Page 1:  
AW COMMISSIC PAL  
LAW COMMISSION OF INDIA  
  
ONE HUNDRED AND SEVENTY SECOND REPORT  
  
on  
  
REVIEW OF RAPE LAWS MARCH, 2000  
  
D.0.No.6(3(36)/2000\_LC(LS)  
March 25, 2000  
Dear Shri Jethmalaniji  
1am forwarding herewith the 172" Report on Review of Rape Laws.  
2. In Writ Petition (C+1.) No.33 of 1997, the petitioner, “Sakshi” an organisation  
interested in the issues conceming women, approached the Supreme Court of  
  
for directions concerning the definition of the expression “sexual  
contained in section 375 of the Indian Penal Code.  
  
intercourse” a  
  
3. The Supreme Court by its order dated 13 January, 1998 directed the Law  
‘Commission to indicate its response with respect to the issues raised in the above writ  
petition. The Commission filed an affidavit dated 28.7.1998 setting out in extenso the  
portions of its 156 Report on the Indian Penal Code dealing with the issues in  
question. In the said Report, the then Law Commission (14" Law Commission) did not  
agree with the viewpoint of the writ petitioners except in certain minor respects. The  
Supreme Court was inclined to agree with the submissions of the writ petitioners that  
the contents of the 156! Report did not deal with the precise issues raised in the writ  
petition.  
  
4. Onthe directions of the Hon’ble Court, the petitioner drew up a note containing  
the precise issues involved in the petition. The Commission was asked by the Hon’ble  
Court by its order dated 9" August, 1999 to examine the said issues afresh. The Court  
observed that the isses needed a thorough examination. By the said order dated  
9 August, 1999, the Hon’ble Court requested the Law Commission “to examine the  
issues submitted by the petitioners and examine the feasibility of making  
  
  
  
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recommendations for amendment of the Indian Penal Code or deal with the same in any  
‘ther manner so as to plug the loopholes”.  
  
5. A copy of the draft of comments prepared by the Law Commission was  
thereafter forwarded to Sakshi inviting their views thereon and for suggesting changes  
of a procedural nature, whether in the Criminal Procedure Code or the Evidence  
Act. Later on, three other organisations, namely, Interventions for Support, Healing  
and Awareness — IFSHA, Alll India Democratic Women’s Association ~ AIDWA and  
the National Commission for Women — NCW also presented their views on the  
proposed suggestions.  
  
6. After detailed discussions with these organisations, the Commission has  
recommended changes for widening the scope of the offence in section 375 and to make  
it gender neutral. Various other changes have been recommended in sections 376,  
376A to 376D. We have also recommended insertion of a new section 376F dealing  
with unlawful sexual contact, deletion of section 377 of the IPC and enhancement of  
punishment in section 509 of the IPC. In order to plug the loopholes in procedural  
provisions, we have also recommended various changes in the Code of Criminal  
Procedure, 1973 and in the Evidence Act, 1872.  
  
7. The Hon'ble Supreme Court forwarded vide its order dated 18.2.2000 the  
comments of the petitioner on the Response and Recommendations of the Law  
‘Commission of India for consideration. The Commission accordingly considered those  
comments and submitted its further resposne and recommendations dated 14.3.2000.  
  
8. The present Report focuses on the need to review the rape laws in the light of  
increased incidents of custodial rape and crime of sexual abuse against youngsters. The  
crime of sexual assault on a child causes lasting psychic damage to the child and as  
such, it is essential to prevent sexual abuse of children through stringent  
provisions. The UN Conventions and various constitutional provisions also underline  
the need for protecting the child from all forms of sexual exploitation and sexual  
abuse. This Report aims at the attainment of these objectives.  
  
With regards,  
Yours sincerely,  
  
(B.P.JEEVAN REDDY)  
  
Shri Ram Jethmalani,  
  
  
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Minister for Law, Justice & Co.Affairs,  
  
Government of India,  
Shastri Bhavan,  
  
‘New Delhi.  
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ail  
  
CHAPTER ONE  
Introduction  
  
Lui, Under an order dated August 9, 1999 sade in weie  
Patitson” (ei) Wo.33 ef 1997, the Guprene Court of Indi  
Fequested the Lew Conmigsion "to examine the iesues raised  
hy the petitioners and examine the feasibility of sexing  
deal with the sane in any other manner so ag to plug the  
Loopholes.”  
  
Lut. me petitioner “sakeni", an organisation  
inedrasted in the issues concerning women, had approached  
the Suprene Court of India with the aforesaid Nrie  
Petition praying for (a) issuance of a weit in the nature  
of declaration or any other appropriate writ or  
dizection decioring snter aite'that “sexuei “intercourse!  
Include ail forme of penetration euch ag pen{ie/vaginal  
  
penetration, penile/oral penetration," peniie/anal  
penetration, finger/vaginal and finger/anal penetration  
and abject /vaginal penetration and (b) to iesue a  
  
Sonsequential writ, srder or direction to the respondents  
inthe Writ Petition and to their servants and agenta, to  
register all auch cases found to be true on investigation.  
  
1.2.2. Te Law Commission was not made a party to the  
Well Petition. The Suprene Court however directed the Lew  
Indicate ite response with respect to the ieeues raised in  
afridavie “dated 25.3.1998 brought to the notice of the  
Hontbie Court that the 156th Report of the Law Conmiesion  
Report wae not yet placed on the table of the Houses of  
Storesaid Report of the Law Cosmiseion wes placed on’ the  
Lav Conatssion filed it affidavit dated 287.98 setting  
out in extenso the portions of the said Report dealing  
with the igsues in question. Suffice Le to say that by  
and large the then Law Conmission (14th La Commission}  
did not agree with the viewpoint of the writ petitioners  
except in certain minor respects which would be indicated  
at the appropriate stage later. It ig after considering  
of Law, Justice and Company Affaire, that the Hon'ble  
Court passed the aforesaid order dated Sth August, 1999.  
  
  
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atatenent of the learned counsel for the writ petitioners  
that the contents of the iséth Report of the Law  
Consiesion vere known to the petitioners, but eines  
according to then the Report did not deal with the precise  
Lseues raised in the writ petition, a request was made by  
the counsel for the petitioner to seek further  
consideration of the Lesues by the Lew Commission and the  
Government of india. ‘The Court was inelined to agree with  
Report was gubsitted by the Lew Conmission prior to these  
Seeues being referred to the Commission and further that  
the said Report of the Law Commission did not in terme  
deal With various aspects of the issues raised in the rie  
Suggestion of the Hon'ble Court, the petitioner did draw  
up a note containing the precise issues involved in the  
perusing the sane, the Court asked the Law Commission eo  
Guanine the said isques afresh. A copy of the “precise  
Seeues! with the appendix and affidavie were gent to the  
Secretary, Law Commission with a request to place the same  
Conaiesion may, Lf 20 advised, call upon the petitioner to  
seaiat it in| auch manner as the Commission thought  
appropriate. The issues, the Court observed, "need a  
thorough examination" ‘The matter was accordingly  
adjourned for these months within which period the Law  
Conmiegaion vas expected to subsit ite responee to the  
  
1.1.4. Te order of the Hon'ble Court was received by the  
Seeletary to the Law Commission on 19-8.99" and placed  
  
1.2, "Precise ‘eeues™.- The “precise Leeues’ gubaitted  
by the petitioner before the Court and which have been  
into three parte (Annexure-A}. Pare I carsies the titie  
the heading "Existing inadequacies" end Part III ie titled  
“Suggestions for anendnent to the Indian Penal Code". We  
ede in ell the three parte,  
  
of ‘the Law Commission and the Government of India.~ (1)  
Having regard to the widespread prevalence of child sexual  
abuse, would Lt not be appropriate to inciude all forme of  
  
penetration such ae penile/vaginal penetration,  
Penile/oral penetration, —peniie/anal penetration,  
Einger/vagina | and finger/onai penetration and  
  
object/vaginal penetration within che meaning of the  
expression "penetration" in the Explanation te section 375,  
ofthe TPC. ‘The restrictive interpretation of  
  
  
Page 6:  
penetration’ in the Explanation to section 375 defeate  
the very purpose and abject underlying section 376(2) (£17  
  
(2) Te St not wrong to elasaity the penetrative abuse  
OF a child below the age of 12 98 unnatural offence under  
Seetion 377 T8C or a cutraging the modesty of a women  
Under ection 354, depending upon the “type” of  
penetration ignoring the “impact an such child.  
  
(3) te ke not wrong to continue to treat  
Ron-congensual penetration upon such a child ag offence  
Under section 377 IPC on par with certain forms of  
consensual penetration (e.g. consensual homosexual sex)  
snore consenting party canbe held table af an abettor or  
  
1.2.2. “Appendix AY appended to Part I containg three  
  
Wote 1: Te Explanation to sections 375 and 376 says that  
penetration is sufficient to consticuee the se¥ual  
intercourse necessary to the offence of rape". By the  
Criminal Law (Anendnent) Act 2983, raping of a onan under  
twelve yeare of age wae made pinishable with rigorous  
imprisonment for” a term which shall not be lesa than een  
yeare but which may be for life in addition to fine. in  
dich. a situation, it would be appropriate to broaden the  
Beaning Of penettation to include net only vaginal  
Penetration but algo anal and oral penetration as well as  
penetration by any part of the body sr by any object  
  
ote 2: in a vast majority of child gexuat abuse cases the  
Penetration is, ether than pentle-vaginal. ‘such  
Penetration causes lasting psychic damage to the child.  
En suche situation, a restrictive meaning attached to  
penetration ig iikely to prove inadequate.  
  
Mote 3(a): The 156th Report of the Law Cosmission has  
feconmended that” penile/orel penetration and penile/ana2  
penetration be covered by section 377 T8C and that finger  
penetration and object penetration into vagina or anus can  
be adequately covered under gection 354 with a nore severe  
Punishaent. ‘This recommendation requires reconsideration  
Very often the sexual abuse of children ia by persons  
known to them. Asa matter of fact, rape is really  
intended to” huniilete, violate or degrade a vonan  
Sexually. Te adversely affects the sexual integrity and  
gutonony of women and chiidren. "The | aforesaid  
very object underlying the Criminal Law (Amendsent) Act,  
1983 whieh inserted aub-section (2) and in particular  
elause (£) thereof in gection 376 ‘the above  
Ghat child of tender years can not discern the degree of  
  
  
  
Page 7:  
penetrated. Certain inetances aze then eet out to  
Tiuserete the aforesaid point  
  
ote 31b): Under ehie note, the petitioner hae sought  
fo argue in the light of the instances. mentioned under  
Note 3(a) that the ISGEh Report of the Law Commission  
requires reconsideration  
  
1a. pare Existing tnadequacies.- various  
instances get out in Appendix-B to Annexure-A (a copy of  
the subsigsions of Sakeht sneluding Appendix-B ig enclosed  
herewith) to this part, the petitioner argues, would not  
amount to rape and perhape not even to natural offence  
Under section 377 or to outreging the modesty of @ women  
  
Under section 354, in view of the existing lev. They  
Bight Just be @ limited form of assault or criminal force,  
Seat all, though ali the said instances aze of a grave  
nature and extrenciy disturbing. re fg therefore  
necessary thet there should be a rethinking on thie issue  
  
precisely defined ond ite paraneters indicated  
  
14. pare Suggestions for amendment to  
fndian Penal Code.- This part sets out the several  
anendwents proposed by the petitioner. Suffice it to say  
that they seek to aubstitute the definition of “repet with  
the definition cf "sexual assault’ and make it gender  
neutral. The abject ie to widen the scope of the offence  
‘The expression “consent\* ia also sought to be defined. A  
hew “section, section 375A with the heading “Aggravated  
Sexual assault’ is sought to be exeated. This new offence  
seeks to aynthesise the offences now categorised under  
Sub-aection (2) of section 276 a well as sections 376B to  
  
caaPTER\_s¥o ail  
inns nvirep oN PROPOSED PROVISTONS  
  
provieione.Several cases of child abuse have all over the  
Norid have caused grave concern to the hunanity. Article  
3€ of the Convention on Righte of the Child (20 Novenber  
1989) ordains the Menber States to protect the child from  
ahi forme of sexual exploitation and sexual abuse. For  
Chese purposes, State Parties aze required to cake  
appropriate national, bilateral and multsiateral measures  
Co prevent:  
  
(a) the nducenent or coercion of a child to  
‘engage in any untawfui sexual activiey:  
(by The exploieative use of children in  
  
  
  
Page 8:  
prostitution or other unlawful sexual practices;  
(c)\_ The exploitative use of children in  
pornographic performances and materiale.  
  
