

# GENDER VIOLENCE in INDIA



A Prajnya Report

2009

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## INTRODUCTION

### Why another report on gender violence?

The last report released by the National Crime Records Bureau noted that in 2007, the incidence of crimes against women increased by 12.5%. Andhra Pradesh led other states by registering 13.3% of the total number of crimes. Even without these numbers, most of us have a sense anecdotally that we now hear of more incidents of gender violence than ever before. Television with its immediate coverage and continuing attention to the early stages of each case underscores this dramatically. The numbers confirm this instinct.

And then we ask, do these things happen more nowadays or are they more frequently reported or do we just hear more about gender violence than we ever did? The answer is, all of the above. But in order to make policy and initiate social change, anecdotal evidence is not enough; systematic research, combining qualitative and quantitative methods of collecting and analysing data, must precede policy-making.

On the face of it, there is a great deal of data available today in the public domain. For India, at least, the main source is annual 'Crimes in India' reports that the National Crime Records Bureau (NCRB) has been compiling from reports published by each of the states. The limitation of this resource is that it is bound by the categories set up by Indian law. This means that some categories become 'umbrellas' for many things: "torture" and "cruelty by husbands and relatives," for instance. If there is no specific law, as with honour killings, these cannot be reported as such, and when incidents of violence are reported they are either defined as torture or as caste violence, which is not gender violence. Moreover, since the statistics in this report are dependent on the independent/moment-to-moment decision of constables and officers at the police station level as to the law under which to register an incident, there is a great deal of overlap. Domestic violence could be listed as torture or cruelty. Finally, the mandate of the NCRB is to compile statistics sent by the state bureaus. The vagaries in data collection, at the district and state level, have to be set aside; reports have to be taken at face value; and conclusions, such as rates of increase, have to be based on evidence at hand, irrespective of problems.

The National Family Health Surveys have become an invaluable resource in the last few years. Gender violence and women's health issues form an important segment of their work, and the data collected also yields special reports on gender, where domestic violence in particular gets attention. At the end of the day, however, this is a sample survey. It is not an exhaustive account of what happens in every village and every municipal ward around the country. Moreover, gender violence in the public domain remains largely outside the purview of the surveys.

In addition to these, there are specific reports carried out by Indian NGOs like Shaktivahini's report on Trafficking; government agency reports such as the Ministry of Women and Child Development's 2007 handbook on statistics relating to women or situation report on the Nithari killings and statistics put out in various reports and studies by international organisations. The latter have highlighted gender violence over and over again in the last decade in annual reports and special studies, with the United Nations Women's Fund spearheading a worldwide campaign to end gender violence.

Across the board, there are three sets of problems with any statistics on any issue. The first set relates to the conceptual underpinnings of data collection. Do the categories into which information is plugged make sense? For instance, if there is no category for workplace sexual harassment cases, does it make sense to put them in under torture? They are torture, but not the same kind of torture as battery or marital rape. Moreover, would another researcher or data analyst know to find them there? That is, is the basis for categorisation transparent and intuitive enough that this is how most people would classify a particular incident?

The second set of problems arises from the nature of data collection. Each agency or organization is collecting data from their point of view: health, education, child rights, security, livelihoods and so on. The data reflect this priority and orientation. The problem is that the basis for collection might vary, the bases of classification might vary and therefore, the data may not be comparable.

A final set follows from the scattered nature of reporting and data collection. Often the same numbers are repeated everywhere. This sometimes indicates accuracy and reliability, but the troubling aspect of this is that over time and repeated usage, we have a 'house built on a weak foundation,' or at least, a dubious one. This is not so much because the original numbers might be flawed, but because citations and sourcing have dropped off along the way.

This is why one of Prajnaya's main activities is documentation. The Prajnaya Resource Centre on Women in Politics and Policy will compile and archive oral historical, qualitative and quantitative data on women in public life in South Asia. In a related endeavour, we hope to start systematically compiling a database on gender violence. The 16 Days Campaign against Gender Violence is a public education programme and our goal is to raise awareness of what is happening and to provide information so that everyone can enter into debates about policy and social change relating to gender violence. There is and will continue to be a close relationship between our gender violence research work and this campaign in the future.

This report is our way of flagging both the pervasiveness of gender violence and the need for systematic and continuous data collection. Yes, Prajnaya will also draw on the same resources as are currently available. But we hope that by dedicating resources to this work, we will be able to document in such a way that we can achieve some standardisation, some comparability and allow people to access sourcing for data across the years.

### **About this report**

*Gender Violence in India* is intended as an indicative rather than an exhaustive account of violence on the basis of gender identity. It is structured around short reports about six kinds of violence: pre-natal sex selection, child marriage and forced marriage, honour killings, dowry death, domestic violence and rape. We chose to highlight these to indicate:

1. Even well-reported and much-discussed varieties of gender violence are under-researched. Although pre-natal sex selection or foeticide and domestic violence are in the news a lot, data collection is still incomplete.
2. Gender violence is not merely a 'crime;' it is a deep-rooted social sickness. The epidemic growth rates of rape incidents suggests not just that people are willing to report and document rape as such, but that the solution for this is to be sought beyond policing and law-making.
3. It is wrong to think some practices have disappeared from our society. Under-age girls and boys are still forced to marry. Dowry deaths have hardly ended but are rather spreading across the country.
4. It is important to call a spade a spade. The classification of killing by caste panchayat decree as caste violence belies the gender dimensions of the killing. Reclassifying them as honour killings uncovers this violence as an expression of community power through the lives of women.

