

# GENDER VI LENCE IN INDIA

A Prajnya Report

2017



This Prajnya Report is an information initiative of the 2017 Prajnya 16 Days Campaign against Gender Violence. It was prepared by the 2017 GRIT Research Fellow, Radhika Bhalerao.

Prajnya gratefully acknowledges the contribution and support of Gynelle Alves who has designed the report cover since 2009. Ahalya Ganesh's internship in June 2017 entailed preliminary data collection for the statistical overview.

## Introduction

In 2009, the frustrating search for easily accessible data on gender violence got us thinking about the need for a ready-reckoner. We were thinking especially of journalists pressed to file a story in a few hours and having to research background in a hurry. The first Gender Violence Report aspired to fill this gap. It was written by volunteers, all journalists. The second report too was a volunteer effort and we got some experts to write short feature articles for us. The third report took many years, volunteers and iterations before it was finally published as a series of blogposts in 2014. We took a break.

This year, Prajnaya's first full-time Gender Violence Research and Information Taskforce (GRIT) Research Fellow, Radhika Bhalerao, was tasked with preparing the report, and the result is what we originally imagined: a fairly comprehensive ready-reckoner on gender violence in India, that defines different kinds of violence, systematically compiles statistics that are in the public domain and provides legal information, including recent case law. We hope to now make this a regular annual publication, released on November 25, 2017, the International Day for Elimination of All Forms of Violence against Women.

Since the first GVR, some things remain unchanged—the quality of available data, the challenges of data collection, the paucity of research in this field and access to information. What has changed is the level of public interest and concern about the pervasive nature of sexual and gender-based violence. This GVR follows feminist practice in stringing together private domain and public domain violence into a single spectrum. We hope that while people discuss these issues, they will also begin to make the connection between sexist jokes, misogynistic speech, male child preference and heteronormativity in the family, domestic violence, street harassment, custodial violence and sexual violence in conflict. All forms of violence stem from unequal power relations, from rape culture and social and political systems that perpetuate impunity. All forms of violence reinforce each other.

A milestone for Prajnaya: This year, we include brief introductions by our own Research Fellows. The Gender Violence Research and Information Task Force Research Fellow, Radhika Bhalerao, who compiled this report, writes about her original research project on the topic of intimate partner violence. Saakshi Fellow, Shakthi Manickavasagam introduces her doctoral research on gender relations in the IT industry.

### **Author's Note**

Prajnya, in keeping with its previous efforts, through this year's report takes stock of gender violence in India. The report has been a rigorous exercise in researching and compilation of all publicly available data on various forms of violence in India. This year's report focuses on sixteen different forms of violence transposing the public as well as private spheres. It focuses on the omnipresence of violence against women and girls. Violence against women begins from their conception, in the form of pre-natal sex selection, and continues through their life cycles. In the private sphere, women face violence by way of early and forced marriages, crimes committed in the name of honour, female genital mutilation, dowry related violence and elder abuse, among others. The buck passes on when she steps into the public realm, where she faces discrimination and violence by way of street sexual harassment, sexual harassment at the workplace, acid attacks, rape, and cyberspace violence, to name a few. This report attempts to shed light on these and just a few other kinds of violence that women in India face today.

The report includes definitions of the various forms of violence, defined internationally and in the national arena. It also takes stock, relying primarily on the National Crime Records Bureau statistics, of the incidence of the listed forms of violence, and finally turns to recent case laws. It must be noted that the report is not based on any field or clinical research and relies entirely on information accessible in the public domain, which includes databases, reports, studies and media reports. It must also be noted that the report does not claim to be an exhaustive and all-encompassing account of the definitions, legal provisions, or case laws.

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## **GLOSSARY**

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

## GENDER VIOLENCE IN INDIA: STATISTICAL TABLE

The following table primarily draws on multiple issues of “Crime in India,” the flagship report of the National Crime Record Bureau. “Crime in India” was first published in 1955. The objective of this table is to provide a snapshot of the incidence of gender violence in India in the decades since independence and we have chosen to include figures at ten-yearly intervals starting from 1955, plus the two most recent reports for 2014 and 2015. Until 1971, kidnapping and abduction appears to be the only form of violence that could be classified as gender violence that is included. In 1971, rape began to be recorded. In 1989, a separate chapter on “Crimes against Women” began to be included, compiling data on IPC crimes as well as crimes for which special laws had been adopted. Since 2013, other categories have been included in the report, accounting in part for the uneven nature of our compilation. The NCRB has now placed all issues of ‘Crime in India’ online and they may be accessed at <http://ncrb.nic.in>.

TYPE OF VIOLENCE	1955	1965	1975	1985	1995	2005	2014	2015
<b>DECLINING SEX RATIO</b>								
Sex ratio (Census years)	946	941	930	934	927	933	943	943
Child Sex Ratio <sup>1</sup>	-	-	-	-	-	927	919	919
Female infanticide	-	-	-	-	-	-	-	-
Pre-natal sex selection	-	-	-	-	-	-		
Pre-Conception Pre-Natal Diagnostic Techniques Act, 1994							25	34
<b>FORCED MARRIAGE</b>								
Forced or child marriages	-	-	-	-	-	-	31237	32177
Kidnapping and Abduction of women and girls <sup>2</sup>	5529	7927	11139	16051	14063	15750		
Kidnapping & Abduction of Women to Compel her for Marriage (Section 366, IPC)	-	-	-	-	-	-	30957	31884
Prohibition of Child Marriage Act	-	-	-	-	-	-	280	293

<sup>1</sup> Census of India, Sex Ratio in India, <http://www.census2011.co.in/sexratio.php>

<sup>2</sup> Kidnapping and Abduction is not disaggregated in the table, but the instances mentioned in the 1955 text refer mainly to girls and women. The 1965 narrative does not describe the nature of the cases at all.

TYPE OF VIOLENCE	1955	1965	1975	1985	1995	2005	2014	2015
<b>HONOUR KILLING<sup>3</sup></b>	-	-	-	-	-	-	28	192
<b>DOMESTIC VIOLENCE</b>								
Domestic violence <sup>4</sup>	-	-	-	-	-	-	426	461
Torture <sup>5</sup>	-	-	-	-	31127	58319	-	-
Cruelty by husbands and relatives	-	-	-	-	28579	58319	1,22,877	1,13,403
<b>DOWRY</b>								
Dowry-deaths	-	-	-	2814	4648	6787)	8455	7,634
Dowry Prohibition Act	-	-	-	-	2814	3204	10050	9,894
<b>RAPE</b>								
Molestation	-	-	-	-	26856	34175	-	-
Rape <sup>6</sup>	-	-	3376	7289	13754	18359	36735	34651
Other <sup>7</sup>	-	-	-	-	-	-	36461	34396
Incest Rape <sup>8</sup>	-	-	-	-	-	750	77	557
Attempt to commit rape <sup>9</sup>	-	-	-	-	-	-	4232	4434

<sup>3</sup> Honour killings are mentioned in the 2014 and 2015 reports, but only the total and the state with the highest incidence are mentioned. In the 2005 report, "Murders due to Class Conflict" and "Murders due to Casteism" are mentioned but only percentages for the states with the highest incidence are mentioned.

<sup>4</sup> Data on crimes under the Protection of Women from Domestic Violence Act (2005) were presented for the first time in 2014.

<sup>5</sup> "Torture" and "Cruelty by Husband and Relatives" both refer to cases registered under IPC 498A; they are used interchangeably across a single NCRB report and across reports, with some tables listing one, some the other. More often than not, the numbers are the same, but occasionally, they are not.

<sup>6</sup> Statistics on rape were first included in 1971.

<sup>7</sup> 'Other' here refers to rapes other than those listed separately.

<sup>8</sup> Defined by NCRB as rape by Parents or Close Family Members.

<sup>9</sup> Introduced in 2014.



TYPE OF VIOLENCE	1955	1965	1975	1985	1995	2005	2014	2015
Custodial Rape <sup>10</sup>	-	-	-	-	-	7	197	95
Assault by the Police on Woman To Outrage Her Modesty	-	-	-	-	-	-	17	7
<b>HARASSMENT IN PUBLIC PLACES</b>								
Street Sexual Harassment (Eve-teasing IPC 509)	-	-	-	-	4689	9984	9735	8685
Sexual harassment in public transport	-	-	-	-	-	-	121	315
Other public places	-	-	-	-	-	-	9088	7537
Voyeurism	-	-	-	-	-	-	720	838
<b>WORKPLACE SEXUAL HARASSMENT<sup>11</sup></b>								
Harassment at the office and places related to work (under IPC 509)	-	-	-	-	-	-	526	833
Rape of Employees/ Co-workers	-	-	-	-	-	-	618	557
<b>ACID ATTACKS</b>	-	-	-	-	-	-	203	222
<b>TRAFFICKING</b>								
Procuration of Minor Girls (Sec. 366-A IPC)	-	-	-	-	-	-	2020	3087
Immoral Traffic (Prevention ) Act	-	-	-	-	8447	5908	2617	2641
Importation of Girls	-	-	-	-	191	149	13	6
Human Trafficking (Sec. 370 and 370A IPC) (Not just females)	-	-	-	-	-	-	720	1021

<sup>10</sup> Custodial rape began to be listed in 1997 in a newly introduced chapter on Custodial Crimes. Crime in India 1996 carried a section on “Complaints against the Police.” In the 2014 and 2015 reports, custodial rape includes rape in hospitals, police stations or judicial custody and is included in the section on rape, disaggregated further into rape and gang-rape.)

<sup>11</sup> These are numbers from ‘Crime in India,’ which means they are a tally of police complaints. We have no way of knowing about complaints lodged with Internal Complaints Committees or Local Complaints Committees under the Workplace Sexual Harassment law.

TYPE OF VIOLENCE	1955	1965	1975	1985	1995	2005	2014	2015
<b>OTHER</b>								
Sati Prevention Act	-	-	-	-	27	1	-	-
Indecent Representation of Women	-	-	-	-	539	2917	47 <sup>12</sup>	40
Cyber Crime with the Intent to insult the modesty of women							599	606

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<sup>12</sup> One possible reason for the dramatic drop in numbers is that the many new laws that have come into force have resulted in the same cases being filed under different sections now.



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

### What is Prenatal sex-selection/female foeticide?

According to the United Nations Population Fund (UNFPA) guidance note, prenatal sex selection is, 'the deliberate elimination of girls and women through the use of sex-selection practices before and during pregnancy'.

In the simplest of terms, it is an attempt to control the sex of an offspring.

Pre-natal sex-selection can be undertaken through a variety of means, including<sup>13</sup>:

- a) Pre-conception: e.g., Sperm sorting
- b) Pre-implantation: in-vitro pre-implantation genetic diagnosis, followed by implantation of an embryo of the desired sex.
- c) During pregnancy: beta ultrasound sex identification, followed by sex-selective abortions.

Amongst these methods the most widely utilised is a combination of beta ultrasound for sex identification, followed by sex-selective abortion. The impact of sex-selective births can be seen starkly on the sex ratio in a country, i.e., the proportion of males to females within a population<sup>14</sup>. It is important to note that the practice of sex-selective abortions spans across all socioeconomic groups and geographical areas in India<sup>15</sup>.

### Looking at numbers:

Pre-natal sex determination techniques, sonograms etc, were first introduced in India in the 1980s. A study <sup>16</sup> estimated that from 1980-2010, sex-selective abortions totaled about 4.2 to 12.1 million.

