



CAPACITY BUILDING OF MULTIPLE STAKEHOLDERS
FOR COMBATTING
VIOLENCE AGAINST WOMEN AND CHILDREN

COMPENDIUM OF TEACHING CASES & PEDAGOGICAL TOOLS

National Gender and Child Centre,
Lal Bahadur Shastri National Academy of Administration

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NATIONAL GENDER AND CHILD CENTRE,
LAL BAHADUR SHASTRI NATIONAL ACADEMY OF ADMINISTRATION
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स्मृति जूबिन इरानी
Smriti Zubin Irani



मंत्री
महिला एवं बाल विकास और वस्त्र
भारत सरकार
नई दिल्ली

Minister
Women & Child Development and Textiles
Government of India
New Delhi



MESSAGE

National Gender and Child Centre (NG&CC), Lal Bahadur Shastri National Academy of Administration (LBSNAA), is committed to the cause of achieving Gender Equality and protection of Child Rights by strengthening capacity building of stakeholder institutions.

I applaud NG&CC for bringing out a publication titled "Capacity Building of Multiple Stakeholders for Combatting Violence against Women and Children- Teaching Cases and Pedagogical Tools". As the name suggests, the compilation of case studies deals with the nuances and complexities addressed by multiple duty-holders closely working on this important issue. Holistic capacity building of the stakeholders is required to enable effective delivery of justice, rehabilitation of the victims as well as prevention of future cases of violence against women and children. This compendium of case studies with its elaborate and pertinent teaching notes and pedagogical tools will help attain this aim of National Gender and Child Centre by providing in-depth understanding of the complex cases.

My compliments to National Gender and Child Centre for their dedication to the cause of eliminating violence against women & children and I extend my support to their endeavour of sensitizing every official across all the departments involved in the mission of uplifting and empowering women and children of India.


(Smriti Zubin Irani)

डॉ. जितेंद्र सिंह

राज्य मंत्री (स्वातंत्र प्रभार)
उत्तर पूर्वी क्षेत्र विकास मंत्रालय,
राज्य मंत्री प्रधान मंत्री कार्यालय,
कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय,
परमाणु ऊर्जा विभाग तथा अंतरिक्ष विभाग,
भारत सरकार



DR. JITENDRA SINGH

Minister of State (Independent Charge),
Ministry of Development of North Eastern Region,
Minister of State, Prime Minister's Office,
Ministry of Personnel, Public Grievances and Pensions,
Department of Atomic Energy & Department of Space,
Government of India



MESSAGE

Gender equality in simple terms means that men and women have equal opportunities for financial independence, education and personal development. The word "Gender" indicates socially-constructed roles and responsibilities that societies consider appropriate for men and women and as there is no logical reasoning and rationale behind this division, it is important to keep examining these roles actively to preclude from restraining all sexes in achieving their full potential only on the basis of gender. When the rights of women are guaranteed and they get equal opportunities it not only ensures the attainment of gender equality, but it also paves a way for meeting a wide range of international development goals. Empowered Women contribute to the health and productivity of their families, communities, and countries, creating a ripple effect that benefits everyone.

However it is not misplaced to comment that not only the countries across the world are making consistent efforts to achieve gender equality they are also encountering Gender-based violence (Violence against women based on their perceived subordinate status) to deal with seems avoidable discriminations. And unfortunately the world witnesses, not only violence against women, but children too, in equal numbers.

National Gender and Child Centre (NG&CC), Lal Bahadur Shastri National Academy of Administration (LBSNAA), is committed to the cause of achieving Gender Equality and protection of Child Rights by strengthening capacity building of stakeholder institutions. I want to convey my appreciation to the Centre for its endeavor to achieve Gender Equality by working towards empowerment of women and bringing about a transformational shift.

It is my pleasure to share that the Centre in line with its stated objectives is bringing out a publication titled **"Capacity Building of Multiple Stakeholders for Combatting Violence against Women and Children-Teaching Cases and Pedagogical Tools"**. This compilation of case studies has been contributed by experts from across the country. It captures the nuances and complexities associated with such cases dealt by multiple duty-holders working to address this important issue. This compilation will go a long way in enhancing the institutional capacity in eliminating Violence against Women and Children.

I would like to congratulate National Gender and Child Centre for their commitment to the cause and we should support them to continue this work so that it reaches each and every official in all the departments that are working towards the upliftment of women and children in India.



(Dr. Jitendra Singh)

MBBS (Stanley, Chennai)

MD Medicine, Fellowship (AIIMS, NDL)

MNAMS Diabetes & Endocrinology



**From the Desk of the
DIRECTOR AND CHAIRPERSON
National Gender and Child Centre**


National Gender and Child Centre is committed to contributing to ensure gender equality to protect children's rights by building institutional capacities. To ensure effective justice delivery and meaningful rehabilitation of the victims, it is critical that holistic capacity building of the stakeholders is done. This compendium of case studies on violence against women and children is precisely a step forward in furthering the objectives of the Centre. This publication will assist in providing a critical understanding of the nuances involved in the cases from a multi-sectoral perspective.

I congratulate Alankrita, the then Executive Director of the Centre, who was ably assisted by her co-editors Vidya Bhushan and Swati Yadav, for not only conceptualizing this compendium based on real-life cases but also, for adding comprehensive teaching notes, to make this compendium a relevant resource for understanding different and crucial aspects of cases, and thus, bringing in the sensitization amongst the stakeholders in addressing the issue of violence against women and children substantively. The efforts of Alankrita and her team are reflective of her commitment to the cause.

I must sincerely thank Hon'ble Minister for Women and Child Development, Ms. Smriti Z. Irani, for sharing her vision and acknowledging the importance of focusing attention on the issues concerning children and that true gender parity cannot be achieved till our efforts to break gender stereotypes, prejudices and discrimination start right from childhood stage. Due to her inspiration and suggestion, the National Gender Centre at LBSNAA has been renamed as National Gender & Child Centre. It is apt that a publication focusing not only on violence against women but also against children is being published soon after the renaming of the Centre to make it truly reflective of its focus areas.

I would also like to place on record my heartfelt gratitude towards Hon'ble Minister Dr. Jitender Singh for his unstinted support and best wishes to the Centre.

I hope the readers will make full use of this resource, and I wish many more such substantive initiatives to the NG&CC.


(Sanjeev Chopra)

Director, Lal Bahadur Shastri National
Academy of Administration & Chairperson,
National Gender & Child Centre



Note from the EXECUTIVE DIRECTOR

National Gender and Child Centre

It is only fair that before commenting on the publication, I, on behalf of the NG&CC team, place on record our heartfelt gratitude to Hon'ble Minister of State (Independent Charge), Ministry of Development of North Eastern Region; Minister of State, PMO, Ministry of Personnel, PG and Pensions, Department of Atomic Energy and Department of Space; Dr. Jitendra Singh for providing continuous unflinching support to the Academy and National Gender and Child Centre.

We extend our sincere gratitude to Union Minister for Women and Child Development and Textiles, Ms. Smriti Z. Irani, for always supporting the mandate of the NG&CC besides encouraging the Centre to achieve beyond that.

We express our heartfelt appreciation for the former Chairperson NG&CC and Director Lal Bahadur Shastri National Academy of Administration Dr. Sanjeev Chopra, under whose able leadership the Center could work efficiently towards enhancing the capacity building of stakeholders apart from preparing this compendium. His ebullient personality inspired his team to deliver to the best of their abilities.

My note for this compilation is incomplete without acknowledging the role played by Hon'ble Justice Madan Lokur in mentoring this whole project besides contributing to the development of Case Commentaries; as their role is critical in helping the learners to be able to see the larger picture and develop a nuanced understanding of the issues at hand.

I must extend my heartiest congratulations to my predecessor, guide and dear friend Alankrita Singh and her co-editors Vidya Bhushan and Swati Yadav for putting their sweat and soul in successfully compiling the case studies. It is significantly because of her persistence, dedication and personal commitment to the cause that different resource personnel who shared the same commitment; worked diligently in moulding the real-life cases, with which they were associated in various official capacities, into teaching cases. The team of editors worked laboriously and vigorously in ensuring that the case studies shared by the authors were worked upon to make them academically strong and relevant. In-depth research in the case related documents was done apart from interviewing important officials associated with the cases to make the teaching notes effective.



Duty holders working in the field towards eliminating violence against women and children encounter many such cases where they work towards ensuring justice delivery to victims; however, sometimes the attempts are frustrated due to lacunae in the process to pursue legal battles. Also, sometimes due to insensitivity that pervades amongst few stakeholders in taking the cases to its just conclusion over the years and lack of deep understanding of the issues at hand, the dispensation of justice evades the victims. It is in this background it was thought critical to work towards building the capacity of different stakeholders in understanding the nuances, complexities and different aspects involved while dealing with the cases of violence against women and children.

This compendium of nine case studies aims to offer teaching cases and pedagogical tools to achieve three main objectives, i.e. to foster the spirit of collaboration amongst duty holders, to promote a victim-centric approach in the discharge of duties by the duty holders and to foster the understanding of rehabilitation as a holistic concept. This publication is divided into two parts - Part A and Part B. Part A deals with five case studies on violence against children, out of which one is in Devanagiri script, and Part B deals with four case studies on violence against women, out of which again one is in Devanagiri script. Each case study is accompanied by detailed teaching notes that act as a beacon or guiding light for the instructors to go ahead.

The teaching notes provide expressed learning objectives and target audience for each case and state the ground rules need to be followed by the participants. It not only shows the path to the instructors by delineating step by step guide but also provides Questions and Answers with each case study to nudge the participants to ponder over some critical aspects of the case from their point of view after understanding the legal framework. Besides ensuring active and meaningful participation of the stakeholders using different pedagogies like Role Play, Stakeholder Analysis and Syndicate Group Work, it also brings to the fore different perspectives to provide for innovative solutions.

In the compendium, Ms. Surekha R. Patil, through a case study, provides a way to deliver justice to the victims of Child Sex-abuse on school premises. Ms. Alankrita Singh delves into the intricacies involved in delivering justice to the victims who are dealing with the abuse and the existence of marginalization in access to justice in general. As she has a deep understanding of Juvenile Justice and the challenges involved in implementing it effectively, she takes us into the life of a juvenile and the whirlpool of events he finds himself in. Mr. Satya Prakash captures the grim realities of the organized offence of trafficking and sexual exploitation and how to deliver justice. Ms. Seema Sharma provides a closer look at the issues encountered in delivering justice in the case of rape and murder of a girl child and challenges faced in delivering justice in a dowry



harassment case. Ms. Vrinda Shukla gives insights into the dark side of Social Media and the different nature of Sex crimes in the era of Technology. Mr. Vidya Bhushan, along with Ms. Alankrita Singh and Ms. Megha Dada Chawdhary, highlights the hurdles one needs to overcome while conducting the proceedings of the Internal Committee for Sexual Harassment at the workplace. Ms. Anupama's case study deals with the critical issue of the legal status of live-in relationships and the challenges faced in justice dispensation. I would like to place on record our appreciation for all the contributors for taking time and putting so much effort to share their cases and for working hand in hand with the editors to develop their cases in a literary form.

Credit for case commentaries is also due to Ms. Swati Chauhan and Ms. Aparna Bhatt. They worked diligently in refining the content and making them relevant for the targeted audience.

I am confident that this compendium will assist the readers in enhancing their knowledge of challenges and strengths in implementing the Acts and Rules besides enhancing their overall understanding of the subject.


Dipha Pannu

Editors' Note

Setting the Context

Government of India is committed to elimination of violence against women and children (VAWC) and to this end, has enacted a plethora of laws and rules. A 2017 report by NGO Bharatiya Stree Shakti¹ on 'Tackling Violence Against Women: A Study of State Intervention Measures', funded by the Union Ministry of Women and Child Development, says that the "low conviction rate in rape cases can be attributed to the lack of coordination between the investigating officers and the public prosecutors".

In this backdrop the NG&CC designed and delivered a series of 3 programmes on eliminating VAWC through capacity building of multiple stakeholders, in partnership with BMGF/IWWAGE; DFID (now FCDO) and BP RD. Hon'ble Justice Madan Lokur mentored and guided the NG&CC in designing and delivering these three programmes.

The 1st and 2nd rounds were conducted for direct duty-holders working in the field towards elimination of VAWC, namely- police officials, members of judiciary, public prosecutors, doctors and civil administration officers. In order to create a pool of trainers, the 3rd round was designed as a Training of Trainers (ToTs) programme. The programs were designed to be interdisciplinary and were based on principles of 'participatory learning'. Diverse pedagogical tools were deployed including case teaching method, stakeholder analysis, role play, syndicate group work etc. Apart from key note lectures, panel discussions, film screenings, quizzes and debates were also used to enhance learner engagement and learning outcomes.

The most important objective of the programmes was to foster the spirit of collaboration among the duty-holders in the larger interest of justice. The participants had the opportunity to understand what were the roles and responsibilities of other duty holders and the challenges faced by them. In 'collective problem solving' during syndicate group work, they learnt to partner with each other as well as with the media, civil society and others to deliver justice.

The second objective was to promote a victim-centric approach in the discharge of duties by the duty holders. To develop empathic understanding of the victim's position in her interface with the duty holders, film screening, interaction with survivors were conducted and exercises by a clinical psychologist from NIMHANS were conducted.

The third objective was to foster the understanding of rehabilitation as a holistic concept. To develop thinking into why rehabilitation continues to be the biggest



missing link, making victim hood a vicious cycle, almost impossible to exit. Finally, how rehabilitation could be strengthened through convergence of schemes and multi-stakeholder collaboration.

About this Compendium

To take the above three objectives forward, the NG&CC is publishing a compendium of teaching cases and pedagogical tools. Case teaching method has long been used in business schools for teaching various management concepts. The method is amenable to collaborative problem solving, brainstorming and out of box thinking. It is particularly useful for inculcating the right attitudes, apart from incrementally improving knowledge and skills.

A total of nine case studies have been included in the compendium which is divided into two parts- Part A and Part B. Part A comprises of case studies on violence against children and Part B on violence against women. The cases have been contributed by faculty, resource persons and participants of the above programs who have been closely associated with the respective cases in their official capacities. The cases have been selected to represent various forms of violence against women and children that are commonly prevalent in the Indian society as well as include cases from the diverse perspectives, those of all key stakeholders- Prosecution, Police, Judicial, Medical and Civil Services Officers. The cases have been researched, documented, developed as teaching tools and supplied with teaching notes by the editorial team of the NG&CC.

A sincere attempt has been made to maintain objectivity and retain the nuances and complexities of each case. The cases generally end in a dilemma or decision point which does not have a straight forward or ideal solution. They are designed to encourage thinking, deliberation and debate. The role of the teacher or trainer is envisaged as that of a facilitator in a process of peer learning. The cases also provide ample opportunities to empathise with the victims and protagonists.

However, the editors are of the view that to draw maximum learning from any of the cases or pedagogies included in the compendium, a pre-session on basic conceptual frameworks like Gender-sex, Intersectionality approach to gender based inequality and Children's Rights may be conducted to have all the participants on the same level of understanding. Concepts, suggested session plans and resources are detailed in Annexure-I. Additionally, the online courses designed and developed by LBSNAA and available on Integrated Government Online Training (iGOT) platform of Department of Personnel and Training (DoPT) may also be accessed for this purpose.

A Guide to the Teaching Notes

Detailed teaching notes have been provided with each case study. These are guidelines for instructors that provide information about the case, teaching strategies and pedagogies. This section elaborates how to effectively use a teaching note. A teaching note has the following components-

1. Learning Objectives: Clear and specific learning objectives have been identified for each case. And the corresponding teaching note focuses on ways and means of achieving those learning outcomes. However, none of the cases is limited by the given set of learning objectives. The cases are multi-faceted and amenable to a diverse set of learning outcomes. Those listed in the teaching notes are indicative and the most commonly used set of learning outcomes. The learning objectives may be varied as per the requirement of the course and the group of learners.

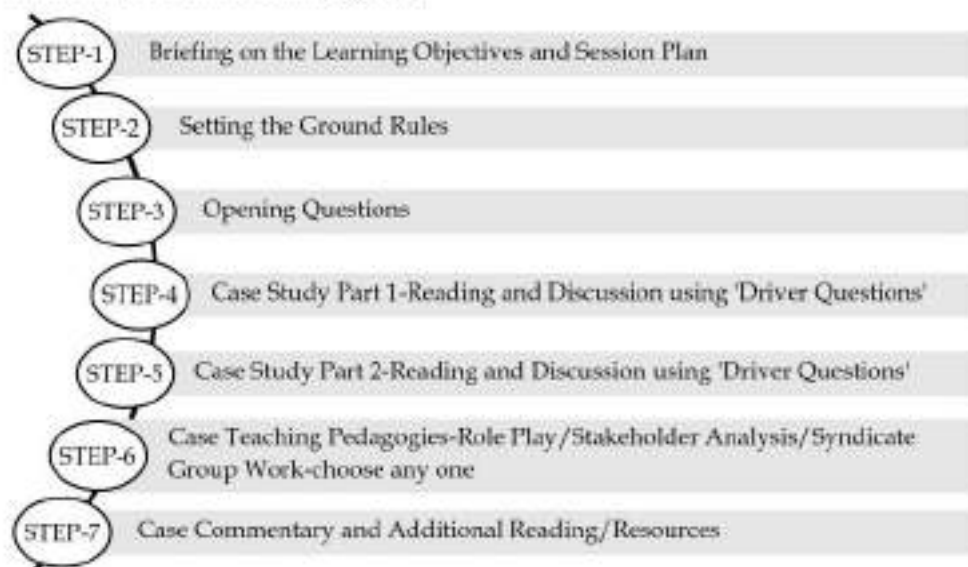
2. Ground Rules: These may be set out with the participants at the beginning of the session with mutual consensus. These help the participants stay focused and elicit commitment from them. Some examples are as follows:

- Punctuality
- Active Listening
- Open and receptive mind
- Being non-judgmental
- No hierarchy- address using first name
- Mobile phones- let the world manage without you for this duration

3. Opening Questions: These are warm up questions that serve three purposes. One, to open up the participants and encourage them to participate and share their thoughts. Second, to introduce the subject or to set the context. And third, to gauge the baseline knowledge and understanding of the subject among the participants. It is suggested that the first 2-3 questions may be objective or yes/no or one word answer types. For example, have you done a training on this subject earlier? The next 2-3 questions could be drawn from the pre-reading circulated prior to the training. A quick quiz may also be used for this purpose. A list of possible opening questions has been provided in each teaching note.



4. Step by step guide to Case Teaching: This section suggests the steps to be followed in the classroom while teaching a case.



5. Driver Questions: There are driver questions that follow each part of the case. These are questions that may be used for a guided discussion on issues relevant to that part of the case. These help the instructor remain focused on the learning objectives to be derived from each part of the case, as well as to engage the participants and encourage them to think and deep dive into the issues under discussion.

6. Case Teaching Pedagogies: Three alternative pedagogies have been suggested for each case. The participants would need to be divided into smaller groups (minimum 3 and maximum 10 members). Within the groups different roles (stakeholders) may be assigned to each member or alternately one group could represent the perspective of one stakeholder. After group formation any one of the following Case Teaching Pedagogies may be adopted for a case:

- Role Play:** To foster 'participatory learning', 'collaborative problem solving' and 'empathy', participants can be assigned different roles of stakeholders including the victim to deliberate on the problem at hand or suggest a possible solution. This practical enactment helps participants to reflect and empathise. Each teaching note contains case specific instructions on conducting the role play.
- Stakeholder Analysis:** Participants may be made to conduct stakeholder analysis by identifying key stakeholders in any given case and their respective roles and responsibilities. A template has been provided in the teaching notes to conduct

stakeholder mapping. This pedagogy helps the participants to always keep the victim at the center and to identify potential areas of collaboration with other stakeholders.

(c) *Syndicate Group Work*: A syndicate group work fosters collaborative problem solving, brain storming and out of box thinking. Each group may be encouraged to deliberate on possible solutions to the problem at hand, deliberate on the various options and arrive at a consensus with regard to the most appropriate solution. The groups may present their respective solutions either as posters or power-point presentations. Group specific solutions may be presented to the full class for further deliberation and discussion.

7. Case Commentary: Case commentaries have been provided to enable learners to understand the complexities and intricacies involved in seemingly simple cases. These have been written by subject/ field experts who have had significant years of experience in dealing with such cases. Commentaries help the learners go beyond what has been discussed in the class, to be able to see the larger picture and develop a nuanced understanding of the issue at hand. Commentaries may also deliberate upon contemporary debates, implementation challenges or way forward with regard to the subject they are dealing with. These may generally be distributed at the end of the case teaching as handout, followed by a quick round of observations or takeaways or questions.

8. Additional Readings: Bareacts of relevant laws or extracts of relevant sections, rules pertaining to the laws, relevant court rulings/case laws; journal articles or analytical opinion pieces, videos, films- these may be provided as pre-readings or post readings. Generally, pre-readings may be fewer, introductory in nature and are provided a week or couple of days prior to the session so as to provide sufficient time for reading. Post readings may focus on addressing specific issues that may not have been addressed in detail during the session. These also help in continuing the dialogue on the subject through email or other online fora. Certain pre and post readings have been suggested in each teaching note.

9. Time Management Plan: This helps the instructor to calculate the approximate time taken to complete the exercise and devise strategy accordingly. However, this is indicative and may vary based on the number of participants and other constraints.

10. Pre/Post Questionnaire: This is optional. If the instructor is interested in measuring knowledge, skills and attitudes with regard to a subject before and after training to be able to say something about the impact of the training, this option may be exercised. A sample questionnaire is annexed (Annexure-2).

11. Feedback: Feedback of participants is valuable for further improving the future training programmes. A sample template for obtaining feedback has been provided. (Annexure-3)



Acknowledgements

First and foremost, we acknowledge the contribution of Chairperson NG&CC for being a constant source of support and guidance in the development of this compendium. We also thank the present Executive Director, NG&CC for the enthusiastic execution of the final and significant stage of publication of this compendium.

We acknowledge the contribution of the contributors and authors of the case studies included in the compendium without which this compendium would not have been possible. Despite keeping a busy schedule, they worked hand in hand with the editors over an extended period of time, including the troubled and challenging times of covid lockdown. We also thank them for being open to editorial remarks and amends.

We also thank the contributors of case commentaries who went through the case shared with them, analysed it and shared their experience of handling similar cases.

Last, but not the least, we place on record our appreciation for the contribution of Justice Madan Lokur (retired) who was a mentor and guide to this project, from beginning till conclusion.

The Way Forward

It is our sincere hope that the teaching cases and pedagogical tools included in this compendium would help enrich the training and capacity building of trainers as well as direct duty holders. It is our endeavour to encourage trainers and training academies to be innovative in teaching and training and to converge field practices and training. We sincerely hope that publication of this compendium would encourage further writing and publication of teaching cases in the area of combatting VAWC.

In order to acknowledge the sincere efforts of the respective contributors and the organization, we recommend that while using a case for a training program due credit be given to the author as well as NG&CC. Any positive or constructive feedback on any case study or its classroom session would be welcome and may be emailed to NG&CC and the editors. We encourage and look forward to further engagement with training academies, trainers and field officers with regard to case-study based teaching, impact evaluation of case teaching as well as development of new case studies.

**Alankrita Singh
Vidya Bhushan
Swati Yadav**

Endnote

¹ Available at: <http://www.bharatiyastreesakti.org/2018/01/06/tackling-violence-against-women/>



PART-A

CASE STUDIES ON VIOLENCE AGAINST CHILDREN

CHAPTER 1:

Child Sexual Abuse in school premises: A case of conviction and justice

: Surekha R. Patil

CHAPTER 2:

Marginalisation in Access to Justice: A case of a child at the intersection of gender, caste and class

: Alankrita Singh

CHAPTER 3:

Dynamics of the organised offence of Trafficking and Commercial Sexual Exploitation: A poignant case of a young victim caught in the web of systemic responses

: Satya Prakash

CHAPTER 4:

Juvenile Justice and implementation challenges thereof: A case of a child in conflict with law

: Alankrita Singh

CHAPTER 5:

Rape and Murder of a girl child: A case of leveraging digital evidence in securing justice

: Seema Sharma



1

CHAPTER

CHILD SEXUAL ABUSE IN SCHOOL PREMISES: A Case of Conviction and Justice

Surekha R. Patil

PART - I

About the Author

Surekha R. Patil was born and brought up at Thane, Mumbai, completed her LL.B. and LL.M. from Mumbai University before starting her practice in Thane District Court in the year 1996. She joined judicial services in the Direct District Judge cadre in the year 2016. During her tenure, she has presided over POCSO Special Court and Women Atrocities Special Court. Presently, she is serving as a District Judge at Kolhapur District Court.

THE LOCAL DAILY

Place: Ramgarh, Maharashtra 13.12.2018

"Reputed Hockey Coach sentenced to life imprisonment for sexually abusing minor students."

The news of sexual abuse of minor school girls by their hockey teacher came out as a shock for everyone. Ramesh Kumar, a 36-year-old unmarried man, was a well-known name in Ramgarh. In his 13-years long career as hockey coach at the Sewa Ram Public School, Ramgarh, he had become a household name with several of his students playing at both state and national level.

Ramesh's popularity gave him an impeccable reputation and a proximity to the Trustees of the School. He gave hockey coaching to students prior to their school from 07:00 to 08:00 am, in activity period 01:00 pm to 02:30 pm and also

in extra session from 04:30 to 06:30 pm. He was akin to God for the students who followed his instructions blindly. Also, he was one of the panellists for the selection of the Hockey Team of the College.

Every year, during summer vacation, Ramesh used to conduct residential summer camp in the school for 15 days. In May 2017, he conducted one such summer camp for his students. Around 50 students participated in it. For the stay of the students, arrangements were made within the school premises. Arrangements for accommodation of boys and girls were made in two separate class rooms at the second floor of the school building.

ACT - I

It did not seem strange to Chitra and other girls when the peon came to inform that Ramesh sir had called them one by one to the sports room located at the first floor. Chitra was the first one to go. She had been undertaking training from Ramesh sir from last five years. Few months ago she had passed her final exam with flying colours and was promoted to class IX. Even though she was brilliant in academics but her heart was in hockey. She dreamt of playing for Indian Hockey Team one day. However, she had no idea that her world was going to change.

Chitra: Sir, may I come inside?

Ramesh: Yes, please come in.

Chitra: Good evening sir, is this regarding today's practice session?

Ramesh: *[getting up from his chair]* No, I have called you to assign specific physical exercises to improve your performance.

[Chitra looked at him bemusedly]

Ramesh: *[moving closer to Chitra]* Do not worry! You are good. It's just that I will take your body measurement and assign you specific physical exercises, suited to your body type, to enhance your performance.

[Ramesh placed his hand on Chitra's shoulder and started touching her inappropriately. He asked her to remove her clothes in order to take her body measurement.]

Ramesh: Do not hesitate. There is nothing to be ashamed of. This will only improve your performance. If you want to play at international level, you will have to get used to it.

Chitra froze, her mind was numb. She could not think or say anything. It felt weird, dirty! As Ramesh's fingers moved across her body, every cell of her body felt repulsed. She wanted to scream, but all she could feel was a huge lump in her throat. She wanted to run away from the room. However, she stood still with her eyes cast down.

Ramesh: *[pointing towards a single bed in the corner]* Chitra lie down there.

[Ramesh performed the act of fingering on Chitra]

Ramesh: Chitra, you have an athletic body. However, you need to work on your posture. Come tomorrow, I will teach you some more exercises. Now go, and send someone else.

Chitra dashed out of the room. Her eyes brimming with tears, she ran to the girl's washroom and cried inconsolably.



ACT - II

One week had passed since the summer camp. Chitra was still struggling to come to terms with the unfortunate incident of previous week. She had not attended hockey coaching since end of summer camp. Not just her participation in hockey coaching was affected; changes could be noticed in her behaviour too. Always bubbly, chirpy and brimming with energy, she now remained quiet. Noticing these changes in her behaviour, Chitra's mother started getting anxious. She asked Chitra again and again but she would only cry in response. After a lot of convincing, Chitra finally opened up and narrated the ordeal of summer camp to her mother.

Chitra's mother was shocked and devastated. She narrated the incident to Chitra's father who decided to report the matter to school authorities. Chitra's parents then called other friends of Chitra who were a part of the summer camp to enquire if something had happened to them. To their shock it was revealed that five other classmates of Chitra had faced something similar. Parents of all the victims decided to meet at Chitra's house the next day.

In their meeting they found out that Ramesh had performed penetrative sexual assault on one of the girls and sexual assault on the others. After summer camp, Ramesh had asked one of the girls named Asha to come to his flat on pretext of some work. There, Ramesh had confessed his love to Asha and performed penetrative sexual assault on her. It was also revealed during discussion that Ramesh had inappropriately hugged and kissed one of the girls during overnight picnic at the beach in the adjacent district. This incident was also seen by some of the students present there. All the girls shared that he used to threaten them that they should not report the incident to anyone otherwise he could ruin their hockey career and have them thrown out of the school.

Parents of the victims collectively decided to call the police and file their complaints. Chitra's father called the Police Inspector of the concerned police station. The Police Inspector sent a lady police officer to Chitra's house to record testimony of the victims. The lady police officer listened to the ordeal of all the victims and asked them to file an FIR.

Chitra's parents filed an FIR the same day. Parents of three other victims (including Asha) filed their FIR the next day. Police arrested Ramesh Kumar and filed charge sheets in all the four cases.

PART - II

Four cases were instituted against the accused. Charge sheet was filed u/s 376 (2)(ii), 354, 506 of IPC and Sections 6 and 8 of POCSO Act.

In his defence, the accused made the following plea:

1. It is a revenge case, instituted to malign his reputation.
2. He was not present during the sports camp
3. He does not reside at the house where rape of the minor (Asha) was committed

To refute claims of the accused, the prosecution placed a host of evidence on record. Besides ocular evidence and documentary evidence were filed on evidence such as Spot *Panchnama* of the school and the house of the accused. Residential proof of the accused was provided to show that he was residing at the spot. Visitors', staff and teachers' register maintained in the school during May 2017, log book of the bus from which students were taken for overnight picnic by the accused during summer camp, Chemical Analyser (CA) report of the electronic articles seized from the accused in which pornographic images and videos were found including images of two victims and a CD of the CCTV footage of the school premises were all filed.

To establish the power wielded by the accused on the lives of the victims, it was brought on record that the accused selected the hockey team of the school. To prove the same, selection list was produced which bore signatures of the accused. The accused admitted that the signatures on the selection list were his. He also admitted that the names on the list were recommended by him.

Besides material witnesses, prosecution examined one more student who attended the summer camp, the peon who came to the girls' room to inform that the accused had called them, the school principal and the driver of bus who had driven the victims and the accused for overnight picnic during camp period. Medical officer was also examined to prove the medical report. All material witnesses corroborated. Medical evidence was also corroborated (hymen of Asha was found ruptured whereas hymen of other girls was found intact).

In all four cases, the statements of the victims were recorded. Each victim in her case narrated the entire incident as had happened with her. Defence referred to the statements of the victims recorded in other cases to bring contradiction on record. Defence also pointed out the contradiction in the time of *panchnama* as four *panchnama* of the same spot were prepared in four cases.

The CD of CCTV footage was prepared but as it did not follow the guidelines and procedures laid down for seizure of forensic evidence, it was considered not admissible. The same applied to the images of two victims found in electronic articles i.e. mobile and memory card, which were not shown to the victim to prove the same. Therefore, it was also not considered as in CA's report it was only mentioned that the image found in the articles were similar to photos of victims. Even though pornographic images and videos could not be proved to be of any of the victims but they were still relevant regarding the conduct and intentions of the accused.

Decision: It was proved beyond reasonable doubt that the accused was guilty of sexually abusing minor girls. The accused was sentenced to life imprisonment for the remainder of his life.



TEACHING NOTES

I. OVERVIEW OF THE CASE STUDY

The case study is based on a real-life incident. The names of the characters and places are changed in order to protect the identity of the victims. Furthermore, the details and timelines have been suitably modified to make the case academically relevant.

The case study is divided into two parts to comprehensively cover all the significant developments in the case. The case study begins with 'setting the context' for the case. Act I provides an account of the occurrence of the incident of sexual abuse against the child victims; the further unfolding of the incident - decision to lodge FIR against the accused - is specified under Act II. Part II, deals with court proceedings resulting in conviction of the accused.

II. LEGAL FRAMEWORK

Children constitute 39 per cent of India's population (Census 2011). The Constitution of India provides that the State shall direct its policy towards ensuring "*that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment*".

India acceded to the United Nations Convention on the Rights of the Child (UNCRC) in 1992 and its two Protocols, namely **the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography** and **the Optional Protocol on the involvement of children in armed conflict**, in 2005.

Keeping up with its Constitutional and international obligation, India has passed several child-centric legislations, in line with international standards, such as Juvenile Justice (Care and Protection) Act 2000, The Commissions for Protection of Child Rights Act, 2005, the Prohibition of Child Marriage Act, 2006, the Right of Children to Free and Compulsory Education Act, 2009, and the Protection of Children from Sexual Offences (POCSO) Act, 2012.

According to a study conducted by the Ministry of Women and Child Development (MWCD), titled "Study on Child Abuse: India 2007", around 53.22% children reported facing one or more forms of sexual abuse. Furthermore, in 50% cases, abusers were the ones known to children and trusted by them. Any form of sexual abuse leaves a traumatic imprint on a child's life, often resulting in their impaired physical and mental

growth. The vulnerability of children is compounded by the fact that they find it difficult to not only fully comprehend the nature of abuse committed against them but are also hesitant to communicate their experiences to someone responsible.

To specifically deal with the menace of child sexual abuse, POCSO Act, 2012 was passed. The Act recognises both *contact* and *no-contact* based sexual abuse of children. It broadly classifies sexual abuse of children under six categories, namely: –



One of the salient features of the POCSO Act, 2012 is its gender-neutrality and child-friendly process. The Act requires mandatory reporting of commission of sexual offence against children. The Act provides for establishment of Special Courts. These courts maintain a child friendly atmosphere, protect identity of child victim and conduct an in-camera trial. During the trial the burden of proof is on the accused, i.e. the accused is presumed to possess culpable mental state and is liable to prove beyond reasonable doubt that there was no such intention. As per the Act the child should not be brought in direct contact with the accused, neither during investigation nor examination.

III. LEARNING OBJECTIVES

- To understand the salient provisions of POCSO Act, 2012 and its significance in cases of sexual abuse of children.
- To understand the role and responsibility of various stakeholders in implementation of the law.
- To understand the need for inter agency coordination amongst various stakeholders in cases of sexual abuse of children.
- To understand the significance of investigation including digital evidence in conviction.



IV. TARGET AUDIENCES

- Judicial Officers/ Children's Courts.
- Police Officers/ Child Protection Officers/ Special Juvenile Protection Units.
- Administrative Officers at the implementation level eg, SDM, ADM, and DM.
- Probation Officers/ District Child Protection Units.
- Juvenile Justice Boards.
- Child Welfare Committees.
- NGOs working in the field of Child Protection.
- Trainers from training academies.
- Officers from other countries seeking to understand the Child Protection System in India.
- Any other relevant stakeholder.

V. STEP BY STEP GUIDE

Step 1 : Briefing on the Learning Objectives and Session Plan

Step 2 : Setting the Ground Rules

Step 3 : Warm-up/Opening Questions

Step 4 : Case Study Part 1- Reading and Stakeholder Analysis

Step 5 : Case Study Part 2- Reading and Syndicate Group Work

Step 6 : Distribute Case Commentary to the participants for reading and questions, if any.

Step 7 : Share Additional Readings/Resources

VI. CASE TEACHING GUIDELINES

- I. Usage of statistics can be relevant to bring into picture the extent of prevalence of sexual abuse of minors, especially by someone in position of trust and responsibility vis-à-vis the child victim. (Refer to MWCD Report 2007, NCRB 'Crime in India' reports, NGO reports).
- II. If the participants are new and uninitiated into the intricacies of the POCSO Act, 2012, a brief background may be useful to begin the session. (Refer to 'Legal Framework' given above).
- III. Administer Part I and choose questions from the following DRIVER QUESTIONS to conduct a guided discussion:

PART-I

1. Do you think Ramesh was in a position of responsibility and trust vis-à-vis the child victim (Chitra) in this case? [Yes/No]
2. According to you, what crime Ramesh has committed under POCSO Act, 2012? Tick the relevant option.
 - (a) Penetrative sexual assault
 - (b) Aggravated penetrative sexual assault
 - (c) Non-penetrative sexual assault
 - (d) Aggravated non-penetrative sexual assault
 - (e) Sexual harassment
 - (f) Using child for pornographic purposes
3. Who could have Chitra approached at this juncture? Specify the authorities
.....
.....
.....

IV. Administer Part II and choose questions from the following DRIVER QUESTIONS to conduct a guided discussion:

PART-II

4. With reference to unfolding of the events in the Act II, according to you, now Ramesh is culpable for which offence under the POCSO Act, 2012? *You may tick more than one option.*
 - (a) Penetrative sexual assault
 - (b) Aggravated penetrative sexual assault
 - (c) Non-penetrative sexual assault
 - (d) Aggravated non-penetrative sexual assault
 - (e) Sexual harassment
 - (f) Using child for pornographic purposes
5. Do you think instead of recording of four FIRs police should have recorded only one? [Yes/No]. Do you think even if four FIRs were lodged investigation should have been carried out by one Investigation Officer (IO)? [Yes/No]. Please give your reasons for the chosen response.
.....
6. Do you think child victims should have been produced before Child Welfare Committee by the police officials? [Yes/No] Support your answer with reasons.
.....



7. Do you think child victims should have been provided the following at the earliest?

Counselling.....

Medical assistance.....

(Specify specific provision under POCSO Act or POCSO Rules for the same)

.....

.....

.....

8. Do you think charges against school authorities should have also been framed? [Yes/No]. Specify your reasons

.....

9. Do you think electronic evidence was recorded in the present case in accordance with procedure laid down in the Evidence Act? [Yes/No]

10. List out the correct procedural practices significant while collecting electronic evidences.

.....

.....

.....

11. Do you think that the Court had the power to issue any relief in form of interim compensation to the child victim? [Yes/No] Do you think that the Court had the power to provide for any relief for restorative care of the child? [Yes/No]

Support your answer with a legal provision or case law

.....

12. According to you, what additional steps could have been taken to rehabilitate the child victims?

.....

VII. CASE TEACHING PEDAGOGIES

The participants can be divided into smaller groups for detailed discussion on the possible solutions to the problem at hand or to answer the dilemma question. For a group of 30 participants, it is recommended to divide them into 3 groups of 10 each. The instructor may use any one of the following pedagogical tools-

i) Role Play

ii) Stakeholder Analysis

iii) Syndicate Group Discussion



It is pertinent to note here that the instructor may give complete freedom to the participants to evolve their solution, their reasoning and arguments. There is no one correct solution to this and none may be recommended or favoured by the instructor. The views of the participants may be respected, the idea is to make them think and deliberate.

i) Role Play

For the Role Play organise the participants into 'n' no of groups of 10 each. Each such group of 10 participants would divide the following characters amongst them through draw of lots.

1. Judicial Magistrate
2. Child Welfare Committee
3. School Principal
4. Child victims
5. SHO/ Investigation Officials
6. Non-Government Organisations
7. Parents
8. Chief Medical Officer
9. Forensics Expert
10. District Magistrate

Time allotted to each group: 30 minutes

In the allotted time, using the limited information available in the case study and the reference material, the group shall discuss the following questions and explore whether they are or they are not able to arrive at a consensus or a solution.

- What were the deviations from the law by the various stakeholders?
- Can those deviations be corrected at this stage? If so, what is the role/ responsibility of each stakeholder?
- How effectively "access to justice" could have been provided to all the child victims?
- What steps could have been taken to provide "restorative care" or rehabilitation to the child victims?

Time allotted to one randomly selected group for role play- 30 minutes (2 minutes each character and 10 minutes for summing up). In the allotted time each participant to speak only for the character being played and to focus on answering each of the questions

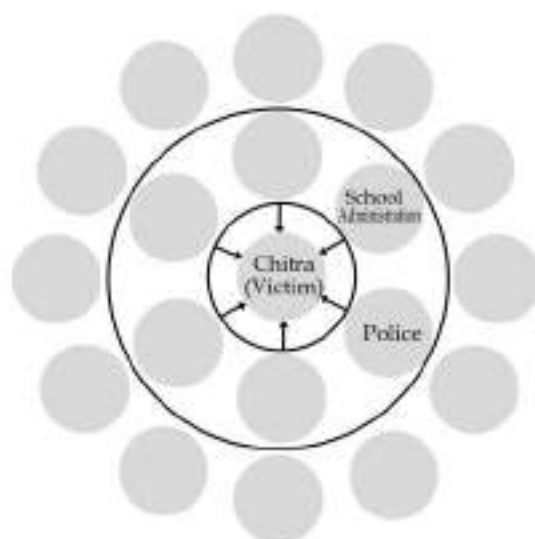


above. Each response may be summed up with the steps that could be taken to prevent such crimes and provide proper care to the child victims.

ii) Stakeholder Analysis

As an alternative to role play, a stakeholder analysis may be done on the format provided below. The purpose is to clarify the roles and responsibilities of each stakeholder in solving the problem at hand. It brings about better understanding of not just one's own role but also the role of other stakeholders leading to better multi-sectoral coordination. Note that the groups may be divided to have 10 different stakeholders in each group or alternately smaller groups of 3 each, each group representing one stakeholder.

After the groups have been formed, ask each group to use the given format to map stakeholders with Chitra at the Center. The duty holders who appeared on the scene and responded may be mapped in the inner circle and those who do not appear on the scene but had a legal responsibility may be mapped in the outer circle. As a next step ask them to briefly write down about the roles and responsibilities of each duty holder and discuss the extent of shortfall on the part of each of them and what may be the reasons for this shortfall. Following format may be used for stakeholder analysis:



iii) Syndicate Group Work

Syndicate Group Work may be done where each group may be required to find a solution to the problem at hand specifying the role of each stakeholder. Note that the

groups may be divided to have 10 different stakeholders in each group or alternately smaller groups of 3 each, each group representing one stakeholder.

After the groups have been formed, ask each group to discuss the possible solutions to the problems at hand. The respective group solutions may be represented on a chart paper or a Power Point presentation.

VIII. TIME MANAGEMENT PLAN

Note: This may be varied depending on the availability of time, number of participants, number of role plays to be performed and the pre-awareness or experience of the participants with the subject.

SUBJECT	DURATION	CUMULATIVE	CLOCK
Introduction	10 minutes	10 minutes	0900-0910 hrs
Case Study Part I- Reading	5 minutes	15 minutes	0910-0915
Discussion	10 minutes	25 minutes	0915-0925
Case Study Part II- Reading and Answering Individually	5 minutes	30 minutes	0925-0930
Key Legal Provisions - Reading	5 minutes	35 minutes	0930-0935
Role Play- Discussion within groups	20 minutes	55 minutes	0935-0955
Role Play- Enactment by two groups	60 minutes	115 minutes	0955-1055
Summing Up	5 minutes	120 minutes	1055-1100

IX. REFERENCES

The following reference material may be provided to the participants as soft copy on email

- Appendix 1A - Protection of Children from Sexual Offences Act, 2012
- Appendix 1B- Protection of Children from Sexual Offences Act Rules 2016
- Appendix 1C - MWCD Report on Child Abuse, 2007



X. ADDITIONAL READINGS

Debarati Halder, *Child Sexual Abuse and Protection Laws in India*, Sage Publishing House (2018).

Dr. Jagadeesh Narayanareddy, *Medical Examination of Survivors/Victims of Sexual Violence: A Handbook for Medical Officers* (2017). Available at <https://india.unfpa.org/sites/default/files/pub-pdf/Violence%20Kit-1.pdf>.

Bharti Ali, Maharuhk Adenwalla & Sangeeta Punekar, *Implementation of the POCSO Act: Goals, Gaps and Challenges. Study of Cases of Special Courts in Delhi and Mumbai* (2012-2015), HAQ Centre for Child Rights. Available at <https://haqcr.org/wp-content/uploads/2018/02/implementation-of-the-pocso-act-delhi-mumbai-study-final.pdf>.

Children's Access to Justice and Restorative Care, HAQ Centre for Child Rights. Available at <https://haqcr.org/wp-content/uploads/2018/04/childrens-access-to-justice-and-restorative-care.pdf-1.pdf>.

XI. CASE COMMENTARY

This case commentary may be distributed to the participants to make them aware of the nuances of the case and best practices to be followed in cases of similar nature. The following Case Commentary is based on a telephonic conversation with the distinguished lawyer **Aparna Bhat** who has an extensive experience of working on wide ranging women's rights issues. *For Judges:*

- In POCSO cases, the judges must ensure that the charges are framed separately.
- POCSO is a child-friendly piece of legislation; therefore, an effort should be made to make the child comfortable.
- Child victim or witness must be made to depose at proper place and time. Assistance of experts should be taken while recording testimony of child victim or witness.
- Assistance of mental health expert should be sought to not only provide counselling to the child but also to seek their expert opinion.
- Should assist in appointment of support persons (NGO/social worker) for the child victim.
- Restorative care for the child victim:

Child victims of sexual abuse achieve "access to justice" in true sense only when they receive "restorative care". This can be achieved only when a child is provided with medical care, mental health care in form of counselling, compensation, shelter, protection, legal aid and so on. Unfortunately, in most of the cases of child sexual abuse, in name of restorative care a child only receives monetary compensation.

This case commentary is written by Aparna Bhatt

CASE COMMENTARY

Significance of Mental Health Expert: The need to recognise the significance of the mental health experts in cases of sexual abuse is paramount. In cases, where there was no penetrative sexual assault, opinion of mental health experts assumes significance. Interaction of mental health experts with the victims, especially child victims, would not only be a therapeutic intervention but also a mechanism to gather evidence.

The presence of clear-cut physical evidence definitely improves the chances of proving the sexual abuse of the child. However, most of the cases of child sexual abuse are difficult to prove owing to their discreet nature and prolonged time period of commission. Mostly, the child is the sole witness in the case and rarely spots any signs of physical abuse. In such a scenario, the opinion/ testimony of mental health expert can be crucial to prove the commission of sexual abuse. The Model Guidelines under Section 39 of the POCSO Act, 2012 for the Use of Professionals and Experts provide for "seeking opinions from mental health experts as to the psychological effects of child sexual abuse, such as PTSD and Child Sexual Abuse Accommodation Syndrome".

In the present case study, testimony of mental health experts would have proved significant in absence of physical medical evidence of sexual assault of victims. Except Asha, other victims were subjected to non-penetrative sexual assault by Ramesh. As no physical medical evidence of commission of sexual assault would have been available, testimony of mental health experts would have proved useful.

Proving the victim is a child: Efforts should be made to collect and present all relevant documentary evidence to prove that the victim is a child. This is significant in cases where the victim falls within the age bracket of (16-18 years) and doubts can be raised regarding the age of the victim. The investigating official must procure and put on record relevant documentary evidence such as birth certificate, school certificates and other documents to establish the age of the child victim.

Rather than procuring and putting on record the relevant documentary evidence, a practice commonly adopted by the investigation officials is to conduct bone ossification test of the victim to determine the age of the child victim. The bone ossification test is to be conducted only in cases where there is no documentary evidence available on record. This principle is clearly enunciated under Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

Selection of Witnesses: Though it is the responsibility of investigation officials to bring forth all the nitty-gritties of the case, it must be done rationally and pragmatically. Selection of witnesses must be done rationally; special care should be taken that not 'too many or too less' witnesses are produced. Identification of witnesses has to be done in a scientific manner, keeping in mind whether they are relevant to the trial or not.

In the cases where the victims are children and accused is a 'well-known, reputed, influential' person, the responsibility of the investigation officials increases. They have to identify the witnesses who would be relevant in establishing or strengthening the case



of the prosecution as there will be many witnesses from the defence side who would be willing to depose in favour of the accused considering his reputation in the society and amongst students.

For Prosecution Officers: Framing of charges: For Prosecutors it is essential to ensure that charges are framed properly; charge is to be framed for each abuse/assault separately. Framing of charge is crucial in any criminal case as it provides accused full and precise description of what prosecution intends to prove against the accused.

In cases where there are multiple FIRs against an accused, as was in the present case, prosecution may request for the cases to be heard together.

Witnesses: Besides framing of charges, another component that prosecution must focus on is witnesses. The prosecution has to be alert of the order of calling of witnesses. In most of the cases, the prosecution does it randomly. The calling of witnesses must be informed by three things, namely, "whom to call", "when to speak" and "whether the witness needs any special support or not".

Technical Evidence: Prosecution must be well-versed with the technical evidences produced in the case as it would help them in examining the expert witnesses. *For Judges:*


- In POCSO cases, the judges must ensure that the charges are framed separately.
- POCSO is a child-friendly piece of legislation; therefore, an effort should be made to make the child comfortable.
- Child victim or witness must be made to depose at proper place and time. Assistance of experts should be taken while recording testimony of child victim or witness.
- Assistance of mental health expert should be sought to not only provide counselling to the child but also to seek their expert opinion.
- Should assist in appointment of support persons (NGO/social worker) for the child victim. Restorative care for the child victim.

Child victims of sexual abuse achieve "access to justice" in true sense only when they receive "restorative care". This can be achieved only when a child is provided with medical care, mental health care in form of counselling, compensation, shelter, protection, legal aid and so on. Unfortunately, in most of the cases of child sexual abuse in name of restorative care a child only receives monetary compensation.

Aparna Bhatt

Aparna Bhatt is a lawyer practicing in the Supreme Court of India. She has worked extensively on various issues with special focus on children. She has argued cases that led to systemic changes in the policies and laws impacting women and children. In 2015, she started Rape Crisis, a legal helpline to support victims of sexual assault for the Delhi government which went on to contribute to increase in conviction rate in rape cases in Delhi. She has been appointed as an Amicus in various cases by the Supreme Court including the Muzaffarpur shelter home case.

2 CHAPTER



MARGINALISATION IN ACCESS TO JUSTICE: A Case of a child at the intersection of Gender, Caste and Class

Alankrita Singh

PART - I

About the Author

Alankrita is an officer of the Indian Police Service who has served as Superintendent of Police in 4 districts and Commandant in 4 different armed police battalions in the state of Uttar Pradesh. For four years she was engaged in a full time training role at the Lal Bahadur Shastri National Academy of Administration (LBSNAA) at Mussoorie where she also served as Executive Director of the National Gender and Child Centre. She is interested in Women's and Children's Human Rights issues, specifically from the perspective of elimination of various forms of violence against them. Currently she is working as Superintendent of Police in the Women and Child Safety Organisation of Uttar Pradesh Police at Lucknow.

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Alka Verma was posted as Superintendent of Police (SP) of District Hapur in Uttar Pradesh, her first assignment as an SP. Though small, the district was challenging in terms of communally sensitive pockets, a national highway criss-crossing the district and all MPs and MLAs being from the ruling party. She was barely 2 years into service after completing her professional training.

In the first 6 months of her posting, having successfully dealt with huge traffic jams that occurred every fortnight after the new moon at the Garh Ganga, having set her priorities in her work and having



understood the geopolitics of the district, she was now feeling somewhat comfortable in this responsibility.

One evening, she got a call from a Station House Officer (SHO) posted at the remotest Police Station (PS) in the district, Bahadurgarh. He informed her that one of the head constables, Rajaram Pandey, posted in Bahadurgarh PS lives in a small room behind the PS building, within the campus of the PS. He had locked a little girl from a nearby construction site, in this room of his. He said that he was on patrolling duty when he received this information. He immediately rushed to the PS. By the time the little girl had been rescued. She is fine now and has been handed over to her mother. There is nothing to worry. All is under control.

Alka Verma got perturbed. I need to visit the spot, she told the SHO. He again assured her that everything is fine. From his experience and wisdom, he also sounded her that her visit might escalate the matter. Media would get information about it and the police would be on the backfoot.

Alka was watching TV, but couldn't take her mind off the incident. She asked for her vehicle to be ready, changed into smart civvies in no time and reached PS Bahadurgarh in about 45 minutes. It was 10.30 pm. Everything looked normal. The SHO was present in his office. He re-narrated the incident in almost the same words. And, said that had he not reached in time, something untoward might have happened. Alka expressed desire to meet the little girl's mother. The SHO said that this might refuel the sentiments. He had pacified them with great difficulty.

By this time the Deputy Superintendent of Police (DySP) of the Circle also joined them. He patted the back of the SHO for averting a serious incident. He advised Alka to transfer the concerned HC somewhere else. He also advised the SHO to manage the mother of the little girl in question. Otherwise there would be another SC/ST case.

