

**National Commission for Women  
4, Deen Dayal Upadhyaya Marg  
New Delhi-110 002**

**22<sup>nd</sup> September, 2015**

**Standardized Module for Legal Awareness Program for Women**

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National Commission for Women has developed a comprehensive **"Standardized Module for Legal Awareness Programme About Women Related Laws"** to improve the quality of Legal Awareness Programme content as well as organizing capacity and increase in financial assistance. The financial assistance for the implementing agencies for organizing one camp of two days duration for 60 participants will be Rs. 1 lakh (for non-NER) and a sum not exceeding Rs. 1,20,000/- for North Eastern States.

The Commission will implement the programme initially with NALSA/reputed Universities/Law Departments/Colleges from all over the country to impart Legal Awareness about women related laws focusing in the districts where crime against women rate is very high and invite online proposals only from the afore mentioned organizations for the year 2015-16 for conducting Legal Awareness Programmes as per terms and conditions of new module available on NCW Website. The last date for receiving the **e-proposals** is 31<sup>st</sup> October, 2015.

Standardized Module for Legal Awareness Programme About Women Related Laws is available on NCW's **website: [www.ncw.nic.in](http://www.ncw.nic.in)**

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22/9/15  
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**STANDARDIZED MODULE FOR LEGAL  
AWARENESS PROGRAMME ABOUT  
WOMEN RELATED LAWS**

**(A manual including objectives,  
procedural guidelines, methods and materials)**

**NATIONAL COMMISSION FOR WOMEN**  
4, Deen Dayal Upadhyaya Marg, New Delhi-110 002  
Website: [www.ncw.nic.in](http://www.ncw.nic.in)

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## CHAPTER-1

### INTRODUCTION

The primary mandate of the National Commission for Women (NCW) is to seek justice for women, safeguard their rights, and promote women's empowerment. The Commission monitors the proper implementation of all the legislations enacted to protect the rights of women so as to enable them to achieve equality in all spheres of life.

Everyone is supposed to know the law of the nation where one lives. If one does not know about it then he/she cannot take the plea of ignorance. The Latin phrase: "*ignorantia juris non excusat*" which is applied universally provides that ignorance of law is no excuse. This principle is applied to even laymen. In a society everyone should be legally aware. A legal literate person knows his rights, duties and privileges so that he can fight against injustice in the society. He knows what he should do or what he should not do in his day to day life. It is the knowledge of law which mitigates the grievances of a person. It is also helpful in effective administration of justice.

As per 2011 census, Indian population is 1.21 billion and majority of which lives in villages. They are not even aware of basic laws. Even the urban population is not aware of laws and the procedure. Success of any Statute depends upon its awareness; many times its ignorance becomes the reason for its failure. For the success, peace, development and effective administration of justice in a society, legal literacy is mandatory. For the legal awareness amongst the people in a society, imparting legal education is a must. Legal education in a society is one of the keys for success, prosperity, peace and popularity of a country. It is the foundation of the judicial system in a society. By the knowledge of law in the society, the justice delivery system can develop effectively because law is the science to make people aware about the good and just. Legal literacy is also compulsory for the proper dispensation of justice in the society because it goes to provide justice in the society. The failure of execution of many laws is also due to the lack of awareness about these laws. .

The reality of our existing legal and justice system is, that a large section of the population is handicapped by poverty, illiteracy and ignorance of law coupled with the complexity and obscurity of laws made and declared by the legislature. Due to this reason, a large section of people suffer from injustice both from the state organs as well as from

individuals or group of individuals. They become victims of violation of their rights without any legal remedy. Despite declaration in the Preamble of the Constitution, of securing justice- *Economic Social and Political*, justice is beyond the reach of the large segment of the society. There is an urgent need to spread legal awareness amongst the people particularly the women of our country need to be imparted with knowledge of legislations made by the Parliament for their welfare and security.

The Constitution of India, by 42<sup>nd</sup> amendment 1976, gave a directive to the state under Article 39-A to ensure that the legal system promotes justice on the basis of equal opportunity and shall in particular provide free legal aid by suitable legislations or schemes or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic and other disabilities. The judiciary in *M.H. Hoskot v. State of Maharashtra*<sup>1</sup> and *Hussainara Khatoon v. Home Secretary, State of Bihar*<sup>2</sup> held that Legal Aid and speedy trial are Fundamental Rights under Article 21 of the Indian Constitution. Further in *State of Maharashtra v. Manu Bhal Pragaji Vashi*,<sup>3</sup> the Supreme Court held that the state has a duty to give grant-in-aid to recognised law collages to provide Legal education to future lawyers for promoting legal Aid.

Recognizing the need to impart legal awareness to women and girls, regarding their rights, the National Commission for Women has initiated a Countrywide Legal Awareness Programme for spreading legal awareness legal awareness is the empowerment of individuals regarding issues involving the law. Legal awareness helps to promote consciousness of legal culture, participation in the formation of laws and the rule of law. Legal awareness among women for their rights is an important issue these days. One of the main aims of legal awareness is to familiarize the women of our country with their rights, their obligations and also to provide them with information required for the assertion of such rights so that they may be able to take action and bring about a change in their circumstances.

## **BASIC OBJECTIVES OF THE LEGAL AWARENESS PROGRAMME**

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<sup>1</sup> AIR 1978 SC 1548

<sup>2</sup> AIR 1979 SC 1322

<sup>3</sup> 1995(5) SCC 730

- Impart practical knowledge about the basic legal rights and remedies provided under various women related laws, thereby making them fit to face the challenges in real life situations.
- To sensitize men about rights of women.
- To create awareness in women about the various machineries/organs of the Justice delivery system available for redressal of their problems/grievances.
- The procedure of approaching and utilizing various channels available for the redressal of grievances i.e. the Police, the Executive and the Judiciary.
- The role of Courts in achieving gender equality, most importantly the concept of Public Interest Litigation.
- The role of District Legal Service Authority, Free Legal Aid and Lok Adalats.
- To sensitize Women and Girls about their Rights as provided under the various laws including *The Indian Penal Code, 1860; The Dowry Prohibition Act, 1961; The Prevention of Domestic Violence to Women Act, 2005, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013* etc.

Legal Awareness Programme aims to empower women and girls with the knowledge of their legal rights and duties, ultimately to be able to share power equally, gain full access to the means of development and to inspire a whole generation of women to work together towards achieving gender equality and justice. However it has been noticed in the recent past that Legal awareness programme (LAP) though organized, frequently have failed to achieve the aforesaid objectives.

Keeping this in mind the National Commission for Women (NCW) has decided to lay down certain guidelines through this standardized module to be followed while organizing Legal Awareness Programme.

This module is meant for use by the implementing agencies. While they seek financial assistance from the Commission to generate the Legal Awareness Programme, they must thoroughly familiarize themselves with the module.

### **OBJECTIVES OF THIS MODULE**

- The purpose of the module is basically to describe the syllabus / laws with regard to which the legal awareness programme is required to be organized. *Chapter*

*2,3,4,5,6,7,8 of this Module cover a detailed list of Women related laws, their Salient Features, Remedies available under different laws.*

- However it will be the duty of the LAP Organizing agency to further elaborate upon the subject matter according to the need and requirements of the target group.
- In this criterion, the category of the target groups and the concerned issues/ problems will be the basis of generating Legal Awareness Programmes.
- The target group can be categorizing on the basis of
  - ❖ **Age group:** For example elderly persons, Students Group (School, University), adolescent girls, middle aged women and so on.
  
  - ❖ **Literacy level of the women**  
(due care should be taken keeping in mind the local language/dialect of the Target Group. For example if a LAP is conducted in West Bengal or Maharashtra, it is expected that the Resource person is well versed with the Local language.)
  
  - ❖ **Profession/Occupation of women:** House Wives, Women working in Offices/Hospitals/ Universities, Women working as Laborers, Domestic help, Prostitutes etc.
  
  - ❖ **Place of inhabitanace**  
  
Rural, urban, small town, city, village.
- The Legal Information in each of the above group will be imparted strictly keeping in view the category to which the target group belongs to;

**For Example,**

- ❖ If the LAP workshop is organized in Local Area/ Mohalla, more emphasis will be laid on Domestic Violence Laws, Dowry Laws, Marriage and Divorce laws, Basic Constitutional laws, Health Related laws etc.



- ❖ If the LAP workshop is organized in Working Sector, more emphasis should be given on the Laws like Sexual Harassment at Workplace, Right to Equality, Equal Remuneration Act, Maternity Benefit laws and other fundamental Rights etc.
- ❖ Methodology would vary keeping in mind the target group, for example, if the **group is literate, the method of Power Point, Lecture** can be adopted while **in case of Illiterates it would be more effective if some Videos, Street Play or other Audio/Visual aids** are used by the Organizing agency.
- The Module also provides for procedural guidelines for imparting legal awareness programme by giving detailed information about **free legal aid services, PIL, Rights of Arrested Women, Remedies and procedure before the family court, Mahila Court.** The information regarding the existence and working of NHRC, National Commissions for Women and Crime against Women Cell etc. is also included in the module.
- To prepare standard guidelines the effective organization of Legal awareness programmers will also include:
  - ❖ the manner of organizing the programme (*for details see Chapter 9*)
  - ❖ Sufficient publicity to reach maximum audience possible.
  - ❖ Place of conducting the legal awareness programme i.e.,:
    - ✓ In rural areas- Panchayat Bhawan, Primary Schools, Aanganwadi Kendra.
    - ✓ In urban areas- slum areas, schools, colleges, public and private offices and hospitals.
    - ✓ Evaluation of the impact of such Legal awareness programmes by feedback system (*for details see Chapter 7*)
- Time frame for LAP should be according to the different target groups/ areas varying from one day to two days. (*for details see Chapter 9*)
- Syllabus for each LAP should be made keeping in view the requirement of the target group and issues of local importance. (*for details see Chapter 3,4,*)

- Resource Person could be persons from the District Legal Service Authority, Law Professors, Retired Judges, Senior Advocates or Women activist. (*for details see Chapter 9*)
- For monitoring of the Programme: one person as a nominated/authorized representative of NCW should be present at the time of LAP. A video should also be recorded of the LAP which should be submitted to the NCW.

