



**Locating the
Survivor** in the Indian
Criminal Justice System:
Decoding the Law

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LAWYERS COLLECTIVE WOMEN'S RIGHTS INITIATIVE



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Foreword

The criminal justice system tends to deter survivors of sexual violence from pursuing a case against the accused. While there are no official figures available on attrition rate in rape cases in India, studies indicate that many cases are lost in the early stages of the criminal justice system – at the stage of reporting the offence. The low rate of conviction in sexual offences leads to the prosecutrix dropping out during the trial proceedings due to delays in the process or acquittals resulting from lack of evidence. These factors are major barriers to successful completion of the process of justice and foreground the need for a committed response to the survivor’s needs.

In order to encourage prosecution of sexual offences, mandatory reporting was introduced by the Protection of Children from Sexual Offences Act, 2012 (“POCSO Act”), and in 2013 the Criminal Law was amended to introduce mandatory reporting by hospitals in rape cases. However, in the absence of committed police and judicial services extended to the survivor, it is likely that many survivors will remain disillusioned with the system and not report the offence. Even if the offence is reported, attrition at the stage of investigation and trial is likely to continue due to the hurdles posed by the criminal justice system.

The Background Note on Criminal Law serves as a guide for a survivor to understand the nuances of the criminal justice system and the legitimate expectations she can have from the system. The Background Note refers extensively to the Code of Criminal Procedure, 1973 (“Cr.P.C”). While the relevant provisions have been reproduced in *Annexure 2*, it is advised that the reader refer to the Cr.P.C while going through this document.

It is hoped that with greater awareness of her rights, a survivor will report the offence perpetrated on her and pursue the case to its conclusion.

Indira Jaising
Executive Director
Lawyers Collective, Women’s Rights Initiative
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List of abbreviation

ACP	Assistant Commissioner of Police
CBI	Central Bureau of Investigation
CLA	Criminal Law Amendment Act, 2013
CrI	Criminal
Cr.P.C	Code of Criminal Procedure, 1973
DCP	Deputy Commissioner of Police
DCW	Delhi Commission for Women
DLSA	Delhi Legal Service Authority
FIR	First Information Report
IEA	Indian Evidence Act, 1872
IPC	Indian Penal Code, 1860
I.O	Investigating Officer
MLC	Medico-Legal Case
NCT	National Capital Territory
NCRB	National Crime Records Bureau
NGO	Non Government Organisation
PCR	Police Control Room Van
POCSO Act	Protection of Children from Sexual Offences Act, 2012
PWDVA	Protection of Women from Domestic Violence Act, 2005
RCC	Rape Crisis Centre
S.C	Supreme Court
SHO	Station House Officer
SJPU	Special Juvenile Police Unit
VAW	Violence Against Women
WP	Writ Petition

Introduction

The National Crime Records Bureau (“NCRB”) data shows that the incidence of Violence Against Women (“VAW”) in the country is increasing.¹ A total of 2,44,270 cases of VAW were reported in 2012 (an increase of 6.4% over 2011); a 3% increase was reported in cases of rape alone. The endemic nature of the problem becomes apparent when combined with cases of “molestation” and “eve teasing” and or sexual harassment, which show an increase of 5.5% and 7% respectively. An analysis of the NCRB data for 2010-2012 shows that the conviction rate for all major crimes against women under the Indian Penal Code, 1860 (“IPC”) have declined (the conviction rate for rape has declined from 26.6 in 2010 to 24.2 in 2012; for molestation, from 29.7 to 24 in the same period; and for ‘eve teasing’, from 52.8 in 2010 to 36.9 in 2012). Data from Delhi alone shows that the number of rape cases reported in 2013 has more than doubled from those reported in 2012.

Crimes Against Women in Delhi in the year 2013

S. No.	Crime Head	Number of Reported Cases in 2012	Number of Reported Cases in 2013
1.	Crimes against women covered under the provisions of IPC	51,479	73,958
2.	Molestation against women	653	3,347
3.	Rapes cases	680	1,559

Source: Delhi Police data, reported in “Huge surge in crimes against women in Delhi”, *Gulf Times*, 4th January 2014

This document aims to serve as an introduction to the Indian criminal justice system for survivors of sexual assault and or rape, young lawyers, law students or other individuals who have a stake in the criminal justice system. The Background Note to Criminal Law has been created with the idea of creating a step-by-step guide for a survivor of sexual violence, and

¹ NCRB ‘Crimes in India’ (2012), available at www.ncrb.nic.in. Last visited on 7th February, 2014.

it is structured based on the steps she would have to take to file and pursue a criminal case.

I. Kinds of Offences

Offences in the IPC are classified as cognisable, non-cognisable, bailable or non-bailable in the Cr.P.C. The First Schedule of the Cr.P.C stipulates whether an offence is cognisable, non-cognizable, bailable or non-bailable.

1. Bailable offences [Section 2(a) Cr.P.C]

A police officer can grant bail in the case of a bailable offence.

2. Non Bailable offences [Section 2(a) Cr.P.C]

In non-bailable offence, the decision to grant bail is taken by the competent court of law.

3. Cognisable offences [section 2(c) Cr.P.C]

For police investigation into offences without constraint, an offence must be cognisable, meaning thereby that the police must have powers to arrest any accused without warrant.

The provisions of the Cr.P.C envisage prompt police action in respect of cognisable offences, defined in Section 2(c) as offences in respect whereof police may arrest an accused legally without warrants of arrest.

4. Non-cognisable offences

The power to investigate a non-cognisable case commences only after the police officer has acquired requisite permission from the Magistrate under Section 155(2) of the Cr.P.C.

All sexual offences under the IPC are cognisable and nonbailable except sexual harassment under Section 354A, sexual intercourse by husband upon his wife during separation (Section 376B), and “words, gestures or act intended to insult the modesty of a woman” under Section 509 of the IPC, which are bailable offences. An offence under Section 376B is cognisable only on the complaint of the victim.

5. Cognisable offences and police responsibility to prevent the commission such offences

A police officer may interpose for preventing the commission of any cognisable offence under Section 149, Cr.P.C. A police officer who receives information about the design to commit a cognisable offence shall communicate such information to his superior officer and any other officer who is duty bound to prevent or take cognisance of such an offence under Section 150, Cr.P.C.

Where a police officer is aware of a design to commit a cognisable offence, s/he may arrest the person designing the commission of such an offence. Under Section 151, Cr.P.C, the arrest may take place without orders from a Magistrate and without a warrant. The duration of arrest cannot extend beyond 24 hours.

6. Procedure for Trial of Cases

The procedure for Trial would depend on whether the case is a “warrant case” or a “summons case”.

As per Section 2(x), Cr.P.C, a warrant case refers to a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years. All other cases are categorised as summons case as per section 2(w) Cr.P.C.

In a warrant case:

- ⦿ There is a separate procedure for a case instituted on a police report / chargesheet, and a case instituted otherwise than on a police report;
- ⦿ Procedures regarding Trial in warrant cases instituted on a police report are specified in Sections 238 to 243 of the Cr.P.C. Sections 244 to 247 deal with warrant cases instituted on a private complaint;
- ⦿ A charge needs to be framed against the accused in a warrant case. It is not necessary to frame a formal charge in a summons case (Section 251, Cr.P.C). However, notice will be issued against the accused in a summons case to defend himself;
- ⦿ A summons case can be converted into a warrant case as per Section 259 Cr.P.C, but not *vice-versa*.

Further, any Chief Judicial Magistrate, any Metropolitan Magistrate or any Magistrate of the first class specially empowered in this behalf by the High Court, may try in a summary way offences of a less serious nature specified under Section 260 of the Cr.P.C. (Note that these do not cover serious offences like rape but may cover an offence under Section 354A(3) of the IPC and final orders passed under the Protection of Women from Domestic Violence Act, 2005 (“PWDVA”).

II. First Information Report

1. Process of recording the complaint

In a criminal prosecution, FIR is an important document and it can corroborate the oral evidence in the trial.² A prompt FIR, providing details of the crime and names of the witnesses, can be a solid basis for the conviction of accused.³ The survivor must clearly give all the information she has about the offence and the offenders. An FIR is a compilation of the preliminary information, which serves as basis for investigation.

As per Section 154 Cr.P.C, on receiving oral information about a cognisable offence, the police must reduce the information into writing, obtain the signature of the person giving the information and read it over to her. When such information is received in written form, the police must take the signature of the informant. In both cases, the police must enter the substance of information in the Daily Diary or the General Diary, kept at the police station. FIR must be registered in the FIR Book or Register.

In the case of a cognisable offence, the police must register the FIR. If it is unclear whether the offence reported is cognisable or not, the scope of preliminary inquiry by the police is restricted to ascertain whether the information reveals cognisable or non-cognisable offence, and not to conduct verification.

As per Section 154, Cr.P.C, a copy of the information recorded shall be given to the informant free of cost.

2. Mandatory reporting under Section 19 of the POCSO Act

In cases of child sexual abuse, any person who has apprehension that an offence under the POCSO Act is likely to be committed, or has knowledge

²Thulia Kaliv. State of Tamil Nadu AIR 1973 SC 501.

³Jagannath Narayan Nikamv. State of Maharashtra 1995 Cri LJ 795 (Bom); Ramesh Nana Ghorpadev. State of Maharashtra 1996 Cri LJ 2185 (Bom).

that such an offence has been committed, shall provide such information to the local police or the Special Juvenile Police Unit (SJPU) under Section 19 of the POCSO Act. **This information is not automatically an FIR.** However, the record under Section 19, POCSO Act can be the basis of further police action including registration of FIR under Section 154 of the Cr.P.C.

3. Special procedures for children

When a child gives information to the police under Section 19 of POCSO, the special procedure of recording it, in the interest of justice, consists the use of: (i) simple sentences in reducing information to enable the child to understand contents of the record [Section 19(3)]; (ii) language understood by the child; and (iii) qualified and experienced translator or interpreter when necessary on payment of fees prescribed [Section 19 (4)].

In case the FIR is based upon the statement of the child recorded under Section 19, then the police must record the FIR in conformity with the procedure for recording information under that Section.

4. Woman officer to record information

Under the proviso to Section 154, Cr.P.C, a woman police officer or any woman officer is required to record the information given by a woman survivor against whom offence under following sections of the IPC is alleged to have been committed:

- ⦿ Section 326A (voluntarily causing grievous hurt by use of acid, etc.);
- ⦿ Section 326B (Voluntarily throwing or attempting to throw acid);
- ⦿ Section 354 (assault or criminal force to woman with intent to outrage her modesty);
- ⦿ Section 375 (Rape);
- ⦿ Section 376 (Punishment for rape)
- ⦿ Section 376A (Punishment for causing death or resulting in persistent vegetative state of survivor);
- ⦿ Section 376B (Sexual intercourse by husband upon his wife during separation);
- ⦿ Section 376C (Sexual intercourse of a person in authority);

- ⦿ Section 376D (Gang rape);
- ⦿ Section 376E (Punishment for repeat offenders); and
- ⦿ Section 509 (word, gesture or act intended to insult the modesty of a woman)

The Police should inform survivor/witness of her right to representation before any questions are asked. The police report should state that survivor/witness was so informed [*Delhi Domestic Working Women's Forum vs. Union of India*].⁴

5. Special procedures for differently-abled complainant

Where the survivor of a sexual offence is temporarily or permanently differently-abled, either physically or mentally, the FIR is to be recorded at her residence by the police officer. Alternately, the recording can also be done at a convenient place of the survivor's choice.

An interpreter or special educator's presence during recording of the FIR is provided for under Section 154(a) of the Cr.P.C.

The recording shall be videographed as per Section 154(b) of the Cr.P.C.

Under Section 154(c) of the Cr.P.C, the police is also duty bound to get the survivor's statement recorded by a Judicial Magistrate under Section 164 at the earliest possibility.

