

MODULE

LEGAL AWARENESS PROGRAMME



NATIONAL COMMISSION FOR WOMEN

NEW DELHI

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CHAPTER -I

WOMEN AND THE INDIAN CONSTITUTION

(The fundamental rights and other constitutional rights must be explained to all the participants at the very outset of the legal awareness programme)

The main privileges granted to women by Constitution of India are as follows:

- **Preamble of the Constitution**

Under the Constitutional law, women have equal rights as men so as to enable them to take part effectively in the administrative of the country.

- **Equality before law**

Article 14 embodies the general principles of equality before law and equal protection of laws.

PROBLEM

There were two vacancies for the same post in a government office. Kanika and Sanjay both applied for the same job. Both of them were selected. The head of the department asked Kanika that they will pay her Rs. 20,000/- and Rs. 25,000/- to Sanjay because Kanika being a female cannot work as much as Sanjay can do.

SOLUTION

In such a situation Kanika can go to the Court and can ask the Court to protect her Fundamental Right to equality by filing a writ petition under Article 226 in the High Court or under Article 32 in the Supreme Court.

- **Prohibition from discrimination on grounds of religion, race, caste, sex or place of birth:**

- **Article 15(1) and (2)** prohibits the state from discriminating against any citizen only on the basis of any one or more of the aspects such as religion, race, caste, sex, place of birth or any of them.
- **Article 15(3)** makes it possible for the state to create special provisions for protecting the interests of women and children.
- **Article 15(4)** capacitates the State to create special **arrangements** for promoting interests and welfare of socially and educationally backward classes of society.

PROBLEM

Manish belongs to the Schedule Caste. He applied for the admission in a Government Law College. The clerk is a biased person who destroyed his form so that Manish won't be eligible to take admission in the College.

SOLUTION

Manish complained about the act of the Clerk to National Commission for Scheduled Castes. The Commission further filed a case in the Supreme Court under Article 32 of the Constitution. The act of the clerk was held to be illegal, unconstitutional and violative of Article 15 of the Constitution.

- **Equality of Opportunity:**
 - **Article 16** provides for equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
 - **Article 39** requires the State to direct its policy towards securing for men and women equally the **right to an adequate means of livelihood** [Article 39(a)]; and **equal pay for equal work** for both men and women [Article 39(d)]
 - **Article 39A** directs the State to promote justice, on the basis of equal opportunity and to promote **free legal aid** by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.
- **Humane Conditions at Work:**
 - **Article 42** directs the State to make provision for securing justice and humane conditions of work and for **maternity relief**.
- **Fundamental Duty:**
 - **Article 51A (e)** enjoins upon every citizen to renounce practices derogatory to the dignity of women.

Sheela gave birth to a child on 1st May 2000. Her employer Mahesh gave her leave with full pay from 19th May, 2000 to 1st August, 2000. If Mahesh had cut Sheela's pay for the period that she stayed away from work, he would have been punished and fined under the Maternity Benefits Act, 1961. (Special Legislation under Article 42)

- **Reservation of seats for Women in Panchayats and Municipalities:**
 - **Article 243 D (3) and Article 243 T(3)** provide for reservation of not less than one third of total number of seats in Panchayats and Municipalities for women to be allotted by rotation to different Constituencies.

- **Article 243 D(4) T(4)** provides that not less than one third of the total number of officers of chairperson in the Panchayat and Municipalities at each level to be reserved for women.

- **Voting rights/Electoral law:**

- Not less than one-third seats shall be reserved for women. Such seats may be allotted by rotation to different constituencies in a Panchayat.
- The office of the chairperson in the Panchayat at the village or any other level shall be reserved for SCs, STs and women in such manner as the legislature of state may, by law provide.
- Reservation of seats for women in Municipalities is provided under **Article 243-T** of the Constitution of India.

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 characterized as 'Crime against Women'. These are broadly classified under two categories.

CERTAIN POLICIES AND SCHEMES WORKING FOR THE WELFARE OF WOMEN (need to add more schemes)

1. Mother and Child Tracking System (MCTS)

- The mother and Child Tracking System, launched in 2009, helps to monitor the health care system in order to ensure that all mothers and their children have access to a range of services, including pregnancy care, medical care during delivery, and immunizations.
- The system consists of a database of all pregnancies registered at health care facilities since 1 December 2009, and all births since December 1, 2009.

2. The Indira Gandhi MatritvaSahyogYojana Conditional Maternity Benefit plan (CMB)

- Indira Gandhi MatritvaSahyogYojana (IGMSY), Conditional Maternity Benefit (CMB) is a scheme sponsored by the national government for pregnant and lactating women of age 19 and above for their first two live births.
- The programme, which began in October 2010, provides money to help ensure the good health and nutrition of the recipients.
- As of March 2013 the programme is being offered in 53 districts around the country.

3. Rajiv Gandhi Scheme for Empowerment of Adolescent Girls- Sabla

- The Rajiv Gandhi Scheme for Empowerment of Adolescent Girls- Sabla is an initiative launched in 2012 that targets adolescent girls.
- The scheme offers a package of benefits to at-risk girls between the ages of 10 and 19 years.
- It is being offered initially as a pilot programme in 200 districts.
- The programme offers a variety of services to help young women become self-reliant, including nutritional supplementation and education, health education and services, and life skills and vocational training.

4. RashtriyaMahilaKosh

- RashtriyaMahilaKosh (The National Credit Fund for Women) was created by the Government of India in 1993.
- Its purpose is to provide lower income women with access to loans to begin small businesses.

5. Priyadarshini

- Priyadarshini, initiated in April 2011, is a programme that offers women in seven districts access to self-help groups.

6. Nirbhaya fund

- The Women and Child Development (WCD) Ministry is the nodal agency for the Nirbhaya Fund which has a total of Rs. 3,000 Crore.
- The Fund is expected to support initiatives by the government and NGOs working towards protecting the dignity and ensuring safety of women in India.
- One stop Centres would be set up to provide much needed medical, legal and rehabilitative services to victims of sexual assault.
- The Nirbhaya Centre will provide support and assistance to all women affected by violence, both in private and public spaces, and will be integrated with a Women Helpline.
- Medical assistance, Police assistance, Psycho-social support/counseling, Legal aid/case management and Shelter are some of the services which would be provided.

7. SWADHAR

- Provides primary need of shelter, food, clothing and care to the marginalized women/girls living in difficult circumstances who are without any social and economic support and provides emotional support and counseling to such women.
- Widows deserted by their families and relatives and left uncared near religious places where they are victims of exploitation; Women prisoners released from jail

and without family support and women survivors of natural disaster who have been rendered homeless and are without any social and economic support are beneficiaries of the scheme.

- The implementing agencies can be the Social Welfare/Women and Child Welfare Department of State Government, Women's Development Corporation, Urban Local Bodies, reputed Public/Private Trust or Voluntary Organizations.

8. Working Women Hostel

- Promotes availability of safe and conveniently located accommodation for working women, with day care facility for their children, wherever possible, in urban, semi urban, or even rural areas where employment opportunity for women exist.
- Beneficiaries under the scheme are working women, who may be single, widowed, divorced, separated, married but whose husband or immediate family does not reside in the same city/area.

CHAPTER-II

WOMEN AND FAMILY LAW

(The LAP organizing Agency and its resource persons are required to apprise the audience about the relevant law, remedies available under such law and the procedure to avail such remedies at the same time.)

• MARRIAGE

- Marriage is an important part of Family life.
- India being a cosmopolitan country (each community has its own tradition and custom) as a result each citizen of India is entitled to be governed by his own personal laws in the matter of marriage and divorce. However, any person irrespective of his or her religion can get his/her marriage solemnized under the Special Marriage Act 1956.
- According to the Indian divorce laws, there are mainly two ways to obtain divorce; mutual divorce and contested divorce. In case of a mutual divorce, you can have a talk with your estranged spouse to come to settlement and get a “no-fault divorce”. If you are seeking a contested divorce, you can file your divorce on the grounds that are specified under the particular Indian marriage Act that you are entitled to.
- There are separate marriage and divorce laws for Hindus, Christians, Parsis and Muslims. Sikhs, Jains and Buddhists are governed by the Hindu Marriage Act, 1955 for filing divorce in India whereas Christians, Parsis and Muslims have their own laws for filing divorce and Inter-caste marriages/ divorces are governed by the Special Marriage Act, 1956. The following steps have to be followed-
 1. Hire a lawyer and provide him with all the relevant details.
 2. Lawyer files a petition in court.
 3. The court will send a copy of the petition to your spouse.
 4. The spouse will contest or agree to the divorce. If he contests it then the length of the process would depend on the facts of the case.
 5. In case of mutual consent the spouses need to prove that they have been staying apart for more than a year.

1. HINDU LAW ON MARRIAGE

- Hindus are governed by a law called the *The Hindu Marriage Act, 1955*, it is a law enacted by the Indian Parliament in 1955 as part of the Hindu Code Bills.
- Three other important Acts were also enacted during this time, *the Hindu Succession Act, 1956, the Hindu Minority and Guardianship Act, 1956 and the Hindu Adoptions and Maintenance Act, 1956*. All of these Acts were meant to modernize the Hindu legal tradition.

1.1 PEOPLE WHO CAN GET MARRIED UNDER THE HINDU MARRIAGE ACT.

- Hindu of any caste or sect or form or development

- Buddhist
- Jains
- Sikhs
- Anyone converted to any of the above mentioned religions.

1.2 A HINDU MARRIAGE MUST BE SOLEMNIZED ACCORDING TO THE CUSTOM OF THE HINDUS

- The Hindu marriage is required to be solemnized either as per the Shastric Ceremonies or by performing other Ceremonies recognized by custom applicable to either party to the marriage.
- Saptapadi (taking seven steps around the sacred fire) is one of common custom of the Hindus for marriage. But Saptapadi is not required if the custom applicable to the party does not require it to be performed.
- If two people do not want to get married according to Hindu Law and custom, they can get married under the Law *Special Marriage Act 1954*
- Marriage under the Special Marriage Act is performed before the marriage registrar and are legal and valid Marriage as per the Marriage Registration Certificate.

1.3 CONDITIONS FOR A VALID HINDU MARRIAGE

Meera and Akshay got married on 25th June 2010. By 2014 they were issueless. Akshay's mother forced him to get married again but initially he refused. Later out family's pressure Akshay decided to marry Sonali without divorcing Meera. After one year a boy was born to Sonali. Later on Akshay pushed out Sonali from his house. Whether it was a valid marriage? Discuss in Group.

- Both the parties to the Marriage (bride and bridegroom) must be Hindus.
- Neither party has a spouse living at the time of the marriage;
- At the time of the marriage, neither party,-
 - i. is incapable of giving a valid consent to it in consequence of unsoundness of mind; or
 - ii. Though capable of giving a valid consent has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or
 - iii. Has been subject to recurrent attacks of insanity;
- The bridegroom has completed the age of twenty one years and the bride the age of eighteen years at the time of the marriage;
- The parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;

- The parties are not **sapindas** of each other (must not be in close relation to each other such as cousins), unless the custom or usage governing each of them permits of a marriage between the two.
- Marriage of a person who is already married or of persons falling within prohibited relationships or are Sapindas to each other is void under the Act and these Marriages are Punishable also. A Hindu is not permitted to marry again even after his conversion to Islam if his earlier Hindu Marriage is subsisting (*Sarla Mudgal v. Union of India*, decided by the Supreme Court in 1995). The consent of the wife to the marriage must not be obtained by force or fraud.
- Under the Hindu Marriage Act a Child Marriage is not invalid. It is only punishable. However, the prohibition of Child Marriages Act 2006 which is applicable to all irrespective of religion provide that Child Marriage (girl below 18 and boy below 21) is voidable and can be annulled on a petition being filed by the child party to the Marriage.
- Section 9 of the Hindu Marriage Act gives right to the Hindu wife to get a decree of restitution of Conjugal rights, if the husband without reasonable cause withdraw from the society of wife.

1.4 REGISTRATION OF MARRIAGE

- Section 8 of Hindu Marriage Act states that the state government may make rules for the registration of Hindu marriage and the parties to any of such marriages may have particulars relating to their marriages entered in such a manner and subject to such conditions as may be prescribed in the Hindu Marriage Register.
- This registration is for the purpose of facilitating the proof of Hindu marriage. The Hindu Marriage Register should be open for inspection at all reasonable times and should be admissible as evidence of the statements contained therein.
- In 2006 the Supreme Court directed the state to make registration of all marriages compulsory. (*Seema v. Ashwin*, SC 2006). Dowry Prohibition Act 1961 makes demanding, taking, giving or advertising of Dowry as offences.

1.5 NRI MARRIAGE: PRECAUTIONS TO BE TAKEN

- Counsel the women check the NRI groom's personal information particulars, Financial status, family background, Visa, passport. Voter or alien registration card, Social security number.
- Registered marriage along with the religious marriage to be solemnized in India with adequate proof like photographs etc.
- NRI brides has the right to separate domicile, own property either independently or jointly, travel abroad, Right to enforce proper decree of foreign court. All the rights provided under the personal laws.

- In case a groom is shortlisted through a matrimonial website, utmost care is to be taken to check the credentials of the groom and his family.

2. HINDU LAW ON DIVORCE

- As per the ancient Hindu laws there was no place for divorce and it was with the codification of Hindu law that the grounds dissolution of marriage by a decree of the court laws were laid down. Divorce between two persons married under the Hindu Marriage Act is also governed by the same Act.
- Both men and women can get a divorce on various grounds given in the law. Women also have some additional grounds of divorce. The grounds of divorce under Hindu Law are as follows:

2.1 GROUND FOR DIVORCE-(Section 13) of the Hindu Marriage Act, 1955

- Extra marital relations[**Section 13(1) (i)**]: If the husband cohabits with another women after marriage has taken place, then the wife can ask for divorce. Even if he says he married that woman before having sex with her, it will be adultery, because the second marriage is no marriage at all.

Rekha found her husband Sanjay having cohabitation with her friend Sunita. She decided to divorce him on the grounds of Adultery. She can get the divorce on the same ground.

- Cruelty**[**Section 13(1)(i)(a)**]:If a husband treats his wife with physical or mental cruelty, then she can ask for a divorce.

Radha was married to Shayam. After the marriage shayam restrained her in the house. Once she tried to go out meet her family members, Shayam started beating her brutally and started calling her a bad-character women. One fine day she successfully ran away from Shayam's house and went to her parents house. Her parents decided to go the Court and plea for divorce on the ground of cruelty.

- Desertion** [**Section 13(1)(ib)**]: If the husband leaves his wife for no fault of hers, she can get a divorce. Leaving the spouse without any good or sufficient cause is called desertion. Desertion must be for at least 2 years before she can ask for the divorce. Desertion are of three types,
 - Actual desertion
 - Constructive desertion
 - Willful neglect

- d. **Conversion [Section 13(1)(i)]:** If the husband converts to any other religion, wife can ask for divorce.

