



Confederation of Indian Industry



Know your Legal Rights

A Handbook for Women

Co-authored by:

CII IWN Delhi

Bhavna Vedhara
Zia N Sawhney
Megha Chopra
Rinki Dhingra

CII IWN Delhi Secretariat

Vaishali Srivastava, Head, CII DSO
Shivangi Jha, Executive, CII DSO

L&L Partners Law Offices

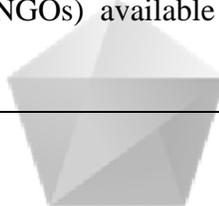
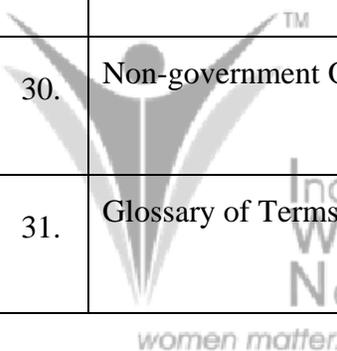
Vijay K Sondhi
Amrita Tonk
Aayushi Mishra

INDEX

S No.	TITLE	PAGE
1.	Disclaimer	4
2.	List of Abbreviations	5
3.	Alternative Dispute Resolution Mechanisms	6
4.	Equality under the Constitution	8
5.	List Of Women And Children Specific Laws Enacted By The Government	10
6.	Rights Of A Girl Child/ Foetus	12
7.	Personal laws	14
8.	Succession Rights of Daughters	15
9.	Succession Rights of Married Women / Daughter-in-laws	17
10.	Hindu Family Law a) Hindu Marriage b) Hindu Guardianship and Adoption	22
11.	Muslim Family Law	33
12.	Christian Family Law	35

13.	Inter-faith Marriages	37
14.	Rights of a Live-in Partner	38
15.	Rights Under Employment Laws (Private Sector)	45
16.	Understanding Criminal law	49
17.	Criminal Offences against women	50
18.	If A Women Is Alleged To Have Committed A Crime, Rights Available To Her During Arrest, Detention And Investigation	53
19.	Rights against Harassment	57
20.	Eve-teasing	58
21.	Rape	60
22.	Sexual Harassment at Workplace	67
23.	Domestic Abuse	71
24.	Cruelty	75

25.	Dowry Prohibition	78
26.	Child Sexual Abuse	82
27.	Child Trafficking	85
28.	Vitriolage/ Acid- Attack	86
 29.	Senior Citizens/ Retirement	87
30.	Non-government Organisations (NGOs) available for assistance/ redressal	88
31.	Glossary of Terms	91



L&L
PARTNERS
Law Offices

DISCLAIMER

The information provided in this handbook does not, and is not intended to, constitute legal advice; instead, all information, content, and materials available in this handbook are for general informational purposes only. This book is not intended as a substitute for consultation with a legal practitioner. Any third party content is only for educational purposes.

Readers of this handbook should contact their attorney to obtain advice with respect to any particular legal matter. No reader of this handbook should act or refrain from acting on the basis of information on this site without first seeking legal advice from counsel in their local area. Only your individual advocate/ lawyer can provide assurances that the information contained herein – and your interpretation of it – is applicable or appropriate to your particular situation. Use of, and access to, this handbook or resources contained within the handbook do not create an attorney-client relationship between the reader, and the handbook authors, contributors, contributing law firms, or committee members and their respective employers.

All rights reserved with the authors. No part of this handbook may be reproduced or transmitted in any form or by any means, electronic or mechanical, without giving credit to and acknowledging the authors of this handbook.

Bhavna Vedhara

Vijay K. Sondhi
vsondhi@luthra.com
+91 98102 84529

Zia N Sawhney

Megha Chopra

Amrita Tonk
atonk@luthra.com
+91 88267 96111

Rinki Dhingra

Vaishali Srivastava

Aayushi Mishra
aayushim@luthra.com
+91 7837712787

Shivangi Jha

Table of Abbreviations

<u>Sr. No.</u>	<u>Abbreviation</u>	<u>Act</u>
1.	NDTA	The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994
2.	JJA	The Juvenile Justice Act, 2015
3.	PCMA	The Prohibition of Child Marriage Act, 2006
4.	ROCFCE Act	the Right of Children to Free and Compulsory Education Act, 2009,
5.	CoI	The Constitution of India
6.	IPC	The Indian Penal Code, 1860
7.	Cr.P.C.	The Criminal Procedure Code, 1973
8.	DPA	The Dowry Prohibition Act, 1961
9.	FA	The Factories Act, 1948
10.	CA	The Companies Act, 2013
11.	ERA	The Equal Remuneration Act, 1976
12.	MBA	The Maternity Benefit Act, 1961
13.	POSH Act	The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013
14.	IE Act	Industrial Employment (Standing Orders) Act, 1946
15.	PWDVA	Protection of Women from Domestic Violence Act (PWDVA), 2005
16.	NCW Act	The National Commission of Women Act, 1990
17.	POCSO Act	The Protection of Children from Sexual Offences Act, 2012
18.	ITPA	Immoral Traffic Prevention Act, 1956
19.	HMA	The Hindu Marriage Act, 1955
20.	HMGA	The Hindu Minority and Guardianship Act, 1956
21.	HAMA	The Hindu Adoption and Maintenance Act, 1956
22.	MWA	The Muslim Women (Protection Of Rights On Marriage) Act, 2019
23.	HAS	Hindu Succession Act, 1956

ALTERNATIVE DISPUTE RESOLUTION MECHANISMS

1. In the event of violation of the legal rights available to women under various statutory provisions, the aggrieved woman has a right to approach Courts of law for enforcing the same. However, prior to approaching the Court, a woman may also explore pre-litigation avenues like mediation and conciliation. These are alternative dispute resolution mechanisms and help resolve conflicts in a peaceful manner where the outcome is accepted by both the parties. These provide a substitute to the conventional methods of resolving disputes including family and child custody matters.
2. In matrimonial and family matters including custody of children, once the matter is before the Court, the parties at any stage of the matter, can make a request to the concerned Court to refer the matter to mediation. Even in the absence of such a request, the Court may itself refer such matters to mediation where the Court feels that the possibility of settlement can be explored. It is important to note that once the matter is settled before the Mediator in a Court-referred mediation, the Court takes the same on record while disposing of the matter. Once the Court takes the mediation settlement on record and passes an order based on the same, the settlement has the same effect as a decree passed by the Court and is binding upon the parties.
3. In both Mediation and Conciliation, a neutral third party helps the parties to communicate, discuss their differences and resolve the dispute. It is a method which enables individuals and group to maintain co-operation, social order and provides opportunity to reduce hostility.
4. Mediation is an Alternative Dispute resolution where a third neutral party aims to assist two or more parties to a dispute in reaching an agreement. It is an easy and uncomplicated negotiation process, where a third party acts as a mediator to resolve dispute amicably by using appropriate communication and negotiation techniques. The process is confidential and controlled by the parties and the role of the mediator is limited to facilitating the parties to reach settlement of their dispute.

5. Conciliation is the process of facilitating an amicable resolution between the parties, whereby the conciliator meets with the parties separately in order to settle their dispute. The conciliator meets with the parties separately to lower the tension between parties, improving communication, interpreting issue to bring about a negotiated settlement.
6. Points to be kept in mind while entering into a mediation settlement:
 - a. The settlement must be captured in writing in the form of an agreement.
 - b. The agreement must be signed by the parties. Without a signed document, it may be difficult to implement the agreement reached during the mediation process.
 - c. The agreement must be detailed and in clear terms and should not be conditional.
 - d. The agreement must also expressly state that in case of any violation of the terms of the same, the parties would have the right to approach the Court to revive the proceedings.



L&L
PARTNERS
Law Offices

EQUALITY UNDER THE CONSTITUTION

1. **Equality of laws and equal protection under the law** - One of the main pillars of the Indian Constitution ¹ is the principle of equality. Article 14 guarantees equality before law and equal protection of law to all its citizens.
2. **Gender neutral applicability**- The constitution under Articles 15(1) and 16(2) ensures that there is no discrimination between men and women, upper castes and lower castes, rich and poor and all will be treated as equals before the law and will be provided equal protection of law. Hence, if any law is passed or any action is taken to prevent women from taking up employment in government or public sector undertaking, such law or action by the concerned authority can be struck down by the Supreme Court or a High Court, as being against the Constitutional provisions. Similarly paying women lower salaries for doing the same work even when they are qualified for it, is discriminatory and against the Constitutional guarantee of equality.
3. **Positive Discrimination**- The constitution under Articles 15(3) (4) and 16 (3) (4) helps to further strengthen the concept of equality by permitting the State to make special provisions for securing the rights of the marginalised² section (women, children, schedule castes and schedule tribes) in order to help them to overcome the discrimination these S.s have suffered. This is called positive discrimination. This has empowered the State to enact special laws for women and children such as the provisions for maintenance of women and children, protection against domestic and sexual violence, the Maternity Benefits Act, special protection for women under all labour laws, a special law to prevent sexual harassment at workplace, or reservations for women.
4. **Equal pay for equal work**- Article 39 of the Constitution envisages that the state shall direct its policy, among other things, towards securing that there is equal pay for equal work for both men and women.

¹ <https://legislative.gov.in/sites/default/files/COI-updated.pdf>

² Marginalised populations are groups and communities that experience discrimination and exclusion (social, political, and economic) because of unequal power relationships across economic, political, social, and cultural dimensions

5. **Article 42:** The State is entitled to make provisions for securing just and humane conditions of work and for maternity relief.
6. **Article 51 (A) (e):** To promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory³ to the dignity of women.
7. **Article 243(D)(3):** Not less than one-third of the total number of seats to be filled by direct election in every Panchayat have to be reserved for women and such seats to be allotted by rotation to different constituencies in a Panchayat.
8. **Article 243(D)(4)-** Not less than one- third of the total number of offices of Chairpersons in the Panchayats at each level to be reserved for women.
9. **Article 243(T)(3):** Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality to be reserved for women and such seats to be allotted by rotation to different constituencies in a Municipality.
10. **Article 243(T)(4):** Reservation of offices of Chairpersons in Municipalities for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a State may by law provide.

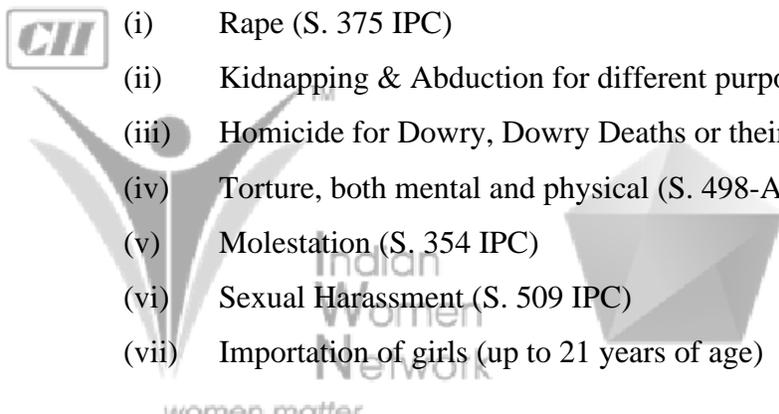
³ expressive of a low opinion

LIST OF WOMEN AND CHILDREN SPECIFIC LAWS ENACTED BY THE GOVERNMENT

1. Offences against women and children in the IPC

To uphold the Constitutional mandate, the State has enacted various legislative measures intended to ensure equal rights, to counter social discrimination and various forms of violence and atrocities and to provide support services especially to working women. Although women may be victims of any of the crimes such as 'Murder', 'Robbery', 'Cheating' etc., the crimes, which are directed specifically against women, are characterised as 'Crime against Women'. These are broadly classified under two categories.

(1) The Crimes Identified Under the IPC (IPC):

- 
- 
- (i) Rape (S. 375 IPC)
 - (ii) Kidnapping & Abduction for different purposes (S. 363-373)
 - (iii) Homicide for Dowry, Dowry Deaths or their attempts (S. 302/304-B IPC)
 - (iv) Torture, both mental and physical (S. 498-A IPC)
 - (v) Molestation (S. 354 IPC)
 - (vi) Sexual Harassment (S. 509 IPC)
 - (vii) Importation of girls (up to 21 years of age)

(2) The Crimes identified under the Special Laws (SLL):

- (i) Immoral Traffic (Prevention) Act, 1956
- (ii) Dowry Prohibition Act, 1961
- (iii) The Medical Termination of Pregnancy Act, 1971
- (iv) The Prohibition of Child Marriage Act, 2006
- (v) Indecent Representation of Women (Prohibition) Act, 1986
- (vi) Commission of Sati (Prevention) Act, 1987 (xviii) The Protection of Women from Domestic Violence Act, 2005

2. Special Laws pertaining to working women

- (i) Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013
- (ii) The Equal Remuneration Act, 1976
- (iii) Maternity Benefit Act, 1961 (Amended in 1995)

3. Special Laws relating to marriage & maintenance

- (i) S. 125 of The Code of Criminal Procedure, 1973:
- (ii) Muslim Women (Protection of Rights on Divorce) Act, 1986
- (iii) Prohibition of Child Marriage Act, 2006

4. Special Laws relating to abortion

- (i) Medical Termination of Pregnancy Act, 1971
- (ii) Pre-Natal Diagnostic Techniques (Regulation & Prevention of Misuse) Act, 1994
- (iii) Pre-Natal Diagnostic Techniques (Regulation & Prevention of Misuse) Amendment Act, 2001
- (iv) Pre-Natal Diagnostic Techniques (Regulation & Prevention of Misuse) Amendment Act, 2002

5. Special Laws relating to children

- (i) Child Labour (Prohibition & Regulation) Act, 1986
- (ii) Child Marriage Restraint Act, 1929
- (iii) Children Act, 1960
- (iv) Children (Pledging of Labour) Act, 1933
- (v) Commissions for the Protection of Child Rights Act, 2005
- (vi) Juvenile Justice (Care & Protection of Children) Act, 2000
- (vii) Juvenile Justice (Care & Protection of Children) Amendment Act, 2006
- (viii) Prohibition of Child Marriage Act, 2006

RIGHTS OF A GIRL CHILD/ FOETUS

1. **Right against female foeticide** - It is illegal to find out the sex of unborn child till birth- S. 6 of The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994⁴, prohibits the medical personnel from conducting or helping anyone conduct sex-determination. All medical equipment regarding pregnancies can only be sold only to registered clinics⁵. Female infanticide results in conviction under S. 302 IPC.
2. **Right to be brought up in a safe and protected environment** - A girl child has the right to be brought up in a safe and protected environment. The Juvenile Justice Act, 2015⁶ makes it illegal for parents and guardians of children to abuse, assault, neglect, or abandon a child.⁷
3. **Right to protection against child prostitution** - The Juvenile Justice Act, 2015 includes special provisions for the protection, treatment, and rehabilitation of girls under 18 years old.⁸ This act protects girls trapped in brothels for child prostitution and protects any person engaged in an immoral, drunken, or depraved life. Inducing a child to prostitution is punishable with rigorous imprisonment of minimum seven years and fine.
4. **Right to a special protective home and supervision if the child is found leading a neglected/ depraved life** - Juvenile⁹ Welfare Boards addresses the problem of neglected girls and the Child welfare committee offers special protective homes and supervision by probation officers.¹⁰
5. **Right against Child Marriage** - The Prohibition of Child Marriage Act, 2006¹¹, provides a civil remedy as well as criminal provisions to prohibit child marriage and protect the rights of the children.

