

UNIT – IV: LAW OF CRIMES

Offences against women and children

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INTRODUCTION

In the ancient Indian women held a high place of respect in the society as mentioned in *Rigveda* and other scriptures. Volumes can be written about the status of our women and their heroic deeds from the *Vedic* period to the modern times. But later on, because of social, political and economic changes, women lost their status and were relegated to the background. Many evil customs and traditions stepped in which enslaved the women and tied them to the boundaries of the house.

The official statistics showed a declining sex-ratio, health status, literacy rate, work participation rate and political participation among women. While on the other hand the spread of social evils like dowry deaths, child marriage, domestic violence, rape, sexual harassment, exploitation of women workers are rampant in different parts of India. Humiliation, rape, kidnapping, molestation, dowry death, torture, wife-beating etc. have grown up over the years.

MEANING OF CRIME / VIOLENCE AGAINST WOMEN

“The Semantic meaning of „crime against women“ is direct or indirect physical or mental cruelty to women. Crimes which are „directed specifically against women“ and in which „only women are victims“ are characterized as „Crime against Women“

It is equally important to clarify the concept of ‘Violence against women’. Violence is also known as abuse and include any sort of physical aggression or misbehave. When violence is committed at home it becomes domestic violence and involves family members such as children, spouse, parents or servants. Domestic violence may involve different means such as hitting, kicking, biting, shoving, and restraining, throwing objects. In broad terms, it includes threats, sexual abuse, emotional abuse, controlling or domineering, intimidation, stalking, passive/covert abuse and economic deprivation, rape, abduction, kidnapping, murder (all cases of criminal violence, dowry death, wife battering, sexual abuse, maltreatment of a widow and for an elderly women (all cases of domestic violence) and eve-teasing, forcing wife/daughter-in-law to go for foeticide, forcing a young widow to commit sati, etc (all cases of social violence), are issues which affect a large section of society.

Rape

As held in *The Chairman, Railway Board and Ors v. Mrs. Chandrima Das and Ors* AIR 2000 SC 988: 2000. "Rape is a crime not only against the person of a woman it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. Rape is therefore the most hated crime. It is a crime against basic human rights and is violative of the victim's most cherished right, namely, right to life which includes right to live with human dignity contained in Article 21."

Rape is a type of sexual assault usually involving sexual intercourse, which is initiated by one or more persons against another person without that person's consent. The act may be carried out by physical force, coercion, abuse of authority or against a person who is incapable of valid consent, such as one who is unconscious, incapacitated, or below the legal age of consent.

Custodial Rape

Custodial rape is a form of rape which takes place while the victim is "in custody" and constrained from leaving, and the rapist or rapists are an agent of the power that is keeping the victim in custody. When it happens in prison, it is known as prison rape. While some definitions of custodial rape define it as taking place in a state-owned institution, and perpetrated by a state agent, the term more generally refers to any situation where the power of a state agent is used to enable rape; thus, when prisoner-on prisoner rape happens as a result of neglect by the prison authorities, it may be considered custodial rape.

Tuka Ram And Anr vs State Of Maharashtra 1979 AIR 185 Supreme Court again converted the decision of the High Court and acquitted the accused. It was agreed with the decision of the Session Judge and held that this was a case of consensual sexual intercourse. On this spot the Supreme Court more added that as "no marks of injury" were found on Mathura's body there was "no battle" on her part and since she did not "raise an alarm" for help she "consented to sex".

Gang rape

Gang rape occurs when a group of people participate in the rape of a single victim. Rape involving at least two or more violators is widely reported to occur in many parts of the world.

Mukesh & Anr vs State For Nct Of Delhi & Ors (Nirbhaya case), The Supreme Court administered justice to the family of the victim and all the women in the country by confirming the punishment of death sentence to the four convicts in the Nirbhaya gangrape and murder case, terming it as the 'rarest of rare', most brutal and barbaric attack on the 23-year-old paramedic student, Jyoti Singh. The convicts treated the victim as an object of enjoyment and exploited her sexually to the worst level.

A three-judge bench, through a unanimous verdict, upheld the Delhi High Court judgement that had concurred with the trial court decision of the case. Mukesh (29), Pawan (22), Vinay Sharma (23) and Akshay Kumar Singh (31) were hanged till death for the brutality they had shown against a woman of the country. The bench awarded them the death sentence because their crime met 'rarest-of-rare' threshold. After the incident, the fifth accused was not tried and he was sent to a correction home for three years because he was a minor at that time.

Marital Rape

Marital Rape refers to unwanted intercourse by a man with his wife obtained by force, threat of force, or physical violence, or when she is unable to give consent. Marital rape could be by the use of force only, a battering rape or a sadistic/obsessive rape. It is a nonconsensual act of violent perversion by a husband against the wife where she is physically and sexually abused.

