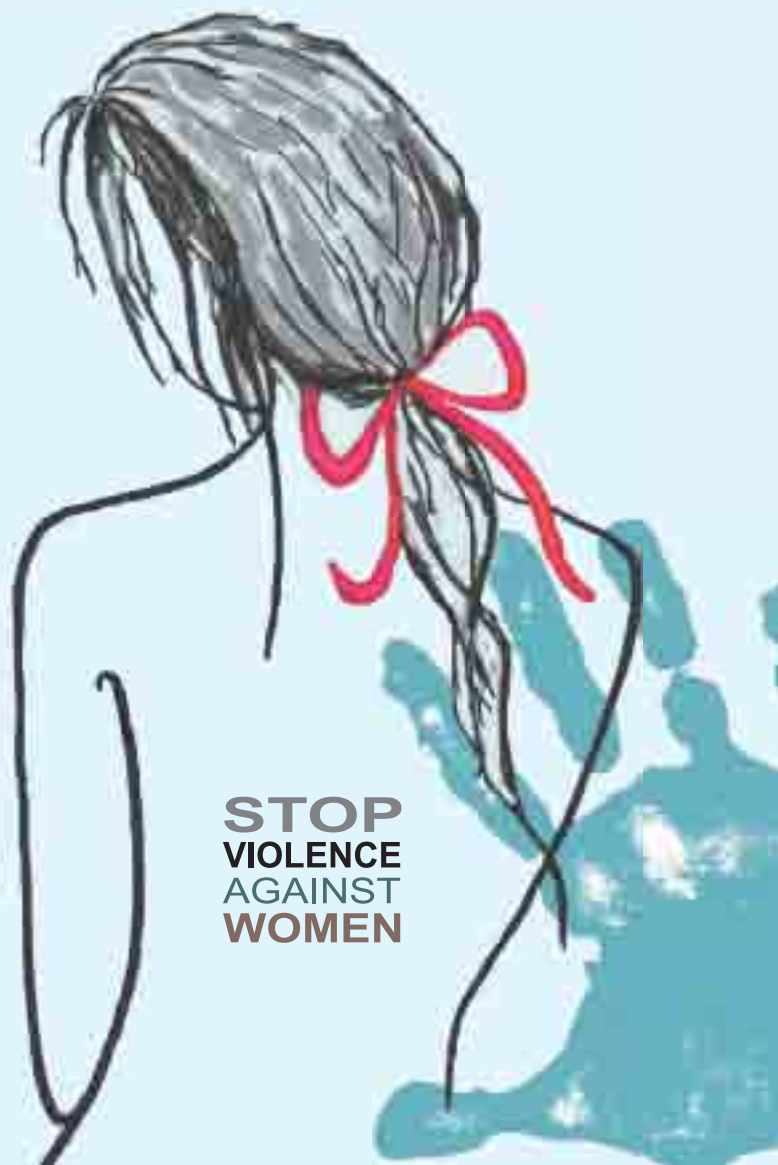


TRAINING MODULE ON THE RIGHTS OF  
**WOMEN**  
**AGAINST VIOLENCE**



**STOP  
VIOLENCE  
AGAINST  
WOMEN**

**Training Module on the  
RIGHTS OF WOMEN  
Against Violence**

**HRLN**

Human Rights Law Network

New Delhi

August 2011

# **TRAINING MODULE ON THE RIGHTS OF WOMEN AGAINST VIOLENCE**

August 2011

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– **Aparna Dwivedi**  
WJI Team, Delhi

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# INTRODUCTION

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**The Training Module on the Rights of Women Against Violence** has been developed as a Training of Trainers (ToT) Material for enhancing the skills of para-legal and law students. It is believed that those para-legals and law students who are part of the training presumed that would be having some basic awareness on the issues concerning rights of the women and law. The Module has been developed keeping in mind the national laws and its use on a national-scale. The module has been prepared to cater a 2-day Training Course; while keeping each thematic sessions as standalone and so can be used for solitary trainings/discussions on each individual topics. In the present Module there are 10 Sessions planned as below:

- Session I** : Introduction of Participants and to the Training
- Session II** : Introduction to Gender
- Session III** : Sexual Crimes against Women
- Session IV** : Caste-based Violence
- Session V** : Acid Attacks
- Session VI** : Recap
- Session VII** : Violence Against Women (Procedural Law)
- Session VIII** : Maternal Mortality and Morbidity
- Session IX** : Role of Lawyer Activist
- Session X** : Q&A / Feedback

The plans for the sessions have been developed to provide a smooth flow in terms of developing the concept as well as honing the training skills of the participants. Each session has a predesigned session plan which provides guidelines as to the following:

- Total allocated time with breakups as to sub-sessions
- Training materials required for the trainings



- Session Objectives; which need to be kept in mind
  - Both as limiting to the objective and also
  - For smooth flow as to the previous and later sessions
- Note for facilitators as an instruction, Dos and Don'ts

### **Session I: Introduction of Participants and to the Training**

The session is designed to introduce the training, trainers and trainees to each others. Each session has sub-sessions designed as icebreakers and also detail out the objectives and expectations from the workshops. The session also provides simple guidelines for the smooth facilitation of the two-day sessions with maximum productive output.

### **Session II: Introduction to Gender**

The session intends to develop an understanding on what is gender, patriarchy and other social constructs attached to them which have a bearing on the life of women. To make the participants understand how gender and patriarchy impacts women and men differently.

What are the different impact on development issues? It is designed keeping in mind that lawyers generally do not get much to read / see the ground realities on social inequalities and so the session provides a background to the understanding before finally getting into the pure law aspects of women's rights.

### **Session III: Sexual Crimes Against Women**

The session attempts to cover the gamut of sexual offences which generally women face in India and to develop understanding on the type and magnitude of such offences. It brings before the trainees the technical differentiation in terms of legal terms of each of such crimes, in order not to lose later on technical procedural battle. It also highlights the precautions and other rights of women concerning procedure, investigation, etc.

## **Session IV: Caste-based Violence**

Caste is a reality in the Indian society and violence against women based on caste is another truth. The session provides the background and present realities of the caste-based violence and equip the participants with adequate knowledge of law and procedure to counter such menace.

## **Session V: Acid Attacks**

Women have been subjected to violence since time immemorial. However, modern day has posed newer threats to their life and liberty. One of such horrifying crimes has been that of Acid Attack. The session attempts to develop understanding on the effects of such attacks, it's being an easy accessible weapon and possibly any woman being the target. To inform on the present law and its adequacy and the recommendations of the Law Commission and the draft proposed bill by NCW.

## **Session VI: Recap**

The purpose is to make the participants recall all that went the previous day both individually and as a group; so that all can remember the main points of the sessions. The other purpose of role plays is to make the session lively and energise the participants for the day.

## **Session VII: Violence Against Women (Procedural Law)**

The session is targeted to inform and equip the participants with the necessary knowledge of law and procedure. This is an important session as it provides the trainees the skills to be a solution provider. The training session on law would be incomplete if it is not solution oriented.

## **Session VIII: Maternal Mortality and Morbidity**

The session deals with a critical issue of Maternal Mortality and Morbidity and its causes. The session attempts to develop a holis-

tic understanding on the issue and equip the participants with the information about the legal and institutional mechanisms available concerning the issues.

### **Session IX: Role of Lawyer-Activist**

The session primarily focuses on imparting and reflecting on the role of lawyers on the issue of social justice. It wants to instil the thought that the legal fraternity can influence both the society and the state with their knowledge and respect they carry in the minds of people. To reemphasises the fact that for any larger political or legal change in the country or globally; lawyers and people with legal information are crucial.

### **Session X: Q&A / Feedback**

The session has multiple objectives of final clarifications from the participants concerning the workshop, sessions and issues/laws dealt. The session is equally important to the organisers and trainers to get a feedback as to the sessions' plan, content improvement and training methodology and delivery skills. From the logistics point of view, the session is important to understand what is that the participants liked and helped in facilitation and what can be further improved. The Module covers various aspects of rights of women dealing both the social constructs such as gender and patriarchy to pure legal issues of crime and punishment. The Module is designed keeping in mind an average human mind that is also part of the same socialisation process and so thinks and dwells on the issues like any other average social being, with its own biases and notions. The Module attempts to sensitise as to the serious patriarchal biases and gender-based violence prevalent in the society and goes on to deal with each individual situations of legal violations and their remedies thereof. The Module facilitates the trainer to orient the para-legal and law students as crusaders against legal violations of women rights and be equipped with information and skills as a solution provider.

## **Terms Used in the Training Module**

### **Cognizable and Non–cognizable**

Cognizable offences are offenses where the police can arrest without any prior permission or warrant. While for non-cognizable offences, police power to act is subject to having prior permission or warrant.

### **Bailable and Non–bailable**

If arrested for a Bailable offence which is a crime of lesser gravity, then the accused can take bail as a matter of right from the police station itself. Non-bailable are serious offences and if bail is granted, it can only be through the courts.

### **Compoundable and Non–compoundable**

Criminal offences are taken as crimes against society so parties are not allowed or have the power to compromise and close the case. However, for compoundable cases, parties are allowed to compromise and close the case.

### **Summons and Warrant Cases**

Offences are also categorised for procedural purposes in terms of quantum of punishment. Warrant cases are those for which the punishment exceeds two-year imprisonment. Warrant cases include those for which there is punishment for life imprisonment or death. Summons cases are all those which are not warrant cases and punishment is imprisonment for less than two years.

### **Certiorari**

The writ of certiorari can be issued to lower courts for decisions violating fundamental rights or which are taken in excess of their authority.

### **Habeas Corpus**

Under this writ the court directs the person or authority who has detained another person to bring the body of the prisoner before the court so as to enable the court to decide the validity, jurisdiction or justification for such detention. The principle aim of the writ is to ensure swift judicial review of alleged unlawful detention on liberty or freedom of prisoner or detenu.

### **Mandamus**

The writ of mandamus can be issued to cancel an order of an administrative or statutory public authority or the government itself where it violates a fundamental right. In the landmark judgement *Vishaka vs State of Rajasthan*, (1997) 6 SCC 241, it was held that writ of mandamus with suitable directions can be issued for the protection and enforcement of fundamental and human rights of working women subject to sexual harassment.

### **Prohibition**

Writ of prohibition is normally issued when the inferior courts or tribunal (a) proceeds to act without or in excess of jurisdiction, (b) proceeds to act in violations of rules of natural justice, (c) proceeds to act under law which is itself ultra vires or unconstitutional, or (d) proceeds to act in contravention of fundamental rights.

### **Quo Warranto**

A writ of quo warranto lies against a person, who according to the relator is not entitled to hold an office of public nature and is only an usurper of the office. That person is required to show by what authority that person is entitled to hold the office.

# PROGRAMME

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## TRAINING MODULE ON THE RIGHTS OF WOMEN AGAINST VIOLENCE

**Material Type:** TOT Material

**Target Group:** Paralegals and Law Students

**Geographic Area:** National

**Time Frame:** 2-day Training Course

### DAY 1

---

**9.30 – 10.15 : Session I: Introduction**

15 Min : Self-introduction

15 Min : Participants' Expectations of the Workshop

15 Min : Synopsis of the Workshop

**10.15 – 11.00 : Session II: Introduction to Gender**

15 Min : Introduction to Gender

15 Min : Introduction to Patriarchy

15 Min : Introduction to Women as Rights Holders

**11.00 – 11.15 : Tea Break**

**11.15 – 01.15 : Session III: Sexual Crimes Against Women  
(No SHWP)**

30 Min : Eve Teasing & Molestation

60 Min : Attempt to Rape, Rape and Gang Rape

30 Min : Precautions, Procedure & Punishment

**01.15 – 02.00 : Lunch**

**02.00 – 04.00 : Session IV: Caste-based Violence**

30 Min : Background & Law

60 Min : Rights & Protection

30 Min : Issues of Concern & Legal Action

**04.00 – 04.15 : Tea Break**

**04.15 – 05.30 : Session V: Acid Attack**

30 Min : Background & Law

30 Min : Inclusion of Acid Attacks as Specific Offences in IPC (Law Commission Report 226)

15 Min : Prevention of offences (by Acids) Act 2008 (Draft Bill)

**Group Formation:** Before breaking for the day, four groups should be formed

: Groups should prepare Role Plays on one topic discussed during the day

: Each individual should prepare a 1-minute presentation on any topic/point discussed during the day.

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## DAY 2

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**9.30 – 11.00 : Session VI: Recap**

30 Min : Individual Presentations

45 Min : Role Play by four groups (10 min each)

15 Min : Open Session with key points on all topics

**11.00 – 11.15 : Tea Break**

**11.15 – 01.15 : Session VII: Violence Against Women (Procedural Law)**

60 Min : Rights vis-à-vis Justice Administration

60 Min : Constitutional Safeguards and Mechanisms

**01.15 – 02.00 : Lunch**

**02.00 – 04.00 : Session VIII: Maternal Mortality  
and Morbidity**

30 Min : Reproductive Rights

60 Min : Law, Policy & Schemes

30 Min : Judicial Interventions

**04.00 – 04.15 : Tea Break**

**04.15 – 05.00 : Session IX: Role of The Lawyer-Activist**

15 Min : Promoting Human Rights Education &  
Developing Paralegals

15 Min : Bridging Rights Violations to Courts

15 Min : About Human Rights Law Network

**05.00 – 05.30 : Session X: Q&A / Feedback**

15 Min : Question & Answers

15 Min : Feedback





# **Session I**

**Introduction of Participants  
and to the Training**



## TIMING & SESSION PLAN

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**Total Time : 45 Minutes**

- 15 Min : Self-Introduction
- 15 Min : Participants' Expectations of the Workshop
- 15 Min : Synopsis of the Workshop

### Training Materials

- Chits of Paper
- Chart papers / Flipchart / Blackboard
- Markers / Pens / Chalk
- Copies of Session Plan for Distribution

### Session Objective

- To introduce participants to each other, to explain the proposed training and to make participants feel comfortable about the whole exercise.
- Make the participants actively involved in the training from session one. Make it clear to them that the two-day exercise will be extremely participatory and not like a classroom session.
- Encourage the participants to speak and share from session one so that both sessions are more participatory and rich in content and experience.

**Note for Facilitator:** It is very important to know the background of the participants before one starts the training. It is equally important to know from the start what their expectations are and then to reassure them that we will try and meet their expectations during

the whole exercise. If we miss this aspect, many of the participants will lose interest in the training and feel imposed by a prefixed agenda.

# SELF-INTRODUCTION

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The simple activity of self-introduction can be made very exciting and engaging. Instead of simple sessions of self-introduction, we encourage the use of engaging ways of introducing participants to each other. Listed below are a few suggestions depending on the type of participants.

## Exercise 1

The participants are grouped into pairs. Each pair is asked to quickly get to know each other in one minute. Then each is supposed to canvass for the other as if they were running for an election. While canvassing the person is supposed to share the details of the other person.

Benefit: Participants will get to know each other and everyone in the group. Since everyone will use the podium, no one will feel singled out or marginalised. It will also ward off any feelings of inhibition.

## Exercise 2

The participants are grouped into pairs. Each pair is asked to get to know each other. They, then, present information about the other person as though they are delivering an essay on some important personality.

Benefit: Many participants take time to open up so this is a comfortable way of making them get to know each other first as a pair and then as a whole group.

## Exercise 3

Some chits are kept in a basket. Each chit should state some information about women's issues or laws concerning women. Each

member picks one chit, reads it and decides what to say on that issue/topic. They can speak on whatever they want/know, but their talk should focus on that topic. While they speak on the topic, they will also share about themselves. After they speak, other participants can add or offer their own viewpoints of the issues, but no one is allowed to rebut.

**Benefit:** In addition to learning about each other, this exercise also provokes participants to think about the issues and the laws which make up the agenda for the next two days. The exercise also builds interest among the participants on what to forward to in the other sessions.

## **EXPECTATIONS OF THE WORKSHOP**

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Once the facilitator is finished with introductions, participants should be encouraged to share their expectations of the workshop. First, they should be asked what the organisers have shared with regards to the agenda of the workshop and on that basis what do they expect from the workshop. If the organisers have already shared with them the topics of the training, then there is no need to share anything at this stage. Otherwise, just mention to the participants that the two days will revolve around issues concerning women, their legal rights and how to tackle problems concerning violence through the legal system and other mechanisms.

To extract their expectations, the facilitator can use the simple exercise of writing on the wall. Place a few chart-papers on all four sides of the wall. Have them walk around the room and make them write on the chart paper what they expect out of the workshop. Once they have done writing, choose four participants to read out loud the four chart-papers.

While the chart-papers are being read out loud, the trainer should

acknowledge the importance of the issues being raised and assure the participants that during the two days efforts will be made to cover all the topics mentioned. Further tea/lunch breaks and the evening can be used for personal questions which individuals might not feel comfortable sharing/ asking in groups.

## **SYNOPSIS OF THE WORKSHOP**

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Once finished with introductions and expectations, the trainers should quickly share the details of the workshop. This is the time where the trainer starts taking control of the workshop and spells out a few rules to be followed during the two day training. The rules can also be developed through participatory methods, but that may take time. However, all rules spelled out or developed should be agreed upon by all the participants.

The key rules mentioned below are very critical for smooth functioning:

- Switch off your mobiles or keep them in silent mode.
- For every session or part thereof, there will be a chairperson chosen from among the participants who will keep track of the rules and timing.
- Anyone wanting to speak should first ask for permission from the session chair.
- Anyone speaking should address the session chair. This will avoid unnecessary altercations and heated discussions.
- Be punctual to sessions, especially in the mornings and after breaks.
- More rules can come from the participants.



Once the rules are formed, the trainer can distribute the print outs of the session plan, read it through and obtain agreement from the participants as to the logical flow.

## **DAY 1**

---

### **9.30 – 10.15 : Session I: Introduction**

15 Min : Self-Introduction

15 Min : Expectations of the Workshop

15 Min : Synopsis about the Workshop

### **10.15 – 11.00 : Session II: Introduction to Gender**

15 Min : Introduction to Gender

15 Min : Introduction to Patriarchy

15 Min : Introduction to Women as Rights Holders  
(Law – Rights as a concept)

### **11.00 – 11.15 : Tea Break**

### **11.15 – 01.15 : Session III: Sexual Crimes Against Women (No SHWP)**

30 Min : Eve Teasing & Molestation

60 Min : Attempt to Rape, Rape and Gang Rape

30 Min : Precautions, Procedure & Punishment

### **01.15 – 02.00 : Lunch**

### **02.00 – 04.00 : Session IV: Caste-based Violence**

30 Min : Background & Law

60 Min : Rights & Protection

30 Min : Issues of Concern & Legal Action

**04.00 – 04.15 : Tea Break**

**04.15 – 05.30 : Session V: Acid Attack**

30 Min : Background & Law

30 Min : Inclusion of Acid Attacks as Specific  
Offences in IPC (Law Commission Report 226)

15 Min : Prevention of offences (by Acids)  
Act 2008 (Draft Bill)

## **DAY 2**

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**9.30 – 11.00 : Session VI: Recap**

30 Min : Background & Law

60 Min : Rights & Protection

30 Min : Issues of Concern & Legal Action

**11.00 – 11.15 : Tea Break**

**11.15 – 01.15 : Session VII: Violence Against Women  
(Procedural Law)**

30 Min : Structure and Procedure of Administration

60 Min : Rights of Women Against Police Procedure

30 Min : Safeguards and Mechanisms

**01.15 – 02.00 : Lunch**

**02.00 – 04.00 : Session VIII: Maternal Mortality  
and Morbidity**

30 Min : Reproductive Rights

60 Min : Law, Policy & Schemes

30 Min : Judicial Interventions

**04.00 – 04.15 : Tea Break**

**04.15 – 05.00 : Session IX: Role of the Lawyer Activist**

15 Min : Promoting Human Rights Education &  
Developing Paralegals

30 Min : Bridging Rights Violations to Courts

**05.00 – 05.30 : Session X: Q&A / Feedback**

15 Min : Question & Answers

15 Min : Feedback

# **Session II**

**Introduction to Gender**



## TIMING & SESSION PLAN

---

**Total Time : 45 Minutes**

- 15 Min : Introduction to Gender
- 15 Min : Introduction to Patriarchy
- 15 Min : Introduction to Women as Rights Holders

### Training Materials

- Chart papers / Flipchart / Blackboard
- Markers / Pens / Chalk
- Films, Role Play (Optional)
- Bare Acts
- Constitution of India

### Session Objective

- To develop an understanding of what is gender, patriarchy and other similar social constructs which have a bearing on the life of women.
- To understand how gender and patriarchy impact women and men differently. What are the different impacts on development issues?
- What are the stereotypical expectations of women and which stereotypes may be responsible for the violence against them?
- To understand women from a pure legalistic human rights point of view and then to try to understand their situation and position in society and in the family.

**Note for Facilitator:** This is mostly a non-legal session but extremely crucial for the workshop because it will create the base

for the following sessions. There is also a chance that there will be oppositions from the participants on certain topics. Diversity of views is quite normal and expected, and the trainer should not rebut immediately. One has to understand that the participants have their own background and experience. Further, these are concepts which form during the socialisation process and one session of a few minutes will not change their mindset. What we are attempting to do is to create a level playing field by sharing basic information on a few critical concepts so that everyone has the same information, if not understanding, when they are introduced to legal provisions in the other sessions.

# INTRODUCTION TO GENDER

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Society has evolved through the ages and evolution has led to the development of various, norms, customs and traditions. The evolution has also benefitted certain classes or categories of people at the cost of others. There are various ways of looking at any given

situation and people may look at it from a purely legal perspective, from an angle of dominance or power or even from the perspective of a woman. When we view a situation from any of these perspectives, we realise that there are certain generic outcomes within the social system; mainly, that for the luxury / comfort of a few, many are made to stretch beyond human limits. The distribution of resources is uneven and while a few enjoy much beyond their immediate utility or capacity to use, most are in deficiency.

The status of women in the various social institutions, be it family or community, has been that of being on the other side. Women carry the burden of taking care of the family, child rearing, and rarely get the due respect or acknowledgment deserved for those tasks.

More critical is the issue of what happens when women aspire beyond defined stereotypical roles. The moment women start thinking beyond the expected, people begin to say she has problems of control, to question on her integrity and thought process, and to classify her as a deviant breaking family-cultural norms. These problems are not solely the result of the men around them, but due to the socialisation process, a majority of women believe that their roles have already been decided because of their physical makeup and their role associated with child birth and childrearing. Many women do not think beyond these set roles. Participants must understand gender and patriarchy in this background before

## **Exercise 1: Group discussion**

Participants share one example of where society sees a difference in the roles between men and women, but in reality both can do with equal ease.



they understand the legal rights which are there to protect women to provide legal and constitutional support for their welfare and promotion, and to acknowledge their womanhood and the historical injustice done to them.

