

## **Protection of Weaker Sections**

### **Protection of weaker sections - Responsibilities of Police**

**526-1.** There are important provisions in the Constitution such as Fundamental Rights and Directive Principles of State Policy, which guarantee protection to SC/ST and other weaker and vulnerable sections. In the framework of the constitutional provisions, certain acts have been enacted and rules framed there under to safeguard the interest of these sections. Hence Police Officers should have a thorough understanding of these acts and rules so that they may be appropriately applied in the best interests of these sections. The following orders deal with specific laws enacted for various sections.

### **Scheduled Castes and Scheduled Tribes**

2. These are notified in terms of the articles 341 and 342 of the Constitution. Scheduled areas are covered by Articles 244 and 244A. It should be noted that scheduled tribes are not only listed but certain portions of the areas of districts or States are declared as scheduled areas. Several safeguards and protections are given to the scheduled tribes in the scheduled areas. Police in the scheduled areas should be familiar with the laws, notifications protections available and the restrictions on those who do not belong to scheduled tribes, but living in scheduled areas.
3. The Government of India have enacted two acts viz. Protection of Civil Rights Act 1955 which prescribes punishment for preaching and practice of un-touchability and for enforcing any disability arising there from and for matters connected there with; and the SC/ST (Prevented of Atrocities) Act 1989 which aims to prevent the commission of offences of atrocities against the members of SC and

ST, and provides for special courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matter connected therewith or incidental thereto. Article 17 of the Constitution of India specifies that un-touchability is abolished and its practice in any form is forbidden.

### **Offences of atrocities**

4. The **Protection of Civil Rights Act 1955** is mainly social welfare legislation. Under this Act the punishments are defined in Sections 3 to 10 with a provision for enhancing penalty u/s 11. The court in certain cases shall presume that an offence is committed on the ground of un-touchability unless contrary is proved. Offences are cognizable, triable summarily and Probation of Offenders Act 1958 is not applicable to persons aged above 14 years. The PCR Rules were passed in 1977 defining the manner in which enquiry has to be made etc. The punishments for offences under the Act is given below:

**Section 3:** Punishment for enforcing religious disabilities on the ground of un-touchability for various offences mentioned therein like preventing entry into public places of worship or preventing worshipping etc.

**Section 4:** Punishment for enforcing social disabilities with regard to access to any shop, public restaurants, hotel or place of public entertainment, use of utensils etc. in any public restaurant, hotel, dharmasala etc.

**Section 5:** Punishment for refusing to admit persons to hospitals etc.

**Section 6:** Punishment for refusing to sell goods or render services.

**Section 7:** Punishments for other offences arising out of “un-touchability”.

**Section 7-A:** Punishments for unlawful compulsory labour when to be deemed to be a practice of “un-touchability”.

**Section 8:** Cancellation or suspension of licensees of a person when he is convicted for an offence u/s 6 of this Act.

**Section 9:** Resumption or suspension of grant of land or money from the Government to the manager or trustee of any Educational institutions, hotel or a place of public worship who has been convicted of an offence under this Act.

**Section 10:** Whoever abets any offence under this Act shall be punishable with the punishment provided for the offence. A public servant who willfully neglects the investigation of any offence punishable under this Act shall be deemed to have abetted an offence punishable under this Act.

**Section 10-A:** The State Government may impose a collective fine on the inhabitants of the locality by way of notification if the inhabitant of that area are concerned in or abetting the commission of an offence etc. under this Act.

**Section 11:** The court can enhance the punishment if a person is already convicted previously under this Act including for abetment.

**Section 12:** Where any act constituting an offence under this Act is committed in relation to a member of a Scheduled Caste the Court shall presume, unless the contrary is proved, that such act was committed on the ground of “un-touchability”.

**Section 13:** (1) No Civil Court shall entertain or continue any suit or proceeding or shall pass any decree or order or execute wholly or partially any decree or order if the claim involved in such suit or proceeding or if the passing of such decree or order or if such execution would in any way be contrary to the provisions of this Act.

(2) No Court shall, in adjudicating any matter or executing any decree or order, recognize any custom or usage imposing any disability on any person on the ground of “un-touchability”.

**Section 14**(1): If the person committing an offence under this Act is a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

**Section 14**(2): Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the consent of any Director or Manager, Secretary or other officer of the company, such Director, Manager, Secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

**Section 15:** Notwithstanding anything contained in CrPC every offence punishable under this act shall be cognizable and every such offence, except where it is punishable with imprisonment for a minimum term exceeding three months, may be tried summarily by a Judicial Magistrate of the First Class or in a metropolitan area by a Metropolitan Magistrate in accordance with the procedure specified in the CrPC. However when any public servant is alleged to have committed the offence of abetment of an offence punishable under this Act, while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such an offence of abetment except with the previous sanction of Central/State Government by the case may be.

**Section 15-A:** It is the duty of State Government to ensure that the rights accruing from the abolition of “un-touchability” may be availed

by the concerned persons.

**Section 16:** Act to override other laws.

**Section 16-A:** The Probation of Offenders Act 1958 will not be applicable to any persons above the age of 14 years when he is found guilty.