6. Non-registration of FIR

As per section 166A(c) of the IPC, if a public servant fails to record any information given u/s 154 of the Cr.P.C regarding offences u/s 326A, 326B, 354, 354B, 370, 370A, 376, 376A, 376B, 376C, 376D, 376E or 509 of the IPC shall be punished with rigorous imprisonment not less than six months which may extend to 2 years and shall be liable to fine. The non-registration of FIRs by the police contrary to the provisions of the Cr.P.C has been a major cause of continuous concern. In a recent order of the Supreme Court in the case of *Lalita Kumari vs. State of Uttar Pradesh and Ors*⁵ ("*Lalita Kumari*"), the Constitution Bench laid down the following rules:

⁴ (1995) 1 SCC 14.

⁵ (2008) 7 SCC 164.

The survivor's lawyer, if present at this stage, can play a crucial role in ensuring that all the beneficial provisions enumerated above are strictly complied with. S/he can ensure that the survivor's statement is recorded properly and comprehensively with all details reflected in the FIR and that a copy of the FIR is handed over to her.

- ◉ *Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.*
- ◉ *If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.*
- ◉ *If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, **a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.***
- ◉ *The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.*
- ◉ *The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.”⁶*

Section 154(3) of the Cr.P.C provides that when a police officer in charge of the police station refuses to record an FIR, the person can *send the substance of such information, in writing and by post, to the superintendent of police concerned*. If the Superintendent of Police is satisfied that the information discloses the commission of a cognisable offence, s/he can

⁶ Ibid. at para 111

either investigate her/himself or direct a subordinate police officer to investigate. The officer investigating shall have powers of an officer in charge of the police station in relation to that cognisable offence. In the absence of any mandatory personal hearing, this provision appears inadequate but in some decisions it was taken as one of the remedies for not registering FIR.⁷

In case of non-registration of FIR, following steps can also be taken:

- ⦿ *CBI investigation or change of investigating officer:* The jurisdiction of a Magistrate extends normally to the local police station and if an accused is a police officer and or posted at the local police station or there is a genuine apprehension that the police would not be independent based upon the past experience, the High Court can, under Article 226 of the Constitution of India, direct investigation by changing the investigating officer or agency. Directions for the CBI investigation can also be passed if a *prima facie* case is madeout and a fair investigation would otherwise not be possible.
- ⦿ *Magisterial directions:* A Magistrate empowered to initiate the prosecution of an accused on the police report can, prior to taking cognisance of the offence, order the local police to register the FIR and investigate the case, and any person including a survivor can apply to the Magistrate for such direction under Section 156(3), Cr.P.C.
- ⦿ *Private prosecution:* The survivor can assume the burden of the prosecution by filing a private complaint [before a Magistrate, within the meaning of Section 2(d), Cr.P.C] and prosecute the accused.

7. Registration of FIR and territorial jurisdiction

A survivor can record a “Zero FIR” irrespective of jurisdiction in any police station, and the information shall be sent to the police station with jurisdiction to investigate.

The Supreme Court has held that in cases of cognisable offences, police cannot refuse to register an FIR on the ground of lack of territorial jurisdiction. The police is duty bound to take necessary steps and commence an investigation.⁸

⁷ Sakiri Vasu v.State of UP (2008) 2 SCC 409; John CV alias John Peruvanthanam v.State of Kerala &Ors2008 Cri LJ 1305 (Ker).

⁸ See State of Andhra Pradeshv. Punati Ramalu AIR 1993 SC 2644; Satvinder Kaurv. State (Govt. of NCT of Delhi) AIR 1999 SC 3596; B.S. Sundareshv. State of Karnataka 2012 Cri LJ 1986 (Kant); and J Raghuraj Goud v. Sub-Inspector of Police Kukatpally 2005 Cri LJ 1301 (Kant).

In *Rasiklal Dalpatram Thakkar v. State of Gujarat and Ors*⁹, the Supreme Court of India held that the CID (Crime) Ahmadabad could not refuse to conduct investigation on the ground that it does not have territorial jurisdiction when the Magistrate directed an investigation under Section 156(3) Cr.P.C. The Supreme Court noted that a part of the cause of action had arisen in the State of Gujarat and held that:

- ⦿ “It was open to the learned Magistrate to direct an investigation under Section 156 (3) Cr.P.C without taking cognizance on the complaint and where an investigation is undertaken at the instance of the Magistrate, a police officer empowered under sub-section (1) of section 156 is bound, except in specific and specially exceptional cases, to conduct such investigation even if he was of the view that he did not have jurisdiction to investigate the matter.”¹⁰

An offence may be committed within the jurisdiction of more than one police station and, for example, under Sections 178 and 179, Cr.P.C, such offences may be inquired into or tried by a court having jurisdiction over any of the areas. The police must give this information where a survivor approaches the police for registering FIR of an offence committed in more than one police station. Her preference of station should be asked.

III. Magisterial Response

Under the provisions of the Cr.P.C, the Magistrate is assigned significant responsibilities including, acting as a forum for receiving complaints in circumstances where the survivor is not entertained by the police. Where the police refuse to register an FIR in a cognisable offence, the person aggrieved has two options with regard to approaching a Magistrate:

- ⦿ *Pre-Cognisance Directions for Investigation*

A Magistrate can order investigation under Section 156(3), Cr.P.C, only at the pre-cognisance stage, that is to say, before taking cognisance under Sections 190, 200 and 204 of the Cr.P.C.

- ⦿ *Post-Cognisance Directions for Enquiry under Section 202 Cr.P.C*

⁹ (2010) 1 SCC (CrI) 436.

¹⁰ Ibid. at para 28.

Another remedy lies under Section 190(1)(a) read with Section 2(d), Cr.P.C for prosecuting a private complaint in respect of such offence. Cognisance under Section 190(1)(b) of the Cr.P.C is taken only on the basis of papers forwarded by the police, but when the Magistrate takes into consideration a private complaint, it would be a case of taking cognisance under Section 190(1)(a) Cr.P.C, and for that matter procedure prescribed for complaint case under Section 200 and 202 thereunder has to be followed.¹¹

If the Magistrate takes cognisance of the offence under Section 190, he or she is not entitled in law to order any investigation under Section 156(3) of the Code. However, enquiry as contemplated by section 202 Cr.P.C can be ordered.

Where a Magistrate chooses to take cognisance he or she can adopt any of the following alternatives:

- ⦿ He/she can pursue the complaint and if satisfied that there are sufficient grounds for proceeding he/she can straight away issue process to the accused but before he/she does so requirements of Section 202 Cr.P.C must be complied with and evidence of the complainant or his witnesses must be recorded;
- ⦿ The Magistrate can postpone the issue of process and direct an enquiry by himself;
- ⦿ The Magistrate can postpone the issue of process and direct an enquiry by any other person or an investigation by the police.

If the offence is exclusively triable by the Court of Sessions (such as a rape case under Section 375, 376 IPC), the Magistrate cannot order police-investigation in the post-cognisance stage.¹²

1. Remedy against police inaction

In case an accused is a police officer or/and is posted at the local police station and there is genuine apprehension that the local police would not act independently in accordance with law, the intervention of the High Court under Article 226 of the Constitution may be sought.

¹¹ See Tula Ram and Ors v. Kishore Singh AIR (1977) SC 2401.

¹² Ibid.

When the police deliberately files final report/closure report suppressing incriminating material or tampering and creating false record of witnesses' statements recorded under Section 161 of the Cr.P.C, apart from a complaint case, a writ petition seeking directions to conduct fair investigation by change of investigating officer or agency, may be filed if necessary.¹³

Directions for CBI investigation can be passed if *prima facie* case is made out,¹⁴ and if the Court is of the view in exceptional circumstances that the accusation against a person cannot be investigated because of his post and influence and the cause of the complainant may be prejudiced, CBI investigation may be ordered to do complete justice.¹⁵ The High Court may, in exercise of inherent powers, order re-investigation, unrestrained by the powers under section 173(8).¹⁶

As per the proviso to section 309 Cr.P.C, when the inquiry of Trial relates to an offence under Section 376, 376A, 376B, 376C, 376D of the IPC, the inquiry or Trial shall, as far as possible be completed within a period of two months from the date of filing of the charge sheet.

IV. Investigation

Investigation, defined under Section 2(h) of the Cr.P.C includes all the proceedings under the Code for the collection of evidence conducted by a police officer or by a person (other than a Magistrate) who is authorised by a Magistrate in this behalf.

- ⦿ When a cognisable offence is committed, investigation can begin immediately after the police receive information about the crime. The police must initiate investigation both where information is given to them and even in cases where they come to know that such offence has taken place. Section 156 of the Cr.P.C does not limit police investigation only when they receive information.

¹³ J Prabhavathiamma v.The State of Kerala &Ors2008 Cr LJ 455 (Ker).

¹⁴ Minor Irregation & Rural Engineering Servicesv.Sangkoo Ram Arya AIR 2002 SC 2225.

¹⁵ State of Punjabv. Davinder Pal Singh 2012 Cri LJ 1001 (SC).

¹⁶ State of Punjab v.Central Bureau of Investigation &Ors2011 Cr LJ 4928 (SC)

- ⦿ It is now well settled that any irregularity or even an illegality during investigation ought not to be treated as a ground to reject the prosecution case. A defective investigation cannot be a basis for acquitting the accused.

1. Steps in Investigation

It was observed by the Supreme Court that police investigation consists of the following steps:¹⁷

- ⦿ Proceeding to the spot;
- ⦿ Ascertainment of the facts and circumstances of the case;
- ⦿ Discovery and arrest of the suspected offender;
- ⦿ Collection of evidence relating to the commission of the offence which may consist of (i) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit; (ii) the search of places or seizure of things considered necessary for the investigation and production of the seized articles at the trial; and,
- ⦿ Formation of the opinion as to whether on the material collected there is a case to place the accused before a magistrate for trial, and if so, taking the necessary steps for the same by the filing of a charge sheet under Section 173, Cr.P.C.

As per Standing Order 303/2010 of the Delhi Police, a survivor is to be kept informed about the progress of investigations. In case she gives anything in writing and requests the I.O, for investigation on any particular aspect of the matter, the same is to be adverted to by the I.O

2. Preliminary, Pre-FIR Enquiry by the police

In *Lalita Kumari*,¹⁸ the Supreme Court held that a preliminary enquiry can be conducted for the limited purpose of deciding whether the offence is cognisable or non-cognisable in nature. The Supreme Court held that if the information received does not disclose a cognisable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognisable offence is disclosed or not.

¹⁷ H.N.Rishbud v.State of Delhi AIR 1955 SC 196.

¹⁸ *Supra*, n. 5.

When the police officer conducts preliminary investigation, before registering an FIR and decides to close the case (as per Supreme Court directions) he must take this decision at the earliest. He must immediately inform the complainant of his decision in writing so that she may pursue the remedy of approaching a Magistrate under Section 156(3) for a direction to register FIR. The Supreme Court in *Lalita Kumari* directed that where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

3. Process of Investigation

Investigation is to be completed “without unnecessary delay” as per Section 173 of the Cr.P.C.

Under Section 173(1A) of the Cr.P.C, the investigation in relation to rape of a child may be completed within three months from the date on which information was recorded by the officer in charge of the police station.

After the introduction of Criminal Law (Amendment) Act, 2013, no woman can be compelled by an officer to be in attendance at any place other than her residence, for purposes of investigation, as per the proviso to Section 160, Cr.P.C.

Section 157, Cr.P.C empowers the officer in charge (or his/her deputed subordinate officer) of a police station to proceed to the crime spot, investigate and where necessary, take measures for the discovery and arrest of the offender. The officer is also required to send a report to the Magistrate empowered to take cognisance on the police report. Under Section 159 of the Cr.P.C, on receiving the police report, the Magistrate can direct investigation. S/he can also proceed her/himself to hold a preliminary inquiry in the case or otherwise dispose of it. S/he can also depute a subordinate for this purpose.

