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COMMITTEE FOR REFORMS IN CRIMINAL LAWS

CENTRE FOR CRIMINOLOGY AND VICTIMOLOGY
NATIONAL LAW UNIVERSITY DELHI

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Date: 30-06-2020

PUBLIC NOTICE

Sub: Invitation to participate in Expert Consultations.

The Ministry of Home Affairs, Government of India, vide its notification '1-2-19 Judicial Cell (Part I)' dated 04-05-2020 has constituted the National Level **Committee for Reforms in Criminal Laws** to undertake a review of criminal laws in India. The Committee endeavours to recommend reforms in a principled, effective, and efficient manner which ensures the safety and security of the individual, the community and the nation; and which prioritises the constitutional values of justice, dignity and the inherent worth of the individual.

Towards the fulfilment of its mandate, the Committee has developed a web-based mechanism for Expert Consultation which has been notified through a Public Notice dated 26-06-2020 on the official website of the Committee (<https://criminallawreforms.in/>). The Consultative process is scheduled to start from 04-07-2020. The Committee has initiated the process of inviting both subject-area experts and governmental/non-governmental organisations to contribute to the Consultations.

In addition to the above, if any person or organisation remains unreached, the Committee requests all professionals, functionaries and stakeholders involved with our Criminal Justice System to kindly register at <https://criminallawreforms.in/expert-consultation/> and participate in the aforementioned Consultations. The Committee shall be accommodative of all inputs and shall stand greatly benefited by such opinion, experience, and knowledge.

Regards,

Prof. (Dr.) Ranbir Singh
(Chairperson)

Notified vide its Notification 1-2-19 Judicial Cell (Part I) dated 4-5-2020 by Ministry of Home Affairs, Govt. of India

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Consultation

Instructions:

For Responding to the Questionnaire:

- Entries can be made in the dialogue boxes below the questions.
- Draft entries maybe saved by clicking on the save button at the bottom of the page.
- Returning/Registered users can access the saved progress by entering the unique code generated at the time of registration, and resume their entries.
- You may direct any queries to criminallawreforms@nludelhi.ac.in.

For Entries:

- Please provide reasoned responses.
- Please limit your responses to a maximum of 200 words.

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Part A

Strict Liability Offences:

Q.1. Which principles regarding the object and nature of crime should guide the introduction of strict liability offences within the I.P.C.?

- A) Strict liability offences within the IPC should be introduced only in exceptional circumstances.
- B) Only direct, unimpeachable and unambiguous evidence should be allowed in the trial and no circumstantial evidence should be permitted.
- C) Any mitigating circumstances must be given due consideration.
- D) Only an offence where it appears highly unlikely that the person accused could not have been aware of the consequences of his actions, should be categorized as a strict liability offence.
- E) In case of wrongful conviction the person so convicted should be entitled to proper compensation.
- F) Any person responsible for such wrongful conviction despite being aware of the innocence of the wrongfully accused person, should be meted severe punishment.

Q.2. Which strict liability offences should be included within the I.P.C.?

- A) Dereliction of duty by a judicial authority, police official, officer of the court or similar.
- B) Failure to take action against the false reporting of crimes or the filing of false charges in any forum.
- C) Any action by any government officer that leads to loss of life or damage to property or endangers public health or safety.
- D) Any act of omission or commission on the part of the concerned authorities that either aids or actively promotes crime in society.

Q.3. Should the principles of sentencing in cases of strict liability offences differ from the general principles of sentencing?

It will depend on the facts of the case but in general as no mens rea is required to be established, the accused has no recourse to such defence and same must be considered as a factor favoring less severe punishment.



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Punishment:

Q.4. Should additional types of punishment- based on objectives of deterrence, rehabilitation, restoration etc.- be inserted in the I.P.C.?

No, the current types of punishment are more than sufficient to deal with almost any kind of crime. Except for rarest of rare cases the focus should be on rehabilitating convicted persons and restoring them to the community so that they may lead productive lives. Towards this end sufficient resources should be allocated for mental and physical health care, occupational training, lifestyle counselling and financial support if deemed appropriate.

Q.5. Are there any punishments under Chapter III that should be deleted?

Yes - the Death Penalty should be struck off as the deterrence factor has never been conclusively proved and there is no possibility at all of revoking the sentence in case of a person wrongly convicted.

Q.6. Are there any offences in the I.P.C. for which the quantum of punishment and fines imposed should be revised?

Yes.

1) Filing of fake cases.