## What is Gender and Gender Relations?

Human beings are born equal with certain biological roles. In addition, there are certain roles which have been imposed upon them through social norms. While some of these roles are something each boy or girl/ men or women can undertake, others are imposed because of their sex and cultural-religious and social norms.

- While a small child might require a mother for breast feeding, all others roles of child-rearing can be executed by men.
- Are women given the skill of managing the home, cleaning utensils, cooking food, etc.? Are these skills God given only to women?
- While men may look strong, is this an excuse for keeping women restricted to the four walls of the home?

<b>Exercise 2: Difference between sex and gender</b>	
<b>Sex</b>	<b>Gender</b>
● Sex is natural	● Gender is socio-cultural and manmade
● Sex is biological. It refers to visible differences in genitalia and related differences in procreative functions	● It refers to masculine and feminine qualities, behaviour patterns, roles, responsibilities
● Sex is constant, it remains the same everywhere	● Gender is variable, it changes from time to time, culture to culture, even family to family
● Sex cannot be changed	● Gender can be changed
<i>Source: Understanding Gender, Kamla Bhasin</i>	

So while human beings are born equal, the norms developed by humans value girls and boys differently in society. Such values also stem from the various different roles that have been assigned to each sex which leads to the creation of dependence and power relations.

### Exercise 3: Group discussion

Gender is a set of expectations held about the likely behaviour, characteristics, and attitudes men and women will have. It refers to the socio-cultural definition of man and woman, and the way societies distinguish between men and women and assign them social roles and power relationships.

## Gender Relations

Gender relations are the defined or expected relationship between men and women in society. Such defined or expected relationship then dictates the way one is expected to behave in private and in

<b>Exercise 4: Group discussion – Stereotypes</b>	
<b>Good women</b>	<b>Masculine men</b>
<ul style="list-style-type: none"> <li>• She possesses traits of shame, humility, humbleness; should have long hair. Child rearing is her responsibility.</li> <li>• Women's work is inside the home i.e. cooking, cleaning, child care, and taking care of family.</li> <li>• She wears traditional dresses like saree (or salwar kameez in the Indian context).</li> <li>• She does not have her own opinions or desires in terms of education, work, marriage, sex and child bearing.</li> <li>• A good woman should accept men's decisions.</li> </ul>	<ul style="list-style-type: none"> <li>• Men and boys do not show their emotions and should be physically strong.</li> <li>• Men should work outside the home i.e. they are expected to be breadwinners and contribute economically.</li> <li>• A man should be dominating, and his decisions should be obeyed by all family members.</li> <li>• A 'Man' is a 'Man' only if he exercises his power over a woman, be it sexually, emotionally or physically.</li> </ul>

public. Any deviation from the set norm then invites repercussions from the opposite sex and society. These repercussions or reactions from society many a times take forms which the law does not subscribe and are offences with strict punishments. There are certain stereotypic images of “good women” or a “manly or masculine” man in society, which have to be consciously shed from our minds and from society.

## INTRODUCTION TO PATRIARCHY

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In her book, *What is Patriarchy*, Kamla Bhasin defines the word ‘patriarchy’ to mean the rule of the father or the ‘patriarch.’ Originally, it was used to describe a specific type of “male dominated family” – the large household of the patriarch

which included women, junior men, children, slaves and domestic servants – all under the rule of this dominant male. Now it is more generally used to refer to male domination, to the power relationships by which men dominate women, and to characterise a system whereby women are kept subordinate in a number of ways. In South Asia, for example, it is called *pitrasatta* in Hindi and *pidarshahi* in Urdu and *pitratontro* in Bangla. The subordination which might be experienced on a daily basis, regardless of the class women belong to, takes various forms – discrimination, disregard, insult, control,

### Exercise 5

After a brief introduction to patriarchy, the floor should be opened for experience sharing and discussion.

### Exercise 6: Focused small group discussions

Form five small groups. Each group should discuss, identify, and write examples of women suppression or active patriarchy on chart paper. The chart papers can then be placed on the walls of the training hall for the remaining two days. If time permits, each chart paper can be discussed at length, otherwise participants should be encouraged to read them during breaks.

The six topics of discussions can be:

- *Women’s productivity or labour power*
- *Women’s reproduction*
- *Control over women’s sexuality*
- *Women’s mobility*
- *Property and other economic resources*

exploitation, oppression, violence – within the family, in the workplace, and in society. The circumstances may be different, but the theme is the same.

Like any other institution of power, the *patriarchy system* gains strength and provides strength to other institutions. This hegemony keeps all the systems alive for the benefit of a few. In this case, the system goes against women. The other institutions which gain and provide strength to the patriarchal system are:

- *Family* is the basic unit of control and ensures prescription to social norms.
- *Religion* lays down a set of duties and rights and defines morality, ethics, behaviour and even law for the so-called larger good. Religions have somehow not been able to come out from the control of the patriarchs.
- *The Legal System* is still in favour of men within the same notions of patriarchy. This favouritism is present and prevalent when the law is interpreted and is reflected many times in judicial pronouncements.
- *The Economic System still* does not recognise the value of household work. We still require laws to ensure equal wages to women, which reflects the continuation of the patriarchal system.
- *The Political System* has rarely allowed women to grow, unless they are connected or promoted by some strong men.
- *Media & entertainment and Sports* are all reflective of the same stereotype. In fact, the media and the way it portrays women has a strong role in perpetuating and strengthening the patriarchal system. For example, the major Tennis tournaments continue to have different prize money for men and women events.
- While such differentiation between men and women remains,

efforts should be towards achieving *gender equality*. We need to break away from stereotypes and create an environment which allows every individual, be it woman or man, to grow to her/his full potential.

# INTRODUCTION TO WOMEN AS RIGHTS HOLDERS

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The social fabric with its norms and customs might have evolved differently but women under the law of the land are treated equal to men. In fact, looking at the historical injustice and present day biases, the laws not only guarantee equality but also provide the scope for affirmative action. The Constitution of India under Part III, IV & IV-A which deals

## Fundamental Rights

Part III of the Constitution provides its citizens with the fundamental Rights to Life & personal liberty, freedom of speech and expression, of assembly, to form association, of movement, to reside and to settle and that of profession, occupation, trade or business.

with Fundamental Rights, Directive Principles and Fundamental Duties provides for the protection of women from various biases and discriminatory practices. To supplement the Constitution, we have special and general laws of the land which provides specific provisions concerning women's rights and protection to women. Even though none of the Fundamental Rights under the Indian Constitution are absolute in India, legislation cannot take them away. Legislation can only impose reasonable restrictions on the exercise of these rights.<sup>1</sup> Part III of the Constitution protects substantive as well as procedural rights, which the Judiciary must effectively protect.<sup>2</sup>

Part IV & IV-A of the Constitution deals with the Directive Principles of State Policy and Fundamental Duties. They impose on the State and citizens a general duty of respecting, protecting and providing support to the women of the country. One of the Fundamental Duties mentions the need to renounce all practices which are derogatory to the dignity of women [Article 51A (e)].

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1. Dharma Dutt vs Union of India, (2004) 1 SCC 712.

2. Pratap Singh vs State of Jharkhand, (2005) 3 SCC 551.

**Exercise 7: Group sharing**  
**Important provisions within Constitution of India concerning women**

- **Article 14:** Equality before law.
- **Article 15:** Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.
- **Article 15(3):** Provides that, “Nothing in this Article shall prevent the State from making any special provision for women and children.”
- **Article 16:** Equality of opportunity in matters of public employment.
- **Article 21:** Protection of life and personal liberty.
- **Article 23:** Prohibits trafficking of human beings and forced labour.
- **Articles 25-28:** Provides freedom of conscience, and free profession, practice and propagation of religion.
- **Article 39:** Certain principles of policy to be followed by State.
- **Article 39A:** Equal justice and free legal aid.
- **Article 42:** Provisions for just and humane conditions of work and maternity relief.
- **Article 45:** Envisages that the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.
- **Article 243D:** Reservation of seats [Panchayats].
- **Article 243T:** Reservation of seats [Municipalities].

The Constitution has a generic provision of equality for all its citizens under Article 14 and Article prohibits discrimination. Recognising ‘women’ different from men as a class and recognising the need for special measures to undo historical injustice, Article 15 permits the Legislatures to make special provisions for women. Special provisions such as reservations, etc., made for the benefit of women cannot be challenged in the court.

In several cases, the court has upheld the validity of special



measures in legislations or Executive Orders favouring women.<sup>3</sup>

Women have human rights for which the State is duty-bound to protect and to promote. It is the duty of the State to ensure that the dignity of a woman, her social position, her economic empowerment and her aspiration are provided with right avenues and equal opportunities. The State is equally responsible for any infringement, degradation or violation of any of the rights enshrined in the Constitution or any other law of the land, or international commitments, by any individual or any machinery.

The following sessions will focus on various pertinent issues concerning violence against women, the related law and procedure, and legal recourse to such violations.

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3. Girdhar vs State, AIR 1953 MB 147; Yusuf vs State of Bombay, AIR 1954 SC 321.

# **Session III**

## **Sexual Crimes Against Women**



## **TIMING & SESSION PLAN**

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**Total Time : 2 hours**

- 45 Min : Eve Teasing, Molestation or Insult to the modesty of Women
- 45 Min : Attempt to Rape, Rape and Gang Rape
- 30 Min : Precautions, Procedure & Punishment

### **Training Materials**

- Chart papers/Flipchart/Blackboard
- Markers/Pens/Chalk
- Handnotes on Local Area Data
  - Case Studies/latest newspaper reports/NCRB Data
- Films, Role Play (Optional)
- Bare Acts
  - Relevant provisions of Indian Penal Code
  - Relevant provisions of Criminal Procedure Code
  - Relevant provisions of Evidence Act

### **Session Objective**

- To develop an understanding of the type and magnitude of offences, which are sexual in nature, against women.
- To understand the technical differences with regard to the legal terms of each crime so as not to lose later on technical procedural battle.

- To make the women understand that evidence is of prime importance and that precautions need to be taken as to procedure and trial.
- To inform participants of other rights of women concerning procedure, investigation, etc.

**Note for Facilitator:** Sexual offences are rampant and women regularly come across issues of eve teasing, molestation, insult to their modesty and many a times hear about more severe cases of attempt to outrage the modest, molestations, attempt to rape and even rape. However due to the social situation and lack of awareness, women many a time keep silent. The present Module is a piece of legal information which needs to be delivered in a manner to empower them to motivate others to take action against such crimes. And also to equip them with knowledge where they can stand with the victim and become a knowledgeable friend during the process of the complaint, medical examination, investigation and trials. Needless to say that these are extremely sensitive issues and the trainer should always address such issues in the third person, while facilitating them to open up and share their own personal experiences.

## EVE TEASING

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**Section 294<sup>1</sup> of IPC** makes all obscene acts in public places criminal offences. In common parlance, such acts are categorised as eve teasing. The act makes certain activities in public places which are a source of annoyance to others in public punishable under law. The Court has held<sup>2</sup> that to make an offence under the law, it should be proved that 1) the offender has done some obscene act 2) such act was done in any public place or 3) the offender has sung, recited or uttered any obscene song or word in or near a public place; and 4) has caused annoyance to others. The court has also held that while judging 'obscenity' it should be sensitive to the changing perspective and concepts of morality to appreciate the effect of section 294 in today's society's standards and its changing views of obscenity.

### Exercise 1: Group Discussion

#### Use of Abusive Language

**Case:** Two respectable girls were moving on a cycle rickshaw when a boy unknown to them passed by on another rickshaw and used amorous words suggestive of a sexual relationship with them. He asked them to go along with him.

**Q:** Will this amount to an obscene act?

**A:** Courts have held that such acts are obscene under the Act.

[Zafar Ahmed, AIR 1963 All 105; Sadar Prasad, 1970 CrLJ 1323 (Pat)]

The test<sup>3</sup> of obscenity is whether there was tendency in the act to deprave and corrupt those whose minds are open to such immoral influence. It is further held that such acts of obscenity arouse lust-

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1. **Section 294 of IPC:** Whoever, to the annoyance of others,

(a) Does any obscene act in any public place, or

(b) Sings, recites or utters any obscene songs, 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.

2. Pawan Kumar vs State of Haryana; (1996) 4 SCC 17.

3. (1978) 4 UCR (Bom) 277.

ful desires or the matter must tend to stir sexually impure thoughts<sup>4</sup>.

A public place is a place where the public goes, no matter whether they have a right to or not.

Cabaret dance has been an issue of concern in many cases and there have been divergent views by the court. Further, courts have even resorted to Sec. 87<sup>5</sup> & 88<sup>6</sup> to show prior consent or good faith. In two Kerala court judgements they have rationalised opposite views. In one case, the court<sup>7</sup> stated that in sensitive issues like 'decency' and 'morality,' when related to cabaret, the court would not take a dogmatic

approach, as the concept of decency and morality are not static and are bound to change from place to place, from time to time, from people to people and from age to age. The courts, concern and anxiety is to prevent the exhibition in public places of performances, which are immodest and indecent as judged by the standards of our country and of our times. However in a later case,<sup>8</sup> it was held that cabaret dances themselves include obscenity for which the audience bargains for their satisfaction.

### **Exercise 2: Reading & making them repeat**

#### **practice & procedure**

For an offence u/s 294 the essential ingredients to be proved in evidence are:

1. An obscene act must have been done in a public place, or
2. The act or utterance of an obscene song or ballad was done in or near to a public place
3. The act of the accused caused annoyance to others

**Procedure:** The offence is cognizable but bailable and triable by any magistrate as a summons case. According to the table provided in section 320, Cr.PC, 1973, this offence is not compoundable.

4. 1967 Ker LT 799.

5. Section 87: Act not intended and not known to be likely to cause death or grievous hurt, and done by consent.

6. Section 88: Act not intended to cause death, done by consent in good faith for person's benefit.

7. K.P Mohammad vs State of Kerala: 1984 Cr.LJ 745.

8. Deepa vs SI of Police; 1986 CrLJ 1120 (1124).

Cases have also held the use of abusive language as an obscene act. It is important to mention the 'words and expressions' used in the first information report (FIR). For example, in a case where the accused uttered obscene words to a woman, the FIR did not contain the exact words, but rather it was vaguely written that there was a showering of obscene words. The court held that it was not enough to constitute an offence under Sec. 294. It is necessary to mention the actual words.<sup>9</sup>

Section 294 provides for a ***punishment*** of imprisonment for up to three months or a fine or both.

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9. Preethimon vs State, 2008 CrLJ 1233 (Ker).



## INSULT TO THE MODESTY OF WOMEN

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**Section 509<sup>1</sup>, IPC deals with word, gesture or act intended to insult the modesty of a woman.**

The section makes the intention to insult the modesty of a woman the essential ingredient of the offence.<sup>2</sup> The word 'modesty' has not been defined anywhere in the IPC, neither in Sec. 354 nor in Sec 509. However, it is well established that the intention of the Legislature is to protect an attribute which is peculiar to women; a virtue which attaches to a female on account of her sex. Modesty is an attribute of the female sex, and she possesses it irrespective of her age. While there is no yardstick to measure insult, whatever is outrageous to morality would be outrageous to the modesty of woman.

### **Exercise 3: Group discussion indecent overtures**

A senior male officer slapped the posterior of a senior female officer at a public party in the presence of guests. She filed complains to his seniors first, but when there was no justice, she complained u/s 509.

**Q: Is this a fit case for insults to the modesty of women?**

**A:** The court held that the accused was fully aware that touching the posterior of the woman in the presence of guests would embarrass her and outrage her modesty. It was found to be a fit case u/s 509.

***Roopan Deol Bajaj vs KPS Gill and KPS Gill vs State; 2005 Cr.LJ 3443 (SC)***

**Intrusion upon privacy with the intention to insult the modesty of a woman:** A woman is entitled to privacy. No one can invade her privacy whenever one likes. She is entitled to protect her person if there is an attempt to violate her person against her wish.

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1. **S.509, IPC:** whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

2. Phiaz Mahomad, (1903) 5 Bom LR 502.

### Exercise 4: Group discussion unsolicited vulgar phone calls

Rashmi used to receive unsolicited regular calls from a Kunal. Kunal used to make obscene remarks and sexual threats. Because of Kunal's actions, Rashmi used to feel very uncomfortable and suffered anxiety, depression, etc.

**Q: Will such phone calls amount to the insults to the modesty of women?**

**A:** The court has held that the nature of the calls could be described by a reasonable person as a crime of violence. *Clarke Re, (1998) CLYB p.327*

When a person makes entry into an apartment occupied by a lady, the first and foremost rational inference that can be drawn in the circumstance must be that it was with the intention of committing some offence against that lady.

- If he only makes gestures and utters words requesting her to agree to commit some sexual offence, or to remove her petticoat or dhoti, then it would only amount to an offence u/s 509, IPC.
- But if he proceeds further and thereby tries forcibly to commit rape and does not stop only at intruding into the apartment and making gestures, then that

### Exercise 5: Reading & making them repeat practice & procedure

For an offence u/s 509 the essential ingredients to be proved in evidence are:

1. The accused uttered any words, made any sound or gesture, or exhibited any object.
2. The accused did so with the intention that such words or sound be heard or that such gesture or object be seen by the woman in question.
3. The accused did all this with the intent to insult the modesty of the woman.
4. The accused intruded the privacy of such woman with the intention to insult her modesty.

**Procedure:** The offence is cognizable but bailable and compoundable with permission of the court and is triable by any judicial magistrate as a summons case.

offence will be read u/s 376<sup>3</sup> in conjunction with S.511.<sup>4</sup>

- If he actually succeeds in committing rape, then it would be an offence u/s 376.

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3. Sec. 376, IPC: Punishment for rape.

4. Sec. 511, IPC: Attempts to commit offence.

# MOLESTATION

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**Section 354<sup>1</sup> of IPC** deals with assault or the use of criminal force with an intention to outrage the modesty of any woman. The section provides for punishment up to two years imprisonment or a fine or both.

The essential ingredients for making an offence u/s 354 are:

- There must be an assault on a woman.
- The accused must have used criminal force on her.
- The force used was with the intention to outrage the modesty of the woman.
- Or the accused knew that such use of force would outrage the modesty of the woman.

While defining ‘modesty’ courts<sup>2</sup> have held that the modesty of a woman is her sex; it is a virtue which attaches to a female owing to her sex. Modesty is the quality of being modest. In relation to

## **Exercise 6: Group discussion & explain positive discrimination constitutionality of special provision**

The constitutionality of the special provision for women was challenged, stating that it infringes the right to equality as even a man’s modesty can be outraged. The court held that the Act is not just about Outraging the modesty but it is the act of outraging the modesty of a woman. Further under the Act both a man and woman can commit the act of outraging. The Act applies equally against a man or a woman; thus, it does not violate Article 14 of the Constitution.

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1. **Section 354 of IPC:** Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

2. Ramkripal vs State of MP, 2007 CrLJ 2302 (SC).

women, it is womanly propriety of behaviour, and scrupulous chastity of thought, speech and conduct. These offences are created not only in the interest of women but in the interest of public morality as well.

## Importance of Evidence

Courts have taken views both for and against women victims on the basis of the medical evidence, forensic evidence and other supportive evidence available. In one case, due to the lack of evidence a case of rape could not be established, but the evidence was enough to convict the accused u/s 354.<sup>3</sup>

The issue is that due to a delay in procedures and the bad handling of the evidence the accused got a lesser punishment than what he deserved. In another case,<sup>4</sup> the court stated that generally a lady would not put her character at stake, yet this principle cannot be applied universally. When the statement of witnesses as to the exact place and manner of occurrence was materially different than that of the accused, it was held that the accused will have the benefit of the doubt.

## Knowing the Act is Likely to Outrage the Modesty of Women

Intention is not the sole criterion for an offence u/s 354; knowledge that the act of using criminal force would outrage the modesty is

### Exercise 7: Group discussion

A shopkeeper pulled a 12 year old girl and put her across his knees and smacked her 12 times on her buttocks outside her shorts for no apparent reason.

**Q: Will this constitute an assault on the modesty of the women (girl)?**

**A:** The court convicted him of indecent assault. The court stated that for a charge of indecent assault, it is sufficient if it is proved that:

- The accused intentionally assaulted such woman.
- Such assault would be considered by right-minded persons as indecent.

3. State vs Dasegowda; 2004 CrLJ NOC 53 (Kar).

4. Moola Singh vs State, 2005 CrLJ 1347 (Raj).

## Exercise 8: Group discussion

### Age of Girl

**Q: Can a girl of the tender age of 7½ months, who has an immature body and whose sexual power is dormant, be subjected to the outraging of her modesty?**

**A:** Even though the girl is small in age and size, and she has not yet developed a sense of shame and has no awareness of sex, from birth she possesses the modesty which is the attribute of her sex. A woman means a female human being of any age (Sec.7, IPC).

***State of Punjab vs Major Singh, AIR 1967 SC 63***

enough for conviction. In one case, after some altercation the accused slapped a lady and kicked her on the stomach. The court held that the actions of the accused amounted to outraging the modesty of the lady.<sup>5</sup>

The breast area has been held as one of the two most vulnerable parts of a woman's body. Any attempt to put hands knowingly or any attempt to squeeze will amount to outraging the modesty of the woman. In a case, where the accused placed his hands on a woman's breast, not by mistake or slip but with knowledge, the Court held him guilty of outraging the modesty of the woman.<sup>6</sup> In another case, where the accused after drinking, caught hold of the hostess, and rubbed her breast, the court held that he committed an offence u/s 354 for outraging the modesty of the woman.<sup>7</sup> In a case, where the accused was charged with outraging the modesty of woman by holding her breast, the accused was convicted because the image of woman in public, family life and reputation was by this incident put at stake.<sup>8</sup>

5. Sailendra Nath Hati vs Aswini Mukherjee, 1988 CrLJ 343 (Cal)

6. State of Rajasthan vs Hetram, 1982 CrLJ (Raj) 522

7. Rohitaswa vs State of Rajasthan, 1987 CrLJ 1557.

8. State vs Ram Das, 1999 CrLJ 2802 (HP).

### **Exercise 9: Reading & making them repeat practice & procedure**

For an offence u/s 354, the essential ingredients to be proved in evidence are:

- The victim concerned belong to fair sex of any age.
- The accused (male or female), subjected her to assault as defined in S.351, IPC or to criminal force as defined in S.350, IPC.
- The accused, while committing assault or using criminal force, intended to outrage the modesty of the woman.