Sakshi's husband Ram converted to Christian Religion and named himself Renal. Sakshi is a very religious lady who married to a Hindu boy. Now she is not willing to live with a Christian man as her husband. She can go to the court and can get the divorce on this ground.

- e. **Insanity [Section 13(1)(iii)]:** If the husband has been incurably of unsound mind or has been suffering from mental disorder, wife can ask for Divorce.
- f. **Venereal Disease [Section 13(1)(v)]:** If the husband is suffering from Venereal Disease in communicable form, wife can ask for divorce.
- g. **Renunciation from the world [Section 13(1)(vi)]:** Like conversion, Renunciation is also a ground for divorce. If the husband renounces the world for religion, wife can ask for divorce.
- h. **Presumption of Death [Section 13(1)(vii)]:** If the husband is unheard for seven years, it will be a presumption of death. In such a case, wife can get the divorce from the court.
- i. **Wife's Special Ground for Divorce [Section 13(2)]:**
- Pre-Act Polygamous marriage of the husband [Section 13(2)(i)]
 - Acts of Rape, Sodomy or Bestiality by the husband [Section 13(2)(ii)]
 - Non-Resumption of Cohabitation after a Decree/Order of Maintenance [Section 13(2)(iii)]
 - Wife was married before she was 15 years old and decided to repudiate the marriage after attaining the age of 15 years but before attaining the age of 18 years.

2.2 PROCEDURE FOR FILING A DIVORCE PETITION-Every petition for divorce should be filed in the District Court within the jurisdiction of which:

- The Marriage was performed as per their respective religion,
- Both parties to the marriage dwelled,
- The other party at the presentation of the petition resides; or
- Where the petitioner is residing at the time of presentation of the petition in case the other party is residing outside the territories to which the Act extends or has not been heard of as being alive for a period of seven years or more. Now the petition for divorce is to be filed in the Family Courts.

2.3 SEC 13 B: DIVORCE BY MUTUAL CONSENT: It is the fastest way or procedure of getting divorce. All marriage which have been solemnized before or after the Marriage Law (Amendment) Act 1976, are entitled to make use of the provision of divorce by mutual consent. However, for filing for a divorce under mutual consent, it is necessary for the husband and wife to have lived separately for at least a year.

Divorce by mutual consent is fastest because parties can get divorce in six months only which can be further shortened if the parties are living separately since long time span. In this case, estranged spouses can mutually agree to a settlement and file for a “no-fault divorce” under the Act.

3. GUARDIANSHIP UNDER THE HINDU LAW

- Guardianship of person of minors
- Natural Guardian- Mother is a natural guardian of a Child under the Hindu Minority and Guardianship Act 1956.
- Right of Guardian of person (minor).
- Right to custody- Mother has a right to the custody of her minor child, especially when the child is below five years of age.
 - Right to education,
 - Right to control movement, and
 - Right to reasonable chastisement
 - Right to manage property of the minor
- Testamentary Guardian
- Guardian Appointed by the Court
- Powers of Certificated Guardian
- Guardianship by affinity
- De-Facto Guardian

4. ADOPTION UNDER HINDU LAW

- The object of adoption is:
 - a. *To secure one's performance of one's funeral rites and*
 - b. *To preserve the continuance of one's lineage.*
- **The Hindu Adoption and Maintenance Act, 1956** deals with the Requirement for a valid adoption.

4.1 WHO CAN TAKE IN ADOPTION

- Any Hindu man or women who is of 18 years of age and of sound mind can adopt a child.
- If he or she is married, the consent of the spouse is necessary before Adoption.
- In case the other spouse is insane or has renounced the world or is not a Hindu then he/she can adopt even without other's consent.
- A widow, divorces or unmarried or married Hindu women can also adopt a child.
- A Person having a child cannot adopt the child of the same sex.

- The adoption is completed by an actual giving and taking and the ceremony called *data human* (oblation to the fire) has been performed. However, this may not be essential in all cases as to the validity of adoption.

4.2 WHO CAN GIVE A CHILD IN ADOPTION

- Both the father and mother of the child can give in adoption only with the consent of the other.
- Consent of the other Parent for giving the Child in adoption is not required if he or she is insane or has renounced the world or has ceased to be a Hindu.
- If neither parent is alive or capable to give child in adoption the guardians can do so with the prior permission of the court.
- The Central Adoption Resource Agency (CARA) is an appropriate Agency from where children can be adopted. .

4.3 WHO CAN BE ADOPTED

- Both boys and girls can be adopted.
- The child should be a Hindu
- The child should not have been already adopted
- He/she should not exceed 15 years of age.
- Child should not be married
- If the child of opposite sex is adopted the age gap between the child and the adopting parents must be of at least 21 years.
- The adopted child will have the same property rights in the adopted family as he has in the born family.

4.4 PROCEDURE FOR ADOPTION OF A CHILD-

- Indian citizens who are Hindus, Jains, Sikhs, or Buddhists are allowed to formally adopt a child. The adoption is under the Hindu Adoption and Maintenance Act of 1956.
- Under the act, a single parent or married couples are not permitted to adopt more than one child of the same sex.
- Foreign citizens, NRIs, and those Indian nationals who are Muslims, Parsis, Christians or Jews are subject to the Guardian and Wards Act of 1890.
- Under this Act, the adoptive parent is only the guardian of the child until she reaches 18 years of age.
- The Juvenile Justice (Protection and Care of Children) Act 2000 and also of 2015 now permits adoption of an abandoned, surrendered or orphaned child who is declared free for adoption by the child welfare committee to be adopted by person of any religion and of any sex irrespective of whether he or she is having his or her own children or not. Any number of children can be adopted under this Act by the same person.

- **The authorities/agencies involved in In-country adoption-** Competent Court, Central Adoption Resource Authority (CARA), State Adoption Resource Agency (SARA), Recognised Indian placement Agency (RIPA), Specialised Adoption (SAA).
- There are seven stages involved for the purpose of adoption- Stage I : Registration, Stage II : Pre-adoption Counselling and Preparation of the PAPs, Stage III : Home Study and Other Requirements, Stage IV : Referral and Acceptance, Stage V : Pre-adoption Foster Care, Stage VI : Legal Procedure, Stage VII : Follow up visits and Post-adoption Services.

5. MAINTENANCE UNDER HINDU LAW

- Maintenance varies according to the position and status of the persons concerned.
- The wife can get as much maintenance as required for her to live according to her status in life. The limit depends upon the husband's earning capacity.
- The amount is given on a monthly or lump sum basis.
- The wife will not be entitled to get maintenance once she remarries, or does not remain chaste.
- If the husband refused to pay the maintenance amount settled by the court. He will be imprisoned.
- **Under the Hindu Marriage Act, 1955**
 - Section 24: Maintenance *Pendentelite* and expenses of the proceedings.
 - Section 25: Permanent alimony and maintenance.
- **Under the Hindu Adoption and Maintenance Act, 1956**
 - Section 3(b)- "Maintenance" includes-
 - (i) In all cases, provision for food, clothing, residence, education and medical attendance and treatment;
 - (ii) In the case of an unmarried daughter, also the reasonable expenses of and incidents to marriage;

5.1 SECTION 18- MAINTENANCE OF WIFE

A Hindu wife is entitled to be maintained by her husband during her life time. She has the right also to live separately from the husband and claim maintenance from the husband if he is guilty of desertion or cruelty or has any other wife living or resides with a concubine or converted to another religion.

5.2 HOW AND WHERE TO GO FOR MAINTENANCE

- An application for maintenance must be given in a Civil Court. Besides this or along with it, an application can also be made to the criminal court Section 125 of the Criminal procedure code.

- If any woman is unable to support herself, she can file an application for maintenance in the Criminal Court Section 125 of the Criminal Procedure code. The proceeding in the Criminal Courts is faster than civil proceedings. This application should be filed in the court of a first class Magistrate. Now these applications are filed in the Family Courts.

6. HINDU WOMEN'S RIGHT TO PROPERTY

Radha's father died and her brother started ill-treating her and her mother. When they asked for the separation he refused to give any property to the other family members. Farida is Radha's friend who is a lawyer. Radha consulted Farida about the situation.

Farida told her about the Hindu Succession Act, 1956 which tells us what will happen to the property of a Hindu male or Female after his or her death.

- The literal meaning assigned to stridhan is woman's property.
- According to Manu seven kinds of gifts may be considered as stridhan:
- Gifts before the nuptial fire (adhyagni),
- Gifts during bridal procession to her husband's house (adhyavahanika),
- Gift of love from father-in-law and mother-in-law (priti-datta) and gifts made at the time of obeisance at the feet of elders (padavandanika),
- Gifts made by her father, mother and brother,
- The Hindu Succession Act 1956 provides equal right of Mother, widow, Son and Daughter to share a person's property on his death. Both Son and Daughter inherit the property of Mother on her death.
- *The Hindu Succession Act, 1956 was gender discriminatory. To remove the said gender discriminatory provisions The Hindu Succession (Amendment) Act, 2005 was passed and the said Act came into force on 9th September, 2005 and it gives the following rights to daughters.*
- In a joint Hindu family the daughter of a coparcener shall, -(a) By birth become coparcener in her own right in the same manner as the son; (b) Have the same rights in the coparcener property as she would have had if she had been a son; (c) Be subject to the same liabilities in respect of the said coparcenaries property as that of a son, and any reference to a Hindu coparcener shall be deemed to include a reference to a daughter of a coparcener:
- *Thus, a daughter has a similar right like son to claim partition of coparcener property. She would have to go to civil court of competent jurisdiction seeking partition.*

7. MUSLIM LAW ON MARRIAGE

- Muslim marriages are governed by the Islamic law i.e. Shariah
- There are two schools of Islamic law: Sunni Law and Shia Law. Majority of Sunni Muslims in India are governed by the Hanafi School and Shias by the IthnaAsharia School.
- The essential of a valid muslim marriage are as follows:
 - There should be a proposal made by or on behalf of one of the parties to the marriage. There should be an acceptance of the proposal by or on behalf of the other party. This is called Nikah.
 - The written document of Marriage contract is NikahNama, which is not necessary
 - A Muslim marriage requires proposal 'Ijab' from one party and acceptance/ 'Qubul' from the other side. This must be done in one sitting.
 - The proposal and acceptance must both be expressed at one meeting orally.
 - The parties must be competent i.e. they must be sane and adult, if the parties or one of them is either a minor or insane, the consent has to be given by the guardian. The consent will be deemed free when it is made at will and given voluntarily and not under any coercion or fraud. For the purpose of marriage a Child becomes major on attaining Puberty. If parties to a Muslim Marriage are major, their own consent to marry is essential.

Farha's Father fixed her marriage with an NRI boy Shahid. After the marriage far came to know that Shahid is not a sane person. Farha decided not to live with him as his wife. In such a case Farha's marriage to Shahid is void.

- There must be two witnesses, who must be sane and adult (Not needed in Shia Law)
- Neither writing nor any religious ceremony is needed.
- There can be stipulations in the Nikah.

7.1 KINDS OF MARRIAGE

- **Valid Marriage:** When a marriage is performed between the parties with all essential ceremonies and in compliance with all the requirements of Shariat it is a valid marriage recognized by law and religion. It confers the status of husband and wife on the parties.
- **Void Marriage:** if a marriage is performed in violation of some essential conditions of the marriage e.g. parties are related to each other within the degrees of prohibited relationships then it is a void marriage. This means it is no marriage at all. The second marriage of a Muslim Wife is also void.
- **Irregular Marriage:** It is recognized in Sunni Law only. It is a marriage performed in violation of some requirements of a valid marriage. But they are temporary or remedial in nature. For example if a Sunni male marries an isolator,

the marriage is irregular but on his wife's conversion to Islam, the marriage becomes valid. Marriage during the Iddat period , fifth marriage during the subsistence of earlier four, unlawful conjunctions, in the absence of witnesses are also irregular

Farida's husband died 15th Dec-2011. She married to Farhan on 24th Feb-2012 as her father was not well and was on death bed. Her family wanted Farida to perform Nikhah in front of her father. The Nikah was solemnized according to the Muslim rituals. Since the Marriage was solemnized during the Iddat period, it is void in Shia Law and irregular in Sunni Law.

7.2 MARRIAGE WITH A NON MUSLIM

- A Sunni Muslim male can marry a Kitabi e.g., Christian or a Jew female.
- A Muslim female cannot marry a Kitabi except by way of Marriage in Muta form (Temporary marriage permitted by Shai Law only)
- A Sunni and Shia Muslim female cannot marry a non-Muslim male.
 - A muslim male is allowed to marry four wives at a time in certain situations.

7.3 OBLIGATIONS OF THE HUSBAND AND WIFE

- *Mahr/Mehr/ Dower* is a sum of money which the Muslim male proposed to pay to the female in consideration of marriage.
- Portion of the Mahr can be paid at the time of marriage
- Witnesses- two Muslim male witnesses are required under Sunni Law

7.4 RESTRAINTS IN MUSLIM MARRIAGE.

7.5 CIRCUMSTANCES UNDER WHICH MARRIAGE IS NOT PERMITTED

a. Absolute Prohibitions/Incapacity:

- i. Consanguinity (qurabat) is relationship by Blood.
- ii. Affinity (mushaarat) refers to relation by marriage.
- iii. Fosterage

b. Relative Prohibitions/ Incapacity:

- i. Unlawful conjunctions
- ii. Marriage with the fifth wife
- iii. Marriage without witnesses is irregular as per Sunni law.
- iv. Marriage during Iddatis irregular as per the Sunni law and void as per the Shia law.
- v. Marrying pregnant women, and
- vi. Marrying own divorced wife.

8. MUSLIM LAW ON DIVORCE

According to the Indian divorce laws, there may be certain situations where the spouse may find it really difficult to live with each other. In such a case the law provides certain remedies. One such remedy is divorce. A Muslim man can divorce his wife without going to the court by the following ways:

8.1 TYPES OF DIVORCE UNDER MUSLIM MARRIAGE

1. Extra Judicial Divorce by husband:

- Talaq: It is of two types:
 - i. Talaq-ul-Sunnat: Talak-ul-Sunnat is further divided into: 1) Talaq-e-Ahsan and 2) Talaq-e-Hasan.
 - ii. Talaq-ul-biddat: Talak-ul-biddat is further divided into: 1) Triple Divorce, and 2) One irrevocable Talaq
 - Ila
 - Zihar and Lian

2. Extra Judicial Divorce by Wife:

- Talaq-i- Tafweez
- Khula
- A Muslim women can divorce her husband under the Dissolution of Muslim Marriage Act, 1939. A Muslim women can get a divorce In *ShayaraBano v. Union of India*, the Supreme Court decided that pronouncement of three TAlaqs (Triple Talaq) at the same time which results in instant dissolution of Marriage without having no chance of revoking the talaq is Unconstitutional. The Government of India has not enacted Muslim women (Protection of Rights on Marriage) Act 2019 which declares triple talaq as void. Husband who has pronounced triple talaq to the wife is liable to punishment also.

