

ENGAGING with the **Criminal Justice System**

A Guide for Survivors of Sexual Violence

LAWYERS COLLECTIVE WOMEN'S RIGHTS INITIATIVE

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Foreword

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

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

The “Guide for Survivors of Sexual Violence” contains Frequently Asked Questions (FAQs) aimed to assist the survivor in the various stages of her case. Even if a survivor chooses not to report the offence to the police and /or file a case, she may require information regarding medical support or legal aid, which is provided in these FAQs. The table at the end of this document lists the various offences constituting rape and sexual violence under the law, and how such offences are punished.

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

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1. What actions constitute rape or sexual violence?

Prior to the enactment of the Criminal Law (Amendment) Act, 2013 (“CLA Act”), only penetration of the penis into the vagina constituted “rape” under Section 376 of the Indian Penal Code, 1860 (“IPC”).

Following the amendments to the law in 2013, rape is no longer confined to penile penetration into the vagina. Any of the following acts, if perpetrated against the will or without valid consent of the woman, constitute rape:

- Penetration of the penis into the vagina, mouth, urethra or anus of the woman;
- Insertion of any object or part of the body into the vagina, urethra or anus of a woman (for example, insertion of the finger into the vagina of a woman);
- Manipulating any part of the body of a woman so as to cause penetration into the urethra, vagina or anus of the woman or making her do so with any other person also constitutes rape (for example, forcing a woman to use her finger to penetrate her urethra, vagina or anus or making her do so to another person);
- Application of the mouth to the vagina, anus or urethra of a woman, or forcing her to apply her mouth to the perpetrator or any other person also constitutes rape.

Sexual offences other than rape

- Prior to 2013, “outraging the modesty of a woman” covered all other sexual offences against women. However, a number of new specific sexual offences were introduced by the CLA Act. Sexual harassment, criminal force to woman with intent to disrobe, voyeurism, and stalking are some new offences introduced (*Please see Table 1 for a complete list of sexual offences under the IPC*).

Please note:

- **Rape necessarily involves penetration. For example, non-consensual touching of the vulva (external genitalia) is not rape but a separate sexual offence.**

- ***Even the slightest penetration is sufficient to cause rape – the depth of penetration is not relevant.***
- ***Penetration does NOT need to result in rupturing of the hymen to constitute rape.***
- Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape under the IPC. ***However, an aggrieved wife may file a civil case under the Protection of Women from Domestic Violence Act, 2005 alleging sexual violence, or in case of a child between 15 to 18 years under the Protection of Children from Sexual Offences Act, 2012 (Please see Table 2 and Table 3).***
- Sexual intercourse by husband upon his wife without her consent during separation is an offence under Section 376B, IPC. Hence, if you are living separately from your husband (irrespective of whether you are judicially separated or not), and your husband rapes you, then he is liable to be punished under section 376B of the IPC.

In 2012, a special law for children below 18 years of age was introduced called “The Protection of Children from Sexual Offences Act, 2012” (“POCSO Act”) Act. Please note:

- **The POCSO Act is gender neutral:** Sexual offences in the IPC are gender specific. The provisions (with the exception of Section 377) only apply to women as victims, while the perpetrators are male. In contrast, the POCSO Act protects children of both sexes from sexual offences (*Please see Table 2 for a list of offences under POCSO*).
- **Consent of the child is irrelevant in cases under the POCSO Act.**
- **The POCSO Act is only applicable to child survivors and adult offenders.** In case two children have sexual relations with each other, or in case a child perpetrates a sexual offence on an adult, the Juvenile Justice (Care and Protection of Children) Act, 2000, will apply.

- **Both men and women can be offenders under the POCSO Act.** Two offences, which involve penetration by the penis, can be perpetrated only by men, specifically:
 - ❖ Section 3: A person is said to commit “penetrative sexual assault” if (a) *“he penetrates his penis, to any extent, into the vagina, mouth, urethra, or anus of a child or makes the child to do so with him or any other person”*; Since the words “any other person” are used in Section 3(a), women may also be offenders or victims under the second part of Section 3(a).
 - ❖ Section 5(j): *“Whoever commits penetrative sexual assault on a child, which... (ii) in the case of female child, makes the child pregnant as a consequence of sexual assault.”*

However, even in these two offences, women can be joined as abettors under Section 16, POCSO Act.

2. What is the difference between a cognisable and non-cognisable case?

In cognisable cases, the police can investigate without a magisterial direction. The power to investigate a non-cognisable case commences after the police officer has acquired requisite permission from the Magistrate under Section 155(2) of the Code of Criminal Procedure, 1973 (“Cr.P.C”). For example, the non-treatment of a victim of rape under Section 166B, IPC is a non-cognisable offence, hence, the police cannot arrest the hospital in-charge without a warrant.

The First Schedule to the Cr.P.C classifies offences under the IPC as cognisable or non-cognisable.

Registration of First Information Report (“FIR”) is mandatory under Section 154, Cr.P.C if the information given to the police discloses the commission of a cognisable offence [See: *Lalita Kumari v. Government of U.P and Ors* (2013) 13 SCALE 559].

Rape is a cognisable offence. Hence, magisterial direction is not required for investigation and recording of the FIR is mandatory in rape cases.

3. What is the difference between a bailable and non-bailable offence?

The First Schedule to the Cr.P.C classifies offences under the IPC as bailable or non-bailable.

A police officer can grant bail in the case of a bailable offence. In the case of a non-bailable offence, the appropriate Court has the discretion to grant bail.

Most offences with punishment upto three years imprisonment are usually bailable.

Rape is a non-bailable offence.

4. Is it mandatory to report an offence of sexual violence to the police?

It is mandatory for all persons to report cases of sexual offences against children under Section 19(1), POCSO Act¹ to the local police or the Special Juvenile Police Unit (“SJPU”).

It is not mandatory on all persons to report an offence of rape or sexual violence if the survivor is an adult woman. However, hospitals are obliged to inform the police of such incidents under Section 357C, Cr.P.C.

5. How do I report an offence?

You can report an offence by registering an FIR.

¹ Section 19 “Reporting of offences” – (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any person (including the child), who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to, –
(a) the Special Juvenile Police Unit; or
(b) the local police.

In the case of sexual offences against a child / children, you can provide information to the local police or SJPU under Section 19, POCSO Act.

6. What is an FIR?

An FIR is the first information report which is provided by any person who has knowledge of the commission of a cognisable offence to a police office under Section 154 of the Cr.P.C. It may be given in writing or given orally to the police officer. An FIR has to be signed by the informant.

The police must be informed about the facts constituting the offence for getting FIR registered. Under the procedural law, the police can commence investigation after registering the FIR.

7. How do I register an FIR?

Please take the following steps while registering an FIR:

As far as possible, the survivor must be the person who registers the FIR: Under the law, any person who has sufficient information about the commission of a cognisable offence can get FIR lodged. Cryptic knowledge, hearsay or gossip would not constitute sufficient information.