A) Revised punishment for false accusers - civil cases 1 month imprisonment; criminal cases - 1 year rigorous imprisonment

B) Revised punishment for government officials who abet such fake cases - civil cases: termination from duty and 6 month imprisonment; criminal cases: termination from duty and 6 year rigorous imprisonment

2) Inaction or dereliction of duty or negligence, etc. of any official or government servant including a police officer, judicial authority, law officer, etc. - Dismissal from service & a suitable proportion of the punishment that would have been awarded to a wrongly accused person

As a general principle the more heinous a crime that a person is wrongly accused of, the more severe the punishment that should be meted out to the false accuser.

Q.7. What is the mode of calculation that should be adopted to rationalise fines under the I.P.C. if the amount of fine is to be re-adjusted for inflation across offences, either automatically or on a one-time basis?

The following factors to be considered:

A) Income level of the person being fined - Higher the income levels, larger should be the fine.

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B) Any liabilities or Dependents of the Accused person - if any then fine must be reduced.

C) Educational background and Status of the Accused person - fine to be enhanced if from a good background.

D) Whether the person is holding any official position or is a public authority - if yes then fine to be enhanced.

E) Repeat offender -fine to increase exponentially.

Part B

General Exceptions:

Q.1. Do you have any suggestions with regards to reclassification/combining/splitting of sections under Chapter IV of the I.P.C.?

1) Club sections 85 & 86 together as they mean almost the same thing.

2) Section 99 affords protection to public servants even in case of acts not strictly justifiable by law, such acts however being illegal hence should not come within the exception provided for by the section.

3) Section 99 also states that the right to self-defense will not apply if there is time to approach the authorities - this section should be suitably modified as in many cases the public authorities concerned refuse to extend any assistance to the affected persons.

Q.2. Do you have any suggestions with regards to addition or omission of general exceptions under Chapter IV of the I.P.C.?

1) It is pointless to double up the child related laws, just refer to the JJ Act, or add a note – “As per the JJ Act 2015”

2) Section 82 & 83 shall be linked with JJ Act, it is doubling up of unnecessary number of laws, not required here. Just say refer to the relevant JJ Act.

3) Section 89 & 90 – Please link to Section 75 of the JJ Act (and any other relevant sections of the Act), it is explicit that if anyone who is not the guardian of the child but has nominal custody of the child at the period of time, does any act which causes harm (physical, mental or any other harm) to the child, such person can be imprisoned. Exceptions are granted to the own biological father & mother, assuming that they have done the act for the benefit of the child.

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Q.3. Are there any circumstances that warrant a modification of the doctrine of 'ignorantia juris non excusat'?

Yes, same should not be applicable if:

- 1) The person is a minor or
- 2) The person is not a native of the place where any special law or act applies
- 3) The law or act is one that is of recent origin and has not been sufficiently publicized or made known to the general public
- 4) There is a reasonable possibility that the accused in spite of due diligence could not have known of the contravened act or law
- 5) The law or act is one that is ambiguous and therefore capable of widely differing interpretation

SUGGESTION:

- 1) Before the law is formally implemented, it should be informed to the public and should go through sufficient trial phase before final modifications and formal implementation
- 2) For all child / minor related matters please refer to the JJ Act instead of doubling it up in the IPC.

Q.4. Does s. 81 fail to clearly describe how the nature of the threat is to be assessed and the type of response that is allowed to counter the threat?

Yes Section 81 provides indicative illustration, but leaves a lot of scope for improvement, for example, based on the illustration provided there, how is it possible in modern times, with a lot of technology possible? Plus it entirely depends on the nature of the case / matter. There could be a risk of misuse of this section, hence matters should be investigated properly. The section needs to be drafted more rigorously as in the present form there are too many variables which are very subjective and are entirely a matter of perception eg: criminal intent, extent of harm, one type of harm v/s another, judgment of the concerned person, factors affecting such judgment etc..

Q.5. Should the defence of necessity under s. 81 extend to the offence of culpable homicide? If yes, please specify the circumstances with reasons.

Yes for example A sees that B is firing an automatic weapon which is likely to cause mass casualties and being equipped with any weapon of his own proceeds to use the same against B with the knowledge that B may lose his life as a result, then A should be absolved of any offence as it was only to prevent the imminent loss of several lives that he was forced to take the life of one person.

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Q.6. In reference to s. 82 and s. 83 of the I.P.C., is there a need to alter (increase or decrease) the minimum age of criminal responsibility to commit an offence? If so, please suggest an age

Sections 82 & 83 are not required in the IPC, Please refer to the JJ Act 2015 & to the Various Child Welfare Committees. It is pointless to have doubling up of the same matter repeatedly in various act. There is already the JJ Act, JJ rules, etc...

Q.7. Is there a need to alter (expand or contract) the definition and scope of the defense of insanity provided for in s. 84 of the I.P.C.?

