

to predominantly benefit rural farming community.

3. Training agriculture labour on skill development to predominantly benefit rural farming community.

Eradicating hunger, poverty and malnutrition

1. Food supply as a disaster relief measure

2. Supplementing government schemes like mid-day meal by corporate through additional nutrition.

Ecological balance

1. Own research for individual crops to identify the most cost optimum and agro-ecological sustainable farm practices.

2. Applied research with a focus on water management.

Conservation of natural resource

Product life cycle analysis from the perspective of soil conservation (also qualify under 'maintaining quality of soil, air and water').

Environmental sustainability, ecological balance and conservation of natural resources

Renewable energy projects.

It has also been provided in the act that the company shall give preference to the local area around which it operates for spending the amount earmarked for corporate social responsibility activities. It further provides that if a company fails to spend such amount, the board must specify the reasons for not spending the amount in its report.

Concluding remarks

In a nutshell, we can conclude that Companies Act, 2013 ushers in a progressive change to corporate society and it must be embraced with warmth and positivism. Its provisions are encouraging and if implemented properly they will benefit the common man and give the much needed impetus to the country. Those close to my heart are provisions vesting increased power to shareholders and investors of the company. And of course the much awaited one comes in the form of fixing Corporate social responsibility which is a move towards ensuring an equitable social order for the country. The act however omits to provide any penal provision in case the companies do not adhere to the requirement of corporate social responsibility. But, all in all we need to embrace it with optimism and hope that it will not only make significant contribution to the growth of Corporate sector but will also pave the way for bright future of India.

CHALLENGE POSED TO LAW BY THE GROWING MENACE OF SEXUAL OFFENCES AGAINST WOMEN

By

—ACHUTA PARTHASARATHY,
Principal Senior Civil Judge, Gajuwaka,
Visakhapatnam

Law is a response to the Social Change

Law is not the only Solution for the Social Problems

The sexual offences against women are increasing day-by-day notwithstanding the

changes brought to the existing laws and enactment of new laws. The Indian Penal Code is a comprehensive enactment which provides protection, generally to the women against sexual offences. It covers various offences and punishments for the said

offences. Immoral Traffic (Prevention) Act, 1956 is a special enactment which attempts to curb trafficking of women. It was enacted pursuant to the India becoming signatory to the International convention signed at New York on 9th May, 1950. This Act is special in the sense that it extends to the whole of India including Jammu and Kashmir. The legislative assembly of Jammu and Kashmir has consented for enactment of the law for curbing the menace of immoral trafficking. Thus it became a law for the whole of India. Prior to the occurrence of the horrid incident of sexual violence in a moving bus of a para-medical student in New Delhi, the Protection of Children from Sexual Offences Act *i.e.*, Act 34 of 2012 was enacted. The said Act is referred hereinafter as POCSO Act. This Act came into force on the Children's Day, 2012 *i.e.*, on 14.11.2012. After the nation-wide protests following the occurrence of the sexual violence in the national capital, the Criminal Law (Amendment) Act, 2013 has been enacted. In tune with the law which prescribes anonymity to the victim of the sexual violence - paramedical student was called as NIRBHAYA by the people and the press. Whenever this Act is invoked, after it came into force on 3.2.2013, the police and the press are preferring to call it as Nirbhaya Act. This law can be conveniently called as CRILAA 13/13 or CRILAA simply in the present discussion. The changes brought by POSCO Act and the CRILAA 13/13 Act have to be considered. The CRILAA relies resourcefully on POCSO Act which brought changes to the Indian Penal Code, the Criminal Procedure Code and the Evidence Act.

The sexual offences may take place at anyplace and at any time. They may happen in the domestic sphere also. The Protection of Women from Domestic Violence Act which is called as DVC Act provides protection to women against sexual abuses within domestic sphere. When such offences occur at the work place, the Sexual

Harassment of Women at Work Places (Prevention, Protection and Redressal) Act, 2013 Act 14 of 2013 which was notified on 22.4.2013 provides for protection of women at work places. They also need to be examined. It is proposed to examine these recent legislations in separate parts.

PART-I

The Protection of Children from Sexual Offences Act (POCSO)

Objective :

India ratified the United Nations Conventions for Rights of Children on 11th December 1992. Convention requires the state parties to prevent (a) the inducement or coercion of child to engage in any unlawful sexual activity; (b) the exploitative usage of children in prostitution or other unlawful sexual offences and (c) the exploitative use of children in pornographic performances and materials. Even otherwise Article 15(3) of the Constitution confers on the State powers to make special provision for children. The Article 39(e) provides that the State shall in particular direct its policy in securing that the tender age of the children is not abused and their childhood and youth are protected against exploitation and they are given facilities to develop in healthy manner and in conditions of freedom and dignity and the childhood and youth are protected against exploitation and against moral and material abandonment.

The instances of crime against children are increasing and the Parliament considered it important to enact a comprehensive legislation to provide for protection of children from the offences of sexual assault, sexual harassment and pornography with due regard in safeguarding the interest and well being of the child at every stage of judicial process incorporating child-friendly procedures for reporting, recording of evidence, investigation and trial of offences and provision for establishment of special

courts for speedy trial of such offences. In this background, with the above object the POCSO Act was enacted.

Scope of the Act :

The Act is mainly introduced to prevent sexual harassment and sexual assault and use of children for pornographic purposes. Act protects a child of any sex. The Act intends to protect both boys and girls who are below the age of 18 years. Act is applicable when the child victim is below 18 years at the time of offence. Act also considered the aggravated sexual assault and penetrative sexual assault and provides punishment for such offences. Act also visualises that apart from use of children for pornographic purposes, the participation of the offenders in pornographic depiction of children and provides for enhanced punishments for such offenders. The acts of the offenders attempting to commit offences are also considered. The act has given importance for the early report of such offences and reporting of such offences by the children, the parents guardians *etc.* The limitations of the faculties of the children are also considered for ensuring special modes for reporting to the police and early recording of the offence and launching of investigation by the police. Smooth and easy procedure for recording the statement of the child is provided in the Act. Recording of the statement of child by Magistrate is also incorporated. Assistance of an interpreter, or an expert or assistance of special educators is also provided at the time of reporting, investigation and during trial. A special provision is made which insists on furnishing of the copies of the documents to the child victim and his parents. This provision is to some extent similar to the provisions under Section 207 of Cr.P.C, which mandates furnishing documents relied upon by the prosecution to the accused. Taking of legal assistance by the children or parents is also provided for. Legal aid to the victim is also provided in the Act. The

medical examination of the children is incorporated and special provisions are also incorporated in the Rules. Trial has to be made by the notified children's court or designated court of sessions which is a special court. Appointment of special public prosecutors is provided under the Act. The Act contemplates completion of trial within 30 days or such other period upon recording reasons by the special court. The special powers are given to the Special Court. An activist and interpretative role in conducting trial is provided to the Special Court. The Special Public Prosecutor and the defence counsel have to convey questions that have to be put to the child witness to the Special Court and the Special Court alone has to put those questions by considering the level of understanding of the child and the impact of the question. The Act also protects the child at the time of testifying by ensuring that the child is not exposed to the accused at the time of recording evidence. The Act and Rules have given special importance for providing compensation to the child victim by providing for interim compensation and also compensation at the time of rendering judgment. The Act also enacted the scope of child welfare committees and child protection units at the District and State Levels and thus strengthen and enlarge the scope of Juvenile Justice (Care and Protection of Children) Act, 2000.

The offences of sexual harassment, sexual assault, aggravated sexual assault and penetrative sexual assault are the given offences on one side. The prevention of use of children for pornography purposes is another objective. Enhanced punishments are provided for the offenders who participated with the children.

The Sexual intent is the ingredient which is required for considering the sexual harassment. If a person utters any word or makes any sound or makes any gesture or exhibits or makes a child to exhibit his or

her body or body parts or if any one shows any body of the child for pornographic purposes or follows, watches or contacts a child either directly or through electronic or digital or other means or if a person threatens to use any form of media, real or fabricated depiction or electronic or other mode, of any child or body part of the child, or induces a child for pornographic purpose, amounts to sexual harassment under Section 11 of the Act.

If a person with sexual intent touches the vagina, penis or anus or breasts of the child or makes the child to touch the vagina, penis, anus or breasts of such person or any other person, or does any Act with the sexual intent or when, it involves physical contact with the child without penetration is said to commit sexual assault. The Act intends to make distinction between normal sexual assault, penetrative sexual assault. If a person penetrates his penis or any part of his body into a vagina, mouth, urethra, anus of the child or makes the child to do so with him or any other person it amounts to penetrative sexual assault. If a person applies his mouth to penis, vagina, anus or urethra to the child or makes the child to do so, towards such person or any other person or manipulates the part of the body of the child it means penetrative sexual assault. Aggravated sexual assault or the aggravated penetrative sexual assault are the graver offences which are provided under the Act. If a police officer, member of armed forces, public servant or a person in the management or on the staff of a jail, remand home, protection home, educational institutions, sexually assaults a child it amounts to aggravated sexual assault. The offences are considered as aggravated by considering the position of the offender, use of deadly weapons or the effect caused on the child such as becoming pregnant, or getting affected with life threatening sexual diseases or infections or HIV. If the offence is committed by a gang, it falls within the

definition of aggravated penetrative sexual assault. When the child becomes physically or mentally incapacitated either temporarily or permanently, the offence becomes aggravated. If a person takes advantage of the child's mental or physical disability, or when the offence is repeated, with the child below 12 years, the offence becomes aggravated. If the offence is committed by the relative or guardian of the child or a person in foster care or having domestic relationship with the parent of the child, the offence, becomes aggravated sexual assault. If the person in the ownership, management or staff of a institution providing services to the child or person holding position or authority commits offence or if the offence is committed when the child is pregnant, if an attempt is made to murder the child or if the offence is committed during communal or sectarian violence, if the offence is committed by a person who is previously convicted under the Act, it becomes aggravated. Whoever does sexual assault on the child and makes the child to strip or parade naked in public, the offence becomes aggravated. If aggravated offence becomes penetrative it becomes penetrative aggravated offence, under Section 5 of the Act. The Act intends to prevent use of the child for pornographic purposes in any form of media including programmes or advertisements. Indecent or abusive representation of the child means using a child for pornographic purpose. Under Section 14 of the Act, enhanced punishments are provided for the offender when the offender himself performs with the child in the pornographic sequences. The storage of pornographic material for commercial purposes is punishable under Section 15 of Act.

