

**EXISTING IMPORTANT LEGAL PROVISIONS WHICH ARE
REQUIRED TO BE OBSERVED AND ENFORCED BY THE POLICE
AND JUDICIARY TO PROTECT RIGHTS AND DIGNITY OF WOMEN**

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Women constitute almost half of the total population of the entire country. Women are subjected to different discrimination and atrocities in the society due to which their development is being hampered. When the development of half of the population is apparently hampered then proper development of the country at large would not be possible.

In India, the Vedic period was the golden period for women when they, like men participated in all the social fields and took active part in each and every sphere of human life. The great women as Apala, Visvara, Gargi, Maitreyi, Indrani, Yami and many others had distinct qualities of art, dance, music and fighting in the battle too. Remarkably, the period had nothing like Purdah system, polygamy was restricted to few royal families and same was the case as far as dowry system is concerned. Women enjoyed the right of choosing their partners for marriage and even widows without any opposition could re-marry.

But starting with the Post Vedic Period i.e.1500 B.C. to 500 A.D. the equal rights that were enjoyed by women gradually deteriorated, with the increase of rivalries between nomadic groups, Principalities and kingdoms hostility increased. Grown up women afforded an attraction for hostile attacks, enhancing the worries of an insecure existence—polygamy as a practice gradually increased, moreover kings and princes started entering into conjugal relationship for extending their territorial and political interests. Gradually the evil of drawing common ancestry from male lineage, law of inheritance being in a way completely male centric, mixing of law and religion to authenticate male dominance and superiority had a cascading effect, in that, the position of women in the society consistently deteriorated. The effect of this long drawn process, started showing its effect in the prevalence of evil practices of female infanticide, Sati, dowry, prohibition of widow remarriage, women being denied the right of inheritance of property, Purdah system women being considered as a trophy to be won in wars, etc. The dominance of males became so prominent that the Indian Society for all practical purposes except for few exceptions became a patriarchal society.

Though during the British Rule, under pressure of certain socially oriented reformers many progressive legislations were introduced but the overall situation of women in the society did not undergo much change. The women at all stages of life- childhood, youth, pregnancy, motherhood ,outside and inside the house, by strangers and also by her own acquaintances were subjected to different forms of discrimination and cruelty.

Through a long drawn process the Constituent Assembly constituted for framing a Constitution for India, came out with a wonderful and the most sacred of all documents of Independent India known as the Constitution of India, which, in its original form and the subsequent amendments carried out by the Parliament, have included many path-breaking and progressive provisions ameliorating the status and dignity of women. In addition there are numerous laws aimed at empowerment of women in the areas of personal, labour, service and criminal and socio economic matters. It would be proper to refer some of the most important legislations pertaining to empowerment of women.

Constitution of India, 1950: The Constitution of India not only guarantees equality to women but also empowers the State to adopt measures of positive discrimination in favour of women. The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. Article 14 of the Constitution of India guarantees equality before law. Article 15 prohibits discrimination on the grounds of sex. Article 16 states about equality of opportunity for all citizens in matters relating to employment. The 73rd and 74th Amendments to the Constitution of India provide for reservation of seats (at least 1/3) in the local bodies of Panchayats and Municipalities for women. Another Constitution Amendment (84th Constitution Amendment) reserving 33% seats in Parliament and State Legislature is in the pipeline.

The Criminal Law (Amendment) Act, 2013 which provides for amendment of the Indian Penal Code, the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872, received the assent of the President on 2nd April, 2013 shall be deemed to have come into force on 3rd February, 2013.

The amendment under the Indian Penal Code, *interalia*, includes the following important changes:

- (1) The amendment under the Indian Panel Code has included new offences like voluntarily causing grievous hurt by use of acid, etc. (Section 326A and 326B); sexual harassment (354A); assault or use of criminal force to women with intent to disrobe (Section 354B); Voyeurism¹ (354C);

stalking² (354D); trafficking and exploitation of a trafficked person (Section 370 and 370A).