There is usually only one FIR in a case and the contents of the FIR have corroborative value during the Trial. Therefore, it is recommended that as far as possible, the survivor herself should take the initiative to get the FIR registered so as to give all relevant facts.

Avoid delays in approaching the police: Delay in filing an FIR in sexual offences will not lead to your case being dismissed. However, it is strongly recommended you approach the police soon after the commission of the crime. If there is delay in filing the FIR, give reasons for the delay to the police. Early reporting of the offence will strengthen your case.

Mandatory FIR: In a cognisable offence, the police must register FIR. The scope of preliminary inquiry by the police is restricted only when upon the information received it is unclear whether cognizable or non-cognizable offences have been committed. Thereafter, such inquiry can only be limited to ascertain whether the information reveals cognisable or non-cognisable

offence and not to conduct verification. Further, the new Section 166A, IPC [inserted by the CLA Act], penalises a police officer/public servant who fails to record FIR for any of the offences under Section 326A, 326B, 354, 354B, 370A, 376, 376A, 376B, 376C, 376D, 376E or 509, IPC, or attempt to commit any such offence, and the offence of default under Section 166A, IPC, is punishable with the minimum imprisonment of six months extendable to two years and fine.

Inform the Police even if you are unaware of which sections constitute the offence: You need not wait to know offences committed against you and the local police can always add the particular penal provisions when the facts constituting the offence are placed before them.

In an emergency you need not ascertain whether the offence is cognisable: You need not know whether the offence is cognisable before informing the police, for on getting to know the facts constituting a cognisable-case the police are duty bound to commence the investigation. **If you have time, reduce the information into writing and while handing it over to the police, get an endorsement on a photocopy as the receipt of the complaint so that there is no dispute as to the information given to the police.**

In case of urgency, approach the nearest police station: In an emergency, you can approach the nearest police station, even though the offence was not committed within its jurisdiction (this is known as a “zero-FIR”). Subsequently the investigation will be handed over to a police station having local jurisdiction. If, however, there is no emergency, you should contact the local police station having jurisdiction to avoid any delay in the investigation.

Call the police control room when immediate help is required: When immediate help of the police is required for your protection, medical help or rescue, you should call the Police Control Room (“PCR”) first and not the local police station. The PCR calls are recorded and in an emergency, a police team is sent to the spot to escort the victim for medical examination or to stop the violence immediately. The local police station is also informed. There will be a proof of the call made by you to the PCR, which can be used in your application under Section 156(3), Cr.P.C, for a magisterial direction to register FIR and conduct police investigation.

Useful numbers in Delhi are as follows:

Police Control Room: 100

Police Women's Helpline: 1091

Delhi Government Women's Helplines: 181

Rape Crisis Centre: 23370557

Centralised Accident and Trauma Services: 102, 1099

AIIMS Trauma Centre: 40401010

Delhi Legal Services Authority: 12525

Childline (Child Abuse Helpline): 1098

FIR to be recorded by a woman police officer or any woman officer: An FIR for any of the offences under Section 326A, 326B, 354, 354B, 370A, 376, 376A, 376B, 376C, 376D, 376E or 509, IPC must be recorded by a woman police or woman officer. The recording of such information shall be video-graphed.

If you are differently-abled: If the offence has been perpetrated on a temporarily or permanently mentally or physically differently-abled person, then the FIR shall be recorded at the residence of the person reporting the offence, or at a convenient place of such person's choice, in the presence of an interpreter or a special educator.

8. What information should an FIR contain?

The information as to the (i) date, (ii) time and (iii) place of the commission of the offence should be precise. **The manner of commission of the crime** should also be given, which in the case of an offence against the body should include the part/s of the body injured and the weapon used, with the names of the accused known and persons who witnessed the crime. Such a narration may get corroborated by your medical examination or the accused person's medical examination.

In respect of accused persons whose names are unknown sufficient details to identify them, if available, should be given. For example, age,

sex, body built or identifying marks on the face etc. or any out of ordinary traits of the speech should be provided. Similarly, if any person unknown has witnessed the crime, the information to identify him should be given which may be corroborated by the police during the investigation. There should be an assertion in the FIR to take penal legal action against the accused.

- *Your particulars*, including address and cellular telephone number should be given to the police to indicate willingness to assist the police.
- *Full particulars of the accused* should, if available, be given to establish his identity, but the information to trace him or arrest him need not form part of the FIR.
- *In emergency it is immaterial whether you mention the penal sections:* If you know the penal sections and the law, you can mention them to the police for incorporation in the FIR. If you have time and can access a lawyer or obtain legal advice before going to the police, you should get such particulars. However, you are not expected to know various penal sections and should not spend extra time to get to know them. The basis of invoking offences in the FIR is your factual statement and when your statement is complete the police or even a Magistrate while granting remand of an accused can specify the correct and complete penal provisions made-out.
- **Do not exaggerate or make any false statement in the FIR. You will be cross-examined in the course of the Trial and any exaggeration made, or false statement even on a minor issue may prove to be fatal to your case.**
- Do make the FIR as lucid as possible. It should contain a detailed statement of facts, since after you have made the FIR, any change in your statement – howsoever slight - will be subject to contradiction.

9. Can I give additional details subsequent to recording of the FIR to the police?

If the FIR does not disclose all the details of the offence, you can get your statement recorded under Section 161, Cr.P.C, besides your statement under Section 164, to give a full and exhaustive account of the incident.

There is no remedy in law to rectify an FIR that does not contain accurate details of the offence. A possible option is to invoke writ jurisdiction of the Supreme Court or the High Court or seek interference of the High Court in exercise of its inherent powers under Section 482, Cr.P.C to secure ends of justice. However, a case for correcting such FIR invoking the jurisdiction of the High Court would be both expensive and time consuming.

It is advisable for the aggrieved woman to approach the superior police officer in such cases. The superior officer may:

- (i) consider whether any rectification is called for;
- (ii) direct the subordinate to conduct the investigation in a manner to minimize any negative effects which an omission or error in the FIR could otherwise have had;
- (iii) pass on his or her experience in conducting of investigation in practical terms to the investigating officer; and
- (iv) gain confidence of survivors in the law enforcement machinery.

You may also elaborate on any point made in the FIR in your subsequent statement made under Section 161, Cr.P.C, but you cannot change or rectify a statement made in the FIR.

10. What are some precautions I can take if I can't approach the police immediately?

In the event you decide not to approach the police immediately, the relevant facts constituting the offence should be conveyed to a person having your trust or your close confident.

The following steps should be taken in case you decide not to approach the police immediately:

- A written first version of the offence should still be recorded by you. Recording your version of the offence is important so that in the future if you decide to take recourse to law, the earliest version of the offence can be presented. A written first version of the offence will serve to show that you have not changed the facts.