Suggestion: The section should make mandatory the opinion of expert medical professionals as the Court or the affected parties may decide, in arriving at any decision under this section.

Q.8. Is there a need to alter s. 86 of the I.P.C. in reference to the potential ambiguity caused by the absence of the term 'intent' in the latter part of the provision?

Yes, as the section in effect means that a person accused of any offence while intoxicated would have committed the offence with intent and knowledge unless the intoxication was against his will or without his knowledge - such a position is not tenable as the very fact that the person was intoxicated would mean that effectively he was no longer in control of himself and so any act done while intoxicated could not be said to be deliberate in any manner.

Q.9. a) Should voluntary intoxication act as an aggravating factor at the time of sentencing; or, b) Should a lack of intention in cases of voluntary intoxication be taken into account as a mitigating factor at the time of sentencing?

a) No, as the accused person would not have known that his being intoxicated would lead to him committing any offence.

b) Yes for the same reasons as mentioned above.

Q.10. In light of inconsistency in the age of the person with reference to s. 87 and s. 89, should the age of the beneficiary in s. 89 be raised to 18 years?

1) Yes, the two sections need to be reconciled with each other.

2) Suggestion: Section 89 & 90 – Please refer/link to Section 75 of the JJ Act (and any other relevant sections of the Act), it is explicit that anyone who is not the guardian of the child, but has nominal custody of the child at the period of time, does any act which causes harm (physical, mental or any other harm) to the child, can be imprisoned. Exceptions are granted to the own biological father & mother, assuming that they have done the act for the benefit of the child.

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Q.11. Should acts, not intended, but known to be likely, to cause death or grievous hurt, done with consent, be included within the chapter?

[Illustration: A hires B, a licensed para-glider, to engage in the adventure sport. B informs A of the inherent danger of death or grievous hurt while engaging in the sport. A consents to the same. A dies in the course of the activity, despite B's diligence and care.]

Yes, with the proviso that such consent should be of the person's own free will without any fear or inducement or coercion. In the illustration given for example B should be made to obtain a written no-liability agreement from A before engaging in the sport.

Q.12. Should the scope of s. 90 and s. 94 be expanded to include fear/threat of injury to persons other than one self?

Yes, especially in the case of fathers who driven by strong paternal instincts may give consent in attempting to save their own children as a father's primary instinct is to save his children. This is particularly true in the present scenario where there are numerous laws favoring women which are primarily based on the assumption that only a man can be guilty and that only a woman can be a victim. Thanks to such laws men are especially vulnerable to threats and coercion.

Q.13. Should s.90 be revised to:

- **Expand the scope of fear of injury;**
- **Resolve the ambiguity in the interpretation of the phrase 'misconception of fact'; Include instances other than fear of injury or misconception of fact?**

Consent given by any person should not deemed valid in the following cases:-

1. If unaware of the consequences of such consent.
2. Under fear of any kind whatsoever.
3. Obtained by deceit or
4. Due to coercion of any type or
5. By blackmail.
6. Age of consent to be raised to 18 years.

Suggestion: For children, please refer to the JJ Act 2015, please don't double it up here. As per the JJ Act the person (except for own father & mother or biological guardians) who have nominal custody of the child at that point of time are liable and responsible for any acts performed & can be subjected to suitable punishment

7. In case of an insane plea, mandatory reference to be made for expert medical opinion.

Q.14. Should compulsion by threats, as provided under s. 94, act as a mitigating factor during sentencing in the offences of murder and offences against the State?

The person who is threatening or is responsible for compelling any person to act against the law, shall be held primarily liable & responsible for all acts,

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For the others who are acting under influence, suitable investigation should be done before drawing any conclusion and such compulsion if shown must definitely be a mitigating factor in any sentencing.

Q.15. Is there a need to alter the circumstances in which the right to private defense of the body can extend to causing death?

1. Act of a person in saving the life of or protecting his own or other's child/ minor/any other person incapable of defending himself or herself.

2. Act of protection of child rights by a biological parent or legal guardian against any non-guardian who may or may not have the nominal custody of the child

Please refer to the JJ Act 2015, in particular Section 75

3. In sub section 3 the word "rape" to be replaced with a gender neutral term.

4. Please also see Part B, Answer 1 above

Q.16. Is there a need to alter the circumstances in which the right to private defense of property can extend to causing death?

1) Same should be subject to proviso that such act was required & it could not have been avoided in spite of making all possible efforts to avoid the same.