(¹**Voyeurism** under Section 354C IPC *inter alia* refers to any act where “Any man watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image.....”

(²**Stalking** under Section 354D IPC *inter alia* refers to any act where “any man follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or monitors the use by a woman of the internet, email or any other form of electronic communication.....”

- (2) The definition of the offence of **rape** has been widened to include many other acts which were earlier not covered under Sect. 375 I.P.C. As per the new amendment “a man is said to commit “rape” if he –
- (a) *penetrates penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or*
 - (b) *inserts, to any extent, any object or part of the body, not being the penis, into the vagina, the urethra, anus of a woman or makes her to do so with him or any other person; or*
 - (c) *manipulates any part of the body of the body of a woman so as to cause penetration into the vagina, anus, or any part of body of such woman or makes her to do so with him or any other person; or*
 - (d) *applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person;”*

Under the circumstances falling in any of the seven descriptions provided by Section 375 IPC.

- (3) The amendment also provides for punishment of a public servant who disobeys the direction under law, related to offences against women like failing to record F.I.Rs relating to sexual offences (Sect. 166A).
- (4) While Sect. 357C Cr.P.C. makes it mandatory for all hospitals, public or private to provide immediate first-aid or medical treatment, free of cost to rape victims, the contravention of the duty is now a punishable offence under section 166B of the I.P.C.
- (5) The age of consent has been increased from 16 to 18 years.
- (6) The amendment provides for minimum jail term of 20 years, which may extend to imprisonment for the remainder of the natural life of the

person or with death, if in the course of committing rape such injury is inflicted which causes the death of the woman or causes the woman to be in a permanent vegetative state.

- (7) Minimum jail term of 20 years of rigorous imprisonment which may extend to the person's natural life for gang rape offenders.
- (8) Now, a person in authority convicted of rape will have to spend rest of his "natural life" in jail. A person in authority has been described as a police officer, public servant, personnel of the armed forces, a doctor or a staffer of a hospital, a jailer or a warden of a remand house or other place of custody, a relative, guardian or teacher. The same is the punishment when rape is committed during communal or sectarian violence, on pregnant woman or on a woman when she is under 16 years of age, or when while committing rape grievous bodily injury is caused or when repeatedly rape is committed {Sect. 376(2)}.
- (9) The amendment provides that any fine in the nature of punishment imposed on the offender in rape or sexual assault related offences shall be paid to the victim, which shall be in addition to any compensation granted under Section 357A Cr.P.C..

Under the Code of Criminal Procedure, 1973 and the Evidence Act following important amendments have been inserted:

1. When the information is given by the victimized women about an offence of sexual assault or rape committed against her then such information shall be recorded by a woman police officer or any woman officer.
2. When the statement of a victimized woman or a disabled person is to be recorded, it shall be recorded at the residence of the person or at a convenient place of such person's choice. Further, the statements to be recorded by a woman police officer have to be videographed and the victims have to be provided with an interpreter or special educator.
3. The statement of the victimized woman under Section 164 shall be recorded at the earliest after the commission of the offence. In case the victim is physically or mentally disabled the statement to be recorded with the assistance of an interpreter or a special educator, shall be videographed.
4. Any such statement of a disabled person shall be considered a statement in lieu of examination-in-Chief (under Section 137 Evidence Act) such 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.

5. There is no need of sanction for the prosecution of a public servant accused of any offence related to rape, sexual harassment, voyeurism, stalking or failing to perform his official duty in relation to any such alleged offence.
6. For ensuring speedy and timely justice the proviso to Sect 309 Cr. P.C. lays down that the inquiry or trial of an offence related to rape, as far as possible be completed within a period of two months from the date of filing of the charge-sheet.

