



GENDER VIOLENCE IN INDIA

**A Prajnya Report
2023-24**

ABOUT THIS REPORT

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

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This year's report was prepared by Kausumi Saha and Shehnaz Latheef, building on previous reports authored over the years by: Kavitha Muralidharan, Zubeda Hamid, Shalini Umachandran, S. Shakthi, Divya Bhat, Titiksha Pandit, Mitha Nandagopalan, Radhika Bhalerao, Jhuma Sen, Suchaita Tenneti and Kausumi Saha. We acknowledge the mentoring and editorial supervision of S. Shakthi and Sweta Narayanan.

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GLOSSARY

AA	Appropriate Authority
AFSPA	Armed Forced Special Powers Act
AHTU	Anti-Human Trafficking Unit
AIDMAM	All India Dalit Mahila Adhikar Manch
AIDWA	All India Democratic Women's Association
CAA	Citizenship Amendment Act
CBI	Central Bureau of Investigation
CEDAW	The Convention on Elimination of All Forms of Discrimination Against Women
CEFM	Child, Early and Forced Marriage
CII	Crime In India
CMPO	Child Marriage Protection Officer
CrPC	Code of Criminal Procedure
DC	District Collector
DCW	Delhi Commission for Women
DHRDN	Dalit Human Rights Defenders Network
DV	Domestic Violence
FGM	Female Genital Mutilation
GBV	Gender-based Violence
GNCT	Government of National Capital Territory
FIR	First Information Report
HC	High Court
IAF	Indian Armed Forces
ICC	Internal Complaints Committee
ICT	Information and Communications Technology
ILO	International Labour Organization
IPC	Indian Penal Code

IPS	Indian Psychiatric Society
IPV	Intimate Partner Violence
LCC	Local Complaints Committee
LGBTQIA+	Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual and other persons
MTP	Medical Termination of Pregnancy
NALSA	National Legal Services Authority
NCT	National Capital Territory
NCR	National Capital Region
NCRB	National Crime Records Bureau
NCW	National Commission for Women
NCWL	National Council for Women Leaders
NFHS	National Family Health Survey
NGO	Non-Governmental Organisation
NIA	National Investigative Agency
NMC	National Medical Commission
NRC	National Register of Citizens
OCIA	Organized Crime Investigative Agency
OHCHR	The Office of the United Nations High Commissioner for Human Rights
OSC	One Stop Centre
PCMA	Prohibition of Child Marriage Act
PCPNDT	Pre-Conception and Pre-Natal Diagnostic Techniques Act
PIL	Public Interest Litigation
PoA	The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act
POCSO	Protection of Children from Sexual Offences Act
POSH	Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act
PTI	Press Trust of India
PWD	Persons with Disability

PWDVA	Protection of Women from Domestic Violence Act
RPWD	Rights of Persons with Disabilities Act
RTI	Right to Information
SC	Scheduled Castes
SC	Supreme Court
SCI	Supreme Court of India
SDG	Sustainable Development Goals
ST	Scheduled Tribes
SEAH	Sexual Exploitation and Abuse and Harassment
TVPA	Victims of Trafficking and Violence Protection Act
UN	United Nations
UNCAT	United Nations Campaign against Torture
UNDESA	United Nations Department of Economic and Social Affairs
UNFPA	United Nations Population Fund
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime
UOI	Union of India
UT	Union Territory
VAW	Violence against Women
VAWG	Violence against Women and Girls
WHO	World Health Organisation

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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, 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. We have chosen to include the statistics at ten-year intervals starting from 1955, in addition to the four most recent reports. 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 titled called *Crimes against Women* began to be included, compiling data on IPC crimes as well as crimes for which special laws had been passed. Since 2013, other categories have been included in the report, accounting in part for the uneven nature of our compilation. In 2017, several categories of cyber-crimes against women have been introduced. Data on cases under the Protection of Women from Domestic Violence Act (2005) were presented for the first time in 2014. The NCRB has now made all issues of *Crime in India* available online and they may be accessed at <http://ncrb.nic.in>.

TYPE OF VIOLENCE	1955	1965	1975	1985	1995	2005	2015	2019 ¹	2020	2021	2022
DECLINING SEX RATIO											
Sex Ratio (census years) ²	946	941	930	934	927	933	943	943	943	943	943
Child Sex Ratio	-	-	-	-	-	927	919	919	919	919	919
Female Infanticide	-	-	-	-	-	-	-	-	-	-	-
Pre-natal sex selection	-	-	-	-	-	-	-	-	-	-	-
Pre-conception Pre-natal Diagnostic Techniques Act, 1994	-	-	-	-	-	-	34	52	51	70	57
FORCED MARRIAGE											
Forced or Child Marriage	-	-	-	-	-	-	32177	-	-	-	-
Kidnapping and abduction of women and girls	5529	7927	11139	16051	14063	15750	-	72780	62300	75369	85310
Kidnapping and abduction of women to compel her for marriage (S. 366 IPC)	-	-	-	-	-	-	31778	32260	24745	28012	28656
Prohibition of Child Marriage Act	-	-	-	-	-	-	293	525	785	1050	1002

¹ Due to non-receipt of West Bengal data for 2019 in time, data furnished for 2018 has been used.

² Census of India, 2011; 2015-2021 are from the same Census.

TYPE OF VIOLENCE	1955	1965	1975	1985	1995	2005	2015	2019	2020	2021	2022
DOMESTIC VIOLENCE											
Domestic Violence							461	553	446	507	468
Torture ³					31127	58319	-	-	-	-	-
Cruelty by Husbands and Relatives					28579	58319	113403	125298	111549	137234	140019
HONOUR KILLING							192	24	25	33	18
DOWRY											
Dowry Death				2814	4648	6787	7634	7115	6966	6753	6450
Dowry Prohibition Act					2814	3204	9894	13287	10366	13568	13479
SEXUAL VIOLENCE											
Molestation ⁴					26856	34175	82422	-	-	-	-
Assault on Women								48586	48037	49761	44867
Assault or Use of Criminal Force on Women with Intent to Disrobe							8613	11238	10580	11102	9101
Assault by Police on Women to Outrage their Modesty							7	-	-	-	-
Rape			3376	7289	13754	18359	34651	32033	28046	31677	31516
Incest Rape ⁵						750	557	2916	2502	2424	2324
Rape by Family Friends/Neighbours/								10938	13555	15196	13548

³ 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.

⁴ “Molestation” data corresponds to IPC 354; this data has subsequently been divided into Assault on Women with Intent to Outrage her Modesty, Sexual Harassment, Assault or Use of Criminal Force on Women with Intent to Disrobe, Stalking, and Voyeurism and the data from 2015 onwards can be found under those categories.

⁵ Included in the Crime in India reports 2017-19 as Rape by Family Members and in 2015 as Rape by Close Family Members and Rape by Grandfather/Father/Brother/Son, etc.

Employer or Other Known Persons											
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TYPE OF VIOLENCE	1955	1965	1975	1985	1995	2005	2015	2019	2020	2021	2022
Custodial Rape ⁶						7	95	47	29	26	24
Rape by Relative/Teacher/Guardian/Person in position of Trust [Sec. 376(2)(f)]								1999	1410	1654	1598
Rape on Pregnant Women [Sec. 376(2)(h)]								35	39	28	34
Rape on Women below 16 years of Age [Sec. 376(2)(i)]								790	244	246	224
Rape on Women incapable of giving Consent [Sec. 376(2)(j)]								393	244	256	224
Rape by Persons in Control or Dominance over Women [Sec. 376(2)(k)]								182	119	53	91
Rape on Women with Mental or Physical Disability [Sec. 376(2)(l)]								116	94	117	110
Endanger Life of Women after Rape [Sec. 376(2)(m)]								34	24	23	25
Repeated Rape on Same Women [Sec. 376(2)(n)]								2373	2879	4155	4681
Other Custodial Rapes								772	875	1359	1160
Attempt to Commit Rape ⁷							4434	3944	3741	3800	3288

⁶ 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. Currently, Rape in Custody includes data for rape by police Personnel, by public servant, by member of armed forces, by management/staff of jail/remand home/place of custody, and by management/staff of hospital.

⁷ Introduced in 2014.

Murder with Rape/Gang-Rape								283	219	284	248
TYPE OF VIOLENCE	1955	1965	1975	1985	1995	2005	2015	2019	2020	2021	2022
HARASSMENT IN PUBLIC PLACES											
Street Sexual Harassment (Eve teasing IPC 509)					4689	9984	8685	6939	7065	7788	8972
Sexual Harassment in Public Transport							315	606	375	357	422
Voyeurism							838	1399	1260	1513	1451
Stalking							6266	8890	8512	9285	10116
WORKPLACE SEXUAL HARASSMENT											
Harassment at the Office and Places related to Work (under IPC 509)							833	505	485	418	419
Rape of Employees/Co-workers							557	-	-	-	-
SEXUAL HARASSMENT IN OTHER PLACES							7537	16750	15736	16328	16445
ACID ATTACKS							222	150	105	102	124
Attempt to Commit an Acid Attack							46	42	33	48	38
TRAFFICKING											
Procuration of Minor Girls (Sec. 366A IPC)							3087	3117	2471	2566	1827
Immoral Traffic (Prevention) Act					8447	5908	2641	1645	1294	1678	946
Importation of Girls					191	149	6	3	0	1	1
Human Trafficking ⁸ (Sec. 370 and 370A IPC)							1027	1334	646	1219	781

⁸ Gender neutral offence.

TYPE OF VIOLENCE	1955	1965	1975	1985	1995	2005	2015	2019	2020	2021	2022
CYBER CRIMES											
Cyber-crimes against Women (total)								8379	10405	10730	14409
Cyber-crime with Intent to Insult Modesty of Women							606	-	-	-	-
Cyber Blackmailing/Threatening (Sec 506, 503, 384 IPC R/W IT Act)								113	74	200	125
Cyber Pornography/Posting/Publishing Obscene Sexual Materials (Sec 67A/67B (Girl Child) of IT Act R/W IPC SLL)								1158	1655	1896	2251
Cyber Stalking/Cyber Bullying of Women (Sec 354D IPC R/W IT Act)								791	887	1172	1457
Defamation/Morphing (Sec 469 IPC R/W IPC and Indecent Rep of Women (P) Act)								61	251	276	385
Fake Profile (R/W IPC SLL)								289	354	225	179
Other Cyber-crimes against Women								5967	7184	6961	10012
CRIMES AGAINST WOMEN FROM SCHEDULED CASTES											
Assault on Women with Intent to Outrage her Modesty (Scheduled Castes)							2800	3375	3373	3724	4160
Insult to the Modesty of Women (Sec. 509) (SC)							58	143	144	157	226

TYPE OF VIOLENCE	1955	1965	1975	1985	1995	2005	2015	2019	2020	2021	2022
Kidnapping and abduction of women to compel her for marriage (SC)							455	357	394	309	408
Rape (SC)							2326	3486	3372	3870	4241
Attempt to Commit Rape (SC)							74	124	90	100	104
CRIMES AGAINST WOMEN FROM SCHEDULED TRIBES											
Assault on Women with Intent to Outrage their Modesty (ST)							818	880	885	881	1022
Insult to the Modesty of Women (Sec. 509) (ST)							12	24	24	35	64
Kidnapping and abduction of women to compel her for marriage (ST)							60	54	34	35	28
Rape (ST)							952	1110	1137	1324	1347
Attempt to Commit Rape (ST)							15	21	25	25	16
OTHER CRIMES AGAINST WOMEN											
Indecent Representation of Women					539	2917	40	23	12	28	28
Sexual Harassment in Shelter Homes for Women and Children								473	407	436	523

PART I: INTERSECTIONS OF GENDER- BASED VIOLENCE

1. GENDER-BASED VIOLENCE AGAINST DALIT AND ADIVASI PERSONS

Dalit women experience multiple layers of marginalisation owing to their caste, gender, and often class, and are disproportionately subjected to gender-based violence in the form of sexual exploitation, abuse, and harassment (SEAH).⁹ They are at risk of violence both by oppressor castes and within their own communities. Often, caste-based atrocities by oppressor castes are meant to be a demonstration of power, and sexual violence, including rape and gang rape, are systematically utilised as weapons to reinforce structural gender and caste hierarchies.¹⁰ Beyond sexual violence, Dalit women are also subjected to forced prostitution, human trafficking, domestic violence, and other discriminatory practices such as untouchability, bonded labour, denial of education and access to land and resources, and manual scavenging.¹¹

Similarly, for indigenous women, gender-based violence is shaped by a multitude of factors including discrimination, ongoing colonisation, militarism, racism, and social exclusion, and poverty-inducing economic and ‘development’ policies.¹² In India, Adivasi women have been at the forefront of activism against harmful development and discrimination projects, putting them at further risk of violent backlash by the state. This is especially true of those tribal regions where laws like the Armed Forces Special Powers Act (AFSPA) are in place, and sexual violence by state military forces are regularly invisibilised.¹³ Adivasi communities are overrepresented in the remotest parts of the country, and often have little access to nutrition, healthcare, education, or employment opportunities. Girls and women from these communities are susceptible to violence in the form of sexual exploitation, trafficking, and

⁹ Mangat, Sandeep & Gill, Aisha, K. 2024. “Negotiating between speech and silence as a form of agency: Understanding Dalit women's experiences of sexual violence in India *Women’s Studies International Forum* 105(102916).

¹⁰ Equality Now. 2021. “The Rape of India’s Dalit Women and Girls”. Accessed November 10, 2024, at https://www.equalitynow.org/the_rape_of_india_s_dalit_women_and_girls

¹¹ Ramalingam, Thilagam. “Caste based gender violence – Dalit women’s security and access to justice”. *OHCHR*. Accessed November 10, 2024, at <https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/MinorityIssues/Session7/item6/AssignedSpeakers/MsThilagamRamalingam.doc>

¹² Sharma, Kriti. 2018. “Mapping Violence in the Lives of Adivasi Women: A Study from Jharkhand”. *Economic and Political Weekly* 53(42): 44-52.

¹³ Baker, Jo. “Sisters in Crisis: Violence against women under India’s Armed Forces Special Powers Act”. Accessed November 10, 2024 at <https://www.jobakeronline.com/wp-content/uploads/2014/03/Violence-Against-Women-under-Indias-AFSPA-J-Baker.pdf>

bonded labour. Additionally, other forms of violence targeting women, such as witch-killing and witch-blaming, are still found in different forms in some regions of Jharkhand.¹⁴

Numerous cases of brutal violence against women from marginalised communities, from the cases of rape of Mathura in 1972 and Bhanwari Devi in 1992, Thangjam Manorama's rape and murder in 2004, the Khairlanji rape and massacre in 2006 to the Unnao, and the Hathras cases in 2017 and 2020 respectively, make it clear that the lens of caste and tribal identities are imperative to the analysis of gender-based violence in India.¹⁵

Another form of gender-based violence to consider when it comes to the intersection of caste and gender is sexual violence faced by Devadasi women. Historically, devadasi women were considered sacred and said to be servants of god and married to god. As a part of this role, they would perform various functions in the temple and were known to offer sexual services to patrons.¹⁶ Devadasis were often recruited from non-brahmin castes and Dalit castes, in which Devadasis from non-brahmin castes would perform classical dance and music and those from Dalit castes would perform folk dances during festivities of the temple. The Devadasi system of pledging young girls into temples was outlawed in 1988; however, the practice continues to be prevalent in some SC communities. The U.S Department of State 2022 report highlights that Devadasi women are still victims of rape and sexual abuse at the hands of priests and temple patrons and are further trapped into sex trafficking.¹⁷

It is also important to note that there are very high acquittal rates under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (PoA Act). The cases mentioned later in this chapter have upheld the convictions for rape and assault under the

¹⁴ Burgos, Annisa. 2022, January 26. "The multi-layered abuse of Adivasi women in India". Upstream Journal. Accessed November 10, 2024, at <https://upstreamjournal.org/adivasi-women/>

¹⁵ More details on these cases can be found here: Pandey, Geeta. 2017, March 17. "Bhanwari Devi: The rape that led to India's sexual harassment law" *BBC News*. Accessed November 10, 2024, at <https://www.bbc.com/news/world-asia-india-39265653> ; Dasarathi, Amala. 2017, March 09. "Remembering Thangjam Manorama | #IndianWomenInHistory". *Feminism in India*. Accessed November 10, 2024, at <https://feminisminindia.com/2017/03/09/thangjam-manorama-essay/> ; Gupta, Shivangi. 2019, August 05. "The Khairlanji Massacre Still Continues To Haunt The Brahmanical State". *Feminism in India*. Accessed November 10, 2024, at <https://feminisminindia.com/2019/08/05/khairlanji-massacre-haunt-brahmanical-state/> ; 2019, August 02. "Unnao rape case: a timeline". *The Hindu*. Accessed November 10, 2024, at <https://www.thehindu.com/news/national/unnao-rape-case-a-timeline/article28794509.ece> ; Pandey, Geeta. 2021, September 19. "Hathras rape case: Prisoners in their own home, lives on hold, a village divided". *BBC News*. Accessed November 10, 2024, at <https://www.bbc.com/news/world-asia-india-58706861>

¹⁶ Geetha, K. A. (2021). "Entrenched Fissures: Caste and Social Differences among the Devadasis". *Journal of International Women's Studies*, 22(4), 87-96.

¹⁷ 2022, Country Reports on Human Rights Practices, Bureau of Democracy, Human Rights and Labour. Accessed on 18 November 2023 at <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/india>.

Indian Penal Code (IPC) and some under the Protection of Children from Sexual offences Act (POCSO) Act. The judgements have, unfortunately, customarily set aside and not recognised convictions under the PoA Act in cases of sexual violence against Scheduled Castes and Scheduled Tribes. The reasoning in all these cases was that caste was not necessarily a factor in the assaults. The Courts, through precedents, have placed a high burden of proof in order to convict under the PoA Act.¹⁸ This is why the recognition of intersectionality is important, as it allows for the recognition of the layers of marginalisation and power dynamics associated with intersecting identities. Consistently setting aside cases under the PoA Act erases caste-based suppression and reinforces narratives of the misuse of the PoA Act.

DATA ON GBV AGAINST SCHEDULED CASTES AND SCHEDULED TRIBES

The NCRB's Crime In India report provides disaggregated data on some crimes and atrocities against Scheduled Castes and Scheduled Tribes. Data from the 2021 and 2022 reports show that there has been a marked increase in reported cases of GBV against SCs and STs in almost all categories. This could be due to an increase in crimes against SCs and STs, an uptick of reporting, or both.

	Crimes against Scheduled Castes		Crimes against Scheduled Tribes	
	2021	2022	2021	2022
<i>Acid Attack</i>	2	3	1	0
<i>Assault on Women with Intent to Outrage her Modesty</i>	3724	4160	881	1022
<i>Sexual Harassment</i>	673	760	158	166
<i>Assault or use of Criminal Force on Women with intent to Disrobe</i>	336	312	35	41
<i>Voyeurism</i>	32	32	5	6

¹⁸ Kothari, Jayna. 2021, June 01. 'Recognising caste-based violence against women'. *The Hindu*. Accessed on 15 November 2023 at <https://www.thehindu.com/opinion/op-ed/recognising-caste-based-violence-against-women/article34692073.ece>.

<i>Stalking</i>	216	212	58	55
<i>Insult to the Modesty of Women</i>	157	226	29	64
<i>Kidnapping and Abduction of Women to Compel her Marriage</i>	309	408	35	28
<i>Procurator of Minor Girls</i>	21	24	9	3
<i>Rape</i>	3870	4241	1324	1347
<i>Attempt to Commit Rape</i>	100	104	25	16

Source: National Crime Records Bureau, Crime in India 2021 and 2022 reports, accessed October 3, 2023, at <https://ncrb.gov.in/crime-in-india-year-wise.html>

CONSTITUTIONAL SAFEGUARDS FOR SCHEDULED CASTES AND SCHEDULED TRIBES

The Indian Constitution contains special provisions for the protection of Scheduled Castes and Scheduled Tribes (hereafter referred to as SC and STs). While all other Indian laws against gender-based violence are applicable, a separate law is also in place for atrocities committed against Dalit and Adivasi persons.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Amended last in 2015 and hereinafter referred to as the POA Act): The Act prohibits the commission of a wide range of discriminatory offences against members of the Scheduled Castes and Scheduled Tribes and establishes special courts for the trial of such offences and the rehabilitation of victims. All offences under the POA Act are non-bailable and the Court's consideration is necessary for allowing bail. The 2018 amendment introduced section 18A, which states that an investigating officer will not require the approval of any authority to arrest a person accused of such an offence, and it provides that a preliminary enquiry will not be required for the registration of a FIR against a person accused under the Act. The amendment, like the original Act, clarifies that the provision of anticipatory bail, under Section 438 of the Code of Criminal Procedure, 1973, shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court.¹⁹

¹⁹ PRS India. 2018. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Bill, 2018. Accessed November 10, 2024, at <https://prsindia.org/billtrack/the-scheduled-castes-and-the-scheduled->

Additionally, the safeguards under Articles 15(4), 17, 23, 25(2b), and Article 16(4), 16(4A) and 335 pertain to the protection in the realms of affirmative action, social, economic, and political.²⁰ The following are relevant articles related to issues of GBV faced by SC/STs:

- Article 15(4) empowers the state to make special provisions that uplift members of Backward Classes and Scheduled Classes both socially and educationally.
- Article 17 of the Constitution abolished untouchability and made its practice illegal. The parliament enacted the Untouchability (Offences) Act in 1955 to punish the practice of untouchability. Later, this was amended to the Protection of Civil Rights Act, 1976, and then to the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
- Article 23 prohibits the trafficking of human beings and forced labour. A significant number of persons forced into bonded labour has been persons from the SC and ST communities.

IN RECENT NEWS

Violence against Dalit and Adivasi women and children is alarmingly common, with news reports detailing cases almost every day. In recent years, cases such as Unnao and Hathras, have led to public outrage. According to a 2021 report by the All India Dalit Mahila Adhikar Manch (AIDMAM), the major forms of violence against Dalit women include rape, gangrape, attempt to rape, sexual assault, sexual harassment, murder (accompanied by rape, gangrape or kidnapping), witch-hunting, mass attacks with physical assault, loss of lives and property, and social boycott. AIDMAM's legal intervention in 81 cases of atrocities on Dalit women and girls evidenced a delay in registration of FIRs, discouragement or refusal by police to file complaints at the first instance, delay by the police in producing the survivor before the judicial magistrate in recording the statement, false counter cases filed against victims of caste and gender-based violence, and survivors being denied by the administration. The report also pointed out that in many cases, there was no effective implementation of provisions of the SC/ST (Prevention of Atrocities) Act.²¹ Another report in 2022, led by the National Council of Women Leaders, studied 50 cases of sexual violence against Dalit women between 2015-2021. The report systematically analysed the patterns of violence perpetrated by men of dominant caste groups, systemic barriers and delays faced by victims-survivors and their families within the

[tribes-prevention-of-atrocities-amendment-bill-2018](#)

²⁰ Mukhopadhyay, Shreya. 2020. "The Continuing Human Rights Violation of 'Dalits' in India: A Discrepancy between Legislative Intent and Subsequent Implementation". *International Journal of Law Management & Humanities*, 3: 967-984.

²¹ AIDMAM. 2021. *Dalit Women Rise for Justice: Status Report 2021*. Accessed November 10, 2024, at <https://gcap.global/wp-content/uploads/2021/04/AIDMAM-report-final-cutmarks.pdf>

justice system and subsequent challenges, access to support services for victims-survivors and their families, and also highlighted major efforts by Dalit women activists to enable the justice process and recommendations to the Central and state governments.²²

A state-wide study by the Tamil Nadu Citizens Vigilance and Monitoring Committee on the implementation of the SC/ST (Prevention of Atrocities) Act in Tamil Nadu observed that there has been a 11.4% rise in crimes against scheduled communities in the state, between 2019 and 2020. Between 2010 and 2020, cases of rape rose by 1150%—from one every 33 days to one every 3 days. Additionally, more young girls are raped than adult women; for instance, of the 126 cases of rape in 2020, 81 (66%) victims were children. The report also highlights the abysmal rate of convictions under the Act in Tamil Nadu.²³

CASES IN RECENT NEWS

The Unnao district in Lucknow has been in the national headlines following several cases of gang rape and subsequent murders of the women. In December 2019, a rape survivor who was on her way to attend a hearing at court in relation with her case, was burnt alive by five men, two of whom were accused in the case.²⁴ On September 15, 2022, the bodies of two Dalit sisters, aged 15 and 17, were found hanging from a tree in the district of Lakhimpur-Kheri, Uttar Pradesh. The postmortem report revealed the rape and strangulation of the girls. On December 13, 2022, a 13-year-old Dalit girl who was 6 months pregnant was the victim of a gang rape by five men who had attacked her at a coffee estate at Karnataka's Hassan District. The police in this case have filed complaints using relevant provisions of the POCSO Act, the POA Act and the IPC.²⁵

²² National Council of Women Leaders. 2022. *Caste Based Sexual Violence and State Impunity*. Accessed November 10, 2024, at <https://www.ncwl.org.in/ebook/caste-based-sexual-violence-and-state-impunity/>

²³ Tamil Nadu Citizens Vigilance and Monitoring Committee. 2021. *The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989: Review of implementation in Tamil Nadu 2020*. Accessed October 4, 2024 at <https://www.cvmc.in/wp-content/uploads/2022/11/St-Govt-TN-Annual-Report-2021.pdf>

²⁴ Sagar. 2019, December 07. "Gang raped, filmed, blackmailed and murdered: The long and tortured road of the Unnao rape victim". *The Caravan*. Accessed October 4, 2023, at <https://caravanmagazine.in/crime/gang-raped-filmed-blackmailed-murdered-long-tortured-road-unnao-rape-victim>.

²⁵ Sabrangindia. 2022, December 15. "Dalit minor allegedly gang-raped multiple times in Karnataka; 4 booked". Accessed October 4, 2023, at <https://sabrangindia.in/dalit-minor-allegedly-gang-raped-multiple-times-karnataka-4-booked/>.

RECENT CASE LAW RELEVANT TO GBV IN THE SC AND ST COMMUNITY

*Muzaffarnagar Gang Rape case (2023)*²⁶

In 2017, a minor Dalit girl, aged 15, was abducted from her home and gang-raped by five men. A special POCSO Court handed life imprisonment for the 4 men, while the case of the fifth accused, who was a minor at the time of the attack, is pending before the juvenile justice board. They were charged under the POCSO Act and relevant sections under the IPC.

*Patan Jamal Vali v. State of Andhra Pradesh (2021)*²⁷

This case relates to the rape of a blind 22-year-old Dalit woman and is an important case that draws attention to the intersectionality of caste, gender, and disability. The trial court and High Court in this case convicted the accused of rape under Section 376 of the IPC and under Section 3(2)(v) of the PoA Act. The accused was sent to serve life imprisonment. The Supreme Court however, set aside the conviction under the PoA act, and only upheld the conviction of rape under the IPC.²⁸ This judgment is significant as it recognised the intersection of disability, caste, and gender and the way in which multiple intersections of oppression operate in unison. Justice Dhananjaya Y Chandrachud and Justice M R Shah further laid down the directives of the Justice Verma Committee on enabling an inclusive environment for women with disabilities.

*Unnao Rape Case (2019)*²⁹

In this case of the rape of a Dalit girl and related murders, detailed in the later chapter titled *Rape*, ex-BJP MLA Kuldeep Singh Sengar was convicted of both the rape of the 17-year-old girl and culpable homicide and criminal conspiracy in her father's murder. He was convicted under Sections 376 (rape), 363 (kidnapping), 366 (kidnapping or inducing a woman to compel for marriage) of the Indian Penal Code and Sections 5(c) (public servant that commits aggravated penetrative sexual assault) and 6 of POCSO, and later in March under

²⁶ Dilshad, Mohd. 2023, July 22. "4 handed lifer for 2017 gang rape of minor Dalit girl". *Times of India*. Accessed October 3, 2023, at <https://timesofindia.indiatimes.com/city/agra/4-handed-lifer-for-2017-gang-rape-of-minor-dalit-girl/articleshow/102027164.cms?from=mdr>.

²⁷ Criminal Appeal No. 452 of 2020 (Arising out of SLP (Crl) No. 1795 of 2021).

²⁸ S. M., Abinaya. 2022. "Case Commentary of Patan Jamal Vali versus the State of Andhra Pradesh." *Indian Journal of Law and Legal Research* 3(2): 1-4.

²⁹ Chaudhuri, Nilashish. 2019, December 20. "Unnao Case: Court Sentences Former BJP Member Kuldeep Singh Sengar to Life Term till End Of Life For Rape Of Minor". *LiveLaw.in*. Accessed November 10, 2024 at <https://www.livelaw.in/top-stories/unnao-case-court-sentences-former-bjp-member-kuldeep-singh-sengar-to-life-sentence-till-end-of-life-for-rape-of-minor-150980>

Sections 299 (culpable homicide) and 120B (criminal conspiracy) of the IPC. He is currently serving a life sentence and was ordered to pay a fine of Rs. 25 lakhs.

*Asharfi v. State of UP (2017)*³⁰

In this case, two men broke into the home of a Dalit woman and brutally raped her. The men fled upon seeing the neighbours who had arrived upon hearing the commotion. The Court held the conviction of rape under Section 376 of the IPC but ruled that there was not sufficient evidence that the accused had committed rape on the ground of the victim belonging to the SC community.

*Kailas and Ors. v. State of Maharashtra (2011)*³¹

A woman belonging to the ST community was stripped naked, beaten, and paraded down the village by the accused. The accused in this case were convicted under the relevant provisions of the IPC but were not convicted under the PoA Act due to the technicality of the woman not furnishing her caste certificate.

³⁰ (2018) 1 SCC 742

³¹ (2011) 1 SCC 793

2. GENDER-BASED VIOLENCE AGAINST LGBTQIA+ PERSONS

Sexual violence against people belonging to LGBTQIA+ communities does not receive adequate news coverage in India, even though global estimates suggest that these communities are at much greater risk of such violence than cis-gendered and heterosexual persons.³² Until recently, Section 377 of the Indian Penal Code (IPC), 1860, prohibited consensual sex between gay individuals and deemed it an “unnatural offence”. There was no separate provision for rape, as any sexual activity between men were considered a criminal offense. Coming to the transgender community, not only do members of the community face sexual violence with no legal recourse, but law enforcement officials are often perpetrators of the violence.³³

Queer populations are marginalised in all walks of life due to deep-rooted homophobia and transphobia. They are especially vulnerable in police custody and in prisons³⁴, and in addition to other motives of sexual assault, they are subjected to hate crimes and corrective rape.³⁵ Other forms of corrective violence include efforts to “cure” queerness or to suppress its expression through a range of interventions including medication, electroconvulsive therapy, hormone administration, physical assault, forced surgery on intersex people, enforced dress codes, confinement within the home, and several others.³⁶ Transgender populations face additional violence in the form of refusal to accept their chosen gender

³² Human Rights Campaign. Sexual Assault and the LGBTQ Community. Accessed November 10, 2024, at <https://www.hrc.org/resources/sexual-assault-and-the-lgbt-community>

³³ Mishra, Jigyasa. 2022, July 07. “Raped, Mocked by Police for Seeking Justice: India’s Rape Laws Do Not Cover Transwomen”. *Article 14*. Accessed November 10, 2024 at <https://article-14.com/post/raped-mocked-by-police-for-seeking-justice-india-s-rape-laws-do-not-cover-transwomen--62c65919a04a3> ; Bhattacharjee, Puja. 2022, June 22. “4 Years After SC Decriminalised Homosexuality, Police Violence Against LGBTQIA+ People Hasn’t Stopped”. *Article 14*. Accessed November 10, 2024, at <https://article-14.com/post/4-years-after-sc-decriminalised-homosexuality-police-violence-against-lgbtqia-people-hasn-t-stopped-629820915541e>

³⁴ Stop Violence Against Women. 2013. Custodial Sexual Assault. Accessed November 10, 2024, at https://www.stopvaw.org/custodial_sexual_assault#

³⁵ Corrective rape is a hate crime in which someone is raped because of their perceived sexual orientation or gender identity. The common intended consequence of the rape, as seen by the perpetrator, is to turn the person heterosexual or to enforce conformity with gender stereotypes.

³⁶ Tenneti, Suchaita. 2019. *Curative Violence against LGBT+ People in India: Key Issues and Perspectives*. Prajnya Trust.

identity, deadnaming³⁷, stereotyping, discrimination (for example by medical personnel³⁸), and various forms of dehumanisation. While most of these cases go unseen and unheard of, the few that do get reported do not find redressal in the justice system of India.³⁹

The Transgender Persons (Protection of Rights) Act in India is filled with ambiguities and pitfalls that make the rights enshrined under the Act harder to achieve. For instance, the Act recognises the right to the self-perceived gender identity of a transgender person under Section 6; however, the mandate of “surgery” to identify as either male or female is conflicting. The ambiguous provisions of the Act make the right to self-identification, upheld in the NALSA judgment, and confirmed by the Ministry of Health and Family Welfare who stated that gender identity “is not constituted by anatomy, especially appearance of genitals”, much harder to achieve.⁴⁰

LAWS RELATED TO LGBTQIA+ PEOPLE IN INDIA

Until recently, Section 377 of the Indian Penal Code, a British-era legislation, criminalised homosexuality as being “against the order of nature”. In 2018, the Supreme Court decriminalised Section 377, with a five-judge bench invoking the right to sexual privacy, dignity, right against discrimination, and freedom of expression.⁴¹ However, despite this judgement, sexual violence against the community has been allowed to continue with impunity. This is mainly because the laws that deal with rape in India continue to recognise rape as only being committed by a male perpetrator against a female victim. The question of gender neutrality came up for the first time in the case of *Sudesh Jhaku v. KC Jhaku*⁴², where the Delhi Court opined that the protection of the law against sexual assault must be

³⁷ Deadnaming is the practice of calling a transgender person by their birth name when they have changed their name as part of their gender transition. It is considered to be a form of transphobic violence by invalidating their chosen identity.

