

# NATIONAL COMMISSION FOR WOMEN



F.No.6/20 2017-NCW (L)  
**NATIONAL COMMISSION FOR WOMEN**  
Plot No.21, Jasola Institutional Area  
New Delhi-110025

## PART-I

**Legal Modules for Nationwide competition to create awareness about legal rights of women**

### DISCLAIMER

The information contained in this document has been compiled by the National Commission for Women and to the best of our knowledge, the information contained in the document is accurate. It is further clarified that, the document is only for guidance and draws material from relevant Acts/Rules/Regulations and documents prepared earlier by the National Commission for Women and the Ministry of Women and Child Development. The readers are advised to cross-check the information with the authoritative text of the relevant laws/ Acts/Rules/Regulations.

Suggestions for improvement in the module will be highly appreciated.

The subsequent parts will be uploaded at a later stage.

Joint Secretary  
National Commission for Women

# NATIONAL COMMISSION FOR WOMEN



**Rekha Sharma**  
Member & Chairperson (I/C)

Tel : 011-26944808  
Fax : 011-26944771



भारत सरकार  
राष्ट्रीय महिला आयोग  
प्लॉट नं. 21, जसोला इंस्टीट्यूशनल एरिया  
एफ. सी. 33, नई दिल्ली-110 025  
GOVERNMENT OF INDIA  
NATIONAL COMMISSION FOR WOMEN  
PLOT NO. 21, FC-33, JASOLA  
INSTITUTIONAL AREA, NEW DELHI-110 025  
Website : [www.ncw.nic.in](http://www.ncw.nic.in)  
E-mail : [chairperson-ncw@nic.in](mailto:chairperson-ncw@nic.in)  
[sharma.rekha@gov.in](mailto:sharma.rekha@gov.in)

12<sup>th</sup> October, 2017

## FOREWORD

The National Commission for Women, in furtherance of its mandate of safeguarding the rights and entitlements of women, has decided to organise a nation-wide competition to create awareness amongst the college and university students about legal rights of women. The competition is being organised at three levels viz. (i) college level, to be organised by individual colleges; (ii) State level, to be organised by the State Women Commissions; and (iii) National level, to be organized by the National Commission for Women. The college level competition is being organized during September – November, 2017. Other stages will follow.

The National Commission firmly believes that the students at college and university level are the future citizens and leaders of the country and their being made aware of the rights and entitlements of women will go a long way in furthering the objective of ensuring the dignity of women in the country.

The National Commission for Women has, under the guidance and supervision of the Joint Secretary in the Commission, prepared a module on some of the women related laws in the country. The Module is being placed on the website of the Commission for easy reference and retrieval. It is hoped that the module, in its present form, will be helpful to the readers in general and the students in particular.

Suggestions for improvement in the module are welcome.

(Rekha Sharma)  
Chairperson (I/C)



**UNIT - I**

**Judiciary in India- a brief introduction**

The governmental machinery in India is structured on the principles of separation of powers between the executive, the judiciary and the legislature with a system of checks and balances. The Indian judiciary plays a key role in accordance with its constitutional remit. This unit briefly introduces the reader to the judiciary in the country.

**Single and Integrated Judicial System:**

The Constitution of India provides for a single integrated judicial system with the Supreme Court at the apex, High Courts at the middle (State) level and District Courts at the local level. Other courts (Subordinate Courts) work under the High Courts. All courts in India form the links of a single judicial system. The courts at all these levels, together, constitute an independent and powerful judicial system that acts as the guardian protector of the Constitution and the fundamental rights guaranteed by the Constitution and other legal rights.

**Independence of Judiciary:**

The Constitution of India makes the Indian judiciary truly independent. It provides for:

## NATIONAL COMMISSION FOR WOMEN

(i) Appointment of judges by the President on the recommendations of the Collegium, where the views of Collegium is accorded primacy in terms of the law laid down by the Supreme Court in Three Judges cases;

(ii) Qualifications for appointment of judges have been clearly stipulated to eliminate any discrepancy or discretion in such appointments.

(iii) Removal of judges is only possible through impeachment which is an arduous process.

(iv) Adequate powers and functional autonomy has been provided to Judiciary.

### **Judicial Review:**

The Constitution of India is the supreme law of the land. The Supreme Court acts as the interpreter and protector of the Constitution. It is the guardian of the fundamental rights and freedoms of the people. For performing this role, it exercises the power of judicial review. The Supreme Court has the power to determine the constitutional validity of all laws. High Courts also exercise this power.

The Right to Constitutional Remedies [Article 32] provides protection for preventing violation of fundamental rights. The Supreme Court and the High Courts have the power to issue writs in case of transgression of any fundamental right under Article 32 and Article 226 of the Constitution, respectively. These writs are:

- 'Habeas Corpus' is in the nature of an order calling upon the person who has detained another person to produce the latter before the Court in order to let the Court know on what ground such person has been confined and to set him free if there is no legal jurisdiction for imprisonment.

## NATIONAL COMMISSION FOR WOMEN

- 'Mandamus' is a command directing a person or organization requiring him or them to do some particular thing therein specified which pertains to his or their office and is in the nature of a public duty.
- 'Prohibition' is a Judicial writ, issued out by a Superior Court for preventing the inferior court from usurping jurisdiction with which it is not legally vested. In other words, the writ compels courts with judicial duties to keep within the limits of their jurisdiction.
- 'Quo Warranto' is the remedy or proceeding whereby the Court inquires into the legality of the claim that a party asserts to an office or franchise to oust him of its enjoyment if the claim is not well founded.
- 'Certiorari' keeps the exercise of powers by inferior judicial and quasi judicial tribunals within the limits of jurisdiction assigned to them by law and restrain them from acting in excess of their authority.

### **The Supreme Court has jurisdiction in all cases of disputes:**

- i) Between the Government of India and one or more States.
- ii) Between the Government of India and any State or States on one side and one or more States on the other, and
- iii) Between two or more States.

### **High Courts:**

The Constitution lays down that there shall be a High Court for each State. However, two or more States can, by mutual consent, have a Joint High Court.

## NATIONAL COMMISSION FOR WOMEN

High Court is a court of record and has the power to punish for contempt (Article 215). It has 'Original Jurisdiction' in civil and criminal matters and 'Appellate jurisdiction' in respect of criminal and civil cases decided by Subordinate courts. The High Court also has 'Revisional Jurisdiction' conferred under the Civil Procedure Code and the Criminal Procedure Code, and 'Writ jurisdiction' [Article 226] of the Constitution of India.

### Open Trial:

The Courts in India conduct open trials. The accused is always given full opportunity to defend himself. The state provides free legal aid to the poor and needy.

### Broad structure of Civil Courts subordinate to High Court

In Cities	In Districts
First Grade Chief Judge and Additional Chief Judge	First Grade District Judge and Additional District Judge
Second Grade Assistant Chief Judge or Senior Civil Judge	Second Grade Assistant District Judge or Senior Civil Judge
Third Grade Munsif or Junior Civil Judge	Third Grade Munsif or Junior Civil Judge

### Broad structure of Criminal Courts Subordinate to High Court

In Cities	In Districts
Sessions Court (Sessions Judge, Addl. Sessions Judge and Asst. Sessions Judge)	Sessions Court (Sessions Judge, Addl. Sessions Judge and Assistant Sessions Judge)
Judicial Magistrate, First Class/Metropolitan Magistrate, Judicial Magistrates Second	Chief Judicial Magistrate

# NATIONAL COMMISSION FOR WOMEN

Class/ Metropolitan Magistrate	
--------------------------------	--

## Separation of powers:

- In pursuance of the scheme of separation of executive from the judiciary (Article 50 of the Constitution) – Two categories of Magistrates have been created.
- **Judicial Magistrates:-** These are appointed and controlled by the High Court and discharge judicial functions.
- **Executive Magistrates:-** These are appointed and controlled by the State Government and discharge executive functions, i.e., maintenance of law and order.

## Executive Magistracy

For Districts -	For Subdivision
<ul style="list-style-type: none"><li>• District Magistrate</li><li>• Additional District Magistrate</li><li>• Executive Magistrate</li></ul>	<ul style="list-style-type: none"><li>• Sub-Divisional Magistrate</li><li>• Additional Sub-Divisional Magistrate</li><li>• Executive Magistrate</li></ul>

## Judicial Activism:

Indian Judicial System has progressively donned an active role. The Supreme Court has been coming out with judicial decisions and directives aimed at active protection of public interest and human rights. Judiciary has been giving directives to public officials for better security for the rights of the public. The Public Interest Litigation system is now well established and the Lok Adalats have become an integral part of the judicial system.

## NATIONAL COMMISSION FOR WOMEN

### Public Interest Litigation:

Under this system, the courts of law in India, can initiate and enforce action for securing any significant public or general interest which is being adversely affected or is likely to be so affected by the action of any agency, public or private. Under it, any citizen or a group or a voluntary organisation, or even a court herself, can bring to notice any case demanding action for protecting and satisfying a public interest.

\*\*\*\*\*



**UNIT-2**

**Introduction to Criminal Procedure**

This unit provides a brief introduction to different aspects of criminal procedure as prevalent in India. The objective is to acquaint the reader with relevant technical terms, their rights and the procedure to be followed in criminal cases. It needs to be noted that a number of amendments have been made in the criminal law by different States and such state specific changes need to be taken note of.