## CHAPTER-2

### 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 Constitutional Privileges in favour of women 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 administration of the country.

- **Equality before law for women [Article 14]**

Article 14 embodies the general principles of equality before law and equal protection of laws. Article 14 is an epitome of the noble ideals expressed in the preamble of the Constitution.

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**PROBLEM****SOLUTION**

*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.*

*This is an unconstitutional act by the Head of the department. It is the violation of Kanika's Fundamental Right to Equality. In such a situation Kanika can go to the Court and can ask the Court to protect her Fundamental Right under Art 226 (high Court) and under Article 32 (Supreme Court)*

- The State cannot discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them [Article 15 (i)]

Article 15 of Constitution of India ensures that the State shall not discriminate only on the grounds of religion, race, caste, sex or place of birth or any of them within the territory of India.<sup>1</sup> The Article further declares that nothing under the Article shall prevent the State from making special provision for women and children<sup>2</sup>. At the time of Independence there was a lot of discrimination in India against women which gradually abolished after the introduction of Article 15.

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## PROBLEM

## SOLUTION

*Manish belongs to the Scheduled 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.*

*Manish complained about the act of the Clerk to Schedule Caste and Scheduled Tribes Commission. 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.*

- The State can make any special provision in favor of women and children [Article 15 (3)] (*Positive Discrimination*)
- Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State [Article 16].
- 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)]

Equal pay for equal work is necessary and the Constitution of India secures this right under Article 39(d).

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<sup>1</sup> Article 15(2) of *The Constitution of India*, 1950.

<sup>2</sup> Article 15(3) of *The Constitution of India*, 1950.

### Activity

*Under an office rule women were allowed to go home by 4:30 p.m in the evening while the men were allowed at 5:00 p.m. Men of a particular group challenged the law as unconstitutional and violative of Article 14.*

*Discuss the Constitutional validity of the law in the group (G.D)*

- To promote justice, on a basis of equal opportunity and to provide free legal aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities [Article 39 A]
- The State to make provision for securing just and humane conditions of work and for maternity relief [Article 42]

*Sheela gave birth to a child on 1<sup>st</sup> May 2000. Her employer Mahesh gave her leave with full pay from 19<sup>th</sup> March, 2000 to 1<sup>st</sup> 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.*

- The State to promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation [Article 46]
- The State to raise the level of nutrition and the standard of living of its people [Article 47]
- To promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women [Article 51(A) (e)]

Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat to be reserved for women and such seats to be allotted by rotation to different constituencies in a Panchayat [Article 243 D(3)].

- Not less than one- third of the total number of offices of Chairpersons in the Panchayat at each level to be reserved for women [Article 243 D (4)].
- Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality to be reserved for women and such seats to be allotted by rotation to different constituencies in a Municipality [Article 243 T (3)]Reservation of offices of Chairpersons in Municipalities for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a State may by law provide [Article 243 T (4)].
- 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**

### **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 Matritva Sahyog Yojana Conditional Maternity Benefit plan (CMB)**

- Indira Gandhi Matritva Sahyog Yojana (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.
- 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. *Rashtriya Mahila Kosh***

- *Rashtriya Mahila Kosh* (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 Corporations, Urban Local Bodies, reputed Public/Private Trust or Voluntary Organisations.

## **8. Working Woman 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 --3

### 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.

#### 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

- Hindus of any cast or sect or gotra
- Buddhist
- Jains
- Sikhs
- Anyone converted to Hinduism

##### 1.2 A Hindu Marriage Must Be Solemnized According To the Custom of the Hindus

- *Saptpadi* (taking seven steps around the sacred fire) is one of common custom of the Hindus for marriage.
- If two people do not want to get married according to custom, they can get married under the Law *Special Marriage Act*.
- Marriage under the Special Marriage Act is performed in the Court and they are legal and valid Marriage as the Court provides Certificate.

### 1.3 Conditions For A Valid Hindu Marriage

*Meera and Akshay got married on 25<sup>th</sup> June 2010. By 2014 they were issueless. Akshay's mother forced him to get married again but initially he refused. Later out of family's pressure Akshay decided to marry Sonal 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 of 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 or epilepsy;
- 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.

### 1.4 Registration of Marriage

- Section 8 of Hindu Marriage the Act states that the state government may make rules for the registration of Hindu marriages 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 marriages. The Hindu Marriage Register should be open for inspection at all reasonable times and should be admissible as evidence of the statements contained therein.

### ***1.5 NRI marriages: 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 right 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 first grounds for the new age 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 Grounds For Divorce - (Section 13) of the Hindu Marriage Act, 1955**

#### **a) Adultery [Section 13(1) (i)]**

If the Husband cohabits with another woman 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.*

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

**c) 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)(ii)]**

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 gone mad and cannot cured, wife can ask for divorce.

**f) Leprosy [Section 13(1)(iv)]**

If the husband is suffering from Leprosy wife can ask for divorce.

g) **Venereal Disease [Section 13(1)(v)]**

If the husband is suffering from Venereal Disease wife can ask for divorce.

h) **Renunciation [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.

i) **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.

j) **Irretrievable Breakdown of Marriage [Section 13(1A)]**

k) **Wife's Special Ground For Divorce [SECTION 13(2)]**

- Pre-Act Polygamous Marriage [Section 13(2) (i)]
- Rape, Sodomy or Bestiality [Section 13(2) (ii)]
- Non-Resumption of Cohabitation after a Decree/Order of Maintenance [Section 13(2) (iii)]

❖ **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.
- **Divorce by Mutual Consent** is the fastest way or procedure of getting divorce in India. All marriages which have been solemnized before or after the Marriage Laws (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 and can be 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 following Acts which vary according to law applicable to parties:-

### 3. GUARDIANSHIP UNDER THE HINDU LAW

- Guardianship of person of minors
- Natural Guardian
- Rights of Guardian of person (minor).
  - Right to custody,
  - Right to determine the religion of children,
  - Right to education,
  - Right to control movement, and
  - Right to reasonable chastisement.
- 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,
  - ❖ to secure one's performance of one's funeral rites and
  - ❖ to preserve the continuance of one's lineage.
- *The Hindu Adoption and Maintenance Act, 1956* deals with the
- Requirements for a valid adoption

#### 4.1 Who Can Take In Adoption

- Any Hindu man who is of 21 years of age and of sound mind can adopt a Child.
- If he is married, the consent of wife is necessary before Adoption.
- In case in the wife is insane or has renounced the world or is not a Hindu then the Husband can adopt even without her consent.
- A widow, divorcee or unmarried Hindu woman can also adopt a child.

- The adoption is completed by an actual giving and taking and the ceremony called *data homan* (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**

- Child's father can give in adoption only with the mother's consent
- If the father is dead, or has become insane or has renounced the world then the Mother can give in adoption.
- 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
- 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 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 this 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 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 Agency (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

- Maintenance includes all the basic necessities of life, which is required by a person for the sustenance of his or her life.
- maintenance is the name given to the weekly or monthly payments which may be ordered on a decree of divorce, or nullity to be made for the maintenance and support of the wife during the joint lives of the spouses,
- Maintenance for the children is a similar provision for their benefit, which may be made in proceedings for divorce, nullity, judicial separation and restitution of conjugal rights.
- 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 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 her marriage ;

## Section 18 - Maintenance of wife

- **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 under 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.

### 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.
- It is also a fact that the subject of stridhan is by far the most difficult branch of Hindu law.
- 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),
- Gifts of love from father-in-law and mother-in-law (pritidatta) 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* 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 a coparcener in her own right in the same manner as the son; (b) have the same rights in the coparcenary property as she would have had if she had been a son; (c) be subject to the same liabilities in respect of the

said coparcenary 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 coparcenary property. She would have to go to civil court of competent jurisdiction seeking partition.

## 7. MUSLIM LAW ON MARRIAGE

- All the Muslims are married under the Islamic law i.e. Shariah
- There are various schools of Islamic law. Majority of Sunni Muslims in India are governed by the Hanafi School and Shias by the Ithna Asharia School.
- The essentials 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.
  - ❖ 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 this can also be done 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 obtained 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.

*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. She went to the Court and filed divorce petition*

*In such a case Farha will get the divorce because her marriage with 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.

### Kinds of Marriage

- **Valid Marriage:** when a marriage is performed between the parties with all essential ceremonies 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.
- **Irregular Marriage:** 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 idolator, the marriage is irregular but on his wife's conversion to Islam, the marriage becomes valid.