³⁸ Paliwal, Ankur. 2017, November 2. “‘How could you have been raped?’: New study on how India’s transgender people face bias from doctors”. *Scroll.in*. Accessed November 10, 2024, at <https://scroll.in/pulse/856285/transphobia-among-indian-doctors-study-aims-to-uncover-reasons-for-bias-against-transgender-people>

³⁹ Bose, Rakhi. 2022, September 23. “Why Safety Is Still A Distant Shore For Transgender Persons In India”. *Outlook India*. Accessed November 10, 2024 at <https://www.outlookindia.com/national/why-safety-is-still-a-distant-shore-for-transgenders-in-india-magazine-223472>

⁴⁰ Bhattacharya Shamayeta, Ghosh Debarchana, & Purkayastha Bandana. 2022. “‘Transgender Persons (Protection of Rights) Act’ of India: An Analysis of Substantive Access to Rights of a Transgender Community”. *Journal of Human Rights Practice* 14(2):676-697

⁴¹ AIR 2018 SC 4321.

⁴² 1998 CriLJ 2428, 62 (1996) DLT 563, 1996 (38) DRJ 22.

extended to men as well. The Criminal Law (Amendment) Bill of 2012 proposed a legislative change that would provide for a gender-neutral definition of rape. However, it did not pass.⁴³

In 2014, the NALSA judgment granted recognition to transgender persons as falling under the ambit of Article 14 of the Indian Constitution, thus granting equality to members of the transgender community. It further stated that sexual assault, including molestation, rape, forced anal and oral sex, gang rape, and stripping is being committed with impunity, and the state must ensure justice to these marginalised communities. Similarly, in 2018, the Supreme Court, while reading down Section 377, recognised that transgender persons face abuse and sexual assault, often at the hands of law enforcement officials. Yet, discriminatory laws still prevent the community from getting justice. One of the main criticisms, for instance, against the *Transgender Persons (Protection of Rights Act), 2019*, is that while it recognises sexual abuse against transgender people as a punishable offense, it is only punishable with up to two years of imprisonment, thus making it a “petty offence” and warranting much lighter punishment than what is sanctioned for cis-gendered women under the Indian Penal Code. Moreover, it does not define the acts that constitute sexual offences, making it more difficult for transgender persons to report such crimes. The act therefore fails to provide judicial protection to transgender persons who are victims of sexual abuse, thus denying equal protection in law and downplaying the graveness of sexual offences committed against a particular section of the population.⁴⁴ Accordingly, in October 2020, the Supreme Court of India heard a petition seeking equal punishment for sexual crimes against transgender victims. The court sought a response to the petition from India's Ministry of Law and Justice and the Ministry of Social Justice and Empowerment.

POLICIES RELATED TO LGBTQIA+ PEOPLE IN INDIA

Government Initiatives

SMILE: The Ministry of Social Justice and Empowerment launched a scheme called SMILE (Support for Marginalised Individuals for Livelihood and Enterprise) on February 12, 2022. This is an umbrella scheme that comprises several initiatives for the welfare of the transgender community, such as rehabilitation, use of medical facilities for gender-reaffirming surgeries, education, skill development, and counselling with the support of

⁴³ Chhabaria, Rishabh, Tripathi, Abhigyan. 2020, May 23. “Transgenders and Rape Law: Is equal protection of law still a pipe dream?”. *The Leaflet*. Accessed November 10, 2024, at <https://www.theleaflet.in/transgenders-and-rape-law-is-equal-protection-of-law-still-a-pipe-dream/#>

⁴⁴ Banerjee, Ajita. 2019, November 26. “Why India’s transgender people are protesting against a Bill that claims to protect their rights”. *Scroll.in*. Accessed November 10, 2024 at <https://scroll.in/article/944882/why-indias-transgender-people-are-protesting-against-a-bill-that-claims-to-protect-their-rights>

state governments, NGOs, voluntary organisations, and other local urban bodies. They are also considering setting up ‘Garima Grehs’ in each state, which will serve as a shelter to protect transgender persons emancipated from their families on account of their gender identity.⁴⁵

Ayushman Bharat Yojna: Health insurance is available for transgender persons who are seeking gender-reaffirming surgery through the Ayushman Bharat TG Plus Scheme under SMILE⁴⁶. Each transgender person can avail themselves of an insurance cover of Rs. 5 lakh per year.

Swadhar Greh Scheme: This is a central government programme that offers rehabilitative services for cis and transgender women in challenging situations.

National Backward Class Finance and Development Corporation (NBCFDC): The Ministry of Social Justice and Empowerment granted transgender persons Rs. 1500 during COVID-19.

The National Portal for Transgender Persons: This portal was launched in 2020 to facilitate the process of transgender persons obtaining a certificate of identity virtually. The certificate is necessary to obtain any social welfare measure for government initiatives, such as the SMILE scheme.⁴⁷

National Education Policy (NEP), 2020: This document looks into the factors of marginalisation that transgender children face in the education system in India, and the policy aims to assist transgender children in accessing their right to an education by minimising barriers. This document identifies transgender children to be part of socio-economically disadvantaged groups. The NEP has further constituted the gender-inclusion fund that will promote the needs of girls and transgender students to access education. The fund is available to states to implement priorities that are set out by the central government.⁴⁸ This is relevant as transgender children often face barriers in accessing education and are disowned by their families. As a result of the lack of education, the access

⁴⁵ Support for Marginalised Individuals for livelihood and Enterprise guidelines, accessed 12 October 2023 at <https://grants-msje.gov.in/display-smile-guidelines>

⁴⁶ Support for Marginalised individuals for livelihood and enterprise through the National Portal for Transgender persons, Accessed 13 October 2023 at <https://transgender.dosje.gov.in/Applicant/Registration>

⁴⁷ India Today. 2021, May 24. “Covid-19: Centre announces Rs 1500 assistance for transgenders. Here’s how to apply”. *India Today*. Accessed October 12, 2023, at <https://www.indiatoday.in/coronavirus-outbreak/story/covid-19-centre-announces-rs-1500-assistance-for-transgenders-here-s-how-to-apply-1806448-2021-05-24>.

⁴⁸ Maherchandani, Ajay. 2022, December 17. “Inclusion of Queer Persons and NEP 2020”. *Economic and Political Weekly* 57(51).

of transgender persons to employment and social integration is affected.⁴⁹ Trans persons without education face higher rates of sexual harassment and violence.

NISHTHA (National Initiative for School Heads' and Teachers' Holistic Advancement): This is a program that was started to address various training requirements. This training programme includes a gender sensitisation module in the context of a classroom environment.⁵⁰

State Initiatives

Tamil Nadu has been proactive in working towards the upliftment of the transgender community in India. Selected government hospitals in the state provide free gender-reaffirming surgeries as well as scholarships and free housing facilities. Through the Tamil Nadu Transgender Welfare Board, the government had also appointed procurers to make the issuance of identity cards a more seamless process to help transgender persons access welfare schemes.⁵¹

Karnataka has created welfare boards to cater to the upliftment of the transgender community. A Mythri pension scheme, which grants a monthly sum for people belonging to the transgender community who fall below an annual income of Rs. 17,000 if located in urban areas and a sum of less than Rs. 12,000 in rural areas, was also introduced.

In Delhi, transpersons living in the city for more than three years are eligible for a monthly stipend of Rs. 1000.

West Bengal set up a welfare board in 2015 and recognised transgender people as a third sex. They have also catered for gender-reaffirming surgery facilities in several government hospitals.

Kerala, following the Supreme Court's verdict in NALSA in 2014, was the first state to implement the transgender policy. A research paper evaluating the impact of the policy from 2015 to 2022 states that the policy has helped create awareness of the transgender community, which has allowed many of them to come out. However, there are also negative procedural drawbacks to the policy. For instance, during COVID-19, many shelters for the

⁴⁹ Raman, Shreya. 2021, June 11. 'Denied Visibility In Official Data, Transgender Indians Can't Access Benefits, Services'. Accessed on 5 November, 2023, at <https://www.indiaspend.com/gendercheck/denied-visibility-in-official-data-millions-of-transgender-indians-cant-access-benefits-services-754436>.

⁵⁰ NISHTHA: National Initiative for School Heads' and Teachers' Holistic Advancement. Accessed November 23, 2024 at <https://itpd.ncert.gov.in/mod/page/view.php?id=504>

⁵¹ Iqbal, Md Aatif. 2022. "Access to Justice for Rights of Transgender." *Indian Journal of Integrated Research in Law* 2(2): 1-14.

transgender community were closed down due to mismanagement, and the paper further stated that the shelter homes only offered minimal stays. This resulted in the rise of domestic violence against the transgender community when they were forced to return home. Some of the schemes implemented, even though they may seem revolutionary on paper, are often impractical. For example, most of the 23 staff of the Kochi Metro Rail belonging to the transgender community quit due to very low salaries that did not meet their basic requirements.

CASES IN RECENT NEWS

In July 2023 it was reported that Tamil Nadu is planning for a new LGBTQIA+ policy. The Director of Social Welfare will head the drafting committee and will comprise of ten other members including representatives of the LGBTQIA+ community, activists, and one lawyer. However, the composition of the committee has been criticised for not having enough representation from the transgender community.⁵²

Eight men were accused of gang-raping a transgender woman in Andhra Pradesh in July 2022. All eight were arrested.⁵³

In August 2022, the National Medical Commission (NMC) released a directive warning doctors that offering or prescribing conversion therapy to LGBTQIA+ youths will be deemed “professional misconduct”, and called to take disciplinary action against practitioners offering such therapy. Earlier in February 2022, Dr Prasad Dandekar, a radiologist and the head of Health Professionals for Queer Indians (HPQI) wrote to the Indian Psychiatric Society (IPS) about one of its members promoting conversion therapy online.⁵⁴

In July 2021, the Karnataka government introduced a 1 percent reservation for the transgender community in government jobs.⁵⁵

⁵² Deccan Herald. Sivapriyan. 2023, July 19. “Tamil Nadu Plans LGBTQIA+ Policy”. *The Deccan Herald*. Accessed October 11, 2023, at <https://www.deccanherald.com/india/tamil-nadu-plans-lgbtqia-policy-1238347.html>.

⁵³ Express News Service. 2022, July 22. “Trans woman gang-raped in Andhra Pradesh's Kadapa, eight arrested”. *The New Indian Express*. Accessed November 10, 2022, at <https://www.newindianexpress.com/states/andhra-pradesh/2022/jul/22/trans-woman-gang-raped-in-andhra-pradeshs-kadapa-eight-arrested-2479352.html>

⁵⁴ DH Web Desk. 2022, September 06. “Offering 'conversion therapy' will be deemed 'professional misconduct' by doctor, warns NMC”. *Deccan Herald*. Accessed November 10, 2024 at <https://www.deccanherald.com/national/offering-conversion-therapy-will-be-deemed-professional-misconduct-by-doctor-warns-nmc-1142679.html>

⁵⁵ Venkatesan, V. 2021, July 22. “Karnataka Becomes the First State to Reserve Jobs for Transgender Persons”. *The Wire*. Accessed November 10, 2024 at <https://thewire.in/lgbtqia/karnataka-first-state-reserve-jobs-transgender-persons>

In April 2020, the Ministry of Personnel issued a notification for the modification of relevant examination rules to allow for a separate category for transgender persons for central government jobs.⁵⁶

RECENT CASE LAW RELEVANT TO THE LGBTQIA+ COMMUNITY

*S Sushma v. Commissioner of Police (2021)*⁵⁷

On June 7, 2021, Tamil Nadu became the first state to ban conversion therapy in India, including corrective rape. The ruling was made by Justice N Anand Venkatesh in the Madras High Court while hearing the case of a lesbian couple from Madurai who had eloped to Chennai and were being harassed by their families. The families had filed police complaints, following which the petitioners approached the court for protection. Upholding the rights of LGBTQIA+ individuals under Article 21 of the Constitution, Justice Venkatesh's order prohibits "any attempts to medically cure or change the sexual orientation of LGBTQIA+ people to heterosexual or the gender identity of transgender people to cisgender". The court further stated that action would be taken against professionals who carried out any form of conversion therapy.⁵⁸

*Navtej Singh Johar v. Union Of India (2018)*⁵⁹

The Supreme Court was asked to determine the constitutionality of Section 377 of the Indian Penal Code, a law which, among other things, criminalised homosexual acts as an "unnatural offence". While the statute criminalises all anal sex and oral sex, including between opposite-sex couples, it largely affected same-sex relationships. On September 6, 2018, the court unanimously declared the law unconstitutional "in so far as it criminalises consensual sexual conduct between adults of the same sex".

⁵⁶ PTI. 2020, April 21. "'Transgender' to be added as separate category in job applications: Centre to departments". *India Today*. Accessed November 10, 2024 at <https://www.indiatoday.in/education-today/news/story/transgender-as-separate-category-in-job-applications-centre-divd-1669255-2020-04-21>

⁵⁷ W.P.No.7284 of 2021. Accessed November 10, 2024, at https://www.livelaw.in/pdf_upload/madras-hc-judgment-on-lgbtqia-rights-394610.pdf

⁵⁸ Firstpost Staff. 2021, June 9. "Explainer: As Madras HC prohibits conversion therapy, a look at history of traumatic 'cures' for queer individuals". *Firstpost*. Accessed November 10, 2024, at <https://www.firstpost.com/india/explainer-as-madras-hc-prohibits-conversion-therapy-a-look-at-history-of-traumatic-cures-for-queer-individuals-9699261.html>

⁵⁹ Navtej Singh Johar vs Union Of India Ministry Of Law And ... 2018. Accessed October 15, 2024, at <https://indiankanoon.org/doc/168671544/>

*Deepika Singh v. Central Administrative Tribunal (2021)*⁶⁰

The Supreme Court decided in favour of a woman who was denied maternity leave because she had two non-biological children through her marriage and the policy was that maternity leave would only be granted for two deliveries. Here the Court recognised ‘atypical’ families and included within its definition queer marriages which could not be placed within the confines of traditional marriages.

*Grace Banu Ganeshan & Ors. v. Union of India & Anr (2020)*⁶¹

In this case the petitioners argued that the provisions of the act relating to the certificate of gender identity being limiting as transgender persons only have the right to be recognised as ‘transgender’ and cannot self-identify as a male or female. Under Sections 5 and 6 of the Act, identity cards will only be issued based on documents. Further, Section 7 of the Act violates the right to self-identify one’s gender by making it contingent on medical surgery.

*Joseph Shine v. Union of India (2019)*⁶²

The Supreme Court in this case held that the right to sexual autonomy and privacy are protected rights under the Indian Constitution.

*Shakti Vahini v. Union of India (2018)*⁶³

In this case, the Court recognised the right to choose one’s partner as a fundamental right under Articles 19 and 20 of the Constitution. The court further issued directives to Khan Panchayats to protect persons who marry even without the approval of the panchayat.

*Anamika v. UOI and Ors (2018)*⁶⁴

The petitioner, a transgender woman, was harassed by men at her university. The police refused to file an FIR stating that the provisions of Section 345A of the IPC do not apply to transgender women. The High Court reached a decision stating that a complaint by a

⁶⁰ 2021 SCC P&H 4574.

⁶¹ W.P. (Civil) No. 406/2020.

⁶² (2019) 3 SCC 39.

⁶³ (2018) 7 SCC 192.

⁶⁴ W.P. (CRL) 2537/2018.

transgender person can be registered under 354A and by the decision of the Supreme Court in the case of NALSA.⁶⁵

*Justice K. S. Puttuswamy v. Union of India (2017)*⁶⁶

Justice K. S. Puttuswamy in the Supreme Court of India held that “sexual orientation is an essential attribute of privacy. Discrimination against an individual based on sexual orientation is deeply offensive to the dignity and self-worth of the individual.” This was a landmark judgment that held that the right to privacy is protected as a fundamental constitutional right under Articles 14, 19, and 21 of the Constitution of India. It explicitly overrules previous judgments of the Supreme Court in *Kharak Singh v. State of UP* and *M.P Sharma v. Union of India*⁶⁷, which had held that there is no fundamental right to privacy under the Indian Constitution. This judgment paved the way for the eventual decriminalisation of homosexuality in India in 2018.

⁶⁵The Leaflet. “Transgender #MeToo: Delhi High Court affirms protection under Section 354A, IPC”. Accessed October 12, 2023, at <https://theleaflet.in/transgender-metoo-delhi-high-court-affirms-protection-under-section-354a-ipc/>

⁶⁶ (2017) 10 SCC 1.

⁶⁷ AIR 1963 SC 1295.

3. GENDER-BASED VIOLENCE AGAINST ELDERLY PERSONS

Old age provides yet another dimension to gender-based violence, as elderly people can be targeted due to the vulnerabilities associated with their age, and perpetrators are usually those in some sort of position of power over them. 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’.⁶⁸ 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 that are abusive to elders.

Elder abuse can often have an element of gender-based violence. In a study by Agewell Research and Advocacy Centre in India, 50.59% of the 50,000 participants stated that elderly women faced marginalisation or isolation due to gender discrimination. According to the same study, almost one-fourth of the 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 were violated more in comparison to elderly men.⁶⁹ Despite this, sexual violence against elderly women is an under-researched phenomenon. The issue is further complicated due to the conflation of sexual violence with other types of violence in existing research.⁷⁰ This kind of violence may occur in settings such as nursing homes or other healthcare centres, and vulnerability of elderly women increases due to dementia and other age-related health concerns.⁷¹

⁶⁸ World Health Organisation. 2024, June 15. Abuse of Older People. Accessed November 11, 2024 at <https://www.who.int/news-room/fact-sheets/detail/elder-abuse>

⁶⁹ Agewell Foundation. 2015, January. Gender Discrimination among Older Women in India. Accessed November 11, 2022 at <https://www.agewellfoundation.org/pdf/reports/GENDER%20DISCRIMINATION%20AMONG%20OLDER%20WOMEN%20IN%20INDIA.pdf>

⁷⁰ Nobels, Anne, Vandeviver, Christophe, Beaulieu, Marie, Inescu, Adina, C., Nisen, Laurent, Van Den Noortgate, Nele, Vander Beken, Tom, Lemmens Gilbert, and Keygnaert, Ines. 2020. ““Too Grey To Be True?” Sexual Violence in Older Adults: A Critical Interpretive Synthesis of Evidence.” *International Journal of Environmental Research and Public Health* 17(11).

⁷¹ ElderAbuse.org. *Elder Sexual Abuse*. Accessed November 11, 2024 at <https://elderabuse.org/elder-sexual-abuse/>

Data on Elder Abuse

Data by the NCRB is not gender disaggregated and it includes any crime committed against senior citizens, for example, cheating, extortion, culpable homicide, assault and rape. It does not specify if the perpetrator is someone who is a caregiver to the victim.

	2021	2022
<i>Total crimes against senior citizens</i>	26110	28545
<i>Simple Hurt (IPC Sections 323 and 324)</i>	7396	7805
<i>Assault on [senior] women with intent to outrage their modesty (Section 354)</i>	280	336
<i>Rape of senior women (Section 376)</i>	78	87

Source: National Crime Records Bureau, Crime in India 2021 and 2022 reports, accessed October 3, 2023, at <https://ncrb.gov.in/crime-in-india-year-wise.html>

INDIAN LAWS RELEVANT TO ELDER ABUSE

- *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 a senior citizen
- *Protection of Women from Domestic Violence Act, 2005*
 - c. *Section 2*: Definition of an aggrieved person
 - d. *Section 3*: Definitions of domestic violence
- 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.

In December 2019, a new Bill to amend the *Maintenance and Welfare of Parents and Senior Citizens Act, 2007* was approved by the Union Cabinet.⁷² The Bill proposes registration and maintenance of minimum standards for senior citizens' care homes, besides registration of home care service agencies. As per the Bill, children and heirs are legally obligated to provide maintenance to senior citizens. Senior citizens shall have the right to apply to a

⁷² *The Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2019*. Accessed November 11, 2024 at <https://www.prsindia.org/billtrack/maintenance-and-welfare-parents-and-senior-citizens-amendment-bill-2019>

maintenance tribunal seeking a monthly allowance of up to INR 10,000 from their children or heirs. State governments are permitted to establish old age homes in every district. They are also to set up maintenance tribunals in every subdivision to decide the level of maintenance.

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 an 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 specifies that a victim or someone on behalf of the victim can give information of domestic violence to the police or to 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).

CASES IN RECENT NEWS

A survey among the elderly by Helpage India in 2021-2022 showed that 35% of elders reported abuse at the hands of their sons and 21% were abused by their daughters-in-law. About 2% of elders were abused by domestic workers in the house. The forms of abuse included disrespect, verbal abuse, neglect, and physical violence.⁷³ According to Longitudinal Ageing Study in India (LASI), a national survey of scientific investigation of the health, economic, and social determinants and consequences of population aging in India, at least 5% of India's population aged 60 and above stated that they experienced ill-treatment in 2020.⁷⁴ A rise in cybercrimes against senior citizens has been observed as well post pandemic, taking advantages of challenges the elderly often face in adopting new technology.⁷⁵

⁷³ Helpage India. 2022. *Bridge the Gap: Understanding Elder Needs*. Accessed November 11, 2024.

⁷⁴ Pihal, Deepak and Kundu, Jhumki. 2021, February 16. "Elderly abuse a growing concern in India, shows LASI". *Down to Earth*. Accessed November 11, 2024 at <https://www.downtoearth.org.in/news/health/elderly-abuse-a-growing-concern-in-india-shows-lasi-75554>

⁷⁵ The Hindu Bureau. 2023, June 16. "251% increase in elder abuse post lockdown: Data". *The Hindu*. Accessed December 21, 2024 at <https://www.thehindu.com/news/national/karnataka/251-increase-in-elder-abuse->

Chronic health conditions among the elderly means that a significant number of them become disabled, which causes further vulnerability for this demographic group. 21% of the disabled population in India are aged 60 and above. Elderly disabled women are at a greater risk of abuse and this vulnerability worsens for women who have multiple disabilities and who are not highly educated and/or belong to a lower economic status.⁷⁶

RECENT CASE LAW

*Sandeep Gulati v. Divisional Commissioner (2020)*⁷⁷

The Delhi High Court held that a senior citizen has a right to evict his or her children from the property even if no ill treatment is done.

*Pramod Ranjankar v. Arunashankar (2018)*⁷⁸

The Chhattisgarh High Court has held that a senior citizen can ask for son's ejection from their home 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)*⁷⁹

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

*Shri Santosh Surendra Patil v. Shri Surendra Narasgonda Patil & Others (2017)*⁸⁰

The High Court at Bombay directed two sons to pay a monthly maintenance for their parents

post-lockdown-data/article66972640.ece

⁷⁶ Raman Shreya. 2022, October 22. "Why Elderly Women With Disabilities Are At Highest Risk Of Abuse, Neglect". *BehanBox*. Accessed November 11, 2024 at <https://behanbox.com/2022/10/12/why-elderly-women-with-disabilities-are-at-highest-risk-of-abuse-neglect/>

⁷⁷ 2020, March 27. "Senior Citizens Act: Parents entitled to evict the children even if there is no ill treatment". *LatestLaws.com*. Accessed November 11, 2024 at <https://www.latestlaws.com/latest-news/parents-entitled-to-evict-the-children-even-if-there-is-no-ill-treatment/>

⁷⁸ Pramod Ranjankar vs Arunashankar. 2018. Accessed November 11, 2024 at <https://indiankanoon.org/doc/96605779/>

⁷⁹ AIR 2018 BOMBAY 229.

⁸⁰ Santosh Surendra Patil vs Surendra Narasgonda Patil And Ors. 2017. Accessed November 11, 2024 at <https://indiankanoon.org/doc/31053306/>

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)*⁸¹

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.

⁸¹ AIRONLINE 2018 DEL 1777.

4. GENDER-BASED VIOLENCE AGAINST PERSONS WITH DISABILITIES

Having a physical, mental, or intellectual disability adds yet another layer of vulnerability for women who are already at risk of violence due to their gender. When it comes to sexual violence, women and girls with disabilities are considered to be a particularly “high-risk” demographic. They are more likely to experience rape, sexual violence other than rape, physical violence, stalking, psychological aggression, and control of reproductive or sexual health by an intimate partner than women without a disability.⁸² GBV can also take unique forms for persons with disabilities, such as denial of daily essentials such as food, water, and money by caregivers, who are often perpetrators of this kind of violence. Caregivers can be at home or in institutional settings, including intimate partners and other family members. This vulnerability is exacerbated by the fact that women with disabilities are often financially and socially dependent on others for survival.⁸³

Access to justice is a significant problem in India for women and girls with disabilities. This can be due to the stigma associated with their sexuality and disability; as perpetrators are often members of the family, the presence of an accompanying family member may discourage or even prevent women from reporting such violence. Police often perceive women with intellectual disabilities as non-credible witnesses and are disinclined to investigate such reports. Other factors that hinder access to the justice system can be a lack of physical mobility, inadequate policies and standards, negative attitudes, other lacks such as information availability, communication, and service provision, and the fact that women with disabilities are often not involved in decisions that directly affect their lives.⁸⁴

The use of ableist language is yet another way in which persons with disabilities are marginalised. India’s legal system continues to use derogatory terms such as “mental retardation” and “handicap”, which have negative connotations. Similarly, the disability community has criticized the Indian Railways’ decision to use ‘Divyang’, a term coined by Prime Minister Narendra Modi, to refer to persons with disabilities. The term, meaning

⁸² Centre for Disease Control and Prevention. *Sexual Violence and Intimate Partner Violence Among People with Disabilities*. Accessed November 13, 2024, at <https://www.cdc.gov/sexual-violence/about/sexual-violence-and-intimate-partner-violence-among-people-with-disabilities.html>

⁸³ Plan International. *Fact Sheet: Violence against Women and Girls with Disabilities*. Accessed November 13, 2024 at https://www.un.org/womenwatch/daw/csw/csw57/side_events/Fact%20sheet%20%20VAWG%20with%20disabilities%20FINAL%20.pdf

⁸⁴ Ibid.

‘divine gift’, has been called paternalistic and regressive, stating further that disability is not a divine gift, and a simple shift in language will not ensure de-stigmatisation or end discrimination based on disability.⁸⁵

The COVID-19 pandemic saw an increase in the vulnerability of disabled persons to gender-based violence⁸⁶ in India as it multiplied barriers to access and exacerbated risks of neglect, isolation, or abandonment in residential facilities affected by the pandemic.⁸⁷ This was due to a lack of visibility of different infrastructural needs of disabled persons during the pandemic which made it harder to access essential services, while quarantine measures made it difficult to leave high-risk situations. The lockdowns were directly related to increased prevalence of violence, even as support services became inaccessible to women and girls with disabilities.⁸⁸

DATA ON GBV AGAINST PERSONS WITH DISABILITIES

The National Crime Records Bureau (NCRB) Crime In India report 2021 registered 256 incidences of rape of women “incapable of giving consent”, and 117 incidences of rape of women “with mental or physical disability”. It is also important to note that many of the struggles faced by disabled persons are often invisibilised and there is a lack of reporting of gender-based violence against the disabled community.

Other than rape, the NCRB does not maintain disaggregated data on gender-based violence against persons with disabilities as a separate category. In September 2019, the Committee on CRPD (United Nations Convention on Rights of Persons with Disabilities) recommended that the Indian Government adopt and implement national and state strategies to identify, prevent, combat, and end all forms of violence against persons with disabilities, including against women, girls, and boys with disabilities. It was also recommended that the NCRB collect data disaggregated by disability in cases of violence and exploitation, including

⁸⁵ Pisharoty, S.B. 2016, March 01. “Use of 'Divyang' is Regressive and Patronising, Say Persons With Disabilities”. *The Wire*. Accessed November 13, 2022, at <https://thewire.in/rights/use-of-divyang-is-regressive-and-patronising-say-persons-with-disabilities>

⁸⁶ Pearce, Emma. 2020. *Disability Considerations in GBV Programming during the COVID-19 Pandemic*. Accessed on 12 October 2024 at http://www.sddirect.org.uk/media/1889/gbv-aor-research-query_covid-19-disability-gbv_final-version.pdf.

⁸⁷ UN Country Support Policy Brief 1. *Women with disabilities in a Pandemic (COVID-19)*. Accessed on 12 October 2024 at <https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2020/Policy-brief-Women-with-disabilities-in-a-pandemic-COVID-19-en.pdf>

⁸⁸ UNFPA. “The Impact of Covid-19 on Women and Girls with disabilities- A global Assessment and Case Studies on Sexual and Reproductive Health and Rights, Gender-Based Violence, and Related Rights’ Pg 16 at https://www.unfpa.org/sites/default/files/pub-pdf/NEW_UNPRPD_UNFPA_WEI_-_The_Impact_of_COVID-19_on_Women_and_Girls_with_Disabilities.pdf.

gender-based violence. In 2020, the National Human Rights Commission (NHRC) reaffirmed the importance of such data in its Advisory on Rights of Persons with Disabilities in the context of COVID-19, specifically mentioning the NCRB.⁸⁹ In 2021, 90 disability rights organisations in India wrote a letter to the Home Ministry on the need to maintain disaggregated data on violence against women with disabilities.⁹⁰

RELEVANT LAWS

The *Rights of Persons with Disabilities Act, 2016* (RPWD Act, 2016) was enacted to give effect to the United Nations Convention on the Rights of Persons with Disabilities and connected matters. The Act stresses non-discrimination, full and effective participation and inclusion in society, respect for difference and acceptance of disabilities as part of human diversity and humanity, equality of opportunity, accessibility, equality between men and women, respect for the evolving capacities of children with disabilities, and respect for the right of children with disabilities to preserve their identities.⁹¹ The RPWD Act, however, fails to recognise the specific and increased vulnerability that disabled women face in India. Section 7(1) of the RPD Act is non-specific and merely asks the government to take measures that protect disabled persons from violence, exploitation, and abuse. The government has, since then, taken no steps to provide for an action plan that prevents violence against women with disabilities nor have they provided legal remedies or prescribed specific procedures to protect and rehabilitate disabled victims of violence.

The *Mental Health Care Act 2017*, which superseded the *Mental Health Act 1987*, came into force in 2018 and effectively decriminalised attempted suicide, which was punishable under the IPC (Section 209). The law has been described in its opening paragraph as an “Act to provide for mental healthcare and services for persons with mental illness and to protect, promote and fulfill the rights of such persons during delivery of mental healthcare and services and for matters connected therewith or incidental thereto.”⁹²

⁸⁹ Sengupta, Shampa. 2020, October 26. “Data On Violence On Girls & Women With Disabilities: Need Of The Hour”. *Feminism in India*. Accessed November 13, 2022, at <https://feminisminindia.com/2020/10/26/women-girls-disabilities-violence-data/>

⁹⁰ Nath, Damini. 2021, January 22. “Crimes against persons with disabilities | Rights organisations want NCRB to maintain data”. *The Hindu*. Accessed November 13, 2024, at <https://www.thehindu.com/news/national/crimes-against-persons-with-disabilities-rights-organisations-want-ncrb-to-maintain-data/article33635243.ece>

⁹¹ CJP. 2022, September 02. *Indian laws pertaining to persons with disabilities*. Accessed November 13, 2024, at <https://cjp.org.in/indian-laws-pertaining-to-persons-with-disabilities/>

⁹² *The Mental Health Care Act, 2017*. Accessed November 13, 2024, at <https://main.mohfw.gov.in/sites/default/files/Final%20Draft%20Rules%20MHC%20Act%2C%202017%20%281>

Other relevant statutes laws in India for persons with disabilities are:

- The Rehabilitation Council of India Act, 1992
- The National Trust Act, 1999

Despite the recent legislation implemented to ensure equal rights for persons with disabilities in India, there is considerable criticism of their ability to do so. For instance, Clause 3 (3) of the RPWD Act⁹³ has been criticised for a loophole that allows implementing agencies to discriminate against persons with disabilities as it leaves open the interpretation to the bureaucracy. The rules of the Act also only call upon the government establishments to implement it, leaving private establishments outside of the purview of the Act.⁹⁴ Similarly, while the 2017 Act has increased the number of recognised disabilities under its clauses, a wide number of disabilities continue to remain unconsidered. Getting a Disability Certificate is in itself a harrowing, time-consuming, and often expensive task.⁹⁵

The legal system also plays a role in the oppression of women with disabilities by denying certain basic rights to them. A report by Prajnya Trust in collaboration with Shanta Memorial Rehabilitation Centre (SMRC) discusses this at length. India’s family laws deny women with disabilities the capacity to marry, stay married, adopt, inherit, terminate a pregnancy, choose a pregnancy, and acquire a new domicile. The Hindu Marriage Act allows the spouse of a woman with a disability to seek divorce on grounds of “unsound mind”. The report finds that women designated as of “unsound mind” are not allowed to independently manage their financial affairs; banks do not allow them to open individual accounts and they cannot file cases of violence in courts as they are usually financially dependent on the perpetrator. They cannot hold public offices under the Constitution, such as the posts of President, Vice-President, Ministers, and Members of Parliament and State Legislatures, nor can they form organisations or associations as per the Contract Act 1872—thus preventing them from

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⁹³ The clause states that ‘No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim’.

⁹⁴ Bhatnagar, G.V. 2017, March 24. “Disability Activists Slam Regressive Clause in New Act That Allows Discrimination”. *The Wire*. Accessed November 13, 2024, at <https://thewire.in/health/disability-sector-aghast-silence-draft-rules-controversial-clause-rights-pwds-act-2016>

⁹⁵ Kulkarni-Petcoski, K. 2017, February 13. “How Language Shapes the Disability Experience in India”. Pulitzer Center. Accessed November 10, 2024, at <https://pulitzercenter.org/stories/how-language-shapes-disability-experience-india>

representing their political interests.⁹⁶

RECENT CASE LAW RELEVANT TO GBV AGAINST PERSONS WITH DISABILITIES

*Patan Jamal Vali v. The State of Andhra Pradesh (2021)*⁹⁷

The case involved a 19-year-old blind woman who was raped by her brother's friend. Justice DY Chandrachud in his judgment acknowledged the threat of sexual violence for women and girls with disabilities as being all too familiar and emphasised that women with disabilities are not weak, helpless, or incapable, stating, "such a negative presumption of disability translating into incapacity would be inconsistent with the forward-thinking conceptualization of disabled lives embodied in our law and, increasingly, albeit slowly, in our social consciousness." The judgment noted that the rape survivor identified the perpetrator by his voice, which was familiar to her, and stressed that such testimony should be given equal legal weight as a visual identification. While the incident took place in 2011, before the adoption of the Criminal Law Amendments Act of 2013, a law enacted following the 2012 Delhi gang rape and murder, the ruling demonstrates that accommodations can be made for people with disabilities in the judicial process.