In other words, this short, selective account is meant to get all of us asking the bigger questions about gender violence, rather than to provide encyclopaedic insights.

### **About our data**

The Prajnya team that has worked on this report has relied on accessible public domain information, databases, reports, studies and media sources. There was no field or clinical research that went into this.

Resource limitations (human, material and financial) were the smaller part of why we chose these resources. Given our twin objectives of showing that gender violence is a serious problem that we have to confront and of showcasing the nature of the data with which we work, we determined this approach to be adequate.

Of course, our work inherits the flaws of this public and scattered 'database.' We hope that these flaws form the foundation of a movement for coordinated data collection, better reporting and systematic compilation, so that the institutional changes we debate and implement may have a strong foundation.

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## PRE-NATAL SEX SELECTION

The question of “missing daughters”, as coined by Nobel laureate Amartya Sen, is of serious concern globally. The elimination of the girl child in India through the rampant practices of female infanticide, female foeticide and sex-selective abortion is a crime of enormous proportions, with long-term consequences. Newborn girls are cruelly murdered – often by older women – in a number of ways including poisoning, starvation, and drowning.

It is estimated that these practises have resulted in at least 10 million missing girls, since ultrasounds and other sex-selection tests became available two decades ago -a striking example of modern technology facilitating age-old prejudices. A preference for male children is at the root of female foeticide and infanticide, perpetuated by customs like dowry and inheritance through sons.

### Counting the losses

- Sex-selective abortion is responsible for the death of almost 7,000 unborn baby girls in India everyday (UNICEF, State of the World’s Children, 2007).
- Media reports estimate that the illegal sex-selective abortion industry makes about \$250 million a year.
- Despite 27 lakh illegal sex determination tests every year, the conviction rate is abysmally low, with only one conviction in 15 years.

On the whole statistics on sex-selective abortions are hard to come by, owing to the severe underreporting of this crime. In the absence of a proper monitoring mechanism, “sex ratio at birth” or the number of females born for every thousand males is the only real statistical indicator that gives us a sense of how prevalent this practise is.

	1901	1931	1961	1991	2001
Sex ratio at birth in India	972	950	941	927	933

Source: Census of India, 2001

### According to this census:

- The national average is 933 girls for 1000 men against a worldwide average of 1050 girls for every 1000 boys.
- The sex ratio in India’s cities averaged 900:1000 while rural India showed 946:1000
- In 1961, the national average was 976 girls to every 1000 boys. This indicates a steady decline in the sex ratio.
- At least 16 districts across the country have a sex ratio of less than 800 women for every 1000 men.

This ratio has declined to less than 900 girls per 1000 boys in States such as Punjab, Haryana, Delhi and Gujarat. For instance, in Fatehgarh Sahib, Punjab the sex ratio is 754; in Kurukshetra, Haryana, 770; in Ahmedabad, Gujarat, 814; Southwest Delhi, 770 and in Mumbai, India’s commercial capital, 898.

### Know the law

- *The Pre-Natal Diagnostic Techniques (Regulation And Prevention Of Misuse) Act, 1994*

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

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

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

## FORCED OR EARLY MARRIAGE

### What is child marriage?

- UNICEF defines child marriage as marriage before the age of 18.
- In India, the legal age for marriage is 18 for a girl and 21 for a boy.
- It's usually a young girl who is married to a much older man, though there are many cases where both the boy and the girl are below the legal age.

### What is forced marriage?

In a forced marriage, the boy or girl or both are married without consent or against his or her will. Most often, it is the female (rather than the male) who is forced into marriage for reasons ranging from maintaining family honour to joining families to expand business interests.

### Counting the losses

According to UNICEF's State of the World's Children 2009 report, South Asia has the highest prevalence of child marriage in the world with 49% of women aged 20-24 married before they were 18 years old. In India, 47% of women in that same age group were married before 18, with 56% in rural areas. The report also says 40% of the world's child marriages take place in India and that about 10% of boys are below the legal age at the time of marriage.

In December 2008, Women and Child Development Minister Renuka Chowdhury told the Rajya Sabha that 78 such cases were reported that year, three of which were recorded in Rajasthan. She also agreed that "scores of child marriages are taking place unhindered in India". According to the Department of Women and Child Development's National Plan of Action for Children 2005, a goal has been set to eliminate child marriage completely by 2010.

All-India	2005	2006	2007
Reported child marriages	122	99	96

Source: National Crime Records Bureau, Ministry of Home Affairs (2008)

- The national English media reportage focuses on cases from Rajasthan, Madhya Pradesh and Haryana; however, Andhra Pradesh recorded the most cases at 21, followed by Gujarat (14) and West Bengal (9).
- The 2001 Census reports that there are nearly three lakh girls under 15 who have given birth to at least one child.

However, the third National Family Health Survey (NFHS-III) says there has been an overall decline in the percentage of women aged 20-24 who are married before the legal age of 18, from 54.2% in 1992-93 to 44.5% in 2005-06.

### Know the law

The Child Marriage Restraint Act was first passed during British rule in 1929, and updated in 1978 to set the age of marriage for a girl at 18 and for a boy 21.

The Prohibition of Child Marriage Act, 2006, which came into force in November 2007, upholds the same legal age.