**CATEGORISATION OF CRIMES**

The Cr.PC provides for threefold categorisation of offences:

**Cognisable and non-cognisable offences**

- Schedule 1 of the Cr.PC classifies offences under the IPC into cognisable and non cognisable offences.
- Part II of the said Schedule specifies that unless provided otherwise, the offences under any special law punishable with three years or more of imprisonment shall be cognisable.
- In non-cognisable offences, the police cannot arrest an accused without warrant. Police also does not register a First Information Report (FIR) in such cases, or initiate investigation unless directed by the Magistrate to do so.

## NATIONAL COMMISSION FOR WOMEN

- On the other hand, in cognisable offences, the police has to necessarily register an FIR and conduct statutory investigation immediately after receipt of information about commission of an offence. The explanatory note in the first Schedule explains that cognisable implies that a police officer may arrest without warrant.

### **Bailable and non-bailable offences:**

In a bailable offence, an accused person can, as a matter of right, ask to be released on bail on furnishing adequate surety by the Station House Officer (SHO) of the police station, if he is in police custody, or by the Court where he appears or is produced. In non-bailable offences, bail can only be granted by the Court.

### **Compoundable and non-compoundable offences:**

- Compounding means that the victim can absolve the accused of the criminal liability by a declaration to that effect. Compounding is permitted when the offence is essentially of a private nature and relatively non-serious. The Tables given in section 320 of the Cr.PC lists offences compoundable by a person against whom a crime has been committed. It also lists the offences where such compounding is allowed only with the permission of the Court.

## NATIONAL COMMISSION FOR WOMEN

- Where the offence is compoundable, if the parties arrive at a compromise, the offence can be compounded with or without the permission of the court.
- Compounding essentially means an agreement between the victim and the accused that is recognised by law and, often, the person against whom the offence has been committed agrees that on payment of a certain amount, the proceedings against the offender may be withdrawn. This procedure gives the victim an opportunity to negotiate compensation from the offender before the trial begins.
- A victim should agree to compound the offence only when the victim is sure that an offence will not be committed against her in future.

### CIVIL AND CRIMINAL CASE

- The main difference between civil and criminal proceedings is that in a civil proceeding, the remedy is civil in nature, and in a criminal proceeding, conviction and punishment involving imprisonment, fine, etc. will ensue. Another difference between the civil and criminal proceedings is that in the former, only the aggrieved person can complain of the wrong. In case of criminal cases, if the offence is serious, anyone can complain about the offence having been committed.

## NATIONAL COMMISSION FOR WOMEN

### DAILY DIARY ENTRY (DDE)

- A DDE is the noting of information in the register kept in the Police Station. A person who fears that he/she may be harassed, may report the apprehension, and reasons for such apprehension to the police. He/she may also state whether he/she wants any immediate action to be taken, or that if anything happens in future, the accused must be held responsible for the harm caused to him/her. Such an option, in the event of any subsequent incident, serves as a record or evidence that the person complained against is responsible for the act. The police can be requested to proceed against the offender and furnish security that he will not commit any offence against her/him in future.
- Information concerning an offence involving a woman or a woman's apprehension that an offence may be committed, can be given either at the police station where the offence is committed, or at the police station having jurisdiction in respect of place where the woman works or lives. If the information is given at any other police station, it will be recorded and passed on to the appropriate police station, which will then register the FIR or a Non-Cognisable Report. Such information can also be given at the Crimes Against Women Cells where it can be dealt with more sensitively by women police officials.

### NON COGNISABLE REPORT (NCR)

## NATIONAL COMMISSION FOR WOMEN

- Information about a Non-Cognisable offence recorded by the police in the prescribed form is called NCR. The NCR has to be forwarded to the Magistrate who may order that the offence be investigated.

### FIRST INFORMATION REPORT (FIR)

- FIR is a written document prepared by police when information about commission of an offence is received by the police. Put in other words, when any offence is reported to the police and the police records the report in writing in the prescribed form, it is called an FIR.
- The FIR is an important piece of evidence. It sets the process of criminal justice in motion. The filing of FIR giving details of the crime promptly and names of witnesses goes a long way in ensuring conviction of an accused. Though, it is not a substantive piece of evidence, it can be used to corroborate or contradict the person who lodges the complaint.
- FIR must set out the time, date, place of the act complained, identity of the accused, and the attending circumstances in detail. Details about the role of accomplices, and the act of persons supporting, aiding, or instigating the accused, are required to be clearly stated.
- Any apprehension of danger on the part of the victim or threat from the accused including threat to restrain the victim from making the complaint are to be recorded in the FIR.

## NATIONAL COMMISSION FOR WOMEN

- A request to take appropriate action in the matter and to take adequate measures for ensuring the safety and security of the victim should form part of the FIR.
- The police has no powers to investigate an offence before an FIR has been registered. In case of non-cognisable offences, the police cannot even investigate a matter unless the court directs it to do so.
- The police is duty bound to investigate cognisable offences and apprehend the accused as soon as the FIR is lodged.
- If the accused, in spite of being informed, that he is required for the purpose of investigation, keeps on evading investigation, such conduct shall be admissible under the Indian Evidence Act against the accused for determining the guilt.
- The omission of minor details, or the fact that the incident has not been reported in detail in the FIR, does not adversely affect the prosecution's case.
- FIR is only a first information report and not the complete investigation report or charge-sheet which the police submits after completion of investigation.

### RIGHTS OF PERSON GIVING INFORMATION TO THE POLICE

- The complainant has the right to get the information recorded.

## NATIONAL COMMISSION FOR WOMEN

- The police is under a duty to listen to the complainant, to treat the complainant with respect and to record the information given by the complainant.
- If the information is not recorded by police, a senior officer or the Magistrate can be approached and an FIR can be registered against such failure.
- If the complainant is injured, the police is required to take him/her to a hospital for medical examination.
- When making a NCR, the DDE number has to be given.
- If the information is given in written form, a copy of the written information stamped with the date and DDE number has to be given.
- The Complainant has the right to ask the officer to read out the contents of the FIR.
- One should sign the FIR only if satisfied with the contents.
- If the police officer concerned refuses to register the FIR, the Police Officer superior to the SHO, should be approached to get the FIR registered.
- Magistrate of the first class competent to take cognizance of the offence or the administratively superior Additional Chief Judicial Magistrate or Chief Judicial Magistrate can also be approached.
- The Magistrate must, in such a case, without taking cognizance, direct the local police to investigate, or take cognizance on the complaint and examine the complainant and witnesses under oath. The

## NATIONAL COMMISSION FOR WOMEN

substance of the examination has to be reduced to writing and the complainant, witnesses and the Magistrate are required to sign it.

- It is also important to note that clause (c) of section 166A IPC makes it an offence on the part of the police to refuse to register an FIR in case of sexual offences.

### INVESTIGATION

- Investigation is undertaken to collect material that is relevant for determining whether the accused is guilty or not. Thus for example, an investigation about sexual harassment at workplace may involve recording statements of co-workers, preparing a site plan of the office, searching the office or the residence of the accused, seizure of relevant items including documents, taking photographs, etc.
- The failure of the police to take immediate and effective steps for investigating the matter can result in the accused tampering with the evidence and influencing or pressurising witnesses. Such failure should, therefore, be immediately brought to the notice of the Magistrate having jurisdiction over the area. Such steps could range from collection of specific evidence, arrest of the accused and/or transfer of the case to another police station, agency or investigating officer who may be expected to deal with the matter more sensitively and expeditiously.

## NATIONAL COMMISSION FOR WOMEN

- After the FIR is registered or the Magistrate directs investigation (in case of a non-cognisable offence), the Investigating Officer records statements of the complainant and of witnesses named by the complainant. The witnesses are required to give all facts regarding commission of offence. The witness is not required to sign the statement.
- The complainant has the right to inform the Investigating Officer if any incriminating material or document can be recovered from any premises.
- The Investigating Officer, on having sufficient grounds, can conduct a search and seize all the evidence relating to commission of the offence

### TRANSFER OF INVESTIGATION

- In a situation where the local investigating agency does not conduct the investigation impartially or effectively, or there is a reason to believe that it will not be able to conduct the investigation in an effective and impartial manner, the High Courts and the Supreme Court can order that the investigation be transferred to the CBI under sections 156, 173, and 482 of the Cr. PC and Articles 32 and 226 of the Constitution of India.

### COGNISANCE OF THE OFFENCE BY THE COURT

- As soon as the court applies its mind to the case presented before it under section 190(1), Cr.PC, such Magistrate shall take cognisance of

## NATIONAL COMMISSION FOR WOMEN

the offence. In cases exclusively triable by the Court of Session, cognisance is taken after committal of the case by the Magistrate.

### **FRAMING OF CHARGES BY THE COURT AGAINST THE ACCUSED**

- After filing of the police report and appearance of an accused, a copy of all statements and documents that the prosecution seek to rely upon under section 207 of the Cr.PC, are required to be made available to the accused free of cost. While framing the charge or notice, as the case may be, the accused to be clearly informed that his particular act amounts to a particular offence and he will be tried for it. He is also to be asked if he pleads guilty or not.
- After the prosecution witnesses have been examined and cross-examined, the entire evidence is put to the accused and he is given an opportunity to personally explain anything presented in the evidence against him. The accused can also ask to produce any defence witnesses before the court. Thereafter, the defence witnesses, if there are any, are examined and cross examined.
- With the pronouncement of the judgment and the determination of sentence, the trial is concluded. In case of serious crimes, this stage is divided into two, viz. conviction, and sentence. Both are addressed separately and at separate hearings.