⁴ <https://www.indiacode.nic.in/bitstream/123456789/8399/1/pre-conception-pre-natal-diagnostic-techniques-act-1994.pdf>

⁵ S. 4, Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994

⁶ <http://cara.nic.in/PDF/JJ%20act%202015.pdf>

⁷ S. 3, Juvenile Justice Act, 2015

⁸ S. 30, Juvenile Justice Act, 2015

⁹ for or relating to boy under the age of 16 and girl under the age of 18

¹⁰ S. 30, Juvenile Justice Act, 2015

¹¹ <https://www.indiacode.nic.in/bitstream/123456789/2055/1/A2007-06.pdf>

S. 9 - A male adult above the age of eighteen years, if found engaging in the practice of child marriage is liable for imprisonment that can extend to a period of two years or may have to pay a fine upto one lakh rupees, or both.

S. 10 - If anyone aids in the performance of such child marriage, they shall also be liable for a punishment of imprisonment upto two years or a fine, unless they are able to prove that they had reason to believe that such marriage did not amount to a child marriage.

6. **Right to free and compulsory education until the age 14** - Under S. 3 of the Right of Children to Free and Compulsory Education Act, 2009¹², all children (gender neutral) between the ages of 6 and 14 years have the right to elementary education (class 1-8) in a neighborhood school. The Right of Children to Free and Compulsory Education Act, 2009 also prohibits that a child cannot be detained in any class till the completion of elementary education.¹³



L&L
PARTNERS
Law Offices

¹²<https://legislative.gov.in/sites/default/files/The%20Right%20of%20Children%20to%20Free%20and%20Compulsory%20Education%20Act,%202009.pdf>

¹³ S. 3, Right of Children to Free and Compulsory Education Act, 2009

PERSONAL LAWS



SUCCESSION RIGHTS

1. Hindu Female

The property of a female Hindu dying without a will shall devolve (be transferred) as given below:

Any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased, upon the heirs of the father;

AND

any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased upon the heirs of the husband.

firstly, upon the sons and daughters (including the children of any pre-deceased (already dead) son or daughter) and the husband;

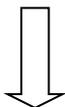
secondly, upon the heirs of the husband;

thirdly, upon the mother and father;

fourthly, upon the heirs of the father; and

lastly, upon the heirs of the mother.

Order of succession and manner of distribution among heirs of a female —The order of succession among the heirs referred to above shall be as per the following rules, namely:—



Among the heirs given above those in one entry shall be preferred to those in any succeeding entry, and those included in the same entry shall have equal share.



Grandchildren from any son or daughter who has passed away, shall take between them the share which such son or daughter would have taken if living at the intestate's death.

2. **Equal rights as son:** Under S. 6 of the Hindu Succession Act, 1956, in a joint Hindu family, the daughter shall (a) by birth be entitled to an equal share in Hindu Undivided Family (HUF) property in her own right as the son; (b) have the same rights in the HUF property as she would have had if she had been a son; (c) be subject to the same liabilities in respect of the said HUF property as that of a son.
3. **Birthright:** In the landmark judgement of **Vineeta Sharma v. Rakesh Sharma 2020 9 SCC 1**, it has been held by the Supreme Court that right is granted by birth and the father of the daughter need not be alive in order for the daughter to inherit rights over the family land/property.
4. The Delhi High Court in a landmark verdict, **Sujata Sharma vs. Manu Gupta (22.12.2015 - DELHC) : MANU/DE/4372/2015**, said that the eldest female member of the family can be its '*karta*' in a HUF in the event of passing of the *Karta* of the HUF.
5. **Who is a Karta?**
 - Karta has the controlling power over the income and expenditure of the family.
 - The Karta is also empowered to run the joint family business.

- The Karta may contract debts on behalf of the family.
 - The Karta has the power to enter into contracts, issue receipts, enter into compromises, and pay contracts relating to the family business.
 - The Karta has the power to pay family debts partially.
 - The Karta can represent the common family in any legal suit or complaint against the family.
2. **Muslim Daughter** - A son takes double the share of a daughter, on the other hand, the daughter is the absolute owner of whatever property she inherits
 3. **Christian Daughter** - A Christian daughter and son have equal rights in the property of their father.
 4. **Parsi Daughter** – Under Parsi Law, the son's share in his father's property is twice that of the daughter.

Recommendations:

Register a 'will' and create a trust during your lifetime securing your inheritance (movable and immovable properties) for your well-being.



L&L
PARTNERS
Law Offices

SUCCESSION RIGHTS OF MARRIED WOMEN (DAUGHTER-IN-LAW)

To Note:

- i. A 'Will' is a legal document in which the drafter outlines what to do with his property after his death.
- ii. An inheritance, on the other hand, is a gift of money or property received by a legal heir of a deceased person after his death.
- iii. A 'Will' supersedes inheritance. If the deceased person had a 'will', the 'will' provides instructions as to the persons who should receive an inheritance from the decedent. If the deceased did not have a 'will', the properties of the deceased will be inherited by the legal heirs of the deceased as per law.

I. HINDU SUCCESSION ACT, 1956

1. Streedhan:

- i. A woman, to be an absolute owner of any property acquired by her by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not.
- ii. Such gift could be given before her marriage, at her wedding or even after her wedding during the course of the marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her.

Pratibha Rani v. Suraj Kumar & Anr. 1985 AIR 628

A Hindu married woman is the absolute owner of her streedhan property and can deal with it any manner she likes; she may spend the whole of it or give it as gift or 'will' without any reference to her husband. Ordinarily, the husband has no right or interest in it with the sole exception that in times of extreme distress, as in famine, illness or the like, the husband can utilise it, but he is morally bound to restore it or its value when he is able to do so.

2. On the event of the death of the female, the devolution of property takes place according to the preferences of the deceased parents and the legal heirs of her husband(as given in chart above).

3. The first rule says that if a person dies without leaving a 'will' (intestate) then his widow, or if there are more widows than one, all the widows together, shall take equal share, while the husband's kin are given second preference.
4. A widowed mother (who may be an adoptive mother) of the intestate has an equal title over her son's share. Even if she is divorced or remarried, she is entitled to inherit from her son.
5. However, if there is an adoptive mother, the natural mother has no right to succeed to the property of the intestate. A mother is also entitled to inherit the property of her illegitimate son.
6. However, widows re-marrying may not inherit as widows.

Cherotte Sugathan vs Cherotte Bharathi & Ors (2008) 2 SCC 610

The Hon'ble Supreme Court laid down the law that a Remarried Widow Can Keep the Share Of Her Dead Husband's Property. In 2008, the Supreme Court of India decided that widow who remarries cannot be deprived of a share in her dead husband's property as according to it the widow becomes an absolute owner of the deceased husband's riches to the extent of her share as the provisions of the Hindu Succession Act 1956 would prevail over the earlier Hindu Widow's Remarriage Act 1856.

II. RIGHTS IN PROPERTY OF A MUSLIM WOMAN (WIDOW)

1. Under Muslim law, no widow is excluded from inheritance. A childless Muslim widow is entitled to one-fourth of the property of the deceased husband, after meeting his funeral and legal expenses and debts.
2. However, a widow who has children or grandchildren is entitled to one-eighth of the deceased husband's property. If a Muslim man marries during an illness and dies from that medical condition without brief recovery or consummating the marriage, his widow has no right of inheritance. But if her ailing husband divorces her and afterwards, he dies from that illness, the widow's right to a share of inheritance continues until she remarries.

III. RIGHTS IN PROPERTY OF A CHRISTIAN WOMAN (WIDOW)

1. In the absence of a 'will', if the heirs (other than the widow) are children, the widow receives a third of the share, with the remaining going to the others.
2. If the heirs are relatives other than the children, the widow receives a half of the share, and the remainder goes to the other relatives. If there are neither children nor other relatives, the widow receives the entire property.

Sonia Khurana v. State

The Petitioners¹⁴ are the wife and child of the Respondent¹⁵. According to the allegations made in the petition, they have been deserted by the Respondent. The Petitioners have prayed for urgent hearing of the case as they are destitute¹⁶ and bereft of any means of livelihood.

In this case, it was held that whereas all cases need to be decided expeditiously as speedy justice is a part of 'right to life' enshrined in Article 21 of the Constitution of India, such a need would be much more in the cases of socially and/or economically backward people and the cases raising social issues. The case of destitute wife/child seeking maintenance would definitely fall in this category.

Bhuvan Mohan Singh v. Meena S.L.P. (Criminal) No. 1565 of 2013)

The Supreme Court held that any delay in adjudication of maintenance cases by Family Court is not only against human rights but also against the basic embodiment of dignity of an individual. The object of the provisions for grant of maintenance is to provide speedy remedy for supply of food, clothing and shelter to the deserted wife and to prevent vagrancy and destitution.

Recommendations:

1. Complete ownership of Streedhan i.e. any gift received by your before, during or after your marriage.
2. Existing properties owned by husband to be converted to joint ownership.
3. All future acquisitions to be jointly held.

¹⁴ a person who institutes a case

¹⁵ person against whom a case is instituted

¹⁶ Poor and lacking means to sustain self

4. Nominations (in bank accounts/ FDs/ PPFs/ Demat Accounts etc) to be consistent with the 'will' of your spouse.
5. The wife is entitled to inheritance as per applicable law in the absence of a 'will' whereas a Live-in partner is only entitled to maintenance.



FAMILY LAW

I. MARITAL RIGHTS - Hindu Marriage Act, 1955

1. Spouses considered equal: Under the Hindu Marriage Act, 1955 the spouses are deemed equal and had equal rights and obligations towards each other. It prohibits the practice of polygamy which was in practice before the act and the concept of monogamy was introduced.
2. Restitution of conjugal rights: the fundamental rule under this right is that one spouse is entitled to the society and the comfort of one spouse and where either spouse has abandoned or withdrawn from the society of the other without reasonable excuse then the spouse can sincerely approach the Court for restitution of the conjugal rights.
3. Judicial Separation: S. 10 of the HMA lays down that when due to any reason it becomes difficult for one party to continue in the society of the other, the law allows separation. This is different from that of divorce as in this, only active marital life between the spouses is suspended.
4. Right to live in the matrimonial home: When a woman is married she gains the right to live in her husband's home; even if the house is not owned by her husband she has the right to live there. If the husband dies, she still has the right to live in that house. If there is an apprehension that she will be thrown out of the house then she can approach the Court under the Domestic Violence Act.
5. Protection against Dowry: under the Dowry Prohibition Act 1961 demanding, taking, giving, or advertising dowry is a criminal offence.
6. Right to Streedhan: Under Hindu Succession Law, all the gifts to a woman which she receives during pre-marriage or marriage ceremonies, post marriage and during childbirth is the property to her.
7. Ground for divorce: S. 13 of the Hindu Marriage Act, 1955 includes the grounds for divorce:
 - a. Extramarital relationship;
 - b. Cruelty;
 - c. Desertion(if the husband leaves his wife without any fault of her then she can get a divorce);

- d. Conversion to a different religion;
- e. Insanity;
- f. Renunciation from the world;
- g. Presumption of Death;
- h. Venereal Disease;
- i. Leprosy.

Additional grounds available to Women for divorce:

- a. Pre-Act Polygamous marriage of the husband;
- b. Acts of Rape, Sodomy, or Bestiality by the husband;
- c. Non-Resumption of Cohabitation after a Decree/Order of Maintenance;

Maintenance under Hindu Law

1. In case of divorce or in the case where both the partners are not living together, the spouse who is financially dependent on the other spouse can seek the remedy of maintenance. So that she/he can maintain their life as when they lived together. The maintenance is given by the person on whom the other person depends on. The amount to the maintenance depends upon the earning of the person and the necessities which other person requires and the necessities which a rational man needs to live a normal life.
2. S. 24 of the HMA talks about the maintenance that how a wife/husband can claim Interim maintenance. Only under the HMA and Parsi Marriage Act both husband and wife can claim for the interim maintenance. In other statutes, only the wife can claim the Interim maintenance. Under S. 36 of the DA, the wife may file the petition for Interim maintenance. S. 25 of the HMA deals with the concept of Permanent Maintenance as the amount which a person has to pay to another person as maintenance in gross sum or periodically or monthly as per the orders of the Court.

Maintenance of Wife under S. 18 of Hindu Adoption and Maintenance Act, 1956.

3. As per S. 18(1) of HAMA the wife is entitled to get the maintenance amount from her husband until she dies or he dies. the Hindu wife is also entitled to take get maintenance even if she lives separately from her husband under following grounds:
 - (a) When the husband is liable for desertion.
 - (b) When the husband is liable for cruelty.
 - (c) When the husband is suffering from leprosy.
 - (d) The husband is liable for bigamy.
 - (e) The husband converts his religion without the consent of the wife.

Maintenance of Hindu wife under S. 125 of the Cr.P.C.

4. As per S. 125 of the Cr.P.C., only a woman who has either taken divorce or given divorce by her husband and who hasn't remarried any other man is entitled to get maintenance. A married woman who refuses to live with her husband because her husband is liable for desertion or liable for cruelty or is suffering from leprosy or liable for bigamy or converts his religion without the consent of the wife can claim a special allowance under this Act.
5. In **D.Velusamy vs D.Patchaiammal (2010) 10 SCC 469** the wife recorded a suit against husband demanding the maintenance according to S. 125 of the Cr.P.C. Here the Court gives the Maintenance to the wife. Under S. 125 of the Cr.P.C. the individual needs to keep up:
 - (a) His Wife, who is incapable to look after herself.
 - (b) His Legitimate or illegitimate minor child whether married or not married, who is unfit to look after itself.
 - (c) His father and mother, who are incapable to look after themselves.
6. In **Gomaji vs Smt. Yashoda I (1996) DMC 487** the petitioner is the Husband and the Respondent is the wife. The Husband filed a case under S. 13 of the HMA seeking a divorce from his wife. And the Respondent filed an application under S. 125 of Cr.P.C. claiming Maintenance. Here the Court accepts the divorce and passed the order against Husband to give monthly Maintenance to his wife.

Maintenance as an Award to Wife under S. 23(2) of the Hindu Adoption and Maintenance Act

7. S. 23 of the HAMA defines the people who can claim the maintenance and how the maintenance can be calculated. The analysing factors of the amount are:

- (a) Status and Position of the parties.
- (b) The basic necessity of the claimant.
- (c) The basic comfort which a reasonable man needs.
- (d) The value of the property whether movable and immovable, of the Respondent.
- (e) The income of the respondent.
- (f) The number of members who depended financially on the respondent.
- (g) The degree of relationship between the two.