- According to this act, a child who is married has the right to approach a court at any time to cancel the marriage.
- But if the boy declares the marriage to be void, the girl has the right to claim maintenance (either from him or from his parents if he is also a minor) until she is remarried.
- The court can also issue orders about where the girl will live and provisions for her residence.
- Child marriage is a cognizable and non-bailable offence.
- Anyone involved in a child marriage — parents, guardians, adult males who marry young girls, those encouraging and solemnising the marriage — can be punished with rigorous imprisonment up to two years and a fine up to Rs. 1 lakh.

Further, the 2006 Act says every state should have Child Marriage Prohibition officers, whose duties include preventing the solemnisation of child marriages, creating awareness about the problems stemming from child marriage, and gathering evidence for the prosecution if a child marriage is reported. Moreover, if a child wants to cancel his or her marriage, the officer must help the child file the petition.

## Other key issues

In recent years, a case that made international headlines was the attack on an Anganwadi worker, Shakuntala Verma, in Madhya Pradesh in May 2005. Verma was attacked with a machete and her arm slashed after she tried to prevent a mass child marriage ceremony in Dhar district.

India has always been a country where child marriage has been prevalent. In fact, the 1921 Census reported that there were 600 brides between the ages of one and 12 months, a fact that eventually led to the passing of the Child Marriage Restraint Act in 1929, which banned marriages below the age of 14 but did not invalidate them. All subsequent acts and amendments have maintained this line — not declaring the marriage void in all circumstances — as, in a society like India, the girl would be the one to suffer most if the law did not recognise the marriage.

So while the marriage is illegal, it is not necessarily invalid — which complicates matters considerably. This also goes against the Convention on the Elimination of All Forms of Discrimination against Women that says “the marriage of a child shall have no legal effect” and the Universal Declaration of Human Rights, which states that “marriages shall be entered into only with the free and full consent of the intending parties”.

The act places the responsibility of declaring the marriage void on the child or the parents, a point that is criticised by child rights activists. Given the social pressure surrounding such marriages, it is unlikely that any child or parent will come forward to file a case. The other gap in this law is that there is no punishment specified for officials when child marriages are solemnised openly in their areas, as happens often. Police are also quick to dispose of cases themselves: of 66.9% of all cases filed in 2007 under the Child Marriage Restraint Act; the courts disposed of only 14.6% of registered cases (NCRB).

But legal aspects apart, child marriages also have a direct impact on women’s health. UNICEF’s report, *State of the World’s Children 2009*, says “the younger a girl is when she becomes pregnant, the greater the health risks for herself and her baby. Girls who give birth before the age of 15 are five times more likely to die in childbirth than women in their twenties. Moreover, if a mother is younger than 18, her infant’s risk of dying before reaching age one is 60 per cent greater than that of an infant born to a mother older than 19. Even if the child survives, he or she has a greater likelihood of suffering from low birth-weight, under-nutrition, and late physical and cognitive development.” And that doesn’t take into account the fact that child marriage denies girls and women access to education, prevents them from receiving or seeking adequate health care, and bars them from making critical decisions that can affect their health and that of their children.

A study by the Boston University School of Public Health, published in *Lancet* in 2009, notes that child marriage is significantly associated with a girl’s inability to negotiate contraceptive use before first childbirth, a repeat childbirth in less than 24 months, multiple unwanted pregnancies, high fertility (three or more births), pregnancy termination, and female sterilisation. The study drew on National Family Health Survey (NFHS-III) data to point out that 44.5% of women aged 20-24 years were married before the age of 18; 22.6% were married before the age of 16 and 2.6% were married before the age of 13. NFHS-III was based on interviews with 22,807 women aged between 20 and 24 at the time of the survey.

## HONOUR KILLINGS

### What is an “honour killing”?

An honour killing or crime is presumed to be committed to salvage the ‘honour’ of a clan, community or family that has somehow been ‘violated’.

- Usually the violation occurs through the actions of a woman in the community choosing a husband, lover or boyfriend, against her family’s wishes.
- Honour, however, can be perceived to be breached in other ways: if a meal is not served on time, if a woman is raped, if she is seen talking to a man, if she refuses to marry a man chosen for her, if she chooses to marry a man of another or “lower caste”, or if she spurns a man’s affections.

The central notion behind these ‘violations’ is that a community’s or family’s ‘honour’ is inextricably linked with a woman’s behaviour, and specifically her chastity. Prior to 1998, the world knew little about crimes that were committed in the name of honour. Thanks to the untiring work of activists and organisations in several countries, these crimes began to gain the attention of the media and later the United Nations.

In 2002, the UN adopted a resolution on ‘Working towards the elimination of crimes against women committed in the name of honour.’ It took India several more years to even begin to accept that such crimes occurred here. In 2002, a High Court Judge implied in his statement that while such crimes were not unusual in Pakistan, they did not quite belong in a ‘secular’ nation like India:

‘The barbaric practice of “honour killings” ... is frequently reported to take place in Pakistan which is a State based on feudal and communal ideology. However, this Court has been shocked to note that in our country also, which boasts of being a secular and liberal country ‘honour killings’ have been taking place from time to time...’

In July 2009 however, Union Home Minister P Chidambaram denounced such crimes in the Rajya Sabha and announced the government’s intention of punishing the perpetrators of these acts. While this is indeed a step in the right direction, the non-classification of such crimes in Indian records, the patriarchal lens under which they are viewed by those in authority and the fact that the perpetrators are rarely brought to justice ensure that these crimes, which occur more often than ‘from time to time’ are severely under-reported. In fact, the National Crime Records Bureau does not have a classification for ‘honour killings’ and does not therefore, have any records or data on the number of such killings in the country.

