all the sides in a legal dispute must be treated equally.

In the case of Huissainara Khatoon v. Home Secretary, State of Bihar, 1995 Cri. LJ 4020 (SC) the Apex Court held that “the trial must be disposed of as diligently as possible”.

- **Right to Consult a Lawyer**

Article 22(1) of the Indian Constitution provides that every arrested person has the right to choose and elect his own lawyer to defend him in the court of law for whatever crime he may/ may not have committed.

Section 41-D of Cr.P.C. allows prisoners to be able to consult with their lawyers even during their interrogation.

Section 303 of Cr.P.C. allows every accused person the right to be defended by a lawyer of his choice even if the criminal proceedings against him have already begun.

● Right to keep quiet

The right to keep quiet does not have any mention in any Indian law, however, its authority can be derived from Cr.P.C. as well as the Indian Evidence Act.

The right to stay silent is principally related to the statement and confession made by the accused person in the court. In addition to this, it is the responsibility of the Magistrate to perceive if any statement or confession made by the accused person was voluntarily or was after the use of force and manipulation. Therefore, police or any other authority for that matter is not allowed to compel an accused person to speak anything in the court.

● **Article 20(3)** additionally, reiterates that no person whether accused or not cannot be compelled to be a witness against himself. This act of exposing oneself is the principle of self-incrimination.

● Right to be examined by a Doctor

Section 54 of Cr.P.C. asserts that if an arrested person claims that medical examination of his body would lead to a detail which would dismiss the fact of commission of the crime by him, or some detail that might lead to evidence towards commission of the crime by some other person against his body.

The court has complete discretion to order for a medical examination of an accused person at his request and the same is granted by the court when satisfied that the request is not made to delay or defeat justice.

● Additional rights available to an arrested person

In landmark case titled, **Prem Shankar Shukla v. Delhi Administration, 1980 Cri LJ 930 (SC)** the court observed that “the prisoners/ arrested persons have a right to not be handcuffed in shackles unless and until some extraordinary circumstances arise during the arrest or when in custody”.

Sr. No.	Provision	Law	Right
1	Section 55-A	Cr.P.C	Maintaining reasonable health care and safety of every arrested person will be the sole responsibility of the person (police official) who has the custody of the accused. This principle was established to protect the arrested person from cruel and inhuman treatment in the prison
2	Section 358	Cr.P.C	Arrested person to be provided with compensation when arrested unreasonably.
3	Section 41-A	Cr.P.C	The police official must furnish notice to the person who has supposedly committed a cognizable offence to appear before him at a specified time, date and location.

4	Section 46	Cr.P.C	The mode of arrest of an accused person which includes submission to custody by the accused, The police official must not cause death of the accused person while trying to arrest the person except when the person to be arrested is accused of an offence which is punishable with death or life imprisonment or when the accused person is trying to unnecessarily resist his arrest by turning violent and aggressive or when the accused is trying to escape.
5	Section 49	Cr.P.C	The police official must not restrain or detain the accused without a legal arrest.
6	Section 41-B	Cr.P.C	Every police official authorised to conduct the investigation/ arrest must supply clear, visible and valid badge where the name and designation of the police official is clearly mentioned.

LEGAL AID AND SERVICES

In our country, most of the prisoners belong to the lower and illiterate class, so they suffer silent deprivation of liberty caused by the unreasonable, arbitrary and unfair procedures behind the 'iron bars' and 'stone walls'. Thus, it becomes essential that these people are made aware of their right to free legal aid.

The definition of legal aid is to provide free legal services to the poor and indigent who are incapable of affording the services of an advocate for the preparation and representation of a case or a legal proceeding in any court, tribunal or before a judicial authority.

✦ Is every woman in India entitled to free legal aid or any kind of help from the Indian laws during the course of litigation and trial?