*Farida's husband died on 15<sup>th</sup> Dec-2011. She married to Farhan on 24<sup>th</sup> 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. Weather is was a valid marriage? Discuss in the Group (G.D).*

### Marriage With A Non Muslim

- A Sunni Muslim male can marry a Kitabia e.g., Christian or a Jew female.
- A Muslim female cannot marry a Kitabia except by way of Marriage in Muta form (temporary marriage).
- A Sunni and a Shia Muslim female cannot marry a non- Muslim male.
- Polygamy
  - ❖ A Muslim male is allowed to marry four wives at a time in certain situations.
- Obligations of the Husband and Wife
- Composites of Marriage in Islam
  - ❖ *Mahr / Mehr*
  - ❖ Portion of the Mahr can be paid at the time of marriage
  - ❖ Witnesses
    - Restraints in Muslim marriage
    - Circumstances under which marriage is not permitted
  - ❖ Absolute Prohibitions / Incapacity:
    - i. Consanguinity (*qurabat*) is relationship by Blood.
    - ii. Affinity (*mushaarat*) refers to relation by marriage.
    - iii. Fosterage

❖ 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

Marriage is not a Permanent institution among Muslims. There may be certain situations like the ill treatment, cruelty, insanity, venereal disease etc 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

- **Extra judicial divorce:** a. By husband
  - i. Talaq, it is of two types:
    - Talaq-ul-Sunnat and
    - Talaq-ul-biddatTalak-ul-Sunnat is further divided into: 1) Talaq-e-Ahsan and, 2) Talaq-e-Hasan.  
Talak-ul-biddat is further divided into 1) Triple Divorce, and 2) One Irrevocable Talaq
  - ii. Ila, and
  - iii. Zihar
- **A Muslim woman can divorce her husband under the Dissolution of Muslim Marriage Act, 1939. A Muslim woman can get a divorce in the following ways:**
  - ❖ Talaq-i-tafweez
  - Ikhitar (choice) giving her the authority to talaq herself,
  - Ambriyad leaving the matter in her own hand, and
  - Mashiat(pleasure) giving her the option to do what she likes.

- ❖ Lian
- ❖ Faskh
- By mutual agreement - i) Khula, andii) Mubarat

## 8.2 Grounds for Divorce

### 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 Bangalore for a job. By the time Ameena was living with her in-laws. For six months got phone calls and e-mail from him. After six months mails and phone calls stopped coming from him. She got worried and her father and brother to go to Bangalore and search him. They went to Bangalore 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.

*Rihana's husband Azeem got married to Ambreen. He started living with his second wife and neglected Rihana completely. Rihana asked him many times for the maintenance but he did not give her any money. Finally she claimed for the prompt dower, he refused to give it to her. Rihana stayed in this miserable life for around 3 years but Azeem did not give maintenance*

**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 obligations 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 15<sup>th</sup> 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 gone 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 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 his 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 in a communicable form 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

**8.3 JUDICIAL DIVORCE**

- The right of judicial divorce under Muslim law is exclusively meant for the wife under the *Dissolution of Muslim Marriages Act, 1939*.

*Sarwat was 13 years old when she got married to Rashid who was 21 years old. Rashid was living in Saudi at the time of marriage and the Nikah was performed on 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 the divorce on this ground.*



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 a 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 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 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.
5. In case of mutual consent the spouses need to prove that they have been staying apart for more than a year
6. Once the proceedings are over the court gives a period of six months to reconsider the decision to divorce
7. In case the petitioners don't withdraw the petition the court grants the decree to divorce

#### **9. ADOPTION UNDER MUSLIM LAW**

- Islam does not recognize adoption.
- Acknowledgement of paternity under Muslim Law is the nearest approach to adoption.
- However an adoption can take place from an orphanage 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.

#### **10. MAINTENANCE UNDER MUSLIM LAW**

10.1 **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) Maintenance for the children till they are two years of age.
- c) All gifts given to her by anyone at the time of marriage.
- d) Maintenance during the period of Iddat.
- e) There are three causes for which it is incumbent on one person to maintain another:

❖ Marriage,

❖ Relationship, and

❖ Property

- f) Claim of Maintenance during Subsistence of Marriage

❖ Marriage must be valid,

❖ Wife has attained puberty, and

❖ Wife must be faithful and obedient to husband.

- g) Claim of Maintenance out of Pre-nuptial Agreement

• General versus (Muslim) Personal Law: conflict of law

h) *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

i) **Maintenance of divorced Woman**

A divorced woman is to be maintained by her husband during the period of iddat.

j) **How much maintenance is a woman entitled to, during Iddat?**

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

k) **Payment of maintenance to a divorced woman**

- 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.

- 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 filling 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?

Under Muslim law the husband or wife has to go to the Court by way of a petition under the Guardianship and Wards Act, to settle the question of custody of the children.

**The Custody of children is decided by the Courts**

- Under some schools of Muslim law the mother is entitled to custody of the children until they are 7 years old. Under others, she is entitled to custody of the children upto the time they attain puberty.
- In all cases, the Court sees the welfare of the child i.e., who can look after the material and emotional needs of the child better.
- Court can refuse to give the 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 in 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 gold 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 Law in India as follows:

- i. Hanafi
- ii. Shia

The main point of differences between the two is that Hanafi rules only count those relatives as heirs whose relation to the deceased person is through a male- son's daughter, 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.
- ❖ The newly created heirs inherit the specified shares along with customary heirs, and not to their exclusion.

**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. Heena can go to the court and can claim for her dower.*

- ❖ It is the sum of money or some 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 to be given to the wife immediately on marriage.  
 Deferred Mahr is to be given to the wife 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 will bequeath  $\frac{1}{3}^{\text{rd}}$  of total property but in case a woman has no blood relations and her husband would be the only heir, then she will get  $\frac{2}{3}^{\text{rd}}$  of the property.

**d) Gift or Hiba**

*Firdaus got some bangles and a necklace on her marriage as a gift from her mother. At the time of her son's marriage she gifted them to her daughter-in-law. Firdaus can gift it to anyone she wants.*

- When one person gives certain property or thing or money to another person 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.
- For a valid gift there shall be a declaration to make the gift, acceptance of the gift.
- The mother cannot accept the gift on her minor child's behalf. The gift can only be accepted by the father on his 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 and protected by *THE INDIAN CHRISTIAN MARRIAGE ACT, 1872*
- 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 descendents
- Man and women of different religion cannot get married under this law.
- Under Christian Law marriage may be solemnized by a person appointed by person appointed by the church to solemnize the Marriage according to the customs of Christians.
- A marriage Registrar is appointed by the State government.
- A Notice in writing is to be 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 party has to take an oath that there is no lawful objection to the marriage.
- **Conditions for a valid marriage**
  - ❖ Neither the husband or the wife have a living spouse at the time of marriage
  - ❖ The age of girl should be at least 18 years of age upto (21 years father's consent is necessary)
  - ❖ The age of boy should be at least 21 years of age
  - ❖ Both must be sound mind at the time of marriage.
- Indian Divorce (Amendment) Act, 2001

- **Grounds of divorce after the amendment**

- ❖ Conversion to another religion
- ❖ Adultery
- ❖ Cruelty
- ❖ Desertion for more than seven years
- ❖ Insanity for more than two years
- ❖ Incurable leprosy for more than two years
- ❖ Willful refusal to consummate the marriage
- ❖ Not being heard of for 7 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 of the act deals with when husband may petition for dissolution of marriage
- 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.

- **Procedure for filing the 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 recognize divorce. The Divorce Act also does not contain any provision for divorce by mutual consent. 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 each individual case. After filing a petition of divorce under the Indian 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. The
- Guardian 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 on 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.

## 16. MAINTENANCE

- 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 CR.PC a Christian woman can also claim maintenance from her husband as explained earlier too.

## 17. CHRISTIAN LAW ON RIGHT TO PROPERTY

- As far as Christian women are concerned the community and the Church with its strong patriarchal tradition is compelled 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 1/3<sup>rd</sup> 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.

## 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 Parsi Dastur 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 witnesses.
- The Act Also Covers Divorce Between Parsi Couples.

### 18.1 Grounds For Divorce.

- That the marriage has not been consummated within one year after its solemnization
- Insanity
- That the defendant was at the time of marriage pregnant by some person other than the plaintiff:
- Adultery
- Cruelty
- 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 submit herself to prostitution:
- Imprisonment for seven years or more
- Desertion
- Separation
- Conversion to another religion.
- **Nullity of Marriage (Section 11) and Voidability of Marriage (Section 12)**
- Any marriage can be voidable and may 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.

A wife can also present a petition for the dissolution of marriage on the ground of if the

- ❖ husband marries again after the commencement of his first marriage or
- if the husband has been guilty of rape, sodomy, or bestiality.

## 18.2 Judicial Separation

- The courts of British India by their pronouncements established that a suit for judicial separation is maintainable on certain grounds.
- As a consequence, the *Indian Divorce Act, 1869* was passed and was made applicable to all communities in the country.
- The grounds for both the husband and the wife are the same as the grounds for divorce contained in section 13(1) of the Act. They are
  - ❖ Adultery
  - ❖ Cruelty
  - ❖ Desertion
  - ❖ Conversion
  - ❖ Unsound Mind
  - ❖ Venereal Disease
  - ❖ Incurable Leprosy
  - ❖ Renunciation of the world
  - ❖ Presumption of death and
  - ❖ Failure to comply with a decree of restitution of conjugal rights, etc.
- Apart from the aforementioned grounds, a Hindu wife may invoke any of the following grounds available exclusively to her, namely,
  - ❖ remarriage by husband,
  - ❖ husband being found guilty of rape,
  - ❖ sodomy or bestiality,
  - ❖ non-resumption of co-habitation in spite of a decree for maintenance of wife and option of puberty

### 18.2 Procedure for filing divorce Petition-

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 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.
5. In case of mutual consent the spouses need to prove that they have been staying apart for more than a year
6. Once the proceedings are over the court gives a period of six months to reconsider the decision to divorce
7. In case the petitioners don't withdraw the petition the court grants the decree 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 the 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 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 court and is a legal and valid marriage.
- Any two persons who want 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)
- **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 a marriage is performed under custom or religion it can be registered under The Special Marriage Act,1954
- Once registered it will be considered to be performed according to The Special Marriage Act,1954
- **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.
- **Grounds of Divorce under *The Special Marriage Act,1954***
- ❖ Adultery
- ❖ Cruelty
- ❖ Desertion for more than seven years
- ❖ Insanity for more than two years
- ❖ leprosy
- ❖ Not being heard of for 7 years
- ❖ imprisonment for seven years or more
- ❖ Venereal disease in communicable form
- Wife's additional grounds if the husband is guilty of
- ❖ Rape
- ❖ Sodomy
- ❖ Bestiality
- Divorce by Mutual consent
- Procedure-
  - ❖ Under sec. 28 of the Act, which primarily deals with the provisions relating to obtaining a divorce by mutual consent in respect of a 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 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. The petition may be presented only after one year from the date of entering the certificate of marriage in the Marriage Certificate Book. However, relaxation may be provided in cases where exceptional hardship is suffered by the petitioner or in cases of exceptional depravity on the part of the respondent.