Year	1980s	1990s	2000s
Number of sex-selective abortions	0 to 2.0 million	1.2 to 4.1 million	3.1 to 6.0 million

<sup>13</sup> The Medical Termination of Pregnancy Act. (1971). Retrieved November 14, 2017 from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3166246/>

<sup>14</sup> United Nations Population Fund. Guidance Note on Prenatal Sex Selection. Retrieved November 14, 2017 from [http://www.unfpa.org/sites/default/files/resource-pdf/guidenote\\_prenatal\\_sexselection.pdf](http://www.unfpa.org/sites/default/files/resource-pdf/guidenote_prenatal_sexselection.pdf)

<sup>15</sup> Madan, K., & Breuning, M. H. (2014, June). Impact of prenatal technologies on the sex ratio in India: an overview. Retrieved November 14, 2017, from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4052431/>

<sup>16</sup> Jha, P., Kesler, M. A., Kumar, R., Ram, F., Ram, U., Aleksandrowicz, L., . . . Banthia, J. K. (2011, June 04). Trends in selective abortion of female foetuses in India: analysis of nationally representative birth histories from 1990–2005 and census data from 1991–2011. Retrieved November 14, 2017, from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3166246/>

As per Census 2011<sup>17</sup>, the child sex ratio in India (0-6 age group) is 914:1000. This is at its lowest in the past 50 years. Except the States of Punjab, Himachal Pradesh, Haryana, Gujarat, Tamil Nadu, Mizoram and Andaman & Nicobar Islands, all other states in India show a declining trend in child sex ratio. For example, in Maharashtra it is:

Year	1981	2011
Child sex ratio (x: 1000)	956	833

The comparison for the child sex ratio in rural and urban areas is:

Area	Rural	Urban
Child sex ratio (x : 1000)	919	902

### Relevant laws:

There are two laws that explicitly prohibit prenatal sex determination and sex-selective abortions in India:

1. The Medical Termination of Pregnancy Act, 1971 (MTP Act)<sup>18</sup>
2. The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 and The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002 (PCPNDT Act)<sup>19</sup>

Besides these,

3. The Indian Penal Code (IPC)<sup>20</sup> contains the following relevant sections:
  - a. Section 312: Voluntarily causing a woman with a child to miscarry the child
  - b. Section 313: Causing a woman to miscarry a child without her consent
  - c. Section 315: Act done with intent to prevent child being born alive or to cause it to die after birth

### Using the law:

1. Any person (a social organisation is also a person under the PCPNDT Act) can approach the designated Appropriate Authority (AA)<sup>21</sup> of the State/District/Sub-District in order to make a complaint about any offences caused under the PCPNDT Act.

The union and state governments, by notification in the Official Gazette, appoint an AA for union territories and states respectively. For example, for the State of Tamil Nadu, the AA is currently the Joint Director of Public Health and Preventive Medicine.

<sup>17</sup> Jha, P., Kesler, M. A., Kumar, R., Ram, F., Ram, U., Aleksandrowicz, L., Banthia, J. K. (2011, June 04). Trends in selective abortion of female foetuses in India: analysis of nationally representative birth histories from 1990–2005 and census data from 1991–2011. Retrieved November 14, 2017, from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3166246/>

<sup>18</sup> The Medical Termination of Pregnancy Act. (1971). Retrieved November 14, 2017 from <http://tcw.nic.in/Acts/MTP-Act-1971.pdf>

<sup>19</sup> The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act. (1994)., The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act. (2002). Retrieved November 14, 2017, from <http://pndt.gov.in/writereaddata/mainlinkFile/File50.pdf>

<sup>20</sup> The Indian Penal Code, 1860. Retrieved November 14, 2017 from <http://lawmin.nic.in/ld/P-ACT/1860/186045.pdf>

<sup>21</sup> Section 17, The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act.(1994)., The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act (2002). Retrieved November 14, 2017, from <http://pndt.gov.in/writereaddata/mainlinkFile/File50.pdf>

A written complaint must be made to the AA and the AA has to acknowledge its receipt. If no action is taken by the AA within 15 days, the complainant can go to court (a magistrate) with the acknowledgement receipt. Alternatively, the complainant can also approach a social organisation (eg: an NGO working on women's rights issues).

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

### Recent case laws:

#### Sabu Mathew George v. UOI and others (2017)<sup>2223</sup>

The petitioner submitted that despite legal prohibition, Yahoo!, Google and Microsoft were displaying advertisements in violation of the provisions of the PCPNDT Act. A Supreme Court Bench ordered Google, Yahoo! And Microsoft to stop displaying and sponsoring any advertisements relating to pre-natal sex determination. The court directed this order be placed on the 'policy' page as well as the 'terms and conditions' page of these respondents. The court also ordered them to constitute in-house expert bodies to identify and block keywords indicative of sex-determination.

#### Voluntary Health Association of Punjab v. UOI and others (2016)<sup>24</sup>

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



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

### What is child marriage?

According to The Office of the United Nations High Commissioner for Human Rights (OHCHR), child marriage is, 'a marriage in which at least one of the parties is a child.'<sup>25</sup> The United Nations Children's Fund (UNICEF) defines it as, 'a formal marriage or informal union before age 18.'<sup>26</sup> Indian Law defines it as a 'contract of marriage between two people of which either or both parties is a child'. 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.'

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<sup>22</sup> Mandhani, A. (2015, January 29). SC orders Google, Yahoo! And Microsoft to stop advertisements relating to sex determination [Read Judgement]. Retrieved November 14, 2017 from <http://www.livelaw.in/sc-orders-google-yahoo-microsoft-stop-advertisements-relating-sex-determination/>

<sup>23</sup> Mishra, PN. (2017, February 16). Skewed Sex Ratio: SC Tells Search Engines To Block Keywords Indicative Of Sex Determination [Read Judgement]. Retrieved November 14, 2017 from <http://www.livelaw.in/skewed-sex-ratio-sc-tells-search-engines-block-keywords-indicative-sex-determination/>

<sup>24</sup> Live Law Network News. (2016, November 8). A Female Child Is Entitled To Enjoy Equal Right Of A Male Child: SC Issues Directions To Curb Female Foeticide [Read Judgement]. Retrieved November 14, 2017 from <http://www.livelaw.in/female-child-entitled-enjoy-equal-right-male-child-sc-issues-directions-curb-female-foeticide/>

<sup>25</sup> Human Rights Council. (2014). Preventing and eliminating child, early and forced marriage. Retrieved November 14, 2017 from [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A-HRC-26-22\\_en.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A-HRC-26-22_en.doc)

<sup>26</sup> The United Nations Children's Fund. Child Marriage. Retrieved November 14, 2017 from [https://www.unicef.org/protection/57929\\_58008.html](https://www.unicef.org/protection/57929_58008.html)

## What is early marriage?

'Early marriage' is often used interchangeably with 'child marriage'<sup>27</sup>. 'Early marriage can also refer to marriages where both spouses are 18 or older but other factors make them unready to consent to marriage, such as their level of physical, emotional, sexual and psychosocial development, or a lack of information regarding the person's life options'.<sup>28</sup>

## What is forced marriage?

OHCHR defines it as, 'any marriage which occurs without the full and free consent of one or both the parties and/or where one or both the parties is/are unable to end or leave the marriage, including as a result of duress or intense social or family pressure.'<sup>29</sup>

## Looking at numbers:

Child, early and forced marriages affect both sexes; however, they affect girls disproportionately.

According to a United Nations (UN) report, India has the highest number of child brides in the world, with an estimate that 47% of girls are married before the age of 18. The report states that while fewer girls are married before age 15, the rates of marriage have increased for girls between ages 15 to 18.<sup>30</sup>

According to National Family Health Survey (NFHS) 2005-2006 data, 47.4% of girls between the ages of 20-24 were married before reaching the legal age of 18.<sup>31</sup> In contrast, in the 2015-2016 NFHS survey this number was 26.8%.<sup>32</sup>

## Relevant laws:

Prohibition of Child Marriage Act, 2006<sup>33</sup>

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

## Using the law:

1. Any person can report (or file a complaint of) a child marriage before or after it has been solemnised. Immediate report can be made with:
  - a) Police
  - b) Child Marriage Prohibition Officer (CMPO) (Also responsible for reporting and preventing)
  - c) Judicial Magistrate First Class/ Metropolitan Magistrate (can take suo moto cognisance)

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<sup>27</sup> Human Rights Council. (2014). Preventing and eliminating child, early and forced marriage. Retrieved November 14, 2017 from [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A-HRC-26-22\\_en.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A-HRC-26-22_en.doc)

<sup>28</sup> Rangita, S. (2008). Child Marriage and the Law. Legislative Reform Initiative Paper Series (UNICEF, New York, January 2008). Page 37. Retrieved November 14, 2017 from [https://www.unicef.org/policyanalysis/files/Child\\_Marriage\\_and\\_the\\_Law\(1\).pdf](https://www.unicef.org/policyanalysis/files/Child_Marriage_and_the_Law(1).pdf)

<sup>29</sup> Human Rights Council. (2014). Preventing and eliminating child, early and forced marriage. Retrieved November 14, 2017 from [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A-HRC-26-22\\_en.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A-HRC-26-22_en.doc)

<sup>30</sup> The United Nations Children's Fund. (2016). The State of the World's Children. Retrieved November 14, 2017 from <https://www.unicef.org/sowc2016/>

<sup>31</sup> National Family Health Survey. (2005-06). Retrieved November 14, 2017 from <http://rchiips.org/NFHS/pdf/India.pdf>

<sup>32</sup> National Family Health Survey. (2015-16). Retrieved November 14, 2017 from <http://rchiips.org/NFHS/pdf/NFHS4/India.pdf>

<sup>33</sup> The Prohibition of Child Marriage Act. (2006). Retrieved November 14, 2017 from <http://ncw.nic.in/acts/pcma2006.pdf>

- d) Child Welfare Committee
- e) ChildLine
- f) District Magistrate (has same powers as CMPO in case of mass marriages):
  - a. Complaint must be made to the nearest police station (as offences are cognisable and non-bailable). The police MUST make an entry in their Daily Diary and register a First Information Report (FIR).
  - b. Complaints can be oral or written, via phone, letter or telegram, e-mail, fax or handwritten note duly signed by the complainant.

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

**Recent case laws:**

Yunusbhai Usmanbhai Shaikh v. State of Gujarat (2016)<sup>34</sup>

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

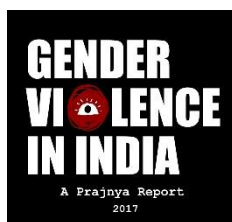
M. Janaki v. K. Vairamuthu (2016)<sup>35</sup>

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

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<sup>34</sup> Mandhani, A. (September 24, 2015). Breaking; Prohibition of Child Marriage Act is a Secular law and would prevail over Personal Laws of Parties : Gujarat HC [Read Judgement]. Retrieved November 14, 2017 from <http://www.livelaw.in/breaking-prohibition-of-child-marriage-act-is-a-secular-law-and-would-prevail-over-personal-laws-of-parties-gujarat-hc-read-jt/>

<sup>35</sup> KM, Ashok. (March 8, 2016). Child Marriages do not become automatically void: Madras HC [Read Judgment]. Retrieved November 14, 2017 from <http://www.livelaw.in/child-marriages-not-become-automatically-void-madras-hc/>



### 3. HUMAN TRAFFICKING

#### What is human trafficking?

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.’<sup>36</sup>

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

#### Looking at numbers:

According to National Crime Record Bureau (NCRB) data, the incidences of human trafficking display a steadily rising trend during the period of 2011-2015.<sup>37</sup>

Year	2011	2012	2013	2014	2015
Cases relating to Human Trafficking	3,517	3,554	3,940	5,466	6,877

India reported a 25% rise in reports of human trafficking in 2015 compared to the previous year.<sup>38</sup> In 2014, the acquittal rate was 77 % and only 6 convictions were for offences of bonded labour. It is important to note that offenders of bonded labour may also be convicted under the Prevention of Atrocities Act. These statistics were not included. The United States Department of State’s 2013 trafficking in persons report estimates the number of people trafficked for the purpose of forced labour in India to be within the range of 20 to 65 million.<sup>39</sup> According to a global slavery index published by the

<sup>36</sup> United Nations Human Rights Office of the High Commissioner. (2000). Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime. Retrieved November 14, 2017 from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>