*Suchita Srivastava v. Chandigarh Administration (2009)*⁹⁸

A woman with mental disability, residing at a government-run welfare institution, became pregnant as a consequence of being raped by a staff member at the institution. The woman wanted to keep the baby, but the Chandigarh Administration filed a petition in court seeking permission to terminate her pregnancy under the Medical Termination of Pregnancy (MTP) Act, 1971, because she was not capable of carrying on with the pregnancy and would not be able to look after a child. The Supreme Court held that the MTP Act required the consent of a "mentally retarded" woman for termination of pregnancy. Following this, the Court concluded that the Appellant was mentally retarded, had not consented to the termination of her pregnancy, and in fact, had expressed her willingness to bear the child. Therefore, it could not permit the termination of her pregnancy.

⁹⁶ SMRC. 2020, December 03. *Sexual and Gender Based Violence against Women with Disabilities in India*.

⁹⁷ Barriga, Shantha Rau. 2021, June 1. "Landmark Ruling in India for Survivors of Sexual Abuse with Disabilities". *Human Rights Watch*. Accessed November 13, 2024, at <https://www.hrw.org/news/2021/06/01/landmark-ruling-india-survivors-sexual-abuse-disabilities>

⁹⁸ CJP. 2022, September 02. *Indian laws pertaining to persons with disabilities*. Accessed November 13, 2024, at <https://cjp.org.in/indian-laws-pertaining-to-persons-with-disabilities/>

5. GENDER-BASED VIOLENCE AGAINST RELIGIOUS MINORITIES

Studies have suggested that when it comes to phenomena such as religious violence, religious persecution, or religious oppression, the experiences of women and gender minorities are distinct from those of men.⁹⁹ Both in war and peacetime, women from religious and ethnic minorities are singled out for physical and sexual violence.¹⁰⁰ There is a need for systemic attention to be paid to the gendered implications of religious persecution or the religious dimensions of gender-based violence.¹⁰¹ Rape against women can be a deliberate tactic in religious conflicts not only because it demoralises the enemy but also leaves women with a “stigma of impurity that consequently erodes their reproductive potential ... because women are perceived as the producers of posterity, rape is employed as an instrument of cultural genocide.”¹⁰² Gender-based violence against religious minorities can also happen in the private sphere where religion and patriarchal beliefs can be used to justify violence against women.¹⁰³ Women can also face violence related to religious beliefs (both minority and majority) at domestic sphere in the forms of denial of access to contraception, female genital mutilation, forced dress codes, polygamy, forced marriages, and marital rape.¹⁰⁴

In India, every major incidence of sectarian and communal violence has been accompanied by large-scale violence against women in the form of mass rapes, torture, and murder. For instance, it is estimated that at least 100,000 Hindu, Muslim, and Sikh women were

⁹⁹ Herrington, L. M. 2022, November 08. “Probing the Intersection of Religion, Gender, and Political Violence”. *E-International Relations*. Accessed November 15, 2024, at <https://www.e-ir.info/2022/11/08/probing-the-intersection-of-religion-gender-and-political-violence/>

¹⁰⁰ Press releases, 2011, July 06, ‘Minority women deliberately targeted for rape and other violence’. Minority Rights. Accessed on 15 November 2023 at <https://minorityrights.org/2011/07/06/minority-women-deliberately-targeted-for-rape-and-other-violence-new-global-report/>.

¹⁰¹ Herrington, L M. 2022.

¹⁰² Caiazza, Amy. 2002. “Why Gender Matters in Understanding September 11: Women, Militarism, and Violence.” Pp. 379-391 in Reed, Betsy (ed.) *Nothing Sacred: Women Respond to Religious Fundamentalism and Terror*. New York: Thunder’s Mouth Press/Nation Books.

¹⁰³ Pertek, Sandra, Block, Karen, Goodson, Lisa, Hassan, Pakinam, Hourani, Jeanine, and Phillimore, Jenny. 2023. “Gender-based violence, religion and forced displacement: Protective and risk factors”. *Frontiers in Human Dynamics* 5.

¹⁰⁴ Dadhania, Pooja R. 2023. “Gender-Based Religious Persecution.” *Minnesota Law Review* 107(4): 1563-1619.

abducted on both sides during the partition of India.¹⁰⁵ During the partition in the 1940s, 75,000 women were raped and mutilated during the sectarian violence. The 2002 Gujarat riots saw mass violence against women, particularly Muslim women. This included stripping them naked, rape and gang rape, acid attacks, beatings, torture of pregnant women, and burning women to death. Academic Kalpana Kannabiran wrote that the rapes were understood to be part of a well-organized, deliberate, and pre-planned strategy, placing the violence into the categories of political pogrom and genocide.¹⁰⁶ Other incidences of communally-motivated riots in subsequent years have seen similar, targeted violence against women, such as the gang rapes during the Muzaffarnagar riots in 2013.¹⁰⁷ Hindutva fundamentalism has refashioned patriarchy in a form that legitimises the participation of Hindu women but relegates women of other religions to the position of ‘other’¹⁰⁸. Since assuming power in 2014, the Bharatiya Janata Party has advanced the rhetoric of love jihad for inter-faith couples, promoted vigilantism through the enactment of policies surrounding the beef ban, and have demonized Muslim men as backward individuals. The increased spread of anti-Muslim propaganda paints individuals from the community as less than human and makes them far more susceptible to higher forms of gender-based violence in India. This shift in the political landscape has also affected other religious minorities such as Christians, who have been attacked by Hindu extremists justifying the violence on grounds of preventing religious conversions.¹⁰⁹

In highly militarised parts of the country such as Kashmir, sexual violence by armed security forces is a rampant yet an invisibilised phenomenon, with ethnic and religious minority women being major targets. A 1993 Human Rights Watch report states that security forces in Kashmir use rape as a method of retaliation against Kashmiri civilians during reprisal attacks after militant ambushes, with most cases occurring during cordon-and-search operations.¹¹⁰ These cases are often not reported due to shame within the community and

¹⁰⁵ Major, Andrew. 1995. Abduction of women during the partition of the Punjab. *South Asia: Journal of South Asian Studies*, 18(1). Also see Butalia, U. 1993. Community, State and Gender: On Women’s Agency during Partition. *Economic and Political Weekly*. 28(17), WS12–WS24. <http://www.jstor.org/stable/4399641>

¹⁰⁶ Kannabiran, Kalpana. 2012. *Tools of Justice: Non-discrimination and the Indian Constitution*. Routledge.

¹⁰⁷ Iyer, Aishwarya. 2022, June 24. “Nine years after Muzaffarnagar riots, the only woman who pursued rape charges still awaits justice”. *Scroll.in*. Accessed November 15, 2024 at <https://scroll.in/article/1026696/nine-years-after-muzaffarnagar-riots-the-only-woman-who-pursued-rape-charges-still-awaits-justice>

¹⁰⁸ Chantler, Khatidja, Gangoli, Geetanjali, and . Thiara, Ravi K. 2019. “Muslim Women and Gender Based Violence in India and the UK.” *Critical Social Policy* 39(2): 163-183.

¹⁰⁹ Gettleman, Jeffrey and Raj, Suhashini. 2021, December 22. “Arrests, Beatings and Secret Prayers: Inside the Persecution of India’s Christians”. *The New York Times*. Accessed on October 25, 2024 at <https://www.nytimes.com/2021/12/22/world/asia/india-christians-attacked.html>.

¹¹⁰ *Rape in Kashmir: A Crime of War*. Asia Watch & Physicians for Human Rights A Division of Human Rights

fear of further retaliation by security forces, making exact numbers difficult to gauge. Even in the highly publicized case of the rapes in Kunan Poshpora, the number of incidents is unclear, with Human Rights Watch estimating it anywhere between 23 and 100.¹¹¹

DATA ON GBV AGAINST RELIGIOUS MINORITIES

There is no data to determine the extent of gender-based violence against religious minorities in India. Among religiously motivated crimes, the NCRB's Crime in India Report 2022 registered 10 cases under the category of murder due to "communal/religious motives". The NCRB discontinued collecting data on mob lynchings and hate crimes in 2017, citing the numbers as unreliable.¹¹²

Muslim women have reported that during the aftermath of communal violence, their access to relief is significantly reduced due to law enforcement officers often participating in communal acts and sexual violence against them.¹¹³ They also fear an added layer of persecution from the police for reporting certain acts of gender-based violence such as domestic violence.¹¹⁴ Furthermore, with the increase in communalisation, women are often the biggest targets of identity politics in which there is an increased pressure to conform to religious norms and fewer options to speak out against violence.

Some information on the issue is captured by non-governmental entities. For instance, the United Christian Forum released a report according to which 525 incidents of violence against Christians were reported in 23 states in the first eight months of 2023. The statement released by the UCF further indicated a sharp and steady increase in violence against Christians since 2014.¹¹⁵ In June 2022, a 3-member international panel compiled a report on alleged violations against India's Muslims since 2019, building on documentation

Watch. Accessed November 15, 2024, at <https://www.hrw.org/sites/default/files/reports/INDIA935.PDF>

¹¹¹ *Abdication of Responsibility: The Commonwealth and Human Rights*. 1991. Human Rights Watch. Accessed November 15, 2024, at <https://www.hrw.org/reports/pdfs/g/general/general291o.pdf>

¹¹² Bhardwaj, Ananya. 2021, December 21. "NCRB stopped collecting data on lynching, hate crime as it was 'unreliable', govt tells LS". *The Print*. Accessed November 15, 2024 at <https://theprint.in/india/governance/ncrb-stopped-collecting-data-on-lynching-hate-crime-as-it-was-unreliable-govt-tells-ls/785201/>

¹¹³ Khanna, Renu. 2008. Communal Violence in Gujarat, India: Impact of Sexual Violence and Responsibilities of the Health Care System, *Reproductive Health Matters*, 142-152.

¹¹⁴ Chantler, Khatidja, Gangoli, Geetanjali and Thiara, Ravi K. 2019. "Muslim Women and Gender Based Violence in India and the UK." *Critical Social Policy* 39(2): 163-183.

¹¹⁵ Thanawala, Sarah. 2023, September 2. "United Christian Forum details the worrying increase in incidents of violence against Christians in India". *The Leaflet*. Accessed October 15, 2024 at <https://theleaflet.in/united-christian-forum-details-the-worrying-increase-in-incidents-of-violence-against-christians-in-india/>.

by the media, academic institutions, civil society groups, and United Nations bodies.¹¹⁶ There is, however, no gender-disaggregated data on the issue.

RELATED LAWS

Article 29 of the Constitution protects the interests of religious and linguistic minorities, mandating that no discrimination can be committed on the grounds of religion, race, caste, language, or any of them.

Over the last few years, several laws and policies have been adopted in India that have systematically targeted minorities, particularly Muslims. In most of these, women are expected to be disproportionately affected. The Citizenship Amendment Act (CAA), 2019, is the first time in the history of India that religion has been made a basis for citizenship, and it actively discriminates against Muslims. It is expected that women, including Muslim women, will be the most at risk of losing their citizenship status under this Act and the related exercise of the National Register of Citizens (NRC), due to rarely owning land or having documents in their names.¹¹⁷

Early in 2022, a government college in Udupi, Karnataka, refused to allow Muslim female students to wear the hijab inside the classroom. Similar bans were followed in other educational institutions in Karnataka and a few other states. The decisions were met with protests from many students, and many Muslim girls skipped classes and exams. In Karnataka, girls from Udupi challenged the verdict in the High Court, which upheld the ban, stating that the hijab is not an “essential practice” of Islam and therefore educational institutions had the right to disallow it as part of their uniform. The case reached the Supreme Court, where a split verdict was delivered in October. While Justice Gupta of the two-judge bench upheld the ban, Justice Dhulia said in his order that it was a wrong path to focus on whether the hijab was an essential religious practice and that wearing it was ultimately a matter of choice.¹¹⁸ The ban on Muslim girls wearing the hijab in public places has been criticized by many feminists, who have stated that such a decision will have a far-reaching impact on the ability of Muslim girls to get an education, especially those coming from socially underprivileged sections. Several girls have already dropped out of school in

¹¹⁶ *Report of the Panel of Independent International Experts to examine information about alleged violations of international law committed against Muslims in India since July 2019*. 2022. UFS Law and Amsterdam Law Clinics. Accessed November 15, 2024, at https://www.ufs.ac.za/docs/librariesprovider21/default-document-library/piie-report-final.pdf?sfvrsn=624e4920_0

¹¹⁷ Rahman, S.U. 2020, June 30. “Anti-CAA Movement Changed Muslim Women Forever”. *NewsClick*. Accessed November 15, 2024, at <https://www.newsclick.in/Anti-CAA-Movement-Changed-Muslim-Women-Forever>

¹¹⁸ 2022, October 13. “Hijab verdict: India Supreme Court split on headscarf ban in classrooms”. *BBC News*. Accessed November 19, 2024, at <https://www.bbc.com/news/world-asia-india-63225351>

Karnataka since the ban, and a report in the Deccan Chronicle has shown a 16% drop in women attending college in Mangalore since the HC ruling.¹¹⁹

Recent incidences of so-called “Love Jihad”, a belief that Muslim men are targeting Hindu women through means of seduction to marry and convert them, have led to several anti-conversion laws in different states. Such laws have been passed in the last few years in Jharkhand (2017), Uttarakhand (2018), Uttar Pradesh (2020), Madhya Pradesh (2021), and Karnataka (2022), amid growing intolerance against religious minorities, especially Christians and Muslims, who have been repeatedly attacked under the pretext of illegally converting people from Hinduism.¹²⁰ These laws and the overall narrative of love jihad have been used to justify moral and social sanctions against women’s rights to choose their partner for marriage.

Similarly, the *Uttar Pradesh Population (Control, Stabilisation, and Welfare) Bill* introduced in 2021 seeks to disqualify those having more than two children from contesting in panchayat and other local body elections, applying for state government jobs, receiving subsidies and benefits from government welfare schemes, and disqualifies public servants from any promotions or increments. The Bill has been criticised for several reasons, one of which is that it will increase women’s vulnerability to violence, their ability of political participation, and their exercise of choice and agency, especially those from marginalized communities. Moreover, while the Bill does not explicitly mention Muslims, experts have expressed their apprehensions about it being used to target the Muslim community (and Muslim women), closely related to the myth of Muslim overpopulation in India.^{121,122}

CASES IN RECENT NEWS

¹¹⁹ Bose, Rakhi. 2022, October 10. “Hijab Ban and Muslim Women's Right to Education: ‘Reform Needed, Not Coercion’”. *Outlook India*. Accessed November 19, 2024, at <https://www.outlookindia.com/national/hijab-ban-and-muslim-women-right-to-education-reform-needed-not-coercion-news-228667>

¹²⁰ Vatican News Staff Reporter. 2022, September 23. “India's Karnataka state passes anti-conversion law despite opposition”. *Vatican News*. Accessed November 15, 2024, at <https://www.vaticannews.va/en/church/news/2022-09/karnataka-passes-anti-conversion-law-despite-opposition.html>

¹²¹ Hussain, Eisha. 2021, August 11. “Why The UP Population Bill Harms Women And Marginalised Populations”. *BehanBox*. Accessed November 15, 2024, at <https://behanbox.com/2021/08/11/why-the-up-population-bill-harms-women-and-marginalised-populations/>

¹²² Nadimpally, Sarojini and Tella, Keertana K. 2024, June 26. “Hamare Baarah and the myth of India’s Muslim population ‘explosion’”. *The Indian Express*. Accessed December 8, 2024 at <https://indianexpress.com/article/opinion/columns/hamare-baarah-and-the-myth-of-indias-muslim-population-explosion-9414996/>

Lack of data notwithstanding, there have been numerous incidents of gender-based violence against women belonging to religious minorities over the last year alone. The United Nations Special Rapporteur on Minority Issues, in an open hearing on September 2023 in Washington, stated that India is on the way to being the world's biggest generator of instability, atrocities, and violence, and in particular, violence of a massive scale being committed against religious minorities such as Muslims, Christians, Sikhs, and others. The scale of targeted violence is indicative of systemic religious nationalism.¹²³

In May 2023, religious attacks in Manipur led to 249 churches belonging to the Meitei Christians being burnt down and destroyed within 36 hours. The mobs reportedly burnt down villages, which led to over 60,000 people being displaced from their homes and over 130 people losing their lives due to clashes between the majority Hindu Meiteis and the minority Christian Kukis.¹²⁴ During this time, a video went viral of a mob chasing three Kuki-Zo women after having stripped them, and later parading the three women naked and encouraging hundreds of Meitei men to grope them, in the village of B Phainom in the Kangpokpi district.¹²⁵ An indigenous rights group claimed that the women were later gang-raped. In this period of violence, feminist Nira Yuval-Davis states that “notions of masculinity and femininity are tested and challenged in times of conflict which in turn affects the construction of nationhood.” Violence was bolstered and incited against the Kuki-Zo women as they were cast in the group of “others” and labelled as “foreigners”, “outsiders” and “infiltrators”. This leads to them being regarded as “aliens” who have no place in Manipur, and attacks against them are taken as mere preservation of the territorial integrity of Manipur.¹²⁶

In April 2022, a video went viral of a Hindu priest openly calling for the rape of Muslim women and girls in front of a crowd in Uttar Pradesh.¹²⁷ Another video by a *Sadhvi* calling

¹²³ The Wire Analysis. 2023, September 29. “Questioned on Minorities, Jaishankar Says ‘Show Me Discrimination’. The Facts He Can See”. *The Wire*. Accessed October 16, 2024, at <https://thewire.in/rights/questioned-on-minorities-jaishankar-says-show-me-discrimination-the-facts-he-can-see>.

¹²⁴ Rathore, Shruti. 2023, August 1. “Navigating the Kuki-Meitei Conflict in India’s Manipur State”. *The Diplomat*. Accessed October 16, 2024 at <https://thediplomat.com/2023/08/navigating-the-kuki-meitei-conflict-in-indias-manipur-state/>.

¹²⁵ Murthy, Laxmi. 2023, August 7. “Women’s Bodies disinformation and nationalism in Manipur”. *Himal Magazine*. Accessed October 18, 2024 at <https://www.himalmag.com/women-disinformation-nationalism-manipur-conflict-sexual-violence-imphal-meitei-kuki-zo-meira-paibisi/>.

¹²⁶ Ayyub, Rana. 2023, August 1. “A grisly rape case has shaken India. Modi needs to act.” *The Washington Post*. Accessed October 16, 2024 at <https://www.washingtonpost.com/opinions/2023/08/01/modi-india-manipur-violence-rape/>.

¹²⁷ Zee Media Bureau. 2022, April 08. “Priest issues rape threat to Muslim women in Uttar Pradesh’s Sitapur as crowd cheers, probe ordered”. *Zee News*. Accessed November 15, 2024 at <https://zeenews.india.com/india/priest-issues-rape-threat-to->

for Hindu men to rape and impregnate Muslim women came to light earlier in February.¹²⁸ In March, a youth from Delhi posted on social media that it was the right of Hindus to rape and kill Muslim women.¹²⁹ In August 2022, all eleven people convicted of the 2002 gang rape of Bilkis Bano during the Gujarat communal pogrom were released from prison.¹³⁰ It was reported that the convicts were greeted with garlands and sweets at a Vishwa Hindu Parishad office post their release.¹³¹ In the previous years, several cases targeting Muslim women, such as online harassment through apps such as *Sulli Deals* and *Bulli Bai*¹³² and open calls forcibly marrying and converting Muslim women by Hindu men,¹³³ have come to light.

In November 2022, during India's fourth Universal Period Review (UPR) at the United Nations Human Rights Council (UNHRC), UN member states urged India to take a tougher stand on sexual violence and religious discrimination and ratify the torture convention.¹³⁴ Earlier in April, the US Commission on International Religious Freedom (USCIRF) alleged that India was engaging in and tolerating systematic, ongoing, and egregious violations of religious freedom, and called for the US State Department to place India on the list of "countries of particular concern".¹³⁵

muslim-women-in-uttar-pradesh-s-sitapur-as-crowd-cheers-probe-ordered-2451805.html

¹²⁸ Asthana, N.C. 2022, February 12. "Sadhvi Vibhanand's Call to 'Rape' Muslim Women With Impunity Shows Hindutva's Politics of Fear". *The Wire*. Accessed November 15, 2024, at <https://thewire.in/communalism/sadhvi-vibhanands-call-to-rape-muslim-women-with-impunity-shows-hindutvas-politics-of-fear>

¹²⁹ Maktoob Staff. 2022, March 26. "Hindu youth says he has right to rape, kill Muslim women, Delhi Police, Women Commission take cognizance". *Maktoob Media*. Accessed November 15, 2024 at <https://maktoobmedia.com/2022/03/26/hindu-youth-says-he-has-right-to-rape-kill-muslim-women-delhi-police-takes-cognizance/>

¹³⁰ Katakam, Anupama. 2022, August 25. "All 11 persons convicted of rape in 2002 Bilkis Bano case released". *Frontline*. Accessed October 21, 2024 at <https://frontline.thehindu.com/news/all-11-persons-convicted-of-rape-in-the-2002-bilkis-bano-rape-case-released/article65774788.ece>

¹³¹ Ghanghar, Gopi M. 2022, August 17. "Bilkis Bano rape case: Released convicts greeted with garlands at VHP office". *India Today*. Accessed October 21, 2024 at <https://www.indiatoday.in/india/story/bilkis-bano-rape-case-convicts-greeted-garlands-vhp-office-1988996-2022-08-17>

¹³² Jafri, Alishan and Aafaq, Zafar. 2021, May 21. "Unchecked Tsunami Of Online Sexual Violence By Hindu Right Against India's Muslim Women". *Article 14*. Accessed November 15, 2024 at <https://article-14.com/post/unchecked-tsunami-of-online-sexual-violence-by-hindu-right-against-india-s-muslim-women>

¹³³ Kundu, Indrajit. 2018, September 19. "Marry Muslim women and convert them, VHP advice to Bengali Hindu men". *India Today*. Accessed November 15, 2024, at <https://www.indiatoday.in/india/story/marry-muslim-women-and-convert-them-vhp-advice-to-bengali-hindu-men-1344133-2018-09-19>

¹³⁴ 2022, November 11. "India urged to improve its human rights record at the UN". *Aljazeera*. Accessed November 15, 2024, at <https://www.aljazeera.com/news/2022/11/11/india-urged-to-improve-its-human-rights-record-at-un-review>

¹³⁵ Ibid.

PART II:

FORMS OF GENDER-BASED

VIOLENCE

6. PRENATAL SEX SELECTION

Prenatal sex selection is the decision to continue or terminate a pregnancy based on the sex of the child. It refers to the practice of systematically eliminating female foetuses through abortion, primarily reflective of a cultural preference for a son. Preference for a son in countries such as India and East Asia have been documented extensively¹³⁶ and is related to other kinds of gender-based violence against girl children besides foeticide. The United Nations in 2001 estimated that there were 44 million missing women in India.¹³⁷ Several studies have shown that parental preference for boys is manifested in differences in household allocation of resources and medical care between boys and girls and can lead to differential levels of caregiving, nutrition, morbidity, and mortality, and in extreme cases, female infanticide. The UNFPA 2009 report¹³⁸ on Prenatal sex selection has stated the acceptable male-to-female ratio to be 105:100, and this ratio is skewed in several countries across Asia. This includes India, China, the Republic of Korea, China, Armenia, Georgia, Azerbaijan, Hong Kong, and several others.

The elimination of girls can be done at several stages, employing a variety of technologies and strategies:

1. Pre-conception methods: One example is sperm sorting which involves separating the X-chromosome-bearing sperm and Y-chromosome-bearing sperm. The X-chromosome-bearing sperm can fertilize an egg to create a female foetus.
2. Pre-implantation: This method can use techniques like in vitro pre-implantation genetic diagnosis. The embryo in the desired sex is implanted into the woman's uterus.
3. During pregnancy: Ultrasounds can reveal the sex of the foetus, post which an abortion can be done if this is revealed to be a girl child.
4. Post-natal methods: This can happen through infanticide, neglect, or abandonment of the girl child.

Technology has played a critical role in the practice of selective abortion of female foetuses, leading to a phenomenon often referred to as “missing women”.¹³⁹ Diagnostic technologies that can be used to monitor the health of the foetus and any possible medical conditions in utero have been available in India since the 1980s. However, while playing a crucial role in

¹³⁶ Hu, Luo, Schlosser, Analía. 2011. “Prenatal Sex Selection and Girls’ Well-Being: Evidence from India”. *IZA Discussion Paper No. 5562*. Accessed October 13, 2024, at <http://ftp.iza.org/dp5562.pdf>

¹³⁷ UNDESA. 2000. United Nations World population prospects: The 2000 revision: Highlights. <https://enerpedia.net/images/2/2c/Wpp2000h.pdf>

¹³⁸ United Nations Population Fund (UNFPA). 2009. Guidance Note on Prenatal Sex Selection. Accessed October 13, 2024, at http://www.unfpa.org/sites/default/files/resource-pdf/guidenote_prenatal_sexselection.pdf

¹³⁹ See Sen, Amartya. 2003. Missing women—revisited. *BMJ* 327 (7427) December 04, 2003:1297-1298.

women’s health (as well as that of the unborn child), the same technology also made it possible to determine the sex of the foetus and subsequently abort those that were female. Parents were thus presented with an alternative way to achieve the preferred sex composition of children. Since the late 1980s, there has been a steep increase in the difference in male-to-female ratios at birth (with an increase in male children), which has been attributed to the increasing practice of sex-selective abortion.¹⁴⁰

To address this practice, the Indian government passed *the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act* in 1994 and its amendment, the *Pre-Conception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act (PC-PNDT)* in 2003, to eliminate prenatal sex determination and consequent sex-selective abortions. The Act imposed strict punishment on patients¹⁴¹ and doctors who sought sex selection through the imposition of fines, imprisonment, and revocation of a doctor’s medical license. It thus became illegal to use ultrasound or amniocentesis to determine the sex of a foetus. However, the acts gave rise to illegal back door service providers (often referred to as a “cottage industry”) that offer ultrasounds to detect foetal sex, as well as abortions for fetuses over 20 weeks of gestation. Many of these service providers are often not fully qualified or equipped to conduct such medical procedures, resulting in risks of botched abortions and even deaths of women.¹⁴²

DATA ON SEX-SELECTIVE ABORTION

	1961	1971	1981	1991	2001	2011
<i>Sex Ratio of Birth in India</i>	941	930	924	927	933	943
<i>Child Sex Ratio</i>	976	964	962	945	927	919

Source: “Sex Ratio of India” in *Census 2011*. Accessed October 13, 2024 at <https://www.census2011.co.in/sexratio.php>

The National Crime Records Bureau (NCRB) 2022 showed that 56 cases had been filed under the PC-PNDT Act. Despite the high rates of sex-selective abortion and female foeticide in India, NCRB does not provide gender-segregated data on the incidence of these crimes.

According to the National Family Health Survey-5 (2019-21), the aggregate sex ratio in India has increased to a healthy 1020 females per 1000 males, increasing from 991 females per

¹⁴⁰ Hu, Luoja, Schlosser, Analía. 2011. Ibid.

¹⁴¹ As per Section 24 of the Act, the husband’s and the relative of the patients are presumed to be liable for compelling a woman to undergo such a diagnosis other than the diagnostic techniques prescribed in Section 4(2). And such a person is held liable for abetment of an offence under section 23 sub-clause (3) and punishment for that offence under the same.

¹⁴² Patel, Tulsi, 2007. “Informal social networks, sonography and female foeticide in India”. *Sociological Bulletin* 56(2): 243-262.

thousand males in the NFHS-4 (2015-16).¹⁴³ However, it is important to note that some of the most populated states and union territories in India continue to have a lower sex ratio of females to males, such as Haryana (926), Punjab (938), Gujarat (965), Madhya Pradesh (968), Maharashtra (966), Delhi NCT (917), and Chandigarh (913). Additionally, the child sex ratio in India remains skewed, with NFHS-5 recording 929 female births for 1000 males in the last five years.

Moreover, experts have warned that the numbers in the latest NFHS pointed towards a significant amount of inaccuracy, as the data collection methods and timelines did not account for the large-scale migration that India saw during the COVID-19 pandemic. More specifically, the fieldwork for the survey was conducted in two phases, one from June 17, 2019, to January 30, 2020, and another from January 2, 2020, to April 30, 2021. The second phase took place at the height of the COVID-19 pandemic, at a time when large numbers of migrant workers had returned to their home villages. It was during this period that data was collected from states with large but floating populations such as Uttar Pradesh, Odisha, Rajasthan, and Madhya Pradesh, and yet the change in figures due to migration remained unaccounted for.¹⁴⁴

A study undertaken in 2011 estimated that from 1980 to 2010, between 4.2 and 12.1 million sex-selective abortions took place.¹⁴⁵ India's Annual Economic Survey of 2017-2018 found that statistically, more than 63 million women are "missing" across India, and more than 21 million girls are unwanted by their families. The same study also showed that Indians have "meta" son preference, which means that if the first few children are all girls, they will continue having children until they have a boy.¹⁴⁶

A recent study indicates that a ban on sex-selective abortions may also have adverse consequences for the surviving girl child, as they are likely to be labelled as "unwanted". There has been limited attention paid to the quality of life and its impact on the child's health post-birth.¹⁴⁷ This study found worsening health outcomes with an increase in

¹⁴³ Ministry of Health and Family Welfare. 2022. National Family Health Survey-5 (NFHS-5) 2019-21. Accessed October 20, 2024, at https://mohfw.gov.in/sites/default/files/NFHS-5_Phase-II_0.pdf

¹⁴⁴ Mishra, V. 2021, November 25. "NFHS-5: No, women don't outnumber men in India just yet. Here is why". *Down to Earth*. Accessed October 13, 2024, at <https://www.downtoearth.org.in/news/health/nfhs-5-no-women-don-t-outnumber-men-in-india-just-yet-here-is-why-80390>

¹⁴⁵ 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 October 13, 2024 at <https://pratigvacampaign.org/wp-content/uploads/2019/09/trends-in-selective-abortion-of-girls-in-india.pdf>

¹⁴⁶ Government of India, Chapter 7: Gender and Son Meta-Preference: Is Development Itself an Antidote? Economic Survey 2017-18, Volume 1, pages 112 and 105 (respectively). Accessed October 13, 2024, at <https://ideas.repec.org/p/ess/wpaper/id12445.html>

¹⁴⁷ Dasgupta, Aprajita and Sharma, Anisha. 2023, July 31. "How does a ban on sex-selective abortions affect

pregnancies for families where the firstborn was a girl as it led to greater competition for resources within a family. There was also a higher increase in mortality and a significant reduction in health-related investments for these girls after the ban. Neonatal mortality increased by 25.7%, infant mortality by 26.6%, and under-five mortality by 25.5% after the ban. The number of antenatal care visits also decreased.¹⁴⁸ The ban, the report suggests, has resulted in larger families with fewer resources and decreased quality of health, in addition to increased mortality rates. An interagency statement by the United Nations Human Rights Office of the High Commissioner (OHCHR), United Nations Population Fund (UNFPA), United Nations Children’s Fund (UNICEF), UN Women, and the World Health Organisation (WHO) mentioned that rather than restrictions on abortion services, the real need was for supportive measures for women and girls such as access to information, healthcare services, nutrition, education, and personal security to fight against gender-biased sex selection.¹⁴⁹ The statement reiterates the importance of policy and legislation, however, not one that restricts access to abortion nor access to gender identification.¹⁵⁰

A study by the Pew Research Centre has found that in India, there is a correlation (but not necessarily causation) between certain parameters and the prevalence of sex-selective abortions, such as caste, religion, and education. Hindus and Sikhs, for instance, accounted for a disproportionate share of India’s “missing” girls. Indians belonging to upper castes, particularly in Northern and Western India, displayed a greater preference for a son than Indians belonging to other castes. The report also highlighted that female foeticide in India has resulted in a shortage of marriageable women, or what the authors called a “marriage squeeze”.¹⁵¹ Women are often held to be the lesser of the sexes and in India, there is still a massive crisis in terms of dowry, gender pay gap, barriers to access to education, decreased access to social benefits, and increased threat to personal safety. There are fundamental issues that are at the root of the problem to the preference of male children over female, and these issues cannot be resolved through a legislation that bans prenatal sex selection. The ban is also noted to affect those with less social capital and economic backing as individuals with resources have successfully identified the gender of a foetus by getting ultrasound tests done in another country.

child health?”. *Ideas for India*. Accessed on 19 October 2023 at <https://www.ideasforindia.in/topics/human-development/how-does-a-ban-on-sex-selective-abortions-affect-child-health.html>.

¹⁴⁸ *ibid.*

¹⁴⁹ Preventing Gender-biased sex selection- An interagency statement OHCHR, UNFPA, UNICEF, UN Women and WHO (pg 6). Accessed 20 October 2024 at https://www.unfpa.org/sites/default/files/resource-pdf/Preventing_gender-biased_sex_selection.pdf.

