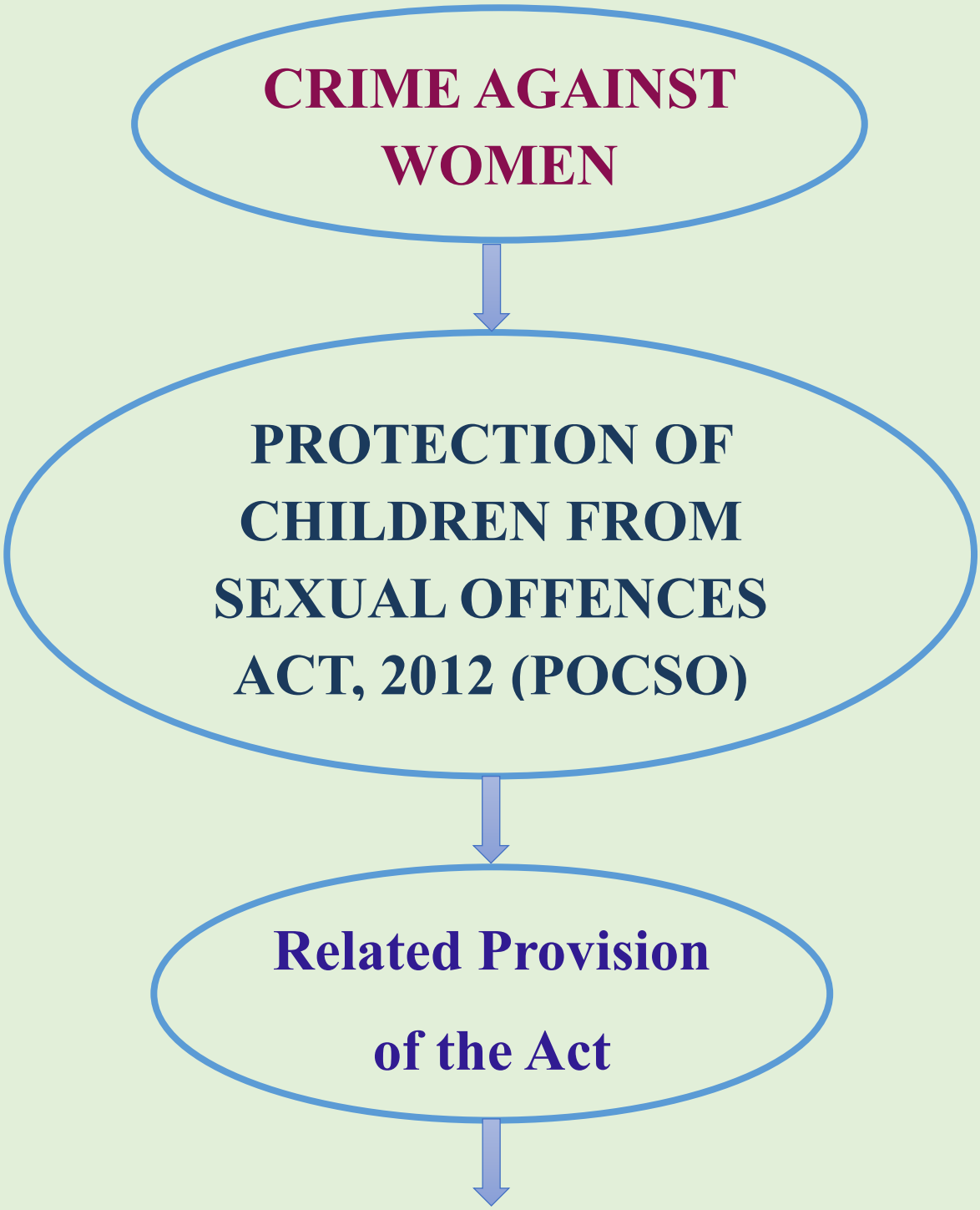


STUDY MATERIAL
ON
"TRAINING PROGRAMME ON CRIME AGAINST WOMEN"
FOR SPECIAL SESSIONS JUDGES/CJMs/ACJMs/JMs
ON 23.10.2026

PREPARED BY:
UTTARAKHAND JUDICIAL AND LEGAL ACADEMY, BHOWALI


CRIME AGAINST WOMEN
PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 (POCSO)
Related Provision of the Act

OFFENCE	SECTION	PUNISHMENT (SUMMARY)
Penetrative sexual assault	3, 4	Min 10 yrs up to life (4(1)); under 16 years: min 20 yrs up to life (4(2))
Aggravated penetrative sexual assault	5, 6	Min 20 yrs up to life (natural life) or death (after 2019 amendment)
Sexual assault	7, 8	3 to 5 yrs
Aggravated sexual assault	9, 10	5 to 7 yrs
Sexual harassment of child	11, 12	Up to 3 yrs
Use of child for pornography	13, 14	5 yrs+ (7 yrs on repeat)
Storage / transmission of child pornographic material	15 (three sub-sections)	Fine / up to 3 yrs / up to 3 to 5 yrs depending on purpose
Abetment and attempt	16 to 18	Abetted offence / half of the punishment for attempt

Key procedural provisions

- S.19 to 21. mandatory reporting (no exception for professionals), failure is itself an offence.
- S.24.child's statement recorded at residence or place of choice, by a woman officer not below sub-inspector, not in uniform.
- S.25 (statement under S.183 BNSS) and S.26 (recording by Magistrate and police).
- S.27 medical examination (girl child only by a woman doctor, in the presence of a person whom the child trusts).
- S.28 Special Courts (Sessions) and S.33 procedure, child not to be repeatedly called, frequent breaks, questions routed through the Court, no aggressive questioning, camera trial (S.37), screens or video link, support person.
- S.29 statutory presumption (offences under SS.3, 5, 7, 9) and S.30 presumption of culpable mental state, rebuttable by the accused.
- S.34 age determination (follow S.94 Juvenile Justice Act 2015 criteria).
- S.35 evidence recorded within 30 days of cognizance; S.35(2) trial within one year where possible.
- S.42 and 42A, alternative punishment and overriding effect.
- POCSO Rules 2020, support persons (Rule 4), compensation and interim relief (Rules 7 and 9).

Landmark and recent case law

Independent Thought v. Union of India (2017) 10 SCC 800

Para 189. Section 42-A of the Pocso Act has two parts. The first part of the section provides that the Act is in addition to and not in derogation of any other law. Therefore, the provisions of the Pocso Act are in addition to and not above any other law. However, the second part of Section 42-A provides that in case of any inconsistency between the provisions of the Pocso Act and any other law, then it is the provisions of the Pocso Act, which will have an overriding effect to the extent of inconsistency. The Pocso Act defines a "child" to be a person below the age of 18 years. "Penetrative sexual assault" and "aggravated penetrative sexual assault" have been defined in Section 3 and Section 5 of the Pocso Act. Provisions of Sections 3 and 5 are by and large similar to Section 375 and Section 376 IPC. Section 3 of the Pocso Act is identical to the opening portion of Section 375 IPC whereas Section 5 Pocso Act is similar to Section 376(2) IPC. Exception 2 to Section 375 IPC, which makes sexual intercourse or acts of consensual sex of a man with his own "wife" not being under 15 years of age, not an offence, is not found in any provision of the Pocso Act. Therefore, this is a major inconsistency between the Pocso Act and IPC. As provided in Section 42-A, in case of such an inconsistency, the Pocso Act will prevail. Moreover, the Pocso Act is a special

Act, dealing with the children whereas IPC is the general criminal law. Therefore, the Pocso Act will prevail over IPC and Exception 2 insofar as it relates to children, is inconsistent with the Pocso Act.

Eera v. State (NCT of Delhi), (2017) 15 SCC 133

Para 25. Section 27 stipulates that medical examination of a child in respect of whom any offence has been committed under the Act is to be conducted in accordance with Section 164-A CrPC. It is also significant to note that the said examination has to be done notwithstanding an FIR or complaint has not been registered for the offences under the Pocso Act. I shall refer to Section 164-A CrPC at a later stage. Section 28 of the Pocso Act deals with Special Courts. Section 31 provides that CrPC shall apply to the proceedings before a Special Court. Section 32 requires the State Government to appoint a Special Public Prosecutor for every Special Court for conducting the cases under the provisions of the Pocso Act. Chapter VIII deals with the procedure and powers of the Special Courts and recording of evidence. Section 35 provides for a period for recording of evidence of child and disposal of case. Section 36 stipulates that child should not see the accused at the time of testifying. The said provision protects the child and casts an obligation on the Special Court to see that the child, in no way, is exposed to the accused at the time of recording of evidence. Recording of the statement of a child is through videoconferencing or by utilising single visibility mirrors or curtains or any other device is permissible. This provision has its own sanctity. Section 37 deals with trials to be conducted in camera and Section 38 provides

assistance of an interpreter or expert while recording evidence of a child. Section 42-A lays the postulate that the Pocso Act is not in derogation of the provisions of any other law.

26. Section 45 empowers the Central Government to make rules for carrying out the purposes of the Pocso Act. In exercise of powers conferred under Section 45, a set of rules, namely, the Protection of Children from Sexual Offences Rules, 2012 (the 2012 Rules) has been framed and the said Rules have come into force on 14-11-2012. Rule 7 which deals with compensation reads as under:

"7. Compensation— (1) The Special Court may, in appropriate cases, on its own or on an application filed by or on behalf of the child, pass an order for interim compensation to meet the immediate needs of the child for relief or rehabilitation at any stage after registration of the first information report. Such interim compensation paid to the child shall be adjusted against the final compensation, if any.

(2) The Special Court may, on its own or on an application filed by or on behalf of the victim, recommend the award of compensation where the accused is convicted, or where the case ends in acquittal or discharge, or the accused is not traced or identified, and in the opinion of the Special Court the child has suffered loss or injury as a result of that offence.

(3) Where the Special Court, under sub-section (8) of Section 33 of the Act read with sub-sections (2) and (3) of Section 357-A of the Code of Criminal Procedure, makes a direction for the award of compensation to the victim, it shall take into account all relevant factors relating to the loss or injury caused to the victim, including the following—

(i) type of abuse, gravity of the offence and the severity of the mental or physical harm or injury suffered by the child;

(ii) the expenditure incurred or likely to be incurred on his medical treatment for physical and/or mental health;

(iii) loss of educational opportunity as a consequence of the offence, including absence from school due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;

(iv) loss of employment as a result of the offence, including absence from place of employment due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;

(v) the relationship of the child to the offender, if any;

(vi) whether the abuse was a single isolated incidence or whether the abuse took place over a period of time;

(vii) whether the child become pregnant as a result of the offence;

(viii) whether the child contracted a sexually transmitted disease (STD) as a result of the offence;

(ix) whether the child contracted human immunodeficiency virus (HIV) as a result of the offence;

(x) any disability suffered by the child as a result of the offence;

(xi) financial condition of the child against whom the offence has been committed so as to determine his need for rehabilitation;

(xii) any other factor that the Special Court may consider to be relevant.

(4) The compensation awarded by the Special Court is to be paid by the State Government from the Victims Compensation Fund or other scheme or fund established by it for the purposes of compensating and rehabilitating victims under Section 357-A of the Code of Criminal Procedure or any other laws for the time being in force, or, where such fund or scheme does not exist, by the State Government.

(5) The State Government shall pay the compensation ordered by the Special Court within 30 days of receipt of such order.

(6) Nothing in these Rules shall prevent a child or his parent or guardian or any other person in whom the child has trust and confidence from submitting an application for seeking relief under any other rules or scheme of the Central Government or State Government."

Attorney General v. Satish, (2022) 5 SCC 545

"skin-to-skin contact" requirement for "touch" under S.7 is rejected. The test is sexual intent, not skin contact. (para 38-39)

Smruti Tukaram Badade v. State of Maharashtra, (2022) 18 SCC 24

Para 7.1. The definition of "vulnerable witness" contained in Clause 3(a) of the "Guidelines for recording evidence of vulnerable witnesses in criminal matters" of the High Court of Delhi shall not be limited only to child witnesses who have attained the age of 18 years and should be expanded to include, inter alia, the following categories of vulnerable witnesses:

(a) Age neutral victims of sexual assault read with Sections 273 and 327 of the Code of Criminal Procedure, 1973 and Section 354 of the Penal Code, 1860 (IPC);

(b) Gender neutral victims of sexual assault read with Section 2(d) of the Protection of Children from Sexual Offences Act, 2012;

(c) Age and gender neutral victims of sexual assault under Section 377 of the Penal Code, 1860 read with para 34(1) of the decision in Sakshi [Sakshi v. Union of India, (2004) 5 SCC 518 : 2004 SCC (Cri) 1645] ;

(d) Witnesses suffering from "mental illness" as defined under Section 2(s) of the Mental Healthcare Act, 2017 read with Section 118 of the Evidence Act, 1872;

(e) Any witness deemed to have a threat perception under the Witness Protection Scheme, 2018 of the Union Government as approved by this Court in Mahender Chawla v. Union of India [Mahender Chawla v. Union of India, (2019) 14 SCC 615 : (2020) 2 SCC (Cri) 101] ;

(f) Any speech or hearing impaired individual or a person suffering from any other disability who is considered to be a vulnerable witness by the competent court; and

(g) Any other witness deemed to be vulnerable by the court concerned.

