



गृह मंत्रालय
MINISTRY OF
HOME AFFAIRS



Project Report
on
Crime Against Women : Investigation Techniques
(Project No. 03/MM:07)

Prepared by
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'Promoting Good Practices and Standards'



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Contents

1	Introduction	4
1.1	Gender Sensitisation	6
1.2	What is Crime against Women?	8
1.3	Review of Existing Modules/SOPs	9
1.4	Crimes against Women: An Overview	17
1.5	The Project	20
1.6	Situational Assessment and Problem Statement: Current Status	21
1.7	Critical Assumptions and Constraints	30
1.8	Implementation Strategy	34
2	Legal Framework	39
2.1	Introduction	40
2.2	Legal Provisions	41
2.3	Guidelines of Government of India and Supreme Court of India	54
3	Guidelines on Rape and Other Sexual Offences	60
3.1	Introduction	61
3.2	Instructions on SOPs	62
3.3	Supreme Court's Landmark Judgements	68
3.4	Annexure- 1 (One-Page Instructions for Doctors)	78
3.5	Annexure- 2 (Comprehensive Health Care Components: A Flowchart)	80
4	Investigation	81
4.1	Introduction	82
4.2	Process of Investigation	83
4.3	Investigation outside the Country	106
5	Modules of Standard Operating Procedures	113
5.1	Introduction	114
5.2	SOP on AHT	115

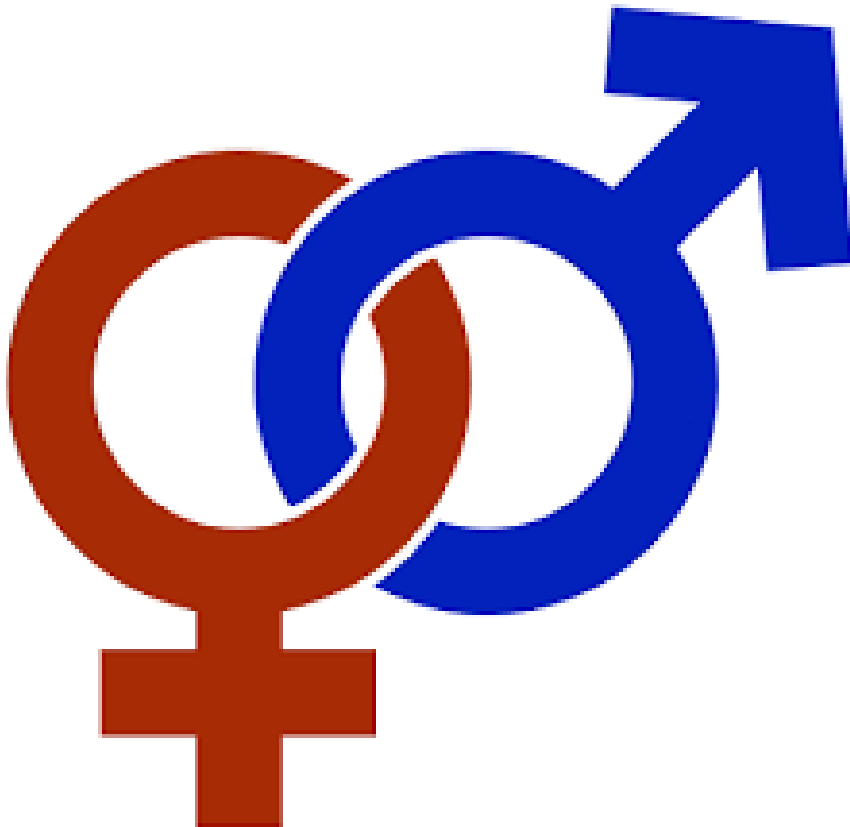


5.3	SOP of Dowry Deaths u/s 80 of BNS, earlier section 304(B) of IPC_____	128
5.4	SOP on Outrage of Modesty u/s 74 of BNS, earlier section 354 of IPC_____	136
5.5	SOP on Rape Cases u/s 64 of BNS, earlier section 376 of IPC _____	148
5.6	SOP on Section 85&86 of BNS, earlier Section 498(A) of IPC _____	160
5.7	SOP on Insult to Modesty of a Woman u/s 79 of BNS earlier section 509 of IPC_____	165
5.8	SOP on Acid Attack _____	169
6	References _____	180



Protocol-1

1 INTRODUCTION



***Freedom cannot be achieved unless women have
been emancipated from all forms of oppression.***

Nelson Mandela



It has been rightly said that no country can truly flourish if it stifles the potential of its women and deprives itself of the contribution of half of its citizens.¹ Optimum generation and utilisation of resources brings prosperity and affluence. Women and girls represent approximately half of the population and, in view of their contribution, they must be able to enjoy respect, dignity and a congenial atmosphere in every sphere of life.

Gender equality not only liberates women but also men. However, violence against women has become a global phenomenon and a problem, which needs to be redressed immediately. Women or girls who face any form of exploitation or violence generally approach the law enforcement authority first. However, they face many challenges in approaching the authority, which include a reluctance to issue an FIR, conduct of investigation, delay in receiving medical reports from experts and forensic laboratory, where investigation is under progress, attitudinal and behavioural approach of police, lack of institutional and infrastructural mechanism, unwillingness of witnesses to come forward and support the prosecution, and lack of stakeholder convergence and political influence. These are only few of the bottlenecks that need to be addressed. On the other hand, many women who face exploitation or violence generally do not come forward to report to the police often due to their own prevailing cultural, social, and economic pressures. Therefore, there is an urgent need to protect such victims during exigencies. One of the seven *Micro Missions* of BPR&D (Bureau of Police Research and Development), Micro Mission 7 (i.e., Gender Crimes and Gender-Related Issues) aims to bring a change in the approach of stakeholders in general and develop certain protocols in form of Standard Operating Procedures (SOPs) for investigation of crimes against women in order to ensure speedy and quality investigation. Present study includes identifying certain investigation techniques to deal with the cases using scientific aids and technology.

Women and girls represent approximately half of the population. Ensuring their dignity, pride, and a congenial atmosphere in every sphere of life is of paramount

¹ Remarks by Michelle Obama at Summit of the Mandela Washington Fellowship for Young African Leaders: 30th July 2014 (<https://obamawhitehouse.archives.gov/the-press-office/2014/07/30/remarks-first-lady-summit-mandela-washington-fellowship-young-african-le>)



1.1 GENDER SENSITISATION

1.1.1 Introduction

The Constitution of India focuses on two key concepts: equality and non-discrimination, which are fundamental rights guaranteed to every citizen. Gender sensitization includes basic concepts like difference between sex and gender, gender roles, gender stereotypes, gender division of labour, gender discrimination, gender-based violence, masculinity, patriarchy, gender equality, etc. Issues around gender are not just about women and men and how they interact, but also about the understanding of gender perspectives which include identity, labour, power and violence based on gender, as effective management of these issues will help not only in sensitizing people about curbing gender bias prevailing in the society, but also in empowering girls and women to achieve their goals. The objective behind imparting knowledge on gender sensitization is to bring about a change in people's mindset across various socio-economic strata. It would also help society deal with misconceptions and myths on one hand and create awareness on realities pertaining to anatomical and physiological changes on the other, which are inevitable in the two genders. It would hopefully bring modifications in people's behaviours and their understanding of what is right and wrong that develops around equality, accountability and empathy towards the other gender and ensures them eventually. As per the European Institute for Gender Equality, gender sensitivity refers to: *Aim of understanding and taking account of the societal and cultural factors involved in gender-based exclusion and discrimination in the most diverse spheres of public and private life.* The National Commission for Women of India brought out a module on gender sensitisation and the same may be referred to for details on the subject.

***The violence against women
exterminates torture that hurts
them physically,
psychologically, sexually, and
economically.***

Women face an uphill battle against sexism and gender-based violence that leads to steep inequality. In some areas, they are forced to deal with a culture that promotes primitive practices that endanger their physical and emotional identity. Street harassment, sexual discrimination, domestic violence & harassment and other gender-based social customs are both deplorable and disrespectful. Inappropriate expression of masculinity, violence against women and children and gender-based discrimination are all pernicious



orientation of our society today. Such a situation should not continue any longer. Each and every citizens of this country and official mechanisms must jointly strive to improve the situation and make the society better for all to live in with peace and dignity.

This requires consistency in our approach and efforts which must begin from our own homes. Once this happens, this will automatically spread to our neighbourhoods, workplaces, social groups, and to society as a whole. Role of each and every stakeholder dealing with the protection of women is important and significant and therefore, all of them ought to join hands to make our environment safe and secure for women. Violence against women is tantamount to a mix of discrimination and torture that hurts women physically, psychologically, sexually and economically. It is one of the pervasive forms of human-rights violation that denies equality, security, dignity, self-worth to women and these are in contradiction to the rights enshrined in our Constitution. Violence against women is often embedded in and indirectly supported by the existing social and cultural values, structures and practices, which have a reflection of a deep-rooted gender inequality and an ideology that discriminates and suppresses a gender. The situation is grim but can be altered, and this needs to be understood in a holistic manner.

1.1.2 Background

In the last two decades, women's engagement in economic activities, which is a key component of sustainability of peace in communities, has grown rapidly. However, women have also been facing formidable constraints vis-a-vis effective engagement in public life because of the threat or experience of sexual and gender-based discrimination and violence. Their physical security, therefore, is an essential prerequisite to their effective participation in nation-building. The responsibility of tackling challenges in making public and private life safe for women falls on various public institutions, amongst which police is pivotal. According to the UN, *with proper support, reformed police services can play a central role in promoting women's peace-building work*². The concept of gender sensitivity has been developed as a way to reduce the barriers to personal and economic development, created by sexism. Gender sensitivity helps in generating respect for the individuals of other sex. It is not about pitting women against men but educating them to be gender sensitive since this benefits members of both the sexes. It helps them determine valid gender-sensitive assumptions and decide what stereotyped generalizations are. Gender awareness requires

² Give reference of the resources – website or publication!



not only intellectual efforts but sensitivity and open-mindedness too. UN recognizes that security sector is the duty bearer to guarantee women's physical security –a right in itself and an essential pre-condition for women's enjoyment of all other rights.

1.1.3 Impact

Unchanged attitude and mentality of individuals results in some familiar obstacles to effective policing and abuse of women's rights which impacts their overall safety and security:

- underreporting by victims and witnesses;
- impunity for perpetrators by tacit social consensus;
- pressure to treat violence against women as domestic dispute which can and should be settled outside the criminal-justice system;
- tendency to regard child abuse as an internal family matter;
- stigmatizing women who experience sexual violence from known persons;
- blaming the victim for violence and abuse;
- isolating the victim post-trauma;
- treating abuse a matter of shame for the victim;
- crime against women, worse still, perpetrated by the police themselves, crime on streets to that in Police cell;
- gender-based discrimination and violence against policewomen themselves at the hands of their colleagues and so on

1.2 WHAT IS CRIME AGAINST WOMEN?

The Beijing Declaration¹ and Platform for Action defines violence against women as *any act of gender-based violence that results in or is likely to result in, physical, sexual, or psychological suffering to women or girls, including threats of such acts, coercion or arbitrary deprivation of liberty whether occurring in public or private life*. Violence against women is a manifestation of historically unequal relations between the two sexes, which have led to the discrimination against women and men's domination of women. Almost every country including India have legal framework and laws against domestic violence, sexual harassment and assault, and other forms of violence against women to deal with the problem effectively. Law enforcement agency of the state plays a key role in protecting women from harassment, violence and other crimes, designing a strategy to prevent crime



and initiating prompt punitive action against criminals. Most of the states in India are evincing sincere efforts on their own to protect women and to ensure a safe environment for them. However, investigation and delivery of justice in crime against women is not being executed timely and so this does not meet any international standards from the perspectives of response time, protection of victim and witness, high conviction rate, rehabilitation of victim, etc. Therefore, it appears necessary to review the existing procedure of various states so as to identify the gaps and develop a set of uniform protocols in the form of an SOP.

1.3 REVIEW OF EXISTING MODULES/ SOPs

A. Ending Violence against Women – A Practitioner’s Toolkit on Women’s Access to Justice 2

Programming

This *Practitioner’s Toolkit* was developed in the year 2018 to enable the protection of women and to end violence against them, speaking in general for public education to address stereotypes, access to health, housing, justice, training and education, employment birth registration and social protection. It is divided into five modules. Module 1 deals with the theory and practice of women’s access to justice programming to understand their overall status in the country, creating an enabling environment for their access to justice, effective accountable & gender responsive justice institutions and legal empowerment of women. Modules 2 to 4 briefly deal with legal empowerment of women with respect to marriages, family, and property rights (Module 2), ending of violence against women (Module 3), and women in conflict with the law (Module 4), and these primarily deal with legally empowering women by creating an enabling environment for their access to justice and creating effective, accountable and gender-responsive justice institutions. Module 5 deals with programming at country level through UNDAFs (UN Development Assistance Frameworks) and UNCTs (UN country teams) for cross-cutting issues and constrains in the implementation of programme for the protection of women.

The Toolkit deals with women’s participation in their legal empowerment and development of a system for consideration towards crisis-affected. It provides an overview and outline for countries to adopt policies to curb crime against women.

The Toolkit speaks for public education to address stereotypes, access to health, housing, justice, training & education, employment, birth registration & social protection



B. Comprehensive SOP for One-Stop Centre in Delhi ³

This SOP is one of the good practices introduced in Delhi towards the protection of women through a programme called *One Stop Centres*. This is a brief SOP for infrastructural facilities at such centres, and this has given three scenarios of means of information of violence against women and the response of personnel at one-stop centres, roles & responsibilities of counsellors, witness-protection, roles & responsibilities of police/public prosecutors and courts, compensation, publicity and awareness of SOP, etc.

This SOP (One Stop Centre) is one of the good practices introduced at Delhi for protection of women.

It elaborately covers the roles & responsibilities of all stakeholder departments, details of criminal laws pertaining to rape, acid attacks, domestic violence and other sexual offences. It created two levels of *one-stop centres* to provide and facilitate best humane, psychological, and medical treatment to the victims during investigation, trials and even thereafter. First tier is based in hospitals and healthcare centres and the second operates from the court complexes, coordinating with gender resource centres of Delhi.

C. SOP/Guidelines for Police Response and Investigation in Cases of Sexual Offence

This SOP has been issued with the objective of responding promptly and appropriately to calls or information pertaining to sexual offences and to initiate immediate legal action, giving critical importance for the investigation in cases of rape and collection of evidence. The document replicates almost all the procedures followed at *one-stop centre* in Delhi. This deals with relatively fewer number of offences and it is sufficient for a union territory like Pondicherry.

D. Legal Module: Gender Sensitisation and Legal Awareness Programme – National Commission for Women, New Delhi ⁴

This document is an academic curriculum on legal framework of crime against women. It is a ready reckoner containing legal framework and details of criminal acts. It also has information on cybercrimes against women, women and reproductive health rights, and procedural guidelines. The functions of National Commission for Women are also listed in this document.

E. Standard Operating Procedures on Trafficking of Persons for Commercial Sexual Exploitation for Law Enforcement Agencies, Government, and Non-Government Service Providers, 2016 ⁵



This document reproduced various protocols that have been suggested by the UNODC (United Nations Office on Drugs and Crime) and other SOPs on human trafficking and commercial sexual exploitation.

This document elaborately discusses trafficking of persons and various criminal acts and urges for the protection of victims. It specifically deals with the problem of missing persons and champions the need for an institutional mechanism and tool to trace missing persons. This document reproduces various protocols that have been suggested by the UNODC (United Nations Office on Drugs and Crime) and other SOPs developed on human trafficking and commercial sexual exploitation.

This document specifically covers various schemes of the government available for compensation to victims of commercial sexual exploitation and providing alternative livelihoods to them (see Chapters 6 and 7). It also discusses various commercial sexual exploitation reports of foreign countries and SOPs for conducting investigation

in cases of commercial sexual exploitation and collection of evidence and filing chargesheet in detail (see Chapters 10, 11, 12 & 13).

It also elaborately deals with victim protection (see Chapter 14) and SOPs to be observed during the trial of cases of sexual exploitation (see Chapter 16). This SOP is exclusive for human trafficking in general and sexual exploitation in particular.

F. Salient Features in Investigation, Prosecution, Trial of Cases, under POCSO Act 2012, Justice A. V. Chandrasekhar, Former Judge, High Court of Karnataka ⁶

Hon'ble Justice in this document categorically and specifically mentioned the POCSO Act of 2012. This document covers investigation to begin with and refers to the guidelines³ of Supreme Court of India. This valuable document can be deemed as a ready reckoner in investigation of cases under the (Protection of Children from Sexual Offences Act, 2012) POCSO Act.

G. SOP on Investigating Crimes of Trafficking for Commercial Sexual Exploitation

The SOP aims to empower investigators responding to and preventing crimes of human trafficking for commercial sexual exploitation. It helps supervisory officials

Justice A.V. Chandrasekhar suggested step by step methodology for investigation, prosecution, and trial of cases under POCSO Act 2012.

in

³ Sakshi's case reported in AIR 2004 SC (p.3566) and Gurmeet Singh's case reported in AIR 1996 SC (p.1393).



take appropriate and prompt action while dealing with trafficking crimes. As a comprehensive resource book, it is a useful tool to inform and empower victims regarding their specific rights. It also seeks to clarify and list out the legal procedures and practices that support and strengthen the process of AHT (anti-human trafficking). Certain SOPs are designed to help investigators conduct professional investigation that strives towards expeditious and effective law enforcement. This SOP provides a step-by-step approach in investigating crimes of human trafficking. References have been made to legal provisions and court rulings wherever appropriate.

H. Handbook on Effective Prosecution Responses to Violence against Women and Girls, 2014 7

This UNODC handbook, published in the year 2014, gives a comprehensive reflection on violence against women and girls and the role of criminal justice system in combating the issue. It deals elaborately with effective response of stakeholders against sexual offences and protection of victims, focusing on pre-trial procedures, evidentiary issues, trial considerations, role of prosecutors both pre and post-conviction. It also deals with restorative justice and violence and suggests the development of an institutional mechanism using proper policies and protocols to improve service delivery and develop coordination and stakeholders' capacities. It also addresses the issue of accountability through monitoring and evaluation of cases since inception.

I. Tackling Violence against Women: A Study of State Intervention Measures, 2017⁸

This 2017 report, created by the NGO *Bhartiya Stree Shakti* and funded by Ministry of Women and Child Development, Government of India, presented a comparative study of the impact of new laws, crime rate and reporting rate, and change in awareness level, elaborately discussing the realities of victims and beneficiaries, police officers and Police Stations, public prosecutors, medical officers, Nirbhaya-Fund officers & social counsellors and makes certain recommendations eventually.

The study was initiated post-Nirbhaya case and aimed to understand the scenario at field level in tackling crime against women and evaluate the challenges being faced by all stakeholders. The study focused on four states namely Maharashtra, Kerala, Uttar Pradesh and Delhi.

(1) Referring to the scenario of Police officers and Police Stations, it informs that trends in reporting of crime against women are influenced by various socio-cultural factors, judicial systems and individual attitude.



(2) It further informs that the rate of unreported sexual violence is far higher than what statistics indicate. However, it asserts that the situation has changed with the new amendments which address the provisions that earlier led to challenges in service delivery. The report adds that the behaviour and attitude of police in responding to cases of violence against women is of proactive nature and that the police are taking initiatives to help victims, which has encouraged the latter to come forward and report their trauma.

Public prosecutors are an independent entity. They play a vital role in protecting the interests of victims and also in creating sensitivity in their mind pertaining to availability of compensation facilities and free legal aid.

The report indicates that there are certain interpersonal barriers amongst healthcare providers such as linguistic and cultural barriers, misunderstandings about the victims' choice to stay with their abusers and psychological difficulties the victims face, which aggravate due to lack of referral sources and adequate procedures for screening. Such barriers prevent delivery of justice to victims and medical practitioners may also be unable to help them. This study can be considered a primary report on GAP analyses.

Micro Mission 7 also reviews various other modules and documents relevant to crimes against women, mostly human trafficking and sexual exploitation. However, many modules/documents did not cover select offences pertaining to women and did not provide comprehensive coverage of all offences. The present study does not cover that due to space constraints, however, it meticulously examines the guidelines issued by Government of India and various landmark judgements of the Supreme Court and other High Courts and includes such observations, guidelines, and instructions in brief.

J. SHE Teams Unit

Genesis

The Government of Telangana State vide G.O.Ms No.1, Women, Disabled and Senior Citizens (Schemes) Department, dated 22nd September 2014, constituted a committee consisting of senior officers from different services that include 4 IAS and 3 IPS officers under Shri Sunil Sharma, IAS, as convenor, to effectively implement various legislations meant for safety and security of girls and women in Telangana state and give suggestions on further changes/steps required in this direction. The committee, after elaborate discussions



and review of the existing legislations recommended both short-term and urgent measures that include creation of the following:

- 1) First response system through a helpline for women, with an additional 3-digit emergency helpline;
- 2) 24-hour one-stop support center in every district and in 3 zones of Greater Hyderabad Municipal Corporation;
- 3) Blueprint for women-friendly Police Stations;
- 4) Induction of more women in the Police department.; and
- 5) Specific suggestions to expedite investigation & Police response and setting-up of the following timelines:
 1. FSL (forensic science laboratory) reports – 10 days,
 2. Doctor's report – 3 days,
 3. Doctor's short opinion – 1 day,
 4. Potency test – 3 days,
 5. DNA test – 30 days,
 6. Chargesheet - 90 days,
 7. Fast-track Courts in all districts to deal with women/ girl-related heinous crimes,
 8. Videoconferencing to be made mandatory for rape victims,
 9. Conducting awareness campaigns,
 10. Women rickshaws on the lines of Delhi Police.

The committee also suggested an annual provision of funds to Police Stations towards conducting awareness campaigns in the range of Rs. 50,000/- to Rs. 2,00,000/-. It suggested various measures in its 62-page report, which may be browsed for details at [telangana.gov.in/women_safety\(final\).](http://telangana.gov.in/women_safety(final).)

SHE Teams

SHE Teams that stand for safety, health and environment, are rapid deployment units comprising women officers who work in small units





along with male officers. While the SHE Teams for Hyderabad city police⁴ were launched in 2014, the model was later extended to the whole of Telangana with the creation of a dedicated women safety wing at the state level.

Bharosa Centres

Bharosa Centre Hyderabad was started in May 2016 with the purpose to provide integrated support to women and children who are abused physically, sexually, financially, or emotionally. Victims approaching the Centre get unhindered access to all support services that they need to overcome their abusive and oppressive circumstances and lead a joyful life thereafter.

Key support services available to victims include the following:

1. Victims of rape and those under POCSO Act are sent to *Bharosa* Centre for carrying out mandatory medical examination u/s 180 of BNSS, earlier section 161 of CrPC and recording of statement u/s 183 of BNSS earlier section 164 of CrPC.
2. A woman Police officer at *Bharosa* Centre helps the victim with police assistance in filing an FIR/ DIR and in the follow-up with the concerned Police Station. She also records the statement for all rape victims, u/s 180 of BNSS, earlier section 161 of CrPC and as per the POCSO Act.
3. Section 183 of BNSS, earlier section 164 of CrPC provides for recording of statement via videoconferencing by the magistrate.
4. Permissions to set up a medical facility at *Bharosa* were obtained from the Health Department.

Currently 02 medical officers are deputed who provide assistance, conduct examination and collect medical evidence in the facility of *Bharosa*.

5. Onsite ANM (auxiliary nurse and midwife) provides immediate medical support to the



⁴ <https://www.hyderabadpolice.gov.in/SheTeams.html>



- victims in emergency and provides assistance to clients in the process of medical examination and evidence collection.
6. Every victim is assigned a well-trained counsellor who takes detailed notes of the situation, assesses the need, and facilitates further support based on the assessment.
 7. A legal counsellor is available to provide legal advice & support to facilitate legal process and take it to its logical end.
 8. Clinical psychologists provide therapeutic counselling to the victims and to the couple or the family in cases of domestic violence.
 9. Child victims of abuse and sexual assault are provided support in a child-friendly environment, that includes recording of the child's statement.
 10. Wherever victims are in need of expert or specialised services, they are referred by the panel.
 11. A child-friendly court has also been set up next to the *Bharosa* Centre as per the guidelines of POCSO Act and Supreme Court of India.
 12. *Bharosa* Centres now operate in 4 districts and commissionerates, and along with the existing *Sakhi* one-stop centres in the district, it continues to provide single-window support to victims.

Child-Friendly Court – Special Court for Trial of Offences under POCSO Act

Child-friendly Court, first of its kind in India, was established on 7th April 2018 in Hyderabad City as per the guidelines of POCSO Act and Supreme Court of India. It is a designated court to try cases of sexual offences against minors. It has the facility to comfort victims and facilitate their interaction with the judge and advocates.

Features of the Court

1. Not in regular court premises (different from other child-friendly courts in the country).
2. Two separate entrances.
3. Child-friendly waiting area.
4. Video linkage room.
5. Child-friendly court hall with a one-way mirror.
6. Separate room for the accused.
7. Legal support officer to take the case to its logical conclusion.



1.4 CRIMES AGAINST WOMEN - AN OVERVIEW

An overview of crimes against women and the present need for developing protocols/SOPs

***Mahatma Gandhi
opined that woman is
companion of man,
gifted with equal
mental capacities. She
has the right to
participate in activities
of man and she has an
equal right of freedom
and liberty with him.***

for investigation have been described with two relevant great quotes, one on equality and liberty of women with dignity of living, and the other on protection of women through institutional architecture and individual commitment. Father of the nation Mahatma Gandhi commented on women's status thus: *She is entitled a supreme place in her own sphere of activity as man is in his.* This ought to be normally accepted irrespective of the fact whether women know how to read and write. By the sheer force of our vicious social norms and customs, even the most ignorant and worthless among men enjoy superiority over women which they do not deserve and ought not to have. Many human movements

stop halfway and do not succeed because of the condition of our women.

Amartya Sen says: *'The idea of justice echoes that there is no automatic guarantee of success by the mere existence of democratic institutions'*. The success of democracy is not because of its most perfect institutional mechanism, but it rather depends inescapably on our actual behaviour and actions and on the functioning of political and social systems. So, institutional virtuosity alone cannot run and ensure democracy. The real success of state and our society depends on the activities of human beings who use the system to create welfare and more opportunities.

Similarly, Justice J. S. Verma, Chairman, Committee on Amendments to Criminal Law, observed that more than required legislation, failure of good governance was the obvious root cause of unsafe social environment. Justice Verma therefore implored the society to change their attitudes in order to improve the gender bias situation.

Institutions of governance may improve work culture but civil society needs to act and take sincere steps to improve social norms to realise the constitutional promises of equality and dignity of women in all spheres of their existence. The Committee further observed that workmen should improve their work culture instead of quarrelling with the tools and opined



that without an improvement in this aspect, mere additions in the statute book were of no avail.

1.4.1 Role of Police

Police investigation begins only when a complaint is lodged or an information is received about the occurrence of a cognizable crime. Whether a crime of sexual violence occurred in bedroom or in public square, investigators must engage a range of fact-finding efforts to produce evidence to elicit the truth.

Such fact-finding usually involves gathering of legally-relevant historical and circumstantial facts surrounding the crime as well as proof of its physical aspects. The latter includes forensic evidence such as material on the crime scene and DNA samples, which investigators and healthcare professionals collect and forward for analysis and use in the court of law.

It has been observed that despite stringent laws and prosecution system in India, everyday there are reports of incidents of physical or mental violence against women, at domestic or social levels, including those arising from customs, traditions and accepted practices. The process of bringing a complainant into the criminal justice system can be difficult and traumatising for many victims for different reasons.

Gender bias and discrimination is a major stumbling block for the Police and prosecutors. Various myths pertaining to such violence revolve around the system. Often victims do not report to the police and

at times even when they report, they do not receive the desired response. The response of police when a victim first approaches them is of supreme significance as this determines whether a victim chooses to initiate legal action or not.

The core objective of police investigations and timely response is to protect the victim and get the accused punished thereby sending a strong message to society that crimes against women and girls shall not be tolerated. Therefore it is important for police to appreciate the whole gamut of issues and feel accountable to protect the interest of victims. The approach of investigation of crime against women needs to be revisited and resolved to

The process of bringing a complainant into the criminal justice system can be a difficult and traumatising experience for many victims for different reasons.

The response by Police when the victim first approaches is of supreme importance



ensure safety and security of women. Huge protest and outcry in the aftermath of Nirbhaya case and Badaun gangrape case reaffirms the need for a holistic and coordinated approach focusing on swift and sensitive response from the legal system.

1.4.2 Genesis of Micro Mission

Under this background, the BPR&D, Government of India, had initiated Micro Mission 7 for developing investigation techniques in the form of protocols and SOPs for dealing with crimes against women. The scope of this Micro Mission was limited to analysing trends in crime against women in India, comprehend various guidelines, evaluate disposal of cases and suggest measures to reduce pendency and enhance accountability.

Expected outcome of the Micro Mission was a strategic approach for law-enforcement officers to investigate cases of crimes against women on international standards following the protocols/SOPs and ensure higher conviction rates. Methodology adopted in the Micro Mission was deductive and included an analysis of previous cases reported in the country and their disposal by the police and court. Field officers and other stakeholders were also consulted and their views taken into account.

The Mission acknowledges the contribution of various experts who brought out literature, strategies and guidelines which were also analysed and used in compiling this document. A detailed reference has been made available towards the end of the document which may be accessed by investigators for further reference and knowledge.

Structure of this document is divided into five protocols:

- i. Gender sensitization,
- ii. Legal framework,
- iii. Guidelines of Government of India and the judiciary,
- iv. General principles of investigation of crimes against women, and
- v. SOP for investigation of headwise crime.

Though it is divided into five segments, the fifth protocol (i.e. the SOP) has been elaborately and carefully designed, which includes the standards of investigation and procedures to facilitate officers investigating crimes against women.



1.4.3 Project Title

Crimes against Women: Investigation Techniques

1.4.4 Vision:

To develop victim centric and strategic approach to combat crime against women

1.4.5 Objective

1. To analyse the trends in crime against women in India and identify gaps in investigation,
2. To evaluate disposal of cases by the police and qualitative measures being taken to minimize crime, and
3. To suggest a strategic approach by developing protocols and SOP for investigation of cases of crime against women.

1.5 THE PROJECT

1.5.1 Purpose

Developing protocols/guidelines in form of SOPs for investigation of crimes against women

1.5.2 Sponsor

BPR&D, Government of India

1.5.3 Financial Benefits

1. It would save manhours in investigation and enhance focus of supervisory officers towards liquidation of pendency of cases under investigation.
2. It would improve the capacity of investigating officers, repose confidence among stakeholders and facilitate speedy, timely and qualitative investigation.
3. It would minimise response time, help the victims and ensure stakeholder convergence.



1.6 SITUATIONAL ASSESSMENT AND PROBLEM STATEMENT: CURRENT STATUS

More than half of the crime ratio is women-related

Most victims of rape are oblivious of their own living conditions

Large volume of cases is under investigation

Police disposal needs a strategy as well as accountability

Rate of chargesheet filing is only about 42.6 %

More than 90% of cases are pending for trial

Average conviction rate is as low as 23%

- **More than half of crime ratio is women-related.**

- A careful examination of ratio of crimes against women per lakh population indicates that in the year 2019, the ratio was 62.4% compared to 58.8% in the previous year. In 2016, 3,38,954 cases were reported under various heads. Similarly, in 2017 and 2018, 3,59,849 and 3,78,277 cases were reported respectively. In the year 2019, 4,05,851 cases were reported with an increase of 7.3% compared to 2018. Further analysis of crime against women reported in the year 2019 indicates that 30.9% suffered cruelty by their husband and/or his parents or relatives, 21.8% faced outrage of modesty & kidnap, 17.9% abduction, 17.9% rape, and 7.9%, among others.

2019

30.9%: cruelty against women

21.08%: Outrage of Modesty

17.9%: Kidnap and Abduction

07.9%: Rape



- **Most victims of rape are oblivious of their own living conditions.**
 - When the head wise crime reported during the year 2018 was analysed, it was revealed that out of a total of 33,977 cases of rape and 296 cases of gang rape reported in the country, the accused in 31,320 (i.e., 93.9%) cases are known to the victims. It was a surprising revelation that 2,780 were family members, 15,972 family friends & neighbours while the rest 12,568 were either live-in partners or online offenders. Data clearly indicated that victims were being fooled mostly by persons known to them and victims were unable to comprehend their actual living conditions. This led to a safer conclusion that women and girls needed proper awareness and gender sensitivity. It was also felt that for enforcement agencies to investigate such cases and repose confidence in the minds of victim against push and pull factors within the known circles was a herculean task.
- **Large volume of cases is under investigation.**
 - Analysis showed that as in the year 2019, there were 476586 cases of crime against women under investigation before the Police, which included 153139 cases from the previous year.
- **Police disposal needs a strategy as well as an accountability.**
 - Disposal of cases by Police in the year 2018 showed that 23,801 cases were treated as false, 27,873 with mistaken facts while police themselves referred a total of 79,948 cases due to various reasons. The situation needs to be verified and an accountability mechanism needs to be put in place to avoid the misuse of discretionary powers vested with the police. It was felt that supervisory officers essentially needed a strategic approach.
- **Rate of charge sheet filing is only 42.6%.**
 - Further analysis revealed that in 2,36,431 cases charge sheets were filed in courts in the current and previous years.
- **More than 90% cases are pending trial.**
 - Data showed that in the year 2018, **15,98,471** cases were pending trial in various courts. During the year, out of these cases, a total of **1,48,698** cases were disposed of, implying that 90.30% cases were pending trial. Considering the rate of pendency, it was hypothetically estimated that at this rate, it would take at least a decade to dispose old cases. It is to be noted that there would be additions of new charge sheets every year. So, the victims of crime against women have no other option but to wait for a decade, which is a matter of serious concern.

**93.9% are
offenders known
to the victim**

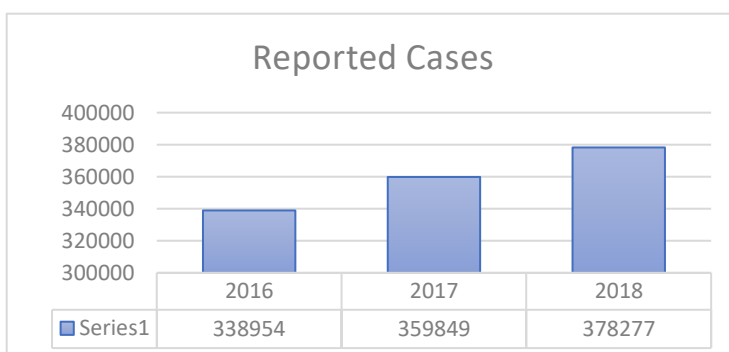


- **Average conviction rate is as low as 23%.**

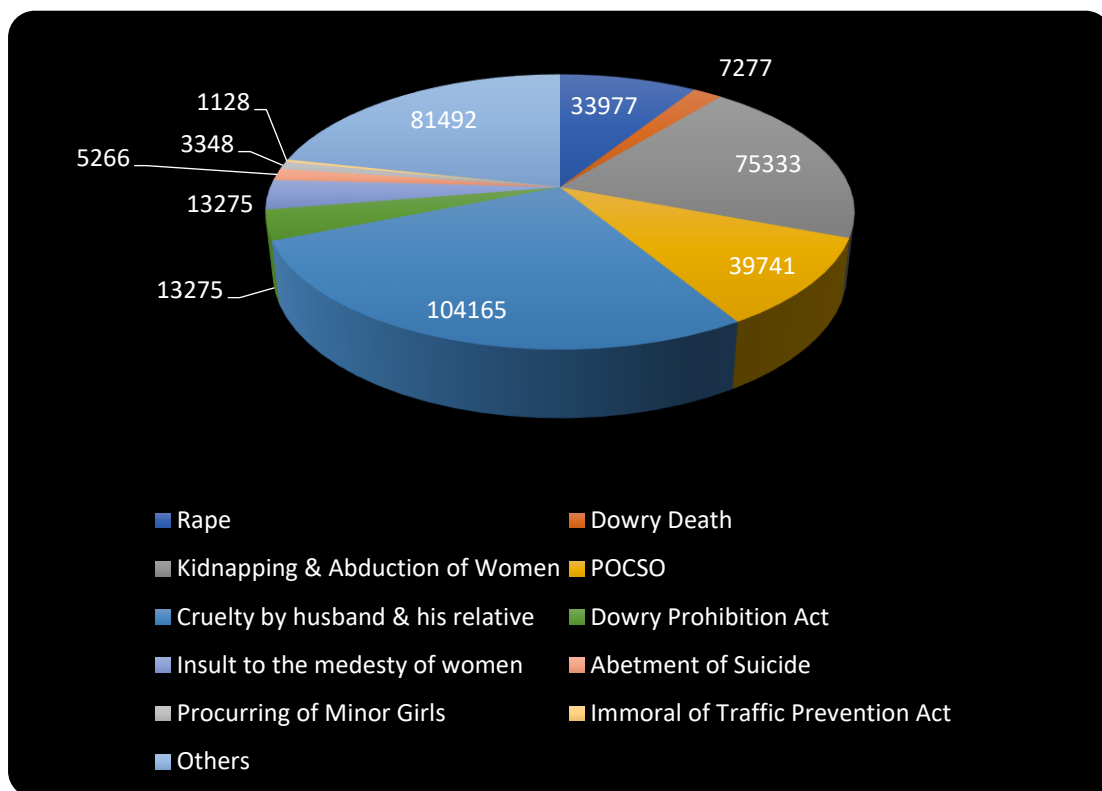
- Analysis of disposal of cases by courts in the year 2018 revealed that the average conviction rate was as low as 23%. The rate of conviction depends on the quality of investigation and justice is delivered only after a charge sheet results in conviction. It is necessary to work towards achieving a better conviction rate.