Indian Penal Code, 1860: Sections 292, 293 and 294 provide for punishment of sale and exhibit of obscene books and for obscene act in public place. Section 304B deals about murder of women in connection with demand of dowry. Sections 312 to 318 deal about punishment for causing miscarriage. Section 354 provides punishment for outraging the modesty of any women, S. 366 deals about kidnapping for marriage against her will. Section 366-A deals about procurement of minor girls for sexual purpose. Section 376 deals about punishment for rape. Section 494 protects women from bigamy. Section 497 deals about protection of married women from adultery. Section 498A of Indian Penal Code deals about subjecting women to cruelty by her husband or relatives and her husband and S.509 provides punishment for uttering words and gesture or act intended to insult and modesty of a woman.

Code of Criminal Procedure, 1973: Under S.125, Code of Criminal Procedure, a woman has got right to maintenance.

Section 125 of the Code of Criminal Procedure with the object to prevent vagrancy by compelling the husband or the father to support his wife or child (sex neutral) unable to support herself or itself. These provisions are not in the nature of penal provisions but are only intended for the enforcement of a duty, a default in which may lead to vagrancy. The real object is to provide food, clothing and shelter to deserted wife, children or parents (father or mother).

The provisions under Section 125-128 provide for a speedy, effective and rather inexpensive remedy. Though the subject matter of these provisions is civil in nature, they have been included under the Cr.P.C. so that a remedy more speedy and economical is provided. These provisions are also applicable to all persons belonging to all religions and have no relationship with the personal law of parties.

A strict proof of legal marriage is not necessary and that the parties were living together as husband and wife would be sufficient for the women to

claim maintenance under Section 125. The wife may be of any age-minor or major likewise “wife” includes a woman who has been divorced by or has obtained a divorce from her husband and has not remarried. Section 125 applies both to women who have been divorced before or after the new Code come into force i.e. 1st day of April, 1974. A Muslim woman also has the liberty to proceed either under the provisions of Section 125 of the Cr. P.C. or the Muslim Women (Protection of Rights on Divorce) Act, 1986 (Shabana Bano Vs. Imran Khan – AIR 2010 SC 305).

Indian Evidence Act, 1872: Sections 113(a), 113(b) and 114(c) provide for presumptions as to abetment of suicide by a married woman within 7 years of marriage, as to dowry death of a woman and as to absence of consent of woman for sexual intercourse.

Hindu Adoption Maintenance Act, 1956: Section 18-A provides for obligations of husband to maintain his wife. Section 18(2) provides for right of wife to live separately and S.19 provides for maintenance of widow by her father-in-law.

Hindu Succession Act, 1956: Section 14 of the Act provides for property of female Hindu to be her absolute property. Section 23 provides right of female legal heirs in the dwelling house.

The Hindu Minority and Guardianship Act, 1956: Section 6 of the Act provides for mother as a natural guardian for minors below 5 years.

The Hindu Marriage Act, 1955: Section 13(2) of the Act provides for wife to present a petition for divorce. Section 13(b) provides equal right for wife for getting divorce by mutual consent. Section 24 of the Act provides for relief for interim maintenance and expenses. Section 25 of the Act provides for right to a wife to seek permanent alimony and maintenance and S. 26 of the Act provides right to claim custody of children.

The Dowry Prohibition Act, 1961: Under the provisions of this Act demand of dowry either before marriage, during marriage and or after the marriage is an offence.

The Muslim Women (Protection of Right on Divorce) Act, 1986: Under the provisions of the Act the Muslim women can claim maintenance against her relatives after the iddat period.

The Factories Act, 1948: The provisions of this Act provides for health, safety, welfare, and working hours for women labourer working in factories.

The Equal Remuneration Act, 1976: It provides for payment of equal wages to both men and women workers for the same work or work of similar nature. It also prohibits discrimination against women in the matter of recruitment.

The Employees State Insurance Act, 1948: The Act provides for insurance pension and maternity benefits to women workers.

The Maternity Benefit Act, 1961: It provides for maternity benefit with full wages for women workers.