Example of exceptions -A poor & illiterate person enters a farm which is not properly bound with fences or boundary wall or does not have proper markings. He/she is mistaken as a trespasser by the owner of the farm. The owner causes harm to the person. In such a case the owner should be made to compensate for inadequate markings & causing harm to a poor & illiterate person with due discretion of the deciding authority.

2) This section should also be extended to cases of mob violence as for example if any section of society is targeted in a riot or mob attack.

3) See also Part B, Answer 1

Q.17. Should the fact that there is time to have recourse to the protection of public authorities be an absolute ban against the exercise of the right to private defense?

No, as in numerous cases the public authorities despite being approached do not extend any protection to the concerned person who is then left to his own devices entirely.

Q.18. Should the scope of s. 101 and s. 104 be expanded to include the cases of involuntary causing of death?

Yes depending on the facts and circumstances of the case as many a time the person defending himself or herself or his/her property against attack would not be in a position to gauge whether the act of self defence will lead to the death of the attacker.

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Q.19. Should the scope of s. 106 be expanded to include cases where there is-

- Reasonable apprehension of harm other than death, and/or;
- Reasonable apprehension of death by causes other than assault?

Yes, There is no reason to limit this section only to when there is an apprehension of death that too only caused by assault, further the section also must extend to protection of a third party.

For example - A child is getting kidnapped at the point of gun, the father rushes to rescue the child, in such cases, in the resulting scuffle many bystanders might get injured. As per Section 75 of JJ Act, anyone who is not related to the child is immediately subject to imprisonment/penalty. The biological father is NOT subject to any criminal proceedings & is presumed to have acted for the best interests of the child

Suggestion: Please refer to Section 75 of JJ Act 2015 for more clarity, under what circumstances it can be used. Please provide references as the Act looks incomplete otherwise.

Q.20. Which principles should govern the determination of permissible risk of harm to an innocent person in the instances raised in the preceding question?

- 1) The section should not extend to causing death of the innocent person unless there are exceptional circumstances for the same.
- 2) There should be compelling evidence that any harm to the innocent person was unavoidable and unintentional.
- 3) There should be no element of pre-planning or conspiracy on the part of the person who has caused the harm.
- 4) The person causing harm to the innocent person should be fully absolved of any offence if there is any indication that the innocent person deliberately put himself in harm's way.
- 5) The innocent person should have the option of seeking adequate compensation from the State to cover medical expenses etc.

Part C

Offences against the State:

Q.1. Should the applicability of s. 124 be expanded to include other functionaries such as Judges of HC/SC, CECs, CICs, CAGs, Attorney General, Advocate Generals, Solicitor General etc.?

No, as the mentioned authorities are already perceived as powerful and influential persons and hence it is all the more necessary that such persons are seen to be covered under the same laws as are applicable to the rest of the population

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Q.2. Does the offence of sedition under s. 124A require omission or any amendment in terms of its definition, scope and cognizability?

This section has been seen to be widely misused by political parties to settle scores with the opposition or even to suppress voices deemed as critical of the government of the day. Hence the section needs to be rigorously drafted leaving no scope for misinterpretation. As an example disloyalty to the government is considered to be sedition - this position is not tenable as disloyalty to the government of the day does not necessarily mean disloyalty to the nation and in fact such a provision would result in a nation of yes men only without the capacity to oppose or question the government because of fear of being deemed an offender under this section.

Q.3. Should Insults to the National Flag, Emblems and Constitution of India, be introduced as substantive offences under the I.P.C.?

To enact such laws it is necessary that there should be a very clear definition of what would constitute an insult to the national flag, emblem or constitution of India failing which such a law is likely to be misused. Not every criticism and alternative view can be considered insulting. Such laws unless clearly defined would pose a threat the freedom of speech in our country and would destroy the fundamental rights of a citizen.

Offences Affecting Human Body:

Q.4. Should an act, colloquially referred to as “Mob Lynching”, be penalised as an offence under the I.P.C.? If yes, what should be the elements and quantum of punishment for the offence?

Yes, Mob violence should be penalized as an offence under the IPC. Elements of the offence would include criminal conspiracy, incitement, provocation, aggravated assault with intent to commit murder, attempt to murder and murder. The quantum of punishment should be in keeping with the most stringent punishment that may be prescribed for murder under IPC.

Killing is killing, It should be sub classified under the specifically understood reasons of killing or lynching after investigation instead of having a separate section. Having a separate section complicates the matter. Mob Lynching shall be sub classified as an understood cause of harassment. The procedure shall be made simpler. The victims shall be kept safe in protective shelter or safe houses. For example, just like IPD in hospitals, the courts & police stations shall have safe shelters.

Q.5. Should an act, colloquially referred to as “Honor Killing”, be penalized as an offence under the I.P.C.? If yes, what should be the elements and quantum of punishment for the offence?