Crimes against Women – Data Analysis (2018)

- The cases of crime against women are about 58.8% of the total crime reported in India. During the years 2016, 2017 and 2018, 3,38,954, 3,59,849 and 3,78,277 cases were reported under various heads of the crime against women respectively.



CASES REPORTED HEAD WISE FOR THE YEAR 2018		
Sl. No.	Major Heads	Total
1	Rape	33,977
2	Dowry Death	7,277
3	Kidnapping & Abduction of Women	75,333
4	POCSO	39,741
5	Cruelty by Husband & His Relatives	1,04,165
6	Dowry Prohibition Act	13,275
7	Insult to Modesty of women	13,275
8	Abetment of Suicide	5,266
9	Procuring of Minor Girls	3,348
10	Immoral of Traffic Prevention Act	1,128
11	Others	81,492
Grand Total		3,78,277

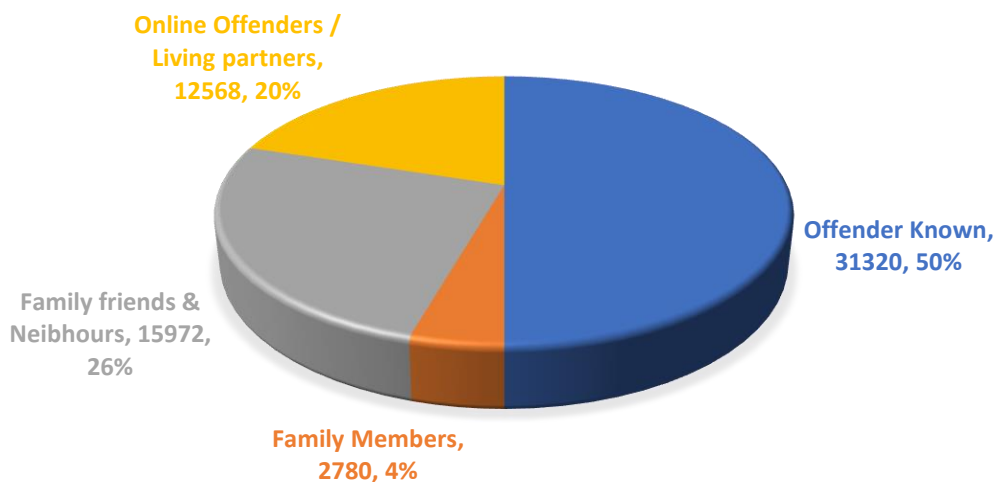


RAPE BY KNOWN OFFENDERS				
Offender Known	Family Members	Family Friends & Neighbours	Online Offenders/ Living partners	Rate %
31,320	2,780	15,972	12,568	93.9

- During the year 2018, 33,977 cases of rape and 296 cases of gang rape were reported in the country, of which accused in 31,320 (93.9%) cases were surprisingly known to the victims. Of these, 2,780 were family members and 15,972 were family friends and neighbours, while 12,568 were either online offenders or live-in partners.

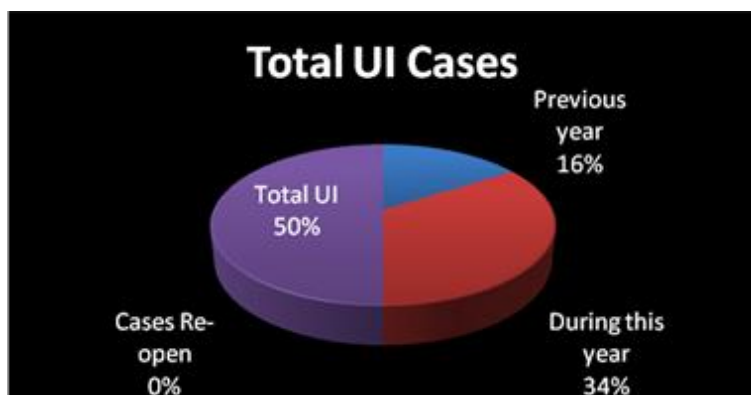


RAPE BY OFFENDERS KNOWN TO VICTIM



STATEMENT OF TOTAL UI CASES IN 2018

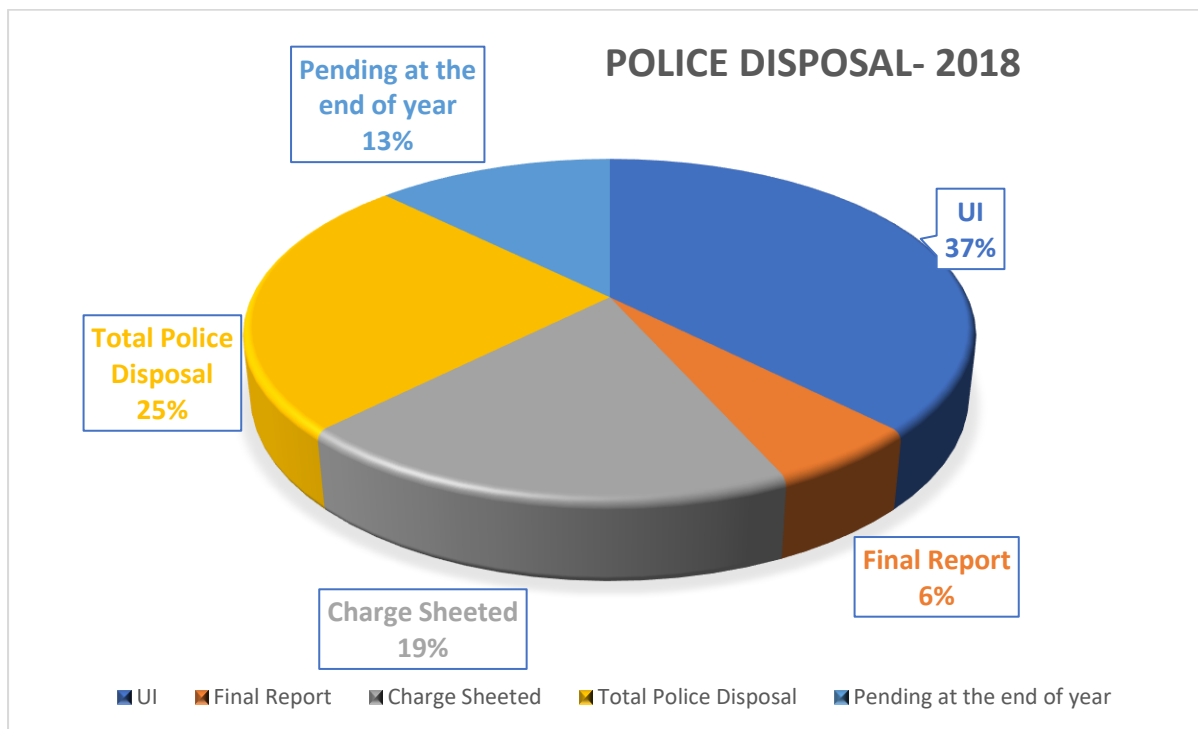
Previous Year	This Year	Cases Re-Open	Total
1,76,536	3,78,277	123	5,54,936



It was found that in the year 2018, 5,54,936 cases were under investigation, which included 76,536 cases from the previous year.



POLICE DISPOSAL IN 2018						
Total	Final Report	Charge Sheeted	Total Police Disposal	Pending at the Year End	Charge Sheeted %	Pending %
5,54,936	84,692	2,82,978	3,68,118	1,86,212	76.90%	33.60%



Final Reports by Police-2018

Sl. No.	Reason	Figure
1	FR Non Cognizable	547
2	False	24,716
3	Mistake of Fact	29,354
4	Lack of Evidence	28,893
5	Abated	1,182
	Total	84,692

Final reports by Police

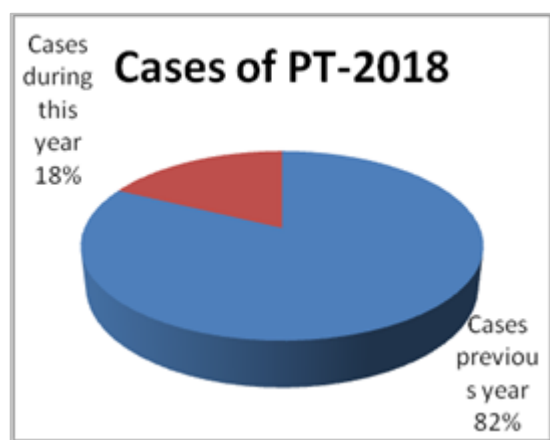
■ Final Report ■ Charge Sheeted

Category	Percentage
Final Report	23%
Charge Sheeted	77%



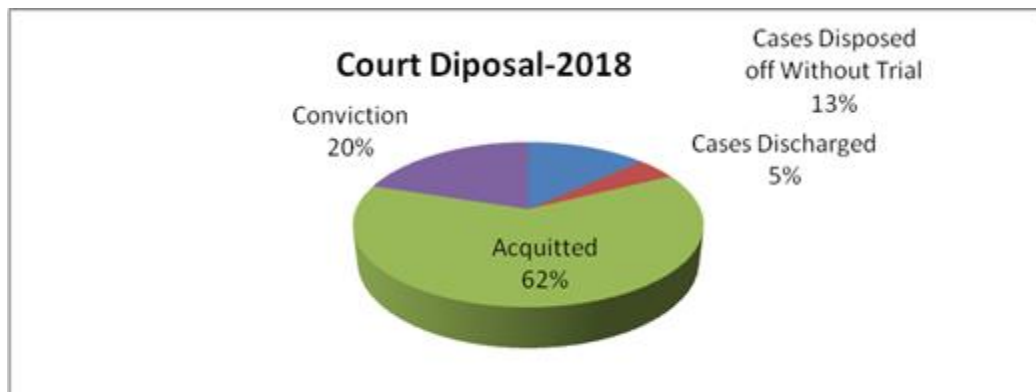
- According to the final reports filed by the Police, disposal of cases during the year 2018 showed that 24,716 cases were treated as false, 29,354 with mistake of fact, 28,893 with lack of evidence and 1,182 action abated while under investigation. Thus, Police referred about 23 to 25% cases which needed to be reviewed on a proper and regular basis to rule out the possibility of abuse of power by Police due to push and pull factors.

Total PT Cases in 2018		
Cases in Previous Year	Cases during this Year	Total
13,15,493	2,82,978	15,98,471



A careful analysis of PT cases in the year 2018 indicates that about 16 lakh cases were pending trial in different courts. Further, it was observed that about 28.3% cases were added to existing PT Cases of about 13.15 lakh cases from the previous year. This indicates that about 82% of cases are pending from the previous year and there is an addition of approximately 18% cases every year on an average. This indicates as to how justice is delayed both by the Police and the prosecution.

COURT DISPOSAL -2018				
Court Disposal	Disposed of without Trial	Discharged	Acquitted	Conviction
1,48,698	19,713	6,521	92,608	29,856



PT and Court Disposal at the End of 2018							
Disposed of without Trial	Conviction	Discharge	Acquitted	Disposal	Pending Trials (PT)	PT %	Conviction %
19,713	29,856	6,521	92,608	1,48,698	14,49,773	90.1	23.1

Analysis of the above data of court disposal at the end of 2018 revealed the following:

2,82,978 cases were charge sheeted in the year 2018 out of total under investigation (UI) cases, which included the cases from previous year.

In the year 2018, a total of 13,15,493 cases were pending trials (PT) pertaining to previous years. So, a total of 15,98,471 PT cases existed in various courts.

Out of the total PT cases, courts could dispose off 1,48,698 cases. So, 14,49,773 cases were still pending trials in the courts, making the pendency about 90%.

The analysis led to a conservative conclusion that it would take more than a decade to clear the pendency, which is an alarming situation and a matter of serious concern. This needs to be addressed immediately.

Rate of conviction, i.e., 23.1%, included the cases of disposal without trial, which accounted for 13% of the total cases. So, overall conviction rate is not satisfactory and it needs to be improved.



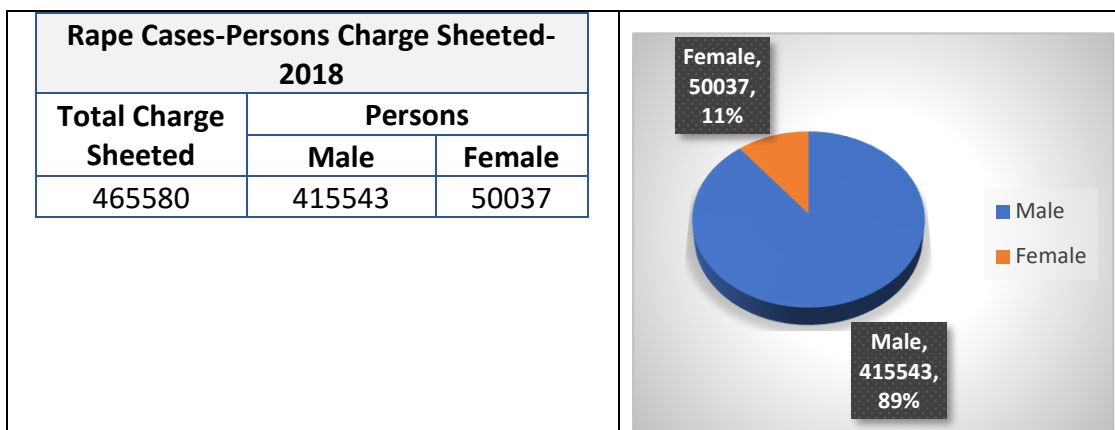
Analysis of Data on Rape Cases

UI Cases of Rape in 2018					
UI			Police Disposal		
Cases Reported	Cases from Previous Year	Total	FR	Charge Sheet	UI Cases Pending Trial at the End of 2018
33,356	13,726	47,139	4,841	28,469	13,829

Rape: Final Report by Police in 2018		
Sl. No.	Reason	Figure
1	Abated	75
2	Lack of Evidence	1,093
3	Mistake in Fact	767
4	False	2,875
5	Non-Cognizable	31
	Total	4,841

RAPE BY KNOWN OFFENDERS-2018			
Offender Known	Family Members	Family Friends & Neighbours	Online Offenders / Living partners and Live-in Partners
31320	2780	15972	12568





Rape: Court Disposal in 2018			
Total PT	Court Disposal	Conviction %	PT %
1,38,642	17,685	23.1	90.7

The analysis revealed that crime against women is steadily rising in India. The existing approach in handling investigation by police and court disposal leading to a marginal conviction rate and abnormal delay in investigation and court disposal necessitates a strategic approach to the matter on priority, a revisit of state heads to the matter, and a uniform and proven methodology.

1.7 CRITICAL ASSUMPTIONS AND CONSTRAINTS

As mentioned earlier, due to large volume of pending UI cases (5,54,936) on one hand and PT cases (15,98,471) on the other, the estimated time of more than a decade to liquidate pendency is an alarming situation. Further, more cases are added every year regularly. The principle of ‘justice delayed is justice denied’ would aptly apply to this situation. However, before addressing the assumptions, constraints can be broadly categorised as:



- a) There is inadequate institutional mechanism to address the matter meeting international standards, in both police and judiciary.
- b) Unpreparedness and casual attitude of police officials gave rise to the problem of delayed disposal of cases by the police and courts.
- c) Inefficiency was reported in the handling of cases of crime against women by the Investigative officers and the prosecutors, and capacity-building was found to be critical.
- d) There was non-convergence of stakeholders, lack of viable and strategic approaches, absence of sharing of best practices and a lack of coordination between states and law enforcement agencies.
- e) Developing institutional mechanism at state and district levels and providing infrastructural facilities with committed leadership would improve the situation.
- f) Lack of continuity was reported and a need was felt to have constant long- and short-term campaigns of creating awareness amongst women in particular and society in general.
- g) A mechanism is needed to develop strategy for speedy liquidation of UI and PT cases, using various modern approaches including IT.



Proposed Measures



It was hypothetically observed that overcoming the constraints mentioned above was not a herculean task if there was political will and committed leadership by adopting no cost and low-cost measures. Further, law enforcement agencies need to devise viable and implementable strategies through a mission-mode approach to ensure protection of women and their rights through friendly policing, partnering with domain experts & NGOs, sensitization of stakeholders, exclusion of marital offences, constitution of taluka & district-level judicial boards to handle marital offences and designation & creation of new courts to ensure timely registration and disposal of cases of crimes against women.

As stated earlier, the purpose of the micro mission was to carefully develop protocols/SOPs for investigation of crimes against women, focusing on capacity-building of investigators for prevention and timely response in dealing with such crimes meeting international standards. The accountability of each stakeholder was also fixed to create awareness amongst the state machineries.

It was hypothetically observed that overcoming the constraints mentioned above was not a herculean task if there was political will and committed leadership and an adoption of no cost and low-cost measures.



As mentioned earlier, the document is divided into five protocols which deal with the legal framework briefly covering international and Constitutional covenants to protect women's rights and provide safe and secure living standards to them. Protocols deal with all the legal provisions under Bharatiya Nyaya Sanhita (BNS), earlier Indian Penal Code (IPC), procedures under the Bharatiya Nagarik Suraksha Sanhita (BNSS), earlier Criminal Procedure Code and collection of evidence to ensure admissibility under the Bharatiya Sakshya Adhiniyam (BSA), earlier Indian Evidence Act. It also briefly covers the Criminal Law Amendment Act pertaining to crime against women and role of police officials in speedy completion of investigation and their mandatory obligations.

Protocol 3 deals briefly with guidelines and instructions issued by the Ministry of Home Affairs, Ministry of Women & Child Development, various Medical and Health Departments and National Human Rights Commission. It briefly covers the references to various landmark judgements of the apex court, particularly on heinous crime like rape, with a view to create legal awareness among Investigating officers.

The Module is divided into 5 Protocols:

- 1. Gender Sensitization***
- 2. Legal Framework***
- 3. Important Guidelines***
- 4. Investigative Procedures***
- 5. SOP Modules***

Protocol 4 explicitly deals with the legal procedures of criminal investigation, duties & powers of Investigating officers and their comprehension of the matter, the means of connecting the accused to the crime and collection of tangible and admissible scientific evidence to secure a higher conviction rate. This protocol briefly provides information on recent judgments of the apex court in its case assessment for criminal justice in sexual offences

vide *SMW (CRL) No. 4 of 2019* and various guidelines issued regarding registration of FIR, recording of victim's statement duly protecting their interests, issuance of zero FIR without jurisdictional barriers, prosecution against any negligent officer u/s 199 of BNS, earlier section 166A of IPC, procedures for recording of statement before the magistrate and medical examination & its procedures. Besides, the focus is also on the scene of crime, methodology for search and seizure, plan of action for collection of evidence, arrest of the accused, interrogation, search and seizure and timely preparation & filing of charge sheet, apart from monitoring the trial. This protocol is the backbone of every investigating officer with regard to scrupulous follow up and systematic completion of investigation. The last



protocol of this document deals with the SOP for investigating officers of crimes against women covering human trafficking, dowry deaths, outraging of modesty, rape, dowry harassment, criminal intimidation and acid attacks. It also envisages a step-by-step methodology regarding investigating procedures to be followed by the police. This will be a ready reckoner for investigating officers, prosecutors and all other stakeholders who deal with the prosecution of crimes against women.

As stated above, crimes against women are a global phenomenon that need to be tackled and redressed from every angle beginning from creating gender awareness and victim protection to developing a robust system of prosecution in order to ensure the dignity of women on par with men. Self-respect by definition is confidence and pride in knowing that your behaviour is both honourable and dignified. It is a greater understanding that needs to be imprinted on the mind of every citizen; that is, when you harass or vilify someone, you not only disrespect them, but disrespect yourself too. Law enforcement agencies being frontline warriors have to be more accountable with a victim-centric approach aimed at professional handling crimes against women.

1.8 IMPLEMENTATION STRATEGY

Firstly, the need is to implement the advisories issued earlier by the Government of India which *inter alia* include those on gender sensitization of Police personnel, adaptation of appropriate measures for swift and stringent punishment to public servants found guilty of custodial violence against women, minimization of delay in investigation of crimes against women, improvement in quality of investigation, capacity-building of Police officers, setting up of women protection cells, special women courts, counselling centres & shelter homes for women victims and improvement in the effectiveness of schemes developed for the welfare and rehabilitation of women victims with greater emphasis on income generation to make them independent and self-reliant.



Secondly, State Governments must be advised to undertake a comprehensive review of the effectiveness of their law-and-order machinery in tackling women's issues and taking appropriate measures to increase its responsiveness to the victims. It is pertinent to recall that though certain states have taken some measures in this respect, inputs regarding crime against women as specified in the problem statement indicate that these measures need to be further strengthened so that women feel secure, enjoy their rights and exist with the dignity they deserve. Further, various reports of the National Commission for Women point out that filing of FIRs even in heinous cases continues to be a problem and hence have issued recommendations in the form of guidelines which need to be implemented in letter and spirit.



Measures to be Taken

1. Crime-prone areas may be identified and a mechanism be put in place to monitor

Identification of Crime Prone areas

Preventive Measures through Tactful Policing

No Delay in of FIR

Implement Confidence Building Measures

Initiate Prompt Investigation, File Timely Chargesheet

Create Women Support Cells

Initiate Capacity Building Activities

Increase Women in Workforce

Enhance Coordination & Convergence

Put in Place Accountability Measures

infractions in schools/colleges to ensure safety and security of female students. Women Police officers, fully equipped with policing infrastructure, may be posted in adequate numbers in such areas.

2. There may be no delay whatsoever in registration of FIRs in all cases of crime against women.

3. All-out efforts may be made to apprehend the

accused named in the FIRs immediately so as to generate confidence among the victims and their families.

4. Cases should be thoroughly investigated and charge sheets against the accused be filed within three months from the date of commission of crime, without compromising on the quality of investigation. Medical examination of rape victims should be conducted without delay.
5. Helpline numbers of cells dealing with crime against women may be exhibited prominently in the premises of suitable public places including hospitals, schools and colleges.
6. Women Police cells may be within Police Stations and exclusive women Police Stations may be set up as required.
7. Police officers who are in-charge of protecting women should be sensitized adequately.



8. Police officers should be trained adequately in special laws dealing with atrocities against women. Enforcement aspect should be emphasized adequately so as to streamline the process.
9. Women Police officers may be recruited adequately in state police forces.
10. Close coordination may be ensured between the Police and NGOs dealing with women's issues.
11. Local Police should be arranged for patrolling affected areas, especially in localities inhabited by weaker sections of society. Periodic visits may be made by DMs and SPs to create a sense of safety and security among the people.
12. Thorough sessions of professional counsellors be made available to the victims as well as their family members to help them overcome the trauma.
13. There should be renewed focus on improving the effectiveness of schemes developed for the welfare and rehabilitation of women victims.
14. Compensation applicable to victims and free legal aid, victim protection, rehabilitation, etc., may be coordinated effectively.

1.8.1 Deliverables

Expected outcome is aimed at achieving the following deliverables:

Uniform Strategic Approach

- Reduce Pendency
- Improve Quality of Investigation
- Follow a Community Policing Approach
- Separate Marital Offences
- Set up Dedicated Courts
- Share Best Practices

There should be a uniformed strategic approach in all states to liquidate the pendency of all under-investigation cases within two years, which are pending since prior to 2018-19.

1. There should be an established mechanism to improve the quality of investigation and prosecution at the levels of state, district and taluka.
2. Capacity-building of stakeholders including Police and prosecutors be made by sensitizing them towards crime against women and its consequences.



3. People-friendly approach that include community policing should be the quintessence.
4. Marital offences be treated separately and special marital judicial dispute boards be created using appropriate political procedures to reduce the burden on regular courts.
5. Increase in conviction rate be ensured at least by 20% every year.
6. Sufficient funds be allocated in the budget for the protection of women and their empowerment.
7. All stakeholders be converged.
8. Best practices for qualitative and quantitative disposal as practiced in states like Telangana, be compiled and shared. Some such initiatives include:
 - a. *Bharosa* Centres
 - b. SHE Teams
 - c. Hawk Eye App
 - d. SHE Shuttles
 - e. SHE Cabs
 - f. Social Media Campaigns
 - g. Fast Track Courts
 - h. Plea Bargaining
 - i. Lok Adalat
9. Following steps are also recommended towards the implementation of basic tenets of this document:
 - a. States may be encouraged to nominate nodal officers who can help in promoting these protocols/SOPs in their State.
 - b. Circulation of these protocols/SOPs may be made after converting them into various formats such as PDF, MS PowerPoint, MS Word, printed copies, digital e-book, etc.
 - c. For the capacity-building of investigating officers, regional webinars of physical workshops may be organized.



Protocol 2

2 LEGAL FRAMEWORK



“Women are never stronger than when they arm themselves with their weaknesses”

Madam Mary DD



2.1 INTRODUCTION

The protocol/*legal framework for the investigation of crime against women* deals with the process of investigation and its interaction with the criminal justice system. Indian justice system is based on the principle that the suspected person/accused is innocent until proven guilty. A fair and effective criminal justice system is an integral part of crime investigation that builds public confidence and commands respect for law & order. In essence, crime investigation is a process by which the accused of a crime or intended crime is identified through the collection of evidence. Crimes have been defined in Bharatiya Nyaya Sanhita, earlier Indian Penal Code which also prescribes punishment for each of them. The Bharatiya Nagarik Suraksha Sanhita, earlier Criminal Procedure Code explains powers, duties, stipulated procedures of investigation for collection of evidence, search and seizure, arrest, interrogation & seizure of any material evidence and production of the accused before the court to establish prima facie evidence and also to conduct further investigation which should prove innocence or guilt of the accused.

A well-developed legal framework that clearly stipulates and defines the roles and responsibilities involved in crime investigation is a prerequisite for a criminal justice system

The criminal justice system demands an adherence to the principles of natural justice and fair trial before awarding punishment. Therefore, a well-developed legal framework that clearly stipulates and defines the roles & responsibilities involved in crime investigation is a prerequisite for any criminal justice system.

All Investigating officers are duty-bound to confine their activities in investigation within the legal framework. Collection of evidence is admissible only when proper procedure is followed. Report of investigation is only the beginning of prosecution where Investigating officers have to prove their finding admissible beyond reasonable doubt in normal course. Present protocol deals briefly with international laws, Constitutional obligations, Bharatiya Nyaya Sanhita (earlier Indian Penal Code), Bharatiya Nagarik Suraksha Sanhita (earlier Criminal Procedure Code), Bharatiya Sakshya Adhinyam (earlier Indian Evidence Act) and Criminal Law Amendment Act pertaining to crime against women. Objective of this protocol is to provide necessary assistance of legal framework in brief to the investigating officers. However, it shall be borne in mind that the provisions mentioned herein are not exhaustive. Officers are advised to refer to the actual legal provisions for detailed application.



2.2 LEGAL PROVISIONS

2.2.1 Constitutional Provisions

The Constitution of India in its Preamble envisages a 'sovereign, socialist, secular, democratic republic' which secures for all its citizens 'justice', 'liberty', & 'equality', and promotes 'fraternity' among them.

Article 15(1) and (2) prohibit the State from discriminating amongst citizens on the basis of religion, race, caste, sex and place of birth, or any of them.

Article 15(3) makes it possible for the State to create special provisions for protecting the interests of women and children.

Article 39 requires the State to direct its policy towards securing the **right to an adequate means of livelihood** [Article 39(a)], and **equal pay for equal work** [Article 39(d)] for men and women.

Article 39A directs the State to promote justice on the basis of equal opportunity and promote **free legal aid** through suitable legislation or scheme or in any other way to ensure that opportunities to secure justice are not denied to any citizen by the reason of economic or other disabilities.

Fundamental Duties under Article 51A (e) enjoin all citizens to renounce practices derogatory to the dignity of women.

2.2.2 Crimes Identified under IPC

Apart from Constitutional provisions, development policies, plans and programmes, Bharatiya Nyaya Sanhita, 2023 (BNS) [earlier Indian Penal Code, 1860 (IPC)], Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) [earlier Code of Criminal Procedure, 1873 (CrPC)], and Bharatiya Sakshya Adhinyam, 2023 (BSA) [earlier Indian Evidence Act, 1872 (IEA)], several legislations have a direct bearing on women. Despite various initiatives, crime against women continues to be a perennial problem and there exists a gap between the goals enunciated in the Constitution, legislations, policies, plans, programmes & related mechanisms on one hand and the situational reality of women in India on the other.

Crime against women is defined as: *any crime/offence under the IPC & other Special Acts/Laws wherein women are victimized*, which includes crimes under the following heads:

Dowry Murder	s. 85&86 and s. 103 (1) BNS , earlier s. 498(A), 302 IPC resp.
Dowry death	s. 80 BNS r/w 118 BSA, earlier s. 304 (B) IPC r/w 113B IEA



Abetment to Suicide	s. 85&86, 108 BNS r/w 117 BSA , earlier s. 498 (A), 306 IPC r/w 113A IEA
Dowry Harassment	s. 85&86 BNS, earlier s. 498(A) IPC
Murder	s. 103 (1) BNS, earlier s. 302 IPC
Rape	s. 64-70 BNS, earlier s. 376 IPC
Kidnapping	s. 137 (2), 140 (3), 97 BNS, earlier s. 363,365,369 IPC resp.
Outraging of Modesty	s. 74 BNS, earlier s. 354 IPC
Bigamy	s. 82 (1) BNS, earlier s. 494, 497 IPC
Insult, Modesty of Women by Acts or Gestures	s. 79 BNS, earlier s. 509 IPC
Acid Attacks	s. 118 (2)/ 109 BNS r/w 3(5)/ 150 BNS, earlier 326/307 IPC r/w 34 /123 IPC Sections resp.
Gang Rape	70 (1) BNS, earlier s. 376-D IPC
Obscenity and Indecent Representation (Sections 294, 295 & 296, earlier Sections 292, 293 & 294)	
Protection of Children from Sexual Offences Act 2012	
Protection of Women from Sexual Harassment at Workplace Act, 2013	
Trafficking of Women	
Indecent Representation of Women (Prohibition) Act, 1987	

Details of each crime head under IPC has been dealt with separately under Protocol 5. Investigation and procedural aspects in the cases of acid attack are briefly dealt under the head 'Acid Attacks' for better understanding of Investigating officers who are new to such offences.

Under the Indecent Representation of Women (Prohibition) Act, 1987, if an individual harasses another through books, photographs, paintings, films, pamphlets, packages, etc., containing 'indecent representation of women', she/he is liable for a minimum sentence of two years.

As per Section 6, 'Any person who contravenes the provisions of Section 3 and Section 4 of the Act shall be punishable on the first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and in the event of a second or subsequent conviction with imprisonment for term of not less than six months but which may extend to five years and also with a fine not less than ten thousand rupees but which may extend to rupees one lakh'.

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



2.2.3 Legal Provisions on Acid attacks

Section 326 of the IPC [Presently Section 118(2) of BNS] was amended on 2nd April 2013 with passing of the Criminal Laws (Amendment) Act, 2013, which resulted in the insertion of Sections 326-A and 326-B to specifically deal with acid violence.

Section 326-A [Presently section 124(1)]: Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person, or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine.

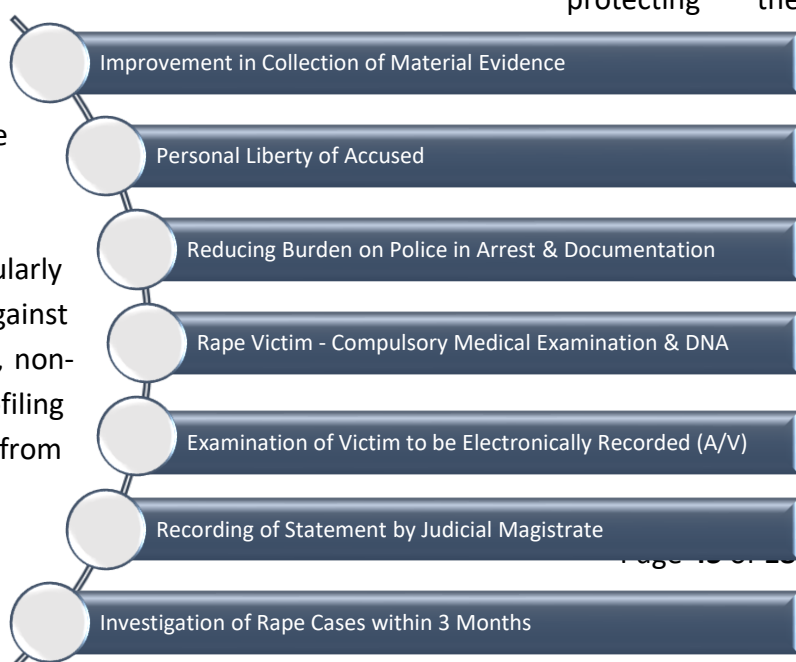
Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim. Provided further that any fine imposed under this Section shall be paid to the victim.

Section 326-B [Presently Section 124(2)]: Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity of burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years, but which may extend to seven years and also be liable to fine.

2.2.4 New Cr.PC Amendments of 2005/2009/2010

The amendments that were made from time to time are basically aimed at collection of material evidence, protecting the freedom and rights of the accused and making the investigating officer more accountable.

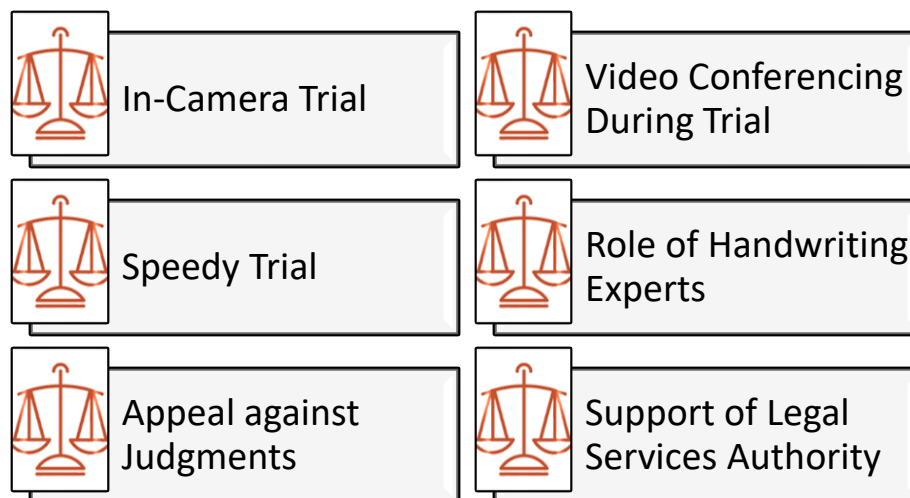
New amendments, particularly with respect to crime against women, medical examination, non-sexual offences and DNA profiling were made mandatory apart from





audio & video recording of statements of victims u/s 181 & 183 BNSS, earlier s. 162 & 164 CrPC. The amendments have also mandated a strict timeline for completing investigation in cases of rape within three months and conducting the trial in-camera by a woman magistrate and also for completing the trial as stipulated above.

Responsibility was also shouldered upon the medical officers and other experts like those from forensic science laboratory (FSL) to expedite the issue of their reports without any delay. Following amendments are explained below under each head:



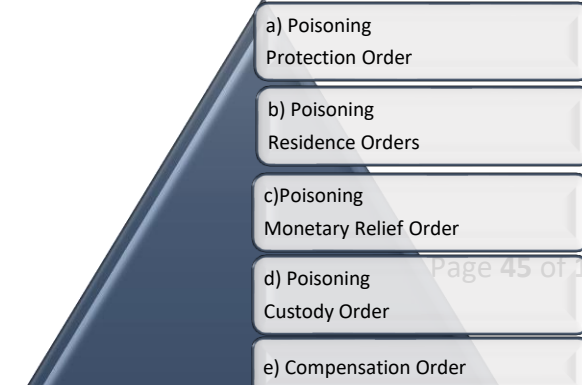
- (i) Improvement in collection of material evidence (Sections 51, 52 & 53 of BNSS, earlier Sections 53, 53A & 54 of CrPC resp.)
- (ii) Ensuring personal liberty of accused persons in accordance with the guidelines of Supreme Court in *D.K.Basu* case (Sections 36 to 38 BNSS, earlier Sections 41B to 41D CrPC)
- (iii) Reducing the burden of Police in the documentation of arrests, etc., where not required
- (iv) Reducing the burden of Police in the documentation of arrests, etc., where not required [Sections 35(3)-(6) of BNSS, earlier Sections 41A of CrPC]
- (v) Ensuring that investigating officers are more accountable while making arrests (Section 35 of BNSS, earlier Section 41(1) of CrPC) and recording reasons in writing.
- (vi) Compulsory medical examination of the rape case accused (Section 52 of BNSS, earlier Section 53A of CrPC) including DNA profiling and other body fluids examination (Section 51(2) of BNSS, earlier Section 53(2)(a) of CrPC)



- (vii) Enabling investigating officer to conduct audio-video recording of statements (Section 180 of BNSS, earlier Section 161 of CrPC) and precluding the personal appearance of the victims/accused before the officer if need be.
- (viii) Statements u/s 183 of BNSS, earlier s. 164 of CrPC need to be recorded.
- (ix) Completion of investigation of child rape cases within three months irrespective of the receipt of medical report (Section 193 of BNSS, earlier Section 173 of CrPC)
- (x) Conducting 'in-camera trial' in rape cases as far as possible with women judges or magistrates (Section 366 of BNSS, earlier Sections 327A and 327(2) of CrPC)
- (xi) Video-Conferencing u/s 310 of BNSS, earlier s. 275(1) of CrPC enables the court to record evidence of a witness by audio, video, electronic means, etc., in the presence of the advocate of the person accused of the offence (CrPC Amendment Act, 2008 with effect from 31st December 2009).
- (xii) Speedy trial ensuring speedy justice delivery by courts (Section 346 of BNSS, earlier Section 309 of CrPC), empowering trial courts not to adjourn cases unnecessarily and examine witnesses when they attend court. Section 346 of BNSS, earlier Section 309(2) of CrPC enables speedy trial, i.e. if witnesses are in attendance, no court shall grant adjournment or postponement without examining them except for special reasons to be recorded in writing.
- (xiii) Handwriting Expert: Court is empowered u/s 349 of BNSS, earlier Section 311(a) of CrPC with effect from 23rd June 2006, to obtain signatures or sample handwritings of any person including that of the accused for the purpose of investigation.
- (xiv) Enabling the victims to prefer an appeal against any order pronounced by court either in acquittal of the accused or their conviction for lesser offence or imposition of inadequate compensation (Section 413 of BNSS, earlier Section 372 of CrPC).
- (xv) Enabling courts & legal services authorities to grant compensation for the victims (Section 396 of BNSS, earlier Section 357A of CrPC) presupposes a sanction of adequate budget for the victims.