**Section 16-B:** The Central Government have got power to make rules to enforce the provisions of this Act.

**The SC & ST (Prevention of Atrocities) Act 1989 and Rules 1995.**

5. The SC/ST Act is enacted to punish for the commission of offences committed by non SC/ST against the members of SC/ST and to provide for special Courts for the trial of such offences and for relief and rehabilitation of the victims of such offences. Atrocities under this Act are offences listed in section (3) according to which, whoever, not being a member of a Scheduled Caste or Scheduled Tribe,
  - A. Forces a member of a SC or ST to drink or eat any inedible or obnoxious substance:
  - B. Acts with intent to cause injury, insult or annoyance to any member of a Scheduled Caste or a Scheduled Tribe by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighborhood.
  - C. Forcibly removes clothes from the person of a member of a Scheduled Tribe or parades him naked or with painted face or body or commits any similar act which is derogatory to human dignity.
  - D. Wrongfully occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or Scheduled Tribe or gets the land allotted to him transferred.

- E. Wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or remises or interferes with the enjoyment of his rights any land, premises or water;
- F. Compels or entices a member of a Scheduled Caste or Scheduled Tribe to do 'begging' or other similar forms of forced or bonded labour other than any, compulsory service for public purpose imposed by Government;
- G. Forces or intimidates a member of a Scheduled Caste or a Scheduled Tribe not to vote to vote to a particular candidate or to vote in a manner other than that provided by law;
- H. Institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;
- I. Gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe;
- J. Intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste/ Scheduled Tribe in any place with public view;
- K. Assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonor or outrage her modesty;
- L. Being in a position to dominate the will of a woman belonging to a scheduled caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed;
- M. Corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Castes or the Scheduled Tribes so as to render it less fit for the purpose for which it is ordinarily used;
- N. Denies a member of a Scheduled Caste or a Scheduled tribe any customary right of passage to place of public resort or obstructs such member so as to prevent him from using or having access to a place of public resort to which

other members of public or any section thereof have a right to use or access to;

- O. Forces or causes a member of a Scheduled Caste or Scheduled Tribe to leave his house, village, or other place or residence, **shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.**

- 6. Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, -
  - A. Gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is capital by the law for the time being in force shall be punished with imprisonment for life and with fine; and if an innocent member of a scheduled Caste or a Scheduled Tribe be convicted and executed in consequence of such false or fabricated evidence, the person who gives or fabricates such false evidence shall be punished with death.
  - B. Gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is not capital but punishable with imprisonment for a term of seven years or upwards, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years or upwards and with fine;
  - C. Commits mischief by fire or any explosive substance intending to cause or knowing to be likely that he will thereby cause damage to any property belonging to the member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;
  - D. Commits mischief by fire or any explosive substance in ending to cause or knowing it to be likely that he will thereby cause destruction of any building which is ordinarily used as a place of worship or as a place for human dwelling or a place for custody of the property by a

member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for life and with fine;

- E. Commits any offence under the Indian Penal Code, punishable with imprisonment for a term of a ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine;
  - F. Knowingly or having reason to believe that an offence has been committed under this Chapter, causes any evidence of commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall be punishable with the punishment provided for that offence.
  - G. Being a public servant, commits any offence under section (3) of the Act, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.
7. According to **section 4** whoever, being a public servant but not being a member of a Scheduled Caste or a Scheduled Tribe, willfully neglects his duties required to be performed by him under this Act, shall be punishable with imprisonment for a term which shall not be less than six months but may extend to one year.
8. According to **section 5** whoever, having already been convicted of an offence under this Chapter is convicted for the second offence or any offence subsequent to the second offence, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.
9. According to **section 6** subject to the other provisions of this Act, the provisions of Section 34, Chapter III, Chapter IV, Chapter V-A, Section 149, and Chapter XXIII of the Indian Penal Code, 1860 shall so far as may be apply for the purposes of this Act as they apply for the purposes of the IPC.

10. According to **section 7** where a person has been convicted of any offence punishable under this Chapter, the Special Court may, in addition to awarding any punishment, by order in writing, declare that any property, movable or immovable or both, belonging to the person, which has been used for the commission of that offence, shall stand forfeited to Government.

Where any person is accused of any offence under this Chapter, it shall be open to the Special Court trying him to pass an order that all or any of the properties, movable or immovable or both belonging to him, shall, during the period of such trial, be attached, and where such trial ends in conviction, the property so attached shall be liable to forfeiture to the extent it is required for the purpose of realization of any fine imposed under this Chapter.

11. According to **section 8** in a prosecution for an offence under this Chapter, if it is proved that-
  - A. the accused rendered any financial assistance to a person accused of or reasonably suspected of committing, an offence under this Chapter, the Special Court shall presume, unless the contrary is proved, that such person had abetted the offence.
  - B. A group of persons committed an offence under this Chapter and if it is proved that the offence committed was a sequel to any existing dispute regarding land or any other matter, it shall be presumed that the offence was committed in furtherances of the common intention or in prosecution of the common object.
12. According to **section 10: (1)** where the Special Court is satisfied, upon a complaint or a police report that a person is likely to commit an offence under Chapter II of this Act in any area included in "Schedule Areas" or "tribal areas", as referred to in Article 244 of the Constitution, it may, by order in writing, direct such person to remove himself beyond and the limits of such area, by such route and within such time as may be specified in the order, and not to return to that area from which he was directed to remove himself for such period not exceeding two years, as may be specified in the order.

- (2) The Special Court shall, along with the order under sub-section (1), communicate to the person directed under that sub-section the grounds on which such order has been made.
- (3) The Special Court may revoke or modify the order made under sub-section (1), for the reasons to be recorded in writing, on the representation made by the person against whom such order has been made or by any other person on his behalf within thirty days from the date of the order.