Yes, Honour Killing should be penalized as an offence under the IPC. Elements of the offence would include aggravated assault with intent to kill, murder or attempt to murder, criminal conspiracy which may be caused by the victim(s) going against the wishes of one's own or any other's

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family/community/caste/religion etc. or against the wishes of any section of society in any matter of marriage/cohabitation/conjugal relation of a couple or couples. The quantum of punishment should be in keeping with the most stringent punishment that may be prescribed for murder under IPC

Killing is killing, it should be sub classified under the specifically understood reasons of killing instead of having a separate section. Such as

- Caste Based
- Religion based
- Marriage based
- Economy based
- .. Etc.

All these should be sub classified under crime called death of person or killing/murder of a person, rather than being put separately in unlinked acts, laws & procedures

Q.6. Should "Corporate Homicide" be penalized as an offence under the I.P.C.? If yes, what should be the elements and quantum of punishment for the offence?

Yes, Corporate homicide should be penalized as an offence under IPC. Elements of the offence would include any act or acts of or by or on behalf of a corporation done deliberately by an individual(s) holding a position of responsibility within the corporation that results in the death of a person when such act or acts are done with the full knowledge that the same may lead to the death of the person. Such an offence should also cover within its ambit an act of suicide committed by any employee or ex-employee of the corporation under the circumstances referred to previously. (Please go through this link on GenPact AVP **Swarup Raj** Committing suicide due to false accusations of sexual molestation. When corporate politics are used maliciously resulting in death, then the culprits/management should definitely be held accountable.

<https://www.indiatoday.in/india/story/top-genpact-executive-commits-suicide-in-noida-over-accusations-of-sexual-harassment-1413409-2018-12-20>

The quantum of punishment should be in keeping with that prescribed for murder under IPC

Humiliation of person (MALE) mostly in corporate so it must have same penalty and similar IPC as we have defined the commenting on females. Because such crimes destroy the MALE person image, career & the support in his office

Q.7. Should s. 306 of the I.P.C. be amended to create an exception for active euthanasia?

No, unless there is a specific instruction of the patient (being of sound mind and body) to his relative or doctor explicitly permitting such euthanasia procedure to be carried out under clearly specified conditions, further that any such instruction should be capable of being proved in a court of law.

Section 306, should also include acts by judicial authorities, police personnel and officers of the law or any other person holding a position of power or responsibility whose act or acts of omission or

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commission result in a person committing suicide and in such cases the person abetting the suicide needs to be punished even more stringently.

Example, Father of a child who is facing matrimonial dispute, is unable to meet his child, due to delays in court order, and the other authorities are not helping him, Aggrieved by not being able to meet his only child, he commits suicide. In such case the judicial magistrate & the police officials and the officers of law shall be charged with abetment to suicide and shall be punished severely.

Q.8. In the light of contemporary discourse on sexual and reproductive rights of women, should the offence under s. 312 be decriminalized?

No, as to do so would be to render the unborn innocent child defenceless and without any rights which would be an absolute failure of our legal system, neither will our culture permit it nor will our conscience. However stringent punishment should be provided against any person who is proved to have made any false complaint in this regard as this section also is prone to misuse

1) Proper Investigation is required before registering an FIR.

a) If the crime warrants criminal justice, then it should be accepted,

b) If the nature of crime is civil, then civil systems are required

2) False accusations should be punished.

3) As per Section 75 of JJ Act, criminal proceedings can't be initiated against innocent father & his family

Unfortunately it is also dangerous tool used by Women in Family disputes OR if she has illicit relations with her Boyfriends and she execute Abortion. But she will use it as a the tool against her husband to put false accusation that he had forced her for abortion and her lawyer present such cases as Miscarriage cases of innocent wife, This is actually not always true

Q.9. Should the definitions of force (s. 349), criminal force (s. 350) and assault (s. 351) be omitted/revised/modified?

Yes, meaning of force and criminal force as drafted in these sections is highly technical, abstract and difficult to understand, hence same must be redrafted to be clear, concise and simple to comprehend.

Assault needs to be redefined in a more tangible manner as presently it is only the perception of the victim that defines whether assault has been committed or not and such a definition is entirely subjective thus lending itself towards misuse. Besides there is also a more fundamental question of whether merely making a threatening gesture can be construed as actual assault.

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Q.10. Do you have any suggestions with regards to addition/omission/modification of provisions dealing with kidnapping and abduction?

In cases of International parental child abduction mirror judgments from foreign courts or vice-versa be made the norm to be followed till India becomes signatory of Hague convention. Abduction/ hostage situation by spouse in lieu of matrimonial disputes should be dealt with severely. Every case of parental abduction should be registered by a central authority like is done in case of the European Union.