- You should place on record the essential facts with date, time and details of the commission of the offence.
- The report of the incident should preferably be sent by email, telegram, or by post, to a relative or friend.
- If the option of writing a record of the offence is unavailable, speak to a relative or friend personally or through telephone or cellular phone.
- Further, if there is any visible injury on your body and your medical examination has not been conducted, get the injury photographed. The date of taking the photograph should be available as evidence. **You can use a newspaper of the day in the background or next to the bruise, and preserve the negatives.**

11. Do I have to record a separate FIR for each offence perpetrated on me?

No. Offences forming part of the same transaction may be recorded and investigated together. For example, sexual violence may be accompanied with criminal intimidation.

It is permissible to register FIR for all the offences forming part of the same transaction, even if only one offence is cognisable. The abetment of, or attempt, or conspiracy to commit such offences can also be investigated as a part of the same FIR.

12. What are my options if the FIR is not registered by the police?

Following the enactment of the CLA Act, Section 166A was inserted into the IPC, which makes failure to record an FIR in cases of sexual offences punishable with rigorous imprisonment for a term which shall not be less than six months, but which may extend to two years and shall also be liable to fine.

However, if the police do not register a FIR despite your complaint, you must be immediately informed of their decision. You have the following options if the FIR is not registered:

(i) *Approach a superior police officer:* Under Section 154(3), Cr.P.C, a person aggrieved by the refusal of the officer-in-charge of the police station to register the FIR can approach the Superintendent of Police by sending the substance of the information in writing by post and the officer may investigate the case or order investigation by a subordinate officer. Meet the Superintendent of Police and impress upon him / her about the need to register the FIR.

(ii) *Magisterial directions for police investigation:* A Magistrate empowered to initiate the prosecution of an accused on the police report can order the local police to investigate the case. The survivor can assume the burden of the prosecution by filing a private complaint before a Magistrate, within the meaning of Section 2(d), Cr.P.C, and prosecute the accused. The condition precedent for the exercise of this power under Section 156(3), Cr.P.C, is the commission of a cognisable offence. It should be noted that the contents of the application to the Magistrate, if allowed, get converted into the FIR and, therefore, details of the commission of the crime updated till the filing of the application must be given.

- *Pre-Cognisance Directions for Investigation*

The power under Section 156(3), Cr.P.C can be invoked by the Magistrate before she/he takes cognisance of the offence. That is to say, the Magistrate can order police investigation or issue a search warrant for the purpose of investigation.

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

If the Magistrate takes cognisance of the offence under Section 190, Cr.P.C, he or she may: (a) postpone the issue of process and enquire into the case himself / herself; (b) direct an investigation to be made by the police officer; or (c) direct an investigation to be made by any other person.

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

(iii) *CBI investigation or change of investigating officer*: If an accused is a police officer or/and posted at the local police station, or there is a genuine apprehension that the police would not be independent based upon past experience, the High Court can, under Article 226 of the Constitution of India, direct investigation by changing the investigating officer or agency. Directions for investigation by the Central Bureau of Investigation (“CBI”) can also be passed if a *prima facie* case is made out and a fair investigation would not be possible otherwise.

While it is mandatory that an FIR be recorded if a cognisable offence is reported to the police, it is possible that the formalities of recording an FIR may not be followed. Hence, please note that:

- **You sign the FIR at the end of the document.** In case of an illiterate complainant, please ensure that the contents of the FIR are read out to him / her;
- **The officer in charge affixes her name and designation on the FIR;**
- **You take a copy of the FIR with you.**

13. How do I file a private complaint?

The following points should be kept in mind while filing a private complaint:

- *Private complaint can be filed by a public servant*: A Court of Sessions, or the Special Court under the POCSO Act, can take cognisance of a complaint filed by a public servant, who is discharging her/his official duty.
- *Private complaint can be filed by a friend or relative*: The victim need not be the complainant. Any person with necessary knowledge and material in possession may file a complaint, and the victim may attend the Court as a witness and avoid being made to discharge legal obligations as the complainant, other than to give evidence.
- *Response of the local police to be stated*: If the applicant has already approached the local police and they have refused to register the FIR, the same should be pleaded.

- *When the police has not been approached:* If you have not approached the local police for as you doubt a fair police investigation is possible, state the specific reasons in the application (for example, local police officer is a friend of the accused).
- *Jurisdiction:* The territorial jurisdiction of the Magistrate should be clearly asserted. When an offence is committed, you can ask any official of the local police station which is the concerned Magistrate's courthaving territorial jurisdiction.
- *Plead commission of cognisable offence:* There should be a clear averment of the commission of a cognisable offence in the application and any material in support should be filed along with the application.
- *Affidavit in support:* As the decision of the Magistrate whether to direct local police to investigate is taken on the application under Section 156(3), Cr.P.C, without recording any other statement of the applicant or other witnesses, the application should be supported by your affidavit to assure the court of the truth of the contents thereof.
- *The case of the prosecution must be set out:* The entire prosecution's case must be set-out in the complaint and it must give more details than the FIR. The prosecution's case must disclose the commission of a cognisable offence. The complaint must specify which part of the case would be proved by which evidence.
- *Lists of witnesses and documents:* Two lists - (i) of the witnesses, and (ii) of the documents in support, are filed for getting the witnesses summoned and producing document before the Magistrate.

14. What can I do if the police file a closure report?

At the conclusion of the investigation, the police either submit a closure report under Section 169, Cr.P.C, or a chargesheet under Section 173, Cr.P.C. A closure report is a report filed by the police stating they are closing the case.

When, after investigation, the police file a final/closure report, you have a right to oppose the acceptance of the final/closure report. Whenever closure report is filed, the Sessions Court or Special Court must give notice to the first informant. You will receive a notice to protest the closure report and counter the claims of the police.

- **Do attach affidavits if possible in the protest petition in order to strengthen your case. For example, you may have visited a private Doctor and his / her report could be annexed as an affidavit.**

The Court will either: (i) accept the closure report; (ii) take cognisance of the offence; or (iii) direct further investigation.

Please note that if the Court fails to take cognisance of the offence, you can file for a revision under Section 397, Cr.P.C.

15. What will the police do in the course of investigation?

The stage prior to the filing of the chargesheet is the investigation stage. Chapter XII of the Cr.P.C provides for the procedure under the investigation stage.

An investigation directed by a Magistrate under Section 202(1), Cr.P.C, in a private complaints case is meant to assist the prosecution in a complaint-case, and at its conclusion, no chargesheet is filed.