The SHO told them that the family are said to be from Bihar. They are the migrant laborers working on a small construction site just next to the police station. The little girl's mother is a widow. She is living here with her father and 2 children. This little girl is 7 years old; the younger one is 4 years old.

7 years old. Alka's heart started beating harder.

Why was it that the others around her were not feeling what she was feeling? Was there something wrong with her? She is an IPS Officer, isn't she supposed to be tough. She was going red in her face. What was it? Anger? Frustration? Dilemma?



The DySP continued to advise the SHO. Give some money to the woman and try and pack her off. Send the whole family back to Bihar.

But this Constable must be punished, said Alka firmly.

Yes, Madam he must be transferred to a district in the Eastern Uttar Pradesh, came a prompt response from the DySP. SHO added, sounding disappointed, that he is a good Munshi. He does good office work. How will this PS run without him.

Surprised at the observations, Alka said, what would transfer do? He will not change. He will do the same thing wherever he is posted, who knows he would have done this or worse, earlier.

'Madam let him do whatever he would, when he is out of our jurisdiction'.

PART - II

Alka was in office when she was informed that Rajaram Pandey's wife and three children have come to meet her. She felt anxious but decided to listen to them. The wife entered her office wailing and crying. Children were also crying. The wife requested Alka to forgive her husband. It had been 24 hours since he had been in jail. She was apologizing profusely on his behalf. She pointed to her children and asked Alka, who is going to feed them and pay for their school.

She received a call from her DIG. He sounded upset. He said that against his advice she has registered a case against a Head Constable without bothering about the reputation of the department. She also sent him to jail. She could have told the DIG and he would have transferred him to another district. What was the need to do all this. Nothing will come out of this exercise. Even the victim is not going to stand with the prosecution. He was speaking from his vast experience.

He said that the DGP was also unhappy with her about the way this has been handled.

She is surprised at the stark similarity between the arguments extended by the DIG and the SHO and the DySP, '*Police ki badnaami hogi Madam*'¹ and '*Aap abhi nai hain, smajhati nahi hain.*'¹

Sir, 'bad name would come to police if we don't take action in the case', she said, suppressing her anger. Those amongst us who break the law do not deserve to be in uniform.

Do you know what the media is saying? 'That safety of all women and children of the state is in danger where the police officials are themselves accused of molesting children' said the DIG. He also said that in the beginning of her career, she has earned the reputation of being anti-police.



The next two weeks she had to focus her full energy and time to the local body elections. After the elections she got transferred to another district as SP. New position, new responsibilities and new challenges, she was looking forward to new experiences.

First six months in the new district passed in a blink. One day she received a phone call from the then SHO of Bahadurgarh. After exchanging pleasantries, she asked about the Rajaram case. She was shocked to hear that the IO had sent a report under Section 169 CrPC for release of Rajaram and submitted a Final Report in the case due to lack of evidence in the case. The Final Report had been accepted in the ACJM Court. The case is closed.

The SHO said that he was transferred to another PS sometime after her transfer from Hapur. The DySP who was doing the investigation had also retired that month. She was feeling uneasy about the whole thing.

She called the current SHO of Bahadurgarh and enquired about the case. He said that the previous SHO had some personal grudge against Rajaram that is why he had used this woman to frame him. The truth was that this woman had borrowed some money from Rajaram for her little girl's school fees. Then she was unable to return. Rajaram started asking her again and again to return his money, and one day threatened her of consequences. That's why she used her little girl to create this false case. And the SHO also used this opportunity to settle scores with Rajaram.

She asked him to scan the entire case docket and send to her. She studied the documents carefully and noted down her observations as follows:

About the complainant: Shanti is a scheduled caste woman, a widow migrated from Bihar and working as a construction labourer in district Hapur in western Uttar Pradesh. She lives with her old father, who also works as a labourer and two daughters Maina(7) and Raina(4). The construction site is located behind the building of Police Station (PS) Bahadurgarh.

About the FIR: Shanti reported that when she returned from market she didn't find Maina anywhere. She started looking around and then Raina took Shanti in front of a room of the PS where HC Rajaram Pandey lives and indicated that her sister is in there. The room was locked from inside. Shanti started banging the door. He opened the door, started dressing up Maina and handed her over to her mother. He gave some money to Shanti and said, Bhabhi please don't scold her, she is fine. Shanti started beating Maina and brought her home. Maina was crying incessantly and told her mother that the HC did bad things to her. Maina's panty was wet and so were her inner thighs. Alleging that rape has been committed on her daughter by HC Rajaram Pandey, she pleaded that her FIR may be lodged.

Key points of observation from the investigation docket:



File photo of Maina from the medical report

1. As per FIR, Incident Date 8th February 2019, Time 5 pm
2. As per FIR, case registration date 8th February, 2019, Time 7.30 pm
3. As per FIR, Sections 342, 376, 511 IPC and 3(1)11 SC/ST Act
4. Overwriting in FIR where Sections of IPC have been listed (refer picture)
5. As per Seizure Memo, Maina's panty examined by a female Constable in the PS. It is torn. There are no spots or stains. It is packed and sealed on 8th February in presence of witnesses.
6. Maina sent to the District Hospital for Medical Examination on 9th February at 3 am, with her mother and two constables, one of them a woman.
7. Main contents of the Medical Report- Shanti gives written consent for internal examination of Maina; breasts not developed; pubic and auxiliary hair not present; no external injury; internal examination reveals hymen intact, no bleeding, no discharge, no injury; vaginal smear taken; no clear opinion about rape; recommended supplementary medical for age determination
8. As per Arrest Memo, accused arrested on 9th February, Time 8.30 am from Petrol Pump crossing by SHO Bahadurgarh.
9. As per Seizure Memo, on disclosure by accused that he is presently wearing the same lower (pants) that he was wearing during the incident, this lower is packed and sealed in presence of witnesses on 9th February.
10. As per report dated 9th February, from SHO to CMO to conduct medical examination of accused- accused has been arrested, being sent for medical examination.



11. Main contents of the Medical report of accused- no injuries on the body.
12. Accused Head Constable placed under suspension on 9th February.
13. As per Vaginal Smear Report received 12th February- no spermatozoa seen.
14. Letter by IO to CJM for recording of statements of Maina and Shanti under Section 164 CrPC on 14th February.
15. Supplementary Medical- no secondary sexual characteristics, bones not fused, age about 7 years on 16th February
16. Statements of Maina and Shanti under Section 164 CrPC recorded on 14th February
17. Main contents of Maina's 164 statement- nothing untoward happened
18. Main contents of Shanti's 164 statement- that she was mistaken, she panicked because she didn't find her daughter but she was playing with some police officials.
19. Two police officials also testify to the above in 161 statements.
20. As per report dated 20th February by IO under Section 169 CrPC to ACJM : to release the accused on grounds of complainant not supporting the complaint in her 164 CrPC statement
21. New IO takes over the case after superannuation of the first IO
22. The two packets are sent to Forensic Science Laboratory (FSL) on 8th March
23. Reminder to FSL on 15th April
24. New IO takes over the case after the previous one gets transferred
25. Final Report submitted in court of ACJM on 30th June under Sections 342, 376G, 511 IPC and 3(1)11 SC/ST Act
26. The ACJM accepts the Final Report on 23rd November as the complainant hasn't turned up in the court despite the notice served which indicates that the complainant is not interested in taking the case forward. Hence no progress is expected with further continuation of investigation.

TEACHING NOTES

I. OVERVIEW OF THE CASE STUDY

The case study is based on a real-life incident. The names of the protagonists & places are changed in order to protect the identity of the victims. Furthermore, the details and timelines have been suitably modified to make the case academically relevant.

The case study is divided into two parts, namely Part I and Part II. Part I records the occurrence of the entire episode. This Part, in a very poignant manner, also captures the personal dilemmas/agony of SP Alka Verma. Part II records further unfolding of the events such as – transfer of the SP, her follow up on the case and provides crucial details from the case docket. The Part ends on an inconclusive juncture leaving it open for the participants to analyse, deliberate and reflect on the entire case.

II. BACKGROUND

Violence against women and children is not an unusual phenomenon. Unfortunately, only a small percentage of such incidents gets reported. Underreporting is even more rampant in cases where the victim is from a socially disadvantaged section of the society and the perpetrator is in a dominant and powerful position vis-à-vis the victim. The present case study can be construed as an example of such imbalance of power and amply demonstrates how securing justice in such situations becomes even more difficult for the victims and their families.

This case study can be read and interpreted with the following lenses¹:

- *Asymmetric Power Structure: Misuse or Abuse of power by those in the role of 'protector'*
- *Victim or Witness protection: Withdrawal of genuine cases under pressure or coercion*
- *Intersectionality: Gender, Caste, Class, Socio-Economic condition of the victim and witnesses*

III. LEGAL FRAMEWORK

Children constitute 39 per cent of the India's population (Census 2011). The Constitution of India provides that the State shall direct its policy towards ensuring "that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment".

India acceded to the United Nations Convention on the Rights of the Child (UNCRC) in 1992 and its two Protocols, namely **the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography** and **the Optional Protocol on the involvement of children in armed conflict**, in 2005.

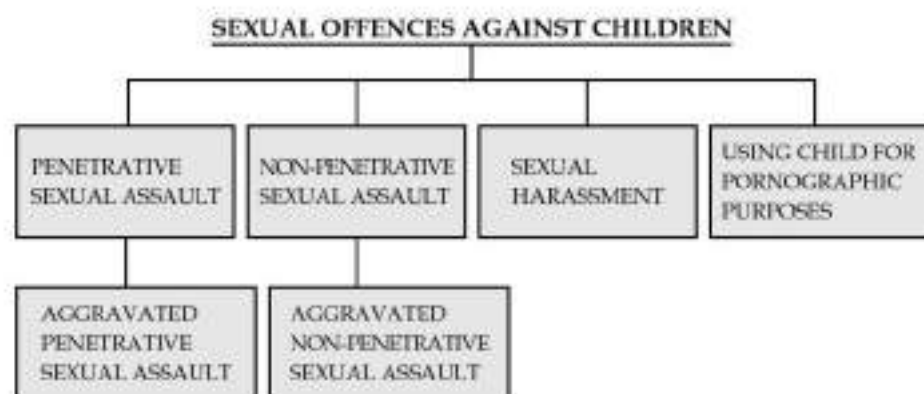


Keeping up with its Constitutional and international obligation, India has passed several child-centric legislations, in line with international standards, such as Juvenile Justice (Care and Protection) Act 2000. The Commissions for Protection of Child Rights Act, 2005, the Prohibition of Child Marriage Act, 2006, the Right of Children to Free and Compulsory Education Act, 2009, and the Protection of Children from Sexual Offences (POCSO) Act, 2012.

According to a study conducted by Ministry of Women and Child Development (MWCD), titled “Study on Child Abuse: India 2007”, around 53.22% children reported facing one or more forms of sexual abuse. Furthermore, in 50% cases, abusers were the ones known to children and trusted by them. Any form of sexual abuse leaves a traumatic imprint on a child’s life, often resulting in their impaired physical and mental growth. The vulnerability of children is compounded by the fact that they find it difficult to not only fully comprehend the nature of abuse committed against them but are also hesitant to communicate their experiences to someone responsible.

POCSO Act, 2012

To specifically deal with the menace of child sexual abuse, POCSO Act, 2012 was passed. The Act recognizes both *contact* and *no-contact* based sexual abuse of children. It broadly classifies sexual abuse of children under six categories, namely: -



One of the salient features of the POCSO Act, 2012 is its gender-neutrality and child-friendly process. The Act requires mandatory reporting of commission of sexual offence against children. The Act provides for establishment of Special Courts. These courts maintain a child friendly atmosphere, protect identity of child victim and conduct an in-



camera trial. During the trial the burden of proof is on the accused, i.e. the accused is presumed to possess culpable mental state and is liable to prove beyond reasonable doubt that there was no such intention. As per the Act the child should not be brought in direct contact with the accused, neither during investigation nor examination.

Juvenile Justice (Care and Protection of Children) Act, 2015

Another monumental piece of child-centric legislation is the Juvenile Justice (Care and Protection of Children) Act, 2015. The Act consolidates law for “*children in conflict with the law*” and “*children in need of care and protection*”. It aims to cater to the basic needs of the children through “proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established, herein under and for matters connected therewith or incidental thereto.”²³ Section 27 of the Act provides for establishment of Child Welfare Committee (CWC) in every district. The Committee is entrusted with the task to dispose of cases for the care, protection, treatment, development and rehabilitation of children in need of care and protection, as well as to provide for their basic needs and protection. Section 2(14) of the Act enumerates “children in need of care and protection”.

As per JJ Act, children victims of CSA are Children in need of care and protection. Section 13 : Taking action for rehabilitation of sexually abused children who are reported as children in need of care and protection to the Committee by Special Juvenile Police Unit or local police, as the case may be, under the POCSO Act, 2012.

Linkages between JJ Act, 2015 and POCSO Act, 2012

The two laws, JJ Act 2015 and the POCSO Act 2012, both share the similarity in dealing with children and in placing male and female children equally before law, whether they are victims or children in contact with law. I have observed the following two important linkages between the laws, or inter-dependence. Though there may be some more, these two appear to be important from the point of view of Police Officers working at the field level.

1. If a Child who is a victim of any offence under the POCSO, should he or she be treated as Child in Need of Care and Protection or not. If yes, then in what circumstances? Find the answer to these questions in the following provisions of the law/rule.



A. POCSO Rule 4(3): Where the SJPU or the local police receives information under sub-section (1) of section 19 of the Act, and has a reasonable apprehension that the offence has been committed or attempted or is likely to be committed by a person living in the same or shared household with the child, or the child is living in a child care institution and is without parental support, or the child is found to be without any home and parental support, the concerned SJPU, or the local police shall produce the child before the concerned Child Welfare Committee (hereafter referred to as "CWC") within 24 hours of receipt of such report, together with reasons in writing as to whether the child is in need of care and protection under sub-section (5) of section 19 of the Act, and with a request for a detailed assessment by the CWC.

B. JJ Act 2015, Section 30. The functions and responsibilities of the Committee shall include – (xiii) Taking action for rehabilitation of sexually abused children who are reported as children in need of care and protection to the Committee by Special Juvenile Police Unit or local police, as the case may be, under the Protection of Children from Sexual Offences Act, 2012.

2.A. Law on age determination for victims of sexual offences is not positively provided in any Law and this leads to strange and arbitrary practices being adopted by the Courts on age determination. However, it is important to take note of three judgments of Hon'ble Supreme Court where it has indicated in clear terms that age determination law and procedure provided in JJ Act and Rules should be used for age determination of victims as well. These Judgments are (1) Jarnail Singh Versus State of Haryana (2013) 7 SCC 263, (2) Mahadeo Versus State of Maharashtra and Anr (2013) 14 SCC 637 and (3) State of Madhya Pradesh Versus Anoop Singh (2015) 7 SCC 773.

The only point to be kept in mind is that these three judgments are in the context of JJ Act, 2012 - where law and procedure on age determination was laid down under Rule 12 of Model JJ Rules 2007. Now JJ Act 2015 is in force which contains law on age determination in its Section 94 and not in the Rules any more. These judgments must be appreciated in the context on the new JJ Act 2015 accordingly. (Source: website HAQ)

B. Age determination as per the JJ Act 2015. Section 94. (1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age. (2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining-

- (i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;
- (ii) the birth certificate given by a corporation or a municipal authority or a panchayat;
- (iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board;

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order. (3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.

3. Both the laws require that the interface of a child with the criminal justice system must be done in a child friendly manner and the duty holders to follow Child Friendly Procedures, eg. Child friendly infrastructure in court rooms and police stations, police officers and judges not to be in uniform.

Indian Penal Code (IPC), 1860⁶

Another major piece of legislation is the Indian Penal Code (IPC), 1860 which provides definition and punishment for criminal offences. The offence of kidnapping is defined under Section 361 of IPC as:

Whoever takes or entices any minor under 2 [sixteen] years of age if a male, or under 3 [eighteen] years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation. – The words “lawful guardian” in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception. – This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

Wrongful confinement is defined under Section 340 as “Whoever wrongfully restrains any person in such a manner as to prevent that person from proceedings beyond certain circumscribing limits, is said “wrongfully to confine” that person.” The punishment for



wrongful confinement is provided under Section 342 as *“Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.”*

Witness or Victim Protection:

“Witnesses are the eyes and ears of justice”

Jeremy Bentham

Witness or victim protection acquire new dimension in situations where an unbalanced power dynamic exists between the victim/witness and the accused. Witness or victim protection is essential to ensure fair trial, prevent withdrawal of complaint by victim and witness turning hostile. The significance or relevance of witness or victim protection has been recognized in several judgements, commission or committee reports. Statutes such as Indian Penal Code, 1860, Juvenile Justice (Care and Protection of Children) Act, 2015, Protection of Children from Sexual Offences Act, 2012, Scheduled Caste and Tribes (Prevention of Atrocities) Act, 1989 etc. provide for safeguarding of witnesses from threats. To deal with the issue of witness protection in a holistic manner, Witness Protection Scheme, 2018 was introduced.

IV. LEARNING OBJECTIVES

- To understand how caste, class, gender and age intersect to make certain individuals or groups of individuals vulnerable to sexual violence- develop an intersectionality perspective and a victim-centric approach
- To understand how the power dynamics impact the registration of offences, investigation and trial.
- To understand the application of relevant laws applicable in the given case study.
- To understand the role and responsibility of various stakeholders in implementation of the law.

V. TARGET AUDIENCES

- Administrative Officers at the implementation level e.g., SDM, ADM, DM.
- Police Officers/ Child Protection Officers/ Special Juvenile Protection Unit
- Probation Officers/ District Child Protection Unit.
- Child Welfare Committees
- Children's Courts or special POCSO Courts
- NGOs working in the field of Child Protection



- Trainers to create a pool of trainers at the level of training academies
- Administrative Officers from other countries seeking to understand the system in India.
- Any other relevant stakeholder

VI. STEP BY STEP GUIDE

- Step 1 : Briefing on the Learning Objectives and Session Plan
- Step 2 : Setting the Ground Rules
- Step 3 : Warm-up/Opening Questions
- Step 4 : Case Study Part 1- Reading and Stakeholder Analysis
- Step 5 : Case Study Part 2- Reading and Syndicate Group Work
- Step 6 : Distribute Case Commentary to the participants for reading and questions, if any.
- Step 7 : Share Additional Readings/ Resources

VII. CASE TEACHING GUIDELINES

- I Usage of statistics can be relevant to bring into picture the extent of prevalence of sexual abuse of minors, especially by someone in position of trust and responsibility vis-à-vis the child victim. (Refer to MWCD Report 2007, NCRB 'Crime in India' reports, NGO reports).
- II Administer Part I of the case study and use following driver questions⁷ for eliciting response:
 1. What are the multiple factors that make the little girl vulnerable?
 2. Do you think intersection of multiple vulnerabilities heightened the risk of sexual violence in this case? How?
 3. What are the factors that make the Constable powerful?
 4. Do you agree with the action proposed by the SHO and the DySP?
 5. What would you have done had you been in Alka's position?
 6. What does the case tell you about attitudes of Police Officers in question?
- III Administer Part II of the case study, display the following chronology of events on the screen. Use the driver questions that follow for eliciting response:



CHRONOLOGY OF EVENTS

Date (2019)	Event
08-02 (1700 hrs)	Incident
08-02 (1930 hrs)	FIR registered u/s 342, 376, 511 IPC and 3(1)11 SC/ST Act
08-02-2019	Maina's panty packed and sealed
09-02 (0300 hrs)	Medical examination of Maina conducted by a lady doctor in District Hospital/Referred to CMO for supplementary medical for age determination
09-02 (0830 hrs)	Accused arrested by SHO
09-02-2019	Lower of the accused packed and sealed
09-02-2019	Medical examination of Accused conducted by CMO
09-02-2019	Accused Head Constable placed under suspension
12-02-2019	Vaginal smear report received- no spermatozoa seen
14-02-2019	164 CrPC statement of Maina and Shanti recorded
16-02-2019	Supplementary Medical Report- Age about 7 years
20-02-2019	Report under 169 CrPC sent to ACJM
08-03-2019	Two packets sent to FSL for examination
15-04-2019	Reminder to FSL
30-06-2019	Final Report sent to ACJM
23-11-2019	Final Report accepted by ACJM

Suppose you are the current SP of the District and Alka calls you expressing concern over the manner in which investigation has been done in the matter. After speaking to the present SHO and after examining the documents what would be your decision? Discussion around the following issues may be guided and facilitated by the trainer.⁸

1. How can investigation and its monitoring and supervision be strengthened? How can technology be leveraged for the same?
2. Role of Medical Officer and Prosecution Officer
3. CLA 2013, POCSO, JJ Act and their interlinkages
4. Who are the stakeholders who had legal responsibilities in such cases?

5. Are there Systemic biases acting against victims from vulnerable sections? What can be done to counter them?
6. How can we ensure comprehensive victim rehabilitation in such cases?

VIII. CASE TEACHING PEDAGOGIES

Now divide the participants into smaller groups for detailed discussion on the possible solutions to the problem at hand or to answer the dilemma question. For a group of 30 participants, it is recommended to divide them into 3 groups of 10 each. The instructor may choose one of the following pedagogical tools-

i) Role Play

ii) Stakeholder Analysis

iii) Syndicate Group Discussion

It is pertinent to note here that the instructor may give complete freedom to the participants to evolve their solution, their reasoning and arguments. There is no one correct solution to this and none may be recommended or favoured by the instructor. The views of the participants may be respected, the idea is to make them think and deliberate. However, the instructor may focus on clarifying the finer legal points which may be done at the end of the discussion.

i) Role Play

For the Role Play organise the participants into n no of groups of 10 each. Each such group of 10 participants would divide the following characters⁹ amongst them through draw of lots.

1. Judicial Magistrate
2. Child Welfare Committee
3. Probation Officer
4. Superintendent of Police/SHO/ Investigation Officer
5. Medical Officer
6. Forensics Expert
7. District Magistrate
8. One-stop Centre
9. Non-Government Organisations
10. Child victim

Time allotted to each group: 30 minutes

In the allotted time, using the limited information available in the case study & the reference material, the group shall discuss the following questions & explore whether



they are or they are not able to arrive at a consensus or a solution.

1. What were the deviations from the law by the various stakeholders?
2. Can those deviations be corrected at this stage? If so, what is the role/ responsibility of each stakeholder?
3. How effectively "access to justice" could have been provided to the child victim and her family?
4. What steps could have been taken to provide "restorative care" or rehabilitation to the child victim?

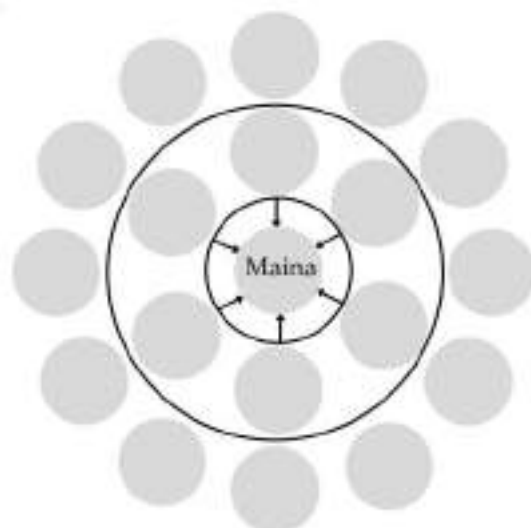
Time allotted to two randomly selected groups for role play- 30 minutes each group (2 minutes each character and 10 minutes for summing up). In the allotted time each participant to speak only for the character being played and to focus on answering each of the questions above. Each response may be summed up with the steps that could be taken to prevent such crimes and provide proper care to the child.

ii) Stakeholder Analysis

As an alternative to role play, a stake holder analysis may be done on the format provided below. The purpose is to clarify the roles and responsibilities of each stakeholder in solving the problem at hand. It brings about better understanding of not just one's own role but also the role of other stakeholders. Hence, better coordination. Note that the groups may be divided to have 10 different stakeholders in each group or alternately smaller groups of 3 each, each group representing one stakeholder.

After the groups have been formed, ask each group to use the given format to map stakeholders with Maina at the centre.

- (a) Stakeholders that appeared on the scene as per the case study may be enumerated in the inner circle.



- (b) Stakeholders that have a legal responsibility in cases but were absent as per the case study may be enumerated in the outer larger circle.

As a next step ask them to briefly write down about the roles and responsibilities of each duty holder and discuss the extent of shortfall on the part of each of them and what may be the reasons for this shortfall. Encourage them to have a discussion around the stakeholder mapping done by them.

iii) Syndicate Group Work

Syndicate Group Work may be done where each group may be required to find a solution to the problem at hand specifying the role of each stakeholder. Note that the groups may be divided to have 10 different stakeholders in each group or alternately smaller groups of 3 each, each group representing one stakeholder.

After the groups have been formed, ask each group to discuss the possible solutions to the problems at hand. The respective group solutions may be represented on a chart paper or a Power Point presentation.

IX. TIME MANAGEMENT PLAN

Subject	Duration	Cumulative	Clock
Introduction	10 minutes	10 minutes	0900-0910 hrs
Case Study Part I- Reading	5 minutes	15 minutes	0910-0915
Discussion	10 minutes	25 minutes	0915-0925
Case Study Part II- Reading and Answering Individually	5 minutes	30 minutes	0925-0930
Key Legal Provisions -Reading	5 minutes	35 minutes	0930-0935
Role Play- Discussion within groups	20 minutes	55 minutes	0935-0955
Role Play- Enactment by two groups	60 minutes	115 minutes	0955-1055
Summing Up	5 minutes	120 minutes	1055-1100

Note: This may be varied depending on the availability of time, number of participants, number of role plays to be performed and the pre-awareness or experience of the participants with the subject.



X. REFERENCES

- Appendix 1A - Protection of Children from Sexual Offences Act, 2012 (pdf in email)
- Appendix 1B - Protection of Children from Sexual Offences Act Rules 2016 (pdf in email)
- Appendix 1C - MWCD Report on Child Abuse, 2007 (pdf in email)
- Appendix 1D - Juvenile Justice (Care & Protection of Children) Act, 2015 (pdf in email)
- Appendix 1E - Witness Protection Scheme, 2018 (pdf in email)
- Appendix 1F - Medical Performa (pdf in email)
- Appendix 1G - Chronology of events
- Appendix 1H - Key observations from case docket

XI. ADDITIONAL READINGS

Debarati Halder, *Child Sexual Abuse and Protection Laws in India*, Sage Publishing House (2018).

Dr. Jagadeesh Narayanareddy, *Medical Examination of Survivors/Victims of Sexual Violence: A Handbook for Medical Officers* (2017). Available at <https://india.unfpa.org/sites/default/files/pub-pdf/Violence%20Kit-1.pdf>.

Bachpan Bachao Andolan, *Frequently Asked Questions & Answers on Child Welfare Committee under Juvenile Justice (Care and Protection of Children) Act, 2015*, available at <https://satyarthi.org.in/wp-content/uploads/2020/02/faq-on-cwc.pdf>.

Bharti Ali, Maharukh Adenwalla & Sangeeta Punekar, *Implementation of the POCSO Act: Goals, Gaps and Challenges, Study of Cases of Special Courts in Delhi and Mumbai (2012-2015)*, HAQ Centre for Child Rights. Available at <https://haqcr.org/wp-content/uploads/2018/02/implementation-of-the-pocso-act-delhi-mumbai-study-final.pdf>.

Children's Access to Justice and Restorative Care, HAQ Centre for Child Rights. Available at <https://haqcr.org/wp-content/uploads/2018/04/childrens-access-to-justice-and-restorative-care.pdf-1.pdf>.

Endnotes

- ¹ Translation: Police will suffer loss of face and bad name.
- ² Translation: You are new and you don't understand things.
- ³ This is merely indicative; readers may come up with more.
- ⁴ Preamble, Juvenile Justice (Care and Protection of Children) Act, 2015.
- ⁵ Under this section, only relevant provisions of IPC are discussed.
- ⁶ Depending on the stakeholders being administered the case study, the questions may be modified accordingly.
- ⁷ The questions are indicative. Selection of questions would depend on the learning objectives.
- ⁸ This may be varied accordingly.

CASE COMMENTARY

This case commentary is written by Alankrita Singh

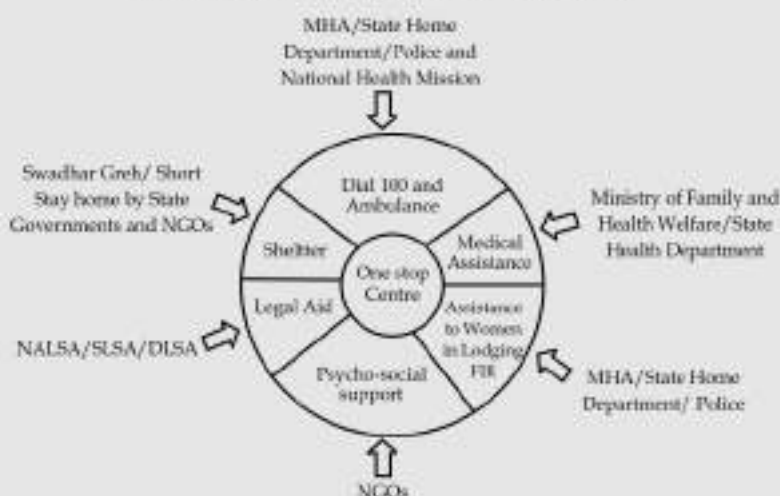
ONE STOP CENTRES- THE WAY FORWARD

Women and children in India continue to be highly vulnerable to various forms of violence. In cases of violence against women and children, there is often lack of transparency and accountability in the conduct of various stakeholders, as also happens in the case at hand. This heightens the power asymmetry between the victims and the criminal justice system resulting in a vicious cycle of denial of justice to the victim. Speaking specifically of rape, several victims commit suicide, are attacked, and even murdered, and the remaining are forced to engage in out-of-court settlements and turn hostile witnesses. No wonder the conviction rates in rape cases are abysmally low at 27.2 percent.

To critically examine the reasons for poor conviction rates, a victim-centric approach may be a useful tool. Victims often find it difficult to share and seek support and registering a case with the police is often an act of courage and of last resort. But after registration of FIR, the victims are often relegated to background. There are no institutional mechanisms for participation of victims in the investigation and trial process. Moreover, the victim has to approach various agencies for various services like FIR, medical examination, recording of statements and legal, health and psychological support. Victims undergo secondary victimisation in their interaction with the various agencies of the CJS.

In this context, the centrally sponsored 'One Stop Centres' scheme is a very welcome step. Adopting a victim-centric approach, the scheme envisages providing multiple

Convergence of Services by various Ministries/Departments/Schemes under the One Stop Centre Scheme of MWCD, GoI





services to victims under one roof. One center would be established in every district with the objective of providing necessary support, assistance and access to essential and non-essential services to women, who are victims of violence. To ensure such convergence of services, the scheme brings under its umbrella all concerned ministries and agencies.

While the scheme is still in the process of delivering its full potential, regular monitoring of the quality of services being provided and the extent of inter-agency collaboration in handling of cases would go a long way. However, this note highlights four important aspects that may further strengthen this visionary scheme.

First, it is recommended to converge more services under the umbrella of OSCs. The services provided by the Child Welfare Committee (CWC), Juvenile Justice Board (JJB), the Children's Home and the Local Committee (LC) for sexual harassment at the workplace must be merged into the OSC scheme.

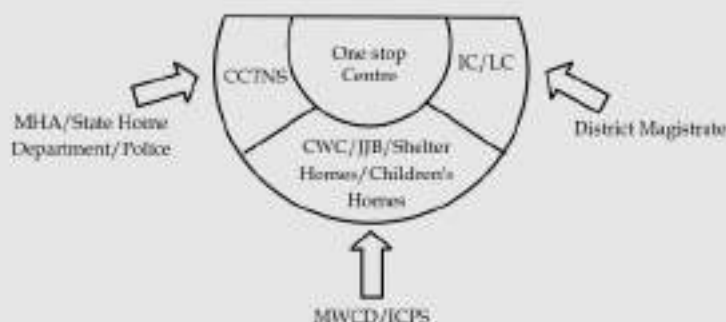
For the OSCs to truly serve their purpose, it is crucial that a victim approaching a center is not required to commute to the CWC separately, if they happen to be a child; does not have to commute to the JJB if they happen to be a witness or a child in conflict with the law, and is not required to commute to an Internal or a District Committee if their case simultaneously happens to be a case of sexual harassment at workplace. Finally, in dealing with children, the scheme must include child-friendly processes as envisaged under POCSO and the Juvenile Justice Act.

Second, the scheme incorporates recording of statements, witness deposition etc through e-conferencing. This aspect needs to be further emphasised and operationalised at the field level. This happens to be the most crucial step in eliminating secondary victimisation and trauma faced by victims.

Third, by leveraging technology and other Government of India schemes like the Crime and Criminal Tracking Network and Systems (CCTNS) Project of the Ministry of Home Affairs (MHA), the OSCs may be able to converge more services under their umbrella, making them truly and literally 'one stop centres' for victims of violence.

The CCTNS was initiated in 2009, with an aim to digitise police records, enable sharing of information between various organs of the criminal justice system, such as courts, prisons, prosecution, forensics, and to provide citizen-centric police services via a web portal. Through the web portal of CCTNS certain e-services like time-bound access to relevant documents and information can be provided to the victim through SMS, WhatsApp or email, for example, a copy of the FIR, medico-legal opinion, statements, information regarding legal services and compensation schemes, etc.

**Additional Service that may be converged under the
One Stop Centres Scheme**



Fourth, rehabilitation and reintegration of the victim continues to remain the biggest missing link. Rehabilitation is defined as, "the sum total of multiple processes including psychological healing, economic empowerment and a civic identity." The social stigma attached to sexual crimes makes the victim prone to ostracisation and exclusionary practices. Thus, any rehabilitation process is incomplete in the absence of the reintegration of the victim into the society.

Every individual has their unique way of coming to terms with such experiences, thus, requiring a plan suited to their individual needs. The concept of Individual Care Plan (ICP) is an integral part of POCSO and the Juvenile Justice Act.

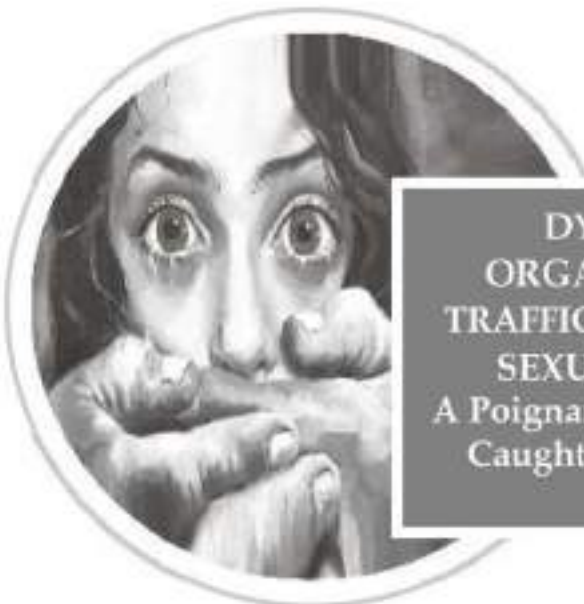
The government-sponsored rehabilitation schemes usually remain confined to monetary compensation in complete abeyance to the fact that the victims face socio-psychological disadvantages in carrying on with their life in a normal manner. Even for monetary compensation under various Govt and State schemes victims face several bottlenecks. There is a requirement of adequate opportunities for education, vocation, shelter, long-term medical support, and psychological counselling. The OSCs need to fill up this vacuum in collaboration with the private sector, NGOs, civil society, academia, and by leveraging simple technologies. Addressing multiple vulnerabilities such as illiteracy, poor socio-economic condition, PTSD, lack of vocation and employment through a comprehensive rehabilitation programs would give a victim the ability to turn her traumatic experience into her strength.

There is a need to make the victim central to the solution space. Restoring a victim's dignity and agency through comprehensive rehabilitation package would empower them to hold the system accountable and complete the cycle of justice. One Stop Centres are the way forward in this regard.



3

CHAPTER



DYNAMICS OF THE ORGANISED OFFENCE OF TRAFFICKING & COMMERCIAL SEXUAL EXPLOITATION: A Poignant Case of a Young Victim Caught in the Web of Systemic Responses

Satya Prakash

PART - I

About the Author

Satya holds an M. Phil degree in Sociology from the Delhi School of Economics and has specialized in Social and Behavioral research at the University of Miami, USA. He has been working in the field of child rights and combating human trafficking for more than a decade as practitioner, researcher and a facilitator. Currently, he is the Program Manager of a national based grass root organization, FXB India Suraksha.

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Pooja Mandal, aged 15 years, belonged to a very underprivileged tribe of Narayanpur in Chhattisgarh. She lived with her mother and her step father in a small hutment. It was not a 'happy living' for her as her step father used to regularly beat her and starve her. The mother, though aware of the ill-treatment meted to her daughter was incapable of intervening. The only respite for Pooja was when she was off to her school. One day while on her way to school, she was approached by a 25-year-old man named Dilip, who was her neighbor and was well versed with her situation at home. He expressed his love for her and declared his intent of marrying her. A bit awkward and scared Pooja refused his proposal. But Dilip kept pursuing her. Pooja who was parched for affection could no longer say no to Dilip. It was beginning of a month-long courtship after which Dilip proposed

marriage to her. Pooja knew that her parents won't agree to this marriage. But Dilip argued that if they elope to Delhi and get stealthily married there then her parents won't have any other option but to accept their marriage. Pooja naively bought Dilip's argument and eloped with him to Delhi in the hope of an elusive 'happy' life.

PART-II

On reaching Delhi, the couple stayed with one of Dilip's friend, Sonu. After a few days, with little bit of fanfare the couple got married in a temple. Pooja beamed in her newly married life. But Dilip started to show his true colors; he was mostly home and had no real intentions of earning a living for themselves. Soon the honeymoon period ended with Pooja realizing that they are left with no money. Dilip even sold the jewelry that Pooja had brought from her mother's almirah. Soon that money too was gone and the couple became totally dependent on Sonu, for their expenses.

How long would this have continued; Sonu one day asked Dilip to leave his place as he won't be able to take care of them anymore. Dilip requested Sonu to allow them to stay as they did not have any shelter and money. Sonu agreed to let the couple stay in his home but on one condition; Dilip will let Sonu have sex with Pooja. Dilip didn't see a problem in the bargain but Pooja refused it outrightly. That night, Dilip having no concern for Pooja's consent or well-being beat Pooja black and blue for refusing to fulfill his orders. A badly bruised Pooja failed to keep the barbarians at bay. Sonu forcibly had sex with her...*this exploitation continued for almost 6 months.*

After 6 months Dilip and Sonu decided to sell Pooja to a brothel. Sonu and Dilip went to the GB road, red-light area and contacted a pimp named Deepak. Deepak agreed to facilitate the sale of the girl in lieu of 25 percent commission. Hands were exchanged and then Deepak took Sonu and Dilip to a brothel keeper, Kajal. Pooja being only 16 years old, a bid of 1 lakh was proposed for her which was readily accepted by the duo. Next day Sonu and Dilip took Pooja to the brothel on pretext of shopping and left her there with Kajal. They collected their spoils of 1 Lakh and shared 25k with Deepak.

Kajal was all ready to maximize her profits on her investment in Pooja. Pooja pleaded with Kajal to not force her into prostitution but her pleas fell on deaf ears. Kajal sent out Pooja's photo to all her regular customers, informing them about the arrival of a young, petite and pretty girl. Kajal got good response from her customers based on Pooja's photo but Pooja refused to take in customers which attracted Kajal's ire. Kajal's bouncers subjugated Pooja by torture and made her agree to Kajal's demand. Soon Pooja started entertaining 6 to 7 customers every day. Pooja, being minor proved to be lucrative investment for Kajal.

PART-III

Meanwhile Pooja was desperately looking for a way out of this hell. And the opportunity came in form of Mukesh, a sales executive who was visiting her as a



customer. Pooja, somehow believed in him and narrated her ordeal and requested for help. Mukesh was moved and promised help to Pooja. Mukesh approached the local police station, at Kamla Market and informed them about a minor being commercially sexually exploited at GB road red light area. But the Sub Inspector on duty, Mr Sanjay refused to take cognizance of the matter.

Mukesh was aghast at the response of police but was afraid to pursue the matter further. The police officers told him that he had also committed an offence by having sex with a child and threatened to book him instead. Scared that his 'unnecessary' persuasion may lead to his own arrest and harassment, Mukesh was in dilemma. He couldn't sleep the whole night but still failed to come up with a solution to help the helpless Pooja.

Next morning, while on his way to office, Mukesh spotted a CHIDLIN (a toll free helpline for children in distress) advertisement at Delhi Metro station. Mukesh saw his redemption in the advertisement and immediately clicked its photo. As soon as Mukesh reached his office, he called CHIDLIN at 1098, shared all the information about Pooja, including her picture that he had received on his what's app message, and requested that she be rescued.

Mukesh also shared Sub Inspector (SI) on duty Mr Sanjay's apathy, who refused to act and said *"je to har din ka hai, jao apna kam karo"* (This is every day business, mind your own business). Mukesh was ready to extend every kind of help in lieu of Pooja's rescue. Now it was upto the CHIDLIN to intervene and do something.

CHIDLIN immediately approached the Kamla Market Police station. They met the Police Inspector, who was the in-charge of the police station, and narrated the case. They showed him the photo of the girl which they received on the WhatsApp message. The SHO got perturbed seeing such a young girl being forced into prostitution in his area. He immediately summoned the SI Mr Sanjay and gave him a dressing-down for not acting when Mukesh approached him with a complaint. SI was now instructed by the SHO to fetch the girl to police station within an hour or else SHO will act against him.

The SI along with one male police and one female police official, and with a CHIDLIN team member raided Kajal's brothel. SI politely requested Kajal to let Pooja go but Kajal was reluctant to part with her golden goose. Kajal first tried bribing the SI but he could not accept the offer as sword of suspension was hanging over his neck. Kajal then applied her tried and tested method of hiding the girl but finally the cops managed to rescue Pooja.

The SI brought Pooja to the police station and reported the same to SHO. SHO and Childline members were exulted at the completion of a successful rescue. CHIDLIN members knew that they could not have rescued the girl without the prompt help of SHO and thus thanked the SHO.

The SHO asked the SI to take in writing and handover the custody of the girl to the CHIDLIN. Pooja was presented before the Child Welfare Committee, which passed a decree to place her at a shelter home under the supervision of the CHIDLIN.

TEACHING NOTES

I. OVERVIEW OF THE CASE STUDY

Inspired by a true incident, case of young tribal girl Pooja has been presented which will help the different stakeholders working in the area of human trafficking to understand in true sense the organized nature of human trafficking. Further, factual information has been included to establish the broader canvas of exploitation which will guide practitioners to take appropriate action which otherwise are missing on the ground while sensitively handling cases of human trafficking in India. This case is based on the author's experience in dealing with similar case of commercial sexual exploitation and other forms of trafficking across India for over a decade. The names of the protagonist and the place are changed in order to protect the identity of the victims. Furthermore, the details and timelines have been suitably modified to make the case academically relevant.

The case study is divided into three parts namely- Part I, Part II and Part III. Part I delineates a series of circumstances which led to Pooja eloping with Dilip to Delhi in hope of a happy life filled with love. The Part II very poignantly paints the picture of aftermath of her one decision which forced her to experience sexual exploitation at the hands of several men in less than a year's time. The last part, i.e. Part III, deals with her eventual rescue with the help of a customer, CHILDLINE and law enforcement agencies.

II. CASE BACKGROUND

Human trafficking (HT) is considered to be one of the most complex, fastest growing criminal trades, with great difficulty to combat. Front line officials from the law enforcement agencies perform key role in protecting, preventing and combating trafficking. Trafficking in India takes place intra-state, inter-state as well as across borders. Women and children are trafficked for various reasons; the most common of all are for commercial sexual exploitation, child labour, bonded labour, domestic servitude, forced marriage, organ trade etc.

This case study is a means to facilitate understanding on existing and emerging issues related to Human Trafficking and the application of legal and other procedures.

It further helps to understand the underlying factors that increase the vulnerability of marginalized children and young women (from remote unconnected areas) to be at risk at being physically, mentally or socially exploited. Based on this reflective enquiry, this case study will guide the participants to promote a safe, protected and empowering ecosystem to enable the children and young women to live a life of dignity.



This case study emphasizes for a collective action to work hand-in-hand with the Government as well as other key stakeholders responsible in ensuring protection and safety of women and children vulnerable to trafficking. Apart from that, this also demands for multi-sectoral approach to build the capacities of the key stakeholders including government official, child protections actors and law enforcement agencies on sensitively handling cases of human trafficking.

III. LEARNING OBJECTIVES

- To understand the existing vulnerabilities of women and children of being exploited especially for Human Trafficking.
- To assess the efficacy of the existing institutional response systems (both governmental and non-governmental) to prevent exploitation of women and children
- To collaboratively implement programmes {prevention, protection & rehabilitation} to reduce the vulnerability of women and children from being exploited.
- To identify the human rights of victims of trafficking and understand States' responsibility in their rescue and rehabilitation.

IV. TARGET AUDIENCE(S)

This case study is designed for use in the training/ capacity building program organized on human trafficking for:

- Law enforcement officials
- Investigation officers
- Social welfare department
- Child Welfare Committee
- Judiciary
- Prosecutors
- NGO workers and
- Law students

V. STEP BY STEP GUIDE

Step 1 : Briefing on the Learning Objectives and Session Plan

Step 2 : Setting the Ground Rules

Step 3 : Warm-up/Opening Questions

- Step 4 : Case Study Part 1- Reading and Stakeholder Analysis
- Step 5 : Case Study Part 2- Reading and Syndicate Group Work
- Step 6 : Case Study Part 3- Reading and Syndicate Group Work
- Step 7 : Distribute Case Commentary to the participants for reading and questions, if any.
- Step 8 : Share Additional Readings/Resources

VI. CASE TEACHING GUIDELINES

- I. The case study can be used in a variety of ways, but works best in classroom setting of a workshop/multi stakeholder training/ capacity building program in which participants are invited to read the case and reflect on it in small groups and share their ideas with the entire group. The process may be coordinated by a facilitator. The case can be used to analyze and brainstorm the best practices in order to explore the various aspects of human trafficking including its prevention, protection and prosecution. This case study can be discussed within a time frame of 90 minutes using a well-formed structure.
- II. The instructor may begin with helping participants understand the nuances of human trafficking around **3P's principle which include Prevention, Protection and Prosecution** to understand the overall risk associated with the victim. The instructor can make the participants aware of risk associated with vulnerable groups and their inability to foresee the chain of exploitation which never appears to be trafficking in the beginning.
- III. The case discussion can center on the critical issues associated around the 3P's of human trafficking. Participants should be asked to put together the different emerging issues which could have averted the situation. The instructor can make the participants aware about the different roles and responsibilities of various service providers or stakeholders with respect to the 3P's approach.
- IV. After discussing the 3P's, the instructor can direct the attention of participants towards Pooja's situation and identify the violation of different laws. At this point, the instructor could ask the participants to list down the different laws which were violated and identify all individuals who have been involved in violating the rights of the victim. Additionally, instructor may facilitate the participants to



identify procedural gaps and its consequences on the victim at each stage of prevention, protection and prosecution.

- V. Throughout this process focus should be on multi-sectoral approach in converging the service while keeping the victim at the center of action and while doing so the 3P's approach should be the driving factor. During the discussion, the instructor also needs to familiarize the participants to who the principles need to apply and about other form of trafficking not only limited to commercial sexual exploitation. And under this light the current trend analysis of human trafficking also need to be briefed using fact and figures. This will help the participants in identifying the various processes or circumstances of exploitation which ultimately results into human trafficking.

VI. Driver Questions (with probable answers) that can be used by the instructor:

1. Identify the offence that has been committed and under what legislation?
2. Identify the offences committed by various persons in the following format:

S.No	Offence	Person	Law/Sections
a)			
b)			
c)			

3. Do you think the procedure followed by the police was correct? If you were the SHO what you would have done differently?
4. For the rescued victim Pooja, what would 'rehabilitation' mean and entail?

Probable Answers to the above given questions:

1. Identify the offence that has been committed and under what legislation?

- Indian Penal Code, 1860
- Protection of Children from Sexual Offences, 2012
- Immoral Trafficking Prevention Act, 1956
- The Information Technology Act, 2000
- Juvenile Justice (Care & Protection of Children) Act, 2015
- The Schedule Caste & Schedule Tribe, atrocities prevention Act.
- The Prohibition of Child Marriage Act, 2006

2. Identify the offences committed by various persons in the given format:

Sl	Offence	Person	Legislation
a)	Ill-treatment	Step Father	JJ Act Sec 75: Punishment for cruelty to child.
b)	Stalking	Dilip	Section 354D, IPC
c)	Theft	Dilip	Sec 379
d)	Kidnapping	Dilip	Displaced from her community, which tantamount to kidnapping/ abduction - Sec 361, 362, 365, 366. Sec 370- Trafficking JJ Act - Sec 84: Kidnapping and abduction of child
e)	Child Marriage	Dilip, Sonu, Priest, etc	Sec 9 Sec 10 who solemnizes
f)	Aggravated	Dilip	Section 6: Aggravated Penetrative penetrative sexual assault. sexual assault POCSO. 373 (3) IPC under the age of sixteen years are committing a serious offence, and will get a minimum punishment of twenty years, which may extend to imprisonment for the remainder of his natural life. Sec 3 (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe- (w) (i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient's consent; (ii) uses words, acts or gestures of a sexual nature towards a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe. Sec 3 (2) Whoever, not being a member of a Scheduled Caste or a Scheduled



Tribe – (v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property [knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member], shall be punishable with imprisonment for life and with fine.

g) Physical

Dilip

Wrongfully restrained – Sec 339
Assault & Sonu Wrongfully Confined – Sec 340
Physically tortured/injured – Sec 327, 329
Subjected to Criminal force – Sec 350.
Mentally tortured/harassed/assaulted – Sec 506

h) Aggravated

Sonu

Section 6: Aggravated penetrative
Penetrative sexual assault. POCSO
Sexual Assault 373 (3) IPC under the age of sixteen years are committing a serious offence & will get a minimum punishment of twenty years, which may extend to imprisonment for the remainder of his natural life. Sec 3 (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe —(w) (i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient's consent; (ii) uses words, acts or gestures of a sexual nature towards a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe. Sec 3 (2) Whoever, not being a member of a Scheduled

Caste or a Scheduled Tribe-(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property [knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member], shall be punishable with imprisonment for life and with fine.

l) Abetment to sell a minor for Prostitution

Deepak

Selling minor for prostitution - Sec 372

j) Selling a minor for prostitution

Dilip & Sonu

Selling minor for prostitution - Sec 372 Buying minor for prostitution - Sec 373

Sec 3 of ITPA: Keeping or managing a brothel or allowing premises to be used as brothel Sec 4 of ITPA: Living on earnings of prostitution

Sec 5 of ITPA: Procuring, Inducing, trafficking a or taking a person for the sake of prostitution

Sec 6 of ITPA: Detaining a person in any premise where prostitution is carried out. JJ Act Sec 81: Sale and procurement of child for any purpose.

k) Procurement of minor girl for Prostitution

Deepak, Kajal, Sonu, Dilip

Buying minor - Sec 373 Sec 5 ITPA Sec 370

l) Forcing her to prostitute

Kajal & her men

Wrongfully restrained - Sec 339 Wrongfully Confined - Sec 340 Physically tortured/injured- Sec 327, 329 Subjected to Criminal force - Sec 350 Mentally tortured/harassed/assaulted - Sec 506



m) Circulating message	Kajal & Customers	Sec 67 obscene material in electronic form Sec 67 A transmitting sexually explicit act & 67 B (children)
n) Buying a girl for prostitution	Customers,	Buying minor for prostitution - Sec 373 Sec 370 A (1) Sec 6 of POCSO Outraged modesty - Sec 354 Raped - Sec 375, 376 (3) SC/ST Act
o) Refusal to record a case of CSA & act on the information regarding child sexual abuse.	SI	Sec 21 of POCSO

3. Do you think the procedure followed by the police was correct? If you were the SHO, what you would have done differently?