The Medical Termination of pregnancy Act, 1971: The Act safeguards women from unnecessary and compulsory abortions.

The Child Marriage Restraint Act, 1976: The Act provides safeguards for girls from child marriage.

The Immoral Trafficking (Prevention) Act, 1986: The Act safeguards women from prostitution.

The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994: This Act prohibits diagnosing of pregnant women and also identification of child in the womb whether it is male or female.

The Indecent Representation of Women (Prohibition) Act, 1986: The Act safeguards women from indecent representation.

The Commission of Sati (Prevention) Act, 1992: It safeguards women from sati.

The National Commission for Women Act, 1992: The Act provides for a setting up a statutory body namely the National Commission for Women to take up remedial measures, and facilitate redressal of grievances and advise the Government on all policy matters relating to women.

The Family Courts Act, 1984: The Act provides for setting up a Family Court for in-camera proceedings for women.

The Tamil Nadu Prohibition of Eve-teasing Act, 1988: The Act provides punishment for eve-teasing.

The Protection of Women from Domestic Violence Act, 2005: The Act provides for punishment for domestic violence committed by husband and his relatives and also provided legal assistance for women suffering from domestic violence. It also provides interim maintenance to women and also for compensation and damages.

**EFFORTS OF THE JUDICIARY TO PROTECT THE RIGHTS AND
DIGNITY OF WOMEN THROUGH THE PRISM OF LANDMARK
JUDICIAL PRONOUNCEMENTS.**

One special feature of Indian Judiciary is that it is an independent wing of the government. It adjudicates the rights and liabilities of persons (whether natural or juristic). It has posed the duty on itself to strike balance between rights and duties. This independent wing performs this duty by playing two roles:-

1) The Traditional Role

The traditional role of the judiciary is to interpret the statutory and constitutional provisions for providing justice. It applies the law in the name of the state. Under the Doctrine of Separation of Power, judiciary does not make law, but rather interprets law and applies to each case.

2) Role of Judicial Activism

Judicial Activism is a dynamic process of judicial outlook in a changing society. It mainly stems from the failure of the other wings of the government. Where the government fails to govern, the civil services is neither civil nor services, the police is more and oppressor than a guardian of law, parliament is a costly debating society, the judiciary remains as the only hope for the people.

Judicial Activism for Women Human Rights

The Judiciary had extended helping hands to women when the legislature had denied it. The higher judiciary has shown concern for women's right in recent times; it also had been greatly influenced by the international declaration and covenants on women's rights. The vibrant judiciary has exalted the dignity of women by its golden judgments.

- **Municipal Corporation of Delhi v. Female Workers (Muster Roll) (AIR 2000 SC 1274)** The Supreme Court extended the benefits of the Maternity Benefit Act, 1961 to the Muster Roll (Daily Wagers) female employee of Delhi Municipal Corporation. In this case, the Court directly incorporated the provisions of Article 11 of CEDAW, 1979 into the Indian law.
- **Chairman, Railway Board v. Chandrima Doss (AIR 2000 SC 988)** The Supreme Court awarded compensation of 10 lakhs to an alien woman under Article 21 of Constitution, who had been a victim of rape.
- **Githa Hariharan v. Reserve Bank of India (AIR 1999 SC 1149)** The supreme Court interpreted Section 6(a) of Hindu Minority and Guardianship Act, 1956 and Section 19(b) of the Guardians and Wards Act, 1890 in such a way that father and mother get equal status as guardians of a minor.