Marital rape occurs when one spouse forces other to take part in certain sex acts without other's consent. It is a form of intimate partner violence, i.e., an abuse of power by which one spouse attempts to establish dominance and control over the other. Research shows that it can be equally, if not more, emotionally and physically traumatizing than rape by a stranger.

Independent Thought v. Union of India and Another (2017) 10 SCC 800, the court held that, The Exception 2 of IPC creates an artificial distinction between a married girl child and an unmarried girl child without any reasonable nexus. The artificial distinction is contrary to both Article 15(3) and Article 21 of the Constitution. No other provision in penal laws gives any immunity to the husband. It also violates the bodily integrity and reproductive choice of the girl child and has no measures for trafficking of a girl child. Therefore, it is being arbitrary and discriminatory hindering the best interest of the girl child. The court further added that The Exception 2 should be read down as follows to make it consistent with the constitution: "Sexual Intercourse or Sexual acts by a man with his own wife, the wife not being 18 years, is not rape."

In *State of Punjab v. Gurmit Singh (1996) 2 SCC 384*, the Supreme Court has advised the lower judiciary, that even if the victim girl is shown to be habituated to sex, the Court should not describe her to be of loose character.

The Supreme Court has in the case of *State of Maharashtra v. Madhukar N. Mardikar (1991) 1 SCC 57*, held that, "the unchastity of a woman does not make her open to any and every person to violate her person as and when he wishes. She is entitled to protect her person if there is an attempt to violate her person against her wish. She is equally entitled to the protection of law. Therefore merely because she is of easy virtue, her evidence cannot be thrown overboard."

Girl and Women Trafficking in India

Trafficking is defined as a trade in something that should not be traded in for various social, economic or political reasons. Trafficking both for commercial sexual exploitation and for non-sex based exploitation is a transnational and complex challenge as it is an organized criminal activity, an extreme form of human rights violation and an issue of economic empowerment and social justice. The trafficking of women and children causes untold miseries as it violates the rights and dignity of the individual in several ways. It violates the individual's rights to life, dignity, security, privacy, health, education and redressal of grievances. Here is a roundup of the causes:

- Abject poverty, especially among women

- A lack of political, social and economic stability
- A lack of reasonable and realistic prospects
- Situations of armed conflict and oppression
- Domestic violence and disintegration of the family structure
- Gender discrimination
- Lack of access to education and information
- The expense of social charges that employers need to pay for the social protection of regularly employed workers
- Increasing demand for cheap and exploitable laborers in the construction, etc.

Dowry Death and its Attempt

‘Dowry deaths’ comprise a unique category of deaths in India. The custom of payment of dowry by the bride’s family to the prospective bridegroom’s family is ancient and widely prevalent. One of the many explanations for it is that it is a form of compensation to the groom’s family for sheltering the woman for life.

When demands for cash, jewellery or goods remain unfulfilled in arranged marriages, or when the dowry is deemed unsatisfactory, the resulting tensions may lead to the husband or his extended family harassing the woman, sometimes to the extent of killing her or creating such intolerable conditions that she decides to take her own life. Such deaths are termed ‘dowry deaths’ in the Indian Penal Code (defined in section 304B). A conundrum for classification purposes is that both homicides and suicides can constitute ‘dowry deaths’.

The appropriate criminal justice response to the death of a woman from burns follows India’s Code of Criminal Procedure (CrPC), 1973. Section 174 outlines the response to suicide, homicide, accident, or death under suspicious circumstances, and is applied particularly to women within seven years of marriage. The police are to report the incident to a magistrate (who follows section 176 and is empowered to hold an inquest), and, with at least two people from the neighborhood in attendance, to report on the appearance of the body and the apparent cause of death.

The Indian Penal Code (IPC) was amended specifically to deal with dowry-related violence, cruelty and dowry deaths in 1983. Section 498A IPC penalizes harassment (or any kind) of a

woman by her marital family. Unnatural death of a woman within seven years of marriage attracts penal provisions of section 304B IPC. This section defines dowry death as the unnatural death of a woman following harassment or cruelty by her husband or his relatives in connection with a demand for dowry. In cases where a woman commits suicide, as a result of harassment (not related to dowry) from her husband or his relatives, section 306 IPC addresses abetment of suicide. If it is a dowry-related suicide both sections 304B and 306 are applicable.

The following flow chart shows the detailed procedure in case of dowry death.

Female Infanticide and Feticide

Female Infanticide and Feticide can be defined as gender selective abortions and infanticide. India passed its first abortion-related law in 1971, the so-called Medical Termination of Pregnancy Act, which made abortion legit in almost all states of the country, but it was particularly made for the cases of medical risk to the mother and child conceived by rape. The law had also established physicians who could legally perform the abortion in the said scenarios. But the government had not considered the possibility of female foeticide based on technological advances. Due to this reason, this law proved to be highly ineffective.

