Legal Aid to Legal Rights

2024

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DEPARTMENT OF JUSTICE

PAN INDIA LEGAL LITERACY AND LEGAL AWARENESS PROJECT

LEGAL AID TO LEGAL RIGHTS

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CENTRE FOR ENVIRONMENTAL LAW, EDUCATION, RESEARCH & ADVOCACY (CEERA),

NATIONAL LAW SCHOOL OF INDIA UNIVERSITY (NLSIU), BENGALURU

VISION STATEMENT

The vision of CEERA on Legal Literacy and Legal Awareness encapsulates:

I. To progressively raise awareness of the duties of the Indian citizens under the Constitution and the legal system.

II. To empower, sensitize and assist citizens to recognise a problem or a conflict as a legal dispute and to analyse the legal solutions available.

III. To strengthen and support access to legal aid and pro bono lawyering.

IV. To facilitate access to legal information and legal learning in a simplistic and holistic manner.

V. To bridge asymmetry in access to legal information, knowledge, and legal assistance.

VI. To raise faith in the justice delivery mechanism and to encourage participation in the legal system.

VII. To develop the capacity for utilisation of preventive, promotive, and rehabilitative legal measures to protect the violation of rights.

VIII. To create opportunities for revitalising legal aid clinics in order to raise their level of engagement with the public.

IX. To strengthen legal aid clinics by entrusting law students with the responsibility of raising legal awareness.

X. To accommodate paralegals in the system of rendering legal justice.

XI. To spread constitutional values and ethos of respecting diversity, promoting inclusion, brotherhood, and social responsibility by innovative engagement.

XII. To improve availability and accessibility of information by building an innovative and interactive repository of legal literacy material.

Preface

The complexities of the legal system often pose challenges for individuals seeking justice despite the Right to Legal Aid being a fundamental right under the Constitution of India. The complex and intricate web of procedures and compliance mechanisms also hinders the ease of doing business. In the words of our Prime Minister, Shri. Narendra Modi, "*Like ease of doing business and ease of living, ease of justice is equally important in Amrit Yatra of the country.*" Justice P.N. Bhagwati has also emphasized *the need to create legal awareness for the poor since in India most of the people reside in rural areas, are illiterates and are not aware of the rights conferred upon them by law.* Realizing the need for strengthening legal literacy and legal awareness in the country, the Department of Justice (DoJ), Ministry of Law and Justice, has formulated the Pan India Legal Literacy and Legal Awareness Programme, under the DISHA Scheme.

In this backdrop, The *Legal Aid to Legal Rights – 2024*, published jointly by the Department of Justice, Ministry of Law and Justice, Government of India, and CEERA-NLSIU, is yet another significant step towards realizing our vision of a society where legal knowledge is not only comprehensive but also accessible to every citizen. This Handbook aims to serve dual objectives, firstly, it intends to democratize legal knowledge across the diverse landscape of India, by handholding the readers of this issue, like its previous Volume. Secondly, it aims to be a ready reckoner for Legal Aid Trainers and Para Legal Volunteers to disseminate legal literacy.

It is imperative to mention that this edition goes beyond the textual explanations by incorporating pictorial representations for an easy understanding to its readers. This innovative approach aims to demystify legal concepts and facilitate the right understanding of the law. This Handbook delves into a wide range of thematic areas relevant to the common man such as the Protection of Rights, Gender-based Violence, Environmental concerns & Ease of Doing Business. The topics covered include the Procedure to file an FIR, Rights of Accused Persons, Bail provisions, Domestic Violence, Medical Negligence, POSH Act, Pollution Control, Waste Management, Forest Conservation, MSMEs, ODI, FDI, Start-ups, amongst others.

Further, I am grateful to the Department of Justice, Ministry of Law and Justice (DoJ-MLJ) that it has extended the "Pan-India Legal Literacy and Legal Awareness Programme" with the Centre for Environmental Law, Education, Research and Advocacy (CEERA), National Law School of India University, Bengaluru (NLSIU). In the past two years, CEERA has worked with the DoJ-MLJ to disseminate and impart legal literacy to the last mile possible, utilising technology and social media platforms to access content that would increase legal awareness among the various sections of our diverse society.

We at CEERA, have found it to be extremely effortless and pleasurable to work alongside DoJ-MLJ and wish to foster this continued partnership. The continued patronage of DoJ-MLJ to CEERA is humbly acknowledged and appreciated.

To fulfil our goal of providing legal awareness and legal literacy, CEERA has partnered up with institutions and other organisations. The success of both editions of the Prof. V. S. Mallar Memorial Legal Aid Competitions, where legal aid clinics and legal aid centres of different law institutions all over the country competed against each other in imparting legal awareness and promoting engagement among the student-led legal aid clinics as they interacted with the general public. There were 48 participating legal aid clinics in the first edition of the competition (2022) and 49 legal aid clinics participating in the second edition (2023) of the competition, consisting of 10 members in each team. The Competition spanned over a period of four months. The idea behind such a programme has been to inculcate a sense of community and the attitude of service within the next generation of lawyers, who are the flag-bearers of legal literacy and legal awareness and build up on the noble concept of Legal Social Responsibility (LSR).

CEERA has also conducted various workshops in the far-fetched areas of Karnataka, Odisha, and West-Bengal amongst other states to spread legal knowledge. These workshops were conducted to ensure that citizens get a practical view of the theme at hand and find ways to apply the gained knowledge in their lives, whenever they need maybe.

Our virtual footprint has been crossing benchmarks with steady growth over various social media platforms such as Instagram, YouTube, Facebook and LinkedIn, which are being utilised by CEERA to disseminate legal online content. Our YouTube channel, "CEERA-NLSIU-DoJ", has videos made by experts from different fields of law, where the law and its usage are narrated in such a way that the common man would be able to comprehend it.

The new podcast series named "Ought Initiative" is also uploaded on the YouTube channel, where each episode delves into a particular aspect of the common man's life and the legal rights and remedies, if necessary, following it. Our Instagram page, "@ceera_nlsiu", contains short posts and reels on various aspects of law and life, being uploaded regularly. Our Facebook page, "Centre for Environmental Law, Education, Research and Advocacy – CEERA", and LinkedIn "Centre for Environmental Law Education Research & Advocacy (CEERA), NLSIU, Bengaluru", are also being regularly updated with details of our workshops, publications and other activities.

In this light, I present to all the readers the Legal Aid to Legal Rights - 2024 as a dynamic toolkit designed to fulfill two key objectives. Firstly, it is intended to act as a guide for the common man in navigating the complexities of the legal landscape. Secondly, it aims to serve as a ready reckoner for Legal Aid Clinics, Legal Aid Lawyers, Pro Bono Clubs and Para Legal Volunteers in order to assist them in their roles and discharge of their duties. Meticulously curated by drawing upon the feedback on our previous two publications, the present edition of the handbook integrates the Frequently Asked Question (FAQs) approach adopted in Volume I and the Infographics format adopted in the Picture Book. This combination aims to transcend the barriers to understanding complex legal topics.

Lastly, I express my profound gratitude to the Department of Justice, Ministry of Law and Justice, Government of India and in particular Shri. Ashutosh Srivastava, Programme Manager, Legal Literacy Programme, Department of Justice. A Special thanks to Dr. Sangeetha Sriraam and her students at the Department of Law, Central University of Tamil Nadu for their valuable contributions to the Gender Based Violence section of this book. Further, I would also like to thank the entire CEERA Team comprising of Mr. Rohith Kamath, Ms. Gayathri KK, Ms. Gayathri Gireesh, Mr. Vikas Gahlot, Ms. Susheela Suresh and Mr. Jaibatruka Mohanta, all of whom have placed in sincere dedication in bringing out this particular edition. A notable thanks to Ms. Diya Jayaraj (4th year BA LLB) student at KLE Law College, Bengaluru for her efforts. Lastly, a note of appreciation to all our interns for their relentless support in this entire process.

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LODGING AN FIR

What is an FIR and who can lodge an FIR?

FIR stands for First Information Report. It is filed before a police officer at a police station, about the commission of a cognizable offense. In effect, it amounts to setting the criminal law into motion by giving information relating to the commission of a cognizable offense to an officer in charge of a police station. It shall be reduced into writing and read over to the informant and shall be signed by the person giving such information. It is mandatory to give a copy of the FIR (as recorded by police) to the complainant or informant free of cost.

What is the importance of an FIR in the legal process?

The significance of an FIR in the legal process is paramount.

- It signifies the initiation of the criminal law into motion, enabling law enforcement agencies to take measures against those accused.
- It serves as the catalyst for criminal investigations, acts as the fundamental document of the incident, and assists in the accumulation of evidence.

How to lodge an FIR?

The informant/complainant should go to the police station having jurisdiction over the area (where the offense is committed) and report to the officer in-charge/ station house officer (SHO) about the commission of a cognizable offense. In case information is given on the telephone, the informant/complainant should subsequently go to the police station to register the FIR and get a copy of the same.

What is a Criminal offence?

According to the Indian Penal Code, 1860 (IPC)/ Bharatiya Nyaya Sanhita, 2023 (BNS) offence means an act punishable under the IPC/BNS. Thus, a criminal offence is an act harmful not only to some individual or individuals but also to a community, society, or the state.

What are the types of offences in the Indian Criminal system?

Criminal offences are divided into categories by the Criminal Procedure Code, 1973 (Cr.P.C)/Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) (effective from July 01, 2024) which are *cognizable*, *non-cognizable*, *bailable*, and *non-bailable offences*.

- A cognizable offence means an offence in which a police officer may, in accordance with the First Schedule of the Cr.P.C/BNSS or under any other law for the time being in force, arrest without a warrant. These offences are mostly serious in nature.
- A non-cognizable offence means an offence in which a police officer has no authority to arrest without a warrant. These offences are less serious in nature. For example: assault, simple hurt, etc.
- Non-bailable offences are serious in nature, just like cognizable offences, and the accused usually does not get bail.
- Whereas a Bailable offence is less serious and the accused is entitled to bail. For instance – wrongful confinement, unlawful compulsory labour, amongst others.

How do you lodge a complaint related to the commission of a Non-cognizable offence?

The disclosure of information regarding such offences is to be given in a similar manner as filing an FIR.

- The officer would put the complaint in writing (concerning a non-cognizable offence) and provide a complimentary copy to the complainant free of cost.
- No police officer may investigate a non-cognizable case without first receiving approval from a magistrate with the authority to try such cases.

What is meant by a 'complaint'?

Complaint means any allegation that someone has committed a crime, whether known or unknown, stated verbally or in writing to a magistrate with the intention of him taking cognizance under Section 190, Cr.P.C/(Section 210 BNSS) is a complaint.

What if the police refuse to file an FIR?

If the police decline to register an FIR for a cognizable offense,

- The complainant can directly approach the senior police officers (Superintendent of Police - SP) with the same grievance stating that the local police authorities have declined to register the FIR.
- Alternatively, the complainant can approach the local magistrate to ensure that the FIR is duly recorded if the senior police officer does not record the FIR.

Is there a time limit for filing an FIR?

In India, there is no fixed time constraint for registering an FIR in cases of cognizable offenses; it can be lodged at any point following the occurrence of the crime.

However, it is recommended to file the FIR at the earliest possible instance in order to facilitate a swift and thorough investigation.

What is Zero FIR?

A Zero FIR is a type of FIR that is registered by the police for a cognizable offence regardless of the jurisdiction in which the incident has occurred.

- It allows for the immediate registration of the FIR and later it is transferred to the police station having the requisite jurisdiction.
- A Zero FIR ensures that the complaint is not delayed due to jurisdictional issues.

What information should be included in an FIR?

The FIR should encompass critical particulars like the incident's date, time, place of occurrence, a comprehensive account of the crime (incident), descriptions and identities of involved individuals, and any other relevant information or evidence pertinent to the case. The FIR's thoroughness and accuracy are imperative to enable a comprehensive investigation.

Can you file an FIR if you don't know all the details of the incident?

Yes, even if an individual doesn't know the details of the incident, a person can still file an FIR. The police, thereafter, might conduct additional investigations to acquire more information if the crime or occurrence is reported as soon as feasible.

- It is advised to provide all the information a person can when filing the F.I.R.
- It is important to keep in mind that while a person can register an FIR with insufficient information, however knowingly providing incorrect information can have legal repercussions.
- Therefore, it is advisable to cooperate and be truthful with the authorities to aid in the investigation.

What happens after filing an FIR?

After filing an FIR, the police authorities initiate an investigation.

- They gather evidence, interview individuals who know about the incident, question witnesses, and take appropriate actions based on the nature of the crime.
- The outcome may involve arrests, further inquiries, or court proceedings, depending on the findings of the investigation.

Can a person be arrested solely based on an FIR?

Yes, an individual can be arrested solely based on an FIR, provided that the FIR

CASE STUDY

A model by profession, Tanya Molly, a model by profession, was shot dead in her apartment at old Delhi. The neighbours called the police and informed them about the crime. They also informed the police that the maid of Tanya Molly – Amita Rani, tried to run away fearing a police investigation. The neighbours caught her and locked her up in the club-house of the apartment complex.

However, the Police refused to file the First Information Report (FIR) until the family members of Tanya Molly reached the spot of the crime.

Further, the telecommunications were considered as information first received by the police to reach the spot of the crime and to file the FIR. Therefore, the Police authorities asked the neighbours to draft a complaint so that the contents of the same could be taken into the FIR like a 'complaint' and also similar to a police report.

On the other side, Amita Rani, who was confined in the club-house, insisted on filing a complaint at the police station against unknown persons for wrongful confinement and assault. The Police did not record the FIR since they wanted to pay more attention to the death of Tanya Molly's case.

In the above case study, the Police have not acted in accordance with the Criminal Procedure Code, 1973 (Bharatiya Nagarik Suraksha Sanhita) especially in following the procedure of filing an FIR and may be liable for action.

reports a cognizable offense.

- In such instances, the police possess the power to arrest without the necessity of a warrant.
- However, the arrest should adhere to the established legal protocols and criteria.

What should you do if you are not satisfied with the police investigation?

If the complainant is not satisfied with the investigation done by the police authorities, he / she can approach the second-class magistrate or the corresponding magistrate, who, in accordance with Sections 156 (3) and 190 (2), of the Cr.P.C, (Section 175 and 210 BNSS) respectively, monitor the duties and acts carried out by police.

- If the magistrate discovers that the police did not act appropriately even after filing the FIR, the magistrate has the authority to order the police to take strict action and to monitor it as well.
- The officer must immediately submit a charge sheet to the magistrate upon the conclusion of the inquiry. Even after the case's final report has been submitted, a magistrate has the authority to compel the case to be reopened.

Can a person named in FIR seek anticipatory bail and what is the legal provision for the same?

Yes, a person named in an FIR can seek anticipatory bail in India.

- The legal provision for this is under Section 438 of the Cr.P.C, (Section 482 BNSS) which allows an individual to seek anticipatory bail to prevent arrest in cases where they apprehend imminent arrest due to an FIR filed against them.
- The court may grant bail with certain conditions to ensure the person cooperates with the investigation.

Can FIR be filed online, i.e., an e-FIR?

An e-FIR is an electronic version of this report, which means it can be filed online or through electronic means. While Complainants preferably cannot file FIRs online and must lodge them at police stations. However, in a

few states in India, certain offences can be filed online. For instance:

- **Delhi:** Property Theft Case, Motor Vehicle (MV) Theft Case
- **Gujarat:** Mobile Theft, Vehicle Theft
- **Karnataka:** Reporting of Stolen Vehicles
- **Madhya Pradesh:** In cases of vehicle theft up to 15 lakh or general theft up to one lakh.
- **Odisha**: Citizens can lodge FIR electronically for certain kinds of Motor Vehicle Theft cases.
- **Rajasthan:** Vehicle theft
- **Uttar Pradesh**: For unknown accused cases
- **Uttarakhand:** For unknown accused cases

Can you withdraw an FIR after it's filed?

FIR once lodged/filed before the Police authorities cannot be withdrawn by the Informant/complainant.

- The police station or any other Senior Police officer also cannot cancel an FIR at the request of the Informant/complainant.
- Most cognizable offenses are deemed serious and are presumed to have been committed not just against the individual victim, but also against the State. Therefore, the option to withdraw the same has not been provided under the law.

Is there a legal time limit for the investigation of cases after filing an FIR?

There is no statutory timeline that has been provided under law to conclude an investigation after filing the filing of FIR.

- The investigation period can fluctuate widely based on the intricacy of the case, the accessibility of evidence, and diverse influencing factors.
- Therefore, there has been no stipulation for the same. However, the police authorities must complete the investigation and file a charge sheet at the earliest possible time frame.

What can you do if you fear retaliation from the accused after filing an FIR?

Filing an FIR can occasionally be dangerous since there are situations in which both the complainant and the witnesses experience threats directed at them or their families by the people they have witnessed or reported.

- After filing the FIR, the complainant has the option of informing the Station House Officer (SHO) of the police station where the FIR was lodged if they believe they are in danger.
- If the SHO does not take action, the complainant may go to the local magistrate who is in charge of handling the FIR and request protection.

Can the contents of an FIR be used as evidence in courts?

Yes, the information contained within an FIR is admissible as evidence in legal proceedings.

- The FIR acts as the preliminary evidence in the initiation of legal proceedings.
- The FIR is primarily used for corroborating or contradicting the informant in a Court of law.

RIGHT TO BAIL

What is bail?

Bail is the temporary release of a person accused of a crime in exchange for a monetary pledge guaranteeing the accused's appearance in court when the time comes.

- The word Bail comes from the French word 'Bailer', which means 'to give or deliver'.
- In essence, bail is an instrument for procuring the release of a person from legal custody.

What is the right to bail?

The right to bail is a legal principle that allows individuals arrested or charged with a crime to be released from custody before their trial, under certain conditions, prescribed by the court.

- It is based on the presumption of innocence, ensuring individuals are not held indefinitely in pretrial detention.
- The bail amount acts as a security, ensuring the accused will appear in court for all proceedings.
- However, bail is a matter of right in bailable cases and a matter of privilege in non-bailable cases.

What are the grounds for granting bail? What factors does a judge consider when deciding whether to grant bail?

The grounds considered while granting or non-granting of a bail are as follows-

- The medical condition, health, age, and sex of the accused;
- The danger of the accused absconding, if there is a past incidence;
- The character, conduct, means, position, circumstances, and standing of the accused;
- The nature and gravity of the charge;
- The welfare of the society;
- The severity of the punishment in the event of conviction;
- The likelihood of the offence being repeated.

Is bail different for different types of crimes?

Yes, bail can vary significantly for different types of crimes.

- The bail amount and conditions are determined based on various factors, and the seriousness of the crime is one of the most significant factors taken into consideration.

What are the types of bail?

There are 4 types of bail, they are: Regular bail, Anticipatory bail, Interim bail and Default bail.

- **Regular bail**

It can be granted to a person who has already been arrested and kept in police custody. A person can file a bail application for regular bail under Sections 437 and 439 of the Cr.P.C. Regular Bail is divided into two parts, regular bail for bailable offences and regular bail for non-bailable offences. (Sections 478 - 496 BNSS)

- **Anticipatory Bail**

Under Section 438 of Cr.P.C, (Section 482 (4)) any individual who apprehends that he may be tried for a non-bailable offence can apply for an anticipatory or advance bail application. The application shall be made to the High Court or Sessions Court, within the jurisdiction, where the crime is alleged to be committed. A bail under this section is bail before the arrest, and the police cannot arrest an individual if the Court has granted anticipatory Bail. According to Sushila Agarwal and others v. State (NCT of Delhi), the Supreme Court of India clarified that anticipatory bail once granted; ordinarily subsists during the entire duration of the trial.

- **Interim Bail**

As the name suggests, this type of bail is granted temporarily. The interim bail is granted to the accused before the hearing for a regular or anticipatory bail grant. This is primarily because furnishing documents from the lower courts to

the High Court takes time. However, the interim bail is concluded during the bail hearing.

- **Default Bail**

This kind of bail procedure differs from the bail granted under the sections mentioned above. Default bail is granted on the default of the police or investigating agency to file its report/complaint within the prescribed period.

- For an offense where an arrest can be made without a warrant, Section 57 of the Cr.P.C commands that the police officer shall not detain the accused for more than 24 hours. (Section 58 BNSS)
- If the investigation is not concluded and the charge sheet is not filed within these 24 hours, section 167 Cr.P.C grants the accused the right to a statutory or default bail. (Section 187 BNSS)

What are bailable offences?

A bailable offence is one in which a grant of bail is a matter of right. In such cases, bail is a right and the arrested person must be released after adhering to the bail conditions. It can be granted either by the police officer who has custody of the accused or the Court.

What are non bailable offences?

Non-bailable offences are those which are more heinous in nature and in such offences bail is not a matter of right.

- If the accused wants bail, he has to apply to the court and it is the court's discretion whether to grant bail.
- In non-bailable cases, bail is a matter of privilege to be granted by the Courts.

What are the sections/provisions in Cr.P.C regarding Bail?

The term 'Bail' has not been defined under the Criminal Procedure Code, 1973.

- Only the terms 'bailable offence' and 'non- bailable offence' has been defined under Section 2(a), Cr.P.C./ Section 2(1)(c) BNSS.
- The provisions relating to bail and bail bonds are mentioned under Section 436-450 of the Cr.P.C./ Sections 478 – 496 BNSS.

Is the right to bail a legal right or a fundamental right?

Bail is the legal right of a person who has been accused for the commission of an offence, which is bailable in nature.

- This right to bail is not absolute, however, it can only be restricted by a procedure established by law.

Can bail be revoked? When can bail be revoked?

Yes, bail can be revoked under certain circumstances. As per Sections 437(5) (Section 481 BNSS) and 439(2) of Cr.P.C, (Section 483 BNSS) any court that has released a person on bail can cancel the bail order and direct the person to be arrested and committed to custody.

In *Dolat Ram* v. State *of Haryana*, the Supreme Court has held that once bail has been granted, it can only be cancelled based on "cogent and overwhelming circumstances."

Bail granted to an accused can be cancelled only if the accused:

- misuses his liberty by indulging in similar criminal activity;
- interferes with the course of investigation;
- attempts to tamper with the evidence of witnesses;
- threatens the witnesses or indulges in similar activities which would hamper the smooth investigation;
- attempts to flee to another country;
- attempts to make himself scarce by going underground or becoming unavailable to the investigating agency;
- attempts to place himself beyond the reach of his surety, etc.

What are the Landmark cases in Bail as a rule?

A landmark case relating to bail is – the **State of Rajasthan v. Balchand** wherein it held that 'bail is the rule, and jail is an exception'.

- In **Satender Kumar Antil v. Central Bureau of Investigation**, the Hon'ble Supreme Court held in detail the procedure under which bail can be granted to an accused, its principles, and relevant guidelines.

Is the right to bail guaranteed for all criminal offences?

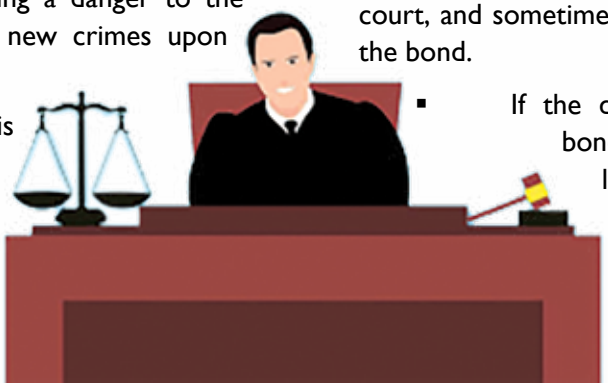
The right to bail is not a universal or guaranteed right for all criminal offenses, as the availability and conditions vary depending on the jurisdiction and the nature of the offense.

- Some offences, like theft or non-violent crimes, are routinely granted bail, while serious offenses like capital crimes, or if the accused is a significant flight risk, may require bail to ensure court appearances and public safety.
- Ultimately, the right to bail and the conditions under which it may be granted or denied are determined by the laws and legal practices of each jurisdiction.
- In essence, bail is not a universal or absolute right across all criminal offenses.

Can a person be denied bail? Under what circumstances?

Bail might not be granted in cases where the accused faces charges punishable by life imprisonment or the death penalty, or if they have a previous conviction for such offenses.

- However, the court retains the authority to grant bail in these situations if the accused is a woman, under sixteen years old, or is ill.
- Bail can also be denied if there is a significant risk of the accused fleeing, posing a danger to the community, or committing new crimes upon release.
- Additionally, if there is evidence or suspicion that the accused might intimidate witnesses or tamper with evidence, bail may be denied to prevent such actions.



How is the bail amount determined?

- In Indian courts, the determination of bail amount is based on specific criteria. Judges consider the brutality of the crime and their judicial mind. They refer to previous cases as precedents to decide both the bail amount and the accompanying conditions. When deciding these factors, judges focus on various aspects:
- The gravity of the offense.
- The likelihood of the accused fleeing.
- For serious offenses punishable by 5 or 7 years imprisonment and the chance of the accused committing another serious offense while on bail.

What happens if someone cannot afford the bail amount set by the court?

- If an accused cannot afford the bail amount set by the court in India, they can seek legal assistance, file a bail application (requesting a lower bail amount or seeking release on personal recognizance (PR) or on surety bonds if the accused is unable to pay the bail amount).
- They approach family and friends for financial help, apply for legal aid, consider charitable organizations and NGOs for assistance, hire bail bondsmen, and advocate for bail reform.
- The specific procedures and options may vary based on the jurisdiction, so consulting an Advocate is crucial.

What is a bail bondsman, and how do they work in the bail proceedings?

- A bail bondsman is a person or company that provides bail money on behalf of a defendant in court when they cannot afford the full bail amount set by the court.
- They work by paying a non-refundable percentage of the total bail amount, securing a bond with the court, and sometimes requiring collateral to secure the bond.
- If the defendant fails to appear, the bondsman becomes financially liable for the full bail amount.

What should someone do if they believe their right to bail has been violated?

If a bail application is rejected by the Magistrate, a second regular bail application can be filed before Sessions Court (at district level).

- If the second regular bail is also rejected, a third regular bail application can be filed before the High Court (at the state level).
- While each court possesses concurrent jurisdiction over bail issues, it is advisable to seek recourse through a hierarchical approach.

Can bail be granted at the police station?

If a person is arrested for a bailable offence, he is entitled to be released forthwith on bail at the police station itself as a matter of right on furnishing a bail bond of reasonable amount as determined by the police authorities.

- However, in case of a non-bailable, offence the police cannot grant bail. The decision for bail needs to be taken by a Judicial Magistrate only.

What is the procedure for granting of bail?

Step 1 – Application of Bail: The person accused or their lawyer must file a bail application before the relevant court. The application should contain the grounds on which bail is sought and any relevant information, such as the accused person's background, character, and ties to the community.

Step 2 – Decision of the court: The court will then consider the bail application and decide whether to grant bail or not. In making this decision, the court will consider factors such as the nature and severity of the offence, the likelihood of the accused person fleeing or tampering with evidence, and the strength of the prosecution's case.

Step 3 – Bail bond: If bail is granted, the accused person will be released from custody upon the payment of a sum of money known as a "**bail bond**." This bond is intended to serve as a guarantee that the accused person will appear in court as required. If the accused person fails to appear in court, the bond may be forfeited and the accused person may be re-arrested and brought back into custody.

CASE STUDY

As part of the Legal Aid training, Vineet, a 5th year student at Government Law College Bengaluru, made an application with the necessary documents to the Bangalore Central Jail authorities to visit and speak to an inmate in the prison; Chinnaswamy. The Jail authorities granted Vineet about 30 minutes to speak to Chinnaswamy. Vineet gathers information that Chinnaswamy has already served the jail term of 10 years, pending appeal in the High Court.

Vineet has read the Sonadhar v. State of Chhattisgarh SLP Cr. No 529/2021, where the Supreme Court has laid down the rule on the right to bail, especially for convicts who have completed ten years of the sentence, pending an appeal of their conviction. In this case, the Supreme Court has held that such convict has the right to bail. To know more about the bail application status in the country, Vineet visited 'ePrison', a prison portal developed by the National Informatics Centre to link up prison personnel, courts, and District and State Legal Service Authorities.

This portal has been used since 2018 and has covered around 1300 jails across the country. Vineet approached the District Legal Services Authority (DLSA) to appoint a lawyer for the case of Chinnaswamy. The DLSA appointed a lawyer and his bail application was granted, pending appeal status in the High Court.

The right to bail has been emphasized by the Supreme Court in many of its judgements. Supreme Court emphasized freedom and bail for those jailed for over 10 years. In Re Policy Strategy for Grant of Bail (Guidelines Issued) on January 31, 2023, the Court held that bail applications should be disposed of at the earliest. The lack of awareness and legal literacy is one of the major constraints for convicts serving the sentence. Legal mechanisms for bail and conditions to be fulfilled for bail to be granted require legal awareness from the Legal Services Authority.

Justice V R Krishna Iyer had once said that Bail is a rule and Jail is an exception. The criminal justice system must be more justiciable with such mechanisms to make this fundamental right to liberty and freedom.

LAND ACQUISITION & LAND DISPUTES

What is Land Acquisition?

Land acquisition is the process by which the government (Centre or State) acquires private property for public purposes, or acquires land for setting up private companies or for any public-private undertaking.

- It is thus different from a land purchase, in which the sale is made by a seller out of his own free will.
- In return, the government pays suitable compensation to the land owner and would be responsible for the rehabilitation and resettlement of the affected land owners.

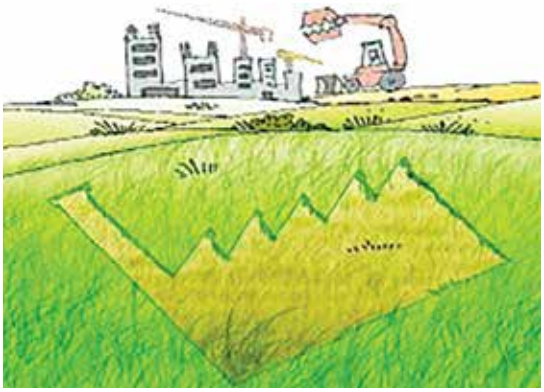
Who can acquire land?

Land acquisition can be carried out by a range of entities, which may encompass government agencies, private corporations, and individuals.

- The eligibility to acquire land is contingent upon the specific purpose of the acquisition and the prevailing land acquisition regulations in that particular state.

What is a Land Dispute?

A land dispute is a disagreement over land rights between two or more parties that is concentrated on a particular piece of land and that can be settled within the confines of the law. The ownership, possession, and control of the piece of land are the legal rights of the owner.



What is the legal process that governs compensation in land acquisition?

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013 (LARR), regulates and governs the entire process of land acquisition.

- The Act carves out the provision for providing fair remuneration to the land owners and it also exhaustively deals with the R&R (Resettlement and Rehabilitation) of the affected people.

What is the main purpose of the Land Acquisition Act?

The primary objective of the Land Acquisition Act, 1894 is to establish a legal structure for the acquisition of land by government or authorized entities for purposes of public development.

- This framework ensures that landowners are fairly compensated for their property and that their rights are protected throughout the acquisition process.
- The act outlines the necessary procedures, mechanisms for determining compensation, and due process requirements, with the overarching goal of striking a balance between the imperative of infrastructure development and the preservation of property rights.

Why do we require the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013 (LARR)?

We require such a legislation to ensure a transparent land acquisition process, in conjunction with all interested parties and local governing bodies, and minimal eviction of the current population that owns or resides on the land.

- This legislation makes suitable provisions for the affected families' rehabilitation and resettlement as well as equitable compensation for those families who are adversely affected by land acquisition, whose land has been acquired, or whose livelihood has been impacted.

What is the impact of the LARR Act of 2013 on the Land Acquisition Act of 1894?

Section 24 of the LARR Act provides for certain conditions in which the land acquisition proceedings initiated under the Land Acquisition Act, 1894 will lapse.

- The state enjoys the power of eminent domain and if possession of land has not taken over or the landowner has not received compensation then the proceedings initiated under the Land Acquisition Act, 1894 will be assumed to lapse, and afresh proceedings will be initiated.
- In the case of *Indore Development Authority v. Manohar Lal*, (2020) 8 SCC 129 it was held that if the state had unconditionally offered payment or tendered the compensation, land acquisition procedures would not be lapsed. The bench explained that a person cannot claim that an acquisition has lapsed because compensation was not paid or deposited if they were offered compensation but declined to accept it.

Where is the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR Act) applicable?

This Act applies to the Government, which can acquire land for its use and control, including for Public Sector Undertakings and public purposes. The provisions of this Act state that government can acquire the land for strategic purposes relating to Central Armed Forces, and Infrastructure projects.

- The provisions relating to rehabilitation and resettlement under this Act also apply to private companies who purchase land, which is equal to or more than limits prescribed by the Government, through private negotiations with the owner of the land.
- It also gives protection to Landowners whose property is being acquired by the government or private company.

What is the role of consent in the LARR Act?

Section 2 of the Act provides that the consent of the landowners is not required when the government buys land for public purposes and directly manages the land.

- However, the approval of at least 80% of the affected families is required when the land is bought for the establishment of private businesses.
- 70% of the impacted families must approve the land acquisition procedure if the project is carried out through a public-private partnership.

What is Social Impact Assessment under the LARR Act?

As per section 4, the Government conducts a social impact assessment on the identified land in conjunction with Gram Panchayat, Municipality, or Municipal Corporation to determine the social impact of the acquisition, its cost, and how it shall be resolved or compensated before deciding whether the land shall be purchased or not.

- The selected land is only requested to be acquired after acquiring a favorable Social Impact study indicating that prospective benefits outweigh the social impact of the Project.
- In the *Nandi Gram Land Grab Case,* it was held that the LARR Act 2013 integrates the Social Impact Assessment, which looks at the projects to see if they are serving the purported public purpose.
- A social impact was defined as a significant increase or decrease in people's well-being or a significant alteration in a factor of community concern.

What is the Preliminary survey of land and power of officers to carry out such a survey?

As per section 12, Preliminary Survey of the land includes:

- right to enter upon, survey and take levels of any land in such locality;
- to dig or bore into the sub-soil;
- to do all other acts necessary to ascertain whether the land is adapted for such purpose;

- to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon; and
- to mark such levels, boundaries and line by placing marks and cutting trenches and where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle.

- However, no action pertaining to land under sections (a) to (e) may be taken in the absence of the landowner or a representative duly authorized by the owner in writing.
- The survey may be carried out without the owner's presence if the owner has been given a reasonable opportunity to be present and has received at least sixty days' notice.

Are there any special provisions for acquiring land from persons of Scheduled Castes and Scheduled Tribes?

Section 41 of the LARR Act states that only under exceptional circumstances and with the prior approval of the Gram Sabha committee, an authority may take land from SC/STs.

- It must be ensured that no harm to their way of life, development must begin within five years.
- The law also makes sure that all rights provided by acts like the Forest Rights Act of 2006 and the Panchayat (Extension to Scheduled Areas) Act of 1996 are upheld.

What are the Rights of Landowners during Land Acquisition?

During the process of land acquisition, landowners possess a range of rights.

- These rights encompass the entitlement to receive just and equitable compensation for their property, and the ability to legally contest the acquisition in a court of law should they perceive any infringements on their rights,
- They possess the right to full disclosure regarding the acquisition procedure, which includes public hearings and negotiation processes.
- These rights are fundamental in safeguarding the interests of landowners impacted by the acquisition.

What is the role of Public Consultation in Land Acquisition?

Public consultation in land acquisition serves the purpose of ensuring openness, collecting input, and resolving issues raised by impacted communities and stakeholders.

- It facilitates a democratic approach where the viewpoints and feedback of the public are considered, potentially resulting in adjustments to project plans or the introduction of measures to reduce adverse consequences.
- The primary goal of public consultation is to encourage community engagement, establish trust, and enhance the accountability of the land acquisition process towards those it impacts.

What are the alternatives to Land Acquisition?

Alternatives to land acquisition involve investigating alternative project sites with reduced or no land procurement needs, contemplating land exchanges or cooperative land-sharing arrangements, and utilizing innovative urban planning and design methods to limit the necessity for extensive land acquisition.

- These alternative approaches seek to mitigate the social, environmental, and economic repercussions linked to conventional land acquisition procedures while still accomplishing the project's goals.

How is Land Acquisition Cost calculated ?

The calculation of land acquisition costs involves the assessment of various elements, such as the present market value of the land, any existing improvements or structures on the property, expenses related to relocating displaced residents or businesses, legal charges, surveying expenses, and administrative costs.

- The precise approach to determining compensation may fluctuate in accordance with local regulations, but it frequently incorporates evaluations conducted by qualified experts to gauge the property's fair market value.
- Section 26 of the LARR Act provides the process to determine the compensation for landowners. It describes the suggested minimum compensation, which is calculated using multiples of market value (as established by the typical sale price for similar types of land located in the closest village or nearby area).
- For land purchased in rural or urban regions, the market value is typically multiplied by a factor given in Schedule I of the act.
- If the land is purchased for private businesses or projects involving public-private partnerships, the compensation may also be an agreed-upon sum.
- Furthermore, negotiations with landowners and those impacted by the acquisition are integral in reaching a mutually agreeable compensation sum.

What is the minimum compensation under this Act? Who pays compensation for Land Acquisition?

The minimum compensation specified in land acquisition laws is typically contingent on the specific legal provisions and regulations in a given jurisdiction, which can differ significantly.

- In most instances, the compensation must not fall below the land's fair market value, and additional sums may be allocated for enhancements, rehabilitation, and resettlement in accordance with legal mandates.
- Payment of compensation is generally the responsibility of the entity or organization that is acquiring the land, whether it be a government agency, private corporation, or another duly authorized entity, as outlined in the established procedures and legal framework for land acquisition.

How does the government pay for Land Acquisition?

The government typically finances land acquisition by utilizing funds set aside within the national or local budget.

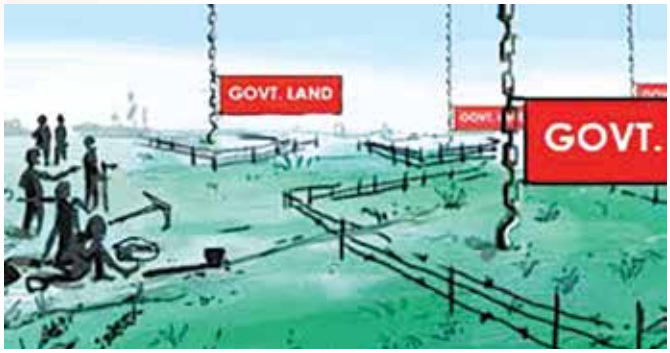
- These funds may be obtained through diverse means, including government-generated revenues, borrowing through loans, receiving grants from international organizations or development agencies, or employing a mix of these financial sources.
- The precise funding strategy can differ depending on the state and the specific project, but the government ensures that it secures the requisite resources to compensate landowners and meet related expenses during the land acquisition process.

What is the difference between Public and Private Land Acquisition?

The primary difference between public and private land acquisition pertains to the entities involved.

- Public land acquisition involves government agencies or authorities acquiring land for public needs like infrastructure projects, while private land acquisition entails private companies or individuals obtaining land for commercial or private development, such as industrial or real estate projects.
- The regulations, procedures, and compensation methods can differ notably between these two categories of acquisition, with public acquisitions often subject to more rigorous oversight to safeguard public interests.

What are the redressal mechanisms that need to be followed in case land is acquired illegally?



If any land is acquired bypassing the procedure established under this act or the acquired land does not come under the criteria established under Section 2, then such order can be challenged in front of the Land Acquisition, Rehabilitation and Resettlement Authority established under this act.

- The Authority, for its functions under this Act, has the same powers as are vested in a civil court.
- As per Section 63 of the Act, civil courts (other than High Court under article 226 or article 227 of the Constitution or the Supreme Court) are barred from entertaining any dispute relating to land acquisition.

- The aggrieved party may appeal the judgment of authority under section 74 to the High Court.
- Articles 300A (Right to Property), 226 (Writ Jurisdiction of the High Court), 136 (Special Leave Petition), 32 (Writ Jurisdiction of the Supreme Court) of the Constitution of India provides for a constitutional remedy to the person aggrieved.

Which are the bodies involved in the land acquisition process?

Entities participating in the land acquisition process generally encompass government bodies overseeing project planning and implementation, such as those related to infrastructure and public development.

- Additionally, authorized officials, land acquisition officers, surveyors, legal experts, and appraisers contribute to the process by evaluating land values and ensuring compliance.
- Affected landowners and local communities also play a role, and at times, non-governmental organizations (NGOs) or advocacy groups become involved through public consultations and legal procedures, aiming to uphold transparency, equitable compensation, and adherence to governing laws.

What is adverse possession?

Taking possession of a property intentionally but peacefully is known as adverse possession.

- It is accepted and widely used in India.
- A person is given ownership rights to a piece of property under the Limitation Law, 1963, if any person remains in possession of a private land for 12 years without the owner's permission and due to the owner's lack of action, it amounts to taking over such property through adverse possession.

How can owners establish their ownership?

The owner can establish their right over the land with the help of the following essential documents:

- Sale agreements
- Conveyance deeds
- Power of attorney
- Will
- Property returns
- Khata
- Title deeds

For agriculture land the owner can prove their ownership by Record of Rights (RoR), Tenancy and cultivation agreement, through the relevant extract from the mutation register at the Tehsil office and Akarbandh.

How to file a criminal complaint against unlawful land acquisition by any person?

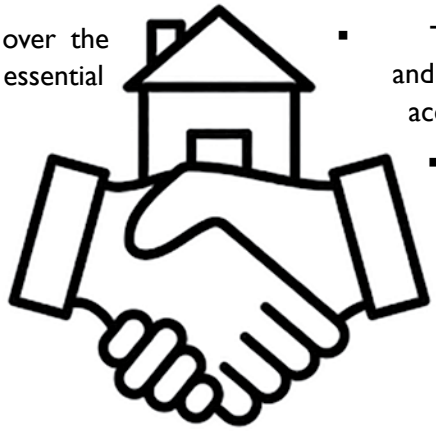
A person may make a police complaint based on Section 441 (Criminal Trespass) and Section 442 (House trespass) of the Indian Penal Code, 1860.

- In states with Land Grabbing Prohibition legislation, the complaint will be submitted following the guidelines of that particular statute.
- The aggrieved party can lodge a complaint against the offending party by going to the local police station.
- In the complaint, issues must be outlined thoroughly and all relevant information must be mentioned.
- Having the land information, property documents, and tax receipts on hand would help demonstrate the ownership.
- After that, the issue can be presented to the local sub-divisional office.
- A copy of the complaint must be sent to the Superintendent of Police and the Jurisdictional Magistrate.

How to take civil action against unlawful land acquisition by any person?

In line with the Code of Civil Procedure, 1908 (CPC), one may bring a civil lawsuit in a civil court under Section 5 of the Specific Relief Act, 1963 (SRA) to recover a specific piece of land.

- If one believes that they have been unfairly evicted from a property, they have six months from the date of eviction to initiate a civil lawsuit under Section 6 of the SRA.



- They can pray for both a temporary and permanent injunction against the land acquisition.
- Temporary injunctions are in effect while the case is pending, whereas permanent injunctions are awarded upon the case's conclusion.

CASE STUDY

The Housing Society, registered under the Karnataka Real Estate Regulatory Authority was in the business of constructing the apartments for the owners of the land. For such construction activity, the few land-owners had approached the society and had made a contract for the same. The land was adjacent to the Outer Ring Road. The State Government of Karnataka made an order for land acquisition for the purpose of building a township having hospitals and educational institutions.

The Government notice for the land acquisitions was sent to the land-owners who had made a contract with the Housing Society along with the proposed township plan. Based on the plan, the landowners approached the High Court of Karnataka stating that although the residential houses were constructed by the State Government, the construction of educational institutions and hospitals was from the private companies.

The land-owners challenged the land acquisition order of the State Government. The High Court of Karnataka upon accepting the petition said that notification of the state government was illegal as per the Land Acquisition Act, 2013

The Land Acquisition Act of 2013 particularly states that the Act does not include the acquisition of land for private hospitals and private educational institutions.

RIGHTS OF PRISONERS

Who is a Prisoner?

A prisoner is someone who is kept in jail or prison under custody because he or she has committed any act which is prohibited by the law of the land.

What are the various types of Prisoners?

- **Criminal Prisoner**:According to *Section 3 (2) of the Prisons Act, 1894*, a criminal prisoner is any prisoner who has been lawfully committed to custody under the writ, warrant, or order of a Court or authority exercising criminal jurisdiction, or by the order of a Court martial.
- **Convicted Criminal Prisoner**: As per *Section 3 (3) of the Prisons Act, 1894*, a "convicted criminal prisoner" refers to any criminal prisoner who is serving a sentence imposed by a Court or Court-martial.
- **Civil Prisoner**: *Section 3(4) of the Prisons Act, 1894*, defines a "civil prisoner" as any prisoner who is not categorized as a criminal prisoner.
- **Convict**: In accordance with the *Model Prison Manual 2016,* a "convict" is a person who has been adjudged guilty by the court of a criminal offence and has been sentenced to imprisonment.
- **Under-trial Prisoners**: *The Model Prison Manual 2016* defines an "under-trial prisoner" as a person who is in prison pending completion of their trial.

What are the different types of prisons in India and their functions?

The different types of Prisons are –

- **Central Jail:** Prisoners sentenced to imprisonment for a long period (more than two years) are confined in the Central Jails.
- **District Prison**: District jails serve as the main prisons in states and union territories where there are no Central Jails.
- **Sub-jail**: Sub jails are smaller institutions situated at a sub-divisional level in the States.
- **Open Prison**: Open jails are minimum security prisons. Only convicted prisoners with good behaviour satisfying certain norms prescribed in the prison rules are admitted in open jails.
- **Policy Lockup**: It is a type of temporary detention which is used to hold people for a short period of time, usually less than 24 hours, for questioning or to await further legal proceedings.
- **Special Prison**: Special jails are maximum security prisons for the confinement of a particular class or particular classes of prisoners.
- **Women's prisons**: Women's jails are prisons that exclusively house female prisoners.
- **Juvenile prisons**: To keep juvenile inmates, i.e., inmates who are under the age of eighteen years.
- **Mental prisons:** To house inmates who have been diagnosed with a mental illness.

What are the rights of prisoners?

In India, Prisoners have the following basic rights -

- The right to accommodation. *(Section 4 of Prisons Act, 1894)*
- Basic fundamental rights enshrined in *Article 14, 19 and 21 of the Indian Constitution.* In the case of *T.V. Vatheeswaran v. State of Tamil Nadu, 1983,* the Court held that "delay exceeding two years in the execution of a sentence of death should be considered sufficient to entitle the person under sentence of death to invoke Article 21 and demand the quashing of the sentence of death."

- The right against custodial violence and death in police lock ups held in the case of *Sunil Batra v. Delhi Administration, 1980.*
- The right to shelter and safe custody of the excess number of prisoners who cannot be kept in any prisons. *(Section 7 of Prisons Act, 1894)*

- The right to examination of prisoners by qualified Medical Officer. *(Section 24 and 26 of Prisons Act, 1894)*
- The right to legal aid and right to legal representation. *(Article 39A* and *Article 22(1) of the Indian Constitution)*
- The right to supply clothing and bedding to civil prisoners and undertrials. *(Section 33(1) of Prisons Act, 1894)*
- The right to care for sick prisoners. *(Section 37 of Prisons Act, 1894)*
- The right to speedy trial. *(Section 309(1) of CrPC.*
- Right to Reasonable Wages in Prison.
- Right to Receive Books and Magazines Inside the Jail.
- Right of the Prisoner to Be Informed of Arrest and Bail.
- Right to Meaningful and Gainful Employment.

Are Prisoners allowed to be in touch with their families?

In the *Sunil Batra v. Delhi Administration case*, the Supreme Court upheld prisoner's rights to visitation from friends and family.

The Supreme Court upheld the right of death row inmates to consult with their families, attorneys, and mental health specialists, guaranteeing the full protection of their rights at every turn of their detention.

Under what circumstances is parole granted to a Prisoner?

Some common circumstances under which parole may be granted include:

- Good Behaviour
- Medical Reasons
- Family Emergency
- Rehabilitation Programs
- Overcrowding in prisons
- Judicial Discretion

Do Prisoners have the right to be produced before a magistrate?

Article 22(2) of the Constitution of India guarantees that every person arrested and detained shall be produced before the nearest magistrate within 24 hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court. This constitutional safeguard applies to all persons, including prisoners.