<sup>37</sup> National Crime Records Bureau. (2015). Crime in India. Retrieved November 14, 2017 from <http://ncrb.nic.in/StatPublications/CII/CII2015/chapters/Chapter%206A-15.11.16.pdf>

<sup>38</sup> Bhalla, N. (September 1, 2016). India reports 25 percent rise in human trafficking cases in 2015. Retrieved November 14, 2017 from <http://in.reuters.com/article/india-trafficking/india-reports-25-percent-rise-in-human-trafficking-cases-in-2015-idINKCN1175OW>

<sup>39</sup> United States of America Department of State. (2013). TRAFFICKING IN PERSONS REPORT. Retrieved November 14, 2017 from <https://www.state.gov/documents/organization/210737.pdf>



Australian Walk Free Foundation, 40% of the world's 45.8 million slaves are trafficked through India. In India 90% of persons trafficked are forced to migrate internally, while 10% are trafficked across national borders.<sup>40</sup>

According to NCRB, the number of victims rescued from trafficking for the purpose of sexual exploitation was 4743 and 9483 for the years 2014 and 2015 respectively.<sup>41</sup>

### Relevant laws:

1. The Indian Penal code, 1860 and the Criminal Law Amendment Act, 2013<sup>42</sup> contain more than 20 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:
  - a. Section 365: Kidnapping or abducting with intent to secretly and wrongfully confine a person
  - b. Section 366 A: Procurement of minor girls for the purpose of illicit intercourse with another person
  - c. Section 366 B: Importation of girls from foreign country
  - d. Section 370: Defines the offence of trafficking in persons
  - e. Section 372: Selling minor for purposes of prostitution, etc.
  - f. Section 373: Buying minor for purposes of prostitution, etc.
2. Immoral Trafficking (Prevention) Act, 1956<sup>43</sup>: 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, 1976<sup>44</sup>: Prescribes punishment for enforcement of bonded labour, among others.
4. Protection of Children from Sexual Offences Act, 2012<sup>45</sup>: 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<sup>46</sup>: Prescribes punishment for removal of human organs without authority and for commercial dealings in human organs.

### Using the law:

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<sup>40</sup> Hameed, S., Hlatshwayo, S., Tanner, E., Turker, M., Yang, J. (2010). Human Trafficking in India: dynamics, Current Efforts, and Intervention Opportunities for The Asia Foundation. Retrieved November 14, 2017 from <https://asiafoundation.org/resources/pdfs/StanfordHumanTraffickingIndiaFinalReport.pdf>

<sup>41</sup> PIB. (April 29, 2016). 14,226 victims rescued from trafficking under sexual exploitation for prostitution during last 2 years. Retrieved November 14, 2017 from <http://www.livelaw.in/14226-victims-rescued-trafficking-sexual-exploitation-prostitution-last-2-years/>

<sup>42</sup> Criminal Law Amendment Act. (2013). Retrieved November 14, 2017 from <http://indiacode.nic.in/acts-in-pdf/132013.pdf>

<sup>43</sup> Immoral Trafficking (prevention) Act. (1956). Retrieved November 14, 2017 from [http://www.protectionproject.org/wp-content/uploads/2010/09/India\\_Acts\\_1986.pdf](http://www.protectionproject.org/wp-content/uploads/2010/09/India_Acts_1986.pdf)

<sup>44</sup> Bonded Labour System Abolition Act. (1976). Retrieved November 14, 2017 from [https://www.childlineindia.org.in/CP-CR-Downloads/Bonded%20Labour%20System%20\(Abolition\)%20Act%201976%20and%20Rules.pdf](https://www.childlineindia.org.in/CP-CR-Downloads/Bonded%20Labour%20System%20(Abolition)%20Act%201976%20and%20Rules.pdf)

<sup>45</sup> Protection of Children from Sexual Offences Act. (2012). Retrieved November 14, 2017 from <http://www.advocatekhaj.com/library/bareacts/childrenprotection/index.php?Title=Protection%20of%20Children%20from%20Sexual%20Offences%20Act,%202012>

<sup>46</sup> Transplantation of Human Organs Act. (1994). Retrieved November 14, 2017 from <http://indiacode.nic.in/fullact1.asp?tfnm=199442>

- 1) Any offence committed in violation of the aforementioned laws is cognisable. That is, a police officer has the authority to arrest an alleged offender without a warrant. An FIR must be filed prior to such an arrest. Please see the Prajnaya FIR Ready Reckoner (Appendix).
- 2) According to section 19 of the Protection of Children from Sexual Offences Act, 2012, information (FIR) regarding an offence should be provided to:
  - a) The Special Juvenile Police Unit, or
  - b) The local police

**Recent case laws:**

Freedom Firm v. Commissioner of Police, Pune & Ors (2015)<sup>47</sup>

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

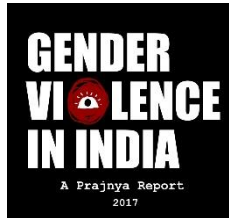
Prajwala v. Union of India<sup>48</sup>

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

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<sup>47</sup> KM, Ashok. (November 27, 2015). Bombay HC issues guidelines in the matter of Human Trafficking crimes : says not being trafficked is a fundamental right, bail shall not be granted for Habitual Traffickers [Read Judgment]. Retrieved November 14, 2017 from <http://www.livelaw.in/bombay-hc-issues-guidelines-in-the-matter-of-human-trafficking-crimes-says-not-being-trafficked-is-a-fundamental-right-bail-shall-not-be-granted-for-habitual-traffickers/>

<sup>48</sup> Advocate Khoj. Supreme Court Judgements. Retrieved November 14, 2017 from <http://www.advocatekhoj.com/library/judgments/index.php?go=2015/december/35.php>



#### 4. STREET SEXUAL HARASSMENT

##### What is street sexual harassment?

Street sexual harassment can refer to any form of sexual harassment that occurs in a public place. This includes not just streets, but also public transport such as buses and trains, malls, beaches, parks, restaurants and cafés, markets, bazaars, public toilets, elevators and any other place outside the home or workplace. Street sexual harassment is euphemistically known in India as ‘eve-teasing’, which trivialises the impact that this form of violence has on victims.<sup>49</sup>

Street sexual harassment is a gender-based form of violence which includes any ‘unwanted comments, gestures, and actions forced on a stranger in a public place without their consent and is directed at them because of their actual or perceived sex, gender, gender expression or sexual orientation’.<sup>50</sup>

##### Looking at numbers:

According to the National Crime Records Bureau:

Year	2007	2011	2014	2015
Percentage of crimes against women under IPC heads	8.8	9.4	11.4	11.1

In 2015, the NCRB reported the following figures under different sections of the IPC:

Sexual Harassment	Voyeurism	Stalking	Insult to modesty of women in public transport system
24041	838	6266	315

##### Relevant laws:

- 1) Indian Penal Code, 1860 and the Criminal Law (Amendment) Act, 2013
  - a) Section 294: Making a girl or a woman target of obscene gestures, remarks, songs or recitation.
  - b) 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.

<sup>49</sup> The Prajnya Trust. (2014). Gender Violence in India Report. Retrieved November 15, 2017 from <https://gritprajnya.wordpress.com/2014/12/11/gender-violence-in-india-report-2014-street-sexual-harassment/>

<sup>50</sup> Stop Street Harassment. (2015). What is Street Harassment? Retrieved November 15, 2017 from <http://www.stopstreetharassment.org/about/what-is-street-harassment/>

- c) Section 354 B: Assault with the intent to disrobe a woman.
- d) Section 354 C: Voyeurism: Watching or capturing the image of a woman engaged in a private act in circumstances where she would usually have the expectation of not being observed.
- e) Section 354 D: Stalking: Follows and contacts or attempts to contact repeatedly despite clear indication of disinterest; monitors the use of internet, email or any other form of electronic communication.
- f) Section 499: Defamation by words either spoken or intended to be read.
- g) Section 503: Criminal intimidation: Threatens to cause injury to person, reputation or property to the person or someone he is interested with an intent to cause alarm or cause that person to act or omit to do an act as the means of execution of such threat.
- h) Section 509: Obscene gestures, indecent body language and negative comments directed at any woman or girl. Further it includes exhibiting any object which intrudes upon the privacy of a woman.

2. The Indecent Representation of Women (Prohibition) Act, 1986<sup>51</sup>: Prevents indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner and includes matters that are incidental to this.

### Using the law:

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

### Recent case laws:

#### Jishu Sengupta & Others v. State of West Bengal & Anr (2016)<sup>52</sup>

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

#### T Manikandan v. The State (Govt of NCT of Delhi) & Anr (2017)<sup>53</sup>

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

#### Pawan Kumar v. State of Himachal Pradesh (2017)<sup>54</sup>

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

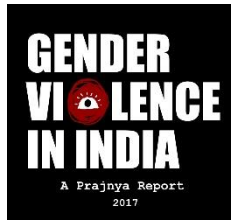
<sup>51</sup> The Indecent Representation of Women Act. (1986). Retrieved November 15, 2017 from <http://ncw.nic.in/acts/TheIndecentRepresentationofWomenProhibitionAct1986.pdf>

<sup>52</sup> Live Law News Network. (November 8, 2016). Retrieved November 15, 2017 from <http://www.livelaw.in/sexually-coloured-remarks-come-within-ambit-sexual-harassment-calcutta-hc/>

<sup>53</sup> Kathuria, D. (January 10, 2017). No Illegality In Convicting Accused Under Sec. 354, 354A IPC Simultaneously: Delhi HC [Read Judgment]. Retrieved November 15, 2017 from <http://www.livelaw.in/no-illegality-convicting-accused-sec-354-354a-ipc-simultaneously-delhi-hc-read-judgment/>

<sup>54</sup> Live law news network. (April 28, 2017). In A Civilized Society Male Chauvinism Has No Room, A Woman Has Her Own Space As A Man Has In Society: SC [Read Judgment]. Retrieved November 15, 2017 from <http://www.livelaw.in/civilized-society-male-chauvinism-no-room-woman-space-man-society-sc/>

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



## 5. CRIMES COMMITTED IN THE NAME OF HONOUR

### What are crimes committed in the name of honour?

Human Rights Watch defines these as, ‘acts of violence, usually murder, committed by male family members against female family members who are perceived to have brought dishonour upon the family’. 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<sup>56</sup>. This type of violence includes ‘any kind of abusive behaviour, torture, mutilation, rape, and forced marriage, keeping confined within the house and even committing murder with intention to preserve and protect the family honour’.<sup>57</sup>

According to the UN special Rapporteur on Violence against Women, these kinds of violence, which constitute a form of domestic violence, have avoided national and international scrutiny because they are seen as ‘cultural practices that deserve tolerance’.<sup>58</sup>

Generally, perpetrators of honour crimes are seen to be male members of a family such as brothers, fathers, uncles, nephews, husbands. It may also include lovers or ex-lovers.<sup>59</sup>

### Looking at numbers:

There is no official figure on ‘honour’ killings in India because they often go unreported or are passed off as suicide or natural deaths by family members involved. A reason for not being reported could be that these crimes are still not separately recognised by Indian law.

However, The NCRB data includes different heads for ‘motives of murder and culpable homicide’ that may include crimes in the name of honour. It specifically includes honour killings. Following is the cumulative data for murder and culpable homicide not amounting to murder. It is important to note data under the heads of love affairs, illicit relationship and casteism may not all be instances of honour killings. Honour killings however have shown 800% increased reporting.