The important steps during the investigation are:

- (i) Medical examination of the victim and accused when necessary;
- (ii) Recording unsigned statements of witnesses under Section 161, Cr.P.C. **You can elaborate on the FIR while making your statement under this Section.**
- (iii) Arrest of the accused and their custodial interrogation by getting police remand, if necessary, to recover material connected with crime;
- (iv) Recording statements of witnesses under Section 164, Cr.P.C, before a Magistrate [compulsory to record such statement of the victim in any of

the offences under Section 354, 354A, 354B, 354C, 354D, sub-section (1) or (2), Section 376, 376 A, 376B, 376D, 376E, or 509, IPC] so that they confirm to their statements under Section 161 in evidence. **Your statement under Section 164 Cr.P.C, made before the Magistrate, should not contradict the statement made by you under Section 161, Cr.P.C.** The defence lawyer will attempt to show contradictions in your statements in order to destroy your case – hence, be clear while making your statements.

- (v) search/seizure of incriminating material/documents; and
- (vi) sending the relevant material for forensic examination by observing necessary precautions and collecting the expert opinion and placing it before the court along with the police report.
- (vii) Sometimes, when the accused confesses voluntarily before a Magistrate under Section 164, Cr.P.C, the confession forms a part of incriminating evidence against the accused and others jointly tried.

You must remember that in certain crimes special procedure is envisaged as follows:

- *Statement under Section 161 by a woman police officer:* The statement of a survivor of an offence under section 354, 354A, 354B, 354C, 354D, 376, 376A, 376B, 376C, 376D, 376E or section 509 IPC shall be recorded under Section 161, Cr.P.C, by a woman police officer or woman officer. A woman cannot be compelled by the police to attend any place for questioning other than that woman's residence (Section 160, Cr.P.C).

Statements under Section 161, Cr.P.C are unsigned.

- *Compulsory statement under Section 164, Cr.P.C:* The statement of the survivor must be recorded by a Magistrate under Section 164, Cr.P.C. If the survivor is temporarily or permanently mentally or physically differently-abled, the Magistrate may take the assistance of an interpreter/a special educator and the statement shall be videographed, which, in such a case, may be taken as the examination-in-chief of the victim during the Trial.
- *Medical examination/treatment without delay:* Delayed medical treatment or first aid to a victim of an offence under Section 326A,

376, 376A, 376B, 376C, 376D or 376E, IPC, is a punishable offence. The medical examination of the victim must be done with her express consent or of a person competent to give consent on her behalf.

- *Keep a record of your assistance to the police during investigation:* The police are independent and not bound to accept every suggestion made by you. However, if you have a record of how you assisted the police and they ignored relevant material, you may place such material before the court during the Trial. Keep the names of witnesses recommended, clues given for the recovery of the case property. If the Investigating Officer rejects your suggestion/proposition, approach the Superintendent of Police first without delay seeking corrective measures.

16. Can I refuse to undergo medical examination, but still continue with the case?

Yes. It is your right to refuse to undergo a medical examination. However, if you are a child under 12 years of age, your parents / guardians (and in their absence, the medical professional) will consent to the medical examination on your behalf.

17. What will happen during the medical examination for evidence collection?²

The medical professional will ask you questions that may appear intrusive, but are necessary for recording the history. For example:

- Details of the date, time and location of the incident(s) of sexual violence.
- The complete history of the incident. Do not feel awkward in providing the history of the incident(s) since if the details are not entered, it may weaken your testimony.

² Guidelines for responding to survivors of sexual violence are being framed by the Ministry of Health and Family Welfare (MoHFW) and will be available online shortly. Please refer to the MoHFW Guidelines as well

- Post assault information, such as, whether you changed your clothes, bathed, urinated, defecated, showered, washed genitals, rinsed your mouth, drank or ate (in oral sexual violence) will be asked since these activities have a bearing on evidence collection. These activities can lead to loss of evidence.
- If vaginal swabs for detection of semen are being taken, then a record of when you last had consensual sexual intercourse in the week preceding the examination will be asked.

Medical examination for evidence collection will include the following steps:

- Taking informed consent for the medical examination:* The medical professional has to take your informed consent for medical examination, medical treatment and evidence collection. If you are a child under 12 years of age, the consent of your parent / guardian will be taken.
- Injury documentation:* The medical professional will examine your body parts for sexual violence related findings (such as injuries, bleeding, swelling, tenderness, discharge). Injuries will be recorded with details - size, site, shape, colour.
- To assist investigation, forensic evidence may be collected:* This may include removing and isolating clothing, scalp hair, foreign substances from the body, saliva, pubic hair, samples taken from the vagina, anus, rectum, mouth and collecting a blood sample.
- iv. The two finger test is against the law, and has been held to be unconstitutional by the Supreme Court of India.³ Whether you are habituated to sexual intercourse or not is irrelevant to the offence of rape. *Per Vaginum / Per Speculum* examination will be done only for detection of injuries or medical treatment. **In case the examining Doctor / medical practitioner states he/she will do the “two finger” test on you, then do not submit to the medical examination.** However, if the two finger test is still conducted on you and you find mention of it in the medical report, inform the Court at the stage of Trial. You can instruct your lawyer to state to the Court that the test is unlawful.**

³ *Lillu @ Rajesh and Anr v. State of Haryana* 2013 (6) SCALE 17

- v. **The medical professional cannot opine whether rape has taken place or not.** The issue of whether an incident of sexual violence occurred or not is a legal issue and not a medical diagnosis. Only findings in relation to medical findings should be recorded in the medical report.

If you are differently-abled, the medical professional should follow the following guidelines:

- a) You must be provided the necessary information (what the procedure involves, the reason for doing the procedure, the potential risks and discomforts) in a simple language and in a form that makes it easy for you to understand the information;
- b) You must be given adequate time to arrive at a decision;
- c) You must be provided the assistance of a friend/colleague/care-giver in making the informed consent decision and in conveying their decision to medical personnel.

If you are a girl under 18 years of age, medical examination will be done by a lady doctor as per Section 27(2), POCSO Act.

18. I want medical assistance, but I don't want to file a case. Is this possible?

It is your right to receive free medical treatment. If you are a survivor of rape, then **all hospitals whether private or public shall immediately provide first aid or medical treatment to you free of cost** (Section 357C, Cr.P.C). Following the enactment of the CLA Act in 2013, the In-charge of the hospital, whether private or public, is liable to face punishment for non-treatment with imprisonment for a term which may extend to one year or fine or both (Section 166B, IPC).

As per Section 357C, Cr.P.C, all hospitals and medical practitioners have a statutory duty to inform the police of cases of rape perpetrated under the IPC.

Under Section 19(1), POCSO Act, all persons (including medical professionals / hospitals) have a statutory duty to inform the police / SJPU of rape or sexual offences perpetrated on a child.

Whether you are an adult woman, a child or the parent / guardian of a child-survivor, if you do not wish to report the matter to the police, then inform the hospital / medical professional accordingly. **Your informed refusal will be communicated to the police/ SJPU in accordance with the law.**

However, please note that there may be situations where the concerned stakeholders may not be able to take your informed refusal into consideration. For example, if you have a life threatening injury, then the duty to inform and take action against the perpetrator overrides your right to privacy. **The injury may be homicidal, suicidal or life threatening in any other way.** Counselling and social services for rehabilitation may be offered to you in such cases.

