

Gender Based Violence

By

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Outline

- Overview of reforms
- Contradictions/gaps across laws
- Opportunities
- Challenges

- **Domestic Violence Act, 2005**
whole of India except J & K
- **Domestic Violence Act, 2010**
For Jammu & Kashmir

Domestic violence Act 2005

- **Section – 3.** For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute **domestic violence** in case it -
 - (a) harms or injures or endangers the health, safety, life, limb or well-being, whether **mental or physical**, of the aggrieved person or tends to do so and includes causing **physical abuse, sexual abuse, verbal and emotional abuse and economic abuse**; or
 - (b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any **unlawful demand for any dowry or other property or valuable security**; or
 - (c) has the effect of **threatening** the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or
 - (d) **otherwise injures or causes harm**, whether physical or mental, to the aggrieved person.

Domestic violence Act 2005

- Explanation I.-For the purposes of this section,-
 - (i) **"physical abuse"** means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;
 - (ii) **"sexual abuse"** includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;
 - (iii) **"verbal and emotional abuse"** includes-
 - (a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and (b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

Domestic violence Act 2005

(iv) "**economic abuse**" includes-

- (a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;
- (b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and
- (c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Domestic violence Act 2005

- Explanation II.

-For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, **the overall facts and circumstances of the case shall be taken into consideration.**

Domestic violence Act 2005

- Ch. V . S.31 gives a penalty up to **one year of imprisonment and /or a fine up to Rs. 20,000/-** for an offence. The offence is also considered **cognisable** and **non-bailable**.

Domestic violence Act 2005

- S. 32 (2) goes even further and says that **"under the sole testimony of the aggrieved person,** the court may conclude that an offence has been committed by the accused"

Domestic violence Act 2005

- The Act also ensures **speedy justice** as the court has to start proceedings and have the **first hearing within 3 days** of the complaint being filed in court and every case must be disposed of within a period of **sixty days of the first hearing**

Types of Orders / Reliefs

- Compensation order
- Custody order
- Monetary relief
- Protection order
- Residence order

Domestic violence

- Protection of Women from Domestic Violence Act, 2005 & Rules, 2006
- Section 7 – Duties of Medical Facilities
Aggrieved person or PO / SP requests for medical aid
– shall provide medical aid
- Rule 17 – as of Sec 7
 - if PO --- domestic incident report (DIR)
 - No refusal of medical aid for NO prior DIR
 - Medical facility – DIR in Form I – forward PO
 - Copy of medical examination report - FREE

More than a Decade 2005 to 2017

- Ignorance of the law
- No deterrent effect
- Whether effective ?????

Criminal Law amendment Act 2013

- Criminal Procedure Code
- **Sec 357C** – all hospitals run by **public or private**, whether run by central govt, state govt, local bodies or **any person**, shall immediately provide the **first aid**, or **medical treatment, free of cost**, to any of the victims covered under **Sec 326A, 376, 376A, 376B, 376C, 376D, 376E** of the IPC and **immediately inform the police** of such incident

Criminal Law amendment Act 2013

- Indian Penal Code
- **Sec 166B** – whoever being incharge of a hospital , **public or private**, whether run by central govt, state govt, local bodies or **any person**, contravenes the provisions of section 357C CrPC.....**Imprisoned for 1 year or fine or both**

Criminal Law amendment Act 2013 - IPC

- Sec 354 – **Indecent assault** – 1yr to 5yr, fine
- Sec 354A – **Sexual Harassment** – 3yrs (Physical, demand, request, Porn), 1yr (Verbal remark), fine
- Sec 354B- **Disrobing** – 3yrs to 7yrs, fine
- Sec 354C – **Voyeurism** – 1yr to 3yr, fine (First)
- 3yrs to 7yrs, fine (Second)
- Sec 354D - **Stalking** – 3yr, fine (First)
- 5yrs, fine (Second)

Criminal Law amendment Act 2013 - IPC

- **Sec 375** – Peno – vaginal /anal / urethral / oral
-objects / fingering

Sixthly – with or without consent **less than 18yrs**

Seventhly – when she is **unable to communicate**

- **Sec 376(1)** 7yrs to Life imprisonment & fine
- **Sec 376 (2).....** 10 yrs to Life imprisonment & fine
Police, Army, Public authority, Hospital, Pregnant,
16 yrs, Physical or mental disability, communal riots,
repeats with same woman

Criminal Law amendment Act 2013 - IPC

- **Sec 376 A**..... Death or PVS...
..... 20 yrs to Life imprisonment & fine
- **Sec 376 B** ...Wife .. 2yrs to 7yrs & fine
- **Sec 376 C**SI by person with authority
..... 5yrs to 10 yrs & fine
- **Sec 376 D** ...Gang rape .. 20yrs to LI & **fine**
- **Sec 376 E** Repeat offenders.....376, 376A,376D.....
.....Life imprisonment
- **Sec 509** Modesty..... 3yrs, fine