13. According to **section 11: (1) if** a person to whom direction has been issued under section 10 to remove himself from any area.

- (a) fails to remove himself as directed; or
  - (b) having so removed himself enters such area within the period specified in the order, otherwise than with the permission in writing of the Special Court under sub-section (2), the Special Court may cause him to be arrested and removed in police custody to such place outside such area as the Special Court may specify.
- (2) The Special Court may, by order in writing permit any person in respect of whom an order under Section 10 has been made, to return to the area from which he was directed to remove himself for such temporary period and subject to such conditions as may be specified in such order and may required him to execute a bound with or without surety for the due observation of the conditions imposed.
  - (3) The Special Court may at any time revoke any such permission.

(4) Any person who, with such permission, returns to the area from which he was directed to remove himself shall observed the conditions imposed, and at the expiry of the temporary period for which he was permitted to return, or on the revocation of such permission before the expiry of such temporary period shall, remove himself outside such area and shall not return thereto within the un-expired portion specified under Section 10 without a fresh permission.

(5) If a person fails to observe any of the conditions imposed or to remove himself accordingly or having so removed himself enters or returns to such area without fresh permission the Special Court may cause him to be arrested and removed in police custody to such place outside such area as the Special Court may specify.

14. According to **section 12** every person against whom an order has been made under Section 10 shall, if so required by the Special Court, allow his measurements and photographs to be taken by a police officer. Refusal or resistance is punishable under section 186 IPC.
15. According to **section 13** any person contravening an order of the Special Court made under Section 10 shall be punishable with imprisonment for a term, which may extend to one year and with fine.
16. According to **section 16** the provisions of Section 10-A of Protection of Civil Rights Act, 1955 (22 of 1955), shall, so far as may be, apply for the purposes of imposition and realization of collective fine and for all other matters connected therewith under this Act.
17. According to **section 17** a District Magistrate or a Sub-Divisional Magistrate or any other Executive Magistrate or any police officer not below the rank of a Deputy Superintendent of Police may, on receiving information and after

such inquiry as he may think necessary, has reason to believe that a person or a group of persons not belonging to the Scheduled Castes and or the Scheduled Tribes, residing in or frequenting any place within the local limits of the jurisdiction is likely to commit any offence or has threatened to commit any offence under this Act and is of the opinion that there is sufficient ground for proceeding, declare such an area to be an area prone to atrocities and take necessary action for keeping the peace and good behavior and maintenance of public order the transfer quality and may take preventive action. The provisions of Chapter VIII, X and XI of the Cr.P.C. shall, so far as may be, apply for this purposes.

18. According to **section 18** nothing in Section 438 anticipatory bail of the Cr.P.C. shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.
19. According to **section 19** the provisions of Section 360 of the Cr.P.C. and the provisions of the Probation of Offenders Act, 1958, shall not apply to any person above the age of eighteen years who is found guilty of having committed an offence under this Act.
20. According to **section 20** save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.
21. According to **section 22** no suit, prosecution or other legal proceedings shall lie against the Central Government or against the State Government or any officer or authority of Government o any officer or authority of Government or any other person for anything which is in good faith done or intended to be done under this Act.

Differences between the SC/ ST (POA) Act and the PCR Act.

- 527-1-A.** Under SC/ST (POA) Act the accused should be non SC/ST person except abettors whereas under PCR Act anybody can be an accused;
- B. In SC/ST (POA) Act victims can be either SC or ST whereas under PCR Act the victims can be only SCs;
  - C. Under SC/ST (POA) Act some of the offences attract the provisions of IPC also in which case offences can be charged both under this Act as well as under IPC. However in PCR Act the offences are specifically religious or social disabilities;
  - D. In SC/ST (POA) Act the offences are triable by special courts of a level of sessions court established by the Government and special P.Ps are appointed for the purpose of conducting prosecutions whereas under PCR Acts the offences are triable by Judicial first class Magistrates;
  - E. Under SC/ST (POA) Act the offences are cognizable and non bailable and non compoundable whereas under PCR Act the offences are cognizable and bailable;
2. The investigation under this Act should be done by an officer not below the rank of DSP. The IO should complete the investigation on top priority within 30 days and submit a report to the S.P.
3. The cases are cognizable, non bailable, non compoundable as contemplated under Cr.P.C. Apart from this a public servant (not being SC or ST) who willfully neglects his duties required to be performed by him under this Act shall be punishable with imprisonment of a term not less than six months.
4. Some of the offences under section 3 of the Act equally attract the provisions of corresponding sections in IPC and so a case should be registered under the relevant provisions of both the Acts for proper investigation of cases.

### ***Rules under Civil Rights Act***

5. The rules under the Civil Rights Act provide for enquiry into incidents by the Sub-Divisional Magistrate and above. The Bonded Labour

System (Abolition) Act 1976, the Child Labour (Prohibition and Regulation Act 1986), the Forest Conservation Act 1980, Panchayats (Extension to scheduled areas) Act 1996 are some of the enactments intended for preventing exploitation of children and the rights of the poor. The responsibilities of the Police in respect of these legislation are dealt separately. It may be mentioned that since a large portion of the affected persons are from Scheduled Castes and Scheduled Tribes the protection available in the above Acts are applicable to them. Wherever relevant and necessary the police officers shall apply the provisions of these Acts as detailed above while dealing with crimes against Scheduled Tribes and the Scheduled Castes.