2.2.1, Article 39(E) of the Constitution of India, one of  
the Directive Principles of State Policy requires the  
State to direct its policy, inter alia, tovards securing  
that ehirdnood and youth are protected against  
exploitation and againet moral and material abandonment  
There is, therefore, great need for tightening the  
existing!” provisions’ seieting "to child “sexuel abuse oF  
  
2.2. Draft of the Law Commission's proposals.- on  
Songideration of the “precise seuss" submicted by the  
petitioner ond in the Light of the order of the Hon'ble  
Court and also taking into account the lave in force in  
certain western countetes on this subject, the Law  
Commission prepared a drafe (Anmewure-B) containing the  
proposed new sections, namely, sections 375, 376, 376A,  
Sieb, 376¢, 2760 in substitution of the existing sections  
375 to 3760’ and algo suggested a new section, section  
376E. The purport of these new sections ie to gubstieute  
the Offence of “rape! under section 375 with the offence  
Of “aexual assault” by including all kinds of penetration  
in the vagine, anus or urethra of ancther, whether by a  
part of the Duman body or by an abject. Section 376 42,  
Eccordingly, modified in the light of the change in  
Fetained substantially except adapting then to the changes  
fede in the offence under section 375 and a few changes in  
the matter of puntahment. Anew offence, namely, section  
Stee with the title "unlawful sexual contact’ is’ sought to  
be created. Besides the above, section 377 ig proposed to  
be deleted a2 unnecessary in the Light of the preceding  
Provisions. Section S09 cf I8C ia also sought to be  
Snended providing higher punishment where the offence set  
  
2.2.1. Views invited. A copy of the said draft was  
sorvaided to Sekehi $n 27.8.09 and they were sovited for 4  
Aiseussion would noe oniy be with respect co the drafe  
Prepared by the Law Coonisaion but that they shall be free  
fo. put forward their other suggestions and ideas, if any,  
and further they could algo bring representations oF other  
women's organisations, slong with then, for discussion  
Accordingly, three persons, nonely, Me Naina Kapur  
(Director, Sakani), “Ma dasjit Pureval (Dieter,  
Interventions for Support, Healing and Awareness - IPSHA)  
and Me Kirei Singh (Ali India Democratic Monen"e  
Association ~ AIDWA) participated in the discussion, on  
behalf of their respective organisations. All the three  
organisations have also put forvard their suggestions in  
weiting = apart fron what ‘Sakshi had filed before the  
Suprene Coure,  
  
  
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We may mention that hereafter whenever we speak of  
or refer to Sakshi, it meang not only the Sakshi, but also  
the evo other" wonen's organisations, namely PSEA  
Uinterventions for Support, Healing and Awareness) and  
AIDKA. (AL India Denocratic Women's Association) ag well  
fe the National Commission for Women (NCH), who were, 6180  
heard on the proposals contained herein  
  
2.3, Views of the "Sakshi" on the IPC provisions. on  
the fixee day of hearing (23.9.99), the said three persone  
cupeessed their appreciation Of the deatt prepared by the  
Tow Conmigsion stating that it was a substantial advance  
fon the subject and met many of their ideas. Even 20,  
after 9 good amount of discussion, they cane forvard with  
the following changes in the said drate:  
  
(a) The \_age\_ of the person assaulted - referred to in  
clauge “aiethiy" in section 375 and in Explanation (2) to  
Section 375 and in section 376(2} [where the age of the  
vite ig refered to} - should be raised to sixteen  
Raising the eaid age to eighteen may not be appropriate  
  
() \_A provision must be inserted to the effect that Lf  
the person assaulted gives his/her age, the court shall  
precune it to be 0. A provision on the iines of section  
114A of the Evidence Act be suggested,  
  
[c) Im the definieion of sexual assault in section  
375, there should be an explanation saying that  
penetration “shall mean” penetration to any. extent  
Whatscaver, inasmuch the penetration ig never complete in  
(a) Explanation (2) to draft eection 375 (which eaye  
that sexual intercourse by aman with his own wife, the  
wife “not being under 15 years of age, does not amount to  
Sexual aseauit) should be deleted Forced sexual  
intercourse by & Musband with his wife should equally be  
treated as an offence just as any physical violence by a  
husband against the wife ig. treated ae an offence  
Following the sane Logie, they submitted that the words  
wuniess the person subjected to sexual assault ig hie own  
vite and ig not under 15 years of age tn which case he  
Shall be punished with inprisonnene of either deseription  
for a term whieh may extend to two years or with fine or  
with both" in section 376(1) of the Lew Conmission's dare  
[adaptation of the existing eection 376(1]) should also be  
deleted. Section 476A should algo be deleted, they said,  
fon the seme reasoning  
  
e) Im the first provigo to draft section 376(2) (in  
the drafe of the “Conmiseion}, the worde "the father,  
grendfather or brother" should be subseituted With the  
words "a person holding position of trust vis-a-vis the  
‘Other person and further to add an explanation saying  
that the said expresaion shall inelude father/atep father,  
broter/atep brother, teacher, instructor, guardian and  
  
  
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(€) Consent should be defined to mean “unequivocal  
Voluntary agreement”  
  
2.3.1. A copy of the handout given by the persons  
mentioned in paragraph 2.2.1, supra of this chapter, on  
the first dace of meeting ie placed at Annexure-c  
  
2.4. Views of the "Saksni" on the relevant provisions  
Aet.- At. the end of the discussion on the first day, it  
  
wae indicated to the persons sentioned in para above that  
EE ey wimed to, euguest any changes of a procedural  
Evidence Act, they could send the gene by the next date,  
which was specified ae 17eh September 1999. Though the  
Sprecise ‘gsuee™ did not epeak of any changes in the  
procedural laws (and wae confined to anendnents to indian  
Penal Code only|, we were of the opinion that uniese  
certain changes are effected simultaneously in the  
felevant provisions of the CrBC and Evidence Act, the  
purpose underlying the changes in the substantive lew IPC  
Svmay not be fully served. It ig for this reagon that we  
Suggested to Sakeni to cone forvard with thelr  
Suggestions, if any, for anendnent of procedural love to  
Achieve the purpose underiying changes in substantive  
lows. Recordingiy, they cane forvard with ae many as 16  
suggestions proposing amendments not only in the Criminal  
Penal Code (Annexure-). The procedural anendnente  
suggested by then aze to the following effect:  
  
(2) the Bath Report of the Law Commission hed  
suggested that where the statement of a giri-victim below  
twelve years of age is recorded, it should be done by @  
woman police officer or by a woman belonging to an  
Organisation interested in the cause of wonen or children  
‘The said recommendation should be accepted with certain  
changes eet out in their note  
  
(2) the present proviso to gub-section (2) of section  
substituted by the following proviso:  
  
“provided that no male person under the age of  
Sixteen years or 2 woman shall be requized to  
attend at any place other than his or her hone oF  
place of his or her choice.”  
  
(3) new sub-section, namely, sub-section (6) should  
Statenent of a male person under the age of sixteen years  
or a fenale, during the course of investigation, should be  
Fecorded only in the presence of a relative, a friend or @  
Social worker of the person's choice  
  
(Anew section, namely, section 164A should be  
  
  
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inserted in the Code of Criminal Procedure stating that as  
soon a & case of sexual assault ia reported to a Police  
person, he shail have the person (allegedly assaulted  
Sexually) examined nedicaily by 9 registered sedical  
Practitioner and” that such medical practitioner shall  
Sfter due examination, prepare 9 report setting ut the  
Various specified particulars. ‘This proposal is a #lsght  
Report of the Law Commission  
  
(8) Subsections (2A), (2B), (26) and (20) should be  
reconmended by the 84th Report of the Law Commisaion, with  
necessary adaptations  
  
(6) White granting basi to @ person accused of sexual  
assault, one of the conditions which should be imposed by  
the court shail be that such perean ehall not be in the  
proxinity of the person assaulted.  
  
(7) tm the case of sexual assault, there shall be no  
the person sexually ageauited by or through the criminal  
Justice process:  
  
(8) The Anvestigation and trial of sexual offences  
  
(9) the expression “social worker" shall be defined to  
mean a woman interested in or working for the cause of  
wonen and/or children and who ts foniier with issues of  
violence against wonen and children  
  
(20) (a) Anew section 1168 should be introduced in the  
Evidence Act stating that where in a prosecution for  
aggravated sexual assault under sections 376A to 3760 of  
the 18¢, the question is whether the person so essaulted  
Eongented to it and where euch person states before the  
court that he/she did not’ so consent, the court shall  
precune if to be eo.  
  
() Clause (4) in section 155 to the Evidence Act  
lwhsch permite the person accused of rape or attenpt to  
rovih "to. prove that the prosecutrix was of generally  
issorai character) should be deleved  
  
[e) Im section 146 of the Evidence Act, another  
clause, namely, clause (4) should be added stating  
expressly that ina prosecution for sexual assault, ie  
Shall not be permissible to adduce evidence or to put  
Guestions in erosa-examination of the person assaulted  
with respect to his/her previous sexual history, character  
  
(4) \_\_ Te absence of a medical report in the case of  
sexual assault, shall not be a factor’ against the  
  
  
Page 12:  
complainant /person assaulted.  
  
(21) There should be @ provision either in the CrEC or  
been aasauited sexually, should not be required to give  
his/her evidence in the presence of the accused ag it Will  
certainly traumatige the minor. Stepa should also” be  
feken to provide an appropriate and afe environsent in  
  
(22) the eestinony of 9 child who Le eubjected to  
opportunity by a judge/magistrate in the presence of @  
Fora proper implenentation of the above suggestion,  
Videotape/eizcuit television should be provided. Further,  
where the child is to be cross-examined, the questions  
Shall be handed over to the Judge who shail” in curn pu  
those questions to the sinor. While recording the  
evidence of the minor, appropriate breaks should also be  
Given to make the mindr feel confortable  
  
(23) ALL cases of sexual ageault should be tried by  
special courts which “shell be manned by judges,  
prosecutors and counsellors, “specially erained/gensieised  
  
(2 A new offence anould be crested by appropriately  
anending section 166 18C making Le an offence for a public  
Servant to disobey the direction of law. prohibiting the  
Susnoning of @ minor/women at any place other than her  
place of choice end algo a public servant who disobeys any  
direction of law with respect to the manner in which the  
Lnvestigation concerning @ minor shall be conducted.  
  
2.4.1. Discussion on the euggestions of "Sakshi". Each  
Of the above suggestions vere discussed in the Commission  
in the presence of the three persons representing organi-  
Setions mentioned in para 2.2-1 above, in the Light of ehe  
Been Report of the Low Cosmiasion ae well ag the 154th  
Report of the Law Commiasion, While we agree with some of  
the aforesaid suggestions [ag would be evident from the  
feconmendations set out in the sueceding chapters), we  
Hind ourselves unable to agree with all of then  
  
2.5. Views of the National Comission for women (NCR)  
Savited.- Te Law Commission would algo wish to put on  
zecord that before finalising their recomendations, the  
Conaiesion for Wonen (NCK) enclosing the aforenentioned  
Grate (prepared by the Lev Commission) (Annexure-8) and  
Knviting then to come and have a discussion wieh the Law  
deputed their Joint secretary, Ms ieena Nehendale. One of  
heard the Joint Secretary and ales asked her to put her  
Adeas/suggestions in writing. Accordingly, the NCW sent a  
  
  
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set of suggestions in writing elgned by the Joint  
Secretary. A copy of the said’ propesale is appended  
  
ail  
  
Changes recommended in the Indian Penal Code, 1860  
  
3.2, Subgtstution of definition of “rape? by definition  
  
Wot only women But young boys, ars  
  
no less trauma and paychologiea:  
  
damage to boy than co girl eubjected to such offence  
Boys and girie both are be  
  
intercourse too, According to  
  
Barse, both young girls and boys are being  
  
Fegularly used fof all kinds of sexual acts and sexual  
  
gn tourists. Sakshi hav.  
  
scope of or  
  
feconmended for widening  
  
Seeauie) ‘not only penile penetration but also  
by. any other pact of the body (Like finger or toel  
any other object. Explanation to section 375 hee  
substituced by us to say that penetration to any  
  
ened to be penetration for  
  
of children, penetration is rarely  
\* for physical reasons. So far ag the Exception  
oniy change mode being in  
age of  
person agsauited  
  
algo mention that in redeatting  
stetion, we have stuck to the existing provision ea far  
possibie. This that in  
provisions ha end elucidat  
Fether than use nev expressions ond new wording  
drafting clauses (a) £0. (  
  
ingpization from the Criminal Law  
  
3.1.2, Substitution of existing section 375 of the 12  
  
We accordingly recormend that  
section 375 be substituted by the following:  
  
  
  
Page 14:  
(a) penetrating the vagina (which term shail include  
the labia majora), the anus or urethra of any  
pereon with =  
  
4) any part of the body of another person ox  
44) an object manipulated by another person  
  
except where such penetration S¢ carried out for  
proper hygienic or sedical purposes;  
  
() sanipuiating any pazt of the body of another  
person go. as to cause penetration of the vagina  
(which term shall include the labia majora), the  
anus or the urethra of the offender by any part of  
the other person's bedy:  
  
(c) introducing any part of the penis of & person into  
the south of ancther persons  
  
(4) engaging in eunniaingus or fellatio: or  
  
(e) continuing sexual asgault ae defined in clauses  
(a) £2 (a) above  
  
An clrounstances failing under any of the sie  
fottowing deseriptions:  
  
Pirst- Against the other person's will.  
Secondiy- Without the other person's consent  
  
Thirdiy- With the other person's consent when such  
consent has been obtained by putting such other person or  
any person in whom such other person is interested, in  
  
Fourthiy- Where the other person ie 2 female, with  
of auch other person and that her consent is given because  
fe or believes herself to be lawfully married  
  
Pigeniy- With the consent of the other person,  
when, a the tine of giving such consent, by reason of  
by the offender personally or through another of any  
Stupefying or unholesone subatance, the other person ig  
Unable te understand the nature and consequences of that  
to which such other person gives consent  
  
Sixthiy- With or without the other person's  
consent, ‘when euch other person ig under sixteen years of  
age  
  
Explanation: Penetration to any extent Le penetration for  
  
  
Page 15:  
che purposes of this section  
  
Exception: Sexual intercourse by a men with Mis own wife,  
the wife not being under aixteen years of age, is not  
  
3.2.20 Representatives of Sakehi wanted us to  
reccemend the deletion of the Exception, with which we aze  
Unabie to agree. Their reasoning rune thus: where a  
  
husband causes sone physical injury to his wife, he Le  
punishable under the appropriate offence and the fact that  
he ia the husbend of the vietim is, not an extenuating  
circumstance recognized by lev: Sf eo, there 1g no reason  
‘hy concession should be made in the matter of offence of  
fape/senual assault” where the wife happens to be above  
ig/is years. ‘Re are not’ satisfied that this Exception  
should be recommended to be deleted since that may amount  
to excessive interference with the marital relationship.  
  