The following are the laws by the virtue of which every woman in India is entitled to free legal aid:

- **Article 39-A** of the Constitution of India: Empowers the women prisoners to secure free legal aid. It provides that the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

*The same right was reaffirmed in the dispute of **Khatari and others etc. v. State of Bihar and others**, AIR 1981 SC 1068 where the court held that, “the state must provide free legal aid to the poverty-stricken accused person.”*

This right to free legal aid for the accused cannot be refused even when the accused fails to ask for it himself. Now, a key note to remember, if the government is unable to provide free legal aid to the poverty-stricken accused person, then whole trial will stand to be void

- **Section 304** of Cr.P.C. provides a very significant right to every accused who is set to appear before a Sessions Court to appoint him a lawyer (totally free of cost) at the expense of the State. The court may appoint him a representing lawyer if the accused has no sufficient means to appoint himself a lawyer for his case.

- **Section 12(c)** of Legal Services Authorities Act, 1987: A woman is entitled for free legal aid irrespective of her income or financial status.

*Lordship **Justice P. N. Bhagwati** aptly stated that “legal aid means providing an arrangement in the society which makes the machinery of administration of Justice easily accessible and in reach of those who have to resort to it for enforcement of rights given to them by law.”*

✦ **How can I apply for free legal aid?**

- You can apply for free legal aid either offline or online. You can fill up the ready-made application form that is available at your nearest Legal Services Authority and submit the same at either the Authority physically, or post the application to the Authority.

- You can even make an application in writing on a simple piece of paper with the necessary details such as your name, gender, residential address, employment status, nationality, whether SC/ST (with proof in support), income per month (with affidavit), the case for which legal aid is required, reason for seeking legal aid, etc. and submit it physically or send by post.

- Another option is to send the application online i.e. by email to NALSA (at nalsa-dla@nic.in), or through the online application form available online at NALSA's website by going on the 'Online Application' Link on the Home Page, along with uploading necessary documents.

- It is also possible to make your application orally - a paralegal volunteer or an officer of the concerned Legal Services Authority will assist you in such cases.

*The same was firmly established in **Sukh Das v. Arunachal Pradesh** where the Court held that, “the right of a poverty-stricken accused person cannot be refused even when the accused fails to apply for the same”.*

RIGHTS OF WOMEN PRE AND POST ARREST

A life in prison is a life condemned. The punishment entails confinement, where the conditions of living are barely basic, but much worse is the loss of the right to live a life of dignity. Shunned by society, often ignored by relatives, contemptuously treated by authorities, these women live behind bars – lives withered, wasted and wrecked by worthlessness. Therefore, not only women under police custody or behind impenetrable walls, every woman needs to know the laws that protect them against custodial torture and violence and give them the right to be treated with compassion.

✦ Do women have special rights during arrest than man?

Code of Criminal procedure, 1973: Though the code is mainly procedural however here we are concerned with those provisions of the code which entitle female accused of certain rights during course of investigation enquiry or trial of an offence with which she is charged.

- **Section 46** envisages three modes of arrest (a) submission to custody (b) touching the body (c) confining the body.

- Proviso to **Section 46(1)** Provides that “where a woman is to be arrested then, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation, of arrest shall be presumed and unless the circumstances otherwise require or unless the police officer arresting is a female, the police officer shall not actually touch the person of the woman for making her arrest.”

- **Sub-section (4) of 46** provides that save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.

- The proviso of **Section 47** requires police officer to notice before search to avoid intruding on her privacy and causing any embarrassment to her.

- **Section 51 (2)** A women must not be searched except by female with strict regard to decency.

- Female must be interrogated only in the presence of female police.

- **Section 53 clause (2)** the medical examination shall be made only by or under the supervision of, female registered medical practitioner.

✦ What are the rights relating to investigation of a woman accused?

Code of Criminal Procedure, 1973: In case of investigation, it is provided that police officer while requiring attendance of witnesses under **Section 160(1)** proviso should not be allowed to question any male person under the age of eighteen

years or above the age of sixty-five years or a woman or physically disabled person at any place other than the place in which such male person or woman resides. **Section 199** takes care of women who by reason of customary practices do not appear before the court or the police. In cases affecting such women, others have been permitted to complain on their behalf.

Prisoners Act, 1894: **Section 24 (3)** states that in the case of female prisoners the search and examination shall be carried out by the matron under the general or special orders of the Medical Officer.

Unlawful Activities (Prevention) Act, 1967: **Section 6** proviso: no female shall be searched in pursuance of this sub-section except by a female.