1. In cases of **International parental child abduction** mirror judgments from foreign courts or vice-versa be made the norm to be followed till India becomes signatory of **Hague convention**. Abduction/ hostage situation by spouse in lieu of matrimonial disputes should be dealt severely. Every case of parental abduction should be registered by the central authority like European Union.

2. **Parental Alienation** of Child from one of the parents (typically in India it's the father & child who suffer) in matrimonial disputes. This has been criminalized in Brazil, Mexico. In sync with Section 75 of JJ Act, UNCRC 1989, etc.

3. **Separation of Child from parent in Matrimonial disputes**, in which any judicial officer or officer of law or any 3rd party causing a child to be so separated, unless in very exceptional circumstances only, shall be deemed to have committed a criminal offence.

4. **Judicial & Police Accountability is a must!** Any Judicial Magistrate, Officer of Law, Police official, etc. found denying child access to father or mother in matrimonial or any other dispute, unless in very exceptional circumstances only, shall be deemed to be guilty of the offence of cruelty against children and be subjected to at least 3 years of imprisonment, a suitably deterrent high fine (> Rs. one lakh) plus any other appropriate sections of law as per the section 75 of JJ Act. Furthermore suitable administrative action, extending to termination of service, needs to be taken against such official as well as compensation to be provided to the child & aggrieved parents

5. There should be Judicial & Police Accountability & procedures for all sections of the IPC

6. Under no circumstances shall any parent be separated from their children in Matrimonial disputes. Section 75 of JJ Act shall be imposed.

7. All the above are as per the JJ Act 2015 & UNCRC 1989 (duly ratified by the government of India)

Q. 11. In view of the divergence of judicial opinion with regards to the validity of minor's consent in s. 366, do you recommend any amendment to the Section to address this issue?

This section discriminates against the male gender as it assumes that only women can be kidnapped/abducted and forced/seduced to marry/illicit intercourse, hence the section must immediately be made gender neutral and applicable to males also. (Refer pakadwa vivaah or jabraan shaadi prevalent in certain parts of the country).

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1) Please refer to the full JJ Act instead of using an extinct law. There is full procedure on use of counselors, how to take care of the crime, etc. IPC is too extinct to be used. Just refer to the JJ & please don't duplicate it here

2) Same with Section 366A

3) At the same time the term minor is relevant more for strangers, who are not biologically connected to the minor's family. A Minor is always a father's & mother's child throughout irrespective of their age. A voting right does not detach a minor from their parents. Hence as per suitable amendments it shall be made criminal offence to detach a person from his/her parents & biological family due to 3rd party interference, including court orders or police actions, unless there is sufficient proven grounds or reason to do so for temporary grounds only. Mostly the minor's innocence is used against the minor's own family.

Sexual Offences:

Q.12. Should sexual offences be classified as:

• A subset of offences against the human body; or, A subset of gender-discrimination offences; or, An independent category of offences?

An Independent gender neutral category of offences requiring impartial unbiased thorough investigation aided by expert psychologists/medical professionals etc.. A mere accusation of sex without consent and without any corroboration whatsoever should be excluded as evidence to prove the offence as there cannot be an automatic presumption that a woman by virtue of her gender is always speaking the truth or that a man by virtue of his gender will always be the guilty party.

Q.13. Other than rape, the sexual offences listed in the IPC are-

- **Obscene Acts and Songs (s. 294)**
- **Assault or Criminal Force to Woman with Intent to Outrage her Modesty (s. 354)**
- **Sexual Harassment (s. 354A)**
- **Assault or Criminal Force to Woman with intent to disrobe (s. 354B)**
- **Voyeurism (s. 354C)**
- **Stalking (s. 354D)**
- **Unnatural Offences (s. 377)**
- **Word, Gesture or Act Intended to Insult the Modesty of a Woman (s. 509)**

Is there a need to reform this classification of sexual offences by adding/ deleting/ modifying any offences?

A) Clause for Misuse of the Law

Reporting a complaint in any of these crimes should be allowed only within a specified period of time. A delay in lodging such a complaint of sexual offence may also indicate that some of the evidences might have been tampered or destroyed to give additional benefits to the complainant. Hence any form of delay by the complainant/victim in reporting a sexual offence must not be condoned by the police or judiciary if there were no bonafide reasons for such a delay.