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<sup>55</sup> Advocate Khoj. Supreme Court Judgements. Retrieved November 15, 2017 from <http://www.advocatekhoj.com/library/judgments/announcement.php?WID=2826>

<sup>56</sup> Stop Violence Against Women. (2008). Crimes Committed in the name of “Honor”. Retrieved November 15, 2017 from [http://www.stopvaw.org/honor\\_killings](http://www.stopvaw.org/honor_killings)

<sup>57</sup> National and International Perspective to Prevent Honour Killing. Retrieved November 15, 2017 from [http://shodhganga.inflibnet.ac.in/bitstream/10603/89946/13/13\\_chapter%20-v.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/89946/13/13_chapter%20-v.pdf)

<sup>58</sup> Stop Violence Against Women. (2008). Crimes Committed in the name of “Honor”. Retrieved November 15, 2017 from [http://www.stopvaw.org/honor\\_killings](http://www.stopvaw.org/honor_killings)

<sup>59</sup> World Organization Against Torture. Crimes against Women Committed in the Name of Honour. Retrieved November 15, 2017 from <http://www.omct.org/files/2004/03/2192/honourcrimespresentation.pdf>

Type of motive	Year	
	2014	2015
Honour killing	28	251
Love affairs	1322	1422
Illicit relationship	1203	1585
Casteism	44	60

As per the All India Democratic Women's Association (AIDWA), the number of honour killings is approximately nine hundred in Punjab, Haryana and Uttar Pradesh, while the rest of the country adds to that number by another three hundred<sup>60</sup>

#### Relevant laws:

- 1) Indian Penal Code, 1860
  - a) Section 34 and 35: Acts done by several persons in furtherance of common intention and with criminal knowledge
  - b) Section 107-118 and Section 120: Abetment of offences
  - c) Section 120 A & B: Definition and punishment of criminal conspiracy
  - d) Section 191-204: Destroying or concealing evidence
  - e) Section 299 and Section 301: Culpable homicide not amounting to murder
  - f) Section 300: Murder
  - g) Section 306: Abetment to suicide
  - h) Section 307: Attempt to murder
  - i) Section 321: Voluntarily causing grievous hurt
  - j) Section 339: Wrongful restraint by voluntarily obstructing any person so as to prevent that person from proceeding in any direction
  - k) Section 343, 344: Wrongful confinement by wrongfully restraining any person so as to prevent that person from proceeding beyond certain circumscribing limits
  
2. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989<sup>61</sup>: Prescribes punishments for offences or atrocities

#### Using the law:

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

<sup>60</sup> Aspects of Honour Killings and Human Rights. Retrieved November 15, 2017 from [http://shodhganga.inflibnet.ac.in/bitstream/10603/89946/12/12\\_chapter%20-iv.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/89946/12/12_chapter%20-iv.pdf)

<sup>61</sup> The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act. (1989). Retrieved November 15, 2017 from [http://lawmin.nic.in/ld/P-ACT/1989/The%20Scheduled%20Castes%20And%20the%20Scheduled%20Tribes%20%20\(Prevention%20of%20Atrocities\)%20Act,%201989.pdf](http://lawmin.nic.in/ld/P-ACT/1989/The%20Scheduled%20Castes%20And%20the%20Scheduled%20Tribes%20%20(Prevention%20of%20Atrocities)%20Act,%201989.pdf)

## Recent case laws:

### B. Dilipkumar v. The Secretary to Government and Ors (2016)<sup>62</sup>

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 & Anr v. Circle Inspector of Police (2016)<sup>63</sup>

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

### Manmeet Singh v. State of Haryana (2016)<sup>64</sup>

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

### Durgesh Vilas Patil v. The State of Maharashtra (2017)<sup>65</sup>[9]

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



## 6. ACID ATTACKS

### What are acid attacks?

OHCHR defines acid attacks as the 'premeditated throwing of acid on a victim, usually on her face'. It is also known as acid throwing and this premeditated form of violence is caused with the intention of physically maiming, disfiguring or killing the victim.<sup>66</sup>

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<sup>62</sup> Ashok, KM. (April 18, 2016). Madras HC asks state to create special cells in every district to 'eradicate the evil of Honour killing'; issues directions [Read Order]. Retrieved November 15, 2017 from <http://www.livelaw.in/madras-hc-asks-state-create-special-cells-every-district-eradicate-evil-honour-killing/>

<sup>63</sup> Ashok, KM. (July 28, 2016). 'Honour Killing' in Kerala: SC acquits the accused [Read Judgment]. Retrieved November 15, 2017 from <http://www.livelaw.in/honour-killing-kerala-sc-acquits-accused/>

<sup>64</sup> Ashok KM. (May 27, 2016). Bring law to enable presumption of guilt of person involved in Honour Killing: Punjab & Haryana HC to Govt. [Read Judgment]. Retrieved November 15, 2017 from <http://www.livelaw.in/bring-law-enable-presumption-guilt-person-involved-honour-killing-punjab-haryana-hc-govt/>

<sup>65</sup> Kashyap, N. (January 13, 2017). No Civilised Society Can Or Should Tolerate Honour Killings Says Bombay HC [Read Judgment]. Retrieved November 15, 2017 from <http://www.livelaw.in/no-civilised-society-can-tolerate-honour-killings-says-bombay-hc-read-judgment/>

<sup>66</sup> Avon Global Centre for Women and Justice at Cornell Law School and the New York City Bar Association. (2011). Combating Acid Violence in Bangladesh, India and Cambodia. Retrieved November 15, 2017 from [http://www2.ohchr.org/english/bodies/cedaw/docs/cedaw\\_crc\\_contributions/AvonGlobalCenterforWomenandJustice.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/cedaw_crc_contributions/AvonGlobalCenterforWomenandJustice.pdf)

Acid attacks may be committed for several reasons including land disputes or bringing perceived dishonour to the family. The most common reasons, however, are revenge for refusal of a marriage proposal or other romantic or sexual advances, and jealousy.<sup>67</sup>

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

#### Looking at numbers:

According to Acid Survivors Foundation India, women constitute 80% of the victims of acid attack.<sup>68</sup> According to NCRB data:

Year	Acid attacks	Attempt to commit an acid attack
2014	203	52
2015	222	46

However, the Human Rights Law Network estimates that there are at least 1000 cases of acid attacks per year, most of which go unreported.<sup>69</sup>

#### Relevant laws:

- 1) Indian Penal Code, 1860
  - a) Section 100: Right of self defence under apprehension of acid attack
  - b) Section 326 A: Voluntarily causing grievous hurt by use of acid, etc.
  - c) Section 326 B: Voluntarily throwing or attempting to throw acid
- 2) Criminal Procedure Code, 1973
  - a) Section 357 A: Compensation for victims of acid attack
  - b) Section 357 C: Free medical treatment by all hospitals, public and private
- 3) The Rights of Persons with Disabilities Act, 2016<sup>70</sup>
  - a) Limited compensation for victims of acid attack

#### Using the law:

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

<sup>67</sup> UN Women. Acid Attacks. Retrieved November 15, 2017 from <http://www.endvawnow.org/en/articles/607-acid-attacks.html>

<sup>68</sup> Acid Survivors Foundation India. Acid Violence. Retrieved November 15, 2017 from <http://www.acidsurvivors.org/Acid-Violence>

<sup>69</sup> Anand, U. (April 10, 2015). 309 acid attack cases in '14, 300% rise in 3 yrs. Retrieved November 15, 2017 from <http://indianexpress.com/article/india/india-others/309-acid-attack-cases-in-14-300-rise-in-3-yrs/>

<sup>70</sup> The Rights of Persons with Disabilities Act. (2016). Retrieved November 15, 2017 from <http://pib.nic.in/newsite/PrintRelease.aspx?relid=155592>



## Recent case laws:

### Renu Sharma v. Govt of NCT of Delhi and Ors (2016)<sup>71</sup>

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

### Preeti Rathi case (2016)<sup>72</sup>

A special court in Mumbai sentenced Ankur Pawar to death for throwing acid and causing the death of Preeti Rathi for rejecting his proposal for marriage.

### Laxmi v. Union of India (2015)<sup>73</sup>

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

### Parivartan Kendra v. Union of India and Others (2015)<sup>74</sup>

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

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<sup>71</sup> S, A. (March 19, 2016). In a Landmark Order Delhi HC directs Govt. to provide Job to an Acid Attack Victim [Read Order]. Retrieved November 15, 2017 from <http://www.livelaw.in/landmark-order-delhi-hc-directs-govt-provide-job-acid-victim/>

<sup>72</sup> Sahani, V. (September 9, 2016). Ankur Panwar Gets Death Sentence In Preeti Rathi Acid Attack Case. Retrieved November 15, 2017 from <http://www.livelaw.in/ankur-panwar-gets-death-sentence-preeti-rathi-acid-attack-case/>

<sup>73</sup> Advocate Khoj. Supreme Court Judgements. Retrieved November 15, 2017 from <http://www.advocatekhoj.com/library/judgments/announcement.php?WID=5975>

<sup>74</sup> Mandhani, A. (July 26, 2014). Apex Court expresses alarm over acid attack cases, issues notices to Centre and State Governments. Retrieved November 15, 2017 from <http://www.livelaw.in/apex-court-expresses-alarm-acid-attack-cases-issues-notices-centre-state-governments/>



## 7. FEMALE GENITAL MUTILATION

### What is Female Genital Mutilation (FGM)?

The World Health Organization (WHO) defines Female Genital Mutilation (FGM) as, 'all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs for cultural or other non-medical reasons'. It further clarifies the concept 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.<sup>75</sup>

In India this practice is referred to as 'khatna' and is generally practiced by the Dawoodi Bohra community and performed by untrained midwives.

### Looking at numbers:

Khatna is commonly practiced on girls as young as 6 or 7 in the Dawoodi Bohra community in the belief that it will keep the woman 'free from sin' by curbing her sexual desire.<sup>76</sup> Most of the community lives in the states of Gujarat, Rajasthan and Maharashtra.<sup>77</sup> It is estimated that Type 1 or clitoridectomy and practices under Type 4 of FGM are practiced on nearly 80% to 90% of the women of this.<sup>78</sup>

There are no authentic statistics about the practice of FGM in India as it is not seen as a specific offence or covered under any 'crime-head'. According to estimates by WHO, approximately 200 million girls across 30 countries are affected by this practice.

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<sup>75</sup> World Health Organization. (2017). Female Genital Mutilation. Retrieved November 15, 2017 from <http://www.who.int/mediacentre/factsheets/fs241/en/>

<sup>76</sup> Gupta, MD. (May 29, 2017). Govt will end female genital mutilation if Bohras don't: Maneka Gandhi. Retrieved November 15, 2017 from <http://www.hindustantimes.com/india-news/practise-of-female-genital-mutilation-should-be-banned-in-india-maneka-gandhi/story-kQhNA4rIYOLQTurkN5zAAM.html>

<sup>77</sup> Dasgupta, D. (December 05, 2011). The Yin, Wounded A primitive rite for Bohra women sees its first murmurs of protest. Retrieved November 15, 2017 from <https://www.outlookindia.com/magazine/story/the-yin-wounded/279088>

<sup>78</sup> Ghosh, A. (May 17, 2017). Understanding female genital mutilation: The practice and the issues. Retrieved November 15, 2017 from <http://indianexpress.com/article/explained/understanding-female-genital-mutilation-the-practice-and-the-issues-fgm-4659216/>

**Relevant laws:**

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

- 1) Indian Penal Code, 1860
  - a) Section 320: The section encompasses various kinds of bodily pain, disease or infirmity that may be termed 'grievous'
- 2) Protection of Children from Sexual Offences Act, 2012: Defines and prescribes punishment for various types of sexual assault. It also defines and prescribes punishment for abetment of offences under the law

**Using the Law:**

- 1) According to section 19 of the Protection of Children from Sexual Offences Act, 2012, information (FIR) regarding an offence should be provided to:
  - a) The Special Juvenile Police Unit, or
  - b) The local police

The section further enumerates how the report should be recorded.

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

**Recent case laws:**Public Interest Litigation (PIL) by Sunita Tiwari (2017)<sup>79</sup>

The PIL has moved the Supreme Court to direct the Central and State Governments to impose a complete ban on the practice of khatna or FGM throughout the entire country. The Supreme Court noted that it is an important matter that is likely to take time and sought replies from four union ministries including Women and Child Development as well as the states of Maharashtra, Gujrat, Rajasthan and Delhi.