3.2, Modifscation of §.376.- So far as the proposed  
Section 376 ie concerned, we aze not suggesting any  
Substantial changes except (wo and adapting the language  
Of the section to accord with the change in section 375  
In the Light of netances coming before the courts and the  
inetances mentioned in the Note prepared by Sakshi, ve  
have proposed addition of a provio to sub-section (2)  
(white treating the existing proviso ag the second  
proviee) providing that where “the sexual assault is  
Sounitted by the father, grandfather or brother, the  
Punisheent should be severe. On the basta of suggestions  
Bade by Sakshi, we have algo added the words "or any other  
person being in @ position of crust or authority tovards  
the other person" after the words "father, grandfather of  
brother". The second change suggested by us ig in the  
matter of the age of wife referred to in proposed  
Sub-section [1] as algo of the person agsaulted in’ clause  
  
(f) of sub-section (2). The age "fifteen" ie raised to  
3.2.1, The reasons for these changes are: (2) to visit  
  
with “a severe penaity the near relations and persone in  
oattsan of trust and autnorsty who nore "often Tthan not  
fenily or on unsuspecting and trusting young persons. We  
have in this connection taken note of the extremely odious  
snd debesed conduct of the father of the minor git in the  
fecte highiignted in Sudesh Jakhoo Vv. K.C.J. and othere  
(2996 13) AD Dein 653 ~ (2996) 62 DUT Sé3] and (2) to  
Haintain uniformity in the matter of age of wife oF any  
Gener young person who. needs. special” protection ~ as  
  
3.2.2. Views of "Sakshi" considered.- Though the  
fapledentatives of Sakshi have auggeated that we should  
delete the second provieo to sectian 376 (2) and. the  
provieo to section 376 (2) (which confer a discretion upon  
  
  
Page 16:  
puniehsent preseribed by the eub-sections), we are not  
Setisfied that there are any good reasons for doing 20  
Any nusber of situations may arise, which it ig) not  
possible to foresee, and which say necessitate the  
Evarding of lesser punishment than the minimum punishsent  
prescribed. Sefequard against abuse is provided by  
Fequiring that adequate and special reasons be mentioned  
in the judgment, for awarding such lesser punishment. Wor  
ig there justification in the erieieign thet” such  
Levwill always be misused Co help the accused  
  
3.2.3. Recasting of section 376 of the IPC reconmended.-  
Accordingly, we recommend that section 376 shall be  
  
"376. punishment for sexual assault - (2) whoever,  
except in the cases provided for by gub-section (21,  
Soumite sexual agsauit shall be punished with imprisonment  
of either description for a term which shail not be less  
than even years but which may be for life or for a ter  
wien say extend to ten Years and shall algo be liable to  
Eine unless the person subjected to sexual aseauit i¢ Mie  
own wife ond is not under sixteen years of age, in which  
fese, he shail be punished with imprisonment of either  
description for a term which may extend to three years and  
  
If the sexual assault is committed by @ person in  
= position of trust or authority towerds the person  
Sestulted or by a neat relative of the person assaulted,  
he/she shall be punished with rigorous imprisonment for 4  
term which ahali not be lesa than ten years but whieh sey  
extend to life imprigonnent and shall also be liable ©3  
  
Provided that the court may, for adequate and  
special reasons to be mentioned in the judgment, impose a  
Sentence of imprisonment fore term of less than minimum  
punishsent prescribed in thie sub-section.  
  
(2) whoever, —  
(a) being @ police officer commits sexual assault  
  
(6) within the Limits of tne police station te  
which ne fe appointed: or  
  
(EL) in the premises of any station house whether  
or not situated in the police station to which he is  
appointed? oF  
  
(645) on a person in hia custody or in the custody  
of a police officer subordinate to him: oF  
  
() being a public servant, takes advantage of hie  
official position and commita sexual assault on a person  
  
  
Page 17:  
kn his custody ae euch pubiie servant or in the custody of  
a pubiie servant subordinate to hin oF  
  
(c)\_ being on the menagenent or on the staff of 2  
jolt, remand hone or ather place of custody established by  
‘or under any law for the time being in foree or of 8  
Nomen's or" children's inatitution takes adventage of his  
official position and commits sexual assault on any inmate  
Of such Jail, remand hone, place of instituttens oF  
  
[d) being on the managenent or on the staff of a  
hospital, takes advantage of his official position and  
commits texual aggault ona person in that hospital; or  
  
(@) commits sexual assault on @ woman knowing ner  
co be pregnant? oF  
  
(£) commits sexual assault on a person when such  
person is under sixteen yeare of ager OF  
  
(a) commits gang sexual assaute,  
  
shalt be punished with rigorous imprisonment for a term  
Which shall not “be less than ten year but which may be  
  
Provided that the court may, for adequate and  
special reasons to be mentioned in the judgment, impose a  
sentence of imprisonment of either description for a term  
Of less than ten years  
  
Explanation 1.- Where @ person is subjected to sexual  
assault by one or nore in a group of persons acting in  
furtherance of their common intention, each of the persone  
shall be deewed to have committed gang sexual assault  
‘thin the meaning of this sub-section  
  
Explanation 2.- "Konen'e or children's institution” means  
an institution, whether called an orphanage or home for  
Regiected wonen of children or a widows" hone or an  
ingeieution called by any other none, which Le established  
and maintained for the reception” ond care of women or  
  
Explanation 3.- "Hoepital" sean the precincts of the  
hospital and includes the precincts of any institution for  
the reception and treatment of persona during  
Sonvaiescence or of persons requiring medical attention oF  
  
3.3. Anendsent of $.376A.- Representatives of Sakshé  
wanted “us to recomend the deletion of section 376A. (as  
eli ag Exception to section 375). Their logic wae thie  
  
‘then a nan who causes hurt or any other physical injury to  
Aig) ovn wife is ilable to be punished for euch offence  
Like any other person causing such hurt or physical  
injury, why should a husband who sexually asseulta hie  
  
  
Page 18:  
wire, who ig Living separately under a decree of  
Separation or under any custom ox usage, be not punished  
ike any ether person. Section 376A, which provides a  
lesser punishsent to a husband who sexually asseulta hie  
oun wife Living separately in the aforesaid clreunstances,  
they axgued, ig arbitrary and discriminatory. They. #ai  
cage would be punished under section 376 (2) which carries  
higher punishment thea section 376A. While we appreciate  
the force of said argument in the context of the wife who  
ie Living separately under @ decree of separation or under  
any custom or usage, we can not at the gene tine ignore  
the fact that even in auch a case the bond of marriage  
Fecormending that this section should be retained on the  
statute book, we recommend enhancement of punishment under  
  
reccemended.- Accordingly, section 376A hall read ae  
  
"376R. Sexuat aeeault by the husband upon nis wife during  
separation. Whoever coamite sexuel assault upon hia wife,  
whois iving separately from him under a decree of  
Separation or under any custom or ugage, without her  
Gongent, shall be punished with imprisonment of either  
description for a term which shall not be less than evo  
yeara and which may extend to seven years and shall also  
  
3.4. Amendnent of $.376B, 376C and 3760: Having regard  
G5 the gravicy of these offences, we reconmend enhancement  
of punishment ~ with a minimum punishment of not less than  
five years, We have also added an Explanation which will  
govern all these three sections. The Explanation defines  
Seexual intercourse” to mean any of the acte mentioned in  
clauses (a) to (e) of section 375. Explanation to section  
375 will however apply even in the cage of sexual  
Intercourse as defined by the Explanation to this section,  
  
the’ iec' recommended.- Aecordingly, section 376B with  
necessary adaptations end changeg, shall reed ag follows  
  
"376B. Sexual intercourse by public servant with person  
in nie custody.- Whoever, being a public servant, takes  
advantage of his/her” official position and induces or  
Seduces any person, who ie in his/her custody as such  
Puplic servant or in) the custody of @ public servant  
Mim/her, such sexual intercourse not amounting to the  
offence’ of sexual assault, shall be punished with  
Snprisonsent of either description for 9 term which shall  
not be lees thon five years ond which may extend to een  
yeare and shail algo be 2iabie to fine  
  
  
Page 19:  
Provided that the court may, for adequate and  
special reason to be mentioned in the judgment, impose a  
Sentence of imprisonment fore ters of less chen five  
yeare  
  
Explanation: "Sexual intercourse" in thie section and  
sections 376¢ and 376D shall sean any of the acts  
Bentioned in clauses (a) to (eof section 375  
  
Explanation to section 375 shall algo be epplicable.”  
  
7376C. Sexua1 intercourse by superintendent of Jatt,  
enager of @ jail, semand hone or other place of custody  
fosce of of & "women's “or childeents Anseitution estes  
Sdvancage of his/her official position and induces or  
seduces any inmate of such jail, renand hone, place ot  
sseault, shall be” punished with imprisonment of either  
description for a corm which shell not be less” than’ five  
Jeera and which may extend to ten years and shell also be  
  
Provided that the court may, for adequate and  
special reasons to be mentioned in the judgment, impose a  
Sentence of imprisonment fore tern of less then five  
years  
  
Explanation 1.- "Superintendent™ in relation to a jail,  
zenand hone or other place of custody or a women's of  
childzents institution includes @ person holding any other  
office in such jail, remand hone, place or institution by  
Vireus of which he/she can exercise any authority oF  
  
Explanation 2.- The expression Twosents or children's  
institution" shall have the same meaning as in Explanation  
2'to sub-section (2) af section 376  
  
376D. Sexual intercourse by any menber of the managenent  
or staff of 8 hospital with any women in that hospital  
Whoever, being on the menagenent of a hospital or being of  
the staff of a hospital takes advantage of his/her  
position and has sexual intercourse with any person in  
that hospital, such sexual intereourse not amounting to  
the offence of eexuai aseauit, shall be punished with  
imprisonment of either description for a term which shall  
not be less than five years and which may extend to ten  
yeare and shall algo be liable to fine  
  
Provided that the court may, for adequate and  
special reasons to be mentioned in the judgment, impose  
Sentence of imprisonment for a term of less than five  
years  
  
Explanation.- The expression hospital" shall neve the  
  
  
Page 20:  
sone meaning ae in Explanation 3 to sub-section (2) of  
  
This ig a wholly new section recommended by us.  
Variety of offences including sexual haragenent at work  
place and sexual perversions of the kind mentioned inthe  
note submitted by Sakshi. Sub-section (2) of this new  
Section covers touching, divectly or indivactly, with a  
part of the body or with an object, any part of the body  
Of another person (not being the spouse of such person),  
person. In case the other person ig below sixteen years  
Of age, we. have” recommended’ higher” punishment  
Sub-eection (2) ig an extension or elaboration of the  
offence mentioned in sub-section (2), while sub-section  
(3) deals with a cage where such offence 1 conmiteed on a  
young person ~ young person being defined by the  
Explanation to sean a person below the age of sixteen  
years. If the offence of uniawful sexual contact ie  
Gonmitted on @ young person by a person with whom such  
young person ss" ina. relationahip “of dependency, the  
Punishment is rigorous imprisonment which may extend to  
Seven years or with fine or with both and in case the  
Offender happens to be the father, grandfather or brother,  
f still nigher punishment is provided for. in the case of  
"young person", consent is treated ag irrelevant.  
(sections 151, 152’ and 153 of the Canadian Criminal Code  
also contain similar provisions}  
  
thelefore recommend that a new section, namely, section  
376E be inserted in the IPC in the following teras:  
  
sa7eR. unlaweul sexual contact (1) Whoever, with sexual  
Antent, touches, dizectiy or indirectly, with a part of  
the body or with an object, any part of the body of  
another person, not being the spouse” of such person,  
‘ithout ‘the ‘consent of such ether person, shall be  
punished with simple isprisansent for a term which may  
Gktend co two years or with fine oF with both  
  
(2) Wnoever, with sexual intent, invites, counsels or  
incites a young person to touch, directly or indirectiy,  
with pare of the body or with’ an object, the body of any  
Peron! including the Body of the person who so invites,  
directly or ndirectiy, with a part of the body ox with an  
object any part of the body of a young person, shall be  
punished with isprisonsent of either description which may  
extend co three years and shall algo be lisble to Fine.  
  