2.2.5 Protection of Women from Domestic Violence Act (DV), 2006

Every law enforcement officer may note that the Act is basically of civil

- 
- a) Poisoning
Protection Order
 - b) Poisoning
Residence Orders
 - c) Poisoning
Monetary Relief Order
 - d) Poisoning
Custody Order
 - e) Compensation Order



nature, intended to render quick civil relief like protection order, residence order, monetary relief order, custody order and compensation order, of which breach of protection order alone is a cognizable and nonbailable offence. However, this does not preclude the Police from initiating legal action in all cognizable offences.

State governments have appointed Project Directors of their Women and Child Welfare Departments as *protection officers* in all their respective districts. However nomenclature may vary from State to State.

Protection officers are empowered to file *domestic incident reports* (DIR) in magisterial courts in a prescribed proforma for the relief mentioned in the above diagram.

2.2.5.1 The aggrieved person (the affected woman) will be the petitioner

The aggrieved person is supported by the Government counsel nominated by the Legal Services Authority of the respective district. Within three days interim orders can be given by the magistrate and final orders be given by a trial court preferably within 60 days only; breach of protection order is cognizable u/s 31 r/w 32 of the DV Act, 2006. Police officers are empowered to register FIRs. The case is a summary trial. Sole evidence of an aggrieved person is adequate for initiation of legal action.

2.2.5.2 Duties of Police

- 1) As soon as a complaint is received, Police shall inform the aggrieved person (Section 5)
 - a) Of her right to make an application for obtaining a relief by way of a protection order, an order for monetary relief, a custody order, a residence order, a compensation order or more than one such order under this Act.
 - b) Of the availability of services of service providers.
 - c) Of the availability of services of protection officers.
 - d) Of her right to free legal services under the Legal Services Authority Act.
 - e) Of her right to file a complaint u/s 85 of the Bharatiya Nyaya Sanhita, earlier s. 498A of the Indian Penal Code, wherever relevant.
- 2) Further, if from the content of the complaint, ingredients of cognizable offence under IPC or any other Act are revealed then she/he shall be informed of her right to initiate criminal proceedings by lodging an FIR. But if the aggrieved person does not want to initiate criminal proceedings, then a daily diary entry (general diary entry) may be made to this effect that the complainant wants to pursue civil remedy.
 - a) Assist the victim in making domestic incident report (DIR) in the prescribed form and forward it to the magistrate through protection officer (PO) or service provider or victim can directly represent to the magistrate for passing an appropriate Protection



Order as prayed by her or as deemed fit by the court. Vide G.O. No. 22 (Ref. 2nd cited), Project Directors of Women & Child Welfare Department, Government of Andhra Pradesh, are designated as Protection Officers.

- b) Take the victim to hospital for proper medical aid, if necessary.
- c) Protect the victim: Police shall provide protection to the aggrieved person if so directed by the Court (Section 19).
- d) Assist in implementation: Police shall assist in the implementation of the Protection Order if directed by the Court (Section 19).
- e) In emergency, if PO feels the necessity of Police assistance, Police shall visit the place of occurrence and render all possible help in recording the DIR on-site (Rule 9).
- f) PO can seek Police assistance in confiscating the weapon used by the respondent in the act of domestic violence [Rule 10(f)].
- g) Aggrieved person or PO may report the breach of protection order to the Police for initiating action u/s 31/32 [Rule (15)] and for issuance of FIR, as such offence is of cognizable nature and nonbailable one, punishable with an imprisonment of up to one year or a fine of up to Rs. 20,000/-.
- h) If a PO prepares a DIR, he/she shall forward copies of the same to the in-charge of the Police Station within the local limits of whose jurisdiction domestic violence is alleged to have been committed (Section 9).

2.2.6 Legal Provisions on Ragging

The Supreme Court has perhaps given a more comprehensive meaning of ragging:

‘Ragging is any disorderly conduct, whether by words spoken or written, or by an act which has the effect of teasing, treating or handling with rudeness any student, indulging in rowdy or indisciplined activities which cause or are likely to cause annoyance, hardship or psychological harm or to raise fear or apprehension thereof in a fresher or a junior student and which has the effect of causing or generating a sense of shame or embarrassment so as to adversely affect the psyche of a fresher or a junior student.’

2.2.6.1 Origin of Ragging

Ragging may appear to be an integral aspect of the Indian educational environment today but surprisingly it is a western concept by origin. Ragging is supposed to have its origin in certain European Universities where seniors played practical jokes at the time of welcoming freshmen to the institutions. Gradually, the practice became popular throughout the world. However, with time, ragging has assumed obnoxious and harmful connotations and hence is



severely

condemned.

Today, almost all countries of the world have enacted stern laws to ban ragging and it has been completely eradicated in countries such as Canada and Japan. But sadly, India, which inherited ragging as a legacy from the British, has not been able to free itself from the clutches of this inhuman practice. It can be said without any room for doubt, that the worst forms of ragging are operational in India. In fact, according to a research conducted by CURE , India and Sri Lanka are the only countries in the world, where ragging exists.

2.2.6.2 Forms of Ragging

It is said that human imagination knows no bounds. And when it comes to ragging, it can again be said that perverted human imagination too knows no bounds. From what was intended to provide good humour and harmless fun to students, ragging today has assumed torturous, vulgar and inhuman forms that defy all social norms of decency and morality. Some of the most popular forms of ragging in colleges are:

- 1) Dress-Code: Freshmen are asked to dress in a specific dress code for a particular period of time. But this isn't as easy as it seems as the dress code prescribed is generally weird e.g., dressing totally in white or black with the hair oiled and combed in a particular style. Dress code ragging often makes freshmen feel awkward and uncomfortable since it brings them unnecessary attention from everybody.
- 2) Formal Introduction: This involves asking freshmen to introduce themselves in *shuddh* ('pure') Hindi. An introduction includes the name, address, school, marks, etc.
- 3) Verbal Torture: Verbal torture involves indulging in loose talk. Freshmen are asked to sing any vulgar song or use abusive language while talking to their seniors.
- 4) Sexual Abuse: This is the severest form of ragging that takes place in colleges. Seniors are mainly interested in 'juicy' details such as the anatomical description of one's body parts, his or her sexual interests, etc. In many cases, freshmen are even asked to strip before their seniors.
- 5) Playing the Fool: Freshmen are asked to enact scenes from a particular movie or mimic a particular film star. In many cases, seniors may also ask the freshmen to do silly things like climbing a tree, kissing a tree, proposing to someone from the opposite sex, etc.



- 6) Hostel Ragging: Outstation students who stay in hostel are the most vulnerable to ragging. They are often asked to do all odd jobs, from cleaning their seniors' rooms to washing their clothes, from fetching water or milk for seniors to completing the seniors' assignments.
- 7) Substance Abuse: In this heinous form of ragging wherein freshmen are forced to try narcotics, which may drive them to addiction.

2.2.6.3 Prohibition of Ragging

- (a) Ragging is prohibited within or outside any educational institution.
- (b) Principals/Heads of institutions shall obtain an undertaking in writing from the students/parents at the time of admission that they shall not indulge in ragging inside or outside the institution.
- (c) Full publicity should be given to the punishment for ragging by displaying open circulars and suitable posters in the premises of colleges, hostels, etc., by the principals/heads of institutions.
- (d) Principals/Heads of institutions shall constitute anti-ragging squads comprising teachers and students to prevent ragging in the institutional premises.
- (e) Principals/Heads of institutions shall lodge a criminal case against students indulging in ragging in order to take action against them. Certain guidelines that are helpful in preventing ragging in educational institutions have been illustrated in the annexure to these rules.

2.2.6.4 Responsibility of the Head of Institution

- 1) At the commencement of academic session, institutions should constitute a proctorial committee comprising senior faculty members and hostel authorities like warden and a few responsible senior students—
 - a) To keep a constant watch and vigil so as to prevent occurrence & recurrence of ragging
 - b) To promptly deal with incidents of ragging brought to notice and summarily punish the guilty itself or by putting forth its findings/recommendations/suggestions before the competent authority for necessary decisions and actions, and
 - c) To identify and watch all vulnerable locations.
- 2) Local communities, particularly students, must be made aware of the dehumanizing effects of ragging and inherent perversity of perpetrators. Notice boards, signboards and all other suitable public spaces, whichever necessary, may be used for the purpose.
- 3) Failure to prevent ragging should be construed as an act of negligence in maintaining discipline in the institution on part of the management, principal and other competent



authority in the institution. Similar responsibility shall be liable to be fixed on hostel wardens/superintendents.

- 4) Whenever a student complains of ragging to the head of institution, the head shall enquire into the same forthwith and if the complaint is prima facie found to be true, she/he shall suspend the student(s) against whom complaint has been made or received, for such period as may be deemed necessary.
- 5) Decision of the head of institution or the person responsible for the management of the institution is final.
- 6) If an institution fails to curb ragging, the funding agency shall consider stoppage of financial assistance to that institution till the situation is under control. University shall consider disaffiliating a college or institution that fails to curb ragging. All Universities shall bring these guidelines to the notice of all educational institutions under their control and jurisdiction. Publicity may also be given by Universities through press notes.

2.2.6.5 Penalty for Ragging

- 1) Whoever with the intention of causing ragging or with the knowledge that she/he is likely by such act to cause ragging, commits or abets ragging shall be punishable as per Andhra Pradesh Prohibition of Ragging Act, 1997 ('Act 26 of 1997').
- 2) Students convicted of an offence u/s 4 of Act 26 of 1997 and punished with an imprisonment for a term shall be dismissed from the educational institution.
- 3) Students convicted of an offence u/s 4 of Act 26 of 1997 and punished with an imprisonment for a term for more than six months shall not be admitted in any other educational institution.
- 4) Students dismissed from a college for ragging should be debarred from seeking admission in any other course of study in any college or University located in the State.
- 5) There shall be an unobliterable embossment on the marks cards and other academic certificates of students involved in ragging in bold letters that they had indulged in ragging and had conducted themselves in a manner unbecoming of a student.

2.2.6.6 Supreme Court of India Guidelines pertaining to Ragging

The Supreme Court of India, in its judgement dated 12th June 2009 in C.A.No.887/2009, had held that it became necessary that the recommendations made by the Raghavan Committee be implemented immediately in view of the then recent incidents of ragging. State governments issued certain guidelines and constituted committees to handle cases of acid attacks.



1. In-Camera Trial

Trial shall be conducted preferably by a woman judge or magistrate as per Section 366 of BNSS, earlier Section 327 (2) of CrPC with in-camera trial being the rule and open trial being an exception.

2. Videoconferencing

As per Section 310 of BNSS, earlier Section 275(1) of CrPC, evidence of a witness may also be recorded in audio-video or electronic means, in presence of advocate of the person accused of the offence.

3. Victim Compensation Scheme/Rehabilitation

As per Section 396(3) of BNSS, earlier Section 357-A(3) of CrPC, a victim who has suffered loss or injury as a result of crime is eligible for compensation and rehabilitation. In case of award of inadequate compensation, the Investigating officer should send a report to the District Magistrate with case documents such as FIR, along with the medical and Police reports, for claiming the required monetary relief. In the state of Andhra Pradesh, Rs. 50,000/- is given in accordance with *G.O. MS No. 28 of WDCW & DW (Prog) Dept.*, dated 4th July 2003.

As per Section 396 of BNSS, earlier Section 357-A of CrPC, the State government shall prepare a scheme for providing funds in coordination with the Central government towards compensation to victims or their dependants owing to their loss and injury as a result of crime and for the purpose of rehabilitation. The Investigating officer should send a report to the District Secretary of Legal Services Authority for payment of victims' compensation u/s 396 of BNSS, earlier s. 357-A of CrPC. Victims are eligible for compensation even if the trial has not commenced as per the Section 396(4) of BNSS, earlier Section 357-A(4) of CrPC.

4. Right to Prefer An Appeal

Victim of a rape case has a right to prefer an appeal in case of acquittal or conviction of the accused for lesser offence or grant of inadequate compensation as per Section 413 of BNSS, earlier Section 372 of CrPC.

Section 120 of Bharatiya Sakshya Adhiniyam, earlier Section 114A of Evidence Act i.e. burden of proof - presumption as to absence of consent: If a victim states in her evidence before the court that she did not consent, the court shall presume that she did not consent pertaining to



Section 64 of BNS, earlier Section 376(2)(a),(b),(c),(d),(e)&(g) of IPC; the punishment is not less than 7 years, but it can be upto 10 years or life.

5. 8.12 Burden of Proof

Section 117 of Bharatiya Sakshya Adhiniyam, earlier Section 113A of Evidence Act: Presumption as to abetment to suicide by a married woman within a period of 7 years from the date of marriage - subjecting her to cruelty by husband or relatives [Section 108 of BNS, earlier Section 306 of IPC] – punishable up to 10 years.

Section 118 of Bharatiya Sakshya Adhiniyam, earlier Section 113B of Evidence Act: Presumption as to dowry death subjecting a woman soon before her death to cruelty or harassment for or in connection with any demand for dowry.

Section 80 of BNS, earlier Section 304B of IPC: Death of a woman caused by any burns or bodily injury or occurs otherwise than under normal circumstances within 7 years of her marriage – soon before her death she was subjected to cruelty by her husband or any relative for dowry –imprisonment of not less than 7 years which may extend to life.

Victim is entitled for medical examination u/s 15(5A) of ITP Act to determine her age and treatment of injuries and STDs (sexually transmitted diseases). Investigating officers are empowered to enter and search brothel houses without warrant as per Section 15 of ITP Act after recording the grounds in writing. They are also empowered to issue summons to witnesses as per Section 15(2) of ITP Act in order to attend and witness the search. Medical examination is necessary when a child or minor is detained for the purpose of prostitution as per Section 6(2A) of ITP Act. Investigating officers should rescue all the persons as they are responsible to remove them when found.

2.2.6.7 Implementation Strategy

First, the need is to implement the advisories issued earlier by Government of India from time to time which *inter alia* include gender sensitization of Police personnel, adapting appropriate measures for swift and stringent punishment to public servants found guilty of custodial violence against women, minimizing delay in investigation of crimes against women, improving quality of investigation by building the capacities of Police officers, setting up of women protection cells in all the districts where they do not exist, providing adequate counselling centres and shelter homes for women who have been victimized, setting up of special women courts and improving effectiveness of schemes developed for the welfare and rehabilitation of women who are victimized with greater emphasis on income generation to make them more independent and self-reliant.



Second, to emphasize and advise State Governments to undertake a comprehensive review of effectiveness of the machinery in tackling the problem of women and to take appropriate measures aimed at increasing the responsiveness of the law & order machinery. It is pertinent to mention here that though certain States have no doubt taken some measures in the regard, inputs regarding crimes against women as enumerated in the problem statement indicate that these measures need to further strengthening so that womenfolk feel secure, enjoy their rights and live their life with dignity and respect that they deserve. Further, various reports of National Commission for Women point out that filing of FIRs even in heinous cases continues to be a problem and have submitted their recommendations as a guideline. These guidelines needs to be implemented in letter and spirit.

1. Crime prone areas should be identified and a mechanism be put in place to monitor infractions in schools/colleges for ensuring safety & security of female students. Women Police officers in adequate numbers fully equipped with policing infrastructure may be posted in such areas.
2. There should be no delay whatsoever in registration of FIR in all cases of crimes against women.
3. All out efforts should be made to apprehend all the accused named in the FIR immediately so as to generate confidence in the victims and their families.
4. Cases should be thoroughly investigated and charge sheets against the accused persons should be filed within two months from the date of occurrence, without compromising the quality of investigation. Medical examination of rape victims should be conducted without delay.
5. Help-line numbers of crimes against women cells should be exhibited prominently in hospitals/schools/college premises and in other suitable places.
6. Women Police cells in Police Stations and exclusive Women Police Stations should be set up as needed.
7. Police officials charged with the responsibility of protecting women should be sensitized adequately.
8. Police personnel should be suitably trained in Special laws dealing with atrocities against women. Enforcement aspect should be emphasized adequately so as to streamline it.
9. Women Police officials should be recruited widely in State Police Forces.
10. Close coordination between the Police and NGOs dealing with the interests of women may be ensured.



11. Local Police should arrange for patrolling in affected areas, especially in the localities inhabited by weaker sections of society. Periodic visits by DM & SP shall create a sense of safety and security among these sections of the population.
12. Thorough counseling by professional counselors is required for victims as well as their families to overcome the trauma of the crime.
13. The effectiveness of schemes developed for welfare and rehabilitation of women who have been victimized should be improved.

2.3 GUIDELINES OF GOVERNMENT OF INDIA AND SUPREME COURT OF INDIA

1. Preventive of Crime Against Women: Government of India has been advising State governments from time to time and prescribing steps that need to be taken to afford greater protection to women in particular and prevent incidence of crime against them. These advisories include gender sensitisation of stakeholders, appropriate measures for swift and stringent punishment to public servants found guilty of custodial violence against women, minimising delay in investigation, creation of women cells, adequate counselling centres and shelter homes, setting up of special women courts, and improving rehabilitation system of women victims with emphasis, while requesting to undertake a comprehensive review of effectiveness of the machinery and comply with the fifth report of 2nd Administrative Reform Commission, in view of emphasising the need to combat crime against vulnerable sections of society, particularly women and children. The Central government also issued instructions for setting up of rape-crisis centres by the State Health Department to provide assistance to rape victims and for better coordination apart from rehabilitation of victims. The District Police machinery was advised to take all precautionary measures by intensifying patrolling, identifying crime-prone areas, setting up fast track family courts and appointing dowry prohibition officers and building their capacity to handle such cases effectively (F.No. 15011/48/2009 SC/ST-W dated 4th September 2009, Ministry of Home Affairs).
2. Setting-up of Investigation Units for Crime Against Women: In another guideline, Ministry of Home Affairs, Government of India, requested all the States to set up investigative units for crime against women particularly at district headquarters and in cities with the objective of having additional functionalities including proactive policing, intelligence gathering, tackling organised crime, monitoring proper implementation of legislative provisions & awareness generation and developing women officers for the purpose (15011/72/2014 SC/ST-W,, dt.05.01.2015, Ministry of Home Affairs). Government of India proposed this initiative on a 50-50 cost sharing with the States.



3. Development of SOP for Investigation: On 9th October 2020, Government of India issued instructions to all the States to follow the SOP for investigation & prosecution of rape against women as issued by the BPR&D, advised them for immediate and compulsory registration of FIR u/s 173(1) of BNSS, earlier s. 154(1) of CrPC and directed them to initiate criminal action against any public servant whenever failure of these instructions comes/is brought to their notice u/s 112 of BNSS, earlier s. 166(A)(c) of CrPC & complete the investigation of all cases of rape within two months. It referred to the orders of Supreme Court of India dated 7th January 2020 in the matter of Criminal Appeal No. 194-195 of 2012 in the case of *Purshottam Chopra and another Vs. State Govt. Of NCT Delhi*. It also referred to the instructions of Directorate of Forensic Sciences (DFSS) with regard to collection, preservation and transportation of forensic evidence in sexual assault cases for investigating and medical officers. It also reiterated the mandatory use of SAEC (sexual assault evidence collection) kits and stressed on the capacity-building of Police officers particularly, stringent provisions in law and measures to be undertaken to ensure strict enforcement. States were also requested to issue suitable instructions to all concerned so as to ensure a suitable follow-up action on cases of sexual crimes against women.
4. Zero FIR Concept- Database on Sexual Offenders/ERSS/ITSSO: While exhorting States to deal with sexual offenses in general and rapes in particular, Ministry of Home Affairs, Government of India, vide its advisory *DO No. 1(8)/2018 – WS – 4(CCTNS)*, dated 5th December 2019, reiterated its earlier instructions and requested them to issue Zero FIR in the event of a cognisable offence including sexual assault on women and made it clear that failure in this regard by any Police officer was a punishable offence. It further drew the attention to the facility of ITSSO (investigation tracking system for sexual offences) portal available to monitor the completion of investigation in serious sexual offences in the prescribed two-month timeframe. It also introduced another two national databases on sexual offenders which consist of more than 7 lakh such offenders for the purpose of identification of criminals. It also referred to following up of implementation of emergency response support system (ERSS) in all States and UTs which is an internationally recognised single number (i.e. 112) based emergency system accessible through call, SMS, email, and mobile apps.

Analysis of ITSSO:

5. However, recent analysis of the implementation of ITSSO tool which is connected to 15000 Police Stations across the country revealed that fast-track courts designated to handle rape cases were also handling other criminal cases leading to delay in verdicts.



Observations especially in States like Haryana, Delhi, Madhya Pradesh, Uttar Pradesh, Chhattisgarh, Rajasthan and Uttarakhand revealed that investigation into nearly half the sexual offences was not being completed within the stipulated 60-day period despite legal provisions issued in the criminal law (Amendment) Act 2018, which prescribes 60 days as the time limit for completion of investigation.

6. **NHRC_Guidelines:** National Human Rights Commission (NHRC) of India has issued certain guidelines in the form of SOPs for combating human trafficking in India which includes those for investigation and strengthening prosecution and various legal provisions. They are self-explanatory.
7. **SOPs from NCW:** In 2005, National Commission for Women (NCW), Government of India, issued SOPs for handling complaints and investigation by forming investigation cell with an aim to achieve uniformity in procedure followed while handling complaints so as to maintain consistency and help the victims emphatically.
8. **Failure to Register FIR a Criminal Offence:** Criminal Law (Amendment) Act, 2018 enables the Police to register FIR or Zero FIR on receipt of information of a cognisable offence, which includes sexual assault on a woman which mandates the registration of FIR u/s 173(1) of BNSS earlier s. of 154(1) CrPC, failing which such a public servant shall face prosecution u/s 199 BNS, earlier s. 166A(c) of IPC in relation to cognizable offences punishable u/s 124(1) of BNS[earlier Section 326A of IPC], Section 124(2) of BNS[earlier Section 326B of IPC], 74 of BNS[earlier Section 354 of IPC], Section 76 of BNS[earlier Section of 354B of IPC], Section 143 of BNS[earlier Section 370 of IPC], Section 144 of BNS[earlier Section 370A of IPC], Section 66 of BNS[earlier Section 376A of IPC], Section 65 (2) of BNS[earlier Section 376AB of IPC], Section 67 of BNS[earlier Section 376B of IPC], Section 70(2) of BNS [earlier Sections 376DA & 376BB of IPC], Section 71 of BNS[earlier Section 376E of IPC] or Section 79 of BNS[earlier Section 509 of IPC]. Section 193 in BNSS, earlier Section 173 in Code of Criminal Procedure has been amended in the Criminal Law (Amendment) Act, 2018 to provide for completion of Police investigation within two months in cases of rape.
9. **Guidelines of Supreme Court:** The Supreme Court, in its case assessment of the criminal justice system and response to sexual offences vide *SMW(CRL) No. 4 of 2019*, passed certain orders post Nirbhaya incident for effective and speedy investigation and trial:
 - a) Status report on immediate cognizance of offence and investigation



- i) The Court observed that delay in such matters in recent times created agitation, anxiety, and unrest in the minds of people. It took stock of the implementation of legal provisions relating to rape and other sexual offences beginning from registration of FIRs, deployment of Woman Police officer for recording the statement at a convenient place for the victim, recording of statement of judicial magistrate u/s 183 BNSS, earlier s. 164 CrPC strictly to follow guidelines issued in the case of *Lalita Kumari Vs. Govt. Of U.P (2014) 2 SEC1*.



Status Reports

- Prompt Registration of FIR
- Medical Examination Report
- Accountability of Officials
- Victim & Witness Protection
- Speedy Investigation & Trial
- Accountability of Trial Courts

b) Victim and Witness Protection

- i) The Court dealt elaborately with protection of witnesses during investigation and trial, and referred to victim compensation u/s 396(2) of BNSSS, earlier s. 357A(2) of CrPC by the district legal authority or the State legal authority, as reiterated *WP(C)565/2012 Nipun Saxena Vs. Union of India*. The Court observed that the compensation scheme would comprehensively provide rehabilitation and compensation for victims of rape since they require immediate counselling, legal & medical aid and social & economic rehabilitation.

2.3.1 Victims and their Protection – Guidelines

Police officers and prosecutors may work together to enable the criminal justice system to function better and reimpose confidence of the people in law of the land.

1. Victims are defined in Section 2(1)(y) of BNSS, earlier Section 2(w)(a) of CrPC as persons who have suffered any loss or injury caused by reason of act or omission for which the accused have been charged.
2. Section 52 of BNSS, earlier Section 53-A of CrPC calls for examination of the rape accused by medical practitioners including DNA profiling and forwarding of the report to investigating officers without delay so as to enable them to complete investigation within the mandatory period of two months.
3. Section 184 of BNSS, earlier Section 164-A of CrPC is regarding medical examination of victims of rape within 24 hours and preparation of the report of



examination in a proforma as given u/s 184 of BNSS, earlier 164A(2) of CrPC by registered medical practitioners.

4. In regard to immediate examination of victims and preserving medical evidence, investigating officers shall send the material objects of the victims such as vaginal swabs and inner garments and also seminal stained cloths of the accused to FSL for DNA finger printing. Used condoms should also be seized and sent to FSL for comparison.
5. Section 193 of BNSS, earlier Section 173(h) of CrPC is about attaching the report of medical examination of the victims to the charge sheet in all cases of **Sections 64 and 66-70 of BNS**, earlier Sections 376 and 376A to D of IPC.
6. To ensure speedy investigation, investigating officers may take up audio-video recording of statements of witnesses including the victims (Section 180 of BNSS , earlier Section 161 of CrPC), precluding their personal appearances before the investigating officers if need be. In accordance with the provisions of Section 193(2) of BNSS, earlier Section 173-1(A) of CrPC, investigation of rape of a child ought to be completed within a period of two months from the date of registration of FIR.
7. In order to ensure speedy trial,
 - (1) As per Section 346 of BNSS, earlier Section 309(1) of CrPC, in rape cases registered u/s 64-70 of BNSS, earlier s. 376 to 376-D of IPC, trial needs to be completed within two months from the date of commencement of the examination of witnesses.
 - (2) It is the duty of a public prosecutor to conduct trial in the Sessions Court and file a requisition for a continuous trial as per Section 346 of BNSS, earlier Section 309(2) of CrPC.
 - (3) Witnesses who are present in court shall be examined without fail and neither adjournment nor postponement of trial shall be allowed to be granted, except under special circumstances that too to be recorded in writing.

Violence against women and girls is a widespread violation of human rights with severe physical, psychological, emotional and social consequences. The process of bringing complaints into the criminal justice system can be a difficult and traumatising experience for many victims for various reasons. Gender bias and discrimination fuels myths around such violence which shape the justice delivery to these victims beginning with their exposure to the Police. Police officers are the frontline battlers and being well aware of the legal framework, they should begin applying their mind regarding the relevant section under which an FIR has to be registered and the victim is to be provided facility in view of their



physical, social and psychological conditions. Despite a robust legal framework and existing stringent penalties, the rate of conviction is not satisfactory. The present section aims to be a ready reckoner for Investigating officers and prosecutors.



Protocol-3

3 GUIDELINES ON RAPE AND OTHER SEXUAL OFFENCES



Any woman who understands the problems of running a home will be nearer to understanding the problems of running a country.

– MARGARET THATCHER



3.1 INTRODUCTION

This section deals briefly with various guidelines issued by the Supreme Court of India in various cases, from time to time. These guidelines are very important and binding on all investigating officers. Though each section briefly focuses on the details about instructions and guidelines, it may be borne in mind that these are only excerpts relating to crime against women, and officers are advised to read the documents/guidelines/judgments for a complete understanding and appreciation in letter and spirit.

Government of India has been advising State Governments from time to time regarding steps that need to be taken to afford greater protection to women in particular to prevent incidence of crime against them. These advisories include gender sensitisation of stakeholders, appropriate measures for swift and stringent punishment to public servants found guilty of custodial violence against women, minimising delay in investigation, creation of women cells, adequate counselling centres and shelter homes, setting up of special women courts and improving rehabilitation of woman victims. Requesting to undertake a comprehensive review of the effectiveness of the machinery and tackling the problem, the Government of India also gave instructions for the setting up of rape-crisis centres by the Health Department to provide assistance to rape victims and better coordination apart from rehabilitation of victims.

These advisories include gender sensitization of stake holders, appropriate measures for swift and stringent punishment of public servants found guilty of custodial violence against women minimising delay in investigation, creation of women cells, adequate counselling centres, shelter homes, setting up of special women courts, improving development rehabilitation of women victims with greater emphasis and requested to undertake a comprehensive review of the effectiveness of the machinery and tackling the problem

3.1.1 Creation of District Institutional Mechanism

The district Police machinery is advised to take all precautionary measures by intensifying patrolling, identifying crime-prone areas, setting up fast track and family courts and appointment of dowry prohibition officers & to build their capacity to handle such cases effectively (F.No.15011/48/2009 SC/ST-W, dt.04.09.2009 of Ministry of Home Affairs).



3.1.2 Creation of Special Investigating Units

In another guideline, Ministry of Home Affairs, Government of India, requested all States to set up investigative units for crime against women, particularly at district headquarters and other cities with the objective of having additional functionalities such as proactive policing, intelligence gathering, tackling organised crime, monitoring proper implementation of legislative provisions & awareness generation and also to develop women officers for the purpose (15011/72/2014 SC/ST-W,, dt.05.01.2015, Ministry of Home Affairs). This initiative of Government of India comprising detailed guidelines was proposed on 50-50 cost sharing with States.

3.2 INSTRUCTIONS ON SOPs

Government of India issued instructions on 9th October 2020 to all States to follow up SOPs for investigation and prosecution of cases of rape against women, as issued by the BPR&D and advised the States for immediate & compulsory registration of FIR u/s 173(1) of BNSS, earlier s. 154(1) of CrPC and directed to take to initiate criminal action against any public servant whenever any failure in compliance of these instructions comes to their notice u/s 199 of BNS, earlier s. 166(A)(c) of IPC and complete investigation within two months' time in all cases of rape. It also referred to the orders of Supreme Court of India dated 7th January 2020 in the matter of *Criminal Appeal No. 194-195 of 2012 in the case of Purshottam Chopra and another Vs. State Govt. Of NCT*

It also reiterated the use SAEC (sexual assault evidence collection) kits invariably, the capacity-building of police officers who particularly deal with the stringent provisions of law, and the measures to be undertaken for strict enforcement.

Delhi. It also referred to the instructions of Directorate of Forensic Sciences (DFSS) for collection, preservation and transportation of forensic evidence and sexual assault cases for investigating officers and medical officers. It also reiterated the use SAEC (Sexual Assault Evidence Collection) kits invariably and capacity-building of Police officers who particularly deal with stringent provisions of law apart from the measures to be undertaken for strict enforcement. State Governments were also requested to issue suitable instructions to all the concerned in order to ensure suitable follow-up action on cases of sexual incidents against women.



3.2.1 Ministry of Home Affairs

Ministry of Home Affairs, Government of India, vide its advisory DO No.1(8)/2018 – WS – 4(CCTNS) dated 5th December 2019, while exhorting States to deal with cases of sexual offences in general and rape in particular, reiterated the instructions issued earlier and requested to issue Zero FIR in the event of a cognisable offence, including a sexual assault on women, and made it clear that failure in this regard by any Police officer would be a punishable offence. It further drew attention to the facility of ITSSO (Investigation Tracking System for Sexual Offences) portal available to monitor the completion of investigation in serious sexual offences in the prescribed two-months' time. It also introduced another two national databases comprising more than 7 lakh sexual offenders to help identify criminals. It also referred to following up of implementation of Emergency Response Support System (ERSS) in all States & UTs which is an internationally recognised single number (i.e. 112) based emergency system, accessible through call, SMS, email, and mobile apps.

3.2.2 Guidelines of Supreme Court of India

Supreme Court of India called for a status report on the institutional mechanism and also on cases registered against any officers u/s 199 of BNS, earlier s. 166A of IPC (i.e. failure to record information of such offences) and it wished to know if any State had published guidelines in the form of an SOP, which could be followed after receipt of information for cases of rape & similar offences.

3.2.2.1 Guidelines for Medical Examination and Treatment of Victims

Supreme Court of India observed that medical treatment and examination of victims was very important not only from the perspective of immediate relief to the victims but also from that of collecting intrinsic evidences for trials and referred various amendments made during 2013-2018. It made an offence punishable u/s 200 of BNS, earlier u/s 166B of IPC and sought for a report on the existence of any guidelines for preparation of medical reports and process of medical examination, referring to the amendment of Section 53A (presently section 48 of BSA) inserted in Indian Evidence Act, 1872, wherein evidence of character of victims and that of such persons with sexual experience with any persons in the past shall not be relevant on the issue of consent or its quality. The Court also observed certain medical opinions such as 'the victim is habitual of sexual intercourse' and an opinion suggesting the possibility of consent on the basis of her previous sexual exposure. However,



Ministry of Health & Family Welfare, Government of India, had prepared certain guidelines and protocols in view of medico-legal care for survivors/victims of sexual violence. The Court further observed that pervaginal examination that commonly referred to two-finger test had been held to be of no consequence and therefore violative of a woman's dignity reiterating the observations made in the case of *Lillu alias Rajesh and other Vs. State of Haryana (2013) 2014 SEC 643*, and called for a detailed status report on medical opinions, process of medical examination and availability of medico-forensic kits with all hospitals and health centres.

3.2.2.2 Guidelines for Forensic Expert Reports and DNA

The Court also observed that forensic examination and report played an important role in investigation as well as in linking of the culprit with the crime. It referred to the advancement of DNA science and its accuracy, sampling for the purpose of forensic examination and expeditious reports apart from other forensic tests like forensic odontology. It also referred to examination of the accused as per provisions of Section 52 of BNSS, earlier Section 53A of CrPC for timely examination and guidance towards the preparation of forensic reports.

3.2.2.3 Filing of Charge Sheet within 60 Days

Supreme Court of India called for a status report on completion of investigation and submission of final report within two months' time from the date of an FIR as per Section 193(2) of BNSS, earlier Section 173(1A) of CrPC in relation to offences u/s 64&65(1) of BNS [earlier s. 376 of IPC], s. 66 of BNS [earlier s. 376A of IPC], s. 65(2) of BNS [earlier s. 376AB of IPC], s. 67 of BNS [earlier s. 376B of IPC], s. 68 of BNS [earlier s. 376C of IPC], s. 70(1) of BNS [earlier s. 376D of IPC], s. 70(2) of BNS [earlier s. 376DA, 376DB of IPC] or s. 71 of BNS [earlier s. 376E of IPC] and asked the Government to observe whether sufficient number of women Police officers is available to conduct investigation into sexual offences, particularly that of rape.

3.2.2.4 In-Camera Trial to be completed within 60 Days

Supreme Court of India also referred to the provisions of Section 125 of BSA, earlier Section 119 of IEA for assistance of interpreters, availability of video recording, time taken for recording of the statements of the victim and also availability of woman judge preferably for the trial apart from mandatory procedure of conducting an on-camera trial as per Section



366 of BNSS, earlier Section 327(2) of CrPC. It repeatedly emphasised on the provisions of Section 346 of BNSS, earlier Section 309(1) of CrPC in regard to the completion of trial, as far as possible within two months' time from the date of filing of the charge sheet.

3.2.2.5 Trial Procedure

The Court elaborately observed on how to follow a trial programme as reiterated in the case of *State of Kerala Vs. Rashid*, AIR 2019 SE721.

- i) Section 183(6)(a),(b) of BNSS, earlier Section 164(5-A) of CrPC has now made it mandatory to for recording the statement of the prosecutrix by the Magistrate. The Investigating Officer is now duty bound to approach the Magistrate for recording of such statement. The Section also makes it incumbent on the Magistrate to record the statements of the persons against whom offence has been committed as soon as the commission has been brought to the notice of the Police. This is not dependent on the IO moving an application to that effect. Section 125 of BSA, earlier Section 119 of the Indian Evidence Act also provides for assistance of an interpreter or special educator in recording the statement of witnesses. This is important in the scenarios where the witness is unable to speak but is capable of giving evidence in any other manner. Such evidence, where collected, should also be videographed.
- ii) Section 21 of BNSS, earlier Section 26(a)(iii) of CrPC provides for trial of such offences to be conducted by a court presided over by a woman judge as far as practicable while Section 366 of BNSS, earlier Section 327(2) of CrPC mandates that in-camera trial be conducted.
- iii) Section 346 of BNSS, earlier Section 309(1) of CrPC emphasises that the enquiry of trial be completed within a period of two months from the date of filing of charge sheet and that sufficient number of special courts have been established exclusively for cases of rape and other sexual offences.
- iv) As per Section 253 of BNSS, earlier Section 230 of CrPC, a trial programme is generally prepared as stated in the case of *State of Kerala Vs. Rashid AIR2019 SE2 721*, and there shall be a case calendar for the trial which shall ensure attendance of witnesses on fixed dates, and bar council & advocates may cooperate for the completion of trial within the stipulated period apart from the constitution of special bench in any State High Court for expeditious hearing of appeals in such cases.