¹⁵⁰ *ibid.*

¹⁵¹ Tong, Yunping. 2022. India’s Sex Ratio at Birth Begins To Normalize. *Pew Research Centre*. Accessed October 13, 2024, at <https://www.pewresearch.org/religion/2022/08/23/indias-sex-ratio-at-birth-begins-to-normalize/>

The Population Research Institute in its 2019 report¹⁵² on sex-selective abortions in India identified the number of girls who have been eliminated through sex-selective abortions since 1990 to be 16 million, a phenomenon they termed “gendercide”. The report states that at present, the ratio of boys to girls in India is 110.7:100. An increase in the number of single men risks increasing the incidence of child marriage and sex trafficking. The report also identifies the following as the lead causes of high sex-selective abortion in India:

- Cultural preference for a son
- Decline in fertility wherein people are choosing to have fewer children, and due to aforementioned son preference, wanting to make sure the few children thus born are sons
- Unequal status of women (lack of decision-making authority), which often results in women being coerced to abort female children
- Increased accessibility to ultrasound technology, which includes the easy availability of this technology

The report offers the following solutions to combat Prenatal sex selection in India:

- Implementation of existing effective policy and legislation on sex-selective abortions
- Promotion of equal status and dignity of women
- Enhancement of public awareness to combat stigma against girls
- Promotion of the rights of girls to be born and deter sex-selective abortions
- Improvement of socio-economic development
- Introduction of conditional cash transfer schemes and other incentives to encourage couples to have daughters
- Involvement of women’s rights groups and NGOs

In 2020, UNFPA’s latest *State of the World’s Population* report¹⁵³ stated that two countries—China (50%) and India (40%)—together account for about 90-95% of the estimated 1.2-1.5 million missing female births annually worldwide due to gender-biased (prenatal) sex selection. The report’s analysis also showed that India has the highest rate of excess female deaths (13.5 per 1,000 female births), which suggests that an estimated one in nine deaths of females below the age of 5 may be attributed to postnatal sex selection.

LAWS PROHIBITING SEX SELECTION

¹⁵² Abbamonte, Jonathan. 2019. Sex-Selective Abortion in India: Estimates on the Occurrence of Sex- Selective Abortion in India and Some Possible Solutions to Eliminate the Practice. *Population Research Institute*. Accessed November 26, 2024, at <https://www.pop.org/wp-content/uploads/2019/07/Sex-Selective-Abortion-in-India-Final-1.pdf>,

¹⁵³ United Nations Population Fund. 2020. *State of the World Population 2020*. Accessed October 13, 2024, at https://www.unfpa.org/sites/default/files/pub-pdf/UNFPA_PUB_2020_EN_State_of_World_Population.pdf

Conflation with the Medical Termination of Pregnancy Act, 1971

The PCPNDT Act is an act that prohibits prenatal sex selection of fetuses. The Act does not stipulate regulations for abortions, and the term “abortion” is used only once about permitting prenatal diagnostic techniques when a woman has had two or more spontaneous abortions. However, medical service providers refuse to provide abortions as they fear prosecution under the PCPNDT Act, conflating this with the Medical Termination of Pregnancy Act 1971.¹⁵⁴ Legislation and policies enacted to criminalise prenatal sex-selection can have negative and far-reaching impacts on the bodily autonomy of women as pregnant women who want to have abortions may not be able to do so due to the unwillingness of doctors.¹⁵⁵ This tends to impact women from marginalised communities the most and can result in increased unsafe abortions. Restricting access to technology and abortion services without addressing the underlying causes for male-child preference will not change gender disparity and instead may be counterproductive.¹⁵⁶

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

This Act regulates the use of pre-natal diagnostic techniques to detect genetic or metabolic disorders, chromosomal abnormalities, certain congenital malformations, or sex-linked disorders. It seeks to ensure that these techniques are not misused for 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 the determination of the sex of a child before it is born. It is, therefore, illegal to test the sex of the foetus to eliminate 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.

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

¹⁵⁴ Centre for Justice, Law and Society and Ipas Development Foundation. *Access to Safe and legal Abortion: A handbook on Abortion Laws for Healthcare Service Providers in India*. Accessed December 1, 2024 at <https://static1.squarespace.com/static/61c2f36a329cfe4aa53a49d7/t/63ef49271ea555578b8146ad/1676626278172/Access+to+Safe+and+Legal+Abortion+A+Handbook+on+Abortion+Laws+for+Healthcare+Service+Providers+in+India.pdf>.

¹⁵⁵ Mohapatra, Seema. 2013. "Global Legal Responses to Prenatal Gender Identification and Sex Selection." *Nevada Law Journal* 13(3): 690-721.

¹⁵⁶ *ibid.*

- *Section 313*: Causing a woman to miscarry a child without her consent
- *Section 315*: Intentionally preventing a child from being born alive or causing it to die after birth

The NCRB data does not mention details of the crimes committed under these acts.

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 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 acknowledgment receipt. Alternatively, the complainant can also approach a social organisation (for example, an NGO working on women's rights issues).
- First Information Report: Please see the Prajnya FIR Ready Reckoner (Appendix).

CASES IN RECENT NEWS

In June 2023, a court in Meerut arrested a doctor and three others for running a prenatal sex determination racket. The accused have been booked under the PCPNDT Act.¹⁵⁷ In August 2023 the municipal health department sealed 14 sonography centers in Pune due to violation of the PCPNDT Act.¹⁵⁸ In Mumbai, the health department through the last census noticed a rise in cases of prenatal sex determination and cited the reason to be poor application of the PCPNDT Act. To combat the issue, the Brihanmumbai Municipal Corporation's health department has hired a special officer to closely monitor cases and conduct regular visits to hospitals and clinics. The department is further offering a reward of 1 lakh rupees for any person who provides information to families that are seeking to determine the gender of the foetus before the delivery of the baby.¹⁵⁹

¹⁵⁷ HT Correspondent. 2023, June 10. "Meerut doctor caught running prenatal sex determination racket". *Hindustan Times*. Accessed October 20, 2024 at <https://www.hindustantimes.com/cities/lucknow-news/doctor-and-three-others-sent-to-judicial-custody-for-prenatal-sex-determination-tests-in-meerut-diagnostic-centre-raid-101686339188452.html>.

¹⁵⁸ Times of India. 2023, August 30. "14 sonography centres sealed over PCPNDT Act violations". Accessed October 18, 2024 at <https://timesofindia.indiatimes.com/city/pune/14-sonography-centres-sealed-over-pcpndt-act-violations/articleshow/103192109.cms?from=mdr>.

¹⁵⁹ Mishra, Swapnil. 2023, September 03. "Mumbai News: Health Department Offers Reward to Curb Rising

In Karnataka's Belagavi district, seven aborted fetuses were found abandoned in a canister on the outskirts of a village in June 2022. The District Health Officer (DHO) suspected it to be a case of illegal sex detection and female foeticide, and it is the second such case to take place in the region since 2013.¹⁶⁰ In September 2022, a group of Hindu priests in Varanasi, UP, performed a *Shraddh* ceremony for an estimated 13,000 fetuses that had fallen victim to female foeticide. This was done to send a strong message to the community against the practice.¹⁶¹ The Pune Health Department in October 2022 decided to rejuvenate an initiative it has been running known as the Khabri Yojana, meant to keep tabs on illegal sex determination and female foeticide. The scheme stipulates that those who notify the authorities of suspicious activity related to sex determination and female foeticide will be eligible for a reward of Rs 1 lakh by the government. The scheme was initiated in 2011 and, until now, more than 15 people in the state have reported illegal cases.¹⁶²

RECENT CASE LAW

*Manoj Krishan Ahuja v. State of NCT of Delhi and Another (2023-Pending)*¹⁶³

In this case, the Delhi High Court refused to quash the FIR against a doctor who was accused of carrying out illegal sex determination and issued a direction for proper implementation of the PCPNDT Act. The Court held that "it was aware of the conflict that plagued women... and the emotional stress and moral uncertainty they experienced for not bearing a male child. Sex determination-based abortion was a powerful method of perpetuating gender inequalities. The restriction of access to foetal sex information was related to the problem of misogyny".

*Shobha Gupta and Another v. UOI & Others (2022)*¹⁶⁴

Cases Of Prenatal Sex Determination". Free Press Journal. Accessed on 19 October 2024 at <https://www.freepressjournal.in/mumbai/mumbai-news-health-department-offers-reward-to-curb-rising-cases-of-prenatal-sex-determination>.

¹⁶⁰ Abraham, Bobbins. 2022, June 25. "Seven Foetuses Found Dumped In A Canister In Karnataka's Belagavi; Female Foeticide Suspected". *India Times*. Accessed October 13, 2024 at <https://www.indiatimes.com/news/india/seven-foetuses-found-dumped-in-a-canister-in-karnatakas-belagavi-573124.html>

¹⁶¹ HT Correspondent. 2022, September 19. "Remembering souls lost to female foeticide in Pitra Paksh". *Hindustan Times*. Accessed October 13, 2024 at <https://www.hindustantimes.com/cities/others/remembering-souls-lost-to-female-foeticide-in-pitra-paksh-101663609887520.html>

¹⁶² Pathare, Vicky. 2022, October 13. "Khabari scheme back to keep tabs on illegal sex determination" *Pune Times Mirror*. Accessed October 13, 2024 at <https://punemirror.com/pune/others/Khabari-scheme-back-to-keep-tabs-on-illegal-sex-determinati/cid8809033.htm>

¹⁶³ CRL.M.C. 1352/2023 & CRL.M.A.5184/2023.

¹⁶⁴ Biju, R.M. 2022, September 5. "PCPNDT Act: Supreme Court Asks Union Govt To Inform State Steps Taken For Enforcement". *Live Law*. Accessed October 13, 2024 at <https://www.livelaw.in/top-stories/supreme-court-pre-conception-Prenatal-diagnostic-techniques-act-1994->

A Supreme Court Bench of Chief Justice of India UU Lalit and Justice Ravindra Bhat asked the Union Of India to inform the steps it has taken to direct appropriate authorities for initiation of punishment/penalty for violations under the provisions of the Pre-Conception and Prenatal Diagnostic Techniques Act, 1994 (PCPNDT Act) and related rules. This was about a petition filed by Advocate Shobha Gupta arguing that various provisions of the Act were not being executed effectively.

*Federation of Obstetricians and Gynaecological Societies of India (FOGSI) v. The Union of India and Others (2019)*¹⁶⁵

A writ petition was filed by the Federation of Obstetricians and Gynaecological Societies of India (FOGSI) questioning the constitutional validity of the Pre-conception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 in the light of criminal charges being taken against several medical centers working in the area of Prenatal diagnostic testing owing to improper documentation. The petitioners stated that their machinery is often sealed when there is suspicion of them undertaking sex-selection procedures, although there might not be sufficient evidence for the same. The petitioners claimed that *Form F*, which is meant for patient information, is often found to contain inadequate information. This leads to criminal charges against the medical establishment and no clear distinction is made between clerical errors and criminal action.

Justices Arun J. Mishra and Vineet Saran dismissed the petition claiming that the seriousness of Prenatal selection and the distorted sex ratio in the country merited stringent enforcement of the Act and that the Act was meant as a form of social regulation and did not guarantee the right to the general practice of medicine. They accused the petitioners of attempting to mislead the court in ensuring the stringent implementation of the provisions of the Act. They further stated that the secretive nature of Prenatal testing warranted raids and that the maintenance of proper records was mandatory to ensure compliance.

*Union of India v. Indian Radiological and Imaging Association and Others (2018)*¹⁶⁶

The Supreme Court stayed a Delhi High Court judgment which had held that there are no provisions in the Pre-conception and Prenatal 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

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¹⁶⁵ Federation Of Obstetrics And ... vs Union Of India. 2019. Accessed October 13, 2024, at <https://indiankanoon.org/doc/123238150/>

¹⁶⁶ Union Of India vs Indian Radiological And Imaging 2018. Accessed October 13, 2024, at <https://indiankanoon.org/doc/37864053/>

clarified that Sub-section 1 of Section 32 of the PCPNDT Act confers the power to formulate rules 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)*¹⁶⁷

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 the corporations to stop displaying and sponsoring any advertisements relating to Prenatal sex determination. The court directed this order be 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.

¹⁶⁷ Sabu Mathew George vs Union Of India And Ors. 2017. Accessed October 13, 2024, at <https://indiankanoon.org/doc/192654466/>

7. CHILD MARRIAGE, EARLY MARRIAGE, AND FORCED MARRIAGE

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.¹⁶⁸ According to the UNFPA¹⁶⁹, child marriage is a marriage or union in which one or both spouses are under 18 years old. According to UNICEF, child marriage is a violation of child rights, and hurts physical growth, health, mental and emotional development, and education opportunities. UNICEF also indicates that girls are affected in much larger numbers than boys and at a greater intensity.¹⁷⁰

Indian law defines child marriage as a “contract of marriage between two people of which either or both parties is a child”¹⁷¹. 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’.¹⁷² The Office of the United Nations High Commissioner (OHCHR) notes that child marriage is often accompanied by early and frequent pregnancy and childbirth, resulting in higher-than-average maternal morbidity and mortality rates. Early and forced marriages often result in women and girls attempting to flee their communities or dying by suicide to avoid or escape the marriage. The COVID-19 pandemic has increased the possibility of child marriages in India, with UNICEF stating that an additional 10 million girls face the risk of child marriage due to the pandemic. The pandemic has led to a strain on access to health care and social services, as well as adding barriers to accessing essential community-based support. Increased economic insecurity further heightens the incidence of child marriages as many parents find that to be a solution for alleviation of their economic burdens.¹⁷³

¹⁶⁸ United Nations Office of the High Commissioner. Child and forced marriage including in humanitarian settings. Accessed October 13, 2024, at <https://www.ohchr.org/en/women/child-and-forced-marriage-including-humanitarian-settings>

¹⁶⁹ United Nations Population Fund. 2020, January 20. Child Marriage—Frequently Asked Questions. Accessed October 13, 2024, at <https://www.unfpa.org/child-marriage-frequently-asked-questions>

¹⁷⁰ UNICEF India. Ending child marriage and adolescent empowerment. Accessed October 13, 2024 at <https://www.unicef.org/india/what-we-do/end-child-marriage>

¹⁷¹ The Prohibition of Child Marriage Act 2006. Accessed October 13, 2024, at https://www.indiacode.nic.in/bitstream/123456789/15943/1/the_prohibition_of_child_marriage_act%2C_2006.pdf

¹⁷² The Indian Penal Code 1860. Accessed October 13, 2024, at https://indiacode.nic.in/handle/123456789/2263?sam_handle=123456789/1362

¹⁷³ UNICEF Press Release. 2021, March 08. “10 million additional girls at risk of child marriage due to COVID-19”. Accessed October 23, 2024 at <https://www.unicef.org/rosa/press-releases/10-million-additional-girls-risk-19>

Early marriage is defined as “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”.¹⁷⁴

Forced marriage, according to the OHCHR, is any marriage that 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.¹⁷⁵

The UNFPA’s *State of the World Population 2020* report¹⁷⁶ states that the real solutions to ending early and forced marriages have to do with ending anti-female biases and discrimination against girls and women. The report also iterates that poverty, financial insecurity, and limited access to quality education and work opportunities for girls and women mean that child marriage is often seen as the optimal choice for girls or as a way for parents to mitigate the household’s difficult economic circumstances. Within India, child marriage is closely tied to low levels of income and education, poverty, and residence in rural areas. In one study conducted by the Population Council of India with the support of the Bill and Melinda Gates Foundation and the David and Lucille Packard Foundation, it was found that early marriage, marital violence, and dowry-related violence had significantly negative effects on the mental health of adolescent girls in India, which on average tends to be much worse than that of adolescent boys.¹⁷⁷

DATA ON CHILD MARRIAGES

According to Census 2011 data, there were 33.8 million child marriages reported in India over the decade.¹⁷⁸ This figure includes both girls below the age of 18 and boys below the

child-marriage-due-covid-19.

¹⁷⁴ Rangita, S. 2008. *Child Marriage and the Law. Legislative Reform Initiative Paper Series*. UNICEF: New York.

¹⁷⁵ United Nations Office of the High Commissioner. *Child and forced marriage including in humanitarian settings*. Accessed October 13, 2024, at <https://www.ohchr.org/en/women/child-and-forced-marriage-including-humanitarian-settings>

¹⁷⁶ United Nations Population Fund. 2020. *State of the World Population 2020*. Accessed October 13, 2024, at https://www.unfpa.org/sites/default/files/pub-pdf/UNFPA_PUB_2020_EN_State_of_World_Population.pdf

¹⁷⁷ Nezami, Sheezan. 2021, October 12. “Suicidal tendency in girls due to early marriage”. *The Times of India*. Accessed October 13, 2022, at <https://timesofindia.indiatimes.com/city/patna/suicidal-tendency-in-girls-due-to-early-marriage/articleshow/86946405.cms>

¹⁷⁸ Young Lives and National Commission for Protection of Child Rights (NCPCR). 2017. *A Statistical Analysis of Child Marriage in India Based on Census 2011*. Accessed October 13, 2022, at <https://www.younglives-india.org/news/launch-analysis-child-marriage-india-based-2011-census>

age of 21. UNICEF data suggests that one in three of the world's child brides live in India, predominantly in 5 states: Uttar Pradesh, Bihar, Maharashtra, West Bengal, and Madhya Pradesh.¹⁷⁹ There are certain shared characteristics found in child brides in India; they are largely from rural backgrounds, with girls from poorer households being at a higher risk.

According to the National Family Health Survey 2019-21, 23.3% of women surveyed got married before attaining the legal age of 18 years, a reduction of 3% from the NFHS-4. Among men and boys, the percentages reported were 17.7% (NFHS-5) and 20.3% (NFHS-4). 43% of women aged 20-24 years were married by age 20, and 61% were married by age 21. Urban India accounts for 14.7% of child marriages, while rural parts of India account for 27% of child marriages. West Bengal, Bihar, and Tripura account for 40% of all child marriages.¹⁸⁰

The NCRB 2022 data identified 28656 cases of kidnapping and abduction of minor girls to compel them for marriage (Section 366) and 1002 instances of violation of the Prohibition of Child Marriage Act.

LAWS ADDRESSING CHILD MARRIAGE IN INDIA

Following the ineffectiveness of the Child Marriage Restraint Act 1929, the Prohibition of Child Marriage Act (PCMA) was passed in 2006 to prevent child marriages with enhanced punishments of rigorous imprisonment for two years and/or a fine of INR 1 lakh. Under this Act, child marriage can be rendered 'voidable' meaning that the marriage can be canceled through the option of the party who was a child at the time of the marriage and the pleas can be registered with the Court at any time before the party who was a child completes two years of attaining majority. If the petitioner is a minor at the time of filing, it can be done through their guardian or next friend along with the Child Marriage Prohibition Officer. In the 2017 Supreme Court judgment, Justices M.B. Lokur and Deepak Gupta commented on the PCMA Act as being 'strange' that it did not declare child marriage void while it simultaneously prohibits and criminalises it.¹⁸¹

The 2006 Act also provides for the appointment of a Child Marriage Prohibition officer whose duties are to prevent child marriages and spread awareness of the same. Some important provisions of the 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;

¹⁷⁹ UNICEF. 2023, May 05. Ending Child Marriage: A Profile of progress in India. Accessed October 20, 2024 at <https://data.unicef.org/resources/ending-child-marriage-a-profile-of-progress-in-india-2023/>.

¹⁸⁰ Ministry of Health and Family Welfare. 2022. National Family Health Survey-5 (NFHS-5) 2019-21. Accessed October 13, 2024, at http://rchiips.org/nfhs/factsheet_NFHS-5.shtml

¹⁸¹ Independent Thought v. Union of India (2017) 10 SCC 800.

- *Section 11*: Punishment for promoting or permitting solemnisation of child marriages.

It must be emphasised that there are inconsistencies between the PCMA and personal laws such as the Hindu Marriage Act 1956, where there is no express provision prohibiting child marriage per se; a girl can get the marriage annulled only if she was married before attaining the age of 15 and she can challenge 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 prioritize secular law over personal laws when it comes to child marriage. Only the Special Marriage Act, of 1954, stipulates marriages where the parties are below the legal age to be void. There is an inconsistency between legislation that criminalises child marriage while simultaneously having personal laws that condone it and make it permissible. This is an indication that there is higher attention given to the patriarchal and cultural tradition of marriage in comparison to the social security and safety of women which makes addressing the instances of child marriage much harder.

In December 2021, an Amendment to the Prohibition of Child Marriage Act was introduced in the Lok Sabha seeking to increase the minimum age of marriage of girls to 21 years.¹⁸² The 2021 Bill, if passed, will override any other law, custom, or practice.

The Ministry of Women and Child Development implemented the 'Beti Bachao Beti Padhao' (BBBP) scheme, which educates women and society at large on gender equality and the negative repercussions of child marriage. The government of India, in collaboration with the police, launched CHILDLINE, an emergency telephone outreach service for children in crisis that responds with appropriate interventions for child marriages. The National Commission for the Protection of Child Rights (NCPCR) runs a variety of programmes in collaboration with relevant parties such as Child Welfare Committees, the police, and the Ministry of Women and Child Department.¹⁸³

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. The Police;
 - b. The Child Marriage Prohibition Officer (CMPO) (also responsible for reporting and preventing);
 - c. The Judicial Magistrate First Class/the Metropolitan Magistrate (can take *suo moto*)

¹⁸² *The Prohibition of Child Marriage (Amendment) Bill, 2021*. Accessed October 13, 2022, at [https://prsindia.org/files/bills_acts/bills_parliament/2021/The%20Prohibition%20Of%20Child%20Marriage%20\(Amendment\)%20Bill,%202021.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2021/The%20Prohibition%20Of%20Child%20Marriage%20(Amendment)%20Bill,%202021.pdf)

¹⁸³ Singh, Rishi. 2023. "The Reality of Child Marriage in India." *Legal Lock Journal* 2(3): 43-57

- cognisance);
 - d. The Child Welfare Committee;
 - e. ChildLine;
 - f. The District Magistrate (has same powers as CMPO in case of mass marriages):
 - i. 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).
 - ii. Complaints can be oral or written, via phone, letter or telegram, e-mail, fax or a handwritten note duly signed by the complainant.
2. First Information Report: Please see the Prajnya FIR Ready Reckoner (Appendix).

CASES IN RECENT NEWS

At the start of 2023, the Chief Minister of Assam was stated to have implemented a crackdown on child marriages in the state. During the first phase of the drive against child marriage, the police registered over 4000 cases resulting in mass arrests, starting in the month of February. During the second phase, at least 706 cases were registered and 1041 people were booked under the PCMA Act and the POCSO Act. The CM stated that the crackdown would continue every six months until 2026.¹⁸⁴

In October 2022, The Kailash Satyarthi Foundation, led by Nobel Peace Prize Laureate and child rights activist Kailash Satyarthi, launched a nationwide campaign called ‘Child Marriage Free India’ to end the social evil of child marriage. The Foundation called the drive the “world’s biggest-ever grassroots campaign against child marriage.” The campaign involved women and girls leading the lighting of lamps and torchlight procession in around 10,000 villages from over 500 districts in 26 states.¹⁸⁵ In a state-level consultation held by the Foundation before the campaign, it stated that at least 96% of child marriage cases were pending trial across the country by the end of 2021.¹⁸⁶

In September 2022, the Bharatiya Muslim Mahila Andolan (BMMA), a secular organisation working for the welfare of Muslim women, demanded that the incidents of child marriages among the Muslim community be registered under the Prohibition of Child Marriage Act (PCMA), as opposed to being governed by Muslim personal law, which does not explicitly

¹⁸⁴ Purkayastha, Biswa. 2023, October 04. “916 held in fresh crackdown on child marriages in Assam”. *Hindustan Times*. Accessed October 19, 2024, at <https://www.hindustantimes.com/india-news/916-held-in-fresh-crackdown-on-child-marriages-in-assam-101696360311759.html>.

¹⁸⁵ FP Staff. 2022, October 16. “Child Marriage Free India: Nobel winner Kailash Satyarthi starts 'biggest-ever grassroots drive' against child marriage”. *Firstpost*. Accessed October 16, 2024, at <https://www.firstpost.com/india/nobel-peace-laureate-kailash-satyarthi-launches-nationwide-child-marriage-free-india-campaign-11460501.html>

¹⁸⁶ India News. 2022, October 5. “96% child marriage cases pending trial across India by 2021: Rights body”. *Hindustan Times*. Accessed October 13, 2024, at <https://www.hindustantimes.com/cities/chandigarh-news/96-child-marriage-cases-pending-trial-across-india-by-2021-rights-body-101664912525692.html>

prohibit marriage below a certain age limit. The BMMA emphasised that the new law must specifically mention Muslim women.¹⁸⁷

The 2021 Amendment Bill to the PCMA has been met with some criticism, which suggested that increasing the age of marriage in itself is not an effective method to curb the practice without addressing economic and cultural factors related to it, just as the 2006 Act has not led to a significant decrease in cases of child marriage. Numerous studies show that raising the age of marriage alone does not lead to higher participation of women in education or employment, as long as attitudinal changes and greater access and infrastructure for development are not ensured. Without economic enablers, such a law can lead to child marriage taking place more clandestinely, and persecution of families that are already socially and economically vulnerable. Furthermore, such a law can also be used to criminalise and prevent young people from exercising their right to choose their marriage partner, especially by disapproving parents. This is particularly true of inter-faith and inter-caste marriages. Critiques also stated that this increase in age is not in conjunction with other laws that continue to see 18-year-olds as legal adults who can vote, buy property, consent to sexual relations, and work.¹⁸⁸

RECENT CASE LAW

*Aisha Kumari v State of N.C.T. of Delhi & Ors (2020)*¹⁸⁹

In this case, the petitioner was forcefully married when she was 14 and stated she had “no option but to go along with her parent’s wishes and was compelled to give her consent for the marriage ceremony”. The petitioner cited the Karnataka government’s introduction of the Prohibition of Child Marriage (Karnataka Amendment) Act, 2016, which declared child marriage to be void ab initio and relied on the Supreme Court’s judgment in the case of *Independent Thought v UOI 2017* in furtherance of her position that the Delhi government must make an amendment to declare child marriages void ab initio, meaning that the marriage should be invalid from the beginning. She stated in her petition that failure to declare would be violative of the fundamental human right to live with dignity. The High

¹⁸⁷ Saigal, Sonam. 2022, September 24. “BMMA seeks inclusion of Muslims under Prohibition of Child Marriage Act”. The Hindu. Accessed October 13, 2024 at <https://www.thehindu.com/news/national/other-states/bmma-seeks-inclusion-of-muslims-under-prohibition-of-child-marriage-act/article65930768.ece>

¹⁸⁸ Rajalakshmi, T.K. 2022, January 14. “The Prohibition of Child Marriage (Amendment) Bill has a flawed notion of gender justice. Frontline. Accessed October 13, 2024 at <https://frontline.thehindu.com/social-issues/gender/the-prohibition-of-child-marriage-amendment-bill-has-a-flawed-notion-of-gender-justice/article38054966.ece> ; Deswal, Vageshwari. 2022, January 25. “Prohibition of Child Marriage (Amendment) Bill, 2021: A critique”. The Times of India. Accessed October 13, 2024 at <https://timesofindia.indiatimes.com/blogs/legally-speaking/prohibition-of-child-marriage-amendment-bill-2021-a-critique/> ; Muttreja, Poonam. 2020, June 30. Ending early marriage in India will take more than legal action – it needs real belief in equality. *Scroll.in*. Accessed October 13, 2024 at <https://scroll.in/article/966034/ending-early-marriage-in-india-will-take-more-than-legal-action-it-needs-real-belief-in-equality>

¹⁸⁹ W.P.(C) 10945/2020 & CM APPL. 34285/2020

Court issued notices to the Ministry of Law and Justice and the National Commission for Women asking them for their responses.

*Hardev Singh v. Harpreet Kaur and Others (2019)*¹⁹⁰

The case concerned a young man who married a 21-year-old woman when he was 17 years old. A bench led by Justice Mohan M. Shantanagoudar interpreted Section 9 of the *Prohibition of Child Marriage Act, 2006*, which states that “whoever, being a male adult above 18 years of age, contracts a child marriage shall be punishable with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees or with both.” The SC said that neither the provision punishing a child for marrying a woman, nor a woman for marrying a male child is stated in the Act. The latter, according to the bench, is because, “in a society like ours, decisions regarding marriage are usually taken by the family members of the bride and groom, and women generally have little say in the matter.” Therefore, it was interpreted that the legislative intent of the provision was to punish men who married minor girls.

*Independent Thought v. UOI (2017)*¹⁹¹

The petitioner in this case had challenged the validity of Exception 2 to Section 375 of the IPC as amended by the Criminal Law (Amendment) Act, 2013, as violating Articles 14, 15, and 21 of the Constitution to the extent that it permits 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 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.

*M. Janaki v. K. Vairamuthu (2016)*¹⁹²

Madras High Court clarified that child marriages do not automatically become void. The

¹⁹⁰ CR APPL. 1331/2013

¹⁹¹ W.P.(C) 382/2013

¹⁹² C.M.A.(MD) No. 100 of 2016

court stated that the conditions for a Hindu marriage are informed in Section 5 of the Hindu Marriage Act, 1955. Section 5(3) places the 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 (2015)*¹⁹³

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

¹⁹³ Yunusbhai Usmanbhai Shaikh v/s State of Gujarat. 2015. Accessed October 13, 2024, at <https://www.lawyerservices.in/Yunusbhai-Usmanbhai-Shaikh-Versus-State-of-Gujarat-2015-09-23>

8. HUMAN TRAFFICKING

The 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 shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.” This involves forceful and illegal migration of victims.¹⁹⁴ Human trafficking can take many forms; one such form extremely prevalent in India is the trafficking of brides, which is the act of purchasing and selling brides into domestic slavery. The disparity in male and female gender ratios has been cited as the cause of bride trafficking.¹⁹⁵

Human trafficking is often considered to be a gendered crime, because of the overwhelming number of victims being female (71%, as of 2017) and perpetrators being male, globally. Of the victims of child trafficking, young girls account for almost three-quarters.¹⁹⁶ As stated by Yakin Ertürk, former Special Rapporteur on Violence against Women, its Causes and Consequences (Special Rapporteur on VAWG)¹⁹⁷, human trafficking is one of the major areas of concern with regards to violence against women, alongside domestic violence, sexual violence in conflict, and reproductive rights violations. More often than not, trafficking of women and girls takes place in the context of migration, and victims face different forms of gender-based violence such as sexual violence, rape, violation of their reproductive rights, and slavery both after and during trafficking.¹⁹⁸

¹⁹⁴ OHCHR. 2000. Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Accessed December 1, 2024 at <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons>

¹⁹⁵ Rishi, Shivani. 2021. “Sexual Violence and Human Trafficking in India: Legislation, Enforcement, and Recommendations.” *Loyola University Chicago International Law Review* 17(1): 47-64.

¹⁹⁶ The Inter-Agency Coordination Group Against Trafficked Persons (ICAT). 2017. The Gender Dimensions of Human Trafficking. Issue Brief 4. Accessed October 13, 2024, at <https://icat.un.org/sites/default/files/publications/icat-ib-04-v.1.pdf>

¹⁹⁷ The United Nations Special Rapporteur on Violence against Women, Its Causes and Consequences. 15 years of The United Nations Special Rapporteur on Violence Against Women, Its Causes and Consequences. Accessed October 13, 2024, at <https://www.ohchr.org/Documents/Issues/Women/15YearReviewofVAWMandate.pdf>

¹⁹⁸ Fernandez, Gema and Yoshida, Keina. 2018, June 28. “Human Trafficking as a Gendered Phenomenon – Part I”. *INTLAWGRRLS*. Accessed October 13 2024 at <https://ilg2.org/2018/06/28/human-trafficking-as-a-gendered-phenomenon-part-i>

The most common cause of human trafficking globally is trafficking for sexual exploitation, accounting for 54% of all forms of trafficking. Girls and women represent 96% of victims trafficked for sexual exploitation. Even other causes of trafficking of women such as forced labour, begging, and domestic servitude may involve the perpetrator(s) exerting some form of sexual violence over victims as a means of coercion and control. 82% of victims of human trafficking for organ removal are male.¹⁹⁹

While sexual violence can affect all individuals, Dalit and women more susceptible to trafficking.²⁰⁰ The same is true for Adivasi women. Ruchira Gupta, an anti-trafficking activist and founder of Apne Aap Women Worldwide, stated that “traffickers tend to take advantage of tribal women the most, and use their intersecting vulnerabilities such as food security, unstable housing, and a lack of legal protection to seduce, trick, and force them into trafficking.”²⁰¹

DATA ON HUMAN TRAFFICKING

According to the NCRB 2022 report, a total of 2250 cases of human trafficking were registered, increasing from 2189 cases in 2021. 6036 victims have been reported as trafficked, of which 3594 were women. 6693 victims of trafficking were reported to have been rescued. Of the 2868 under-18 victims reported as trafficked, 1819 were males and 1059 were females. Of adult victims of trafficking, 2535 were females and 623 were males.²⁰²

The 2023 Trafficking in Persons Report, issued by the United States of America State Department's Office to Monitor and Combat Trafficking in Persons, categorized India in Tier 2, which includes countries whose governments do not fully comply with the minimum standards of the Trafficking Victims Protection Act (TVPA) of 2000, but are making significant efforts to bring themselves into compliance with those standards. The government demonstrated increased efforts compared to the previous reporting period. These efforts included “investigating more human trafficking cases, collaborating with foreign governments on trafficking cases, and convicting more traffickers for bonded labour”.²⁰³ India’s continued place in Tier 2 is in part due to the impact of the COVID-19

¹⁹⁹ ICAT. (2017). Ibid.

²⁰⁰ The Situation of Dalit rural Women - Discussion on CEDAW General Comment on rural women- Article 14 by Navsarjan Trust (India), FEDO (NEPAL) and the International Dalit Solidarity Network, 2013.

²⁰¹ Aziz, Sarah. 2023, August 22. “In India, Human Traffickers Target Tribal Women and Girls”. *Voice of America English News*. Accessed on November 1, 2024 at <https://www.voanews.com/a/in-india-human-traffickers-target-tribal-women-and-girls/7235083.html>

²⁰² NCRB Crime in India Report 2022.