(3) whoever being in a position of trust o authority  
towards a young person or is a person with whom the young  
person ig ine relationship of dependency, touches,  
  
  
Page 21:  
directly or ndirectty, with sexual intent, with » part of  
the body or with an object, any part of the body of such  
young person, shail be punished with imprisonment of  
Gither description which say extend to seven years and  
  
Explanation: "Young person” in this eub-section and  
sub-section (2) meane a person below the age of sixteen  
years.”  
  
In the light of the change effected by us in  
section 375, we are of the opinion that section 377  
deserves to be deleted. Attar the changes effected by us  
in the preceding provisions (sections 375 to 3762), the  
ony content deft in section 377 ta" having voluntary  
Sernai intercourse with any animal. We may leave such  
persons to their juse deeree  
  
So far cs this section is concerned, the only  
change we are suggesting is enhancenent of punishment. We  
reconmend that the existing section 509 be amended ae  
  
"509. Word, gesture of act intended to ineult the  
nedesty of & woman:  
  
Whoever, intending co insult the modesty of any.  
woman, utters any word, makes any sound or gesture, oe  
Gunibles any abject intending that euch yard or sound  
shall be heard, or that such gesture or object shall be  
Seen, by such woman, or inteudes upon the privacy ef such  
Noman, shall be punished with simple imprisonment for s  
term whieh sey extend to three years and shell also be  
  
The “Sith Report of the Law Commission had.  
recormended (para 3.20) that a new section, namely,  
object behind thia new section” was to punish a public  
Servant who knowingly digobeya any” direction of lew  
prohibiting Ms from requiring the attendance at any place  
Of any person for the purpose of investigation into an  
Sffence of other matter or knowingly disobey any other  
direction of law regulating the manner in which he shall  
Sonduct euch investigation and which act of his causes  
Prejudice to any person, The representatives of Sakshi  
with whos ve had @ discussion, requested that a new  
Section os recommended by 4th Report of the Law  
Provision must be understood in the 2ight of the fact that  
Inthe next chapter, we are recommending several meacures  
wich reapect to the manner in which the statenent of women  
and children (below 16 years) should be recorded, the  
place where it should be recorded and goon  
  
  
Page 22:  
recommended. Recordingly,  
  
“266K. Hhoever, being a public servant-  
  
(a) knowingly dieobeye any dizection of  
Tew prohibiting im fron requiring eh  
of any person for the  
  
pups: eigation into an offence oF ot  
  
() knowingly disobeys any other direction  
Sondust such investigation, to  
any person, sha  
  
request of Sakshi  
for the purpose of  
  
of the opinion  
ne sd for at this stag  
  
sd and pronounced upon by the courts in  
a good nusber of ca nce in this behalf may be  
ede to page 700 of the Commentary on TEC by Justice  
SJespei Singh (First Edition 1998) where ie te stated, on  
Nagpur High Courts, that "consent implies the exercise of  
otras fed right to forbid or withhold what  
fe being consented to; Le sivaye is @ voluntary and  
conseioue acceptance of what is proposed to be done by  
  
ail  
  
CHAPTER FOUR  
Changes recommended in  
the Code of Criminal  
  
Procedure, 1973  
  
4.1, Proposals of "Sakshi" x to the co  
fepresentatives of Sakshi have cone forerd with a8 many  
a 14 recomendations proposing anendnents to the Co  
  
then in the said chapter. We shall now proceed to discuse  
4.2, Addition of (3) Go (5) An section  
  
  
  
Page 23:  
CeEC.- The 84th Report of the Law Conmiseion hed  
  
fecoemended (paragrephe 3.2 to 3.25) that subsections (3)  
  
eo (71  
  
‘be added in section 160. instead of parephrasing  
  
the reasons given in the 84th Report in our ovn words, Se  
would be appropriate to get out paragraphs 3.21 to 3.15 of  
that Report hereinbelow:  
  
“IV. interrogation of female victine of sexual  
3.12 Reporting and Investigation. These matters  
  
general. We now deal with certain matters  
peculiar to. women who aze victims of sexual  
Offences, ‘Ronen who have been raped are reluctant  
fo report St, partly because of the enbarrasenent  
of discussing the details with male policenen, and  
partly because of the very fear of even more  
painful huniiiation of being a witness in coure  
  
‘They get seared and become confused when,  
in the strange environsent of the Court soon, they  
have to conduct thenselves ina manner foreign to  
fo clear and coherent thought or free expression  
  
3.12 Investigation by female police - No statutory  
  
Change recossended.- A woman is often discouraged  
fron pressing a charge of rape or other sexual  
offence by the fact that she usually encounters  
only male police and prosecution officers. It ie  
precunably for this’ reason that it hae been  
Suggested that the investigation of such offences  
Should be done by vonen police officers only.  
  
We would be happy if the questioning of  
female vietine of sexual offences would be done by  
wonen police officers only. We are not, hoxever,  
Inlined te recommend a statutory provision in  
this regard. A mandatory provision to that effect  
say prove to be unworkable. The number of woren  
police officers in rucel areas ia very amell,  
(with the status of a police station) ie created  
for investigation into sexual offences ageingt  
women, such @ provision may not be practicable  
  
We regard this digeieulty as a transient  
  
surficient umber of women police officers, who  
Gould be drafted for the police duties” of  
Interrogation and investigation, should be made  
  
Practice to be adopted in metropolitan  
cities.= Till then, in metropolitan cities or big  
police officers, a practice should be established  
  
  
Page 24:  
chat wonen police officers alone Investigate  
Senual offences and interrogate the victim.  
  
We are, therefore, not in favour of any  
statutory provision being made in this respect,  
Subject to what” we are recoemending in the next  
paragraph.  
  
14 Interrogation of child victim of rape  
Statutory provision recosmended.- The practice  
suggested above could be adopted in wetropoitecan  
areas and big cities. But there Le one matter  
which is of isportance for the whole country. Te  
Le necessary that in the case of gizis below a  
certain age ~ say, below twelve years who are  
viceine “of rape, there should be a statutory  
Provision to enaure that the girl must be  
Tneerrogated only by a women. A woman police  
officer would be preferable. But, if a wonan  
police officer is not available, an alternate  
procedure a¢ detailed below should be followed  
  
‘The alternate procedure that ve  
Contesplate is this. Where a wonan police officer  
{eu not available, the officer in charge of the  
police station should forward a 1ist of questions  
fo a qualified fenale (we shall suggest detacis  
Jeter) who would, after recording the information  
Pepera to the officer in charge of the police  
  
Station. If necessary, further questions to be  
put to the child may be gent by the police to the  
Tntersogator  
  
For the present, thie procedure may be  
Spplied te female victine below 12, years. Tt  
general, ££ found practicable  
  
‘The "qualified female” whos we have in  
Belonging to a recognised soctal organisation. If  
she possesses gone Hnowledge of Lav and procedure,  
be a statutory requizenent,  
  
15 Amendsent of section 160 recommended by  
Gnsereion of gub-sectione (3) to (7).- Zn view of  
addition of the following provision = say, as new  
  
713) Where, under ehis chapter,  
the etatencnt of a gizl under ehe age of  
twelve years ie to be recorded, either ot  
  
  
Page 25:  
course of an investigation into an  
offence, and the girl ie a person against  
375 of the Indian Penal Code ia alleged to  
have been committed or attempted, the  
Statement shell be recorded either by a  
female police officer or by a person  
authorised by such organisation interested  
recognised in this behalf by the state  
Government by notification in the official  
gazette  
  
(4) there the cage Le one to whieh  
the provisions of sub-section (3) apply,  
anda female police officer is nat  
available, the officer in charge of the  
police ¢tation shail, inorder to  
Eecilitate the recording of the stavenent,  
forward to the person referred to in that  
sub-section 9 writeen request setting out  
the points on which information| ie  
fequited to be elicited from the girl  
  
(5) the person to whom such a  
written request {2 forvarded shail, after  
Fecording the statement of the girl,  
charge of the police station  
  
(6) where the statenent recorded  
by such personae forwarded under  
sub-section (5) appears in any respect to  
fequire elarifieation or” amplification,  
the officer in charge of the police  
Station ehail return the papers to the  
person by whos it wae forwarded, with a  
Fequest for clarification or amplification  
on specified matters; and such person  
Shall thereupon record. the further  
Statement of the gizl in conformity with  
the request and return the papers to the  
officer in charge of the police station.  
  
(7) me statement of tne git  
(3) 0 (6) shail, for the purpose of the  
lew relating to the admissibility in  
evidence of statements made by any person,  
bbe deemed to be a statement recorded by &  
police officer.""  
  
4.2.1, me representatives of Sakshi supported the said  
  
4.2.2. the 154th Report of the Law Commission dealt with  
the above recommendation in paragraphs 6.5 to 6.9. After  
  
  
Page 26:  
setting out the aforesaid sub-sections in para 6.5, the  
isetn Report makes the following ‘comments’ and  
recormendation in paragraphe 6.6 to 6.9 af chapter XVIIT  
  
"6.6 the origin of this suggestion in ite  
ecbryonte fers can be traced to. the Lay.  
Conmtasion's Reports on “Rape and Allied Offences  
and "Women in Custody”  
  
6.7 The BL2i (CK) has gone beyond the Law  
ingisting on the presence of @ fenaie police  
officer. Though the presence of such female  
Officer ta useful and necessary, theit absence  
Should not lead to delay in the investigation of  
the offences. Sub-sections (8), (3)» (@) and (7)  
referred to above obligates the ‘officer incharge  
Of the police station to forvard the person to  
Pepresentative of a government, recognised women's  
organisation and the statenent’ recorded by such  
person shall be deened to be @ statenent recorded  
by the police officer  
  
6.8 Te may be pointed out that the 1996  
‘Bini does not incorporate the above anenduent  
  
6.9 We are of the opinion that section 160  
‘be anended on the tines suggested above subject to  
Sub-section (4) of NCW Bill ig not practicable  
having regard to the present condition and dearth  
of female police officers, Tt may also not be  
practicable for the victim or any. person  
Tnterested in her to approach the person mentioned  
in sub-section (3). Instead, ve suggest that  
sub-section (4) may be anended to the effect that  
‘here a fenale police officer tg not available and  
to contact the person mentioned in sub-section (3)  
ig “dieticult, the officer in eharge ef the police  
station, for reasons to be recorded in writing,  
shall proceed with the recording of the statement  
Of the victim in the presence of @ relative of the  
  
Further, the age of Tevelve years” be raised to  
‘eighteen years" in conformity with the Convention  
fon the Rights of the Child.”  
  
154ch Report. On a consideration of all the relevant  
fects and the realities of life, we too are of the opinion  
that the procedure indicated in the sub-section (4, (3)  
and (6) is too involved besides being impracticable,  
Inplesentation of the several steps sentioned in the said  
Sub-sections (4) to (6) would indeed result in unnecessary  
complainant, ag the case nay be. We are inclined to agree  
  
  
Page 27:  
wien the opinion expressed én para 6.9 of the 154th Report  
Shanged the Language of sub-section (3) by including  
woman governnent officer. Changes are also called for in  
the light of the amendments effected by Act 43 of 1983 and  
also in the Light of the recommendations made by us in  
paras 3.2 and 3.5 (substitution of the offence in section  
575 and the addition of section 3765)  
  
4.2.30 ingertion of gub-sections (3) & (4) dn  
1973.Accordingly, we recommend that the following ewe  
  
"(G) here under this chapter, the statement of 2  
Ste, a0an, 165, Sec, 3¥eD, 3768 oe $03" of the  
indian Pena1 Code ie alleged” to have been  
Secorded by a fensie police officer and in case  
Female police officer is not avaliable, by @  
[e'aiso not availebie, by a fenaie authorised by  
fn Gxganiaation intereated in the welfare of wonen  
  
(4) where in any cage none of the alternatives  
Rentioned in sub-section (3} con be folleved for  
the reason that no female police officer or female  
Government servant or a female authorised by an  
Srganisation interested in the welfare of wonen  
and children ig available, the officer in charge  
Of the police station shall, after recording the  
Feasons’ in writing, proceed with the recording of  
presence of @ relative of the victin."  
  