Criminal Law amendment Act 2013

- Indian evidence Act
- **Sec 114 A** – absence of consent.. Sec 376(2)
- **Sec 146** – No questions on past sexual practices

Code of Criminal Procedure (Amendment) Act of 2005

- **Section 164(A) CrPC**

Medical examination of victim of rape

- **Consent of the victim - Mandatory**

- **Section 53 (A) CrPC - Examination of person accused of rape by medical practitioner**

POCSO 2012

- **Sec 3 – Penetrative Sexual assault**
 - 7 yrs to Life imprisonment, fine
- **Sec 5 – Aggravated Penetrative Sexual assault**
 - 10yrs to Life imprisonment, fine
- **Sec 7 – Sexual assault**
 - 3yrs to 5yrs, fine
- **Sec 9 – Aggravated Sexual assault**
 - 5yrs to 7yrs, fine
- **Sec 11 – Sexual harassment**
 - 3yrs, fine

POCSO 2012 – Mandatory reporting

- **Sec 19** of POCSO Act 2012 Any personlikely offence or offence
- **Sec 20** of POCSO Act 2012..... Hospital Material /objectSexually exploitative

Failure to report

- **Sec 21** 6 months Any person 1 year ... incharge of hospital

POCSO 2012

- **Sec 27 – Medical examination** –
voluntary reporting
 - Informed consent
 - woman doctor – girl child
 - parent / trusted person ...? Hospital
- **Rule 5 -Treatment** of
injuries, STD, HIV, pregnancy, emergency
contraceptives, mental counseling

POCSO & its effects

- Trial of case even before the accused is caught
- Speedy justice Special Courts ?
- Interim compensation to cover medical expenses
- Gender neutral offence – Victim / Accused

What is the status of **Marital Rape**?

- Civil Law

✓ - **PWDVA**- Protection of Women from Domestic Violence Act..... **any age**

- Criminal Law

✗ - **Sec 375 IPC**..... more than **15 years** of age

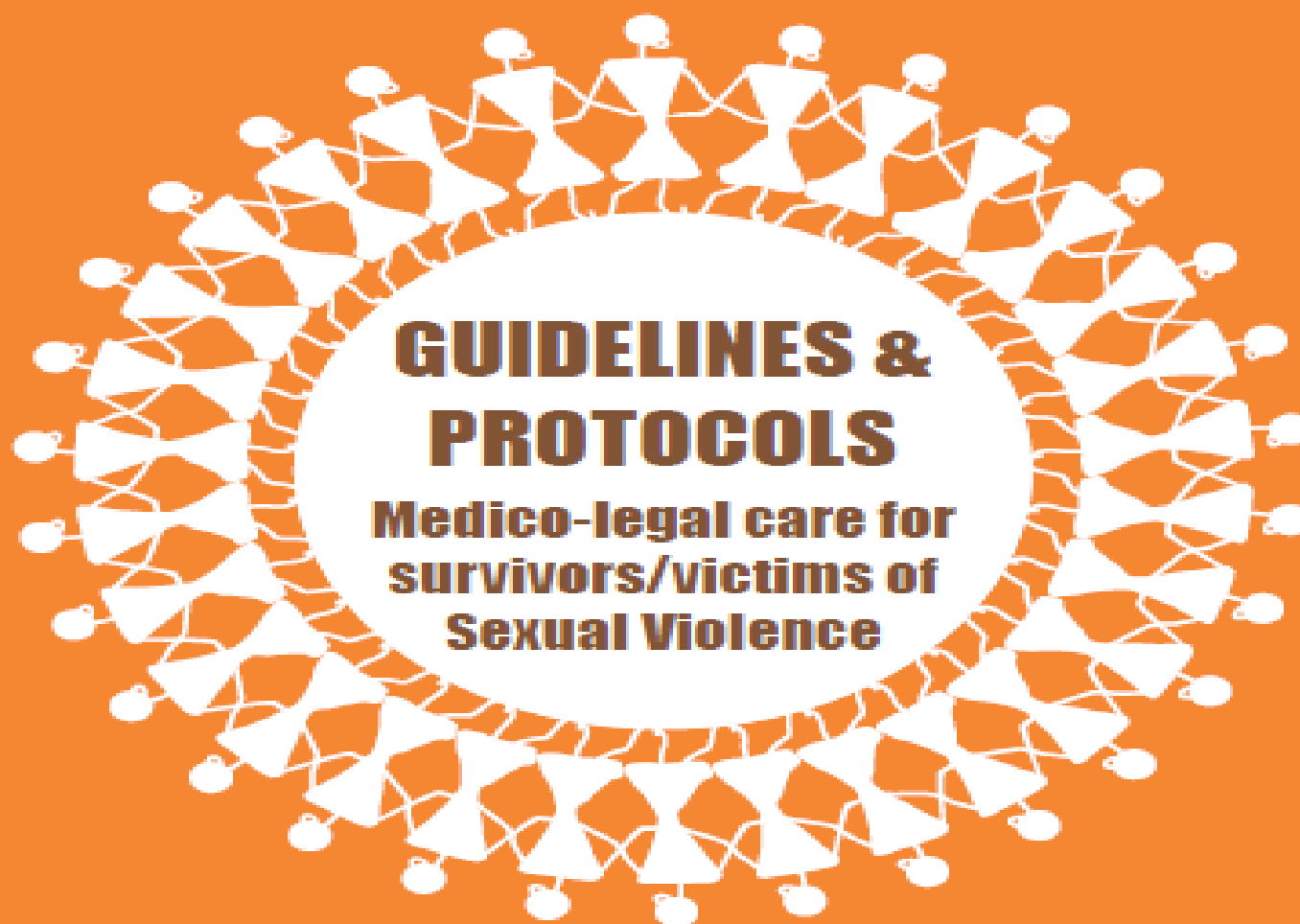
✓ - **POCSO Act**..... **less than 18 years** of age