4. The petition seeking divorce by mutual consent could be presented to a District Court, within whose jurisdiction, either,

- the marriage was solemnized,
- the respondent resides, or in case the wife is the 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.

5. 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.

6. Before passing a decree of divorce, the District Court considers the following, among other aspects:

- that the petition has not been withdrawn yet,
- that a marriage has 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- 4

### CRIMINAL LAW AND WOMEN

- **The Crimes Identified Under the Indian Penal Code (IPC)**
  - ❖ Obscenity (Sections 292, 293&294)
  - ❖ Dowry Death (Section 304-B)
  - ❖ Acid Attack (Sections 326-A& 326-B)
  - ❖ Outraging the modesty of a woman (Sections 354, 354-A 354-B, 354-C, 354-D&509)
  - ❖ Kidnapping & Abduction for different purposes ( Sections 363-373)
  - ❖ Rape and sexual assault (Section 376)
  - ❖ Cruelty (Section 498-A)
  - ❖ Domestic Violence.

#### I. OBSCENITY AND INDECENT REPRESENTATION

- ❖ **Section 292(IPC) Sale, etc., of obscene books, etc.– (1)** 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.  
(2)Whoever sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation or advertises or makes known by any means or offers or attempts to do any act which is an offence under this section, shall be punished on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees.
- ❖ **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.



## 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.

The offences under these aforesaid sections shall be cognizable.

## II. DOWRY DEATH

*Megha got married to Vijay on 5<sup>th</sup> of March. It was an arranged marriage. On 20<sup>th</sup> 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 matter, 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 which is*

- “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*

a) An offence called 'dowry death' has been created by introducing section 304B in the Indian Penal Code.

- ❖ death of a woman 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 and
- ❖ in connection with any demand for dowry.

b) Punishment is of at least 7 years which may even extend to life imprisonment.

➤ **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 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 Courts Act, 1984:** All dowry-related crimes except dowry deaths and burning of the bride will be tried by Family Courts.
  
- ❖ Section- 46 of the Cr.P.C lays down the period of limitation for filing the complaint;
  - 6 months for offences punishable with fine only.
  - 1 year for offences punishable with imprisonment for a term not exceeding one year.
  - 3 years for offences punishable with imprisonment for more than 1 year and not exceeding 3 years.

### III. ACID ATTACKS

- a) **Section 326.**of the Indian Penal Code was amended on the 2nd of 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 for the treatment of the victim. Further, any fine imposed under this section shall be paid to the victim.
- c) **Section326-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 or 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 shall 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.**"

e) **Free Medical Treatment:**

**357-C** has been newly inserted **whereby all hospitals, public or private are required to provide first aid or medical treatment free of cost.** The section reads as: "All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under sections 326-A, 376, 376-A, 376-B, 376-C, 376-D or section 376-E of the Indian Penal Code and shall immediately inform the police of such incident."

- **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.

**IV. SEXUAL HARASSMENT AND OUTRAGING THE MODESTY OF A WOMAN**

- a) Modesty in section 354, IPC is an attribute associated with women owing to their sex. The act of pulling a woman, removing her saree coupled with a request for sexual intercourse, is considered to be an act of outraging her modesty and knowledge that modesty is likely to be outraged is sufficient to constitute an offence without any deliberate intention having such outrage alone for its object.
- b) **Section 354: Assaulting a woman or using criminal force on her with the intention of outraging her modesty**- It implies that the assault must be on a woman 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 even extend to five years.
- c) **Section 354A: Sexual Harassment-**
- (1) The following acts or behavior shall constitute the offence of sexual harassment—
- a) 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 unwelcome physical, verbal or non-verbal conduct of sexual nature.

(2) Any person who commits the offence specified in clause (i) or clause (ii) of sub-Section (1) shall be punished with rigorous imprisonment which may extend to five years, or with fine, or with both.

(3) Any person who commits the offence specified 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 with both.

d) **Section 354-B: Assault or use of criminal force on women with intent to disrobe-** Whoever assaults or uses criminal force on any woman or abets such act with the intention of disrobing or compelling her to be naked in any public place, 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 with fine.

e) **Section 354-C: Voyeurism-** Whoever 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 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 purposes 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, buttocks or breasts are exposed or covered only in underwear; or the victim is using a

lavatory; or the person 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 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 354-D: Stalking-** (1) Whoever follows a person and contacts, or attempts to contact such person to foster personal interaction repeatedly, despite a clear indication of disinterest by such person, or whoever monitors the use by a person of the internet, e-mail or any other form of electronic communication, 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:

Provided that the course of conduct will not amount to stalking if the person who pursued it shows—

- i. that it was pursued for the purpose of preventing or detecting crime and the person accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the state; or
- ii. that it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or
- iii. that in the particular circumstances the pursuit of the course of conduct was reasonable.

(2) Whoever commits the offence of stalking shall be punished 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.

- f) **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.

- Once the case is filed in the Court, the concerned woman has to prove the following:
  - ❖ Under Section 354 of IPC: a) that the accused had assaulted the woman or has used criminal force on her, b) that he had done so with the intention of outraging her modesty or he knew that by the act the modesty will be outraged thereby.
  - ❖ Under Section 509 of IPC: a) that the accused has uttered any word or made any sound or gesture or exhibited any object to the woman with the intention that she sees or hears it or it intrudes her privacy, b) that he has done so with the intention of insulting her.
  - ❖ The case will be decided as per the procedure laid down by the Criminal Procedure Code. Appeal lies to the next higher court.
  - ❖ The case may be compounded with the permission of the court or the accused may resort to plea bargaining for sentence reduction or any other concession.

#### V. KIDNAPPING AND ABDUCTION

- a) Section 360 of IPC defines kidnapping and section 362 defines the offence of abduction. Punishment for kidnapping shall be imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.
- b) **Section 366: Kidnapping, Abducting or inducing woman to compel her marriage, etc.-**
  - ❖ compelled to marry any person against her will,
  - ❖ forced or seduced to illicit intercourse and
  - ❖ shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.
- c) **Section 366-A: 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.
- d) **Section 366-B: Importation of girl from foreign country-**



- ❖ importation of a girl under the age of twenty-one years from any country outside India,
- ❖ forced or seduced to illicit intercourse with another person and
- ❖ punishment shall be imprisonment which may extend to ten years, and shall also be liable to fine.

**e) Section 372: selling minor for purpose of prostitution, etc.-**

- ❖ selling, lets to hire, or otherwise disposes of any person under the age of eighteen years,
- ❖ for the purpose of prostitution or illicit intercourse or for any unlawful and immoral purpose and
- ❖ punishment shall be imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**f) Section 373: buying minor for the purpose of prostitution, etc.-**

- ❖ buys, hires or otherwise obtains possession of any [person under the age of eighteen year,
- ❖ for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose and
- ❖ punishment for this offence shall be imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**g) The differences between the offences of Kidnapping and Abduction are as follows -**

- ❖ The offence of abduction can be committed with respect to a person of any age. Likewise, the offence of kidnapping from India can also be committed with respect to a person of any age.
- ❖ On the other hand kidnapping from lawful guardianship can only be committed with respect to a minor under 16 years of age , if male , and under 18 years of age

, if a female . But the offence of kidnapping from lawful guardianship can be committed with respect to a person of unsound mind of any age.

- ❖ In case of abduction, the offender must use compulsion, force, or deceitful means. But in kidnapping, the minor is simply taken away or enticed away.
- ❖ In case of abduction or kidnapping from India, if the victim is capable by law of giving consent, the offence is not committed. But in case of kidnapping from lawful guardianship giving consent by the victim is immaterial or in-operative.
- ❖ In case of kidnapping from lawful guardianship, the person kidnapped must be removed out of the custody of a lawful guardian. A person without a guardian cannot be kidnapped. But abduction has reference exclusively to the person abducted.
- ❖ Abduction is an auxiliary act, not punishable by itself, but made criminal only when it is committed with one or other intents mentioned in section 364 onwards of IPC. But kidnapping is a substantive offence, either from India or from lawful guardianship.
- ❖ Kidnapping from lawful guardianship cannot be abetted, but if there is a conspiracy, conviction for abetment can be sustained. But abduction or kidnapping from India can be abetted.
- ❖ In case of kidnapping, intention of the offender is wholly irrelevant. But in case of abduction intention of the offender is an important factor.

- **PROCEDURE FOR REMEDY-** A person has to register an FIR in the nearest police station if he suspects any kidnapping or abduction of a person. The rest of the procedure shall be carried out in accordance with law.