**Procedure:** the offence is cognizable and non compoundable but bailable. Trial by any judicial magistrate as a summons case.

## **A Woman's Consent**

In a case, where the accused deceived three women to allow breast self-examinations on the basis of being medically qualified, the court held that the accused was guilty of assaulting the modesty of the women. There was no genuine consent because they consented on the basis of false information.<sup>9</sup> Where the concerned woman is a consenting party, no offence for the outraging of modesty has been made out.<sup>10</sup>

9. R. vs Tabassum, (2000) 2 Cri App R 328 (CA).

10. State Govt. MP vs Sheo Dayal, 1956 CrLJ 83.

# ATTEMPT TO RAPE, RAPE AND GANG RAPE

## Rape

Chapter XVI of the Indian Penal Code deals with ‘sexual offences.’ The section deals with rape, offences related to sexual intercourse and the punishment for such offences. The Sections are 375, 376, 376-A, 376-B, 376-C, and 376-D. While ‘rape’ is defined under Section 375, Section 376 states the punishment for the crime of rape.

**Section 375** defines RAPE, and an offence that is committed if a man has sexual intercourse with a woman:

- Against her will.
- Without her consent.
- When her consent is taken by fear of death or harm.
- to herself or to someone she is interested in protecting.

### **Exercise 10: Group discussion**

#### **Consent under Section 90, IPC**

Section 90, IPC specifically deals with consent and no consent can be translated as true consent when given by person under fear of injury or under a misconception of facts, etc. In a case where the girl student was made to agree to have sexual intercourse by her music teacher on the pretext of enhancing quality of her voice, was taken as no consent. **Williams, (1923) 1 KB 340.**

Consent on part of a woman, as a defence to an allegation to rape, requires voluntary participation, not only after the exercise of intelligence, based on knowledge, of the significance and moral quality of the act, but after having freely exercised a choice between resistance and assent. Submission of her body under the influence of fear or terror is no consent. **Rao Harnarain vs State of Punjab; AIR 1958 Punj 123**



- When her consent is taken by pretending to be her husband when he is not.
- When her consent is taken when she is under the influence of drugs or drinks and is unable to understand the nature and consequence of what she is consenting to.
- When she is of unsound mind and is not able to understand what the man is going to do.
- If a man has sexual intercourse with a girl below the age of 16 years, even when she has given consent, will also amount to rape as she is supposed not to understand the nature and the consequences of what she has consented to.
- Marital rape has also been recognised in a limited sense. Only husband who has sexual intercourse with his wife, who is below 15 years of age, can be held for rape.

### **Exercise 11: Group discussion women's character**

Q: Is a woman's character relevant in cases of

Rape? Can the accused take the excuse that the

woman whom he raped is of loose character?

A: No. The Supreme Court stressed in State of UP V Pappu (2004) that the character of the woman is "really of no consequence" when deciding whether she was raped or not. Even though the court has laid down this principle several times before, some courts still seem to consider that women of "easy virtue" need not be given sympathy.

## **Punishment for Rape**

- Minimum imprisonment is for 7 years and maximum imprisonment can be for life or 10 years with fine.
- In cases of marital rape by a husband against his wife, the punishments are as follows:
  - If the wife is below 12 years of age, then the punishment is as mentioned above.

- If the wife's age is between 12 and 15 years of age, then the punishment is a maximum of 2 years or fine or both.
- If the wife is above 15 years of age, then there is no punishment under Indian law.
- Further, the law provides that a husband cannot be prosecuted for committing rape on his own minor wife below 15 years of age if more than one year has elapsed from the date of the commission of the offence (SS.(6) of Sec. 198 Cr.PC)

**Exercise 12: Reading & making them repeat**

**Presumption as to absence of evidence**

Section 114A, Indian Evidence Act provides that in cases of rape (custodial rape by police, public servant, jail, etc., hospital, pregnant woman, gang rape) where intercourse is proved and the matter is just about knowing whether it was with or without consent; if the victim stated in the court that she didn't consent then there will be a presumption that she didn't consent.

**Kuldip Singh vs State of Punjab  
2003 CrLJ 3777**

- Further the court also has the power to condone the offence and give punishment for less than 7 years. When the court does so, they are bound to mention in the judgement adequate and special reasons for the judgement.

**Other forms of Rape and Punishments**

- Custodial rape occurs when a man commits the offence of rape (as mentioned above) against a woman in his custody. There are four instances of such custodial rape mentioned in the IPC:
  - sexual intercourse by policemen in the police station.
  - with a woman who is in his custody or in custody of his subordinate.

- within the limits of the police station.
- sexual intercourse by a public servant with a woman who is under his custody or custody of his junior is rape.
- sexual intercourse by a doctor or other staff with a woman in the hospital.
- sexual intercourse by managerial staff of the jail or remand homes like children’s institution or Nari Niketan, etc. Any institution which has been established for the reception and care of women and children would fall under this category.
- A man commits rape of a woman when he knows she is pregnant.
- A man commits rape of a woman who is less than 12 years of age.
- A group of people commit gang rape. In cases of gang rape, what is important is “common intention” and not how many people had sexual intercourse. All who acted with the same intention of committing rape would be liable as if each committed the offence of rape.

## **Punishment for Rape**

- Rigorous imprisonment for a minimum of 10 years and the maximum can be for life with fine.
- The court has the power to be lenient and give punishment for less than 10 years. When court does so, they are bound to mention in the judgement the adequate and special reasons for the judgement.

# PENETRATION

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Section 375 states that Penetration is sufficient to constitute the sexual intercourse necessary for the offence of rape.

The Court has deliberated over various instances which either fall short of penetration or the penetration has been challenged not to have happened as something didn't occur as an outcome.

The male organ inserted between thighs kept tight has been held to constitute unnatural sex not rape.<sup>1</sup>

In another case, the Court stated clearly that it is not necessary that the hymen<sup>2</sup> should rupture in every case. Sec. 375 just requires medical evidence of penetration.<sup>3</sup>

For rape to occur, partial penetration of the male organ within the female genital organ with or without emission of semen is sufficient

## Exercise 13: Group discussion

### Attempt to rape and indecent assault

Attempt to commit rape or failure to rape completely but it being more than preparation but falling short of penetration amounts to attempt to commit rape, and the offence is charged u/s. 376/511 IPC. In an incident when the accused stripped the girl and pounced on her but the rape couldn't be effected as she was successful in escaping, the court held that it was an attempt to rape, not merely preparation to commit rape.

Any attempt to rape would definitely involve an indecent assault on the victim. It has been held that an attempt to rape can only be made out when the act has proceeded beyond the stage of preparation. If the act of the accused falls short of an attempt and does not go beyond the stage of preparation, then this will fall only as an offence amounting to indecent assault. [Premanarayan vs State of MP; 1989 CrLJ 707 (MP)]

1. State of Kerala vs Kundumkara Govindam, 1969 CrLJ 818.

2. A fold of tissue that partly covers the entrance to the vagina of a virgin (wordweb dictionary).

3. Mt. Jantan vs Emperor, AIR 1934 Lah 797.

for the purpose of law. What is important to ascertain is that the private part of the accused did enter into the person of the woman. It is not necessary to enter a discussion over how far it entered.<sup>4</sup>

Based on the legal provision and court judgements one can say that Penetration is sufficient and necessary to constitute sexual intercourse for the offence of rape.

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4. Bhudanlal Sharma vs State of Orissa, (1960) 1 CrLJ 689; Allen, (1839) 9 C&P 31.

## **VARIOUS SITUATIONS & COURT JUDGEMENTS**

- **Dormant participant in gang rape:** Plea of the accused that he was only present at the scene of crime and did not indulge in the sexual intercourse was not accepted by the court.<sup>1</sup>
- **Consent of minor girls:** Accused was cohabiting with a minor girl aged 13 or 14 with her consent. The court held that the offence of rape stands as the consent of a minor is irrelevant.<sup>2</sup>

### **Exercise 2: Reading & making them repeat**

#### **Practice & procedure**

**For offences of rape the essential ingredients to be proved in evidence are:**

1. Accused had sexual intercourse with a woman; (a) if the girl is below 16 years of age her consent will be immaterial, (b) if the victim is not married to the accused then it has to be proved that there was no consent on part of the victim, (c) if the victim deposes that there was no consent, then it is for the defence to prove that the sexual intercourse was consensual.
2. Or the consent for intercourse was obtained from the woman (above 16 years of age): a. through fear of her death or one in whom the victim is interested, b. on false belief that the accused was the person with whom she was married, and c. because of unsoundness of mind or intoxication which rendered her unable to appreciate the nature and consequence of such consent.
3. If the victim, though a wife, is below the age of 15 years.
4. The statute merely requires medical evidence of penetration.

**Procedure:** The offence is cognizable and non-compoundable and non-bailable and triable by Court of Session. When the offence is against the accused's own wife, it is non-cognizable and non-compoundable and bailable and triable by Court of Session.

1. Ashwini Chaturbhai Parmar vs State, 2008 CrLJ 4764 (Guj).

2. Dolgobinda vs State of Orissa, AIR 1958 Ori 224.

- **Age 16 & above:** The clause about a minor's consent does not apply if the woman is 16 years old or above. Therefore if a man has intercourse with an adult woman above 16 years of age with her consent it does not constitute rape.<sup>3</sup>
- **Child rape cases:** Such cases of perverse lust for sex where even innocent children are not spared in the pursuit for sexual pleasure should be considered crimes against humanity. The evidence from the victim of crime in such cases is not unreliable and non-examination of independent witness cannot be grounds for setting aside the conviction of accused.<sup>4</sup>
- **Corroborative evidence missing:** The accused committed rape on minor girl but there were no signs of injury, swelling or blood or semen on the penis of the accused. It was held that absence of such evidence does itself make the witness false and the conviction was upheld.<sup>5</sup>
- **Previous sexual intercourse:** The fact that the girl had had previous sexual intercourse or is promiscuous does not necessarily mean that she was a consenting party to a sexual intercourse.<sup>6</sup>

**Mentally challenged girl:** When rape was committed against a mentally challenged girl, her consent was of no relevance. The accused was charged with the offence of rape.<sup>7</sup>

**Promise of marriage:** Consent obtained with the false promise of marriage is a deceitful means of obtaining consent and is not consent. The offence comes within the ambit of rape.<sup>8</sup>

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3. Ebadi Khan vs Emperor, AIR 1938 Cal 460.

4. State of Rajasthan vs Om Prakash, (2002) CrLJ 2951 (SC).

5. Shyogi Ram vs State, 2005 CrLJ 4763 (Raj).

6. Gajanand vs State of Gujarat, 1987 CrLJ 374.

7. Khoja Ram vs State, 2006 CrLJ 2093 (HP).

8. Saleha Khatoon vs State of Bihar, 1989 CrLJ 202.

## **PRECAUTIONS, PROCEDURE & PUNISHMENT**

Sexual offences are generally committed in secluded places where the presence of persons other than the victim and accused is less probable, which makes the detection of crime, gathering of evidence and conviction difficult. There are provisions which take care of such situations but basic precaution and prompt action on the part of the victim, her family and friends, and her lawyers can make the real difference. Many a time, due to the lack of or in the absence of adequate evidence, the culprit walks away scot-free or gets a lesser punishment than he deserves.

Courts have held that unexplained delays in lodging an FIR are fatal to prosecution.<sup>1</sup> Further, in order to make a strong case, courts many a time require delays to be properly explained. The primary action point is at the level of victim and her family and friends.

### **General Precautions which a Rape Victim Should Take**

- Narrate the incident to someone in the family or to a friend.
- Do not take a bath. Do not wash your clothes. There is the possibility of crucial forensic evidence in the form of sperm, blood, skin, hair, etc., washing away.
- Once the family / friend knows of the incident, an immediate effort should be made towards getting the First Information Report (FIR) registered at the nearest police station.
- While filing the FIR, give proper and descriptive details of the incident. Remember the words used/ written in the FIR matter. We have seen above that if the right words are not used then the crime might fall in a lesser category and the accused will get a lesser punished than he deserves. So always give

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1. Rewaram vs State of MP, 1977 CrLJ (NOC) 188 (MP).



detailed information. Mention that sexual intercourse took place.

- Further, always remember that it is your right to get a copy of the FIR free of cost. This will also ensure that the actual FIR was lodged.
- The police will take the victim's clothes for examination which may contain the semen, blood or hair of the man. The police should take the clothes in a sealed packet in front of you. Take a receipt of the sealed clothes.

## **Medical Examination of the Victim**

**Section 164 A Cr. PC** deals with the medical examination of a rape victim. This Section requires that the female victim of rape or attempt to rape should be examined by a medical expert.

Once done with the FIR, it is the duty of the police to take the victim immediately to undergo a medical examination by a doctor.

The law requires that the woman be medically examined by a registered medical practitioner who is:

- Employed in a hospital run by the government, or a local authority.
- In absence of such practitioner, by any other registered medical practitioner.
- With the consent of the female victim or with consent of such other person who is competent to give consent on her behalf.
- Such medical examination should be conducted within 24 hours from the time of receiving information.

## **Role of Doctor and Report**

The law requires the registered medical practitioner to

examine the woman without delay. The doctor is supposed to examine the woman in person and submit a report with the following information:

- the name and address of the woman and of the person by whom she was brought.
- the age of the woman.
- the description of material taken from the person of the woman for DNA profiling.
- any marks of injury on the person of the woman.
- general mental condition of the woman.
- description of other material in reasonable detail.
- The doctor should mention the following things in the report:
  - The fact that the *consent* of the woman or some person competent to consent on her behalf was obtained.
  - Exact time when the medical examination started and the amount of time the examination lasted.
  - The doctor should after examination immediately forward the report to the investigation officer and the officer should further forward the report to the concerned magistrate.

## **In Camera Trial in Cases of Rape**

The cases related to rape should be tried in camera. This means that no outsider can be present at the time of the trial. The law gives the presiding judge or magistrate the power to not allow or prohibit the general public from being part of the proceedings. The honorable Supreme Court<sup>2</sup> stressed the importance of provisions of Section 327 (2) and (3) Cr.P.C. and issued a direction to hold the trial of rape cases in camera. This was done to protect honour

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2. State of Punjab vs Gurmit Singh (1996) 2 SCC 384.

### **Exercise 15: Group sharing**

#### **Prohibition on publishing the name of victim**

**Section 228A, IPC** prohibits the disclosure of the identity of victim in crimes of rape. It makes printing or publishing names or making known the identity of a rape victim a punishable offence.

Though Section 228A does not apply to printing/publishing of the judgement by the High Court and the Supreme Court, the court held that it is more appropriate to abstain from giving the name of the victim in order to maintain the social object of the section. So any judgement of the High Court or lower court should not contain the name of the victims of the sexual offence.

**Bhupinder Sharma vs State of HP, 2004 CrLJ I (SC)**

and privacy of the victims and to enable the victims of the crime to be comfortable and answer the questions. It was further directed that as far as possible the trial of such cases should be conducted by lady Judges so that the prosecutrix can make a statement with greater ease and assist the court in properly discharging their duties, without allowing the truth to be sacrificed at the altar of rigid technicalities.

# **Session IV**

## **Caste-based Violence**



## TIMING & SESSION PLAN

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**Total Time** : 2 hours

- 30 Min : Background & Law
- 60 Min : Rights & Protection
- 30 Min : Issues of Concern & Legal Action

### Training Materials

- Chart papers / Flipchart / Blackboard
- Markers / Pens / Chalk
- Handnotes on Local Area Data / Case Studies / Newspaper reports / NCRB Data.
- Films, Role Play (Optional)
- Bare Acts
  - The Schedules Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 & Rules 1995
  - The Protection of Civil Rights Act, 1955

### Session Objective

- To develop an understanding of the background and present realities of the caste-based violence
- To equip the participants with adequate knowledge of the law and procedure
- To prepare participants as facilitators of Justice

**Note for Facilitator:** Caste and atrocity are sensitive issues. Special care should be taken when dealing with such issues and when

interacting with participants. There should be no discussions, even unintentional, suggesting or naming someone is part of a certain caste during the sessions, case study discussions or role plays. The challenge is to deal with the law which is against the status quo while respecting and without hurting sentiments attached with local dialect, culture, traditions and customs.

## BACKGROUND AND LAW

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As per 2001 Census, SCs accounted for 166.63 million (16.2 percent) and STs 84.32 million (8.2 percent) of the country's total population. The Scheduled Castes are subjugated to various discriminations, social disabilities, exploitation and exclusion which deprives and denies them the opportunity to be treated as equals. Denial of rights and crime against SCs & STs remains the biggest challenge against upholding the Constitution's commitments to freedom, equality and justice.

To further the objectives of the Constitutional guarantees of equality,<sup>1</sup> prohibition against discrimination and affirmative action<sup>2</sup> and abolition of inhumane practices of untouchability<sup>3</sup> and bonded labour,<sup>4</sup> there are two important pieces of legislation: the Protection of Civil Rights Act, 1955 (PCR Act) and the Scheduled Castes and

### **Status of Crime against SC & ST**

The Scheduled Castes and Scheduled Tribes face all forms of discrimination, exploitation and abuse. Crimes against them are rampant. According to the latest National Crime Record Bureau (NCRB) records, the incidents of crimes against SCs increased by 10.9 percent in 2007 compared to 2006. However, incidents of crime against Scheduled Tribes registered a decline of 4.5 percent during 2006-2007. There are procedural glitches and every case does not get registered and further the average conviction rate for crime against Scheduled Castes and Scheduled Tribes stood at 30.9 percent and 29 percent, respectively, as compared to the overall conviction rate of 42.3 percent in IPC cases.

**Source: Mid-Term Appraisal of the Eleventh Five Year Plan, Planning Commission**

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1. Article 14 provides that States shall not deny any person **equality before law** or the equal protection of laws within the territory of India.

2. Article 15.

3. Article 17.

4. Article 23.



### **Exercise 1**

Open the discussion and let the participants react to the NCRB data on the increase in crimes, non-registration of cases and low conviction rate.

Ask participants to narrate two instances of social discrimination, one which they have witnessed and another which they might have heard or read about. While they narrate these instances – categorise them under the different crimes as mentioned in the POA Act, 1989.

***Chartpapers can be used.***

Scheduled Tribes (Prevention of Atrocities) Act, 1989 (POA Act). These acts provide protection against various forms of social discrimination i.e., untouchability, exploitation and atrocities. While protections guaranteed under these laws are generic and apply to all members of the family and community, it is also true that in a patriarchal setup, women belonging to the Scheduled Caste and Scheduled Tribes form the basic object of oppression and suppression, requiring more protection than others.

## RIGHTS AND PROTECTION

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Segmentation on the basis of caste and tribes forms one of the core differentials in the Indian society. Caste or tribes clubbed with gender multiplies the degree of discrimination against women. For various historical, social and economic reasons, they remain vulnerable and subjected to various offences, indignities, humiliation and harassments. It was found that the Constitutional protection and guarantees and normal provisions of IPC and Protection of Civil Rights Act, 1955<sup>1</sup> were inadequate to protect against the increasing atrocities of certain kinds. To further enhance the protection the Legislature brought a special law, the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (POA Act).

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1. The Protection of Civil Rights Act, 1955 furthers the Constitutional Guarantee stated in Article 17, (abolishing the practice of untouchability). The Act guarantees every person basic civil rights by abolishing the practice of untouchability and its prevalence in all walks of life, with adequate punishment.

## WHAT ARE THE REASONS AND OBJECTIVE BEHIND BRINGING THE POA ACT?

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There was an increasing number of crimes such as parading women naked, forcing to eat excreta, etc., which were not being adequately addressed within the general provisions of IPC.

As the members of Scheduled Castes and Scheduled Tribes were educated and started asserting their rights and in some cases, challenging the status quo, the other castes reacted by increasing the number of atrocities perpetuated.

Further, these new set of crimes or 'atrocities' were not defined anywhere and so a law was required to define them.

### Exercise 2

A few participants are asked to narrate their experiences interacting with the police or Judiciary and whether it has been a hard or easy experience. Also ask them to contextualise their experience by keeping in mind a poor illiterate member of Scheduled Caste or Scheduled Tribe.

A brief background sharing and explanation can be provided as to the listed reasons and objectives.

Since members of Scheduled Tribes and Scheduled Castes are poor and without much influence within the administration or Judicial System, a separate mechanism of investigation, rules of evidence (such as presumption) and provisions for special police and courts were necessary. Further, caste-based atrocities many times are mass actions against the whole family or community so special provisions for cordoning off the entire area are required.

Finally, the act provides for relief and rehabilitation of victims of such offences and places the duty on the State to take measures of support such as legal aid, covering expenses, economic and social rehabilitation, etc.

# WHO DOES THE LAW PROTECT? WHOM DOES IT PUNISH?

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## Who does the law protect ?

- The POA Act applies only to members of a Scheduled Caste or Scheduled Tribe.
  - The Court has held that for the law to apply it is necessary that the offence or atrocities be committed against the person belonging to SC or ST community.<sup>1</sup>

## Whom does the law punish?

- Any person who does not belong to the Scheduled Caste or a Scheduled Tribe community when he commits any offence against a member of a Scheduled Caste or a Scheduled Tribe.

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1. Kalasika Prashanta Kumar vs State of AP; 2004 Cri LJ 1051 (AP).

## WHAT KIND OF ATROCITIES HAVE BEEN MADE PUNISHABLE OFFENCES?

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Section 3 of the Act defines “atrocities” and broadly creates two kinds of offences.

- Minor offences for which the punishment can be from 6 months to 5 years with fine. [Section 3(1)]
- Major offences for which the punishment is 10 years of life imprisonment. [Section 3(2)]

Under the first category, the following acts if **committed by** a person who is not a member of SC/ST community **with or against** a member of SC/ST community is an atrocity against such member. The Atrocities which are held to be punishable can be categorised as follows:

- Force used physically against a person’s wishes
- Acts derogatory and an insult to human dignity
- Acts against enjoyment of property or creating injury or annoyance
- Intimidation and conspiracy
- Sexual offences against women

## USE OF PHYSICAL FORCE AGAINST A PERSON

Physical force is used against a person such as:

- Forcing someone to drink or eat any inedible or obnoxious substance
- Compelling or enticing someone to do ‘begar’ or other similar forms of forced or bonded labour
  - The act of ‘begar’ or forced labour or bonded labour is also prohibited in both the Indian Constitution under Article 23 and also under the special law Bonded Labour System (Abolition) Act, 1976.
  - While the provisions prohibiting ‘begar’ and forced or bonded labour are generic in the other laws, it is also a social reality that the majority of bonded labourers are from the most marginalised communities and may belong to the Scheduled Castes and Scheduled Tribes.
  - The court has also held that any payment less than the minimum wage against any work done would be considered forced labour and a violation of Article 23 of the Constitution.<sup>1</sup>
  - The only exception to this provision is compulsory service for public purposes imposed by government.