- **Mohammed Ahmed Khan v. Shah Bano (AIR 1985 SC 945)** The Supreme Court granted equal right of maintenance under Section 125 of Cr. P.C., 1973 to a divorced married woman notwithstanding the personal law. The Supreme Court also held that “large segments of society which have been traditionally subjected to unjust treatment, women are one such segment.”
- **Charansingh v. Union of India (1979 Lab IC 633)** The Delhi High Court expressed that women are a backward class as compared to men.
- **Government of Andhra Pradesh v. P.B. Vijay Kumar (AIR 1995 SC 1648)** The Supreme Court has held that the issue of reservation for women in State Services was valid under Article 15(3) of the Indian Constitution.
- **Municipal Corporation of Delhi v. Female Workers (AIR 2000 SC 1274, 1281)** The Supreme Court held that a just social order could be achieved only when inequalities are obliterated and women, who constitute almost half of the segment of our society, are honoured and treated with dignity.
- **Uttarakhand Mahila Kalyan Parishad v. State of Utter Pradesh (AIR 1992 SC 1695)** The Supreme Court struck down the discriminatory rules of Education Department of Government of Utter Pradesh.
- **Air India v. Nargis Mirza (AIR 1981 SC 1829)** The validity of the Indian Air lines and Air India’s service rules providing that an Air Hostess had to retire from service at the age of 35 or on marriage whichever was earlier, or if she got married within four years of confirmation or on first pregnancy was struck down and held arbitrary.
- **Vishkha v. State of Rajasthan (AIR 1997 SC 301)** The Supreme Court took a serious note of the increasing menace of sexual harassment at workplace and elsewhere. Considering the inadequacy of legislation on the point, the Court even assumed the role of legislature and defined sexual harassment and laid down instruction for the employers.
- **Apparel Export Promotion Council v. A.K. Chopra (AIR 1999 SC 625)** The Supreme Court found all facets of gender equality including prevention of sexual harassment in the fundamental rights granted by the Constitution.
- **C.B. Muthamma v. Union of India (AIR 1979 SC 1868): 1979 Lab IC 1307** A service rule whereby marriage was a disability for appointment to foreign service was declared unconstitutional by the Supreme Court.

- **Shobha Rani v. Madhukar (AIR 1988 SC 121)** The Supreme Court held that dowry demand was enough to amount to cruelty.
- **Prathibha Rani v. Suraj Kumar (AIR 1985 SC 628)** The Supreme Court upheld women's right to the Stridhana.
- **State of Punjab v. Gurmit Singh (AIR 1996 SC 1393)** The Supreme Court held that rape was violative of the right of privacy.
- **Bodhisattwa Gautam v. Subhra Chakraborty (AIR 1996 SC 922)** The Supreme Court observed that rape was not only an offence under the criminal law, but it was a violation of the fundamental right to life and liberty guaranteed by Article 21 of Indian Constitution.
- **Saveeth Samvedhi case ((1996) 1 SCR 1046)** The Supreme Court held that a married daughter was entitled to accommodation in parental house.
- **Delhi Domestic Working Women's Forum v. Union of India ((1995) 1 SCC14)** The Supreme Court suggested the formulation of a scheme for awarding compensation to rape victims at the time of convicting the person found guilty of rape. The Court suggested that the Criminal Injuries Compensation Board or the Court should award compensation to the victims by taking into account, the pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurs as a result of rape.
- **Gourav Jain v. Union of India (AIR 1997 SC 3012)** The Supreme Court laid down guidelines including the necessity of counselling, cajoling, and coercing the women to retrieve from prostitution and rehabilitate them,

**SUGGESTIONS FOR JUDICIAL OFFICERS IN LOWER COURTS
HOW THE EXISTING LEGAL PROVISIONS CAN BE UTILIZED FOR
PROTECTING THE RIGHTS AND DIGNITY OF WOMEN.**

- 1) **Section 26 of the Code of Criminal Procedure, 1973** has been amended by prescribing that the offences under sec. 376 of 376A to D of IPC, are to be tried, as far as practicable, by a court presided by a women.
- 2) **Section 173 (1A)** has been amended to state that the investigation of a case of rape of a child may be completed within 3 months from the date on which the information was recorded by the officer in charge of a police station.
- 3) **Section 327 (2)** which prescribed in camera trial in cases of offences under Section 376, 376A to 376D has been amended by providing

that 'in camera' trial shall be conducted as far as possible by a woman judge or magistrate.

