



GUIDELINES FOR PREVENTION, PROHIBITION AND REDRESSAL OF SEXUAL AND GENDER BASED VIOLENCE FOR TIBETANS-IN-EXILE

2020

**Women's Empowerment Desk
Social and Resource Development Fund
Department of Finance, CTA**

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FOREWORD

Sexual and Gender Based Violence (SGBV) is one of the greatest challenges that communities face today. This challenge violates the human rights and dignity of individuals and hinders human development. SGBV is deeply rooted in the attitudes that condone violence in the community especially against women and children who are at risk in these situations.

Today, across the globe, Governments and international communities are more united than ever in their commitment to end gender-based violence. There is a need for a collective effort to put an end to this violence and respond compassionately and more effectively to those affected by it. We must come together and act to put into place systems to prevent violence from occurring, but when it does occur, to respond to the needs of the survivors/victims.

The Central Tibetan Administration is committed towards the elimination of the SGBV in all spaces of the exile Tibetan community and has adopted a 'ZERO tolerance' policy for any types of SGBV in the community. As a step towards the fulfillment of this commitment, we have published these Guidelines for the Prevention of Sexual and Gender Based Violence in the Tibetan Community as a tool to provide practical assistance on the establishment of a coordinated approach for the prevention and mitigation of SGBV. The Guideline also details the essential steps and interventions required to respond to the needs of the survivors/victims of this violence. We would like to call upon all those who are involved in the development of our community to use these Guidelines and work together to prevent and respond to sexual and gender-based violence.

As per the Kashag Secretariat's letter no. KA/617 (5) 2020/21 dated on 23rd July 2020 I, hereby request each and every one to abide by the contents of this document.

Let us all work together to ensure a community that is free of all forms of Sexual and Gender Based Violence. It will take a coordinated and collaborative effort to ensure the protection and development of those who are at risk in our community as well as for our common goal of a future that is safe and secure for all.

Karma Yeshi

Minister, Department of Finance (CTA)

LIST OF ACRONYMS

CTA	Central Tibetan Administration
UN	United Nations
UNHCR	United Nations High Commission for Refugees
UDHR	Universal Declaration of Human Rights
CEDAW	Convention on Elimination of Discrimination Against Women
WED	Women's Empowerment Desk
WEP	Women Empowerment Policy
TWA	Tibetan Women Association
TCCR	Tibetan Centre for Conflict Resolution
TCHRD	Tibetan Centre for Human Rights and Democracy
STSSS	Sambhota Tibetan School Society
SGBV	Sexual and Gender Based Violence
GBV	Gender Based Violence
PSEA	Prevention of Sexual Exploitation and Abuse
POCSO	Protection of Children from Sexual Offences
IPC	Indian Penal Code
FIR	First Information Report
SOP	Standard Operation Protocol
NGO	Non-Governmental Organization
LGBTQIA	Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual or Allied
IC	Internal Committee
LC	Local Committee
IEC	Information, Education and Communication
WASH	Water, Sanitation and Hygiene
CWC	Child Welfare Committee
CICL	Children in Conflict with Law

I. INTRODUCTION

The Central Tibetan Administration (CTA) is committed to creating a Tibetan community free of sexual abuse and exploitation, along with ensuring justice at the centre of its relief and development work. The Charter of the Tibetans-In-exile is the supreme law governing the functions of the CTA. It was promulgated and adopted by the Eleventh Assembly of Tibetan People's Deputies on June 14, 1991. It recognises that Sexual and Gender Based Violence results in the violation of the fundamental right of all Tibetans, under Articles 9 and 12, to equality without discrimination on grounds of birth, sex, race, religion, language, lay or ordained status, social origin and economic status.

The CTA conscientiously addresses all cases and concerns of sexual exploitation, abuse and complaints that are brought to its attention. The Women's Empowerment Desk (WED) under the Department of Finance, CTA believes in ensuring human dignity and justice to all individuals, asserting the importance of recognizing and addressing sexual and gender based violence in the community. The CTA is dedicated towards supporting the vision of a gender-just and gender-inclusive society for all Tibetans in exile. To further this commitment, the CTA in partnership with various non-governmental partners, experts and communities, has been working towards building a pro-active and accessible mechanism for the prevention and redressal of sexual and gender based violence (SGBV) among the Tibetan community in India.

The CTA is also committed to the implementation of the six core principles adopted in 2002 by the Inter-Agency Standing Committee on Prevention and Response to Sexual Exploitation and Abuse (PSEA) of the United Nation, which is applicable for addressing complaints of sexual exploitation and abuse involving CTA Employees and the general public as well. The WED released the first ever guidelines for Tibetan community to create a 'Sexual Assault Free Tibetan Society' on 12th August 2014 in Dharamshala.

Taking forward this initiative, the CTA is introducing these Guideline, with a view of establishing and strengthening this mechanism. These Guideline outlines strategies to bring tangible results in preventing and responding to SGBV among the exile Tibetan community in India.

The Guidelines will be reviewed as and when required to ensure consistency and effectiveness.

DEFINING SEXUAL AND GENDER BASED VIOLENCE

Gender Based Violence (GBV) is defined as a violence that is directed at an individual based on their biological sex and gender identity. According to the United Nations High Commissioner for Refugees (UNHCR), "*Sexual and Gender Based Violence (SGBV) refers to any act that is perpetrated against a person's will and is based on gender norms and unequal power relationships. It encompasses threats of violence and coercion. It can be physical, emotional, psychological, or sexual in nature, and can take the form of a denial of resources or access to services. It inflicts harm on women, girls, men and boys*".

It is important to remember at the outset that:

- All forms of SGBV stem from unequal gender power relationships in a society and they seek to maintain these unequal relationships intact. Therefore, intervention related to SGBV should be able to address structural gender-based inequalities to ensure long-term impacts.
- SGBV is not just physical, but also emotional and psychological; therefore, its impact is not just upon an individual's physical well-being, but also their emotional and psychological well-being.
- People can also experience SGBV based on socially defined norms of masculinity and femininity.
- SGBV not only affects women and girls, but also men, boys, and people who do not fall in gender binary category; gender power relationships also render powerless men and boys, who do not identify with the gender norms or are located outside of them; especially at risk are young children (both boys and girls) and people who do not identify as straight or heterosexual, but rather belong to the Lesbians Gays Bisexual Transgender Queer Intersex Asexual (LGBTQIA) gender spectrum.

People most at risk of sexual violence:

- Single women
- Female heads of households
- Unaccompanied children (includes separated children unaccompanied by relatives who are not legal or previous customary primary care-givers)
- Children in foster care
- People in detention or detention-like situations
- Old women
- Differently abled people
- LGBTQIA+

It is also critical to remember that in a patriarchal society, SGBV can take place anywhere, including in our homes, communities, public places, workplaces and digital spaces. SGBV includes, but is not limited to:

- **Intimate partner violence** (which can be physical, sexual, emotional and economic in nature)
- **Domestic Violence** (which can be physical, sexual, emotional and economic in nature)
- **Sexual Violence** (which can be physical, verbal, non-verbal and visual in nature)
- **Sexual Harassment at Workplace** (which can be physical, verbal, non-verbal and visual in nature)
- **Child Sexual Abuse** (which can be physical, verbal, non-verbal and visual in nature)
- **Child/ Forced/ Early marriages** (which can affect both boys and girls)
- **Forced commercial sex work** (which can affect both boys and girls)
- **Human Trafficking for the purpose of commercial sex work** (which can affect both boys and girls)
- **Acid Violence** (against both men and women)
- **Violence against people of LGBTQIA+** (who do not fall in binary gender description)
- **Everyday gender discrimination, due to which people have differential access to resources and opportunities.**

Based on these definitions of SGBV, the Guidelines outlined in this document applies to all Tibetans in India (including men, women, boys, girls and LGBTQIA), who are at risk to SGBV in their homes, communities, schools, colleges, public places and workplaces and are committed towards providing these individuals with support and protection¹.

¹ Further definitions of various forms of SGBV are annexed.

KEY PRINCIPLES

- Intervene with a **victim/survivor-centred approach** (advocated both by the Indian Constitution and UNHCR):
 - ⇒ Treat every victim/survivor with respect
 - ⇒ The safety of victims/survivors and their families is paramount
 - ⇒ Respect the choices, wishes, rights and confidentiality of victims/survivors and their families. The identity of a survivor should never be revealed without his or her or their prior consent
 - ⇒ Provide services and support without discrimination on any grounds
 - ⇒ All victims/survivors should be provided with support to overcome the cultural and social barriers that discourage them from reporting sexual violence
 - ⇒ All victims/survivors should be provided with holistic support, which include (but not limited to):
 - ◆ **Legal support**
 - ◆ **Medical support** (which should not be limited to medical examination conducted after the reporting of the case; there are long-term detrimental health impacts of SGBV, which can only be addressed through active socio-medical support)
 - ◆ **Livelihood and rehabilitation support** (many victim/survivors of SGBV are at the risk of poverty, homelessness and loss of income. Often, their families and communities are not ready to accept them and therefore, they may need rehabilitative support. Also, in the long-term, to ensure that

According to the Criminal Law (Amendment) Act, 2013 of India, a woman is not required to prove that there was active resistance on her part during the commission of the act of rape. Absence of these factors does not indicate that a woman has given consent for the act. The provision stating that it is not necessary for the victim to resist a rape attempt was inserted especially for situations where the victim may fear further wrath of the perpetrator or even death. The burden is on the accused to prove that he took steps to ascertain that the victim was consenting. Further keeping in mind the interest of the victim/survivor, the 2013 Amendment also explicitly stated that a woman alleging rape cannot be cross-questioned in the court on the basis of her sexual history. Also, any woman who approaches the police with a complaint of rape or sexual assault cannot be denied filing of First Information Report (FIR). The police also have to assist the victim with her medical examination. The statement of the woman can be recorded at her home. The UNHCR guidelines for “Sexual and gender based violence (SGBV) prevention and response”, also emphasize upon the importance of intervening with a victim/survivor centric approach.

Source:

<https://cms.emergency.unhcr.org/documents/11982/51689/UNHCR%2C+Sexual+and+GenderBased+Violence+against+Refugees%2C+Returnees+and+Internally+Displaced+Persons.+Guidelines+for+Prevention+and+Response%2C+2003/9591f62d-4f6a-4faf8c03df0d6bacf871>

victims/survivors of SGBV are able to lead a life of dignity and independence, they should be assisted with livelihood support)

- ◆ **Psycho-social support** (Ongoing abuse and violence can induce feelings of shock, disbelief, confusion, terror, isolation, and despair, and can undermine a victim/survivor's sense of self. It is necessary to help victims/survivors of SGBV to overcome depression and post-traumatic stress, so that they become aware of themselves, not blame themselves for the violence inflicted upon them and are able to lead a life of dignity and confidence)

Intervene with a rights-based approach, where individuals and communities, with support, can empower themselves to exercise their rights, rather than assisting them as 'beneficiaries'. The direct involvement of the victim/survivor should be promoted in decisions relating to their own protection, and their full enjoyment of human rights, including rights to be protected against SGBV. This also requires that culturally appropriate and acceptable services are available, accessible and affordable for all SGBV survivors.

Inclusivity should be at the centre of all intervention, where the involvement of women, girls, men, boys, LGBTQIA and persons of concern with specific needs is ensured. Special attention should be paid to children, persons with disability and elderly people and conscious attempts should be made to understand how SGBV impacts them.

The capacity, agency, rights and dignity of persons of concern should be at the centre of intervention. There should be an active and substantive involvement of communities in all aspects of programmes that affect them. The community should be the driving force of change. This will ensure a structural renegotiation in gender power relationships and ensure positive sustainability to the intervention.

Evolve a **convergent approach**, where all relevant partners and stakeholders are equipped with the necessary knowledge and tools for prevention of SGBV, so that it is mainstreamed in all their actions.

II. KEY CURATIVE MEASURES FOR RESPONSE TO AND REDRESSAL OF SGBV

LEGISLATIVE FRAMEWORKS RELATED TO SGBV:

1. Charter of the Tibetans – in – Exile

The core objective of the Charter is to secure to all Tibetans-in-Exile Justice, Liberty, Equality, Fraternity and Dignity.

Article 6 of the 1991 Charter of the Tibetan People recognises that all laws, ordinances, regulations, administrative and executive orders of the Tibetan Administration-in-Exile shall conform to the generally accepted principles of international law and in particular comply with the local laws of the host countries.²

1.1 Fundamental Rights as vested by the Charter

- Article 9: Provides for equality before the law for all Tibetans-in -Exile. It ensures that all the people of Tibetan origins shall enjoy the rights and freedoms set forth in the Charter without discrimination on grounds of birth, sex, race, religion, language, lay or ordained status, social origin, rich or poor.
- Article 12: Ensures that all Tibetans shall be entitled to the following rights and freedoms:
 - Freedom of life, liberty and property;
 - Freedom of speech and expression;
 - Freedom of movement;
 - The Right to publish and distribute newspapers, periodicals, articles and other writings;
 - Freedom to assemble peacefully without arms;
 - When charged and required to appear before a court of law, the right to free legal counsel and interpreter should a person lack necessary means;
 - The Right to form and become a member of any religious, cultural, economic, or trade union or other association;
 - Freedom of employment in the Tibetan Administration, or any other institution under its jurisdiction, according to qualification;

²Related information on laws, both International and that of the host country (India) are annexed

- The Right to practice any profession or carry out any trade or business enterprise or occupation, including acquisition of land and property, in accordance with the law of the respective host countries;
- The Right of children under the age of 14 years not to be employed in manual labor.
- Article 14: Ensures that as specified in Article 12 of the Charter, all Tibetans shall have the right to approach the Tibetan Supreme Justice Commission, and all Tibetan Local Justice Commissions, in the event of violation of their Rights subject to restrictions imposed by the law.

2. Tibetan Women's Empowerment Policy

The CTA is fully committed towards recognizing and respecting the fundamental rights of Tibetan women as equal partners in all aspects of Tibetan society. The goal of the Tibetan Women's Empowerment Policy, therefore, is to acknowledge the rights of Tibetan women and girls to participate as equal partners in all socio-economic and political activities. The Policy also believes that for effectively responding to and addressing complaints of SGBV, it is important to have a grievance handling mechanism that is accessible to all. The Policy strongly recommends the establishment of a redressal mechanism for those who have experienced SGBV, harassment and discrimination.

- Section 7 of the Policy frames the outline for addressing Sexual and Gender-based Violence (SGBV) as a step towards ensuring empowerment of women, by:
 - Adopting a zero tolerance policy towards sexual and domestic violence
 - Disseminating information regarding laws on SGBV and sexual harassment in schools, settlements, home and in workplaces
 - Sensitizing community members on SGBV and sexual harassment
 - Establishing a redressal mechanism for those who have experienced SGBV, harassment and discrimination.³

3. CTA's Policy Guidelines on the Prevention and Response to Sexual Exploitation and Abuse (PSEA)

CTA is committed towards the implementation of the 6 core principles adopted in 2002 by the Inter-Agency Standing Committee Task Force on Prevention and Response to Sexual Exploitation and Abuse. The Core Principles states that:

- Sexual exploitation and abuse by humanitarian workers are an act of gross misconduct and are therefore grounds for termination of employment.

³Tibetan Women's Empowerment Policy

- Sexual activity with children (persons under the age of 18) is prohibited regardless of the local age of consent, i.e. the local or national laws of the country you are working in. Ignorance or mistaken belief on the age of the child is not cause for defence.
- Exchange of money, employment, goods or services for sex, including sexual favours or other forms of humiliating, degrading or exploitative behaviour by CTA Employees and Related Personnel is prohibited and are punishable offences.
- Sexual relationships between “CTA employees and Related- Personnel”, and beneficiaries of CTA’s programs are strongly discouraged. Such relationships undermine the credibility and integrity of CTA’s relief and development work.
- When a CTA employee or Related Personnel develops concerns or suspicions regarding sexual exploitation or abuse by a CTA Employee or Related- Personnel, they must report such concerns via the established reporting procedures to the appropriate authority.
- CTA Employee and Related personnel are obliged to create and maintain an environment that prevents sexual exploitation and abuse and promotes the implementation of this Policy. CTA and its affiliate Institutions at all levels have particular responsibilities to support and develop systems that maintain this environment.

The PSEA Policy applies to complaints of sexual exploitation and abuse involving CTA employees and related personnel and the general Tibetan public as well. It recognises that working relationships often put CTA employees and related personnel in positions of power, especially with regards to at risk women and children. PSEA policy sets the minimum standards to be followed and defines strategies and procedures to uphold this Policy and the Core Principles on which it is based.

CTA’s Policy Guidelines on Prevention and Response to Sexual Exploitation and Abuse (PSEA), lays down the following standards of behavior for all employees:

- Exchange of money, employment, goods or services for sex by employees of CTA and its affiliate units is strictly prohibited and are punishable offences.
- Employees must be aware of consent regardless of the local age of consent, i.e. the local or national laws of the country in which the employee works. Ignorance or mistaken belief of the child’s age is not a cause for defense.
- Employees will not support or take part in any form of sexual exploitative or abusive activities including, for example, child pornography or trafficking of human beings.
- Employees must report any concerns or suspicions they have regarding possible violations of this PSEA Policy via CTA’s or affiliate’s reporting mechanism.
- Sensitive information related to incidents of sexual exploitation and abuse whether involving colleagues, program participants or others in the communities shall be shared only with enforcement authorities and CTA employees of the appropriate seniority or function who have a need to know such information.

- Employees must undertake to create and maintain an environment that promotes implementation of this policy.
- Competent officers and supervisors at all levels have particular responsibilities to support and develop systems that maintain an environment that facilitates implementation of this policy.