During the 1980's, sex screening technologies in India was easily accessible to the common people. Due to this reason, a large number of reports started pouring in about the abuse of the sex screening technologies. Considering this problem, the Government passed the Pre-natal Diagnostic Techniques Act (PNDT) in 1994. This law was again amended due to various reasons, and it finally became Pre-Conception and Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) (PCPNDT) Act in 2004. Its main goal was prevention and punishment of prenatal sex screening and female foeticide.

Assault or criminal force to woman

When a gesture is made to any person, knowing that the person is going to apprehend it as the person is going to use criminal force on that person is known as assault. Mere words do not consist of an assault. But a person may use certain gestures and expressions or preparation, such

gestures, expressions and preparations may amount to assault. Whereas, when a person intentionally uses force on another person without that person's consent, in order to commit an offence and with the prior intention of causing harm to that person in the form of injury, fear or annoyance to whom the force is used, is said to use criminal force on the other person. It comes under Section 350 of the Indian Penal Code.

When someone assaults or uses Criminal force another person based on sudden and grave provocation by another person, he may be sentenced to prison time of a term which may be extended for a term of three months or a fine of up to INR 500, or both. It is defined under Section 352 of the Indian Penal Code.

The Supreme Court in *State of Punjab v. Major Singh*, while dealing with section 354 had interpreted the term 'women' denoting female of any age. It further held that an offence which does not amount to rape may come under the sweep of section 354, IPC.

In this context the decision rendered in the case of *State v. Musa* is worth noticing. The aforesaid offence caught the eye of the nation when a senior police officer misbehaved with another senior officer belonging to the IAS cadre. The lady officer was slapped before the members of the elite society. Their Lordships (Supreme Court) observed that the observations made in the FIR were neither absurd nor inherently improbable. Finally the accused was acquitted.

In *Rupen Deo Bajaj v. Kanwar Pal Singh Gill*, the Supreme Court said that the offence under this section should not be treated lightly as it is quite a grave offence. In certain western countries privacy to person and even privacy to procreation are regarded as very sacrosanct rights and if this offence is studied in that prospect the offence would clearly show that it affects the dignity of women and, therefore, the accused of this offence, when proved, should be appropriately dealt with.

In *People's Union for Democratic Rights v. Police Commissioner, Delhi, Police Headquarter and another*, the supreme court after holding that the accused was guilty of offence under section 354 of IPC, awarded, to the victim, compensation which is to be recovered from the salary of the guilty officers.

Sexual Harassment

A man committing any of the following acts:

- Physical contact and advances involving unwelcome and specific sexual overtures.
- A demand or request for sexual favours.
- Showing porno against the desire of a woman.
- Making sexually coloured remarks shall be guilty of the offence of sexual harassment.

Any man that commits the offence laid out in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be penalised with rigorous imprisonment for a term which can extend to 3 years, or with fine, or with both of these.

Any man that commits the offence laid out in clause (iv) of sub-section (1) shall be penalised with imprisonment of either description for a term which can be one year or with fine, or with both. This comes under Section 354A of the Indian Penal code.

Vishaka vs. State of Rajasthan and Ors., JT 1997 (7) SC 384 (Bhanwari Devi Case), Supreme Court held that the sexual harassment of a woman at a workplace would be violative of her fundamental rights of gender equality and right to life and liberty under Articles 14, 15, 19 and 21 of the Indian Constitution. The court concluded that such Act would be considered as a violation of women's human rights.

Legal changes brought after the case:

- For preventing the acts of sexual harassment in the workplace, it should be the duty of the employer or any other responsible person to prescribe for procedures and settlements.
- Formation of a complaint committee at all workplaces.
- Such committee has to be headed by a woman employee only and should have NGO or third-party participation.
- Half of the members of a committee should be comprised of women only.

- All complaints regarding sexual harassment of a woman employee would be dealt by this committee only, appropriate action in this regard shall be initiated by the employers in accordance with the concerned law.
- The committee would advise and recommend to the victim for the further course of action.
- Provides for the definition of sexual harassment which includes any:

“Unwelcome sexually determined behaviour & demands from males employees at workplace, such as: any physical contacts and advances, sexually colored remarks, showing pornography, passing lewd comments or gestures, sexual demands by any means, any rumors/talk at workplace with sexually colored remarks about a working woman, or spreading rumours about a woman’s sexual relationship with anybody.”

Voyeurism

Any man that watches, or captures the image of a lady participating in an exceedingly personal act in circumstances wherever she would typically have the expectation of not being discovered either by the culprit or by the other person at the dictation of the culprit or disseminates such image shall be penalized on initial conviction with imprisonment of either description for a term that shall not be but one year, however, it may add up to 3 years, and shall even be at risk of a fine, and be penalized on a second or subsequent conviction, with imprisonment of either description for a term which shall not be but 3 years, however, which can add up to seven years, and shall be liable to fine.