Abetment of offences is provided under Section 16 of the Act. Section 16 is similar to the definition of abetment under Section 107 of Indian Penal Code (IPC). The Explanation 3 however adds that whoever employs, receives or transports a child by means of threat or use of force or other

form of coercion, abduction or deception or abuse of power or of a position, vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purposes of any offence under the Act is said to aid in doing the act, if the act abetted is committed, the abettor is punishable for the punishment provided for the offence. Attempting to commit the offence is made punishable under Section 18 of the Act.

Reporting of the case :

Report has to be made whenever a person or a child apprehends that offence is likely to be committed or if they have knowledge about the commission of such offences. The reporting can be made to the Special Juvenile Police Unit formed under the Juvenile Justice Act or to the local police. Every report has to be ascribed entry number and has to be recorded in writing, read over to the informant and shall be entered in a book to be kept by the police unit. The report has to be recorded in simple language which enables the child to understand. Protection is given to the informant under Section 19(7) of the CRILAA.

Obligation is placed on the media, or hotel or lodge or hospital or club or studio or photographic facilities by reporting when coming across any material or object which is sexually exploitative of the child through use of any medium. Punishment is provided for failure to report. Punishment is also provided for making false complaint or giving false information. However, child is made immune from such punishment. Code is provided for the media while reporting. Media shall not disclose the identity of the child in any form which leads to the disclosure of the identity of the child.

Statement of the child has to be recorded at the residence of the child, as

far as practicable, by a woman police officer of the rank of Sub-inspector and above. Such police officer shall be in plain clothes. The recording of statement of the child by a Magistrate is also provided.

Section 25(2) of the Act provides that the Magistrate shall provide the child or his or her parents or his representative copy of the document specified under Section 207 of the Code when the final report is filed by the police under Section 173 of the Code.

The child has to be medically examined, whether the FIR has been issued or the complaint has been registered. In case of a girl child, medical examination shall be done by a woman doctor. The parents of the child shall be allowed to be present at the time of medical examination. In the absence of the parents or any other person in whom the child reposes trust or confidence, the medical examination has to be conducted in the presence of a woman nominated by the head of the medical institution. Rule 5 provides for providing emergency medical aid.

Special Courts :

Act has stated that earlier Special Children's Court notified under the Commissions for Protection of Child Rights Act, 2005 or Sessions Court notified in the Official Gazette is designated as Special Court. While trying the offence under the Act, Special Court shall also try other offences including offences under the Information Technology Act. The presumption of innocence of the offender is not there. More over, when a person is prosecuted for the offences under Sections 3, 5, 7 and 9 of the Act Special court shall presume that such person has committed or abetted or attempted to commit the said offence, as the case may be, unless contrary is proved. There is also presumption of culpable mental state, such as intention, motive, knowledge of a fact, or belief *etc.*, under the Act. State Government has to provide Special Public

Prosecutors by making notification in the Official Gazette for conducting cases. The Advocate who has been in practice for not less than seven years alone is eligible to be appointed as Special Public Prosecutor.

Procedure:

Without the accused being committed to it, the Special Court may take cognizance of the offence. The Special Public Prosecutor or the counsel appearing for the accused while recording chief-examination, cross-examination or re-examination shall communicate the questions to be put to the child to the Special Court. The Special Court shall in-turn put those questions to the child. The Special Court shall create child-friendly atmosphere by allowing a family member, a guardian, friend or relative in whom the child has trust or confidence to be present in the Court. Court shall ensure that the child is not called repeatedly to testify. The Special Court shall not permit aggressive questions to be put to the child. The court has to prevent character assassination and ensure that the dignity of the child is maintained at all times during the trial. The identity of the child has to be protected. The Special Court in addition to the punishment direct payment of compensation as may be prescribed for the child, for physical and mental trauma caused to the child or for immediate rehabilitation of the said child. Rule 7 of the POCSO Rules 2012 provides for payment of interim compensation for the child after registration of F.I.R. The Court shall take into consideration all relevant factors relating to the loss or injury caused to the victim while awarding compensation. Compensation awarded by the Special Court has to be paid by the State Government from the victim compensation fund for the purpose of compensating and rehabilitating the victim under Section 357A of the Code. Whether any of the offence is committed by the child, the said child shall be dealt with under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000. As stated

earlier recording the evidence is to be completed within a period of 30 days of taking cognizance of the offence by the Special Court and in case of delay reasons have to be recorded. The court has to ensure that the child is not exposed in any way to the accused while at the same time ensuring that the accused is in a position to hear the statement of the child and communicate with his Advocate. The Special Court may record the statement of the child through the video conferencing or by utilizing single visibility mirrors or curtains or any other device. Trial has to be conducted in camera. Assistance of interpreters or expert or Special Educator in the case the child is with mental and physical disability may be availed by the Special Court. Another special provision in the Act is that the child is provided with right to take the assistance of a Legal Practitioner. Parent or Guardian of the child shall be entitled to get assistance of a legal counsel of their choice. When the family or guardian of the child are not in a position to afford a legal counsel. Legal Services Authority shall provide lawyer to them. This proviso itself is of salient benefit to the child and family of the child for taking legal assistance during the trial. The special Court also has alternative of imposing punishment provided under the Act or where offence is also an offence under Sections 166A, 354A *etc.*, of IPC and has to provided for punishment which is greater in degree.

Need for Amendment :

Laws will be enacted basing on human observation for meeting certain social problems or for protecting rights of the people. It is often said that law is nothing but common sense and it is codified common sense. Normally offences will be laid down in ascending order. Simple or lesser offences will be laid down first and then graver offences will find place subsequently. Even in the Indian Penal Code, which is general law which deals with the

offences, also offences are in ascending order *i.e.*, lesser offences first and subsequently the severe offences. In Chapter-II of the POCSO Act which deals with sexual offences against children, it is laid down as to what amounts to penetrative sexual assault under Section 3, Aggravated penetrative sexual assault under Section 5, Sexual assault under Section 7, aggravated sexual assault under Section 9 and sexual harassment in Section 11. Likewise punishments for the said respective offences are laid down in Sections 4, 6, 8, 10 and 12 respectively. The sexual harassment is lesser offence among the said offences, next comes the sexual assault. Aggravated sexual assault is higher offence. Then comes penetrative sexual assault and then comes aggravated penetrative sexual assault. Under Section 9 which deals with aggravated sexual assault and in Section 5 which deals with penetrative

sexual assault the difference is presence of ingredients of penetrative sexual assault as laid down in Section 3. With regard to other aspects, the difference is there in clause (j)(ii) aggravated penetrative sexual assault which says that it amounts to the aggravated penetrative sexual assault, if a person makes a child pregnant as consequence of sexual assault in case of a female child. Ingredients of Section 9(j)(ii) are similar to Section 5(j)(iii). Apart from these differences, and apart from the presence or absence of penetration as laid down in Section 3, ingredients of Sections 5 and 9 are almost similar. When such is the case, it would have been better if aggravated sexual assault is laid down earlier and then offence of aggravated penetrative sexual assault is laid down later. It would be less simple and acceptable and comprehend-able if offences are laid down in the following order :

Sl.No.	Sexual Offences	Present order of Sections	Suggested order of sections
1	Sexual harassment	Section 11	Section 3
2	Sexual assault	Section 7	Section 5
3	Aggravated sexual assault	Section 9	Section 7
4	Penetrative sexual assault	Section 3	Section 9
5	Aggravated penetrative sexual assault	Section 5	Section 11

Order of Punishments :

Sl.No.	Sections which provides punishment for	Present order of Sections	Suggested order of sections
1	Sexual harassment	Section 12	Section 4
2	Sexual assault	Section 8	Section 6
3	Aggravated sexual assault	Section 10	Section 8
4	Penetrative sexual assault	Section 4	Section 10
5	Aggravated penetrative sexual assault	Section 6	Section 12

The above order is less cumbersome which is in the natural or ascending order. It is easily comprehend-able. It enhances popularity of the Act by making stakeholders including those who have to know about the provisions of the Act in better unfolding manner, and it is less cumbersome. The Act came into force with effect from 14.11.2012. Section 46 of the Act empowers

the Central Government to remove difficulties if any difficulty arises in giving effect to the provisions of this Act, by making publication in the official Gazette, to make such provisions not inconsistent with the provisions of this Act as it may appear to the Central government to be necessary or expedient for removal of difficulty, provided that such removal of

difficulties by making publication is made within a period of 2 years from the commencement of the Act. Section 46(2) says that every order made under Section 46 shall be laid down as soon as it may be after it is made before each House of Parliament. The Central Government can remove such difficulties in laying down the provisions of the Act in the natural and pragmatic order on or before 14.11.2014. If the changes have to be brought beyond 14.11.2014 the Act has to be amended by initiating amendment in the Parliament.