✦ **Are the women entitled to certain rights relating to trial as the hardship faced by women under trial is much greater than men?**

Code of Criminal Procedure, 1973

- Under **Section 360** the Court may order to release on probation of good conduct or after admonition any woman.
- Proviso to **Section 416** whereby when a woman sentenced to death is found to be pregnant; the High Court can postpone the execution of the sentence and, if it thinks fit, commute the sentence to imprisonment for life.
- Women prisoners should be exempted from the rigours of **Section 433-A**. **Section 437 clause (1)** proviso provides that women can be released on bail in case of non-bailable offence.

✦ **Do the Indian justice system and prison system deal with extra care and precaution with female offenders?**

Prisoners Act, 1894:

- **Section 27 (1)** deals with Separation of prisoners: the females shall be imprisoned in separate buildings, or separate parts of the same building.
- **Section 46:** No female or civil prisoner liable to the imposition of any form of handcuffs or fetters, or to whipping.

✦ **How does the legal system protect women in custody while it is difficult to prosecute and punish a rape accused, the challenge is even greater when it comes to custodial rape?**

Protection against custodial rape

Indian Penal Code, 1860 – **Section 376-C:** The punishment prescribed for custodial rape is at least 10 years of rigorous imprisonment which may extend up to life imprisonment along with a fine.

FAQ's - REALITY CHECK**1. Can the police arrest me, a woman after sunset?**

No, **sub-section (4) of 46** of Code of Criminal Procedure, 1973 provides that save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise.

2. Can I, being a woman suspect be searched only by a female police officer?

Yes, as per Cr.P.C. 1973, **Section 51 (2)** a woman must not be searched except by female with strict regard to decency.

3. I am pregnant women guilty of cold murder; will the Indian laws save from death penalty on account of being pregnant?

No, according to Proviso to **Section 416** of Code of Criminal Procedure, 1973 when a woman sentenced to death is found to be pregnant; the High Court can postpone the execution of the sentence and, if it thinks fit, commute the sentence to imprisonment for life.

4. I am a woman aged 34 and was subjected to beating and whipping by police custody was it illegal of them to beat me?

Yes, Prisoners Act, 1894, **Section 46**: No female or civil prisoner liable to the imposition of any form of handcuffs or fetters, or to whipping.

5. Is my sister a woman prisoner, entitled to separate prisons than men?

Yes, Prisoners Act, 1894, **Section 27 (1)** states that the females shall be imprisoned in separate buildings, or separate parts of the same building.

6. I am liable to pay bail bond what is the fixed amount of bail?

No, as per **Section 440** the amount of every bond executed shall be fixed with due regard to the circumstances of the case.

7. My brother accused of theft is going to be arrested in a while. He has no intention to run away. Will he still be handcuffed?

No, the prisoners/ arrested persons have a right to not be handcuffed in shackles unless and until some extraordinary circumstances arise during the arrest or when in custody.

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JUDICIAL PRONOUNCEMENT RELATING TO RIGHTS OF WOMEN IN CUSTODY:

1. D. K. Basu v. State of West Bengal [AIR 1997 SC 610]

The Hon'ble Supreme Court, in *D.K. Basu v. State of West Bengal*, has laid down specific guidelines required to be followed while making arrests. The principles laid down by the Hon'ble Supreme Court are given hereunder:

i. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register

ii. That the police officer carrying out the arrest shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.

iii. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organization in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

iv. The person arrested must be made aware of his right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

v. The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The 'Inspection Memo' must be signed both by the arrestee and the police officer affecting the arrest and its copy provided to the arrestee.

vi. The arrestee should be subjected to medical examination by the trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory, Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

vii. Copies of all the documents including the memo of arrest, referred to above, should be sent to the Magistrate for his record.

viii. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

ix. A police control room should be provided at all district and State headquar-

ters where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

2. Nandani Satpathy v. P. L. Dani [AIR 1978 SC 1025]

The court held that the right not to make self-incriminatory statements should be widely interpreted to cover the pre-trial stage of police investigation. It also criticized the police for calling women to police investigations. It also criticized the police for calling women to police stations for investigation saying this constitute a violation of **Section 160 (1)** of the Cr.P.C, which requires the police to interview males under 15 and women in the places where they reside.