Disrobing a Woman (Stripping)

Section 354B penalises the offence of assaulting or using criminal force to a woman or abetting any such act with an intention to disrobe or compel her to be naked, with a punishment of not less than three years which may extend to seven years with a fine. It is a gender specific offence i.e. only a man can be punished under this section.

Ingredients

- The accused must be man.

- Use of criminal force or assault or abetment of any such act must be there.
- There must be an intention to disrobe a woman or compel her to be naked.

Acid Attack

The Criminal Law (Amendment) Act, 2013 incorporated Section 326A and 326B with an intend to make specific provision for punishment in the case of acid attack. Section 326A focuses on voluntarily causing grievous hurt by using acid. In the view of this section, whosoever causes permanent or partial damage or burns, disfigures or disables any part of the body of a person or causes grievous hurt by throwing or administering acid with an intention to cause such injury or hurt will be punished with imprisonment of at least **ten years** which may extend to life imprisonment with fine.

Section 326B has more legislative focus on the act of throwing or attempting to throw acid with the intention of causing grievous hurt. The punishment under this section is imprisonment of not less than **five years** with fine which may extend upto seven years.

Essential Ingredients of Acid Attack

The following are the requisites of an acid attack-

- permanent/partial damage/deformity/burn/figure/disable any part of the body of any person; or
- Grievous hurt by throwing acid; or
- By using any other means;
- There must be an intention to cause injury or hurt.

For the first time compensation was given to acid victim in the case of *Laxmi v UOI*, the Apex Court issued the direction for the regulation of acid to the state and Union territories. The Court

also gave the solution to the problem related with the compensation of acid victims. The Court held that Section 357A provides for the preparation of a scheme for providing funds for the purpose of compensation to the victims of acid attack or his dependents who have suffered loss or injury as a result of crime and who require rehabilitation. The Court also direct that acid attack victims shall be paid compensation of at least Rs 3,00,000 by the concerned State Government or Union territories.

In *Morepally Venkatasree Nagesh v State of AP*, the accused was suspicious about the character of his wife and poured mercuric chloride into her vagina, she later died due to renal failure. The accused was charged and convicted under section 302 and 307 IPC.

In State of Karnataka by *Jalahalli Police Station v Joseph Rodrigues*, one of the most famous cases involving acid attack. The accused threw acid on a girl named Hasina for refusing his job offer. Due to the acid attack, the colour and appearance of her face changed which left her blind. The accused was convicted under Section 307 of IPC and sentenced to imprisonment for life. Compensation of Rs 2,00,000 in addition to Trial Court fine of Rs 3,00,000 was to be paid by the accused to the parents of Hasina. The aforementioned cases are evident of the harsh repercussions faced by the victims due to the acid attacks. The government is still in the pursuit of stringent measures. The apathy of the society and the psychological stigma surrounding this issue has been a hindrance.

Word gesture or act intended to insult the modesty of a women

Section 509 of the IPC lays down that if anyone with an intention to insult the modesty of a woman utters any word, makes any sound or gesture or exhibits any object, intending that such word or sound shall be heard, or such gesture or object shall be seen by the woman, or intrudes upon the privacy of the woman, they shall be punished with simple imprisonment which may extend up to a term of 1 year, or a fine, or both.”

This section is referred to as the eve-teasing section, and its main objective is to protect the chastity and modesty of a woman. Though initially designed to address the issue of eve-teasing or street-sexual harassment, this section has also been applied to the cyber space to curb online

stalking and harassment. In 2001, a teenage boy in 11th grade was convicted under section 509 for making vulgar remarks about his female classmates on a website

Husband or relative of husband of a woman subjecting her to cruelty.

For safeguarding the interest of woman against the cruelty they face behind the four walls of their matrimonial home, the Indian Penal Code, 1860 was amended in 1983 and inserted S.498A which deals with 'Matrimonial Cruelty' to a woman. Matrimonial Cruelty in India is a cognizable, non-bailable and non-compoundable offence. It is defined in Chapter XXA of I.P.C. under Sec. 498A as:

Husband or relative of husband of a woman subjecting her to cruelty: Whoever being the husband or the relative of the husband of a woman, subjects her to cruelty shall be punished with imprisonment for a term, which may extend to three years and shall also be liable to a fine.

Explanation – for the purpose of this section, "cruelty" means:

- any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demands for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

The section was enacted to combat the menace of dowry deaths. It was introduced in the code by the Criminal Law Amendment Act, 1983 (Act 46 of 1983). By the same Act section 113-A has been added to the Indian Evidence Act to raise presumption regarding abetment of suicide by married woman. The main objective of section 498-A of I.P.C is to protect a woman who is being harassed by her husband or relatives of husband.

