

# GENDER VI LENCE IN INDIA

A Prajnya Report

2018

## **GENDER VIOLENCE IN INDIA 2018**

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This report is an information initiative of the Gender Violence Research and Information Taskforce at Prajnya.

This year's report was prepared by Jhuma Sen, 2018 R. Rajaram GRIT Research Fellow.

We gratefully acknowledge the contribution and support of Gynelle Alves who has designed the report cover since 2009.

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## **GLOSSARY**

AA	Appropriate Authority
AIDWA	All India Democratic Women's Association
CEFM	Child, Early and Forced marriage
CMPO	Child Marriage Prohibition Officer
FGM	Female Genital Mutilation
FIR	First Information Report
HC	High Court
IPC	Indian Penal Code
MTP	Medical Termination of Pregnancy
NCRB	National Crime Records Bureau
NCT	National Capital Territory
NFHS	National Family Health Survey
OCIA	Organized Crime Investigative Agency
OHCHR	The Office of the United Nations High Commissioner for Human Rights
PCPNDT	The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 and The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002
PIL	Public Interest Litigation
PCMA	Prohibition of Child Marriage Act
PWDA	Protection of Women from Domestic Violence
UN	United Nations
UNFPA	United Nations Population Fund
UNICEF	United Nations Children's Fund
UOI	Union of India
WHO	World Health Organization

## INTRODUCTION

2018 has been a remarkable year in many ways. 'Gender violence' has been at the forefront of conversations with #MeToo taking shape in India. In September, several women from the entertainment industry and media publicly accused men in position of power of sexually harassing them; of abusing their positions of power. As testimonies emerged and entered the juridical realm from the social and the political, solidarities too were forged between women cutting across class, caste, gender and other axes of marginality. Significant developments took place in the legislative and the judicial arena as well. Several landmark judgments were delivered by the apex court, leading to decriminalisation of India's colonial law, especially Indian Penal Code Section 377, which criminalised consensual sexual relationships between same sex adults; decriminalisation of yet another colonial relic, Section 497 or India's adultery law, recognising that wives were not chattels, allowing entry of women of menstruating age to Sabarimala temple, to name a few. Patriarchy however did not give in without a fight, and as this report was being prepared, feminist movement also saw a tremendous backlash from men's rights groups and conservative clerics, be it, in opposing women's entry to temple, or to make the domestic violence law a toothless legislation.

Prajnya's Gender Violence in India Report has been taking stock of the state of gender violence in India since 2009. This year, the Gender Violence Report has been prepared by R. Rajaram Gender Violence Research and Information Taskforce (GRIT) fellow Jhuma Sen. The Report is meant to be used as a ready reference for activists, journalists, students, lawyers and anyone with an interest in gender justice. The report in addition includes definitions of the various forms of violence, defined internationally as well as in national laws and policies. The data is primarily collected from the National Crime Records Bureau, but wherever possible, other relevant statistics by other state agencies, NGOs, international as well as domestic have been relied upon. Finally, the report also reviews the last year's significant developments in law, policy as well as important judicial decisions.

We hope you will find this report useful.



## GENDER VIOLENCE IN INDIA: STATISTICAL TABLE

The following table primarily draws on multiple issues of “Crime in India,” the flagship report of the National Crime Record Bureau. “Crime in India” was first published in 1955. The objective of this table is to provide a snapshot of the incidence of gender violence in India in the decades since independence and we have chosen to include figures at ten-yearly intervals starting from 1955, plus the most recent reports for 2016. Until 1971, kidnapping and abduction appears to be the only form of violence that could be classified as gender violence that is included. In 1971, rape began to be recorded. In 1989, a separate chapter on “Crimes against Women” began to be included, compiling data on IPC crimes as well as crimes for which special laws had been adopted. Since 2013, other categories have been included in the report, accounting in part for the uneven nature of our compilation. The NCRB has now placed all issues of ‘Crime in India’ online and they may be accessed at <http://ncrb.nic.in>.

TYPE OF VIOLENCE	1955	1965	1975	1985	1995	2005	2015	2016
<b>DECLINING SEX RATIO</b>								
Sex Ratio (census years)	946	941	930	934	927	933	943	
Child Sex Ratio	-	-	-	-	-	927	919	
Female Infanticide	-	-	-	-	-	-	-	-
Pre-natal sex selection	-	-	-	-	-	-	-	-
Pre-conception Pre-natal Diagnostic Techniques Act, 1994	-	-	-	-	-	-	34	93
<b>FORCED MARRIAGE</b>								
Forced or child marriage	-	-	-	-	-	-	32177	
Kidnapping and abduction of women and girls	5529	7927	11139	16051	14063	15750		64519
Kidnapping and abduction of women to compel her for marriage (S. 366 IPC)	-	-	-	-	-	-	31884	33732
Prohibition of Child Marriage Act	-	-	-	-	-	-	293	326
<b>HONOUR KILLING</b>							192	71

TYPE OF VIOLENCE	1955	1965	1975	1985	1995	2005	2015	2016
<b>DOMESTIC VIOLENCE<sup>1</sup></b>								
Domestic Violence							461	437
Torture <sup>2</sup>					31127	58319		
Cruelty by husbands and relatives					28579	58319	1,13,403	1,10,378
<b>DOWRY</b>								
Dowry Death				2814	4648	6787	7634	7621
Dowry Prohibition Act					2814	3204	9894	9683
<b>SEXUAL VIOLENCE</b>								
Molestation					26856	34175		
Rape			3376	7289	13754	18359	34651	38947
Other <sup>3</sup>							34396	
Incest Rape <sup>4</sup>						750	557	
Attempt to Commit Rape <sup>5</sup>							4434	5732
Custodial Rape <sup>6</sup>						7	95	16
Assault by police on women to outrage her modesty							7	
<b>HARASSMENT IN PUBLIC PLACES</b>								
Street Sexual Harassment (Eve teasing IPC 509)					4689	9984	8685	7356

<sup>1</sup> Data on crimes under the Protection of Women from Domestic Violence Act (2005) were presented for the first time in 2014.

<sup>2</sup> Torture” and “Cruelty by Husband and Relatives” both refer to cases registered under IPC 498A; they are used interchangeably across a single NCRB report and across reports, with some tables listing one, some the other. More often than not, the numbers are the same, but occasionally, they are not.

<sup>3</sup> Other’ here refers to rapes other than those listed separately.

<sup>4</sup> Defined by NCRB as rape by Parents or Close Family Members.

<sup>5</sup> Introduced in 2014.

<sup>6</sup> Custodial rape began to be listed in 1997 in a newly introduced chapter on Custodial Crimes. Crime in India 1996 carried a section on “Complaints against the Police.” In the 2014 and 2015 reports, custodial rape includes rape in hospitals, police stations or judicial custody and is included in the section on rape, disaggregated further into rape and gang-rape.)

TYPE OF VIOLENCE	1955	1965	1975	1985	1995	2005	2015	2016
Sexual harassment in public transport							315	
Other public places							7537	
Voyeurism							838	932
<b>WORKPLACE SEXUAL HARASSMENT</b>								
Harassment at the office and places related to work (under IPC 509)							833	-
Rape of Employees/ Co-workers							557	
<b>ACID ATTACKS</b>							222	206
<b>TRAFFICKING</b>								
Procuration of minor girls (Sec. 366-A IPC)							3087	2488
Immoral Traffic (Prevention) Act					8447	5908	2641	2337
Importation of girls					191	149	6	7
Human Trafficking <sup>7</sup> (Sec. 370 and 370A IPC)							1021	8132
<b>OTHER</b>								
Sati Prevention Act					27	1		0
Indecent Representation of Women					539	2917	40	38
Cyber Crime with intent to insult modesty of women							606	-

<sup>7</sup> Gender neutral offence.

## NOTES

## 1. PRE-NATAL SEX SELECTION/FEMALE FOETICIDE

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Prenatal sex selection is choosing to continue or terminate a pregnancy based on the baby's sex. Sex selection - in particular, the deliberate elimination of girls and women through abortion, infanticide and neglect - has historically resulted in severely skewed population sex ratios in a number of countries, especially in Asia.<sup>8</sup>

Two laws that prohibit the sex selection of a foetus in India are the *Medical Termination of Pregnancy Act, 1971 (MTP)*, as amended in 2002, and the *Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (PNDT)*, as amended in 2002. The former Act prohibits abortion except only in certain qualified situations<sup>9</sup>, while the latter prohibits the sex determination of a foetus with a view towards aborting it.

According to the *UNFPA Guidance Note on Prenatal Sex Selection*<sup>10</sup>, the elimination of females can be done at several stages, employing a variety of technologies and strategies:

- 1) Pre-conception (for instance, sperm sorting);
- 2) Pre-implantation (for instance, in vitro pre-implantation genetic diagnosis, followed by implantation of an embryo of the desired sex);
- 3) During pregnancy (for instance, beta ultrasound sex identification, followed by sex selective abortion); and
- 4) Post-natal methods (for instance, selective infanticide or femicide and neglect - with respect to nutrition, vaccination, curative care, abandonment and so on).

Amongst these methods the most widely utilised is a combination of beta ultrasound for sex identification, followed by sex-selective abortion.

### Recent data

- India's Annual Economic Survey (2017-18) found more than 63 million women are "missing" statistically across India, and more than 21 million girls are unwanted by their families.<sup>11</sup> The study showed that Indians have a "meta" son preference, which means that if they have girls, they will continue having children until they get a boy.
- Sex-selective abortion is responsible for the death of almost 7,000 unborn baby girls in India everyday (UNICEF, State of the World's Children, 2007).

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<sup>8</sup> UNFPA Guidance Note on Prenatal Sex Selection

<sup>9</sup> Such as medical risk to the mother and rape. The law also identifies physicians who can legally provide the procedure and the facilities where abortions can be performed.

<sup>10</sup> United Nations Population Fund. Guidance Note on Prenatal Sex Selection. Retrieved November 14, 2018 from [http://www.unfpa.org/sites/default/files/resource-pdf/guidenote\\_prenatal\\_sexselection.pdf](http://www.unfpa.org/sites/default/files/resource-pdf/guidenote_prenatal_sexselection.pdf)

<sup>11</sup> <http://time.com/5124337/india-unwanted-missing-girls-women/>

- As per *Census 2011*, the child sex ratio in India (0-6 age group) is 914:1000. This is at its lowest in the past 50 years. Except the States of Punjab, Himachal Pradesh, Haryana, Gujarat, Tamil Nadu, Mizoram and Andaman & Nicobar Islands, all other states in India show a declining trend in child sex ratio.

Source: *Census of India 2011*

	1901	1931	1961	1991	2001	2011
Sex Ratio of Birth in India	972	950	941	927	933	914

- A study undertaken in 2011 estimated that from 1980-2010, between 4.2 and 12.1 million sex-selective abortions took place.<sup>12</sup>

## Laws regulating abortion & prohibiting sex selection

### ***The Medical Termination of Pregnancy Act, 1971 (amended in 2002)***

The MTP Act provides for an abortion to be performed by a registered medical practitioner in a government hospital provided, in their opinion; continuance of the pregnancy, (which at the time must not exceed twelve weeks and); involves a risk to the life of the woman or a grave injury to her physical or mental health; or, there is a substantial risk that the child, when born, would suffer such physical or mental abnormalities as to be seriously handicapped.

### ***The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994***

This Act regulates the use of pre-natal diagnostic techniques for the purpose of detecting genetic or metabolic disorders, chromosomal abnormalities, certain congenital malformations or sex-linked disorders. It seeks to ensure that these techniques are not misused for the purpose of pre-natal sex determination, leading to female foeticide.

### ***The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act (PCPNDT Act) 2003***

This Act prohibits and punishes deliberate sex selection, before or after conception. Its purpose is to prevent the misuse of ultrasound technologies that enable determination of the sex of a child before it is born. It is therefore illegal to test the sex of the foetus for the purpose of eliminating a female child. The law provides for imprisonment, which may extend to three years and a fine of up to Rs. 10,000 for the first conviction.