Section 327(2) in the Code Of Criminal Procedure, 1973 provides that "(2) Notwithstanding anything contained in sub-section (I), the inquiry into and trial of rape or an offence under section 376, section 376A, section 376B, section 376C or section 376D of the Indian Penal Code shall be conducted *in camera*: Provided that the presiding judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain in, the room or building used by the court."

- 4) **Section 327 (3)** which bars printing/ publishing any matter in relation to such 'in camera' proceedings except with the previous permission of the court has been relaxed by mandating that the ban may be lifted subject to maintaining confidentiality of names and addresses of the parties.
- 5) **Section 137 of the Indian Evidence Act, 1874** provides for the **Examination-in-chief, Cross Examination and Re-Examination** of witnesses appearing from the opposite side basically to extract the truth behind the statement made by the witness.

Where a lady witness appears before the Court, it shall be the duty of the Judicial Officer to keep watch on the counsel conducting the cross-examination that he/she should not ask any question to the witness which apprehends her modesty.

The questionnaire round with the victim of rape/ sexual assault shall not be conducted in the open court as it directly challenges the modesty of a woman. Such procedures shall be conducted only by a lady advocate, in the chamber of the judge in presence of the parents or guardian of the victim.

- 6) **Section 309 gives the power to the court to adjourn the proceeding for a future date.**

Section 309 proviso to sub-clause (1) (added by 2008 amendment act) provides that when the enquiry or trial relates to an offence under section 376A to 376D of the IPC, the inquiry or trial shall, as far as possible be completed within a period of two months from the date of commencement of the examination of witnesses.

Section 309 proviso to sub-clause (2) (added by 2008 amendment Act) provides that no adjournment shall be granted at the request of

a party, except where the circumstances are beyond the control of that party.

Now, the provision inserted under section 309 as proviso to sub-clause (1) & (2) are to be strictly followed in its spirit and letters so that the very intention of the legislature to pass such amendment cannot be defeated.

The proviso added to sub-clause (2) provides for a kind of discretion to the court as far as adjournment of a proceeding is concerned. But such power shall be exercised very carefully as to decide which circumstances are beyond the control of the party. The court has to keep an eye on the party which is seeking adjournment, to ensure that the party is rightly praying for it and it is not for the purpose of benefiting the ill intentions of the accused.

- 7) The fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment.
- 8) Where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in the Court, is not ready to examine or cross-examine the witness, the court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness.
- 9) Guidelines laid down by Supreme Court in :-

Delhi Domestic Working Women Forum Vs. Union of India {1995 SCC (1) 14} needs to be followed:

“Directives to the police to maintain a list of lawyers capable of handling the cases of rape victims and to provide them help in rehabilitation.”

- 10) It shall be the duty of a “District Judge” of a district to prepare and maintain a ‘**list of lady advocates**’, to be circulated to every Sessions Court in the district, who are well reputed and acquainted with the cases and respective laws relating to women like domestic violence, dowry matters, dowry deaths, rape matters and matters relating to the modesty of a women.

With the help of such an extensive list prepared by the District Judges, lady counsels can be engaged on behalf of the women victims of crime and a proper honorarium can be paid from a fund created for this purpose or under Section 12 of the Legal Services

Authorities Act, 1987 they can be engaged for providing legal aid to the victims at State cost.

11) Bail of women prisoners – Section 437 provides for:-

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

- 1. such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life.*
- 2. such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a non-bailable and cognizable offence.*

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

Under an adversarial system like ours, the courts insist on the search for proof rather than the search for truth. Whether the legal system is primarily adversarial or inquisitorial, bail hearings should be inquisitorial, with the magistrate inquiring into all the facts and circumstances relevant to the decision. This should be done even if the accused is not legally represented. As the adversarial system does not impose a positive duty on the judge to discover the truth, but he should play a positive role as far as bail of women prisoner is concerned. A good trial judge needs to have a “third ear”, that is to hear and comprehend what is not said.