3.2.3 NCW Guidelines

National Commission for Women, Government of India, has issued SOPs to enable uniform complaint handling mechanism at Police Stations. These SOPs also cover the formation of Investigation Cell (2005) and other frequently updated guidelines.



3.2.4 Failure to Record Information (FIR) u/s 173(1) of BNSS, earlier s. 154(1) of CrPC is a Criminal Offence.

Criminal Law (Amendment) Act, 2018, enables the Police to register FIR or Zero FIR on the receipt of information of a cognisable offence which includes sexual assault on a woman, mandating the registration of FIR u/s 173(1) of BNSS, earlier s. 154(1) of CrPC failing which such a public servant shall face prosecution u/s 199 of BNS, earlier s. 166A(c) of IPC in relation to cognizable offences punishable u/s 124(1) of BNS[earlier Section 326A of IPC], Section 124(2) of BNS[earlier Section 326B of IPC], 74 of BNS[earlier Section 354 of IPC], Section 76 of BNS[earlier Section 354B of IPC], Section 143 of BNS[earlier Section 370 of IPC], Section 144 of BNS[earlier Section 370A of IPC], Section 66 of BNS[earlier Section 376A of IPC], Section 65(2) of BNS[earlier Section 376AB of IPC], Section 67 of BNS[earlier Section 376B of IPC], section 70(2) of BNS[earlier Sections 376DA, 376BB of IPC], Section 71 of BNS[earlier Section 376E of IPC] or Section 79 of BNS[earlier Section 509 of IPC]. Section 193 of BNSS, earlier Section 173 in Code of Criminal Procedure has been amended in the Criminal Law (Amendment) Act, 2018 to provide for the completion of Police investigation within two months' time in cases of rape.

3.2.5 Guidelines for Medico-Legal Care for Survivors/Victims of Sexual Violence

Ministry of Health & Family Welfare (MoHFW), Government of India, issued guidelines in medico-legal cases for the survivors/victims of sexual exploitation in accordance with the recent guidelines issued by the Government of India. The Ministry recognised the critical role of health systems and professionals, and issued certain guidelines to strengthen the legal framework & develop comprehensive and multi-sectoral national strategies with the following aims and objectives:

- i) Operationalise informed consent and respect autonomy of survivors in making decisions about examination, treatment and Police intimation.
- ii) Provide specific guidance on dealing with persons from marginalised groups, such persons with disabilities, sex workers, LGBT persons, children, persons facing caste, class or religious discrimination.
- iii) Ensure gender sensitivity in the entire procedure by desisting from mentioning past sexual practices through disparaging comments on the size of vaginal introitus, velocity of vagina or anus, etc., commenting on the built, height, weight, nutrition or gait of victims, which particularly perpetuate stereotypes.



- iv) Focus on accrued knowledge and theoretical framework by recognising various forms and dynamics of sexual violence including the activities that lead to loss of evidence.
- v) Collect evidence based on science and have historical learnings with specific guidance for taking relevant samples and preservation of evidence.
- vi) Lay down standard treatment protocols for managing health consequences for sexual violence.
- vii) Lay down guidelines for provision of first line psychological support.
- viii) Ensure effecting positive health consequences by extending timely response to the needs of victims, including special groups, children, etc. Handle various operational issues like medical examination and reporting of sexual violence, psycho-social care for survivors/victims, guidelines for interface with other agencies such as Police and judiciary. (The guidelines include legal definitions of sexual violence, time since injury, age estimation, table indicator of evidence collection, etc., and prescribe a standard proforma for medico-legal examination of survivors/victims of sexual violence. The proforma is enclosed herewith for reference & understanding.
- ix) Issue provisional clinical opinion immediately after the examination of survivors/ victims on the basis of history and findings of detailed clinical examination and briefly mention relevant aspects of the history of sexual violence, clinical findings and samples which are sent to FSL for analysis.
- x) Draw an inference in the opinion submitted, correlating with the history and clinical findings, in line with issued guidelines with certain examples, to form provisional opinion. Bear in mind that normal examination findings neither refute nor confirm forceful sexual intercourse. However, take into consideration circumstantial and other evidence while giving an opinion. In the matter of absence of injuries or where laboratory results are negative, these may be ascribed to an inability of the survivors/ victims to offer resistance to the assailant because of intoxication or threats, delay in reporting of examination, activities such as urinating, washing, bathing, changing clothes or douching, which may lead to or result in the loss of evidence. While formulating an opinion, mention the reason if there is a use of condom/vasectomy or some disease of vas.
- xi) Designate responsible staff for handling evidence so as to prevent its mishandling and tampering. Maintain fool-proof chain of custody of evidence for its admissibility in court. Maintain a regular log of handing over of evidence from one custodian to the other.
- xii) Use the table of various indicators provided while issuing the final opinion after receiving reports from

The guidelines also directed the hospital authorities to designate certain responsible staff for handling evidence to prevent it's mishandling and tampering.



- the FSL differently for penetrative and non-penetrative assault.
- xiii) For access to current guidelines, visit the website of MoHFW, Government of India, and search for 'Guidelines and protocols medico legal care for survivors' victims of sexual violence'. (The link to guidelines currently available is in the reference⁹.)
- xiv) There is a one-page set of instructions for doctors as provided by MoHFW, which is included in the annexures as well.

3.3 SUPREME COURT'S LANDMARK JUDGEMENTS

3.3.1 On RAPE

3.3.1.1 *Dhananjay Chatterjee Vs. State of West Bengal (1994) 2SCC220.*

In this case, a schoolgirl was raped and murdered by the security guard of a building. He was convicted by the trial court and awarded death penalty which was confirmed by the High Court and eventually by the Supreme Court. However, the apex court observed that there were many aggravating factors in the instant case. The security guard who was supposed to protect the girl had been the oppressor and the criminal. It was held that while imposing a sentence, courts must keep in mind the rights of the victim, their families and also of the society.

3.3.1.2 *Shimbu Vs. State of Haryana. (MANU/SC/0871/2013)*

The prosecutrix in this case who was living in a village was accosted when she was on the way to attend nature's call. The accused forcibly took her to their shop at gun point and gangraped her repeatedly for two days. The trial court awarded a sentence of ten years of rigorous imprisonment which was upheld by the High Court. However, Supreme Court, while hearing the appeal, observed that several lower courts and High Courts have invoked Section 64 BNS, earlier Section 376 IPC instead of Section 70(1) BNS, earlier Section 376-D IPC to reduce the sentence and this showed insensitivity by not providing proportionate punishment. It further held that compromising rape cases cannot be a ground for reducing

The Court further held that compromising rape cases cannot be a ground for reducing the sentence since it is a crime against the society at large and that an accused may try to influence the victim for compromising if allowed.



the sentence since rape is a crime against the society at large and that the accused may try to influence the victim to compromise, if allowed.

3.3.1.3 *State of Punjab Vs. Gurmit Singh 1996 AIR1393*

In this case, a 16-year girl student was gangraped by three men, who abducted her when she had gone to appear for her examinations. The trial court exonerated the accused on grounds that only the testimony of the girl was available. She was not able to tell in which car she had been abducted and that medical evidence showed that she was habituated to sex. It was further found that there was enmity between family members, and that she did not raise alarm and that the girl had tried to implicate the accused falsely.

The Supreme Court came down heavily on the lower court and held that grounds for disbelieving the prosecutrix were not sound. No fault can be attributed to her for not raising an alarm and for the reasons of a botched enquiry. It was held that even if the evidence showed that prosecutrix is habituated to sex, no inferences should be drawn about her character and she had a right to refuse sexual intercourse with anyone she wanted. The accused were sentenced to five years rigorous imprisonment and the findings of the lower court were set aside.

3.3.1.4 *Tuka Ram and then State of Maharashtra, AIR 1979 SC 185 (Mathura Case)*

In Mathura rape case, a young tribal girl named Mathura was allegedly raped by two policemen while she was in custody. It was an incident of custodial rape that took place on 26th March 1972, where the girl was raped in Desai Gunj Police Station in Maharashtra.

- a) **Issues raised:** The case raised several issues in the context of Indian rape laws and criminal laws that were then in prevalence. The issue of consent, the question of burden of proof, the reference to two-finger test and the reference to the girl's sexual history were taken up.
- b) **What was held?** The Sessions Court passed the judgment in favour of defendants and held them not guilty. It was held that Mathura gave her consent voluntarily as she was habituated to sexual intercourse. Sessions Judge found that there was a major difference between 'sexual intercourse' and 'rape'. Hence, it was a case of sexual intercourse in which she had consented voluntarily and not that of rape. Thus, the case was further appealed in the Bombay High Court which took note of all the findings arrived at during the trial in the Sessions Court. The High Court appreciated the observations given by the Sessions Judge and said that there was a major difference between sexual intercourse and rape, but they had overlooked the fact



that there was a world of difference between 'consent and 'passive submission'. On the ground of such observations, the High Court held that the defendants were guilty of rape and consent given was not voluntary as it was due to serious threats by the accused policemen. It was held that *'Mere passive or helpless surrender of the body and its designates to the other's lust induced by threats or fear cannot be equated with desire or will, nor can furnish an answer by the mere fact that the sexual act was not in opposition to such desire or volition.'*

- c) **Findings of Supreme Court of India:** Later, the case went to the Supreme Court where the accused were acquitted and the judgment passed by the Bombay High Court was set aside. The Supreme Court stated that as no marks of injury were found on the person of the girl, there were no signs of any struggle, or, any resistance; from the shreds of evidence, it could be shown that the girl had not been put in fear of death or hurt, so consent would be considered as free or voluntary. Also, since the girl was habituated to sex, it may be possible that she might have incited the cops. Hence, it was concluded and held by the Supreme Court that the sexual intercourse which was in question in the given case was not proved to amount to rape.
- d) **Legal Changes Brought in Indian Rape Laws:** Due to such rationale behind the judgment, many protests and huge public outcry took place which ultimately led to an amendment in the Indian rape laws. At the time when Mathura rape case did take place, the rape laws in our country were heavily biased towards rapists. The main question which was raised after this judgment was regarding the concept of consent because earlier it was difficult for women to prove that they had not consented to any sexual intercourse. Therefore, after the judgment of this landmark case, the Criminal Law (Second Amendment) Act, 1983, came into force which brought in many changes in the Indian rape laws, including:
 - a. Insertion of Section 114(A) in Indian Evidence Act, 1872 (presently Section 120 in BSA, 2023) which states that in a prosecution for rape where it has been already proved that sexual intercourse by accused did take place, if the victim says that she had not consented to sexual intercourse, the Court shall presume that she did not consent as a rebuttable presumption of law.
 - b. Section 376 of IPC, 1860 (Presently section 64 of BNS) underwent a change in which Sections 376(A), 376(B), 376(C) and 376(D) [presently section 66, 67, 68, 70(1)] were added which were further amended by the Criminal Law (Amendment) Act, 2013.
 - c. The Act added the provision for 'custodial rape' u/s 376(2) of IPC, 1860 (presently u/s 64 of BNS) for offences which take place when a victim is in the custody of the state.



- d. The person liable u/s 64 of BNS, earlier s. 376(2) of IPC shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to life and shall also be liable to fine.
- e. The Act amended the idea of burden of proof which always lies on the prosecution. After the amendment, in cases of rape where sexual intercourse was already established, the burden of proof will lie on the accused.
- f. The Act introduced Section 228A in the IPC, 1860 (presently section 72 of BNS), which prohibits any publication regarding identity of rape victims and any matter through which victim's identity could be known, subsequently amended by Criminal Law (Amendment) Act, 2013.

Hence, Mathura rape case was monumental from both social and legal perspectives as it sparked huge protests and public outcry for the very first time in India for the cases of rape at a very large level. This case further led to so many reforms in the Indian rape law via the Criminal Law (Second Amendment) Act, 1983.

3.3.1.5 Mukesh & Anr Vs. State for NCT of Delhi (Criminal Appeal Nos. 607 to 608 of 2007)

This is known as Nirbhaya case which had invoked nationwide protests and demonstrations regarding the poor nature of protection for Indian women.

a) Facts

A 23-year-old trainee physiotherapist woman was brutally raped repeatedly by five adult men and a juvenile on the night of 16th December 2012 on a moving bus in the country's capital. She was assaulted with an iron rod due to which her intestines were pulled out. Later, despite receiving all the possible treatment, she died in a hospital in Singapore.

- b) What was held?** One accused hanged himself in jail while other four adults were sentenced to death. A Bench of Justices Dipak Mishra, R. Banumathi and Ashok Bhushan unanimously passed the judgment of death penalty to all the accused except the one who was juvenile. The juvenile who was equally involved in the incident and raped the woman was convicted and sentenced to three years in a reformation centre. Such an incident, where humanity is treated with irreverence, created a shock in the collective conscience and sparked nationwide revulsion. This led to various legislative reforms in rape laws.

- c) Aftermath:** After the incident, a panel was set up under the chairmanship of former Chief Justice of India JS Verma for analysing the existing criminal laws and to suggest all possible amendments which can be made to enhance punishment in cases of assault of extreme nature and brutality against women. Within a month, the panel was ready with its report consisting of recommendations for changing India's rape



laws.

As per the recommendations of the Justice Verma Committee, Criminal Law (Amendment) Act, 2013 was passed which provided for the amendment of Indian Penal Code, 1860 [presently Bharatiya Nyaya Sanhita (BNS)], Code of Criminal Procedure, 1973 [presently Bharatiya Nagarik Suraksha Sanhita (BNSS)], Indian Evidence Act, 1872 [presently Bharatiya Sakshya Adhiniyam (BSA)] and Protection of Children from Sexual Offences Act, 2012, in regards to laws related to sexual offences. The Amendment Act widened the scope of definition of rape and provided for capital punishment in rape cases that led to the death of the victim or left her in a permanent vegetative state. The Act also provides for several new offenses, thereby making the laws more stringent.

The verdict in this case, which was fought to provide justice to one woman, continues to bring hope to several women facing circumstances that undermine their dignity and their fundamental right to equality.

3.3.2 Sexual Harassment at Workplace

3.3.2.1 *Vishaka vs. State of Rajasthan and Ors., JT 1997 (7) SC 384 (Bhanwari Devi Case)*

1. **Facts:** This is a landmark case regarding protection of women against sexual harassment at workplace. The incident occurred in 1992 when a social worker, Bhanwari Devi, belonging to a socially-backward caste and working for a women's development programme in Rajasthan, tried to stop a child marriage in her village. She was allegedly gangraped by five men of the upper-caste community. She went to the Police Station to lodge a complaint against the offenders but no thorough investigation was launched.



2. **Issue raised:** This landmark case raised several questions in the context of sexual harassment which takes place at workplace including whether the employer has any responsibility in cases of sexual harassment by its employee/employees at workplace.



3. **What was held?** To get justice, she took her case to the trial court which acquitted the accused for lack of medical evidence and other reasons. Following this, many women's groups and organizations appealed against the judgment. This resulted in a PIL being filed in the Supreme Court on the issue of sexual harassment at the workplace. The Supreme Court held that sexual harassment of a woman at workplace was violative of her fundamental rights of gender equality and to life and liberty under Articles 14, 15, 19 and 21 of the Constitution. It was thus concluded that such an act would be considered a violation of women's human rights.
4. **Legal changes brought after the case:** After this verdict, a statutory vacuum was observed which paved the route of judicial legislation in the context of sexual harassment at workplace. The case laid down various guidelines and requirements to be fulfilled by an employer as well as other responsible persons or institutions.

To prevent the acts of sexual harassment at workplace, it should be the duty of employers or any other responsible persons to prescribe for procedures and settlements.

Formation of a complaint committee at all workplaces.

- Such committee has to be headed by a woman employee only and should have an NGO or a third-party's participation.
- Half of the members of the committee should be women only.

All complaints regarding sexual harassment of a woman employee would be dealt with by this committee only, and appropriate action in this regard shall be initiated by the employers in accordance with law.

The committee would advise and recommend further course of action to the victim.

Provides for the definition of sexual harassment which includes any

'Unwelcome sexually determined behaviour & demands from male employees at workplace, such as any physical contacts and advances, sexually coloured remarks,



showing pornography, passing lewd comments or gestures, sexual demands by any means, any rumours/talk at workplace with sexually coloured remarks about a working woman, or spreading rumours about a woman's sexual relationship with anybody'.

These guidelines were the first of its kind that brought in gender equality rights for women at the workplace. It mandated that a workplace should be free from harassment in both public and private employment. This judgment led the Indian Government to enact the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 which came into force from 9th December 2013. This Act superseded the Vishaka Guidelines for prevention of sexual harassment introduced earlier by the Supreme Court.

3.3.2.2 Apparel Export Promotion Council Vs. A.K. Chopra AIR 1999 SC 625

In this case, a female typist was molested by the respondent who was placed under suspension and subsequently terminated from service. He filed a writ petition in the High Court wherein it was found that he had attempted to molest the female employee and did not actually molest her. The said employee was reinstated without back wages.

He filed an appeal in the High Court which also confirmed the same. When the matter was carried to the Supreme Court, it was held that in such a case, testimony of the victim needs to be looked into and other facts such as the respondent trying to sit close to the female employee after repeated protests and trying to hold her or touch her, were all indicative of the fact that he had indulged in sexual harassment. Thus, the findings and decision of the termination of the respondent as observed by the disciplinary authority was upheld.

3.3.2.3 D.S. Grewal Vs Vimi Joshi (2009)2 SCC 210

In this case, the accused was a colonel in the Indian Army and was the Vice-Chairman of a school's management committee. The respondent, who had initially joined as a teacher, was the principal of the school. The accused sent sexually-coloured love letters and made sexual advances towards her. The Chairman of the school, after receiving the complaint, instead of initiating action against the respondent terminated the services of the principal (complainant) upon which she filed a writ petition.

The High Court held that the management of the school failed to take action against the person though it was a case of sexual harassment. The matter was carried to the Supreme Court wherein it was held that the management of the school had failed to take action and



was directed to provide redressal mechanism to the victim by constituting a committee to be headed by a lady to look into the charges of sexual harassment.

3.3.2.4 *Medha Kotwal Lele Vs. Union of India (2013)1 SCC 297*

This is a PIL filed on the grounds that the guidelines issued in the case of *Vishakha Vs. State of Rajasthan* were not being followed and implemented due to which women were still being subjected to incidents of sexual harassment at workplace and they are made to suffer horrors, and insult by legal and extra-legal methods.

The Supreme Court, having taken note of contents of the petition, held that the guidelines issued should be implemented in letter and spirit and directed that all organisations whether public or private must have in place a mechanism so that a witness or a victim is not intimidated. The Court also held that any person, when facing a grievance of any sort with regard to noncompliance of the Vishakha guidelines, can move the High Court for necessary directions.

3.3.3 Acid Attack Cases

3.3.3.1 *Laxmi Vs Union of India*

In 2006, Laxmi, an acid-attack victim, filed a petition seeking measures to regulate the sale of acid and provide adequate compensation to the victim. Taking cognizance of a rise in the number of cases relating to acid attacks against women, the Supreme Court imposed stringent regulations on the sale of acid in 2013.

The ruling banned over-the-counter sale of acid. Dealers can thus sell acid only if the buyer provides a valid identity proof and declares the need for the purchase. It is also mandatory for the dealer to submit the details of the sale within three days to the Police. The ruling also made it illegal to sell acid to a person below 18 years.

3.3.3.2 *Centre for Enquiry into Health and Allied Themes (CEHAT) Vs Union of India*

- i. With the advent of pre-natal diagnostic techniques that could determine the sex of a foetus, a growing trend of aborting female foetuses was observed. In a bid to curtail female feticide, Government of India issued the PNDT Act in 1996.
- ii. Provisions of PNDT Act, however, were not being effectively implemented by the State and Central government.
- iii. CEHAT filed a petition which led to the Supreme Court directing the Central and State governments to enact the provisions of the Act



immediately and banned all advertisements relating to pre-natal sex determination techniques.

- iv. Termination of 24-week pregnancy permitted on account of abnormal foetus

The petitioner in this case, a rape survivor, who wished to remain unidentified, approached the Supreme Court seeking permission to abort her 24-week abnormal foetus. The petition challenged the 46-year-old Maternal Termination of Pregnancy Act that does not permit abortion of a foetus after 20 weeks.

The Supreme Court ruled in favour of the petitioner after the Medical Board submitted a report stating that continuing with the pregnancy would put the mother's life at risk.

3.3.4 Family Disputes and Child Custody

3.3.4.1 Mary Roy Vs State of Kerala

Women from the Syrian Christian community in Kerala were prevented from inheriting property due to patriarchal traditions. This decree was challenged by Mary Roy, a women's rights activist and educator.

After the demise of her father, she filed a case against her elder brother when she was denied equal share in the family's inheritance. Though the plea was rejected by the lower court, Kerala High Court overruled the previous judgment.

In 1986, the Supreme Court delivered a landmark judgment that granted Syrian Christian women the right to seek an equal share in their father's property.

3.3.4.2 Lata Singh Vs State of Uttar Pradesh

Lata Singh was an adult when she left her family home to be joined in matrimony with a man from a lower caste. Her brothers, who were unhappy with the alliance, filed a missing person report and alleged that Lata had been abducted. This resulted in the arrest of three people from her husband's family.

In order for charges to be dropped, Lata Singh filed a petition which resulted in a landmark judgment by the Supreme Court that allowed an adult woman the right to marry or live with anyone of her choice.

The Court further ordered the Police to initiate criminal action against people who commit violence against couples who opt for inter-religious or inter-caste marriages.



3.3.4.3 *Roxann Sharma Vs Arun Sharma*

Roxann was involved in a bitter child custody battle with her estranged husband. A court in Goa granted her interim custody of their child but the husband Arun Sharma whisked their son away and refused to let Roxann meet the child.

She filed a case against him which led to a landmark judgment pronounced by the Supreme Court regarding children caught in a legal battle between parents. The Court ruled that when estranged parents are involved in a legal tussle over the custody of a child who is under the age of five years, the custody of the child shall remain with the mother.

3.3.4.4 *Tamil Nadu Vs Suhas Katti*

This case led to the first conviction under the Information Technology Act, 2000. The victim was being harassed by the accused Suhas Katti when the victim refused to marry him.

Suhas would send defamatory and obscene online messages to the victim in a Yahoo message group. To add to her agony, the victim began to receive phone calls from unknown people soliciting sex work. She then filed a complaint in February 2004, and within seven months the accused was convicted. In an age of merciless trolls and other forms of online harassment, this judgment acts as a tool that women can use to safeguard their dignity.

The legal framework to deal with crime against women (as briefly dealt with in Section 2 of this document i.e., guidelines of Government of India) clearly indicates that there is a robust system for enforcement agency to deal with the cases of crime against women. Various judgments of the Supreme Court, guidelines of other authorities and commission reports also indicate the commitment of Indian judicial system to protect the interests of women. Various amendments were made to effectively handle the investigation and prosecution of cases of rape and sexual offences.

It is for the States to devise a viable strategy and ensure an institutional and infrastructural mechanism to handle these cases effectively and build the capacity of investigating officers on one hand and develop a sensitive mechanism amongst all stakeholders to coordinate and contribute their individual might. The Government of India may pass instructions to all the States to adhere to its instructions and follow the guidelines of Supreme Court in letter and spirit creating accountability on district Police administration.



3.4 ANNEXURE- 1 (ONE-PAGE INSTRUCTIONS FOR DOCTORS)

ONE-PAGE INSTRUCTIONS FOR DOCTORS

The examining doctor should carefully read the guidelines for responding to the survivors of sexual violence as issued by the MoHFW and should be well aware of the comprehensive care to be provided:

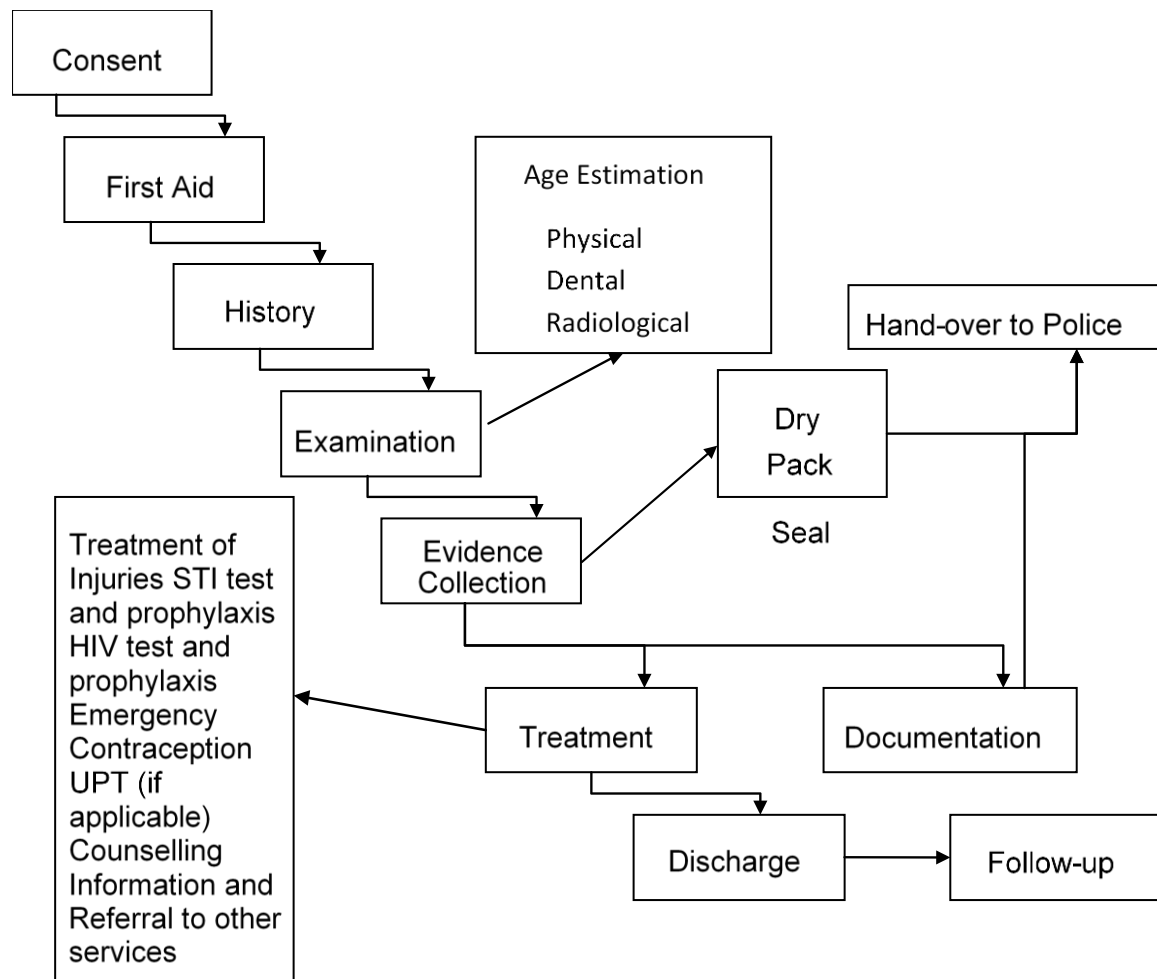
1. Informed consent: Doctors shall inform the person being examined about the nature and purpose of examination and in case of a child, inform the child's parent/guardian/person in whom the child reposes trust. This information should include:
 - a. Medico-legal examination is to assist investigation, arrest and prosecution of those who committed the sexual offence. This may involve an examination of the mouth, breasts, vagina, anus and rectum.
 - b. To assist investigation, forensic evidence may be collected with the consent of the survivor. This may include removing and isolating clothing, scalp hair, foreign substances from the body, saliva, pubic hair, samples taken from the vagina, anus, rectum, mouth and collecting the blood sample.
 - c. The survivor or, in case of a child, the parent/guardian/person in whom the child reposes trust, has the right to refuse either a medico-legal examination or collection of evidence or both, but that refusal will not be used to deny treatment to the survivor after an act of sexual violence.
 - d. As per law, the hospital/examining doctor is required to inform the Police about the sexual offence. However, if the survivor does not wish to participate in the Police investigation, it will not result in denial of the treatment for sexual violence. Informed refusal shall be documented in such cases.
2. Per vaginum examination, commonly referred to by lay persons as 'two-finger test', must not be conducted to establish an incident of sexual violence and no comment on the size of vaginal introitus, elasticity of the vagina or hymen or about past sexual experience or habituation to sexual intercourse should be made, as it has no bearing on a case of sexual violence. No comment on shape, size, and/or elasticity of the anal opening or about previous sexual experience or habituation to anal intercourse should be made.
3. Injury documentation: Examine body parts for findings related to sexual violence (such as injuries, bleeding, swelling, tenderness and discharge). This includes both micro mucosal injuries which may heal within a short period to that of severe injuries, which would take longer to heal. Please refer to Section VI Point 17 of the Guidelines.
 1. Injuries must be recorded with details - size, site, shape and colour.



2. If a past history of sexual violence is reported, then record relevant findings. Sexual violence is largely perpetrated against females, but it can also be perpetrated against males, transgender and intersex persons.
4. The nature of forensic evidence collected will be determined by three main factors- nature of sexual violence, time elapsed between incident of sexual violence and examination, and whether survivor has bathed or washed herself. Please refer to Section VI Point 21 of the Guidelines.
5. Opinion: The issue of whether an incident of rape/sexual assault occurred is a legal issue and not a medical diagnosis. Consequently, doctors should not, on the basis of medical examination, conclude whether rape/sexual assault had occurred. Only findings in relation to medical investigation should be recorded in the medical report.
 - Drafting of provisional opinion should be done immediately after the examination of a survivor on the basis of history and findings of detailed clinical examination of the survivor.
 - It should always be kept in mind that normal examination findings neither refute nor confirm an act of sexual violence. Hence, circumstantial/other evidence may please be taken into consideration.
 - Absence of injuries may be due to
 - Inability of survivor to offer resistance to the assailant because of intoxication or threats.
 - Delay in reporting for examination.



Annexure-2 (Comprehensive Health Care Components: A Flowchart)





Protocol-4

4 INVESTIGATION



Whatever you do, be different – that was the advice my mother gave me, and I cannot think of better advice for an entrepreneur. If you're different, you will stand out. ---

Anita Roddick



4.1 INTRODUCTION

Police organization in any country is an instrument to enforce law of the land, thereby tranquility is upheld in a civilized society and lives and property of citizens are protected. Police functions in any democratic country focus on preventive and punitive aspects. As part of the punitive aspect of policing and on receipt of any violation against an individual or society or States at large, Police will register such an offence and conduct detailed investigation. Democratic India has a well-settled legal framework defining roles, responsibilities and power of the Police for conducting investigation of such crimes and initiating proceedings of prosecution against the accused. The Supreme Court held that investigation consists generally of four steps: 1. Proceeding to the spot and collection of primary evidence, 2. Ascertaining facts and circumstance of the case, 3. Collection of evidence relating to the commission of offence like examination of witnesses and recording their statements including that of the accused, search of places or seizure of things if relevant, for the investigation to prove the guilt of the accused, and 4. Discovery and arrest of the accused duly following the procedures and laying the final report before the jurisdictional magistrate to conduct a trial and to bring the case to its logical conclusion. Investigation is made to form an opinion as to whether prima facie a case is established against the accused and to establish facts and circumstances of the case connecting the accused to the crime. Investigation is not merely a process to boost the prosecution of a case but also to bring out the real unvarnished truth.

In a country like India, the Police organisation has to shoulder a greater responsibility particularly in the investigation of heinous crimes like sexual assault. Sexual assault is an act that involves forceful, illegal sexual contact, behaviour or threats of undesirable sexual activity without the consent of a victim.

Sexual exploitation, penetration or an act of sexual contact without consent of the victims refers to an act of a sexual nature such as forced kissing, inappropriate touching, exhibitionism, forced vaginal, anal or oral penetration, forced sexual intercourse, child molestation and voyeurism.

Objective of any investigation is to identify the nature of crime that has been reported as a complaint, analyse and understand the behaviour of an accused and to connect the criminal to the crime by collecting lawfully-accepted evidence to establish the guilt of an offender. Section 2(h) of CrPC defines the term 'investigation' as: 'Investigation includes all the proceedings under this Code for the collection of evidence conducted by a Police officer or



by any person (other than a magistrate) who is authorised by a magistrate in this behalf.’ Police begins an investigation when it receives any information in cognizable cases.

4.2 PROCESS OF INVESTIGATION

Investigation begins with the registration of an FIR and the power of investigation is given to the Police u/s 175 of BNSS, earlier s. 156 of CrPC. The purpose of investigation is to identify the guilt of a person in a crime, locate the criminal, collect admissible evidence in order to connect the accused to the crime, and to prove his guilt.

It includes the establishment of what specific offence has occurred, how the offence has been committed, who has committed the offence and when and where it has been committed. More important is to establish *why* it has been committed. It is necessary to form certain teams for the collection of evidence. Investigation begins after issuance of the FIR, by collecting information from the scene of crime immediately involving experts wherever necessary, and ensuring medical care to the injured, etc., simultaneously.

1. The procedure of investigation and preparation of reports to the Court are narrated u/s 176 of BNSS, earlier s. 157 of CrPC and 177 of BNSS, earlier s. 158 of CrPC. Section 178 of BNSS, earlier Section 159 of CrPC empowers magistrates to act upon the report submitted by the Police.
2. Investigating officers are empowered to require the attendance of witnesses u/s 179 of BNSS, earlier s. 160 of CrPC. However, no male persons under the age of 15 years or women shall be required to attend any place other than the place in which they reside or at a place of their convenience.
3. Statements recorded u/s 180 of BNSS, earlier 161 of CrPC by the Police are basically the record of oral examination of the witnesses and as such the officer recording the statement should know how to extract and record the facts of a case. A witness is also bound to reveal the facts. However, such statements as recorded by Police should not be signed by the deponent.
4. Section 182 of BNSS, earlier Section 163 of CrPC mandates the Police not to

Section 2(1)(l) BNSS, earlier Section 2(h) CrPC defines the word investigation: ‘Investigation includes all the proceedings under this Code for the collection of evidence conducted by a Police officer or by any person who is authorised by a magistrate in this behalf’



offer any inducement, promise or threat to witnesses, since such acts are fatal to the case as it falls u/s 22 of BSA, earlier section 24 of the Indian Evidence Act, 1872.

5. Section 183 of BNSS, earlier Section 164 of CrPC empowers the recording of confession and statements by the magistrate in the course of investigation.
6. Police are authorized to conduct search and seizure of a place. Sections 166, 166A, and 166B of CrPC (presently Section 186, 112, 113 of BNSS resp.) explain the competency to issue a search warrant.
7. Section 187 of BNSS, earlier Section 167 of CrPC indicates detention of the accused for a period of 24 hours and explains the detailed procedure if the investigation cannot be completed within 24 hours.
8. Section 188 of BNSS, earlier Section 168 of CrPC directs that any subordinate officer conducting investigation shall report the matter to the Station House Officer.
9. Section 191 of BNSS, earlier Section 171 of CrPC mandates that complainants and witnesses need not be required to accompany a police officer and they are not to be subjected to restraint by Police.
10. The Police officer, after completion of investigation, submits a report without unnecessary delay to a magistrate empowered as per the format u/s 193 of BNSS, earlier 173 of CrPC, along with all the connected documents of the case. Nothing in this Section shall be deemed to preclude further investigation. If further evidence is obtained, oral or documentary, the same can be submitted through an additional charge sheet.

4.2.1 Issue of FIR

1. Section 173 of BNSS, earlier Section 154 of CrPC states that every information relating to cognisable offence if given orally to an officer in charge of a Police Station, shall be reduced to writing by him or under his direction and read over to the informant and every such information whether given in writing or reduced to writing as aforesaid shall be signed by the person giving it and substance thereof shall be entered in a book to be kept by such officer in such form as the government may prescribe in this behalf. A copy of the information as recorded under sub-Section 1 shall be given forthwith free of cost to the informant.
2. The first proviso to sub-Section 1 of Section 154 CrPC (presently section 173 BNSS)

if the victim is temporarily or permanently mentally or physically disabled, the information shall be recorded by a police officer at the residence of the person seeking to report such offence or at a convenient place of such person's choice in presence of a special educator or an interpreter



inserted by the amendment act of 2013 and subsequently amended by the amendment act of 2018 provides for the registration of first information report in the cases of rape and sexual offences, by a woman Police officer or any woman officer. It is further provided that if a victim is temporarily or permanently mentally or physically disabled, the information shall be recorded by a Police officer at the residence of the person seeking to report such offence or at a convenient place of such person's choice in presence of a special educator or an interpreter and the recording of such information may be recorded.

3. Recording of statement may be taken up by a woman officer and she shall issue an FIR immediately and take up spot enquiry and further investigation. The SHO shall also proceed to the spot without fail to ascertain the facts.
4. The ingredients of a complaint may be examined and paraphrased properly meeting the definition of the Section of law that may include that the offence was committed against her will, without her consent or with her consent by putting her under fear of death or hurt or by impersonation or consent obtained by reason of unsoundness of mind or intoxication or by stupefying or when the victim is under the age of 16 years.
5. Investigating officers should bear in mind that if the victim is a member of SC/ST community, appropriate Sections of SC & ST (POA) Act (Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989) should be invoked during the investigation. Similarly, if the victim is a minor, the relevant provisions of POCSO Act shall be invoked during the investigation.
6. A copy of the FIR shall be forwarded without any delay to the concerned court, all senior officers and a copy may also be sent to the District Legal Authority whenever applicable for releasing the required compensation and legal assistance. The victim shall be treated with empathy and care and shall be provided immediate medical assistance.
7. The officer shall examine if there is any delay in receipt of the information/complaint from the victim under certain circumstances and mention the same in the relevant column of the FIR, and shall also make an entry in the records of her/his investigation.
8. FIR relating to sexual offences shall not be uploaded on the official website of CCTNS (Crime and Criminal Tracking Network and Systems) portal and it may be categorised as sensitive.
9. The Investigating officer shall ensure that details and identity of the victim/child is protected from publicity and all precautionary measures shall be taken not to reveal the identity of the accused if she/he is juvenile, since it will be an offence u/s 72 of BNS, earlier 228A of IPC and Section 74 of JJ Act (Juvenile Justice (Care and Protection of Children) Act, 2015).