²⁰³ U.S Department of State. 2023. 2023 Trafficking in Persons Report. Accessed November 5, 2024, at

pandemic on its anti-trafficking capacity. The National Commission for Women (NCW)'s launch of an anti-trafficking unit was mentioned as significant as well.²⁰⁴

RELEVANT LAWS ON HUMAN TRAFFICKING IN INDIA

The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021

In early July 2021, the Ministry of Women and Child Development invited suggestions and comments on its new draft Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021²⁰⁵, a reworked version of the previous Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018. The 2018 Bill has been criticized for its 'failed carceral approach to trafficking'²⁰⁶ or in other words, 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.²⁰⁷

The 2021 Bill has been cited by many to have improved some of the drawbacks of the earlier Bill. A few salient features of the same are as follows:

- The legislation will extend to all citizens inside as well as outside India, persons on any ship or aircraft registered in India wherever it may be or carrying Indian citizens wherever they may be.
- Property bought via such income as well as used for trafficking can now be forfeited with provisions set in place, similar to that of the Money Laundering Act.
- Besides women and children, the draft also extends the protection to transgender persons.
- The definition of trafficked victim has been changed; a person need not be transported from one place to another to be identified as a victim of trafficking.

<https://www.state.gov/reports/2023-trafficking-in-persons-report/india/>

²⁰⁴ *ibid.*

²⁰⁵ Journals of India. 2021, July 6. "Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021". Accessed October 14, 2024, at <https://journalsofindia.com/trafficking-in-persons-prevention-care-and-rehabilitation-bill-2021/>

²⁰⁶ For a comprehensive critique of the Bill see Kotiswaran, Prabha. 2018, July 23. "How India can go forward on tackling human trafficking," *Hindustan Times*. Accessed October 14, 2024 at <https://www.hindustantimes.com/analysis/how-india-can-go-forward-on-tackling-human-%20trafficking/story-nlm1deYwCMn6ApdwuFRs6K.html>

²⁰⁷ United Nations Office of the Human Rights Commissioner. 2018, July 23. "India must bring its new anti-trafficking Bill in line with human rights law, urge UN experts". Accessed October 14, 2024, at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23392>

- The scope of the Bill vis-a-vis offenders will also include defence personnel and government servants, doctors and paramedical staff, or anyone in a position of authority.
- The Bill requires the central or state government to set up Protection Homes, to provide shelter, food, counselling, and medical services to victims.
- To punish trafficking, the Bill provides for the setting up of investigation and rehabilitation authorities at the district, state, and national levels.

However, the 2021 Bill has raised some concerns, notably around the lack of clarity on the procedure through which the NIA will gather information through Anti-Human Trafficking Units or AHTUs at different levels in different parts of the country, the absence of community-based rehabilitation, missing definition of reintegration, and other such technical issues. Moreover, representatives of Durbar, the largest sex worker collective in Kolkata, have emphasized that the proposed Bill criminalizes sex work and the choice of sex work as a profession.²⁰⁸

The current Indian laws on trafficking are as follows:

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 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*: Procurement 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.

²⁰⁸ Singh, Shiv Sahay. 2021, July 18. "Concerns remain over anti-trafficking bill". *The Hindu*. Accessed October 14, 2024, at <https://www.thehindu.com/news/national/concerns-remain-over-anti-trafficking-bill/article35388874.ece>

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.

International Covenants

India is a party to several international agreements. It is the signatory to the International Covenant on Civil and Political Rights which states that a person cannot be subjected to cruel, inhuman, or degrading treatment.²⁰⁹ India is also a signatory to the International Covenant on Economic, Social and Cultural Rights which guarantees the right to the highest attainable standard of health.²¹⁰ Furthermore, India is a party to the UN Convention on the Elimination of All Forms of Discrimination Against Women.²¹¹ As a party to these treaties, India has specific obligations to take measures to as mentioned in them.

CASES IN RECENT NEWS

The National Investigation Agency carried out raids across eight states and two union territories in connection with human trafficking cases in November 2023, resulting in the arrests of over 44 persons.²¹²

RECENT CASE LAW

*Geeta Arora @ Sonu Punjaban v. State (2020)*²¹³

Geeta Arora, AKA Sonu Punjaban, was accused alongside Sandeep Bedwal of kidnapping and selling a minor girl into prostitution. Punjaban was sentenced to jail by a Delhi court for 14 years for offences under the Immoral Traffic (Prevention) Act and 10 years for other

²⁰⁹ International Covenant on Civil and Political Rights, *part. III*, art. 7, Dec. 19, 1966, 999 U.N.T.S. 171.

²¹⁰ International Covenant on Economic, Social, and Cultural Rights, *pt. III*, art. 12, Dec 16, 1966, 993 U.N.T.S. 3.

²¹¹ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

²¹² Chauhan, Neeraj. 2023, November 8, "NIA carries out nationwide raids over human trafficking cases". *Hindustan Times*. Accessed November 5, 2024 at <https://www.hindustantimes.com/india-news/niacarries-out-nationwide-raids-over-human-trafficking-cases-101699419573881.html>.

²¹³ CRLA. 413/2020

offences under the Indian Penal Code, including selling and buying of a minor girl for prostitution and criminal conspiracy, which will run separately. She was also fined INR 64,000. Her co-accused was also convicted and sentenced to 20 years in jail and fined INR 65,000. While sentencing the duo, the court said that the minor was sexually exploited for three to four years at the hands of several offenders, and if Sandeep had not kidnapped her, “perhaps the ordeal would not have happened.”

*2019 Case in Rajasthan*²¹⁴

In a landmark verdict in Rajasthan, magistrate Vandana Rathode sentenced a man identified as Sonu, accused of human trafficking, with a life sentence as opposed to simply imposing a fine. This verdict was hailed by human rights activists who considered it to be a strong deterrent to human trafficking particularly in Rajasthan, which has one of the highest rates of human trafficking in India. The culprit was responsible for forcing five boys into child labour while luring them with the promise of education.

*Freedom Firm v. Commissioner of Police, Pune & Others (2015)*²¹⁵

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 of 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)*²¹⁶

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.

²¹⁴ Nagaraj, Anuradha. 2019, August 29. “New hope for child rights after India gets tough on traffickers”. *Thomas Reuters Foundation News*. Accessed October 14, 2024, at <https://www.reuters.com/article/world/new-hope-for-child-rights-after-india-gets-tough-on-traffickers-idUSKCN1VJ25H/>

²¹⁵ Freedom Firm Versus Commissioner Of Police, Pune And Ors. 2015. Accessed October 14, 2024, at <http://www.the-laws.com/Encyclopedia/Browse/Case?CaseId=315102532300>

²¹⁶ Prajwala v. Union of India (UOI) and Ors. 2015. Accessed October 14, 2024, at <https://indiankanon.org/doc/90702391/>

9. STREET SEXUAL HARASSMENT

Street sexual harassment refers to any form of sexual harassment that occurs in a public place. This includes not just streets, but 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.²¹⁷ This 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.”²¹⁸ Street sexual harassment is euphemistically known in India as ‘eve-teasing’, a term that has been criticized because it can lead to trivialization of the impact that this form of violence has on victims.²¹⁹

Section 354A of the Criminal Law (Amendment) Act, 2013, stipulates what constitutes a sexual harassment offence and the penalties for a person committing such an offence would be. Penalties range from one to three years imprisonment and/or a fine. According to the Section, sexual harassment comprises of 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.

In August 2023, the Supreme Court released a 30-page handbook²²⁰ aimed at combating gender stereotypes. The handbook identifies common stereotypical words and phrases about women that are often used in judgements. One such phrase is ‘eve teasing’, which has now been corrected to ‘street sexual harassment’. Correcting antiquated language that promotes stereotypical references and descriptions of women is the first step towards combating patriarchal notions of women in India.²²¹

²¹⁷ Rana, Usha. 2023. “Are We Safe? An Investigation of Eve-teasing (Public Sexual Harassment) in India.” *Journal of International Women's Studies*: 25(7).

²¹⁸ Stop Street Harassment. 2015. *What is Street Harassment?* Accessed October 16, 2024, at <http://www.stopstreetharassment.org/about/what-is-street-harassment/>

²¹⁹ Mohanty, Ranjani I. 2013, April 20. “The Term 'Eve-Teasing' Must Die”. *The Wall Street Journal*. Accessed December 8, 2024 at <https://www.wsj.com/articles/BL-IRTB-18485>

²²⁰ Handbook on Combating Gender Stereotypes. Accessed December 8, 2024 at <https://www.scobserver.in/wp-content/uploads/2023/08/Handbook-on-Gender-Stereotypes.pdf>

²²¹ R, Mihir. 2023, August 19. “Supreme Court handbook on gender stereotypes: Progressive, but will the law catch up?”. *Supreme Court Observer*. Accessed December 8, 2024 at <https://www.scobserver.in/journal/supreme-court-handbook-on-gender-stereotypes-progressive-but-will-the-law-catch-up/>

DATA ON SEXUAL HARASSMENT (WITH A FOCUS ON STREET SEXUAL HARASSMENT)

The following table contains the data pertaining to street sexual harassment from the National Crime Records Bureau reports.

	<i>Assault on Women with Intent to Outrage Her Modesty</i>	<i>Assault on Women</i>	<i>Sexual Harassment</i>	<i>Street Sexual Harassment (Eve Teasing IPC 509)</i>	<i>Sexual Harassment in Public Transport</i>	<i>Assault on Women with Intent to Disrobe</i>	<i>Voyeurism</i>	<i>Stalking</i>
2021	89200	49761	17539	7788	357	11102	1513	9285
2022	83344	44867		8972	422	9101	1451	10116

Source: National Crime Records Bureau, Crime in India 2021 and 2022 reports.

According to studies by Action Aid in 2015-16, 79% of the total women surveyed in India have experienced some form of sexual harassment in public spaces, and 44% of women surveyed said that they had experienced groping.²²² These numbers are even more alarming when taking into account that sexual harassment is one of the least reported crimes in the country.²²³ The lack of reporting is often due to various factors such as the lack of awareness of redressal systems, the trivialisation of sexual harassment as mere 'eve-teasing', victims fearing reprisals and undue backlash by perpetrators, and victims fearing social stigma and victim blaming.²²⁴

LACK OF SAFE SPACES IN INDIA

In a 2007 paper, Kalpana Viswanath and Surabhi Mehrotra examined gender-based violence in Delhi's public spaces through 30 safety audits conducted across the city. According to 2005 data from the National Crime Records Bureau, Delhi ranked among the most dangerous cities for women. According to Vishwanath and Mehrotra, this pervasive threat of violence heavily influences women's movements and their access to public spaces.

²²² Senthilingam, Meera. 2017, November 29. "Sexual Harassment: How it stands around the globe". *CNN*. Accessed October 16, 2024, at <https://edition.cnn.com/2017/11/25/health/sexual-harassment-violence-abuse-global-levels>

²²³ Safetipin. 2021, June 21. "Street Harassment: An Epidemic of Gender Violence". Accessed October 16, 2024, at <https://safetipin.com/street-harassment-an-epidemic-of-gender-violence/>

²²⁴ Singh, Nandini, 2022, October 21. "More than 80% of women commuters faced sexual harassment but only 1% reported it, here's why". *India Today*. Accessed October 24, 2023 at <https://www.indiatoday.in/diu/story/women-commuters-faced-sexual-harassment-but-only-reported-it-2288137-2022-10-21>.

Women who occupy public spaces without a clearly defined purpose—such as work, shopping, or activities related to family responsibilities—are often deemed illegitimate users, particularly during certain times of the day. Violence against women is characterized by its constant, normalized presence in society. The findings of the audits also revealed that access to public spaces is shaped not only by gender but also by intersections of class, occupation, marital status, mode of transportation, and other identity-related privileges. Additionally, the audits highlighted infrastructural issues that exacerbate women’s vulnerability, such as poor lighting in public areas, encroached pedestrian paths, relocation of urban poor communities to the city’s outskirts, and the lack of functional public toilets. These challenges force many women to use open fields for sanitation, increasing their risk of sexual assault.²²⁵

It is clear that, not only do social norms in India act to restrict women’s mobility, but barriers to transportation and lack of safety exacerbate this. Mobility is an important contributor in the ability to participate in paid employment.²²⁶ In India, the female labour participation rate in fell to 16.1% during the quarter of July-September 2020, reported to be the lowest among all the major economies.²²⁷ For women, sexual and gendered minorities, and persons with disabilities to be able to experience safe and inclusive public spaces, it is important to first understand their unique requirements.²²⁸

Since the Nirbhaya case, there have been some technological advancements to promote the safety of women such as panic buttons in buses, CCTVs across the public areas in cities including train stations and GPS tracking in public transport vehicles.²²⁹ These initiatives have been criticised, however, because they rely on the concept of negative liberty, defined

²²⁵ Viswanath, Kalpana and Mehrotra Surabhi T. 2007. “Shall We Go out?” Women’s Safety in Public Spaces in Delhi. *Economic and Political Weekly*, 42(17), 1542–1548.

²²⁶ World Bank. 2022. India - Making Public Transport and Urban Spaces Safer and Inclusive for Women : Policy Brief - Based on the Toolkit for Enabling Gender Responsive Urban Mobility and Public Spaces. Accessed December 8, 2024 at <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/099606210202239624/idu05a42e5560dd3c04d060ae300b580fef175f6>

²²⁷ Kumar, Manoj. 2021, August 3. “India’s female labour participation rate falls to 16.1% as pandemic hits jobs.” *Reuters*. Accessed October 23, 2024 at <https://www.reuters.com/world/india/indias-female-labour-participation-rate-falls-161-pandemic-hits-jobs-2021-08-03/>.

²²⁸ World Bank. 2022. Ibid.

²²⁹ Press Information Bureau, GOI, Ministry of Road Transport & Highway. 2014, February 6. “Nirbhaya Fund” Scheme for Women Safety in Public Road Transport. Accessed on November 18, 2024 at <https://pib.gov.in/newsite/PrintRelease.aspx?relid=103102>; Haidar, Faizan. 2018, April 20. “More railway station to get CCTVs using Nirbhaya Fund”. *Hindustan Times*. Accessed November 15, 2024 at <https://www.hindustantimes.com/india-news/more-railway-station-to-ge-get-cctvs-using-nirbhaya-fund/story-3owBwVG9HrusulyAmdAlHP.html>; Press Information Bureau, GOI, Ministry of Home Affairs, ‘Panic Buttons for females in distress’. Accessed December 8, 2024 at <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1562923>

as the “absence of obstacles, barriers, or constraints,” and adopt a top-down approach where decisions are driven by the government. In contrast, positive liberty emphasizes not only the absence of restraint but also the capacity for self-governance, fostering collaborative, bottom-up solutions involving diverse societal actors. The top-down approach, relying on invasive surveillance tools like CCTVs, GPS tracking, and panic-button apps, excludes women without smartphones and often focuses only on violence in public spaces, neglecting the significant violence that occurs within homes. Surveillance framed as security can lead to negative repercussions, as constant monitoring under the guise of safety can curtail freedom. These measures often sidestep challenging patriarchal norms, addressing only select acts of violence in public while placing the burden of safety on women. As a result, male dominance in public spaces is acknowledged but left unchallenged.²³⁰

Creating safe spaces requires dismantling systemic inequality and patriarchy through visible movements and reclaiming public spaces. Barriers to accessing transport and public areas can be reduced through gender-sensitive infrastructure design and services. Suggestions by Kalpana Viswanath and Surabhi Mehrotra in their paper include increasing women’s representation among frontline staff, establishing emergency services and rapid response teams, and improving intermediate public transport to enhance safety.²³¹

RELEVANT LAWS ON STREET SEXUAL HARASSMENT IN INDIA

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 expect not to be observed.
- *Section 354 D:* Stalking: Following and contacting or attempting to contact repeatedly despite a clear indication of disinterest; monitoring the use of the internet, email, or any other form of electronic communication.
- *Section 499:* Defamation by words either spoken or intended to be read.

²³⁰ Soni, Meher. 2023, May 23. “Rethinking the Challenges of Women’s Safety in India’s Cities”. *Observer Research Foundation (ORF) Issue Brief*.

²³¹ Viswanath, Kalpana and Mehrotra Surabhi T. 2007. *Ibid*.

- *Section 503*: Criminal intimidation: Threat to cause injury to person, reputation or property to the person or someone he is interested in 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)*²³²

The Delhi High Court refused to categorise every ‘unwelcome’ physical contact (such as accidental contact) as sexual. It held that physical contact without sexual undertones would not amount to sexual harassment.

*T Manikandan v. The State (Govt of NCT of Delhi) & Another (2017)*²³³

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)*²³⁴

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. The court stated that no one can compel her to love, and she has the absolute right to reject anyone.

*Jishu Sengupta & Others v. State of West Bengal & Another (2016)*²³⁵

The Kolkata High Court stated that sexual innuendos come within the ambit of “sexually coloured remarks” and constitute sexual harassment under Section 354A of IPC.

²³² W.P.(C) 8149/2010

²³³ CRL.REV.P. 404/2016 & CrI.M.B. 1114/2016

²³⁴ AIR 2017 SUPREME COURT 2459

²³⁵ Jishu Sengupta & Others vs The State Of West Bengal & Anr. 2017. Accessed October 16, 2024, at <https://indiankanoon.org/doc/143017740/>

10. WORKPLACE SEXUAL HARASSMENT

Sexual harassment at the workplace is a form of gender-based discrimination at the place of employment. Sexual harassment in the workplace is considered a violation of women's right to equality, life, and liberty. By creating an insecure and hostile work environment, it discourages women from participating in paid employment, thereby adversely affecting their social and economic empowerment, and hindering inclusive growth.²³⁶

The General Assembly Resolution 48/104 on the *Declaration on the Elimination of Violence Against Women* defines violence against women to include sexual harassment, which is prohibited at work, in educational institutions, and elsewhere and encourages the development of penal, civil, or other administrative sanctions, as well as preventive approaches to eliminate violence against women.²³⁷ The *Convention on the Elimination of all Forms of Discrimination against Women* (CEDAW) directs State Parties to take appropriate measures to eliminate discrimination against women in all fields, specifically including equality under the law, in governance and politics, the workplace, education, healthcare, and in other areas of public and social life (Arts. 7-16).²³⁸ The *Beijing Platform for Action* recognizes sexual harassment as a form of violence against women and as a form of discrimination, and calls on multiple actors, including governments, 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.²³⁹

DATA ON WORKPLACE SEXUAL HARASSMENT

According to a 2022 report by the International Labour Organization (ILO)²⁴⁰, almost 23%

²³⁶ Usman, Shah. 2019, December 19. "Sexual Harassment Of Women At Workplace: A Brief Analysis Of The POSH Act, 2013". *Mondaq*. Accessed October 16, 2024 <https://www.mondaq.com/india/employee-rights-labour-relations/876830/sexual-harassment-of-women-at-workplace-a-brief-analysis-of-the-posh-act-2013>

²³⁷ OHCHR. Declaration on the Elimination of Violence against Women. Accessed October 16, 2024, at <https://www.ohchr.org/en/professionalinterest/pages/violenceagainstwomen.aspx>

²³⁸ UN Women. General Recommendations. Convention on the Elimination of All Forms of Discrimination against Women. Accessed October 16, 2024, at <https://www.un.org/womenwatch/daw/cedaw/recommendations/index.html>

²³⁹ UN Women. 1995. Beijing Declaration and Platform for Action. *The Fourth World Conference on Women*. Accessed October 16, 2024 at <http://www.un.org/womenwatch/daw/beijing/platform/>

²⁴⁰ International Labour Organization and Lloyd's Register Foundation. 2022. Experiences of Violence and Harassment at Work: A Global First Survey. Accessed December 10, 2024 at https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_863095.pdf

or 743 million people have experienced sexual harassment in the workplace. The number of incidences were higher for women than men.

In India, the NCRB 2022 recorded 419 cases of sexual harassment at work or office premises over the last year. It is known, however, that workplace sexual harassment is widely underreported due to fear of retaliation and other negative repercussions.²⁴¹

INDIAN LAWS RELEVANT TO WORKPLACE SEXUAL HARASSMENT

In 1997, the Supreme Court, in *Vishaka 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.²⁴² *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013* was enacted sixteen years after *Vishaka*. The Act, similar to *Vishaka*, provides a civil remedy for women and exists alongside various criminal laws that can be used in cases of workplace sexual harassment.²⁴³

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 a sexual nature.

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 unorganised sectors. The complainant can be any “aggrieved woman” who is:

²⁴¹ Ansari, Bushra and Rajaram, Sowmya. 2024, March 7. “It’s Women’s Day, but on the ground, little has changed”. *Deccan Herald*. Accessed December 10, 2024 at <https://www.deccanherald.com/opinion/its-womens-day-but-on-the-ground-little-has-changed-2927289>

²⁴² Vishaka Guidelines against Sexual Harassment at Workplace. Accessed October 16, 2024, at <http://www.nitc.ac.in/app/webroot/img/upload/546896605.pdf>

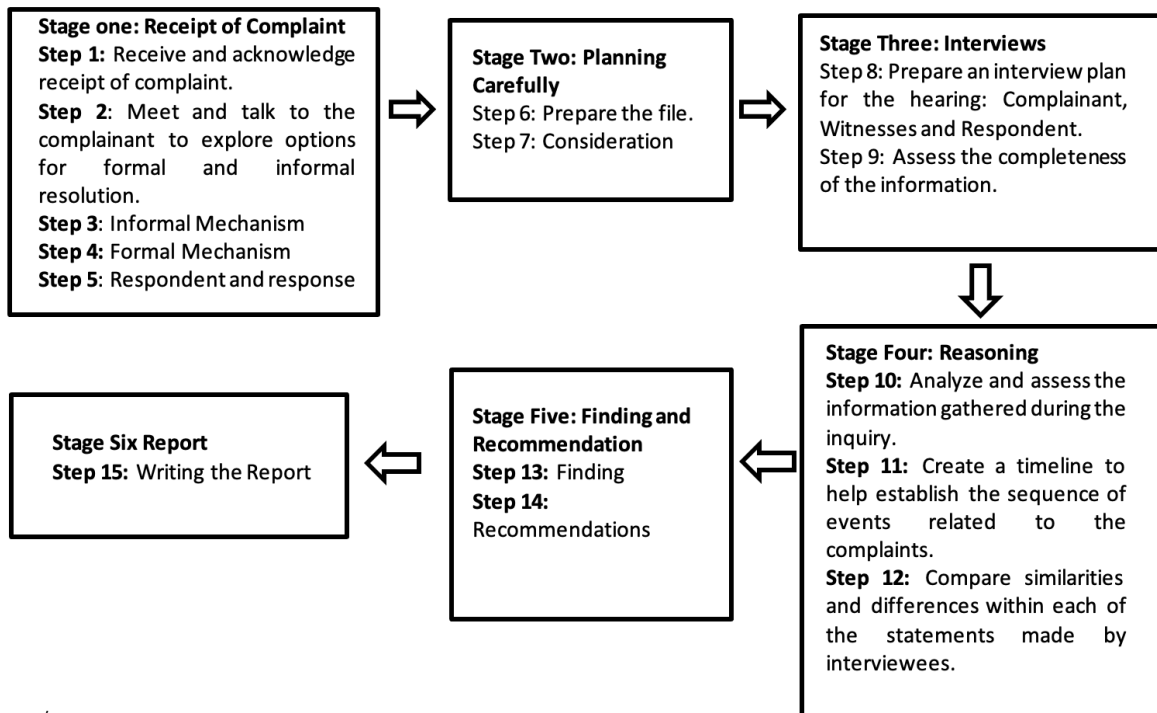
²⁴³ GOI, Ministry of Women and Child Development. 2015. Handbook on Sexual Harassment of Women at the Workplace. Accessed November 10, 2024 at <https://www.iitk.ac.in/wc/data/Handbook%20on%20Sexual%20Harassment%20of%20Women%20at%20Workplace.pdf>

- An employee (this includes a 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);
- A visitor at a workplace (such as a customer at a store);
- A student

The Act provides for two kinds of complaints mechanisms: the Internal Complaints Committee (ICC) and the Local Complaints Committee (LCC). All workplaces with more than ten workers are required to have an Internal Complaints Committee. A 2016 amendment dropped the word ‘Complaints’ so that these are now to be known as Internal Committee and Local Committee²⁴⁴, signalling a broader role than grievance redressal.

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, is presented in this diagram



Source: Ministry of Women and Child Development, Government of India. Handbook On Sexual Harassment of

²⁴⁴ Repealing and Amending Act, 2016, The Second Schedule. 2016, May 16. Accessed October 16, 2024, at <http://extwprlegs1.fao.org/docs/pdf/IND169760.pdf>

Women at Workplace for Employers / Institutions / Organisations/ Internal Complaints Committee / Local Complaints Committee, Page 27.

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.
- the right to appeal in case the recommendations/findings of the complaints committee are not satisfactory.

According to Anagha Sarpotdar, chairperson of the Mumbai city district local committee on sexual harassment at the workplace, one of the major milestones of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 is to provide a special redress mechanism for complaints in the unorganised sector. Section 7 of this Act mandates the constitution of local committees by the state government.²⁴⁵ However, evidence has shown that women in informal sectors, who constitute almost 95% of all women workers in the country, continue to find the institutional processes of the law unclear and inaccessible. Complaints committees are also dysfunctional, as seen in a series of RTI requests filed by the Martha Ferrell Foundation in 2016 and 2017. 56% of the 655 districts that the foundation reached out to did not respond to the RTI requests, only 29% said they had local committees to look into workplace sexual harassment, and 15% said they had not set up a committee yet.²⁴⁶ Similarly, following an RTI application in Tamil Nadu in 2016, The Prajnya Trust wrote to all the District Collectors in the state with a copy of the RTI reply, asking for information regarding "the Local Complaints Committee, formed under the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013, Chapter III, Section 6(1) and Section 6(2)." Only four DCs have responded so far.²⁴⁷

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:

²⁴⁵ Sarpotdar, Anagha. 2020, May 16. "Examining Local Committees under the Sexual Harassment of Women at Workplace Act". *Economic and Political Weekly* 55(20). Accessed October 16, 2024, at <https://www.epw.in/journal/2020/20/review-womens-studies/examining-local-committees-under-sexual-harassment.html>

²⁴⁶ Bhuyan, Anoo, and Khaitan, Shreya. 2021, February 23. "Eight years on, India's law to prevent workplace sexual harassment is marred by poor data collection". *Scroll.in* Accessed October 16, 2024, at <https://scroll.in/article/987583/eight-years-on-indias-law-to-prevent-workplace-sexual-harassment-is-marred-by-poor-data-collection>

²⁴⁷ Prajnya Trust. Replies to RTI on Local Complaints Committees. Accessed October 16, 2024, at <https://www.prajnya.in/lcc-rti-replies>

- 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 expect not to be observed.
- e. *Section 354 D*: Stalking: Following and contacting or attempting to contact repeatedly despite a clear indication of disinterest; monitoring the use of the 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: Threaten 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.

CASES IN RECENT NEWS

In early 2023, a number of India's top women wrestlers began a protest to draw attention to claims of sexual harassment against the BJP MP and Wrestling Federation of India (WFI) chief Brij Bhushan Sharan Singh. Detailing incidents that had occurred over a period of ten years, the wrestlers also levelled allegations against WFI Secretary Vinod Tomar.²⁴⁸ Protests and demonstrations were staged by the wrestlers over several months, gaining international attention²⁴⁹ and resulting in the filing of criminal charges

²⁴⁸ Sinha, Jignasa. 2023, June 2. "Demands for sexual favours, at least 10 cases of molestation detailed in 2 FIRs against Brij Bhushan". *The Indian Express*. Accessed November 26, 2024 at <https://indianexpress.com/article/cities/delhi/demands-for-sexual-favours-at-least-10-cases-of-molestation-detailed-in-2-firs-against-brij-bhushan-8641505/>.

²⁴⁹ ESPN India. 2023, February 23. "Wrestling: Asian Championships moved out of India due to inquiry against WFI." Accessed on November 26, 2024 at https://www.espn.in/wrestling/story/_/id/35718317/wrestling-asian-championships-moved-india-due-inquiry-wfi.

against Singh and Tomar. Both defendants were granted bail in July 2023.²⁵⁰

In October 2023, the Supreme Court directed all states and Union Territories to ensure the appointment of district officers as mandated by the Sexual Harassment at Workplace (Prevention, Prohibition, and Redressal) Act, 2013, within a period of four weeks.²⁵¹ The bench further directed the Union government to oversee states' compliance with the Act and to complete a consolidated affidavit of compliance in 12 weeks.²⁵²

In September 2022, the Delhi Commission for Women (DCW) submitted a report to the city government pointing out several 'lapses' in the implementation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) law.²⁵³ The law requires that a functioning Local Complaints Committee (LCC) is to be constituted in every district. Based on notices issued by the DCW to all district magistrates in Delhi seeking information on its complaint committees, it was observed that the LCCs received only 40 complaints between 2019-21. These cases were also not being dealt with efficiently, the report by DCW claimed.

In a survey conducted by the Association for Advocacy and Legal Initiatives (AALI) Trust in Jharkhand, 63 working women out of a group of 138 interviewed between 2019 and 2021 reported experiencing some form of sexual harassment at their place of work. Additionally, none among the 138 respondents had any information regarding the POSH Act.²⁵⁴

A study among Nifty 50 companies has suggested that with an increasing number of companies resuming work from offices post the COVID-19 pandemic, cases of sexual harassment at workplaces have increased over the last fiscal year. Data from annual reports showed a 20% increase in the number of harassment complaints received by Nifty 50

²⁵⁰ Ojha, Srishti. 2023, July 20. "Brij Bhushan Singh granted bail in wrestlers' sexual harassment case". *India Today*. Accessed on November 26, 2023 at <https://www.indiatoday.in/law/story/brij-bhushan-singh-granted-bail-wrestlers-sexual-harassment-case-delhi-court-2409344-2023-07-20>.

²⁵¹ Anand, Utkarsh. 2023, October 20. "SC directs Centre, states to immediately appoint district officers under POSH Act". *Hindustan Times*. Accessed November 25, 2023, at <https://www.hindustantimes.com/india-news/sc-directs-centre-states-to-immediately-appoint-district-officers-under-posh-act-101697744155584.html>

²⁵² We The Women Of India vs Union Of India on 19 October, 2023. Accessed 25 November 2023 at <https://indiankanoon.org/doc/89897584/>

²⁵³ PTI. 2022, September 19. "DCW seeks strict implementation of the law against sexual harassment of women at workplace". *The Print*. Accessed October 16, 2024 at <https://theprint.in/india/dcw-seeks-strict-implementation-of-law-against-sexual-harassment-of-women-at-workplace/1134453/>

²⁵⁴ Shikha, Swati. 2022, July 5. "Most sexual harassment cases at workplaces go unreported: Study". *The Times of India*. Accessed October 16, 2024 at <https://timesofindia.indiatimes.com/city/ranchi/most-sexual-harassment-cases-at-workplaces-go-unreported-study/articleshow/92665840.cms>

companies in the 2022 financial year.²⁵⁵

RECENT CASE LAW

*Civic Chandran @ CV Kuttan v. State of Kerala (2022)*²⁵⁶

In this case, where a civil rights activist was accused of sexual harassment, Justice Krishna Kumar, while considering bail for the accused, stated that the photographs produced by the accused reveal that the complainant “herself is exposing to dresses which are having some sexual provocative tone”. This was offered as grounds for Section 354A failing to stand against the accused prima facie. He further opined that it was “impossible” to believe that a 74-year-old disabled man could force the complainant in his lap and make sexual advances towards her.

*P vs A & Ors., 2021 (Subsequent order dated March 2022)*²⁵⁷

Following an interim application filed by lawyer Indira Jaising representing Forum Against Oppression of Women, the Bombay High Court on 17th March 2022, issued a subsequent order to its order dated 24th September 2021 in the judgment of the P vs A & Ors., 2021. The order laid down a set a guidelines condemning the disclosure of the identities of the parties, even accidental disclosures, involved in matters falling under the Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“POSH Act”) and Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (“POSH Rules”).

*Acquittal of Tarun Tejpal (2021)*²⁵⁸

²⁵⁵ Bhattacharyya, Richa. 2022, October 3. “Sexual harassment cases rise as India Inc resumes WFO”. *Economic Times*. Accessed October 19, 2024, at <https://economictimes.indiatimes.com/news/company/corporate-trends/sexual-harassment-cases-rise-as-india-inc-resumes-wfo/articleshow/94819887.cms>

²⁵⁶ Jain, Anubhuti. 2022, August 31. “Kerala court granting bail to Chandran highlights sexism, misogyny within Indian judiciary”. *The Print*. Accessed October 16, 2024 at <https://theprint.in/campus-voice/kerala-court-granting-bail-to-chandran-highlights-sexism-misogyny-within-indian-judiciary/1109469/#>

²⁵⁷ POSH at Work. 2022. Bombay High Court: Privacy Guidelines for POSH Cases is Case-Specific. Accessed October 16, 2024, at <https://poshatwork.com/bombay-high-court-privacy-guidelines-for-posh-cases-is-case-specific/>

²⁵⁸ Saigal, Sonam. 2021, May 21. “Tarun Tejpal acquitted in Sexual Harassment Case”. *The Hindu*. Accessed October 16, 2024, at <https://www.thehindu.com/news/national/other-states/tarun-tejpal-acquitted-in-sexual->

In May 2021, a trial court in Mapusa, Goa, acquitted Tarun Tejpal, the former editor-in-chief of Tehelka magazine, of all charges. He was accused of sexually assaulting his female employee in the lift of a five-star hotel in Goa during a work event in 2013. The acquittal was met with protest, and the Network of Women in Media, India (NWMI) stated that it was a grave miscarriage of justice and a massive setback for the Indian women's rights movement, and the safety of working women in particular.²⁵⁹ The NWMI further stated that the court put the victim on trial, persistently shaming and discrediting her. The Goa Government has appealed the judgement, citing the trial court's lack of understanding of a rape victim's post-trauma behavior, using her past sexual history and education as legal bias against her but not using the same standards against the accused, and stating that the judgement was coloured by prejudice and patriarchy.²⁶⁰

*Mobashar Jawed Akbar Vs. Priya Ramani (2021)*²⁶¹

In October 2018, journalist Priya Ramani accused MJ Akbar, a veteran journalist and then a union minister, of sexually harassing her when she was 23 years old. Akbar subsequently filed a criminal defamation case against Ramani in October 2018 and resigned as Minister of State for External Affairs in the same month. Ramani faced a prison sentence of up to two years. In 2021, Judge Ravindra Kumar Pandey decided in Ramani's favor, ruling that a woman has the right to put her grievance on any platform even after decades. The court noted that there was a lack of mechanisms to raise sexual harassment claims at the time the alleged incident occurred. The judge further stated: "The time has come for our society to understand the sexual abuse and sexual harassment and its implications on victims...The woman cannot be punished for raising (her) voice against the sexual abuse on the pretext of criminal complaint of defamation, as the right of reputation cannot be protected at the cost of the right of life and dignity of a woman as guaranteed in the Indian Constitution." Akbar has since then appealed the judgement.