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<sup>12</sup> Jha, P., Kesler, M. A., Kumar, R., Ram, F., Ram, U., Aleksandrowicz, L., Banthia, J. K. (2011, June 04). Trends in selective abortion of female foetuses in India: analysis of nationally representative birth histories from 1990–2005 and census data from 1991–2011. Accessed on 14<sup>th</sup> November 2018 at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3166246/>

## ***Sex Selective Abortion in Other Laws:***

The **Indian Penal Code** may also be used in certain cases:

- Section 312: Voluntarily causing a pregnant woman to miscarry the child
- Section 313: Causing a woman to miscarry a child without her consent
- Section 315: Act done with intent to prevent child being born alive or to cause it to die after birth

## **How to access justice**

- Any person (a social organisation is also a person under the PCPNDT Act) can approach the designated Appropriate Authority (AA) of the State/District/Sub-District in order to make a complaint about any offences caused under the PCPNDT Act.
- The union and state governments, by notification in the Official Gazette, appoint an AA for union territories and states respectively. For example, for the State of Tamil Nadu, the AA is currently the Joint Director of Public Health and Preventive Medicine.
- A written complaint must be made to the AA and the AA has to acknowledge its receipt. If no action is taken by the AA within 15 days, the complainant can go to court (a magistrate) with the acknowledgement receipt. Alternatively, the complainant can also approach a social organisation (eg.: an NGO working on women's rights issues).
- First Information Report: Please see the Prajnya FIR Ready Reckoner (Appendix).

## **Recent case law**

*Union of India v. Indian Radiological and Imaging Association and Others (2018)*<sup>13</sup>

The Supreme Court stayed a Delhi High Court judgment which had held that there are no provisions in the Pre-conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, empowering any of the bodies constituted under the law or even the Central government to prescribe qualifications for persons to be employed at genetic counselling centers. The Supreme Court held that the Delhi High Court had erred in its finding and clarified that Sub-section 1 of Section 32 of the PCPNDT Act confers rule making power upon the Central Government for "carrying out the provisions of the Act," which would include prescribing specifications for qualification for persons to be employed at genetic counselling centres.

*Sabu Mathew George v. UOI and Others (2017)*<sup>14</sup>

The petitioner submitted that despite legal prohibition, Yahoo!, Google and Microsoft were displaying advertisements in violation of the provisions of the PCPNDT Act. A Supreme Court Bench ordered Google, Yahoo! And Microsoft to stop displaying and sponsoring any advertisements relating to pre-natal sex determination. The court directed this order be

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<sup>13</sup> <https://www.livelaw.in/mandatory-training-ultrasonography-sc-stays-delhi-hc-judgment-indian-radiological-imaging-association-case-read-order/>

<sup>14</sup> <http://www.livelaw.in/skewed-sex-ratio-sc-tells-search-engines-block-keywords-indicative-sex-determination/>

placed on the 'policy' page as well as the 'terms and conditions' page of these respondents. The court also ordered them to constitute in-house expert bodies to identify and block keywords indicative of sex-determination.

*Voluntary Health Association of Punjab v. UOI and others (2016)*<sup>15</sup>

The Supreme Court issued directions for the effective implementation of the PCPNDT Act, 1994. The bench stated that no special emphasis is required to state that a female child is entitled to all rights that a male child is allowed to have.

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<sup>15</sup> <http://www.livelaw.in/female-child-entitled-enjoy-equal-right-male-child-sc-issues-directions-curb-female-foeticide/>

## 2. CHILD MARRIAGE, EARLY MARRIAGE AND FORCED MARRIAGE

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Child, early and forced marriage (CEFM) is a human rights violation and a harmful practice that disproportionately affects women and girls globally, preventing them from living their lives free from all forms of violence.<sup>16</sup>

According to UNFPA<sup>17</sup>, child marriage is a marriage in which one or both spouses are under 18 years old. These varied definitions suggest that the realities of child marriage can be complicated with both the words “child” and “marriage” are sometimes interpreted differently. According to the *Office of the United Nations High Commissioner for Human Rights* (OHCHR), child marriage is, ‘a marriage in which at least one of the parties is a child.’ The *United Nations Children’s Fund* (UNICEF) defines it as, ‘a formal marriage or informal union before age 18.’ UNICEF maintains that ‘child marriage is a violation of child rights, and has a negative impact on physical growth, health, mental and emotional development, and education opportunities’ and that girls are affected in much larger numbers and with greater intensity.<sup>18</sup> Indian Law defines it as a ‘contract of marriage between two people of which either or both parties is a child’<sup>19</sup>. According to Indian law, ‘a child is a male who has not completed 21 years of age and a female who has not completed 18 years of age.’<sup>20</sup>

### Early Marriage

‘Early marriage can also refer to marriages where both spouses are 18 or older but other factors make them unready to consent to marriage, such as their level of physical, emotional, sexual and psychosocial development, or a lack of information regarding the person’s life options’.

(Rangita, S. (2008). Child Marriage and the Law. Legislative Reform Initiative Paper Series (UNICEF, New York, January 2008).)

### Forced Marriage

Any marriage which occurs without the full and free consent of one or both the parties and/or where one or both the parties is/are unable to end or leave the marriage, including as a result of duress or intense social or family pressure.

(Definition by the United Nations High Commissioner for Human Rights (OHCHR))

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<sup>16</sup> See <https://www.ohchr.org/EN/Issues/Women/WRGS/Pages/ChildMarriage.aspx> OHCHR also notes that child marriage is also often accompanied by early and frequent pregnancy and childbirth, resulting in higher than average maternal morbidity and mortality rates. CEFM often result in women and girls attempting to flee their communities or to commit suicide to avoid or escape the marriage.

<sup>17</sup> <https://www.unfpa.org/child-marriage-frequently-asked-questions#what%20is%20child%20marriage>

<sup>18</sup> See <http://unicef.in/Whatwedo/30/Child-Marriage>

<sup>19</sup> The Prohibition of Child Marriage Act 2006.

<sup>20</sup> The Indian Penal Code 1860

## Recent data

- The Census of India has reported that the proportion of females in child marriage has fallen in each 10-year census period since 1981. In 2001 report, the census listed zero married girls below age 10, 1.4 million married girls out of 59.2 million girls aged 10–14, and 11.3 million married girls out of 46.3 million girls aged 15–19.<sup>21</sup>
- Since 2001, child marriage rates in India have fallen 46%, reaching an overall nationwide average 7% child marriage rate by 2009.<sup>22</sup>
- According to the report “Improving Children’s Lives, Transforming the Future — 25 years of child rights in South Asia” by UNICEF, India has the second highest number of child marriages, with 43% of women aged 20-24 having been first married by the age of 18 between 2005-2013.<sup>23</sup>

## Laws addressing child marriage

The *Child Marriage Restraint Act 1929* was deemed to be ineffective<sup>24</sup>. The (PCMA) was passed in 2006 with the aim of preventing child marriages with enhanced punishments of rigorous imprisonment for two years and/or fine of INR 1 lakh. The Act also provides for the appointment of a Child Marriage Prohibition officer whose duties are to prevent child marriages and spread awareness regarding the same.

Some important provisions of the 2006 Act are as follows:

- Section 3: Child marriages to be voidable at the option of the child
- Section 9: Punishment for male adult marrying a child
- Section 10: Punishment for solemnising a child marriage
- Section 11: Punishment for promoting or permitting solemnisation of child marriages

It must be stressed that there are inconsistencies between the PCMA and personal laws like the Hindu Marriage Act 1956, where there is no express provision to prohibit child marriage per se; a girl can get the marriage annulled only if she was married off before attaining the age of 15 and she challenges the marriage before turning 18. Similarly, the Muslim Personal Law is uncodified and prescribes no express bar, with the age of marriage being the age of puberty; and the Indian Christian Marriage Act provides a preliminary 14 days’ notice to be given if the parties are minor. Courts have however shown a tendency to prioritise secular law over personal laws when it comes to child marriage.

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<sup>21</sup> See Table C-2 Marital Status by Age and Sex Subtable C0402, India Total Females Married by Age Group, 2001 Census of India, Government of India (2009) here [http://censusindia.gov.in/Tables\\_Published/C-Series/c\\_series\\_tables\\_2001.aspx](http://censusindia.gov.in/Tables_Published/C-Series/c_series_tables_2001.aspx)

<sup>22</sup> Data from Family Welfare Statistics 2011, compiled by Union Health Ministry. See also <https://timesofindia.indiatimes.com/india/Nearly-50-fall-in-brides-married-below-18/articleshow/11829410.cms>

<sup>23</sup> See <http://www.unicef.in/Itstartswithme/childmarriage.pdf>

<sup>24</sup> See for example <https://hrln.org/wp-content/uploads/2018/03/CHILD-MARRIAGE-FINAL-BOOK.pdf>

## How to access justice

1. Any person can report (or file a complaint of) a child marriage before or after it has been solemnised. Immediate report can be made with:
  - a) Police
  - b) Child Marriage Prohibition Officer (CMPO) (Also responsible for reporting and preventing)
  - c) Judicial Magistrate First Class/ Metropolitan Magistrate (can take suo moto cognisance)
  - d) Child Welfare Committee
  - e) ChildLine
  - f) District Magistrate (has same powers as CMPO in case of mass marriages):
    - a. Complaint must be made to the nearest police station (as offences are cognisable and non-bailable). The police MUST make an entry in their Daily Diary and register a First Information Report (FIR).
    - b. Complaints can be oral or written, via phone, letter or telegram, e-mail, fax or handwritten note duly signed by the complainant.
2. First Information Report: Please see the Prajnya FIR Ready Reckoner (Appendix).

## Recent case law

### *Independent Thought v. UOI (2017)*<sup>25</sup>

The petitioner in this case had challenged the validity of Exception 2 to Section 375 of the Indian Penal Code [as amended by the Criminal Law (Amendment) Act, 2013, as violative of Articles 14, 15 and 21 of the Constitution to the extent that it permits intrusive sexual intercourse with a girl child aged between 15 to 18 years only on the ground that she has been married. Exception 2 to Section 375 (rape) of IPC states that sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape. The petitioner underlined the inconsistency between Exception 2 and clause sixthly of Section 375, which has increased the age of consent for sexual intercourse for a girl child to 18 years. Therefore, sexual intercourse with a girl child under 18 years would constitute rape, with or without her consent. The Supreme Court accepted this pleading and held that sexual intercourse with wife, wife under 18 years of age would constitute rape. The judgment noted that 'it is only through this reading that the intent of social justice to the married girl child and the constitutional vision of the framers of our Constitution can be preserved and protected and perhaps given impetus.' This case settled the legal confusion over marital rape within prohibited child marriages in India.

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<sup>25</sup><https://www.livelaw.in/breaking-sex-minor-wife-rape-police-can-register-case-wifes-complaint-sc-reads-exception-2-s-375-ipc/>

*M. Janaki v. K. Vairamuthu (2016)*<sup>26</sup>

Madras High Court clarified that child marriages do not automatically become void. The court stated that the conditions for a Hindu marriage are informed in Section 5 of the Hindu Marriage Act, 1955. Section 5(3) places requirement that the bridegroom should have completed the age of 21 years and the bride 18 years at the time of marriage. The breach of such condition does not 'automatically' render the marriage void under Section 11 or voidable under Section 12. Such a marriage can only be annulled on an application by a party who contracted the marriage as a child.

*Yunusbhai Usmanbhai Shaikh v. State of Gujarat (2016)*<sup>27</sup>

The Gujarat High Court ruled that the Prohibition of Child Marriage Act, 2006 is a secular law which deals specifically with the problem of child marriage. The court stated that the law was a "Special Act", which in case of conflict will override the provisions of Muslim Personal Law, Hindu Marriage Act or any other personal law.

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<sup>26</sup> <http://www.livelaw.in/child-marriages-not-become-automatically-void-madras-hc/>

<sup>27</sup> <http://www.livelaw.in/breaking-prohibition-of-child-marriage-act-is-a-secular-law-and-would-prevail-over-personal-laws-of-parties-gujarat-hc-read-it/>

### 3. HUMAN TRAFFICKING

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UN Trafficking in Persons protocol defines trafficking in persons as, ‘the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.’

Exploitation includes, but is not limited to, various forms of sexual exploitation and prostitution, commercial exploitation, forced labour or services, slavery or similar practices and removal of organs. This involves forceful and illegal migration of the victims.