Chapter 3 deals with the using child in pornographic purposes. The internet has transformed the lives of the people in such a manner which would not have been visualised about 20 to 30 years back. Internet is providing such information which changes the lives of the people. One can rely upon the information one seeks to get by clicking the internet or by clicking personal computer or laptop or tablet. It also adversely affects the lives of the people. It is also likely to create chaos in the normal social order and peaceful living. It is also likely to affect the social fabric by its communicative effects. The information one seeks may be got by one who accesses information. Sometimes a child may be subjected to pornographic abuse. The child may not be knowing that she is being subjected to such abuse. The person who accesses information one thinks of may get such information. These days, the billions of visuals and images are found in the internet. If a person who is familiar with the child may also come to know about the depiction of the child for pornographic purposes. In such cases, the child or parent or guardian or a person having foster care of the child may come to know of the child in two ways (1) when he or she accesses internet and comes to know about the depiction of the child, when or she accesses information directly or personally,

(2) other is when a person who is familiar with the child accesses internet or accesses such information where the child is depicted for pornographic purposes or where the said child is abused for such purposes. In such case, child or parent *etc.*, of the child may come to know about the depiction of the child and abuse of the child subsequently through others, in such case the rights of the child or parent of the child have to be protected and there has to be strict vigilance for those who abuse the child for pornographic purpose for they will not escape from the operation of the law. Law has to provide for such instances whether the child or parent or guardian of the child comes to know about the abuses of the child for pornographic purposes and in such case delay becomes inevitable. Child or parent or guardian of the child has to be provided with an opportunity of giving report on such abuse of the child irrespective of the delay in reporting. Similarly punishment for those who participate in pornographic acts with the child shall be provided, and also for those who participate in such acts irrespective of the period in reporting the offence and notwithstanding the offence coming to light after long period. The Act has to be made acceptable and easy for the stake-holders and those who are implementing law in easy manner. The various offences laid down under the section of the offence aggravated sexual assault, penetrative sexual assault, aggravated penetrative sexual assault are laid down by considering the various offences which are happening day in and day out.

PART-II OF THE ARTICLE

Criminal Law Amendment Act 13 of 2013

(*Cri. LAA Act 13/2013*)

This Act has been brought into force for amending Indian Penal Code, Code of

Criminal Procedure, Evidence Act and the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) consequent upon the nation-wide agitation by young population of the country which shook the nation. Under Section 100 of the IPC, right of private defence of the body extends under the restrictions mentioned in Section 99 to the voluntarily causing of death or any other harm to the assailant if the offence which occasions the exercise of right be of any of the descriptions or instances mentioned from first to sixth. The CRILAA 13/2013 included the offence of voluntarily causing grievous hurt by using acid *etc.*, as new offence under Section 326-A of IPC after the offence of voluntarily causing grievous by dangerous weapons or means under Section 326 of IPC. Likewise, the voluntarily throwing or attempting to throw acid is also made an offence under Section 326-B of IPC. Consequently the Right of Private Defence of the body which extends to the voluntarily causing of death or any other harm to the assailant in case of act of throwing or administering acid or attempting to throw or administer acid which may reasonably cause apprehension that grievous hurt will otherwise be consequence of such act which is provided under Section 2.

Section 3 inserted two new sections under the chapter dealing with the offences by or relating to public servants. The said section inserted Section 166-A and Section 166-B of IPC. When a public servant knowingly disobeys any direction of the law as to the way in which he has to conduct himself as such public servant, which is offence under Section 166 of IPC.

Section 157 of Cr.P.C. provides procedure for investigation. The Proviso of Section 157 of Cr.P.C., in relation to the offence of the recording of the statement of the victim of rape shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of

her parents or guardian or near relatives or social worker of the locality. This Proviso was added by Act 5 of 2009. Sections 19, 21, 24 and 26 of the POCSO Act, is supplement to this proviso and also Section 154 of Cr.P.C. CRILAA 13/13 also supplemented Section 154 of Cr.P.C., by adding yet another provision. Section 13 of the CRILAA inserted a proviso with yet another proviso therein. It shows that after information is given by a woman against whom an offence under Sections 326-A, 326-B, 354, 354-A to Sections 354-D, 376, 376-A to 376-E and Section 509 of IPC alleged to have been attempted or committed, such information shall be recorded by a woman police officer or any woman officer. Proviso (a) of the proviso says that if the person against whom the offence under Sections 354, 354-A to 354-D, 376, 376-A to 376-E or Section 509 of IPC is alleged to have been committed or attempted is temporarily or permanently mentally or physically disabled then such information shall be recorded by police officer at the residence of the person seeking to report such offence or at convenient place of such person's choice in the presence of an interpreter or a special educator. It is not known why Sections 326-A and 326-B of IPC are not included in this said Proviso (a). Even in acid throwing cases, woman's sensitivities may be involved. Proviso (b) says that information shall be videographed. Proviso (c) says that the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5-A) of Section 164 as soon as possible.

Proviso 1 of Section 160 of Cr.P.C., says that no male person under the age of 15 years or woman shall be required to attend at any place other than the place in which such male person or woman resides. Section 14 of the CRILAA added to this proviso that "the persons above the age of 65 years and mentally or physically disabled persons".

Section 19(2) of the POCSO Act says that every offence with regard to which information is given to Special Juvenile Police Unit or local police shall be (a) ascribed an entry number and recorded in writing (b) read over to the informant (c) shall be entered in a book to be kept by the police unit. Section 19(4) of POCSO Act says that when the report of the child victim is recorded in a language not understood by the child, services of the translator or interpreter may be availed by making payment. Section 26(2) says that Magistrate or a police officer may take the assistance of a translator or an interpreter while recording statement of the child. Section 24 provides that the statement of the child shall be recorded at the residence of the child as far as practicable by a woman police officer not below the rank of Sub-Inspector and the said police officer shall not be in uniform. No child shall be detained in the police station in the night for any reason. Section 27 provides for the medical examination of the child victim by a woman doctor when the child is a girl. For ensuring strict compliance of these provisos by the public servant, and to supplement Section 166 of IPC, Section 166-A is inserted which says that the public servant who knowingly disobeys the direction of law which prohibits from requiring attending at any place for the purpose of investigation into an offence or a public servant who knowingly disobeys any direction of the law regulating manner in which investigation should be conducted or when he fails to record information for the offence under Sections 326-A and 326-B; Sections 354 and 354-B, Sections 370 and 370-A, Sections 376 and 376-A to 376-E; Section 509 shall be punishable with rigorous imprisonment which shall not be less than six months but which may extend to two years and shall also be liable to fine. Section 357-C introduced by CRILAA shows that the public and private hospitals shall provide first aid or medical treatment free of cost to the victim of offences under Sections 326-A, 376, 376-A to 376-E and

shall also immediately inform police about the said incident. Section 166-B made non-compliance by the public or private hospitals *i.e.*, failing to treat the victim of offence, or failing to inform the police about the incident, the concerned is/are punishable with imprisonment which may extend to one year or with fine or both. Criminal Law Amendment Act No.43 of 1984 which inserted Section 228-A to Cr.P.C., which provides for printing or publication or disclosure of the identity of the victim for the offences under rape is punishable with imprisonment for two years and fine. The effect of Section 4 of the CRILAA is to add Section 376-E along with the offences under Sections 376, 376-A to 376-D for the said classification of offences for which Section 228-A is attracted subject to the other provisos.

Section 5 of the CRILAA inserted Sections 326-A and 326-B. Section 326 introduced offences of causing permanent or partial damage or deformity to or whoever causes burns, maims, or disfigures or disables by throwing acid or administering acids, the same becomes a specific offence. The punishment provided for the breach is imprisonment for 10 years which may extend to life imprisonment and fine. The fine shall be reasonable for meeting the medical expenses of the treatment of the victim which shall be paid to the victim. Section 326-B provides that even throwing or attempting to throw acid or attempt to administer acid even in the absence of damage or injury is punishable with imprisonment which shall not be less than 5 years or which may extend upto seven years and with fine.

PART-III OF THE ARTICLE

A Break from CRILA

Amendment to Section 354 IPC

Whether there is conflict between Central

Legislation and Amendments in State of Andhra Pradesh and Orissa ?

The offence of assault or criminal force to a woman with an intent to outrage modesty of woman under Section 354 of IPC is hitherto punishable with imprisonment which may extend to two years or with fine or with both. The extent of punishment is modified under Section 6 of the CRILAA and punishment is enhanced. The offence of Section 354 of IPC is punishable with imprisonment which shall not be less than one year but which may extend to 5 years and with fine. The offence under Section 354 of IPC continues to be triable by any Magistrate. By amending first schedule the offence is made non-bailable. By Cr.P.C. A.P. Amendment (Act 6 of 1991) for the offence under Section 354 of IPC is made punishable with imprisonment of not less than 5 years which may extend to 7 years and shall also be liable to fine. The proviso enables the Court to impose sentence of imprisonment of less than 5 years by recording adequate and special reasons. Act 6 of 1991 has come into force from 1.4.1991. Schedule was also amended in State of Andhra Pradesh. By Cr.P.C. (A.P. Amendment) Act 3 of 1992, the offence under Section 354 of IPC which is bailable in the central scheme is made as non-bailable offence and the offence which is triable by Magistrate is made as triable by Court of Sessions. This amendment came into force with effect from 15.2.1992.

In State of Orissa the first schedule of Cr.P.C., with regard to the Section 354 of IPC, was amended by Act 6 of 1995. The offence under Section 354 of IPC is made non-bailable with effect from 10.3.1995. The question arises whether the offence under Section 354 is triable by the Court of Judicial First Class Magistrate or by the Court of Sessions?

It has to be considered whether there is any repugnancy between the Central

Amendment and the Amendment made in the State of Andhra Pradesh. Whether the Central Amendment and State Amendment are conflicting with each other.