*Anamika v Union of India (2020)*²⁶²

harassment-case/article34611849.ece

²⁵⁹ 2021, June 5. "Judgment in Tejpal case a huge setback, says Network of Women in Media". *The Hindu*. Accessed October 16, 2022, at <https://www.thehindu.com/news/national/nwmi-critiques-judgment-in-tarun-tejpal-case/article34740769.ece>

²⁶⁰ Hakim, Sharmeen. 2021, June 1. "Tarun Tejpal Acquittal Judgment Coloured By Prejudice & Patriarchy; Focuses On Victim Blaming : Goa Govt In Appeal". *Live Law*. Accessed October 16, 2024, at <https://www.livelaw.in/top-stories/goa-government-appeal-tarun-tejpal-bombay-high-court-tehelka-174986>

²⁶¹ CNR No. DLCT120000252019

²⁶² "Transgender #MeToo: Delhi High Court affirms protection under Section 354A, IPC". 2018, December 23. *The Leaflet*. Accessed November 11, 2024 at <https://theleaflet.in/supreme-court/transgender-metoo-delhi-high-court-affirms-protection-under-section-354a-ipc>

The Petitioner, who was a transwoman and a student at Delhi University, complained to the police station about certain male students who had sexually harassed her, but the Investigating Officer was reluctant to file a case under Section 354A. Challenging this outcome, the writ petition stated that not extending the law outside of gender binaries was a violation of the Petitioner's fundamental rights under Articles 14, 15, and 21 of the Constitution. The High Court affirmed that Section 354A would apply to transpersons who experienced sexual harassment.

*Anita Suresh vs Union of India & Others (2019)*²⁶³

The petitioner, Anita Suresh, was an Assistant Director at the ESI Corporation in Manesar, Gurgaon, in July 2011. On July 8, 2011, the petitioner made a written complaint to the Director-General of ESI Corporation alleging workplace sexual harassment by the accused, Mr. Verma. It was alleged that Mr. Verma made attempts at sexual advances. An Internal Complaints Committee was constituted to examine the complaint of the petitioner. The Committee examined Ms. Anita, Mr. Verma, and eight witnesses to determine their guilt. None of the witnesses corroborated her testimony. In 2019, the Delhi High Court dismissed the petition for its 'lack of merit' and imposed a fine of INR 50,000 on the petitioner for filing a false complaint and misusing the provisions of the POSH Act. The single judge bench comprising of Justice J.R Midha also granted liberty to the respondent-ESI Corporation to initiate appropriate action against the petitioner for the same.

*Samuel Tennyson vs The Principal and Secretary (2019)*²⁶⁴

The case entailed a writ petition filed by the petitioner seeking to quash the Fact-Finding report of the Internal Complaints Committee of the Madras Christian College in a sexual harassment case. The petitioner stated that the complaint of sexual harassment was submitted as written communication against Dr. Raveen and that his name was only mentioned in a supportive capacity. The petitioner claimed that the procedures followed in filing a complaint and acting against him were not by the service rules of a permanent government employee, which he was. Therefore, he wished to quash the Fact-Finding report filed in the case. The Madras High Court ruled that there was no justifiable ground to interfere with the Fact-Finding Report as well as the second show cause notice, and the writ petition was dismissed. However, the court acknowledged that Christian missionaries were increasingly being viewed with suspicion and that there was scope for women to misuse laws that were laid down to protect them.

²⁶³ W.P.(C) 5114/2015

²⁶⁴ W.P.15145 of 2019

*Ms Renuka Mukherjee v. Vodafone (2017)*²⁶⁵

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

11. CRIMES COMMITTED IN THE NAME OF “HONOUR”

“Honour killing” is the murder of a person accused of “bringing shame” upon their family. Human Rights Watch defines honour killings 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”. 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. Violence in the name of honour can also mean “any kind of abusive behaviour, torture, mutilation, rape, and forced marriage, keeping confined within the house... to preserve and protect the family honour”.²⁶⁶ Honour killing in India is largely a product of casteist patriarchy²⁶⁷ and religious intolerance, with women constituting 97% of honour killing victims in India.²⁶⁸

Honour killings are most prevalent in states such as Uttar Pradesh, Bihar, Rajasthan, Haryana, Jharkhand, and Punjab; however, it is now being reported increasingly in states across south India.²⁶⁹ Since October 2022, Karnataka has reported at least 7 cases of honour

²⁶⁵ Renuka Mukherjee vs Vodafone Essar Ltd & Ors. 2017. Accessed October 16, 2024, at <https://indiankanon.org/doc/161861542/>

²⁶⁶ Stop Violence Against Women. 2008. Crimes Committed in the Name of “Honor”. Accessed October 16, 2024, at http://www.stopvaw.org/honor_killings

²⁶⁷ Gupte, Manisha. 2013. “The Concept of Honour: Caste Ideology and Patriarchy in Rural Maharashtra”. *Economic and Political Weekly* 48 (18): 72-81.

²⁶⁸ Sundaravelu, Anugraha. 2020, April 21. “Why India Needs a Separate Law for Honor Killings”. *The Swaddle*. Accessed October 16, 2024, at <https://theswaddle.com/honor-killings-india-law/>

²⁶⁹ Sripad, Ashwini. 2023, September 04. “Killing honour in the name of ‘honour killings’”. *The New Indian Express*. Accessed October 31, 2024 at <https://www.newindianexpress.com/states/karnataka/2023/sep/04/killing-honour-in-the-name-of-honour-killings-2611437.html>

killings.²⁷⁰ In recent years, another form of honour-related crimes has been violence in response to claims of “love jihad”, a belief that Muslim men are targeting Hindu women through means of seduction in an effort to marry and convert them. In February 2020, in response to a question in the Lok Sabha on the existence of love jihad, the Union Minister of State for Home G. Kishan Reddy emphasised that Article 25 of the Constitution provides for the freedom to profess, practice, and propagate religion subject to public order, morality and health. He also went on to say that the term ‘love jihad’ is not defined under the extant laws, and no case of love jihad has been reported by any of the central agencies.²⁷¹

The UN Special Rapporteur on Violence against Women states that 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”.²⁷² 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 and/or husbands. It may also include lovers or ex-lovers.

DATA ON HONOUR CRIME

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 as well.

	<i>Honour Killing</i>	<i>Illicit Relationship</i>	<i>Casteism</i>	<i>Love Affair</i>	<i>Class Conflict</i>
2021	33	1559	33	1566	99
2022	18	1420	27	1401	83

Source: National Crime Records Bureau, Crime in India, 2021 and 2022 reports.

It is important to note that data under the headers of *Love Affairs*, *Illicit Relationship*, *Class Conflict*, and *Casteism* may not all be instances of honour killings.

A research report titled ‘Crimes in the Name of Honour: A National Shame’ was published by

²⁷⁰ *ibid.*

²⁷¹ Government of India, Ministry of Home Affairs, Lok Sabha starred question no. 23. Answered on 04.02.2020. Accessed October 16, 2022, at <http://164.100.47.194/Loksabha/Questions/QResult15.aspx?qref=11406&lsno=17>

²⁷² OHCHR. 15 Years of the United Nations Special Rapporteur on Violence Against Women, Its Causes and Consequences. Accessed October 16, 2024, at <https://www.ohchr.org/Documents/Issues/Women/15yearreviewofVAWMandate.pdf>

the Dalit Human Rights Defenders Network (DHRDNet), in collaboration with the National Council for Women Leaders (NCWL). The report traces and analyses cases of caste-based honour crimes in seven Indian States: Haryana, Gujarat, Bihar, Rajasthan, Tamil Nadu, Maharashtra, and Uttar Pradesh. The report includes qualitative and quantitative data on 24 cases ranging between 2012 to 2021, collected from the victim/survivor families in the eight states. The data is limited only to cases where victims face violence from family members. The report found that most of the victims belonged to the SC community.²⁷³

RELEVANT LAWS ADDRESSING HONOUR KILLING

Crimes of honour are prevalent in India; however, there is no dedicated legislation to deter honour-based crimes. These crimes currently fall under various provisions of the Indian Penal Code and the SC/ST (Prevention of Atrocities) Act. In 2012, the Law Commission of India recommended the creation of a bill in a report titled 'The Prohibition of Interference with The Freedom of Matrimonial Alliances Bill'. However, the bill never materialized. In 2018, in the case of *Shakti Vahini v UOI*, honour killings were recognised as a serious issue and the state was accorded accountability and responsibility through enumerated preventive, remedial, and punitive measures. The following year, the state government of Rajasthan introduced a bill in the state legislature which was created based on the 2012 law commission report. This bill was passed in the Rajasthan Assembly in August 2019; it has, however, not been signed by the governor but is one of the first attempts made by a state to address crimes based on honour.²⁷⁴

Crimes of honour violate various fundamental rights enshrined under the Indian Constitution through Articles 14, 15(1), 15(3), 19, and 21. In the case of *Lata Singh v State of U.P. anr*²⁷⁵ the Supreme Court held that the right to life under Article 21 includes the fundamental right of a person to marry a person of their choice.

The Special Marriage Act of 1954 is legislation that enables inter-religious marriage. Specific legislation, such as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, has been created to facilitate justice when crimes are perpetrated against members of the SC and ST communities. A vast majority of the honour killings are due to caste-based politics that disproportionality affect the SC and ST communities, who end up being receivers of such violence. Additionally, the Domestic Violence Act, of 2005, provides for protection for women who have restrictions imposed upon them that lead to their emotional, physical, or psychological abuse.

²⁷³ Dalit Human Rights Defenders Network and NCWL. 2023. Crimes in the Name of Honour: A National Shame. Accessed on November 5, 2024 at <https://www.dhrdnet.org/honour-crimes-research-report/>

²⁷⁴ Ibid.

²⁷⁵ (2006) 5 SCC 475.

Below are the legislations in India addressing crimes committed in the name of Honour:

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

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989: This legislation prescribes punishments for offences or atrocities.

CASES IN RECENT NEWS

Several instances of honour killings have made headlines over the last few years. Most of them were caste- and religion-motivated crimes. In October of 2023, a 23-year-old woman was murdered after she married a Muslim man. The woman's family was suspected of murdering her and cremating her body on the same night. A case has been registered at the Azad Nagar Police station in Hisar, Haryana after a resident of the village filed a complaint.²⁷⁶ In another incident, a 22-year-old woman from a village in Haryana was allegedly killed by her parents and brother for marrying someone from a different caste.²⁷⁷

²⁷⁶ 2023, October 31. "4 of family in Hisar arrested for suspected honour killing" *Times of India*. Accessed October 31, 2023 at <https://timesofindia.indiatimes.com/city/chandigarh/4-of-family-in-hisar-arrested-for-suspected-honour-killing/articleshow/104840531.cms>

²⁷⁷ Kumar, Ashok. 2023, August 25. "Haryana 'honour' killing | Death penalty for a daughter". *The Hindu*. Accessed October 31, 2024 at <https://www.thehindu.com/news/national/death-penalty-for-a-daughter/article67232594.ece>; For more information on incidents of honour violence in the year 2023 please visit <https://www.outlookindia.com/national/rising-honour-killings-in-india-a-look-at-5-brutal-murders-in-recent-past-news-296381>.

Anti-caste activists and organisations under the Dalit Human Rights Defenders Network (DHDRN) proposed the draft Freedom of Marriage and Association and Prohibition of Crimes in the Name of Honour Bill 2022. This Bill seeks to “provide justice, compensation, and rehabilitation in crimes committed in the name of honour vis-à-vis caste, faith, age, gender, sexual orientation, language, class, race, status, and tradition’.²⁷⁸ The Bill also identifies relationships and companionships beyond heterosexual marriages as ones that need protection. Another recommendation of the Bill is that honour killings should be designated as non-bailable offences, burden of proof of innocence should rest on the accused and fast-track courts should conduct trials and have an adequate compensation mechanism for victims and their families.

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 for 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

*Sachin Laxman Dandekar v. State of Maharashtra (2022)*²⁷⁹

²⁷⁸ Sarkar, Amlan. 2022, September 15. “Anti-Caste Activists Propose Bill to End ‘Honour Killings’”. *The Swaddle*. Accessed October 30, 2024 at <https://www.theswaddle.com/anti-caste-activists-propose-bill-to-end-honor-killings>

²⁷⁹ Hakeem, Sharmeen. 2022, October 15. “[Honour Killing With Hammer] Bombay HC Says Father Wanted To Teach Daughter’s Young Lover A Lesson, No Intention To Kill, Sets Aside Life Sentence”. *Live Law*. Accessed October 16, 2024 at <https://www.livelaw.in/news-updates/honour-killing-with-hammer-bombay-hc-says->

In a case pertaining to the killing of a man due to having a relationship with a woman from a different caste, the Bombay High Court set aside the life sentence awarded to a carpenter and his son and instead held them guilty of culpable homicide not amounting to murder. The Bench further observed that the duo just wanted to "teach the victim a lesson" for continuing the relationship with the girl. The duo had accosted, assaulted, overpowered, and hit the 20-year-old man with a hammer, and had fled the scene when people gathered.

*Judgement in the Cuddalore Honor Killing Case of 2003 (2021)*²⁸⁰

Eighteen years after the honour killings of S Murugesan and D Kannagi in the Cuddalore District of Tamil Nadu, the Cuddalore District Special Court for Scheduled Caste and Scheduled Tribe cases sentenced one person to death and twelve people to life imprisonment in September 2021. Murugesan, who belonged to the Dalit community, and Kannagi, a Vanniyar girl, had married without informing their relatives in 2003. The couple was found and poisoned by Kannagi's family members.²⁸¹ Charges were filed by the male victim's father. The judge handed the death sentence to Kannagi's elder brother, while twelve others received life imprisonment, including a deputy superintendent of police, and a sub-inspector.

*Judgement in the Udumalpet Murder Case of 2016 (2020)*²⁸²

In June 2020, the Madras High Court acquitted B. Chinnasamy, accused of conspiring in the murder of his daughter's husband Shankar in Udumalpet, Tirupur District, in 2016. Chinnasamy's daughter C. Kowsalya, belonging to the OBC community, eloped with Shankar, who belonged to a Dalit caste, in 2015. Shankar was hacked to death a year later, and Kowsalya also suffered injuries. Along with acquitting Chinnasamy, the court also commuted the death sentence awarded to the five assailants to life imprisonment.

*T. Padmaja vs The State of Telangana (2019)*²⁸³

father-wanted-to-teach-daughters-young-lover-a-lesson-no-intention-to-kill-sets-aside-life-sentence-211719

²⁸⁰ Perier, Bagalavan. 2021, September 24. "18 years after couple's honour killing, TN court hands death penalty to one, life terms to 12". *The New Indian Express*. Accessed October 16, 2024, at <https://www.newindianexpress.com/states/tamil-nadu/2021/Sep/24/18-years-after-couples-honour-killing-tn-court-hands-death-penalty-to-one-life-terms-to-12-2363205.html>

²⁸¹ Sajeev, Upasana. 2022, June 8. "Kannagi-Murugesan Honour Killing Case: Madras High Court Commutes Death Sentence Of Brother, Acquits Two". Accessed on November 17, 2023 at <https://www.livelaw.in/news-updates/madras-high-court-2003-kannagi-murugesan-honour-killing-death-sentence-commute-201136>

²⁸² Imranullah S, Mohamed. 2020, June 22. "Madras High Court sets aside death sentence awarded to prime accused in 2016 Udumalpet Shankar murder case". *The Hindu*. Accessed October 16, 2024 at <https://www.thehindu.com/news/national/tamil-nadu/madras-high-court-sets-aside-death-awarded-to-prime-accused-in-2016-udumalpet-shankar-murder-case/article31887684.ece>

²⁸³ T. Padmaja vs The State Of Telangana. 2019. Accessed October 16, 2024, at

A case of honour killing occurred in Miryalguda, Telangana, where a Dalit man named Pranay Perumalla was hacked to death by assassins hired by his father-in-law, Maruthi Rao, for having an inter-caste marriage. In this case, Perumulla's family challenged Rao's bail order. However, this was denied and on April 26, the father-in-law, Maruthi Rao, was released on bail.

*Shakti Vahini v. UOI (2018)*²⁸⁴

The Supreme Court held that the consent of family, community, or clan is not necessary when two adults agree to enter into a wedlock. The court said that the Rule of Law requires that only formal institutions under the law deal with such situations. Khap panchayat or any panchayat of any nomenclature cannot obstruct the exercise of human rights, protected by the rule of law. The court observed that "Elders of family or clan can never be allowed to proclaim a verdict guided by some notion of passion and eliminate the life of young who have exercised their choice to get married against wishes of their elders or contrary to the customary practice of clan."

The court further held, "...honour killing guillotines individual liberty, freedom of choice and one's perception of choice. When two adults consensually choose each other as life partners, it is a manifestation of their choice which is recognized under Articles 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)*²⁸⁵

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)*²⁸⁶

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 several prosecution witnesses had turned hostile, the court overturned the judgement by the Kerala High Court convicting the accused.

<https://indiankanoon.org/doc/95632531/>

²⁸⁴ AIR 2018 SUPREME COURT 1601

²⁸⁵ Writ Petition No.26991 of 2014

²⁸⁶ CRIMINAL APPEAL NO. 952 OF 2010

12. ACID ATTACKS

An acid attack is a form of gendered violence that involves the voluntary and premeditated throwing of acid on a person, usually female, and usually on her face. Section 326B of the IPC defines an acid as “any substance which has the acidic or corrosive character or burning nature, capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability”.²⁸⁷ Such an attack aims to disfigure, torture, maim, or even kill. In addition to causing long-term psychological trauma, acid attacks result in severe pain, permanent disfigurement, subsequent infections, and often blindness in one or both eyes. According to UN Women, acid attacks are committed for several reasons, including revenge for refusal of a marriage proposal or other romantic or sexual advances, land disputes, perceived dishonor, and jealousy.²⁸⁸ In cases where acid attacks are perpetrated by an intimate partner, it is also a form of intimate partner/domestic violence.

DATA ON ACID ATTACKS

Although men can also be the victims of acid attacks, girls and women are disproportionately targeted in this kind of crime, with the motives being overwhelmingly gendered in nature.

	2021	2022
<i>Acid Attacks</i>	102	124
<i>Attempted Acid Attacks</i>	48	38

Source: National Crime Records Bureau, Crime in India 2021 and 2022 reports.

LAWS RELEVANT TO ACID ATTACKS

1. Indian Penal Code, 1860
 - a. *Section 100*: Right of self-defence under the apprehension of an 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 a crime
 - b. *Section 357B*: Compensation provided by the state government to the victim under

²⁸⁷ Section 326B, The Indian Penal Code, 1860.

²⁸⁸ UN Women. (2011). Acid Attacks. Accessed October 16, 2024, at <https://www.endvavnow.org/en/articles/607-acid-attacks.html>

375A is in addition to the payment made by the criminal to the victim under 326A or 376D of the Indian Penal Code

- c. *Section 357 C*: Free medical treatment by all hospitals, public and private for victims of a crime

3. The Rights of Persons with Disabilities Act, 2016

- a. Limited compensation for victims of acid attacks

In India, before the Criminal Law Amendment Act of 2013, there was no specific legal provision that punished acid attacks. 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.

Thereafter, with the Criminal Law (Amendment Act) 2013, Sections 326A and 326B were inserted into the Indian Penal Code providing punishment for acid attacks and attempted acid attacks, making it a separate, cognizable, and non-bailable offence under the IPC. Under this 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 to cause injury or hurt. This also includes attempts to throw acid on any person. The minimum punishment for perpetrating an acid attack is 10 years imprisonment, extendable up to life imprisonment with a fine. For the law, the term “acid” includes any substance which has an acidic or corrosive character or burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability.

According to research by the Acid Survivors Trust International (ASTI), the total time taken for litigation in a case of acid attack in India averages between 5-10 years, and in 76% of cases, the perpetrator is someone known to the victim. ASTI data further states that key aspects of the law against acid attacks remain to be effectively enforced; for instance, acid continues to be easily obtainable, and survivors often have trouble accessing compensation, medical care, and justice.²⁸⁹ The Supreme Court of India has stated that victims of acid attacks must receive compensation from the respective State Government or Union Territory [overseen by the National Legal Services Authority (NALSA)] of at least INR 3 Lakhs to cover the cost of aftercare and rehabilitation.²⁹⁰ From this amount, INR 1 lakh must be paid within 15 days of the attack to address costs related

²⁸⁹ Acid Survivors Trust International. Country Files. Accessed October 16, 2024, at <https://www.asti.org.uk/a-worldwide-problem.html>

²⁹⁰ Government of India, Ministry of Home Affairs. Acid Attacks. Accessed November 2, 2024 at <https://www.mha.gov.in/en/commoncontent/acid-attack>

to urgent medical care, with the remainder to be paid within the following 2 months.²⁹¹

HOW TO ACCESS JUSTICE

- First Information Report: Please see the Prajnya FIR Ready Reckoner (Appendix).
- The financial relief granted under NALSA's *Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes* (as outlined above) 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 attacks to grant interim relief to victims.

LAW ON REGULATION OF ACID SALES

Acid attacks gave rise to the Supreme Court's decision to regulate the sale of caustic substances in 2013. Based on this, the Ministry of Home Affairs developed the Model Poison Possession and Sales Rule, 2013, under the Poisons Act, of 1919. Based on these rules, acid is not an over-the-counter product, and a vendor is mandated to maintain a logbook or register recording the purchase of acid.²⁹²

RECENT CASE LAW

*State (UT OF J&K) through Police Station Soura v. Irashad Wani and Mohammed Noor (2023)*²⁹³

The Jammu and Kashmir Court, in August 2023, confirmed the life imprisonment of two persons involved in an acid attack case in Srinagar. The Court further imposed a fine of INR 5 Lakhs upon each of the perpetrators.

²⁹¹ Ibid.

²⁹² Das, Saptarshi. 2023, January 19. "NCW holds all India meet on acid attack; key focus on stopping unregulated sale." *Hindustan Times*. Accessed November 25, 2023 at <https://www.hindustantimes.com/india-news/ncw-holds-all-india-meet-on-acid-attack-key-focus-on-stopping-unregulated-sale-101674116317582.html>

²⁹³ Makhdoomi Basit, A. 2023, August 22. "Acid Attack: Srinagar Court Hands Life Imprisonment To Two Convicts Who Targeted Law Student". *Live Law*. Accessed October 25, 2023 at <https://www.livelaw.in/news-updates/srinagar-court-hands-life-imprisonment-to-culprits-in-infamous-2014-acid-attack-case-targeting-law-student-235896>

*Hakim and Another v. State [NCT of Delhi and other connected matter] (2022)*²⁹⁴

The Delhi High Court said, during the proceedings of the case, that the word 'acid' in Section 326A of the Indian Penal Code is not merely restricted to substances classically or scientifically termed as acids but also includes all substances that have an acidic, corrosive, or burning nature and are capable of causing disfigurement or disability (permanent or temporary).

*Mahesha v. State by Malebennur Police (2021)*²⁹⁵

In July 2021, the Karnataka High Court confirmed the life sentence awarded to the accused in an acid attack case IPC section 326A. The court also stated that “acid attack is a crime against basic human rights and also violates the most cherished fundamental rights guaranteed under Article 21 of the Constitution of India.”

*Sonali Mukherjee v. Union of India and Others (2019)*²⁹⁶

The Jharkhand High Court passed a judgement ordering the states/UTs to make a serious note of the directions of the Supreme Court about treatment and payment of compensation to acid attack victims and to implement these directions through the issue of requisite orders or notifications. Private hospitals were brought on board for compliance and the State/UTs would use necessary means in this regard. No hospital/clinic should refuse treatment citing a lack of specialized facilities and should administer first aid. Post stabilisation, the patient may be moved to a specialized facility if required. Action may be taken against a hospital/clinic for refusal to treat victims of acid attacks and other crimes in contravention of the provisions of Section 357C of the Criminal Procedure Code, 1973.

*Raja v. State of Haryana (2019)*²⁹⁷

This was a case of acid attacks against a woman in Haryana wherein the petitioners demanded a compensation of Rs. 3 lakhs from the state government for the victim. The court directed the respondent to pay a compensation of Rs. 50,000 and the state to pay Rs. 3 lakh to the victim within six months. Failing to pay the amount would result in rigorous imprisonment for the respondent and he would have to pay the compensation amount in

²⁹⁴ Thaplial, Nupur. 2022, October 13. “[Section 326A IPC] 'Acid' Includes All Substances Having Burning Nature, Not Merely Those Classically Termed as Acids: Delhi High Court” Accessed October 16, 2024 at <https://www.livelaw.in/news-updates/acid-substances-burning-nature-disfigurement-permanent-temporary-disability-delhi-hc-211587>

²⁹⁵ CRIMINAL APPEAL NO.512/2016(C)

²⁹⁶ W.P. (C) No. 2742 of 2019

²⁹⁷ AIRONLINE 2019 P AND H 1936

addition to what was imposed by the trial court.

*Nipun Saxena v UOI (2018)*²⁹⁸

The Supreme Court observed that NALSA could set up a committee to draft model rules addressing victim compensation in cases related to sexual violence and acid attacks. In light of this judgement, NALSA's compensation scheme for women victims or survivors of sexual assault and acid attacks was established.

*Piyali Dutta v. State of West Bengal (2017)*²⁹⁹

Victims of acid attacks are entitled to compensation before the CrPC amendment in 2009, which inserted Section 357A of the IPC.

*Renu Sharma v. Govt of NCT of Delhi and Others (2016)*³⁰⁰

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

*Parivartan Kendra v. Union of India and Others (2015)*³⁰¹

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 about the inclusion of the names 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.

*Laxmi v. Union of India and Others (2015)*³⁰²

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 survivors.

²⁹⁸ Writ Petition(s)(Civil) No(s).565/2012

²⁹⁹ Piyali Dutta vs State of West Bengal. 2017. Accessed October 16, 2024, at <https://indiankanoon.org/doc/21784779/>

³⁰⁰ W.P.(C) 2229/2016

³⁰¹ WRIT PETITION (CIVIL) NO. 867 OF 2013

³⁰² AIR 2015 SUPREME COURT 3662

13. 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 external female genitalia. In December 2012, the UN General Assembly adopted a unanimous resolution on the elimination of FGM. The World Health Organisation (WHO)³⁰³ 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.

Feminist scholars describe the practice of female genital mutilation as an attempt to control women's sexuality and their experience of sexual pleasure, and is rooted in patriarchal ideas about the purity and modesty of women.³⁰⁴ It perpetuates harmful gender norms; some communities believe it is required for a girl's 'proper' upbringing, marriage or to maintain the family's honour. Moreover, due to the controversial nature of the practice, it is shrouded in secrecy and often done by traditional circumcisers, in unhygienic conditions using unsafe instruments.

FGM has no known health benefits for girls and women; in fact, it can cause immediate complications like severe pain, excessive bleeding and urinating problems. It can also have long-term effects, including leading to cysts and infections, as well as complications in childbirth. The event itself can be traumatic for survivors and can cause lasting psychological consequences.³⁰⁵

³⁰³ WHO. 2022, January 21. Female Genital Mutilation. Accessed October 16, 2024 at <https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation>

³⁰⁴ Amnesty International. What is Female Genital Mutilation? Accessed October 16, 2024 at <https://www.amnesty.org/en/documents/act77/005/1997/en/>

³⁰⁵ Ibid.

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.³⁰⁶

Data on Female Genital Mutilation

- According to the submission by the Indian Ministry for Women and Child Development, 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 the UN Women, as of February 2021, approximately 200 million girls across 31 countries are affected by this practice, and 4.16 million girls and women are at risk in 2021.³⁰⁷
- A study across the Dawoodi Bohra community was published by the NGO Sahiyo, detailing the practice and its repercussions on Bohra women and girls.³⁰⁸ 80% of Bohra women surveyed for this study stated that there is a need for this practice to end.
- An independent study titled *The Clitoral Hood: A Contested Site* shows that 75% of girls interviewed above the age of 7, from the Bohra community, had been subjected to FGM.³⁰⁹

Relevant Indian laws addressing FGM

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

1. Indian Penal Code, 1860: *Section 320* 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

- According to Section 19 of the Protection of Children from Sexual Offences Act, 2012,

³⁰⁶ Baweja, Harinder. n.d. "India's Dark Secret". *Hindustan Times*. Accessed October 16, 2024 at <https://www.hindustantimes.com/static/fgm-indias-dark-secret/>

³⁰⁷ UN Women. 2021, February 4. Ending FGM is essential to give girls control over their own lives. Accessed October 16, 2024 at <https://www.unwomen.org/en/news/stories/2021/2/feature-ending-fgm-is-essential>

³⁰⁸ Sahiyo. 2017. Understanding Female Genital Cutting in the Dawoodi Bohra Community: An Exploratory Study. Accessed October 16, 2024 at https://sahiyo.files.wordpress.com/2019/05/sahiyo_report_final-5.21.19.pdf

³⁰⁹ Anantnarayan, Lakshmi, Diler, Shabana and Menon, Natasha. 2018. "The Clitoral Hood: A Contested Site". *WeSpeakOut and Nari Samta Manch*. Accessed October 16, 2024 at https://www.wespeakout.org/site/assets/files/1439/fgmc_study_results_jan_2018.pdf

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.

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

Recent Case Law

*Sunita Tiwari v Union of India (ongoing)*³¹⁰

The Supreme Court referred the plea seeking complete ban on FGM to a constitutional bench. Several Dawoodi Bohra women have filed interventions in the ongoing case.³¹¹

³¹⁰ Rajagopal, Krishnadas. 2018, September 24. "SC refers plea against female genital mutilation to Constitution Bench". *The Hindu*. Accessed October 16, 2024 at <https://www.thehindu.com/news/national/sc-refers-pil-against-female-genital-mutilation-to-constitution-bench/article25026340.ece>

³¹¹ Shelar, Jyoti. 2018, July 18. "FGM case: more women file interventions". *The Hindu*. Accessed October 16, 2024 at <https://www.thehindu.com/news/cities/mumbai/fgm-case-more-women-file-interventions/article24446383.ece>

14. RAPE

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 several 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, incestuous 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.”³¹²

Rape is the fourth most common crime against women in India. The Indian Penal Code, of 1860, lays down various actions that 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 a 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. Before legal amendments were made in 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.³¹³

Date Rape and Acquaintance Rape

Date rape is a form of acquaintance rape. The two phrases are often used interchangeably, but date rape specifically refers to situations 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 neighbours.

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 rape laws, however, include an explicit exemption for marital rape. Marital rape is specifically excluded from the ambit of Section

³¹² International Criminal Tribunal for Rwanda, Prosecutor vs. Akaseyu, Case No. ICTR-96-4-T, September 1998.

³¹³ The Criminal Law (Amendment) Bill, 2019.

376 of the Indian Code which addresses the crime of rape.

DATA ON RAPE IN INDIA

	2021	2022
<i>Rape</i>	31677	31516
<i>Incest Rape</i>	2424	2324
<i>Gang Rape</i>	2200	2118
<i>Rape by Family Friends/Neighbours/Employer or Other Known Persons</i>	15196	13548
<i>Custodial Rape</i>	26	24
<i>Rape by Relative/Teacher/Guardian/Person in position of Trust [Sec. 376(2)(f)]</i>	1654	1598
<i>Rape on Pregnant Women [Sec. 376(2)(h)]</i>	28	34
<i>Rape on Women below 16 years of Age [Sec. 376(2)(i)]</i>	246	224
<i>Rape on Women incapable of giving Consent [Sec. 376(2)(j)]</i>	256	224
<i>Rape by Persons in Control or Dominance over Women [Sec. 376(2)(k)]</i>	53	91
<i>Rape on Women with Mental or Physical Disability [Sec. 376(2)(l)]</i>	117	110
<i>Endanger Life of Women after Rape [Sec. 376(2)(m)]</i>	23	25
<i>Repeated Rape on Same Women [Sec. 376(2)(n)]</i>	4155	4681
<i>Other Custodial Rapes</i>	1359	1160
<i>Attempt to Commit Rape</i>	3800	2288
<i>Murder with rape/Gang-Rape</i>	284	248

Source: National Crime Records Bureau, Crime in India 2021 and 2022 reports.

As per data from the National Family Health Survey 5 (2019-21), 95% of married women aged 18-49 who experienced sexual violence identified their husbands or former husbands as the perpetrators. Over 90% of the women who endured sexual violence did not seek help from anyone, and among women who did seek help, none sought legal recourse. More than

70% sought help from their own family or husband's family.³¹⁴

RELEVANT LAWS ADDRESSING RAPE

- *Indian Penal Code, 1860*
 - a. *Section 228 A*: Not disclosing the name of a victim of rape
 - b. *Section 375 & 376*: Definition of rape and punishment for rape
 - c. *Section 376A*: Imprisonment for life or death if the rape leads to the death of the woman or if the woman is left in a vegetative condition
 - d. *Section 376 B*: Intercourse by a public servant with a woman in his custody
 - e. *Section 376 C*: Intercourse by superintendent of jail, remand home, etc.
 - f. *Section 376 D*: Intercourse by any member of the management or staff of a hospital with any woman in that hospital
 - g. *Section 376E*: A repeat rape offender should be jailed for life or sentenced to death
 - h. *Section 511 and Section 354 read with Section 376*: Attempt to commit rape
- *Criminal Procedure Code, 1973*
 - a. *Section 53*: Collection of evidence by examination of accused by medical practitioner at the request of a police officer
 - b. *Section 164 A*: Medical examination of a victim of rape
 - c. *Section 166A*: punish public servants who fail to record information regarding rape
 - d. *Section 327*: Trial to be conducted in-camera
- *Indian Evidence Act, 1872*
 - a. *Section 114 A*: Presumption as to the absence of consent in certain prosecutions for rape
 - b. *Section 53A*: Was introduced in the Indian Evidence Act making it clear that in their sexual assault and rape cases, the Court will not consider the victim's sexual history or her character.