In July 2018, the Lok Sabha passed the highly controversial Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill which creates a law for investigation of all types of trafficking, and rescue, protection and rehabilitation of trafficked victims. The bill has been criticised for its ‘failed carceral approach to trafficking, based on a prosecution-driven, raid-rescue-rehabilitation model.’<sup>28</sup>

#### Recent data on human trafficking

- According to a report published by the US Department of State, India is the source, destination and transit country for human trafficking whose victims then become involved in forced labor and sex trafficking. The State Department’s 2013 trafficking in persons report estimates the number of people trafficked for the purpose of forced labour in India to be within the range of 20 to 65 million.<sup>29</sup>
- According to National Crime Record Bureau (NCRB) data, the incidences of human trafficking display a steadily rising trend during the period of 2011-2016.

	2011	2012	2013	2014	2015	2016
Cases relating to human trafficking	3517	3554	3940	5466	6877	8,132

- The statistics of the Ministry of Women and Child Development state that 19,223 women and children were trafficked in 2016 against 15,448 in 2015, with the highest number of victims being recorded in the eastern state of West Bengal.<sup>30</sup>

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<sup>28</sup> For a comprehensive critique of the bill see <https://www.hindustantimes.com/analysis/how-india-can-go-forward-on-tackling-human-trafficking/story-nlm1deYwCMn6ApdwuFRs6K.html> and <https://www.epw.in/engage/article/how-did-we-get-here-or-short-history>

<sup>29</sup> United States of America Department of State. (2013). TRAFFICKING IN PERSONS REPORT. Accessed on November 14, 2018 from <https://www.state.gov/documents/organization/210737.pdf>

<sup>30</sup> See <http://www.fiinnovation.co.in/news/govt-report-suggests-almost-20000-women-children-trafficked-india-2016/>

- The Global Slavery Index estimates that on any given day in 2016 there were nearly 8 million people living in modern slavery in India. In terms of prevalence of modern slavery in India, there were 6.1 victims for every thousand people.<sup>31</sup>
- The NCRB report notes that the number of rescued victims is higher than the number of trafficked people as rescued victims may also include persons trafficked in the previous year. Most of the rescued victims reported being trafficked for the purpose of forced labour (10,509 victims), followed by sexual exploitation for prostitution (4,980 victims), and other forms of sexual exploitation (2,590 cases).<sup>32</sup>

## Relevant Laws in India

### *The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018*<sup>33</sup>

- The Bill creates a law for investigation of all types of trafficking, and rescue, protection and rehabilitation of trafficked victims.
- The Bill provides for the establishment of investigation and rehabilitation authorities at the district, state and national level. Anti-Trafficking Units will be established to rescue victims and investigate cases of trafficking. Rehabilitation Committees will provide care and rehabilitation to the rescued victims.
- The Bill classifies certain purposes of trafficking as ‘aggravated’ forms of trafficking. These include trafficking for forced labour, bearing children, begging, or for inducing early sexual maturity. Aggravated trafficking attracts a higher punishment.
- The Bill sets out penalties for several offences connected with trafficking. In most cases, the penalties set out are higher than the punishment provided under prevailing laws.

The Trafficking Bill has been criticised from all quarters including the OHCHR, which has noted that –‘Its focus on addressing trafficking from a criminal law perspective is not sufficiently complemented by a human-rights based and victim-centred approach, and this risks further harming already vulnerable individuals.’ In other words, the bill has been criticized for promoting ‘rescue raids’ by the police, and the institutionalisation of victims in the name of rehabilitation, rather than applying appropriate screening methods and standard operating procedures for the identification and referral of victims or potential victims of trafficking and social integration programs which are respectful of their rights.

The Indian laws on trafficking are governed by the following laws:

**1. The Indian Penal Code, 1860** contains several provisions that are relevant to trafficking in persons and prescribe penalties for offences such as kidnapping, abduction, buying or selling

<sup>31</sup> <https://www.globalslaveryindex.org/2018/findings/country-studies/india/>

<sup>32</sup> National Crime Records Bureau 2017, Crime in India 2016 Statistics, Ministry of Home Affairs, p. 512-518. Available from: <http://ncrb.gov.in/StatPublications/CII/CII2016/pdfs/NEWPDFs/Crime%20in%20India%20-%202016%20Complete%20PDF%20291117.pdf>.

<sup>33</sup> <http://www.prsindia.org/billtrack/the-trafficking-of-persons-prevention-protection-and-rehabilitation-bill-2018-5277/>

a person for slavery or labour, buying or selling a minor for prostitution, importing or procuring a minor girl and rape among others. Some of them are as follows:

- *Section 365: Kidnapping or abduction with intent to secretly and wrongfully confine a person*
- *Section 366 A: Procuration of minor girls for the purpose of illicit intercourse with another person*
- *Section 366 B: Importation of girls from foreign country*
- *Section 370: Defines the offence of trafficking in persons*
- *Section 372: Selling minor for purposes of prostitution, etc.*
- *Section 373: Buying minor for purposes of prostitution, etc.*

**2. Immoral Trafficking (Prevention) Act, 1956:** Prescribes punishment for procuring, inducing or taking person for the sake of prostitution and includes provisions for rescue and rehabilitation of sex workers.

**3. Bonded Labour System Abolition Act, 1974:** Prescribes punishment for enforcement of bonded labour, among others.

**4. Protection of Children from Sexual Offences Act, 2012:** Defines and prescribes punishment for various sexual offences against children.

**5. Child Marriage (Prevention) Act, 2006:** Prescribes punishment for male adult marrying a child; solemnising a child marriage; promoting or permitting solemnisation of child marriage.

**6. Transplantation of Human Organs Act, 1994:** Prescribes punishment for removal of human organs without authority and for commercial dealings in human organs.

## Recent case law

*Freedom Firm v. Commissioner of Police, Pune & Others (2015)*<sup>34</sup>

The Bombay High Court (HC) stated that the courts shall, as a general principle, refuse bail to a person who is shown as a trafficker in human beings. The court issued guidelines in the matter of bail for a person accused of trafficking in persons and stated that not being trafficked is a fundamental right.

*Prajwala v. Union of India (2015)*

The Supreme Court directed the Ministry of Home Affairs to set up an “Organised Crime Investigative Agency” (OCIA) and make it functional before December 2016. The court also noted the policy decision made by the Ministry of Women & Child Development to constitute a committee to draft a comprehensive anti-trafficking legislation.

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<sup>34</sup> See <http://www.livelaw.in/bombay-hc-issues-guidelines-in-the-matter-of-human-trafficking-crimes-says-not-being-trafficked-is-a-fundamental-right-bail-shall-not-be-granted-for-habitual-traffickers/>

## 4. STREET SEXUAL HARASSMENT

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Street sexual harassment can refer to any form of sexual harassment that occurs in a public place. This includes not just streets, but also public transport such as buses and trains, malls, beaches, parks, restaurants and cafés, markets, bazaars, public toilets, elevators and any other place outside the home or workplace. Street sexual harassment is euphemistically known in India as ‘eve-teasing’, which trivialises the impact that this form of violence has on victims.<sup>35</sup>

Street sexual harassment includes any ‘unwanted comments, gestures, and actions forced on a stranger in a public place without their consent and is directed at them because of their actual or perceived sex, gender, gender expression or sexual orientation’.<sup>36</sup>

Through the Criminal Law (Amendment) Act, 2013, Section 354A was added to the Indian Penal Code that stipulates what constitutes a sexual harassment offence and what the penalties shall be for a man committing such an offence. Penalties range from one to three years imprisonment and/or a fine.

According to S. 354A sexual harassment comprises unwelcome physical contact and advances, including unwanted and explicit sexual overtures, a demand or request for sexual favours, showing someone sexual images (pornography) without their consent, and making unwelcome sexual remarks.

### Recent data on sexual harassment

In 2016, the NCRB reported the following figures under different sections of the IPC:

Assault on Women with Intent to Outrage her Modesty	Assault on Women	Sexual Harassment	Assault on Women with Intent to Disrobe	Voyeurism	Stalking	Insult to the modesty of women
84746	39543	27344	9737	932	7190	7305

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<sup>35</sup> The Prajnya Trust. (2014). Gender Violence in India Report. Retrieved November 14, 2018 from <https://gritprajnya.wordpress.com/2014/12/11/gender-violence-in-india-report-2014-street-sexual-harassment/>

<sup>36</sup> Stop Street Harassment. (2015). What is Street Harassment? Retrieved November 14, 2018 from <http://www.stopstreetharassment.org/about/what-is-street-harassment/>

## Relevant Laws

**1. Indian Penal Code 1860:** Various provisions may be used to redress sexual harassment in public places such as--

- *Section 294:* Making a girl or a woman the target of obscene gestures, remarks, songs or recitation.
- *Section 354 A:* Sexual harassment includes a man causing (unwanted) physical contact and advances involving unwelcome and explicit sexual overtures, demand or request for sexual favours, showing pornography against the will of a woman or making sexually coloured remarks.
- *Section 354 B:* Assault with the intent to disrobe a woman.
- *Section 354 C:* Voyeurism: Watching or capturing the image of a woman engaged in a private act in circumstances where she would usually have the expectation of not being observed.
- *Section 354 D:* Stalking: Following and contacting or attempting to contact repeatedly despite clear indication of disinterest; monitoring the use of internet, email or any other form of electronic communication.
- *Section 499:* Defamation by words either spoken or intended to be read.
- *Section 503:* Criminal intimidation: Threat to cause injury to person, reputation or property to the person or someone he is interested with an intent to cause alarm or cause that person to act or omit to do an act as the means of execution of such threat.
- *Section 509:* Obscene gestures, indecent body language and negative comments directed at any woman or girl. Further it includes exhibiting any object which intrudes upon the privacy of a woman.

## How to access justice

First Information Report: Please see the Prajnya FIR Ready Reckoner (Appendix).

## Recent case law

*Shanta Kumar v. CSIR & Others (2017)*<sup>37</sup>

The Delhi High Court refused to categorise every 'unwelcome' physical contact (such as accidental contact) as sexual. Physical contact without sexual undertone, it held would not amount to sexual harassment.

*Jishu Sengupta & Others v. State of West Bengal & Another (2016)*<sup>38</sup>

Kolkata High Court stated that sexual innuendos come within the ambit of "sexually coloured remarks" and constitute sexual harassment under sec. 354A of IPC.

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<sup>37</sup> <https://www.livelaw.in/mere-physical-contact-without-sexual-overtones-not-amount-sexual-harassment-workplace-delhi-hc-read-judgment/>

<sup>38</sup> <http://www.livelaw.in/sexually-coloured-remarks-come-within-ambit-sexual-harassment-calcutta-hc/>

*T Manikandan v. The State (Govt of NCT of Delhi) & Another (2017)*<sup>39</sup>

The Delhi High Court held that there is no illegality in convicting an accused under both section 354 and section 354A of the IPC at the same time.

*Pawan Kumar v. State of Himachal Pradesh (2017)*<sup>40</sup>

The Supreme Court observed that in a civilised society, male chauvinism has no room and a woman is entitled to her own space, as much as a man, in our society. The court stated that no one can compel her to love and she has the absolute right to reject.

*Deputy Inspector of General of Police and Another v. S. Samuthiram (2012)*<sup>41</sup>

The Supreme Court directed the Centre to legislate effective legislation to contain the menace of “eve-teasing”.

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<sup>39</sup> <http://www.livelaw.in/no-illegality-convicting-accused-sec-354-354a-ipc-simultaneously-delhi-hc-read-judgment/>

<sup>40</sup> <http://www.livelaw.in/civilized-society-male-chauvinism-no-room-woman-space-man-society-sc/>

<sup>41</sup> <http://www.advocatekhoj.com/library/judgments/announcement.php?WID=2826>

## 5. SEXUAL HARASSMENT AT WORKPLACE

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Sexual harassment at the workplace is a form of gender-based discrimination in the workplace. General Assembly Resolution 48/104 on the *Declaration on the Elimination of Violence Against Women* defines<sup>42</sup> violence against women to include sexual harassment, which is prohibited at work, in educational institutions, and elsewhere, and encourages development of penal, civil or other administrative sanctions, as well as preventative approaches to eliminate violence against women.