3. Extra Judicial Divorce by Mutual Consent: called Mubarat

8.2 JUDICIAL DIVORCE- The Rightfor divorce by a Court's decree is exclusively available to Muslim wife by the dissolution of Muslim Marriages Act 1939 in cases of:

a. Cruelty

- It includes both physical and mental cruelty. Physical cruelty is beating and physical torture. Mental cruelty means constantly troubling or torturing her. It includes:
- Husband lead an infamous life;
- Husband selling away his wife's property or preventing her from exercising her legal rights over it;
- Husband not giving equal treatment to all his wives, where he has more than one wife;
- Husband forcing her to lead an immoral life.

Zeenat was married to Parvez. After the marriage Zeenat came to know by the

neighbors and relatives that Parvez is leading an infamous life. Later on Parvez and her in-laws started beating her for not bringing enough Dowry. Out of his greed he started selling Zeenat's jewelry which her mother gifted her at the time of her marriage and then forced her to live immoral life. Zeenat decided not to tolerate this any longer and went to the court for a divorce. The court gave her divorce on the ground of cruelty.

- b. Husband unheard for at least four years:** If the whereabouts of the husband are not known for a period of four years, a Muslim wife can ask for a divorce.

Ameena's Husband Asim went to Banglore for a job. By the time Ameena was living with her in-laws. For six months she got phone calls and e-mail from him. After six months mails and phone calls stopped coming from him. She got worried and asked her father and brother go to Banglore to search him. They went to Banglore but could not find him. She waited for him for five years. Her friend told her that if she wants a divorce she can get it from the Court. She went to the Court and got a divorce

- c. Failure to provide maintenance to the wife for a period of two years or more:** If the husband failed to provide maintenance to his wife for a period of two or more, she can ask for a divorce.
- d. Husband sentenced to a term of Imprisonment for a period of seven years or more:** If the husband has been sentenced to a term of imprisonment for a period of seven years or more, the wife can ask for a divorce. The decree of divorce can be passed only if the sentence has become final.

Shaheen's husband Miraj is found guilty of rape. She was imprisoned for a term of seven years. Shaheen is not willing to live as his wife anymore. She decided to file the divorce as his husband's sentence is final from the court of law. Shaheen got the divorce on this ground.

- e. Failure to perform matrimonial Obligation:** On the failure to perform marital obligation without any cause for a period of 3 years or more the wife is entitled to obtain a decree for the dissolution of the marriage.

Faraz married Sara on 15th January 2000, till 2004 Faraz did not perform any of his marital obligation. Sara decided to divorce him. Sara can go to the Court and can ask for divorce on this ground.

- f. **Insanity of the Husband:** If the Husband has gone mad and has been mad for over 2 years the wife can get divorce from the court.

Jahangir was mentally sound at the time of marriage. He married Tabassum but after 3 years of marriage Jahangir got mad. Tabassum stayed with him for 2 more years but there was no sign of recovery of Jahangir's mental condition. On his madness he used to beat and abused Tabassum. One day she decided to divorce him and went to the lawyer. The lawyer told her she will get the divorce because it is provided in the law.

- g. **Impotency of the husband:** If the Husband was impotent at the time of marriage and continued to be till the filing of the divorce then the wife can get a divorce.

Rabia married Amir. Later on she discovered that her husband is impotent. She asked him to consult a doctor but the doctor also said that Amir cannot recover from impotency. Rabia can file the divorce on the ground of impotency.

- h. **Leprosy:** If the husband is suffering from leprosy of any type the wife can ask for a divorce.

Rukhsana's Husband Mobin discovered some changes in his body. On consultation with a doctor it was found the spots of Leprosy. Rukhsana can divorce her husband on this ground.

- i. **Venereal Disease:** If the husband is suffering from venereal disease the wife can ask for a divorce. The disease need not be communicable but it should be in virulent form.

Sitara got married to Faheem. Faheem got ill after 3 years of marriage. The doctor told them that Faheem is HIV Positive. Sitara can seek divorce on this ground.

- j. **Option of Puberty:** If the girl was married before attaining the age of fifteen years by her guardian then she can ask for a divorce from the court if: the marriage has not been consummated or the marriage has been repudiated by her before attaining the age of 18 years.

Sarwat was 13 years old when she got married to Rashid who was 21 years old. Rashid was living in Saudi Arabia at the time of marriage and the Nikkah was performed on the Internet. The marriage was not consummated as the parties were living in different countries. Rashid came back to India after 3 years of marriage, by the time Sarwat was

16 years old and decided to file for divorce. Sarwat will get divorce on this ground.

9. ADOPTION UNDER MUSLIM LAW

- Islam does not recognize adoption.
- Acknowledgement of paternity under Muslim Law is the nearest approach to adoption.
- However a Muslim can take the Guardianship of a Child by obtaining permission from the court under the Guardians and Wards Act, 1890
- Under section 41 of Juvenile Justice (Care and Protection of Children) Act, 2000 adoption of such children as are orphaned, abandoned, or surrendered through institutional and non-institutional methods can be done by anyone. The Juvenile Justice (Care and Protection of Children) Act 2015 also permits every person to adopt a child as per the provisions of the Act.

10. MAINTENANCE UNDER MUSLIM LAW

10.1 AS PER THE MUSLIM PERSONAL LAW (SHARIAT) A DIVORCED WOMAN HAS A RIGHT TO GET THE FOLLOWING THINGS FROM HER HUSBAND:

- a) A sum equal to dower (Mahr) settled at the time of marriage.
- b) All the gifts given to her by anyone at the time of marriage.
- c) Maintenance during the period of Iddat.
- d) Maintenance for herself till their child attains the age of two years:
- e) Claim of Maintenance during Subsistence of Marriage: A Muslim wife is entitled to be maintained by her husband during the subsistence of marriage.

f) Maintenance under Cr.P.C

- Section 125 Order for maintenance of Wives, Children and Parents.
- Section 126- Procedure
- Section 127- Alteration in allowance
- Section 128- Enforcement of order of maintenance

g) How much maintenance is a woman entitled to:

She is entitled to as much money as maintenance as is necessary for her needs.

h) Payment of maintenance to a divorced woman: The Muslim Women (Protection of Rights on Divorce) Act 1986.

- A Muslim husband is liable to make all reasonable and fair provisions for the maintenance of the divorced wife, which includes her maintenance as well. Such a reasonable and fair provision extending beyond the iddat period must be made by the husband within the Iddat period.

- Liability for a Muslim husband to his divorced wife to pay maintenance is not confined to the Iddat period. (Danial Latifi v. union of India, decided by Supreme Court)
- A divorced woman who has not remarried and who is not able to maintain herself after the Iddat period can proceed against her relatives who are liable to maintain her in proportion to the properties which they inherit on her death according to Muslim law from such divorced woman including her children and parents.
- If any of the relative being unable to pay maintenance, the magistrate may direct the state Wakf Board to pay the maintenance

Kasim got married to Farzana. Three years later he divorced her. Farzana went to her parents home who are very poor and cannot afford her. Farzana claimed for the maintenance but Kasim refused to pay her any maintenance. Farzana can made an application in the Civil Court for the maintenance.

10.2 MAINTENANCE UNDER SECTION 125 OF CODE OF CRIMINAL PROCEDURE

- A Muslim woman can get maintenance from her husband even after the period of Iddat by filing a petition under section 125 of Criminal Procedure Code.
- But this can be done only if the Husband and the wife file an affidavit or a declaration in the Court, opting to be governed by this law.
- This declaration can be included in the *Nikahnama* at the time of marriage. If this declaration is filed in the court, then the magistrate will order that the husband should pay maintenance to the wife every month.

11. CUSTODY OF CHILDREN

- Parents live for their children. Most of the time woman bears all the torture and pain for their children's wellbeing. But what about the children after the divorce when husband and wife live separately.
- The problem arises to the children. With whom will they live? Who will pay for their maintenance and till when?

The custody of children is decided by the courts

- Under some schools of Muslim law the mother is entitled to the custody of the children until they are 7 years old. Under others, she is entitled to custody of the children up to the time they attain puberty.
- In all cases, the court sees the welfare of the child i.e, who can look after the maternal and paternal needs of the child better.

- Court can refuse to give custody of the child to the wife if the court finds her of bad character (only saying that the woman is of a bad character is not enough. Even if she is seen in male company, it does not mean she is of bad character), if she has some mental illness (which will have bad effect on the child) or the case the child wishes to live with his/her father.

12. MUSLIM LAW ON RIGHT TO PROPERTY

Saba is working in a school as a teacher and earns Rs. 15,000 per month. At the time of her marriage her father gave her 10 tolas and a car as a gift. Later on Saba bought a house in her locality for her and her children's security. Whatever money she earned, property she bought and whatever was gifted to her by her father is all Saba's property. She can do whatever she wants out of that property and she will also be entitled to get the share in succession and inheritance.

There are two broad schools of Muslim in India as follows:

- i. Sunni
- ii. Shia

The main point of differences between the two is that Sunni rules only count those relatives as heirs whose relation to the deceased person is through a male- son's son and father's mother.

Shias include even those persons as heirs who are related to the deceased through a female e.g. daughter's son, daughter's daughter.

A woman has certain rights to property in inheritance, maintenance and Mahr. She is entitled to inherit property as a daughter, Widow, Grandmother, Mother and Son's daughter.

a) Islamic Principles of succession were propounded by the Prophet:

- The husband and the wife, being equal, are entitled to inherit to each other.
- Some near females and cognates are also recognized and enumerated as heirs.
- The parents and certain other ascendants are made heirs even where there are descendants.
- The newly created heirs (those who were not entitled to inherit under customary law) are given specific shares. They are called sharer.
- The newly created heirs inherit the specified shares along with customary heirs, and not to their exclusion. Share of a daughter is half of the Son's share.

b) Dower or Mahr:

Heena got married to Mirza. At the time of Marriage the Mahr was fixed Rs. 10 Lacs as prompt Dower and 5 lacs as deferred. Three years later her father-in-law tried to abuse her. When Heena told this to her Husband he did not believe her and said I will not hear a word against my father. She started living separately and claimed for her Mahr, Mirza refused to give her the Dower. Henna can go to the court and can claim for her Dower.

- It is the sum of money or other property which the wife is entitled to get from the husband on marriage. It is an integral part of marriage.
 - It can be fixed before or at the time of marriage.
 - There are two kinds of Mahr i.e., Prompt and Deferred.
 - Prompt Mahr is payable to the Wife Immediately on Marriage.
 - Deferred mahr is to be given to the wife when the specific event happens or when her marriage has ended- either by death of her husband or by divorce.
 - ❖ A wife can even go to the Court if her Mahr is not paid by the husband. She can also refuse Conjugal Rights.
 - ❖ If the wife is staying separately from her husband on account of non-payment of Prompt Mahr, he is bound to maintain her.
 - ❖ In case of husband's death the wife will get her Mahr out of her husband's property. This is called the right of retention.
- c) **Will or wasiyat:** A Muslim can bequeath $\frac{1}{3}^{\text{rd}}$ of total property but in case a woman has no blood relation and her husband would be the only heir, then she can bequest $\frac{1}{2}$ of the property.
- d) **Gift or Hiba**
- When one person gives certain property or thing or money to another who accepts it and the giver gets nothing in return is called Gift or Hiba.
 - Any person who is major, sound mind may make gift. But the gift must be without any force or fraud.
 - Any person who is major, sound mind may make gift. But the gift must be without any force or fraud or coercion or under influence
 - For a valid gift there shall be a declaration to make the gift, acceptance of gift and delivery of possession of the gifted property to donee and delivery of possession of the gifted property to donee.
 - The mother cannot accept the gift on her minor child's behalf but if there is no father, then by the legal guardian of the Child.

13. CHRISTIAN LAW ON MARRIAGE AND DIVORCE

- All Christians are governed by **THE CHRISTIAN MARRIAGE ACT, 1872** and **the Divorce Act 1869** as amended in 2001 by the Indian Divorce (amendment) Act 2001.
- All persons practicing the Christian religion such as Roman catholic or Protestants can get married under this law.
- An *Indian Christian* is an Indian converted to Christianity and includes his or her descendants
- Men and Women of different religion cannot get married under this law.
- Under Christian law marriage may be solemnized appointed by the church to solemnize the marriage according to the customs of Christians or by a marriage registrar.
- A marriage registrar is appointed by the State Government
- A notice in writing is given to the Registrar by one of the persons getting married.
- The marriage is to be solemnized in the presence of two witnesses and one of the parties has to take an oath that there is no lawful objection to the marriage.

13.1 CONDITIONS FOR A VALID MARRIAGE

- Neither the husband nor the wife have a living spouse at the time of marriage.
- The age of the girl should be at least 18 years of age upto (21 years father's consent is necessary)
- The age of the boy should be at least 21 years of age.
- Both must be of sound mind at the time of marriage.
 - **Indian Divorce (amendment) Act, 2001:** Grounds of divorce after the amendment of section 10 of the Divorce Act 1869.
 - ❖ Conversion to another religion
 - ❖ Adultery
 - ❖ Cruelty
 - ❖ Desertion for at least two years
 - ❖ Incurable Insanity for more than two years
 - ❖ Incurable and virulent form of leprosy for more than two years
 - ❖ Willful refusal to consummate the marriage
 - ❖ Not being heard for seven years
 - ❖ Venereal disease in communicable form for two years
 - ❖ Failure to obey the order for restitution of conjugal rights
 - **Wife's additional grounds if the husband is guilty of:**
 - ❖ Rape

- ❖ Sodomy
- ❖ Bestiality
- Section 10-A deals with dissolution of marriage by mutual consent
- Section 11 deals with adulterer to be co-respondent
- Section 18 deals with petition for decree of nullity
- Grounds of decree- section 19
 - That the respondent was impotent at the time of the marriage and at the time of the institution of the suit;
 - That the parties are within the prohibited degrees of consanguinity (whether natural or legal) or affinity;
 - That either party was a lunatic or idiot at the time of the marriage
 - That the former husband or wife of either party was living at the time of the marriage, and the marriage with such former husband or wife was then in force
 - Nothing in this section shall affect the jurisdiction of the high court to make decrees of nullity of marriage on the ground that the consent of either party was obtained by force or fraud.

13.2PROCEDURE FOR FILING DIVORCE PETITION-The Indian Divorce Act deals with divorce among Christians. The reasons are almost similar to the ones under the Hindu Marriage Act. Roman Catholics do not come under the purview of any divorce proceedings since the Roman Catholic Church has not recognized divorce. Maintenance: During the period when the divorce case is in the court, the husband has to give one fifth of his salary for the maintenance of his wife. Later, maintenance can be given either yearly or once for all as total settlement.Custody: Custody of the child is decided by the court after going into the details of individual case. After filing a petition of divorce under the Christian Divorce Act, the petitioner can seek the following remedies-

- **The Courts have powers to:**
 - Order adulterer to pay damages and costs
 - Order alimony, *pendante-lite* (pending decision of the court) or permanent
 - Order settlement of property
 - Make order as to custody of children in a suit or separation
- Once the separation is awarded, from the date of the sentence, the separated wife would be deemed spinster, with respect to property, which she may acquire or which may devolve on her. This status would apply for the purposes of contract, wrongs and injuries and suing and being sued in civil proceedings.