4.3, Substitution of the proviso to sub-section (2) of  
section 160.- Sub-eection [1] of section 160 deals with  
the power of a police officer to require the attendance of  
witnesses who “appear to be acquainted with the facts and  
Elrcunstances of the case being investigated by him. Te  
algo casts an obligation upon the person 0 required to  
Sttend. The proviso ae it now stands, however, says thet  
Sno male person under the age of 25 years or women shall  
be required to attend at any place other than the place in  
which such male person or vonan resides". Ke recommend  
raising the age from 15 years mentioned in the said  
proviso to 16 years.  
  
4.3.1. Consideration of the view of "Sakeni" regarding  
piegence of @ relative or a friend or a social worker  
  
  
Page 28:  
during the investigation.- AE thie stage, we may deal with  
snother suggestion put forward by Sekehi to. provide that  
ven where the statenent of @ male person under the age of  
Le yeara or of a female is recorded by a police officer  
during the course of investigation, a relative or a friend  
or a octal yorker of the choice of such male person below  
36 years or the wonan, ae the case may be, shall be  
alioved to be present throughout the period during which  
the statement ie recorded. We are inclined to agree with  
this suggestion, particularly in the Light of the decision  
Of the Suprane Court in’ Nandini Setpathy v. Pi. Dani  
(AIR 1978 SC 1025),  
  
4.5.2. Substitution of the provieo to sub-section (2) of  
sdetion 160 reconmended.- Accordingly, we recormend that  
the proviso to sub-eection (1) of section 160 be  
  
"Provided that no male person under the age of 16  
years or wonan shail be required to attend at any  
Place other than the place in which such male  
Person or woman resides.” While recording the  
worker of the choice of the person whose statement  
Le'being recorded shall be allowed to remain  
present. The relative, friend or social worker so  
Slloved to be present shall not interfere with the  
Fecording of statenent in any nanner whatecever.  
  
4.4. Ingertion of 2 new section, nasely section 164A in  
the’ code of Criminal Procedure. the 8¢th Report of the  
provision in paragraphe 4.8 to G.11 of chapter @. The  
Eeasone for such a provision and the provision suggested  
are the following  
  
4.8 Section 166A, CrPC (To be added) .- We next  
deal with the victim. In many cases, the report  
cursory and does not give adequate information  
about the material particulars which are necessary  
for an edjudication aa to the various ingredients  
that the médical exenination report ie not sent  
promptly to the investigating officer. AS a  
Feauit, the possibility of eonpering with the  
report renaine  
  
in our opinion, the report of the  
‘examination of the victim ins ease of rape should  
(besides containing the usual formal particulars)  
deal pect ficaity with  
  
() the age of the victta,  
  
  
Page 29:  
(4) the question whether the victim  
wae previously used to sexual intercourse,  
(645) injuries to the Body of the  
  
(iv) generat’ mentat condition of the  
() other —Meterial particulars in  
  
He ig also necessary that the report  
‘ithout delay to the investigating officer. re ie  
very important that the report should state  
  
4.9 Need for legislative provisions.- Ordinarily,  
such matters are left to be dealt with by  
Guecutive inatructions. However, having regard to  
the inportance of the gubject, it vould be proper  
appropriate place, a provision incorporating the  
Guidelines that we have suggested above. in the  
Lignt of the practical working of the provision,  
further improvenents could be made in the relevant  
provisions  
  
4.20 Section 164A, CrPC, reconmended.Accordingly,  
‘we reconmend that the following new section should,  
  
"160R. (2) where, during the  
stage when an offence of rape or attenpt  
fo commit rape ts under investigation, ie  
Le proposed to get the person of the voran  
with whom rape ig alleged to have been  
Sounitted oF attempted, examined by  
medical expert, such examination shall be  
conducted bya tegistered medical  
practitioner, with the consent of the  
oman or of sone person competent to give  
Shall ‘be forwarded to” the. registered  
nedical practitioner without delay.  
  
(2) the registered sedicat  
practitioner eo whom such woman ie  
Forwarded anal without delay exemine her  
person and prepare a report specifically  
Fecording the result of his examination  
and giving the following detasis:  
  
(6) the nase and address of the  
woman” and of the person by whom  
the wes brought,  
  
(EO the age of the woman,  
  
(i) whether tle victin as  
  
  
Page 30:  
previously used to gesual  
(iv) marke of injuries, ££ any, on  
the person of the onan,  
() general “mentai condition of  
(wi) other “matefiel particulars,  
  
(3) the report shail state  
precisely the reasons for each conclusion  
  
(4) The report shalt spectfteaity  
sone person competent to give auch consent  
  
(5) The exact tine of commencenent  
‘and completion of the examination shail  
Sto be noted’ in the report, and” the  
Fegistered medical practitioner shall  
without delay, forward the report to” the  
Investigating officer, who shall forward  
ke to the Magistrate referred to in  
Section 173 as part of the docunente  
Fefersed to in clause (a) of sub-section  
(5) of that section  
  
(6) Nothing tn ens section ehait  
‘be construed as rendering lawful any  
victim or of any person competent to give  
  
11 Medical examination of the victim of repe.n  
Tagard to the examination of the person of the  
accused, section 53(2) of the Cade of Criminal  
Procedute provides that whenever the person of 8  
exenination shall be sade only by, or under the  
Supervision of, a fenaie registered medical  
practitioner  
  
‘The question whether 9 provision should be  
Guaminetion shall” be conducted only by @ female  
medical practitioner has been carefully considered  
by us. Re think that a statutory provision ia not  
necessary, for two reasons. in the first. place,  
this is almost the invariable practice sn India  
and a statutory mandate i not needed. In the  
Second place, if a female victim does not wich to  
Subaie ¢o exatination by a male doctor, there is  
ho legal obligation on her part te'do so.” For  
  
  
Page 31:  
that reason also, @ statutory provision is not  
necessary. Te may be nentioned that euch medical  
exenination cannot be lewfuily made without the  
consent of the woman or of some person competent  
fo give consent.  
  
4.5. Relteration of the above proposal in the 154th  
Report.- The 15th Report of the La Commigsion has  
felterated the said. proposal in paras 7.1" to 7.4. of  
chapter XVIII. The Commission expressed the opinion that  
Such a provision ig eninentiy desirable subject to the  
Bodification that’ medical examination be made preferably  
by a female medical practitioner. The Report alsa  
eaphasises the importance and signifance of a speedy and  
detailed medical examination of rape victims and speedy  
Gespaten oF such report to the investigating officer  
  
4.5.1, Acceptance of the proposal with consequential  
changae.- We affirn and” reiterate the aforesaid  
feconmendations contained in the e¢th and 154th Reports,  
However, in the Light of the changes proposed by ua ia  
section’ 375, necessary changes by way of adaptation have  
  
Procedure reconmended.- Accordingly, ve recommend that the  
following section 164A be ingerted in the Code of Criminal  
  
s160n. (2) Where, during the stage when  
any oftence “under section 376, section 376A,  
Section 3762 ia Under investigation and it is  
proposed to get the victim examined by a medical  
Gupert, such examination shell be conducted by a  
Pegistered. sedical practitioner, with the consent  
Of the victim or of Sone person competent to give  
Such consent on his/her behalf. In all cases, the  
any detay.  
  
Provided thet if the victim happens to be  
Conducted’ by @ female medical officer, as far a8  
possible  
  
(2) The registered medical practitioner to  
‘whom the victim i forwarded shall. without delay.  
Guanine ‘the person and prepares report  
specifically recording the result of his,  
examination and giving the following details:  
  
4) the nase and addrese of the victim and  
the person by whom he/ehe wag brought,  
(6) the age of the victin,  
  
(Gi) marks of injuries, Lf any, on the  
person of the victin,  
  
  
Page 32:  
(iy genera ental condition of the  
(i) other material particulars, in  
  
(2) ‘The report shail state precisely the  
  
(4) me report shail apecitiesity record  
that the consent of the victim or of some person  
competent’ to give such consent on his/her behalf  
  
(5) The exact tine of commencement and  
Completion of the examination shall also be noted  
Inthe report, and the registered medical  
practitioner shall without delay, forward the  
Eeport to the investigating officer, who ehall  
forward eto the Magistrate referred to in  
section 173 ag part of the documents referred to  
In clause (a) of sub-section (5) of that section,  
  
(6) Nothing in thie section shail be  
Sonstrued ag rendering lawful any examination  
Mithout the’ consent of the victim or any person  
Competent to give such consent on his/her behalf.”  
  
Criningl Procedure. The 84th Report of the Law Commission  
had” recosmended the insertion of nev section 3A in pares  
45 to 4.7 of chapter @, which reads as follows:  
  
4.5 Provision in the Code - Need for timely  
in section $3, @ general provision on the subject  
  
Te Se, however, geen that the report of  
the ‘medical examination is often cursory, or is  
ot gent in tine, in cases of rape or attempt to  
conaie ape,  
  
In 4 recent Caleutte case Qlarayan Dutta  
v. “State, 1980 Criy 264, paras 1-2), the High  
  
ste ig also striking that the appetient,  
though arrested on that very might (9th  
May) Mas not produced before Dr. Pal  
(P.M. 12) who Sxanined P.we. 2 and 10 an  
  
  
Page 33:  
ko be given. Tt te algo desirable that  
the report should (besides containing the  
usual formal particulars) deat  
specifically with = (4) the age of the  
accused, (14) injuries co che Body of the  
Secused, and (44) other material  
particulare in reasonable detail. Te  
Should aiso note the precise tine of  
delay by the registered medical  
Practitioner to the investigating officer  
Magistrate espovered to take cognicance  
along with the documents sent with the  
Ghatian under section 173(5) of the Code  
  
crec.- it is very important that’ reasons  
should be given for the opinion expressed  
in the report. Accordingly, we recosmend  
Criminal Procedure, of the following  
  
“Section 530), (GB), (Gc) and  
(2D), Code of Criminal Procedure, 1973 to  
  
(2A) when a person accused of rape  
(or an attenpe to conmit rape is, arrested  
Gnd” an examination of his person is to be  
forwarded without delay to the registered  
medical practitioner by whos he ig) to be  
  
(2B) the registered medical  
practitioner conducting such examination  
Shall without delay examine such person  
and prepare report specifically  
Fecording the reguit of hie examination  
and giving the following particulars:  
  
(4) the nase and address  
(Of the accused and of the person  
by whom he was Brought,  
  
GO the age of the  
  
(Eis) marks of injury, sf  
  
any, on the person of the accused,  
(Gs) omer materiat  
particulars in reasonable detail  
  
(2c) the report shail state  
precisely the reasons for each conclusion  
  
  
Page 34:  
(2) the exact tine of  
commencement “end completion of the  
feport, and” the registered medical  
practitioner shall, without delay, forward  
the report to the investigating officer,  
who shall forward it to the Magistrate  
feterred to in section 173 es part of the  
documents referred to in clause (a) of  
sub-section (5) of that section.™=  
  
répiedentatives of Sakshi supported the said proposal with  
a fev additions. By means of these additions it wae  
Sought” to be provided that the registered medical  
Practitioner shell algo state in hia report with respect  
fo any traces of biaod, senen and evidence of any recent  
Sexual activity in reasonable detail". We are, however,  
Of the opinion that the said addition suggested by Sakshi  
fe unnecessary eines the provision as suggested by the  
Beth Report Se comprehensive enough to take in the said  
particulars ag well. Accordingly, ve affire and reiterate  
the recommendation of the Bdth Report, subject, however,  
fo changes end adaptations in’ the light of our  
  
1973 reconmended.~ Thus the proposed section 53A shall  
  
"SA. (2) When a person accused of any of the  
3760 or 376E or of an attempt to commit any of the  
his/her person te to be made under this section,  
he/she ‘shall be sent without delay to the  
registered medical practitioner by whom he/she 48  
  
(2) the registered medical practitioner  
Conducting auch examination shall without delay  
exenine such person and. prepare a report  
specifically recording the result of his  
ekenination and giving the following particulars:  
  
(6) the name and address of the  
‘accused and the person by whom he wa  
Brough,  
  
(EL) the age of the accused,  
  
(L4) marks of injury, S€ any, on  
the person of the accused, and  
  
(iv) other material particulars in  
  
  
Page 35:  
(2) ‘The report shail atate precisely the  
  
(4) The exact eine of commencenent and  
completion of the examination shall also be noted  
in the report, and. the registered medical  
practitioner shall, without delay, forward the  
Eeport to the investigating officer, who shall  
forward it to the Magistrate referred to in  
Section 173 ae part of the docunents referzed to  
In clause (a) of sub-section (5) of that section.”  
  