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<sup>79</sup> PTI. (May 08, 2017). SC to examine practice of genital mutilation of minor Dawoodi Bohra girls. Retrieved November 15, 2017 from <http://www.firstpost.com/india/sc-to-examine-practice-of-female-genital-mutilation-of-minor-dawoodi-bohra-girls-3431598.html>



## 8. RAPE

### What is rape?

According to the World Health Organization, rape is defined as, ‘physically forced or otherwise coerced penetration (even if slightly) of the vulva or anus, using a penis or other body parts or an object’. An attempt to do so constitutes ‘attempted rape’ and when caused by two or more persons is termed as ‘gang rape’.<sup>80</sup>

Most jurisdictions in the world define it as being sexual intercourse, or other forms of sexual penetration, initiated by a perpetrator against a victim without consent. The Indian Penal Code, 1860 lays down the various actions which may constitute rape and the circumstances under which it may be committed by a man against a woman. Under this code, ‘consent’ means, ‘an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or nonverbal communication, communicates willingness to participate in the specific sexual act’. The code further provides that a lack of physical resistance from the woman cannot be regarded as consent.

The Indian Penal Code also provides for custodial rape, incest rape and gang rape as well.

### Looking at numbers:

According the NCRB statistics:

Year	Rape including custodial rape, gang rape and other than custodial rape	Attempt to Rape
2014	36,735	4234
2015	34,651	4437

### Relevant laws:

- 1) 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 376 B: Intercourse by a public servant with a woman in his custody
  - d) Section 376 C: Intercourse by superintendent of jail, remand home, etc
  - e) Section 376 D: Intercourse by any member of the management or staff of a hospital with any woman in that hospital
  - f) Section 511 and Section 354 read with Section 376: Attempt to commit rape
- 2) Criminal Procedure Code, 1973

<sup>80</sup> World Health Organization. (2002). World report on violence and health. Retrieved November 15, 2017 from [http://apps.who.int/iris/bitstream/10665/42495/1/9241545615\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/42495/1/9241545615_eng.pdf)

- a) Section 53: Collection of evidence by examination of accused by medical practitioner at the request of police officer
  - b) Section 164 A: Medical examination of victim of rape
  - c) Section 327: Trial to be conducted in-camera
- 3) Indian Evidence Act, 1872
- a) Section 114 A: Presumption as to absence of consent in certain prosecutions for rape

### Using the law:

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

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

### Recent case laws:

#### State of Madhya Pradesh v. Madanlal (2015)<sup>81</sup>

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

#### Akshay Manoj Jaisinghani v. State of Maharashtra (2017)<sup>82</sup>

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

#### State (Govt of NCT of Delhi) v. Mahmood Farooqui (2016)<sup>83</sup>

A Delhi Court held the defendant guilty of rape under section 376 of the IPC and stated that the evidence of the prosecutrix was of sterling quality. The court held that her evidence had been corroborated in all material particulars and further stated that in the case of rape the sole testimony of the victim is sufficient to establish the guilt of the accused and no corroboration is required.

#### Mahmood Farooqui v. State (Govt of NCT of Delhi) (2017)<sup>84</sup>

The Delhi High Court overturned the trial court judgement and acquitted the co-director of a popular Hindi film from charges of raping a US research scholar. The court raised doubts as to the occurrence of the incident itself as well as the

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<sup>81</sup> Pathak G. (July 1, 2015). Breaking ; Under No Circumstances a Rape Case can be Compromised; Supreme Court [Read the Judgment]. Retrieved November 15, 2017 from <http://www.livelaw.in/under-no-circumstances-a-rape-case-can-be-compromised-supreme-court/>

<sup>82</sup> Mandhani, A. (January 17, 2017). Every Breach Of Promise To Marry Cannot Amount To Rape: Bombay HC Reiterates [Read Order]. Retrieved November 15, 2017 from <http://www.livelaw.in/every-breach-promise-marry-cannot-amount-rape-bombay-hc-reiterates-read-order/>

<sup>83</sup> Indian Kanoon. (2016). Delhi District Court. Retrieved November 15, 2017 from <https://indiankanoon.org/doc/121239495/>

<sup>84</sup> Livelaw News Network. (September 25, 2017). Retrieved November 15, 2017 from <http://www.livelaw.in/delhi-hc-acquits-peepli-live-director-mahmood-farooqui-rape-case-read-judgment/>

communication of non-consent of the victim. The court stated, “Instances of woman behaviour are not unknown that a feeble ‘no’ may mean a ‘yes’”.



## 9. DATE RAPE

### What is date rape?

Date rape may be defined as non-consensual sexual intercourse or other forms of sexual penetration by someone with whom the victim has or has potential to have a romantic or sexual relationship. This type of violence is usually perpetrated by means of secretly administering drugs, i.e date-rape drugs, to the victim. This incapacitates the victim from expressing consent, explicitly or implicitly, and allows the perpetrator to manipulate the victim, physically and psychologically, into unwanted sexual acts.

Any drug that may affect judgement and behaviour and put the victim at risk for unwanted or risky sexual activity are used to cause date rape. Flunitrazepam, Clonazepam and Rohypnol are some commonly used drugs.

### Looking at numbers:

In India, exact statistics for the instances of date rape are not known.

### Relevant laws:

- 1) Indian Penal Code, 1860
  - a) Section 328: causing hurt by means of poison, etc, with intent to commit an offence
  - b) Section 375: Rape
  - c) Section 376: Punishment for rape
- 2) Criminal Procedure Code, 1973<sup>85</sup>
  - a) Section 53: Collection of evidence by examination of accused by medical practitioner at the request of police officer
  - b) Section 164 A: Medical examination of victim of rape
  - c) Section 327: Trial to be conducted in-camera
- 3) Indian Evidence Act, 1872<sup>86</sup>
  - a) Section 114 A: Presumption as to absence of consent in certain prosecutions for rape

### Using the law:

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

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

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<sup>85</sup> Criminal Procedure Code. (1973). Retrieved November 15, 2017 from <http://lawmin.nic.in/Id/P-ACT/1974/The%20Code%20of%20Criminal%20Procedure.%201973..pdf>

<sup>86</sup> The Indian Evidence Act. (1872). Retrieved November 15, 2017 from <http://lawmin.nic.in/Id/P-ACT/1872/A1872-1.pdf>



## 10. MARITAL RAPE

### What is marital rape?

Marital rape is rape and may be defined as any sexual acts by a spouse or a former spouse without the other person's consent, against the other person's will, obtained by force or intimidation, or obtained when the other person is unable to communicate consent. The sexual acts may include penetrative intercourse, vaginal, anal or oral, and other behaviour of a sexual nature which is unwanted. This may also include sexual activities that are considered as degrading, humiliating, painful and unwanted by the victim.<sup>87</sup>

Three generally occurring forms of coercion may form the basis of the act of marital rape itself: social coercion whereby social norms and cultural expectations pressurise a victim into participating in unwanted sexual activities; interpersonal coercion whereby the perpetrator uses non-violent forms of threats against the victim, for example, threatening to harm their children, and; actual physical coercion which includes use of physical force (Finkelhor & Yllo, 1987). In India, forced intercourse by a man against his wife is a legal act and not considered rape, unless the woman is below the age of 15 or separated from the husband.

### Looking at numbers:

Rape by husbands is a complex issue in India, particularly when seen in the legal framework. While action may be constituted under law for protection of women against domestic violence, exact numbers of instances of marital rape in the country are difficult to estimate.

A survey by the United Nations Population Fund found that more than 2/3rds of married women in India, aged 15 to 49 have been beaten, raped or forced to provide sex. The survey also found that only one in four abused women has ever sought help for sexual violence. A report by Ashish Gupta of the Rice Institute states that in India, the number of women who experienced sexual violence by husbands was 40 times the number of women who experienced sexual violence by non-intimate perpetrators.<sup>88</sup>

### Relevant Laws:

There is gross confusion as to the legality or illegality of marital rape in India. Section 375 of the IPC explicitly includes the marital rape exemption in law, provided the wife is over the age of fifteen and not separated from the husband. However, action may be instituted under the following provisions.

- 1) 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.

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<sup>87</sup> Stritof, S. (April 23, 2017). Marital Rape Resources and Support for Victims of Marital Rape. Retrieved November 15, 2017 from <http://lawmin.nic.in/ld/P-ACT/1872/A1872-1.pdf>

<sup>88</sup> Bhandare, N. (May 25, 2015). Behind closed doors: Marital rape in India. Retrieved November 15, 2017 from <http://www.livemint.com/Politics/b6HcnmMqYadNzWAP05FbEO/Behind-closed-doors-Marital-rape-in-India.html>

2) Protection of Women from Domestic Violence Act (PWDA), 2005<sup>89</sup>

- a) Section 3 (a): Domestic Violence to include sexual abuse.

**Using the law:**

1. First Information Report: Please see the Prajnya FIR Ready Reckoner (Appendix).
2. Section 4 of PWDA:
  - a. Under PWDA, anyone can file a complaint against their spouse who is the 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 give information of domestic violence (marital rape/sexual assault within marriage) to the police or the Protection officer (most states do not have one appointed yet). In case the informant is not the victim, he/she must reduce 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.

**Recent case laws:**

Hiral P Harsora v. Kusum Narottamdas Harsora (2016)<sup>90</sup>

The Supreme Court, on the grounds that it violates Article 14 of the Constitution of India, struck down the phrase, 'adult male', from section 2 (a) of the Protection of Women from Domestic Violence Act of 2005. Following the judgment anyone, male or female, may invoke action under the law.

State v. Vikash (2014)<sup>91</sup>

A Special Fast Track court in New Delhi ruled that intercourse between husband and wife, even if forced, cannot constitute rape.

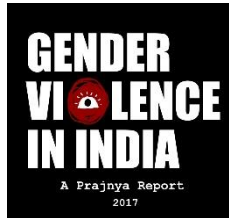
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<sup>89</sup> Protection of Women from Domestic Violence Act. (2005). Retrieved November 15, 2017 from <http://ncw.nic.in/acts/TheProtectionofWomenfromDomesticViolenceAct2005.pdfv>

<sup>90</sup> Anand, U. (2016). Women can also be prosecuted under domestic violence law: SC. Retrieved November 15, 2017 from <http://indianexpress.com/article/india/india-news-india/women-can-also-be-prosecuted-under-domestic-violence-law-sc-3071493/>

<sup>91</sup> Mandhani, A. (May 14, 2014). Marital Sex even if forcible is not Rape; Delhi Court [Read Judgment and a close look at the Law relating to Marital rape in India]. Retrieved November 15, 2017 from <http://www.livelaw.in/marital-sex-even-forcible-rape-delhi-court-read-judgment-close-look-law-relating-marital-rape-india/>





## 11. DOWRY-RELATED VIOLENCE

### What is dowry related violence?

Dowry related violence is a form of domestic violence that includes violence and deaths associated with demands of dowry. This type of violence includes physical, emotional and economic violence as well as harassment to ensure compliance or punish the victim.

The United Nations Division for the Advancement of Women defines dowry-related violence or harassment as “any act of violence or harassment associated with the giving or receiving of dowry at any time before, during or after the marriage.”<sup>92</sup>

A ‘dowry’ is the money or property that is brought by the woman to her husband’s family at the time of her marriage. In India, giving or taking dowry has been illegal since 1961. However, it is still commonly practised across all social classes and is paid in the form of cash or goods like jewellery, household appliances, etc.<sup>93</sup>

### Looking at numbers:

Dowry related violence in India includes cruel treatment by the husband or his relatives including torture and harassment. This also includes various forms of domestic violence and bride burning and other forms of dowry related killings.