In cognisable offences, the police after registering FIR under Section 154 may, during the investigation, under section 156 of the Code, conduct search and seizure under sections 100 and 165 of the Code. Police can collect evidence necessary for the prosecution of accused.

The police may arrest the accused and interrogate them in custody and come to know how and by whom the offence was committed. If confession in custody leads to recovery of incriminating material the same may be used as evidence against such accused and if necessary they can obtain Magisterial order for police remand under sub-section (2)Section 167 of the Cr.P.C.

The nearest Magistrate can remand the accused to judicial or police custody during investigation under Section 167 of the Cr.P.C.

The compilation of the material necessary for the prosecution along with recommendation to that effect can be filed only by the police in the form of police report expeditiously after complying with the provisions of Section 173 of the Cr.P.C.

As provided for recording of offence by a rape survivor, special procedure for investigation has also been laid down under Section 157, Cr.P.C. A rape survivor's statement shall be recorded at the survivor's residence or a place of her choice. As far as practical, a woman officer shall record the statement in the presence of her parents or guardian, or near relatives or social worker of the locality.

Further under Section 161(3), introduced by CLA, 2013 only a woman police officer or any woman officer is mandated to record the statement of a woman against whom an offence under Section 354, 354A, 354B, 354C, 354D, 376E or 509 of the IPC is alleged to have been committed.

4. Fair police investigation

Often in crimes against woman, the police conduct the bare minimum investigation required for filing a police report. Large number of cases end in acquittals primarily due to the inadequate investigation of evidence conducted by the police for the prosecution. The Courts, knowing the conditions prevalent, try to avoid giving to the accused benefits during the investigation. Two illustrations would be (i) the test for framing charges is that a *prima facie* case is made out; (ii) allowing material evidence to be recorded at the instance of a private concerned witness supporting the prosecution under Section 311 of the Code.

5. Statements and Confessions

Examination and statements of witnesses: During the course of investigation, statements of the survivor, witnesses or any person acquainted with the facts of the case can be recorded by the police. Under Section 157 and 161, Cr.P.C, statement of a rape survivor can be recorded only by a woman officer. Under 161, a police officer can orally examine any person supposed to be acquainted with the facts and circumstances of the case. To ensure attendance of such person, Section 160 Cr.P.C empowers the police to require attendance of any person within her/his jurisdiction. Persons summoned for purposes of these sections are bound to truly answer questions other than those that expose him to a penalty, criminal charge or forfeiture.

It is advisable that statement under Section 161 Cr.P.C be taken by the police in phases allowing the survivor to fully recall the incident. Further, where the survivor misses out details, they can still be included in the statement she makes before the Magistrate under Section 164. Additionally, the survivor should ensure that she includes all the information given in the statement under Section 161 in her statement under Section 164 as well.

The police can reduce in writing the statement made during examination. Where he/she does so, he/she must make a separate and true record of the statement of each person whose statement is recorded, as per Section 161(3). However, where police reduce statements to writing, it shall not be signed by the person making it as provided in Section 162(1) Cr.P.C.

Statement recorded under Section 161 cannot be used as evidence by the prosecution.

A witness called for the prosecution, a part or whole of whose statement reduced into writing, is proved true, can be contradicted by the accused on the basis of the statement or its part proved true (proviso to section 162 Cr.P.C).

Statements under Section 161 may also be recorded by audio-video electronic means.

Where false information has been recorded by the police under Section 161, the remedy lies in providing the correct information while giving statement under Section 164 before the Magistrate.

Confessions to the Magistrate: Any Metropolitan or Judicial Magistrate can record any confession, irrespective of jurisdiction under Section 164(1), Cr.P.C, during the course of investigation and before commencement of inquiry or Trial. The Magistrate recording the confession shall then forward it to the Magistrate by whom the case is to be inquired into or tried as per Section 164(6).

Before the confession is recorded, if the person states that he is unwilling to make it, the Magistrate shall not authorise his detention under Section 164(3).

Prior to recording any confession, the Magistrate shall explain to the accused that the accused is not bound to make it and that it can be used as evidence against him. The Magistrate is duty bound to record it only after he has reason to believe that it is voluntary by having questioned the accused as per Section 164(2).

Such confessions may also be recorded by audio-video electronic means, in the presence of the advocate of the person accused of an offence.

A police officer on whom the powers of a Magistrate are conferred cannot record a confession as per proviso to Section 164(1).

Recording the confession: Confession to the Magistrate shall be recorded in accordance with Section 164 Cr.P.C. In addition, the Magistrate shall make a memorandum as laid down under Section 164(4).

Statements to the Magistrate: Any Metropolitan or Judicial Magistrate can record any statement, irrespective of jurisdiction under Section 164(1), during the course of investigation and before commencement of inquiry or Trial. The Magistrate recording the statement shall then forward it to the Magistrate by whom the case is to be inquired into or tried as per Section 164(6).

Such statement may also be recorded by audio-video electronic means, in the presence of the advocate of the person accused of an offence.

However, an exception has been created under POCSO Act: Where the child's statement is being recorded under Section 164 of the Cr.P.C, it will be recorded as spoken by the child (Section 25 of POCSO Act). Permission for presence of the advocate of the accused will not apply in cases under POCSO Act.

Statement of woman survivor: The Judicial Magistrate shall record the statement of a survivor of offences under sections 354, 354A, 354B, 354C, 354D, 376(1), 376(2), 376A, 376B, 376C, 376D, 376E, 509 of IPC as soon as the commission of the offence is brought to the notice of the police as per Section 164(5A)(a) Cr.P.C.

Statement of differently-abled survivor: Where the woman survivor referred to above is temporarily or permanently mentally or physically differently-abled, the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement, as per proviso to Section 164(5A)(a). Recording of such survivor's statement shall be videographed.

The statement of a differently-abled woman survivor shall be considered to be statement in lieu of examination-in-chief [section 164 (5A) (b) Cr.P.C]. Such statement will suffice as examination-in-chief as under Section 137 of the Indian Evidence Act, 1872. Consequently, the woman survivor can be cross-examined on the basis of such statement.

6. Medical Examination of the rape survivor

Examination only by consent: The medical examination of the victim must be done with her express consent or of a person competent to give consent on her behalf. As per Section 164A(7) Cr.P.C, nothing contained in Section 164A *"shall be construed as rendering lawful any examination without the consent of the woman or of any person competent to give such consent of her behalf."*

Medical examination of a child: Section 41, POCSO Act exempts medical treatment or medical examination of the child as an offence under the Act if it is undertaken with the consent of the child's parents or guardians.¹⁹ However, the POCSO Act does not clearly state what the age of consent for

¹⁹ Section 41: Provisions of sections 3 to 13 not to apply in certain cases:
The provisions of sections 3 to 13 (both inclusive) shall not apply in case of medical examination or medical treatment of a child when such medical examination or examination or medical treatment is undertaken with the consent of his parents or guardian."

medical examination or medical treatment is. Section 90, IPC states “A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or.....

...Consent of child – unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age

Hence, in the case of a child, the age of consent for medical examination, medical treatment and evidence collection is 12 years of age. However, in practice, the medical practitioner may take the maturity of the child between 12 to 15 years of age into consideration to conclude whether the child has the maturity to consent to medical examination or treatment.

The examination should be carried out within twenty four hours of receiving information relating to the offence (Section 164A Cr.P.C).

Medical Examination Report: Medical examination shall be done by a registered medical practitioner as per Section 164A (1) Cr.P.C. The time of commencement and completion of the examination along with the reasons for each conclusion must be precisely stated as per Section 164A (5) and sub-clause (3) respectively. Section 164A (2) Cr.P.C mandates that the registered medical practitioner shall examine the survivor without delay and prepare a report detailing:

- ⦿ name and address of the woman
- ⦿ name and address of the person who brought her
- ⦿ age of the woman
- ⦿ the description of material from the person of the woman for DNA profiling
- ⦿ general mental condition of the woman
- ⦿ other material particulars in reasonable detail

The practitioner shall forward the medical examination report to the I.O. without delay who must then forward it to the Magistrate.

Medical Treatment of survivors: As per Section 357C, all hospitals, public or private run by any government or local bodies, or any person, shall immediately provide free first aid or treatment, to the survivors of offences under Section 326A, 376, 376A, 376B, 376C, 376D, 376E of the IPC. The

hospital shall immediately inform the police of such incident. Section 166B of the IPC lays down punishment of imprisonment extending to one year or fine or both, for contravention of the above provision.

(*) Mandatory Reporting:* Under Section 19 of the POCSO Act, all persons (including medical professionals / hospitals) have a statutory duty to inform the police / Special Juvenile Police Unit (SJPU) of rape or sexual offences perpetrated on a child. Failure to report an incident of child sexual abuse can lead to imprisonment or fine under Section 21 of the POCSO Act.

A failure to report is a non-cognisable offence under Section 21 of the POCSO Act. The police cannot investigate the offence without magisterial permission under Section 155(2) of the Cr.P.C, which is a discretionary act.

Hence, Section 357C, Cr.P.C imposes the duty of mandatory reporting upon hospitals, while Section 19 of POCSO Act imposes such duty on all persons.

However, the apprehension or knowledge of an informant under Section 19 of the POCSO Act has to have reasonable basis. For example, hearsay from strangers who have no knowledge cannot form reasonable basis.

(Please refer to FAQ No.18 in "Frequently Asked Questions" for cases where the survivor does not wish to pursue the case)

7. Medical Examination of the accused

At the request of police: Section 53 Cr.P.C provides for medical examination of a person arrested. Where an offence committed is of such nature and is committed under such circumstances that a medical examination of the accused is likely to afford evidence of the offence, a police officer can request for the same. Hence, this Section provides for examination of *any offence* and can be used by the police. Under Section 53, police officer not below the rank of sub-inspector can request a registered medical practitioner to carry out medical examination of the arrested person.

However, where a woman accused has to be medically examined, the examination shall be done only by or under the supervision of a female registered medical practitioner.

8. Medical examination of rape accused

Section 53A Cr.P.C provides for medical examination of an accused arrested on charge of committing rape or attempt to commit rape. A police officer,

not below the rank of sub-inspector can request a registered medical practitioner employed in a government run hospital or one run by local authority.

Reasonable force where necessary can be used to carry out the medical examination (section 53A Cr.P.C).

Report of medical examination of accused:

As per Section 53A (2) of the Cr.P.C, the medical examiner's report of medical examination of rape accused must contain:

- ⊙ Name and address of the accused
- ⊙ Name and address of the person by whom he was brought
- ⊙ Age of the accused
- ⊙ Marks of injury on his person
- ⊙ Description of material taken from his person for DNA profiling
- ⊙ Other material particulars in reasonable detail

The report must also state the following:

- ⊙ the precise reasons for each conclusion arrived at; and,
- ⊙ the exact time of commencement and completion of the examination.

After completion of medical examination of an accused charged with rape or attempt to rape, the registered medical practitioner shall, without any delay, forward the report to the I.O. The I.O shall forward the same to the Magistrate.

While handling forensic evidence, all procedures and formalities must be complied with. In absence of strict adherence, the defence can point to improper handling while sampling, sealing, delivery, etc and reliance on such crucial evidence might be obstructed.

9. Timeline for investigation in rape of a child

The investigation in relation to rape of a child may be completed within three months from the date of recording of such information by the officer in charge of the police station [Section 173(1A), Cr.P.C].