4.7, Consequential anenduente in the First Schedule to  
recormended.consequent upon the proposed anendnente in  
existing entries in respect of sections 376 to 376D, 377  
nd 509 of the IEC will have to be substituted and entry  
in respect of new section 316E will have to be inserted at  
  
376 Sexual aeeaule teprisonmene pice Won- \_Coure  
imprisonment  
for 10 yeare  
Sexual aseauit Ieprigonment Mon Dieta Ditto  
by anan on for 3 years cognizable  
  
being under  
16 years of age:  
  
Sexual assault Imprisonment Cogni- Won- Ditto  
connitted by for iife and gable batiable  
  
a person ina fine  
  
position of  
  
suthority  
  
person as:  
  
or by a near  
person assaulted.  
  
Sexual assault Imprisonment Cogni- Won- Ditto  
by a police for life and fable bailable  
officer or by 8 fine  
  
pubiie servant  
  
Or by a person  
  
being onthe  
  
Banagenent or on  
  
  
Page 36:  
Jatt, remand  
place of custody  
by a person on  
the sanagenent  
of a hospital,  
Coking advantage  
position  
  
Sexual assault Iaprssonnent  
by the husband for 7 years  
upon his wife and fine  
during separation  
  
Sexual imprisonment  
intercourse by for 10 years  
pubiie servant and Fine  
with person in  
  
his custody.  
  
intercourse by  
Superintendent of  
gait, remand  
  
intercourse by  
any nenber of  
the sanagenent  
hogpieal with  
any vonan in  
  
Chae hospiead,  
  
Unlawful sexual taprssonnent  
contact for 2 years,  
  
Unlawful sexual taprssoanent  
contact with a for 3 years  
  
cogné~ Mon isto  
(but only  
  
complaint  
  
viceial  
  
cogni- Mon- bitte  
(bueno  
Magistrate)  
  
Won-—\_naitable Magis  
cognizable erate  
cogni~ Mon Ditto  
  
  
Page 37:  
young person Fa  
  
pelating €3  
fe given eo  
charge of @  
  
by the person  
aggrieved by  
  
or by any  
person  
  
her/his by  
adopeion oF  
felative, by  
any public  
belonging to  
category as  
say be notified  
by the State  
  
Untawfui eexual Ieprisonment Ditto on-court  
contact by a for 7 yeare batlapie of  
person ina and Fine session  
position of  
  
suthority  
  
young person  
  
509 Uttering any Simpie cogni- Non= Magis  
word or meking imprisonment fable bailable trate  
Say gesture for 3 yeera ‘of the  
sodesty of @  
  
4.8. Amenduent of sub-section (6) of section 298 of the  
Code of Criminal Procedure, 1973.- Consequent upon  
Proposed amenduent Of section 376 of IEC, sub-section (6)  
Of section 198 CLEC shell” be amended in the following  
  
  
Page 38:  
of Criminal following new section  
  
and (3) of  
  
sub-sections (2)  
  
cake cagave  
  
(2) and (3) of  
  
(45 of 1860)  
or upon a complaint “made  
xd to him/her by blood of  
adoption, if $0 permitted by the coure™  
  
upon a  
person  
  
4.20. Proposals for amending Cr®C put forward by Sakshi  
wich’ wnich we do not agree.- Sakehi have put forvard  
Sertain other suggestions which” we hav  
  
8 6, 7, 8 and 9 in chapter two of thie  
opinion, the said propossis ase unnecessary in view of the  
  
cHaprER F1ve ail  
changes recomended in the Evidence Act, 1872  
  
Suggestions of "sakeni=  
ntatives of Sakehé have sug;  
Evidence Act, viz. (a) anendnent of  
  
saying that in a prosecution for aggravated sexual assault  
and were sexual intercourse ig proved and the question ie  
complainant states in her evidenc the court  
that she did not consent, the court ehall presume that she  
id not consents (b) clause (4) sn section 155, which  
  
fe show that Prosecuteix. was of 9 y innoral  
sd and (c} in section 146,  
  
be added stating that ina  
  
aeeault and where the question of consent i in  
st shall not be permisaible to put any questions in  
  
Seeault or an attempt to. commit  
  
  
  
Page 39:  
the crose-exanination of the complainant with respect to  
Aig/her previous sexual Metory, character or conduct for  
proving consent or the quality of consent  
  
5.2.1. Suggestion Wo.1.- So far as the firet suggestion  
£5 Concerned, Lt hag avidentiy been made without taking  
  
“110K. Preeumption as to absence of consent in  
certain prosecutions for repe.- In a prosecution  
for rape Under clause (a) or clause (b) or clause  
(c) oF clause (4) or clause (e) or clause (g) of  
gub-eection [2] of section 376 of the Indian Penal  
Code (45 of 1860), where sexual intercourse by the  
accused ts proved and the question ie whether Le  
Mes without the consent of the woman alleged to  
have been raped and she states in her evidence  
court shall presume chat she did not consent.”  
  
5.1.2. A reading of the above section shows that it does  
provide for the matter which the representatives of Sakshi  
  
Actl-" Te ie however necessary to point out that section  
214A Sa confined only te the aggravated forme of rape  
mentioned under clauses (a} to (e) and (a) of sub-section  
(2) of section 376. Te does not apply to sub-section (2)  
3760. But the representatives of Sakshi alco wanted such  
a presumption to be raised only in respect of “aggravated  
Sexual seeault™ end that’ ia exactly what section 114A  
provides. Mo anendnent ig therefore called for in section  
INGA except sone modifications ~ by way of adaptation ~ in  
the Light of anendnent proposed by ue to section 315, 20  
  
recdemended.- Recordingly, we reconmended that section  
  
“110K. Preeumption ag to absence of consent in  
certain prosecutions for sexual agsauit.- In a  
prosecution for sexual agsault under (a) or clause  
(b) oF clause (c) or clause [d) or clause (e) oF  
clause (g) of sub-section (2) of section 376 of  
the Indian Penal Code (45 of 1860) where sexual,  
Intercourse by the accused ig proved and the  
question ig whether ie wag without the consent of  
the other person alleged to have been sexually  
assaulted and such other person states in his/her  
evidence before the court that he/she did not  
Eongent, the court shall presune that he/she did  
  
Explanation: "Sesual intercourge™ in this section  
  
  
Page 40:  
and sections 376C and 376D shall mean any of the  
dete mentioned in clauses (a) to (el of section  
375. Explanation to. section 375 ghali also be  
appiteabie.  
  
5.142 Te goss without saying that the aforesaid  
precupiion ig a” rebuttable presumption of low ( shall  
pregune') within the meaning of section ¢ of the Evidence  
  
5.1.5. Consideration of the suggestion of "Sakehin to  
create presumption in respect of the age of the victin.-  
We may in this connection refer to another suggestion of  
Sekehi that a sintiar presumption be created in respect of  
the age of the victim. We however do. not see any  
necessity for such a provision since the question of age  
ie really and ultimately a matter of evidence and be  
better left to the judgment of the court.  
  
5.2.1. Suggestion No.2.- For a proper appreciation of the  
Biggedtion for anendsent of “ection 155, st would be  
appropriate to eet out section 155 in full (omitting the  
iHlustrations). re reads ae follows:  
  
"155. impeaching exedit of witnese.- The eredie  
of a witness may be impeached in the following  
Mays by the adverse party, or with the consent of  
the court, by the party who calle hin:~  
  
(2) by the evidence of persons who testify chat  
they, from their knowledge Of the witness, belleve  
him to be unworthy of credit;  
  
(2) by proof that the witness hes been Betbed, or  
has accepted the offer of a bribe, or has received  
any other corrupt inducement to give hia evidence,  
  
(3) by proof of former etatenents inconsistent  
wth any part of hie evidence which is liable to  
  
(4) when 9 man Le prosecuted for rape or an  
Sttenpt to ravieh, it may be shown that the  
prosecutzix ae of generally iemoral character  
  
Explanstion.- A witness declaring another witness  
fo be unworthy of credit may not, upon his  
exenination-in-chiet, give reasone for his bellef,  
bu he may Be asked his reasons in  
crose-exanination, and the answers which he gives  
Sennoe be contradicted, though if they are false,  
he may afterwards be charged with giving false  
  
credit of a witness may be impeached, Clause (4)  
Specifically deals with prosecution for rape. in such 8  
  
  
Page 41:  
prosecution, the Act pernite the man prosecuted for rape  
(or an attanpt to ravish) to show that the prosecutrix was  
of generally ienoral character. We are of the opinion  
nat Enka Louse ought to be deleted. Ke gee no relevance  
(eentioned under sections 375 to 3762) and” the general  
a right to have forced sexual intercourse with @ yonan  
ven if she ig generally of an immoral character. In this  
context, ve may refer to the pertinent observations of the  
Suprene Coure in State of Punjab v. Gurmit Singh (AIR  
1996 Sc 1393) which are to the following effect:  
  
"15. We must express our strong disapproval of  
the approach of the trial Court and ite casting @  
Stigne on the character of the prosecutrix. The  
observations lack sobriety expected of a Judge.  
Such ike stignas have the potential of not only  
Aiscouraging an even otherwise reluctant victim of  
sexual assault to bring forth complaint for trial  
Of criminals, thereby making the society to suffer  
by letting the criminal escape even a trial. The  
Courts are expected to use self-restraint while  
zecording such findings which have Larger  
repercussions so far ae the future of the victim  
Gmpiicatione on the society ae a whole - where the  
vietin of crime ig discouraged - the criminal  
encouraged and. in turn erime gets rewarded. Even  
Invcases, unlike the present case, where there is  
Sone acceptable material on the record to show  
being a girl of "loose moral character" ie  
persigsibie to be drown from that circumstance  
Slone. Even if the prosecutrix, ina given case,  
hes been promiscuous in her’ sexual behaviour  
eariier, she has a right to refuse to submit  
herself to sexual intercourse to anyone end  
everyone because she is not a vulnereble object or  
prey for being sexually assaulted by anyone and  
Everyone. No stigna, Iike the one ae cast in the  
present cose should be cast against such a witness  
by the Courte, for after ail it is the accused and  
  
5.2.3. Deletion of clause (4) of section 155 of the  
Evidence Act tecommended.- Reference may also be made in  
this context co the Gath Report of the Lay Conmiesion  
whien, inter alia, deala with this aspect. In. chepter 7  
Of the Report under” iten "V. Past Sexual History" the  
Commission had emphasised the desirability of amending  
elause (4) in section 155 (eo make uch questions  
permissible only to the extent of her previous sexual  
Felationship with the accused but otherice to ber any  
questions regarding the prosecutrix's general ienoral  
  
  
Page 42:  
character or previous sexual experience) as well os  
addition of a new clause, clause (4) in ection 146  
section, section S3A in the Act. It is not necessary to  
See out the entire reasoning given in the Bien Report in  
Support of anendsent of clause (4) in section 155 inasmuch  
Se the purport of auch amendeent is now incorporated by us  
in section 146. tn that view, clause (4) in section 155  
clause (4) of section 255.  
  
5.3.1, Suggestion No.3.- So far as the addition of a new  
claies, nanely, clause (4) in section 146 42 concerned,  
the 8éth Report of the Law Commission had suggested the  
following addition:  
  
"(4) tn & prosecution for rape or attempt to  
Commit’ rape, where the question of consent to  
Sexual intercourse or attempted sexual intercourse  
Le at seus, ie shall not be permissible to adduce  
evidence “or "to put questions in the  
Erosevexanination of the prosecutrix ag to her  
general isnoral character, of ag to her previous  
Sexual experience with any person other than the  
Accused for proving such consent or the quality of  
  
5.3.2. The 84th Report of the Law Commission had further  
the following effect:  
  
"S3h, In a prosecution for rape or attempt to  
coumit rape, where the question of consent to  
Sexual intercourse or attempted sexual intercourse  
prosecutrix’ or of her previous sexual experience  
with any person other than the accused shall not  
quality of consent.”  
  
5.3.3. obviousty, section S3A was recommended to be  
questions that ney be put in cross-examination and is  
therefore of limited operation, whereas section S3A Le  
uch wider and bare such evidence to be adduced in any  
  
Béeh Report and reference to the New South Wales Law  
Reform Comsission'a recosmendations.- We are in agreement  
Report of the Low Commission and do hevevith reiterate  
them, In this context, however, we may refer to a set of  
zecocnendations proposed by the New South Wales Law Reform  
(blew South Wales). Sub-section (2) of section 0B of the  
New South Males Act provides that "in prescribed sexual  
  
  
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offence proceedings, evidence relating to the sexual  
Zeputation of the complainant ig inadnigeibie™  
Sub-section (3) makes evidence of any sexual experience of  
Leck of sewual experience of the complainant equally  
inadnissibie except in certain specified situations. The  
New South Wales Low Commission has proposed retaining the  
existing sub-section (2) a¢ clause (a) of sub-section (2)  
and to add a new clause, clause (b) in sub-section (2)  
Fe nas slgo proposed addition ef sub-aections (3) te (21)  
We do not hovever propose to get out ail the eaid proposed  
Sub-sections, except sub-section (2), which reads ae  
  
"12)(a) Im proceedings to which this section  
applies, evidence relating to. the. sexual  
Peputation of the complainant ie inadaisstbie  
  
(®) Wotwstnstanding sub-section (2) (a), evidence  
about any sexual experience or sexual activity, oF  
lack of experience or activity, of the conpleinant  
shall not’ be inadmissible metely because it also  
Felates to the sexual reputation of the  
complainant.”  
  