4. Application of the Indian Constitution and Law

There are two types of Fundamental Rights granted in India - one available to only citizens and the other available to all persons irrespective of their nationality, provided that they are residing in India. This second set of Articles use the word 'person' in place of 'citizens', implying that they are available to non-citizens, including Tibetans in India. These articles are as follows:

- **Equality before law and equal protection of laws (Article 14).**
- **Protection in respect of conviction for offences (Article 20).**
- **Protection of life and personal liberty (Article 21).**
- **Right to elementary education (Article 21 A).**
- **Protection against arrest and detention in certain cases (Article 22).**
- **Prohibition of traffic in human beings and forced labour (Article 23).**
- **Prohibition of employment of children in factories etc., (Article 24).**
- **Freedom of conscience and free profession, practice and propagation of religion (Article 25).**
- **Freedom to manage religious affairs (Article 26).**
- **Freedom from payment of taxes for promotion of any religion (Article 27).**
- **Freedom from attending religious instruction or worship in certain educational institutions (Article 28).**

All Indian statutes or laws are derived from the provisions of the Indian Constitution. They are applicable to all persons, irrespective of their nationality, including Tibetans in India. These guidelines listed below encourage and promote building access to the following laws (both criminal and civil) for the protection of Tibetan in India from SGBV:

- **Juvenile Justice Act [refer Chapter 6]**
- **Protection of Children from Sexual Offences (POCSO) Act, 2012 [refer Chapter 7]**
- **Protection of Women from Domestic Violence Act, 2005 [refer Chapter 8]**
- **Sections in Indian Penal Code (IPC) related to sexual violence, acid violence and domestic violence [refer Chapter 9]**
- **Sexual Harassment of Women at Workplace (Prevention, Prohibition, Redressal) Act, 2013 [refer Chapter 10]**

- **The Prohibition of Child Marriage Act, 2006**
- **Child Labour (Prohibition and Regulation) Act 1986**
- **Immoral Traffic (Prevention) Act 1986**
- **Pre-conception and Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 2004**
- **Rights of persons with Disabilities Act, 2016**

Information on some of these laws are provided in the Annexure. Given that these laws apply to all Tibetans living in India, the following section explains the critical steps that need to be undertaken to institutionalize a robust mechanism for response to and redressal of cases of SGBV.

HELP SEEKING AND REFERRAL PATHWAY IN A COMPLAINT OF SGBV:

REPORTING

Victims/survivors informs about the incident:

- Case to be received by committees in schools, communities or workplaces; Survivors are accompanied as needed to health centre, police or counselling centre, based on what the victim/survivor wishes
- Inform survivors/victims about their rights, available recourse and services. In case of children, their parents/guardians should be informed about the same.
- Do not compel the survivors/victims to take certain action, which they do not desire or is not ready for
- Maintain proper record of incident and keep all information confidential.



IMMEDIATE RESPONSE

The service provider must provide a safe, caring and respectful environment for the victims/survivors:

- Provide immediate medical/ health care. Maintain a record of the institution from where the victims/survivors obtained the medical/ health care.
- Obtain consent from victims/survivors and make referrals to legal experts/ police. If the victims/survivors wishes, initiate reconciliation. In case of children, parents/guardians should be informed about the same.
- If legal action is taken, the victim/survivor should be accompanied when visiting the police, protection officer, Para-legal worker or lawyer. All of this should be duly documented; maintain copies of DD entry, FIR, medical report, depositions and charge sheet and ensure that the victims/survivors also have copies of the same.
- Provide psycho-social support. Maintain a record of the institution from where the victims/survivors obtain such support.
- Ensure confidentiality so that the survivor doesn't experience any threats or backlash.



FOLLOW-UP

After immediate response, follow-up with other services:

- Support and protection during case proceedings, with the assistance of the Police
- Continued health care and psycho-social support
- Ensure that victims/survivors receives his/her compensation as per the law
- Basic needs, safe shelter, ration, support for children, livelihood should be provided.

ESTABLISHING A SGBV RESPONSE AND REDRESSAL SYSTEM ACCORDING TO THE FOLLOWING GUIDELINES:

Any aggrieved person may file their complaint to any of the following committees, each of which has been described in this documents:

1. Central Coordinating Committee with WED
2. Settlement Level SGBV Committee
3. Helpline: within CTA and the registered State helpline of the particular State in India
4. For sexual harassment at workplace:
 - a. Internal Committee within the workplace
 - b. Local Committee at the District level
5. Child protection committee in schools for addressing issues related to POCSO
6. Local Justice in India for Crimes Against Women and Children

1. Central Coordinating Committee with WED

- Five to Eight Member team
 - ⇒ Headed by a woman
 - ⇒ 50% women membership mandatory
 - ⇒ Should be changed every three years
 - ⇒ Should consist of prominent gender rights' activist/lawyers and representation from LGBTQIA+ and differently abled people.
- Receive and review report from regional teams and monitor their performance and output
- Ensure that all teams at regional, settlement, workplace and school level receive necessary training and capacity building support
- Publish IEC material on redressal and prevention of SGBV to be used for awareness and sensitization
- Ensure all cases received by the helpline are referred to the relevant committees
- To mobilize financial and infrastructural resources for ensuring the sustainability of the system
- Make an annual report and submit to the CTA as well as share important updates with the Tibetan community in India through newsletters, emails, social media, radio or messages

2. SETTLEMENT LEVEL SGBV COMMITTEE FOR COMPLAINTS OF SGBV:

- Eight member SGBV committees to be established in every settlement for the redressal of SGBV complaints.
- **Composition:**
 - ⇒ Mandatory 50% women membership
 - ⇒ One male or female head of the committee
 - ⇒ Members to include settlement officer, camp leader, community women leader(s), NGO ,youth, LGBTQIA+ representative
 - ⇒ All members should be trained as Para-legal workers, be gender sensitive and have no criminal records
 - ⇒ 80% of the committee to change every 2 year so as to ensure continuity of the committee
- **Committee to receive all cases of SGBV directly or through the helpline.** Upon receiving the case, the committee shall:
 - Accompany the victim/survivor to the police or protection officer to register a DD entry or FIR
 - Assist the victim/survivor to access legal aid, medical care and psycho-social support
 - Keep confidentiality of the victim
- Ensure that all schools and workplaces in settlement have School Level Complaints committee and Internal Committees
- Documentation of each case to be maintained, including its follow-up
- Report quarterly to Central Coordination Committee
- Consult with empanelled counsellor, medical practitioner and legal expert for support and advice when required
- Ensure that all settlements have CCTV Cameras, adequate lighting, SGBV complaint boxes and display of important legal and non-legal information related to SGBV Committee and Internal Committees respectively
- Ensure access to shelter homes for victims/ survivors of SGBV (CTA established or Indian government approved shelter homes)

*The Head of these Committee or any of the other members can be removed by the Committee before the end of their tenure, if they are abusing their position(s) as a member of the committee by:

- Publishing, communicating or making known to the public, press and media about the information related to the case
- Convicted for an offense under any law or undergoing an inquiry into an offense under any law or found guilty in any disciplinary proceedings

3. HELPLINE:

- A Toll free Tibetan women helpline service should be established, in order to provide 24 hours immediate and emergency response to Tibetan women in distress who are seeking support and are affected by violence across the country through a single uniform phone number.
- Forms of Support:
 - ⇒ Referral (linking with appropriate authority such as the police, One Stop Centre, hospital)
 - ⇒ Information about women related government schemes/programs
- **Staff Composition:**
 - ⇒ Helpline Management Staff (Female)
 - ⇒ Helpline Supervisor
 - ⇒ Counselor
 - ⇒ Community Outreach worker
- A **Physical Safe Space/Shelter Home** should be provided to shelter these SGBV survivors as needed.
- A **Sustenance Fund** should be allocated to provide financial assistance to SGBV affected Tibetan in all age group who have no adequate means of subsistence and are at risk.
- Develop a **Standard Operating Processes (SOPs)** taking into account the law of the land for Helpline operation.
- Ensure linkages/maintain relations with other departments, civil society groups and partners to provide psychological, social, medical, and legal and any other form of support to survivors.
- Ensure the accessibility of the Helpline service to all the Tibetans across the country.
- Indian Govt. helpline:
 - ⇒ **Children in Difficult Situation: 1098**
 - ⇒ **Women Helpline : 1091**
 - ⇒ **Women Helpline (Domestic Abuse): 181**
 - ⇒ **National Commission for Women : 011-26942369, 26944754**
 - ⇒ **Deputy Commissioner of Police- Missing Child and Women : 1094**

4. WORKPLACE:

- Internal Committee (IC) have to be constituted in all work places with more than 10 employees as per the Sexual Harassment of women at workplace (Prevention, Prohibition, Redressal) Act 2013
- **Composition:**
 - ⇒ At least 4 members, out of which 2 should be women
 - ⇒ Presiding officer should be senior women employee
 - ⇒ A third party member who is familiar with issues related to sexual harassment at work place
- All workplace to have:
 - ⇒ Complaint boxes
 - ⇒ Display of information regarding the provisions of the Act and names and contact information of IC members
- All complaints of sexual harassment to be received by the IC in writing. As per the Act:
 - ⇒ The IC has the power akin to that of a civil court
 - ⇒ It can summon and enforce the attendance of any person
 - ⇒ Examine the individual on oath
 - ⇒ Require the discovery and production of documents essential to the case.
- The inquiry has to be completed within a period of 90 days upon receiving the complaint
- Duties of Employer:
 - ⇒ Should act on the recommendations of the committee within 60 days of the receipt of the inquiry report
 - ⇒ Maintain a safe working environment
 - ⇒ Organize awareness and sensitization programs for the employees and inform them about the provisions of the Act,
 - ⇒ Develop relevant visual materials like brochures, posters or notices to disseminate such information
 - ⇒ Establish facilities for the Committee to conduct the inquiry
 - ⇒ Ensure that Committee members undergo regular capacity building training.
- If the complaint is against the senior most person of the organization, then it has to be referred to the local committee (LC) constituted at the district level by the district officer.

5. SCHOOLS:

- School complaints committee have to be constituted in all schools
- **Composition:**
 - ⇒ Head of Committee—Principal/ Vice-principal
 - ⇒ One female teacher and one male teacher
 - ⇒ One male student and one female student
 - ⇒ One non-teaching staff—male or female
- All schools to have:
 - ⇒ Complaint/ suggestion box
 - ⇒ CCTV Cameras
 - ⇒ Display toll free child helpline number —centralised child helpline number **1098** must be popularized and displayed at prominent places in the schools
- Mandatory training or capacity building:
 - Conduct programmes to support the empowerment of and by girls
 - In residential schools, all house masters and mistresses/ wardens should undergo compulsory training on gender sensitization and POCSO Act
 - All induction of teachers should include a mandatory module on gender sensitization and child rights
 - All school staff (teaching and non-teaching) should undergo training on adolescent gender issues and awareness programmes that promote gender equality and sensitivity
 - All students should undergo age-appropriate gender sensitization programmes and participate in special activities that promote gender equality and sensitivity
 - Provision for guidance and counselling facilities in schools
- As per India's Prevention of Child Sexual Offences (POCSO) Act, teachers and management are mandated to report instance of sexual abuse to Special Juvenile Police Unit or the Child Welfare Committee.

Important:

Listen to
children
reporting sexual
abuse

Believe the
child

Tell the child
that he/she is
brave

Tell the child
it is not his/
her fault that
he/she has
been abused

6. LOCAL JUSTICE IN INDIA FOR CRIME AGAINST WOMEN AND CHILDREN:

Crime against Women and Children are divided into two broadly category.

I. Crime under Indian Penal Code:

- ⇒ Murder (Section 302 IPC)
- ⇒ Attempt to commit murder (Section 307 IPC)
- ⇒ Infanticide (Section 315 IPC)
- ⇒ Rape (Section 376 IPC)
- ⇒ Unnatural Offence (Section 377 IPC)*
- ⇒ Assault on Women (Girl Child) with Intent to Outrage her Modesty (section 354 IPC)*, (6.1 Sexual Harassment (Section 354A IPC)* , 6.2 Assault or Use of Criminal Force to Women (Girl Child) with Intent to Disrobes (Section 354B IPC*), 6.3 Voyeurism (Section 354C IPC)* , 6.4 Stalking (Section 354D IPC)*
- ⇒ Insult to the Modesty of Women (Section 509 IPC*)
- ⇒ Kidnapping & Abduction (Section 363, 364,364A, 365, 366, 367, 368 & 369 IPC).
- ⇒ Feticide (Section 315 and 316 IPC).
- ⇒ Abetment of Suicide of Child (Section 305 IPC)
- ⇒ Exposure and Abandonment (section 317 IPC)
- ⇒ Procurement of Minor Girls (section 366-A IPC)
- ⇒ Buying of Minors for Prostitution (Section 373 IPC)

II. Crimes Under Special and Local Laws:

- ⇒ The Dowry Prohibition Act, 1961
- ⇒ The Child Marriage Restrain Act of 1976
- ⇒ The Medical Termination of Pregnancy Act of
- ⇒ Prohibition of Child Marriage Act, 2006
- ⇒ Child labor (Prohibition & Regulation) Act, 1986
- ⇒ Immoral Traffic (Prevention) Act, 1956
- ⇒ Juvenile Justice (Care & Protection of Children) Act, 2000
- ⇒ Protection of Children from Sexual Offences Act, 2012
- ⇒ Protection of Women from Domestic Violence Act, 2005
- ⇒ Sexual Harassment of Women at Workplace (Prevention, Prohibition, Redressal) Act, 2013
- ⇒ Indecent Representation of Women (Prohibition) Act, 1986

Any aggrieved person can seek grievances under these legal provisions in India. More on some of the related laws are provided in the annexures.

COMPLAINTS RELATED TO SGBV SHOULD BE DEALT WITH IN THE FOLLOWING MANNER:

- The statements/ testimonies/ depositions of victim/survivor(s) should never be met with doubt or scepticism.
- The survivor/victim(s) should be informed of what to expect from the legal process. Protection and community services should collaborate to ensure that the complainant is adequately informed of their rights, procedures and time involved in the legal process. The Staff should be adequately prepared to answer any queries the survivor may have.
- All cases related to aforementioned laws/statutes should be referred to the Indian police, after obtaining due consent from the victim/survivor. Since these offences are criminal in nature, the guidelines emphasize on referring these cases to the Indian police, so that justice can be delivered on the principles of natural justice.
- The complainant should be counselled on the nature of the crime, the time it will take to investigate and prosecute the crime, and the possible outcomes from the Indian judicial process.
- The point person or nodal officer will ensure that the survivor and accused have identity cards and should work closely with local lawyers familiar with national laws and procedures concerning sexual violence.
- Once (an) incident report is received, it should be ensured that the complaint is recorded with the Indian police and; the medical report and a statement from the survivor/victim are recorded.
- Crucial witnesses from the Tibetan community in India should comply with legal procedures by providing statements and attending court when summoned.
- In the event where the guardian is accused of sexual

According to UNHCR guidelines for prevention of SGBV, when speaking to a victim/survivor of SGBV, following should be kept in mind:

- Conduct interviews in private settings and with same sex interviewer
- Be a good listener
- Maintain a non-judgmental manner
- Be patient; do not press for more information if the victim/survivor is not ready to speak about their experience
- Ask victims/survivors only relevant questions
- The status of the virginity of the victim/survivor is not an issue and should not be discussed
- Avoid requiring the victim/survivor to repeat the story in multiple interviews
- Do not laugh or show any disrespect for the individual or their culture, family or situation
- The victim/survivor should be referred to appropriate/relevant actors when there is no qualified individual available to conduct an interview
- Ask the victim/survivor separately whether they want their married/unmarried partner to be present during the interview.

violence, the child should be immediately separated from the guardian, either through foster care or by finding alternative housing for the guardian. It should be ensured that the victim and the accused do not come in contact during the investigation. The confidentiality and dignity of the complainant should be ensured and secured in all cases and scenarios. Wherever possible, a survivor's anonymity should be maintained. Written information on the survivor must be kept locked and secured from others. If confidentiality is breached, it could bring grave consequences for the survivor, particularly if adequate protection is not in place. It may subsequently discourage others from coming forward.

Rehabilitation of Victim(s)/Survivor(s) of SGBV:

- All curative measures, while ensuring justice for the victims(s)/survivor(s), should also focus on their rehabilitation. These rehabilitative measures should include:
- Socio-legal support for the survivor;
- Medical and healthcare support: all schools, settlements, homes, colleges and CTA offices should be equipped with providing other medical care that is required
- The victim/survivor should not be forced to live in a hostile or an abusive home or environment. The PWDVA Act 2005 of India provides right to residence to a survivor of domestic violence. The same should be ensured for any Tibetan survivor of domestic violence. In case of a child experiencing SGBV, they should not be made to live in a hostile home. It should be ensured that there are rehabilitation or shelter homes for victims/survivors of SGBV.
- For complete rehabilitation, vocational, skills training and livelihood opportunities should be enabled for victims/survivors of SGBV. The CTA can design and implement special schemes to ensure the same.
- Counsellors should be identified and trained to provide necessary post-trauma support to the victims/survivors. Also, it should be ensured that psychological support is provided to the victim/survivor as soon as a case comes to light.

III. KEY MEASURES FOR PREVENTION OF SGBV

PREVENTIVE MEASURES FOR SGBV:

- Support community initiatives in SGBV prevention with an active participation of women, girls, men, boys, youth, community and faith leaders
- Engaging community members in the assessment, prioritization, design, implementation, monitoring and evaluation of SGBV prevention programmes
- Increasing awareness and knowledge on gender equality and SGBV related issues and laws, thus, promoting positive changes in community attitudes and practices
- Empowering communities to support SGBV survivors, have zero tolerance for perpetrators, and tackle sensitive topics such as sexual violence and domestic violence through undertaking commitments to prevent SGBV
- Seek innovative approaches that identify new entry points and tools to address SGBV
- Monitor the implementation of the Guidelines to identify areas in need for improvement.

STEPS FOR PREVENTION OF SGBV:

1. Develop a team of core trainers to deliver the various training programmes
2. Deliver community sensitization programmes through community level teams
3. Deliver school sensitization programmes through school level teams
4. Deliver workplace sensitization programmes through regional level teams,
5. Capacity building of key stakeholders such as settlement officers, school teachers, school principals, NGO members, para legal workers, community, school and regional team members
6. Publish and display IEC material for communities, schools and workplaces; utilizing radio, newspaper, social media and emails to publicize and enhance outreach
7. Establish community resource centres, where sensitization activities can take place, victims/survivors can be counselled (along with their families) and information related to prevention and redressal of SGBV can be accessed; all community resources centres should have relevant IEC material and modules on prevention and redressal of SGBV
8. Cultivate and strengthen dialogue with Indian state and district authorities through regular meetings and consultations; inviting them for community programmes and seeking their support as resource people and facilitators for these programmes.
9. Create a safe physical environment. In settlements and camps, there should be adequate provision of lighting, an adequate security presence (including female security personnel),

and secure shelters allocated according to need and vulnerability, and WASH facilities that are safe and accessible.