Under Article 245 of the Constitution of India, Parliament can make laws in whole or any part of the territory of India. Legislature of State may make laws in the whole or any part of the State. This legislative power for making laws is however, subject to the provisions of the Constitution. Under Article 246 Parliament has exclusive powers to make laws with respect to any matters enumerated in List-I in the seventh schedule which is referred to as Union List not withstanding anything in clauses 2 and 3, the Parliament and the Legislature of any State also have power to make laws with respect to any of the matters enumerated in List-III referred to as Concurrent List. In clause 3 Legislature of any State has exclusive power to make laws for any State or any part of the State with respect to any matters enumerated in List-II referred to as State List-II. In the scheme of distribution of legislative powers, the residuary power of legislation is vested with Parliament, under Article 248 with respect to any matter not enumerated in Concurrent List or State List. Entry-97 of List-I *i.e.*, Union List of seventh schedule says that any matter not enumerated in List-II and List-III including any tax not mentioned in either of those lists, the power is vested with Parliament. In the Concurrent List, Criminal Law including of matters included in the Indian Penal Code, figured as Entry-1, Criminal Procedure Code including matters in the Code of Criminal Procedure at the commencement of Constitution figured as Entry-2. Civil Procedure including of matters included in the Civil Procedure at the time of commencement of this Constitution, limitation and arbitration figured as Entry-13.

In the List-II *i.e.*, State List, Entry-1 is public order, but not including the use of

naval, military or air force or any other armed forces of the union or of any other force subject to the control of union or any contingent or unit thereof in aid of the civil power. Entry-2 is with regard to the police including railway and village police subject to the provisions of Entry-2-A of List-I with regard to deployment of any armed forces of the union or any contingent or unit of the union in aid of civil power. Entry-65 of State List is jurisdiction and power of Courts except Supreme Court with respect to any of the matters in the second list.

In *Calcutta Gas Company v. State of Bengal*, AIR 1962 SC 1044, their Lordships of Supreme Court held that language in each entry should be given widest possible and most liberal interpretation.

Article 254(1) of the Constitution says if any provision of law made by the Legislature of State is repugnant to any provision of law made by Parliament, which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2) the law made by the Parliament whether passed before or after the law made by the Legislature of such State or as the case may be, the existing law shall prevail and the law made by Legislature of State shall, to the extent of repugnancy, be void.

It has to be considered whether there is any repugnancy between amendment made by the Parliament and amendment made by the State Legislature. The Article 254(1) applies only when there is inconsistency between the Central Law and State Law regarding to subject-matter in the Concurrent List. In *M. Karunanidhi v. Union of India*, His Lordship Justice *Fazal Ali* reviewed all the earlier Supreme Court judgments. His Lordship held that repugnancy would arise between Central and State Law. (1) When there is clear and direct inconsistency between

the two enactments which is irreconcilable so that they cannot stand together or operate in the same field. (2) There can be no repeal by implication unless the inconsistency appears on the face of the two statutes (3) where the two statutes occupy a particular field, but there is room or possibility of both statutes operating in the same field without coming into collusion with each other, no repugnancy results. (4) where there is inconsistency but a statute occupying the same field, seeks to create distinct and separate offences no question of repugnancy arises and both the statutes continue to operate in the same field.

In *Jilabhai Nanabhai Kachar v. State of Gujarat*, 1995 Supp. (13) CC 596 = AIR 1995 SC 142, their Lordships held that it is settled law of interpretation that the entries in the VII schedule are not powers but fields of legislation. The Legislature derives its power under Article 246 and other related Articles of the Constitution. The language of the respective entries should be given the widest scope of their meaning, fairly capable to meet the machinery of the Government settled by the Constitution.

In *Offshore Holdings Pvt. Ltd. v. Bangalore Development Authority and others*, 2011 (1) SCALE 533, while referring the matter to a Larger Bench, their Lordships considered the Bangalore Development Authority Act and Land Acquisition Act, 1894 and observed that having examined the pith and substance of the legislation and holding that it is relatable to the Entries 5 and/or 18 of List-II of Schedule-VII of the Constitution, the question of repugnancy can hardly arise. Further mere constitutionality of the impugned Act is not determined by the degree of invasion into domain assigned to the other Legislature but by its pith and substance. The true nature and character of the legislation is to be analyzed to find whether the matter falls within the domain of the enacting Legislature. The incidental or ancillary encroachment on forbidden fields

does not effect the competence of the Legislature to make the impugned law.

In *Girnar Traders v. State of Maharashtra and others*, (2004) 8 SCC 505 and *Digambar Moti Ram, Yadav v. Commissioner of Police*, (2011) 3 SCC 1, their Lordships held that the legislative competence of the Central and State Legislatures has been demarcated by the Constitution under the Article 246 with the fields for exercise of legislative power enumerated in List-I (Central List), List-II (State List) and List-III (Concurrent List) of Schedule-VII to the Constitution of India. Power to enact laws thus, is vested in the Parliament as well as in the State Legislative Assemblies within their respective spheres. This is paramount source for enactment of law, *i.e.*, direct exercise to the legislative powers by the respective Constitution.

Relying upon the *Federation of Hotel and Restaurant Association v. Union of India*, (1989) 3 SCC 634, their Lordships held that the constitutionality of law becomes essentially a question of power, which in Federal Constitution, turns upon the construction of the entries in the legislation lists. Interpretative process as a tool of interpretation, introduced new dimensions to the expansion of law enacted by Legislature, through Judge made law. Among other doctrines of 'legislation by reference' and 'legislation by incorporation' are the creation of judicial pronouncements.

Criminal Law including all matters included in the Indian Penal Code figured as Entry-1 of the Concurrent List. The Criminal Procedure including all matters included in the Code of Criminal Procedure at the commencement of the Constitution figured as Entry-2 in the Concurrent List. The jurisdiction and power of all Courts except Supreme Court, with respect to any of the matters in the second list are included as Entry 65 in the State List. The Constitution, organization and jurisdiction and powers of the Supreme Court *etc.*, is included

in Entry-77 of the Union List. Jurisdiction and powers of all Courts, except the Supreme Court with respect to any of the matters in List-III figured as Entry-46 of List-III. It is therefore, clear that with regard to the Criminal Procedure or provisions of the Criminal Procedure Code, both Union and the States have power to make legislations as provided under Article 246 of the Constitution.

In view of the fields in federal scheme of the legislation, it is clear that the State Legislature is competent to make laws for amending Indian Penal Code and the Criminal Procedure Code. It cannot be said that there is any incompetence in making the amendments. Amendment to the Section 354 is made by Section 6 of the CRILAA. The CRILAA has not repealed the amendments made by A.P. under Act 6 of 1991 and Act 3 of 1992. There cannot be any repeal by implication in the absence of any repugnancy or conflict or inconsistency between the two laws. The State Law and the Central Law will be applicable in their respective spheres. It cannot be said that two are different fields of law and that they cannot stand together or operate in the same field as there is no clear conflict of inconsistency. Though the extent, arrangement and the power of Court which can try offences under the Central Legislation and the State Legislation. There is room and possibility for both the statutes operating in the same field without coming into collusion with each other. Hence there is no repugnancy. Furthermore, the Entry 65 of the State List is the entry which confers jurisdiction and power of all Courts except Supreme Court with respect to any of the matters in the State List. Public Order in aid of the civil power and the police figured as Entries 1 and 2 of the State List. Amendment to Section 354 of IPC is made by State Legislature of Andhra Pradesh in view of the increasing incidence of the offences against women. In view of the Article 246 (Lists-II and III) State Legislatures have exclusive

power to make laws with regard to the entries enumerated in the State List, which include Entries 1 and 2. In view of the Article 246(2), State Legislature has also power to make laws with regard to the Entries land 2 of the Concurrent List. Parliament also can make laws with regard to the jurisdiction and power of all Courts with respect of any of the matters in the Concurrent List in view of the Entries 77 and 78 of Union List and Entry 46 of the Concurrent List.

The amendment of Section 354 by Section 6 of the CRILAA *does not affect the amendment* made to Section 354 of IPC by Act 6 1991. Likewise, the amendment made to the first schedule by Section 24 of the CRILAA does not affect the amendment made to the first schedule by the Cr.P.C. (Amendment) Act 3 of 1992 by the State Legislature of A.P.

Whether a Court of Sessions tries a particular offence or a Magistrate Court tries the matter, prescribed punishment for the offence will decide the trial procedure. Trial of the offences by the Court of Sessions has to be conducted in accordance with the procedure for trial before a Court of Sessions as laid down in Chapter-18 of the Code of Criminal Procedure. Trial of an offence punishable upto 5 years imprisonment by a Magistrate has to be in accordance with the trial of warrant cases under Chapter-19 of Cr.P.C. The difference in the trial procedure would also change the appellate Court. The State Legislatures are having power and competence to make legislations with regard to the provisions under the Indian Penal Code and Code of Criminal Procedure and as the Public Order in aid of civil power, figured in the State List and the State Legislation has power to make laws with regard to the jurisdiction, power of all Courts in respect of matters in the State List and also in view of the Entry-46 of the Concurrent List. The amendment made by the State of Andhra Pradesh

cannot be affected by the amendment under Sections 6 and 24 of the CRILAA. Offence under Section 354 of IPC is punishable upto seven years in State of A.P., subject to proviso for recording adequate and special reasons for imposing sentence of imprisonment of less than 5 years. Similarly the Court of Sessions can only try the offences under Section 354 of IPC. In Andhra Pradesh this fact remains unaffected.

Additions to Section 354 of IPC :

The CRILAA also introduced new offences. Sexual harassment under Section 354-A; Assault or use of criminal force to woman with intent to disrobe under Section 354-B; Voyeurism under Sections 354-C and stalking under Sections 354-D are the new offences. For the offence of sexual harassment, the unwelcome and explicit sexual overtures, demand or request for sexual favours, showing pornography against the will of a woman are punishable with imprisonment with imprisonment which may extend to 5 years or with fine or with both. Making sexually coloured remarks is made punishable with imprisonment upto one year or with fine or with both. The assaulting or using criminal force for disrobing or compelling a woman to become naked is punishable with imprisonment of not less than three years and which may extend upto 7 years. Watching a woman while she is engaged in any private act or capturing her images is considered as voyeurism. For the first offence, it is punishable with imprisonment which shall not be less than one year and which may extend upto 3 years. For second or subsequent offences, minimum punishment is 3 years which may extend to 7 years. Following or contacting for fostering personal interaction or attempting to contact despite of disinclination or disinterest by a woman or monitoring use of internet or email by a woman is considered as stalking. Except when it is for preventing or protecting crime or complying the requirement of law. On the first

conviction, the offence is punishable with imprisonment upto 3 years or fine and for second or subsequent conviction, imprisonment which may extend to five years or with fine.