- Similar provisions have also been incorporated through statutes, as in Section 167 of CrPC. (Section 187 BNSS).It can also be traced through the judgments of the Supreme Court in the case of *Sheela Barse v. State of Maharashtra* as well as in *D.K. Basu v. State of West Bengal*, wherein the Court stated that the production of an arrested person must be made before a magistrate within 24 hours of arrest, and failure to comply with this rule renders the custody illegal and violates Article 21.

Does a Prisoner have the right to post-conviction bail?

The Supreme Court has held in the case of Sonadhar v. State of Chhattisgarh that all convicts who have served 10 years of their sentence and whose appeals are not likely to be heard in the near future, without any extenuating factors, should be released on bail.

- Furthermore, the Court has also held that cases must be identified where individuals have completed 14 years of custody, following which their matters can be referred to the government authorities for consideration of premature release within a stipulated time frame, regardless of whether appeals against conviction are pending or not.

Do Prisoners have a right to privacy?

Right to Privacy have also been made applicable to the prisoners and convicts.

- In *Rahmath Nisha v.Additional Director General of Prisons and Others*, the accused, granted 10 days' leave to visit his hospitalized wife, faced refusal from police escort to visit her in the hospital, citing permission for home visit only. The Madras Court ruled in favour of the prisoner, affirming his right to hospital visitation and ordering that their meeting remain unmonitored. The court stressed the importance of preserving prisoners' privacy and dignity.

Do Prisoners retain their Fundamental Rights after being convicted?

The Constitution of India safeguards the fundamental rights of all prisoners.

- The Supreme Court, in the case of *State of A.P. v. Challa Ramkrishna Reddy & Ors.*, affirmed that a prisoner, whether a convict or an undertrial, does not lose their status as a human being and retains their fundamental rights.

Do Prisoners have a right to good medical facilities?

The jail administration is responsible for making sure that medical care is accessible to prisoners. Treatment decisions, such as drug prescriptions, diagnostic exams, or hospital admission, fall under the purview of the medical officer.

- If there is a pathology lab in the prison, diagnostic testing is performed there. Pharmaceuticals are provided at no cost.
- The jail warden or the court, through their attorney, can provide authorization for inmates to receive specialised care; alternatively, the medical officer may suggest a nearby facility. This guarantees that prisoners receive quality healthcare both inside and outside of the institution.

What are the conditions for granting Parole to Prisoners?

Though the process and rules to get parole in different states are different from one another, here are a few conditions to get parole in India.

- A convict must have served at least one year in jail, excluding any time spent in remission.
- The prisoner's behaviour has to be uniformly good.
- The criminal should not have committed any crimes during the period of parole if it was granted previously.
- The convict should not have broken any of the terms and restrictions of his or her previous release.
- A minimum of six months should have passed since the previous parole was terminated.

Are Prisoners allowed to pursue their studies while being lodged in a jail?

A prisoner can continue or begin their studies while in prison. They are also permitted to appear for any examination. Prisoners undergoing educational courses are permitted to receive books and writing material from their family or friends, and may also be provided with books by the state or be permitted to purchase on their own.

- Some jails have special programmes under Indira Gandhi National Open University (IGNOU), Adult Literacy Programmes and even Information Technology (IT) courses at computer centres. Prisoners must apply to the prison authorities to seek permission to pursue their studies.
- The court stressed that every individual has a fundamental right to education in the case of *Muhammad Giasuddin v. State of AP*.

During incarcerations, do Prisoners have a right to publish books and articles?

The Right of Convicts to publish books and essays while they are incarcerated has been upheld by the Supreme Court in a number of decisions.

- In *State of Maharashtra v. Prabhakar Pandurang Sanzgir*, it was decided that it was against Article 21 to deny a person in custody permission to publish a book.
- In a similar vein, the court in *Rajgopal v. State of Tamil Nadu* decided that inmates might write autobiographies. Thus, inmates are still entitled to this, subject to certain legal restrictions.

Do Prisoners earn wages while being lodged in jail?

Prisoners can earn wages while in jail under Section 53 of the Indian Penal Code, which allows those sentenced to rigorous imprisonment to work without mandating unpaid labour.

However, if the remuneration falls below the minimum wage, it constitutes "forced labour" under Article 23 of the Constitution, as established in *People's Union for Democratic Rights v. Union of India.* The Supreme Court has stressed the importance of paying prisoners reasonable wages, as seen in *Mohammad Giasuddin v. State of Andhra Pradesh*, directing states to ensure wages are not trivial or below minimum.

When are Prisoners shifted from one jail to another jail?

Prisoners may be transferred from one prison to another for various reasons:

- medical reasons;
- for attendance in court for the purpose of standing trial or giving evidence;
- to be closer to their home district;
- on grounds of security, expediency, etc.;
- on humanitarian grounds, in the interest of their rehabilitation.

What is the procedure for the transfer of prisoners?

The procedure for the transfer of prisoners involves two main scenarios:

Transfer within the state:

- The State Government or the Inspector General, may issue orders for the transfer of any inmate.
- The Superintendent of the receiving prison is responsible for receiving and detaining the transferred person according to the court's requirements until lawfully discharged or removed.

Transfer to and from other states:

- The Transfer of Prisoners Act, 1950 applies when transferring prisoners between States or Union Territories.
- The authority for granting suspension, remission, and commutation of sentence, as well as for granting state remission, remains with the appropriate Government as defined in section 2 of the Transfer of Prisoners Act, 1950.

Can prisoners follow their religious practices while in prison?

A prisoner has the freedom to follow their religion. However, they may not be permitted to carry or use articles that fall under the prohibited category, such as Kirpan, normally carried by Sikhs. Rituals obstructing prison routine or rules are also not permitted. Prisoners may request the officer-in-charge for special considerations such as a separate space or special diet in accordance with their religious beliefs.

What if a prisoner cannot afford to engage a lawyer?

All prisoners are entitled to free state-sponsored legal aid services as per section 12(g) of the Legal Services Authorities Act 1987. The concerned legal services authority is responsible to provide a lawyer who will defend the prisoner free of cost at the time of production and during trial proceedings.

CASE STUDY

Santhosh Kumar aged 30 years was accused of an offence of theft and the trial was pending before the court. The Court had ordered him to judicial custody and was in jail for the same. During his stay in the jail, his parents visited him and it came to the notice of his father that he was kept in the same room with the inmate who was convicted of murder and serving lifetime imprisonment. His father approached the District Legal Services Authority (DLSA) requesting their assistance stating the condition of his son in Jail. The DLSA stated that it would make a petition to the Jail Authorities stating that a convict and an under trial cannot be kept in the same room as per the Prison manual and various court decisions.

The Prison Manual of 2016 states that an undertrial prisoner shall not be treated in the same manner as a convict. This is necessary because of the various conditions and circumstances the undertrial prisoners have to face while being with the convicts.

JUVENILE JUSTICE ACT, 2015

Who is a Juvenile?

A Juvenile is an adolescent or a child who has been convicted or has been found guilty for an offence that is punishable by law.

- Section 2(35) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act) defines a juvenile as a child who is below the age of eighteen years.
- This juvenile is also known as a "Child in Conflict with Law" (CCL).

What is Juvenile Justice?

Juvenile Justice is a system of law, policies and procedures introduced by the legislature, intended to regulate the conduct of a CCL & child offenders for violating the law, provide legal remedies, and protect the interests in situations of conflict or neglect with authorities.

What are the legislations that govern Juvenile Justice in India?

- The JJ Act is the primary legislation for governing Juvenile Justice in India.
- The Indian Penal Code, 1860 (IPC) states the punishment of a child on the basis of age.
  - Section 82 of the IPC (Section 20 BNSS) states that no act is an offence that is committed by a child under seven years old.
  - Section 83 (Section 21 BNSS) states that an act committed by a child between the ages of seven and twelve is not an offence if they have not attained sufficient maturity to understand the consequences of their actions.
- Section 27 of the Code of Criminal Procedure, 1973 (Cr.P.C) states that if a Juvenile offender (who appears or is under the age of sixteen years, when brought before the Court) can be tried by the Chief Judicial Magistrate, or by any specially empowered Court (under the Children Act, 1960). It also conforms with restorative justice – by looking into – the treatment, training & rehabilitation of youthful offenders.
- Section 437 of the Cr.P.C states that a child who is convicted of any crime can request or demand anticipatory bail which is maintainable in the High Court and the Court of Sessions.

When does a child come under the purview of the Juvenile Justice (Care and Protection of Children) Act, 2015?

The JJ Act describes the following people who come under the purview of this Act:

- According to Section 2(12), a "child" is a person who has not completed eighteen years of age.
- Sub-clause (13) of Section 2 has mentioned "Child in conflict with Law", (CCL) which is a child who is alleged or found to have committed an offence and who has not completed eighteen years on the date of commission of such offence.
- The Act creates a class of "child" which is "child in need of care and protection", under Section 2(14) meaning a child –

a. whose guardians or parents are/were unfit or uninterested in taking care of the child.

b. without any home or settled place of abode or means of sustenance.

c. who is/was found guilty of performing works that are in contravention to the labour laws or begging in the streets.

d. who is residing with a person who has injured, exploited, abused or threatened to do or killed, abused, neglected or exploited some other child.

e. whose parents/ guardians are mentally or physically ill to support him.

f. who is an orphaned, abandoned or surrendered child.

g. who is a missing or runway child.

h. who is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts.

i. who is a victim of armed conflict, civil unrest or natural calamity.

j. who has an imminent threat of marriage before attaining the specified lawful age.

What is the procedure to deal with a Child in conflict of law?

- Section 4 of the JJ Act mentions the constitution of the Juvenile Justice Board (JJ Board), which is a judicial body or any other concerned authority whose main objective is to deal with Children in conflict with the Law.
- It is a separate court for juveniles accused of crimes, as they cannot be taken into regular court.
- The main responsibility of the JJ Board is to provide care, treatment, protection, developmental needs, inquiry, and final order for the rehabilitation of juveniles under this Act.

What are the classifications of offences under the Act?

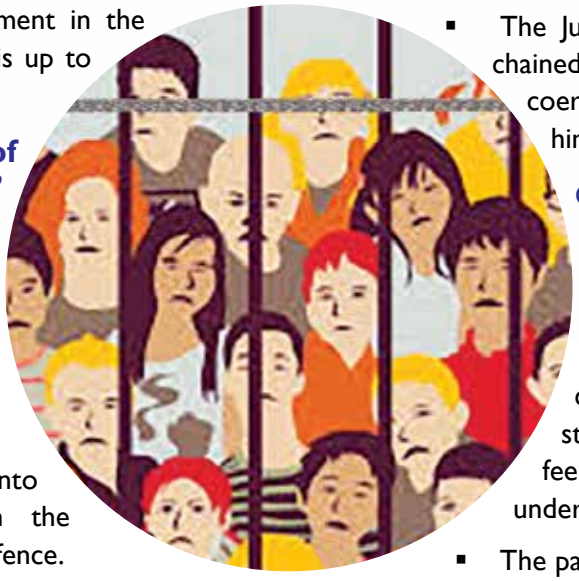
There are three types of offences under the JJ Act: heinous, serious and petty.

- **Heinous Offences** [Section 2(33)] – are offences for which the minimum punishment under the IPC or any other penal law in force at that time is imprisonment for seven years or more or even death sentence.
- **Serious Offences** [Section 2(54)] – are the offences for which the maximum punishment under the IPC or any other penal law in force is between three to seven years of imprisonment.
- **Petty Offences** [Section 2(45)] – are offences for which the maximum punishment in the IPC or any other penal law is up to three years of imprisonment.

What are the functions of the Juvenile Justice Board?

The functions of the JJ Board are:

- They conduct proceedings related to CCLs.
- They decide on matters of Bail.
- They conduct an inquiry into the CCL's involvement in the commission of a particular offence.



- They take decisions regarding the rehabilitation and social-reintegration of CCLs.
- They pass orders for re-admission of CCL in school when his/her name is struck off because of the pending inquiry before the JJ Board.
- They pass orders for continuation of his/her studies, if disallowed due to the inquiry pending before the JJ Board or because of his/her stay at the Observation Homes.
- They conduct monthly inspections of the Observation Home.
- They order police to register FIR for commission of offences against CCLs or on a written complaint received by the Child Welfare Committee.

What are the rights provided to a "child in conflict with law", who is apprehended?

- As soon as a CCL is apprehended by the police, he shall be placed under the charge of Special Juvenile Police Units (SJPU) or Child Protection Welfare Unit (CPWU).
- The Juvenile shall be produced within twenty-four hours before the JJ Board, excluding the necessary time of the journey.
- A CCL shall, under no circumstance, be placed in a police lockup or placed in jail.
- On apprehension, the police shall inform his parent/ guardian and the Probation officer/ CWPO for the preparation and submission of the Social Investigation Report within two weeks to the JJ Board.
- The Juvenile must not be handcuffed, chained or otherwise fettered and no coercion/force must be exerted on him/her.

Can a police officer interrogate a juvenile?

- CCL can be interviewed only by the SJPU or at a child-friendly premise or child-friendly corner in the police station, which does not "give the feel of a police station or of being under custodial interrogation."
- The parent or guardian of the CCL can be present during the interview of the child.
- CCL cannot be compelled to confess the guilt.

Can a child in conflict released on Bail?

Bail is a matter of right for a Child in conflit with law, (CCL) irrespective of whether the offence is bailable or not.

- Section 12(1) states thar a child can be released on bail with or without surety.
- Bail cannot be denied based on the gravity of the offence.

Bail can be denied only if there are reasonable grounds to believe that –

- The release will bring the persons in association with any known criminal, or
- Expose the person to moral, physical, or psychological danger, or
- The release would defeat the ends of the case.

Can Juvenile Offenders be tried as adults in certain cases?

The Act considers teenagers between the age of 16 and 18, who commits heinous crimes to be adults, but they must be tried in Juvenile Court.

- Also, if the Juvenile Justice Board passes an order that there is a need for the trial of the child as an adult, then it may order the transfer of the case to the Juvenile Court having jurisdiction to try such offences.
- The Children's Court is a designated court that deals with cases transferred by the JJ Board under Section 18 of the JJ Act, 2015.

What are the safeguards in place to protect the rights of Juvenile Offenders during the legal process?

When a juvenile is charged, they are entitled to certain rights to ensure fairness:

- Juvenile records are mostly sealed so that they won't be liable as criminals for a lifetime.
- Most of the juvenile records are erased once they turn 18 years old, if they meet certain criteria.
- They're entitled to a transcript of the trial.
- They have the Right to a consult a lawyer and to present their own evidence.
- They can appeal a decision.
- They can have their parents or guardians present.

- The trials should be fair and speedy.
- Under Section 437 of the Cr.P.C, (Section 480 BNSS) juveniles can seek bail before the High Courts or Courts of Session.

What kind of orders can be passed against a child in conflict with law?

The Juvenile Justice Board, following a preliminary evaluation as outlined in Section 15 of the Act, can decide to handle the case. They follow the procedure as in summons cases under the Cr.P.C/BNSS. Section 18 of the Act provides various options for the Board, including:

- Recommending counselling for the juvenile and their parents or guardian, either individually or in a group.
- Assigning community service under supervision.
- Imposing a penalty, to be paid by the juvenile or their parent/guardian.
- Releasing the child on probation, under the supervision of a parent/guardian or another individual, for up to three years.
- Directing placement in a special home for education, skill development, counselling, behaviour modification therapy, and psychiatric support for up to three years.
- Further, if, after inquiry, the Board finds that the juvenile hasn't committed an offense, it can order exoneration or refer the case to the Child Welfare Committee.
- If the Board believes a juvenile should be tried as an adult, it transfers the case to a Children's Court, stating the reasons.
- The Act allows the Board to transfer a case to the Children's Court if deemed appropriate.

- Section 19 of the Act outlines the trial procedures for the Children's Court, which may conduct assessments and pass orders under Section 18.
- Appeals from the Board's decisions can be made to the Sessions Court within 30 days, with the option to seek expert advice, excluding those involved in the preliminary assessment.

Is there a provision for legal aid for Juvenile Offenders?

SJPU are duty bound to inform the District Legal Services Authority for free legal aid to be provided to the juvenile if there is a need for it.

- Every JJ Board needs to have their own panel of Legal Aid Counsels available for aid and assistance to the CCLs and their contact details must be made available.

What are the punishments for those who abuse or exploit Juvenile Offenders?

Section 75 of the JJ Act addresses the punishment for cruelty to a child.

- It states that a person in control of a child who intentionally assaults, abandons, neglects, abuses, or exposes them, leading to mental or physical harm, can face imprisonment for up to three years and a fine of up to one lakh rupees, or both.
- The first provision clarifies that if a child is abandoned due to circumstances beyond the control of the biological parents, it won't be considered wilful abandonment under the Act.
- The second provision deals with individuals employed by organizations responsible for a child's care. If they commit any of the mentioned offenses, they can face rigorous imprisonment for up to five years and a fine of up to five lakh rupees.
- The third provision states that if the cruelty results in the child becoming physically disabled, mentally incapable, or at risk of death, the offender may face rigorous imprisonment for three to ten years and a fine of five lakh rupees.

Can a CCL be sentenced to death or life imprisonment?

A juvenile convicted cannot be sentenced to death or life imprisonment without the possibility of release, for any offence provided in the IPC/BNS or any other Penal law.

What are the places where children in conflict of law are kept in protective custody?

The Act provides for different residential facilities for Children in Conflict with Law or Children in Need of Care and Protection.

- The Act provides for Observation Homes (Section 47), special home (Section 48) and place of safety (Section 49) for Children in Conflict with Law.
- For Children in Need of Care and Protection, there are Children's Homes (Section 50) and Specialized Adoption Agency (Section 65).
- There are also provisions for declaring any institution as a fit facility (Section 51) or a person as a fit person (Section 52) for keeping the child in protective custody.
- The Act also provides for foster Care (Section 44) and open Shelters (Section 43).

When can the police and judicial records of a convicted juvenile be destroyed?

The Juvenile Justice Board (JJB) should instruct the police, and the Children's Court should instruct its registry, to erase conviction records once the appeal period ends or after seven years.

- However, records of children found in conflict with law by the Children's Court, following an adult trial, must be kept.
- Only records of children not tried as adults by the Children's Court should be deleted.

What is the role of the District Child Protection Unit?

Government-notified schemes mandate that the District Child Protection Unit should:

- Identify orphaned, abandoned, and surrendered children in the district and facilitate their legal declaration as available for adoption by the Child Welfare Committee, with assistance from Specialised Adoption Agencies or Child Care Institutions as necessary.
- Ensure prompt uploading of Child Study Reports and Medical Examination Reports onto the Child Adoption Resource Information and Guidance System within ten days of a child being declared legally available for adoption.
- Facilitate connections between Child Care Institutions and Specialised Adoption Agencies within the same or different districts to streamline adoption processes.
- Monitor the adoption progress of each legally available child and intervene as needed to expedite the process.
- Track the progress of adoption applications from Prospective Adoptive Parents registered in the system and take necessary steps to accelerate proceedings.
- Maintain a panel of qualified social workers and establish counselling centres, in collaboration with the State Adoption Resource Agency or Authority, to support adoption processes, including preparation of reports and post-adoption counselling.
- Oversee and monitor adoption programs within the district, ensuring accurate and timely data entry into the adoption information system.
- Provide assistance to the State Adoption Resource Agency and Authority on adoption-related matters.
- Support the Child Welfare Committee in efforts to restore children to their families and in the process of legally declaring abandoned children available for adoption, including necessary publication of information and obtaining reports from relevant authorities.
- Upload certificates issued by the Child Welfare Committee declaring children legally available for adoption onto the adoption information system.
- Maintain up-to-date adoption-related information on the adoption information system as specified by the Authority.

What are the helpline numbers for a Child in crisis?

Any child in crisis or a concerned adult can dial the Child helpline number 1098, by the CHILDLINE India Foundation which is a nodal agency of the Union Ministry of Women and Child Development. This number operates at any time of day.

CASE STUDY

Rajdeep was arrested for kidnapping and sexually abusing a girl who was from the same village where he was a resident. During the trial, the defence lawyer stated that as on the date of his arrest he had attained the age of eighteen (18) but on the date of committing the offence he was a minor and he were to tried as per the Juvenile Justice (Care and Protection of Children) Act, 2000. The Juvenile Justice Act states the determination of age is on the date of commencement of offence. The Government prosecutor emphasised that all the witnesses and circumstantial evidence proved that he had committed a heinous crime and he had to undergo the trial as an adult capable of such heinous crimes. The government prosecutor held that the time gap between the commission of the offence and his date of arrest was just five days and as such he shall be treated as an adult. The jurisdictional court held the trial as per the Criminal Law (Amendment Act)2013 and treated him to be an adult for such heinous crimes.

The Juvenile Justice (Care and Protection of Children) Act, 2000 defines the age of juvenile and any offences committed by a minor shall be tried before a Juvenile Justice Board (JJB). But because of the Criminal Law (Amendment Act)2013 for the heinous offences of rape and murder any juvenile between the age of 16 and 18 shall be tried and punished as an adult.

LAW OF ADOPTION

What is meant by child adoption?

Child adoption is the legal process where an individual or couple becomes the permanent legal parent(s) of a child not biologically related to them.

- Adoption provides stable, loving families when biological parents cannot care for the child.
- Adoptions can occur domestically or internationally, with social workers or adoption agencies playing a significant role.
- After the adoption, adoptive parents gain full parental rights, including responsibility for the child's well-being, education, healthcare, and upbringing.

Which authority regulates or monitors the process of adoption in India?

The Central Adoption Resource Authority (CARA), a division of the Ministry of Women and Child Care, oversees and controls the adoption process in India.

- It is the responsibility of CARA, the central agency for adopting Indian children, to oversee and control domestic adoptions.
- In compliance with the terms of the 1993 Hague Convention on Intercountry Adoption, which the Indian government accepted in 2003, CARA is also appointed as the Central Authority to handle adoptions between countries.

Which law in India governs the process of adoption?

There are two legislations that primarily deal with the adoption of a child. These legislations are:

- The Hindu Adoption and Maintenance Act, 1956, (**HAMA Act**) and
- The Juvenile Justice (Care and Protection of Children) Act, 2000 (**JJ Act**).

What are the changes that the recent amendments to the JJ Act has brought into the process of adoption?

Section 61 of the JJ Act now permits adoption orders to be issued by District Magistrates and Additional District Magistrates. A child's adoption is considered complete after the civil court issues an adoption order, as stated earlier in the JJ Act of 2015.

What are the required conditions to be fulfilled by a male person to adopt a child?

A man planning to adopt a child must:

- Be of sound mind.
- The prospective parent shall be physically, mentally, emotionally and financially capable.
- The parent must not have any life-threatening medical condition and they should not have been convicted in criminal act of any nature or accused in any case of child rights violation.
- The prospective adoptive parents, irrespective of their marital status and whether or not they have biological son or daughter, can adopt a child, provided:

a. The consent of both spouses for the adoption shall be required, in the case of a married couple;

b. A single male shall not be eligible to adopt a girl child;

c. No child shall be given in adoption to a couple unless they have at least two years of stable marital relationship except in the cases of relative or step-parent adoption.

d. Has the consent of his wife. Without his wife's consent, the adoption will be considered 'void.'

e. If he has more than one wife. (When permitted by any religious law)

What are the conditions to be fulfilled by a female in order to adopt a child?

A woman willing to adopt a child:

- Must be of sound mind.
- Must be an adult.
- A single female can adopt a child of any gender;
- If she has changed her religion, renounced the world

or her husband is dead, no consent is needed for adoption.

- The points mentioned above shall be relevant if the woman is married.

What are some legal age bars/guidelines with respect to parents, single parents & children that need to be adhered to for the process of adoption?

Adoptive parents cannot adopt a child of any age, unless adhere to some legal age guidelines:[1]

Age of the Child	Maximum Composite Age of Couple (Prospective Parents)	Maximum Age of Single Prospective Parent
Up to 2 Years	85 years	40 years
Above 2 and up to 4 years	90 years	45 years
Above 4 and up to 8 years	100 years	50 years
Above 8 and up to 18 years	110 years	55 years

Provided that the minimum age difference between the child and either of the prospective adoptive

- In case of a couple, the composite age of the prospective adoptive parents shall be counted.
- The age criteria for prospective adoptive parents shall not be applicable in case of relative adoptions and adoption by step-parent.
- The prospective adoptive parents have to revalidate their Home study report after a period of three years.

Can you adopt a child if you already have one?

Yes, adoptive parents are free to choose to adopt another child even if they already have one of their own.

- The HAMA Act, however, states that these parents are only permitted to adopt children who are the opposite gender from their own; that is, if you have a boy, you may only adopt a girl, and vice versa.
- The Guardians and Wards Act, 1890 (**GWA**) and the JJ Act, on the other hand, do not have any comparable adoption provisions.
- In addition, the adopted child's viewpoint will be considered if they are mature enough to do so.

Can a couple adopt a child if they already have two or more children?

Couples with two or more children shall only be considered for special needs children and hard-to-place children unless they are relatives or step-children.

Is it possible to adopt more than one child?

Yes. Parents can adopt more than one child so long as they do not have three or more children.

How does adoption vary across religions?

- **For Hindus, Buddhists, Jains, & Sikhs (under HAMA) –** If a man is of sound mind and is not underage, he may adopt a child. Unless the court finds them to be incompetent to consent.
- **For Muslims –** Although Muslims do not accept adoption, they are allowed to assume custody of a kid under Section 8 of the GWA.
- **For Christians and Parsis –** Although Christians and Parsis do not accept adoption, they are able to maintain a kid in foster care if they obtain a court order under the terms of the GWA.

Can Foreign Nationals adopt a child in India?

A foreigner may apply to adopt a child in India under the provisions of GWA, where the court may appoint the foreigner as the guardian of the child they are adopting. The foreign national may take the child to their country and adopt them as per the laws of their country. They must submit the following supporting documents along with the application:

- Recent family photograph.
- Marriage certificate.

1 Regulation 5: Eligibility criteria for prospective adoptive parents, Central Adoption Development Authority, https://cara.wcd.gov.in/Parents/Eg_living_Abroad.html

- Declaration of the applicants' physical fitness that has been duly certified by a medical doctor.
- Declaration of the applicants' financial status with verifying documents like income tax returns, employment certificate, bank references, and details of properties owned by the applicant.
- Declaration of willingness to adopt the child.
- An undertaking to adopt the child as per their country's laws at the earliest, but not later than two years of the child's arrival in their country.
- A signed power of attorney in favor of a Social or Child Welfare Agency in India – so that they can monitor the case.
- An undertaking assuring to send the Indian agency and Court a progress report and photograph of the child

What are the fundamental principles that governs adoption of children in India?

The following fundamental principles shall govern adoptions of children from India, namely:

- The child's best interest shall be of prime importance while deciding any placement;
- Preference shall be given to place the child in adoption within the country;
- Adoption of children shall be guided by a set procedure and in a time-bound manner;
- No one shall derive any gain, whether financial or otherwise, through adoption.

Who are the persons that can be adopted under the Hindu Adoption and Maintenance Act, 1956?

The Hindu Adoption and Maintenance Act (HAMA) covers everyone residing in India who is not a Christian, Muslim, Parsi, or Jew. Thus children who do not belong to the following communities – Christian, Muslim, Parsi, or Jew can be adopted under the HAMA.

What should be the age difference between a female child and a male person adopting that female child under the Hindu Adoption and Maintenance Act, 1956?

If the adoption is by a male and the person to be adopted is a female, in that case, the adoptive father should be at least twenty-one years older than the person to be adopted.

What should be the age difference between a male child and a female person adopting that male child under the Hindu Adoption and Maintenance Act, 1956?

If the adoption is by a female and the person to be adopted is a male, in that case, the adoptive mother should be at least twenty-one years older than the person to be adopted.

What shall be the duty of individual, hospital or any other institution who finds an abandoned child or orphan child?

Every person, whether an individual or a nursing home or hospital or any other institution who or which finds an abandoned child or an orphan child without family support, has the duty to report the fact immediately either to the officer in charge of the nearest police station or the Child Welfare Committee (CWC) or Childline (Tel 1098) or the Specialised Adoption Agency in that area, as is practicable.

How many children can a couple see before finalizing? Can the preference of the child change from a girl to a boy during this process?

As per CARA guidelines, prospective adoptive parents can be referred to profiles of up to 3 children – one at a time.

- In addition, the prospective parents will not be able to see multiple children. They will have to see a profile and accept the same.
- The prospective parents can change their preference once after registering.

Is there a separate process for adopting an older child or a child with special needs?

The process for adopting an older child or a child with special needs is the same, except that the parents need to mention the same while registering.

- There may be a shorter wait list for parents opting for such children.
- Parents can also register for a child under normal category, but at any time, reserve a child from Immediate Placement or Special Need Category without losing their seniority for the normal category.

How much does adoption cost in India? Is the expense the same for Indian or Foreign parents?

The total adoption cost for Indian residents is Rs. 46,000 including home study, foster care, medical expenses, legal expenses and follow-up costs.

- The comparable figure for foreigners, NRIs or foreign Parents residing in India is around $5000, plus any additional expenses related to adoption in their home country.

How do the prospective parents get the child's birth certificate and other legal documents like passport etc?

The adoption agency shall obtain the birth certificate of the child from the birth certificate issuing authority within ten days from the date of issuance of an adoption order, with the name of adoptive parents, as parents, and date of birth as recorded in the adoption order.

- Similarly, for Inter-Country adoption, the adoption agency shall submit the application to the regional passport officer within three working days from the date of receipt of a certified copy of the adoption order and the regional passport office shall issue passport for the child within ten days from the date of receipt of application.
- For adoption within India, the parents can apply for passport as per procedure outlined by the Regional Passport Office.

Can a couple adopt a child, if one of the partners in against the adoption process?

As per CARA guidelines, consent of both the spouses is a pre-requisite for adoption by a couple and a child can be given into adoption to a couple only after two years of stable marital relationship.

Apart from the legal side, the adoption will also not be in the child's interest if one of the parents is not committed to the cause.

What are the conditions where on adopted child can be surrounded?

A child may be surrendered in case: -

- The child is born as a consequence of non-consensual relationship;
- The child is born of an unwed mother or out of wedlock;
- One of the biological parents of the child is dead and the living parent is incapacitated or unfit to take care;
- The parents of the child are compelled to relinquish him or her due to physical, emotional and social factors beyond their control.

What are the agencies or authorities for Inter-country adoption?

The authorities and agencies involved in Inter-country adoption process are -

- Court of Competent Jurisdiction who can pass Order for Adoption;
- Central Adoption Resource Authority (CARA);
- Central Authority in the receiving Country (CA);
- Indian Diplomatic Missions Abroad;
- Foreign Diplomatic Missions in India;
- Authorised Foreign Adoption Agency (AFAA);
- State Adoption Resource Agency (SARA) or Adoption Coordinating Agency (ACA);
- Recognised Indian Placement Agency (RIPA); and
- Adoption Recommendation Committee (ARC).

Which law governs the Inter-Country Adoption?

The authorities and agencies in inter- state adoption are guided by the procedure laid down for inter-country adoption under the Hague Convention on Inter-country Adoption-1993.

CASE STUDY

Ananth Kumar was not living with his wife as the court had ordered a judicial separation. Having presumed that the judicial separation would lead to divorce Ananth Kumar wanted to adopt a child. He approached a children's home for same and then also approached an advocate to sensitise him regarding the law relating to adoption. His advocate mentioned that he being under the judicial separation, the consent of the spouse is a required procedure to adopt the child. He has to wait for a divorce in order to adopt the child. For his question, of his interest in adopting a girl child, the advocate said that as per Indian law an adult male shall not be given a female child for adoption

The Law on adoption in India is governed by two legislations namely: The Hindu Adoption and Maintenance Act, 1956 and The Juvenile Justice (Care and Protection of Children) Act, 2000.

MENTAL HEALTH CARE

What are the objectives of the Mental Healthcare Act, 2017?

The Mental Healthcare Act, 2017 was enacted to provide healthcare facilities to persons suffering from mental illness and to protect, promote, and fulfill their rights keeping in mind their special needs.

- Mentally ill persons are a vulnerable segment of the population and require special care and support.
- This legislation seeks to improve existing facilities in India for care and support of mentally ill persons to protect their rights and well-being, in accordance with the internationally accepted norms and standards.
- For these purposes, the Act creates various bodies such as the Central Mental Health Authority at the Union level, State Mental Health Authorities at the state level, and Mental Health Review Boards at the local level.

How is mental illness different from unsoundness of mind?

Mental illness is a medical finding, whereas unsoundness of mind is a legal determination of the capability of a person to do certain acts. The Act does much to dispel the confusion surrounding the area.

- It defines mental illness as a '*substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behavior, capacity to recognise reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs…*'
- It excludes mental retardation from the definition, which means incomplete or arrested development of the mind of a person is not covered under it.
- Also, common mental disorders such as depression, anxiety, etc. where judgment, capacity, and ability to meet daily requirements are not affected are not included in the definition.
- Most importantly, a person's mental illness cannot by itself mean that he is of unsound mind.

Under section 3(5) of the Act, a competent court has to declare a person as being of unsound mind to have any legal consequences under the law relating to that of persons with unsound mind.

How can mental illness be diagnosed and determined and who can determine it?

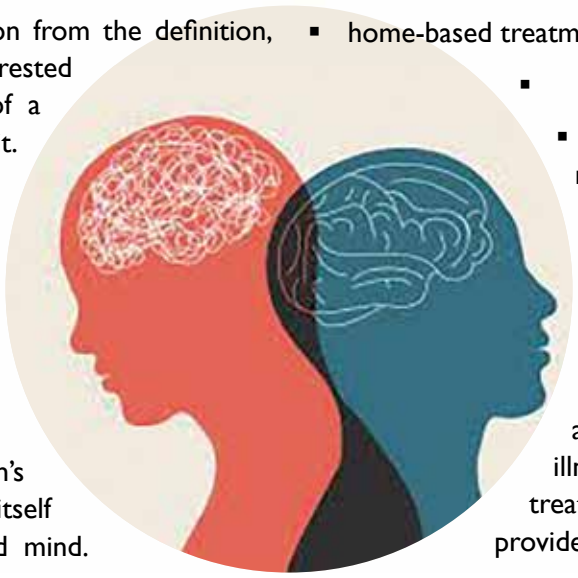
Under section 3(1) of the Act, mental illness has to be determined according to the nationally and internationally accepted medical standards including those published by the World Health Organization.

- Under the Mental Healthcare Act, 2017, only a government-certified medical practitioner or mental health professional can confirm if a person is suffering from mental illness based on tests including CT scans, MRI scans, or EEGs as well as psychological testing like the Wechsler Adult Intelligence Scale (WAIS), Minnesota Multiphasic Personality Inventory (MMPI), and Beck Depression Inventory (BDI).
- Institutes like the National Institute of Mental Health and Neuro Sciences (NIMHANS), Bangalore, or Central Institute of Psychiatry, Ranchi are institutes that specifically cater to patients suffering from mental illness.

What treatments can I avail if I am diagnosed with mental illness?

There are various alternatives available for a person to choose for the treatment of mental illness. These include

- home-based treatment,
- community-based treatment,
- half-way homes for rehabilitation,
- and in extreme cases there are provisions for admission into mental health establishments.
- Every person including a person identified with mental illness has a right to choose the treatment alternative for themselves, provided that they have the requisite



capacity to do the same, including the ability to understand relevant information and the consequences of their decisions.

- A person suffering from mental illness may also contact the 24x7 government helpline KIRAN by dialing the Toll-Free number **1800-599-0019** to seek help.
- After dialing, a welcome message will be heard, after which a language needs to be selected by pressing the appropriate button and then state/UT needs to be selected. Then the call will be directed to the mental health expert for help. This helpline may be called from anywhere in India and is available in thirteen languages. More information regarding this may be sought here.

What is the least restrictive alternative/ environment option?

This means that the treatment given to the person should be such that it fulfills the treatment needs of the person and should impose the least restriction on the person's freedom.

For example, if a person can be appropriately treated with community-based treatment, they should not be confined to mental health establishments that have more restrictive environments.

What are Mental Health Establishments (MHEs)?

Section 2(p) defines MHE as any health establishment, either wholly or partly, meant for the care of persons with mental illness, where persons with mental illness are admitted and reside at, or kept in, for care, treatment, convalescence, and rehabilitation, either temporarily or otherwise and that is established, owned, controlled or maintained either publicly or privately by any entity or person.

- This includes any general hospital or nursing home but excludes family residential places where a person with mental illness resides with his relatives or friends.
- These have a much-restricted environment and admission to these is supposed to be the last resorted option when all other community-based treatments have proven ineffective.
- These are controlled and regulated by State and Central Mental Health Authorities and are required to fulfill standards set by the relevant authority.

How can I get admission to an MHE?

Admissions in an MHE can happen in various ways

- **Independent Admission (Section 86):** This is the most preferred way of admission to an MHE under the Act, where a mentally ill person, who is not a minor, can request the medical officer or in-charge of an MHE for admission in the establishment.
- The application should be made in the manner given in Form-C of Mental Healthcare (Rights of Persons with Mental Illness) Rules, 2018 (2018 Rules).
- The concerned medical officer shall make sure that the person making the request has a mental illness of severity that requires admission to the MHE and such admission will benefit from the same, and understands the nature and purpose of admission. The request shall be made out of free will and without any duress or coercion. Such a person, if admitted, shall be treated as an independent patient, and can be discharged from the MHE on request made by them without the consent of the concerned medical officer.
- **Supported Admission (section 89):** A mentally ill person, requiring a very high degree of support who is unable to make treatment decisions for themselves, can be admitted in a MHE on application by the Nominated Representative of the person.
- The application should be made in the manner given in Form-E of the 2018 Rules.
- However, the person shall be independently examined by one psychiatrist and the other being a mental health professional or a medical practitioner, and both should independently conclude that the person requires admission to the MHE, and cannot be treated as an independent patient. The advance directive shall be taken into account at this stage before making any decision.
- Information of every such admission shall be given to

the concerned board within three days in the case of a woman or minor, and in every other case in seven days.

- **Readmission (section 90):** A person who was admitted on the application of the nominated representative and needs to be readmitted within seven days of discharge shall be readmitted following the conditions of section 90 only.
- An application needs to be made by the nominated representative in the manner provided in Form-F of 2018 Rules for this purpose.
- Two psychiatrists need to independently examine the person and certify that they need to be admitted to the MHE and cannot be admitted as an independent patient. The concerned medical officer needs to inform the board of the readmission within seven days and the board has to permit the same within 21 days from the date of readmission.

For what duration can one stay in MHE?

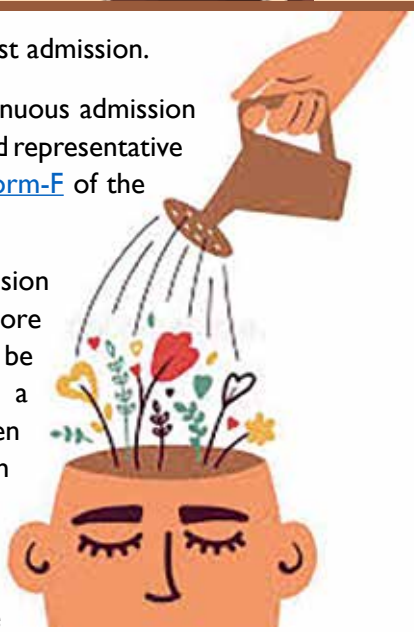
An independent patient shall be discharged on the request made by them at any time during their stay in the MHE.

- However, they may be required to stay for a period of 24 hours for assessment of whether they can be admitted as supported patient, which is under section 89.

  For example, if a person is admitted as an independent patient in an MHE, and after a few days requests to get discharged, they may be confined and examined by a psychiatrist and a mental health professional and if they both reach a decision that the person is not fit for discharge and is not capable for being admitted as an independent patient, then the person may be admitted as a supported patient under section 89.

- A supported patient under section 89 can be admitted for a maximum period of thirty days. If before that they stop fulfilling the criteria of section 89, that is they may become capable of giving consent as an independent patient, then they shall be discharged or may remain in the MHE as an independent patient. The concerned medical officer shall communicate to the patient their change of status.
- A supported patient may remain in the MHE for more than 30 days but only after following the procedure under section 90 that is after certification by two psychiatrists that person shall be admitted to the MHE after the approval of the concerned medical board within 21 days of last admission.

An application for such continuous admission shall be made by the nominated representative in the manner provided in Form-F of the 2018 Rules.



At first instance, the admission shall not stretch to more than ninety days, then can be subsequently increased by a stretch of 120 days, and then subsequently by the stretch of 180 days. At each time of increasing the person's stay in the MHE, the procedure under the section shall be reconducted.

Can leave be taken from the MHE without getting discharged?

A supported patient or a minor admitted to an MHE may be granted leave of absence by the medical officer or mental health professional in charge such duration as they may deem fit.

An application in the manner provided in Form-I shall be made by the nominated representative for this purpose with the reason for such leave.

How can one be discharged from an MHE?

An independent patient shall be discharged on the request made by them at any time during their stay in the MHE. An application for this shall be made in the manner provided in Form-G of the 2018 Rules. There is no need for the consent of the concerned medical officer for the same. When a minor is admitted to an MHE and attains majority while their stay in the MHE, they are considered as an independent patient and can be discharged on their will.

- A person admitted as a supported patient shall be discharged when they no longer meet the requirements of a supported patient, that is there is no requirement for them to stay in the MHE, *i.e.,* that it is not the least restrictive option available for the treatment, or when they start understanding nature and consequences of their admission and decisions, that is they become capable for independent admission.
- In any case, the stay in the MHE cannot be longer than 30 days, and the patient needs to be discharged

on expiry of this period.

- A supported patient staying for more than 30 days or readmitted under section 90 shall be discharged if they no longer meet the criteria of a supported patient under section 90, or when the Mental Health Review Board refuses the permission for such admission, or when the period for which the person was admitted expires.

Can a decision of an MHE to admit a person be challenged in any way?

A mentally ill person, or their nominated representative, or a representative of a registered non-governmental organization with consent of the person, can apply to the concerned Mental Health Review Board for review of the decision of the MHE to admit a person as a supported patient either for less or more than 30 days.

- The decision to admit a minor can also be challenged by the nominated representative or any other interested person, more specifically representative of a non-governmental organization.
- The information and contact details of the relevant board are displayed at every MHE including the address and telephone number of the board. The MHE shall also provide the person with relevant forms and reasonable facilities to make phone calls to the Board to apply for review. The applications in extreme circumstances can be accepted orally and over the telephone, and there is no fee to apply for review. The proceedings of the Board shall be held at the MHE where the person is admitted and the parties may appear in person or through counsel or any representative of their choice.

What are the rights of a person with mental illness?

The Act provides a set of rights to persons with mental illness and has a whole chapter dedicated to it. The most important rights of a mentally ill person are as follows:

- Right to Access Mental Healthcare
- Right to Community Living
- Right to Protection from Cruel, Inhuman and degrading Treatment
- Right to Equality and Non-discrimination
- Right to Information
- Right to Confidentiality
- Restriction on release of information in respect of mental illness
- Right to Access Medical Records
- Right to Personal Contacts and Communication
- Right to Legal Aid
- Right to make complaints about deficiencies in provision of services
- Prohibition of certain procedures on persons suffering from mental illness
- Restriction on psychosurgery for persons with mental illness
- Right against restraints and Seclusion

If these rights are violated, where can the complaints be made?

Any deficiency in service or treatment can be complained to the person in charge of the MHE and if not satisfied, then to the concerned Medical Health Review Board or State Mental Health Authority.

- Such an application needs to be decided by the Board within a period of ninety days. Further, to enforce any right under this act or any other law, judicial intervention can be sought, that is a person with mental illness may move to court to enforce their rights.
- For this free legal aid can be sought from legal services authority and information regarding that can be found here.

What can be done if a person suffering from mental illness is ill-treated at home and neglected?

If a person suffering from mental illness is ill-treated or neglected at home or in their private residence, this fact should be reported to the police officer in charge of that area, who shall report it to the concerned magistrate having jurisdiction in the area.

- On a report of a police officer or otherwise, if

the magistrate has reason to believe that such ill-treatment is meted out to a mentally ill person, then they may order to produce such person before them.

- On appearance before them, the magistrate may send the person to an MHE for assessment and treatment, and that MHE shall deal with the person in accordance with the provisions of the Act.
- The magistrate may authorize the admission of such a person to the MHE for a maximum period of ten days for assessment and planning of treatment. On completion of such a period a report shall be submitted to the magistrate by the in-charge of the MHE and the person shall be dealt with in accordance with the provisions of the act.

What is an Advance Directive and for what purposes can it be used?

An advance directive is directions given by an adult person regarding how they wish to be treated for their mental illness and to whom they want to appoint as their nominated representatives.

- This shall be specifically made in writing and can be made by any adult person irrespective of their past mental illness history. However, a minor cannot make advance directives.
- The directions given in the advance directive come into effect only when the person making it ceases to have the capacity to make decisions for their own treatment, and it shall be the duty of every medical professional in charge of MHE or the person's mental health treatment to give effect to directions given in the directive.
- The concerned Medical Health Review Boards have to keep an online register of these directives and shall make them available to the mental health professional as and when required.

How can one make an Advance Directive and revoke it?

The advance directive shall be made in writing and in the manner provided in Form A of Mental Healthcare (Central Mental Health Authority) Regulations, 2020, which can be found here.

- This application shall be submitted to the concerned Medical Health Review Board for registration and shall have the signature of two witnesses attesting to the fact that the person making the directive has signed it in their presence.
- If the advance directive contains the name of a person to be appointed as nominated representative, the person's signature shall also be there on the application signifying their willingness to act as nominated representative. This application shall be made and registered free of cost and a copy of the advance directive shall be given to the person making it after registration.
- The advance directive may be altered or revoked in the same manner it is made, that is through an application in writing made in the manner provided in Form-A with the signature of two attesting witnesses. With registration of the new advance directive, the previous one becomes null and void.
- The concerned Medical Health Review Board can also review, alter, modify, or cancel the advance directive on an application made by a mental health professional or a relative or a caregiver of the person making the advance directive if they desire not to follow it while treating the person. The Board within 14 days shall hold the proceedings on such application and thereafter in seven days decide on it.
- The legal guardian can make an advance directive for a minor in writing and all the provisions shall apply to it as they apply to the advance directive of an adult till the minor attains majority.

Who is the Nominated Representative?

- A nominated representative is a person appointed to act on behalf of a mentally ill person and make decisions on their behalf according to the provisions of the Act.
- The nominated representative cannot be a minor and shall have the requisite capacity to make decisions for the mentally ill person and give consent to mental health professionals to fulfill their duties.

How can a Nominated Representative be appointed and revoked?

Every person who is not a minor can appoint a nominated representative, but such appointment shall be made in writing on a plain paper with signature or thumb impression of the person making it.

- If no appointment is made and the need arises for such nominated representative, the following persons shall be deemed as nominated representatives in order of precedence as given here.

- The first is, any person named in the advance directive made by the mentally ill person, if no such direction is there then a relative of the person if no such willing relative is there then a caregiver of the person, if no such willing caregiver is there then a suitable person appointed by the concerned Medical Health Review Board, and if no such willing person is available then Board shall appoint the Director, Department of Social Welfare, or his designated representative, as the nominated representative of the person with mental illness.
- However, till the time such an appointment is made by the concerned Board, a representative of an organization working for mentally ill persons may be temporarily engaged by the mental health professional to discharge the functions of the nominated representative.
- A written application may be made by such a representative of the organization to such a professional to temporarily discharge the functions of the nominated representative, and they shall be accepted as the same.
- The legal guardian of a minor is deemed to be the nominated representative of such minor. The concerned Mental Health Review Board may appoint any other suitable person as the nominated representative of the minor if, on the application presented to it by a mental health professional or any other person acting in the best interest of the minor, the Board is of opinion that the legal guardian is not acting in the best interest of the minor or is otherwise unfit to discharge such functions.
- A person appointing the nominated representative may revoke or alter such appointment in the same manner, that in writing on a plain paper with signature or thumb impression.
- The concerned Medical Health Review Board, if it thinks it is in best interests of the mentally ill person, may revoke the appointment of a person as nominated representative and may appoint someone else to discharge such functions under section 14(7) of the Act or on an application made to it by person with mental illness, or by a relative of such person, or by the psychiatrist responsible for the care of such person, or by the medical officer in charge of the MHE where the individual is admitted or proposed to be admitted under section 16.

What are the duties of a Nominated representative?

A nominated representative has a duty to help and support the mentally ill person to make treatment decisions to the extent they require support.