6. The SC, ST (Prevention of Atrocities) Rules 1995 under the Act specifies the preventive measures which have to be taken by the Police and Executive Magistrates and non-Government organizations. Registration of the case by police has to be done in the manner provided in Rule 5 of these Rules. A PCR Cell is under the charge of SSP/SP, CID. Rule 8 of the SC, ST (POA) Rules 1995 prescribes the duties and responsibilities of this Cell, which include.
  - A. Conducting survey of the identified area
  - B. Maintaining public order and tranquility in the identified area
  - C. Recommendation to the State Government for deployment of Special Police force or establishing of special police post in the identified area;
  - D. Making investigations about the probable causes leading to an offence under this Act.
  - E. Restoring the feeling of security amongst the members of the Scheduled Castes and the Scheduled Tribes.
  - F. Informing the nodal officer and special officer about the law and order situation in the identified area.

- G. Making enquiries about the investigation and spot inspections conducted by various officers.
- H. Making enquiries about the action taken by the Superintendent of Police in the cases where an officer in charge of the Police Station refused to enter information in a book to be maintained by that Police Station under Sub-Rule (3) of Rule 5.
- I. Making enquiries about the willful negligence by a public servant.
- J. Reviewing the position of cases registered under the Act; and
- K. Submitting a monthly report on or before 20<sup>th</sup> day of each subsequent month to the State Government.

### **PCR Cell and its duties**

**528-1.** The first duty is to act directly and investigate the offences against SC/ST. The second duty is to be a nodal, monitoring, coordinating and advisory agency for the police department, in so far as the enforcement of these Acts are concerned. Being one of the wings of the CID it is in a position to have access to all data in SCRB and the DCRBs and issue suitable instructions to all concerned on preventive, investigative and prosecuting aspects. The advisory role of the PCR Cell is important, as several other departments are also charged with the responsibility of enforcement of PCR and SC, ST (Prevention of Atrocities) Act.

### **529. Duties of the District**

- 1. The SP in the districts is responsible to organize both preventive measures and investigation of cases. The local Police will be responsible for preventing atrocities and investigation of cases. The more important cases have to be taken by the investigation.
- 2. The preventive steps to be taken by local Police are -
  - A. Information of all incidents, even of a minor nature should be collected.

- B. The disputes and frictions should be identified.
- C. The areas prone to atrocities or where violations of Civil Rights Act takes place should be identified from time to time with a view to focus attention.
- D. The SDPOs should regularly monitor and review such identified areas and report to SsP in monthly crime meetings.
- E. The build up to a major incident should be pre-empted by timely intervention and activating conflict resolution machinery.
- F. If there is a simmering problem with underlying social causes, the matter should be brought to the notice of Additional District Collector/Collector designated to resolve the dispute.
- G. If the problem is factional or political the SDPO should monitor and take action to defuse the rumblings.
- H. Action under security provisions under CrPC should be initiated by local Police in appropriate cases.
- I. The instructions to beat staff in each police station should include specific guidelines on this subject and their reports should be scrutinized by the SHO.

### **Investigation of Cases**

- 530-1.** All instructions regarding prompt arrival, processing the scene, preservation of all clues, examination of witnesses, searches of places and arrest of accused should be attended to with expedition. The police station of the area should reach the spot promptly and take up investigation without delay. All information relating to crime and criminals should be fed in the DCRB for analysis to be useful for investigation as well as for preventive measures.

## **Monitoring and Review**

2. A district vigilance and monitoring committee with District Magistrate as Chairman and a state level review committee with Chief Secretary as Chairman is formed to hold review meeting as required.
  - B. The following questions are to be added to the questionnaire for inspecting officers;
    - Whether any cases involving ill treatment or harassment or atrocities on SCs and STs due to caste considerations were reported at the PS?
    - If so, how many cases have been charge sheeted in the court?
    - How many cases have been reported under the PCR Act.
    - How many cases out of them have been charge sheeted in the court?
    - What is the result of the court cases? If there are any acquittals, was there any deficiency in investigation?
  - C. Village Panchayat should play an important constructive role in getting to reconcile differences to prevent atrocities.
  - D. Free legal aid should be provided in consultation with SP and PP when SC & ST are accused.
  - O. PCR Cell in CID should ensure prompt investigation, prosecution and disposal of cases under PCR Act and SC, ST, (Prevention of Atrocities) Act.
3. The following action should be taken by the local police for giving protection to the SCs & STs who are landless and poor:
  - A. any attempt by others to dislodge the SC/ST unlawfully from their lands should be prevented and in cases of criminal trespass booked.
  - B. the arms licensees in the sensitive area should be reviewed;
  - C. special striking and mobile forces should be located in strategic areas

where trouble is anticipated and pickets should be posted;

- D. in the event of trouble in spite of preventive action, force must be moved to quell the disturbance and arrest the offenders;
  - E. prompt registration of cases
  - F. setting up of special police stations if required.
  - G. speedy investigation and charge sheets
  - H. bail should be opposed in non-bailable and serious cases
  - I. maximum punishment should be pressed for
4. The identification of villages or areas where atrocities are likely to be committed should be done and report should be in the following form.
- A. Name of the village
  - B. History of conflict between Scheduled Caste and Scheduled Tribe/other caste groups
  - C. History of atrocities
  - D. Freed bonded labourers belonging to Scheduled Caste and Scheduled Tribe groups
  - E. Skewed distribution of land, money (few rich people and mostly poor people among Scheduled Castes and Scheduled Tribes)
  - F. Large extent of land taken possession under Ceiling Act or under Declaration and Litigation
  - G. Having highly educated youth belonging to SC/ST
  - H. Predominantly consisting of SC/ST members who are agricultural

labourers

J. Members of SC/ST communities are occupying seats of power such as Panchayat, Fair Price Shop Dealer etc.

**531.** The National Commission for Scheduled Castes and Scheduled Tribes has the following functions and powers for monitoring and issuing suitable instructions to the concerned.

