

# **GENDER VI LENCE IN INDIA**

**A Prajnya Report  
2021**

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### **A Prajnya Report**

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

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# GLOSSARY

AA	Appropriate Authority
AFSPA	Armed Forced Special Powers Act
AHTU	Anti-Human Trafficking Unit
AIDMAM	All India Dalit Mahila Adhikar Manch
AIDWA	All India Democratic Women's Association
CBI	Central Bureau of Investigation
CEDAW	The Convention on Elimination of All Forms of Discrimination Against Women
CEFM	Child, Early and Forced Marriage
CII	Crime In India
CMPO	Child Marriage Protection Officer
CrPC	Code of Criminal Procedure
DV	Domestic Violence
FGM	Female Genital Mutilation
GBV	Gender-based Violence
GNCT	Government of National Capital Territory
FIR	First Information Report
HC	High Court
IAF	Indian Armed Forces
ICC	Internal Complaints Committee
ICT	Information and Communications Technology
IPC	Indian Penal Code
IPV	Intimate Partner Violence
LCC	Local Complaints Committee

LGBTQIA+	Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual and other persons
NALSA	National Legal Services Authority
NCT	National Capital Territory
NCR	National Capital Region
NCRB	National Crime Records Bureau
NCW	National Commission for Women
NFHS	National Family Health Survey
NGO	Non-Governmental Organisation
NIA	National Investigative Agency
OCIA	Organized Crime Investigative Agency
OHCHR	The Office of the United Nations High Commissioner for Human Rights
PCMA	Prohibition of Child Marriage Act
PCPNDT	Pre-Conception and Pre-Natal Diagnostic Techniques Act
PIL	Public Interest Litigation
PoA	The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act
POSH	Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act
PTI	Press Trust of India
PWDVA	Protection of Women from Domestic Violence Act
RTI	Right to Information
SC	Supreme Court
TVPA	Victims of Trafficking and Violence Protection Act
UN	United Nations
UNCAT	United Nations Campaign against Torture
UNFPA	United Nations Population Fund
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime

UOI	Union of India
UT	Union Territory
VAW	Violence against Women
VAWG	Violence against Women and Girls
WHO	World Health Organisation

# ABOUT THIS REPORT

Prajnya's Gender Violence in India Report has been taking stock of the state of gender violence in India since 2009. This year, the Gender Violence Report has been updated and prepared by Kausumi Saha.

The Report is meant to be used as a ready reference for activists, journalists, students, lawyers and anyone with an interest in gender justice. It defines the various forms of gender-based violence by drawing on their conceptualisation in national and international legal and policy frameworks, presents statistics, where available, and highlights recent cases that have appeared in the news. The data is primarily collected from the National Crime Records Bureau. However, with the understanding that NCRB data are based on reported cases, which generally comprise a fraction of the overall incidence of gender violence, this report also draws from relevant statistics by other state agencies and NGOs, both international and domestic. In addition, the report also reviews the previous years' significant developments in law, policy as well as important judicial decisions.

The Gender Violence in India report is a work in progress, and every year we take some time to reassess how it can be a more accurate reflection of the realities of gender-based violence. The 2021 report includes a new chapter on gender-based violence against the Dalit and Adivasi communities. Over the last few years, we have committed to not only highlight the various forms of GBV, but also adopt a more intersectional lens to how it is experienced. Intersectionality as an analytical tool and a method of praxis was developed in 1984 by Dr. Kimberlé Crenshaw<sup>1</sup>, and challenges the idea of 'sameness' of all women, and in doing so takes into account that differently situated women encounter inequality in different ways. An intersectional approach to violence against women and girls includes a consideration of where gender intersects with other inequalities/oppressions (sexuality, gender identity, ethnicity, indigeneity, immigration status, disability) to produce unique experiences of violence.<sup>2</sup> In all the forms of gender-based violence detailed in this report, therefore, it is worth noting that overlapping identities beyond gender have an important role to play in how GBV is experienced. Moreover, as the world learns to live with the coronavirus pandemic, pre-existing inequalities continue to escalate even as new inequalities come into being. The problems of gender violence in a pandemic are, therefore, both amplified and in many ways unique, and this report attempts to capture some of these nuances. Finally, with each passing year, we aim to rework the report to ensure that it is more sensitive, empathetic, and inclusive in its reporting of gender-based violence.

We hope you will find this report useful.

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<sup>1</sup> Crenshaw, Kimberlé. 1991. "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color". *Stanford Law Review* 43(6): 1241-1299

<sup>2</sup> UN Women. 2019. The Value of Intersectionality in Understanding Violence against Women and Girls (VAWG). Accessed November 5, 2021 at <http://surl.li/astuo>

# GENDER VIOLENCE IN INDIA: STATISTICAL TABLE

The following table primarily draws on multiple issues of *Crime in India*, the flagship report of the National Crime Record Bureau, first published in 1955. The objective of this table is to provide a snapshot of the incidence of gender violence in India in the decades since independence; we have chosen to include the statistics at ten-yearly intervals starting from 1955, in addition to the three most recent reports. Until 1971, kidnapping and abduction appears to be the only form of violence that could be classified as gender violence that is included. In 1971, rape began to be recorded. In 1989, a separate chapter on 'Crimes against Women' began to be included, compiling data on IPC crimes as well as crimes for which special laws had been passed. Since 2013, other categories have been included in the report, accounting in part for the uneven nature of our compilation. In 2017, several categories of cyber-crimes against women have been introduced. Data on cases under the Protection of Women from Domestic Violence Act (2005) were presented for the first time in 2014. The NCRB has now made all issues of *Crime in India* available online and they may be accessed at <http://ncrb.nic.in>.

TYPE OF VIOLENCE	1955	1965	1975	1985	1995	2005	2015	2018	2019 <sup>3</sup>	2020
<b>DECLINING SEX RATIO</b>										
Sex Ratio (census years) <sup>4</sup>	946	941	930	934	927	933	943	943	943	943
Child Sex Ratio	-	-	-	-	-	927	919	919	919	919
Female Infanticide	-	-	-	-	-	-	-	-	-	-
Pre-natal sex selection	-	-	-	-	-	-	-	-	-	-
Pre-conception Pre-natal Diagnostic Techniques Act, 1994	-	-	-	-	-	-	34	54	52	51
<b>FORCED MARRIAGE</b>										
Forced or Child Marriage	-	-	-	-	-	-	32177	-	-	-
Kidnapping and abduction of women and girls	5529	7927	11139	16051	14063	15750	-	72751	72780	6160
Kidnapping and abduction of women to compel her for marriage (S. 366 IPC)	-	-	-	-	-	-	31778	33354	32260	24745
Prohibition of Child Marriage Act							293	501	525	785

<sup>3</sup> Due to non-receipt of West Bengal data for 2019 in time, data furnished for 2018 has been used.

<sup>4</sup> Census of India, 2011; 2015-2020 are from the same Census.

TYPE OF VIOLENCE	1955	1965	1975	1985	1995	2005	2015	2018	2019	2020
<b>DOMESTIC VIOLENCE</b>										
Domestic Violence							461	579	553	446
Torture <sup>5</sup>					31127	58319	-	-	-	-
Cruelty by Husbands and Relatives					28579	58319	1,13,403	103272	125298	111549
<b>HONOUR KILLING</b>										
							192	20	24	25
<b>DOWRY</b>										
Dowry Death				2814	4648	6787	7634	7167	7115	6966
Dowry Prohibition Act					2814	3204	9894	12826	13287	10366
<b>SEXUAL VIOLENCE</b>										
Molestation <sup>6</sup>					26856	34175	82422	-	-	-
Assault on Women								47355	48586	48037
Assault or Use of Criminal Force on Women with Intent to Disrobe							8613	9949	11238	10580
Assault by Police on Women to Outrage their Modesty							7	-	-	-
Rape			3376	7289	13754	18359	34651	33356	32033	28046
Incest Rape <sup>7</sup>						750	557	2780	2916	2502
Rape by Family Friends/Neighbours/Employer or Other Known Persons								557	10938	13555

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

<sup>7</sup> Included in the Crime in India reports 2017-19 as Rape by Family Members and in 2015 as Rape by Close Family Members and Rape by Grandfather/Father/Brother/Son, etc.

TYPE OF VIOLENCE	1955	1965	1975	1985	1995	2005	2015	2018	2019	2020
Custodial Rape <sup>8</sup>						7	95	60	47	29
Rape by Relative/Teacher/Guardian/ Person in position of Trust [Sec. 376(2)(f)]								2226	1999	1410
Rape on Pregnant Women [Sec. 376(2)(h)]								24	35	39
Rape on Women below 16 years of Age [Sec. 376(2)(i)]								1546	790	244
Rape on Women incapable of giving Consent [Sec. 376(2)(j)]								396	393	244
Rape by Persons in Control or Dominance over Women [Sec. 376(2)(k)]								136	182	119
Rape on Women with Mental or Physical Disability [Sec. 376(2)(l)]								87	116	94
Endanger Life of Women after Rape [Sec. 376(2)(m)]								16	34	24
Repeated Rape on Same Women [Sec. 376(2)(n)]								2472	2373	2879
Other Custodial Rapes								99	772	875
Attempt to Commit Rape <sup>9</sup>							4434	4097	3944	3741
Murder with Rape/Gang-Rape								294	283	219

<sup>8</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. Currently, Rape in Custody includes data for rape by police Personnel, by public servant, by member of armed forces, by management/staff of jail/remand home/place of custody, and by management/staff of hospital.

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

TYPE OF VIOLENCE	1955	1965	1975	1985	1995	2005	2015	2018	2019	2020
<b>HARASSMENT IN PUBLIC PLACES</b>										
Street Sexual Harassment (Eve teasing IPC 509)					4689	9984	8685	6992	6939	7065
Sexual Harassment in Public Transport							315	730	606	375
Voyeurism							838	1313	1399	1260
Stalking							6266	9438	8890	8512
<b>WORKPLACE SEXUAL HARASSMENT</b>										
Harassment at the Office and Places related to Work (under IPC 509)							833	401	505	485
Rape of Employees/Co-workers							557	-	-	-
<b>SEXUAL HARASSMENT IN OTHER PLACES</b>										
<b>ACID ATTACKS</b>							222	131	150	105
Attempt to Commit an Acid Attack							46	37	42	33
<b>TRAFFICKING</b>										
Procuration of Minor Girls (Sec. 366A IPC)							3087	3039	3117	2471
Immoral Traffic (Prevention) Act					8447	5908	2641	1882	1645	1294
Importation of Girls					191	149	6	4	3	0
Human Trafficking <sup>10</sup> (Sec. 370 and 370A IPC)							1027	1313	1334	646

<sup>10</sup> Gender neutral offence.

TYPE OF VIOLENCE	1955	1965	1975	1985	1995	2005	2015	2018	2019	2020
<b>CYBER CRIMES</b>										
Cyber-crimes against Women <sup>11</sup>								6030	8379	10405
Cyber-crime with Intent to Insult Modesty of Women							606	-	-	-
Cyber Blackmailing/Threatening (Sec 506, 503, 384 IPC R/W IT Act)								113	113	74
Cyber Pornography/Posting/Publishing Obscene Sexual Materials (Sec 67A/67B (Girl Child) of IT Act R/W IPC SLL)								862	1158	1655
Cyber Stalking/Cyber Bullying of women (Sec 354D IPC R/W IT Act)								738	791	887
Defamation/Morphing (Sec 469 IPC R/W IPC and Indecent Rep of Women (P) Act)								62	61	251
Fake Profile (R/W IPC SLL)								207	289	354
Other Cyber-crimes against Women								4048	5967	7184
<b>CRIMES AGAINST WOMEN FROM SCHEDULED CASTES</b>										
Assault on Women with Intent to Outrage their Modesty (Scheduled Castes)							2800	3091	3375	3373
Insult to the Modesty of Women (Sec. 509) (SC)							58	148	143	144

TYPE OF VIOLENCE	1955	1965	1975	1985	1995	2005	2015	2018	2019	2020
Kidnapping and abduction of women to compel her for marriage (SC)							455	493	357	394
Rape (SC)							2326	2936	3486	3372
Attempt to Commit Rape (SC)							74	132	124	90
<b>CRIMES AGAINST WOMEN FROM SCHEDULED TRIBES</b>										
Assault on Women with Intent to Outrage their Modesty (ST)							818	854	880	885
Insult to the Modesty of Women (Sec. 509) (ST)							12	18	24	24
Kidnapping and abduction of women to compel her for marriage (ST)							60	48	54	34
Rape (ST)							952	1008	1110	1137
Attempt to Commit Rape (ST)							15	17	21	25
<b>OTHER CRIMES AGAINST WOMEN</b>										
Indecent Representation of Women					539	2917	40	22	23	12
Sexual Harassment in Shelter Homes for Women and Children								707	473	407

<sup>11</sup> Total of all cyber-crimes against women.

# 1. PRE-NATAL SEX SELECTION / FEMALE FOETICIDE

Pre-natal sex selection is the decision to continue or terminate a pregnancy based on the sex of the child. It particularly refers to the practice of systematically eliminating female foetuses through abortion, primarily as a result of preference for a son. Preference for a son in India and other East Asian countries has been documented extensively<sup>12</sup>, and is related to several other kinds of gender-based violence against girl children, besides foeticide. A large number of studies have shown that parental preference for boys is manifested in gender differences in household allocation of resources and medical care, and can lead to outcomes such as differential levels of caregiving, nutrition, morbidity and mortality among boys and girls, and in extreme cases, female infanticide. The UNFPA 2009 report<sup>13</sup> on pre-natal selection has stated the acceptable male to female ratio to be 105:100, and this ratio has been found to be skewed in several countries across Asia. This includes India, China, the Republic of Korea, China, Armenia, Georgia, Azerbaijan, Hong Kong, and several others.

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

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

Technology played a critical role in the practice of selective abortion of female foetuses, a phenomenon often referred to as leading to “missing women”. Diagnostic technologies that can be used to monitor the health of the foetus and any possible medical conditions in utero have been available in India since the 1980s. However, while playing a crucial role in women’s health (as well as that of the unborn child), the same technology also made it possible to determine the sex of the foetus and subsequently abort those that were female. Parents were thus presented with an alternative way to achieve the preferred sex composition of children. Indeed, starting from the late 1980s, there has been a steep

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<sup>12</sup> Hu, Luo, Schlosser, Analía. 2011. “Prenatal Sex Selection and Girls’ Well-Being: Evidence from India”. *IZA Discussion Paper No. 5562*. Accessed September 9, 2021 at <http://ftp.iza.org/dp5562.pdf>

<sup>13</sup> United Nations Population Fund (UNFPA). 2009. *Guidance Note on Prenatal Sex Selection*. Accessed September 9, 2021 at [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)

increase in male to female ratios at birth, which has been attributed to the increasing practice of sex-selective abortion.<sup>14</sup>

To address this practice, the government passed the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act in 1994 and its amendment, the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act (PC-PNDT) in 2003, with the goal of eliminating prenatal sex determination and consequent sex-selective abortions. It thus became illegal to use ultrasound or amniocentesis in order to determine the sex of a foetus. However, the acts gave rise to illegal back door service providers (often referred to as a “cottage industry”) that offer ultrasounds to detect foetal sex, as well as abortions for foetuses over 20 weeks of gestation. Many of these service providers are often not fully qualified or equipped to conduct such medical procedures, resulting in risks of botched abortions and even deaths of women.<sup>15</sup>

### Data on Sex-Selective Abortion

	1961	1971	1981	1991	2001	2011
<i>Sex Ratio of Birth in India</i>	941	930	924	927	933	940
<i>Child Sex Ratio</i>	976	964	962	945	927	919

Source: *Census of India 2011, Provisional Results*, “Chapter 5: Gender Composition of the Population”, Figure 21, page 90. Accessed September 9, 2021 at [http://censusindia.gov.in/2011-prov-results/data\\_files/india/Final\\_PPT\\_2011\\_chapter5.pdf](http://censusindia.gov.in/2011-prov-results/data_files/india/Final_PPT_2011_chapter5.pdf)

Despite the high rates of sex-selective abortion and female foeticide in India, NCRB does not provide gender segregated data on the incidence of these crimes.

A study undertaken in 2011 estimated that from 1980-2010, between 4.2 and 12.1 million sex-selective abortions took place.<sup>16</sup> India’s Annual Economic Survey of 2017-2018 found that statistically, more than 63 million women are “missing” across India, and more than 21 million girls are unwanted by their families. The same study also showed that Indians have “meta” son preference, which means that if they have girls, they will continue having children until they have a boy.<sup>17</sup>

<sup>14</sup> Hu, LuoJia, Schlosser, Analía. 2011. Ibid.

<sup>15</sup> Patel, Tulsi, 2007. “Informal social networks, sonography and female foeticide in India”. *Sociological Bulletin* 56(2): 243-262.

<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. . Accessed September 9, 2021 at <https://pratigyacampaign.org/wp-content/uploads/2019/09/trends-in-selective-abortions-of-girls-in-india.pdf>

<sup>17</sup> Quackenbush, Casey. 2018, January 30. India Says 21 Million of its Girls are 'Unwanted' Due to a Preference for Sons. *Time*. <http://time.com/5124337/india-unwanted-missing-girls-women/> Last accessed September 9, 2021. Original source: Government of India, Chapter 7: Gender and Son Meta-Preference: Is Development Itself an Antidote? Economic Survey 2017-18, Volume 1, pages 112 and 105 (respectively). Accessed September 9, 2021 at <https://ideas.repec.org/p/ess/wpaper/id12445.html>

Similarly, The Population Research Institute in its 2019 report<sup>18</sup> on sex-selective abortions in India identified 16 million as the number of girls who have been eliminated through sex-selective abortions since 1990, a phenomenon they termed “gendercide”. The report states that at present, the ratio of boys to girls in India is 110.7:100. An increase in the number of single men risks increasing the incidence of child marriage and sex trafficking. The report also identifies the following as the lead causes for high sex-selective abortion in India:

1. Preference for a son;
2. Decline in fertility wherein people are choosing to have fewer children, and due to aforementioned son preference, wanting to make sure the few children thus born are sons;
3. Unequal status of women, which often results in women often being coerced to abort female children and a general inferiority associated with women;
4. Increased accessibility to ultrasound technology, which includes the easy availability of this technology and its affordability and the prospects of running a lucrative business of sex selection.

The report offers the following solutions to combatting pre-natal sex selection in India:

1. Effective enforcement of laws to ban sex selection;
2. Promotion of equal status and dignity to women;
3. Enhancement of public awareness to combat stigma against girls;
4. Promotion of the rights of girls to be born and discourage recourse to abortion;
5. Overall socio-economic development;
6. Introduction of conditional cash transfer schemes and other incentives to encourage couples to have daughters;
7. Involvement from women’s rights groups and NGOs;
8. Termination of India’s population control policies since the two-child policy and laws that tacitly promote forced sterilization, that lead to fewer children being born in a family and hence, increased son preference.

In 2020, UNFPA’s latest *State of the World’s Population* report<sup>19</sup> stated that two countries—China (50%) and India (40%)—together account for about 90-95% of the estimated 1.2-1.5 million missing female births annually worldwide due to gender-biased (prenatal) sex selection. The report’s analysis also showed that India has the highest rate of excess female deaths (13.5 per 1,000 female births), which suggests that an estimated one in nine deaths of females below the age of 5 may be attributed to postnatal sex selection.

### **Laws Prohibiting Sex Selection**

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

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<sup>18</sup> Abbamonte, Jonathan. 2019. Sex-Selective Abortion in India: Estimates on the Occurrence of Sex- Selective Abortion in India and Some Possible Solutions to Eliminate the Practice. *Population Research Institute*. Accessed September 9, 2021 at <https://www.pop.org/sex-selective-abortion-in-india/>

<sup>19</sup> United Nations Population Fund. 2020. *State of the World Population 2020*. Accessed September 9, 2021 at [https://www.unfpa.org/sites/default/files/pub-pdf/UNFPA\\_PUB\\_2020\\_EN\\_State\\_of\\_World\\_Population.pdf](https://www.unfpa.org/sites/default/files/pub-pdf/UNFPA_PUB_2020_EN_State_of_World_Population.pdf)

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

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

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

*Sex-Selective Abortion in Other Laws:*

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

- *Section 312*: Voluntarily causing a pregnant woman to miscarry the child
- *Section 313*: Causing a woman to miscarry a child without her consent
- *Section 315*: Intentionally preventing a child being born alive or causing it to die after birth

The NCRB 2019 data does not mention details of the crimes committed under these acts.