- Further, they have a duty to seek information on diagnosis and treatment to provide adequate support, access the rehabilitation services on behalf of and for the benefit of mentally ill person,
- They can apply for admission to MHE as supported patient under Sections 89 or 90 or 87 (for admission of a minor to MHE),
- They can apply to the concerned Medical Health Review Board for discharge from the MHE,
- They can apply to the concerned Board for violation of any right of the mentally ill person in the MHE,
- They need to also give consent for treatment given to the supported patients if they are unable to do so under section 89 and 90.
- While fulfilling all these duties the nominated representative shall keep in mind the mentally ill person's current and past wishes, the life history, values, cultural background, and the best interests and try to give effect to their views as far as possible.

Can a person suffering from mental illness have a legal guardian?

- There are no specific provisions for appointment of legal guardian for a person suffering from mental illness in the Act.
- However, one may move to the concerned High Court to be appointed as legal guardian of a mentally ill person, if such person is not sufficiently capable of taking care of himself. The High Court exercising its jurisdiction may appoint a person as legal guardian in law and for management for a mentally ill person's property.

Are there any special provisions for minors and women in the Mental Healthcare Act?

The Act does have special provisions for women and minors taking into

consideration their different needs and circumstances.

- As discussed earlier, a child under three years of age shall not be separated from its mother receiving treatment for mental illness, unless it is absolutely necessary for the safety of the child. This decision to separate the child from the mother shall be reviewed every fifteen days and in the period of separation, the mother shall have access to the child under supervision.
- When a woman or a minor is admitted to an MHE as a supported patient under section 87 or 89 for less than 30 days, this admission shall be reported to the concerned Medical Health Review Board within the period of three days.
- Advance directives for a minor can only be made by their legal guardian and also the legal guardian serves as their nominated representative unless someone else is appointed by the concerned Medical Health Review Board.
- A minor is not capable of being admitted to an MHE as an independent patient and can be admitted to an MHE only under section 87 of the Act.

This requires an application made by the nominated representative of the minor to the in-charge of the MHE in the manner given in Form-D of 2018 Rules. On such an application being made, the minor shall be independently examined by two psychiatrists, or one psychiatrist, and one mental health professional, or one psychiatrist and one medical practitioner.

They both should conclude that it is necessary for the minor to be admitted to the MHE and it is in their best interest and is the least restrictive alternative. On admission minors shall be accommodated separately from the adults in the MHE and the surroundings should be conducive to their developmental needs and of the same quality as provided to a minor.

The nominated representative or an attendant appointed by them shall in all circumstances be with the minor admitted in the MHE for the entire duration and in case the minor is a girl, the nominated representative if not a female, shall appoint a female attendant to fulfill the duties.

Minor shall be treated with the informed consent of their nominated representative and shall be discharged at any time on the request made by such nominated representative. The application for discharge shall be made in the manner given in Form-H of the 2018 Rules.

Further, if a minor is admitted for more than thirty days, the concerned Mental Health Review Board shall be informed immediately and the Board shall review such admission within seven days, and this review shall happen after every period of thirty days if the admission continues.

Moreover, electro-conclusive therapy is prohibited for minors, unless the psychiatrist in charge of a minor's treatment is of the opinion that such therapy is necessary, and then also this shall be conducted with the consent of the guardian and with permission of the concerned Medical Health Review Board.

Can prisoners and persons in custodial institutions also receive mental healthcare?

Any prisoner suffering from mental illness may be transferred to the psychiatric ward of the medical wing of the prison and if there is no such ward then to an MHE with prior permission of the concerned Medical Health Review Board.

- A special report of such prisoners in the MHE shall be prepared and sent to the institution where the prisoner was detained by the in-charge of the MHE regarding the mental and physical health of the prisoner.
- Further, the medical officer of the jail or prison is required to make a quarterly report certifying that no prisoners are suffering from mental illness and send it to the concerned Medical Health Review Board, and the Board has the right to inspect the jail or prison for any such case.
- Mental illness (including any mental illness or disability developed in prison) is also considered as a mitigating factor by courts during awarding of punishments in criminal cases, especially death penalty cases.
- With regards to custodial institutions, if it appears to the person in charge of such State-run institution that any resident has or is likely to have a mental illness, then the resident must be taken to the nearest MHE run or funded by

the government for assessment and treatment and such resident shall be dealt under the provisions of the Act for any procedure undertaken.

What are the duties of a police officer under the Mental Healthcare Act?

Police officers are required to report to the magistrate any ill-treatment meted out to a person with mental illness at their home or private residence within limits of their police station, brought to their notice by any person or otherwise.

- Further, they have duty to take under protection any person wandering at large or posing risk to himself or others by reason of mental illness within limits of their police station and take such person to the nearest MHE for assessment as soon as possible but no later than twenty-four hours, and the person if diagnosed with mental illness shall be dealt under the provisions of the Act.
- The police officer is also required to inform such person or their nominated representative of the reason for taking them into protection.
- If no mental illness is diagnosed, then the police officer is required to take such a person to their home, or in the case of a homeless person to government shelters. The police officer is also required to trace families of such people found wandering.

CASE STUDY

Akhila was doing MBBS and was suffering from stress due to her studies in college. She wanted to meet a psychiatrist to know about her mental condition. Due to late-night studies, she was having sleep disorders. In a moment of high stress and emotion, she attempted suicide by having an overdose of medicine in her room. Her parents who were in the house immediately rushed her to the hospital. Due to timely treatment, the doctors were able to save her life.

The hospital administration approached her parents for more information regarding the attempted suicide. Parents were frightened thinking that an attempt to commit suicide was an offence and her daughter may be arrested.

The hospital authorities comforted and consoled them stating that the Mental Health Care Act 2017 addresses the situation of attempted suicide, and the person shall not be prosecuted or punished. It will be dealt as a medico-legal case providing necessary medical and health care facilities.

The Mental Healthcare Act in a way has decriminalized S.309 of IPC (omitted in BNS) for attempted suicide though it does not repeal the section.This will now be dealt with in a more humane way of care, treatment, and rehabilitation.

DISASTER MANAGEMENT AND DISASTER VICTIMS

What is a Disaster?

Disasters are serious disruptions to the functioning of a community that exceed its capacity to cope using its own resources. They stem from a range of sources, including natural phenomena, human actions, and technological failures, alongside factors affecting a community's exposure and susceptibility.

What is a disaster as per law?

- A disaster is defined under Section 2(d) of the Disaster Management Act, 2005 as any catastrophic event, be it natural or human-induced, that results in extensive loss of human life, significant damage to the natural environment, private property, or public infrastructure.
- These events can manifest suddenly, like earthquakes or industrial accidents, or they can evolve gradually over an extended period, as seen with prolonged health emergencies or climate-related disruptions.

What is the National Disaster Response Fund?

The National Disaster Response Fund (NDRF), constituted under Section 46 of the Disaster Management Act, 2005, supplements the State Disaster Response Fund (SDRF) of a State, in case of a disaster of severe nature, provided adequate funds are not available in SDRF.

What is the SDRF?

- The SDRF, constituted under Section 48 (1) (a) of the Disaster Management Act, 2005, is the primary fund available with State Governments for responses to notified disasters.
- The Central Government contributes 75% of SDRF allocation for general category States/UTs and 90% for special category States/UTs (NE States, Sikkim, Uttarakhand, Himachal Pradesh, Jammu and Kashmir).

What is the National Disaster Management Plan?

The National Disaster Management Plan in India plays a pivotal role in addressing and mitigating the impact of such disasters. This plan was first released in 2016 and updated in 2018. This comprehensive plan:

- outlines strategies and measures for disaster preparedness, response, and recovery,
- emphasizes the importance of a well-coordinated and efficient approach to minimize the human, economic, and environmental costs associated with these events.

*A notable example of a major disaster in India is the **2004 Indian Ocean Tsunami**, which resulted from a massive undersea earthquake off the coast of Sumatra. This catastrophic event led to widespread devastation along the coastal regions of several Indian states, causing loss of life and immense damage to infrastructure and the environment. It serves as a poignant reminder of the necessity for effective disaster management and preparedness in a country prone to a wide range of natural and man-made disasters.*

How does a person protect himself from disasters?

A few steps a person should keep in mind while being indoors:

- DROP down onto your hands and knees before the earthquake knocks you down. This position protects individuals from falling and allows them to still move if necessary.
- COVER your head and neck (and your entire body if possible) underneath a sturdy table or desk. If there is no shelter nearby, get down near an interior wall or next to low-lying furniture that is sturdy, and cover your head and neck with your arms and hands.
- HOLD ON to your shelter (or to your head and neck) until the shaking stops. Be prepared to move with your shelter if the shaking shifts it around.

If you are outdoors in most situations, you can protect yourself if you immediately:

- Move away from buildings, utility wires, sinkholes, fuel and gas lines. The greatest danger from falling debris is just outside doorways and close to the outer walls of buildings.
- Go to an open area away from trees, telephone poles, and buildings.
- Once in the open, get down low and stay there until the shaking stops (for Earthquakes).
- The area near the outside walls of a building is the most dangerous place to be.
- Windows, facades, and architectural details are often the first parts of the building to collapse. Stay away from this danger zone.
- If in a crowded public place, do not rush for the doorways, others will do the same which may result in a stampede.
- Try moving away from falling objects and take cover under a sturdy object to shield your head from falling debris.
- If in a moving vehicle, move your vehicle away from utility poles, wires, and underpasses, turn on the radio for emergency broadcasting park your car in an open area, and wait till it is safe to drive.

Who is a Disaster Victim?

According to the National Disaster Management Authority of India, a disaster victim is any person who is affected by a disaster to the extent of:

- Loss of life or injury.
- Loss of property or damage to property.
- Loss of livelihood or disruption to livelihood.
- Displacement from home or loss of home.
- Any other form of loss or hardship caused by the disaster.

In ***Olpad Taluka Panchayat v. State of Gujarat (2017),*** the court held that the government is liable to compensate victims of natural disasters, even if the disasters are caused by natural forces. The Court also held that the government must ensure that disaster relief funds are used properly and efficiently.

What are some challenges a Disaster victim might face?

Some of the most common challenges disaster victims might face are:

- Disasters can cause loss of life and injury, which can have a devastating impact on families and communities.
- Difficulty accessing government help assistance programs.
- Disasters can also cause damage to or destruction of property and livelihoods, which can make it difficult for people to rebuild their lives.
- Disasters can displace people from their homes and communities, which can be disruptive and stressful.
- Indian Red Cross Society: **1098** can be dialed to seek assistance in such matters.
- Disasters can disrupt access to food, water, and shelter, which can lead to health problems and other challenges.
- Disasters can increase the risk of health problems, such as injuries, infections, and chronic diseases.
- Ministry of Health and Family Welfare toll-free number 1800-180-1104 can be dialed for assistance.
- Disasters can also lead to mental health problems, such as post-traumatic stress disorder (PTSD), anxiety, and depression. Kiran Initiative is a toll-free mental health number the services of which can be availed by dialling **1800-599-0019**
- Disasters can cause economic hardship for individuals and families, due to loss of income, property damage, and increased expenses.
- Disasters can lead to social isolation, as people may be separated from their loved ones or lose their support networks.
- Most of these challenges can be effectively countered by dialing the emergency number **112** and people seeking help can additionally dial the given numbers to seek any additional assistance required.

What are the disaster risks in India?

India faces susceptibility to a wide array of natural and man-made calamities to varying extents.

- Approximately 58.6% of its land is prone to earthquakes ranging from moderate to severe intensity, with over 40 million hectares (12 percent of the land) susceptible to floods and river erosion.
- Moreover, nearly 5,700 kilometers out of its 7,516-kilometer coastline are vulnerable to cyclones and tsunamis, while about 68% of its cultivable land is at risk of drought.
- Additionally, mountainous regions face threats of landslides and avalanches.
- India also confronts potential disasters of Chemical, Biological, Radiological, and Nuclear (CBRN) origin.

What are the objectives of the Disaster Management Act, of 2005?

The Disaster Management Act, 2005 is a comprehensive legislation that provides for the establishment of a national disaster management framework in India. It aims to minimize the loss of life and property due to disasters and to provide for timely and effective response to disasters. The Act provides for the following:

- Establishment of the National Disaster Management Authority (NDMA), the National Executive Committee, the State Disaster Management Authorities, and the District Disaster Management Authorities
- Creation of the National Disaster Response Fund and the State Disaster Response Funds
- Preparation of disaster management plans at the national, state, and district levels
- Capacity building for disaster management at all levels
- Provision of relief and rehabilitation to victims of disasters

Interestingly, the Disaster Management Act, 2005 was invoked to deal with the CoVID-19 pandemic in India. The NDMA issued guidelines for various aspects against the pandemic response, including:

- Lockdown
- Quarantine
- Social distancing
- Testing and contact tracing
- Treatment and hospitalization
- Relief and rehabilitation

Who is responsible for preparing a Disaster Management Plan in India?

- As per Section 37 (1) (a) of the Disaster Management Act, 2005, every Ministry or Department of the Government of India shall prepare a Disaster Management Plan.
- Section 37(1)(c) of the Disaster Management Act, 2005 states that every Ministry / Department of the Government of India shall forward a copy of its Disaster Management Plan to NDMA for its approval.

What are the Disaster Management Authorities in India?

- **National Disaster Management Authority (NDMA) –** The NDMA serves as the apex body for disaster management in India. Its primary function is to formulate policies, plans, and guidelines for disaster management at the national, state, and district levels. NDMA coordinates efforts among various agencies to ensure effective preparedness, response, and recovery during disasters. Contact NDMA at 112.
- **National Executive Committee (NEC) –** The National Executive Committee (NEC) is chaired by the Union Home Secretary and includes secretaries from various government ministries as members. Additionally, secretaries from other ministries and the NDMA secretary are invited to NEC meetings. NEC supports NDMA in its functions and ensures compliance with government directives. It coordinates responses to disaster situations, prepares the National Plan for Disaster Management, and monitors the implementation of NDMA guidelines. Additional functions may be assigned by the Central Government in consultation with the NDMA.
- **Central Water Commission (CWC) –** CWC is a technical organization that provides hydrological

and flood forecasting services. Its key role is to monitor and assess water resources, especially during periods of heavy rainfall, to issue flood forecasts and warnings. CWC contributes vital data and information for early flood detection and response.

- **India Meteorological Department (IMD) –** IMD is a scientific agency responsible for providing meteorological services in India. It plays a crucial role in forecasting weather patterns, issuing warnings for extreme weather events like cyclones, and monitoring meteorological conditions. The information and forecasts from IMD are critical for disaster preparedness and response.
- **Geological Survey of India (GSI) -** GSI is a scientific agency that provides geological services. It conducts geological surveys and research to understand the Earth's structure and the potential risks of geological hazards such as earthquakes and landslides. GSI's data and expertise are essential for assessing and mitigating geological disaster risks.
- **National Disaster Response Force (NDRF) -** NDRF is a specialized force dedicated to disaster response and rescue. Comprising highly trained personnel, NDRF units are strategically located across India to respond swiftly to disasters, including earthquakes, floods, cyclones, and other emergencies. Their role involves search and rescue operations, medical assistance, and evacuation of affected people. In case of a disaster, you can contact NDRF at **1070**.

To apply for disaster assistance in India, you can contact your local emergency management office or visit the following authorities for assistance: -

National Disaster Management Authority: https://ndma.gov.in/ **or 112**

National Disaster Response Force: https://www.ndrf.gov.in/

Note: A specialized force for disaster response in India, with 16 battalions are deployed across the country.

Apart from these, there are several State and District Disaster Management authorities too for disaster management which will vary depending on the state and district but it is to note that each of them would include gov. in url.

In addition to the above, there are also specialized disaster management authorities for specific hazards, such as the:

- **National Cyclone Risk Mitigation Project (NCRMP):** A World Bank-funded project to reduce vulnerability to cyclones and other hydro-meteorological hazards in coastal communities in India.

What are the steps taken by the various Authorities to prevent and mitigate Disasters?

- **Preventing Disasters:** While we cannot stop natural calamities, we can prevent them from becoming disasters through proper mitigation measures and planning.
- **Three-Pronged Approach to Mitigation:**

a. **Integrate Mitigation into Development:** Make sure all development projects include measures to reduce disaster risk.

b. **National-Level Projects:** National Disaster Management Authority (NDMA) should lead projects in high-risk areas, with help from central ministries, departments, and states.

c. **Support State-Level Projects:** States should be encouraged and supported to undertake their own projects following guidelines.

- **Respecting Indigenous Knowledge:** We should value and use the knowledge and techniques for dealing with disasters that various states have developed over time. Special attention should be given to protecting heritage structures.

How can the Indian Community prepare for and mitigate Disasters?

Community-Based Disaster Preparedness:

- Communities are often the first affected by disasters and the first to respond.
- Community involvement ensures local ownership, addresses local needs, and promotes volunteerism.

- States and Union Territories (UTs) should encourage community efforts in disaster preparedness.

Special Attention to Vulnerable Groups:

- Elderly, women, children, and differently abled persons need special attention.
- Women and youth should be encouraged to participate in decision-making and action groups.
- Communities will be trained in various aspects of disaster response, such as first-aid and search and rescue.

Stakeholders' Participation:

- Civil society stakeholders' participation will be coordinated by State Disaster Management Authorities (SDMAs) and District Disaster Management Authorities (DDMAs).
- Organizations like Civil Defence, NCC, NYKS, NSS, and local NGOs will be encouraged to empower communities and raise awareness.

Corporate Social Responsibility (CSR) and Public Private Partnership (PPP):

- Corporate sectors historically support disaster relief, but their involvement in risk reduction is limited.
- Corporations should integrate hazards, risks, and vulnerabilities into their business plans and invest in innovative social initiatives.
- Public-Private Partnerships between the government and private sector should be encouraged for effective disaster management.

Media Partnership:

- The media plays a crucial role in disseminating information during disasters.
- Effective partnerships with the media can enhance community awareness, early warning systems, and education about various disasters.

What is the role of the National Executive Committee (NEC) in immediate response to Disasters?

- NEC coordinates responses in the event of any threatening disaster situation or disaster.
- While disaster-specific guidelines will be formulated by NDMA, NEC may give directions to the concerned Ministries/Departments of the Govt. of India, the State Governments and the State Authorities regarding measures to be taken by them in response to any specific threatening disaster situation or disaster.

What is the National Disaster Response Force (NDRF)?

The NDRF is mandated by the Disaster Management Act, 2005 to establish the NDRF for specialized response to threatening disaster situations, both natural and man-made. They are under general superintendence, direction, and control by NDMA; commanded and supervised by a Director General appointed by the Central Government.

- Currently, NDRF consists of eight battalions with potential for further expansion.
- The battalions are positioned strategically, with four specifically trained to handle Chemical, Biological, Radiological, and Nuclear emergencies.
- They work in close liaison with State Governments for rapid response to serious disaster situations.

Training and Preparedness:

- Para-military forces have established training centers for NDRF personnel and State/UT Disaster Response Forces.
- NDRF units provide basic training to stakeholders identified by State Governments.
- A National Academy is established for training in disaster management.

Pre-positioning of Resources:

- Essential reserves are pre-positioned at crucial locations, including high-altitude areas, based on experience from past major disasters.

- Reserves intended to augment State-level resources.
- Mitigation reserves are provided to NDRF for enhancing emergency response capabilities during disasters.

What are the steps taken by the authorities after the occurrence of a Disaster for relief and rehabilitation?

Relief is now seen as a comprehensive system to help disaster victims rehabilitate and ensure their social safety and security. Relief should be prompt, sufficient, and meet approved standards. The NDMA creates guidelines defining minimum relief standards.

Setting up Temporary Relief Camps:

- DDMAs, especially in areas prone to frequent disasters, will identify locations for temporary camps.
- Necessary supplies will be identified before disasters.
- Relief camps will have provisions for water, sanitation, healthcare, and possibly community kitchens and education facilities.
- Governance systems like entitlement cards will be developed for uniform practices.

Management of Relief Supplies:

- Standard operating procedures (SOPs) will ensure organized procurement, packaging, transportation, storage, and distribution of relief items.
- Affected communities and local authorities will work together to manage relief camps.
- Guidelines will ensure transparency and accountability in managing donations.

Review of Relief Standards:

- Existing relief standards will be reviewed to meet current community needs.
- SDMAs may develop Disaster Management Codes aligning with NDMA guidelines.
- Temporary Livelihood Options and Socio-Economic Rehabilitation:
- After major disasters, temporary livelihood options will be created, considering hazard resistance, durability, sustainability, and cost-efficiency.

Provision of Intermediate Shelters:

- Intermediate shelters will be built in extreme weather conditions or for long-term stays after devastating disasters.
- Shelters will be eco-friendly and culturally appropriate, planned by SDMAs during normal times.

How to report a Disaster?

There are several ways to report a disaster in India. The most common way is to call the emergency number **112**.

- If you do not have access to a phone you can also report a disaster to the local police station or the District Disaster Management Authority (DDMA).

If you are reporting a disaster, it is important to provide as much information as possible, including:

- The type of disaster
- The location of the disaster
- The severity of the disaster
- The number of people affected
- Any other relevant information

If you can, you should also take photos or videos of the disaster. This information can be helpful to the authorities in assessing the damage and providing assistance.

By following these tips, you can help to ensure that your report is received quickly and that assistance is provided to the worst hit at the earliest.

How to secure help for a disaster victim?

- Contact the local police station by dialing **100** or the district disaster management authority (DDMA).
- They will be able to provide you with information on the available assistance and help you to access it. If you do not have the contact for the district disaster management authority then you can ask the same by dialing **112**.
- Call the national helpline number **112**. This helpline is available 24/7 and provides information on disaster relief and rehabilitation.

Visit the website of the National Disaster Management Authority (NDMA): https://ndma.gov.in/. The NDMA

website provides information on disaster preparedness, response, and relief.

What are my Rights as a Disaster Victim?

Here are the following rights available to you as a disaster victim and as held in the much-celebrated case of ***MC Mehta v. Union of India (1986)***

- Right to be treated with immediate medical treatment.
- Right to be informed about the disaster the response and relief measures taken and the assistance available.
- Right to claim compensation for damages.
- Right to access to free food and shelter.

How do I apply for Disaster Compensation?

To apply for disaster compensation in India, you can follow these steps:

- **Contact** the local police station or District Disaster Management Authority (DDMA). They will be able to provide you with information on the available assistance and help you to access it.
- **Fill out an application form**. The application form will ask for information about the disaster, the damage to your property and livelihood, and your household income. You may also need to provide documentation to support your claim for assistance.
- **Submit the application** form to the appropriate authority. This may be the local police station, the DDMA, or the State Disaster Management Authority (SDMA), depending on the type of assistance you are applying for.
- Your application will be reviewed and assessed. The authorities will assess the damage to your property and livelihood and your household income to determine if you are eligible for assistance.

If you are eligible for assistance, you will be notified and the assistance will be provided to you. The type of assistance you receive will depend on your specific needs and the type of disaster that occurred.

Here are some documents that you may need to provide when applying for disaster compensation:

- Proof of identity, such as an **Aadhar Card** or **passport**.
- Proof of residency, such as a **utility bill** or **rental agreement**
- Proof of income, such as **PAN Card** or pay stubs
- Proof of the damage to your property, such as **photos** or **videos**
- Proof of the loss of your livelihood, such as a letter from your employer or a copy of your business license

CASE STUDY

In Meghalaya, a state in northeastern India known for its lush greenery and hilly terrain, a devastating landslide struck a remote village. The unexpected disaster not only caused immense damage to properties but also posed a threat to the lives of the residents, including their livestock.

A family, residing in a small village in between hills of Meghalaya, was caught off guard when heavy rains triggered a massive landslide, engulfing their home and belongings. With their house reduced to rubble and their livestock injured, the family found themselves in a dire situation in the aftermath of the disaster.

Upon receiving news of the landslide, the National Disaster Management Authority (NDMA) swiftly sprang into action. Recognizing the urgency of the situation, they immediately deployed National Disaster Response Force (NDRF) battalions to the affected area to conduct search and rescue operations. Despite the challenging terrain and adverse weather conditions, the NDRF teams worked tirelessly to locate and evacuate the trapped individuals.

In the aftermath of the landslide, the affected family and their livestock were provided with immediate medical assistance and temporary shelter by the NDRF troops. Furthermore, recognizing the need for long-term rehabilitation, the NDMA collaborated with private companies and non-governmental organizations (NGOs) to mobilize resources for reconstruction efforts. Additionally, volunteers from various parts of the country selflessly offered their time and expertise to assist in the reconstruction process. Their collective efforts not only expedited the restoration of the family's property but also instilled a sense of hope and resilience within the community.

Meanwhile, medical practitioners from neighbouring states volunteered to lend their expertise in providing healthcare services to the affected individuals. Setting up makeshift medical camps, they administered medical treatment to the injured and conducted health assessments for the community members, ensuring that their physical and mental well-being was attended to during this trying time.

MEDICAL NEGLIGENCE

What is meant by Medical Negligence?

Medical negligence refers to a breach of duty of care by a medical practitioner or healthcare provider, which results in harm, injury, or death of a patient. It is a legal concept that refers to the failure of a healthcare professional to provide a standard of care that meets the required level of competence and skill. A case of medical negligence can also be filed against a hospital as well.

- Misdiagnosis, incorrect treatment or medication, surgical errors, incorrect administration of anaesthesia failure to obtain informed consent, and inadequate follow-up care could fall under the category of medical negligence. This list is not an exhaustive list, a case of medical negligence or malpractice will have to be judged according to the facts of each case.
- Recently, two doctors and three nurses in Pune were found guilty in a medical negligence case of stillbirth and were punished with imprisonment for up to two years and also with a fine of ₹ 50,000.
- A mother in Delhi has filed a case against a hospital in Delhi alleging that they delayed diagnosis, and treatment and also concealed birth-related injury of her 5-year-old son which has led to physical and mental paralysis.

What are the Essentials of Medical Negligence?

- Duty of care owed by the medical professional to the patient.
- Breach of the said duty by an act or omission.

- The patient has suffered an injury due to such a breach.

What are the Duties owed by Physicians to their Patients?

As per **Chapter 2** of the **Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002** issued by the Medical Council of India by virtue of the powers conferred by the Indian Medical Council Act, 1956, a physician is free to select who he will treat but shall respond to emergency requests requiring his assistance and once he has agreed to undertake a case, he shall not neglect any patient and cannot withdraw from the case without giving adequate notice to the patient and the family.

In ***Samira Kohli v Dr Prabha Manchanda (2008)***, the Supreme Court held that **informed consent** is an essential prerequisite for any medical procedure or surgery and that it implies voluntary and competent consent by the patient after receiving adequate information about the nature, purpose, risks, benefits, alternatives and consequences of such procedure or surgery.

What laws prosecute Medical Negligence?

There is no standalone law or regulation in India dealing with medical negligence, however, the Union Ministry of Health and Family Welfare has replied to an RTI application that such a guideline is under consideration by the Ministry.

Currently, the following provisions are employed in a case of medical negligence.

Indian Penal Code, 1860:

- **Causing Death by Negligence (Section 304A)-** The Punishment for this crime entails imprisonment for up to two years, fine, or both. **(Section 104 of Bharatiya Nyaya Sanhita - BNS)**
- **Causing Hurt by act endangering life (Section 337)-** The maximum punishment for this crime is imprisonment for up to six months, fine up to five hundred rupees, or both. **(Section 123(a) of - BNS)**
- **Causing Grievous Hurt by act endangering life (Section 388)-** A convict of this crime could

get a maximum punishment of two years, fine up to thousand rupees, or both. **(Section 123(b) of - BNS)**

Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002:

- **Punishment and Disciplinary Action (Para 8)-** Any violation of the Regulations stipulated in this Code or any other case of misconduct listed and otherwise can be complained to the appropriate Medical Council for disciplinary action. The Council has the power to prescribe any punishment they deem necessary or cancel a physician's registration for their negligent behavior but it doesn't have the power to adjudicate or provide compensation to the victim. Registration can be cancelled for a temporary period as well as permanently and such deletion from

the Register shall be publicized in local press and the publications of different Medical Associations/ Societies/Bodies.

Revised Dentists (Code of Ethics) Regulations, 2014:

- **Punishment and Disciplinary Action (Para 9)-** Similar to the above punishment, a Dental Council can prescribe any punishment they deem necessary or cancel a physician's registration for their negligent behavior. The removal can be for a temporary period or permanent.

What are the Role of Consumer Protection Act, 2019 in case of Medical Negligence?

In ***Indian Medical Association vs. V.P. Shantha*** **(1995)** the Hon'ble Supreme Court observed that the medical practitioners are covered under the Consumer Protection Act, 1986 and the medical services rendered by them should be treated as services under section 2(1)(o) of the Consumer Protection Act, 1986.

- They continue to fall under the definition of services provided under Section 2(1)(o) of the new Consumer Protection Act of 2019. Section 2(1)(g) of the Act defines 'deficiency', which includes any act of negligence or omission or commission which causes loss or injury to the consumer and deliberate withholding of information to the consumer affecting the consumer.

Where can a Complaint of Medical Negligence be filed?

- **Consumer Forum:**

  District Forum: Claims up to 50 lakh rupees

  State Forum: Claims between 50 lakh to 2 crore rupees

  National Forum: Claims of more than 2 core rupees

- **Criminal Court**: Lowest Grade Competent Court to try it according to the offence.
- **State Medical Council**: It has the power to suspend the license of the doctor.

Filing a consumer complaint in case of medical negligence essentially brings the issue under **civil liability**, and such a case will be determined by applying the test of reasonable care and skill. In a civil case, the court can award compensation.

Criminal liability can be invoked by filing a complaint in a criminal court under the Indian Penal Code as mentioned above. The burden of proof in civil liability is on the balance of probabilities, while the burden of proof in criminal liability is beyond reasonable doubt.

With whom does the Burden of Proof lie in the case of Medical Negligence?

In a case of medical negligence, the burden of proving that the doctor did not exercise reasonable care lies on the patient.

- The patient shall successfully establish all of the essentials of medical negligence such as the existence of the patient-doctor relationship, the duty of care owed by the doctor to the patient, breach of said duty by the doctor and finally an injury caused due to such breach.

However, in cases where medical negligence is apparent on the face of it, for example, if surgery was supposed to be done on the left leg but the doctor operated on the right leg, the burden of proof might shift onto the doctor.

Are there any Defences available for doctors in case of Medical Negligence?

The best defence available to a doctor in a case of medical negligence is that he performed his functions with utmost care and to the best of his abilities. In ***Kusum Sharma & Ors vs. Batra Hospital and Medical Research (2010)***, the Supreme Court held that a case of medical negligence has to be decided on the basis of the facts and circumstances of the case. **An allegation will not lead to the blind presumption that the medical professional has committed negligence.**

- Facts such as the medical institution where the alleged incident took place is a **registered institution** and the accused is a registered practitioner, all point to the credibility of the institution as well as the accused. As mentioned above, it is the patient who alleges who will then have to show the injury caused due to the breach of the duty owed by the medical professional.
- The **Karnataka Private Medical Establishments Act of 2007** makes it mandatory for all private medical establishments in Karnataka where investigation, diagnosis and preventive or curative or rehabilitative medical treatment facilities are provided to the public to get registered adhering to the terms and conditions prescribed.
- The **Mental Healthcare Act, 2017** requires the Central Authority as well as the State Authorities to maintain a register of mental health professionals, nurses and psychiatric social workers and makes it an offence to knowingly serve in an establishment which is not registered under this Act.
- **Contributory negligence:** This is when the patient's own negligence or carelessness contributed to the harm or injury caused by the doctor. ***However, this defence does not absolve the accused from his liability entirely but only reduces it proportionately to the extent of the patient's fault.***
- **Emergency:** This is when the doctor acted in good faith and with due care in an emergency where there was no time to obtain consent or follow standard procedures.
- The Supreme Court in ***Dr. Suresh Gupta vs. Govt. of NCT of Delhi (2004)*** acquitted the doctor who was convicted of causing the death of a patient due to excessive bleeding during a nose surgery, as the prosecution failed to prove that the doctor's act amounted to gross negligence or recklessness.

Further, the following general exceptions provided in the Indian Penal Code can also be used as defences by a doctor:

- **Section 80 -** Accident in doing a lawful act —Nothing is an offence which is done by accident or misfortune and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution. **(Section 18 of Bharatiya Nyaya Sanhita - BNS)**
- **Section 81-** Act likely to cause harm, but done without criminal intent, and to prevent other harm, is not an offence. **(Section 19 of Bharatiya Nyaya Sanhita - BNS)**
- **Section 88 -** Act not intended to cause death, done by consent in good faith for a person's benefit, is not an offence. **(Section 26 of Bharatiya Nyaya Sanhita - BNS)**
- **Section 92 -** An act done in good faith for the benefit of a person without consent is not an offence. For example, A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation is immediately performed. There is no time to apply to the child's guardian. A operates despite the entreaties of the child, intending, in good faith, the child's benefit. A has committed no offence.

What is the role of an Expert Witness in a Medical Negligence case?

When the alleged negligence is not apparent in the face of it, the courts will seek the opinion of an expert in the field. An expert witness in a medical negligence case could be another qualified and experienced professional in the field.

An expert witness in a medical negligence case has two functions

- Firstly, to explain the technical issues involved in the case in simple terms.
- Secondly, to assist the court in determining whether the alleged medical negligence has taken place or not.

Can a hospital be held vicariously liable in a case of Medical Negligence?

Hospitals can be held vicariously liable for harm caused to patients due to the negligence of their employees. In the recent case of ***Gyan Mishra v. Sahara India Medical Institute Ltd., (2019)*** National Consumer Disputes Redressal Commission, held the hospital vicariously liable for a doctor writing a prescription negligently, and the complainant was entitled to an aggregate of Rs. 30 Lakhs from the Hospital.

In ***Aparna Dutta v. Apollo Hospitals (2002)*** Enterprises Ltd. the Madras High Court held that the hospital is responsible for the medical services it offers, even if the doctors and surgeons are not directly employed by the hospital.

There is a growing instance of violence against Medical Professionals connected with Medical Negligence cases, are there any laws in place protecting them from such violence?

- In 2019, medical professionals in West Bengal went on strike after two junior doctors were attacked by the public. Several such accounts of violence against medical professionals on the allegation of medical negligence have been reported in the State.
- In March 2023, a doctor from Calicut, Kerala was attacked by the family of a pregnant woman alleging that the baby died because there was a delay in her treatment.

These are only some of the incidents reported in the recent past in India. Healthcare professionals have been demanding a comprehensive law protecting them from the growing violence across the country which is mostly associated with allegations of medical negligence. This has not been materialized so far; however, there are other statutes that afford protection to healthcare professionals from violence.

The Epidemic Diseases (Amendment) Act, 2020 ("the Ordinance") [During Epidemic only] have increased punishments for certain crimes related to medical negligence in comparison to the **Indian Penal Code, 1860:**

- **Violence causing Hurt-** Imprisonment between three months and five years, with a fine between fifty-thousand rupees and two lakh rupees is prescribed under the Ordinance. IPC imposes imprisonment up to one year, with a fine up to thousand rupees, or both.
- **Violence causing grievous hurt-** Imprisonment between six months and seven years and a fine between one lakh rupees and five lakh rupees, is given under Ordinance. IPC states that Voluntarily causing grievous hurt is punishable with imprisonment up to seven years and a fine.
- **Damage to property-** The Ordinance states that the punishment for this crime is imprisonment between three months and five years, and a fine between fifty-thousand rupees and two lakh rupees. Under IPC, Loss or damage to the property worth Rs 50 or more is punishable with imprisonment up to two years, or fine, or both.

The **Healthcare Service Personnel and Clinical Establishments (Prohibition of Violence and Damage to Property) Bill, 2019** sought to punish violence against healthcare professionals and damage to property and the punishments ranged from five years to ten years and with a fine from five lakh to ten lakh rupees.

ADVISORY ISSUED BY UNION MINISTRY OF HEALTH & FAMILY WELFARE:

To prevent violence against doctors, the Union Ministry of Health & Family Welfare has advised States and Union Territories to consider the following:

- Security of sensitive hospitals is to be managed by a designated and trained force.
- Installation of CCTV cameras and round-the-clock Quick Reaction Teams with effective communication/ security gadgets particularly at Casualty, Emergency and areas having high footfalls.

- Well-equipped centralized control room for monitoring and quick response, Entry restriction for undesirable persons, Institutional FIR against assaulters.
- Display of legislation protecting doctors in every hospital and police station, Appointment of Nodal Officer to monitor medical negligence.
- Expeditious filling up of vacant posts of doctors and paramedical staff in hospitals/ Primary Health Centres (PHCs) to avoid excessive burden/pressure on doctors and to maintain the global doctor-patient ratio.
- Better infrastructural facilities and medical equipment and provision of extra monetary incentives for the doctors and paramedical staff serving in hard/remote areas as compared to major and metro cities with better career prospects, etc.

What is Professional Indemnity Insurance Policy?

It is an insurance plan to financially safeguard medical practitioners against legal costs and claims for compensation by the patients in case of a legal row.

Mostly, the professional indemnity policy offers cover to the medical practitioner depending on the features of the policy, such as:

- Cost of defending oneself in the court of law.
- Third-party damages.
- The extent of financial damage or loss to the victim which is not a result of willful neglect. Unintentional errors and omissions.
- Out-of-court settlements
- Damages awarded by the court.

What can be done to avoid Medical Negligence?

- The doctor should inform the patient about all the symptoms before commencing treatment.
- The patient must be given access to all medical records and be allowed to ask questions about his/ her health condition without hesitation and must obtain consent either from him or his guardian before proceeding until and unless there is an immediate life threat.
- Laboratory tests should be carried out but they are necessary for a successful diagnosis, and any laboratory test results that are reported back must include an explanation of what those results mean in relation to the illness being treated by the physician or specialist.
- A hospital should have properly trained Staff and Doctors, if he does not have the skill or degree required to treat that disease then he must refer to someone who has it.

CASE STUDY

Nikhita was an adult of 25 years living in Delhi and was an obese person. She aspired to be a model and therefore was on a regular diet. On a routine visit to the hospital, she was informed by her bariatrician (doctor who specialises in obesity-related disorders) that she could undergo bariatric surgery for her weight loss and obesity-related disorders. She was kind of attracted to the benefits of such a surgery and decided to give it a try. After all the required medical evaluation, bariatric surgery was performed on her. She was discharged from the hospital and within a few days she started experiencing complications and increased weight to pre-surgery. This was the side effect of the surgery which she wasn't prepared for. Further, there was no informed consent regarding the same. A case was filed before the Consumer Forum and also before the State Medical Council for negligence.

The complaints of medical negligence can be filed with the Medical Superintendent of the concerned hospital. The complaint can be filed to the state Medical Council and also to the Medical Council of India. The victim can also file a complaint with the Consumer Forum/ Commission, Civil Court and Criminal Court as the case may be, for seeking damages arising out of medical Negligence.

SCHEDULED CASTE AND SCHEDULED TRIBE ACT

Who are Scheduled Caste and Scheduled Tribes?

In India, Scheduled Castes are groups within the Hindu caste system that have historically been deprived, oppressed, and socially isolated owing to historical practices.

- Only marginalised Hindu communities are considered Scheduled Castes in India, as per The Constitution (Scheduled Castes) Order, 1950.
- According to the 2011 Census, there are 16.6 percent Scheduled castes in India which translates into around 166,635,700 individuals.
- Further, as per Article 366(25) of the Constitution of India the Scheduled Tribes is defined as; Such tribes or tribal communities or part of or groups within such tribes or tribal communities as are deemed under Article 342 of the Constitution to be Scheduled Tribes.

What is the law on Schedule Caste and Scheduled Tribes?

The Constitution of India is rich in provisions that protect the rights of the Scheduled Castes (SCs) and Scheduled Tribes (STs).

- Article 15 prohibits discrimination based on caste, religious, racial or regional discrimination. It also deals with historical segregation and other hardships faced by SCs.

- This guarantees that no person can be discriminated against on the grounds of his/her caste.
- According to Article 46, it shall be the duty of the state to promote with special care the educational and economic interests of the weaker sections of society, particularly SCs and STs.
- SC/STs have been provided reservation in seats for admission in educational institutions as well as in jobs under public sector due to their historical marginalization.
- The Scheduled Tribes and Other Traditional Forest Dwellers Act, 2006 safeguards the rights of tribal people in forest areas, including the right to free and prior informed consent in cases of displacement.
- The Protection of Civil Rights Act, 1955, prohibits the practice of untouchability in any form.
- The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, aims to deter crimes against SCs and STs.
- The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013, bans the practice of manual scavenging, recognizing it as dehumanizing.

What is the primary objective of the SC/ST Act?

The primary objective of the SC/ST Act is to deliver justice to the marginalized through proactive efforts, ensuring them a life of dignity, self-esteem, and a life without fear, violence, or suppression from the dominant castes.

The Schedule Caste and Schedule Tribes ? (Prevention of atrocities Act)

The Act defines actions targeting SCs/STs as criminal offenses, with recent amendments introducing new categories of offenses.

- These new offenses include demeaning acts like garlanding with footwear, compelling manual scavenging, using caste-based insults, fostering animosity, and enforcing social boycotts.
- Additionally, assaulting or sexually exploiting SC/ST women, engaging in unwanted physical contact, uttering sexual remarks, or involving them in practices

like dedicating them as devadasis are considered offenses.

- Denying SCs/STs access to common resources or entry into places of worship, educational institutions, or healthcare facilities also constitutes an offense.
- The court is mandated to assume that the accused was aware of the victim's caste unless proven otherwise, particularly if there is a prior relationship between the accused and the victim or their family.
- Penalties are stipulated for public servants who neglect their duties towards SCs/STs, such as failing to register complaints.
- Certain offenses under the Indian Penal Code against SCs/STs, carrying sentences of less than 10 years, have been included as punishable offenses under this Act.
- Special courts and public prosecutors are designated exclusively for the speedy adjudication of cases under the Prevention of Atrocities Act.
- Furthermore, the amendment introduces a chapter on the rights of victims and witnesses, emphasizing the state's responsibility to ensure its enforcement. Courts are empowered to protect witnesses by concealing their identities, swiftly address complaints of harassment, and resolve cases within a two-month timeframe.

What are the atrocities prohibited under the SC/ST Act?

If any member who is not a SC/ST and does the following with any SC/ST, the same is liable to punishment under the SC and ST. They are mentioned below:

- Putting in mouth or forcing to drink or eat any inedible or obnoxious substance
- Dumping waste (such as excreta, sewage) in or at entrance of premises
- Garlands footwears or parades naked or semi-naked
- Any act which is derogatory to human dignity
- Interferes with enjoyment of land, rights, forest rights etc.
- Forcing to do '*begar*' or any other form of bonded labour
- Forcing to do manual scavenging
- Interfering with his exercise of free vote in the election.
- Institute false, malicious or vexatious suit or criminal or other legal proceedings
- Gives false or frivolous information to public servant
- Insults, intimidation, or humiliation
- Promoting feelings of enmity, hatred or ill-will
- Sexually abusing (verbally or physically) any women
- Corrupts or fouls or denies entry to any community resources
- Causing economic and social boycott

Minimum punishments range from 6 months to one year.

What are the provisions on untouchability?

Untouchability is neither defined in the Constitution nor in the Act. It refers to a social practice that looks down upon certain depressed classes solely on account of their birth and makes any discrimination against them on this ground. Their physical touch was considered to pollute others.

- Article 17 of the Constitution of India prohibits untouchability.
- **The Protection of Civil Rights Act of 1955** bans such acts of untouchability and provides for punishment regarding the same.
- It prohibits discrimination in religious institutions such as temples on grounds of untouchability.
- It abhors economic boycotts by providing punishment for refusing to sell goods or render services.

Illustration:

- *Restricting the entry of a Dalit person in the temple on grounds of his birth will amount to untouchability.*
- *Refusing to serve food in a restaurant to a Dalit person because of his caste will amount to untouchability.*

What is required to be done in case any practice of Untouchability is noticed or any atrocities committed against any member of SC/ST Community?

The person affected by the same may approach the Police Station covering the area of such an incidence and register a First Information Report (FIR). As per the Supreme Court guidelines, the registration of FIR by the police is mandatory.

What are the Rights of victims and witnesses as per the SC/ST Act?

In 2016, the Parliament made amendments to the SC/ST (Prevention of Atrocities) Act, introducing **Section 15A** to ensure the protection of victims and witnesses. This section includes several crucial provisions aimed at safeguarding their rights:

- **Protection against Intimidation:** Victims, their dependents, and witnesses must be shielded from intimidation, coercion, violence, or threats by the state.
- **Fair Treatment:** Victims are entitled to fair treatment, respect, and dignity regardless of their age, gender, education, or economic status.
- **Notice of Court Proceedings:** Victims and their dependents have the right to timely notice of court proceedings and the option to request the summoning of parties or the production of documents.
- **Right to be Heard:** Victims have the right to be heard during court proceedings and to submit written statements.
- **Comprehensive Protection:** The Act provides for complete protection, including travel and maintenance expenses, social-economic rehabilitation, and relocation during investigation, inquiry, and trial.
- **Protection of Witnesses:** Measures can be taken to conceal the identities of witnesses, and the Special Court must be informed about the protection provided.
- **Recording of Complaints:** Investigators and police officers are mandated to record complaints of intimidation or violence and provide free copies of First Information Reports.
- **Video Recording of Proceedings:** All proceedings related to offences under this Act must be video recorded.
- **Scheme for Victims' Rights:** The state must specify a scheme to ensure the rights of victims and witnesses, including providing relief, protection, maintenance expenses, legal aid, and information about the case's status and proceedings.

Additionally, the Prevention of Atrocities Amendment Act, 2015, under Section 3(1)(p), safeguards victims against false cases filed by perpetrators, while Section 4 holds public servants, including police officers, accountable for neglecting their duties under the Act.

What relief is provided to a SC/ST person affected by atrocities?

An SC/ST victim of gang rape, murder, or an acid attack is entitled to a minimum compensation of Rs 8.5 lakh from the state government, in what is a significant enhancement of relief for such crimes through an amendment to the rules by the Centre.

- The Centre has amended the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 now specifying as many as **47 categories of offences** in which states will pay compensation ranging from Rs. 1 lakh to Rs. 8.25 lakh to SC/ST victims.
- The enhanced amounts now must be paid by the state within 7 days of the incident being reported, either in full or at various stages of the investigation and trial, as per a schedule.

The compensation for each offence can be checked here - https://ncsc.nic.in/files/PoA%20Amendment%20Rules,%202016.pdf

Are there any helplines to contact in cases of emergency?

The National Helpline with Self-service Portal for prevention of atrocities on members of SCs/STs across the country is – 14566.

- This helpline is accessible every minute in Hindi, English, and other local languages.
- The helpline guarantees that each complaint is registered as a FIR, relief granted, all filed complaints are enquired into and all chargesheets prepared are pursued in courts for verdict within the time schedule specified in the Act.
- All victim related provisions of the POA Act, 1989 & PCR Act, 1955 are monitored and enforced through communications/reminders with State/UT implementing agencies by way of SMS/E-mails.
- This helpline adopts a single window redressal system and has an effective feedback system.

What is an SC/ST certificate?

An SC/ST certificate serves as proof of belonging to a specific caste or community, issued by the state government and recognized nationwide.

- Its purpose is to enable individuals from these groups to access educational and employment reservations.
- The validity of an SC/ST certificate varies from state to state.
- In general, **these certificates are valid for one year from the date of issue**.
- After that, they **need to be renewed**.
- However, in **some states, these certificates are valid for three years**.

What is the procedure to apply for the SC/ST certificate?

The process of applying for an SC/ST certificate consists of these steps which are different in various states.

The process of applying for an SC/ST certificate varies across states, but typically involves these steps:

- **Obtain the application form**: Get the form from the local tehsil, revenue office, or state government website.
- **Fill out the form**: Provide personal details like name, address, date of birth, and caste.
- Attach supporting documents: Include birth certificate, school records, voter ID, ration card, etc.
- **Submit the form**: Take the completed form and documents to the tehsil or revenue office.
- **Verification**: Authorities will verify the information and documents provided.
- **Certificate issuance**: If everything checks out, the SC/ST/OBC certificate will be issued.

Documents required include proof of identity and address (e.g., voter ID, Aadhar card), birth certificate, caste certificate, and a passport-sized photo.

Who are the authorities governing and catering to the welfare of SC/STs in India?

The National Commission for Scheduled Castes (NCSC) is a constitutional body aimed at protecting the interests of scheduled castes in India.

- It works to prevent discrimination and exploitation of the SC community and strives to uplift them.
- Article 338 of the Indian constitution establishes this commission.
- Established by the 89th Amendment Act, 2003, the National Commission for Scheduled Tribes (NCST) is a constitutional body dedicated to the economic development of Scheduled Tribes in India, governed by Article 338.