3. Sheela Barse v. State of Maharashtra [AIR 1983 SC 378]

The Supreme Court in Sheela Barse v. State of Maharashtra devised number of guidelines to ensure protection of woman prisoners:-

i. We would direct that four or five police lock-ups should be selected in reasonably good localities where only female suspects should be kept and they should be guarded by female constables. Female suspects should not be kept in a police lock-up in which male suspects are detained.

ii. We would further direct that interrogation of females should be carried out only in the presence of female police officers/constables.

iii. Whenever a person is arrested by the police without warrant, he must be immediately informed of the grounds of his arrest and in case of every arrest it must immediately be made known to the arrested person that he is entitled to apply for bail.

iv. We would direct that as soon as a person is arrested, the police must immediately obtain from him the name of any relative or friend whom he would like to be informed about his arrest and the police should get in touch with such relative or friend and inform him about the arrest; and lastly

4. Dr. Upendra Baxi and others v. State of U.P. [AIR 1987 SC 191]

The Court directed that Superintendent of the Protective Home shall take care to see that no woman or girl is detained in the Protective Home without due authority and process of law. The District Judge, Agra who carries out monthly inspection of the Protective Home shall verify during every visit that no woman or girl is detained except under the authority of law and if he finds that any of them is

detained without any authority of law, he shall take steps to see that she is released and repatriated to her parents or husband or other proper authority. Supreme court also directed the State Government to set up, within a period of two weeks from the receipt of this Order, a Board of Visitors on which there shall be at least three social activists working in the field of welfare of women and particularly suppression of immoral traffic in women and there shall also be included in the Board of Visitors two persons to be nominated by the District Judge.

5. Christian Community Welfare Council of India and another v. Government of Maharashtra and others [1995 Cri LJ 4223]

The Apex Court has laid down the guidelines for effective enforcement of the fundamental rights in the aforesaid judgment, as under:

- i. An arrested person being held in custody is entitled, if he so requests to have one friend relative or other person who is known to him or likely to take an interest in his welfare told as far as is practicable that he has been arrested and where is being detained.
- ii. The Police Officer shall inform the arrested person when he is brought to the police station of this right.
- iii. An entry shall be required to be made in the Diary as to who was informed of the arrest.

These protections from power must be held to flow from **Articles. 21 and 22(1)** and enforced strictly. The court observed that the object would be served if a direction was issued to the arresting authority that while arresting a female person, all efforts should be made to keep a lady constable present.

6. R. D. Upadhyay v. State of Andra Pradesh [AIR 2006 SC 1946]

The Supreme Court has formulated guidelines regarding pregnancy, antenatal, child-birth and post-natal care and child The Apex court has clearly stated the following guidelines regarding gynecological examination, regarding Pregnancy, regarding Child birth in prison and regarding child care:

- i. A child shall not be treated as an under trial/convict while in jail with his/her mother. Such a child is entitled to food, shelter, medical care, clothing, education and recreational facilities as a matter of right.
- ii. Pregnancy:
 - a. Before sending a woman who is pregnant to a jail, the concerned authorities must ensure that jail in question has the basic minimum facilities for child delivery as well as for providing pre- natal and post-natal care for both, the mother and the child.