14. GUARDIANSHIP UNDER CHRISTIAN LAW

- The Guardians and Wards Act, 1890 which resides in the secular realm also, may be resorted to.
- Guardians not to be appointed by the court in certain cases
- Duties of Guardian of the person:
 - Custody of the wards and
 - Support of health and
 - Support of education

15. ADOPTION UNDER CHRISTIAN LAW

- Christians have no personal law of adoption
- An adoption can take place from an orphanage by obtaining permission from the court under the Guardians and Wards Act, 1890
- Besides, such a child does not have legal right of inheritance. The general law relating to Guardian and Ward is contained in the Guardians and Wards Act, 1890. It clearly lays down that father's right is primary and no other person can be appointed unless the father is found unfit.
- The court must take into consideration the welfare of the child while appointing a guardian under the act.
- Under section 41 of Juvenile Justice (Care and Protection of Children) Act, 2000 adoption of such children as are orphaned, abandoned or surrendered through institutional and non-institutional methods can be done by anyone.
- Now the new law Juvenile Justice (Care and protection of Children) Act 2015 has a separate chapter dealing with adoption. Any person has the Right to adopt as per this Act.

16. MAINTENANCE UNDER CHRISTIAN LAW

- Under section 37 of the Indian Divorced Act 1869, the wife can seek permanent alimony after dissolution of Marriage or decree of Judicial Separation.
- Under section 125 of CrPC a Christian woman can also claim maintenance from her husband as explained earlier too.

17. RIGHT TO PROPERTY UNDER CHRISTIAN LAW

- As far as the Christian women are concerned the community and the church with its strong patriarchal tradition compels women to remain subjugated

- As per the repealed *Travancore Christian Succession act 1916*, women were given Stridhan and the practice is still being continued till today.
- However women started claiming a share of the father's property under section 37 of *The Indian Succession Act 1925*.
- A Christian widow is entitled to 1/3rd of her husband's property.
- All children whether son or daughter gets the equal share in the remaining property.
- Even a married woman has equal right in the property.
- In case a daughter or a son is dead his/her children would get their parents share in the property.
- The child in the womb also gets the equal share in the property.
- Mother and Father are not entitled to inherit the property of a Son or a Daughter if the Son or Daughter is survived by his/ her own children or grandchildren.

18. THE PARSI MARRIAGE AND DIVORCE ACT, 1936

- Parsi wedding has to be solemnized as per the "Ashirvad" tradition in the presence of a Parsi Priest or PrsiDastur or Mobed under the *Parsi Marriage and Divorce Act, 1936*.
- 2 Witnesses should be present at the time of the marriage.
- The Parsi Priest/Dastur/Mobed who conducts the wedding should issue a wedding certificate signed by the priest, the couple and two witnesses.
- All Parsi/Irani/Zoroastrian weddings have to be registered with the marriage registrar.
- Only Parsi men over the age of 21 and Parsi women over the age of 18 can marry.
- Marriage is not allowed between blood relatives
- Bigamy and Polygamy are not allowed
- The Act also states dos and don'ts for the Parsi Priest/dastur/mobed, couple and the witnesses.
- The Act also covers Divorce between Parsi couples.

18.1 GROUND FOR DIVORCE

- a. That the marriage has not been consummated within one year after its solemnization owing to the willful refusal of the defendant.
- b. Insanity
- c. That the defendant was at the time of marriage pregnant by some other person other than the plaintiff.
- d. Adultery
- e. Cruelty
- f. That the defendant has since the marriage voluntarily caused grievous hurt to the plaintiff or has infected the plaintiff with venereal disease or, where the defendant is the husband, has compelled the wife to herself to prostitution.
- g. Imprisonment for seven years or more

- h. Desertion for at least two years
- i. Separation for one year
- j. Conversion to another religion
- k. Nullity of marriage (section 11) and Voidability of Marriage (section 12)
- l. Any marriage can be voidable and can be annulled on the following grounds:**
 - The marriage has not been consummated due to impotency,
 - Contravention of the valid consent
 - Mental illness
 - Respondent at the time of the marriage was pregnant by someone other than the petitioner.
 - The spouse could contest or agree to the divorce. If he contests it then the length of the process would depend on the facts of the case.
 - In case of mutual consent the spouses need to prove that they have been staying apart for more than a one year.
 - Once the proceedings are over the court gives a period of six months to reconsider the decision to divorce

19. PARSI LAW ON RIGHT TO PROPERTY

- Parsi's are governed by the *Indian Succession Act, 1925*
- The property rights of the Parsis are quite gender just
- Basically, a Parsi widow and all her children get equal shares in property of the intestate while each parent, both father and mother get half of the share of each child.

20. THE SPECIAL MARRIAGE ACT, 1954

- Sometimes people following same or different religions don't want to get married under their personal laws
- In such cases they can get married under *The special Marriage Act, 1954*
- Under this law marriage is performed by the special officer appointed under the Act.
- Any two persons who wants to get married under this law have to fulfill the following conditions:
 - Neither the man nor the woman must be already married
 - They should be mentally sound so that they can give a valid consent.
 - The girl should be at least of 18 years of age.
 - The boy should be at least of 21 years of age.
 - They should not be closely related to each other (in the prohibited degree).

20.1 STEPS FOR THE SOLEMNIZATION OF MARRIAGE UNDER *THE SPECIAL MARRIAGE ACT, 1954*

- A notice informing about the intention to get married in a prescribed form to be given to the marriage officer generally located in the District Court
- The notice must be signed by both the parties.
- The marriage can be registered only after the expiry of 30 days from the date of notice. (so that any objection can be raised about the illegality of the marriage)
- The applicant should get their marriage solemnized within two months of the application otherwise they will have to proceed again as a fresh.
- Even if marriage is performed under custom or religion it can be registered under The Special marriages Act, 1954.
- Once registered it will be considered to be performed according to The Special Marriages Act, 1954.

20.2 DIVORCE

- **Either of the party to marriage may file a petition for divorce when the respondent:**
 - Makes a voluntary sexual intercourse with any person other than the spouse.
 - Deserts the petitioner for a period not less than two years.
 - Undergoes an imprisonment of seven years or more.
 - Been treating the petitioner with cruelty.
 - Is of unsound mind or suffering from continuous mental disorder.
 - Suffering from venereal disease, leprosy etc.
 - Is not heard of being alive for seven years or more.
- **Wife's additional grounds if the husband is guilty of**
 - Rape
 - Sodomy
 - Bestiality
- **Divorce by mutual consent**

20.3 PROCEDURE-

The petition for divorce may be presented only after one year from the date of entering the certificate of the marriage in the Marriage Certificate Book. However, the relaxation may be provided in cases where exceptional depravity on the part of the respondent. The petition seeking divorce could be presented to a District Court, within whose jurisdiction, either,

- The marriage was solemnized,
- The respondent resides, or in case the wife is petitioner, where she is residing,
- The parties to the marriage last resided together, or

- The petitioner resides, in cases where the respondent is residing outside the territories to which the Act extends.

Under section. 28 of the Act, which primarily deals with the provisions relating to obtaining a divorce by mutual consent in respect of marriage solemnized and/or registered under the Act, a petition for divorce by mutual consent may be presented to the district court. A few key points to be considered while seeking a divorce by mutual consent are as follows:

1. A petition for divorce must be presented to the district Court by both the parties together.
2. The petition must be on the grounds,
 - That they have been living separately for a period of one year or more,
 - That they have not been able to live together, and
 - That they have mutually agreed that the marriage should be dissolved.
3. Between 6 months after, and within 18 months of, the date of presentation of the petition seeking divorce by mutual consent, both parties must make a motion together seeking grant of a decree of divorce.
4. Before passing a decree of divorce, the District Court considers the following, among other aspects:
 - That the petition has not been withdrawn yet,
 - That the marriage has not been solemnized under the Act,
 - That the averments in the petition are true,
 - That consent for divorce has not been obtained by force, fraud or undue influence
 - That there has not been any unnecessary or improper delay in instituting the proceedings.

Thus the provisions and the procedure for obtaining divorce by mutual consent under the Special Marriage act are fairly simple and straight forward.

- Parties desirous of obtaining a divorce by mutual consent must however keep in mind that the Act also contains provisions dealing with grant of Alimony and maintenance, both permanent and during the pendency of the proceedings.
- In the cases of divorce by mutual consent, the parties may agree upon the terms relating to payment of alimony or maintenance and the same may be incorporated in the pleadings before the court.
- However care has to be taken that suitable provisions are incorporated in the pleadings to avoid future misunderstandings or litigation. It is therefore advisable that, while discussing the various issues connected with seeking a divorce by mutual consent with their advocates, the parties must specifically discuss their arrangement and agreement on alimony and maintenance, and take suitable steps to ensure that their interest is safeguarded.

CHAPTER-III
CRIMINAL LAW AND WOMEN

The Crimes Identified Under the Indian Penal Code (IPC)

1. Obscenity

- ✓ Sections 292, 293 & 294, Indian Penal Code, 1860
- ✓ Section 67 of the Information Technology Act
- ✓ Indecent representation of women (prohibition) Act, 1987

2. Dowry Death

- ✓ Sections 304-B, Indian Penal Code, 1860
- ✓ Section 2, Dowry Prohibition Act, 1961
- ✓ Section 174, Code of Criminal Procedure, 1973
- ✓ Section 113-A, Evidence act, 1872

3. Acid Attack

- ✓ Section 326-A and 326-B, Indian Penal Code, 1860 (amendment 2013)
- ✓ Section 357-B and 357-C, Code of Criminal Procedure, 1973

4. Outraging the modesty of a women

- ✓ Sections 354, 354A, 354B, 354C, 354D, Indian Penal Code, 1860
- ✓ Section 509 Indian Penal Code, 1860

5. Rape and Sexual Assault

- ✓ Section 375, 376, 376-A-D Indian Penal Code, 1860

6. Cruelty

- ✓ Section 498- A Indian Penal Code, 1860

7. Domestic Violence.

- ✓ Protection of women from Domestic Violence Act, 2005
- ✓ Sections 12-29, Protection of women from Domestic Violence Act, 2005

1. OBSCENITY AND INDECENT REPRESENTATION

❖ **Section 292(IPC) Sale, etc., of obscene books, etc,-**

A book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest.

❖ **Section 293(IPC) Sale, etc., of obscene books, etc, to young persons--**

Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in the last preceding section, or offers or attempts so to do, shall be punished 2[on first conviction with imprisonment of either description for a term which may extend to three years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to seven years, and also with fine which may extend to five thousand rupees]

❖ **Section 294. Obscene acts and songs-** Whoever to the annoyance of others does any obscene act in public place, sings, recites or utters any obscene song, ballad or words in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months or with fine or with both.

❖ **Section 67, Information Technology Act 2000-** It lays down the law that obscenity is an offence when it is published or transmitted or caused to be published in any electronic form.

1.1 INDECENT REPRESENTATION OF WOMEN (PROHIBITION) ACT, 1987

- a) Under the ***Indecent Representation of Women (Prohibition) Act, 1987***, if an individual harasses another with books, photographs, paintings, films, pamphlets, packages, etc. containing the “indecent representation of women”, he/she is liable for a minimum sentence of 2 years.
- b) **Section-6 : Penalty-** Any person who contravenes the provisions of section 3 (**Prohibition of advertisements containing indecent representation of Women**) or section 4 (**Prohibition of publication or sending by post of books, pamphlets, etc. containing indecent representation of women**) shall be punishable on the first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and in the event of a second or subsequent conviction with imprisonment for term of not less than six months but which may extend to five years and also with a fine not less than ten thousand rupees but which may extend to rupees one lakh.

- c) **Section -7 (offenses by Companies)** further states that companies where any kind of “indecent representation of women”(such as the display of pornography takes place in the premises shall be deemed guilty of offence and shall be liable to be proceeded against and punished accordingly.

PROCEDURE FOR REMEDY- A person has to file a complaint in the nearest police station if any such offence occurs. The rest of the procedure shall be carried out in accordance with law.

2. DOWRY DEATH

Megha got married to Vijaya on 5th of March. It was an arranged marriage. On 20th March i.e. exactly after 15 days of her marriage, she came to her parents' house and started crying. When her parents asked her about the matters, she told them that her husband and in-laws were demanding for a new brand Santro car and on her refusal to their demand of dowry, her in-laws forcibly expelled her out of her matrimonial house and asked her to return only when her parents buy a car for Vijay. It is an illegal demand of dowry.

- “Dowry” as defined under Section 2 of the *Dowry Prohibition Act*, 1961 means any property or valuable security given or agreed to be given either directly or indirectly by one party to the other at or before or at any time after marriage.
- Demand for cash, gold, car or any other type of property is dowry.
- Giving taking or demanding or even advertising for dowry is an offence.

Dowry Death and Procedural Laws:

- Section 174 of the Code of Criminal Procedure, 1973 is amended to secure. Postmortem in case of suicide or death of woman within seven years of her marriage.
- Section 113-A has been introduced in the Evidence Act, 1872.
(if the wife commits suicide within a period of seven years from the date of her marriage it will be presumed that she had been subjected to cruelty by her husband and his relatives as per sec.498-A, IPC.)

Radha is 16 years old class XI student. She was sitting quietly in the classroom and was looking very depressed. After the class her teacher asked her if there is any problem with her. She told her teacher that her sister Sudha got married to Piyush three years back and on the day of marriage Sudha's in-laws demanded for 15 tolas of gold and 3 lack rupees in cash. From that time till the date they were continuously demanding for the dowry. Radha also mentioned that her father is the only bread earner in her family and they are four brother and sisters and Sudha is the eldest one among them. Her father was never in the position to fulfill their demand of dowry. Three days back in the morning, Radha's father got a call from Sudha's in-laws that while working in the kitchen, Sudha got fatal burn injuries and consequently she died. Radha's teacher told Radha that it is a case of dowry death.

- a) An offence called 'dowry death' has been created by introducing section 304B in the Indian Penal Code.
 - ❖ Death of a women caused by any burns or bodily injury;
 - ❖ Does not occur under normal circumstances;
 - ❖ Within seven years of her marriage;
 - ❖ Soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband in connection with any demand for dowry.
- b) Punishment is of at least 7 years which may even extend to life imprisonment.

2.1 PROCEDURE FOR REMEDY:

- Any person can make a complaint at the nearest police station;
- **The complaint can be made within ten years of marriage;**
- A metropolitan magistrate or a judicial magistrate of the first class may take cognizance of an offence under the act as per his own knowledge or on the basis of a police report or on a complaint received by the aggrieved person or a parent or a relative of the aggrieved person or by any recognized welfare institution or organization. (section-7)
- **Family court Act, 1984:** All dowry related crimes except dowry deaths and burning of the bride will be tried by Family Courts.

3. ACID ATTACKS:

- a) **Section 326** of the Indian Penal Code was amended on 2nd April, 2013 with the passing of the Criminal Law (amendment) Act, 2013. (The amendment resulted in insertion of sections 326-A and 326-B for specifically dealing with acid violence)
- b) **Section 326-A:** Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either

description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine.

Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim. Provided further that any fine imposed under this section shall be paid to the victim.

- c) **Section 326-B:** Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity of burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years, but which may extend to seven years and also be liable to fine.
- d) **Compensation for acid attack:** Section 357-B has been newly inserted in Cr.P.C, which reads as, The Compensation payable by the State Government under section 357-A shall be in addition to the payment of fine to the victim under section 326-A or section 376-D of the Indian Penal Code.

○ COMPENSATION FOR WOMEN VICTIMS/SURVIVORS OF SEXUAL ASSAULT/OTHER CRIMES - 2018

National Legal Services Authority (NALSA) has formulated a compensation scheme detailed below:

S.no.	Particulars of loss or injury	Minimum Limit of Compensation	Maximum Limit of Compensation
1.	Gang Rape	Rs. 5 lakh	Rs. 10 lakh
2.	Rape	Rs. 4 lakh	Rs. 7 lakh
3.	Grievous physical injury or mental injury requiring rehabilitation	Rs. 1 lakh	Rs. 2 lakh
4.	Victims of acid attack		
(a)	In case of disfigurement of face	Rs. 7 lakh	Rs. 8 lakh
(b)	In case of injury more than 50%	Rs. 5 lakh	Rs. 8 lakh
(c)	In case of injury less than 50%	Rs. 3 lakh	Rs. 5 lakh
(d)	In case of injury less than 20%	Rs. 3 lakh	Rs. 4 lakh

Supreme Court has clarified that the said scheme is to be used as guidelines by Special Courts in awarding compensation to minor victims of sexual abuse till Central Government prepares rules.

○ WHO CAN MAKE AN APPLICATION TO LEGAL SERVICES AUTHORITIES FOR COMPENSATION?

- i. Victim
- ii. Her Dependents

iii. SHO of the area

e) **Free Medical Treatment:**

Section 357-C states that all hospitals, (public or private), are required to provide first aid or medical treatment to the victim free of cost.

3.1 **PROCEDURE FOR REMEDY:** A person has to file a complaint immediately in the nearest police station about the acid attack upon a woman. The rest of the procedure shall be carried out in accordance with law.

4. **SEXUAL HARASSMENT AND OUTRAGING THE MODESTY OF A WOMEN:**

- a) **Modesty in section 354 IPC** is an attribute associated with women. The act of pulling a women, removing her clothes with a request/ intent to cohabitation is considered to be an act of outraging her modesty.
- b) **Section 354:** Assaulting a women or using criminal force on her with the intention of outraging her modesty- It implies that the assault must be on a women and that the accused must have used criminal force on her intending to outrage her modesty. The punishment is of at least one year which may extend to five years.
- c) **Section 354A: Sexual Harassment:**
 - (1) The following acts or behavior shall constitute the offence of sexual harassment:
 - a) Any physical contact and advances involving unwelcome and explicit sexual overtures; or
 - b) A demand or request for sexual favors; or
 - c) Making sexually colored remarks; or
 - d) Forcibly showing pornography; or
 - e) Any other unwelcomed physical, verbal or non-verbal conduct of sexual nature.
 - (2) Any man who commits the offence specified in clause (i) or clause (ii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to five years, or with or with both.
 - (3) Any person who commits the offence in clause (iii) or (iv) or (v) of sub-section 1 shall be punishable with imprisonment of either description that may extend to one year or with fine or both.
- d) **Section 354B: Assault or use of criminal force to woman with intent to disrobe:** Any man who assaults or uses criminal force to any woman or abets such act with the

intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.

e) Section 354C: Voyeurism

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

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

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

f) Section 354D: Stalking

1. Any man who—
 - i. follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or
 - ii. monitors the use by a woman of the internet, email or any other form of electronic communication;
 - iii. or watches or spies on a person in a manner that results in a fear of violence or serious alarm or distress in the mind of such person, or interferes with the mental peace of such person commits the offence of stalking.
2. Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.'

Add eg.

- g) **Section 509: Word, gesture or act intended to insult the modesty of a woman:** criminalizes uttering of any word or sound or gesture or exhibiting any object to a woman with the intention that she sees or hears it or it intrudes her privacy with the intention of insulting her modesty.

5. **RAPE AND SEXUAL ASSAULT**

- When a man forces a woman against her will to have sex with him it is termed as rape. Rape is a heinous crime but a woman/girl does not want to report it to the police, because she feels:
 - People will think that she is a bad person and will hold her responsible for what has happened
 - She feels that her family will get a bad name and nobody will believe her story
 - However the law is very strict with regard to offences of rape and sexual assault.
 - Even a husband can be held guilty of rape of his wife who is less than fifteen years of age.
 - If a man has sex with a woman/girl by pretending to be her husband, it is also rape.
- Section 375, 376, 376 A-D of Indian Penal Code deals with Rape:
 - **Section 376A.- Punishment for causing death or resulting in persistent vegetative state of victim:** The offender shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death.
 - **Section 376B.- Sexual intercourse by husband upon his wife during separation:** The offender shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.
 - **Section 376C.- Sexual intercourse by person in authority:** Authority includes a person in a position of authority or in a fiduciary relationship; or a public servant; or superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force, or a women's or children's institution; or on the management of a hospital or being on the staff of a hospital. The offender in this case shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.
 - **Gang rape. Section 376D.** The offender shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which

may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine.

- **Punishment for repeat offenders. Section 376E.** Repeated offenders shall be punished with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death.'

5.1 PROCEDURE FOR REMEDY

- ✓ An FIR needs to be filed in the nearest police station.
- ✓ Since 2013 (Criminal Law Amendment Act, 2013), when any information is given by a women regarding Commission or attempt of sexual harassment, outraging her modesty or rape then such information shall be recorded, by a woman police officer or any woman officer
- ✓ Victim has a right to be represented by a lawyer from the beginning of the case, i.e. from lodging of an FIR at the police station till the final outcome of the case.
- ✓ The doctor should cater to the medical needs of victim with utmost priority. No hospital can deny conducting medical legal checkup (M.L.C) of the victim who has come to the hospital without police referral.

❖ *Introduction of Panic Button in mobile phones: Recently, the 'Panic Button and Global Positioning System in Mobile Phone Handsets Rules 2016' has been notified to enable women to send distress signal to family or police authorities when faced with situations of violence. As per these Rules, all new phones have Panic Buttons to invoke emergency call and w.e.f. 01.01.2017 all types of mobile phone in India are having panic button system.*

6. CRUELTY:

The object behind penalizing this act was to prevent torture to a women by her husband or her relatives in connection with the demand of dowry. To ventilate the grievances about atrocities of newly married brides due to dowry or other such similar demands from their husbands or in-laws, women social workers had taken up the cause in a movement in the country and due to the effective persuasion by social compulsions, section 498A has been introduced in the Code of Law (Amendment) Act, 1983 to combat the menace of dowry deaths.

- **Definition:** The definition of cruelty is given under Section 498 A of the Indian Penal Code 1860, according to which, whoever being the husband or the relative of the husband, subjects such women to cruelty shall be punished with imprisonment for a term which may extend to three years and shall be liable to fine.

Explanation- For this section cruelty means:

- Any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

6.1 **PROCEDURE FOR REMEDY:** A person or her relative have to file a complaint in the nearest police station if she is a victim of any such offence. The rest of the procedure shall be carried out in accordance with law.

Subjects such women to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation- For the purpose of this section, “cruelty” means-

- Any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or damage to life, limb or health (whether mental or physical) of the woman; or
- Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

7. **DOMESTIC VIOLENCE**

- Act was passed in 2005 and was implemented from October, 2006.
- The Act broadens the definition of **Domestic Violence** is under Section 3 of the Act cover the following kinds of abuses;
 - Physical abuse,
 - Sexual abuse
 - Verbal and emotional abuse and
 - Economic abuse
- The Act broadens the definition of domestic relationships by including mothers, wives, sister-in-laws, daughters, and daughter-in-laws. Beneficiaries under the Act are:
 - ❖ Women,
 - ❖ Children and
 - ❖ Respondent
- PWDVA recognizes a life free of violence and fear and makes the state responsible for extending protection against domestic violence to women.

- PWDVA seeks to protect women from all forms of domestic violence and check harassment and exploitation by family members or relatives.
- The first and immediate consequence, if a woman files complaints against DV is dispossession-through the woman out of the house and taking custody of children.
- PWDVA empowers a woman to claim immediate maintenance and compensation.
- Right granted to women under the domestic violence Act:
 - Right to reside in a shared household
 - Right to issuance of Orders
 - Protection Orders
 - Residence Orders
 - Monetary relief
 - Custody orders
 - Compensation orders
 - Interim and Ex parte Orders
 - Right to obtain relief granted by other suits and legal proceedings.

7.1 LIABILITIES AND RESTRICTIONS IMPOSED UPON THE RESPONDENT:

- He can be subjected to certain restrictions as contained in the Protection and Residence order issued against him.
- The respondent can be made accountable for providing monetary relief to the aggrieved person and her children and pay compensation damages as directed in the Compensation order.
- He has to follow the arrangement/s made by the court regarding the custody of the child or children of the aggrieved person as specified in the Custody order.
- The Act does not permit any female relative of the husband or male partner to file a complaint against the wife or female partner.

7.2 PROCEDURE OF FILING COMPLAINT AND THE COURT'S DUTY (SECTIONS 12-29)

- The aggrieved person or any other witness of the offence can approach a Police officer, Protection Officers or Service Provider or Magistrate.
- The Magistrate shall give a notice of the date of hearing to the Protection officers within a maximum period of 2 days or such further reasonable time as allowed by the Magistrate.
- The court is required to dispose of the case within 60 days of the first hearing.

- Upon finding the complaint to be genuine, the Magistrate may, direct the respondent or the aggrieved person, either singly or jointly, to undergo counseling.
- Direct that the women shall not be evicted or excluded from the household or any part of it.
- Pass a protection order, providing protection to the women which shall remain in force till the aggrieved person applies for discharge.
- Grant **monetary relief** to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person due to domestic violence.
- Grant custody orders of any child or children of aggrieved person.
- Compensation/damages for the injuries including mental torture and emotional distress caused by domestic violence. If upon receipt of an application from the aggrieved person, the Magistrate is satisfied that the circumstances so require, he may alter, modify or revoke an order after recording the reasons in writing.
- A complaint can also be filed under Section 498-A of the Indian Penal Code.

8. TRAFFICKING OF WOMAN

- Trafficking in women and children includes placing them in conditions of forced labour and forced sex.
- The recruiters and traffickers who force a women and child into sexually or economically oppressive and exploitative situation as well as other illegal activities such as false marriages, false adoption, domestic labour and all kinds of illegal employment.
- Section 366-A, IPC: Procreation of minor girl- Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

8.1 THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956

- Trafficking of the women generally starts on the promise of job or marriage by which recruiters entice the victims to leave home.
- Further, the village girls and their families are often deceived by the agents/

8.2 PROCEDURE FOR REMEDY

- The first thing that the victim has to do is to file an FIR in the nearest police station. The complainant of sexual assault has a right to be represented by a lawyer from the beginning of the case, from lodging of an F.I.R. at police station till the final outcome of the case.

- If the officer in- charge of the police station refuses to register F.I.R., then the victim can meet or send a copy of the complaint in writing to the deputy commissioner of police or the Superintendent of Police. If action is still not taken, then she can file the complaint before the magistrate within whose jurisdiction the police station falls. The doctor should cater the medical needs of victim with utmost priority. No hospital can deny conducting medical legal checkup (M.L.C.) of the victim who has come to hospital without police referral.

9. **HONOUR KILLING**

- Honor killing or shame killing is the homicide of a member of a family by other members, due to the perpetrators' belief that the victim has brought shame or dishonor upon the family, or has violated the principles of a community or a religion, usually for reasons such as refusing to enter an arranged marriage, being in a relationship that is disapproved by their family, having sex outside marriage, becoming the victim of rape, dressing in ways which are deemed inappropriate, engaging in non-heterosexual relations or renouncing a faith.
- In *Lata Singh v. State of Uttar Pradesh (2006)*, the Supreme Court opined that "There is nothing honourable in honor killings and they are wholly illegal".
- The Hon'ble Supreme Court in the case of *Shakti Vahini v. Union of India (2018)*, ruled that it was illegal for so called khap panchayats, or assemblies of village elders, to interfere in marriage between two consenting adults, and to summon and punish them.

9.1 **PROCEDURE FOR REMEDY**

- ✓ File a complaint in the nearest police station.

10. **THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (POCSO) ACT, 2012**

- The Act 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. The framing of the Act seeks to put children first by making it easy to use by including mechanisms for child-friendly reporting, recording of evidence, investigation and speedy trial of offences through designated Special Courts. The Act makes abetment of child sexual abuse an offence.
- **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

- ii. Sexual Assault: When a person touches the child, or makes the child touch them or someone else
 - iii. Sexual Harassment: passing sexually coloured remark, sexual gesture/noise, repeatedly following, flashing, etc.
 - iv. Child Pornography: With respect to pornography, the Act criminalizes even watching or collection of pornographic content involving children.
 - v. Aggravated Penetrative Sexual Assault/ Aggravated Sexual Assault
- **Gender Neutral Law:** The Act is gender-neutral.
 - **Child-friendly process:** It also provides for various procedural reforms, making the process of trial considerably easier for children.
 - **Child Welfare Committee (CWC):** Police officer is duty bound to inform the CWC about every case under the Act within 24 hours. CWC can appoint a support person for the child who will be responsible for psychosocial well being of the child. This support person will also liaise with the police, and keep the child and child's family informed about progress in the case.
- 10.1 PROCEDURE FOR REMEDY
- ✓ Anyone including a child (anyone below 18 years of age) can report an offence to Special Juvenile Police Unit/Local police.

CHAPTER- IV

CYBER CRIMES AGAINST WOMEN

- Information Technology solutions have paved a way to a new world of internet, business networking and e-banking, budding as a solution to reduce costs, change the sophisticated economic affairs to easier, speedy, efficient, and time saving method of transactions. Various criminals like hackers, crackers have also found ways and measures to interfere with the internet accounts and have been successful in gaining unauthorized access to the user's computer system and stolen useful data.
- In general cybercrime may be defined as “Any unlawful act where computer or communication device or computer network is used to commit or facilitate the commission of crime”. Below is a list for some of the cybercrimes along with their indicative explanation. This is to facilitate better reporting of complaints.
 - a. **Harassment through e-mails:** Harassment via email, includes black mailing, threatening and constant sending of love letters in anonymous names or regular sending of embarrassing mails.
 - b. **Cyber stalking:** ‘Stalkers are strengthened by the anonymity the internet offers. He may be on the other side of the earth, or a next door neighbor or a near relative!’ It involves following a person's movements across the Internet by posting messages (sometimes threatening) on the bulletin boards frequented by the victim, entering the chat-rooms frequented by the victim, constantly bombarding the victim with emails etc. In general, the stalker intends to cause emotional distress and has no legitimate purpose to his communications.