What is the process to designate a caste/tribe as SC/ST respectively in India?

The criteria to designate a caste/tribe as SC or ST is as follows:

- Criteria for a caste to be classified as SC: They need to have extreme social, economic and educational backwardness due to traditional and customary practices of untouchability.
- Criteria for a tribe to be classified as ST: The community is geographically isolated, they have primitive traits and distinctive culture, shyness of contact with the larger Indian community and backwardness.

Other than the constitutional provisions, the Government has laid down certain Modalities in 1999, which was later amended in 2002 for processing modifications in the SC/ST List.

- It states that only proposals of the concerned State Government or Union Territory Administrations, which are then approved by the Registrar General of India (RGI) and the National Commission of Scheduled Castes [in case of SCs], and the RGI and National Commission of Scheduled Tribes [in case of STs], are further in accordance with the relevant provisions of the Constitution and Legislations, shall be accepted and added to the SC/ST list.

What are the functions of the National Commission for Scheduled Castes?

Its functions include:

- Monitoring and investigating issues related to the constitutional safeguards for SCs.
- Addressing complaints regarding violations of SCs' rights and safeguards.
- Advising central and state governments on the socio-economic development of SCs.
- Providing regular reports to the President on the implementation of these safeguards.
- Recommending measures to enhance the socio-economic development and welfare of SCs.
- Undertaking any other activities aimed at the welfare, protection, development, and advancement of the SC community.

What are the functions of the National Commission for Scheduled Tribes?

The functions of the NCST include:

- Monitoring and investigating matters related to the constitutional safeguards for Scheduled Tribes.
- Addressing specific complaints regarding the deprivation of rights and safeguards for STs.
- Participating in and advising on the planning of socio-economic development for STs and assessing the progress of development activities.
- Submitting annual reports to the President on the implementation of safeguards.
- Providing recommendations to central and state governments on measures needed for the protection, development, and welfare of STs.
- Undertaking various other activities aimed at the welfare, protection, development, and advancement of STs.

CASE STUDY

Adithya, a college student belonging to a Scheduled Tribe, faced relentless bullying and discrimination from his classmates based on his social identity. Despite seeking help from teachers and mentors, he found no relief. His college environment became hostile due to derogatory remarks and mistreatment from his peers. The bullying escalated to physical violence when he refused to succumb to their demands, leaving him emotionally distressed and physically harmed. His parents decided to seek justice through legal means witnessing his suffering and the failure of the educational institution to address the issue.

Upon approaching the police, Adithya and his family found a compassionate Officer in charge, who not only facilitated the filing of an FIR but also provided guidance and support throughout the legal proceedings. Adithya underwent a medical examination to document his injuries which served to be crucial evidence in his case.

The availability of concrete evidence, including video footage captured by a fellow classmate, strengthened Adithya's case. The perpetrators were apprehended, and the evidence presented before the magistrate left no room for doubt regarding their culpability. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, was invoked to ensure justice in accordance with the law. The perpetrators were convicted and sentenced to imprisonment, setting a precedent for accountability in cases of discrimination and violence against marginalized communities.

LOK ADALATS

What is a Lok Adalat?

In India, there is a particular kind of Alternative Dispute Resolution (ADR) process known as a Lok Adalat, which means "People's Court" in Hindi.

- It is a forum where disputes/cases pending in the court of law or at pre-litigation stage are settled/ compromised amicably.
- Lok Adalats are built on the ideas of conciliation and compromise, with the main objective of offering a quick and economical way to settle disputes.
- Lok Adalats have been given statutory status under the Legal Services Authorities Act, 1987.

How is a Lok Adalat different from a regular court?

There are several significant ways that a Lok Adalat varies from an ordinary court.

- First, it prioritizes amicable settlements over adversarial litigation and operates upon the conciliation and compromise of the dispute.
- Second, it is a quick and informal process that frequently concludes cases in one or two sitting.
- Third, participation is frequently voluntary, and agreements are made with the parties' consent, making the results legally binding.
- The lack of court fees in Lok Adalats further promotes accessibility and affordability.
- Regular courts, in contrast, contain formal legal processes, longer and frequently more expensive litigation, and rulings are enforced by the judge rather than reached via mutual agreement.

What types of disputes can be resolved through Lok Adalats?

Lok Adalats can resolve a variety of disputes, including those involving civil, criminal (compoundable offences) & family disputes.

- These cases cover a range of topics, including property disputes, marital conflicts, requests for compensation following car accidents, and even criminal cases where the parties are ready to resolve a compoundable dispute outside court.
- The versatility of Lok Adalats makes them a flexible substitute against conventional court proceedings and enables the resolution of both monetary and non-monetary problems.

How do you initiate a case in a Lok Adalat or ADR mechanism?

Initiating a case in a Lok Adalat or ADR mechanism begins when one party or both parties usually indicate their desire to resolve the dispute between themselves.

- The procedure varies depending on the jurisdiction, but in general, parties can approach the relevant authorities and file a request or application for conflict settlement, like the Legal Services authorities in India.
- Once the case is approved, a hearing date will be set, and both parties will be invited to attend.
- A mutually agreeable settlement will be sought through the use of qualified mediators or conciliators who will facilitate the proceedings.

Are the decisions arrived in Lok Adalats legally binding and how are they enforced?

Lok Adalats have been given statutory recognition under the Legal Services Authorities Act, 1987.

- Under the said Act, the award (decision) made by the Lok Adalats is deemed to be a decree of a civil court and is final and binding on all parties, and no appeal against such an award lies before any court of law.
- Lok Adalat' awards are enforceable through the ordinary court system and have legal authority.

- The other party may go to a regular court to request a judgement based on the Lok Adalat or ADR settlement if a party refuses to willingly comply with it.
- In order to assure compliance, this decree may then be enforced like any other court order utilizing a variety of legal remedies, such as the attachment of property or wages.

What are the advantages of approaching Lok Adalat?

The advantages of approaching a Lok Adalat has several benefits.

- **No Court Fee:** There is no court fee payable when a matter is filed in a Lok Adalat. If Court fee has already been paid, the amount will be refunded to the litigants, if their dispute is settled in Lok Adalat according to the rules.
- **Procedural flexibility & Speedy Trial**: The dispute trials are conducted quickly and with procedural flexibility. When evaluating Lok Adalat does not strictly follow the procedural laws. With the help of their counsels, the parties to the case can speak privately with the judge, which is not available in conventional courts of law.
- **Award Binding & Final**: The Lok Adalat's award is binding on the parties and has the legal force of a civil court's judgment, and cannot be appealed, thus it doesn't prolong the final resolution of a dispute.

What are the disadvantages of approaching Lok Adalat?

Although Lok Adalats have many benefits, they also have significant drawbacks.

- **First,** of all, their purview is restricted to certain types of cases and this forum might not be appropriate for resolving complex legal issues.
- **Second,** participation is frequently optional, which implies that both parties must consent to participate and that no one has the authority to compel them to do so.
- **Third,** the decisions do not always follow procedural laws which may raise questions regarding justice and consistency.
- **Fourth,** the location and skill of the conciliators or judges engaged can have an impact on the efficiency of the Lok Adalats' proceedings.
- **Fifth,** personal biases of the conciliators or judges may also define how the relief is given to a person.

How long does it typically take to resolve a dispute through Lok Adalat?

While the length of time it takes to settle a dispute through Lok Adalat can vary, it usually seeks speedy settlement.

- A lot of cases are resolved in one sitting, frequently in a matter of hours.
- Lok Adalat has become a significant key in reducing the burden of the judiciary.
- The functioning of the Lok Adalats incentivized and enhanced the resolution of over 50 lakh matters in 2017 alone.

Can you still approach a regular court if you do not agree with the award of a Lok Adalat?

Yes, if the parties are not satisfied with the award of the Lok Adalat they are free to initiate litigation by approaching the court of appropriate jurisdiction by filing a new case by following the required procedure, in exercise of their right to litigate.

- The parties must file a fresh case since there is no provision for an appeal against an award passed by a Lok Adalat.

Can you approach Lok Adalat when your case is pending in any court?

Yes, parties can approach Lok Adalat when the case is pending before a particular High Court or other Courts.

- The Doctrine of Res-Sub Judice, which prevents the simultaneous filing of the same case in multiple forums, is not applicable on Lok Adalat as it is one of the forums where disputes/cases pending in the

court of law or at pre-litigation stage are settled/ compromised and settled.

Can Lok Adalats handle cases involving multiple parties or complex legal issues?

Lok Adalats are typically best suited for resolving simple and non-complex disputes, and cases involving multiple parties or complex legal issues are typically not within their scope.

- Lok Adalats primarily focus on amicable settlements in matters of a more straightforward nature through mediation and conciliation, making them less appropriate for handling intricate legal disputes or cases with numerous parties, which may require a more comprehensive and formal legal process.

When is ADR mostly used?

Alternative Dispute Resolution (ADR) methods, such as mediation and arbitration, are mostly used when parties involved in a dispute seek a quicker, cost-effective, and confidential means of resolving their differences outside the traditional court system.

- ADR is particularly popular in commercial and business-related disputes, labor and employment matters, family disputes, and civil cases where parties prefer more flexibility and control over the resolution process.

What is the legal framework governing Lok Adalats in India?

Lok Adalats in India are primarily governed by the Legal Services Authorities Act, 1987.

- This act provides the statutory framework for the establishment, organization, and functioning of Lok Adalats, which serve as informal dispute resolution forums for the settlement of legal disputes, particularly those of a civil nature.
- Additionally, the National Legal Services Authority (NALSA) and State Legal Services Authorities play a crucial role in supervising and implementing Lok Adalats across the country.

What happens if the parties to Lok Adalat proceedings are not able to reach a compromise or settlement?

The Supreme Court has opined that once there is no compromise and/or a settlement between the parties before the Lok Adalat, then as per Section 20(5) of the Legal Services Authorities Act, 1987 the matter has to be returned to the Court from where the matter was referred to Lok Adalat, for deciding the matter on merits by the concerned court.

Are the decisions of Lok Adalats subject to appeal in regular courts?

Decisions of Lok Adalats are typically not subject to appeal in regular courts. The Legal Services Authorities Act, 1987, provides for the finality and binding nature of Lok Adalat decisions.

- Parties voluntarily participate in Lok Adalats, and once an amicable settlement is reached and recorded, it is considered a valid and legally binding agreement.
- However, if there are procedural irregularities or if the settlement is based on fraud or coercion, parties may seek redress in regular courts, but the merits of the settlement are not typically subject to appeal.

Can Lok Adalats handle criminal cases involving serious offenses?

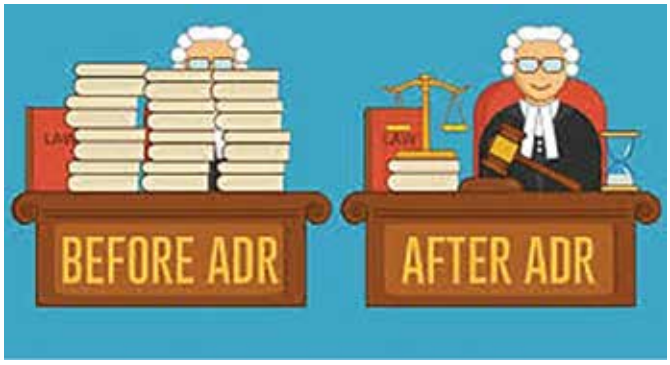
Lok Adalats do not handle criminal cases involving serious offenses. They primarily focus on civil disputes and minor criminal cases of a petty or compoundable nature.

- Serious criminal offenses, such as those involving heinous crimes, are dealt with by the regular criminal justice system in India, and not through Lok Adalats.

Are there any fees associated with Lok Adalat proceedings?

In Lok Adalat proceedings, there are typically no court fees or charges associated with the resolution process.

- Lok Adalats are designed to provide an accessible and cost-effective means of dispute resolution and the services are generally provided free of charge to the parties involved.



- This is in line with their objective of promoting access to justice and amicable settlement of disputes, particularly for individuals with limited financial means.

Is ADR legally recognized in all jurisdictions?

Alternative Dispute Resolution (ADR) is generally legally recognized and accepted in many jurisdictions worldwide.

- However, the specific recognition and regulatory framework for ADR can vary from one jurisdiction to another.
- While ADR methods like mediation and arbitration are widely accepted and encouraged in numerous countries, there may be variations in the extent to which they are formally recognized and regulated by law.
- It is essential to consult the laws and regulations of a specific jurisdiction to understand the legal status and requirements of ADR for a particular jurisdiction.

CASE STUDY

Shankar Gowda is a native of village in Mandya. He had purchased five acres of agricultural land to grow crops. After the purchase and registration of the land being made, he submitted the sale deed and relevant document to the competent authority to include his name in the mutation register as per the Karnataka Land Records Act 1958. He received acknowledgment of the receipt application. After a few years, Shankar Gowda wanted to apply to divert a part of his land for non-agricultural purposes and applied to the competent authority under the Karnataka Land Revenue Act 1964. During this time, it came to his notice that the Mutation register did not mention his name as the purchaser of the agricultural land. On an application, the competent authority replied stating certain reasons regarding the mutation register.

Thus, he approached the District Legal Services Authority (DLSA) for his grievances to be addressed. The DLSA mentioned that Lok Adalat shall be conducted by the DLSA and the Mutation Register cases can be referred to the Lok Adalat. Also, any pre litigation matter can also be referred to a Lok Adalat, and therefore DLSA referred Shankar Gowda's matter to the Lok Adalat by giving a notice to the competent authority under the Karnataka Land Records Act 1958.

Lok Adalats have the statutory status under the Legal Services Authorities Act 1987. The land revenue and land records matters constitute the greatest number of cases in the Indian Courts and as such Lok Adalats can be an effective way for speedy justice.

IMPORTANT HELPLINES FOR VICTIMS OF GENDER-BASED VIOLENCE

Ministry of Women & Child – Women Helpline	181
National Commission for Women	7827170170
CEERA-ProBono Number	9019645266
International Foundation for Crime Prevention and Victim Care (PCVC), Chennai Dhwani Crisis Hotline (NGO)	1800 102 7282 (Toll-Free), 9840888882 (WhatsApp), 6383743790 (Admin)
Shakti Shalini (NGO), Delhi	011-24373737, 9654462722 / 7838957810
Centre for Social Research (Non-profit organization, Delhi)	+91 011 46131929
Nationwide Police Helpline	1091
Kerala Police Helpline (Aparajitha)	9497996992
Karnataka Police Helpline	112, 080-22943224
Karnataka Police Helpline (Bangalore)	080-22943225
Mysore Police Helpline	0821-2418400.
Chandigarh Police Helpline	112 Women & Child Helpline No.- 0172-2741174
All India Women's Conference	(011) 23389680
JAGORI (NGO, Delhi)	(011) 41427460/26692700,+918800996640
Joint Women's Programme, Delhi	(011) 24619821

For more helpline, **visit http://www.ncw.nic.in/helplines**

GENDER-BASED VIOLENCE

What is gender-based violence?

Gender-based violence is violence directed against a person on account of their gender. Such violence is deep-rooted in gender inequalities and is a serious violation of human rights. Gender-based violence adversely impacts the physical, mental, emotional, sexual, social, and financial well-being of the victim. In its worst forms, gender-based violence can be a life-threatening issue as well.

- While persons of all genders can be victims of gender-based violence, the majority of the victims are women, girls, and transgender persons.
- This results in the terms "gender-based violence" and "violence against women" being used interchangeably.
- According to the United Nations,[1] "violence against women" is defined as *"any act of gender-based violence that results in or is likely to result in physical, sexual or psychological harm or suffering to women including such threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."*

What are the different kinds of violence that a woman faces?

Women may go through different forms of violence in their day-to-day lives. Some of them are:

- **Intimate partner abuse:** Any kind of abuse whether physical, sexual, mental, or financial, from a woman's partner is known as intimate partner abuse. This could include physical aggression, sexual coercion, psychological abuse, and controlling behaviours.
- **Sexual Abuse:** Sexual abuse would also include certain forms like sexual harassment, rape, corrective rape, sexual violence in conflict.
- **Femicide:** Femicide refers to the intentional murder of women or girls on account of theirgender and/or sex.
- **Female Foeticide**:This means the killing of a female foetus. This often stems from societal pressure and cultural norms that protect women and girls as burdensome.
- **Human Trafficking:** A horrific crime that exploits and victimizes individuals often based on their gender. Women, girls, and transgender persons are at a disproportionate risk of being trafficked. Trafficking involves various forms of exploitation, primarily forced labour, sexual slavery, and domestic servitude. The victims are often coerced or deceived through false promises of jobs, education, or a better life, then trapped in cycles of abuse and fear.
- **Female Genital Mutilation:** It is a procedure that involves partial or complete removal of the external genitals of a woman for non-medical reasons.
- **Online or cyber abuse:** The use of computers and the internet to harass, intimidate, threaten, or humiliate women or gender minorities is commonly referred to as cyber abuse. Crimes against women and gender minorities that are committed in the physical world such as stalking, can also be committed online. Additionally, new forms of crimes also emerge in cyberspace. For example, the era of modernisation has contributed to the emergence of issues such as deepfakes, cyberbullying, and non-consensual sexting.
- **Technological abuse:** The use of technology to control a person or to cause physical, sexual, psychological, or economic abuse.

What is the prevalence of gender-based violence in India?

According to the **2022 Report of the National Crime Records Bureau** (NCRB)[2] of India, 31,982 cases of rape; and 6,966 cases of dowry deaths, 182 cases of acid attacks, 17,003 cases of sexual harassment were reported in India.

Given the prevalence and pervasiveness of gender-based violence in India, as well as the lasting impact that violence has on the victims and their families, it is pertinent that urgent steps are taken by all to prevent, report, record the incidences of violence and also rehabilitate the victims and survivors of gender-based violence. An imperative step in this regard is to be aware in case an act of gender-based violence is carried out.

1 Article 1, Declaration on the Elimination of Violence against Women. UNGA/1994/Res/48/104.

2 National Crime Records Bureau, Ministry of Home Affairs, *Crime in India, 2022, Statistics Volume-I,* Table 1.2

ACID ATTACK

What is an Acid attack?

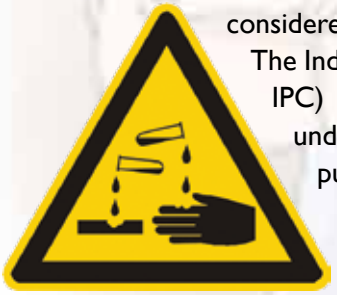
Acid attack is also known as acid throwing or vitriolage and results in severe pain, permanent disfigurement, infection, psychological trauma, and even blindness or loss of limb which makes acid attacks one of the worst and most heinous offences.

According to the National Crime Records Bureau, a total of 560 acid attack cases were registered in India.[3]

The elements of acid attacks are:

- Throwing or using acids in any form,
- Intending or knowing that such an act would
- Cause bodily injuries, burns, disfigurement, disablement, or bodily damage (permanent or partial).

How were the penal provisions related to Acid attacks implemented?



Until 2013, Acid attack was not even considered as a penal offense under The Indian Penal Code (hereinafter IPC) and it was covered under general laws such as punishment for grievous hurt and attempt to murder. But with the Criminal Law (Amendment) Act of 2013 was passed which changed the situation in India regarding acid attack laws.

What is the punishment for an acid attack?

- As per Section **326A of IPC** (**Section 124 of the BNS, 2023**) the minimum punishment for causing grievous hurt using acid is **ten years imprisonment** and the maximum punishment is **life imprisonment** and a **fine can be levied which shall be enough to bear all the medical expenses of the victim.**
- As per **Section 357A of CrPC**, **(Section 396 of BNSS)** the State Government in co-ordination with the Central Government shall establish a **Victim Compensation Scheme** and this compensation (not just for acid attack victims, but others as well) should be in addition to the fine levied for acid attack under the criminal provisions.[4]
- Attempting to throw acid is punishable with a minimum sentence of **five years imprisonment**, which may extend to **seven years**.[5] These offences are Cognizable and non-bailable.

> Cognizable offences are those offences that the police can arrest without an arrest warrant.
>
> In Non-Bailable offences, the accused cannot seek bail as a matter of right. It is the court's discretion whether to grant a bail or not.

Punishment for a Police Officer for failing to record information regarding an Acid attack: Section 166A of IPC (**Section 199 of BNS, 2023**) provides for rigorous imprisonment of six months, extendable to two years along with a fine, for a public servant who fails to record any information given to him under **Section 154(1)** of Code of Criminal Procedure, 1973 (CrPC) (**Section 173(1) of BNSS, 2023**) in relation to an offence of Acid attack.

Provisions on treatment of victims of crime:

As per **Section 357C** of **CrPC** (**Section 397 of BNSS)**, all hospitals (public/private) shall immediately provide medical treatment to Acid attack victims and shall immediately inform the police of such incidents (this provision is available to victims of sexual offense such as rape and gang rape)**.**

The person in charge of such hospitals can be punished with **imprisonment for a term up to one year or with a fine or with both** for violation of Section 375C of CrPC (Section 397 of BNSS).[6]

3 *Ibid.*

4 The Code of Criminal Procedure, 1973, § 375B; The Bharatiya Nagarik Suraksha Sanhita, 2023, § 396(7).

5 The Indian Penal Code, 1860, § 326B; The Bharatiya Nyaya Sanhita, 2023, § 124.

6 The Indian Penal Code, 1860, § 166B; The Bharatiya Nyaya Sanhita, 2023, § 200.

What are the special policies/ provisions available for acid attack victims?

In *Laxmi v. Union of India*,[7] the Supreme Court directed all State Governments and Union Territories to pay ₹ 3 lakhs to victims of acid attacks. The Court directed to pay ₹ 1 lakh within 15 days of the occurrence of the incident or when it comes to the notice of the concerned State or Union Territory for immediate medical expense and the rest of the amount should be paid within two months following this as compensation for aftercare and rehabilitation. Following this judgment, the **Ministry of Home Affairs issued an advisory statement to all States and Union Territories, urging them to be proactive in investigation, trial, treatment, and compensation.**[8]

The **Prime Minister's National Relief Fund (PMNRF)** also provides **financial assistance of ₹ 1 lakh to both female and male victims**. But if the incident had occurred before October 8, 2016 will not be eligible for such assistance, since the policy came into effect from that date.[9]

Several States also provide a **monthly pension** to Acid attack victims such as Haryana and Punjab.

The Rights of Persons with Disability Act, 2016 considers the injury caused by an Acid attack as a locomotor disability and provides for reservation in government jobs.[10]

Is there any regulation related to acid sales in India?

The sale of acid in India is regulated under the **Poisons Possession and Sale Rules** of the **Drugs and Cosmetics Act, 1940.** Additionally, the **Supreme Court of India issued guidelines in 2013 to regulate the sale of acids and curb acid attacks**.

Key points related to the regulation of acid sales in India include:

- **Retail Restrictions:** The sale of acid is restricted to licensed retailers, and individuals are required to provide proper identification and reasons for purchasing acid. Retailers are expected to maintain records of acid sales.
- **Age Verification:** Buyers are often required to be of a certain age, and retailers are instructed to verify the age and identity of the purchaser before selling acid. This is implemented to discourage impulsive or malicious use.

- **Record Keeping:** Licensed retailers are mandated to maintain records of acid sales, including details of the buyers and the purpose of purchase. This intends to create a traceable trail in case of misuse.
- **Quantitative Restrictions:** There are limits on the quantity of acid that could be sold to an individual at one time. This measure aims to prevent large-scale procurement for malicious purposes.
- **Strict Penalties:** Strict penalties, including imprisonment and fines, are specified for non-compliance with the regulations. This is to deter both sellers and buyers from engaging in illegal activities involving acids.
- **Awareness and Training:** The regulations emphasise the need for awareness campaigns and training programs to educate both sellers and the general public about the dangers of acid misuse and the legal consequences of violating the rules.

7 Laxmi v. Union of India, (2014) 4 SCC 427.
8 Ministry of Home Affairs, Government of India, *Advisory on expediting cases of acid attack on women*, 15011/66/2012-SC/ST-W.
9 Grant to Acid Attack Victims, https://pmnrf.gov.in/en/about/grant-to-acid-attack-victims (last visited on Apr. 04, 2024).
10 The Rights of Persons with Disability Act, 2016, § 34.

CASE STUDY

Sridevi, a woman aged 21 years, was waiting at a bus stop as she does every day to reach her college. Sridevi is from a socially backward community and her father is a carpenter. In her college, she often felt lonely and had no friends.

She was often teased by the boys of her college. On one Valentine's Day, she was approached by one boy with flowers. Sridevi refused the flowers. Despite an increase in such gestures from the said boy, Sridevi, not only declined but sternly refused to accept any further advancements. Subsequently, the boy began to stalk her enroute back home. Sridevi did not disclose this harassment to her parents, nor did she complain at her college fearing if it will adversely affect her education.

On the last working day of the college, while she was waiting for the bus at the bus stop, two boys approached her on a bike threw acid at her, aiming for her face. On being injured, she had a panic attack and was rushed to the nearest Government Hospital by the local police.

Acid attack causes physical, social, economic and physiological damage to the victim. Survivors struggle to lead a normal life as the stigma and trauma continues for a long time.

CYBER CRIMES AGAINST WOMEN

What is Cyber Crime?

Cyber Crime is a criminal activity that targets or uses a computer, a computer network or a networked device. With this particular invasion of networks, multiple kinds of crime can be committed. Thus, a computer is used as the medium to further some illegal ends. It could also be called as an attack on individuals, corporations, or governments.

How does cybercrime affect women?

The most common forms of Cybercrime affecting women are Revenge porn, Deepfakes, Cyber blackmail, Defamation, Stalking, and Cyberbullying.

As per the data provided by the National Crime Records Bureau, between 2021 and 2022, 14,072 cybercrimes against women were reported cumulatively in States and 337 cybercrimes against women were reported in Union Territories. including crimes such as cyber blackmailing, publishing obscene materials, morphing, and creating fake profiles.[11]

What are the Cyber-crimes against women under the Information Technology Act, 2000?

- **Identity Theft (Section 66C)** refers to False or Dishonest usage of another person's electronic signature, password, or other distinctive identifying features. Once convicted, the criminal can be punished with an imprisonment up to three years and a fine up to one lakh rupees.
- **Violation of Privacy (Section 66E)** means taking, sharing, or sending a picture of a person's private area without their consent or in a way that violates their privacy. The punishment of this crime includes, imprisonment up to three years, fine up to two lakh rupees, or both.
- **Publishing/Transmitting Obscene Material in electronic form (Section 67)** is also a crime under the Information Technology Act. The punishment in case of first conviction is up to three years of maximum imprisonment and a fine up to five lakh rupees and in the case of Second/ Subsequent conviction, the punishment ranges from imprisonment up to five years and a fine up to ten lakh rupees.
- **Publishing, transmitting, or aiding in the transfer of sexually explicit material in electronic form (Section 67A)** is a Cybercrime punishable with imprisonment of up to five years and a fine levied up to ten lakh rupees. On Second/ Subsequent conviction, the convict is punishable with an imprisonment up to seven years and a fine up to ten lakh rupees.

How to file a Cybercrime complaint in India?

Cyber-crimes may be reported using one of the following three ways:

- File a FIR with the nearest police station,
- Call the **National Cyber Crime Helpline Number** at **1930**, or
- File a complaint on the **National Crime Reporting Portal of India.**

The portal is an initiative of the Government of India to facilitate victims to report cybercrime complaints online. The Cyber Crime Portal[12] classifies crime reporting into three categories:

1. **Reporting of offences against women and children (Allows you to report them anonymously as well)**

11 National Crime Records Bureau, Ministry of Home Affairs, Crime in India, 2022, Statistics Volume-II, Table 9a.10.

12 https://cybercrime.gov.in/

2. Financial Frauds

3. Other Cyber-crimes.

The Portal is user-friendly and accessible. The detailed instructions on how to file complaints under each of these categories is provided in the portal itself.[13]

What is revenge porn?

- Revenge Porn is generally considered to be the sharing of sexually explicit or intimate images/ videos of their former partners without their consent. The videos or images that are circulated must have been obtained by consent by the partner during the relationship but then could further be used as a means of revenge on the partner later.

The District Court of Purba Medinipur delivered the first conviction in India relating to revenge porn in the case of the ***State of West Bengal v. Animesh Boxi.***[14] The District Court held that by uploading nude pictures and videos of the victim, the accused had committed virtual rape against her.

What is Deepfake?

Deepfake uses Artificial Intelligence (AI) to replace the likeness of a person with another in a video or audio. These are deep learning algorithms which teach themselves to solve problems with large sets of data and can be used to create fake content of real people.

Deepfakes are generally used for sextortion and harassment and can also be used to share explicit content of people as pornography on websites.

Few instances where the usage of Deepfake caused harm:

- In 2018, for example, a Belgian political party released a video of Donald Trump giving a speech calling on Belgium to withdraw from the Paris climate agreement. Trump never gave that speech, however – it was a deepfake.
- Recently, several actresses in India have fallen victim to deepfake technology wherein their faces were deep-faked into other women stirring controversy.

How to deal with Revenge porn and Deepfake in India?

Deepfake and Revenge porn, though not identified expressly as a crime in India, can be reported to the departments created by the government to facilitate victims to easily submit their complaints.

- **Section 499 of IPC** (**Section 356, BNS, 2023**) which makes defamation an offence can be used to register a case against deepfake.

Additionally, Information Technology, to invoke **Section 66D** of the **Information Technology Act, 2000** and **Rule 3(1)(b)** of the **IT Rules** can be invoked to social media platforms to remind that they are obligated to remove such content within stipulated timeframes in accordance with the regulations.

CASE STUDY

Latika, as a saleswoman in the regional office of a paper manufacturing company was in a relationship with Suraj, who was the assistant manager of the regional office. The relationship was toxic for Latika as Suraj used to demand her to be sexually intimate with him even though she was not ready to do that.

Due to persistent demands and coercion from Suraj, Latika gives in. Without her knowledge, Suraj made a video recording of Latika in a vulnerable state.

Few months after this incident, unable to stay in the relationship due to the toxicity she was being subjected to, Latika decided to end the relationship. Suraj did not take this well. He threatened Latika that he will leak the explicit video of Latika to her family members and friends from an anonymous account. Because of this, Latika was under immense stress mentally and emotionally.

Here, Suraj has committed the violation of privacy of Latika by taking videos of her in a vulnerable state without her consent which is a Cyber-crime.

13 For more details on how to file a crime against a woman in this portal, refer to: Crimes against Women and Children: User Manual for Reporting Cyber Crime Against Women and Children (CP/RGR)

14 State of West Bengal v. Animesh Boxi, GR/1587/2017.

DOMESTIC VIOLENCE

What are the objectives of the Protection of Women from Domestic Violence Act, 2005?

The Protection of Women from Domestic Violence Act, 2005 (hereinafter, "the Act") was enacted to protect the rights of women suffering from any form of abuse in a domestic setting and to provide a quick and effective remedy against such abuse to the victim. It simplifies the cumbersome legal regime and provides a fast solution in the form of civil remedy for a victim of violence for their protection and enforcement of their rights.

What is the meaning of domestic violence?

Section 3 of the Act defines domestic violence broadly to include not only physical beating, but any act, commission, omission, or conduct by the respondent that harms, injures, or endangers the health, safety, life, limb, or well-being, both mental or physical, of the aggrieved person, or tends to do so. This includes physical abuse, sexual abuse, verbal and emotional abuse, and economic abuse.

Any harm or harassment with a view of coercing the aggrieved person to meet any unlawful demand for valuable property, including that of dowry is also covered. Further, any such harm or threat of such harm to the aggrieved person or any other person related to the aggrieved person is also included.

- **Physical abuse** is any act that may cause harm, pain, or danger to any body part, life, or health and includes, assault, criminal intimidation, or criminal use of force.
- **Sexual abuse** includes any act sexual in nature that humiliates, degrades, or otherwise violates a woman's dignity.
- **Verbal and emotional abuse** includes any insult, ridicule, humiliation, and especially insults about not having a child or a male child.
- **Economic abuse** encompasses depriving the aggrieved person of entitled resources, such as necessities, stridhan, and jointly or separately owned property, including rental housing and maintenance. It extends to the disposal of any property the aggrieved person is entitled to or has an interest in, and includes prohibiting or restricting their use of facilities associated with their domestic relationship, like living in the shared house. **It is further stated that overall facts and circumstances are to be considered while determining whether the act or conduct is domestic violence or not.**

Who all are protected under the Act?

Section 2(a) of the Act defines an aggrieved person as a woman who is or was in a domestic relationship and alleges to be a victim of domestic violence in such relationship. The Act protects women of every age irrespective of their marital status. So, a domestic relationship means a relationship shared by the aggrieved person and respondent who live or at any point in time have lived in a shared household. This includes relationships by marriage such as wife, daughters-in-law, sister-in-law, widow, or any other member of the family, or blood relationships such as mother, sister, daughter, or other domestic relationships such as that by way of adoption, live-in relationships, or a woman illegally married.

The amount of time lived together by the aggrieved person and the respondent is not a factor in recognizing a domestic relationship. Judicial separation also does not change the nature of a domestic relationship. *Hence, a woman judicially separated from her partner can also seek remedy under the Act as an aggrieved person.*

What is the meaning of a shared household?

As per **Section 2(s)**, shared household means where the aggrieved person has lived or lives in a domestic

relationship with the person against whom the complaint is filed, either singly or jointly. **This includes all types of accommodations such as those owned or rented by the respondent, or which are singly or jointly owned or rented by the respondent and the aggrieved person or in which they have any right, interest, or title.** Such accommodation, which is owned by the joint family of which the respondent is a part, is also included in this.

Section 17 gives the aggrieved person the right to reside in a shared household and not to be thrown out without following the procedure which is prescribed by any law in force.

If she is thrown out of such a household, she can enforce her claim and brought back to the accommodation by an order of the Magistrate.[15] To enforce such right, two things need to be proved,

- that she was in a domestic relationship with the respondent and
- that the household in question is a shared household.

Even if the aggrieved person has not entered the shared household and lived there, it will be considered as a shared household if such aggrieved person has a valid right to reside in such household due to her relationship with the respondent or otherwise. Thus, time spent in the shared household is irrelevant.[16]

For example, if a woman is married and, due to custom prevailing in the area, does not go to the house of her husband for the initial period of marriage and lives at her parent's home, and during this period a feud arises between the woman and her husband, this would not preclude the woman from enforcing her right to reside in her husband's house, as that will be considered as a shared household as she has a valid right to live in that house.

Against whom a complaint under the Act may be filed?

Under **Section 2(q)**, a complaint under the Act can be filed against any perpetrator of domestic violence with whom the aggrieved person has lived in a domestic relationship at any point in time and it includes any female or a non-adult person also.[16]

Complaints can also be filed against male or female relatives of the husband or male partner (such as in a live-in relationship).

Who can report an incident of domestic violence?

As per **Section 4**, any person, including an aggrieved person, who has reason to believe that an act of domestic violence was committed, is being committed or is likely to be committed, may give information regarding the same to the concerned Protection Officer. Any such person giving the information in good faith shall incur no liability for the same.

Who is a Protection Officer and what are their duties?

A Protection Officer is appointed by the State Government and acts as a facilitator for an aggrieved person to seek any relief under the Act or protection from domestic violence otherwise.

The duties of the protection officer include:

- As per Section 9 of the Act, the Protection Officer complies a domestic incident report, in the manner given in Form-I of the 2006 Rules, on a complaint of domestic violence and forward such report to the local police station, concerned Magistrate, and local service providers.
- The Protection Officer assists the aggrieved person:

1. in making an application to the Magistrate for any relief under the Act,
2. getting legal aid,
3. getting shelter in a shelter home if required,
4. getting the aggrieved person medically examined,
5. in case bodily injuries are reported; sending such report to the concerned Magistrate and Police station,

15 The Protection of Women from Domestic Violence Act, 2005, § 19(a).
16 Prabha Tyagi v. Kamlesh Devi, AIR 2022 SC 2331.

and

6. ensuring that an order for monetary relief under the Act is carried out.

- The Protection Officer helps the Magistrate in discharging their duties under the Act, which includes service of notice to any party concerned for proceedings under the Act. The Protection Officer shall also maintain the list of all the service providers providing legal aid, counselling, shelter home facilities, and medical facilities.

Who is a service provider and what are their duties?

Any association having the objective of protecting women's rights, that is registered as a society or a company or under any other law can be registered as a service provider with the State Government. **These may include NGOs, companies, and voluntary organizations and they are duty-bound to assist women facing domestic violence such as services of shelter homes, medical and financial assistance, etc.**

It is the duty of the service provider to make a domestic incident report, in the manner given in Form-I of 2006 Rules, on a complaint of domestic violence and forward such report to the concerned Magistrate and Protection Officer. They shall also assist and help the aggrieved person in getting shelter under a shelter home if required and getting medically examined and forward such report to the Protection Officer and police station.

What are the duties of a police officer under the Act?

On receiving information of domestic violence being committed, the police officer is required to inform the aggrieved person about

- their rights and reliefs under the Act,
- services of Protection officers, service providers, and
- their right to free legal aid.

They are also duty-bound to proceed per the law if the information of domestic violence reveals any commission of a cognizable offence under any other law.

The police officers are also required to assist the aggrieved person, provide protection to them, and see that the orders given by the Magistrate under the Act are implemented under **Section 19(5)** of the Act.

Further, they are also required to assist the Protection Officer or the service provider in remedying a situation of emergency where an act of domestic violence is likely to be committed.

What steps can an aggrieved person take to remedy their situation?

An aggrieved person may approach the local police station and lodge a complaint there or may go to any local service provider or Protection Officer or directly approach the concerned magistrate to make a complaint and obtain any relief.

It is the duty of the magistrate, police officer, Protection Officer, or the service provider, who has received the complaint of domestic violence to inform the aggrieved person about the remedies available to them under the Act. They also have the duty to inform the aggrieved person of her right to file a complaint under **Section 498A of IPC (Section 85 of BNS)** for the cruelty inflicted by her husband or his relatives.

Once the domestic incident report has been prepared by the Protection Officer or the service provider, on receiving such a complaint, it shall be forwarded to the magistrate and the local police station.[17]

An application can directly be made to the magistrate under Section 12 of the Act for seeking relief under the Act in the manner given

17 The Protection of Women from Domestic Violence Act, 2005, § 9(b), 10(a).

in Form-II of the Protection of Women from Domestic Violence Rules, 2006 (2006 Rules).

What are the remedies available under the Act to an aggrieved person?

There are various remedies present under the Act that can be availed by an aggrieved person. The table below lists such remedies. These can be sought by making an application to the concerned Magistrate in the manner given in **Form-II** of 2006 Rules. The Magistrate shall try to dispose of such application within sixty days from the first date of hearing.[18]

- **Protection Order (Section 18):** Upon prima facie satisfaction of domestic violence, the Magistrate can issue a protection order, restraining the respondent from committing or aiding such violence. This order may include restrictions on visiting the aggrieved person's workplace, communication, alienation of property, and violence against dependents or helpers.
- **Residence Order (Section 19):** The Magistrate can prevent the respondent from disturbing the aggrieved person's possession of the shared household, and may even direct the respondent to vacate it. Alternate accommodation arrangements and rental obligations may also be mandated, with enforcement through police direction.
- **Monetary Relief (Section 20):** Monetary compensation may be awarded to cover losses or expenses due to domestic violence, such as medical bills or loss of earnings. The relief must be reasonable and consistent with the aggrieved person's living standards, provided either as a lump sum or monthly payments.
- **Custody Order (Section 21):** The Magistrate can grant custody of children to the aggrieved person or their representative, with visitation arrangements for the respondent if deemed safe for the children's interests. Visitation may be restricted if it poses harm.
- **Compensation Order (Section 22):** The Magistrate can order the respondent to compensate the aggrieved person for injuries, including mental and emotional distress caused by domestic violence. Interim orders can be issued in the respondent's absence based on the aggrieved person's affidavit.

What if a protection order is violated under the Act?

A breach of a protection order issued by a Magistrate is punishable with imprisonment of either description for a term which may extend to one year, or with a fine which may extend to twenty thousand rupees, or with both.[19]

Is there any relief other than legal remedies present under the Act?

Other than the legal remedies listed above, the aggrieved person and respondent may also, either singly or jointly, avail of counselling services as may be directed by the Magistrate under **Section 14** of the Act. These services are provided by the service provider, and on the report of such counsellor, the court may take appropriate actions.

Further, an aggrieved person, a Protection Officer, or a service provider on their behalf may request shelter home facilities or medical aid from the appropriate institution, and such facilities shall be provided to the aggrieved person on such request.

Which court can hear and dispose of cases under the Act?

Section 27 of the Act provides that a Judicial Magistrate of first class or a Metropolitan Magistrate shall be the competent court to grant relief and try offences under the Act within whose jurisdiction: -

- the person aggrieved permanently or temporarily resides or carries on business or is employed; or
- the respondent resides or carries on business or is employed, or the cause of action has arisen.

18 The Protection of Women from Domestic Violence Act, 2005, § 12(5).
19 The Protection of Women from Domestic Violence Act, 2005, § 31.

CASE STUDY

Miya was being pressurized by her family to get married since she turned 25 years old. Due to the mounting stress of finding a suitor, Miya said yes to a proposal brought by her relatives who claimed that the guy is well-educated, earns handsomely and will take good care of her. Rohan and Miya got married after talking to each other for merely three months.

Soon after the wedding, Rohan and his family started treating Miya horribly. She was always burdened with domestic chores and was never given a break. Whenever she brings up the topic of finding a job to support herself, Rohan and her in-laws would discourage saying that she doesn't need a job as Rohan is managing her expenses. Miya always felt that she is forcefully being made dependent on Rohan when she is perfectly capable of supporting herself through a job.

Around six months into the marriage, Rohan and his mother started to beat and hurl abuses Miya whenever she tried to bring up any concern.

Here, Miya is an unfortunate victim of domestic violence by her husband and the in-laws. She is being abused mentally, emotionally, economically, physically, and verbally. This is unfortunately the story of many women in India. There is a prevalent social conditioning that domestic violence is part of marriages in India and that the wife will have to silently endure such abuses without complaining. However, such abuses are wrong morally and legally.

DOWRY HARASSMENT

What is Dowry?

Section 2 of the **Dowry Prohibition Act, 1961**, defines the term 'dowry' as property or valuable security shelled out or agreed to be bestowed, by the parents of one party to a marriage to the parents of the other party. It is pertinent to note that this Act is applicable to people from all religions. However, 'Dower or Mahr', governed by Muslim Personal Law is usually given as financial security for the women and shall not be covered under the sweep of this definition. Even *Stridhan* is not analogous to dowry.

The fundamental distinction between dowry and *stridhan* is that dowry possesses an element of 'coercion' where there is either a demand for dowry with an element of threat or it is made conditional to the marriage whereas *stridhan* is provided voluntarily. *Stridhan* also includes the bride's inherited or self-acquired property, as well as monetary or in-kind gifts from her husband's family. Another distinction is that dowry is regulated by the Dowry Prohibition Act of 1961, whereas *stridhan* is governed by the Hindu Succession Act of 1956.

Is receiving or giving dowry illegal in India?

Yes, according to the Dowry Prohibition Act, 1961, receiving, sending, demanding, or abetting the giving or receiving of dowry is strictly prohibited. Even the agreements concerning dowry shall be considered *void ab initio* (such agreements will be treated as they are void from the beginning; as if they never existed).

Punishments under the Dowry Prohibition Act:

- **Giving/taking dowry (Section 3)-** Imprisonment for at least 5 years or a fine not less than Rs. 15,000/the dowry amount.
- **Urging/demanding dowry (Section 4)-** Imprisonment for at least 6 months which can go up to 2 years or fine of Rs. 10,000/-.
- **Advertising an offer of dowry as a consideration for the marriage of their son or daughter, through any form of media (Section 4A)-** Imprisonment for a minimum term of 6 months and a maximum term of 2 years.

All the offences falling within the ambit of the Dowry Prohibition Act shall be considered non-bailable. Under this Act, people can be arrested without a warrant in such dowry-related cases. Wedding presents are often drawn up as dowry.

A wedding present is not illegal given that it is received without any demand and it falls under the list maintained in accordance with the rules made under the Dowry Prohibition Act, 1961. Even if the present is made on the bride's behalf, it must be customary in nature and its value should not be excessive in relation to the financial status of the person by whom, or on whose behalf, the present was given.

What special laws have been framed for the purpose of preventing harassment in relation to dowry?

- **Section 498A** of the **IPC (Section 85 of BNS)** penalises the brutal and cruel treatment given by the husband or the relative of the husband of a woman by punishing them with imprisonment for up to three years and a fine.
- Even, the **Protection of Women from Domestic Violence Act** has multifaceted provisions that can be passed down to put a stop to dowry-related violence so long as dowry is a reason for domestic violence.

- In addition to the aforementioned provisions, there are also laws relating to dowry death to deter people from engaging in cruelty towards women.

What is Dowry Death?

The death of a woman shall be contemplated as a dowry death falling within the purview of **Section 304B** of **IPC (Section 80 of BNS),** if:

- the death of a woman is caused by physical assault, unwarranted bruises, burns, or any other non-typical circumstances,
- within seven years of her marriage, and
- it can be shown that prior to her death she was exposed to savagery, inhumanity or violence by her intimate partner or the family members of her partner with respect to any demand for dowry.

Furthermore, **Section 113B** of the **Evidence Act (Section 118 of BSA)**, states that if it is proved that a person subjected a woman to cruelty in relation to dowry before her death, then the court presumes that the woman's death was a dowry death.

Similarly, if it is shown that a woman committed suicide within seven years from the date of her marriage and that her husband or a relative of her husband had subjected her to cruelty, the court may presume that such suicide had been abetted by her husband or by the relative of her husband.

CASE STUDY

Raj's family has been looking for a bride for her. They found Usha through mutual relatives and her family was also thrilled to have their daughter married to Raj not just because he was well-settled but also because his family did not ask for any dowry.

However, around three months after the wedding, Raj asked Usha all her gold jewelry to be kept as a security for some loan. Following this, Raj asked Usha to ask her father for 3 lakh rupees for some urgent renovation of his house. He convinced her that since it is her house as well now, this money is not asked as dowry. Usha's father gave the amount as asked. Soon enough, his family also started demanding Usha to bring money from her house for various needs. After a couple of demands, they started threatening her and to physically abuse whenever she was unable to meet their demands.

Their torture grew harsh each day and on an unfortunate day, Usha was found dead in her room. The police found a suicide note, however, the autopsy revealed that she had bodily injury all over her body and she had succumbed to those injuries inflicted by her in-laws, and they had fabricated the suicide note.

HONOUR KILLING

What is Honour Killing?

Honour killing refers to an umbrella of heinous crimes that involve the death of a family member at the hands or the behest of another family member.

- These killings are generally carried out in retaliation for the perceived shame or dishonour that has been brought to the family by the acts of the victim, typically by marrying or being in love with a person of another caste, religion, etc.
- Another circumstance where honour killings are prevalently seen is where the persons belonging to the same *gotra* choose to marry.
- It must be noted that *sagotra* marriages, inter-caste marriages, and inter-religious marriages are legal and protected by law.

While persons of all genders can be victims of honour killings, women and transgender persons are particularly vulnerable.

The patriarchal beliefs and underpinnings in Indian society have conditioned many to think that the honour and prestige of the family are vested in the women in the family. When women exercise their autonomy and choose a partner from a different community or against the will of the family, it is considered so dishonourable that they would rather have the woman dead. Transgender persons, on the other hand, are killed because their gender identity is seen as dishonourable to the image of the family.

Honour killings, though illegal in India, continue to be reported in various parts of the country. It's important to note that the reporting of honour killings can be challenging due to underreporting, social stigma, and the clandestine nature of such acts.

- **Uttar Pradesh (2023)**: A reported case of honour killing where a girl was axed to death by her father and two brothers for an alleged affair.
- **Haryana (2023)**: A young couple was brutally murdered by the girl's family for marrying outside their caste.

These cases highlight the persistent challenge of honour killings in India, despite legal provisions aimed at preventing such acts. The Indian government and various NGOs continue to work towards raising awareness, enforcing laws, and providing support for victims to combat the deeply ingrained societal norms that contribute to honour killings. Additionally, there have been efforts to sensitise law enforcement agencies and the judiciary to take strict action against perpetrators of honour killings.

What are the laws against honour killing in India?