**How to Access Justice**

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

**In Recent News**

In July 2021, the Uttar Pradesh government released a new draft population policy to disincentivize having more than two children per couple. According to the draft, those with more than two children will be barred from applying for government jobs, seeking promotions in them or benefiting from government subsidies. However, many experts predict that such a policy can lead to a rise in female foeticide and unsafe abortions,

targeting of certain communities, and reduced agency of women over their own bodies.<sup>20</sup>

### Recent Case Law

*Federation of Obstetricians and Gynaecological Societies of India (FOGSI) v. The Union of India and Others (2019)*<sup>21</sup>

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

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

*Union of India v. Indian Radiological and Imaging Association and Others (2018)*<sup>22</sup>

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

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<sup>20</sup> Ara, Ismat. 2021, July 16. “Higher Female Foeticide, Targeted Harassment: UP’s Population Control Bill May Be Dangerous”. *The Wire*. Accessed September 9, 2021 at <https://thewire.in/rights/rising-female-foeticide-targeted-harassment-ups-population-control-bill-may-be-dangerous>

<sup>21</sup> Federation Of Obstetrics And ... vs Union Of India. 2019. Accessed September 9, 2021 at <https://indiankanoon.org/doc/123238150/>

<sup>22</sup> Union Of India vs Indian Radiological And Imaging ... . 2018. Accessed September 9, 2021 at <https://indiankanoon.org/doc/37864053/>

*Sabu Mathew George v. UOI and Others (2017)*<sup>23</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 the corporations 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.

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<sup>23</sup> Sabu Mathew George vs Union Of India And Ors. 2017. Accessed September 9, 2021 at <https://indiankanoon.org/doc/192654466/>

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

Child, early and forced marriage (CEFM) is a human rights violation and a harmful practice that disproportionately affects women and girls globally, preventing them from living their lives free from all forms of violence.<sup>24</sup>

According to the UNFPA<sup>25</sup>, child marriage is a marriage in which one or both spouses are under 18 years old. These varied definitions suggest that the realities of child marriage can be complicated with both the words ‘child’ and ‘marriage’ interpreted differently at times. According to the Office of the United Nations High Commissioner for Human Rights (OHCHR), child marriage is ‘a marriage in which at least one of the parties is a child.’ The United Nations Children’s Fund (UNICEF)<sup>26</sup> defines it as ‘a formal marriage or informal union before age 18.’ UNICEF maintains that ‘child marriage is a violation of child rights, and has a negative impact on physical growth, health, mental and emotional development, and education opportunities. UNICEF also states that girls are affected in much larger numbers than boys and in greater intensity. Indian law defines child marriage as a ‘contract of marriage between two people of which either or both parties is a child’<sup>27</sup>. According to Indian law, a child is ‘a male who has not completed 21 years of age and a female who has not completed 18 years of age’.<sup>28</sup> OHCHR notes that child marriage is often accompanied by early and frequent pregnancy and childbirth, resulting in higher-than-average maternal morbidity and mortality rates. Early and forced marriages often result in women and girls attempting to flee their communities or committing suicide to avoid or escape the marriage.

Early marriage has been defined as ‘marriages where both spouses are 18 or older but other factors make them unready to consent to marriage, such as their level of physical, emotional, sexual and psychosocial development, or a lack of information regarding the

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<sup>24</sup> United Nations Office of the High Commissioner. Child and forced marriage including in humanitarian settings. Accessed September 12, 2021 at <https://www.ohchr.org/EN/Issues/Women/WRGS/Pages/ChildMarriage.aspx>

<sup>25</sup> United Nations Population Fund. 2020, January 20. Child Marriage—Frequently Asked Questions. Accessed September 12, 2021 at <https://www.unfpa.org/child-marriage-frequently-asked-questions>

<sup>26</sup> UNICEF India. Ending child marriage and adolescent empowerment. Accessed September 12, 2021 at <https://www.unicef.org/india/what-we-do/end-child-marriage#:~:text=Estimates%20suggest%20that%20each%20year,15%2D19%20are%20currently%20married>

<sup>27</sup> The Prohibition of Child Marriage Act 2006. Accessed September 12, 2021 at <https://indiacode.nic.in/handle/123456789/2055>

<sup>28</sup> The Indian Penal Code 1860. Accessed September 12, 2021 at <https://indiacode.nic.in/handle/123456789/2263?locale=en>

person's life options'.<sup>29</sup>

Forced marriage, according to the OHCHR, is 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.

The UNFPA's *State of the World Population 2020* report<sup>30</sup> states that the real solutions to ending early and forced marriages have to do with ending anti-female biases and discrimination against girls and women. The report also iterates that poverty, insecurity and limited access to quality education and work opportunities mean that child marriage is often seen as the optimal choice for girls or as a way for parents to mitigate the household's difficult economic circumstances. Within India, child marriage is closely tied to low levels of income and education, poverty and rural residence. In one study, conducted by the Population Council of India with the support of the Bill and Melinda Gates Foundation and the David and Lucille Packard Foundation, it was found that early marriage, marital violence, and dowry-related violence had a significantly negative effect on the mental health of adolescent girls in India, which on average tends to be much worse than that of adolescent boys.<sup>31</sup>

### Data on Child Marriages

According to Census 2011 data, there were 33.8 million child marriages reported in India over the decade.<sup>32</sup> This figure includes both girls below the age of 18 and boys below the age of 21. Since 2001, child marriage rates in India have fallen from 9.1% in 2006 to 2.2% in 2015<sup>33</sup>. A 2014 UNICEF report stated that India had the second highest number of child marriages, with 43% of women aged 20-24 having been first married by the age of 18 between 2005-2013<sup>34</sup>. Another report<sup>35</sup> in the same year by UNICEF ranked India 8<sup>th</sup> in its list

<sup>29</sup> Rangita, S. 2008. Child Marriage and the Law. Legislative Reform Initiative Paper Series. UNICEF: New York.

<sup>30</sup> United Nations Population Fund. 2020. State of the World Population 2020. Accessed September 12, 2021 at [https://www.unfpa.org/sites/default/files/pub-pdf/UNFPA\\_PUB\\_2020\\_EN\\_State\\_of\\_World\\_Population.pdf](https://www.unfpa.org/sites/default/files/pub-pdf/UNFPA_PUB_2020_EN_State_of_World_Population.pdf)

<sup>31</sup> Nezami, Sheezan. 2021, October 12. "Suicidal tendency in girls due to early marriage". *The Times of India*. Accessed October 15, 2021 at <https://timesofindia.indiatimes.com/city/patna/suicidal-tendency-in-girls-due-to-early-marriage/articleshow/86946405.cms>

<sup>32</sup> Young Lives and National Commission for Protection of Child Rights (NCPCR). 2017. A Statistical Analysis of Child Marriage in India Based on Census 2011. Accessed September 12, 2021 at <https://www.younglives-india.org/news/launch-analysis-child-marriage-india-based-2011-census>

<sup>33</sup> Ministry of Statistics and Programme Implementation. 2018. Statistical Year Book India - 2017. Accessed September 12, 2021 at <http://www.mospi.nic.in/statistical-year-book-india/2017/199>

<sup>34</sup> UNICEF. 2014. Improving Children's Lives, Transforming the Future 25 years of Child Rights in South Asia. Accessed September 12, 2021 at [https://www.unicef.org/publications/files/Improving\\_Children\\_s\\_Lives\\_-\\_Transforming\\_the\\_Future\\_9\\_Sep\\_2014.pdf](https://www.unicef.org/publications/files/Improving_Children_s_Lives_-_Transforming_the_Future_9_Sep_2014.pdf)

<sup>35</sup> UNICEF. 2014. Ending Child Marriage: Progress and Prospects. New York. Accessed September 12, 2021 at <https://data.unicef.org/resources/ending-child-marriage-progress-and-prospects/#>

of countries where child marriage is most prevalent. In February 2019, yet another UNICEF report<sup>36</sup> stated that one in three of the world's child brides lived in India and over half of them lived in Uttar Pradesh, Bihar, West Bengal, Maharashtra and Madhya Pradesh. Child marriage and forced marriage often lead to earlier pregnancies and subsequently higher mortality rates. According to the National Family Health Survey 2015-16<sup>37</sup>, more than 26% of women aged 20-24 were pregnant at 18 years old, and 8% of girls aged 15-19 were already mothers or pregnant. The same survey also highlighted that West Bengal currently tops the list among the states with the most child marriages in India.

The NCRB 2019 data identifies 24745 cases of the kidnapping and abduction of minor girls to compel them for marriage (Section 366) and 785 instances of violation of the Prohibition of Child Marriage Act.

### **Laws addressing Child Marriage in India**

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

Some important provisions of the 2006 Act are as follows:

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

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

### **In Recent News**

The government of India is currently considering an increase in the legal age of marriage of girls to 21, with an aim to working towards better maternal and child health outcomes, as

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<sup>36</sup> UNICEF. 2019. Ending Child Marriage: A profile of progress in India. Accessed September 12, 2021 at <https://data.unicef.org/resources/ending-child-marriage-a-profile-of-progress-in-india/>

<sup>37</sup> National Family Health Survey-4, India, 2015-2016. Accessed September 12, 2021 at [http://rchiips.org/nfhs/factsheet\\_nfhs-4.shtml](http://rchiips.org/nfhs/factsheet_nfhs-4.shtml)

well as providing better educational and employment opportunities to women. However, experts have suggested that merely increasing the legal age of marriage will not have the desired effect, if overall gender and social inequality is not addressed.<sup>38</sup>

UNICEF has speculated that due to the pandemic, increased poverty and related factors will put an additional 10 million girls at risk of child marriage globally, over the next decade.<sup>39</sup> India is already witnessing this trend, with the Indian government reportedly stopping over 5,584 child marriages across the country from the beginning of the first three months of the nationwide lockdown imposed in March 2020.<sup>40</sup> Schools being shut, no mid-day meals, and jobs being lost mean that several parents from weaker economic backgrounds are pushed to marry off girl children and engage young boys in child labour.<sup>41</sup>

Madhya Pradesh recorded an increase in the number of child marriages from 46 cases between November 2019 and March 2020 to 117 cases between April and June 2020. Similarly, 18 cases of child marriages were reported in Chhattisgarh in the five months before the COVID-19 lockdown, but during the first three months of the lockdown, the number increased to 58.<sup>42</sup> In Telangana, the Ministry of WCD reported that 1,355 cases of child marriage were averted from April 2020 to March 2021, a 27% increase from the previous year.<sup>43</sup> In a study conducted in four states (Jharkhand, Chhattisgarh, Odisha, Bihar) among 3932 adolescents (10-19 years), 8% of the respondents have heard of an incidence of child marriage in their neighbourhood since the beginning of the pandemic. Two-thirds of adolescents reported that their family members were planning for their marriage and their chances of getting married early have increased; the proportion was higher among girls.<sup>44</sup>

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<sup>38</sup> Muttreja, Poonam. 2020, June 30. Ending early marriage in India will take more than legal action – it needs real belief in equality. *Scroll.in*. Accessed September 12, 2021 at <https://scroll.in/article/966034/ending-early-marriage-in-india-will-take-more-than-legal-action-it-needs-real-belief-in-equality>

<sup>39</sup> UNICEF. 2021, March. COVID-19: A threat to progress against child marriage. Accessed September 12, 2021 at <https://data.unicef.org/resources/covid-19-a-threat-to-progress-against-child-marriage/>

<sup>40</sup> Dogra, Nupur. 2020, July 28. “Are Pandemic Induced Child Marriages a Wakeup Call for India?”. *The Leaflet*. Accessed September 12, 2021 at <https://www.theleaflet.in/are-pandemic-induced-child-marriages-a-wakeup-call-for-india/#>

<sup>41</sup> Gupta, Ridhima. 2021, April 10. “Covid pandemic led to 27% increase in child marriages”. *The New Indian Express*. Accessed September 12, 2021 at <https://www.newindianexpress.com/states/telangana/2021/apr/10/covid-pandemic-led-to-27-rise-in-child-marriages-2288264.html>

<sup>42</sup> Bahl, Deepika, Bassi, Shalini, and Arora Monika. 2021, March 4. “The Impact of COVID-19 on Children and Adolescents: Early Evidence in India”. *Observer Research Foundation*. Accessed September 12, 2021 at [https://www.orfonline.org/research/the-impact-of-covid-19-on-children-and-adolescents-early-evidence-in-india/#\\_edn44](https://www.orfonline.org/research/the-impact-of-covid-19-on-children-and-adolescents-early-evidence-in-india/#_edn44)

<sup>43</sup> Gupta, Ridhima. 2021. Ibid.

<sup>44</sup> Bahl et al. 2021. Ibid.

## How to Access Justice

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

## Recent Case Law

### *Hardev Singh v. Harpreet Kaur and Others (2019)*<sup>45</sup>

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

### *Independent Thought v. UOI (2017)*<sup>46</sup>

The petitioner in this case had challenged the validity of Exception 2 to Section 375 of the Indian Penal Code [as amended by the Criminal Law (Amendment) Act, 2013, as violating Articles 14, 15 and 21 of the Constitution to the extent that it permits intrusive sexual intercourse with a girl child aged between 15 to 18 years only on the ground that she has been married. Exception 2 to Section 375 (rape) of IPC states that sexual intercourse or

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<sup>45</sup> Hardev Singh vs Harpreet Kaur. 2019. Accessed September 12, 2021 at <https://indiankanoon.org/doc/169642291/>

<sup>46</sup> Independent Thought vs Union Of India. 2017. Accessed September 12, 2021 at <https://indiankanoon.org/doc/87705010/>

sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape. The petitioner underlined the inconsistency between Exception 2 and clause sixthly of Section 375, which has increased the age of consent for sexual intercourse for a girl child to 18 years. Therefore, sexual intercourse with a girl child under 18 years would constitute rape, with or without her consent. The Supreme Court accepted this pleading and held that sexual intercourse with wife, wife under 18 years of age would constitute rape. The judgment noted that ‘it is only through this reading that the intent of social justice to the married girl child and the constitutional vision of the framers of our Constitution can be preserved and protected and perhaps given impetus.’ This case settled the legal confusion over marital rape within prohibited child marriages in India.

*M. Janaki v. K. Vairamuthu (2016)*<sup>47</sup>

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

*Yunusbhai Usmanbhai Shaikh v. State of Gujarat (2015)*<sup>48</sup>

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

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<sup>47</sup> M.Janaki vs K.Vairamuthu. 2016. Accessed September 12, 2021 at <https://indiankanoon.org/doc/196038778/>

<sup>48</sup> Yunusbhai Usmanbhai Shaikh v/s State of Gujarat. 2015. Accessed September 12, 2021 at <https://www.lawyerservices.in/Yunusbhai-Usmanbhai-Shaikh-Versus-State-of-Gujarat-2015-09-23>

### 3. HUMAN TRAFFICKING

The UN Trafficking in Persons protocol defines trafficking in persons as ‘the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.’ In this case, exploitation includes, but is not limited to, various forms of sexual exploitation and prostitution, commercial exploitation, forced labour, slavery or similar practices, and removal of organs. This involves forceful and illegal migration of the victims.

Human trafficking is often considered to be a gendered crime, because of the overwhelming number of victims being female (71%, as of 2017) and perpetrators being male, globally. Of the victims of child trafficking, young girls account for almost three quarters.<sup>49</sup> As stated by Yakin Ertürk, former Special Rapporteur on Violence against Women, its Causes and Consequences (Special Rapporteur on VAWG)<sup>50</sup>, human trafficking is one of the major areas of concern with regards to violence against women, alongside domestic violence, sexual violence in conflict and reproductive rights violations. More often than not, trafficking of women and girls takes place in the context of migration, and victims face different forms of gender-based violence such as sexual violence, rape, violation of their reproductive rights, and slavery both after and during trafficking.<sup>51</sup>

The most common cause for human trafficking globally is trafficking for the purpose of sexual exploitation, accounting for 54% of all forms of trafficking. Females represent 96% of victims trafficked for sexual exploitation. Even other causes of trafficking of women such as forced labour, begging, and domestic servitude may involve the perpetrator(s) exerting some form of sexual violence over victims as a means of coercion and control. 82% of victims of human trafficking for the purposes of organ removal are male.<sup>52</sup>

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<sup>49</sup> The Inter-Agency Coordination Group Against Trafficked Persons (ICAT). 2017. The Gender Dimensions of Human Trafficking. Issue Brief 4. Accessed September 10, 2021 at <https://icat.un.org/sites/default/files/publications/icat-ib-04-v.1.pdf>

<sup>50</sup> The United Nations Special Rapporteur on Violence against Women, Its Causes and Consequences. 15 years of The United Nations Special Rapporteur On Violence Against Women, Its Causes and Consequences. Accessed September 10, 2021 at <https://www.ohchr.org/Documents/Issues/Women/15YearReviewofVAWMandate.pdf>

<sup>51</sup> Fernandez, Gema, Yoshida, Keina. 2018, June 28. “Human Trafficking as a Gendered Phenomenon – Part I”. *INTLAWGRRLS*. Accessed September 10, 2021 at <https://ilg2.org/2018/06/28/human-trafficking-as-a-gendered-phenomenon-part-i/#:~:text=Trafficking%20in%20human%20beings%20is,traffickers%20are%20'overwhelmingly%20male'>

<sup>52</sup> ICAT. (2017). *Ibid.*

## Data on Human Trafficking

According to the NCRB 2020 report, a total of 1714 cases of human trafficking were registered, showing a decrease of over 500 cases since 2019. 4709 victims have been reported as trafficked, of which 2797 were women. 4680 people were reported to have been saved from potential trafficking.

Of the 2222 under-18 victims reported as trafficked, 1377 were males and 845 females. Of adult victims of trafficking, 1952 were females and 535 males.<sup>53</sup>

The 2021 Trafficking in Persons Report<sup>54</sup>, issued by the United States of America State Department's Office to Monitor and Combat Trafficking in Persons categorized India in Tier 2, which includes countries whose governments do not fully comply with the minimum standards of the Trafficking Victims Protection Act (TVPA) of 2000, but are making significant efforts to bring themselves into compliance with those standards. The report noted, “the government (of India) demonstrated overall increasing efforts compared to the previous reporting period, considering the impact of the COVID-19 pandemic on its anti-trafficking capacity; therefore India remained on Tier 2. These efforts included identifying more victims and investigating and prosecuting more trafficking cases.”

## Relevant Laws on Human Trafficking in India

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

In early July 2021, the Ministry of Women and Child Development invited suggestions and comments on its new draft Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021<sup>55</sup>, a reworked version of the previous Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018. The 2018 Bill had been criticized for its ‘failed carceral approach to trafficking’<sup>56</sup>, or in other words, for promoting ‘rescue raids’ by the police, and the institutionalisation of victims in the name of rehabilitation, rather than applying appropriate screening methods and standard operating procedures for the identification and referral of victims or potential victims of trafficking, and social integration programs

<sup>53</sup> Also see Global Slavery Index 2018. 2018. Country Study: India. Accessed September 10, 2021 at <https://www.globallslaveryindex.org/2018/findings/country-studies/india/>

<sup>54</sup> U.S Department of State. 2021. 2021 Trafficking in Persons Report: India. Accessed September 10, 2021 at <https://www.state.gov/reports/2021-trafficking-in-persons-report/india/>

<sup>55</sup> Journals of India. 2021, July 6. “Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021”. Accessed September 12, 2021 at <https://journalsofindia.com/trafficking-in-persons-prevention-care-and-rehabilitation-bill-2021/>

<sup>56</sup> For a comprehensive critique of the Bill see Kotiswaran, Prabha. 2018, July 23. “How India can go forward on tackling human trafficking,” *Hindustan Times*. Accessed September 10, 2021 at <https://www.hindustantimes.com/analysis/how-india-can-go-forward-on-tackling-human-%20trafficking/story-nlm1deYwCMn6ApdwuFRs6K.html>

which are respectful of their rights.<sup>57</sup>

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

- The legislation will extend to all citizens inside as well as outside India, persons on any ship or aircraft registered in India wherever it may be or carrying Indian citizens wherever they may be.
- Property bought via such income as well as used for trafficking can now be forfeited with provisions set in place, similar to that of the money laundering Act.
- Besides women and children, the draft also extends the protection to transgender persons.
- The definition of trafficked victim has been changed and now one need not be transported from one place to another to be identified as a victim of trafficking.
- The scope of the Bill vis-a-vis offenders will also include defence personnel and government servants, doctors and paramedical staff or anyone in a position of authority.
- The Bill requires the central or state government to set up Protection Homes, to provide shelter, food, counselling, and medical services to victims.
- In order to punish trafficking, the Bill provides for the setting up of investigation and rehabilitation authorities at the district, state and national level.