10. Case-Diary

Statutory provision for maintenance of Case Diary: Under Section 172 Cr.P.C, Diary of proceedings is to be maintained by the police. During an investigation, every police officer is required to make daily entries of

proceedings in the investigation in a diary. He must mention the time at which the information reached him, time of beginning and ending the investigation, places visited, and statement of circumstances as ascertained by the investigation. Statements of witnesses recorded under Section 161, Cr.P.C shall also be entered in the diary. **However, it must be reiterated that where police reduces statements to writing, it shall not be signed by the person making it as per Section 162(1) Cr.P.C. The section also prohibits use of such statement or its record or part of it at any inquiry or trial for any offence being investigated when the statement was made.**

The proper maintenance of a Case Diary is a necessary step. The Case Diary containing accurate account of the day to day investigation of an offence by the police is one of the most important means to ensure fair investigation. Regarding the purpose of the diary, it was observed that:

“Section 172 of the Code of Criminal Procedure requires a police officer to enter his proceedings in a diary day by day. It also empowers a Criminal Court to look into diaries, not as evidence, but to aid it in enquiry or trial. Object of requiring a diary to be maintained day by day is obviously to avoid concoction of evidence, or changing chronology to suit investigation. Every authority whose actions have a potential of jeopardizing liberty of a citizen must ensure a transparency in its actions by scrupulously following requirement to keep a record of such activities...”²⁰

It was observed by the Supreme Court in yet another case that:

“(Section 172) lays down that every police officer making an investigation should maintain a diary of his investigation. It is well-known that each State has its own police regulations or otherwise known as police standing orders and some of them provide as to the manner in which such diaries are to be maintained.”²¹

After seeing that a Case Diary was not maintained duly but in loose sheets and senior police officials were unaware of the provisions of Section 172 (1-B), the Bombay High Court issued instructions to all concerned within the State to comply with the provision of Section 172(1-B) of the Code.²²

²⁰ Statev. Anil Jacob 2009 Cri LJ 1355 (Bom) (DB).

²¹ ShamshulKanwarv. State of Uttar Pradesh AIR 1995 SC 1748.

²² Mrs. Atluri Padma Venkateshwara Rao v.P.I. Pawar &Ors 2011 Cri LJ 1439 (Bom).

It is well-known that Case Diaries are not properly maintained and there is hardly any supervision to ensure compliance with law. Investigating police officials in order to save time create Case Diary entries. The law regarding ensuring maintenance of Case Diary does not involve any official outside the executive police. A criminal Court may send for Case Diary and use it in aid of pending inquiry or Trial. The accused does not have a right to see the Case Diary but is entitled to see the particular entry referred to during the prosecution evidence and other parts of the Case Diary as the Court deems necessary for full understanding of the entry.²³ However, the Case Diary can be called for by the Court and used to aid the inquiry or Trial.²⁴ Under Section 172, Cr.P.C, a Court cannot rely on the Case Diary as evidence or use it to explain contradictions pointed out by the defence.²⁵ Further, it has also been held that a failure to maintain case-diary cannot demolish the case of the prosecution.²⁶

Scrutiny of Case Diaries: The honest and timely entries in a Case Diary may be useful to correct the line of investigation and a superior officer can guide and advise the investigating officer. When there is a change of investigating officer, the new police officer may be able to function effectively if proper Case Diary is in existence. In this context, the CBI practice for maintenance and supervision of Case Diaries should be a model, and regard may be had to the relevant portions of the CBI Manual, which reads as follows:

“11.7 Investigating Officers should submit their Case Diaries for each day of investigation to the Superintendent of Police of the Branch concerned and the latter shall scrutinize the Case Diaries and issue instructions for further investigation. The Case Diaries and other documents enclosed thereto may be used for preparing periodical Progress Reports. The Case Diary must be written on the day of investigation. SP would record a gist of its contents in the running note sheet. These need not be forwarded to the Head Office, unless specially called for.”

Secrecy of Case Diary must be maintained

A Case Diary is an internal record of the day to day police investigation and, apart from the documents and statements under Section 207, Cr.P.C, the

²³ Queen-Empressv. Mannu ILR 19 All 390 (FB); Re petition of Jhubboo Mahton ILR 8 Cal 739.

²⁴ Avinash Kumarv. State (1963) 2 Cr LJ 706; Habeeb Mahomedv. State of Hyderabad AIR 1954 SC 51.

²⁵ Md Ankoos & orsv. The Public Prosecutor, High Court of Andhra Pradesh 2010 Cri LJ 861 (SC).

²⁶ Pulukuri Kottayyav. Emperor AIR 1947 PC 67; Zahiruddin v. Emperor AIR 1947 PC 75; Niranjan Singhv. State of Uttar Pradesh AIR 1957 SC 142; Hafiz Mahommed v. Emperor AIR 1931 Pat 150; Gajanand v. State AIR 1954 SC 695.

accused is not entitled to access the information in the Case Diary. During the inquiry or Trial, the Court may, use such a Diary for its aid. No accused has the right of access to such Diary even though the Court may have referred to it. The accused may be granted access if the police officer who made an entry in it uses the Case Diary to refresh his memory or the Court uses it to contradict such police officer. However, it is a normal practice to send a copy of Case Diary to the office of public prosecutor, and most defence counsels are able to access the diary unofficially and get to know facts to base and formulate their strategy of defence and cross-examination.

V. Post Investigation Procedures

1. Report to the Magistrate

Under Section 173(2)(i), Cr.P.C, on completion of investigation, the officer in charge of the police station is required to send a Police Report or Chargesheet to the Magistrate who is empowered to take cognisance of the offence.

In compliance with Section 173(2)(i), Cr.P.C, the Police Report must contain details like names of the parties, nature of information, names of persons who appear to be acquainted with the circumstances of the case, etc.

Where, after the investigation, the police recommend no prosecution by filing the closure report, the survivor and the first informant must be heard by the Magistrate. Whenever closure report is filed, the Sessions Court or Special Court must give notice to the first informant. The first informant will receive a notice to protest the closure report and counter the claims of the police. It is the right of the informant to plead before the Magistrate that:

- ⦿ Her complaint to the police was not taken up and investigated seriously;
- ⦿ That sufficient material is available on record to take cognizance of the offence.

If the Magistrate after hearing the protest petition of the survivor takes cognisance of the offence based on the material in the final report or the Case Diary, the public prosecutor will resume his function as the in charge of the case.

Section 25 (2) of the POCSO Act, 2012, gives a right to a survivor child and his or her parents to get a copy of the statements and documents filed with a final report

The Magistrate would reject the recommendation of the police if incriminating material (including statements under Section 161 and documents in the Case Diary) are found, and in that event, process would be issued against the accused to face the prosecution.

☉ *Specific provision for Medical Examination Report:*

Where the investigation relates to an offence under Section 376, 376A, 376B, 376C, 376D or 376E, the police report to the Magistrate must specifically mention whether the medical examination report of the survivor has been attached [Section 173(2)(i)(h), Cr.P.C].

The informant, who gives information about the commission of the offence, is entitled to be informed about the action taken by the police officer on the basis of it under Section 173(2)(ii).

VI. Role of Public Prosecutor and Trial proceedings

1. Prosecution by Survivor's private lawyer in limited cases

A survivor can use her private lawyer if the case is instituted on a private complaint.

Even in a case instituted upon a police report, if there is reasonable apprehension of misconduct by police or collusion or indifference by the Public Prosecutor, the survivor is entitled to seek the Magistrate's permission

As per Section 309, Cr.P.C, when the inquiry of Trial relates to an offence under Section 376, 376A, 376B, 376C, 376D of the IPC, the inquiry or trial shall, as far as possible be completed within a period of two months from the date of filing of the charge sheet.

to conduct the prosecution under Section 302, Cr.P.C. If such permission is granted, she can engage a lawyer of her choice to conduct the prosecution.

2. Public Prosecutor to Prosecute Complaint Case in Offences Triable by the Court of Session

The legal intervention at the stage of Magisterial cognizance of a complaints case on behalf of the survivor would be independent, and the survivor's lawyer would not be obliged to work under the directions of the Public Prosecutor, as required by sub-section (2) Section 301 of the Cr.P.C, because at that stage no Public Prosecutor can be called in charge of the case.

A Public Prosecutor has to conduct a prosecution in the Court of Session even when it is instituted upon a private complaint. After the committal of the case, he shall open the case of the prosecution in accordance with the provisions of Sections 225 and 226, Cr.P.C.

The lawyer representing a survivor complainant has the right to file such complaint before the Magistrate competent to take cognizance of the offence, get the complainant and all her witnesses examined as per the proviso to sub-section (2) Section 202 of the Cr.P.C and independently represent the complainant till the process is issued after the appearance of accused, the case is committed to the Court of Session.

The Public Prosecutor will conduct prosecution if cognizance is taken upon the closure report filed by the police.

3. Role of the Public Prosecutor in Inquiry and Trial

After the appearance or production of the accused and supply of copies of the documents and statements mentioned in Section 207, Cr.P.C, the Public Prosecutor shall open the case by describing the allegations against the accused and plead for framing charges or issue of notice against the accused giving the substance of offending acts to the accused.

The purpose of framing charges includes:

- ⦿ To tell the accused (as precisely and concisely as possible) of the matter with which he is charged;
- ⦿ What the prosecution intends to prove against him and of which he will have to clear himself;

- ⦿ At the time of framing charges, the Court is not required to screen evidence or to apply the standard whether the prosecution will be able to prove the case against the accused at the trial.

After the charge is framed and the plea of the accused is taken, the Public Prosecutor shall make list of documents filed by the prosecution. The accused or his advocate will be called upon to admit or deny the genuineness of each such document (Section 294 Cr.P.C).

The survivor will be asked to identify accused either before beginning the evidence or soon thereafter when she refers to the accused.

MLC report, medical and forensic evidence, if any, should be produced.

The Public Prosecutor shall assist the Court in preparing questions to be put to the accused under Section 313 of the Cr.P.C.

4. Presumptions beneficial to the Survivor

In prosecutions of rape or other sexual offences, uncorroborated testimony of a survivor tested by cross-examination, if truthful, would be sufficient to record the conviction of accused. The provisions of the Indian Evidence Act, 1872 (“IEA”), do not lay down minimum requisite witnesses necessary to prove a fact; the conviction based upon the testimony of a single and reliable witness would be lawful. Further, some specific provisions of the IEA provide that:

- ⦿ There would be presumption as to the absence of consent in a prosecution of rape under clauses (a) – (n) of sub-section (2)Section 376, IPC (Section 114A).
- ⦿ In a prosecution of an offence under Section 354, 354A, 354B, 354C, 376, 376A, 376B, 376C, 376D or 376E, IPC, or attempt to commit any of the offences, when the consent of a survivor is an issue, her previous sexual experience shall not be relevant to decide whether she had consented (Section 53A).
- ⦿ In a prosecution for an offence under Section 376, 376A, 376B, 376C, 376D or 376E, IPC, or an attempt to commit such offences, when the consent of the woman is an issue, the general immoral character or previous sexual experience of her with any person cannot be proved, either through cross-examination or leading evidence in rebuttal (proviso, section 146).

- ⦿ In 2013, Section 53A was added to the IEA. When the question of consent is an issue in a prosecution for sexual assault, Section 53A provides that evidence of character of the survivor or of such persons previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent.

5. Refreshing Memory Before Deposing

Under Section 159 IEA, a witness or survivor may refresh his memory with his relevant previous statement while under examination or in the witness-box subject to the right of the adverse party to see and cross-examine the witness with respect to such previous statement.

At present, a survivor or witness deposes years after the commission of crime. Hence, they cannot be expected to accurately recollect their statement and withstand cross-examination.

As mentioned above, the CLA created an exception and a differently-abled survivor's statement recorded before the Magistrate under Section 164 Cr.P.C is now considered as the examination-in-chief.²⁷

It must be noted that where the investigating officer sends questionnaires to a witness, during investigation, and his reply is recorded as the statement under Section 161, a copy of the reply would invariably remain with the witness. There is no procedure to ensure that the witness or survivor does not retain a copy of the reply.

Many a times before the beginning of deposition, a witness would be asked by the Court to hear or read his statement under Section 161, Cr.P.C who would note down few points to remember on the palms of his hand or paper which the defence counsel would expose during the deposition to discredit the witness. A counsel engaged by a survivor can get access to such statements unofficially. It seems that, in the present scenario, to allow a survivor or witness to legally and without blemish refresh his memory by reading statement under Section 161 may be in the interest of justice.