The right to choose a partner/spouse of one's choice and the right to express one's self, including their gender identity, is an intrinsic aspect of dignity and is protected by **Articles 19 and 21** of the **Constitution of India**. Any crime committed in retaliation to transgression of customs, or cultural, religious or other social norms is liable to be punished.

Statutory provisions regarding Honor Killings:

- There is no provision of law per se on honour killings, however, they can be punished under **Sections 299, 300 and 302** of **the IPC (Sections 100, 101 and 103 of BNS)** which deals with murder.
- Attempt to commit honour killings is punishable under **Section 307 of IPC (Section 109 of BNS)**.
- Moreover, if a victim of the honour killing is a member of the Schedule Caste (SC) or Schedule Tribe (ST) and the perpetrator(s) is/are not a member(s) of the SC or ST, the perpetrator(s) may be tried under the **Scheduled Castes and Scheduled Tribes**

Note: Any offense carrying a ten-year imprisonment penalty shall incur a life imprisonment sentence if the victim belongs to the SC/ST community. [Section 3 SC/ST Act]

(Prevention of Atrocities) Act, 1989 (SC/ST Act) as well.

- Where the victim is a woman, honour killing and its attempt are also covered under the Protection of Women from Domestic Violence Act, 2005.

Who can be punished for honour killing?

Any person who is directly or indirectly responsible for killing or attempting to kill another person in the name of honour may be charged with the provisions provided above. This includes family members or anyone else involved in the planning, abetment, preparation, attempt, or execution of such killings.

An informal institution that advocates and aggravates the issue of honour killings in India is the ***Khap* Panchayat**. *Khap* panchayats are caste and class-based institutions wherein elder, upper-caste men regulate and control the functioning of the '*khap*' or clan formed of people believed to belong to the same lineage or 'gotra'. These institutions have no legal sanctity but are powerful in terms of social influence, as they have emerged as kangaroo courts that pronounce harsh punishments based on age-old customs and traditions.

The most visible issue with *khap* panchayats emerges when persons belonging to the same gotra or persons belonging to different castes choose to marry. Though these marriages are legal, *khap* panchayats, due to archaic customs, do not permit such unions. *Khap* Panchayats dish out punishments ranging from fines, and ex-communication, to the killing of the persons involved.

The Supreme Court has held *Khap* Panchayats' interference in marriages illegal.[20] Where members of the *khap* panchayat cause, encourage, promote, abet, attempt, or carry out honour killings, they may be charged with the same offences listed above.

What is the punishment prescribed in law against acts of honour killing?

The murder of persons in the name of honour may be punished with imprisonment for life or even death. Attempt to commit honour killings may be punished with a jail sentence of three years up to ten years or life imprisonment.

CASE STUDY

Raju and Geetha were in love and decided to get married defying societal norms, particularly regarding their caste. They got married on 12-01-2010 and fled from their hometown. The families sought the intervention of the Khap Panchayat, which condemned the marriage and imposed fines on anyone who dared to support the couple. However, the families' determination to uphold their honour led to the abduction and brutal murder of Raju and Geetha by their own relatives, including Geetha's grandfather, who was a prominent figure in the Khap panchayat.

Further, a case was registered with the local police and the matter was referred to the Hathras Sessions Court, by the cousin brother of Raju. The Court upon hearing the matter in detail, sentenced five perpetrators (Vijay, Anand, Anshuman, Shamu and Veeru) to life imprisonment, marking a significant departure from lenient punishments typically associated with honour killings. The driver involved in the abduction was sentenced to seven years rigorous imprisonment. The verdict sent a powerful message that caste-based violence and honor killings will not be tolerated, and perpetrators will be held accountable for their actions. The judgment in the case of Raju and Geetha signifies a pivotal moment in the fight against honour killings, highlighting the importance of upholding principles of equality, justice, and individual rights.

Illustrated from – Smt. Chandrapati vs State of Haryana And Others (Crl. Misc. No. M-42311 of 2007 (O&M))

20 Shakti Vahini v. Union of India, AIR 2018 SC 1601.

PREGNANCY-RELATED VIOLENCE

Pregnancy-related violence is a form of gender-based violence that generally occurs during pregnancy, childbirth, and the postpartum period.

What are the offences related to pregnant women under The Indian Penal Code, 1860?

The Indian Penal Code outlines several offences related to the termination of pregnancy, with the intent of protecting the health and well-being of pregnant women and their unborn children and taking into account the gravity and sensitivity of such acts. These offences address both voluntary and involuntary actions. The sections are listed below:

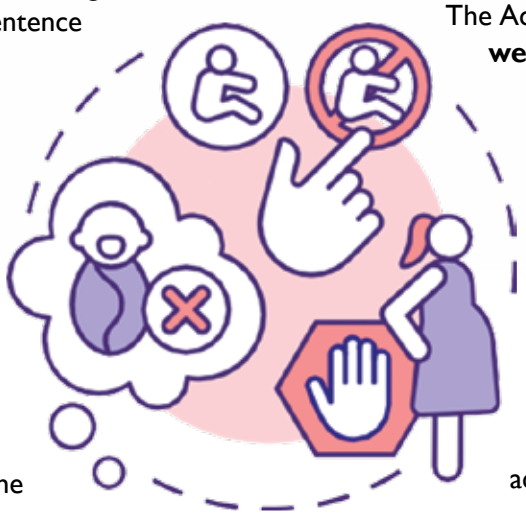
Voluntary Termination:

- **Section 312 of IPC (Section 88 of BNS): Causing Miscarriage:** Both attempting and intentionally causing miscarriage, by the woman herself or another person, carries a potential imprisonment of three years and a fine.
- **Section 313 of IPC (Section 89 of BNS): Causing Miscarriage without Woman's Consent:** Voluntarily inducing miscarriage without the woman's consent is a more serious offence, punishable by up to ten years imprisonment and a fine.
- **Section 314 of IPC (Section 90 of BNS): Causing Death by Inducing Miscarriage:** Intentionally inducing miscarriage with the aim of causing the woman's death constitutes a grave offence, attracting a ten-year sentence and a fine.

Act Affecting Childbirth:

- Section 315 of IPC (Section 91 of BNS): Preventing Child Birth or Causing Death

  After Birth: Attempting to prevent a child from being born alive or causing its death after birth is punishable by up to ten years imprisonment and a fine. However, an act done to protect the life of the pregnant woman is a recognised exception.



Does this mean that abortion is illegal in India?

The need for providing safe medical abortions was put forth in the early 1960s. With this intention, the **Medical Termination of Pregnancy Act, 1971** ("MTP Act") was brought in. The Medical Termination of Pregnancy Act granted immunity to Registered Medical Practitioners [RMP] and those seeking an abortion under specific circumstances.

Is the practice of abortion a constitutional right?

The Right to Abortion has been safeguarded under Article 21 of The Constitution of India. It has been interpreted by the Apex Court that Article 21 expands to the Right of a woman towards her reproductive choices, which includes the right to abortion. Further, it has been recognised that Reproductive rights are part of the woman's liberty rights, and such rights come under the Right to Privacy, Dignity, and Bodily Integrity and, thus, must be respected.[21]

What are the circumstances under which medical termination is allowed?

The conditions under which this termination is allowed laid out in **Section 3** of the **MTP Act** are:

- The abortion must be performed by a registered and authorised medical practitioner (RMP). The Act permitted abortions up to **20 weeks** (on the advice of two RMPs).
- Women can medically terminate their pregnancies before the completion of **20 weeks** of gestation if the pregnancy poses a *"risk to the life of the pregnant woman or of grave injury to her physical or mental health"*. The risk of injury to the health is determined by taking into account the actual or foreseeable

21 Suchita Srivastava v. Chandigarh Administration (2009) 9 SCC 1.

circumstances of the pregnant woman. For example, failure of contraceptive methods constitutes a grave injury to the mental health of pregnant women.

- If prescribed by an RMP, abortions using self-administered abortion pills are also permissible.
- Where there is a substantial risk that the child if born, would *"suffer from any serious physical or mental abnormality"*, medical termination is permitted irrespective of the length of the pregnancy, as long as the same is deemed necessary by a medical board.
- Medical termination of pregnancy is permitted at any time, irrespective of the length of the pregnancy, if there is a likelihood of danger to the life of the pregnant person.
- Medical termination may be carried out by either using self-administered abortion pills under the prescription of a registered medical practitioner or in a legally recognised medical facility.

When can the termination extend up to 24 weeks of gestation?

The Medical Termination of Pregnancy Act, 1971 generally allows for the termination of pregnancy before the completion of 20 weeks of gestation. **However, certain categories of women have the right to terminate their pregnancy before 24 weeks of gestation.**

These categories of women are:

- Survivors of sexual assault, rape, incest,
- Minors,
- Women who undergo a change in marital status during the pregnancy, i.e., widows and divorcees, or whose partner has abandoned them during the pregnancy,
- Women with physical disabilities or mental illnesses,
- Women carrying foetuses with malformation or physical or mental abnormalities,
- Women in humanitarian settings or disasters or emergencies,
- Women who have undergone material alteration in the circumstances of their lives.

Who is a Registered Medical Practitioner under this Act?

A medical practitioner is a person registered under the State Medical Register and qualified to practice under **Section 2(h)** of the **Indian Medical Council Act, 1956**. They must have experience or training in gynaecology and obstetrics.

How many doctors are required to recommend the termination of the pregnancy?

The following points highlight the recommended number:

- 0 to 20 weeks pregnant- One RMP
- 20-24 weeks pregnant- Two RMPs
- Beyond 24 weeks pregnant- A Medical Board will decide whether the termination of pregnancy is viable.

What is sex-selective abortion?

Sex-selective abortion is the practice of **terminating a pregnancy based on the sex of the foetus.** In India, this primarily extends to female foeticide wherein the female foetus is terminated because of the cultural preference of having a son.

What are the laws in India to prevent sex-selective abortions?

In addition to the provisions of the Indian Penal Code mentioned above, the Parliament has enacted the **Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994** to stop female foeticides. Pre-natal diagnostic techniques such as ultrasound machines must only be used to detect genetic abnormalities, metabolic disorders, chromosomal abnormalities, congenital malformations, haemoglobinopathies etc. The mere communication of the sex of the child to the relatives is a crime and the imprisonment can go up to three years.[22]

22 Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994, § 22(3).

CASE STUDY

Radhika is working in a health science-based journal and specialized in women health. She wanted to write an informative article on women undergoing psychological and sexual domestic violence during pregnancies. During the course of her research, she interviewed few community health centre workers in Bangalore rural district. Due to these conditions, they developed high risk pregnancies. Her research also gave her some inputs regarding the availability of health care facilities to treat such conditions. Astonished by such facts, she felt the necessity of establishing a community health centre specially to address the needs of such situations. She wrote in her magazine the existing lacunas in the health care system and said "it's the need of the hour to meet such situations with strong medical facility."

Reading her article in the magazine, a reputed chain of hospitals volunteered to establish and set up a dedicated team of doctors in their hospital premises. They assured round the clock medical and health care facility to the women in need. They also assured to conduct regular awareness programs.

RAPE

What is Rape?

Rape is generally understood as a sexual act that is forced upon one by another.

The Indian Penal Code under **Section 375[23] (Section 63 of BNS)**, defines Rape as:

A man is said to commit "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,

What are the statistics related to Rape cases in India?

According to the National Crime Records Bureau (NCRB) figures for 2022, a staggering 31,982 rape cases were reported between 2021 and 2022,[24] and out of these 2080 were gang rapes.[25]

It must be noted that hundreds of rape cases go unreported in India.

What are the essentials of rape under Section 375 in IPC (Section 63 of BNS)?

If the acts mentioned in **Section 375 of IPC (Section 63 of BNS)** are committed under the following circumstances, the act of that Man would amount to Rape. The circumstances are listed below:

- Against her will.
- Without her consent.
- Consent obtained under threat of death or hurt.
- With her consent but where the man knows he is not her husband but where she believes she lawfully married him.
- Where the woman is of unsound mind or is intoxicated or where he (directly or indirectly administers her any unwholesome substance, as a result of which she is unable to understand the nature and consequences of that to which she gives consent.
- Where she is under eighteen years of age.
- When she is unable to communicate consent.

Is consent an essential component of the offence to rape?

The absence of consent alone is sufficient to qualify as an offence of rape.

Consent has to be unambiguously defined, i.e., the woman must give an explicit, voluntary declaration that she consents to the specific sexual act. When deciding a case of rape, factors like a girl's personality, occupation, social background, sexual history, etc., are irrelevant. Any sexual interaction regardless of whether consent is given, with a boy or a girl under the age of eighteen is considered statutory rape.

Marital Rape

Marital rape is defined as the rape of the wife over eighteen years by the husband. Marital rape is dealt with under the Protection of Women from Domestic Violence Act, 2005. **The Protection of Women from Domestic Violence**

23 Indian Penal Code, 1860, § 375.
24 National Crime Records Bureau, Ministry of Home Affairs, *Crime in India, 2022, Statistics Volume-I*, Table 3a.3.
25 National Crime Records Bureau, Ministry of Home Affairs, *Crime in India, 2022, Statistics Volume-I*, Table 3a.11.

Act defines domestic violence in the broadest terms (**Section 3**). Any act or commission could constitute domestic violence if it causes sexual abuse. Sexual abuse includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of a woman, and would include marital rape. Wives suffering from marital rape can approach the protection officer appointed under this Act or the police and obtain protection orders, residence orders and monetary compensation for the violence suffered.

- It must be noted that sexual intercourse by a husband with his wife who is aged below eighteen years is viewed as rape and is punishable under the Indian Penal Code, 1860 and the Protection of Children from Sexual Offences Act, 2012.
- Further, sexual intercourse by a man with his wife, who is living separately, whether under a judicial decree or otherwise, is rape, and may be punished with imprisonment up to seven years.[26]
- Marital rape is also a ground for divorce and judicial separation. Marital rape amounts to cruelty and therefore a valid ground for seeking matrimonial reliefs.
- Cruelty is a ground for divorce under **Section 13(1)(ia)** of the **Hindu Marriage Act, 1955**, **Section 27(1)(d)** of the **Special Marriage Act, 1954**, **Sec 10(1)(x)** of the **Divorce Act, 1869**, **Section 32(dd)** of the **Parsi Marriage and Divorce Act, 1936**, **Section 2(viii)** of the **Dissolution of Muslim Marriage Act, 1939**.
- Judicial separation on the grounds of cruelty is likewise dealt with in **Section 10** read with **13(1)(ia)** of the **Hindu Marriage Act, 1955**, **Section 23** of the **Special Marriage Act, 1954**, **Section 22** of the **Divorce Act, 1869**, and **Section 34** of the **Parsi Marriage and Divorce Act, 1936**.

CASE STUDY

In the fall of 2023, Meera, became a victim of sexual assault at the hands of her professor.

Meera, a 20-year-old college student, had been struggling academically in one of her courses. Her professor teaching that course, Professor Jacob, taking advantage of her vulnerability, exploited her academic concerns by promising better grades in exchange for dinner. She agreed for the invitation, not realising his true intentions. During dinner, Mr. Jacob spiked her drink, rendering her unconscious. He then transported her to his residence where the assault occurred. The victim, incapacitated and unaware of the events that transpired, woke up disoriented near her home the following morning. The trauma she endured was compounded by the threat of expulsion if she dared to speak out.

Upon returning home Meera confided in her parents of the event that transpired the previous night. Despite the fear instilled by her professor, her parents stood by her, providing unwavering support and encouragement. Together, they made the brave decision to seek justice, despite the initial reluctance of the victim to involve law enforcement.

With the assistance of a compassionate female police officer, Meera was able to recount her experience in a safe and supportive environment. The legal process, including medical examinations and testimonies, was meticulously followed to ensure the perpetrator was held accountable. The Magistrate found Mr. Jacob guilty under Section 375 of the IPC (Section 63 of BNS), and he was convicted for life imprisonment. The Magistrate also fined the convict five lakh rupees, which was then given as a part of the Victim Compensation Scheme to Meera.

26 The Indian Penal Code, 1860, § 376D; The Bharatiya Nyaya Sanhita, 2023, § 67.

VIOLENCE AGAINST TRANSGENDER PERSONS

Who is a transgender person according to Indian law?

While gender identity falls within the precincts of one's self-identity, the law has laid down a definition for legal purposes.

The Transgender Persons (Protection of Rights) Act, 2019 in **Section 2(k)**[27] defines the term "transgender person" as

"a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as kinner, hijra, aravani and jogta".

- In 2014, the *NALSA* judgment[28] recognised that transgender persons enjoy the right to equality as enshrined in Article 14 of the Constitution of India.
- However, the Supreme Court also noted that they are subjected to several forms of violence including physical and sexual violence including molestation, rape, forced anal and oral sex, gang rape and stripping, and the state must ensure justice.
- The Court in another case, also acknowledged that transgender persons face abuse and sexual assault, often at the hands of law enforcement officials.[29]

What forms of violence are commonly experienced by transgender individuals in India?

Transgender people in India still have not been completely accepted by Indian society and face widespread violence. Some of the commonly experienced violence are:

- **Molestation/Rape:** There have been many instances of transgender people being molested or raped. There have also been instances of transgender people being inflicted with mental and physical harassment on account of their gender.
- **Sex Trafficking:** Several transgenders have been trafficked into prostitution or being sexually trafficked into different countries under the pretext of jobs or work.
- **Murder:** The societal taboo of transgender individuals often leads to widespread killings either by the families or by individuals who are responsible for their trafficking. Murders could also be for various other factors as well.
- **Prolonged incarceration:** Even though it is a right under **Article 39A** of the Indian Constitution to get **free legal aid,** many transgender people are discriminated even on that basis. They are faced with poor legal representation, which puts them in jail for several years.
- **Discrimination:** Discrimination is one of the most common forms of abuse a transgender person goes through. Not being accepted by society expands to unemployment, and discrimination in respect of any kind of facility that is guaranteed to a citizen of the country.

What are the laws protecting transgender persons from violence in India?

The Transgender Persons (Protection of Rights) Act, 2019 was enacted by the Indian Parliament to protect the rights of transgender persons and also to prevent discrimination and punish violence against them. To this end, the Act makes the following acts as punishable offences:

27 The Transgender Persons (Protection of Rights) Act, 2019, § 2(k).
28 National Legal Service Authority v. Union of India, AIR 2014 SC 186.
29 Navtej Singh Johar v. Union of India, 2018 INSC 790.

- Compelling or forcing a transgender person to do forced or bonded labour other than any compulsory service for public purpose mandated by government **[Section 18(a)]**.
- Denying a transgender person, the right to use a passage to a public place or obstructing them from using or having access to a public place to which a cisgender persons have access or a right to use **[Section 18(b)]**.
- Forcing or causing a transgender person to leave a household, village or other place of residence **[Section 18(c)]**
- Harming or injuring or endangering the life, safety, health or well-being (mental or physical) of a transgender person or tending to do acts including causing physical abuse, sexual abuse, verbal and emotional abuse, and economic abuse **[Section 18(d)]**

What punishments do these offences carry?

As per **Section 18(d)**, any person committing any of the offences listed above can be punished with a **minimum sentence of six months which may extend up to two years with fine.**

Are there any other general protections available to transgender persons under the Act, and the Transgender (Protection of Rights) Rules, 2020?

- The Act prohibits discrimination against transgender persons in all fields, including education, employment, healthcare services, facilities and services for the general public. (Section 3)
- The Act provides for the recognition of transgender identity. (Section 4)
- A transgender person can apply for a certificate of identity to the District Magistrate. (Section 5)
- A minor can apply through their parent or guardian. It, after the issuance of such identity certificate, they have undergone a sex reassignment surgery, they can apply for a revised certificated with the documents mentioned in Section 7.
- Upholds their Right to movement, Right to occupy a residence, Right to hold offices and parity of treatment in government or private establishments under whose custody or care the transgender person is in. (Section 3)
- The Act also prescribes inclusive education and opportunities for sports, recreation and leisure activities to transgender persons without discrimination on an equal basis with cisgender persons. (**Section 13**)
- All employers, public and private are to be an equal opportunity employer. It means that every employer is required to take steps to eliminate discrimination against transgender persons not only in recruitment but also by making employment benefits and promotions equally available to transgender employees. Additionally, employers are expected to make infrastructural adjustments if any required to facilitate a safe and equal work environment for transgender persons. (**Rule 12).**[30]
- The Act ensures that adequate counselling is provided to transgender people after sex reassignment surgery.
- They cannot be discriminated against in access to public transport, participation in public life, and opportunity to contest elections or hold public or private office (**Rule 11(1)**[31])

What other legal protections are available to transgender persons?

All legal protections that are generally available under the IPC (BNS) to cisgender persons are also available to transgender persons. Thus, offences such as,

- Murder (Section 300) (Section 101 of BNS),
- Culpable homicide (Section 299) (Section 100 of BNS),
- Abetment to suicide (Section 306) (Section 108 of BNS),
- Causing hurt (Sections 323 & 324) (Sections 116 & 118 of BNS),

30 The Transgender Persons (Protection of Rights) Rules, 2020, Rule 12(2).
31 The Transgender Persons (Protection of Rights) Rules, 2020, Rule 11(1).

- Grievous hurt (Sections 325-335) (Sections 117-123 of BNS),
- Endangering their life (Sections 336-338), (Section 125 of BNS),
- Wrongful restraint or confinement (Sections 339-348) (Sections 126 & 127 of BNS),
- Assault or use of criminal force (Sections 352) (Section 131 of BNS),
- Kidnapping (Section 363) (Section 137 of BNS) and
- Abduction (Section 362) (Section 138 of BNS),

These are some forms of violence against which the IPC extends protection to transgender persons as well.

In particular, the use of criminal force with the intent of dishonouring a person is an important provision that protects transgender persons from violence **(Section 355 of IPC) (Section 133 of BNS)**. Such an act is punishable with imprisonment up to two years.

Who can be approached in case of instances of violence against transgender persons?

Violence against transgender persons may be taken up with the police through a FIR.

Employers are required to appoint a complaint officer in their establishment who receives complaints against discrimination against transgender persons within the establishment. The **complaint officer** must enquire into the complaint within fifteen days of the receipt of the complaint and submit it to the head of the establishment. The head of the establishment is duty-bound to act on the enquiry report within fifteen days. (**Section 11 of the Act**[32] **and Rule 13, 2020 Rules**).[33]

The other forms of protection for transgender individuals are:

- Constitution of the **National Council for Transgender Persons** which includes representatives from various Ministries/Departments and representatives of Transgender Community.
- Ministry set up 12 pilot shelter homes in 9 States namely Garima Greh: Shelter Home for Transgender Persons to provide basic amenities like food, medical care, and recreational facilities to Transgender Persons.
- The Department of Social Justice and Empowerment launched a **National Portal for Transgender Persons** through which any Transgender Person can avail Certificate of Identity/Identity Card without any physical interface. So far, 18,000+ Certificates and Cards have been issued.[34] This certificate is now acceptable as a supporting document for Aadhaar enrolment.

CASE STUDY

Vishwas is studying in 7th standard and wanted to join a prestigious international school for eighth standard. He wanted to become a doctor. His parents were very supportive of his ambitions. It was at this stage he started developing the traits of being a female, the sex that was different from his birth assigned sex at birth. After joining his 8th standard, his school mates started teasing him. He also faced hate speeches regarding his identity. His parents were amused at his behaviour and visited the school to ascertain any reason for his behavioural changes. His parents approached the school authorities and asked them regarding the facilities available to deal with this kind of situation. The school had a Counselling Psychologist who would talk to the parents and the child facing this situation. They also held special sessions to sensitise the classmates of Vishwas to accept his behavioural patterns as every child has the fundamental right to education.

The landmark NALSA judgement every person has the right to self-identification and lead a dignified life. UGC has committed under its policy that every university will undertake action to acclimatize the transgender students to facilitate his/her education.

32 The Transgender Persons (Protection of Rights) Act, 2019, § 11.
33 The Transgender Persons (Protection of Rights) Rules, 2020, Rule 13.
34 National Portal for Transgender Persons, https://transgender.dosje.gov.in/ (last visited on Apr. 6, 2024).

WORKPLACE SEXUAL HARASSMENT

What are the objectives of the Protection of Women from Sexual Harassment Act, 2013?

The **Protection of Women from Sexual Harassment Act, 2013** (POSH Act) provides for protection against sexual harassment of women in the workplace and the prevention and redressal of such complaints. It ensures upholding fundamental rights of women by ensuring the right to equality enshrined under **Articles 14** and **15** of the Constitution and their right to life and to live with dignity under **Article 21** of the Constitution and right to practice any profession. under Article 19(1) (g).

Who are aggrieved women as per the Act?

The Act recognizes the right of every woman to a safe and secure workplace environment irrespective of her age or employment/work status.

All women working or visiting a workplace are protected under this Act. This could indeed a woman working or visiting any workplace whether in the capacity of

- Regular worker,
- Temporary worker,
- working on a daily wage basis,
- working in a dwelling place or house,
- ad hoc worker,
- a co-worker,
- a contract worker,
- worker engaged directly through an agent (including a contractor, with or without the knowledge of the principal employer)
- a trainee,
- a probationer,
- an apprentice or
- called by any other name.

They may be working for remuneration, on a voluntary basis or otherwise. Their terms of employment can be expressed or implied.

What is the scope of this Act?

The Act aims to prevent sexual harassment in the 'workplace'. As per **Section 2(o)[35] of the POSH Act**, workplace includes but is not limited to any department, organization, or enterprise under any appropriate government.

- The definition of workplace is broad enough to include private sector organizations including hospitals, nursing homes and sports institutes.
- It goes one step further by recognizing dwelling places or houses also as workplaces.
- Notably transportation during the course of employment is also included in the workplace.
- In relation to a dwelling place or house, a woman who is employed in such place can file such a complaint under the Act *(for eg: a domestic worker)*.

It is important to note that this definition is not exhaustive and includes only some of the aspects of the workplace. By giving broad meaning to the workplace, it aims to secure the best interest of women in furtherance of constitutional mandate.

In the case of ***Saurabh Kumar Mallick v. Comptroller & Auditor General of India,***[36] the Delhi High Court held that the official mess, where the employee reported being sexually harassed, fell under the definition of a workplace under POSH.

35 The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, § 2(o).
36 Saurabh Kumar Mallick v. The Comptroller and Auditor General of India, WP(C) No. 8649/2007.

In another landmark judgement of ***Jahid Ali v. Union of India***,[37] the Delhi High Court has made clear that sending messages is by no means less susceptible to consideration in assessing a colleague´s harassment.

What constitutes sexual harassment as per the Act?

Section 2(n)[38] of POSH Act broadly covers five instances which amount to sexual harassment. It includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:—

- physical contact and advances; or
- a demand or request for sexual favours; or
- making sexually coloured remarks; or
- showing pornography; or
- any other unwelcome physical, verbal or non-verbal conduct of a sexual nature;

Other circumstances in relation to above-mentioned act or behaviour such as a promise of preferential treatment

in her employment or threat of detrimental treatment in employment or creating a hostile work environment will also amount to sexual harassment under the POSH act.

In the case of ***Shanta Kumar v. Council of Scientific and Industrial Research***,[39] the Delhi High Court held that all physical contact cannot be termed as sexual harassment and only physical contact or advances which are in the nature of an *"unwelcome sexually determined behaviour"* would amount to sexual harassment.

In the case of ***Albert Davit Limited v. Anuradha Chowdhury***[40] Calcutta High Court held that harassment may be verbal or non-verbal conduct. Hence, a mere statement in a case where the plaintiff requested the defendant to instruct the attendants to switch off the A.C. Machine, but in reply, the defendant said *"... come close to me, you will start feeling hot"*, can also be construed to be sexual harassment.

What are some examples of sexual harassment?

Some examples of behaviour that constitutes sexual harassment at the workplace:

- Making sexually suggestive remarks or innuendos.
- Offensive comments or jokes.
- Inappropriate questions, suggestions or remarks about a person's sex life.
- Intimidation, threats, blackmail around sexual favours.
- Stalking an individual.

Some examples of behaviour that may indicate underlying workplace sexual harassment and merit inquiry:

- Exclusion from group activities or assignments without a valid reason.
- Removing areas of responsibility, unjustifiably.
- Constantly overruling authority without just cause.
- Arbitrarily taking disciplinary action against an employee.
- Blaming an individual constantly for errors without just cause.

Where to report cases of sexual harassment?

The Act provides for the obligation of the employer of a workplace to constitute an **'Internal Complaints Committee'** at all administrative units or offices and a **'Local Complaints Committee'** to be established at the district level by the government.

Any woman can file a complaint of sexual harassment to the 'internal committee' however in case the same is not constituted or the complaint is against the employer itself, the woman can proceed to file a complaint at

37 Jahid Ali v. Union of India, WP(C) 11182/2015.
38 The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, § 2(n).
39 Shanta Kumar v. Council of Scientific and Industrial Research, WP(C) 8149/2010.
40 Albert Davit Limited v. Anuradha Chowdhury, F.M.A.T No. 2770 of 2003.

the 'local committee'. The aggrieved person also has an obligation to file the complaint within a period of three months of the incident of sexual harassment.

The Committees first shall provide the option to an aggrieved woman to take steps to settle the matter through conciliation however in cases where the conciliation is not reached then the Committees can proceed to inquire into the complaint filed by the aggrieved woman.

Are there any reliefs available to an aggrieved woman during the pendency of the inquiry?

The Internal Complaints Committee (ICC) or Local Complaints Committee (LCC) on **written request** by the aggrieved woman can recommend the employer to transfer the aggrieved woman or the accused to another workplace or grant leave to the aggrieved woman for up to a period of three months which shall be in addition to leave she would otherwise be entitled and lastly, it provides broad scope to the committee to grant any other relief as may be prescribed.[41]

What are the reliefs available after the completion of the inquiry?

If the ICC or LCC arrives at the conclusion that the allegation against the accused has been proven, then it shall recommend the employer or the District Officer (DO) to take the necessary action as per service rules or to deduct the salary or wages of the concerned person to be paid to the aggrieved women as compensation. Compensation is to be determined based on various factors such as mental trauma, pain, suffering, loss of a career opportunity, medical expenses if incurred etc.

Can the recommendations of the inquiry report be appealed?

Any person aggrieved by the recommendations after the inquiry or non-implementation of the recommendations can appeal to the court or tribunal as per **Section 18**[42] of the POSH Act. The appeal has to be filed within a period of 90 days of the recommendation.

What is the time period prescribed for this process?

- Submission of Complaint **(Section 9)** - Within 3 months of the last incident.
- Providing a copy of the complaint report to the Respondent **(Section 11 read with Rule 7(2) of the POSH Rules, 2013) -** Within 7 days of receipt of the complaint.
- Completion of Inquiry **(Section 11)** - Within 90 days.
- Submission of Report by ICC/LCC to Employer/DO **(Section 13)** - Within 10 days of completion of the inquiry.
- Implementation of Recommendations **(Section 13)** - Within 60 days.
- Appeal **(Section 18)** - Within 90 days of the recommendations.

What are the rights and duties of various stakeholders?

The contents of complaints, the identity and addressees of aggrieved women, accused and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the Committee, and action taken by the employer or District officer shall not be published, communicated or made known to public, press and media in any manner. Any person who contravenes this by disclosing such details shall be liable for penalty. **(Sections 16 & 17)**

Section 19[43] of the POSH Act imposes various duties on the employer to ensure a safe environment at the workplace. The employer has to display at conspicuous places the penal consequences of sexual harassment, organize regular workshops for sensitizing employees,

41 The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, § 12(a).
42 The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, § 18.
43 The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, § 19.

assist the internal committee and local committee and provide assistance to women if they choose to file a complaint under IPC.

What protection is available in the Act against a false complaint of sexual harassment?

Section 14[44] of the Act deals with punishment for false or malicious complaints and false evidence. In such a case, the committee "may recommend" to the employer to take action against the woman or the person who has made the complaint, in *"accordance with the provisions of the service rules"*. The Act, however, makes it clear that action cannot be taken for *"mere inability to "substantiate the complaint or provide adequate proof"*.

Are there any other laws in India which cover cases of Sexual Harassment?

Yes, the **Indecent Representation of Women (Prohibition) Act, 1987** prohibits indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner and for matters connected therewith or incidental thereto. **If an individual harasses another with books, photographs, paintings, films, pamphlets, packages, etc. containing 'indecent representation of women' they are liable for a sentence of up to two years under Section 6**[45] **of the Act.** According to this Act, "indecent representation of women" means the depiction in any manner of the figure of a woman; her form or body or any part thereof in such way as to have the effect of being indecent, or derogatory to, or denigrating women, or is likely to deprave, corrupt or injure the public morality or morals.

Further as per **Section 354(A)** of **IPC (Section 75 of BNS)**, a man committing any physical contact, advances involving unwelcome and explicit sexual overtures; demanding or requesting sexual favours or showing pornography against the will of a woman; or making sexually coloured remarks, shall be guilty of the offence of sexual harassment. It entails a punishment of rigorous imprisonment for a term which may extend to three years.

Harassment at the workplace can also involve verbal harassment, cyberbullying, psychological harassment and physical harassment. Verbal harassment consists of demeaning remarks, offensive gestures and unreasonable criticism which can threaten health and career. Cyberbullying refers to bullying or harassment on media platforms to harass, humiliate, threaten, embarrass or target any person. Online threats, aggression, rude and vulgar messages, and threatening to post such photographs videos or messages as to embarrass or hurt the reputation, character and feelings of a person is known as cyberbullying. Psychological harassment is similar to verbal harassment, but it is more covert and consists of exclusionary tactics, like withholding information or gaslighting which are intended to mentally break down the victim, chip away at their self-esteem and undermine them. Physical harassment in the workplace can vary in degrees which can include simple unwanted gestures, like touching an employee's clothing, hair, face or skin, and more severe gestures, like physical assault, threats of violence and damage to personal property.

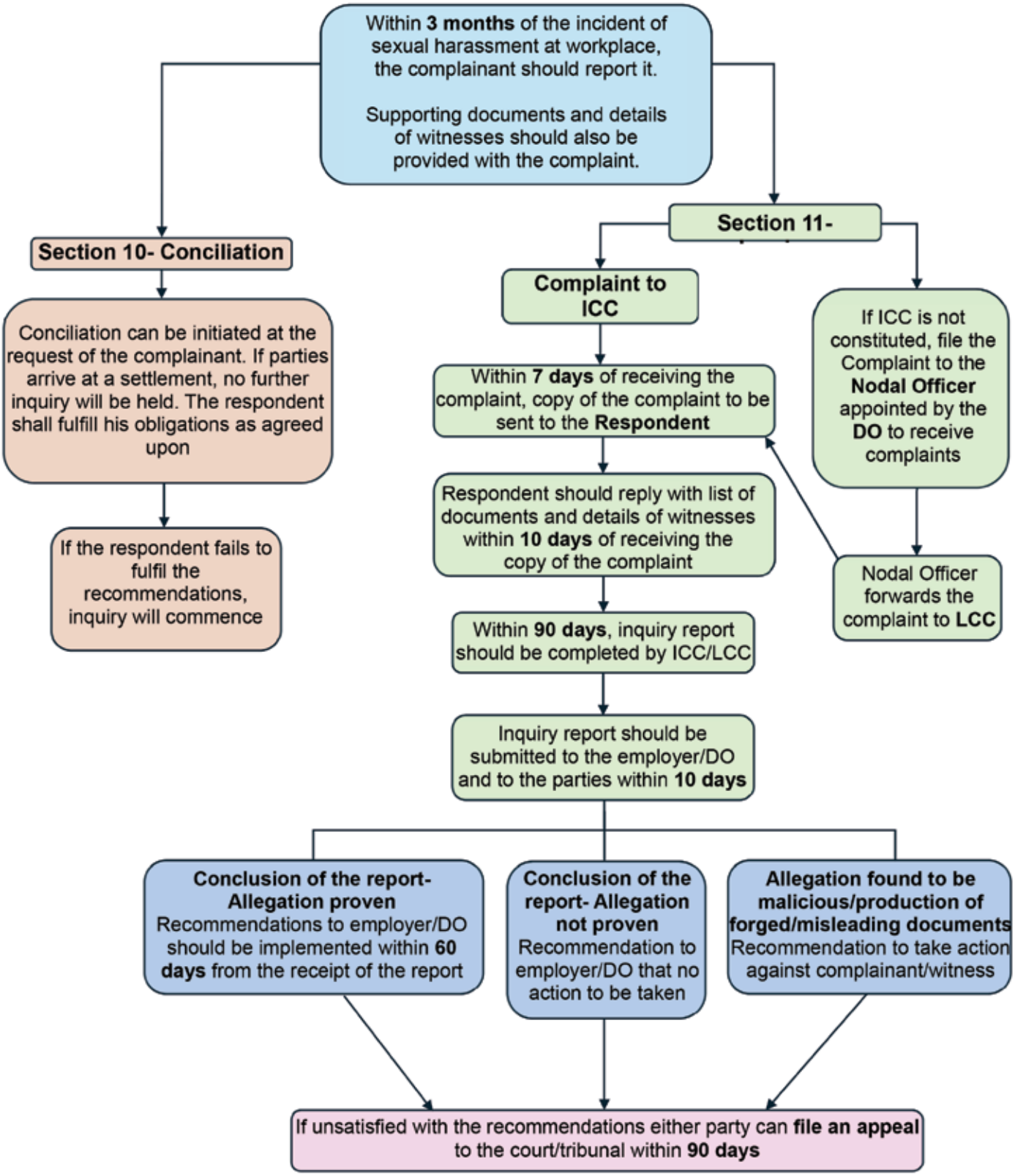
CASE STUDY

Neha, a recent hire at a company, found herself under the guidance of Milind, her immediate supervisor. Initially appreciative of his hands-on approach and willingness to assist, Neha soon became uncomfortable with his behaviour. Milind's actions crossed professional boundaries as he began complimenting Neha's appearance and personal grooming choices. His behaviour escalated to invading her personal space, including sniffing her hair and leaving inappropriate gifts on her desk.

Feeling harassed and uncomfortable, Neha took the step of filing a complaint with the Internal Complaints Committee at her workplace, within the following week. The committee conducted a thorough inquiry as per Section 11, adhering to legal protocols, and found Milind guilty of harassment. As a result, he was terminated from his position, ensuring a safer work environment for Neha and her colleagues.

44 The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, § 14.
45 The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, § 6.

INQUIRY PROCESS UNDER THE POSH ACT



WOMEN COMMISSION & HELPLINES

What are Women Commissions?

Women commissions are institutions that aim to safeguard rights as well as interests of women at the state and national levels. At national and state levels women commissions have been constituted to ensure that there is a redressal mechanism available to each and every woman in the society.

What is the role of the National Commission for Women?

The National Commission for Women (NCW) was set up under the National Commission for Women Act, 1990. It aims to achieve the constitutional mandate of equality and dignity for all women by reviewing the status of women, suggesting remedial legislative measures, conducting promotional and educational research activities, promoting legal awareness etc.

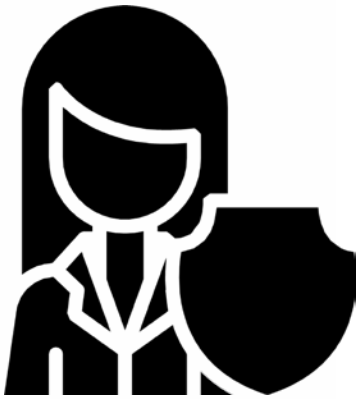
Every offence pertaining to women is generally handled by the NCW. NCW receives complaints on various issues and responds through appropriate interventions. These complaints are handled by the **Complaint and Investigation Cell**.

The NCW enjoys all the powers of a civil court including that to summon a person from any part of India; to require the production of documents; require evidence on affidavits; access to public records and the power of issuing commissions for the examination of witnesses and documents.

Thus, the main functions of NCW are:

- To investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws.

- To regulate and review the constitutional as well as the legal aspects related to women
- Call for special studies or investigation into atrocities against women.
- Facilitate redressal of grievances
- Advise the government in all matters pertaining to policy affecting women.



Why are Women Commissions important?

Every State in this country has commissions set up for women to ensure their safety and well-being. This, Commission acts as a redressal for every woman who might face gender-based abuse in some form or the other. Thus, setting up these institutions makes it easier for women to know the specific bodies that are particularly governed for their safety and protection of their rights.

A number of enquiry commissions have been established by the commission under **Section 8 (1)** of the Act to look into the matters of law, political empowerment, custodial justice for women, social security, panchayat raj, women and media, development of scheduled tribe woman, development of women of weaker sections, development of women of minority communities, transfer of technology and agriculture for development of women. This helps to create a safe space for women and ensures that their rights and interests are protected.

Complaints may be filed by writing to **The Complaint and Investigation Cell, National Commission for Women, Plot no. 21 Jasola Institutional Area, New Delhi – 110025** or using the portal: https://ncwapps.nic.in/onlinecomplaintsv2/. Details of the complainant, victim, respondent (opposite party), the incident shall be required to register a complaint. Please note that anyone else on the behalf or for the victim can register a complain through this portal.

Contact numbers for complaint-related queries: 011-26944880, 26944883. Contact details: Email address: complaintcell-ncw@nic.in

What is the role of the National Legal Services Authority?

The National Legal Services Authority is an organisation that aims to provide competent legal services to the weaker sections of society. Thus, every marginalised person who cannot afford lawyers for a legal proceeding or a case before any authority is provided with this service free of cost.

Persons with disability, women, persons belonging to Scheduled Tribes or Castes and children are given priority under these services. The requests for legal aid can also be filed online using the link below:

https://nalsa.gov.in/lsams/nologin/applicationFiling.action;jses-sionid=7424F7DBD549A8EBEF691B8C72D09D60?requestLocale=null

What are the steps taken by the Government in order to ensure women's safety and well-being?

Considering the significance of maintaining the safety of women in the country, the **Ministry of Women and Child Development (MWCD)** and the **Ministry of Home Affairs (MHA)** of the Government of India have undertaken a number of measures for safeguarding the interests of women.

- The Central Government has set up a corpus called the **Nirbhaya Fund** to enhance the safety and security of women. MWCD has been implementing numerous schemes under the framework of this Fund.
- Using technology to aid smart policing and safety management, **Safe City Projects** have been sanctioned in the first phase in 8 cities (Ahmedabad, Bengaluru, Chennai, Delhi, Hyderabad, Kolkata, Lucknow and Mumbai) under this Fund. Several Acts mentioned in this Section has been administering by MWCD. MWCD has also prepared a **National Policy in 2001** with a goal to bring about the advancement, development and empowerment of women.
- MHA, on the other hand, has set up a **Women Safety Division** to strengthen the measures for safety of women in the country and instil greater sense of security in them through speedy and effective administration of justice in a holistic manner and by providing a safer environment for women.
- An online analytic tool called **Investigation Tracking System for Sexual Offences (ITSSO)** for police has been launched to monitor and track time-bound investigations in sexual assault cases.
- MHA has also launched a '**National Database of Sexual Offender'** which is used by police to identify repeat offenders.
- **Emergency Response Support System**, which provides a **single emergency number 112** based computer-aided dispatch of field resources to the location of distress, has been operationalized in several States/ UTs.
- Several states are equipped with **Cyber Crime Forensic Labs** and thousands of personnel, including Public Prosecutors and Judicial Officers, have been properly trained in identifying, detecting and resolving cyber-crimes against women in this regard.

What is the procedure to file an online complaint on the National Cyber Crime Reporting Portal?

- You can visit the website of the portal: https://cybercrime.gov.in/
- File under women/child related crime as this portal also deals with financial fraud and other cybercrimes.
- A complaint can be registered as an anonymous complaint as well.
- Before registering, if the complainant or any other person requires any clarification, they can refer to the FAQ available in this link: https://cybercrime.gov.in/Webform/FAQ.aspx
- Details such as category of the cybercrime, date, time and place of incident, reasons for delay in reporting, and other relevant information as asked for must be provided.
- Requirement of uploading other documents and details would depend upon the case. The complainant however can mention in brief the hurdles faced.

For more details on how to file the complaint, refer Crimes against Women and Children: User Manual for Reporting Cyber Crime Against Women and Children (CP/RGR)

The Cyber Crime Helpline is **1930**.

What sort of welfare schemes are in place for women in India?

Since the State shall direct its policy towards ensuring that the citizens – both men and women, equally– have the right to an adequate means of livelihood, various schemes and campaigns have been framed from time to time. Women have the right to seek benefits from programmes initiated by the Government, they are:

- **The Mother and Child Tracking System,** helps to monitor the health care system to ensure that all mothers and their children have access to a range of services, including pregnancy care, medical care during delivery and immunizations.
- **The Indira Gandhi Matritva Sahyog Yojana (Conditional Maternity Benefit**) introduced in 2010 is a scheme for pregnant and lactating women aged 19 and over for their first two live births, providing money to help ensure good health and nutrition of the recipients.
- **The Rajiv Gandhi Scheme for Empowerment of Adolescent Girls (SABLA)** is an initiative launched in 2011 that offers a package benefits and services to girls falling within the age group of 11 to 18 in an attempt to help them become self-reliant, including nutritional supplementation and education, health education and services, and life skills and vocational training.
- **The Rashtriya Mahila Kosh (National Credit Fund for Women)**, created by the Central Government in 1993, aims to deliver women from lower income groups with access to loans to begin small businesses.
- **The Digital Laado - Giving Digital Wings** to Daughters initiative became operational nationwide with the motive of empowering and strengthening daughters on digital platforms, in which every daughter shall be taught and trained to develop her talent and skills to work from home and get connected with the global platform.

Is there any NGO or department of police that assists and counsels the victims of violence or abuse?

There are a few NGOs in different states of the country that have been putting efforts into making a socially equitable society. Similarly, there are several police helplines in this regard:

- The **Ministry of Women & Child** Development has launched the **Women Helpline '181'** to provide free, confidential, immediate and 24x7 support and assistance to women in distress and in need of care and protection– both in public and private spaces, to facilitate crisis and non-crisis intervention through referral to appropriate agencies and to provide details about the support services, schemes and programmes available.
- Also, whenever a woman from any part of the country needs urgent help from the police or wants the police to come and rescue her, she can immediately dial the **Police Helpline** number '**1091**', which is majorly useful for requiring help in emergency situations. As soon as a call is received, it is directed to the respective police station in the district, with the Superintendents of Police and Commissioners of the district being held responsible for cases in their jurisdiction.
- **Dhwani Crisis Hotline (NGO)** - The International Foundation for Crime Prevention and Victim Care (PCVC) runs the toll-free number **1800 102 7282** or one can reach call their WhatsApp number **984088882**. This NGO provides prompt and timely assistance to the survivors of physical assault, violence and burn injuries from their intimate partners or their family members.
- **Sayodhya (NGO)** - Based out of Hyderabad, Andhra Pradesh, this NGO provides temporary accommodation to victims of violence/abuse and an online emergency response through its 24-hour telephone helpline.
  - The services include free of cost medical kit, legal, psychological and emotional counselling sessions, bed covers and blankets, sanitation facilities and clothing.
  - They also help victims reintegrate with their families if they wish to do so. Furthermore, they motivate women to take charge of legal justice by taking them to the women's protection cells where they elucidate upon the procedure to be followed by the aggrieved party to file a case against the offender.
  - The shelter home shares a close nexus with police officials and judicial bodies to make certain that absolute protection is guaranteed. They can be reached at **+91 40 29330114.**

- **Shakti Shalini (NGO)** – This NGO, based out of Delhi, provides assistance to the survivors of gender and physical/mental/sexual abuse. Their helpline numbers are: **011-24373737**, or Call/WhatsApp-**9654462722/7838957810**.
- **Police helplines:** Various states have also set up police helplines that help against gender-based crimes such as dowry and domestic abuse.
- **Kerala** has launched a 24-hour police helpline for women that can be accessed by calling **9497996992**.
- Similarly, Women in **Karnataka** can call **112, 080-22943224**, to access free counselling and police assistance.
- In **Karnataka**, there is a separate helpline for women in **Bangalore- 080-22943225**.
- Women in Mysore can call **0821-2418400**.
- There is a women's helpline run by **Chandigarh Police** which can be contacted at **0172-2741174**.

CASE STUDY

Shruthi was selected for a job in a software company in Pune. Since she was a native of Bangalore, she had to find a place for accommodation nearby her workplace. She approached a local agent for a house and gave her details to contact her. She joined the work place and also got the house for rent with the help of an agent named Ramesh. Few days after she joined the work the agent started stalking her using her number. She often received unsolicited messages from him to her phone number and messages on Facebook, Instagram and X (Twitter) accounts. She was being physically stalked in her workplace and also near her house. When she requested him to stop stalking her, he confronted her with foul language, outraging her modesty. The HR manager of the company and Shruthi went to the local police station to register a complaint. The Officer-in-charge brushed off the incident stating that these are common incidents and told her not to worry about it.