However, the 2021 Bill has raised some concerns, notably around the lack of clarity on the procedure through which the NIA will gather information through AHTUs at different levels at different parts of the country, the absence of community-based rehabilitation, missing definition of reintegration and other such technical incapacities. Moreover, representatives of Durbar, the largest sex worker collective in Kolkata, have emphasized that the proposed Bill criminalizes sex work and the choice of sex work as profession.<sup>58</sup>

The current Indian laws on trafficking are as follows:

1. *The Indian Penal Code, 1860* contains several provisions that are relevant to trafficking in persons and prescribe penalties for offences such as kidnapping, abduction, buying or selling a person for slavery or labour, buying or selling a minor for prostitution, importing or procuring a minor girl and rape among others. Some of them are as follows:

- *Section 365*: Kidnapping or abduction with intent to secretly and wrongfully confine a person
- *Section 366 A*: Procuration of minor girls for the purpose of illicit intercourse with another person

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<sup>57</sup> United Nations Office of the Human Rights Commissioner. 2018, July 23. "India must bring its new anti-trafficking Bill in line with human rights law, urge UN experts". Accessed September 12, 2021 at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23392>

<sup>58</sup> Singh, Shiv Sahay. 2021, July 18. "Concerns remain over anti-trafficking bill". *The Hindu*. Accessed September 12, 2021 at <https://www.thehindu.com/news/national/concerns-remain-over-anti-trafficking-bill/article35388874.ece>

- *Section 366 B*: Importation of girls from foreign country
  - *Section 370*: Defines the offence of trafficking in persons
  - *Section 372*: Selling minor for purposes of prostitution, etc.
  - *Section 373*: Buying minor for purposes of prostitution, etc.
2. *Immoral Trafficking (Prevention) Act, 1956*: Prescribes punishment for procuring, inducing or taking person for the sake of prostitution and includes provisions for rescue and rehabilitation of sex workers.
  3. *Bonded Labour System Abolition Act, 1974*: Prescribes punishment for enforcement of bonded labour, among others.
  4. *Protection of Children from Sexual Offences Act, 2012*: Defines and prescribes punishment for various sexual offences against children.
  5. *Child Marriage (Prevention) Act, 2006*: Prescribes punishment for male adult marrying a child; solemnising a child marriage; promoting or permitting solemnisation of child marriage.
  6. *Transplantation of Human Organs Act, 1994*: Prescribes punishment for removal of human organs without authority and for commercial dealings in human organs.

### In Recent News

Studies have reported that one major effect of COVID-19 is a rise in human trafficking, abuse, and exploitation, especially of children. Higher incidents of migration and increased economic instability have caused greater vulnerabilities to trafficking. In addition, the lockdown had slowed down rescue initiatives; for instance, a survey in the earlier months of the pandemic in 2020 stated that only 27% of the Anti-Human Trafficking Units (AHTUs) were functional following the pandemic.<sup>59</sup> “The pandemic has increased vulnerabilities to trafficking in persons while making trafficking even harder to detect and leaving victims struggling to obtain help and access to justice,” according to Ghada Waly, Executive Director of the United Nations Office on Drugs and Crime (UNODC).<sup>60</sup> In December 2020, the National Human Rights Commission, India issued an advisory on combating human trafficking in context of the COVID-19

<sup>59</sup> Das, Prajanma. 2020, September 7. “Trafficking Jam: Why India's human trafficking problem has skyrocketed during the COVID-19 pandemic” *EdexLive*. Accessed September 10, 2021 at <https://www.edexlive.com/people/2020/sep/07/trafficking-jam-why-indias-human-trafficking-problem-has-skyrocketed-during-the-covid-19-pandemic-14464.html> ; Also see Yeung, Jessie and Sur, Piyali. 2020, October 26. “The pandemic has created a second crisis in India — the rise of child trafficking”. *CNN*. Accessed September 10, 2021 at <https://edition.cnn.com/2020/10/24/asia/india-covid-child-trafficking-intl-hnk-dst/index.html>

<sup>60</sup> United Nations News. 2021, July 8. New UN report reveals impact of COVID on human trafficking. Accessed September 10, 2021 at <https://news.un.org/en/story/2021/07/1095472> ; Also see UNODC. 2021. The effect of the COVID-19 pandemic on trafficking in persons and responses to the challenges. Accessed September 12, 2021 at [https://www.unodc.org/documents/human-trafficking/2021/The\\_effects\\_of\\_the\\_COVID-19\\_pandemic\\_on\\_trafficking\\_in\\_persons.pdf](https://www.unodc.org/documents/human-trafficking/2021/The_effects_of_the_COVID-19_pandemic_on_trafficking_in_persons.pdf)

pandemic.<sup>61</sup>

While recent data is hard to come by on actual trafficking numbers, activists and scholars over the country have documented how individual communities – usually those that are heavily marginalized -- have been affected.<sup>62</sup> These cases have also brought into light the need for recognition of new forms of trafficking such as post-disaster trafficking.

### Recent Case Law

#### *Geeta Arora @ Sonu Punjaban v. State (2020)*<sup>63</sup>

Geeta Arora, AKA Sonu Punjaban was accused alongside Sandeep Bedwal of kidnapping and selling a minor girl into prostitution. Punjaban was sentenced to jail by a Delhi court for 14 years for offences under the Immoral Traffic (Prevention) Act and 10 years for other offences under the Indian Penal Code, including selling and buying of a minor girl for prostitution and criminal conspiracy, which will run separately. She was also fined INR 64,000. Her co-accused was also convicted and sentenced to 20 years in jail and INR 65,000 to be paid as fine. While sentencing the duo, the court said that the minor was sexually exploited for three-four years at the hands of several offenders, and if Sandeep had not kidnapped her, “perhaps the ordeal would not have happened.”

#### *2019 Case in Rajasthan*<sup>64</sup>

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

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<sup>61</sup> National Human Rights Commission, India. 2020, December 11. R-17/8/2020-PRPP – Part(6). Accessed September 12, 2021 at <https://nhrc.nic.in/sites/default/files/NHRC%20Advisory%20on%20Human%20Trafficking.pdf>

<sup>62</sup> Kabra, Abhishek. 2020, November 18. “Human trafficking was a big problem in the Northeast. COVID-19 has made it much worse”. *East Mojo*. Accessed September 12, 2021 at <https://www.eastmojo.com/news/2020/11/18/human-trafficking-was-a-big-problem-in-the-northeast-covid-19-has-made-it-much-worse/>; Thusoo, Sumati. 2021, September 8. “The Impact of COVID-19 on Anti-Human Trafficking Initiatives in West Bengal.” *Live Wire*. Accessed September 12, 2021 at <https://thewire.in/women/impact-of-covid-19-on-anti-trafficking-initiatives-in-west-bengal>

<sup>63</sup> PTI. 2020, July 23. “Sonu Punjaban Gets 24 Years Imprisonment For Trafficking Minor Girl”. *Outlook*. Accessed September 10, 2021 at <https://www.outlookindia.com/website/story/india-news-sonu-punjaban-gets-24-years-imprisonment-for-trafficking-minor-girl/357236>

<sup>64</sup> Nagaraj, Anuradha. 2019, August 29. “New hope for child rights after India gets tough on traffickers”. *Thomas Reuters Foundation News*. Accessed September 10, 2021 at <http://news.trust.org/item/20190829142656-swuxc/>

*State of Uttarakhand v. Sartaj Khan (2017)*<sup>65</sup>

The appeal of the state against Sartaj Khan for the kidnapping and trafficking of a woman from Nepal and subsequently sexually abusing, threatening and abducting her was admitted. The respondent was convicted for these offences under Sections 363, 366B, 370(4) and 506 of the IPC and Section 8 of the POCSO Act. The Registry was directed to prepare the production warrant ensuring the presence of the respondent before the court at a date that would be fixed later.

*Freedom Firm v. Commissioner of Police, Pune & Others (2015)*<sup>66</sup>

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

*Prajwala v. Union of India (2015)*<sup>67</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>65</sup> State Of Uttarakhand vs Sartaj Khan. 2017. Accessed September 10, 2021 at <https://indiankanoon.org/doc/4044462/>

<sup>66</sup> Freedom Firm Versus Commissioner Of Police, Pune And Ors. 2015. Accessed September 10, 2021 at <http://www.the-laws.com/Encyclopedia/Browse/Case?CaseId=315102532300>

<sup>67</sup> Prajwala v. Union of India (UOI) and Ors. 2015. Accessed September 10, 2021 at <https://www.legitquest.com/case/prajwala-v-union-of-india-uoi-and-ors/184c3a>

## 4. 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 may lead to a trivialization of the impact that this form of violence has on victims.<sup>68</sup>

Street sexual harassment includes any ‘unwanted comments, gestures, and actions forced on a stranger in a public place without their consent and is directed at them because of their actual or perceived sex, gender, gender expression or sexual orientation’.<sup>69</sup>

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

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

### Data on Sexual Harassment (with a focus on Street Sexual Harassment)

	<i>Assault on Women with Intent to Outrage her Modesty</i>	<i>Assault on Women</i>	<i>Sexual Harassment</i>	<i>Street sexual Harassment (Eve Teasing IPC 509)</i>	<i>Sexual Harassment in Public Transport</i>	<i>Assault on Women with Intent to Disrobe</i>	<i>Voyeurism</i>	<i>Stalking</i>
<b>2019</b>	88367	48586	18334	6939	606	11238	1399	8890
<b>2020</b>	85392	48037	17003	7065	375	10580	1260	8512

Source: National Crime Records Bureau, Crime in India 2019 and 2020 reports, accessed September 20, 2021 at <https://ncrb.gov.in/en/crime-india>

According to studies by Action Aid in 2015-16, 79% of women in India had experienced some form of sexual harassment in public, and 44% of women surveyed said that they had

<sup>68</sup> Sanitation First. What is ‘Eve-Teasing’ and Why Should We Be Angry About it? Accessed September 20, 2021 at <http://sanitationfirst.org/blog/eve-teasing-angry/>

<sup>69</sup> Stop Street Harassment. 2015. *What is Street Harassment?* Accessed September 20, 2021 at <http://www.stopstreetharassment.org/about/what-is-street-harassment/>

experienced groping.<sup>70</sup> A survey conducted by Jagori and UN Women in Delhi suggested that the majority of incidents of street harassment took place in broad daylight.<sup>71</sup> These numbers are even more alarming when taken into account the fact that sexual harassment is one of the least reported crimes in the country.<sup>72</sup>

### Relevant Laws on Street Sexual Harassment in India

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

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

### How to Access Justice

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

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<sup>70</sup> Senthilingam, Meera. 2017, November 29. "Sexual Harassment: How it stands around the globe". *CNN*. Accessed September 20, 2021 at

<sup>71</sup> Jagori. 2011. Safe Cities Free of Violence Against Women and Girls Initiative A Draft Strategic Framework for Women's Safety in Delhi 2010. Accessed September 20, 2021 at [http://www.jagori.org/wp-content/uploads/2006/01/Strategic\\_Framework.pdf](http://www.jagori.org/wp-content/uploads/2006/01/Strategic_Framework.pdf)

<sup>72</sup> Safetipin. 2021, June 21. "Street Harassment: An Epidemic of Gender Violence". Accessed September 20, 2021 at <https://safetipin.com/street-harassment-an-epidemic-of-gender-violence/>

## Recent Case Law

### *Shanta Kumar v. CSIR & Others (2017)*<sup>73</sup>

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

### *Jishu Sengupta & Others v. State of West Bengal & Another (2016)*<sup>74</sup>

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

### *T Manikandan v. The State (Govt of NCT of Delhi) & Another (2017)*<sup>75</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>76</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.

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<sup>73</sup> Shanta Kumar vs Council Of Scientific And ... 2017. Accessed September 20, 2021 at <https://indiankanoon.org/doc/161594683/>

<sup>74</sup> Jishu Sengupta & Others vs The State Of West Bengal & Anr. 2017. Accessed September 20, 2021 at <https://indiankanoon.org/doc/143017740/>

<sup>75</sup> T. Manikadan vs The State (Govt Of Nct Of Delhi) & ... 2017. Accessed September 20, 2021 at <https://indiankanoon.org/doc/34693422/>

<sup>76</sup> Pawan Kumar vs State Of H.P. 2017. Accessed September 20, 2021 at <https://indiankanoon.org/doc/50939276/>

## 5. WORKPLACE SEXUAL HARASSMENT

Sexual harassment at the workplace is a form of gender-based discrimination at the place of employment. Sexual harassment at a workplace is considered to be a violation of women's right to equality, life and liberty. By creating an insecure and hostile work environment, it discourages women from participating in paid employment, thereby adversely affecting their social and economic empowerment and hindering inclusive growth.<sup>77</sup>

The General Assembly Resolution 48/104 on the *Declaration on the Elimination of Violence Against Women*<sup>78</sup> defines violence against women to include sexual harassment, which is prohibited at work, in educational institutions, and elsewhere, and encourages development of penal, civil or other administrative sanctions, as well as preventive approaches to eliminate violence against women.

The *Convention on the Elimination of all Forms of Discrimination against Women* (CEDAW)<sup>79</sup> directs States Parties to take appropriate measures to eliminate discrimination against women in all fields, specifically including equality under law, in governance and politics, the workplace, education, healthcare, and in other areas of public and social life (Arts. 7-16).

The *Beijing Platform for Action*<sup>80</sup> recognizes sexual harassment as a form of violence against women and as a form of discrimination, and calls on multiple actors including government, employers, unions, and civil society to ensure that governments enact and enforce laws on sexual harassment and that employers develop anti-harassment policies and prevention strategies.

### In Indian Law

In India, in 1997, the Supreme Court in *Vishaka v. State of Rajasthan* defined sexual harassment at the workplace, pronounced preventive, prohibitive and redressal

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<sup>77</sup> Usman, Shah. 2019, December 19. "Sexual Harassment Of Women At Workplace: A Brief Analysis Of The POSH Act, 2013". *Mondaq*. Accessed September 20, 2021 at <https://www.mondaq.com/india/employee-rights-labour-relations/876830/sexual-harassment-of-women-at-workplace-a-brief-analysis-of-the-posh-act-2013#:~:text=Sexual%20harassment%20at%20a%20workplace,goal%20of%20inclusive%20growth1>

<sup>78</sup> OHCHR. Declaration on the Elimination of Violence against Women. Accessed September 20, 2021 at <https://www.ohchr.org/en/professionalinterest/pages/violenceagainstwomen.aspx>

<sup>79</sup> UN Women. General Recommendations. Convention on the Elimination of All Forms of Discrimination against Women. Accessed September 20, 2021 at <https://www.un.org/womenwatch/daw/cedaw/recommendations/index.html>

<sup>80</sup> UN Women. 1995. Beijing Declaration and Platform for Action. *The Fourth World Conference on Women*. Accessed September 20, 2021 at <http://www.un.org/womenwatch/daw/beijing/platform/>

measures, and gave directives towards a legislative mandate to the guidelines proposed.<sup>81</sup> *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH)* was enacted sixteen years after *Vishaka*. While sexual harassment at workplace is primarily a civil offence, criminal law has also been used from time to time, especially in the absence of a specific law, to frame sexual harassment.<sup>82</sup>

*The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*<sup>83</sup>

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

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

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

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

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

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

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<sup>81</sup> Vishaka Guidelines against Sexual Harassment at Workplace. Accessed September 20, 2021 at <http://www.nitc.ac.in/app/webroot/img/upload/546896605.pdf>

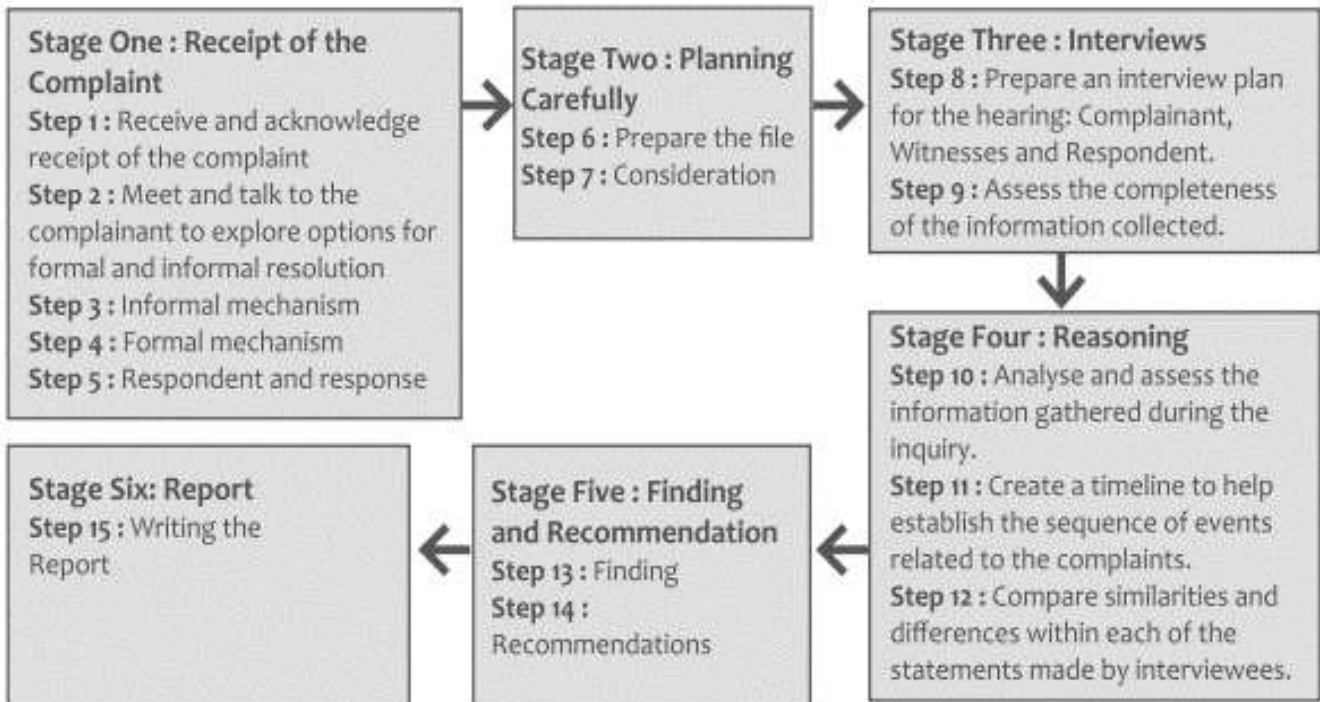
<sup>82</sup> Mrs. Rupan Deol Bajaj & Anr vs Kanwar Pal Singh Gill & Anr. 1995. Accessed September 20, 2021 at <https://indiankanoon.org/doc/579822/>

<sup>83</sup> The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Accessed September 20, 2021 at <http://legislative.gov.in/sites/default/files/A2013-14.pdf>

Internal Committee and Local Committee<sup>84</sup>, signalling a broader role than grievance redressal.

In a workplace with less than ten workers, any woman employee can complain to the Local Complaints Committee with support of the Nodal Officer. The written complaint should contain a description of each incident, relevant dates, timings and locations; name of the respondent(s); and the working relationship between the parties.