1. To visit the scene of occurrence immediately by itself or by monitoring on receipt of information;
2. Prompt registration of FIR.
3. All the persons cited by the complainant are included in the FIR
4. Investigation is taken up by a senior officer as per provisions.
5. Culprits are apprehended and booked without loss of time.
6. Proper charge sheet is filed mentioning the relevant sections of IPC together with the PCR and SC, ST, PA Act.
7. The cases are tried by Special Courts
8. Special Public Prosecutors are appointed to handle these cases.
9. Police assists the courts in bringing witnesses and see that the culprits are successfully prosecuted by the Courts.
10. The victims are provided suitable medical assistance on time;
11. Adequate protection is arranged to the victims of such incidents by providing police protection by stationing a police party or by patrolling.
12. To see proper compensation is paid to the victims as per provisions of law.

**Powers of the Commission to act as a Civil Court**

**532.** While investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of the clause (5) of Article 338 of the Constitution the Commission shall have the powers of a Civil Court trying a suit and in particular in respect of the following matters:

- 1 -A. summoning and enforcing the attendance of any person from any part of India and examining him on oath;
  - B. requiring the discovery and production of any document;
  - C. receiving evidence on affidavits;
  - D. requisitioning any public record or copy thereof from any court or office;
  - E. appointing issuing commissions for the examination of witnesses and documents;
  - F. any other matters which the President may, by rule, determine.
2. There are several agencies of the Government particularly the District Magistrates and the Social Welfare Department who have special responsibility to implement various safeguards. Police have their own important role in implementing the Acts effectively.

**Crimes against Children - Trafficking in Children-Rights of Children  
- Police Duties - Investigation of Crimes**

**533** The Constitution guarantees certain rights and opportunities to children for their development in a healthy manner under a free and conducive atmosphere. The declaration of U.N. relating to children also lays down as;

- A. Protection from economic exploitation;

- B. Protection from harmful substances including drugs and psychotropic substances;
- C. Protection from sexual exploitation;
- D. Protection from kidnapping;
- E. Protection from torture and capital punishment;
- F. Treatment of children who are accused of violation of criminal law in a manner consistent with the promotion of child's sense of dignity;
- G. To enable his reintegration and playing a constructive role in society;
- H. Protection from cruelty and exploitation.

### ***Juvenile Justice (Care and Protection of Children) Act, 2000***

- 534-1.** The Juvenile Justice Act 1986 is repealed and the new Act is to be followed now. In the new Act greater attention is paid for the care and protection of Juveniles. The Juvenile under this Act means a boy or girl who has not attained the age of 18 years. This Act is a comprehensive legislation dealing with exploitation of children and treatment of children in need of care and protection and with Juveniles in conflict with law.
2. This Act is a human rights legislation. The problems of increasing juvenile delinquency and child misbehavior has been a cause of concern to the society. This trend can mainly be attributed to the following ills of society.
- The so called present day materialistic approach to life;
  - Impact of Cinemas having full of sadistic crime and lustful sex;
  - Lack of parental care;
  - Environmental factors and economic conditions – extremes of affluence and poverty;

3. Juvenile delinquency refers to the anti - social acts of children. Such acts are either found to be a deviation from normal behaviour such as incorrigibility, disobedience, running away from home, reading obscene literature and viewing obscene or crime prone movies, or doing acts forbidden by law such as committing offences (from minor to major) from pick-pocketing to rape and murder.
4. Juvenile Justice Act deals with the above two types. The first type of juveniles is termed as neglected juveniles and second type as delinquent juveniles. A neglected juvenile falls under 5 categories -
  - A juvenile found begging;
  - A juvenile having no settled place of abode and no ostensible means of living;
  - Having parent or guardian but incapable of exercising control over the child;
  - living in a brothel or with a prostitute or visiting a place of prostitution frequently;
  - being likely to be abused or exploited for immoral purposes
5. Child welfare Committees are constituted by Government to inquire into children who need care and protection. The board is presided over by a chairman with two or more members one among them being a woman compulsorily. The board is vested with powers of a first class Magistrate.
6. Juvenile welfare boards are constituted to inquire into Juvenile in conflict with law presided over by a judicial first class Magistrate. Juvenile homes are established to house neglected juveniles and special homes are established to house delinquent juveniles after due inquiry. Observation homes are constituted to house both neglected and delinquent juveniles pending inquiry.
7. A police officer dealing with the child in need of care and protection has to strictly follow the following procedure;
  - A. When a police officer is of the opinion that a person is a child and is in need of care and protection, he shall take charge of the person for bringing

him before the juvenile welfare board of the area. Every person taken charge shall be brought before the board within 24 hours excluding the journey time. If the parents do not come forward to take him in the meanwhile, he shall be kept in observation home before he is brought before the board but he shall never be kept in a police station or lock-up or jail.