10. Set up complaint boxes in settlements, camps, schools, colleges and workplaces, so that people can immediately report cases without any fear of backlash.
11. Make Helplines easily accessible. Phone numbers of the relevant people should be displayed in all places, so that they can be immediately contacted is there is a case of SGBV.
12. Phone numbers of members of Internal Committee should be displayed in all workplaces.
13. Make the information on the Committees accessible to everyone. Some of the practical measures that may be considered are listed below:
 - Raise awareness about the Committees at all levels
 - Raise awareness about the Committees among the officials of the relevant government institutions so that they can provide support as appropriate
 - Develop a network of trained officers at different administrative levels who would provide necessary assistance to workers in filing a complaint
 - Collaborate with civil society organisations at the grassroots level to support assistance in filing a complaint.

ANNEXURES

ANNEXURE I: IMPORTANT DEFINITIONS

According to UN Women:

- **Gender:** Gender refers to the roles, behaviors, activities and attributes that a given society at a given time considers appropriate for men and women. These attributes, opportunities and relationships are socially constructed and are learned through socialization processes. They are context/time-specific and changeable. Gender determines what is expected, allowed and valued in a woman or a man in a given context. In most societies there are differences and inequalities between women and men in responsibilities assigned, activities undertaken, access to and control over resources as well as decision making opportunities.
- **Sexual Rights:** Sexual Rights embrace human rights that are already recognize in national laws, international laws, international human rights documents and other consensus documents. These include the right of all persons, free of coercion, discrimination and violence, to the highest attainable standard of health in relation to sexuality, including access to sexuality; sexuality education; respect for bodily integrity; choice of partner; decide to be sexually active or not; consensual sexual relations; consensual marriage; decide whether or not and when to have children and pursue a satisfying, safe and pleasurable sexual life.
- **Violence against Women:** Any act of gender based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. Violence against women shall be understood to encompass but not be limited to the following:
 - Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, intimate partner violence, non-spousal violence and violence related to exploitation;
 - Physical sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment in public spaces and sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
 - Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

Other Definitions

- **Child friendly:** means any behavior, conduct, practice, process, attitude, environment or treatment that is humane, considerate and in the best interest of the child.
- **Place of safety:** means any place or institution, not being a police lockup or jail, established separately or attached to an observation home or a special home, as the case may be, the person in-charge of which is willing to receive and take care of the children alleged or found to be in conflict with law, by an order of the Board or the Children’s Court, both during inquiry and ongoing rehabilitation after having been found guilty for a period and purpose as specified in the order;
- **Probation Officer:** is the officer in charge of the juvenile when he is released from detention for a given period subject to good behavior.
- **Sponsorship:** means provision of supplementary support, financial or otherwise, to the families to meet the medical, educational and developmental needs of the child.
- **Child care institution:** means Children Home, open shelter, observation home, special home, place of safety, Specialized Adoption Agency and a fit facility recognized under this Act for providing care and protection to children, who are in need of such services
- **Best interest of child:** means the basis for any decision taken regarding the child, to ensure fulfillment of his basic rights and needs, identity, social well-being and physical, emotional and intellectual development.
- **Heinous offences:** includes the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment for seven years or more.
- **Petty offences:** include the offences for which the maximum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment up to three years.
- **Child Sexual Abuse (CSA):** is a broad term used to describe sexual offences against children. To put it simply, Child Sexual Abuse occurs when a person involves the child in sexual activities for his/her sexual gratification, commercial gain or both. Section- 2(1) (d) defines a child– as any person below the age of 18 years.

THE NON-BINARY DICTIONARY

- **Queer:** Originally used as a pejorative slur, queer has now become an umbrella term to describe the myriad ways people reject binary categories of gender and sexual orientation to express who they are. People who identify as queer embrace identities and sexual orientations outside of mainstream heterosexual and gender norms.
- **Gay:** A sexual orientation that describes a person who is emotionally or sexually attracted to people of their own gender; commonly used to describe men.
- **Lesbian:** A woman who is emotionally or sexually attracted to other women.
- **Bisexual:** A person who is emotionally or sexually attracted to more than one sex or gender.
- **Pansexual:** A person who can be attracted to all different kinds of people, regardless of their biological sex or gender identity.
- **Asexual:** A person who experiences no sexual attraction to other people.
- **Demisexual:** Someone who doesn't develop sexual attraction to anyone until they have a strong emotional connection.
- **Same-gender loving:** A term some in the African-American community use instead of lesbian, gay or bisexual to express sexual attraction to people of the same gender.
- **Aromantic:** A person who experiences little or no romantic attraction to others.
- **Transgender:** A person whose gender identity differs from the sex they were assigned at birth.
- **Cisgender:** A person whose gender identity aligns with the sex they were assigned at birth.
- **Agender:** Someone who doesn't identify as any particular gender.
- **Gender-expansive:** An umbrella term used to refer to people, often times youth, who don't identify with traditional gender roles.
- **Gender fluid:** Not identifying with a single, fixed gender. A person whose gender identity may shift.
- **Gender non-conforming:** People who don't conform to traditional expectations of their gender.
- **Transsexual:** A person whose gender identity does not align with the sex they were assigned at birth, and who takes medical steps such as sex reassignment surgery or hormone therapy to change their body to match their gender.
- **Transvestite:** A person who dresses in clothing generally identified with the opposite gender/sex.
- **Trans:** The overarching umbrella term for various kinds of gender identifies in the Trans community.
- **Drag kings & drag queens:** People, some who are straight and cisgender, who perform either masculinity or femininity as a form of art. It's not about gender identity.

- **Androgynous:** A person who has both masculine and feminine characteristics, which sometimes means you can't easily distinguish that person's gender.
- **Sex positive:** An attitude that views sexual expression and sexual pleasure, if it's healthy and consensual, as a good thing.
- **Heterosexual privilege:** Refers to the societal advantages that heterosexuals get which LGBTQ people don't. If you're a straight family that moves to a new neighborhood, for example, you probably don't have to worry about whether your neighbors will accept you.
- **Heteronormativity:** A cultural bias that considers heterosexuality (being straight) the norm. When you first meet someone, do you automatically assume they're straight? That's heteronormativity.
- **Heterosexism:** A system of oppression that considers heterosexuality the norm and discriminates against people who display non-heterosexual behaviors and identities.
- **Cissexism:** A system of oppression that says there are only two genders, which are considered the norm, and that everyone's gender aligns with their sex at birth.
- **Homophobia:** Discrimination, prejudice, fear or hatred toward people who are attracted to members of the same sex.
- **Biphobia:** Discrimination, prejudice, fear or hatred toward bisexual people.
- **Transphobia:** Prejudice toward Trans people.
- **Transmisogyny:** A blend of transphobia and misogyny, which manifests as discrimination against "trans women and trans and gender non-conforming people on the feminine end of the gender spectrum."
- **Transfeminism:** Defined as "a movement by and for trans women who view their liberation to be intrinsically linked to the liberation of all women and beyond." It's a form of feminism that includes all self-identified women, regardless of assigned sex, and challenges cisgender privilege. A central tenet is that individuals have the right to define who they are.
- **Intersectionality:** The understanding of how a person's overlapping identities — including race, class, ethnicity, religion, sexual orientation and disability status — impact the way they experience oppression and discrimination.⁴

⁴<https://www.usatoday.com/story/news/2017/06/15/lgbtq-glossary-slang-ally-learn-language/101200092/>

ANNEXURE II: INTERNATIONAL LEGISLATIVE FRAMEWORKS

The following standards and frameworks include key contents on promoting equality and addressing SGBV:

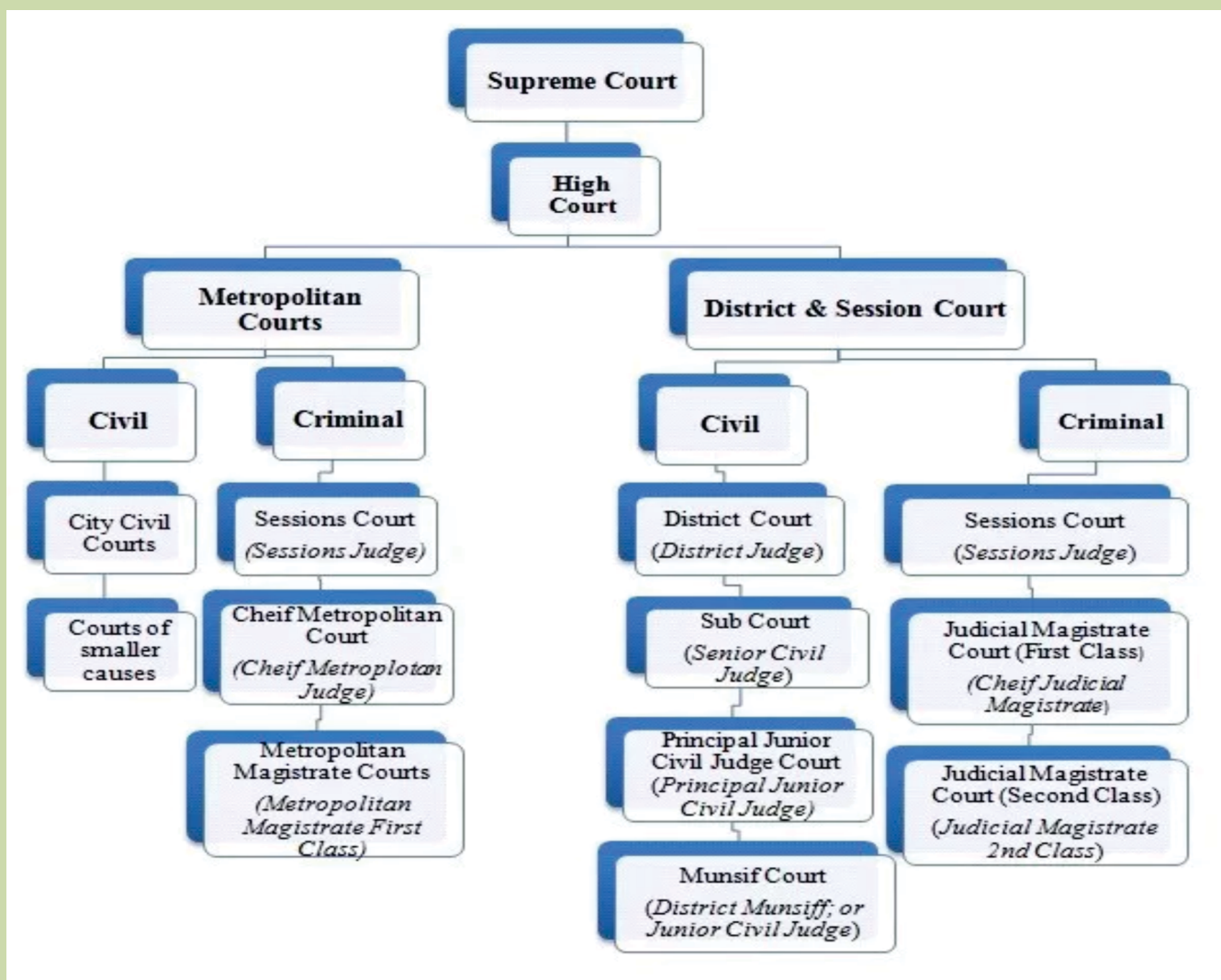
- **Universal Declaration of Human Rights, 1948:** Articles 1, 2 and 7 speak about equality in dignity, rights and freedoms and equal protection against any discrimination
- **ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111)** aims to protect against discrimination in employment and occupation on the grounds of sex, race, colour, religion, political opinion, national or social origin. In its general observation of 2003, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has emphasized that sexual harassment is a form of sex discrimination and should be addressed within the requirements of Convention No. 111. In the view of the gravity and serious repercussions of sexual harassment, the CEACR has urged governments to take appropriate measures to prohibit sexual harassment in employment and occupation and has provided elements of a definition of sexual harassment.
- **United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979:** Article 11 prescribes States to eliminate discrimination against women in the field of employment and to ensure equality of men and women. While sexual harassment is not yet covered by a specific international instrument, the CEDAW Committee in its General Recommendation No. 19 in 1992 has qualified it as a form of discrimination on the basis of sex and as a form of violence against women. Recognizing that equality in employment can be seriously affected when women are subjected to gender specific violence, such as sexual harassment in the workplace, it called on States to take measures to protect women from sexual harassment.
- **ILO Decent Work for Domestic Workers Convention, 2011 (No. 189):** Each Member shall take measures to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment and violence (Article 5)
- **UN Declaration on the Elimination of Violence against Women, 1993:** Article 1 of this Declaration defined “Violence against women” as any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. It also included sexual harassment and intimidation at work, in educational institutions and elsewhere as part of violence against women. The Declaration stated that such violence encompasses, but is not limited to, the following: “...physical, sexual and

psychological violence in the community including rape, sexual harassment and intimidation at work, in education institutions and elsewhere”

- **The Beijing Platform of Action** drawn at the United Nations’ Women’s Conference in Beijing in 1995 called to advance women’s rights and to eliminate violence against women including sexual harassment at work.
- **ILO Violence and Harassment Convention, 2019 (No. 190)**: Articles 2-11 identifies “gender-based violence and harassment” as violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment. This Convention protects workers and other persons in the world of work and states that appropriate measures should be taken to prevent violence and harassment in the world of work.
- **Convention on the Rights of the Child** in Article 19, 34, 35, 36 prescribes that all appropriate legislative, administrative, social and educational measures to protect the child from all forms of violence and abuse (mental, physical, sexual, etc.) and all forms of exploitation including child trafficking.

ANNEXURE III: UNDERSTANDING THE JUDICIAL SYSTEM IN INDIA

The Indian Judicial System is one of the oldest legal systems in the world today. The framework of the current legal system has been exquisitely laid down in the Indian Constitution and the judicial system derives its powers from it. There are various levels of judiciary in India—different types of courts, each with varying powers depending on the tier and jurisdiction bestowed upon them. They form a hierarchy of importance, in line with the order of courts in which they sit, with the Supreme Court of India at the top, followed by High Courts of respective states with District Judges sitting in District Courts and Magistrates of Second Class and Civil Judge (Junior Division) at the bottom.



Source: <https://singhania.in/indian-civil-courts-system/>

Supreme Court in India

The Supreme Court is the highest court of the country or nation, which is established by the Constitution. According to it, the Supreme Court is a federal court, guardian of the Constitution and the highest court of appeal. Articles 124 to 147 of the Constitution lay down the composition and jurisdiction of the Court. Primarily, it is an appellate court which takes up appeals against judgments of the High Courts of the states and territories. It also enjoys original, writ, appellate and advisory jurisdiction.

High Courts in India

These courts are the highest court at the State and Union Territories level. They have jurisdiction over a State or Union Territory or a group of States and Union Territories. Article 141 of the Constitution of India mandates that they are bound by the judgements and orders of the Supreme Court of India. The High Courts in India enjoy writ, appellate, revisional and in certain circumstances original jurisdiction.

What is a Writ Petition?

If a fundamental right of a person is infringed by an arbitrary administrative action he may approach the Supreme Court or the High Court for appropriate remedy. The Constitution of India, under Articles 32 and 226 confers writ jurisdiction on Supreme Court and High Courts respectively. Writ is an instrument or order of the Court by which the Court (Supreme Court or High Courts) directs an Individual or official or an authority to do an act or abstain from doing an act. Thus, Supreme Court and High Court are said to have Writ Jurisdiction.

District Courts in India

The District Court of India are established by the State Government in India for every district or more than one district taking into account the number of cases, population distribution in the district. These courts are under administrative control of the High Court of the State to which the concerned district belongs. The District Court is presided over by one District Judge appointed by the State Government. In addition to the district judge there are many Additional District Judges and Assistant District Judges depending upon the workload.

Appellate Jurisdiction

It refers to the authority of a court to rehear or review a case that has already been decided by a lower court. Appellate jurisdiction is generally vested in higher courts. The appellate court can either overrule the judgment of the lower court or uphold it.

These courts function under the complete control and supervision of the High Court. A state has got exclusive Legislative competence to determine the constituent organization and territorial jurisdiction of all courts subordinate to the High Court. The organization of subordinate courts throughout the country is generally uniform.

There are two type of law courts in every district;

(i) Civil Courts (ii) Criminal Courts

The court of the district judges is the highest civil court in a district. It exercises both judicial and administrative powers. It has the power of superintendence over the courts under its control. The court of the District judge is located at the district headquarters. It has power of trying both civil and criminal cases. Thus, he/she is designated as the District and Sessions Judge.

Civil Cases versus Criminal Cases

Civil cases usually involve private disputes between persons or organizations. Criminal cases involve an action that is considered to be harmful to society as a whole (hence, these are considered offences against the "state" or the jurisdiction of the prosecution).

Civil Cases

A civil case begins when a person or entity (such as a corporation or the government), called the plaintiff, claims that another person or entity (the defendant) has failed to carry out a legal duty owed to the plaintiff. Both the plaintiff and the defendant are also referred to as "parties" or "litigants." The plaintiff may ask the court to tell the defendant to fulfil the duty, or make compensation for the harm done, or both. Legal duties include respecting rights established under the Constitution or under central or state law.

An example of a civil case in a state court would be if a person (including a corporation) sued another citizen for not living up to a contract.

Criminal Cases

Any act or omission which is prohibited by law and is punishable by law is a crime. The punishment for such crime is decided by following procedures of criminal trial. The criminal trials in India are well established in statutory, administrative and judicial frameworks and criminal law consists of three main Acts namely, Indian Penal Code (IPC), 1860; Code of Criminal Procedure (CrPC), 1973 & Indian Evidence Act (IEA), 1872. IPC is a substantive criminal law defining offences and prescribing punishments for the same. CrPC and IEA are procedural laws laying down ways to administer the substantive law.

In criminal court, the government through a public prosecutor files a case against someone for committing a crime. The person accused of committing the crime is called the defendant. The defendant is represented by a defense counsel. If he/she cannot afford a counsel, the same is to be informed to the court and legal aid would be given to him/her as the court deems fit.

It is also important to note that India follows the adversarial system, where generally the onus of proof is on the State (Prosecution) to prove the case against the accused, and until and unless the allegation against the accused are proved beyond reasonable doubt, the accused is presumed to be innocent. If the defendant is found guilty, then he or she may get the punishment as the court thinks fit.