She then approached the National Women's Commission (NCW), registered an online complaint, and received acknowledgment along with the complaint number, login ID, and password from the National Commission for Women. In her complaint, Shruthi had also mentioned the apathy of the police officer. The commission sent a notice to the concerned police station and directed them to take the complaint and initiate legal action against the accused.

Outraging the modesty of women is a serious offence under Section 354 of the IPC (Section 74 BNS) and is a punishable offence with a minimum impression of one year and extending up to 5 years.

MICRO, SMALL AND MEDIUM ENTERPRISES

What is an MSME?

MSME stands for Micro, Small and Medium Enterprise. It is a classification used to categorize businesses based on their size, investment, and turnover.

- Capital and Investment is the lifeline of any business which allows the business to scale opportunities.
- The Government has time and again created needful policies that support the businesses to raise capital and investment.
- The law and policy on Micro, Small, and Medium Enterprises is one such area where the Government has been focusing predominantly.

What are the different categories of MSMEs in India?

In India, MSMEs are categorized into three types based on their investment in plant and machinery or equipment and their Turnover, as provided herein below:

- **Micro Enterprise**, where the investment in Plant and Machinery or Equipment does not exceed **one crore** rupees and turnover does not exceed **five crore** rupees;
- **Small Enterprise**, where the investment in Plant and Machinery or Equipment does not exceed **ten crore** rupees and turnover does not exceed **fifty crore** rupees;
- **Medium Enterprise**, where the investment in Plant and Machinery or Equipment does not exceed **fifty crore** rupees and turnover does not exceed **two hundred and fifty crore** rupees.

How can a business register as an MSME?

The Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act) was enacted to facilitate the growth of small businesses by providing various benefits and support mechanisms.

- The MSMED Act applies to all entities engaged in the manufacture or production of goods and providing or rendering services and are in the size of micro, small, and medium enterprises.

In India, businesses can register as an MSME through the **Udyam Registration** portal [https://udyamregistration.gov.in/Government-India/Ministry-MSME-registration.htm], which is an online registration process.

The entities need to provide their Aadhaar number and other relevant details of the Owner.

What are the advantages of being classified as an MSME?

MSMEs enjoy various benefits, including easier access to credit, government subsidies, priority lending, and exemptions under certain laws and regulations.

- Furthermore, companies are required to disclose their transactions with MSMEs in their annual financial statements, including the amount due and the amount paid beyond the agreed terms, as a requirement of compliance.
- The Companies are also required to file half-yearly returns with the Registrar of Companies (RoC) in a Form MSME I, that provide details of outstanding payments to MSMEs beyond the agreed-upon terms.
- Each Company has been mandated to appoint a designated Nodal Officer to oversee and monitor compliance with the provisions of the MSMED Act, including ensuring timely payments to MSMEs.

Can MSMEs avail themselves of government schemes and incentives without registering under the Act?

While registration is not mandatory, it is recommended as it provides easier access to various government

schemes, incentives, and benefits designed for MSMEs.

For instance, several schemes are particularly designed to facilitate the registered entities alone, as enlisted herein below:

Along with the Udyam Registration, enterprises may register themselves on GeM (Government e Market place, portal to address issues relating to delay in payments) and simultaneously MSMEs can also onboard themselves on the TReDS Platform, (the invoices of receivables are traded on this platform) through three available platforms, namely, 1. www.invoicemart.com; 2. www.m1xchange.com; 3. www.rxil.in.

Udyam Registered Entity becomes eligible for priority sector lending from the Bank: MSMEs are recognised under the guidelines issued by RBI on Priority Sector Lending.

Are there any specific benefits for women entrepreneurs in MSMEs?

There are various schemes and incentives to encourage women entrepreneurs in MSMEs, including lower interest rates on loans and special training programs. A few of the programmes that entail special privileges to Women Entrepreneurs are as follows:

- **Annapurna Scheme**

  Women Entrepreneurs engaged in the food business, can borrow up to ₹50,000 to buy the kitchen gear required for your business. This scheme comes with a repayment tenure of up to 3 years.

- **Stree Shakti Package**

  This is one of the best government schemes for developing women entrepreneurs who run small businesses who own up to 50% of the business, and can enjoy a lower rate of interest with this loan package.

- **Bharatiya Mahila Bank Business Loan**

  This bank focuses on empowering women entrepreneurs. They provide MSME loans for women, training, and guidance to help your business thrive. They have special loan options to suit your needs.

- **Mahila Udyam Nidhi Scheme** offers a financial boost to businesswomen in small-scale businesses and may avail a loan of up to ₹10 lakhs to start or expand your venture. You get a tenure of up to 10 years to repay this MSME loan for women.

- **Trade-Related Entrepreneurship Assistance and Development (TREAD) Scheme**

  This women entrepreneur scheme in India brings training, credit, and backing to women in rural regions. The government lends financial support to non-government organisations (NGOs) that train and mentor women entrepreneurs.

- **Stand-Up India Scheme** supports businesswomen from scheduled castes (SC), scheduled tribes (ST), and women borrowers, who may avail an MSME loan ranging from ₹10 lakhs to ₹1 crore to kick-start a new business.

What is the Credit Guarantee Fund Trust for Micro and Small Enterprises (CGTMSE)?

CGTMSE is a scheme launched by the Indian government to provide credit guarantees to financial institutions, encouraging them to lend to MSMEs without requiring collateral or third-party guarantees.

- The CGTMSE scheme extends a cover for loans up to INR 5 Crore, that is received from any participating lending institution.
- To avail the benefit, the Micro and Small Enterprises are required to pay a one time guarantee fee and an annual service fee to avail CGTMSE coverage through the participating lending institution.

What is the role of the National Board for Micro, Small, and Medium Enterprises (NBMSME)?

The NBMSME, established under the Act, advises the government on policy matters related to MSMEs, recommends measures for their promotion and development, and monitors their implementation.

What are the provisions related to delayed payments under the MSMED Act?

The Act stipulates that buyers who avail goods or services from MSMEs must make payments to the MSME suppliers within **45 [Forty-Five] days**, failing which they are liable to pay compound interest. MSMEs can file complaints for delayed payments.

Are there any penalties for non-compliance with the MSMED Act?

Yes, non-compliance with the provisions of the Act can result in penalties, including fines.

For instance, the interest paid to MSMEs for delayed payments, shall not be allowed as a Deduction under the Income Tax Act, 1961.

Whether a Contractual Clause can provide for payment of a lower interest rate to the MSME?

The Interest payment under the MSME Act is a statutory protection granted to MSMEs, and given the purpose of the legislation, and as such no party can enforce a contractual clause that agrees for a payment of a lower interest rate to the MSME.

CASE STUDY

The proprietor of Arun Enterprises, an electric wires manufacturing company wanted to register his business as MSME under the MSME Act. His company had an annual turnover of Rs. 150 crores. He approached the State Bank of India (SBI) for details regarding the loan availability to MSME companies. The bank gave him the details as per the Master Direction Lending to Micro, Small & Medium Enterprises (MSME) Sector (Updated as of July 29, 2022). The Bank official advised him to look into the details for lending of loans applicable to his business. They also advised him to get his business registered under the Udyog Adhar to avail of more benefits in terms of loans to build his industry. He also understood that rates of interest for MSMEs are lower than the other industries

The Government in an attempt to promote MSMEs has made all new industrial units having MSME Registration and expansion of business exempt from payment of Stamp Duty and Registration fees and Direct Tax Exemption in their initial year of business.

COMPULSORY LICENSING

What is compulsory licensing in Indian law?

A compulsory license is an authorization granted by the Government to someone else under **Section 84** of the **Patent Act, 1970.**

- Under this Section, a third party is authorized to produce a patented product without the consent of the patent owner who has been taking undue advantage of exclusive rights granted by a patent.
- Hence, compulsory licensing tries to eliminate misuse of patent rights by a patent holder in view of public health or anti-competitive practices which would result in restricting trade or hindering technology transfer.

Under what circumstances can compulsory licensing be granted in India?

There exists various theories as to why compulsory license can be issued.

- **The adequacy of supply theory**

When the demand for the product is so great that the producer may not be able to supply and meet demand.

- **The public interest theory**

Compulsory licenses are considered vital to the public on account of certain factors like public health issues, high prices, etc.

- **The 'worked in the country' theory**

To set up a manufacturing base and to use the patented product in the country.

- **Interdependence of patents theory**

Earlier patent may be required for another patent to be exploited and the State allows for such use through a compulsory license.

A compulsory license may also be granted for:-

- For exports in certain exceptional circumstances **[Section 92 A].**
- In case of national emergency, extreme urgency of public non-commercial use by notification of the Central Government in the official gazette **[Section 92 A].**
- To countries with insufficient or no pharmaceutical sector manufacturing capacity to address public health problems [Section 92 A (1)].

The Indian Patent Office might also grant a compulsory license only if the use of the patented product does not satisfy public requirements, or the patented product is not accessible to the public at a reasonable price, or the patentee has not worked on the patented product in India.

- In other words, compulsory licenses will only be imposed when an innovation which could be greatly beneficial to the public interest is not being used or at least not sufficiently by the patent owner.

Who can apply for a compulsory license in India?

Any person interested can apply for a compulsory license in India. This can include individuals, companies, or organizations that meet the criteria set out in the law.

What is the procedure for obtaining a compulsory license in India?

Before applying for a compulsory license under Section 84, the applicant should attempt to obtain a voluntary license from the patent proprietor in order to make use, sell or import the patent proprietor's invention.

- If the patent holder refuses to give consent and grants a voluntary license on reasonable terms and conditions resulting in applicants failing to obtain a voluntary license, the interested person may apply for a compulsory license under Section 84(1) before the patent controller.
- Then the controller will examine the initial application for

the compulsory license to determine whether the application actually reveals sufficient facts and incidents that can support the raised reasonable grounds.

- The patentee's desire to oppose the application may, within such time as may be prescribed (two months) or within such further time as the Controller may on application (made either before or after the expiration of the prescribed time) allow, give to the Controller notice of opposition.
- Here both the applicant and patentee have the opportunity to be heard before deciding the case.
- Section 84 of the Patents Act allows for the application of a compulsory license by 'any person interested.'
- The definition of 'person interested' can be found in Section 2(t) of the Patent Act of 1970, which includes individuals engaged in or promoting research in the same field as the relevant invention.
- Section 84(2) expands upon this definition, specifying that a person who is a licensee under the patent is not automatically disqualified from applying for a compulsory license.
- In the case of *Neo-Pharma Industries v. Park Davis and Co*, of citation infringement by the applicant was considered evidence of being a 'person interested.'
- Being a 'person interested' alone does not guarantee the grant of a compulsory license. Several conditions must be met to be eligible for such a license.
- Section 84(3) outlines that an application for a compulsory license under Section 84(1) must include a statement describing the 'nature of the applicant's interest' along with prescribed particulars and the underlying facts supporting the application.

What are the factors to be taken into consideration by the Controller while granting a compulsory license?

The Controller shall take into account factors set out in Section 84(6), Patents Act, 1970:

- The nature of the invention, the time which has elapsed since the sealing of the patent and the measures already taken by the patentee or licensee to make full use of the invention.
- The ability of the patentee to work the patent.
- The capacity of the applicant to undertake the risk in providing capital and working the invention if the application is granted.
- Whether the applicant has made efforts to obtain license from the patentee on reasonable terms and conditions and such efforts have not been successful within a reasonable period as the Controller may deem fit.

Exception

These are not applicable in case of national emergency or other cases of extreme urgency, or public non-commercial use, or anti-competitive practices by the patentee.

Can a patent holder object to the grant of a compulsory license?

On application by the patentee or any person interested the compulsory license so granted under Section 84 can be terminated if conditions no longer exist.

- In such cases of termination on application by the patentee, the holder of a compulsory license shall have a right to object to such termination.

Is there a provision for royalties in compulsory licensing agreements in India?

Section 102 of the Patent Act, 1970, The Central Government is responsible for compensating the applicant or patentee and any other relevant parties who have an interest in the patent.

- The compensation can be determined through mutual agreement between the Central Government and the affected parties.
- In case an agreement cannot be reached, the matter can be referred to the High Court for a fair determination of compensation.
- The compensation is based on various factors, including the costs incurred in developing the invention, the remaining term of the patent, the manner in which the invention has been utilized, and any profits generated by the patentee or their licensees during its operation.

Under what circumstances can compulsory license be terminated in India?

The termination can be initiated by the patent holder or anyone else who has a legitimate interest in the patent.

- To terminate the compulsory license, the Controller (a regulatory authority) must determine that the

circumstances that led to the grant of the license no longer exist and are unlikely to happen again.

- The holder of the compulsory license has the right to object to its termination.
- When considering the termination, the Controller should ensure that the interests of the previous license holder are not unfairly harmed.

A compulsory patent license under Section 84 can be terminated if the Controller, upon receiving an application (Form 21) with evidence from the patent holder or someone with a legal interest, determines that the circumstances justifying the license no longer exist.

- The applicant must notify the Controller and serve the application and evidence to the license holder.
- The license holder can object within one month by submitting their own evidence to the Controller and serving a copy of the objection and evidence to the applicant.
- A hearing is scheduled by the Controller to evaluate the facts and make a decision.
- If the Controller decides to terminate the compulsory license, an order outlining any associated terms and conditions is issued to both parties.

What is the duration of a compulsory license in India?

The term of a compulsory license is usually determined by the Controller of Patents and can vary based on the circumstances of the case. It is typically granted on a case-by-case basis.

What are the case laws related to Compulsory License in India?

- Novartis AG v. Union of India, (2013) 6 SCC 1
- Bayer Healthcare LLC v. NATCO Pharma Ltd., 2023 SCC OnLine Del 3921
- Bristol-Myers Squibb Holdings Ireland UnLtd. Co. v. BDR Pharmaceuticals International (P) Ltd., 2020 SCC OnLine Del 1700
- Lee Pharma v. AstraZeneca AB (CLA No. 1 of 2015)

Are there any safeguards to prevent misuse of compulsory licenses in India?

Yes, there are safeguards in place to prevent the misuse of compulsory licenses. Compulsory licenses are granted under very strict conditions to ensure that the rights of patent holders are respected.

Has India entered into any international treaties or agreements concerning compulsory licenses?

Yes, India has entered into the Trade-Related Aspects of Intellectual Property Rights (TRIPS) on 26 March 2007.

Which section/article of the TRIPS agreement discusses compulsory licenses?

Article 31(f) of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement says products made under compulsory licensing must be "predominantly for the supply of the domestic market". This applies to countries that can manufacture drugs and it limits the amount they can export when the drug is made under compulsory license.

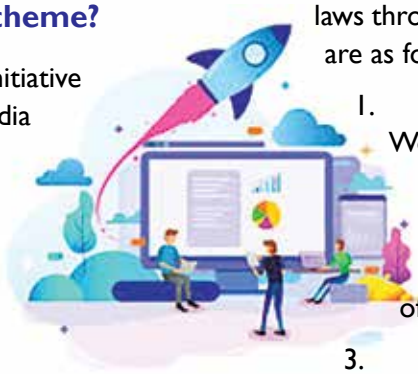
CASE STUDY

Smith's Company based in Delhi manufactured a drug for treating Type-II Diabetes Mellitus and got patented in India. The drug costs around Rs 3500 for 10 tablets. A pharma company, Avinash Pharma, based in Hyderabad made an application under Section 84(1) of the Patent Act for compulsory licensing of that drug stating that it was highly priced and not available to the public at a reasonably affordable price because Type II diabetes is quite high in India, around 77 million people suffering from it.

For a grant of Compulsory licensing, the applicant has to show that the drug is exorbitantly priced, not affordable and the quantitative requirements of the drug are high. The application will be rejected or accepted considering whether any prima facie case had been made concerning the price affordability, availability of similar drugs, and market requirement of the patented drug, under section 84 (1) of the Indian Patent Act.

START-UP INDIA SCHEME

What is the Start Up India Scheme?



The Start Up India Scheme is an initiative launched by the Government of India in 2016 to promote and support entrepreneurship and innovation by facilitating the creation of startups and providing them with various benefits and incentives.

Who is eligible to apply for the Start Up India Scheme?

Any Indian citizen with an innovative business idea or an existing business that meets the definition of a startup can apply for the scheme.

- Startups must be registered as legal entities (e.g., Private Limited, LLP, or Partnership) and meet certain criteria, such as being **less than 10 years old** and having an annual turnover below **INR 100 Crore**.
- A Sole-Proprietorship and Unregistered Partnership cannot be eligible for registration under the scheme.
- It is also necessary that the entity must be an original entity and should not have been formed by splitting up or reconstructing an already existing business.

What are the benefits of registering under the Start Up India Scheme?

Benefits of registering under the scheme include access to various government schemes and incentives, tax benefits, funding opportunities, intellectual property support, and easier compliance with regulations.

- In the case of labour laws, no inspections will be conducted for a period of 5 years.
- Startups may be inspected only on receipt of credible and verifiable complaint of violation, filed in writing and approved by at least one level senior to the inspecting officer.
- In the case of environmental laws, startups which fall under the 'white category' (as defined by the Central Pollution Control Board (CPCB)) would be able to self-certify compliance and only random checks would be carried out in such cases.
- For instance, Startups are allowed to self-certify compliance for 6 labour Laws and 3 environmental laws through a simple online procedure. These Laws are as follows:

1. The Building and Other Constructions Workers' (Regulation of Employment & Conditions of Service) Act, 1996;
2. The Inter-State Migrant Workmen (Regulation of Employment & Conditions of Service) Act, 1979;
3. The Payment of Gratuity Act, 1972;
4. The Contract Labour (Regulation and Abolition) Act, 1970;
5. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952;
6. The Employees' State Insurance Act, 1948 and
7. 3 Environmental Laws
   a. The Water (Prevention & Control of Pollution) Act, 1974;
   b. The Water (Prevention & Control of Pollution) Cess (Amendment) Act, 2003;
   c. The Air (Prevention & Control of Pollution) Act, 1981.

How can I register my startup under the Start Up India Scheme?

Startups can register online through the official Start Up India website, viz the *Shram Suvidha* Portal available at shramsuvidha.gov.in/registerAgency.

The registration process typically involves providing basic information about the business, its founders, and its innovative nature.

What is the recognition and registration process for startups?

Startups can self-certify their eligibility through a simple online form. Once certified, they can access the benefits of the scheme. There is no formal approval process for recognition.

Is there financial assistance available under the Start Up India Scheme?

While the scheme does not directly provide financial assistance, it helps startups by facilitating access to

various government funding programs, venture capital, and angel investors.

What are some of the important funding schemes for Startups?

- The **Seed Fund Scheme** is a part of the Startup India initiative, which provides financial assistance to startups through the Department of Science and Technology. It provides up to ₹25 lakhs as seed funding to startups for product development, testing, and market entry.
- The **Fund of Funds for Startups** (FFS) is a ₹10,000 crore fund created by the Indian government to provide funding support to startups through alternate investment funds (AIFs) registered with SEBI.
- The **Startup India Hub** is an online platform launched by the Indian government to provide comprehensive information, resources, and networking opportunities for startups. It serves as a single point of contact for startups to connect with investors, incubators, mentors, and other stakeholders. You can visit this platform using this link- investindia.gov.in/startup-india-hub

Are there any tax benefits for startups under the scheme?

Yes, startups registered under the scheme may be eligible for income tax exemptions for a specific period. Additionally, there may be exemptions on capital gains tax and a reduction in the tax rate on profits.

- For instance, Private Limited Companies incorporated after April 1, 2016 are exempted from paying income tax for 3 consecutive financial years out of their first ten years since incorporation.
- Furthermore, investments into eligible startups by listed companies with a net worth of more than INR 100 Crore or turnover more than INR 250 Crore shall be exempt under Section 56 (2) VIIB of Income Tax Act, 1961

Does the scheme provide support for intellectual property protection?

The scheme offers fast-track examination and an 80% rebate on patent filing fees for eligible startups to encourage intellectual property protection. Further the following benefits are entailed for a Registered Start Up:

- Fast-tracking of Startup Patent Applications: Patent applications filed by startups shall be fast-tracked for examination so that their value can be realised sooner.
- Panel of facilitators to assist in filing of IP applications: For effective implementation of the scheme, a panel of "facilitators" shall be empanelled by the Controller General of Patents, Designs and Trademarks (CGPDTM), who shall also regulate their conduct and functions. Facilitators will be responsible for providing general advisory on different intellectually property as well as information on protecting and promoting intellectual property in other countries.
- Government to bear facilitation cost: Under this scheme, the Central Government shall bear the entire fees of the facilitators for any number of patents, trademarks or designs that a Startup may file, and the Startups shall bear the cost of only the statutory fees payable.
- Rebate on filing of application: Startups shall be provided an 80% rebate in filing of patents vis-a-vis other companies. This will help them pare costs in the crucial formative years

Are there any incubation and mentorship opportunities for startups?

Yes, the scheme promotes the establishment of incubators and accelerators to provide mentorship, guidance, and infrastructure support to startups.

How does the scheme facilitate ease of doing business for startups?

The scheme aims to reduce regulatory burdens on startups by simplifying compliance procedures and offering self-certification options for various statutory requirements.

Further, startups with simple debt structures, or those meeting certain income specified criteria can be wound up within 90 days of filing an application for insolvency, in accordance with the Insolvency and Bankruptcy Code, 2016.

Is the Start Up India Scheme limited to technology-based startups only?

No, the scheme is open to startups across various sectors, including technology, manufacturing, agriculture, healthcare, and more.

Is the Start Up India Scheme applicable only to new startups, or can existing businesses also benefit?

Existing businesses not older than 10 years that meet the eligibility criteria and are working on innovative solutions can also register and benefit from the scheme.

Are there any protective participatory measures in Public Procurement for Start-Ups?

- **Opportunity to list the product of Start Ups on Government e-Marketplace:** Government e Marketplace (GeM) is an online procurement platform and the largest marketplace for Government Departments to procure products and services. DPIIT Recognized Startups can register on GeM as sellers and sell their products and services directly to Government entities. This is a great opportunity for startups to work on trial orders with the Government.

- **Exemption from Prior Experience/Turnover:** In order to promote startups, the Government shall exempt Startups in the manufacturing sector from the criteria of "prior experience/ turnover" without any compromise on the stated quality standards or technical parameters. The Startups will also have to demonstrate requisite capability to execute the project as per the requirements and should have their own manufacturing facility in India.
- **EMD Exemption:** DPIIT recognised startups have been exempted from submitting Earnest Money Deposit (EMD) or bid security while filling government tenders.

CASE STUDY

Two Engineers from Bangalore developed and commercialised a product that would help the water supply board to make the drinking water supply more efficient and reduce water wastage during long-distance water supply. It could also monitor the groundwater level.

They applied for a patent for the product and started commercialisation of this product with a few water supply boards getting this product on a trial basis as part of their Public Procurement Policy. The engineers registered it as a partnership company and have been running the business for more than 5 years. To make this product more commercially viable and have a scalable business model, the engineers decided to apply for the Start-Up India Scheme.

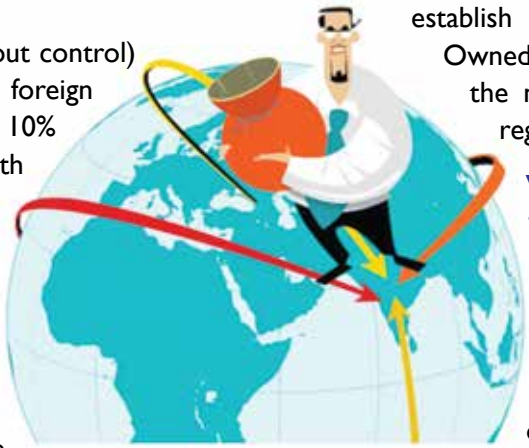
GeM is the government e-market online procurement platform for government ministries and departments. It is the most commonly used channel for government procurement. The Start-Ups can register for government recognition and procurement to sell their products. GeM Start-Up Runway is a new initiative launched for Start-Up companies.

OVERSEAS DIRECT INVESTMENT

What does the term "Overseas Direct Investment" refer to?

Overseas Direct Investment (ODI) means investment in equity of an unlisted foreign company, subscription as a part of the memorandum of association of a foreign entity.

Investment of 10% or more (without control) of the paid-up equity in a listed foreign entity and Investment of less than 10% of the paid-up equity capital, with control, of a listed foreign entity.



*Explanation – Where an investment by an Indian resident in the equity capital of a foreign entity is classified as ODI, such investment shall continue to be treated as ODI even if the investment falls to a level below 10 per cent of the paid-up equity capital or such person loses control in the foreign entity.

Who meets the eligibility criteria for undertaking overseas investment?

Resident corporate entities and partnership firms registered under the Indian Partnership Act, 1932 are eligible to make investment abroad in Joint Ventures/ Wholly Owned Subsidiaries.

Is it possible for an individual to make investments in a foreign entity?

Resident individuals can invest without any restrictions in overseas portfolio investments in listed foreign companies, provided that these foreign companies hold at least a 10% share in an Indian company listed on a recognized stock exchange in India as of January 1st of the investment year.

Can overseas investment (OI) be made in any activity?

In accordance with OI Rules, Overseas Direct Investment (ODI) is prohibited in Foreign Entities (FE) **engaged** in the following activities:

a. Real estate operations,

b. Any form of gambling, and

c. Dealing with financial products linked to the Indian rupee, unless explicit approval from the Reserve Bank of India (RBI) is obtained.

What is the automatic route?

Under the automatic route, a company can establish a Joint Venture (JV) or Wholly Owned Subsidiary (WOS) abroad without the need for prior approval from the regulatory authority.

What is the maximum limit for Financial Commitment (FC)?

The total FC made by Indian Entity (IE) in all the Foreign Entities (FE) taken together at the time of undertaking such FC shall not exceed 400% of the net worth of IE as on the date of the last audited

What do you mean by Financial Commitment?

Financial Commitment includes the following:

a. Investment made by Persons Resident in India by way of ODI,

b. Debt other than Overseas Portfolio Investment in a foreign entity or entities in which the ODI is made,

c. Non-fund-based facilities extended by Persons Resident in India to or on behalf of such foreign entity or entities.

Is approval from RBI necessary for initiating Overseas Investments?

Investments exceeding USD 1 billion (or its equivalent) in a financial year require prior approval from the Reserve Bank, even if the total financial commitment is within the eligible limit under the automatic route.

Under what circumstances is approval required from the Central Government (CG)?

Below are the specific situations where CG approval is mandatory:

a. When seeking to exceed the prescribed limits, which are typically 400% of the net worth, in strategic sectors or specific geographical regions.

b. When intending to make overseas investments or financial commitments in countries such as Pakistan or any other jurisdiction as directed by the Central Government.

How should applications for overseas investments under the approval route be submitted?

The applicant who is intending to make FC shall file Form FC. Applications for overseas investments under the approval route should be submitted to the (RBI) through the designated Authorised Dealer (AD) bank in physical/electronic form along with specified documents.

What are the key documents to be submitted with an investment proposal under the approval route?

Key documents include background details, reasons for seeking approval, observations, and recommendations of the designated AD bank, a board resolution confirming the proposed transaction, diagrammatic representation of the organisational structure indicating all the subsidiaries of the Indian entity horizontally and vertically with their stake (direct and indirect) and status (whether operating company or Special Purpose Vehicle), valuation certificate for the foreign entity (if applicable) and other relevant documents properly numbered, indexed and flagged.

Can a Resident Individual acquire foreign securities by way of gift?

Indian resident can acquire foreign securities without any limit, by way of gift from another Indian resident who is a relative and holding such securities in accordance with the provisions of Foreign Exchange Management Act, 1999 (FEMA).

What entities can residents in India invest in overseas under this permission?

Residents in India can invest in foreign entities engaged in bona fide business activities, directly or through Special Purpose Vehicles (SPVs).

What are the prerequisites for making financial commitments in start-ups for overseas investors?

Financial commitments in start-ups should not be made out of funds borrowed from others, and a certificate

from statutory auditors/chartered accountants is required certifying the same.

How is the acquisition or transfer by way of deferred payment regulated?

Deferred payment transactions should have defined periods, and the part of the payment deferred is treated as non-fund based financial commitment. Subsequent payments towards deferred consideration shall be reported in Form FC as conversion of non-fund based financial commitment to equity.

What are the restrictions on the mode of payment for overseas investments?

Cash payments are not permitted for overseas investments, and a person resident in India shall not make any payment on behalf of any foreign entity other than by way of financial commitment as permitted under the OI Rules/Regulations.

Can overseas lenders be from any country for creating a pledge/charge?

No, overseas lenders must be from countries where financial commitment is permissible under the OI Rules.

Are there any exceptions to what counts towards the financial commitment limit?

Balances in the Exchange Earner's Foreign Currency Account, American Depositary Receipts / Global Depositary Receipts issuances, and stock-swap for financial commitment do count unless the financial commitment is made through such resources prior to the date of notification of the Overseas Investment Rules/Regulations.

What happens when External Commercial Borrowings (ECB) are used for financial commitment?

Only the part of the ECB exceeding the amount of the corresponding pledge or charge already counted is

reckoned towards the limit.

Can resident individuals transfer overseas investments by way of gift to someone outside India?

No, resident individuals are not permitted to transfer overseas investments as gifts to non-residents.

What are the rules for acquisition or transfer of Immovable Property outside India?

Any acquisition or transfer of immovable property outside India shall be governed by the provisions contained in Rule 21 of OI Rules. The following is further provided:

An AD bank may allow an Indian entity having an overseas office to acquire immovable property outside India for the business and residential purposes of its staff, provided total remittances do not exceed the following limits as laid down for initial and recurring expenses, respectively:

- 15 percent of the average annual sales/income or turnover of the Indian entity during the last two financial years or up to 25 percent of the net worth, whichever is higher;
- 10 percent of the average annual sales/ income or turnover during the last two financial years.

What is the difference between Overseas Direct Investment and Foreign Direct Investment (FDI)?

Overseas Direct Investment refers to investments made by Indian individuals or entities in foreign entities, while Foreign Direct Investment (FDI) refers to investments made by foreign individuals or entities in Indian companies.

Are there any limits on the amount of overseas investment that can be made?

Yes, there are limits on the amount of overseas investment that can be made. The maximum limit for financial commitment (FC) is determined by the Reserve Bank of India (RBI) and may vary based on the type of investor and the nature of the investment.

Are there any restrictions on the mode of payment for overseas investments?

Yes, there are restrictions on the mode of payment for overseas investments. Payments can only be made through banking channels, such as wire transfers or foreign currency accounts.

Can an individual transfer their overseas investment to someone outside India as a gift?

Yes, resident individuals can transfer their overseas investments to someone outside India as a gift, subject to compliance with the Foreign Exchange Management Act and other applicable laws.

CASE STUDY

An Indian Start Up in Pharmaceuticals wanted to invest in Joint Venture Pharma company in US. The need for certain drugs for the treatment of Juvenile Diabetes (Type I) in India is very crucial for the Indian Market access and therefore the Start Up applied for the RBI approval to invest ODI in the US. This ODI investment would help in getting the required knowledge and drugs at the rationalised prices which is crucial element of investment. The Director of the Start-up approached the Authorised Dealer (Bank) for getting details regrading the investment. The bank official informed him that all the Overseas Direct Investment are regulated by RBI under ***Foreign Exchange Management (Overseas Investment) Regulations, 2022 and therefore the compliances are very important.***

Form FC needs to be submitted to the authorised Dealer Bank. The form has the complete details of the investor, foreign entity, and investment Form APR (Annual Property Returns) which contains the financial details of the foreign entity, needs to be submitted to the Authorized Dealer Bank before the end of the calendar year.

An Indian Resident who has made an Overseas Direct Investment will be required to adhere to ODI compliances. This will entail the submission of Form FC and the annual filing of Form APR. Form FC needs to be submitted to the Authorised Dealer (Bank) before making the investment.

FOREIGN DIRECT INVESTMENT

What is Foreign Direct Investment (FDI)?

FDI refers to the investment made by an individual residing outside India in an unlisted Indian company using equity instruments, or in 10% or more of the fully diluted post-issue paid-up equity capital of a listed Indian company.

If a person residing outside India has previously invested in equity instruments of a listed Indian company, and their investment falls below the 10% threshold of the fully diluted post-issue paid-up equity capital, it will still be considered as FDI. "Fully diluted basis" signifies the total number of shares that would be outstanding if all possible conversion sources were exercised.

What are the Permissible FDI Routes in India?

There are three permissible FDI routes in India:

Category I- Automatic Route: FDI under the automatic route does not require prior approval from the government or the RBI. Investors can invest in sectors and activities permitted under this route without seeking specific approval, but they are required to notify the RBI within a specified timeframe after the investment is made.

Category II- Government Approval Route: Certain sectors or activities necessitate prior approval from the government. Investors must seek approval from the relevant government department or ministry, as well as from the RBI, before making investments in these sectors. The approval process involves a case-by-case assessment of the proposal.

Category III- In these sectors, foreign investors can invest up to a certain limit under the automatic route, but any investment beyond that limit will require prior approval from the government.

Which sectors are prohibited from receiving FDI?

Investment by a person resident outside India is prohibited in the following sectors:

- Lottery Business including Government/ private lottery, and online lotteries.
- Gambling and betting including casinos.
- Chit funds
- Nidhi Company
- Trading in Transferable Development Rights (TDRs).
- Real Estate Business or Construction of farm houses.
- However, please note that "Real estate business" does not include development of townships, construction of residential or commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations, 2014.
- Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes.
- Activities/sectors not open to private sector investment viz., (i) Atomic energy and (ii) Railway operations
- Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for lottery business and gambling and betting activities.

Can a non-resident acquire shares listed on an Indian stock exchange?

Besides portfolio investors, non-residents can acquire or purchase shares listed on the stock exchange through a registered broker, as long as they have previously acquired the shares and retained their ownership.

Are the investments and profits obtained through FDI eligible for repatriation?

Yes, investments and profits earned under FDI in India are generally repatriable, except when they are made on a non-returnable basis, subject to certain conditions and regulations set by the RBI and the Central Government (CG).

What types of securities can Indian companies issue while receiving FDI?

An Indian company is permitted to receive foreign investment by issuing equity instruments to the investor. The equity instruments are equity shares, compulsorily convertible debentures, preference shares and share warrants issued by the Indian company.

- Equity shares: Equity shares are those issued in accordance with the provisions of the Companies Act, 2013 and will include equity shares that have been partly paid.
- Partly paid shares: Partly paid shares issued on or after July 8, 2014, will be considered as equity instruments.

What are the regulations concerning Foreign Portfolio Investment (FPI) in Indian companies, and when does government approval become necessary?

FPI in Indian companies can be up to forty-nine percent (49%) of the paid-up capital on a fully diluted basis or the sectoral or statutory cap, whichever is lower, without requiring government approval or sectoral condition compliance, as long as it doesn't lead to the transfer of ownership and control from resident Indian citizens to persons residing outside India.

However, for other investments made by individuals residing outside India, they must adhere to the conditions specified by the government and comply with sectoral conditions outlined in Schedule I of the NDI Rules, necessitating government approval.

What are the rules for transferring equity instruments of an Indian company or units by a person residing outside India, and when is Government approval required?

A person not classified as a non-resident Indian, overseas citizen of India, or overseas corporate body can transfer equity instruments of an Indian company or units to another person outside India, by sale or gift.

- This also applies to transfers resulting from mergers, demergers, or amalgamations involving entities registered outside India.
- Government approval is necessary for such transfers if the Indian company operates in a sector that requires it.
- If a Foreign Portfolio Investor (FPI) breaches investment limits during acquisition, they must sell excess equity instruments to an eligible Indian resident within five trading days after settlement, without incurring a violation, subject to SEBI's guidelines.

What is the approved mode of payment for the transfer of equity instruments between residents in India and residents outside India?

The consideration amount for transferring equity instruments between a person residing in India and a person residing outside India must be received from abroad or remitted from India through authorized banking channels in India. Alternatively, it can be paid from or received in NRE (Non-Resident External), FCNR(B) (Foreign Currency Non-Resident - Banks), or Escrow accounts in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.

If the investment is held on a non-repatriation basis, in addition to the above, the consideration amount for the transfer can also be paid from or received in an **NRO (Non-Resident Ordinary)** account as per the Foreign Exchange Management (Deposit) Regulations, 2016.

What are the options for transferring equity instruments of an Indian company held by another Indian company that has foreign investment and is not owned or controlled by resident Indian citizens or persons residing outside India?

Following are the exit options available:

- These equity instruments can be transferred to a person outside India, with the requirement to report the transfer using Form FCTRS ("FCTRS" stands for "Foreign Currency Transfer of Shares." RBI has specified Form FCTRS for making reporting of Transfer of Capital Instruments between a person resident in India and a person resident outside India). Pricing guidelines do not apply in this case.
- They can be transferred to a person in India, but the transfer must adhere to pricing guidelines.
- Alternatively, they can be transferred to an Indian company with foreign investment, provided that the recipient company is not owned or controlled by resident Indian citizens or persons residing outside India. In this scenario, neither pricing nor reporting guidelines apply.

What are the conditions for Non-resident Indians or Overseas Citizens of India to purchase or sell equity instruments of a listed Indian company on a repatriation basis on a recognized Indian stock exchange?

NRIs and OCIs can buy or sell equity instruments of a listed Indian company on a repatriation basis, subject to these conditions:

- The transactions must be conducted through a designated authorized dealer branch.
- The individual NRI or OCI's total holdings should not exceed five percent (5%) of the total paid-up equity capital on a fully diluted basis or the paid-up value of each series of debentures, preference shares, or warrants issued by the Indian company. The combined holdings of all NRIs and OCIs should not exceed ten percent under the same criteria.
- The aggregate ceiling of ten percent (10%) can be increased to twenty-four percent if the General Body of the Indian company passes a special resolution to that effect.

What are the provisions for deferred payment consideration in the transfer of equity instruments between residents in India and residents outside India?

In the case of transferring equity instruments between a person residing in India and a person residing outside India, up to twenty-five percent (25%) of the total consideration can be handled as follows:

- The buyer can make the payment on a deferred basis within a period not exceeding eighteen months from the date of the transfer agreement; or
- The payment can be settled through an escrow arrangement between the buyer and the seller for a period not exceeding eighteen months from the date of the transfer agreement; or
- The seller can provide indemnification for a period not exceeding eighteen months from the date of full consideration payment by the buyer, if the total consideration has already been paid by the buyer to the seller.

It is crucial to note that the total consideration ultimately paid for the shares must comply with the applicable pricing guidelines.

What are the provisions for opening an Escrow account in the transfer of equity instruments between residents in India and residents outside India?

When transferring equity instruments between a resident in India and a person residing outside India, the person residing outside India is allowed to open an Escrow account as per the Foreign Exchange Management (Deposit) Regulations, 2016.

This Escrow account can be funded through inward

remittances via banking channels or by a guarantee issued by an authorized dealer bank, following the terms and conditions outlined in the Foreign Exchange Management (Guarantees) Regulations, 2000.

If the transaction falls under SEBI guidelines/regulations, the operation of the Escrow accounts for securities must comply with the relevant SEBI regulations, if applicable.

How can a foreign investor set up business operations in India through a company?

Foreign investors can set up business operations in India by incorporating a company under the Companies Act, 2013 and operate through various forms such as Joint Venture/Wholly Owned Subsidiary/Holding Company in compliance of the entry route/sectoral cap and other conditions under the FDI Policy and Foreign Exchange Management (Non-Debt Instruments) Rules, 2019.

What is downstream investment?

Downstream investment refers to an investment made by an Indian entity that already has foreign investment, or by an Investment Vehicle, in the capital instruments or capital of another Indian entity.

Who is required to make reporting of downstream investment?

When an Indian company with foreign investment uses that investment to invest in another Indian company, it's known as indirect foreign investment or downstream investment. In such cases, the investor company must report this using Form DI for downstream investment.

Which regulations govern downstream investment under the Foreign Exchange Management Act (FEMA)?

Downstream investment under Foreign Exchange Management Act, 1999 (FEMA) is regulated by the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017.

What is the time limit for an Indian entity to file Form DI for reporting downstream investment?

The Indian entity making a downstream investment in another Indian company (falling under the category of indirect foreign investment for the investee company) must submit the reporting in Form DI (Downstream Investment) within 30 days from the date of the investment. This reporting requirement remains the same even if the investee company has not yet allocated the capital instruments.

What are the consequences of late filing of Form DI for reporting downstream investment in India?

If a company fails to report its downstream investment after 30 days from the date of the investment, it may be subject to late submission fees determined by the RBI in consultation with the Central Government.

CASE STUDY

A Real Estate company wanted to build a state-of-the-art storage and warehousing facility for agriculture-based industrial products. Their company had an FDI investment of 100%, under an automatic route for storage and warehousing including warehousing of agriculture products with refrigeration (cold storage). All the directors of the Warehousing company are NRIs (Non-resident Indians).They had made a business plan to buy 50 acres of agricultural land in the vicinity of Mysore and hold them as a land bank to build a warehouse for agricultural or farm products. The company wanted to buy directly from the farmers but it was held that according to the Karnataka Land Reforms Act 2020 an Indian citizen or resident can own agricultural land in Karnataka. Also, it was held that as per the FDI Consolidated Policy, 2020, FDI investment can be directed for specific agricultural purposes (for eg:- Horticulture) and not to buy farmland in India.

FINANCIAL FRAUDS

What is meant by financial fraud?

Financial fraud refers to deceptive activities carried out by individuals or organizations with the intention of obtaining money or assets illegally. It typically involves misrepresentation, manipulation, or theft of funds, assets, or other sensitive information from an individual.

What is electronic financial fraud?

Electronic financial fraud refers to any fraudulent activity that involves the use of electronic or online channels or apps to deceive individuals for monetary gain.

How does electronic financial fraud occur?

Electronic financial fraud can occur through various means, such as emails pretending to be from legitimate sources asking for personal or banking details, SMS, WhatsApp or other messages with links to lottery prices, pre-approved loans, vouchers or coupons etc.

Some of the common types of electronic financial fraud are:

- **Phishing scams:** Fraudsters send deceptive emails or messages with links to trick individuals with offers, discounts, and rewards to trick users into revealing sensitive information.
- **UPI Scams:** Unauthorised UPI payment requests by fraudsters via calls or messages or QR scans to enter UPI PIN/OTP for receiving money.
- **Credit/Debit card skimming:** In ATMs, fraudsters attach an external keyboard/card reader/pinhole camera above the keypad which is camouflaged with the ATM device to steal the user's card details.
- **Contactless NFC cards:** Lost/stolen or transaction limitless cards are very vulnerable to fraud, especially a credit card which usually does not require a pin, or tap and pay.
- **SIM Swapping/Cloning:** Fraudsters employ various methods such as offering free-of-cost data recharge or SIM upgradation to make a clone of the user's SIM and gain access to personal or banking details. Unauthorized/non-licensed repair stores may also commit the same.
- **Credit/Debit card fraud:** Fraudsters try to get your card information via vishing calls (phone calls pretending to be from a bank or a wallet service, telecom providers), fake apps, websites, ads, pop-ups, advertisements, SMS, and WhatsApp message links to steal money from your bank account.
- **Online shopping fraud:** Scammers set up fake online stores offering branded items at low cost to collect payments for products or services that they never deliver.
- **Fake/Counterfeit Apps:** Fraudsters can remotely access the user's device through fraudulent apps and extract information like account details, OTP, card details etc.
- **Juice Jacking:** Fraudsters target public USB ports meant for charging purposes to insert malware/bugs into the user's mobile to steal sensitive information. This can also be done by external gadgets from unauthorized stores or manufacturers or street vendors or train vendors using gadgets like power banks.
- **Identity Theft:** Stealing someone's personal information to make unauthorized transactions or open new accounts in their name and request medical or emergency monetary help on the user's friends list.

Some Instances of online financial frauds in India

- In May 2023, a woman in Nagpur lost over five lakh rupees as she was deceived into clicking a fraudulent link as part of a supposed job recruitment process.
- Another man from Nagpur lost six lakh sixteen thousand rupees by a fraudster who asked him to click on the link and verify some details through WhatsApp.

- A Mumbai resident lost twenty thousand rupees after clicking on a malicious link. A message, posing as a genuine message from the bank warned him

that his net-banking facility will be discontinued unless he updates his KYC information and asked him to click on a link to update his PAN Card.

- Recently there were reports on scammers cloning or obtaining biometric data such as fingerprints of Aadhaar users to withdraw money misusing the Aadhaar Enabled Payment System (AePS) as this does not require OTP to withdraw cash, biometric data alone suffices.

How can I protect myself from electronic financial fraud?

- Be cautious of unsolicited emails or messages asking for personal information.
- Never share your Bank account details, login credentials, ATM or UPI PINs, OTPs, or Debit/ Credit card details with any strangers, and never write your PIN on the card.
- Use strong, unique passwords for your online accounts and enable two-factor authentication/ biometrics where available.
- Regularly review your financial statements and account activity to detect any suspicious transactions.
- Avoid clicking on links, pop-ups, ads or downloading attachments from unknown or suspicious sources.
- Set transaction limits on your NFC credit/debit card. If you lost the card block or freeze immediately. If the credit card is lost, then block the card or freeze the card immediately.
- Verify the security of websites before entering sensitive information by checking for "https" in the URL and a padlock icon and double verify the website address and its genuineness.
- Educate yourself about common scams and stay informed about new fraud techniques.

What is the role of the Reserve Bank of India in curbing financial fraud?

The Reserve Bank of India (RBI) has notified all commercial, small finance and payments banks to strengthen their security systems to make electronic transactions safer.

- Banks are obliged to put in place risk mitigation systems to identify existing risks in their digital infrastructure and also efficient fraud detection and prevention mechanisms among others.
- As per RBI mandates, banks will have to ensure that customers have registered for SMS alerts mandatorily. Customers can also opt for e-mail alerts. Banks shall also maintain 24x7 mechanisms for the customer to report unauthorised electronic banking transactions.
- RBI has also issued a list of safe digital practices that can be exercised by users to stay safe from falling victim to financial fraud.

Under which laws are the punishments prescribed for financial fraud?

The Indian Penal Code, 1860 Bhartiya Nyaya Sanhita, 2023 and the Information Technology Act of 2002 largely defines and prescribes punishment for an array of financial frauds.

How to Report a Financial Fraud?

If a person has fallen victim to financial fraud, inform your bank immediately about the fraud. For more details, one can give a missed call to 14440.

Victims of such frauds can also call the cyber crime helpline number at 1930.

What is the National Cyber Crime Recording Portal (NCCRP)?

NCCRP is a centralized portal aimed to facilitate online reporting of all kinds of cyber-crimes including mobile crimes and financial frauds such as phishing, vishing, SIM card swapping, identity theft, and debit/credit card fraud.

A victim of online financial fraud can visit the NCCRP website (https://cybercrime.gov.in/). The detailed steps for reporting a complaint can be accessed in their website.

- Once a complaint is filed, the selected State/UT will further deal with the complaint and the user can time track the status of the complaint and can also withdraw the complaint before it is converted into an FIR.

- This service can be availed by citizens and non-citizens alike.

What is the customer's liability in case of financial fraud?

Zero Liability

- A customer has no liability if an unauthorised transaction has happened because of contributory fraud/negligence/deficiency on the part of the bank.
- If it happened because of a third-party breach where neither the bank nor the customer is at fault.
- Than, the customer will have to report the incident to the bank within three working days to avoid liability.

Limited Liability

- A customer is partially liable if the unauthorised transaction happened because he divulged personal/ banking information albeit being deceived to do so. If the fraudulent transaction continues even after informing the bank, the bank will have to be accountable for such losses.
- If the deficiency lies with neither the bank nor the customer but there is a delay of 4-7 working days in reporting the fraud to the bank, the customer's liability will be capped at 5,000/-, 10,000/- and 25,000/- depending upon the type of account.
- If there is a delay of more than 7 working days in reporting, the liability of the customer is determined as per the bank's Board approved policy.

Is there Insurance coverage available for Online Financial Fraud?

Cyber Insurance policy for protection from cybercrimes is available for individuals in India. In 2021, the Insurance Regulatory and Development Authority of India (IRDAI), released a Guidance Document to the insurers on how to design a cyber-insurance policy. The document can be accessed in their website.

- Further, several banks themselves offer fraud coverage insurance such as the HDFC ERGO Cyber Sachet, Kotak Cyber Secure, SBI Cyber VaultEdge amongst others.

I lost my mobile, or got stolen, what should I do now?