If you are a child, and your parent or guardian is sexually abusing you, then you may be sent for counselling and also taken to the Child Welfare Committee.

In such extreme cases, the police/SJPU may mandatorily have to take action irrespective of your consent.

19. What is the next step after the investigation concludes?

After the investigation by the police comes to an end upon the filing of the police report – called “Final Report” when no prosecution is recommended and “charge sheet” when prosecution is recommended – inquiry into an offence, as a prelude to the trial, begins. Please note the following:

- *If a Closure Report is filed:* When the police recommend no prosecution against one of the accused or dropping of even one of the offences, you have a right to represent your case against the recommendation before the Magistrate. The Magistrate would reject the recommendation if incriminating material (for example, incriminating statements under Section 161, Cr.P.C and documents in the police diary) are present.

- *When the chargesheet discloses involvement of a person in the offence not shown as accused:* A Magistrate at the time of taking cognizance is not bound to summon only those persons recommended by the police. He or she can summon others as well whose role in the offence is implicit by a reading of the charge-sheet. Thus, when the material filed with the charge sheet makes-out a case against a person not named earlier as an accused before the police, you can plead before the Magistrate to include him as one of the accused and to issue process for his attendance before the Magistrate.
- *Plead for further investigation:* If the investigation conducted shows – in the police report or otherwise – that certain important aspects of the case were not looked into at all or that fresh material is there, the Magistrate may, after hearing you, order further investigation, and upon its conclusion further report may be filed before the Magistrate for appropriate action. **You can also consider filing a private complaint if the chargesheet does not fully capture the case against the accused.** In that case, you can supplement the police investigation with a private enquiry as well, and additional evidence can be produced before the Court.

20. I can't afford a lawyer. What can I do?

Under Section 12, Legal Services Authorities Act, 1987, all women and children are entitled to legal services. You can approach the State Legal Services Authority in your State for a lawyer. Alternatively, you can approach a legal NGO and ask for a private lawyer from the NGO, or to be referred to a lawyer whose fees are subsidised or reasonable.

The State Legal Services Authority or legal NGO can also provide you with legal advice in order to familiarise you with the process of justice from the stage of investigation to the termination of the Trial. You may consider familiarising yourself with which legal order/proceedings can be challenged by you.

Role of the Support Person in cases of child sexual abuse

The journey through the medical and legal process can result in secondary victimization to the concerned child. This re-victimization takes the form of delays at every stage, lack of sensitivity by the actors, the survivor being expected to communicate with multiple personnel for various services. These barriers can be overcome by having a coordinated mechanism with a single point contact person who can be engaged in dealing with the case.

A support person can be assigned to a child survivor by the CWC's under Rule 4 (7) of the POCSO Rules. The child and his parents / guardian or other person in whom the child has trust and confidence may, on their own, seek the assistance of a support person or organization for proceedings under the Act. The Special Court can assign a Support Person to the child as well.

The support person will handhold the child and his /her parents or guardians through the entire law enforcement/judicial process, thus making it easy for him / her to navigate the system as there is one person coordinating the entire effort, and acting as the link between the survivor and the court process.

Some Legal Help-lines you can contact in Delhi:

- *Lawyers Collective Women's Rights Initiative* for free legal advice on domestic violence cases at 46805555
- *Jagori* at 26692700
- *Human Rights Law Network* at 24374501 / 24379855
- *Delhi Commission for Women (DCW)* at 23370596
- *Rape Helpline of DCW* at 23370557

21. What are the legal orders I can challenge?

In general, the right to appeal begins after the final decision at the termination of the Trial. However, before that, you can challenge the legality of any finding or order or the regularity of the prosecution in a revision. However, such finding or order cannot be interlocutory, that is, an intermediate order which is not final.

Please note:

- You can intervene and oppose bail or anticipatory bail to the accused, if the investigating officer has not done his duty and helped the accused. Further, a bail or anticipatory bail order which is perverse, i.e., passed ignoring the material on record, can be challenged by you.
- If the order granting bail or anticipatory bail did not impose necessary conditions on the accused, apply to the High Court invoking its inherent powers under Section 482, Cr.P.C, to secure the ends of justice by getting the relevant conditions imposed.
- An order passed during the stage of investigation may be challenged by you. Section 397(2), Cr.P.C, restricts a revision to non-interlocutory order in “any appeal, inquiry, trial or other proceeding” and leaves out “investigation”.
- You can challenge an order not taking cognizance of the offence in revision before the High Court, and plead that the incriminating material was sufficient to reverse the order.
- After the appearance of the accused and supply of copies of statements and documents, she or he has the right to plead for discharge before the Magistrate / Sessions Judge. If his or her plea is accepted you can contest the order in revision before the High Court.

22. What is the role of the Public Prosecutor?

In a case instituted on a police report / chargesheet, the Public Prosecutor in charge of the case represents the State and a legal aid lawyer or your private lawyer can assist the public prosecutor by acting under the Public

Prosecutor. Your private or legal aid counsel may assist the prosecution with the permission of the trial court. Please note the following:

- *When closure report is filed:* The victim and the first informant must be heard by the Magistrate when the police file a final report recommending no prosecution. If the Magistrate after hearing the victim takes cognisance of the offence based on the material in the final report or the case diary, the Public Prosecutor will resume his function as the in-charge of the case.
- *Permission to conduct prosecution:* A case exclusively prosecuted before a Magistrate by the State may be allowed to be conducted by a private person with the permission of the Magistrate, which is granted under extraordinary circumstances.
- *In a complaint triable by the Court of Session, the Public Prosecutor is the In-charge:* The complainant and her lawyer can prosecute the case before the Magistrate till the case is committed to the Court of Session. After the case is committed to the Sessions Court, the Public Prosecutor will be in charge of the prosecution and any other counsel can only assist the Public Prosecutor.
- *Special Public Prosecutor to conduct the prosecution effectively in serious cases:* The Government may appoint a Special Public Prosecutor and it is permissible for the victim to suggest the name/s of competent legal practitioners to the Government for that purpose.
- State Governments are mandated to appoint Special Public Prosecutors in cases of child sexual abuse under Section 32, POCSO Act. If a Special Public Prosecutor is absent or unavailable, the Public Prosecutor in charge of a case can conduct the prosecution in the absence of the Special Public Prosecutor.
- *Written submissions may be submitted by the Assistant Public Prosecutor:* The Assistant Public Prosecutor may submit written submissions after the evidence is closed in the case under Section 301(2), Cr.P.C. Do instruct your private counsel to file the written submissions.