### Counting the losses

The All India Democratic Women’s Association (AIDWA) conducted a survey and found that in cases where the girl belonged to an ‘upper’ caste, it was her family that initiated the violence. AIDWA also estimates that Haryana and Punjab alone account for around 10 percent of all honour crimes in the country.

However, other non-governmental organisations state that while attention has been focussed on the north of the country, honour killings are not unheard of in the south. In the last three years, according to one NGO working in the field, there have been at least 60 such crimes in the southern districts of Tamil Nadu alone.

While increasing attention has been focussed on such crimes in the recent past by both the media and human rights activists, there are still no records of such crimes. They also continue to be classified under the general sections of the Indian Penal Code as assault, battery or homicide. Moreover, as many of these crimes have to do with cases of love or marriage between a caste Hindu woman and a Dalit man, they are generally filed under the SC/ST Act as a caste-based crime and not recognised as an honour killing. In fact, there is no “honour killing” category under which cases can be filed or complaints can be registered; there is also no specific legislation to prevent this crime or enforce punishment.

## The caste factor

The 'crime' of falling in love or marrying a Dalit is often seen as a 'crime' against the whole village and punishment is usually extracted on this basis.

In a majority of cases, the woman is punished, either with death or some form of physical violence or humiliation. But in many others, especially where the man belongs to a lower caste, he is either killed or severely punished with his entire family.

Last year, a young Dalit man from Tirunelveli district in Tamil Nadu, a Sivaji, was murdered for having married a girl from an upper caste, allegedly by his wife's family. His wife S Lakshmi, who was seven months pregnant at the time, was forced to watch as her older brother and others from her village tried to choke her husband and then dragged him away. His body was later discovered nearby, hacked to death. With her baby boy in tow, Lakshmi has since been running from pillar to post, seeking justice.

Apart from the Dalit/Caste Hindu equation though, any case of breach of caste dynamics can lead to violence, almost always from the family of the upper caste targeted against the lower caste family. In several cases though, it is the dominant caste/community in a village, irrespective of the hierarchical position, that will wreak vengeance on the less dominant community.

### Caste panchayats and police

Caste panchayats and the dominance of local customs and laws combined with the fact that it is almost always the upper sections of the community which begin the violence make it hard to bring the accused to book.

Inevitably, local customs are endorsed by the local police, who often see nothing wrong in forcing a woman who has consensually eloped to return to her family.

Since cases of abduction, kidnapping or rape are often foisted upon the men in question, proving that these charges are baseless is often a daunting and a time-consuming task.

In many cases where the couple has eloped and community members cannot track them down, it is the families that are punished. Take for instance, a case in Bhawanipur district in Uttar Pradesh, where a woman was gang-raped and burnt to death by members of the Yadav community. Her 'crime' was that her son had eloped with the wife of one of the Yadavs. Her family alleged that despite their running to the local police station and begging them to help, the station officer refused to do anything about it.

This, as in many instances, was a case of vengeance against one family for having 'sullied' the 'honour' of another's.

Killing by stabbing, strangulation, setting on fire, gang rape, acid attacks, being paraded naked in the village and ostracism are just some of the many ways in which powerful caste panchayats choose to avenge the 'honour' of the community.

### Other key issues

One of the many problems with bringing perpetrators to justice is that the crimes are often instigated by adult members of a community but actually committed by teenage boys in the family so as to incur a lighter sentence. In many cases the women in the family including mothers, mother-in-law and sisters also participate.

In other cases, such as the incident in the Jind district of Haryana that garnered national attention in July this year, 21-year-old Ved Pal who was accompanied by at least 15 policemen and a court warrant officer was ambushed by villagers, mainly his wife Sonia's family members, and lynched. His 'crime' was to have married Sonia against the community's wishes as they both belonged to the same gotra and were therefore seen to be 'brother and sister'.

The accompanying policemen and officer fled the scene. Pal's body was displayed by the villagers in public that night.

The police, while not helpless, often prefer to turn a blind eye to the workings of local caste panchayats or leaders of the community as the case may be. This is partly because of an innate patriarchal belief in the notion of honour and a woman's chastity and partly because of a reluctance to rock the applecart or in this case, delicate village caste dynamics. Deaths are often shrouded in secrecy and then made to look like suicides or accidents. In other cases, even first information reports are not registered by the police. Often, when cases are registered by Dalits, they are not even recorded, as in the case of V Kokila, a Dalit girl in Tamil Nadu who was tied to a tree and beaten by villagers for falling in love with an upper-caste boy last year. It was only after intense pressure from a local Dalit organisation that an FIR was filed.

## DOWRY DEATHS

### What is a dowry death?

When a married woman dies within seven years of marriage, and the cause of death is hanging, burning, physical injury or otherwise unnatural, and she faced dowry harassment by her husband and his family, then the latter are held responsible for her death. This is the legal definition of dowry death. Bride burning is the most common form of dowry-related violence, and is often disguised, and explained as an unfortunate incident. A new bride's parents are usually informed that their daughter has "died in an accident in the kitchen".

Some instances of dowry harassment are registered as cases of "cruelty by husband and relatives".

### Counting the losses

	1997	2003	2006	2007
Incidence of dowry deaths	6006	6208	7618	8093
Cruelty by husbands & relatives	36592	50703	63128	75930

The National Crime Records Bureau statistics are testimony to a consistent increase in the number of dowry deaths every year in India.