## NATIONAL COMMISSION FOR WOMEN

### PROVISIONS REGARDING GRANT OF BAIL

- For bailable offences, the accused has the right to be released on bail after arrest. For non-bailable offences, the accused can apply to be released on bail and the court, depending on the facts of the case, can grant bail.
- The purpose of arresting an accused is to ensure his presence during trial. If the presence of the accused can be secured without curtailing his liberty, or by curtailing his liberty only to the extent that his presence during the trial is ensured, the accused need not be kept in detention. Therefore, when the court is satisfied that the accused will not evade proceedings and he furnishes adequate security, he can be released on bail.
- Factors to be kept in view for determining whether bail should be granted are as below:
  - a) Enormity of the charge or the nature of accusation.
  - b) Severity of punishment, the conviction would entail in the case.
  - c) Nature of evidence presented in support of accusation.
  - d) Danger of the accused absconding if he is released on bail.
  - e) Length of trial.
  - f) Period of detention of the accused.
  - g) Character, means and standing of the accused.
  - h) Previous conduct and behaviour of accused in the court.
  - i) Health, age and sex of the accused.

## NATIONAL COMMISSION FOR WOMEN

j) Opportunity to the accused to prepare a defense and to access counsel.

k) Danger that the crime will be repeated.

- These considerations generally apply to grant of anticipatory bail also.

### CANCELLATION OF BAIL

- When there are circumstances that render it no more expedient to allow the accused to be on bail, the bail can be cancelled. If there is a possibility that he may commit the same crime or any other crime, that he may not appear before the court, that he would tamper with the evidence or that he has acted contrary to any of the considerations relevant for granting bail, these can be brought to the attention of the court and request made for cancellation of bail.
- If the accused threatens the victim or any other witnesses, the complainant can move the court for cancellation of bail as such act by the accused amounts to tampering with the evidence. Further, if a victim finds that bail granted to an accused is preserve the victim can maintain an application for cancellation of bail.

### APPEARANCE OF THE ACCUSED BEFORE THE COURT

- After a Magistrate has taken cognizance of an offence i.e. applied his mind to the matter brought before him and reached the conclusion that

## NATIONAL COMMISSION FOR WOMEN

the matter requires further proceedings, he has to take adequate steps to ensure that the accused is present before the court for further proceedings. To ensure the attendance of the accused, the court can issue summons or warrant.

### **WARRANT CASES**

- Warrant cases are cases, which can result in sentences exceeding two years of imprisonment. The court, if it has a reason to believe that a person will not obey the summons, can issue a warrant of arrest to ensure the presence of the accused. The presence of the accused is crucial since his presence is required for framing charges and for recording evidence.

### ***LOCUS STANDI* OF THE COUNSEL FOR COMPLAINANT**

- The duty of the prosecutor in a criminal trial is not merely to secure conviction at all costs; but to place before the court the evidence available with the prosecutor, whether it is favour of or against the accused. It is up to the court to decide, based on the evidence, whether the accused is guilty of the offence alleged.
- In a Magistrate's court, private counsel for the complainant can seek permission to assist the prosecution and present the case before the court. With the leave of the court, the private counsel can also file written arguments in a case.

## NATIONAL COMMISSION FOR WOMEN

- The court is under an obligation to ensure that the witness is not caused undue inconvenience in the course of judicial proceedings. The law does not permit causing undue inconvenience to the complainant or witnesses by irrelevant or mischievous questions, suggestions or allegations.

### STANDARD OF PROOF IN CRIMINAL CASES

- In criminal proceedings, the standard of proof required is beyond reasonable doubt.

### APPEAL

- There is a right to appeal against the order of acquittal of an accused or against inadequate sentence imposed or compensation ordered to be paid by a convict under proviso to section 372 of the Cr.PC.
- A petition for appeal must be made in a higher court than the court which made the order; it must be accompanied by a copy of the order appealed against; and must state the grounds for appeal. The grounds can be that the order suffers from some legal infirmity or mistake or that evidence was not properly weighed.

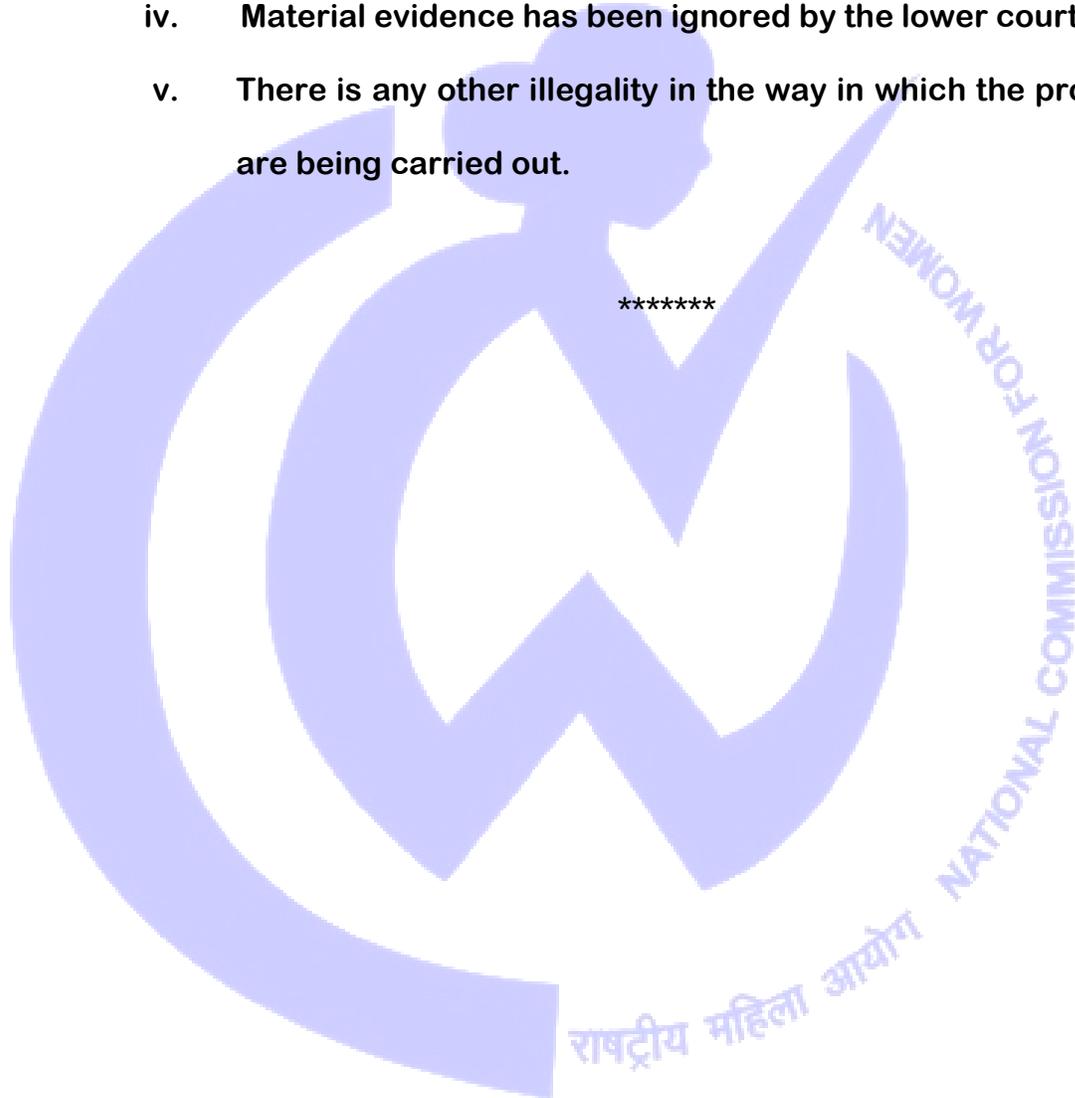
### REVISION

- The complainant can file an application for revision in higher courts such as the Sessions Court or a High Court to challenge an order which is not interlocutory. The difference between an appeal and a revision is that an appeal is a matter of right but, in case of revision, the courts have the discretion to entertain or to reject the petition.

## NATIONAL COMMISSION FOR WOMEN

- A court can exercise its powers of revision when:
  - i. The decision of the lower court is grossly erroneous
  - ii. There is no compliance with the provisions of law.
  - iii. The finding of the fact is not based on evidence.
  - iv. Material evidence has been ignored by the lower court.
  - v. There is any other illegality in the way in which the proceedings are being carried out.