PART-IV OF THE ARTICLE

A Shift to Prevention of Trafficking and Exploitation

Article 23(1) of the Constitution says that traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. The Directive Principles of State Policy particularly Articles 39(a), 39(d), 41, 42, 43, 43(a) also safeguard the rights of men and women and provide right to work, protection *etc.*

Importing, exporting, removal by selling any person as a slave which is offence under Section 370 of IPC, disappeared from the statute book in the place of Section 370 the offence trafficking of person is introduced. Further exploitation of trafficked person is made an offence under Section 370-A of IPC. The CRILAA substituted a new section in the place of Section 370 of Indian Penal Code and added a new Section 370-A. In Chapter-16 of the Indian Penal Code, deals with offences affecting human body. There is classification of offences into various groups. Section 370 to Section 374 are in the group of offences captioned under kidnapping, abduction, slavery and forced labour. Section 370 of IPC which existed till it was substituted deals with buying or disposing any person as a slave, importing, exporting, removing, buying selling of any person, accepting or receiving any person against will as a slave is punishable upto 7 years and fine. Section 371 which is still continuing says that whoever habitually imports, exports, removes, buys, sells, traffics,

or deals in slaves is punishable under Section 371 of IPC. Even for the usage of specific word or phrases, the offences incorporated in the Indian Penal Code are defined in such beautiful manner with brevity of language and scope for the interpretation and scope for invoking the offences for various contingencies.

In the place of Section 370 the offence of trafficking of a person is incorporated and various contingencies are literally laid down. The word exploitation is used in Section 370. Whoever transfers or receives for the purpose of recruiting, transporting *etc.*, through threats or coercion, abduction, practising fraud, or abuse of power *etc.*, or any means, it amounts to trafficking. The word slavery is not used in the Explanation-1. It is stated that the exploitation, slavery or practices similar to slavery servitude or the forced removal of organs. The punishment for trafficking shall not less than 7 years and it may extend to 10 years with fine is added. The trafficking of more than one person *i.e.*, group trafficking of a minor, trafficking of a group of minors and trafficking of minor are made punishable with imprisonment which shall not be less than 10 years, which may extend to life imprisonment and also fine. The trafficking of minor on more than one occasion *i.e.*, as repeated offence and the commission of the offence with the involvement of public servant or police officer are also made punishable with imprisonment. However, the life imprisonment in such cases shall mean for the remainder of the person's natural life and also fine. For the first time, in IPC such punishment for the remainder of the person's natural life is specifically incorporated by the CRILAA. The exploitation of trafficked person minor and trafficked person for sexual exploitation of minor or other trafficked person is made punishable with imprisonment which shall not be less than 5 years and 3 years which may extend to seven years and 5 years respectively under

Section 370-A of IPC. When the offences of importing of any person or acceptance or detention of any person for the purpose of slavery is obliterated. The offence of exploitation or the purpose of slavery is indirectly included under Section 370 of IPC. When the offence of the buying and disposing off any person for the purpose of slavery is removed, it has to be seen whether the habitual dealing in slaves which is provided under Section 371 of IPC is maintainable or not. Even after removal of the Section 370 of IPC with regard to the dealing of slaves *etc.*, the habitual dealing in slaves is continuing under Section 371 of IPC. If the Legislature is considered that the offences of slavery is being made in newly substituted Section 370-A of IPC Section 371 need not continue. The Section 370-A of IPC which is incorporation by CRILAA would have been numbered as Section 371.

Article 4 of the Universal Declaration of Human Rights says that no one shall be held in slavery or servitude and slavery and slave trade shall be prohibited in all their forms. Article 8(1) of the International Covenant of Civil and Political Rights says that no one shall be held in slavery and slave trade in all their forms shall be prohibited. Article 8(2) says one shall be held in servitude. Article 8(3)(a) says that no one shall be required to perform forced or compulsory labour. Article does not preclude imposition of hard labour or rigorous imprisonment as punishment. Article 2 of International Convention of Civil and Practical Rights says that where the rights recognized in the covenant are not provided for by existing legislative or other measures each State party to covenant undertakes to take necessary steps in accordance with its constitutional process and with the provisions of the present covenant to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the covenant. Article 253 of the Indian Constitution says that notwithstanding

anything in the provisions in Part-XI of Chapter-I dealing with legislative roles and distribution of legislative powers. Parliament has power to make law in the whole or any part of the territory of India for implementing the Treaty Agreements or convention with any other country or countries or any decisions made by the international conference associations or other bodies. Article 23 prohibited trafficking in human beings and beggar and other similar forms of forced labour and declared that the contravention is said to have been evidenced in accordance with the law. Article 39(e) exalts that the State shall in all directs its policy towards securing that the health and strength of the men and women and children. Rights of the children are not abused and that citizens are not forced by economic necessities to enter any avocation in not suited to their age or strength. In view of those provisions, the international obligation and the constitutional mandates substitution of Section 370 of IPC and removal of direct provisions which deal with or prohibits of slavery has to be re-examined. Further in view of the continuance of Section 371 of IPC which deals with habitual indulgence in slave trade, continuance of Section 370 of IPC as existed prior to the amendment under CRILAA is necessary. The Legislature has to re-examine the same.

It is not that there is no provision hitherto with regard to the trafficking of persons *etc.* and it is incorporated by CRILAA in IPC. Sections 372 and 373 are there for the offences selling and buying of minor for the purpose of prostitution. These offences are redefined in particular terms. Even the phrase for any unlawful and immoral purpose is included in the said offences.

Immoral Traffic (Prevention) Act, 1956 :

Immoral Traffic (Prevention) Act, 1956 hereinafter, called as ITP Act is a law which directly deals with trafficking.

Section 5 of the ITP Act reads that any person who procures or attempts to procure a person for the purpose of prostitution or induces any person or takes any person for the purpose of prostitution is punishable with rigorous imprisonment for a term not less than three years and not more than 7 years and fine which may extend to Rs.2,000/-. If the offence is committed against the will the maximum punishment may extend upto 14 years. If the victim is a child, *i.e.*, person who has not completed the age of 16 years the punishment shall be for a term not less than 7 years which may extend to life. If the victim is a child who is not aged 16 years or a minor minimum punishment shall be for a term which shall not be less than 7 years and maximum punishment in the case of child victim is life and in the case of minor victim is 14 years. The distinction made in Section 5(1)(i) and Section 5(1)(ii) has to be removed in view of the repeal of Juvenile Justice Act 1986 which is replaced by Juvenile Justice Act, 2000 under which a child or a juvenile is defined similarly in Section 2(k). Juvenile or child means person who does not complete the age of 18 years. The ITP Act Section 5(1)(i) and (ii) needs amendment. Further under Section 9 of ITP Act any person having custody charge or care of any person or in a position of authority or any person causes or aids or abets the seduction for prostitution of that person such person is in-charge or having custody shall be punishable with imprisonment which shall not be less than 7 years which may extend to life or alternatively which may extend to 10 years and fine. As already stated selling, letting or disposing off any person, by hiring or obtaining any person under the age of 18 years for the purpose of prostitution, illicit intercourse or any unlawful and immoral purpose is covered under Sections 372 and 373 of IPC. The words for any unlawful and immoral purpose is a broad application and its meaning is also obvious. Under Explanation-1

it shall also be presumed any person alleged to have committed offence have committed the offence. The Explanation-2 explains what '*illicit intercourse*' means. As Article 25 of the Constitution says that 'trafficking of human being and beggar shall be offence punishable in accordance with law, there should be law which deals with such offences and which provides punishments for such offences. [It cannot be said that slavery disappeared from the Indian society] There cannot be any scientific evidence that slavery is eradicated and is no longer continuing as there is scientific evidence for small pox and polio are, by and large, eradicated. In the absence of such scientific evidence total eradication of commission of such evidence, absence of specific provisions for dealing with the offence of slavery which is prohibited by the Constitution, when the Constitution created a fundamental right does not look proper.

Buying or disposing of *etc.*, of any person as a slave under Section 370 prior to its substituting with the CRILAA amendment should have continued. If by disposing off any person as slave is deleted from the Penal Code, the continuance of Section 371 which says that habitually dealing in slaves is punishable with higher punishments has no meaning. Further in view of the punishments provided under Sections 372 and 373 of IPC, the substituted Section 370 with regard to the trafficking of persons should have been numbered as Section 373-A and exploitation of trafficked person should have been numbered as 373-B. Even in the absence of the newly substituted Section 370, newly inserted Section 370-A by Section 8 of CRILAA such offences are already dealt under Sections 372 and 373 of IPC. However, in Sections 372 and 373 of IPC phrases might have been included to include that to make that it is also the offence even if offence is committed in the case of a person above 18 years with lesser punishment.

PART-V OF THE ARTICLE

Offences of Rape

Section 9 of the CRILAA has substituted Sections 375, 376, 376-A to 376-D with new Sections 375, 376, 376-A to E. Section 375 of IPC which has given definition for the offences rape is substituted with new section. Newly substituted Section 375 says that a man is said to have committed rape if he :

- (a) penetrates his penis, to any extent, into the vagina, mouth urethra or anus of a woman or makes her to do so with him or any other person; or
- (b) inserts, to any extent, any object or a part of the body, not being the penis into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
- (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person
 - (a) against her will;
 - (b) without her consent
 - (c) with her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt;
 - (d) with her consent, when the man knows that he is not her husband, and that her consent is given because as she believes that he is another man to whom she is or believes herself to be lawfully married
 - (e) with her consent, when at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by

him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent

- (f) with or without her consent, when she is under sixteen years of age.