Yuvaprakash v. State of T.N., (2024) 17 SCC 684

Para 16. Section 94(2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the examination board concerned has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through "an ossification test" or "any other latest medical age determination test" conducted on the orders of the authority concerned i.e. Committee or Board or Court.

Right to Privacy of Adolescents, 2025 SCC OnLine SC 120

Para 23. The facts of this case are an eye opener for everyone. It highlights the lacuna in our legal system. The final report concludes that though the incident was seen as a crime in law, the victim did not accept it as one. The Committee records that it was not the legal crime that caused any trauma to the victim, but rather, it was the consequences that followed, which took a toll on her. What she had to face as a consequence was the police, the legal system and the constant battle to save the accused from punishment. At the same time, she took care of her daughter to the best of her abilities,

notwithstanding the huge financial burden she carried. In fact, the final conclusion in the report is an eye opener. The relevant part of the final report reads thus: "In conclusion, a heinous crime causes trauma in the psyche of the victim. In this case, the law saw it as a crime, the victim did not. Hence, the legal crime did not cause any trauma on this particular victim. It was the consequences thereafter - the police personnel, the legal system, the battle to save her husband and do the best for her daughter while having a financial burden, which is taking its toll on her. A young woman, who refuses to be called a "Victim", fighting for her husband needs all the support that can be made available. It would be in the best interest of the child if the family structure can be restored."

24. What troubles us is the issue of sentencing. The reports of the Committee stare at our faces. Though the victim did not treat the incident as a heinous crime, she suffered because of it. This was because at an earlier stage, the victim could not make an informed choice due to the shortcomings of our society, our legal system and her family. In fact, she did not get any opportunity to make informed choice. The society judged her, the legal system failed her, and her own family abandoned her. Now, she is at a stage where she is desperate to save her husband. Now, she is emotionally committed to the accused and has become very possessive of her small family.

25. After having read the reports and having interacted with the Committee as well as the victim, we are of the view that if we send the accused to jail, the worst sufferer will be the victim herself. As compared to the situation in 2018, she is better placed today. Now she is comfortable with her small family. She along with the accused, is concentrating on their daughter and they want to ensure that she gets quality education. At the same time, as recorded in the final report, the victim is attending school and is desperate to complete her school education. Though the State has offered to enroll her in some vocational course, she is keen on completing her education, at least up to graduation.

26. In law, we have no option but to sentence the accused and send him to jail for undergoing the minimum punishment prescribed by the Statute. However, in this case, the society, the family of the victim and the legal system have done enough injustice to the victim. She has been subjected to enough trauma and agony. We do not want to add to the injustice done to the victim by sending her husband to jail. We as Judges, cannot shut our eyes to these harsh realities. Now, at this stage, in order to do real justice to the victim, the only option left before us is to ensure that the accused is not separated from the victim. The State and the society must ensure that the family is rehabilitated till the family settles down in all respects.

27. Ultimately, this Court is bestowed with extraordinary jurisdiction under Article 142 for the sole object of ensuring that the highest Court of the land is in a position to do substantial justice in its truest sense. In the context of this situation, sadly, true justice lies in not sentencing the accused to undergo imprisonment. This case is not going to be a precedent and should not be a precedent. This case is an illustration of the complete failure of our society and our legal system. All that the system can do for the victim now, is to help her fulfil her desire of completing her education, settling down in life, providing a better education to her daughter and ensuring overall better living conditions for her family.

Waris v. State of M.P., 2026 SCC OnLine SC 2001

Para 128. The same facts establish the offences under Sections 5 and 6 of the POCSO Act. Section 5 enumerates the forms of aggravated penetrative sexual assault, and Section 6 prescribes the punishment for it. The assault in the present case falls within aggravated penetrative sexual assault upon more than one count. It falls within clause (m) of Section 5, in that it was committed upon a child below twelve years of age. It falls within clause (n) of Section 5, in that it was committed by the appellant, who, being the step-father of the victim and residing in the same household, was a relative of the child. Once the foundational facts are established by the prosecution, the presumption arising under Section 29 of the POCSO Act comes into operation. That provision enacts that where a person is prosecuted for an offence under, among others, Sections 5 and 6 of the POCSO Act, the Special Court shall presume that such person has committed the offence, unless the contrary is proved. The presumption is not a substitute for the proof of the foundational facts, and it operates only after those facts, namely the age of the victim, the fact of penetrative sexual assault, and the identity of the accused as the assailant, have been established by the prosecution. In the present case those foundational facts stand established, as we have found, by evidence independent of the presumption, and the burden thereupon cast upon the appellant to prove the contrary has not been discharged, his defences having been found to be false. We wish to make it clear that we do not rest the conviction upon the statutory presumption. The conviction rests upon the affirmative evidence we have discussed, and the presumption under Section 29 operates only to reinforce a conclusion that the evidence independently establishes, The offences under Sections 5 and 6 of the POCSO Act are made out.

‘R’ v. ‘E’, 2026 SCC OnLine SC 2002

Para 76. We may now briefly consider a related situation. The child who is the alleged victim of an offence under the POCSO Act may be the subject of guardianship or custody proceedings between the child's parents, and the offence may be alleged against one of the parents or against any other family member of that parent living under the same roof as the child. In such a case, the registration of the POCSO case may adversely affect that parent's interests in the guardianship or custody proceedings. If the complaint is made with mala fide intent, its purpose may be to gain an upper hand in those proceedings. In such cases, the concerned court should adopt the approach suggested by the Kerala High Court in Suhara (supra), to which we have already referred. To reiterate, the Kerala High Court held that: (i) the mere registration of a case under the POCSO Act should not by itself give rise to an inference that the allegation is true, and should not be allowed to become a ruse for defeating that parent's legitimate claim to custody or guardianship; and (ii) the court concerned, after considering the relevant material, including the material collected by the investigating agency, shall, on a case-to-case basis, form a prima facie view as to whether the allegations are baseless.

77. Beyond the basic principles reiterated above, it is difficult for us to state precisely the course that the court concerned should follow. The multiplicity of facts and circumstances in which such situations may arise, makes any hard and fast rule impossible to conceive and impracticable to apply. How the matter should proceed is therefore for the concerned court to decide, in light of the basic principles laid down above and by due application of judicial mind.

BNS PROVISIONS ON CRIMES AGAINST WOMEN AND ITPA 1956

1. Rape and gang rape

TOPIC	BNS	IPC
Definition of rape	S.63	S.375
Punishment (10 yrs to life)	S.64(1)	S.376(1)
Aggravated rape (police officer, public servant, hospital staff, pregnancy, disability etc.)	S.64(2)	S.376(2)
Rape of a woman under 16 (20 yrs to life) / under 12 (20 yrs to life or death)	S.65(1), 65(2)	S.376(3), 376AB
Rape causing death or persistent vegetative state (20 yrs to life or death)	S.66	S.376A

Rape causing death or persistent vegetative state (20 yrs to life or death)	S.66	S.376A
Intercourse by husband during separation	S.67	S.376B
Intercourse by person in authority	S.68	S.376C
Sexual intercourse by deceitful means (false promise of marriage, employment, promotion, or concealment of identity)	S.69	New
Gang rape (woman, 20 yrs to life; under 18, life or death)	S.70(1), 70(2)	S.376D, 376DA, 376DB
Repeat offenders (life or death)	S.71	S.376E
Disclosure of identity / printing proceedings	S.72, 73	S.228A, 228A(3)

Consent: Under S.63 (explanation 2), consent means an unequivocal voluntary agreement. Absence of resistance does not by itself imply consent. The presumption in S.120 BSA applies when sexual intercourse is proved and the victim states she did not consent.

CASE LAWS

Pramod Suryabhan Pawar v. State of Maharashtra (2019) 9 SCC 608

Para 16. . Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a "misconception of fact" that vitiates the woman's "consent". On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it. The "consent" of a woman under Section 375 is vitiated on the ground of a "misconception of fact" where such misconception was the basis for her choosing to engage in the said act. In Deepak Gulati v. State of Haryana, (2013) 7 SCC 675 this Court observed:

"21. … There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to

marry her, despite having every intention to do so. Such cases must be treated differently.

> **24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The "failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term "misconception of fact", the fact must have an immediate relevance". Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, [Ed. : The matter between two asterisks has been emphasised in original.] unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her [Ed. : The matter between two asterisks has been emphasised in original ."**

18. To summarise the legal position that emerges from the above cases, the "consent" of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the "consent" was vitiated by a "misconception of fact" arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act.

Sonu @ Subhash Kumar v. State of U.P. (2021) 18 SCC 517

"each case turns on the facts; the court must see whether the accused had intent to deceive at the time of the promise."

Naim Ahamed v. State (NCT of Delhi) (2023) 15 SCC 385

"a long consensual relationship cannot be converted into rape because marriage did not follow, stressed distinction between breach of promise and false promise."

Para 21 ". ……..that there is a difference between giving a false promise and committing breach of promise by the accused. In case of false promise, the accused right from the beginning would not have any intention to marry the prosecutrix and would have cheated or deceited the prosecutrix by giving a false promise to marry her only with a view to satisfy his lust, whereas in case of breach of promise, one cannot deny a possibility that the accused might have given a promise with all seriousness to marry her, and subsequently might have encountered certain circumstances unforeseen by him or the circumstances beyond his control, which prevented him to fulfil his promise. So, it would be a folly to treat each breach of promise to marry as a false promise and to prosecute a person for the offence under Section 376.

As stated earlier, each case would depend upon its proved facts before the court."

Gang Rape (common intention all participants liable even if only one commits rape)

Ashok Kumar v. State of Haryana (2003) 2 SCC 143

Para 8. Charge against the appellant is under Section 376(2)(g) IPC. In order to establish an offence under Section 376(2)(g) IPC, read with Explanation I thereto, the prosecution must adduce evidence to indicate that more than one accused had acted in concert and in such an event, if rape had been committed by even one, all the accused will be guilty irrespective of the fact that she had been raped by one or more of them and it is not necessary for the prosecution to adduce evidence of a completed act of rape by each one of the accused. In other words, this provision embodies a principle of joint liability and the essence of that liability is the existence of common intention; that common intention presupposes prior concert which may be determined from the conduct of offenders revealed during the course of action and it could arise and be formed suddenly, but, there must be meeting of minds.

It is not enough to have the same intention independently of each of the offenders. In such cases, there must be criminal sharing marking out a certain measure of jointness in the commission of offence.

Death penalty: Mukesh v. State (NCT of Delhi) (2017) 6 SCC 1 (Nirbhaya)

Para 516. Society's reasonable expectation is that deterrent punishment commensurate with the gravity of the offence be awarded. When the crime is brutal, shocking the collective conscience of the community, sympathy in any form would be misplaced and it would shake the confidence of public in the administration of criminal-justice system. As held in Om Prakash v. State of Haryana, (1999) 3 SCC 19, the Court must respond to the cry of the society and to settle what would be a deterrent punishment for what was an apparently abominable crime.

517. Bearing in mind the above principles governing the sentencing policy, I have considered all the aggravating and mitigating circumstances in the present case. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the crime. Justice demands that the courts should impose punishments befitting the crime so that it reflects public abhorrence of the crime. Crimes like the one before us cannot be looked with magnanimity. Factors like young age of the accused and poor background cannot be said to be mitigating circumstances. Likewise,

post-crime remorse and post-crime good conduct of the accused, the statement of the accused as to their background and family circumstances, age, absence of criminal antecedents and their good conduct in prison, in my view, cannot be taken as mitigating circumstances to take the case out of the category of "the rarest of rare cases". The circumstances stated by the accused in their affidavits are too slender to be treated as mitigating circumstances.