\*\*\*\*\*



# NATIONAL COMMISSION FOR WOMEN

LEGAL MODULE, 2017

## UNIT-3

THE INDIAN PENAL CODE, 1860

### SPECIFIC PROVISION RELATED TO CRIME AGAINST WOMEN

This Unit covers crimes relating to women and penal provisions in respect of such crimes in the Indian Penal Code, 1860. Details of Sections which have been amended in 2013 have been included in Unit-4. Brief details of the relevant provisions are summarised below:

#### OFFENCES AGAINST THE HUMAN BODY

Offence	Section	Punishment	Cognizable / non-cognizable	Bailable / non-bailable
Disclosure of identity of the victim of certain offences including in cases of sexual harassment	228A	Imprisonment for two years and fine	Cognizable	Bailable
Obscene acts and songs	294	Imprisonment for three months, or fine or both	Cognizable	Bailable
Dowry Death	304B	Minimum imprisonment of 7 years which may extend upto imprisonment for life	Cognizable	Non-bailable
Abetment of suicide	306	Imprisonment for ten years and fine	Cognizable	Non-Bailable

## NATIONAL COMMISSION FOR WOMEN

Causing miscarriage	312	Imprisonment upto 3 years or fine or both	Non-cognizable	Bailable
Causing miscarriage without woman's consent	313	Imprisonment for life, or imprisonment for 10 years and fine	Cognizable	Non-bailable
Death of woman caused by an act done to cause miscarriage without the woman's consent	314	Imprisonment upto 10 years and fine or Imprisonment for life and fine	Cognizable	Non-bailable
Preventing a child from being born alive or to cause its death after birth	315	Imprisonment upto 10 years or fine or both	Cognizable	Non-bailable
Causing death of unborn child by act amounting to culpable homicide	316	Imprisonment for 10 years and fine	Cognizable	Non-bailable
Assault or use of criminal force to woman with intent to outrage her modesty	354	Imprisonment for one year which may extend to five years, with fine	Cognizable	Non-bailable
Kidnapping from India	360	Imprisonment for 7 years and fine	Cognizable	Bailable
Kidnapping from lawful guardianship (minor i.e below 18 years for females and below 16 years for	361	Imprisonment for 7 years and fine	Cognizable	Bailable

## NATIONAL COMMISSION FOR WOMEN

males)				
Kidnapping, abducting or inducing a woman to compel her marriage, etc	366	Imprisonment for 10 years and fine	Cognizable	Non-bailable
Procuration of minor girl (minor girls is under the age of 18 years)	366A	Imprisonment for 10 years and fine	Cognizable	Non-bailable
Importation of girl from foreign country ( any country outside India or from the State of Jammu and Kashmir)	366B	Imprisonment for 10 years and fine	Cognizable	Non-bailable
Selling a minor for purpose of prostitution, etc. (person under 18 years)	372	Imprisonment for 10 years and fine	Cognizable	Non-bailable
Buying a minor for purposes of prostitution, etc.	373	Imprisonment for 10 years and fine	Cognizable	Non-bailable
Criminal breach of trust	406	Imprisonment for three years and fine or both	Cognizable	Non-Bailable
Word, gesture or act intended to insult the modesty of a woman	509	Simple imprisonment for three year or fine or both	Cognizable	Bailable

## NATIONAL COMMISSION FOR WOMEN

### OFFENCES RELATING TO MARRIAGE

Cohabitation by deceitful means (by making a woman believe that she is lawfully wedded to him)	493	Imprisonment for 10 years and fine	Non-cognizable	Non-bailable
Bigamy: (1)Marrying again during lifetime of first husband or wife (2)Marrying again with concealment of former marriage	494	Imprisonment for 7 years and fine	Non-cognizable	Bailable
	495	Imprisonment for 10 years and fine	Non-cognizable	Bailable
Marriage ceremony fraudulently gone through without lawful marriage	496	Imprisonment for 7 years and fine	Non-cognizable	Bailable
Adultery	497	Imprisonment for 5 years, or fine or both	Non-cognizable	Bailable
Enticing or taking away or detaining with criminal intent a married woman	498	Imprisonment for 2 years or fine or both	Non-cognizable	Bailable

### CRUELTY BY HUSBAND OR RELATIVES OF HUSBAND

Husband or relative of a woman subjecting her to cruelty	498A	Imprisonment for three years and fine	Cognizable	Non-Bailable
--	------	---------------------------------------	------------	--------------

\*\*\*\*\*

**UNIT-4**

**The Criminal Law (Amendment) Act, 2013**

**What are the objectives?**

The provisions of the Criminal laws, as these were before 2013 amendment, were found to be inadequate to effectively address the growing crimes against women. Based on the recommendations of Justice Verma Committee, the Criminal Law Amendment Act, 2013 was enacted. It amends the Indian Penal Code, 1860, Indian Evidence Act, 1872, the Code of Criminal Procedure, 1973 and the Protection of Children from Sexual Offences Act, 2012. The amendment:

- i) recognizes new crimes against women, such as acid attacks, sexual harassment, voyeurism, stalking and trafficking of persons;
- ii) widens the definition of rape;
- iii) changes the medico-legal examination procedures of rape and acid attack victim; and
- iv) provides for prosecution of members of armed forces/uniformed personnel under ordinary criminal law in case of rape.

**Specific Reliefs provided to women victims of sexual offences:**

- i) When the information is given by the victim about an offence of sexual assault or rape committed against her, the information is required to be recorded by a woman police officer, or any women officer.
- ii) When the statement of a victim or a disabled person is to be recorded, it shall be recorded at the residence of the person or at a

## NATIONAL COMMISSION FOR WOMEN

place convenient to such person. Further, the statement to be recorded by a woman police officer has to be video graphed and the victim has to be provided with an interpreter or special educator.

iii) The statement of the victim under Section 164 Cr. PC shall be recorded at the earliest after commission of offence. In case, the victim is physically or mentally disabled, the statement is to be recorded with the assistance of an interpreter or a special educator and shall be video-graphed.

iv) Any such statement of a disabled person shall be considered a statement in lieu of examination-in-Chief (under Section 137 of Indian Evidence Act) so that the maker of the statement can be cross examined on such statement without the need of recording the same at the time of trial.

v) For ensuring speedy and timely justice, the proviso to Section 309 Criminal Procedure Code, 1973 lays down that the inquiry or trial of an offence related to rape shall, as far as possible, be completed within a period of two months from the date of filing of charge-sheet.

vi) No sanction is required in case of a public servant accused of an offence alleged to have been committed under sections 166A, 166 B, 354, 354 A, 354 B, 354 C, 354 D, 370, 375, 376, 376A, 376 D or Section 509 of the Indian Penal Code, 1860 as amended

### **New offences under IPC to deal with crimes against women:**

<b>Section</b>	<b>Offence</b>	<b>Punishment</b>	<b>Nature</b>
166-A [Sub-clause C]	Public servant disobeying direction under law	Imprisonment for a minimum period of 6 months which may extend to 2 year with fine.	Cognizable and Bailable

## NATIONAL COMMISSION FOR WOMEN

166-B	Non treatment of victim by hospital	Imprisonment for 1 year or fine or both.	Non-Cognizable and Bailable
326-A	Acid attack	Imprisonment for not less than ten years but which may extend to imprisonment for life and fine to be paid to the victim	Cognizable and non-Bailable
326-B	Voluntarily throwing or attempting to throw acid	Imprisonment for not less than five years which may extend to seven years with a fine. Fine to be paid to the victim	Cognizable and non Bailable
354A	Sexual harassment of the nature of unwelcome physical contact and advances or demand or request for sexual favours, showing pornography	Imprisonment which may extend to 3 years or with fine or with both.	Cognizable and Bailable
	Sexual harassment of the nature of making sexually coloured remarks	Imprisonment which may extent to one year or with fine or with both.	Cognizable and Bailable
354B	Assault or use of criminal force to women with intent	Imprisonment not less than three years but which	Cognizable and Non-

## NATIONAL COMMISSION FOR WOMEN

	to disrobe	may extend to seven years and with fine.	Bailable
354C	Voyeurism (Watching or capturing the image of a woman engaging in a private act)	Imprisonment of not less than one year, but which may extend to 3 years, and with fine for first conviction.  For second and subsequent conviction imprisonment not less than 3 years, but which may extend to 7 years, and with fine	Cognizable and Bailable
354D	Stalking	Imprisonment up to 3 years with fine for first conviction.	Cognizable and Bailable
		For second and subsequent conviction, imprisonment up to 5 years with fine	Cognizable and Non Bailable
376 (Clause )	Rape	Rigorous imprisonment for not less than seven years, which may extend to imprisonment for life with fine.	Cognizable and Non Bailable

## NATIONAL COMMISSION FOR WOMEN

<p>376 (Clause (2))</p>	<p>Rape by a police officer or a public servant or member of armed forces or a person being on the management or on the staff of a jail, remand home or other place of custody or women's or children's institution or by a person on the management or on the staff of a hospital, and rape committed by a person in a position of trust or authority towards the person raped by a near relative of the person raped.</p>	<p>Rigorous imprisonment for a term which shall not be less than ten years, but may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death</p>	<p>Cognizable and Non-Bailable</p>
<p>376-A</p>	<p>Person committing an offence of rape and inflicting injury which causes death or causes the woman to be in a persistent vegetative state.</p>	<p>Rigorous imprisonment not less than 20 years but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life and</p>	<p>Cognizable and Non-Bailable</p>