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1. Peoples Union for Democratic Right vs Union of India; AIR 1982 SC 1473.

## **ACTS DEROGATORY AND AN INSULT TO HUMAN DIGNITY**

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- If anyone forcibly remove clothes or parades naked or with painted face or body or commits any similar act which is derogatory to human dignity
  - The section clearly mentions actions which are unlawful and derogatory in any civilised society.
- If anyone intentionally insults or intimidates a member of ST or SC community in any place which is within the public view with the intention to humiliate, then it is a punishable offence.
  - Court has held that for making an offence under this provision it is important that:
    - The utterance be made in a public place within public view.<sup>1</sup>

### **Exercise 4: Pose as a question**

#### **Swaran Singh vs State**

Vinod a member of SC community used to work as a driver with Umesh. The neighbours of Umesh used to always taunt Vinod and tell him that he should not come their way when they were going out as he belonged to chuda-chamar community and was an untouchable. Vinod complained to his employer and also to the neighbour but nothing changed. One day while he was washing the car, the neighbours threw dirty water on him and abused him using bad language and his caste name. A few fellow drivers witnessed the whole incident.

**Question: Does calling a person `Chamar` amount to intentionally insulting with intent to humiliate a member of the Scheduled Caste?**

The Court held that calling a Scheduled Caste member `Chamar` with intent to insult or humiliate him in a place within public view was certainly an offence under section 3 (1) (x) of the Act.

- The words used to insult be used with the intent to humiliate and also the words should be clearly mentioned in evidence so as to ascertain whether those words amounted to insult or not.<sup>2</sup>

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2. Pappu Singh vs State of UP; 2002 Cri LJ 1251.



## ACTS AGAINST ENJOYMENT OF PROPERTY OR CREATING INJURY OR ANNOYANCE

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- If anyone dumps excreta, waste matter, carcasses or any other obnoxious substance in the house, premises or neighborhood with an intention to cause injury, insult or annoyance.
  - It is important to point that in this clause, the intention of the accused is important.
  - Further it is also important that the act should be such which causes or was intended to cause injury, insult or annoyance.
    - Annoyance is defined to include even mental annoyance, not just physical annoyance (Section 144 Cr.PC).<sup>1</sup>

### Exercise 5: Pose as a question

#### **Kashiben Chhaganbhai Koli vs State of Gujarat**

In a village, a person belonging to SC community named Kanchhi Bhai, had bought a piece of land from a person called Kashiben. After part payment, a sale deed was signed and the land was handed over to Kanchhi Bhai. After the first crop, Kashiben forcibly entered the land and tilted the whole land with a tractor, destroying the standing crop. He also abused Kanchhi Bhai in name of his caste.

**Question: Will Kashiben be guilty of Section 3(1)(v) which deals with wrongfully dispossessing of land or premises or interference with the enjoyment of land, premises or water?**

In this case, the court held that Kashiben not only interfered with the possession and enjoyment of the claimant over the land, but also damaged the crops thereon. Therefore, Kashiben was guilty of an offence punishable under Section 3(i)(v) of the Act and Section 427 IPC. Section 427 IPC made any mischief causing damage above the amount of Rs. 50 an offence with punishment.

- Injury is defined as harm caused illegally to any person, in body, mind, reputation or property. (Section 44, IPC). Court has held, injury is an act contrary to law.<sup>2</sup> It has the same meaning as “un-lawful.”
- If anyone commits wrongful acts against the property of the victim, then it will be a punishable offence. The acts include:
  - Wrongfully occupying or cultivating any land which is owned or was allotted to or was notified by any competent authority, or
  - Getting land which was allotted to someone else, transferred in his name.
- If anyone has a right over some land, premises or water and someone interferes with such enjoyment or wrongfully disposes such land or premises, then it is an offence.
  - Courts have held the following are important aspects concerning the provisions, namely:
    - There should be either interference with enjoyment or dispossession of land, premises or water.
    - Only those acts are specifically forbidden and wrongful by law.
    - The victim must belong to the Scheduled Caste or Scheduled Tribe to make out an offence under the section and sustain conviction and sentence of the accused.<sup>3</sup>
    - Court has stressed the importance of the content of complaint/FIR in showing the existence of prime

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2. Swami Nayudu vs Subramania Mudali (1864) 2 MHC 158.

3. Hukum Singh vs State of MP, 2004 (14) AIC 358 (MP).

facie case constituting the offence.<sup>4</sup>

- If anyone corrupts or fouls the water of any spring, reservoir or any other source which is generally used by the scheduled caste or scheduled tribe community to make the water body less fit for use, than this is a punishable offence.
- If anyone obstructs or restricts use of any passage or prevents from accessing any public place which is otherwise customarily used as a right, such acts will be a punishable offence.
- If anyone forces or causes to leave his house, village, or other place of residence this will also form a punishable offence.

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4. Yashwant vs State of Maharashtra; 2003 (8) AIC 717 (Bom).

## INTIMIDATION AND CONSPIRACY

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- If someone forces or intimidates a member of the SC or ST community to influence his voting to which candidate and in which manner, then such an act is a punishable offence.
  - ‘Intimidation’ is something which puts a man in fear and induces him to do or to abstain from doing some other act.<sup>1</sup>
  - Intimidation includes any words or acts intended and calculated to put any person in fear of any injury or danger to himself or to any member of his family or to any person in his employment, or in fear of any injury to or loss of property, business, employment, or means of living.<sup>2</sup>
- If anyone institutes false, malicious or vexatious suits or criminal or other legal proceedings against a member of ST or SC community, then this amounts to a punishable offence.
  - It is a fact that going through the Indian Judicial System takes time and is a large expense; for these reasons, it remains out of the reach of the poor. Many a time, it is even oppressive. The system may even be used against innocent members of SC & ST by falsely implicating them in cases. The law makes all such malicious attempts a punishable offence.
  - Malice signifies the presence of some improper and wrongful motive, that is to say, intent to use the legal process in question for some other use than its legally appointed and appropriate purpose.<sup>3</sup>
  - Vexation is the action of troubling or harassing by

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1. Payne vs Western. R Cal 49 Am Rep 666.

2. Whelon vs Fisher; 26 LR Ir 340 nm.

3. State of Bihar vs Rameshwar Prasad; AIR 1980 Pat 267, 270.

aggression or interference. It includes by physical means.<sup>4</sup>

- If anyone by giving false or frivolous information to any public servant causes such public servant to use his lawful powers to injure or annoy a member of SC or ST community because of such false information, then the person who provided such false information is said to have committed a punishable offence.
  - False means erroneous, untrue, the opposite of correct or true. In jurisprudence, it implies something more than mere untruth. It is an untruth coupled with a lying intent, or intent to deceive or to perpetuate some treachery or fraud.
  - Frivolous means of little weight or importance. A claim or defence is frivolous if a proponent can present no rational argument based upon the evidence or law in support of that claim or defence.<sup>5</sup>

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4. Vide Section 217(a), CrPC.

5. *Liebouritz vs Aimexco Inc.*; Colo App 701 p.2d 140 at 142.

## SEXUAL OFFENCES AGAINST WOMEN

- Anyone who assaults or uses force against any SC or ST woman with the intention to dishonour or outrage her modesty commits a punishable offence.
  - A similar offence is provided under Section 354, IPC for outraging the modesty of a woman.
  - Many times cases falling short of rape are registered under the category of outraging the modesty.
- Anyone being in a position where he can dominate the will of a woman from SC or ST community and uses his position to exploit her sexually, to which otherwise she would not have

### **Difference between S.354, IPC & S.3 (1) (xi), POA**

Sec 3 which deals with assaults or use of force on any woman belonging to SC or ST with intent to dishonour or outrage her modesty is an aggravated form of the offence under Sec 354, IPC. The core difference essentially is the caste or tribe to which the victim belongs.

### **Exercise 6: Pose as a question**

#### **Case study for group discussion**

One girl named Kanta belonging to a SC community stayed in Kishan Village. A boy name Raghav from a caste other than SC loved her. The girl did not like him much. Her parents fixed her marriage to someone else. On learning that she was getting married, Keshav got angry and raped her. Keshav committed a gruesome crime and should be punished.

**Q: Since Kanta is a member from a SC community, will the POA Act will apply on Keshav? Can Keshav be charged with a crime under the POA Act?**

**Answer:** The accused will be charged for an offence of rape under Section 375, IPC but not under Section 3 (2) (xii) of the SC/ST (POA) Act.

agreed if he was not in that position, is said to commit a punishable offence.

- The court has held that to prosecute anyone under this provision it is necessary to show in the record material indicating that the crime was committed against the victim only because she / he is a member of the Scheduled Caste or Scheduled Tribe.<sup>1</sup> For this section to apply, it has to be proved that the accused had previous knowledge of the victim's SC or ST status.

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1. Mehandi Lal Yadav vs State of Chhattisgarh; 2004 Cri L 710.

## **MAJOR OFFENCES**

### **[PUNISHMENT ABOVE 10 YEARS OR LIFE IMPRISONMENT SECTION 3(2)]**

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- Anyone who gives or produces false<sup>1</sup> evidence against any SC or ST member for an offence which is capital by the law will be punished with life imprisonment and a fine.
- Anyone who gives false or fabricated<sup>2</sup> evidence against an innocent member from the SC or ST community for an offence who gets convicted and executed will be punished with a death sentence.
- Anyone who gives false or fabricated evidence against an innocent member from SC or ST community for an offence which has a conviction of 7 years or more will be punished for a minimum of 6 months to 7 years or more with a fine. There are several offences under IPC with punishments for 7 years or more.<sup>3</sup>

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1. Section 191, IPC deals with giving false evidence. In *Parbutty Churn Sircar*; (1866) 6 WR (Cri) it was said that it is not necessary that the false statement should be material to the case in which it is given. In *Mohammad Khudabux vs King Emperor*; AIR 1949 Nag 303 it was stated that if the statement made is designedly false, the accused is liable whether the statement had a material bearing or not upon the matter under enquiry before the court.

2. Section 192, IPC deals with fabricating false evidence. In *Aberdare Local Bd. Health v Hammett*; LR 10 QB 162 court has held that the word 'fabricate' imports a criminal intention – a mens rea, a wrongful act, an act done with a mens rea, fraud or falsehood, a false or fraudulent concoction, knowing it to be wrong or contrary to law as fabricating evidence.

3. Sections 115, 118, 119, 120, 121, 121A, 122, 123, 124, 124A, 125, 126, 127, 128, 129, 130, 131, 132, 134, 193, 194, 195, 196, 197, 198, 199, 200, 201, 211, 213, 214, 216, 219, 221, 222, 225, 231, 232, 234, 235, 238, 240, 243, 244, 245, 247, 249, 251, 255, 256, 257, 258, 259, 260, 281, 302, 303, 304, 304B, 305, 306, 307, 308, 311, 312, 313, 314, 315, 316, 317, 325, 326, 327, 328, 329, 330, 331, 333, 363, 363A, 364, 364B, 365, 366, 366A, 366B, 367, 368, 369, 370, 371, 372, 373, 376(1), 377, 380, 381, 382, 386, 387, 388, 389, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 404, 407, 408, 409, 412, 413, 420, 433, 435, 436, 437, 438, 439, 449, 450, 451, 452, 454, 455, 457, 458, 459, 460, 466, 467, 468, 472, 473, 474, 475, 476, 477, 477A, 489A, 489B, 489C, 489D, 493, 494, 495, 496, 506, 511.



- Anyone who commits mischief<sup>4</sup> by fire or any explosive substance with the intention to cause or knowing that it will likely cause:
  - Damage to any property belonging to member of SC or ST community, should be punished with imprisonment for minimum of 6 months to 7 years or fine.
  - Destruction to any building which is a place of worship, a place for human dwelling or a place for custody of the property of a member of SC or ST community, should be punished with imprisonment for life and with fine;
- Anyone who commits an offence<sup>5</sup> against a person or property of a member of the SC or ST community for which the punishment is for a term of 10 years or more under IPC, shall be punished with imprisonment for life and with fine.
- Anyone who knows or has reason to believe that an offence has been committed and causes any relevant evidence to disappear<sup>6</sup> with the intention to protect the offender from legal punishment, or gives false information, should be punished with the punishment provided for that offence.
- Anyone who is a public servant and commits any offence under this section, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.

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4. Section 425, IPC also defines mischief. In *Satish Chand Singhal vs State*, 2007 CrLJ 4132 (Raj) it was held that since the accused had knowledge of consequences of his acts his case fell under the definition of mischief.

5. In *Masumsha Hasanasha Musalman vs State of Maharashtra*; AIR 2000 SC 1876 the court held that to attract the provisions of Section 3(2)(v) of the Act it is important that the victim should be a member of the scheduled tribe or scheduled caste and that the offence was committed against him on the basis that such person belongs to such caste or tribe.

6. Section 201, IPC deals with causing the disappearance of evidence of the offence, or giving false information to screen offender. In *Hanuman vs State of Rajasthan*, AIR 1994 SC 1307 the court held that it must be proved that an offence, the evidence of which the accused is charged with causing to disappear, has actually been communicated, and that the accused knew, or had information sufficient to lead him to believe, that the offence had been committed.

## **PUNISHMENT FOR PUBLIC SERVANT FOR NEGLECT OF DUTY (SECTION 4)**

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- The Act also brings within its purview the fact that there are cases of willful neglect of duties by public servants, when it comes to prosecution in cases related to ST or SC community members. Section 4 deals with punishment for the neglect by public servants in performing the duties mentioned or prescribed under the present Act. The conditions for punishment are as follows:
  - The public servant should not be a member of ST or SC community.
  - In order to invoke the provisions against the investigating officers, willful neglect of duties is necessary and proper averments of facts must show that they have willfully neglected their duties.<sup>1</sup>
  - The duties neglected have to be prescribed under the POA Act and not any other Act. Thus, any neglect of duties such as the investigation or submission of final investigation

### **Exercise 7: Group discussion: Advocacy point**

For complete abolition of untouchability, it was recommended: There is a need for a single comprehensive legislation that covers both the Protection of Civil Rights Act, 1955 and POA Acts as well as laws such as the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993; and Bonded Labour (Abolition) Act, 1976; there needs to be a cell to deal exclusively with caste related crimes; and a special court needs to be established to deal with the caste-based offences in all states and UTs with appointments of prosecutors, police personnel and other officials.

**2006 Study, National School of Law, Bangalore**

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1. Ananda Pangala vs TR Jagannath; 2003 Cri LJ 3215 (Kar).

report (Sec. 173, Cr.PC), which are conferred in the Cr.PC, will not be an offence, unless it is established that the duty was specifically prescribed in the POA Act.<sup>2</sup>

- Punishment is 6 months to 1 year imprisonment.<sup>3</sup>

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2. Ram Pal vs State of Rajasthan; 1998 (2) Crimes 254.

3. Section 4.

# PROCEDURE OF COMPLAINT, INVESTIGATION AND COURT

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## **Complaint – What is the procedure?**

### **Where is it to be filed?**

- The crime can be first informed in the nearest police station. *It is always advisable to take friends and family members when going to the police station to file complaints.*
- At the police station, share the details of the crime committed with full details as to the offender (if known), place and nature of the crime. It is always better to take the victim so they share a first-hand account of the occurrence. All the statements made during the complaint will be written and read over to the informant before they are finalised by the police.
- The statements whether given in writing or reduced to writing will be signed by the person giving it.
- The police will then also file the first information report (FIR) in the designated register *and provide the complainant / family with a copy of the FIR, free of cost.*
- Remember at the police station there is no need for money throughout the process.

**It is well known that if an FIR is swiftly and correctly registered, then the battle is half won. Over time people learn that filing an FIR is not an easy task due to the police's attitude and the corruption attached.**

### **What can one do if the police refuses to register the complaint?**

- If the local police station does not file an FIR, then a written complaint can be sent by post to the Superintendent of Police (SP). Even personal meetings with SP along with friends and family members can help expedite the process.
- Further, the Rules provide for the creation of a Scheduled Castes and Scheduled Tribes Protection Cell at the Police Headquarters, which can be approached in case the local police is not registering the case.
- After an investigation, the SP or the Deputy Superintendent of Police (DSP) will make a written order directing the officer in-charge of the concerned police station to lodge your FIR.

***In these trainings, it is always recommended to have a local lawyer along who can share details such as the name, address and contact numbers of the district SP, Mahila Thana, etc.***

## Investigation Procedure

- The offences under the SC/ST POA Act are cognizable, meaning that the offences are of a serious nature and the police has the authority to arrest any offender without waiting for a warrant.
- Once the complaint has been lodged by the police, the law states that the investigation can only be done by a senior official. Serious crimes based on caste biases can only be investigated by either the Deputy Superintendent of Police (DSP) or any officer senior to him.
- Further, the investigation procedure has to be completed within a period of 30 days.

### Exercise 8: Group discussion

#### Cognizable & Non-bailable

The Constitution of India under Part X, Article 244 along with Fifth and Sixth Schedules describes the Scheduled Caste and Tribal Areas in India.

- A report of the investigation conducted has to be submitted to the Superintendent of Police (SP). The SP would then forward it to the Director General of Police (DGP).
- Every third month, the status of all investigations are reviewed by the:
  - Home Secretary
  - Social Welfare Secretary
  - Director of Prosecution
  - Officer-in-charge of Prosecution
  - Director-General of Police

## **Special Courts & Public Prosecutors**

The Act provides for speedy trials at the level of courts through District Special Courts<sup>1</sup> and Special Public Prosecutors.<sup>2</sup> So that there is a speedy trial only Special Court will try the offences.

### **Exercise 9: Group discussion**

#### **Advocacy point**

#### **Special Courts & Special Police Stations**

In order to ensure early prosecution of cases under the SC/ST Prevention of Atrocity (Act), 1989, 151 exclusive special courts have been set up in the following states: Andhra Pradesh – 12, Bihar – 11, Chhattisgarh – 7, Gujarat – 10, Karnataka – 7, Madhya Pradesh – 43, Rajasthan – 17, Tamil Nadu – 4 and Uttar Pradesh – 40. State governments such as Bihar, Jharkhand, Madhya Pradesh and Chhattisgarh have also set up special police stations for the registration of complaints of offences committed against SCs/STs. So far 77 such special police stations have been set up.

The law requires Special Courts in every district.

**Source: Mid-Term Appraisal of the Eleventh Five Year Plan**

1. Section 14.

2. Section 15.

The SC/ST POA Act provides for speedy trial through special courts and also requires the government to appoint Special Public Prosecutor who can handle cases effectively and ensure justice to the victim.

The state governments are required to specify a public prosecutor or advocate with a minimum of 7 years practice for special courts in each district. The government is required to publish such names in the official gazetteer.

Senior lawyers other than those on the panel can also be allowed to or be requested to handle the case if the court thinks it is necessary to ensure justice and if the victim of atrocity so desires.

### **Exercise 10: Pose as a question**

Ask the participants:

#### **Does your district have a special court?**

- Who is appointed as a Special Public Prosecutor?
- If they don't know the answer, then leave them with the questions for them to enquire later.

## **Forfeiture of Property<sup>3</sup>**

If anyone has been convicted for any offence under the Act, the special court in addition to the punishment can also order for the forfeit of the convict's movable or immovable property or both, which has been used in the commission of the crime.

Forfeiture<sup>4</sup> is the divestiture of specific property without compensation as a result of some default or act forbidden by law.

## **Anticipatory Bail and Probation**

The law takes crimes against members of SC or ST community with utmost seriousness and does not allow any person who has committed any offence under the Act to be granted anticipatory bail.

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3. Section 7.

4. Forfeiture is also defined in Section 114, Transfer of Property Act, 1882.

### **Exercise 11: Pose as a question**

#### **State of MP vs Ram Krishna Balothia**

The case was appealed against the MP High Court judgement which had held that Section 18 was unconstitutional and violated Article 14 and Article 21 of the Indian Constitution. Section 18 bars anticipatory bail. In the appeal the Honorable Supreme Court held that the provision should be viewed in the context of the prevailing social conditions, which give rise to such offences. Moreover, one should be mindful of the apprehension that perpetrators of such atrocities are likely to threaten and intimidate upon their victims to prevent or obstruct them from prosecuting these offenders, if the offenders are allowed to avail anticipatory bail. Further looking at the statement of object and reasons graphically describing the social condition, Section 18 cannot be held violative of Articles 14 and 21 of the Constitution.

The law of bail as applied to the person apprehended is dealt with in the criminal procedure code.<sup>5</sup>

Further, if the offender is above 18 years of age,<sup>6</sup> then the person cannot be released on probation. The provisions<sup>7</sup> concerning probation will not apply to such offenders.

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5. Section 438, Cr.PC.

6. Person below 18 years of age are children as per the Juvenile Justice (Care and Protection of Children) Act, 2000, which gives children the right to bail.

7. Section 360 Cr. PC and Probation of Offenders Act, 1958.



## OTHER MEASURES SUCH AS EXTERNMEN OR FORFEITURE

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The law against atrocities has been developed while keeping the social realities in mind; thus, the provisions are designed to eliminate all chances of atrocities and ensure justice to the victim. The Legislature knows that members of the SC / ST community are many a time intimidated by individuals.

### **Exercise 12: Group discussion**

#### **Scheduled and Tribal Areas**

The Constitution of India under Part X; Article 244 along with Fifth and Sixth Schedules describes the Scheduled and Tribal Areas in India.

### **Extermen**

In cases where there is a complaint or police report suggesting apprehension that someone is about to commit an offence mentioned in the Act in a Scheduled Area or Tribal Area:

- If the court is satisfied, then the court can direct such persons through written order to stay away from the boundary of designated area.
- The maximum period of externment can be for 2 years.
- Further if the person disobeys the court order, then the person can be arrested by the police and removed by the police to a place outside such area.
- Further if the person can also be punished for non-compliance of court order, then the punishment can be imprisonment for a term of up to one year or with fine.
- The person can return back to the area only after getting written permission from the court.

For any person who has been ordered for externment, the court

can allow the police officer to take his measurements and photographs.<sup>1</sup> In such cases:

- If the person resists or refuses the taking of such measurement or photographs, the police officer is allowed to use all necessary lawful means to take such measurement or photograph.
  - Further such resistance or refusal to allow the taking of measurements or photographs will also be taken as an offence.<sup>2</sup>
  - The measurements or photographs taken by the police of the person should be destroyed or returned once the order or term of externment is over.