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

- *Indian Penal Code, 1860*
 - 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.

³¹⁴ Benu, Parvathi. 2022, May 16. "Marital rape: Most married women are sexually abused by their husbands, says NFHS data". *BusinessLine*. Accessed October 21, 2024, at <https://www.thehindubusinessline.com/data-stories/data-focus/marital-rape-most-married-women-are-sexually-abused-by-their-husbands-says-nfhs-data/article65409875.ece>

- *Protection of Women from Domestic Violence Act (PWDA), 2005*
 - a. Section 3 (a): Domestic Violence to include sexual abuse.
- *Protection of Children from Sexual Offences Act, 2012 (POCSO)*
 - a. The Act was enacted to protect children from sexual assault, sexual harassment, and pornography.

HOW TO ACCESS JUSTICE

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

CASES IN RECENT NEWS

The Bharatiya Nyaya Sanhita Bill 2023 is one of the three new draft criminal law Bills brought by the Union Government. The Bill seeks to include a provision that criminalises “sexual offence on the false promise of marriage” as well as intercourse under the false promise of employment, promotion, and false identity. Courts have also repeatedly considered whether the “misconception of fact” can result in a lack of consent, amounting to rape under Section 375.³¹⁵ In 2019, Justice DY Chandrachud and Justice Indira Banerjee noted a distinction between the false promise to marry and the breach of promise. They concluded that in instances of the former, sex was obtained under pretenses, while in the case of the latter, the promise of marriage was initially offered with good intent but not followed through.³¹⁶

The new Bill has been criticised for continuing to recognise only those cases of rape perpetrated by men against women, offering no legal recourse for men who experience sexual assault.³¹⁷

The Maharashtra government, in December 2020, tabled what is being called the ‘Shakti Bill’ or ‘Shakti Law’, which includes two bills, the Maharashtra Shakti Criminal Law (Maharashtra Amendment) Act, 2020, and the Special Court and Machinery for Implementation of Maharashtra Shakti Criminal Law, 2020. The former was passed in December 2021, while the latter has been sent to a joint select committee for further discussions. The Act provides for the death penalty for rape and has increased the minimum

³¹⁵ Khan, Khadija and Singh, Rishika. 2023, August 13. “Proposed IPC Bill with new clause on ‘false promise to marry’: What it says and how such cases been dealt thus far”. *Indian Express*. Accessed November 6, 2024 at <https://indianexpress.com/article/explained/explained-law/new-clause-false-promise-to-marry-proposed-law-8888473/>

³¹⁶ Ibid.

³¹⁷ Sriram, Varsha. 2023, August 18. “Section 377 Out, New Bill Raises Questions Over Protection of Men Against Rape”. *The Quint*. Accessed November 2, 2024 at <https://www.thequint.com/news/law/bharatiya-nyaya-sanhita-section-377-rape-sexual-offenses-ipc-act#read-more>.

punishment for crimes such as acid attacks on women and sexual assault of children. It also included provisions to tackle gender-based violence perpetrated through digital and social media and set a time limit of 30 days from the day of complaint to complete the probe.³¹⁸ The two bills have previously received wide criticism by feminists, lawyers, and academicians, who called it “draconian” and that it fed into the patriarchal construction of consent and conduct of women. The Act’s mandate towards the death penalty also met with criticism because data suggests that capital punishment for a crime has historically led to reduced reporting and conviction rates.³¹⁹ It is worth noting that the Indian constitution already allows for the death penalty under IPC Sections 302, 376, 364A, and the POCSO Act, among others.

In August 2022, all 11 persons convicted of the 2002 gang rape of Bilkis Bano were released from prison in Gujarat. The gang rape took place during the Gujarat communal pogrom, at which time the survivor Bilkis Bano was reportedly pregnant. Her six-year-old daughter and other members of her family were also killed.³²⁰ The Gujarat government stated that the release of the convicts was because they had completed 14 years of imprisonment, the term given for a life sentence, and also due to displaying “good behaviour” during their imprisonment.

The Dera Sacha Sauda (an Indian spiritual organization) Chief Gurmeet Ram Rahim, who was convicted in several cases of rape and murder, was released on 40 days’ parole on October 14, 2022. This is reportedly the third time in the past year and the sixth time overall that Rahim has been released from prison, either on parole or on furlough.³²¹ On October 29, the Delhi Commission for Women (DCW) chief Swati Maliwal wrote to Prime Minister Narendra Modi seeking stronger laws and policies to restrict the remission and paroles of rape convicts. In the letter she called for the convicts of the Bilkis Bano rape case and Dera Sacha Sauda chief Gurmeet Ram Rahim to be sent back to jail.³²²

³¹⁸ Jain, Bhavika. 2021, December 24. “Maharashtra assembly unanimously OKs Shakti bill seeking death for rape”. *Times of India*. Accessed October 21, 2024, at <https://timesofindia.indiatimes.com/city/mumbai/maharashtra-assembly-unanimously-oks-shakti-bill-seeking-death-for-rape/articleshow/88463298.cms>

³¹⁹ Phadke, Manasi. 2020, December 17. “The Maharashtra Shakti bill on crimes against women, children & why it’s called ‘draconian’”. *The Print*. Accessed October 21, 2024, at <https://theprint.in/theprint-essential/the-maharashtra-shakti-bill-on-crimes-against-women-children-why-its-called-draconian/567660/>

³²⁰ Katakam, Anupama. 2022, August 25. “All 11 persons convicted of rape in 2002 Bilkis Bano case released”. *Frontline*. Accessed October 21, 2024 at <https://frontline.thehindu.com/news/all-11-persons-convicted-of-rape-in-the-2002-bilkis-bano-rape-case-released/article65774788.ece>

³²¹ India News. 2022, October 20. “Dera chief Gurmeet Ram Rahim’s 3 releases this year coincide with elections”. *Hindustan Times*. Accessed October 21, 2024, at <https://www.hindustantimes.com/india-news/dera-chief-gurmeet-ram-rahim-s-3-releases-this-year-coincide-with-elections-101666203536850.html>

³²² Jain, Pankaj. 2022, October 29. “Send Bilkis Bano rapists, Gurmeet Ram Rahim back to jail: Delhi women’s panel chief writes to PM Modi”. *India Today*. Accessed October 30, 2024 at <https://www.indiatoday.in/india/story/bilkis-bano-rapists->

RECENT CASE LAW

*The State Of Jharkhand v. Shailendra Kumar Rai @ Pandav Rai (2022)*³²³

The Supreme Court prohibited the "Two-Finger Test" in rape cases and further warned that anyone found to be conducting such tests will be held guilty of misconduct. The bench stated that the test had no scientific basis and further re-victimises and re-traumatises women. The Bench further stated that the test assumes that a sexually active woman cannot be raped, which is an untruth based on patriarchal and sexist notions.

*Farhan v. State & Anr (2022)*³²⁴

In this case, concerning marital rape, the Delhi High Court delivered a 1:1 split verdict on the issue of criminalisation of marital rape and said that the matter will have to be considered by the apex court. Section 375 of the Indian Penal Code (IPC) exempts the sex of a man with his wife aged 18 or above from being raped even if it is without her consent. The head of the two-judge bench Justice Rajiv Shakti struck down this exception as being unconstitutional. However, Justice C. Hari Shankar rejected the plea to criminalise marital rape, noting that any change in the law has to be carried out by the legislature since the issue requires consideration of many social, cultural, and legal contexts.

*Babu Khan v. State Of U.P. And Another (2022)*³²⁵

The Allahabad HC granted anticipatory bail to a man accused of raping his daughter-in-law along with another man, stating that it is "quite unnatural" in Indian culture for a father-in-law to commit such a crime on his daughter-in-law.

*Naasir and Others v. State Of U.P. Thru. Prin. Secy. Home and Anr (2022)*³²⁶

The Lucknow bench of the Allahabad High Court stayed a rape case against two brothers

gurmeet-ram-rahim-jail-dcw-chief-swati-maliwal-pm-modi-2290836-2022-10-29

³²³Chowdhury, Sohini. 2022, October 31. "Supreme Court Bans Two-Finger Test; Says It's Based On Patriarchal Mindset That Sexually Active Women Can't Be Raped". Live Law. Accessed October 31, 2024 at <https://www.livelaw.in/top-stories/breaking-supreme-court-bans-two-finger-test-says-its-based-on-patriarchal-mindset-that-sexually-active-woman-cant-be-raped-212806>

³²⁴Singh, Soibam R. & Chandra, Jagriti. 2022, May 11. "Delhi HC delivers split verdict on marital rape". Accessed October 21, 2024 at <https://www.thehindu.com/news/cities/Delhi/delhi-high-court-delivers-split-verdict-on-marital-rape/article65403832.ece>

³²⁵ Abraham, Bobins. 2022, June 01. "Unnatural In Indian Culture That Father-In-Law Would Rape Daughter-In-Law, Says Allahabad HC". India Times. Accessed October 21, 2024, at <https://www.indiatimes.com/news/india/unnatural-father-in-law-would-rape-daughter-in-law-allahabad-hc-571047.html>

³²⁶ Lucknow News. 2022, July 24. "HC stays trial of father, two sons in 2019 rape case of Pratapgarh". Hindustan Times. Accessed October 21, 2024 at <https://www.hindustantimes.com/cities/lucknow-news/hc-stays-trial-of-father-two-sons-in-2019-rape-case-of-pratapgarh-101658684854213.html>

who were reportedly encouraged by their father to commit the rape. The judge, while staying the trial, stated that it is “unbelievable” that a father would encourage his sons to commit rape.

*Aparna Bhat v. The State of Madhya Pradesh (2021)*³²⁷

Supreme Court Justice Ravindra Bhat addressed the ‘entrenched paternalistic and misogynistic attitudes’ in judgments and orders around gendered sexual violence cases and laid down a set of dos and don’ts for progressive judgment writing. These include, but are not restricted to, the need for judges to appear impartial, provide appropriate protections to complainants when necessary, and gender sensitization for all judges. It also stated that bail orders should not reflect patriarchal notions such as commenting on women’s morals, physical weakness, capability to make decisions, position in the family, submissiveness, or motherhood. Neither should any comment be made nor inference drawn from women’s sexual activity, clothes, consumption of alcohol/cigarettes, or lack of physical harm.

*Irappa Siddappa Murgannavar v. State of Karnataka (2021)*³²⁸

The Supreme Court in this case commuted the death sentence awarded to a man accused of the rape and murder of a five-year-old girl, convicted under Sections 302 and 376 of the IPC (among others). The court stated its belief that there is still hope for reformation and rehabilitation, and life imprisonment is an acceptable punishment.

*Santhosh v. State of Kerala (2021)*³²⁹

A division bench of the Kerala High Court expanded the definition of rape, stating that a non-penetrative sexual act between the thighs of a victim to produce a sensation akin to penetration will also be defined as rape. The bench of Justices K Vinod Chandran and Ziyad Rahman stated, “...when the body of the victim is manipulated to hold the legs together to simulate a sensation akin to penetration of an orifice; the offence of rape is attracted. When penetration is thus made in between the thighs so held together, it would certainly amount to “rape” as defined under Section 375”.

*Utsav Kadam v. The State of Assam (2021)*³³⁰

³²⁷ R, Kruthika and R, Mihir. 2021, March 20. “Justice Bhat’s Dos and Don’ts for Progressive Judgment Writing on Gender Violence Cases”. Supreme Court Observer. Accessed October 21, 2024, at <https://www.scoobserver.in/journal/justice-bhats-dos-and-donts-for-progressive-judgment-writing-on-gender-violence-cases/>

³²⁸ CRIMINAL APPEAL NOS. 1473-1474 OF 2017

³²⁹ CRL.A NO. 1311 OF 2016

³³⁰ Bail Appln./1623/2021

In this case of rape by a student of IIT Guwahati against a fellow student, the HC decided to grant bail to the prime accused, on the pretext that both the victim and accused are “the state’s future assets”, and “talented” students of technical courses at IIT Guwahati. The order was met with protest by several individuals and organizations, stating that belonging to a prestigious institution should not be a reason to receive preferential treatment. Furthermore, the All-India Democratic Women’s Alliance (AIDWA) stated that the order failed to take into consideration “the emotional and physical impact on the victim of the continuous presence of the accused on campus and the fact that the accused could pressurize the victim.”³³¹

*Conviction in the Unnao Rape Case (2019)*³³²

In the well-known Unnao rape case and related murders³³³, ex-BJP MLA Kuldeep Singh Sengar was convicted of both the rape of the 17-year-old girl and culpable homicide and criminal conspiracy in her father’s murder. He was convicted under Section 376 IPC and Sections 5(c) and 6 of POCSO, and later in March under Sections 299 and 120A. In the former conviction, the judge stated, “In my considered opinion, the investigation has suffered from a patriarchal approach or an inherent outlook to brush the issues of sexual violence against children under the carpet apart from exhibiting lack of sensitivity and humane approach. It appears that somewhere investigation in the instant case has not been fair qua victim of crime and her family members”. He received life imprisonment as well as a fine.

*Criminal Justice Society v. Union of India (2018)*³³⁴

The Supreme Court refused to interfere in a plea to make rape law gender-neutral. The plea, filed by an NGO called the Criminal Justice Society of India, 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’.

³³¹ 2021, August 26. “AIDWA Condemns Gauhati HC’s Decision to Grant Bail to IIT-Guwahati Rape Accused”. *NewsClick* Accessed October 21, 2024, at <https://www.newsclick.in/AIDWA-Condemns-Gauhati-HC-Decision-Grant-Bail-IIT-Guwahati-Rape-Accused>

³³² Chaudhuri, Nilashish. 2019, December 20. “Unnao Case: Court Sentences Former BJP Member Kuldeep Singh Sengar To Life Term Till End Of Life For Rape Of Minor”. *LiveLaw.in*. Accessed October 21, 2024 at <https://www.livelaw.in/top-stories/unnao-case-court-sentences-former-bjp-member-kuldeep-singh-sengar-to-life-sentence-till-end-of-life-for-rape-of-minor-150980>

³³³ 2019, December 19. “Chronology of events in Unnao rape case”. *The Tribune*. Accessed October 21, 2024, at <https://www.tribuneindia.com/news/nation/chronology-of-events-in-unnao-rape-case-14641>

³³⁴ Writ Petition (Civil) No. 1262/2018

*Sandeep and Others v. Neelam and Another (2018)*³³⁵

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

*Hemudan Nanbha Gadhvi v. State of Gujarat (2018)*³³⁶

The Supreme Court held that the accused of rape cannot be acquitted merely because the 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)*³³⁷

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

*State of Uttarakhand v. Karandeep Sharma (2018)*³³⁸

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

*State of Maharashtra v. Bandu (2017)*³³⁹

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

*Akshay Manoj Jaisinghani v. State of Maharashtra (2017)*³⁴⁰

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 that qualify for rape; for example,

³³⁵ Sandeep vs Neelam. 2018. Accessed October 21, 2024, at <https://indiankanoon.org/doc/58555996/>

³³⁶ CRIMINAL APPEAL NO.913 OF 2016

³³⁷ Yogesh S/O. Gajanan Sayankar And ... vs The State Of Maharashtra. 2018. Accessed October 21, 2024, at <https://indiankanoon.org/doc/45242209/>

³³⁸ Criminal Appeal No. 156 of 2017

³³⁹ CRL. APPEAL @ SLP(CRL.) NO.2172 OF 2014

³⁴⁰ CRIMINAL WRIT PETITION NO.3599 OF 2017

consent for sexual activity obtained from an illiterate woman under the promise to marry.

*Mahmood Farooqui v. State (Govt of NCT of Delhi) (2017)*³⁴¹

The Court shifted the meaning of consent to what the man understood from what the woman said. The court stated, “Instances of woman behavior 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 for how 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.

*State of Madhya Pradesh v. Madanlal (2015)*³⁴²

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 the compromise would be against the ‘honour’ of the woman. The court stated that the ‘honour’ of a woman is ‘sacrosanct’.

³⁴¹ CRL.A.944/2016

³⁴² CRIMINAL APPEAL NO. 231 OF 2015 (@ SLP(CrI) No. 5273 of 2012)

15. DOWRY-RELATED VIOLENCE

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.”³⁴³

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. Dowry is often demanded as it is a way for the groom or his family to demonstrate the amount of wealth and social status that they have. In some families, it is seen as a way for the bride’s family to show respect and appreciation for the groom’s family to ensure the bride is taken care of at their home. In many cases, however, the requisition and imposition of dowry results in violence. Despite the practice of dowry being illegal, it remains a widespread occurrence in most parts of India.³⁴⁴

One of the consequences of the dowry system has often been the murder or suicide of young wives, either because more dowry was not provided to her husband or his family, or to secure the goods after marriage.³⁴⁵ The violence and deaths associated with dowry demands constitute a form of domestic violence. These deaths, however, are often masked as accidents or suicides, which makes accurate tracking of data related to dowry death difficult.³⁴⁶ 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 a means to exact compliance from or to punish the victim.³⁴⁷

The eradication of the dowry system in India requires a multifaceted approach that can address the root cause of the perpetuation of the system. One way to do this is by increasing the number of community-building schemes that educate the public about the negative consequences of the dowry system and promote alternative marriage customs.

³⁴³ United Nations. 2009. Good Practices in Legislation on “Harmful Practices” against Women. Accessed October 24, 2024 at https://www.un.org/womenwatch/daw/egm/vaw_legislation_2009/Report%20EGM%20harmful%20practices.pdf

³⁴⁴ Singh, Jyoti A. 2023. “Dowry & Dowry Death: In India.” *International Journal of Law Management & Humanities* 6(1): 117-128.

³⁴⁵ Kaur, Navpreet and Byard, Roger, W. 2020. Bride burning: A unique and ongoing form of gender-based violence. *Journal of Forensic and Legal Medicine* 75(102035).

³⁴⁶ Singh, Jyoti A. Ibid.

³⁴⁷ Stop Violence against Women. Dowry Related Violence. Accessed October 24, 2024, at https://www.stopvaw.org/dowry-related_violence

Though social awareness and unlearning of deep-rooted cultural biases may take some time, it is also necessary that legal measures that can help deter such crimes be tightened. For instance, India does not still recognise marital rape as a crime. Inherent moral biases in law need to be countered simultaneously with social awareness schemes.

DOWRY UNDER INDIAN LAW

In Indian law, dowry is defined as “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 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.”³⁴⁸

Both dowry death (304B) and cruelty by the 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. The IPC prohibits both the giving and taking of dowry and punishes those that engage in dowry-related offences. Under the IPC, those who engage in the transaction of dowry can be punished with imprisonment for up to five years in addition to a fine.³⁴⁹

Dowry Death

Section 304B of the IPC states that “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.”³⁵⁰ Punishment is a minimum of seven years for cases of dowry death and can extend to life imprisonment.

Suicide

Section 306 of the IPC deals with the abetment of suicide, and the punishment for those who abet or conspire to commit dowry death is imprisonment for up to ten years and a fine.

³⁴⁸ See Dowry Prohibition Act, India, 1961, Art. 2

³⁴⁹ Section 60 and Section 61 of the Indian Penal Code.

³⁵⁰ Indian Penal Code, 1860 - Section 304B.

Cruelty

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

For 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 to coerce 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.³⁵¹ [S. 498A of the Indian Penal Code].

DATA ON DOWRY-RELATED VIOLENCE

Dowry-related violence includes dowry death and cruelty under the Indian Penal Code, and the giving and taking of dowry under the Dowry Prohibition Act. The statistics may not accurately reflect the true scale of dowry deaths in India, as many cases go unreported due to the fear of social stigma and the fear of reprisal. The following table shows statistics on the occurrences of dowry deaths and violations of the Dowry Prohibition Act for the years 2020 and 2021.

	<i>Dowry death</i>	<i>Dowry Prohibition Act violations</i>	<i>Cruelty by husband or his relatives</i>
2021	6753	13568	136234
2022	6450	13479	140019

Source: National Crime Records Bureau, Crime in India 2021 and 2022 reports

According to data shared by Union Minister of State for Home Ajay Kumar Mishra in the Rajya Sabha, 35,493 dowry deaths were reported in the country between 2017 and 2021. With six deaths per day, Uttar Pradesh has reported the highest number of dowry-related deaths in the country. According to Mishra, UP witnessed more than 11,000 deaths from 2017 to 2021, followed by 5354 cases in Bihar, 2856 in Madhya Pradesh, 2386 in West

³⁵¹ Indian Penal Code, 1860 - Section 498A

Bengal, and 2244 deaths in Rajasthan.³⁵²

LAWS RELATED TO DOWRY AND DOWRY DEATHS

1. *The Dowry Prohibition Act, 1961*: The Dowry Prohibition Act was modified in 1984 and 1986 to impose harsher punishments for the acts of giving, taking, or asking for dowry. The amendment to the law also shifted the burden of proof on the accused and classified the offence as non-bailable. The specific section on dowry death was included in the IPC when it was revised in 1986. However, over time, it is clear that the alteration of the law has not dissuaded people from committing the crime. This is clear from the data above which shows an increase in violence related to dowry. The tradition of dowry has remained a fundamental element of marriage and is still strongly rooted in Indian culture.
 - 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

CASES IN RECENT NEWS

Dowry-related violence, including murders, continues to make headlines in different parts of

³⁵² PTI. 2022, December 14. "35,493 Dowry Deaths Reported Between 2017-21; 20 Deaths Daily: Govt Data". *Outlook India*. Accessed November 25, 2024 at <https://www.outlookindia.com/national/35-493-dowry-deaths-reported-between-2017-21-20-deaths-daily-govt-data-news-245030>

the country, with conviction rates being alarmingly low.³⁵³

In April 2022, a Rajya Sabha MP brought to attention statements made regarding the dowry system in a Sociology textbook, part of the curriculum for B.Sc. Nursing students. The book lays down the “merits and advantages” of the dowry system, and states at one point, “ugly looking girls can be married off with attractive dowry with well or ugly looking boys.” The MP, Priyanka Chaturvedi, brought this to the attention of the Union Education Minister, calling to stop the circulation of textbooks propagating regressive practices like these.³⁵⁴

RECENT CASE LAW

*Vismaya Case Judgement (2022)*³⁵⁵

The Kollam Additional Sessions Court found S Kiran Kumar guilty of dowry harassment and violence, which led to the suicide of his wife Vismaya in June 2021. Kumar will undergo imprisonment for ten years for committing the offences under 304 (B) of IPC for dowry death as well as serve a term of 6 years under 306 (abetment to suicide) and pay a fine of INR 2 lakhs.

*Mukesh Bansal v. State of UP (2022)*³⁵⁶

An Allahabad High Court bench issued a set of guidelines and safeguards to prevent the “misuse” of Section 498A of the Indian Penal Code (IPC). One of the guidelines issued by the court stated that after the registration of a First Information Report (FIR) under 498A IPC, no arrest or coercive action should be taken against the accused during the two-month cooling-off period. The court stated that the misuse of Section 498A, which criminalises cruelty inflicted on a woman by her husband and his kin, was “adversely affecting our social fibre, especially in northern India”, and that matrimonial disputes are often “exaggerated

³⁵³ Jain, Nikita. 2022, September 20. “Dowry Was Banned 60 Years Ago. But Cases Are Rising, While Grieving Families Find Justice Harder Than Ever”. *Article 14*. Accessed October 24, 2024, at <https://article-14.com/post/dowry-was-banned-60-years-ago-but-cases-are-rising-while-grieving-families-find-justice-harder-than-ever-63291fa11a171>

³⁵⁴ Bajeli-Datt, Kavita. 2022, April 04. “Dowry helps in marrying off ugly looking girls, says textbook for nursing students; draws flak”. *The New Indian Express*. Accessed October 24, 2024, at <https://www.newindianexpress.com/nation/2022/apr/04/dowry-helps-in-marrying-off-ugly-looking-girls-says-textbook-for-nursing-students-draws-flak-2437856.html>

³⁵⁵ Staff Reporter. 2022, May 24. “Kiran Kumar sentenced to 10 years’ RI in Vismaya case”. *The Hindu*. Accessed October 24, 2024 at <https://www.thehindu.com/news/national/kerala/kiran-kumar-sentenced-to-10-years-ri-in-vismaya-case/article65456964.ece>

³⁵⁶ Srivastava, Pankaj. 2022, June 16. “‘FIR not porn literature’: Allahabad HC denies arrest during cooling-off period in matrimonial dispute case”. *India Today*. Accessed October 24, 2024, at <https://www.indiatoday.in/law/story/fir-not-porn-literature-allahabad-hc-denies-arrest-during-cooling-off-period-in-matrimonial-dispute-case-1962971-2022-06-16>

manifold”.

In the same case, in which the complainant had accused her husband and father-in-law of sexual harassment and coercion, Justice Chaturvedi chose to criticise the language used by the complainant in the FIR. He stated, “The FIR is the place where the informant gives the story about 112 mobilizing the state machinery engaging in the commission of a cognizable offence. It is not porn literature where the graphical description should be made.”

*Rupali Devi vs State of Uttar Pradesh (2019)*³⁵⁷

The Supreme Court held that a woman who has fled the cruelty of her marital home can file a case of dowry harassment under Section 498A of the IPC against her husband and in-laws at the place where she is currently sheltered. The judgement thus expanded the jurisdiction of courts to provide relief to victims of dowry harassment and relaxed the rigours of the Code of Criminal Procedure (CrPC). Section 177 of the Code mandates that criminal cases can be filed and tried only in courts within whose jurisdiction the crime occurred.

*Sri Sukha Ranjan Das vs The State Of Tripura (2019)*³⁵⁸

A woman named Rupashree Debnath, aged 16 years, died of burn injuries sustained in an attack by her husband and his family. A case of dowry death under Section 304B was filed against the husband and the in-laws and they were found guilty of the crime. They were also separately and independently convicted under Section 498A. The ruling was challenged in the Tripura High Court on grounds of inordinate delay in filing an FIR, not interviewing witnesses, the circumstantial nature of the evidence, lack of evidence of the complicity of the in-laws, and arguments against the use of kerosene for burning. The Supreme Court did not admit the appeal stating that the arguments were insufficient. It ruled that the testimony of neighbours and other witnesses is not required in the case of dowry deaths.

*Aniket Subhash Tupe vs Piyusha Aniket Tupe and Anir (2018)*³⁵⁹

This case was an appeal against a conviction of dowry harassment because the previous conviction was not the result of due procedure. The court ruled that a court could deviate from sub-section (1) of Section 28 r/w Rule 6(5) and devise its procedure which would include permitting evidence by way of an affidavit. It is not required that a victim of dowry-

³⁵⁷ Rupali Devi vs. State of Uttar Pradesh. 2019. Accessed October 24, 2024, at <http://lawtimesjournal.in/rupali-devi-vs-state-of-uttar-pradesh/>

³⁵⁸ AIR ONLINE 2019 TRI 32

³⁵⁹ WRIT PETITION NO.2938 OF 2017

related crime be present at the hearing.

*Social Action Forum for Manav Adhikar v. UOI (2018)*³⁶⁰

The Supreme Court 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)*³⁶¹

The Delhi High Court stated that Section 304B IPC does not contemplate harassment minutes or hours before death, but a reasonable period before the death when the deceased is subjected to cruelty is sufficient to show the live link. The legal terminology used, “soon before”, is a relative term to be considered under specific circumstances of each case. The prosecution is required to prove that there is a proximate and live link between the effect of cruelty based on dowry demand and consequential death. In this case, it was proven that two days before the death, a specific demand for dowry was made from the brother of the deceased.

³⁶⁰ AIR 2018 SUPREME COURT 4273

³⁶¹ CRL.A. 433/2013

16. DOMESTIC VIOLENCE

Domestic violence is any violence that is committed by a member of the victim's family. This includes current and former spouses, members of the victim's direct family, extended relatives, and close family friends. When there is a close relationship between the perpetrator and the victim, the phrase 'domestic violence' is used. In 1993, The United Nations Declaration on the Elimination of Violence Against Women defined domestic violence as the "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."³⁶²

The term *domestic violence* encompasses physical abuse such as assault, criminal intimidation, and the use of force. It can refer to any act that causes injury, poses a threat to life, limb, or health, or affects the health or development of the victim. Any sexual activity that violates a woman's dignity by abusing, humiliating, or degrading her is sexual abuse. Domestic violence can also take the form of emotional abuse in which the woman is subjected to taunts, humiliation, name-calling, and insults or ridicule.³⁶³ Economic abuse is also another form of domestic violence and includes deprivation of economic resources. Economic abuse can take various forms, such as restricting the spouse from working outside the house or restricting her educational and job options. Financial exploitation is merely another type of control that is less visible than the other forms of domestic violence.³⁶⁴

Domestic violence is caused by a complex combination of sociological, cultural, and religious factors. For instance, the socio-cultural and patriarchal elements of dowry are a prevailing cause of domestic violence in India. Other cultural reasons include the desire for a male child, which often leads to domestic violence against the woman. However, these are not comprehensive as the triggers for domestic violence vary.³⁶⁵

Numerous elements affect a woman's ability for redressal on issues of domestic violence. Caste, class, religious prejudice, and race play a role in the way victims of domestic violence are treated. Women from lower socio-economic or caste backgrounds typically have difficulty obtaining assistance from the police and face greater barriers in accessing legal

³⁶² OHCHR. 1993. Declaration on the Elimination of Violence against Women. Accessed October 24, 2024, at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ViolenceAgainstWomen.aspx>

³⁶³ Tagia, Tassar. 2022. "An Introduction to Domestic Violence in India." *Indian Journal of Law and Legal Research* 4: 1-6.

³⁶⁴ Tiwari, Anjali. 2021. "Causes of Domestic Violence in India." *Law Essentials Journal* 2(3): 21-32.

³⁶⁵ Suri, Shoba, Mona and Sarkar, Debosmita. 2022. "Domestic Violence and Women's Health in India: Insights from NFHS-4". *ORF Occasional Paper No. 343*. Observer Research Foundation.

recourse.³⁶⁶ The unprecedented COVID-19 pandemic led to lockdowns and placed restrictions upon movement worldwide. The pandemic also saw a rise in domestic violence and abuse against women in India. As per the World Health Organisation (WHO), one out of three women globally experience bodily or sexual offence by a perpetrator in their lifetime.³⁶⁷ These acts are further increased in times of unprecedented emergencies when safeguards and measures are not included to allow for easy access to law enforcement and justice.

WHAT IS INTIMATE PARTNER VIOLENCE (IPV)?

Intimate Partner Violence is sometimes used interchangeably with domestic violence (DV). According to the WHO, intimate partner violence is one of the most common forms of violence against women. It includes physical, sexual, and emotional abuse, and controlling behaviours by an intimate partner.³⁶⁸ 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.

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 described here.

- 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, and threats to take children away.
- Controlling behaviours, including isolating a person from family and friends, monitoring their movements, and restricting access to financial resources, employment, education, or medical care.

³⁶⁶ Kaushal, Shubhankar. 2022. "The Evolution of Domestic Violence Law India." *Indian Journal of Law and Legal Research*, 4, 1-15.

³⁶⁷ WHO. 2020, April 7. COVID-19 and Violence against Women. Accessed October 30, 2024 at <https://www.who.int/publications/i/item/covid-19-and-violence-against-women>

³⁶⁸ WHO. 2012. Intimate Partner Violence. Accessed October 24, 2024, at https://apps.who.int/iris/bitstream/handle/10665/77432/WHO_RHR_12.36_eng.pdf;jsessionid=F1859C87849F0612045624695E0B22EB?sequence=1

DATA ON DOMESTIC VIOLENCE

	2021	2022
<i>Cases registered under PWDVA</i>	507	468

Source: National Crime Records Bureau, Crime in India, 2020 and 2022 reports.

According to the National Family Health Survey 5 (2019-21), 30% of women between the ages of 18 and 49 have experienced physical violence since their 15th birthday, and two in five women surveyed have experienced physical or sexual violence by their husbands or partners. However, only 14% of women who experienced physical or sexual violence reported the issue to anyone.³⁶⁹

LAWS ON DOMESTIC VIOLENCE IN INDIA

In India, numerous laws address the issues of domestic violence; however, they are not termed domestic violence laws. The Dowry Prohibition Act of 1961 was the first law to criminalize the giving and receiving of dowries. Domestic violence was previously tackled by criminal law, through the sections about dowry death (304B of IPC) and cruelty (498A of IPC). Domestic violence in India continues to be a crime that is widely perpetuated but spoken about the least. This is largely due to rigid patriarchal rules and the family structure that creates a clear distinction between public and private life.

The Protection of Women from Domestic Violence Act 2005 (DV Act) was passed by the Indian parliament to safeguard women against domestic violence. The Indian government and the Ministry of Women and Child Development implemented it on October 26, 2006. For the first time under Indian Law, the Act uses the term ‘domestic violence’ with a comprehensive definition that covers not only physical assault but also other types of violence (such as emotional and psychological abuse). It is a civil law that places more emphasis on enforcing protection orders than it does on the criminal aspects of the laws.