## NATIONAL COMMISSION FOR WOMEN

		with fine.	
376-B	Sexual intercourse by husband with his wife during separation.	Imprisonment for not less than 2 years but which may extend to 7 years and with fine.	Cognizable (but only on the complaint of the victim) and Bailable
376-C	Sexual intercourse by a person in authority (Not amounting to rape).	Rigorous Imprisonment for not less than 5 years but which may extend to 10 years with fine.	Cognizable and Non Bailable
376-D	Gang Rape	Rigorous Imprisonment not less than 20 years but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life and with fine to be paid to the victim.	Cognizable and Non Bailable
376-E	Repeat offenders	Imprisonment for life which mean imprisonment for the remainder of that person's natural life or with death.	Cognizable and Non Bailable

## NATIONAL COMMISSION FOR WOMEN

**Trafficking of person (Section 370 IPC is substituted by Sections 370 and 370-A)**

<b>Section</b>	<b>Offence</b>	<b>Punishment</b>	<b>Nature</b>
370	Person convicted of offence of trafficking of minor on more than one occasion	Imprisonment for life which shall mean the remainder of that person's natural life with fine	Cognizable and Non Bailable
	Public servant or a police officer involved in trafficking of minor	Imprisonment for life which shall mean the remainder of that person's natural life with fine	Cognizable and Non Bailable
370-A	Exploitation of trafficked child	Imprisonment not less than 5 years which may extend to 7 years and with fine.	Cognizable and Non Bailable
	Exploitation of trafficked person	Imprisonment for not less than 3 years which may extend to 5 years and with fine.	Cognizable and Non Bailable

राष्ट्रीय महिला आयोग  
NATIONAL COMMISSION FOR WOMEN

## NATIONAL COMMISSION FOR WOMEN

### Other Amendments Carried Out in the Indian Penal Code, 1860:

Section	Offence	Existing provision	Amendment
228-A Sub - Sec(1)	Disclosure of identity of the victim of certain offences, etc:-	An offence under section 376, section 376A, section 376B, section 376C or section 376D is alleged or found to have been committed imprisonment of either description for a term which may extend to two years and shall also be liable to fine.	Section 376 E has also been added in the Section.
354	Assault or criminal force to woman with intent to outrage her modesty	Imprisonment of either description for a term which may extend to two years, or with fine, or with both.	Punished with imprisonment of either description for a term which shall not be less than one year and which may extend to 5 years, and shall also liable to fine.
509	Word, gesture or act intended to insult the modesty of a woman	Simple imprisonment for a term which may extend to one year, or with fine, or with both.	Simple imprisonment for a term which may extend to 3 year, and also with fine

### Specific provisions included in Code of Criminal Procedure, 1973 for Compensation and Treatment of Rape and Acid Attack Victims

**Section-357B:-** The compensation payable by the State Government under section-357A shall be in addition to the payment of fine to the victim under section 326A or section 376D of the Indian Penal Code.

## NATIONAL COMMISSION FOR WOMEN

**Section-357C:-** 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 victims of an offence under sections 326A, 376, 376A, 376B, 376C, 376D or section 376E of the IPC, and shall immediately inform the police of such incident.

### **New sections inserted in the Indian Evidence Act, 1872**

**Section 53A:** In prosecution for an offence under section 354, 354A, 354B, 354C, 354D, 376, 376A, 376B, 376C, 376D, 376E of the IPC, evidence of character of the victim or of such persons previous sexual experiences with any person shall not be relevant.

**Section 114A:** Presumption regarding absence of consent in cases of rape, where the woman tenders evidence before the Court that she did not consent.

**Section 119A :** A witness who is unable to speak, may give his evidence in any other manner in which he can make it intelligible as by writing or signs, and such writing/sign in the open court is deemed to be oral evidence. If the witness is unable to communicate verbally, the court shall take the assistance of interpreter and it should be video-graphed.

**Section 146:** In prosecution for an offence under section 376, 376A, 376B, 376C, 376D, 376E of the IPC where the question of consent is an issue, it shall not be permissible to adduce evidence or put questions in the cross examination of the victim as to the general immoral character or previous sexual experience.

## NATIONAL COMMISSION FOR WOMEN

### **New sections inserted in Protection of Children from Sexual Offences Act, 2012**

Section 42 of the Protection of Children from Sexual Offences Act, 2012, substituted by the following:-

**Section 42:** 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, notwithstanding 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.

**Section 42A:** The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of inconsistency.

\*\*\*\*\*

राष्ट्रीय महिला आयोग

NATIONAL COMMISSION FOR WOMEN

UNIT-5

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

**Objective**

The Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013 had been enacted with the objective of providing women protection against sexual harassment at the workplace and for the prevention and redressal of complaints of sexual harassment. Sexual harassment is considered as a violation of the fundamental rights of a woman to equality as guaranteed under Articles 14 and 15 of the Constitution of India and her right to life and to live it with dignity as per Article 21 of the Constitution. It has also been considered as a violation of a right to practice or to carry out any occupation, trade or business under Article 19(1)(g) of the Constitution, which includes a right to a safe environment free from harassment.

**Whom does this law protect?**

The law seeks to protect any aggrieved woman in relation to a workplace  
i.e.:

- Also include domestic worker, students and volunteers (above 18 years of age)

## NATIONAL COMMISSION FOR WOMEN

- A woman of any age, whether employed or not, who alleges to have been subjected to any act of sexual harassment
- The law also makes a provision for legal heir of such person to file the complaint in situations where the aggrieved employee is unable to make the complaint on account of physical incapacity, mental incapacity or death.

### **What is workplace? (Section 2 (o))**

Workplace includes any of the following:

- Organised sector,
- Unorganized sector, (any enterprise owned by an individual or self-employed workers engaged in production or sale of goods or providing services of any kind),
- Government bodies,
- Private and public sector organisations,
- Non-governmental organisations,
- Organisations carrying out commercial, vocational, educational, entertainment, industrial, or financial activities,
- Hospitals and nursing homes,
- Educational institutes,
- Sports institutions,
- Stadiums used for training individuals, sports or other activities

## NATIONAL COMMISSION FOR WOMEN

- Dwelling place or a house,
- Any place visited by the employee arising out of or during the course of employment.

### **What does Sexual Harassment mean under the Act? (Section 2 (n))**

- Sexual harassment includes any one or more of the following unwelcome acts or behaviour, whether directly or by implication:

- Physical contact and advances,
- Demand or request for sexual favours,
- Making sexually coloured remarks,
- Showing pornography, or
- Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

- In addition, the following circumstances may also amount to sexual harassment (if it occurs or is present in relation to the sexual harassment behaviour):

- Implied or explicit promise of preferential treatment in employment;
- Implied or explicit promise or threat of detrimental treatment in employment;
- Implied or explicit promise or threat about present or future employment;

## NATIONAL COMMISSION FOR WOMEN

- Interference with work or creating an intimidating or offensive or hostile work environment;
- Humiliating treatment likely to affect the lady employee's health or safety

### **Who is an Employee? (Section 2 (f))**

The definition covers regular, temporary, ad-hoc employees, individuals engaged on daily wage basis, employed either directly or through an agent, contract labourers, co-workers, probationers, trainees, and apprentices, with or without the knowledge of the principal employer, whether for remuneration or not, working on a voluntary basis or otherwise, whether the terms of employment are express or implied.

### **Complaints Committee**

- An important feature of the Act is that it envisages the setting up of grievance redressal forums for both organized and unorganized sectors.

These are:

#### **A. Internal Complaints Committee (Section 4)**

The Prevention of Workplace Sexual Harassment Act, 2013 requires an employer to set up an 'internal complaints committee' ("ICC") at each office or branch, of an organization employing 10 or more employees, to hear and redress grievances pertaining to sexual harassment.

## NATIONAL COMMISSION FOR WOMEN

### B. Composition of the ICC (Section 4(2))

Presiding Officer	Woman employed at a senior level at the workplace from amongst the employees
Members	Not less than 2 members from amongst employees, preferably committed to the cause of women or who have had experience in social work or have legal knowledge.
External member	From an NGO or association committed to the cause of women or person familiar with issues relating to sexual harassment.

#### Other requirements:

- Not less than half of the ICC Members shall be women
- The term of the ICC Members shall not exceed 3 years
- A minimum of 3 Members of the ICC including the Presiding Officer are to be present for conducting the inquiry.

# NATIONAL COMMISSION FOR WOMEN

## **Notification of District Officer (Section 5)**

In each district, the Government has to notify the District Magistrate or Additional District Magistrate, Collector or Deputy Collector as District Officer to exercise powers or discharge functions under this Act.

## **Local Complaints Committee (Sec.6)**

- At the District level, the Government is required to set up a 'local Complaints Committee' ("LCC") to investigate and redress complaints of sexual harassment from the unorganized sector or from establishments where the ICC has not been constituted due to the establishment having less than 10 employees or if the complaint is against the employer.

## **Complaint Mechanism**

- An aggrieved woman can file a complaint under Section 9 of the Act. 6 copies of the written complaint along with supporting documents and names and addresses of witnesses are required to be given to the ICC or LCC. Complaint has to be filed within 3 months from the date of the incident and, in case of a series of incidents, within a period of 3 months from the date of the last incident. The ICC/ LCC can extend the timeline for filing the complaint, for reasons to be recorded in writing, by a period of 3 months.

# NATIONAL COMMISSION FOR WOMEN

## Interim Reliefs

- The ICC/LCC, at the request of the complainant, can recommend to the employer interim measures such as:

- i. transfer of the aggrieved woman or the respondent to any other workplace.