Classification of Offences

1. Cognizable and Non-Cognizable

All offences (criminal) have been classified as either Cognizable or Non-Cognizable. Section 2(c) and 2(l) of the Criminal Procedure Code, 1973 (CrPC) respectively defines Cognizable Offence and Non – Cognizable Offence.

Cognizable offence means an offence for which a Police Officer may arrest without warrant. In case of cognizable offences, the Police Officer is bound to register an FIR (First Information Report) immediately under Section 154 of CrPC and can take up investigation and initiate actions such as arrest etc. Cognizable Offences are generally very serious in nature or such cases wherein immediate Police intervention is warranted.

Non-cognizable offence means an offence for which a police officer shall have no authority to arrest without warrant. Though FIR need not be registered for Non-cognizable offences, yet the same has to be entered in a separate register maintained for the purpose. A Police Officer may initiate investigation in such cases after obtaining permission from the competent court under Section 155 of CrPC

2. Bailable and Non-Bailable

Bailable Offence means an offence, which has been categorized as bailable, and in case of such offence, bail can be claimed, subject to fulfilment of certain conditions, as a matter of right under

Section 436 of the Cr.P.C. In case of bailable offences, the Police is authorised to give bail to the accused at the time of arrest or detention.

Non-bailable Offence means an offence in which the bail cannot be granted as a matter of right, except on the orders of a competent court. In such cases, the accused can apply for grant of bail under Section 437 and 439 of the Cr.P.C. It is important to note that the grant of bail in a non-bailable offence is subject to judicial discretion of the Court, and it has been mandated by the Supreme Court of India that “Bail, not Jail” should be the governing and guiding principle. In simple words, if the offence committed by the arrested person is bailable, the police Officer in charge can release the person on bail. If the offence is non-bailable, police Officer cannot, and only the Court can release the person on bail.

FIR- First Information Report

The first information report means information recorded by a police officer on duty given either by the aggrieved person or any other person to the commission of an alleged offence. On the basis of first information report, the police commences its investigation. Mere going to a police station (preferably nearest police station of the area where the crime was committed) and asking the police inspector to file a First Information Report is sufficient.

First Information Report is registered only for cognizable offences.

It is not required that the person registering FIR should be personally aware of the whole incident. Therefore, if one finds a body lying at the corner of a lane, it is not assumed that he knows when the murder happened or how did it happen?

When to File an FIR?

- ◆ The prompt and early reporting of an FIR, as soon as one comes to know of the happening of an offence, is advisable.
- ◆ The provision as to an information report is enacted to obtain early information of alleged crime actively.
- ◆ If an FIR is still not filed at an early stage, the findings of an FIR cannot be doubted on the same ground.
- ◆ The only thing needed before filing a late FIR is a reasonable reason for the delay in filing of an FIR.

What are the Consequences of Delay in Filing of an FIR?

- ◆ 5 hours delay: Not seen with suspicion.
- ◆ 6 hours delay: Do not in any manner warrants any adverse inferences.
- ◆ 12 hours delay: Non-explanation of delay of 12 hours in lodging the First Information Report assumes significance from the point of view of evidence law.
- ◆ 15 hours delay: When the evidence is clouded with strong suspicion and as the First Information Report is lodged with a delay of 15 hours, the false implication of accused cannot be completely ruled out.
- ◆ 5 days delay: Accused becomes entitled to the benefit of the doubt.
- ◆ 14 days delay: It will be utterly unsafe for convicting a person based on an allegation 14 days late. In spite of the delay, if still, the First Information Report looks substantive from the point of view of the law, such delay will not result in letting the culprit escape.

How to Register an FIR?

- ◆ Visiting the nearest police station within the crime scene (preferably).
- ◆ Informing either orally or in writing. In case a verbal complaint is made, it is the duty of the authority recording the FIR to convert it into writing.
- ◆ First Information Report should be signed by the person giving the complaint.
- ◆ It is the duty of the police authorities to register the FIR in a record book.
- ◆ It is the duty of the police officer to provide the complainant with a free copy of FIR.

What To Do in the Case Where a Police Officer Refuses to Register an FIR?

- ⇒ In such case, a person may send the substance of such information – in writing and by post – to the concerned S.P. (Superintendent of police).
- ⇒ When S.P. receives such information it is his duty to either investigate such matter or pass the matter and order an investigation by the concerned authority.

Procedure after FIR is lodged

- ⇒ If the area where the incident occurred is within the reach (jurisdiction of the police station) then, the police authority possesses all the power to investigate.
- ⇒ The police officer himself/herself assesses whether the complaint is worth entertaining or not. E.g. where there is an FIR of theft of Rs.50 then the police might not forward with the complaint.
- ⇒ If convinced with the findings of First Information Report, police forward a report to the magistrate and ask him to take cognizance of the offence.
- ⇒ Further, magistrate orders an investigation on the basis of First Information Report.
- ⇒ A police officer might require the attendance of any person being within the local area of such police station.
- ⇒ During enquiry of an FIR and its investigation, no statement made by any person to a police officer in the course of an investigation shall be signed by the person making it.
- ⇒ After taking the final report, if the magistrate is satisfied with the report and findings of the investigation on the basis of First Information Report, court summons is issued.

FIR CHECKLIST

- An FIR can either be recorded with a police officer in writing or verbally
- When verbally accounting details of a crime, it is the duty of the officer to write it down
- Once the police officer has written down all the details of the FIR, he must read it back to the individual so that they can be sure that the details have been recorded exactly the way they were stated
- It is the right of the person filing a verbal FIR to ask that the police officer read out what has been written down to confirm that it is correct
- Once satisfied that the details have been recorded accurately, the person filing must sign the FIR
- When submitting a written FIR, it must be signed the person who is filing it
- Once the FIR has been recorded, signed and registered the police must give the individual a copy
- It is the right of anyone who files an FIR to receive a copy of the FIR free of cost

Source: <https://jaagruti.org/2013/12/13/reporting-a-crime-all-about-lodging-an-f-i-r-with-the-police/>

ANNEXURE IV: JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

The first proper intervention by the government of India in justice for children was via the National Children's Act, 1960. This act was replaced later with Juvenile Justice Act, 1986. In 1992, India ratified the United Nations Convention on the Rights of the Child (UNCRC). To adapt to the standards of the convention, the 1986 act was repealed and the JJ Act, 2000 was passed.

The JJ Act 2000 dealt with two categories of children viz. 'child in conflict with law' and 'child in need of care and protection'. As per JJ Act, 2000, a juvenile is a person who is below 18 years of age. This Act has a provision that a child in conflict with law (CICL) cannot be treated as an adult. If a child is convicted for any offence, he may spend a maximum of three years in institutional care. This Act empowered the Child Welfare Committees (CWCs) to deal with child in need of care and protection while Juvenile Justice Boards (JJB) were empowered to deal with child in conflict with law.

1.1. General principles to be followed in administration of Act

The Central Government, the State Governments, the Board, and other agencies, as the case may be, while implementing the provisions of this Act shall be guided by the following fundamental principles, namely:—

- **Principle of presumption of innocence:** Any child shall be presumed to be an innocent of any mala fide or criminal intent up to the age of eighteen years.
- **Principle of dignity and worth:** All human beings shall be treated with equal dignity and rights.
- **Principle of participation:** Every child shall have a right to be heard and to participate in all processes and decisions affecting his interest and the child's views shall be taken into consideration with due regard to the age and maturity of the child.
- **Principle of best interest:** All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential.
- **Principle of family responsibility:** The primary responsibility of care, nurture and protection of the child shall be that of the biological family or adoptive or foster parents, as the case may be.
- **Principle of safety:** All measures shall be taken to ensure that the child is safe and is not subjected to any harm, abuse or maltreatment while in contact with the care and protection system, and thereafter.
- **Positive measures:** All resources are to be mobilized including those of family and community, for promoting the well-being, facilitating development of identity and providing an inclusive and enabling environment, to reduce vulnerabilities of children and the need for intervention under this Act.

- **Principle of non-stigmatizing semantics:** Adversarial or accusatory words are not to be used in the processes pertaining to a child.
- **Principle of non-waiver of rights:** No waiver of any of the right of the child is permissible or valid, whether sought by the child or person acting on behalf of the child, or a Board or a Committee and any non-exercise of a fundamental right shall not amount to waiver.
- **Principle of equality and non-discrimination:** There shall be no discrimination against a child on any grounds including sex, caste, ethnicity, place of birth, disability and equality of access, opportunity and treatment shall be provided to every child.
- **Principle of right to privacy and confidentiality:** Every child shall have a right to protection of his privacy and confidentiality, by all means and throughout the judicial process.
- **Principle of institutionalization as a measure of last resort:** A child shall be placed in institutional care as a step of last resort after making a reasonable inquiry.
- **Principle of repatriation and restoration:** Every child in the juvenile justice system shall have the right to be re-united with his family at the earliest and to be restored to the same socio-economic and cultural status that he was in, before coming under the purview of this Act, unless such restoration and repatriation is not in his best interest.

1.2 Child in Need of Care and Protection (CNCP)

Who is a child in need of care and protection or CNCP?

The Act defines a “child in need of care and protection” as a child:

- Who is found without any home or settled place of abode and without any ostensible means of subsistence; or
- Who is found working in contravention of labour laws for the time being in force or is found begging, or living on the street; or
- Who resides with a person (whether a guardian of the child or not) and such person: has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or
- has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee; or
- who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or
- who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him; or

- who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or
- who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or
- who is found vulnerable and is likely to be inducted into drug abuse or trafficking; or
- who is being or is likely to be abused for unconscionable gains; or
- who is victim of or affected by any armed conflict, civil unrest or natural calamity; or
- who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnization of such marriage.

1.3 Child Welfare Committee (CWC)

Composition:

Committee consists of a Chairperson, and four other members of whom at least one is a woman and another, an expert on the matters concerning children. No person can be appointed as a member of the Committee unless such person has been actively involved in health, education or welfare activities pertaining to children for at least seven years or is a practicing professional with a degree in child psychology or psychiatry or law or social work or sociology or human development. The Act provides for induction training of Members of Juvenile Justice Board and Child Welfare Committee within two months of their appointment

- No person can be appointed for a period of more than three years as a member of the Committee
- The Committee functions as a criminal court and has the powers conferred by the Code of Criminal Procedure, 1973 on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of First Class.

Procedure of CWC

A child can be brought before the committee (or a member of the committee if necessary) by a police officer, any public servant, CHILDLINE personnel, any social worker or public spirited citizen, or by the child himself/herself.

In the event of any difference of opinion among the members of the Committee at the time of taking any decision, the opinion of the majority shall prevail but where there is no such majority, the opinion of the Chairperson shall prevail.

Powers of CWC

CWC has the authority to dispose of cases for the care, protection, treatment, development and rehabilitation of children in need of care and protection, as well as to provide for their basic needs and protection. (Section 29(1))

Power to deal with all cases relating to children in need of care and protection under the Juvenile Justice (Care and Protection of Children) Act, 2015 (Section 29(2))

What is a “Child Care Institution”?

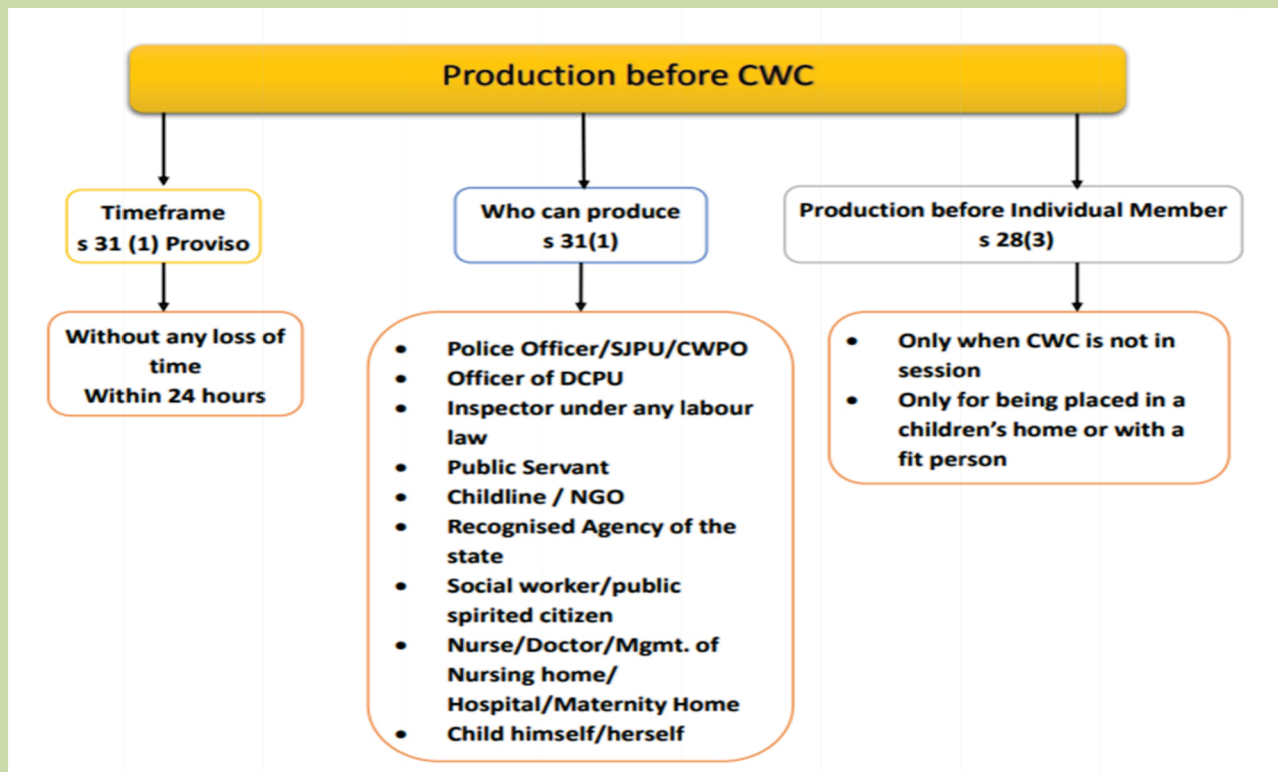
“Child care institution” means Children Home, open shelter, observation home, special home, place of safety, Specialized Adoption Agency and a fit facility recognized under this Act for providing care and protection to children, who are in need of such services

Functions and Responsibilities of CWC

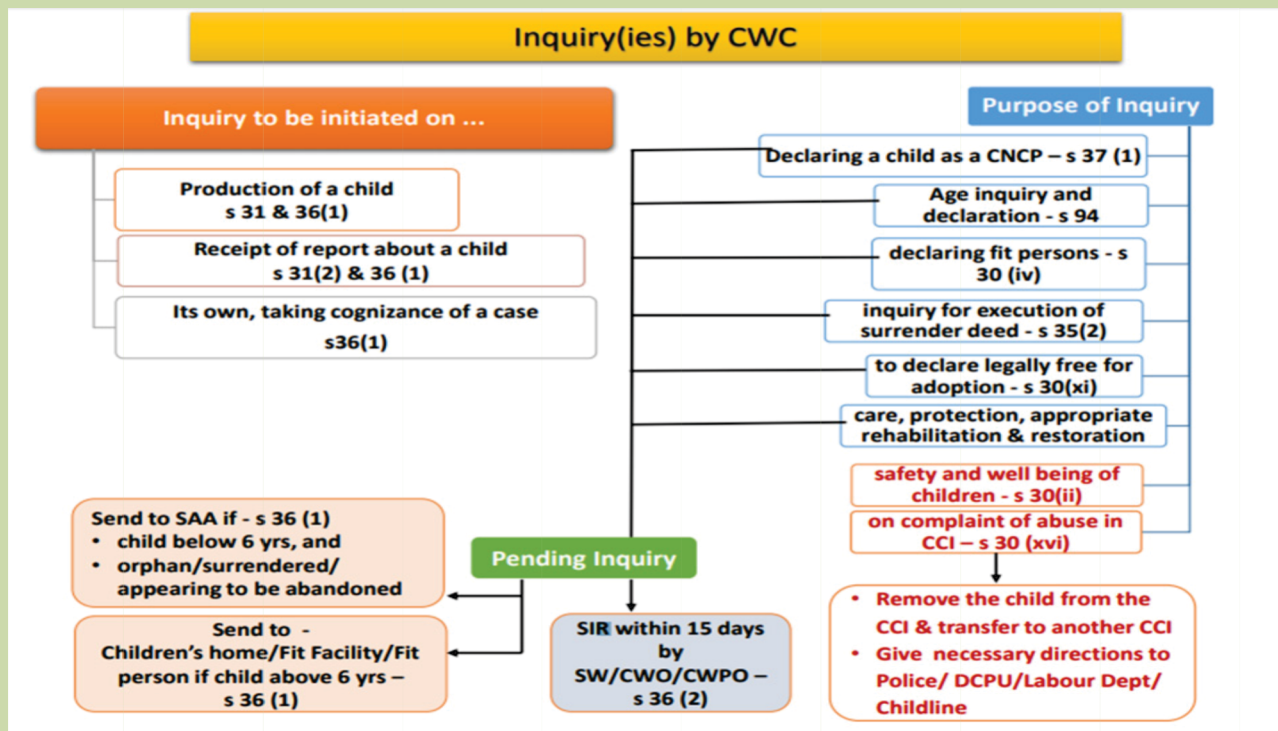
As per Section 30 of the Juvenile Justice (Care & Protection of Children) Act, the committee shall perform the following functions, namely:

- Taking cognizance of and receiving the children produced before it;
- Conducting inquiry on all issues relating to and affecting the safety and well-being of the children under this Act;
- Directing the Child Welfare Officers or probation officers or District Child Protection Unit or non-governmental organisations to conduct social investigation and submit a report before the Committee;
- Conducting inquiry for declaring fit persons for care of children in need of care and protection;
- Directing placement of a child in foster care;
- Ensuring care, protection, appropriate rehabilitation or restoration of children in need of care and protection, based on the child’s individual care plan and passing necessary directions to parents or guardians or fit persons or children’s homes or fit facility in this regard;
- Selecting registered institution for placement of each child requiring institutional support, based on the child’s age, gender, disability and needs and keeping in mind the available capacity of the institution;
- Conducting at least two inspection visits per month of residential facilities for children in need of care and protection and recommending action for improvement in quality of services to the District Child Protection Unit and the State Government;
- Certifying the execution of the surrender deed by the parents and ensuring that they are given time to reconsider their decision as well as making all efforts to keep the family together;
- Ensuring that all efforts are made for restoration of abandoned or lost children to their families following due process, as may be prescribed;
- Declaration of orphan, abandoned and surrendered child as legally free for adoption after due inquiry;

- Taking suo motu cognizance of cases and reaching out to children in need of care and protection, who are not produced before the Committee, provided that such decision is taken by at least three members; taking action for rehabilitation of sexually abused children who are reported as children in need of care and protection to the Committee by Special Juvenile Police Unit or local police, as the case may be, under the Protection of Children from Sexual Offences Act, 2012;
- Dealing with cases referred by the Board under sub-section (2) of section 17;
- Co-ordinate with the police, labour department and other agencies involved in the care and protection of children with support of the District Child Protection Unit or the State Government;
- In case of a complaint of abuse of a child in any child care institution, the Committee shall conduct an inquiry and give directions to the police or the District Child Protection Unit or labour department or ChildLine services, as the case may be;
- Accessing appropriate legal services for children;
- Such other functions and responsibilities, as may be prescribed.