Under the circumstances falling under any of the following seven descriptions. In the new section and circumstances stated are :

First against her will

Secondly without her consent

Thirdly with her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt

Fourthly with her consent, when the man knows that he is not her husband, and that her consent is given because as she believes that he is another man to whom she is or believes herself to be lawfully married

Fifthly with her consent, when at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent are identical for the circumstances reiterated as

Firstly – against her will.

Secondly – without her consent.

Fourthly – with her consent, when the man knows that he is not her husband, and that her consent is given because as she believes that he is another man to whom she is or believes herself to be lawfully married

Fifthly – with her consent, when at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome

substance, she is unable to understand the nature and consequences of that to which she gives consent. In the sixth clause it reads “with or without her consent when she is under eighteen. (In place of 16 years, 18 years of age is substituted)

Seventh circumstance : when she is unable to communicate consent is added which is new.

The opening ingredient a to d are identical with the offence of penetrative sexual assault, stated in Section 3 of POCSO Act. The difference is in clause (d). In clause (d) the application of mouth to penis, stated in Section 3(d) of POCSO ACT is deleted, other clause (d) Section 3 continued. The source for the certain ingredients for the opening words are found in POCSO. The explanation in Section 375 which says penetration is sufficient to constitute sexual intercourse is deleted. In its place Explanations 1 and 2 state about ‘vagina’ and ‘consent’. Exception in the old section is continuing as Exception No.2. The inserted exception has become Exception No.1 which says that a medical procedure or intervention shall not constitute a rape. The ingredient for the specific instances of rape by police officer, public servant, management or staff of jail or remand home or hospital are continuing as Section 2(a), 2(b), 2(d) and (e). The introduction of a new Section 376(2)(c) shows that the Parliamentarians have noted the several instances of armed forces deployed for assisting civil authorities committing rapes as alleged at various places such as Jammu and Kashmir, Punjab, North-Eastern States and added to Section 376(2)(c) which reads whoever being a member of armed forces deployed in an area by the Central or State Government, commits rape in such area; Section 376(2)(c) is a new distinct offence. The commission of rape by the relative, guardian or teacher (f); during communal or sectarian violence (g); rape on a woman incapable of giving consent (j); rape by person in position of control or dominance over a woman (k); rape of a

woman suffering from mental or physical disability (l); causing of grievous bodily harm, maiming, dis-figuring or endangering the life of a woman (m); repeated offences on the same woman (n) are the new offences where the Legislatures have noted with concern increasing incidents of such offences. Under Section 376(2)(f) commission of rape of woman who is under 12 years of age, the 16 years is substituted and the clause (f) is renumbered as clause (i). Rape of a pregnant woman which was offence under Section 376(2)(e) is renumbered as Section (h). Gang rape is made distinct offence under Section 376-D and explanation under Section 376(2) is newly added to newly Section 376(d). Explanation to Section 376(2)(d) is with regard to women’s’ or children’s’ institution. Explanation 3 in the old Act with regard to “hospital” is stated as Explanation (b). The “armed forces” and “police officer” are explained under Explanations (a) and (c). Section 376-A is renumbered as Section 376-B and the quantum of punishment for the intercourse by husband with his own wife during judicial separation or otherwise without her consent is imprisonment which may extend to 2 years. Now the minimum punishment is provided which shall not be less than 2 years and maximum may go upto 7 years and fine. Penal provision to the newly inserted Section 376-A *i.e.*, commission of rape and inflicting of injury or causing death or making a woman to be in a persistent vegetative state is punishable with rigorous imprisonment which shall not be less than 20 years, which may extend to imprisonment for life which shall mean imprisonment for the remainder of that persons natural life or till death. These two extents of punishments are new additions to IPC. Life imprisonment under the circumstances is given a new meaning and its duration extends upto natural death. Similar punishment is provided for the Gang Rape and for repeated offences under Sections 376-D and E. Offence under Section 376(b) and 376(d) intercourse of by public servant, by Superintendent of Jail, member

or staff of hospital, *etc.*, is merged into one grouping under Section 376C under the caption 'sexual intercourse by a person in the authority'. As such earlier Gang Rape is made distinct offence as Section 376(d) and the Explanation No.1 of the Section 376(2) is incorporated in Section 376(b) and sentence prescribed is apart from life imprisonment till death, fine also has to be imposed for the offence under Section 376-B. Repetition of offences of rape or sexual intercourse by a previous convict is covered under a new Section 376-E which consists punishment for repeated offenders. For the offence under Section 509 of IPC, simple imprisonment which may extend to one year, or with fine or with both, the substituted extent of punishment is simple imprisonment for a term which may extend to three years and also with fine. Fine as alternative punishment is deleted under Section 10 of CRILAA for the offence under Section 509 of IPC and fine is made compulsory, but not as alternative punishment.

Other Amendments of Cr.P.C. :

Certain amendments made to the Cr.P.C. were considered earlier. Other amendments are with regard to proviso to Section 26 of Cr.P.C., which says as far as practicable, trial shall be conducted by Court presided over by a woman for the offences under Sections 376-A to 376-D offence under Section 376 is added under Section 11 of CRILAA. Section 54-A inserted by Cr.P.C. (Amendment) Act 25 of 2005. Section 12 of CRILAA Act amended Section 54-A of Cr.P.C. Identification parade proceedings with regard to the identification of the suspect by mentally or physically disabled person is incorporated, as they need special care. Further proviso is added for videographing the proceedings for aiding the Court during the trial and also for ensuing fairness to the accused and victim. Section 54-A to Section 164 of Cr.P.C., is added by Section 16 of CRILAA along with two provisos. Second proviso also provided for videographing of the recording of statement of a person who

is mentally or physically disabled is also similar to such provision for ensuring fair trial with care. Section 16(b) of CRILAA Act which amended Section 164 has indirectly widened scope of Section 137 of Evidence Act. When a statement of temporarily or permanently mentally or physically disabled person is recorded, it shall be considered as a statement in lieu of examination-in-chief. That can be considered as chief examination itself, and the witness can be cross-examined based on such statement without need for recording of the same at the time of trial. This is a practically visualised and novel amendment. It minimizes ordeal of victims to some extent. Protection is also afforded under Section 273 of Cr.P.C., for the woman below the age of 18 years, by ensuring that the Court may take appropriate steps to see that the woman is not directly confronted by the accused. This is likely to boost confidence levels of the victim girls. The two months time limit for completion of trial is set in by the Proviso to Section 309 of Cr.P.C., with regard to requirement for conducting the trial in camera under Section 327 of Cr.P.C. Section 376-E is added for Sections 376, 376-A to Section 376-D of IPC. By Section 23 of CRILAA, Section 357-B and Section 357-C are added. The compensation payable by the State Government under Section 357-A shall be in addition to the payment of fine to the victim under Section 326-A or 376-D. The treatment of victims is provided under Section 357-C.

Amendment of Evidence Act :

The amendment of Sections 53-A and 114-A, 119 and 146 of the Evidence Act are consequential amendments with regard to relevancy of the character of the victim, presumption that can be drawn and inclusion of the newly incorporated section under Section 376-E. Taking the assistance of interpreter or Special Educator in recording the statement is incorporated under Section 119 of Evidence Act.

Part-VI of the Article

Sexual Harassment of Women at Work Places (Prevention, Prohibition and Redressal) Act

Article 3 of the Universal Declaration of Human Rights, 1948 (hereinafter referred to as UDHR) and Article 9 of International Convention of Civil and Political Rights 1966 say that every one has right to life, liberty and security of person. Article 12 of UDHR and Article 17 of International Covenant on Civil and Political Rights (herein referred as ICCPR) says that no one shall be subjected to arbitrary interference with his privacy, family, home, correspondence, nor to attack upon his honour and reputation. Every one has the right to the protection of law against such interference or attacks. Article 16(3) of UDHR, Article 10 of the International Convention on Economy and Social and Cultural Rights 1966 and Article 23 of the International Convention of Civil and Political Rights say that family is the natural and fundamental group unit of the society and is entitled to protection by society and State. The phraseology of these Articles is broad. It has to be considered that State has an obligation to protect every member of the family which include women and children. Article 23(1) of the UDHR says that every one has a right to work, to free choice of employment, to just and favourable conditions of work and protection against unemployment.

Article 6 of the International Covenant on Economic, Social and Cultural Rights (hereinafter referred to as ICOSAC) says that State parties shall recognize the right to work which includes right of every one to get an opportunity to gain his living by work which he freely chooses or accepts and would take appropriate steps to safeguard that right. Article 7 says that every one has the right of enjoyment of just and favourable conditions of work which includes safe and healthy working conditions. Article 1 of Convention on the Elimination of all Forms

of Discrimination against Women (CEDAW) 1979 says that discrimination against women shall mean any discrimination, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. Article 11(1) of CEDAW says that State shall take measures to eliminate discrimination against women in the fields of employment in order to ensuring the basis of equality of men and women same rights, in particular right to work, as a inalienable right of human beings, free choice of profession and employment.

These basic rights are also reflected in the Indian Constitution. Equality is guaranteed under Article 14 of the Constitution. Article 15(1) says that State shall not discriminate against any citizen on the grounds of..... sex..... Article 15(3) enables the State to make special provisions for women and children. Article 16(1) says that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office in the State. Article 16(2) says that no citizen shall be discriminated in respect of any employment or office in the State on the grounds of sex apart from other grounds. Directive Principles of State Policy are the principles which are fundamental for the Government in making laws. Article 39(a) says that the State shall direct its policy towards securing that the citizens men and women equally have the right to an adequate means of livelihood. Article 39(e) says that health, strength of the workers, men and women shall not be abused. Article 41 says that State shall within the limits of its capacity and development make effective provision for securing right to work. Article 42 says that the State shall make efforts for securing just and humane conditions of work and for maternity relief.