518. In the present case, there is not even a hint of hesitation in my mind with respect to the aggravating circumstances outweighing the mitigating circumstances and I do not find any justification to convert the death sentence imposed by the courts below to "life imprisonment for the rest of the life". The gruesome offences were committed with highest viciousness. Human lust was allowed to take such a demonic form. The accused may not be hardened criminals; but the cruel manner in which the gang rape was committed in the moving bus; iron rods were inserted in the private parts of the victim; and the coldness with which both the victims were thrown naked in cold wintery night of December, shocks the collective conscience of the society. The present case clearly comes within the category of "the rarest of rare cases" where the question of any other punishment is "unquestionably foreclosed". If at all there is a case warranting award of death sentence, it is the present case. If the dreadfulness displayed by the accused in committing the gang rape, unnatural sex, insertion of iron rod in the private parts of the victim does not fall in the "rarest of rare category", then one may wonder what else would fall in that category. On these reasonings recorded by me, I concur with the majority in affirming the death sentence awarded to the accused persons.

Manoj v. State of M.P.
(2023) 2 SCC 353

2. Outraging the modesty of a woman (S.74 BNS/ S.354 IPC) and insulting modesty (S.79 BNS, S.509 IPC)

- **S.74: assault or criminal force to a woman intending to outrage or knowing it likely to outrage her modesty, 1 to 5 years and fine.**
- **State of Punjab v. Major Singh AIR 1967 SC 63 (an act capable of shocking the decency of a woman);**
- **Rupan Deol Bajaj v. K.P.S. Gill (1995) 6 SCC 194**

Para 14. Since the word 'modesty' has not been defined in the Penal Code, 1860 we may profitably look into its dictionary meaning. According to Shorter Oxford English Dictionary (3rd Edn.) modesty is the quality of being modest and in relation to woman means "womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct". The word 'modest' in relation to woman is defined in the above dictionary as "decorous in manner and conduct; not forward or lewd; shamefast". Webster's Third New International Dictionary of the English Language defines modesty as "freedom from coarseness, indelicacy or indecency; a regard for propriety in dress, speech or conduct". In the Oxford English Dictionary (1933 Edn.) the meaning of the word 'modesty' is given as "womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct (in man or woman); reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions".

15. In State of Punjab v. Major Singh AIR 1967 SC 63, a question arose whether a female child of seven and a half months could be said to be possessed of 'modesty' which could be outraged. In answering the above question Mudholkar, J., who along with Bachawat, J. spoke for the majority, held that when any act done to or in the presence of a woman is clearly suggestive of sex according to the common notions of mankind that must fall within the mischief of Section 354 IPC. Needless to say, the "common notions of mankind" referred to by the learned Judge have to be gauged by contemporary societal standards. The other learned Judge (Bachawat, J.) observed that the essence of a woman's modesty is her sex and from her very birth she possesses the modesty which is the attribute of her sex. From the above dictionary meaning of 'modesty' and the interpretation given to that word by this Court in Major Singh case , AIR 1967 SC 63 it appears to us that the ultimate test for ascertaining whether modesty has been outraged is the action of the offender such as could be perceived as one which is capable of shocking the sense of decency of a woman. When the above test is applied in the present case, keeping in view the total fact situation, it cannot but be held that the alleged act of Mr Gill in slapping Mrs Bajaj on her posterior amounted to "outraging of her modesty" for it was not only an affront to the normal sense of feminine decency but also an affront to the dignity of the lady — "sexual overtones" or not, notwithstanding.

17. It is undoubtedly correct that if intention or knowledge is one of the ingredients of any offence, it has got to be proved like other ingredients for convicting a person. But it is also equally true that those ingredients being states of mind may not be proved by direct evidence and may have to be inferred from the attending circumstances of a given case.

Since, however, in the instant case we are only at the incipient stage we have to ascertain, only prima facie, whether Mr Gill by slapping Mrs Bajaj on her posterior, in the background detailed by her in the FIR, intended to outrage or knew it to be likely that he would thereby outrage her modesty, which is one of the essential ingredients of Section 354 IPC. The sequence of events which we have detailed earlier indicates that the slapping was the finale to the earlier overtures of Mr Gill, which considered together, persuade us to hold that he had the requisite culpable intention. Even if we had presumed he had no such intention he must be attributed with such knowledge, as the alleged act was committed by him in the presence of a gathering comprising the elite of the society — as the names and designations of the people given in the FIR indicate. While on this point we may also mention that there is nothing in the FIR to indicate, even remotely, that the indecent act was committed by Mr Gill, accidentally or by mistake or it was a slip. For the reasons aforesaid, it must also be said that — apart from the offence under Section 354 IPC — an offence under Section 509 IPC has been made out on the allegations contained in the FIR as the words used and gestures made by Mr Gill were intended to insult the modesty of Mrs. Bajaj.

18. That brings us to the other offences, namely, under Sections 352, 341, 342 IPC. We need not however take notice of the offence under Section 352 IPC for the offence under Section 354 IPC includes the ingredients of the former. In other words, Section 352 IPC constitutes a minor offence in relation to the other. Regarding the offence of wrongful confinement punishable under Section 342 IPC there is not an iota of material in the FIR; and so far as the offence under Section 341 IPC is concerned, the only allegation relating to the same is that Mr Gill stood in front of Mrs Bajaj in such a manner that she had to move backward. From such act alone it cannot be said that he "wrongfully restrained" her within the meaning of Section 339 IPC to make him liable under Section 341 IPC.

Raju Pandurang Mahale v. State of Maharashtra (2004) 4 SCC 371

Para 11. Coming to the question as to whether Section 354 of the Act has any application, it is to be noted that the provision makes penal the assault or use of criminal force on a woman to outrage her modesty. The essential ingredients of offence under Section 354 IPC are:

(a) That the assault must be on a woman.

(b) That the accused must have used criminal force on her.

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

12. What constitutes an outrage to female modesty is nowhere defined. The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. Modesty in this section is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex. The act of pulling a woman, removing her saree, coupled with a request for sexual intercourse, is such as would be an outrage to the modesty of a woman; and knowledge, that modesty is likely to be outraged, is sufficient to constitute the offence without any deliberate intention having such outrage alone for its object. As indicated above, the word "modesty" is not defined in IPC. The Shorter Oxford Dictionary (3rd Edn.) defines the word "modesty" in relation to a woman as follows:

"Decorous in manner and conduct, not forward or lewd, Shamefast, Scrupulously chaste."

13. Modesty is defined as the quality of being modest; and in relation to a woman, "womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct". It is the reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions. As observed by Justice Patteson in R. v. James Lloyd [(1836) 7 C&P 317 : 173 ER 141] :

In order to find the accused guilty of an assault with intent to commit a rape, court must be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person but that he intended to do so at all events, and notwithstanding any resistance on her part.

The point of distinction between an offence of attempt to commit rape and to commit indecent assault is that there should be some action on the part of the accused which would show that he was just going to have sexual connection with her.

Ishwar Chand Sharma v. State of U.P., 2026 SCC OnLine SC 1004

Para 6.7 Now, coming to Section 74 of BNS, the said section penalises any act or omission that outrages the modesty of a woman. To apply the said Section, there must be an assault or use of criminal force on a woman. Such assault or use of criminal force must be made with an intention to outrage her modesty or with the knowledge that her modesty is likely to be outraged. Mere knowledge that the modesty of a woman is likely to be outraged is sufficient without any deliberate intention. Therefore, the essential ingredients of the offence punishable under Section 74 of BNS are that the person assaulted should be a woman, and the accused must have used criminal force on her intending thereby to outrage her modesty. The ultimate test for ascertaining whether the modesty of a woman has been outraged, assaulted, or insulted is that the action of the offender should be such that it may be perceived as one which is capable of shocking the sense of decency of a woman.

- S.76: assault with intent to disrobe, 3 to 7 yrs.
- S.79: word, gesture or act intended to insult modesty or intrusion on privacy, up to 3 yrs and fine.

3. Sexual harassment (S.75 BNS, S.354A IPC)

- Physical contact and advances involving unwelcome and explicit sexual overtures; demand or request for sexual favours; showing pornography against will, up to 3 years, or fine, or both.
- Making sexually coloured remarks, up to 1 year, or fine, or both.

Vishaka v. State of Rajasthan (1997) 6 SCC 241

Apparel Export Promotion Council v. A.K. Chopra (1999) 1 SCC 759 (even an attempt to molest without physical contact is sexual harassment at the workplace, standard of dignity applies).

4. Stalking and voyeurism

- **S.77 BNS (voyeurism, S.354C IPC): watching or capturing images of a woman in a private act where she would expect not to be seen; and disseminating. First conviction 1 to 3 yrs; repeat 3 to 7 yrs.**
- **S.78 BNS (stalking, S.354D IPC): following or contacting a woman despite clear indication of disinterest, or monitoring her use of the internet, email or electronic communication. First conviction up to 3 yrs; repeat up to 5 yrs. Exceptions, crime prevention, legal compulsion, or reasonableness.**
- **Practical points: cyber-stalking, morphing and revenge porn typically attract S.77, S.78, S.79 BNS along with S.67/67A IT Act and S.356 BNS (defamation) in some cases. Preserve electronic evidence with certification under S.63 BSA (IEA S.65B).**

Kalandi Charan Lenka v. State of Odisha, 2017 SCC OnLine Ori 52

Para 16. Considering the punishment prescribed for the offence prima facie found out, most of the offences as alleged by prosecution are bailable, character of evidence as discussed above including absence of criminal antecedent of petitioner and period of his custody, lenient view is taken to release him on bail. But the dignity of the woman as discussed above has to be kept in view as stalking or opening of fake Facebook account or obscene representation including morphed naked photographs are menace to the society and the right of the woman.

5. Immoral Traffic (Prevention) Act, 1956 (ITPA) and trafficking (SS.143 and 144 BNS)

- Key sections: S.3 (brothel keeping), S.4 (living on earnings of prostitution), S.5 (procuring, inducing or taking person for prostitution), S.6 (detaining a person in premises where prostitution is carried on), S.7 (prostitution in or near public places), S.8 (seducing or soliciting), S.13 (Special Police Officer), S.15 (search without warrant), S.16 (rescue), S.17 (protective home), S.18 (closure of brothel).
- BNS S.143 (trafficking of person, 7 to 10 yrs; harsher where multiple persons or minors) and S.144 (exploitation of a trafficked person) replace S.370 and S.370A IPC.
- Rehabilitation of sex workers and their children

Gaurav Jain v. Union of India (1997) 8 SCC 114

Para 59. The Committee has since submitted its report. In its report the Committee has made various recommendations for the rehabilitation of the children of prostitutes. I do not find that the question of eradication of prostitution was an issue involved in these proceedings or the subject-matter of the Committee's deliberations. The Committee in its report which runs into over 100 pages has only referred in two paragraphs, while examining the target group, as to who are the prostitutes. Apart from this I do not find there is any discussion in the report of the Committee towards eradication of prostitution. As to what should be the scheme to be evolved to eradicate prostitution, i.e., the source itself; the basics; and what succour and sustenance can be provided to the fallen victims of the flesh trade was not a question agitated in the proceedings. Certainly, no one can dispute that the evil of prostitution must be curbed. It is the mandate of the Constitution which prohibits traffic in human beings. Keeping that object in view and in pursuance to International Conventions for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of others signed at New York on 9-5-1950, Parliament enacted the Suppression of Immoral Traffic in Women and Girls Act, 1956. The Act was amended in 1978 to make good some inadequacies in the implementation of the Act and in the light of the experience gained during the period the Act was being implemented. Despite the amendments of the Act, it was felt that enforcement of the Act had

not been effective enough to deal with the problems of immoral traffic in all its dimensions. Suggestions had been made to the Government by voluntary organisations working for women, advocacy groups and various individuals urging the enlargement of the scope of the Act, to make penal provisions more stringent and to provide for certain minimum standards for correctional treatment and rehabilitation of the victims. The Act was, therefore, further amended in 1986 making it more wide-based. The Act is now called as Immoral Traffic (Prevention) Act, 1956. I need not detail other objects of the Act as all the discussions would not be relevant in these proceedings.

Rescue and rehabilitation of victims of trafficking

Vishal Jeet v. Union of India (1990) 3 SCC 318 ().

Para 7. Article 23 which relates to Fundamental Rights in Part III of the Constitution and which has been put under the caption 'Right against exploitation' prohibits 'traffic in human beings and beggar and other similar forms of labour' and provides that any contravention of Article 23(1) shall be an offence punishable in accordance with law. The expression 'traffic in human beings' is evidently a very wide expression

including the prohibition of traffic in women for immoral or other purposes. Article 35(a)(ii) of the Constitution reads that notwithstanding anything in this Constitution, Parliament shall have, and the legislature of a State shall not have, power to make laws for prescribing punishment for those acts which are declared to be offences under this part. The power of legislation, under this article, is given to the Parliament exclusively, for, otherwise the laws relating to fundamental rights would not have been uniform throughout the country. The power is specifically denied to the State legislatures. In implementation of the principles underlying Article 23(1) the Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA for short) has been enacted under Article 35 with the object of inhibiting or abolishing the immoral traffic in women and girls.