²⁷ In an offence punishable under Section 354, 354A, 354B, 354C, 354D, sub-section (1) or (2), Section 376, 376A, 376B, 376C, 376D, 376E or 509, IPC, it is compulsory for a Magistrate to record the statement of the survivor under Section 164, Cr.P.C, and if she is suffering from temporary or permanent mental or physical disability, her statement before the Magistrate shall be taken as the examination-in-chief during the Trial and her deposition would commence from cross-examined.

The survivor's lawyer should interact closely with the survivor prior to Trial; ensure that victim is able to face court proceedings comfortably. Further, the lawyer should meet the survivor at least a day prior to the Trial to properly brief her.

6. Strategies employed by the Defence during trial

During trial, defence lawyers expose the witnesses' lack of knowledge of their recorded statements including the date and time when they are shown as recorded. The defence counsel, having read the statement, attempts to introduce contradictions in the evidence. The deposition of a witness during examination-in-chief often varies from the statement under Section 161. Therefore, during cross-examination, the defence counsel having read the statement of the witness is able to introduce contradictions in the evidence.

Further, where there are multiple eyewitnesses, their statements recorded under Section 161 Cr.P.C often appear identical. The defence counsel then concentrates his/her cross-examination on the modalities of when and where such statements were recorded, and brings the irreconcilable contradictions on record.

7. Hostile Witness

A witness is said to turn hostile when s/he retracts from her/his statement given under Section 161, Cr.P.C, that is, to the police. When any prosecution witness turns hostile the prosecution need not abandon its case but should adduce the rest of evidence after cross-examining the hostile witness. The position of law is that believable evidence of a hostile witness can be considered against the accused.

8. Stages prior to acquittal

In a criminal Trial before the Court of Session, the prosecution must be allowed to adduce all evidence and accused shall be examined under Section 313, Cr.P.C, during which any incriminating statement made by him can be considered along with other evidence. His acquittal is possible only after this stage.

In a Trial before the Court of Session, under Section 232, Cr.P.C, acquittal is permissible after the prosecution evidence has been recorded and the

statement of the accused (under Section 313 Cr.P.C) has been taken. Similarly, the conclusion of a Trial by acquittal or conviction can take place in a warrant-case, under Section 247, Cr.P.C, after the evidence of defence, if any, has been recorded, and the same procedure is provided for in a summons-case under Section 255 thereunder.

VII. Case law on Survivor's Right to Oppose Bail and Assisting Prosecution

The rights of survivors to interfere in prosecutions launched by the State, under the provisions of the Cr.P.C, are limited.²⁸ However, changes in case law and statutory law conferring more say to survivors in prosecutions launched by the State give a scope for broader interpretation of law of *locus standi* of a private person in State sponsored prosecutions. These developments are:

1. Cancellation of Bail

The Supreme Court has held that when ignoring the material and evidence on record, a perverse order of bail is passed in a heinous crime, such order would be against the principle of law, and not only the State but any aggrieved private party may move the Court for the cancellation of bail,²⁹ and this position of law is now well established.

Earlier, it was held that the independent right of the complainant or first informant to intervene and oppose the bail of an accused cannot be recognised and that the counsel for the complainant or first informant has no right to oppose grant of bail to an accused, and, he may, at best, act under the instructions of Public Prosecutor.³⁰

2. Survivor's right to appeal against acquittal or conviction

The proviso to Section 372, Cr.P.C gives the survivor a right to appeal against any order acquitting the accused or convicting him for lesser offence or imposing inadequate compensation.

²⁸ These limited rights flow from sub-section (2), Section 301, Cr.P.C and are to the extent that a lawyer briefed by a private party must assist the prosecution by acting under the Public Prosecutor, and if the prosecution is being conducted by a Special Public Prosecutor, the permission of the Court for such assistance, as provided for under the proviso to Section 24(8), Cr.P.C, must also be obtained. At the conclusion of the evidence, written arguments with the permission of the Court can also be filed. Additionally, in prosecutions before a Magistrate, the Court may grant permission to any person to conduct the prosecution under Section 302, Cr.P.C, and if so the burden normally upon the shoulders of the State would have to be discharged by such person either personally or by engaging a lawyer.

²⁹ Puran v. Rambilas AIR 2001 SC 2023.

³⁰ All India Democratic Women's Association v. State & Ors 1998 Cr LJ 2629 (Mad); Praveen Malhotra v. State 1990 Cr LJ 2184. See also Indu Bala v. Delhi Administration 1991 Cr LJ 1774 (Del); Dr. Sunil Puri v. State of Chhattisgarh 2006 Cr LJ 2866 (Ch'garh).

Survivor's lawyer must inform her about the remand or bail application filed by the accused; the lawyer must attend every Court hearing and keep the survivor informed about the proceedings; the lawyer can work closely with DLSA to ensure compensation is provided to survivor expeditiously.

Further, as per the order of the Delhi High Court, the Rape Crisis Centre Lawyer is required to inform the survivor about the remand or bail application filed by the accused.

[Circular No. 53/Record Branch/PHQ – 2011, Issued by the Commissioner of Police]

3. Right to assist prosecution

There is no provision in the Cr.P.C which allows intervention of a private person [in an investigation after the registration of the FIR or in post-cognisance proceeding instituted upon a police report under Section 190(1)(b), be that a *de facto* complainant or survivor, except to a limited extent as provided for in Section 302(1), to assist the Public Prosecutor by working under his control and guidance. A Public Prosecutor discharges public functions and there is no bar on placing before the Public Prosecutor or pointing out to him, relevant material or even relevant arguments, if any, so that he may discharge his functions in opposing bail of an accused effectively.

However, a situation of conflict of interest, not provided for by the Cr.P.C, is when the Public Prosecutor is not independent and has strong predisposition in favour of the accused. As the Cr.P.C does not empower a Magistrate or the Sessions Judge to appoint another prosecutor as the Public Prosecutor in charge, a *via media*, preferably by legislative intervention or interpretation of law, should be found.

Further, during the investigation (unlike in inquiry or Trial), the entire material is with the police, and if, for whatever reasons, the Public Prosecutor entrusted with the task of opposing bail is not briefed properly by the investigating officer, failure of justice can take place, and in order to avoid such situation the counsel for the *de facto* complainant should have a greater role in opposing bail during the investigation.

Recommendations of the Justice J.S.Verma Committee

The Verma Committee recognised the important role of an advocate assisting the survivor. The Committee duly noted in Para 26 and 27, respectively:³¹

26. The Committee is of the opinion that in cases of rape/sexual assault, additional representation, if sought, is made available to the complainant/victim prior to and during the trial. While the sole responsibility of carriage of prosecuting a crime lies with the State, we consider it necessary to suggest that in rape/sexual assault cases the complainant and/or the victim must have the opportunity to engage his/her own lawyer. The said lawyer would also be permitted to assist the prosecutor, examine witnesses and make submissions to the Court.

*27. We have also taken note of proviso to Section 24(8) of the Cr.P.C which empowers the Court to permit the victim to engage an advocate of his/her choice to assist the prosecution under this Section. However, we would like to add that it is necessary to confer an independent right of representation in favour of the victim. In other words, we wish to make it clear that **it should be a statutory right as a part of due process of access to justice that the victim/complainant will be able to engage a lawyer of his or her choice – that is, the victim's advocate should have a right of audience in his/her own right, and not merely in a support capacity to the prosecutor.** The Committee believes that this will add an additional level of oversight in the trial process."*

VIII. Functions of Survivor's Lawyer

Subsequent to the FIR stage, legal aid may be necessary to effectively oppose bail of an accused, in serious crime against women, during the investigation. The legal aid lawyer's role in the prosecution is subject to Sections 24(8) proviso and 301(2) of the Cr.P.C: (i) to act under the instructions of the Public Prosecutor and take the permission of the Court if a Special Public Prosecutor has been appointed to conduct the case, and assist the prosecution; and

³¹ Report of the Committee on Amendment to Criminal Law. Accessed from: http://www.thehindu.com/multimedia/archive/01340/Justice_Verma_Comm_1340438a.pdf. Last visited on 7th February, 2014

(ii) after the evidence of all the witnesses is recorded, to submit written arguments to the Court with its permission. Under Section 2(u), Cr.P.C, a person acting under the Public Prosecutor must be considered a Public Prosecutor, and, therefore, the general responsibilities and obligations of Public Prosecutor will apply to a private or legal aid lawyer limited to the extent of the case in which he is assisting the prosecution.

In *Delhi Domestic Working Women's Forum v. Delhi Police*,³² a three judge bench expounded on an enhanced role of the survivor's lawyer. The Court held that:

*"The complainant of sexual assault cases should be provided with legal representation. It is important to have someone who is well acquainted with the criminal justice system. **The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counselling or medical assistance.**"*³³

Pointing to the level and duration of the lawyer's role, the Court noted:

*"It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station represent her till the end of the case."*³⁴

1. Survivor's Lawyer Supplementing the Public Prosecutor's Functions

The extent of access of private or legal aid lawyer to the case file with the Public Prosecutor has not been specified by law, though ordinarily nothing should prevent the Public Prosecutor in allowing the counsel assisting the prosecution to see the case file, and there is nothing in law to the contrary. The case file with the Public Prosecutor, without the Case Diary,³⁵ should be accessible to such lawyer assisting the prosecution.

³² 1995 SCC(1) 14.

³³ *Ibid.* at para 15

³⁴ *Ibid.*

³⁵ Under Section 172 of the Cr.P.C. Only the Court may call for a Case Diary in pending inquiry or Trial and may use it only for the aid of the inquiry or Trial and not as evidence. The Case Diary contains the day to day proceedings of investigation and includes statements recorded under Section 161 of the Code.

The Public Prosecutor should allow a lawyer assisting the prosecution to brief him as to the relevant law and facts.

The legality of the lawyer assisting the prosecution to raise any question of law or relevant facts to supplement submissions of the Public Prosecutor in the Court with the requisite permission should be considered and should be had resort to. Dispensation of criminal justice is based upon oral submissions, and written arguments under Section 301(2), Cr.P.C. Thus, if during oral submissions of the Public Prosecutor, some legal arguments have not been advanced or some relevant fact has not been placed before the Court due to inadvertence or otherwise (for example, no time or opportunity to discuss such aspects between the Public Prosecutor and the lawyer assisting the prosecution) the lawyer assisting the prosecution should be allowed, with permission from the Public Prosecutor, to raise such a question.

The expression in Section 301(2) of the Code, that is, “the Public Prosecutor... in charge of the case shall conduct the prosecution, and the pleader so instructed (by any private person) shall act therein under the directions of Public Prosecutor...”, permits extensive assistance by the survivor’s lawyer.

The survivor’s lawyer can keep the Public Prosecutor informed about every development in the case, for instance regarding survivor’s need for witness protection.

In case the public prosecutor is not doing his/her job, the lawyer can seek legal recourse.

IX. Legal Aid

The concept of legal aid traditionally evolved around the inability of an accused facing a serious charge, to engage a defence lawyer due to financial constraints, and be provided with a lawyer at the expenses of the State.

Under Article 39A of the Constitution of India, the State is responsible to secure legal aid, through the Directive Principles of the State Policy, and ensure that legal system dispenses justice without discrimination. The Legal Services Authorities Act, 1987 (“LSA Act”), has sought to fulfil the mandate of this directive. Under section 12 of the LSA, all women and children are entitled to legal aid.

1. Legal Aid to Survivors

When a complaint of a woman disclosing a cognisable offence is not investigated by the police under Section 156(1), Cr.P.C and, after preliminary investigation without registering FIR, the case is closed, the complainant shall be entitled to legal aid in order to pursue the remedy of a Magisterial order under Section 156(3) of the Code.

2. Legal Advice

Under Section 2 of the LSA, the definition of “legal service” includes giving legal advice in any matter.