Written arguments

Filing written arguments on your behalf after the evidence is closed, with the permission of the Court, can be an effective means to convince the

Trial Court that the accused deserves to be convicted. Your arguments should contain the following:

- Analysis of the prosecution evidence to show why it can be relied upon and which minor contradictions should be ignored.
- How there is a corroboration of the prosecution evidence to show the culpability of the accused.
- Parts of the evidence of hostile witnesses, if any, which can be relied upon.
- Which of the statements of the accused under Section 313, Cr.P.C, show admission of incriminating material and which parts of his statement are vague or irrational that may be taken into account together with the prosecution evidence to convict him.
- A clear enunciation of the case law in support of your plea of convicting the accused.
- A plea for directing the accused to pay compensation, under Section 357(1), out of the fine, or under Section 357(3), Cr.P.C, without imposing fine, as appropriate.

Role of Rape Crisis Centre's in Delhi

In *Delhi Commission for Women v. Delhi Police* W.P. (CrI) 696/2008, the High Court of Delhi held that:

- A duty officer upon receipt of complaint must also intimate "Rape Crises Cell" (RCC) on its notified helpline number (Counselors from the RCC's represent survivors in Delhi).
- RCC's will have with them accredited support services for shelter, social workers, counselors, mental health professionals, lawyers.
- If it is brought to the notice of the Court from a support person / RCC advocate / victim, threats received by the victim or her family members to compromise the matter, the judge shall immediately direct the ACP to look into the matter and provide an action taken report before the court within 2 days. The court must ensure that protection is provided to the victim and her family.

(contd...)

In *DCW v. Shri Lalit Pandey W.P. (Crl.) No. 696/2008* and Standing Orders No. 303/2010 issued by Commissioner of Police, Delhi, it is directed that:

- On receiving complaint, Duty Officer calls the woman police officer to record complaint. Every SHO shall ensure a woman police officer (not below the rank of Head Constable) is available.
- Unavailability of women officers: women officers from other police stations in the district should immediately be pulled in and put on the job.
- Duty officer upon receipt of complaint must also intimate RCC on its notified helpline number
- RCC will in turn contact designated Crisis Intervention Center(CIC), who will send their Counselor to the Police Station.
- CIC Counselor provides counseling to survivor. If service of Counselor is required during night, then concerned SHO should arrange transport to pick up and drop the Counselor.
- If Counselor refuses to come or causes unnecessary delay, then RCC should be informed to arrange for an alternate Counselor.

22. What will happen during the course of the Trial?

The Trial is the most important part of a criminal prosecution. In most cases, evidence recorded in the Court is the basis of the final verdict of conviction or acquittal.

Please note the following:

(i) Refreshing memory: After stepping in the witness-box and taking oath you are entitled to refresh your memory with respect to your previous statements including the statement to the police under Section 161, Cr.P.C. If the evidence is being recorded long after the incident of crime you should refresh your memory before giving further evidence.

(ii) *Irrelevant questions not allowed:* During the examination-in-chief, the Public Prosecutor is not supposed to ask any question which suggests the answer though such questions can be put to you by the defence during the cross-examination.

- Indecent and scandalous questions not having direct bearing to the facts in issue may be forbidden by the court.
- Questions intended to annoy or insult in offensive form may be forbidden.
- The Trial Court decides which questions cannot be put to a witness.
- **It is likely that during cross-examination, the defence lawyer will pose questions seeking to destroy your credibility as a witness, hence, you must be as consistent as possible with the facts of the case.**
- Under Section 327(2), Cr.P.C, the inquiry into and trial of rape shall be conducted *in camera*. The presiding Judge may, 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.

Some relevant provisions of the Indian Evidence Act, 1872 (“IEA”), are:

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

- A witness unable to speak may give evidence in any other intelligible manner, by writing or signs in open Court, which shall be deemed oral evidence, or when she cannot verbally communicate, through the assistance of interpreter or special educator [Section 119, IEA].

Your main task during the Trial is giving evidence but you should keep yourself informed of how the Trial is proceeding, which witnesses supported the case of the prosecution and withstood the test of cross-examination, which witnesses turned hostile or tried to create doubt in the case of the prosecution and which prosecution witnesses could not be examined as they left the given address and failed to give the new address. You can assist the prosecution in the following manner:

- If summons to witnesses are returned without service due to their non-availability and you know the whereabouts of any of the witnesses, inform the Court in writing to enable it to secure the attendance of the witness/s.
- If there is a relevant witness not cited by the prosecution, you should inform the Court and request it to summon the witness for recording his evidence.
- You can instruct the counsel representing you to assist the Court in formulating questions to be put to the accused in the court's examination after the close of the prosecution evidence so that all incriminating facts and circumstance are put to the accused clearly and distinctly for his/their explanation.
- In case the accused wants to lead evidence in defence and a list of witnesses is filed, you can brief your counsel about any relevant information you may have about a defence witness in advance. The counsel representing you should in his turn inform the Public Prosecutor, so that the defence witnesses may be effectively cross-examined by him.

Post-conviction Sentence: After the conviction, the prosecution pleads for severe sentence in serious cases, but in practice, by and large, the quantum of sentence is left to be determined by the Court. In any event, after the conviction, the Court will give the convict an opportunity to place material for taking a lenient view on sentencing him and if evidence of his

good character is given that witnesses can be cross-examined and the bad character of the accused would then be a relevant fact.

23. Are there any special provisions for child witnesses?

Yes. Special Courts established under the POCSO Act have special procedures and powers. Specifically, these include:

- (a) The Special Public Prosecutor or the counsel appearing for the accused shall communicate the questions to be put to the child to the Special Court, which shall in turn put those questions to the child.
- (b) The Special Court may permit frequent breaks for the child during the Trial.
- (c) Allowing family member, guardian, friend or relative, in whom the child has trust or confidence, to be present.
- (d) Ensuring that the child is not called repeatedly to testify in Court.
- (e) Disallowing aggressive questioning or character assassination of the child and ensuring that his or her dignity is maintained at all times.
- (f) Ensuring identity of the child is not disclosed at any time during the course of investigation or Trial.

The following guidelines are included in The Delhi High Court Committee 'Guidelines for Recording of Evidence of Vulnerable Witnesses in Criminal Matters.'⁴ All Trials before the Special Court:

- Must be *in camera* and in the presence of the parents of the child or other person the child trusts. No media report shall disclose any details of a child which may lead to the disclosure of its identity without the Special Court's permission.

⁴ The 'Guidelines for Recording of Evidence of Vulnerable Witnesses in Criminal Matters' are available at: http://delhihigh-court.nic.in/notifications_practice_directions.asp. Last accessed on 5th August 2013.