5.3.5. For ready reference, we are enclosing both section  
ite amendment ae suggested by the New South Wales Law  
Reform Conmigsion. (The recommendation was made in  
Novenber 1998.) (Annexure-F)  
  
5.3.6. We do not think that we need to drew any  
inepization from the highly involved and intricate  
provisions suggested by the New South Wales Lav Reform  
Conaission by way of clause (b) of sub-section (2) or by  
way of sub-sections [3] to (7) of §.209-B. The provision  
be suggested herein are sufficient. Tt Sa, of course, for  
the government to deeide whether any provisions on the  
ines of the suggestions made by the New South Roles Iaw  
  
5.3.7, In the Light of changes proposed by us in section  
395; the Language of section $3" and of clause (4) ia  
deetion 166, recommended in the @éth Report of the Law  
Conaission, have to be modified and adapted.  
  
5.3.8. Consequential amendsent recommended in proposed  
section 53 and proposed clause (4) of section 146 of the  
Evidence “Act.- Accordingly, we zeconmend that the  
following oneidnents be made in the Evidence Act:  
  
5.3.8.2 After section 53, the following section be  
"SSK. In a progecution for an offence under  
  
attenpe to commit” any ‘such “offence, where the  
question of consent ie in issue, evidence of the  
  
  
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character of the victim or of his/her previous  
Sexual experience with any” person shall not be  
quality of consent.”  
  
following clause shall be added after clause (3)  
  
(4) Zn 9 prosecution for an offence under section  
376, 376A, 3763, 376C, 3760 or 376 or for attempt  
Go “conmit any tuch offence, where the question of  
Eongent is in Lesue, ie shall not be permissible  
fo adduce evidence or to put questions in the  
Erose-exanination of the victim as to his/her  
General immoral character, of a8 to his/her  
previous sexual experience with any person for  
proving such consent or the quality of consent.”  
  
cuneren\_s1x all  
Miscellaneous Suggestions of Sakshi  
  
Suggestion under iten 11 1g concerned, we may refer 0  
section 273 of the Criminal Procedure Code, which requires  
that "except ag otherwise expressly provided, all evidence  
taken in the course of the trial or other proceeding,  
shall be taken in the presence of the accused or when hic  
personal attendance is dispensed with, in the presence of  
hia pleder™. Re do not think that this general  
principie, founded upon’ natural justice, should be done  
Exay with altogether in trials and enquities concerning  
sexual offences. In an appropriate case, it may be open  
fo the prosecution to request the court to provide a  
Accused, while at the sane tine providing an opportuniey  
and give appropriate instructions to his advocate for an  
atlay any apprehensions on this score, @ proviso con be  
foltowing effect  
  
“Provided that where the evidence of a person  
Below sixteen years who is alleged to have been  
Sppropriate measures to ensure that auch person is  
Cine cnguring the Fight of croes-exanination of  
  
  
Page 45:  
‘The provice can be placed above the Explanation to  
  
6.2. The suggestion mentioned under item 12 is, in our  
opinion, impractical; it ig not possible to accede to the  
Seid request. ‘The same comment holds good with respect to  
the proposal under iten 13. We are therefore unable to  
sake any reconmendation for the present in terns of oF on  
the basis of che aforesaid requests of Sakshi  
  
caapren seve ial  
coneLsror  
  
preceding chapters, the Cormission is of the considered  
Opinion that” the following anendnente need to be carried  
  
7.2, Changes recommended in the Indian Penal Code, 1860  
  
7.2.1, Substitution of existing section 375 of the 1ec  
  
secdeended.- The existing section 375 be gubetieuted by  
  
the following:  
  
(a) penetrating the vagina (which term shall include  
the labia sejora), the enue or urethra of any  
person with =  
  
4) any part of the body of another person ox  
fan object sanipulated by another person  
  
except where such penetration fe carried out for  
proper hygienic or medical purposes;  
  
() sanipuiating any pazt of the body of another  
person gos to cause penetration of the vagina  
(which term shall include the labia majora), the  
anus or the urethra of the offender by any part of  
the other person's bodys  
  
(c) introducing any part of the penis of & person into  
the south of another persons  
  
(4) engaging in eunniaingus or fellatio: oF  
  
(2) continuing sexual asgault as defined in clauses  
(a) 2 (a) above  
  
An clrounstances failing under any of the sie  
  
  
Page 46:  
following desertptions:  
Pirst- Against the other person's will.  
Secondiy- Without the other person's consent  
  
Thirdiy- With the other person's consent when such  
consent has been obtained by putting such other person or  
any person in whom such other person is interested, in  
  
Fourthiy- Whexe the other person ie 9 female, with  
Of auch other person and that her consent is given because  
ie or believes herself to be lawfully married  
  
Figeniy- With the consent of the other person,  
when, a the tine of giving such consent, by reason of  
by the offender personally or through another of any  
stupefying or unholesone subatance, the other person ig  
lnable to understand the nature and consequences of that  
to which such other person gives consent  
  
Sixthiy- With or without the other person's  
consent, ‘when euch other person i¢ under sixteen years of  
age  
  
Explanation: Penetration to any extent Le penetration for  
the purposes of this section  
  
Exception: Sexual intercourse by a men with his own wife,  
  
the wife not being under sixteen years of age, ie not  
  
Further we are not satisfied that the Exception  
(paragraphs 3.1.2 and 3.2.2.1, supray  
  
7.2.2. Recagting of section 376 of the 18C reconmended.—  
  
"276. punsanment for sexual assault - (2) whoever,  
except in the cases provided for by gub-section (21,  
Soumite sexual aesauit shall be puniehed with imprisonment  
of either description for a term which shail not be lees  
than seven years but which say be for life or for a ter  
wnicn say extend to ten Years and shall algo be liable to  
Eine unless the person subjected to sexual aseauit ie hie  
foun wife and is not under sixteen years of age, in which  
fese, he shail be punished with imprisonment of either  
description for a term which may extend to three years and  
  
If the sexual assault is conmitted by a person in  
position of trust or authority towards the person  
Sesgulted or by a neat relative of the person assaulted,  
  
  
Page 47:  
he/she shall be punished with rigorous smprisonment for a  
term which ahali not be less than ten years but whieh sey  
extend to life imprisonment and shail aiso be liable ©3  
  
Provided that the court say, for adequate and  
special reasons to be mentioned in the judgeent, impose @  
Sentence of imprisonment for a term of less than minimum  
punishsent prescribed in this eub-section.  
  
(2) whoever, -  
(a) being @ police officer commits sexual assault  
  
(4) within the Limite of the police station te  
which ne ie appointed: oF  
  
(iL) in the prenises of any station house whether  
or not aituated inthe police station to which he is  
appointed; oF  
  
(645) on a person in hia custody or in the custody  
of a police officer subordinate to him: oF  
  
() being a public servant, takes advantage of hie  
official position and commita sexual assault on a person  
fn nis custody ee such public servant or in the custody of  
a pubiie servant subordinate to hin oF  
  
(c) being on the managenent or on the staff of a  
Jett, remand hone or ather piace of custody established by  
or Under any lew for the tine being in force or of &  
Nomen's or children's institution takes advantage of his  
‘Official position and commits sexual assault on any omate  
Of such Jail, renand hone, place of institutions oF  
  
(4) being on the management or on the staff of 2  
hospital, takes advantage of his official position and  
counties texual agsauit on a person in that hospital; or  
  
(e) comsiite sexual assault on a woman knowing her  
co be pregnant? oF  
  
(2) commits sexual assault on a person when auch  
person is under sixteen yeare of ager oF  
  
(a) commits gang sexuat assaute,  
  
shall be puniehed with rigorous imprisonment for a ter  
which shati not be leas than ten years but which may be  
  
Provided that the court may, for adequate and  
special reasons to be mentioned in the judgment, impose  
Sentence of inprionsent of either deseripeion fore ter  
Of less than ten yeara  
  
  
Page 48:  
Explanation 1.- Where a person Lg gubjected to sexual  
aeeaule by one oF more in a group of persons acting in  
furtheranes of their common intention, each of the persons  
shall be deemed to have committed gang sexual assault  
thin the meaning of this sub-section  
  
Explanation 2.- "Wosents or childrents institution" means  
fan institution, whether called an orphanage or a home for  
neglected vonen or children ore widows" hone or an  
ingeieueion called by any other none, which Le established  
and maintained for the reception and care of wonen oF  
Explanation 3.- "Hoepital" ean the precincts of the  
hospital and includes the precincts of any institution for  
the reception and treatment. of persons. during  
Sonvalescence or of persons requiring medical attention oF  
(paragraph 3.2.3, eupeal  
  
"376R. Sexuat aeeault by the husband upon nis wife during  
separation.- Whoever commits sexuel assault upon hia wife,  
who ig living separately from Ms under a decree of  
Separation or under any custon or usage, without her  
consent, shali be punished with imprisonment of either  
Geceription for 6 term which shail not be lees than evo  
yeara and which may extend to seven years and shell. also  
(paragraph 3.3.2, supra)  
  
xicdenend enhancenent of puntehnent ~ with a minimus  
punishaent of not less thon five years. We have also  
Edded' en Explanation which will govern ali these three  
Sections. The Explanation defines "sexual intercourse” to  
ean any of the acte mentioned in clauses (a) to (e) of  
Section 375. Explanation co section 375 will hovever  
Spply even in the case of sexual intercourse aa defined by  
the Explanation to thie section  
  
Accordingly, the modified sections 3768, 376C and  
  
"376B. Sexual intercourse by public servant with person  
in nie custody.- Whoever, being a public servant, takes  
advantage of his/her” official position and induces or  
Seduces any person, who ie in his/her custody as such  
Puplic servant or in) the custody of @ public servant  
Mim/her, such sexual intercourse not amounting to the  
offence’ of sexual assault, shall be punished with  
Snprisonsent of either description for 9 term which shall  
not be lees thon five years ond which may extend to een  
yeare and shail algo be 2iabie to fine  
  
  
Page 49:  
Provided that the court may, for adequate and  
special reason to be mentioned in the judgment, impose a  
Sentence of imprisonment fore ters of less chen five  
yeare  
  
Explanation: "Sexual intercourse" in thie section and  
sections 376¢ and 376D shall sean any of the acts  
Bentioned in clauses (a) to (eof section 375  
  
Explanation to section 375 shall algo be epplicable.”  
  
7376C. Sexua1 intercourse by superintendent of Jatt,  
enager of @ jail, semand hone or other place of custody  
fosce of of & "women's “or childeents Anseitution estes  
Sdvancage of his/her official position and induces or  
seduces any inmate of such jail, renand hone, place ot  
sseault, shall be” punished with imprisonment of either  
description for a corm which shell not be less” than’ five  
Jeera and which may extend to ten years and shell also be  
  
Provided that the court may, for adequate and  
special reasons to be mentioned in the judgment, impose a  
Sentence of imprisonment fore tern of less then five  
years  
  
Explanation 1.- "Superintendent™ in relation to a jail,  
zenand hone or other place of custody or a women's of  
childzents institution includes @ person holding any other  
office in such jail, remand hone, place or institution by  
Vireus of which he/she can exercise any authority oF  
  
Explanation 2.- The expression Twosents or children's  
institution" shall have the same meaning as in Explanation  
2'to sub-section (2) af section 376  
  
376D. Sexual intercourse by any menber of the managenent  
or staf of a hospitel with any woman in thet hospital.~  
Whoever, being on the menagenent of a hospital or being on  
the staff of hospital takes advantage of his/her  
position and nes sexual sntercourse with any person in  
that hospital, such sexual intercourse not” amounting to  
the offence of sexual aggault, shall be punished with  
inprisonsent of either description for a term which shall  
not be lees” thon five years ond which may extend to een  
yeare and shail algo be 1iabie to fine  
  
Provided that the court may, for adequate and  
special reasons to be mentioned in the judgment, impose  
Sentence of imprisonment for a term of less than five  
years  
  
Explanation.- The expression hospital" shall neve the  
  
  
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sone meaning ae in Explanation 3 to sub-section (2) of  
(paragraphs 3.4 4 3.4.2, eupral  
  
seetian, namely, section 376E be inserted in che IPC in  
the following vere:  
  
sa7eE. unlaweul sexual contact.- (1) Whoever, with sexual  
intent, touches, directly or indirectly, with a pare of  
the body or with an object, any part of the body of  
another person, not being the spouse” of such person,  
Mithout the ‘consent of such other person, ahall be  
Punished with simple isprisansent for a term which may  
Gxtend co two years or with fine oF with both  
  
(2) Whoever, with sexual intent, invites, counsels or  
incites a young person to touch, directiy or indirectiy,  
with a pare of the body or with’ an object, the body of any  
Berson, “including the Body of the person who ¢0 invites,  
directly or ndirectiy, with a part of the body or with an  
object any part of the body of a young person, shall be  
punished with isprisansent of either description which may  
Gxtend co three years and shall also be liable to fine:  
  
(3) whoever being in a position of trust o authority  
Couarde” a young person or ig a person with whom the young  
person ig in @ relationship of dependency, touches,  
directly or indirectly, with sexual intent, with @ part of  
the body or with an object, any part of the body of such  
young person, shall be punished with imprisonment of  
Either description which may extend to seven years and  
  
Explanation: "Young person” in this gub-section and  
sub-section (2) meane’ a person below the age of sixteen  
years.  
  