2) False Evidences & False Cases

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All these offences should be made gender neutral as laws have to keep pace with society and to consider either the victim or the perpetrator as belonging to only one gender, is a form of discrimination against or bias in favor of one gender or the other which is no longer acceptable in today's society where there has been a massive shift in gender roles, behavior and attitudes

B) Make the Laws Gender Neutral – Society has changed a lot

All these offences should be made gender neutral as laws have to keep pace with society and to consider either the victim or the perpetrator as belonging to only one gender, is a form of discrimination against or bias in favor of one gender or the other which is no longer acceptable in today's world. 376D is made to help women like Nirbhaya in India, However 376D is used as a tool of extortion, used by many Women, Gang lords and Corrupt Law Officers gangs to take revenge from reputed persons in organization by making some filmy stories. Additionally on 376D Indian Government have feature of compensations [7lakh INR) so it becomes a business of anti-social elements corrupt law officers & scheming women

C) Competent Professionals of medical team & forensic science with sufficient tools & decision making powers mandatory

All of these offences require the highest standards of impartial, unbiased, thorough investigation aided by expert psychologists/medical professionals etc. The biggest issue is misuse of law. Misuse of law should be curtailed so that genuine victim's aer heard. There should compulsorily be a separate clause for misuse of law. X punishment to false accuser & 2X punishment to the agency pursuing the false complaint only to harass innocent citizens.

Q.14. What should be the standard of consent under s. 375 of the I.P.C.?

1) The definition of consent is such that any woman though consenting at the time of sex with a man can easily claim that she did not give any consent later on in any legal proceeding that she may pursue for a variety of reasons including revenge, greed, blackmail, extortion etc.. so that this section is particularly prone to misuse. As the consequences can be devastating not only for the man falsely accused but also for his entire family which may extend to several years even, therefore the word consent needs to be very exactly described without leaving any loopholes that may be exploited by a false accuser.

2) One means of establishing consent or lack of the same would be to mandate that any persons desiring to have sex with each other should be required to first give such consent in writing - this may seem extreme but seeing how easily consent can be withdrawn after committing the act thus putting the partner in serious risk of destroying his life - therefore such a proposition may be fully justified in today's world. Should such a law be made it must then be publicized in the widest way possible after which there would be no doubt about which cases constitute actual rape and which do not.

3) The most controversial part is the Consent in cases of "Sex on The Pretext of Marriage". By definition "Sex on The Pretext of Marriage" should be under Contract Law in which one party becomes liable to legal action if it fails to oblige the contract terms. But according to Indian law the intimate relationship between two individuals is not a contract. It is also erroneous to assume that an adult

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woman, who knows all the consequences of such a relationship, is allured into a physical relationship on false promise.

That this is a very biased approach and is easily seen by simply reversing genders when the question will arise that "should a woman be punished if she has turned back from her marriage promise?" The law is made on the notion that a man is a sex hungry monster and a woman is always a victim of sexual crime.

Similarly, a rape case filed by bride's relatives on bridegroom, when they are not happy with their marriage, should not be allowed.

If such laws need to be made then they should be gender neutral. Also, to minimize the misuse of laws we need strong provisions in the law of torts and in the perjury laws.

4) It should be the responsibility of the complainant to submit all the evidence at the time of filing a complaint and no further evidence should be accepted if a substantial period of time has elapsed, since such evidence may indicate fabrications by the complainant to mislead the police and the judiciary.

The rape Laws in India are prejudiced and are widely misused by women because current rape laws are female-centric and do not provide any protection to men. According to the report submitted by Delhi Commission for Women (DCW) in 2014, 53% of reported rapes in the year 2012-2013 were false.

It is presumed or believed by law makers and our society that a woman can never lie in the matter of rape and sexual assault because it outrages her modesty and causes humiliation in the society, however they have not taken into account that we are living in the 21st century where there has been a major shift in societal attitudes, behavior and thinking.

5) Without professional psychological counseling, Consent between male and female is a really debatable topic and calculating consent so consent related parameters can be removed from IPC375. **Apart from Section 375, the Section 376A also, leaves a lot of doubts. It has to mandate the requirement of professional psychological counselors & trained medical personnel.**

Consent cannot be so simply established or un-established. Decriminalize Section 376A & it should be applied only after thorough investigation. If a man & his wife have spent sufficient time together, then judicial order is a mere paper work, it is no one's business to see if the sex has happened or not. Besides the judicial officers have no knowledge on personal matters. Hence referring to such court orders is null & void. It requires **professional psychologist & medical counselor to validate** whether under what circumstances such act has happened. Officers of law don't have qualifications or experience for this

Q.15. Should the grounds of vitiation of such consent be expanded to include cases where-
• ***The victim has been put in fear of injury other than physical hurt or death; and,***
• ***The perpetrator is impersonating any other person (and not just the husband as currently provided in s. 375) that the victim would otherwise knowingly have consented to?***

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This section is already prone to misuse. Hence before adding more provisions it should be mandatory that such laws should be made gender neutral. Also, to minimize the misuse of laws we need strong provisions in the law of torts and in perjury law. Right now, perjury laws are very weak because they totally depend upon the discretion of the judge. Generally, even after proving false allegations and giving strong evidence judges are reluctant to impose perjury. The perjury laws should be independent of judge discretion and there also should be stringent punishment provisions for misuse of this section.