The advice may include, if appropriate, how statements under Section 161, Cr.P.C should be recorded, the time and place where they can be recorded by the police and how at various other stages of investigation a survivor may protect her rights.

X. Judgement

1. Conviction or acquittal

As per Section 235 of the Cr.P.C, the judge gives a judgement after hearing the arguments and points of law.

2. Sentencing

Where the accused is convicted, the judge will hear the accused on the question of sentence and then pass a sentence.

The survivor’s lawyer should inform the survivor regarding final judgment in the case and the manner in which it is proceeding further, in terms of appeal/ conviction or acquittal.

3. Compensation under Section 357

Under Section 357C Cr.P.C compensation can be given from the fine imposed upon the convict. If fine does not form part of the sentence, the Court may order appropriate compensation without imposing fine under Section 357(3).

4. Victim Compensation Scheme under Section 357A

The Victim Compensation Scheme is to be prepared by every State Government to provide funds for compensation to the victim and dependants who have suffered losses and need rehabilitation. On the Court's recommendation for compensation, the District/State Legal Service Authority shall decide the quantum of compensation to be awarded.

Where the offender is not traced or identified and the Trial does not take place, the identified victim and her/his dependants, can make an application to the District / State Legal Service Authority for compensation under Section 357A(4), Cr.P.C.

On Court's recommendation or on receipt of an application, the District or State Legal Service Authority shall complete an enquiry within two months and award adequate compensation.



Annexures

Annexures

ANNEXURE 1

Table 1:List of Offences under the Indian Penal Code, 1860 and the Punishment for the Offence

S.No	Offence and Description	Punishment under IPC
1	<p>Section 354 A</p> <p>Sexual Harassment consists of; Any of the following offending acts of a man (i) physical contact and advances including unwelcome and explicit sexual overtures; (ii) a demand or request for sexual favours; (iii) showing pornography against the will of the woman; (iv) making sexually colored remarks.</p>	Rigorous imprisonment which may extend to three years or with fine, or with both for clause (i) to clause (iii). Imprisonment of either description which may extend to one year or with fine or both for clause (iv)
2	<p>Section 354B</p> <p>Assault or use of criminal force to woman with intent to disrobe is an offence.</p>	Not less than three years imprisonment this may extend to seven years and shall also be liable to fine.
3	<p>Section 354C</p> <p>Voyeurism – is an offence by a 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.</p>	First conviction – One year imprisonment which may extend to three years and fine Subsequent conviction – Three years imprisonment which may extend to seven years and shall also be liable to fine
4	<p>Section 354 D</p> <p>Stalking is an offence by a man who (i) follows a woman and contacts or attempts to contact her 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.</p>	First conviction – Imprisonment which may extend to three years and shall also be liable to fine Subsequent conviction – Imprisonment which may extend to five years and shall also be liable to fine

5	<p style="text-align: center;">Section 370</p> <p>Trafficking of Persons is an offence committed by a person who for the purpose of exploitation (a) recruits (b) transports (c) harbors (d) transfers or (e) receives a person/s by firstly using threats, secondly, using force / coercion, thirdly, by abduction, fourthly, by practicing fraud, fifthly, by abuse of power or sixthly by inducement commits the offence of trafficking. Exploitation includes sexual exploitation.</p>	<p>Section 370 (4), 370 (5), 370 (6) deal with trafficking of minors. The offence is punishable with rigorous imprisonment for not less than ten years imprisonment but which may extend to life and shall also be liable to fine</p>
6	<p style="text-align: center;">Section 370 A</p> <p>Exploitation of a trafficked person is an offence by anyone —who knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation.</p>	<p>Rigorous imprisonment for not less than 5 years which may extend to seven years and shall also be liable to fine</p>
7	<p style="text-align: center;">Section 375</p> <p>A man is said to commit “rape” if he—</p> <p>(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or</p> <p>(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or</p> <p>(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or</p> <p>(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:—</p>	<p style="text-align: center;">Section 376</p> <p>Whoever, except in the cases provided for in sub-section (2), commits rape shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.</p> <p>(2) Whoever,—</p> <p>(a) being a police officer, commits rape—</p> <p>(i) within the limits of the police station to which such police officer is appointed; or</p> <p>(ii) in the premises of any station house; or</p> <p>(iii) on a woman in such police officer’s custody or in the custody of a police officer subordinate to such police officer; or</p>

First.—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 eighteen years of age.

Seventhly.—When she is unable to communicate consent.

Explanation 1.—For the purposes of this section, “vagina” shall also include *labia majora*.

Explanation 2.—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

- (b) being a public servant, commits rape on a woman in such public servant’s custody or in the custody of a public servant subordinate to such public servant; or
 - (c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or
 - (d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women’s or children’s institution, commits rape on any inmate of such jail, remand home, place or institution; or
 - (e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or
 - (f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or
 - (g) commits rape during communal or sectarian violence; or
 - (h) commits rape on a woman knowing her to be pregnant; or
 - (i) commits rape on a woman when she is under sixteen years of age;
- or
- (j) commits rape, on a woman incapable of giving consent; or
 - (k) being in a position of control or dominance over a woman, commits rape on such woman; or
 - (l) commits rape on a woman suffering from mental or physical disability; or

	<p>Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.</p> <p><i>Exception 1.</i>—A medical procedure or intervention shall not constitute rape.</p> <p><i>Exception 2.</i>—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.]</p>	<p>(m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or</p> <p>(n) commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life, and shall also be liable to fine</p>
8	<p style="text-align: center;">Section 376 A</p> <p>Punishment for causing death or resulting in persistent vegetative state of victim- Whoever commits an offence punishable under subsection (1) or (2) of S 376 and in the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state</p>	<p>Rigorous imprisonment for not less than 20 years, but which may extend to imprisonment for life (remainder of that person’s natural life) , or with death</p>
9	<p style="text-align: center;">Section 376 C</p> <p>Sexual intercourse by a person in authority- Whoever, being- in a position of authority or in a fiduciary relationship; a public servant; superintendent or manager of a jail, remand home or other place of custody or a women’s or children’s institution; or on the management of a hospital or being on the staff of a hospital, abuses such position or fiduciary relationship to induce or seduce woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape.</p>	<p>Rigorous imprisonment of either description for a term which shall not be less than five years, but may extend to ten years, and fine</p>

10	<p style="text-align: center;">Section 376 D</p> <p>Gang Rape-</p> <p>When a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape</p>	<p>Rigorous imprisonment for not less than 20 years and may extend to life (remainder of that person's natural life), and with fine (the fine shall be paid to the victim and shall be just and reasonable to meet the medical expenses and rehabilitation of the victim)</p>
11	<p style="text-align: center;">Section 376 E</p> <p>Punishment for repeat offenders-</p> <p>Whoever has been previously convicted of an offence punishable under 376, 376A or 376D and is subsequently convicted of an offence punishable under any of the said sections</p>	<p>Imprisonment for life (remainder of that person's natural life), or with death</p>
12	<p style="text-align: center;">Section 377</p> <p>Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal.</p> <p><i>Explanation:</i> Penetration is sufficient to constitute the carnal intercourse necessary to the offence.</p>	<p>Imprisonment for life or with imprisonment of either description for a term which may extend to ten years</p>
13	<p style="text-align: center;">Section 509</p> <p>Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, of that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman,</p>	<p>Simple imprisonment for a term which may extend to three years, and also with fine</p>

Table 2. List of offences under The Protection of Children from Sexual Offences Act, 2012 and the Punishment for the offence:

S.No	Offence and Description	Punishment under POCSO
1.	<p style="text-align: center;">Section 3</p> <p>Penetrative Sexual Assault Inserting body part or object in a child, or making a child does this with another.</p>	<p style="text-align: center;">Section 4</p> <p>Not less than seven years of imprisonment which may extend to imprisonment for life, and fine</p>
2	<p style="text-align: center;">Section 5</p> <p>Aggravated Penetrative Sexual Assault Penetrative sexual assault by a police officer, member of armed forces, public servant, staff of remand home, jail, hospital or school. It includes penetrative sexual assault committed by any other person through gang penetrative assault, penetrative sexual assault using deadly weapons, fire, heated substance or corrosive substance, penetrative sexual assault which physically incapacitates the child or causes child to become mentally ill, causing grievous hurt or bodily harm and injury to the sexual organs of the child, making girl child pregnant, inflicting child with HIV or any other life threatening disease, penetrative sexual assault more than once, penetrative sexual assault on a child younger than 12 years, by a relative, owner / manager or staff of any institution providing services to the child, by a person in a position of trust or authority over the child, committing penetrative sexual assault knowing the child is pregnant, attempts to murder the child, by a person previously convicted for a sexual offence, penetrative sexual assault in the course of communal or sectarian violence, penetrative sexual assault and making the child strip or parade naked in public.</p>	<p style="text-align: center;">Section 6</p> <p>Not less than ten years of imprisonment which may extend to imprisonment for life, and fine</p>
3	<p style="text-align: center;">Section 7</p> <p>Sexual Assault With sexual intent touching the private parts of a child</p>	<p style="text-align: center;">Section 8</p> <p>Not less than three years of imprisonment which may extend to five years, and fine</p>

4	<p align="center">Section 9</p> <p>Aggravated Sexual Assault Sexual assault by a police officer, member of armed forces, public servant, staff of remand home/jail/hospital/school, etc, and other acts of sexual assault by any person as mentioned in the second part of section 5, except making a girl child pregnant.</p>	<p align="center">Section 10</p> <p>Not less than five years of imprisonment which may extend to seven years, and fine (Section 10)</p>
5	<p align="center">Section 11</p> <p>Sexual Harassment of the Child With sexual intent:</p> <ul style="list-style-type: none"> ⦿ showing any object/body part, or making any gesture aimed at a child ⦿ making a child exhibit her body ⦿ enticing or threatening to use a child for pornography 	<p align="center">Section 12</p> <p>Up to three years of imprisonment and fine</p>
6	<p align="center">Section 13</p> <p>Use of Child for Pornographic Purposes</p>	<p align="center">Section 14 (1)</p> <p>Imprisonment up to five years and fine and in the event of subsequent conviction, up to seven years and fine</p>
7	<p align="center">Section 14 (2)</p> <p>Penetrative sexual assault by directly participating in pornographic acts</p>	<p align="center">Section 14 (2)</p> <p>Not less than ten years of imprisonment, which may extend to imprisonment for life, and fine</p>
8	<p align="center">Section 14 (3)</p> <p>Aggravated penetrative sexual assault by directly participating in pornographic acts</p>	<p align="center">Section 14 (3)</p> <p>Rigorous imprisonment for life and fine</p>
9	<p align="center">Section 14 (4)</p> <p>Sexual assault by directly participating in pornographic acts</p>	<p align="center">Section 14 (4)</p> <p>Not less than six years of imprisonment which may extend to eight years, and fine</p>
10	<p align="center">Section 14 (5)</p> <p>Aggravated sexual assault by directly participating in pornographic acts</p>	<p align="center">Section 14 (5)</p> <p>Not less than eight years of imprisonment which may extend to ten years, and fine</p>
11	<p align="center">Section 15</p> <p>Storage of pornographic material involving a child for commercial purposes</p>	<p align="center">Section 15</p> <p>Three years of imprisonment and / or fine</p>

Note: As per section 42 of the POCSO Act, where an act or omission constitutes an offence punishable under this Act and also under sections 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376, 376A, 376C, 376D, 376E or section 509 of the Indian Penal Code, then not with standing anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment under this Act or under the Indian Penal Code as provides for punishment which is greater in degree.