These human rights from the International Conventions, Fundamental Rights and Directive Principles of State Policies have to be kept in mind while protecting the right to work of women and ensuring security for the women in the work environment.

On 13.8.1997 in *Visakha and others v. State of Rajasthan* and others their Lordships of the Supreme Court noted that there is vacuum in the existing legislation and writ petition was filed for class action for remedying social aberration. Under Article 253 Legislation has to give effect to international treaties conventions and there are provisions in such international conventions for prevention and redressal of sexual harassment at workplaces. Their Lordships of the Supreme Court have laid down guidelines and norms for prevention of sexual harassment with regard to initiating criminal proceedings, disciplinary action, complaints committee of the workers. Creation of awareness and requesting Central and State Governments for adopting suitable measures including legislation to ensure that the guidelines laid down by the Hon'ble Supreme Court are followed and see that they are also observed by the employers in private sector. The guidelines were laid down in *Visakha* in the month of Vaisakhi of the Indian almanac. After CRILAA 13/13, Act 14 of 2013 is second development. Sexual Harassment of Women at Work Places (Prevention, Prohibition and Redressal) Act 2013 is notified on 23.4.2013. This Act which has been passed as soon as reaching the Parliament. Proposals about inclusion of certain provisions in protecting domestic worker and employee in private sector and any organized sector are accepted. This Act contemplates the formation of Internal Committee and Local Committee for receiving complaints, any enquiries and making recommendations *etc.* Woman subjected to sexual harassment is aggrieved woman and the person who subjects her to such harassment is respondent under the Act. Wide meaning is given to

the words 'employee' and 'employer' so as to include even workers working on a voluntary basis. Though the worker is a probationer, contract worker, or daily wage worker, and an apprentice and whether the terms of employment are express or implied. The employer covers Government or local authority, organization, undertaking, establishment, branch or unit of the appropriate Government *etc.* It is significant that domestic workers who are women to do household work on temporary or permanent basis part time or full time basis those interests are also protected under the Act.

Section 3 prohibits sexual harassment. Clause (n) of Section 2 and Section 3 have to be read together to know what does amount to sexual harassment. Unwelcome acts or behaviour, such as physical contact and advances, demand or request for sexual favours, or making sexually coloured remarks, showing pornography unwelcome physical, verbal and non-verbal conduct of sexual nature would come under the offence of sexual harassment. Implied or explicit promise, threats or interference with work or humiliating treatment likely to affect the health of the women are prohibited. The promise of preferential treatment in employment, threat of detrimental treatment, or threat about her present or future employment status, creation of intimidating or offensive or hostile work environment are prohibited and sought to be prevented.

The Act has provided for early redressal of the grievances. Act has provided for constitution of Internal Complaints Committee by the employer (Section 4) and Local Complaints Committee by the District Administration (Sections 5, 6 and 7). These committees when constituted will continue for three years. The Presiding Officer/ Chairman or Members *etc.*, as the case may be, shall not be removed from office except for in the contravention of the requirement to keep the information confidential,

notwithstanding anything in the Right to Information Act, 2005, or upon conviction or finding guilty in disciplinary proceedings or when they abuse their position. Internal Committee is presided by the Presiding Officer. Local Committee is presided by a Chairperson. Presiding Officer shall be senior level woman employee. Further the Internal Committee will consist of two members from among the employees and one member from non-Governmental organizations. At least half of the total number of committee shall consist of women. The Central or State Government has to notify the District or Additional District Magistrate or Collector or Deputy Collector as District Officer. It is the duty of the District Officer to constitute Local Committee and to designate a Nodal Officer at block or taluq level in rural or tribal areas and Ward or Municipality level in the urban areas for receiving complaints and for forwarding the same to the Local Complaints Committee. The eminent women in the field of social work or one of those committed to the cause of women shall be Chairperson of the Local Complaints Committee. One member shall be nominated from amongst the Block, Taluk or Tehsil level or from Ward or Municipality in the district. Two members shall be nominated from NGOs committed to the cause of women or who are familiar with the issues relating to sexual harassment. At least one nominee should have law or legal background. Representation is provided for Scheduled Castes or Scheduled Tribes or other Backward Classes or from the minorities. The concerned officer from Social Welfare or Women and Child Development Wing to the Government shall be Ex-official Members. Granting of funds after due appropriation made by the Parliament is provided in the Act. The Government has to set up an agency for the transfer of grants (Section 8). Agency shall pay to the District Officer sums required. These sums or funds have to be accounted by maintaining accounts and through periodical

auditing. State Governments have prescribed rules under Section 8(4) for auditing of accounts in consultation of Accountant General of the State and furnishing of audited copy of Accounts to the State Government. Chapters 4 and 5 deal with the complaint and inquiry into the complaint respectively. Three months time limit is laid down for giving complaint, 10 days for submission of the report by the Enquiry Committee which completes enquiry. 60 days time for the employer or District Officer to act upon the recommendations of the Internal or Local Committees 90 days for completion of enquiry, and 90 days is the limitation for preferring an appeal.

The Act visualizes steps to settle the matter between the aggrieved person and respondent through conciliation before initiating the enquiry or upon request of the aggrieved woman. The Act made it clear that the settlement shall not be monetary settlement. The monetary payment may be there after inquiry as a measure of compensation, but not as a term for the settlement. Committee shall record settlement and forward the same to the employer or District Officer and also shall provide copies of the settlement recorded to the aggrieved woman and respondent. When there is a settlement, there may not be any further inquiry. The Act is silent as to how conciliation has to be made. However, the Rules to be adopted by the mediator or the conciliation under the Conciliation Act 1996 would provide guidance. The Arbitration and Conciliation Act 1996, however extracted with the Part-III belonging for the conciliation under the Arbitration and Conciliation Act, 1996 may provide guidance for holding conciliation, there will not be any norms for past conciliators *etc.* The Conciliator is expected to have proper knowledge and understanding about the issues of woman and rights of the woman. The Conciliator shall be guided by the principles of objectivity, fairness and justice.

He must have an understanding about the hierarchy of relationships that will be there in organizations, workplaces or field situation and is expected to know the rights and obligations of the parties, practical knowledge about the file flow process in Government Offices and production process in Private Sector. The Committees may meet the aggrieved woman and the respondent and may communicate with them orally or in writing and may communicate with the parties together or separately. In the process of the settlement, communication with the parties together or separately or holding private sessions may be required. Industrial Employment (Standing Orders) Act, 1946 has advised for avoiding frequency of conflict in industrial undertakings. Employment Standing Orders may include provisions for the constitution of Internal Committees. In Industries Special Conciliation Officers on the lines of the Conciliation Offices under Section 4 and Committees or Parallel Boards of Conciliation as provided under Section 5 may be created.

In the absence of settlements, Committee may proceed with inquiry of the complaint. Conducting inquiries may be as per the Service Rules applicable and in the case of domestic workers in the manner prescribed by the Central or State Governments or alternatively if *prima facie* case exists the committee has to forward the complaint to the police within a period of seven days for registering a case under Section 509 of IPC or under any other relevant and concerned offence. When the terms and conditions of the settlement is not complied also, the committee has to make enquiry. Powers of Civil Court for summoning any person and examining him and others on oath for requiring discovery and production of documents *etc.* are given for the committees.

During inquiry at the request of the aggrieved woman or in the circumstances of the complaint, committee may recommend to the employer either to transfer the aggrieved

women or the respondent to any other workplace or unit. Committee may recommend granting of leave to the aggrieved women upto a period of three months. This leave shall be special leave in addition to the other leaves as per the applicable Leave Rules. The Committee may make other recommendations. The employer has to implement the recommendations and send report of the implementation to the committee.

If the allegation is not proved committee may recommend to the employer or District Officer that no action is required. If the allegations are proved, committee may recommend the employer or District Officer for taking action for sexual harassment as misconduct as per the Service Rules that are applicable. In such case, regular departmental enquiry would have to be initiated in the case of Government servants or employees of the local bodies *etc.* Committee may also recommend deduction of salary or wages of the respondent for making payment to the aggrieved woman or her legal heirs in the case of involvement of instances of death, suicide *etc.* When such recommendation to make payment is made, employer has to deduct the amount from the salary or wages of the respondent. If the respondent absconds or absents from the duty or due to cessation of employment the employer may direct the respondent to make such payment. If the respondent fails to make payment the committee may order for recovery of the sum as arrears of land revenue by the District Officer. The employer or the District Officer shall act upon the recommendations within 60 days from the receipt of the report by him as stated earlier.

The Act also considers the scope for giving malicious or frivolous complaints and production of false or fabricated documents either by the respondent or by any witness on behalf of the aggrieved woman or the respondent as the case may be. If the allegations levelled are malicious or false or

if the respondent produces any forged or misleading document the committee may recommend to take action against the woman or the respondent. If Service Rules are there, action can be taken as per the Service Rules. In the absence of Service Rules, as may be prescribed by the Government or by any law. Such recommendations may be made only when the malicious intent of the complainant is established after inquiry.

While making recommendations for payment of compensation for determining the sums, the mental trauma, pain and suffering emotional distress, loss of income, loss in the career opportunity, and other damages are to be considered. Medical expenses, for physical and psychiatric treatment, income and financial status of the respondent are the important factors. Payment may be required to be made in lumpsum or instalments.

When the person aggrieved from the recommendations or any implementations of the recommendations may prefer appeal to the Court or Tribunal in accordance with the Service Rules. In the absence of the Service Rules, in such manner as may be prescribed. This is the crucial area where the provisions have to be prescribed in the case of domestic workers, servants or the contractual workers, and temporary workers *etc.* POCSO and CRILAA Acts provide certain reliefs and measures in the case of offence.