Source: HAQ, Centre for Child Rights



Production of Child before CWC (Section 31)

The CWC can act in the interest of any child on its own or on a report from the following:

- Any police officer / SJPU / Child Welfare Police Officer / DCPU
- Any public servant
- ChildLine Services or any voluntary or nongovernmental organisation, or agency recognised by the government
- Child Welfare Officer or probation officer
- Any social worker or a public spirited citizen
- By the child himself, or
- Any nurse, doctor or management of a nursing home, hospital or maternity home.
- According to the Act, the child has to be produced before the Committee without any loss of time but within a period of twenty-four hours excluding the time necessary for the journey.

Orders that may be passed by the CWC (Section 37)

- The Committee on being satisfied through the inquiry that the child before the Committee is a child in need of care and protection, may, on consideration of Social Investigation Report submitted by Child Welfare Officer and taking into account the child's wishes in case the child is sufficiently mature to take a view, pass one or more of the following orders, namely:
 - declaration that a child is in need of care and protection;
 - restoration of the child to parents or guardian or family with or without supervision of Child Welfare Officer or designated social worker;
 - placement of the child in Children's Home or fit facility or Specialised Adoption Agency for the purpose of adoption for long term or temporary care, keeping in mind the capacity of the institution for housing such children, either after reaching the conclusion that the family of the child cannot be traced or even if traced, restoration of the child to the family is not in the best interest of the child;
 - placement of the child with fit person for long term or temporary care;
 - foster care orders under section 44;
 - sponsorship orders under section 45;
 - directions to persons or institutions or facilities in whose care the child is placed, regarding care, protection and rehabilitation of the child, including directions relating to immediate shelter and services such as medical attention, psychiatric and psychological support including need-based counselling, occupational therapy or behaviour modification therapy, skill training, legal aid, educational services, and other developmental activities, as required, as well as follow-up and coordination with the District Child Protection Unit or State Government and other agencies;
 - declaration that the child is legally free for adoption under section 38.

1.4 Child in Conflict with Law (CCL)

A child in conflict with law means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence.

- The new Act strengthens the protective approach provided by the juvenile justice system towards children in conflict with law as well as children in need of care and protection. The 'Juvenile' in conflict with law has been redefined in the Juvenile Justice Act 2015 as a 'child' in conflict with law. Offences have been categorized as petty/ serious/ heinous offences. Children in the age group of 16 - 18 years may be tried as adults in cases of heinous offences after preliminary assessment by the Juvenile Justice Board.
- Observation Home: A child in conflict with law will be sent to an Observation Home temporarily during pendency of inquiry. The child will be segregated according to age, gender, physical and mental status and nature of offence. A child who is found to have committed an offence by the Juvenile Justice Board will be placed in a Special Home.
- A Place of Safety: will be setup for children above the age of 18 years or children of the age group of 16 - 18 years who are accused or convicted for committing a heinous offence. The Place of Safety will have separate arrangement and facilities for under trial children and convicted children.
- The Juvenile Justice Board will conduct regular inspection of jails meant for adults to check if any child is lodged in such jails and take immediate measures for transfer of such a child to the Observation Home [Section 8 (3) (m)].

What is a "Place of Safety?"

"Place of safety" means any place or institution, not being a police lockup or jail, established separately or attached to an observation home or a special home, as the case may be, the person in-charge of which is willing to receive and take care of the children alleged or found to be in conflict with law, by an order of the Board or the Children's Court, both during inquiry and ongoing rehabilitation after having been found guilty for a period and purpose as specified in the order

Juvenile Justice Board (JJB)

- In pursuance of Section-4 of the Juvenile Justice (Care and Protection of Children) Act, 2015 read with rule-3 of the Juvenile Justice (Care & Protection of Children) Model Rules, 2016, the State Government constitutes Juvenile Justice Boards in the districts time to time, for exercising the powers & to discharge duties, conferred on such Boards in relation to Children in Conflict with Law under this Act and Rule.
- As per section-8 of the Juvenile Justice (Care & Protection of Children) Act, the Board shall have power to deal exclusively with all proceedings under this Act, relating to children in conflict with law. The powers conferred on the Board by or under this Act may also be exercised by the High Court and the Children's Court, when the proceedings comes before them in appeal, revision or otherwise.

Composition of JJB:

- A Board consists of a Metropolitan Magistrate or a Judicial Magistrate of First Class with at least three years' experience and two social workers selected in such manner as may be prescribed in the Rules.
- At least one social worker has to be a woman.
- No social worker shall be appointed as a member of the Board unless such person has been actively involved in health, education, or welfare activities pertaining to children for at least seven years or a practicing professional with a degree in child psychology, psychiatry, sociology or law.
- Together they form a Bench and every such Bench shall have the powers conferred by the Code of Criminal Procedure, 1973 on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of First Class.

Functions of the JJB:

As per Sub-section 3 of Section-8 of the Juvenile Justice (Care & Protection of Children) Act, the Board shall perform the following functions, namely:

- ensuring the informed participation of the child and the parent or guardian, in every step of the process;
- ensuring that the child's rights are protected throughout the process of apprehending the
- ensuring availability of legal aid for the child through the legal services institutions;
- directing the Probation Officer, or in case a Probation Officer is not available to the Child Welfare Officer or a social worker, to undertake a social investigation into the case and submit a social investigation report within a period of fifteen days from the date of first production before the Board to ascertain the circumstances in which the alleged offence was committed;
- adjudicate and dispose of cases of children in conflict with law in accordance with the process of inquiry specified in section 14;
- transferring to the Committee, matters concerning the child alleged to be in conflict with law, stated to be in need of care and protection at any stage, thereby recognising that a child in conflict with law can also be a child in need of care simultaneously and there is a need for the Committee and the Board to be both involved;
- disposing of the matter and passing a final order that includes an individual care plan for the child's rehabilitation, including follow up by the Probation Officer or the District Child Protection Unit or a member of a non-governmental organisation, as may be required;
- conducting inquiry for declaring fit persons regarding care of children in conflict with law;
- conducting at least one inspection visit every month of residential facilities for children in conflict with law and recommend action for improvement in quality of services to the District Child Protection Unit and the State Government;

- order the police for registration of first information report for offences committed against any child in conflict with law, under this Act or any other law for the time being in force, on a complaint made in this regard;
- order the police for registration of first information report for offences committed against any child in need of care and protection, under this Act or any other law for the time being in force, on a written complaint by a Committee in this regard;
- conducting regular inspection of jails meant for adults to check if any child is lodged in such jails and take immediate measures for transfer of such a child to the observation home; and
- any other function as may be prescribed.

Apprehension of child in conflict with law

- A police officer who arrests a child in conflict with law (CCL) shall immediately place the child under the charge of SJPU or the designated Child Welfare Police Officer (CWPO). (Section 10(1))
- SJPU shall produce CCL before the Juvenile Justice Board within 24 hours of apprehension. (Section 10(1))
- In no case a CCL be placed in police lockup or lodged in a Jail. (Section 10(1))
- Any person in whose charge the JJB places the child shall have the responsibility of the child as if the child was his/her own. (Section 11).
- The CWPO / SJPU shall as soon as possible inform the parent/guardian of such child and direct them to be present before the JJB. (Section 13(1)(i))
- The CWPO / SJPU shall as soon as possible inform the probation officer or Child Welfare Officer, for preparation and submission of social investigation report within two weeks containing information regarding the antecedents and family background of the child and other material circumstances likely to be of assistance to JJB for making the inquiry. (Section 13(1)(ii))

Inquiry by Juvenile Justice Board

- Inquiry shall be completed within 4 months from the date of first production of the child before the JJB; it may be extended by two more months by the JJB after recording the reasons in writing for such extension. (Section 14(2))
- A preliminary assessment in case of heinous offences under Section 15 shall be disposed of by the JJB within a period of 3 months from the date of starting. (Section 14(3))
- JJB shall ensure that the CCL has not been subjected to any ill-treatment by police or any other person. (Section 14(5)(a))
- The proceedings shall be conducted in simple manner and in child friendly atmosphere. (Section 14(5)(b))

<p>“Child friendly” means any behaviour, conduct, practice, process, attitude, environment or treatment that is humane, considerate and in the best interest of the child.</p>
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Preliminary assessment into heinous offences

- In case of a heinous offence allegedly committed by CCL who is above 16 years, JJB shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order accordingly under Section 18(3). For such assessment JJB may take assistance of experienced psychologists or psycho-social workers or other such experts. (Section 15(1)).
- Section 18(3) says that where the Board after preliminary assessment under section 15 passes an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children’s Court having jurisdiction to try such offences.

What are Heinous Offences?

“Heinous offences” includes the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment for seven years or more.

Orders that may / may not be passed by JJB

- No child in conflict with law shall be sentenced to death or for life imprisonment without possibility of release. (Section 21)
- There shall be no joint proceedings of a child alleged to be in conflict with law, with a person who is not a child. (Section 23(1))
- If the child brought before JJB is found to be a child in need of care and protection, the JJB may refer the child to CWC with appropriate directions. (Section 17(2))
- In case of offence (petty or serious) committed by a child of any age or in case of heinous offence committed by a child below 16 years of age, JJB may:
 - Allow the child to go home after advice/admonition and counselling to the child, its parents or guardian. (Section 18(1)(a))
 - Direct the child to participate in group counselling and similar activities. (Section 18(1)(b))
 - Order the child to perform community service (Section 18(1)(c))
 - Order the child or parent or guardian to pay fine. (Section 18(1)(d))
 - Direct the child to be released on promise of good conduct. (Section 18(1)(e))
 - Place the child under the care and supervision of any fit facility. (Section 18(1)(f))
 - Direct the child to be sent to special home. (Section 18(1)(g))
 - In addition to above JJB may pass orders for a child to attend school, vocational training centre, and therapeutic centre or to undergo a de-addiction programme. (Section 18(2))

What are Petty Offences?

“Petty offences” include the offences for which the maximum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment up to three years.

Punishment for Offences Against Children

The JJ Act, 2015 includes a separate chapter on offences against child and several of the offences listed in this chapter were so far not adequately covered under any other law. These include sale and procurement of children for any purpose including illegal adoption, corporal punishment in child care institutions, giving children intoxicating liquor or narcotic drug or psychotropic substance or tobacco products, use of child by militant or adult groups, offences against disabled children and, kidnapping and abduction of children. Further, the JJ Act, 2015 prescribes punishment for the various offences against children such as enhanced punishment for cruelty to children from six months to three years. The selling or buying of children will be a punishable offence with imprisonment of five years. Corporal punishment within a Child Care Institution will be a punishable offence. Adoption without prescribed procedures shall be punishable with imprisonment up to three years or fine of Rs.1 lakh or with both. For the effective implementation of these provisions, JJ Model Rules, 2016 provides for child friendly procedures for reporting, recording and trial.

ANNEXURE V: PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 (POCSO ACT)

POCSO is in line with Article 15(3) of the Constitution of India, which permits the State to make special provisions for children. With its enactment, India now has one of the most comprehensive laws in the world that not only allows justice for children who are victims of sexual offences but also takes into account the best interests and well-being of the child.

In fact, before 2012, there were no specific laws in India that addressed sexual crimes against children. Sexual offences against children were booked under the Indian Penal Code (IPC). Further, many forms of sexual abuse, like showing pornography to children could not be prosecuted; unless there was penetrative sexual assault. There were no provisions that could prosecute sexual offences against boys.

Journeying through the judicial system was a daunting proposition for victims and families. Intense questioning of the child victim by the defence counsel in courts and the possibility of media coverage around the case meant that there was a grave risk of the child revisiting the trauma of the incident. Rehabilitative and compensatory measures were lacking. The justice system itself was insensitive to the victims. The inordinate delays in justice delivery would disrupt the life of the child and their family. The burden of proof was solely on the victim and not on the offender. Thus, numbers of cases reported were very few compared to the scale at which the offences took place. Many of the victims in reported cases would turn hostile during the investigation and trial. Further, if the victim decided to speak out, they were left vulnerable to social stigma as there were no institutional safeguards.

Understanding Child Sexual Abuse

Child Sexual Abuse (CSA) is a broad term used to describe sexual offences against children. To put it simply, Child Sexual Abuse occurs when a person involves the child in sexual activities for his/her sexual gratification, commercial gain or both. Section- 2(1) (d) defines a “child” – as any person below the age of 18 years.

One needs to consider the following factors when attempting to understand and assess cases of child sexual abuse:

1) Power and Trust Dynamics

In most cases of child sexual abuse, the offender holds a position of trust and/ or power vis-à- vis the child and is often known to the child victim. Statistics of the past few years from the Crime in India Report of National Crime Records Bureau (NCRB) suggests that in 80-90% of the cases, the offender is ‘known’ to the victim. However, there may be many cases where the offender is a total stranger.

2) Age of the Offender

The offender can be either young or old i.e. above 18 years of age or below 18 years of age. e.g., there are several reported cases in which extremely minor girls aged 4 and 5 years have been sexually assaulted by senior citizens including grandfathers etc. Similarly, there are several cases in which 13 or 14 year olds have abused their own classmates or other children.

However, it is important to understand that children do sometimes indulge in/experiment with some kind of sexual activity. Caregivers and protectors must be aware of age and developmentally appropriate sexual activity among children before they label any child as a sex offender.

A simple reading of POCSO Act suggests that:

- Any person (including a child) can be prosecuted for engaging in a sexual act with a child irrespective of whether the latter consented to it.
- The Act is gender neutral.

3) Dynamics between Offender and Child

In the majority of cases, the child knows the offender. In reports/ researches and surveys conducted, it is seen that in a large majority of cases of sexual violence against women and children, the accused is a known person/acquaintance of victim and family/close family members including fathers, step-fathers, grandfathers, uncles, cousins, etc.

It is one of the biggest myths about child sexual abuse is that strangers, in a park or on a lonely street, are more likely to abuse children. In fact, the situations we need to safeguard our child against often occur inside or close to our homes, schools, playgrounds etc.

4) Gender and Profile of the Offender

The offender can be of any gender – male, female, third gender, etc. Majority of the offenders are men but not exclusively so. There may be occasionally cases in which women have been the main accused or have abetted the crime. The gender and outward appearance of a person has no implication on whether the person is a child sex offender or not.

Further they may belong to any, social, economic, religious, cultural or educational background. They may or may not be married. They may or may not be mentally stable. In short, a perfectly regular, average person like you or me could be a child sex offender.

5) Gender and Profile of the Victim Child

The victim may be a child of any gender. Boys are as susceptible to sexual abuse as girls, if not more. According to the World Health Organization, one in every 4 girls and one in every 7 boys is sexually abused across the world. However, there are higher chances of boys trying to hide or deny

the fact that they have been abused. The 2007, national survey conducted by the Ministry of Women & Child Development clearly shows that of 57% of children who said that they have experienced one or more forms of sexual abuse, were boys.

All children are at the risk of being abused despite of their social, economic, religious, cultural or educational background. However, some children are more at risk than the others such as:

- Children with disabilities
- Children from lower socio-economic backgrounds. e.g.:- living in very close proximity increasing chances of access to the child by a potential offender, lack of adult supervision when parents are at work, etc.
- Children with low self esteem
- Children who are questioning their sexuality
- Children who are isolated and have limited peer support/friend circle
- Children who have an unhealthy or dysfunctional home atmosphere. E.g.:- children from families where fights are common place; children from families that do not give the child enough love and attention at home, etc.

6) Physical Contact' Forms of Abuse

In some cases, there will be clear physical contact between the offender and the child such as penetrative sex, fondling of the child's genitals or making the child touch the offender's genitals, touching any part of the child's body with sexual intent, kissing with sexual intent, etc.

7) 'Non-Physical Contact' Forms of Abuse

Child Sexual Abuse can also occur without contact between the offender and the child such as showing pornographic videos or pictures to the child, using the child in pornographic material, verbal abuse, making lewd gestures to the child, playing sexualized games, stalking the child or chatting with sexual intent with the child over the Internet, etc.

The POCSO Act would still apply where the offence is committed by a child, the only difference is that the procedure would be as per the Juvenile Justice (Care and Protection of Children) Act, 2015.

8) Child Sexual Abuse Imagery: Online Sexual Abuse

Online abuse is any type of abuse that happens on the web, whether through social networks, playing online games or using mobile phones. Children and young people may experience cyber bullying, grooming, sexual abuse, sexual exploitation or emotional abuse. Children can be at risk of online abuse from people they know, as well as from strangers. Online abuse may be part of abuse that is taking place in the real world (for example bullying or grooming) or, it may be that the abuse only happens online (for example persuading children to take part in sexual activity online). Children may feel like there is no escape from online abuse – abusers can contact them at any time of the day or night, the abuse can come into safe places like their bedrooms, and images and videos can be stored and shared with other people.