- Must record the evidence of the child within 30 days of the Special Court's taking cognisance of the offence. If delayed, the Court shall give reasons.
- Shall ensure while recording evidence that the child is not exposed to the accused. The following procedures should be adhered to when recording such evidence –
 - (i) *Connect the courtroom and the children's room by live video-link and video-conference facilities.* This will ensure that a traumatised or a child of tender age is able to depose without being overwhelmed by the court surroundings and/or the accused. The video-link/video-conferencing shall be so arranged that the child does not see the accused, though those present in the courtroom are able to see the child depose in the children's room, and the going-on in each room can be heard by those in the other.
 - (ii) The persons who can remain in the room during the deposition of a child witness are parents or guardian, or friend or relative in whom the child has trust or confidence; support person appointed by the Child Welfare Committee; translator or interpreter or special educator or person familiar with the manner of communication of child or an expert in the field; any other person representing NGO/ professionals/experts/persons having knowledge of psychology, social work, physical health, mental health and child development deemed necessary by the Court for the welfare and well-being of the child; an officer of the court; and persons necessary to operate the live video-link and video-conferencing equipment. When such evidence is not recorded by video-conferencing the Judge, accused, the special public prosecutor, the defence lawyer, the child's lawyer, police personnel other than witnesses in the case, the administrative staff of the Court can remain in the Court.
 - (iii) When the child witness is examined and cross-examined, a video monitor will record and transmit the child's deposition to those in the courtroom.
 - (iv) *Testimonial aids*, such as, dolls, anatomically correct dolls, puppets, drawings, mannequins or appropriate demonstrative device should be available with the Special Court to provide a child with

appropriate assistance during its deposition. The testimonial aids should be kept in the children's room.

- (v) *Children's room*: (a) child witness awaiting her/his turn to depose before the Special Court should be in the children's waiting room, which should be equipped with toys, books, drawing and painting material, indoor games and recreational equipment; (b) the children's waiting room should have attached toilet and facilities for drinking water, electricity, light and ventilation, and cooling or heating arrangement [depending on the climate], and arrangements to provide the child with appropriate food so that the child is comfortable; (c) the children's waiting room should have security for the protection of children, and the entry of the accused, defense lawyer or other person detrimental to the interest of the child should be barred.
- (vi) *Miscellaneous*: (a) A child during deposition should be allowed to have emotional security item, such as, blanket, toy or doll. (b) The presiding judge of the Special Court should not be dressed in judicial robes and should sit on an appropriate platform so that the child is able to take him/her as a friend/well wisher and no artificial psychological barrier is created.

24. I am an adult woman being raped and/or sexually abused by my husband. What are my rights under The Protection of Women from Domestic Violence Act, 2005?

You have the following rights:

- *The right to reside* (Section 17, PWDVA): Every woman in a domestic relationship shall have the right to reside in the shared household, **whether or not she has any right, title or beneficial interest in the same**. You have a right not to be evicted or excluded from the shared household or any part of it, save in accordance with the procedure established by law.

- *Protection orders* (Section 18, PWDVA) can be claimed preventing your husband from committing, aiding or abetting any act of domestic violence or any other act specified in the order. Protection orders can include preventing violence to dependants, other relatives, and persons who are assisting you.

Breach of a protection order is a punishable offence under Section 31, PWDVA, and offences are non-bailable and cognisable.

- *Monetary relief* (under Section 20, PWDVA) to meet expenses incurred and losses suffered, including maintenance, medical expenses etc. (for example, the cost of an abortion).
- *Residence orders* restraining from disturbing your possession of the shared household, or from entering any portion of the shared household in which you reside can be granted under Section 19. Further, orders can be passed directing the respondent to remove himself from the shared household, restraining him from alienating, disposing off the shared household, or to secure an alternate accommodation for you.
- *Temporary Custody* of any child under Section 21, PWDVA.
- *Compensation* and damages for injuries caused by acts of domestic violence (for example: mental injury) under Section 22, PWDVA, can be granted.

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

S. No	Offence and Description	Punishment under IPC
1	<p>Section 354 A</p> <p>Sexual Harassment consists of; Any of the following offending acts of a man (i) physical contact and advances including unwelcome and explicit sexual overtures; (ii) a demand or request for sexual favours; (iii) showing pornography against the will of the woman; (iv) making sexually colored remarks.</p>	Rigorous imprisonment which may extend to three years or with fine, or with both for clause (i) to clause (iii). Imprisonment of either description which may extend to one year or with fine or both for clause (iv)
2	<p>Section 354B</p> <p>Assault or use of criminal force to woman with intent to disrobe is an offence.</p>	Not less than three years imprisonment this may extend to seven years and shall also be liable to fine.
3	<p>Section 354C</p> <p>Voyeurism – is an offence by a man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed.</p>	<p>First conviction – One year imprisonment which may extend to three years and fine</p> <p>Subsequent conviction – Three years imprisonment which may extend to seven years and shall also be liable to fine</p>
4	<p>Section 354 D</p> <p>Stalking is an offence by a man who (i) follows a woman and contacts or attempts to contact her to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or (ii) monitors the use by a woman of the internet, email, or any other form of electronic communication.</p>	<p>First conviction – Imprisonment which may extend to three years and shall also be liable to fine</p> <p>Subsequent conviction – Imprisonment which may extend to five years and shall also be liable to fine</p>
5	<p>Section 370</p> <p>Trafficking of Persons is an offence committed by a person who for the purpose of exploitation (a) recruits (b) transports (c) harbors (d) transfers or (e) receives a person/s by firstly using threats, secondly, using force / coercion, thirdly, by abduction, fourthly, by practicing fraud, fifthly, by abuse of power or sixthly by inducement commits the offence of trafficking. Exploitation includes sexual exploitation.</p>	Section 370 (4), 370 (5), 370 (6) deal with trafficking of minors. The offence is punishable with rigorous imprisonment for not less than ten years imprisonment but which may extend to life and shall also be liable to fine
6	<p>Section 370 A</p> <p>Exploitation of a trafficked person is an offence by anyone – who knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation.</p>	Rigorous imprisonment for not less than 5 years which may extend to seven years and shall also be liable to fine

S. No	Offence and Description	Punishment under IPC
7	<p style="text-align: center;">Section 375</p> <p>A man is said to commit “rape” if he—</p> <p>(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or</p> <p>(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or</p> <p>(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or</p> <p>(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:—</p> <p><i>First.</i>—Against her will.</p> <p><i>Secondly.</i>—Without her consent.</p> <p><i>Thirdly.</i>—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.</p> <p><i>Fourthly.</i>—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.</p> <p><i>Fifthly.</i>—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.</p> <p><i>Sixthly.</i>—With or without her consent, when she is under eighteen years of age.</p> <p><i>Seventhly.</i>—When she is unable to communicate consent.</p>	<p style="text-align: center;">Section 376</p> <p>Whoever, except in the cases provided for in sub-section (2), commits rape shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.</p> <p>(2) Whoever,—</p> <p>(a) being a police officer, commits rape—</p> <p>(i) within the limits of the police station to which such police officer is appointed; or</p> <p>(ii) in the premises of any station house; or</p> <p>(iii) on a woman in such police officer’s custody or in the custody of a police officer subordinate to such police officer; or</p> <p>(b) being a public servant, commits rape on a woman in such public servant’s custody or in the custody of a public servant subordinate to such public servant; or</p> <p>(c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or</p> <p>(d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women’s or children’s institution, commits rape on any inmate of such jail, remand home, place or institution; or</p> <p>(e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or</p> <p>(f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or</p> <p>(g) commits rape during communal or sectarian violence; or</p> <p>(h) commits rape on a woman knowing her to be pregnant; or</p> <p>(i) commits rape on a woman when she is under sixteen years of age;</p>