## VI. 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 generally 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 (why were you out late in the Evening, why were you laughing so loudly in front of everybody etc)

- 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 Rape and Sexual assault especially after Delhi gang rape Case.
- Even a Husband can be held guilty of rape of her wife if she is less than fifteen years old of age.
- If a man has sex with a woman by pretending to be her husband, it is also rape.
- Section 375, 376, 376 A-D of Indian Penal Code deal with RAPE.
- Definition of Rape:
  - *The Organizing Agency shall put emphasis on the definition provided under Sec.375, IPC with reference to the new amended definition (2013).*

**Punishment for Rape is provided under Section 376.**

➤ **PROCEDURE FOR REMEDY-**

- ❖ The first thing that the victim has to do is to file an FIR in the nearest police station. Complainant of sexual assault has a right to be represented by a lawyer from the beginning of the case, i.e. from lodging of an F.I.R. at police station till the final outcome of the case.
- ❖ If the officer in-charge of a 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 victim who has come to the hospital without police referral.
- ❖ The Indian Evidence (Amendment) Act of 2002 Deleted section 155(4) IEA and amended section 146 *stating that it is not permissible to put questions in cross examination of the prosecutrix about her general moral character.*
- ❖ The Criminal Procedure Code (Amendment) Act, 2005 introduced section 164(A), CrPC for *medical examination of victims of rape*; section 53(A), CrPC for medical examination of accused of rape and section 176(1A)(a)(b), CrPC for investigation by judicial magistrates of custodial rape and deaths.

The Code of Criminal Procedure (Amendment) Act, 2008 - Inserted a section 357(A) CrPC providing for *Victim Compensation Scheme*.

## VII. ADULTERY AND BIGAMY-

Adultery and bigamy are also very common these days in our society. These are explained as under-

- a) **Section 493: Cohabitation caused by a man deceitfully inducing a belief of lawful marriage** - Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.
- b) **Section 494: Bigamy** (Marrying again during lifetime of husband or wife) - Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.
  - **Exception**-This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.
- c) **Section 497: Adultery**- Sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man.
  - **PROCEDURE FOR REMEDY**- A person has to file a complaint in the nearest police station if he suspects any kidnapping or abduction of a person. The rest of the procedure shall be carried out in accordance with law.

## VIII. CRUELTY

The object behind penalizing this act was to prevent torture to a woman by her husband or her relatives in connection with 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 worker 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 by the Law (Amendment) Act, 1983 (Act 46 of 1983) to combat the menace of dowry death. This section was added with a view to punishing a husband and his relatives to satisfy unlawful demands of dowry.

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

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

- 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.
- **PROCEDURE FOR REMEDY-** A person or her relatives 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.

## IX. DOMESTIC VIOLENCE

*(Brief information will be provided by the organizing team on the introductory part of this Act, such as definition of domestic violence, kinds of abuse, domestic relationship, and beneficiaries under the Act.)*

- a) **Act was passed in 2005 and was implemented from October, 2006.**
- b) The Act broadens the definition of *domestic violence*. Section 3 of the Act covers the following kinds of abuses;
- ❖ physical abuse,
  - ❖ sexual abuse,
  - ❖ verbal and emotional abuse and
  - ❖ economic abuse.
- c) The Act broadens the definition of *domestic relationships* by including mothers, wives, sister in-laws, daughters, daughter in-laws. Beneficiaries under the Act are:
- ❖ Women,
  - ❖ Children and
  - ❖ Respondent.
- d) PWDVA recognizes a life free of violence and fear and makes the state responsible for extending protection against domestic violence to women.
- e) PWDVA seeks to protect women from all forms of domestic violence and check harassment and exploitation by family members or relatives.
- f) The first and immediate consequence, if a woman files complaints against DV is dispossession- throwing the woman out of the house and taking custody of children.
- g) PWDVA empowers a woman to claim immediate maintenance and compensation.
- h) **Rights Granted to Women under the domestic violence Act:**
- Right to reside in a shared household
  - Right to obtain assistance and protection
  - 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

*(The Organization imparting legal awareness will emphasize more on the following points.)*

**(i) 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 arrangements 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.

➤ **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 Officer or Service Provider or a Magistrate.
- The Magistrate shall give a notice of the date of hearing to the Protection Officer 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.

#### X. TRAFFICKING OF WOMAN

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

#### THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956

- a) Trafficking of the women generally starts on the promise of job or marriage by which recruiters entice the victims to leave home.
- b) Further, the village girls and their families are often deceived by the agents/ traffickers. These agents/traffickers offer marriages and other comforts of life and very good employment in the city but they instead abduct/kidnap the girls and sell them to the brothels.
- c) Any person who sells, procures or induces a person for the purpose of prostitution is punished by imprisonment which may extend to 10 years and fine.
- d) Impact of Trafficking:
  - ❖ Physical and psychological health problems which include lack of access to birth control, constant rapes, physical abuse and other health issues.
  - ❖ Women in forced prostitution suffer increased risk of sexually transmitted infections such as HIV/AIDS.



- **PROCEDURE FOR REMEDY**- A person or her relatives 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

## **XI. CYBER CRIMES AGAINST WOMEN**

- a) **Types of Cyber crimes as mentioned below are to be discussed by the Organizing Agency:**

- ❖ Harassment through e-mails,
- ❖ Cyber stalking,
- ❖ Cyber pornography,
- ❖ Email spoofing,
- ❖ Morphing and
- ❖ Cyber defamation.

- b) Chapter XI of the IT Act deals with the offences such as tampering with computer source documents-

- ❖ Section 65 deals with hacking of computer system,
- ❖ Section 66 deals with publishing of information which is obscene in electronic form,
- ❖ Section 67 deals with Access to protected system and
- ❖ Section 70 deals with Breach of confidentiality and privacy.

- **How to File a Complaint:**

The complaint regarding commission of a cyber-crime can be made to the in-charge of the cyber-crime cells which are present almost in every city. 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
  - ❖ A soft copy as well as a 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 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.

## CHAPTER -5

### LAWS RELATED TO WORKING WOMEN

*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: Yes sir, I have made all my documents ready*

*Boss: you will have to come with me tonight for the dinner*

*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*

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

- Sexual Harassment at workplace broadly includes:
  - ❖ physical contact and advances;
  - ❖ a demand or request for sexual favours; or
  - ❖ making sexually colored remarks; or
  - ❖ showing pornography; or
  - ❖ any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

## **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 at least -
  - ❖ 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 ten employees it is difficult to set up ICC. In that case complaints may be filed at local complaints committees (LCC) 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 for 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 fewer than 10 employees) who is then obligated 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 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**

### **1.3 THE MATERNITY BENEFIT ACT, 1961**

- Motherhood is a very special experience in a woman’s life. A woman needs to be able to give 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 provision for securing just and humans 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 sixtieth session of the 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 provision for extended or extra leave during the child's infancy,
  - ❖ higher rates of maternity benefits,
  - ❖ more effective protection against dismissal during pregnancy and after confinement,
  - ❖ greater encouragement of breast feeding and wider provision of nursing breaks,
  - ❖ more adequate attention to the safety and health of women 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 women government employees can avail these benefits, which have less than two surviving children.
- ❖ If a woman wants she can avail few days leave 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 Sraksha Yojna* was introduced.
- **COMPLAINT UNDER WHICH SECTION?**

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 the 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 maybe 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 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 of not less than 3 months to one year and with fine for not less than Rs. 2000 to Rs. 5000.
- There is provision of 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 appellate 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 voluntary social organization that may help fight her case.

#### **1.4 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 labor 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 operated by people so as to avoid unnecessary accidents.
  - ❖ Regular visits of industrial sites by industrial inspectors to oversee health and safety regulations.
  - ❖ Exclusive provisions have been made for employment of women in factories.
- Provisions favoring women:

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

- **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 any factory or group or class of factories, but no woman can be permitted to work during 10 PM to 5 AM.
- ❖ Shift change can be 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 6:00 am.
  - ❖ 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 works unwary as well as negligent and to secure for them, employment in conditions conducive to their health and safety from accidents.

### **1.5 THE EQUAL REMUNERATION ACT, 1976**

*Meena is working on a construction site. Sanjay Kumar is the Contractor at the site. He refused to pay meena equal amount paid to the other male laborers because she is a lady and told her that her working capacity is less than the male laborers. 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 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 favorable 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 ground 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 for the same work or work of a similar nature, or in recruitment such as promotions, training or transfer, make any discrimination against women except where the employment of 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 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 Court 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 thirty days but not thereafter is allowed.
- It is the duty of employers to maintain registers
- **Powers of the 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 the provisions of this Act are being, or have been, complied with;
- ❖ To examine the employer, his agent 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.

### **1.6 MINIMUM WAGES ACT, 1948**

*Shanti is 27 years old young lady. There was a beedi making factory nearby her home. Shanti in need of finances decided to work in the factory as a labor. 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 some special benefits.
- Minimum wages act are to 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 than the labor can complaint to the labor inspector.
  
  - ❖ The employer cannot make the labor work for more than 9 hours which includes the time for rest also.
  
  - ❖ If the labor works for more than 9 hours he/she will get the extra money which is doubled the wages.
  
  - ❖ Every week there should be one day paid rest.
  
  - ❖ Claims for payment of minimum rates of wages or remuneration for days of rest or of wages at overtime rate or as per the rules and orders made by the appropriate government under this Act.
  
  - ❖ The presiding officers of the Labor court and Deputy Labor 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 lies against the decision of the authorities under the Act.

## CHAPTER 6

### 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 therewith or incidental thereto.

- Forcing a woman to terminate pregnancy is illegal.
- Abortion is legal when it is done according to the law.
- Abortion carried out 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 involve 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 were 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 eighteen years, is a lunatic, shall be terminated except for the case in which her guardian gives his/her consent in writing.