✓ Do's

Adopt supportive behaviour towards child victims



Listen to the case with patience when the child complains about a person or an incident or a physical discomfort



Raise your concern with people close to the child



Call CHILDLINE at 1098



Ensure the child has undergone medical examination immediately after reporting the incident



Report incident of abuse at the nearest Police Station



Be sensitive while discussing the incident or its details with the child

✗ Do Not

Do not adopt unsupportive behaviour towards child victims



Blaming the child



Ignoring when the child complains about a person or an incident or a physical discomfort



Reacting in extremes when the incident is reported



Sending the child back to the person/ place where the abuse happened



Asking the child not to seek help from others



Disclosing the child's identity to other people or to the media



Not providing medical attention to the child



Not taking action even when one is aware of the abuse being taking place



Not reporting the incident at the Police Station

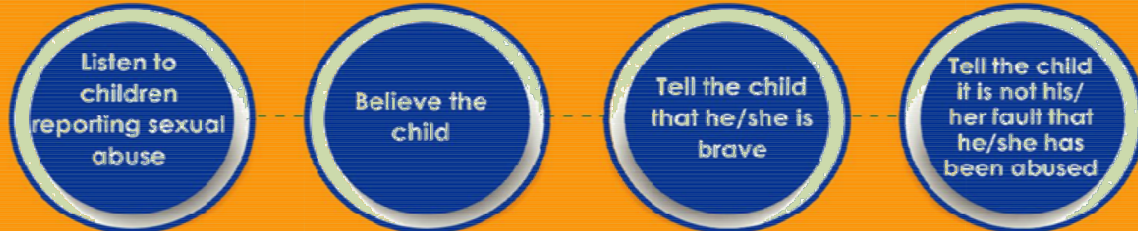
Source: "An Easy Guide to Prevention of Children against Sexual Offences (POCSO) Act and Rules, 2012", National Commission for Protection of Child Rights (NCPCR)

7 Reasons why Children don't speak up about Abuse

1. Children are afraid that they may be disbelieved.
2. Children feel a sense of guilt that perhaps it is indeed 'their own fault' that the abuse occurred.
3. Every time, a child talks about the incident of abuse they may be remembering and reliving the trauma; children don't want to remember the abuse.
4. Children are afraid that the person who groomed and abused them will stop loving them or get in trouble because of them. This is because of manipulations during the 'grooming' process and is also true in case where the offender is a family member.
5. The child may have been manipulated by the offender into believing that their relationship is normal. Sometimes that child does not realize this is being abused.
6. Fear of retaliation and further abuse also forces a child to keep silent.
7. Generally, children are not encouraged to talk about their feelings and when they do ... adults do not listen or believe.

Source: "User Handbook on Prevention of Children against Sexual Offences (POCSO) Act, 2012", National Commission for Protection of Child Rights (NCPCR), 2017

Important:



Salient Features of POCSO Act, 2012

- Burden of Proof on the Accused: What makes POCSO Act special is that it asks us to trust our children. It places the onus squarely on the accused to prove that he/ she is innocent. Section 29 of the Act provides that where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act (discussed later in the chapter), the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, unless the contrary is proved. The law ensures that the pressure is not on the child to prove that the crime took place.
- POCSO Act is gender-neutral law, wherein the law takes cognizance of sexual crimes committed against both girls and boys under the age of 18 years.
- POCSO Act ensures punishment for all perpetrators irrespective of age and gender.
- Calibration of Offences: POCSO Act addresses a wide range of sexual offences which include anything from complete and partial penetration; non-penetrative sexual assault; stalking of a child; showing children pornography; using the child for pornography; exhibitionism etc. The law protects children from both physical and or non-physical contact forms of abuse.
- Graver Punishment when Protectors are Perpetrators: POCSO Act provides for more severe punishment, when the sexual offence is committed by a person in a position of trust or authority such as police officer or a member of security forces or public servant etc. (Sections 5 and 9).
- Accountability of every citizen towards Child Protection: POCSO Act makes it mandatory for every citizen to report cases of sexual offences against children to the police (Section 19).
- Introduction of Child Friendly Measures: POCSO Act calls for people, systems and procedures to be sensitive and respond to the needs of children. For instance, it clearly mentions that the child need not be taken to the police station to report a case of sexual offence. Rather it directs the police (to be not in uniform and as far as practicable a woman officer not below the rank of Sub-inspector) to reach out to the child, based on the child's preference and convenience. (Section 24).
- Support to the Child and Family in the form of Support Person: POCSO Act takes into account that handling a sexual offence is not easy for the child and family. So it makes provisions for experienced and professional individuals to be associated with the pre-trial and trial stage to assist the child (Sections 39 and 40). Under Rule 4 (7) of POCSO Rules, 2012, Child Welfare Committee is to appoint Support Person to render assistance to the child through the process of investigation and trial.

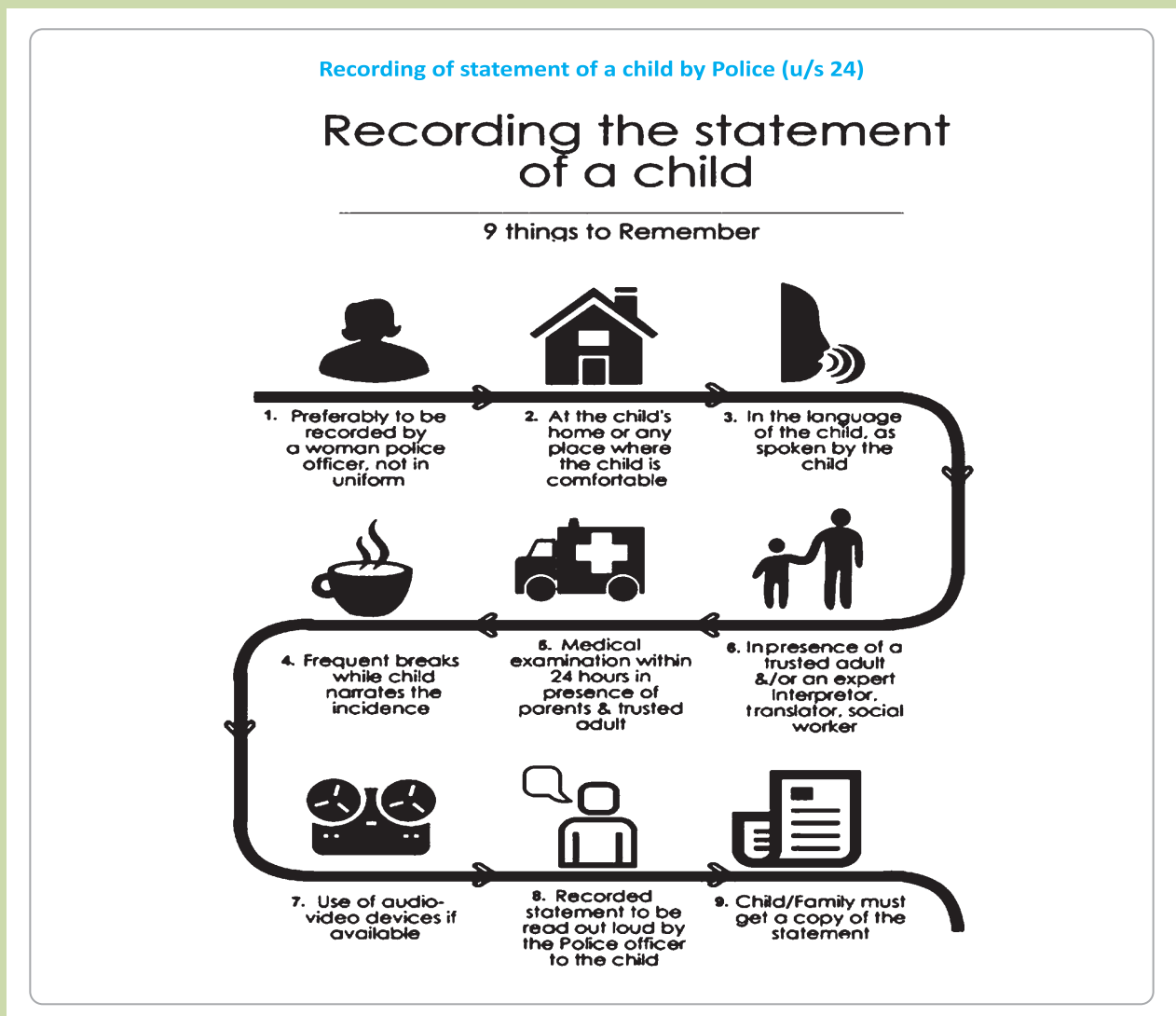
Did you know?

Section 40, POCSO Act recognizes the right of the child victim to receive the assistance of free legal counsel during trial.

Reporting of a Child Sexual Abuse Case

Under Section 19 of the POCSO Act, 'Reporting of offences' by any person including the child has been made mandatory. Section 21 of the Act provides punishment for failure to report or record a child sexual abuse case. However, a child cannot be punished for failure to report {S.21 (2)}.

- Punishment for failure to report or record a case: Failing to report the commission of an offence u/s 19 (1) or u/s 20 or failing to record such offence u/s 19(2) shall be punishable u/s 21.
- No discretionary jurisdiction: Courts cannot exercise their discretionary powers in POCSO cases. They cannot reduce the term of imprisonment to a term less than the minimum term stipulated under the Act.
- Confidentiality of the Child and the Family: Media has to secure the identity and privacy of the child. Disclosing or publishing the identity of the child victim by mentioning name, address, neighbourhood, school name and other particulars is punishable with imprisonment of not less than six months but extendable to one year or with fine or with both. It also prohibits making of negative reports that cause harm to the child's reputation. Provided that for reasons to be recorded in writing, the Special Court may permit such disclosure, if in its opinion such disclosure is in the interest of the child (Section 23).



KEY AUTHORITIES UNDER THE POCSO ACT, 2012

AUTHORITIES	DUTIES
Police/Special Juvenile Police Unit	<input type="checkbox"/> Record Information <input type="checkbox"/> Conduct preliminary inquiry <input type="checkbox"/> Report the case to CWC/ Special Court within 24 hours <input type="checkbox"/> Produce child before CWC within 24 hours, if required <input type="checkbox"/> Adhere to medical needs of the child <input type="checkbox"/> Keep parents/ guardians informed <input type="checkbox"/> Inform special court about the appointment of support person within 24 hours <input type="checkbox"/> Ensure that at no point of time child comes in contact with the accused.
Child Welfare Committee (CWC)	<input type="checkbox"/> Determine placement of child within 3 days with family/ children home/ shelter home if found in need of care and protection <input type="checkbox"/> Provide support person
District Child Protection Unit	<input type="checkbox"/> Maintain list of interpreter/ translators/ special educators etc. and make it available to authorities <input type="checkbox"/> Make payment for services of interpreters/ translators
Magistrate	<input type="checkbox"/> Record statement of the residence of child or at a place of child's choice/ comfort <input type="checkbox"/> Provide child/ parents/ representative, a copy of the final report by the police
Special Court/ Judge	<input type="checkbox"/> Conduct in-camera trial <input type="checkbox"/> Ensure a child-friendly environment <input type="checkbox"/> Respect dignity of the child <input type="checkbox"/> Maintain anonymity of the child <input type="checkbox"/> Record evidence of child within 30 days <input type="checkbox"/> Complete trial within one year
Special Public Prosecutor	<input type="checkbox"/> Prosecution of cases exclusively under the Act
Support Person	<input type="checkbox"/> Maintain confidentiality <input type="checkbox"/> Keep parents/guardians of child informed <input type="checkbox"/> Inform child of his/her role in the judicial process

State Government	<input type="checkbox"/> Designate a court as special court <input type="checkbox"/> Appoint a special prosecutor <input type="checkbox"/> Provide publicity to the act <input type="checkbox"/> Impart trainings to stakeholders/ authorities <input type="checkbox"/> Frame rules and guidelines
Central Government	<input type="checkbox"/> Provide publicity to the act <input type="checkbox"/> Impart trainings to stakeholders/ authorities <input type="checkbox"/> Frame rules and guidelines
NCPCR/ SCPCR	<input type="checkbox"/> Monitor implementation of the Act <input type="checkbox"/> Call for reports from CWCs on specific cases <input type="checkbox"/> Report on the implementation of the Act by way of a separate chapter in its annual report

OFFENCES UNDER THE POCSO ACT, 2012

OFFENCES	DEFINITIONS	PRESCRIBED PUNISHMENTS
Penetrative sexual assault (Section 3 and Section 4)	Penetration of penis or any other object, to any extent, into the vagina, mouth, urethra or anus of a child or make the child to do so with him or any other person or application of the mouth to the above mentioned body parts of a child or forcing the child to penetrate the offender or someone else.	Imprisonment, not less than 10 years but which may extend to life, and shall also be liable to fine.
Aggravated penetrative sexual assault (Section 5 and Section 6)	When a penetrative sexual assault is committed by a person in position of trust or position of authority such as a police officer, member of security forces, public servant, staff of a hospital or educational institution etc.	Rigorous imprisonment, not less than 20 years but may extend to life, and shall also be liable to fine.
Sexual Assault (Section 7 and Section 8)	All acts of physical nature without penetration. For example- stalking of a child, showing dirty pictures, touching private parts of a child or making a child touch the private parts of someone else.	Imprisonment, not less than three years but which may extend to five years, and shall also be liable to fine.

<p>Aggravated sexual assault (Section 9 and Section 10)</p>	<p>Offence of sexual assault committed by a person in position of trust, authority or power.</p>	<p>Imprisonment, not less than five years but which may extend to seven years, and shall also be liable to fine.</p>
<p>Sexual Harassment (Section 11 and Section 12)</p>	<p>Sexual Harassment is committed upon a child when a person with sexual intent:</p> <ul style="list-style-type: none"> • Utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; • Makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; • Shows any object to a child in any form or media for pornographic purposes; • Repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; • Threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; • Attracts a child for pornographic purposes. 	<p>Imprisonment, which may extend to three years and shall also be liable to fine.</p>
<p>Pornographic Purposes (Section 13, Section 14, Section 15)</p>	<ul style="list-style-type: none"> • Uses a child for pornographic purposes; (Section 13) • Uses child for pornographic purposes, directly participating acts and commits offence under Section 3 • Uses child for pornographic purposes, directly participating acts and commits offence under Section 5 	<ul style="list-style-type: none"> • Imprisonment, which shall not be less than five years and shall also be liable to fine. • Imprisonment, which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine. • Rigorous imprisonment not less than 20 years but may extend to imprisonment for life and shall also be liable to fine.

	<ul style="list-style-type: none"> • Uses child for pornographic purposes, directly participating acts and commits offence under Section 7; • Uses child for pornographic purposes, directly participating acts and commits offence under Section 9 • Stores child pornography material under Section 15 	<ul style="list-style-type: none"> • Imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine. • Imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine. • Imprisonment not less than 3 years which may extend to five years with fine or both.
Attempt (Section 18)	<ul style="list-style-type: none"> • Does an act in an attempt to commit any offence punishable under this Act or cause any such offence to be committed 	<ul style="list-style-type: none"> • Imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence or with fine or with both.
Media Obligations (Section 20 and Section 23)	<ul style="list-style-type: none"> • If the media discloses the identity of the victim or fails to report about any attempt or commission of the offence to the police 	<ul style="list-style-type: none"> • Imprisonment of either description for a period which shall not be less than six months but which may extend to one year or with fine or with both.
False complaint or false information (Section 22)	<ul style="list-style-type: none"> • If any person makes a false complaint or gives false information against any person alleging that such person has committed any offence under Section 3, 5, 7, or 9. • If any person makes a false complaint or gives false information against a child, knowing it to be false. • Where such complaint or information has been provided by a child no punishment shall be given. 	<ul style="list-style-type: none"> • Imprisonment for a term which may extend to six months or with fine or with both. • Punishment may extend to one year

Emergency Medical care and Counseling for Children

The Child victim who is in need of urgent medical care and protection, SIPU/local police shall within 24 hours of receiving information about the crime, arrange to take such child to the nearest hospital or medical care facility center for emergency medical care {Rule 5 (1)}. The medical examination of child shall be conducted whether FIR or complaint is registered or not, by a women doctor, if the victim is girl. In case parent is not available for any reason, medical examination of child shall be conducted in the presence of a women nominated by the head of the medical institution (Section 27).

Child Victim shall be provided translator or an interpreter, having such qualification, experience to understand the content and language of FIR (u/s 19 (4)). Child may take help of interpreter/ translator/ Special Educators under Rule 3 (7) at any stage after information is received u/s 19. The family or the guardian of the child shall be entitled to the assistance of a legal counsel of their choice for any offence under the Act. They are also entitled for free legal counsel from Legal Services Authority (u/s 40).