(paragraphs 3.5 4 3.5.2, eupral  
  
descrves to be deleted in the light of the changes  
  
Gtfected by us in section 375 to 2766. We leave persons  
  
having carnal intercourse with ony animal, to thelr just  
(paragraph 3.6, eupza)  
  
the existing section 509 be amended ae follovs:  
  
"509. Word, gesture or act intended to Inuit the  
nodesty of & woman:  
  
Whoever, intending co insult the modesty of any.  
woman, utters any word, makes any sound or gesture, oe  
Gunibles any object intending that euch ord or sound  
shall be heard, or that such gesture or object shall be  
  
  
Page 51:  
seen, by such woman, of intrudes upon the petvacy of sue  
  
Noman, shall be punished with simple imprisonment for 6  
  
term which may extend "to three years and shell algo be  
paragraph 3.7, eupea)  
  
following ters:  
  
"166K. whoever, being a public servant~  
  
(a) knowingly disobeye any dizection of  
Che “low prahibieing him from requiring the  
attendance’ at any place of any person for the  
purpose of Snvestigation into on offence ox other  
  
(p) knowingly dieobeye any other direction  
  
of the lav regulating the manner in which he shail  
  
Eonduct such” investigation, to the prejudice of  
  
any person, shall be punished with imprisonment  
  
for So term. wnich may extend £0 one year oF with  
(paragraphs 3.8 4 3.8.2, eupral  
  
7.2.9. Mo definition of the expression "consent" Le  
called for at this stage  
(paragraph 3.9, eupea)  
  
7.3. Changes recormended in the Code of Criminal  
  
7.3.1, Insertion of eub-sections (3) and (4) in section  
that the following to sub-sections be ingerted in section  
  
"13) Where under this chapter, the statenent of @  
Snveatigation inte an offence and she is « person  
against whon an offence under sections a5¢," 375,  
Indian Penai Code ig alleged to have been  
committed or attempted, the statement shal be  
recorded by a fenaie police officer and in case @  
female police officer is not available, by &  
female government servent available in the  
vieinity and in case a female government servant  
As also not available, by a fenale authorised by  
an organisation interested in the welfare of women  
  
(4) where in any cage none of the alternatives  
mentioned in sub-section (3} con be followed for  
the reason that no female police officer or female  
  
  
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Srgenieation interested én the welfare of wosen  
snd. children is available, the officer in charge  
‘of the police station shall, after recording the  
the statement of” such feasie. victim in the  
(Paragraphs 4.2.3 & 6.2.3.2, supra)  
  
7.3.2. Modification of the proviso to sub-section (2) of  
setian 160.- We recomend raising the age mentioned in  
the proviso co eub-section (1) of section 160 from fifteen  
years to sixteen years,  
  
paragraph 4.3, supza)  
  
7.3.3. Substitution of the proviso to sub-section (2) of  
the above modification, the proviso to sub-section (2) of  
  
“Provided that no male person under the age of 16  
Years or woman shall be required co attend at any  
place other than the place in which such male  
Person or woman ‘resides. hile recording the  
worker of the choice of the person whose statement  
Ie being recorded shall be allowed. to remain  
present. The relative, friend or social worker #0  
allowed to be present chal not interfere with the  
Fecording of statenent in any manner whatecever.”  
(paragrephe 4.3.1 4 403.2, supe)  
  
7.3.4. Ingertion of @ new section, nenely, section 164A  
that the following section 164A be ingerted in the Code of  
  
"160n. (2) Where, during the stage when  
any oftence “under section 376, section 376A,  
section 3762 ia under investigation and it is  
proposed to get the victim examined by a medical  
Gupert, such examination shell be conducted by a  
registered sedical practitioner, with the consent  
of the victim or of Sone person competent to give  
Such consent on hig/her behalf. In all cases, the  
  
any detay.  
Provided that if the vietim happens to be  
Eonducted by @ fenaie medical officer, a far as  
poseibie  
  
(2) The registered medical practitioner to  
‘whom the victim ‘a forwarded shall without delay  
Guanine the person and prepare a. report  
  
  
Page 53:  
specifically recording the result of his  
examination and giving the following detaiis:  
  
(4) the nase and addrese of the victim and  
the person by whom he/ehe wag broughe,  
(65) the age of the victim,  
  
(ky marks of injuries, £ any, on the  
person of the victin,  
  
(En) general ental’ condition of the  
(i) other materiel particulars, in  
  
(3) me report shail atate precisely the  
  
4) The report shail epectticatly record  
that the consent of the victim or of sone person  
Eompetent to give euch consent on his/her behalf  
  
(5) The exact tine of commencement and  
completion of the examination shall also be noted  
in the report, and. the registered medical  
Practitioner shall without delay, forward the  
Heport to the investigating officer, who shall  
forward it to the Magistrate referred to in  
Section 173 ae part of the docunents referred to  
in clause (a) of sub-section (5) of that section  
  
(6) Nothing in thie section shail be  
construed ag rendering lawful any examination  
Mithout the consent of the victim ‘or any person  
Competent to give such consent on his/her behalf.”  
(paragraphs 4.5.1 and 4.5.2, supra)  
  
Criminal Procedure recommended.- The proposed section S3A  
  
"SA. (2) When a person accused of any of the  
5760 or 376E or of an attempt to commit any of the  
his/her person te to be made under this section,  
he/she ‘shall be sent without delay to the  
registered medical practitioner by whom he/she 48  
  
(2) the registered medical practitioner  
Conducting auch examination shell without delay  
exenine such person and prepare a report  
specifically recording the result of his  
ekenination and giving the following particulars:  
  
(6) the name and address of the  
‘accused and the person by whom he wae  
  
  
Page 54:  
brought,  
(6) the age of the accused,  
  
(Ls) marks of injury, S€ any, on  
the person of the accused, and  
  
(iv) other materia particulars in  
  
(2) ‘Te report shail atate precisely the  
  
(4) The exact eine of commencenent and  
completion of the examination shall also be noted  
in” the report, and. the registered medical  
practitioner shall, without delay, forward the  
Eeport to. the investigating officer, who shall  
forward itt the Magistrate referred to in  
section 173 ae part of the documents referred to  
In clause (a) of sub-section (5) of that section.”  
(paragraph 4.6.2, supra]  
  
7.3.6, Consequential amendments in the First Schedule to  
Congequent upon the proposed ancndnents in the 18C, the  
existing entries in respect of sections 376 to 376, 377  
Gnd 509 will have to be substituted and entry in eapect  
  
376 Sexual aegault Teprisonmene Dieeo Won- Cour  
  
Amprisonent  
for 10 years  
  
Sexual aseault Ieprigonment Mon Ditto Ditto  
  
by asan on for 3 years cognizable  
  
being  
  
under 16 yeare  
  
of age  
  
Sexual assault taprisonment Cogni- Won- Ditto  
  
connitted by for life and gable bailable  
@ person ina fine  
  
position of  
  
authority  
  
person assaulted  
  
or by a near  
  
person assaulted.  
  
  
Page 55:  
Sexual assault Iaprssonnent  
by a police for life and  
officer or by 8 fine  
  
public servant  
  
Or by a person  
  
being oa the  
  
Banagenent or on  
  
jeit, remand  
  
place of custody  
  
by a person on  
  
the management  
  
of a hospital,  
  
faking advantage  
  
position  
  
Sexual assault Iaprssonment  
by the husband for 7 years  
upon hig wife and fine  
during separation  
  
sexual imprisonment  
intercourse by for 10 years  
pubiie servant and Fine  
with person in  
  
his custody.  
  
intercourse by  
Superintendent of  
jail, remand  
  
intercourse by  
any nenber of  
the Sanagenent  
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Page 56:  
376E Unlowfui sexual imprisonment won- Ballabie Magis  
  
contact for 2 years, cognizable trate  
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509 Uetering any Simpie cogni- Non= Magis  
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any gesture for 3 years of the  
  
sodesty of @  
  
  
Page 57:  
(paragraph 4.7, eupzal  
  
7.3.7. Reendnent of sub-section (6) of section 198 of the  
Cade “of Criminal Procedure, 1973.- Consequent upon  
Proposed anendnent Of section 376 of TEC, sub-section (6)  
Of section 198 CrEC shell. be amended in the following  
  
Substituted by the words "sexual assault" and the  
word "eifteen" shall be substituted by the word,  
(paragraph 4.8, supza)  
  
of Criminal Procedure, 1973, the following new section  
  
“Prosecution of offences under sub-sectione (2)  
and (3) of section 376E of the Indian Penal Code  
  
Wo court shal take cognizance of an offence  
punishable under gub-sections (2) and (3)\_of  
Section 3762 of the Indian Penal Code (45 of 2860)  
Gucept upon a polies report of facta whieh  
constitute euch offence or upon @ complaint nade  
by the person aggrieved by” the offence or by  
Aig/her father, mother, brother, sister or by  
Aig/her father'e or mother's brother of sister or,  
by any other person related co hin/her by blood of  
adoption, if $0 permitted by the coure™  
  
(paragraph €.9, supza)  
  
Procedure, 1973.- A proviso to the following effect be  
Sdded under section” 273 above the Explanation clause  
  
“Provided that where the evidence of « person  
‘below sixteen years who is alleged to have been  
subjected to sexual assault or any other sexual  
offence, i¢ to be recorded, the court may, take  
Sppropriate measures to endure that auch person is  
not confronted by the accused while at the sone  
Eine enguring the Fight of croes-exanination of  
  
(paragraph 6.2, supza)  
  
7.4. Changes reconmendad in the Indian Evidence Act,  
  
  
Page 58:  
“110A. Preeumption ag to absence of consent in  
certain prosecutions for sexual agsaule.- In a  
prosecution for sexual aegault under (a) or clause  
(b) oF clause (c) or clause [d) or clause (e) oF  
Elause "(g) of sub-section (2) of section 376 of  
the Indian Penal Code (45 of 1860) where sexual,  
Intercourse by the accused is proved and the  
question ig whether it wag without the consent of  
the other person alleged to have been sexually  
assaulted and such other person states in his/her  
evidence before the court that he/she did not  
Eongent, the court shall presume that he/she did  
  
Explanation: "Sesual intercourge™ in this section  
‘and sections 376 and 376D shall mean any of the  
acts mentioned in clauses (a) to (2) of section  
375. Explanation to. section 375 shall also be  
appiteabie.  
  
(paragraph 5.2.4, supra)  
  
Ze goes without eaying that the aforesaid  
  
presumption is a rebuttable presumption of law ("shall  
  
presume) within the meaning of section ¢ of the Evidence  
(paragraph 5.1.4.2, eupral  
  
7.4.2. Deletion of clause (4) of section 155 of the  
Evidence Act.- Ke recommend deletion of clause (4) of  
(paragraphs 5.2.2 and 5.2.3, supra)  
  
7.4.3. Amendnente recomended in proposed section 53A,  
following section be inserved  
  
"SSR. In a prosecution for an offence under  
attenpe to commit’ any ‘such offence, where the  
question of consent ie in isaue, evidence of the  
Gharacter of the victim or of his/her previous  
Sexual experience with any” person shall not be  
quality of consent.  
  
(pazagraph 5.3.8.2, eupral  
  
7.4.4. ingertion of clause (4) in section 146 of the  
  
Act, the following clause ahall be added after clause (3)  
  
(4) 1 2 prosecution for an offence under section  
376, 376, 3768, 376C, 376D or 376E oF for attempt  
Go Commit’ any sich offence, where the question of  
Eongent ig in iseue, it shall not be permissible  
fo adduce evidence or to put questions in the  
Erose-exemination of the ‘victim ag to his/her  
  
  
Page 59:  
general {snoral character, or ae to his/her  
  
previous sexual experience with any person for  
  
proving such consent or the quality of consent.”  
(paragraph 5.3.8.2, eupra)  
  
We recommend accordingly and urge the Government  
to initiate steps to anend ail the three Acts, namely, the  
Indian Evidence Act on the Lines suggested by us.  
  
(#R.JUSTICE B.P. JEEVAN REDDY) (RETO)  
  
(05 JUSTICE LEILA SETH) (RETD) (DR\_N.M. GHATATE) (DR.SUBHASH C.JAIN)