10. It is also provided that a Police officer shall get the statement of such person recorded by a judicial officer u/s 183 of BNSS, earlier 164 of CrPC as soon as possible. In *Lalit Kumari Vs. Govt. of U.P (2014) 2SEC1*, it was laid down that Police is duty bound to register the offence based upon the information given by the victim/informant in case of cognizable offences and that the statement of the victim is required to be recorded by a woman Police officer or any woman officer u/s 180 of BNSS, earlier 161 of CrPC.

4.2.2 Zero FIR

Police/SHO may receive information of rape or sexual assault from various sources like the Police Control Room, the victim herself or her relative or neighbour or some passer-by whether known or unknown. Police shall immediately respond and try to be polite and responsible in receiving the complaint or statement immediately, and shall inform their immediate superiors without any delay and without getting deterred by a jurisdictional issue, as there is a provision of Zero FIR.

4.2.3 Prosecution against Negligent Officer

The Criminal Law (Amendment) Act, 2018 enables the Police to register an FIR or a Zero FIR on receipt of the information of a cognizable offence which includes a sexual assault on woman, which mandates the registration of an FIR u/s 173(1) of BNSS, earlier 154(1) of CrPC, failing which such public servant shall be facing prosecution u/s 199 of BNS, earlier s. 166A(c) of IPC in relation to cognizable offences punishable u/s 124(1) of BNS[earlier Section 326A of IPC], Section 124(2) of BNS[earlier Section 326B of IPC], 74 of BNS[earlier Section 354 of IPC], Section 76 of BNS[earlier Section 354B of IPC], Section 143 of BNS[earlier Section 370 of IPC], Section 144 of BNS[earlier Section 370A of IPC], Section 66 of BNS[earlier Section 376A of IPC], Section 65(2) of BNS[earlier Section 376AB of IPC], Section 67 of BNS[earlier Section 376B of IPC], Section 70(2) of BNS[earlier Sections 376DA, 376DB of IPC], Section 71 of BNS[earlier Section 376E of IPC] or Section 79 of BNS[earlier Section 509 of IPC]. Section 193 of BNSS, earlier Section 173 of Code of Criminal Procedure has been amended under the Criminal Law (Amendment) Act, 2018 to provide for completion of Police investigation within two months in case of rape. A new provision of Section 166A was inserted by the Criminal Law (Amendment) Act, 2013 (Nirbhaya Act) to prosecute a public servant who fails to record any information of such offences as prescribed u/s 173(1) of BNSS, earlier 154(1) of CrPC.



4.2.4 Collection of Evidence

1. Collection of evidence should always be focussed to substantiate the allegations mentioned in the FIR. Collected evidence should establish the link of an accused to the crime and establish beyond reasonable doubt the guilt of the accused. Therefore, each allegation shall be properly understood and tangible evidence connecting the accused to the crime should be collected whereby the case of prosecution is sustained. In cases of sexual offences, Investigating Officer shall make every effort to know as to how the victim and the accused came in contact, identify and inspect the accused, collect digital evidence i.e., usage of modern equipment and processes like cell phones, call data/mobiles, emails, social media, SMSs, WhatsApp messages, etc., ensuring the prerequisites of admissibility.
2. Scientific evidence such as the reports of medical examination, DNA test, FSL reports, and any other biological exhibits, be collected promptly and maintained in proper care and custody. Sanctity of the chain of custody should be maintained and the items of such exhibits should be preserved without damage. Each of the exhibits should connect to the crime/criminal/victim.
3. The Supreme Court, in its case assessment of the criminal justice system and response to sexual offences vide *SMW(CRL) No. 4 of 2019*, passed certain orders post-Nirbhaya incident for effective and speedy investigation and trial. The Court observed that delay in such matters in recent times created agitation, anxiety and unrest in the minds of the people. The Court took stock of the implementation of legal provisions relating to rape and other sexual offences, beginning from the registration of an FIR, deploying a woman Police officer, recording the victim's statement at a place as per her convenience and choice, recording of her statement by the judicial magistrate u/s 183 of BNSS, earlier s. 164 of CrPC, etc., and observed that guidelines issued in the case of *Lalita Kumari Vs. Govt. Of U.P (2014) 2 SEC1.*, be observed in letter and spirit.
4. In the matter of collection of scientific evidence such as medical reports, wound certificates, DNA reports and other expert opinions of FSL, the Court also observed that forensic examination and reports played an important role in investigation as well as in linking the culprit with the crime. The Court also referred to the advancement of DNA science and its accuracy, the sampling for the purpose of forensic examination and expeditious reports apart from other forensic tests like forensic odontology; it also referred to timely examination of



the accused as per the provisions of Section 52 of BNSS, earlier Section 53A of CrPC for guidance in the preparation of a forensic report.

5. Recording statement of the victim and other available persons:

- a. Investigating officer should apply her/his experience and knowledge to elicit each and every relevant information and details of the incident from the victim while ensuring the victim's comfort, as she may be under trauma and may not be able to reveal the entire episode as to when, where, who, how and why of the incident. It is to be borne in mind that a proper recording of the statement of the victim plays a vital role to ensure successful prosecution and it is the foundation on which an FIR is registered and further investigation is conducted.
- b. Statement shall be recorded accurately and promptly as per the version of the victim and it shall not be recorded in a mechanical manner.
- c. If the victim is a minor, help of her parents or guardian or any other person the victim reposes confidence in, may be made available to console and comfort her. However, due care shall be taken when the allegations point to an involvement of parents, blood relatives or persons in authority or control.
- d. Statement of the victim may be recorded at a convenient place for her where she can record her statement without fear.

6. Recording of Statement before the Magistrate:

- a. Section 184 of BNSS, earlier Section 164A of CrPC imposes an obligation to get the victim of rape examined medically within 24 hours and the submission of medical examination report to the jurisdictional magistrate.
- b. Investigating officer shall take suitable steps to ensure that the statement of a victim is recorded within 24 hours of the registration of FIR and the victim shall be produced with a medical report of the prosecutrix along with a requisition.
- c. If the victim is admitted in a hospital or otherwise, the concerned magistrate may be requested to record her statement at the hospital.
- d. In the case of a victim being a minor, she shall not be separated from her parents/guardian or taken out from her environment on grounds of ascertaining voluntary nature of statement, unless the parent or guardian is suspected to be abusive and the magistrate may take appropriate measures in the interest of justice.
- e. Investigating officer may also follow the provisions of Section 26(4) of POCSO Act by video recording.



- f. Statements recorded u/s 183 of BNSS, earlier s. 164 of CrPC shall not be revealed or disclosed to anybody who is not connected with the investigation.
- g. Every possible care shall be taken to ensure that the victim does not come in contact with the accused at any point of time and the victim shall not be kept in a Police Station on any pretext for longer hours. If she has no safe place of stay, she should be accommodated in any safest place like a Government-recognized home or an NGO-run establishment.
- h. Recording of the statement shall be carried out by a woman Police officer or a woman officer and the same shall also be video-recorded initially and also at the earliest in presence of the judicial magistrate; the video recording shall be marked as an exhibit during the trial as digital evidence.

4.2.5 Investigative Techniques

1. Introduction

Research indicates that Police use various investigative techniques in the collection of tangible evidence in this modern era of technological innovation. Investigation of serious crimes like sexual assault needs special attention and an approach to timely respond, failing which ramifications on part of the victim and general public affect the matter drastically. If the accused is not arrested immediately, criticism and uproar mounts and calls for the attention of media which further adds fuel to the fire. Investigative techniques are used in serious crimes in identifying offenders, arresting them, eliciting confessions from them and getting them convicted. Investigative techniques are activities or strategies used by the Police in gathering evidence admissible in the court of law through methods of collecting/testing DNA, interrogation, profiling and surveillance, etc. One of the feedback meetings with Investigating officers and senior supervisory officers to know various challenges before investigators indicated that the biggest challenge was non-cooperation of witnesses and non-availability of alternative investigative techniques. Another serious point raised was about an abnormal delay in the receipt of expert reports from medical department, FSL and other agencies. Yet another challenge put forth was the hostile situation of a victim subsequent to the registration of an FIR since majority of the accused in serious cases like rape are known to the victim. Considering the changing scenario and advancement of technology, every Investigating officer who particularly deals with crime against women should be thorough with alternative techniques of investigation to ensure protection to the victim



and

prompt

justice.

1.1. What are Alternative Techniques?

For years, criminal investigators have mostly relied on the development of informants, use of undercover agents, laboratory analysis of physical evidence, physical and electronic surveillance, interrogation of suspects and, where permitted by law, wiretapping, etc., for collection of evidence. The advancement in technology has brought greater challenges for investigators who now need to focus on collection of evidence from various angles including forensic, digital, physical and scientific ones. Forensic evidence analysis and assistance of expert reports is well-established in most of the countries and these are known as scientific aids to investigation. Present challenge in the Indian scenario is to collect digital and physical evidence, reconstruct the scene, and connect the accused to the incident. DNA analysis and fingerprinting techniques, cellphone-data analysis, tower locations and connectivity of both the victim and the accused, closed-circuit TV footages, retrieval and image mapping of call data, messages, duration, timing and interconnectivity between associates are only few to be used for successful collection of evidence. It is to be borne in mind that these techniques are not in isolation but in addition to the primary and secondary evidence which shall establish the guilt of the accused.



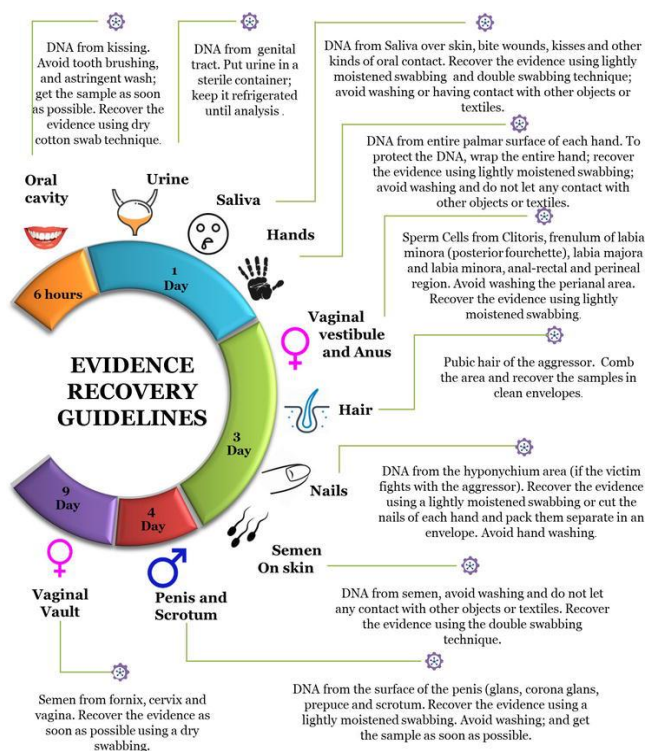
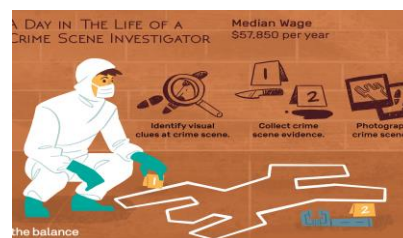
1.2. Objective

The primary focus of this section is not to make Investigating officers experts in these areas but to provide them an awareness on using alternative techniques of investigation. Having robust experience in dealing with crime against women, most Investigating officers and supervisory officers find it difficult to complete the investigation within the stipulated period and get higher conviction due to non-cooperation and unwillingness of independent witnesses to come forward and depose evidence. It is also a herculean hurdle to collect primary evidence in heinous crimes like rape wherein more than 90% of the accused are known to the victim, either they are members within the family or known to the victim in the capacity of neighbors, friends, etc.



Therefore, an effort has been made to briefly give an exposure to Investigating officers who particularly deal with crime against women. Most of the cases of sexual exploitation against women occur in isolation or in a secluded environment where there may not be any eyewitnesses. Collection of evidence through conventional methods is of no avail and the investigation becomes a challenge. However, investigative techniques may rely on collection of scientific and technological evidence which are admissible in the court of law. Such evidence may differ from case to case in which forensic and physical evidence from the scene, apart from the digital evidence, plays a vital role in connecting the accused to the crime.

- 2. Role of Forensic Experts:** Opinion of experts and reports of forensic physicians play a key role to corroborate the facts and reconstruct the scene. Forensic physicians are independent experts whose duty is to collect evidence to assist in proving or disproving an offence. Trial courts give importance to the evidence of experts depending on circumstances of the incident where primary evidence may not be available. However, expert reports



are of a greater scientific evidentiary value in cases of sexual offences. The aim of forensic medical examination is always to rule out informed consent to support the victim's assertion that sexual assault has taken place without her consent. Swabbing the external and internal areas of the complainant's body and samples thus collected for forensic examination assist in revealing the evidence to identify or eliminate the suspect and nature of activity that has taken place. Such examinations may be recorded using various advanced methods like colposcopy. Sometimes, it is found to be a good practice to collect urine and

blood samples for the purpose of bringing toxicology report on board, to establish the levels of use of alcohol or drugs, which may indicate the incapability of a victim because of the influence/inducement of alcohol or drugs. It can provide strong support in cases



where it is difficult to prove a victim's consent. In cases involving children, medical examination may involve a pediatrician or a suitably-qualified forensic practitioner who can examine post pubertal using various techniques to collect the medical evidence; thus, forensic physicians shall play a vital role in proving facts.

3. Forensic Evidence

Forensic medicine is one of the largest and most important areas of forensic science called medical jurisprudence. It basically deals with anatomy, pathology, and psychiatry which have application in legal problems.

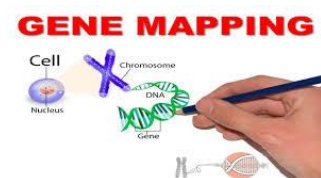
Evidence collected through such experts are admissible in the court of law and opinion of these experts plays a vital role in prosecution of cases. Various research reports indicate that victims of sexual violence owing to obvious reasons do not prefer going to law enforcement agencies or judiciary but they are likely to seek



medical care. Therefore, this necessitates proper coordination between the Police and the Medical departments through a policy. Countries like India have already created an environment to ensure an increasing response of the Police. Forensic evidence in cases of sexual violence, including collection of DNA samples, has been found to be of greater value. Forensic evidence is defined as a medical examination conducted in view of a possibility of the requirement of medical opinion in judicial proceedings in future. Forensic evidence include samples of hair, blood, semen, or, saliva which can contain the DNA of perpetrator, foreign material from the crime scene, urinary analysis of victim for sedation or poisoning & any other physical evidence.

3.1 Global Summit to End Sexual Violence in Conflict:

International protocol on the documentation and investigation of sexual violence in conflict was discussed elaborately during the Global Summit (June, 2014) with an aim to end sexual violence. The Summit identified potential pitfalls in collection of evidence and measures to be taken to use physical and digital evidence to prove the case and develop uniform and comprehensive policies towards this objective.



The Summit identified sexual violence as a mass atrocity and attempted to equate that to genocide. The Summit recommended to review evidentiary rules in regard to collection and admissibility of physical and digital evidence.¹⁰ There are well-established rape examination kit and guidelines to collect samples. DNA profiling, when matched with the accused, becomes more tangible evidence in proving



the guilt of the accused.

11

3.1. Importance of Forensic Evidence:

Research into the ways forensic evidence is used during a criminal investigation has demonstrated that such evidence often is unavailable and when collected at the scene of crime, it frequently goes unanalyzed. However, forensic evidence plays a vital role whenever the evidence of DNA profiling is associated resulting in majority of cases ending in conviction.

12

3.2. Important Objects in Sexual Assault:

Investigating officers need to preserve the evidence, avoiding cross-contamination, wherever there is a named or known suspect involved in the incident. Forensic examination of damaged clothing may provide support whether or not there is consent in sexual activity. Body fluids, DNA, fiber, hair, lubricants and toxicology marks and traces are capable of revealing useful evidence. Due to rapid development of new forensic techniques and scientific methods, advice may be sought from forensic experts to ensure that nothing is missed. Forensic experts need to receive a copy of medical examination reports including body diagrams of both victim and the suspect wherever appropriate, and Police may take appropriate steps to provide these to them without any delay.

4. Alternative Techniques - A Case Study:

It may not be possible to collect DNA samples in each and every case but the case cannot be left to its fate. In a case study, it has been found that a 20-year-old woman who broke her relationship with her boyfriend several months ago was not interested in the process of reconciling. On a fateful day, her boyfriend suddenly appeared, turned violent, grabbed her neck and began to force himself on her. As he ripped off her clothes, she managed to rebut using a small pocketknife which was broken. However, the woman was dragged out of her car and raped in a nearby wooded area. The boyfriend afterwards ran away, stealing her credit cards, etc. The victim received treatment and was medically examined. Evidence was collected for sexual assault by the Police. Though the case appeared to be a clear case of rape, the accused boyfriend defended that they were having fun in the evening at a party and after that she came to him wanting to get back together. He admitted that he had taken some drugs that



evening and denied any force or threat.

Police in this case collected **forensic evidence** which became critical to unravel the incident though there was no use of DNA analysis. In such cases, evidence provided by friends and relatives may not help much other than forensic evidence. Police collected evidence through blood samples and toxicology results that the man was under the influence of N-methylamphetamine (MDMA, commonly known as ECSTASY) a drug that is known to produce the feelings of increased energy, pleasure and distorted sensory and time perception. The investigation also revealed that he had sent a few messages after the assault which proved his involvement. Scientific evidence showed that there were abrasions on the private parts of the victim whose inner garments were found torn. Thus, forensic evidence and circumstantial evidence like CCTV footages proved the guilt of the accused and he was eventually convicted.¹³ It is a good practice to involve forensic personnel to examine various exhibits and compile the samples for further examination followed by a summary of statements of the victim and the accused, which one may withhold and reveal in due course.

5. Electronic Evidence and Admissibility

Technological revolution in communications and IT has brought a great impact on social media and Investigating officers are advised to use forensic investigation techniques in that light. Electronic evidence is digital evidence introduced through the India IT Act, 2000.



Electronic evidence is an invisible and latent evidence which can be altered or destroyed. Therefore, Investigating officers need to take every possible precaution so as to prevent the alteration of such evidence and use special tools and equipment to collect evidence with the assistance of experts. Evidence may be available in any storage device like computers, CDs, DVDs, floppy disks, hard drives, thumb drives, digital cameras, memory sticks, sim cards, PDA cellphones, fax machines, answering machines, cellphones, emails, CCTVs and caller ID scanners. It may be in form of an audio, a video or some text. Cyber forensics is an application of science and engineering for the collection of electronic evidence which is a synthesis of science and law. Electronic evidence plays a big role in criminal investigation. Section 2(t) of IT Act defines electronic evidence as data, recorded or generated, image or sound stored, received or sent in an electronic form or microfilm or computer-generated micro fiche. The process of seizure of electronic equipment, handheld devices, etc., is annexed to this document and presented through a flow chart for better understanding. Online child sexual abuse,



pornography, child pornography, harassment, humiliation, etc., are some offences which come under the head of sexual exploitation.

5.1. Chain of Custody in Digital Forensics

Chain of custody of this data is quite important. Forensic methodologies are both traditional forensics and live forensics, and can be said as digital forensics that include computer forensics, network forensics, mobile device forensics, IOT forensics, cloud forensics, voice forensics and photo forensics. These can be collected as forensic image or forensic copy. Necessary care has to be taken while retrieving files deleted, erased or wiped, and the data collected may be calculated through hash, algorithm, etc., which uses specific number of bytes to store a thumb print of contents.

5.2. Electronic Evidence: Legal Provisions

Section 62 BSA, earlier Section 65A IEA	Special provisions of evidence relating to electronic record
Section 63 BSA, earlier Section 65B IEA	Admissibility of electronic records
Section 90 BSA, earlier Section 88A IEA	Presumption as to electronic messages
Section 96 and 185 BSA, earlier Sections 93 and 165 CrPC resp.	Search and seizure
Section 80 of IT Act	Independent witnesses, video, photo and power to police to search and seize not below the rank of Inspector of Police.
Section 4 of IT Act	Admissibility of e-records
Section 63 BSA, earlier Section 65B IEA	Evidentiary value of electronic record and certification

While dealing with the interpretation of Section 65B of Indian Evidence Act, 1872 (presently section 63 of BSA) a three-judge bench of Justices R. F. Nariman, S. Ravindra Bhatt and V. Ramasubramanian of the Supreme Court held that the certificate required u/s 65B(4) is a condition precedent to the admissibility of evidence by way of electronic record. It however clarified that the required certificate was unnecessary if the original document itself was produced.¹⁴

5.3. Analysis of CCTV Footages

Advancement in technology and endeavors to have safer environment has facilitated the installation of closed-circuit television (CCTV) cameras in most





countries particularly in urban areas. A CCTV system monitors the interior and exterior of a property, transmitting signals to the display. Studies indicate that there is a reduced level of fear among people wherever CCTV surveillance is installed and it also helps in prevention of crime. Another study indicates that of nine in ten investigations reported in urban areas, CCTV footages are of immense value. Private players may be encouraged to install such systems. Latest technologies are embedded with the facility of high-quality cameras, 360-degree movement, night-vision recording and are equipped to raise alarm in some situations. However, Police have to create an awareness campaign on the benefits of CCTV systems and their coverage and encourage their installation. Police officers around the globe are using CCTV footages in crime investigation. It is very effective in solving crimes as it records the occurrence and helps investigators identify a suspect and determine whether an offence has occurred and if so it also generates investigative leads. Cases like voyeurism, entry, exit and enroute of both victims and the accused are covered prior to the incident and after the incident. Thus, CCTV has become a silent witness. Such evidence is admissible u/s 7 of BSA, earlier s. 9 of Indian Evidence Act. Therefore, CCTV footages play a vital role. A case may be registered against a known or unknown person and in the cases of the latter, CCTV footages are very useful. These also help Investigating officers with the time of occurrence of crime and the witnesses which could corroborate the facts of the case. At times when eyewitnesses turn hostile, quality CCTV footages are reliable to prove the case. However, CCTV footages also have certain challenges. The origin of CCTV footages have to be proved beyond reasonable doubt and courts have to observe the relevance and importance of CCTV footages in many cases. It is electronic evidence presented in court through a witness to corroborate the prosecution's case.

5.4. Certificate to Establish Authenticity

Whenever any electronic evidence is used, it is mandatory to prove the contents of the electronic record in accordance with the Section 63 of BSA, earlier Section 65B of Indian Evidence Act. There are many case laws where CCTV footages were used as admissible evidence when the source and proper certification was made before the court. In view of this, investigating officers have to be familiar as to how to collect CCTV footages whenever these are available in a server, or from a huge storage device. A requisition has to be filed before the competent authority for the



collection of such evidence and its retrieval into a smaller storage device like pen drive, CD, or, USB. Such information may be certified by the competent authority in control of such server and the certificate must be as per the prescribed format. It should also be borne in mind that the data so collected should be frozen and not altered or tampered with. Thus, CCTV footages are very helpful in criminal investigation.

5.5. Call Data Analysis

Mobile phones have become ubiquitous in a very short time, having the highest penetration among all known communication technologies with over 5 billion users worldwide and still growing rapidly. Even the feature phones generate a variety of data during normal usage of such a phone while smart phones generate even greater amount of data with high-speed data accesses. Analysis of these data in combination with rule base and heuristics would yield a wealth of information on the characteristics, personality and lifestyle of the users.¹⁵ Cell phones may be a mobile communication device with a digital organizer, low-end computer, digicam, media player, etc., and the data is configured in a volatile memory which may drain out once the battery is off. Collection of evidence shall always be as early as possible. Cell phones may also have GPS, navigational aids, personal digital assistant (PDA) using 3G or 5G. Most of the advanced phone instruments will have personal identification numbers (PIN) and personal unblocking code (PUK) apart from smart cards, etc. Retrieval of data and mapping of phone will enhance opportunities to identify the suspect and know various details like deleted messages, affairs, deleted call records, dishonest activities, etc. Sometimes, it is also used to transmit objectionable pictures, messages, videos, documents, etc.

5.6. SIM Cards

A SIM card provides a subscriber's unique identity to the GSM networks for an authenticated network where personal data is stored. Combination of SIM card reader will give tangible information. It also facilitates to know area coverage by antenna on cell tower and mobile phones can be tracked through MSP (managed service providers) to establish connectivity with the nearest cell tower which would lead to the current location and generation of the calls.



5.7. Tools for Collection of Evidence

There are various tools for CDR analysis like Analyst Notebook (i2, UK), and C5 CDR Analyser (Prosoft, India). Physical evidence can be collected from a mobile using such tools: users DNA, loose cheek, cells on microphone, skin flakes near buttons, earpiece, fingerprints from mobile body/ cover/ screen, etc., can also be collected if the accused is identified and apprehended immediately after the incident. Memory cards in most of the phones will have lot of images and pictures, and using the USB memory card reader may give certain details in some cases.

5.8 Practical Challenges

Investigating officers do not focus on the wealth of information available in cell phones and do not take timely action to get them analyzed and collect digital evidence. However, there are certain practical challenges to retrieve the data for obvious reasons like certain phones particularly made in China do not support forensic tools and the tools available are also not compatible. Most phones will also not synchronize with personal computers and have connectivity problems and other chargers may not work.

5.9 What to Seize?

Investigating officers, while seizing, should also collect mobile phone, power adapter, accessories, communication cable, desk top, lap top and PC to which the mobile phone is usually connected for backup/restore/syncing, if any.

5.10. Proper Documentation

The documentation of the seized equipment should be made properly mentioning the details of cell phone. Photograph should be taken of the phone showing time setting, state (on/off), connected/disconnected from network characteristics, mobile application installed running in a chronological manner. The phone is to be turned off upon seizing as evidence and the battery to be removed if examination of the phone is going to be delayed. The phone has to be isolated from incoming calls/SMS by rapping the device into a thicker layer of aluminum foil to block the radio signal and change the mobile profile to flight mode.

Data may be extracted from a cell phone without any change in the phone memory



and analysis must be done in a shielded environment isolating from RF signal omitted by the cell tower. Investigating officers may seek an analysis of the following from a cell phone through mobile forensic lab: internal memory, SIM card, removable or external memory cards and PC system to which the phone is usually connected for backup/syncing. To extract and examine the data from a cellphone, written authorization must be available from the agency, seeking investigation by a lab. Information that can be retrieved includes service-related data such as identifier for SIM card and subscriber call logs such as numbers called/received/missed, and SMS/ MMS contents- and the information on location.

16

Analysis of data indicates voice call history, messaging history, contact list, phone-book usage, time and duration of usage, picture/video albums, camera/video usage characteristics, schedules in calendar, notepad usage and content, etc. In the cases of sexual offences, tangible evidence can be collected from the analysis of call data of both the victim and the accused. There are many advanced technologies available which describes simple statistics on a single data set and information can be retrieved with SMS or personalized voice message clip. Since the data on cellphones is highly personal and of private nature, it is very difficult for people to share their data. However, a well-established mechanism for anonymous retrieval of data which is possible over a period of six months is essential. It may not be possible for the investigating office to develop them, but steps should be taken to refer the phone numbers to get information from service providers for detailed analysis using forensic/digital experts. By mapping of cell phone data and tower location, investigators will be able to determine certain facts pertaining to the case. When the data and findings are confronted to the accused or to the victim, they do not have any alternative except to admit the facts.

5.11. Guideline to Service Providers

Cellular companies and internet service providers are issued specific guidelines to maintain CDRs and other relevant records for a concerned period in tune with the Section 33 of BSA, earlier Section 39 of the Indian Evidence Act, in a segregated and secured manner, if a particular CDR or other record is seized during investigation in the said period. Concerned parties can be summoned for such records at the stage



of trial, and it can be used as admissible evidence u/s 67C of IT Act. There are settled guidelines in our country to this end and investigating officers may use the CDRs analysis during their investigation. The Supreme Court of India has passed instructions in this regard in the case of *Arjun Pandit Rao Khotkar Vs. Kailas Khushan Rao Gorantyal*, 2020 SCC online SC571.

5.12. Need for Alternative Techniques

As stated above, Investigating officers should apply different methods and techniques to collect evidence not only from conventional source but also from other sources to ensure the standards of investigation and those of evidence. Primary objective of an investigative process through any technique is to establish the facts relevant to an allegation and to ensure a prompt conviction. The investigation standard is to determine the veracity of allegations and maintain objectivity, impartiality and fairness throughout the investigative process maintaining the highest level of integrity. The standard of evidence is always appreciated only once when the same is accepted and appreciated in the court of law supporting the case of prosecution.¹⁷

4.2.6 Scene of Crime – Methodology, Search and Seizure

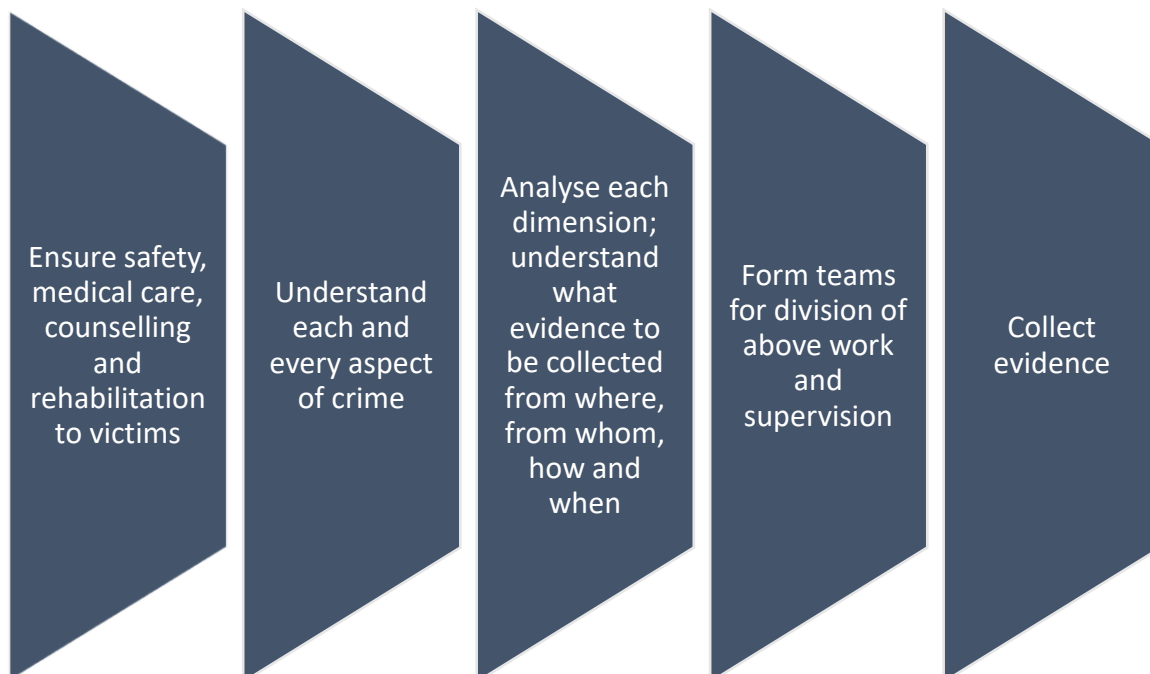
Key principle underlying investigation of the crime scene is a concept that has come to be known as Locard's principle of exchange (i.e., the perpetrator of a crime will bring something into the scene of crime and leave with something from it, which is 'all contacts leave a trace') The rough drawing of the crime scene plays a vital role as it is admissible before the court as per Section 7 of BSA, earlier Section 9 of Indian Evidence Act and it helps in writing case diaries and examining witnesses and reflects a true picture of the incident refreshing the memory of the Investigating officers and also helping the court during a trial. As per Section 347 of BNSS, earlier Section 310 of CrPC, the court can also visit the scene. Therefore, Investigating officers should take the following steps very carefully:

1. Preserve the scene of crime and prevent entry of any persons other than Investigating officers and other experts from FPB (finger-print bureau)/FSL and ensure that the scene of crime is cordoned off using a crime scene tape.
2. Ensure photography and videography of the crime scene before making any attempt to search and seize any material from the scene and ensure that the entire scene is captured from various angles in a detailed manner.



3. Thorough inspection, as per the procedure, be conducted without any negligence. Inspection of the crime scene can be carried out by following either clockwise or anti-clockwise pattern and this should include any one of the methods like strip, spiral, zonal, wheel or grid method, which are known to the Police.
4. Crime scene may be searched and evidence may be collected to connect the accused to the crime and any exhibits to be seized shall be lifted and packed taking all precautions using regional FSL teams.
5. Rough sketch is drafted duly following the procedures.

4.2.7 Plan of Action



4.2.8 Medical Examination

In the *MSW (Crl) 4, 2019 Case* post-Nirbhaya incident, the Court observed that medical treatment and examination of a victim is a very important aspect not only for immediate relief to the victim concerned but also from the perspective of intrinsic evidences which such examination could bring to the trial, and referring to various amendments made during 2013-2018, made an offence punishable u/s 200 of BNS, earlier 166B of IPC. It also sought for a report whether there are any guidelines for preparation of a medical report and the



manner of medical examination, and referred to the amendment of Section 48 BSA, earlier Section 53A inserted in the Indian Evidence Act, 1872, wherein the evidence of character of the victim and of such persons and their previous sexual experience with any persons shall not be relevant on the issue of such consent or the quality of consent.

The Court also observed certain medical opinion issued as 'the victim is habitual of sexual intercourse' and the opinion suggesting a possibility of consent on the basis of her previous sexual exposure.

However, the MoHFW, Government of India, had prepared the guidelines and protocols that govern the medico-legal care to be extended to the survivors/victims of sexual violence.

The Court observed that per vaginum examination, commonly referred to a two-finger test, had been held to be of no consequence and violative of the dignity of woman, reiterating the observations in the case of *Lillu alias Rajesh and other Vs. State of Haryana (2013) 2014 SEC 643* and called for a detailed status report on the medical opinion, process of medical examination and availability of medico-forensic kits with all hospitals and health centres.

4.2.8.1 Guidelines for Medico-Legal Care for Survivors/Victims of Sexual Violence

The Ministry of Health and Family Welfare, Government of India, issued the guidelines on medico-legal cases for the survivors/ victims of sexual exploitation as per the recent guidelines of the Government of India. The Ministry recognised the critical role of health professionals and health systems, and issued certain guidelines to strengthen the legal framework, developing comprehensive and multi-sectorial national strategies with the following aims and objectives:

1. Operationalize informed consent and respect autonomy of the survivors in making decisions about examination, treatment and Police intimation.
2. Specific guidance on dealing with persons from marginalised groups, such persons with disabilities, sex workers, LGBT persons, children, persons facing caste, class or religion-based discrimination.
3. Ensure gender sensitivity in the entire procedure by refraining from any mention of past sexual practices through comments on size of vaginal introitus, velocity of vagina or anus etc. Further it bars comments of built height, weight, nutrition or gait that perpetuate stereotypes about victims.
4. Focus on history by recognising various form and dynamics of sexual violence including activities that lead to loss of evidence.



5. Collect evidence based on science and history with specific guidance for taking relevant samples and preservation of evidence.
6. Standard treatment protocols for managing health consequences for victims of sexual violence.
7. Guidelines for provision of extending first line psychological support.
8. Guidelines issued to narrate how health professionals should play a vital role over the health consequences of survivors by timely responding to the needs of special groups, including children, and handling various operational issues like medical examination, reporting, extension of psychosocial care, etc., and the guidelines for interface with other agencies such as the police and the judiciary.

(The guidelines also included legal definitions of sexual violence, time since injury, age estimation, and table indicator of evidence collection. The guidelines prescribed a standard proforma for medico-legal examination of the survivors/ victims of sexual violence. The proforma is enclosed as Annexure 1 and 2 in the Protocol 3, for understanding the format of medico-legal examination of survivors.)

9. Guidelines to issue provisional clinical opinion immediately after examination of the survivor on the basis of history and findings of detailed clinical examination; the provisional opinion must in brief mention the relevant aspects of the history of sexual violence, clinical findings and samples which are sent for analysis to an FSL.
10. An inference must be drawn in the opinion correlating the history and clinical findings. Certain guidelines were also given to form provisional opinion with certain examples. It suggests that it shall be borne in mind that normal examination findings neither refute nor confirm the forceful sexual intercourse. However, circumstantial and other evidence may be taken into consideration for giving an opinion. Taking an example of the absence of injuries or negative laboratory results, it is advised that it may be due to the inability of survivors to offer resistance to the assailant because of intoxication or threats, delay in reporting of examination, activities such as urinating, washing, bathing, changing clothes or douching which may lead to a loss of evidence. It further mentioned about the use of condom/vasectomy or diseases of vas and the medical officers were advised to mention the reasons while formulating their opinion.
11. The guidelines also directed hospital authorities to designate certain responsible staff for handling the evidence in order to prevent mishandling and tampering of the evidence. It advised to maintain fool proof chain of custody of all evidence for their admissibility in court of law and it is directed to maintain a log of handing over of the evidence from one custodian to the other from time to time.