The police officer on duty must have followed the procedures as laid down under the ITPA act for cases of commercial sexual exploitation nature. Some of the procedures are:

❖ **Appointment of Special Police Officer as per the provision of ITPA:**

- Police Officer of the rank of Police Inspector or above
- Notified by the government,

❖ **Rescue**

Acting on tip of information for rescuing any victim from the place of exploitation under the ITPA act, following steps must be followed

- With Warrant - Sec 16
 - Magistrate can order rescue.
 - Police can seek warrant from the magistrate
 - Production before the same magistrate.
- Without Warrant - Sec 15

❖ **Search Team**

While raiding the place of incidence the search team plays an important role and the evidence collected and testimony of the witness (panchnama) plays crucial role at the state of trial.

- To be conducted by the special police officer along with least two lady police officer and in the presence of two witnesses, one of whom needs to be a lady.
- Any person who refuses to be a witness shall be deemed to have committed an offence.

❖ Recording of the Statement

The rescued victim needs to be interviewed by a lady police officer or in the absence of lady police officer by a male police officer in the presence of a lady NGO member.

❖ Medical Examination

Any person produced before the magistrate needs to be medically examined for determination of age, detection of injuries, sexual abuse, etc. In case of minor, the age determination must be conducted by the order of Child Welfare committee of the district (Sec.94, JJ Act, 2015).

❖ Production

- Any victim who is adult (above 18years), shall be produced before the following authorities as laid down under the Section-17 of the ITPA
- Any victim who is adult (above 18years), shall be produced before the following authorities as laid down under the Section-17 of the ITPA
 - ☞ Magistrate;
 - ☞ SDM,
 - ☞ DM,
 - ☞ Judicial Magistrate – 1st Class
- Any victim who is a child (below 18 years) shall be produced before the CWC (Sec.30 JJ Act, 2015).

Further, the table below will help the participants to list down the different procedures need to be adopted in this case study:

S.No	Procedure	Legislation [Minor]	Legislation [Adult]
1.	Register a Case: FIR		
2.	Arrest all those involved in the exploitation of Pooja.		
3.	Rescue by special police officer of the rank of Police Inspector	Sec 13 ITPA	Sec 13 ITPA



4.	Form a team to raid – female witnesses/lady social workers; lady police officer	Sec 15 ITPA	Sec 15 ITPA
5.	Team should raid the brothel along with the Team	Sec 15 ITPA	Sec 15 ITPA
6.	Rescue Pooja	Sec 15 ITPA	Sec 15 ITPA
7.	Rescue other girls from the brothel	Sec 15 ITPA	Sec 15 ITPA
8.	Seal the brothel	Sec 18 ITPA	Sec 18 ITPA
9.	Separate the victim/s from the traffickers		
10.	Arrange for a social worker to provide counseling to the victim/s		
11.	Record the statement in the presence of the social worker	Sec 15 ITPA	Sec 15 ITPA
12.	Produce the victim before CWC [Child in need of care and protection sec 2 (14)] Magistrate (SDM, DM, Judicial Magistrate 1st Class)	Sec 30 of JJ Act	Sec 17 ITPA
13.	Inform the special court about rescue of the Child	Sec 19 (6) of POCSO	Sec 17 ITPA
14.	CWC should order for admission of the victim in CCI (in case of minor) Magistrate Should order admission at Protective Home (in case of major)	Sec 30 of JJ Act	Sec 17 ITPA
15.	CWC should have conduct a detail inquiry with the help of NGO in Narayanpur to ascertain fitness of parents and safety of the child and accordingly decide about her release/custody/referral to an institution.	Sec 30 of JJ Act	Sec 17 (5) ITPA

4. For the rescued victim Pooja, what would 'rehabilitation, mean and entail?

Effective rehabilitation of victim of human trafficking is an area of concern. Merely sending the victim back to their family may not be in the best interest of the person, a child in this case. Comprehensively assessing the situation before rehabilitating and in the case of a child, chalking out an individual care plan and assigning a support person, will be critical in deciding the future course of action, or else the victim may be subjected to stigma, neglect, rejection or even increased chances of re-trafficking. The situation becomes graver in cases of victims of sexual exploitation due to the shame and trauma associated with such exploitation. In such situations the victim carries years of physical, mental and sexual exploitation which would require appropriate and long term medical (therapeutic and psychological) intervention on a case to case basis. In the absence of a planned intervention, the rehabilitation may not be effective and may be counter productive as well.

In case of Pooja, following steps are recommended for a successful rehabilitation:

- **Medical examination:** The first and the foremost step would be to conduct a medical examination of Pooja. This would not be limited to identification of physical injuries but also test for pregnancy, HIV/ AIDS and STD. Accordingly she would need gynecological prescriptions. Bone ossification test to be conducted only on the order of the CWC who would first try to ascertain age based on documents.
- **Psychological counseling:** She would require psychological counseling by a professional to be made available either at the child care institution or outside the same, if required. The District Child Protection officer or the Child Welfare Committee may facilitate provision of the service. The counsellor may prescribe the duration of services she would require to be successfully rehabilitated.
- **Home investigation report/Social investigation report:** The CWC in Delhi shall make all efforts to get the investigation done to ascertain the involvement of family in her trafficking and/or family's willingness to accept her back and/or the means available with the family to support her, her education and rehabilitation. This should be conducted as per the format shared under JJ Act, 2015 (Form: FORM 22[Rule 19(8)]). Based on the SIR report, CWC shall order for Pooja to be restored to her parents or else they may order transfer of Pooja to Narayanpur district CWC. Even the Narayanpur CWC would be required to conduct the SIR report before taking a decision. They may hand over Pooja to her parents or place her at the Child Care Institution in case CWC finds handing over Pooja to family may not be safe or will not be best for her. While conducting the SIR, the official's/ NGO worker must ensure that no steps should be



taken to reveal the situation to any member of the family apart from her mother. This will help to keep the information confidential and will protect Pooja to get stigmatized due to her sexual exploitation or being rescued from a brothel.

- **Individual care plan:** The CWC of Narayanpur shall develop a Pooja Care Plan as prescribed in the J.J.

Act, 2015 (FORM 7th). The CWC would require to periodically review the progress and pass necessary order as required.

- **Rehabilitation card:** The CWC of Narayanpur shall develop a Pooja Rehabilitation Card as prescribed in the JJ, Act, 2015 FORM 14th. This will help CWC to effectively monitor Pooja's rehabilitation status and in case required may pass necessary order to any concerned department/official's for required service(s).

- **Victim Compensation:** She is entitled to receive the victim compensation as notified by Ministry of Home Affairs in 2015. This scheme is set up by the States/ UTs; and to continue the financial support to victims of various crimes, especially crimes against children, human trafficking and sexual offences including rape. District Legal Service Authority is the nodal department to facilitate process, Pooja being from a scheduled tribe and victim of POCSSO, all state and central level victim compensation schemes may be explored.

- **Support person and Witness protection:** Pooja who suffered exploitation of various forms and would require continuous support and guidance so that she understands the process involved in the criminal justice system. CWC shall appoint support person¹² as prescribed under the POCSSO Act, 2012 sub-rule (8) of rule 4. Additionally, by the order of Standing Committee chaired by District and Session Judge at the district level, she could receive protection under the witness protection scheme¹³. These two play critical role and encourage (not limited to) victim to be cooperative throughout the court procedure and may strongly prevent the victim and key witnesses from turning hostile.

VII. CASE TEACHING PEDAGOGIES

For the purpose of teaching this case study, depending on the batch size the participants can be divided into smaller groups for detailed discussion on the possible solutions to the problem at hand or to answer the dilemma question. For a group of 30 participants, it is recommended to divide them into 3 groups of 10 each. They may be encouraged to conduct one of the following pedagogical exercises-

- i) Role Play
- ii) Stakeholder Analysis and
- iii) Syndicate Group Work

It is pertinent to note here that the instructor may give complete freedom to the participants to evolve their solution, their reasoning and arguments. There is no one correct solution to this and none may be recommended or favoured by the instructor. The views of the participants may be respected, the idea is to make them think and deliberate.

i) Role Play

For the Role Play organise the participants into 'n' no of groups of 10 each. Each such group of 10 participants would divide the following characters amongst them through draw of lots.

- Pooja (Child Victim)/Pooja's Parents
- Dilip and Sonu (Perpetrators)
- Kajal (Brothel Owner)
- Mukesh (Customer)
- Sub Inspector (Sanjay)/SHO Kamla Market PS
- Childline
- Child Welfare Committee
- District Magistrate
- Social Welfare Department
- Judicial Magistrate

Firstly, the characters may conduct a 'vulnerability mapping' of Pooja discussing what are the factors that made her vulnerable to a series of heinous offences and prevented her from seeking support or rescue. Secondly, the characters to showcase in the form of a role play, as to what part would each of them play, in their capacity, in prevention, rescue and rehabilitation of Pooja. The driver questions listed below may be provided to the participants to help them plan their role play.

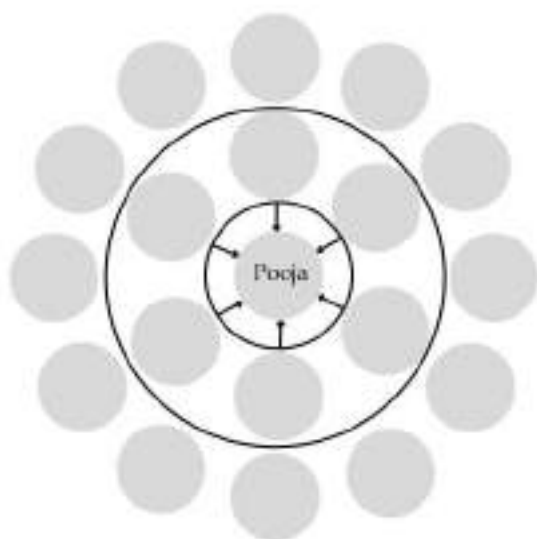
ii) Stakeholder Analysis

As an alternative to role play, a stake holder analysis may be done on the format provided below. The purpose is to clarify the roles and responsibilities of each stakeholder in solving the problem at hand. It brings about better understanding of not just one's own role but also the role of other stakeholders. Hence, better coordination.



Note that the groups may be divided to have 10 different stakeholders in each group or alternately smaller groups of 3 each, each group representing one stakeholder.

After the groups have been formed, ask each group to use the given format to map stakeholders with POOJA at the centre. The duty holders who appeared on the scene and responded may be mapped in the inner circle and those who do not appear on the scene but had a legal responsibility may be mapped in the outer circle. As a next step ask them to briefly write down about the roles and responsibilities of each duty holder and discuss the extent of shortfall on the part of each of them and what may be the reasons for this shortfall.



iii) Syndicate Group Work

Syndicate Group Work may be done where each group may be required to find a solution to the problem at hand specifying the role of each stakeholder. Note that the groups may be divided to have 10 different stakeholders in each group or alternately smaller groups of 3 each, each group representing one stakeholder. After the groups have been formed, ask each group to discuss the possible solutions to the problems at hand. First, the groups may conduct a 'vulnerability mapping' of Pooja discussing what are the factors that made her vulnerable to a series of heinous offences and prevented her from seeking support or rescue. Second, the groups may discuss the possible solutions for prevention, rescue and rehabilitation of Pooja. The driver questions listed below may be provided to the participants to help them design their group work presentations. The respective group solutions may be represented on a chart paper or a PowerPoint presentation.

VIII. TIME MANAGEMENT PLAN

Subject	Duration	Cumulative	Clock
Introduction	15 minutes	15 minutes	0900-0915 hrs
Case Study Part I- Reading	5 minutes	20 minutes	0915-0920
Case Study Part II- Reading and Answering Individually	5 minutes	25 minutes	0920-0925
Case Study Part III- Reading and Answering Individually	5 minutes	30 minutes	0925-0930
Role Play- Discussion on vulnerability mapping of the victim	15 minutes	45 minutes	0930-0945
Role Play-Discussion on relevant laws and policies	25 minutes	70 minutes	0945-1010
Role Play- Discussion on solutions and way forward	15 minutes	85 minutes	1010-1025
Summing Up	5 minutes	90 minutes	1025-1030

IX. ADDITIONAL READINGS

ARZ (Anyay Rahit Zindagi),2016: *Standard Operating Procedures on Trafficking in Persons for Commercial Sexual Exploitation for Law Enforcement Agencies, Government and Non-Government Service Providers*. Retrieved from <https://citizen.goapolice.gov.in/documents/10184/1778591/sop.pdf/900e0fee-1c89-4304-ae27-e9487bfc51ad>

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Ministry of Women and Child Development, Government of India, 2016: *UJJAWALA A Comprehensive Scheme for Prevention of Trafficking and Rescue, Rehabilitation and Re-Integration of Victims of Trafficking for Commercial Sexual Exploitation*. Retrieved from <https://wcd.nic.in/sites/default/files/Ujjawala%20New%20Scheme.pdf>

2020: *Guidelines for Implementation of Adolescent Girls Scheme as A Component Under Centrally Sponsored ICDS (General) Scheme*. Retrieved from https://wcd.nic.in/sites/default/files/Detailed%20Guidelines%20for%20implementation%20of%20scheme_1.pdf

Endnotes

¹⁰ [Rules 11(3), 13(7)(vi), 13(8)(ii), 19(4), 19(17), 62(6)(vii), 62(6)(x), 691(3)].

¹¹ Rules 7(1)(ii), 13(8)(iv)(C)(cd), 17(vi), 19(20), 65(3)(viii), 69E(2), 691(4), 691(1), 691(3).

¹² Note: To provide different kinds of assistance to a child such as for mental health, medical assistance, liaising between the child and the family of the child and the police, courts, or other authorities.

¹³ The scheme was launched in 2018 by the Ministry of Home Affairs to provide witness protection to victims of any crime by providing police escort or arranging technological audio-video session or more extraordinary measures in complex cases like organized crime safeguarding the identity and life of the victim wherever necessary.

IX. CASE COMMENTARY

The case commentary, authored by Juliana Lohar, may be provided to the participants for their better understanding of the given case study and its multiple nuances.

This case commentary is written by Juliana Lohar

CASE COMMENTARY

The organized offence of Human Trafficking: Poignant story of a young girl from Chhattisgarh highlights trafficking of minor girl on the pretext of marriage and thereafter being sold by person/s known to her for commercial sexual activity. It highlights how girls are inducted and commercially sexually exploited. The case further highlights the role played by the police, Childline/NGO in rescue and rehabilitation of victims of sex trafficking.

Ms. Pooja lived in a dysfunctional family with her step father and mother. She faced neglect, abuse and lack of affection in the family. Pooja as an adolescent was going through a phase of interest in romantic relationship. This was triggered when Dilip expressed his love for her. Pooja lacked support and mechanism to discuss with any person about her feelings and proposal from Dilip for marriage. Pooja's decision making was controlled and influenced solely by Dilip. He wanted to ensure that the family is angry with her and do not support her. He managed to achieve this by instigating Pooja to elope with him along with some money and jewelry.

Pooja was an adolescent who had an aspiration of being in a romantic, intimate and socially accepted relationship. This was accomplished when Dilip married her in a temple. However, things did not turn out the way Pooja had aspired. Dilip did not take up financial responsibilities. He lived with Sonu and initially they both survived on the money brought by Pooja. After the resources ran out, Sonu demanded to have sex with Pooja in exchange for allowing them to stay at his place. Dilip failed to prevent and protect Pooja and actively conspired with Sonu in mental, physical and sexual exploitation of Pooja and in ultimately selling her to a brothel.

Pooja's exit from commercial sexual exploitation occurred due to her non-acceptance of commercial sexual exploitation and determination to move out from the exploitative situation. The exit of Pooja transpired due to a customer who was sensitive and wanted to help a person who was victim of trafficking and commercial sexual exploitation. He managed to inform Childline, an agency whose mandate is to help children. Finally, Pooja was rescued and rehabilitated as the police and child welfare committee members intervened as per law.



Pooja lacked a conducive and protected environment at home. Dilip's presences in Pooja's life triggered risky adolescent behavior. If Pooja had **strong bonding and attachment with any of her family members**, she would have shared about stalking, proposal and harassment from Dilip.

Pooja was a student and liked going to school. **In the school if Pooja had a space and opportunity to express**, she would have shared about Dilip. A friend's or an adult's guidance and support may have prevented Pooja from eloping and leaving home without informing anyone. If the school had activities for **building life skills and resilience**, Pooja would have been able to cope and manage the vacuum of emotional needs created by her family.

If the school or community or administration had mechanisms to **keep a check and follow-up on the drop-out students**, it would have helped in initiating action by the police to search for Pooja and also would have deterred the perpetrators who followed this typical modes-operandi of befriending girls and eloping with them only to exploit them.

If the land lord of Sonu and **people in the neighborhood would have been alert** of a young bride living in the house and alerted the police, Pooja may have been rescued prior to her being trafficked and sold in the red-light area at GB Road.

If the police had a good **surveillance system** in the red-light area, a place known for sex trafficking and commercial sexual exploitation of girls and women, they would have known that a girl child has been sold and is being commercially sexually exploited. The police would have rescued her and saved her from the ordeal of sexual exploitation.

The raid at Kajal's brothel with a decoy customer, showing the exchange of money would assist and **strengthen the case for prosecution**. The raid should have been conducted by the Special Police Officer (of the rank of Police Inspector or above as per ITPA). In order to break the organized network and ensure prosecution, it is important to follow the legal provisions verbatim.

Pooja, an adolescent faced abuse, exploitation and intense trauma as her trust was broken by the person she trusted the most. Pooja would require a **psychological assessment** by a counselor to understand the impact of abuse and services required for her to recover from the consequent trauma. Pooja will require therapeutic counseling and mental health services to overcome Post Traumatic Stress Disorder.

Cognitive Behavior Therapy and Eye Movement Therapy will help in her recovery from trauma. In case she exhibits symptoms of mood swings, depressions and anxiety and is

not able to overcome through therapeutic counseling and psychotherapy then she may have to start medication under the instruction and supervision of a psychiatrist.

Pooja, once she has control on her emotional and mental health would require returning to normal life as a girl of her age. **Returning back to school** will help, however that may require a lot of motivation, support and consistent efforts.

The **reintegration** with her family needs to be done based on the Social Investigation Report. It is important to work with her family to enable them to support Pooja, given her precarious condition and to participate in Pooja's recovery and rehabilitation.

Juliana Lohar

Juliana Lohar is a professional, trained social worker. She has been working on the issue of sexual violence since last 18 years. Her work involves rescue and rehabilitation of victim of sexual violence including victims of sex trafficking. She has been one of the founders in setting up Swift Wash mechanized laundry an economic rehabilitation to provide livelihood to victims of sex trafficking in Goa. She has been actively involved in conducting research and training. She has been a recipient of various State and International awards.



4

CHAPTER

JUVENILE JUSTICE AND IMPLEMENTATION CHALLENGES THEREOF : A Case of Child in Conflict with Law

Alankrita Singh

About the Author

Alankrita is an officer of the Indian Police Service who has served as Superintendent of Police in 4 districts and Commandant in 4 different armed police battalions in the state of Uttarpradesh. For four years was engaged in a full time training role at the Lal Bahadur Shastri National Academy of Administration (LBSNAA) at Mussoorie where she also served as Executive Director of the National Gender and Child Centre. She is interested in Women's and Children's Human Rights issues, specifically from the perspective of elimination of various forms of violence against them. Currently she is working as Superintendent of Police in the Women and Child Safety Organisation of Uttar Pradesh Police at Lucknow.

PART - I

Jagraj was born in a small village in Sultanpur district of Uttar Pradesh. He was the youngest of three brothers. All the brothers studied in a government school in their village. When Jagraj had to fill the form for high school examination, based on the memory of his parents and in relation to ages of his brothers, he filled 27th June 1997 as his date of birth.

His eldest brother Rajkumar flunked his high school board exams thrice and eventually dropped out of school. He then started working as a labourer like his father. He was married to a girl from a neighbouring village by his parents

in 2012. The second brother dropped out of school too. Unlike his two brothers, Jagraj passed his class 10th and class 12th boards without having to repeat in any class. His parents thought that he could do something in his life if they could support him in continuing his studies.

In the June of 2015 an unfortunate incident occurred in his family. On 26th June 2015 Rajkumar's wife Savita committed suicide by consuming poison. Jagraj was at his friend's house in the neighbourhood at the time when the incident took place. He rushed home as soon as he got to know and joined his brothers in shifting Savita to a nearby hospital where she was declared brought dead.

The very next morning, Savita's parents got a case of dowry death registered against all five family members including Jagraj in Police Station Sultanpur. During the investigation the investigating officer found that Jagraj's parents had received a motorcycle and some furniture in dowry from Savita's parents. Savita's parents met the DM and the SP of Sultanpur threatening that they would sit on hunger strike if the accused in the case of their daughter's dowry death are not arrested and sent to jail.

While the investigation was going on, one day, Savita's mother went to the CM Janata Darbar at Lucknow and met the CM of the state and informed him of the injustice being faced by them. The CM Office called both the DM and the SP of Sultanpur and asked them to send an action taken report in the matter. The current investigating officer in the case was placed under suspension. The new IO sent each of the accused to jail on 10th August 2015 and within 3 days submitted a charge sheet against each one of them in the Sessions Court Sultanpur.

PART- II

Jagraj subsequently came out on bail even while the case was under trial in the sessions court of Sultanpur. While granting the bail of Jagraj, the sessions judge observed that the youngest brother of the three looks very young and he has already served time for six months now. Though his two elder brothers were denied bail, his old mother was granted bail in the same hearing as Jagraj. But unfortunately his father died of diarrhoea while in jail.

Jagraj and his mother knew nothing about the criminal justice system and didn't even have enough money to pursue the matter of the bail of his brothers. He was not even aware of his entitlements as a child, which he was at the time of the incident.

Jagraj decided to resume his studies. Although the circumstances were very different now, financially and socially. The local print media had already branded them as



greedy murderers and had printed their pictures also. This ensured that Jagraj couldn't get even a menial job near his village to support himself and his mother. He had to drop the plans of doing graduation.

After a lot of struggle, he got a temporary job of cleaning and brooming at a shopping complex in Sultanpur city. The job did not pay well for him to make ends meet for himself, his mother and the legal expenses for his brothers. While on the job, he was engaged in book keeping by the same employer when he learnt that Jagraj was good with numbers and reading and writing. He started learning typing and shorthand from a co-worker. At his workplace he had access to local newspapers, where one day he saw an advertisement of a walk in interview for the position of a typist and stenographer in the Fire Services Department in Sultanpur. He appeared for the same and was selected without any recommendation because he was the fastest and the most accurate. For his appointment he was required to produce several documents including a character certificate.

He put up an application dated 11th Jan 2018 in the office of SDM Sadar Sultanpur for a character certificate. SDM Sadar forwarded his file to the concerned police station seeking a police report for the same. The police report, based on the crime records of Police Station Sultanpur, listed the following facts-

1. There is a crime of dowry death registered against Jagraj (Crime no/Date).
2. Jagraj was arrested by the police and was in jail for three months (Date).
3. Jagraj was charge sheeted in this case along with 4 others (CS No/Date).
4. The case is still under trial in the sessions court Sultanpur (Court File No)

The Police Report reached the office of the Assistant Superintendent of Police who was an IPS officer for whom this was the first posting after completion of his training. Reading the report something struck the ASP and he started browsing through the file of Jagraj. Attached with Jagraj's application for character certificateZ boy was a child at the time the incident took place. Yet he was treated same way as his elder brothers. And was there enough evidence to hold him guilty of a dowry death?

He got a copy of the JJ Act 2015 and read through it cover to cover. There appears to be violation of several principles of Juvenile Justice as enshrined in the JJ Act 2015. But most importantly, was there a way to help out this boy who probably had a last chance at life in the form of this job opportunity that he had won on his own merit. The ASP had also chaired the committee for examining the candidates for the post of stenographer in the Fire Service Department.

TEACHING NOTES

I. OVERVIEW OF THE CASE STUDY

The case is based on a real life incident with which the author was associated in her capacity as Superintendent of Police in a district in the state of Uttar Pradesh in India. The details and the timelines have been suitably modified in view of the privacy of the protagonist and in order to make the case academically relevant. The case is divided into two parts- Part I and Part II. The second part ends in a decision dilemma where there may not be a single correct answer or solution.

II. BACKGROUND

Children constitute 39 per cent of the India's population (Census 2011). Children on account of their tender age and immature mind need special care and protection. They have certain special legal entitlements that are acknowledged nationally and internationally. Recognized by policy-makers as a supreme national asset, children deserve the best in terms of investment, for their survival, good health, development opportunity, security and dignity. The Constitution of India provides that the State shall direct its policy towards ensuring "that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment".

In active recognition of international standards, the Government of India is a signatory to the Universal Declaration of Human Rights since its adoption in 1948, and moved the UN General Assembly to declare an International Year for the Child in 1979. It acceded to the United Nations Convention on the Rights of the Child (UN CRC) in 1992, and ratified its Optional Protocols on Involvement of Children in Armed Conflict, and on Sale, Prostitution and Pornography, in 2005. These acts of accession and ratification stand as treaty obligations which India has undertaken to fulfill.

India has passed various child-centric legislations such as the Juvenile Justice Care and Protection Act (2000) and the new Act of 2015 in line with the international standards of care and protection for children, establishment of the National Commission for the Protection of Child Rights (NCPCR) (2005), the Prohibition of Child Marriage Act (2006), the Right of Children to Free and Compulsory Education Act (2009), and the Protection of Children from Sexual Offences (POCSO) Act (2012).

In this backdrop, young boy from rural Uttar Pradesh gets implicated in a criminal case and comes in contact with the criminal justice system. Was he a child at the time of the incident and was he treated like one by the legal system? If not, what are the economic,



social, psychological costs to him, his future, his family and to the nation? Can the wrongs done to him be corrected at a later stage? Would he have a fair chance at life? What role the various agencies envisaged under the JJ Act 2015 have to play in such a scenario in order to uphold the principles of Juvenile Justice as envisaged in the law?

The present case examines the agency of a child within the regime of the new Juvenile Justice Law in India to be able to protect his or her rights in order to develop to his or her fullest potential. In the absence of interagency coordination and the sensitivity to the cause of juvenile justice, the law in itself may not be sufficient to ensure justice to children in contact or conflict with law and to ensure protection of their rights and entitlements.

III. LEARNING OBJECTIVES

- To understand 'Juvenile Justice' as a concept.
- To fostering empathy and developing a victim-centric approach.
- To understand the Principles of Juvenile Justice under the Juvenile Justice (Care and Protection of Children) Act 2015 and how they guide various duty holders.
- To understand the roles and responsibilities of the various duty holders under the JJ Act 2015.
- To understand the significance of multi-stakeholder collaboration in the implementation of the law.

IV. TARGET AUDIENCES

- Administrative Officers at the implementation level eg. SDM, ADM, DM from any state.
- Police Officers/ Child Protection Officers/ Special Juvenile Protection Unit
- Administrative/Police Officers from other countries seeking to understand the Juvenile Justice
- System in India.
- Probation Officers/ District Child Protection Unit.
- Juvenile Justice Boards
- Child Welfare Committees
- NGOs working in the field of Child Protection
- Training of trainers to create a pool of trainers at the level of training academies

The last paragraph of the Part B of the Case Study may be customized according to the target audience and the decision dilemma may be suitably modified according to the audience.

V. STEP BY STEP GUIDE

- Step 1 : Briefing on the Learning Objectives and Session Plan
- Step 2 : Setting the Ground Rules
- Step 3 : Warm-up/Opening Questions
- Step 4 : Case Study Part 1- Reading and Stakeholder Analysis
- Step 5 : Case Study Part 2- Reading and Syndicate Group Work
- Step 6 : Distribute Case Commentary to the participants for reading and questions, if any.
- Step 7 : Share Additional Readings/ Resources

VI. CASE TEACHING GUIDELINES

- I. If the participants are new and uninitiated into the Juvenile Justice System of India, a brief background may be useful to begin the session. (refer Synopsis above)
- II. Opening Questions that have been tested and tried by the author, that work well to introduce the subject as well as to elicit participant engagement-
 - (a) What words come to your mind when I say "Childhood" (list out on the board):
Learning-
"Children are different from adults, particularly in terms of maturity of mind and body."
 - (b) Look back into your childhood to explore whether as a child did you do or witness some other child doing a certain thing which is embarrassing to be retold as an adult. Ask some participants to share if they are comfortable doing so. Learning-
"It is normal for children to make mistakes and it's a part of growing up."
 - (c) For the mistakes that you committed as a child, were you admonished or counselled or sent to jail? -
"It is essential to have a separate legal system to deal with children called the juvenile justice system which is child friendly"
- III. Administer Part I of the Case Study. Circulate the General Principles of Care and Protection of Children as a handout.



Use the following Driver Questions for eliciting responses from the participants-

- Is Jagraj a child?
- How is Jagraj different from his middle brother as a legal entity?
- Which general principles of care and protection of children have been violated in this case? Tick on the list provided.
- What is the social cost of such violation to Jagraj?
- What should Jagraj have done to prevent the violation of his rights?
- Is he a child in need of care and protection or a child in conflict with law?

IV. Administer Part II of the Case Study and ask the participants to individually answer the questions that follow in the space provided:

- If you were the ASP and had you received this police report, would you issue or recommend issuing of a character certificate to Jagraj?

V. Display the following Timeline on the projector screen:

Chronology of Events	
27-06-1997	Date of Birth of Jagraj
2012	Marriage of Rajkumar
26-06-2015	Savita commits suicide
27-06-2015	FIR registered against five including Jagraj in the sections of Dowry Death
26-06-2015	Arrest of all the accused including Jagraj
27-06-2015	Charge sheet against each accused including Jagraj submitted to the sessions court Sultanpur.
27-12-2015	Jagraj and his mother released on bail.
11-01-2018	Jagraj applies for a character certificate to the office of SDM Sadar Sultanpur.

VI. Supply the Key Legal Provisions for reading (Appendix-1). This has been prepared to provide an overall background to this case as well as to supply relevant and crucial snippets from the law. It equips the participants to understand the nuances of the law as applied to the case at hand.

Now divide the participants into smaller groups for detailed discussion on the possible solutions to the problem at hand or to answer the dilemma question. For a group of 30 participants, it is recommended to divide them into 3 groups of 10 each. They may be encouraged to conduct one of the following pedagogical exercises-

i) Role Play

ii) Stakeholder Analysis or

iii) Syndicate Group Discussion

all three have been detailed below it is pertinent to note here that the instructor may give complete freedom to the participants to evolve their solution, their reasoning and arguments. There is no one correct solution to this and none may be recommended or favoured by the instructor. The views of the participants may be respected, the idea is to make them think and deliberate.

(i) Role Play

For the Role Play organise the participants into n no of groups of 10 each. Each such group of 10 participants would divide the following characters amongst them through draw of lots.

- District Superintendent of Police
- Juvenile Justice Board
- Sessions Court
- Child Welfare Committee
- District Child Protection Unit
- Special Juvenile Police Unit
- District Probation Officer
- Station House Officer
- Non Government Organisations
- Jagraj

Time allotted to each group for discussion- 30 minutes

In the allotted time, using the limited information available in part A and B of the case study and the key legal provisions, the group shall discuss the following questions and explore whether they are or they are not able to arrive at a consensus or a solution.

- Whether or not a character certificate should be issued to Jagraj? Reasons for their response.
- What were the deviations from the law by the various stakeholders?



- Can those deviations be corrected at this stage? If so, what is the role/ responsibility of each stakeholder?
- Can justice be delivered to both Jagraj and Savita? If so, how?
- What can be done by the various stakeholders, at his or her level to ensure that such violations of the law do not take place in future?

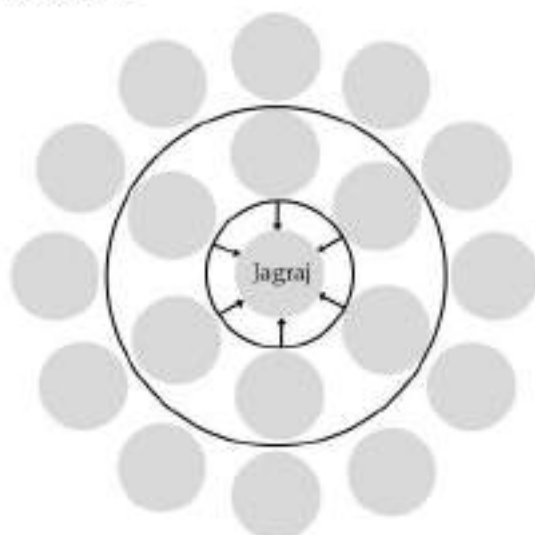
In the allotted time each participant to speak only for the character being played and to focus on answering each of the questions above. The participant playing the role of Jagraj to sum up with a corrective and futuristic perspective.

(ii) Stakeholder Analysis

As an alternative to role play, a stake holder analysis may be done on the format provided below. The purpose is to clarify the roles and responsibilities of each stakeholder in solving the problem at hand. It brings about better understanding of not just one's own role but also the role of other stakeholders. Hence, better coordination.

Note that the groups may be divided to have 10 different stakeholders in each each group or alternately smaller groups of 3 each, each group representing one stakeholder. After the groups have been formed, ask each group to use the given format to map stakeholders with Jagraj at the Center. The duty holders who appeared on the scene and responded may be mapped in the inner circle and those who do not appear on the scene but had a legal responsibility may be mapped in the outer circle.

As a next step ask them to briefly write down about the roles and responsibilities of each duty holder and discuss the extent of shortfall on the part of each of them and what may be the reasons for this shortfall.



(iii) Syndicate Group Work

Syndicate Group Work may be done where each group may be required to find a solution to the problem at hand specifying the role of each stakeholder. Note that the groups may be divided to have 10 different stakeholders in each each group or alternately smaller groups of 3 each, each group representing one stakeholder.

After the groups have been formed, ask each group to discuss the possible solutions to the problems ta hand. The respective group solutions may be represented on a chart paper or a PowerPoint presentation.

VII. TIME MANAGEMENT PLAN

Subject	Duration	Cumulative	Clock
Introduction	10 minutes	10 minutes	0900-0910 hrs
Case Study Part I- Reading	5 minutes	15 minutes	0910-0915
Discussion	10 minutes	25 minutes	0915- 0925
Case Study Part II- Reading and Answering Individually	5 minutes	30 minutes	0925-0930
Key Legal Provisions	5 minutes	35 minutes	0930-0935
Role Play- Discussion within group	20 minutes	55 minutes	0935-0955
Role Play - Enactment by two groups	60 minutes	115 minutes	0955-1055
Summing Up	5 minutes	120 minutes	1055-1100

Note: This may be varied depending on the availability of time, no of participants, no of role plays to be performed and the pre-awareness or experience of the participants with the subject.

VIII. REFERENCES

The following reference material may be provided to the participants as soft copy on email

1. Appendix 1A- Juvenile Justice (Care and Protection of Children) Act 2015
2. Appendix 1B- Juvenile Justice (Care and Protection of Children) Rules 2016.



3. Appendix 1C- Supreme Court Judgement in Writ Petition (Criminal) No. 102 of 2007 by Justice Madan B Lokur dated May 5, 2017.
4. Appendix 1D- The Principles of Juvenile Justice as per the JJ Act 2015.
5. Appendix 1E- JJ Amendment Act 2020.

IX. SUPPLEMENTARY READING

Participants who may be interested in having a deeper understanding into the issues around Juvenile Justice in India may read the following articles/studies. These may be shared on email in electronic form.

- A legal perspective on the age of criminal responsibility (<http://lexpress.in/criminal-justice/age-of-criminal-responsibility-in-india>)
- A comprehensive study of the Juvenile Justice System in India along with the linkages with the international instruments in the area conducted by HAQ foundation on Child Rights. (<http://haqcr.org/wp-content/uploads/2016/07/blind-alley-juvenile-justice-in-india.pdf>)
- Child-like or Adult-like (<https://qz.com/579566/five-reasons-why-india-shouldnt-reduce-the-juvenile-delinquency-age-from-18-to-16/>)
- Why criminal act is not same as criminal liability? (<https://timesofindia.indiatimes.com/india/why-criminal-act-is-not-the-same-as-criminal-liability/articleshow/61719231.cms>)
- Child and Criminal Liability (<http://racolblegal.com/child-and-criminal-liability/>)
The current debates in the field of Juvenile Justice in India (<https://theprint.in/opinion/stop-making-new-laws-for-childrens-safety-implement-first/48820/>)

X. TRIAL RUN

The above case has been used for two successive trainings of Senior Civil Servants from Bangladesh with approximately 30 participants each time. The learning objectives were suitably modified to include only the Principles of Juvenile Justice, as other technical details were found to be less relevant for the target audience. Role play was not done due to the paucity of time. It must be noted that on both occasions the participants were interested in discussing the 'Nirbhaya Rape Case' of Delhi referring to the popular perception that Juvenile Offenders may be getting away with heinous offences post the Juvenile Justice Act 2015.

The case has also been used to train 180+ 210 police officers of Chhattisgarh Police in two tranches and 50 police officers of Dehradun Police and 200 officers of Delhi Police including 30 IPS Officers of the rank of Assistant Commissioners of Police. In each of the above trial runs of the case role play was done and as anticipated different solutions emerged on each of the occasions.

XL CASE COMMENTARY

The following Case Commentary has been contributed by Hon Justice Madan Lokur from his experience of adjudicating on various cases pertaining to Juvenile Justice and chairing the Supreme Court Committee on implementation of Juvenile Justice Act across states in India.

This case commentary is written by Justic Madan B Lokur

CASE COMMENTARY

Awareness of the provisions of the law and sensitizing those in authority are extremely important.

The first step is to be cognizant of the date of offence. Clearly, on the relevant date, Jagraj was a minor and should have been dealt with as a minor. The date of arrest or the charge sheet are not relevant. Unfortunately, this was overlooked.

Having come to the conclusion that Jagraj was a minor on the crucial date, the second step is that he should have been placed in charge of the Special Juvenile Police Unit. Did the Police Station have an SJPU? Was he placed in charge of the SJPU?

The third step (not applicable in this case since the offence is of 2015) is to examine whether there is a change in law. The JJ Act was amended with effect from 01.01.2016 and a special procedure was adopted for children between the ages of 16 and 18 in respect of a heinous offence. (Dowry death is a heinous offence). Section 15 of the JJ Act is relevant for this purpose and the trainer should bring this to the attention of the participants.

In criminal cases, procedural safeguards are as important as substantive provisions of law and the trainer must sensitize participants to follow the procedure, otherwise the trial or inquiry might get vitiated. In the case under discussion, the procedural safeguards were not followed and to make matters worse, the child was produced before an 'adult' court and sent to an 'adult' prison.

Free legal aid is an important component of justice delivery. The Legal Services Authorities Act, 1987 mandates free legal services to a child. Jagraj was entitled to free legal aid as a matter of right and was not obliged to make arrangements for paying a lawyer. If Jagraj is denied legal aid or cannot afford a lawyer or a competent lawyer due to poverty, he is effectively denied a fair trial. Every accused has a constitutional right to a fair trial. Jagraj cannot be deprived of his constitutional right due to his poverty.

Over the years, criminal justice jurisprudence has been functioning on a custodial, retributive and deterrent philosophy. The Supreme Court has been encouraging (since



the 1980s) a correctional, rehabilitative and restorative approach. The JJ Act has accepted the philosophy advocated by the Supreme Court and international instruments. This should be the basis of our understanding and implementation of the provisions of the JJ Act.

It is also necessary to consider the future of the child while taking a decision on what to do in a given case. The Investigating Officer has a fair idea of whether a suspect is guilty or not and files a final report or charge sheet accordingly. But some additional considerations need to be addressed, such as, is the child a first-time offender, what are the socio-economic circumstances that led the child to commit the offence and so on. A large range of issues need consideration and all these could have an impact on the future of the child. If the charge sheet is to be filed, should the child be placed in an observation home; are the living conditions in the observation home conducive to restoration and rehabilitation and so on. What about job opportunities – does the stay in the observation home provide an opportunity to the child to develop into a responsible citizen? Availability of educational facilities, issues of health and hygiene should also be taken into account. Remand to an observation home should not be treated as a routine affair.

In other words, the trainer must emphasize to the participants that they carry a great burden relating to the future of the child and a mistake might have adverse consequences.

Justice Madan B Lokur

Justice Madan B Lokur is a former judge of the Supreme Court of India. He studied history from St Stephens College Delhi and obtained his law degree from Delhi University. Earlier in his career he served as an advocate-on-record. He also served as editor of the Indian Law Review. In his judicial career he served as a judge of the Delhi High Court, as chief justice of Delhi High Court, Gauhati High Court and Hyderabad High Court before being elevated as a judge of the Supreme Court in 2018. He is known for his keen interest in juvenile justice and certain landmark judgements passed by him for strengthening the implementation of the law in India. He chaired the Supreme Court's Committee on implementation of juvenile justice. He is currently a judge of the Supreme Court of Fiji, being the first Indian judge to adjudicate in a foreign country.

5 CHAPTER



दूधमुँही बालिका का अपहरण, बलात्कार एवं हत्या परिस्थितिजन्य साक्ष्य पर आधारित प्रकरण

Seema Sharma

About the Author

लेखिका गुड (पुलिस) विभाग मध्य प्रदेश की वर्ष 2003 बैच की सहायक जिला लोक अभियोजन अधिकारी हैं तथा वर्तमान में विशेष लोक अभियोजक पॉस्टो एक्ट भी हैं। लेखिका कानूनी विषयों पर गहन अध्ययन और रिसर्च करने में रुचि रखती हैं। लेखिका के द्वारा लिखी गयी दो विधि पुस्तकें "युतिस् अनुसंधान एवं अभियोजन" और "पॉक्सो एक्ट - अनुसंधान एवं विचारण" प्रकाशित हो चुकी हैं। लेखिका के द्वारा अपने विभाग के लिए लिखी गयी पुस्तकें "अभियोजन सागर" एवं "केस स्टडी" के लेखन कार्य में भी सहयोग किया गया है। लेखिका पुलिस अनुसंधान, महिलाओं और बच्चों के विरुद्ध होने वाले लैंगिक अपराधों से संबंधित विषयों के अध्ययन एवं प्रशिक्षण में विशेष रुचि रखती हैं। लेखिका अपने विभाग की मास्टर ट्रेनर होकर एक उत्साही ट्रेनर हैं और यह विश्वास करती हैं कि भविलांगी डिजाइन किया गया प्रशिक्षण कार्यक्रम प्रशिक्षार्थियों के ज्ञान, कौशल और दक्षता में इच्छित परिवर्तन लाता है। लेखिका को अभियोजन, लेखन और प्रशिक्षण के क्षेत्र में किये गये उत्कृष्ट प्रदर्शन के लिए उनके विभाग का सर्वोच्च सम्मान "ग्रैंड ऑफ प्रोफिक्शन्स" बार बार प्राप्त हो चुका है।

घटना एवं उसके तथ्य

मृतका के माता-पिता इंदौर के राजवाड़ा तथा सराफा क्षेत्र में बलुन बेचने का काम करते थे। उनके चार बच्चे थे। जिनमें से 02 लड़कियाँ और 02 लड़के थे। सबसे छोटी पुत्री घटना के समय 03 माह 04 दिन की थी। मृतका के माता-पिता कभी-कभी बलुन बेचने के कार्य में अधिक समय हो जाने पर अपने घर न जाकर राजवाड़ा पर ही सो जाते थे। दिनांक 19.04.2018 की रात्रि करीब 09 बजे अभियुक्त नवीन, जिसने मृतका की रिश्तेदार को अपनी पत्नी बनाकर रखा था, अपने साथ शराब की दो बोटल लेकर वहाँ आता है और शराब दिखाकर कहता है कि शराब पी लो इस पर मृतका की नानी शराब की बोटल फेंक देती है। इस पर अभियुक्त नवीन मृतका के नाना-नानी से झगड़ा करता है और कहता है कि शराब के पैसे दे दो, इस पर मृतका का मामा अभियुक्त को धक्का देकर कहता है कि यहां से चला जा इस बात पर अभियुक्त नवीन विवाद



करता है तब मृतका के नाना वहीं पर खड़े पुलिस अधिकारी के पास जाकर उन्हें कहते हैं कि यह नवीन हमसे लड़ रहा है तो पुलिस अधिकारी गाड़ी से उतर कर समझाते हैं। नवीन पुलिस अधिकारी से भी बहस करता है और कहता है कि मेरी शराब फेंक दी, पैसे दिलाओ। इस पर पुलिस अधिकारी नवीन को डांटते हैं और वहां से भगा देते हैं। अभियुक्त नवीन सायकल लेकर चला जाता है। मृतका के पिता के आने पर मृतका की माता नवीन से लड़ाई वाली बात उसे बताती है। मृतका के माता-पिता, 02 मामा, नाना-नानी, मृतका और उसके तीनों भाई-बहन भोजन उपरांत राजवाड़ा के गेट के सामने ओटले पर सो जाते हैं। मृतका अपने माता-पिता के बीच में सोई हुई थी। उसी ओटले पर सुनील नाम का लड़का भी सो रहा था। रात में लगभग 03 बजे मृतका रोने लगी तो उसकी मां ने उसे दूध पिलाया और सुला दिया। लगभग 05 बजे मृतका की माता की नींद खुती तो देखा कि बालिका वहां नहीं थी तथा ओटले पर सोया हुआ व्यक्ति सुनील भी नहीं था, तो उसने सोचा कि बालिका को सुनील ले गया है। मृतका के माता-पिता, मामा, नाना-नानी सबने मृतका को कई स्थानों पर ढूँढा किन्तु उसका कहीं पता नहीं चला। इसके बाद वे उस महिला शीमा (परिवर्तित नाम) के पास गये जिसे अभियुक्त नवीन ने पूर्व में पत्नी के रूप में रखा हुआ था और उसे मृतका के गुम हो जाने के बारे में बताया और उसे साथ लेकर भी मृतका की तलाश की किन्तु उसका पता नहीं चला तो मृतका के परिजन सराफा धाना पर गये जहां मृतका के पिता ने प्रथम सूचना रिपोर्ट दर्ज कराई और सुनील पर शंका व्यक्त की। प्रथम सूचना रिपोर्ट लिखाने के बाद जब पुलिस एवं परिजन बालिका को ढूँढ रहे थे तब बालिका के मामा 'एम' ने बताया कि मृतका राजवाड़ा के पास श्रीनाथ पैलेस के तलघर में मरी हुई पड़ी है। तब मृतका के पिता पुलिस के साथ घटनास्थल पर पहुंचे तो देखा कि उनकी बेटी मृत अवस्था में पड़ी हुई है, जिसे देखकर उन्होंने पहचान लिया। मृत बालिका के गुफ्तारों में आगे व पीछे खून लगा हुआ था। इसके बाद पुलिस मृत बालिका को लेकर एम.बाय.एच. हॉस्पिटल गई, जहां उसका पोस्टमार्टम हुआ तत्पश्चात उसे दफना दिया गया। उसी दिन रात में पुलिस ने मृत बालिका की माता एवं शीमा को सी.सी.टी.वी. फुटेज दिखाया जिसमें अभियुक्त नवीन बालिका को सायकल से ले जाते हुए दिखाई दे रहा था। जिसे बालिका की माता 'एस' और शीमा ने पहचान लिया था। अभियुक्त नवीन ने करीब 6 साल तक शीमा को पत्नी की तरह रखा हुआ था, जो करीब छः माह से नवीन से पृथक् रह रही थी। इस पर नवीन मृतका की माता से कई बार कह चुका था कि शीमा से मिलवा दे और मेरे पास भिजवा दे जिसके लिये मृतका की माता 'एस' ने मना कर दिया था।

पोस्टमार्टम रिपोर्ट से ज्ञात हुआ कि बालिका की वजाइना एवं एनस में चोटें थी। सिर एवं अन्य अंगों पर भी चोटें थी। परीक्षा के 24 घंटे के भीतर सेक्सुअल असाउल्ट किया गया था। मृतका का मुँह एवं नाक दबाया जाना तथा सिर किसी सख्त स्थान पर बलपूर्वक लगने के कारण केनिया सेरेबल जेमेज से मृत्यु होने का अभिमत पी.एम. रिपोर्ट में दिया गया था। उल्लेखनीय है कि दोनों घटना स्थल इंदौर शहर के मुख्य बाजार होकर कई स्थानों पर सीसीटीवी कैमरे लगे हुए हैं।

केस स्टडी के परिदृश्य में उठने वाले प्रश्न एवं उनके उत्तर

प्रश्न 1— किन अपराध धाराओं के विचारण हेतु अभियोग-पत्र प्रस्तुत किया गया ?

उत्तर— अभियुक्त के विरुद्ध अभियोग-पत्र भारतीय दण्ड संहिता, 1860 (संक्षेप में नादवि) की धाराओं 201, 302, 363, 376क, 366, 376(2)(एफ), 376(2)(आई), 376(2)(जे), 376(2)(के), 376(2)(एम) व 377

तथा लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 (संक्षेप में पॉक्सो एक्ट) की धाराओं 3/4, 5(एम)/6, 5(एन)/6 के अपराधों के विचारण हेतु न्यायालय में प्रस्तुत किया गया।

प्रश्न 2— न्यायालय के द्वारा किन-किन अपराध धाराओं का आरोप विरचित किया गया ?

उत्तर— आरोपी नवीन उर्फ अजय के विरुद्ध भारतीय दण्ड संहिता की धाराओं 363, 366क, 376(क)(2)(आई)(जे)(के)(एम), 302, 201 तथा लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 की धाराओं 5(एम)(आई)/6 के आरोप विरचित किये गये।

प्रश्न 3— यदि यह दुर्भाग्यपूर्ण घटना वर्तमान में घटी होती तो कौनसी अपराध धाराओं का आरोपण होता ?

उत्तर— भादवि की धाराएं 366, 363, 376कख, 302, 201 और पॉक्सो एक्ट की धारा 5/6.

प्रश्न 4— अनुसंधान अधिकारियों द्वारा क्या-क्या साक्ष्य संकलित की गई ?