## **Allowance & Maintenance**

During the investigation or trial, the Act provides for facilities to ensure that justice is dispensed in a better manner, which includes legal support, maintenance, travel expenses and daily diet expenses.

- Free legal aid
- Travelling and maintenance expenses to witnesses including the victim
- The rail fare by second class train or equivalent for every victim / his / her dependents and witnesses. This is to be ensured by the magistrate.
- People who are entitled to an attendant of her/ his choice

Every women witness:

- Victim or her dependent who is a woman or a minor
- Person who is less than 60 years; and

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1. Section 12, SC/ST POA Act.

2. Section 186 IPC.

- Person having 40% or more disability
- Provide for economic and social rehabilitation of victim of atrocities.
- Daily diet maintenance expenses of the victim, witness and attendant will also be paid.
- The daily maintenance expenses cannot be less than the minimum wages. All the expenses should be paid within 3 days; efforts should be made to be paid immediately.

**Exercise 14: Pose as a question**

**Who is a Dependent?**

- wife
- children (married or unmarried)
- dependent parents
- widowed sister
- widow and children of pre-deceased son of a victim of atrocity

Payment of the travelling allowance, the daily allowance, maintenance expenses and reimbursement of transport facilities for visiting the the special court, the investigating officer, the in-charge police station, the hospital authorities or the SP/DSP, District Magistrate or any other officer concerned will be made by the:

- District Magistrate or
- Sub-Divisional Magistrate or
- Any other Executive Magistrate

**Committees and Cells to Ensure Justice**

The SC and ST (Prevention of Atrocities) Rules, 1995 provides for constitution of state level and district level vigilance and monitoring committees. The members in the state level vigilance and monitoring committee are ministers and officials for the state government including the Chief Minister and director of the National Commission for SC and ST. In comparison the district level vigilance and monitoring committee apart from government officials at the district level is also composed of 5 non-official members belonging to

the SC/ST community and 3 members from NGOs.

Broadly the role of both the committees is primarily to monitor the cases and ensure justice to the members of the SC / ST community. The lists below provides information about each committee in terms its composition, powers and role.

### **Duties of the State-Level Vigilance and Monitoring Committee**

- Constituted by the state government.
- Reviews the implementation of the Act.
- Provides relief and rehabilitation facilities to the victims.
- Ensures prosecution of cases.
- Monitors the role of different officers/agencies responsible for implementing the Act.
- Nodal for reports received by the state government concerning ST/SC POA Act.
- Meets every 6 months.

### **Duties of District Level Vigilance and Monitoring Committee**

- Constituted by the District Magistrate.
- Reviews the implementation of the Act.
- Provides relief and rehabilitation facilities to the victims.
- Ensures prosecution of cases.
- Monitors the role of different officers/agencies responsible for implementing the Act.
- Nodal for reports received by the district administration concerning ST/SC POA Act.
- Meets every 3 months.

If the victim feels that the forums available at the district and state level are unable to dispense justice to her, then the person can also approach the National forum, i.e. **The National Commission for Scheduled Castes and Scheduled Tribes**, 5th Floor, Loknayak Bhavan, Khan Market, New Delhi - 110003, Phone - 011- 4620435, Fax - 011- 4625378

## ANNEXURE

(See Rule 12.(4)) NORMS FOR RELIEF AMOUNT		
S. N.	Name of offence	Minimum amount of relief
1.	Drink or eat inedible or obnoxious substance [Section 3 (1) (i)]	Rs. 25,000 or more depending on the nature and gravity of the offence and also commensurate with the indignity, insult, injury and defamation suffered by the victim. Payment to be made as follows: I. 25% when the charge sheet is sent to the Court. II. 75% when the accused is convicted by the lower court.
2.	Causing injury insult or annoyance [Section 3(1)(ii)]	
3.	Derogatory act [Sec. 3(1) (iii)]	
4.	Wrongful occupation or cultivation of land.	At least Rs.25,000 or more depending on the nature and gravity of the offence. The land/premises/ water supply shall be restored where necessary at Government cost; full payment to be made when charge sheet is sent to the Court.
5.	Relating to land, premises and water [Section 3(1)(v)]	
6.	Begar or forced or bonded labour [Section 3(1) (vi)]	At least Rs.25,000 to each victim with 25% to be paid at the FIR stage and 75% on conviction in the lower court.

7.	Relating to right to franchise [Section 3(1) (vii)]	Up to Rs.20,000 to each victim depending on the nature and gravity of the offence.
8.	False, malicious or vexatious legal proceedings [Section 3(1) (viii)]	Rs. 25,000 or reimbursement of actual legal expenses and damages or whichever is less after the trial of the accused has concluded.
9.	False and frivolous information [Section 3 (1)(ix)]	
10.	Insult, intimidation and humiliation [Section 3 (1)(x)]	Up to Rs. 25,000 to each victim depending on the nature of the offence. Payment of 25% when charge-sheet is sent to the court and the rest on conviction.
11.	Outraging the modesty of a woman [Section 3 (1)(xi)]	Rs.50,000 to each victim of the offence. Half of the amount may be paid after the medical examination and the remaining 50% at the conclusion of the trial.
12.	Sexual exploitation of a woman [Section 3(1) (xii)]	
13.	Fouling of water [Section 3 (1) (xiii)]	Up to Rs.100,000 or full cost of restoration of normal facility, including cleaning when the water is fouled. Payment may be made when deemed fit by the District Administration.

14.	Denial of customary rights of passage [Section 3(1) (xiv)]	Up to Rs.100,000 or full cost of restoration of right of passage and full compensation of the loss suffered, if any. Half of the amount will be paid when charge sheet is sent to the court and the rest on conviction in the lower-court.
15.	Making one desert place of residence [Section 3(1) (xv)]	Restoration of the site/right to stay and compensation of Rs.25,000 to each victim and reconstruction of the house at government cost, if destroyed. To be paid in full when charge sheet is sent to the lower court.
16.	Giving false evidence [Section 3(2)(i) and (ii)]	At least Rs.100,000 or full compensation of the loss or harm sustained. Half to be paid when the charge-sheet is sent to Court and the rest on conviction by the lower court.
17.	Committing offences under the Indian Penal Code punishable with imprisonment for a term of 10 years or more [Section 3 (2)]	At least Rs.50,000 depending on the nature and gravity of the offence to each victim and or his dependents. The amount would vary if otherwise provided in the Schedule.
18.	Victimisation at the hands of a public servant [Section 3(2) (vii)]	Full compensation on account of damages, loss or harm sustained. Half to be paid when charge-sheet is sent to the Court and the rest on conviction by lower court.



19.	Disability. The definitions of physical & mental disabilities are contained in the Ministry of Welfare, GOI notification No.4-2/83-HW.III, dated 6-8-1986 as amended from time to time. A copy of the notification is at Annexure - II.	
	(a) 100% incapacitation	
	(i) Non- earning member of a family	At least Rs.100,000 to each victim of offence. Half to be paid when FIR is filed, 25% when chargesheet is sent and 25% on conviction by the lower court.
	(ii) Earning member of a family	At least Rs.200,000 to each victim of offence, Half to be paid at the FIR/ Medical examination stage, 25% when charge-sheet is sent to court and 25% on conviction in lower court.
	(b) Where incapacitation is less than 100%	The rates as laid down in a(i) and (ii) above shall be reduced by the same proportion. The stages of payments shall be the same. However, not less than Rs.15,000 to non-earning members and not less than Rs.30,000 to an earning member of a family.
20.	Murder/Death	

	(a) Non-earning member of a family	At least Rs.100,000 to each case. Payment of 75% after postmortem and 25% on conviction by the lower court.
	(b) Earning member of a family	At least Rs. 200,000 to each case. Payment of 75% after postmortem and 25% on conviction by the lower Court.
21.	Victim of murder, death, massacre, rape mass rape and gang rape, permanent incapacitation and dacoity	In addition to relief amounts paid under above items, relief may be arranged within three months of date of atrocity as follows: (i) Pension to each widow and/or other dependents of deceased SC and ST @ Rs. 1,000 per month, or employment of one member of the family of the deceased, or provision of agricultural land, and house, if necessary by outright purchase. (ii) Full cost of the education and maintenance of the children of the victims. Children may be admitted to Ashram Schools/ residential schools. (iii) Provision of utensils, rice, wheat, dals, pulses, etc., for a period of three months.
22.	Complete destruction/ burnt houses.	Brick/stone masonry house to be constructed or provided at Government cost where it has been burnt or destroyed.



# **Session**

# **V**

## **Acid Attacks on Women**



## TIMING & SESSION PLAN

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**Total Time** : 1 hour 15 Minutes

- 30 Min : Background & Law
- 30 Min : Inclusion of Acid Attacks as Specific Offences in IPC (Law Commission Report 226)
- 15 Min : Prevention of offences (by Acids) Act 2008 (Draft Bill) (National Commission for Women)

### Training Materials

- Chart papers/Flipchart/Blackboard
- Markers/Pens/Chalk
- Handnotes on Local Area Data
  - Case Studies/latest newspaper reports/NCRB Data.
- Films, Role Play (Optional)
- Bare Acts
  - Relevant provisions of Indian Penal Code
  - Law Commission Report 226.
  - Draft Bill – Prevention of Offences (by Acid) Act 2008

### Session Objective

- To understand the horrifying effects of such attacks, its easy accessibility as a weapon, and the fact that any woman can be the target.
- To understand the present law and its adequacy.

- To understand the recommendations of the Law Commission and the draft proposed bill by NCW.

**Note for Facilitator:** This is one of most serious topics in the schedule. An acid attack is one of the most gruesome crimes one can think of, and in a sense it is much more intentionally sick than even rape and murder. The crime leaves the victim living her entire life conscious of her looks and body. Most of the girls confine themselves to their homes to avoid public view. In such situations, it is very important that the present law is dealt with painstakingly. The draft law and commission reports are of equal importance for lawyers / activists.

## ACID ATTACKS ON WOMEN: BACKGROUND AND LAW

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### **Six women injured after acid attacks on local train**

TNN, Aug 12, 2010, 03.21am IST

KOLKATA: At least six women in a ladies' compartment of the Baruipur local suffered serious burn injuries when an unidentified youth threw acid on them as the train was pulling out of Ballygunge station on Wednesday evening.

**–Newspaper Report of acid attack**

We often hear of girls being attacked by some boy who threw Acid on her. The girl is rushed to the hospital, either she dies or if she is saved, her situation is horrifying. She is blinded or mutilated forever. Generally, the stories in such cases are similar. Some man who wants some favour from the girl, be it marriage or other, first harasses the girl to agree and on her repeated disagreement becomes hopeless and wants to teach her a lesson of a lifetime; thinking: *“if you are not mine, then I will not let you be anyone else’s.”* Since acids are freely available in Indian markets, it becomes the most convenient weapon. They are lethal and deface the women. They leave the person, suffering for a lifetime. These thoughts are reflections of

### **Exercise 1: Case study**

#### **Group discussion**

The 21-year-old was bathing buffaloes outside her home in Delhi, when her father's tenant Yashpal came towards her with a steel mug in hand. Sonia thought he wanted water but instead he suddenly threw a cupful of acid on her body. Yashpal was angry as she refused to marry him.



## Injuries and physical consequences

**Skull:** May be partly destroyed or deformed. Hair is often lost.

**Forehead:** Skin may shrink, as though stretched tightly, and be scarred.

**Ears:** Shriveled up and deformed. Deafness may occur immediately or later. Cartilage in the ear is usually partly or totally destroyed, exposing the victim to future infection and hearing loss.

**Eyes:** Direct acid contact or acid vapours can damage eyes, causing blindness. Even if the eyes survive the acid attack, they remain vulnerable to other threats which can cause blindness during the victim's recovery. Eyelids may have been burned off, or may be deformed by scarring, leaving the eyes to dry up and go blind. This is very difficult to prevent.

**Nose:** Shrunken and deformed. Nostrils may close completely because the cartilage is destroyed.

**Cheeks:** Scarred and deformed.

**Mouth:** Shrunken and narrowed, and may lose its shape. Lips may be partly or totally destroyed. Lips may be permanently flared, exposing the teeth. Movement of the lips, mouth and face may be impaired. Eating can be difficult.

**Chin:** Scarred and deformed. The scars may run downward, welding the chin to the neck or chest.

**Neck:** Often badly damaged. There may be a thick cord of scarred flesh running down from the chin to the upper chest, or a wide, heavily-scarred area on one side of the neck. Victim may be unable to extend the neck, or the head may constantly lean to one side.

**Chest:** Often badly scarred. The chest may have narrow lines of scars or wide patches of scars from acid splashes or drips. For girls and young women, the development of their breasts may be stopped, or their breasts may be destroyed completely.

**Shoulder:** May be badly scarred, especially around the underarm, which may limit the victim's arm movement. In some cases, one or both of the victim's upper arms may be stuck like glue to the sides of their body.

**Source:** *Law Commission Report, 226*

the patriarchal mindset that sees women as their chattel, slave or property.

An acid attack has long-lasting consequences on the life of the victim who faces perpetual torture, permanent damage and other problems for the rest of her life. Victims normally feel worthless, are afraid and mortified, and become social outcasts because of their appearance. They may be too traumatised and embarrassed to walk out of their house and carry out simple tasks; let alone get married, have children, get a job, go to school, etc. Even if they are willing to pursue a normal life, there is no guarantee that society itself will treat them as normal human beings given their appearance and disabilities after an attack. They may not be able to work, or be able to find a job, and thus perpetually struggle to survive.

Today there is no specific law against acid attacks. The Law Commission, the National Commission for Women and the women rights organisations have advocated for a specific law to deal with this gruesome crime. We will discuss the Law Commission report later and also the proposed draft law drafted by NCW.

In one case, the accused and the female victim used to work in the same college laboratory. The female victim was married. The male colleague became infatuated with her. After a few failed attempts to persuade her, he threw acid on her face, causing permanent disfigurement of her face. Because the harm being dangerous to life the court<sup>1</sup> convicted the accused under Section 326,<sup>2</sup> IPC. In

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1. A.G.Bhagat (Dr.) vs UT of Chandigarh, 1989 Cr.LJ 214

2. **Section 326 of IPC: Voluntarily causing grievous hurt by dangerous weapons or means.** Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

## Exercise 2: Reading & making them repeat

### Practice & procedure

For offences of grievous hurt (acid attack) the essential ingredients to be proved in evidence are:

1. That the accused caused grievous hurt as contemplated in S.320, IPC
2. That the accused caused it voluntarily as envisaged in S. 322, IPC
3. That causing such grievous hurt was made
  - by means of an instrument for shooting etc., or
  - by means of any instrument, which used as a weapon of offence, is likely to cause death; or
  - by means of fire, etc., or
  - by means of any instrument, which, used as any weapon of offence, is likely to cause death; or
  - by means of fire, etc., or means of any poison, etc., or
  - by means of any substance which it is deleterious to the human body to inhale, etc. or
  - by means of any animal.

**Procedure:** the offence is cognizable and non compoundable and non-bailable and trial by magistrate. The Supreme Court has held that the offence cannot be made compoundable. *Mahesh Chand vs State of Rajasthan, AIR 1988 SC 2111*.

**Punishment:** punishable with imprisonment for life, or with imprisonment of either description for a term which may extend to 10 years, and shall be liable to fine.

another case<sup>3</sup> acid was thrown on the girl by a boy resulting in permanent disfigurement of her face. The court convicted the accused under section 326, IPC.

Currently, the crimes of acid attack are booked under Section 326, IPC, which deals with *Voluntarily causing grievous hurt by dangerous weapon or means*. The section requires that to prove an

3. Sangeeta Kumari vs State, 2004 CrLJ 1734 (Jhar).

offence under this section, it is important to prove that the act was done 'voluntarily' and that the intention was to cause grievous hurt or he knew himself likely to cause grievous hurt.

Grievous hurt has been defined in Section 320, IPC. It categorises 8 types of harms as grievous hurts. The most important ingredient for conviction for grievous hurt is the presence of intention or knowledge to cause grievous hurt by the accused. The types of hurts which have been held to be grievous and can come within the effects of Acid attack are:

- Permanent privation of sight of either eye
- Permanent privation of hearing of either ear
- Privation of any member or joint
- Destruction or permanent impairing of the power of any member or joint
- Permanent disfigurement of the head or face
- Fracture or dislocation of the bone or tooth
- Any hurt which endangers life or which causes the sufferer to be in severe bodily pain, or unable to follow his ordinary pursuits during the space of twenty days.

In many cases where the attack by acid has led to death of the victim, the courts have convicted the accused for the charges of murder under Section 302, IPC.

In one case,<sup>4</sup> the accused who was the husband of the victim was suspicious of her character. In his mad rage he poured acid into her vagina causing grievous hurt and ultimately causing her death. The accused was convicted for murder and attempt to murder under Section 302 and 307 IPC. Similarly in another case,<sup>5</sup> the brother-in-law threw acid on the victim, inflicting grievous injuries on

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4. Marepally Venkata Sree Nagesh vs State of A.p ( 2002 CriLJ3625).

5. Gulab Sahiblal Shaikh vs The State of Maharashtra, (1998 Bom CR(Cri)).

her and also the child she was holding. The Court sentenced the accused for life imprisonment on the charges of murder because the woman died.

In another case of matrimonial discord, the husband had an extra marital affair and there were regular arguments between the husband and wife on the issue of divorce. One day on the refusal of the wife to grant him divorce the husband threw acid on the wife; the attack lead to severe burns on face and other body parts of the victim, finally leading to her death. The Court<sup>6</sup> convicted under Section 302 of the IPC.

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6. Revinder Singh vs State of Harayana(AIR 1975 SC 856).

# **INCLUSION OF ACID ATTACKS AS SPECIFIC OFFENCES IN IPC**

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## **(Law Commission Report 226)**

The Law Commission of India submitted its Report no. 226 (LCR 226) in July 2009, titled “The Inclusion of Acid Attacks as Specific Offences in the Indian Penal Code and a law for Compensation for Victims of Crime,” to the Hon’ble Supreme Court of India for its consideration in the pending proceedings filed by one Laxmi in WP (CrI.) No. 129 of 2006.

The LCR 226 proposes for the inclusion of acid attacks as specific offences in the Indian Penal Code and a law for compensation for victims of the crime.

The reports stress the fact that acid attacks are becoming a growing phenomenon in India. Though an acid attack is a crime which can be committed against any man or woman, it has a specific gender dimension in India. Most of the reported acid attacks have been committed on women, particularly young women for spurning suitors, for rejecting proposals of marriage, for denying dowry etc. The attacker cannot bear the fact that he has been rejected and seeks to destroy the body of the woman who has dared to stand up to him. Thus, acid throwing is an extremely violent crime by which the perpetrator of the crime seeks to inflict severe physical and mental suffering on his victim.

Perpetrators of the crime act cruelly and deliberately and are often motivated by deep-seated jealousy or feelings of revenge against a woman. Acid violence is a premeditated act of violence as the perpetrator of the crime carries out the attack by first obtaining the acid, carrying it on him and then stalking the victim before executing the act.

## Background

As many as 174 cases of acid attack were reported in India in 2000. On a per capita basis Bangladesh has higher figures but on an absolute number basis the number of acid attacks in India is reaching that in Bangladesh.

Acid attack survivors are physically, psychologically and socially traumatised. The physical extents of their injuries are deep, permanent and have a direct impact on their psychological well-being and social functionality. Hydrochloric, sulphuric and other acids all have a catastrophic effect on human flesh. These corrosive substances cause the skin tissue to melt. The bones of victims become exposed and sometimes the acid dissolves the bones too.

Over the years various kinds of acid attacks have been registered under the sections related to hurt, grievous hurt, murder, etc. However, the nature and effect of the crime of acid attack is very distinct and complex and the Sections relating to hurt and grievous hurt do not provide adequate relief and punishment. Moreover, the police often uses discretion when deciding under what section cases of acid attack should be registered. This discretion is at times influenced by gender bias and corruption or is a wrong assessment.

In most of the cases no compensation has been awarded. In those in which compensation has been awarded the sum is minimal and is totally inadequate to meet even the medical expenses.

The victims suffer a great deal due to the slow judicial process, inadequate compensation and from the after effects of the acid attack. Thus, there is an urgent need to legislate distinct sections in the IPC to deal with acid attacks. There is also a need to setup a Criminal Injuries Compensation Board in India to deal with such cases in an effective and efficient manner and to help the victims of acid attacks to get compensation for medical expenses and rehabilitation.

Acid attacks have been documented in various different parts of the

world including Australia, Bangladesh, Cambodia, China, El Salvador, Ethiopia, Italy, Laos, Malaysia, Nepal, Pakistan, Sri Lanka, Thailand, Uganda, UK, USA, and Vietnam. However, the number of incidences in Bangladesh, India, Pakistan, Cambodia and Uganda are much higher and are on the rise.

The LCR 226 also analysed the laws of various countries. Except for Bangladesh and the UK, in all other countries the laws are similarly inadequate as in India. The table below shows a comparative assessment of the laws in various countries for acid attacks.

### 6.8 Summary table of laws and sentences in other countries

Country	Specific Suppression Act	Maximum Sentence	Usual sentence
Bangladesh	Acid Crime Suppression Act	Life/Death	7 years – death
Cambodia	Draft resolution being presented	10 years	9 month – 10 years
India	No specific law	Not known	Not known
Nigeria	No specific law	Not known	Not known
Pakistan	No specific law	Not known	Not known
Uganda	S 2 16 (g) Penal Code	Life	2 years – 15 years
UK	S29 Offence Against the Person Act 1861	Life	10-15 years

It has been contended by those working for these victims that the Criminal law relating to grievous hurts in Sections 320, 322, 325 and 326 of the Indian Penal Code (IPC) is insufficient to deal with the phenomenon of acid attacks. The petition argues that though in some cases Section 307 of the IPC has been applied, this is not enough because courts tend to grant bail easily and mens rea is extremely difficult to prove.

Further, the report states that compensation to victims of acid attacks is of vital importance as huge medical costs are often



involved. The victims of acid attacks need both short term as well as long term specialized medical treatments and plastic surgeries. The provisions in the Indian law for giving compensation to the victims are insufficient.

The Law Commission keeping all the above aspects in mind proposed that a new section 326A should be added to the Indian Penal Code. The proposed Section 326 A will read as follows:

**326 A. (i) Hurt by acid attack:** Whoever 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 administering acid to that person, with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punishable with imprisonment of either description which shall not be less than 10 years but which may extend to life and with fine which may extend to Rs. 10 Lakhs.