- ii. granting leave to the aggrieved woman up to a period of 3 months in addition to her regular statutory/ contractual leave entitlement.

## False or malicious complaints (Section 14)

- To ensure that the protections envisaged under the law are not misused, provisions for action against “false or malicious” complainants have been included in the Act.

- The Act prohibits publication of the contents of the complaint, the identity and addresses of the complainant, respondent and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the ICC/LCC and the action taken.

- The statute allows dissemination of information pertaining to justice that has been secured to any victim of sexual harassment, without disclosing the name, address, identity or any other particulars which could result in identification of the complainant or the witnesses.

- The Act has a provision for conciliation (Section 10). The ICC/LCC can take steps to settle the matter between the aggrieved woman and the

## NATIONAL COMMISSION FOR WOMEN

respondent; however this option will be used only at the request of the woman. It also provides that monetary settlement shall not be made a basis of conciliation.

### **Duties of Employer (Section19)**

The Act assigns certain duties to an employer under the Act:

- Provide a safe working environment at the workplace which shall include safety from the person against whom complaint has been made coming into contact with the complainant at the workplace;
- Display at any conspicuous place in the workplace, the penal consequences of sexual harassment and the order constituting the Internal Complaint Committee;
- Organise workshops and awareness programmes at regular intervals for sensitizing the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee;
- Provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with complaints and conducting an inquiry;
- Assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;

## NATIONAL COMMISSION FOR WOMEN

- Make available such information to the Internal Committee or the Local Committee, as it may require having regard to the complaint made;
- Provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code(45 of 1860) or any other law for the time being in force;
- Cause to initiate action, under the Indian Penal Code(45 of 1860) or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place;
- Treat sexual harassment as a misconduct under the service rules and initiate action in cases of misconduct;
- Monitor timely submission of reports by the Internal Committee.

### **Timelines**

- Written complaints (6 copies) along with supporting documents and names and addresses of witnesses have to be filed within 3 months of the date of the incident. Timeline is extendable by another 3 months.
- Upon receipt of the complaint, 1 copy of the complaint is to be sent to the respondent within 7 days.
- Upon receipt of the copy of complaint, the respondent is required to reply to the complaint along with a list of supporting documents, and names and addresses of witnesses within 10 working days.

## NATIONAL COMMISSION FOR WOMEN

- The Inquiry has to be completed within a total of 90 days from the date of receipt of the complaint.
- The Inquiry report has to be issued within 10 days from the date of completion of inquiry.
- The report of the ICC is to be deemed as an 'Inquiry Report' in a disciplinary case.
- The employer is required to act on the recommendations of the ICC/LCC within 60 days of receipt of the Inquiry report.
- Appeal against the decision of the committee has to be made within 90 days from the date of the recommendation.

\*\*\*\*\*

राष्ट्रीय महिला आयोग

NATIONAL COMMISSION FOR WOMEN

**UNIT-6**

**The Protection of Women from Domestic Violence Act, 2005**

**Background of the law**

• Women are often subjected to violence within their household. These acts of violence are perpetuated by people close to them. These can include father, son, brother, husband and his relatives. Also, many a times, older women are often treated badly by their son or daughter-in-law. Women, when subjected to cruelty by husband or his relatives, have a remedy under Section 498A of the Indian Penal Code. However, there was no civil remedy available to women, hence this Act was enacted.

**Objective of the Act**

• This law safeguards the rights of aggrieved women against any form of domestic violence and provides legal remedies if their right is violated.

• The Act seeks to protect rights of women who are victims of violence of any kind within the family i.e. in a domestic relationship viz: a relationship between two persons who live or have, at any point of time, lived together in a shared household when they are related by consanguinity, marriage or through a relationship in the nature of

## NATIONAL COMMISSION FOR WOMEN

marriage, adoption or are family members living together as a joint family. These will include:

- Wife
- Sister
- Mother
- Mother-in-Law
- Woman in Relationship in the nature of marriage including ex-wife
- Daughter
- Women living as members of Joint Family
- Children/adopted Children

### **Domestic Violence (Section 3)**

- a) Any Act or omission or conduct which causes harm or injures health, safety, life, limb which includes causing physical abuse, sexual abuse, verbal, emotional abuse and economic abuse to the aggrieved woman.
- b) Any harassment, harm or injury with a view to coercing to meet any other unlawful demand for dowry or any other valuable property or valuable security.
- c) Threats to cause injury or harm to women or any other person related to her.
- d) injures or causes harm, mental or physical to the aggrieved person.

## NATIONAL COMMISSION FOR WOMEN

### Forms of abuse considered as domestic violence:

**1. Physical abuse-** any act that causes bodily pain, injury or hurt or danger to life, limb or health or impair the health or, development of aggrieved person.

These include:

- Assault
- Beating
- Slapping
- Hitting
- Biting
- Punching
- Kicking
- Pushing
- Shoving
- Hair pulling
- Any other Physical force which results in pain, discomfort or injury.

**2. Sexual abuse-** *any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of women.* These include:

- Forced sexual intercourse
- Being compelled to watch or participate in pornography/other obscene material
- Unwelcome sexual conduct such as demand for oral sex

## NATIONAL COMMISSION FOR WOMEN

- Any other conduct of sexual nature which violates the dignity of women

**3. Verbal and Emotional abuse-** insults, ridicule and humiliation, name calling especially with regard to not having a child or a male child. These include:

- Comment about not bringing dowry
- Preventing woman from leaving the home or meeting others
- Forcing a woman to marry against her will, Interfering with a woman's plan to marry a person of her choice threatening to commit suicide
- Forcing the woman to leave her job
- Name-calling
- Character assassination
- Demeaning a woman for not giving birth to a male child
- Threatening to desert / harm the woman
- Ridicule
- Insults regarding child bearing
- Taunts about appearance / cooking skills
- Any other act by using language, whether spoken or written, to cause harm to an aggrieved woman or to make a woman feel stupid or worthless

**4. Economic abuse-** deprivation of any financial or economic resources to which the aggrieved person is entitled or deprivation of basic necessities of life and entitlements.

- Refusing to give money for maintenance of the woman and/or children
- Not providing or forbidding the use of food/ clothes / medicines/ other necessities to woman and / or children
- Interfering with woman's employment

## NATIONAL COMMISSION FOR WOMEN

- Taking the woman's income / salary / wages / assets
- Prohibiting woman from using her money the way she wishes
- Expelling her from the household
- Interfering with woman's use of any part of the home
- Failing to pay rent if living in rented premises
- Disposing of assets in which she has an interest, against her wishes
- Any other act which controls a woman's financial resources without her consent or misuses those resources

### Process of Complaint [Section 4, 5 ]

Complainant	Complain to
Aggrieved Woman, or any other person on behalf of aggrieved person	Magistrate, Protection Officer, service providers, police

### Reliefs Provided:

18. **Protection Orders [Section 18]** - The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being *prima facie* satisfied that the domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from-

Breach of protection order punishable with imprisonment of one year or fine of Rs.20,000 or both [ Section 31 ].

## NATIONAL COMMISSION FOR WOMEN

- a) committing any act of domestic violence;
- b) aiding or abetting in the commission of acts of domestic violence;
- c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;
- d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;
- e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her *stridhan* or any other property held either jointly by the parties or separately by them;
- f) causing violence to the dependants, other relatives or any person providing assistance to prevent from domestic violence;
- g) committing any other act as specified in the protection order.

**Residence orders - [ Section 19 ]** While disposing of any application, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order-

## NATIONAL COMMISSION FOR WOMEN

a) restraining the respondent from dispossessing, or in any other manner, disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household.

b) directing the respondent to remove himself from the shared household;

c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

d) restraining the respondent from alienating or disposing of the shared household or encumbering the same;

e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

f) directing the respondent to secure same level of alternative accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require.

- No such order can be passed against any person who is a woman.
- The Magistrate can impose any additional conditions or pass any other direction deemed reasonable to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person or ask the respondent to execute a bond, with or without sureties, for preventing occurrence of domestic violence.

## NATIONAL COMMISSION FOR WOMEN

- The court can also pass an order directing the officer-in-charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

- The Magistrate can also impose on the respondent obligations relating to the discharge of rent and other payment having regard to the financial needs and resources of parties and return *stridhan* or any other property or valuable security to the aggrieved person.

**Monetary reliefs [Section 20 ]** - The Magistrate can direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of domestic violence and such relief may include:

- a) the loss of earnings;
- b) the medical expenses;
- c) the loss caused due to destruction, damage or removal of any property from the control of the aggrieved person; and
- d) maintenance for the aggrieved person and her children, if any,

- The monetary relief granted under this section has to be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed. The payment could be a lump sum or monthly payment for maintenance.

- Upon the failure on the part of the respondent to make payment in terms of the order, the Magistrate may direct the employer or a debtor of

## NATIONAL COMMISSION FOR WOMEN

the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

### **Custody Orders [ Section 21 ] -**

- The Magistrate can, at any stage of hearing of the application for protection order or for any other relief under the Act, grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent.
- If the Magistrate is of the opinion that any visit of the respondent may be harmful to the interests of the child or children, the Magistrate shall refuse to allow such visit.

### **Compensation Orders [ Section 22 ] –**

- In addition to other reliefs as may be granted under this Act, the Magistrate may, on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent.