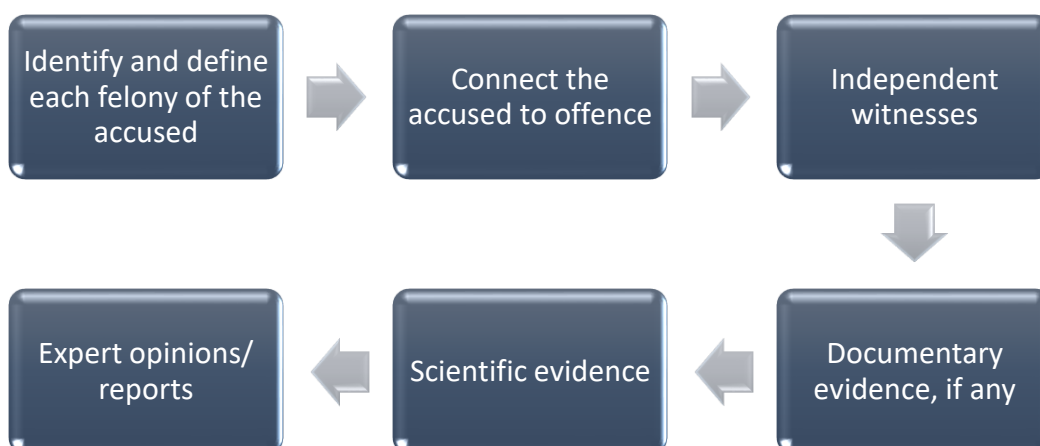
12. The guidelines elaborately give a table of various indicators for issuing a final opinion after receiving reports from an FSL, differently for penetrative and non-penetrative assaults.

13. To access the current guidelines, officers are encouraged to visit the MoHFW website and search for 'Guidelines and protocols medico legal care for survivor's victims of sexual violence'. The link to guidelines presently available is given in the reference¹⁸.

4.2.9 Arrest of the Accused and Remand

Prompt arrest of the accused, interrogation, confession, search & seizure, remand and Police custody as and when required.

4.2.9.1.1 Crime Mapping



4.2.10 Depositing Material Objects in the Court and Proper Chain of Custody

1. Take all precautionary measures to prepare mediator (*panchas*) reports, search and seizure of material objects and ensure proper chain of custody.
2. Take steps to deposit all the material objects in a proper manner of packing, protection, and safety.
3. Obtain property deposit number indicating crime number from the court in time.

4.2.11 Filing of Charge Sheet

The Supreme Court of India called for a status report on the completion of investigation and submission of the final report within a period two months from the date of FIR as per the



Section 193 of BNSS, earlier Section 173(1A) of CrPC in relation to the offences u/s 64,65(1) of BNS[earlier s. 376 of IPC], s. 66 of BNS[earlier s. 376A of BNS], s. 65(2) of BNS[earlier s. 376AB of IPC], s. 67 of BNS[earlier s.376B of IPC], s. 68 of BNS[earlier s. 376C of IPC], s. 70(1) of BNS[earlier s. 376D of IPC], s. 70(2) of BNS[earlier s. 376DA, 376DB of IPC] or s. 71 BNS[earlier s. 376E of the IPC], and drew the attention of the Government on the availability of sufficient number of women police officers to conduct investigation into the offences relating to rape and other sexual offences.



4.2.12 Trial

4.2.12.1.1 In-camera trial to be completed within 60 days

The Court also referred to the provisions of Section 125 of BSA, earlier Section 119 of IEA for assistance of an interpreter availability of video recording, time taken for recording of the statements of the victim and also availability of woman judge preferably for trial apart from mandatory procedure of conducting on-camera trial as per Section 366 of BNSS, earlier Section 327(2) of CrPC.

The Court emphasised on the provisions of Section 346 of BNSS, earlier Section 309(1) of CrPC for completing trial as far as possible within a period of two months from the date of filing of charge sheet.

4.2.12.1.2 Trial Procedure

The Court dealt elaborately as to how a trial programme has to be followed as reiterated in the case of *State of Kerala Vs. Rashid, AIR 2019 SE721*.

1. Section 183(6)(a) of BNSS, earlier Section 164(5A) of CrPC provides for the recording of statement by the court other than recording of statement u/s Section 183 of BNSS, earlier 164 of CrPC for the purpose of recording of statements during the trial. Section 125 of BSA, earlier Section 119 of IEA provides for assistance of an interpreter or special educator in recording the statement of witness unable to speak but capable to give evidence in any other manner and it shall be video-recorded.
2. Section 21 of BNSS, earlier Section 26(a)(iii) of CrPC provides for the trial of such offences to be conducted by a court presided over by a woman judge as far as



practicable and Section 366 of BNSS, earlier Section 327(2) of CrPC mandates that in-camera trial be conducted and that insertion of these provisions as a very important object.

3. Section 346 of BNSS, earlier Section 309(1) of CrPC emphasised that it should be ensured that trial shall be completed within a period of two months from the date of filing of charge sheet and that sufficient number of special courts have been established to exclusively deal with cases of rape and other sexual offences.
4. Section 253 of BNSS, earlier Section 230 of CrPC says that a trial programme is generally prepared as stated in the case of *State of Kerala Vs. Rashid AIR2019 SE2 721*, and there shall be a case calendar for the trial & shall ensure attendance of witnesses on fixed dates and bar council & advocates may cooperate for the completion of trial within the stipulated period apart from the constitution of special bench in any of the state's High Courts for expeditious hearing of appeals in such cases.

4.2.13 Victim and Witness Protection

The Court dealt elaborately on the protection of witnesses during investigation and trial and referred to victim compensation u/s Section 396(2) of BNSS, earlier 357A (2) of CrPC by District Legal Authority or State Legal Authority, as reiterated in *WP(C)565/2012 Nipun Saxena Vs. Union of India*.

The Court observed that the compensation scheme will comprehensively provide for the rehabilitation and compensation for the victim of rape and other requirements including immediate counselling, legal aid & medical, social, economic rehabilitation.

4.3 INVESTIGATION OUTSIDE THE COUNTRY

4.3.1 Introduction

It has been observed that in some cases of crime against women particularly in cases of domestic violence, dowry harassment, fraud marriages, divorce in disguise suppressing facts and cheating innocent women, cases of human trafficking under different heads are only few to quote, in which it may be necessary to gather information or conduct a formal investigation abroad where the accused escapes from the country after committing the crime or part of the crime is committed outside the country or the witnesses and other material evidence are available in another country. However, it may not be necessary to gather formal evidence in all such cases but the investigation agency may need informal



information or certain leads in the first instance upon which further evidence can be collected through Interpol or diplomatic channels. For the purpose of investigation abroad, the International Police Cooperation Cell (IPCC) of Central Bureau of Investigation, New Delhi, is the designated agency for routing request for informal enquiries to be made with a national central bureau of other countries, Interpol headquarters as well as Indian missions abroad. It is pertinent to mention here that IPCC is the national nodal agency for investigation abroad while Crime Investigation Department (CID) of State Police is the State's nodal agency which will route all such requests of respective district Police officers so as to forward them to the IPCC for taking further action in the matter.

4.3.2 Investigation Abroad

Extraterritorial application of Indian statutes abroad has become a matter of concern as some of the cases of human trafficking, serious cases of fraud against women, domestic violence, etc., are becoming difficult to solve and the investigation to be completed. Present section on Investigation Abroad is aimed at giving an exposure to Investigating officers about what is investigation abroad, relevant provisions of law, Interpol matters, scope of assistance, procedure for letter rogatory, red corner notice, etc., in cases wherever relevant. Section 1(5) of BNS, earlier Section 4 of the IPC and Section 208 of BNSS, earlier Section 188 of CrPC provide for the extraterritorial application of Indian laws on crimes committed by Indian citizens abroad and crimes committed by persons on any ship or aircraft registered in India.

4.3.3 Legal Interpretation

The High Court of Kerala reiterated the settled law that there was no requirement to obtain a sanction from the Central Government for arresting an accused during an investigation which is going on for an offence committed outside India. The Court relied upon the case law *Muhammed Vs. State of Kerala*, where the Court had held that the words "deals with" essentially included investigation apart from enquiry and trial furthermore, since enquiry and trial have been explicitly excluded from the main body by virtue of the proviso, this essentially implied that investigation by the police in a foreign soil shall not require any previous sanction of the Central Government and the same stand was also taken in the cases of *Muhammad Rafi Vs State of Kerala*, wherein it was stated that the bar proviso of Section 208 of BNSS, earlier Section 188 of CrPC only applied to the enquiries and trials and not to the investigations. However, any police officer of India does not enjoy the police



powers in a foreign country, the powers to investigate arrest or detain if exercised without express the consent of the country in question, would amount to the breach of its sovereignty. This challenge was clarified by the comprehensive guidelines issued by the Ministry of Home Affairs, Government of India. Investigating officers should have sound knowledge on these guidelines to be juristic and acceptability of their action exercised during the course of investigation.

4.3.4 Investigation Abroad: Procedural Aspects

Any request of investigation abroad shall precisely incorporate the following:

- i) The FIR number along with names of the accused and sections of law under which case has been registered.
- ii) The gist of the allegations in the FIR/ preliminary enquiry or any other investigation process.
- iii) The details of information required in order of facilitating the requested country/ its NCB providing information, the specific relevant details must be furnished.

1. Visit of Police Officers Abroad for Investigation

- i) A brief note detailing the reasons for sending the team, nature of enquiries required to be made in the requested country. This is to enable the authorities in that country to assess whether the request is justified.
- ii) All available details about the identity or particulars of the person to be contacted or documents to be scrutinized, etc.
- iii) Information about the penal offence(s) to which mission relates.
- iv) Whether Article 3 of ICPO (Interpol) Constitution or some other legal provision restricting international cooperation is attracted.
- v) Exact date and duration of the mission and information about the Police officers such as their name, ranks, etc.
- vi) Any other information which may be relevant in processing such a request.

2. Issue of Letters Rogatory (LRs) for Investigation Abroad u/s 112 of BNSS, earlier 166-A of CrPC, 1973



- 1) In order to conduct formal investigation and to collect evidence and gather material objects/documents, Section 112 of BNSS, earlier Section 166-A of CrPC of the Criminal Procedure Code, 1973 lays down the procedure of sending 'Letter of Request' (Letter Rogatory/LR) through a competent court. Letter rogatory is forwarded within the ambit of mutual legal assistance treaty (MLAT) in criminal matters, memorandum of understanding (MoU)/Arrangement, etc., existing between India and the requested country or on basis of reciprocity in case no such treaty or MoU exists. In certain cases, it may also be possible to use the provisions of an international convention providing for such mutual cooperation, to which both India and the requested country are signatories for sending such letters rogatory.
- 2) No request for issue of an LR shall be brought before any court by an investigating agency without the prior concurrence of the central authority i.e., Ministry of Home Affairs (MHA), Government of India.
- 3) In case it is considered necessary to get a letter rogatory issued, a self-contained proposal has to be sent to the Under Secretary (Legal), Internal Security Division, Ministry of Home Affairs, Lok Nayak Bhawan, New Delhi, to be routed through the Home Department of the state in case of State Police, and directly to MHA in case of DSPE (CBI) for obtaining concurrence of the Government before filing an application in the competent court.
- 4) Before making a proposal to the MHA, the investigating agency concerned may examine the matter in detail whether it is absolutely necessary to get the investigation conducted abroad for taking the case to a logical conclusion. The provisions of the MLAT, MoU, Arrangement or International Convention as well as the requirement of the law of the requested country such as principle of dual criminality, assurance of reciprocity, etc., may be studied to ensure that such a request would fall within the parameters of legal requirements of the requested country. It is important as it would have to be specifically mentioned as to under what provisions of the treaty, MoU, Arrangement or International Convention the request was being made. Where no such bilateral or multilateral arrangement exists, a letter rogatory may be made on the basis of an assurance of reciprocity.
- 5) Certain countries do insist that a LR be sent in a particular language or format. If so, the requirements for making such a request may be studied to comply with them. Necessary assistance of IPCC, CBI, New Delhi, may be taken for purpose, if required.
- 6) For obtaining the concurrence of MHA, the investigating agency concerned has to send the following in triplicate:
 - i) A self-contained note containing brief facts of the case incorporating the allegations, names of the accused and particulars of the offences committed



with details of Sections of law and a copy of first information report (FIR). The FIR may be neatly word processed and must accompany with an English translation if written in vernacular.

- ii) The need to conduct investigation abroad along with the legal opinion of Director of Prosecution or the senior-most law officer on the need for such LR, that it would fall within the ambit of MLAT, MoU, Arrangement, International Convention and laws of the requested country on the principles of dual criminality, etc. The relevance of statements of witnesses to be examined and collection of documents/material being requested to be seized, etc., to the investigation of the case may also be commented upon.
- iii) Relevant provisions of the MLAT or MoU or Agreement/Arrangement or an International Convention under which a letter rogatory is to be made may be enclosed. In case it is to be sent on assurance of reciprocity, the same may be mentioned.
- iv) Draft application to be filed in the competent court for issue of a letter rogatory may be enclosed. The application should contain the following:
 - Background note with brief facts of the case, the allegations and name of the accused and particulars of the offences committed with an extract of Sections of law and a neatly word-processed copy of first information report (FIR) as enclosures.
 - Details of investigation to be carried out in the requested country. Care must be taken that request made is specific as no country would allow fishing enquiries/investigation.
 - Particulars of the witnesses to be examined their identity and addresses if available along with a detailed questionnaire for examination of each witness.
 - Description of the documents/articles to be collected and procedure for the same.
 - Extract of the corresponding Sections of laws of the requested country which would constitute an offence(s) on similar allegations under investigation in India. It may be stated in particular if under the laws of the requested country, the principle of dual criminality or any other requirement is essential requirement for execution of a letter rogatory.
 - Extract of relevant provisions of the MLAT, MoU, Arrangement or International Convention, etc., providing for such assistance by the requested country.



- Declaration that the proposed letter rogatory is in compliance with all requirements of the requested country and that the case under investigation is not of political, military, racial or religious character.
- A draft 'Assurance of Reciprocity' in case the request is being made to a country with whom no MLAT, MoU, Arrangement, etc., exists or the request does not fall within the ambit of an International Convention.
- Whether a visit by investigating or any other officer is proposed to assist the authorities in the requested country to execute the letter rogatory.

7. Letter Rogatory (LR) Precautions

- i) Documents, photographs and objects, if enclosed with the LR, should be clearly marked and referred to in the body to enable the requested authority to know clearly what is required to be done with them.
- ii) All the photocopied papers/documents enclosed must be legible and translated in the required language, if required.
- iii) The LR should be neatly bound and page numbered.
- iv) The authenticated translated copies, duly signed by a translator, be enclosed along with the original LR, if required to be submitted in a language as prescribed in the MLAT, MoU, Arrangement or otherwise.
- v) At least five copies of the LR should be prepared including the original. Three copies along with the translated version, if any, are to be sent to MHA along with a copy to the IPCC of CBI.

8. MHA may consult CBI whenever required and convey its concurrence to the proposal to be filed in the competent court for the issue of an LR and also mark a copy of its concurrence to the IPCC, CBI, New Delhi.

9. After obtaining the concurrence of MHA, an application may be filed in the court of competent jurisdiction for issue of an LR addressed to the competent authority of the requested country. The competent court may decide to issue an LR addressed to the competent authority in the requested country as prayed for or otherwise.

10. In case the request is accepted, the court would issue the LR under its seal and authority. A format and the contents of the LR are given in the Annexure to the guidelines.

Note: The investigating agency may refer for further details to: mha.gov.in/sites/default/LR-170709_2, for the procedures to be followed after the issue of an LR by the competent authority, handling of incoming LR, handling of extradition request, contacting by and with foreign police/legal officers/attaches, etc., and for comprehensive guidelines of the MHA, and for the format and contents of letter rogatory.



8. Service of Process Abroad

Section 110 of BNSS, earlier Section 105 of CrPC provides for reciprocal arrangements to be made by the Central Government with the foreign government with regard to the service of summons/warrants/judicial processes. However, despite sincere efforts, service of summons and other judicial process is getting delayed upon which the MHA, Government of India, issued the comprehensive guidelines vide *Letter No.25016/17/2007 Legal Cell*. Such guidelines may be verified on wbja_adm/mha_service_process.pdf.



Protocol-5

5 MODULES OF STANDARD OPERATING PROCEDURES



The best protection any woman can have ----is courage.

Elizabeth Cady Stanton



5.1 INTRODUCTION

This Section deals with core guidelines and SOPs for investigation of crime against women in general and sexual offences in particular. Objective is to facilitate the Investigating officer with certain guidelines to follow and also to maintain a checklist to ensure that all the important points are covered during the investigation.

It is necessary to draw attention of the investigating and supervisory officers to the fact that investigation basically depends on an individual thinking process and experience of the investigation officer. It differs from case to case and on the different circumstances of the case as how, when and where tangible evidence can be collected, collated and compiled for their presentation before the court of law to ensure the conviction of the accused.

SOPs recommended in this document are recommended to be read in conjunction with the literature on legal provisions of the offence and also the prescribed procedure of investigation. It may also be borne in mind that the successful implementation of steps prescribed in the SOPs will require diligent application of mind of an Investigating officer and also on the high degrees of accountability to go with that.

SOPs are structured for the offences listed below in form of an information manual that may be made available both online and offline.

SOP on Anti-Human Trafficking (AHT)	SOP on Dowry Death [S. 80 BNS, earlier S. 304(B) IPC]	SOP on Sexual Harassment [S. 74-78 BNS, earlier S. 354(A-D) IPC]	SOP on Outrage of Modesty [S. 74 BNS, earlier S. 354 IPC]
SOP on Rape [S. 64,65(1) BNS, earlier S. 376 IPC]	SOP on Dowry Harassment [S. 85,86 BNS, earlier S. 498(A) IPC]	SOP on Insult to Modesty [S.79 BNS, earlier S. 509 IPC]	SOP on Acid Attacks



5.2 SOP ON AHT

5.2.1 Introduction

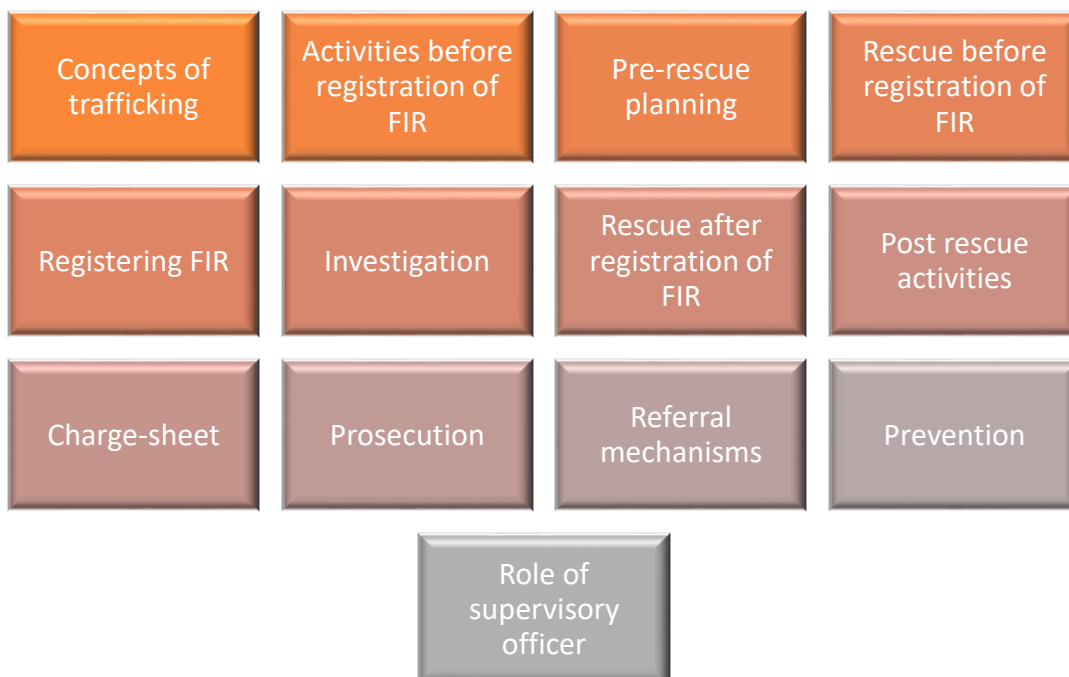
Human trafficking implies buying and selling of human beings for profit. It is one of the largest organized crimes across the world along with trafficking in drugs and arms. Human trafficking is a grave violation of human rights, one that deprives and demolishes the dignity of the trafficked person. Officers who deal with the victims of human trafficking should be empathetic and they should understand the situation from the victims' perspectives.

5.2.2 Victim-Friendly Procedures

- Victim not to be treated as offender
- Victim not to be re-victimized
- Victim not branded as a 'soliciting person'
- Victim not to be arrested
- Victim not to be stigmatized
- Victim to be extended all assistance as a matter of right.

5.2.3 Structure of SOP

SOP covers the following segments:





5.2.4 Reasons for Human Trafficking

Human trafficking takes place for a number of purposes such as prostitution, forced labour, marriage and removal of organs. The underlying purpose of human trafficking is exploitation and therefore motive of this crime is profit. There are three distinct elements of human trafficking- the acts, the means and the purpose of exploitation. Any combination of these three elements would constitute an offence of human trafficking.

i. Acts are

- Recruitment
- Transportation
- Transfer
- Harboring
- Receipt of a person into exploitation

ii. Means are

- Threat
- Force
- Other forms of coercion
- Abduction
- Fraud
- Deception
- Abuse of power, and position of vulnerability of victim
- Giving or receiving payment or benefits

iii. Purposes of exploitation are

- Prostitution for others
- Other forms of sexual exploitation
- Forced labour or services
- Slavery or practices similar to slavery
- Servitude
- Removal of organs



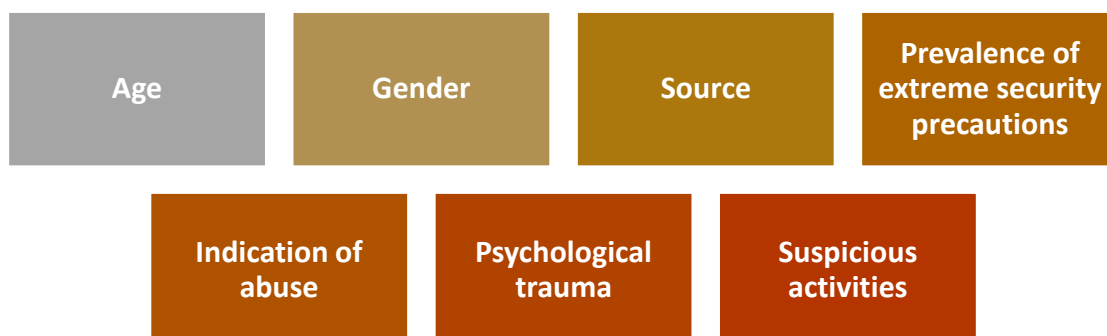
The consent of a victim of trafficking shall be irrelevant where any of the means set forth above has been used. In case of adult victims, all three elements have to be present to establish an offence of trafficking and if one of the elements is missing, it is not trafficking although it may be another offence. Consent is irrelevant in case of children even if this does not involve any of the means listed above. The means are irrelevant if the victim is a person under the age of 18 years.

iv. Who is a victim of human trafficking for commercial sexual exploitation (CSE)?

- Any trafficked person, irrespective of nationality, age and sex, is a victim.
- Any person, who is made to have sex with another person for profit gain of a third person, is a victim

v. How to Identify a Victim of Human Trafficking?

Police can identify victims of human trafficking for the purposes of commercial sexual exploitation (CSE) using the following indicators:



- **Age:** Young age of a person increases the vulnerability to trafficking for CSE
- **Gender:** Women and young girls are more susceptible than men.
- **Source:** Persons from vulnerable backgrounds, such as economic deprivation, discrimination, lack of opportunity to pursue viable economic options, etc.
- **Prevalence of extreme security precautions:** At the place of exploitation such as barred windows, locked doors, etc.
- **Indication of abuse:** Signs of rape/ sexual abuse, presence of sexually-transmitted diseases, marks of physical injury, etc.
- **Psychological trauma:** Acceptance of destiny, demotivation, distressed look, lack of trust for others, etc.
- **Suspicious activities:** Establishments operating under the guise of massage parlours, escort services, friendship clubs, placement agencies, etc.



Who is a human trafficker/offender in crimes of trafficking?

A human trafficker is any person who is involved in the process of human trafficking, who gains/makes profit/exploits a trafficked person from the point of source area through transit area to final destination, and this includes:

- Recruiter,
- Agent of recruiter,
- Seller of trafficked person,
- Buyer of trafficked person,
- Transporter,
- Conspirator,
- Abettor,
- Customer/client,
- Pimp,
- Brothel madam,
- Brothel manager,
- Financier,
- Parents/guardians who knowingly sell/traffic their children/ward and/or,
- Any other person who is knowingly involved at any stage of human trafficking.

vi. Where is a brothel/place of CSE?

'Brothel' u/s 2(a) of ITPA includes

- House
- Room
- Conveyance
- Place
- Portion of any house or room which is used for sexual exploitation or abuse

vii. Where is the scene of crime in trafficking for CSE?

Scenes of crime are not restricted to a brothel or places of exploitation but these also include

- The source point,
- The transit point including places of halt, transfer, etc.,
- The destination point,



- The vehicles used for transfer, and
- The places used for exploiting the trafficked persons.

5.2.5 Activities before Registration of FIR

Intelligence collection is the cornerstone of human trafficking investigation:

- Collect intelligence on traffickers.
- Interrogation of suspects needs to be thorough
- Follow-up on one lead can lead to information on another
- NGOs can be a good source of information
- Develop database on traffickers
- Update the database and disseminate to other stakeholder agencies.

i. Sources for Obtaining the Information

- Travel agents/tour operators
- Immigration agents
- Marriage bureaus
- Hotels
- Massage parlours
- Escort services
- Surroundings of pilgrimage places
- Social networking advertisements
- Illegal abortion clinics
- Print and electronic media
- Internet sites
- Bus stops, railway stations, airports, tourist spots, etc.

ii. Pre-Rescue Planning

Do's and don'ts

- Take prompt action on the information.
- Verify the genuineness of information by discussing it in detail.
- Understand which other departments are to be associated with the operation - the when, where, and how of it, and how many are likely to be rescued and how many are likely to be arrested.
- Ensure appropriate legal and administrative sanction wherever required.



- Think about the logistics including food, clothes, medicines, money, etc., that may be required.
- Think about a contingency plan in case of unforeseen challenges.
- Consider how the confidentiality of an anti-trafficking operation can be maintained.

iii. Rescue before Registration of FIR

Rescue should never be delayed on any count - even for filing of the FIR. Two Sections of the ITP Act, i.e., 15 and 16, authorize the rescue of victims/search of premises where CSE is perpetrated.

iv. Step-By-Step Rescue Procedure

- Enter source information in the GD maintaining the anonymity of the source/victim/location.
- Carry out a reconnaissance of the place to be searched. Take the help of local officials/NGOs.
- Draw a sketch map of the area which can be used for briefing and assigning specific duties to both officials and witnesses involved in the rescue. This includes duties like cordoning, guarding entry and exit points, and locating hide-outs.
- Wherever possible, obtain a search warrant.
- Ensure proper composition of the rescue team.
- Ensure that teams should have two women officers of any rank.
- If rescued persons are to be interviewed, get this done by a woman Police officer or in presence of a woman representative of an NGO.
- Secure the help of NGOs to act as *panchas*/witnesses.
- Arrange adequate number of vehicles and escort for the rescued persons so that victims are always kept segregated from the offenders.
- Arrange material for documentation and evidence collection, such as writing pads, white paper, and pen.
- Inform appropriate authorities regarding the places to be visited and the time of operation.
- Alert the residents of the neighbourhood.
- Conduct the rescue promptly.
- Identify children among the rescued as they have to be produced before the Child Welfare Committee.
- Ensure safety of all rescued persons.



- Segregate offenders from the victims.
- Allow rescued persons to take their belongings with them.
- Collect documents and exhibits from the place of rescue.

5.2.6 Crime Scene Photography/Videography

- Brief the photographer/videographer to record the minute details.
- Ensure photography/videography both inside and outside the premises.
- Get some pictures of witnesses while recording the scene.
- Take long-distance, intermediate-distance and close-up photographs of the scene of crime.

5.2.7 Registering an FIR

- Appropriate Sections of ITPA to be used in registering an FIR.
- In addition to ITPA, u/s 96 of BNS[earlier Section 366A of IPC], u/s 141 of BNS[earlier Section 366B of IPC], u/s 98 of BNS[earlier Section 372 of IPC], u/s 99 of BNS[earlier Section 373 of IPC], u/s 63 of BNS[earlier Section 375 of IPC], u/s 64 of BNS[earlier Section 376 of IPC], 377, u/s 61(1) of BNS[earlier Section 120A of IPC], u/s 61(2) of BNS[earlier Section 120B of IPC], u/s 319(1) of BNS[earlier Section 416 of IPC], u/s 318(2) of BNS[earlier Section 417 of IPC], u/s 126(1) of BNS[earlier Section 339 of IPC], u/s 127(1) of BNS[earlier Section 340A of IPC], u/s 126(2) of BNS[earlier Section 341 of IPC], u/s 127(2) of BNS[earlier Section 342 of IPC], etc., of IPC, may be invoked.
- Other special provisions such as Section 67 of JJ Act, etc., may be invoked.
- If additional offences are revealed during investigation, Investigating officer can add appropriate provisions and file additional memos in the court.

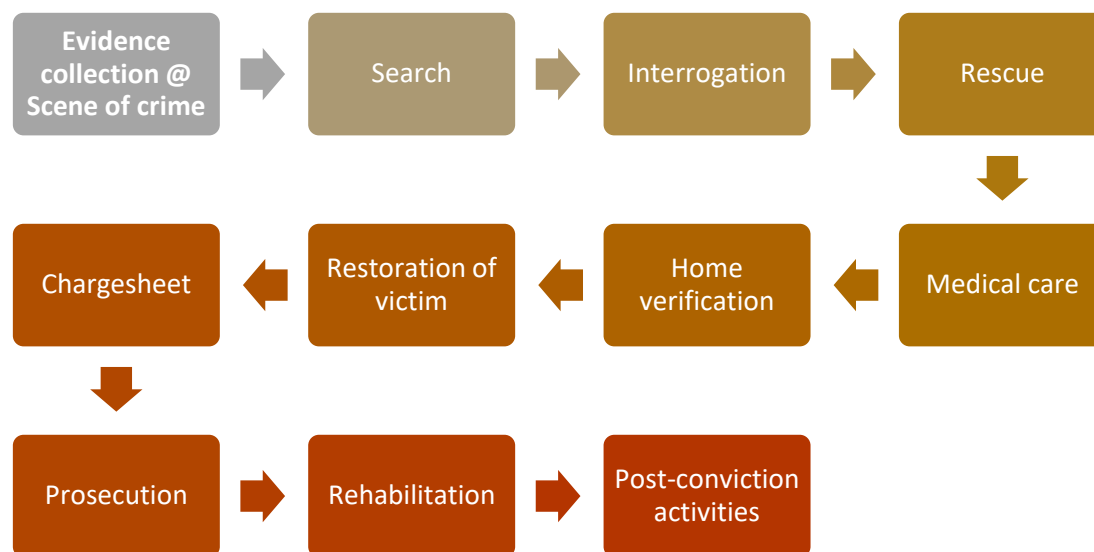
5.2.8 Checklist

- Essential ingredients of law should be referred to, based on the facts of the case to support the offence.
- Details of source, transit, and destination.
- Telephone numbers, cell numbers, internet sites, etc., of the suspects.
- Details of physical injuries and trauma noticed on the victims.
- Take care to mention the apparent age of the victim as age is a crucial factor in deciding the course of action to be followed.



- If the rescued person is an adult and she says that she was trafficked when she was a child, use the Sections of law which would apply to child trafficking, such as section 96 BNS, earlier section 366A IPC, section 98 BNS, earlier section 372 IPC, section 64 BNS earlier section 376 IPC and the recent POCSO Act, 2012, because trafficking is a continuous offence and had commenced when the person was a child.

5.2.9 Investigation



i. Collection of material objects from the scene of crime

- a. Diaries, notebooks, account books, registers, etc., in the brothel
- b. Travel documents like bus/train/air tickets, papers of travel agents, visiting cards, etc.
- c. Rent agreements, rent receipts, ration cards, passports, driving license and any other documents, which may help to prove the existence and address of the brothel.
- d. Receipts and registers reflecting expenditure on medicines (including contraceptives, doctor's prescriptions, hospital records indicating termination of pregnancy of victims), cosmetics, pornography, etc., to prove the sexual exploitation of victims.
- e. Photographs, albums, videos, pornographic material, computers, hard disks, brochures, etc., to prove sexual exploitation and existence of an organized network of criminals.
- f. Vehicles used for transporting victims to prove transportation of victims and linking up places of exploitation.



- g.** Visitors' list, tokens issued, documents regarding clients, etc., to prove exploitation.

ii. Search

- a.** Material objects (MOs) should be collected from the scene of crime during the rescue under *panchnama*.
- b.** Search the accused person for documents and notebooks, etc.
- c.** Search the vehicles of transportation.
- d.** Search the hideouts/residence/place of residence of offenders.
- e.** Search the bank lockers.
- f.** Search the customers/clientele.
- g.** Search places where data/information is stored.

iii. Interrogation of Suspects and Accused

- a.** Associate other agencies for interrogation like the Income Tax Department, and other financial institutions, Immigration Department, Labour Department, etc.
- b.** Use scientific methods in the process of interrogation.
- c.** If during interrogation, it transpires that the arrested person is a victim, the person should be treated as a victim and should not be targeted.

iv. Arrest of Accused

- a.** The arrested female offender should be searched by a female police officer u/s 49 BNSS, earlier s. 51(2) CrPC and s. 103 BNSS, earlier s. 100(3) CrPC.
- b.** Medical examination of the accused should also be done.
- c.** Follow-up on communication history that may be available on the cell phones of the accused before and after arrest, as it can lead to gathering of intelligence on the trafficking links and additional arrests.

v. Rescue after Registration of FIR

All the principles of rescue before registration of FIR will be applicable here. In addition, following steps need to be carried out:

- Investigating officer should record the events in the CD.
- Statements need to be recorded u/s 180 BNSS, earlier s. 161 of CrPC.
- All memos should bear the FIR no. and date.



a. Post-Rescue Activities

- i. Recording statements.
- ii. Counselling by a trained counsellor.

b. Age Assessment

- i. Investigating officer must obtain the date of birth certificate, school certificate, ration card, or, any other document useful to determine the victim's age.
- ii. Investigating officer must send the victim for age determination test to a forensic medicine department.
- iii. All possible circumstantial evidence regarding the age of the victim should be ascertained from the neighbours, other rescued persons, etc.
- iv. In case of doubt or dispute with regard to the age of a victim, Investigating officer must refer the case to a Medical Board.

c. Producing Rescued Person before the Magistrate/CWC

- i. Produce the adult victims before the Magistrate.
- ii. Produce the child victims before the Child Welfare Committee (CWC).
- iii. If nobody is available, send the rescued persons to a government or an NGO-run home.
- iv. If none of the above is available, the Police officer should take the initiative to arrange a place of safety, such as a bona fide hotel, guest house, etc., for the victims. In such a case, a female representative of an NGO and a lady Police officer should accompany the victims.

d. Medical Care of the Victim

- i. Informed consent of the victim is mandatory before a medical examination.
- ii. A lady Police officer should escort the victim.
- iii. The presence of a known NGO may also be secured.
- iv. Since the victims may be addicted to drugs, drinks, smoking, etc., they may be referred to appropriate deaddiction counselling services, wherever applicable.



e. Home Verification

- i. A list of NGOs working on anti-human trafficking (AHT) may be kept ready and provided to the Magistrate.

f. Restoration of the Victim

- i. Police should ensure that the victims are released to the appropriate person after receipt of the home verification report.
- ii. Police should provide adequate security to the victim during the transfer of the victim.
- iii. Police should facilitate genuine and supportive parents to take custody of the rescued victim, wherever possible.

g. Charge Sheet

A correct and proper charge sheet is a *sine qua non* in securing the conviction in any crime.

- i. As human trafficking (HT) is an organized crime, prepare a matrix of crime-offender-evidence and present it in the CD.
- ii. Legal opinion of the prosecutor is to be taken for drafting the charge sheet.
- iii. Collect all expert opinions and reports including the following:
 - 1. Medical report of sexual abuse, sexually transmitted diseases, and medical history of the victim.
 - 2. Age verification.
 - 3. Expert opinion on the psychosocial trauma.
 - 4. Copies of statements of accused recorded u/s 23(1) of BSA, earlier s. 25 of IEA.

h. Prosecuting Crimes

- i. Brief the prosecutor not only on the facts of the case, but also on the victim's trauma, organised crime linkages, etc.
- ii. Prepare the victim for testimony in the court with the assistance of counsellors or NGOs.
- iii. Prepare the witnesses.
- iv. Ensure the protection of victim/witness during the trial.

i. Referral Mechanisms

The objective is to rehabilitate trafficked persons by referring them to counsellors for relief, health care, psychosocial intervention, legal



representation, victim compensation and overall rehabilitation.

j. Post-Conviction Steps In AHT

Even after conviction, there are some provisions in the ITPA which should be followed:

- i. Eviction from the place of exploitation after conviction.
- ii. Suspension/cancellation of licence of hotels u/s 7 of ITPA.
- iii. Notifying the residence of the offender/absence of offenders.
- iv. Externment.
- v. History sheets/suspect sheets.
- vi. Naming and shaming.

k. Prevention

- i. Prevention through aggressive law enforcement by putting traffickers behind bars.
- ii. Prevention by properly rehabilitating victims prevents re-trafficking.
- iii. Prevention at source area by conducting awareness campaigns involving the agencies concerned.
- iv. Prevention at transit area, such as railway stations, bus stops, etc., by appropriate intervention.
- v. Keeping vigil at the locations prone to trafficking by monitoring the movements of strangers there.
- vi. Ensuring effective patrolling, especially at highways, *dhabas*, railway stations and bus stations, where a special 'vigil' needs to be maintained to check the movement of traffickers accompanied with the victims.

l. Role of Supervisory Officers

- i. Networking with officers in other districts and states, since trafficking is a borderless crime and it requires a borderless policing.
- ii. Developing and sharing the database on traffickers, which has to originate from Police Stations, moving through district and state database, should reach the national database of National Crime Records Bureau (NCRB).
- iii. Regularly reviewing of AHT activities in the monthly crime meeting to ensure that HT crimes are investigated thoroughly and professionally.