Minimum age for marriage

is 18 years legally for female



Ministry of Health
& Family Welfare
Government of India



GUIDELINES & PROTOCOLS

**Medico-legal care for
survivors/victims of
Sexual Violence**

Physical & Mental Assault

- **Section 498A IPC**
- Whoever being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine

Burns – dowry deaths

- **Section 304B IPC** (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than in normal circumstances within seven years of her marriage & it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called 'dowry death' and such husband or relative shall be deemed to have caused her death. (2) Whoever commits dowry death, shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.
- **Dowry Prohibition Act, 1961**

Criminal Law amendment Act 2013

- INDIAN PENAL CODE
- **Sec 326A** – Voluntarily causing **grievous hurt** by use of acid, etc ----- 10yrs / Life imprisonment **and Fine** – medical expenses, paid to victim
- **Sec 326B** – Voluntarily throwing or **attempting** to throw acid..... 5yrs to 7yrs and Fine
- **Sec 328** - Causing **hurt** by means of poison, Term to 10yrs and Fine

Supreme Court – **Treatment means** as long as it is needed

Treat acid attack victims for free, Supreme Court orders private hospitals

Amit Anand Choudhary | TNN | Apr 11, 2015, 05:39 AM IST



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NEW DELHI: The Supreme Court on Friday directed private hospitals to provide free treatment, including specialized surgeries, to acid attack victims and asked government authorities to take action against them if they fail to comply with its order.

After laying down a stringent regulatory mechanism for sale of acid to curb acid attacks on women, the court asked private hospitals to bear the entire cost of medical treatment of acid attack survivors, including costly plastic and corrective surgeries.

A social justice bench of Justices Madan B Lokur and U U Lalit said hospitals must also provide free medicine, food and other facilities to such victims.

Supreme Court

Bans open sale of Acid - in 2013

Laxmi Minor vs. Union of India (WP 129 of 200)

a.com/delhi/report-acid-sells-for-as-little-as-rs-25-supreme-court-ban-ignored-2050813

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Acid sells for as little as Rs 25, Supreme Court ban ignored

Man carries acid bottles for door-to-door sale in Ghaziabad (iamin.in - Bhavy Bhardwaj)

BHAVY BHARDWAJ | RAJESH KHARWAR | Fri, 9 Jan 2015-01:20pm, Ghaziabad, iamin.in

Even though the Supreme Court has banned the open sale of acid all over the country, illegal sale of the liquid continues.

HONDA

The open sale of acid is banned

Union Home Ministry Advisory to States

- The Poisons Possession and Sale Rules, 2013
under Poisons Act 1919

Karnataka Poisons (Possession and Sale) Rules 2015

- Seller – License to sell Acid
- OTC sale of acid prohibited – except Seller - Log register of identity and address of buyer
- Buyer – Identity card and also specifies purpose
- Less than 18 years No sale
- Educational institutions, research laboratories, hospitals

Register / person incharge / storage under supervision / compulsory checking

PCPNDT Act

- Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994
- **ban** the use of **sex selection techniques** after conception
- **prevent** the misuse of prenatal diagnostic technique for **sex selective abortion**

Challenges

- Beliefs & cultural values
- Ignorance
- Multiple stakeholders

Opportunities

- Legal changes
- Advocacy
- Training

THANK YOU

Dying declaration

- Section 32 IEA
- Role of Doctor – Compos mentis
- Certifying higher mental functions
 - both at start and end
- If none available – record Dying declaration
- Question and answer method
- In Court – to certify person capable of giving Dying declaration on medical grounds