Care and Protection of child victim

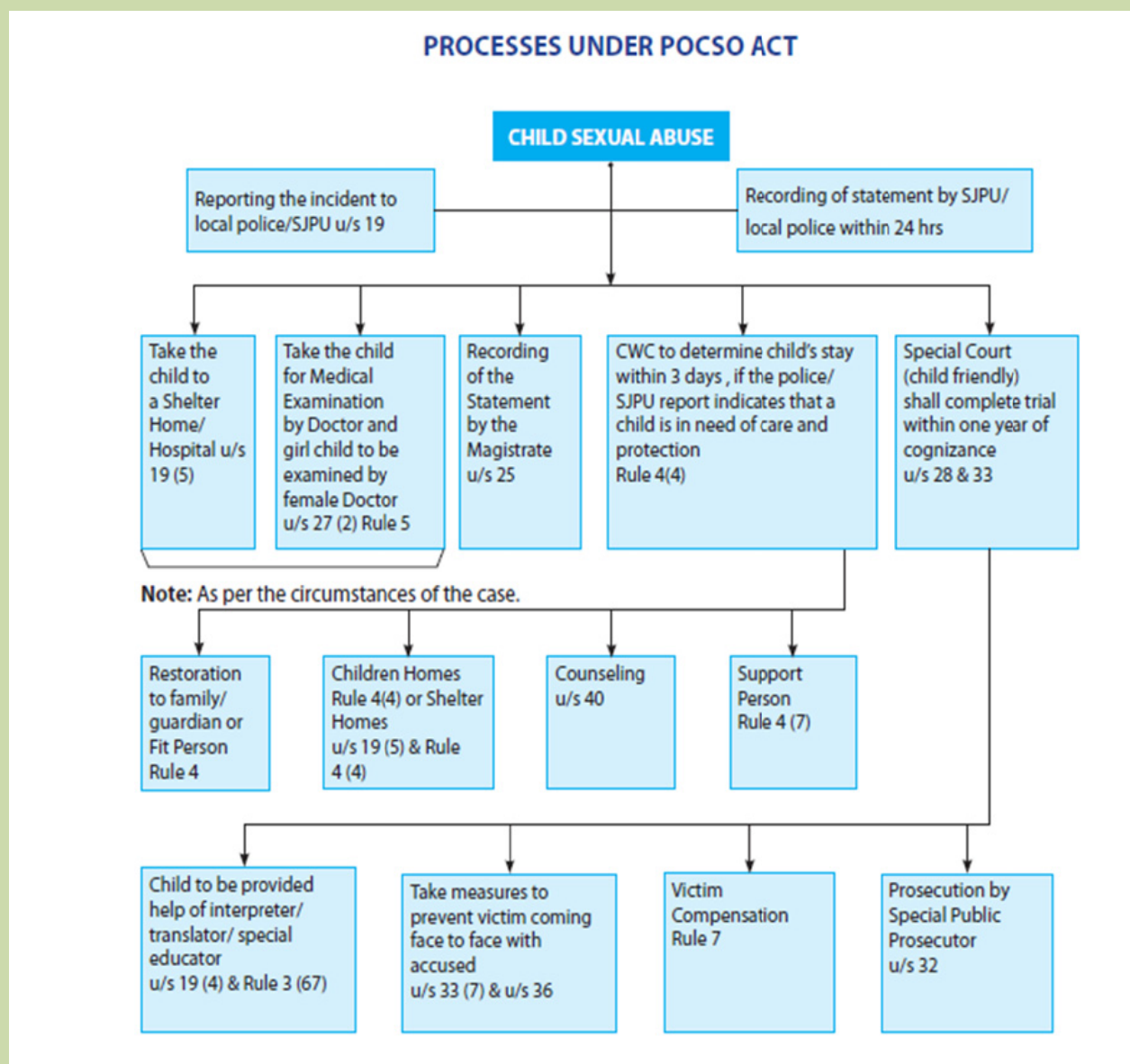
- If the SJPU or local police has reasonable grounds to believe that the child is in need of care and protection, then, it shall after recording the reasons in writing, make arrangements to give the child such care and protection (including admitting the child into shelter home or to the nearest hospital) within 24 hours of the report {Section 19 (5)}.
- The SJPU or local police shall report the matter to the Child Welfare Committee (CWC) and the Special Court within 24 hours including need of the child for care and protection and steps taken in this regard {Section 19 (6)}.
- CWC may provide a Support Person to render assistance to the child through the process of investigation and trial {Rule 4 (7)}.
- In certain cases, children have to be mandatorily produced before CWC as per Rule 4 (3) of the POCSO Rules.
- CWC can also order that the child be taken out of the custody of her/his family if she/he has been or is likely to be sexually abused there (Rule 4 of POCSO Rules).

Speedy Procedures

The POCSO Act requires that the evidence of the child be recorded by the Special Court within 30 days of taking cognizance of the offence. Any delay shall be recorded in writing. As far as possible, the trial shall be completed within a period of one year from the date of taking cognizance of the offence (Section 35).

Compensation

The Special Court may pass an order for interim compensation to meet the immediate needs of the child for relief or rehabilitation at any stage of the FIR. Such interim compensation paid to the child shall be adjusted against the final compensation, if any. The Special Court may recommend award of compensation where the accused is convicted, or where the case ends in acquittal or discharge, or the accused is not traced or identified, and in the opinion of the Special Court the child has suffered loss or injury as a result of that offence. (Rule 7 of POCSO Rules, 2012).



ANNEXURE VI: PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT (PWDVA), 2005

The Protection of Women from Domestic Violence Act (PWDVA), instituted in 2005, is a legislation aimed at protecting women from violence in domestic relationships. The origin of the Act lies in Article 15 (2) of the Constitution of India, which clearly says that “State can make special provisions for women and children” towards realizing the right to equality. It is a civil law. While the objective of criminal laws is to punish the offender, a civil law is directed towards providing reliefs to the aggrieved woman; in this case, the woman who faces violence at home.

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The framework and crucial aspects of this Act are as follows:

Definition of “Domestic Violence”

Omission or commission or conduct of a person shall constitute domestic violence in case it-

- Harms or injures or endangers the health, safety, life, limb or well-being, whether mental, physical, sexual, emotional abuse or economic abuse
- Harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for dowry
- Threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Physical Abuse - any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved woman

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

Verbal and Emotional Abuse – includes but not limited to:

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

Economic Abuse – includes- deprivation economic or financial resources to which the aggrieved person is entitled under any law or custom; includes but not limited to:

- household necessities for the aggrieved person and her children, stridhan, property, payment of rental related to the shared household and maintenance

- disposal of household assets whether movable or immovable in which the aggrieved person has an interest or is entitled to
- depriving of access to resources or facilities which the aggrieved person is entitled to within the shared household.

Please Note: A victim/survivor of domestic violence does not need to experience physical violence to be abused.

Often the psychological abuse can leave someone feeling fearful, helpless and powerless to act on their own behalf. People affected by domestic violence are rich, poor, married, divorced or single, from all ethnic backgrounds and economic levels. They can be able-bodied or with a disability, heterosexual or homosexual, gay, lesbian, bisexual and/or transgender. As someone affected by domestic violence and battering they will find that they have common issues with many others who have also experienced this type of violence.

The Power & Control wheel (provided below) is a particularly helpful tool in understanding the overall pattern of abusive and violent behaviours, which are used by a batterer to establish and maintain control over their partner. Very often, one or more violent incidents are accompanied by an array of these other types of abuse. They are less easily identified, yet firmly establish a pattern of intimidation and control in the relationship.



Source: <https://www.peaceoverviolence.org/iii-the-cycle-of-violence-and-power-and-control>

Against whom can the complaint can be filed?

Complaint can be made against any adult male or his relations (including women) who have been in a domestic relationship with the aggrieved woman, like husband, father-in-law, brother, son, mother-in-law etc.

Can a case be filed against the women of house?

Yes, but no order can be passed for removing the women from the shared household.

Who can help a Victim of Domestic Violence?

1) Protection Officer (PO)

- Protection Officers are specially appointed officers by the State Government, who function under the control and supervision of the magistrate and are responsible for assisting an aggrieved woman to get justice and other facilities. Their responsibilities include:
- To make a Domestic Incident Report to the Magistrate, upon receipt of a complaint of domestic violence and forward copies thereof to the police and service providers.
- Maintain a list of service providers who can provide the aggrieved woman with legal aid, shelter, medical care and counselling.
- Ensure that the aggrieved woman gets medically examined and the report of the same is forwarded to the police and Magistrate.
- Ensure the compliance of protection orders obtained from the Magistrate.

Whom to Complain to?

As per PWDVA 2005, a complaint can be filed with:

- Protection Officer
- Police Officer
- Service Provider
- Judicial Magistrate of First Class or Metropolitan Magistrate

How to Complain?

As per PWDVA 2005, you can file a complaint:

- Over telephone or email
- Through writing

When to Complain?

- When the incident of domestic violence has happened
- When the incident of domestic violence is happening
- When there is a probability that an incident of domestic violence will happen

ANYONE WHO HAS KNOWLEDGE OF DOMESTIC VIOLENCE HAPPENING CAN SUBMIT COMPLAINT OR PROVIDE INFORMATION.

2) Service Provider

Service Providers are registered companies or societies notified by the State Government. A PO has their list. They can support the aggrieved woman with the following:

- Medical Treatment
- Counselling
- Safe Shelter
- File Domestic Incident Report and submit to Magistrate, PO or police.

THE RELIEFS PROVIDED UNDER THE ACT

AUTHORITIES	DUTIES
Protection Orders (Sec 18)	Prohibiting the Respondent from: <ul style="list-style-type: none"> • Committing acts of domestic violence • Aiding and abetting acts of domestic violence • Entering the place of employment of aggrieved woman or school of the child • Alienating aggrieved woman from assets, stridhan, bank accounts or property they hold jointly or separately.
Residence Order (Sec 19)	<ul style="list-style-type: none"> • To remove the abuser from the shared household • To prohibit the abuser from entering any portion of the house where the aggrieved woman resides • Direct the abuser to find an alternative accommodation • Restrain the abuser from alienating or disposing the assets or property under the shared household <p>Shared Household: means a household where the aggrieved lives or has lived in a domestic relationship with the respondent and includes such a household whether owned or tenanted either jointly or singly, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.</p>
Monetary Reliefs (Sec 20)	The aggrieved woman is entitled to: <ul style="list-style-type: none"> • Expenses incurred • Medical expenses • Recovery of any financial loss that has occurred out of loss of employment or loss of property/assets • Maintenance for herself and the children
Custody Order (Sec 21)	<ul style="list-style-type: none"> • The court can grant the custody of the children to the aggrieved woman during the pendency of the application • The court can deny visitation rights to the respondent if such a visit is deemed harmful for the children

Compensation Order (Sec 22)	Magistrate can also grant compensation order for: <ul style="list-style-type: none"> • Damager for physical injury, including for mental torture and emotional distress caused due to the act of domestic violence
Interim and ex parte orders (Sec 23)	<ul style="list-style-type: none"> • Magistrate may pass any Order as she thinks just and reasonable. It can be passed in the absence of one party if he thinks it is necessary.

Which is the Competent Court to provide Relief?

- The Court of Judicial Magistrate of First Class or Metropolitan Magistrate under whose jurisdiction the aggrieved person comes under will provide relief.

What are the Procedures for obtaining Relief under the Act?

- Either the aggrieved person, PO or service provider make an application in the prescribed form to the Magistrate of the locality
- On receipt of the application, the magistrate shall fix the first date of hearing within three days of the receipt of the application
- The date of the hearing will be served by the PO within a maximum of two days
- The Magistrate shall also call for a Domestic Incident Report from the PO or service provider
- The Magistrate can also secure the assistance of a Welfare Expert, preferably a woman who is an expert in the field
- All proceedings can be conducted in-camera (not in an open court).

How long one should wait for getting Relief?

- Can get interim relief within two days of issuing the notice to the Respondent. The entire proceedings will be closed and final orders will be passed within 60 days.

What is the Punishment for the Respondent if the Orders are violated?

- If the respondent disobeys the orders of the Magistrate, he is liable to be punished. The breach of order can extend up to one year or with fine which can extend up to INR 20,000 or both.
- The breach of order should be reported immediately to Police Officer, Magistrate or the PO. The respondent shall be arrested immediately. It will be seen as a non-bailable and cognizable offence.

What is the Role of the Police as per the Act?

- If the police will receive a complaint of the domestic violence, they will forward it to the PO who will forward it to the Magistrate. The police will also make a Daily Diary (DD) entry.
- If the offence mentioned in the complaint fall under any of the sections of the Indian Penal Code, the police will register a FIR and follow due process.
- Police has to ensure the due compliance of the Protection Order. If the aggrieved woman reports breach of the order, the police shall deal with it as a cognizable offence.

How long will the Protection Order be in Force?

- The interim order will be in force until the final order is passed, which will be within 60 days.
- The final order will be force as long as the aggrieved woman wants it to be.
- The final orders can be modified, changed or amended as the request of the aggrieved person, or in case of changed circumstances.

ANNEXURE VII: INDIAN PENAL CODE (IPC)

- **Sections 292:** “anyone found selling, putting on hire, distributing, publicly exhibiting in pamphlets, papers, writings, drawings, paintings, representations, figures, or any other object, which is obscene shall be punished on first conviction with imprisonment for a term which may extend to two years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment for a term which may extend to five years, and also with fine which may extend to five thousand rupees”
- **Section 293:** “whoever sells, hires, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in section 292, shall be punished on first conviction with imprisonment for a term which may extend to three years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment for a term which may extend to seven years, and also with fine which may extend to five thousand rupees”
- **Section 294:** “whoever, to the annoyance of others, (a) does any obscene act in any public place, or (b) sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment for a term which may extend to three months, with fine, or with both”
- **Section 354:** “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 both”
- **Section 354 A:** This section was added to the Indian Penal Code upon the presidential approval of the *Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act 2013*. The Amended Criminal Law Act, 2013 recognizes and provides a clear definition of sexual harassment and the punishment for it through this newly added section
- **Section 354 C (voyeurism):** “Any man who watches or captures the image of a woman engaging in a *private act*⁵ in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator, or disseminates such image. Punishments are imprisonment from three to seven years and fine on

⁵ "Private act" includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public. Where the victim consents to the capture of the images or any act, but not to their dissemination to third

the first conviction, and one to three years and fine on the second subsequent conviction”

- **Section 354 D (stalking):** “Any man is said to commit the offence of stalking when he i) follows a woman and contacts or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman, or ii) monitors the use by a woman of the internet, email or any other form of electronic communication, or iii) watches or spies on a woman in any manner that results in a fear of violence or serious alarm or distress in the mind of such woman or interferes with the mental peace of the woman. Punishment is imprisonment of either description from one year to five years and fine”

- **Section 375 (rape):** A man is found to have committed rape as defined if it is:
 - without her consent
 - against her will
 - when her consent is taken by fear of death or hurt
 - 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
 - when she is mad or weak of mind and is not able to understand what the man is going to do
 - with or without consent when her age is below 18 years
 - when she is unable to communicate consent.

When does the offence of rape get aggravated?

The offence of rape can get aggravated in certain situations and may have higher punishment. Those circumstances have been enlisted in Section 376(2)

Section 376(2) says, whoever,—

- a) being a police officer, commits rape—
 - within the limits of the police station to which such police officer is appointed; or
 - in the premises of any station house; or
 - on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.

- b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or
- c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or
- d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or
- e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or
- f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or
- g) commits rape during communal or sectarian violence; or
- h) commits rape on a woman knowing her to be pregnant; or
- i) commits rape on a woman when she is under sixteen years of age; or
- j) commits rape, on a woman incapable of giving consent; or
- k) being in a position of control or dominance over a woman, commits rape on such woman; or
- l) commits rape on a woman suffering from mental or physical disability; or
- m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or
- n) commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Other provisions related to rape

376B Sexual intercourse by husband upon his wife during separation—Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.

376C Sexual intercourse by a person in authority. — Whoever, being—

- in a position of authority or in a fiduciary relationship; or
- a public servant; or
- superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force, or a women's or children's institution; or
- on the management of a hospital or being on the staff of a hospital,

Abuses such position or fiduciary relationship to induce or seduce any woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than five years, but which may extend to ten years, and shall also be liable to fine.

Dowry death- Section 304-B

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

The essential components of Section 304-B are:

- Death of a woman occurring otherwise than under normal circumstances.
- Death should have occurred within 7 years of marriage.
- Soon before her death, she should have been subject to cruelty and harassment in connection with any demand for dowry.

Unnatural Offences Section 377

In India, there aren't precisely any laws dealing with sexual abuse against adult males. JJA and POCSO provide redressal to male children when they face sexual abuse.

Section 377 prohibited 'unnatural sex' or carnal intercourse against the order of nature, consensual or non-consensual. It was a colonial-era law (1861) that was against non-peno-vaginal intercourse and made it a punishable offence that can earn the accused up to ten years in prison. Prior to the enactment of JJA and POCSO, 377 was also used for penalizing child sexual abuse. While it does not directly discriminate against the LGBTQIA community by name, but creates an atmosphere of shame and lack of dignity for the community. There have been numerous instances where people with non-binary gender and sexual identities have been criminalized on the pretext of 377. In the light of this, the Supreme Court of India, in its landmark judgment in Navtej Singh Johar v. Union of India in 2018, decriminalized consensual sexual relations that came under the ambit of Section 377. Now, it only punishes non-consensual sexual acts perpetrated against an adult and any kind of carnal intercourse with a minor and acts of bestiality.

As the judgement said-

The provisions of Section 377 will continue to govern non-consensual sexual acts against adults, all acts of carnal intercourse against minors, and acts of bestiality.

Implying thereby that this provision can be used more effectively with lesser stigma to address male sexual abuse cases. The victim can file an FIR for the same as soon as he can. Attitudes should be built in society decreasing the stigma associated with male sexual abuse and accepting and supporting a male victim in the same manner that a female victim is supported.

- **Section 509:** For the offence under this section, a person who intends to insult the modesty of the women or utters words or makes gestures intending that such words or gestures are heard, or intrudes her privacy shall be liable under this section. Punishment is simple imprisonment which may extend to three years along with fine. The ultimate test for ascertaining whether the modesty of a woman has been outraged, assaulted or insulted is that there is:
 - intention to outrage the modesty of the women;
 - Utters words, gestures or sounds with the intention that the words/ gestures/ sounds are heard or seen by the woman;
 - Or Intrudes her privacy

Cruelty by husband and relative of Husband - Section 498 - A

- **Section 498-A** was brought into the IPC in the year 1983 to curb the menace of cruelty to married women, which often led to dowry deaths. In order to protect helpless women who were regularly getting abused and beaten and tortured by their respective husbands and husband's family members, multiple changes were made to IPC. Accordingly, under Section 498A cruelty to a woman by her husband or any relative of her husband was made punishable for with an imprisonment for a term of three years and also with fine.

Cruelty means—

- any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.
- Cruelty can be depriving her of economic resources or essential amenities of life. It can be putting restraints on her movements. It can be not allowing her to talk to outside world. The list is illustrative and not exhaustive. Physical cruelty could be actual beating or causing pain and harm to the person of a woman.

CHANGES BROUGHT BY CRIMINAL AMENDMENT ACT, 2013

Section	Offence	Description	Punishment
Section 326 A and 326 B	Acid Attack - Causing grievous hurt by throwing and Attempting to throw acid	Throwing acid on a person causing permanent or partial damage or deformity, burns or maims, disfigures or disables any part of the body of the person	Punishable with 10 years' Imprisonment extendable to life imprisonment or fine or both. The fine amount should be sufficient for the medical expenses of the victim and should be paid to the victim.
Section 354 A	Sexual harassment	A man committing any of the following acts— i. physical contact and advances involving unwelcome and explicit sexual overtures; or ii. a demand or request for sexual favours; or iii. showing pornography against the will of a woman; or iv. making sexually coloured remarks.	Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both. Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.
Section 354 B	Assault or use of criminal force to woman with intent to disrobe	Any man who by use of force or otherwise compels a woman to remove her clothes	Punishable with imprisonment 3 to 7 years
Section 375	Rape	Rape under the IPC had been interpreted to mean only penile-vaginal intercourse. The 2013 Act expands the definition of rape to include oral sex as well as the insertion of an object or any other body part into a woman's vagina, urethra or anus.	Rigorous imprisonment of minimum 10 years extendable to life imprisonment and also liable to fine. Marital Rape has not been included as an offence if the wife is 15 years and above.