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- b. When a woman prisoner is found or suspected to be pregnant at the time of her admission or at any time thereafter, the lady Medical Officer shall report the fact to the superintendent. As soon as possible, arrangement shall be made to get such prisoner medically examined at the female wing of the District Government Hospital for ascertaining the state of her health, pregnancy, duration of pregnancy, probable date of delivery and so on. After ascertaining the necessary particulars, a report shall be sent to the Inspector General of Prisons, stating the date of admission, term of sentence, date of release, duration of pregnancy, possible date of delivery and so on.
 - c. Gynecological examination of female prisoners shall be performed in the District Government Hospital. Proper pre-natal and post-natal care shall be provided to the prisoner as per medical advice.
- iii. Child birth in prison:
- a. As far as possible and provided she has a suitable option, arrangements for temporary release/parole (or suspended sentence in case of minor and casual offender) should be made to enable an expectant prisoner to have her delivery outside the prison. Only exceptional cases constituting high security risk or cases of equivalent grave descriptions can be denied this facility.
 - b. Births in prison, when they occur, shall be registered in the local birth registration office. But the fact that the child has been born in the prison shall not be recorded in the certificate of birth that is issued. Only the address of the locality shall be mentioned.
 - c. As far as circumstances permit, all facilities for the naming rights of children born in prison shall be extended.
- iv. Female prisoners and their children:
- a. Female prisoners shall be allowed to keep their children with them in jail till they attain the age of six years.
 - b. No female prisoner shall be allowed to keep a child who has completed the age of six years. Upon reaching the age of six years, the child shall be handed over to a suitable surrogate as per the wishes of the female prisoner or shall be sent to a suitable institution run by the Social Welfare Department. As far as possible, the child shall not be transferred to an institution outside the town or city where the prison is located in order to minimize undue hardships on both mother and child due to physical distance.
 - c. Such children shall be kept in protective custody until their mother is released or the child attains such age as to earn his/her own livelihood.

- d. Children kept under the protective custody in a home of the Department of Social Welfare shall be allowed to meet the mother at least once a week. The Director, Social Welfare Department, shall ensure that such children are brought to the prison for this purpose on the date fixed by the Superintendent of Prisons.
- e. When a female prisoner dies and leaves behind a child, the Superintendent shall inform the District Magistrate concerned and he shall arrange for the proper care of the child. Should the concerned relative(s) be unwilling to support the child, the District Magistrate shall either place the child in an approved institution/home run by the State Social Welfare Department or hand the child over to a responsible person for care and maintenance.
- v. Food, clothing, medical care and shelter:
 - a. Children in jail shall be provided with adequate clothing suiting the local climatic requirement for which the State/U.T. Government shall lay down the scales.
 - b. State/U.T. Governments shall lay down dietary scales for children keeping in view the calorific requirements of growing children as per medical norms.
 - c. A permanent arrangement needs to be evolved in all jails, to provide separate food with ingredients to take care of the nutritional needs of children who reside in them on a regular basis.
 - d. Separate utensils of suitable size and material should also be provided to each mother prisoner for using to feed her child.
 - e. Clean drinking water must be provided to the children. This water must be periodically checked.
 - f. Children shall be regularly examined by the Lady Medical Officer to monitor their physical growth and shall also receive timely vaccination. Vaccination charts regarding each child shall be kept in the records. Extra clothing, diet and so on may also be provided on the recommendation of the Medical Officer.
 - g. In the event of a woman prisoner falling ill, alternative arrangements for looking after any children falling under her care must be made by the jail staff.
 - h. Sleeping facilities that are provided to the mother and the child should be adequate, clean and hygienic.
 - i. Children of prisoners shall have the right of visitation.
 - j. The Prison Superintendent shall be empowered in special cases and where circumstances warrant admitting children of women prisoners to prison without court orders provided such children are below 6 years of age.

- vi. Education and recreation for children of female prisoners:
 - a. The child of female prisoners living in the jails shall be given proper education and recreational opportunities and while their mothers are at work in jail, the children shall be kept in crèches under the charge of a matron/female warder. This facility will also be extended to children of warders and other female prison staff.
 - b. There shall be a crèche and a nursery attached to the prison for women where the children of women prisoners will be looked after. Children below three years of age shall be allowed in the crèches and those between three and six years shall be looked after in the nursery. The prison authorities shall preferably run the said crèches and nursery outside the prison premises.
- vii. In many states, small children are living in sub-jails that are not at all equipped to keep small children. Women prisoners with children should not be kept in such sub-jails, unless proper facilities can be ensured which would make for a conducive environment there, for proper biological, psychological and social growth.
- viii. The stay of children in crowded barracks amidst women convicts, under trials, offenders relating to all types of crimes including violent crimes is certainly harmful for the development of their personality. Therefore, children deserve to be separated from such environments on a priority basis.
- ix. Diet: Dietary scale for institutionalized infants/children prepared by Dr. A.M. Dwarkadas Motiwala, MD (Paediatrics) and Fellowship in Neonatology (USA) has been submitted by Mr. Sanjay Parikh. The document submitted recommends exclusive breastfeeding on the demand of the baby day and night. If for some reason, the mother cannot feed the baby, undiluted fresh milk can be given to the baby. It is emphasized that “dilution is not recommended; especially for low socio-economic groups who are also illiterate, ignorant, their children are already malnourished and are prone to gastroenteritis and other infections due to poor living conditions and unhygienic food habits. Also, where the drinking water is not safe/reliable since source of drinking water is a question mark. Over-dilution will provide more water than milk to the child and hence will lead to malnutrition and infections. This in turn will lead to growth retardation and developmental delay both physically and mentally.” It is noted that since an average Indian mother produces approximately 600 800 ml. milk per day (depending on her own nutritional state), the child should be provided at least 600 ml. of undiluted fresh milk over 24 hours if the breast milk is not available. The report also refers to the