It is pertinent to note that all the aforesaid reliefs for maintenance are mutually exclusive and a woman can only seek maintenance under ONE of the provisions. Although, a subsequent proceeding seeking maintenance under another provision can be filed if the maintenance once awarded is less than the requisite amount.

Rajesh v. Neha [Criminal Appeal No. 730 of 2020]

1. The Hon'ble Supreme Court laid down comprehensive guidelines to govern payment of maintenance in matrimonial cases.
2. For instance, a Hindu wife can claim maintenance under the HAMA, HMA, Cr.P.C., and Protection of Women from DV Act. Each claim under these laws would be treated as separate and distinct leading to "*multiplicity of proceedings and conflicting orders*".
3. While there is no restriction on invoking multiple laws to avail maintenance, "*it would be inequitable to direct the husband to pay maintenance under each of the proceedings, independent of the relief granted in a previous proceeding*". Hence, the spouse seeking maintenance must disclose to the Court if they have been awarded maintenance from a separate or previously-instituted suit.
4. The Court drafted affidavit formats that parties have to fill out while disclosing their financial status. It further fixed time periods to overcome delay: the respondent is

required to file their disclosure within four weeks, and the concerned Court must adjudicate the issue of interim maintenance within four to six months.

5. Criteria for Assessing Quantum of Maintenance - The Court acknowledged that there was no straitjacket formula to calculate the quantum of maintenance. But to weigh interests it is necessary to consider: status of the parties, needs of the applicant, income and property of the respondent, liabilities and financial responsibilities of the claimant, age and employment status of the parties, residential arrangements, maintenance of minor children, illness or disability.
6. The Court concluded that it would be in the best interest of the applicant if maintenance is awarded from the date of the filing of the application.
7. Further, the maintenance orders may be enforced similar to a decree of a civil Court and the Court would have the power for civil detention, attaching property etc. Second, the Court may strike off the defence of the respondent. Third, the Court may initiate contempt proceedings. The Court could use any of these mechanisms to enforce maintenance orders.

Kusum Sharma v. Mahinder Kumar Sharma 2017 SCC Online Del 12534

The Delhi High Court issued the following Modified Directions to file affidavits of the assets, income and expenditure to determine the real income of both the parties:

- i. The monthly income of one party may not very often be within the knowledge of the other party, particularly when the relationship is strained, and the spouses are living apart for a considerable period. The true income of the parties is within their personal knowledge and S. 106 of the Indian Evidence Act casts the burden of proof of the income on the parties.
- ii. It was further held that a detailed affidavit of the assets, income and expenditure of both the parties is necessary to determine their true income. This affidavit is not only to fix the maintenance but also to determine the permanent alimony.

- iii. It is the duty of the Court to ascertain the true income of the parties and then pass the appropriate order relating to maintenance. The Court has examined the formats of the affidavits of assets, income and expenditure to be filed by the parties in matrimonial litigation in UK, USA, Canada, Ireland, Australia, Singapore and South Africa. However, this Court incorporated only important questions and documents to keep the format concise and precise.
- iv. The parties are also required to disclose their standard of living & lifestyle: credit/debit cards, membership of clubs, loyalty programmes, social media accounts, domestic help and their wages, mode of travel in city and outside city, category of hotels/hospitals, frequency of foreign travel, frequent flyer cards, etc.
- v. Upon completion of the pleadings in the maintenance application, the Court shall fix the date for reconciliation and direct the parties to simultaneously file the affidavits of their assets, income and expenditure.
- vi. The simultaneous filing of the affidavit by the parties is very important and should be strictly adhered to. The simultaneous filing of the affidavit by the parties would avoid any undue advantage to the party who files his/her affidavit later. It is clarified that the affidavit of assets, income and expenditure is not to be filed along with the petition/application/or written statement/reply
- vii. If any party delays in filing of the affidavit of assets, income and expenditure or the affidavit filed by a party is not in terms of these directions or a party delays the disclosure of further information/documents and the delay is causing hardship, the Court is at liberty to fix ad-interim maintenance after hearing the parties.
- viii. If the statements are incorrect, the Court shall consider its effect by drawing an adverse inference or imposing additional costs, while fixing the maintenance.
- ix. At the time of passing a decree of divorce, the Court shall bring to notice that the concerned party can claim permanent alimony without prejudice.

Recommendations:

1. Have your inheritance plan 'will' in place to secure yourself and your child.
2. Divorce by mutual consent preferred to save precious time, agony and money.

3. Possess evidence such as recordings, photographs and complaints to prove cruelty, abuse, harassment etc.
4. Do not move out of matrimonial home without a Court order to that effect.

II. GUARDIANSHIP - Hindu Minority And Guardianship Act, 1956

1. According to HMG Act a guardian can be of three categories, namely natural guardian, testamentary guardian and Court appointed guardian. Since the woman gives birth and is the natural nurturer and care-giver of the child, particularly in the first few years of its life, therefore in all cases the custody is generally with the mother, till the child attains five years of age.
2. The Supreme Court in **Jijabai Vithalarao Gajre v. Pathankhan [(1970) 2 SCC 717]** in which the Court observed that “It is no doubt true that the father was alive but had fallen out with the mother and he was not taking any interest in the affairs of the minor for 20 long years and it was as good as if he was non-existent so far as the minor was concerned. In the peculiar circumstances, the mother could be considered as the natural guardian.
3. The Supreme Court in **Githa Hariharan v. Reserve Bank of India** and in **Vandana Shiva v. Bandhopadhyaya [(1992) 2 SCC 228]** observed that “the word ‘after’ father, on a cursory reading does give an impression that the mother can be considered as a natural guardian only after the life time of the father but the word ‘after’ need not necessarily mean ‘after the lifetime’ but it means ‘in the absence of’.
4. The mother is enabled to seek custody of her minor child below the age of five years if she is deprived of it in case of any matrimonial litigation filed under the HMA. Only under exceptional situations, the custody of children cannot be given to mother considering the welfare of the children.
5. In 2016, the Delhi High Court passed an order directing the passport authority to amend its software so that disclosing the mother’s name in the application for a minor is enough.

Recommendation:

Divorce decree (if through mutual consent) to contain all necessary details to secure your guardianship, custody, secure financials for well-being of self and children.

III. ADOPTION - Hindu Adoption And Maintenance Act, 1956

- a) Adoption by a Hindu woman - any female Hindu- who is of sound mind, who is not a minor, and who is not married, or if married, whose marriage has been dissolved or whose husband is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a Court of competent jurisdiction to be of unsound mind, has the capacity to take a son or daughter in adoption. Therefore, it permits an unmarried woman, a divorcee and a widow to adopt.
- b) Adoption by a woman undergoing judicial separation - The aforesaid provision enables especially a childless woman, who is under judicial separation or living separately, to adopt provided her husband gives his consent to adopt, which was otherwise not permissible under old provisions of HAMA .
- c) Consent of wife - Any Hindu Married man if he has a wife living, shall not adopt except with the consent of his wife unless the wife has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a Court of competent jurisdiction to be of unsound mind, as is specified under S. 7.
- d) Adoption by a widow - The legal status of a widow has been improved under HAMA by which she can adopt not only for her deceased husband but also for herself exclusively. It is her independent personal right.
- e) Equal rights to give a child in adoption - a father could give the child in adoption only with the consent of the mother, if she was alive, and the absence of mother's consent renders the adoption void. The father or the mother, if alive, shall have equal right to give a child in adoption.
- f) Unwed mother to give child for adoption without requirement of consent by other parties - An unwed mother can give her illegitimate child for adoption without anybody's consent.

IV. ADOPTION BY A SINGLE PARENT IN INDIA

Can a Single Parent Adopt a Child?

The Juvenile Justice Act (amended in 2006) explains adoption as a process that permanently separates an adopted child from the biological parents and converts him into the legitimate child of his adoptive family with all the privileges, rights and responsibilities which the role of parents entails. This act empowers single or divorced people to adopt a child.

Adoption Rules in India for Single Parents

1. For Hindus

Adoptions for Hindus, which include Sikhs, Jains and Buddhists, are upheld by the Hindu Adoptions and Maintenance Act, 1956. The act allows:

- i. Any male Hindu is entitled to adopt a child, however a single male cannot adopt a girl child. He should be of sound mind and not a minor.
- ii. Any female Hindu is eligible to adopt a child. She may be unmarried. In case her husband is not living or her marriage has dissolved by the Court or her husband is legally declared to be incompetent to take a child in adoption.

2. For Muslims

Muslim do not recognise total adoption meaning that S. 8 of the Guardians and Wards Act, 1890 only allows them to take up the guardianship of a kid. They shall not be considered parents of the adopted child rather only guardians. Even for the purposes of succession the adopted children shall not have a share in the guardian's property.

3. For Christians and Parsis

Similarly, Christians and Parsis also do not recognise adoption either. In case someone wants to adopt he/she can approach the Courts and obtain legal permission under the Guardians and Wards Act, 1890. The act permits them to take a child under foster care or as guardians and not as parents. The child, on attaining the age of 18, is free to break all connections and walk away. He also possesses no legal rights of inheritance as per the Christian Laws.

Adoption Rules for the Single Male and Female

In 2015, the Ministry of Women and Child Development issued the Central Adoption Resource Agency (CARA) Guideline which permits a single woman to adopt a kid of any gender. The Juvenile Justice Act does not lawfully prescribe a single male to adopt a female child.

The minimum age limit of single mother adoption in India has been brought down from 30 to 25. The minimum age of the adopting single male is also 25 years. Prospective single male and female parents up to 45 years of age can adopt a kid below the age of 4 years, while those up to the age of 50 are eligible to adopt kids between the ages of 5 to 8. For those up to the age of 55, they may adopt kids between the ages of 9 to 18. Adoption is not allowed after this age.

PRODECURE FOR ADOPTION



- Potential parents need to register online. They can do so by taking the help of District Child Protection Officer (DCPO). The application form is available at the official website of CARA.
- Within 30 days of registration, the adoption agency formulates a home study report taking note of the different compliances and factors of the prospective parents, and then posts it on its database.
- The adoptive parents can have a look at the photograph and medical history of kids so that they may choose a kid according to their liking and preference.
- The adoptive parents can reserve a kid for possible adoption for up to 48 hours.
- The adoption agency will arrange a meeting between the prospective parents and the chosen child, and also assess them for suitability.
- In case the match is compatible, the future parents need to sign the child study report. A social worker must be present there as a witness.
- In case the match is not compatible, the entire process starts again. The whole process of matching usually takes around 15 days.

What Are the Obstacles Faced By Single Parents?

Despite the increasing acceptance of the concept of single parenting people aspiring to adopt may face obstacles from their parents, families and society at large. The traditional view where society believes that a child may prosper well in the ideal ‘two-parent set up’ comprising of a father and mother in a loving, compatible relationship, still holds strong. Moreover, single parents may require a solid support system which can provide necessary help and relief in times of crisis like medical care, after-school care, and job-related travel. Personal finances can also become a likely issue. Moreover, some adoptive parents may find it difficult to balance the demands of their job and taking care of the child by themselves. Certain adoptive agencies may be biased towards single males hopeful of adopting, and can subject them to tougher scrutiny.

Obstacles Arising in the Case of Inter-Country Adoption

In case of inter-country adoption, there is always a possibility of an adopted child becoming a target of human trafficking. There have been cases where children, after being taken to another country, were passed on to human traffickers in exchange for money. Also, in inter-country adoption follow-up, monitoring may prove difficult which can become a factor for negligence and abuse by adoptive parents. Therefore, many countries impose restrictions when it comes to single parent adoption.

Resources that Can Aid in Adoption

Some resources that can aid in the adoption are:

- Children of the World (India) Trust, Mumbai
- Delhi Council of Child Welfare
- National Council for Single Adoptive Parents

MUSLIM FAMILY LAW

I. MARITAL RIGHTS - The Muslim Women (Protection Of Rights On Marriage) Act, 2019

1. Prohibition of Triple Talaq - This Act deals with the rights of married Muslim women and prohibits the practice of triple talaq (S. 3 of the Act)¹⁷.
2. Punishment for Triple Talaq - The pronouncement of talaq is an offence punishable with imprisonment for a term of three years and fine (S. 4 of the Act)¹⁸.
3. Right to allowance - A married Muslim woman upon whom talaq is pronounced shall be entitled to receive from her husband such amount of allowance, for her and dependent children, as may be determined by the Magistrate. (S. 5 of the Act)
4. Right to custody - A married Muslim woman shall be entitled to custody of her minor children in the event of pronouncement of talaq by her husband, in such manner as may be determined by the Magistrate (S. 6 of the Act)

Shayara Bano v. Union of India (2017) 9 SCC 1

On 22.08.2017, the 5 Judge Bench of the Supreme Court pronounced its decision in the Triple Talaq Case, declaring that the practice was unconstitutional. In light of the same, the Muslim Women (Protection of Rights on Marriage) Act, 2019 was enacted.

II. DIVORCE - The Muslim Women (Protection Of Rights On Divorce) Act, 1986

1. Right of Muslim women during divorce - This Act deals with the rights of the Muslim women at the time of divorce and entitles a Muslim woman to reasonable maintenance to be paid to her within the iddat period. Muslim women to be paid maintenance for a period of 2 years, where she is maintaining the children born to her either before or after her divorce, from the date of birth of such children.
2. Right to Mahr - She is also entitled to an amount equal to mahr ¹⁹ agreed at the time of marriage and all the properties given to her by her relatives/ friends/ family/ husband/ husband's family and friends at the time of or after her marriage (See S. 3 of the Act).

¹⁷ Any pronouncement of talaq by a Muslim husband upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be void and illegal.

¹⁸ Any Muslim husband who pronounces talaq referred to in S. 3 upon his wife shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

3. Payment of maintenance in case the woman is unable to fend for herself- A divorced Muslim woman who is not able to sustain herself after the iddat period can also make an application to the Magistrate seeking order for payment of maintenance from her relatives who would inherit her property after her death (S. 4 of the Act).
4. Criminal law protection - In addition, a divorced Muslim woman can also make an application under S. 125 of Cr.P.C seeking maintenance from her former husband after the iddat period and throughout her lifetime and until she remarries.

Shabana Bano v. Imran Khan [AIR 2010 SC 305]

The issue involved in this case was regarding the eligibility of a Muslim divorced wife to collect the amount of maintenance from her divorced husband under S. 125 of the Cr.P.C. The Hon'ble Supreme Court held that proceedings under S. 125 of the Cr.P.C. are civil in nature and held that the appellant's petition under S. 125 Cr.P.C. would be sustainable in front of the Family Court as long as the appellant does not remarry.



L&L
PARTNERS
Law Offices

¹⁹ Under the Muslim Law, Mehr (dower) means money or property which the wife is entitled to receive from the husband in consideration of the marriage but this consideration is not the same as that of the civil contract. Dower is an obligation imposed upon the husband as a mark of respect for the wife. The major object of the dower is to provide wife for her subsistence after the dissolution of her marriage so that she may not become helpless after the death of the husband or termination of marriage by divorce.