It was held in *Kaliyaperumal vs. State of Tamil Nadu*, that cruelty is a common essential in offences under both the sections 304B and 498A of IPC. The two sections are not mutually inclusive but both are distinct offences and persons acquitted under section 304B for the offence of dowry death can be convicted for an offence under sec.498A of IPC. The meaning of cruelty is given in explanation to section 498A. Section 304B does not contain its meaning but the

meaning of cruelty or harassment as given in section 498-A applies in section 304-B as well. Under section 498-A of IPC cruelty by itself amounts to an offence whereas under section 304-B the offence is of dowry death and the death must have occurred during the course of seven years of marriage. But no such period is mentioned in section 498-A.

In the case of *Inder Raj Malik vs. Sunita Malik*, it was held that the word ‘cruelty’ is defined in the explanation which inter alia says that harassment of a woman with a view to coerce her or any related persons to meet any unlawful demand for any property or any valuable security is cruelty.

Kinds of cruelty covered under this section includes following:

- Cruelty by vexatious litigation
- Cruelty by deprivation and wasteful habits
- Cruelty by persistent demand
- Cruelty by extra-marital relations
- Harassment for non-dowry demand
- Cruelty by non-acceptance of baby girl
- Cruelty by false attacks on chastity
- Taking away children

The presumption of cruelty within the meaning of section 113-A, Evidence Act, 1872 also arose making the husband guilty of abetment of suicide within the meaning of section 306 where the husband had illicit relationship with another woman and used to beat his wife making it a persistent cruelty within the meaning of Explanation (a) of section 498-A.

Supreme Court, in a relatively recent case, *Sushil Kumar Sharma vs. Union of India and others*, observed as:

“The object of the provision is prevention of the dowry menace. But as has been rightly contented by the petitioner that many instances have come to light where the complaints are not bonafide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes adverse media

coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreck personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the Courts have to take care of the situation within the existing frame work.

Other offences against women

- Section 312- Voluntarily causing miscarriage (maximum imprisonment of 3years of fine or both)
- Section 313- Causing miscarriage without women's consent (life imprisonment or maximum imprisonment of 10years and fine)
- Section 366- Kidnapping, abducting or inducing women to compel her marriage (imprisonment of either description for a term which may extend to 10years and fine)
- Section 366A- Procuration of minor girl for illicit sexual intercourse (maximum imprisonment for ten years and fine)
- Section 366B- Importation of girl from foreign country for illicit sexual intercourse (maximum imprisonment for 10years and fine)
- Section 372- Selling of minor girl for prostitution (maximum imprisonment of 10years and fine)
- Section 373- Buying minor girl for prostitution (maximum imprisonment of 10years and fine)

OFFENCES AGAINST CHILDREN

Children all over the world are considered among the most vulnerable & innocent victims of crimes committed in the society. Amongst the most significant legislations enacted to protect children's rights and ensure their safety are the POCSO Act and the Juvenile Justice Act, whereas the Indian Penal Code, 1860 recognises the various offences committed against children

and penalizes their commission under various heads. These offences may include homicide, foeticides, kidnapping, sexual acts, etc. and are discussed herein.

Abetment of Suicide

Abetment by other persons for the commitment of suicide by children: Section 305 of the IPC provides that a person who abets suicide, committed by a person under the age of eighteen years shall be punished with death/life imprisonment, or imprisonment of upto 10 years and fine. This provision is based on a reasonable public policy principle to prevent other persons' involvement, instigation, and aiding in the termination of a child's life.

In *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)*, the court dealt with the dictionary meaning of the word "instigation" and "goading". The court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidal pattern is different from the others. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straight-jacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

Kidnapping & Abduction

Kidnapping in any form curtails the liberty of an individual, thereby impinging the right to life guaranteed under Article 21 of the Constitution of India. The IPC, under Section 359, recognises two kinds of 'kidnapping':

- Kidnapping from India; and
- Kidnapping from lawful guardianship.

An offender of kidnapping shall be punished under Section 363 of the IPC with imprisonment of upto 7 years and fine.

It can be for the following purposes:

- Kidnapping for exporting (Section 360)
- Kidnapping from lawful guardianship (Section 361)
- Kidnapping for ransom (Section 364A)
- Kidnapping for begging (Section 363-A)
- Kidnapping to compel for marriage (Section 366)
- Kidnapping for slavery etc. (Section 367)
- Kidnapping for stealing from its person (Section 369)
- Procuration of minor girls (Section 366-A)

For inducement to force or seduce, to illicit intercourse: For convicting a person under Section 366-A, it's essential to establish that he has induced a minor girl below the age of 18 years to go from any place/ do any act with the intent/knowledge that she would be forced/seduced to illicit intercourse with another person. Such offender shall be punishable with imprisonment of upto 10 years and fine.