Year	2014	2015
Dowry Deaths	8455	7634
Dowry Prohibition Act, 1961	10050	9894

### Relevant laws:

- 1) The Dowry Prohibition Act, 1961
  - a) Section 2: Definition of dowry
  - b) Section 3: Penalty for giving or taking dowry
- 2) Indian Penal Code, 1861
  - a) Section 302: Culpable homicide amounting to murder
  - b) Section 304 B: Dowry death caused within seven years of her marriage
  - c) Section 498 A: Cruelty by husband or his relatives
- 3) Criminal Procedure Code, 1973
  - a) Section 198 A: Prosecution of offences under section 498 A of the Indian Penal Code, 1860
- 4) Indian Evidence Act, 1872
  - a) Section 113 A: Presumption of guilt for abetment of suicide by a married woman

<sup>92</sup> United Nations. (2009). Good Practices in Legislation on “Harmful Practices” against Women. Retrieved November 15, 2017 from [http://www.un.org/womenwatch/daw/egm/vaw\\_legislation\\_2009/Report%20EGM%20harmful%20practices.pdf](http://www.un.org/womenwatch/daw/egm/vaw_legislation_2009/Report%20EGM%20harmful%20practices.pdf)

<sup>93</sup> Rau, A. (July 03, 2015). Dowry Killings in India. Retrieved November 15, 2017 from <https://borgenproject.org/dowry-killings-india/>

- 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.

### Using the Law:

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

### Recent case laws:

#### Rajesh Sharma & ors v. State of Uttar Pradesh & Anr (2017)<sup>94</sup>

The court noted that a large number of cases continue to be filed under section 498A alleging harassment of married women. To remedy this, the court stated that involvement of civil society aiding the administration of justice could be useful. The court also laid down numerous guidelines to prevent the misuse of the law. The court stated that no arrest should normally be affected until the receipt of a report from the Family Welfare Committees previously constituted by the District Legal Service Authorities.

#### Baijnath & Others v. State of Madhya Pradesh (2016)<sup>95</sup>

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

#### Bobbili Ramakrishna Raju Yadav v. State of Andhra Pradesh (2016)<sup>96</sup>

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

#### Bhim Singh & Another v. State of Uttarakhand (2015)<sup>97</sup>

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

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<sup>94</sup> Livelaw News Network. (July 27, 2017). Breaking: Supreme Court Issues New Guidelines To Prevent Misuse Of S.498A IPC [Read Judgment]. Retrieved November 15, 2017 from <http://www.livelaw.in/breaking-misuse-of-s-498a-sc-directs-to-form-family-welfare-committees-to-examine-each-cases-no-arrests-before-committees-report-read-new-guidelines/>

<sup>95</sup> Livelaw News Network. (November 18, 2016). Dowry Death: Ingredients Shall Be Proved By Prosecution Beyond Reasonable Doubt To Invoke Presumption: SC [Read Judgment]. Retrieved November 15, 2017 from <http://www.livelaw.in/dowry-death-ingredients-shall-proved-prosecution-beyond-reasonable-doubt-invoke-presumption-sc/>

<sup>96</sup> Ashok, KM. (January 20, 2016). Dowry given during wedding time does not raise presumption that it was entrusted to parents in law of the bride to attract the Offence under Dowry Act: SC [Read Judgment]. Retrieved November 15, 2017 from <http://www.livelaw.in/dowry-given-during-wedding-time-does-not-raise-presumption-that-it-was-entrusted-to-parents-in-law-of-the-bride-to-attract-the-offence-under-dowry-act-sc/>

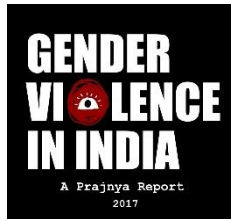
<sup>97</sup> Livelaw News Network. (February 15, 2015). Pre marriage demand not the chronological qualification for Dowry penalty, punishment attracted if demanded at any time: Supreme Court. Retrieved November 15, 2017 from <http://www.livelaw.in/pre-marriage-demand-not-chronological-qualification-dowry-penology-punishment-attracted-demanded-time-supreme-court/>

Arnesh Kumar v. State of Bihar (2015)<sup>98</sup>

The Supreme Court held that dowry laws were being 'used as weapons rather than shields, by disgruntled wives'. The court upheld its order stating there should be adequate material to show the reason behind the arrest of the accused and that the arrest was necessary to investigate the matter.

Sher Singh @ Partapa v. State of Haryana (2015)<sup>99</sup>

The Supreme Court laid down rules of interpretation of provisions relating to cruelty to wives and dowry deaths. The Court stated that the burden of proof lies on the husband to prove his innocence.



## 12. INTIMATE PARTNER VIOLENCE

### What is Intimate Partner Violence?

According to the World Health Organisation (WHO), intimate partner violence is, 'any behaviour within an intimate relationship that causes physical, psychological or sexual harm to those in the relationship, including physical acts of aggression, sexual coercion, psychological abuse and controlling behaviours'.<sup>100</sup>

A multi-country study by WHO notes that acts that are perceived as abusive, particularly sexual, psychological and emotional abuse, are likely to vary between countries and within them among socioeconomic and ethnic groups.<sup>101</sup>

As per PWDA, intimate partner violence is synonymous with domestic violence and may be caused by spouses, ex-spouses or live-in partners. It includes harm, injuries or endangerment caused to the health, safety, life, limb or well-being (mental or physical), of the aggrieved person. Further it includes physical abuse, sexual abuse, verbal and emotional abuse and economic abuse.

### Looking at numbers:

The statistical data for violence caused by intimate partners is extremely scattered and disaggregated. Cases may be registered under the Protection of women against Domestic Violence Act, 2005 as well as under certain provisions of the Indian Penal Code, 1860. Moreover, violence within dating relationships, that is other than marital or live-in relationships,

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<sup>98</sup> Pathak, G. (March 13, 2015). Supreme Court refuses to review its judgment on arrest in dowry related cases. Retrieved November 15, 2017 from <http://www.livelaw.in/supreme-court-refuses-to-review-its-judgment-on-arrest-in-dowry-related-cases/>

<sup>99</sup> Mandhani, A. (January 15, 2015). Dowry Death: Prosecution has to prove the ingredients only by standard of preponderance of probabilities but Accused has to discharge his burden by proving his defence beyond reasonable doubt: SC. Retrieved November 15, 2017 from <http://www.livelaw.in/dowry-death-prosecution-prove-ingredients-till-standard-preponderance-probabilities-accused-discharge-burden-proving-defence-beyond-reasonable-doubt-sc/>

<sup>100</sup> World Health Organization. (2002). World report on violence and health. Retrieved November 15, 2017 from [http://www.who.int/violence\\_injury\\_prevention/violence/world\\_report/en/full\\_en.pdf](http://www.who.int/violence_injury_prevention/violence/world_report/en/full_en.pdf)

<sup>101</sup> World Health Organization. (2005). WHO multicountry study on women's health and domestic violence against women. Retrieved November 15, 2017 from <http://www.who.int/reproductivehealth/publications/violence/24159358X/en/>

are not covered specifically by any law and hence may be registered under certain provisions of the Indian Penal Code, for example, causing grievous hurt.

Year	2014	2015
Protection of Women against Domestic Violence Act, 2005	426	461

#### Relevant laws:

1. Indian Penal Code
  - a. Section 376 A: Forcible sexual intercourse by a man with his wife when separated legally, by custom or by usage.
  - b. Section 498 A: Conduct which is likely to cause grave injury or danger to the life, limb or health (mental or physical), of a woman.
2. Protection of Women against domestic violence, 2005
  - a. Section 2: Aggrieved person
  - b. Section 3: Domestic violence

#### Using the law:

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

#### Recent case laws:

##### Bipin v. Meera (2016)<sup>102</sup>

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

##### Kunapareddy @ Nookala Shanka Balaji v. Kunapareddy Swarna Kumari (2016)<sup>103</sup>

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

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<sup>102</sup> Bhattacharya, A. (November 29, 2017). Divorced Woman, Too, Can Seek Protection Under Domestic Violence Act: Kerala HC [Read Judgment]. Retrieved November 15, 2017 from <http://www.livelaw.in/divorced-woman-can-seek-protection-domestic-violence-act-kerala-hc/>

<sup>103</sup> Ashok, KM. (May 18, 2016). Courts not powerless to allow amendment to a Complaint under Domestic Violence Act: SC [Read Judgment]. Retrieved November 15, 2017 from <http://www.livelaw.in/courts-not-powerless-allow-amendment-complaint-domestic-violence-act-sc/>

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

**IS THIS ABUSE?**

***Understanding late adolescents' conceptualization of abuse and violence within heterosexual intimate partner relationships.***

*Radhika Bhalerao*

After writing my postgraduate thesis on the topic of criminalisation of marital rape in India, I got interested in the topic of domestic violence. I became particularly interested in the dynamics of power and control in violent intimate partner relationships. At Prajnya, I was afforded the opportunity to explore this research interest. I was encouraged to independently design my research and subsequently conduct it. I chose to look at the ways abuse and violence in heterosexual intimate partner relationships are conceptualised.

My research is an exploratory analysis into the question, "In what way do late adolescents conceptualise abuse within heterosexual intimate partner relationships?". The target population was rural and urban educated late adolescents (between the ages of 18-21), male and female. I set out to see whether I found any gender differences in the way in which the population understood and constructed notions of abuse. As sub-questions, I explore whether they can distinguish between violence and abuse, what behaviours they perceive as being unlawful abusive behaviours and what their perceptions are of some provisions of the Protection of Women against Domestic Violence Act, 2005.

In the West, there has been a long-standing debate about the gender parity of intimate partner violence. But numerous studies have challenged this idea by establishing the need to differentiate between intimate partner violence. In heterosexual relationships, coercive controlling violence is predominantly perpetrated by men against women. Therefore, the idea of differentiating between 'coercive controlling violence' and other forms of violence such as violent resistance, situational couple violence and separation-instigated violence, is crucial.

My study is designed along these lines and is a mixed-method study involving qualitative and quantitative research methods. In my study, 'coercive controlling violence' is termed as abuse (Abuse) and situational couple violence (Violence) is taken as a competing context. Using survey questionnaires and focus group interviews, I have attempted to identify how the population understands abuse. The study aims to identify whether participants can successfully distinguish between abuse and violence. The study is still in the data sorting stage of its analysis. So far while I have not been able to demarcate gender differences, marked differences appear between the rural and urban participants.

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<sup>104</sup> Ashok, KM. (October 07, 2017). SC Strikes Down Words 'Adult Male' From The Definition Of "Respondent" Under Section 2(Q) Of DV Act; Relief Possible Against Minors, Women [Read Judgment]. Retrieved November 15, 2017 from <http://www.livelaw.in/sc-strikes-words-adult-male-definition-respondent-section-2q-dv-act-relief-possible-minors-women/>



### 13. Sexual Harassment at the Workplace

#### What is Sexual Harassment at the Workplace?

Sexual harassment includes any behaviour of a sexual nature that is unwelcome.<sup>105</sup> In India, sexual harassment at the workplace is defined as ‘any unwelcome sexual behaviour, either directly or by implication, and includes physical contact and advances; a demand or request for sexual favours; making sexually coloured remarks; showing pornography; or any other unwelcome physical, verbal or nonverbal conduct of a sexual nature’.<sup>106</sup> Thus, it may include verbal harassment, non-verbal harassment or physical harassment and may be perpetrated by an officer superior in position to the victim, even if from a different department of the workplace, a coworker, client or customer.

#### Looking at numbers:

According to NCRB data:

Year	2014	2015
Sexual harassment at the workplace (office premises and other places related to work)	526	833

#### Relevant laws:

- 1) The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
  - a) Section 3: Prevention of sexual harassment.
- 2) Indian Penal Code, 1860
  - a) Section 354: Outraging modesty of a woman
  - b) Section 354 A: Sexual harassment by a man includes physical advances involving 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 or use of criminal force with the intent to disrobe
  - d) Section 354 C: Voyeurism: Watching or capturing the image of a woman engaged in a private act in circumstances where she would usually have the expectation of not being observed.
  - e) Section 354 D: Stalking: Follows and contacts or attempts to contact repeatedly despite clear indication of disinterest; monitors the use of internet, email or any other form of electronic communication.
  - f) Section 499: Defamation by words either spoken or intended to be read.
  - g) Section 503: Criminal intimidation: Threatens to cause injury to person, reputation or property to the person or someone he is interested with an intent to cause alarm or cause that person to act or omit to do an act as the means of execution of such threat.