## FEMALE INFANTICIDE AND FOETICIDE

*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 child is destroyed, a woman of future is crucified. To put it differently, the 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 constricted thinking with regard to a girl child eventually leads to 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.
- Ultrasound and scanning, being a non-invasive technique, quickly gained popularity and are now available in even 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 on a woman or a man or on 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 or 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 7

### WOMEN AND CUSTOMS OF THE SOCIETY

*(The Organizing Agency will appraise the target group about the evil practices of the particular region apart from the below mentioned evils of the society.)*

#### CHILD MARRIAGE

- A marriage where either the woman is below the age of 18 years or the man is below the age of 21 is considered to be child marriage under Indian Law.
- Child marriages are prevalent in India. Jharkhand is the state with highest child marriage rates in India (14.1%). Kerala is the only state where child marriage rates have increased in recent years, particularly in its Muslim community [6][7]. As per the 2009 census report, rates of child marriages in rural areas are three times higher than the child marriage in urban India. [6]
- Several states of India have introduced incentives to delay marriages. For example, the state of Haryana introduced the so-called “*Apni Beti, Apna Dhan*” program in 1994. It is a conditional cash transfer programme dedicated to delaying young marriages by providing a government paid bond in her name, payable to her parents, in the amount of Rs.25,000/ after her 18<sup>th</sup> birthday if she is not married.

#### THE PROHIBITION OF CHILD MARRIAGE ACT, 2006

- Prohibition of Child Marriage Act (PCMA), 2006, is the statute which penalizes child marriages.
- This Act has kept the same ages of adult males and females but has made some other significant changes to further protect the children.

- Boys and girls forced into child marriage as minors have the option of voiding their marriage till two years after they reach their adulthood, and in certain circumstances, marriages of minors can be null and void before reaching adulthood.
- All valuables, money, and gifts must be returned if the marriage is nullified, and the girl must be provided with a place of residency until she marries or becomes an adult.
- Children born from child marriages are considered legitimate, and the courts are expected to give parental custody with the children's best interests in mind.
- Any male above 18 years of age, who enters into a marriage with a minor or anyone who directs or conducts a child marriage ceremony can be punished with imprisonment which may extend to two years or a fine.

### SATI

*Gauri was only 19 years old when her husband who was 54 years old died due to illness. At the time of her husband's death she was having two small children Munni (3 years old) and Shankar (5 years old) respectively. Gauri's mother-in-law dressed her as a bride and asked her to jump in the fire to die with her husband. On her refusal her father-in-law threw her in the fire and burned her to death. It was an illegal activity where the live women were forcefully burnt along with the dead husband.*

*This custom was first prohibited by the British by passing the Sati Regulation Act, 1829.*

- **Sati** refers to a funeral ritual within some of the Asian communities in which a recently widowed woman commits suicide on the husband's funeral pyre.
- The practice was outlawed by the British Raj in 1829 *by Sati Regulation Act, XVII of 1829* in their territories in India, followed up by laws in the same directions by the authorities in the princely states of India in the ensuing decades, with a general ban for the whole of India



- *Sati (Prevention) Act, 1987* is law enacted by Government of Rajasthan in 1987. It became an Act of the Parliament of India with the enactment of *The Commission of Sati (Prevention) Act, 1987* in 1988.
- The Act seeks to prevent the evil practice of Sati and also to prohibit glorification of this
- action through the observance of any ceremony, the participation in any procession, the creation of a financial trust, the construction of a temple, or any actions to commemorate or honor the memory of a widow who committed sati. CHILD LABOUR

*Rani is 10 years old and her brother is 11 years old. Ramesh (father) cannot work anymore. He lost one of his hands in an accident four months back. His wife is all the time busy in looking after him and has to see all the domestic tasks and so she cannot go out to work. His children Rani and Mohan were only nine and eleven years old respectively and were studying 3<sup>rd</sup> and 5<sup>th</sup> standards in a government school at the time of his accident. Due to his illness he stopped sending his children to the school and asked them to earn money to earn a living. The children left their studies due to family pressure and started working. Mohan is working in a glass making factory and Rani is working as a maid.*

*In the above situation is Child labour justifiable? Discuss in the Group. (G.D)*

- Child labour is the practice of having children engaged in economic activity, on part or full-time basis.
- The practice deprives children of their childhood, and is harmful for their physical and mental development.
- Poverty, lack of good schools and growth of informal economy are considered as the important causes of child labour in India.
- Article 24 of India's constitution prohibits child labour.

- According to Child Labour (Prohibition and Abolition) Act, 1986, a child below 14 years cannot be employed in any of the following occupations:
  - ❖ Transport services,
  - ❖ At construction sites,
  - ❖ Factories where explosives or toxic and inflammable substances, etc. are handled.
- Additionally, laws like the Indian Penal Code, the Juvenile Justice (care and protection) of Children Act, 2000 have also been enacted to prevent exploitation of children.
- Whenever a child is employed in any of the banned process or occupations the employer can be punished with imprisonment ranging from three months to one year. The imprisonment may even extend to 3 years depending on the circumstances of the case. The employer can also be fined for Rs. 10,000/- Rs.20, 000/.
- Children cannot be made to work more than six hours and in between there should be a rest for at least one hour.
- A child is not permitted to work between 7:00 pm to 8:00 am.
- Every Child is entitled to one day paid holiday in a week.

### **PROSTITUTION**

- Prostitution is providing sexual services, such as oral sex or sexual intercourse, for money.
- Prostitution word itself speaks about the plight of women.
- Prostitution is a worldwide problem and does not exist only in India. For instance, prostitution was a part of daily life in ancient Greece.
- Prostitution is more prevalent in big cities and ports, where a significant proportion of the population is engaged in the top levels of economic activities.

- India is a home today to Asia's largest red-light district- Mumbai's infamous Kamathipura, which originated as a massive brothel for British occupiers and later shifted to a local clientele after the Indian independence movement.
- Causes of prostitution:
  - ❖ ill treatment by parents;
  - ❖ bad company;
  - ❖ social customs;
  - ❖ inability to arrange a marriage ceremony;
  - ❖ lack of sex education;
  - ❖ prior incest and rape;
  - ❖ early marriage and desertion;
  - ❖ lack of recreational facilities, ignorance, and acceptance of prostitution;
  - ❖ economic causes like poverty and economic distress and
  - ❖ psychological causes including desire for physical pleasure, greed, and dejection.

## CHAPTER 8

### 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 Contractor 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 claimed for the compensation in the court, for which she need not to*

- 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 9<sup>th</sup> 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 State Legal Services Authority and in every High Court a 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 Lok Adalats in States.
- For widening the network of Lok Adalats, NALSA also extended its ambit to governmental departments, petitions pending before the Women's Commission, various Tribunals and Labour Courts and setting up special Lok Adalats in the Family Courts.
- 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)**

- The NALSA issues guidelines for the State Legal Service Authorities to implement the Legal Aid Programmes,
- To provide free legal services to the eligible person,
- To organize Lok Adalats for amicable settlement of disputes,
- Following persons have been identified for being eligible to avail the free Legal Aid Services:
  - ❖ Women and children;
  - ❖ SC/STs;
  - ❖ Industrial Workmen;
  - ❖ Victims of massive disaster/violence and natural calamities;
  - ❖ disabled persons;

- ❖ persons in custody;
- ❖ person whose annual income does not exceed Rs. 50,000/;
- ❖ victims of human trafficking, etc.

### **THE FREE LEGAL AID SERVICES INCLUDE**

- Providing of an advocate for legal proceedings,
- Payment of court fees/process fee or all other charges payable incurred in connection to legal proceedings,
- Obtaining and supplying of certified copies of orders and other documents required in legal proceedings,
- 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 Counselling 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.
- Counselling and Conciliation Centres 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,
  - organize 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 service programmes and
  - to develop audio-visual spots, documentary films, etc. for publicity.

## **LEGAL AID 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 Collages 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 Indian 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 (suo motu), 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 a Non-Governmental Organization (NGO), an Institution or an Individual.
- The Supreme Court of India has defended Public-Interest Litigation by stating that the 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 Iyer* 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 person 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 person 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, at the same time some policemen knocked her door and told her that she is under arrest as a compliant 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 wellbeing while she is in custody.
- She must be informed about the grounds for her arrest and full particulars of charges levied on her for that matter of fact.
- She has right to see the warrant if arrested under warrant (Sec.75 CrPC.)
- Right to privacy while recording statement.
- She has the right to consult the legal practitioner of her choice and to be defended by him.
- The accused must be produced before the magistrate within 24 hours of arrest.

- It is the duty of the arrestee to inform of her arrest to either her relatives or to her friends.
- A woman cannot be arrested before sunrise or after sunset except with prior permission of a Magistrate.
- 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.
- No beatings or force can be administered while arresting a female juvenile.
- The search and examination of the female prisoners shall be carried out by the matron under the General or Special Order of the Medical Officer.
- The female prisoners have the right to live separately from the male prisoners.
- All the prisoners have the basic human rights such as hygienic food, shelter, medical facilities and facilities of reading and writing.
- If arrested soon after a child birth women cannot be taken before the Magistrate until they are in proper conditions to travel.
- Women prisoners have the right to speedy trial.
- 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 lock ups.
- 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.
- Rights of the pregnant women in jails (pre- natal and post-natal care, Gynaecological 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 an arrest made in execution of such a 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 a 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 possess stolen property;
  - If he is proclaimed an 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 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 the custody of such officer or at any stage of the proceeding 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 maybe 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 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 a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had 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, 1984 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 a 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 channelling of cases to different courts set up specially for this purpose not only ensures their speedy disposal, but also ensures that the cases, being dealt with experts in courts specially 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 become the topic of great controversy and cause harassment to families.
- The main purpose behind setting up these Courts was to take the cases dealing with family matters away from the 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 counsellors and psychologists who ensure that the disputes are handled by experts.
- The role of the counsellors is not limited to counselling 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 of 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 a 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.
- Counselling 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 complainants.

### **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 Magistrate 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 of maintenance, cases dealing with assault or criminal force and words or gestures intended to insult the modesty of a woman.
- At the Sessions 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 Magistrates 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 wherein 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 (NCW) is a statutory body of the Government of India, 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 subjects of their campaigns include dowry, politics, religion, equal representation for women in jobs, and the exploitation of women for labour, etc.,
- 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 safeguards;



- 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, inadequacies or shortcomings in such legislations;
- Take up the cases of violation of the provisions of the Constitution and of 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 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 any State;
- Inspect or cause to be inspected a 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;
- Fund litigation involving issues affecting a large body of women.