RituKohli's Case: Warning Bell to the Government

RituKohli's case was India's first case of cyber stalking reported in India. The victim complained to the police against the person, who was using her identity to chat over the internet. She further complained that the perpetrator was also giving away her address online and using obscene language. Her contact details were also leaked leading to frequent calls at odd hours. Consequently the 'IP' address was traced and police investigated the entire matter and ultimately arrested the offender, Manish Kathuria.

- c. **Cyber defamation:** Cyber defamation also called Cyber smearing can be understood as the intentional infringement of 'another person's right to his good name. 'Cyber Defamation occurs with the help of computers and / or the Internet. It is considered more of a menace owing to its expeditious nature.

- d. **Child pornography:** Child sexually abusive material (CSAM) refers to material containing sexual image in any form, of a child who is abused or sexually exploited. Section 67 (B) of IT Act states that “it is punishable for publishing or transmitting of material depicting children in sexually explicit act, etc. in electronic form.
- e. **Cyber bullying:** A form of harassment or bullying inflicted through the use of electronic or communication devices such as computer, mobile phone, laptop, etc.
- f. **Cyber grooming:** Cyber Grooming is when a person builds an online relationship with a young person and tricks or pressures him/ her into doing sexual act.
- Chapter XI of the IT Act deals with the offences such as tampering with computer source documents-
 - a. **Section 65** deals with hacking of computer system
 - b. **Section 66** deals with publishing of information which is obscene in electric form
 - c. **Section 67** deals with Access to protected system
 - d. **Section 70** deals with Breach of confidentiality and privacy.

- **PROCEDURE FOR REMEDY:**

- ✓ In case of cyber- crimes, a victim may contact the nearest cyber cell or police station.
- ✓ A complaint may also be filed anonymously through National Cybercrime Reporting Portal (cybercrime.gov.in).
- ✓ To file a complaint alleging commission of a cyber-crime the following documents must be provided:
 - In case of **hacking** the following information should be provided:

Server logs.

 - ❖ Soft copy as well as hard copy of defaced web page in case your website is defaced.
 - ❖ In case the data is compromised on your server or computer or any other network equipment, soft copy of original data and compromised data is required.
 - ❖ Access control mechanism details i.e. who had what kind of the access to the compromised system.
 - ❖ List of suspects if any.
 - ❖ All relevant information leading to the answers to following questions-
 - What has been compromised in the system?
 - Who might have compromised the system?
 - When the system was compromised?
 - Why the system might have been compromised?

- Where is the impact of attack-identifying the target system from the network?
- How many systems have been compromised by the attack?
- In case of **e-mail abuse** like vulgar e-mails, etc., the following information should be provided:
 - ❖ Extract the extended headers of offending e-mail and bring soft copy as well as hard copy of offending e-mail.
 - ❖ Please do not delete the offending e-mail from your e-mail box.
 - ❖ Please save the copy of offending e-mail on your computer's hard drive.
- **FEW MEASURES FOR ONLINE SAFETY**
 - ✓ Keep an eye out for phoney email messages
 - ✓ Don't respond to email messages that ask for personal information
 - ✓ Steer clear of fraudulent Web sites used to steal personal information
 - ✓ Pay attention to privacy policies on Web sites and in software
 - ✓ Guard your email address
 - ✓ Strong Passwords

CHAPTER- V

LAWS RELATING TO WORKING WOMEN

(Certain important definitions are required to be discussed in detail by the Organizing Institutes such as of employee, sexual harassment, and workplace)

Seema is working In a multinational co. one day her Boss called her in his office.

Seema: yes sir

Boss: are you aware about the next week's meeting regarding your promotion.

Seema: sir, I don't go out at late hours except with my family, members, my in-laws/parents.

Boss: okay than you should rethink about your promotion.

Seema is extremely worried about her promotion. She seeks her friend's help who is a lawyer.

*Her friend told her about the Supreme Court Guidelines in **VISHAKHA** case and about the law, **THE PROHIBITION OF SEXUAL HARASSMENT OF WOMEN AT WORKPLACE ACT, 2013***

SexualHarassment at workplace broadly includes:

- Physical contact and advances:
- A demand or request for sexual favours; or
- Making sexually coloured remarks; or
- Showing pornography; or
- Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

1. THE PROHIBITION OF SEXUAL HARASSMENT OF WOMEN AT WORKPLACE ACT, 2013

1.1.PROCEDURAL REQUIREMENTS FOR EMPLOYERS

- The act provides an outline about employer's requirements to develop a complaint mechanism.
- Section 4 lays down the establishment of an Internal Complaints Committee (ICC).
- The ICC must consist of atleast-

- ❖ Four members under the Chairpersonship of a senior woman employee,
 - ❖ Two members from amongst the employees preferably a women with experience in social work or legal knowledge and
 - ❖ A third party member preferably affiliated with a non- governmental organization.
- If a workplace has less than 10 employees it is difficult to set up ICC. In that case complaints may be filed at local complaints committee (LOC) established at the district level.
 - Section 19 requires employers to organize an orientation, workshops and awareness programs for sensitizing employees to the harms of sexual harassment and to provide assistance to the complainant should she choose to file a police complaint.
 - Further, employers are required to display at the workplace details of the penal consequences of indulging in acts of sexual harassment, the composition of the ICC, and the grievance redressal mechanism available to aggrieved employees.

1.2.THE COMPLAINT PROCESS

1. Assuming an ICC has been established in a workplace, a woman alleging sexual harassment must act quickly to preserve her complaint.
2. Section 9 requires that a complaint of sexual harassment be filed within three months of the date of the incident.
3. This may be extended to another three months if the woman can prove that grave circumstances prevented her from filing at an earlier time although “grave” is not defined within the act.
4. The ICC is required to complete the inquiry within 90 days of receipt of a complaint. While the complaint investigation is ongoing, upon written request of the complainant, the woman may be transferred to another workplace or granted leave for a period of up to three months.

5. On completion of the inquiry, a report will be sent to the employer or the District Officer (for workplaces with few than 10 employees) who is then obliged to take action on the report within 60 days.
6. Employers are required to ensure timely submission of reports to the District Officer.
7. Section 15 provides various factors to be considered if compensation for the aggrieved woman is deemed appropriate by the ICC which include the level of mental trauma, pain, suffering, emotional distress, medical expenses incurred, financial status of the respondent, loss in career opportunity due to the incident, and the feasibility of such payment in lump sum or in installments.
8. As a result, the accused person faces a potentially significant financial loss if found liable by the ICC.
9. The Act provides that the deductions may be made from the respondent's salary or wages.
10. If a complaint is not proven, the ICC can instruct the employer or appropriate District Officer that no further action is required.

2. WOMEN AND THE LABOUR LAWS

2.1 THE MATERNITY BENEFIT ACT, 1961

- Motherhood is a very special experience in a woman's life. A woman needs to be able to give a quality time to her child without having to worry about her job and her source of income.
- Article 42 of the Constitution of India imposes obligation upon the state to make provisions for securing just and human conditions of work and for maternity relief.
- The maternity benefit is a payment to a woman worker at the rate of average daily wages for the period of her actual absence immediately preceding and including the day of her delivery and for six weeks immediately following that day.
- In the matters relating to maternity leave, economic benefits during absence of work, leave for bringing up children and non- termination of service during pregnancy and immediately after delivery were deliberated upon and a resolution passed.

- In the sixth session of International labor organization held in 1975, emphasis was laid down on the need to make maternity protections more adequate in the following spheres:
 - ❖ Extension of maternity protection to new categories of women workers,
 - ❖ Extension of the period of statutory or prescribed maternity leave,
 - ❖ More liberal provisions for extended or extra leave during child's infancy,
 - ❖ Higher rates of maternity benefits,
 - ❖ More effective protection against dismissal during pregnancy and after confinement,
 - ❖ Greater encouragement of breastfeeding and wider provisions of nursing breaks,
 - ❖ More adequate attention to the safety and health of woman during pregnancy and
 - ❖ Establishment by social security schemes or public bodies of day nurseries to care for infants and children of working parents.
- **Maternity Benefits:** A woman can get maternity Benefits,
 - During Pregnancy
 - After Pregnancy (during the early months of motherhood)
 - ❖ Government employed women are entitled for maternity leave with full pay.
 - ❖ Other working women are entitled for 16 weeks maternity benefits.
 - ❖ Even unmarried women are entitled for maternity benefits.
 - ❖ Only those Government employees can avail these benefits, which have less than two surviving children.
 - ❖ If a woman wants she can avail few days before the delivery and the remaining leave after the delivery, or she can avail the entire leave at the same time.
 - ❖ The employer cannot make a woman do any heavy work in the last working month of pregnancy. She can refuse to do work which is physically tiring and involved long standing hours, caring heavy loads or any work which can endanger the proper growth of child, etc.
 - ❖ A woman is entitled to 45 days leave full wages in case of miscarriage.
- The National maternity Benefit scheme was modified and new scheme called *Janani SrakshaYojna* was introduced.

- **Complaint: Section 17-** Section 17 talks of complaint that can be made to the inspector appointed under the Act. Section 23 talks of complaint that may be lodged in a court of law after exhausting the remedies provided under the Act.
- **PROCEDURE TO SEEK REMEDY-**
 - Normally, for any grievance under the Act, the aggrieved woman may approach the Inspector appointed under the Act.
 - However, where she is dissatisfied with the orders passed by the Inspector or where a larger question of law is involved she may approach the Metropolitan Magistrate or a first class Judicial Magistrate of the competent jurisdiction. However, such a case must be filed within 1 year from the date of commission of offence.
 - Any office bearer of a registered Trade Union of which such a woman is a member or a Voluntary Organization registered under the Societies Registration Act, 1860 or any inspector may also file a case in a court of law on behalf of the aggrieved woman.
 - In some cases, the inspector may enter any place where women are working, in exercise of powers given to him under the Act and examine any registers, records or notices required to be maintained under the Act.
 - He may examine any employee of the establishment and require them to give him information regarding particulars of employees, payments made and application or notice received from them. If he finds any discrepancies in the matter or payment of maternity benefits, he may direct such payments to be made.
 - The woman should have put 80 days of work before in a delivery period of one year to be able to claim the benefits under the Act.
 - It is the duty of woman claiming maternity benefit to give notice in writing in the prescribed form to her employer claiming her benefit and the period of leave. Such a notice may be given immediately after delivery also.

- Where she has failed to give such a notice, she may apply to the Inspector who shall make the necessary orders of payment under the Act.
- Appeal against the orders of the Inspector lies to the appellate authority which must be made within 30 days from the date of the decision of the Inspector is communicated to her. The decision of the appellate authority is final.
- If she is dissatisfied with the orders of the Inspector or the appellate authority or if a larger Question of law is involved, she may approach the court of the competent jurisdiction. The case will proceed according to the established procedure of law.
- Where the employer is guilty of payment of maternity benefit or dismissing or discharging the employee on account of her absence in violation of the Act, he is punishable with imprisonment not less than 3 months to one year and with fine for not less than Rs. 2000 to Rs. 5000
- There is appeal against the decision of the inspector. In a court of law, the normal procedure of filing appeals may be followed.
- **Alternative Remedies-/ Judicial;** The Act itself has provided for an alternative judicial recourse by appointing Inspectors under the Act and for an appellant authority above him.
- Only where the complainant is dissatisfied with their decisions that she has to approach a court of law for judicial remedies and for instituting penal action against her employer. Certain questions of law like the period to be included while calculating the amount of maternity benefit etc. are also decided by a court of law.
- The aggrieved woman may also approach the registered trade union of which she is a member or a voluntarily social organization that may help fight her case.

2.2 THE FACTORIES ACT, 1948

- In India, The Factories Act, 1881 was primarily passed to protect children and to provide for a few measures for the health and safety of workers.

- The subsequent act and finally the Act of 1948 aim to consolidate and amend the law and regulate labour in factories.
- This Act is complete from all points of view and implements several provisions of International Conventions like the ILO'S code of Industrial Hygiene and Periodical Examination of Young Persons.
- The major objectives of the Factories Act are-
 - To protect laborers from long hours of work.
 - Maintain healthy and sanitary conditions at the workplace.
 - Maintain safety of workers.
 - Maintain Industrial machines used by people so as to avoid unnecessary accidents.
 - Regular visit of Industrial sites by Industrial Inspectors to oversee health and safety regulations.
 - Executive provisions have been made for employment of women in factories.
 - Welfare
 - Adequate facilities for washing, sitting, storing clothes when not worn during working hours.
 - If a worker has to work in standing position, sitting arrangement to take short rests should be provided.
 - Adequate First aid boxes should be provided and maintained.
- Facilities in case of large factories:
 - Crèches are to be provided if 30 or more women workers are employed.
- Safety measures.
- Working hours.

- Overtime wages:

- Overtime wages are double the rate of wages payable.
- Overtime should not exceed 60 hours in a week and total overtime hours in a quarter should not exceed 50. Register of overtime should be maintained.

2.2.1 RIGHTS OF WORKING WOMEN IN FACTORIES

- ❖ Women must have separate toilets and washrooms with doors.
- ❖ If a factory has more than 30 women workers the employer must provide a crèche for the workers children.
- ❖ Women cannot be made to lift more than the prescribed weight.
- ❖ Women cannot be made to clean or oil any moving machine.
- ❖ Women cannot be made to work more than 48 hours in a week.
- ❖ Women must get one day off in a week.
- ❖ Women cannot be made to work for more than 5 hours at a stretch.
- ❖ Women cannot be made to work only between 6 in the morning and 7 in the evening.
- ❖ 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.
- ❖ Shift can change only after weekly or other holiday and not in between.
- ❖ Night shift for women-
 - Factories Act has been proposed to be amended to allow night shift for women workers.
 - The government has decided to amend section 66 of the Factories Act, 1948 to allow employment of women workers between 7:00 pm and 6:00am.
 - The employer has to ensure occupational safety and adequate protection to the women workers.

- For contravention of the provisions of the Act or Rules- imprisonment up to 2 years or fine up to Rs. 1,00,000 or both.
- 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.
- Continuation of Contravention – imprisonment up to 3 years or fine not less than Rs. 10,000 which may extend to Rs. 2, 00,000.
- On contravention of chapter IV pertaining to safety or dangerous operation.
- Factories Act works with a primary object to protect workers employed in the factories against industrial and occupational hazards.
- For that purpose, it seeks to impose upon the owners or the occupiers certain obligations to protect workers unwary as well as negligent and to secure for them, employment in conditions conducive to their health and safety from accidents.

2.3 THE EQUAL REMUNERATION ACT, 1976

Meena is working on a construction site. Sanjay Kumar is a contractor at the site. He refused to pay Meena equal amount paid to the other male labourers because she is a lady and told her that her working capacity is less than the male labourers. Meena complained the contractor because the act of the Contractor is illegal.