11. With the growing danger in society to healthy and decent living with morality, the world public opinion congregated at New York in a convention for suppression of traffic in persons for exploitation for immoral purposes. Pursuant to the signing of that convention on May 9, 1950, our Parliament has passed an Act called "Suppression of Immoral Traffic in Women and Girls Act, 1956" which is now changed as "the Immoral Traffic (Prevention) Act, 1956" to which certain drastic amendments are introduced by the Amendment Acts of 46 of 1978 and 44 of 1986. This Act aims at suppressing the evils of prostitution in women and girls and achieving a public purpose viz. to rescue the fallen women and girls and to stamp out the evils of prostitution and also to provide an opportunity to these fallen victims so that they could become decent members of the society. Besides the above Act, there are various provisions in the Penal Code, 1860 such as Sections 366-A (dealing with procuration of minor girl), 366-B (dealing with offence of importation

of girl from foreign country), 372 (dealing with selling of minor for purposes of prostitution etc.) and 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 enquiry and make such orders in relation to the neglected juveniles as it may deem fit.

12. In spite of the above stringent and rehabilitative provisions of law under various Acts, it cannot be said that the desired result has been achieved. It cannot be gainsaid that a remarkable degree of ignorance or callousness or culpable indifference is manifested in uprooting this cancerous growth despite the fact that the day has arrived imperiously demanding an objective multi-dimensional study and a searching investigation into the matter relating to the causes and effects of this evil and requiring most rational measures to weed out the vices of illicit trafficking. This malady is not only a social but also a socio-economic problem and, therefore, the measures to be taken in that regard should be more preventive rather than punitive.

16. We, after bestowing our deep and anxious consideration on this matter feel that it would be appropriate if certain directions are given in this regard. Accordingly, we make the following directions:

(1) All the State Governments and the Governments of Union territories should direct their concerned law enforcing authorities to take

appropriate and speedy action under the existing laws in eradicating child prostitution without giving room for any complaint of remissness or culpable indifference.

(2) The State Governments and the Governments of Union territories should set up a separate Advisory Committee within their respective zones consisting of the Secretary of the Social Welfare Department or Board, the Secretary of the Law Department, sociologists, criminologists, members of the women's organisations, members of Indian Council of Child Welfare and Indian Council of Social Welfare as well the members of various voluntary social organisations and associations etc., the main objects of the Advisory Committee being to make suggestions of:

(a) the measures to be taken in eradicating the child prostitution, and

(b) the social welfare programmes to be implemented for the care, protection, treatment, development and rehabilitation of the young fallen victims namely the children and girls rescued either from the brothel houses or from the vices of prostitution.

(3) All the State Governments and the Governments of Union territories should take steps in providing adequate and rehabilitative homes manned by well-qualified trained social workers, psychiatrists and doctors.

(4) The Union Government should set up a committee of its own in the line, we have suggested under direction No. (2) the main object of which is to evolve welfare programmes to be implemented on the national level for the care, protection, rehabilitation etc. etc. of the young fallen victims namely the children and girls and to make suggestions of

amendments to the existing laws or for enactment of any new law, if so warranted for the prevention of sexual exploitation of children.

(5) The Central Government and the Governments of States and Union territories should devise a machinery of its own for ensuring the proper implementation of the suggestions that would be made by the respective committees.

(6) The Advisory Committee can also go deep into Devadasi system and Jogin tradition and give their valuable advice and suggestions as to what best the government could do in that regard.

(7) The copies of the affidavits and the list containing the names of 9 girls are directed to be forwarded to the Commissioner of Police, Delhi for necessary action.

Pinki v. State of U.P., (2025) 7 SCC 314

Following directions were issued by the Hon'ble Supreme Court:

84.1. We direct the Chief Judicial Magistrate, District Varanasi and the Additional Chief Judicial Magistrate, Court No. 5, District Varanasi to commit all the three criminal cases referred to in para 12 of this judgment to the Sessions Court, within a period of two weeks from today without fail.

84.2. Upon all the three criminal cases being committed to the Court of Session, the trial court concerned shall proceed to frame charge against individual accused persons within a period of one week thereafter.

84.3. If it is brought to the notice of the trial court that some of the accused persons have absconded or their whereabouts are not known, the trial court shall take steps immediately to secure their presence by issuing non-bailable warrant, etc. The trial of the absconding accused shall be separated in accordance with law so that the trial of the other co-accused persons do not get delayed.

84.4. Once the charge is framed by the trial court in individual cases, the trial court concerned shall proceed with the recording of the evidence preferably on day-to-day basis and complete the proceedings of the trial within a period of six months.

84.5. We direct the State Government to appoint three Special Public Prosecutors for the purpose of conducting of the trials well-versed in criminal trials at the earliest.

84.6. We also direct the State Government to provide police protection to the victims and their families pending the trial at the earliest so as to prevent tampering of the evidence.

84.7. We grant two months' time to the State Police to trace out all those accused persons who have absconded and are on the run. They shall be apprehended and produced before the court concerned at the earliest.

84.8. We direct the State Government to ensure that the trafficked children are admitted in schools in accordance with the provisions of the Right of Children to Free and Compulsory Education Act, 2009 and continue to provide support for their education.

84.9. At the end of the trial, the trial court concerned shall pass appropriate orders as regards compensation to the victims under the provisions of the BNSS, 2023 including under the Uttar Pradesh Rani Laxmi Bai Mahila Evam Bal Samman Kosh managed by the Land Welfare Committee.

84.10. All the State Governments across the country are directed to look into the Report of BIRD dated 12-4-2023 more particularly the recommendations, as reproduced by us in para 37 of this judgment.

84.11. All the State Governments are directed to study the entire Report and start implementing each of the recommendations by working out appropriate modalities in that regard.

84.12. We direct all the High Courts across the country to call for the necessary information as regards the status of the pending trials relating to child trafficking. Once each of the High Courts is able to collect the necessary data as regards the status of the trials, a circular thereafter shall be issued on its administrative side to all the trial courts concerned to complete the trials within a period of six months from the date of the circular and if need be, by conducting the trials on day-to-day basis. Each of the High Courts shall thereafter forward a report to this Court as regards the compliance of the directions contained in the circular.

84.13. Non-compliance of our directions or any laxity of any nature in that regard on the part of any of the authorities shall be viewed very strictly and if need be, they shall be proceeded for contempt.

Prajwala v. Union of India, 2026 SCC OnLine SC 1053

Para 362. The Victim Protection Plan is as follows:

……

Proceedings before the Magistrate

(ix) During the very first production of the adult victim before the Magistrate, and at every subsequent hearing, the Magistrate shall ensure that a lawyer who effectively represents the interest of the victim is present throughout the course of the proceedings. If not, the Magistrate shall appoint any such lawyer at his/her discretion or those empanelled by the DLSA to represent the victim. It must be ensured that the lawyer representing the victim is different from the lawyer representing the offender(s). No substantive step in the proceedings shall be taken until such legal representation has been made available to the victim. Where practicable, a social worker with experience in working with such victims shall also be present to assist the victim in understanding the nature of the proceedings.

(x) At the outset, the Magistrate shall inform the victim of her right to be heard at every stage, and shall ensure that she is given a genuine and meaningful opportunity to express her views and wishes. Further, the Magistrate shall ensure that the victim has been informed about the nature and purpose of the proceedings, the steps that will follow, and the choices available to her at each stage.

(xi) The Magistrate shall, at the earliest opportunity, make a prima facie assessment as to whether the victim produced before her is an adult or a child. Where the Magistrate has any doubt as to the victim's age, she shall be treated as a child at this stage, and the matter shall be referred to the CWC, which shall deal with the victim in accordance with the provisions of JJA, 2015. If the CWC concludes that the victim is an adult, the matter shall be returned to the Magistrate.

(xii) At the first hearing, the Magistrate shall hear the victim, among other things, on: (i) whether she considers herself to be engaging in prostitution on her own volition and without coercion, fraud or force, whether direct or indirect, and (ii) whether she wishes to be placed in long-term safe custody by virtue of an order under Section 17(4), ITPA.

(xiii) Where the victim clearly and unequivocally states that she is engaging in prostitution voluntarily and does not wish to be placed in long-term safe custody under Section 17(4), the Magistrate shall pass an order directing a preliminary inquiry into whether her engagement in prostitution is voluntary in nature. This specific inquiry shall be conducted by one or more social workers from the panel maintained under Section 17(5), ITPA, who have experience in working with victims of CSE. The preliminary inquiry report shall be submitted to the Magistrate within 7 (seven) days from the date of the order. Where the victim makes no such statement, or is unable to clearly express her position, the matter shall proceed directly to the deeper inquiry under Paragraph (xviii) of this section.

(xiv) The aforesaid inquiry shall be conducted in the victim's preferred language, and, if a social worker proficient in that language is unavailable, an interpreter shall be arranged. The inquiry shall be held in a private setting, without the presence of the police or any person who may have influence over the victim.

(xv) Upon completion of the preliminary inquiry, the social worker(s) tasked with it shall submit a report to the Magistrate, which, among other things, shall include the following:

a. First, the victim's own statement on whether she considers herself to be engaging in prostitution voluntarily.

b. Secondly, the social worker's assessment of the conditions in which the victim was undertaking prostitution, including her manner of entry, her control over her earnings, and her freedom of movement, and any other indicators which would shed light on whether the victim is being coerced or forced into prostitution and/or whether her statement of voluntariness is manufactured through threats of coercion, force or undue influence.

c. Thirdly, the social worker's overall assessment, based on the victim's statement and working conditions, of whether the victim engages in prostitution voluntarily. Where this assessment differs from the victim's own statement, the report shall record specific and concrete reasons for the difference, with particular reference to any circumstances that would pose a real risk to the victim's safety were she to be released and/or which indicate that the statement of voluntaries is manufactured through threats of coercion, force or undue influence.

(xvi) Upon receipt of the report, i.e., after 7 (seven) days from the date of the order directing the preliminary inquiry, the Magistrate shall peruse the findings of the report and, before passing any order, give the victim and her lawyer an opportunity to respond to the report, particularly where the social worker's assessment differs from the victim's own statement. Thereafter, the Magistrate shall pass a reasoned order:

a. releasing the victim where the victim affirms her position as being engaged in prostitution voluntarily, and the social worker's report does not contradict this position and does not specify any circumstances that indicate safety concerns placing the victim at real and immediate risk if released and/or that the statement of voluntariness is manufactured through threats of coercion, force or undue influence;

b. directing a deeper inquiry under Paragraph (xviii), where the victim herself acknowledges upon reflection or during the inquiry that she was coerced or forced to engage in prostitution or where the victim maintains her position as engaging in prostitution voluntarily, but the social worker's report identifies circumstances that indicate safety concerns placing the victim at real and immediate risk if released and/or that the statement of voluntariness is manufactured through threats of coercion, force or undue influence, and the Magistrate, upon consideration, finds such concerns to be well-founded.

(xvii) For the purpose of such preliminary inquiry, in all cases, the victim's own statement shall be accorded primacy and shall form the basis for the Magistrate's decision. This primacy may be displaced only where the Magistrate finds, for reasons to be recorded in writing, that there exist cogent grounds to believe that the victim's safety would be at risk upon her release or that her statement of voluntariness is manufactured through threats of coercion, force or undue influence.

(xviii) Where a deeper inquiry is ordered either directly under this Paragraph or under Paragraph (xvi)(b) of this section, the Magistrate shall direct an inquiry as contemplated under Section 17(2), ITPA which shall cover the following aspects: (i) the circumstances of removal or rescue of the victim including the veracity of the information

received; (ii) character and antecedents of the victim; (iii) the suitability, capacity and genuineness of the victim's parents, guardian or husband to take charge of the victim; and (iv) the likely influence of the victim's home environment on her well-being if she is returned.

(xix) Given the multi-faceted nature of the inquiry under Section 17(2), ITPA, the Magistrate shall necessarily seek the assistance of a probation officer appointed under the Probation of Offenders Act, 1958, and a panel of social workers constituted under Section 17(5) of the ITPA with experience in working with victims of trafficking for CSE and/or a recognised welfare institution or organisation under Section 17A.