उत्तर —

1. बालिका 'एल' के पिता 'एस' ने दिनांक 20.04.2018 को 14:31 बजे थाना सराफा इंदौर पर बालिका के गुमशुदा होने की सूचना दी जो अपराध क्रमांक 50/18 पर उपनिरीक्षक नरेन्द्र जैसवार के द्वारा धारा 363 भा.द.वि. की दर्ज की गई। प्रथम घटनास्थल जहां से बालिका को उठाकर ले जाया गया था, का नक्शा मौका शाम को कायमीकर्ता के द्वारा घटनास्थल पर जाकर मृतका 'एल' के पिता 'एस' की निशादेही पर बनाया गया था तथा अपराध की विवेचना उपनिरीक्षक बुदेलसिंह सुनेरिया को दे दी गई थी।
2. जिस स्थान पर बालिका के साथ बलात्कार कर उसकी हत्या की गई थी वह स्थान राजवाड़ा इंदौर में ही स्थित श्रीनाथ कॉम्प्लेक्स का बेसमेंट था वहां दीपक जैन की रेडीमेड कपड़ों की दुकान थी। घटना दिनांक 20.04.2018 को उनके कर्मचारी सुनिल शर्मा ने दोपहर करीब साढ़े बारह बजे फोन कर बताया कि लोहे के गेट के अंदर बेसमेंट में एक बच्ची उल्टी अवस्था में पड़ी हुई है। सूचना मिलते ही दीपक अपनी दुकान पर पहुंचे वहां से थाना एम.जी. रोड पर जाकर दोपहर 13:27 बजे घटना की सूचना दी। यह घटनास्थल थाना एम.जी. रोड के अंतर्गत आता है। जहां पुलिस के द्वारा मर्ग क्र. 15/18 दर्ज किया गया। यह जांच हेतु सुरेन्द्र दान सहायक उपनिरीक्षक को सौंपा गया।
3. सुरेन्द्र दान ने द्वितीय घटनास्थल श्रीनाथ कॉम्प्लेक्स पहुंचकर घटनास्थल का निरीक्षण कर धारा 175 द.प्र.सं. के तहत मृत्यु जांच में पंचों की उपस्थिति के लिए सफ़ीना फॉर्म जारी किया। मृत बालिका को मीके पर ही उपस्थित उसके मामा 'एम' ने पहचाना था। मृतका की लाश का नक्शा पंचायतनामा बनाया, जिसकी प्रति एसडीएम को भी भेजी गई। शव परीक्षण के लिए आवेदन पत्र लेख किया। घटनास्थल पर जहां शव पड़ा था वहां फर्श पर एवं बेसमेंट में जाने की सीढ़ियों पर रक्त पड़ा था। दोनों स्थानों से रूई की सहायता से खून को पोंछा तथा खून आलुदा एवं सादा रूई साक्षीगण 'एम' एवं दीपक के समक्ष जप्त कर जप्टी पंचनामा बनाया गया। इस घटना स्थल का नक्शा मौका भी दीपक जैन की निशादेही पर बनाया गया। शॉर्ट पी.एम. रिपोर्ट प्राप्त करने के लिये भी आवेदन विभागाध्यक्ष एम.जी.एम. कॉलेज को दिया गया। शव परीक्षण उपरांत शव परिजनों को सौंप शव प्राप्ति रसीद लेख की। शव परीक्षण उपरांत आरक्षक योगेन्द्र जोशी ने एम.वाय. अस्पताल से सीलबंद अवस्था में दो बॉटल विसरा, एक पैकेट कपड़े का, एक एनल र्स्वॉब एवं स्लाइड, एक यजाइनल र्स्वॉब एवं स्लाइड, नमक के घोल की एक शीरी और एम.वाय.एच अस्पताल की चार



नमूना सील लाकर थाना एम.जी. रोड पर पेश की थी जो दो साक्षियों के समक्ष प्र.आर. बलवंत के द्वारा जप्त कर जप्ती पंखनामा बनाया गया था। यह मर्ग थाना सराफा के अपराध क्रमांक 50/18 से संबंधित होने के कारण यह मर्ग जायरी समस चालान दिनांक 20.04.2018 के माध्यम से उसी दिन आरक्षक प्रतापरिंह के माध्यम से जप्तशुदा विसरा आदि एवं घटनास्थल से जप्तशुदा आर्टिकल सहित थाना सराफा को सौंपी गई। मर्ग जांच के दौरान मृतका की माता का कथन भी लेख किया गया था।

4. बालिका का शव जब घटनास्थल पर पड़ा था तभी दिनांक 20.04.2018 को सीन ऑफ काईम मोबाइल युनिट इंदौर में पदस्थ वैज्ञानिक अधिकारी डॉ. मयूरी धनवार भी एम.जी. रोड थाने से सूचना प्राप्त होने पर अपने पुलिस फोटोग्राफर प्रधान आरक्षक सुरेश शर्मा के साथ घटनास्थल 29, श्रीनाथ पैलेस राजवाड़ा इंदौर पहुंची थी। उन्होंने घटनास्थल का निरीक्षण किया था और निरीक्षण उपरांत घटनास्थल पर उपस्थित पुलिस अधिकारी को आवश्यक निर्देश दिए जिसका प्रतिवेदन भी बनाया। यह निर्देश देने के बाद वे घटनास्थल से चली गई थी। घटनास्थल पर जो रफ नोटिंग उन्होंने की थी उसके आधार पर दिनांक 24.04.2018 को घटनास्थल के निरीक्षण का विस्तृत प्रतिवेदन तैयार कर विवेचना अधिकारी को प्रेषित किया था। इस प्रतिवेदन के साथ घटनास्थल का आउटलाइन डायग्राम तथा विस्तृत डायग्राम भी बनाया गया था जो विस्तृत प्रतिवेदन के साथ भेजा था। फोटोग्राफर के द्वारा घटनास्थल एवं बालिका के शव के फोटोग्राफ लिये गये थे।
5. थाना सराफा पर पदस्थ उपनिरीक्षक बुंदेलसिंह सुनेरिया भी दिनांक 20.04.2018 को अपराध क्रमांक 50/2018 की विवेचना मिलने पर, वायरलेस पर प्रसारित हो रही सूचना कि श्रीनाथ पैलेस के बेसमेंट में एक बच्ची की लाश मिली है, सुनकर उस स्थान पर पहुंचे थे और मृत बालिका ही अपहृत बालिका है इस पहचान के संबंध में शिनाख्त पंखनामा बनाया था। शिनाख्त घटनास्थल पर उपस्थित मृतका के पिता ने साक्षीगण राजेन्द्र एवं 'एम' के समक्ष की थी।
6. इस घटना के अनुसंधान हेतु दिनांक 20.04.2018 को ही पुलिस उपमहानिरीक्षक इंदौर के द्वारा विशेष अनुसंधान दल (एस.आई.टी.) का गठन किया गया था। इसलिये कंस जायरी उस टीम को सौंप दी गई थी।
7. उक्त आदेश की प्रति कंट्रोल रूम से प्राप्त कर उक्त विशेष अनुसंधान दल के सदस्य भंवरकुआ थाना प्रमारी शिवपालसिंह कुशवाह ने दिनांक 20.04.2018 को ही सराफा थाना पर पदस्थ उपनिरीक्षक बुंदेलसिंह सुनेरिया जो एस.आई.टी. के सदस्य भी थे, से इस अपराध की कंस जायरी प्राप्त की तथा एस.आई.टी. के अन्य सदस्यों को साथ लेकर घटनास्थल के आसपास लगे हुए सीसीटीवी कैमरों की जगह देखी तथा मृतका के परिजनों से चर्चा की। टीम के एक सदस्य उपनिरीक्षक मनीषा दांगी को कौटिल्य अकादमी में लगे सीसीटीवी कैमरे के विडियो फुटेज देखने हेतु निर्देशित किया था। राजवाड़ा पर लगे सीसीटीवी कैमरे के विडियो फुटेज कंट्रोल रूम स्थित सीसीटीवी सेंटर पर स्वयं शिवपालसिंह कुशवाह ने देखे तथा मृतका की मां 'एस' एवं रिश्तेदार रीमा को भी दिखाए। वहां मनीषा दांगी भी कौटिल्य अकादमी के विडियो फुटेज की रिकॉर्डिंग पेनड्राइव में लेकर पहुंची। सभी विडियो फुटेज घटना दिनांक 20.04.2018 के सुबह साढ़े चार-पांच बजे के थे। सभी फुटेज मृतका की मां एवं रीमा को दिखाए गए जिन्होंने फुटेज देखकर बच्ची को उठाकर ले जाने वाले व्यक्ति को रीमा के पति नवीन उर्फ अजय के रूप में पहचाना जो एक हाथ में बच्ची और दूसरे हाथ में साइकिल को पकड़े हुए था। वहीं पर रीमा एवं मृतका की माता से पूछताछ कर उनके विस्तृत कथन लेख किए गए। रीमा ने अभियुक्त नवीन का पता बताया।
8. निरीक्षक शिवपालसिंह कुशवाह अपने स्टाफ के साथ अभियुक्त के पते पर गांव गाडराखेड़ी के लिये रवाना हुए। गाडराखेड़ी में जहीरउद्दीन एवं बब्बर नामक दो व्यक्ति मिले जिन्हें नवीन के

द्वारा कारित की गई घटना के बारे में बताया तथा उनसे नवीन के घर का पता पूछा तो उन्होंने साथ में चलकर बताया। उस समय अभियुक्त नवीन अपने घर के दरवाजे पर बैठा हुआ था जिसने पुलिस को देखकर भागने का प्रयास किया जिसे घेराबंदी कर पकड़ा, गिरफ्तार किया और घटना के संबंध में पूछताछ की तथा उसके द्वारा की गई संस्वीकृति और सूचना के संबंध में धारा 27 साक्ष्य अधिनियम का मेमोरेण्डम बनाया। आरोपी ने बालिका के रक्त से सनी अपनी पैंट, टी-शर्ट और चप्पल अपने घर में रखने व निकालकर देने की सूचना दी थी जिसका मेमोरेण्डम साक्षी जहीरउद्दीन तथा बब्बर के समक्ष तैयार किया गया था। इस मेमोरेण्डम में दी गई सूचना के आधार पर अभियुक्त ने अपने घर के कमरे की रस्सी से नारंगी रंग की टी-शर्ट जिस पर सामने की ओर खून लगा हुआ था और एक नीले रंग का जिन्स पैंट जिसकी घेन के आस-पास खून लगा हुआ था तथा एक जोड़ी काले रंग की चप्पल जिस पर भी खून लगा हुआ था, बरामद कराई जो जप्त कर जप्ती पंचनामा उक्त दोनों साक्षियों के समक्ष बनाया गया।

9. उसके परघात निरीक्षक शिवपालसिंह कुशवाह, आरोपी एवं उक्त दोनों स्वतंत्र साक्षियों को साथ लेकर दोनों घटनास्थलों की तस्दीक हेतु गए थे। आरोपी के द्वारा तस्दीक किए जाने पर तस्दीक पंचनाम में साक्षियों के समक्ष बनाये थे। उसके बाद सराफा थाने पर पहुंचकर जप्तशुदा सामग्री प्रधान आरक्षक लेखक को सुपुर्द कर आरोपी को हवालात में बंद कर रोजनामचे में वापसी दर्ज की थी।
10. थाना एम.जी. रोड से प्राप्त मर्ग डायरी भी इस अपराध की डायरी में शामिल की गई।
11. दिनांक 21.04.2018 को आरोपी के मेडिकल परीक्षण हेतु मेडिकल फॉर्म भरकर उसे एम.वाय.एच. हॉस्पिटल भेजा गया था। मेडिकल परीक्षण के समय अभियुक्त नवीन के शरीर से प्राप्त भौतिक साक्ष्य सीमन स्लाइड, प्यूबिक हेयर, नाखून, अंडरवियर और हॉस्पिटल की नमूना सील सहायक उपनिरीक्षक संतोष मिश्रा के द्वारा लाकर थाने पर पेश करने पर सहायक उपनिरीक्षक के.के. त्रिपाठी के द्वारा जप्त कर जप्ती पंचनामा बनाया गया था।
12. उसके बाद दिनांक 21.04.2018 को ही निरीक्षक शिवपालसिंह कुशवाह के द्वारा आरोपी से साक्षी जहीरउद्दीन एवं बब्बर के समक्ष, जिन्हें पूछताछ में उपस्थित रहने के लिए पूर्व में ही सूचित कर दिया गया था, थाना सराफा पर पूछताछ की गई तो अभियुक्त ने घटना कारित किये जाने में प्रयुक्त सायकिल जिसके हैंडल में, बालिका को उठाकर फेंकते समय हाथों में लगा बालिका का खून, लग गया था, बरामद कराने की सूचना दी जिसका धारा 27 भारतीय साक्ष्य अधिनियम, 1872 (संक्षेप में सा.अधि.) का मेमोरेण्डम तैयार किया गया।
13. दिनांक 21.04.2018 को निरीक्षक शिवपालसिंह कुशवाह के द्वारा मृतका के रिश्तेदार साक्षी 'डी', 'एम' एवं मृतका के पिता के कथन लेख किये गये।
14. उपनिरीक्षक मनिषा दांगी के द्वारा दिनांक 21.04.2018 को कौटिल्य अकादमी राजवाड़ा इंदौर एवं पुलिस कंट्रोल रूम इंदौर से घटना से संबंधित सीसीटीवी फुटेज तीन प्रतियों में डीवीडी में कॉपी कर जप्त कर जप्ती पंचनाम बनाये गये तथा इन फुटेज के संबंध में साक्षी मैनेजर सुभाष चौधरी कौटिल्य अकादमी इंदौर एवं पुलिस सीसीटीवी कंट्रोल रूम में पदस्थ उपनिरीक्षक लोकेश के कथन लेख किये गये तथा इनसे धारा 65बी(4) साक्ष्य अधिनियम के प्रमाण-पत्र भी प्राप्त किये गये।
15. दिनांक 22.04.2018 को निरीक्षक शिवपालसिंह कुशवाह द्वारा मृतका के रिश्तेदार साक्षी 'आर' एवं 'एस' के कथन लेख किये गये। साक्षी जहीरउद्दीन एवं बब्बर को तलब कर उनके समक्ष आरोपी



नवीन की निशादेही से उसके द्वारा दी गई सूचना के मुताबिक उसके घर के पीछे खाली जगह से घटना में प्रयुक्त सायकिल जप्त की और सायकिल के हैंडल पर लगे हस्तों पर रक्त मिलने की संभावना के कारण उन्हें सावधानीपूर्वक निकाला जाकर उन्हें भी जप्त कर चिटबंद सीलबंद किया गया। सायकिल पर जप्ती चिट चरखा की गई।

16. दिनांक 23.04.2018 को डी.एन.ए. परीक्षण हेतु आरोपी का रक्त सैंपल एकत्र करने हेतु उसे एम. वाय.एच. इंदौर ले जाया गया, जहां आरोपी का रक्त सैंपल लिया गया। इडीटीए द्यूब में सुरक्षित कर सीलबंद किया गया जो डॉ. दीपक फड़से से जप्त कर जप्ती पंचनामा बनाया गया। सीलबंद इडीटीए द्यूब को आईस बॉक्स में रखा गया। थाना वापसी पर एच.सी.एन. को सौंपा गया और रोजनामचे में वापसी दर्ज की।
17. समस्त जप्ताशुदा प्रदर्शा को डी.एन.ए. एवं बायोलोजिकल परीक्षण हेतु ड्राफ्ट तैयार कर आरक्षक मौजूद एहमद खान के माध्यम से राज्य न्यायालयिक विज्ञान प्रयोगशाला सागर भेजे गए। मृत बालिका का जप्ताशुदा विसरा परीक्षण हेतु ड्राफ्ट के साथ राज्य न्यायालयिक विज्ञान प्रयोगशाला राऊ, इंदौर भेजा गया। जमा रसीदें प्राप्त कर प्रकरण के संलग्न की गई।
18. दिनांक 23.04.2018 को एच.आई.टी. के अन्य सदस्य उपनिरीक्षक जी.एस. रघुवंशी द्वारा साक्षी दीपक, सुनिल शर्मा और सुनिल ठाकुर के कथन लेख किये गये। सुनिल ठाकुर वही व्यक्ति है जिसे संदिग्ध मानते हुए इसके विरुद्ध प्रथम सूचना रिपोर्ट दर्ज कराई गई थी परंतु विवेचना में इसके द्वारा अपराध किया जाना नहीं पाया गया। ये तथ्य स्पष्ट करने हेतु इसके कथन लेख किये गये।
19. राजवाड़ा एवं कौटिल्य अकादमी के सीसीटीवी कैमरे के विडियो फुटेज के 09 फोटो फोटोग्राफर अनिल द्वारा तैयार कर प्रस्तुत किए गए। घटना स्थल के फोटो फोटोग्राफर सुरेश द्वारा प्रस्तुत करने पर प्राप्त कर डायरी में शामिल किये गये थे तथा इनके संबंध में दोनों फोटोग्राफर से धारा 65बी(4) साक्ष्य अधिनियम के प्रमाण-पत्र भी प्राप्त किये गये।
20. पुलिस कंट्रोल रूम से प्राप्त सीसीटीवी फुटेज घटना घटित होने की दिनांक एवं समय नहीं दर्शा कर भिन्न दिनांक दर्शा रहा था। इसका कारण स्पष्ट करने के लिये कंट्रोल रूम पर सीसीटीवी फुटेज कंट्रोल करने वाले प्रोजेक्ट मैनेजर हिमांशु पाण्डे से प्रमाण-पत्र प्राप्त कर कथन भी लेख किये गये।
21. द्वितीय घटना स्थल श्रीनाथ पैलेस के पास स्थित मोदी क्रियेशन शॉप की दीवार पर लगे सीसीटीवी कैमरे की रिकॉर्डिंग में दिनांक 20.04.2018 को सुबह 4 बजे आरोपी बच्ची को ले जाता हुआ और 15 मिनट बाद वापिस खाली हाथ आता हुआ दिखाई देने पर उक्त विडियो फुटेज को कम्प्यूटर ऑपरेटर जगदीश सुहागिर के द्वारा तीन प्रतियों में तैयार कर प्रस्तुत करने पर जप्त कर जप्ती पंचनामा बनाया गया। फुटेज के संबंध में जगदीश से धारा 65बी(4) साक्ष्य अधिनियम का प्रमाण-पत्र भी प्राप्त किया तथा कथन भी लेख किये गये। उक्त कार्यवाही उपनिरीक्षक मनिषा दांगी के द्वारा की गई।
22. दिनांक 25.04.2018 को मृतका की माता 'एस' एवं रीमा के धारा 164 द.प्र.सं. के कथन कराये गये एवं कथनों की प्रति प्राप्त कर केस डायरी में संलग्न की गई। इसी दिन नवीन डिजीटल पहुंचकर मनोज वर्मा के सहयोग से राजवाड़ा स्थित प्रथम घटनास्थल से श्रीनाथ पैलेस स्थित द्वितीय घटना स्थल तक का गुगल मैप बनाया गया और इन दोनों स्थानों के मध्य लगे समस्त सीसीटीवी कैमरों को चिन्हित किया गया। इस गुगल मैप पर आरोपी के जाने का रास्ता दर्शाया गया। इस मैप को तैयार किये जाने के संबंध में मनोज वर्मा से धारा 65बी(4) साक्ष्य अधिनियम का प्रमाण-पत्र प्राप्त किया गया।

23. जपतशुदा प्रदर्शों को बायलोजिकल परीक्षण उपरांत बायलोजिकल शाखा से डी.एन.ए. शाखा में हस्तांतरित करने के लिये एक पत्र लिखा गया।
24. दिनांक 26.04.2018 को सहायक उपनिरीक्षक रामनाथ के कथन लेख किये गये। मृतका का जन्म प्रमाण-पत्र उपनिरीक्षक वी.एस. रघुवंशी द्वारा जिला अस्पताल इंदौर से प्राप्त किया गया। जिसके अनुसार बालिका की जन्म दिनांक 16.01.2018 थी।
25. दिनांक 26.04.2018 को साक्षी जहीरउद्दीन तथा बम्बर के कथन लेख किये गये। थाना सराफा में पदस्थ कम्प्यूटर ऑपरेटर आरक्षक वैशाली से प्रकरण से संबंधित दर्ज खानगी वापसी रोजनामचा सान्नों के प्रिंटआउट निकलवाकर थाना प्रभारी से सत्यापित करवाकर प्राप्त किये गये। इनके संबंध में कम्प्यूटर ऑपरेटर वैशाली ने धारा 65बी(4) साक्ष्य अधिनियम का प्रमाण-पत्र दिया।
26. संपूर्ण विवेचना उपरांत दिनांक 27.04.2018 को अभियोग-पत्र न्यायालय में प्रस्तुत किया गया। यह अपराध जघन्य एवं सनसनीखेज प्रकरण के रूप में चिह्नित किया गया।
27. अभियोग-पत्र प्रस्तुत करने के उपरांत विस्तरा की रिपोर्ट प्राप्त हुई थी, जिसके उपरांत दिनांक 28.04.2018 को डी.एन.ए. परीक्षण हेतु एक पत्र के साथ विस्तरा को राज्य न्यायालयिक विज्ञान प्रयोगशाला सागर भेजा गया था। राज्य न्यायालयिक विज्ञान प्रयोगशाला राऊ, इंदौर से प्राप्त रिपोर्ट तथा सागर की लेब से प्राप्त रिपोर्ट्स भी अभियोग पत्र प्रस्तुति उपरांत प्राप्त होने पर न्यायालय में प्रस्तुत की गई थी।

प्रश्न 5-विचारण के समय अभियोजन ने क्या साक्ष्य प्रस्तुत की तथा किस साक्ष्य से कौन-से तथ्य प्रमाणित किये ?

उत्तर -

1. असा. 01 : मृतका की माता 'एस' -

- धारा 161 द.प्र.सं. के अंतर्गत लेख किये गए अपने कथन का समर्थन किया।
- घटना के ठीक पूर्व रात्रि में अभियुक्त नवीन द्वारा किए गए विवाद के बारे में बताया
- बालिका की उम्र की मौखिक साक्ष्य दी।
- घटना उपरांत उसी दिन पुलिस द्वारा दिखाए विडियो फुटेज के संबंध में साक्ष्य दी।
- अभियोजन के निवेदन पर कौटिल्य अकादमी के सामने लगे सीसीटीवी कैमरे एवं राजवाड़ा परिसर पर लगे सीसीटीवी कैमरे न्यायालय में प्ले किये गये, जिन्हें देखकर साक्षी ने उस विडियो फुटेज की अंतर्वस्तुओं के संबंध में साक्ष्य दी। इस साक्ष्य से आरोपी नवीन द्वारा बालिका को उसके सोते हुए माता-पिता के बीच से उठाकर ले जाने के तथ्य अभिलेख पर आए।
- शीमा से समझौता कराने के लिये आरोपी द्वारा अनुरोध किये जाने की साक्ष्य दी।

2. असा. 02 : शीमा -

- यह साक्षी अभियुक्त नवीन की दूसरी पत्नी थी।
- इस साक्षी ने पुलिस को धारा 161 द.प्र.सं. के तहत दिए अपने कथन का समर्थन किया, मात्र एक बिन्दू पर कि आरोपी नवीन के हाथ में दिखाई दे रही बच्ची मृतका 'एल' ही थी, यह पक्का नहीं रही।



- आरोपी नवीन के साथ रहने के दौरान आरोपी द्वारा रीमा एवं उसकी बेटियों के साथ कूरता का व्यवहार करने नशा करने का आदि होने तथा स्वयं को ब्लेड से घायल कर लेने के तथ्यों की साक्ष्य दी।
- आरोपी के उक्त व्यवहार के कारण रीमा के द्वारा घर से निकाल देने पर रिश्तेदार मृतका की माता से आरोपी ने रीमा से समझौता कराने को कहा था, यह साक्ष्य भी दी।
- अभियोजन के निवेदन पर कौटिल्य अकादमी के सामने लगे सीसीटीवी कैमरे के फुटेज प्ले कर इस साक्षी को दिखाये जाने पर उसमें अभियुक्त नवीन बांये हाथ में बच्ची को व दांये हाथ से सायकिल का हैंडल पकड़कर जाते हुए दिखाई देने का कथन किया परंतु बच्ची को मृतका के रूप में पहचानने से इंकार किया।
- विवेचना के दौरान पुलिस द्वारा उक्त फुटेज दिखाये जाने का भी कथन किया।

3. असा. 03 डी –

- धारा 161 द.प्र.सं. के अंतर्गत लेख किये गए अपने कथन का समर्थन किया।
- घटना की ठीक पूर्व रात्रि में अभियुक्त द्वारा शराब की बोतलों के लिये किये गये विवाद का समर्थन किया।
- आरोपी रीमा का घति होने व रीमा व उसकी बेटियों के साथ कूरता पूर्वक व्यवहार करने और उसकी बेटियों पर बुरी नजर रखने की साक्ष्य दी।
- आरोपी के मृतका की माता के पास आकर रीमा से समझौता कराने की कहने व मृतका की माता द्वारा मना करने, की साक्ष्य दी।
- शेष घटना की अनुश्रुत साक्षी होकर घटना की इस रूप में पुष्टि की।

4. असा. 04 : मृतका के पिता 'एस' –

- धारा 161 द.प्र.सं. के अंतर्गत लेख किये गए अपने कथन का समर्थन किया।
- बालिका के गुम हो जाने के संबंध में प्रथम सूचना रिपोर्ट दर्ज कराने की साक्ष्य दी।
- बालिका को तलाश करते हुए द्वितीय घटना स्थल पर पहुंचने पर बालिका का शव देखने, पहचानने व शिनाख्तगी पंचनामा बनाये जाने, प्रथम घटनास्थल का नक्शामौका बनाये जाने व पोस्टमार्टम उपरांत शव प्राप्त होने संबंधी तथ्यों की पुष्टिकारक साक्ष्य दी।
- आरोपी द्वारा रीमा से समझौता कराने के लिये मृतका की माता अर्थात् इस साक्षी की पत्नी से कहने व उसके द्वारा मना करने के तथ्य की भी साक्ष्य दी।

5. असा. 05 दीपक जैन –

- धारा 161 द.प्र.सं. के अंतर्गत लेख किये गए अपने कथन का समर्थन किया।
- द्वितीय घटनास्थल श्रीनाथ काम्प्लेक्स में रेडीमेड कपड़ों की एजेंसी है। अपने कर्मचारी सुनिल शर्मा द्वारा शव देखने की सूचना प्राप्ति उपरांत घटना स्थल पर पहुंचने, तत्पश्चात एम.जी. रोड पुलिस को इस घटना की सूचना देने, पुलिस के द्वारा घटनास्थल पर आकर कार्यवाही करने, सफीना फॉर्म, लाश का नक्शा पंचायतनामा, नक्शामौका बनाने, घटनास्थल से रक्त रूई से पोंछकर जप्त करने के तथ्यों के संबंध में समर्थनकारी साक्ष्य दी।

6. असा. 06 : सुनिल शर्मा –

- धारा 161 द.प्र.सं. के अंतर्गत लेख किये गए अपने कथन का समर्थन किया।
- द्वितीय घटना स्थल पर शव देखकर दीपक जैन को फोन पर सूचना देने, दीपक के द्वारा पुलिस को सूचना देने, पुलिस के वहां आने और कार्यवाही करने के तथ्यों की समर्थनकारी साक्ष्य दी।

7 असा. 07 : सहायक उपनिरीक्षक रामलाल –

- धारा 161 द.प्र.सं. के अंतर्गत लेख किये गए अपने कथन का समर्थन किया।
- दिनांक 19.04.2018 को अपनी ड्यूटी राजवाड़ा एफ.आर.व्ही. में रात्रि 21 बजे से प्रातः 8 बजे तक होने, रात्रि करीब 9-9:30 बजे प्रथम घटना स्थल राजवाड़ा के ओटले पर शराब की बोतल को लेकर विवाद होने, विवाद करने वाले को समझाईश देकर वहां से भगा देने, न्यायालय में आरोपी को उस व्यक्ति के रूप में पहचानने की साक्ष्य दी।

8 असा. 08 : सुभाष चौधरी कौटिल्य अकादमी इंदौर में मैनेजर –

- धारा 161 द.प्र.सं. के अंतर्गत लेख किये गए अपने कथन का समर्थन किया।
- उक्त अकादमी में सीसीटीवी कैमरों के मैनेजमेंट का कार्य करना।
- सड़क की ओर 15 एवं 16 नंबर के कैमरे लगे होना।
- दिनांक 20.04.2018 को एक पुलिस अधिकारी ने आकर कैमरा नं. 15 के फुटेज देखे थे जिसमें सुबह 4 बजकर 51 मिनट से 4 बजकर 57 मिनट के फुटेज में एक व्यक्ति एक हाथ में सायकिल तथा दूसरे हाथ में बच्ची को ले जाते हुए दिखाई दे रहा है।
- उक्त फुटेज की तीन डीवीडी तैयार कर पुलिस को सौंपी। पुलिस ने जप्त कर जप्ती पंचनामा बनाया था व धारा 65बी(4) साक्ष्य अधिनियम का प्रमाण-पत्र भी पुलिस को दिया था।
- इस साक्ष्य की परीक्षा के समय भी उक्त आर्टिकल 1 की सीडी चलाकर साक्ष्य को दिखाई गई थी। साक्षी ने बताया कि उक्त फुटेज में 4 बजकर 52 मिनट 49 सेकण्ड पर एक व्यक्ति राजवाड़ा की ओर से आकर इमली बाजार की ओर टर्न लेकर इंदौर कौटिल्य अकादमी के सामने जहाँ कैमरे लगे हुए हैं, वहाँ से गुजर रहा है, जिसने दाहिने हाथ से सायकिल पकड़ी हुई है और बांये हाथ में बच्ची को लिये हुए है और वह पैदल-पैदल जा रहा है। सुभाष चौधरी ने उक्त फुटेज देखने पर यह उत्तर दिया है कि उस फुटेज में उक्त व्यक्ति समय 04.52.49 से 04.53.06 तक की अवधि में नजर आया था। आगे कथन करते हुए सुभाष चौधरी का कहना है कि उसके कैमरे में जो समय आ रहा है, वह 6 मिनट आगे है, क्योंकि कैमरे को मैकेनिक ने अपनी घड़ी से सेट किया है और उक्त कैमरा ऑफलाईन होकर इंटरनेट से जुड़ा हुआ नहीं है, इसलिये टाइम स्वतः अपडेट नहीं होता है।

9. असा. 09 : जगदीश सुहागिर –

- धारा 161 द.प्र.सं. के अंतर्गत लेख किये गए अपने कथन का समर्थन किया।
- सीसीटीवी कैमरे लगाने, ऑपरेट एवं सर्विसिंग करने का कथन किया।
- मोटी क्रियेशन की शॉप पर सीसीटीवी कैमरे लगाने, दिनांक 20.04.2018 को विडियो रिकॉर्डिंग में व्यक्ति साथ में कुछ लेकर जाता हुआ और करीब 15 मिनट बाद वापस आता हुआ दिखाई



देने, इस विडियो फुटेज की तीन डीवीडी तैयार कर पुलिस को देने, पुलिस द्वारा जप्त करने, धारा 65बी(4) साक्ष्य अधिनियम का प्रमाण—पत्र स्वयं द्वारा पुलिस को देने की साक्ष्य दी। इस साक्षी को अभियोजन के निवेदन पर ये फुटेज न्यायालय में डीवीडी प्ले कर दिखाये गये। साक्षी ने फुटेज देखकर मोदी क्रिएशन शॉप के कमरा नं. 03 के होने व इसमें दिनांक 20.04.2018 के 4.46.37 ए.एम. पर एक व्यक्ति दोनों हाथों में कुछ उठाकर मोदी क्रिएशन के आगे लेफ्ट तरफ अस्पताल की ओर पैदल—पैदल ले जाते हुए दिखाई देने और दिनांक 20.04.2018 को 4.59.45 पर वही व्यक्ति इंदौर अस्पताल की ओर से खाली हाथ वापस आने संबंधी विडियो फुटेज के संबंध में साक्ष्य दी। यह भी बताया कि मोदी क्रिएशन शॉप पर जहां कैमरे लगे हैं, वहां से एक मिनट की दूरी पर श्रीनाथ पैलेस बिल्डिंग है।

10. असा. 10 : 'एम' मृतका का मामा —

- धारा 161 द.प्र.सं. के अंतर्गत लेख किये गए अपने कथन का समर्थन किया।
- घटना के कुछ घंटे पूर्व रात्रि में अभियुक्त द्वारा शराब की बोटलों के संबंध में विवाद करना, बालिका का गुम हो जाना, उसे ढूंढना, द्वितीय घटना स्थल पर शव पाया जाना, पुलिस के द्वारा घटना स्थल पर शव की पहचान, पंचनामा आदि कार्यवाही की जाना, आरोपी का रीमा का पति होना एवं रीमा की बधियों पर उसकी बुरी नजर होना, रीमा द्वारा छोड़ देने पर आरोपी का मृतका की माता के पास समझौता करवाने हेतु आना, मृतका की माता के द्वारा मनाकर देना आदि तथ्यों की समर्थनकारी साक्ष्य दी।

11. असा. 11 : सहायक उपनिरीक्षक संतोष मिश्रा —

- अभियुक्त नवीन को मेडिकल परीक्षण के लिये एम.वाय. अस्पताल ले जाना, मेडिकल परीक्षण के समय आरोपी के शरीर से प्राप्त शैतिक साक्ष्य को सीलबंद अवस्था में चिकित्सक से प्राप्त कर थाने पर लाकर सौंपना, जो सहायक उपनिरीक्षक त्रिपाठी द्वारा जप्त कर जप्ती पंचनामा बनाना, संबंधी साक्ष्य दी।

12. असा. 12 : आरक्षक योगेन्द्र जोशी —

- घटनास्थल से मृतका का शव एवं शव परीक्षा आवेदन लेकर थाने पर जाना, शव परीक्षण उपरांत सहायक उपनिरीक्षक दान द्वारा शव परिजनों को सौंपने, पोस्टमार्टम उपरांत दो बोटल विसरा, मृतका के कपड़ों का सीलबंद पैकेट, दो—दो एनल व वजाइनल स्लाइड्स, सादे नमक घोल की शीशी तभी सीलबंद अवस्था में और अस्पताल की नमूना सील अस्पताल से लाकर स्वयं द्वारा एम.जी. रोड थाने पर प्रधान आरक्षक बलवंत को सौंपना जो उनके द्वारा जप्त कर जप्ती पंचनामा बनाना, संबंधी साक्ष्य दी।

13. असा. 13 : आरक्षक वैशाली सिकरवार —

- प्रकरण से संबंधित थाना सराफा के समस्त रोजनामचा साहें के प्रिंट निकालने एवं उनके संबंध में 65बी(4) साक्ष्य अधिनियम का प्रमाण—पत्र देने संबंधी साक्ष्य दी।

14. असा. 14 : जहीरउद्दीन –

- आरोपी की गिरफ्तारी, पूछताछ, आरोपी द्वारा घटना संबंधी सूचना दी जाना, धारा 27 साक्ष्य अधिनियम के तहत मेमोरैण्डम बनाए जाने, आरोपी के कब्जे से उसके कपड़े, चप्पल, साइकिल जप्त किये जाने संबंधी तथ्यों की समर्थनकारी साक्ष्य दी।

15. असा. 15 : डॉ. मयूरी धनवार साइंटिफिक ऑफिसर –

- घटनास्थल का निरीक्षण, पुलिस अधिकारी को निर्देश देना, निरीक्षण प्रतिवेदन बनाना, घटनास्थल का आउटलाइन डायग्राम, विस्तृत डायग्राम बनाने, घटना स्थल एवं मृत बालिका के शव के फोटोग्राफ्स इनके निर्देशन में पुलिस फोटोग्राफर द्वारा लिये जाना संबंधी साक्ष्य दी।

16. असा. 16 : मनोज बर्मा –

- प्रथम घटना स्थल से द्वितीय घटना स्थल तक आरोपी के जाने के मार्ग का गुगल मैप तैयार कर, प्रिंट निकालकर पुलिस अधिकारी को देने, इस संबंध में धारा 65बी(4) साक्ष्य अधिनियम का प्रमाण-पत्र देने संबंधी साक्ष्य दी। गुगल मैप के विवरणों के संबंध में विस्तृत साक्ष्य दी।

17. असा. 17 : डॉ. दीपक फडसे –

- अभियुक्त नवीन की चिकित्सा परीक्षा करने, अभियुक्त की यूरिथल स्मीयर स्लाइड बनाने, प्लूबिक हेयर, अंडरवियर, दोनों हाथों के नाखून सुरक्षित कर पैक कर सीलबंद कर सहायक उपनिरीक्षक संतोष मिश्रा को सौंपने, दिनांक 23.04.2018 को आरोपी का रक्त नमूना लेने हेतु आईडेंटिफिकेशन फॉर्म तैयार करने, अपनी उपस्थिति एवं निर्देशन में मेल नर्स द्वारा आरोपी का रक्त नमूना ई.डी.टी.ए. ट्यूब में एकत्र करने, उसे सुरक्षित कर, सीलबंद किये जाने, ई.डी.टी.ए. ट्यूब पर आरोपी के नाम का उल्लेख करने, उक्त कार्यवाही दो साक्षियों के समक्ष किए जाने, जिस सील से सीलबंद किया था उसका सील नमूना आईडेंटिफिकेशन फॉर्म पर अंकित करने की कार्यवाही संबंधी साक्ष्य दी। ई.डी.टी.ए. ट्यूब को पुलिस अधिकारी को सौंपने जिनके द्वारा इसे जप्त कर जप्टी पंचनामा बनाकर धर्माकोल के बॉक्स में बर्फ के मध्य में सुरक्षित रखा जाकर बॉक्स को बंद करने की साक्ष्य दी तथा न्यायालय में उपस्थित अभियुक्त को उसी व्यक्ति के रूप में पहचाना जिसका रक्त नमूना लिया था।

18. असा. 18 : के.के. त्रिपाठी सहायक उपनिरीक्षक –

- आरोपी के मेडिकल के समय उसके शरीर से प्राप्त भौतिक साक्ष्य को सहायक उपनिरीक्षक संतोष मिश्रा के द्वारा दिनांक 21.04.2018 को थाने पर लाकर सीलबंद अवस्था में पेश किये जाने पर जप्त कर जप्टी पंचनामा बनाया था।

19. असा. 19 : डॉ. प्रशांत राजपूत प्रदर्शक फॉरेंसिक मेडिसिन विभाग –

- शव परीक्षण, दो बोटल विसरा रासायनिक जांच हेतु नमक में रखे गए, एक वजाइनल स्वीब व चार वजाइनल स्मीयर स्लाइड जांच हेतु सुरक्षित रखी गई। एक एनल स्मीयर स्वीब व चार एनल स्मीयर स्लाइड जांच हेतु तैयार किये गये। इनमें से तीन हिस्टोलॉजी एवं एक जरूरत पड़ने पर, डी.एन.ए. परीक्षण हेतु सुरक्षित रखी गई। सभी वस्तुओं को सीलबंद कर सील नमूने के साथ पुलिस को सौंपने संबंधी तथा शव परीक्षण रिपोर्ट एवं विस्तृत शव परीक्षण रिपोर्ट तैयार किये जाने संबंधी साक्ष्य दी।



20. असा. 20 : डॉ. पूनम माथुर –

- शव परीक्षण एवं मृतका के कपड़े आदि भौतिक एवं जैविक साक्ष्य एकत्र कर सुरक्षित रखने एवं दो शव परीक्षण प्रतिवेदन देने संबंधी साक्ष्य दी।

21. असा. 21 : लोकेश गेहलोत उपनिरीक्षक –

- पुलिस कंट्रोल रूम इंदौर में सीसीटीवी कैमरे से संबंधित कार्य करना।
- दिनांक 20.04.2018 की मध्य रात्रि के राजवाड़ा क्षेत्र में लगे सीसीटीवी कैमरे के फुटेज देखने जिसमें ओटले पर सोये कुछ लोगों के बीच से एक बच्ची को एक व्यक्ति द्वारा उठाकर लेकर जाने के संबंध में साक्ष्य दी।
- पुलिस अधिकारी, बच्ची की मां एवं एक अन्य महिला द्वारा भी उक्त फुटेज देखे जाने, महिलाओं द्वारा, बच्ची को लेकर जाने वाले व्यक्ति को अभियुक्त नवीन के रूप में पहचानने, बच्ची को भी पहचानने स्वयं के द्वारा उक्त फुटेज की तीन सीडी बनाने, ये सीडी उपनिरीक्षक द्वारा जप्ती पंचनामा बनाकर जाप्त करने, स्वयं के द्वारा विवेचक को 65बी(4) का प्रमाण-पत्र दिये जाने की साक्ष्य दी।
- अभियोजन ने उक्त सीडी पर आर्टिकल मार्क करवाकर इसे चलाकर साक्षी को दिखाये जाने का निवेदन किया। उक्त सीडी में 4 विडियो फुटेज थे जो चलाकर साक्षी को दिखाये गये।
- साक्षी ने एक फुटेज देखकर बताया "उक्त फुटेज में दिनांक 01.08.2009 समय 11.54.05. के बीच एक व्यक्ति लाल टी-शर्ट पहने साइकिल से आता हुआ दिखाई दे रहा है। स्क्रीन पर जो दिनांक 01.08.2009 के 11:54 बजे का समय दिखाई दे रहा है वह इस कैमरे का मेकटाईम है, उक्त कैमरे की रिकॉर्डिंग इंदौर कंट्रोल रूम के मेन सर्वर पर हो रही है। मेन सर्वर पर बड़ी टाईम आता है जो रिकॉर्डिंग का है जो 4.50 मिनट का था।"
- साक्षी ने सभी फुटेज देखे और उनकी अंतर्वस्तु अर्थात् विडियो में दिखाई दे रहे दृश्यों के समस्त विवरण दिनांक एवं समय सहित दिए कैमरों के क्रमांक भी बताये तथा न्यायालय में उपस्थित आरोपी को विडियो फुटेज में दिखाई देने वाला व्यक्ति जो बच्ची को उठाकर ले जा रहा है, के रूप में पहचाना।
- कैमरों के समय की भिन्नता को स्पष्ट किया कि सीसीटीवी कैमरे लगाने वाला टेक्निशियन जो समय सेट करता है, वह समय झिस्ले होता है। इसलिये भिन्न-भिन्न स्थानों पर लगे कैमरों के समय में भिन्नता आती है।
- स्वयं के द्वारा 65बी(4) साक्ष्य अधिनियम का प्रमाण-पत्र दिये जाने की साक्ष्य भी दी।

22. असा. 22 : हिमांशु गोड़ प्रोजेक्ट मैनेजर –

- इंदौर पुलिस द्वारा शहर में विभिन्न स्थानों पर लगाये गए सीसीटीवी कैमरे जिनका नियंत्रण पुलिस कंट्रोल रूम इंदौर से किया जाता है वहां कैमरों और जगह का मॉनिटरिंग का कार्य करने के लिए प्रोजेक्ट मैनेजर के पद पर पदस्थ होने संबंधी साक्ष्य दी।

- राजवाड़ा पर लगे कैमरे की रिकॉर्डिंग में प्रदर्शित होने वाली भिन्न दिनांक के संबंध में स्पष्टीकरण प्रस्तुत करने के प्रयोजन से इस साक्षी की साक्ष्य करवाई गई। साक्षी ने बताया कि "दिनांक 20 अप्रैल 2018 की रिकॉर्डिंग निकाली गई थी जो राजवाड़े के कैमरे 268 पीटीजेड कैमरे की रिकॉर्डिंग निकाली गई थी। उसमें समय वर्तमान दिनांक से मिला आ रहा था, क्योंकि उक्त कैमरा वह दिनांक शो कर रहा था जिस दिनांक को वह कैमरा बना था। हमारी कंपनी के द्वारा जो भी कैमरे लगाये गये हैं, वे ऑनलाईन कैमरे नहीं हैं और इंटरनेट से जुड़े हुए नहीं हैं इसलिए उक्त कैमरे मानक समय पर नहीं चलते हैं। कैमरे लगाने वाला टेक्नीशियन इंजीनियर कैमरे लगाते समय जो टाइम कैमरों में डालता है उसी के अनुसार वह समय दिखाता है और यदि टेक्नीशियन कैमरे लगाते समय टाइमिंग की सेटिंग नहीं करता है तो कैमरा अपना मेकटाइम दिखाता है। मुझसे विभाग द्वारा उक्त कैमरे के समय की भिन्नता के सम्बन्ध में पूछताछ की गई थी। इसके लिए मैंने उक्त सम्बन्ध में एक सर्टिफिकेट दिनांक 24 अप्रैल 2018 को दिया गया था। जो प्रदर्श पी 57 है, जिसके ए से ए भाग पर मेरे हस्ताक्षर हैं एवं हमारी कंपनी की सील अंकित की गई है।"

23. असा. 23 : प्रधान आरक्षक बलवंतसिंह –

- धाना एम.जी. रोड़ पर दीपक की सूचना पर मर्ग कायमी।
- शव परीक्षण उपरांत शव परीक्षण के समय प्राप्त भौतिक साक्ष्य को थाने पर प्रस्तुत करने पर जप्त करने एवं जपती पंचनामा बनाने संबंधी साक्ष्य दी।

24. असा. 24 : सहायक उपनिरीक्षक सुरेन्द्र दान –

- मर्ग जांच के लिए घटनास्थल पर जाना, घटना स्थान का अवलोकन, मृतका के शव का नक्शा पंचायतनामा बनाने के लिये पंचों को तलब करने हेतु सफीना फॉर्म जारी करना, उसके बाद पंचों की उपस्थिति में नक्शा पंचायतनामा बनाने, शव परीक्षण हेतु आवेदन, मय आवेदन के शव भेजना, घटनास्थल पर पड़े रक्त को रुई से पोंछकर जप्त करना, नक्शामीका बनाना, शॉर्ट पी. एम. रिपोर्ट के लिए भी आवेदन भेजना, शव परीक्षण उपरांत शव परिजनों को सूचना, मर्ग थाना सराफा के अपराध से संबंधित होने के कारण मर्ग बायरी मय जप्तशुदा सामग्री के सराफा थाने पर भिजवाने संबंधी तथ्यों की साक्ष्य दी।

25. असा. 25 : उपनिरीक्षक मनिषा दांगी विवेचक –

- विवेचना के दौरान विभिन्न स्थानों पर लगे सीसीटीवी कैमरों से घटना से संबंधित सीसीटीवी फुटेज का संकलन कर संबंधित व्यक्तियों के द्वारा 65बी(4) साक्ष्य अधिनियम के प्रमाण-पत्र प्राप्त करने, सीसीटीवी फुटेज देखे जाने, उनकी अंतर्वस्तुओं का वर्णन करने तथा न्यायालय में उपस्थित आरोपी को फुटेज में दिखने वाले व्यक्ति के रूप में पहचानने की साक्ष्य दी।



26. असा. 26 : निरीक्षक शिवपालसिंह – अनुसंधान अधिकारी –

- अपने द्वारा की गई संपूर्ण विवेचना का समर्थन करते हुए की गई कार्यवाहियों के संबंध में कमवार विस्तार से कथन दिया। इस साक्षी की परीक्षा के दौरान अभियोजन ने समस्त आर्टिकल भी प्रदर्शित कराए। आर्टिकल पर प्रदर्श अंकित किये जाने संबंधी कथन के कुछ अंश अवलोकन हेतु यहां प्रस्तुत हैं –

"एफएसएल/डीएनए/637/18 का एक लिफाफा जिस पर आर्टिकल 'ए' मार्क होकर बी/आर-4591 लेख है, जो सीलबंद अवस्था में है, जिसे खोला गया जिसके अंदर घटनास्थल श्रीनाथ पैलेस तलघर की फर्श से रूई में लिये गये खून वाली रूई है जिसमें उस पर मीके पर लगाई गई जप्ती चिट भी है एवं उक्त रूई एवं जप्ती चिट को जिस कपड़े में रखकर सीलबंद किया गया था वह कपड़ा भी है, जप्ती चिट पर जप्तीकर्ता सुरेन्द्र दान एवं साक्षी 'एम' का अंगुठा निशानी लगा है और दीपक जैन के हस्ताक्षर होकर जप्ती चिट पर दिनांक 20.04.2018 लेख है। कपड़े पर थाना एम.जी. रोड के मार्ग क्रमांक 15/18 का उल्लेख है। उक्त खून लगी हुई, रूई आर्टिकल ए-4 से मार्क किया गया है।"

"एक सीलबंद पैकेट जिस पर एफएसएल/डीएनए/637/18 एवं आर्टिकल एल मार्क होकर बी/आर - 4802 लेख है, जो सीलबंद अवस्था में है, जिसे खोला गया। जिसके अंदर आरोपी नवीन उर्फ अजय की एक अंडरवियर है, जिस पर पूर्व से एफएसएल/डीएनए/637/18 एवं आर्टिकल एल मार्क होकर बी/आर-4802 लेख है, जिसे आर्टिकल एल- 1 से मार्क किया गया। उक्त पैकेट के अंदर एक जप्ती चिट जिस पर दिनांक 21.04.2018 सीएमओ एम वाय अस्पताल के हस्ताक्षर होकर एम वाय अस्पताल की चपड़ी सील भी लगी है। जिससे उक्त अंडरवियर को रखकर सीलबंद किया गया था।"

- सीसीटीवी फुटेज देखे जाने एवं उनमें दिखने वाला व्यक्ति न्यायालय में उपस्थित आरोपी नवीन ही होने का कथन किया।

27 असा. 27 : बुंदेलसिंह सुनेरिया उपनिरीक्षक –

- घटनास्थल पर पहुंचना तथा लाश का शिनाखागी पंचनामा बनाये जाने की साक्ष्य दी।

28 असा. 28 : उपनिरीक्षक नरेन्द्र जैसवार –

- प्रथम सूचना रिपोर्ट लेख करने और प्रथम घटना स्थल का नक्शा मौका बनाने की साक्ष्य दी।

प्रश्न 6 – अंतिम निर्णय ?

उत्तर – विचारण न्यायालय द्वारा दोषी अभियुक्त नवीन उर्फ अजय को तीन माह चार दिन की अबोध बालिका को उसके प्राकृतिक संरक्षकता में से रोई हुई अवस्था में उसे अयुक्त सम्भोग करने के लिये किये गये अपहरण के धारा 363 भा.दं.सं. के अपराध के लिये पांच वर्ष के सश्रम कारावास एवं पांच हजार रुपये अर्थदण्ड, धारा 366क भा.दं.सं. के अपराध के लिये सात वर्ष के सश्रम कारावास एवं पांच हजार रुपये अर्थदण्ड एवं धारा 5(एम)(आई)/6, लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 के अंतर्गत आजीवन कारावास एवं पांच हजार रुपये अर्थदण्ड की सजा से दण्डित किया गया। अभियुक्त

को धारा 376क भारतीय दण्ड संहिता (दण्ड विधि (संशोधन) अधिनियम, 2013) के अपराध के लिये मृत्युदण्ड से एवं धारा 302 भा.दं.सं. के अपराध के लिये मृत्यु दण्ड एवं पांच हजार रुपये अर्धदण्ड से तथा धारा 201 भा.दं.सं. के आरोप में पांच वर्ष के सश्रम कारावास एवं पांच हजार रुपये अर्धदण्ड से दण्डित किया गया।

माननीय उच्च न्यायालय म.प्र. खण्डपीठ इंदौर के द्वारा अभियुक्त के द्वारा दोषसिद्धि एवं दण्डादेश के विरुद्ध प्रस्तुत किमिनल अपील क्र. 3830/2018 निरस्त करते हुए, किमिनल रेफरेन्स नंबर 03/2018 में दिनांक 24.12.2018 को विचारण न्यायालय द्वारा दिये गये मृत्युदण्ड की पुष्टि की गई।

प्रश्न 7 – अपील न्यायालय के निर्णय के मुख्य अंश क्या है?

उत्तर – मुख्य अंश निम्नानुसार है:-

- 1 संतोष कुमार सिंह वि. राज्य द्वारा सी.बी.आई. (2010) 9 एससीसी 747 में माननीय सर्वोच्च न्यायालय ने अवधारित किया है कि डीएनए को वैज्ञानिक रूप से शुद्ध एवं सटीक विज्ञान के रूप में स्वीकार किया जाना चाहिए। आगे यह भी अवधारित किया गया है कि यह प्रतिपादित किया जाना खतरनाक सिद्धांत होगा कि विशेषज्ञ साक्षी की रिपोर्ट को, उस विषय के कुछ अवतरण/इबारत (टेक्स्ट) का उल्लेख करके, उस इबारत/अवतरण को साक्षी के समक्ष रखे बिना किनारे किया जा सकता था। कोर्ट विशेषज्ञ का कार्य नहीं कर सकती है।
- 2 फुल कुमार सिंह वि. देहली प्रशासन एआईआर 1975 एससी 905 एक्सपर्ट की रिपोर्ट द.प्र.सं. की धारा 293 के अधीन साक्ष्य में ग्राह्य है और केवल साक्षी के प्रतिपरीक्षण के द्वारा ही संदेह किया जा सकता है।
- 3 भगवानदास वि. राजस्थान राज्य एआईआर 1957 एससी 589 के पैरा 13 में प्रतिपादित किया गया है कि मेडिकल ज्यूरिसप्रुडेन्स की पुस्तक के आधार पर एक्सपर्ट के अभिमत को नकारा नहीं जा सकता कि यदि अभिमत का वह भाग जिससे अविश्वसनीय होना कहा जा रहा है विशेषज्ञ के समक्ष नहीं रखा जाता है।
- 4 इस निर्णय के पैरा 51 में उल्लेख है कि विद्वान एमिकस क्यूरियाए ने कहा कि अभियोजन धारा 65बी(4) साक्ष्य अधिनियम का अनुपालन सिद्ध करने में असफल रहा है। माननीय उच्च न्यायालय ने इस पर असहमति व्यक्त करते हुए प्रकट किया है कि धारा 65बी(4) साक्ष्य अधिनियम का प्रमाण-पत्र सीसीटीवी फुटेज के साथ प्रस्तुत किया गया है। जो प्रदर्श पी 49 है; और जब सीसीटीवी फुटेज को न्यायालय के समक्ष साक्ष्य में प्रस्तुत किया गया तब कोई आपत्ति नहीं ली गई थी इसलिये अपील के प्रक्रम पर यह आपत्ति नहीं उठाई जा सकती है। यद्यपि प्रमाण-पत्र में यह विशिष्टतः उल्लेखित नहीं है कि ये सीसीटीवी फुटेज कहां से लिये गये हैं। इलेक्ट्रॉनिक अभिलेख/साक्ष्य की ग्राह्यता के लिये अपेक्षित विशिष्ट विवरण उल्लेखित नहीं किये गये हैं। निर्णय के पैरा 52 में न्यायालय ने सोनू उर्फ अमर विरुद्ध हरियाणा राज्य ए.आई.आर. 2017 एस.सी. 3441 में माननीय शीर्ष न्यायालय द्वारा प्रतिपादित सिद्धांतों को उल्लेखित करते हुए उनके आलोक में धारा 65बी(4) साक्ष्य अधिनियम के अनुपालन के संबंध में अपील प्रक्रम पर आपत्ति उठाई जाने को सबूत की विधि से संबंधित होने के कारण अनुमत नहीं किया गया है और अभियोजन द्वारा प्रस्तुत सीसीटीवी फुटेज को प्रमाणित माना गया है।



प्रश्न 8 – पॉक्सो एक्ट के प्रकरणों में पुलिस सामान्यतया क्या गलतियां करती है ? अनुसंधान अधिकारी को अनुसंधान के दौरान क्या बातें ध्यान में रखना चाहिए ?