- Since 2006, there has been an increase of 6.2 percent in dowry deaths in the country.
- 25.7 percent of total such cases reported in the country were reported from Uttar Pradesh (2076) and Bihar followed next with 14.5 percent (1,172).

### Know the law

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

This act prohibits the request, payment or acceptance of a dowry, "as consideration for the marriage". Dowry is defined as a gift demanded or given as a precondition for a marriage. Gifts given without a precondition are not considered dowry, and are legal. Under this act, punishment for giving, demanding or taking dowry is imprisonment of up to six months or a fine of up to Rs. 5000. This act replaced several pieces of anti-dowry legislation that had been previously enacted by various Indian states.

#### ▪ *Relevant sections of the Indian Penal Code*

Section 302 deals with the punishment for murder with death, life imprisonment and also a fine.

Under Section 304B (which is also the source for the definition of dowry death in this section) dowry death is punishable with a term of not less than seven years, but could extend to life imprisonment.

Section 498A provides for up to three years in prison and a fine for a husband or husband's relative for cruelty to his wife. Cruelty is defined as something that can drive a woman to suicide or cause her grave injury or pose a danger to her life, limb and mental or physical health. Furthermore, it states that, "Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her meet such demand."

#### *Protection of Women from Domestic Violence Act, 2005 no. 43 (2005)*

Protects women who are victims of violence of any kind occurring within the family or household.

## DOMESTIC VIOLENCE

### What is domestic violence?

Under The Protection of Women from Domestic Violence Act, 2005 (PWDVA), domestic violence includes actual abuse or the threat of abuse whether physical, sexual, verbal, emotional or economic. It also covers harassment for dowry or any other “unlawful demand”.

### Counting the losses

	1997	2003	2006	2007
Cruelty by husband and relatives (see note below)	36,992	1,40,601	63,128	75,930

Source: National Crime Records Bureau, Ministry of Home Affairs.

#### *A note on the NCRB numbers*

The NCRB tally is based on cases reported and recorded as “Cruelty by husband and relatives” under IPC Sec 498A and special and local laws including:

- Immoral Traffic (Prevention) Act, 1956
- Dowry Prohibition Act, 1961
- Child Marriage Restraint Act, 1929
- Indecent Representation of Women (Prohibition) Act, 1986
- Commission of Sati (Prevention) Act, 1987
- but not the PWDVA though it has been in force since 2005

- Though NCRB data on the site goes back to 1953, cases of ‘cruelty by husband and relatives’ is recorded only from 1995 with 28,579 cases.
- A total of 75,930 cases were reported in the country in 2007 with an increase of 20.3% over 2006 and 35.8% over the average of the previous 5 years (2002-2006).
- 93.9% of the reported cases were chargesheeted, but the conviction rate was only 20.9%.
- Tripura alone reported 15.7% of all recorded cases, the highest in the country in 2007 while Andhra Pradesh reported

14.9%.

- 75% of cases registered under IPC and recorded as cruelty by husband and relatives were disposed of by police.
- ‘Torture’ cases, as the NCRB also refers to ‘cruelty...’ in the country have increased by 20.3% since 2006.

On an interesting note, women are more likely to be arrested in cases that involve violence against women. Female criminality in the total IPC crimes accounted for 5.9% only in 2007 and 5.8% in 2006. However, the percentage share of female arrestees was higher for those crimes which are perpetrated upon women such as Cruelty by Husband and Relatives (22.8%) followed by Dowry Deaths (21.6%) and Kidnapping & Abduction of Women & Girls (7.9%).

### Know the law

Under The Protection of Women from Domestic Violence Act, 2005, anyone who believes that there has been an instance of domestic violence can make a complaint to a protection officer.

*Who does the act cover?*

The act extends to “any woman who is, or has been, in a domestic relationship” with the man being accused of perpetrating the violence — which means wives, female live-in partners, sisters, widows or mothers. Even relatives of the man can be listed as “accused” in the case.

*Who is a protection officer?*

A protection officer (PO) is appointed by the state government and reports the incident to the magistrate and the police. POs also ensure that the woman gets legal aid, medical aid, shelter, monetary relief and other help.

*What happens after that?*

- A police officer, protection officer, NGO or magistrate who has received a complaint of domestic violence should tell the woman about the options available to her. These include:
  - her right to apply for a protection order from the abusive party
  - monetary relief, residence order or compensation order
  - the availability of NGOs to help her; service of protection officers
  - her right to free legal services
  - her right to file a complaint under section 498A of the Indian Penal Code

The magistrate fixes the date of the first hearing, within three days from the date of receipt of the application, and it has to be disposed of within 60 days from the date of the first hearing. At any time during the proceedings, the magistrate can direct the woman and/or the abusive party to undergo counselling, either alone or as a couple, with any NGO who offers such a service.

### **How has PWDVA worked so far?**

- A total of 7,913 applications were filed under the PWDVA between November 2006 and July 31, 2007, according to the First Monitoring & Evaluation Report 2008 by the Lawyers Collective Women's Rights Initiative.
- The first case under the act, which came into effect in October 2006, was registered in Tirunelveli district in Tamil Nadu, and the first judgement in connection with the act took place in Vellore.

TAMIL NADU & PWDVA: As of May 2008, Tamil Nadu has received 712 complaints under the DV act, of which 179 have been resolved, according to the social welfare department.