**Authorities before whom the complaint can be made are as follows:**

## NATIONAL COMMISSION FOR WOMEN

- **Police:** Police has an important role to play in implementation of the Act. They are duty bound to provide information to the aggrieved person about the rights and remedies provided under the Act including obtaining different orders mentioned earlier, and facilitate access to Protection Officer and service providers.

- **Protection Officers:** They are nodal officers appointed to oversee implementation of the Act. They are duty bound to assist Courts in the discharge of their functions, facilitate shelter, medical and legal aid to the aggrieved person and support in obtaining appropriate relief from the court.

When a Protection Officer fails or refuses to provide his services, he is punishable upto one year or fine of Rs.2000/- or both.

- **Service Providers:** These are voluntary/non-profit organizations registered under the Societies Registration Act, Companies Act, or other law, whose objective is to protect the rights and interests of women and who are notified under this Act to provide legal aid, medical and financial assistance, shelter, counseling, vocational training, etc. to the women affected by domestic violence.

- **Courts:** In accordance with the objectives of ensuring easy access to emergency relief, the Act allows an aggrieved person to directly approach the court with complaints of domestic violence. The

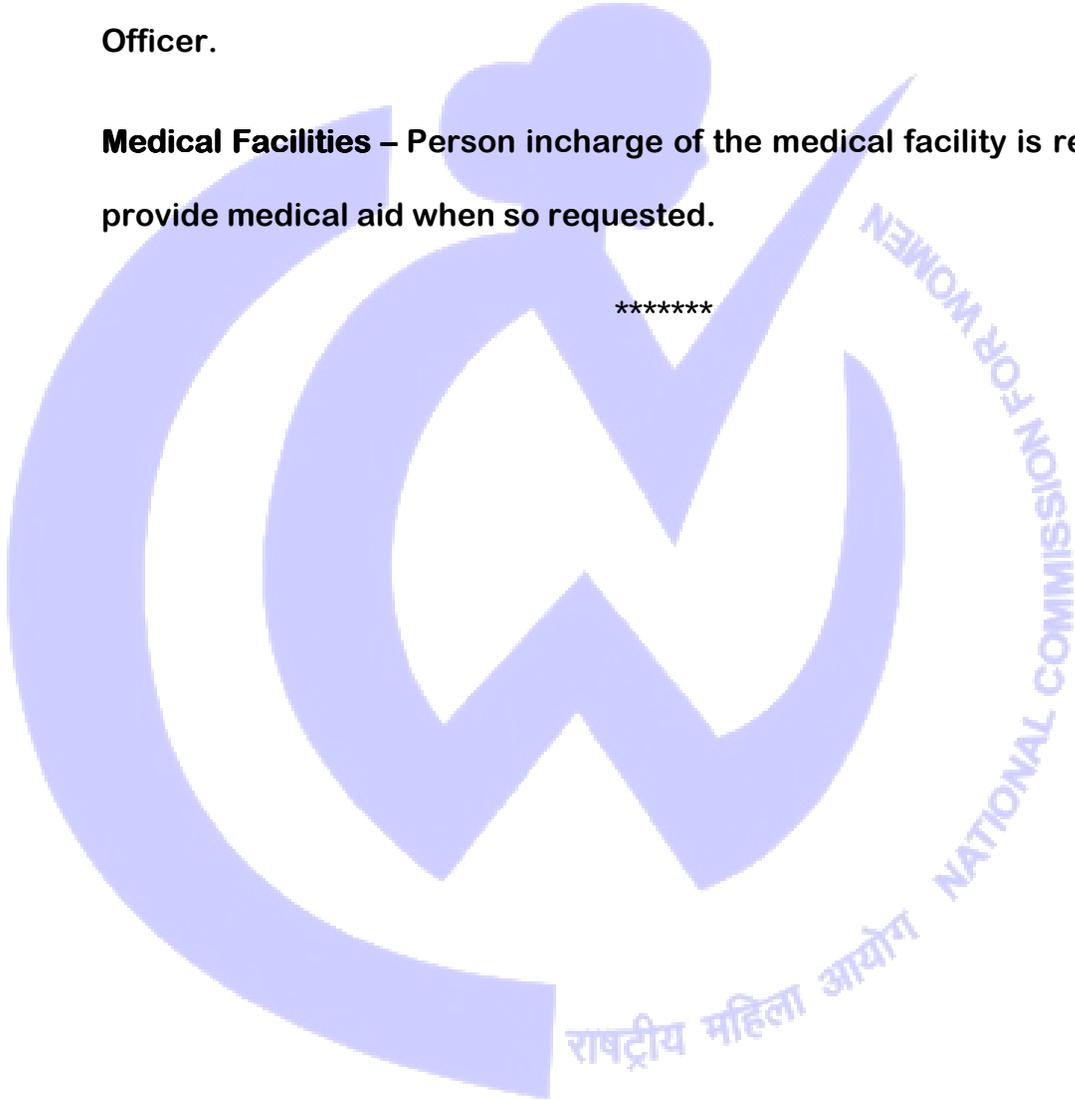
## NATIONAL COMMISSION FOR WOMEN

appropriate court to approach is the Judicial Magistrate, First Class or Metropolitan Magistrate, as applicable.

**Shelter Homes** - These are required to provide shelter to the aggrieved person when so requested by the aggrieved person or by the Protection Officer.

**Medical Facilities** – Person incharge of the medical facility is required to provide medical aid when so requested.

\*\*\*\*\*



UNIT-7

**THE INDECENT REPRESENTATION OF WOMEN (PROHIBITION) ACT,  
1986**

**Introduction**

• The Indecent Representation of Women (Prohibition) Act, 1986 was enacted to prohibit indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner. The Act, in its present form, covers primarily the print media. Since enactment of this Act, the technological revolution has led to development of new forms of communication, such as internet and satellite based communication; multi-media message cable television, social media, etc.

**Indecent representation**

• Indecent representation of women means deprivation in any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent or derogatory to or denigrating, woman or is likely to deprave, corrupt or injure the public morality or morals.

## NATIONAL COMMISSION FOR WOMEN

### Prohibition under this Act

- Section 3 of the Act prohibits publishing or exhibition of any advertisement that contains indecent representation of women in any form.
- Section 4 of the Act prohibits production selling, letting to hire, distribution, circulation or sending by post of any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure which contains indecent representation of women in any form.
- Categories of publications/advertisements, etc. exempted under Section 4 include:
  - i) such books/publications, etc., as are proved to be justified in the interest of science, literature, art or learning or is kept or used bonafide for religious persons.
  - ii) Any representation (sculpture, engravings, paintings, etc. ) in any ancient monument or any temple or vehicle used for conveyance of idols.
  - iii) Any film covered by part of Cinematograph Act, 1952.

### Powers to enter and search

Section 5 of the Act provides that officer authorized by the State Government may enter or search at any place in which he has reason to believe that an offence under this Act has been or is being committed. He can seize any advertisement or book, drawing, painting, writing, etc. which contravenes the provisions of the Act. The above power is subject

## NATIONAL COMMISSION FOR WOMEN

to the condition that entry into a private dwelling house is not permitted without a warrant and if any person seizes anything under clause (b) or clause (c) of subsection (1), he shall, as soon as may be, inform the nearest Magistrate and take his orders as to the custody thereof.

### **Nature of offences**

Under Section 8 of the Act, all offences are cognizable and bailable.

### **Penal provision**

Contravention of the provisions of Section 3 or Section 4 is punishable with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees on first conviction. In the event of a second or subsequent conviction, imprisonment for a term of not less than six months but which may extend to five years and also with a fine not less than ten thousand rupees but which may extend to one lakh rupees has been prescribed.

### **Offences by companies**

- Where an offence under this Act has been committed by a company, every person who at the time of offence was committed (i) was in charge of the Company; (ii) or was responsible to the company for the conduct of business of the company will be deemed to be guilty of the offence.

\*\*\*\*\*

UNIT-8

The Immoral Traffic (Prevention) Act, 1956

**Background**

- The Immoral Traffic Prevention Act, 1956 was enacted in conformity with the United Nations Convention for Suppression of Immoral Trafficking in Persons and the Exploitation of the prostitution of others for the purpose of prevention of immoral traffic. The background for this was also that separate legislations enacted by different States lacked uniformity.

**Protection under the Act**

- Persons including men, women and children, who have been trafficked or are vulnerable to trafficking, are protected under this law.