CHRISTIAN MARRIAGES AND DIVORCE

1. Governing Law- When it comes to Christian marriages, it is governed by the Indian Christian Marriage Act, 1872. It is necessary for either one or both the parties are Christians if they want to get married under the Indian Christian Marriage Act, 1872.
2. Requirements to qualify for a valid marriage under the Act- There are some essential requirements for two people to get married under Indian Christian Marriage Act, 1872:
 - a) The Groom must be above the age of 21 years and the Bride must have attained the age of 18 years.
 - b) The consent of both the parties to the marriage should be voluntary and any kind of misrepresentation of facts should not be involved or no undue influence should be there.
 - c) Neither of the parties, while getting married should be having any living spouse.
 - d) A person who is authorised to grant the certificate of marriage should be present while the marriage is performed and also there should be at least two reliable witnesses.
3. Governing provisions for divorce - Divorce of Christians in India is governed by the provisions of the Indian Divorce Act, 1869. Either wife or the husband can introduce a petition in the Court of Law for getting a divorce under this Act. Any Christian couple can get a divorce with their mutual consent. This is called no-fault divorce or mutual divorce. Also, any of the spouse can file for a divorce without the consent of the other, known as fault divorce.

MAINTENANCE UNDER CHRISTIAN LAW

1. Indian Divorce Act - S. 36²⁰ of the Indian Divorce Act is inclined towards women and lays down that any maintenance (maintenance pendente lite and interim maintenance) can only be claimed by the wife and not the husband.

²⁰ Alimony pendente lite. —In any suit under this Act, whether it be instituted by a husband or a wife, and whether or not she has obtained an order of protection [the wife may present a petition for expenses of the proceedings and alimony pending the suit.]

2. Demand for alimony - If a Christian woman is divorced and is not in a position to look after herself, she doesn't have to worry as S. 37²¹ of Indian Divorce Act says that if the woman demands an alimony/maintenance in a civil Court or any High Court, the Court may order any sum it deems fit and the husband will have to pay the same till her lifetime.

3. Provisions under criminal law - S. 125 of the Criminal Procedure Code, 1973 empowers a woman (married, divorced or in a live in) to file an application before the Magistrate seeking maintenance/ monthly allowance from the husband, if the husband despite having sufficient means neglects or refuses to maintain his wife who is unable to maintain herself.



women matter.



L&L

PARTNERS

Law Offices

Such petition shall be served on the husband; and the Court, on being satisfied of the truth of the statements therein contained, may make such order on the husband [for payment to the wife of the expenses of the proceedings and alimony pending the suit] alimony pending the suit as it may deem just:

[Provided further that the petition for the expenses of the proceedings and alimony pending the suit, shall, as far as possible, be disposed of within sixty days of service of such petition on the husband.]

²¹ Power to order permanent alimony. — [Where a decree of dissolution of the marriage or a decree of judicial separation is obtained by the wife, the District Court may order that the husband shall] to the satisfaction of the Court, secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as, having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it thinks reasonable; and for that purpose may cause a proper instrument to be executed by all necessary parties.

INTER-FAITH MARRIAGES

1. The Special Marriage Act deals with inter-caste and inter-religion marriages. Inter caste marriage is a marriage between people of two different castes.
2. Succession to the property of persons married under this act or any marriage registered under this act and that their children will be governed under the Indian Succession Act. But if any party to the marriage belongs to Hindu, Buddhist, Sikh, or Jain religions, then the Hindu Succession Act will govern the succession to their property.
3. The grounds for judicial separation or divorce under this Act are same as under the Hindu  Marriage Act.
4. Divorce by mutual consent is also provided for under this Act. However, unless and until one year has expired from the date of their marriage as recorded in the marriage books, the parties may not apply for divorce in the District Court under this Act.
5. Any Court exercising jurisdiction under the Special Marriage Act of 1954 may, order the husband to secure and support the wife via Interim or Permanent Alimony or Maintenance, if necessary, by charge on the property of the husband, such gross sum or such monthly or periodic payment of money for a period of time not exceeding her life.

RIGHTS OF A LIVE-IN PARTNER

1. A live-in relationship like marriage must consent to some basic criteria where the couple must be of legal age to marry or should be qualified to enter into a legal marriage. Every kind of live-in relationship shall not be considered as live-in and simply spending a week together or a one night stand would not make it a household relationship. For example- if a man has a “keep” whom he maintains financially and uses principally for sexual reasons or potentially as a slave then it would not be considered, as a relationship in the nature of marriage.

2. In a landmark case **Indra Sarma v. V.K.V. Sarma (2013) 15 SCC 755**, Supreme Court addressed the issue of live-in relationships in detail and also laid down the conditions for live in relationship that can be given the status of marriage.

Following are the guidelines given by Supreme Court to determine if a relationship is a live-in relationship:

“(a) Duration of Period of Relationship

The relationship should be of a reasonable period of time to maintain and continue the relationship which may vary from case to case, depending upon the fact situation.

(b) Shared Household

The couple should be residing in a shared household and includes both - an owned or a tenanted house.

(c) Pooling of Resources and Financial Arrangements

The couple should be supporting each other, or any one of them, financially, sharing bank accounts, acquiring immovable properties in joint names or in the name of the woman, long-term investments in business, shares in separate and joint names, so as to have a long-standing relationship, may be a guiding factor.

(d) Domestic Arrangements

Entrusting the responsibility, especially on the woman to run the home, do the household activities like cleaning, cooking, maintaining or upkeeping the house, etc. is an indication of a relationship in the nature of marriage.

(e) Sexual Relationship

Marriage like relationship refers to sexual relationship, not just for pleasure, but for emotional and intimate relationship, for procreation of children, so as to give emotional support, companionship and also material affection, caring, etc.

(f) Children

Having children is a strong indication of a relationship in the nature of marriage. Parties, therefore, intend to have a long-standing relationship. Sharing the responsibility for bringing-up and supporting them is also a strong indication.

(g) Socialisation in Public

Holding out to the public and socialising with friends, relations and others, as if they are husband and wife is a strong circumstance to hold the relationship is in the nature of marriage.

(h) Intention and Conduct of the Parties

Common intention of parties as to what their relationship is to be and to involve, and as to their respective roles and responsibilities, primarily determines the nature of that relationship.”

Maintenance rights of live-in partners

1. In 2003, the Malimath Committee Report on “Reforms in the Criminal Justice System” suggested an amendment of the word “wife” in S. 125 of the Cr.P.C. to include a woman who is living in with a man for a “reasonable period”.
2. The Supreme Court expressed its opinion that a broad interpretation of “wife” should include cases where man and woman live together as husband and wife for a reasonably long period of time. A strict proof of marriage should not be a precondition for

maintenance under S. 125 Cr.P.C. so as to fulfill the true spirit and essence of the beneficial provision of maintenance, **Chanmuniya v. Virendra Kumar Singh Kushwaha, (2011) 1 SCC 141.**

3. Recently, it is held that a woman in a live in relationship has an efficacious remedy to seek maintenance under Protection of Women from Domestic Violence Act, 2005 even if it is assumed that she is not entitled to the same under S. 125 Cr.P.C.. In fact, under the Domestic Violence Act, the victim would be entitled to more relief than what is contemplated under S. 125 Cr.P.C., **Lalita Toppo v. State of Jharkhand, 2018 SCC OnLine SC 2301.**

Inheritance rights of live-in partners

1. Partners in a live-in relationship do not enjoy an automatic right of inheritance to the property of their partner. The HSA does not specify succession rights to even a mistress living with a male Hindu.
2. However, a man can bequeath his properties (movable or immovable) to his live-in partner by way of a 'will'.

Domestic violence and live-in partners

1. It took until 2006 for persons in a marriage and those in a live-in relationship to be treated absolutely alike by a statute. This happened with the introduction of the Protection of Women from Domestic Violence Act, 2005. It offered a range of remedies to women facing violence, including compensation (damages), protection orders, restraining orders, right to reside in the shared household, etc. The definition of domestic violence has been made wide enough to include all forms of physical, sexual, emotional and even economic abuse.
2. Live-in partners have a right to all remedies which may be available to a wife under this Act. This includes monetary relief either as damages, compensation, maintenance or any other name that suits the duty-right situation of the man and woman. They enjoy the right to reside in the shared home and the man cannot evict them in retaliation. Further, S. 18 of the Act provides for preventive measures where Magistrates may pass restraining

orders, etc. to protect the woman from “acts that are likely to take place”. The man may also be liable for up to one year's imprisonment and/or fine up to Rs 20,000.

3. In **M. Palani v. Meenakshi AIR 2008 Mad 162**, the Madras High Court looked into the definition of “domestic relationship” as given in S. 2(f) of the Protection of Women from Domestic Violence Act, 2005 which did not specify that the couple should have lived together for a particular period for the relationship to be a domestic relationship. The Court held that “at least at the time of having sex by them, they shared household and lived together”. The Court further held that the provisions of the Act would apply even in such a case; hence, maintenance claim under the Act was upheld.
4. Thus the provisions of the Act would apply even in those cases where man and woman share a frequent sexual relationship, even if there is no express intention to a long-term commitment from either party.

Status of children from live-in relationships

1. The Supreme Court in **Tulsa v. Durghatiya (2008) 4 SCC 520** held that children born out of such a relationship will no more be considered illegitimate.
2. Again in **Vidhyadhari v. Sukhrana Bai (2008) 2 SCC 238**, the Supreme Court held that even if a person had contracted second marriage during the on-going of his first marriage, children born out of such second marriage would still be legitimate though the second marriage would be void. Thus, in a case where a couple has lived together for a long time, there shall be presumption of marriage and a child born from such a relationship shall enjoy all the rights of a legitimate child.
3. The important precondition for the same should be that the parents must have lived under one roof and cohabited for a significantly long time for the society to recognise them as husband and wife and it should not be a “walk-in and walk-out” relationship **Madan Mohan Singh v. Rajni Kant, (2010) 9 SCC 209**.
4. In another case **Bharatha Matha v. R. Vijaya Renganathan (2010) 11 SCC 483** the Supreme Court held that a child born out of a live in relationship may be allowed to inherit the property of the parents (if any) and therefore be given legitimacy in the eyes of law. We have seen that Indian judiciary in the absence of specific legislation have been

protecting the rights of the children by giving law a broader interpretation so that no child is “bastardised” for having no fault of his/her own.

5. On 31-3-2011 a Special Bench of the Supreme Court of India consisting of G.S. Singhvi, Asok Kumar Ganguly in **Revanasiddappa v. Mallikarjun (2011) 11 SCC 1**, remarked that irrespective of the relationship between parents, birth of a child out of such relationship has to be viewed independently of the relationship of the parents. It is as plain and clear as sunshine that a child born out of such relationship is innocent and is entitled to all the rights and privileges available to children born out of valid marriages.

Maintenance rights of children

1. S. 125 of the Cr.P.C. provides maintenance to children whether legitimate or illegitimate while they are minors and after they attain majority where such child is unable to maintain himself.
2. However, the right to maintenance of children born from a live-in relationship was upheld in 2007, in **Dimple Gupta v. Rajiv Gupta (2007) 10 SCC 30**

Guardianship and custodial rights

1. S. 2(2) of the Children Act, 1960 provides that where the father and the mother of the child were not married to each other before the birth of the child, the mother and not the father has the parental responsibility for the child.
2. But as S. 2(2)(b) of the Act states, the unmarried father can acquire parental responsibility in the following ways:
 - a. by subsequently marrying the child's mother,
 - b. upon taking office as a formally appointed guardian of the child,
 - c. by making a parental responsibility agreement with the mother,
 - d. by obtaining a parental responsibility order under the Act, and
 - e. by obtaining a residence order in which case a separate parental responsibility order must be made.

3. S. 6(a) of the Hindu Minority and Guardianship Act, 1956 provides the father as the natural guardian of his minor legitimate children and the mother becomes the natural guardian “in his absence” i.e. where he is incapable of acting as the guardian. S. 6(b) of the HMG Act however provides the mother as the natural guardian over her illegitimate children.
4. Under Muslim law, the father is the natural guardian and the mother does not become the natural guardian even after his death. Muslim law does not provide for the guardianship of illegitimate children, but it has come to be established through case law that it will be vested in the mother.
5. While deciding a matter on custody, the Court takes into account the welfare, age and sex of the child as well as his own wishes and those of his parents where welfare of the child shall be the paramount consideration. Hence, even in custody cases involving children from live-in relationships, the welfare of the child would be the paramount consideration for the Court.

Inheritance rights of children

In **Vidhyadhari v. Sukhrana Bai (2008) 2 SCC 238**, the Supreme Court granted the inheritance to the four children born from the woman with whom the man shared a live-in relationship, calling them “his legal heirs”. The Court has thus ensured that no child born from a live-in relationship of a reasonable period may be denied their inheritance.

How does one prove a live-in relationship?

To get recognised as “in the nature of marriage,” certain conditions were set by the Supreme Court in the case of “D. Velusamy and D. Patchaimal (5 SCC 600) being-

- i. The couple must hold themselves out to society as being akin to spouses.
- ii. They must be of legal age to marry.
- iii. They must be otherwise qualified to enter into a legal marriage, including being unmarried.

- iv. They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time. Such period of time differs from case to case .



RIGHTS UNDER EMPLOYMENT LAWS (PRIVATE SECTOR)

I. THE COMPANIES ACT, 2013 AND RULES

1. S. 149(1) - It is mandatory for every company to hire at least one women Director in its Board of Directors.
2. Further, the Companies (Appointment and Qualifications of Directors) Rules, 2014 mentions the type of companies which should have at least one women member in its Board of Directors:
 - i. All listed companies, and
 - ii. Other public limited companies having paid up capital of Rs.100 crore or turnover of Rs.300 crore.



II. Rights Of Working Women In Factories/ Establishments²²

- a) Separate washrooms - Women must have separate toilets and washrooms with doors.²³
- b) Creche facility - If a factory has more than 30 women workers, the employer must provide a creche for the workers children.²⁴
- c) Threshold of weight to be lifted by a woman - Women cannot be made to lift more than the prescribed weight.²⁵
- d) Prohibition on cleaning or oiling a moving machine - Women cannot be made to clean or oil any moving machine.²⁶
- e) Duration of work hours - Women cannot be made to work more than 48 hours in a week.²⁷
- f) Mandatory Day-off - Women must get one day off in a week.²⁸
- g) Duration of work in a day - Women cannot be made to work for more than 5 hours at a stretch.²⁹

²² https://labour.gov.in/sites/default/files/Factories_Act_1948.pdf

²³ S. 19, Factories Act 1948

²⁴ S. 48, Factories Act 1948

²⁵ S. 34, Factories Act 1948

²⁶ S. 22, Factories Act 1948

²⁷ S. 66, Factories Act 1948

²⁸ S. 52, Factories Act 1948

- h) Timings of work in a day - State government can grant exemption to nay factory or group or class of factories, but no woman can be permitted to work during 10 PM to 5 AM.³⁰
- i) Change in shifts - Shift can change only after weekly or other holiday and not in between³¹.
- j) Night shift for women - Factories Act, 1948 has been proposed to be amended to allow night shift for women workers. The government has decided to amend S. 66 of the Factories Act, 1948 to allow employment of women workers between 7:00 pm and 6:00 am. The employer has to ensure occupational safety and adequate protection to the women workers.³²
- k) Punishment for contravention - For contravention of the provisions of the Act or Rules, the infringer is liable for imprisonment up to 2 years or fine up to Rs. 1, 00, 000 or both.
- ii. Contravention causing death or serious bodily injury- fine not less than Rs. 25,000 in case of death and not less than Rs. 5000 in case of serious injuries.
 - iii. Continuation of Contravention – imprisonment up to 3 years or fine not less than Rs. 10,000 which may extend to Rs. 2, 00,000.
 - iv. For that purpose, it seeks to impose upon the owners or the occupier’s certain obligations to protect works unwary as well as negligent and to secure for them, employment in conditions conducive to their health and safety from accidents.