The complaints process, as mapped by the Ministry of Women and Child Development, is presented in this diagram:



*Source:* Ministry of Women and Child Development, Government of India. Handbook On Sexual Harassment of Women at Workplace for Employers / Institutions / Organisations/ Internal Complaints Committee / Local Complaints Committee, Page 27, accessed September 21, 2021 at <https://wcd.nic.in/sites/default/files/Handbook%20on%20Sexual%20Harassment%20of%20Women%20at%20Workplace.pdf>

The respondent is entitled to:

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

According to Anagha Sarpotdar, chairperson of the Mumbai city district local committee on sexual harassment at the workplace, one of the major milestones of the Sexual Harassment

<sup>84</sup> Repealing and Amending Act, 2016, The Second Schedule. 2016, May 16. Accessed September 20, 2021 at <http://extwprlegs1.fao.org/docs/pdf/IND169760.pdf>

of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is to provide a special redress mechanism for complaints in the unorganised sector. Section 7 of this act mandates the constitution of local committees by the state government.<sup>85</sup> However, evidence has shown that women in informal sectors, who constitute almost 95% of all women workers in the country, continue to find the institutional processes of the law unclear and inaccessible. Complaints committees are also dysfunctional, as seen in a series of RTI requests filed by the Martha Ferrell Foundation in 2016 and 2017. 56% of the 655 districts that the foundation reached out to did not respond to the RTI requests, only 29% said they had local committees to look into workplace sexual harassment and 15% said they had not set up a committee yet.<sup>86</sup> Similarly, following an RTI application in Tamil Nadu in 2016, Prajnya Trust wrote to all the District Collectors in the state with a copy of the RTI reply, asking for information regarding "the Local Complaints Committee, formed under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Chapter III, Section 6(1) and Section 6(2)." Only four DCs have provided responses so far.<sup>87</sup>

### Other Relevant Provisions of Indian law

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

- a. *Section 294*: Making a girl or a woman target of obscene gestures, remarks, songs or recitation.
- b. *Section 354 A*: Sexual harassment: Causing (unwanted) physical contact and advances involving unwelcome and explicit sexual overtures, demand or request for sexual favours, showing pornography against the will of a woman or making sexually coloured remarks.
- c. *Section 354 B*: Assault with the intent to disrobe a woman.
- d. *Section 354 C*: Voyeurism: Watching or capturing the image of a woman engaged in a private act in circumstances where she would usually have the expectation of not being observed.
- e. *Section 354 D*: Stalking: Following and contacting or attempting to contact repeatedly despite clear indication of disinterest; monitoring the use of internet, email or any other form of electronic communication.

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<sup>85</sup> Sarpotdar, Anagha. 2020, May 16. "Examining Local Committees under the Sexual Harassment of Women at Workplace Act". *Economic and Political Weekly* 55(20). Accessed September 20, 2021 at <https://www.epw.in/journal/2020/20/review-womens-studies/examining-local-committees-under-sexual-harassment.html>

<sup>86</sup> Bhuyan, Anoo, and Khaitan, Shreya. 2021, February 23. "Eight years on, India's law to prevent workplace sexual harassment is marred by poor data collection". *Scroll.in*. Accessed September 20, 2021 at <https://scroll.in/article/987583/eight-years-on-indias-law-to-prevent-workplace-sexual-harassment-is-marred-by-poor-data-collection>

<sup>87</sup> Prajnya Trust. Replies to RTI on Local Complaints Committees. Accessed October 13, 2021 at <https://www.prajnya.in/lcc-rti-replies>

- 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.

### In Recent News

According to the NCRB's Crime In India Report, 485 cases of workplace sexual harassment were registered in 2020. It has been observed that most *#MeToo* accusations made after 2017 have by and large blown over with most of the accused resuming their professional lives. Many have gone on to achieving higher levels of power despite hue and cry, like the newly appointed Chief Minister of Punjab, Charanjit Singh Channi, who was accused by an IAS officer of sexual harassment in 2018.<sup>88</sup> Those who made the allegations, on the other hand, have suffered personal and professional damage.<sup>89</sup> Moreover, feminists have reiterated that the movement itself has been restricted to the educated middle class with access to the internet.<sup>90</sup>

Sexual harassment at the workplace continues to escalate, meanwhile, with one study by the Network of Women in Media India and Gender at Work finding that out of 456 cis and trans women working in media, over one-third had faced sexual harassment at the workplace, and half of them did not report the incident.<sup>91</sup>

In September 2021, a female officer of the Indian Air Force (IAF) who had accused her colleague of rape, alleged that she had been subjected to an illegal two-finger test to confirm the sexual assault. According to a statement by the NCW, such a test violated a 2013 Supreme Court ruling that banned the two-finger test, as well as her right to privacy and dignity. NCW Chairperson Rekha Sharma has also written to the IAF air chief marshal to take necessary steps and impart the necessary knowledge to the force's doctors about the prevailing government guidelines and the Indian Council of Medical Research in 2014

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<sup>88</sup> Scroll Staff. 2021, September 21. "Punjab CM should be removed over sexual harassment accusation, says women's panel chief". Scroll.in. Accessed September 25, 2021 at <https://scroll.in/latest/1005837/punjab-cm-should-be-removed-over-sexual-harassment-accusation-says-womens-panel-chief>

<sup>89</sup> Jain, Jhalak. 2020, February 3. "India and its #MeToo Movement in 2020: Where are we Now?" *Feminism in India*. Accessed September 20, 2021 at <https://feminisminindia.com/2020/02/03/india-metoo-movement-2020/>

<sup>90</sup> DW. #MeToo in India: 'Women's rights need more than just a social media campaign'. Accessed September 20, 2021 at <https://www.dw.com/en/metoo-in-india-womens-rights-need-more-than-just-a-social-media-campaign/a-42989744>

<sup>91</sup> Gender at Work and NWMI. 2020. Creating Safe Workplaces: Prevention and Redressal of Sexual Harassment in Media Houses in India. Accessed September 20, 2021 at [https://genderatwork.org/wp-content/uploads/2020/03/Creating\\_Safe\\_Workplaces.pdf](https://genderatwork.org/wp-content/uploads/2020/03/Creating_Safe_Workplaces.pdf)

terming the two-finger test unscientific.<sup>92</sup> The Airforce has denied these claims.<sup>93</sup>

In 2019, a blind spot became obvious in India's existing laws surrounding workplace harassment when a woman working in the office of the then Chief Justice of India Ranjan Gogoi tried to lodge a sexual harassment complaint against him. While a Supreme Court employee could complain about sexual harassment against her co-workers and seniors (including judges), there is simply no mechanism for someone to lodge a sexual harassment complaint against the Chief Justice of India.<sup>94</sup>

A report by Human Rights Watch in October 2020, titled *"No Me Too for Women Like Us"* found that women who work in India's informal sector are constrained by stigma, fear of retribution, and institutional barriers to justice, and are unable to report sexual violence in the workplace. The report concludes that the central and local governments have failed to promote, establish, and monitor complaints committees—a central feature of the POSH Act—to receive complaints of sexual harassment, conduct inquiries, and recommend actions against abusers.<sup>95</sup>

While a lot of workplaces have shifted online due to the COVID-19 pandemic, sexual harassment pertaining to workplaces has remained rampant. As students and employees spend more time on the Internet than ever before, they are also more vulnerable to cyber violence.<sup>96</sup> For instance, several cases have been reported of teachers being sexually harassed by students as more and more classes are now being held online.<sup>97</sup> Cyber-crimes as a whole have increased, and in some cases, taken new forms over the pandemic, an issue dealt with in greater detail in a chapter that follows.

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<sup>92</sup> Ray, Meenakshi. 2021, October 1. "IAF officer alleges she was subjected to two-finger test. What does Supreme Court say?". *The Hindu*. Accessed November 1, 2021 at <https://www.hindustantimes.com/india-news/iaf-officer-alleges-she-was-subjected-to-two-finger-test-what-does-sc-say-101633075988623.html>

<sup>93</sup> 2021, October 5. "Air Force denies two-finger test done on survivor in Coimbatore rape case". *The News Minute*. Accessed November 1, 2021 at <https://www.thenewsminute.com/article/air-force-denies-two-finger-test-done-survivor-coimbatore-rape-case-156097>

<sup>94</sup> Bhuyan, Anoo. 2019, May 21. "Explained: Seven Dead-Ends if You're a Victim of Sexual Harassment in the Supreme Court". *The Wire*. Accessed September 20, 2021 at <https://thewire.in/law/seven-dead-victim-sexual-harassment-supreme-court>

<sup>95</sup> Human Rights Watch. 2020. "No Me Too for Women Like Us": Poor Enforcement of India's Sexual Harassment Law. Accessed September 20, 2021 at <https://www.hrw.org/report/2020/10/14/no-metoo-women-us/poor-enforcement-indias-sexual-harassment-law>

<sup>96</sup> Halder, Debarati. "Covid-19: Online Harassment of Women during work from home". *Karnavati University*. Accessed September 20, 2021 at <https://karnavatiuniversity.edu.in/uid/blogs/2020/covid-19-online-harassment-of-women-during-work-from-home/>

<sup>97</sup> "Enough is Enough: Kerala's Women Teachers Harassed Online". 2020, June 2. *The Quint*. Accessed September 20, 2021 at <https://www.thequint.com/neon/gender/kerala-women-teachers-harassed-online>

## Recent Case Law

### *Acquittal of Tarun Tejpal (2021)*<sup>98</sup>

In May 2021, a trial court in Mapusa, Goa acquitted Tarun Tejpal, the former editor-in-chief of Tehelka magazine, of all charges. He was accused of sexually assaulting his female employee in the lift of a five-star hotel in Goa during a work event in 2013. The acquittal was met with protest, and the Network of Women in Media, India (NWMI) stated that it is a grave miscarriage of justice and a massive setback for the Indian women's rights movement and the safety of working women in particular. The NWMI further stated that the court put the victim on trial, persistently shaming and discrediting her.<sup>99</sup> The Goa Government has appealed the judgement, citing the trial court's lack of understanding of a rape victim's post-trauma behavior, using her past sexual history and education as legal bias against her but not using the same standards against the accused, and stating that the judgement was coloured by prejudice and patriarchy.<sup>100</sup>

### *Mobashar Jawed Akbar Vs. Priya Ramani (2021)*<sup>101</sup>

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

<sup>98</sup> Saigal, Sonam. 2021, May 21. "Tarun Tejpal acquitted in Sexual Harassment Case". *The Hindu*. Accessed November 2, 2021 at <https://www.thehindu.com/news/national/other-states/tarun-tejpal-acquitted-in-sexual-harassment-case/article34611849.ece>

<sup>99</sup> 2021, June 5. "Judgment in Tejpal case a huge setback, says Network of Women in Media". *The Hindu*. Accessed November 2, 2021 at <https://www.thehindu.com/news/national/nwmi-critiques-judgment-in-tarun-tejpal-case/article34740769.ece>

<sup>100</sup> Hakim, Sharmeen. 2021, June 1. "Tarun Tejpal Acquittal Judgment Coloured By Prejudice & Patriarchy; Focuses On Victim Blaming : Goa Govt In Appeal". *Live Law*. Accessed November 1, 2021 at <https://www.livelaw.in/top-stories/goa-government-appeal-tarun-tejpal-bombay-high-court-tehelka-174986>

<sup>101</sup> Mobashar Jawed Akbar Vs. Priya Ramani. 2021. Accessed September 20, 2021 at [https://www.livelaw.in/pdf\\_upload/mobashar-jawed-akbar-vs-priya-ramani-389297.pdf](https://www.livelaw.in/pdf_upload/mobashar-jawed-akbar-vs-priya-ramani-389297.pdf)

*Anita Suresh vs Union of India & Others (2019)*<sup>102</sup>

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

*Samuel Tennyson vs The Principal and Secretary (2019)*<sup>103</sup>

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

*The Management of Christian vs Mr SG Damodharan (2018)*<sup>104</sup>

The case entailed an employee of a minority education institution being accused of sexual harassment and action being taken against him. He filed a writ of certiorari seeking access to the records of the case and to quash the order convicting him. It was also demanded that the victim testify again. The court ruled that the complainant could not be summoned by the Industrial Tribunal to give evidence against her perpetrator once again. The court ruled the approach of the Tribunal to be invalid.

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<sup>102</sup> Anita Suresh vs Union Of India & Ors. 2019. Accessed September 20, 2021 at <https://indiankanoon.org/doc/98792027/>

<sup>103</sup> Samuel Tennyson vs The Principal & Secretary. 2019. Accessed September 20, 2021 at <https://indiankanoon.org/doc/79788274/>

<sup>104</sup> The Management Of Christian vs Mr.S.G.Dhamodharan. 2018. Accessed September 20, 2021 at <https://indiankanoon.org/doc/39453860/?type=print>

*Ms Renuka Mukherjee v. Vodafone (2017)*<sup>105</sup>

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

*Shanta Kumar v. CSIR & Others (2017)*<sup>106</sup>

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

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<sup>105</sup> Renuka Mukherjee vs Vodafone Essar Ltd & Ors. 2017. Accessed September 20, 2021 at <https://indiankanoon.org/doc/161861542/>

<sup>106</sup> Shanta Kumar vs Council Of Scientific And .... 2017. Accessed September 20, 2021 at <https://indiankanoon.org/doc/161594683/>

## 6. CRIMES COMMITTED IN THE NAME OF HONOUR

“Honour killing” is the murder of a person accused of “bringing shame” upon their family. Human Rights Watch defines honour killings as ‘acts of violence, usually murder, committed by male family members against female family members who are perceived to have brought dishonour upon the family’. This form of violence may be motivated due to perceptions of violation of accepted social norms of sexuality, for example, romantic involvement with a partner from a different caste or religion, inter-caste marriages, etc. Violence in the name of honour can also mean ‘any kind of abusive behaviour, torture, mutilation, rape, and forced marriage, keeping confined within the house...with the intention to preserve and protect the family honour’.<sup>107</sup> Honour killing in India is largely a product of casteist patriarchy<sup>108</sup> and religious intolerance, with women constituting 97% of honour killing victims in India.<sup>109</sup>

In recent years, another form of honour-related crimes has been violence in response to claims of “love jihad”, a belief that Muslim men are targeting Hindu women through means of seduction in an effort to marry and convert them. In February 2020, in response to a question in the Lok Sabha on the existence of love jihad, the Union Minister of State for Home G. Kishan Reddy emphasised that Article 25 of the Constitution provides for the freedom to profess, practice and propagate religion subject to public order, morality and health. He also went on to say that the term ‘love jihad’ is not defined under the extant laws, and no case of ‘love jihad’ has been reported by any of the central agencies.<sup>110</sup>

The UN special Rapporteur on Violence against Women states that these kinds of violence, which constitute a form of domestic violence, have avoided national and international scrutiny because they are seen as ‘cultural practices that deserve tolerance’.<sup>111</sup> Feminists have framed ‘honour’ crimes as a form of custodial violence as well. Generally, perpetrators of honour crimes are seen to be male members of a family, such as brothers, fathers, uncles,

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<sup>107</sup> Stop Violence Against Women. 2008. Crimes Committed in the Name of “Honor”. Accessed September 25, 2021 at [http://www.stopvaw.org/honor\\_killings](http://www.stopvaw.org/honor_killings)

<sup>108</sup> Gupte, Manisha. 2013. “The Concept of Honour: Caste Ideology and Patriarchy in Rural Maharashtra”. *Economic and Political Weekly* 48 (18): 72-81. Accessed September 25, 2021 at <https://www.jstor.org/stable/23527311>

<sup>109</sup> Sundaravelu, Anugraha. 2020, April 21. “Why India Needs a Separate Law for Honor Killings”. *The Swaddle*. Accessed September 25, 2021 at <https://theswaddle.com/honor-killings-india-law/>

<sup>110</sup> Government of India, Ministry of Home Affairs, Lok Sabha starred question no. 23. Answered on 04.02.2020. Accessed September 26, 2021 at <http://164.100.47.194/Loksabha/Questions/QResult15.aspx?qref=11406&lsno=17>

<sup>111</sup> OHCHR. 15 Years of the United Nations Special Rapporteur on Violence Against Women, Its Causes and Consequences. Accessed September 25, 2021 at <https://www.ohchr.org/Documents/Issues/Women/15yearreviewofVAWMandate.pdf>

nephews and/or husbands. It may also include lovers or ex-lovers.

### Data on Honour Crime

The NCRB data includes different heads for ‘motives of murder and culpable homicide’ that may include crimes in the name of honour. It specifically includes honour killings as well.

Type of Motive →	Honour Killing	Illicit Relationship	Casteism	Love Affair	Class Conflict
<b>2019</b>	24	1602	60	1570	44
<b>2020</b>	25	1588	27	1443	20

Source: National Crime Records Bureau, Crime in India, 2019 and 2020 reports. Accessed September 21, 2021 at <https://ncrb.gov.in/en/crime-india>

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

### Road to Legal Protection

In 2010, the legal cell of the All-India Democratic Women’s Alliance (AIDWA) prepared *The Prevention of Crimes in the Name of Honour and Tradition Bill* which received the support of the National Commission of Women, which prepared a similar bill. The 2010 bill foregrounded the offence in the following words:

*“All persons including young persons and women have the right to control their own lives, a right to liberty and freedom of expression, and a right of association, movement and bodily integrity. Every man and woman has a right to choose her/his own partner in marriage or otherwise and any action listed below to prevent the exercise of this right shall amount to an offence under the provisions of this Bill.”<sup>112</sup>*

In 2012, the Law Commission in their 242<sup>nd</sup> Report put forward a bill titled *Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliances) Bill, 2011*. The Bill dealt primarily with the “unlawful assemblies” called by caste panchayats to prevent a ‘self-choice marriage.’<sup>113</sup>

In May 2018, the Ministry of Home Affairs issued an advisory to all States about preventive, remedial and punitive measures to address honour crimes. Under this, states are required to create Special Cells in every District comprising of the Superintendent of Police, the District Social Welfare Officer and the District Adi-Dravidar Welfare Officer to receive petitions and complaints of harassment and threat to couples of inter-caste marriage. These Special Cells

<sup>112</sup> Karat, Brinda. 2016, March 22. “Honour killings are a separate horror”. *The Hindu*. Accessed September 25, 2021 at <https://www.thehindu.com/opinion/lead/Honour-killings-are-a-separate-horror/article14168010.ece>

<sup>113</sup> Law Commission of India. 2012, August. Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition): A Suggested Legal Framework. *Report No.242*. Accessed September 25, 2021 at <http://lawcommissionofindia.nic.in/reports/report242.pdf>

are to house a 24-hour helpline for such complaints.<sup>114</sup>

In August 2019, the Rajasthan government passed a bill to address honour killings and make it a non-bailable offence. In the case of honour killings, the bill proposes a jail term of not less than three years and liability to a fine of rupees two lakh for criminal intimidation of a couple. In the case of death of a couple or of one of them, the sentence proposed is either death or imprisonment for the rest of one's natural life and liability to a fine of up to five lakh rupees.<sup>115</sup>

### Relevant Laws addressing Honour Killing

#### *Indian Penal Code, 1860*

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

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

### In Recent News

Several instances of honour killings have made headlines over the last year, including during the lockdown. Most of them were caste- and religion- motivated crimes.

### How to Access Justice

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

Despite the preventive measures taken by the State Police, if it comes to the notice of the local police that the Khap Panchayat has taken place and it has passed any diktat to take

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<sup>114</sup> Ministry of Home Affairs. 2018, July 31. Honour Killings. *Press Information Bureau*. Accessed September 25, 2021 at <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1540824>

<sup>115</sup> Sundaravelu, Anugraha. 2020, April 21. "Why India Needs a Separate Law for Honor Killings". *The Swaddle*. Accessed September 25, 2021 at <https://theswaddle.com/honor-killings-india-law/>

action against a couple/family of an inter-caste or inter-religious marriage (or any other marriage which does not meet their acceptance), the jurisdictional police official shall cause to immediately lodge an F.I.R. under the appropriate provisions of the Indian Penal Code including Sections 141, 143, 503 read with 506 of IPC.