Since mobile phones contain sensitive personal, banking or other information it is always advisable to secure your phone with a pattern/passcode/fingerprint/face ID lock. If your phone is lost or stolen, it is best advised to:

- Use Find My Device for Android or Find My iPhone for IoS to locate or lock the phone or erase data from it.
- Request your telecom service provider to block the SIM card as SIM cards also store sensitive information in them.
- File an FIR at the nearest police station or cyber police station.
- File a request for blocking the lost/stolen phone in the Central Equipment Identity Register (CEIR) Portal. For this:
- Obtain a new SIM card from Telecom Service Provider (TSP) which is necessary for OTP verification and carry identity proof of the user, invoice of the lost/ stolen device (optional) along with the Complaint Number of such FIR. Alternatively, you can also submit the number of Lost Article Report.

Go to https://ceir.gov.in and follow the steps for registering a request for blocking as provided in detail here.

Once the device is found, the user can request to unblock the same.

What to do in case of inaction from the side of the Bank in case of a Financial Fraud?

If someone has withdrawn money from your account and the same has been notified to your bank, the bank will have to resolve your complaint within 90 days from the date of receipt.

You may approach the Banking Ombudsman or the appropriate Consumer Forum, if your bank has not taken any action after a financial fraud was duly reported. Complaints to the Banking Ombudsman can be made either online through the portal that can be accessed using this link: https://cms.rbi.org.in/ or can be sent via post.

CASE STUDY

Sanjay is an engineering student in Bangalore and had opened a savings bank account recently. He applied for a student loan for which he was given a Prepaid Card for making payments. He received a message regarding the payment made from his student card. He was from a village nearby Bangalore and wasn't much aware of digital transactions. Thus, he approached his bank and enquired about the message he received on his phone. The Bank official was able to trace the transaction made and enquired if Sanjay had shared his student card login ID and password. He said that he had written the details in his book, for safety purposes, in case he forgets the bank details.

The bank official explained to him the importance of digital transactions and precautions to be followed. They explained him what are types of digital transactions and he should be more aware of online payment systems, importance of passwords, One Time passwords (OTP) for online payment. The increase in digital transactions and online banking has led to many financial fraud cases. The RBI and Banks have been regularly spreading awareness about the preventive measures to be followed like, regular updation of one's bank statements, and other relevant information like Aadhaar Number, login ID etc.

Thus, Sanjay realised the importance of digital transactions and also learnt that he must not write bank details in books / copies that can be accessed by others.

TRADEMARKS

What is a trademark?

A trademark is a word, phrase, symbol, design, or combination thereof that identifies and distinguishes the source of the goods or services of one party from those of others. Trademarks can be used on a variety of products and services, including physical goods, digital goods, and services.

A trademark can be designated by the following symbols: TM - ™, R - ® and C - ©

What types of things can be trademarked in India?

Under the Trade Marks Act, 1999, a wide range of things can be registered as trademarks, including:

- **Word marks:** These include words, slogans, names, or combinations of words used to identify and distinguish goods or services.
- **Device marks:** These are logos, symbols, designs, or graphical representations used as trademarks.
- **Shape marks:** The shape or packaging of goods can be registered as a trademark if it is distinctive.
- **Colour marks:** Specific colours or colour combinations can be trademarked for goods or services if they are distinctive and not functional.
- **Sound marks:** Unique sounds, jingles, or musical tunes can be registered as trademarks.
- **Scent marks:** Distinct and non-functional scents can be trademarked for certain goods or services.
- **Hologram marks:** Three-dimensional holograms can be registered as trademarks.
- **Collective marks:** These are trademarks owned by an association, society, or other collective body for use by its members.
- **Certification marks**: These are used to certify the geographical origin, material, mode of manufacture, quality, or other characteristics of goods or services.
- **Well known marks:** These marks are accorded a greater degree of recognition and are protected across all categories.

What does TM and R signify, when can we use them?

The symbol "TM" stands for "Trademark" whereas the symbol "SM" stands for "Service Mark" it indicates that the mark has been filed with the Trademark Office for registration. Its usage signifies the owner's claim over the mark, even before it is officially registered.

On the other hand, the symbol "®" represents a "Registered Trademark." This symbol can only be used once the trademark has successfully completed the registration process and has been officially validated and registered by the Trademark Office for the specific goods or services.

What are the rules and regulations governing trademarks?

Trademarks in India are governed by the Trade Marks Act, 1999 along with the Trade Marks Rules 2017. This comprehensive law covers various aspects related to trademark registration, protection, and enforcement. Furthermore, certain international agreements such as the Paris Convention and the TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights) ensure harmonization of trademark laws globally.

What is the purpose of a trademark?

The primary purpose of a trademark is to protect the goodwill and reputation of a business. A trademark can help consumers to identify and purchase the goods or services of the business that they trust.

- Trademarks can also help businesses to differentiate their goods or services from those of their competitors.
- In **ITC Ltd. v. British American Tobacco (India) (2004),** the Supreme Court of India held that a trademark is a valuable asset of a business and its protection is essential to the promotion of fair competition.

What are the rights and benefits of trademark registration?

A registered trademark gives the owner the exclusive right to use the trademark in relation to the goods or services for which it is registered. This means that the owner can prevent others from using the trademark without their permission.

- If a third party uses the trademark without permission, the owner can sue for trademark infringement. **Section 29 of the Trade Marks Act, 1999** states that the owner of a registered trademark has the exclusive right to use the trademark in relation to the goods or services for which it is registered.

What can be and what cannot be registered as a trademark?

To be eligible for registration in India, a trademark must be:

- Capable of being represented graphically
- Distinctive meaning that it must be able to distinguish the goods or services of one person from those of others
- Not prohibited from registration under the Trade Marks Act, 1999

Section 9 of the Trade Marks Act, 1999 states that the following types of marks cannot be registered as trademarks:

- Devoid of any distinctive character
- Descriptive of the goods or services in respect of which it is sought to be registered
- Identical or deceptively similar to an earlier registered trademark for the same or similar goods or services
- Contrary to public order or morality

What is the validity period of a registered trademark in India?

A trademark registration in India remains valid for a period of 10 years from the date of filing the application. However, the validity of the trademark is not limited to this initial 10-year term. The registration can be renewed indefinitely by paying the prescribed renewal fees every 10 years. To renew the registration, the trademark owner must file a renewal request, using the prescribed FORM TM-R, within one year before the expiration of the current 10-year validity period.

How many classes are there in the trademark classification system?

There are 45 classes in the Nice Classification system. Classes 1 to 34 cover various goods, while classes 35 to 45 cover services.

For instance, Class 9 includes computer software, scientific instruments, and glasses. Class 35 covers advertising, business management, and retail services.

Who can apply for a trademark, and how?

Any person claiming to be the proprietor of a trademark, used or proposed to be used by them can apply. The application must be in writing and it must contain the trademark, the goods/services, name and address of the applicant, and, if applicable, the agent with a power of attorney.

What's the difference between a trademark, copyright, and patent?

- Trademarks are words, phrases, symbols, or designs that identify the source of goods or services and distinguish them from those of other traders. Trademarks can be registered with the government to give the owner exclusive rights to use the mark in relation to the goods or services for which it is registered. **The Nike swoosh** is a trademark that identifies athletic goods as coming from Nike.

- Copyrights protect original works of authorship, such as books, movies, music, and software. Copyrights arise automatically when a work is created and do not need to be registered. Copyright holders have the exclusive right to reproduce, distribute, display, and perform their copyrighted works. The copyright for the Bollywood film "**Dangal**" belongs to **Aamir Khan Productions**, which means that they have the exclusive right to reproduce, distribute, display, and perform the film.
- Patents protect new and useful inventions, such as machines, processes, and compositions of matter. Patents are granted by the government for a period of 20 years. The Patent holders have the exclusive right to make, use, and sell their patented inventions. The patent for the **Indian Railways'** indigenously developed **Train 18** which belongs to the Indian government, this means that the government has the exclusive right to make, use, and sell the **"Train 18"**.

How does one choose a strong and effective trademark?

A strong and effective trademark should be:

- ***Distinctive*:** It should be able to distinguish the goods or services of one person from those of others.
- ***Memorable*:** It should be easy for consumers to remember and pronounce.
- ***Available*:** It should not already be registered as a trademark for the same or similar goods or services.

What is the process for registering a trademark? Is a lawyer needed to register?

- ***Choose a trademark*:** The trademark should be distinctive and not descriptive of the goods or services for which it is sought to be registered. It should also not be identical or deceptively similar to an earlier registered trademark for the same or similar goods or services.
- ***Conduct a trademark search*:** This is to ensure that the trademark is available for registration and is not already in use by someone else.
- ***File a trademark application with the Registrar of Trademarks*:** Applicants can file trademark applications in India through two methods: physical submission or online filing. Applications can be filed online through the e-filing gateway available on the official website "www.ipindia.nic.in". The application must include the following information like: The name and address of the applicant, the trademark and a list of the goods or services for which the trademark is sought to be registered with the prescribed fee

***Examination of the application*:** The Registrar will examine the application to determine whether it meets the requirements for registration. If the application is approved, the trademark will be published in the "Trade Marks Journal" for a period for opposition.

- ***Opposition*:** If anyone files an opposition within the specified period, the Registrar will hear the opposition and decide whether to register the trademark.
- ***Registration:*** If no opposition is filed or the opposition is unsuccessful, the trademark will be registered.

Whether a lawyer is required to register a trade mark?

A lawyer is not required to register a trademark, but it is advisable to consult with a trademark attorney to ensure that the application is properly filed and to avoid any potential problems.

What happens after applying for a trademark? What rights are given?

Once a trademark is registered, the owner has the exclusive right to use the trademark in relation to the goods or services for which it is registered. This means that the owner can prevent others from using the trademark without their permission.

Registered trademark owners also have the right to:

- Use the ® symbol next to their trademark.
- Sue for trademark infringement, if someone else uses their trademark without permission.
- License their trademark to others.

The registered proprietor of the trademark has the exclusive right to sue for infringement of the trademark as per section 28(1) of the Trade Marks Act, 1999. Whereas, as per Section 27 (1) of the Trade Marks

Act, 1999, no person shall have the right to sue for the infringement of an unregistered trademark.

Can one file an International Trademark Application?

Yes, trademarks can be used internationally. There are two main ways to protect a trademark internationally:

- Filing an international trademark application with the World Intellectual Property Organization (WIPO): This allows the applicant to file a single application for trademark protection in multiple countries.
- Filing trademark applications in each country where the trademark is to be used: This is the most common way to protect a trademark internationally.
- It is important to note that trademark rights are territorial, meaning that trademark protection in one country does not automatically extend to other countries.

What if someone else is using a similar trademark?

If someone else is using a similar trademark, the trademark owner may have a claim for trademark infringement. To succeed in a trademark infringement claim, the trademark owner must prove that the other person's use of the trademark is likely to cause confusion among consumers as to the source of the goods or services. If the trademark owner is successful in their claim for trademark infringement, they may be awarded damages, an injunction to prevent the other person from continuing to use the trademark, or both. **Section 29 of the Trade Marks Act, 1999** states that the owner of a registered trademark has the exclusive right to use the trademark in relation to the goods or services for which it is registered.

Is it possible to sell or transfer a trademark?

Yes, it is possible to sell or transfer a trademark. Trademark registrations are transferable assets and can be sold or transferred/assigned to another person or entity. To transfer a trademark registration, the trademark owner must file a transfer application with the Registrar of Trademarks. (**Section 37 of the Trade Marks Act, 1999)**

How does one renew their trademark registration?

Section 25 of the Trade Marks Act, 1999 states that a trademark registration lasts for 10 years and can be renewed for an **additional 10 years indefinitely**. To renew a trademark registration, the trademark owner must file a renewal application with the Registrar of Trademarks **within 6 months before the expiration** date of the registration.

Is it possible to remove a registered trade mark due to lack of use?

Yes, under Section 47 of the Indian Trade Marks Act of 1999, a registered trademark can be removed on the grounds of non-use in the following circumstances:

- If it is proven that the trademark was registered without a genuine intention to use it, and it remained unused until three months before the application for removal was filed; or
- If the trademark has not been put into continuous use for a period of five years from the date of registration, and the application for removal is made after the expiry of three months following the completion of the five-year period of non-use.

Is it possible to change the trademark after it is registered?

Yes, it is possible to change a trademark after it is registered. However, there are some restrictions on what changes can be made. For example, the trademark cannot be changed to a trademark that is identical or deceptively similar to an earlier registered trademark for the same or similar goods or services. **(Section 22 of the Trademarks Act, 1999)**

In the event that a single application, as referred to in sub-section (2) of section 18, is amended by dividing it into two or more separate applications, the date of filing the initial application shall be considered as the date of filing for the divided applications resulting from such division.

What is Trademark Infringement?

If a trademark is used without permission, the trademark owner may have a claim for trademark infringement.

To succeed in a trademark infringement claim, the trademark owner must prove that the other person's use of the trademark is likely to cause confusion or is deceptively similar among consumers as to the source of the goods or services.

What if the Trademark is used without permission?

Section 29 of the Trade Marks Act, 1999 sets out the remedies available to the owner of a registered trademark in the event of infringement, some of which are as follows:

- ***An injunction*:** This is a court order that prevents the infringer from continuing to use the trademark.
- ***Damages*:** This is monetary compensation awarded to the trademark owner for the losses they have suffered as a result of the infringement.
- ***An account of profits*:** This is an order requiring the infringer to account for and pay over to the trademark owner the profits they have made from using the trademark without permission.
- ***Delivery up*:** This is an order requiring the infringer to deliver up to the trademark owner all goods and materials bearing the trademark.
- ***Destruction or erasure*:** This is an order requiring the infringer to destroy or erase all goods and materials bearing the trademark.

The Amul Trademark Infringement case 2007: In this case, the Gujarat High Court ruled that if a trademark is registered, no one else can use it, even if they're selling different products. This case came up when Amul Dairy and GCMMF filed trademark infringement cases against two local shops, Amul Chasmaghar and Amul Cut Piece Stores. The court decided that using the Amul trademark by these shops was not allowed, even though they were selling different things. The decision reinforces the rights of registered trademark owners to protect their brand name.

What benefits will a startup get by registering a trademark for its service or product?

- Registering a trademark provides a startup with exclusive rights to use the mark for its goods/ services, preventing consumer confusion.
- It offers legal protection against infringement, allowing the startup to take action and claim damages.
- A trademark helps build brand identity, recognition, and customer loyalty. It deters counterfeiting by establishing clear ownership rights.
- Moreover, a registered trademark is a valuable intellectual property asset that can increase the startup's overall value and attractiveness to investors and partners.

CASE STUDY

Ashok had recently joined a fitness club that trained people to run for marathons. He was advised to buy a sports shoe which is used by professional trainers. He visited a reputed sports company showroom. He then approached the store manager and said his requirements for the shoes for the marathon. Upon looking into different varieties of shoes, Ashok felt that the logo of the same brand differed. He felt that this might be duplicate shoes having a similar trademark logo. He then asked the manager about the matter. Then the store manager explained to him that this wasn't a deceptive trademark or duplicate shoes. Both logos are owned by the same company and they have a different purpose

Logos can be designed as per their requirements and use. For eg: - The mountain emblem for Adidas is designed for professional athletes. The three-striped design of the Adidas is used for the casual apparel and shoes.

GOODS AND SERVICES TAX (GST) LAW IN INDIA

What is GST?

Goods and Services Tax (GST) is a comprehensive indirect tax levied on the supply of goods and services in India, replacing various indirect taxes levied by the central and state governments.

What are the different types of GST?

GST in India is categorized into Central Goods and Services Tax (CGST), State Goods and Services Tax (SGST), Integrated Goods and Services Tax (IGST), and Union Territory Goods and Services Tax (UTGST).

What is IGST?

Integrated Goods and Services Tax (IGST) is a tax levied on the inter-state supply of goods and services. It is collected by the central government and shared with the respective states.

Who is liable to pay GST?

- Any person or entity involved in the supply of goods and services, exceeding the prescribed turnover threshold, is liable to register for and pay GST. The threshold limit for GST refers to the maximum limit of aggregate turnover in a financial year, beyond which a person is required to register for GST.
- Any business with Aggregate Turnover of Rs. 40 Lakhs (for goods) and Rs.20 lakhs (for services) shall register under the GST regime.
- Businesses with a yearly turnover of less than the threshold may choose to register for GST voluntarily. This is beneficial for businesses as it enables them to avail of input tax credit and other benefits.

What is Aggregate Turnover?

Aggregate turnover comprises all taxable supplies, exempt supplies, exports, and interstate supplies. However, it excludes inward supplies under reverse charge and the central tax, state tax, union territory tax, integrated tax, and cess.

What is the GST Council?

The GST Council is a constitutional body comprising representatives from the central and state governments. It is responsible for making recommendations on GST rates, exemptions, and other related matters.

How are GST rates determined?

GST rates are determined by the GST Council based on the nature of goods and services. The rates are usually categorized as "5%, 12%, 18%, or 28%", with certain items attracting a Nil rate or Special rates.

Is there a composition scheme for small businesses?

Yes, the Composition Scheme is available for small businesses with an annual turnover below a specified limit. They can pay GST at a fixed rate and file simplified returns. However, a significant disadvantage of the composition scheme is that they cannot charge GST from the purchasers, and also not avail Input Tax Credit.

Service providers, except restaurants/caterers, are not eligible for composition schemes.

The following three classes of persons, are not eligible for benefit of composition scheme, namely:

- Ice cream and other edible ice, whether or not containing cocoa.
- Pan masala
- All goods, i.e. Tobacco and manufactured tobacco substitutes.

What is Reverse Charge Mechanism (RCM) in GST?

Under RCM, the recipient of goods or services is liable to pay GST instead of the supplier. This mechanism is

applicable in specific cases outlined in the GST law.

Can input tax credit be claimed under GST?

Yes, registered businesses can claim input tax credit on GST paid on purchases of goods and services that are used for furtherance of business.

Can we get Input Tax Credit for capital expenditures like vehicles, solar panels etc for company use?

Input Tax Credit on capital goods is generally available if they are used in the course or furtherance of business. Examples - Credit is not available on cars, unless you are in a business of imparting driving training, or supplying such cars. A list of items on which ITC is not available is provided in Section 17 of the CGST Act, 2017.

What is the time limit for filing GST returns?

The time limit for filing GST returns varies based on the type of return. Generally, returns are filed monthly, quarterly, or annually.

How does GST impact exports and imports?

Exports are considered as zero-rated supplies, and GST paid on inputs used for exports is refundable. Imports attract IGST, and input tax credit can be claimed on the same.

Is GST applicable to online transactions and e-commerce?

Yes, GST is applicable to online transactions and e-commerce supplies. E-commerce operators may also be liable to collect and deposit TCS (Tax Collected at Source) under certain conditions.

Are there any exemptions under GST?

Certain goods and services, such as essential commodities and specific health services, are exempted from GST. The GST Council periodically revises the list of exempted items.

What are the different types of GST Returns?

There are several types of GST returns that taxpayers need to file, including:

- GSTR-1 (Outward Supplies)
- GSTR-3B (Monthly Summary Return)
- GSTR-4 (Quarterly Return for Composition Dealers)
- GSTR-5 (Non-Resident Taxable Persons)
- GSTR-6 (Input Service Distributor)
- GSTR-7 (Tax Deductor at Source)
- GSTR-8 (E-Commerce Operator)
- GSTR-9 (Annual Return)
- GSTR-10 (Final Return)

Are there any other types of GST Return?

Yes, GSTR-2A is an auto-populated return, but taxpayers do not need to file it separately. It is automatically generated and is made available in the taxpayer's GST portal. It is based on the information furnished by suppliers in their respective GSTR-1 returns. It contains details of all the inward supplies made to a registered taxpayer.

Can GST registration be cancelled?

Yes, GST registration can be cancelled voluntarily by the taxpayer or by the tax authorities in case of non-compliance or other specified reasons.

How can one get assistance for GST-related queries?

Taxpayers can seek assistance from the GST helpdesk or consult with tax professionals, or refer to official GST publications and notifications for clarifications on GST-related matters.

How long can one wait to register for the GST?

An unregistered person has 30 days to complete its registration formalities from its date of liability to obtain registration.

Whether salary received by an employee or a partner is taxable under the GST regime?

Although Partners are not employees of the firm, Salary paid to a Partner will not be leviable of GST. Any salary paid to an employee is under employer-employee transactions. Hence, not liable for GST.

When does registration in more than one state required? Will giving service from one location to a location in another state require registration in another state?

If services are being provided from one location, then registration is required to be taken only to the State where your place of business is and IGST to be paid on inter-state supplies.

On opening of a Branch Office or Outlet in another state, registration in the other state becomes mandatory.

Can tax paid in one state be used as ITC by the same firm in another state?

No, if a service provider is registered in more than one state, then each such registration will be treated as a separate registered person. Cross utilization of credit available with two different registered persons is not allowed.

Whether an advocate providing interstate supply chargeable under Reverse Charge liable for registration?

Exemption from registration has been provided to such suppliers who are making only those supplies on which the recipient is liable to discharge GST under Reverse Charge Mechanism.

CASE STUDY

Sri Guru Hair Care Company, in the state of Telangana, was a registered company exclusively for hair care products including hair oil and shampoos, having ayurvedic ingredients. It had obtained the AYUSH license for preparing Ayurvedic hair care products. It recently launched a new shampoo product for frizzy hair with ayurvedic ingredients which also promoted hair growth. During the filing for GST, the shampoos were rated at 18% GST. The Company had appealed to the GST commissioner that it should be rated 12% for ayurvedic products. The GST commissioner in his order on appeal stated that the shampoos which contained spirits (distilled form of Alcohol) are rated at 18% (HS Codes 33051010) and Ayurvedic shampoos are rated at 12%.

INSURANCE

Who can apply for an Insurance Contract?

Any person who has risks associated with business, professional or legal liabilities, threat of damage to automobiles, damage / destruction/ theft of movable property, fear of Untimely Death or disability, or damage/destruction of immovable property, may apply for an Insurance Contract, for the protection of the economic value of such risk.

Except in the case of Life Insurance, the economic value of the property or asset, is determined based on the market value.

Can any individual/firm carry the business of Insurance?

No, only an entity which is registered under the company's act and who is granted a **'Certificate of Registration'** by Insurance Regulatory and Development Authority (IRDA) can carry the business of insurance.

What are insurance contracts?

Insurance contracts are contracts of indemnity. Indemnity means making good of the loss by reimbursing the exact monetary loss. It aims at keeping the insured in the same position he was before the loss occurred and thus prevent him from making profit from insurance policy.

What is the principle behind Insurance Contracts?

Insurance Contracts are risk-bearing contracts where the Insurance Company agrees to bear the large risk for a small reward, viz. premium. As such the Insurance Contracts are governed by the 'principle of Utmost good faith' which requires the buyer/insured to disclose all the material facts.

It is necessary that the material facts must be disclosed to the insurer at the time of entering into the contract, and that all the information given in the proposal form should be true and complete.

What is insurance risk?

Insurance risk refers to the potential for financial loss or adverse outcomes that insurance companies face due to factors such as claim payments, market fluctuations, and unforeseen events.

How is insurance risk assessed?

Insurance companies assess risk through evaluating the risk profile. Factors such as age, health, lifestyle, and occupation are considered for life and health insurance, while factors like location, driving history, and property value are assessed for property and other insurance.

How do insurance companies manage risk?

Insurance companies manage risk through various strategies, including diversification of portfolios, setting appropriate premium levels, reinsurance (transferring risk to other insurers), and maintaining sufficient capital reserves.

Can insurance companies refuse coverage?

Yes, insurance companies have the right to refuse coverage based on risk assessment. Factors such as a high likelihood of claims, non-disclosure of relevant information, or a history of fraudulent activities may lead to the denial of coverage.

What is an Insurance Proposal Form?

A proposal form is one that is filled by any purchaser of a policy in written or electronic form, where all material information in respect of a risk is sought by the Insurance Company, in order to decide whether to grant an Insurance Contract.

What are the different forms of insurance contract?

An insurance contract may be in the form of an insurance policy or a cover note or a Certificate of Insurance or any other form as approved by the Insurance Regulatory and Development Authority of India (IRDAI) to evidence / verify / authenticate the existence of an insurance contract.

Who regulates insurance in India?

The Insurance Sector is one of the highly regulated sectors in India. The Insurance Regulatory and Development Authority of India (IRDAI) is the regulatory body responsible for overseeing and regulating the insurance industry in India. It operates under the provisions of the Insurance Act, 1938.

Are there any specific rules and regulations that protect the purchaser of an Insurance Policy?

The Insurance Regulatory and Development Authority of India (Protection of Policyholders' Interests) Regulations, 2017. These regulations have been formulated to ensure that the:

- Interests of insurance policyholders are protected.
- Insurers, distribution channels and other regulated entities fulfill their obligations towards policyholders and have in place standard procedures and best practices in sale and service of insurance policies.
- Policyholder-centric governance by insurers with emphasis on grievance redressal.

Can a purchaser cancel an Insurance Contract after purchasing the Insurance Policy?

Yes, but only in case of a Life Insurance Policy. **"Free Look Cancellation"** right is given to the purchaser of a Life Insurance Policy Cover, where the Purchaser has a free look period of 15 days from the date of receipt of the policy document and period of 30 days in case of electronic policies and policies obtained through distance mode.

What is the refund amount in case of cancellation during the Free Look Period?

The 'Free Look Period' ranges between 15-30 days depending on the mode in which the Policy was purchased. An Insurer is bound to provide a refund of the premium paid within a period of 15 days from the date of receipt of request for cancellation, subject to the deduction of a proportionate risk premium for the period of cover and the expenses incurred by the insurer on medical examination of the proposer and stamp duty charges.

Can I convert my existing paper polices into electronic policies?

Yes, it is possible to convert the existing paper policies into electronic form. A service request may be made to the Insurance Repository or Insurance Company or the Approved person for the conversion.

What is the role of an insurance agent or broker in India?

Insurance agents and brokers act as intermediaries between the insurance company and the policyholder. Their role is to educate customers about insurance products, assist in policy selection and purchase, and help with claims processing. They are also regulated by the IRDAI.

What is the difference between an individual insurance policy and a group insurance policy?

- An individual insurance policy is purchased by an individual to provide coverage for themselves or their family members. The policyholder is responsible for paying the premiums and is the sole beneficiary of the policy. These policies are tailored to meet the specific needs and requirements of the individual policyholder.
- On the other hand, a group insurance policy is taken out by an organization, such as an employer, trade union, or association, to provide coverage for a group of individuals who are members or employees of that organization. The organization acts as the master policyholder and pays the premiums for the entire group, which can sometimes be subsidized or fully paid by the organization.

Is it mandatory to purchase an Insurance Policy?

- Any person who owns a motor vehicle should compulsorily have third-party (TP) insurance as per Section 146 of the Motor Vehicles Act,

1988. The Third-Party Insurance is also known as 'act only' or 'liability only' cover.

- Any person found driving a vehicle without this mandatory insurance cover, would be liable to a penalty of Rs 2,000 and/or imprisonment of up to three months.
- If a person is found driving a vehicle without such insurance a second time, s/he will be liable for a fine of Rs 4,000 and/or imprisonment of up to three months.

Who is a Third Party in case of a Motor Vehicle Insurance?

As per **National Insurance Co. Ltd. v. Fakir Chand**, "third party" should include everyone (other than the contracting parties to the insurance policy), be it a person traveling in another vehicle, one walking on the road or a passenger in the vehicle itself which is the subject matter of insurance policy.

What is a valid KYC Document for purchasing an Insurance Policy?

The following serve as valid KYC documents:

- Identity Proof:
  - PAN card
  - UID
- Address Proof:
  - Ration Card
  - Passport
  - Aadhar letter
  - Voter ID Card
  - Driving license
  - Bank Passbook (not more than 6 months old)
  - Registered Lease and License agreement / Agreement for sale.
  - Self-declaration by High Court and Supreme Court judges, giving the new address in respect of their own accounts.
  - Identity card/document with address, issued by Central/State Government and its Departments, Statutory/Regulatory Authorities, Public Sector Undertakings, Scheduled Commercial Banks, Public Financial Institutions, Colleges affiliated to Universities; and Professional Bodies such as ICAI, ICWAI, Bar Council etc. to their members.

CASE STUDY

On reading a newspaper report, that as per the new e-Insurance Rules, it is now mandatory for insurance companies to issue only digital policies in line with the IRDA Protection of Policy holder's interests. A retired bank official wanted to know the status of his existing physical policies. He approached the bank for more details, as he had SBI Life Insurance Policy. The HR manager of the bank appraised him with the following details. He assured that there is a provision that all the existing policies can be converted to E - insurance policies in the demat form. The HR manager gave him a Policy Conversion Form to be filled including details like the policyholder's name, policy number, e-insurance account number, and insurance company name. He then submitted the Policy Conversion Form along with the e-Insurance Account Opening Form to the nearest insurance company branch. The insurance company person stated that after the completion of the conversion process, individuals will receive an SMS and email notifications confirming the credit of the policy to their e-Insurance Account.

LAKE GOVERNANCE

What are Lakes and what is Lake Governance?

According to the National Lake Conservation Programme (NLCP), standing water bodies which have a minimum water depth of three metres, generally cover a water spread of more than ten hectares and have no or very little aquatic vegetation are termed as Lakes.

- Environmental governance regimes are often made of various pivotal Social-Ecological Systems (SES).
- One such SES is Lake Governance, which is the process of overseeing and controlling operations pertaining to the utilization, preservation, and protection of lakes and the ecosystems they support.
- It entails a system of laws, regulations, organizations, and customs designed to guarantee the sustainable management of lakes, which are vital natural resources that offer a range of ecological, economic, and recreational advantages.

Why do we need Lake Governance and why is it necessary to preserve lakes?

Lakes serve as crucial habitats for flora and wildlife and serve as significant freshwater reservoirs, aquifer recharge zones, and purifiers of terrestrial wastes. We need Lake Governance to tackle the major problems affecting the optimum utilization and conservation of lake waters from eutrophication (aging processes), chemical and biological poisoning, and decrease in water volumes. We need to conserve urban lakes more than ever because of the current dire water situation in Indian cities.

What are the different classifications of Lakes in India?

Lakes are classified on the basis of a) Origin, b) Trophic levels, c) Mixing of water, d) Nature of Inflow-outflow. The following are the major types of lakes:

- **Natural Lakes:** Formed through geological processes over time, such as tectonic activity, glacial erosion, or volcanic activity. Ex- Wular Lake (Jammu and Kashmir)
- **Glacial Lakes:** Formed by the movement and melting of glaciers, often leaving behind U-shaped valleys that fill with water. Ex-Roopkund Lake (Uttarakhand)
- **Volcanic Lakes:** Created within volcanic craters or calderas, either through rainfall, groundwater accumulation, or direct volcanic activity. Ex - Lonar Lake (Maharashtra)
- **Tectonic Lakes**: Result from geological movements, such as faults, rift zones, or tectonic plate boundaries. Ex-Chilika Lake (Odisha)
- **Oxbow Lakes:** Formed when a meandering river changes its course, leaving behind a curved or horseshoe-shaped body of water. Ex- Nalsarovar Lake (Gujarat)
- **Saltwater Lakes:** Saltwater lakes, also known as saline or salt lakes, have a high concentration of dissolved salts in their water. They are formed through various processes, including evaporation, geological processes, or the presence of underground salt deposits. Ex- Chilka Lake (Odisha).

Is there a difference between lakes and wetlands?

The Ramsar Convention (1971) defines 'Wetlands' as "areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six meters."

- **Lakes** are defined by the National Lake Conservation Program (NLCP) as "standing water bodies with a minimum water depth of 3 m, a water spread of more than ten hectares, and no or very little aquatic vegetation," as mentioned above.

- However, there are no particular criteria which differentiate between lakes and wetlands as their definition overlaps; However, both of these bodies are visibly distinguishable.
- Therefore, many lakes in India get protected under

Ramsar convention because of India's commitment at international level to protect wetlands and lakes.

What is the National Lake Conservation Programme (NLCF)?

The Ministry of Environment & Forests (MoEF), Government of India, launched the National Lake Conservation Plan (NLCP), a Centrally Sponsored Scheme exclusively aimed at restoring the water quality and ecology of the lakes in different parts of the country including urban and semi-urban areas.

- The NLCP aims at comprehensive conservation and restoration of lakes and wetlands for attaining desired water quality enhancement in addition to improvement in biodiversity and ecosystem.
- Funding pattern under NLCP has 70:30 costs sharing between the Central and the concerned State Government.
- In order to achieve sustainable management and preserve Lakes, this scheme supports and encourages state governments.
- This scheme also instructs the local or state government to take the proper steps to designate the lake's limit.
- To ensure that there are no encroachments in the lake boundary or submergence area, the local authority or body must take all necessary steps.

What is Eutrophication and how is Eutrophication of a Lake controlled?

Eutrophication is the process in which a water body becomes overly enriched with nutrients, leading to the plentiful growth of simple plant life. Biological methods, such as removing fish that eat zooplankton, and introducing phosphorus sorption agents like aluminum are the most often used strategies to stop Eutrophication.

How can we ensure the sustainable use of water from Lake?

- Since lakes are the primary supply of drinking water in terrain areas and it is a very important resource for society, we must prioritize their sustainable use in urban areas.
- We shouldn't build drains or discharge waste into natural drainage systems in order to use lakes responsibly.
- Water pollution must be stopped, chemicals, industrial waste must be handled before being released into lakes or other bodies of water.
- Informing local authorities, when witnessing someone pouring chemicals into a river or lake, hearing about such an incident, or both. Speedy removal of encroachment of dry land of lakes.
- Lake rejuvenation methods must be utilized to have sustainable use of lake water without harming it.

What are the difference Statutes for the Protection of Lakes?

- **The Water (Prevention & Control of Pollution) Act, 1974** as amended, deals comprehensively with water issues. It empowers the Government to maintain the wholesomeness of National Water Bodies. The Act also provides for prohibition on use of streams (including inland water whether natural & artificial) or wells for disposal of polluting matter etc.
- **The Environment (Protection) Act, 1986** defines the power of the Central Government to take measures to protect and improve the environment which includes water, air, land and the relationship which exists among and between water, air and land and human beings, other living creatures, plants, micro-organisms and property.
- **The National Environment Policy (NEP), 2006**, recognises the ecological services rendered by the water bodies like lakes & wetlands. However,

only a few states in India have passed and implemented bills specifically targeted to the conservation of water bodies. These include Assam, West Bengal, Andhra Pradesh and Keralam.

What are the consequences of lake destruction or degradation in terms of biodiversity loss and ecosystem services?

The most valuable natural resource on Earth is freshwater. Changes in water levels as a result of climate change could exacerbate or alleviate shoreline modification because higher water levels often will results in the hardening of shorelines, ultimately resulting in loss of lakes.

Lakes offer four basic types of ecosystem services to the local human populations as well as populations at larger regional and global scales:

- providing,
- regulating,
- sustaining, and
- cultural services.
- Millions of people receive their drinking water from large lakes, which is essential given that the drinking water insecurity experienced by many populations may be made worse by an increase in drought as a result of climate change.
- Fish, invertebrates like crayfish, and aquatic plants are among the culturally and economically significant foods that can be gathered from huge lakes.
- Large lakes can be important dietary staples in underdeveloped nations, especially for indigenous people.
- Loss of lakes could result in cascading consequences at species, population, and community levels, hampering human life culturally and economically which would result in an increase of burden on government.

What are the benefits of Lakes monitoring?

For the purpose of the restoration of the lakes, they are monitored during pre and post treatment stages.

- Similarly, after restoration the lake is monitored with usual intervals (long-term monitoring of restoration projects).
- This results in collection of data for an adequate period of time and sufficient details of before and after restoration.
- These details are sent for rigorous analysis and interpretation. After such analysis, results come whether the lake is restored or not or the administration needs to change the policy.

What are the factors influencing public participation in Lake Governance?

Public participation in Lake Governance is shaped by several key elements. These include:

- public awareness and understanding of lake-related matters,
- the availability of easily accessible information,
- the presence of accommodating institutional frameworks,
- local socio-economic conditions,
- environmental concerns,
- various legal policies,
- effective leadership and advocacy initiatives,
- and the degree of trust placed in stakeholders.

Therefore, these factors collectively provide both the scope and character of the public's participation in the decision-making procedures linked to lake management.

How can the cultural heritage of a particular region contribute to Lake Governance?

The cultural heritage of a particular area can play a significant role in Lake Governance by nurturing a sense of belonging, attachment, and accountability within the local populace.

- Cultural norms and traditions often highlight the significance of safeguarding natural assets such as lakes, influencing the community's shared values and actions regarding conservation.
- Furthermore, the ancestral practices passed through generations can provide valuable insights into

sustainable methods for managing lakes, thereby shaping the decision-making procedures and resource utilization practices.

- In essence, cultural heritage serves as a potent catalyst for encouraging community participation and supervision in Lake Governance endeavors.

What are the major challenges related to lake water governance?

The major challenges related to lake water governance include:

- **Pollution**: Water quality in lakes are compromised by pollutants from various origins, including runoff from agriculture, discharges from industries, and untreated sewage. These contaminants, which may include chemicals and heavy metals, pose risks to both aquatic ecosystems and human health.
- **Eutrophication**: The excessive inflow of nutrients, often stemming from sources like agricultural runoff and urban drainage, can trigger eutrophication. This phenomenon encourages the rapid growth of algae, resulting in oxygen depletion in the water, fish mortality, and the formation of unsightly and harmful algal blooms.
- **Invasive Species**: The introduction of non-native species into lakes can lead to disruptions in local ecosystems, endangering native species and impacting biodiversity and fisheries. Managing and mitigating the spread of these invasive species is an ongoing challenge within Lake Governance.
- **Water Scarcity**: Escalating water demands driven by agriculture, industry, and urban area developments, coupled with the influence of climate change, can contribute to water scarcity in many regions. Competing interests for limited water resources often result in disputes over water allocation and utilization.
- **Climate Change Effects**: Climate change can bring about alterations in precipitation patterns, temperatures, and weather conditions, affecting aspects such as lake water levels, water quality, and the dynamics of ecosystems. Strategies for adaptation are necessary to address these evolving challenges.

What is the importance of the International Agreement on transboundary Lake Governance?

The significance of the **International Agreement on transboundary Lake Governance** enables collaborative management of lakes that cross international boundaries.

- It encourages neighboring nations to work together to tackle shared issues like water quality, resource allocation, and environmental preservation, ultimately ensuring the sustainable and fair utilization of these crucial freshwater bodies.
- By doing so, this agreement helps avert conflicts, advance biodiversity protection, and contribute to the enduring prosperity of communities that depend on transboundary lakes for drinking water, agriculture, industry, and recreational activities.

How does Lake Governance contribute to the economic benefits of the country?

Lake Governance plays a crucial role in strengthening country's economic advantages through various means.

- It involves the efficient administration and preservation of lakes, which in turn can promote income generation and job opportunities from fisheries, tourism, and recreational activities.
- Moreover, ensuring the availability of clean and dependable lake water serves as a vital asset for agriculture, industry, and municipal water supply, thereby enhancing economic productivity and growth.
- Sustainable Lake Governance additionally contributes to the safeguarding of ecosystems and biodiversity, with long-term economic benefits by preserving natural resources and supporting industries like ecotourism.

Therefore, well-maintained lakes are an indispensable element of a country's economic prosperity.

How can we set a balance between sustainability and governance of the lake?

Balancing sustainability and Lake Governance involves establishing effective regulations and management practices that prioritize

long-term ecological health while considering the needs of communities and industries reliant on the lake.

- This can be achieved by implementing science-based monitoring, setting sustainable resource allocation policies, and promoting stakeholder engagement.
- Adaptive management approaches, which allow for adjustments based on changing conditions and feedback, are vital.
- Striking this balance requires transparent decision-making, interdisciplinary collaboration, and a commitment to addressing both environmental and socioeconomic aspects, ensuring the lake's resilience and continued benefits for all stakeholders.

Who has the responsibility of Lake Governance?

Lake Governance is a shared responsibility involving multiple stakeholders, including government authorities, local communities, non-governmental organizations (NGOs), and industry representatives.

- Government agencies at various levels often play a central role in setting policies, regulations, and management frameworks.
- However, effective Lake Governance requires collaborative efforts among all stakeholders, with a focus on transparency, accountability, and inclusive decision-making processes to address the complex environmental and socioeconomic issues associated with lakes.

What are the strategies by which we can enhance Lake Governance?

Enhancing Lake Governance involves implementing strategies such as:

- **Engaging Stakeholders**: Actively involving local communities, government entities, non-governmental organizations (NGOs), and industries in decision-making processes to ensure a variety of perspectives and shared responsibility.
- **Implementing Effective Regulations:** Establishing and enforcing clear, science-based rules to oversee water quality, prevent pollution, and manage invasive species.
- **Ensuring Equitable Resource Allocation**: Enacting policies that fairly distribute water resources among different users, while also considering ecological needs and long-term sustainability.
- **Enhancing Data and Monitoring**: Investing in robust monitoring systems to oversee water quality, the health of the lake, and changes in the ecosystem, offering timely information for decision-makers.
- **Embracing Adaptive Management:** Adopting approaches to management that allow for flexibility and adjustments in response to evolving environmental conditions and feedback from stakeholders.
- **Promoting Education and Outreach**: Increasing public awareness and knowledge about the significance of lakes and the importance of their sustainable management, encouraging a sense of responsibility.
- **Encouraging Cross-Disciplinary Collaboration**: Fostering cooperation among scientists, policymakers, and stakeholders to develop comprehensive solutions that address both environmental and socioeconomic dimensions.
- **Ensuring Transparency**: Guaranteeing that decision-making processes are transparent and accountable, thereby building trust among stakeholders and advancing good governance practices.

What are the major factors affecting the Lake Governance due to climate change?

The major factors impacting Lake Governance as a result of climate change includes:

- changes in rainfall patterns and water availability,
- shifts in lake water temperatures and stratification,
- a heightened occurrence of extreme weather events, and
- transformations in lake ecosystems and water quality.

These climate-driven challenges have the potential to disrupt established management approaches, demanding adaptive measures and revised regulations to tackle

emerging issues in Lake Governance and ensure the enduring well-being and sustainability of lakes.

What kind of human and animal activities are permitted in a lake?

- Permitted human activities in a lake typically includes recreational pursuits such as swimming, boating, fishing, and picnicking, depending on local regulations.
- Additionally, some lakes may allow activities like water sports, kayaking, and birdwatching. Animal activities primarily involve aquatic life and wildlife.
- Fish inhabit lakes, and the ecosystem supports a variety of animal species for drinking, nesting, and foraging.

The specifics of allowable activities can vary significantly based on local laws, conservation efforts, and lake management policies.

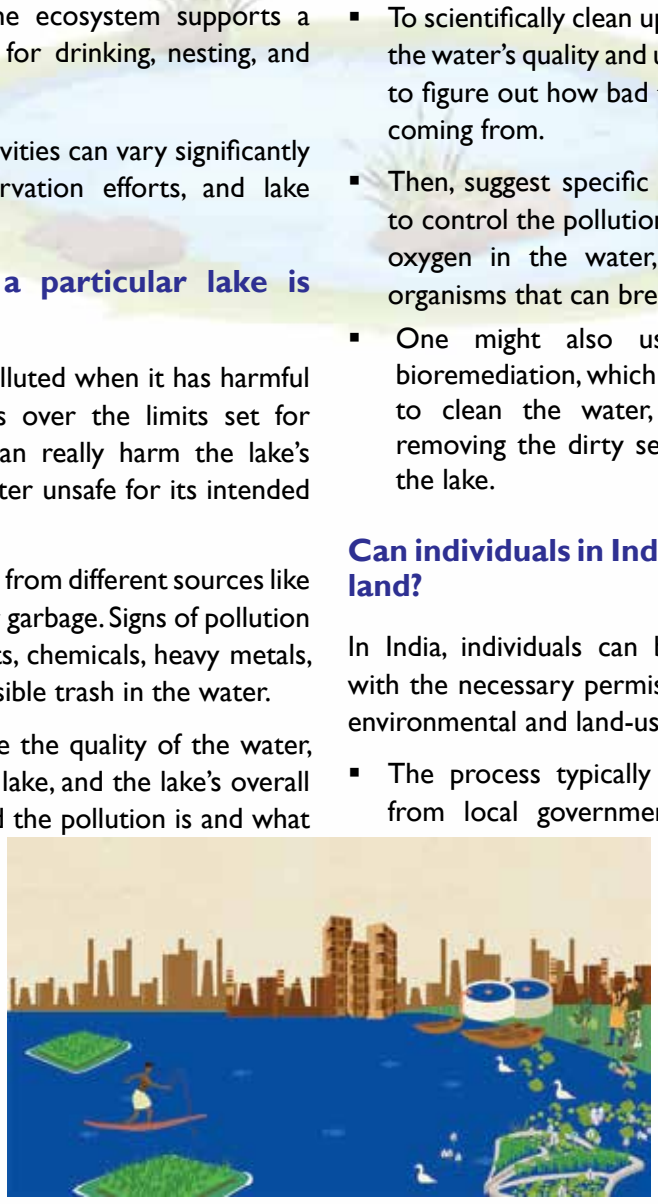
When is it said that a particular lake is polluted?

A lake is considered to be polluted when it has harmful contaminants in it that goes over the limits set for clean water, and this stuff can really harm the lake's environment or make the water unsafe for its intended uses.

- Pollution in lakes can come from different sources like factories, farms, sewage, or garbage. Signs of pollution include too many nutrients, chemicals, heavy metals, bad microorganisms, or visible trash in the water.
- This pollution can degrade the quality of the water, the creatures living in the lake, and the lake's overall health. To identify how bad the pollution is and what to do about it, people regularly check and assess the lake's condition.

What is the natural procedure to conserve a polluted lake?

To naturally clean up a polluted lake, we can use methods like fixing wetlands and areas with plants alongside the lake. These plants act like natural filters, catching pollutants before they get into the water.



- We can also plant native trees and plants, prevent soil from washing away, and add helpful tiny organisms or creatures that eat harmful algae.
- Making sure the land around the lake is used responsibly, like preventing too much runoff and limiting extra nutrients, is important in cleaning up and taking care of a polluted lake using nature's ways.

What are the scientific methods to conserve a polluted lake?

- To scientifically clean up a polluted lake, first examine the water's quality and use data and computer models to figure out how bad the pollution is and where it's coming from.
- Then, suggest specific actions like adding chemicals to control the pollution, using machines to put more oxygen in the water, or introducing helpful tiny organisms that can break down the bad stuff.
- One might also use advanced methods like bioremediation, which involves using living creatures to clean the water, or dredging, which means removing the dirty sediments from the bottom of the lake.

Can individuals in India build a lake on private land?

In India, individuals can build a lake on private land with the necessary permissions and adherence to local environmental and land-use regulations.

- The process typically involves obtaining approvals from local government authorities, including the district collector's office and the state's revenue and water resources departments.
- These approvals are essential to ensure that the lake construction complies with legal and environmental requirements, doesn't harm neighboring lands or water

bodies, and adheres to any water rights or irrigation laws in place.

- Individuals should also consider consulting with experts to ensure that their lake construction aligns with ecological and sustainability considerations.

What are the advantages of preserving and rejuvenating lakes?

- Lakes act as a natural reservoir and increases storage of water.
- Lakes make up a crucial part of the natural biodiversity, by optimising the quality of water, temperature and atmosphere.
- They increase the ground water level.
- It controls erosion of soil and reduces risks of floods.
- Lakes are homes to a variety of eco-systems which needs to be preserved.

What are the benefits of having a lake in community-specific areas?

Having a lake in a community area offers many advantages.

- It provides clean water for drinking and farming, and people can enjoy activities like boating and fishing there.
- Lakes make the place look beautiful and green, support local animals and nature, and can even attract tourists, which can help the community make money.
- Plus, they can help prevent floods and store extra water when it's dry, making the area stronger and more sustainable for the people who live there.

Do lakes have a direct impact on the bearing temperate in the surrounding areas?

Lakes can indeed affect the nearby temperature. They act like natural temperature regulators. When it's hot outside, lakes can make the area cooler, and in cold weather, they can help keep it warmer. This balancing act makes the local climate more comfortable and steadier, which is good for farming and the people who live there.

CASE STUDY

Ramveer Tanwar is a 29-year-old mechanical engineering graduate from Greater Noida, Delhi. His love for water bodies sparked a mission to save them from disappearing due to urbanization. During his college days, Tanwar launched the 'Jal Chaupal' campaign with his friends. Together, they rallied together local communities to revive water bodies, mostly ponds, in Uttar Pradesh. This revival project started in 2015, has now grown to cover water bodies in Uttar Pradesh, Madhya Pradesh, Uttarakhand, Delhi, Haryana and Karnataka. This led to the establishment of "Say Earth" in 2018, a group dedicated to conserving water and planting trees.