III. THE EQUAL REMUNERATION ACT, 1976

1. Importance of parity in wages - Parity in wages is one of the major components of Service Law Jurisprudence which has evolved over the years.
2. Equal pay for equal work - If two workers are doing the same work, they should be paid equal wages.
3. To give effect to this Constitutional provision The Equal Remuneration Act, 1976 was passed to provide for the payment of equal remuneration to men and women workers and

²⁹ S. 55, Factories Act 1948

³⁰ S. 66, Factories Act 1948

³¹ S. 66, Factories Act 1948

³² S. 87, Factories Act 1948

for the prevention of discrimination, on the grounds of sex, against women in the matter of employment.

People's Union for Democratic Rights v. Union of India, 1982 AIR 1473

- i. Duty of Employer to pay equal remuneration to men and women workers for same work or work of a similar nature.³³
 - ii. No employer shall pay to any worker, at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex for the same work or work of a similar nature.
 - iii. An employer cannot claim exemption on the grounds of financial incapability from The Equal Remuneration Act, 1976.
 - iv. No discrimination to be made while recruiting men and women workers.³⁴
4. Discrimination against woman by employer prohibited - No employer shall, while making recruitment of the same work or work of a similar nature, or in recruitment such as promotions, training or transfer, make any discrimination against women in such work is prohibited or restricted by or under any law for the time being in force.

IV. THE MATERNITY BENEFIT ACT, 1961

1. The Act is applicable to:

- (i) all establishments which include factories, plantations, mines belonging to Government.
- (ii) every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances.
- (iii) Any shop or establishment that falls within the purview of laws for shops and establishments in any State wherein ten or more persons are employed or were employed within the preceding twelve months.

2. Twenty-Six (26) weeks: The Maternity Benefit Act now provides maternity benefit till upto 26 weeks. Out of the 26 weeks, up to 8 weeks can be claimed before delivery.

³³ S. 4, the Equal Remuneration Act, 1976

³⁴ S. 5, the Equal Remuneration Act, 1976

3. Adoptive mothers: The law was also amended to extend maternity benefits to commissioning and adoptive mothers who are now entitled to 12 weeks of leave from the date the mother gives birth or adopts a child below the age of three months.
4. Miscarriage/ termination of pregnancy: In case of miscarriage or medical termination of pregnancy, the law permits women six weeks' leave after the procedure. In case of an illness after delivery, miscarriage, medical termination of pregnancy or tubectomy, a woman can claim a leave with wages for a further period of one month, over and above what is allowed.
5. Creche facility: Every establishment with more than 50 employees to provide for crèche facilities for working mothers and such mothers will be permitted to make four visits during working hours to look after and feed the child in the crèche.

Recommendations

1. Entitled to equal remuneration.
2. Private Sector is governed by contract. Negotiate well for equal / better remuneration.
3. 26 weeks of paid maternity leave- In the event a government employee does not get maternity benefits as per the law, she can file a Writ Petition to enforce the same. A woman in the Private sector can file a complaint before the Metropolitan Magistrate/ Judicial Magistrate of First Class.
4. If maternity leave is not granted and if a pregnant woman absents herself from work for 26 weeks or less, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence.
5. If any woman is not granted a safe environment at the workplace or is harassed at her workplace in any manner she can file a complaint before the police.

UNDERSTANDING CRIMINAL LAW



Indian
Women
Network

women matter.



L&L

PARTNERS

Law Offices

CRIMINAL OFFENCES AGAINST WOMEN³⁵

1. **Acts of obscenity towards women**- Obscene acts and songs towards women are punishable upto 3-month imprisonment and/or fine.³⁶
2. **Outraging the modesty of a women** - Assault to outrage modesty is punishable upto 2 years imprisonment and/or fine.³⁷
3. **Insulting the modesty of a women** - Word/ gesture/ act to insult modesty is punishable upto 1 year imprisonment and/or fine.³⁸
4. **Sexual Harassment** - Sexual Harassment is punishable upto 3 years imprisonment and/or fine.³⁹
5. **Disrobing a woman** - Assault or use of criminal force to woman with intent to disrobe is punishable upto 7 years imprisonment and/or fine.⁴⁰
6. **Voyeurism** - Voyeurism is punishable upto 7 years imprisonment and/or fine.⁴¹
7. **Kidnapping a minor girl** - Kidnapping or maiming a minor girl for the purpose of begging is punishable upto life imprisonment.⁴²
8. **Inducing a minor girl to engage in intercourse** - Inducing a minor girl to go to any place knowing she will be forced or seduced to illicit intercourse is punishable upto 10 years and fine.⁴³
9. **Purchasing girls for the purpose of prostitution** - Buying and selling of minor girls for purpose of prostitution is punishable upto 10 years and fine.⁴⁴
10. **Rape** - Rape of a woman is punishable with minimum 10 years extendable to life imprisonment and even death penalty.⁴⁵

³⁵ <https://legislative.gov.in/sites/default/files/A1860-45.pdf>

³⁶ S. 294, IPC 1860

³⁷ S. 354, IPC 1860

³⁸ S. 509, IPC 1860

³⁹ S. 354-A, IPC 1860

⁴⁰ S. 354-B, IPC 1860

⁴¹ S. 354-C, IPC 1860

⁴² S. 363-A, IPC 1860

⁴³ S. 366-A, IPC 1860

⁴⁴ S. 372-373, IPC 1860

⁴⁵ S. 375-376, IPC 1860

11. **Injury resulting in death or a vegetative state of the woman** - Injury to a woman resulting in vegetative state or death is punishable not less than 20 years extended to life imprisonment.⁴⁶
12. **Engaging in intercourse with a spouse during judicial separation** - Having Intercourse with wife during separation is punishable upto 2 years and/or fine.⁴⁷
13. **Intercourse elicited by a person in a position of authority** - Intercourse by person in position of authority is punishable upto 6-10 years and/or fine⁴⁸
14. **Gang Rape** - Gang rape (two or more men) of a woman is punishable with minimum 20 years extendable to life imprisonment and even death penalty.⁴⁹
15. **Repeated Offenders** - Repeated offenders are punishable upto life imprisonment.⁵⁰
16. **Cruelty**- Cruelty is also punishable under S. 498A of the IPC with imprisonment upto 3 years and fine. Harassment for dowry falls within the scope of this S..
17. **Dowry Death**- Also, S. 304B of the IPC states that if a woman dies within seven years of marriage by any burns or bodily injury or it was revealed that before her marriage she was exposed to cruelty or harassment by her husband or any other relative of the husband in connection to demand dowry then the death of the woman will be considered as a dowry death. Punishment for dowry death is a minimum sentence of imprisonment for seven years or a maximum sentence of imprisonment for life.
18. Abetting **Dowry Death** - Even otherwise, under Dowry Prohibition Act, 1961,⁵¹ if any person, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than five years, and with the fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more; and a punishment extendable to two years for demanding dowry plus the fine upto ten thousand rupees.⁵²
19. **Refusal to return streedhan** - If the husband refuses to return the streedhan, then he can be prosecuted for misappropriation of the streedhan and criminal breach of trust under S. 406 of IPC and is punishable with imprisonment upto 3 years or fine or both.

⁴⁶ S. 376-A, IPC 1860

⁴⁷ S. 376-B, IPC 1860

⁴⁸ S. 376-C, IPC 1860

⁴⁹ S. 376-D, IPC 1860

⁵⁰ S. 376-E, IPC 1860

⁵¹ S. 3, Dowry Prohibition Act, 1961

⁵² S. 3, Dowry Prohibition Act, 1961

20. **Place of investigation** - S. 160 Cr.P.C. makes it clear that women cannot be called to the police station for investigation, and they shall be interrogated at the place of their residence.



IF A WOMEN IS ALLEGED TO HAVE COMMITTED A CRIME, RIGHTS AVAILABLE TO HER DURING ARREST, DETENTION AND INVESTIGATION

Within the Cr.P.C there are provisions and safeguards for women. In the year 2005, **S. 46(4)** was inserted into the Cr.P.C which describes the procedure for the arrest of a woman.

1. Rights when the woman is an alleged Accused

- a. A woman can only be arrested in the presence of a woman constable.
- b. A woman cannot be arrested after sunset and before sunrise. Even if there is a woman constable accompanying the officers, the police can't arrest a woman at night.
- c. Women cannot be called to the police station for interrogation. It is a woman's right to not be physically present at the police station for interrogation. The police can interrogate a woman at her residence.



2. Rights available during Arrest —

- (1) Where a woman is to be arrested, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest.
- (2) Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed, or the arrest is to be made.
- (3) The same principle was further reiterated in **Kavita Manikikar v. CBI**.⁵³ The Court in this case held that, where a statute mandates that no woman shall be arrested after sunset and before sunrise, and the arrest of a person when she is woman must be made by a Police Officer who is female, the provisions of the statute cannot be simply ignored. In this case the Petitioner was arrested at 8 P.M in connection with claims of money laundering and criminal conspiracy. The Court held that the arrest was against S. 46(4).

⁵³ Kavita Manikikar of Mumbai v. Central Bureau of Investigation, 2018 SCC OnLine Bom 1095

3. **Search of Arrested Person:** Whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency under S. 51.
4. **Right to dignity and decency:** In the event an accused person is a woman, any medical examination on her must be performed by or under the supervision of a female medical practitioner under S. 53.

Further, in **Sheela Barse v. State of Maharashtra**⁵⁴, a letter from a journalist-activist concerning the poor condition and plight of women in jail was treated as writ petition. In this judgement, the Supreme Court held that it is the duty of the police officer making an arrest to see that arrested females are segregated from men and kept in female lock up in the police station. In case there is no separate lock up, arrested women must be kept in a separate room.

5. **Search of Place by Competent Authority:** Per S.100 if the search of a place owned by a woman is to happen, such search must be conducted by a female officer only.

6. **Investigation when the woman is a victim of Sexual Harassment (S. 154):**

- a) If the information is given by a victim of sexual harassment, molestation, rape etc. is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer.
- b) If the victim of sexual harassment, molestation, rape etc., is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be; (b) the recording of such information shall be videographed; (c) the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-S. (5A) of S. 164 as soon as possible.
- c) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

⁵⁴ Sheela Barse v. State of Maharashtra, 1983 2 SCC 96

- d) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognisable⁵⁵ offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him.

7. Investigation of victims of Sexual Offences:

The statement of victims of offences under S.s 354 to 354-0, 376, 376-A to 376-E or S. 509 IPC pertaining to harassment of women are required to be recorded by a woman police officer or woman officer.

8. Rules regarding detention when investigation cannot be completed within twenty-four hours :

- a) If a woman is arrested and detained in custody, the police cannot detain her for period of more than twenty-four hours if there aren't grounds for believing that the accusation or information is well-founded.
- b) In case there are sufficient grounds for believing that the accusation is well founded, then the woman who has been detained has a right to be produced before a Magistrate within 24 hours of her arrest.
- c) If the woman is below the age of eighteen years, the detention shall be authorised to be in the custody of a remand home or recognised social institution.

9. Application of Plea Bargaining (S. 256A):

A plea bargain cannot be made out in cases where the offence has been committed against a woman.

10. Evidence to be taken in the presence of the accused (S. 273):

Exception is that where the evidence of a woman below the age of eighteen years who is alleged to have been subjected to rape or any other sexual offence, is to be recorded, the Court may take

⁵⁵ Offence where police do not need a warrant to arrest and begin investigation

appropriate measures to ensure that such woman is not confronted by the accused while at the same time ensuring the right of cross-examination of the accused.

11. Application of Bail for a woman:

In terms of S. 437 Cr.P.C., one of the considerations while deciding a bail application filed by a person suspected/accused of commission of a non bailable offence is gender. The Court while granting bail may take a lenient view in case the accused is a woman.

S. 144-SPECIAL POWERS OF MAGISTRATE

This section empowers a District Magistrate, a Sub- divisional Magistrate or any other Executive Magistrate to, pass written orders for women protection including but not limited to directing that organisations like BPO's , Corporate & Media Houses have the system of picking up and dropping their employees and the concerned transporters, security agencies, drivers and security guards in the jurisdiction of Sub Division Kamla Market, Delhi and shall :

- a) Maintain a data base of all employees, security personnel, cab drivers and contractual workers working with them, for access by the police as and when required.
- b) Hire the security personal and other contractual personal as far as possible from licensed agencies only and ensure verification of their antecedents.
- d) Ensure that women employees are not made to travel alone with the cab driver and a duly verified security guard or a male Colleague (regular employee of the company is invariably deployed in each cab carrying women staff during the night hours i.e. 08 PM to 07 AM.
- e) Choose the route in such manner that as far as possible a women employee is not the first one to be picked up or the last to be dropped.
- h) Exercise effective check and control on the vehicle movement in order to check any unwarranted activities of the cab drivers, such as picking up strangers, straying away from the designated route etc.
- i) Get GPS system installed in the cabs used in the transportation of such employees, especially women employees, and other such orders as the Magistrate may deem fit.

RIGHTS AGAINST HARASSMENT



Indian
Women
Network

women matter.



L&L

PARTNERS

Law Offices

EVE- TEASING

1. **DEFINITION**: “Eve” in the term eve-teasing represents that the woman herself tempt the male for disgraceful comments and behaviour towards her. It includes vulgar gestures, sexual remarks, winking, whistling, staring, touching inappropriately, groping etc.

Pertinent Laws

2. If obscene acts are committed in public or obscene words are spoken in public then S. 294 IPC makes the punishment for such acts mandatory. The person will be punished with imprisonment up to 3 months or fine or both. This section is not gender-specific so, male or female can be a victim or the offender.
3. A person who expresses words, gestures, acts with an intention to hurt the modesty of the women then such person will be penalised under S. 509 of IPC and such act is punishable with an imprisonment up to three year or fine. The penalty will depend upon the severity of the offence.
4. A fine of Rs.2000 and imprisonment of 2 years will be imposed if a man shows any pornographic or obscene pictures, books or papers to a woman or a girl under S. 292 of the IPC and in case if this offence is repeated then the offender will be held liable for imprisonment up to 5 years and a fine of Rs. 5000.
5. If a person passes any negative comments or shows obscene gestures to a girl or a woman which intrudes on her privacy will be held liable for imprisonment up to 1 year and a fine or both.