- 12) The Statement under Section 164 (1),** of a victim of rape or any kind of sexual assault, shall not be recorded in open courtroom. It may be recorded in the chamber or the residence of the Judge/Magistrate in presence of the parents or guardian of the victim. Such statement shall be recorded, as far as practicable, by a woman judge.

- 13) **Section 164-A** (as introduced by Act no. 25 of 2005; w.e.f. 23/06/2006) provides for compulsory medical check-up of rape victims within 24 hours ensuring substantial evidence against accused is not lost.

These type of provisions have to be followed very promptly by the state authorities because if these provisions are not followed in their true spirit and letters then the basic objective behind introducing such provisions stands defeated. The benefit, which ought to be availed by the victim/prosecution, starts shifting towards the accused/offender/s.

- 14) **173(1)(h)** {inserted by Cr.P.C. (amendment) Act, 2008} will also have to mention whether report of medical examination of the woman has been attached where the investigation relates to an offence under section 376 and 376A to D of the IPC.
- 15) **The 2008 Act adds a proviso in section 157 (1)** which provides that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardians or near relatives or social worker of the locality.
- 16) **In respect of Section 157 (1) and Section 164 A,** it has been provided under Cr.P.C. as an obligation upon police to comply with the procedure laid down, it is the duty of judicial officer or the Court to ensure the strict compliance of the obligation. The court should confirm from the victim that obligation on part of police was duly served or not. If not, then court should take appropriate steps to do the needed and write to the head of the concerned police department to take appropriate action against such police officer.
- 17) **Proper counselling** – The District Judge and District Legal Services Authority shall endeavour to seek co-operation from women advocates, other public spirited advocates and different NGO's working in the field for women empowerment, to organize counselling camps for women victim/witness/accused inside the Court premises, at Mahila Thanas and other Police stations.
- 18) Whenever a woman appears before a court of session, the Judge shall be duty bound to address her on legal rights specially provided for women in Cr.P.C. during trial in the court.

- 19) The **name of the victim or relatives or any other information like addresses, shall not be disclosed in the judgment** of the Court. It ultimately publicises the victim's bad image in the society and hurts the modesty of the victim.
- 20) The **Family Courts Act, 1984** provides for the power of the Family Court to lay down its own procedure with respect to discharge of its duty (provided under **Section 9** of the Act) to endeavour for the settlement between the parties.

Section 10. Procedure generally.-

Clause (3) Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other.

By virtue of this “power to lay down own procedure” a mechanism can be formulated so as to serve the larger interest of the women coming to the forum.

There may be a kind of “Form” system, whatsoever be the nomenclature of the form, so as to be filled by the parties in dispute and filed with the other documents or plaint.

This so called “form” may provide for the columns for:-

Educational background of the parties,

Family background of the parties,

Facts establishing the standard of living of both the parties,

Facts establishing the standard of living of the close relatives of the parties,

Names, Addresses, and certain other information about the Common Relatives of the parties.

The Basic purpose of suggesting this so called “form” system is just to equip and acquaint the court about all the aspects of the facts on paper and **it would help in analyzing and finding ways for resolution of the differences between the parties through the process of mediation and conciliation.**

- 21) By virtue of the “power to lay down own procedure” under Section 10 of the Family Courts Act, 1984 the Family Court Judges can make a kind of different procedure by **allowing a lady to come before the**

family court directly without any application/ complaint on paper or advocate. She may address her grievances orally to the judge in the Family Court. If it strikes to the considerations of the Judge concerned, he may record the statement of the lady and treat it as application/ claim/complaint for the satisfaction of the procedural requirements. After that the concerned Judge may issue “Notices” to the respondents.