“Dietary Guidelines for Indians. A Manual,” published in 1998 by the National Institute of Nutrition, Council of Medical Research, Hyderabad, for a balanced diet for infants and children ranging from 6 months to 6 years of age. It recommends the following portions for children from the ages of 6-12 months, 1-3 years and 4-6 years, respectively: Cereals and Millets 45, 60-120 and 150-210 grams respectively; Pulses 15, 30 and 45 grams respectively; Milk 500 ml (unless breast fed, in which case 200 ml); Roots and Tubers 50, 50 and 100 grams respectively; Green Leafy Vegetables 25, 50 and 50 grams respectively; Other Vegetables 25, 50 and 50 grams respectively; Fruits 100 grams; Sugar 25, 25 and 30 grams respectively; and Fats/Oils (Visible) 10, 20 and 25 grams respectively. One portion of pulse may be exchanged with one portion (50 grams) of egg/meat/ chicken/fish. It is essential that the above food groups to be provided in the portions mentioned in order to ensure that both macronutrients and micronutrients are available to the child in adequate quantities.

- x. Jail Manual and/or other relevant Rules, Regulations, instructions etc. shall be suitably amended within three months so as to comply with the above directions. If in some jails, better facilities are being provided, same shall continue.
- xi. Schemes and laws relating to welfare and development of such children shall be implemented in letter and spirit. State Legislatures may consider passing of necessary legislations, wherever necessary, having regard to what is noticed in this judgment.
- xii. The State Legal Services Authorities shall take necessary measures to periodically inspect jails to monitor that the directions regarding children and mother are complied with in letter and spirit.
- xiii. The Courts dealing with cases of women prisoners whose children are in prison with their mothers are directed to give priority to such cases and decide their cases expeditiously.

PRACTICAL CASE SCENARIO**PRACTICAL CASE SCENARIO NO. 1**

Radhika is a 29 years old woman who lives in Wadner village of Maharashtra. Her husband regularly beats her after consuming alcohol but she neither has money to approach a lawyer in nearby district nor knowledge about law relating to domestic violence. What can Radhika do?

Answer: Radhika has a right to free legal aid under **Article 39-A** of the Constitution of India and **Section 12(c)** of Legal Services Authorities Act, 1987 especially entitles a woman to free legal aid irrespective of her income or financial status. Many women across India approach the LSA and get immediate help from DSLA which not only guides a person on his/her legal rights but assist them in the complete litigation process.

PRACTICAL CASE SCENARIO NO. 2

Gunjan is a prisoner who is suffering from high fever and has all the symptoms of malaria. But she is left unattended for last one week which is resulting in deterioration of her health, the prison authorities have not even got her blood tested. Is Gunjan not entitled to medical treatment because she is an offender?

Answer: As per Prison Act, 1894 and Model Prison Manual, 2016 physical and mental health treatment should be proper in every woman's prison. Also, right to health is one of the fundamental rights provided under **Article 21** of the Constitution of India. Therefore, it is the foremost duty of prison authority to take care of the health and safety of prisoners.