- Parity in wages is one of the major components of Service Law Jurisprudence which has evolved over the years.
- If two workers are doing the same work, they should be paid equal wages.
- Even 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.
- 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 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*

- Duty of Employer to pay equal remuneration to men and women workers for same work or work of a similar nature.

- 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.
- An employer cannot claim exemption on the grounds of financial incapability from The Equal Remuneration Act, 1976.
- No discrimination to be made while recruiting men and women workers.
 - ❖ 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.
 - ❖ The provisions of this section shall not affect any priority or reservation for scheduled castes or scheduled tribes, ex-servicemen, retrenched employees of any other class or category of persons in the matter of recruitment to the posts in an establishment or employment.
- **Advisory committee:**
 - The appropriate government shall constitute one or more advisory committees to advice.
 - Every advisory committee shall consist of not less than ten persons of which one-half shall be women.
 - The advisory committee shall have regard to the number of women employed in the concerned establishment or employment, the nature of work, hours of work, suitability of women for employment.
 - The advisory committee shall regulate its own procedure.
- Power of appropriate government to appoint authorities for hearing and deciding claims and complaints:
 - A labour officer is to be appointed for the purpose of hearing and deciding;
 - Complaints with regard to the contravention of any provision of this Act,
 - Claims arising out of non- payment of wages at equal rates to men and women and

- In the case of complaint, that adequate steps to be taken by the employer so as to ensure that there is no contravention of any provision of this Act.
- Every authority appointed shall have all the powers of a civil code under the Code of Civil Procedure, 1908 (5 of 1908), for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents.
- An appeal within 30 days but not thereafter is allowed.
- It is the duty of employers to maintain the registers.

▪ **Powers of Inspectors:**

- To enter, at any reasonable time with such assistance as he thinks fit, any building, factory, premises or vessel;
- To require any employer to produce any register, muster- roll or other documents relating to the employment of workers, and examine such documents;
- To see that the provisions of this Act are being, or have been, complied with;
- To examine the employer, his agents or servant or any other person found in charge of the establishment or any premises connected therewith;
- To make copies, or take extracts from, any register or other document maintained in relation to the establishment under this Act.

▪ **Remedies under the Act:**

- A complaint may be made to the appropriate authority appointed by the government by-
 - The worker or
 - A legal practitioner or
 - Any official of a registered trade union authorized for this purpose or
 - An inspector appointed under section 9 of the Act.
- A Metropolitan Magistrate or a Judicial Magistrate of the first class is eligible to try offences under the Act. The Magistrate may take up the case on its own or on receiving a complaint either from-

- The appropriate Government or
- The aggrieved person or
- Any recognized Welfare Institution or Organization and even Public Interest Litigation may be filed for discrimination in payment on grounds of gender.

▪ **How to file a Complaint?**

The complaint to the authority appointed under the Act must be made in Triplicate, in Form A for contravention of the Provisions of the Act and in form b for nonpayment of equal wages. The Authority will listen to both the parties and after making the necessary inquiry, direct the payment of the difference in the amount actually paid and the amount payable under the Act or direct the employer to comply with the provisions of the Act.

- Either of the parties may appeal to the appellate authority as notified by the Government under the Act within 30 days of the original order.
- Alternatively, a Public Interest Litigation may be filed in the court of law or the Legal Services Authority may be approached for getting appropriate relief and legal aid.

2.4 MINIMUM WAGES ACT, 1948

Shanti is 27 years old young lady. There was a beedi making factory nearby her home. Shanti is in need of finances decided to work in the factory as a labour. She went to the factory and asked the contractor to provide her some work as she is extremely needy for the work and money. The contractor asked her to work for upon the wages which were much lower to the prescribed Rates of Minimum wages at that point of time which Shanti agreed to work.

Here the contractor's act is illegal because he cannot pay less than the minimum wages fixed by the government.

- Women must get wages because every person who works must be paid for his or her work.
- A person must be paid at least a minimum wages which is fixed by the government under the Minimum Wages Act, 1948.

- Every woman must be paid the same wage as a man for the same kind of work i.e., equal to the man and not less.
- Women workers must be given to the person who work on temporary basis, piece rate basis, daily wages, who works for a contractor or who works in agriculture.
- Even if a person agrees to work on less wages then prescribed by the government, the employer is bound to pay the minimum wages.
- Minimum wages must be fixed on:
 - ❖ Daily basis,
 - ❖ Hourly basis and
 - ❖ Monthly basis.
- **REMEDY/PROCEDURE UNDER THE MINIMUM WAGES ACT, 1948**
 - ❖ If the employer is not paying the Minimum Wages then the labour can complaint to the labour inspector.
 - ❖ The employer cannot make the labour work for more than 9 hours which includes the time for rest also.
 - ❖ If the labour works for more than 9 hours he/she will get the extra money which is doubled the wages.
 - ❖ Every day there should be one day paid rest.
 - ❖ Claims for payment of minimum rates of wages or remuneration for days of rest or wages at overtime rate or as per the rules and orders made by the appropriate government under this Act.
 - ❖ The Presiding Officers of the Labour court and Deputy Labour Commissioners hear and decide claims arising out of payment of less than the minimum rates of wages. The employee or any legal practitioner or any official of a regd. Trade Union or any Inspector or Any other authorized person may file a claim petition under this act.
- **How to file the Complaint?**
 - ❖ Every application under this Act must be presented within 6 months from the date on which the minimum wages become payable.
 - ❖ A single application may be filed on behalf of any number of employees.

- ❖ The Adjudicating authority will hear both the applicant and the employer and after due inquiries may direct-
 - i. Payment of the difference between the minimum wages to be paid under the Act and the actual wages along with a compensation not exceeding 10 times such amount.
 - ii. Payment of any amount due to the employees by the employer along with compensation. A Penalty of fifty rupees may be levied on the applicant if the authority feels that the application is either malicious or vexatious. The direction of the authority is final and he shall exercise all the powers of a civil court under the Code of Civil Procedure for taking evidence, enforcing attendance of witnesses and compelling the production of documents. Courts have been barred from entertaining suits under this Act.
- ❖ No appeal shall lie against the decision of the authorities under the Act.

CHAPTER- VI

WOMEN AND THE REPRODUCTIVE HEALTH RIGHTS ABORTION OR TERMINATION OF PREGNANCY

- Relevant Provisions of *The Indian Penal Code, 1860*-
 - ❖ Section 312: Causing miscarriage
 - ❖ Section 313: Causing miscarriage without woman's consent.

(Whoever causes miscarriage of a woman without her consent shall be punished with ten years imprisonment and fine)

However, there are certain situations in which it is legal to terminate the pregnancy on the advice of doctor if:

- To continue pregnancy involves the risk to the mother's life (physical or mental); or
- The pregnancy is caused by rape; or
- The child is born it would be gravely deformed.

THE MEDICAL TERMINATION OF PREGNANCY ACT, 1971

Priyanka conceived a child after 3 years of her marriage. The doctor told her she is having some problems in her pregnancy. After 13 weeks, the foetus was diagnosed some genetic disorder. Due to this disorder the child would have faced serious mental problem if he would survive as well there was a threat to the mother's life also. Priyanka's mother wants her to terminate her pregnancy.

Discuss about this problem in the group (G.D)

- This Act provides for the termination of certain pregnancies by registered medical practitioners and for matters connected there with or incidental thereto.
- Forcing a woman to terminate pregnancy is illegal.
- Abortion is legal when it is done according to the law.
- Abortion carried on by midwives, nurses or quacks is illegal.
- It should be done only in Government Hospital or in a hospital authorized by the Government.
- When pregnancies may be terminated by registered medical practitioners.
- A registered medical practitioner shall not be guilty of any offence if any pregnancy is terminated by him in accordance with the provisions of this Act.

- A pregnancy may be terminated by a registered medical practitioner-
 - Where the length of the pregnancy does not exceed twelve weeks; or
 - Where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks and is done in good faith; or
 - In case where the continuance of the pregnancy would a risk to the life of the pregnant woman or of grave injury whether physical or mental; or
 - Where there is a substantial risk that if the child was born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.
 - Where any pregnancy is alleged by the pregnant woman to have been caused by rape (the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.)
 - Where any pregnancy occurs as a result of failure of any device or method for the purpose of limiting the number of children (the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.)
- No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of 18 years, is a lunatic, shall be terminated except for the case in which her guardian gives his/her consent in writing.

FEMALE INFANTICIDE AND FOTICIDE

During Radha's second pregnancy, she had to undergo ultrasound test for finding genetic abnormalities of the foetus, if any. During the process her husband secretly asked the doctor about the gender of the foetus. When doctor refused to tell him about the gender of the child he offered him some money and asked him that he does not want a girl child and in case if the foetus is a girl child he wants an abortion of his wife.

Doctor told him that the sex detection is a crime and he will not tell him about the sex of the child. He also told him that he should not discriminate between a girl and a boy as both of them are innocent and girls are not lesser than boys in any way.

Discuss about the importance of girl child in the discussion.(G.D)

- Female infanticide is the intentional killing of infant girls.
- Destroying foetus in the womb, because she is likely to be born as a girl child, is female foeticide.
- All involved in female foeticide deliberately forget to realize that when the foetus of a girl is destroyed, a woman of future is crucified. To put it differently, the present present generation invites the sufferings on its own and also sows the seeds of suffering for the

future generation, as in the ultimate eventuate, the sex ratio gets affected and leads to manifold social problems.

- It is not out of place to state here that the restricted and constructed thinking with regard to a girl child eventually leads to a female foeticide.
- In addition to the active methods undertaken to eliminate baby girls soon after birth, neglect and discrimination leading to death and sex-selective abortion are also means by which many female children die each year.
- Ultra sound and scanning, being a non-invasive technique, quickly gained popularity and are now available in some of the most remote rural areas. These techniques are now being used for sex determination with the intention of abortion if the foetus turns out to be female.

THE PRE-NATAL DIAGNOSTIC TECHNIQUES (REGULATION AND PREVENTION OF MISUSE) AMENDMENT ACT, 2002

(certain important aspects like pre-natal diagnostic procedures and techniques, pre-natal diagnostic test, sex selection, Genetic Counseling Centers, Genetic laboratories and Genetic Clinics are to be discussed by the organizing institute.)

- **Prohibition of sex-selection-**

No person, including a specialist or a team of specialists in the field of infertility, shall conduct or aid in conducting sex selection of a woman or a man or both or on any tissue, embryo, conceptus, fluid or gametes derived from either or both of them.

- **Prohibition on sale of ultrasound machines, etc., to persons, laboratories, clinics, etc. not registered-**

- ❖ No person shall sell any ultrasound machine or imaging machine or scanner or any other equipment capable of detecting sex of the foetus to any Genetic Counseling Centre, Genetic laboratory, Genetic Clinic or any other person not registered under the Act
- ❖ No pre-natal diagnostic techniques shall be conducted except for the purposes of detection of any of the following abnormalities, viz., chromosomal abnormalities, genetic metabolic diseases, haemoglobinopathies, sex-linked genetic diseases, congenital anomalies, etc.

- **No pre-natal diagnostic techniques shall be conducted unless the person qualified to do so is satisfied for reasons like-**

- ❖ Age of the pregnant woman is above thirty-five years,
- ❖ The pregnant woman has undergone two or more spontaneous abortions of foetal loss,

- ❖ The pregnant woman had been exposed to potentially teratogenic agents such as drugs, radiation, infection or chemicals,
- ❖ The pregnant woman or her spouse has a family history of mental retardation or physical incapability,
- ❖ Deformities such as, spasticity or any other genetic disease and
- ❖ Any other condition as may be specified by the Central supervisory Board.

➤ **PROCEDURE FOR REMEDY-**

- If any doctor or specialist conducts sex selection he will be punished with an imprisonment of 5 years and fine of Rs.10,000/ or removal of his name from register of medical council.
- Publication, distribution or communication of any advertisement is illegal.
- A pregnant women cannot be compelled by anyone to get the sex of the foetus determined and those who compel her to do so will be punished with 3 years' imprisonment and a fine of Rs.10,000/.

CHAPTER- VII

PROCEDURAL GUIDELINES

(During the Legal Awareness Programme, the target groups should be informed about the availability of free Legal Aid Services, Public Interest Litigation and the Procedure there-of)

FREE LEGAL AID AND SERVICES

Anita was a labour at the construction site. While she was on duty, she tripped off from the first floor. She got her leg and hand fractured for which she claimed for the compensation. On the refusal of the contractors to pay the compensation, Anita felt helpless and sat quietly. Mr Tariq is the lawyer where Suresh (Anita's Husband) is working as a driver suggested Anita that she can claim for the compensation in the court.

- Article 39-A of the Constitution of India provides for free legal Aid for the poor and weaker sections of the society to ensure justice thereof.
- In the year 1987, the Legal Services Authority Act was enacted by the Parliament (that came into force on 9th November, 1995) with an objective to establish a nationwide uniform network for providing free and competent legal services to the weaker sections of the society on the basis of equal opportunities.
- Article 14 of the Indian Constitution makes it obligatory for the state to ensure equality before the law and provide for a legal system which promotes justice on the basis of equal opportunities to all.
- The National Legal Services Authority (NALSA) has been constituted under the Legal Services Authority Act, 1987 to monitor and evaluate the implementation of legal services under the Act.
- The Chief Justice of India is the Patron-in-Chief of NALSA.
- In every State, a Legal Services Authority and in every High Court Legal Services Committee has been constituted.
- Further, at each District Level, District Legal Services Authority and Taluka Legal Services Committees have been constituted to give effect to the policies and directions of

the NALSA and to provide free legal services to the people and conduct LokAdalats in States.

- The State Legal Services Authorities are chaired by Hon'ble Chief Justice of the State and District and Taluka Legal Services Committees are chaired by Judicial Officer of the District or the Taluka.

Functions of National Legal Services Authority (NALSA)

- (a) To provide free Legal Services to the eligible person,
- (b) Following persons have been identified for being eligible to avail the free Legal Aid Services:

- ❖ Women and children;
- ❖ SC/STs;
- ❖ Industrial Workers;
- ❖ Victims of massive disaster/violence and natural calamities;
- ❖ Disabled persons;
- ❖ Persons in custody;
- ❖ Persons whose annual income does not exceed Rs. 1,00,000/;
- ❖ Victims of human trafficking, etc.

Free Legal Aid and Services include

- (a) Providing of an Advocate for legal proceedings,
 - (b) Payment of court fees/process fee or all other charges payable incurred in connection to legal proceedings,
 - (c) Preparation of Appeals/ Paper books, including printing and translation of documents in legal proceedings,
- NALSA has also initiated Legal Aid Council Scheme to provide meaningful legal assistance to under trial prisoners who due to lack of resources or other disabilities cannot engage a council to defend them.
 - Now Legal Aid Councils have been attached to each Magistrate Court to provide assistance and defend a person who is not able to engage a council right from the stage he/she is produced in the court by the police.
 - The target groups are also to be informed that NALSA has also formulated a Counseling and Conciliation Scheme for the settlement of disputes through negotiation and

conciliation in order to guide and motivate the migrants to resolve their disputes amicably.