State of Haryana v. Raja Ram, AIR 1973 SC 819, The trial court held him guilty, but the High court acquitted him. On appeal to the Supreme court, it was held that:

- Section 361 is to protect minor children from being seduced for improper purposes and to protect the rights and privileges of guardians having their custody.
- The consent of a child is completely immaterial and only the guardian's consent is relevant to decide whether the offence was committed or not.
- 'Taking' as mentioned in the Section is not only through fraud or force but also through persuasion by the accused which creates willingness on the part of minor to be taken away from his/her lawful guardian.
- In this case, the respondent was held guilty under section 361 as it was the respondent's action which persuaded the prosecutrix from going out of her father's keeping, against her father's wishes.

Vikram Singh v. Union of India, (2015), the court held that section 364A is very wide. There is nothing which suggests that this section is limited to offences against a foreign state or international governmental organisation, and covers all the "any other person" as well. Court also emphasised upon various Indian and foreign judgements to highlight the importance of

proportionality of punishment. It held that the job of giving punishment is the job of the legislature, and the court can only intervene when it feels that the punishment is outrageously disproportionate. In section 364A however, when death is concerned the courts do reserve the right to give death penalty or if not required, a lesser punishment of life imprisonment. Hence, it is not ultra vires with the constitution.

Selling of minors for prostitution

Section 372 provides the punishment for selling a person under the age of 18 years of either sex for the purpose of prostitution, illicit intercourse, or for any other immoral purpose. The offence is complete the moment there is sale/letting to hire a minor with the aforementioned intention/knowledge, and is punishable with imprisonment of upto 10 years and fine. Further, such offence committed against a female is presumed to be done with the required mens rea unless proven to the contrary.

Buying of minors for prostitution

Section 373 punishes those persons who buy/hire any person under the age of 18 years with the intention/knowledge that he/she shall be employed for the purposes of prostitution, illicit intercourse, or for any other unlawful/immoral purpose, with imprisonment of upto 10 years and fine. Furthermore, such an offence committed against a female is presumed to be done with the required mens rea unless proven otherwise.

Rape

Section 375(6) of the IPC provides that the commission of sexual intercourse in any of the forms mentioned in clauses (a),(b),(c), and (d), with a minor girl under the age of 18 years will amount to rape, irrespective of her consent to such act.

The offence of rape committed against minor girls is punished under the IPC as follows:

Section 376(3)	Rape of woman under 16 years of age	Rigorous imprisonment of not less than 20 years/life & fine
Section 376-AB	Rape of woman under 12 years of age	Rigorous imprisonment of not less than 20 years/life & fine, or death
Section 376-DA	Gang rape of woman under 16 years of age	Imprisonment for life & fine
Section 376-DB	Gang rape of woman under 12 years of age	Imprisonment for life & fine, or death

Offences against newborn & unborn children

The offences against newborn & unborn child under the Indian Penal Code, 1860 include those enlisted under Sections 312- 318, i.e. causing of miscarriage, injuries to unborn children, abandonment & exposure of infants, concealment of births & secret disposal of their dead bodies.

Causing miscarriage

Sections 312, 313 & 314 deal with the offence of causing miscarriage and its aggravated forms, distinguishing the liability into two categories with reference to the woman's consent and of her being 'with child' or 'quick with child'.

Essential Ingredients

- Voluntarily Causing Miscarriage
- Woman with Child and Woman Quick with Child

➤ Miscarriage

Exceptions to the offence of causing miscarriage/ abortion are twofold:

- Medical Termination of Pregnancy Act, 1971- It was enacted to legalise the termination of certain pregnancies by registered medical practitioners in order to provide for safe abortions. The Act, prevailing over the aforementioned provisions of IPC, allows a woman to legally abort her pregnancy if its continuance would be injurious to her life (physically/mentally); if the foetus is detected with abnormalities; or if such pregnancy is a result of rape or failure of contraceptives.
- Good faith- Section 312 of the IPC exempts such persons who cause miscarriage in good faith (as defined under Section 52) to save the woman's life.

In the case of *Dr Jacob George v. State of Kerala*, a surgical operation for abortion was performed by a quack on a woman with her consent, which resulted in her death due to the perforation of her uterus. The Supreme Court affirmed his conviction while laying down the principle that a person could be held liable under this section if the abortion is not carried out in good faith for the purpose of saving the woman's life.

In another case of *State of Maharashtra v. Flora Santuno Kutino*, one of the respondents, who had illicit relations with a woman & pregnated her, was instrumental in causing miscarriage, and hence, was convicted by the High Court since such miscarriage was caused, not in good faith, but to wipe off his illicit relationship.

Injury to an Unborn Child

Sections 315 & 316 envisage the provisions relating to injury caused to an unborn child. They cover the situations where an act is done with the intention of preventing such child to be born alive; or causing the death of a child who's quick unborn by an act amounting to culpable homicide.

Abandonment and Exposure of an Infant

Section 317 of the IPC deals with the offence of exposing a child under twelve years of age with an intention of wholly abandoning it, done by a parent or any person having care of it. An offender under this Section shall be liable with imprisonment of upto 7 years/fine/both.