Provided that any fine levied under this section shall be given to the person on whom acid has been thrown or administered.

### **Classification of Offence**

Minimum imprisonment of 10 years extendable upto imprisonment for life and fine – cognizable – non-bailable – triable by court of session – non-compoundable.

**(ii) Intentionally throwing or administering acid:** Whoever throws acid on, or administers acid to, any person with the intention of causing burns or maiming or disfiguring or disabling or causing grievous hurt to that person shall be liable to imprisonment of either description for a term not less than 5 years but which may extend to 10 years and with fine which may extend to Rs. 5 Lakh.

### **Classification of Offence**

Minimum imprisonment of 5 years extendable up to 10 years and

fine-cognizable – non-bailable – triable by court of session – non-compoundable.

The Law Commission further proposed, for the reasons stated above, that in cases of acid attacks a presumption be incorporated in the Indian Evidence Act as Section 114B. The proposed Section 114B of the Indian Evidence Act shall read as state below.

**Section 114 B: Presumption as to acid attack:** If a person has thrown acid on, or administered acid to, another person the court shall presume that such an act has been done with the intention of causing, or with the knowledge that such an act is likely to cause such hurt or injury as is mentioned in Section 326 A of the Indian Penal Code.

Further, it was also proposed that a law known as “Criminal Injuries Compensation Act” be enacted as a separate Law by the government. This law should provide both interim and final monetary compensation to victims of certain acts of violence like rape, sexual assault, acid attacks, etc. and should provide for their medical and other expenses relating to rehabilitation, loss of earnings, etc. Any compensation already received by the victim can be taken into account while computing compensation under this Act.

Lastly, it was recommend that the distribution and sale of acid be strictly regulated and the sale of acid across shop counters be banned.

# PREVENTION OF OFFENCES (BY ACIDS) ACT 2008 (DRAFT BILL)

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## (National Commission for Women – Draft Bill)

With the horrifying act of acid attack increasing in India and the Supreme Court suggesting possible changes or the inclusion in the Penal law of the land, the National Commission of Women drafted a new law for Acid Attacks. The Acid Attack has been termed as an act of gender-based violence. Taking cue from the Declaration on the Elimination of Violence against Women 1993, which provides for stricter legislation for the elimination of violence against women, the National Commission for Women has drafted a Bill entitled Prevention of offences (by Acids) Act 2008.

The draft bill in its opening statement of object and reasons clearly highlights the plight of women victims of the heinous crime of acid attack. The suffering which ranges from permanent disfigurement to even death, destroys the victim, both physically and psychologically. If alive the victims suffer from both short-term and long-term

### **News report: The Times of India**

#### **“No change in law needed to make acid attack a heinous offence: Centre”**

*Dhananjay Mahapatra, TNN, Apr 15, 2010, 03.26am IST*

*In an earlier instance in 2008 the Supreme Court had asked the Union Government to examine the feasibility of having a stringent provision in the IPC for Acid Attack.*

The Union Government stated in the Supreme Court that there was no change required in the law to provide life sentence to offenders. The stance was taken after a conference of home secretaries was convened in 2008, and it was felt that the existing Section 326, IPC was adequate. At present, the offenders get charged under Section 326 of IPC, which lists many offences and provides sentences up to life imprisonment.

medical facilities and are maimed and confined to homes like a living corpse for life. Even their deaths are of extreme pain as acid seeps into the body and harms internal organs over an extended period of time.

Chapter I of the proposed Act covers all of India, except the State of Jammu & Kashmir, and is made applicable to victims of acid attacks.

The Act defines certain key new words such as:

- “Acid” to mean and include any substance which has the character of acidic or corrosive or burning nature that is capable of causing bodily injuries leading to scars or disfigurement or temporary or permanent disability.
- “Acid attack” means any act of throwing acid or using acid in any form on the victim with the intention of or with knowledge that such person is likely to cause to the other person permanent or partial damage or deformity or disfiguration to any part of the body of such person.

The Act further conceptualises three new institutions namely,

- ‘Board’ which means the National Acid Attack Victim’s Assistance Board
- “Monitoring Authority” means the State Commissions for Women or any authorised service provider (NGO)
- “Service provider” means any registered voluntary association which espouses the cause of women and/or provides for support and rehabilitation of victims of acid attacks

Chapter II of the Act deals with the ***Implementing Authorities under the Act***. The Act contemplates establishment of the *National Acid Attack Victim’s Assistance Board*, which will be the body constituted by the central government with representation from the central government and NGOs with practical experience of women

issues. Then there will be *Monitoring Authority at State/UT level*; and the National Board through the Monitoring Authority or Service Providers would ensure assistance to the victims of acid attack by way of ensuring medical treatment and other services, which shall include psychological counseling. Then there are other functions such as recommending welfare for victims for medical services, employment, education, rehabilitation, housing and other welfare measures taking into account the specific needs of the victim.

The authorities are also expected to Enquire into or constitute fact finding teams into incidents of acid violence and provide financial support, to the victim, through the National Fund.

Chapter III of the Act provides for ***Procedure for Assistance*** to the victim. The Act provides that the victim may apply to the Board for financial and other relief through family members or even an NGO. In case death is caused by or results from an acid attack, the dependents can apply for relief. There are prescribed formalities, powers and roles for the Board to assess and award relief and reimbursement of claims. The amount prescribed can be up to 5 lakhs. Further there are provisions for a maximum of Rs. 30 Lakhs towards treatment.

Chapter IV of the Act deals with the new conceived ***National Acid Attack Victim Assistance Fund***, which will be administered by National Board. The fund will be used to support and assist the victims of an acid attack.

Chapter V deals with various other miscellaneous provisions and provides for the duty of the government and duty of the medical facility. It provides that no medical facility private or government should deny the victim treatment. If they so do, they can be imposed with fine.

The Act further provides that the victims of acid attack shall be deemed to be a person with a disability and entitled to benefits and all measures initiated by the appropriate government under the

*Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.*

Finally, the Act prescribes an amendment in the Criminal Law, the Indian Penal Code, the Indian Evidence Act and the Criminal Procedure Code. The Act suggests the following insertions:

## **Amendments in Indian Penal Code**

**Section 326A, IPC – throwing or using of acid in any form on the body of other person:** Notwithstanding anything contained in section 324 or 326 of the Code, Whoever does any act of throwing acid or using acid in any form on the other person with the intention of or with knowledge that he is likely to cause such person permanent or partial damage or deformity disfiguration or disability to any part of the body of such person shall be punished with imprisonment of either description for a term which shall not be less than 10 years but which may extend to Life and shall also be liable to fine which shall be a minimum of RS 2 Lakhs and may extend to Rs 5 lakhs The offence shall be cognizable, non-bailable and non-compoundable

**Explanation:** the terms “acid” and “acid attack” – as defined in section 3(a) and (b) of the Prevention of Offences (by acids) Act 2008 justification are: Although the offences relating to acid throwing is covered under section 320 and 326 of the IPC but keeping in view the extreme heinous nature of the act and the fact that under section 326 the offence can be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, it is proposed in the Bill that the minimum punishment be not less than 10 years and extend to life imprisonment. Further, using acid with intention or knowledge is a punishable offence irrespective of the nature and extent of injury, therefore, there is no need for categorisation of various forms of disability.

**Section 326 B – Attempt to throw or use acid in any form on the other person:** Whoever does any act with such intention or

knowledge and under such circumstances that, if he by that act caused permanent or partial damage or deformity disfiguration or disability to any part of the body of such person, shall be punished with imprisonment of either description for a term which shall not be less than 7 years and shall also be liable for a fine of a minimum of Rs 1 lakh.

## **Amendments in the Indian Evidence Act**

**Section 114 B, Presumption as to acid attack:** When the question is whether a person has committed the act of throwing acid on the woman the court shall presume, having regard to the circumstances of the case and the statement of the victim, that such person had thrown acid on the woman.

## **Amendments in the Criminal Procedure Code**

**Section 357A - Defraying of expenses:** Notwithstanding anything contained in Section 357 of the Code of criminal procedure or in any other law for the time being in force, the court may when passing judgement for the offence under section 326 A or 326 B of the IPC -

(a) In the payment to any person of compensation for any loss or injury caused by the offence and may order the recovery of the amount from the assets of the accused

(b) Defraying of expenses incurred by the concerned authorities under for assistance to victims of acid attacks

(c) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or if an appeal be presented, before the decision of the appeal.

(d) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

The new special law provides new institutions to take care of the plights of acid attack victims. It even proposes certain amendments in the criminal laws to ensure that the victim gets justice and that the punishment of the culprit sends a strong message and acts a deterrent within the society.





# **Session**

# **VI**

**Recap**



## TIMING & SESSION PLAN

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- Total Time** : 1.5 Hours
- 30 Min : Individual Presentations
  - 45 Min : Role Play by four groups (10 min each)
  - 15 Min : Open Session with key points on all topics

### Training Materials

- Chart papers/Flipchart/Blackboard
- Markers/Pens/Chalk

### Session Objective

- To have the participants, individually and as a group, recall all that happened the previous day so that everyone remembers the main points of the sessions.
- To make the session livelier and to energize the participant for the day through role play.
- To use role plays to enhance their ability to recall a law and to create sensitivity about the issue.
- To sharpen their public speaking skills through an exercise where each participant is expected to speak on the laws learned.
- In cases where the participants are unable to recall any crucial point of law, the session gives them a chance to repeat and confirm before going ahead with the days sessions.

**Note for Facilitator:** This session is very crucial from a TOT point of view. The session will allow participants to feel themselves as a trainer and speak on the laws. The group exercise will also allow everyone to learn the speaking and presenting styles of all the other participants. Further,

the session allows the facilitator to repeat in case there are any missing points in day 1 exercises.

## INDIVIDUAL PRESENTATIONS

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The individuals are expected to prepare and present before the larger group one point of law and act as if they were training the group. The task should be assigned at the end of Day 1 to allow the participants to prepare for the session.

### **Role Play by four groups (10 min each)**

The group is to be divided into four groups. Each group is expected to select one issue/law which was discussed the previous day.

- Gender
- Sexual Crimes Against Women
- Caste-based Violence
- Acid Attack

Knowing well that probably none of the participants are trained artists, the facilitator should tell the participants that role play is an effective means of information dissemination. The purpose is to ensure that the legal information is complete, correct and in order of priority.

The facilitator has to keep in mind that while the participants will bring in story line/humour and emotions in the enacted drama/role play they don't lose the fine legal information or fudge with its technicality.

Further, what is important is to ensure that all the main points of the law are built in within the enacted role play.

## **OPEN SESSION WITH KEY POINTS ON ALL TOPICS**

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The open session is to clarify any questions still in the minds of the participants. The previous session and today's role play will raise various questions in the mind of the participants related to law, society and procedures. Further, it is possible that participants might have been sitting with some confusion and this is the time to clarify those questions and concerns.

The role of the facilitator is critical in guiding and facilitating an atmosphere of open questioning and discussion. The forum should be an encouraging platform for asking and sharing.

The facilitator can also note down the questions asked for future workshops/frequently asked questions sections and for the improvement of the Module/training as it is practical feedback coming directly from the practitioners/trainees.

The session is a learning experience for the trainers too. It is possible that at times the trainer does not have answers to all the questions or the trainer is not able to satisfy the participants with her/his answers. This is quite normal and human and trainers should not be discouraged. The Trainer should not misguide, mislead or provide wrong information in an attempt to show themselves as someone who knows all the answers. Always remember the relationship between the trainer and trainee is based on faith and mutual respect, and once that connection breaks the spirit of training and learning will get discontinued.

# **Session VII**

**Violence Against Women  
(Procedural Law)**





## TIMING & SESSION PLAN

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**Total Time** : 2 Hours

- 60 Min : Rights vis-à-vis Justice Administration
- 60 Min : Constitutional Safeguards and Mechanisms

### Training Materials

- Chart papers / Flipchart / Blackboard
- Markers / Pens / Chalk
- Handnotes on Local Area Data / Case Studies / Newspaper reports / NCRB Data.
- Films, Role Play (Optional)
- Bare Acts
  - The Constitution of India
  - Code of Criminal Procedure Code, 1973
  - Indian Penal Code, 1860
  - Indian Evidence Act, 1872

### Session Objective

- To equip the participants with adequate knowledge of law and procedure.
- Constitutional remedies are the most important provision, without which all rights would be meaningless.
- The training session on law would be incomplete if it is not solution oriented.

**Note for Facilitator:** This is an important session. In previous sessions, we discussed the rights of women in different situations and their accompanying laws. In this session, we will equip the participants with the information to move forward. The session has been divided into two sections: Violation and Action. While Part I deals broadly with the rights of women vis-à-vis the Justice Administration including police; Part II deals with Constitutional remedies and Public Interest Litigation. The session will show participants how to proceed in order to ensure justice in case of rights violation.

## RIGHTS VIS-À-VIS JUSTICE ADMINISTRATION

The Law is meaningless if it is unable to provide solutions to society's problems. The Justice System is comprised of courts and lawyers in the judicial process with the police acting as a support system by investigating crimes.

Offences mentioned under the Acts can be classified in many ways. Before discussing the rights of women vis-à-vis police and judicial processes, there are certain terms which are frequently used and it is useful to have some clarity on them.

- **Cognizable and Non-cognizable:** Cognizable offences are offences where the police can arrest without any prior permission or warrant. While for non-cognizable offences, police power to act is subject to having prior permission or warrant.
- **Bailable and Non-bailable:** If arrested for a bailable offence which is a crime of lesser gravity, then the accused can take bail as a matter of right from the Police station itself. Non-bailable are serious offences and if bail is granted, it can only be through the courts.
- **Compoundable and Non-compoundable:** Criminal offences are taken as crimes against society so parties are not allowed or have the power to compromise and close the case. However, for compoundable cases, parties are allowed to compromise and close the case.
- **Summons and Warrant Cases:** Offences are also categorised for procedural purposes in terms of quantum of punishment. Warrant cases are those for which the punishment exceeds two-year imprisonment. Warrant cases include those for which there is punishment for life imprisonment or death. Summons cases are all those which are not warrant cases and punishment is imprisonment for less than two years.

# WOMEN'S RIGHTS VIS-À-VIS POLICE

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## Rights During Interrogation

- Right to be interrogated / questioned only at your residence and in the presence of your family members; and right to not be taken to the police station or anywhere else for interrogation.
- Right to consult a lawyer of your choice when you are being interrogated whether you are arrested or not.
- Right against forced confession before the police or before the magistrate.

### Power of police to arrest

Police has the power to arrest without orders from magistrate or without a warrant to prevent commission of cognizable offence (Section 151, CrPC)

- Subject to the condition that the person so detained should not be kept beyond 24 hours from the time of arrest; unless further detention is required or authorised.
- The provision provides the police the required powers for preventing and maintaining law and order. There are safeguards against its misuse with the provision for limitation of period and judicial review.
- The Section providing power to Police has been held Constitutional and with safeguards. Arrest made u/s 151 is possible only if the person concerned is believed to have a design to commit a cognizable offence. This is not a power for arbitrary use.
- Further in *Joginder Kumar vs State of UP* (AIR 1994 SC 1349) it was held that inherent in Article 21 and 22 of the Constitution is the *Fundamental Right* for all persons to inform someone about their arrest and to consult a lawyer privately.

## Rights of Women at Time of Search

- A woman can be searched only by a female. This can be a women police officer. If no such women personnel are present, then some woman from community can be requested.

### **DK Basu vs State of West Bengal**

**[1997] 1 SCC 416**

In the landmark judgement the Supreme Court issued guidelines for all cases of arrest and detention as mandatory requirements against misuse of power and protection of individual rights. The guidelines are:

1. All police personnel involved in arrest and interrogation should wear an accurate and visible name tag with clear identification of their designations. Further, details of all police personnel involved in interrogation should be recorded in the register.
2. Police officer making the arrest should prepare a memo of arrest at the time of the arrest.
  - The memo should have the signature of the arrestee with the time and date of arrest.
  - The memo should also have the signature of at least one witness from the family of the arrestee or a respectable person of the locality from where the arrest is made.
3. Once a person is arrested or detained or held in custody in a police station or interrogation centre or other lock-up; the information of such arrest and place of detention should be provided to one friend or relative or another person known to him or having interest in his welfare.
4. The time, place of arrest and venue of custody of an arrestee should be informed to next friend or relative of the arrestee within a period of 8 to 12 hours after the arrest.
5. The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
6. There should be an entry made in the diary at the place of detention regarding.

- The arrest of the person,
- The name of the next friend of the person who has been informed of the arrest and
- The names and particulars of the police officials in whose custody the arrestee is.

7. The arrestee has a right to medical examination at the time of his arrest and

- Major and minor injuries, if any present on his/her body, must be recorded at that time
- The “inspection memo” must be signed both by the arrestee and the police officer effecting the arrest and a copy provided to the arrestee

8. The arrestee should be subjected to medical examination every 48 hours during his detention in custody by a trained doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory. The Director, Health Services should prepare such a panel for all tehsils and districts as well.

9. Copies of all the documents including the memo of arrest should be sent to the Illaqa Magistrate for his record.

10. The arrestee may be permitted to meet his lawyer during interrogation though not throughout the interrogation.

11. There should be a police control room in all district and state headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest. At the police control room a notice should be displayed on a conspicuous notice board.

12. Further the court stated that these requirements are in addition to the constitutional and statutory safeguards. Failure to comply with the requirements shall render the official concerned liable for departmental action and also render him liable to be punished for Contempt of Court.

- When the police makes search of your person or your premises they are supposed to undertake such search in presence of two independent witnesses.

## **Rights at the Time of Arrest**

- Right to be informed at the time of arrest about the *Rights to Bail* and *Right to Consult a Lawyer* of your choice.
- It is duty of the police to make a List of all things seized during arrest and give a duplicate signed copy of the list immediately to the arrestee.
- Right to be arrested in presence of a female constable.

## **First Information Report (commonly known as FIR)**

- When information provided by the victim of a crime to the police is written down, it becomes an FIR.
- Right to have an FIR filed and to read it before signing it.
- Right to have a free copy of the FIR.
- In cases of refusal to file FIR, the aggrieved person can approach the Superintendent of Police or senior officials through a written complaint.
- Once the FIR is registered the law makes the police duty bound to inform the Magistrate without undue delay.
- FIR can be recorded in any police station. In cases of crime being committed outside the territorial jurisdiction of the police station the FIR can be forwarded to the concerned police station.

## **Right in Custody & Trial**

- Children below the age of 18 years are governed by the Juvenile Justice Act and have a separate system of courts known as the Juvenile Justice Boards. They should be kept in a separate place of custody known as Observation Homes.
- There can be no use of force or torture against an accused



person. These are grave violations of human rights. In such cases, the person detained should immediately inform his friends, relatives, lawyer or Magistrate.

- Right to have access to friends, relatives and lawyers as per the rules during custody.
- Right to be produced before the Magistrate within 24 hours of the arrest.
- While being produced before the Magistrate, the accused should use that opportunity to inform the Magistrate of any wrongdoings on the part of the police, such as:
  - If the time/date of arrest is wrong in the report
  - If there was any use of force or torture to extract information or a forced confession
  - Any other inhumane treatment as to stay, food or other difficulties.
- Right to have access to information/documents which are being used to frame charges.

Any violation of the above mentioned rights or ignorance of duty due to action or inaction on the part of the administration gives rise to legal action. When small violations are ignored, the system becomes arbitrary, abusive, corrupt and anti-people.

## CONSTITUTIONAL SAFEGUARDS AND MECHANISMS

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The Constitution of India provides the mechanism for the effective governance of the country. It also guarantees Fundamental Rights to its citizens and others in the country. To further ensure that these rights which are fundamental to human existence are not denied in the name of law and procedure, the Constitution provides for certain safeguards, judicial review and space for appeal.

Though none of the Fundamental Rights provided in the Constitution are absolute, it is also true that the Constitution and judicial activism in India have ensured that these rights are not arbitrarily taken away in the guise of public interest, law and order.

The main provisions which provide protection from arbitrary use of power and judicial review are:

- Article 20: Protection in respect to conviction for offences
- Article 21: Protection of life and personal liberty
- Article 22: Protection against arrest and detention in certain cases
- Article 32: Remedies for enforcement of rights conferred
- Article 39A: Equal justice and free legal aid
- Article 226: Power of High Court to issue certain writs

### **Article 20: Protection in Respect to Conviction for Offences**

The constitutional position as stands is that:

- For convicting a person there should be a violation of some law in force at that time.

- The quantum of penalty should also be equal to what is prescribed under the law at the time of the commission of offence.
- No person can be prosecuted and punished for the same offence more than once, which is known as double jeopardy.
- No person accused of any offence shall be compelled to be a witness against himself.

## Article 21: Protection of Life and Personal Liberty

The specific right to life, including personal liberty, has wide interpretations and forms the most basic and important of all Fundamental Rights. One of the foremost guarantees and limitations of the right is the fact that the right cannot be deprived, except according to the procedure established by law. The expression ‘procedure established by law’ has been judicially construed to mean a procedure which is reasonable, fair and just.

In regards to the issues of arrest, detention, trials and judicial process, there have been many judicial pronouncements, namely:

- Speedy trial has been held to be a component of personal liberty.<sup>1</sup> Inordinate delay by the State in bringing an accused to trial or in preferring an appeal against acquittal violates Article 21, if it is no fault of the accused.<sup>2</sup>
- Handcuffs are permitted in only extraordinary circumstances.<sup>3</sup> Further, the Supreme Court has given directions to the states to frame rules or guidelines, regarding the circumstances in which handcuffing of the accused should be used.<sup>4</sup>
- Compensation has been ordered for cases of *Illegal Detention*,<sup>5</sup>

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1. Kartar Singh vs State of Punjab, 1994 CriLJ 3139.

2. State of Rajasthan vs Sukhpal, AIR 1984 SC 1675.

3. Sunil vs State of MP; (1990) 3 SCC 119.

4. Citizens for Democracy vs State of Assam, AIR 1996 SC 2193.

5. Meera vs State of Tamil Nadu, (1991) CriLJ 2395 (Mad).

*inhumane treatment*<sup>6</sup> and *police atrocities*.<sup>7</sup>

- A prisoner kept in jail for a period exceeding the maximum prison term awarded on conviction must be released.<sup>8</sup>

## **Article 22: Protection Against Arrest and Detention in Certain Cases**

This is a constitutional guarantee against arbitrary abuse of police power.