(xx) After competition of the deeper inquiry as mentioned under Paragraph (xviii) of this section, a joint report shall be submitted to the Magistrate within 21 days of the date of the order (in a case where no preliminary inquiry had been ordered under Paragraph (xiii) of this section) and within 14 days of the date of the order (in a case where a preliminary inquiry had already been completed and an order for deeper inquiry had been made under Paragraph (xvi)(b)). Where a preliminary inquiry has already been conducted, the report prepared thereunder may be referred to in the course of the deeper inquiry, and the social worker who conducted the preliminary inquiry may, where appropriate, form part of the deeper inquiry process.

(xxi) During the course of the deeper inquiry, the victim's own views, among other things, shall be sought and recorded on: first, whether she wishes to return to her family and secondly, whether she wishes to be placed in long-term safe custody under Section 17(4), ITPA. The victim's responses shall form part of the joint inquiry report and shall be placed before the Magistrate alongside the findings of the probation officer, the

findings of the probation officer, the panel, and/or a recognised welfare institution or organisation under Section 17A.

(xxii) Upon receipt of the joint inquiry report, the Magistrate shall peruse it and thereafter, hear the victim. No order placing the victim with her family shall be passed without the victim's consent. Further, except where the Magistrate finds that there exists cogent grounds to conclude that any release would be seriously prejudicial to the victim's safety or that the victim withheld consent to be placed in long-term safe custody under Section 17(4) under the influence of threats, coercion, or undue influence, no order shall be passed placing the victim in a protective home without the victim's consent.

(xxiii) Where the victim consents to placement with her family, and the Magistrate is satisfied, on the basis of the joint inquiry report which includes the investigation conducted by the recognised welfare institution or organisation under Section 17A, ITPA, that the family is genuine, capable and that such placement would not expose the victim to harm, the Magistrate shall pass an order accordingly. Where, despite sufficient efforts, the family of the victim cannot be traced, the Magistrate shall ask the victim whether she wishes to be placed in long-term safe custody under Section 17(4) and pass an order in accordance with Paragraphs (xxiv) and (xxv) respectively.

(xxiv) Where the victim consents to be placed in long-term safe custody, or where the Magistrate finds, for reasons to be recorded in writing, that release would be seriously prejudicial to the victim's safety or that her consent was withheld under the influence of threats, coercion, or undue influence, the Magistrate shall pass an order directing her placement in a protective home or such other suitable custody, in accordance with Section

17(4), ITPA. Whether placement in a protective home was ordered with or without the victim's consent, the victim may, at any time after 90 days from the date of the order, make an application to the Magistrate seeking her release. The Magistrate shall consider such application on its own merits and pass an appropriate order thereafter. This right to apply for release before the magistrate is without prejudice to the victim's right to appeal an order made under Section 17(4), ITPA provided under Section 17(6), ITPA.

(xxv) In scenarios not covered by Paragraphs (xxiii) and (xxiv) respectively, i.e., where the victim does not wish to be placed with her family or in long-term safe custody, and wishes to be released, the Magistrate shall record such a choice and pass an order for release accordingly. In such a release order, the Magistrate may, if he deems fit, assign a social worker to help and guide the victim in availing herself of the benefits to which she may be entitled under various government schemes.

(xxvi) A victim's choice not to be placed under long-term safe custody shall not be treated as an adverse inference against her at any stage, present or future, and shall not preclude her from making an application under Section 19, ITPA should she later wish to avail for herself care, protection, or rehabilitation.

(xxvii) From the date of the first production and throughout the inquiry process (both the preliminary inquiry under Paragraph (xiii) of this section and the deeper inquiry under Paragraphs (xvi)(b) and (xviii) of this section respectively), the Magistrate shall pass appropriate orders for the interim safe custody of the victim, which shall provide for the

victim to be placed in a protective home under Section 21, ITPA and be provided with adequate basic care, including medical attention, psychological support/counselling, food, and shelter. The provision of such care shall not be contingent on the outcome of any inquiry and shall not be withheld or deferred at any stage.

(xxviii) Every endeavour shall be made to complete the inquiries contemplated under this plan and to pass an order under Section 17(4) within the maximum period prescribed for interim safe custody under Section 17(3) ITPA. Where, for any reason, there is an unreasonable delay in the completion of the inquiry or the passing of such an order beyond this period, the victim shall be entitled to file an application before the magistrate bringing such delay to his notice. Upon receipt of such an application, the magistrate shall take due cognisance of the delay, record his reasons for the same, and take all necessary steps to ensure that the matter is concluded without further delay.

(xxix) Necessary legal and social support shall be made available to every victim, free of cost, to assist her in filing any application or appeal contemplated under this plan or under the ITPA.

(xxx) Any victim produced before a Magistrate must be examined by a registered medical practitioner for the purposes of detection of any injuries as a result of sexual abuse or for the presence of any sexually transmitted diseases as per Section 15(5A), ITPA. Such an examination shall be done with the informed consent of the victim and without any delay. It must be ensured, as far as possible, that such examination is done by a female medical practitioner and if no female practitioner is available, it shall be done in the presence of a women social worker or counsellor. Arrangements for specialists like gynaecologists may be made, if required. Male police officers and attendants must not be present in the examination room.

(xxxi) All proceedings before the magistrate, and all orders passed thereunder, to the extent possible, shall be conducted and maintained with strict regard to the confidentiality and privacy of the victim. No information that may lead to the identification of the victim shall be disclosed to any person not directly involved in the proceedings.

(xxxii) The concerned AHTU or the police rescue team who rescued the victims shall keep track of all the victims who have been directed by the Magistrate to be placed in long term safe-custody and those who have been placed with their family/guardian/husband respectively, and forward a list thereof to the PNO and GNO of the concerned State.

Protection of Women from Domestic Violence Act, 2005 (DV Act)

- **S.2(a) aggrieved person,**
- **2(f) domestic relationship (marriage, relationship in the nature of marriage, consanguinity, adoption, joint family),**
- **S.2(s) shared household,**
- **S.3 definition of domestic violence (physical, sexual, verbal and emotional, economic abuse, including dowry harassment).**
- **S.4 information to Protection Officer;**
- **S.5 duties of police and service providers;**

- **S.9 duties of Protection Officer;**
- **S.10 service providers.**
- **S.12 application to the Magistrate; hearing to commence within 3 days, and disposal within 60 days (S.12(5)).**
- **Reliefs: S.17 (right to reside in the shared household),**
- **S.18 (protection order),**
- **S.19 (residence order),**
- **S.20 (monetary relief),**
- **S.21 (custody orders),**
- **S.22 (compensation),**
- **S.23 (interim and ex parte orders),**
- **S.25 (duration and alteration),**
- **S.28 (procedure under CrPC/BNSS),**
- **S.29 (appeal to Sessions Court within 30 days),**
- **S.31 (breach of protection order, up to 1 yr and fine; cognizable and non-bailable).**
- **Proceedings under the DV Act are civil in nature but with criminal sanctions for breach.**

CASE LAWS

Bachni Devi v. State of Haryana, (2011) 4 SCC 427

Para 14. The 1961 Act was enacted to prohibit the giving or taking of "dowry" and for the protection of married woman against cruelty and violence in the matrimonial home by the husband and in-laws. The mere demand for "dowry" before marriage, at the time of marriage or any time after the marriage is an offence. The 1961 Act has been amended by Parliament on more than one occasion and by the Amendment Act, 1986, Parliament brought in stringent provisions and provided for offence relating to "dowry death". The amendments became imperative as the dowry deaths continued to increase to disturbing proportions and the existing provisions in the 1961 Act were found inadequate in dealing with the problems of dowry deaths. The definition of "dowry" reproduced above would show that the term is defined comprehensively to include properties of all sorts as it takes within its fold "any property or valuable security" given or agreed to be given in connection with marriage either directly or indirectly.

Surinder Singh v. State of Haryana, (2014) 4 SCC 129

Para 23. The Explanation to Section 304-B IPC states that:

"**Explanation.** —For the purpose of this sub-section, 'dowry' shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961)."

Section 2 of the Dowry Prohibition Act, 1961, so far as it is material to this case, states that 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 at or before or at any time after the marriage in connection with the marriage of the said party. Thus, the emphasis is on property or valuable security given "at or before" or "at any time after" the marriage in connection with marriage. The amount or things demanded must, therefore, have a nexus with the marriage. In this case both the brothers i.e. PW 6 Satish Kumar and PW 7 Ashok Kumar, brothers of the deceased, have clearly stated that the accused were unhappy by the quality and quantity of the dowry and the deceased was being taunted and beaten up for that. The words "insufficient and inferior quality of dowry" are important. They indicate that the transaction of giving dowry was not complete. Sufficient quantity of dowry was not given and that transaction was sought to be completed by asking for Rs 60,000 after the marriage for the business of the appellant. This demand has a connection with the marriage. Therefore, in our opinion Vipin Jaiswal [Vipin Jaiswal v. State of A.P., (2013) 3 SCC 684 : (2013) 2 SCC (Cri) 15] is not applicable to the present case.

Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273

Para 11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:

11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;

11.2. All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);

11.3. The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

11.4. The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

11.5. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.6. Notice of appearance in terms of Section 41-A CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.

11.8. Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A IPC or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine.

M. Narayan v. State of Karnataka, (2015) 6 SCC 465

Para 27. "Dowry" as used in Section 304-B IPC, has been assigned the meaning as, according to it, in Section 2 of the Dowry Prohibition Act, 1961. Section 2 of the Act defining "dowry" is quoted hereinbelow:

"2.Definition of 'dowry'.—In this 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 to 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.

Explanation II.—The expression 'valuable security' has the same meaning as in Section 30 of the Penal Code, 1860."

As is evident from the definition so provided, "dowry" shorn of all details, in the plainest form, signifies any property or valuable security having an inextricable nexus with the marriage.

Para 31. This Court, amongst others, in Rajinder Singh, [Rajinder Singh v. State of Punjab, (2015) 6 SCC 477 : (2015) 3 Scale 174] after an exhaustive survey of the judicial pronouncements on the purport of the expression "dowry" as noticed hereinabove, has enunciated that any

money or property or valuable security demanded by any of the persons mentioned in Section 2 of the Act, at or before or at any time after the marriage which is reasonably connected to the death of a married woman, would necessarily be in connection with or in relation to the marriage unless the facts of a given case clearly and unequivocally point otherwise, thus defining the content of the word for its application.

Rajinder Singh v. State of Punjab, (2015) 6 SCC 477

Para 8. A perusal of Section 2 shows that this definition can be broken into six distinct parts:

(1) Dowry must first consist of any property or valuable security— the word "any" is a word of width and would, therefore, include within it property and valuable security of any kind whatsoever.

(2) Such property or security can be given or even agreed to be given. The actual giving of such property or security is, therefore, not necessary.

(3) Such property or security can be given or agreed to be given either directly or indirectly.

(4) Such giving or agreeing to give can again be not only by one party to a marriage to the other but also by the parents of either party or by any other person to either party to the marriage or to any other person.

It will be noticed that this clause again widens the reach of the Act insofar as those guilty of committing the offence of giving or receiving dowry is concerned.

(5) Such giving or agreeing to give can be at any time. It can be at, before, or at any time after the marriage. Thus, it can be many years after a marriage is solemnised.

(6) Such giving or receiving must be in connection with the marriage of the parties. Obviously, the expression "in connection with" would in the context of the social evil sought to be tackled by the Dowry Prohibition Act mean "in relation with" or "relating to".

9. The ingredients of the offence under Section 304-B IPC have been stated and restated in many judgments. There are four such ingredients and they are said to be:

(a) death of a woman must have been caused by any burns or bodily injury or her death must have occurred otherwise than under normal circumstances;

(b) such death must have occurred within seven years of her marriage;

(c) soon before her death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and

(d) such cruelty or harassment must be in connection with the demand for dowry.

11. "… A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. The evidence adduced by the prosecution does not,

therefore, show that any demand for 'dowry' as defined in Section 2 of the Dowry Prohibition Act was made by the appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure."

20 …We, therefore, declare that any money or property or valuable security demanded by any of the persons mentioned in Section 2 of the Dowry Prohibition Act, at or before or at any time after the marriage which is reasonably connected to the death of a married woman, would necessarily be in connection with or in relation to the marriage unless, the facts of a given case clearly and unequivocally point otherwise.