उत्तर –

- पॉक्सो एक्ट के अंतर्गत पीड़ित की उम्र मुख्यतः 18 वर्ष से कम प्रमाणित करना होती है। कुछ विशेष धाराओं के अपराधों के लिए 12 वर्ष या 16 वर्ष से कम भी प्रमाणित करना होती है। सामान्यतया पुलिस संबंधित स्कूल से साक्ष्य प्राप्त कर प्रस्तुत करती है परंतु पीड़ित और उसके परिजनों के कथनों में पीड़ित की उम्र, शिक्षा और पिछालय संबंधी विवरणों का उल्लेख नहीं करती है जो कि आवश्यक है।
- लैंगिक अपराधों से बालकों का संरक्षण नियम, 2020 के नियम 4(14) में उपबंधित प्ररूप-क के अनुसार पीड़ित पक्ष को उसकी हकदारियों और उपलब्ध सेवाओं के बारे में सूचित करना तथा प्ररूप-ख में प्रारंभिक निर्धारण रिपोर्ट सी.डब्ल्यू.सी. को प्रस्तुत करना आवश्यक है।
- पीड़ित जिस स्थान से दस्तायाब/ बरामद हो उसी स्थान पर दस्तायाब पंचनामा बनाना चाहिए तथा जिस व्यक्ति के कब्जे से दस्तायाब हो पंचनामों में उसके कब्जे से दस्तायाब होने का उल्लेख करना चाहिए। पंचनामों में दस्तायाबी स्थान का उल्लेख कर, जिसके कब्जे से दस्तायाब किया जा रहा है उसके हस्ताक्षर करवाना चाहिए। सामान्यतः देखा गया है कि पीड़ित आरोपी के कब्जे से जिस स्थान पर बरामद होता है उस स्थान पर दस्तायाब पंचनामा न बनाया जाकर थाने पर बनाया जाता है और आरोपी के कब्जे से दस्तायाब होने का उल्लेख ही नहीं किया जाता, इसका विपरीत प्रभाव प्रकरण पर पड़ता है। पीड़ित का आरोपी के कब्जे से दस्तायाब होना अपराध को प्रमाणित किये जाने में एक महत्वपूर्ण साक्ष्य होती है जिसे उचित पंचनामा न बनाकर अक्सर नष्ट कर दिया जाता है।
- यदि पीड़ित स्वयं थाने पर पहुंचा या अपने माता-पिता, पति या अन्य व्यक्ति के साथ थाने पर पहुंचा तो पीड़ित एवं इन व्यक्तियों के कथन में स्पष्ट कराया जाना चाहिए कि पीड़ित इन तक कैसे और कब पहुंचा।
- घटना में यदि मोबाइल का प्रयोग हुआ हो तो संबंधित नंबरों की सीडीआर तथा टॉवर लोकेशन के लिए पत्र लिखना चाहिए। सीडीआर प्राप्ति पर उसकी विश्लेषण रिपोर्ट तैयार कर प्रकरण में प्रस्तुत करना चाहिए।
- यदि घटना किसी अन्य शहर या स्थान पर ले जाकर घटित की गई है तो उन स्थानों का नक्शा मौका बनाना चाहिए और उन स्थानों के आस-पास के व्यक्तियों से पूछताछ करना चाहिए, घटना के तथ्य उन्हें ज्ञात होने की स्थिति में उनके कथन लेख कर उन्हें साक्षी बनाना चाहिए।
- होटल, लॉज आदि में ठहरने के तथ्य हो तो संबंधित रिकॉर्ड प्राप्त करना चाहिए।
- घटना स्थल के आसपास के सीसीटीवी कैमरों की जानकारी प्राप्त कर उनके विडियो फुटेज देखे जाने चाहिए। सुसंगत फुटेज मिलने पर जप्तकर संबंधित का धारा 65बी(4) साक्ष्य अधिनियम का प्रमाण-पत्र प्राप्त करना चाहिए।
- घटना की सूचना प्राप्त होते ही तुरंत घटनास्थल पर पहुंच कर उसे सुरक्षित करना चाहिए। घटनास्थल का निरीक्षण कर उसका खय्याम बनाना चाहिए, फोटोग्राफी एवं विडियोग्राफी करवाना चाहिए।
- शव का नक्शा पंचायतनामा बनाते समय 'मरने का समय' कॉलम में अक्सर पुलिस के द्वारा वह समय लिख दिया जाता है जब पुलिस ने शव को प्रथम बार देखा या पुलिस को सूचना देने वाले

व्यक्ति ने प्रथम बार देखा, जबकि उक्त दोनों के द्वारा प्रथम बार शव को देखे जाने के पूर्व मृत्यु हो चुकी होती है, इसलिये इस कॉलम में शव को प्रथम बार जिस व्यक्ति ने देखा उस समय के पूर्व मृत्यु होना उल्लेखित करना चाहिए अर्थात् यदि व्यक्ति ने सुबह 11 बजे प्रथम बार शव देखा और पुलिस को सूचना दी तो मरने का समय 11 ए.एम. के पूर्व लिखना चाहिए ताकि मृत्यु के समय के विषय में कोई विरोधाभास उत्पन्न न हो।

- कई बार देखने में आता है कि विभिन्न स्थानों पर बने पंचनामों या दस्तावेजों में एक ही समय या अल्प अंतराल का समय अंकित कर दिया जाता है। अतः विवेचक को पंचनामों बनाते समय टाईम-लाईन का विशेष ध्यान रखना चाहिए। प्रत्येक पंचनामों को बनाते समय पूर्व में बने पंचनामों पर अंकित समय एवं पंचनामों को तैयार करने के स्थानों की दूरी आदि ध्यान में रखना चाहिए।
- प्रथम सूचना रिपोर्ट इलेक्ट्रॉनिक रिकॉर्ड का आउटपुट नहीं है इसलिये इसे साक्ष्य में ग्राह्य बनाने के लिये धारा 65बी(4) साक्ष्य अधिनियम के प्रमाण-पत्र की आवश्यकता नहीं है।
- जब भी रोजनामचा सान्ठे की प्रिंटआउट प्रस्तुत करें तब उसके साथ धारा 65बी(4) साक्ष्य अधिनियम का प्रमाण-पत्र आवश्यक रूप से प्रस्तुत करें। रोजनामचे के प्रिंटआउट को सत्यापित करने की कोई आवश्यकता नहीं है, क्योंकि विधि की ऐसी कोई अपेक्षा नहीं है।
- किसी भी वस्तु को जप्त करते ही जप्ती स्थल पर ही सीलबंद एवं चिटबंद किया जाना चाहिए तथा चेन ऑफ कस्टडी को मेन्टेन किया जाना चाहिए। साक्ष्य को संग्रहित किये जाने के स्थान से उसे न्यायालय में प्रस्तुत किये जाने तक के पूर्ण अभिलेख और प्रत्येक स्टेज का पूर्ण दस्तावेजीकरण चेन ऑफ कस्टडी है।

प्रश्न 9- सीसीटीवी फुटेज के संबंध में धारा 65बी(4) सा.अधि. के प्रमाण-पत्र के आवश्यक तत्व क्या होंगे ? इसका एक आदर्श प्रारूप तैयार करें।

उत्तर - माननीय सर्वोच्च न्यायालय के द्वारा अनवर पी.वी. विरुद्ध पी.के. बरीर, माननीय सर्वोच्च न्यायालय सिविल अपील नंबर 4226 / 2012, निर्णय दिनांक 18 सितम्बर 2014 के न्यायदृष्टांत में धारा 65बी(4) के अधीन प्रस्तुत किये जाने वाले प्रमाण-पत्र के लिये निम्नलिखित आवश्यक शर्तें बताई गई हैं -

1. एक प्रमाणपत्र होना चाहिए जो इलेक्ट्रॉनिक अभिलेख को परिलक्षित करें जिसमें वह कथन अंतर्विष्ट है जिसकी साक्ष्य दी जाना है;
2. प्रमाणपत्र में उस प्रक्रिया का विवरण होना चाहिए जिसके द्वारा इलेक्ट्रॉनिक अभिलेख के आउटपुट का उत्पादन किया गया है;
3. प्रमाणपत्र में उन यंत्रों का समुचित विवरण होना चाहिए जो इलेक्ट्रॉनिक अभिलेख के आउटपुट के उत्पादन में अंतर्ग्रास्त हो;
4. प्रमाणपत्र को धारा 65बी(2) में वर्णित शर्तों से संबंधित विषयों पर विचार करना चाहिए;
5. ऐसा प्रमाणपत्र उस व्यक्ति के द्वारा हस्ताक्षरित होना चाहिए जो सुसंगत यंत्र के संचालन अथवा सुसंगत क्रियाकलापों के प्रबंधन के संबंध में कोई उत्तरदायी पद ग्रहण करता हो;
6. यह पर्याप्त होगा कि प्रमाणपत्र में उल्लेखित बातें उसके हस्ताक्षरकर्ता के सर्वोत्तम ज्ञान और विश्वास पर आधारित हो।



प्रमाण-पत्र का आदर्श प्रारूप
अंतर्गत धारा 65बी(4) साक्ष्य अधिनियम, 1872
(डीवीआर से सीसीटीवी फुटेज के लिए)

यह प्रमाणित किया जाता है कि -

- 1 मैं (नाम) पता में निवास करता हूँ/काम करता हूँ। मैं (स्थान का विवरण) पर स्थापित डीवीआर , मॉडल , सीरियल क्रमांक और सॉफ्टवेयर कम्प्रेषन सॉफ्टवेयर (यदि कोई हो) का स्वामी/भारसोधक/प्रयोगकर्ता हूँ।
- 2 उक्त डीवीआर में अतिविष्ट उक्त विडियो रिकॉर्डिंग का उत्पादन इसके नियमित रूप से प्रयोग किये जाने/क्रियाकलापों के सामान्य अनुक्रम में किया गया था, जो मेरे कब्जे/नियंत्रण में था।
- 3 दिनांक से दिनांक तक की अवधि में (वह दिनांक या समयावधि लिखना है जिन दिनों की विडियो फुटेज है) उक्त डी.वी.आर. के नियमित रूप से प्रयोग के सामान्य अनुक्रम में विडियो रिकॉर्डिंग होती रही है।
- 4 उक्त अवधि में उक्त डीवीआर समुचित ढंग से संचालित हो रहा था तथा उसमें संचालन संबंधी ऐसी कोई समस्या नहीं थी जो विडियो फुटेज/सी.सी.टी.वी. फुटेज या उसकी अंतर्वस्तु की शुद्धता को प्रभावित करें। (जहां फुटेज में वास्तविक दिनांक और समय दर्शित हो रहे हो वहां प्रमाण-पत्र में यह भी लिखें कि उक्त अवधि में उक्त डी.वी.आर. वास्तविक समय एवं दिनांक में रिकॉर्डिंग करता रहा है और जहां फुटेज में दर्शित समय या दिनांक वास्तविक समय या दिनांक से भिन्न हो वहां इसका कारण दर्शाते हुए इस आशय का विवरण भी प्रमाण-पत्र में लेख करना चाहिए कि उक्त डी.वी.आर. इंटरनेट से कनेक्ट न होने के कारण, समय और दिनांक ऑटो अपडेटेड न होने के कारण फुटेज में दर्शित समय या दिनांक वास्तविक समय या दिनांक से इतना भिन्न है।)
- 5 इस अवधि में डीवीआर मेरे कब्जे में और सुरक्षित अभिरक्षा में था और इसके सॉफ्टवेयर में सुरक्षा तंत्र सन्निहित है (अर्थात पासवर्ड से सुरक्षित पहुंच, नियंत्रण आदि का उल्लेख यहां करें)।
- 6 उक्त डीवीआर से उत्पादित किए गए विडियो फुटेज इसके प्रयोग के सामान्य अनुक्रम में इसमें हुई रिकॉर्डिंग का ही पुनः एवं सत्य उत्पन्न है।
- 7 उक्त डीवीआर आज दिनांक तक अर्थात इससे ये फुटेज लिए जाने तक भी समुचित ढंग से संचालित हो रहा था। सीडी/डीवीडी/पेन ड्राइव में ट्रांसफर किये गए फुटेज सीधे/प्रत्यक्ष डीवीआर से ही लिए गए हैं।
- 8 मेरी प्रत्यक्ष उपस्थिति एवं संबद्धता पदजबसअमउमदजद में तकनीकी विशेषज्ञ श्री के द्वारा फुटेज सीडी/डीवीडी/पेनड्राइव में कॉपी किए गए हैं।
- 9 मैं कंप्यूटर का ज्ञान रखता हूँ और सूचना प्रौद्योगिकी में मेरी योग्यता है (यह बिन्दु जहां लागू हो वहीं उल्लेखित करना है)।
- 10 उपरोक्त उल्लेखित तथ्य मेरे सर्वोत्तम ज्ञान एवं विश्वास से सत्य हैं।

हस्ताक्षर
प्रमाण-पत्र जारीकर्ता
का नाम एवं पदनाम

प्रश्न 10— पॉक्सो प्रकरणों के अनुसंधान के दौरान अनुसंधान अधिकारियों द्वारा संकलित की जाने वाली साक्ष्य के संबंध में चेक लिस्ट तैयार करें ?

उत्तर — लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 (संक्षेप में पॉक्सो एक्ट) के अधीन अपराधों के अनुसंधान के दौरान अनुसंधान अधिकारियों को प्रकरण की परिस्थितियाँ एवं तथ्यों के अनुसार साक्ष्य संकलित करते समय निम्नलिखित चेक-लिस्ट को ध्यान में रखना चाहिए।

- 1 प्रथम सूचना रिपोर्ट / देहाती नालसी / आवेदन-पत्र / जीरो की प्रथम सूचना रिपोर्ट / गुमशुदगी रिपोर्ट।
- 2 लैंगिक अपराधों से बालकों का संरक्षण नियम, 2020 के नियम 4(14) में उपबंधित प्ररूप-क तथा प्ररूप-ख की प्रतियाँ।
- 3 पीड़ित की उम्र के प्रमाण।
- 4 स्पेशल रिपोर्ट।
- 5 प्रथम सूचना रिपोर्ट काउंटर जमा रसीद।
- 6 दस्तयाबी पंचनामा एवं सुपुर्दगी पंचनामा।
- 7 पीड़ित का निर्धारित प्रारूप में मेडिकल फॉर्म मय सहमति के - बालिका होने की स्थिति में महिला पुलिस अधिकारी एवं रजिस्टर्ड महिला चिकित्सक।
- 8 पीड़ित की मेडिकल रिपोर्ट व परीक्षण के दौरान सुरक्षित आर्टिकल्स का जप्ती पंचनामा।
- 9 डी.एन.ए. परीक्षण हेतु लिये गये सेम्पल एवं आईडेंटिफिकेशन फॉर्म।
- 10 करियादी के कथन अंतर्गत दण्ड प्रक्रिया संहिता, 1973 (संक्षेप में द.प्र.सं.) की धारा 161 - पीड़ित के कथन महिला पुलिस अधिकारी द्वारा (यथासाध्य कम से कम उपनिरीक्षक रैंक)।
- 11 नवशा मौका - उस स्थान का भी जहाँ पीड़िता के साथ बलात्कार किया गया एवं अपहरण कर उसे रखा गया।
- 12 शिनाख्तगी पंचनामा (शव, वस्तु या व्यक्ति का)।
- 13 आवेदन 164 द.प्र.सं. के कथन हेतु।
- 14 पीड़ित बालक के कथन अंतर्गत धारा 164 द.प्र.सं.।
- 15 जन्म दिनांक के प्रमाण में - 10वीं कक्षा की अंकसूची की छायाप्रति की जप्ती। इसके अभाव में विद्यालय से जन्म तारीख प्रमाण-पत्र, स्कॉलर रजिस्टर, प्रवेश फॉर्म एवं प्रवेश-फॉर्म के संलग्न दस्तावेज प्राप्ति हेतु आवेदन-पत्र एवं प्राप्ति उपरांत उक्त दस्तावेज।
- 16 उक्त के अभाव में नगर निगम या नगर पालिका या पंचायत द्वारा दिया गया जन्म प्रमाण-पत्र। (यदि उपलब्ध हो तो)
- 17 उक्त के अभाव में अस्थि जांच या आयु अवधारण संबंधी अन्य कोई जांच रिपोर्ट।
- 18 गिरफ्तारी पत्रक, 7 वर्ष से कम या 7 वर्ष तक के कारावास से दण्डनीय संज्ञेय अपराध की स्थिति में चेकलिस्ट सहित।
- 19 गिरफ्तारी पत्रक पर आरोपी का फोटो।
- 20 गिरफ्तारी की सूचना।



- 21 फिंगर प्रिंट।
- 22 धारा 27 भारतीय साक्ष्य अधिनियम, 1872 (संक्षेप में साक्ष्य अधिनियम) का मेमोरेण्डम एवं जपती।
- 23 आरोपी का मेडिकल एवं परीक्षण के दौरान सुरक्षित आर्टिकल्स का जपती पंचनामा।
- 24 डी.एन.ए. परीक्षण हेतु सेम्पलिंग एवं आई.डी.एफ.फॉर्म।
- 25 पीडित व आरोपी के प्रदर्शों की जपती।
- 26 शव परीक्षण प्रतिवेदन, सफीना फॉर्म एवं शव का नक्शा पंचायतनामा (यदि कोई हो)।
- 27 एफ.एस.एल. ड्राफ्ट।
- 28 एफ.एस.एल. रसीद।
- 29 एफ.एस.एल./डी.एन.ए. रिपोर्ट मय मुद्देमाल के।
- 30 कथन/पूरक कथन साक्षी - 1. माता 2. पिता 3. चश्मदीद साक्षी 4. परिस्थितिजन्य साक्षी 5. अनुश्रुत साक्षी।
- 31 रोजनामचा सान्हा रिपोर्ट मय धारा 65बी(4) साक्ष्य अधिनियम के प्रमाण-पत्र (यदि कोई हो)
- 32 पर्यवेक्षण प्रतिवेदन - इस प्रतिवेदन की प्रति अभियोग-पत्र के साथ प्रस्तुत नहीं की जाती है, न ही इसकी प्रति अभियुक्त को प्रदान की जाती है।
- 33 आपत्ति प्रतिवेदन।
- 34 जमानत आदेश।
- 35 दस्तावेज सूची।
- 36 साक्षी सूची।

प्रश्न 11 - प्रतिकर एवं पुनर्वास संबंधी प्रावधान एवं प्रक्रिया क्या है ?

उत्तर - प्रतिकर एवं पुनर्वास के संबंध में पॉक्सो एक्ट के नियम 9 में प्रावधान किये गये हैं। दण्ड प्रक्रिया संहिता की धारा 357, 357ख, 357ग में प्रावधान किये गये हैं तथा कई राज्यों में पीडित प्रतिकर योजना भी लागू की गयी है जिनके अधीन भी प्रतिकर एवं पुनर्वास प्रदान किया जाता है। प्रतिकर प्राप्ति के लिए संबंधित विशेष न्यायालय, सचिव जिला विधिक सेवा प्राधिकरण के समक्ष आपेदन प्रस्तुत किया जाना चाहिए। इस प्रक्रिया को विस्तृत रूप से समझने के लिए दिल्ली उच्च न्यायालय का न्यायदृष्टांत विकास यादव विरुद्ध उत्तरप्रदेश राज्य क्रिमिनल अपील नं. 910/2008 निर्णय दिनांक 06.02.2015 का अध्ययन किया जाना चाहिए।

प्रश्न 12 - संभावित समाधान ?

उत्तर - पीडित के लिए उपलब्ध कानूनी प्रावधानों और ऐसे अपराधों के दण्डात्मक प्रावधानों, पॉक्सो एक्ट एवं नियमों के प्रावधानों के संबंध में आम जनता में जागरूकता फैलाकर ऐसे अपराधों पर अंकुश लगाया जा सकता है। स्कूलों, कॉलेजों, गाँव, कस्बों में मासिक रूप से ऐसे विधिक जागरूकता कार्यक्रम आयोजित किये जाने चाहिए। सिनेमाघरों में प्रत्येक शो से पूर्व और अंत में, टेलीविजन पर समाचारों व प्रमुख कार्यक्रमों के मध्य छोटे-छोटे विज्ञापन दिखाकर भी विधिक जागरूकता बढ़ायी जा सकती है। इंटरनेट पर उपलब्ध अश्लील सामग्री एवं पोर्न साइट्स को प्रतिबंधित कर भी ऐसे अपराधों में कमी लाई जा सकती है।

TEACHING NOTES

I. प्रकरण की प्रकृति

यह प्रकरण मध्यप्रदेश के इन्दौर शहर में घटी तीन माह की बालिका के अपहरण, बलात्कार और हत्या की एक सत्य घटना पर आधारित है। जिसमें विचारण न्यायालय के द्वारा अपराधी को मृत्युदण्ड से दण्डित किया गया था। मृत्युदण्ड की पुष्टि प्रथम अपील न्यायालय उच्च न्यायालय खण्डपीठ इन्दौर से भी हो चुकी है। पीड़ित की पहचान गुप्त रखने के उद्देश्य से पीड़ित मृत बालिका और उसके परिजनों के नाम, पते प्रकट नहीं किये गये हैं परंतु घटना का स्थान, समय, दिनांक, अन्य साक्षीगण संबंधी विवरण वास्तविक है। यह केस स्टडी मात्र प्रशिक्षण के उद्देश्य से लेख की गई है। लेखिका मध्यप्रदेश में सहायक जिला लोक अभियोजन अधिकारी एवं विशेष लोक अभियोजक पौक्सो एक्ट के रूप में पदस्थ हैं और इसी रूप में इस प्रकरण के संबंध में ज्ञान रखती हैं।

II. सार-संग्रह (SYNOPSIS)

वर्ष 2012 में लैंगिक अपराधों से बालकों का संरक्षण अधिनियम प्रवृत्त होने के पूर्व बालकों के विरुद्ध लैंगिक अपराध भादवि की धाराओं 376, 354, 377 और 509 के अधीन अभियोजित होते थे। धारा 375 में बलात्कार की सीमित परिभाषा दी गई थी जो सिर्फ बालिकाओं को संरक्षा प्रदान करती थी, बालकों को नहीं (वर्तमान में भी नहीं करती है)। यह धारा पीड़ित को पारम्परिक peno-vaginal intercourse के अतिरिक्त किसी अन्य प्रवेशन लैंगिक कृत्य से संरक्षित नहीं करती थी। धारा 354 और धारा 509 भी सिर्फ बालिकाओं को संरक्षा प्रदान करती है, बालकों को नहीं। झोल्मिंग और लैंगिक उत्पीड़न को भी परिभाषित नहीं किया गया है। धारा 377 में प्रयुक्त शब्दावली 'प्रकृति विरुद्ध' को भी परिभाषित नहीं किया गया है। इस प्रकार भारत में लैंगिक अपराधों से बालकों का संरक्षण करने के लिए भादवि के उक्त प्रावधानों के अतिरिक्त कोई विधिक प्रावधान नहीं थे जबकि बच्चों के विरुद्ध लैंगिक अपराध दिन-प्रतिदिन बढ़ते जा रहे थे इसलिए तत्संबंधी कानून की आवश्यकता महसूस की गई। लैंगिक अपराधों से बालकों का संरक्षण करने के लिये, उनके प्रति होने वाले ऐसे अपराधों का विचारण करने के लिये विशेष न्यायालय की स्थापना, विशेष लोक अभियोजक की नियुक्ति और संबद्ध विषयों का उपबन्ध करने के लिये लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 (संक्षिप्त में पौक्सो एक्ट) अधिनियमित किया गया, जो 14 नवम्बर, 2012 को लागू हुआ। यह अधिनियम लिंग निरपेक्ष है और प्रत्येक प्रक्रम पर बालकों के सर्वोत्तम हित और कल्याण पर सर्वोपरि महत्व के मामले से संबंधित है, जिससे बालक के अच्छे शारीरिक, भावनात्मक, बौद्धिक और सामाजिक विकास को सुनिश्चित किया जा सके। तथापि, हाल ही के समय में देश में ऐसे अपराधियों की, जिनका बालक पीड़ितों के बारे में बर्बर दृष्टिकोण होता है, अमानवीय मानसिकता दर्शाने वाले बाल यौन अपराधों के मामलों में वृद्धि हुई है। इसलिये देश में बाल यौन अपराधों की बढ़ती हुई प्रवृत्ति को रोकने के लिए कई कदम उठाए गए हैं। न सिर्फ इस अधिनियम बल्कि भारतीय दण्ड संहिता, 1860 (संक्षिप्त में भा.द.सं. या भा.द.वि.), दंड प्रक्रिया संहिता, 1973 (संक्षेप में द.प्र.सं.) एवं भारतीय साक्ष्य अधिनियम, 1872 (संक्षेप में साक्ष्य अधिनियम) में भी आवश्यक संशोधन किये गये हैं। पौक्सो एक्ट में दिनांक 16.08.2019 को अन्य संशोधनों के साथ मुख्य रूप से धारा 6 में मृत्युदंड का प्रावधान भी किया गया। इस अधिनियम में 46 धाराएं हैं।

वर्ष 2012 में निर्मया केस की घटना के बाद भादवि एवं दण्ड प्रक्रिया संहिता में जरिस्टा वर्मा कमीशन की अनुशंसाओं के आधार पर बड़े संशोधन किए गए। दिनांक 03.02.2013 को भादवि की धारा 375 में संशोधन कर बलात्कार की परिभाषा विस्तृत की गई तथा बलात्कार के अपराध के विभिन्न वर्ग धारा 376क-376ड के रूप में जोड़े गये। भादवि में धाराएं 354क-354घ, 166क जोड़ी गई तथा दण्ड प्रक्रिया संहिता में



संशोधन कर धारा 154, 164 और 309 में प्रभावी प्रक्रियात्मक परिवर्तन किए गए। किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2015 अधिनियमित कर इसमें प्रावधान किया गया कि ऐसे बालक जिन्होंने 16 वर्ष की आयु पूर्ण कर ली है परंतु 18 वर्ष से कम आयु के हैं, उनके द्वारा जघन्य अपराध किये जाने पर उनका विचारण वयस्क की तरह किया जा सकेगा। वर्ष 2018 में कटुआ केस के बाद मादवि में रजिस्ट्रेशन कर न केवल दण्डात्मक प्रावधानों को और अधिक कठोर बनाया गया बल्कि दण्ड प्रक्रिया संहिता में संशोधन कर महत्वपूर्ण प्रक्रियात्मक प्रावधानों जैसे धारा 154, 164 और 309 में विशिष्ट उपबंध जोड़े गए।

III. LEARNING OBJECTIVES

- लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012, लैंगिक अपराधों से बालकों का संरक्षण नियम, 2020 और मादवि, दण्ड प्रक्रिया संहिता व साक्ष्य अधिनियम के संबंधित प्रावधानों को समझना।
- पॉक्सो एक्ट और लैंगिक अपराधों के प्रकरणों के अनुसंधान की प्रक्रिया विधि और साक्ष्य संकलन को समझना।
- ऐसे प्रकरणों के विचारण की प्रक्रिया विधि और पीड़ित पक्ष की ओर से प्रकरण का संचालन एवं साक्ष्य प्रस्तुतीकरण को समझना।
- लैंगिक अपराधों के पीड़ित बालकों के प्रतिकर एवं पुनर्वास की प्रक्रिया विधि को समझना।

IV. TARGET AUDIENCE

- पुलिस अधिकारी / विशेष किशोर पुलिस युनिट।
- अभियोजन अधिकारी।
- न्यायिक अधिकारी।
- मेडिकल ऑफिसर।
- सपोर्टर्स।
- बालकों के कल्याण के लिये कार्यरत एनजीओ।
- बाल कल्याण समिति।
- वैज्ञानिक अधिकारी एवं सहायक रसायनिक परीक्षक।

V. CASETEACHING GUIDELINES

1. केस स्टडी में वर्णित घटना एवं उसके संपूर्ण तथ्यों को प्रतिभागियों के समक्ष प्रस्तुत किया जाना आवश्यक है।
2. प्रतिभागियों को केस स्टडी से उत्पन्न प्रश्न, उनके संभावित समाधान एवं विचार-विमर्श के लिए निम्नलिखित प्रश्न दिये जा सकते हैं –
3. वर्तमान समय में ऐसी घटना घटित होने पर कौन-कौन सी अपराध धाराओं के आरोपण होंगे?
4. अनुसंधान के समय किस तथ्य को प्रमाणित करने के लिये क्या साक्ष्य एकत्र की जाना आवश्यक है?
5. सीसीटीवी फुटेज को साक्ष्य में ग्राह्य बनाने के लिये किस प्रक्रिया विधि का पालन आवश्यक है?
6. सीसीटीवी फुटेज के संबंध में धारा 65बी(4) सा.अधि. के प्रमाण-पत्र के आवश्यक तत्व क्या होंगे?
7. धारा 65बी(4) सा.अधि. के प्रमाण-पत्र का एक आवर्श प्रारूप तैयार करें।
8. पॉक्सो एक्ट के प्रकरणों में पुलिस सामान्यतया क्या गतितियां करती है? अनुसंधान अधिकारी को

अनुसंधान के दौरान क्या बातें ध्यान में रखना चाहिए ?

9. पॉक्सो प्रकरणों के अनुसंधान के दौरान अनुसंधान अधिकारियों द्वारा संकलित की जाने वाली साक्ष्य के संबंध में चेक लिस्ट तैयार करें ?
10. विचारण के समय विशेष लोक अभियोजक को किन साक्षियों की साक्ष्य न्यायालय के समक्ष कराना चाहिए ?
11. विशेष लोक अभियोजक को किस साक्षी से क्या तथ्य सिद्ध कराये जाने का प्रयास करना चाहिए ?
12. विशेष लोक अभियोजक को सीसीटीवी फुटेज किस प्रकार प्रमाणित करना चाहिए ?
13. क्या मृतका के परिवार को प्रतिकर के रूप में राशि प्रदान की जानी चाहिए और इस संबंध में क्या प्रावधान एवं प्रक्रिया है ?
14. पीड़ित की पहचान गुप्त रखे जाने संबंधी विधिक प्रावधान क्या है ?
15. ऐसे मामलों में अनुसंधान एवं विचारण के दौरान बालक के कथन/साक्ष्य अभिलिखित किये जाने संबंधी प्रक्रिया विधि ?
16. सपोर्ट पर्सन की नियुक्ति एवं कर्तव्य संबंधी प्रावधान ?
17. प्रथम सूचना रिपोर्ट दर्ज किये जाने और उसके शीघ्र पश्चात् की जाने वाली कार्यवाहियों संबंधी प्रावधान क्या है ?
18. पीड़ित बालक की उम्र को कैसे प्रमाणित किया जाएगा और तत्संबंधी विधिक उपबंध एवं न्यायदृष्टांत बताईए ?
19. संकलित व प्रमाणित साक्ष्य के आधार पर निष्कर्ष ?
20. संभावित समाधान ?

VI. ROLE PLAY

रोल प्ले के लिए करीब दस प्रतिभागियों के ग्रुप बनाये जाना आवश्यक है जो निम्नलिखित पात्रों की भूमिका अदा करेंगे –

- (1) पुलिस अधिकारी/विशेष किशोर पुलिस युनिट
- (2) महिला पुलिस अधिकारी
- (3) सपोर्ट पर्सन
- (4) बाल कल्याण समिति
- (5) विशेष लोक अभियोजक
- (6) विशेष न्यायाधीश
- (7) मेडिकल ऑफिसर
- (8) वैज्ञानिक अधिकारी एवं सहायक रसायनिक परीक्षक
- (9) अभियोजन साक्षीगण

प्रत्येक ग्रुप को रोल प्ले से पूर्व विचार-विमर्श के लिए करीब तीस मिनट का समय दिया जाना चाहिए। पुलिस अधिकारी का पात्र पीड़ित पक्ष को उसके विधिक अधिकारों एवं उपलब्ध सेवाओं की हकदारी के बारे में बताएगा, इसके लिए उसे 2 मिनट का समय दिया जाना चाहिए। अनुसंधान अधिकारी के पात्र को संपूर्ण विवेचना की प्रक्रिया एवं प्रत्येक तथ्य को प्रमाणित करने के लिए संकलित साक्ष्य के बारे में बताने के लिए 10 मिनट का समय दिया जाना चाहिए। बाल कल्याण समिति अधिकारी पॉक्सो नियमों में उपबंधित



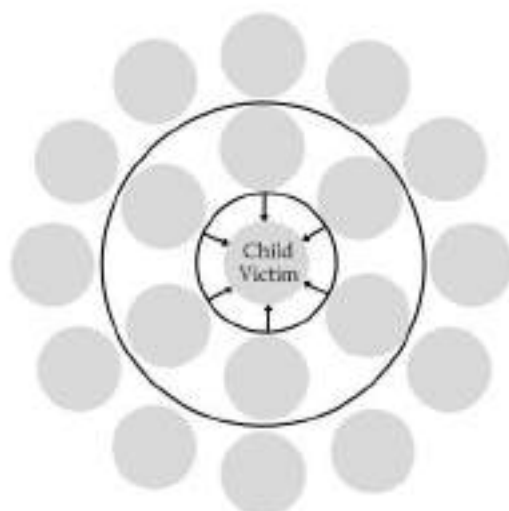
अपनी भूमिका और सपोर्ट पर्सन की नियुक्ति के बारे में बताएगा, इसके लिए उसे 4 मिनट का समय दिया जाना चाहिए। सपोर्ट पर्सन अपनी भूमिका एवं दायित्व के संबंध में बताएगा इसके लिए उसे 5 मिनट का समय दिया जाना चाहिए। मेडिकल ऑफिसर मेडिकल परीक्षण, डीएनए सेम्पलिंग आदि के संबंध में बताएगा, इसके लिए उसे 5 मिनट का समय दिया जाना चाहिए। विशेष लोक अभियोजक किस तथ्य को किस साक्ष्य से प्रमाणित करना चाहता है, इस संबंध में बतायेगा तथा मुख्य अभियोजन साक्षियों का मुख्य परीक्षण करके दिखायेगा, इसके लिए उसे 10 मिनट का समय दिया जाना चाहिए। वैज्ञानिक अधिकारी एवं सहायक रसायनिक परीक्षक जैविक साक्ष्य एवं डीएनए सेम्पलिंग, लेबलिंग आदि संबंधी प्रक्रियात्मक जानकारी देगा, इसके लिए इसे 10 मिनट का समय देना चाहिए। विशेष न्यायधीन प्रस्तुत साक्ष्य का विश्लेषण कर अंतिम निर्णय सुनायेगा, उसे इसके लिए 10 मिनट का समय दिया जाना चाहिए। इस प्रकार करीब 2 घंटे का समय रोल प्ले के लिए प्रत्येक ग्रुप को दिया जाना चाहिए।

VII. STAKEHOLDER ANALYSIS

सभी संबंध एजेंसियों के सहयोग के पहलू को समझने के लिए यह महत्वपूर्ण है कि सभी प्रतिभागी प्रकरण से संबंधित सभी स्टैकहोल्डर्स से अवगत हो। प्रतिभागियों को प्रकरण से संबंधित विभिन्न स्टैकहोल्डर्स के बारे में जानकारी देने के लिए उन्हें स्टैकहोल्डर विश्लेषण करने के लिए कहना चाहिए। यह स्टैक-होल्डर्स विश्लेषण सीमित या प्रतिबंधित नहीं होना चाहिए और प्रतिभागियों को अधिक से अधिक संभव स्टैकहोल्डर्स उल्लेखित करने के लिए प्रोत्साहित करना चाहिए।

स्टैकहोल्डर्स विश्लेषण के लिए निम्नलिखित कदम उठाये जाने चाहिए—

- (क) वे स्टैकहोल्डर्स जो अधिक प्रत्यक्ष और स्पष्ट हो (या पीड़ित से निकट रूप से संबंध हो) उनका उल्लेख बड़े घेरे में उपलब्ध स्थान में एक-एक करने करना आवश्यक है।
- (ख) वे स्टैकहोल्डर्स जो पीड़ित से दूरस्थ रूप से संबंध हो उनका एक-एक करके उल्लेख बड़े घेरे से बाहर करना आवश्यक है।





PART-B

CASE STUDIES ON VIOLENCE AGAINST WOMEN

CHAPTER 6:

Sex Crimes in the Age of Social Media: A case of Revenge Porn

: Vrinda Shukla

CHAPTER 7:

Sexual Harassment at Workplace: A case of the abuse of official power and limitations of Internal Committees

: Alankrita Singh, Vidya Bhushan & Megha Dada Chaudhry

CHAPTER 8:

Justice delivery in Domestic Violence: A case of alive-inrelationship

: Anupama T V

CHAPTER 9:

Challenges to justice in Dowry Harassment- A case study (in Hindi)

: Seema Sharma



6

CHAPTER

SEX CRIMES IN THE AGE OF SOCIAL MEDIA: A Case of Revenge Porn

Vrinda Shukla

About the Author

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PART - I

With only three days to go for the wedding, the bride-to-be, Mallika1, received a call from her fiancé. Nothing could have prepared her for what he had to say. Hundreds of links had suddenly appeared on Instagram, Twitter and Facebook flashing obscene and intimate pictures of hers. Thus began a terrible nightmare for the hapless girl, the sole solace being the extraordinary strength of character and commitment of the groom-to-be.

Immediately after Mallika and Brajesh's2 wedding, began a losing battle against this flood of obscenity. The scale of the problem was so vast that over a hundred new links for the pictures would appear every day. The young couple spent their days and nights scouring various social media and porn websites for relevant links and 'reporting' them to the concerned platforms for removal. Viewing the content over and over again,

reading the dreadfully distasteful comments on it, and assessing the mammoth extent of its dissemination took its toll. Mallika plunged into dark depression and got suicidal.

It was not the accused alone who was the problem. Mallika's photos and videos had been mass downloaded and began being shared by hundreds of social media accounts which are solely in the business of supplying pornographic content on leading social media websites. Many social media accounts displayed WhatsApp numbers where more content of the victim could be purchased, and promised 'a good time' for price options from Rs. 30 for five photos to Rs. 400 for seven photos and two videos.

Upon contacting these numbers, the payment for this additional content was sought through Paytm. Imagine the plight of the young husband paying for several such folders to ascertain whether the 'good time' was being sold at the expense of the dignity and sanity of his life partner. Upon payment, another WhatsApp number would swiftly send the buyer more pictures/ videos of the victim. Associates of the main accused began contacting Mallika for sexual favors and extortion of money to 'delete' the pictures in their possession or to 'convince' him to do it. Emotionally drained and defeated from a lonely fight of four months, the couple finally approached the Police.

Reporting such a crime to the police was no mean feat. The nature of the pictures being circulated was so intimate and violative that to share them with police officers (mostly male) and then to submit them for forensic analysis evoked in Mallika's mind formidable fears of misuse of her pictures for purposes of personal titillation or further dissemination due to careless handling by the police. However, after gathering some courage and in the absence of another choice, Mallika opened up to the police. She informed that a former boyfriend, from four years ago, was in possession of these pictures and was the most likely culprit. Upon receiving the news of her impending wedding he appeared to have begun uploading the content and kept obsessively doing it day after day, creating a staggering quantity of content in circulation. Later, completely unrelated social media accounts further exacerbated the problem of dissemination. The handlers of these accounts prowled the digital space for any intimate content available, download it, and then regularly upload that content as a way of making money through paid folders of pictures and videos.

PART - II

The challenge confronting the Police in this case was two-fold:

- Arresting the accused and other social media users who were uploading the content
- Sanitizing the internet by removal of the victim's intimate content

A case was duly registered under section 67A of the Information Technology (IT) Act and an investigation was initiated. Section 67A of the IT Act penalizes electronic transmission of sexually explicit material. The victim supplied a pen drive to the police containing screen shots of all the links which she had found, which contained intimate images of her. This data was supported by a certificate under Section 65-B of the Indian Evidence Act - a mandatory certification for electronic evidence to be admissible in the Court of Law - which was given by the victim.



All the URLs furnished by the victim, which contained her images, were accessed by the Investigating Officer (IO), who took screen shots of the same and saved them in a separate pen drive. He attached to this pen drive a self-issued certificate under Section 65-B of the Indian Evidence Act, validating that the URLs furnished by the victim do indeed exist and contain the said objectionable imagery or videos.

The victim had informed the police in the FIR that the likely accused was a jilted boyfriend from four years ago who, over the course of their relationship, had taken many intimate photos and videos of her, and had also compelled her to take them and send them to him. She presumed that he may be behind this whole nightmare, given that she had left him despite his repeated remonstrations. She had tired of his sexual and emotional abuse. She supplied three phone numbers which she had known him to use over the recent years.

This lead was the logical first step in the investigation process. Call Details Records (CDR) and Customer Authorization Forms (CAF) were procured for all three numbers of the alleged accused. Two of the numbers were found operating at a similar location in Baruipur District, West Bengal. Given the restrictions on movement and transportation due to the nationwide lockdown, the location details were shared with the Baruipur Police, who made discreet enquiries at the given address and found the alleged accused, Agastya3, to be staying there.

Then a team of police persons from Gautam Buddh Nagar Police travelled from Noida to Baruipur. Upon reaching Baruipur, the accused's house was raided. The accused was arrested and his phone was sealed and taken into custody, as it was found to be containing a significant number of the images and videos which were circulating online.

The pen drive submitted by the victim and the accused's phone, which was sealed at the time of arrest, were submitted to the Forensic Science Laboratory (FSL) with a request to match the images contained in the two devices. The FSL report returned a clear match between the two sets of images and ruled out any morphing of images contained in either of the devices.

Further, the social media accounts that were uploading the victim's intimate pictures were reported to the concerned platforms with a request to furnish the IP addresses from where the account was being operated. Some of these IP locations were traced back to Baruipur District of West Bengal where the main accused was based. This further confirmed the involvement of the named accused, Agastya.

Certain WhatsApp numbers were being publicized on social media accounts as a contact for purchasing more images and videos of the victim. Upon contacting these numbers, a Paytm wallet's details were shared to which payment had to be made. Once the payment was made, the images were received from another WhatsApp number. The IP addresses and CAFs of these numbers and the account details associated with the Paytm wallet were procured by the Police. The account details from Paytm and the subscriber details of the phone numbers were in the same name and address and based out of Jodhpur, Rajasthan. However, as is typical in most criminal activity the details did not trace back to the true perpetrator. Investigation is still underway to trace the actual photo sellers and the recipients of the money. The key accused, Agastya, has been charge sheeted. The investigation is pending against the other alleged accused persons who were found selling the victim's objectionable intimate imagery.

TEACHING NOTES

I. OVERVIEW OF THE CASE STUDY

The case study is a classic case of revenge porn—an invasion of sexual privacy and a form of online harassment where the perpetrator—mostly a disgruntled ex-partner—posts intimate photos without consent, often with the aim of shaming the subject or sabotaging her new relationship. The case study is divided into two parts, namely Part I, Part II.

Part I of the case study very poignantly establishes the context— the beginning of a long battle of a young couple against an almost insurmountable wrong and records the personal struggle of the couple to deal with the crime on their own, eventually deciding to take help of the police. Part II delineates the entire process of investigation and dwells in the shortcomings in the legal framework that act as an impediment in the investigation of cases of revenge porn.

II. CASE BACKGROUND

It was a classic case of revenge porn—an invasion of sexual privacy and a form of online sexual harassment where the perpetrator—mostly a disgruntled ex-partner—posts intimate photos without consent, often with the aim of shaming the subject or sabotaging her new relationship.

In cases of revenge porn, the non-consensual intimate content is mostly uploaded on myriad porn websites as well as social media platforms. But a body of growing research around the world, on sex crimes of the digital age, indicates that it is the circulation on social media that has been found to have the most extreme emotional impact on victims because social media is where all our real world connections are.

The consequences for victims of such crimes can be extreme, encompassing honour killings, breakdown of relationships, physical abuse, destruction of reputation and career, and immense emotional trauma often resulting in suicide or long term health complications. The infamous exit last year of Katie Hill, a promising member of the American Democratic Party, who resigned from the House of Representatives after her nude photos were allegedly leaked online by her ex- husband and two high profile suicides involving Korean pop star, Goo Hara, and a student at the University of London, Damilya Jossipalenya, both victims of revenge porn, are cases in point.

III. LEGAL FRAMEWORK

The Internet has subverted the concept of physical barriers. Now, anyone sitting in any corner of the world can commit a crime without risking disclosure of their identity and location. The discreetness or anonymity provided by this digital media age poses several challenges to investigators. The prominent challenges encountered during the



investigation process were the identification and tracking of the accused, a pan India jurisdiction, meticulous collection of electronic evidences, and fixing the liability of intermediaries in the commission of the crime. In the absence of a mechanism of demanding accountability from social media intermediaries about the commission of these crimes, it would be nearly impossible to stem the roaring tide of these offences.

In the past few years, there has been a rapid growth in the total number of internet users across the world. With 3.8 billion internet users, almost 50 percent of the world's total population is 'online' now.¹ The internet has become an integral, nay indispensable part of our everyday lives – a medium which has transformed the world into a global village. However, the internet not only provides a vast range of opportunities but also poses several dangers. The crimes no longer take place only conventionally but through the digital medium. In contemporary times, the offline forms of crime are finding new forms of expression in the online world with amplified effect. An efficient legal framework is essential to deal with the dynamic nature of cyber crimes.

(a) Indian Penal Code (IPC), 1860

It is a comprehensive code that intends to cover all substantive aspect of criminal law in the country. This Code has a vast sweep, defining and punishing most forms of criminal activity in India. The scope of Code has been expanded over time to be rendered applicable to cyber crimes as well. A separate legislation in the form of the Information Technology Act, 2000, provided a further shot in the arm to the penal framework for cyber crimes. However, given the rapidly mutating and increasingly sinister forms of cyber abuse, a lot more needs to be urgently done to strengthen the legal framework.

Revenge porn, for instance, is not an independent explicitly defined offence under the IPC. At present, it can be covered by a combination of the following relevant sections:

S.No.

1. Sec 509 <i>Word, gesture or act intended to insult the modesty of a woman.</i>	Whoever, intending to insult the modesty of any woman, utters any words, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, [shall be punished with simple imprisonment for a term which may extend to three years, and also with fine].
2. Sec 499 <i>Defamation</i>	Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe

	<p>that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.</p> <p>Explanation 1. - It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.</p> <p>Explanation 2. - It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.</p> <p>Explanation 3.-An imputation in the form of an alternative or expressed ironically, may amount to defamation.</p> <p>Explanation 4. - No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.</p>
<p>3. Section 292 <i>Sale, etc., of obscene books, etc.</i></p>	<p>(1) For the purposes of sub-section (2), a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it. [(2)] Whoever</p> <p>(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or</p> <p>(b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire,</p>



distributed or publicly exhibited or in any manner put into circulation, or

(c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or

(d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or

(e) offers or attempts to do any act which is an offence under this section, shall be punished [on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to five

4. Sec 354C
Voyeurism

Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, & shall also be liable to fine & be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

Explanation 1. – For the purpose of this section, "private act" includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.

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

(b) Information Technology (IT) ACT, 2000

IT Act, 2000 was introduced to punish several crimes proliferating in the cyberspace due to advancement in the field of information and communication technology. This Act has been amended in 2008 to introduce provision to specifically punish “publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form”. However, the crime of ‘revenge porn’ has not been explicitly or independently defined under the IT Act.

The following relevant provisions of the IT Act can be applied to cases of revenge porn:

<p>1. Sec 67 <i>Punishment for publishing or transmitting obscene material in electronic form.</i></p>	<p>Whoever publishes or transmits or causes to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees.</p>
<p>2. Sec 67A <i>Punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form.</i></p>	<p>Whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees.</p>



Role of Intermediaries

To understand the aspect of criminality of intermediaries, it is pertinent to refer to the case of Avinash Bajaj case or DPS MMS scandal case.³ In this case a MMS clip of two students of DPS was being circulated on Avinash Bajaj's website Bazeed.com. The Delhi High Court prosecuted him under Section 67 of IT Act. In this case, the criminal liability was deemed to be on Avinash Bajaj even though his company was not arraigned as accused.

However, this decision was overturned by Supreme Court which denied holding Bajaj vicariously liable as no case was made against his company. Post this case, the IT Act was amended to provide conditional immunity to intermediaries from acts of a third party. Thus, Section 79 was inserted in the Act to exempt intermediaries from any liability of such sorts.

Section 2(1)(w) of the IT Act defines "intermediary" with respect to any particular electronic message as "any person who on behalf of another person receives, stores or transmits that message or provides any service with respect to that message." Thus, the definition of intermediaries includes telecom services providers, network providers, internet service providers, web-hosting services etc. Furthermore, search engines, online payment sites, online-auction sites, online market places and cyber cafés are also included in the definition of the intermediary. Thus, an intermediary is one who facilitates the usage of the internet.

Section 79 of the IT Act reads as follow:

"Exemption from liability of intermediary in certain cases:

(1) Notwithstanding anything contained in any law for the time being in force but subject to the provisions of sub-sections (2) and (3), an intermediary shall not be liable for any third party information, data, or communication link made available or hosted by him.

(2) The provisions of sub-section (1) shall apply if-

(a) the function of the intermediary is limited to providing access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted; or

(b) the intermediary does not-

(i) initiate the transmission,

(ii) select the receiver of the transmission, and (iii) select or modify the information contained in the transmission;

(a) the intermediary observes due diligence while discharging his duties under this Act & also observes such other guidelines as the Central Government may prescribe in this behalf.

(3) The provisions of sub-section (1) shall not apply if-

(a) the intermediary has conspired or abetted or aided or induced, whether by threats or promise or authorize in the commission of the unlawful act;



- (b) upon receiving actual knowledge, or on being notified by the appropriate Government or its agency that any information, data or communication link residing in or connected to a computer resource, controlled by the intermediary is being used to commit the unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner.

Explanation-For the purpose of this section, the expression "third party information" means any information dealt with by an intermediary in his capacity as an intermediary."

Thus, we can see the intermediary is granted extensive immunity in Section 79(1) from third party information, data or communication link made available or hosted by them. Section 79(2) grants immunity where role of intermediary is of passive, technical and automatic nature. Section 79(3) delineates the "notice and take down" regime in cases where intermediary receives actual knowledge of unlawful content being hosted by it. Considering the difficulty in judging the legitimacy of the large volume of content being received by the intermediaries in the *Shreya Singhal v. Union of India*⁷ case, the Supreme Court read down this section to mean that an "intermediary upon receiving actual knowledge from a court order or on being notified by the appropriate government or its agency that unlawful acts relatable to Article 19 (2) are going to be committed then fails to expeditiously remove or disable access to such material" shall be held liable.

Information Technology Intermediary Guidelines (Amendment) Rules, 2018 lay down a complete framework to make "social media platforms accountable by making them offer time bound assistance to Government agencies, provide for traceability and deploy technology based automated tools to identify and remove public access to unlawful information."⁸ However, the Intermediaries Guidelines are contrary to the orders in the *Shreya Singhal* case by asking the intermediaries to use automated tools for identifying and removing content, which may not be wholly feasible. Not making it incumbent upon social media firms to manually remove objectionable content is what is causing the kind of problems detailed in this case study. At present, artificial intelligence and face recognition technology are in various stages of development for sifting out non-consensual abusive content. Most firms rely on human content moderators to manually review all content flagged as 'abuse' and subsequently take down the same. The Intermediary Guidelines do not bind social media firms to ensure this manual removal of reported illegal content.

IV. LEARNING OBJECTIVES

- To understand the nature of cyber sexual abuse, particularly revenge porn.
- To understand the challenges encountered in reporting and investigating cases of revenge porn



- To understand the role and significance of collaboration amongst different stakeholders to effectively deal with the crime of revenge porn.

V. TARGET AUDIENCE

- Law Enforcement authorities encompassing Investigating Officers at the Police Station level, Cyber Cells, supervisory officers
- Administrative Officers
- Judicial Officers
- Public Prosecutors
- Intermediaries such as operators of Social Media platforms
- Forensic Experts
- NGOs working in the field of cyber crime awareness and advocacy
- Trainers at Police, Judicial, Administrative, Forensic training academies
- Academics working at schools and colleges
- Other relevant stakeholders

VI. STEP BY STEP GUIDE

Step 1 : Briefing on the Learning Objectives and Session Plan

Step 2 : Setting the Ground Rules

Step 3 : Warm-up/Opening Questions

Step 4 : Case Study Part 1- Reading and Stakeholder Analysis

Step 5 : Case Study Part 2 - Reading and Stakeholder Analysis

Step 6 : Distribute Case Commentary to the participants for reading and questions, if any.