Section 317 also places a similar duty & liability, as imposed upon the parents of the child, on the person made responsible for the care & protection of the child, and hence, as highlighted in *Emperor v. Blanche Constant Cripps & Anr.*, daycare centres, creches, orphanages, etc. are all included under it.

Concealment of Birth of a Child

Section 318 of the IPC deals with a situation where a person intentionally endeavours to conceal a child's birth by secretly burying or disposing of the dead body of the child, irrespective of the death occurring before/after/during its birth. A person convicted under this Section shall be liable with imprisonment which may extend to 2 years/fine/both.

The term 'body' in this Section indicates a precondition that the secret burial/disposal should be of the dead body of the child, i.e. the child should not be a mere embryo/foetus but should've been developed and matured. Further, in the case of *Radha v. State of Rajasthan*, it was held that if the child were alive at the time of such secret burial/ disposal, then no offence would be made out under this Section, but would attract other provisions of the IPC.

Child pornography

Child pornography is publishing and transmitting obscene material of children in electronic form. In recent years child pornography has increased due to the easy access of the internet and easily available videos on the internet. Child pornography is the most heinous crime which occurs and has led to various other crimes such as sex tourism, sexual abuse of the child, etc.

The Penal Code, 1860 and The Criminal Procedure Code, 1973 governs the substantive and procedural parts of criminal offenses, including those which apply to children. Since no special provisions are governing the abuse of children, the same laws apply to the adults and children of the country. The laws governing sexual offenses include Sections 375 (rape), 377 (unnatural offenses) and 354 (outraging the modesty of women) under the Penal Code. There are also

offenses against minor girls i.e. Section 366-A (inducement or force or seduce to illicit intercourse), Section 372 (selling of girls for prostitution) and Section 373 (buying of girls for prostitution). However, these laws are not comprehensive or adequate to handle such grave offenses on such tender-aged children. These provisions are also biased towards women and are not enough themselves either substantively or procedurally to meet the special needs of sexual abuse among children.

Protection of Children from Sexual Offences Act, 2012

The Protection of Children from Sexual Offences Act, 2012 was enacted with the object to protect the children from offenses of sexual assault, sexual harassment, pornography and to provide for the establishment of Special Courts for the trial of such offenses and matters connected therewith or incidental thereto. The term here means that the usage of the child in any such form of media including program or advertisement by television channels, internet or any other electronic form or the printed form which may or may not be for personal use or distribution may be an offense if it is used for sexual gratification. This includes the representation of sexual organs, usage of a child in real or simulated sexual acts or indecent or obscene representation of a child. The Act mandates a punishment of a maximum of five years and in the second conviction this may extend up to seven years with a fine. If the person also takes part in such an act that constitutes the abovementioned sexual acts/assaults, he would be liable for life imprisonment.

Legal status of child pornography in India

- Pornography in any form is illegal in India and comes under Section 292 and 293 of the Indian Penal Code (IPC).
- Information Technology (IT) Act – Section 67B makes child pornography illegal in the country.
- But neither Section 67 of the IT Act nor Section 293 of the IPC define child pornography.

- The laws strictly prohibit child pornography in India and any person convicted for browsing child porn content can be awarded a sentence of five years in prison and a fine of Rs 1 million.

Child labour

“Child labour” is defined as the employment of children in any manual work. According to the Child Labour (Prohibition and Regulation) Act, 1986, a “child” is a person who has not yet attained the age of 14 years.

Child labour laws in India

As compared to other countries, child labour in India is more prevalent. Out of 179 million children, 90 million who are in the age group of 6 to 14 years are employed and they don't go to school. It contributes to 50% of children in our country who are involved in child labour. Since 1933, various laws have been made in India to control child labour. These laws include:

- Minimum Wages Act, 1948: The State Government fixes minimum wages that are to be provided to the workers/labourers including the child labourers. The government fixed wages according to the type of work and according to the class of workers.
- The Plantation Labour Act, 1951: This Act prohibits the employment of children below the age of 12 years, but a child above the age of 12 years can be employed only when the appointed doctor issues a fitness certificate to that child.
- The Mines Act, 1952: This Act provides that no child should be present where the work of mining is going on and no child should be employed for such work.
- The Merchant Shipping Act, 1958: Except for a training ship, this Act does not allow the employment of children below the age of 14 years in a ship. Also, a person under the age of 18 years cannot be appointed as trimmers under this Act. They can only be appointed under some specific conditions mentioned in this Act.