## RAPE

### What is rape?

“Rape is defined as a physical invasion of a sexual nature committed on a person under circumstances that are coercive.”  
*International Criminal Tribunal for Rwanda, Prosecutor vs. Akaseyu, Case No. ICTR-96-4-T, September 1998.*

### Counting the losses

- Rape is the fastest growing crime in India with a 733% increase in reported cases since 1971.
- As the statistics show, there has been a 7.2 per cent increase in rape from 2006 to 2007 and a 5.8 per cent increase in cases of molestation over the same period.
- In the last few years crimes against women including rape, has gone up in major cities across the country. Delhi alone, accounted for 29.5 per cent of the total number of rapes in 2007.

	1997	2003	2004	2005	2006	2007
Rape	15330	15847	18233	18359	19348	20737
Molestation	-	32939	34567	34175	36617	38734

Source: National Crime Records Bureau

- Madhya Pradesh has reported the highest number of rape cases (3,010) accounting for 14.5% of total such cases reported in the country.
- 9.5% (1,972) of the total victims of rape were girls under 15 years of age, while 15.2% (3,152) were teenage girls (15-18 years). Nearly two-third (11,984) (57.7%) were women in the age-group 18-30 years.
- Rapists were known to the victims in as many as 19,188 (92.5%) cases according to NCRB statistics for 2007. Neighbours figured as the most common of perpetrators: in 36 percent of the cases a neighbour was involved.
- West Bengal accounted for the highest number of incest rape cases (114) or 28.1% of the total such cases reported in the country.
- Parents were involved in 2.1 per cent of the cases while relatives were involved in 7.5 per cent.

The 20,727 cases reported in 2007 do not tell us the whole story - hundreds of cases go unreported both due to social stigma and the nature of the police system which does not have a uniform procedure to deal with rape and often does not take the crime very seriously.

And, despite growing inclination to register or report a case of rape our laws and judgements are still behind the times, as the conviction rate shows, Rape in India is still not been seen by police officers and law makers as a heinous crime against women. Rather its severity is judged from a patriarchal point of view: the taking away of a 'woman's precious possession: her virginity' or the besmirching of the honour of another man's wife.

## Where the law falls short

- Rape under the IPC takes into account only sexual intercourse through penetration. This means, that forced oral or anal sex or insertion of fingers, fists, other body parts or objects into the vagina or anus are not rape as defined by the law.
- Another problem is the outdated and discriminatory nature of the law with regards to evidence. Under Section 155 (4) of Indian Evidence Act (IEA), "When a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix (victim) was of generally immoral character." (1) Whereas Section 54 of the same Act says, "In criminal proceedings (including rape) the fact that the accused person has a bad character is irrelevant, unless evidence has been given (by him) that he has a good character, in which case it becomes relevant."
- Moreover, the onus of proving consent lies with the victim, adding another layer of complication to the issue.
- As it is extremely difficult to prove consent, the Indian Evidence Act was amended so in cases of custodial rape, rape of pregnant woman and gang rape, if the victim states in court that she did not consent, the onus of proving consent shifts to the accused. Several special sections added to the IPC included provisions for custodial rape where a person in authority who offers handsome rewards can be convicted even if a woman had sexual intercourse with him 'willingly'. The accused has to prove consent and even if he does, he can be convicted for a lesser offence and be imprisoned for five years.
- If a victim of rape is not medically examined within 24 hours, it is very difficult to obtain evidence and thereby prove that rape has been committed. In cases of child rape, an added difficulty is that due to physical reasons, penetration is never complete, a fact that is not yet recognised by the law.
- Debates are on among activists on the conviction of minors for sex offences. Laws still do not take into account the rape of young boys and there are still no adequate provisions to deal with sodomy.

The various changes to the laws have plugged some loopholes but they still do not deal with the gamut of sexual crimes in an effective manner. The procedures to be followed after a rape has been reported are also neither uniform nor comprehensive. Provisions for a woman police officer and/or woman from a social organisation or a female relative to be present during interrogation, interrogation at the place of residence of the victim and allowing the victim to remain unseen by the accused in court are some recommendations that have been made but are yet to be made into law.

## Know the law

Under Section 375 of the Indian Penal Code (IPC), a man is said to commit rape if he has sexual intercourse with a woman:

- when it is against a woman's will
- without her consent
- and with her consent when that consent is obtained by putting her or any person in whom she is interested in fear of death or hurt.

Several other circumstances have also been defined, but these form the primary definitions.

The explanation for the offence states that penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Apart from the physical injuries of the assault, victims of rape also have to deal with immense psychological trauma, which can sometimes lead to permanent mental damage or scarring.

Internationally, rape is now recognised as a crime against humanity in armed conflict and is often one component of genocide or large scale killings. Rape is used as a weapon to degrade, humiliate, cause injury, exert power and many times to impregnate women deliberately, especially in conflicts between ethnic groups.

Every thirty minutes, a woman in the country is raped. Molestation, other forms of sexual assault and harassment occur even more frequently. For over two decades, activists in India have been fighting for amendments to the existing laws on rape in order to broaden their scope on the definition of the crime. The conviction rate for rape is 26.4 per cent, one of the lowest for all violent crimes in the country. Reasons for this include both problems with the law itself and with procedures followed after a complaint of rape has been filed.

## Landmark judgements in recent years

A few judgements in recent years have overturned some of the provisions of the IEA and serve as precedents for other cases in the country. In 1983, after the Supreme Court delivered a controversial judgement acquitting two policemen who had raped a tribal girl, several amendments were made to the law. Changes for the better included: a minimum imprisonment (of a rigorous nature)

of seven years, and a minimum of ten years for certain kinds of rape such as rape by a public servant, warden in a jail, supervisor of a remand home or hospital, gang rape, rape of a pregnant woman and rape of a girl under 12 years of age.