Step 7 : Share Additional Readings/Resources

VII. CASE TEACHING GUIDELINES

- If the participants are new and uninitiated in the intricacies of cybercrime, a brief background may be useful to begin the session. (Refer the Case Background provided above)
- Begin by asking the following Opening Questions :
 - Do you think lately there has been a proliferation in cybercrimes?

2. Do you think social media platforms such as WhatsApp, Facebook, Instagram etc. (advertently/inadvertently) facilitate the commission of Cyber crimes of sexual nature?
3. Do you think there is a general bias of treating cyber crime as a less severe form of crime than a body offence?
4. Have you ever come across any incident of cybercrime of sexual nature professionally or personally?

III. Administer the case study and use following Discussion Drivers/Questions¹ for eliciting responses

Following set of questions can be used for discussion on each Part:

PART I

1. According to you what crime(s) were committed against Mallika?
2. State the legal provisions which cover the crimes committed against Mallika.
3. Do you think the existing legal framework is robust enough to effectively deal with cyber crimes of sexual nature?
4. Do you think Mallika was wary of reporting the incident to the police? If yes, enumerate the reasons for it.
5. What steps can be taken to instill confidence and assurance in the minds of the victims to come forward and report such crimes?
6. Do you think the victim can visit a One Stop Center (OSC) to seek assistance in such cases?
7. Do you think there should be a medical/mental health examination to assess the trauma experienced by the victim(s) of cyber sexual crimes?
8. Do you think there is any scheme which lays down guidelines for providing compensation to the victims of cyber crimes?
9. Do you think Mallika should be provided monetary compensation and counselling funded by State? If there is any scheme that provides for the same, enumerate it.
10. What steps can be taken to ensure effective collaboration between different stakeholders to improve the reporting and prosecution of such crimes?

PART II

11. Enumerate the challenges encountered during investigation of cyber crimes?
Collection of evidences:
 - Tracing the accused



- Framing charges
- 12. What steps can be taken to efficaciously deal with these challenges?
- 13. Imagine if the accused, Agastya, was based in another country. How difficult would it have been for investigative authorities to apprehend him?
- 14. Do you think criminal liability should be placed on intermediaries such as social media platforms, online payment apps and so on?
- 15. What steps can be taken by the intermediaries to assist the investigative authorities in investigation of the case?
- 16. Do you think that the poor conviction rate in cyber crime cases is due to difficulties in collection of evidence & then convincingly connecting the evidence to the crime?

VIII. CASE TEACHING PEDAGOGIES:

The participants can be divided into smaller groups for detailed discussion on the possible solutions to the problem at hand or to answer the dilemma question. For a group of 30 participants, it is recommended to divide them into 3 groups of 10 each. They may be encouraged to conduct one of the following pedagogical exercises-

- i) **Role Play**
- ii) **Stakeholder Analysis or**
- iii) **Syndicate Group Discussion**

It is pertinent to note here that the instructor may give complete freedom to the participants to evolve their solution, their reasoning & arguments. There is no one correct solution to this & none may be recommended or favored by the instructor. The views of the participants may be respected, the idea is to make them think & deliberate.

(i) **Role Play**

For the Role Play organise the participants into 'n' no. of groups of 10 each. Each such group of 10 participants would divide the following characters amongst them through draw of lots.

1. *Judicial Magistrate*
2. *Investigating Officials*
3. *Representatives of Intermediaries*
4. *Victim*
5. *Non-Government Organizations*
6. *Medical Health Experts*
7. *Forensic Expert*
8. *District Magistrate*

9. *Cybercrime expert*
10. *Cybercrime lawyer/public prosecutor*

Time allotted to each group: 30 minutes

In the allotted time, using the limited information available in the case study and the reference material, the group shall discuss the following questions and explore whether they are or they are not able to arrive at a consensus or a solution.

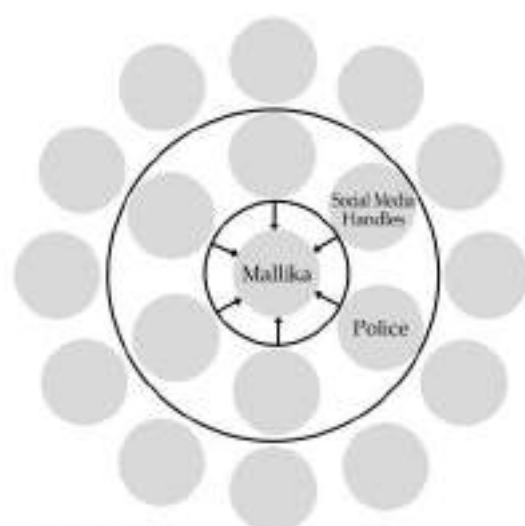
1. What are the challenges experienced by each stakeholder in efficaciously dealing with cyber crimes of sexual nature?
2. Do you think there were any deviations from the law by any concerned stakeholder?
3. If so, what is the role/ responsibility of each stakeholder?
4. How effectively could "access to justice" be provided to the victim in this case?
5. What steps could have been taken to provide "restorative care" or rehabilitation to the victim?

Time allotted to one randomly selected group for role play- 30 minutes (2 minutes each character and 10 minutes for summing up). In the allotted time each participant to speak only for the character being played and to focus on answering each of the questions above. Each response may be summed up with the steps that could be taken to prevent such crimes and provide proper care to the child victims.

(ii) Stakeholder Analysis

As an alternative to role play, a stake holder analysis may be done on the format provided below. The purpose is to clarify the roles & responsibilities of each stakeholder in solving the problem at hand. It brings about better understanding of not just one's own role but also the role of other stakeholders leading to better multi-sectoral coordination. Note that the groups may be divided to have 10 different stakeholders in each group or alternately smaller groups of 3 each, each group representing one stakeholder.

After the groups have been formed, ask each group to use the given format to map stakeholders with Mallika at the Center. The duty holders who appeared on the scene and responded may be mapped in the inner circle and those who do not appear on the scene but had a legal responsibility may be mapped in the outer circle. As a next step ask them to briefly write down about the roles and responsibilities of each duty holder and discuss the extent of shortfall on the part of each of them and what may be the reasons for this shortfall. Following format may be used for stakeholder analysis.



(iii) Syndicate Group Discussion

Syndicate Group Work may be done where each group may be required to find a solution to the problem at hand specifying the role of each stakeholder. Note that the groups may be divided to have 10 different stakeholders in each each group or alternately smaller groups of 3 each, each group representing one stakeholder.

After the groups have been formed, ask each group to discuss the possible solutions to the problems ta hand. The respective group solutions may be represented on a chart paper or a PowerPoint presentation.

X. TIME MANAGEMENT PLAN

Note: This may be varied depending on the availability of time, no of participants, no of role plays to be performed and the pre-awareness or experience of the participants with the subject.

Subject	Duration	Cumulative	Clock
Introduction	10 minutes	10 minutes	0900-0910 hrs
Case Study Part I- Reading	5 minutes	15 minutes	0910-0915
Discussion	10 minutes	25 minutes	0915-0925
Case Study Part II- Reading and Answering Individually	5 minutes	30 minutes	0925-0930

Key Legal Provisions - Reading	5 minutes	35 minutes	0930-0935
Role Play- Discussion within groups	20 minutes	55 minutes	0935-0955
Role Play- Enactment by two groups	60 minutes	115 minutes	0955-1055
Summing Up	5 minutes	120 minutes	1055-1100

XI. REFERENCES

- Appendix 1A - Information Technology Act, 2000
- Appendix 1B - Intermediary Guidelines (Amendment) Rules, 2018
- Appendix 1C - Cyber Crime Investigation Manual
- Appendix 1D - CLA Act 2013

XII. ADDITIONAL READINGS

- Country wise legislations on revenge porn, available at <https://cis-india.org/internet-governance/files/revenge-porn-laws-across-the-world>.
- Franks, Mary Anne, Drafting an Effective 'Revenge Porn' Law: A Guide for Legislators (August 17, 2015). Available at <http://dx.doi.org/10.2139/ssrn.2468823>.
- Halder, Debarati and Jaishankar, K., Revenge Porn by Teens in the United States and India: A Socio-Legal Analysis (November 1, 2013). International Annals of Criminology, 51(1-2), 85-111, 2013, Available at SSRN: <https://ssrn.com/abstract=2493178>.

XIII. CASE COMMENTARY

This case commentary is provided by Vrinda Shukla.

CASE COMMENTARY

In the case under discussion, a major impediment encountered in the investigation was on the part of the social media platforms where most of this content was being uploaded. Reporting of such non-consensual content by victims to the concerned social media platforms is often of no avail mostly due to an inadequate number of content moderators employed by social media firms for reviewing and removing reported non-consensual content. The scale of the problem can be gauged from the half a million reports of revenge porn received per month by Facebook alone. During the COVID-19 pandemic the number



of content moderators being employed by various platforms has been further slashed. A typical message received by users reporting abusive content during this period was that content might take longer to be reviewed due to the company having a reduced workforce that is working from home or that the content may not be reviewed at all as it was not classified as top priority.

All social media companies operate Law Enforcement Agency (LEA) portals where Police authorities make requests for IP addresses of errant accounts and removal of the obscene content. However, often the portals are a mere formality, with the requests of investigative agencies remaining unacknowledged and unaddressed. While Facebook has in place a reasonably responsive legal support system, Twitter, Instagram and WhatsApp are virtually bereft of one. It is a frustrating stonewalling of the Police and thousands of desperate victims. A country offering one of the largest subscriber bases in the world - a formidable source of revenue and projected growth deserves better legal support.

For the purposes of this case the absence of a proper legal support framework at Twitter and Instagram was countered through direct personal liaising with the country executives of these firms by the DCP, Women and Child Safety, Noida. Appealing on the grounds of the victim's emotional and mental state due to the mammoth extent of the content's dissemination, and repeated follow-ups on these requests, finally led to the removal of the majority of the content uploaded. However, there was no mechanism in place for a time-bound removal of content, upon a request by the Investigating Officer, at the level of the concerned Police Station. There were significant delays in receiving the IP addresses of the errant accounts, delaying the tracing of the accused persons.

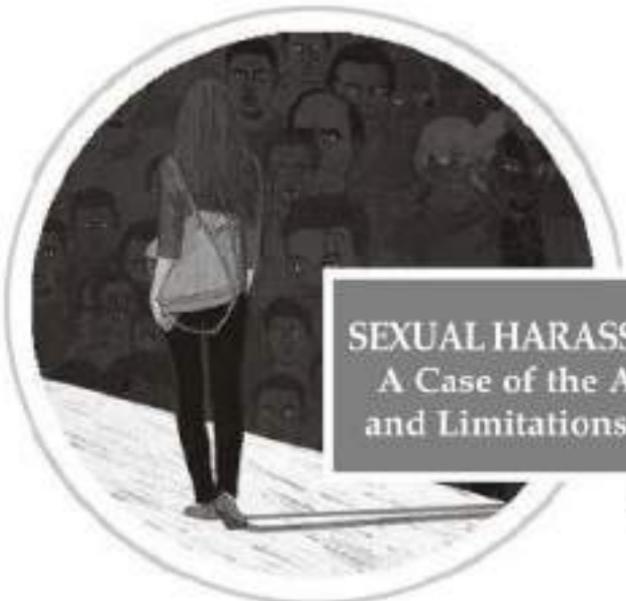
Given that the digital space, particularly social media, has become the scene of sex crimes which are stubborn, difficult to trace, and unprecedented in scale, there is a pressing need to find an impactful solution. At present, cases of revenge porn are usually booked under sections of the Information Technology Act or certain relevant sections of the Indian Penal Code (IPC). In this particular case under consideration, no other section of the IPC was added to the FIR along with Section 67A of the IT Act at the time of registration of the case. This was because of the absence of any IPC section clearly corresponding to the nature of the crime. In other such cases around the country, the Police sometimes chooses to add sections 509, 499, 292 or 354C of the IPC. However, these sections do not thoroughly address the crime of revenge porn, nor do the penalties contained in these sections correspond to the gravity of the crime of revenge porn. The lack of uniformity in the penal sections under which such cases are booked by various Police forces, around the country, is one of the major lacunae in the handling and seriousness lent to the crimes of revenge porn.

There is merit in clearly classifying revenge porn as a sex offence in the Indian Penal Code (IPC). If rape can be typically understood as a non-consensual sexual violation, the dissemination of nude photos and videos of a victim engaging in a sexual act is a continued violation because what is once put in the digital space can rarely be wholly retracted. With such classification, the offence will move to the category of serious offences, earning the promptness and priority it deserves by the Police authorities. With this shall also come into play the strict privacy norms in investigation and media reporting. It will encourage

victims to come forward for reporting who may, otherwise, choose to suffer alone under the presumption that cyber abuse is just endemic to contemporary digital life.

The more important intervention is demanding accountability and responsiveness from social media giants for law enforcement and investigation purposes. Several countries have begun negotiating tough laws on the issue, including a time bound removal of social media content that is declared illegal, fines as high as €50 million on tech companies, and even imprisonment of their executives in extreme cases of non-compliance of requests made by law enforcement authorities.

Advancements in Facial Recognition Technology and Artificial Intelligence may, in the future, become the panacea for victims of revenge porn. However, at present, the criticality and urgency of the PIL filed in the Supreme Court for putting in place an efficient mechanism to remove sexually graphic abusive content and to seek accountability from social media platforms cannot be over emphasized. A respectable numbers of content moderators for a country of over a billion people and of 400 million social media users, time bound compliance of social media companies to the requests of law enforcement agencies, and steep penalties in case of deliberate non-compliance are imperatives. With the world's largest population of young people, vulnerable to the new mutations of deeply scarring sex crimes, nothing less can be acceptable.

7
CHAPTER

**SEXUAL HARASSMENT AT WORKPLACE:
A Case of the Abuse of Official Power
and Limitations of Internal Committees**

**Alankrita Singh, Vidya Bhushan
and Megha Dada Chawdhry**

PART - I

About the Authors

Megha Dada Chawdhry

The co-author is a marketer and behavioural researcher who builds design informed growth strategies that translate the smallest nuggets of people-centric insights to steer more inclusive outcomes. She has over a decade's work experience across multiple sectors in both global and domestic markets. She has interest in understanding the dynamics of gender inequalities at workplace, including sexual harassment.

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ACT 1- THE DREAM JOB

Kusum was in sheer disbelief over how her luck had flipped in a matter of months.

In early 2017, just when she was finishing her nursing training, she came across a job opportunity -a contractual vacancy for a nurse in the hospital of a PSU, a Navratna. The campus was located in the State of Uttar Pradesh, in Lucknow, very near to her village in Sitapur. Kusum and her family had humble beginnings, she was the eldest of 5 siblings, to a widowed mother who struggled hard to make ends meet. Despite their circumstances, her mother had shown uncompromising commitment towards the education of her children- it was the means to a promising future.

This job, even though in a contractual capacity, would help her stabilise her family's

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Alankrita is an officer of the Indian Police Service who has served as Superintendent of Police in 4 districts and Commandant in 4 different armed police battalions in the state of Uttar Pradesh. For four years was engaged in a full time training role at the Lal Bahadur Shastri National Academy of Administration (LBSNAA) at Mussoorie where she also served as Executive Director of the National Gender and Child Centre. She is interested in Women's and Children's Human Rights issues, specifically from the perspective of elimination of various forms of violence against them. Currently she is working as Superintendent of Police in the Women and Child Safety Organisation of Uttar Pradesh Police at Lucknow.

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income considerably. And being stationed in Lucknow meant she could have the weekends with her family.

She sent her application by post and was called for interview. She was interviewed by a senior doctor. However, she was informed shortly thereafter that she did not make it as she lacked a diploma—a compulsory requirement for the job. Kusum was deeply disappointed. By no means could her mother afford a diploma for her at this stage. She continued to look for jobs & applied for few other vacancies.

In April 2017, she got another call from the same PSU hospital asking her to re-appear for the interview. Apparently, the nurse selected previously, had left. Kusum was very happy at this second opportunity to her dream job. She went to the hospital and met the Deputy Chief Medical Officer (DCMO) Dr Ramesh Kumar Kala in his office. She recollected that he was the same person who had interviewed her previously.

He welcomed her and asked her to join immediately. She reminded him that she doesn't have that diploma which she was told was a mandatory qualification. He said that he will look into it. As of now she can join. She had landed her first job, which would give her a good head start both professionally and personally. She would earn Rs 20k a month, to begin with enabling her to start supporting her family. Her stay in Lucknow was well provided for. She was allocated a room on the campus itself. The campus was well equipped with a mess, laundry, shopping mart and various recreational facilities.

The DCMO informed her that she would be assisting him directly, in the dental ward.



He seemed very large hearted. A warm, receptive, fatherly figure, with all the makings of a family man. She learned he had two grown up children. Kusum looked upto him for the years he had in practice, a seasoned doctor. She looked forward to learning a lot on the job.

On her very first day, he called her into his office explaining the nature of her duties as his nursing assistant. With only 1-2 patient visits per day the work load was not much. Through the course of their interaction she spoke about her family and expressed her gratitude for giving her this opportunity. She assured him of delivering her very best at work.

The Dentist ward with its minimal patients was also located in a very isolated area from the rest of the hospital. The staff deployed was limited and Kusum's interactions with them were bare minimal. There was Pooja, another contractual nurse who seemed to bear some degree of inexplicable animosity towards her, or so she believed. Then there was Kailash, the ward boy who rarely entered the ward, always keeping a marked distance.

ACT 2 - HITTING THE GROUND FROM CLOUD 9

The DCMO instructed Kusum to remain inside the dentist ward at all times. But what she found extremely odd and somewhat unsettling was that he insisted she sit next to him with the door always closed. A very discomforting feeling would surge in her but she wasn't able to pinpoint what triggered it exactly or how should she react. She brushed these aside as first job jitters.

One day she overheard the DCMO and Pooja vehemently arguing. The nature of such a discourse between a nurse and her supervisor struck her as odd but she decided not to delve further as it was not her business.

Barely in the first week of her job, one night she received a few porn pictures and jokes on her mobile from the DCMO's mobile number. She was baffled. Was it his son? But this is his official number. She started becoming increasingly unsettled but didn't know who to approach. Other than Pooja there was no other woman on the floor and she quite didn't feel comfortable broaching the issues with Kailash. Strong suspicions about the DCMO's intentions started waning in her mind. Her suspicions turned out to be correct when she started getting those messages in the day time as well, when the phone certainly would have been with the Doctor himself.

Now she was scared. She could not afford to lose her job, she had to deal with the situation smartly. One evening the doctor asked her to go with him to watch a movie. She politely declined but he grabbed her arm and tightly twisted it. Physically overpowering her with his huge frame, he was intimidating. He boasted on how he could throw her out anytime, after all, he had given her the job even when she was not qualified for the post.

Kusum, overwhelmed, started crying and suddenly the demeanour of the doctor changed. He became very caring and insisted that she would feel good if they go out. He just wanted to talk to her, which he cannot do in the hospital. Later that evening he



brought her gifts and flowers. In the movie hall, he kept slipping his hands around her body; she did not like it and tried to stop him, to no use. Finally, Kusum walked out of the movie and insisted to be dropped home. He obliged but was furious. On the way he reiterated his threat of terminating her contract.

The next morning, not knowing what else to do, Kusum felt compelled to apologise to him for her behaviour. Dr. Kala laid down clear terms for the continuation of her employment. She had to fulfil his sexual desires. Furious at the request, she told him that she doesn't see him as a romantic partner. She is ready to face the consequences. The magnitude of the blackmail kept scaling with the doctor now stating that through his network he would ensure she didn't land a job in the entire state, let alone Lucknow.

The next one month was fairly repetitive in the nature of this ordeal, his pursuit unrelenting; Kusum eventually gave into his demands. She saw this as the only way to escape the daily torture and she badly needed her job.

ACT 3 - A QUAGMIRE

Meanwhile, she got to know that the doctor had also been involved with Pooja for the last two years, even his wife had got wind of the affair. One day Pooja confronted Kusum and told her that the doctor would marry her soon so she should stay away from him. Kusum shared this with the doctor on WhatsApp who assured her that she has nothing to worry about as he has decided that Pooja's contract will not be renewed. Overtime, more incidents came to light and Kusum realised she was not the first one to be victimised by the doctor. He had a bad reputation with women even in his previous job. Rumour had it that the nurse who was selected prior to Kusum had also left due to his sexual advances. She apparently had reported the incident to someone but no action was taken and she was advised to leave the job.

Kusum didn't even have the option to resign, not until she found another job. The situation at work only plummeted further. The threats and intimidation became direct, physical and severe. Meanwhile, other people suspected that the duo were in a relationship. Further, some said that Kusum was very ambitious about her career and was using the DCMO for advancing her career.

One day when she was with him, in his car, he said that if she ever refused him, he would publicly shame her as a woman of easy passable morals. She felt she was caught in a quagmire, the harder she struggled, the deeper she sank.

ACT 4 - AN ACT OF COURAGE

She felt ashamed, she felt alone. Who would believe her now, even if she complained?

And who could she complain to? Her limited network within the hospital didn't seem to give her any hope. But she had to do something. Maybe if she had evidence, someone would listen to her.



Whenever she was inside the dentist ward with him, she would try and use her phone camera to capture everything that happened- behind the curtain, near the wash area. If he got to know, he would kill her.

After several attempts, one video came out clear which showed his face and his actions. Would she ever use this video? She wasn't sure.

But having done that, she felt more confident than ever. She told him to stay away from her or else she would complain against him, though she did not mention the video. At this assertion by her, he was mad with anger and he hit her. But she was determined this time. He threatened that he would terminate her contract the next morning, 6 months prior to the completion of the term. That night Kusum decided that she had had enough.

PART II

ACT 1- CONSTITUTING AN IC- THE ART OF THE BARE MINIMUM

Sreelekha Iyer was pacing in her office, gathering her thoughts from the last telephonic conversation. The PS to the General Manager, informed her of her appointment as the Chair to the Internal Committee for the PSU's Lucknow division. The previous committee's term had expired few months ago. Further, he added hastily, they had already been notified of a sexual harassment complaint and she must immediately get the ball rolling.

"But I do not have any prior experience in handling such cases!", she exclaimed.

"Your appointment is inline with our stated guidelines. We need a senior woman, there's no one else who fits the criteria."

As she paused trying to gauge the enormity of the task at hand, the PS pressed on- "Please take up any further concerns with the GM directly". With that the call got concluded.

Iyer now, sat down, thinking.

She did not want to go the GM with her apprehensions. This task would be in addition to all her other work responsibilities, with no additional support or staff. And these issues are often controversial.

As far as she could recall, there had not been a singular incident of such a nature reported earlier, ever. It did seem strange, for the entirety of her tenure here, the PSU had been a safe township with a strong sense of community. It prided itself for the quality of life it delivered and attracted educated and skilled professionals countrywide. Hailing from Tamil Nadu herself, she was very much at ease in this integrated family located in Lucknow in Uttar Pradesh.

The case would have strong undercurrents within the organisation, and she felt nothing in her 20 years long career as an engineer equipped her for this new role.

The rest of the committee, as she was informed, comprised of 2 Manager level employees- Aparna and Sumit, the Principal of the school owned and run by the PSU and a member of the legal cell- Prakash. She had heard of the Principal, who had been



there for more than 20 years and was well-regarded. She was relieved to have Prakash on board, he would guide them through the provisions and technicalities of law.

ACT 2- A SCRUTINY IN SHAMBLES

Within a week of the re-constitution, the committee members met to discuss the complaint. The complainant had penned down her complaint in over 15 pages in Hindi. Sifting through, Ms. Iyer found it difficult to comprehend it fully. Even after a decade spent in the Hindi heartland, she remained challenged.

Broadly, she gathered that the complainant was a 27-year-old nurse named Kusum who had been working in the dental ward on a contractual-basis. She alleged that she had been repeatedly sexually harassed and violated by the DCMO, Dr. Kala for the entirety of her tenure of 6 months.

Ms Iyer, opened the floor for discussions. The legal expert, Prakash, made an observation on the marital status of the complainant.

“Unmarried at 27, seems strange”

“Possibly an affair that went bad. It happens a lot”, the Principal chimed in, outrightly stating that she felt from the beginning that the case was bogus.

The HR manager, Aparna urged the committee to have an open mind and deal with the facts of the case methodically and without any preconceived notions. “It’s too early to jump to any conclusions.” The committee decided to meet the complainant in the next meeting.

Kusum walked into the room. She seemed petrified of it all, as she sat down, she was informed that the session is being taped on a video recorder. The stiffness and discomfort in the room was palpable. The committee seemed to be clueless on how to initiate the discussion, what should be asked, what shouldn’t be?

Ms. Iyer took the lead encouraging Kusum to narrate what had happened. She noticed her male- counterparts did not seem at ease.

Kusum shared that she had been recruited as a contractual nurse after a second round of interviews. She had not been selected earlier for not meeting a key eligibility criterion. Both rounds were conducted by Dr. Kala and she was to work under his direct supervision in the Dental- ward. It is here that the harassment spree began and continued.

“He has ruined my life, and I live in constant fear of him.” she broke off
“If something is not done, I will also end up losing my job”

As the committee began to probe further, they found dealing with Kusum increasingly difficult. She had flashes of anger coupled with bouts of crying. They sensed both her uneasiness and her lack of. For every question fielded-

“What about his behaviour did you find problematic?” “Why didn’t you bring this up earlier?” “Why now?” “Why did you not go to the Police?”

She only repeated the same answer, that he is a sick man and must be punished.



Eventually, she had a break-down. She accused them of shielding the DCMO because he is politically very powerful. Both sides were extremely frustrated at making little headway.

Post the session, a general suggestion floated within the committee to have Kusum interface the women members separately- it might help Kusum be comfortable.

And it did. The next interaction entailed a 4 hour gruelling session.

Kusum narrated the incidents in full chronology, some of which were gruesome. She showed the committee several messages from Dr. Kala's official number. The exchange initially had lewd pornographic messages, followed by a tone of direct sexual explicitness. There was blackmail, he threatened to terminate her contract and that of another nurse, Pooja, should she trouble Kusum.

Towards the end, exhausted, Kusum remarked that she knew he is too powerful to be touched.

This discourse had shaken Ms. Iyer up considerably. She felt Kusum had been wronged. But was the evidence insurmountable? What if she was lying? The doctor had a lot at stake. Was Kusum's consent there or not there?

In the next meeting, the DCMO was summoned. He expressed clear shock at the allegations and complete denial. But the committee kept probing him. Eventually he relented, "Yes, we had been in a relationship, but it was between two mutually consenting adults."

Kusum, was called in for a joint interrogation which left everyone unsettled. An aggressive Kusum hurled abuses at a submissive doctor as she read out their message exchanges. While she submitted a copy of the same to the committee, he said he would send in his written statement.

Iyer was deeply concerned at the pace and quality of discourse within the IC itself. Members were not forthcoming in their views. Every session also aggrieved the complainant further and the case itself remained inconclusive. She decided to interview more witnesses.

Pooja, another contractual nurse deployed under Dr. Kala's supervision, squarely blamed Kusum for falsifying facts. She commented on her 'loose character'. A male nurse, Kailash, on the contrary indicated the Doctor had a vile reputation, he especially targeted younger women. But nothing ever got reported. He had targeted the nurse who had joined before Kusum, who left job because of he began harassing her as soon as she joined. He indicated he had had affairs in the past with his staff, including Pooja.

He further confirmed he had seen Dr. Kala and Kusum in a compromising position on at least two occasions.

During this investigation, Iyer got a call from another nurse- Shanti. She alleged she had faced a similar ordeal with the DCMO and had directly confronted him over the profane messages. He denied sending them but continued to do so. Perplexed, she reached out to a senior nurse in the Maternity Ward, who hailed from the same village in Kerala as her. She advised Shanti to quit. That he had sexually exploited several women, where



ever he was posted, was a secret known to everyone. His Modus Operandi was to directly target younger women especially those with less paid or contractual jobs. But he had remained unscathed over the last decade.

Shanti remained deeply resentful as she had to take up a lower paying job in Orissa for sustenance. Iyer made this known to the entire committee and made them listen to the recording of Shanti's telephonic conversation. She requested Shanti for a written statement on email.

Meanwhile, the DCMO's statement arrived and was laden with accusations on Kusum. He alleged that she had lied about a critical certification claiming she will submit the necessary documents later, which she never did. When confronted, she threatened to shame him on charges of sexual harassment and blackmailed him to remain silent.

The committee asked Kusum to clarify the statement. She lashed back accusing them of blindly supporting the doctor and suppressing the truth. The situation turned volatile with Prakash bluntly stating this was all a waste of time and bolting out of the room. Calming Kusum down, the committee pressed her for a response. This is when for the first time she shared that she had video evidence.

To Iyer's dismay, the men in the committee refused to watch the video, despite her repeated insistence. She along with the other two women members saw the footage which left them aghast. It appeared clearly to their minds, that the DCMO had abused his authority forcing Kusum to comply with his sexual demands. Such acts were committed inside the dentist ward during work hours.

Meanwhile, Ms. Iyer received a call from a colleague, AGM Admin, inquiring about the case.

"Such incidents do not occur without the girl enticing the man. Secondly she is a mere contractual employee but the long-earned reputation of the doctor is at stake."

He further added that he had received a representation from the SC/ST Welfare Association of the PSU claiming the Doctor was being framed because of his caste. He warned her that incase the doctor proceeded with a police complaint, she would be personally liable.

Alarmed, Iyer wondered why was she being personally targeted. She felt a deep sense of abandonment from the organisation.

PART III

ACT 1-PIECING TOGETHER THE VERDICT

Eventually, Ms. Iyer persuaded all the members to watch the footage. Immediately after, she probed them-

"Would you like sending your wife/children/mother to this doctor for a tooth ache?"

"Is he not a threat to women and child patients of the PSU family?"



Post considerable deliberation on all the gathered evidence the IC found Dr. Kala guilty on the following charges of sexual harassment-

1. Sending profane messages from his official number
2. Misusing his power to hire-fire contractual women employees
3. Threatening women subordinates into sexual demands
4. Physical intimidation and sexual assault at the workplace.

They were of the view that the accused must be removed from the job, they deliberated and decided not to specify the quantum of punishment.

They deliberated if Kusum should be awarded compensation and also provided with interim relief either in terms of leave or her transfer to another ward or his transfer to another hospital. The IC wholly acknowledged the psychological trauma she had undergone. She was possibly suffering from Post-Traumatic Stress Disorder and Depression and might also be in need of gynecological or medical attention. They concluded in their report that it was not safe for her to continue working under Dr. Kala, but desisted from recommending an interim relief.

Concluding the above, as per the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, a report was submitted to the GM well within the deadline.

ACT 2- RE-PIECING THE VERDICT

The GM in-turn took the following executive decisions-

1. Issue notice to Kusum for termination of her contract, 5 months prior to the date of expiry for unauthorized absence from duty on three occasions in the past 3 months.
2. Issue notice to Kailash for termination of his contract, 7 months prior to the date of expiry, despite an impeccable record of working on this position for more than 3 years.
3. Dr. Kala was given a clean chit and a green signal to continue work.
4. IC was reconstituted with another Chairperson.

All the above timely concluded after coercion of the committee to water- down findings against the DCMO ensuring a softer landing for him. The video appeared to have been morphed. The DCMO denied sending the messages- his phone was tampered with. They were asked to add another dimension to the report: the role and responsibility of the victim in the series of events reported.

TEACHING NOTES

(Abbreviation used- SH@WP for Sexual Harassment at Work Place)

I. OVERVIEW OF THE CASE

The Case is based on a real life incident with which one of the authors had direct engagement in her capacity as a Gender Trainer officially engaged by the organisation to conduct training on the Sexual harassment at Workplace (Prevention, Prohibition and Redressal) Act 2013 for the members of their Internal Committee. The factual details have been suitably modified in view of the privacy of the protagonist and in order to make the case academically relevant. The case is divided into three parts.

The first part has been written from the perspective of the victim and deals with the understanding of what constitutes SH@WP. The second part has been written from the perspective of the Chairperson of the Internal Committee (IC) and deals with the understanding of the factors that lead to the efficacy or lack of it, of an IC. The third part is in the form of an epilogue which describes what happened in the actual case.

The case study has been designed for a comprehensive 2-day module to cover all aspects of SH@WP in detail. To make the case amenable to shorter courses/sessions, Parts 1 & 2 are written to be complete in themselves, so that they may be used independently.

Part I may be used for creating awareness on the subject, to understand the nature of SH@WP and to provide a lens to examine what factors in an organisation create such conditions that make women employees vulnerable to SH@WP.

Part II may be used for understanding the functioning of an IC, the challenges before them & the role of organisation's leadership or management in facilitating or crippling an IC or even a LC. Both Part I & II may be concluded independently using Part III.

II. CASE BACKGROUND

There may be several reasons why a woman might want to work. She might be keen to be economically independent or to support her family financially. She may be deriving self fulfilment out of her work. Or it may be a combination of several factors. But what happens when a woman is compelled to choose between her job and sexual harassment by someone at her workplace?

In India, SH@WP has only recently been recognised as a specialised form of Sexual Harassment which women face at their workplace. This drives many to seek transfers, to forgo promotions and ultimately to leave their jobs. And has negative health consequences for the women, like depression, severe anxiety, insomnia and many more. Often, the victims of SH@WP themselves and bystanders engage in victim blaming, attributing the incident to the victim herself, either partially or fully. This, combined



with several other factors compels victims to remain silent and not report the matter, formally or informally. Research has also documented that most organisations pay lip service to the Anti Sexual Harassment policies and do not see it as violence against women or as violation of the fundamental rights of women. Hence do not take it with the seriousness it merits. This is systemic.

In this backdrop, the present Case examines the factors that make a young female employee in a Public Sector Undertaking (PSU) in India, vulnerable to SH@WP. Harassment that begins with a direct quid- pro-quo, goes on for months to create an extremely hostile work environment for her. As a corollary, the case also brings out the factors that enable the respondent to commit sexual violence on his female coworkers. How the physical infrastructure, the communication channels in the organisation, the unchecked power of hire and fire, male dominated organisations, the perception of someone being 'powerful', lack of awareness about the reporting and redressal mechanisms, all these factors come together to make an organisation unsafe for women. How did she get caught in this quagmire like situation? Who could she share this with? Would her own family support her if she shares with them? Would her colleagues and seniors not attribute all this to her? Whom can she complain to? Would she lose her job if she complained? Can she survive this battle against a powerful man? When she summons the courage to make a formal complaint, what are the hurdles before her? How is she treated by the Internal Committee? The challenges the Committee faces in conducting the enquiry, the extraneous pressures on them and the legal lacunae that leave them toothless.

Finally, does the organisation in question comply with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013? Merely in letter or in spirit as well? The Case examines the nuances of all these aspects of SH@WP and many more.

III. LEARNING OBJECTIVES

- To understand what constitutes SH@WP. (Part I)
- To understand the dynamics of power during the incident, reporting, enquiry and redress of a case of SH@WP. (Part I)
- To understand the legal and procedural framework for prevention, prohibition and redress of SH@WP. (Part II)
- To understand the factors that limit the effectiveness of an ICC. (Part II)
- To strengthen capacity to prevent, prohibit, and redress SH@WP. (Part III)

IV. TARGET AUDIENCE

- Any public/private organisation seeking to train and sensitise their employees
- Any IC constituted under the law

- Any LC constituted under the law
- Administrative Officers at the implementation level eg. SDM, ADM, DM
- Police Officers/ Special Police Cells for Women
- Chairpersons/Members of Women's Commissions at the Central or State levels
- NGOs working in the field of Women's Rights
- University/College students
- Administrative Officers from other countries seeking to understand the mechanism for Prevention, Prohibition and Redressal of SH@WP in India

V. STEP BY STEP GUIDE

Step 1	: Briefing on the Learning Objectives and Session Plan
Step 2	: Setting the Ground Rules
Step 3	: Warm-up/Opening Questions
Step 4	: Case Study Part 1- Reading and Stakeholder Analysis
Step 5	: Conduct Syndicate Group Work-1
Step 6	: Case Study Part 2- Reading and Syndicate Group Work
Step 7	: Conduct Syndicate Group Work-2
Step 8	: Case Study Part 3- Reading and Syndicate Group Work
Step 9	: Conduct Syndicate Group Work-3
Step 10	: Conduct Role Play
Step 11	: Share Additional Readings/Resources

VI. CASE TEACHING GUIDELINES

i). Pre-reading/Appendices- To be circulated on email in advance

Appendix 1- Case Background

Appendix 2- Handbook on Sexual Harassment of Women at Workplace by Ministry of Women & Child Development. (<https://wcd.nic.in/sites/default/files/Handbook%20on%20Sexual%20Harassment%20of%20Women%20at%20Workplace.pdf>)

Appendix 3- Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013

ii). Opening Questions- The opening questions that have been tested and tried by the author, that work well to introduce the subject as well as to elicit participant engagement-



- Are you familiar with the #Me-too movement of Hollywood? Did you hear or read about it?
- Do you think it is a western phenomenon and may not be happening in our country?
- Do you think SH@WP is limited to certain workplaces like the Film/ Entertainment Industry?
- At your workplace have you ever witnessed any incident of SH@WP happening with anyone?
- Do you think that there could be a relationship between women's fundamental freedom to work and SH@WP?

iii). Case Teaching Pedagogies- This case can be taught using *any one* of the following pedagogies: Role Play, Syndicate Group Work or Stakeholder Analysis. For any of these pedagogies the participants may be divided into groups of 5 each. Groups may be designed to have diversity in terms of gender and other parameters.

It is suggested that the session may be conducted as a series of 2 group works (for Part 1 and Part 2) and one Role Play (for Part 3), as explained below-

iv). Administer Part 1 of the Case Study- Once the participants have gone through Case Study Part 1, conduct Syndicate Group Work as follows:

• Syndicate Group Work - 1

Print out the following list of Driver Questions into as many copies as are the groups. Alternately, questions may also appear in that sequence on a PowerPoint Presentation.

Ask each group to discuss the Questions within the group and list out the answer/s on which most members of the group agree.

• Driver Questions?

(To be answered based on what has been narrated/reported)-

- Does the behaviour and actions of the DCMO towards the nurse Kusum constitute SH@WP? Y/N
- Identify and list those behaviours/actions.
- Which form of SH@WP do the behaviours/actions of the DCMO constitute?
- What are the factors that might contribute to the DCMO having 'power' over the nurse (at the personal and organisational level)?
- What are the factors that might have contributed to the vulnerability of Kusum?
- What are the recourses available to Kusum? **PROBABLE ANSWERS-**

A. Yes

B. Porn messages/jokes via his mobile, asking out for movie, threatening to terminate her contract

C. Both Quid Pro Quo and Hostile Work Environment.



- D. Gender, Seniority, Power in selection and removal of contractual employees, Age, Prior history of similar abuses, caste-based network, acceptance of such male behaviour by the patriarch society.
- E. Gender, SES, Contractual employee, Age, personality factors like lack of assertiveness.

ICC, Police Complaint, Resignation (could ask them in real life which option is most likely to be exercised?)

After Group Discussions are over, in the full group, go through the Questions one by one, give opportunity to as many participants as possible, to contribute to the discussion. Conclude the discussion by linking everything to the Learning Objectives. First, to understand what constitutes SH@WP and second, to understand the dynamics of power during the incident, reporting, enquiry and redress of a case of SH@WP.

It is pertinent to note here that the instructor may give complete freedom to the participants to evolve their solution, their reasoning and arguments. There is no one correct solution to this and none may be recommended or favoured by the instructor. The views of the participants may be respected, the idea is to make them think and deliberate. It is possible that groups or participants may differ in their responses, which must be leveraged for a more nuanced discussion.

(Note: In view of time constraint, Group Work may be replaced by a moderated discussion around the Driver Questions below. Though, group work elicits better group engagement and leads to better learning outcomes.)

v). Administer Part II of the Case Study- Once the participants have gone through Case Study Part 2, conduct Syndicate Group Work as follows:

- **Syndicate Group Work – 2**

Using the same groups of 5 each, as above, designate each group as the IC as in the Case Part 2 above. Each committee to deliberate upon the complaint, the procedure of enquiry to be followed, arrive at a conclusion based on the available evidence and list out the recommendations based on the SH@WP Law.

(The major recommendations by each committee may be put up on a flip chart and displayed around the class.)

- **Driver Questions?**

(To be answered based on what has been narrated/reported)-

- A. As Chairperson IC did you face any dilemma?
- B. As Chairperson IC what were the enablers available to you in making the right decision?
- C. As Chairperson IC what were the disablers that prevented you from making the right decision?



- D. What procedure did the IC follow in conducting this enquiry?
- E. What are the legal entitlements of the complainant?
- F. What are the legal entitlements of the respondent?
- G. What are the constraints before the IC in real life settings?
- H. Was the composition of this IC as per the requirements of the law?
- I. What are the various deadlines under the law?
- J. Had you been the HoD/Chairperson/MD of the PSU, with this finding, what decision would you have taken?

After Group Discussions are over, in the full group, go through the Driver Questions one by one, give opportunity to as many participants as possible, to contribute to the discussion. Conclude the discussion by linking everything to the Learning Objectives. First, to understand the legal and procedural framework for prevention, prohibition and redress of SH@WP and second, to understand the factors that limit the effectiveness of an ICC.

(Note: If time permits, then one or more groups may be asked to do role play of the deliberations of the ICC. Role Play is more experiential than group work and elicits better group engagement and leads to better learning outcomes. In case of paucity of time, Group Work may be replaced by a moderated discussion around the Driver Questions. Though, group work elicits better group engagement and leads to better learning outcomes.)

vi). Administer Part III of the Case Study- Once the participants have gone through the Case Part-3, conduct Syndicate Group Work as follows.

Role Play

Using the same groups of 5, each designated as an IC, each IC may be asked to develop a framework to strengthen an individual's, an ICC's and an organisation's capacity to prevent, prohibit, and redress SH@WP.

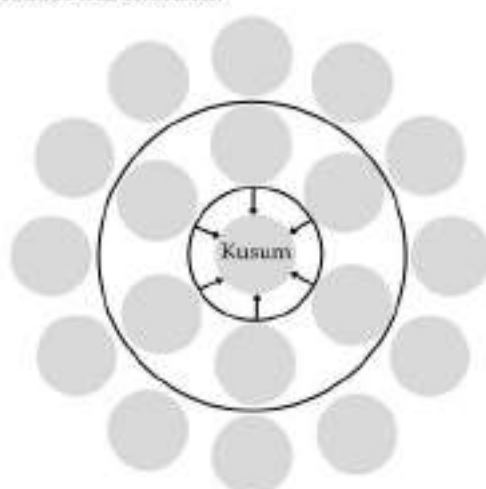
The recommendations of the committee may be enacted as role play by the committee members.

(In case of paucity of time the major recommendations of each committee may be put up on a flip chart and displayed around the class or presented on power point. Group Work may be replaced by a moderated discussion around the Learning Objective. Though, the group work elicits better group engagement and leads to better learning outcomes.)

Stakeholder Analysis

As an alternative to the above combination of Syndicate Group Work and Role Play as pedagogy of, a combination of stake holder analysis (for Part-1) and syndicate group work (for part-2 and 3) may be used. The purpose of Stakeholder Analysis is to clarify the roles and responsibilities of each stakeholder in solving the problem at hand. It brings about better understanding of not just one's own role but also the role of other stakeholders. Hence, better coordination. It may be conducted on the format provided below.

After the participants have been divided into smaller groups, ask each group to use the given format to map stakeholders with Kusum at the center. The duty holders who appeared on the scene and responded may be mapped in the inner circle and those who did not appear on the scene but had a legal responsibility may be mapped in the outer circle. As a next step ask them to briefly write down about the roles and responsibilities of each duty holder and discuss the extent of shortfall on the part of each of them and what may be the reasons for this shortfall.



VII. TIME MANAGEMENT PLAN

Subject	Duration	Cumulative	Clock
Case Study Part I- Reading	10 minutes	10 minutes	
Syndicate Group Work-1 Small Group Discussion on Driver Questions	15 minutes	25 minutes	
Full Group Discussion on Driver Questions	15 minutes	45 minutes	
Case Study Part II- Reading	10 minutes	55 minutes	
Syndicate Group Work-2 Small Group Discussion on Driver Questions	15 minutes	70 minutes	
Full Group Discussion on Driver Questions	15 minutes	85 minutes	
Key Legal Provisions (PPT)	15 minutes	100 minutes	



Case Study Part III- Reading	5 minutes	105 minutes	
Role Play	45 minutes	150 minutes	
Summing Up	10 minutes	160 minutes	

VIII. ADDITIONAL READINGS

- A Video on brief introduction on Sexual Harassment at Workplace Act (<https://youtu.be/fag3CwJfdIY>)
- A Video on interview of Mrs. R. Bajaj upon her being victim of Sexual Harassment (<https://youtu.be/WJjtoV2mXKE>)
- Sexual Harassment at the Workplace: What Kind of Change Do Internal Committees Need?
- https://www.epw.in/engage/article/sexual-harassment-workplace-what-kind-change-do?0=ip_login_no_cache%3Da5e27b88859e3e6813915babb27e1093
- Why Most Women Do Not Report Sexual Harassment in the Workplace: A Reading List
- https://www.epw.in/engage/article/why-most-women-do-not-report-sexual-harassment-workplace-readinglist?0=ip_login_no_cache%3Da5e27b88859e3e6813915babb27e1093
- Examining Local Committees under the Sexual Harassment of Women at Workplace Act
- <https://www.epw.in/journal/2020/20/review-womens-studies/examining-local-committees-under-sexual-harassment.html>
- Do Courts Rely on Stereotypes Instead of Legal Frameworks in Cases of Sexual Harassment? <https://www.epw.in/engage/article/sexual-harassment-workplace-false-complaints-stereotypes-posh-act>
- Piercing the impunity
- <https://indianexpress.com/article/opinion/editorials/tamil-nadu-police-officer-sexual-harassment-7213053/>

IX. TRIAL RUN

- **First Trial Run** at ATI WB for the ongoing Induction Training Program for officers of state services promoted to the IAS. Date- 17th Aug 2018, Total no of participants- 28, Women- 2, States- 8.

Observations during the first trial of the case

The case was preceded by a 30-40 mins discussion on 'Understanding Gender', gender based inequalities and Gender based Violence. This was very crucial. In the opinion of the authors, rolling out the case directly may not be a good idea.

The case was interesting to read and was received positively by all participants. The answer to the question, whether this is a case of SH@WP was 'yes' unanimously, with not a single vote of disagreement.

Responses to the questionnaire indicated their exposure to the subject as a group. Flowing back the trends of their responses into the session was useful. For example, out of 28 officers, 10 have handled or seen a case of SH@WP directly, out of these 10, the respondent was transferred in two cases, admonished in two cases, issued warning in two cases and one case was taken back, one case found to be false. The question of misuse of the law came up towards the end. It is likely to be raised in all such sessions. The facilitator to be prepared with a reasonable response.

The Case is more useful for longer a training, preferably a training exclusively organised for this subject. If the Case is taught over a span of 2-3 days, better and deeper understanding of the subject would be derived from it.

If only a session of around an hour is available, then only Case Part I or only Case Part II must be used depending on the audience. Part I is useful for an uninitiated audience while the Part II is more useful for the audience who have a basic prior understanding of the subject. The Epilogue may be supplied for reading at the end, if only Part I is being used.

- **The Second Trial Run** at LBSNAA for the ongoing Induction Training Program for officers of state services promoted to the IAS. Date- 26th Aug 2018, Total no of participants- 90, Women- 20, States- 10

Observations during the second trial of the case

Due to time constraint, only Part I of the Case Study was used for the respective learning objectives. The other learning objectives were covered through a PPT and two videos. Awareness level about the law was low in general, but the participants found the subject relevant and significant, as indicated by the feedback after the session.

X. HANDOUT

Chronology of Events

Month/Year	Event
January 2017	Kusum applies for the contractual vacancy of a nurse at the PSU Hospital but is not selected
April 2017	Kusum is selected for the same vacancy
October 2017	Kusum files a formal complaint of SH@WP to the ICC of the PSU
January 2018	IC submit their report to the HOD
February 2018	Notice issued to Kailash for termination of contract
March 2018	1. Notice issued to Kusum for termination of contract 2. Contract of Kailash terminated
April 2018	DCMO absolved of all charges




JUSTICE DELIVERY IN DOMESTIC VIOLENCE: A Case of a Live-in Relationship

Anupama TV

About the Author

Anupama TV is an IAS Officer of the 2010 batch borne on the Kerala Cadre. She served as District Collector of Alappuzha and Thrissur districts. She also served as Director Tourism, Food Safety Commissioner and Director of Social Justice. Since 2019 she is serving as Director Women and Child in the state of Kerala.

PART - I

This part narrates the story of Mala in the words of the DC Seema, how the protagonist Mala got in touch with the DC, what actions were taken by the DC and what transpired hence.

It was 5:30 am on a morning in September 2017. It was not unusual for a District Collector (DC) to wake up to an early phone call. Seema expected it to be a case of illegal mining or encroachment which often happen during the wee hours of the night.

But to her surprise, it turned out to be a 24-year-old nursing student, named Mala, who landed in Thrissur district searching for her partner. She had called Seema from Irawadi police station premises where she had landed up seeking help of police in locating the address of her partner. To her shock, police informed her that the person she came searching for had already left the country to

join a new job in the Middle East. Distressed, Mala then chose to call the District Collector (Seema) for help.

Seema referred the case to Surekha, the Women Protection Officer, who got in touch with the Station House Officer as well as Mala. The story was thus revealed to the DC - Mala was in a live-in relationship with a boy (Sanjay) while studying in Hyderabad. One day, following a fight between them, Sanjay left their apartment. Mala didn't hear from him for a while and came to Irawadi in search of him. There she went to his house, met him and his parents, had a minor altercation with them, and left soon, after only to come back a week later. When she returned she realized Sanjay had fled the place not wanting to have her in his life. Disappointed Mala spent entire night in the police station requesting the police officers to bring Sanjay back from Middle East. In the morning at 5:30 am she called Seema with this very expectation.

On further inquiry it was revealed that Sanjay's parents who owned the house had already secured a judicial order restraining her from visiting them. Police were in a dilemma, but Surekha also reached the police station and they together summoned the parents to the Police station. They informed that their son did not want to be with her because of her deviant behaviour". They even spoke to Sanjay over the phone who informed them of his decision to break up with her. On the other hand, despite the order restraining Mala's visit to Sanjay's parents' house, she was adamant to stay in their house.

Despite the order of restraint, Surekha was quick to file Domestic Incident Report (DIR) with Judicial Magistrate First Class and pursued it strongly. The Magistrate dictated the orders and issued the same in a couple of days.

The order secured Mala the following:

1. Protection from all kinds of domestic violence
2. Monthly maintenance of Rs. 5000/-
3. Alternative accommodation equivalent to the one held by Sanjay's parents

However, over a period of time Mala started showing signs of psychological distress. She became bitter towards police, WPO and Seema. Soon the One Stop Centre (OSC) staff, where she was temporarily admitted, also learnt that Mala was 2 months pregnant. She left the OSC and went to Irawadi again. There she started a protest in front of Sanjay's parents' house. Fearing for her safety, the police had to forcefully move her from there to the police station at night.

Mala refused to be readmitted at OSC. Everybody was constrained in using any force of any kind on her, considering her ill health and pregnancy. Next day, as per the court order an alternative accommodation was arranged and Mala was shifted there. But Mala again attempted to run back to the house of Sanjay's parents. She declined food and refused to take up the alternative accommodation. Instead, she spent the entire night at a bus stop near the police station where three police officers guarded her over night.



Considering the poor physical and mental health of Mala, Surekha secured the orders to get Mala admitted in mental health centre. Meanwhile talks were on with Sanjay's parents and Mala's parents who lived in the neighbouring district of Pazhyam. Mala's parents had long abandoned her and they did not know of her relationship with Sanjay. Sanjay and his parents were convinced that they could never live with Mala.

The police were finding it hard to carry out their duty with respect to this case. However, finally the officers at Pazhyam district succeeded in convincing Mala's brother-in-law to take her to her parents. He personally came down and took her back home, much against her wish.

PART- II

This part narrates the story of the protagonist Mala in the words of the Women Protection Officer Surekha who was entrusted with the responsibility of taking necessary action in the case of Mala by the DC. Surekha engaged with Mala and other stakeholders in the case. She continues to be in touch with Mala and is following the various court cases in the matter, last updated January 2021.