Table 3. Relevant Provisions under The Protection of Women from Domestic Violence Act 2005

S.No	Relevant Provision
1	<p>Section 3. Definition of domestic violence – For the purpose of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it –</p> <p>(a) harms or injures or endangers the health, safety, life, limb or well being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or</p> <p>(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or</p> <p>(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b) or;</p> <p>(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.</p> <p><i>Explanation 1</i> – For the purposes of this section –</p> <p>.....</p> <p>(ii) “sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;</p>

ANNEXURE 2

Relevant Provisions In Criminal Law

	Relevant Provisions of the Code of Criminal Procedure, 1973
2 (d). “Complaint”	“complaint” means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.
24. Public Prosecutor	(8) The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor: Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section.
26. Courts by which offences are triable	Subject to the other provisions of this Code,— (a) any offence under the Indian Penal Code (45 of 1860) may be tried by— (i) the High Court, or (ii) the Court of Session, or (iii) any other Court by which such offence is shown in the First Schedule to be triable: Provided that any offence under section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code (45 of 1860) shall be tried as far as practicable by a Court presided over by a woman. (b) any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court and when no Court is so mentioned, may be tried by— (i) the High Court, or (ii) any other Court by which such offence is shown in the First Schedule to be triable.
149. Police to prevent cognizable offences	Every police officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence.
150. Information of design to commit cognizable offences	Every police officer receiving information of a design to commit any cognizable offence shall communicate such information to the police officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence

<p>151. Arrest to prevent the commission of cognizable offences</p>	<p>(1) A police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented</p> <p>2) No person arrested under sub-section (1) shall be detained in custody for a period exceeding twenty-four hours from the time of his arrest unless his further detention is required or authorized under any other provisions of this Code or of any other law for the time being in force.</p>
<p>154. Information in cognizable cases</p>	<p>(1) Every information relating to the commission of a cognizable 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 be 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 the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.....”</p>
<p>155. Information as to non-cognizable cases and investigation of such cases</p>	<p>(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer, the informant to the Magistrate</p> <p>(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial</p> <p>(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case</p> <p>(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable</p>
<p>156. Police officer’s power to investigate cognizable cases</p>	<p>(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.</p> <p>(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.</p> <p>(3) Any Magistrate empowered under section 190 may order such an investigation as abovementioned</p>

157. Procedure for investigation

(1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the

offender:

Provided that—

- (a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;
- (b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements to that sub-section, and, in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated

159. Power to hold investigation or preliminary inquiry

Such Magistrate, on receiving such report, may direct an investigation, or, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry into, or otherwise to dispose of, the case in the manner provided in this Code

161. Examination of witnesses by police

(1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case

(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture

(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.

Provided that the statement of a woman against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of The Indian Penal Code is alleged to have been committed or attempted shall be recorded, by a woman police officer or any woman officer.

162. Statements to police not to be signed: Use of statements in evidence

(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial

whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872

(1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of section 27 of that Act .

Explanation—An omission to state a fact or circumstance in the statement referred to in subsection

(1) may amount to contradiction if the same appears to be significant and otherwise

relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact

164. Recording of confessions and statements

(1) Any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force, or at any time afterwards before the commencement of the inquiry or trial:

Provided that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force

(2) The Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him; and the Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily.

(3) If at any time before the confession is recorded, the person appearing before the Magistrate states that he is not willing to make the confession, the Magistrate shall not authorise the detention of such person in police custody.

(4) Any such confession shall be recorded in the manner provided in section 281 for recording the examination of an accused person and shall be signed by the person making the confession; and the Magistrate shall make a memorandum at the foot of such record to the following effect:—

“I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him

(Signed) AB
Magistrate”

(5) Any statement (other than a confession) made under sub-section (1) shall be recorded in such manner hereinafter provided for the recording of evidence as is, in the opinion of the Magistrate, best fitted to the circumstances of the case; and the Magistrate shall have power to administer oath to the person whose statement is so recorded.

(6) The Magistrate recording a confession or statement under this section shall forward it to the Magistrate by whom the case is to be inquired into or tried.

165. Search by police officer

(1) Whenever an officer in charge of police station or a police officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorised to investigate may be found in any place within the limits of the police station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station

(2) A police officer proceeding under sub-section (1), shall, if practicable, conduct the search in person

(3) If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may, after recording in writing his reasons for so doing, require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the place to be searched, and so far as possible, the thing for which search is to be made; and such subordinate officer may thereupon search for such thing in such place

(4) The provisions of this Code as to search-warrants and the general provisions as to searches contained in section 100 shall, so far as may be, apply to a search made under this section

(5) Copies of any record made under sub-section (1) or sub-section (3) shall forthwith be sent to the nearest Magistrate empowered to take cognizance to the offence, and the owner or occupier of the place searched shall, on application, be furnished, free of cost, with a copy of the same by the Magistrate

167. Procedure when investigation cannot be completed in twenty-four hours

(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is

well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that—

- (a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding—
 - (i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;
 - (ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be released under the provisions of Chapter XXXIII for the purposes of that Chapter;
- (b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him;
- (c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police

169. Release of accused when evidence deficient

If upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report, and to try the accused or commit him for trial.

170. Cases to be sent to Magistrate when evidence is sufficient

(1) If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial, or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate otherwise directed

(2) When the officer in charge of a police station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant (if any) and so many of the persons who appear to such officer to be acquainted with the facts and circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrate as thereby directed and prosecute or give evidence (as the case may be) in the matter of the charge against the accused

(3) If the Court of the Chief Judicial Magistrate is mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference is given to such complainant or persons

(4) The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report

172. Diary of proceeding in investigation

(1) Every police officer making an investigation under this Chapter shall day by day enter his proceeding in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation

(2) Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial

(3) Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police officer, the provisions of section 161 or section 145, as the case may be, of the Indian Evidence Act, 1872 (1 of 1872), shall apply

173. Report of police officer on completion of investigation

(1) Every investigation under this Chapter shall be completed without unnecessary delay

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating—

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under section 170

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any whom the information relating to the commission of the offence was first given

(3) Where a superior officer of police has been appointed under section 158, the report, shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report—

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceeding or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5)

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)

174. Police to inquire and report on suicide, etc

(1) When the officer in charge of a police station or some other police officer specially Empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any); such marks appear to have been inflicted

(2) The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate

(3) When—

(i) the case involves suicide by a woman within seven years of her marriage; or

(ii) the case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman; or

(iii) the case relates to the death of a woman within seven years of her marriage and any relative of the woman has made a request in this behalf; or

(iv) there is any doubt regarding the cause of death; or

(v) the police officer for any other reason considers it expedient so to do, he shall, subject to such rules as the State Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the State Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless

(4) The following Magistrates are empowered to hold inquests, namely, any District Magistrate or Sub-divisional Magistrate and any other Executive Magistrate specially empowered in this behalf by the State Government or the District Magistrate

<p>179. Offence triable where act is done or consequence ensues</p>	<p>When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued</p>
<p>190. Cognizance of offences by Magistrates</p>	<p>(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence—</p> <p>(a) upon receiving a complaint of facts which constitute such offence;</p> <p>(b) upon a police report of such facts;</p> <p>(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed</p> <p>(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try</p>
<p>198 B. Cognizance of Offence</p>	<p>No Court shall take cognizance of an offence punishable under section 376B of the Indian Penal Code (45 of 1860) where the person are in a marital relationship, except upon <i>prima facie</i> satisfaction of the facts which constitute the offence upon a complaint having been filed or made by the wife against husband.</p>
<p>200. Examination of complainant -</p>	<p>200. Examination of complainant -</p> <p>A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:</p> <p>Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses—</p> <p>(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or</p> <p>(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:</p> <p>Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them</p>

**202.
Postponement of
issue of process**

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,—

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witness on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant

**204. Issue of
process**

(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be—

(a) a summons-case, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint

	<p>(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint</p> <p>(5) Nothing in this section shall be deemed to affect the provisions of section 87</p>
<p>207. Supply to the accused of copy of police report and other documents</p>	<p>In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:—</p> <ul style="list-style-type: none"> (i) the police report; (ii) the first information report recorded under section 154; (iii) the statements recorded under sub-section (3) of section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under subsection <p>(6) of section 173;</p> <ul style="list-style-type: none"> (iv) the confessions and statements, if any, recorded under section 164; (v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of section 173: <p>Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused:</p> <p>Provided further that if the Magistrate is satisfied that any document referred to in clause</p> <ul style="list-style-type: none"> (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court

<p>210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence</p>	<p>(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation</p> <p>(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report</p> <p>(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Cod</p>
<p>225. Trial to be conducted by Public Prosecutor</p>	<p>In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor</p>
<p>226. Opening case for prosecution</p>	<p>When the accused appears or is brought before the Court in pursuance of a commitment of the case under section 209, the prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused</p>
<p>232. Acquittal</p>	<p>If after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the judge shall record an order of acquittal.</p>

<p>243. Evidence for defence</p>	<p>(1) The accused shall then be called upon to enter upon his defence and produce his evidence; and if the accused puts in any written statement, the Magistrate shall file it with the record.</p> <p>(2) If the accused, after he had entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing:</p> <p>Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice.</p> <p>(3) The Magistrate may, before summoning any witness on an application under sub-section (2), require that the reasonable expenses incurred by the witness in attending for the purposes of the trial be deposited in Court.</p>
<p>247. Evidence for defence</p>	<p>The accused shall then be called upon to enter upon his defence and produce his evidence; and the provisions of section 243 shall apply to the case.</p>
<p>255. Acquittal or conviction</p>	<p>(1) If the Magistrate, upon taking the evidence referred to in section 254 and such further evidence, if any, as he may, of his own motion, cause to be produced, finds the accused not guilty, he shall record an order of acquittal.</p> <p>(2) Where the Magistrate does not proceed in accordance with the provisions of section 325 or section 360, he shall, if he finds the accused guilty, pass sentence upon him according to law.</p> <p>(3) A Magistrate may, under section 252 or section 255, convict the accused of any offence triable under this Chapter which form the facts admitted or proved he appears to have committed, whatever may be the nature of the complaint or summons, if the Magistrate is satisfied that the accused would not be prejudiced thereby.</p>

273. Evidence to be taken in presence of accused

Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused or, when his personal attendance is dispensed with, in the presence of his pleader.

Provided that where the evidence of a woman below the age of eighteen years who is alleged to have been subjected to rape or any other sexual offence, is to be recorded, the court may take appropriate measures to ensure that such woman is not confronted by the accused while at the same time ensuring the right of cross-examination.

Explanation— In this section “accused” “includes a person in relation to whom any proceeding under Chapter VIII has been commenced under this Code.

281. Record of examination of accused.

(1) Whenever the accused is examined by a Metropolitan Magistrate, the Magistrate shall make a memorandum of the substance of the examination of the accused in the language of the Court and such memorandum shall be signed by the Magistrate and shall form part of the record.

(2) Whenever the accused is examined by any Magistrate other than a Metropolitan Magistrate, or by a Court of Session, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full by the Presiding Judge or Magistrate himself or where he is unable to do so owing to a physical or other incapacity, under his direction and superintendence by an officer of the Court appointed by him in this behalf.

(3) The record shall, if practicable, be in the language in which the accused is examined or, if that is not practicable in the language of the Court.

(4) The record shall be shown or read to the accused, or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.

(5) It shall thereafter be signed by the accused and by the Magistrate or Presiding Judge, who shall certify under his own hand that the examination was taken in his presence and hearing and that the record contains a full and true account of the statement made by the accused.

(6) Nothing in this section shall be deemed to apply to the examination of an accused person in the course of a summary trial.

<p>294. No formal proof of certain documents.</p>	<p>(1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.</p> <p>(2) The list of documents shall be in such form as may be prescribed by the State Government.</p> <p>(3) Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed:</p> <p>Provided that the Court may, in its discretion, require such signature to be proved.</p>
<p>301. Appearance by public prosecutors.</p>	<p>(1) The Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal.</p> <p>(2) If any such case any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case.</p>
<p>302. Permission to conduct prosecution.</p>	<p>(1) Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than a police officer below the rank of Inspector; but no person, other than the Advocate-General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor, shall be entitled to do so without such permission:</p> <p>Provided that no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence with respect to which the accused is being prosecuted.</p> <p>(2) Any person conducting the prosecution may do so personally or by a pleader.</p>

309. Power to postpone or adjourn proceedings

(1) In every inquiry or trial the proceedings shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.