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

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

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

### Recent Case Law

#### *Judgement in the Cuddalore Honor Killing Case of 2003 (2021)*<sup>116</sup>

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

#### *Judgement in the Udumalpet Murder Case of 2016 (2020)*<sup>117</sup>

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

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<sup>116</sup> Perier B, Bagalavan. 2021, September 24. "18 years after couple's honour killing, TN court hands death penalty to one, life terms to 12". *The New Indian Express*. Accessed September 25, 2021 at <http://cms.newindianexpress.com/states/tamil-nadu/2021/sep/24/18-years-after-couples-honour-killing-tn-court-hands-death-penalty-to-one-life-terms-to-12-2363205.html>

<sup>117</sup> Imranullah S, Mohamed. 2020, June 22. "Madras High Court sets aside death sentence awarded to prime accused in 2016 Udumalpet Shankar murder case". *The Hindu*. Accessed September 25, 2021 at <https://www.thehindu.com/news/national/tamil-nadu/madras-high-court-sets-aside-death-awarded-to-prime-accused-in-2016-udumalpet-shankar-murder-case/article31887684.ece>

*T. Padmaja vs The State of Telangana (2019)*<sup>118</sup>

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

*Shakti Vahini v. UOI (2018)*<sup>119</sup>

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

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

*B. Dilipkumar v. The Secretary to Government and Others (2016)*<sup>120</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 & Another v. Circle Inspector of Police (2016)*<sup>121</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.

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<sup>118</sup> T. Padmaja vs The State Of Telangana. 2019. Accessed September 25, 2021 at <https://indiankanoon.org/doc/95632531/>

<sup>119</sup> Shakti Vahini vs Union Of India. 2018. Accessed September 25, 2021 at <https://indiankanoon.org/doc/92846055/>

<sup>120</sup> B.Dilipkumar vs The Secretary To Government. 2016. Accessed September 25, 2021 at <https://indiankanoon.org/doc/171256546/>

<sup>121</sup> Baby @ Sebastian & Anr vs Circle Inspector Of Police ... . 2016. Accessed September 25, 2021 at <https://indiankanoon.org/doc/16985200/>

## 7. ACID ATTACKS

An acid attack is a form of gendered violence that involves the voluntary and premeditated throwing of acid on a person, usually female, and usually on her face. The aim of such an attack is to disfigure, torture, maim, or even kill. In addition to causing long-term psychological trauma, acid attacks result in severe pain, permanent disfigurement, subsequent infections, and often blindness in one or both eyes. According to UN Women, acid attacks are committed for a number of reasons, including revenge for refusal of a marriage proposal or other romantic or sexual advances; land disputes; perceived dishonor; and jealousy.<sup>122</sup>

### Available Data on Acid Attacks

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

	2019	2020
<i>Acid Attacks</i>	150	105
<i>Attempted Acid Attacks</i>	42	33

Source: National Crime Records Bureau, Crime in India 2019 and 2020 reports, accessed October 4, 2021 at <https://ncrb.gov.in/en/crime-india>

### Laws Relevant to Acid Attacks

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

In India, prior to the Criminal Law Amendment Act of 2013, there was no specific legal provision that punished acid attacks. The Justice J.S. Verma Committee and 226th Report of Law Commission of India (2009) specifically dealt with acid attacks and recommended

<sup>122</sup> UN Women. (2011). Acid Attacks. Accessed October 1, 2021 at <https://www.endvawnow.org/en/articles/607-acid-attacks.html>

a separate law defining the offence as well as a liberal compensation scheme for survivors.

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

According to research by the Acid Survivors Trust International (ASTI), the total time taken for litigation in a case of acid attack in India averages between 5-10 years, and in 76% of cases, the perpetrator is someone who is known to the victim. ASTI data further states that key aspects of the law against acid attacks remain to be effectively enforced; for instance, acid continues to be easily obtainable, and survivors often have trouble accessing compensation, medical care, and justice.<sup>123</sup>

### How to Access Justice

- The financial relief granted under NALSA's *Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes* is not linked with the trial in such cases, and the victim can approach the state legal services authority for compensation immediately after the incident. The scheme also empowers the legal services authority to take *suo moto* cognizance of cases of acid attack to grant interim relief to victims.<sup>124</sup>
- Please see the Prajnya FIR Ready Reckoner (Appendix).

### Recent Case Law

*Mahesha v. State by Malebennur Police (2021)*<sup>125</sup>

In July 2021, the Karnataka High Court confirmed the life sentence awarded to an acid attack accused, under IPC section 326A, a provision that came into effect from February 2013 to provide stringent punishment in crimes against women by acid attacks. The court also stated, "acid attack is a crime against basic human rights and also violates the most

<sup>123</sup> Acid Survivors Trust International. Country Files. Accessed October 4, 2021 at <https://www.asti.org.uk/a-worldwide-problem.html>

<sup>124</sup> For procedure for compensation, see: [http://wcd.nic.in/sites/default/files/Final%20VC%20Scheme\\_0.pdf](http://wcd.nic.in/sites/default/files/Final%20VC%20Scheme_0.pdf)

<sup>125</sup> Mahesha vs State by Malebennur Police. 2021. Accessed October 1, 2021 at <https://indiankanoon.org/doc/26956323/>

cherished fundamental rights guaranteed under Article-21 of the Constitution of India."

*Sonali Mukherjee v. Union of India and Others (2019)*<sup>126</sup>

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

*Raja v. State of Haryana (2019)*<sup>127</sup>

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

*Piyali Dutta v. State of West Bengal (2017)*<sup>128</sup>

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

*Renu Sharma v. Govt of NCT of Delhi and Others (2016)*<sup>129</sup>

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

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<sup>126</sup> Sonali Mukherjee @ Sonali vs The Union Of India & Ors. 2019. Accessed October 4, 2021 at <https://indiankanoon.org/doc/173011481/>

<sup>127</sup> Raja vs State of Haryana. 2019. Accessed October 4, 2021 at <https://indiankanoon.org/doc/86904145/>

<sup>128</sup> Piyali Dutta vs State of West Bengal. 2017. Accessed October 4, 2021 at <https://indiankanoon.org/doc/21784779/>

<sup>129</sup> Renu Sharma vs Gncr Of Delhi And Ors. 2016. Accessed October 4, 2021 at <https://indiankanoon.org/doc/149678491/>

*Parivartan Kendra v. Union of India and Others (2015)*<sup>130</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.

*Laxmi v. Union of India and Others (2015)*<sup>131</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.

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<sup>130</sup> Parivartan Kendra & Anr vs U.O.I & Ors. 2015. Accessed October 4, 2021 at <https://indiankanoon.org/doc/16029001/>

<sup>131</sup> Laxmi vs Union Of India & Ors. 2015. Accessed October 4, 2021 at <https://indiankanoon.org/doc/90443079/>

## 8. FEMALE GENITAL MUTILATION

Female genital mutilation (FGM), also known as female genital cutting and female circumcision, is the ritual cutting or removal of some or all of external female genitalia. In December 2012, the UN General Assembly adopted a unanimous resolution on the elimination of FGM. The World Health Organisation (WHO)<sup>132</sup> classifies FGM as a violation of the human rights of girls and women. According to WHO, FGM reflects deep-rooted inequality between the sexes, and constitutes an extreme form of discrimination against women. It is nearly always carried out on minors and is a violation of the rights of children.

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

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

Feminist scholars describe the practice of female genital mutilation as an attempt to control women's sexuality and their experience of sexual pleasure, and is rooted in patriarchal ideas about the purity and modesty of women.<sup>133</sup> It perpetuates harmful gender norms; some communities believe it is required for a girl's 'proper' upbringing, marriage or to maintain the family's honour. Moreover, due to the controversial nature of the practice, it is shrouded in secrecy and often done by traditional circumcisers, in unhygienic conditions using unsafe instruments.

FGM has no known health benefits for girls and women; in fact, it can cause immediate complications like severe pain, excessive bleeding and urinating problems. It can also have long-term effects, including leading to cysts and infections, as well as complications in childbirth. The event itself can be traumatic for survivors and can cause lasting psychological consequences.<sup>134</sup>

In India, FGM is known as *Khatna* or *Khafz*, which involves a procedure of partially removing the clitoral hood. Young girls at the age of six or seven, primarily from the Dawoodi Bohra

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<sup>132</sup> WHO. Eliminating Female Genital Mutilation. Accessed October 5, 2021 at <https://www.who.int/reproductivehealth/topics/fgm/about/en/>

<sup>133</sup> Amnesty International. Female Genital Mutilation in India. Accessed October 5, 2021 at <https://amnesty.org.in/female-genital-mutilation-in-india/>

<sup>134</sup> Ibid.

community, undergo these procedures conducted by doctors and midwives.<sup>135</sup>

### Data on Female Genital Mutilation

- According to the submission by the Indian Ministry for Women and Child Development, there is no data on FGM in India as it is not seen as a specific offence or covered under any 'crime-head'. According to estimates by the UN, as of February 2020, approximately 200 million girls across 30 countries are affected by this practice.<sup>136</sup>
- An independent study titled *The Clitoral Hood: A Contested Site* shows that 75% of girls interviewed above the age of 7, from the Bohra community, had been subjected to FGM.<sup>137</sup>
- According to UNFPA, 4.1 million girls around the world are at risk of being subjected to FGM in 2020<sup>138</sup>.

### Relevant Indian laws addressing FGM

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

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

### How to Access Justice

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

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<sup>135</sup> Baweja, Harinder. "India's Dark Secret". *Hindustan Times*. Accessed October 5, 2021 at <https://www.hindustantimes.com/static/fgm-indias-dark-secret/>

<sup>136</sup> UN News. 2020, February 06. "Female Genital Mutilation costs \$1.4 billion annually: UN health agency". Accessed October 5, 2021 at <https://news.un.org/en/story/2020/02/1056802>

<sup>137</sup> Anantnarayan, Lakshmi, Diler, Shabana, Menon, Natasha. 2018. "The Clitoral Hood: A Contested Site". *WeSpeakOut and Nari Samta Manch*. Accessed October 5, 2021 at [https://www.wespeakout.org/site/assets/files/1439/fgmc\\_study\\_results\\_jan\\_2018.pdf](https://www.wespeakout.org/site/assets/files/1439/fgmc_study_results_jan_2018.pdf)

<sup>138</sup> UNFPA. 2020, February 06. UNFPA exhibition: A Piece of Me stresses that globally 4.1 million girls are at risk of FGM in 2020. Accessed October 5, 2021 at <https://www.unfpa.org/press/unfpa-exhibition-piece-me-stresses-globally-41-million-girls-are-risk-fgm-2020>

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

### **Recent Case Law**

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

The Supreme Court referred the plea seeking complete ban on FGM to a constitutional bench.<sup>139</sup> Several Dawoodi Bohra women have filed interventions in the ongoing case.<sup>140</sup>

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<sup>139</sup> Rajagopal, Krishnadas. 2018, September 24. "SC refers plea against female genital mutilation to Constitution Bench". *The Hindu*. Accessed October 5, 2021 at <https://www.thehindu.com/news/national/sc-refers-pil-against-female-genital-mutilation-to-constitution-bench/article25026340.ece>

<sup>140</sup> Shelar, Jyoti. 2018, July 18. "FGM case: more women file interventions". *The Hindu*. Accessed October 5, 2021 at <https://www.thehindu.com/news/cities/mumbai/fgm-case-more-women-file-interventions/article24446383.ece>

## 9. RAPE

Rape is defined in most jurisdictions as sexual intercourse, or other forms of sexual penetration, committed by a perpetrator against a victim without their consent. Incidents of rape are classified into a number of categories, and they may describe the relationship of the perpetrator to the victim and the context of the sexual assault. These include date rape, gang rape, marital rape, incestuous rape, child sexual abuse, prison rape, acquaintance rape, war rape and statutory rape. The International Criminal Tribunal for Rwanda defined rape as “a physical invasion of a sexual nature committed on a person under circumstances that are coercive.”<sup>141</sup>

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

In 2018, the criminal law relating to child rape was further amended after the brutal Kathua gang rape case to prescribe harsher punishment, including death penalty.<sup>142</sup>

### *Date Rape and Acquaintance Rape*

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

### *Marital Rape*

Marital rape or spousal rape is the act of sexual intercourse with one's spouse without the spouse's consent. The lack of consent is the essential element and need not involve violence. Marital rape is considered a form of domestic violence and sexual abuse. It is

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<sup>141</sup> International Criminal Tribunal for Rwanda, Prosecutor vs. Akaseyu, Case No. ICTR-96-4-T, September 1998.

<sup>142</sup> The Criminal Law (Amendment) Bill, 2019. Accessed November 1, 2021 at <http://164.100.47.4/BillsTexts/RSBillTexts/asintroduced/crimnal-E-12719.pdf>

recognized as rape by many societies around the world, repudiated by international conventions, and increasingly criminalized. Indian law protects marital rape from being criminalized.

### Data on Rape in India

According to data by the NCRB, an average of 77 rapes were reported every day in India in 2020. The data also reveals that the conviction rate of rape cases in India is only about 39%. As per data from the National Family Health Survey 2015-16, around 99.1% of sexual violence cases against females aged 15-49 are unreported in the country. Institutional help, in general, was sought by just over 5% of those surveyed, with the vast majority turning to relatives and friends for support.<sup>143</sup>

The *Crime In India* 2019 and 2020 reports have published the following data for rapes in India over the last two years.

	2019	2020
<i>Rape</i>	32033	28046
<i>Incest Rape</i>	2916	2502
<i>Rape by Family Friends/Neighbours/Employer or Other Known Persons</i>	10938	13555
<i>Custodial Rape</i>	47	29
<i>Rape by Relative/Teacher/Guardian/Person in position of Trust [Sec. 376(2)(f)]</i>	1999	1410
<i>Rape on Pregnant Women [Sec. 376(2)(h)]</i>	35	39
<i>Rape on Women below 16 years of Age [Sec. 376(2)(i)]</i>	790	244
<i>Rape on Women incapable of giving Consent [Sec. 376(2)(j)]</i>	393	244
<i>Rape by Persons in Control or Dominance over Women [Sec. 376(2)(k)]</i>	182	119
<i>Rape on Women with Mental or Physical Disability [Sec. 376(2)(l)]</i>	116	94
<i>Endanger Life of Women after Rape [Sec. 376(2)(m)]</i>	34	24
<i>Repeated Rape on Same Women [Sec. 376(2)(n)]</i>	2373	2879
<i>Other Custodial Rapes</i>	772	875
<i>Attempt to Commit Rape</i>	3944	3741
<i>Murder with rape/Gang-Rape</i>	283	219

Source: National Crime Records Bureau, Crime in India 2019 and 2020 reports, accessed November 1, 2021 at <https://ncrb.gov.in/en/crime-india>

<sup>143</sup> Bhattacharya, Prमित, Kundu, Tadit. 2018, April 24. 99% cases of sexual assaults go unreported, govt data shows. *LiveMint*. Accessed November 1, 2021 at <https://www.livemint.com/Politics/AV3siKoEBAGZozALMX8THK/99-cases-of-sexual-assaults-go-unreported-govt-data-shows.html>

## Relevant Laws Addressing Rape

- *Indian Penal Code, 1860*
  - a. *Section 228 A*: Not disclosing the name of a victim of rape
  - b. *Section 375 & 376*: Definition of rape and punishment for rape
  - c. *Section 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 376E*: A repeat rape offender should be jailed for life or sentenced to death
  - g. *Section 511 and Section 354 read with Section 376*: Attempt to commit rape
- *Criminal Procedure Code, 1973*
  - a. *Section 53*: Collection of evidence by examination of accused by medical practitioner at the request of police officer
  - b. *Section 164 A*: Medical examination of victim of rape
  - c. *Section 327*: Trial to be conducted in-camera
- *Indian Evidence Act, 1872*
  - a. *Section 114 A*: Presumption as to absence of consent in certain prosecutions for rape

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

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

## How to Access justice

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

## In Recent News

The Maharashtra government in December 2020 tabled what is being called the ‘Shakti Bill’ or ‘Shakti Law’ – this involves two bills, the Maharashtra Shakti Criminal Law (Maharashtra Amendment) Act, 2020, and the Special Court and Machinery for Implementation of Maharashtra Shakti Criminal Law, 2020. The draft legislation seeks amendments to the Indian Penal Code (IPC), Code of Criminal Procedure (CrPC) and the Protection of Children from Sexual Offences (POCSO) Act to include new offences, increase punishments and speedier investigations and trials.<sup>144</sup> The Bill strives to introduce the death penalty for

<sup>144</sup> Phadke, Mansi. 2020, December 17. “The Maharashtra Shakti bill on crimes against women, children & why it’s called ‘draconian’”. *The Print*. Accessed November 1, 2021 at

offences against women such as causing grievous hurt by use of acid, rape, and gang rape. Under IPC, the maximum punishment for these offences is life imprisonment, along with a fine. The Bill seeks to amend the IPC to provide for death penalty for these offences, where the offence is heinous, there is conclusive evidence, and the circumstances warrant exemplary punishment. The Bill also suggests increasing the term of imprisonment and fine for certain offences under the IPC and the POCSO Act.<sup>145</sup> The Bill has been widely criticised by feminists, lawyers, and academicians, who called it “draconian” and pointed out its patriarchal nature. The Bill’s mandate towards the death penalty also met with critique because data suggests that capital punishment for a crime has historically led to reduced reporting and conviction rates.<sup>146</sup> It is worth noting that the Indian constitution already allows for the death penalty under IPC Sections 302, 376, 364A, and the POCSO Act, among others.

In March 2021, a student of the Indian Institute of Technology, Guwahati was accused of rape by a fellow student. The accused was arrested in April, and in August the High Court granted him bail, noting that he is a “future asset” of the country.<sup>147</sup> Furthermore, the court also overturned the rustication notice sent by IIT to the accused.<sup>148</sup> In another case in September, a 32-year-old woman was raped and brutalised with an iron rod in a stationary tempo at Sakinaka, Mumbai. The victim succumbed to her injuries on the next day. The accused was traced by the police with the help of CCTV cameras in the area and was found to be a pavement dweller who worked as a driver.<sup>149</sup> The case was widely publicised due to its similarity of with the infamous 2012 Delhi gangrape case.