Through "Say Earth", Tanwar has restored over 80 water bodies and planted urban forests in six states. His projects are funded by companies, and he uses eco-friendly methods like Constructed Wetlands and Floating Islands to clean water. He also follows the Miyawaki method to grow forests quickly, planting lots of trees close together. This helps wildlife and provides a green escape in cities. He believes in farming practices that help the environment, like making biodiesel from plants.

Tanwar's work has brought real benefits to communities, improving farming and reducing sickness. His efforts haven't gone unnoticed; he's earned the nickname "Pondman of India" and even got praise from Prime Minister Narendra Modi.

FUNCTIONS OF THE POLLUTION CONTROL BOARDS

What is the primary statutory authority responsible for regulating and controlling pollution in India?

The primary statutory authority responsible for regulating and controlling pollution in India is the Central Pollution Control Board (CPCB) at the national level and State Pollution Control Boards (SPCBs) at the state level. As per Sections 3&4 of The Water (Prevention and Control of Pollution) Act 1974 and Sections 3&4 of The *Air* (Prevention and Control of Pollution) *Act*, 1981, there shall be a board appointed by appropriate government.

What are the key objectives and functions of Pollution Control Boards in India?

Objectives of the Pollution Control Boards in India:

- Provide incentives for manufacturers and importers to reduce adverse environmental impact of products.
- Reward genuine initiatives by companies to reduce adverse environmental impact of their products.
- Assist consumers in becoming environmentally responsible by providing information for eco-friendly purchase decisions.
- Encourage citizens to purchase products with less harmful environmental impacts.
- Improve the quality of the environment and encourage sustainable management of resources.

Functions of the Pollution Control Boards in India:

- Advise the Central Government on matters concerning the prevention and control of water and air pollution, and air quality improvement.
- Research, Plan and Execute nationwide programs for the prevention, control, or abatement of water and air pollution.
- Coordinate activities among State Pollution Control Boards SPCBs and resolve disputes among them.
- Provide technical assistance and guidance to State Pollution Control Boards (SPCB) to conduct research and investigate related to pollution issues.
- Plan and organize training programs for individuals engaged in pollution prevention, control, or abatement.
- Organize mass awareness programs through mass media regarding the prevention, control, or abatement of water and air pollution.
- Collect, compile, and publish technical and statistical data related to water and air pollution and measures for prevention, control, or abatement.
- Lay down, modify, or annul standards for water quality, air quality, and other relevant parameters after consulting the State Governments and SPCBs.
- Prepare manuals, codes, and guidelines for the treatment and disposal of sewage, effluents, and air pollution control devices.
- Perform any other function as prescribed by the Government of India.

What is the Composition of Central Pollution Control Board (CPCB) and State Pollution Control Boards (SPCB)?

Members of Pollution Control Boards are appointed by the appropriate governments with the Central Government appointing CPCB members and State Governments appointing SPCB members. The Chairman, nominated by the government, requires special knowledge in environmental protection or administration. Members include officials from the government, nominees from

state/local boards, and non-officials representing varied interests or government-owned corporations. The appointments are typically made based on qualifications and experience in areas related to environmental science, engineering, law, or management.

What powers do Pollution Control Boards have in terms of granting or revoking environmental clearances for industrial projects?

Pollution Control Boards in India, empowered by the Water Act of 1974, hold significant powers regarding the granting and revoking of environmental clearances for industrial projects.

According to Section 25(4) of the Act, the Boards can grant consent for the establishment of industries, operations, or treatment systems, imposing conditions for compliance.

- The consent allows the Boards to sample effluents for assessment.
- Clearances are contingent upon adherence to these conditions, and the Boards reserve the right to refuse or withdraw consent if specified norms are not met.
- Under Sections 25 and 26, the Boards have the authority to review imposed conditions, serving notices for reasonable variations or revocations. This includes the power to review the grant or refusal of consent and issue orders as deemed fit.

The comprehensive regulatory framework ensures that Pollution Control Boards can effectively assess and monitor potential environmental impacts, ensuring industrial projects align with prescribed environmental norms and promoting sustainable development practices.

What are the penalties and legal consequences for non-compliance with pollution control regulations enforced by Pollution Control Boards?

The types of non-compliances and their penalties and legal consequences are listed below:

- **Violating air quality limits:** After informing the respective Pollution Control Boards, the costs of corrective actions borne are to be reimburse by the violator. The Court will pass an order to restrain emissions. The violator must reimburse the expenses with interest.
- **Operating industrial plant without permissions or equipment:** The punishment for this violation is imprisonment for 1.5 to 6 years and levy of fine. A daily fine of Rs. 5,000 will be levied on persistent violations. If there is extended non-compliance for 1 year, the punishment is 2-7 years imprisonment with a fine.
- **Driving vehicles violating noise/air pollution standards:** If it is a first offense, a fine of Rs. 1,000 will be levied. If the person is a second- time offender, a fine of Rs. 2,000 will be levied. If the offender is not carrying a valid Pollution Under Control (PUC) Certificate, then a fine of Rs. 10,000 will be collected.
- **Violating any provisions in Environmental Protection Act, 1986 (air, water, or land pollution):** An offender will be imprisoned for a period up to 5 years and fined up to Rs. 1,00,000. For continued non-compliance, a daily fine of Rs. 5,000 will be levied on the violator.
- **Releasing harmful pollutants constituting public nuisance:** The violator has to pay a fine up to Rs. 5,000.
- **Engaging in activities harmful to community health:** The Magistrate may pass an order to cease such activity.

Can a citizen report instances of pollution or environmental violations to the Pollution Control Boards?

Yes, citizens can report instances of pollution or environmental violations to the Pollution Control Boards.

- Visit Official Website
- Check for Complaints Section

- Use Online Complaint Portal (if available)
- Provide Supporting Evidence (Include photographs or videos, if possible, to strengthen your case and provide solid evidence.)
- If No Online Portal, Find Contact Details (phone numbers or email addresses.)
- Report Violation Directly via Phone or Email
- Follow Up on Complaint

Every State Pollution Control Boards have established public grievance redressal systems. Through helplines, integrated grievance management systems, official websites, and social media platforms, citizens can lodge complaints related to environmental problems, including air pollution. (visit site: https://cpcb.nic.in/uploads/SPCB_Directory)

What measures and initiatives have been taken by Pollution Control Boards to control air pollution?

- **National Clean Air Programme (NCAP):** Long-term strategy aiming for a 20-30% reduction in PM10 and PM2.5 concentrations by 2024.
- **Comprehensive Action Plan (CAP) for Delhi-NCR:** Specific guidelines for Delhi-NCR based on air quality categories.
- **Graded Response Action Plan (GRAP):** Guidelines with actions based on air quality categories.
- **SAMEER App:** Real-time air quality information and a platform for lodging complaints.
- **National Green Corps (NGC):** Promoting environmental education and awareness.
- **BS-VI norms for fuel and vehicles:** Adoption of this helps for Implementation of stricter emission standards for vehicles.
- **Promotion of public transport:** State Road transport corporations, metro, railways, expressways etc.
- **Industrial Emissions Control:** For all toxic chemicals and gases.
- **Regulations on firecracker usage:** Emphasis on adherence to regulations during festivals.

What measures and initiatives have been taken by Pollution Control Boards to control water pollution?

- **National River Conservation Programme (NRCP):** Initiative for the conservation of rivers.
- **National Lake Conservation Programme (NLCP):** Program focused on the conservation of lakes.
- **Atal Mission for Rejuvenation and Urban Transformation (AMRUT):** Urban transformation program with a focus on water conservation.
- **Jal Jeevan Mission (2019):** Aims to provide drinkable tap water to every rural home in India by 2024.
- **Wastewater Treatment and Bio-chemical Oxygen Demand (BOD):** Emphasizes the importance of treating wastewater before discharge.
- **Identification of Polluted Stretches:** Studied by CPCB, identifies 351 polluted stretches on 323 rivers based on Bio-chemical Oxygen Demand (BOD) levels.
- **Groundwater Quality Monitoring Program:** Monitored pollutants like fluoride, arsenic, nitrate, iron, and heavy metals.

Can citizens file any legal actions against polluting industries with the support of Pollution Control Boards?

Citizens of India can file legal actions against polluting industries with the support of Pollution Control Boards.

- Public interest litigations and Citizen suits are the judicial methods through which individuals can seek legal remedies for environmental issues.
- Pollution Control Boards possess the authority to take legal actions, including issuing directives for compliance, conducting inspections, and ordering the closure of non-compliant establishments. Citizens can make appeals to the PCBs for resolving these environmental issues

Can citizens file any legal actions against the Pollution Control Boards, in case of failure on the part of the PCB?

Citizens of India possess the right to initiate legal actions against PCBs, if they believe that they are not performing adequately in their response to instances of environmental harm and violations. In India, citizens can legally challenge Pollution Control Boards (PCBs) for inadequate responses to pollution under the Water Act of 1974. The PCB has to remain transparent in their functioning, but a 6-month notice period is required to be given to them to reveal the information.

- The concerned citizens may write their complaints to PCBs directly or file suits in the court through PILs or Citizen Suits for violations, like illegal pollution.
- Public hearings during Environmental Impact Assessment helps in the prevention of environmental violations. There is no necessity for public consultations during these assessments, which can pose a challenge.
- Right to Information (RTI) enable citizens to obtain information of the measures taken by the PCBs for pollution control and allocation of public funds.
- The National Green Tribunal (NGT) expedites environmental cases.

Despite legal avenues, the complexity, cost, and procedural intricacies underscore the needs for continued reforms for effective environmental governance and citizen empowerment.

What role do Pollution Control Boards play in regulating the discharge of industrial effluents into water bodies and ensuring the quality of water sources?

The role of PCBs in regulating the discharge of industrial effluents is:

- They issue and regulate permits for the discharge of industrial effluents into water bodies and conserve the quality of water sources in India.
- The Industrial (Prevention and Control of Pollution) Act, 1974 lists the measures for industrial organisations to reduce water pollution and enhance the quality of water.
- The Act gives powers to the CPCB and SPCBs to collect information and conduct surveys regarding industrial effluents, set effluent standards, conduct regular monitoring and penalise the violators.
- Section 24 of the Act specifically prohibits the discharge of the effluents into lands, streams and wells, with additional restrictions on newly established industries which are likely to discharge waste and effluents.
- The industries have to take consent from the SPCBs for waste management. The board can then decide whether to grant complete/partial clearance and suggest remedial measures. Violation of these guidelines may result in a Suit filed by the SPCB.

What role do Pollution Control Boards play in regulating air pollution and emissions?

PCBs in India regulate, oversee and manage air pollution and emissions in India.

- They formulate and enforce emission standards for industries as per the Air (Prevention and Control of Pollution) Act, 1981. This ensures that gaseous emission levels, which lead to air pollution, remain within permissible limits.
- The National Air Quality Monitoring Programme (NAMP) is an initiative taken by the PCBS with the main objective being to monitor and evaluate the air quality across various regions.
- PCBs provide recommendations to the government on implementing measures to prevent and control air pollution.
- They conduct regular inspections of industrial organisations to ensure compliance with the regulations which are formulated to minimise environmental impact.
- They designate certain areas to be "Air Pollution Control Zones", where additional measures are enforced to curb pollution.
- They conduct scientific research and combine that with National Environmental Goals to send strict standards for air quality and emissions.

- They set compliance standards with the provisions of the Act. PCBs organise and conduct public awareness campaigns to educate the people about air pollution and environmental conservation.
- They also conduct public outreach programmes and community initiative programmes to encourage individuals of the wider community and other organisations to adopt sustainable practices and reduce carbon footprint.

How do Pollution Control Boards monitor and regulate waste management and disposal in India?

Pollution Control Boards monitor hazardous waste management through regulations and guidelines. They issue authorizations, inspect facilities, and ensure proper disposal methods to prevent adverse environmental impacts. In The Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016, it contains

- **Authorization and Registration**: Industries generating hazardous waste are required to obtain authorization from the State Pollution Control Board (SPCB) or Pollution Control Committee (PCC) based on the type and quantity of waste generated. The authorization ensures compliance with rules and standards.
- **Manifest System:** A manifest system is in place to track the movement of hazardous waste from the point of generation to the disposal facility. The generator, transporter, and operator of the disposal facility are all required to sign the manifest, providing transparency and accountability.
- **Transportation:** Strict regulations govern the transportation of hazardous waste. Only authorized transporters with valid licenses are permitted to carry hazardous waste. The waste must be appropriately packaged, labelled, and accompanied by the manifest during transportation.
- **Treatment, Storage, and Disposal Facilities (TSDFs):** Hazardous waste must be sent to authorized Treatment, Storage, and Disposal Facilities (TSDFs) for proper management. These facilities undergo scrutiny and approval by the PCBs to ensure they meet prescribed standards for safe handling and disposal.
- **Inspections and Audits:** PCBs conduct regular inspections and audits of industries, TSDFs, and other facilities involved in hazardous waste management. These inspections ensure compliance with rules, proper documentation, and the implementation of safety measures.
- **Surveillance and Monitoring:** PCBs engage in continuous surveillance and monitoring of hazardous waste management practices to identify potential violations and take corrective actions promptly.
- **Penalties and Enforcement:** Non-compliance with hazardous waste management rules can result in penalties and legal actions. PCBs have the authority to take stringent measures, including closure of non-compliant facilities and legal proceedings against violators.

How are the decisions and actions of Pollution Control Boards transparent, and how can the public access information about their regulatory processes?

- The PCBs are held accountable regarding their powers and duties by the citizens through various executive and legal procedures, the most important one being the Right to Information Act (RTI), 2005. The RTI Act helps citizens to access information related to the regulatory processes of PCBs. Under this act, individuals have the right to request specific details about central enactments, rules, notifications, and other pertinent information concerning pollution control.
- To further enhance transparency, PCBs publish comprehensive information on their official websites, including details about regulatory frameworks, enforcement actions, and environmental monitoring reports.
- Additionally, PCBs conduct public hearings which provide a platform for citizens to discuss, express concerns, and gather insights into the regulatory decisions of the PCB. The PCBs further maintain transparency in their functioning by publishing the laws, rules, and notifications in the Gazette of India, which is accessible to everyone.

Through these practices, PCBs ensures that the public stays well-informed about regulatory processes, holds the PCBs accountable, and participates in environmental governance.

What initiatives have Pollution Control Boards taken to address emerging environmental challenges such as plastic pollution and electronic waste?

The PCBs play a very important role when it comes to Plastic and e-Waste management. They set the standards and formulate regulations to manage and dispose these wastes so that they do not cause more harm to the environment.

Initiatives taken for Plastic Pollution:

- Enforcement of Plastic Waste Management Rules
- Extended Producer Responsibility (EPR)
- Centralized EPR Portals
- Contribution to Swachh Bharat Mission
- Awareness Campaigns

Initiatives taken for e-Waste Management:

- Regulations for E-waste Management
- Awareness Programs
- Regular Monitoring and Enforcement
- Research and Development Initiatives
- Gandhian E-Waste Management System

How does the Pollution Control Board ensure the involvement of local communities and stakeholders in decision-making processes related to environmental protection?

The Pollution Control Boards (PCBs) in India ensure active involvement of local communities and stakeholders in environmental decision-making processes through various mechanisms dictated by environmental laws.

Governed by acts like the Water (Prevention and Control of Pollution) Act, 1974, the Water (Prevention and Control of Pollution) Cess Act, 1977, and the Air (Prevention and Control of Pollution) Act, 1981, PCBs implement advisory roles, advising the Central Government and coordinating activities among State Pollution Control Boards.

- They actively collect and publish technical data on pollution, organize mass awareness programs through mass media, and engage in public consultations.
- The legal framework emphasizes the importance of setting and modifying standards in consultation with State Governments, considering regional variations.
- Mandated inspections of pollution control equipment and industrial plants involve local stakeholders in monitoring and enforcing environmental standards.

While the legal framework acknowledges the need for transparency and public access to information, challenges remain, indicating the ongoing efforts needed for improved community participation in environmental governance.

What measures are in place to monitor and control noise pollution, and how does the Pollution Control Board regulate noise levels in different areas?

The regulation of noise pollution is governed by the Noise Pollution (Regulation and Control) Rules, 2000 (S.O. 123(E)), which outlines a comprehensive framework. State Governments play a pivotal role in categorizing areas and enforcing noise standards, overseen by various authorities like District Magistrates and Police Commissioners. The Pollution Control Board, as a regulatory body, likely implements these rules, empowered by specific sections of the Environment (Protection) Act, 1986 – sections 3(2)(ii), 6(1), 6(2)(b), and 25. Designated authorities actively monitor and assess noise levels, ensuring compliance with ambient air quality standards.

- The rules cover the use of loudspeakers, requiring written permission and imposing time restrictions (10:00 p.m. to 6:00 a.m.), with exceptions for cultural or religious events.
- Designated silence zones around hospitals, schools, and courts carry penalties for violations under the Environment (Protection) Act, 1986.
- Individuals can actively participate in enforcement through a complaint mechanism, triggering investigations and actions by authorities when noise levels exceed standards by 10 dB (A) or more.

The governing body, with the authority to issue written orders, reg ng a balanced ap

CASE STUDY

A Bakery is in the process of making products and planning for a cloud kitchen near a village near Hyderabad. Without seeking Consent from the Pollution Control Board [PCB], the Bakery was discharging the untreated kitchen wastewater to the nearby pond. For their day-to-day activities, the pond water was used by local villagers for their livestock. Discharge of untreated wastewater to lakes and ponds contaminates the surface and groundwater. This is an offence under the Water Act, of 1974. Further, all industrial and trade activities must seek Consent to Establish and Consent to Operate from the respective Pollution Control Boards. The villagers with the help of an NGO approached the State Pollution Control Board and submitted a written complaint. The Pollution Control Board sent a notice to the Bakery seeking information on their pollution-causing activities. The Bakery replied arguing that the PCB cannot act on the complaint of the villagers or the NGO and can only act through the court order. The PCB relying on its powers u/s 20(3) of the Water Act, responded that it had the power to obtain information from industries or trade activities, especially if it results in pollution of water.

The State Pollution Control Boards have been established under the Water Act and Air Act, with a mandate for prevention, control, and abatement of pollution, and have powers to regularly inspect the effluent treatment plants and set standards for emission of effluents.

FOREST RIGHTS ACT

What are the Salient Features of Forest Rights Act (FRA)?

The key policies and provisions of the Forest Rights Act include:

- **Recognition of Rights**: The Forest Rights Act provides for the recognition and vesting of rights over forest lands that have been traditionally occupied and used by forest dwellers for their livelihoods.
- **No Eviction without Consent**: The Act explicitly prohibits the eviction or forced relocation of forest dwellers from their traditional forest lands without their consent.
- **Role of Gram Sabha**: The Gram Sabha, which is the village assembly, plays a crucial role in the process of recognizing and verifying forest rights. It verifies and approves the claims for individual and community rights, ensuring local participation in the decision-making process.
- **Community Forest Rights:** The Forest Rights Act recognizes and grants community forest rights, allowing forest-dwelling communities to manage and protect the community forest resources collectively.
- **Grievance Redressal:** The Act establishes a grievance redressal mechanism for addressing disputes and conflicts arising from the recognition and vesting of forest rights, providing recourse for forest dwellers if they face any violations of their rights.

Who are Forest Dwellers under the FRA?

According to Forest Rights Act, 2006 **Forest Dwellers**, also known as **"Scheduled Tribes"** or **"Other Traditional Forest Dwellers"**, are individuals or communities who have been residing in forests or forested areas for generations and depend on the forests for their livelihoods, culture, and sustenance.

What are the requirements for a Forest Dwelling Scheduled Tribe (FDST) to claim rights under FRA?

As per Section 2 (c) of FRA, in order to qualify as FDST and be eligible for recognition of rights under FRA, an applicant must satisfy two requirements under the Act. Such applicant/s may be individual members or community. The requirements are:

- The applicant must be a Scheduled Tribe in the area where the right is claimed; and
- The applicant must depend on forest or forests land for *bonafide livelihood needs* and includes pastoralist communities.

What are the requirements for Other Traditional Forest Dweller (OTFD) to claim rights under FRA?

- The applicant has *primarily resided in*[1] forest or forests land for three generations (75 years) prior to 13th December 2005; and
- The applicant must depend on the forest or forests land for bonafide livelihood needs.

The requirement under Section 2 (o) of the FRA is that they should be forest dwellers for 75 years. There is no requirement that such forest dwellers must reside in the same village for 75 years. The same can be proved as a community and not every individual claimant needs to prove it.

What are the rights conferred by the FRA?

Forest dwelling Scheduled Tribes and other traditional forest dwellers on all forest lands are entitled to the following rights under the Act:

- Right to hold and live in the forest land either for habitation or cultivation for livelihood;
- Community rights such as *'Nistar'*, and other community rights regarding use of resources;

1 In a Circular dates 9.06.2008, the Ministry of Tribal Affairs clarified the meaning of the phrase 'primarily resided in' as: "such Scheduled tribes and other traditional forest dwellers who are not necessarily residing inside the forest but are depending on the forest for their bona fide livelihood needs would be covered under the definition of 'forest dwelling Scheduled Tribes' and 'other traditional forest dweller' as given in Sections 2 (c) and 2(o) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

- Right of ownership, access to collect, use and dispose of minor forest produce;
- Rights in or over disputes lands, i.e, lands in any State where claims over such land is disputed;
- Rights for conversion of leases or grants issued by any local authority on any forest land;
- Any other such rights that are recognized under any State law, District Council, Regional Council, or any traditional or customary law governing the concerned tribes;
- Right to be rehabilitated in the original land or any alternative land in cases of illegal eviction or displacement without receiving the legal entitlement to rehabilitation prior to December 2005.

Are these rights transferable?

No, these rights are non-transferable right and non-alienable. It is exclusively available to those who are living in forests traditionally and it passes on to their biological heirs.

What are the authorities and due procedures for Recognition of Forest Dwellers Rights under FRA 2006?

- **Gram Sabha**

  Within its jurisdiction, the Gram Sabha has the ability to begin the process of deciding the kind and extent of individual or communal forest rights, or both, that may be granted to forest living scheduled tribes and other traditional forest inhabitants. Receiving claims, consolidating and verifying them, and preparing a map delineating the area of each recommended claim in such a manner as may be prescribed for the exercise of such rights shall be done, and the Gram Sabha shall then pass a resolution to that effect, and a copy of the same shall be forwarded to the Sub-Divisional Level Committee.

- **Sub-Divisional Level Committee**

  Sub-Divisional Level Committee evaluates the Gram Sabha's resolution, prepare a record of forest rights, and transmit it to the District Level Committee for a final determination. Any person who is aggrieved by the Sub-Divisional Level Committee's decision may file a petition with the District Level Committee within sixty days of the Sub-Divisional Level Committee's decision, and the District Level Committee will consider and decide the petition.

- **District Level Committee**

  District Level Committee reviews and ultimately approves the Sub-Divisional Level Committee's Forest rights record. The District Level Committee's judgment on the record of forest rights is to be considered final and binding. The State Government shall establish a State Level Monitoring Committee to oversee the process of forest rights recognition and vesting, as well as to submit any returns or reports requested by the nodal agency.

Can an appeal be filed against the order of the District Level Committee?

Section 6(6) of FRA clearly states that the decision of the DLC is final and binding. Therefore, the statutory process of appeal ends with the DLC.

However, it is also necessary that reasons be supplied to the claimant/s for rejection of application, so that they can take any other legal recourse, such as, activating the writ jurisdiction of the constitutional courts, or any other avenue available in law.

If the decision of the DLC is in contravention of any provision of the FRA or Rules, proceedings under **Section 8** can be initiated by the Gram Sabha with due notice to the State Level Monitoring Committee.

Is there any time limit for the submission of applications for Recognition of Forest Rights under the Act?

As per procedure, the Gram Sabhas must call for claims in relation to any forest land in the area. Such claims must be made within a period of three months from the date of such calling. If necessary, the Gram Sabha may extend such period by recording the reasons for doing so.

Which body may assist the Gram Sabha in the discharge of its functions regarding the Recognition and Vesting of Forest Rights under the FRA?

Under the FRA and FR Rules, it is the Forest Rights Committee that is empowered to assist the Gram Sabha in discharging its functions relating to the recognition and vesting of forest rights. Such functions include receiving, acknowledging and retaining claims and supporting evidence, verifying claims as per procedure provided in the FR Rules, etc.

Only the Forest Rights Committee is entitled to assist the Gram Sabha in such matters. No other Committee or person/s is permitted to be constituted under the provisions of the FRA as well as the FR Rules.

Does the FRA and the Rules extend any protection to Wildlife as a part of forest land?

The Rules provide that one of the functions of the Gram Sabha is to constitute Committees consisting of its own members for the protection of wildlife, forest, and biodiversity in the area. Supporting this, Sub-Divisional Level Committee is bound to provide necessary information and updates about wildlife and forests in the area to the Gram Sabha so that necessary action can be taken by the Gram Sabha.

What are the protections granted to Forest Dwellers against Eviction and Forced Relocation?

The Act allows for modifications or resettlement of those rights if specific conditions are met. Section 4(2) states that the forest rights holders cannot be resettled nor have their rights affected solely for creating wildlife conservation areas, except when the following conditions are fulfilled:

- The process of recognizing and vesting rights, as specified in Section 6 of the Act, is completed in the areas under consideration.
- State Government agencies, using their powers under the Wild Life (Protection) Act of 1972, have confirmed that the activities or presence of rights holders are causing irreversible damage to wildlife species and their habitat, threatening their existence. The State Government has determined that other reasonable options, such as coexistence with wildlife, are not feasible.
- A resettlement or alternative package has been prepared and communicated to provide a secure livelihood for the affected individuals and communities, meeting the requirements of relevant laws and the policy of the Central Government.
- The written, free, and informed consent of the Gram Sabhas (village assemblies) in the concerned areas has been obtained for the proposed resettlement and the package offered.
- Resettlement will not take place until facilities and land allocation at the new location are complete, as per the promised package.
- Moreover, it's important to note that critical wildlife habitats, from which rights holders are relocated for wildlife conservation, cannot be diverted by the State Government, Central Government, or any other entity for other purposes in the future.

Can a committee other than the Forest Rights Committee be formed for assisting the Gram Sabha in discharge of its functions relating to Recognition and Vesting of Forest Rights under FRA?

The FRA and FR Rules do not permit formation of any committee other than the Forest Rights Committee nor do they permit constitution of a committee comprising persons other than the members of the Gram Sabha, for assisting the Gram Sabha in discharge of its functions relating to recognition and vesting of forest rights under the FRA. In fact, any decision/action taken by such a committee would be void.

Does the Civil Court have jurisdiction under FRA, 2006?

The civil court can take the case in hand only if SCDA has responded to the aggrieved within 60 days. Anyways, doors to constitutional courts are always open.

Does the Applicability of FRA extend to Municipal areas?

The Act applies to claimants in respect of forest lands wherever they are located; and this includes municipal areas.

What is Minor Forest Produce (MFP)?

As per Section 2(i) "minor forest produce" includes all non-timber forest produce of plant origin including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and the like.

Who can exercise MFP rights?

Section 3 (1) of FRA provides that all forest rights that are listed therein can be enforced by an individual, a group of individuals, a user group or a Gram Sabha. Such rights include forest rights to MFP.

What is the Nodal Agency under the FRA?

As per Section 11, the Ministry of the Central Government dealing with Tribal Affairs or any officer or authority authorised by the Central Government in this behalf shall be the nodal agency for the implementation of the provisions of this Act.

How many rights have been granted so far under the FRA?

As of March 2023, out of the 45,44,886 claims (43,64,312 individual and 1,80,574 community claims) made, only 23,07,712 titles have been distributed. This means that **almost half of the claims have been rejected**.

In 2022, it was alleged by a tribal rights group that around 1,50,000 applications for individual rights in Odisha were rejected flouting procedures.

What are the offences envisaged under the Forest Rights Act? Are these offences cognizable?

Under Section 7, a contravention of the provisions of the Forest Rights Act by members or officers of authorities and Committees established under this Act constitutes an offence. It is punishable with fine which may extend to one thousand rupees.

However, as per Section 8, no court may take cognizance of such offence unless a forest dwelling Scheduled Tribe, in the event of a dispute regarding a Gram Sabha resolution or a Gram Sabha resolution against a higher authority, provides a notice of at least sixty days to the State Level Monitoring Committee, and the Committee has not taken action against that authority.

What are the duties of holders of forest rights?

Forest right holders, Gram Sabha, and local institutions in areas covered by this Act have the duty to:

- Safeguard wildlife, forests, and biodiversity.
- Protect neighbouring catchment areas, water sources, and other ecologically sensitive zones.
- Preserve the habitat of forest-dwelling Scheduled Tribes and traditional forest communities from harmful practices that impact their cultural and natural heritage.

Enforce decisions made in the Gram Sabha regarding the control of access to communal forest resources and the cessation of activities harming wildlife, forests, and biodiversity

Can the Government carry out developmental activities in forest areas? If so, what are the procedures to be complied with?

Yes. As envisaged under Section 3(2) of the Act, the Central Government may provide for the diversion of forest land for the following facilities managed by the Government: which includes schools; dispensary or hospital; angan-wadis; fair price shops; electric and telecommunication lines; tanks and other minor water bodies; drinking water supply and water pipelines; water or rain water harvesting structures; minor irrigation canals; non-conventional source of energy; skill upgradation or vocational training centres; roads; and community centres

However, the following procedural requisites must be complied with:

- Such facilities involve felling of trees not exceeding 75 trees per hectare
- Forest land to be diverted is less than one hectare in each case
- It must be recommended by the Gram Sabha

Only when these three conditions are met the facilities can be constructed by diverting forest lands over which forest dwelling communities have rights.

CASE STUDY

An NGO in the state of Chhattisgarh is working for tribal rights in the areas of providing legal assistance and also providing documentation assistance for the ownership of the land which is being cultivated by the tribals and the rights of the dwellers. The traditional dwellers in the forest village approached the NGO with certain documents to be provided to the Gram Sabha and required their help to ascertain their rights to the forest land they had been residing, based on proof of residence and original possession, The Gram Sabha had sent a notice to provide the documents to assess their needs and ownership from the forest lands. The NGO approached the Supreme Court stating that the notice sent by the Gram Sabha is illegal. The SC dismissed the petition stating that representation has to be made to the Gram Sabha because the Gram Sabha is the authority to ascertain the forest rights.

Under the Forest Rights Act 2006, substantial rights have been given to Gram Sabha to initiate the process of determining individual or community forest rights. Any person aggrieved by the resolution of Gram Sabha shall make a petition to the Sub Divisional Level Committee constituted under the Forest Rights Act 2006.

VAN (SANRAKSHAN EVAM SAMVARDHAN) ADHINIYAM, 1980

What is the name of Forest Conservation Act?

The Forest (Conservation) Act, 1980 (FCA) renamed as the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 (VSESA).

What is the purpose of VSESA, 1980?

To safeguard India's forest cover from indiscriminate exploitation. It aims to preserve forests and achieve a critical balance between conservation and development especially with regard to diversion of forest land for non-forest purpose.

What kind of forest land are covered under, Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 (VSESA)?

- Lands which are declared or notified as forests under the Forest Act, 1927 and any other law for the time being in force.
- It will also encompass lands which are characterized as 'forests' in Government records on or after 25th October 1980.
- However, if a land was being utilized for non-forest purpose prior to December 12, 1996, i.e., the date of the T.N. Godavarman judgement, such land will be beyond the scope of the VSESA.
- A catalogue of lands which are exempted from the coverage of VSESA has been enumerated under Section 1A (2) of VSESA. For instance, lands located within a distance of one hundred kilometres from international borders or lands up to 10 hectares proposed to be utilized for developing security infrastructure will not be covered by the definition of forest

Can private individuals be penalized under VSESA, Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980?

While private individuals can't be directly prosecuted under VSESA, they can be added as abettors of an offence. If private individuals benefit from actions violating the Act, they may be accused of abetting an offence. Kerala High Court in *Angels Nair* directed the State to take action against officials or companies violating the Act, suggesting that private individuals may also be prosecuted as abettor

Is offense under VSESA, Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 a civil wrong or a penal wrong?

The offenses under the (VSESA), Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980, are considered penal wrongs rather than civil wrongs. Section 3A highlights Penalty for contravention of the provisions of the Act. Whoever contravenes or abets the contravention or any of the provisions of Section 2, shall be punishable with simple imprisonment for a period which may extend to fifteen days.

What are the exemptions under VSESA, Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980?

- Forest land along government-maintained rail lines or public roads, up to 0.10 hectare.
- Tree plantations on non-forest lands not declared or recorded as forests.
- Forest land within 100 km of international borders/ Line of Control/Line of Actual Control, for strategic national projects and security infrastructure
- Forest land up to 10 hectares for security infrastructure and up to 5 hectares for defence / public utility projects

How is Forest land granted under VSESA, Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980?

Before the 2023 amendment, VSESA regulated the assignment or lease of forest land, requiring prior approval from the Central Government for assignments or leases to private entities but not for government agencies, creating an imbalance. The amendment now mandates prior approval from the Central Government for state-

owned /controlled /managed agencies as well, removing the exemption previously granted to them. Additionally, the Central Government can now establish terms and conditions to regulate the grants of forest land, ensuring fair treatment.

What is the broad definition of 'non-forest purpose' for the purpose of VSESA, Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980?

Section 2 initially defined 'non-forest purpose' as the breaking up or clearing of forest land for certain specified activities, excluding those related to conservation and management of forests and wildlife. However, it broadened the scope by expanding the list of activities that are not considered 'non-forest purpose'. This includes silvicultural operations, establishment of check-posts, wireless communications, construction works, establishment of zoos and safaris, eco-tourism facilities, and other purposes specified by the Central Government. The Amendment Act also empowers the Central Government to lay down terms and conditions for surveys and exploration activities which are not regarded as 'non-forest purpose'.

In *T.N. Godavarman Thirumulpad v. Union of India,* it was held that running of sawmills of any kind including veneer or plywood mills, and mining of any mineral are non-forest purposes and are, therefore, not permissible without prior approval of the Central Government.

Who can be held liable for an offence under the VSESA, Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980?

Anyone who contravenes or aids in the contravention of any provision outlined in Section 2 of the VSESA, 1980 can be held liable. The term "whoever" encompasses individuals, companies, firms, associations, etc., potentially extending to vicarious liability as per applicable law.

What restrictions does the Act impose on the de-reservation of forests or the use of forest land for non-forest purposes?

The Act prohibits the de-reservation of forests or the use of forest land for non-forest purposes without prior approval from the Central Government.

Who can file an appeal to the National Green Tribunal under this Act?

Any person aggrieved by an order or decision of the State Government or other authority made under this Act can file an appeal to the National Green Tribunal.

Can the Central Bureau of Investigation inquire into cases concerning violations of VSESA, Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980?

The Forest Department, by itself, cannot hand over cases to the CBI. However, at the discretion of the Department a petition before the High Court may be filed for directions, citing necessary grounds.

What is the procedure of prosecution under VSESA, Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980?

VSESA, Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 is a concise legislation which has no mention of procedural details regarding the prosecution of offences under it. Hence, the relevant procedure laid out in the code of Criminal Procedure will be applicable.

What is the limitation period for initiating prosecution under VSESA, Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980?

Under VSESA, Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 the punishment is 15 days of simple imprisonment. The limitation period is only one year from the date of commission of the offense.

From where can an appeal be made from the trial court under VSESA, Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980?

Appeals can be made to the Court with appellate jurisdiction as per Section 372 of the Code of Criminal Procedure (Section 413 BNSS). Despite this, accused individuals may opt to approach the respective High Courts, invoking the inherent powers.

What are Deemed guilty provisions?

The VSESA (Van (Sanrakshan Evam Samvardhan) Adhiniyam) includes deemed guilty provisions under Section 3B, which establish criminal vicarious liability for heads of government departments or persons in charge of authorities. In cases where

violations of Section 2 occur within their jurisdiction, Section 3B holds them deemed guilty. This provision imposes stringent punishment, stating that when an offense is committed by any government department, its head, or any authority, every person directly in charge of that authority will be deemed guilty. Notably, since VSESA is a special environmental legislation, the requirement of prior sanction under Section 197 Cr.P.C. ((Section 218 BNSS) may be waived for prosecuting government officers for VSESA violations.

Is it permitted for the central bureau of investigation to look into cases relating to VSESA violations?

Central Bureau of Investigation (CBI) may inquire into VSESA offences with certain conditions:

- State Police organizations hold original jurisdiction to investigate any crime.
- CBI can undertake investigations when State Governments transfer particular cases due to their political sensitivity or significant media attention. The transfer should with the consent of the Government of India.
- Constitutional Courts such as the High Courts and the Supreme Court may direct the CBI to initiate fresh investigations or transfer cases from State Police organizations.

The Forest Department alone cannot refer cases to the CBI. Courts consider various factors before deciding, including state government actions. Examples include *T.N. Godavarman Thirumulpad v. Union of India, Obulapuram Mining case, and Samaj Samudaya case.*

What the offences that can be committed under the VSESA?

- Breaking up or clearing of any forest land or portion thereof for,
  i. The cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants.
  ii. Any purpose other than reforestation.
- Mining, including underground mining.
- Boulders, bajri, stone, etc., in the riverbeds located within forest area as would constitute a part of the forest land.
- Raising of commercial plantations of low rotation, including plantation of medicinal plants in the forest land.
- As held by the Supreme Court in *T.N. Godavarman Thirumulpad v. Union of India*, running of sawmills of any kind including veneer or plywood mills, and mining of any mineral.
- Ecotourism activities conducted on a commercial basis, such as camping sites and river rafting beach camps.

CASE STUDY

The Reputed Five Star Hotel situated on the Outer-Ring Road; Bangalore, razed around 100 trees to make the luxurious hotel more visible to the main road. The trees were on the adjacent land and were covering the visibility of the beautifully constructed hotel. Incidentally, the land on which trees were grown belonged to the Reserved Forest and the hotel officials razed around 100 trees without obtaining the permission of the forest department. The trees were native species having very high environmental value. The Conservator of Forest took cognisance of the offence and booked the hotel proprietor for the offences under S.3(A) of the Forest Conservation Act 1980, S.24(e) (g) Karnataka Forest Act 1963, and under S.8 of the Karnataka Tree Preservation Act 1976. The Proprietor of the Hotel in his defence stated that they weren't aware that the land was a reserved forest.

The Conservator of the Forest stated that even though he wasn't aware that the land was forest land, the proprietor should have approached the Tree officer under the Karnataka Tree Preservation Act for any grievances. The Act of clearing trees in the forest area is an offence under the Karnataka Forest Act 1963 and the Forest Conservation Act 1980.

HAZARDOUS AND OTHER WASTES (MANAGEMENT AND TRANSBOUNDARY MOVEMENT) (HOWM) RULES, 2016

What is hazardous waste?

Hazardous waste means any waste which by the characteristics such as physical, chemical, biological, reactive, toxic, flammable, explosive or corrosive, causes danger or is likely to cause danger to health or environment, whether alone or in contact with other wastes.

What is transboundary movement in these rules?

Transboundary movement refers to any movement of hazardous or other wastes from one country to another or through an area not under the jurisdiction of any country, involving at least two countries.

What is the scope of application of these rules?

These rules apply to the management of hazardous and other wastes specified in the Schedules. However, they do not apply to certain categories of waste, including wastewater, exhaust gases, radioactive wastes, biomedical wastes, and municipal solid wastes covered under specific legislation.

Which regulatory provision governs the utilization of hazardous wastes by actual users, and what are the requirements for obtaining authorization for this purpose?

Rule 9 of HOWMA is a provision which facilitate actual users for utilization of hazardous wastes. Any occupier of the facility intends to utilize hazardous waste should obtain authorization from the concerned State Pollution Control Boards (SPCB) or Pollution Control Committees (PCC), based on the Standard Operating Procedure (SOP) or guidelines prepared by Central Pollution Control Board (CPCB).

What are the Storage Requirements for Hazardous Waste?

The occupiers of facilities generating hazardous & other wastes may store for a period of not more than ninety days and a maximum quantity of ten tonnes. The State Pollution Control Board may extend the said period of ninety days.

What is meant by export and import according to these rules?

- Export refers to taking hazardous or other wastes out of India to a location outside India.
- Import involves bringing hazardous or other wastes into India from a location outside India.

What are the Procedures for Importing and Exporting Hazardous and Other Wastes?

Though hazardous waste is banned for import for disposal in the country, however, it is allowed for recycle, reuse, recovery and co-processing purpose. In order to regulate import and export of hazardous and other wastes. The Ministry of Environment, Forests and Climate Change has made provisions in the regulations under Chapter III sub-rules 11, 12, 13, 14 and 15 of HOWM Rules, 2016.

What is Illegal Traffic in the Context of Hazardous Waste?

The export and import of hazardous and other wastes to and from India are illegal under the following circumstances:

- Conducted without permission from the Central Government as per the rules.
- Permission obtained through falsification, misrepresentation, or fraud.

- Failure to adhere to the shipping details provided in the movement documents.
- Involves deliberate disposal of hazardous or other wastes, violating the Basel Convention and international/domestic laws.

What are the responsibilities of an occupier for the management of hazardous and other wastes according to the rules?

The occupier is required to follow specific steps for waste management, including prevention, minimization, reuse, recycling, recovery, utilization, and safe disposal. They are also responsible for ensuring safe and environmentally sound waste management practices.

What is the procedure for obtaining authorization for managing hazardous and other wastes?

Occupiers engaged in waste management activities must apply to the State Pollution Control Board and submit necessary documents. The Board, after inquiry and satisfaction with the facilities, may grant authorization within 120 days. The authorization is valid for five years.

Under what circumstances can the State Pollution Control Board suspend or cancel an authorization?

The Board may suspend or cancel authorization if the holder fails to comply with conditions or provisions of the rules.

Which ministry is responsible for managing the transboundary movement of hazardous and other wastes?

The Ministry of Environment, Forest and Climate Change is the nodal Ministry tasked with dealing with the transboundary movement of hazardous and other wastes

What actions must be taken in the event of an accident involving hazardous or other wastes?

In case of an accident at a facility or during transportation, the occupier, operator, or transporter must immediately inform the State Pollution Control Board and subsequently submit a report in Form 11.

Who is responsible for the identification, design, and operation of treatment, storage, and disposal facilities for hazardous wastes?

The State Government, occupiers, operators of facilities, or any association of occupiers may be individually or jointly responsible for identifying sites and setting up such facilities.

What are the responsibilities of the State Government regarding the environmentally sound management of hazardous and other wastes?

The State Government, through relevant departments or agencies, is tasked with various responsibilities, including earmarking industrial space for waste management activities, ensuring worker recognition and registration, facilitating skill development, and preparing integrated plans for effective implementation.

What is the procedure to dispose off bio-medical waste?

These HOWMA rules are for dealing with hazardous and other types of waste listed in the schedules. However, they don't include biomedical waste, which has its own set of rules called the Bio-Medical Wastes (Management and Handling) Rules, 1998.

The following procedures for the disposal of various types of biomedical wastes are as follows:

- **Incineration:** Incineration is a controlled combustion process in which the waste is completely oxidized and microorganisms, if present are destroyed and denatured at high temperature.
- **Autoclaving:** Autoclaving is a low-heat thermal process in which steam is brought into contact with the waste under pressure for a sufficient duration of time.
- **Microwaving:** Microwave ovens having radiation frequency between 300MHz and 300, 0000 MHz are used for treating waste.

- **Shredding:** In shredding, waste is cut into smaller blocks and disinfected. The shredded material is then stored in landfills.
- **Secure landfills:** A secure landfill is a specially designed pit (of dimension 50x50x 10m3) from which hazardous wastes cannot escape into open air or mix with groundwater. The sides of the pit are lined with an impermeable membrane such as plastic. The solid waste is carefully placed in the pit, spread out and compacted with heavy machinery. The waste is then covered with a layer of compacted soil. The process is repeated till the pit is full. It is then closed by cement concrete.
- **Deep well injection:** Deep well injection is a technology of disposing waste, mostly liquid, in which treated or untreated water is poured through pipes running down several thousand feet from the ground level. The water is injected into highly saline regions under the earth so that the contaminants do not migrate to pollute freshwater aquifers.

What hazardous waste is generated in households? How should the same be handled?

Some of the hazardous waste generated from households include oil paints, nail polish, latex, paints, batteries, cleaning chemicals, e waste, pesticides, chlorinated and non-chlorinated solvents and many more.

To manage Household Hazardous Waste effectively:

- Choose the least toxic products and buy only what you need to avoid waste.
- for household items marked with "caution" or "warning" instead of "danger" to minimize health and environmental risks.
- Opt for non-chemical pest control methods and use organic fertilizers to maintain a healthy yard and garden.
- Take used motor oil to designated recycling centres or automotive service stations to prevent environmental contamination.
- Check with friends, neighbours, or community groups to see if they can use any unused household products that are still safe and usable.
- Dispose of leftover hazardous products through local Household Hazardous Waste (HHW) programs to prevent water contamination and protect sanitation workers.

What are the repercussions of mishandling hazardous waste?

- **Failed Inspections**: Mishandling hazardous waste can lead to failed inspections by regulatory agencies like the EPA and OSHA, resulting in fines, reputation damage, and potential operational shutdowns.
- **Expenses**: Non-compliance can incur fines and long-term expenses.
- **Organizational Inefficiencies**: Mismanagement burdens the EHS department, leading to reactive responses, increased paperwork, and overwhelmed staff.
- **Risks to Employees:** Mishandling poses risks like spills, fires, and exposure to toxic chemicals, endangering employee safety and well-being.
- **Environmental Hazards:**

  Improper handling can lead to pollution, contamination, and environmental damage, harming ecosystems.

What are the responsibilities of hospitals and medical units to treat bio-medical waste?

Hospitals and medical units have specific responsibilities for the treatment of bio-medical waste, as outlined by the Bio-Medical Waste Management Rules, 2016.

These responsibilities include:

- **Segregation:** Hospitals must segregate bio-medical waste at the point of generation into color-coded

bins or bags as per the guidelines provided by the Central Pollution Control Board (CPCB).

- **Collection:** Bio-medical waste should be collected and stored separately from other types of waste in designated storage areas within the healthcare facility.
- **Transportation:** Hospitals are responsible for ensuring safe transportation of bio-medical waste to the treatment facility using authorized vehicles equipped with necessary safety measures.
- **Treatment and Disposal**: Bio-medical waste must be treated and disposed of in compliance with the standards set by the CPCB. Treatment methods may include autoclaving, incineration, or any other approved method to render the waste non-infectious.
- **Record-keeping:** Hospitals are required to maintain accurate records of bio-medical waste generation, collection, transportation, treatment, and disposal, as specified by the Bio-Medical Waste Management Rules.

Industries and their dealing with hazardous waste?

According to the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016, industries in India handle hazardous waste. These regulations specify how hazardous waste produced by industries is to be identified, gathered, transported, treated, and disposed of. The Central Pollution Control Board (CPCB), which is in charge of enforcing environmental laws in India, has released the instructions.

What are the permissions required for industrial units in handling hazardous waste?

Generally, authorization from the relevant State Pollution Control Boards (SPCBs) or Pollution Control Committees (PCCs) is required for industrial facilities managing hazardous waste. The Central Pollution Control Board's (CPCB) Standard Operating Procedure (SOP) or recommendations serve as the basis for obtaining this permit.

What are the permissions required for a hospital in handling hazardous waste?

The Bio-Medical Waste (Management and managing) Rules, 1998 provide that hospitals managing biomedical waste must obtain consent of the State Pollution Control Boards (SPCBs) or Pollution Control Committees (PCCs).

CASE STUDY

In the city of Raipur, the local government had identified 5 acres of land for processing and recycling the hazardous wastes generated in the city of Raipur. The adjacent villages having the farmlands were to be affected because of this. The villagers approached the National Green Tribunal (NGT) stating that they were not consulted for the decision to identify the land for hazardous waste processing plant. They also stated that it was the responsibility of the local governments to create awareness about the implications of such plants being established near the farmland. The NGT on receiving the petition made an order to the local government of Raipur to strictly follow the Hazardous Waste Management Rules 2016 and sought information regarding the waste processing plant. It directed the State Pollution Control Board to monitor the situation.

As per the Hazardous Waste Management Rules 2016, the local governments must mention the total generation of hazardous for a particular time. The Local government shall also make public the information regarding the capacity of processing plants to be set up. It shall also mention the residual wastes generated during the processing.

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