*(Similarly at the state level also Commission for Women exists 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 reactively 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.

## CHAPTER 9

### ELIGIBILITY / FEEDBACK / SUGGESTION

#### **I. ELIGIBILITY CRITERIA FOR SELECTION OF ORGANISATION**

- i. Applications for conducting legal awareness programme will be invited online by the NCW. ([www.ncw.nic.in](http://www.ncw.nic.in))
- ii. Any Educational Institute/NGO/Voluntary Organization registered under the Societies Registration Act, 1860/Educational Institutions with at least three years working experience can apply online provided their Memorandum of Association states that the organisation may conduct such programmes.
- iii. The Objective of Conducting LAP should be clearly laid down in the proposal.
- iv. New proposal from an organisation will be considered only after statement of previous dues in respect of any programme conducted the for Commission earlier.
- v. Government departments, Universities, colleges or any academic institutions fully or partly funded by the Government and State Women Commission are exempted from the condition of submission of Bank Guarantee, MOA, Annual and Audit Report.
- vi. Any Educational Institute/NGO/Voluntary Organization working specifically for women will be given preference.

#### **II. DOCUMENTS REQUIRED FOR DETERMINING THE ELIGIBILITY OF ORGANISATION**

The eligible organization applying for grant of financial assistance are required to send their application form as per format given on the website of National Commission with the following documents:

- i. Proposal as per the format given at **Annexure-I** clearly stating the objectives to undertake Legal Awareness Programmes and the laws to be covered during the programme.
- ii. Certified copy of Registration Certificate with minimum three years or registration and experience.
- iii. Certified copy of Memorandum & Articles of Association clearly stating that the organisation will take for women empowerment and legal Awareness for Women as one of the objectives of the Organisation.

- iv. Certified copy of list of present members of executive body of the organisation.
- v. Certified copy of Audited statement of accounts for the last three years.
- vi. Certified copy of Annual Reports for the last three years.
- vii. An undertaking as per the format given at **Annexure-II**.
- viii. List of Resource persons, along with their background, expertise, address and contact details. It is mandatory to have one Resource person from legal background.
- ix. The NGOs/Private Academic Institutions would be required to submit a Bank guarantee of 10% of the total sanctioned amount before release of the funds. The format of the Bank Guarantee is given in **Annexure-III** (the Bank guarantee may be forfeited and the amount released to the Organisation may be refunded through the Bank Guarantee, in case the organisation is unable to complete the LAP within the stipulated time period or is unable to submit a satisfactory report as per the format given in **Annexure-IV** or in case the report is not approved by the Commission.
- x. The public representatives from the area such as MP, MLA, Local Leaders like Sarpanches /Panches, Municipal Corporation etc should invariably be invited to the venue of and a list of such invitees with complete address and telephone numbers should be provided to the Commission in advance.
- xi. The organisation should also invite Chairperson/ Members of the National and concerned State Commission well in advance for attending the programme.

### **III. THE MANNER OF ORGANIZING THE PROGRAMME**

- i. NCW conducts itself with the help of Resource persons.
- ii. NCW sponsor the programmes to State Government/NGO/Law Institutes/Collages.
- iii. NCW to conduct in collaboration with State/District Legal service Authorities.

### **IV. TIME FRAME AND PARTICIPANTS**

- i. The programme should be at least of two days.
- ii. There should be at least 60 participants in each Legal Awareness Programme.
- iii. First day session should be devoted to the introduction of National Commission for Women and some basic information of the Commission e.g. National Human Rights

Commission, National Commission for SC/ST and State Women Commission and Fundamental rights & some Basic Rights (**Ref. Chapter - 8**).

- iv. The NGOs/Private Academic Institutions would be required to do a wide Publicity of the LAP through Posters, Banners, Pamphlets, etc. (Covering its Venue, timing, laws covered)

#### **V. RESOURCE PERSON**

The awareness on the aforementioned syllabus could be imparted with the help of resource persons from the District Legal Service Authority, Law Professors, Retired Judges, Senior Advocates and Women Activitist.

#### **VI. FINANCE ASSISTANCE/ BUDGET**

The Commission provides financial Assistance upto Rs.1,00,000/- for a camp of two days duration and a sum not exceeding Rs. 1,20,000/- for North Eastern States to NGOs/VOs/ Educational Institutions/ State Women Commission/ Govt. bodies to organize the Legal Awareness Programme. The item-wise ceiling for incurring expenditure is given at **Annexure – V** of Module.

#### **VII. TERMS AND CONDITIONS**

- i. The financial assistance given by NCW will only be used for organizing Legal awareness Programme.
- ii. The assistance will be released in two installments, 50% of the sanctioned amount will be released after the proposal is approved by the NCW and on receipt of all requisite documents such as, write-up on programme, venue, item-wise budget estimates (Sr. no. VI) at **Annexure-V**, number of participants etc.
- iii. The balance amount will be released as 2<sup>nd</sup> Installment (50%) after the submission of the
  - a. Original copy of Utilization Certificate duly signed by the Chartered Accountant as per the format given at **Annexure – VI**.
  - b. Original copy of Statement of Audited item wise accounts of expenditure as per the format given at **Annexure – VII**.
  - c. Original Bills and Vouchers (there should be a revenue stamp for cash payment of more than Rs. 5,000/-)
  - d. Report as per the format

- e. List of resource persons
  - f. List of Participants
  - g. Audio-Video recording of the Programme.
- iv. The Organization/Institutions receiving financial assistance from NCW have to display standard banner size of 6' X 3' with logo and name of NCW in font size of 8'-10' clearly stating the title of the LAP, date and venue.
  - v. The government department, Universities, colleges or any academic institutions fully or partly funded by the Government and State Women Commission are exempted from the condition of submission of bank Guarantee, MOA and Audit Reports.
  - vi. The original utilization certificate as per the format given in Annexure VI of the complete sanctioned amount along with other documents should be submitted in a month's time from the date of organizing the Legal awareness programme.
  - vii. No equipment/asset will be purchased out of the assistance given by NCW.
  - viii. Unspent portion of the assistance will be refunded to the NCW.
  - ix. Separate account of the Programme will be maintained and the same will be subjected to test check by the commission through its representative.
  - x. In the event of Violation of any of the terms and conditions of sectioned, the organisation will have to refund the entire amount sanctioned, to the commission on demand or such part thereof along with penal interest as per the government rates.
  - xi. The Organizations should send a report on the Legal awareness programme (LAP) after organizing it, which should furnish the details of participants, resource persons, VIPs, subject covered and any other matter of interest that the organizations consider relevant.
  - xii. The commission will not be responsible for any programme organized before the release of first installment.

#### **VIII. MONITORING OF THE PROGRAMME**

- i. One person as a Representative of NCW should be present at the time of LAP.

- ii. A video should also be recorded of the LAP which should be submitted to the NCW with the report.
- iii. The monitoring of the programme shall be done either by National Commission for Women or by any authorized agency/individual on behalf of NCW to do the same.

#### **IX. METHODOLOGY**

More stress should be laid on imparting knowledge through discussion, case studies, video films, case conference and street plays, interactions and meeting with social activists, visits to Lok Adalats, District Legal Service Authority, Jails, Police Stations, Family Courts, Mahila Courts and Consumers Courts etc.

#### **X. FEEDBACK/EVALUATION**

The Organizing group is expected to give a feedback form to the target group for their response. If the target group is not literate, the questions of the feedback form shall be open-ended and the Organizing group is required to help them in filling the feedback form. This form should consist of the following particulars:

- i. Name (Optional):
- ii. Sex:
- iii. Age:
- iv. Profession/Occupation:
- v. Address:
- vi. Place of workshop:
- vii. Resource Persons:
- viii. Topic of the workshop:
- ix. Target group's Response:
  - x. Benefits which the target Group achieved:
  - xi. Any Comment by Target group to make the workshop better:

***NOTE: All the Annexure mentioned in the above text are attached with the LAP and numbered accordingly.***

❖ ***National Commission for Women reserves the right to reject any proposal without assigning any reason.***

**FORM OF APPLICATION FOR GRANT OF FINANCIAL ASSISTANCE  
FOR ORGANIZING LEGAL AWARENESS CAMPS**

Note: Application is to be submitted in duplicate. Incomplete application will not be entertained.

<b>1.</b>	Name of the organization with complete postal address with Telephone No., Fax No. and E-mail ID				
<b>2.</b>	Whether registered under the Societies Registration Act, 1860, or any other Act, (to be specified) and the date of registration (please enclose a copy of the Registration Certificate)				
<b>3.</b>	(i) Particulars of the present members of Executive Body/Board of Management; date on which it was constituted and tenure.				
	(ii) Name of the person and his/her designation nominated/authorized to act on behalf of the organization.				
	(iii) Telephone number, fax number, mobile number and E-mail ID of the Contact person				
<b>4.</b>	Clear Objective for organizing Legal Awareness Programme				
<b>5.</b>	Target Group and geographical area to be covered				
<b>6.</b>	Financial assistance sought with Break-up of cost estimates (item wise)				
<b>7.</b>	Tentative date(s) of the programme and venue				
<b>8.</b>	Details of Resource Persons: (Please attach a separate sheet):	<b>Name</b>	<b>Designation</b>	<b>Specialization</b>	<b>Office Address &amp; Contact no.</b>
<b>9.</b>	Is it proposed to receive grant/ funds from any other source for the same purpose or activity to which this				



	application pertains? If so, details thereof may be provided.	
<b>10.</b>	Information relating to the grants received or likely to be received from the NCW for any other activity. If any grant had been received in the past, it is mandatory to provide details thereof with file/letter No. of the Commission.	
<b>11.</b>	Additional information, if any	
<b>12.</b>	List of documents attached: i) Certified copy of Registration Certificate ii) Certified copy of Memorandum & Articles of Association iii) Certified copy of Audited statement of accounts for the last three years iv) Certified copy of Annual Report for the last three years iv) Undertaking as per annexure II of NCW Guidelines	
Signature & Designation With seal/stamp		

**(On One Hundred Rupees Stamp paper)**

**UNDERTAKING  
FOR SEEKING ASSISTANCE FOR LEGAL AWARENESS PROGRAMME**

.....  
..... (The name of the organization hereby agrees/agree to  
be responsible for:-

- (i) Proper administering and managing of the funds exclusively for the work for which financial assistance is granted by the National Commission for Women; and
- (ii) To refund full amount with interest thereon in case of misuse or unauthorized use of funds for purposes other than those indicated in the Sanction Order of National Commission for Women; or for withholding or suppressing any information regarding the funds/grants from other official sources in respect of the project for which sanction has been awarded.
- (iii) The organization has not been blacklisted or any disciplinary action initiated against the organization by any Govt./Semi-Govt. or Autonomous Bodes.
- (iv) The organization is not receiving funds from any other source for undertaking the programme.