The duties of the employer are laid down in Chapter-VI providing safe working environment, displaying the penal consequences of the sexual harassment at prominent places, organizing workshops and awareness programmes providing facilities to the Internal Committee or Local Committee, ensuring attendance of the respondent and witnesses, assistance to file complaint to the police and or for initiating action for the offences under Indian Penal Code, are some of the duties. Sexual harassment has to be treated as misconduct. Employer has to

monitor time for the submission of the report by the Internal Committee. District Officer has to maintain timely submission of reports by the Local Committee and for involvement of the non-Government organizations for creation of awareness. The committees have to submit annual reports. The District Officer has to submit a brief report on the annual reports to the State Government. The employer has to mention in the report about the number of cases filed in the year and their result. The State Government has to monitor the implementation of the Act (Sections 21, 22 and 23). The appropriate Government may require in public interest or in the interest of women employees and may call upon employer or the District Officer to furnish information relating to sexual harassment or may authorize and require the officers to make inspection of the records and workplaces in relation to sexual harassment. The employer and District Officer shall produce such records and documents on demand by the authorized officer. (Section 25).

There are two types of offences under the Act. If the employer fails to constitute the Internal Committee, or failed to take action on the recommendations of the Internal Committee or Local Committee as the case may be, as per the Service Rules, or when he fails to deduct the sums out of the salary or whether it is proved under Section 13 or when the malicious intent on the part of the aggrieved woman or other person is established, and when recommended by the committee to take action against such persons, for making malicious complaint, or on the failure to take action against the witness when required by the committee as provided in the Section 14 when it becomes an offence. Similarly, when the employee fails to submit annual report with regard to the number of cases of sexual harassment to the District Officer, or when the employee contravenes or admits contravention or abets contravention of any of the provisions of the Act or the Rules made under Section

29, it is an offence by the employer. The offence is punishable with fine which may extend to Rs.50,000/-. On conviction for such offence, repetition of the offence by the employer, the offence is punishable with double the fine *i.e.*, which may extend to Rs.1,00,000/-. Offence is non-cognizable. The cognizance may be taken on the complaint made by the aggrieved woman or person authorized by either Internal Committee or Local Committee. The offence shall be tried by the Metropolitan Magistrate or Judicial First Class Magistrate.

The implementation of the Act in the unorganized sector and for the unorganized workers is a big challenge to the Act. It may be appropriate for the District Employment Officer to collect details with regard to the unorganized workers to whom smart cards with unique identification number is issued as provided under Section 10 of the Unorganized Workers (Social Security) Act, 2008. This duty to record about the work details may be entrusted to the District Panchayat in the Rural Areas and Urban Local Bodies in the Urban Areas to whom duties are provided for record keeping under Section 8 of the Unorganized Workers (Social Security) Act. The Sexual Harassment of Women at Workplaces (Prevention, Prohibition and Redressal) Act, 2013 is a fine piece of legislation which emphasized the prevention and prohibition of the offences of sexual harassment and redressal of the grievances of the aggrieved woman. It is an easy and convenient method for having an outlet for the grievances and to complain about the sexual harassment at the workplaces. The work of the Collector is likely to change the atmosphere at the work places. Internal and Local Complaints Committees, District Officers, Nodal Officers have to perform their functions with determination and dedication for ensuring success of the Act. The enactment of an Act for the Prevention, Prohibition of Sexual Harassment is a welcome attempt. It is a

salient Act and implementation of the Act is crucial for the success of the Act. If the Act is not implemented, the offences of sexual harassment will increase and remain uncontrolled as in the case of any other Acts. Section 8(b) of the Dowry Prohibition Act provides for appointment of Dowry Prohibition Officers. Gujarat, Madhya Pradesh and Andhra Pradesh Governments have appointed Dowry Prohibition Officers by entrusting charges to Child Marriage Prevention Officer-cum-District Social Defence Officers in Gujarat, District Women and Child Development Officer in Madhya Pradesh and Revenue Divisional Officers or Sub-Collectors in Andhra Pradesh. The A.P. Dowry Prohibition Rules, 1998 also provide for formation of village teams or groups by entrusting duties to the Village Sarpanch and the Panchayat Secretaries. Rules also provide for a District Level Advisory Board and Advisory Committees. Rules also provide for a Revision of Dowry Prohibition Act and submission of periodical reports. The District Committees has to submit monthly reports and State level committee has to conduct review periodically about the serious instances of dowry prohibition violations and the implementation of the Act. Not much is being heard with regard to these finest provisions. It is not known whether these fine provisions also remain on the finest paper only. References can be made to Article Dormant Provisions in Dowry Prohibition Act by the author in *Andhra Law Times (Criminal) 2007 Journal Section*.

Another fine piece of legislation *Maintenance and Welfare of Parents and Senior Citizens Act, 2007* is an enactment that is fundamentally expected to provide expeditious, reasonable and just maintenance to the parents and senior citizens. This Act also visualized for separate wards in the hospitals for the senior citizens. Indian Railways has to be complimented where senior citizens are being provided with concessions and they are provided with separate queues. Maintenance of the Welfare

of Parents and Senior Citizens Act has not gained popularity as was expected because of the tardy implementation of the Act. The implementation of the Sexual Harassment at Work Places (Prevention, Prohibition and Redressal) Act is vital for the success of the Act. Another aspect that has to be considered is it is not the enactment of law that solves any problem. While making such laws, for achieving social justice, duties are being cast on the existing District Officers *etc.*, who are already performing too many tasks. Similarly, the Special Courts are not being created. Jurisdiction and functions of the Special Courts are being entrusted to the existing regular Courts which are discharging the functions of the Special Courts. When such vast number of Acts are coming Governments shall provide for the Constitution of Special Courts, the Special Courts have to be constituted as provided by the such Acts instead of always entrusting powers, functions and conferring jurisdiction to the existing Courts.

End note

The offences against women are increasing despite enacting POCSO Act, Sexual Harassment of Women at Workplaces (Prevention, Protection and Redressal) Act and amending existing laws by CRILAA. There is also change in pre-independent and post-independent India. Joint families used to be predominant in traditional society. Joint family used to provide physical and emotional security to the children and women. It used to be economic, religious, recreational *etc.*, center. Primary socialization used to be within the family. Inculcation of values used to take place within the family. Women used to be revered. With the industrialization, urbanization, the joint family has undergone radical change. Unitary families are increasing. Social security is getting reduced. The role of the women is also undergoing radical change. Women are advancing educationally. With advancement of education the occupational roles of the

women are changing. Social, economical, political and occupational opportunities are increasing for women. Changes in the information technology is also providing greater opportunities for the women. Traditional role of the woman has undergone a radical change and is no longer relevant and meaningful for the post independent India. Women are equally participating in all the sectors of the society. Economic independence of the women is also increasing. They are expected to play greater role in the development, progress and advancement of the society. There is need for more special mobility of women with the changes. With the decline of the joint families and changing roles of the women, there is need for better prevention of crimes against the women and greater protection of women. There is need for greater institutional support for women.

There is also change in the value system with the enormous expansion of electronic media and film industry. We have to reinvent our value system. Women have to be respected and our outlook towards women has to change. Education system has to inculcate the values and how the counterpart of the men have to be treated for ensuring that with advancement of civilization and progress of the society feminine half who are responsible for the development, progress and advancement growth of the society have to be revered and protected for ensuring harmony and peace in the society. These values have to be reflected in the organizational sector, workplace, transit situation and neighborhood.

The POCSO Act has visualized the various contingencies and different offences which are happening. The act has given detailed descriptions as to how the offences are happening. For the success of the Act the acceptability and successful adoption and implementation of the Act is necessary. The success and popularity of the Act depends

on its structuring and unfolding of the various provisions of the Act. There is need for rearranging the provisions of Act by rearranging the sections so that there is proper unfolding of the Act. When the Act becomes popular and effective it becomes a tool for controlling crimes against women.

The people should feel reassured that there is an effective law which curbs and controls crimes against women and gives them effective remedy in case of breach of law. There has to be prompt and confident reporting of crimes against children and women. It shall be followed by meticulous, thorough, prompt, scientific and effective investigation. It is a base for just, effective and speedy trial. Hostility and gaining over the witnesses is big challenge for the trial process. When the people realize that law provides them effective, just and useful remedy and law also provides appropriate

punishments just compensation and satisfactory remedy for them the hostility is going to get reduced. With the confident participation of the witnesses success of the criminal justice system as an effective means of preventing, controlling and minimizing the crimes against women depends. Peace and order in the society depends on the effective control of crimes against women. The status of the women and the confident participation of the women in the economic, social, educational, political and other spheres of the society is inevitable for onward march of the nation. The status of the women and protection provided to the women is an indicator of the level of civilization. The level of civilization is a yardstick of the progress of the nation. With the progress of the nation people can be proud of its nation and its cultural ethos. It is a gift which we can give to future generations.

A CRITICAL STUDY – ON VICARIOUS LIABILITY OF STATE

By

—P. SAMBA SIVA RAO, Advocate
Narsipatnam-531116

Introduction

Of late, day-in-day out, road accidents have touched a new height and as a consequence, the wearing of helmets by two wheel riders and belts has now been mandatory, as a safe guard measure of protection in the event of road accidents, the violation of which was also made punishable. More accidents assumed great importance, and deaths due to electrocution or deaths due to the negligence of Doctors, has assumed great importance, during the last few decades, and several claims pending in various Courts, and Consumer Forums, involving the question of vicarious liability of the State, which may arise for negligence

strict liability, misfeasance non-fesance, nuisance and intentional torts *etc.*, and as a concomitance, payment of compensation. These factors, coupled with the failure of the State Government or Central Government to define 'sovereign' functions *vis-a-vis* non sovereign functions, and the circumstance in which the State can be made liable, by way of legislation, in spite of the report of the First Law Commission made long back in 1956, and the suggestions made by the Supreme Court, in *N. Nagendra Rao v. State of A.P.*, AIR 1994 SC 2663, recognizing the report of the First Law Commission recommending for statutory recognition of the liability of the State, as had been done in England through the Crown Proceeding