Section 2 of the PWDVA, which is essentially a civil law, contains the various definitions of terms used in the Act, defines of domestic violence, describes who can act against domestic violence, describes whom an action can be taken against, 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. Some key points to consider are:

³⁶⁹ Paul, Chokita. 2022, May 30. “NFHS-5 Shows 30% Women In India Face Sexual Violence: Where Are The Laws?”. *She The People*. Accessed October 24, 2024, at <https://www.shethepeople.tv/top-stories/opinion/nfhs-5-report-on-sexual-violence/>

- The definition of DV based on the 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
- Recognition of inequality within the home—the right to reside in a shared household
- Effective access to justice—introduces new authorities and mechanisms (PO³⁷⁰ as the interface between the woman and the court)
- Intended specifically to protect women (children, both male and female). Covers mothers, daughters, sisters, widows, and relations through adoption
- Recognition of “relationships like marriage”—victims of bigamous/fraudulent marriages, cohabitation
- Mix of both civil and criminal laws through a two-stage process:
 1. Civil orders passed by a Magistrate on Application u/S. 12
 2. On breach of civil orders by the perpetrator, arrest (imprisonment &/or fine)

According to Section 3 of the DV 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.

Other Salient Features of the Act

1. The act allows any person who believes that an act of domestic violence has taken place to report it to a Protection officer (PO). (Section 4)
2. Under the Act, a woman shall be informed of her rights, which includes applying remedy by way of a protection order monetary relief, or any other order. (Sec 5)
3. The PO files a domestic violence incidence report and sends copies of it to the police officer in charge (Sec 9). The magistrate is required to fix the first date of the hearing (Sec 12).
4. The PO shall serve notice of hearing given by the magistrate on the respondent and any other person as directed by the Magistrate. (Sec 13)

498 A of the Indian Penal Code (Criminal Amendment Act 1863)

This pertains to the husband or a relative of the husband of a woman subjecting her to cruelty. Cruelty includes 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. It also includes any harassment of the woman to coerce

³⁷⁰ 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.

her, or any person related to her to meet any unlawful demand of any property or other valuable assets.

The Dowry Prohibition Act, 1961

Under this Act, someone who physically or mentally pressurises a woman or her relatives for dowry shall be liable for imprisonment for a term of 6 months. It is a law that penalises being involved in any part of the transaction of dowry.

HOW TO ACCESS JUSTICE

1) Under Section 4 of PWDVA:

- a. Anyone can file a complaint against their spouse who is a perpetrator of an act of violence. In cases of marriage, a 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 provide information about domestic violence (marital rape/sexual assault within marriage) to the police or to 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).]

CASES IN RECENT NEWS

A Bombay high court has ruled that a transgender person can claim compensation under the Protection of Women from Domestic Violence Act, 2005. The Court held that the Act was gender neutral and that the man could not refuse to pay maintenance because the transgender person was not a woman and had undergone gender reassignment surgery. A transgender person who has undergone such surgery is an ‘aggrieved person’ under the Act.³⁷¹

According to data submitted by the National Legal Services Authority (NALSA) before the Supreme Court, a total of 4,71, 684 original cases and 21,088 appeals are pending under the PWDVA in the country as of July 1, 2022. The state-wise data on the pendency of disposal of

³⁷¹ PTI. 2023, November 2. “SC to examine whether transgender person who becomes woman after surgery can seek relief under Domestic Violence Act”. *The Economic Times*. Accessed on November 25, 2024 at <https://economictimes.indiatimes.com/news/india/sc-to-examine-whether-transgender-person-who-becomes-woman-after-surgery-can-seek-relief-under-domestic-violence-act/articleshow/104923392.cms?from=mdr>

cases under the DV Act showed that the maximum number of original cases were pending in Uttar Pradesh, followed by Maharashtra.³⁷²

The exponential increase in domestic violence cases during the COVID-19 pandemic has been recorded in previous reports, with the National Commission for Women (NCW) receiving 26,513 complaints from women in 2021-21, an increase of 25.09% from the 20,309 complaints in 2019-20.³⁷³ In 2022, the NCW reported receiving 17,348 complaints from women. The alarming numbers have brought to the fore the need for, and lack of, One Stop Centres (OSCs) for women across the country. OSCs are intended to support women affected by violence in private and public spaces, within the family, community, and at the workplace. Data suggests that most states do not have adequate numbers of functional OSCs, with West Bengal, which reports very high numbers of crimes against women, having none. In total, of the 758 approved OSCs, 708 were found to be functional across 35 states and union territories.³⁷⁴

Based on a longitudinal analysis conducted on the NCRB annual reports, a study published in BMC Women's Health found that domestic violence cases had increased by 53% between 2001 to 2018. The analysis further highlighted the under-reporting and almost stagnant data on the issue.³⁷⁵ Another study found that 1 in 3 women in India is likely to have been subjected to intimate partner violence, but only 1 in 10 of these women formally reports the offence. Based on these figures, India is highly unlikely to meet the Sustainable Development Goal 5 (SDG-5), which focuses on gender equality and the elimination of all forms of violence against women and girls by 2030.³⁷⁶

³⁷² Ojha, Srishti. 2022, September 02. "Over 4 lakh cases pending under Domestic Violence Act, Supreme Court told". *India Today*. Accessed October 25, 2024, at <https://www.indiatoday.in/law/supreme-court/story/over-four-lakh-cases-pending-domestic-violence-act-nalsa-tells-supreme-court-1995554-2022-09-02>

³⁷³ Arya, Prachi. 2022, August 29. "The Indian domestic violence scenario is chilling". *The Leaflet*. Accessed October 25, 2024 at <https://theleaflet.in/the-indian-domestic-violence-scenario-is-chilling/>

³⁷⁴ VP, Sashikala. 2022, July 25. "As NCW Registers 17,348 Complaints In 2022, Increasing One Stop Centres For Women Is Need Of The Hour". *India Ahead*. Accessed October 25, 2024, at <https://indiaaheadnews.com/india/as-ncw-registers-17348-complaints-in-2022-increasing-one-stop-centres-for-women-is-need-of-the-hour-224977/>

³⁷⁵ Dandona, Rakhi, Gupta, Aradhita, George, Sibin, Kishan, Somy and Kumar G. Anil. 2022. Domestic violence in Indian women: Lessons from nearly 20 years of surveillance. *BMC Women's Health* 22(128): 1-14.

³⁷⁶ Dwivedi, Vineeta. 2022, August 22. "Darlings, domestic violence needs attention!". *The Times of India*. Accessed October 25, 2024, at <https://timesofindia.indiatimes.com/blogs/voices/darlings-domestic-violence-needs-attention/>

RECENT CASE LAW

*Sh Jagmohan Kashyap v. Govt. of Nct of Delhi & Anr (2022)*³⁷⁷

Justice Asha Menon of the Delhi High Court observed that the right to claim maintenance under the PWDVA and Section 125 of the Code of Criminal Procedure are not mutually exclusive. The aggrieved person can seek interim maintenance before the Magistrate while also seeking permanent maintenance under Section 125 CrPC.

*Satish Chander Ahuja v. Sneha Ahuja (2020)*³⁷⁸

The Supreme Court ruled that once a woman complains to the PWDVA, she will have the right to live in the shared (marital) house, even if it is rented or owned by the in-laws and her husband did not have legal ownership over it. The judgement widened the definition of “shared household” to protect women who are at risk of eviction from their marital homes following a domestic violence complaint. This set aside an earlier rule that the distressed woman could have the right to residence only if her marital home was owned by her husband or if he had shared ownership rights of it.

*Decision by Jammu and Kashmir High Court (2020)*³⁷⁹

In light of increased cases of domestic violence amidst the coronavirus lockdown, the Jammu & Kashmir High Court has directed all courts in Ladakh and J&K to treat cases of domestic violence as 'urgent'. It has also suggested that the government designate certain pharmacies or grocery stores or empty hotels or educational institutions as safe spaces for women, increase the availability of tele/online legal and counselling services, and conduct awareness campaigns increasing awareness of steps being taken by the government to combat violence.

*All India Council of Human Rights, Liberties, and Social Justice v. Union of India and Others (2020)*³⁸⁰

³⁷⁷ Thapliyal, Nupur. 2022, May 30. “Right To Claim Maintenance Under Domestic Violence Act & U/S 125 CrPC Not Mutually Exclusive: Delhi High Court”. *LiveLaw*. Accessed October 25, 2024, at <https://www.livelaw.in/news-updates/right-maintenance-domestic-violence-act-sec-125-crpc-delhi-high-court-200396>

³⁷⁸ CIVIL APPEAL NO.2483 of 2020 (Arising out of SLP(C)No.1048 of 2020)

³⁷⁹ Court on Its Own Motion v/s Union Territories of Jammu & Kashmir and Ladakh through Secretaries, Social Welfare Department. 2020. Accessed October 25, 2024, at https://www.livelaw.in/pdf_upload/pdf_upload-373329.pdf

³⁸⁰ W.P.(C) 2973/2020 & CM APPLs. 10318/2020 (exemption), 10372/2020 (Intervention), 10373/2020 (exemption), 10374/2020 (exemption) & 10375/2020 (exemption)

While highlighting the spike in domestic violence cases during the lockdown, the Petitioner submitted that only 17 Protection Officers were not adequate owing to the large population in Delhi. Moreover, no mass campaigning has been done to date and no efforts have been undertaken for mass outreach. The Petitioner further argued that the remedies regarding domestic violence available on the website were of no help to the poor, the downtrodden, and the illiterate as they had no access to these online.

*Kasturi v. Subhash (2017)*³⁸¹

The omission of the husband in neglecting to maintain his wife and live 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 held while upholding maintenance awarded to a wife who filed a petition for maintenance after 3 decades. The court noted that “domestic violence” under Section 3 of the Act among others takes into consideration “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 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 stipulated 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)*³⁸²

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)*³⁸³

The High Court of Kerala ruled that 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)*³⁸⁴

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

³⁸¹ Kasturi vs Subhas. 2017. Accessed October 25, 2024, at <https://indiankanoon.org/doc/195470812/>

³⁸² Vinay Gupta vs Saveri Nayak. 2017. Accessed October 25, 2024, at <https://indiankanoon.org/doc/131522846/>

³⁸³ CRL. M. C. No. 2990 of 2016

³⁸⁴ Criminal Appeal Nos. 516/2016 arising out of SLP (CRL.) No. 1537/2016

sparingly, with caution, and under limited circumstances.

17. TECHNOLOGY FACILITATED GENDER-BASED VIOLENCE

Online violence and abuse against women are extensions of offline violence and abuse. In the 21st century, our offline and online worlds are intertwined more than ever. Enhanced digital tools and digital spaces, through the rapid advancement of technology, have made it easier to commit crimes of stalking and sexual harassment, and the non-consensual digital manipulation of images and videos through artificial intelligence. Technology-facilitated gender-based violence involves the misuse of technology motivated by the sexual or gender identity of the target. This misuse is carried out to coerce, stalk, harass, and harm the person.³⁸⁵ It can include direct and indirect threats of violence, such as physical or sexual threats.³⁸⁶ According to the Special Rapporteur on Violence against Women (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.*³⁸⁷

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. Email spoofing is when a fraudulent email activity, in which the sender's address and other parts of the email header are altered to make it seem like an authorised source, happens;
- 3) *Surveillance/Tracking/Stalking*: This is the use of technology to stalk the victim's activities online or in the physical world. A cyberstalker often gathers information

³⁸⁵ International Center for Research on Women. 2019. Technology-facilitated Gender-based Violence, Violence against women and girls. Accessed November 17 2024, at <https://www.icrw.org/publications/technology-facilitated-gender-based-violence-overview/>.

³⁸⁶ Pinto, Shiromi. 2017, November 17. "What is online violence and abuse against women?" *Amnesty International*. Accessed October 31, 2024, at <https://www.amnesty.org/en/latest/campaigns/2017/11/what-is-online-violence-and-abuse-against-women/>

³⁸⁷ UN Human Rights Office of the High Commissioner. 2018, June 21. 38th session of the Human Rights Council, Statement by Ms. Dubravka Šimonović, Special Rapporteur on Violence against Women, its causes and consequences. Geneva. Accessed October 31, 2024, at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23235&LangID=E>

online and makes threats through different forms of verbal intimidation. There are four broad reasons for cyber stalking: sexual harassment, obsession, revenge, and power trips³⁸⁸;

- 4) *Harassment/Spamming*: This is the use of technology to continually contact, threaten, or scare the victim. Harassment includes blackmailing, threatening, bullying, and cheating through the use of emails. Cyber defamation is a cyber tort and includes libel and defamation which publishes defamatory content. Women are at a higher risk of cyber defamation³⁸⁹;
- 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. Cyber pornography is the creation of pornographic websites and magazines produced to publish and print explicit pictures and videos. These turn dangerous when a picture of a woman is edited by an unauthorised user and uploaded.

Some of the biggest reasons for the continuous increase in cybercrimes against women are the cost of equipment used to execute this and an increase in online targets. The growth in technology has also made it easier to conceal a person's real identity, which causes a lack of hesitation to commit cybercrimes. In addition, cybercrimes are often not reported owing to fears of societal isolation and adverse impacts on the reputation of the victim and their families. Cybercrimes, in comparison to other crimes, are also not taken as seriously by the Indian police.³⁹⁰

DATA ON CYBER CRIMES AGAINST WOMEN

Despite being a relatively new phenomenon with a consequent lack of comprehensive data, it has been estimated that 23% 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 15.³⁹¹ A survey by Feminism in India, a digital platform, found that 28% of women who experienced online abuse said they intentionally

³⁸⁸ Sharma, Niharika. 2022. "Cyber Crimes against Women in India: An Overview." *Indian Journal of Law and Legal Research* 3(2): 1-16.

³⁸⁹ *ibid.*

³⁹⁰ Kumar, Suresh and Gaur, Karan S. 2023. "Cyber Crime in India." *International Journal of Law Management & Humanities*, 1288-1301.

³⁹¹ European Union Agency for Fundamental Rights. 2014. Violence against women: an EU-wide survey. Accessed October 31, 2024, at https://fra.europa.eu/sites/default/files/fra_uploads/fra-2014-vaw-survey-main-results-apr14_en.pdf

reduced their online presence.³⁹²

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 the USA) who had experienced abuse or harassment made changes to the way they used social media platforms.³⁹³

The National Crime Records Bureau (NCRB) documents cybercrimes against women in detail.

	2021	2022
<i>Cyber blackmailing/threatening (Sec 506, 503, 384 IPC R/W IT Act)</i>	200	125
<i>Cyber pornography/posting/publishing obscene sexual materials (Sec 67A/67B (Girl Child) of IT Act R/W IPC SLL)</i>	1896	2251
<i>Cyber stalking/cyber bullying of women (Sec 354D IPC R/W IT Act)</i>	1172	1457
<i>Defamation/morphing (Sec 469 IPC R/W IPC and Indecent Representation of Women (P) Act)¹¹²</i>	276	385
<i>Fake Profile (R/W IPC SLL)</i>	225	179
<i>Other cybercrimes against women</i>	6961	10012

Source: National Crime Records Bureau, Crime in India 2021 and 2022 reports.

CASES IN RECENT NEWS

The Indian Parliament seeks to introduce the Digital India Act to replace the Information Technology Act (IT Act) of 2000. The Act seeks to expand upon the IT Act to cover artificial

³⁹² Feminism in India. 2016. #DigitalHifazat: Combat Cyber Violence Against Women in India. Accessed October 31, 2024, at <https://feminisminindia.com/2016/11/16/digitalhifazat-campaign-cyber-violence-women-india/>

³⁹³ Salim, Mariya. 2018, July 8. "Online Trolling of Indian Women Is Only an Extension of the Everyday Harassment They Face". *The Wire*. Accessed October 31, 2024, at <https://thewire.in/women/online-trolling-of-indian-women-is-only-an-extension-of-the-everyday-harassment-they-face>

intelligence, cybercrimes, and issues related to data protection. Data has suggested that there has been a significant increase in cybercrimes against women during and after the COVID-19 pandemic. Online traffic escalated due to an increase in online platforms for video conferencing, meetings, online classes, and chatting, increasing the likelihood of cyber violence.³⁹⁴ A study by ICRW and Quilt.AI showed many emerging forms of cyberviolence during the pandemic in urban areas, such as exploitation, hacking, doxing,³⁹⁵ and image-based abuse.³⁹⁶

RELEVANT INDIAN LAWS AGAINST CYBER VIOLENCE

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

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

2) *Indian Penal Code, 1860*

- a. *Section 292*: Sale, etc. of obscene books, etc.
- b. *Section 292 A*: Printing, etc., of grossly indecent or scurrilous matter or matter intended for blackmail
- c. *Section 406*: Punishment for criminal breach of trust
- d. *Section 419*: Punishment for cheating by personation

³⁹⁴ Bhattathiripad, P. V. 2021. "Cybercrimes Against Indian Women: Before and During COVID-19". In: George, I., Kuruvilla, M. (eds) *Gendered Experiences of COVID-19 in India*. Palgrave Macmillan, Cham.

³⁹⁵ Doxing (also spelled doxxing) is the act of revealing personally identifiable information about another individual or organization (this can be the name of an anonymous individual or organization, address, phone numbers, etc.) on the internet without the owners' consent.

³⁹⁶ Quilt.AI and ICRW. 2021. COVID-19 and Online Violence in India: Digital Intelligence Report. Singapore and Washington, DC. Accessed October 31, 2024, at <https://www.icrw.org/publications/covid-19-and-online-violence-digital-intelligence-report/>

- e. *Section 441*: Criminal trespass is entering into the property of another with intent to commit an offence or to intimidate, insult, or annoy any person in possession of such property
- f. *Section 499*: Defamation by words either spoken or intended to be read
- g. *Section 501*: Printing or engraving matter known to be defamatory
- h. *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.
- i. *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.

GOVERNMENT INITIATIVES FOR PREVENTION OF CYBERCRIMES

- The Cyber Crime Prevention against Women and Children Scheme: provides financial assistance to all States and Union Territories to set up cyber forensic training laboratories and to hire and train cyber consultants. The labs have now been established in 28 states.³⁹⁷
- Spreading awareness through the issuance of alerts and advisories, capacity building, and training for law enforcement officers and audial officers. This programme is run by the Ministry of Electronics and Information Technology.³⁹⁸
- Indian Cyber Crime Coordination Centre: offers a framework for law enforcement agents to deal with cybercrimes.
- National Cyber Crime Reporting Portal: allows members of the public to report instances of cybercrimes with a focus on cybercrimes against women and children.
- All India Women's Conference: an initiative by the Government of Tamil Nadu and the Tamil Nadu State Commission for Women. This conference looked into issues of better access to technology and how cyber security can be increased.
- Cyber Cells: cells especially created for the investigation and prevention of cybercrimes in metros.
- The National Commission for Women: collaborates with law enforcement to help victims of cybercrimes. The commission has the power to set up an inquiry committee, conduct

³⁹⁷ Ministry of Home Affairs, Government of India. Details About CCPWC (Cybercrime Prevention against Women and Children) Scheme. accessed on October 17, 2024 at https://www.mha.gov.in/en/division_of_mha/cyber-and-information-security-cis-division/Details-about-CCPWC-CybercrimePrevention-against-Women-and-Children-Scheme#:~:text=Overview about CCPWC Scheme, lab in each State/UT.

³⁹⁸ Ministry of Electronic and IT. 2022, July 27. Prevention of Cyber Crime. Accessed on November 20, 2024 at <https://pib.gov.in/PressReleasePage.aspx?PRID=1845321>

spot inquiries, collect evidence, and interrogate suspects. A complaint can be made either online or physically through the submission of a complaint to their office.

- Report to POSH Committee: if the perpetrator is from the workplace, the victim can submit a complaint. The company's POSH committee will have to conduct an internal inquiry and disciplinary actions initiated.

WOMEN ASSISTANCE CELLS FOR CYBERCRIME VICTIMS

The following are cells/NGO's who women and girls can contact for guidance on cybercrimes:

- Sakshi
- Navjyoti
- Cyber Rights Foundation (an NGO that educates women on their legal rights and their options for legal redressal for cybercrimes)
- Centre for Cyber victims Counselling

RELEVANT CASE LAW

*Public Interest Litigation by Prajwala (2016)*³⁹⁹

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)*⁴⁰⁰

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.

*SMC Pneumatics (India) Pvt. Ltd. v. Jogesh Kwatra (2014)*⁴⁰¹

This was India's first case in which order an against cyber defamation was passed. The accused, who was an employee at the plaintiff's company, sent derogatory, defamatory,

³⁹⁹ IANS. 2016, December 6. "SC Issues Notice To Facebook, Google, Other Internet Majors on Sharing of Sexual Assault, Cybercrime Videos". *The Wire*. Accessed October 31, 2024, at <https://thewire.in/uncategorised/supreme-court-google-facebook-microsoft-sexual-offence-cybercrime-videos>

⁴⁰⁰ Kamlesh Vaswani v. Union of India & Others. 2016. Accessed October 31, 2024, at <https://www.legitquest.com/case/kamlesh-vaswani-v-union-of-india-others/A2B21>

⁴⁰¹ Suit No. 1279/2001, District Court of Delhi.

and vulgar emails to all the employers in the company with the intent to defame the company and its managing director. The plaintiff filed a case for a permanent injunction against the defendant against sending these derogatory emails. The Delhi High Court passed an ad-interim injunction against the defendant to restrain him from publishing any further defamatory content.⁴⁰²

*Suhas Katti v State of Tamil Nadu (2004)*⁴⁰³

This was the first ever conviction of cyber pornography in India. A woman who declined a man's proposal for marriage was sent obscene and defamatory messages through email. The accused had opened a fake email account in the name of the victim and forwarded emails. This resulted in the victim receiving phone calls from persons believing her to be engaged in the solicitation of sex work. The accused, Katti, was convicted under Section 469 of the IPC (forgery to harm reputation), Section 509 of the IPC (words, gestures or acts intended to insult the modesty of a woman), and under Section 67 of the IT Act 2000 (punishment for publishing or transmitting obscene material in the electronic form).⁴⁰⁴

⁴⁰² Panchagnula, Nikitha. 2021, November 13. 'Smc Pneumatics (India) Pvt. Ltd vs Shri Jogesh Kwatra'. Case Briefs. Accessed on November 25, 2024 at <https://casebriefs.truthandyouth.com/2021/11/13/smc-pneumatics-india-pvt-ltd-vs-shri-jogesh-kwatra/>.

⁴⁰³ C No. 4680 of 2004.

⁴⁰⁴ Nagarjun, S. 2021, January 1. "Suhas Katti v. State of Tamil Nadu". *Indian Law Portal*. Accessed on November 25, 2024 at <https://indianlawportal.co.in/suhas-katti-v-state-of-tamil-nadu/>.

18. GENDER-BASED VIOLENCE IN CUSTODY

Sexual assault occurring in custody, such as in police or judicial custody, and committed by a person of authority is a form of custodial as well as gender-based violence. The former United Nations Special Rapporteur on Violence Radhika Coomaraswamy states that custodial rape can also occur outside of an institutional setting, such as instances when members of the police or military personnel enter homes to search, question, intimidate, and/or harass.⁴⁰⁵ Sexual assault in custody is considered to be a form of torture, and additionally, if carried out by the state, other acts that are violent and sexual in nature, such as the deliberate use of intimate searches, groping, or inappropriate threats, can amount to torture under international law.⁴⁰⁶

The most common example of custody is detention by the state, through the police, army, and other security forces, which may be at police stations, lockups, prisons, and interrogation centres. However, the concept of custody also applies to hospitals (government and private), mental health care institutions, shelter homes, and juvenile homes. In India, under Section 376 of the IPC, custodial rape is broadly categorised as rape by police personnel, rape by a public servant, by a member of the armed forces, by management/staff of a jail/remand home/place of custody or by management/staff of a hospital. However, the law does not make any difference in procedures or punishments for custodial rape and other forms of aggravated rape such as the rape of a pregnant woman, rape of a child, and gang rape covered under Section 376.⁴⁰⁷

In 1972, a 14-year-old Adivasi girl called Mathura was raped by two policemen in Maharashtra. The acquittal of the accused caused massive public outcry and protests, and eventually led to amendments to India's rape law via the Criminal Law Amendment Act 1983 (No. 43). Section 376 of the IPC was also changed, with the enactment and addition of Section 376(A), Section 376(B), Section 376(C), and Section 376(D), making custodial rape punishable. Besides defining custodial rape, the amendment shifted the burden of proof from the accuser to the accused once intercourse was established; it also added provisions for in-camera trials, prohibition on the disclosure of the victim's identity, and

⁴⁰⁵ United Nations. Alternative Approaches and Ways and Means within the United Nations System for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms. Special Rapporteur on violence against women, its causes, and consequences. Accessed October 31, 2024, at <https://digitallibrary.un.org/record/82143?ln=en>

⁴⁰⁶ Stop Violence Against Women. 2013. Custodial Sexual Assault. Accessed October 31, 2024, at https://www.stopvaw.org/custodial_sexual_assault#

⁴⁰⁷ Peoples Union for Democratic Rights. 2004. In Custody: An Investigation Into 5 Cases Of Sexual Assault. Accessed October 31, 2024, at <https://puodr.org/custody-investigation-5-cases-sexual-assault>

tougher sentences.⁴⁰⁸

DATA ON CUSTODIAL SEXUAL VIOLENCE

	2021	2022
<i>Custodial Rape</i>	29	26
<i>Other Custodial Rapes</i>	875	1359

Source: National Crime Records Bureau, Crime in India 2021 and 2022 reports

Custodial rape is a grossly underreported crime.⁴⁰⁹ In highly militarized parts of the country, especially in states governed by the Armed Forces Special Powers Act (AFSPA), sexual violence by the armed forces against civilians is a common occurrence.⁴¹⁰ The National Campaign Against Torture's Violence In India Report 2019 explores several instances of rape of women and children by police personnel as well as the armed forces.⁴¹¹ Rape by other inmates in prison is another form of custodial sexual violence that is common but that goes unreported.

LAWS ADDRESSING CUSTODIAL SEXUAL VIOLENCE

Generally, the laws that address rape in India would be used for a case of rape in custody. The sections that refer to this particularly are as follows:

Indian Penal Code, 1860

- *Section 376 A: Rape by a police officer:*
 - (i) within the limits of the police station to which he is appointed; or
 - (ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or
 - (iii) on a woman in his custody or in the custody of a police officer subordinate to

⁴⁰⁸ Murthy, Laxmi. 2013, June 8. From Mathura to Bhanwari. *Economic and Political Weekly* 48(23). Accessed October 31, 2024, at <https://www.epw.in/journal/2013/23/commentary/mathura-bhanwari.html>

⁴⁰⁹ Bhog, Sahar. 2019, August 16. "What Is Custodial Rape And Why We Need To Be Discussing It". *Feminism in India*. Accessed October 31, 2024, at <https://feminisminindia.com/2019/04/16/custodial-rape-india/>

⁴¹⁰ Krishnan, Kavita. 2017, April 26. "When it Comes to Rape By Men in Uniform, the Media Forgets the Victim is Also Part of the 'Nation'". *The Wire*. Accessed October 31, 2024, at <https://thewire.in/culture/rape-security-forces-afspa>

⁴¹¹ National Campaign Against Torture. 2020. India: Annual Report on Torture 2019. Accessed October 31, 2024, at <http://www.uncat.org/wp-content/uploads/2020/06/INDIATORTURE2019.pdf>

him;

- *Section 376 B*: Rape by a public servant of a woman in his custody
- *Section 376 C*: Rape by superintendent of jail, remand home, etc.
- *Section 376 D*: Rape by any member of the management or staff of a hospital with any woman in that hospital

Prior to 1983, the term 'custodial rape' only included rape by police officers in police custody. It now includes rape by police officers in a police station and the victim in his custody; rape by a public servant of a woman in the public servant's custody; rape by army personnel in an area where forces have been deployed; rape by management/staff in a jail, a remand home, a women's home, or other places with women in custody; rape by hospital staff with a woman in custody.⁴¹²

Indian Evidence Act, 1872

The Criminal Law Amendment Act introduced Section 114A. Under this section, if sexual intercourse is proven and the victim states it occurred without their consent, then the court will presume there was no consent. The burden of proof shifts onto the perpetrator of the offence.

Code of Criminal Procedure, 1973

- *Section 46(4)*: no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed, or the arrest is to be made.
- *Section 154(1)*: if the victim of a sexual crime or acid attack comes to report the crime, then the FIR must be recorded by a woman police officer.
- *Section 154 (3)*: if police officers fail to register a report of rape, then the victim can file a case against the police officer, and he shall be punished for the act.

India signed the United Nations Convention Against Torture in 1997 but has yet to ratify it. In its 273rd report, The Law Commission of India recommended its implementation through legislation, the Prevention of Torture Bill, 2010. The Bill contained a broad definition of torture, which included physical and mental pain, stress, and trauma. It also emphasised torture in the context of discrimination based on sex, race, and religion. This legislation would have been a significant step against custodial violence, including rape of

⁴¹² Bhog, Sahar. 2019, April 16. 'What Is Custodial Rape And Why We Need To Be Discussing It'. Feminism in India. Accessed October 13, 2024 at <https://feminisminindia.com/2019/04/16/custodial-rape-india/>.

men and non-cis women. However, the Bill lapsed with the dissolution of the 15th Lok Sabha in 2014. Another Bill was drafted in 2017 but has not been passed yet.⁴¹³

IN RECENT NEWS

The Tamil Nadu Government in March 2023 increased the compensation for death due to custodial torture, firing, rape, and permanent incapacitation from 5 lakhs to 7 lakhs. The compensation also applies to deaths by suicide in police custody or where there is partial incapacitation.⁴¹⁴ In June 2023, a case was registered in the state of Andhra Pradesh against six police officers for sexually assaulting and torturing two women who were in custody for the alleged offence of theft.⁴¹⁵

In October 2022, the Punjab State Police Complaints Authority (SPCA) chairman Satish Chandra wrote a letter to senior IPS officer Sharad Satya Chauhan that a Special Investigation Team (SIT) formed to probe allegations of extortion and custodial rape against Inspector General (AIG) Ashish Kapoor did not conduct an enquiry and recommended a closure report to the court. The custodial rape and extortion allegations were leveled by a woman inmate while Ashish Kapoor was posted as superintendent of Amritsar Central Jail. Following an FIR, the woman had approached the SPCA alleging inaction, and subsequently, the then state police chief had constituted the SIT in January 2020.⁴¹⁶

RECENT CASE LAW

Jayaraj-Bennick Case (2020)

Jayaraj and his son Bennick were arrested and brought into police custody in June 2020 for violating the COVID-19 curfew by keeping their shop open 15 minutes past the curfew time. During police custody, the father and son were sexually assaulted and tortured, which led to their deaths. This case led to a major public outcry regarding police

⁴¹³ Indian Journal of Law and Public Policy. Anti-Torture Law In India: Urgent Need For A Legislation. Accessed October 31, 2024, at <https://ijlpp.com/anti-torture-law-in-india-urgent-need-for-a-legislation/>

⁴¹⁴ Mariappan, Julie. 2023, March 11. "Tamil Nadu enhances compensation for deaths caused by custodial torture, firing, rape". *Times of India*. Accessed October 13, 2024, at <https://timesofindia.indiatimes.com/city/chennai/tamil-nadu-enhances-compensation-for-deaths-caused-by-custodial-torture-firing-rape/articleshow/98560975.cms?from=mdr>.

⁴¹⁵ Jayachandran, Apoorva. 2023, June 21. "6 Andhra cops booked for sexually abusing 2 women suspects in custody". *India Today*. Accessed October 18, 2024, at <https://www.indiatoday.in/india/story/6-andhra-cops-booked-for-sexually-abusing-of-2-women-suspects-in-custody-2395879-2023-06-21>.

⁴¹⁶ Gopal, Navjeevan. 2022, October 10. "SIT never probed extortion allegation against AIG, gave him clean chit in custody rape case." *Indian Express*. Accessed October 31, 2024 at <https://indianexpress.com/article/cities/chandigarh/sit-never-probed-extortion-allegation-against-aig-gave-him-clean-chit-in-custody-rape-case-8199613/>

brutality.⁴¹⁷

*Sheela Devi v. State of Haryana (2016)*⁴¹⁸

A woman was raped and murdered by a police constable. A huge public outcry led to an amendment in the law covering rape to include custodial rape. The punishment for custodial rape is not less than 10 years and can extend to life imprisonment.⁴¹⁹

*State of Punjab v. CBI (2011)*⁴²⁰

The Supreme Court ruled against a petition that challenged a judgement by the High Court wherein the court had ruled, in a case of rape in custody, that the investigation may not be fair and proper because senior police officers and highly influential persons were involved in the case. The court then directed the CBI to handle the investigation.

LANDMARK CASES ON CUSTODIAL SEXUAL VIOLENCE

Smt. Rameeza Bee v. D Arumugam (1978)

Rameeza, a 26-year-old woman was returning from a movie with her husband and was arrested for loitering on the street. The policeman asked the husband to go home and get money to pay for the fine. While the husband was gone, the policeman raped Rameeza and beat her husband to death on his return. This led to protests in the community, and the city was shaken up by the death and rape. The Mukhtad Commission, which was subsequently constituted, highlighted the lived realities and barriers to justice that Muslims face.⁴²¹

Sheo Kumar v. State of U.P. And Ors (1980)

A pregnant woman who was traveling with her husband and his friends was dragged out of the car, assaulted, stripped, and paraded naked on the streets. She was then taken to the police station and raped. A group of 10 policemen shot her husband.⁴²²

⁴¹⁷ TNN. 2021, September 8. "Jayaraj-Bennix case: Supreme Court refuses bail to two cops". *Times of India*. Accessed on October 20, 2024 at <https://timesofindia.indiatimes.com/city/chennai/jayaraj-bennix-case-supreme-court-refuses-bail-to-two-cops/articleshow/86030217.cms>

⁴¹⁸ Criminal Revision No.4220 of 2014

⁴¹⁹ 2022, July 04. "Custodial Rape in India". *Free Law*. Accessed October 20, 2024 at <https://www.freelaw.in/legalarticles/Custodial-Rape-in-India>

⁴²⁰ 2011 AIR SCW 5248

⁴²¹ Bhog, Sahar. 2019, April 16. *Ibid*.

⁴²² Kamath, Nishka. 2023, June 19. "Custodial Rape". *IPleaders*. Accessed October 28, 2024 at <https://blog.ipleaders.in/custodial-rape/>