- B. It must be noted that a child in need of care and protection is not an offender. As such he is not to be arrested.
- C. The board holds inquiry and examines the police officer and other witnesses produced before it. The child in need of care and protection or any one on his behalf can challenge the witnesses. If the majority members of the board are of the opinion on inquiry that he is a neglected juvenile, he will be sent to juvenile home till he ceases to be a juvenile. Instead of sending a juvenile to juvenile home the board may place the juvenile under the care of a parent, guardian or any fit person or any recognized organization by imposing conditions with or without sureties for the good behaviour and well being of the juvenile.

Duties of police officer while dealing with the Juvenile in conflict with law.

- 8. A juvenile in conflict with law is one who has committed an offence as mentioned in Order (second type). The duties of police in dealing with such type of juveniles is as follows:
  - A. When a Juvenile in conflict with law has committed any cognizable offence, he may be arrested by the police officer but he shall not be handcuffed or kept in lock-up.
  - B. The I.O. shall release him on bail when offered whether it isailable or non-ailable offence. But he shall not be so released if there appears reasonable grounds for believing that his release is likely to bring him in to association with any known criminal or exposing to moral danger or his release would defeat ends of justice. If he is not released on bail, he shall be removed to observation home or a place of safety till he is produced before the juvenile court and he shall continue there till the inquiry is completed.

- C. When a Juvenile in conflict with law is arrested the SHO shall inform immediately the parent or guardian and direct them to be present at a juvenile court on the day of production of juvenile. The SHO shall simultaneously inform the probationary officer to enable him to obtain information regarding his antecedents and forward it to the juvenile court.
- D. After due inquiry if the juvenile is found not guilty, he will be discharged.
- E. If the juvenile is found guilty a court may order either of the following steps –
- allow the juvenile to go home after advice or admonition
  - direct the juvenile to be released on probation of good conduct and placed in the care of parents or guardian after executing a bond with or without sureties for a period not exceeding 3 years;
  - he may be placed in the care of a fit institution for a period not exceeding 3 years; or ordered to perform community service.
  - he may be sent to special home till he ceases to be a juvenile or till the juvenile attains the age of 18 years in the case of a boy and 20 years in the case of a girl;
  - fine also can be imposed if the juvenile is above 14 years.

**535.** The following points are to be noted relating to juveniles.

1. No sentence of imprisonment shall be imposed on a juvenile even after conviction.
2. Only a juvenile welfare board enquires into any offence committed by a juvenile.
3. If the juvenile welfare board finds in the preliminary inquiry that he is not a juvenile, he shall be forwarded to the ordinary court of concerned jurisdiction for his trial.
4. Even if he ceases to be a juvenile during inquiry in the juvenile welfare board, the inquiry will continue in the same court.
5. Inquiries are conducted by Magistrates in observation homes.
6. Inquiries are conducted in camera.
7. There shall not be a joint trial of a juvenile and non juvenile for offences committed by them jointly. Though common investigation is made

against them, charge sheets should be filed separately in the respective courts.

8. No security proceedings under sections 107 to 110 CrPC shall be launched against a juvenile.
9. The Act provides punishments for offences committed against juveniles. Section 23 provides punishments for willfully neglecting a juvenile or assaulting, abandoning, exposing or causing mental suffering to a juvenile who under their control or charge but the sanction of the Government is necessary before filing a charge sheet under this section.
10. Section 24 provides punishment for those who employ or use any juvenile for the purpose of begging. Abetment is also an offence under this section. The offence under this section is cognizable.
11. Section 25 provides punishments for giving intoxicating liquor or narcotic drug or psychotropic substance to a juvenile.
12. Section 26 provides punishments against persons who procure a juvenile for the purpose of employment and withholds his earnings.
13. The offences under sections 41 to 44 can be charged together with any other offence provided under any other law and cases are to be filed in the ordinary courts.

**536.** There are some other legislations to protect the interest of children.

1. The Child Labour Prohibition And Regulation Act (1986) prohibits children below 14 years from employment in railway, in such other processes as beedi making, carpet weaving, cement manufacturing, cloth printing, dyeing and weaving, bagging, manufacture of matches, explosives, fire-works, mica cutting and splitting, shellac and soap manufacture, tanning, wool cleaning and building construction. In other cases where children are employed, certain precautions have to be taken in the interest of their safety and health as per section 13. Violation of provisions entails punishment of 3 months up to one year. The offences however are not cognizable.

A. Section 16 empowers any person and police officer or inspectors

appointed under the Act to file complaints in a competent court.

- B. Whenever violation of the Act comes to notice, the duty of the police officer should be to make a record in the General Diary and file a complaint before the Metropolitan Magistrate or first class Magistrate who is competent to try the case. For every second offence, the punishment is 6 months to 2 years of imprisonment.
  - C. The main duty of enforcing this Act is that of the inspectors appointed for this specific purpose. The police officer need not therefore undertake the job of going round the factories or places of work with a view to detect and prosecute the violation.
  - D. The police should make thorough inquiries where they come across organized, deliberate employment of children against the provisions of this Act, and a proper FIR should be registered under appropriate sections of IPC and the Act. The example of such racketeering is the middle men who gather children and make them work taking advantage of the poverty of the parents.
  - E. Every police station should maintain missing children register and make efforts to trace them. The register should be kept up to date with details of inquiries conducted.
2. The Child Marriage Restraint Act provides for punishments against any male person above 18 years marrying a female child below 18 years. It also provides for punishments against persons who perform, conduct or direct any child marriage and also against the parents and guardians having charge of a minor female child conducting marriage or failing to prevent the marriage of a child.
  3. All these offences are cognizable for the purpose of registration and investigation of these offences but arrest can be made only on a warrant from a court.
  4. Charge sheets must be filed within one year from the date of offence. Otherwise courts will not take cognizance.