Eve-teasing complaint

The victim/complainant should immediately go to the following places and file an FIR:

- i. Nearest police station, or Nearest women’s police station, or Public grievance cell at the Commissioner of Police’s office.
- ii. Most police stations have a ‘Rapid Response Desk for Women, Children and Senior Citizens’ where at least one lady officer is seated at all times. The victim must approach the officials at this desk. In the off chance that such a desk is not accessible, the victim may approach the officer on duty.

- iii. In case there is no lady officer, a lady constable is called to take the statement; in case the latter is also unavailable a lady representative from an NGO is called.
- iv. The victim should note that the FIR would be recorded in a register and she should take the registration number or receipt for the same.
- v. It is always advisable to consult a lawyer before registering the FIR. The victim can call on 100 (Police control room) or 1091 (Women helpline number) at the time of the incident.

Police Investigation:

- i. A detailed account of the incident to be given to the police. Try and have recording (voice or video) of the commission of the offence.
- ii. An investigation is initiated and varies from case to case depending on eye witnesses and the amount of information provided by the victim, after which an arrest is made. This entire procedure takes up a maximum time period of up to 3 months.



RAPE

1. DEFINITION OF RAPE

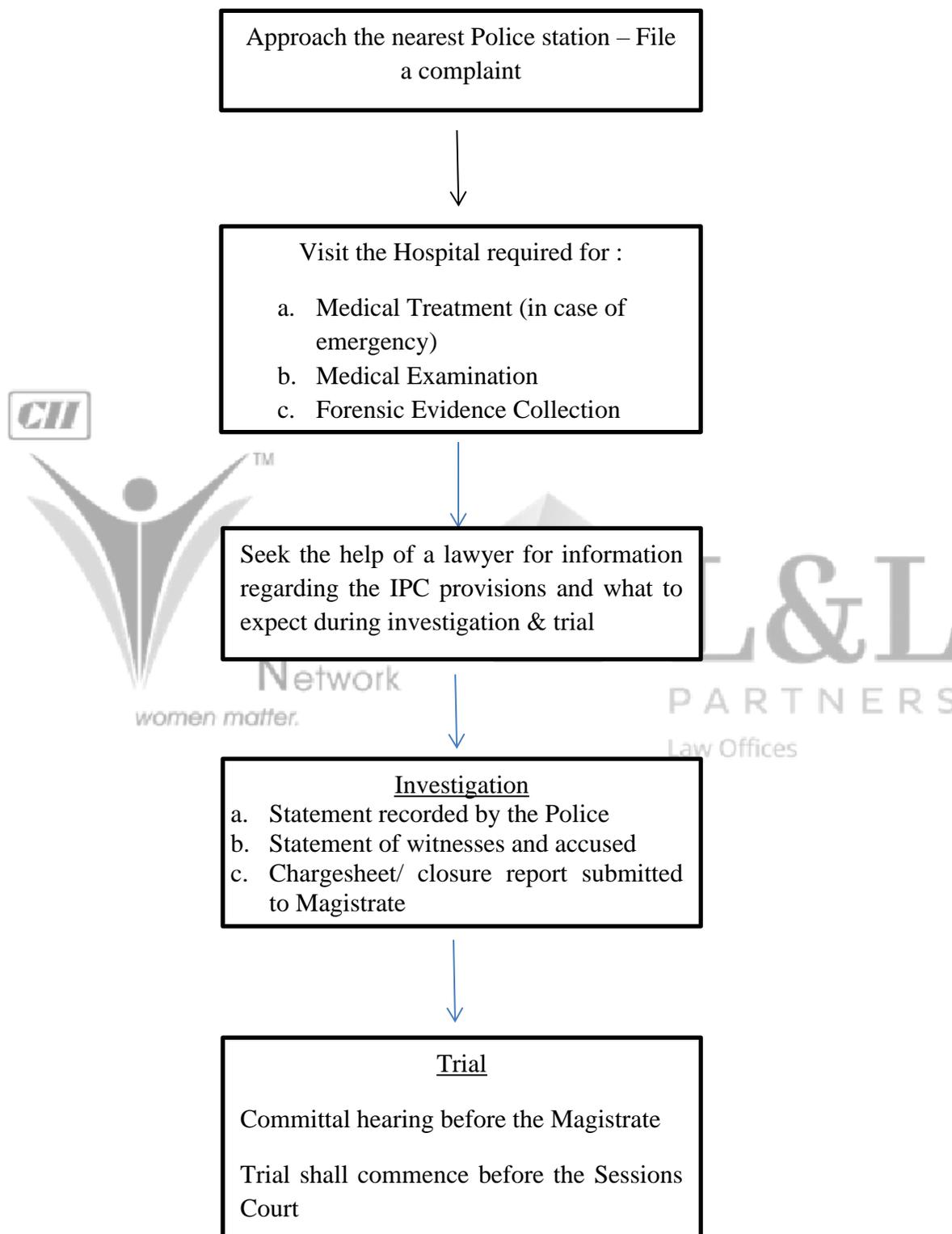
Rape.—A man is said to commit “rape” if he –

- a. penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- b. inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- c. manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
- d. applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,
 - i. Against her will.™
 - ii. Without her consent.
 - iii. With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.
 - iv. With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
 - v. With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.
 - vi. With or without her consent, when she is under sixteen years of age.
 - vii. Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

2. FIR UNDER S. 376 IPC

- i. The first step in initiating proceedings against rape is to start by filing a First Information Report (FIR) at the police station in the vicinity of either where the offence took place, or, where the person who faced the crime resides.

- ii. Usually, while it is advisable to file the FIR at the earliest, delays are condoned if you can show sufficient cause to explain the delay.
- iii. The FIR should contain every bit of information pertaining to the crime, in this case, rape.



The Trial

- i. A rape case is fought by the state in which the survivor lives in and not the survivor herself, so the public prosecutor and the lawyers of the accused take over. However, once the matter goes to Court, the survivor/complainant can appoint a lawyer to assist the prosecution.
- ii. A rape trial is always held in-camera, which means that they are not open to the public to watch. If found guilty, the accused can be jailed for a minimum period of seven years, but which may extend to life imprisonment, and fined, depending on the exact nature of the assault. If the incident is termed as 'rarest of the rare', the accused can even be sentenced to death.

RESOURCES AVAILABLE

National Commission For Women (NCW)

1. Alternatively, any case involving deprivation of women's right or harassment of women in India can be registered with the National Commission for Women. The complaint should disclose complete details of the matter with specific relief/intervention sought from the National Commission for Women.
2. Deals with: the complaints received from all over the country including those relating to deprivation of rights of women and involving injustice to women takes suo motu cognizance of incidents related to commission of heinous crimes against women U/S 10 of the National Commission Act, 1990
3. Scrutiny of Complaints: The complaints which fall within the Commission's mandate and adopted procedure to handle complaints are registered under 19 identified categories.
4. Heads Under Which Complaints Are Registered
 - Rape / Attempt to rape
 - Acid Attack
 - Sexual Assault
 - Sexual harassment
 - Stalking / Voyeurism
 - Trafficking / prostitution of women
 - Outraging modesty of women / Molestation
 - Cyber crimes against women

- Police Apathy against women
- Harassment of married women / Dowry Harassment
- Dowry Death
- Bigamy / Polygamy
- Protection of women against Domestic Violence
- Women's right of custody of children / Divorce
- Right to exercise choice in marriage / Honour Crimes
- Right to live with dignity
- Sexual Harassment of women at workplace
- Denial of maternity benefits to women
- Gender discrimination including equal right to education and work
- Indecent representation of women

 Sex Selective Abortions; Female Foeticide / Amniocentesis

- Traditional practices derogatory to women rights like Sati Pratha, Devdasi Pratha and Witch Hunting
- Free legal aid for women

5. Processing of Complaints: To provide adequate relief to the complainant and ensure suitable redressal of her grievances, the complaints are acted upon in the following manner :

- Investigations by the police are expedited and monitored.
- Family disputes are resolved or compromised through counseling or hearing before the Commission.. For serious crimes, the Commission constitutes an Inquiry Committee which makes spot enquiries, examines various witnesses, collects evidence and submits the report with recommendations. Such investigations help in providing immediate relief and justice to the victims of violence and atrocities. The implementation of the report is monitored by the NCW. There is a provision for having experts/lawyers on these committees.
- A few complaints are also forwarded to the respective State Commissions for Women and other forums like the National Human Rights Commission, National Commission for Scheduled Caste / Scheduled Tribe, etc., for disposal of the complaints at their end.
- In respect of complaints related to sexual harassment of women at their workplaces, the concerned organisations or departments are urged to constitute an Internal Complaints

Committee (ICC) as per the mandatory provisions Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 in order to enquire into such complaints. The Commission regularly monitored and takes up these complaints with the concerned organisations/departments to expedite the disposal of the complaints by following the statutory provisions.

6. Analysis of Complaints:

- The complaints received show the trend of crimes against women and suggests systemic changes needed for reduction in crimes.
- The complaints are analysed to understand the gaps in routine functioning of government in tackling violence against women and to suggest corrective measures.
- The complaints are also used as case studies for sensitisation programmes for the police, judiciary, prosecutors, forensic scientists, defence lawyers and other administrative functionaries.

7. A person intending to file a complaint before the National Commission for women may do so by making a complaint on the official website of the Commission ncwapps.nic.in under the S. of 'register online complaints'.

8. One can also send a written application containing all the important details (along with supporting documents, if any) through post or by hand. An acknowledgment along with complaint number, login ID and password is sent to the complainant upon receipt of complaint by the National Commission for Women if the complaint has been accepted by the National Commission for Women.

9. In the event of the complaint being rejected, the same shall be communicated to the complainant at the earliest. One can also check it telephonically or by personally visiting the National Commission for Women. Following information shall be furnished by the complainant:

- Contact details of the complainant and the respondent (if available)
- Brief description of the incident
- Details of remedies already exhausted
- Supporting documents (If any)

Contact: 011-26944880, 26944883

ONE STOP CENTRE SCHEME (OSC) - SAKHI

1. Ministry of Women and Child Development (MWCD), has formulated a Centrally Sponsored Scheme for setting up One Stop Centre, a sub - scheme of Umbrella Scheme for National Mission for Empowerment of women including Indira Gandhi Matritrav Sahyaog Yojana. Popularly known as 'Sakhi', the scheme is being implemented since 1st April 2015. These Centres are being established across the country to provide integrated support and assistance under one roof to women affected by violence, both in private and public spaces in phased manner.
2. The OSC will support all women including girls below 18 years of age affected by violence, irrespective of caste, class, religion, region, sexual orientation or marital status.
3. The Centres will be integrated with a Women Helpline to facilitate access to following services:
 - i. Emergency Response and Rescue Services - OSC will provide rescue and referral services to the women affected by violence. For this, linkages will be developed with existing mechanisms such as National Health Mission (NHM), 108 service, police (PCR Van) so that the woman affected by violence can either be rescued from the location and referred to the nearest medical facility (Public/ Private) or shelter home.
 - ii. Medical assistance - Women affected by violence would be referred to the nearest Hospital for medical aid/examination which would be undertaken as per the guidelines and protocols developed by the Ministry of Health and Family Welfare.
 - iii. Assistance to women in lodging FIR /NCR/DIR
 - iv. Psycho - social support/counselling - A skilled counsellor providing psycho - social counselling services would be available on call. This counselling process will give women confidence and support to address violence or to seek justice for the violence perpetuated. Counsellors shall follow a prescribed code of ethics, guidelines and protocols in providing counselling services.
 - v. Legal aid and counselling - To facilitate access to justice for women affected by violence, legal aid and counselling would be provided at OSC through empanelled Lawyers or National/ State/District Legal Service Authority.

- vi. Shelter - The OSC will provide temporary shelter facility to aggrieved women. For long term shelter requirements, arrangements will be made with Swadhar Greh/Short Stay Homes (managed/affiliated with government/NGO). Women affected by violence along with their children (girls of all ages and boys up till 8 years of age) can avail temporary shelter at the OSC for a maximum period of 5 days.
- vii. Video Conferencing Facility - To facilitate speedy and hassle free police and Court proceedings the OSC will provide video conferencing facility (through Skype, Google Conferencing etc.). Through this facility if the aggrieved woman wants, she can record her statement for police/ Courts from OSC itself using audio - video electronic means.
4. A woman affected by violence can access OSC in the following manner:
- By herself; or
 - Through any person including any public-spirited citizen, public servant , relative, friend, NGO, volunteer etc., or
 - Through Women Helpline integrated with police, ambulance and other emergency response helplines.
5. As soon as the complaint is registered a text message (SMS /Internet) would be sent to the DPO/PO/ CDPO/ SHO/ DM/ SP/ DYSP /CMO /PO of the district/area as required. When an aggrieved woman approaches the OSC for help either in person or if anybody approaches on her behalf, the case details will be fed in to a system as per the prescribed format and a Unique ID Number will be generated.

SEXUAL HARASSMENT AT WORKPLACE

1. **The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013** was enacted with the objective to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matter connected therewith or incidental thereto.

2. **Definition of Sexual Harassment** - Sexual harassment is defined as unwelcome acts or behaviour (whether directly or by implication) namely, physical contact and advances, a demand or request for sexual favours, making sexually coloured remarks, showing pornography, any other unwelcome physical, verbal or non-verbal conduct of sexual nature. Any act of unwelcome and sexual nature shall be considered as sexual harassment

3. **Acts amounting to sexual harassment:** The Act also provides the circumstances under which an act may amount to sexual harassment. These are:
 - implied or explicit promise of preferential treatment in her employment; or
 - implied or explicit threat of detrimental treatment in her employment; or
 - implied or explicit threat about her present or future employment status; or
 - interference with her work or creating an intimidating or offensive or hostile work environment for her; or
 - humiliating treatment likely to affect her health or safety.

4. **Most importantly, the Act guarantees anonymity** with regard to the identity of the victim and the proceedings under this Act shall not be published. There is a prohibition on publication of identity of the aggrieved woman, respondent, witnesses, contents of the complaint, inquiry proceedings or recommendations of the committee, except information regarding the justice secured to any victim of sexual harassment.

5. **Internal Complaints Committee (ICC)** has to be mandatorily set up at every office of the organisation or institution, having more than 10 employees, to hear and redress complaints pertaining to sexual harassment. Where employees are less than 10, there exists a Local Committee (LC) in every district set up by the District Officer which committee while inquiring into such complaint shall have the same power as vested in a civil Court.

The ICC has to include an external member being a person familiar with issues relating to sexual harassment, or from a non-governmental organisation or association committed to the cause of women to inject a degree of objectivity and outside perspective in the working of the ICC.