- It was held that providing the grounds for arrest is mandatory.<sup>9</sup>
- There is a right to consult and to be defended by a legal practitioner of choice.<sup>10</sup>
- It is mandatory to produce arrestee before the nearest magistrate<sup>11</sup> within 24 hours after arrest. The period of 24 hours excludes the time required for journey.
- Any detention beyond 24 hours can only be done with the authority of a Magistrate.
- While there is an exception for cases of preventive detention, even that is limited to a maximum period of three months.

## **Article 39A: Equal Justice and Free legal Aid**

The Article which forms part of the Directive Principles of State Policy in Part IV is not an enforceable right. However, due to the court's interpretation legal aid may be treated as a part of the right created under Article 21.<sup>12</sup> The Article has also been used to interpret and

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6. PV Kapoor vs Union of India, (1992) CriLJ 140 (Del).

7. People's Union for Democratic Rights vs Police Commissioner, (1989) 4 SCC 730.

8. Hussainara vs State of Bihar, AIR 1979 SC 1369.

9. Gopalan vs State of Madras, AIR 1950 SC 27.

10. Supra.

11. State of UP vs Abdul Samad, AIR 1962 SC 1506.

12. Kishore vs State of HP, AIR 1990 SC 2140.

expand the rights conferred by Section 304<sup>13</sup> of CrPC.<sup>14</sup>

The conditions of various categories of people who are unable to hire pleaders on their behalf and thus making the justice procedure unfair against them and also the duty imposed under the Constitution on the State to provide free legal aid, the Legal Services Authorities Act, 1987 was instituted to provide free legal aid and create awareness among various categories of people.

## **Article 32 & 226: Remedies for Enforcement of Rights Conferred and Power of High Court to Issue Certain Writs**

Rights will be meaningless if there is no remedy against their violations. The Constitution provides for such remedies even against the violations by the State. In cases where the High Court or the Supreme Court is of the opinion that the State/government has violated the fundamental rights of an individual, the court can order the government to act to restore or fulfill the rights. Such orders are called writs. It has been held that judicial review under Article 32 and 226 is a basic feature of the Constitution beyond the pale of amendability.<sup>15</sup>

There are five kinds of writs which can be requested from the Courts.

- **Certiorari:** The writ of certiorari can be issued to lower courts for decisions violating fundamental rights or which are taken in excess of their authority.
- **Habeas Corpus:** Under this writ the court directs the person or authority who has detained another person to bring the body of the prisoner before the court so as to enable the court to decide

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13. Section 304 enables the Sessions Court to assign a pleader for the defence of the accused at the expense of the State provided he is unrepresented and the Court is satisfied that he has no sufficient means to engage a pleader.

14. Hussainara vs State of Bihar, AIR 1979 SC 1369.

15. Kihota vs Zachilhu, AIR 1993 SC 412.

the validity, jurisdiction or justification for such detention. The principle aim of the writ is to ensure swift judicial review of alleged unlawful detention on liberty or freedom of prisoner or detenu.<sup>16</sup>

- **Mandamus:** The writ of mandamus can be issued to cancel an order of an administrative or statutory public authority or the government itself where it violates a fundamental right. In the landmark judgement *Vishaka vs State of Rajasthan*, (1997) 6 SCC 241, it was held that writ of mandamus with suitable directions can be issued for the protection and enforcement of fundamental and human rights of working women subject to sexual harassment.
- **Prohibition:** Writ of prohibition is normally issued when the inferior courts or tribunal (a) proceeds to act without or in excess of jurisdiction, (b) proceeds to act in violations of rules of natural justice, (c) proceeds to act under law which is itself ultra vires or unconstitutional, or (d) proceeds to act in contravention of fundamental rights.
- **Quo Warranto:** A writ of quo warranto lies against a person, who according to the relator is not entitled to hold an office of public nature and is only an usurper of the office. That person is required to show by what authority that person is entitled to hold the office.

## Public Interest Litigation

The constitutional remedies as described above are governed by the traditional rule of locus standi meaning that any person complaining of infraction of any Fundamental Rights guaranteed by the Constitution can be invoked only if it concerns the right of the person who complains. The court relaxed the concept of locus standi for any person who is filing on behalf of those who are unable to

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16. *State of Maharashtra vs Bhaurao Punjabrao Gawande*, (2008) 3 SCC 613.

approach the court for relief. The Supreme Court has dealt with the classes of person for whom Public Interest Litigation or PIL may be fought.<sup>17</sup> The development of PIL during the last decade has largely modified the traditional rule as to standing to litigate in constitutional matters. Courts now allow PILs for public spirited citizens and groups for those who represent those unable to fight their own battle.

Realising the importance of protecting rights against matters of procedure, the court in *People's Union of Democratic Rights vs Union of India*, AIR 1982 SC 1473 (also known as the *Asiad Village Case*) expanded the definition of the concept of locus standi making procedural issues secondary in cases of violations of Fundamental Rights. However, it cannot be said that procedural laws do not apply but there is no prescribed procedure for initiating a PIL. PIL can be maintained provided the petitioner is acting bonafide and has sufficient interest in maintaining an action for judicial redress for public injury.

PILs are the most powerful tool in the hands of lawyers / activists today to fight for the rights of the deprived. The globalisation has intensified the fight for material development against the livelihood of the marginalised. Demand for more resources of the rich has started pinching the basic survival resource of the poor, rural and tribal populace, and the delay and expense of the judicial system has made justice for poor seem beyond sight. Lawyers and activists have a special role to play in ensuring that rights of the marginalised communities and rule of law prevails.

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17. *Subhash vs State of Bihar*, AIR 1991 SC 420.

# **Session**

# **VIII**

## **Maternal Mortality and Morbidity**





## TIMING & SESSION PLAN

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**Total Time** : 2 hours

- 30 Min : Reproductive Rights
- 60 Min : Law, Policy & Schemes
- 30 Min : Judicial Interventions

### Training Materials

- Chart papers/Flipchart/Blackboard
- Markers/Pens/Chalk
- Handnotes on Local Area Data/Case Studies/Newspaper reports.
- Films, Role Play (Optional)

### Session Objective

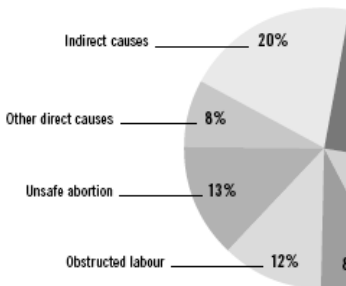
- To develop an understanding on maternal mortality and morbidity and its causes.
- To equip the participants with information about the legal and institutional mechanisms available concerning the issues.
- To identify and discuss the points of intervention and issues for larger advocacy.

**Note for Facilitator:** Reproductive health rights and health system is of utmost importance to the communities as all are able to relate to it. Many participants have personal or known ill-fated incidences due to lack of health services or issues of affordability or accessibility. All this makes the issue very sensitive and relevant. A facilitator has to be aware of these factors throughout this session.

# REPRODUCTIVE RIGHTS

**Reproductive Rights** guarantee that every woman is treated with dignity and respect and has the right to enjoy reproductive health, thereby ensuring that every birth is safe and every child is wanted. The International Conference on Population and Development (ICPD) at Cairo in 1994, where the nations agreed to ensure universal access to reproductive health information and services by the year 2015, reiterated a woman's rights to reproductive health. The importance of reproductive health was further emphasised when *universal access to reproductive health* was included as one of the targets in Millennium Development Goals (MDGs) framework to be achieved by 2015.

CAUSES OF MATERNAL DEATH – WORLDWIDE



Source: *The World Health Report 2005. Make every mother and child count*

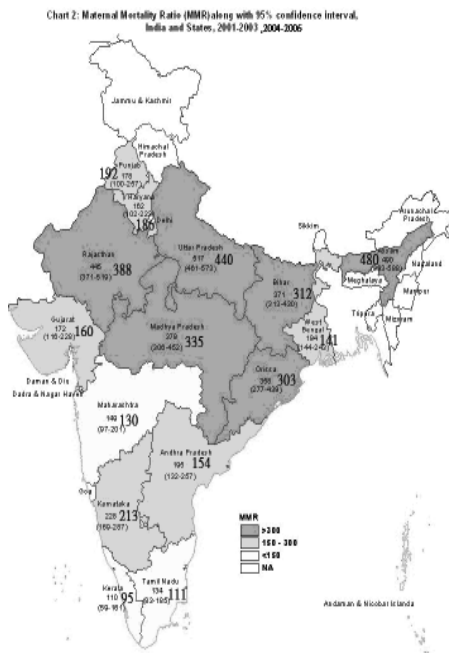
## Severity of reproductive health concerns

According to the WHO, reproductive and sexual ill-health accounts for 20% of the global burden of ill-health for women. It is estimated that each year, 358,000 women die due to complications related to pregnancy and childbirth; 99% of these deaths occur within the most disadvantaged population groups living in the poorest countries of the world. Most of these deaths can be avoided with improving women's access to quality care from a skilled birth attendant before, during and after pregnancy and childbirth.

Source: <http://en.wikipedia.org/>

Reproductive Rights 'rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. This should also include the right of all to make decisions concerning reproduction free of discrimination, coercion and violence.'

In the ICPD Program of Action, ‘**Reproductive health**’ is defined as: *“a state of complete physical, mental and social well-being and...not merely the absence of disease or infirmity, in all matters relating to the reproductive system and its functions and processes. Reproductive health, therefore, implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so. Implicit in this last condition are the right of men and women to be informed [about] and to have access to safe, effective, affordable and acceptable methods of family planning of their choice, as well as other methods of birth control which are not against the law, and the right of access to appropriate health-care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant.”*



**Maternal Mortality** is defined as ‘the death of a woman while pregnant or within 42 days of termination of pregnancy, irrespective of the duration and site of the pregnancy, from any cause related to or aggravated by the pregnancy or its management, but not from accidental or incidental causes.’ As per the Sample Registrar Survey 2004-2006 estimates, maternal mortality rates for India stands at **254** (number of deaths per 100,000 live births).

Few basic indices integral to any maternal health rights system are:

- **Availability:** Availability of public health facilities, goods and services as per prescribed quality norms.
- **Accessibility:** Universal accessibility to facilities, goods and services. The accessibility of health service should be made known to people, should be affordable, physically accessible and inclusive.
- **Acceptability:** Should be in line with the medical ethics, culturally appropriate, respectful of confidentiality and sensitive.
- **Quality:** The services, facilities and goods should all be as per prescribed standards and quality.

## **LAW, POLICY & SCHEMES**

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The Government of India as a responsible state is signatory to various International Laws and Instruments. These international commitments by India have impacted and influenced the manner in which Indian Health policies have been designed. The family planning programmes have seen new infusion through a target free approach in 1996, the Reproductive and Child Health Programme in 1997 and the National Population Policy in 2002. Among those, the important ones concerning maternal morality are the following:

### **International**

- Right to Health is provided within the ICESCR (International Covenant of Economic, Social and Cultural rights) and the International Covenant on Civil and Political Rights (ICCPR).
- CEDAW (Convention on the Elimination of all forms of Discrimination against Women).
- ICPD (International Conference on Population and Development), 1994.
- Fourth World Conference on Women (Beijing 1995).

### **National Instruments**

- Eleventh Five Year Plan, 2007-2012.
- National Policy for the Empowerment of Women, 2001.
- National Health Policy, 2002.
- National Population Policy, 2000.
- National AIDS Prevention and Control Policy, 2002.
- National Blood Policy, 2002.

- Reproductive and Child Health Programme
- Standards for Female and Male Sterilisations, 1999
- National Nutrition Policy, 1993

One of the most powerful International Instrument concerning rights of women is the CEDAW, 1979. CEDAW has very specific provisions concerning maternal health rights, such as:

- **Article 10 (a) and 10 (h):** States are required to take all necessary steps to eliminate discrimination against women in education and to provide women equal access to educational materials and advice on family planning.
- **Article 11 (2):** States are required to undertake appropriate measures to prohibit dismissal of women workers on the grounds of pregnancy, to introduce maternity leave, to promote the development of a network of child care and to provide pregnant women with special protection from work that may be harmful.
- **Article 12:** States are required to provide women with appropriate services where necessary during ante and post natal stages of pregnancy.
- **Article 12 (a):** States are required to eliminate discrimination against women in the area of healthcare and to ensure that men and women have equal access to health care services, including family planning services.
- **Article 16:** States are required to eliminate discrimination against women in all matters with regard to marriage and family relations.

Similarly ICESCR and ICCPR contain provisions for protection of reproductive health rights:

- Under ICESCR:

- “The right to health contains both freedoms and entitlements. The freedoms include the right to control one’s health and body, including sexual and reproductive freedom.”
- “Functioning public health and healthcare facilities, goods and services, as well as programmes, have to be available in sufficient quantity within the State Party.”
- “Improve child and maternal health, sexual and reproductive health services, including access to family planning, pre and post-natal care, emergency obstetric services and access to information, as well as to resources necessary to act on that information.”
- The ICCPR contains multiple provisions that are protective of reproductive rights:
  - Article 2 protects the rights in the Covenant without distinction as to sex.
  - Article 3 guarantees the equal right of men and women to enjoy the rights under the Covenant.
  - Article 26 guarantees equality before the law and requires the law to protect against discrimination.

At the National level, the **Constitution of India** forms the bedrock of human rights. The following Articles guarantee rights concerning maternal health rights.

- **Article 21** conferring the Right to Life to every Citizen, has been extended through judicial pronouncements by the Supreme Court to include the *right to adequate medical treatment in a government hospital*. The Supreme Court of India held that the right to life includes the right to adequate medical facilities for preserving human life as well as the right to timely treatment in a government hospital. [Paschim Banga Khet Mazdoor Samity & ors vs State of West Bengal & anr (AIR 1996 SC 2426)].



- **Article 42 (d)** of the Directive Principles of State Policy guarantees the *Right to just and humane conditions of work and maternity relief*.
- **Article 14** (right to equality) and **Article 15** (freedom from discrimination) ensures that women are treated equally without any discrimination.

## RELEVANT MATERNAL HEALTH SCHEMES

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**The government is bound to provide each of the services under the relevant schemes any failure to implement becomes an opportunity for legal interventions.**

### National Rural Health Mission

As stated earlier as per the WHO findings, 99% of the maternal health problems occur within the most disadvantaged population and in India the rural populace suffers the most due to the lack of health services and issues of accessibility. It is important to understand the National Rural Health Mission (NRHM) and its key components. Policies get laid down, but the government ignores the poor by claiming a fund crunch. To ensure that the policies are implemented as they should and to take up legal recourses in case they are not implemented as prescribed, it is important to understand as per the NRHM who are the major stakeholders and what are their roles:

#### NRHM: 2005-2012

“The goal of the mission is to improve the availability of and access to quality healthcare by people, especially for those residing in rural areas, the poor, women and children.”

**Reproductive Health Goal:** Reduce MMR in India to 100 per 100,000 live birth by 2012.

- Accredited Social Health Activist (ASHA)
- Auxiliary Nurse Midwife and Aanganwadi Worker (ANM)
- Aanganwadi Worker (AWW)
- Janani Suraksha Yojana (JSY)
- National Rural Health Mission (NRHM)
- Integrated Child Development Services Scheme (ICDS)
- Janani-Shiksha Suraksha Karyakram (JSSK)

## **Accredited Social Health Activist**

One of the key components of the National Rural Health Mission is to provide every village in the country with a trained female community health activist – ‘ASHA’ or Accredited Social Health Activist. The ASHA should be selected from the village and accountable to it. The ASHA will be trained to work as an interface between the community and the public health system.

A few major roles of ASHA are:

- The ASHAs will receive performance-based incentives for promoting universal immunisation, referral and escort services for reproductive & child health (RCH) and other healthcare programmes, and the construction of household toilets.
- She will counsel women on birth preparedness, the importance of safe delivery, breast-feeding and complementary feeding, immunisation, contraception, prevention of common infections including reproductive tract infection/sexually transmitted infections (RTIs/STIs), and care of the young child.
- ASHA will mobilise the community and facilitate them in accessing health and health related services available at the Anganwadi/sub-centre/primary health centers, such as immunisation, ante natal check-up (ANC), post natal check-up supplementary nutrition, sanitation and other services provided by the government.
- She will act as a depot holder for essential provisions being made available to all habitations like oral rehydration therapy (ORS), iron folic acid tablet (IFA), chloroquine, disposable delivery kits (DDK), oral pills & condoms, etc.

## **Auxiliary Nurse Midwife**

The roles of the auxiliary nurse midwife (ANM) and ASHA have been integrated in various ways. The ANM will hold weekly/fortnightly

meeting with ASHA, and provide on-job training by discussing the activities undertaken during the week/fortnight and provide guidance in case ASHA encounters any problems. ANMs will act as a resource person for the initial and periodic training and also ensure that during the training the ASHA gets the compensation for performance and the TA/DA is compensated for attending the training schedule. She will also guide ASHA in bringing the beneficiary to the outreach session. She will utilise ASHA to motivate the pregnant women to come to the sub-centre for initial check-ups and bring married couples to sub-centres and to motivate pregnant women to take full course of iron and folic acid (IFA).

### **Aanganwadi Worker**

The responsibilities of Aanganwadi Worker (AWW) are to guide ASHA in performing health services and integrated with the role of ASHA. AWW will guide ASHA in performing activities such as organising Health Day once/twice a month at Aanganwadi Centre and orienting women on health related issues such as the importance of nutritious food, personal hygiene, care during pregnancy, importance of immunisation etc. Aanganwadi worker will be depot holder for drug kits and issue it to ASHA. AWW may also replace the consumed drugs. ASHA will support the AWW in mobilising pregnant and lactating women and infants for nutrition supplement. She would also be responsible for bringing the beneficiaries from the village to Anganwadi on specific days of immunisation, health check-ups/health days, etc.

### **Janani Suraksha Yojana**

The Janani Suraksha Yojana or JSY is a safe motherhood intervention scheme under the National Rural Health Mission (NRHM) implemented with the objective of reducing maternal and neo-natal mortality by promoting institutional delivery among the poor pregnant women. This was launched on 12th April 2005. It is a 100%

centrally sponsored scheme and integrates cash schemes with delivery and post-delivery care. The JSY identifies the Accredited Social Health Activist (ASHA) as an effective link between the government and the poor pregnant women. She (ASHA) usually works under an auxiliary nurse midwife (ANM) and their work is expected to be supervised by a medical officer (MO).

Under the JSY the role of the ASHA or any other link health worker associated with JSY would be to:

- Identify pregnant woman as a beneficiary of the scheme and report or facilitate registration for ANC. This should be done at least 20-24 weeks before the expected date of delivery.
- Assist the pregnant woman to obtain necessary certifications wherever necessary, within 2-4 weeks of registration.
- Provide and / or help the women in receiving at least three ANC checkups including TT injections, IFA tablets.
- Identify a functional government health centre or an accredited private health institution for referral and delivery, immediately on registration.
- Counsel for institutional delivery.
- Escort the beneficiary women to the pre-determined health centre and stay with her till the woman is discharged.
- Arrange to immunise the newborn till the age of 14 weeks.
- Inform about the birth or death of the child or mother to the ANM/MO.
- Post natal visit within 7 days of delivery to track mother's health after delivery and facilitate in obtaining care, wherever necessary.
- Counsel for initiation of breastfeeding to the newborn within one-hour of delivery and its continuance till 3-6 months and

promote family planning.

- A micro birth plan must mandatorily be prepared by the ASHA or equivalent health activist

A child under the JSY is entitled to:

- Emergency care of sick children including Integrated Management of Neonatal and Childhood Illness (IMNCI).
- Care of routine childhood illness.
- Essential newborn care.
- Promotion of exclusive breastfeeding for 6 months.
- Full immunisation of all infants and children against vaccine preventable diseases as per guidelines of GOI.
- Vitamin A prophylaxis to the children as per guidelines.
- Prevention and control of childhood diseases like malnutrition, infections, etc.

## **Concrete Service Guarantees**

NRHM sets forth concrete service guarantees, including several reproductive health services that sub health centres (SHC), primary health centres (PHC), and community health centres (CHC) must provide. SHC must provide a range of maternal health services including, inter alia, (1) early registration of all pregnancies ideally in the first trimester, (2) minimum four ante natal checkups and provision of complete package of services including iron folic acid tablets, injections, identification of high risk pregnancies and anaemia examination, (3) promotion of institutional deliveries, (4) appropriate and prompt referral, (5) minimum of two postpartum visits, (6) provision of contraceptives, (7) education and counseling on family planning methods and, (8) training of traditional birth attendants and ASHAs.

PHC is obligated to provide, inter alia, (1) 24-hour emergency care, (2) comprehensive ante natal care including nutrition & health counseling, (3) 24-hour delivery services for both normal and assisted deliveries, (4) appropriate and prompt referral cases needing specialist care, (5) training of staff for emergency management, (6) post natal care including initiation of early breast-feeding and minimum of two postpartum home visits, (7) essential newborn care, (8) range of family planning including contraceptives, tubal ligation, counseling and appropriate referral for safe abortion services, (9) JSY program and (10) referral services including transport either by PHC vehicle or hired vehicle for which funds will be made available by the Medical Officer.

CHC must provide a range of maternal health services including (1) 24-hour delivery services including normal and assisted deliveries, (2) essential and emergency obstetrics care, (3) full range of family planning services, (4) safe abortion services, (5) blood storage facility, (6) essential laboratory services, (7) HIV/AIDS control programme, (8) and referral & transport services.

## **Integrated Child Development Services Scheme**

The Integrated Child Development Service scheme (hereafter ICDS) was enacted to cater the needs of children, adolescents, pregnant women and lactating mothers. The objectives of ICSDS are:

- To improve the nutritional and health status of children in the age-group 0-6 years.
- To lay the foundation for proper psychological, physical and social development of the child.
- To reduce the incidence of mortality, morbidity, malnutrition and school dropout.
- To achieve effective co-ordination of policy and implementation amongst the various departments to promote child development; and to enhance the capability of the mother to look

after the normal health and nutritional needs of the child through proper nutrition and health education.

The package of services provided under the ICDS include:

- supplementary nutrition
- immunisation
- health check-up
- referral services
- pre-school non-formal education and nutrition & health education

### **Janani-Shishu Suraksha Karyakram**

In recognition of the continued crisis in the delivery of maternal and infant health services to pregnant women in India, the Union of India launched the Janani-Shishu Suraksha Karyakram (JSSK) on June 1, 2011. Acknowledging that the costs associated with pregnancy serve as significant barriers to care, the initiative “assure[s] free services to all pregnant women and sick neonates accessing public health institutions” and “envisages free and cashless services to pregnant women including normal deliveries and caesarean operations and also treatment of sick new born in all government health institutions across the State/UT.” The scheme provides a range of free delivery services, drugs & consumables, diagnostics, diets, blood, referral transport and exemption from all user fees.