Sandeep Kumar v. State of Uttarakhand, (2022) 14 SCC 544

Para 52. We have set out the findings of the trial court. The charge is one under Section 304-B. The ingredients of the offence are well-settled. A marriage performed within seven years before the death of the wife. The death must be unnatural. Soon before the death, the deceased wife must have been at the receiving end of cruelty or harassment, on account of demand for dowry. It is described as dowry death. The relatives concerned, including husband, become liable. Section 113-B of the Evidence Act comes to the rescue of the prosecutor by providing for a presumption that a person has caused dowry death if, it is shown that soon before her death, she was subjected by such person for cruelty or harassment for or in connection with demand for dowry.

State of M.P. v. Jogendra, (2022) 5 SCC 401

Para 13. The Latin maxim "Ut res magis valeat quam pereat" i.e. a liberal construction should be put up on written instruments, so as to uphold them, if possible, and carry into effect, the intention of the parties, sums it up. Interpretation of a provision of law that will defeat the very intention of the legislature must be shunned in favour of an interpretation that will promote the object sought to be achieved through the legislation meant to uproot a social evil like dowry demand. In this context, the word "dowry" ought to be ascribed an expansive meaning so as to encompass any demand made on a woman, whether in respect of a property or a valuable security of any nature. When dealing with cases under Section 304-BIPC, a provision legislated to act as a deterrent in the society and curb the heinous crime of dowry demands, the shift in the approach of the courts ought to be from strict to liberal, from constricted to dilated. Any rigid meaning would tend to bring to naught, the real object of the provision. Therefore, a push in the right direction is required to accomplish the task of eradicating this evil which has become deeply entrenched in our society.

Dara Lakshmi Narayana v. State of Telangana (2024 SCC OnLine SC 3682)

The Hon'ble Supreme Court quashed criminal proceedings under Section 498A IPC and Sections 3 and 4 of the Dowry Prohibition Act. It noted that the allegations lacked specific instances of cruelty or dowry demands, and merely naming family members without concrete evidence

- **amounts to abuse of legal process. The Court stated that "a mere reference to the names of family members in a criminal case arising out of a matrimonial dispute, without specific allegations indicating their active involvement, should be nipped in the bud."**
- **Digambar v. State of Maharashtra (2024 SCC OnLine SC 3836) The Hon'ble Supreme Court stated that cruelty alone is not sufficient to constitute an offence under Section 304B IPC — the dowry-related element must also be established.**
- **Chabi Karmakar v. State of West Bengal, 2024 INSC 665**

The Hon'ble Supreme Court, while setting aside the conviction under Section 304B IPC, observed that the presumption under Section 113B of the Indian Evidence Act cannot be raised when demand for dowry has not been established. The Court upheld the conviction under Sections 498A and 306 IPC, holding that the deceased wife faced cruelty and harassment at the hands of her husband which compelled her to commit suicide — but this was not dowry-related cruelty.

The Court held: "Mere death of the deceased being unnatural in the matrimonial home within seven years of marriage will not be sufficient to convict the accused under Section 304B and 498A of IPC." Regarding Section 113B: "The trial court erred in raising a presumption under Section 113B of the Indian Evidence Act, even though the demand for dowry was not established."

- **Rajesh Chaddha v. State of Uttar Pradesh (2025 INSC 671) The Hon'ble Supreme Court set aside the conviction of the appellant-husband under Section 498A IPC and Section 4 of the Dowry Prohibition Act, citing lack of evidence and vague allegations. The Court held that general and unsubstantiated claims without specific details could not form the**

basis of a criminal conviction. The trial had dragged on for over two decades, and the apex court observed misuse of dowry laws in matrimonial disputes, particularly against distant and unrelated family members.

The Court emphasised that the term "cruelty" under Section 498A is often subject to misuse and cannot be established by general or vague allegations alone. It must be supported by specific instances detailing the time, date, and manner of the alleged cruelty.

- **Yogendra Pal Singh v. Raghvendra Singh (2025 INSC 1367) — The Hon'ble Supreme Court emphasised that in cases of dowry death, courts must remain alive to the broader societal ramifications, as such offences strike at the very root of social justice and gender equality. Permitting alleged perpetrators of such crimes to remain at liberty on bail, when evidence indicates active infliction of physical as well as mental cruelty, may jeopardize the fairness of the trial and erode public faith in the administration of criminal justice.**
- **Janshruti v. Union of India (2025 SCC OnLine SC 909) - The Hon'ble Supreme Court rejected a petition seeking declaration of unconstitutionality of Section 498A, stating that the provision was introduced to address the widespread and deeply entrenched exploitation of women through traditional practices such as dowry. The legislature had continued to retain this provision over the decades, presumably in recognition of the persistent and deep-rooted nature of the underlying social malaise.**

Yogendra Pal Singh v. Raghvendra Singh @ Prince, 2025 INSC 1367

Mandatory nature of Section 113B; bail courts must consider statutory presumption; "soon before" does not mean "immediately before"

The Supreme Court reiterated the four essential ingredients for Section 113B: (a) death otherwise than under normal circumstances within seven years of marriage; (b) cruelty/harassment by husband or his relatives; (c) such cruelty in connection with demand for dowry; and (d) occurring "soon before her death". Once these foundational facts are established, Section 113B compels a presumption of dowry death against the accused, with the burden shifting to them to rebut it.

The Court further held that in cases of dowry death, courts must remain alive to the broader societal ramifications, as such offences strike at the very root of social justice and gender equality. Permitting alleged perpetrators to remain at liberty on bail, when evidence indicates active infliction of physical and mental cruelty, may jeopardize the fairness of the trial and erode public faith in the administration of criminal justice.

State of U.P. v. Ajmal Beg, 2025 SCC OnLine SC 2801

Para 26. …..

(a) to ensure that the change brought in is able to make an impact on the efforts to eradicate this evil, it is to be ensured that the future generation, youngsters of today, are informed and made aware about this evil practice and the necessity to eschew it. As such, it is directed that States and even the Union Government consider changes as are necessary to the educational curricula across levels, reinforcing the constitutional position that parties to a marriage are equal to one another and one is not subservient to the other as is sought to be established by giving and taking of money and or articles at the time of marriage;

(b) The law provides for the appointment of Dowry Prohibition Officers[40] in States. It is to be ensured that these officers are duly deputed, aware of their responsibilities and given the necessary wherewithal to carry out the duties entrusted to them. The contact details (name, official phone number and email ID) of such an officer designated to this position are disseminated adequately by the local authorities ensuring awareness of citizens of the area;

(c) the police officials, as also the judicial officers dealing with such cases, should periodically be given training, equipping them to fully appreciate the social and psychological implications which are often at the forefront of these cases. This would also ensure a sensitivity of the concerned officials towards genuine cases versus those which are frivolous and abusive of the process of law;

(d) it is not lost on us that the instant case began in 2001 and could only be concluded 24 years later by way of this judgment. It is but obvious that there would be many such similar cases. The High Courts are requested to take stock of the situation, ascertain the number of cases pending dealing with Section 304-B, 498-A from the earliest to the latest for expeditious disposal; and

(e) in furtherance of (a) above, we also recognize that many people today are/have been outside the education fold, and that it is equally, if not more so, important to reach them and make accessible and comprehensible, the relevant information regarding the act of giving or taking of dowry as also other acts sometimes associated therewith, other times independent thereof (mental and physical cruelty) is an offence in law. The District Administration along with the District Legal Services Authorities, by engaging and involving civil society groups and dedicated social activists, is requested to conduct workshops/awareness programs at regular intervals. This is to ensure change at the grassroot level.

PCPNDT Act, 1994 (Pre-Conception and Pre-Natal Diagnostic Techniques Act)

Scheme

- **S.3: regulation of genetic counselling centres, laboratories and clinics;**
- **S.3A, prohibition of sex selection before or after conception;**
- **S.3B, prohibition on sale of ultrasound machines to unregistered bodies.**
- **S.4: regulation of pre-natal diagnostic techniques (only for listed genetic abnormalities);**
- **S.5: written consent and no communication of sex;**
- **S.6: prohibition on determination of sex.**
- **S.7 to 17: Central Supervisory Board, Appropriate Authorities, Advisory Committees; S.17A powers to search and seize.**
- **S.22: prohibition of advertisement;**
- **S.23: offences and penalties (up to 3 yrs and fine Rs 10,000 for first offence; up to 5 yrs and fine Rs 50,000 for repeat offence);**
- **S.24 presumption (the pregnant woman is presumed to have been compelled by husband or relative unless proved otherwise);**
- **S.25 contravention penalty;**

- **S.27 offences cognizable, non-bailable, non-compoundable;**
- **S.28 cognizance only on complaint by the Appropriate Authority or a person who has given 30 days' notice to the Appropriate Authority.**
- **The Magistrate should check S.28 compliance before taking cognizance, ensure seized records (Form F) are properly proved, and use the decoy-customer evidence in light of the State's duty to prove the contravention, not just the form defects.**

CASE LAWS

- **Centre for Enquiry into Health and Allied Themes (CEHAT) v. Union of India (2003) 8 SCC 398 (and earlier orders (2001) 5 SCC 577): directions for effective implementation (monitoring, registration, advertisement bans, appropriate authority action). (para 4 & 6)**
- **Voluntary Health Association of Punjab v. Union of India (2013) 4 SCC 1: sex ratio concerns; directions for strict implementation, review of Form compliance and appropriate authority's accountability.**

Para 12. It is common knowledge that the State Governments and Union Territories sometimes hold workshops as well as awareness camps at the State and district levels which have the characteristic of a routine

performance, sans sincerity, bereft of seriousness and shorn of meaning. It is embedded on data-orientation. It does not require Solomon's wisdom to realise that there has not yet been effective implementation of the provisions of the Act, for there has not only been total lethargy and laxity but also failure on the part of the authorities to give accent on social, cultural, psychological and legal awareness that a female foetus is not to be destroyed for many a reason apart from command of the law. Needless to emphasise, there has to be awareness of the legal provisions and the consequences that have been provided for violation of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for brevity "the Act") but, a significant one, the awareness in other spheres are absolutely necessitous for concretising the purposes of the Act.

32. A cosmetic awareness campaign would never subserve the purpose. The authorities of the Government, the non-governmental organisations and other volunteers are required to remember that there has to be awareness camps which are really effective. The people involved with the same must take it up as a service, a crusade. They must understand and accept that it is an art as well as a science and not simple arithmetic. It cannot take the colour of a routine speech. The awareness camps should not be founded on the theory of Euclidian geometry. It must engulf the concept of social vigilance with an analytical mind and radiate into the marrows of the society. If awareness campaigns are not appositely conducted, the needed guidance for the people would be without meaning and things shall fall apart and everyone would try to take shelter in cynical escapism.

34. The people involved in the awareness campaigns should have boldness and courage. There should not be any iota of confusion or perplexity in their thought or action. They should treat it as a problem and think that a problem has to be understood in a proper manner to afford a solution. They should bear in mind that they are required to change the mindset of the people, the grammar of the society and unacceptable beliefs inherent in the populace.

Federation of Obstetrics and Gynaecological Societies of India (FOGSI) v. Union of India (2019) 6 SCC 283

Para 97. In light of the nature of offences which necessitated the enactment of the Act and the grave consequences that would ensue otherwise, suspension of registration under Section 23(2) of the Act serves as a deterrent. The individual cases cited by the petitioner Society cannot be a ground for passing blanket directions, and the individuals have remedies under the law which they can avail. Moreover, the concept of double jeopardy would have no application here, as it provides that a person shall not be convicted of the same offence twice, which is demonstrably not the case here. Suspension is a step-in-aid to further the intendment of the Act. It cannot be said to be double punishment. In case an employee is convicted for an offence, he cannot continue in service which can be termed to be double jeopardy.

98. Non-maintenance of record is springboard for commission of offence of foeticide, not just a clerical error. In order to effectively implement the various provisions of the Act, the detailed forms in which records have to be maintained have been provided for by the Rules. These Rules are necessary for the implementation of the Act and improper maintenance of such record amounts to violation of provisions of Sections 5 and 6 of the Act, by virtue of proviso to Section 4(3) of the Act. In addition, any breach of the provisions of the Act or its Rules would attract cancellation or suspension of registration of Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, by the appropriate authority as provided under Section 20 of the Act.

99. There is no substance in the submission that provision of Section 4(3) be read down. By virtue of the proviso to Section 4(3), a person conducting ultrasonography on a pregnant woman, is required to keep complete record of the same in the prescribed manner and any deficiency or inaccuracy in the same amounts to contravention of Section 5 or Section 6 of the Act, unless the contrary is proved by the person conducting the said ultrasonography. The aforementioned proviso to Section 4(3) reflects the importance of records in such cases, as they are often the only source to ensure that an establishment is not engaged in sex determination.