6. **Filing of a complaint:** An aggrieved woman may file a complaint in writing ICC/LC within three months from the date of the incident and in case of series of such incidents within three months from the last such incident. However, any delay in filing the complaint can be condoned by the committee up to further three months. In case of physical or mental incapability of the aggrieved woman, her legal heirs may make a complaint.
7. **Procedure:**
 - i. On receiving the complaint, the ICC/LC, before initiating an inquiry, may take steps to settle the matter between her and the respondent through conciliation and when a settlement is arrived no further inquiry is conducted.
 - ii. If the conciliation fails or any term of the settlement arrived at has not been complied with by the respondent, the ICC/LC shall proceed further with the inquiry.
 - iii. For the purpose of making an inquiry, the ICC/LC shall have the same powers as are vested in a civil Court. The ICC/LC has to complete the inquiry within a period of 90 days. The committee can give certain interim reliefs to the aggrieved woman during the pendency of the inquiry.
 - iv. The ICC/LC within 10 days after completion of the inquiry shall provide the report of its findings to the employer/District Officer and the concerned parties.
 - v. When the allegation against the respondent has been proved the ICC/LC shall recommend the employer/District Officer to take action for sexual harassment as misconduct in accordance with provisions of service rules or where no such rules have been made, as prescribed in Rule 9 of the Rules and to pay such sum to the aggrieved woman as it considers appropriate, in accordance with the provisions of S. 15, from the salary of the respondent. The employer/District Officer shall act upon the recommendations within 60 days.

- vi. An appeal can be filed against the recommendations made by the ICC/LC before the Court or tribunal, within 90 days from the recommendations, in accordance with service rules and in absence of service rules, to the Appellate Authority under S. 2 of the IE Act.
8. **Domestic Worker/ House help:** In case of a domestic worker, the LC shall, if prima facie case exists, forward the complaint to the police, within a period of seven days for registering the case under S. 509 of the IPC or any other relevant provisions of the said Code where applicable.
9. **Duties of the employer and District Officer** is creating awareness on sexual harassment at workplace, sensitise the employees, assist the complaints committee in conducting the inquiry, act upon recommendations of the committee, monitor timely submissions of reports of the committee etc.
10. **Non-compliance:** The non-compliance of the provisions of the Act by the employer may result in fine which may extend to fifty thousand rupees and can also lead to cancellation of his license or withdrawal, or non-renewal, or approval, or cancellation of the registration, as the case may be.
11. **ROLE OF NGOS**
1. **Awareness Programmes-** NGOs like Oxfam India and Parivartan are increasingly taking initiatives to organise programmes and camps to promote awareness among the women of the country. Since, education in an area where India still lags behind, such intervention from outside is important to ensure that the victims know about their rights and duties. These organisations tackle the problem of ignorance through such programmes.
 2. **Support To Victims-** These NGOs provide social and psychological support to the victims to help them recover from the trauma. Such help is provided in the form of a personal one-on-one counselling for the victim as well as for the family. It gives them courage to fight emotionally and physically.
 3. **Legal Aid-** NGOs often provide the requisite legal aid to the victims so that they may not be denied justice. Legal costs are borne by these NGOs, who strive to ensure justice.

Lawyers engaged by these organisations assist the victims by presenting and fighting for the victims in the Court.

4. **Some of these NGOs are:**

- i. **The Pranjya Trust-** B-402, Prince Villa, 7, Rajamannar Street, Chennai, Tamil Nadu, India, 600017, Phone No- +914424811255, email- prajnyatrust@gmail.com
- ii. **Sakhya Womens' Guidance Cell** - The Image building, 2nd floor Nirmal Naka, Nala Sopara, West Palghar, Mumbai, Maharashtra, India, 401304, Phone No- 91-9975393724, email- hildafds@gmail.com, website- <http://www.sakhyawgc.org>
- iii. **Gender at work-** general inquiries: info@genderatwork.org.



Gender at work NGO is also part of the Government of India recommended Panel of Institutions/Organisation for imparting training programs/workshop under Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

There are various organisations that provide services to institutions so as to create safer work environment for women by conducting various workshops and courses on this topic. They also become part of the Internal Complaints Committee so as to help women face harassment at work. One such organisation is Kelphr, which helps organisation to create a work environment compliant with the law.

DOMESTIC ABUSE

1. The Protection of Women from Domestic Violence Act (PWDVA), 2005 recognises following types of domestic violence:

i. Physical Abuse-

- an act or conduct causing bodily pain, harm, or danger to life, limb, or health;
- an act that impairs the health or development of the aggrieved person;
- an act that amounts to assault, criminal intimidation and criminal force.

ii. Sexual Abuse-

- any conduct of a sexual nature that abuses, humiliates, degrades, or violates the dignity of a woman.

iii. Verbal and Emotional Abuse-

- any insult, ridicule, humiliation, name-calling;
- insults or ridicule for not having a child or a male child;
- repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

iv. Economic Abuse-

- depriving the aggrieved person of economic or financial resources to which she is entitled under any law or custom or which she acquires out of necessity such as household necessities, streedhan, her jointly or separately owned property, maintenance, and rental payments;
- disposing of household assets or alienation of movable or immovable assets;
- restricting continued access to resources or facilities in which she has an interest or entitlement by virtue of the domestic relationship including access to the shared household.

2. Beneficiaries under the Act:

- i. Women: The Act covers women who have been living with the Respondent in a shared household and are related to him by blood, marriage, or adoption and

includes live-in relationships. Women in fraudulent or bigamous marriages or in marriages deemed invalid in law are also protected.

- ii. Children: The Act also covers children who are below the age of 18 years and includes adopted, step or foster children who are the subjects of physical, mental, or economical torture. Any person can file a complaint on behalf of a child.

3. Rights available under the Act :

- i. to file a domestic violence case and get relief by way of a protection order, an order for monetary relief, a
- ii. custody order, a residence order, a compensation order or more than one such order under this Act
- iii. availability of services of service providers- (The duty of the service provider, as provided under S. 6 of the DV Act, upon receipt of request should be to provide shelter to the aggrieved person in the shelter home)
- iv. availability of services of the Protection Officers
- v. free legal services under the Legal Services Authorities Act, 1987
- vi. file a complaint under S. 498-A of the IPC wherever relevant;

4. Procedure for filing a domestic violence case :

- i. The victim of domestic violence or any witness of the offence, on her behalf, can file an FIR/complaint with the local police officer, or the protection officer, or service provider, or directly to the Magistrate.
- ii. The basic question that comes in the mind of every person filing a case is that which Court should he/her approach?
 - A domestic violence case is heard by the judge of the Court within whose local limit either the victim resides or the accused or where the action has been committed.
 - In Delhi, special Courts have been set up for dealing exclusively with cases of Domestic Violence, known as 'Mahila Courts'. These are presided over by a woman magistrate.
 - The Magistrate shall upon receiving the complaint, commence the hearing of the case within 3 days of the complaint being filed.
 - The Magistrate shall also give the notice of the date of hearing to the Protection officer who shall issue it to the accused.

- The Court shall as far as possible, dispose the case within a period of sixty days from the date of the first hearing.
- The victim can even request the Magistrate to conduct the proceeding in camera, i.e., the victim will not be required to be physically present for the hearing and the proceedings will be conducted via video conferencing.

5. **Reliefs available :**

- Protection orders under S. 18: Wherein the Court can further restrain the accused to commit the act of domestic violence on the victim or any of their family members or can even disallow him/her to enter your place of employment or residence. The protection order can be claimed by the victim as an interim relief, i.e. before the final judgement is passed.
- Residence orders under S. 19: The Court, if satisfied, that the victim has no other place to stay or for any other reason, then it can also prevent the accused from dispossessing the victim from their matrimonial home and can even disallow him to enter that area of the household in which the victim is residing.
- Monetary relief under S. 20: The victim can even ask the Court for monetary relief from the accused in order to incur medical expenses or any other monetary loss that has occurred to the victim due to the offence being committed.

Binita Dass vs Uttam Kumar (2019) SCC Online Del 9666⁵⁶

The Delhi High Court has held that Magistrate cannot deny interim maintenance to wife only because she has earning capacity or is a qualified person.

- Custody of the child under S. 21: The Court can also grant the temporary custody of the child/children to the person making the application.
- Compensation orders under S. 22: In addition to above-mentioned reliefs, the Magistrate may also on an application being made by the victim, pass an order directing the accused to pay the compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence.
- These orders will remain in force until the victim files an application in the Court for its revocation.

- g. If the order of the Court is not passed in the victim's favour, the victim can also make an appeal against the order within thirty days from the date on which the order is passed.

6. Penalty/punishment:

1. For Respondent: The breach of Protection Order or interim protection order by the Respondent is a cognizable and non-bailable offence. It is punishable with imprisonment for a term, which may extend to one year or with fine, which may extend to twenty thousand rupees or with both. He can also be tried for offences under the IPC and the Dowry Prohibition Act.
2. For Protection Officer: If he fails or does not discharge his duties as directed by the Magistrate without any sufficient cause, he will be liable for having committed an offence under the Act with similar punishment.

Eviction proceedings under Senior Citizens Act, 2007 cannot override the right of residence of woman in a shared household - Smt. S. Vanitha Vs. The Deputy Commissioner, Bengaluru Urban District & Ors



CRUELTY - S. 498A IPC

1. **Cruelty** has been defined in wide terms so as to include inflicting physical or mental harm to the body or health of the woman and indulging in acts of harassment with a view to coerce her or her relations to meet any unlawful demand for any property or valuable security. Harassment for dowry falls within the sweep of latter limb of the section. Creating a situation driving the woman to commit suicide is also one of the ingredients of “cruelty”.
2. That Cruelty is also a ground for divorce under HMA, which includes physical as well as mental cruelty (conduct that makes another person suffer but does not involve physical assault).
3. **S. 498A of the IPC, 1860**, also deals with the offence of cruelty including domestic violence. This section was introduced to protect married women from being subjected to cruelty by the husband or his relatives. A punishment extending to 3 years and fine has been prescribed.
4. **Essential Ingredients**
 - The woman must be married;
 - She must be subjected to cruelty or harassment; and
 - Such cruelty or harassment must have been shown either by husband of the woman or by the relative of her husband, **U. Suvetha v. State, (2009) 6 SCC 757**
5. **Classification of offence** – As per the IPC, S. 498-A is a cognizable offence (a case in which a police officer may arrest the accused without an arrest warrant) if the information relating to the commission of the offence is given to an officer-in-charge of a police station by the person aggrieved by the offence or by any person related to her by blood, marriage or adoption or if there is no such relative, by any public servant belonging to such class or category as may be notified by the State Government in this behalf. Also, it is a non-bailable offence.
6. **Who may file a complaint?** - The complaint under S. 498-A may be filed by the women aggrieved by the offence or by any person related to her by blood, marriage or adoption. And

if there is no such relative, then by any public servant as may be notified by the State Government in this behalf.

7. **Period of Limitation**- A complaint alleging commission of an offence under S. 498-A can be filed within 3 years of the alleged incident. However, a Court can take cognizance of an offence after the period of limitation if it is satisfied that it is necessary so to do in the interest of justice. Cruelty is a continuing offence and on each occasion on which the woman was subjected to cruelty, she would have a new starting point of limitation.⁵⁷
8. Once the chargesheet is filed after investigation by the police, the Court shall take cognizance of an offence punishable under S. 498-A. except upon a police report of facts which constitute such offence or upon a complaint The aggrieved person can herself also directly file a complaint before Court or through her father, mother, brother, sister. The Court can also take cognizance if the complaint is made by any other person related to her by blood, marriage or adoption with Court's permission.
9. Even before a Court where a case under S. 498-A is pending, if allegation is found genuine, it is always open to the appellant to ask for reliefs under S.s 18 to 22 of the Domestic Violence Act and interim relief under S. 23 of the said Act⁵⁸

10. ROLE OF NGOS

- i. If the victim does not want her name to be directly involved in the case, then the victim can approach an NGO which may file the case in the Court on their behalf and fight for the victim's cause. NGOs continue to spread awareness amongst people regarding the legal rights they have in hand for fighting against the atrocities they are subjected to. NGO's are encouraging more and more people to report any case of domestic violence so that proper action may be taken against the culprits.

⁵⁷ Arun Vyas v. Anita Vyas, (1999) 4 SCC 690.

⁵⁸ Juveria Abdul Majid Patni v. Atif Iqbal Mansoori, (2014) 10 SCC 736

- ii. The basic work done by the NGOs for protection of women against domestic violence includes counselling, providing legal help, running victim support and victim survivor program, providing medical aid, etc.
- iii. There are quite a few NGOs that help women who suffer from domestic violence. Some of them are as follows:
 - i. **All India Women's Conference** – 6, Bhagwan Das Road, New Delhi Ph No:)11 23381165, web: aiwc.org.in
 - ii. **Jwp Joint Women's Programme Cisrs** - House, 14, Jangpura-B Mathura Road, New Delhi – 110 014, Ph No: 011 24314821
 - iii. **Streebal** - B-5/19, Safdarjung Enclave, New Delhi – 24 web: www.streebal.com, Ph No: 26164113
 - iv. **Shakti Shalini** - 6/30 B, Jangpura-B, New Delhi
 - v. **Urja Trust Foundation**- Office hours: 10am -6pm. Email: connect@urjatrust.org. Ph No: 9819806266



women matter.

Indian
Women
Network



L&L
PARTNERS
Law Offices

DOWRY PROHIBITION

I. THE DOWRY PROHIBITION ACT, 1961:

The Dowry Prohibition Act is a secular legislation and applicable to all persons who are Indian citizens irrespective of religion.

- Dowry is a demand for property of valuable security, having an inextricable nexus with marriage. Conventionally, it is a consideration from the bride's side to the relatives of the groom, and/or his parents or guardians in lieu of an agreement to marry.
- Under Dowry Prohibition Act, 1961,⁵⁹ if any person (independent of religion) gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than five years, and with the fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more; and a punishment extendable to two years for demanding dowry plus the fine upto ten thousand rupees.⁶⁰
- While the Act makes no explicit reference to a dowry death, the Supreme Court in the case of **Pratibha Rani v. Suraj Kumar** held that taking possession of the bride's articles would be tantamount to a "criminal breach of trust" punishable under the IPC under S.405.

II. IPC, 1860

S.304-B is the relevant sections in the IPC that deals with death by dowry. It is as follows:

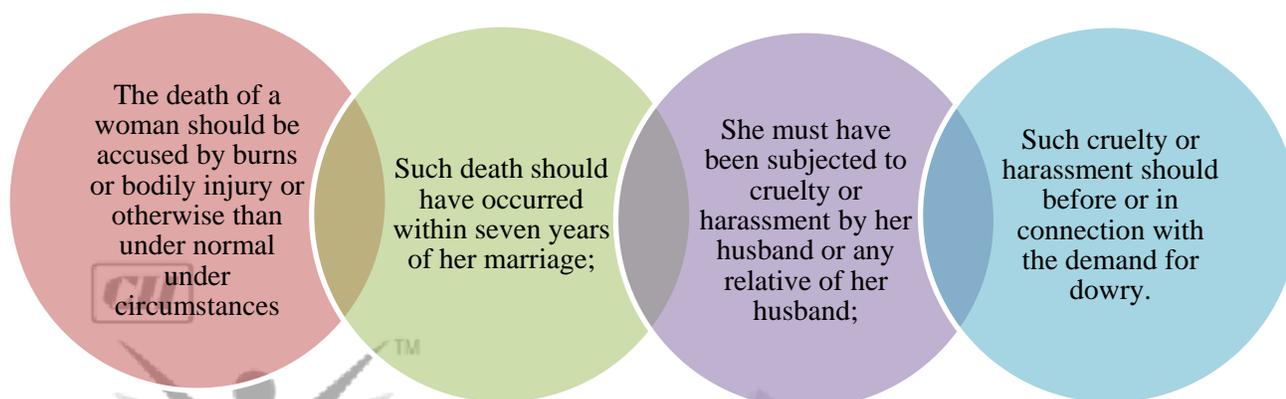
- Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.
- Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years, but which may extend to imprisonment for life."