Section 376A	Rape resulting in death or persistent vegetative state	Whoever commits rape inflicting an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state	Punishable with rigorous imprisonment of 20 years which may extend to life imprisonment.
Section 376D	Gang rape	Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape.	Imprisonment up to 20 years extendable to Life Imprisonment. And fine that meets the medical expenses of the victim.
Section 376 B	Rape of a Woman under 12 years of age	Whoever commits rape of a woman under 12 years of age shall be punished.	Rigorous imprisonment up to 20 years extendable to Life Imprisonment or death penalty. Also liable to fine.
Section 354 C	Voyeurism	<p>Any man who watches, or captures the image (say by means of a photograph or video) of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person.</p> <p>This includes a woman:</p> <ul style="list-style-type: none"> • using a toilet, or • who is undressed or in her underwear, or • engaged in a sexual act. • Any other such act <p>If the woman agrees to private photos, it is not a crime to take them. However, if she expects them to remain with only certain people, then sharing them is a crime. The law makes it clear that the woman has to expressly consent to <i>both</i>, watching/taking pictures <i>as well as</i> sharing them, for it to not be an offence.</p>	Punishable with imprisonment 3 to 7 years

Section 354 D	Stalking	<p>Any man who—</p> <ul style="list-style-type: none"> • follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or monitors a woman’s usage of the internet, email or any other form of electronic communication, commits the offence of stalking 	<p>Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.</p>
Section 354 D	Stalking	<p>Any man who—</p> <ul style="list-style-type: none"> • follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or monitors a woman’s usage of the internet, email or any other form of electronic communication, commits the offence of stalking 	<p>Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.</p>

VICTIM COMPENSATION

Who is a victim of crime?

- Any person, group, or entities who have suffered harm, injury or loss due to illegal activities of others. The harm may be economical, mental, or physical.
- Thus any person who has suffered harm because of violation of criminal law is a victim.
- A person will be considered as a victim even when the offender is not identified or prosecuted. Term victim also includes individuals who have suffered harm as a result of assisting victims in distress or to prevent victimization.
- Not only the person who suffered loss or injury are the victim, but in some cases, the near and dear of victims (family members) are also the victims.

Can a victim of crime get compensation in India?

Yes. A victim of the offence can get compensation in India. But there is a procedure which needs to be followed. We will discuss the procedure at length in the later part of this article.

How can the compensation be sought?

The compensation has to be ordered by the court. Compensation can be sought through the procedure established by the court. Compensation is awarded for material as well as non-material damages.

Material damages include medical expenses, loss of livelihood, etc. Non-material damages include pain, suffering, mental trauma, etc. In criminal cases, the victims can directly apply for the compensation, and it is the duty of the lawyer representing the victim to demand such compensation.

Laws governing compensation of victims of crime in India:

The provisions relating to compensation to victims of crime are contained in sections 357, 357(1), 357 (2), 357 (3), 357A, 358, 359 and 250 of the Code of Criminal Procedure, 1973.

Constitution of India also provides for certain safeguards to the victim of crime. Article 14 and 21 of the Constitution supports the argument.

WHERE CONVICTION AND FINE ARE PART OF THE SENTENCE

When an accused is proven guilty, and the court passes an order which contains a fine of any denomination, the court can order such fine or any part of it to be paid to the victim of crime. The fine imposed is utilised to compensate the victim of fine in the following ways.

#1 Compensating for the expenses incurred during litigation (357 (1) (a))

- This is the essential relief which a victim of a crime must get. Litigation costs in India are very arbitrary. The lawyer charges hefty amount. Getting justice at times adds to the burden of the victim itself. Instead of getting justice, the victim is trapped in the honeycomb of justice delivery system.
- The court knows this fact and thus, compensate victim by providing them the expenses incurred during litigation.

#2 Compensation for loss or injury to be recovered by the civil court

If the court is of the view that, the compensation sought is beyond the jurisdiction of the court, the court itself orders the appropriate court to look into the matter.

In the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court.

#3 Compensation in case of death

One might question the fact that, who is the victim where death has been caused? As the victim is already dead, who should be compensated for the crime?

It is the family of the victim. Think of the mental trauma they might have gone through. Medical expenses incurred, expenses during last rites. What if the victim who died was the sole bread earner of the family?

The Court is well aware of such situation. Therefore, the legislature and the judiciary tied their hands to do complete justice.

Victims are entitled to recover damages from the person sentenced for the loss resulting to them from such death. When any person is convicted of any offence for having caused the lives of another person or of having abetted the commission of such a crime.

#4 Compensation of victim of crime in offences like theft, cheating, criminal breach of trust, etc.

In cases of crime such as theft, cheating, criminal breach of trust, criminal misappropriation, the Court either tries for recovery of goods and in the case where recovery is not possible court orders for compensation for the price of such goods.

COMPENSATION WHERE FINE IS NOT A PART OF THE SENTENCE

The accused person in such case may be ordered by the court to pay a certain sum as compensation to the victim of crime who suffered loss or injury.

ANNEXURE VIII: SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION, REDRESSAL) ACT, 2013

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act was passed in India in 2013. It provides protection against sexual harassment of women at their workplaces and for the prevention and redressal of complaints of sexual harassment. It recognizes that sexual harassment results in the violation of a woman's fundamental right to equality under Articles 14, 15 and 21 of the Indian Constitution - which provide for equality under the law, prohibition of discrimination on grounds of religion, race, caste, sex or place of birth, and protection of life and personal liberty.

The framework and crucial aspects of this Act are as follows:

Important Definitions as per the Act

Aggrieved Woman: A woman of any age irrespective of her employment status who alleges to have been subjected to any act of sexual harassment at her workplace

Respondent: The person against whom the aggrieved woman has made a complaint of sexual harassment at workplace

Employee: A person employed at a workplace for any work on regular, temporary, ad hoc or daily wage basis, for remuneration or not, or whether terms of employment are expressed or implied.

Employer: Any person responsible for the management, supervision or control of a workplace, who is also responsible for the formulation and implementation of workplace policies. In relation to a residence or home, a person or family who employs or benefits from the employment of the domestic workers.

Workplace: Workplace is any place where working relationships exist. It constitutes but is not limited to:

- Offices -Workplace of an external client
- Premises of other organizations
- Hotels, restaurants, and other venues during official functions/events
- Work station of other employees
- Corridors
- Canteens/cafeteria/entertainment zone
- Official tours/field visits etc
- Factories and sweatshops
- Residential complexes, dwelling places or homes
- Lifts in the building
- Restrooms/toilets
- Co-working spaces
- Farms and fields
- Construction sites

WHAT IS SEXUAL HARASSMENT AT THE WORKPLACE

According to this Act, sexual harassment at workplace is defined as any unwelcome sexual behaviour of physical, verbal, non-verbal and visual nature at the workplace. There are four different forms of sexual harassment, which are substantiated below in this table:

Physical	Verbal	Non-Verbal	Visual
<ul style="list-style-type: none"> · Unwelcome hugging, sexual touching or kissing 	<ul style="list-style-type: none"> · Derogatory comments of a sexual nature 	<ul style="list-style-type: none"> · Staring 	<ul style="list-style-type: none"> · Presence of sexual visual materials, such as posters, cartoons, drawings, pinups, pictures, videos etc.
<ul style="list-style-type: none"> · Standing too close to or brushing up against another person, leaning over, invading a person's space 	<ul style="list-style-type: none"> · Sexual or gender-based jokes, singing songs and teasing of a sexual nature 	<ul style="list-style-type: none"> · Sizing up a person's body 	<ul style="list-style-type: none"> · Written material that is sexual in nature, such as notes or emails, containing sexual comments
<ul style="list-style-type: none"> · Patting, stroking, grabbing or pinching 	<ul style="list-style-type: none"> · Comments about clothing, personal behaviour, or a person's body 	<ul style="list-style-type: none"> · Sexually suggestive looks 	<ul style="list-style-type: none"> · Knick-knacks and other objects of sexual nature
<ul style="list-style-type: none"> · Blocking someone's path with the purpose of making a sexual advance 	<ul style="list-style-type: none"> · Requesting sexual favours 	<ul style="list-style-type: none"> · Facial expressions of a sexual nature; winking, licking lips 	<ul style="list-style-type: none"> · Sending sexually explicit messages, photos or videos via social media, emails, phone calls or WhatsApp.
<ul style="list-style-type: none"> · Stalking 	<ul style="list-style-type: none"> · Pressure for dates 	<ul style="list-style-type: none"> · Hand gestures of a sexual nature; showing the middle finger 	<ul style="list-style-type: none"> · Leaving unnamed or unmarked gifts of sexual or romantic nature for a colleague
<ul style="list-style-type: none"> · Rape or attempted rape 	<ul style="list-style-type: none"> · Graphic descriptions of pornography 		

<ul style="list-style-type: none"> · Actual or attempted sexual assault, or forced fondling 	<ul style="list-style-type: none"> · Obscene phone calls · Telling lies or spreading rumours about a person's personal or sex life · Turning work discussions to sexual topics (using "puns") 		
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According to the Act, all types of sexual harassment can be classified under two forms:

Quid Pro Quo	Hostile Work Environment
<p>Quid Pro Quo literally means "this for that", implying that employment decisions or expectations are based on an employee's willingness to grant or deny sexual favours. It occurs when:</p> <ol style="list-style-type: none"> 1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; <p>OR</p> <ol style="list-style-type: none"> 2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting that individual. 	<p>Hostile Work Environment is that which involves conditions or behaviours that makes the work environment 'hostile' for the women to be in. Such as:</p> <ol style="list-style-type: none"> 1) Conduct that interferes with an employee's work or creates an intimidating, hostile or offensive work environment; 2) Where verbal or non-verbal behaviour in the workplace focussed on the sexuality of another person or a person's gender; 3) Where verbal or non-verbal behaviour is severe or pervasive enough to affect the person's work environment such as safety and health; 4) Displaying of pornography, passing of sexist remarks, sharing of jokes that are full of obscenity/ double meaning, physical contact/ brushing against women colleagues are some of the examples of hostile work environment.

Mechanisms for Prevention, Prohibition and Redressal as per the Act

1) Internal Committee (IC)

All employers (private/government) are required to set up an Internal Committee (IC) for each of their office/branch where there are more than 10 employees. The role of the IC is to handle complaints of sexual harassment at workplace, conduct a fair inquiry of all cases and provide redressal.

Composition of IC:

- At least four members, out of which two should be women
- The presiding officer should be a senior woman employee
- A third party member who is familiar with issues related to sexual harassment at workplace.

2) Local Committee (LC)

Every District Officer must constitute a Local Committee (LC) to receive complaints of sexual harassment from workplaces having less than 10 employees. The role of the LC is to handle complaints of sexual harassment at such workplaces, conduct a fair inquiry of all cases and provide redressal. The protection of the LC also extends to informal sector workplaces, where often there are less than 10 employees and the work is of a casual nature. This includes the workplaces of domestic workers, construction workers, agricultural workers, daily wage workers, street vendors and home-based workers. In cases, where the complaint is against the senior-most handle such cases.

Composition of LC:

- At least 5 members, with 50% women membership
- The presiding officer should be a woman who has substantial experience working on this issue
- Two members from NGOs or trade unions
- An Ex Officio member who can be an officer dealing with the welfare of women and child development in the district.

Filing a Complaint

- Aggrieved woman can submit a complaint of sexual harassment to the IC or LC.
- The complaint must be submitted in writing. Assistance must be provided to the woman if she needs help in writing the complaint.
- The complaint should be submitted within a period of 3 months from the date of the incident. This may be extended to another 3 months if the woman can prove that grave circumstances prevented her from doing the same and the reasons must be recorded. If it's a series of incidents then the complaint must be filed within 3 months from the date of the last incident.

Inquiry into a Complaint

The Act confers the Committee with the powers of a civil court with respect to conducting an investigation. It can:

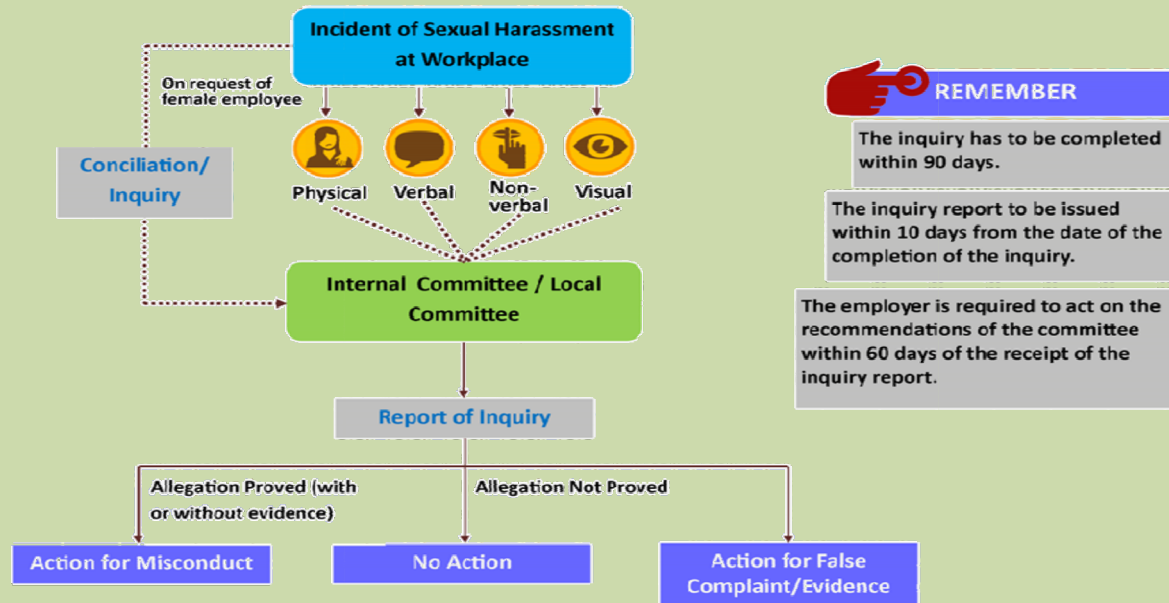
- Summon and enforce the attendance of any person
- Examine the individual on oath
- Require the discovery and production of documents essential to the case.
- No anonymous complaints against any individual should be accepted or action taken on the same
- Once a complaint of sexual harassment is brought to the committee, it must be registered immediately
- The Chairperson of the Committee should convene a meeting of the Committee within 48 hours of the receipt of complaint
- According to the principles of natural justice, the respondent should be informed of the complaint against him/her. Both parties should be given a fair chance of being heard.
- The inquiry has to be completed within a time period of 90 days upon receiving the complaint
- The inquiry report should be issued within 10 days from the date of the completion of the inquiry
- The employer is required to act on the recommendations of the committee within 60 days of the receipt of the inquiry report
- Committee can take steps to settle matters through conciliation before initiating an inquiry. The conciliation can only happen at the request of the aggrieved woman and money cannot be the basis of this settlement. If such conciliation takes place, a record of the same has to be sent to the employer or district officer.
- Where the committee concludes that the complaint is false/malicious, it must direct the employer or district authority to take action against the complainant.

Duties of an Employer

- All employers are responsible for maintaining a safe working environment, organize awareness and sensitization programmes for the employees, inform about them about the provisions of the act, develop relevant visual material like brochures, posters or notices to disseminate such information and make facilities for the Committee to conduct the inquiry.

LAW AT A GLANCE

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



According to the Indian law on *Sexual Harassment of Women (Prevention, Prohibition and Redressal) Act 2013*, State Governments are mandated to notify either of the following individuals to be a District Officer for each District to implement the requirements under the Act:

- District Magistrate
- Additional District Magistrate
- Collector
- Deputy Collector.

Every District Officer is mandated by the Act to constitute a Local Committee (LC) to receive complaints of sexual harassment from establishments where the Internal Committee (IC) has not been constituted due to having less than 10 employees, or if the complaint is against the senior most person in the workplace.

The District Officer is further mandated to designate one nodal officer in every block, taluka and tehsil in rural or tribal area and ward or municipality in the urban area, to receive complaints and forward it to the concerned LC within 7 days.

Points to remember for the Complaints Committee members

- No anonymous complaints against any individual should be accepted or action taken on the same
- Once a complaint of sexual harassment is brought to the committee, it must be registered immediately and a written complaint filed
- The Chairperson of the Internal Committee should convene a meeting of the Committee within 48 hours of the receipt of complaint
- A quorum should be maintained for the Complaints Committee meeting, which stipulates 50 per cent attendance of the members. The presence of Chairperson is mandatory
- According to the principles of natural justice:
 - The alleged harasser should be informed of the complaint against him/her. It is suggested that the harasser should be informed of the complaint against him/her via a formal charge sheet
 - On receipt of a formal charge sheet, s/he must submit his/her defense statement within the specified time frame. A time frame of 10 working days is suggested for the defendant to present his defense statement.

TRANSGENDER RIGHTS

In 2018, the Supreme Court of India decriminalised gay sex between consenting adults by reading down Section 377 of the Indian Penal Code (IPC). The judgment titled *Navtej Singh Johar & Ors. v. Union of India* was delivered by a five-judge bench of the Supreme Court.

A year later in December 2019, The Transgender Persons (Protection of Rights) Act received President's Assent. It defines a transgender person as:-

‘a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as kinner, hijra, aravani and jogta.’

It prohibits discrimination against transgender persons within their educational institutes, occupation, and accommodation amongst other things. It grants right for recognition of transgender identity and provides for application process for issuance of certificate of identity.

It provides grievance redressal mechanism for transgender persons; healthcare facilities including provisions of sex-reassignment surgery; and creation of a National Council for Transgender Persons. The Council shall advise the Central Government on formulation of policies and monitor and evaluate the impact of such policies.

This Act has been challenged in the Supreme Court of India recently; whereby it is stated that the Transgender Act violates transgender people's fundamental rights of life, liberty, privacy, autonomy and dignity guaranteed by the Constitution by forcing them undergo any medical procedure as a requirement for legal recognition of this identity.

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