- iv. Empowering the police officers of all ranks with proper training focused on knowledge, skills, attitude, and resources.
- v. Rewarding officers doing good work on AHT.
- vi. Documenting and disseminating good practices and providing a forum for wider discussion and emulation.



5.3 SOP ON DOWRY DEATHS U/s 304(B) OF IPC

5.3.1 Introduction

Dowry deaths are quite frequent in India. All such deaths are investigated by the Sub Divisional Magistrate and additionally by the police. Post-mortem examination is usually conducted by a team of doctors. In majority of such incidents, death occurs owing to the following causes:



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

5.3.2 Dowry Death Procedural Law

- i. **Section 174** of Code of Criminal Procedure, 1973 (Presently Section 194 of BNSS) is amended to secure medical examination in case of suicide or death of a woman within seven years of her marriage.
- ii. **Section 113-A** (Presently Section 117 of BSA) has been introduced in the Evidence Act, 1872, which states that if a wife commits suicide within a period of seven years of her marriage, it will be presumed that she had been subjected to cruelty by her husband and his relatives as per the Section 85&86 of BNS, earlier Section 498(A) of IPC.
- iii. An offence called 'dowry death' has been created by introducing the Section 304B in the Indian Penal Code (Presently Section 80 of BNSS)



- a) Death of a woman caused by any burns or bodily injury.
- b) Death does not occur under normal circumstances.
- c) Death within seven years of her marriage.
- d) Soon before her death, she was subjected to cruelty or harassment by her husband or any relative of her husband.
- e) In connection with any demand for dowry.

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

5.3.3 SOPs

- i. Issue FIR, on receiving the complaint under relevant Sections of law and explain the complainant that the burden of proof lays on the accused.
- ii. It should be made clear to every investigator that dowry death has five essential elements:
 - 1. It relates to the death of woman only.
 - 2. It must have happened within seven years of marriage only.
 - 3. It must be shown that just before her death her husband or his relatives subjected her to the cruelty or harassment,
 - 4. It must be shown that such cruelty or harassment was for, or, in connection with any demand for dowry, and
 - 5. The death is caused by any bodily injury, burns, or the death does not occur in normal circumstances. If all the above circumstances are present, the husband or relatives of the husband shall be deemed to have caused her death.
- iii. After issuing the FIR, inform the SDPO.
- iv. Dowry death cases are to be investigated by a Deputy Superintendent of Police (DSP). In the absence of a regular DSP, the unit officer should appoint another DSP for the investigation of the case.
- v. Address a letter to the Executive Magistrate with a request to conduct the inquest over the corpse.
- vi. Summon the forensic team to the scene of offence for collection of the clues.
- vii. Investigating officer should examine the scene minutely and search the scene minutely for the clues.
- viii. Examine the eyewitnesses which may include parents, blood relatives, neighbours, marriage elders, witnesses, who were party to earlier reconciliations, and other circumstantial witnesses, and collect the proceedings, if any.



- ix. Following pieces of evidence like marriage card, examination of *Purohith*, marriage elders, place of marriage, photographs of marriage and examination of the photographer, serve as definite proof of marriage.
- x. Death caused within seven years of her marriage.
- xi. Death occurred under other than normal circumstances.
- xii. Before her death, the victim was subjected to cruelty by her husband or any relative.
- xiii. Place of occurrence should be inspected immediately.
- xiv. Every physical or circumstantial evidence should be preserved.
- xv. Post-mortem should be done by a board of doctors at earliest opportunity.
- xvi. Dying declaration, if possible, should be recorded/obtained or requested.
- xvii. Proof of cruelty as per the requirement of the case should be obtained.

5.3.3.1 Checklist for Collection of Tangible Evidence from the Medical Officer

- 1) Sample of foetus, if pregnancy is beyond marital period.
- 2) Sample and swab if any sexual assault or extramarital relation is expected.
- 3) Shoes or slippers for inflammable material residue.
- 4) Scalp hair for inflammable material- kerosene/petrol diesel/hot oil/alcohol.
- 5) Clothing for signs of struggle/traces residue of inflammable material/firearm residue, etc.
- 6) Dying declaration.
- 7) Swabs from burn area.
- 8) Broken ornament or bangles.
- 9) Nail scrapings for skin tags of assailant for blood grouping.
- 10) Blood, urine, vomits, gastric lavage material, cloth or hand washing in poisoning cases.
- 11) Viscera biological fluids for toxicological analysis in dead persons.
- 12) Photograph if physical assault injuries should be there.

5.3.3.2 Checklist for Collection of Corroborative Evidence

- 1) Any letters written by the deceased to her parent, relative, friend, police, etc., for maltreatment or cruelty.
- 2) Statements of mother, father, brother, sister, friends, relatives, etc., for maltreatment or cruelty.
- 3) Important exhibits like container of poisoning, kerosene oil.
- 4) Educational status of the victim: literate or illiterate; level of literacy; and occupations: housewife, working girl.
- 5) Type of work: office/medical/legal/nurse/assistant/government/private.



- 6) Date or year of marriage.
- 7) First marriage or second marriage reason thereof.
- 8) Husband's marriages/education/employment/monthly income.
- 9) Arranged or love marriage, polygamous history, present or past.
- 10) After marriage, whether living together or separately.
- 11) Visiting parental house, whether alone or with husband.

5.3.3.3 Information in Burns

- 1) Place of incident [close]: kitchen/bathroom/living room/veranda/corridor/bedroom, etc.,
- 2) Open space veranda, roof, field street/or in closed space, whether there was any door/window present? – if yes—
- 3) Whether any other party could open the door?
- 4) Whether the door was open or locked from inside or outside?
- 5) Whether the windows were opened/bolted/just shut?
- 6) Inflammable material –nature/quantity/spreading/container; empty or partially filled.
- 7) Ignition source used: matchstick/burning wood/gas/kerosene/stove or lamp/smoking in bed, etc.
- 8) Whether any other article also got the fire, mention with detail.
- 9) Number of persons involved?
- 10) Whether victim asked for any help? Cried/shrieked/run/threatened/struggled.
- 11) Who noticed the fire? Time, fire flame/smoke/cry/state of fire or condition of the victim. Who shared the action taken information with others, neighbour/relatives/Police?
- 12) Was there any attempt to rescue the victim? If yes, then by whom? In-laws/husband/any other.
- 13) Who informed the police and when? After hospitalization/unknown informer/husband/in-laws/parents.
- 14) Nature of information given to the police - whether accidental/suicide/homicide.
- 15) Whether the scene of occurrence was intact or tampered with? If tampered, then, what was the intention behind it? Clothing: Cotton/synthetic (Terri wool, tricot, nylon, silk, terrylen, terrene, etc.); Colour of the clothing: plain/printed; Type of wearing: saree/dhoti/petticoat/salwar/kurta, pants/skirts/gown/lehenga, etc.; Loose/tight/partly tight or loose; Condition of clothing: burnt partly or fully, identifiable or unidentifiable remnants.



- 16) External appearance of clothing: changed/original/contain blood or any other stain/inflammable substances over it/tear/completely burnt or partly burnt; Article: extra piece of cloth in neck or limbs/bangles ring/chain/ or any other ornament; Injuries in detail: burns/abrasions/contusion/lacerations/stab/fracture/gunshot, etc.; Injury complication: shock/infection/tetanus/gangrene/contracture/disfigurement.

5.3.3.4 Initial Impression about the Case

- 1) If suicide, probable motive: dispute with in-laws/immediate quarrel/poverty/maladjustment/frustration in love and life/scolding/incurable disease/loneliness/suicide note/threatening letter/marital unhappiness/previous attempt/personality disorder/any psychiatric illness or treatment.
- 2) If an accident, circumstances leading to death or injury: while cutting vegetable/ on stove or *chullah*/stove/*angithi*/oven/mixed flour or other cooking equipment, if injury then location of injury and correlation with the accident site or object of sustaining such an injury/ place of bottle of poison: separate or with household medicines, etc.,
- 3) If homicide, probable motive: sexual jealousy/marital infidelity/dowry/troubled and strained relations/any apprehensive statement or letter or dying declaration/previous attacks/absconding persons/any missing link in chain/ information to parents/preparation/intention.

5.3.3.5 In Poisoning Cases

- 1) In last few hours or in 24 hours, food/ drink/unusual exposure.
- 2) Last time when she ate or drank anything or purchased anything.
- 3) Initial observations like vomitus/urinated or went into convulsion or delirium, etc.
- 4) Good health prior to death or falling unconscious.
- 5) Recovery of any suspected substance powder/liquid/ insecticide/cleansing agent/medicine/fumigant, etc.
- 6) Medicine bottles/tubes/needles or similar material near the body.
- 7) Empty or partially filled glasses/utensils/container.
- 8) Sample of excreta, saliva, vomit, urine, blood, etc.
- 9) Sample of left out food or drink.
- 10) Counting of medicinal pill numbers from the total capacity of a bottle/blister packing, etc.
- 11) Any object to administer poison/medicine.



- 12) Collection of debris from dining table/dustbins of house/sink/wash basin.

5.3.3.5.1 Circumstantial Evidence

- 1) History of previous attempt.
- 2) Photography of the scene and the body.
- 3) Possession of literature: diary, suicide note, etc.
- 4) Psychological profile of the person.
- 5) Relation after marriage with the family of husband.

5.3.3.6 Hanging

- 1) In majority of cases, the body of a victim is first recovered by a relative.
- 2) When found suspended, they bring down the body in an attempt to take to a hospital to revive.
- 3) Ligature material:
 - i. rope/string/wire/scarves/saree/dupatta/belts/chain/bed sheet/chunnie, etc.
 - ii. composition/ texture/ multiplicity and width of ligature.
 - iii. Impression produced on the neck's skin: reproduced/marked/furrow/groove.
- 4) Platform: chair/bed/projections in wall/window/door or any other convenient platform according to the need.
- 5) Suspension point: ceiling fan/window iron bar/door handles/hooks/beam/flush water tank/lavatory cisterns/tree branch.
- 6) Any other marks indicating removal of the body from hanging stage.
- 7) Pressure marks on neck/abrasions or bruises.
- 8) Dirt or twigs on body or clothing of the victim in suspected cases, found beneath the subject.
- 9) Where and how ligature was tied.
- 10) Knot used.
- 11) Signs of struggle.
- 12) Condition of hands and material therein.
- 13) Natural orifices.
- 14) Measurement height, feet end above the platform/ ground/ floor body weight, free end, circumference, and ligature.
- 15) Previous attempt.
- 16) Medical history.



5.3.3.7 Material to Be Preserved

- 1) Photographs of the scene and the body.
- 2) Cello tape method for cloth fibre from neck skin.
- 3) Ligature after tying the knot.
- 4) Viscera if needed.
- 5) Different swabs as per the requirement of the case.
- 6) In strangulation, drowning or death due to any other way; scene has to investigate as per routine procedure.

5.3.3.8 Legal Aspect of dowry crime

1. Sections Involved

A dowry-related crime can fall under the following Sections of IPC:

- a. Section 103(1) of BNS, earlier 302 of IPC, Murder.
- b. Section 80 of BNS, earlier Section 304B of IPC, Dowry death.
- c. Section 108 of BNS, earlier Section 306 of IPC, Abetment to commit suicide.
- d. Section 309 of IPC, Attempt to commit suicide
- e. Section 85&86 of BNS, earlier Section 498A of IPC, Cruelty by the husband and his relatives
- f. Section 316(2) of BNS, earlier Section 406 of IPC, Criminal breach of trust that by not returning of *stridhan* or misappropriating of *stridhan*.

2. Indian Evidence Act

- a) Section 117 of BSA, earlier Section 113-A, Presumption as to abetment of suicide by a married woman.
- b) Section 118 of BSA, earlier Section 113-B, Presumption as to dowry death.

3. Criminal Procedure Code

- a. Section 196 of BNSS, earlier Section 176 of CrPC, Inquiry by Magistrate into
cause of death.

4. Criminal Law (Amendment) Act, 2013

It brought about comprehensive amendments the in CrPC in respect of the investigation of offences against women:

- a. Proviso to Section 154 of CrPC (Presently Section 173 of BNSS) under which information pertaining to offences given by women victims shall be recorded by a woman police officer or any woman officer.



- b. Proviso in Section 154 of CrPC (Presently Section 173 of BNSS) for recording of information either in the residence or of a convenient place in presence of an interpreter or any special educator in case the victim is temporarily or permanently mentally or physically disabled.
- c. Videography of such statements of the victim.
- d. Amendment of Section 161 of CrPC (Presently Section 180 of BNSS) for recording of statement of the victim by women police officer or any woman officer.
- e. Amendment of Section 164 of CrPC (Presently Section 183 of BNSS) to record statement of the victim before a magistrate as soon as the commission of offence is brought to the notice of the police.
- f. Amendment of Section 97 of CrPC (Presently Section 100 of BNSS) to dispense with sanction of prosecution in case of a public servant accused of an offence against women.
- g. Amendment of Section 273 of CrPC (Presently Section 308 of BNSS) to avoid confrontation of the victim of sexual offence under the age of 18 years by the accused.
- h. Amendment of Section 309 of CrPC (Presently Section 346 of BNSS) to complete enquiry or trial of some offences against women on the basis of day-to-day proceedings within a period of two months from the date of filing of charge sheet.
- i. Insertion of Section 357(C) of CrPC (Presently Section 397 of BNSS), under which all hospitals, whether run by Government or local body or any other person, have been made duty-bound to provide first-aid or medical treatment free of cost to the victim.



5.4 SOP ON OUTRAGE OF MODESTY U/S 74 OF BNS, EARLIER 354 OF IPC

5.4.1 Section 74 of BNS, earlier Section 354 of IPC

The Section refers to an *‘Assault or criminal force to woman with intent to outrage her modesty’—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.’*

5.4.2 What is Modesty of a Woman?

For over a century, the courts have tried thousands for the offence of ‘outraging the modesty of a woman’ without a precise definition of what constitutes a woman's 'modesty' until the Supreme Court finally defined it as *‘The essence of a woman's modesty is her sex’*.

The result of the labour of the Bench comprising Justices Arijit Pasayat and S. H. Kapadia will help fill a glaring void in the Indian Penal Code, 1860 (Presently Bhartiya Nyaya Sanhita, 2023) but the scope of the definition of 'modesty' as mentioned in Section 74 of BNS, earlier Section 354 of IPC appears to go far beyond what framers of the Code possibly had in mind.

‘The act of pulling a woman, removing her saree, coupled with a request for sexual intercourse...would be an outrage to the modesty of a woman; and knowledge, that modesty is likely to be outraged, is sufficient to constitute the offence’, the Bench said in a judgment that has drawn from several verdicts by different courts.

In other words, outraging a woman's modesty as mentioned in Section 74 of BNS, earlier Section 354 of IPC will apply to the crime against women that stop short of penetration, in which event it becomes a rape. In the same judgment, the Bench ruled that penetration alone was sufficient to qualify as a rape whether there has been ejaculation or not.

The Supreme Court's definition shows growing sensitivity to a changing society in which relatively subtle acts of harassment of women have come to be viewed as a crime. The Court also clarified that claims of lack of protest couldn't be an alibi.

The Bench said, *‘The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive.’* This, say legal experts, will have importance implications for the women who face harassment at workplace, from acquaintances or while out dating.



What amounts outraging of modesty of woman: *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.*

Punishment u/s 74 of BNS, earlier Section 354 of IPC includes imprisonment of either description for a term which may extend to two years, or with a fine, or with both.

5.4.3 Primary Process

- a) Register a case by ensuring that the ingredients are satisfied.
- b) If any injuries to the victim, send her to the government hospital for medical examination by giving a proper requisition.
- c) Get the victim examined at her residence by a woman officer carefully with empathy; be patient and very polite, as the victim is in a state of distress/trauma. Do not pose questions which hurt the feelings of a victim.
- d) Examine all relevant witnesses or eyewitnesses.
- e) Visit the scene of offence, conduct a detailed *panchnama* of the scene of offence in presence of respectable inhabitants/official witnesses. Collect any physical evidence like broken bangle pieces, torn cloth pieces, mobile phones, computer, or any other incriminating material available.
- f) Take photographs or videos of the scene of offence.
- g) Record the statement of the victim/complainant, and or any other if required, u/s 183 of BNSS, s. 164 of CrPC.

5.4.4 Secondary Process

Arrest the accused and remand to judicial custody following the guidelines of the Supreme Court and record his/their version in presence of respectable inhabitants/official witnesses.

5.4.5 Final Process

- a) Prepare a correct and proper charge sheet, as it is a *sine qua non* in securing conviction in any crime.
- b) Taken legal opinion of the prosecutor while drafting the charge sheet.

5.4.6 Check List in Filing the Charge Sheet

- a) Original part-II statements of the complainant, victim, and other eye/circumstantial witnesses.



- b) Original *panchnama* of the scene of offence.
- c) Original medical certificate of the victim.
- h) Statements recorded u/s 183 of BNSS, earlier s. 164 of CrPC.
- d) Deposit the seized physical evidence in the court in Form-66 and get the CPR No. (Case Property Receipt Number).

5.4.7 Entries in Records

- a) General diary
- b) FIR index
- c) Sentry relief book
- d) Prisoners search register
- e) Arrest records

NOTE

- 1) If the victim is a minor, appropriate Sections under POCSO Act will be applied.
- 2) If the victim belongs to SC/ST, appropriate Sections under SC/ST (POA) Act will be applied.

5.4.8 SOPs on Investigation of Sexual Harassment [Section 75 of BNS, earlier section 354A) IPC]

5.4.8.1 Introduction

Modesty in Section 74 of BNS, earlier section 354 IPC is an attribute associated with women. The act of using force on a woman (such as removing her clothes, etc.) with an intent to assault her sexually is considered to be an act of outraging her modesty. Assaulting a woman or using criminal force on her with an intention of outraging her modesty implies that the assault must be on a woman and that the accused must have used criminal force on her intending to outrage her modesty. The punishment is of at least one year which may extend to five years.

Section 75 of BNS, earlier section 354A of IPC - Sexual Harassment

- 1) The following acts or behaviour shall constitute the offence of sexual harassment:
 - a) Any physical contact and advances involving unwelcome and explicit sexual overtures;
 - b) Demanding or requesting for sexual favours;
 - c) Making sexually-coloured remarks;



- d) Forcibly showing pornography; or,
- e) Any other unwelcome physical, verbal, or nonverbal conduct of sexual nature.
- 2) Any man who commits the offence specified in clause (i) or clause (ii) of sub-Section 1)
 - a) Shall be punished with a rigorous imprisonment for a term which may extend to five years, or with a fine, or with both.
- 3) Any person who commits the offence in clause (iii) or (iv) or (v) of sub-Section (1) shall be punishable with an imprisonment of either description that may extend to one year or with a fine, or, with both.
- 4) A man committing any of the following acts—
 - a) physical contact and advances involving unwelcome and explicit sexual overtures; or
 - b) a demand or request for sexual favours; or
 - c) showing pornography against the will of a woman; or
 - d) making sexually coloured remarks; shall be guilty of the offence of sexual harassment.
- 5) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-Section (1) shall be punished with a rigorous imprisonment for a term which may extend to three years, or with a fine, or, with both.
- 6) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with an imprisonment of either description for a term which may extend to one year, or with a fine, or, with both.

5.4.8.2 Primary Process

- 1) Register a case by ensuring that the ingredients of applicable legal sections are satisfied.
- 2) If there are any injuries to the victim, send her to a government hospital for medical examination by giving a proper requisition.
- 3) Get the victim examined at her residence by a woman officer carefully with empathy; be patient and very polite as the victim is in a state of distress/trauma. Do not pose questions which hurt the feelings of a victim.
- 4) Examine all relevant witnesses or any eyewitnesses.
- 5) Visit the scene of offence, conduct detailed *panchnama* of the scene of offence in presence of respectable inhabitants/official witnesses. Collect all physical evidence like broken bangle pieces, torn cloth pieces, mobile phones, computer, or any other incriminating material available.
- 6) Collect the evidence from mobile phone or computer with the help of an IT expert and create a Hash value to the concerned data and forward it to an FSL with a letter of advice.
- 7) Take photographs or videos of the scene of offence.



- 8) Record the statement of the victim/complainant and any other, if required, u/s 164 of CrPC.
- 9) Maintain a chain of custody.

5.4.8.3 Secondary Process

Arrest the accused and remand to judicial custody by following the guidelines of the Supreme Court of India, and record his/their version in presence of respectable inhabitants/official witnesses.

5.4.8.4 Final Process

- 1) Prepare a correct and proper charge sheet, since it is a *sine qua non* in securing the conviction in any crime.
- 2) Take legal opinion of the prosecutor while drafting the charge sheet.

5.4.8.5 Check List in Filing the Charge Sheet

- 1) Original part-II statements of the complainant, victim, and other eye/circumstantial witnesses.
- 2) Original *panchnama* of the scene of offence.
- 3) Original medical certificate of the victim.
- 4) FSL report of the collected evidence.
- 5) Statements recorded u/s 183 of BNSS, earlier s. 164 of CrPC.
- 6) Deposit the seized physical evidence in the court in form-66 and get the CPR No. (Case Property Receipt Number).

5.4.8.6 Entries in Records

- 1) General diary
- 2) FIR index
- 3) Sentry relief book
- 4) Prisoners search register
- 5) Arrest records

NOTE

- If the victim is a minor, appropriate Sections under POCSO Act will be applied.
- If the victim belongs to SC/ST, appropriate Sections under SC/ST (POA) Act will be applied.
- Add appropriate IT Act Sections.



5.4.9 Section 76 BNS, earlier Section 354B IPC - Assault or use of criminal force to woman with intent to disrobe.

5.4.9.1 Introduction

Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.

5.4.9.2 Primary Process

Register a case by ensuring that the ingredients are satisfied.

- a) If any injuries to the victim, send her to a government hospital for medical examination by giving a proper requisition.
- b) Get the victim examined at her residence by a woman officer carefully with empathy; be patient and very polite as the victim is in a state of distress/trauma. Do not pose questions which hurt the feelings of a victim.
- c) Examine all relevant witnesses or any eyewitnesses.
- d) Visit the scene of offence, conduct detailed *panchnama* of the scene of offence in presence of respectable inhabitants/official witnesses. Collect all physical evidence like broken bangle pieces, torn cloth pieces, mobile phones, computer or any other incriminating material available.
- e) Take photographs or videos of the scene of offence.
- f) Record the statement of victim/complainant and any other, if required, u/s 183 of BNSS, earlier s. 164 of CrPC
- g) Maintain a chain of custody properly.

5.4.9.3 Secondary Process

Arrest the accused and remand to judicial custody by following the guidelines of the Supreme Court and record his/their version in presence of respectable inhabitants/official witnesses.

5.4.9.4 Final Process

- 1) Prepare a correct and proper charge sheet since it is a *sine qua non* in securing the conviction in any crime.
- 2) Take legal opinion of a prosecutor while drafting the charge sheet.



5.4.9.5 Check List in Filing the Charge Sheet

- 1) Original part-II statements of the complainant, victim, and other eyewitness/ circumstantial witnesses.
- 2) Original *panchnama* of the scene of offence.
- 3) Original medical certificate of the victim.
- 4) Statements recorded u/s 183 of BNSS, earlier s. 164 of CrPC
- 5) Deposit the seized physical evidence in the court in form-66 and get the CPR No. (Case Property Receipt Number).

5.4.9.6 Entries in Records

- 1) General diary
- 2) FIR index
- 3) Sentry relief book
- 4) Prisoners search register
- 5) Arrest records

NOTE

- 1) If the victim is a minor, appropriate Sections under POCSO Act will be applied.
- 2) If the victim belongs to SC/ST, appropriate Sections under SC/ST (POA) Act will be applied.



5.4.10 SOP (Section 77 BNS, earlier 354C IPC) Voyeurism

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

5.4.10.1 Explanations

- 1) For the purpose of this Section, 'private act' includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.
- 2) Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this Section.

5.4.10.2 Primary Process

- a) Register a case by ensuring that the ingredients of applicable legal Sections are satisfied.
- b) Get the victim examined at her residence by a woman officer carefully with empathy; be patient and polite as the victim is in a state of distress/trauma. Do not pose questions which hurt the feelings of a victim.
- c) Examine all relevant witnesses or any eyewitnesses.
- d) Visit the scene of offence, conduct detailed *panchnama* of the scene of offence in presence of respectable inhabitants/ official witnesses. Collect all digital evidence, where available, like CC TV footages, video files, or any other incriminating material available that may substantiate the case. Collect tower location for cell phone data which indicates the movement of the victim and the accused. Collect any other digital evidence of electronic voyeurism. Seize any gadgets or devices installed/adapted/operated enabling another person to observe without consent for obtaining sexual gratification.



- e) Collect the evidence from mobile phone or computer with the help of an IT expert and create a Hash value to the concerned data and forward it to an FSL with a letter of advice.
- f) After creating Hash value make sure that data should not be exposed or shared.
- g) Take photographs or videos of the scene of offence.
- h) Record the statement of victim/ complainant and any other, if required, u/s 183 of BNSS, earlier s. 164 of CrPC
- i) Secondary Process

Arrest the accused and remand to judicial custody following the guidelines of the Supreme Court and record his/their version in presence of respectable inhabitants/official witnesses.

5.4.10.3 Final Process

- a) Prepare a correct and proper charge sheet, since it is a *sine qua non* in securing the conviction in any crime.
- b) Take legal opinion of the prosecutor while drafting the charge sheet.

5.4.10.4 Check List in Filing the Charge Sheet

- a) Original part-II statements of the complainant, victim, and other eye/circumstantial witnesses.
- b) Original *panchnama* of the scene of offence.
- c) FSL report for the collected evidence.
- d) Statements recorded u/s 183 of BNSS, earlier s. 164 of CrPC
- e) Deposit the seized physical evidence in the court in Form-66 and get the CPR No. (Case Property Receipt Number).

5.4.10.5 Entries in Records

- a) General diary
- b) FIR index
- c) Sentry relief book
- d) Prisoners search register
- e) Arrest records

NOTE

- a) If the victim is a minor, appropriate Sections under POCSO Act will be applied.
- b) If the victim belongs to SC/ST, appropriate Sections under SC/ST (POA) Act will be applied.



- c) Add appropriate IT Act Sections.

5.4.11 SOP (Section 78 BNS, earlier 354D IPC) Stalking

- 1) Any man who
 - i) Follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or
 - ii) Monitors the use by a woman of the internet, email, or any other form of electronic communication, commits the offence of stalking. Provided that such conduct shall not amount to stalking if the man who pursued it proves that—
 - (1) It was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or
 - (2) It was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or
 - (3) In the particular circumstances such conduct was reasonable and justified.
- 2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

5.4.11.1 Primary Process

- a) Register a case by ensuring that ingredients of applicable legal Sections are satisfied.
- b) Get the victim examined at her residence by a woman officer carefully with empathy; be patient and polite as the victim is in a state of distress/trauma. Do not pose questions which hurt the feelings of a victim.
- c) Examine all relevant witnesses or any eyewitnesses.
- d) Visit the scene of offence, conduct detailed *panchnama* of the scene of offence in presence of respectable inhabitants/official witnesses. Collect all physical evidence like broken bangle pieces, torn cloth pieces, mobile phones, computer or any other incriminating material available.



- e) Collect the evidence from mobile phone or computer with the help of an IT expert and create a Hash value to the concerned data and forward it to an FSL with a letter of advice.
- f) U/s 94 of BNS, earlier 91 of CrPC, contact the concerned service provider/Legal Department for IP Logs and account details.
- g) Take photographs or videos of the scene of offence.
- h) Record the statement of victim/complainant and any other, if required, u/s 183 of BNSS, earlier s. 164 of CrPC
- i) Secondary Process

Arrest the accused and remand to judicial custody following the guidelines of the Supreme Court of India, and record his/their version in presence of respectable inhabitants/official witnesses.

5.4.11.2 Final Process

- a) Prepare a correct and proper charge sheet, since it is a *sine qua non* in securing the conviction in any crime.
- b) Take legal opinion of the prosecutor while drafting the charge sheet.

5.7.4 Check List in Filing the Charge Sheet

- a) Original part-II statements of the complainant, victim and other eye/circumstantial witnesses.
- b) Original *panchnama* of the scene of offence.
- c) Statements recorded u/s 183 of BNSS, earlier s. 164 of CrPC
- d) Original 94 of BNSS, earlier 91 of CrPC copy served to the concerned service provider or Legal department.
- e) Original 63 BSA, earlier 65-B IEA certificate from the concerned service provider.
- f) FSL report of the collected evidence.
- g) Deposit the seized physical evidence in the court in form-66 and get the CPR No. (Case Property Receipt Number).

5.4.11.3 Entries in Records

- a) General diary
- b) FIR index
- c) Sentry relief book
- d) Prisoners search register
- e) Arrest records



NOTE

- a) If the victim is a minor, appropriate Sections under POCSO Act will be applied.
- b) If the victim belongs to SC/ST, appropriate Sections under SC/ST (POA) Act will be applied.
- c) Add appropriate IT Act sections.



5.5 SOP ON RAPE CASES U/S 64 OF BNS, EARLIER 376 OF IPC)

Definition

Rape is defined in Section 63 of BNS, earlier Section 375 of IPC and in simple terms: *‘it is the crime, typically committed by a man, of forcing another person to have sexual intercourse with the offender against their will or it can be said as unlawful sexual intercourse or any other sexual penetration of the vagina, anus, or mouth of another person, with or without force, by a sex organ, other body part, or foreign object, without the consent of the victim’.*

Definitions of *rape* vary, and though rape is usually dependent upon whether or not consent was present during the act, the term ‘consent’ varies as well. Minors, for example, are often considered too young to consent to sexual relations with older. Consent is also considered invalid if obtained under compulsory threat and force, or from a person who does not have the ability to understand the nature of the act, due to factors such as young age, mental disability, or substance intoxication.

Section 63 BNS, earlier Section 375 IPC : Rape

A man is said to commit ‘rape’ who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions—

- (Firstly) — Against her will.
 - (Secondly) — Without her consent.
 - (Thirdly) — With her consent when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.
 - (Fourthly) — With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
 - (Fifthly) — With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.
 - (Sixthly) — With or without her consent when she is under sixteen years of age.
- Explanation — Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.



- (Exception) —Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape. (Amendment made by the State)

Section of Law Section 64 BNS, earlier Section 376 IPC

376. Punishment for rape

(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with an imprisonment of either description for a term which may extend to two years or with a fine, or, with both, provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever, —

(a) Being a Police officer commits rape—

(i) Within the limits of the Police Station to which he is appointed; or

(ii) In the premises of any station house whether or not situated in the Police Station to which he is appointed; or

(iii) On a woman in his custody or in the custody of a Police officer subordinate to him; or

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

(c) 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 woman's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

(d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

(e) Commits rape on a woman knowing her to be pregnant; or

(f) Commits rape on a woman when she is under twelve years of age; or



(g) commits gang rape,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

Explanation 1 — where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.

Explanation 2 — ‘Women’s or children’s institution’ means an institution, whether called an orphanage or a home for neglected woman or children or a widows’ home or by any other name, which is established and maintained for the care of woman or children.

Explanation 3 — ‘Hospital’ means the precincts of the hospital used for treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.

POCSO Act 2012 is applicable if the victim is minor and the following Sections are applicable

Section 3. Penetrative sexual assault. A person is said to commit ‘penetrative sexual assault’ if—

- (a) He penetrates his penis, to any extent, into the vagina, mouth, urethra, or anus of a child or makes the child to do so with him or any other person; or
- (b) he inserts, to any extent, any object, or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
- (c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus, or any part of body of the child or makes the child to do so with him or any other person or
- (d) He applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.



Section 5. Aggravated Penetrative Sexual Assault

- (a) Whoever, being a Police officer, commits penetrative sexual assault on a child —
- (i) Within the limits of the Police Station or premises at which he is appointed; or
 - (ii) In the premises of any Station house, whether or not situated in the Police Station, to which he is appointed; or
 - (iii) In the course of his duties or otherwise; or
 - (iv) Where he is known as, or identified as, a Police officer; or
- (b) Whoever being a member of the armed forces or security forces commits penetrative sexual assault on a minor:
- (i) Within the limits of the area to which the person is deployed; or
 - (ii) In any areas under the command of the forces or armed forces; or
 - (iii) In the course of his duties or otherwise; or
 - (iv) Where the said person is known or identified as a member of the security or armed forces; or
- (c) Whoever being a public servant commits penetrative sexual assault on a child; or
- (d) whoever being on the management or on the staff of a jail, remand home, protection home, observation home, or other place of custody or care and protection established by or under any law for the time being in force, commits penetrative sexual assault on a child, being inmate of such jail, remand home, protection home, observation home, or other place of custody or care and protection; or
- (e) Who ever being on the management or staff of a hospital, whether Government or private, commits penetrative sexual assault on a child in that hospital; or
- (f) whoever being on the management or staff of an educational institution or religious institution, commits penetrative sexual assault on a child in that institution; or

Explanation — When a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang penetrative sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or



- (g) Who ever commit gang penetrative sexual assault on a child.
- (h) whoever commits penetrative sexual assault on a child using deadly weapons, fire, heated substance, or corrosive substance; or
- (i) whoever commits penetrative sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or
- (j) whoever commits penetrative sexual assault on a child, which—
- (i) Physically incapacitates the child or causes the child to become mentally ill as defined under clause (b) of Section 2 of the Mental Health Act, 1987 or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; or 14 of 1987
- (ii) In the case of female child, makes the child pregnant as a consequence of sexual assault.
- (iii) inflicts the child with Human Immunodeficiency Virus or any other life-threatening disease or Infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; or
- (k) whoever, taking advantage of a child's mental or physical disability, commits penetrative sexual assault on the child; or
- (l) whoever commits penetrative sexual assault on the child more than once or repeatedly; or
- (m) whoever commits penetrative sexual assault on a child below twelve years; or
- (n) whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child; or
- (o) whoever being in the ownership, or management, or staff, of any institution providing services to the child, commits penetrative sexual assault on the child; or
- (p) whoever being in a position of trust or authority of a child commits penetrative sexual assault on the child in an institution or home of the child or anywhere else; or
- (q) whoever commits penetrative sexual assault on a child knowing the child is pregnant; or
- (r) whoever commits penetrative sexual assault on a child and attempts to murder the child; or



(s) whoever commits penetrative sexual assault on a child in the course of communal or sectarian violence; or

(t) whoever commits penetrative sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or

(u) whoever commits penetrative sexual assault on a child and makes the child to strip or parade naked in public, is said to commit aggravated penetrative sexual assault.

Section 6. Punishment for aggravated penetrative sexual assault. Whoever commits aggravated penetrative sexual assault, 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 and shall also be liable to fine.

5.5.1 Sexual Assault and Punishment Thereof

Section 7. Sexual Assault. Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

Section 8. Punishment for sexual assault. Whoever commits sexual assault, shall be punished with 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.

Section 9. Aggravated sexual assault.

(a) whoever, being a Police officer, commits sexual assault on a child—

(i) within the limits of the Police Station or premises where he is appointed; or

(ii) in the premises of any station house whether or not situated in the Police Station to which appointed; or

(iii) in the course of his duties or otherwise; or

(iv) where he is known as, or identified as a Police officer; or

(b) whoever, being a member of the armed forces or security forces, commits sexual assault on a child—

(i) within the limits of the area to which the person is deployed; or

(ii) in any areas under the command of the security or armed forces; or



- (iii) in the course of his duties or otherwise; or
- (iv) where he is known or identified as a member of the security or armed forces; or
- (c) whoever being a public servant commits sexual assault on a child; or
- (d) whoever being on the management or on the staff of a jail, or remand home or protection home or observation home, or other place of custody or care and protection established by or under any law for the time being in force commits sexual assault on a child being inmate of such jail or remand home or protection home or observation home or other place of custody or care and protection; or
- (e) who ever being on the management or staff of a hospital, whether Government or private, commits sexual assault on a child in that hospital; or
- (f) who ever being on the management or staff of an educational institution or religious institution, commits sexual assault one child in that institution: or
- (g) who ever commit gang sexual assault on a child.

Explanation — When a child is subjected to a sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or

- (h) whoever commits sexual assault on a child using deadly weapons, fired, heated substance, or corrosive substance; or
- (i) whoever commits sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or
- (j) whoever commits sexual assault on a child, which—(i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (l) of section 2 of the Mental Health Act, 1987 or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; or (ii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill toper form regular tasks; or
- (k) whoever, taking advantage of a child's mental or physical disability, commits sexual assault on the child; or



- (l) whoever commits sexual assault on the child more than once or repeatedly; or
- (m) whoever commits sexual assault on a child below twelve years; or
- (n) whoever, being a relative of the child through blood or adoption or marriage or guardianship or in foster care, or having domestic relationship with a parent of the child, or who is living in the same or shared household with the child, commits sexual assault on such child; or
- (o) whoever, being in the ownership or management or staff, of any institution providing services to the child, commits sexual assault on the child in such institution; or
- (p) whoever, being in a position of trust or authority of a child, commits sexual assault on the child in an institution or home of the child or anywhere else; or
- (q) whoever commits sexual assault on a child knowing the child is pregnant; or
- (r) whoever commits sexual assault on a child and attempts to murder the child; or
- (s) whoever commits sexual assault on a child in the course of communal or sectarian violence; or
- (t) whoever commits sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or
- (u) whoever commits sexual assault on a child and makes the child to strip or parade naked in public, is said to commit aggravated sexual assault.