Many states reported an upsurge of rape cases during the second wave of the COVID pandemic. For instance, data from the Delhi Police shows that the city reported 1.5 times more rape cases in the first half of 2021, compared to the same period last year.<sup>150</sup>

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<https://theprint.in/theprint-essential/the-maharashtra-shakti-bill-on-crimes-against-women-children-why-its-called-draconian/567660/>

<sup>145</sup> PRS India. 2020. The Shakti Criminal Laws (Maharashtra Amendment) Bill, 2020. Accessed November 3, 2021 at <https://prsindia.org/bills/states/the-shakti-criminal-laws-maharashtra-amendment-bill-2020>

<sup>146</sup> Phadke, Manasi. 2020, December 17. “The Maharashtra Shakti bill on crimes against women, children & why it’s called ‘draconian’”. *The Print*. Accessed November 1, 2021 at <https://theprint.in/theprint-essential/the-maharashtra-shakti-bill-on-crimes-against-women-children-why-its-called-draconian/567660/>

<sup>147</sup> Choudhuri, Ratnadeep. 2021, August 23. “‘State’s Future Assets’: IIT-Guwahati Student, Accused Of Rape, Gets Bail”. *NDTV*. Accessed November 1, 2021 at <https://www.ndtv.com/india-news/states-future-assets-iit-guwahati-student-accused-of-rape-gets-bail-2516602>

<sup>148</sup> Thakuria, Megha. 2021, October 9. “Guwahati: Court stops rustication order of IIT rape accused Utsav Kadam”. *East Mojo*. Accessed November 1, 2021 at <https://www.eastmojo.com/news/2021/10/09/guwahati-court-stops-rustication-order-of-iit-rape-accused-utsav-kadam/>

<sup>149</sup> Singh, Divyesh. September 28. “Sakinaka rape and murder case: Mumbai Police files chargesheet in 18 days”. *India Today*. Accessed November 1, 2021 at <https://www.indiatoday.in/india/story/sakinaka-rape-mumbai-police-chargesheet-1858382-2021-09-28>

<sup>150</sup> Singh, Nivedita. 2021, July 6. “Rape Outbreak in Delhi amid Covid: 1.5 Times More Cases till June 15 than in First Half of 2020”. *News 18*. Accessed November 1, 2021 at <https://www.news18.com/news/india/rape->

## Recent Case Law

### *Irappa Siddappa Murgannavar v. State of Karnataka (2021)*<sup>151</sup>

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

### *Santhosh v. State of Kerala (2021)*<sup>152</sup>

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

### *Utsav Kadam v. The State of Assam (2021)*<sup>153</sup>

In this case of rape by a student of IIT Guwahati against a fellow student, the HC decided to grant bail to the prime accused, on the pretext that both victim and accused are "the state's future assets", and "talented" students of technical courses at IIT Guwahati. The order was met with protest by several individuals and organisations, stating that belonging to a prestigious institution should not be a reason to receive preferential treatment. Furthermore, the All-India Democratic Women's Alliance (AIDWA) stated that the order failed to take into consideration "the emotional and physical impact on the victim of the continuous presence of the accused on campus and the fact that the accused could pressurise the victim."<sup>154</sup>

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[outbreak-in-delhi-amid-covid-1-5-times-more-cases-till-june-15-than-in-first-half-of-2020-3932771.html](https://www.livemint.com/News-Analysis/Outbreak-in-Delhi-amid-COVID-19-5-times-more-cases-till-June-15-than-in-first-half-of-2020-3932771.html)

<sup>151</sup> Irappa Siddappa Murgannavar v. State of Karnataka. Accessed November 9, 2021 at [https://www.livewlaw.in/pdf\\_upload/irappa-siddappa-murgannavar-vs-state-of-karnataka-ll-2021-sc-632-1-403664.pdf](https://www.livewlaw.in/pdf_upload/irappa-siddappa-murgannavar-vs-state-of-karnataka-ll-2021-sc-632-1-403664.pdf)

<sup>152</sup> Santhosh v. State of Kerala. 2021. Accessed November 1, 2021 at [https://www.livewlaw.in/pdf\\_upload/santhosh-v-state-of-kerala-397813.pdf](https://www.livewlaw.in/pdf_upload/santhosh-v-state-of-kerala-397813.pdf)

<sup>153</sup> Utsav Kadam versus the state of Assam. 2021. Accessed November 1, 2021 at [https://www.livewlaw.in/pdf\\_upload/iit-guwahati-gauhati-hc-rape-case-399073.pdf](https://www.livewlaw.in/pdf_upload/iit-guwahati-gauhati-hc-rape-case-399073.pdf)

<sup>154</sup> 2021, August 26. "AIDWA Condemns Gauhati HC's Decision to Grant Bail to IIT-Guwahati Rape Accused". *Newslick*. Accessed November 1, 2021 at <https://www.newslick.in/AIDWA-Condemns-Gauhati-HC-Decision-Grant-Bail-IIT-Guwahati-Rape-Accused>

*Conviction in the Unnao Rape Case (2019)*<sup>155</sup>

In the well-known Unnao rape case and related murders<sup>156</sup>, ex-BJP MLA Kuldeep Singh Sengar was convicted of both the rape of the 17-year-old girl and culpable homicide and criminal conspiracy in her father's murder. He was convicted under Section 376 IPC and Sections 5(c) and 6 of POCSO, and later in March under Sections 299 and 120A. In the former conviction, the judge stated, "In my considered opinion, the investigation has suffered from a patriarchal approach or an inherent outlook to brush the issues of sexual violence against children under the carpet apart from exhibiting lack of sensitivity and humane approach. It appears that somewhere investigation in the instant case has not been fair qua victim of crime and her family members". He received life imprisonment as well as a fine.

*Criminal Justice Society v. Union of India (2018)*<sup>157</sup>

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

*Sandeep and Others v. Neelam and Another (2018)*<sup>158</sup>

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

*Hemudan Nanbha Gadhvi v. State of Gujarat (2018)*<sup>159</sup>

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

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<sup>155</sup> Chaudhuri, Nilashish. 2019, December 20. "Unnao Case: Court Sentences Former BJP Member Kuldeep Singh Sengar To Life Term Till End Of Life For Rape Of Minor". *LiveLaw.in*. Accessed November 1, 2021 at <https://www.livelaw.in/top-stories/unnao-case-court-sentences-former-bjp-member-kuldeep-singh-sengar-to-life-sentence-till-end-of-life-for-rape-of-minor-150980>

<sup>156</sup> 2019, December 19. "Chronology of events in Unnao rape case". *The Tribune*. Accessed November 1, 2021 at <https://www.tribuneindia.com/news/nation/chronology-of-events-in-unnao-rape-case-14641>

<sup>157</sup> Criminal Justice Society Of India vs Union Of India. 2018. Accessed November 1, 2021 at <https://indiankanoon.org/doc/164599854/>

<sup>158</sup> Sandeep vs Neelam. 2018. Accessed November 1, 2021 at <https://indiankanoon.org/doc/58555996/>

<sup>159</sup> Hemudan Nanbha Gadhvi vs The State Of Gujarat. 2018. Accessed November 1, 2021 at <https://indiankanoon.org/doc/171003922/>

*Yogesh v. State of Maharashtra (2018)*<sup>160</sup>

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

*State of Uttarakhand v. Karandeep Sharma (2018)*<sup>161</sup>

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

*State of Maharashtra v. Bandu (2017)*<sup>162</sup>

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

*Akshay Manoj Jaisinghani v. State of Maharashtra (2017)*<sup>163</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 that qualify for rape; for example, consent for sexual activity obtained from an illiterate woman under the promise to marry.

*Mahmood Farooqui v. State (Govt of NCT of Delhi) (2017)*<sup>164</sup>

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

<sup>160</sup> Yogesh S/O. Gajanan Sayankar And ... vs The State Of Maharashtra. 2018. Accessed November 1, 2021 at <https://indiankanoon.org/doc/45242209/>

<sup>161</sup> Karandeep Sharma Alias Razia ... vs State Of Uttarakhand. 2018. Accessed November 1, 2021 at <https://indiankanoon.org/doc/148366568/>

<sup>162</sup> The State Of Maharashtra vs Bandu @ Daulat. 2017. Accessed November 1, 2021 at <https://indiankanoon.org/doc/96251512/>

<sup>163</sup> Akshay Manoj Jaisinghani vs The State Of Maharashtra. 2017. Accessed November 1, 2021 at <https://indiankanoon.org/doc/173973806/>

<sup>164</sup> Mahmood Farooqui vs State (Govt Of Nct Of Delhi). 2017. Accessed November 1, 2021 at [https://indiankanoon.org/doc/160377045/#:~:text=Mahmood%20Farooqui%20vs%20State%20\(Govt,Delhi\)%20on%2025%20September%2C%202017&text=1.,Delhi%20in%20Sessions%20Case%20No.](https://indiankanoon.org/doc/160377045/#:~:text=Mahmood%20Farooqui%20vs%20State%20(Govt,Delhi)%20on%2025%20September%2C%202017&text=1.,Delhi%20in%20Sessions%20Case%20No.)

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

*State of Madhya Pradesh v. Madanlal (2015)*<sup>165</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'.

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<sup>165</sup> State Of M.P vs Madanlal . 2015. Accessed November 1, 2021 at <https://indiankanoon.org/doc/84388891/>

## 10. DOWRY-RELATED VIOLENCE

The United Nations Division for the Advancement of Women defines dowry-related violence or harassment as “any act of violence or harassment associated with the giving or receiving of dowry at any time before, during or after the marriage.”<sup>166</sup>

Dowry includes gifts, money, goods or property given from the bride’s family to the groom or in-laws before, during or any time after the marriage. Dowry is a response to explicit or implicit demands or expectations of the groom or his family. One of the consequences of the dowry system has often been the murder or suicide of young wives, either because more dowry goods were not provided to her husband or his family, or to secure the goods after marriage.<sup>167</sup> The violence and deaths associated with dowry demands constitute a form of domestic violence. Similar to acts of domestic violence, the acts used in dowry-related offenses include physical, emotional, and economic violence, as well as harassment and stalking as a means to exact compliance or to punish the victim.<sup>168</sup>

In Indian law, dowry is defined as –

*“any property or valuable security given or agreed to be given either directly or indirectly, (a) by one party to a marriage to the other party to the marriage; or (b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person; at or before [or any time after the marriage] [in connection with the marriage of the said parties, but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.”<sup>169</sup>*

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

### *Dowry Death*

Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any

<sup>166</sup> United Nations. 2009. Good Practices in Legislation on “Harmful Practices” against Women. Accessed October 10, 2021 at [https://www.un.org/womenwatch/daw/egm/vaw\\_legislation\\_2009/Report%20EGM%20harmful%20practices.pdf](https://www.un.org/womenwatch/daw/egm/vaw_legislation_2009/Report%20EGM%20harmful%20practices.pdf)

<sup>167</sup> Kaur, Nvpreet, Byard, Roger, W. 2020. Bride burning: A unique and ongoing form of gender-based violence. Journal of Forensic and Legal Medicine. 75. Accessed October 10, 2021 at <https://www.sciencedirect.com/science/article/pii/S1752928X20301426#bib19>

<sup>168</sup> Stop Violence against Women. Dowry Related Violence. Accessed October 10, 2021 at [https://www.stopvaw.org/dowry-related\\_violence](https://www.stopvaw.org/dowry-related_violence)

<sup>169</sup> See Dowry Prohibition Act, India, 1961, Art. 2

relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death. Punishment is minimum 7 years in dowry death and can extend to life imprisonment [S. 304 B of the Indian Penal Code].

### *Cruelty*

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

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

- (a) *any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or*
- (b) *harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.* [S. 498A of the Indian Penal Code].

### **Data on Dowry-related Violence**

Dowry-related violence includes dowry death, cruelty under the Indian Penal Code and the giving and taking of dowry under the Dowry Prohibition Act.

	<i>Dowry death</i>	<i>Dowry Prohibition Act violations</i>	<i>Cruelty by husband or his relatives</i>
<b>2019</b>	7115	13297	125298
<b>2020</b>	6966	10366	111549

Source: National Crime Records Bureau, Crime in India 2019 and 2020 reports, accessed October 10, 2021 at <https://ncrb.gov.in/en/crime-india>

### **Indian Laws relevant to Dowry and Dowry Death**

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

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

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

### In Recent News

Dowry related violence, including murders continue to make headlines in different parts of the country. Earlier in 2021, the state of Kerala came under the radar when multiple cases of dowry-related deaths were registered in quick succession.<sup>170</sup>

### Recent Case Law

#### *Rupali Devi vs State of Uttar Pradesh (2019)*<sup>171</sup>

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

#### *Sri Sukha Ranjan Das vs The State Of Tripura (2019)*<sup>172</sup>

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

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<sup>170</sup> Sood, Amy. 2021, August 1. "Families are at war over a wedding tradition India banned decades ago". *CNN*. Accessed October 10, 2021 at <https://edition.cnn.com/2021/07/31/india/india-kerala-dowry-deaths-intl-hnk-dst/index.html>

<sup>171</sup> Rupali Devi vs. State of Uttar Pradesh. 2019. Accessed October 10, 2021 at <http://lawtimesjournal.in/ruptali-devi-vs-state-of-uttar-pradesh/>

<sup>172</sup> Sri Sukha Ranjan Das vs The State Of Tripura. 2019. Accessed October 10, 2021 at <https://indiankanoon.org/doc/137055360/>

*Aniket Subhash Tupe vs Piyusha Aniket Tupe and Anir (2018)*<sup>173</sup>

This case was an appeal against a conviction of dowry harassment on the grounds that the previous conviction was not the result of due procedure. The court ruled that it was possible for a court to deviate from sub section (1) of Section 28 r/w Rule 6(5) and devise its own procedure which would include permitting evidence by way of an affidavit. It is not required that a victim of dowry-related crime be present at the hearing.

*Social Action Forum for Manav Adhikar v. UOI (2018)*<sup>174</sup>

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

*Ashok v. State of Delhi (2017)*<sup>175</sup>

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

*Bajjnath & Others v. State of Madhya Pradesh (2016)*<sup>176</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.

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<sup>173</sup> Aniket Subhash Tupe vs Piyusha Aniket Tupe And Anr. 2018. Accessed October 10, 2021 at <https://indiankanoon.org/doc/26774800/>

<sup>174</sup> Social Action Forum vs Union Of India And Ors. Ministry Law ... 2018. Accessed October 10, 2021 at <https://indiankanoon.org/doc/81618143/>

<sup>175</sup> Ashok vs State (Gnct Of Delhi). 2017. Accessed October 10, 2021 at <https://indiankanoon.org/doc/109151123/>

<sup>176</sup> Bajjnath And Ors vs State Of M P. 2016. Accessed October 10, 2021 at <https://indiankanoon.org/doc/73277952/>

# 11. DOMESTIC VIOLENCE

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

*Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.*<sup>177</sup>

According to the National Family Health Survey 2015-16, around 32% of women have experienced spousal violence—physical, sexual or emotional—in their lifetimes. Only 14% of women who experienced domestic violence have sought help.<sup>178</sup>

In India, domestic violence was previously tackled by criminal law, i.e., dowry death (304B of IPC) and cruelty (498A of IPC), before a civil law, the *Protection of Women from Domestic Violence Act 2005* was passed. According to Section 3 of the Act:

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

- *harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or*
- *harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or*
- *has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or*
- *otherwise injures or causes harm, whether physical or mental, to the aggrieved person.*

## What is Intimate Partner Violence (IPV)?

Intimate Partner Violence is sometimes used interchangeably with domestic violence (DV). According to WHO, intimate partner violence is one of the most common forms of violence against women and includes physical, sexual, and emotional abuse and controlling behaviours by an intimate partner.<sup>179</sup> The most common form of intimate partner violence is

<sup>177</sup> OHCHR. 1993. Declaration on the Elimination of Violence against Women. Accessed November 1, 2021 at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ViolenceAgainstWomen.aspx>

<sup>178</sup> Ministry of Health and Family Welfare. National Family Health Survey 4. Accessed November 1, 2021 at [http://rchiips.org/nfhs/factsheet\\_nfhs-4.shtml](http://rchiips.org/nfhs/factsheet_nfhs-4.shtml)

<sup>179</sup> WHO. 2012. Intimate Partner Violence. Accessed November 1, 2021 at [https://apps.who.int/iris/bitstream/handle/10665/77432/WHO\\_RHR\\_12.36\\_eng.pdf;jsessionid=F1859C87849](https://apps.who.int/iris/bitstream/handle/10665/77432/WHO_RHR_12.36_eng.pdf;jsessionid=F1859C87849)

situational couple violence ('situational violence'), and is more likely to occur among younger couples, including adolescents (teen dating violence) and those of college-going age.

IPV refers to any behaviour within an intimate relationship that causes physical, psychological or sexual harm to those in the relationship. Examples of types of behaviour are described here.

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

### Data on Domestic Violence

	2019	2020
<i>Cases registered under PWDVA</i>	553	446

Source: National Crime Records Bureau, Crime in India, 2019 and 2020 reports, accessed November 1, 2021 at <https://ncrb.gov.in/en/crime-india>

### In Recent News

The COVID-19 pandemic and subsequent lockdowns have led to an alarming surge in cases of domestic violence and intimate partner violence, while at the same time making it difficult for victims to seek help. In 2020, during the first nationwide lockdown, the National Commission for Women (NCW) reportedly registered 587 domestic violence complaints between March 23 and April 16 and 396 complaints in the previous 25 days between February 27 and March 22.<sup>180</sup> The number of distress calls also doubled between March and April. In 2021, between January and May, over 2,300 domestic violence complaints were filed with the National Commission for Women the highest for any year since 2000.<sup>181</sup>

The increase in violence against women during the pandemic, in particular domestic violence, has often been referred to as a "shadow pandemic".<sup>182</sup>

[F0612045624695E0B22EB?sequence=1](https://www.aljazeera.com/news/2020/04/18/locked-down-with-abusers-india-sees-surge-in-domestic-violence/)

<sup>180</sup> S, Rukmini. 2020, April 18. "Locked down with abusers: India sees surge in domestic violence". *Al Jazeera*. Accessed November 1, 2021 at <https://www.aljazeera.com/news/2020/04/18/locked-down-with-abusers-india-sees-surge-in-domestic-violence/>

<sup>181</sup> Sen, Sumant and Jasmin Nihalani. 2021, June 21. "Domestic violence complaints received in past five months reach a 21-year high". *The Hindu*. Accessed November 1, 2021 at <https://www.thehindu.com/data/data-domestic-violence-complaints-received-in-past-five-months-reach-a-21-year-high/article34877182.ece>

<sup>182</sup> Gupta, Gayatri. 2020, September 24. "Domestic Violence During Lockdown: Dealing With The 'Shadow

Globally as well, domestic violence cases rose significantly in the months leading up to the pandemic. UN Women reported that between April 2019 and 2020, 243 million women and girls aged 15-49 were subjected to intimate partner violence. It also stated that cases are only likely to increase during the pandemic, as worries over security, health and money lead to heightened tensions and stress are accentuated by cramped and confined living conditions.<sup>183</sup> The numbers suggest that these claims were well-founded. According to economist Ashwini Deshpande, “The abuser feels frustrated and angry because of lack of control due to the constraints imposed by lockdown. This prompts him to exercise greater control by abusing his partner and/or children, often with violence.”<sup>184</sup>

According to the Domestic Violence Act, state governments are required to appoint protection officers in each district in the country. Protection officers, usually women, act as a liaison between the aggrieved women and the system. They are empowered to provide first-hand assistance to an aggrieved woman by informing her of her rights, making a domestic incident report or submitting an application, and ensuring that facilities such as legal aid, shelter homes and medical facilities are provided.<sup>185</sup> However, due to restrictions imposed by the lockdowns, it has become increasingly difficult for women to get help from protection officers. A number of social workers and lawyers have highlighted the restricted access to protection officers as a cause of concern, and have suggested that the work of protection officers, counselling and crisis centres should be declared as essential services.<sup>186</sup>

## Indian Laws Addressing Domestic Violence

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

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

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Pandemic’’. *The Logical Indian*. Accessed November 1, 2021 at <https://thelogicalindian.com/gender/domestic-violence-during-lockdown-23944>

<sup>183</sup> UN Women. 2020. COVID-19 and ending violence against women and girls. Accessed November 1, 2021 at <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/issue-brief-covid-19-and-ending-violence-against-women-and-girls-en.pdf?la=en&vs=5006>

<sup>184</sup> 2020, June 2. “What India’s lockdown did to domestic abuse victims”. *BBC*. Accessed November, 2, 2021 at <https://www.bbc.com/news/world-asia-india-52846304>

<sup>185</sup> Gupta, Gayatri. 2020, September 24. “Domestic Violence During Lockdown: Dealing With The ‘Shadow Pandemic’’. *The Logical Indian*. Accessed November 3, 2021 at <https://thelogicalindian.com/gender/domestic-violence-during-lockdown-23944>

<sup>186</sup> Gupta, Gayatri. 2020. *Ibid*.

- The definition of DV based on *UN Framework for Model Legislation on Domestic Violence & UN Declaration on Elimination of Violence Against Women* (GA Res. 48/104 of 1993) Unambiguous recognition of the woman’s right to live free from violence; provides immediate relief to victims in cases of emergency
- Recognition of inequality within the home—the right to reside in a shared household
- Effective access to justice—introduces new authorities & mechanisms (PO<sup>187</sup> as the interface b/w the woman and the court)
- Intended specifically to protect women (children, both male and female). Covers mothers, daughters, sisters, widows, relations through adoption etc
- Recognition of “relationships in the nature of marriage” —victims of bigamous/fraudulent marriages, cohabitation
- Mix of both civil and criminal laws through a two-stage process:
  1. Civil orders passed by a Magistrate on Application u/S. 12
  2. On breach of civil orders by the perpetrator, arrest (imprisonment &/or fine)

#### *Other relevant laws*

- a. *IPC Section 376 A*: Forcible sexual intercourse by a man with his wife when separated legally, by custom or by usage
- b. *IPC 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

#### **How to Access Justice**

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

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<sup>187</sup> The Protection Officer is the key authority appointed under PWDVA by the State governments and acts as the nodal agency between the various stakeholders. Their duties include receiving the complaint, informing the victim of her rights and facilitating her access to support services and the Court. The PO also enforces the orders of the Court.