*The Convention on the Elimination of all Forms of Discrimination against Women*<sup>43</sup> (CEDAW) directs States Parties to take appropriate measures to eliminate discrimination against women in all fields, specifically including equality under law, in governance and politics, the workplace, education, healthcare, and in other areas of public and social life (Arts. 7-16).

The Beijing Platform for Action<sup>44</sup> recognizes sexual harassment as a form of violence against women and as a form of discrimination, and calls on multiple actors including government, employers, unions, and civil society to ensure that governments enact and enforce laws on sexual harassment and that employers develop anti-harassment policies and prevention strategies.

### Background: Indian Law

In 1997, the Supreme Court in *Vishakha v State of Rajasthan* defined sexual harassment at the workplace, pronounced preventive, prohibitive and redressal measures, and gave directives towards a legislative mandate to the guidelines proposed. *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH)* was enacted sixteen years after *Vishakha*. While sexual harassment at workplace is primarily a civil offence, criminal law has also been used from time to time, especially in the absence of a specific law, to frame sexual harassment.<sup>45</sup>

### The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Sexual harassment includes any one or more of the following unwelcome acts or behavior (whether directly or by implication), namely:

1. Physical contact and advances; or
2. A demand or request for sexual favors; or
3. Making sexually colored remarks; or
4. Showing pornography; or
5. Any other unwelcome physical, verbal, or non-verbal conduct of sexual nature

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<sup>42</sup> <http://www.un.org/documents/ga/res/48/a48r104.htm>

<sup>43</sup> <http://www.un.org/womenwatch/daw/cedaw/recommendations/index.html>

<sup>44</sup> <http://www.un.org/womenwatch/daw/beijing/platform/>

<sup>45</sup> See Rupan Deol Bajaj v KPS Gill

*What is a workplace?* A workplace is defined as “any place visited by the employee arising out of or during the course of employment, including transportation provided by the employer for undertaking such a journey.” The workplace therefore covers both organised and un-organised sectors.

Under the Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the complainant can be any “aggrieved woman” who is:

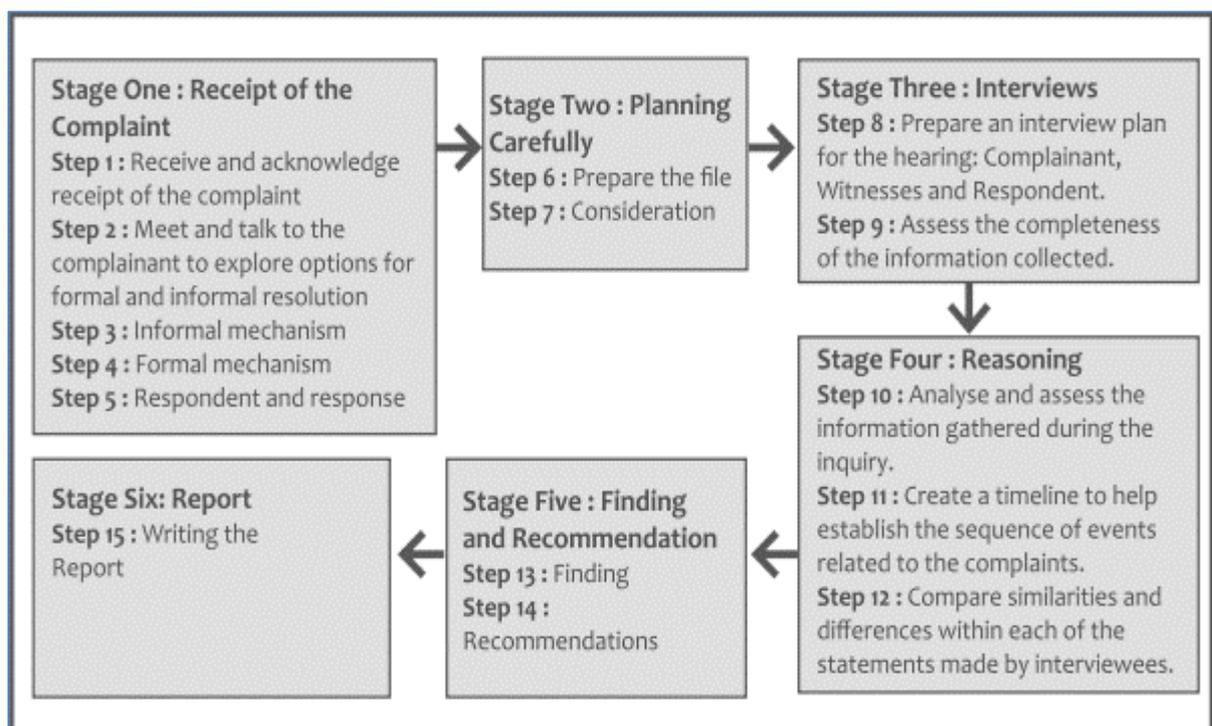
- Working (This includes domestic worker, regular/ temporary/ ad hoc/ daily wage worker, for remuneration/ voluntary basis or otherwise, employed directly/ through an agent, contract worker/ probationer/ trainee/ apprentice/ called by any other such name);
- Visiting the workplace (such as a customer at a store);
- Student.

The Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013 provides for two kinds of complaints mechanisms: Internal Complaints Committee (ICC) and Local Complaints Committee (LCC). All workplaces with more than ten workers are required to have an Internal Complaints Committee.

In a workplace with less than ten workers, any woman employee can complain to the Local Complaints Committee with support of the Nodal Officer.

The written complaint should contain a description of each incident, relevant dates, timings and locations; name of the respondent(s); and the working relationship between the parties.

*The complaints process, as mapped by the Ministry of Women and Child Development:*



The Respondent is entitled to-

- A copy of the statement along with all the evidence and a list of witnesses submitted by the complainant
- Confidentiality throughout the process
- Right to appeal in case not satisfied with the recommendations/findings of the complaints committee

### **Other relevant provisions of Indian law**

In addition to the 2013 law, criminal remedy may also be available to the respondent. Various provisions of the Indian Penal Code may be used to redress sexual harassment such as:

- a. *Section 294*: Making a girl or a woman target of obscene gestures, remarks, songs or recitation.
- b. *Section 354 A*: Sexual harassment: Causing (unwanted) physical contact and advances involving unwelcome and explicit sexual overtures, demand or request for sexual favours, showing pornography against the will of a woman or making sexually coloured remarks.
- c. *Section 354 B*: Assault with the intent to disrobe a woman.
- d. *Section 354 C*: Voyeurism: Watching or capturing the image of a woman engaged in a private act in circumstances where she would usually have the expectation of not being observed.
- e. *Section 354 D*: Stalking: Following and contacting or attempting to contact repeatedly despite clear indication of disinterest; monitoring the use of internet, email or any other form of electronic communication.
- f. *Section 499*: Defamation by words either spoken or intended to be read.
- g. *Section 503*: Criminal intimidation: Threatens to cause injury to person, reputation or property to the person or someone he is interested with an intent to cause alarm or cause that person to act or omit to do an act as the means of execution of such threat.
- h. *Section 509*: Obscene gestures, indecent body language and negative comments directed at any woman or girl. Further it includes exhibiting any object which intrudes upon the privacy of a woman.

## Recent case law

### **#MeToo & Sexual Harassment**

The #MeToo movement, which began in the United States last year in response to accusations of sexual harassment and abuse by powerful men in the entertainment industry gained traction in India this year with women in the media and entertainment industries calling out a number of well-known and influential men for their predatory behaviour. The Ministry of Women and Child Development responded by stating that a panel of legal experts would be set up to look into the allegations of sexual harassment that have surfaced in the #MeToo campaign.

#### *Ms Renuka Mukherjee v. Vodafone (2017)*<sup>46</sup>

Telecom Company Vodafone was fined by Bombay High Court Rs. 50,000 for its failure to constitute a Complaints Committee as required by the law.

#### *Shanta Kumar v. CSIR & Others (2017)*<sup>47</sup>

The Delhi High Court refused to categorise every 'unwelcome' physical contact (such as accidental contact) as sexual. Physical contact without sexual undertone, it held would not amount to sexual harassment.

#### *Rupesh Samant v. State (2015)*<sup>48</sup>

The High Court of Bombay at Goa refused Anticipatory Bail to a senior journalist, based in the state, against whom complaints of sexual harassment was made by three journalists who worked under him, holding that persistent acts like those alleged by the complainants amounted to assault.

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<sup>46</sup> <https://www.livelaw.in/bombay-hc-fines-vodafone-flouting-vishaka-guidelines-past-read-judgment/>

<sup>47</sup> <https://www.livelaw.in/mere-physical-contact-without-sexual-overtone-not-amount-sexual-harassment-workplace-delhi-hc-read-judgment/>

<sup>48</sup> <https://www.livelaw.in/bombay-hc-refuses-anticipatory-bail-to-go-based-journalist-accused-of-sexually-harassment/>

## 6. CRIMES COMMITTED IN THE NAME OF HONOUR

India is seeing a rise in ‘honour’ crimes.<sup>49</sup> India registered an almost 800 percent rise in the number of killings in the name of honour last year. ‘Honour’ killing is the murder of a person accused of "bringing shame" upon their family. Human Rights Watch defines these as, ‘acts of violence, usually murder, committed by male family members against female family members who are perceived to have brought dishonour upon the family’.<sup>50</sup> This form of violence may be motivated due to perceptions of violation of accepted social norms of sexuality, for example, romantic involvement with a partner from a different caste or religion, inter-caste marriages, etc. This type of violence includes ‘any kind of abusive behaviour, torture, mutilation, rape, and forced marriage, keeping confined within the house and even committing murder with intention to preserve and protect the family honour’.

According to the UN special Rapporteur on Violence against Women, these kinds of violence, which constitute a form of domestic violence, have avoided national and international scrutiny because they are seen as ‘cultural practices that deserve tolerance’. Feminists have framed ‘honour’ crimes as a form of custodial violence as well.

Generally, perpetrators of honour crimes are seen to be male members of a family such as brothers, fathers, uncles, nephews, husbands. It may also include lovers or ex-lovers.

### Data on Honour Crime

- There is no official figure on ‘honour’ killings in India because they often go unreported or are passed off as suicide or natural deaths by family members involved.
- A reason for not being reported could be that these crimes are still not separately recognised by Indian law.
- However, the NCRB data includes different heads for ‘motives of murder and culpable homicide’ that may include crimes in the name of honour. It specifically includes honour killings.

Type of Motive	Honour Killing	Illicit Relationship	Casteism	Love Affair	Class Conflict
Year/2016	71	1671	312	1493	134

*It is important to note data under the heads of love affairs, illicit relationship, class conflict and casteism may not all be instances of honour killings.*

<sup>49</sup> See <https://www.news.com.au/lifestyle/real-life/a-24yearold-has-been-hacked-to-death-in-a-suspected-honour-killing-in-india-after/news-story/2ecbd653566caaec1e7da9e572d01c8> ; <https://www.theguardian.com/world/2018/feb/11/i-feel-no-hatred-the-radical-response-to-an-honour-killing-that-shook-india> ; <https://www.thehindu.com/opinion/op-ed/Of-love-and-honour-killings/article14160134.ece>

<sup>50</sup> Stop Violence Against Women. (2008). Crimes Committed in the name of “Honor”. Accessed November 14, 2018 from [http://www.stopvaw.org/honor\\_killings](http://www.stopvaw.org/honor_killings)

- Honour killings however have shown 796% increased reporting from 2014 to 2015. Data in 2016 show a decrease from 251 in 2015 to 71 in 2016 with Madhya Pradesh and Uttar Pradesh leading the crime.

## Road to legal protection<sup>51</sup>

The Ministry of Home Affairs pursuant to the Judgment passed by the Honorable Supreme Court in the matter of *Shakti Vahini vs. Union of India & Others*, circulated an advisory to all States about the preventive, remedial and punitive measures required to be implemented to address the issues related to honour crime. The said advisory is available at <http://mha.gov.in>.