### **Crimes against Women and Duties of Police**

**537.1** Women have equal rights under the Constitution. Special provisions aimed at protection of women and to prevent atrocities against them have been made by various laws. Article 23 of the Constitution prohibits trafficking in women, which is recognized as a fundamental

right. Trafficking in human beings covers exploitation and trading by taking advantage of the vulnerability, poverty and physical weakness of the women. The provisions in the Indian Penal Code relating to crimes against women are contained in sections 294, 304B, 354, 366, 366A, 366B, 372, 373, 374, 376, 376-A, B, C, D, 493, 494, 496, 497, 498, 498A, 509. Sections 125 to 128 of Chapter VIII of CrPC relate to maintenance of women. The investigations of some of these offences are covered in the relevant Chapters in this Manual.

- A. Organized criminal activity is known to operate in illicit trafficking subjecting the women to untold trauma, agony and suffering.
- B. Women are subjected to physical harm, molestation, physical and mental suffering arising out of dowry system and conflicts in the family due to various reasons. Domestic violence against women and girls is yet another manifestation of sufferings of women.
- C. Adequate safeguards and protections are provided for the treatment of arrested women and women offenders by various laws and rules.
- D. Apart from the Indian Penal Code, special legislations also exist. In the matter of rehabilitation, rescue and treatment, the welfare departments of the government and recognized non-governmental organizations have an important role to play. The role of the police which is complementary to these is set forth in the concerned Acts and Rules. In respect of atrocities against women of an unorganized nature, the governmental and non-governmental agencies and also the police have a role to play. In the matter of dealing with organized crime against women particularly trafficking and serious crimes it is entirely the responsibility of the police.
- E. The norms of conduct of the police towards women whether they are offenders or in custody or come in contact on various occasions requiring police intervention are set forth and any violation attracts action against them. Police Officers of all ranks should familiarize

and assimilate in spirit and letter, the various provisions of law and rules in the discharge of their duties. The training branch of the police and all the training institutions shall cover these aspects comprehensively in the induction, in-service and on-job training courses. The syllabus of induction training for all police officers should contain a module on the manners of official conduct with women.

### **The Immoral Traffic (Prevention) Act, 1956**

2. The Immoral Traffic (Prevention) Act 1956 prohibits trading, trafficking and exploitation of women. Under the Act prostitution is not by itself punishable but exploitation of prostitution by others is made punishable under section 3, 4, 5 and 6 of the Act. Prostitution in public places and inviting for prostitution from public places is punishable under section 7 and 8. Inducing for prostitution by persons under whose custody the women are punishable under section 9. This Act attracts offences against both males and females. The opposite party (accomplice) can be prosecuted as abettor. There are deterrent punishments if the exploitation relates to child prostitutes. A public place is one which is within 200 meters radius to any place of Worship, Hospital, School, Hotel, or any other place declared by the government as such. Section 18 provides for removal of a brothel from a public place by police by the orders of an executive magistrate. Rehabilitation measures are also provided under the Act and Rules.

### **Investigation Duties of Police**

3. Under the Act, a special police officer who shall not be lower than the rank of an Inspector as notified by the Government is only competent to detect, make searches, and affect arrests in these cases. The State government has appointed each of the sub-divisional police officer of respective area as a special police officer for dealing with the offences under this act in their respective jurisdiction. Sub Inspector and below can only assist him, but in cases of emergency SIs can arrest

and immediately report to the Inspector. Searches shall be made in the presence of two independent witnesses and one among them shall be a woman. The victims of prostitution shall be clearly differentiated from organizers and such persons should be rescued and rehabilitated. Prompt registration of cases, investigation, and prosecution with care and caution is important.

4. The police shall collect information relating to brothels and enter the information in part IV of the village crime notebook in a separate sheet.
5. Trafficking in minor girls is a heinous crime and special attention must be paid by police for prevention and for rehabilitation. Though there are several non-governmental organizations and government departments, the police must play a supportive role in rescuing the victims from the clutches of organized crime or gangs or professional traffickers.

#### **Preventive measure**

6. The following are the preventive measures to check the illegal practices of trafficking in women and minor girls for the purpose of prostitution and illegal practices.

- A. Gathering information relating to procurers, brokers, agents, and pimps through beat constables and other police officers.
- B. Prompt recording of information and action regarding missing women and girls.
- C. Maintain a liaison with voluntary bodies and concerned departments regarding care and custody of rescued females.
- D. Keeping watch at holiday resorts.

## **Attacks against women and their modesty**

**538-1.** This category of offences relate to physical assault, vulgar gestures, lewd remarks and other conduct intended to outrage or insulting the modesty of a woman and cause annoyance and put her to shame etc. Incidents of throwing acids to disfigure a woman also occur. Section 354, 509 IPC deal with the attacks on modesty of women and their dignity as individuals. Section 354 IPC deals with criminal force and outraging the modesty of women. The ingredients of this offence are -

- there is an assault or use of criminal force;
- against a woman irrespective of age;
- intention to outrage her modesty;

2. Section 509 IPC punishes uttering words, making sounds or gestures or exhibiting any object within the hearing or view of the woman or intruding on her privacy to insult her.