⁵⁹ S. 3, Dowry Prohibition Act, 1961

⁶⁰ S. 3, Dowry Prohibition Act, 1961

- Additionally, S.304 would apply in cases of homicide and suicide if the deceased has been subject to cruelty or harassment in lieu of the demand of dowry. Further, the expression “otherwise than under normal circumstances” would mean the death due to an unusual cause and under suspicious circumstances.

Four essential components of dowry death under S.304B:



III. ANALOGOUS LAW THAT IS INCORPORATED INTO S.304B:

- S.113 of the Indian Evidence Act – This was inserted to give teeth to S.304B, IPC and enable faster prosecution of such a grave offence.
- “113B. Presumption as to dowry death. —When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

IV. S.498A OF THE IPC – Cruelty for the demand for dowry is included in S. 498A.

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

PROCEDURE FOR FILING COMPLAINT AGAINST DOWRY DEATH:

A written or oral complaint in the nearest police station can be made by any person who knows of the offence.

If the concerned officer refuses to hear your complaint and to file the FIR you can send it to the Superintendent of Police either in person or through post

If the police refuses to act upon your complaint, you can directly file a complaint before the Magistrate.

You have a right to a copy of the FIR free of cost.

Clearly mention the names and addresses of the culprits involved.

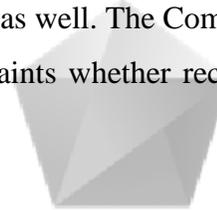
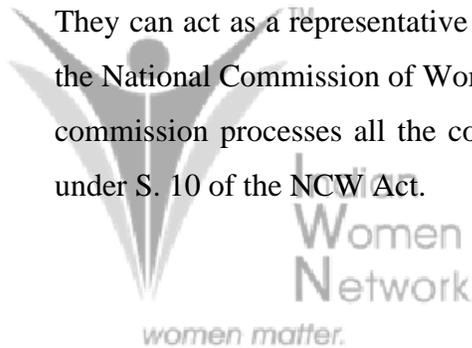
The date, time and place of dowry death also to be mentioned.

Mention clearly the details of the dowry death including the motive behind it.

Mention marks and injuries on the dead body.

Mention the names of witnesses, if any.

- i. Sections under which the complaint is to be filed - S.304B IPC and FIR under S.154 of the Cr.P.C and also S. 34 & S. 120 B IPC if more than one persons such as - husband's family are involved.
- ii. The prosecution will have to prove that-
 - (a) That the death was caused by burns, bodily injury, or any other unnatural reason. To prove this the post-mortem report will be sufficient.
 - (b) that the death occurred within seven years of the marriage by using wedding invitation card, photographs, and marriage certificate.
 - (c) that the harassment is linked with dowry.
- iii. If the police do not register the FIR and all remedies under the state authorities have failed, a complaint can be filed by approaching the Legal Services Authority in the relevant jurisdiction.
- iv.  National Commission Of Women: administers the authority to deal with these cases too. They can act as a representative of the inflicted party in the legal arena. One can contact the National Commission of Women as well. The Complaints and Councelling Cell of the commission processes all the complaints whether received orally, written or '*suo motu*' under S. 10 of the NCW Act.



CHILD SEXUAL ABUSE

11. **The Protection of Children from Sexual Offences Act, 2012** was enacted to provide a robust legal framework for the protection of children from offences of sexual assault, sexual harassment and pornography, while safeguarding the interest of the child at every stage of the judicial process.
12. The new Act provides for a variety of offences under which an accused can be punished. It recognises forms of penetration other than penile-vaginal penetration and criminalises acts of immodesty against children too. Offences under the act include:
 - i. **Penetrative Sexual Assault:** Insertion of penis/object/another body part in child's vagina/urethra/anus/mouth, or asking the child to do so with them or some other person- Punishment minimum 10 years of rigorous imprisonment extendable to life and fine.
 - ii. **Sexual Assault:** When a person touches the child, or makes the child touch them or someone else. Punishment minimum 10 years of rigorous imprisonment extendable to further five years and fine.
 - iii. **Sexual Harassment:** passing sexually coloured remark, sexual gesture/noise, repeatedly following, flashing, etc. Punishment up to three years of rigorous imprisonment and fine.
 - iv. **Child Pornography:** Punishment minimum five years of rigorous imprisonment and fine.
 - v. **Aggravated Penetrative Sexual Assault/ Aggravated Sexual Assault:** Punishment minimum five years of rigorous imprisonment extendable to seven years and fine.
2. The act is gender-neutral for both children and for the accused. With respect to pornography, the Act criminalizes even watching or collection of pornographic content involving children. The Act makes abetment of child sexual abuse an offence.
3. **Reporting a case of Child Sexual Abuse (CSA)**
 - i. Under S. 19.1 of the POCSO Act, any person who has apprehension that an offence is likely to be committed or has knowledge that an offence has been committed, should bring the incident to the notice of the Special Juvenile Police Unit (SJPU) or the local police.

- ii. The failure to report such an offence, is punishable with imprisonment of upto six months or fine or both. This penalty is, however, not applicable to a child less than 16 years of age.
- iii. For easy reach, if one calls Childline on 1098, they will connect the concerned to the police and Child Welfare Committee.

4. **The police should also inform the child and his guardian about the following:**

- i. Availability of support services including counselling.
- ii. Right to legal aid and representation.
- iii. Availability of public and private emergency and crisis services.
- iv. Availability of victims' compensation benefits.
- v. Developments in the case, including arrest of the accused, applications filed, and Court proceedings.
- vi. Procedural steps involved in a criminal prosecution.
- vii. Status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation.
- viii. Rendering of a verdict after trial.
- ix. Sentence imposed on an offender.
- x. Filing of charges against a suspected offender.
- xi. Bail, release or detention status of an offender or suspected offender.
- xii. Schedule of Court proceedings that the child is either required to attend or is entitled to attend.

5. **Role of the Child Welfare Committee (CWC) under the POCSO Act**

- i. If the police/SJPU report indicates that a child is in need of care and protection, the CWC should decide whether the child needs to be removed from the custody of his family and placed in a children's home/shelter, within three days.
- ii. The CWC can provide support to the child during the course of the investigative and trial. The support person can be an individual or organisation working in the field of child rights, or an official from the shelter where the child is placed or an individual employed by the District Child Protection Unit (DCPU).

6. **Compensation-** The Special Court is also in a position to order interim compensation to meet the relief and rehabilitation needs of the child, any time after the FIR is registered. This order can be passed based on an application by or on behalf of the child, or by the Court itself. The compensation that is awarded is payable by the State Government from the Victims Compensation Fund or other similar schemes that have been established for compensating victims under S. 357A of the Cr.P.C. and is payable within 30 days of the receipt of the order.
7. **National Commission for Protection of Child Rights-** National Commission for Protection of Child Rights provides for an online portal for registering complaints.

Note: Also, the complaints can be registered in person or by post, messenger or any other means to NCPDR office. Once receiving the e-complaint from a parent or the child, NCPDR officials will take cognizance of the matter and will address the complaints in a highly confidential manner.

NGO's

Some of the NGOs helping with child sexual abuse are as follows:

- **Arpan-** Phone : +91 22 2686 2444 / 2686 8444, Email : info@arpan.org.in Counselling : +91 98190 86444
- **Rahi foundation-** Telephone- 011 41607055, Email- info@rahifoundation.org
- **Sneha-** CRISIS HELPLINE: 98330 52684 / 91675 35765, Email- communications@snehamumbai.org

CHILD TRAFFICKING

1. Trafficking of children is a form of human trafficking and is defined by the United Nations as the "recruitment, transportation, transfer, harboring, and/or receipt" kidnapping of a child for the purpose of slavery, forced labor and exploitation.
2. When a magistrate has reason to believe from information received from the police or from any other person authorised by the state government that any person is living on, or is caring on, or is being made to carry on prostitution in a brothel, he may direct a police officer not below the rank of sub-inspector to enter such brothel and to remove such person and produce the person before him.
3. A minor as a child rescued under the Juvenile Justice Act, 1986 is treated as a neglected child which is also known as child in need of care and protection, now the Juvenile Justice Act, 2000 and has to be produced before the Juvenile Welfare Board, now the Child Welfare Committee for reception and rehabilitation, and placing in safe custody.

NGO'S DEALING WITH HUMAN TRAFFICKING:

Prerana is an NGO that works towards the rescue, protection, and rehabilitation of human trafficking victims.

Phone No- +912223877637

Email- preranakp2010@gmail.com

Website- <http://www.preranaantitrafficking.org>

VITRIOLAGE

1. **Definition of an Acid Attack** - An **acid attack** also called **acid throwing, vitriol attack, or vitriolage**, is a form of violent assault involving the act of throwing acid or a similarly corrosive substance onto the body of another "with the intention to disfigure, maim, torture, or kill".

2. **Impact of the attack** - The long-term consequences of these attacks may include blindness, as well as eye burns, with severe permanent scarring of the face and body, along with far-reaching social, psychological, and economic difficulties.

3. **PUNISHMENT FOR VITRIOLAGE**

The **S. 326 A in the IPC** lays down the punishment for acid attacks. The minimum punishment is 10 years' imprisonment. It can extend up to life imprisonment with fine. A separate law to punish offenders in such cases was passed along with amendment of law on sexual offences.

4. **RESOURCES AVAILABLE**

Many non-governmental organisations (NGOs) have been formed in the areas with the highest occurrence of acid attacks to combat such attacks. Some of the NGOs are as follows:

- i. **The Acid Survivors Foundation India**- India, Phone No- 919007612727; +919830518828. Email director.asfi@gmail.com, website-
- ii. **Acid Survivors and Women Welfare Foundation**- Email ID : director.asfi@gmail.com
Helpline No- 9007612727, Landline No- 033 4600 1626/27
- iii. **Chhanv Foundation**- Email- stopacidattacks@gmail.com,
chhancfoundation@gmail.com, Phone No- +91 9717900302, +91-9958066951

SENIOR CITIZENS/ RETIREMENT

1. A senior citizen who is unable to maintain herself from her own earning or out of property owned by her can claim maintenance from her children, grandchildren or from her relatives in the absence of immediate family
2. Application for maintenance can be filed before Court seeking monthly maintenance from the family / relatives.
3. The Delhi High Court has held that 'a son, irrespective of his marital status, has no legal right to live in his parents' house, and can reside there only at their mercy'. ... The eviction holds as much for a married and unmarried son, as it does for a daughter, and even the son-in-law or daughter-in-law.
4. It has been recently held by the Kolkata High Court that children and their spouses living in the senior citizen's house are at best "licensees". It is also stated that the said license comes to an end once the senior citizens are not comfortable with their children and their families.

Recommendations

1. Estate and financial planning to start in your 20's.
2. All properties to devolve upon the beneficiaries only after your demise, and not during lifetime by way of will/ trust.
3. Secure roof over your head, adequate returns, sources of income and insurances in place, prepare for contingencies.
4. Guardian in the event you are unable to take care of yourself.

NON-GOVERNMENT ORGANISATIONS

Some of the organisations and NGOs in India have taken charge of the issue of women protection in India. They are offering a helping hand to women victims to molestation, rape, sexual assault, and child sexual abuse.

1. Guria India

URL - <http://www.guriaindia.org/>

Contact: 91-542-2504253

Email: info@guriaindia.org

2. Women Helpline (All India)- Women in India

The women helpline number has been created to deal with inquiries and complaints regarding cases concerning and causing distress to any women in India. You can report and register cases of rape, sexual assault, harassment, child sexual abuse, etc. at their rape hotline online.

Contact: 1091

3. The Pranjya Trust

URL - <http://www.prajnya.in/>

Contact: +914424811255

Email: prajnyatrust@gmail.com

4. Action-Aid India

URL - <https://www.actionaidindia.org/>

Contact: +91 80 25586293 (9 AM – 6 PM)

5. Snehalaya

URL - www.snehalaya.org

Contact: +91 0241 2778353,

Email: give@snehalaya.org

6. Majlis

URL - <https://www.giveindia.org/nonprofit/majlis-manch>

Contact: 91-22-26662394 / 26661252

Email: majlislaw@gmail.com

7. Azad Foundation

URL - <http://azadfoundation.com/>

Contact: +91 11 4060 1878

Email: azadfoundation@gmail.com

8. International Center for Research on Women

URL - <https://www.icrw.org/icrw-asia/>

Contact: 011 4664 3333

Email: info.india@icrw.org

9. Aasra

URL - <http://www.aasra.info/>

Contact: +91-9820466726

Email: aasrahelpline@yahoo.com

10. Sneha

URL - <https://snehamumbai.org/>

Contact: +91 91675 35765

Email: crisis@snehamumbai.org



women matter.

Indian
Women
Network



L&L

PARTNERS

Law Offices

Glossary of terms

1. **Juvenile** - for or relating to young people
2. **Marginalised Setions** - Marginalised populations are groups and communities that experience discrimination and exclusion (social, political, and economic) because of unequal power relationships across economic, political, social, and cultural dimensions.
3. **Derogatory** – expressive of a low opinion
4. **Intestate** - having made no valid will
5. **Streedhan** - As per Hindu Law, Streedhan is whatever a woman receives during her lifetime
6. **Devolution** - Devolution is about the transfer of power by a central government to local or regional administrations
7. **Averments** - a positive statement asserting a fact
8. **Destitute** - not having the necessities of life
9. **Adjudication** - the act of judging a case, competition, or argument, or of making a formal decision about something
10. **Alimony** - Alimony is a legal obligation on a person to provide financial support to their spouse
11. **Desertion** – the act by which a person abandons and forsakes, without justification, a condition of public, social, or family life, renouncing its responsibilities and evading its duties.
12. **Leprosy** – Hansen’s disease
13. **Claimant** – person making the claim
14. **Petitioner** - a person who presents a petition to an authority in respect of a particular cause.
15. **Respondent** - a party against whom a petition is filed
16. **Renounce** - formally declare one's abandonment of (a claim, right, or possession)
17. **Human trafficking** - Sex trafficking is the recruitment, harboring, transportation, provision, obtaining, patronising, or soliciting of a person for the purposes of a commercial sex act, in which the commercial sex act is induced by force, fraud, or coercion.
18. **Legitimate** - conforming to the law or to rules

19. **Illegitimate** - not authorised by the law, not in accordance with accepted standards or rules
20. **Abet** - encourage or assist (someone) to do something wrong, to commit a crime
21. **Accused** - a person or group of people who are charged with or on trial for a crime
22. **Inextricable Nexus** - forming a maze or tangle from which it is impossible to get free



Indian
Women
Network

women matter.



L&L

PARTNERS

Law Offices