Vide the above-mentioned advisory States/UTs were advised to comply with the directions as mentioned in the judgement, which include among others that:

- 1) The State Governments shall create Special Cells in every District comprising of the Superintendent of Police, the District Social Welfare Officer and District Adi-Dravidar Welfare Officer to receive petitions/complaints of harassment of and threat to couples of inter-caste marriage;
  - 2) These Special Cells shall create a 24-hour helpline to receive and register such complaints and to provide necessary assistance/advice and protection to the couple.
- 2010: AIDWA legal cell prepares “The Prevention of Crimes in the Name of Honour and Tradition Bill” which received the support of the NCW which prepared a similar bill. The 2010 bill foregrounded the offence in the following words-  
*“All persons including young persons and women have the right to control their own lives, a right to liberty and freedom of expression, and a right of association, movement and bodily integrity. Every man and woman has a right to choose her/his own partner in marriage or otherwise and any action listed below to prevent the exercise of this right shall amount to an offence under the provisions of this Bill.”*
  - 2012: Law Commission in their 242<sup>nd</sup> Report put forward a bill titled “Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliances) Bill, 2011.” The Bill dealt primarily with the “unlawful assemblies” called by caste panchayats to prevent a ‘self-choice marriage.’

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<sup>51</sup> See <https://www.thehindu.com/opinion/lead/Honour-killings-are-a-separate-horror/article14168010.ece>

## Relevant laws

### ***Indian Penal Code, 1860***

- a) *Section 34 and 35: Acts done by several persons in furtherance of common intention and with criminal knowledge*
- b) *Section 107-118 and Section 120: Abetment of offences*
- c) *Section 120 A & B: Definition and punishment of criminal conspiracy*
- d) *Section 191-204: Destroying or concealing evidence*
- e) *Section 299 and Section 301: Culpable homicide not amounting to murder*
- f) *Section 300: Murder*
- g) *Section 306: Abetment to suicide*
- h) *Section 307: Attempt to murder*
- i) *Section 321: Voluntarily causing grievous hurt*
- j) *Section 339: Wrongful restraint by voluntarily obstructing any person so as to prevent that person from proceeding in any direction*
- k) *Section 343, 344: Wrongful confinement by wrongfully restraining any person so as to prevent that person from proceeding beyond certain circumscribing limits*

**2. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989:** Prescribes punishments for offences or atrocities.

## How to access justice

In *Shakti Vahini v UOI* (2018) the Supreme Court has laid down extensive guidelines-

*Despite the preventive measures taken by the State Police, if it comes to the notice of the local police that the Khap Panchayat has taken place and it has passed any diktat to take action against a couple/family of an inter-caste or inter-religious marriage (or any other marriage which does not meet their acceptance), the jurisdictional police official shall cause to immediately lodge an F.I.R. under the appropriate provisions of the Indian Penal Code including Sections 141, 143, 503 read with 506 of IPC.*

*Upon registration of F.I.R., intimation shall be simultaneously given to the Superintendent of Police/ Deputy Superintendent of Police who, in turn, shall ensure that effective investigation of the crime is done and taken to its logical end with promptitude.*

*Additionally, immediate steps should be taken to provide security to the couple/family and, if necessary, to remove them to a safe house within the same district or elsewhere keeping in mind their safety and threat perception.*

First Information Report: Please see the Prajnya FIR Ready Reckoner (Appendix).

## Recent case law

### *Shakti Vahini v. UOI (2018)*

The Supreme Court held that consent of family or community or clan is not necessary when two adults agree to enter into a wedlock. The court said that Rule of Law requires that only formal institutions under law deal with such situations. Khap panchayat or any panchayat of any nomenclature cannot create a dent in exercise of human rights, protected by rule of law. The court observed

*“Elders of family or clan can never be allowed to proclaim a verdict guided by some notion of passion and eliminate life of young who have exercised their choice to get married against wishes of their elders or contrary to customary practice of clan.”*

The court further held, “...honour killing guillotines individual liberty, freedom of choice and one’s own perception of choice. When two adults consensually choose each other as life partners, it is a manifestation of their choice which is recognized under Arts. 19 and 21 of the Constitution. Such a right has constitutional sanction and thus needs protection and cannot succumb to class honour or group thinking which has no legitimacy.”

### *B. Dilipkumar v. The Secretary to Government and Others (2016)*

The Madras High Court directed the State to create special cells in each district of the state to receive complaints and petitions of harassment and threat to couples of inter-caste marriage and eradicate the evil of honour killings.

### *Baby Sebastian & Another v. Circle Inspector of Police (2016)*

The Supreme Court reinstated the trial court’s judgement in acquitting the accused in an alleged act of ‘honour killing’. Citing that there was no evidence on record to point to the guilt of the accused and that a number of prosecution witnesses had turned hostile, the court overturned the judgement by the Kerala High Court convicting the accused.

### *Manmeet Singh v. State of Haryana (2016)*

The Punjab and Haryana High Court urged the State to bring in a legislation to tackle crimes of honour killings.

### *Durgesh Vilas Patil v. The State of Maharashtra (2017)*

The Bombay High Court stated that honour killings are reflective of a barbaric society and have no place in a civilised one when rejecting the bail application of the accused.

## 7. ACID ATTACKS

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Acid Attack also known as acid throwing is a gendered form of violent assault which is defined as the act of throwing acid intentionally on the body of another to disfigure, maim, torture or kill. OHCHR defines acid attacks as the 'premeditated throwing of acid on a victim, usually on her face'.

According to UN Women, acid attacks may be committed for several reasons including land disputes or bringing perceived dishonour to the family. The most common reasons, however, are revenge for refusal of a marriage proposal or other romantic or sexual advances, and jealousy.

In India, prior to the Criminal Law Amendment Act of 2013, there was no specific law of legal provision that punished acid attack. The Justice J.S. Verma Committee and 226th Report of Law Commission of India (2009) specifically dealt with acid attacks and recommended a separate law defining the offence as well as a liberal compensation scheme for survivors.

Under Indian law, an acid attack includes causing permanent or partial damage or deformity to, or burning or maiming or disfiguring or disabling, any part or parts of the body of a person, or causing grievous hurt by throwing acid on or by administering acid to that person, or by using any means with the intention of causing injury or hurt. This also includes attempts to throw acid on any person.

### Recent data on acid attacks

- According to Acid Survivors Foundation India, women constitute 80% of the victims of acid attack.<sup>52</sup>
- According to NCRB data, there were 206 instances of acid attack in 2016.

### Laws that are relevant to acid attacks

- 1) Indian Penal Code, 1860
  - a) Section 100: Right of self-defence under apprehension of acid attack
  - b) Section 326 A: Voluntarily causing grievous hurt by use of acid, etc.
  - c) Section 326 B: Voluntarily throwing or attempting to throw acid
- 2) Criminal Procedure Code, 1973
  - a) Section 357 A: Compensation for victims of acid attack
  - b) Section 357 C: Free medical treatment by all hospitals, public and private
- 3) The Rights of Persons with Disabilities Act, 2016
  - a) Limited compensation for victims of acid attack

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<sup>52</sup> Acid Survivors Foundation India. Acid Violence. Accessed November 15, 2018 from <http://www.acidsurvivors.org/Acid-Violence>

## How to access justice

- The financial relief granted under the scheme is not linked with the trial in such cases, and the victim can approach the state legal services authority for compensation immediately after the incident. The scheme also empowers the legal services authority to take suo moto cognizance of cases of acid attack to grant interim relief to victims. For procedure for compensation, see [http://wcd.nic.in/sites/default/files/Final%20VC%20Scheme\\_0.pdf](http://wcd.nic.in/sites/default/files/Final%20VC%20Scheme_0.pdf)
- Please see the Prajnya FIR Ready Reckoner (Appendix)

## Recent case law

*Piyali Dutta v. State of West Bengal (2017)*<sup>53</sup>

Victims of acid attack entitled to compensation before CrPC amendment in 2009 which inserted S. 357A of the IPC.

*Renu Sharma v. Govt of NCT of Delhi and Ors (2016)*<sup>54</sup>

The Delhi High Court acknowledging the need to provide support for daily life of survivors of acid attack directed the Government of NCT of Delhi to provide employment commensurate with the petitioners' educational qualification and medical status. The court also directed that she be provided free medical treatment.

*Laxmi v. Union of India (2015)*<sup>55</sup>

The Supreme Court directed all states to ban across-the-counter sale of acid. The court also noted that the minimum compensation of Rs. 3 Lakh was not set by some states yet. The court also stated that all hospitals must provide free medical treatment to the survivors.

*Parivartan Kendra v. Union of India and Others (2015)*<sup>56</sup>

The Supreme Court expressed alarm over the Government's lax approach to the pitiable situation of acid attacks in the country and directed all States and Union Territories to take appropriate steps with regards to inclusion of the name of the survivors in the list of persons with disabilities. The court also stated that the State shall take full responsibility for the treatment and rehabilitation of survivors.

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<sup>53</sup> <https://www.livewlaw.in/victims-acid-attacks-cr-p-c-amendment-entitled-compensation-calcutta-hc-read-judgment/>

<sup>54</sup> <http://www.livewlaw.in/landmark-order-delhi-hc-directs-govt-provide-job-acid-victim/>

<sup>55</sup> <https://drive.google.com/file/d/0BzXilfcxe7yuUi1DZGg2WkhUcXM/view>

<sup>56</sup> <http://www.livewlaw.in/apex-court-expresses-alarm-acid-attack-cases-issues-notices-centre-state-governments/>

## 8. FEMALE GENITAL MUTILATION

Female genital mutilation (FGM), also known as female genital cutting and female circumcision, is the ritual cutting or removal of some or all of the external female genitalia. In December 2012, the UN General Assembly adopted a unanimous resolution on the elimination of FGM. The World Health Organisation (WHO) classifies FGM as a violation of the human rights of girls and women. According to WHO, FGM reflects deep-rooted inequality between the sexes, and constitutes an extreme form of discrimination against women. It is nearly always carried out on minors and is a violation of the rights of children.

WHO further clarifies FGM by classifying it in four major types as follows:

- *Type 1 or Clitoridectomy*: The partial or total removal of the clitoris and in very rare cases removal of only the prepuce.
- *Type 2 or Excision*: The partial or total removal of the clitoris and the labia minora. This may be with or without the removal of the labia majora.
- *Type 3 or Infibulation*: The narrowing of the vaginal opening with a covering seal.
- *Type 4: All other harmful procedures* caused to the female genitalia for nonmedical purposes. For example, pricking, piercing, incising, scraping and cauterising the female genital area.

In India, FGM is known as Khatna or Khafz, which involves a procedure of partially removing the clitoral hood. Young girls at the age of six or seven, primarily from the Dawoodi Bohra community, undergo these procedures conducted by doctors and midwives.<sup>57</sup>

### Recent data on FGM

- An independent study titled “The Clitoral Hood: A Contested Site” shows that 75 per cent of 94 respondents interviewed had subjected their daughters to FGM.<sup>58</sup>
- According to the submission by the MWCD, there is no data on FGM in India as it is not seen as a specific offence or covered under any ‘crime-head’. According to estimates by WHO, approximately 200 million girls across 30 countries are affected by this practice.

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<sup>57</sup> See <https://www.hindustantimes.com/static/fgm-indias-dark-secret/>

<sup>58</sup> See <https://indianexpress.com/article/india/75-bohra-women-admit-female-genital-mutilation-study-5052869/>

## Relevant Indian laws

While there is no specific law to curb FGM, action may be initiated under the following provisions:

1) Indian Penal Code, 1860

*Section 320*: The section encompasses various kinds of bodily pain, disease or infirmity that may be termed 'grievous'

2) Protection of Children from Sexual Offences Act, 2012:

Defines and prescribes punishment for various types of sexual assault. It also defines and prescribes punishment for abetment of offences under the law.

## How to access justice

1) According to section 19 of the Protection of Children from Sexual Offences Act, 2012, information (FIR) regarding an offence should be provided to:

- a) The Special Juvenile Police Unit, or
- b) The local police

The section further enumerates how the report should be recorded.

2) First Information Report: Please see the Prajnya FIR Ready Reckoner (Appendix).

## Recent case law

The Supreme Court, this year in *Sunita Tiwari v Union of India* referred the plea seeking complete ban on FGM to a constitutional bench.<sup>59</sup> Several Dawoodi Bohra women have already filed interventions in the ongoing case.<sup>60</sup>

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<sup>59</sup> <https://www.livewlaw.in/breaking-sc-refers-plea-seeking-complete-ban-on-female-genital-mutilation-to-constitution-bench/>

<sup>60</sup> <https://www.thehindu.com/news/cities/mumbai/fgm-case-more-women-file-interventions/article24446383.ece>

## 9. RAPE

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Rape is defined in most jurisdictions as sexual intercourse, or other forms of sexual penetration, committed by a perpetrator against a victim without their consent. Incidents of rape are classified into a number of categories, and they may describe the relationship of the perpetrator to the victim and the context of the sexual assault. These include date rape, gang rape, marital rape, incestual rape, child sexual abuse, prison rape, acquaintance rape, war rape and statutory rape.