100. Section 23 of the Act, which provides for penalties of offences, acts in aid of the other sections of the Act is quite reasonable. It provides for punishment for any medical geneticist, gynaecologist, registered medical practitioner or a person who owns a Genetic Counselling Centre, a Genetic Clinic or a Genetic Laboratory, and renders his professional or technical services to or at the said place, whether on honorarium basis or otherwise and contravenes any provisions of the Act, or the Rules under it.

101. Therefore, dilution of the provisions of the Act or the Rules would only defeat the purpose of the Act to prevent female foeticide, and relegate the right to life of the girl child under Article 21 of the Constitution, to a mere formality.

102. In view of the above, no case is made out for striking down the proviso to Section 4(3), provisions of Sections 23(1), 23(2) or to read down Section 20 or 30 of the Act. Complete contents of Form F are held to be mandatory.

State of U.P. v. Brij Pal Singh, 2026 SCC OnLine SC 1673

Para 10.7. The view taken by us above, that insofar as the offences under the Act are concerned, the AA is the only competent authority to conduct investigation and the police, if involved, can only be so in a supplemental capacity. In effect, there is a bar on the police being the investigator under this Act. This would be in line with the interpretation of other legislations referred to supra (such as the TOHO Act and the DCA). The requirement of the legislation being socially beneficial in nature and yet at the same time, there being a requirement to protect doctors from being harassed or intimidated, requires us to take this view. For the offences involving other Acts such as the IPC, obviously, there is no restriction on police power in place.

11. Although we have extracted the questions referred to us in paragraph 2, for the sake of completion we may reproduce them here also.

Question 1 - Whether, for offences under the PC & PNDT Act, the registration of FIR at the police station is permissible, merely because the offences under the PC & PNDT Act have been made cognizable and non-bailable?

Answer 1 - The language of the statute, more particularly Sections 27 and 28 of the Act when read together, in light of the other provisions and the socially beneficial nature of the Act as also the requirement of sensitivity along with medical and technical know-how, indicates that the police are not meant to be the investigators for the purpose of this Act. This is further made clear by the fact that an FIR once registered cannot be taken to its logical conclusion as per the procedures of this Act. The restriction applies only to offences under this Act and does not restrict the police's power to investigate or prosecute independent offences disclosed under substantive criminal law (IPC/BNS).

Question 2 - Whether the police investigation is permissible for the offences under the PC & PNDT Act? And who can investigate the complaints, received for violation of the provisions of the PC & PNDT Act?

Answer 2 - Section 17(4) of the Act, while describing the functions of the AA, clearly states that investigating the complaints is its responsibility. Rule 18A(3)(iv), which has statutory force, also requires that recourse to the police be avoided "as far as possible". It necessarily has to be concluded, therefore, that the police cannot be the main investigating authority. At best, the police may play a supplemental role, as and when required by the AA under its supervision.

Question 3 - Whether on the chargesheet submitted after the investigation by the police, the competent magistrate can take cognizance of the offence under the PC & PNDT Act?

Answer 3 - Section 28 of the Act envisions a complete statutory embargo on the taking of cognizance except in situations and scenarios provided thereunder. The answer has to be clear. The competent Magistrate shall not be able to take cognizance upon the filing of a chargesheet.

POSH Act, 2013 & National Commission for Women Act, 1990

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

- **S.2(n) sexual harassment (includes unwelcome physical contact, demand for sexual favours, sexually coloured remarks, showing pornography, any other unwelcome conduct of a sexual nature),**
- **S.2(o) workplace (very wide: includes places visited in the course of employment, transport provided by the employer, and the domestic worker's household),**

- **S.3 (circumstances amounting to sexual harassment, implied or express promise of preferential or detrimental treatment, threat, interference with work, humiliating treatment).**
- **S.4 Internal Committee (IC) for organisations with 10 or more employees;**
- **S.6 Local Committee (LC) at the district level for establishments with fewer than 10 employees or where the complaint is against the employer; District Officer under S.5.**
- **S.9 complaint within 3 months from the date of the incident (extendable by up to 3 months for reasons recorded in writing);**
- **S.10 conciliation (no monetary settlement);**
- **S.11 inquiry (conclude within 90 days);**
- **S.12 interim reliefs;**
- **S.13 report within 10 days of completion;**
- **S.14 action for false or malicious complaint (mere inability to prove is not malicious);**
- **S.15 compensation;**
- **S.16 confidentiality of identity and proceedings;**
- **S.18 appeal within 90 days;**
- **S.19 duties of the employer (including awareness programmes, annual report);**
- **S.26 penalty for non-compliance (fine up to Rs 50,000).**

- **POSH is a service-law remedy: IC findings are administrative and disciplinary in nature. A criminal case under S.75 BNS can run in parallel. Courts must not hold that outcome of the IC bars the criminal case or vice versa, though the evidence standards differ (preponderance of probabilities versus beyond reasonable doubt).**

CASE LAWS

Vishaka v. State of Rajasthan (1997) 6 SCC 241: the genesis; guidelines under Art. 14, 15,

Para 7. In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all workplaces, the contents of international conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein. Any international convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. This is implicit from Article 51(c) and the enabling power of Parliament to

enact laws for implementing the international conventions and norms by virtue of Article 253 read with Entry 14 of the Union List in Seventh Schedule of the Constitution. Article 73 also is relevant. It provides that the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws. The executive power of the Union is, therefore, available till Parliament enacts legislation to expressly provide measures needed to curb the evil.

8. Thus, the power of this Court under Article 32 for enforcement of the fundamental rights and the executive power of the Union have to meet the challenge to protect the working women from sexual harassment and to make their fundamental rights meaningful. Governance of the society by the rule of law mandates this requirement as a logical concomitant of the constitutional scheme. The exercise performed by the Court in this matter is with this common perception shared with the learned Solicitor General and other members of the Bar who rendered valuable assistance in the performance of this difficult task in public interest.

10. Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognised basic human right. The common minimum requirement of this right has received global acceptance. The international conventions and norms are, therefore, of great significance in the formulation of the guidelines to achieve this purpose.

11. The obligation of this Court under Article 32 of the Constitution for the enforcement of these fundamental rights in the absence of legislation must be viewed along with the role of judiciary envisaged in the Beijing Statement of Principles of the Independence of the Judiciary in the

LAWASIA region. These principles were accepted by the Chief Justices of Asia and the Pacific at Beijing in 1995 as those representing the minimum standards necessary to be observed in order to maintain the independence and effective functioning of the judiciary. The objectives of the judiciary mentioned in the Beijing Statement are:

"Objectives of the Judiciary:

10. The objectives and functions of the Judiciary include the following:

(a) to ensure that all persons are able to live securely under the rule of law;

(b) to promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and

(c) to administer the law impartially among persons and between persons and the State."

13. The general recommendations of CEDAW in this context in respect of Article 11 are:

"Violence and equality in employment:

22. Equality in employment can be seriously impaired when women are subjected to gender specific violence, such as sexual harassment in the workplace.

23. Sexual harassment includes such unwelcome sexually determined behaviour as physical contacts and advances, sexually-coloured remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruiting or

promotion, or when it creates a hostile working environment. Effective complaints, procedures and remedies, including compensation, should be provided.

24. States should include in their reports information about sexual harassment, and on measures to protect women from sexual harassment and other forms of violence of coercion in the workplace."

The Government of India has ratified the above Resolution on 25-6-1993 with some reservations which are not material in the present context. At the Fourth World Conference on Women in Beijing, the Government of India has also made an official commitment, inter alia, to formulate and operationalize a national policy on women which will continuously guide and inform action at every level and in every sector; to set up a Commission for Women's Rights to act as a public defender of women's human rights; to institutionalise a national level mechanism to monitor the implementation of the Platform for Action. We have, therefore, no hesitation in placing reliance on the above for the purpose of construing the nature and ambit of constitutional guarantee of gender equality in our Constitution.

14. The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all the facets of gender equality including prevention of sexual harassment or abuse. Independence of judiciary forms a part of our constitutional scheme. The international conventions and norms are to be read into them in the absence of enacted domestic law occupying the field when there is no inconsistency between them. It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law.

The High Court of Australia in Minister for Immigration and Ethnic Affairs v. Teoh [128 Aus LR 353] has recognised the concept of legitimate expectation of its observance in the absence of a contrary legislative provision, even in the absence of a Bill of Rights in the Constitution of Australia.

17. The Guidelines and Norms prescribed herein are as under:

Having Regard to the definition of "human rights" in Section 2(d) of the Protection of Human Rights Act, 1993,

Taking Note of the fact that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in workplaces and that enactment of such legislation will take considerable time,

It is necessary and expedient for employers in workplaces as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women:

1. Duty of the employer or other responsible persons in workplaces and other institutions:

It shall be the duty of the employer or other responsible persons in workplaces or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

2. Definition:

For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

(a) physical contact and advances;

(b) a demand or request for sexual favours;

(c) sexually-coloured remarks;

(d) showing pornography;

(e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Where any of these acts is committed in circumstances whereunder the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

3. Preventive steps:

All employers or persons in charge of workplace whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:

(a) Express prohibition of sexual harassment as defined above at the workplace should be notified, published and circulated in appropriate ways.

(b) The rules/regulations of government and public sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

(c) As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.

(d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at workplaces and no woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

4. Criminal proceedings:

Where such conduct amounts to a specific offence under the Penal Code, 1860 or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

In particular, it should ensure that victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

5. Disciplinary action:

Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

6. Complaint mechanism:

Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time-bound treatment of complaints.

7. Complaints Committee:

The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special counsellor or other support service, including the maintenance of confidentiality.

The Complaints Committee should be headed by a woman and not less than half of its members should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.

The Complaints Committee must make an annual report to the Government Department concerned of the complaints and action taken by them.

The employers and person-in-charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government Department.

8. Workers' initiative:

Employees should be allowed to raise issues of sexual harassment at workers' meeting and in other appropriate forum and it should be affirmatively discussed in employer-employee meetings.

9. Awareness:

Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.

10. Third-party harassment:

Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person-in-charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

11. The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in private sector.

12. These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993.

- **Apparel Export Promotion Council v. A.K. Chopra (1999) 1 SCC 759: a superior's attempt to molest; High Court's interference with disciplinary punishment was held unjustified; sexual harassment is a violation of Art. 14, 15 and 21.**
- **Medha Kotwal Lele v. Union of India (2013) 1 SCC 297: directions to ensure Vishaka compliance, ICs with an external member; non-compliance is a ground for departmental action.**
- **Aureliano Fernandes v. State of Goa (2024) 1 SCC 632: the Supreme Court set aside a disciplinary inquiry that bypassed the statutory procedure and violated natural justice, directed all authorities to appoint ICs, LCs, District Officers, and to run**

- awareness and training programmes. It stressed that the failure to constitute a proper IC is a basic procedural defect. (Para – 22 to 28)
- Initiative for Inclusion Foundation v. Union of India, (2024) 1 SCC 779

16. The general thrust of the affidavits, especially that of the Union of India — has been to highlight the generation of awareness through a massive publicity campaign and issuance of advisories, publication of handbooks, etc. However, it is quite plainly clear that though the generation of awareness is necessary, if a woman suffers sexual harassment at the workplace — the framework for redressal has to in fact exist. The failure to notify District Officers specifically, has a snowballing effect on appointment of the LCs and nodal officers, in addition to other aspects. The complaint mechanism, and larger framework — no matter how effective, remain inadequate if the authorities set out in the Act, are not duly appointed/notified. Therefore, the State/UT Government must ensure that every district, at all times has a notified District Officer; in case of vacancy caused by retirement, or any other reason, it must be duly remedied, to enable smooth transition between officers, and ensure that there is always someone in-charge of this position. Furthermore, effort has to be undertaken to orient, train and sensitise these District Officers, with regards to the provisions of the Act and Rules, with an emphasis on their roles and obligations. Similar range of activities must be conducted for the nodal officers appointed and LCs constituted by each District Officer.

18. Consider next, the composition and role of the LC — which is the foundational body in the district, especially so for the unorganised sector. This Committee is headed by a nominated chairperson who is an eminent woman in the field of social work and committed to the cause of women; one member is nominated from the women working in a block/taluka/tehsil (rural) or ward/municipality (urban); two more, of which at least one has to be a woman to be nominated amongst NGOs or associations committed to cause of women or a person familiar with the issues relating to sexual harassment. Further one must be with legal background/knowledge of the law, and one must belong to a Scheduled Caste, Scheduled Tribe, or Other Backward Class. [As per Sections 6 and 7 of the Act.] An LC is empowered with powers equivalent to a civil court [Section 11 of the Act.] to conduct inquiry, issue summons, enforce attendance, etc. which is reflective of its importance in the framework. The inclusion of nominees from such NGOs is also helpful, because in a context where LCs may convey a sense of formality, women find it easier to approach local NGOs; this is one of the findings in a 2015 International Labour Organisation ("ILO") Report. However as pointed out, there is no avenue in the law for these NGOs to register or pursue the matter on behalf of such consenting women. Thus, the spreading of awareness relating to LCs and dispelling the air of formality, should form a priority of the highest-level State, that seeks to implement the Act.