5.5.2 Primary Process

- Receive the complaint, which could be a message, oral or written.
- Improve the FIR by incorporating material omissions and commissions and obtain the signature of the complainant.
- If the victim is illiterate, reduce it into writing and read it over to her, in the presence of parents/guardians whom the child has trust in.
- Ensure that all ingredients are satisfied in complaint, by including when, where, whom, why and how.
- Examine the victim carefully with empathy. Be patient and very polite as the victim is in a state of distress. Do not pose questions which hurt the feelings of a victim.
- Issue FIR and send to all concerned.
- Prepare plan of action and obtain approval of superior officer.



- Examine the victim in details and immediately send the victim for medical examination.
- Subject the victim to age determination, to decide if the victim is a minor.
- Collect the clothes of victim.
- Immediately forward the material objects (clothes, etc.) seized by a medical officer to an FSL.
- Visit the scene of offence and conduct a detailed *panchnama* of the scene. Protect the scene of crime and examine the circumstantial witnesses/ owner of the land.
- Examine all witnesses in details and record their statements.
- Give priority to location of the scene of offence in establishing the offence.
- Collect incriminating articles, if any, viz., broken bangle pieces, torn cloth pieces, hairs, stains, struggle marks.
- Write first case diary incorporating a plan of action, material omissions and commissions.
- Get the statement of victim, if possible, recorded u/s 183 of BNSS, earlier s. 164 of CrPC.
- Collect blood samples, if required, for the DNA test.
- It is MANDATORY NOT to expose the victim's name, photo and her personal details to press/ media.
- A woman officer/ woman should escort the victim to a hospital and get her examined. If a woman officer is not available, then other investigating officer can examine the victim.
- Do not call the victim to a Police Station but get her examined at her place of residence.
- After establishing the victim as minor (child), where the Special Juvenile Police Unit or local police is satisfied that the child against whom an offence has been committed is in need of care and protection, then, the officer shall, after recording the reasons in writing, make immediate arrangement to give the victim such care and protection including admitting the child into a shelter home or to the nearest hospital within 24 hours of the report, as may be prescribed.
- The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of 24 hours, should report the matter to the Child Welfare Committee and the Special Court or where no Special Court has been designated, to the Session Court, regarding the need of child for care and protection and steps taken in this regard.



5.5.3 Secondary Process

- Arrest the accused.
- Give an opportunity to the accused to defend his case as part of the criminal justice system.
- Collect further evidence to rebut the defence of the accused.
- Record the detailed confession of the accused.
- Seize the clothes of the accused to check for presence of any seminal stains.
- Subject the accused to a potency test.
- Collect blood samples for the purpose of DNA, if any, for comparison with that of semen available on the clothes and swabs of the victim.
- Remand the accused to judicial custody.

5.5.4 Final Process

- Obtain the statement of victim, if possible, u/s 183 of BNSS, earlier s. 164 of CrPC
- Obtain the age determination certificate of victim.
- Obtain potency test of the accused.
- Obtain the FSL report.
- Obtain final opinion from the Medical Officer based on the FSL report.
- Obtain the DNA report wherever required.
- Write final case diary analysing the evidence in support of the prosecution or otherwise.
- File charge sheet in consultation with the public prosecutor or legal advisor (PP/LA).
- In-charge investigating officer should attend the court during the trial of important witnesses, such as victim and circumstantial witnesses.
- Statement of the child shall be recorded at her residence or at a place where she usually resides or at the place of her choice and as far as practicable by a woman police officer not below the rank of sub-inspector.
- The police officer while recording the statement of the child shall not be in uniform.
- The police (investigating) officer shall, while examining the child, ensure that at no point of time and in no way, the child comes in contact of the accused.
- No child shall be detained in the Police Station in the night for any reason.
- The Police officer shall ensure that the identity of the child is protected from the public/media, unless otherwise directed by the Special Court in the interest of the child.



- Recording of statement of a child by Magistrate. (1) if the statement of the child is being recorded u/s 183 of BNSS, earlier s. 164 of CrPC shall, record the statement as spoken by the child.
- The Magistrate or his representative shall provide to the child and his parents, a copy of the document specified u/s 230 of BNSS, earlier s. 207 of CrPC, upon the final report being filed by the police u/s 193 of BNSS, earlier s. 173 of CrPC.
- Additional provisions regarding statement to be recorded (1) The Magistrate or the Police officer, shall record the statement as spoken by the child in the presence of the parents of the child or any other person in whom the child has trust or confidence.
- Wherever necessary, the Magistrate or the Police officer, as the case may be, may take the assistance of a translator or an interpreter, having such qualifications, experience and on payment.
- Wherever possible, the Magistrate or the police officer, as the case may be, shall ensure that the statement of the child is also recorded by audio-video electronic means.
- Designation of Special Courts (1) For the purposes of providing a speedy trial, the State Government shall in consultation with the Chief Justice of the High Court, by notification in the Official Gazette, designate for each district, a Court of Session to be a Special Court to try the offences under the Act.
- Provided that if a Court of Session is notified as a children's court under the Commissions for Protection of Child Rights Act, 2005 or a Special Court designated for similar purposes under any other law for the time being in force, then, such court shall be deemed to be a Special Court under this Section.
- The evidence of the child shall be recorded within a period of 30 days of the Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court.
- The Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence.
- Child not to see accused at the time of testifying
 - (1) The Special Court shall ensure that the child is not exposed in any way to the accused at the time of recording of the evidence, while at the same time ensuring that the accused is in a position to hear the statement of the child and communicate with his advocate.
 - (2) For the purposes of sub-section (1), the Special Court may record the statement of a child through video conferencing or by utilising single visibility mirrors or curtains or any other device.



- Trials to be conducted in camera
 - The Special Court shall try cases the Special Court may record the statement of a child through video conferencing or by utilising single visibility mirrors or curtains or any other device.
 - The Special Court shall try cases in camera and in the presence of the parents of the child or any other person in whom the child has trust or confidence

5.5.5 Rehabilitation and Relief

- If the victim is an orphan or is not accepted by blood relatives, then arrange for her rehabilitation with the help of NGOs.
- If the victim belongs to SC/ST by caste, immediately send a report to the Collector for monetary relief.

Note: As the incidents of rape are quite sensitive, more particularly the cases involving minors and unmarried girls, it is advisable to defer press publicity keeping in view the social stigma of a victim.

5.5.6 Records

- a) General Diary
- b) FIR Index
- c) Sentry relief book
- d) Prisoners search register
- e) Arrest Records
- f) Maintain a separate register as per the guidelines of Supreme Court of India in respect of the arrested persons.

Note: Give wide publicity in print and electronic media in case of the conviction of an accused and open rowdy sheets for the convicted accused.



5.6 SOP ON SECTION 85, 86 OF BNS , EARLIER SECTION 498 (A) OF IPC

5.6.1 Definition

A married woman is subjected to cruelty by her husband or his relatives physically or mentally.

‘Cruelty’ means

(a) any wilful 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

b) 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.

- The main objective of Section 85, 86 of BNS, earlier Section 498(A) of IPC is to protect a woman who is being harassed by her husband or relatives of husband.
- Section 85, 86 of BNS, earlier Section 498(A) of IPC can be invoked whether the woman is alive or dead. The period of her married life is also not material.

5.6.2 SOPs

- The victim or anyone on her behalf can lodge a complaint with the police, where she is staying, parent’s house or at in-law’s house.
- After receiving a complaint from the victim, issue an FIR following the guidelines of Supreme Court of India.
- Add appropriate Section of the Dowry Prohibition Act if the victim was meted to harassment for the purpose of dowry.
- After issuing an FIR, if she was harassed physically, send her to a hospital for medical examination.
- Get the statements of victim recorded by a woman police officer.
- Prepare a plan of action by:
 - identifying the witness(es) for examination and record their statements u/s 183 of BNSS, earlier s. 164 of CrPC,
 - Collecting material and documentary evidence and seizing the weapon if the accused has used to harass the victim with a deadly weapon, and



- Seizing the marriage card, photos, etc.
- Examine the witnesses who are acquainted with the facts of the case.
- Examine the independent witnesses from the area near the victim's residence.
- In some cases, Section 85, 86 of BNS, earlier Section 498(A) of IPC is misused, and relatives of the husband are falsely implicated. Therefore, ascertain whether the other accused have harassed the victim physically or mentally.
- Do not arrest the accused without establishing guilt.
- Establish whether the other alleged accused were residing in the same house or same village or same colony, by examining the neighbours of the other accused.
- Examine the elders who earlier had mediated to reconcile them and any proceedings thereof can be collected as part of the evidence as these are independent evidence.
- Prove the harassment meted to the victim mentally or physically, and clearly establish for each accused.
- Examine the marriage elders.
- Seek permission of the Superintendent of Police, for prosecution or deletion of the accused.
- Collect scientific evidence, if any, such as audio recordings and CCTV footage.
- Give an opportunity to the accused to defend their case as part of the criminal justice system.
- Collect further evidence to rebut the defence of the accused.
- Prepare charge sheet in consultation with the public prosecutor.
- In-charge investigating/ responsible officer to attend the court on dates of examination of victim and other important witnesses who knew the harassment and marriage.

5.6.3 Records

- a) General diary
- b) FIR index
- c) Sentry relief book
- d) Prisoners search register
- e) Arrest records
- f) Maintain a register as per the guidelines of the Supreme Court in respect of the arrested/ accused.

Note: Give wide publicity in case of the conviction of accused.



5.6.4 Supreme Court Directions in Cases u/s 85, 86 of BNS, earlier s. 498(A) of IPC

- 1) The Supreme Court held in the case of *Inder Raj Malik vs. Sunita Malik*¹⁹, that the word 'cruelty' is defined in the explanation which inter alia says: '*harassment of a woman with a view to coerce her or any related persons to meet any unlawful demand for any property or any valuable security is cruelty.*'
- 2) Kinds of cruelty covered under this Section includes the following:
 - i) Cruelty by vexatious litigation
 - ii) Cruelty by deprivation and wasteful habits
 - iii) Cruelty by persistent demand
 - iv) Cruelty by extra-marital relations
 - v) Harassment for non-dowry demand
 - vi) Cruelty by non-acceptance of baby girl
 - vii) Cruelty by false attacks on chastity
 - viii) Taking away children.

Supreme Court of India has issued new set of directions to prevent the misuse of Section 85, 86 of BNS, earlier Section 498(A) of IPC in *Rajesh Sharma Vs state of Uttar Pradesh in Crl Appeal Number 1265 of 2017*, which are briefly narrated as follow.

Instructions of Supreme Court of India in Cases of Section 85, 86 of BNS, earlier Section 498(A) of IPC

ii. Constitution of Family Welfare Committee

- i) In every district one or more Family Welfare Committees is constituted by the District Legal Services Authorities preferably comprising of three members. The constitution and working of such committees may be reviewed from time to time and least once in a year by the District and Sessions Judge of the district who is also the Chairman of the District Legal Services Authority.
- ii) The Committees may be constituted out of para legal volunteers/ social workers/ retired persons/ wives of working officers/ other citizens who may be found suitable and willing.
- iii) The Committee members will not be called as witnesses.
- iv) Every complaint u/s 85, 86 of BNS, earlier s. 498(A) of IPC received by the Police or the Magistrate be referred to and looked into by such committee. Such committee may have to initiate interactions with the parties personally or by means of telephone or any other mode of communication, including electronic communication.



- v) Report of such committee is given to the Authority by whom the complaint is referred to it latest within a month from the date of receipt of the complaint.
- vi) The committee may give its brief report about the factual aspects and its opinion in the matter.
- vii) Till report of the committee is received, no arrest should normally be affected.
- viii) The report may be then considered by the investigating officer or the Magistrate on its own merit.
- ix) Members of the committee may be given such basic minimum training as may be considered necessary by the Legal Services Authority from time to time.
- x) Members of the committee may be given such honorarium as may be considered viable.
- xi) It will be open to the District and Sessions Judge to utilize the cost fund wherever considered necessary and proper.

iii. Designation of Investigation Officer within a Month

- Complaints u/s 85, 86 of BNS, earlier s. 498(A) of IPC and other connected offences may be investigated only by a designated an investigating officer of the area. Such designated officer may be required to undergo training for such duration (not less than one week) as may be considered appropriate. The training may be completed within four months from the time of designation.
- iv. In cases where a settlement is reached, it will be open to the District and Sessions Judge or any other senior Judicial Officer nominated by him in the district to dispose of the proceedings including closing of the criminal case if the dispute primarily relates to a matrimonial discord.
 - v. If a bail application is filed with at least one clear day's notice to the public prosecutor/complainant, the same may be decided as far as possible on the same day. Recovery of disputed dowry items may not by itself be a ground for denial of bail if maintenance or other rights of a wife/minor children can otherwise be protected. In dealing with the matters related to bail, individual roles, prima facie truth of the allegations, requirement of further arrest/custody and interest of justice must be carefully weighed.
 - vi. In respect of persons ordinarily residing out of India, impounding of passports or issuance of Red Corner Notice should **not be** a routine.
 - vii. It will be open to the District Judge or a designated senior judicial officer nominated by the District Judge to club all connected cases between the parties arising out of matrimonial disputes, so that a holistic view is taken by the Court to whom all such cases are entrusted.



- viii. Personal appearance of all family members and particularly outstation members may not be required, and the trial court ought to grant exemption from personal appearance or permit appearance by videoconferencing without adversely affecting the progress of the trial.
- ix. These directions will not apply to the offences involving tangible physical injuries or death.



5.7 SOP ON INSULT TO MODESTY OF A WOMAN U/s 79 OF BNS, EARLIER S. 509 OF IPC

5.7.1 What is an insult to modesty of a woman?

‘The act of pulling a woman, removing her saree, coupled with a request for sexual intercourse...would be an outrage to the modesty of a woman; and knowledge, that modesty is likely to be outraged, is sufficient to constitute the offence,’ a Supreme Court Bench has said in a judgment that has drawn from several verdicts by different courts. In other words, outraging a woman's modesty as mentioned in Section 354 will apply to the crime against women that stop short of penetration, in which event it becomes rape. In the same judgment, the court ruled that penetration alone was sufficient to qualify as rape whether there has been ejaculation or not.

The above definition shows growing sensitivity to a changing society in which relatively subtle acts of harassment of women have come to be viewed as a crime. The Bench also clarified that claims of lack of protest couldn't be an alibi.

The Bench further said, ‘The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive.’ This, say the legal experts, will have importance implications for the women who face harassment at workplace, from acquaintances, or while out on dating.

What amounts to an insult to the modesty of a woman? If a person, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, he insults the modesty of the woman.

Section 74 of BNS, earlier Section 354 of IPC contemplates that the offender must have an intention to insult the modesty of any woman. With such an intention he must utter any word, make any sound, or gesture, or exhibit any object. His intention for doing so must be that the woman shall hear such a word or a sound, or that she shall see such a gesture or an object. Or the offender must intrude upon the privacy of such a woman.

The last part of the Section, i.e., ‘or intrudes upon the privacy of such woman’, are also, like the subject matter of the Section, qualified by the opening words, i.e., ‘whoever, intending to insult the modesty of any woman’. The argument that to intrude upon the privacy of a woman calls for a private place and cannot take place in a public place, has no basis in view



of the fact that everyone wherever he or she may be taken his or her privacy along with, and also because the Section nowhere says that intrusion to privacy needs a private place.

Similarly, the Section also does not say that the woman whose modesty is intended to be insulted must hear the word or sound or see the gesture or object. Exposing one's person or using obscene words or exhibiting obscene drawings, etc., with the requisite guilty mind are all covered under this Section. It is important to note that there is no provision for rigorous imprisonment under this Section.

Orissa High Court is of the view that it is not necessary to place on record the exact words uttered by an offender; but the essential elements of the offence would have to be proved before an offender could be convicted under this Section. Sending by post a letter to a woman containing indecent overtures with the suggestion that she was to take certain action to show that she accepted his terms was held to be punishable under this Section.

Entering into the house of a woman at night and finding her asleep, catching hold of her and trying to take off her clothes with a view to sexually assault her, was held to be an offence under this Section and not attempt to rape, because it was an intrusion upon her privacy. Entering at night a room occupied by four women, and on an alarm being raised escaping from there, was held to be an offence under this Section on the ground of intrusion upon the privacy of women and also u/s 329(1) of BNS, earlier s. 441 of IPC because unauthorised entry with intent to commit an offence was established.

Punishment u/s 79 of BNS, earlier s. 509 of IPC: Punished with a simple imprisonment for a term which may extend to three years, and additionally, a fine may also be imposed.

5.7.2 Primary Process

- 1) Register a case by ensuring that the ingredients are satisfied.
- 2) Get the victim examined at her residence by a woman officer carefully with empathy; be patient and very polite, as the victim is in a state of distress/trauma. Do not pose questions which hurt the feelings of a victim.
- 3) Examine other relevant witnesses or any eyewitnesses.
- 4) If the eve teasing is over the telephone, contact the telephone department and keep track of the incoming calls and trap them.
- 5) Visit the scene of offence, conduct a detailed *panchnama* in the presence of respectable inhabitants/official witnesses. Collect all physical evidence like broken bangle pieces, torn cloth pieces, mobile phones, computer, or any other incriminating material available.



- 6) Take photographs or video of the scene of offence.
- 7) Record the statement of the victim u/s 183 of BNSS, earlier s. 164 of CrPC, of the complainant and/or any other, if required.

5.7.3 Secondary Process

Arrest the accused and remand to judicial custody following the guidelines of the Supreme Court of India, and record his/ their version in the presence of respectable inhabitants/ official witnesses.

5.7.4 Final Process

- a) Prepare a correct and proper charge sheet, since it is a *sine qua non* in securing a conviction in any crime.
- b) Take legal opinion of the prosecutor while drafting the charge sheet.

5.7.5 Check List in Filing the Charge Sheet

- 1) Original Part-II statements of the complainant, victim, and other eye/circumstantial witnesses.
- 2) Original scene of offence *panchnama*.
- 3) Statements recorded u/s 183 of BNSS, earlier s. 164 of CrPC.
- 4) Deposit the seized physical evidence in the Hon'ble Court in form-66 and get the CPR No. (Case Property Receipt Number).

5.7.6 Entries in Records

- 1) General diary
- 2) FIR index
- 3) Sentry Relief Book
- 4) Prisoners Search Register
- 5) Arrest records.

5.7.7 Preventive Process

- These types of offences are most common in bus stops, colleges, schools, secluded colonies etc. Therefore, patrolling needs to be intensified.
- Visible policing will prevent this type of offences.
- Arrange meetings with colony people.
- Traps at important places (SHE Teams) to nab the unscrupulous gangs.



NOTE

- If the victim is a minor, appropriate sections under POCSO Act will be applied.
- If the victim belongs to SC/ST, appropriate sections under SC/ST (POA) Act will be applied.
- Relevant Sections of IT Act shall apply, if necessary.



5.8 SOP ON ACID ATTACK

5.8.1 Acid Attacks and the Law

Since no special section in the IPC deals with acid attacks, such incidents are not even recorded separately. Section 118(2) of BNS, earlier Section 326 of IPC, which deals with causing grievous hurt by throwing of a corrosive substance, etc., is insufficient/inadequate to deal with the matter.

Firstly, the definition of grievous hurt is not broad enough to cover various kinds of injuries which are inflicted in acid attacks. Secondly, the Section does not cover the act of administering acid. Thirdly, the Section gives a wide discretion to the courts so far as punishment in the matter is concerned. Cases of acid attacks in India show that inadequate punishment is awarded normally in such cases. Fourthly, the Section does not punish the intentional act of throwing acid if no injuries occur. Lastly, the Section also does not specify who should be fined. So, if a person has thrown or administered acid on another person, a presumption should be raised against the perpetrator, who has thrown or administered acid that he has done so deliberately.

Acid Attacks - A Serious Trend

Section 124(1) of BNS, earlier Section 326(A) of IPC (i) Hurt by acid attack Whoever burns or maims or disfigures or disables any part or parts of the body of a person or causes grievous hurt by throwing acid on or administering acid to that person, with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punishable with imprisonment of either description which shall not be less than 10 years but which may extend to life and with fine which may extend to Rs. 10 Lakhs. Provided that any fine levied under this section shall be given to the person on whom acid has been thrown or administered.

In order to bring offenders involved in 'acid attack' cases to justice, the investigating officers have to deal with these cases in a holistic manner. It is imperative that special attention has to be given to prevention as well as speedy investigation and trial of such crimes.

Pertinent Sections of law are Sections 109, 118(2), 130, 131, 74, 351(2)&(3), 351(4), and 79



of BNS, earlier Sections 307, 326, 351, 352, 354, 506, 507, and 509 of IPC resp. in this regard, and following observations are noteworthy:

The High Court of UT Chandigarh elucidated that such offences constituted an offence u/s 109 of BNS, earlier 307 of IPC as intention or knowledge and not consequence of actual act done, for the purpose of carrying out the intention is of importance. Man's state of mind cannot be proved by direct evidence except through his own confession and in the absence of such a confession, it can be proved only by circumstantial evidence, such as presence of a motive, preparations made, weapons used, nature of injuries actually inflicted, etc. Injury, likely to cause death (likely means probably as distinguished from possibly) must be such that death will be the more probable result in ordinary course of nature.

As regards Section 116 of BNS, earlier Section 320 of IPC, 'Grievous Hurt' clause eight reads as 'Any hurt which endangers life or which causes the sufferer to be during the space of 20 days in severe body pain, or unable to follow his ordinary pursuits'. The term 'endangers life' – is much stronger than the expression 'dangerous to life' and it is used by design to exclude cases of hurt, which, however dangerous to life, does not put life in actual danger.

The above legal position has to be understood while investigating the cases u/s 109 and 118(2) of BNS, earlier s. 307 and 326 of IPC resp., which are registered in the incidents of acid attacks.

In the case of *M.S. Mallipatil*, Mumbai High Court reduced the sentence against the culprit M.S. Mallipatil to a mere 35 days as against the original three years of sentence awarded to him by a trial court. However, on an appeal made by the victim Jadhav who had received serious burn injuries on the head, face, and chest on 25th January 2002, the Supreme Court held that 'Persons' attacking others with acid should not be shown any leniency lest people cannot live in peace. The Court chided the Mumbai High Court for reducing the sentence imposed by the trial court and restored the three-year sentence imposed by the trial court.

In an incident reported in 1999, the accused Joseph Rodrigues tossed 1.5 litres of sulphuric acid on his employee Ms. Hasina Husain which burnt a hole in her head, dissolved her facial features welded her neck and shoulders, fused her fingers, and left her blind. Consequently, the victim spent seven years in a hospital and underwent 18 surgeries costing over six lakh rupees. Karnataka High Court took into consideration the mental trauma of the victim and her family, and awarded 'life imprisonment' to the accused seven years after the incident, modifying the punishment of five years as awarded by a sessions court. Karnataka High Court inter alia observed that 'Rodrigues (the accused) deserves the hardest punishment because he has imprisoned the victim for life by disfiguring and blinding her. The victim Hasina could never work, earn or become a mother'. The Court said that Judges have to be



responsible towards society and that State Government should participate in rehabilitating acid attack victims.

Therefore, Investigating officers need to react promptly in providing medical care and trauma counselling to the victims, besides meticulously collecting the material evidence with utmost care, preserving them appropriately and sending material objects (Mos) to FSL without delay, photographing scene of crime, finding out source of acid, pH of acid, type of acid, etc., and finally percentage of burns from the medical officer.

Chances of conviction will naturally be more in cases where the investigation is completed procedurally and swiftly, and the trial is pursued with distinct care. Prosecution should insist on heavy compensations from the accused u/s 400 of BNSS, earlier 359 of CrPC, to be paid to the victims.

Even as the Supreme Court restricted the sale of acid across the country, questions on compensations and rehabilitation of survivors still remain unanswered. Taking note of the rules drafted by the Union Government, the Supreme Court passed an interim order restricting the sale of acid. Acid attacks can be termed as an act of gender-based violence that results in, or is likely to result in, physical, sexual, psychological harm or suffering to women.

Amendment to IEA Based on the Report of 18th Law Commission of India

The 18th Law Commission of India headed by Justice A.R. Lakshmanan proposed Section 326A and 326B of IPC (presently 124(1) and 124(2) of BNS) in the India Penal Code and Section 114B in the Indian Evidence Act.

1) Short title, extent, and commencement

- a) This Scheme may be called scheme for relief and rehabilitation of offences (by Acids) on women and children
- b) It extends to the whole of India except the State of Jammu and Kashmir
- c) It shall come into force on such date as the Central Government may by notification in the official Gazette, appoint.

2) Constitution of National Criminal Injuries Relief and Rehabilitation Board

The Central Government shall by notification constitute a body to be known as National Criminal Injuries Compensation Board which shall consist of - The Chairperson, National Commission for Women who shall be the President of the Board, ex-officio and an officer not below the rank of Joint Secretary of the Central Government in the Department of Women and Child Development.



3) Functions of the National Board

The National Board shall administer the Scheme and to that effect-

- a) Lay down policies and procedures for the effective implementation and administration of the Scheme.
- b) Review, from time to time, and advise the Central Government on the quantum payable and other relief provided under the Scheme.
- c) Advise the Ministry to issue suitable advisories to State Government for directing the public prosecutors to plead before the competent court to award suitable compensation to the victims and appraise the court on the actions initiated as per the scheme.
- d) Estimate the requirement of the funds/budget. Administer and allocate funds to the State Boards.
- e) Issue directions to the appropriate authorities under the Scheme for ensuring proper medical, psychological, and legal assistance to the victim.
- f) Frame and issue guidelines on the rehabilitation schemes in consultation with the Central and State government.
- g) Monitor and evaluate the implementation of the scheme and seek periodical reports.
- h) Coordinate and monitor the functioning of the state and district authorities constituted under this Scheme for the implementation of the Scheme.
- i) The Board may inquire or cause to be inquired *suo moto* or otherwise or on a petition presented to it by a victim or any person on her behalf or by an NGO, into any complaint alleging the offence of acid attack and/or with respect to any matter in connection with the provisions of the scheme and refer the matter to the appropriate District or State Board.

4) Constitution of The State Board

The State Government shall constitute State Criminal Injuries Relief and Rehabilitation Board, by notification in the Official Gazette.

Accountability of Public servants- Prosecution against Failure

Section 199 BNS, earlier Section 166A IPC: Prosecution against Public Servant

- a) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or,
- b) knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation, or,



- c) fails to record any information given to him under sub-Section (1) of Section 154 of the Code of Criminal Procedure, 1973 (2 of 1974) [presently Section 173(1) and 173(2)] of BNSS] in relation to cognizable offence punishable u/s 124(1), 124(2), 74, 76, 143, 144, 64, 66, 67, 68, 70(1), 71, 79 of BNS, earlier 326A, Section 326B, Section 354, Section 354B, Section 370, Section 370A, Section 376, Section 376A, Section 376B, Section 376C, Section 376D, Section 376E or Section 509 of IPC resp. shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine.

The offence is cognizable, bailable and triable by the Magistrates of the First Class. FIR/ application u/s 175(3) of BNSS, earlier s. 156(3) of Cr.PC or private complaint u/s 223(1) of BNSS, earlier 200 of CrPC, may be preferred, subject to the mandate of Section 218 of BNSS, Section 197 of CrPC, 1973.

5.8.2 Scale of Victim Compensation

5.8.2.1 SECTION 124(1) BNS, earlier SECTION 326A IPC

- i. Throwing or using of acid in any form on the body of other person - Notwithstanding anything contained in Section 118(1) or 118(2), earlier Sections 324 or 326 of the Code, whoever does any act of throwing acid or using acid in any form on the other person with the intention of or with knowledge that he is likely to cause such person permanent or partial damage or deformity disfiguration or disability to any part of the body of such person shall be punished with imprisonment of either description for a term which shall not be less than **ten** years but which may extend to life imprisonment and shall also be liable to a fine which shall be a minimum of Rs.2 lakh and may extend to Rs.5 lakh.
- ii. The offence shall be cognizable, non-bailable and non-compoundable.
Explanation: the term 'acid' and 'acid attack' – as defined in Section 3(a) & (b) of the prevention of offences (by acids) scheme 2008
- iii. Justification: Although the offences relating to acid-throwing is covered u/s 116 and 118(2) of BNS, earlier 320 and 326 of IPC, but keeping in view the extreme heinous nature of the act and the fact that the offence can be punished with an imprisonment for life or with that of either description for a term which may extend to ten years u/s 118(2) BNS, earlier s. 326 IPC, it has been proposed in the Bill that the minimum punishment should not be less than 10 years and extended to life imprisonment.



- iv. Further, using acid with intention or knowledge is a punishable offence irrespective of the nature and extent of injury; therefore, there is no need to categorize various forms of disability.

Explanation 1. For the purposes of this section, 'acid' includes any substance which has acidic or corrosive character or burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability.

Explanation 2. For the purposes of this section, permanent or partial damage or deformity shall not be required to be irreversible.

Such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim; further, any fine imposed under this Section shall be paid to the victim.

5.8.2.2 SECTION 124(2) of BNS, earlier SECTION 326B of IPC

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

5.8.2.3 Amendments Proposed

- i. In the Indian Evidence Act
 - i) Section 114B Presumption as to acid attack:
 - (1) When the question is whether a person has committed the act of throwing acid on the woman the Court shall presume, having regard to the circumstances of the case and the statement of the victim, that such person had thrown acid on the woman.
- ii. **Amendments to the Criminal Procedure Code**
 - Insertion of new Section 357A of CrPC (presently section 396 of BNSS)- Defraying of expenses: Notwithstanding anything contained in the Section 395 of BNSS, earlier Section 357 of CrPC or in any other law for the time being in force, the court may when passing judgment for the offence u/s 124(1) or 124(2) of BNS, earlier 326 A or 326 B of IPC -
 - (1) In the payment made to any person as compensation for any loss or injury caused by an offence, the court may order the recovery of the said amount from the assets of the accused.



- (2) It provides for defraying of expenses incurred by the concerned authorities under for assistance to victims of acid attacks.
- (3) If a fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or if an appeal be presented, before the decision of the appeal.
- (4) An order under this Section may also be made by an Appellate Court or by the High Court or Session Court while exercising its powers of revision. Although no firm figures of acid attack are available, as it is clubbed with other offences u/s 118(2) of BNS, earlier 326 of IPC, it is estimated that roughly 100 such cases occur every year.

5.8.2.4 SECTION 124(1) BNS, earlier SECTION 326A IPC

The Section 124(1) in BNS, earlier Section 326-A in IPC lays down the punishment for acid throwing. The minimum punishment is 10-year imprisonment. It can extend up to life imprisonment with a fine. A separate law to punish offenders in such cases was passed along with an amendment in the law on sexual offences.

Section 124(1) BNS, earlier Section 326A IPC: Whoever causes permanent or partial damage or deformity to or burns or maims or disfigures or disables any part or parts of the body of a person or causes offences [hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine].

Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim.

Provided further that any fine imposed under this section shall be paid to the victim.

Explanation 1. - For the purposes of this Section, 'acid' includes any substance which has acidic or corrosive character or is of burning nature, that is capable of causing bodily injury leading to scars or disfigurement, or, temporary or permanent disability.

Explanation 2. - For the purposes of this Section, permanent or partial damage or deformity shall not be required to be irreversible.



5.8.2.5 Section 396(7) of BNSS, earlier Section 357B of CrPC-Compensation for acid attack

Section 396(7) BNSS, earlier Section 357B has been newly inserted in the CrPC which reads:

"The compensation payable by the State Government u/s 396 BNSS, earlier s. 357A shall be in addition to the payment of fine to the victim u/s 124(1) or 70(1) BNS, earlier 326A or 376D resp. of the Indian Penal Code."

5.8.2.6 Section 397 BNSS, earlier Section 357-C CrPC - Free Medical Treatment

Section 397 of BNSS, earlier Section 357C of CrPC has been newly inserted whereby all hospitals, public or private, are required to provide first aid or medical treatment free of cost, which reads:

‘All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the First-aid or medical treatment, free of cost, to the victims of any offence covered u/s 124(1), 64&65(1), 66, 67, 68, 70(1), 71 of BNS, earlier s. 326A, 376, 376A, 376B, 376C, 376D or section 376E resp. of the Indian Penal Code and shall immediately inform the Police of such incident.’

5.8.3 Investigation of Acid Attack Cases -Primary Process

- As the incident is very critical one, all hospitals, public or private run by either Central or State Government, or, local bodies or any other person, shall immediately provide first aid or medical treatment free of cost to the victims of any offence covered u/s 124(1) BNS, earlier s. 326A IPC.
- If a victim receives serious acid injuries, it may also lead to death, so Section 109 of BNS, earlier 307 of IPC may also be applied. Record the Dying declaration of the victim.
- After receiving a complaint, which could be a message oral or written, immediately, inform all senior officers and rush to the hospital where the victim is admitted.
- FIR should be improved by incorporating material omissions and commissions and signature of the complainant must be obtained. Then FIR should be issued and sent to all the concerned.
- If a victim is illiterate, complaint must be put into writing and read over to her (victim).



- Ensure that all ingredients of applicable legal sections are satisfied in the complaint, by including when, where, whom, why and how.
- If possible, examine the victim with care and empathy. Since a victim is in a state of shock and distress, she must be treated patiently and politely.
- Collect the clothes of a victim.
- Prepare a plan of action and obtain an approval of the superior officer.
- Visit the scene of offence and conduct a detailed *panchnama* of the scene. Further, protect the scene of crime and examine all circumstantial witnesses/ owner of the land.
- Collect all material evidence from the scene of offence and take photographs of each item at the scene, specifically the acid damages found on objects, articles, walls, ground, etc.
- Immediately send the material objects (clothes, acid bottles or any other material, etc.) seized from the scene of offence, to an FSL.
- Examine all witnesses in details and record their statements.
- Location of scene of offence is given priority in establishing the offence.
- Collect the information regarding the sale and purchase of acid, and regarding the shop that sold the acid to the accused.
- Write first case diary incorporating the plan of action, material omissions and commissions.
- Collect the information regarding the accused/ suspect who regularly follows the victim, by examining the victim's friends.
- Mostly, a woman officer/woman should escort the victim to hospital and examine her.

5.8.4 Secondary Process

- Try to arrest the accused by verifying all sources and collecting all evidences.
- Collect further evidence to rebut the defence of the accused.
- Record the accused's detailed confession and collect information regarding the purchase/procurement of acid.
- Collect the clothes of the accused worn on the day of attack.
- Remand the accused to judicial custody.

5.8.5 Final Process

- Wherever possible, obtain statement of victim, u/s 183 of BNSS, earlier 164 of CrPC.
- Obtain the report from FSL.



- Obtain final opinion of medical officer based on the FSL report.
- Write final case diary analysing the evidence in support of the prosecution or otherwise.
- File charge sheet in consultation with the public prosecutor/legal advisor (PP/LA).
- In-charge investigating officer should attend the court during the trial of important witnesses, such as victim and circumstantial witnesses.

5.8.5.1 Rehabilitation and Relief

Procedure for Assistance to Victims

- a) A victim, or her dependents or immediate family member or any voluntary organization espousing the cause of women/children may apply to the District Board for financial and other relief in accordance with the application form as may be prescribed.
- b) In case of death caused by or results as a consequence of acid attack, children, or other dependents of the deceased or any voluntary organization espousing the cause of women/ child or service provider, may apply to the Board for relief in accordance with the provisions of the scheme.
- c) Where the legal heir is—
 - i) A child, the application may be made on his behalf by the father or guardian or by any authorized voluntary organization.
 - ii) A mentally ill person within the meaning of the Mental Health Act, 1987, the application may be made by the person with whom the victim normally resides or a duly authorized medical officer or a voluntary organization.
- d) An applicant shall submit all/ any of the following documents with the application:
 - i) Medical certificate, where the application is being made by or on behalf of the victim; or
 - ii) Death certificate of the victim/post-mortem report, where a legal heir is making the application including copy of post-mortem report; or
 - iii) Copy of FIR/ complaint.
- e) The Board shall order an interim financial relief of an amount up to Rs. 5,00,000/- within a period of 30 days from the date of receipt of the application, after having been prima facie satisfied that a case of acid attack has been made out. The payment would directly be sent to the hospital where the acid attack survivor is undergoing the treatment.



- f) Any further sum of money as approved by the Board/ monitoring authority, from time to time shall be met towards the treatment of the victim, subject to a maximum of Rs. 25 lakh inclusive of the interim compensation.
- g) If death of a victim occurs, the Board shall, based on the facts and circumstances of the case, pay a lump sum not exceeding Rs. 2,00,000/- to the legal heir preferably to the children of the deceased victim so as to protect their best interests. This would be in addition to any expenses incurred towards the treatment of the victim.
- h) The Board shall in addition to the above, take such measures for the purposes of rehabilitation, legal aid, or any special needs of the victims in consultation with the monitoring authority or service provider. The Board or the monitoring authority shall cater to the special needs and rehabilitation of such victims of an amount up to Rs.5 lakh.
- i) While conducting any home study or enquiry, the fact that if a victim has been at any time subjected to any act of domestic violence, this shall be taken into account and the question whether the legal heir is the husband or the husband's relatives shall be determined by the Board or by the monitoring authority.

Note

As incidents of rape are quite sensitive, it is always advisable to defer the press publicity in view of the social stigma of victims.



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