The International Criminal Tribunal for Rwanda defined rape as “a physical invasion of a sexual nature committed on a person under circumstances that are coercive.”<sup>61</sup>

The Indian Penal Code, 1860 lays down the various actions which may constitute rape and the circumstances under which it may be committed by a man against a woman. Under this code, ‘consent’ means, ‘an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or nonverbal communication, communicates willingness to participate in the specific sexual act’. The code further provides that a lack of physical resistance from the woman cannot be regarded as consent. Prior to the legal amendments of 2013, rape had a narrow definition and there was no definition of consent.

In 2018, the criminal law relating to child rape was further amended after the brutal Kathua gang rape case to prescribe harsher punishment, including death penalty.<sup>62</sup>

### **Date Rape & Acquaintance Rape**

Date rape is a form of acquaintance rape. The two phrases are often used interchangeably, but date rape specifically refers to a rape in which there has been some sort of romantic or potentially sexual relationship between the two parties. Acquaintance rape also includes rapes in which the victim and perpetrator have been in a non-romantic, non-sexual relationship, for example as co-workers or neighbors.

### **Marital Rape**

Marital rape or spousal rape is the act of sexual intercourse with one's spouse without the spouse's consent. The lack of consent is the essential element and need not involve violence. Marital rape is considered a form of domestic violence and sexual abuse. It is recognized as rape by many societies around the world, repudiated by international conventions, and increasingly criminalized. Indian law protects marital rape from being criminalised.

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<sup>61</sup> International Criminal Tribunal for Rwanda, Prosecutor vs. Akaseyu, Case No. ICTR-96-4-T, September 1998

<sup>62</sup> <http://www.prsindia.org/billtrack/the-criminal-law-amendment-ordinance-2018-5232/>

## Recent data on rape

Year	Rape including custodial rape, gang rape	Attempt to rape
2015	34651	4437
2016	38947	5732

Source: NCRB

- Rape accounts for about 12% of all crimes against women.
- India's average rate of reported rape cases is about 6.3 per 100,000 of the population. There are geographical differences as well with Sikkim and Delhi having rates of 30.3 and 22.5, respectively, while Tamil Nadu has a rate of less than one.
- Unit-level data of the National Family Health Survey (NFHS) conducted in 2015-16 showed that only a minuscule portion of incidents of sexual violence is reported to the police. An estimated 99.1% of sexual violence cases are not reported, and in most such instances, the perpetrator is the husband of the victim.<sup>63</sup>
- A survey by the United Nations Population Fund found that more than 2/3rds of married women in India, aged 15 to 49 have been beaten, raped or forced to provide sex. The survey also found that only one in four abused women has ever sought help for sexual violence.
- According to the 2016 NCRB data, Madhya Pradesh followed by Uttar Pradesh and Maharashtra have the highest incidences of rape.
- NCRB data also shows that while generally post 2013, reporting in crimes against women including rape has increased, the conviction rate has remained stagnant or has fallen.

## Relevant Laws

- **Indian Penal Code, 1860**
  - *Section 228 A*: Not disclosing the name of a victim of rape
  - *Section 375 & 376*: Definition of rape and punishment for rape
  - *Section 376 B*: Intercourse by a public servant with a woman in his custody
  - *Section 376 C*: Intercourse by superintendent of jail, remand home, etc
  - *Section 376 D*: Intercourse by any member of the management or staff of a hospital with any woman in that hospital
  - *Section 511 and Section 354 read with Section 376*: Attempt to commit rape
- **Criminal Procedure Code, 1973**
  - *Section 53*: Collection of evidence by examination of accused by medical practitioner at the request of police officer
  - *Section 164 A*: Medical examination of victim of rape
  - *Section 327*: Trial to be conducted in-camera
- **Indian Evidence Act, 1872**

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<sup>63</sup> <https://www.livemint.com/Politics/AV3sIKoEBAGZozALMX8THK/99-cases-of-sexual-assaults-go-unreported-govt-data-shows.html>

- *Section 114 A*: Presumption as to absence of consent in certain prosecutions for rape

**Note:** Although Section 375 of the IPC explicitly includes the *marital rape exemption* in law, provided the wife is over the age of fifteen<sup>64</sup> and not separated from the husband, action may be instituted under the following provisions:

- ***Indian Penal Code, 1860***
  - Section 376 A: Forcible sexual intercourse by a man with his wife when separated legally, by custom or by usage.
  - Section 498 A: Conduct which is likely to cause grave injury or danger to the life, limb or health (mental or physical), of a woman.
- ***Protection of Women from Domestic Violence Act (PWDA), 2005***
  - Section 3 (a): Domestic Violence to include sexual abuse.

### **How to access justice**

First Information Report: Please see the Prajnya FIR Ready Reckoner (Appendix).

See also: <https://blogs.wsj.com/indiarealtime/2013/01/10/how-to-report-a-rape-in-india/>

### **Recent case law**

#### *Criminal Justice Society v. Union of India (2018)*

The Supreme Court refused to interfere in plea to make rape law gender neutral. The plea filed by Criminal Justice Society of India, an NGO sought that the definition of rape under Section 375 be held 'ultra vires' for being 'discriminatory and violative of Articles 14 (right to equality), 15 (prohibition of discrimination on grounds of religion, race, caste, sex) and 21 (right to life and personal liberty) of the Constitution'.

#### *Sandeep & Others v. Neelam & Another (2018)*

The MP High Court ruled that sexual relations on false marriage promise amount to rape.

#### *Hemudan Nanbha Gadhvi v. State of Gujarat (2018)*

The Supreme Court held that a rape-accused cannot be acquitted merely because victim turned hostile and failed to identify him in the dock. The court said that the victim turning hostile does not efface other evidence.

#### *Yogesh v. State of Maharashtra (2018)*

The Bombay High Court held that sexual intercourse during 'deep love affair' did not constitute rape.

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<sup>64</sup> Raised to 18 after *Independent Thought v UOI judgment*

*State of Uttarakhand v. Karandeep Sharma (2018)*

Uttarakhand HC recommended that the government enact legislation for awarding death penalty for rape of girls aged 15 years or below.

*State of Maharashtra v. Bandu (2017)*

The Supreme Court asked the HCs to set up special centres for examination of vulnerable witnesses in criminal cases.

*Independent Thought v. UOI (2017)*

The petitioner in this case had challenged the validity of Exception 2 to Section 375 of the Indian Penal Code [as amended by the Criminal Law (Amendment) Act, 2013, as violative of Articles 14, 15 and 21 of the Constitution to the extent that it permits intrusive sexual intercourse with a girl child aged between 15 to 18 years only on the ground that she has been married. Exception 2 says that sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape. The petitioner underlined the inconsistency between Exception 2 and Sixthly of Section 375, which has increased the age of consent for sexual intercourse for a girl child to 18 years. Therefore, sexual intercourse with a girl child under 18 years would constitute rape, with or without her consent. The Supreme Court accepted this pleading and held that sexual intercourse with wife, wife under 18 years of age would constitute rape. The judgment noted that 'it is only through this reading that the intent of social justice to the married girl child and the constitutional vision of the framers of our Constitution can be preserved and protected and perhaps given impetus.' This case settled the legal confusion over marital rape within prohibited child marriages in India

*State of Madhya Pradesh v. Madanlal (2015)*

The Supreme Court stated that in a case of rape or attempted rape the idea of compromise cannot be entertained under any circumstances, thus ruling out mediation. The court stated that compromise would be against the 'honour' of the woman. The court stated that the 'honour' of a woman is 'sacrosanct'.

*Akshay Manoj Jaisinghani v. State of Maharashtra (2017)*

The Bombay High Court stated that every breach of promise to marry does not amount to rape. The court noted that this was an 'unfortunate but routine case' and stated that it is necessary to have a healthy, objective and legal approach towards such incidents. The complaint stated that consent for sexual intercourse was obtained fraudulently by falsely promising marriage. The court reiterated an earlier judgment that stated that withdrawal of a bonafide promise of marriage excludes from the ambit of rape, previous consensual sexual intimacy. The court further reflected upon circumstances which qualify for rape, for example consent for sexual activity obtained from an illiterate woman under the promise to marry.

*Mahmood Farooqui v. State (Govt of NCT of Delhi) (2017)*

The Court shifted the meaning of consent to what the man understood from what the woman said. The court stated, “Instances of woman behaviour are not unknown that a feeble ‘no’ may mean a ‘yes’” signalling a judicial confusion in the affirmative standard of consent ushered in by the 2013 amendment to S. 375 where the definition of consent was inscribed.

It is important to note that this judgment has been widely criticized<sup>65</sup> for the way in which it shifted the definition of ‘consent’ and seemed to create artificial classifications (educated women) for whom consent must have a different standard. The lower court, on the other hand had applied the definition of consent available in S. 375 in the IPC and held that the survivor’s testimony was of sterling quality. Based on her testimony and corroborating evidence the accused was sentenced.

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<sup>65</sup> See <https://www.outlookindia.com/website/story/dastan-e-judiciary-versus-consent-through-farooqi-case-court-creates-a-separate-/302636>

## 10. DOWRY-RELATED VIOLENCE

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The United Nations Division for the Advancement of Women defines dowry-related violence or harassment as *“any act of violence or harassment associated with the giving or receiving of dowry at any time before, during or after the marriage.”*<sup>66</sup>

Dowry includes gifts, money, goods or property given from the bride’s family to the groom or in-laws before, during or any time after the marriage. Dowry is a response to explicit or implicit demands or expectations of the groom or his family. The violence and deaths associated with dowry demands may constitute a form of domestic violence. Similar to acts of domestic violence, the acts used in dowry-related offenses include physical, emotional, and economic violence, as well as harassment and stalking as means to exact compliance or to punish the victim.<sup>67</sup>

In Indian law, dowry is--

*“any property or valuable security given or agreed to be given either directly or indirectly-*

*(a) by one party to a marriage to the other party to the marriage; or*

*(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person; at or before [or any time after the marriage] [in connection with the marriage of the said parties, but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.”*

(See: Dowry Prohibition Act, India, 1961, Art. 2)

Both dowry death (304B) and cruelty by husband and his family (498A) were inscribed in the Indian Penal Code in the 1980s, by the Criminal Law Amendment Act 1986 and the Criminal Law Amendment Act 1986 respectively.

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<sup>66</sup> United Nations. (2009). Good Practices in Legislation on “Harmful Practices” against Women. See [http://www.un.org/womenwatch/daw/egm/vaw\\_legislation\\_2009/Report%20EGM%20harmful%20practices.pdf](http://www.un.org/womenwatch/daw/egm/vaw_legislation_2009/Report%20EGM%20harmful%20practices.pdf)

<sup>67</sup> [http://www.stopvaw.org/dowry-related\\_violence](http://www.stopvaw.org/dowry-related_violence)

## *Dowry Death*

Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death. Punishment is minimum 7 years in dowry death and can extend to life imprisonment.

[S. 304 B of the Indian Penal Code]

## *Cruelty*

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

For the purpose of this section, “cruelty” means—

*(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or*

*(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.*

[S. 498A of the Indian Penal Code]

## **Recent data on dowry**

Dowry related violence includes dowry death, cruelty under the Indian Penal Code and the giving and taking of dowry under the Dowry Prohibition Act. NCRB data indicates that in 2016, 7621 cases of dowry death were reported, accounting for 1.8% of offences, which is a marginal decrease from the previous year. Under Dowry Prohibition Act, 9683 cases were registered.

Under cruelty i.e. 498A, 110378 cases were registered.