In case after case, men accused of rape have been acquitted by High Courts in the country. In one case in 1989, after the amendments to the law were made, the accused was acquitted by the Delhi High Court because there were no marks of injury on his penis to prove resistance; this, despite the fact that the victim was a seven-year-old whose hymen had been ruptured and who had bite marks all over her body.

A recent case in point was an incident in Kodaikanal when the Madurai bench of the Madras High Court commuted the death sentence of a 52-year old man convicted of raping and killing a four-year-old girl in 2003 to life sentence. The Judges said 'that the convict was a narcotic, drunkard, illiterate and uncivilised. Though he did not intend to kill the child, she died due to profuse bleeding following the sexual assault. The Supreme Court had held that such offences committed due to a momentary lapse on seeing a lonely girl at a secluded place did not fall under the ambit of "rarest or rare" offences.'

In yet another case of a man convicted of raping and strangling a ten-year-old girl in Jahindapuram in 2006, the trial court awarded him the death sentence. However, on appeal to the Madurai Bench of the Madras High Court, the accused claimed to be a minor, stating that he was only 17 when the crime was committed. The matter therefore, has once again been transferred to the trial court for a fresh appraisal.

In 1991, the Supreme Court declared that the past sexual history of a woman cannot be used in any way to imply or prove willingness.

"The unchastity of a woman does not make her open to any and every person to violate her person as and when he wishes. She is entitled to protect her person if there is an attempt to violate her person against her wish. She is equally entitled to the protection of law..." (State of Maharashtra vs. Madhukar N Mardikar, 1991).

In another judgement in 2006 the Supreme Court held that having sexual intercourse with a girl with her consent obtained through a false promise of marriage, coercion or fraud constituted rape.

Earlier this year, the Delhi High Court laid down a set of guidelines for government hospitals to have forensic kits to examine rape victims and also for investigators to be more sensitive especially in cases of incest abuse.

In October this year, the Court ruled that in cases involving minor rape victims, the child should not be tried in open court but rather in a 'friendly atmosphere' in the presence of parents or guardians. Also, the testimony of the child should be video-recorded by the police when the complainant is lodged and the officer recording the statement of the child should not be in police uniform.

In several developed countries including the UK and Australia, the word 'rape' has been removed from criminal laws and replaced with 'sexual assault' and punishment is given depending on the severity of the violence. This was suggested along with several other excellent recommendations to amend existing laws in the 172nd Law commission report. They are yet to be implemented.

## MAKING IT COUNT!

What can we conclude from these notes aside from remedying the shortcomings and shortfalls of the data available to us?

- Perfect, text-book data collection is impossible; but what we have to work with as policy-makers, activists, media-persons and scholars can be vastly improved by investment in systematic research programmes on gender violence, its impact and policy and civic action plans. The search for solutions begins with understanding, and understanding begins with information. Where we draw on islands of collected data, each reflecting a specialised perspective, what will further our search for solutions is sustained and systematic data collection that absorbs, incorporates compiles and publishes all this research into one accessible database.
- Taxonomy matters. While the rationale for NCRB statistics following the classification suggested by relevant laws is understandable, in order to understand exactly what is going on, we need numbers that are better disaggregated. Since the NCRB is now our primary resource, there is a need for research centres and civil society organisations to engage with them and other major data collection centres to understand how to optimise the effort that is already going into this process.
- Law inevitably follows rather than anticipates social realities and conditions. Marital rape has only just become punishable; and there are still no separate laws on honour killings, street sexual harassment or workplace sexual harassment. It becomes all the more important to keep these issues on the radar of democratic debate so that consensus forms on their importance, the need for both legislation and attitudinal shifts.
- Legal literacy is really important. There are well-intentioned laws, but even people with higher education are unaware of them or hesitant to take recourse to them. Sustained programmes of legal literacy, with follow-up activities and a networking of support services are critical institutional components to any action plan to eliminate gender violence.
- Legal literacy is important, but better implementation and widespread understanding of laws are a symptomatic response to a societal malaise that is rooted in patriarchal values, hierarchical mores, unequal relationships and inequitable power equations. There is no short-cut solution available, as the old laws on dowry and child marriage illustrate. Organisations like Prajnya have to reach out and engage more people, different people, in different ways, to take information out, open conversations about these issues, in the belief that this will snowball into fundamental shifts in attitude.

Gender violence is not just a crime. It is not merely a public health issue, to be assessed in terms of its impact on health indicators and other personal and social costs. Incidents of gender violence may have a random quality to them, but individual acts add up to more than their mere aggregation. Gender violence violates a human being's right to life, liberty and security of person, while disregarding their right to freedom, equal rights and dignity. Such a fundamental injury to any one of us injures all of us.