## Recent Case Law

### *Satish Chander Ahuja v. Sneha Ahuja (2020)*<sup>188</sup>

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

### *Decision by Jammu and Kashmir High Court (2020)*<sup>189</sup>

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

### *All India Council of Human Rights, Liberties, and Social Justice v. Union of India and Others (2020)*<sup>190</sup>

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

### *Kasturi v. Subhash (2017)*<sup>191</sup>

The omission of the husband in neglecting to maintain the wife and living with another woman amounts to ‘economic’ and ‘emotional’ abuse and the wife is entitled to protection under the Domestic Violence Act, the Karnataka High Court held while upholding

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<sup>188</sup> Satish Chander Ahuja versus Sneha Ahuja. 2020. Accessed November 2, 2021 at [https://main.sci.gov.in/supremecourt/2020/689/689\\_2020\\_37\\_1501\\_24378\\_Judgement\\_15-Oct-2020.pdf](https://main.sci.gov.in/supremecourt/2020/689/689_2020_37_1501_24378_Judgement_15-Oct-2020.pdf)

<sup>189</sup> Court on Its Own Motion v/s Union Territories of Jammu & Kashmir and Ladakh through Secretaries, Social Welfare Department. 2020. Accessed November 2, 2021 at [https://www.livelaw.in/pdf\\_upload/pdf\\_upload-373329.pdf](https://www.livelaw.in/pdf_upload/pdf_upload-373329.pdf)

<sup>190</sup> All India Council Of Human Rights, Liberties And Social Justice versus Union Of India & Ors. 2020. Accessed November 2, 2021 at [https://www.livelaw.in/pdf\\_upload/pdf\\_upload-373793.pdf](https://www.livelaw.in/pdf_upload/pdf_upload-373793.pdf)

<sup>191</sup> Kasturi vs Subhas. 2017. Accessed November 2, 2021 at <https://indiankanoon.org/doc/195470812/>

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

*Vinay Gupta v. Saveri Nayak (2017)*<sup>192</sup>

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

*Bipin v. Meera (2016)*<sup>193</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>194</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>192</sup> Vinay Gupta vs Saveri Nayak. 2017. Accessed November 2, 2021 at <https://indiankanoon.org/doc/131522846/>

<sup>193</sup> Bioin v. Meera D.S. 2016. Accessed November 2, 2021 at <https://www.casemine.com/judgement/in/583ec332bc4168371fe34008>

<sup>194</sup> Kunapareddy @ Nookala Shanka Balaji Vs. Kunapareddy Swarna Kumari & ANR. 2016. Accessed November 2, 2021 at <https://www.advocatekhoj.com/library/judgments/announcement.php?WID=7449>

## 12. ELDER ABUSE

The World Health Organisation (WHO) defines elder abuse as, ‘Elder abuse is 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>195</sup>

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

However, elder abuse is also a form of gender-based violence. A study by Agewell Research and Advocacy Centre in India found that 50.59% of the 50,000 participants said that elderly women have to face marginalisation or isolation due to gender discrimination. According to the same study, almost one-fourth of the respondents in rural areas said that the legal rights of elderly women were most often violated due to their gender and 38.9 % of the male and 39.7% of the female respondents said that the human rights of elderly women were violated more in comparison to elderly men.<sup>196</sup>

### Data on Elder Abuse

Recent studies indicate the increasing number of elder abuse and neglect cases.<sup>197</sup> Data by the NCRB is not gender disaggregated and it includes any crime committed against senior citizens, for example, cheating, extortion, culpable homicide, assault and rape, etc. It does not specify if the perpetrator is someone who is a caregiver to the victim.

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<sup>195</sup> World Health Organisation. 2021, June 15. Elder Abuse. Accessed October 5, 2021 at <https://www.who.int/news-room/fact-sheets/detail/elder-abuse>

<sup>196</sup> Agewell Foundation. 2015, January. Gender Discrimination among Older Women in India. Accessed October 5, 2021 at <https://www.agewellfoundation.org/pdf/reports/GENDER%20DISCRIMINATION%20AMONG%20OLDER%20WOMEN%20IN%20INDIA.pdf>

<sup>197</sup> See Shankardass, Mala Kapur. 2018, May 9. “We can no longer ignore the rise in elder abuse cases”. *Hindustan Times*. Accessed October 5, 2021 at <https://www.hindustantimes.com/opinion/we-can-no-longer-ignore-the-rise-in-elder-abuse-cases/story-6mHYOkICB3AViEGyncBbaL.html> ; 2020, July 22. “The silent evil of elder abuse in India”. *The New Indian Express*. Accessed October 5, 2021 at <https://www.newindianexpress.com/opinions/2020/jun/22/the-silent-evil-of-elder-abuse-in-india-2159626.html> ; Chaurasia, Himanshu, Srivastava, Shobhit, 2020. “Abuse, Neglect, and Disrespect against Older Adults in India”. *Journal of Population Ageing*. Accessed October 5, 2021 at <https://link.springer.com/article/10.1007/s12062-020-09270-x>

	2018	2019	2020
<i>Crimes against senior citizens</i>	24349	27696	24794
<i>Simple Hurt (IPC Sections 323 and 324)</i>	5347	6042	6396
<i>Assault on [senior] women with intent to outrage their modesty (Section 354)</i>	212	187	204
<i>Rape of senior women (Section 376)</i>	63	63	57

Source: National Crime Records Bureau, Crime in India, 2018, 2019 and 2020 reports, accessed October 5, 2021 at <https://ncrb.gov.in/en/crime-india>

A report on elder abuse by the Agewell Foundation in 2019 found that 71% of elderly people suffered abuse by family members. The report also found that humiliation was the most common form of elder abuse in old age; it linked this humiliation of the elderly to the poor financial status of the family, limited space, interpersonal differences among family members, chronic illnesses, changing moral systems and notions about caring for the elderly.<sup>198</sup>

### In Recent News

The Agewell Foundation conducted a study during the early months of the pandemic, between June 1 to June 12, 2020, among 5,000 elderly people in different parts of the country. 71% of respondents stated that they have faced increased abuse during the COVID-19 lockdown. Elderly people are already at increased risk of catching the virus, and abuse at the hands of family members have added to the trauma. 56.1% of the respondents said they were experiencing abuse meted out by their families or by society. The forms of abuse included disrespect and verbal abuse, silent treatment, neglect of their daily needs, denying proper food, denying medical support, being cheated financially, physical and emotional violence and forcing the elderly to work. 79% of those who faced abuse said that it was financial in nature, wherein they were denied control over the funds of the household. Many respondents reported that they were facing increased isolation due to the lockdown.<sup>199</sup> Subsequently, in June 2021, the NGO conducted another survey, according to which 73% elderly respondents reportedly said that cases of elder abuse have increased during

<sup>198</sup> PTI. 2019, June 13. "Over 71 pc senior citizens in India victims of abuse by family members: Survey". *Economic Times*. Accessed October 5, 2021 at <https://economictimes.indiatimes.com/news/politics-and-nation/over-71-pc-senior-citizens-in-india-victims-of-abuse-by-family-members-survey/articleshow/69777963.cms>

<sup>199</sup> Pandit, Ambika. 2020, June 15. "Abuse has increased during lockdown, say 71% of elderly". *Times of India*. Accessed October 5, 2021 at <https://timesofindia.indiatimes.com/india/abuse-has-increased-during-lockdown-say-71-of-elderly/articleshow/76377324.cms>

lockdown period and after, 61% claimed that interpersonal relationships is the main factor responsible for elder abuse in families, and 65% were facing neglect.<sup>200</sup>

Another survey by Helpage India, conducted in 2021 among 3510 elderly people in 6 Indian cities, found that the primary abusers during the pandemic were sons (in 43.8%), followed by daughters-in-law (27.8%), and daughters (14.2%). Around 60% of the respondents faced emotional and financial abuse while 58.6% faced physical abuse.<sup>201</sup>

### Indian Laws Relevant to Elder Abuse

- *Maintenance and Welfare of Parents and Senior Citizens Act, 2007*
  - a. *Section 4: Maintenance of parents and senior citizens*
  - b. *Section 24: Exposure and abandonment of a senior citizen*
- *Protection of Women from Domestic Violence Act, 2005*
  - c. *Section 2: Definition of an aggrieved person*
  - d. *Section 3: Definitions of domestic violence*
- Action may also be brought under various provisions for the IPC depending on the abuse involved. For example, action may be brought under sections of assault, rape, wrongful restraint, etc.

In December 2019, a new Bill to amend the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 was approved by the Union Cabinet.<sup>202</sup> The Bill proposes registration and maintenance of minimum standards for senior citizens' care homes, besides registration of home care service agencies. As per the Bill, children and heirs are legally obligated to provide maintenance to senior citizens. Senior citizens shall have the right to apply to a maintenance tribunal seeking a monthly allowance of up to INR 10,000 from their children or heirs. State governments are permitted to establish old age homes in every district. They are also to set up maintenance tribunals in every subdivision to decide the level of maintenance.

### How to Access Justice

- 1) *Maintenance and Welfare of Parents and Senior Citizens Act, 2007*
  - a. Section 5 specifies that an application for maintenance may be made to a special

<sup>200</sup> Agewell Foundation. 2021, June 15. Humans Rights of elderly are at stake- Agewell. Accessed October 5, 2021 at <https://www.agewellfoundation.org/wp-content/uploads/2021/06/Human-Rights-of-Older-Persons-with-special-focus-on-Impact-of-Covid-19-on-Elderly-June-2021.pdf>

<sup>201</sup> Helpage India. 2021. A Silent Tormentor: COVID 19 and the Elderly. Accessed October 5, 2021 at <https://www.helpageindia.org/wp-content/uploads/2021/06/The-Silent-Tormentor-Covid-19-the-Elderly-A-HelpAge-India-Report-2021-1.pdf>

<sup>202</sup> *The Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2019*. Accessed October 5, 2021 at <https://www.prsindia.org/billtrack/maintenance-and-welfare-parents-and-senior-citizens-amendment-bill-2019>

tribunal constituted under this Act.

b. For offences under Section 24, the police must be approached to file an FIR. According to Section 25, an offence under this Act is to be tried summarily by a Magistrate.

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

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

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

### Recent Case Law

*Sandeep Gulati v. Divisional Commissioner (2020)*<sup>203</sup>

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

*Pramod Ranjankar v. Arunashankar (2018)*<sup>204</sup>

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

*Dattatrey Shivaji Mane v. Lilabai Shivaji Mane (2018)*<sup>205</sup>

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

*Shri Santosh Surendra Patil v. Shri Surendra Narasgonda Patil & Others (2017)*<sup>206</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

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<sup>203</sup> 2020, March 27. "Senior Citizens Act: Parents entitled to evict the children even if there is no ill treatment". *LatestLaws.com*. Accessed October 5, 2021 at <https://www.latestlaws.com/latest-news/parents-entitled-to-evict-the-children-even-if-there-is-no-ill-treatment/>

<sup>204</sup> Pramod Ranjankar vs Arunashankar. 2018. Accessed October 5, 2021 at <https://indiankanoon.org/doc/96605779/>

<sup>205</sup> Mr. Dattatrey Shivaji Mane vs Mrs. Lilabai Shivaji Mane And Ors. 2018. Accessed October 5, 2021 at <https://indiankanoon.org/doc/93887975/>

<sup>206</sup> Santosh Surendra Patil vs Surendra Narasgonda Patil And Ors. 2017. Accessed October 5, 2021 at <https://indiankanoon.org/doc/31053306/>

Welfare of Parents and Senior Citizens Act, 2007.

*Sunny Paul and Another v. State NCT of Delhi (2017)*<sup>207</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.

*Hiral Harsora v. Kusum Harsora (2016)*<sup>208</sup>

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

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<sup>207</sup> Sunny Paul vs State Of Nct Of Delhi & Ors. 2017. Accessed October 5, 2021 at <https://indiankanoon.org/doc/193708272/>

<sup>208</sup> Hiral P. Harsora And Ors vs Kusum Narottamdas Harsora And Ors. 2016. Accessed October 5, 2021 at <https://indiankanoon.org/doc/114237665/>

## 13. CYBER VIOLENCE

Online violence and abuse against women is an extension of offline violence and abuse. It can include direct and indirect threats of violence, such as physical or sexual threats.<sup>209</sup> According to the Special Rapporteur on Violence against Women (VAW):

*The definition of online violence against women extends to any act of gender-based violence against women that is committed, assisted or aggravated in part or fully by the use of ICT, such as mobile phones and smartphones, the Internet, social media platforms or email, against a woman because she is a woman, or affects women disproportionately.*<sup>210</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.

### Data on Cybercrimes against Women

Despite being a relatively new phenomenon and with a consequent lack of comprehensive data, it has been estimated that 23% of women have reported having experienced online abuse or harassment at least once in their life, and that one in 10 women has experienced some form of online violence since the age of 15.<sup>211</sup> A survey by Feminism in India, a digital

<sup>209</sup> Pinto, Shiromi. 2017, November 17. What is online violence and abuse against women? *Amnesty International*. Accessed October 10, 2021 at <https://www.amnesty.org/en/latest/campaigns/2017/11/what-is-online-violence-and-abuse-against-women/>

<sup>210</sup> UN Human Rights Office of the High Commissioner. 2018, June 21. 38th session of the Human Rights Council, Statement by Ms. Dubravka Šimonović, Special Rapporteur on Violence against Women, its causes and consequences. Geneva. Accessed October 10, 2021 at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23235&LangID=E>

<sup>211</sup> European Union Agency for Fundamental Rights. 2014. Violence against women: an EU-wide survey. Accessed October 10, 2021 at [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2014-vaw-survey-main-results-apr14\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2014-vaw-survey-main-results-apr14_en.pdf)

platform, found that 28% of women who experienced online abuse said they intentionally reduced their online presence.<sup>212</sup>

Amnesty International conducted a study on online violence against women in 2017 which showed that more than 75% of women surveyed across eight countries (Denmark, Italy, New Zealand, Poland, Spain, Sweden, the UK and USA) who had experienced abuse or harassment made changes to the way they used social media platforms.<sup>213</sup>

The NCRB 2019 and 2020 documents cybercrimes against women in detail.

	2019	2020
<i>Cyber blackmailing/threatening (Sec 506, 503, 384 IPC R/W IT Act)</i>	113	74
<i>Cyber pornography/posting/publishing obscene sexual materials (Sec 67A/67B (Girl Child) of IT Act R/W IPC SLL)</i>	1158	1655
<i>Cyber stalking/cyber bullying of women (Sec 354D IPC R/W IT Act)</i>	791	887
<i>Defamation/morphing (Sec 469 IPC R/W IPC and Indecent Representation of Women (P) Act) <sup>112</sup></i>	61	251
<i>Fake Profile (R/W IPC SLL)</i>	289	354
<i>Other cybercrimes against women</i>	5967	7184

Source: National Crime Records Bureau, Crime in India 2019 and 2020 reports, accessed November 2, 2020 at <https://ncrb.gov.in/en/crime-india>

## In Recent News

Data suggests that there has been a significant increase in cybercrimes against women, especially sextortion<sup>214</sup>, during the COVID-19 lockdown. Online traffic has escalated due to a larger number of people working or studying from home during the lockdown, thus increasing video conferencing, meetings, online classes, and chatting.<sup>215</sup> As workplaces shift

<sup>212</sup> Feminism in India. 2016. #DigitalHifazat: Combat Cyber Violence Against Women in India. Accessed November 2, 2020 at <https://feminisminindia.com/2016/11/16/digitalhifazat-campaign-cyber-violence-women-india/>

<sup>213</sup> Salim, Mariya. 2018, July 8. "Online Trolling of Indian Women Is Only an Extension of the Everyday Harassment They Face". *The Wire*. Accessed October 10, 2021 at <https://thewire.in/women/online-trolling-of-indian-women-is-only-an-extension-of-the-everyday-harassment-they-face#:~:text=In%202017%2C%20Amnesty%20International%20conducted,their%20opinions%20on%20some%20issues.>

<sup>214</sup> Sextortion refers to the broad category of sexual exploitation in which abuse of power is the means of coercion, as well as to the category of sexual exploitation in which threatened release of sexual images or information is the means of coercion.

<sup>215</sup> Singh, Ridhima, Singh, Arshdeep. 2020, September 22. "Growth in Cyber-Crimes in the COVID-19 times and Fragile Cyber Laws in India". *LatestLaws.com*. Accessed October 10, 2021 at <https://www.latestlaws.com/articles/growth-in-cyber-crimes-in-the-covid-19-times-and-fragile-cyber-laws-in->

online, many instances of online sexual violence also qualify as workplace sexual harassment, such as those faced by teachers.<sup>216</sup> In January 2021, the National Commission for Women Chairperson Rekha Sharma stated that cases of online harassment had seen an increase by five times since the outbreak of the pandemic shooting up to around 1,500 complaints per week.<sup>217</sup>

As more and more people were forced to reveal their phone numbers online as they searched for hospital beds and oxygen support during the second wave of the pandemic, many women had their phone numbers circulated without their consent, leading to harassment in the form of unwanted phone calls, messages, and pictures.<sup>218</sup> In another instance of gender- and religion-based online violence, an app called Sulli Deals was created in June 2021 that showcased hundreds of Indian Muslim women's pictures and other personal details without their consent. The app pretended to offer the chance to its users to buy a "Sulli" – a derogatory term for Muslim women often used by right wing Hindus. The app was taken down by GitHub, the platform that hosted it, following complaints. Earlier, on 13<sup>th</sup> May 2021, during the festival of Eid, a YouTube channel ran a live "auction" of Muslim women from India and Pakistan, with people in the comments section threatening rape and other kinds of violence.<sup>219</sup>

### Relevant Indian Laws Against Cyber Violence

- 1) *Information Technology Act, 2000 and Information Technology (Amendment) Act, 2008*
  - a. *Section 43*: Penalty and Compensation for damage to computer, computer system, etc.
  - b. *Section 66 A*: Punishment for sending offensive messages through communication service, etc.
  - c. *Section 66 C*: Punishment for identity theft
  - d. *Section 66 D*: Punishment for cheating by personation by using a computer resource
  - e. *Section 66 E*: Punishment for violation of privacy
  - f. *Section 67*: Punishment for publishing or transmitting obscene material in electronic form

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<sup>216</sup> Halder, Debarati. Covid-19: Online Harassment of Women during work from home. *Karnavati University*. Accessed October 10, 2021 at <https://karnavatiuniversity.edu.in/uid/blogs/2020/covid-19-online-harassment-of-women-during-work-from-home/>; Enough is Enough': Kerala's Women Teachers Harassed Online. 2020, June 2. *The Quint*. Accessed October 10, 2021 at <https://www.thequint.com/neon/gender/kerala-women-teachers-harassed-online>

<sup>217</sup> Nazir, Tashafi. 2021, July 3. "Online Sexual Abuses Among Women On Rise Amid Covid-19 Crisis". *The Logical Indian*. Accessed October 10, 2021 at <https://thelogicalindian.com/gender/online-sexual-abuses-among-women-on-rise-29332>

<sup>218</sup> Mukherjee, Richa. 2021, May 21. "Women Face Epidemic of Online Stalking, Harassment on Seeking Help in Covid Crisis". *News 18*. Accessed October 10, 2021 at <https://www.news18.com/news/india/women-face-epidemic-of-online-stalking-harassment-on-seeking-help-in-covid-crisis-3760676.html>

<sup>219</sup> Pandey, Geeta. 2021, July 10. "Sulli Deals: The Indian Muslim women 'up for sale' on an app". *BBC*. Accessed October 10, 2021 at <https://www.bbc.com/news/world-asia-india-57764271>

- g. *Section 67 A*: Punishment for publishing or transmitting of material containing a sexually explicit act, etc. in electronic form
  - h. *Section 72*: Breach of confidentiality and privacy
- 2) *Indian Penal Code, 1860*
- a. *Section 292*: Sale, etc. of obscene books, etc.
  - b. *Section 292 A*: Printing, etc., of grossly indecent or scurrilous matter or matter intended for blackmail
  - c. *Section 406*: Punishment for criminal breach of trust
  - d. *Section 419*: Punishment for cheating by personation
  - 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.