Conclusion and Directions

25. Having regard to the above discussion, it is appropriate for this Court to issue the following directions (under the relevant heads) to ensure the effective implementation of the PoSH Act, and render it workable:

A. Coordination between Union Government and State/UT Governments

(i) The Women and Child Development Ministry of every State/UT, through its Principal Secretary, should consider identifying a "nodal person" within the Department, to oversee and aid in coordination as contemplated under the PoSH Act. This person would also be able to coordinate with the Union Government on matters relating to this Act and its implementation.

(ii) Each State/UT Government is to submit a consolidated report of its compliance with the below directions to the Union Government within 8 weeks. The latter is hereby directed to consolidate the various reports, identify any lapses in the compliance by the State and try to remedy it, before filing a consolidated affidavit of compliance — detailing the States' compliance, and the Union Government's action taken in regard to the direction within 12 weeks from the date of this judgment.

B. Appointment of public authorities

(iii) The Principal Secretary concerned of the State/UT Ministry of Women and Child [or any other Department, subject to amendment of the Rules as per Direction (vii) below], will personally ensure appointment of a District Officer in each district within their territorial jurisdiction, as contemplated under Section 5 within four weeks from the date of this judgment.

(iv) Thereafter, each appointed District Officer

(a) must in compliance of Section 6(2) appoint nodal officers in every block, taluka and tehsil in rural or tribal area and ward or municipality in the urban area;

(b) must constitute a LC, as contemplated under Sections 6 and 7 of the Act; and

(c) ensure the contact details of these nodal officers, and LCs, shall be forwarded to the nodal person within the State Government, Ministry of Women and Child Development within 6 weeks from the date of this judgment.

(v) Thereafter, a circular/bulletin containing names of all District Officers, and their contact details (phone, address, and email), along with a districtwise chart of the various nodal officers and their contact details, must be uploaded on the department's website (or in the absence of one, on the main State Government website) in a conspicuous location, along with a compiled version of the Act, Rules, and simple charts/explainers on the basics of the Act, within 6 weeks from the date of this judgment.

C. Amendments and gaps in Rules that State must fill

(vi) The Union Government ought to consider amending the Rules, so as to operationalise Section 26 of the Act, by recognising a reporting authority, and/or a fine collecting authority. This direction must be read in light of the discussion in para 9 (role of District Officer with regards to annual compliance reports) and para 24 (on the penalty regime contemplated in the Act and resulting lacunae in the Rules) above.

(vii) The Union Government may also consider amending the Rules so as to identify one Department (preferably the Women and Child Department), and creating a "nodal person" post within the said Department to be responsible for the coordination required in the implementation of the Act [see Direction (i)]. This will ensure greater uniformity in the implementation of the Act across the country.

D. Training and capacity building

(viii) The District Officers and LCs should be mandatorily trained regarding their important responsibilities. Given their position in the redressal framework contemplated in the Act, they must first be sensitised to the nature of sexual harassment, the gendered interactions that occur in the workspace, etc. The State Governments, must organise periodic, and regular training sessions at the district level which are to be attended by the District Officer, members of the LC, and nodal officers [ref : Section 24(b)].

E. Larger efforts towards awareness

(ix) In furtherance of Section 24, the State/UT Governments, and Union Government are hereby directed to set out the financial resources

allocated and/or needed, to developing educational, communication and training material for spreading awareness of the provisions of this Act to the public, and formulate orientation and training programmes as elaborated in Direction (viii) above. This plan of action, must form part of the compliance affidavit filed by each State. The discussion in para 19 is to be read along with this Direction.

(x) The District Officers, once nominated by the State are hereby directed to identify the non-governmental organisations working with women and their protection within the district, and take action pursuant to their duty under Section 20(b) for creation of awareness.

(xi) The appropriate Government or District Officers in question, must also undertake effort to spread awareness on the existence of LCs, and make them approachable for the unorganised sector — thus operationalising the horizontal import of this Act.

(xii) Directions 87.4 and 87.5 passed in Aureliano Fernandes v. State of Goa [Aureliano Fernandes v. State of Goa, (2024) 1 SCC 632] cover specifically the direction to authorities, management and employers to familiarise the members of the ICCs and LCs of their duties and detailed step-wise manner in which an enquiry ought to be conducted on receiving a complaint of sexual harassment; conduct orientation programmes, workshops, seminars, awareness programmes, etc. and to educate women employees and women groups about the Act, Rules, and Regulations are reiterated. The modules prepared by Nalsa [as per Direction 87.6 in Aureliano Fernandes [Aureliano Fernandes v. State of Goa, (2024) 1 SCC 632] to conduct workshops and organise awareness programmes to sensitise authorities, managements, employers could be used in this regard.

(xiii) It is relevant to add here that the Ministry of Women and Child Development, Government of India, has prepared a Handbook for implementation of the PoSH Act, which serves as a useful guide for not just employees seeking information, but also more pertinently those who are nominated or appointed as members of the ICs (by the employer) or LCs (by the District Officer). It is hereby directed that a targeted effort be made to share this information with each District Officer, who may in turn disseminate it to their respective LCs, the nodal officers appointed under Section 6(2), and employers who constitute their own ICCs.

F. Annual compliance reports

(xiv) Due compliance with Sections 21(1) and (2), and Section 22, must be undertaken by each District Officer, of the State — including collecting the reports from the IC/employers (or information where no report is available), and from the LC, and preparation of a brief report to be shared with the State Government. The State/UT Governments is hereby directed to create a standard operating procedure ("SOP") including the procedure, and timelines for this process, so as to enable it to, in turn, comply with Section 23 of the Act i.e. monitoring implementation and maintaining data. This Direction may be read in light of the discussion contained in para 21 above.

G. Monitoring of ICs and compliance by employers

(xv) The directions passed in Aureliano Fernandes v. State of Goa [Aureliano Fernandes v. State of Goa, (2024) 1 SCC 632] address most specifically, the constitution of ICs — in public establishments [falling broadly within Section 2(o)(i)] and some private establishments — such as bodies governing professional associations, etc.; those directions are

hereby reiterated, to avoid multiplicity or overlap of efforts. It is however further, directed that efforts made must be in line with the scheme of the Act, and through the authorities so designated for the various roles.

(xvi) Similarly, directions are hereby made to hospitals, nursing homes, sports institutes, stadiums, sports complex, or competition or games venues [as defined in Sections 2(o)(iii) and (iv)] to establish ICs, and report compliance as per the duties under this Act.

(xvii) The District Officer must be supplied a list of establishments (compiled by the relevant departments of the State/UT Government) that fall within the scope of Section 2(o), so that they may write to them and ensure that they are well versed with the provisions relating to employers, and their duties (including constitution of ICC under Section 4, duties under Section 19, etc.) and are implementing them in letter and spirit. This will also enable collection of annual reports, as contemplated under Section 21. The consequent direction to all private sector workplaces under Section 2(o)(ii) can be passed once the District Officer is able to discern an exhaustive list of entities.

B. National Commission for Women Act, 1990

- **S.3 constitution (Chairperson, five Members including at least one each from SC and ST, and a Member-Secretary); S.4 term (3 years); S.10 functions: investigate and examine safeguards under the Constitution and other laws; review legislation; take suo motu notice of deprivation of women's rights; study systemic problems; fund litigation; inspect jails and remand homes; make annual reports to the Central Government. The Act confers civil-court-type powers (summons, discovery, evidence on affidavit) for such inquiries**

- **Character of the NCW: it is a statutory advisory and investigative body, not a judicial body. Its recommendations are not binding, and it cannot adjudicate or award relief.**
- **Judicial sensitivity: NCW and State Commissions should be viewed as complementary, not substitutes for judicial remedies. A woman who approaches NCW is not barred from judicial remedies. When a court receives an NCW report or notice, the court should apply its own judicial mind, give the accused a hearing and not treat the NCW's findings as proof.**

Child sexual abuse: behavioural and psychological impairment in victims

A. How abuse presents and why judges should understand it

- **Grooming: gradual building of trust, secrecy and desensitisation. Offender is usually known to the child (family member, neighbour, teacher, caregiver). Lack of struggle or injury is common, as the abuse is rarely violent.**
- **Delayed, partial or inconsistent disclosure is the norm. Reasons: shame, fear, dependence on the abuser, threats, confusion, not knowing the vocabulary, family pressure. Disclosure often comes accidentally (behaviour changes, school counsellor, friend).**

- **Child Sexual Abuse Accommodation Syndrome (Summit, 1983): secrecy; helplessness; entrapment and accommodation; delayed, conflicted and unconvincing disclosure; retraction. It explains behaviour; it is not a diagnostic test or proof of abuse.**
- **Trauma responses: freeze, flight, fight and fawn (compliance); dissociation and memory gaps for peripheral details; central details are usually consistent.**
- **Behavioural indicators (none individually conclusive): regression (bed-wetting, thumb-sucking), sleep disturbances, nightmares, school refusal, withdrawal, aggression, self-harm, fear of a particular person or place, age-inappropriate sexual knowledge or behaviour.**
- **Psychological impairments: PTSD, depression, anxiety, attachment problems, dissociation, low self-esteem, substance misuse in adolescence, suicidality. Long-term effect on trust and relationships.**

B. Implications for the courtroom

COURT PRACTICE	RELATED PROVISION/ CASE LAWS
Use a child-friendly setting, a support person (POCSO Rules 2020, Rule 4), screens or video link	S.33 POCSO; Smruti Tukaram Badade v. State of Maharashtra, (2022) 18 SCC 24
Competence inquiry with simple, open-ended questions (not suggestive)	Dattu Ramrao Sakhare v. State of Maharashtra, (1997) 5 SCC 341
Avoid repetition: single, early recorded testimony; do not call the child again and again	S.33(5), S.35 POCSO
Allow breaks; questions through the Judge; avoid aggressive cross-examination and character assassination	S.33(2), (3) POCSO
Do not draw adverse inference from delay in disclosure or lack of resistance	State of H.P. v. Shree Kant Shekari, (2004) 8 SCC 153

Treat minor inconsistencies on peripheral details as natural; check consistency on core facts	Bharwada Bhoginbhai Hirjibhai v. State of Gujarat (1983) 3 SCC 217
Recognise retraction may be caused by family pressure, social stigma or threats; examine the circumstances (compare the first statement, medical and other corroboration)	General principle; assess carefully
Maintain confidentiality and avoid identification (including in orders)	S.23 POCSO; S.33(7); Nipun Saxena v. Union of India, (2019) 13 SCC 715
Order psychological counselling and rehabilitation (through Child Welfare Committee, Support Person, DLSA) and compensation	POCSO Rules 2020; State Victim Compensation Scheme
Mental health reports and expert evidence: assess the qualifications of the expert; psychological evidence assists but does not substitute for judicial appreciation	Evidence principles

C. Language and attitude for judges

- **Avoid terms like "ravished", "victim's character", "provocative dress", "consensual" for a child, "affair" or "relationship" for abuse.**
- **Recognise secondary victimisation through repeated questioning, insensitive remarks and delay.**
- **Be alert to abuse by family members, where the non-offending parent may be pressured to withdraw support.**
- **Involve Child Welfare Committees under JJ Act 2015 for care and protection of the child.**
- **Where the accused is a child (in conflict with law), the Juvenile Justice Board has jurisdiction. Age verification is essential.**

IPC to BNS (key crimes against women)

OFFENCE	IPC	BNS
Rape	375/376	63/64
Gang rape	376D	70
Outraging modesty	354	74
Sexual harassment	354A	75
Assault with intent to disrobe	354B	76
Voyeurism	354C	77
Stalking	354D	78
Insulting modesty	509	79
Dowry death	304B	80
Cruelty by husband or relatives	498A	85, 86
Trafficking	370	143
Identity disclosure	228A	72

CrPC to BNSS

PROVISION	CRPC	BNSS
Statement before Magistrate	164	183
Medical examination of rape victim	164A	184
Victim compensation	357A	396
Maintenance	125	144
Witness protection	NA (scheme)	398

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