S. No	Offence and Description	Punishment under IPC
	<p><i>Explanation 1.</i>—For the purposes of this section, “vagina” shall also include <i>labia majora</i>.</p> <p><i>Explanation 2.</i>—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:</p> <p>Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.</p> <p><i>Exception 1.</i>—A medical procedure or intervention shall not constitute rape.</p> <p><i>Exception 2.</i>—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.]</p>	<p>or</p> <p>(j) commits rape, on a woman incapable of giving consent; or</p> <p>(k) being in a position of control or dominance over a woman, commits rape on such woman; or</p> <p>(l) commits rape on a woman suffering from mental or physical disability; or</p> <p>(m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or</p> <p>(n) commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life, and shall also be liable to fine</p>
8	<p style="text-align: center;">Section 376 A</p> <p>Punishment for causing death or resulting in persistent vegetative state of victim-</p> <p>Whoever commits an offence punishable under subsection (1) or (2) of S 376 and in the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state</p>	<p>Rigorous imprisonment for not less than 20 years, but which may extend to imprisonment for life (remainder of that person’s natural life) , or with death</p>
9	<p style="text-align: center;">Section 376 C</p> <p>Sexual intercourse by a person in authority-</p> <p>Whoever, being-</p> <p>in a position of authority or in a fiduciary relationship;</p> <p>a public servant;</p> <p>superintendent or manager of a jail, remand home or other place of custody or a women’s or children’s institution; or</p> <p>on the management of a hospital or being on the staff of a hospital,</p> <p>abuses such position or fiduciary relationship to induce or seduce woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape.</p>	<p>Rigorous imprisonment of either description for a term which shall not be less than five years, but may extend to ten years, and fine</p>

S. No	Offence and Description	Punishment under IPC
10	<p style="text-align: center;">Section 376 D</p> <p>Gang Rape-</p> <p>When a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape</p>	<p>Rigorous imprisonment for not less than 20 years and may extend to life (remainder of that person's natural life), and with fine</p> <p>(the fine shall be paid to the victim and shall be just and reasonable to meet the medical expenses and rehabilitation of the victim)</p>
11	<p style="text-align: center;">Section 376 E</p> <p>Punishment for repeat offenders-</p> <p>Whoever has been previously convicted of an offence punishable under 376, 376A or 376D and is subsequently convicted of an offence punishable under any of the said sections</p>	<p>Imprisonment for life (remainder of that person's natural life), or with death</p>
12	<p style="text-align: center;">Section 377</p> <p>Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal.</p> <p><i>Explanation:</i> Penetration is sufficient to constitute the carnal intercourse necessary to the offence.</p>	<p>Imprisonment for life or with imprisonment of either description for a term which may extend to ten years</p>
13	<p style="text-align: center;">Section 509</p> <p>Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, of that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman,</p>	<p>Simple imprisonment for a term which may extend to three years, and also with fine</p>

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

S.No	Offence and Description	Punishment under POCSO
1.	<p>Section 3 Penetrative Sexual Assault</p> <p>Inserting body part or object in a child, or making a child does this with another.</p>	<p>Section 4</p> <p>Not less than seven years of imprisonment which may extend to imprisonment for life, and fine</p>
2	<p>Section 5 Aggravated Penetrative Sexual Assault</p> <p>Penetrative sexual assault by a police officer, member of armed forces, public servant, staff of remand home, jail, hospital or school. It includes penetrative sexual assault committed by any other person through gang penetrative assault, penetrative sexual assault using deadly weapons, fire, heated substance or corrosive substance, penetrative sexual assault which physically incapacitates the child or causes child to become mentally ill, causing grievous hurt or bodily harm and injury to the sexual organs of the child, making girl child pregnant, inflicting child with HIV or any other life threatening disease, penetrative sexual assault more than once, penetrative sexual assault on a child younger than 12 years, by a relative, owner / manager or staff of any institution providing services to the child, by a person in a position of trust or authority over the child, committing penetrative sexual assault knowing the child is pregnant, attempts to murder the child, by a person previously convicted for a sexual offence, penetrative sexual assault in the course of communal or sectarian violence, penetrative sexual assault and making the child strip or parade naked in public.</p>	<p>Section 6</p> <p>Not less than ten years of imprisonment which may extend to imprisonment for life, and fine</p>
3	<p>Section 7 Sexual Assault</p> <p>With sexual intent touching the private parts of a child</p>	<p>Section 8</p> <p>Not less than three years of imprisonment which may extend to five years, and fine</p>
4	<p>Section 9 Aggravated Sexual Assault</p> <p>Sexual assault by a police officer, member of armed forces, public servant, staff of remand home/jail/hospital/school, etc, and other acts of sexual assault by any person as mentioned in the second part of section 5, except making a girl child pregnant.</p>	<p>Section 10</p> <p>Not less than five years of imprisonment which may extend to seven years, and fine (Section 10)</p>

S.No	Offence and Description	Punishment under POCSO
5	Section 11 Sexual Harassment of the Child With sexual intent: showing any object/body part, or making any gesture aimed at a child making a child exhibit her body enticing or threatening to use a child for pornography	Section 12 Up to three years of imprisonment and fine
6	Section 13 Use of Child for Pornographic Purposes	Section 14 (1) Imprisonment up to five years and fine and in the event of subsequent conviction, up to seven years and fine
7	Section 14 (2) Penetrative sexual assault by directly participating in pornographic acts	Section 14 (2) Not less than ten years of imprisonment, which may extend to imprisonment for life, and fine
8	Section 14 (3) Aggravated penetrative sexual assault by directly participating in pornographic acts	Section 14 (3) Rigorous imprisonment for life and fine
9	Section 14 (4) Sexual assault by directly participating in pornographic acts	Section 14 (4) Not less than six years of imprisonment which may extend to eight years, and fine
10	Section 14 (5) Aggravated sexual assault by directly participating in pornographic acts	Section 14 (5) Not less than eight years of imprisonment which may extend to ten years, and fine
11	Section 15 Storage of pornographic material involving a child for commercial purposes	Section 15 Three years of imprisonment and / or fine

Note: As per section 42 of the POCSO Act, where an act or omission constitutes an offence punishable under this Act and also under sections 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376, 376A, 376C, 376D, 376E or section 509 of the Indian Penal Code, then 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.

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

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