<sup>105</sup> United Nations. What is Sexual Harassment. Retrieved November 15, 2017 from <https://www.un.org/womenwatch/osagi/pdf/whatish.pdf>

<sup>106</sup> The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act. (2013). Retrieved November 15, 2017 from <https://www.iist.ac.in/sites/default/files/Internal-Complaints-Committee/shww.pdf>

- 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.
- 3) The Indecent Representation of Women (Prohibition) Act, 1986: Prevents indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner and includes matters that are incidental to this.

#### Using the law:

1. Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013:
  - a. The complainant can be any “aggrieved woman” who is:
    - i. Working (This includes domestic worker, regular/temporary/ad hoc/daily wage worker, for remuneration/voluntary basis or otherwise, employed directly/through an agent, contract worker/probationer/trainee/apprentice/called by any other such name.
    - ii. Visiting the workplace (such as a customer at a store)
    - iii. Student
  - b. The Act provides for two kinds of complaints mechanisms: Internal Complaints Committee (ICC) and Local Complaints Committee (LCC).
  - c. All workplaces with more than ten workers are required to have an Internal Complaints Committee.
  - d. In a workplace with less than ten workers, any woman employee can complain to the Local Complaints Committee with support of the Nodal Officer.
  - e. 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.
2. First Information Report: Please see the Prajnya FIR Ready Reckoner (Appendix).

#### Recent cases:

##### TVF case (2017)<sup>107</sup>

A charge-sheet under sections 354, 354 A and 509 of the IPC has been filed against Arunabh Kumar, CEO of The Viral Fever (TVF) group. Kumar was also named in another case filed with a different police station on similar charges of sexually harassing a woman at TVF office in 2014. Kumar has stepped down from his office and is currently on bail.

##### Justice Ganguly case (2014)

Three Supreme Court Judges found the former judge guilty of sexually harassing a law student.<sup>108</sup> Despite this, the Ministry of Home Affairs stated that there was not sufficient evidence to file an FIR against him on charges of sexual misconduct against the law student interning in his office.<sup>109</sup>

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<sup>107</sup> Express Web Desk. (June 16, 2017). TVF CEO Arnabh Kumar steps down in wake of sexual harassment case. Retrieved November 15, 2017 from <http://indianexpress.com/article/india/tvf-ceo-arunabh-kumar-steps-down-in-the-wake-of-sexual-harassment-case-4707297/>

<sup>108</sup> Ghosh, D. Justice Ganguly, indicted for sexual harassment, quits as West Bengal rights panel chief. Retrieved November 15, 2017 from <https://www.ndtv.com/india-news/justice-ganguly-indicted-for-sexual-harassment-quits-as-west-bengal-rights-panel-chief-546970>

<sup>109</sup> Chakraborty, A. (July 10, 2014). 'No case against Justice Ganguly'. Retrieved November 15, 2017 from <https://timesofindia.indiatimes.com/city/kolkata/No-case-against-Justice-Ganguly/articleshow/38099424.cms>

An FIR was lodged against ex-chief of The Energy and Resources Institute (TERI), RK Pachauri, regarding sexual harassment of a research scholar. The matter is pending in a Delhi Court. The victim and complainant has said that it is her right to talk to the media and that she will continue to do so.

#### WORKPLACE SEXUAL HARASSMENT IN THE IT INDUSTRY

*Shakthi Manickavasagam*

A significant part of my doctoral research on gender relations in the Indian IT industry looks at workplace sexual harassment, and companies' responses to it. My interest in this topic arose from my work with Prajnya; the very first engagement event I attended when I started working with Prajnya in 2012 was a workshop on workplace sexual harassment at an IT company. The access that I was given in an industry that usually imposes heavy restrictions on the entry of 'outsiders', provided me with an opportunity to interact with female IT employees in a group discussion setting. In the brief time I spent there, I was able to discern that the office floor was a distinctly gendered space, and my interactions with the women who attended this session were the starting point for eventually deciding to pursue this area of research.

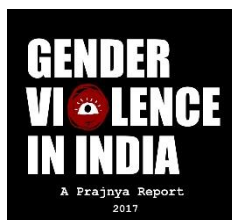
Sexual violence as an academic topic of study has gained traction in the aftermath of the 2012 Delhi gang rape. However, there is still a dearth of research on workplace sexual harassment, both in the formal and informal economies (and the spaces in-between). In recent years, the IT industry has projected itself as a pioneer in the area of workplace diversity and gender equality in India, with many companies having incorporated dedicated Diversity and Inclusion divisions into their human resources departments. The passage of legislation in 2013 mandating the formation of workplace sexual harassment committees, two years before I commenced my fieldwork, caused a flurry of activity in IT companies across the country, which further contributed to my foregrounding workplace sexual harassment as a subject of inspection.

During the course of my research, I had the opportunity to speak with employees at the beginning of their careers, as well as senior managers and leaders at various IT companies in Chennai. I also met with recruitment consultants, IT union leaders, college placement cell officers and bureaucrats. It can perhaps be seen as a sign of progress that almost everyone in positions of power expressed openly that workplace sexual harassment is highly prevalent in the industry; there thus appears to be an acknowledgment that this is, in fact, a problem. Lower-level employees, however, did not seem to have much awareness about workplace sexual harassment, with many respondents seeming vague about their companies' policies, although I cannot definitively conclude this from my limited, qualitative sample. Conversations with diversity consultants also revealed that the implementation of provisions of the 2013 law has been uneven; while most larger companies appear to have constituted their Internal Complaints Committees (ICCs), some small and mid-sized IT companies seem to be lagging behind.

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<sup>110</sup> Asia News International. (July 14, 2017). Pachauri sexual harassment case: Tactics of delaying matter strengthen me, says complainant. Retrieved November 15, 2017 from <http://www.freepressjournal.in/india/pachauri-sexual-harassment-case-tactics-of-delaying-matter-strengthen-me-says-complainant/1103054>





## 14. SEXUAL VIOLENCE IN CONFLICT

### What is sexual violence in conflict?

‘Sexual violence in conflict’ or ‘conflict-related sexual violence’ may be defined as, ‘rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, forced sterilisation, forced marriage and any other form of sexual violence of comparable gravity perpetrated against women, men, girls or boys that is directly or indirectly linked (temporally, geographically or causally) to a conflict’.

The perpetrators of this kind of violence are often affiliated with a state or non-state armed group. The victim, on the other hand, is often a member of a persecuted political, ethnic or religious minority. Forming the basis for this type of violence is a climate of impunity, which is generally associated with state collapse, and there are often cross-border consequences, such as displacement or trafficking in persons.<sup>111</sup>

Sexual violence in conflict has only recently been recognised as a gender-based criminal act.<sup>112</sup> Charges of this type of violence emerge wherever there is a heavy deployment of paramilitary and military personnel and is used as a mode of repression and when rape is used as a form of punishment against civilians.<sup>113</sup>

### Looking at numbers:

Official figures for sexual violence in conflict are hard to come by. A large number of women from areas in Jammu & Kashmir, the North-East, Punjab, Chhattisgarh, Odisha and Andhra Pradesh have suffered this kind of violence.<sup>114</sup> The table below reports some data compiled between 2013-2015, but they are indicative.<sup>115</sup> Most accounts are compiled by civil society fact-finding groups.

Year	Place	Incidents reported
2013	Kashmir Valley	70
2015	Bijapur, Chattisgarh	16
2015	Bijapur, Chattisgarh	13

<sup>111</sup> UN Security Council. Conflict related sexual violence- Report of the Secretary-General (S/2016/361) [EN/AR]. Retrieved November 15, 2017 from <https://reliefweb.int/report/world/conflict-related-sexual-violence-report-secretary-general-s2016361-enar>

<sup>112</sup> Chen, S., Skjelsbaek, I. (2010). Sexual Violence in Armed Conflict. Retrieved November 15, 2017 from [http://www.peacewomen.org/assets/file/Resources/Academic/vaw\\_sexualviolenceinarmedconflicts\\_prio\\_jan2010.pdf](http://www.peacewomen.org/assets/file/Resources/Academic/vaw_sexualviolenceinarmedconflicts_prio_jan2010.pdf)

<sup>113</sup> Shrivastava, J. (March 30, 2017). Under AFSPA’s Protection Sexual Violence Goes Unpunished In Kashmir. Retrieved November 15, 2017 from <https://www.youthkiawaaz.com/2017/03/the-norm-of-sexual-violence-and-impunity-in-jk-2/>

<sup>114</sup> Verma, J., Seth, L., Subramaniam, G. (2013). Report of the Committee on AMENDMENTS TO CRIMINAL LAW. Retrieved November 15, 2017 from <http://apneaap.org/wp-content/uploads/2012/10/Justice-Verma-Committee-Report.pdf>

<sup>115</sup> Amnesty International India. (2013). Briefing: Armed Forces Special Powers Act: A Renewed Debate in India on Human Rights and National Security. Retrieved November 15, 2017 from <https://www.amnestyusa.org/files/asa200422013en.pdf>

## Relevant laws:

1. Indian Penal Code, 1860 and Criminal Law Amendment Act, 2013
  - a. Section 376 (2) (c): Punishment for rape by a member of the Armed Forces. Here, 'armed forces' means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government.
2. Criminal Procedure Code, 1973
  - a. Section 45: Protection of members of the Armed Forces from arrest. No member of the Armed Forces of the Union shall be arrested for anything done or purported to be done by him in the discharge of his official duties except after obtaining the consent of the Central Government.
3. Armed Forces (Special Powers) Act, 1958<sup>116</sup>
  - a. Section 4: Special powers of the Armed Forces.
  - b. Section 6: Protection to persons acting under Act.

## Recent case laws:

### Extra Judicial Execution Victim Families Association (EEVFAM) v. Union of India & Anr (2017)<sup>117</sup>

The Supreme Court stated that Manipur was, 'creating a fictional stonewall by not probing Army personnel for allegedly raping a 13-year-old who later committed suicide'.

### Union of India & Anr v. State of Manipur & Anr (2014)<sup>118</sup> [Thangjam Manorama Case]

The Supreme Court directed the central government to pay Rs. 10 lakh to the victim's mother.