JSSK mandates concrete and immediate actions by the state governments, some of which are highlighted below:

- Issue government order on free entitlements.
- Nominate a state nodal officer.
- Institute a grievance redressal mechanism for ensuring that the commitments are fulfilled in letter and spirit.



- Ensure regular procurement and availability of drugs and consumables at the public health institutions.
- Take necessary steps for ensuring functional lab facilities and diagnostic services at the public health institutions.
- Establish and operationalise blood banks at the district levels and blood storage centres at identified FRUs.
- Establish district wise assured referral linkages with GPS fitted vehicles and centralised control rooms.
- Provide required finances and necessary administrative steps/ GOs for the above activities.
- Financially empower the district and facility in-charges for the above activities, particularly in emergency situations/stock-outs.
- Regularly monitor and report on designated formats at specified periodicity.
- Review the implementation status during district CMOs meetings.

JSSK also charges the district with specific, immediate actions:

- Nominate a district nodal officer.
- Circulate the GO on free entitlements to all facility in-charges.
- Widely publicise free entitlements in public domain.
- Institute a grievance redressal for ensuring that the commitments are fulfilled in letter and spirit.
- Regularly review the stocks of drugs & consumables for ensuring availability at the public health institutions.
- Ensure lab facilities and diagnostic services are functional at all designated facilities, particularly at DH, SDH, FRU, CHC, PHC.

- Prepare time bound action plans for establishing and operationalising blood bank at district level and blood storage centres at identified FRUs.
- Review referral linkages and their utilisation by beneficiaries.
- Provide require finances/empowerment for utilisation of funds to the Block MOs and facility in-charges for the above activities, particularly in emergency situations/stockouts.
- Regularly monitor & report on designated formats at specified periodicity.
- Review the implementation status during Block MOs/MOs meetings.

### **Panchayati Raj Institutions (PRI) & Non- Government Organisations (NGOs)**

NRHM aims at empowering local governments to manage, control and be accountable for public health services at various levels. The Mission envisages the following roles for PRIs.

- States will indicate in their MoUs the commitment for devolution of funds, functionaries and programmes for health to PRIs.
- The district health mission (DHM) will be led by the Zilla Parishad. The DHM will control, guide and manage all public health institutions in the district, sub-centres, PHCs and CHCs.
- ASHAs will be selected by and be held accountable to the Village Panchayat, the village health plan and promote inter-sectoral integration.
- Each sub-centre will have an untied fund for local action @ Rs.10,000 per annum. This fund will be with the ANM, in consultation with the Village Health and Sanitation Committee.
- PRI will be involved in hospital management committees for

good hospital management.

- PRI will provide training to members of PRIs.
- PRI will make available health related database to all stakeholders, including Panchayats at all levels.

## **District Administration**

Specific action plans at district level will include the following:

- Constitution of district health mission led by Zilla Parishad to lead the activities under NRHM and total sanitation campaign (TSC) in the district.
- Preparation of integrated district action plan as per the NRHM mandate.
- Constitution of hospital management society for district hospital, community health centres (CHCs) and primary health centres (PHCs) after which maintenance grant of Rs. 1 lakh shall be released by the Government of India.
- Opening a Joint Account of ANM and Sarpanch to manage Untied Fund of Rs. 10,000 per sub-centre, to address the unmet gaps reflected in village health plan.
- Facilitation of village health planning under the guidance of village health and sanitation committee of the Gram Panchayat.
- Upgrade of CHCs to Indian public health standards (IPHS) in a time bound manner.
- Addressing issues of availability of manpower, equipment and drugs in public health facilities.
- Exploring models of public-private partnership (PPP) to supplement services in the district, like contractual engagement of district paramedics, hiring services of district specialists on payment of remuneration, and contracting out services to

NGOs/accredited private health facilities in the district.

- Operationalising services of mobile medical unit in every district.
- Ensuring supply and replenishment of generic drugs for common ailments supplied under NRHM at CHC/PHC/sub-centre/village level.
- Organising selection and training of ASHAs.
- Strengthening universal immunisation through micro-planning, including availability of auto disabled syringes and alternate vaccine delivery.
- Ensuring maintenance of cold chain and plan for waste plastics and sharp disposal.
- Implementation of Janani Suraksha Yojana (JSY) to improve levels of institutional delivery by dissemination of the scheme to ensure fund flow, identification of public and private hospitals for providing services, and ensuring compliance to Citizen's Charter displayed at CHCs.
- Ensuring simple procedure for BPL certification and introduction of voucher system wherever possible for JSY, immunisation, contraception, etc.
- Conducting verbal autopsy of maternal deaths.
- Promoting breast-feeding and integrated management of neonatal childhood illness (IMNCI) in the district.

## **State Governments**

Each state shall develop its own strategy for National Rural Health Mission (NRHM) under the overarching guidelines of the Government of India. Some specific state level actions envisaged under the NRHM include the following:

- Organising state and divisional/district level stakeholder workshops involving department of health, family welfare, AYUSH, women and child development, Panchayati Raj, rural development, finance, drinking water supply, finance, district administration including District Magistrate, Medical Associations like IMA and FOGSI, and corporate sector.
- Constitution of State Health Mission chaired by the Chief Minister and co-chaired by the state health minister.
- Merging different societies of health and family programmes into an integrated society at the state and district level.
- Preparation of integrated state action plan for RCH-II, national disease control programmes, and integrated disease surveillance programmes and related sectors of nutrition, sanitation and hygiene. The state action plan will also reflect available funds under the state health budget, and funds received from the Planning Commission, bilateral agencies and major NGOs.
- The state government would identify core performance indicators and time frames for achieving the same.
- Preparing a distinct strategy for addressing vulnerable population groups and underserved areas to be specified in the state action plan.
- Ensuring key role of Panchayati Raj institutions at all levels under the Mission to plan, control and monitor the health programme.
- Integrating the institutional framework of health & total sanitation campaign at district and sub-district levels to ensure provision of household toilets under the mission.
- Guidelines for constitution of hospital management committees at district, CHC an PHC level, fully empowered to levy and utilise user charges.

- Finalising the state model and training module of ASHA.
- Issue government order (GO) to facilitate a fixed Health Day at Aanganwadi level every month for comprehensive mother and child healthcare activities.
- Strengthening programme management unit at state and district level through induction of skilled professionals, and their integration into the mainstream organisation.
- Organising trainings for staff, finalising new organogram, providing office equipment to the new recruits.
- GIS mapping of public and private health facilities.
- Identifying at least two CHCs per districts for upgrade to Indian public health standards (IPHS) in the first year.

## **NATIONAL MATERNITY BENEFIT SCHEME**

Given the condition of women belonging to poor families and because safe child birth is the social responsibility of the State, the Supreme Court ordered that all pregnant women belonging to Below Poverty Line (BPL) families should get social assistance (financial) [*PUCL vs Uoi and Ors Writ (Civil) Petition No. 196 of 2001*].

**National Maternity Benefit Scheme** was initiated in accordance to the order. The scheme provides that all pregnant women belonging to BPL families should be paid Rs. 500.

- The payment should be made 8–12 weeks prior to delivery for each of the first two births.
- The benefit under NMBS is irrespective of place of delivery and of age.

## JUDICIAL INTERVENTIONS

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The *Right to Health*, which is inherent to every human being, is part of the *Right to Life* under Article 21 of the Constitution of India. This insertion or extension of the *Fundamental Right to Life* to include the *Right to Health* gives legitimacy for further legal actions for violations of the right.

The judicial pronouncements have been severe and univocal, when defining Article 21: *“Right to Life, does not connote mere animal existence or continued drudgery through life, but rather implies a right to live with human dignity and all that goes along with it, namely, the bare necessities of life. The jurisprudence of personhood or philosophy of the right to life envisaged under Article 21, enlarges its sweep to encompass human personality in its full blossom with invigorated health.”*

Further, there are various schematic and administrative mechanisms which have been developed based on these rights and judicial pronouncements which provide further legitimacy and state

### Constitutional basis for legal claims

- Article 14: Equality before the law
- Article 15: Prohibition of Discrimination
- Article 21: Protection of life and personal liberty
- Article 32: Remedies for the enforcement rights (Supreme Court’s jurisdiction over PIL action)
- Article 42: Just and humane conditions of work and maternity relief
- Article 47: Duty of the State to raise the level of nutrition and the standard of living and to improve public health
- Article 51 (c) Respect for international law and treaty obligations
- Article 51A (e): Fundamental Duties: obligating citizens to denounce practices derogatory the dignity of women



recognition. Violations of complete deprivation or administrative inaction can be further points of intervention and legal actions.

Various judicial pronouncements have extended the legitimacy and scope for legal action in cases of violation of such rights.

- In *Consumer Education and Research Centre vs UOI (1995)*, it was held that the 'right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter.'
- In *Parmanand Katara vs UOI, 1989* pronounced that every individual has a *Right to emergency medical care*, thereby making 'every doctor whether at a government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life.'
- In *Paschim Banga Khet Mazdoor Samity vs State of West Bengal, 1996*, it was held that 'failure on the part of a government hospital to provide timely medical treatment to a person in need of such treatment results in violation of his Right to Life guaranteed under Article 21... The government cannot ignore its constitutional obligations on the pretext of 'financial constraints.'

# **Session**

# **IX**

## **Role of Lawyer-Activist**



## TIMING & SESSION PLAN

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**Total Time** : 45 Minutes

- 5 Min : Promoting Human Rights Education & Developing Paralegal
- 15 Min : Bridging Rights violations to Courts
- 15 Min : About Human Rights Law Network

### Training Materials

- Chart papers/Flipchart/Blackboard
- Markers/Pens/Chalk

### Session Objective

- To instill the feeling that the legal fraternity can influence both society and the State with its knowledge and respect for people.
- To reemphasise the fact that for any larger political or legal change in the country or globally lawyers and people with legal information are crucial.
- To emphasise the role of lawyers with other stakeholders such as community-based organisations (CBOs), media, police administration among others.
- To inform the participants about the objective and expanse of the HRLN pan-India as a legal support mechanism.

**Note for Facilitator:** The session aims to motivate, inform, and transfer skills. The fine balance has to be kept in mind when delivering the session and facilitating the discussion. The people with legal information are critical for change in the political and social fabric is understood, but needs to be reiterated during the session.

# PROMOTING HUMAN RIGHTS EDUCATION & DEVELOPING PARALEGAL

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Educating people to read and write a few words or sentences has a very limited impact on the lives of people. People who are unaware of their rights and duties, cannot take advantage of the laws in place. In today's world with withering social norms and where every engagement is based on written or unwritten contracts, knowledge of the law and system becomes imperative.

In modern day society, State and governance have become complicated. The conflicting demands of individual rights, community rights, and the push for economic development and its related concerns, have created a situation where legal norms and the rule of law will have to guide every individual behaviour be in private and public spaces. In such a situation the informed becomes the mighty. The power of knowledge is many a times pitted against the poor and the marginalised who have been and continue to be deprived of knowledge and the sources of knowledge or power centres.

It is time to take sides and strengthen the weak and uninformed through the power of knowledge. Lawyers have a very critical role to play. Lawyers with social responsibility are needed to make a sustained meaningful change in society. The legal fraternity can influence both society and the State with their knowledge and the respect they have for people. What becomes more important is the dissemination of such knowledge to more individuals rather than lawyers in order to not hold individuals back and create dependency. Prior knowledge of the law and rights has always been a deterrent for perpetrators, empowering for the victim and facilitative for the system to act.

**Discussion Point:** The lack of knowledge and access to legal information or support system as a disabler in the fight to justice.

## **LAWYERS' ROLE IN ENSURING JUSTICE**

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Lawyers are critical in ensuring justice to the marginalised. Their role as part of the Judicial System is that of custodian of justice and equity. They are informed and can facilitate change processes within society on the basis of the rule of law. Prevalence of Rule of Law is pertinent for everyone and not only the marginalised. In their fight against injustice, lawyers can have critical and strong partners among public spirited individuals, civil society organisations, media and even the governance system.

There are possibilities of both formal and informal collaborations/participation with all these stakeholders. Within the governance system various committees and bodies where lawyers can become active members and provide inputs and proper functioning are formed or are stipulated under statutes to be formed. These processes will enhance lawyers' understanding of the flaws in the governance system and will be better equip them with first-hand experience to influence its reform and strengthen it. Further, with the tools like *Right to Information (RTI)* available for seeking information, the role of lawyers in the legal and constitutional reform process has increased. They can lead the crusade in seeking and ensuring a more transparent and accountable governance.

### **Lawyers & Public Spirited Individuals**

It is well known that most of the time the battle against a corrupt system or for a cause is started by individuals who are not affiliated to any group or organisations. While few succeed, many of them without any support are broken by the might of the corrupt confederation. The nexus of politicians, bureaucrats and self interested individuals and businesses ensure that the individual is cornered before being eliminated.

Lawyers can provide strength to such individuals, with their

knowledge, information and skills. Guiding such individuals towards the right process or procedures or even linking them to the right group can ensure that the fight goes on. There are various civil society organisations or lawyers and lawyer groups at the district and state levels which can be provide help. The Human Rights Law Network is one such national group where people can get the required support to fight for a cause. (See page 184).

## **Lawyers & Civil Society Organisations**

There are various CSOs who have been working hard on issues which concern the community. However, it is also a fact that most of them do not have the legal acumen to take on the fight within the Judicial System. The expense and delays within the Judicial System also deter them. What they end up doing is raising public awareness and limiting their work within the community. While the RTI Act has provided them scope to know and gather relevant data, many organisations are unable to understand the utility of the data or the process after that.

Lawyers can strengthen the capacity of such organisations in their fight; from basic orientations on state & democratic governance to issues of transparency and accountability; to rights issues and State responsibility; to actually using law on all such issues. From simple skill development on how to file an RTI application to actually guiding a public interest litigation (PIL), lawyers have a large role to play as a partner in change with such organisations. Lawyer support is important to develop local leadership and to create community pressure.

## **Lawyers & Media**

Media is a strong pillar (Fourth Estate) in any vibrant democracy and their impartial role is critical for the growth of democracy. The media reports issues as they occur, but many times they do not include the crucial legal points which can be informative for all.

When they cover cases of dowry deaths as a story proper legal information and input of the issues of rights violations can be highlighted along with the duties of institutions such as the police; thus, there will be no scope for officers involved to manipulate, which is generally the case.

Lawyers have a role to provide the media with the legal perspective and provisions, and data concerning issues/causes. Lawyers also play a role in strengthening the reporting system within media houses. These specific legal inputs can strengthen the system and go a long way in ensuring individual accountability, which is otherwise lacking within the administrative mechanisms today.

## **Lawyers & Governance System**

The present system of governance, though expected to work for the people, works in an extremely secretive manner. The secretive manners of functioning are the reason for malfunction, corruption, indifference and arbitrary biases. Most of the common people don't understand the functioning of the system. Fear of a vindictive response and further victimisation keeps many silent. Lawyers can play a guiding role in such situations. Lawyers can work both with the system in terms of strengthening the hierarchy and ensuring that corrupt officials are identified and weeded out. They can also provide support to the people at large in ensuring the mechanisms are functioning and unjust actions or inactions are corrected.

## **About Human Rights Law Network**

HRLN is India's leading public interest law group, working at the intersection of law, advocacy and policy. The HRLN Advocates use the law as a shield to protect the human rights of the poor and of marginalised communities in India. For more than two decades, HRLN Advocates have played a prominent role in investigating, monitoring, and documenting human rights violations, efforts which have resulted in landmark judgements in the sphere of both civil



and political rights as well as social, cultural and economic rights.

With over dozens of lawyers across the country, HRLN Advocates work tirelessly on defending the rights of the marginalised sections of society including the women, both inside and outside the courtroom. In addition to legal advocacy, HRLN advocates engage in public education through “know your rights” materials, and conducting of training seminars as well as workshops for lawyers, activists, judges, and government officials.

**Session**

**X**

**Q&A / Feedback**



## TIMING & SESSION PLAN

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**Total Time** : 30 Minutes

- 15 Min : Open Session: Question & Answers
- 15 Min : Feedback

### Training Materials

- Chart papers / Flipchart / Blackboard
- Markers / Pens / Chalk
- Feedback Forms

### Session Objective

- The session has two objectives:
  - To clarify any questions on the workshop, sessions, or issues/laws.
  - The session is equally important to the organisers and trainers to get feedback as to the session's plan, content improvement, training methodology and delivery skills.
  - From a logistics point of view, the session is important to understand what the participants liked, what helped during the facilitation and what can be further improved.

**Note for Facilitator:** This session is very crucial from a TOT point of view. As stated in the objective this will feed into the improvement of the overall quality of the training. So while the trainees might be in a rush to leave, it is very important for the trainers/organisers to solicit feedback and ensure that feedback is provided.

## **OPEN SESSION: QUESTIONS & ANSWERS**

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The open session is similar to the morning feedback session in that we discuss both days' training topics. This is an occasion to clarify in case there are questions still in the minds of the participants.

The role of the facilitator is critical in guiding and facilitating an atmosphere of open questioning and discussion. The forum should be an encouraging platform for asking and sharing.

The facilitator can note down questions asked for future workshops/frequently asked questions sections and also to improve the Module / Training as these are practical feedbacks coming directly from the practitioners/trainees.

You must remember that the session is a learning experience for the trainers too. It is possible that the trainer will not have answers to all the questions or the trainer is not able to satisfy the participants with their answers. This is quite normal and human and should not discourage the trainers. The Trainer should not misguide, mislead or provide wrong information in an attempt to show herself/himself as someone who knows all the answers. Always remember the relationship between the trainer and trainee is based on faith and mutual respect, and once that connection breaks, the spirit of training and learning will get discontinued.

# FEEDBACK

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As an organisation which believes in participatory learning and knowledge, and skill sharing it is very important to get the feedback from the participants concerning topics, content, delivery, the trainers, facilities, enablers and disablers, etc.

While the feedback form can also be developed with the participation of the trainees and organisers, it is always better to have a sample feedback form ready.

The Feedback Form can include but is not limited to, the following:

## 1. About the Training

- a. Share your opinion about the overall training? Suggest what could have been improved.
- b. What is your best memory of the training?
- c. Which part of the training did you like the most and why?
- d. Which part of the training did you like least and why? Suggest what could have improved the training.
- e. How would you rate the *Training* on a scale of 1-10?

## 2. About the Topics / Laws

- a. Which topic/Laws discussed during last two days did you feel was the most relevant? Why?
- b. Which topic/Laws discussed during last two days did you feel was the least relevant? Why?
- c. What topics/laws did you feel were relevant and would want to be discussed in the next training?

- d. How will you rate the **Topics/Laws** in terms of relevance, etc., on the scale of 1-10?

### 3. About the Module

- a. Share your opinion about the Training Module used for the training. Suggest what could have been improved.
- b. Share your opinion about the content/the way it is written and used for the training. How could it be improved?
- c. How would you rate the **Training Module** on a scale of 1-10?

### 4. About the Trainers

- a. Share your opinion about the overall skills and capacities of the trainers.
- b. Which training style/method did you like the most and why?
- c. Which training style/method did you not like and why? How could it be improved?
- d. How would you rate the **Trainers** on a scale of 1-10?

### 5. About the Logistics

- a. Share your opinion about the arrangements of food, training halls and other facilities. How could it be improved?
- b. Share your opinion about the stay arrangements. How could it be improved?
- c. How would you rate the **Arrangements** on a scale of 1-10?

## CONCLUSION

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Sexual offences are rampant and women regularly come across issues of eve teasing, molestation, insult to their modesty and many a time hear about more severe cases of attempt to outrage the modesty, molestations, attempt to rape and even rape. However, due to the social situation and lack of awareness and support, women most of the times keep silent. The present Module has been developed to empower and motivate individuals to take action against such crimes.

Lack of support at the time of actual happening or motivating the victim to pursue legal action and remedies or during stages of trial, are one of the major vacuum areas and hurdles in getting justice. Local support next door is the only solution for such problems. Institutions come into play at a later stage, knowledge within friend, family and community can be of great help and support.

The Module attempts to provide information to fill that gap and can be used as a ready reference material for even practitioners beyond trainees. The Module is an attempt to simplify and form a capsule of law and practice mixed with ground realities. However to make a training effective the primary focus should be given on the quality of trainers; pre-training need assessment and also on the quality of trainees, more so for ToTs.

Training as an effective tool needs proper planning and need assessment to cater the right needs of the trainees and their future community.

The difference between training from a classroom teaching has to be well understood and so even the settings of halls and other details needs to be well planned in advance. Training is just not reading of books and it requires mixing of bookish knowledge and field experience. To make an effective training, it is important to know the background of the participants; be aware of the participant's



need and expectations and its utility in their work life later.

Thematically, the Module attempted to cover the whole gamut of issues concerning violence against women and the law. Covering issues such as caste based atrocities, Sexual crimes, newer weapons of violence such as acid attacks, reproductive health rights and health system, procedural details as to rights of women within the legal system. The facts that people with legal information are critical to any change in the political and social fabric; this has been dealt and re-emphasised as role of lawyers.

The Module is expected to increase the number of people with legal information and solution providers. While the government institutions, legal aid societies provide supportive role to victims; there still remains gap in terms of reachout to all victims in all places. The role of non-government organisations, pro bono lawyers and para-legal and community workers needs to be increased to fill that information gap. Lawyers, law schools, NGOs working on legal solutions have a larger burden towards establishing the Rule of Law and ensuring equity and justice within the society. This Human Rights Law Network Module is an efforts towards the same purpose.

The *Training Module on the Rights of Women Against Violence* has been developed as a Training of Trainers (ToT) Material for enhancing the skills of para-legal and law students. It is believed that those para-legals and law students who are part of the training presumed that would be having some basic awareness on the issues concerning rights of the women and law. The Module has been developed keeping in mind the national laws and its use on a national-scale. The Module has been prepared to cater a 2-days Training Course; while keeping each thematic sessions as standalone and so can be used for solitary trainings/discussions on each individual topics. In the present Module there are 10 Sessions planned as follows: Session I: Introduction of Participants and to the Training, Session II: Introduction to Gender, Session III: Sexual Crimes against Women, Session IV: Caste-based Violence, Session V: Acid Attack, Session VI: Recap, Session VII: Violence against Women (Procedural Law), Session VIII: Maternal Mortality and Morbidity, Session IX: Role of Lawyer Activist and Session X: Q&A/Feedback.



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