Q.16. Should the marital rape exception (Exception 2) under s. 375 of the I.P.C. be deleted?

- 1) No, not without first making the provision gender neutral. Not doing so will only add to the multitude of gender biased laws that have been widely misused and due to which the institution of family is slowly but surely being destroyed. Also such a law will create an atmosphere of fear, distrust and unwanted tension in a marital relation.
- 2) The current sexual offence law does not specify any time limit to report the sexual offence this led to flood of fake rape cases in court of law. Without a time limit of reporting, the removal of exception 2 will lead to more fake cases which would be filled on malafide intention.
- 3) There is also the more fundamental question of how an innocent man would ever be able to defend himself against a false allegation by a vindictive wife as what takes place inside the bedroom is a matter between husband and wife covering a wide range of emotions, interactions and perceptions that neither the Legislature nor the Judiciary nor the Executive have any business interfering with.
- 4) If at all such a law is thought about then there there must be two prerequisites: that the law be gender neutral and that there be a requirement to obtain written consent before engaging in any sexual activity - if the second requirement is thought to be absurd then it show clearly that removing the exception without such prerequisites is also absurd..

Q.17. Should sexual offences be defined by employing gender-neutral terms for the offender and the victim?

Yes. By definition of law of natural justice, a sexual offence is a crime against a human. It is unconstitutional and unjust that such laws only made for a specific gender. Due to this in the past the men and transgender, who were victims of sexual offence, did not get justice. It is erroneous to make such laws which make only one specific gender the perpetrator of crime and other gender the victim of crime and assume that a man can only commit a sexual offence but not a female. It has been proven that a woman is equally capable to commit sexual offence like rape to a man...

Q.18. Should sexual violence during armed conflict be expressly penalised as a sexual offence?

Not only as a sexual offence but also as a war crime but here again the offence should be gender neutral. Throughout history, sexual violence has been widespread in armed conflict with devastating

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consequences for victims – women, men, boys and girls – as well as their families and whole communities. Additionally, such violations remain vastly under-reported, and underestimated in terms of prevalence and consequences.

But not only this, sexual violence against men which occurs during police custody, judicial custody or during police interrogation/investigation should also be made a criminal offence.

Q.19. Barring generally applicable aggravating and mitigating factors (gravity of offence, recidivism, age, socio-economic background, etc.), which other factors should be taken into account during sentencing in sexual offences?

1. **Educational background** of perpetrator. A highly educated perpetrator needs to be punished with harsher punishment compared to a perpetrator with lower education. The reason for that is an educated perpetrator knows very well the laws and consequences of his/her actions, and he/she also very well knows the suffering of victims due to such offence and still he/she committed such crime. An educated perpetrator is worse criminal than an uneducated perpetrator.

2. **Economic Back-Ground** – Higher the economic background, harsher should be the punishment

3. **First time crime or repeat offender** – if repeat offender without sufficient reason or cause, then increase the penalty

4. **Officer of Law** – Police, Judiciary, Advocates, etc. are expected to maintain law & order, if they commit crime, then double the punishment should be provided to them

5. **MP, MLA, Law Maker etc.** – An officer or representative selected or elected by the public, and/or a person in power who has sufficient means, if found guilty of offence shall be penalized or impeached, or un-voted from power & re voting may take place. They will also have to face double the punishment as prescribed in the law

6. **A Person or official in a seat of power if found committed crime, shall be punished more than an ordinary citizen**

7. **Misuse of laws, programs, activities, which are put in place for empowerment of weaker sections (including women)** – This will mean that the culprit as well as the involved agencies, law officers have corrupted and done malpractice and the punishment shall be at least 50% of the prescribed punishment as if the crime claimed, had been committed based on the law section. The person or agency who are falsely accused shall be suitably compensated & suitable retribution shall be given to the false accusers so that such mal practice does not happen in the future.

8. Justice in sexual offences should be handled by judicial court, not by Police with Fake encounter, by political pressure or public (Feminists) demand. Most of the sexual offences committed by Political linked or rich persons who has influence over judiciary. Any fake encounters / deaths in sexual offence cases is failure of the judiciary.

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