3. Modesty of any woman relates to her sex and her body. Law has interpreted that modesty of a woman as capable of being outraged whether she is young or old, intelligent or innocent, awake or asleep. Any Act suggestive of sex is deemed to be affecting her modesty. The other ingredient necessary in such offence is guilty intention and motive.

4. Obscenity arises out of the use of language gestures motions signs and eve teasing. The following factors determine obscenity of any matter.

A. It is so depraved as to corrupt the minds of ordinary persons;

B. Suggests to the mind of young person's impure thoughts;

C. Arouses lust and stimulate sexual impulse;

- D. Vulgar and immodest as to affect the reader or viewer;
5. The police are required to collect information with regard to circulation of such literature or objects and conduct searches with or without warrant.
  6. The Indecent Representation of Women (Prohibition Act 1986) prohibits vulgar and indecent representation of women through advertising or in publications, writings, paintings figures or in any other manner. The figures or writing in scientific and medical journals and books are exempted from this Act. The offences under the Act are cognizable and bailable. The powers to enter and search and seize any thing which is in contravention of the Act and examine any record, register and document and seize if necessary are conferred on any gazetted officer. A warrant is necessary for the search.
  7. The production and circulation of obscene articles, literature and visual media is sometimes a major money-spinner and often a subject of organized criminal activity. When information is obtained regarding the operation of a gang, the police should register a case under 120 (B) IPC and other relevant sections and conduct thorough investigation.

### **The Dowry Prohibition Act 1961**

- 539-1.** Dowry under this Act is defined as any property or valuable security given or agreed to be given directly or indirectly by one party of the marriage to the other party at, before or after the marriage and in connection with the marriage.
2. Section 3 makes giving or taking or abetting dowry punishable with a minimum and maximum of 5 years. Section 4 makes demanding dowry an offence punishable with a minimum of 6 months and a maximum of 2 years.

3. The offences are cognizable for the purpose of registration and investigation but arrest cannot be made without the orders of the Magistrate. Reports to police must be given only by the aggrieved or their parents or guardians or recognized institutions. The offences are non bailable and non compoundable. The presents given at the time of marriage either to the bride or bridegroom is exempted provided the gifts are given by persons having the financial capacity and a list of articles is made out at the time of marriage and those articles are made over to the bride or bridegroom.

### **Offences relating to the marriage**

**540.** There is another category of offences relating to marriage.

1. Section 493 is an offence whereby any person fraudulently co-habits with any women inducing her in a belief that she is his legally wedded wife. The man going through ceremony of the marriage, which he knows is not valid, may practice the deception contemplated under this section.
2. Section 494 to 496 IPC deal with cases of bigamy. Bigamy is defined as marrying again during the lifetime of spouse when the personal law does not permit and when the marriage takes place without the first marriage being legally made null and void. These offences are cognizable but by virtue of section 198 CrPC courts will not take cognizance unless a complaint is filed by the aggrieved or by the parents or by the guardians or by any recognized welfare organizations.
3. Section 498 IPC deals with enticing a married woman or conceals or detains her with the intention of having illicit intercourse. In this case also the complaint should be filed in the court by the husband, who is aggrieved.
4. **The National Commission for Women Act 1990:** This Commission has varied statutory functions which inter alia include investigation and examination of matters relating to safeguards and look into complaints of non-implementation of laws enacted to provide

protection to women, inspect the place of custody where women are kept as prisoners or otherwise and take up with the authorities for remedial action. The Commission has powers to summon witnesses and production of documents receiving evidence on affidavits, requisition of public records etc.

### **Arrest of Women**

5. Whenever any women has to be arrested under the law, the women police officers should be employed and for any reason if the services of women police could not be secured, it is necessary to secure the presence of services of women social workers or other respectable women witnesses of the area. The Police Officers making arrest shall not use force unless there are circumstances which make him believe that the prisoner is likely to escape or there is danger to her life or she is in possession of fireworks, explosives or any other dangerous weapons.
6. In respect of women offenders whose custody in the police station becomes necessary, a woman police officer should be available in the police station or the prisoner shall be left under the charge of woman police in the same police station or in a women police station. The Investigation Officer or the SHO may permit her male or female relatives not exceeding two to visit her or to be in attendance near the police station until she is sent to judicial custody.
7. The interrogation of women in custody in the course of investigation of a case should be done in the presence of woman police officer if the I.O. is not a woman police officer.
8. The women prisoners should be kept in separate lock up meant for women and toilet facilities be provided with women escorts.
9. In respect of women prisoners with a child in arms, the child should be permitted to be with the mother and arrangements made with the help of any NGO or government welfare department or the concerned

department of government to provide medical aid and care of child and mother. There should be no objection to allow an elderly female member of the family to be present near the police station for any assistance that may be required for the child.

## **Bonded labour**

**541-1.** Bonded labour is forced labour under which he enters into an agreement with the employer that he would by himself or through his descendants serve him for a specified or unspecified periods without wages or with nominal wages in consideration to the advance obtained by him from the employer earlier. Thus he is curtailed from liberty to move freely or to take other employment till the debt is discharged.

2. The Bonded Labour System (Abolition) Act 1976 provides punishment for enforcement advancement, extracting bonded labour under bonded labour system. Abetment is also an offence under this Act. All the offences are cognizable and bailable and triable by executive Magistrates who are vested with the powers of judicial first class Magistrates or second class Magistrates. Police Officers have to file these cases after investigation before the concerned executive Magistrate Court.