Mala was working as a nurse in a hospital at Hyderabad where Sanjay was working as a trainee engineer. They both fell in love and got married to each other in a temple at Hyderabad on 21/5/2017. Both of them were from different religious backgrounds; Mala was a Christian and Sanjay was a Hindu. Sanjay convinced Mala that he had informed his parents about their relationship and after reaching Irawadi they would get their marriage registered in a Registrar's office. They both continued living in Hyderabad for some time and also maintained physical relationship.

Everything was going well between the two, when after few weeks Mala informed Sanjay that she is pregnant and they must get their marriage registered now. Sanjay asked Mala to abort the child; on her refusal he coerced her to abort the child if she wants their marriage to get registered. Mala agreed and aborted the child.

After few weeks, by the end of June 2017, Sanjay left from Hyderabad without informing Mala. Mala frantically tried to reach out to Sanjay through calls/texts but got no response. Eventually on 15 July 2017, Mala reached Irawadi, native place of Sanjay, looking for him.

She went to his parents' house; there she was asked to return to Hyderabad. They also offered to pay 5 lakh rupees as compensation in order to end her relationship with Sanjay.

Mala filed a complaint with the Irawadi police station. The police arranged for a mediation talk between Mala and Sanjay. On the basis of the mediation talk, their marriage was solemnised and registered on 30 July 2017 in Irawadi Sub-Registrar's Office. After registration of the marriage, Mala went back to Hyderabad to join her



work. However, Sanjay refused to join her in their shared household stating that because of their marriage his parents had disowned him. Still, both of them continued to remain in contact.

After some time, somewhere in August Sanjay requested Mala to come to Kerala to live with him. She complied and without the knowledge of Sanjay's parents lived in Thrissur for ten days. During this period, they maintained physical relationship. Sanjay compelled her to divorce her however she refused to do so. He also threatened her but Mala remained adamant.

After spending 10 days with Sanjay, Mala returned to Hyderabad to resume her work. To her dismay Sanjay avoided her calls/texts. She also went to Irawadi to meet him but could not find him. She also filed a complaint with Irawadi police and a case was registered against Sanjay and his parents under relevant Sections 498(A), 420, 341, 323, 324, 354 r/w 34 IPC.

Mala also complained to Thrissur District Collector, on the basis of which WPO Surekha was appointed to provide all necessary assistance to Mala. Mala was provided counselling and was taken to Shakhi One Stop Centre (OSC) for short stay and the very next day a petition was also filed under the Domestic Violence Act, 2005 along with Domestic Incident Report (DIR).

An interim order was passed in favour of Mala by the Judicial Magistrate First Class providing protection, interim maintenance of Rs. 5000 per month and alternative accommodation with necessary amenities. Though benefits of this order were not availed by Mala who insisted on bringing Sanjay back and refused to accept any protection or compensation.

Criminal case against Sanjay is pending who is absconding till date. Parents of Sanjay managed to secure bail from the High Court. When the criminal case was filed, Sanjay's parents sought mandatory injunction from Civil Court restraining Mala from entering their property. A restraint order against Mala was issued, however the case is still pending before the Court. The domestic violence case filed by Mala is also pending before the court till date.

When Mala escaped from the OSC, she sat in front of Sanjay's parents' house in protest. There she was given protection by the police officials who further transferred her case to the Chief Judicial Magistrate. Mala was also sent to Mental Health Centre for mental health assistance. Telecommunication was also established with her parents, siblings and other relatives to take her back. Finally, her brother-in-law agreed to take her back to her parents.

Mala gave birth to a baby boy and now works as a staff nurse in Hyderabad. However, she continues to wait for Sanjay.



TEACHING NOTES

I. OVERVIEW OF THE CASE STUDY

The case study is divided into two parts – Part I and Part II. Both these parts narrate the story of Mala from two different perspectives. Part I delineates the story of Mala from the perspective of the District Collector who was contacted by the protagonist Mala seeking an intervention. She took keen interest in the case, deputed an experienced and committed officer to the case and regularly followed up on the welfare of Mala. Part II is narrated from the perspective of Women Protection Officer Surekha who was more closely associated with the case. Her perspective brings different nuances in the case & inform us of the challenges faced by Mala.

II. STEP BY STEP GUIDE

- Step 1 : Briefing on the Learning Objectives and Session Plan
- Step 2 : Setting the Ground Rules
- Step 3 : Warm-up/Opening Questions
- Step 4 : Case Study Part 1- Reading and Stakeholder Analysis
- Step 5 : Case Study Part 2- Reading and Stakeholder Analysis
- Step 6 : Distribute Case Commentary to the participants for reading and questions, if any.
- Step 7 : Share Additional Readings/Resources

III. LEARNING OBJECTIVES

- To understand the legal & other adjunct challenges in cases of live-in relationships.
- To understand the role & responsibility of various stakeholders in cases of domestic violence.
- To understand the need for interagency coordination amongst various duty-holders in cases of domestic violence.

IV. TARGET AUDIENCES

- Administrative Officers at the implementation and monitoring level – SDM, DM, ADM.
- Police officers
- Protection Officers under DV Act

- One-stop Centre staff
- Medical Officers
- Non-Governmental Organisations (NGOs)
- Judges
- Public Prosecutors
- Trainers
- Law Students

V. CASE TEACHING GUIDELINES

- I. Administer Part I of the case study to the participants.
- II. Ask following driver questions to elicit the response of participants
 - (a) Do you think Mala is a victim of domestic violence?
 - (b) Is Mala victim of any other crime?
 - (c) Do you think the assistance provided to Mala by the Court was sufficient?
 - (d) Do you think Mala was provided following:
 - *Necessary legal assistance – Yes/No*
 - *Necessary health facilities – Yes/No*
 - *Necessary counseling support – Yes/No*
 - (e) Do you think that the necessary steps were taken to rehabilitate Mala? Yes/No. *Rehabilitation in terms of providing her medical, psychological support, shelter, job opportunity, compensation and so on*
 - (f) What other legal remedy could have been provided to Mala?
 - (g) List out the steps you could have taken in your professional capacity, keeping in mind your official position, to provide necessary support to Mala?
- III. Administer Part II of the case study to the participants.
- IV. Ask following driver questions to elicit the response of participants
 - (a) What additional legal challenges arise in Part II?
 - (b) According to you, what crimes were committed against Mala?
 - (c) Do you think that certain biases were operating against Mala in Part II? Enumerate them and discuss.

VI. CASE TEACHING PEDAGOGIES

The participants can be divided into smaller groups for detailed discussion on the possible solutions to the problem at hand or to answer the dilemma question. For a



group of 30 participants, it is recommended to divide them into 3 groups of 10 each. They may be encouraged to conduct one of the following pedagogical exercises-

i) Role Play

ii) Stakeholder Analysis or

iii) Syndicate Group Discussion

It is pertinent to note here that the instructor may give complete freedom to the participants to evolve their solution, their reasoning and arguments. There is no one correct solution to this and none may be recommended or favored by the instructor. The views of the participants may be respected, the idea is to make them think and deliberate.

(i) Role Play

For the Role Play organise the participants into 'n' no of groups of 10 each. Each such group of 10 participants would divide the following characters amongst them through draw of lots.

1. *Mala*
2. *Sanjay*
3. *Parents of Sanjay*
4. *Women Protection Officer*
5. *District Magistrate*
6. *Judicial Magistrate*
7. *Police*
8. *Non-Government Organisations*
9. *Medical Officer*
10. *Family of Mala*

Time allotted to each group: 30 minutes

In the allotted time, using the limited information available in the case study and the reference material, the group shall discuss the following questions and explore whether they are or they are not able to arrive at a consensus or a solution.

6. What are the challenges experienced by each stakeholder in efficaciously dealing with cyber crimes of sexual nature?
7. Do you think there were any deviations from the law by any concerned stakeholder?
8. If so, what is the role/responsibility of each stakeholder?
9. How effectively could "access to justice" be provided to the victim in this case?

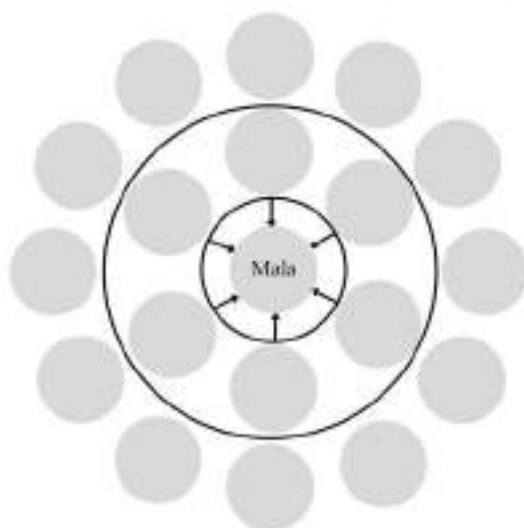
10. What steps could have been taken to provide “restorative care” or rehabilitation to the victim?

Time allotted to one randomly selected group for role play- 30 minutes (2 minutes each character and 10 minutes for summing up). In the allotted time each participant to speak only for the character being played and to focus on answering each of the questions above. Each response may be summed up with the steps that could be taken to prevent such crimes and provide proper care to the child victims.

(ii) Stakeholder Analysis

As an alternative to role play, a stake holder analysis may be done on the format provided below. The purpose is to clarify the roles and responsibilities of each stakeholder in solving the problem at hand. It brings about better understanding of not just one’s own role but also the role of other stakeholders leading to better multi-sectoral coordination. Note that the groups may be divided to have 10 different stakeholders in each group or alternately smaller groups of 3 each, each group representing one stakeholder.

After the groups have been formed, ask each group to use the given format to map stakeholders with Mallika at the Center. The duty holders who appeared on the scene and responded may be mapped in the inner circle and those who do not appear on the scene but had a legal responsibility may be mapped in the outer circle. As a next step ask them to briefly write down about the roles and responsibilities of each duty holder and discuss the extent of shortfall on the part of each of them and what may be the reasons for this shortfall. Following format may be used for stakeholder analysis:





(iii) Syndicate Group Discussion

Syndicate Group Work may be done where each group may be required to find a solution to the problem at hand specifying the role of each stakeholder. Note that the groups may be divided to have 10 different stakeholders in each group or alternately smaller groups of 3 each, each group representing one stakeholder.

After the groups have been formed, ask each group to discuss the possible solutions to the problems at hand. The respective group solutions may be represented on a chart paper or a PowerPoint presentation.

VII. TIME MANAGEMENT PLAN

Subject	Duration	Cumulative	Clock
Introduction	10 minutes	10 minutes	0900-0910 hrs
Case Study Part I- Reading	5 minutes	15 minutes	0910-0915
Discussion	10 minutes	25 minutes	0915-0925
Case Study Part II- Reading and Answering Individually	5 minutes	30 minutes	0925-0930
Key Legal Provisions - Reading	5 minutes	35 minutes	0930-0935
Role Play- Discussion within groups	20 minutes	55 minutes	0935-0955
Role Play- Enactment by two groups	60 minutes	115 minutes	0955-1055
Summing Up	5 minutes	120 minutes	1055-1100

VIII. REFERENCES

The following documents may be provided on email to the participants

Appendix 1A - Domestic Violence Act, 2005

Appendix 1B - Relevant provisions of Indian Penal Code

Appendix 1C - Performa of Domestic Incident Report

Appendix 1D - Medical Performa

IX. ADDITIONAL READINGS

1. <https://www.scconline.com/blog/post/2019/01/23/live-in-relationship-and-indian-judiciary/>.

2. *Indra Sarma v. V.K.V. Sarma*, (2013) 15 SCC 755.
3. *Dhannulal v. Ganeshram*, (2015) 12 SCC 301.
4. Anuja Agrawal, 'Law and Live-in relationships in India', EPW, available at <https://www.epw.in/journal/2012/39/special-articles/law-and-live-relationships-india.html>.

X. CASE COMMENTARY

The case commentary has been contributed by Ms. Swati Chauhan, Principal Judge, Family Court, Nanded, Maharashtra.

CASE COMMENTARY

Live-in relationships: Live-in relationships are yet to be legally defined in India. When it comes to the legal status, rights and obligations of live-in partners, there is a legal vacuum. The jurisprudence on the subject of live-in relationships is in a nascent stage. However, there are court judgements that attempt to clarify certain specific issues around live-in relationships, particularly under the ambit of the Domestic Violence law.

The Protection of Women from Domestic Violence Act, 2005 acknowledges and recognises the rights of females who are in live-in relationships in the following words:

Section 2(f) of the DV Act, 2005 defines:

Domestic relationship means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.

The term live-in relationship has been explicitly used anywhere in the DV Act, 2005. The courts have interpreted the phrase "through a relationship in the nature of marriage" to mean live-in relationship.¹¹ This interpretation gives the much needed protection to the women in live-in relationships from all forms of violence and abuse. In *Indra Sarma v. V.K.V. Sarma*¹² the two-judge bench of the Supreme Court of India laid down the following guidelines to determine whether a particular relationship is in the nature of marriage or not:

- (1) **Duration of period of relationship:** Section 2(f) of the DV Act has used the expression "at any point of time", which means a reasonable period of time to maintain and continue a relationship which may vary from case to case, depending upon the fact situation.
- (2) **Shared household:** The expression has been defined under Section 2(s) of the DV Act and, hence, need no further elaboration.
- (3) **Pooling of Resources and Financial Arrangements:** Supporting each other, or any one of them, financially, sharing bank accounts, acquiring immovable properties in joint names



or in the name of the woman, long term investments in business, shares in separate and joint names, so as to have a long standing relationship, maybe a guiding factor.

- (4) **Domestic Arrangements:** *Entrusting the responsibility, especially on the woman to run the home, do the household activities like cleaning, cooking, maintaining or up keeping the house, etc. is an indication of a relationship in the nature of marriage.*
- (5) **Sexual Relationship:** *Marriage like relationship refers to sexual relationship, not just for pleasure, but for emotional and intimate relationship, for procreation of children, so as to give emotional support, companionship and also material affection, caring etc.*
- (6) **Children:** *Having children is a strong indication of a relationship in the nature of marriage. Parties, therefore, intend to have a long standing relationship. Sharing the responsibility for bringing up and supporting them is also a strong indication.*
- (7) **Socialization in Public:** *Holding out to the public and socializing with friends, relations and others, as if they are husband and wife is a strong circumstance to hold the relationship is in the nature of marriage.*
- (8) **Intention and conduct of the parties:** *Common intention of parties as to what their relationship is to be and to involve, and as to their respective roles and responsibilities, primarily determines the nature of that relationship*

In *Dhanmudal v. Ganeshran*⁸, the apex court of the country held that the couples living in live-in relationships for a long duration will be presumed legally married and the woman would be able to inherit the property after death of her partner. These judgements reflect that the case law in India has taken incremental steps towards recognising the rights of women in live-in relationships under the DV Act, 2005.

However, in case of a marriage, domestic violence can serve as a ground for divorce but a live-in relationship cannot have a legal termination or closure. Moreover, there is often no registration and no contract in live-in relations, hence the terms and conditions of entering into, continuing in and terminating such a relationship are not laid down. This makes adjudication and dispensation of justice in cases like Mala's a challenge in following ways:

- (a) Mala wanted the relationship to continue whereas Sanjay did not. There could be a legal solution to this which would protect rights of both the parties.
- (b) Mala insisted on staying at Sanjay's residence. As the house belonged to Sanjay's parents, an injunction was sought by them preventing Mala from entering their property. If it would have been marriage, Mala might have been given the right to stay in the residence of Sanjay's parents, which would be inherited by Sanjay in due course. However, as the relationship was in the nature of 'live-in', no such right could be granted to Mala. It is worth mentioning that Mala defied Court's injunction order by repeatedly visiting Sanjay's parents' residence. Technically, the concerned court was well within its powers to take action against Mala.

(c) Mala's insistence on staying at Sanjay's parents' residence was countered by the court by granting ex-parte injunction order. The probable considerations that might have influenced the decision of the judge are -

- It was prima facie case of live-in relationship about which the parents of Sanjay might not have been aware of.
- The house was owned by parents of Sanjay and not by Sanjay.
- Balance of convenience tilted in favour of the parents who were senior citizens and couldn't be disturbed in peaceful enjoyment of their property.
- Irreparable loss could have been caused to the right of Sanjay's parents to live peacefully.
- Mala did not reside at Sanjay's parents' house at any point of time.

(d) The protection order passed by the Judicial Magistrate First Class in favour of Mala may be scrutinised on following grounds:

- Monthly maintenance assistance of Rs. 5000 was ordered but who would pay the same, how long would it be paid, how would this be monitored and in case of non-payment, how would Mala have her grievance redressed. All these issues were not covered.
- Since Mala was expecting a baby, how much additional payment would be given to her by Sanjay for the medical and other expenses and for child care later on, was not specified.
- The order to provide alternative accommodation equivalent to Sanjay's parents' was unrealistic as the parents would have secured their present day standard of living after several years of hard work and their standard of living may not have been same as Sanjay's. A more reasonable order would have been to provide alternative accommodation to Mala equivalent to Sanjay's standard of living.

(e) Mala was sent with a brother-in-law who agreed to take care of her. However, in the best interest of Mala credentials of the person may have been verified. As Mala was in medical health centre, her movement from one place to another may have been done in the interest of her health condition.

Other Support

Legal Aid: In such cases, it is to be ensured that the victim is given adequate legal support. This free legal aid can be provided by District Legal Services Authority (DLSA). If the victim is at One Stop Centre, it is their responsibility to ensure that the victim is given adequate legal and medical support.

Counselling Support: A psychiatric analysis is requisite to determine which counselling support to be afforded to the victim. It can be mentioned here that there is



no specific provision in the DV Act, 2005 for psychological support. However, court can pass such order.

Gynaecologist: The victim should also be referred to gynaecologist. In the case of Mala, if the Court knew about her pregnancy their order should have included expenses, for her medication, nutritional support and delivery, at the cost of Sanjay.

Beneficial Government Schemes: The protection officer can apprise Court of the existing schemes, run by the government, which can prove useful for the victim. The court may order benefit of the scheme be available to the victim.

Monthly Assistance Order: The aggrieved party can approach the Court if it is not obeyed.

Conclusion: Unless live-in relationships are legally recognised and the rights and responsibilities of live-in partners are codified, justice delivery in most cases shall remain a challenge. To cite an example of codification, Germany's Registered Partnership Act provides partners opportunity to register their „life partnerships“. The Act enumerates host of rights and responsibilities for the partners in form of maintenance, property rights, dissolution of partnership, post partnership maintenance and so on.

Swati Chauhan

Swati Chauhan served as the first magistrate of Mumbai's specialized court for cases under the Prevention of Immoral Trafficking Act. In this role she was committed to ending sex trafficking in Mumbai by adjudicating the individual cases before her and by slaying the linkages with police investigation in the cases that had ended in conviction and arrest of trafficking kingpins. Her convictions and interpretations of law have served as a model for the rest of the country. She earned international reputation for her work in rehabilitation of victims of sex trafficking. In 2011 she was named a "TIP Report Hero" in the US Department of State Trafficking in Persons Report. "A threat to women anywhere is a threat to women everywhere", says Chauhan who is a Rotary Peace Fellow and holds a masters degree in International Peace Studies and Conflict Resolution. In her current assignment she presides over a family court.

Endnotes

¹⁴ <https://www.scconline.com/blog/post/2019/01/23/live-in-relationship-and-indian-judiciary/>.

¹⁵ (2013) 15 SCC 755.

¹⁶ (2015) 12 SCC 301.

9 CHAPTER

CHALLENGES TO JUSTICE IN DOWRY HARASSMENT - A Case Study

Seema Sharma

About the Author

लेखिका गृह (पुलिस) विभाग मध्य प्रदेश की वर्ष 2003 बेंच की सहायक जिला लोक अभियोजन अधिकारी हैं तथा वर्तमान में विशेष लोक अभियोजक पॉक्सो एक्ट भी हैं। लेखिका कानूनी विषयों पर गहन अध्ययन और रिसर्च करने में रुचि रखती हैं। लेखिका के द्वारा लिखी गयी दो विधि पुस्तकें "पुलिस अनुसंधान एवं अभियोजन" और "पॉक्सो एक्ट - अनुसंधान एवं विचारण" प्रकाशित हो चुकी हैं। लेखिका के द्वारा अपने विभाग के लिए लिखी गयी पुस्तकें "अभियोजन सागर" एवं "केस स्टडी" के लेखन कार्य में भी सहयोग किया गया है। लेखिका पुलिस अनुसंधान, महिलाओं और बच्चों के विरुद्ध होने वाले लैंगिक अपराधों से संबंधित विषयों के अध्ययन एवं प्रशिक्षण में विशेष रुचि रखती हैं। लेखिका अपने विभाग की मास्टर ट्रेनर होकर एक उत्साही ट्रेनर हैं और यह विश्वास करती हैं कि भलीभांति डिजाइन किया गया प्रशिक्षण कार्यक्रम प्रशिक्षार्थियों के ज्ञान, कौशल और दक्षता में इच्छित परिवर्तन लाता है। लेखिका को अभियोजन, लेखन और प्रशिक्षण के क्षेत्र में किये गये उत्कृष्ट प्रदर्शन के लिए उनके विभाग का सर्वोच्च सम्मान "ग्रैंड ऑफ प्रोफिक्चुरेशन" चार बार प्राप्त हो चुका है।

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दहेज एक सामाजिक कुरीति : दहेज
लोभी पति एवं उसके नातेदारों के
विरुद्ध दहेज की मांग एवं प्रताड़ना
के अपराध के लिए प्रकरण

1. पृष्ठभूमि

दहेज समाज में गहरी जड़ों तक व्याप्त एक बुराई है। यह प्रेम एवं स्नेह के साथ पारम्परिक उपहारों के रूप में प्रारंभ हुई थी। लेकिन दुर्भावनावाश अनेक वर्षों में एक नया चलन प्रारंभ हो गया। लड़के अथवा उसके परिवार के सदस्यों ने वधू के माता-पिता से नगदी या वस्तु की मांग करना प्रारंभ कर दिया। उन्होंने दहेज साधिका मांगना प्रारंभ कर दिया है। यह मांग अक्सर विवाह के पश्चात भी होती रही है और मांग पूरी न किये जाने पर पत्नी को प्रताड़ित भी किया गया है। इस बुरे चलन पर अकुश लगाने के उद्देश्य से संसद ने दहेज प्रतिषेध अधिनियम, 1961 अधिनियमित किया। इसमें दहेज देने और लेने का प्रतिषेध किया गया था, लेकिन इस अधिनियम के बावजूद कुछ समुदायों में यह अनिष्टकारी चलन जारी रहा



इसलिए दहेज प्रतिषेध संशोधन अधिनियम, 1984 द्वारा मूल अधिनियम में संशोधन किये गये तथा भारतीय दण्ड संहिता, 1860 (जिसे आगे संक्षेप में भादस या भादवि लिखा जायेगा) में संशोधन कर धारा 498ए का समावेश किया गया जो दिनांक 25.12.1983 से प्रभावी हुई। धारा 498ए भा.द.वि. के अनुसार किसी स्त्री का पति या पति का नातेदार होते हुए ऐसी स्त्री के प्रति क्रूरता करेगा, वह तीन वर्ष तक के कारावास और जुर्माने से भी दण्डनीय होगा। क्रूरता से अभिप्रेत है स्त्री को शारीरिक या मानसिक रूप से प्रताड़ित करना या दहेज की मांग के लिए प्रताड़ित करना।

2. घटना एवं उसके तथ्य

यह प्रकरण भी दहेज सम्बंधी अपराधों से सम्बंधित है। दिनांक 2 जून 2009 को ज्योति पिता कन्हैयालाल निवासी राणापुर जिला झाबुआ का विवाह जाति रीति-रिवाज अनुसार ललित उर्फ लक्ष्मीनारायण पिता मदनलाल निवासी सरवन जिला रतलाम से राणापुर में हुआ था। आरोपी ललित उसके पिता मदनलाल निवासी सरवन एवं उसकी माता धन्नीबाई निवासी सरवन के मांगने पर ज्योति के पिता कन्हैयालाल पिता चांदमल निवासी राणापुर ने विवाह के समय दहेज में गृहस्थी का सारा सामान सोने चांदी के जेवरों, टीवी, फ्रिज एवं वाशिंग मशीन एवं 60 हजार रुपये नगद आरोपीगण को दिए थे, जिसके साक्षी ज्योति के चाचा दिनेश एवं जगदीश निवासी राणापुर तथा ज्योति की बुआ मंजुबाई पति लालचंद निवासी सरवन हैं। ज्योति की बुआ का ससुराल सरवन में ही होने से आरोपीगण मंजुबाई के परिचित होने से इस विवाह सम्बंध में स्थिरता मंजुबाई ने ही की थी।

शादी के बाद ज्योति अपने पति ललित, सास धन्नीबाई एवं ससुर मदनलाल के साथ अपने ससुराल सरवन में निवास करती थी। एक वर्ष बाद ज्योति ने पुत्र दर्शील को जन्म दिया। उसके बाद तीनों आरोपीगण ललित व उसके माता-पिता ज्योति को दहेज के लिए शारीरिक और मानसिक रूप से प्रताड़ित करने लगे, मारपीट करते थे व दहेज के लिए ताने देते थे। तीनों ने ज्योति से मोटरसाइकिल खरीदने के लिए 50 हजार रुपये की मांग की। ज्योति ने अपने पिता को बताया तो कन्हैयालाल ने 50 हजार रुपये राणापुर में आरोपी ललित को दिनेश एवं जगदीश के समक्ष दिए। कुछ दिनों बाद तीनों आरोपीगण ने ज्योति को फिर से दहेज के लिए प्रताड़ित करना प्रारंभ किया और 5 लाख रुपयों की मांग की। ललित ज्योति को राणापुर लेकर गया। वहां ज्योति ने अपने माता-पिता और चाचा को सारी बातें बताईं तो ज्योति के पिता ने ललित को अपनी आर्थिक असमर्थता बताई तो ललित बोला कि 1 लाख रुपये आपको अभी देना ही होगा। दिनांक 25.03.2014 को ज्योति के पिता ने अपने दोनों भाईयों दिनेश, जगदीश एवं साले बाबूलाल पिता आशाराम निवासी भांवरा से उधार लेकर, दिनेश एवं जगदीश के समक्ष 1 लाख रुपये ललित को दिए थे। ललित, ज्योति को लेकर फिर सरवन आ गया। ललित एम.आर. (मेडिकल रिप्रेजेंटेटिव) होने के कारण अक्सर कई दिन सरवन से बाहर ही रहता था। उसके पूनम (परिवर्तित नाम) नामक महिला से अवैध संबंध थे, उसके साथ ललित लिव-इन-रिलेशनशिप में रहता था। अपने ससुराल में रहने के दौरान ज्योति को घर में से ललित एवं पूनम के दो फोटो एवं उन दोनों के साथ निवास करने के संबंध में स्टाम्प पर निष्पादित नोटरी किया एक लेख एवं पूनम के सपथपत्र की छायाप्रति मिली थी। जिन्हें वह अपने साथ राणापुर ले गई थी व अपने मायके फ्ला को दिखाए थे। विवाह के समय ललित मन्दसौर में नौकरी करता था उसके बाद उसका रतलाम ट्रांसफर हुआ था। ज्योति अपना वैवाहिक संबंध बनाये रखना चाहती थी इसलिए सारी प्रताड़ना बर्दाश्त करती रही। करीब तीन माह बाद तीनों आरोपीगण ने ज्योति के साथ मारपीट की व अपने पिता के यहां से दहेज के 5 लाख रुपये लाने को कहा। ललित ने कहा कि यदि तुम 5 लाख रुपये नहीं लाईं तो मैंने जिस दूसरी औरत को रख रखा है, उसी से शादी कर लूंगा। ऐसा कहकर आरोपीगण ने दिनांक 23.06.2014 को ज्योति को घर से निकाल दिया था तो ज्योति अपने माता-पिता के घर राणापुर चली गई एवं ज्योति एवं उसके माता-पिता ने सोचा कि आरोपीगण उसे लेने आएंगे इसलिए वे इंतजार करते रहे क्योंकि ज्योति अपना गृहस्थ जीवन नहीं बिगाड़ना चाहती थी। कन्हैयालाल ने ललित से फोन पर बात की तो ललित ने ज्योति को रखने से इंकार

कर दिया तब ज्योति ने अपना दहेज का सामान एवं रुपये जो आरोपीगण के पास थे, वापिस मांगे। लेकिन आरोपीगण ने दहेज नहीं लौटाया तब दिनांक 21.07.2014 को ज्योति अपने मायके पक्ष के साथ थाना सरवन आई और प्रथम सूचना रिपोर्ट दर्ज कराने के लिए एक आवेदन पत्र दिया। जिसके आधार पर प्रथम सूचना रिपोर्ट दर्ज हुई। विवेचना के दौरान पुलिस ने एफआईआर की प्रति मजिस्ट्रेट को भेजकर रसीद प्राप्त की। पुलिस ने अनुसंधान के दौरान ज्योति उसके माता-पिता, बुआ, दोनो चाचा, मामा बाबुलाल, शादी करने वाले पण्डित के कथन अंतर्गत धारा 161 दण्ड प्रक्रिया संहिता, 1973 (संक्षेप में द.प्र.सं.) लेख किये। ज्योति से विवाह पत्रिका, विवाह के फोटो, पूनम के शपथपत्र और ललित एवं पूनम के मध्य निष्पादित लेख की छायाप्रति जब्त की। इन दोनों दस्तावेजों को सम्बन्धित नोटरी से अनुप्रमाणित करवाकर अभियोग-पत्र के संलग्न कर नोटरी सुल्तान मोहम्मद मंसूरी एडवोकेट के भी धारा 161 द.प्र.सं. के अधीन कथन लेख किए गए।

दहेज सामग्री जब्त करने के लिए तीनों आरोपीगण से धारा 27 भारतीय साक्ष्य अधिनियम, 1972 (संक्षेप में सा.अधि.) के तहत पूछताछ कर मेमोरण्डम तैयार किए परन्तु आरोपीगण ने दहेज सामग्री के सम्बंध में कोई जानकारी नहीं दी तथा रुपये खर्च हो जाने के संबंध में जानकारी दी। आरोपीगण को गिरफ्तार कर उनकी गिरफ्तारी की सूचना उनके रिश्तेदार को दे दी। आरोपीगण ललित एवं मदनलाल के विरुद्ध थाना सरवन पर ही दर्ज अन्य अपराध अन्तर्गत धारा 323, 325 भा.द.वि. का आपराधिक रिकार्ड भी संलग्न किया और विवेचना उपरांत तीनों आरोपीगण के विरुद्ध धारा 498ए, 406, 34 भा.द.वि. एवं 3/4 दहेज प्रतिषेध अधिनियम, 1961 का आरोपण कर अभियोग पत्र न्यायिक दण्डाधिकारी प्रथम श्रेणी सीलाना के समक्ष प्रस्तुत किया गया। न्यायालय ने अपराध का संज्ञान लेकर तीनों आरोपीगण पर उक्त धाराओं के आरोप विरहित किए। अभियोजन ने ज्योति, उसके पिता कन्हैयालाल, उसके चाचा दिनेश, उसकी बुआ मंजूबाई, पूनम शर्मा एवं दोनों विवेचकों सहित कुल सात साक्षियों की साक्ष्य कराई तथा सम्बन्धित साक्षी से सम्बन्धित दस्तावेज न्यायालय के समक्ष प्रदर्शित कराए। पूनम को छोड़कर सभी साक्षियों ने अभियोजन कहानी एवं धारा 161 द.प्र.सं. के कथनों के तथ्यों का समर्थन किया। पूनम ने अपने 161 द.प्र.सं. के कथन में वर्णित तथ्यों का आंशिक समर्थन किया। साक्ष्य की विस्तृत समीक्षा उपरांत दिनांक 06.08.2016 को विचारण न्यायालय द्वारा तीनों आरोपीगण को धारा 498ए भा.द.वि. के तहत तीन वर्ष का सश्रम कारावास एवं 1000 रुपये अर्धदण्ड, धारा 406 भा.द.वि. के तहत एक वर्ष का सश्रम कारावास तथा 1000 रुपये का अर्धदण्ड तथा धारा 4 दहेज प्रतिषेध अधिनियम, 1961 के तहत दो वर्ष के सश्रम कारावास एवं 1000 रुपये के अर्धदण्ड से दण्डित किया गया।

3. केस स्टडी के परिदृश्य में उठने वाले प्रश्न एवं उनके संभावित समाधान

प्रश्न 01. इस प्रकरण के संबंध में किन-किन आरोपियों पर किन-किन अपराधों का आरोप विरहित किया जाना चाहिए?

प्रश्न 02. इस प्रकरण के अनुसंधान एवं विचारण के अनुक्रम में किन-किन अधिनियमों की किन-किन धाराओं का प्रयोग होगा?

प्रश्न 03. प्रकरण के तथ्यों के आलोक में अभियोजन पक्ष के लिये उपयोगी न्यायदृष्टांत क्या-क्या है? विषय से संबंधित अन्य उपयोगी न्यायदृष्टांत (केस लॉ)?

प्रश्न 04. उपरोक्त प्रकरण के प्रकाश में घटित घटनाओं को प्रमाणित करने हेतु क्या साक्ष्य संकलित की जाना चाहिए?

प्रश्न 05. प्रकरण में अपराध प्रमाणित किये जाने हेतु क्या-क्या साक्ष्य संकलित की गई तथा कौन-सी महत्वपूर्ण साक्ष्य संकलित होने से छूट गई?

प्रश्न 06. संकलित व प्रमाणित साक्ष्य के आधार पर निष्कर्ष?

प्रश्न 07. संभावित समाधान?



4. इस प्रकरण के संबंध में किन-किन आरोपियों पर किन-किन अपराधों का आरोप विरचित किया जाना चाहिए :-

- तीनों आरोपीगण पर पति एवं पति के नातेदारों द्वारा दहेज की मांग के संबंध में क्रूरता करने के लिये धारा 498ए भादवि का आरोप विरचित किया जाना चाहिए।
- दहेज की सामग्री जो स्त्रीघन होती है, आरोपीगण को न्यस्त थी, उसे अपने उपयोग में सम्परिवर्तित कर और न लौटा कर आपराधिक न्यास भंग कारित किया इसलिये धारा 406 भा.द.वि. एवं धारा 06 दहेज प्रतिषेध अधिनियम, 1961 के आरोप विरचित किये जाना चाहिए।
- दहेज लेने के लिये धारा 3 दहेज प्रतिषेध अधिनियम, 1961 एवं दहेज मांगने के लिये धारा 4 दहेज प्रतिषेध अधिनियम के आरोप विरचित किये जाना चाहिए।

5. प्रकरण के लिये प्रयुक्त अधिनियम एवं उनकी धाराएं :-

- द.प्र.सं. की धाराएं 154, 161, 173, 238, 207, 211, 240, 242, 243, 313, 314, 248, 353, 31, 428, 363, 389।
 - भारतीय साक्ष्य अधिनियम की धाराएं 03, 27, 137, 138, 145, 154, 157।
 - भादवि की धाराएं 64, 498ए, 406।
 - दहेज प्रतिषेध अधिनियम, 1961 की धाराएं 02, 03, 04, 06, 07, 08क।
- दहेज प्रतिषेध (वर और वधू को दिये गये उपहारों की सूचियां रखना) नियम, 1985 के नियम 02, 03, 04।
- विशेष रूप से उल्लेखनीय है कि धारा 7 दहेज प्रतिषेध अधिनियम, 1961 के प्रावधानों अनुसार इस अधिनियम के अधीन अपराधों का विचारण महानगरीय मजिस्ट्रेट या प्रथम वर्ग के न्यायिक मजिस्ट्रेट के न्यायालय के द्वारा किया जाता है। धारा 29 द.प्र.सं. के प्रावधान अनुसार प्रथम वर्ग मजिस्ट्रेट के न्यायालय को तीन वर्ष तक की अवधि के कारावास या दस हजार रुपये तक के जुर्माने या दोनों का दण्डोदय देने की अधिकारिता है। धारा 31 द.प्र.सं. के प्रावधान अनुसार एक से अधिक अपराधों के लिए संकलित दण्ड उस दण्ड की मात्रा के दुगुने तक हो सकता है जिसे एक अपराध के लिए देने के लिए वह न्यायालय सक्षम है। इस प्रकार धारा 29 व 30 के प्रावधानों का सम्मिलित प्रभाव यह होगा कि एक से अधिक अपराधों के लिए दण्ड देते समय प्रथम वर्ग न्यायालय 6 वर्ष तक का संकलित दण्ड दे सकता है। यहाँ विशेष रूप से यह भी उल्लेखनीय है कि धारा 3 दहेज प्रतिषेध अधिनियम में कम से कम 5 वर्ष की अवधि के कारावास के दण्ड का प्रावधान है। इसी कारण विधायिका ने दहेज प्रतिषेध अधिनियम, 1961 की धारा 7 की उपधारा (1) और इसके क्लॉज (ग) में यह प्रावधान किया है कि द.प्र.सं. में कोई बात अन्तर्विष्ट होने पर भी किसी महानगरीय मजिस्ट्रेट या न्यायिक मजिस्ट्रेट को इस अधिनियम के अधीन किसी अपराध के सिद्धबोध व्यक्ति पर इस अधिनियम द्वारा प्राधिकृत कोई दंडाज्ञा पारित करना विधिपूर्ण होगा। इस प्रकार यह प्रावधान द.प्र.सं. की धाराओं 29 व 30 के प्रावधानों पर अधिभावी है।

6. प्रकरण के तथ्यों के आलोक में अभियोजन पक्ष के लिये उपयोगी एवं विषय से संबंधित अन्य उपयोगी न्यायदृष्टांत (केस लॉ) :-

- (1) अरनेश कुमार विरुद्ध बिहार राज्य क्रिमिनल अपील नम्बर 1277 / 2014 जे.टी. 2014 (7) एस.सी. 527— गिरफ्तारी के संबंध में दिये गये निर्देश।
- (2) प्रतिभा रानी बनाम सूरज कुमार एवं अन्य ए.आई.आर. 1985 एस.सी. 628— धारा 406 भादवि. के संबंध में।
- (3) पवन कुमार विरुद्ध स्टेट ऑफ हरियाणा ए.आई.आर. 1998 एस.सी. 958— दहेज की मांग के संबंध में।

- (4) स्टेट ऑफ आंध्रप्रदेश विरुद्ध राजगोपाल ए.आई.आर. 2004 एस.सी. 1933— दहेज की मांग के संबंध में।
- (5) पब्लिक प्रोसीक्यूटर विरुद्ध मिथेस्वर गंगाधर (2009)16 एस.सी.सी. 255— दहेज की मांग के संबंध में।
- (6) वननी देवी विरुद्ध स्टेट ऑफ हरियाणा ए.आई.आर. 2011 एस.सी. 1098— दहेज की मांग के संबंध में।
- (7) रूपाली देवी विरुद्ध उत्तर प्रदेश राज्य व अन्य किमिनल अपील नंबर 71/2012, निर्णय दिनांक 09.04.2019 में इस प्रकरण के पैरा 16 में माननीय सर्वोच्च न्यायालय द्वारा अभिनिर्धारित किया गया है कि — हम, इसलिये, यह अभिनिर्धारित करते हैं कि पति या उसके रिश्तेदारों द्वारा की गई क्रूरता के पश्चात, उस स्थान, जहां घर से निकाले जाने या छोड़ने के पश्चात पत्नी आश्रय लेती है, के न्यायालय भी तथ्यात्मक स्थिति पर निर्भर रहते हुए भारतीय दंड संहिता की धारा 498ए के अंतर्गत परिवाद ग्रहण करने का क्षेत्राधिकार रखेंगे।
- (8) शोभारानी विरुद्ध मधुकर रेड्डी ए.आई.आर. 1988 एस.सी. 121— क्रूरता के संबंध में।
- (9) हिमाचल प्रदेश विरुद्ध तारादत्त ए.आई.आर. 2000 एस.सी. 297— धारा 498ए के अपराध को निरंतर अपराध माना गया।
- (10) चितरंजन शर्मा अन्य विरुद्ध म.प्र. राज्य 2009(3) एम.पी.डब्ल्यू.एन. 98— मोटर साइकिल की मांग को दहेज की मांग माना।
- (11) एल.बी. जाधव विरुद्ध शंकर राव ए.आई.आर. 1983 एस.सी. 1219— धारा 03 एवं 04 दहेज प्रतिषेध अधिनियम के संबंध में।
- (12) वज्रेश वैकटराय अन्वेकर विरुद्ध कर्नाटक राज्य 2013(4) सी.सी.एस.सी. 1806 एस.सी.— क्रूरता के संबंध में।
- (13) जगदीश बनाम राजस्थान राज्य 1998 सी.आर.एल.जे. 554— क्रूरता के संबंध में।
- (14) सुरिन्दरसिंह बनाम हरियाणा राज्य 2014(2) सी.सी.एस.सी. 744 (एस.सी.) जब उत्पीड़न एवं क्रूरता वैवाहिक गृह की चारदिवारी में किया जाता है तो स्वतंत्र साक्षियों को प्राप्त करना कठिन है।
- (15) स्टेट ऑफ पंजाब वि. गुरमीतसिंह, 2014(3) काईम्स 44 एस.सी. के अनुसार एक व्यक्ति जो पति से रक्त, विवाह या दत्तक द्वारा संबंधित हो उसे पति का नातेदार कहा जाता है और जो पति का नातेदार न हो उसे धारा 304बी भा.द.सं. के लिये अभियोजित नहीं किया जा सकता है।
- (16) विजेता गुप्ता वि. स्टेट एन.सी.टी. देहली, ए.आई.आर. 2010 एस.सी. 2712 के अनुसार पति की सौतेली बहन धारा 498ए भा.द.सं. के संदर्भ में पति के नातेदार की परिभाषा में नहीं आती है, क्योंकि वह रक्त, विवाह या दत्तक तीनों के अंतर्गत नहीं है।
- (17) यू. सुवैधा वि. स्टेट (2009)6 एस.सी.सी. 757 में कहा गया है कि पति से रक्त, विवाह या दत्तक द्वारा संबंधित व्यक्ति ही पति के नातेदार में आते हैं, इसमें सौतेला या महिला मित्र शामिल नहीं है। इस मामले में यह भी कहा गया है कि पति का अन्य महिला के साथ निवास करना धारा 498ए भा.द.सं. के संदर्भ में क्रूरता गणित नहीं करता है। यह तलाक के लिये एक आज्ञापि का आधार हो सकता है।



(18) प्रीति गुप्ता वि. स्टेट ऑफ झारखण्ड (2010) 7 एस.सी.सी. 667 के अनुसार धारा 498ए के परिवाद में पति और उसके निकट के रिश्तेदारों को अपराध में शामिल करने की प्रवृत्ति असामान्य नहीं है। न्यायालय को अत्यंत सावधान और सतर्क रह कर ऐसे परिवाद पर विचार करना चाहिए और वैवाहिक प्रकरणों के निराकरण के समय वास्तविक और उचित दृष्टिकोण रखना चाहिए।

(19) सुरेशचन्द्र भार्गव वि. म.प्र.राज्य आई.एल.आर. 2016 बॉल्युम 2 (अप्रैल) पेज 1207 में उल्लेखित है कि जहाँ विवाह सम्पन्न नहीं हुआ है और मात्र सगाई हुई हो, दहेज के संबंध में कोई अवैध मांग की जाती है, तब अभियुक्त पर दहेज प्रतिषेध अधिनियम की धारा 3 एवं 4 के अधीन अपराध का आरोप अधिरोपित किया जा सकता है।

7. उपरोक्त प्रकरण के प्रकाश में घटित घटनाओं को प्रमाणित करने हेतु क्या साक्ष्य संकलित की जाना चाहिए :-

धारा 498ए नादवि एवं धारा 03 एवं 04 दहेज प्रतिषेध अधिनियम के अपराधों के लिये सर्वप्रथम वैवाहिक स्थिति तथा वैवाहिक नातेदारी साबित करना आवश्यक होती है इसे प्रमाणित करने के लिये विवाह की निमंत्रण पत्रिका, विवाह समय के फोटो, विडियो रिकॉर्डिंग, विवाह कराने वाले पंडित के कथन आवश्यक होते हैं। नातेदारी होने के तथ्यों का कथनों में समावेश कर मौखिक साक्ष्य से नातेदारी प्रमाणित की जा सकती है। क्रूरता एवं दहेज का मांगना एवं लेना प्रमाणित करना आवश्यक होता है। इसके लिये पीड़िता, चश्मदीद साक्षियों, परिस्थितिजन्य साक्षियों या अनुश्रुत साक्षियों के कथन, मेडिकल आदि साक्ष्य एकत्रित की जाना आवश्यक होती है। रुपयों एवं दहेज के लेन-देन के संबंध में वस्तुओं के क्रय बिल, चश्मदीद साक्षियों के कथन, बैंक संबंधी साक्ष्य एकत्र करना आवश्यक होती है। अवैध संबंधों को प्रमाणित करने के लिये संबंधित महिला के कथन, दोनों के फोटोग्राफ, चश्मदीद साक्षी के कथन, दोनों के मध्य कोई दस्तावेज निष्पादित हुआ हो तो वह दस्तावेज संबंधित नोटरी का कथन एवं नोटरी का संबंधित रजिस्टर, दोनों की मोबाइल कॉल डिटेल्स, सीडीआर, एस.एम.एस., वाट्सएप चैट आदि डिटेल्स अर्थात् डिजिटल साक्ष्य एकत्र की जाना चाहिए। डिजिटल साक्ष्य को साक्ष्य में ग्रहण बनाने के लिए संबंधित व्यक्ति का धारा 65बी (4) सा.अधि. का प्रमाण-पत्र भी प्रस्तुत करना होगा। धारा 406 नादवि का अपराध प्रमाणित करने के लिये सम्पत्ति का न्यस्त किया जाना तत्पश्चात् आरोपीगण द्वारा उसको अपने उपयोग के लिये सम्पत्तिवर्तित कर लेना तथा मांगने पर भी नहीं लौटाना प्रमाणित करना होता है। इसके लिये दहेज प्रतिषेध नियम, 1985 के तहत यदि दहेज के सामान की कोई सूची बनी हो तो वह प्राप्त करना चाहिए, कथनों में न्यस्त संपत्ति वापिस मांगने पर नहीं लौटाने के तथ्य होना चाहिए, दहेज सामग्री के क्रय बिल, फोटोग्राफ्स, विवाह के समय की विडियो रिकॉर्डिंग जिसमें दहेज सामग्री दृश्यमान हो आदि साक्ष्य एकत्र किया जाना चाहिए और न्यस्त संपत्ति होने से साक्ष्य के तौर पर आरोपीगण से जप्त भी किया जाना चाहिए। परंतु इस प्रकरण में न्यस्त संपत्ति जब्त नहीं की गई थी।

इस प्रकरण में ज्योति के पास ललित एवं पूनम के एक साथ होने के प्रमाण स्वरूप दो फोटोग्राफ थे परंतु पुलिस ने उन्हें प्राप्त नहीं किया था। धारा 6 दहेज प्रतिषेध अधिनियम का आरोपण नहीं किया गया। इस धारा के अनुसार दहेज प्राप्ति के तीन मास के भीतर उसे स्त्री को अंतरित न करने पर स्वतः न्याय भंग माना जाता है।

8. प्रकरण में अपराध प्रमाणित किये जाने हेतु क्या-क्या साक्ष्य संकलित की गई तथा कौन-सी महत्वपूर्ण साक्ष्य संकलित होने से छूट गई :-

पुलिस ने ज्योति द्वारा प्रस्तुत लिखित आवेदन प्राप्त होने पर उसके आधार पर प्रथम सूचना रिपोर्ट दर्ज की तथा विवेचना प्रारंभ की और निम्नानुसार साक्ष्य एकत्र किये-

(1) विवाह प्रमाणित करने के लिये ज्योति के आधिपत्य से विवाह निमंत्रण पत्रिका एवं विवाह के फोटो जप्त कर जप्ति पंचनामा बनाया गया तथा विवाह कराने वाले पंडित के बयान लेख किये गये।

- (2) विवाह संबंधी नातेदारी प्रमाणित करने के लिये मौखिक साक्ष्य अर्थात् ज्योति एवं उसके माता-पिता, उसके दोनों चाचा, मामा एवं बुआ के कथन लेख किये गये।
- (3) अवैध संबंध प्रमाणित करने के लिये ज्योति के पेश करने पर ललित एवं पूनम के मध्य साथ निवास करने के संबंध में निष्पादित स्टाम्प लेख एवं पूनम के स्टाम्प पर लेख शपथपत्र की छायाप्रतियां जप्त कर जप्ति पंघनामा बनाया गया, इन दोनों जप्त दस्तावेजों की छायाप्रतियों को संबंधित नोटरी एडवोकेट से अनुप्रमाणित करवाकर अभियोग पत्र के संलग्न किया गया। नोटरीकर्ता एडवोकेट एवं पूनम के कथन लेख किये गये। ज्योति एवं उसके मायके पक्ष वालों की इस संबंध में मौखिक साक्ष्य भी ली गई। पूनम की न्यायालय में साक्ष्य के दौरान उसकी ललित के साथ की फोटो जो ज्योति के पास थी उसे दिखाकर अभियोजन अधिकारी ने प्रश्न पूछे थे।
- (4) प्रथम सूचना रिपोर्ट की प्रति धारा 157 द.प्र.स. के तहत संबंधित मजिस्ट्रेट को भेजकर रसीद प्राप्त की।
- (5) क्रूरता, दहेज की मांग एवं दहेज लेना प्रमाणित करने के लिये मौखिक साक्ष्य के तहत ज्योति और उसके मायके पक्ष के कथन लेख किये गये।
- (6) आपराधिक न्यास भंग प्रमाणित करने के लिये ज्योति एवं उसके मायके पक्ष के उसके माता-पिता, चाचा, मामा एवं बुआ के कथन लेख कर मौखिक साक्ष्य एकत्र की गई तथा तीनों आरोपीगण से दहेज में दी गई सम्पत्ति के संबंध में पृथक-पृथक पूछताछ कर धारा 27 सा.अधि. के तहत तीन मेमोरेण्डम बनाये गये। तीनों आरोपीगण ने दहेज में प्राप्त सामग्री के संबंध में कोई जानकारी नहीं दी और रुपये खर्च हो जाने का कथन किया।
- (7) तीनों आरोपीगण को गिरफ्तारी का कारण बताकर गिरफ्तार कर उनके गिरफ्तारी पंघनाम बनाये गये। गिरफ्तारी की लिखित सूचना उनके रिश्तेदारों को दी गई जिसकी प्रति संलग्न की गई।
- (8) आरोपीगण ललित उर्फ लक्ष्मीनारायण एवं मदन के विरुद्ध सरबन थाने पर एक अन्य अपराध अन्तर्गत धारा 325, 323 भा.द.वि. का दर्ज होने से उसका आपराधिक रिकॉर्ड प्राप्त कर संलग्न किया गया।
- (9) आपराधिक रिकॉर्ड में दर्शित प्रकरण में आरोपीगण लक्ष्मीनारायण एवं मदन को विचारण न्यायालय द्वारा दोषसिद्ध किया गया था। तत्पश्चात् प्रथम अपील न्यायालय ने भी दण्डादेश की पुष्टि की। अभियोजन ने आरोपीगण की पूर्व दोषसिद्धि के संबंध में अपील न्यायालय द्वारा पारित दण्डादेश की प्रति इस प्रकरण में निर्णय के समय दण्ड के प्रश्न पर प्रस्तुत की थी इसलिये आरोपीगण को अधिक दण्ड दिया गया।