**Offences and punishments**

**Section-3**

<b>Offence/Crime</b>	<b>Punishment</b>
A person who keeps or manages a brothel or allows or assists premises to be used as a brothel	First conviction: rigorous imprisonment for not less than one year and not more than 3 years and fine upto Rs.2000/-.  Second or subsequent conviction  Not less than 2 years and not more than 5 years and fine.
(i)A tenant, lessee, occupier or	First conviction: imprisonment upto 2 years with fine upto

## NATIONAL COMMISSION FOR WOMEN

<p>person in charge of any premises, who uses, or knowingly allows any other person to use such premises or any part thereof as a brothel.</p> <p>(ii)The owner, lessor or landlord of any premises or the agent of such owner, leaser or landlord, lets out the same or any part thereof with the knowledge that the same or any part thereof is intended to be used as a brothel, or is willfully, a party to the use of such premises or any part thereof as a brothel.</p>	<p>Rs.2000/-</p> <p>Second conviction: rigorous imprisonment upto 5 years and fine.</p>
--	---

### **Section-4:**

<p>Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of any other person.</p>	<p>Imprisonment upto 2 years or fine upto Rs.1000/- or both</p> <p>In case of victim being a child or minor, imprisonment for not less than 7 years and not more than 10 years.</p>
---	---

# NATIONAL COMMISSION FOR WOMEN

## **Section 5**

<p>Procuring or attempting to procure or inducing or taking person for prostitution or attempt to take a person or cause a person to be taken from one place to another causing or inducing a person to carry on prostitution.</p>	<p>Rigorous imprisonment for not less than three years and not more than seven years and fine</p> <p>In case of children, the rigorous imprisonment is for not less than seven years and can extend to life imprisonment.</p> <p>In case of minor, imprisonment is for not less than 7 years and not more than 14 years.</p>
--	--

## **Section 6:**

<p>Detaining a person with or without consent, —(a) in any brothel, or (b) in or upon any premises with intent that such person may have sexual intercourse with a person who is not the spouse of such person</p>	<p>Imprisonment of not less than 7 years which can extend upto 10 years or life and also fine.</p>
<p>Note: Where any person is found with a child in a brothel, it shall be presumed that unless the contrary is proved, he has committed an offence of detaining the child.</p>	

## **Section 7:**

<p>Carrying out prostitution in public places notified by State</p>	<p>Imprisonment upto three months.</p>
---	--

## NATIONAL COMMISSION FOR WOMEN

Governments or within 200 meters of any place of religious worship, educational institutions, hostel, hospital, or other public place.	
If the above offence is in respect of child or minor,	Not less than seven years – but may be extended to life or for ten years.
<p>A person who is a keeper of a public place, and permits prostitutes to carry on their trade.</p> <p style="text-align: center;">Or</p> <p>A tenant/lessee/occupier of such premises.</p> <p style="text-align: center;">Or</p> <p>Owner/lesser/landlord</p>	<p>First conviction upto three months or fine.</p> <p>Second or subsequent conviction imprisonment upto six months.</p>

### **Section 8**

Seducing or soliciting for the purpose of prostitution by words, gestures, etc.	<p>First conviction – Imprisonment upto 6 months or fine.</p> <p>Second or subsequent offence upto one year and fine.</p>
---	---

# NATIONAL COMMISSION FOR WOMEN

## **Section 9**

Seduction of a person in custody	Imprisonment for not less than seven years but may extend to life or ten years.
----------------------------------	---

## **Section 14**

All offences under this Act are cognizable; however, arrest without warrant can only be made by a Special Police Officer not below the rank of Police Inspector.

Note: Provisions of Section 370 and 370A of the IPC also cover offences of Trafficking of persons and exploitation of trafficked persons and those may be referred to.

Section	Heading	Magistrate competent to exercise the powers
<b>7 (1)</b>	Prostitution in or in the vicinity of public places	District Magistrate
<b>11(4)</b>	Production of a repeat offender:	Metropolitan Magistrate or a Judicial Magistrate of first class
<b>15(5)</b>	Search without Warrant: Production before Magistrate	Metropolitan Magistrate or a Judicial Magistrate of first class or District Magistrate or Sub-Divisional Magistrate
<b>16</b>	Rescue of Person	Metropolitan Magistrate or a Judicial

## NATIONAL COMMISSION FOR WOMEN

		Magistrate of first class or District Magistrate or Sub-Divisional Magistrate
<b>18</b>	Closure of brothel and eviction of offenders from the premises	District Magistrate or Sub-Divisional Magistrate
<b>19</b>	Application for being kept in a protective home or provided care and protection by court	Metropolitan Magistrate or a Judicial Magistrate of first class or District Magistrate or Sub-Divisional Magistrate
<b>20</b>	Removal of Prostitute from any Place	District Magistrate or Sub-Divisional Magistrate or any Executive Magistrate specially empowered by the State Government.
<b>22B</b>	Power of Court to try cases summarily	Metropolitan Magistrate or a Judicial Magistrate of first class

\*\*\*\*\*

राष्ट्रीय महिला आयोग

NATIONAL COMMISSION FOR WOMEN

Unit-9

**The Maternity Benefit Act, 1961 as amended by The Maternity Benefit (Amendment) Act, 2017**

**Background of this law:**

With the increased participation of women in various activities in the economy, the instances of discrimination based on biological factors have been on the rise. The Maternity Benefit Act had been enacted to curb such discrimination and promote economic and reproductive rights of women, ensure maternity benefits for protecting and safeguarding their health and to enable them to give quality time to children without having to worry about job security and loss of income.

**Objective of the Act:**

The Act seeks to regulate:

- To regulate the employment of women in certain establishments for certain period before and after child-birth and to provide for maternity and other benefits;
- to protect the dignity of “Motherhood” by providing complete health care to woman and her child when she is not able to perform her duty on account of health conditions.

## NATIONAL COMMISSION FOR WOMEN

### **Maternity Benefit**

Maternity Benefit is a payment (maternity allowance) paid by an employer to a pregnant woman employee at the rate of the average daily wage for the period of her actual absence during pregnancy, i.e. the period immediately preceding the day of delivery.

### **Section 4:- Prohibition of Employment of Women during Certain Periods**

- No employer can knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery or miscarriage or medical termination of pregnancy.
- No woman can work in any establishment during the six weeks immediately following the day of her delivery or miscarriage or medical termination of pregnancy.
- No pregnant woman will, after a request made by her, be required by her employer to do any work which is of an arduous nature or which involves long hours of standing or which in any way could interfere with her pregnancy or the normal development of the foetus, or is likely to cause miscarriage or otherwise adversely affect her health during the period of one month immediately preceding the period of six weeks, before the date of her expected delivery.

### **Right to payment of maternity benefit [Section 5]:-**

## NATIONAL COMMISSION FOR WOMEN

- Every woman is entitled to, and her employer is liable for payment of maternity benefit which is the amount payable to her at the rate of the average daily wage for the period of her actual absence. The maximum period for which any woman is entitled to maternity benefit for first two children is twenty six weeks of which not more than eight weeks can precede the date of her expected delivery.
- A woman having two or more children is entitled to the maternity benefit of twelve weeks out of which not more than six weeks can precede the date of her expected delivery.
- A woman who legally adopts a child below the age of three months or a commissioning mother is also entitled to maternity benefit for a period of twelve weeks from the date, the child is handed over to the adopting mother or the commissioning mother, as the case may be.
- For getting the maternity benefit, the women employee should have worked for a minimum of 80 days in the establishment of employer during 12 months preceding delivery.
- In case of death, maternity benefit is payable upto the day of death; however when the child delivered is alive, the employer is liable for providing maternity benefit for the entire period.
- A woman entitled to maternity benefit is also entitled to leave with wages for six weeks in case of miscarriage or medical termination of pregnancy.
- The maternity benefit, in case of tubectomy, is two weeks.

## NATIONAL COMMISSION FOR WOMEN

- A woman is also entitled to one months' maternity benefit in case of illness related to pregnancy over and above other entitlements.
- In case, where the nature of work assigned to a woman is of such that she may work from home, the employer may allow her to do so after availing of the maternity benefit for such period and on such conditions as the employer and the woman may mutually agree.
- Every establishment having 50 or more employees is required to have a crèche facility. Four visits a day to the crèche by the woman are allowed. It also includes the interval for rest allowed to her. She is allowed two nursing breaks of fifteen minutes each in the course of her daily work till her child is fifteen months old.

### **Section 12:- Prohibition of dismissal during absence due to Pregnancy:**

No woman who absents herself from work in accordance with the provisions of this Act, can be dismissed from service.

### **Punishment for the contravention of the provisions of the Act**

- If an employer fails to pay or dismisses a woman during her maternity leave in contravention to this Act, he is liable to imprisonment for not less than 3 months which may extend to 1 year and fine of not less than Rs.2000, which may extent to Rs.5000.

## NATIONAL COMMISSION FOR WOMEN

- If any employer contravenes the provisions of this Act or rules there end, he is liable to imprisonment upto 1 year or fine which may extend to Rs.5000 or both.

### Whom to complain / where to complain

- **Section 17:-** For any grievance under the Act, the aggrieved woman may approach the Inspector appointed under the Act.
- **Section 23:-** Where a complainant is dissatisfied with the orders passed by the Inspector or where the larger question of law is involved, she may approach the Metropolitan Magistrate or a First Class Judicial Magistrate of competent jurisdiction.
- Any office bearer of a registered Trade Union of which such a woman is a member or voluntary organization registered under the Societies Registration Act, 1860 or any Inspector may also file a case in a court of law on behalf of the aggrieved woman.
- No prosecution after expiry of one year from the date on which the offence is alleged to have been committed shall be instituted except by, or with the previous sanction of the Inspector.

### Under Section 28:- Enforcement Machinery

- The Central Industrial Relations Machinery (CIRM) in the Ministry of Labour is responsible for enforcing this Act. CIRM is an Attached office

## NATIONAL COMMISSION FOR WOMEN

of the Ministry and is also known as the Office of the Chief Labour Commissioner (Central) Organization.

\*\*\*\*\*