PRACTICAL CASE SCENARIO NO. 3

Kalyani was sentenced to imprisonment of 7 years later it was found that she is in second trimester of her first pregnancy, but the court refused to release her on parole because she was a key conspirator for rioting and was held guilty for 18 other crimes, her release could affect public order. In such a case what are the duties of jail authority and rights available to Kalyani?

Answer: The authorities must ensure that Kalyani and her child are not at risk and the jail in question must have:

- a. The basic minimum facilities for child delivery as well as for providing pre-natal and post-natal care for both, the mother and the child.

- b. Gynecological examination shall be performed in the District Government Hospital. Proper pre-natal and post-natal care shall be provided to her as per medical advice.
- c. Adequate and timely food including supplementary nutrients should be provided to her.

PRACTICAL CASE SCENARIO NO. 4

Ruksara resident of north Delhi was apprehended in the hours between midnight and dawn over alleged possession of illegal liquor by a male ASI. She was completely helpless and unaware of her rights as a woman and the police officer refused to let her make any calls to her relatives or friends. However, after being produced before magistrate the arrest was deemed illegal. Knowledge of which laws could have made Ruksar herself aware that such an arrest is an illegal arrest?

Answer: Ruksar's arrest was a violation of various statutory rights and violation of **Article 21** of the Constitution. Every woman should know that as per **Section 46** of Criminal Procedure Code, 1973 applicable unless and until some extraordinary circumstances arise during the arrest or when in custody.

- a. No women can be arrested after sunset and before sunrise
- b. A woman can only be arrested by a female police officer
- c. Every arrested person has the right to choose and elect his own lawyer to defend him
- d. The prisoners/ arrested persons have a right to not be handcuffed.

PRACTICAL CASE SCENARIO NO. 5

Smita was the only woman prisoner in the district jail she had to compromise on sanitation and hygiene and suffered discrimination from the jail personnels and teasing from male counter parts that were in the same premise. As a result, Smita was mentally disturbed and attempted to commit suicide. What can she do as per laws?

Answer: Smita has a statutory and constitutional right to separate prison under Prisoners Act, 1894, **Section 27 (1)** the females shall be imprisoned in separate buildings, or separate parts of the same building so that their privacy is not infringed and **Article 21**.

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ASSESS YOURSELF: MULTIPLE CHOICE QUESTIONS

1. Every person has fundamental right to be defended by a lawyer under Article:

- a. 42
- b. 67
- c. 45
- d. 22

2. D.K. Basu guidelines include:-

- a. The police officers should wear, accurate and visible name tags
- b. A memo of arrest should be prepared during the time of arrest
- c. Both (a) and (b)
- d. None of the above

3. Define the term offence:-

- a. Fair trial
- b. Act for which complaint can be made
- c. Passing a judgment
- d. Accused will be put in jail

4. The Constitution places a duty on the State to provide a lawyer to any citizen who is unable to engage one due to poverty or disability under _____.

- a. Article 39
- b. Article 22
- c. Article 47
- d. Article 63

5. The accused person can apply for bail by filing which form

- a. Form no: 42
- b. Form no: 73

- c. Form no: 45
- d. Form no: 25

6. Section 54 of Criminal Procedure Code, 1973 gives the right to be examined by doctor to which of the following:

- a. Only woman accused
- b. Arrested person
- c. Suspect
- d. Prisoner

7. Which of this right given to accused person belongs to pre-trial stage:

- a. Right not to make self-incriminatory statement
- b. Right to pre-natal care
- c. Separate prison for female offenders
- d. Grant of victim compensation

8. The maximum possible detention under Section 151 of the Code of Criminal procedure is:

- a. 12 hours
- b. 24 hours
- c. 48 hours
- d. 72 hours

9. A woman is entitled to free legal aid irrespective of her income and financial status.

- a. True
- b. False
- c. No, only those women whose income is below 10,000 p.m.
- d. None of the above

10. The punishment for custodial rape prescribed under Section 376-C of IPC is:

- a. At least 10 years of rigorous imprisonment
- b. Death sentence
- c. Fine
- d. All of the above

ANSWER KEY									
1	2	3	4	5	6	7	8	9	10
d	c	b	a	c	b	a	b	a	d