9. विश्लेषण

चूंकि ये दो वर्ष से अधिक कारावास से दण्डनीय अपराध का मामला था इसलिये यह वारण्ट मामला होने से द.प्र.स. के अध्याय 19 के तहत धारा 238 से धारा 243 तथा धारा 248 द.प्र.स. में दी गई वारण्ट मामलों की विचारण प्रक्रिया के अनुसार विचारण किया गया। न्यायालय में अभियोग पत्र प्रस्तुत होते ही धारा 238 द.प्र.स. के एवं धारा 207 द.प्र.स. के प्रावधान अनुसार आरोपीगण को अभियोग पत्र की प्रति दिखाई गई। धारा 240 द.प्र.स. के तहत आरोपीगण पर धारा 498ए, 406 भा.द.वि. एवं धारा 3/4 दहेज प्रतिषेध अधिनियम के आरोप विरचित किये गये, जो आरोपीगण ने अस्वीकार कर विचारण चाहा इसलिये प्रकरण अभियोजन साक्ष्य हेतु नियत कर साक्षियों को तलब किया गया। अभियोजन द्वारा धारा 242 द.प्र.स. के तहत साक्षी ज्योति, उसके पिता कन्हैयालाल, उसके चाचा दिनेश, उसकी बुआ मंजू बाई, अनुसंधान अधिकारी सहायक उपनिरीक्षक शरीफ पटान, पूनम शर्मा, अनुसंधान अधिकारी निरीक्षक आर.एन.एस. परिहार के कथन कराये गये और अभियोग पत्र के साथ प्रस्तुत दस्तावेज प्रदर्शित कराये गये। अभियोजन साक्षी ज्योति ने प्र.चू.रि. एवं धारा 161 द.प्र.स. के तहत लेखबद्ध अपने कथन में वर्णित तथ्यों का समर्थन किया। उसके पिता कन्हैयालाल ने भी धारा 161 द.प्र.स. के कथन में वर्णित तथ्यों का पूर्ण समर्थन कर



ज्योति के कथनों की पुष्टि की। साक्षी दिनेश जो दहेज की मांग एवं लेन-देन के चश्मदीद साक्षी होकर दहेज की एक लाख की राशि जो आरोपीगण को दी गई थी उसमें से तीस हजार स्वयं द्वारा एवं बीस हजार अपने भाई जगदीश द्वारा कन्हैयालाल को उधार देने का कथन करता है। इस साक्षी ने भी अपने 161 द.प्र.सं. के कथन में वर्णित तथ्यों का समर्थन कर ज्योति एवं कन्हैयालाल के कथन की पुष्टि की। साक्षी मंजूबाई जो ज्योति की बूआ होकर आरोपीगण के गांव सरवन में ही निवासरत होने से विवाह संबंध की मध्यस्थ रही है, साथ ही दहेज की मांग एवं प्रताड़ना की चश्मदीद एवं अनुश्रुत साक्षी भी है, ने भी अपने धारा 161 द.प्र.सं. के कथन में वर्णित तथ्यों का पूर्ण समर्थन कर उपरोक्त तीनों साक्षियों के कथन की पुष्टि की। दोनों विवेचक साक्षियों ने विवेचना में एकत्र की गई साक्ष्य एवं विवेचना कार्यवाही का समर्थन किया। अभियोजन साक्षी पूनम जो आरोपी के साथ लिव इन रिलेशनशिप में रही है, ने संस्त्राण लेख, स्वयं के रूपशपत्र का निष्पादित होना, उन पर अपने हस्ताक्षर होना, उनमें वर्णित समस्त तथ्यों के सत्य होने का कथन किया है। परंतु ललित के साथ लिव इन रिलेशनशिप में रहने से इंकार किया है। पूनम ने साक्ष्य के समय उक्त दोनों दस्तावेज में वर्णित तथ्यों अनुसार साथ-साथ रहने से इंकार किया। जबकि ये दोनों दस्तावेज साथ रहने के संबंध में ही निष्पादित किये गये थे।

इस संबंध में अभियोजन ने अंतिम तर्कों के प्रक्रम पर न्यायदृष्टांत मोहम्मद भीर खान विरुद्ध अब्दुल गफ्फार 1996(2) एम.पी.डब्ल्यू.एन. 134 प्रस्तुत किया था। जिसके अनुसार दस्तावेजों का निष्पादन स्वीकार – भार उस पर होता है जो दस्तावेज में अभिप्रेत से भिन्न उसका अर्थ लगाना चाहता है। अभियोजन साक्ष्य समाप्त होने के पश्चात धारा 313 द.प्र.सं. के तहत आरोपीगण का परीक्षण किया गया। आरोपीगण द्वारा धारा 243 द.प्र.सं. के तहत प्रतिस्वा साक्ष्य नहीं दी गई। उसके पश्चात दोनों पक्षों ने माननीय न्यायालय को अंतिम तर्क सुनाये और अपने-अपने पक्ष समर्थन में न्यायदृष्टांत प्रस्तुत किये।

10. निष्कर्ष

माननीय न्यायालय ने अभिलेख पर आई साक्ष्य की विस्तृत विवेचना उपरांत आरोपीगण को धारा 498ए, 406 भा.द.वि. एवं धारा 4 दहेज प्रतिषेध अधिनियम के अंतर्गत दोषी पाकर धारा 248 द.प्र.सं. एवं 353 द.प्र.सं. के प्रावधान अनुसार दण्डादेश पारित कर धारा 498ए भा.द.वि. के तहत 3 वर्ष के सश्रम कारावास और 1000 रु के अर्थदण्ड, धारा 406 भा.द.वि. के तहत 1 वर्ष का सश्रम कारावास और 1000 रु का अर्थदण्ड, धारा 4 दहेज प्रतिषेध अधिनियम के अंतर्गत 02 वर्ष का सश्रम कारावास और 1000 रु के अर्थदण्ड से दण्डित किया, साथ ही अर्थदण्ड न ज़दा करने पर धारा 64 भा.द.वि. के तहत अतिरिक्त दण्डादेश का भी आदेश दिया। धारा 31 द.प्र.सं. के प्रावधान अनुसार मूल सजाएं साथ-साथ भुगतवाई जाने का आदेश भी दिया और धारा 428 द.प्र.सं. का प्रमाण पत्र बनाने का आदेश दिया। धारा 363(1) द.प्र.सं. के तहत आरोपीगण को निर्णय की प्रति निःशुल्क दी गई। आरोपीगण द्वारा न्यायालय में धारा 389 द.प्र.सं. के तहत दण्डादेश के निलम्बन एवं जमानत हेतु आवेदन प्रस्तुत किया गया, जो स्वीकार किया गया।

11. समाधान

- यदि दहेज प्रताड़ना के प्रकरणों में पुलिस अधिकारी द्वारा विधिक प्रावधानों एवं प्रकरण के तथ्यों को ध्यान में रखते हुए विवेचना कर विधि अनुसार ग्राह्य साक्ष्य संकलित की जाए और उस साक्ष्य को अभियोजन अधिकारी द्वारा न्यायालय में प्रभावी तरीके से प्रस्तुत की जाए तो अपराधियों को उचित दण्ड से दण्डित कराया जा सकता है।
- जातिगत विचारधारा, अशिक्षा, रुढ़िवादिता, संकुचित विचारधारा, बेमेल विवाह, बेरोजगारी की समस्या के निदान और कानूनी जागरूकता से दहेज नामक इस कुरीति से हमारे समाज को मुक्त किया जा सकता है।

TEACHING NOTES

I. प्रकरण की प्रकृति

यह प्रकरण दहेज प्रताड़ना की एक सत्य घटना पर आधारित है जिसमें लेखिका ने मध्यप्रदेश राज्य के रतलाम जिले की तहसील सैलाना के न्यायालय में सहायक जिला लोक अभियोजन अधिकारी के पद पर कार्यरत रहते हुए शासन (पीड़ित पक्ष) की ओर से पैरवी की थी। इस केस स्टडी में इस केस के वास्तविक तथ्यों एवं विवरणों को पक्षकारों और साक्षियों के सत्य नामों सहित प्रशिक्षण के उद्देश्य से प्रस्तुत किया गया है। इस केस स्टडी के माध्यम से दहेज प्रताड़ना संबंधित प्रकरणों के अनुसंधान एवं विचारण संबंधी प्रक्रिया विधि और उनके व्यवहारिक पहलुओं पर प्रकाश डाला गया है।

II. सार-संग्रह (SYNOPSIS)

प्राचीनकाल में प्रचलित विवाह पद्धतियों में से सर्वाधिक प्रचलित 'ब्रह्म विवाह' पद्धति थी जिसके अंतर्गत पिता या पालक के द्वारा पति-पत्नी को विवाह के समय धनराशि एवं उपहार आदि प्रदान किये जाते थे। कालांतर में इस परंपरा ने दहेज का रूप धारण कर लिया और वर पक्ष ने साक्षिकार दहेज मांगना प्रारंभ कर दिया। यह मांग अक्सर विवाह के पश्चात भी होती रही है और मांग पूरी न किये जाने पर पत्नी को प्रताड़ित किया जाने लगा, यहाँ तक कि वधुओं को जिंदा जला दिया जाने लगा। इस बुरे चलन पर अंकुश लगाने के उद्देश्य से संसद ने दहेज प्रतिषेध अधिनियम, 1961 अधिनियमित किया जो दिनांक 01.07, 1961 को प्रवृत्त हुआ। इसमें दहेज देने और लेने का प्रतिषेध किया गया था, लेकिन इस अधिनियम के बावजूद कुछ समुदायों में यह अनिष्टकारी चलन जारी रहा इसलिए दहेज प्रतिषेध संशोधन अधिनियम, 1984 द्वारा मूल अधिनियम में संशोधन किये गये तथा भारतीय दण्ड संहिता, 1860 (जिसे आगे संक्षेप में भादस या भादवि लिखा जायेगा) में संशोधन कर धारा 498ए का समावेश किया गया जो दिनांक 25.12.1983 से प्रभावी हुई। दहेज प्रताड़ना या क्रूरता से पीड़ित महिला को 'घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम, 2005' भी विभिन्न प्रकार के विधिक संरक्षण एवं उपचार प्रदान करता है।

III. LEARNING OBJECTIVES

- महिलाओं के विरुद्ध उनके पति एवं पति के नातेदारों द्वारा की जाने वाली क्रूरता, स्त्रीधन का न्यास भंग, दहेज प्रताड़ना, दहेज की मांग से संबंधित कानून के सैद्धांतिक एवं व्यवहारिक पक्ष को समझना।
- ऐसे प्रकरणों के अनुसंधान की प्रक्रिया विधि और साक्ष्य संकलन को समझना।
- ऐसे प्रकरणों के विचारण की प्रक्रिया विधि और पीड़ित पक्ष की ओर से प्रकरण का संचालन एवं साक्ष्य प्रस्तुतीकरण को समझना।

IV. TARGET AUDIENCE

- पुलिस अधिकारी।
- अभियोजन अधिकारी।
- न्यायिक अधिकारी।
- संरक्षण अधिकारी (महिला एवं बाल विकास विभाग)।



V. CASE TEACHING GUIDELINES

- केस स्टडी के बिंदु क्रमांक 2 “घटना एवं उसके तथ्य” में वर्णित अभियोजन कहानी के संपूर्ण तथ्यों को प्रतिभागियों के समक्ष प्रस्तुत किया जाना आवश्यक है। परंतु इसके अंतिम दो पैरा में पुलिस द्वारा किये गये अनुसंधान का भी उल्लेख है। अतः उस भाग को छोड़कर प्रथम सूचना रिपोर्ट दर्ज होने तक के घटना के संपूर्ण तथ्यों को प्रतिभागियों के समक्ष प्रस्तुत किया जाना चाहिए।
- प्रतिभागियों को केस स्टडी से उत्पन्न प्रश्न, उनके संभावित समाधान एवं विचार-विमर्श के लिए निम्नलिखित प्रश्न दिये जा सकते हैं –
 - (1) पीड़िता किन-किन स्थानों पर प्रथम सूचना रिपोर्ट/परिवाद दर्ज करवा सकती है ?
 - (2) इस प्रकरण के संबंध में किन-किन आरोपियों पर किन-किन अपराधों का आरोप विरचित किया जाना चाहिए ?
 - (3) ज्योति एवं ललित का विवाह प्रमाणित करने के लिए क्या-क्या साक्ष्य संकलित करना होगी ?
 - (4) शेष आरोपी ललित के नातेदार हैं, यह तथ्य प्रमाणित करने के लिए क्या-क्या साक्ष्य संकलित करना होगी ?
 - (5) दहेज की मांग एवं प्रताड़ना प्रमाणित करने के लिए क्या-क्या साक्ष्य संकलित करना होगी ?
 - (6) ललित एवं घूम के अनैतिक संबंध प्रमाणित करने के लिए क्या-क्या साक्ष्य संकलित करना होगी ?
 - (7) उपरोक्त प्रकरण के प्रकाश में घटित घटनाओं को प्रमाणित करने हेतु क्या साक्ष्य संकलित की जाना चाहिए ?
 - (8) इस प्रकरण के अनुसंधान एवं विचारण के अनुक्रम में किन-किन अधिनियमों की किन-किन धाराओं का प्रयोग होगा ?
 - (9) प्रकरण के तथ्यों के आलोक में अभियोजन पक्ष के लिये उपयोगी न्यायदृष्टांत क्या-क्या हैं? विषय से संबंधित अन्य उपयोगी न्यायदृष्टांत (केस ली) ?
 - (10) संकलित व प्रमाणित साक्ष्य के आधार पर निष्कर्ष ?
 - (11) संभावित समाधान ?
- निम्नलिखित टाईमलाइन को प्रोजेक्टर स्क्रीन पर दर्शाया जा सकता है –

घटनाओं का कालक्रम	
दिनांक 02.06.2009	ज्योति एवं ललित का विवाह सम्पन्न हुआ
दिनांक 02.06.2009	ज्योति के पिता ने जेबरात, सामग्री एवं साठ हजार रुपये आरोपीगण को दहेज में दिये
एक वर्ष बाद	ज्योति ने पुत्र को जन्म दिया
पुत्र जन्म के बाद	दहेज के लिए शारीरिक और मानसिक प्रताड़ना प्रारंभ हुई। मोटर सायकिल खरीदने के लिए पचास हजार रुपये की मांग
उसके बाद	ज्योति के पिता ने ललित को पचास हजार रुपये दिये

उसके बाद	पाँच लाख रुपये की माँग
दिनांक 25.03.2014	ज्योति के पिता ने एक लाख रुपये ललित को दिये
करीब तीन माह बाद	ज्योति के साथ मारपीट एवं पाँच लाख रुपये की माँग
दिनांक 23.06.2014	आरोपीगण ने ज्योति को घर से निकाल दिया
दिनांक 21.07.2014	ज्योति ने अपने समुदाय के प्रथम सूचना रिपोर्ट दर्ज कराया

VI. CASE TEACHING PEDAGOGIES

Role Play

रोल प्ले के लिए करीब दस प्रतिभागियों के ग्रुप बनाये जाना आवश्यक है जो निम्नलिखित पात्रों की भूमिका अदा करेंगे

- (1) संरक्षण अधिकारी
- (2) पुलिस अधिकारी
- (3) न्यायिक मजिस्ट्रेट
- (4) अभियोजन अधिकारी
- (5) पीड़िता ज्योति एवं अन्य साक्षीगण

प्रत्येक ग्रुप को रोल प्ले से पूर्व विचार-विमर्श के लिए करीब बीस मिनट का समय दिया जाना चाहिए। संरक्षण अधिकारी का पात्र पीड़िता को उसके विधिक अधिकारों एवं उपलब्ध सेवाओं की हकदारी के बारे में बताएगा, इसके लिए उसे 3 मिनट का समय दिया जाना चाहिए। अनुसंधान अधिकारी के पात्र को संपूर्ण विवेचना की प्रक्रिया एवं प्रत्येक तथ्य को प्रमाणित करने के लिए संकलित साक्ष्य के बारे में बताने के लिए 7 मिनट का समय दिया जाना चाहिए। अभियोजन अधिकारी किस तथ्य को किस साक्ष्य से प्रमाणित करना चाहता है, इस संबंध में बतायेगा तथा पीड़ित एवं मुख्य साक्षियों का मुख्य परीक्षण करके दिखायेगा, इसके लिए उसे 10 मिनट का समय दिया जाना चाहिए। न्यायिक मजिस्ट्रेट प्रस्तुत साक्ष्य का विश्लेषण कर अंतिम निर्णय सुनायेगा। इस प्रकार करीब 30 मिनट का समय रोल प्ले के लिए प्रत्येक ग्रुप को दिया जाना चाहिए।

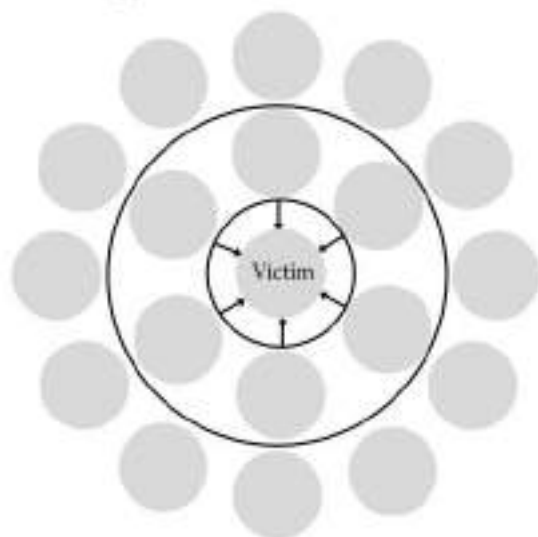
Stakeholder Analysis

सभी संबंधित एजेंसियों के सहयोग के पहलू को समझने के लिए यह महत्वपूर्ण है कि सभी प्रतिभागी प्रकरण से संबंधित सभी स्टैकहोल्डर्स से अवगत हो। प्रतिभागियों को प्रकरण से संबंधित विभिन्न स्टैकहोल्डर्स के बारे में जानकारी देने के लिए उन्हें स्टैकहोल्डर विश्लेषण करने के लिए कहना चाहिए। यह स्टैकहोल्डर विश्लेषण सीमित या प्रतिबंधित नहीं होना चाहिए और प्रतिभागियों को अधिक से अधिक संभव स्टैकहोल्डर्स उल्लेखित करने के लिए प्रोत्साहित करना चाहिए।



स्ट्रेकहोल्डर्स विश्लेषण के लिए निम्नलिखित कदम उठाये जाने चाहिए:-

- (क) वे स्ट्रेकहोल्डर्स जो अधिक प्रत्यक्ष और स्पष्ट हो (या पीड़ित से निकट रूप से संबंध हो) उनका उल्लेख बड़े घेरे में उपलब्ध स्थान में एक-एक करने करना आवश्यक है।
- (ख) वे स्ट्रेकहोल्डर्स जो पीड़ित से दूरस्थ रूप से संबंध हो उनका एक-एक करके उल्लेख बड़े घेरे से बाहर करना आवश्यक है।



VII. REFERENCES

- भारतीय दण्ड संहिता, 1860
- दण्ड प्रक्रिया संहिता, 1973
- भारतीय साक्ष्य अधिनियम, 1872
- दहेज प्रतिषेध अधिनियम, 1981
- केस लॉ में उल्लेखित उनके संबंधित जर्नल्स.

VIII. SUPPLEMENTARY READING

जो प्रतिभागी दहेज प्रताड़ना एवं दहेज की मांग विषय पर गहन अध्ययन करना चाहते हैं उन्हें भारतीय दण्ड संहिता, 1860 की धाराएं 498क, 304ख, भारतीय साक्ष्य अधिनियम, 1872 की धाराएं 113क, 113ख तथा दहेज प्रतिषेध अधिनियम, 1981 का गहन अध्ययन करने के साथ ही संबंधित केस लॉ का भी अध्ययन करना चाहिए।

नोट :- यह केस स्टडी मेरे द्वारा संचालित एक वास्तविक केस पर आधारित है, जिसमें प्रथम अपील न्यायालय से भी दोषसिद्धि की पुष्टि हुई है और वर्तमान में माननीय उच्च न्यायालय म.प्र. खण्डपीठ, इंदौर के समक्ष द्वितीय अपील लम्बित है।

Annexure I

PRE-SESSION ON BASIC CONCEPTUAL FRAMEWORK

The case studies draw on the following conceptual framework and presuppose a basic understanding of the same.

1. An understanding of Gender as a psychologically ingrained social construct, rather than being an innate quality of individuals, that actively surfaces in everyday human interaction and leads to gender-based inequalities and violence. To distinguish between 'Gender Neutral' policies and administrative decisions from those that are 'Gender Inclusive'.
2. An understanding that Gender is no more recognized as binary or even a spectrum, rather as a complex, multi-layered and dynamic phenomenon which may not fit into finite number labels or boxes. It is an individual experience. Yet sexual minorities have historically been subjected to discrimination and violence based on their sex, gender identity and sexuality.
3. An understanding that Gender, instead of operating in isolation, intersects with other identities like class, caste, race, religion, sexuality etc. to heighten the vulnerabilities of certain individuals or groups or the 'Intersectionality' approach to gender-based violence.
4. An understanding that 'Children's Rights' is an umbrella term covering multifarious issues facing children. The violations of children's rights are a result of complex interplay of political, economic, social and psychological phenomenon. An ecological approach to 'Children's Rights' provides a useful framework for understanding violence against children.

For a deeper understanding of the above concepts and to develop the ability to meaningfully utilize such an understanding in practice, modules on 'Gender and Intersectionality' and/or 'Children's Rights' may be run prior to running the case studies on VAWC.

Suggested session plans for the two modules- '*Gender and Intersectionality*' and '*Children's Rights*' are provided on Annexure 1A and 1B respectively.

**Annexure - IA****GENDER AND INTERSECTIONALITY - SESSION PLAN****LEARNING OBJECTIVES**

1. To understand basic concepts like Gender and Sex
2. To understand Gender as a basis of inequalities
3. To understand how Gender may intersect with other identities
4. To understand our role as individuals & duty-holders in fostering Gender Equality

STEP BY STEP SESSION PLAN

S.No.	Exercise/Activity	Duration (Mins)	Cumulative (Mins)
I.	Exercise-1 (Distinguish between Sex and Gender)	10	10
II.	Exercise-2- Pop up Quiz (Check your understanding)	5	15
III.	Exercise-3 (Agents of Socialisation/ Sanctions)	5	20
IV.	Exercise-4 (Introspective Exercise)	10	30
V.	Video- Run like a girl	10	40
VI.	Exercise-5 (Gender-based Inequalities)	15	55
VII.	Exercise-6 (Power and Privilege)	30	85
VIII.	Exercise-7 Identify various forms of Gender-based violence prevalent in the Indian society	5	90
IX.	Video- How Masculinity harms Men	10	100
X.	The Way Forward	5	105
XI.	Closing Comments	5	110

DETAILED SESSION PLAN**I. EXERCISE - 1 (10 mins)**

1. Divide the white board into three columns as below and give titles to two columns as below-

WOMEN		MEN

2. Ask the participants the following question-

'WHEN I SAY THE WORD **WOMEN** WHAT ARE THE WORDS THAT COME TO YOUR MIND?'

Write the keywords mentioned by the audience in the first column

WOMEN		MEN

3. Ask the participants the following question-

'WHEN I SAY THE WORD **MEN** WHAT ARE THE WORDS THAT COME TO YOUR MIND?'

Write the keywords mentioned by the audience in the third column

4. Pick out words from the first and third column that are associated with human physiology and write them in the middle column. Eg. Child birth, moustache, menstruation, tall (average height), breasts / breast-feeding, voice cracks at puberty etc. Name the second column-SEX and rename the first and third columns as follows-

Women- Masculine Gender	Sex	Men- Feminine Gender
Shy	Childbirth	Strong/ powerful
Caring	Breast feed	Breadwinners
Soft-spoken	Menstruation	Macho/ handsome
Multitasking	Average height, weight, muscular strength more for men	Responsible
Mother	Voice cracks at puberty	Tech savvy
Beautiful/ pretty	Moustache/ Beard	Engineers
Have long hair		Good drivers
Nurses		Sincere
Good cooks		Leaders
Gossipers		Confident



5. Conclude the exercise by explaining that the middle column is about biological and physiological differences between men and women which are a consequence of difference in chromosomes, hormones and reproductive organs. However, first and third columns are about adjectives, behaviours, actions, practices and categories that are sociologically defined. Gender is a social construct that defines what is appropriate for men and what is appropriate for women. It is culturally determined and may change over time and space.
6. Sum up the difference between Sex and Gender with relevant examples.

II. EXERCISE - 2 POP UP QUIZ (5 mins)

To check the understanding of the above concepts, run a quick quiz. Say that you would be reading out some statements one by one. After each statement the participants have to say loudly 'SEX' or 'GENDER' depending on what they would attribute that statement to.

1. Young boys enjoy playing with guns. (G)
2. Young girls may wear frocks as well as pants but young boys are less likely to wear frocks. (G)
3. Most drivers in Karnataka are men. (G)
4. Women carry babies in their womb. (S)
5. Women are entitled to 6 months maternity leave. (S)
6. My mother cooks food for me and my father earns money to run our household. (G)
7. Women are in a small percent in Police. (G)
8. Men generally sport short hair. (G)
9. In India adolescent boys are more likely to take up drugs than girls. (G)

III. EXERCISE - 3 (5 mins)

- Q. When does the conditioning of Gendered Thinking start?
- Q. Who are the agents of SOCIALISATION who instill the understanding of Gendered Roles among us? Parents, extended family, teachers, text books, neighborhood, media and social media, religion, laws,....
- Q. How and what sanctions do the agents of socialization impose on those who transgress the gender boundaries?

IV. EXERCISE - 4 (10 mins)

Introspective Exercise- Have you personally faced or directly witnessed any instance of Gender based discrimination? Y/N (Have them raise hands for Y)

If Yes, how many such instances are you able to recollect at this point of time?

1. Only 1

2. Around 5
3. Several/Innumerable

Choose any one of such instances and write about it. When, by whom, how, what happened, how did you feel.

Have each participant write this and have a couple of them share it with the whole group.

V. PLAY THE VIDEO 'RUN LIKE A GIRL' (5 mins+5 mins)

(<https://www.youtube.com/watch?v=XjJBjWYDTs>)

Sum up by explaining that Sex is a 'Benign Variation' yet it leads to inequality. Gender based inequalities have been documented the world over (may refer to Prof Amartya Sen's article 'A 100 million missing women'). They manifest in various forms and at various sites like Home, Society, Market and State.

VI. EXERCISE - 5 (15 mins)

In the context of the Indian society, identify Gender based inequalities at the level of Home, Society, Market and State.

Make 4 small groups and give one of the above topics to one group each.

Listen to the points for each topic and summarize with the following slide

- female feticide/infanticide
- preference for male child
- discrimination in nutrition, education and access to information/knowledge opportunities
- child marriage, dowry, domestic violence
- property rights, widowhood

• FAMILY

- conformity pressures for religious and social norms like purdah, fasting for sons and husbands
- media portrayal of women reinforces stereotypes
- societal character assassination of non conformists
- lack of community role models

• COMMUNITY

- unequal wages, unequal job opportunities during fertility age, the care economy, the unaccounted care work
- lack of enabling environment, creches, toilets, safe transport, accomodation
- no access to credit
- Sh@WP, mobility restrictions
- combat positions still closed

• MARKET

- progressive laws may be there but no implementation on the ground
- the state machinery as gender blind and discriminatory as the community itself
- poor access to the CJS
- Programs/policies sometimes perpetuate bias/ill practices

• STATE



VII. EXERCISE - 6 (30 mins)

Power and Privilege

1. Ask for 10 volunteers, preferably a 50-50 mix of men and women.
2. Randomly distribute 'ROLE' Cards to each of them, which they may read but not share with others. The identities that have been assigned to them would be revealed at the end.
3. Suggestions for 'ROLES':
 - i) a woman sarpanch
 - ii) a young widow in a slum with 5 children
 - iii) a gay man well placed in the private sector who has recently come out on social media
 - iv) a widower with a 6 digit salary
 - v) a young female entrepreneur living in a PG in Mumbai
 - vi) a teenage boy from rural background recently admitted to St. Stephens college
 - vii) a dalitanganwadi worker
 - viii) a newly wed 23 years old woman who left her job in Delhi to stay with husband's family in semi urban India
 - ix) a young dalit male college student
 - x) a 75 years old woman pension bearer retired school teacher
4. Brief them in front of the audience that they have to try and step into the shoes of the 'ROLE' that they have been assigned. This would entail forgetting their own identity and assuming the identity of the role assigned. Certain questions would be posed to them. They have to think for the role assigned and respond to the question by choosing one of the three- Take a step forward if the answer is YES, take a step backward if the answer is NO and remain at their own position if they are ambivalent.
 - i) I can go out at any time of the day without any fear
 - ii) I can locate to new city whenever I want to
 - iii) I can open a bank account in my name or even more than one, as per my wish
 - iv) I can approach a police station when threatened or attacked
 - v) I have access to health and life insurance
 - vi) I read newspaper every day



- vii) I received guidance from my parents regarding my education and career
- viii) I can freely talk about my identity in any social circle of mine
- ix) When facing financial crunch, I can rely on my friends and family for support
- x) I feel free to spend money on myself, for things that I like to do including recreation

5. Place all the 10 participants on a straight line.
6. Start reading the questions from the list below one by one. Wait for everyone to respond by taking a step forward or backward or stay-put, before proceeding to the next question.
7. By the end of all the questions, there would be large gap between the person right in the front and the person right at the back. Starting from the person right at the back, ask everyone to reveal their identities.
8. Ask the first and the last person and someone on the middle-
 - Q- How did you feel playing the role that was assigned to you?
 - Q- How easy or difficult it was to assume someone else's identity?
 - Q- How do you feel being at the end/front/middle?
 - Q- Do you think that the person who's role you played suffers any disadvantage or advantage?
 - Q- Would you like to be on this person's position in real life? Why?
9. Take some observations from the audience. Thank the volunteers.
10. Sum up by reiterating the concept of 'Intersectionality' and discussing the linkages of Gender as an identity with other identities.

VIII. EXERCISE - 7 (5 mins)

How are power and privilege linked with inequality, discrimination and violence?

What are the various forms of gender based violence prevalent in the Indian society? As the participants to list out.

Put up the slide on various forms of Gender based Violence and explain how each one of them is an example of gender being the predominant cause of violence. However, when gender intersects with other forms of vulnerabilities, the violence may become extreme, inter-generational and normalised.

XII. RESOURCES

• Video Resources

1. Run like a girl
<https://www.youtube.com/watch?v=XjJBjWYDTs>
2. Masculinity by Kamla Bhasin
<https://www.youtube.com/watch?v=aOLYIzJnKT4>
3. Rights of Women in India
<https://www.youtube.com/watch?v=MT6HoFa8ZDk>
4. Truck Driver Selvi
<https://www.youtube.com/watch?v=addFOebo5UA&t=1s>
5. Hair Love
https://www.youtube.com/watch?v=kNw8V_Fkw28
6. Laura Bates
<https://www.youtube.com/watch?v=fGoWLWS4-kU>
7. What is Consent
<https://www.youtube.com/watch?v=fGoWLWS4-kU>

• Reading Resources

1. What does it mean to be a Hijra mother? (Goel, I. 2018)
<https://www.epw.in/engage/article/what-does-it-mean-to-be-hijra-mother#:~:text=By%20claiming%20motherhood%2C%20hijras%20have,for%20hijra%20performance%20of%20gender>
2. Seven Kinds of Deprivation that Women Face Everyday (EPW, 2019)
<https://www.epw.in/engage/article/seven-kinds-deprivation-women-face-everyday>
3. The many faces of Inequality (Sen, A. 2001)
<http://prof.chicanas.com/readings/SenInequality.pdf>
4. What does Work from home mean for Women? (Deshpande, A. 2020)
<https://www.epw.in/engage/article/what-does-work-home-mean-women>
5. From reel to real life, challenges faced by women in police are manifold (Singh, A. 2019)
<https://thewire.in/women/woman-police-officers-india>
6. Not Just a Thappad on domestic violence (Sehgal, S. 2020)
<https://www.epw.in/journal/2020/26-27/commentary/not-just-thappad.html>
7. Gender Inclusive Language
<https://www.worldbank.org/en/news/feature/2019/01/24/gendered-languages-may-play-a-role-in-limiting-womens-opportunities-new-research-finds>



CHILDREN'S RIGHTS - SESSION PLAN

LEARNING OBJECTIVES

1. Understanding why are children considered to be the supreme assets of a nation? Why Children's Rights?
2. Giving an introduction to multifarious issues under the broad umbrella of Children's Rights
3. Introducing the existing Legal Framework in the area of Children's Rights in India
4. Understanding the role of the participants as a parents, role models in the society and as duty-holders in upholding children's rights

TOTAL DURATION- 110 mins

Proposed to be conducted in a group of 30 (maximum)

WHO IS A CHILD IN INDIA- 10 mins

(Understanding how is a child different from adults, what makes children vulnerable as compared to adults, why they might need certain protections and what is the legal definition of a Child.)

DRIVER QUESTIONS?

1. **What words come to mind when I say 'Childhood'?** List out participant's responses on board. Expected answers- Innocence, playful, freedom, naughty etc. Conclusion- Expectations from a child are not same as those from adults.
2. **As a child did you do certain things that today you may not be proud of?**
One or two participants may share. Conclusion- All of us have made mistakes as children, those that we are not expected to repeat as adults, its normal to make mistakes, and probably desirable because mistakes are life's lessons, they help us grow and develop.
3. **What was the consequence of that action of yours?**
List out. Expected responses- spanking, a slap, scolding, counselling etc. Conclusion- We are not sent to jail, or handed to police for mistakes we make as children, we deserve a second chance, an opportunity to learn, to be forgiven.
4. **How are Children different from Adults?**
Conclusion- in maturity of mind and body, in limited life experiences and world view, though we may often underestimate their capabilities, each child is unique and has a unique growth and development trajectory.

5. What are the protections/immunities that they might require being different from adults?

List out responses. Expected responses- no handcuffing or jail, no bad publicity in media etc. Conclusion- they need development opportunities, a congenial environment to grow up in, to develop into a competent citizen capable of contributing meaningfully to nation building. It encompasses health, education, love and care from family, protection from exploitation and abuse.

S. No.	Children's Rights	Indicative List of Laws/Policies
1	Education and Health	Right to Education Act Beti Bachao Beti Padhao Mid-day Meal Universal Immunization
2	Child Marriage	Prohibition of Child Marriage Act 2016
3	Child Sexual Abuse	Protection of Children from Sexual Offences Act 2012
4	Child Labour	The Child Labour (Prohibition and Regulation) Amendment Act 2016
5	Child Protection	The Juvenile Justice (Care and Protection) Act 2015 The Commissions for Protection of Child Rights Act, 2005

6. Who is a child in India?

Definition under UNCRC- The UN Convention on the Rights of the Child defines children as all human beings below the age of 18 unless, in a given State, majority is attained beforehand. (<https://home.crin.org/rights-gallery/the-convention>)

Definition of a Child under the Juvenile Justice (Care and Protection of Children) Act, 2015- Child means a person who has not completed eighteen years of age. (<https://home.crin.org/rights-gallery/the-convention>)

Notes for Trainers

Defining what age a person is or ceases to be a child is a constant debate in the India. Because of its umbrella clauses and because it is the latest law to be enacted regarding child rights and protection, many are of the opinion that the definition of child found in the Juvenile Justice Act, 2015 should be considered the legal definition for a child in all matters. (<https://www.childlineindia.org.in/child-in-india.htm>)



Section 1(4) JJ Act, 2015- Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to all matters concerning children in need of care and protection and children in conflict with law.

National Policy for Children, 2013, Preamble, 2.1 Recognising that “child is any person below the age of eighteen years”.

Supreme Court of India in Salil Bali vs Union Of India & Anr on 17 July, 2013 pronounced-

44. The basis of fixing of the age till when a person could be treated as a child at eighteen years in the Juvenile Justice (Care and Protection of Children) Act, 2000, was Article 1 of the Convention of the Rights of the Child, as was brought to our notice during the hearing. Of course, it has been submitted by Dr. Kishor that the description in Article 1 of the Convention was a contradiction in terms. While generally treating eighteen to be the age till which a person could be treated to be a child, it also indicates that the same was variable where national laws recognize the age of majority earlier. In this regard, one of the other considerations which weighed with the legislation in fixing the age of understanding at eighteen years is on account of the scientific data that indicates that the brain continues to develop and the growth of a child continues till he reaches at least the age of eighteen years and that it is at that point of time that he can be held fully responsible for his actions. Along with physical growth, mental growth is equally important, in assessing the maturity of a person below the age of eighteen years. In this connection, reference may be made to the chart provided by Mr. Kanth, wherein the various laws relating to children generally recognize eighteen years to be the age for reckoning a person as a juvenile/ child including criminal offences.

45. In any event, in the absence of any proper data, it would not be wise on our part to deviate from the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, which represent the collective wisdom of Parliament.

INTRODUCING CHILDREN'S RIGHTS-5mins

(Getting a peek into what is the group's understanding of Children's Rights and introducing the various dimensions of Children's Rights' violations)

DRIVER QUESTIONS ?

1. What do 'children's rights' mean to you?
2. Have you directly witnessed any violation of child rights? (any incident that might have happened with you or your siblings/friends ?)
3. Would you like to share that incident?

Let us hear from people who have spent decades working in the area of children's rights.

UNDERSTANDING THE MULTIFARIOUS ISSUES UNDER THE BROAD UMBRELLA OF CHILDREN'S RIGHTS IN INDIA- 8+2+10= 20 mins

Briefing before playing the video- Make list of all those issues mentioned in the video that you would consider Children's Rights issues. To be done individually by all participants.

Play the Ted Talk by Bharti Ali and Enakshi Ganguly, for duration 8 minutes. (https://m.youtube.com/watch?v=mM7vAh_KODs)

The video may be paused at either 6.43 mins or 8.13 mins.

Participants to take notes while the video is playing. Give 2 more minutes to complete the list.

Discuss and list the responses on board. Focus on bringing diversity in the list in terms of Children's Rights issues, affecting various age groups, various socio-economic backgrounds and various states/languages/ethnicities.

Ideas from outside the video may also be accepted.

CONCLUSION

- (i) Preparing a long list of forms of Children's Rights issues including entitlements as well as violations of children's rights.
- (ii) While entitlements and violations may be of many forms, not all of them have corresponding legal protections. Preparing a list of laws/legal protections meant for protection of children and fostering their rights.
- (iii) What might be the challenges to effective implementation of the laws?

AN INTERSECTIONALITY APPROACH TO UNDERSTANDING CHILDREN'S RIGHTS -10 mins (Cumulative 45 mins)

Notes for Trainers

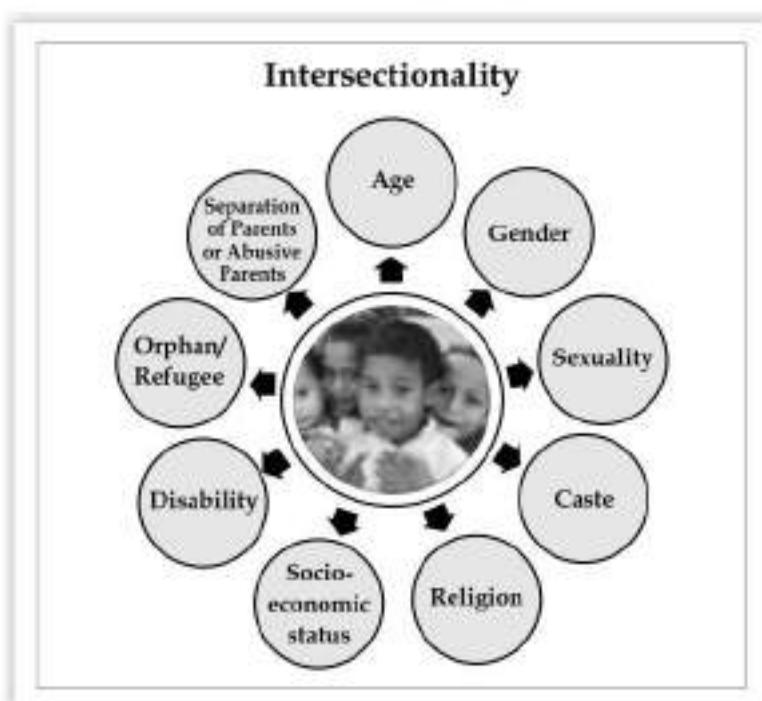
Sum up the above discussion by introducing the Intersectionality Approach to Children's Rights. The understanding that none of the issues that we listed out can be or should be seen in isolation. They are complex interactions of the various vulnerabilities that's child might be facing.

For example, Children forcefully engaged in begging may be children from disadvantaged backgrounds as well as be children with disability or disease, children outside the network of schools, orphaned or separated children, children facing physical, mental or sexual abuse, children in conflict with law etc. They may be facing multiple vulnerabilities simultaneously.

Example of Sushma from the video may also be used to explain intersectionality.



This approach is crucial in understanding the big picture and for devising strategies for tackling the issue at hand. Any solution would need to factor in the multiple overlapping Intersectionalities. (<https://globalsocialtheory.org/concepts/intersectionality/>)



SUMMING UP- UNDERSTANDING OUR ROLE IN FOSTERING CHILDREN'S RIGHTS-10 minutes

1. In personal capacity- as siblings, parents, friends and as role model in the society- Ask the participants what they think is their role is. Take a few responses and sum up by encouraging them to remain exemplary in their personal life and conduct-eg, not yourself engage in child labour, do not promote or support child marriage in family, educating friends and family about Child Sexual Abuse so on...
2. In professional capacity, as duty-holders and service providers - Ask the participants what they think is their role is, how and where are they likely to interact with children in their personal capacity ? The Principles of Care and Protection of Children to guide them in their official discharge of duties. As leaders, they may also need to train their staff in the provisions of the JJ Act and other relevant laws as applicable to them.

**Annexure
II**

**PRE-POST QUESTIONNAIRE
MULTISTAKEHOLDER COLLABORATION FOR COMBATING VAWC
NATIONAL GENDER AND CHILD CENTRE**

Gender:

Service:

State:

1. Sex and Gender are two words with the same meaning. T/F
2. Give 5 examples of gender based inequalities in a family.
.....
.....
3. In gender based violence like sexual assault and rape, caste, class and age of women have no role to play. T/F
4. With respect to redressal of VAWC, who are the major stakeholders of the criminal justice system in India. List as many as you can.
.....
.....
5. Which of the following are true with respect to the Juvenile Justice (Care and Protection of Children) Act 2015, which of the following are true? (Choose all those that apply)
 - A. Decisions regarding custody and care of Children in Need of Care and Protection are taken by the Juvenile Justice Board (JJB).
 - B. Adjudication regarding Children in Conflict with Law are done by the Child Welfare Committee (CWC).
 - C. Budget for rehabilitation services and Shelter Homes is provided under the Integrated Child protection Scheme (ICPS)
 - D. The JJB and the CWC are required to furnish quarterly reports of pendency of cases to the District Magistrate.
 - E. The District Magistrate is responsible for registration of orphanages and Shelter Homes and regular inspections of the same.
6. Child Marriage affects both boys and girls in the same manner. T/F
7. Children, both boys and girls are vulnerable to Child Sexual Abuse. T/F
8. As per Sexual Harassment at Workplace, Prevention, Prohibition and Redressal Act 2013, Sexual Harassment at Workplace is of two types- Quid pro quo and Hostile Work Environment. T/F
9. As per section 375 of IPC (definition of Rape), a woman who does not physically resist to the act of penetration shall, be regarded as consenting to the sexual activity. T/F
10. Under the Criminal Law Amendment Act 2013, which of the following are offences? (Choose all those that apply)
 - A. Voyeurism
 - B. Penetration of any orifice of a Female by an object by a Male.
 - C. Stalking and e-Stalking



NATIONAL GENDER
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- D. Lewd comments and gestures
 - E. Groping
 - F. Rape of woman by her husband
 - G. Acid Attack
 - H. Exhibiting one's sexual organs
 - I. Parading a woman naked
 - J. All of the above
11. Which of the following are true regarding the Domestic Violence Law in India? (Choose all those that apply)
- A. The law provides both civil and criminal remedy for domestic violence.
 - B. The law includes economic violence, mental violence and physical violence in the ambit of domestic violence.
 - C. The law recognises marital rape as a criminal offence.
 - D. The law has provisions for restraining the husband and his relatives from meeting the woman at her place of work or residence.
 - E. The law has provisions for providing monthly stipend from husband's salary and/or residence in shared household of husband.
12. The 'two-finger test' is necessary to be performed in all cases of alleged rape. T/F
13. Most women perform sex work/prostitution out of choice and for money. Y/N
14. You are aware of a standard pro-forma prescribed by MHA for medico-legal examination of victims of sexual violence. Y/N
15. What is the role/responsibility of District Magistrates/Magistrates in supervision and monitoring of Prosecution in cases pending for trial from the Police Stations under their jurisdiction? List out as many points as possible.
-
16. As per a Court judgement, age determination in case of a victim under PoCSO must be done in line with the procedure laid down in the Juvenile Justice Act 2015. T/F
17. Of all the reported cases of Sexual Harassment at workplace, in your perception, how many are false cases? (Choose any one)
- A. Less than 10%
 - B. 10-30%
 - C. 30-50%
 - D. 50-70%
 - E. 70-90%
 - F. More than 90%
18. When it comes to a victim of Acid Attack, it is legally mandatory for all government and private hospitals to provide free of cost all necessary medical facilities, including reconstructive surgeries. T/F
19. As a Judicial/Police/Administrative/Prosecution/Medical Officer (tick whichever applies to you), you find it very easy to empathise with a victim of VAWC. (Choose one from the following)
- A. Strongly agree
 - B. Partly agree

- C. Ambivalent
 - D. Partly disagree
 - E. Strongly disagree
20. As a Judicial/Police/Administrative/Prosecution/Medical Officer (tick whichever applies to you), you believe that you have only a limited role to play in providing justice to the victims of VAWC, as you are dependent on other stakeholders in discharge of your duty. (Choose one from the following)
- A. Strongly agree
 - B. Partly agree
 - C. Ambivalent
 - D. Partly disagree
 - E. Strongly disagree
21. As a Judicial/Police/Administrative/Prosecution/Medical Officer (tick whichever applies to you), it is your primary responsibility to secure the rights of the victim and not of the accused. (Choose one from the following)
- A. Strongly agree
 - B. Partly agree
 - C. Ambivalent
 - D. Partly disagree
 - E. Strongly disagree
22. As a Judicial/Police/Administrative/Prosecution/Medical Officer (tick whichever applies to you), due to infrastructure bottlenecks, poor quality Human Resources and various pulls and pressures, when it comes to delivery of justice, despite your best intentions, you feel helpless. (Choose one from the following)
- A. Strongly agree
 - B. Partly agree
 - C. Ambivalent
 - D. Partly disagree
 - E. Strongly disagree
23. You are aware of the CCTNS scheme of the MHA which aims to compile and share crime and criminal related information across the country. T/F
24. Criminal Law Amendment Act 2013 provides protection against sexual abuse and sexual assault to transgender persons also, apart from women. T/F
25. To make the Criminal Justice System more responsive and efficient in providing justice to victims of VAWC, training is a powerful tool of shaping knowledge, skills and attitudes of all the stakeholders. (Choose one from the following)
- A. Strongly agree
 - B. Partly agree
 - C. Ambivalent
 - D. Partly disagree
 - E. Strongly disagree

YOUR FEEDBACK IS VALUABLE

1. What were your expectations from this training?
2. Which specific expectations were satisfied?
3. Which specific expectations were not met?
4. How do you rate the overall experience of this training on a scale of 5. *(5 is completely satisfied with the overall training experience and 1 is completely dissatisfied with the overall training experience)*

Comments-

5. Rate the usefulness of the 'Case Study' on a scale of 5.

Comments-

6. Rate the usefulness of 'Stakeholder Analysis' on a scale of 5.

Comments-

7. Rate the usefulness of 'Role Play' on a scale of 5.

Comments-

8. Any other suggestion/observation/comment?

Job Title.....Age.....Gender.....

Name (optional).....

ABOUT US

The Lal Bahadur Shastri National Academy of Administration (LBSNAA) is the premier institute of the country entrusted with the task of training senior officers of the Civil Services in India. The National Gender & Child Centre (NG&CC) has been functioning under the aegis of Lal Bahadur Shastri National Academy of Administration (LBSNAA) since 1995.

The centre is committed to mainstreaming gender and children's rights concerns through training and capacity building of multiple stakeholders. Working towards this end, the Centre has been actively involved in designing and conducting thematic workshops, programmes and trainings including Training of Trainers (ToTs) for trainers and policy makers to enhance gender sensitization as well as build capacities for gender analysis, gender planning and gender and child budgeting. The centre has designed and developed graded modules for all courses at the LBSNAA viz. Induction trainings and in-service mid-career training programmes.

Over the past 25 years, the center has collaborated with several national and international organizations and organized many programmes in collaboration with the Ministry of Women & Child Development, NITI Aayog, International Food Policy Research Institute and UNICEF. Notably, in 2020-21, in collaboration with the Ministry of External Affairs, the Centre conducted two international conferences on 'Gender Inclusive Governance' which saw participation from more than 200 officers from 21 countries across the globe. The Centre has published a report on analysis of responses to questionnaire filled by the participants and has come up with key recommendations with regard to making governance gender inclusive.

In 2020 the Centre was consulted and has provided key recommendations to the Criminal Reforms Committee constituted by the Ministry of Home Affairs with regard to amendments to the Indian Penal Code and the Criminal Procedure Code. Also in 2020, the Union Minister for Women and Child Development addressed the officers of the Centre, opening up various avenues of collaboration in future.



NATIONAL GENDER
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ABOUT OUR PARTNERS

Bureau of Police Research and Development (BPR&D)



It is a unique organization of the Ministry of Home Affairs, Government of India, which strives to define best practices for Indian Police Officers, by trying to study the dynamic Policing ecosystem, viz-a-viz the emerging legal and social ecosystems. BPR&D tries to define the emerging needs, trends, threats and opportunities emerging for effective Policing. BPRD consists of 05 Divisions, i.e.

- a. Training Division
- b. Research and Correctional Administration (R&CA):-
- c. Modernization Division
- d. National Police Mission
- e. Special Police Division
- f. Police Vigyan Partika (Police Science Journal)

Bill & Melinda Gates Foundation



Guided by the belief that every life has equal value, the Bill & Melinda Gates Foundation (Gates Foundation) works to help all people lead healthy, productive lives. In developing countries, it focuses on improving people's health and giving them the chance to lift themselves out of hunger and extreme poverty. In the United States, it seeks to ensure that all people—especially those with the fewest resources—have access to the opportunities they need to succeed in school and life. Based in Seattle, Washington, the foundation is led by CEO Sue Desmond-Hellmann and Co-chair William H. Gates Sr., under the direction of Bill and Melinda Gates and Warren Buffett. The Gates Foundation's efforts in India are closely aligned with India's development priorities - working closely with India's central and state governments, and partnering with community groups, nonprofit organizations, academic institutions, the private sector, and development organizations, to achieve shared goals. The Gates Foundation's core areas of work in India include Health, Sanitation, Agricultural Development, Gender Equality, and Financial Services for the Poor.



Department for International Development (DFID)



 UK Government

The Department for International Development (DFID), now known as Foreign Commonwealth and Development Office, leads the UK's work to end extreme poverty, deliver the Global Goals and tackle global challenges. The UK is committed to building a safer, healthier, more prosperous world for everyone, and for the UK's national interest. In India, DFID works in partnership with other parts of Her Majesty's Government (HMG) like the Foreign and Commonwealth Office, the Department for International Trade, Treasury and others to deliver joint economic development priorities in India, focusing on areas of mutual benefit. These are: good governance and strong institutions; urban development; infrastructure investment and public finance; clean energy; skills and entrepreneurship; and improving the business environment. DFID also works in partnership with India to maximise the development impact of India's trade and investment in low income countries in South Asia and Sub-Saharan Africa. We will help build resilience to shocks in cities, ensuring modernised cities can cope with disasters and climate change, and support climate risk and disaster management. We continue to focus on girls and women to mitigate risks of forced labour, trafficking and child labour. We also improve skills and access for poor households to energy, the urban labour market and finance.

Initiative for What Works to Advance Women and Girls in the Economy (IWWAGE)



Initiative for What Works to Advance Women and Girls in the Economy (IWWAGE) promotes the generation, synthesis and use of rigorous data and evidence in decision-making to drive the agenda on women's economic empowerment in India. IWWAGE is an initiative of LEAD, an action-oriented research centre of IFMR Society. LEAD has strategic oversight and brand support from Krea University. IWWAGE is supported by the Bill & Melinda Gates Foundation.



EDITORS

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Vidya Bhushan is an officer of the Indian Administrative Service. After a four years tenure in a full-time training role at Lal Bahadur Shastri National Academy of Administration at Mussoorie, he is currently posted as Managing Director at an electricity company of Government of Uttar Pradesh. His area of interest is Urban Planning and Development including the role of migration and urban informality and resulting inequalities.

SWATI YADAV

Swati Yadav, an alumna of Tata Institute of Social Sciences, Mumbai, possesses keen interest of working on child rights issues. She served as a Teaching Associate at NG&CC, LBSNAA, Mussoorie. She worked as an Academic Tutor & TRIP Fellow at the Jindal Global Law School before joining as Assistant Manager (Legal), Securities and Exchange Board of India.



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