## Check out these websites

Office of the Special Rapporteur on violence against women, its causes and consequences.  
<<http://www2.ohchr.org/english/issues/women/rapporteur/annual.htm>>

Crime in India, National Crime Records Bureau, Ministry of Home Affairs. 2007. <<http://ncrb.nic.in/crimeinindia.htm>>

National Family Health Survey. <<http://www.nfhsindia.org>>

## Read more

UNIFEM Annual Report, 2009. <[http://www.unifem.org/attachments/products/annual\\_report\\_2008\\_2009\\_en.pdf](http://www.unifem.org/attachments/products/annual_report_2008_2009_en.pdf)>

Progress for Children: A Report Card on Child Protection, UNICEF, September 2009.  
<[http://www.unicef.org/protection/files/Progress\\_for\\_Children-No.8\\_EN\\_081309\(1\).pdf](http://www.unicef.org/protection/files/Progress_for_Children-No.8_EN_081309(1).pdf)>

“Survival to Success: Celebrate Her Life,” A Handbook of Statistical Indicators on Indian Women, 2007, Ministry of Women and Child Development, Government of India. <<http://wcd.nic.in/stat.pdf>>

Staying Alive: Monitoring & Evaluation Report 2008 on the Protection of Women from Domestic Violence Act (2005). There are three reports by Lawyers Collective Women’s Rights Initiative and UNIFEM all accessible at <<http://www.unifem.org.in/violenceagainstwomen.html>>. The second has been cited in this report.

WHO Multi-Country Study on Women’s Health and Domestic Violence against Women, 2005, World Health Organization.  
[http://www.who.int/gender/violence/who\\_multicountry\\_study/en/index.html](http://www.who.int/gender/violence/who_multicountry_study/en/index.html)

Report on Trafficking in India, 2004. Shakti Vahini. <<http://www.imicreation.com/sv/pdf/traffickingreport.pdf>>

Not a Minute More: Ending Violence Against Women, 2003, UNIFEM.  
<[http://www.unifem.org/materials/item\\_detail.php?ProductID=7](http://www.unifem.org/materials/item_detail.php?ProductID=7)>

A Report on Trafficking in Women and Children in India 2002-2003, National Human Rights Commission, India.  
<[nhrc.nic.in/Documents/ReportonTrafficking.pdf](http://nhrc.nic.in/Documents/ReportonTrafficking.pdf)>

Women in India: How Free? How Equal? 2001. United Nations India. <<http://www.un.org.in/wii.htm>>

## Access legal texts

Indian Penal Code. <[nrcw.nic.in/shared/sublinkimages/59.pdf](http://nrcw.nic.in/shared/sublinkimages/59.pdf)>

Protection of Women from Domestic Violence Act, 2005. <<http://www.vakilno1.com/bareacts/Domestic-Violence/Domestic-Violence-Act-2005.htm>>

Dowry Prohibition Act (1961). <[ncw.nic.in/PDFFiles/Dowryactamendment.pdf](http://ncw.nic.in/PDFFiles/Dowryactamendment.pdf)>

The Prohibition of Child Marriage Act (2006). <[wcd.nic.in/cma2006.pdf](http://wcd.nic.in/cma2006.pdf)>

The Pre-Natal Diagnostic Techniques (Regulation And Prevention Of Misuse) Act (1994). <[nrcw.nic.in/shared/sublinkimages/78.htm](http://nrcw.nic.in/shared/sublinkimages/78.htm)>

The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act (PCPNDT Act). (2003)  
<[india.gov.in/allimpfrms/allacts/2605.pdf](http://india.gov.in/allimpfrms/allacts/2605.pdf)>



## SAY NO TO GENDER VIOLENCE WITH PRAJNYA

When?	25 November to 10 December 2009
Where?	At multiple locations across Chennai and cyberspace
Why?	Because violence against women cuts across caste, class and community. Because gender violence is not a private concern. Because gender violence hurts us all.
How?	Through a broad, inclusive, structural and human rights approach to gender-based violence; By forging partnerships to create a network for action; By involving diverse audiences including educational institutions, corporate groups & civil society organisations; By working with multiple media and programme formats.

The "16 Days of Activism against Gender Violence" campaign originated in 1991 as an initiative of the Center for Women's Global Leadership at Rutgers University. Since then, hundreds of organisations worldwide have used the campaign as an organising strategy in order to advocate the elimination of all forms of violence against women.

*To learn more about the Prajnya 16 Days Campaign*

Visit our website	<a href="http://www.prajnya.in/16days.htm">http://www.prajnya.in/16days.htm</a>
Read our campaign blog	<a href="http://prajnya16days.blogspot.com">http://prajnya16days.blogspot.com</a>
Email us	<a href="mailto:prajnya.16days@gmail.com">prajnya.16days@gmail.com</a>
Find us on Facebook	Prajnya 16 Days Campaign Against Gender Violence



## ABOUT PRAJNYA

Prajnya is a non-profit think-tank in Chennai that works in areas related to peace, justice and security. Prajnya's work embraces scholarship, advocacy, networking and educational outreach and is organized into thematic initiatives.

## ABOUT THE POLITICS, SECURITY AND WOMEN IN SOUTH ASIA (PSW) INITIATIVE

Prajnya's PSW Initiative is founded in the belief that it is imperative to undertake the systematic study of women in politics, the security of women and the role of women in creating security and insecurity. The creation of a comprehensive, continually updated, publicly accessible resource centre on the participation of women in the politics and policy structures of South Asia is the cornerstone project of this Initiative. The Prajnya Resource Centre on Women in Politics and Policy seeks to fill the data, communication and capacity gaps that characterise women's participation in public affairs.

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## ABOUT THIS REPORT

"Gender Violence in India: A Prajnya Report" draws on available data on the different forms of violence against women to highlight the magnitude of the issue, underscoring the need for more systematic monitoring and gathering of data related to crimes against women.

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Blog	<a href="http://keepingcount.wordpress.com">http://keepingcount.wordpress.com</a>
Facebook Group	Friends of Prajnya