- The Apprentices Act, 1961: Unless a child attains the age of 14 years and satisfy the standard of education and physical fitness test, he cannot undergo an apprenticeship training.
- The Indian Factories Act, 1948: No child below the age of 14 years shall be employed in a factory. Also, there are rules that a factory has to follow if they employ pre-adults that are between 15-18 years of age.
- The Child Labour (Prohibition and Regulation) Act, 1986: No child who is less than 14 years of age shall be employed in any hazardous occupations that are provided in a list by law. This list is explained further in the article. This list was amended not only in 2006 but also in 2008.
- The Juvenile Justice (Care and Protection) of Children Act, 2000: If any person employs a child in any of the hazardous work or use the child as a bonded labour then that person will be punishable under this Act.
- The Right of Children to Free and Compulsory Education Act of 2009: Free and compulsory education must be provided to each and every children below 14 years of age. In fact, to follow this Act efficiently, 25% of seats are also reserved in every private school for children who belongs to the disadvantaged group and for children who are physically challenged.

Other Acts are:

- Children (Pledging of Labour) Act, 1933.
- Employment of Child Act, 1938.
- The Bombay Shop and Establishment Act, 1948.
- The Motor Transport Workers Act, 1961.
- The Atomic Energy Act, 1962.
- Bidi and Cigar Workers (Condition and Regulation) Act, 1986.
- State Shops and Establishment Acts

Children below the age of 14 years are not allowed to work in a factory and it is expressly provided in Article 24 of the Indian Constitution and Section 67 of the Factories Act, 1948.

Free and compulsory education for all children up to the age of 14 years is provided by the Directive Principle of State Policy under Article 45 of the Indian Constitution.

Article 23 of the Indian constitution

Article 23 and 24 of the Indian Constitution provides for the Right against Exploitation.

Human trafficking and forced labour like beggar is prohibited under Article 23 of the Indian Constitution. The term “*beggar*” was defined when the British Government and the zamindars used to force the people to carry their goods along with them when they move from one place to another, these people were called beggars. This was called forced labour also because no remuneration was provided to such people. Human trafficking is the modern form of slavery as there is an illegal trade of human beings for various commercial purposes like sexual exploitation, prostitution or forced labour.

The Supreme Court of India in the case of *People’s Union for Democratic Rights and others Vs. Union of India and others*, which is also known as Asiad Workers Case provided that when a person provides a service that is a labour service and in return he/she gets remuneration less than the minimum wage then this case falls clearly in the scope of forced labour which is covered by Article 23 of the Indian Constitution.

The Supreme Court, in the case of *Bandhua Mukti Morcha v. Union of India & Others*, took into cognizance the employment of children in the carpet manufacturing industry in Mirzapur, Uttar Pradesh. It instructed the District magistrate to conduct raids, and subsequently got 144 children, who were under the forced custody of the owners, released.

In the case of *Sheela Barse & Others v. Union of India*, under the direction of the Supreme Court, children who were being exposed to chemical fumes and coal dust from working near furnaces in the glass industry were released from their employment.

In the landmark case of *M.C. Mehta v. State of Tamil Nadu*, the Supreme Court gave directions to the government to eliminate child labour, which included the conducting of surveys for the identification of working children, ensuring the withdrawal of children working in hazardous industries and ensuring their education in appropriate institutions. In cases where a child was withdrawn from work, the Supreme Court directed the Government to ensure that at least one adult member of the child’s family receives employment.

PRACTICE QUESTIONS

1. Match List-I with List-II and give the correct answer by using the code given below :
(July 2018)

List – I

(Provision for)

- (a) Punishment for causing death or resulting
- (b) Sexual intercourse by husband upon his
- (c) Sexual intercourse by a person in authority
- (d) Gang rape

List-II

(Sections of I.P.C.)

- (i) Section 376-D in persistent vegetative state of victim
- (ii) Section 376-B wife during separation
- (iii) Section 376-A
- (iv) Section 376-C

Code :

- (a) (b) (c) (d)
- (1) (i) (ii) (iii) (iv)
- (2) (ii) (iv) (i) (iii)
- (3) (iii) (ii) (iv) (i)
- (4) (iv) (i) (iii) (ii)

2. Which of the factors are essential for fixing criminal liability on importing girls from different territory other than India for seduction? (November 2017)
- a. That girl must be below the age of 21 years.
 - b. That imported girl must be from Indian origin irrespective of age.
 - c. That girl must be from Jammu and Kashmir or any other UN recognised country and is brought forcefully to render domestic help.

- d. That girl is on a tourist Visa and above 21 years and is likely that she will be forced to illicit intercourse.
3. Supreme Court has held that mother can be natural guardian even in the presence of father, in a case: **(December 2004)**
- a. Visakha Case
 - b. Mangla Prasad Case
 - c. Gita Hariharan Case
 - d. Hanuman Prasad Case
4. Sex with a girl with fraudulent consent amounts to **(December 2010)**
- a. Simple physical assault
 - b. Molestation
 - c. Outraging of modesty
 - d. Rape
5. Enticing a minor girl amounts to **(December 2011)**
- a. Kidnapping
 - b. Abduction
 - c. Absence from free consent
 - d. None of the above