## Indian laws relevant to dowry and dowry-death

### 1. *The Dowry Prohibition Act, 1961*

- a. *Section 2*: Definition of dowry
- b. *Section 3*: Penalty for giving or taking dowry

### 2. *Indian Penal Code, 1861*

- a. *Section 302*: Culpable homicide amounting to murder
- b. *Section 304 B*: Dowry death caused within seven years of her marriage
- c. *Section 498 A*: Cruelty by husband or his relatives

### 3. *Criminal Procedure Code, 1973*

- a. *Section 198 A*: Prosecution of offences under section 498 A of the Indian Penal Code, 1860

### 4. *Indian Evidence Act, 1872*

- a. *Section 113 A*: Presumption of guilt for abetment of suicide by a married woman
- b. *Section 113 B*: Presumption of dowry death

### 5. *Protection of Women against Domestic Violence Act, 2005*

- a. *Section 3*: Domestic violence to include economic abuse and abuse related to dowry.

## Recent case law

### *Social Action Forum for Manav Adhikar v UOI (2018)*

The SC modified its earlier order in *Rajesh Sharma v State of UP* which had prescribed setting up of Family Welfare Committees to scrutinise 498A complaints. The court said there were inbuilt provisions to check misuse of the law.

### *Ashok v State of Delhi (2017)*

Delhi High Court stated that section 304B IPC does not contemplate harassment minutes or hours before death but a reasonable period prior to the death when deceased is subjected to cruelty is sufficient to show the live link which in the present case is proved as two days prior to the death, specific demand from the brother of deceased was made.

### *Bajnath & Others v. State of Madhya Pradesh (2016)*

The Supreme Court stated that to invoke the presumption of dowry death under section 304 B of the Indian Penal Code and section 113 B of the Indian Evidence Act, the prosecution must prove all ingredients of the offence beyond reasonable doubt.

### *Bobbili Ramakrishna Raju Yadav v. State of Andhra Pradesh (2016)*

The Supreme Court held that it cannot be presumed that dowry and traditional presents given at or about the time of the wedding were entrusted and put under the dominion of the parents-in-law of the bride or other close relations.

### *Bhim Singh & Another v. State of Uttarakhand (2015)*

The Supreme Court stated that a demand for dowry can be made at any time and not necessarily before marriage.

## 11. DOMESTIC VIOLENCE

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In 1993, The United Nations *Declaration on the Elimination of Violence Against Women* defined domestic violence as-

*Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.*

According to the National Family and Health Survey in 2005<sup>68</sup>, total lifetime prevalence of domestic violence was 33.5% among women aged 15–49; the prevalence of sexual violence specifically in a domestic setting among this group was 8.5%.

In India, domestic violence was tackled by criminal law – dowry death (304B of IPC) and cruelty (498A of IPC) before a civil law, the *Protection of Women from Domestic Violence Act 2005* was passed.

According to Section 3 of the Act,

*“any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it:*

*harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or*

*harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or*

*has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or*

*otherwise injures or causes harm, whether physical or mental, to the aggrieved person.”*

### **What is Intimate Partner Violence (IPV)?**

Intimate Partner Violence is sometimes used interchangeably with domestic violence (DV). According to WHO, *intimate partner violence is one of the most common forms of violence against women and includes physical, sexual, and emotional abuse and controlling behaviours by an intimate partner*. The most common form of intimate partner violence is *situational couple violence* (‘situational violence’), and is more likely to occur among younger couples, including adolescents (teen dating violence) and those of college going age.

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<sup>68</sup> <https://dhsprogram.com/pubs/pdf/od57/od57.pdf>

IPV refers to any behaviour within an intimate relationship that causes physical, psychological or sexual harm to those in the relationship. Examples of types of behaviour are listed below.<sup>69</sup>

- **Acts of physical violence**, such as slapping, hitting, kicking and beating.
- **Sexual violence**, including forced sexual intercourse and other forms of sexual coercion.
- **Emotional (psychological) abuse**, such as insults, belittling, constant humiliation, intimidation (e.g. destroying things), threats of harm, threats to take away children.
- **Controlling behaviours**, including isolating a person from family and friends; monitoring their movements; and restricting access to financial resources, employment, education or medical care.

## Recent data on domestic violence

- NCRB data suggest that there is a decrease in cases registered under PWDVA in 2016 from 2015. Number of cases registered in 2016 is 437 from 461 in 2015.
- According to the most recent National Family Health Survey<sup>70</sup> released by the Union Health Ministry, every third women, since the age of 15, has faced domestic violence of various forms in the country.
- According to the NFH survey, 27 per cent of women have experienced physical violence since the age 15 in India. This experience of physical violence among women is more common in rural areas than among women in urban areas. Domestic violence cases, where women reported physical abuse in rural and urban areas, were at 29 per cent and 23 percent, respectively.

## Indian law addressing domestic violence

### *Protection of Women from Domestic Violence Act (2005)*

Section 2 of the Act contains the various definitions of terms used in the Act, setting out the definition of domestic violence, who can bring an action against domestic violence, against whom an action can be brought, and sets up a multi-agency response system demanding that key stakeholders understand each other's roles and responsibilities and coordinate to bring relief to the aggrieved person.

- Definition of DV based on *UN Framework for Model Legislation on Domestic Violence & UN Declaration on Elimination of Violence Against Women (GA Res. 48/104 of 1993)*
- Unambiguous recognition of the woman's right to live free from violence. Provides immediate relief to victims in cases of emergency
- The right to reside in shared household – recognizes inequality within the home

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<sup>69</sup> Krug, Etienne G.; Dahlberg, Linda L.; Mercy, James A.; Zwi, Anthony B.; Lozano, Rafael (2002). World report on violence and health. Geneva, Switzerland: World Health Organization.

<sup>70</sup> [http://rchiips.org/NFHS/factsheet\\_NFHS-4.shtml](http://rchiips.org/NFHS/factsheet_NFHS-4.shtml)

- Ensures effective access to justice – introduces new authorities & mechanisms (PO<sup>71</sup> as the interface b/w the woman and the court)
- Intended specifically to protect women (children both male & female). Covers mothers, daughters, sisters, widows, relations through adoption etc.
- Recognition to “relationships in the nature of marriage” – victims of bigamous/fraudulent marriages, cohabitation.
- Mix of both civil & criminal laws – Two stage process:
  1. Civil orders passed by Magistrate on Application u/S. 12
  2. On breach of civil orders by the perpetrator, arrest (imprisonment &/or fine)

### **Other relevant laws**

#### **1) Indian Penal Code**

- a) *Section 376 A*: Forcible sexual intercourse by a man with his wife when separated legally, by custom or by usage.
- b) *Section 498 A*: Conduct which is likely to cause grave injury or danger to the life, limb or health (mental or physical), of a woman.

#### **2) Protection of Women against Domestic Violence, 2005**

- a) *Section 2*: Definition of aggrieved person
- b) *Section 3*: Definition of domestic violence

### **How to access justice**

- 1) Under section 4 of PWDVA:
  - a) Anyone can file a complaint against their spouse who is the perpetrator of an act of violence. In cases of marriage, complaint can also be filed against male or female relatives of the partner, who have perpetrated violence.
  - b) A victim or someone on behalf of the victim can give information of domestic violence (marital rape/sexual assault within marriage) to the police or the Protection officer (most states do not have one appointed yet). In case the informant is not the victim, he/she must produce the complaint in writing and sign it before having it delivered to the police. A complaint can only be filed if the victim wishes to initiate legal proceedings.
- 2) First Information Report: Please see the Prajnya FIR Ready Reckoner (Appendix).

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<sup>71</sup> The Protection Officer is the key authority appointed under PWDVA by the State governments and acts as the nodal agency between the various stakeholders. Their duties include receiving the complaint, informing the victim of her rights and facilitating her access to support services and the Court. The PO also enforces the orders of the Court.

## Recent case law

*Kasturi v. Subhash (2017)*<sup>72</sup>

The omission of the husband in neglecting to maintain the wife and living with another woman amounts to 'economic' and 'emotional' abuse and the wife is entitled to protection under the Domestic Violence Act, the Karnataka High Court has held while upholding maintenance awarded to a wife who filed petition for maintenance after 3 decades. The court noted that "Domestic violence" under Section 3 of the Act among others takes into its fold 'economic abuse' as well. The omission of the husband in neglecting to maintain the aggrieved person, who is at the receiving end, falls within the description of Section 3 of the Act. The very fact that he has cohabited with another woman during the subsistence of his marriage with his wife and begot children from the second wife amounts to emotional abuse as contemplated by Section 3(a) of the Act, endangering the mental and physical well-being of the aggrieved person. This is another form of domestic violence within the meaning of Section 3(a) of the Act.

*Vinay Gupta v. Saveri Nayak (2017)*<sup>73</sup>

The Orissa High Court noted that ex-parte order for interim custody of child under the PWDVA is permissible and does not suffer from any illegality.

*Bipin v. Meera (2016)*<sup>74</sup>

The High Court of Kerala ruled that even a divorced wife is entitled to initiate proceedings under section 3 of the Protection of Women against Domestic Violence, 2005.

*Kunapareddy @ Nookala Shanka Balaji v. Kunapareddy Swarna Kumari (2016)*<sup>75</sup>

The Supreme Court held that a petition or complaint filed under the Domestic Violence Act can be amended and the court has the power to amend such petitions in view of subsequent events. The court added that the power to amend applications should be used sparingly, with caution and under limited circumstances.

*Hiral Harsora v. Kusum Harsora (2016)*<sup>76</sup>

The Supreme Court stated that women can also be respondents under the Protection of Women against Domestic Violence Act, 2005.

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<sup>72</sup> <https://www.livelaw.in/neglecting-maintain-wife-living-another-woman-domestic-violence-wife-karnataka-hc-read-order/>

<sup>73</sup> <https://www.livelaw.in/ex-parte-order-custody-child-dv-act-not-suffer-illegality-orissa-hc/>

<sup>74</sup> <https://www.livelaw.in/divorced-woman-can-see-protection-domestic-violence-act-kerala-hc/>

<sup>75</sup> <https://www.livelaw.in/courts-not-powerless-allow-amendment-complaint-domestic-violence-act-sc/>

<sup>76</sup> <https://indiankanoon.org/doc/114237665/>

## 11. ELDER ABUSE

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The World Health Organisation (WHO) defines elder abuse as, 'a single or repeated act or lack of appropriate action occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person'.<sup>77</sup>

These are intentional or unintentional acts of commission or of omission (described as 'neglect') that cause harm or a risk of harm to the elderly person. Abuse may be of many types including physical, psychological, economic and sexual. Cultural context, frequency, duration, severity and consequences are important factors when assessing behaviours abusive to elders.

However, elderly abuse is also a form of gender-based violence. A study by Agewell Research and Advocacy Centre in India found that 50.59% of the 50,000 participants said that elderly women have to face marginalisation or isolation due to gender discrimination. According to the same study, almost one-fourth of the respondents in rural areas said that the legal rights of elderly women were most often violated due to their gender and 38.9 % of the male and 39.7% of the female respondents said that the human rights of elderly women are violated more in comparison to elderly men.

### Recent data on elder abuse

Recent studies indicate the increasing number of elder abuse and neglect cases.<sup>78</sup> The National Crime Records Bureau (NCRB) does not collect data under the separate heading of 'elder abuse'. It does record the total number of crimes against senior citizens, which for the year 2015 was 19, 239 in all states and 20, 532 in Union Territories whereas in 2016 the numbers were 20657 in states and 753 in Union Territories.

This data includes any crime committed against senior citizens, for example, cheating, extortion, culpable homicide, assault and rape etc., but does not specify if the perpetrator is someone who is a caregiver to the victim.

### Indian laws relevant to elder abuse

- 1) ***Maintenance and Welfare of Parents and Senior Citizens Act, 2007***
  - a) *Section 4*: Maintenance of parents and senior citizens
  - b) *Section 24*: Exposure and abandonment of senior citizen
- 2) ***Protection of Women from Domestic Violence Act, 2005***
  - a) *Section 2*: Definition of aggrieved person
  - b) *Section 3*: Definitions of domestic violence

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<sup>77</sup> [https://www.who.int/ageing/projects/elder\\_abuse/en/](https://www.who.int/ageing/projects/elder_abuse/en/)

<sup>78</sup> See <https://www.helpageindia.org/wp-content/uploads/2018/08/ELDER-ABUSE-IN-INDIA-2018-A-HelpAge-India-report.pdf> and <https://www.hindustantimes.com/opinion/we-can-no-longer-ignore-the-rise-in-elder-abuse-cases/story-6mHYOkICB3AViEGyncBbaL.html>

- 3) Action may also be brought under various provisions for the IPC depending on the abuse involved. For example, action may be brought under sections of assault, rape, wrongful restraint, etc.