### Kunan-Poshpora Mass Rapes (2014)<sup>119</sup>

The Jammu & Kashmir High Court stated that recommendations of the State Human Rights Commission were supported by evidence and asked the government to explore possibilities to compensate victims. The Supreme Court subsequently stayed all proceedings in this case in an ex-parte order.<sup>120</sup>

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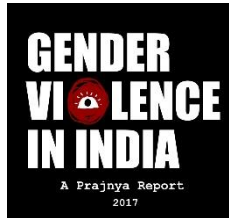
<sup>116</sup> The Armed Forces (Special Powers) Act. (1958). Retrieved November 15, 2017 from <http://lawmin.nic.in/ld/P-ACT/1958/A1958-28.pdf>

<sup>117</sup> Madhukalya, A., Jain, R. (April 19, 2017). So you have rapists in uniforms? Supreme Court asks Army. Retrieved November 15, 2017 from <http://www.dnaindia.com/india/report-do-you-have-rapists-in-uniform-supreme-court-asks-army-2407248>

<sup>118</sup> Human Rights Law Network. Thangjam Manorama Case: SC directs Centre to pay Rs. 10 lakh as interim compensation. Retrieved November 15, 2017 from <http://www.hrln.org/hrln/womens-justice-/pils-a-cases/1665-thangjam-manorama-case-sc-directs-centre-to-pay-rs-10-lakh-as-interim-compensation.html>

<sup>119</sup> Masood, B.(July 02, 2014). Kunan-Poshpora rapes: HC asks J&K to consider paying compensation in 3 weeks. Retrieved November 15, 2017 from <http://indianexpress.com/article/india/india-others/kunan-poshpora-rapes-hc-asks-jk-to-consider-paying-compensation-in-3-weeks/>

<sup>120</sup> Masood, B.(March 10, 2015). SC stays proceedings in Kunan-Poshpora case. Retrieved November 15, 2017 from <http://indianexpress.com/article/india/india-others/sc-stays-proceedings-in-kunan-poshpora-case/>



## 15. ELDER ABUSE

### What is elder abuse?

WHO defines elder abuse as, 'a single or repeated act or lack of appropriate action occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person'<sup>121</sup>. These are generally intentional or unintentional acts of commission or of omission (described as 'neglect') that cause harm or a risk of harm to the elderly person.<sup>122</sup> Abuse may be of many types including physical, psychological, economic and sexual.<sup>123</sup> Cultural context, frequency, duration, severity and consequences are important factors when assessing behaviours abusive to elders.<sup>124</sup>

### Looking at numbers:

Data on elder abuse is hard to come by in India. The National Crime Records Bureau (NCRB) does not collect data under the separate heading of 'elder abuse'. It does record the total number of crimes against senior citizens, which for the year 2015 was 19, 239 in all states and 20, 532 in Union Territories. This data includes any crime committed against senior citizens, for example, cheating, extortion, culpable homicide, assault and rape etc., but does not specify if the perpetrator is someone who is a caregiver to the victim.

However, elderly abuse is also a form of gender-based violence. A study by Agewell Research and Advocacy Centre in India<sup>125</sup> found that 50.59% of the 50,000 participants said that elderly women have to face marginalisation or isolation due to gender discrimination. According to the same study, almost one-fourth of the respondents in rural areas said that the legal rights of elderly women were most often violated due to their gender and 38.9 % of the male and 39.7% of the female respondents said that the human rights of elderly women are violated more in comparison to elderly men.<sup>126</sup>

### Relevant laws:

- 1) Maintenance and Welfare of Parents and Senior Citizens Act, 2007<sup>127</sup>
  - a) Section 4: Maintenance of parents and senior citizens
  - b) Section 24: Exposure and abandonment of senior citizen
- 2) Protection of Women from Domestic Violence Act, 2005
  - a) Section 2: Definition of aggrieved person
  - b) Section 3: Definitions of domestic violence

<sup>121</sup> World Health Organization. Elder abuse. Retrieved November 16, 2017 from [http://www.who.int/ageing/projects/elder\\_abuse/en/](http://www.who.int/ageing/projects/elder_abuse/en/)

<sup>122</sup> Kumar, Y., Bhargava, A. (2014). Elder Abuse in Indian families: Problems and Preventive Actions. International Journal of Scientific and Research Publications, Volume 4, issue 10. Retrieved November 16, 2017 from <http://www.ijsrp.org/research-paper-1014/ijsrp-p3498.pdf>

<sup>123</sup> World Health Organization. Elder abuse. Retrieved November 16, 2017 from [http://www.who.int/ageing/projects/elder\\_abuse/en/](http://www.who.int/ageing/projects/elder_abuse/en/)

<sup>124</sup> World Health Organization. (2002). World Report on Violence and Health. Chapter 5, Abuse of the elderly. Retrieved November 16, 2017 from [http://www.who.int/violence\\_injury\\_prevention/violence/global\\_campaign/en/chap5.pdf](http://www.who.int/violence_injury_prevention/violence/global_campaign/en/chap5.pdf)

<sup>125</sup> Agewell Foundation. (2014). HUMAN RIGHTS OF OLDER PEOPLE IN INDIA A REALITY CHECK. Retrieved November 16, 2017 from <https://social.un.org/ageing-working-group/documents/fifth/AgewellFoundationHumanRightsofOlderPeopleinIndia.pdf>

<sup>126</sup> DNA research and archives. (March 23, 2015). Elderly women face discrimination: Study. Retrieved November 16, 2017 from <http://www.dnaindia.com/delhi/report-elderly-women-face-discrimination-study-2071259>

<sup>127</sup> The Maintenance and Welfare of Senior Citizens Act. (2007). Retrieved November 16, 2017 from <http://socialjustice.nic.in/writereaddata/UploadFile/Annexure-X635996104030434742.pdf>

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

#### Using the law:

- 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 - A victim or someone on behalf of the victim can give information of domestic violence to the police or the Protection Officer (most states do not have one appointed yet). In case the informant is not the victim, he/she must produce the complaint in writing and sign it before having it delivered to the police. A complaint can only be filed if the victim wishes to initiate legal proceedings.
- 3) First Information Report: Please see the Prajnya FIR Ready Reckoner (Appendix).

#### Recent case laws:

##### Sachin & Anr v. Jabbbhu Lal & Anr (2016)<sup>128</sup>

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

##### Shri Santosh Surendra Patil V. Shri Surendra Narasgopnda Patil & ors (2017)<sup>129</sup>

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

##### Sunny Paul v. State (2017)<sup>130</sup>

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.

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<sup>128</sup> Sahani, V. (November 29, 2016). Son Has No Legal Claim On Parents' House, Can Stay Only Till They Allow: Delhi HC [Read Judgment]. Retrieved November 16, 2017 from <http://www.livelaw.in/son-no-legal-claim-parents-house-can-stay-till-allow-delhi-hc/>

<sup>129</sup> Kashyap, N. (June 24, 2017). Bombay HC Asks State To Create Awareness About Maintenance And Welfare Of Parents And Senior Citizens Act, 2007. Retrieved November 16, 2017 from <http://www.livelaw.in/bombay-hc-asks-state-create-awareness-maintenance-welfare-parents-senior-citizens-act-2007/>

<sup>130</sup> Ashok, KM. (March 16, 2017). Maintenance Tribunal Can Order Eviction Of Adult Children In Cases Of Parental Abuse: Delhi HC [Read Judgment]. Retrieved November 16, 2017 from <http://www.livelaw.in/maintenance-tribunal-can-order-eviction-adult-children-cases-parental-abuse-delhi-hc/>



## 16. VIOLENCE IN CYBERSPACE

### What is violence in cyberspace? What is violence against women in cyberspace?

Violence in cyberspace may be seen as online behaviour that is harmful to and affects the wellbeing of the individual or group that it is directed at. While this type of violence may not have an immediate physical component, it can cause harm to the psychological or emotional well-being of the victim.<sup>131</sup>The Violence against Women (VAW) learning network includes six broad categories of violence against women in cyberspace.

1. Hacking: This is the use of technology to gain illegal or unauthorised access to systems or resources for malicious purposes such as acquiring personal information.
2. Impersonation: This is the use of technology to assume the identity of the victim for purposes such as shaming the victim publicly in cyberspace.
3. Surveillance/Tracking: This is the use of technology to stalk the victim's activities online or in the physical world.
4. Harassment/Spamming: This is the use of technology to continually contact, threaten or scare the victim.
5. Recruitment: This is the use of technology to lure the victim to potentially violent situations such as traffickers using chat rooms.
6. Malicious distribution: This is the use of technology to distribute defamatory materials related to the victim such as leaking intimate photos/videos.<sup>132</sup>

Apart from these forms of violence, there are a few specific forms of violence that are perpetrated against women. For example, 'revenge porn' or non-consensual pornography is when intimate photos or videos of the victim are published online with the intent of public shaming or even causing damage to the 'real-world' of the victim's life. Women and girls also experience the social consequences of their gendered expectation to provide intimate images when 'sexting', as the photos/videos often travel further than the intended recipient.<sup>133</sup>

### Looking at numbers:

According to NCRB report, the total number of cybercrimes reported in the years 2014-2015 are:

Year	Total number of cyber-crimes reported
2014	9622
2015	11592

<sup>131</sup> Herring, S. (2002). Cyber Violence: Recognizing and Resisting Abuse in Online Environments. Asian Women 14 (Summer): 187-212. Retrieved November 16, 2017 from <http://info.ils.indiana.edu/~herring/violence.html>

<sup>132</sup> The UN Broadband Commission for Digital Development. Cyber Violence Against Women and Girls: A World-wide wake up call. Retrieved November 16, 2017 from <http://www.unesco.org/fileadmin/MULTIMEDIA/HQ/CI/CI/images/wsis/GenderReport2015FINAL.pdf>

<sup>133</sup> The UN Broadband Commission for Digital Development. Cyber Violence Against Women and Girls: A World-wide wake up call. Retrieved November 16, 2017 from <http://www.unesco.org/fileadmin/MULTIMEDIA/HQ/CI/CI/images/wsis/GenderReport2015FINAL.pdf>

However, the report does not contain separate heads for crimes against women in cyberspace. 75% of the victims are believed to be women; however, these figures are more on an assumed bias.<sup>134</sup> The actual numbers are difficult to know as these types of violence often go unreported, particularly because they have no immediate physical ramifications, for example bodily injuries.

#### **Relevant laws:**

1. Information Technology Act, 2000<sup>135</sup> and Information Technology (Amendment) Act, 2008<sup>136</sup>
  - 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 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 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
  - e) Section 441: Criminal trespass is entering into property of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property
  - 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.

#### **Using the Law:**

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

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<sup>134</sup> Halder, D. Cyber Crime against women in India. Retrieved November 16, 2017 from <http://www.cyberlawtimes.com/articles/103.html>

<sup>135</sup> The Information Technology Act. (2000). Retrieved November 16, 2017 from [http://www.dot.gov.in/sites/default/files/itbill2000\\_0.pdf](http://www.dot.gov.in/sites/default/files/itbill2000_0.pdf)

<sup>136</sup> The Information Technology (Amendment) Act. (2008). Retrieved November 16, 2017 from <http://www.eprocurement.gov.in/news/Act2008.pdf>

## Recent case laws:

### Public Interest Litigation by Prajwala (56/2004) (2016)<sup>137</sup>

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.<sup>138</sup>

### Kamlesh Vaswani v. Union of India (2015)<sup>139</sup>[7]

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.

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<sup>137</sup> Livelaw News Network. (November 21, 2016). "Officials Busy In Parliament? So We Judges Sitting Here Doing Nothing?" Angry SC To Centre's Lawyer. Retrieved November 16, 2017 from <http://www.livelaw.in/officials-buzy-parliament-judges-sitting-nothing-angry-sc-centres-lawyer/>

<sup>138</sup> Livelaw News Network. (December 05, 2016). Gang Rape Videos : SC Notice To Face Book, Google, Yahoo, Microsoft. Retrieved November 16, 2017 from <http://www.livelaw.in/gangrape-videos-sc-notice-face-book-google-yahoo-microsoft/>

<sup>139</sup> Mandhani, A. (September 20, 2015). SC Women Lawyers Association moves Apex Court seeking blocking of all Porn sites, formulation of National Policy on Pornography to curb Child Porn [Read Petition]. Retrieved November 16, 2017 from <http://www.livelaw.in/sc-women-lawyers-association-moves-apex-court-seeking-blocking-of-all-porn-sites/>

## APPENDIX

### FIR READY RECKONER

#### *A Prajnya 16 Days Campaign against Gender Violence Resource*

Prepared by Amba Salelkar

December 2013

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#### **BEFORE YOU LODGE AN FIR**

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



## **AT THE POLICE STATION**

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

## **AFTER YOU LODGE THE FIR**

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

## NOTES



### **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 organised into thematic initiatives.

### **About the Gender Violence Research and Information Taskforce (GRIT) at Prajnya**

GRIT at Prajnya anchors a full-fledged research agenda on gender violence in tandem with a year-round public education programming calendar whose pivot is the 16 Days Campaign against Gender Violence.

### **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. It is intended as a ready-reckoner and beginners' resource.

This is the fourth edition of this Prajnya report.

### **Get in touch**

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