Provided that when the inquiry or trial related to an offence under section 376, section 376A, section 376B, section 376C or section 376D of the Indian Penal Code (45 of 1860), the inquiry or trial shall, as far as possible be complete within a period of two months from the date of filing of the charge sheet.

(2) If the Court after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:

Provided further that when witnesses are in attendance no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing:

Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.

Provided also that-

(a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;

(b) the fact that the pleader of a party is engaged in another Court, shall not be a ground adjournment;

(c) where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, as the case may be.

Explanation 1 —If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Explanation 2 —The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused.

<p>311. Power to summon material witness, or examine person present.</p>	<p>Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.</p>
<p>313. power to examine the accused</p>	<p>(1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court—</p> <p>(a) may at any stage, without previously warning the accused put such questions to him as the Court considers necessary;</p> <p>(b) shall after the witnesses for the prosecution have been examined and before he is called on for his defence question him generally on the case:</p> <p>Provided that in a summons-case where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (2) No oath shall be administered to the accused when he is examined under sub-section (1)</p> <p>(3) The accused shall not render himself liable to punishment by refusing to answer such question, or by giving false answers to them.</p> <p>(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he had committed.</p>
<p>321. Withdrawal from prosecution.</p>	<p>The Public Prosecutor or Assistant Public Prosecutor in charge of a case may, with the consent of the Court at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and upon such withdrawal,—</p> <p>(a) If it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;</p> <p>(b) if it is made after a charge has been framed, or when under this Code no charge is required he shall be acquitted in respect of such offence or offences:</p>

	<p>Provided that where such offence—</p> <ul style="list-style-type: none"> (i) was against any law relating to a matter to which the executive power of the Union extends, or (ii) was investigated by the Delhi Special Police Establishment under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or (iii) involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government, or (iv) was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty, and the prosecutor in charge of the case has not been appointed by the Central Government he shall not, unless he has been permitted by the Central Government to do so, move the Court for its consent to withdraw from the prosecution and the Court shall, before according consent, direct the Prosecutor to produce before it the permission granted by the Central Government to withdraw from the prosecution.
<p>357. Order to pay compensation.</p>	<ul style="list-style-type: none"> (1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied— <ul style="list-style-type: none"> (a) in defraying the expenses properly incurred in the prosecution; (b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court; (c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death; (d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

	<p>(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.</p> <p>(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.</p> <p>(4) An order under this section may also be made by an Appourt or by the High Court or Court of Session when exercising its powers of revision.</p> <p>(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.</p>
<p>357C. Treatment of victims</p>	<p>All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first aid or medical treatment, free of cost, to the victims of any offence covered under section 326A, 376, 376A, 376B, 376C, 376D or section 376E of the Indian Penal Code, and shall immediately inform the police of such incident.</p>
<p>372. No appeal to lie unless otherwise provided</p>	<p>No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.</p> <p>Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.</p>

437. When bail may be taken in case of non-bailable offence.

(1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on

bail, but—

- (i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;
- (ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a cognizable offence punishable with imprisonment for three years or more but not less than seven years:

Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:

Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:

Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court.

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial as the case may be, that there are no reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, subject to the provisions of section 446A and pending such inquiry, be released on bail, or, at the discretion of such officer or Court on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code (45 of 1860) or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1) the Court shall impose the condition-

- (a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,
- (b) that such person shall not commit an offence similar to the offence of which he is accused or suspected, of the commission of which he is suspected, and
- (c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer or tamper with the evidence, And may also impose, in the interest of justice, such other conditions as it considers necessary.

(4) An officer or a Court releasing any person on bail under sub-section (1), or sub-section (2), shall record in writing his or its reasons or special reasons for so doing.

(5) Any Court which has released a person on bail under sub-section (1), or sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.

(6) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

(7) If, at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

<p>482. Saving of inherent power of High Court.</p>	<p>Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.</p>
<p>Relevant Provisions of the Indian Evidence Act, 1872</p>	
<p>53A. Evidence of character or previous sexual experience not relevant in certain cases.</p>	<p>In a prosecution for an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code or for attempt to commit any such offence, where the question of consent is in issue, evidence of the character of the victim or of such person's previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent.</p>
<p>113A. Presumption as to abetment of suicide by a married woman.-</p>	<p>When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband. Explanation.-- For the purposes of this section, "cruelty" shall have the same meaning as in section 498A of the Indian Penal Code (45 of 1860).</p>
<p>114A Presumption as to absence of consent in certain prosecutions for rape</p>	<p>In a prosecution for rape under clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause (l), clause (m) or clause (n) of sub-section (2) of section 376 of the Indian Penal Code, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the court. That she did not consent, the court shall presume that she did not consent.</p>

<p>146. Questions lawful in cross-examination</p>	<p>When a witness is cross- examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend-</p> <p>(1) to test his veracity,</p> <p>(2) to discover who he is and what is his position in life, or</p> <p>(3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture. Provided that in a prosecution for an offence under section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code or for attempt to commit any such offence, where the question of consent is an issue, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the victim as to the general immoral character, or previous sexual experience, of such victim with any person for proving such consent or the quality of consent.</p>
<p>154. Question by party to his own witness</p>	<p>(1) The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross- examination by the adverse party.</p> <p>(2) Nothing in this section shall disentitle the person so permitted under sub-section (1), to rely on any part of the evidence of such witness.</p>
<p>Relevant Provisions of the Indian Penal Code, 1860</p>	
<p>166A Public servant disobeying direction under law</p>	<p>Whoever, being a public servant –</p> <p>(a) knowingly disobeys any direction of the law which prohibits him for requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or</p> <p>(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</p> <p>(c) fails to record any information given to him under sub section (1) of section 154 of the Code of Criminal Procedure, 1973 in relation to cognizable offence punishable under section 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,</p> <p>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.</p>

<p>354. Assault or criminal force to woman with intent to outrage her modesty</p>	<p>Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will there by outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year and may extend to five years, and shall also be liable to fine.</p>
<p>354A. Sexual harassment and punishment for sexual harassment.</p>	<p>1. A man committing any of the following acts—</p> <ul style="list-style-type: none"> i. physical contact and advances involving unwelcome and explicit sexual overtures; or ii. a demand or request for sexual favours; or iii. showing pornography against the will of a woman; or iv. making sexually coloured remarks, shall be guilty of the offence of sexual harassment. <p>2. Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.</p> <p>3. Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both</p>
<p>354 B. Assault or use of criminal force to woman with intent to disrobe.</p>	<p>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.</p>
<p>354C. Voyeurism</p>	<p>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.</p>

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

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

354D. Stalking

1. Any man who—

- i. follows a woman and contacts, or attempts, to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or
- ii. monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking:

Provided that such conduct shall not amount to stalking if the man who pursued it proves that—

- i. 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
- ii. it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or
- iii. 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..

376. Punishment for rape

1. Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.

2. Whoever,—

a. being a police officer, commits rape—

i. within the limits of the police station to which such police officer is appointed; or

ii. in the premises of any station house; or

iii. on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

b. being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

c. being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or

d. being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

e. being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or

f. being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or

g. commits rape during communal or sectarian violence; or

h. commits rape on a woman knowing her to be pregnant; or

i. commits rape on a woman when she is under sixteen years of age; or

j. commits rape, on a woman incapable of giving consent; or

k. being in a position of control or dominance over a woman, commits rape on such woman; or

l. commits rape on a woman suffering from mental or physical disability; or

m. while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or

n. commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for remainder of that person's natural life, and shall also be liable to fine.

<p>376A. Punishment for causing death or resulting in persistent vegetative state of victim</p>	<p>Whoever, commits an offence punishable under sub-section (1) or sub-section (2) of section 376 and in the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death.</p>
<p>376 B. Sexual intercourse by husband upon his wife during separation</p>	<p>Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.</p>
<p>376C. Sexual intercourse by person in authority</p>	<p>Whoever, being—</p> <ol style="list-style-type: none"> a. in a position of authority or in a fiduciary relationship; or b. a public servant; or c. superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force, or a women's or children's institution; or d. on the management of a hospital or being on the staff of a hospital, abuses such position or fiduciary relationship to induce or seduce any woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than five years, but which may extend to ten years, and shall also be liable to fine.
<p>376D. Gang rape</p>	<p>Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine:</p> <p>Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:</p> <p>Provided further that any fine imposed under this section shall be paid to the victim.</p>

<p>376E. Punishment for repeat offenders.</p>	<p>Whoever has been previously convicted of an offence punishable under section 376 or section 376A or Section 376 B and is subsequently convicted of an offence punishable under any of the said sections shall be punished with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death.</p>
<p>406. Punishment for criminal breach of trust.-</p>	<p>Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.</p>
<p>498A. Husband or relative of husband of a woman subjecting her to cruelty</p>	<p>Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.</p> <p>Explanation.- For the purposes of this section, "cruelty" means-</p> <p>(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or</p> <p>(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.</p>
<p>509. Word, gesture or act intended to insult the modesty of a woman</p>	<p>Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which shall not be less than three years and shall also be liable to pay fine.</p>



Glossary

Acquittal: An acquittal formally certifies that the accused is free from the charge of the offence. Bail is not acquittal.

Bail: Bail is the release from imprisonment by payment of money as a guarantee that the accused will appear for the trial.

Closure Report: A report with a recommendation for no prosecution is called “closure report”.

Cognizance: A criminal case is initiated only when the cognizance is taken. The word ‘cognizance’ is used to indicate the point of time when the Magistrate or Judge first takes judicial notice of an offence. Cognizance of an offence can take place in the absence of the accused.

Differently-abled: Persons / children who are unable to perform all usual mental or physical functions whether temporarily or permanently, have been termed as “differently-abled” in this document.

Enquiry: An enquiry is every investigation conducted under the Code directed by a Magistrate. It is normally conducted by the police.

Police Report: A police report, defined under section 2 (r) of the Code includes a report with recommendation of the police for prosecution under sub-section (2) of section 173 Cr.P.C and is also called “charge-sheet”.

Survivor: Survivor in this document means a child or woman who was a victim of any of the offences in *Table 1* (IPC provisions), *Table 2* (POCSO provisions) or *Table 3* (PWDVA provisions) and is recovering, or has recovered from the sexual offence.

Medical Professional or Health Professional: Means both individuals and institutions that provide health care services and includes, but is not limited to, general practitioners, specialists, nurses, mental health practitioner and / or public health practitioners.

Prima Facie case: A prima facie case means that on first examination a case is established.

Public Prosecutor: In this document, the term “public prosecutor” includes the public prosecutor appointed under section 24 of the Cr.P.C, and the special public prosecutor appointed under section 32 of the POCSO Act.

Special Juvenile Police Unit: Means a police unit which consists of police officers dealing primarily with juveniles under the Juvenile Justice (Care and Protection of Children) Act, 2000. Such police officers are specifically trained for the purpose of handling cases involving children. At least one such police officer with proper training and aptitude, designated as the juvenile or child welfare officer, shall handle juveniles and coordinate with the police. Such units may be created in every district and city.

Territorial jurisdiction: Territorial jurisdiction refers to the power of any court or police station to take cognizance of a case / crime within a geographical territory. For example, if a crime takes place in a South Delhi colony, the police station of the South Delhi area would have territorial jurisdiction over the crime.

Writ jurisdiction: High Courts in India and the Supreme Court of India can issue writs in the nature of Habeas Corpus, Certiorari, Prohibition, Mandamus and Quo-warranto under Article 226 and Article 32 of the Constitution of India respectively for the enforcement of fundamental rights. High courts can exercise the power of writs not only for the enforcement of fundamental rights but also for other rights.