## **How to access justice**

### **1) Maintenance and Welfare of Parents and Senior Citizens Act, 2007**

- a) Section 5 specifies that an application for maintenance may be made to a special tribunal constituted under this Act.
- b) For offences under section 24, the police must be approached to file a FIR. According to section 25, an offence under this Act is to be tried summarily by a Magistrate.

### **2) Protection of Women against Domestic Violence Act, 2005**

- a) Section 4 - A victim or someone on behalf of the victim can give information of domestic violence to the police or the Protection Officer (most states do not have one appointed yet). In case the informant is not the victim, he/she must produce the complaint in writing and sign it before having it delivered to the police. A complaint can only be filed if the victim wishes to initiate legal proceedings.

- 3) First Information Report: Please see the Prajnya FIR Ready Reckoner (Appendix).

## **Recent case law**

### *Pramod Ranjankar v. Arunashankar (2018)*

The Chhattisgarh High Court has held that a senior citizen can ask for son's ejection as an interim measure under the Maintenance and Welfare of the Parents and Senior Citizens Act, 2007.

### *Dattatrey Shivaji Mane v. Lilabai Shivaji Mane (2018)*

Bombay High Court held no child can insist on staying with parents, particularly senior citizens and ordered son's eviction from mother's house.

### *Sachin & Another v. Jabbhu Lal & Another (2016)*

The Delhi High Court stated that a son, irrespective of his marital status, cannot claim a legal right to reside at the self-acquired property of his parents.

### *Shri Santosh Surendra Patil v. Shri Surendra Narasgonda Patil & Others (2017)*

The High Court at Bombay directed two sons to pay a monthly maintenance for their parents and asked them to vacate their parent's house in light of the harassment meted out to them. The court also asked the state government to create awareness about the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

### *Sunny Paul and Another v. State NCT of Delhi (2017)*

The Delhi High Court stated that the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, among other remedies, provides for eviction of adult children in cases of elderly abuse.

## 12. VIOLENCE IN CYBERSPACE

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Taking many different forms, online violence and abuse against women is an extension of offline violence and abuse against women. It can include direct and indirect threats of violence, such as physical or sexual threats.<sup>79</sup> According to the Special Rapporteur on VAW,

*The definition of online violence against women extends to any act of gender-based violence against women that is committed, assisted or aggravated in part or fully by the use of ICT, such as mobile phones and smartphones, the Internet, social media platforms or email, against a woman because she is a woman, or affects women disproportionately.*<sup>80</sup>

The Violence against Women (VAW) Learning Network includes six broad categories of violence against women in cyberspace:

- 1) Hacking: This is the use of technology to gain illegal or unauthorised access to systems or resources for malicious purposes such as acquiring personal information;
- 2) Impersonation: This is the use of technology to assume the identity of the victim for purposes such as shaming the victim publicly in cyberspace;
- 3) Surveillance/Tracking: This is the use of technology to stalk the victim's activities online or in the physical world;
- 4) Harassment/Spamming: This is the use of technology to continually contact, threaten or scare the victim;
- 5) Recruitment: This is the use of technology to lure the victim to potentially violent situations such as traffickers using chat rooms;
- 6) Malicious distribution: This is the use of technology to distribute defamatory materials related to the victim such as leaking intimate photos/videos.

### Recent data

- Despite being a relatively new phenomenon and, with a consequent lack of comprehensive data, it has been estimated that 23 per cent of women have reported having experienced online abuse or harassment at least once in their life, and that one in 10 women has experienced some form of online violence since the age of 15.<sup>81</sup>
- A survey by Feminism in India, a digital platform, found that 28% of women who experienced online abuse said they intentionally reduced their online presence.<sup>82</sup>
- Amnesty International conducted a study on online violence against women in 2017 which showed that more than 75% of women surveyed across eight countries (Denmark, Italy, New Zealand, Poland, Spain, Sweden, the UK and USA) who had experienced abuse or harassment made changes to the way they used social media platforms.

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<sup>79</sup> <https://www.amnesty.org/en/latest/campaigns/2017/11/what-is-online-violence-and-abuse-against-women/>

<sup>80</sup> See <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23235&LangID=E>

<sup>81</sup> See European Union Agency for Fundamental Rights, "Violence against women: an EU-wide survey", 2014.

<sup>82</sup> <https://feminisminindia.com/2016/11/16/digitalhifazat-campaign-cyber-violence-women-india/>

- According to NCRB data, total number of cybercrimes reported in 2016 is 12317, which is a rise from 2015 (11592). However, the report does not contain separate heads for crimes against women in cyberspace.

## Relevant Indian laws<sup>83</sup>

### 1) Information Technology Act, 2000 and Information Technology (Amendment) Act, 2008

- Section 43*: Penalty and Compensation for damage to computer, computer system, etc.
- Section 66 A*: Punishment for sending offensive messages through communication service, etc.
- Section 66 C*: Punishment for identity theft
- Section 66 D*: Punishment for cheating by personation by using computer resource
- Section 66 E*: Punishment for violation of privacy
- Section 67*: Punishment for publishing or transmitting obscene material in electronic form
- Section 67 A*: Punishment for publishing or transmitting of material containing sexually explicit act, etc. in electronic form
- Section 72*: Breach of confidentiality and privacy

### 2) Indian Penal Code, 1860

- Section 292*: Sale, etc. of obscene books, etc.
- Section 292 A*: Printing, etc., of grossly indecent or scurrilous matter or matter intended for blackmail
- Section 406*: Punishment for criminal breach of trust
- Section 419*: Punishment for cheating by personation
- Section 441*: Criminal trespass is entering into property of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property
- Section 499*: Defamation by words either spoken or intended to be read
- Section 501*: Printing or engraving matter known to be defamatory
- Section 503*: Criminal intimidation: Threatens to cause injury to person, reputation or property to the person or someone he is interested with an intent to cause alarm or cause that person to act or omit to do an act as the means of execution of such threat.
- Section 509*: Obscene gestures, indecent body language and negative comments directed at any woman or girl. Further it includes exhibiting any object which intrudes upon the privacy of a woman.

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<sup>83</sup> For a comprehensive legal position, see <https://internetdemocracy.in/wp-content/uploads/2017/11/Internet-Democracy-Project-Submission-Online-VAW-2-November-2017-4.pdf>

## **Recent case law**

### *Public Interest Litigation by Prajwala (2016)*

The Supreme Court asked the centre to file an 'action taken' report on steps initiated against cybercrimes and posting of videos of sexual assault on women and children. The court also issued notices to Facebook, Google, Microsoft and Yahoo seeking their view on blocking gang rape videos.

### *Kamlesh Vaswani v. Union of India (2015)*

Supreme Court Women Lawyers Association challenged the constitutional validity of a few sections of the Information Technology Act, 2000 and the Information Technology Amendment Act, 2008 and sought to recognise the harmful effects of pornography.



**FIR READY RECKONER**  
***A Prajnya 16 Days Campaign against Gender Violence Resource***  
**Prepared by Amba Salelkar**  
**December 2013**

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**BEFORE YOU LODGE AN FIR**

1. Check whether an FIR is applicable here. A first information report is a loose term that's meant to describe the recording of a Complaint in a Cognizable Case.
2. A *cognizable case* is one in which the police has powers to investigate, arrest and search without a warrant. The following are examples of cognizable cases:
  - a. Rape
  - b. Murder
  - c. Robbery
  - d. Dacoity
  - e. Domestic Violence as defined under Sec. 498A, Indian Penal Code
3. *Non-cognizable cases* are those in which the Police does not have powers to investigate. But, you can approach a Magistrate who can direct the Police to investigate. You can also file the case directly before the Magistrate. Some examples are:
  - a. Defamation
  - b. Bigamy
  - c. Giving False evidence in a judicial proceeding
  - d. Forgery
4. Other offences under special legislations e.g. The Prevention of Corruption Act, The Protection of Women from Domestic Violence Act etc. have specialized procedures. So verify what procedure you should be following.
5. As far as possible, check for what offence you think has been committed and make sure you have all the necessary documents to show some basis for making the complaint. For example:
  - a. Establish your own identity with a passport or other form of photo ID.
  - b. If it is a domestic violence complaint, bring some proof of marriage, even if it is a photo.
  - c. If it is a case of theft/dowry/criminal breach of trust, bring some document showing that the item in question was yours in the first place. If it is a dowry case for example, photos of exchange of jewelry, original receipts etc. are useful. Also, make a list of the items that have been stolen/misappropriated.
6. Check jurisdiction. Most criminal cases have jurisdiction where the offence took place. For example, if your chain was stolen at Nanganallur Railway Station, you will have to file the Complaint at the Police Station which has jurisdiction. In domestic violence cases, a woman can file the case at the police station which has jurisdiction over the place she presently resides. Some offences, like offences under 498A and offences under cyber crimes, may be entrusted to a separate police cell, so check before you go.
7. As far as possible, write your complaint out and carry it along with one copy.

### **AT THE POLICE STATION**

1. Ask to see the Station House Officer. S/he will be the person who will register your complaint.
2. In every cognizable case, the Police *must* register a Complaint.  
In case of a non cognizable complaint, the police will record your complaint and give you an “NC” or a non cognizable complaint record. Keep this safely. You might need it in the future in case the matter escalates into a cognizable offence, or you go before a Magistrate.
3. The FIR has two parts:
  - a. The proforma, which is the printed sheet where details relating to the Complainant and the Accused and the offence will be taken down. As a Complainant, you will have to sign the proforma.
  - b. The second part is the statement of the Complainant, which also has to be signed. No other witness statement requires to be signed under Indian Law.
4. Even if you do not know your Accused, give a faithful and accurate description. Print out and/or download cellphone shots you may have taken. Keep the original files as they will be called upon later at the stage of trial.
5. Ask for the statement to be recorded in a language you understand. In case that is not possible, make sure the statement is translated and explained to you by the officer recording it. Insist on every detail being recorded.
6. In case the statement is not recorded as per your wishes, please sign it “under protest,” recording your reservations. Submit your written complaint and obtain an acknowledgement on the copy you have.
7. If that is not possible, go home and send the written complaint by registered post AD and be sure to record that your Complaint was not recorded as per your narration. Keep the acknowledgment.
8. Do not leave the police station without your copy of the FIR. As the Complainant, you have a right to this.
9. You may be called to the Police Station for further statements – including identification of seized goods, identifying arrested persons, clarifications etc. Leave a reliable contact number for the police to get in touch with you.
10. If the Police refuse to lodge an FIR or record an NC when the case is cognizable, this is what you can do:
  - a. Go to the Senior Inspector of Police of the Police Station and make your Complaint.
  - b. If that fails, visit the Office of the ACP of the Division and make your Complaint.
  - c. If that fails, go before a Magistrate with all your documents and a written Complaint and ask that he direct that an FIR be lodged at the Police Station. You may require a lawyer for this.

### **AFTER YOU LODGE THE FIR**

1. Keep the FIR copy safely. There will be an FIR Number which will be the reference for the Case until the investigation is over.
2. Follow up with the Police until the chargesheet is filed. The chargesheet is filed when the investigation is over and the Police believe that they have a case which can lead to a conviction.
3. You can also follow up to find out whether anyone has been arrested, and as a Complainant/Victim you have the right to be heard when these Accused apply for Bail/Anticipatory Bail.
4. When the Chargesheet is filed, the Case will go to trial. As a victim/complainant you have the right to appoint a lawyer to assist the Prosecution.
5. In case you are not satisfied with the investigation, on concrete grounds, you can approach a Magistrate/The High Court for directions in appropriate cases, if you can show that there has been a miscarriage of justice.



Email	<a href="mailto:prajnyatrust@gmail.com">prajnyatrust@gmail.com</a>
Web	<a href="http://www.prajnya.in">http://www.prajnya.in</a>
Twitter	@prajnya
Facebook	@prajnyatrust
Instagram	@prajnyatrust
Blog	<a href="http://gritprajnya.wordpress.com">http://gritprajnya.wordpress.com</a>