- Counseling and conciliation centers are being set up in all the districts of the country.

LEGAL LITERACY PROGRAMME

- NALSA has formulated a strategy to-
 - Provide basic and essential knowledge to the vulnerable groups so that they can understand and know the scope of their rights provided under the law,
 - Organise Legal Aid camps for educating the weaker sections of the society.,
 - Settle their disputes through ADR mechanism,
 - Organize meetings, seminars and workshops connected with the legal services programmes and
 - To develop audio-visual spots, documentary films, etc. for publicity.

LEGAL AND CLINICS

- The rural target groups should be informed that Legal Aid Clinics are being established in all Gram Panchayats similar to (primary Health Centres) by engaging competent lawyers as legal Consultants in the Clinics.
- A wide publicity is required to be given about these clinics with the help of Local Self Government.
- The Urban target groups are to be informed that legal aid clinics are available in all Law Colleges and all Law Universities and students are encouraged to adopt remote village areas for providing legal assistance to the poor and needy.

No fee is to be collected for the beneficiaries from the Legal Aid Clinics.

PUBLIC INTEREST LITIGATION

- Public Interest Litigation is a litigation for the protection of the public interest.
- Article 32 of the India constitution contains a tool which directly joins the public with Judiciary.

- A PIL may be introduced in a court of law by the court itself (suomotu), or by public spirited citizens.
- For the exercise of the court's jurisdiction, it is not necessary for the victim of violation rights to personally approach the court.
- In a PIL, the right to file suit is given to a member of the public by the courts through Judicial Activism. The member of the public may be Non-Governmental Organization, (NGO), an Institution or an Individual.
- The Supreme Court of India has defended Public-Interest Litigation by stating that Judiciary has stepped in to give directions because due to executive in –action, the laws enacted by Parliament and the State Legislatures for the poor since independence have not been properly implemented.
- The concept of Public Interest Litigation (PIL) is in consonance with the principles enshrined in Article 39-A of the Constitution of India to protect and deliver prompt social justice with the help of Law.
- Before the 1980s. Only the aggrieved party could approach the courts for justice. After the emergency era the High Court reached out to the people, devising a means for any person of the public (or an NGO) to approach the court seeking legal remedy in cases where the public interest is at stake.
- Justice P.N. Bhagwati and Justice V.R. Krishna Lyer were among the first judges to admit PILS in court.
- Filing a PIL is not as cumbersome as a usual legal case; there have been instances when letters and telegrams addressed to the court have been taken up as PIL and heard.

ARREST

- A person is said to be arrested when a police officer or a citizen takes him into custody or otherwise substantially deprives him of his freedom of action so that he may be held to answer for a crime or an offence.
- The police in India do not have any power to detain anybody for questioning unless he is arrested with or without warrant.
- The most basic provision relating to arrest has been incorporated in the Article 21 of the Constitution. It lays down that no persons can be deprived of his/her right to liberty, except in accordance with the procedure established by law.
- Article 22 (1) of the constitution provides, “no persons who is arrested shall be detained in custody without being informed, as soon as maybe, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by a legal practitioner of his choice.”

RIGHT OF ARRESTED WOMEN

At around 8:30 in the evening, Mrs. Mala was having her dinner at her house. Some policemen knocked her door and told her that she is under arrest as a complaint has been lodged against her. They forcibly held her hand and brought her to the police station. Her sister wanted to accompany her but the policemen refused her to join them.

- Every woman must be aware of some basic rights relating to arrest to ensure her well-being while she is in custody.
 - 1) She must be informed about the grounds for her arrest and full particulars of charges levied on her for that matter of fact.
 - 2) She has right to see the warrant if arrested under warrant (Sec.75 CrPC)
 - 3) She has the right to privacy while recording statement.
 - 4) She has the right to consult the legal practitioner of her choice and to be defended by him.
 - 5) The accused must be produced before the magistrate within 24 hours of arrest.
 - 6) It is the right of the arrestee to inform of her arrest to either her relatives or to her friends.
 - 7) A woman cannot be arrested before sunrise or after sunset except with the prior permission of a magistrate.
 - 8) A woman can only be taken into custody in presence of a woman police officer as far as practicable and the arrest must be affected with proper dignity.

- 9) No beatings or force can be administered while arresting a female accused.
- 10) The search examination of the female prisoners shall be carried out by the matron under the general or the special order of the medical officer.
- 11) The female prisoners have the right to live separately from the male prisoners.
- 12) All the prisoners have the basic human rights such as hygienic food, shelter, medical facilities and facilities of reading and writing.
- 13) If arrested soon after a child birth women cannot be taken before the magistrate until they are in proper conditions to travel.
- 14) Women prisoners have the right to speedy trial.
- 15) Examination of body of an arrested person by a registered medical practitioner at the request of the arrested person in case of torture and maltreatment in the lock ups.
- 16) The legal assistance to a poor or indigent accused, arrested and put in jeopardy of life or personal liberty, is a Constitutional imperative mandated not only by Article 39-A but also by Articles 14 and 21 of the constitution.
- 17) Rights of the pregnant women in jails (pre-natal and post-natal care, Gynecological examination etc.)

ARREST WARRANT

- It is a written order issued by a court to a police officer to arrest and produce an offender or to search his premises for a particular thing.
- A police officer who executes the warrant shall notify the substance thereof to the person to be arrested and if he demands, shall show him the warrant.
- He is expected to bring the required person before the court without unnecessary delay.
- A warrant of arrest should be in writing, signed by the presiding officer of the court and should bear the seal of the court.
- It should also contain the name of the accused, his address and indicate the offence for which he is charged.
- If any of these factors is absent, the warrant is not in order and arrest made in execution of such warrant is illegal.
- Warrants are of two kinds:
 - ❖ Bailable and
 - ❖ Non-bailable

ARREST WITHOUT WARRANT

- A police officer has power to arrest a person without warrant if he is suspected of having committed a cognizable offence.
- Normally in non-cognizable offences a police officer cannot arrest a person without a warrant from magistrate.
- In the first schedule of the Criminal Procedure Code (CrPC) offences have been classified and enumerated as cognizable and non-cognizable. The more serious offences such as murder, rape, robbery, theft, and waging war against the state etc. are cognizable.
- **When can a person be arrested without a warrant?**
 - If he is involved in a cognizable offence or if there is a reasonable suspicion, complaint or information that he has committed a cognizable offence;
 - If he possesses implements of house breaking;
 - If he possesses stolen property;
 - If he is an proclaimed offender;
 - If he obstructs a police officer on duty;
 - If he escapes from a legal custody;
 - If he is a deserter from the army, navy or air force;
 - Where he is out of India, if he commits an offence punishable under any extradition;
 - Under the fugitive Offenders Act;
 - If he is a released convict who breaks the restrictions imposed by the court on his movements;
 - If he is suspected of preparing to commit a cognizable offence;
 - if he is a habitual criminal;
 - If he, after committing a non-cognizable offence in the presence of a police officer, refuses to give the police his name and address or has given him a false name and address;
 - If he is required by a police officer of another police station who suspects that he has committed a cognizable offence;

BAILABLE/ NON-BAILABLE OFFENCES

➤ BAILABLE OFFENCES

- when any person accused for a bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a court, and is prepared at any time while in custody of such officer or at any stage of the proceedings before such court to give bail, such person shall be released on bail.
- In case of a bailable offence bail is a matter of right.
- If such officer or court, thinks it fit such person may be released on a personal bond without sureties.

- In case of bailable offence, one has to only file the bail bonds and no application is required.

➤ **NON-BAILABLE OFFENCES**

- When any person accused for a non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, it is a matter of discretion of the court to grant or refuse bail.
- On appearance the arrested person is brought before a court other than the High Court or Court of Session, he may be released on bail on the direction of Court if such a person is:
 - Under the age of sixteen years or is a woman or is sick or infirm and gives an undertaking that he shall comply with such directions as he may be given by the Court.
 - And shall not be released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;
 - And shall not be released if such offence is Cognizable Offence and he had been previously convicted of an offence punishable with death or imprisonment for life or imprisonment for seven years or more, or he has been previously convicted on two or more occasions of a non-bailable and cognizable offence.
- When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail, the court may impose any condition which the court considers necessary in order to ensure that such person shall attend in accordance with the conditions of the bond executed under this Chapter or in order to ensure that such person shall not commit an offence similar to the offence of which he is accused or of the commission of which he is suspected, or otherwise in the interests of justice.
- An officer or a court releasing any person on bail shall record in writing the reasons for doing so.

FAMILY COURT

- The Family Courts Act, 1948 was passed to facilitate satisfactory resolution of disputes concerning the family through a forum expected to work expeditiously in a just manner and with an approach to ensure maximum welfare of society and dignity of women.
- There are cases dealing with broad spectrum of issues such as family matters and property which continue for generations (ranging from 7 years to 30 years).

- In such a scenario, the channeling of cases to different courts set up specifically for this purpose not only ensures their speedy disposal, but also ensures that the cases, being dealt with experts in courts specifically set up for this purpose are dealt with, more effectively.
- The aim of the family courts is to form a congenial atmosphere where family disputes are resolved amicably.
- There are issues like alimony which became the topic of great controversy and cause great harassment to families.
- The main purpose behind setting up these courts was to take the cases dealing with family matters away from intimidating atmosphere of regular courts and ensure that a congenial environment is set up to deal with matters such as marriage, divorce, alimony, child custody etc.
- The family courts are equipped with counselors and physiologists who ensure that the disputes are handled by experts.
- The role of the counselors is not limited to counseling but extends to reconciliation and mutual settlement wherever deemed feasible.

➤ PROCEDURE FOLLOWED BY THE FAMILY COURTS

- The Family Courts are free to evolve their own rules and procedure, and once a Family Court does so, the rules so framed override the rules of procedure contemplated under the Code of Civil Procedure.
- Special emphasis is put on settling the disputes by mediation and conciliation and to give priority to mutual agreement over the usual process of adjudication.
- The most unique aspect regarding the proceedings before the Family Court are that they are first referred to conciliation and only when the conciliation proceedings fail to resolve the issue successfully, the matter is taken up for trial by the court.
- The cases are kept away from the trappings of a formal legal system.
- The Act stipulates that a party is not entitled to be represented by a lawyer without the express permission of the court.

CRIMES AGAINST WOMEN CELL

- The crimes against women cell was set up in 1983 at the central level in the Delhi Police.
- The need for a gender-specific police response had been felt for some time earlier due to the following reasons:
 - i. Low status of women,
 - ii. Little inclination to take their problems to police stations staffed largely by male police officers who did not show sensitiveness towards female victims.
- In 1986, separate cells on similar lines were set up in each of the nine districts of Delhi. Most importantly, the central Crimes against Women Cell was provided with enhanced manpower, infrastructure and responsibilities.

- Counseling of families is an essential part of the functioning of these cells.
- Other cities and states in India have set up similar units within their police forces with some southern states experimenting with all woman police stations to provide a more enabling environment for women complaints.

MAHILA COURTS

- Mahila Courts are specialized courts set up to dispense justice to women.
- They speedily deal with and dispose off cases pertaining to women fighting legal battles following matrimonial discord.
- Mahila or Women Courts have been established as forums in which women, with or without their small children, seek quick relief in disputes for shelter and for financial assistance.
- Mahila Courts are headed by experienced women judges and magistrates and the staff employed in such courts is also predominantly female. They are headed by a judge of the rank of Additional Chief Metropolitan cum Assistant Sessions Judge, who too, is a woman.
- These courts deal exclusively with cases pertaining to offences against women such as cases relating to grant to maintenance, cases dealing with assault or criminal force and words or gestures intended to insult the modesty of a woman.
- At the Session level, Mahila Courts deal with the cases of Kidnapping, procuring minor girls for the purpose of prostitution, rape and cruelty by husband or in-laws.
- The Metropolitan Magistrate in these courts are assigned cases relating to molestation, rape, kidnapping and also of Domestic Violence.
- These courts serve the purpose of rendering justice in criminal matters pertaining to women victims with great sensitivity.
- The procedure followed in these courts is informal and comfortable for women. They can shed their inhibitions and depose freely in the presence of women judges, who are more sensitized towards females and their inherent nature.
- These courts also provide a platform to women where they can negotiate their claims. Mahila Courts ordinarily hold criminal trials but at times conciliation proceedings are also organized in order to preserve the family fabric.

NATIONAL COMMISSION FOR WOMEN

The National Commission for Women was set up as statutory body in January 1992 under the National Commission for Women Act, 1990 with a mandate to safeguard the constitutional rights of women. It is concerned with advising the government on all policy matters affecting women.

The objective of the NCW is to represent the rights of women in India and to provide a voice for their issues and concerns.

➤ The functions of the Commission are as follows:

- Investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws;
- Present to the Central Government, annually and at such other times as the commission may deem fit, reports upon the working of those safeguard;
- Make in such reports, recommendations for the effective implementation of those safeguards for improving the conditions of women by the Union or any State;
- Review, from time to time , the existing provisions of the Constitution and other laws affecting women and recommend amendments thereto so as to suggest remedial legislative measures to meet any lacunae, inadequate or shortcomings in such legislation;
- Take up the case of violation of the provisions of the Constitution and the other laws relating to women with the appropriate authorities;
- Look into complaints and take *suo moto* notice of matters relating to –
 - a) Deprivation of women's rights;
 - b) Non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development;
 - c) Non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women, and take up the issues arising out of such matters with appropriate authorities.
- Call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and identify the constraints so as to recommend strategies for their removal;
- Undertake promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres and identify factors responsible for impeding their advancement such as lack of access to impeding their advancement such as lack of access to housing and basic services, inadequate support services and technologies for reducing drudgery and occupational health hazards and for increasing their productivity;
- Participate and advise on the planning process of socio-economic development of women;
- Evaluate the progress of the development of women under the Union and State;
- Inspect or cause to be inspected jail, remand home, women's institution or other place of custody where women are kept as prisoners or otherwise, and take up with the concerned authorities for remedial action, if found necessary;
- Found litigation involving issues affecting a large body of women.

Similarly at the state level also Commission for Women exist with the same objectives and functions. The Resource Person must appraise the target groups about the procedure to approach the Commission.

NATIONAL HUMAN RIGHTS COMMISSION, NHRC

- The National Human Rights Commission (NHRC) of India is an autonomous public body responsible for the protection and promotion of human rights.
- “Human Rights” means the rights relating to life, liberty, equality and dignity of an individual guaranteed by the constitution or embodied in the International Covenants and enforceable by courts in India.

➤ FUNCTIONS OF NHRC:

- Proactively or relatively inquire into violations of human rights or negligence in the prevention of such violation by a public servant.
- By leave of the court, to intervene in court proceeding relating to human rights.
- Visiting any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates and make recommendations.
- Reviewing the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation.
- Reviewing the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures.
- To study treaties and other International instruments on human rights and make recommendations for their effective implementation.
- To undertake and promote research in the field of human rights.
- To engage in human rights education among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, media, seminars and other available means.
- Encourage the efforts of NGOs and institutions working in the field of Human Rights.