Signature  
Name  
On behalf of

\_\_\_\_\_  
(Name of the organization and seal)  
With full address, telephone & PAN No.

Signature of Witnesses:

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_

**BANK GUARANTEE FORMAT**

Pay and Accounts Officer	B.G.No.
National Commission for Women	B.G.Date :
4, Deen Dayal Upadhyaya Marg	BG AMT(Rs.)
New Delhi-110 002	VALID UPTO:

In consideration of the Government of India, National Commission for Women, 4, Deen Dayal Upadhyaya Marg, New Delhi-110 002 (hereinafter called the owner) which expression shall unless repugnant to the context or the meaning thereof includes its successor administrator and assign having awarded to .....with its registered head office at .....(hereinafter referred to as the Grantee Institution/Organization which expression shall unless repugnant to the context or the meaning thereof includes its successor administrator and assign a grant by issue of owner letter No..... Dated..... and the same having been unequivocally accepted by the Grantee Institution/Organization resulting in a Contract bearing No..... valued at Rs..... (Rupees.....only) for ..... (scope of contract) and the Grantee Institution/Organization having agree to provide a Contract Grantee for faithfull performance of the entire Legal awareness Programme equivalent to the approved amount of the grant equivalent to Rs.....(Rupees.....only). to the owner on demand.

2. We ..... Bank do hereby undertake to pay the amount due and payable under this guarantee without any demur, merely or a demand from the Government stating that the amount claimed is required to meet recovered due or likely to be due from the said contractor. Any such demand on the Bank shall be conclusive as regard the amount due and payable by the bank under this Bank Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs.....(Rupees.....only).

3. We undertake to pay to the Government any money so demanded not with standing any dispute or disputes raised by the Grantee Institution/Organization in any or proceeding pending before any court of Tribunal relating thereto our liability under this present being absolute and unequivocal. The payment to made by us under this Bond shall be valid discharge of our liability for payment there under and the contractor shall have no claim against us for making such payment.

4. We, ....., Further agree that the Guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said award letter and that it shall continue to be enforceable till all the due of the Government or by virtue of the said Agreement have been fully paid and its claims satisfied or discharged or till the Joint Secretary, NCW on behalf of the Government certifies that the terms and conditions of the said work has been fully and properly carried out by the said grantee and accordingly discharge the Guarantee.

5. We, ....., further agree with the Government that the Government shall have the fullest liberty without or consent and without affecting in any manner our obligation hereunder to vary any of the terms and conditions of the said contract or to extend time of performance by the said grantee from time to time or to postpone for any time or from time to time any of the powers exercisable by the Government against the said grantee and to forbear or enforce any of the terms and conditions relating to the said Legal Awareness Programme and we shall not be relieved from our liability by reason of any variation, or extension being granted to the said grantee or for any forbearance act or omission on the part of the Government or any indulgence by the Government to the said Grantee Institution/Organization or by any such matter or thing whatsoever which effect of so reveling us.

6. This Guarantee will not be discharged due to the change in the constitution of the bank or grantee.

7. We,....., lastly undertake not to revoke this Guarantee except with the previous consent of the Government in writing.

8. This guarantee shall be valid upto ..... unless extended on demand by Government. Notwithstanding anything mentioned above or availability against the Guarantee is restricted to Rs.....(Rupees.....only) and unless a claim in writing is lodged with us within six months of the date expiry of the extended date of expiry of this Guarantee all our liabilities under this Guarantee shall stand discharged.

Dated:

For

(Indicate the name of the Bank)

**FORMAT FOR THE REPORT OF LEGAL AWARENESS PROGRAMME (LAP)**

- Cover page**
- Topic/subject of the LAP
  - Name and address of the organization holding the Legal Awareness Programme.
  - Dates and Venue of the LAP.
  - Details of the funding organization i.e. National Commission for Women to be given prominently at the bottom of the cover page.

**1. Introduction/Overview**

- (a) Background of NCW – Origin, mandate etc.
- (b) Background of the subject matter of the Legal Awareness programme.
- (c) Objectives of the Legal Awareness programme.
- (d) Target groups - description of categories e.g. rural/urban etc.
- (e) No. of the participants
- (f) Resource persons

**2. Methodology**

- (a) Session wise/interactive sessions, Presentations, Discussion, Case study, Video films, case conference and street plays, interaction and meeting with social activists ,visits to Lok Adalats, District Legal Service Authority, Jails, Police Stations , Family Courts, Mahila Courts, Consumer Courts etc.

**3. Proceedings (separately for both the days)**

- (a) A brief on inaugural function, if any.
- (b) Summary of deliberation – Session wise/interactive session in both the days including the details of the topics covered by the resource persons as per the Guideline for LAP.
- (c) Visits reports (if any).

**4. Observation and summing up:**

- (a) Discussion & Conclusion including local issues if discussed during the programme.

Annexure:

- (a) List of dignitaries participated.
- (b) List of Resource persons/experts.
- (c) List of Participants.
- (d) Presentation, if any, made by experts
- (e) Photographs of Legal Awareness Programme.
- (f) Audio-Video recording of the Programme.
- (g) Name of the individual/agency monitored the programme.

## Annexure V

### H. Financial Assistance

The Commission provides financial assistance upto Rs.1,00,000/- (Rupees One Lakh Only) for a camp of two days duration and a sum not exceeding Rs.1,20,000/- (Rupees One Lakh Twenty Thousand Only) for North Eastern States to NGOs/VOs/Educational Institutions/State Women Commission/Govt. bodies to organize the Legal Awareness Programme. The item-wise ceiling for incurring expenditure is given below:-

The total expenditure on each programme should not exceed the specified limit mentioned in the table below. The item-wise limit is as under:-

<b>S. No</b>	<b>Particulars</b>	<b>Non North Eastern Region</b>	<b>North Eastern States (enhanced @ 20%)</b>
1.	Boarding & lodging for 60 participants for 2 days @ 300/- per head upto a ceiling of	Rs.36,000/-	Rs.43,200/-
2.	Refreshment (Rs.110/- for lunch and Rs. 10/- for tea) per head subject to ceiling of	Rs. 20,000/-	Rs. 24,000/-
3.	Camp arrangement	Rs. 14,000/-	Rs. 16,800/-
4.	Honorarium and travel for Resource persons	Rs. 16,000/-	Rs. 19,200/-
5.	Material for distribution (pamphlets, participants kit etc)	Rs. 4,000/-	Rs. 4,800/-
6.	Participants' travel & field visit	Rs. 4,000/-	Rs. 4,800/-
7.	Administration & follow up	Rs. 6,000/-	Rs. 7,200/-
<b>Total</b>		<b>Rs. 1,00,000/-</b>	<b>Rs. 1,20,000/-</b>



**GFR 19-A**  
**[See Rule 212 (1)]**

**Form of Utilization Certificate**

<b>Sr. No</b>	<b>Latter No. and Date</b>	<b>Amount</b>
<b>1</b>		
	<b>Total:-</b>	

Certified that out of **Rs.....** of grant -in-aid sanctioned during the year 2015-16 in favors of ..... under this Ministry/Department letter no. given in the margin and Rs. Nil on account of unspent balance of the previous year, a sum of Rs..... has been utilized for the purpose of organizing ..... for which it was Sanctioned and that the balance of Rs.

..... Remaining unutilized at the end of year has been surrendered to Government (Vide No. ....Date.....) will be adjusted toward the grants-in-aid payable during the next year.....

2. Certified that I have satisfied myself that the conditions on which the grant-in-aid was sanctioned have been duly fulfilled/are being fulfilled and that I have exercised the following checks to see that the money was actually utilized for the purpose for which it was sanctioned.

Kind of checks exercised:-

- 1.
- 2.
- 3.
- 4.
- 5.

**Signature**.....

Designation.....

Date.....

C.A. Firm Registration no.....

## ANNEXURE - VII

### Payment- Expenditure

Audited item wise accounts of the expenditure incurred by the -----  
----- for organizing Legal Awareness Programme at  
District-.....

**LAP no. :-**

**Place of Camp: -**

**Date: -**

<b>Sr. No.</b>	<b>Expenditure Head</b>	<b>Invoice/Bill No.</b>	<b>Date</b>	<b>Amount</b>
1	Boarding & Lodging for Participants			
2	Refreshment			
3	Camp Arrangement			
4	Honorarium to Resource persons			
5	Material for distribution			
6	Participants travel & field visit			
7	Administration & follow up			
<b>Total</b>				

**Signature**.....

Designation.....

Date.....

C.A. Firm

Registration no.....