### Recent Case Law

#### *Public Interest Litigation by Prajwala (2016)*<sup>220</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.

#### *Kamlesh Vaswani v. Union of India (2015)*<sup>221</sup>

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>220</sup> IANS. 2016, December 6. “SC Issues Notice To Facebook, Google, Other Internet Majors on Sharing of Sexual Assault, Cybercrime Videos”. *The Wire*. Accessed October 10, 2021 at <https://thewire.in/uncategorised/supreme-court-google-facebook-microsoft-sexual-offence-cybercrime-videos>

<sup>221</sup> Kamlesh Vaswani v. Union of India & Others. 2016. Accessed October 10, 2021 at <https://www.legitquest.com/case/kamlesh-vaswani-v-union-of-india-others/A2B21>

## 14. GENDER-BASED VIOLENCE IN CUSTODY

Sexual assault occurring in custody, such as in police or judicial custody, and committed by a person of authority is a form of custodial as well as gender-based violence. The former United States Special Rapporteur on Violence Radhika Coomaraswamy states that custodial rape can also occur outside of an institutional setting, such as instances when member of the police or military personnel enter homes to search, question, intimidate and/or harass.<sup>222</sup> Sexual assault in custody is considered to be a form of torture, and additionally, if carried out by the state, other acts that are violent and sexual in nature, such as the deliberate use of intimate searches, groping, or inappropriate threats, can amount to torture under international law.<sup>223</sup>

The most common example of custody is detention by the state, through the police, army and other security forces, which may be at police stations, lockups, prisons and interrogation centres. However, the concept of custody also applies to hospitals (government and private), mental health care institutions, shelter homes and juvenile homes. In India, under Section 376 of the IPC, custodial rape is broadly categorised as rape by police personnel, rape by a public servant, by a member of the armed forces, by management/staff of jail/remand home/place of custody or by management/staff of a hospital. However, the law does not make any difference in procedures or punishments for custodial rape and other forms of aggravated rapes such as the rape of a pregnant woman, rape of a child and gang rape covered under Section 376.<sup>224</sup>

In 1972, a 14-year-old Adivasi girl called Mathura was raped by two policemen in Maharashtra. The acquittal of the accused caused massive public outcry and protests, and eventually led to amendments in India's rape law via the Criminal Law Amendment Act 1983 (No. 43). Section 376 of the IPC was also changed, with the enactment and addition of Section 376(A), Section 376(B), Section 376(C) and Section 376(D), making custodial rape punishable. Beside defining custodial rape, the amendment shifted the burden of proof from the accuser to the accused once intercourse was established; it also added provisions for in-camera trials, prohibition on the disclosure of the victim's identity, and

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<sup>222</sup> United Nations. Alternative Approaches and Ways and Means within the United Nations System for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms. Special Rapporteur on violence against women, its causes and consequences. Accessed October 15, 2021 at <https://digitallibrary.un.org/record/82143?ln=en>

<sup>223</sup> Stop Violence Against Women. 2013. Custodial Sexual Assault. Accessed October 15, 2021 at [https://www.stopvaw.org/custodial\\_sexual\\_assault#](https://www.stopvaw.org/custodial_sexual_assault#)

<sup>224</sup> Peoples Union for Democratic Rights. 2004. In Custody: An Investigation Into 5 Cases Of Sexual Assault. Accessed October 15, 2021 at <https://puodr.org/custody-investigation-5-cases-sexual-assault>

tougher sentences.<sup>225</sup>

### Data on Custodial Sexual Violence

	2019	2020
<i>Custodial Rape</i>	47	29
<i>Other Custodial Rapes</i>	772	875

Source: National Crime Records Bureau, Crime in India 2019 and 2020 reports, accessed October 15, 2021 at <https://ncrb.gov.in/en/crime-india>

Custodial rape is a grossly underreported crime.<sup>226</sup> In highly militarized parts of the country, especially those states that are governed by the Armed Forces Special Powers Act (AFSPA), sexual violence by the armed forces against civilians is a common occurrence.<sup>227</sup> The National Campaign Against Torture's Violence In India Report 2019 explores several instances of rape of women and children by police personnel as well as the armed forces.<sup>228</sup> Rape by other inmates in prison is another form of custodial sexual violence that is common, but yet go unreported.<sup>229</sup>

### Laws Addressing Custodial Sexual Violence

Generally, the laws that address rape in India would be used for a case of rape in custody. The sections that refer to this particularly are as follows:

- *Indian Penal Code, 1860*
  - a. *Section 376 A: Rape by a police officer:*
    - (i) within the limits of the police station to which he is appointed; or

<sup>225</sup> Murthy, Laxmi. 2013, June 8. From Mathura to Bhanwari. *Economic and Political Weekly* 48(23). Accessed October 15, 2021 at <https://www.epw.in/journal/2013/23/commentary/mathura-bhanwari.html>

<sup>226</sup> Bhog, Sahar. 2019, August 16. "What Is Custodial Rape And Why We Need To Be Discussing It". *Feminism in India*. Accessed October 15, 2021 at <https://feminismindia.com/2019/04/16/custodial-rape-india/>

<sup>227</sup> Krishnan, Kavita. 2017, April 26. "When it Comes to Rape By Men in Uniform, the Media Forgets the Victim is Also Part of the 'Nation'". *The Wire*. Accessed October 15, 2021 at <https://thewire.in/culture/rape-security-forces-afspa>

<sup>228</sup> National Campaign Against Torture. 2020. India: Annual Report on Torture 2019. Accessed October 15, 2021 at <http://www.unecat.org/wp-content/uploads/2020/06/INDIATORTURE2019.pdf>

<sup>229</sup> See Shekhar, Raj. 2015, June 11. "Rampant sexual abuse is a real nightmare in Tihar". *Times of India*. Accessed October 15, 2021 at <https://timesofindia.indiatimes.com/city/delhi/Rampant-sexual-abuse-is-a-real-nightmare-in-Tihar/articleshow/47621742.cms>; Mendiratta, Raghav, Tewari, Shreya. 2018, April 3. "Rape is not supposed to be a part of the penalty: On rapes and sexual abuse in Indian prisons". *Medium*. Accessed October 15, 2021 at <https://medium.com/@hrln/rape-is-not-supposed-to-a-part-of-the-penalty-on-rapes-and-sexual-abuse-in-indian-prisons-698b919f7429>; Rahman, Farah. 2013, March 12. "Rape behind prison bars." *LiveMint*. Accessed October 15, 2021 at <https://www.livemint.com/Opinion/BzOQYSLesQ9YrXmcbipwrN/Rape-behind-prison-bars.html>; Kumar, Pramod G. 2013, March 12. "Ram Singh's death: Rape and ugly sexual violence in Indian jails". *Firstpost*. Accessed October 15, 2021 at <https://www.firstpost.com/india/ram-singhs-death-rape-and-ugly-sexual-violence-in-indian-jails-657071.html>.

- (ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or
- (iii) on a woman in his custody or in the custody of a police officer subordinate to him;

- b. *Section 376 B*: Rape by a public servant of a woman in his custody
- c. *Section 376 C*: Rape by superintendent of jail, remand home, etc.
- d. *Section 376 D*: Rape by any member of the management or staff of a hospital with any woman in that hospital

India signed the United Nations Convention Against Torture in 1997, but is yet to ratify it. In its 273<sup>rd</sup> report, The Law Commission of India recommended its implementation through a legislation, the Prevention of Torture Bill, 2010. The Bill contained a broad definition of torture which included physical and mental pain, stress and trauma. It also emphasised on torture in the context of discrimination based on sex, race, religion. This legislation would have been a significant step against custodial violence, including rape and of men and non-cis women. However, the Bill lapsed with the dissolution of the 15<sup>th</sup> Lok Sabha in 2014. Another Bill was drafted in 2017 but has not been passed yet.<sup>230</sup>

### In Recent News

In June 2020, during the COVID-19 pandemic and subsequent lockdown, two Dalit men, P. Jayaraj and his son, J. Bennix, were picked up by police personnel in Sathankulam, in the Thoothukudi district of Tamil Nadu, allegedly for flouting lockdown regulations. Soon after, the duo died from custodial brutality, and eye witnesses claimed that they had been sexually assaulted by rods. Both were found bleeding profusely from their rectums before they died.<sup>231</sup> Following massive outrage, two sub inspectors and an inspector were suspended, and the case is currently being investigated by the CBI.

### Recent Case Law

*State of Punjab v. CBI (2011)*<sup>232</sup>

The Supreme Court ruled against a petition that challenged a judgement by the High Court wherein the court had ruled, in a case of rape in custody, that the investigation may not be fair and proper because senior police officers and highly influential persons were involved in the case. The court then directed the CBI to handle the investigation.

<sup>230</sup> Indian Journal of Law and Public Policy. Anti-Torture Law In India: Urgent Need For A Legislation. Accessed October 15, 2021 at <https://ijlpp.com/anti-torture-law-in-india-urgent-need-for-a-legislation/>

<sup>231</sup> Sen, Sumanti. 2020, June 25. "Tamil Nadu: Father-Son Duo's Custodial Death Sparks Outrage, Eyewitnesses Claim They Were Sexually Assaulted". *The Logical Indian*. Accessed October 15, 2021 at <https://thelogicalindian.com/news/tamil-nadu-custodial-deaths-21908>

<sup>232</sup> State Of Punjab vs Cbi & Ors. 2011. Accessed October 15, 2021 at <https://indiankanoon.org/doc/718708/>

# 15. GENDER-BASED VIOLENCE AGAINST LGBTQIA+ PERSONS

Rape of people belonging to LGBTQIA+ communities are largely overlooked in India, even though global estimates suggest that these communities are at much greater risk of sexual violence than cisgendered and heterosexual persons.<sup>233</sup> Until recently, Section 377 of the IPC made gay sex illegal, as an “unnatural offense”. There was no separate provision for rape, as any sexual activities between men were deemed a criminal offense. Not only do members of the transgender community find themselves victim to sexual violence with no legal recourse, law enforcement officials are often observed to be the biggest perpetrators of violence against them.<sup>234</sup>

In 2018, the Supreme Court decriminalised Section 377, with a five-judge bench invoking the right to sexual privacy, dignity, right against discrimination and freedom of expression.<sup>235</sup> However, despite this judgement, sexual violence against the community is allowed to continue with impunity. This is mainly because the laws that deal with rape in India continue to recognise rape as only being committed by a male perpetrator against a female. The question of gender neutrality came up for the first time in the case of *Sudesh Jhaku v. KC Jhaku*, where the Delhi Court opined that the protection of the law against sexual assault must be extended to men as well. The Criminal Law (Amendment) Bill of 2012 proposed a legislative change that would provide for a gender-neutral definition of rape. However, it did not pass.<sup>236</sup>

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<sup>233</sup> Human Rights Campaign. Sexual Assault and the LGBTQ Community. Accessed October 15, 2021 at <https://www.hrc.org/resources/sexual-assault-and-the-lgbt-community>

<sup>234</sup> See 2016, April 18. “Police harass transgenders most, says study”. *Times of India*. Accessed October 15, 2021 at <https://timesofindia.indiatimes.com/city/chennai/Police-harass-transgenders-most-says-study/articleshow/51869919.cms> ; Banerjee, Ajita. “Discard Regressive Laws That Legitimise Violence Against Transgender People”. *The Wire*. Accessed October 15, 2021 at <https://thewire.in/lgbtqia/discard-regressive-laws-that-legitimise-violence-against-transgender-people> ; Ramgopal, Ankita. 2018, March 3. “Rape laws: Why is sexual violence against India’s transgender community not being taken seriously?”. *Scroll.in*. Accessed October 15, 2021 at <https://scroll.in/article/868907/rape-laws-why-is-sexual-violence-against-indias-transgender-community-not-being-taken-seriously> ; Gaur, Kshitiz. 2014, June 11. “Transgender alleges gang-rape by cops in Ajmer”. *Times of India*. Accessed October 15, 2021 at <https://timesofindia.indiatimes.com/city/jaipur/Transgender-alleges-gang-rape-by-cops-in-Ajmer/articleshow/36365899.cms>

<sup>235</sup> Navtej Singh Johar vs Union Of India Ministry Of Law And ... 2018. Accessed October 15, 2021 at <https://indiankanon.org/doc/168671544/>

<sup>236</sup> Chhabaria, Rishabh, Tripathi, Abhigyan. 2020, May 23. “Transgenders and Rape Law: Is equal protection of law still a pipe dream?”. *The Leaflet* Accessed October 15, 2021 at <https://www.theleaflet.in/transgenders-and-rape-law-is-equal-protection-of-law-still-a-pipe-dream/#>

In 2014, the NALSA judgement granted recognition to transgender persons as falling under the ambit of Article 14 of the Indian Constitution, thus granting equality to members of the transgender community. It further stated that sexual assault, including molestation, rape, forced anal and oral sex, gang rape and stripping is being committed with impunity, and it is the duty of the state to ensure justice to these marginalised communities. Similarly, in 2018, the Supreme Court while reading down Section 377 recognised that transgender persons face abuse and sexual assault, often at the hands of law enforcement officials. And yet, discriminatory laws still prevent the community from getting justice. One of the main criticisms, for instance, against the Transgender Persons (Protection of Rights Act), 2019 is that while it recognises sexual abuse against transgender people as a punishable offence, it is only punishable up to two years of imprisonment, thus making it a “petty offence” and warranting much lighter punishment than what is sanctioned for cisgendered women. Moreover, it does not define the acts that constitute sexual offences, making it complicated for transgender persons to report such crimes. The act therefore fails to provide judicial protection to transgender persons who are victims of sexual abuse, thus denying equal protection in law and downplaying the graveness of sexual offences committed against a particular section of the population.<sup>237</sup> Accordingly, in October 2020, the Supreme Court of India heard a petition seeking equal punishment for sexual crimes against transgender victims. The court sought a response to the petition from India's Ministry of Law and Justice and the Ministry of Social Justice and Empowerment, but the government is yet to comment.<sup>238</sup>

Deep-rooted homophobia and transphobia mean that queer populations are marginalised in all walks of life. They are especially vulnerable in police custody and in prisons<sup>239</sup>, and along with other motives of sexual assault, they are additionally subjected to hate crimes and corrective rape.<sup>240</sup> Other forms of corrective violence includes efforts to “cure” queerness or to suppress its expression through a range of interventions including medication, electroconvulsive “therapy”, hormone administration, physical assault, forced surgery on

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<sup>237</sup> Banerjee, Ajita. 2019. 2019, November 26. “Why India’s transgender people are protesting against a Bill that claims to protect their rights”. Scroll.in Accessed October 15, 2021 at <https://scroll.in/article/944882/why-indias-transgender-people-are-protesting-against-a-bill-that-claims-to-protect-their-rights>

<sup>238</sup> Mitra, Esha. 2020, December 9. “India's rape laws don't cover transgender people. They say it's putting them at risk”. *CNN*. Accessed October 15, 2021 at <https://edition.cnn.com/2020/12/08/india/india-transgender-rape-laws-intl-hnk-dst/index.html>

<sup>239</sup> Stop Violence Against Women. 2013. Custodial Sexual Assault. Accessed October 15, 2021 at [https://www.stopvaw.org/custodial\\_sexual\\_assault#](https://www.stopvaw.org/custodial_sexual_assault#)

<sup>240</sup> Corrective rape is a hate crime in which someone is raped because of their perceived sexual orientation or gender identity. The common intended consequence of the rape, as seen by the perpetrator, is to turn the person heterosexual or to enforce conformity with gender stereotypes. Some recent cases: TNN. 2015, June 10. “Victims of corrective rape speak up”. Accessed October 15, 2021 at <https://timesofindia.indiatimes.com/life-style/relationships/parenting/Victims-of-corrective-rape-speak-up/articleshow/47602170.cms>; Fenton, Siobhan. 2017, January 19. “Indian parents arrange 'corrective rape treatment' for son after discovering his sexuality”. *Independent*. Accessed October 15, 2021 at <https://www.independent.co.uk/news/world/asia/parents-gay-son-corrective-rape-treatment-gay-son-discover-sexuality-kolkata-homosexual-lgbt-a7535741.html>

intersex people, enforced dress codes, confinement within the home, and several others.<sup>241</sup> Transgender populations face additional violence in the form of refusal to accept their chosen gender identity, deadnaming<sup>242</sup>, stereotyping, discrimination (for example by medical personnel<sup>243</sup>) and various forms of dehumanisation. While most of these cases go unseen and unheard of, the few that do get reported<sup>244</sup> do not find a place in the justice system of India.

### Relevant Laws Addressing Sexual Violence against LGBTQIA+

#### *S Sushma v. Commissioner of Police (2021)*<sup>245</sup>

On June 7, 2021, Tamil Nadu became the first state to ban conversion therapy in India, including corrective rape. The ruling was made by Justice N Anand Venkatesh in a Madras high court, while hearing the case of a lesbian couple from Madurai who had eloped to Chennai and were being harassed by their families. The families had filed police complaints, following which the petitioners approached the court for protection. Upholding the rights of LGBTQ individuals under Article 21 of the Constitution, Justice Venkatesh's order prohibits “any attempts to medically cure or change the sexual orientation of LGBTQIA+ people to heterosexual or the gender identity of transgender people to cisgender”. The court further stated that action would be taken against professionals who carried out any form of conversion therapy.<sup>246</sup>

<sup>241</sup> Tenneti, Suchaita. 2019. Curative Violence against LGBT+ People in India: Key Issues and Perspectives. Prajnya Trust. Accessed October 15, 2021 at <http://prajnya.in/storage/app/media/rrgritpaper1.pdf>

<sup>242</sup> Deadnaming is the practice of calling a transgender person by their birth name when they have changed their name as part of their gender transition. It is considered to be a form of transphobic violence by invalidating their chosen identity.

<sup>243</sup> Paliwal, Ankur. 2017, November 2. “How could you have been raped?": New study on how India's transgender people face bias from doctors". *Scroll.in*. Accessed November 2, 2021 at <https://scroll.in/pulse/856285/transphobia-among-indian-doctors-study-aims-to-uncover-reasons-for-bias-against-transgender-people>

<sup>244</sup> See Mehta, Gaurav. 2018, September 27. “Gay Men in India Reveal Terrifying Tales Of Rapes And Extortion on Dating App Grindr”. *News 18*. Accessed October 15, 2021 at <https://www.news18.com/news/buzz/gay-men-in-india-reveal-terrifying-tales-of-rapes-and-extortion-on-dating-app-grindr-1884845.html> ; Krishnan, Aishwarya. 2017, January 4. “Guy raped by men; Gay from Delhi could not report it due to fear of Section 377!”. *India.com*. Accessed October 15, 2021 at <https://www.india.com/viral/guy-raped-by-men-gay-from-delhi-could-not-report-it-due-to-fear-of-section-377-read-viral-facebook-post-1740140/> ; Rozario, Anthony S. 2019, September 3. “The Dark Side of Gay Dating Apps”. *The Quint*. Accessed October 15, 2021 at <https://www.thequint.com/videos/dating-apps-for-gay-men-in-india-extortion-harassment-gang-rape> ; Pandey, Siddhant. 2019, May 17. Bengaluru. “Three men gang-rape two Manipuri transgender students”. *NewsBytes*. Accessed October 15, 2021 at <https://www.newsbytesapp.com/timeline/india/46230/209112/two-manipuri-trans-students-gang-raped-in-bengaluru>

<sup>245</sup> W.P.No.7284 of 2021. Accessed October 15, 2021 at [https://www.livelaw.in/pdf\\_upload/madras-hc-judgment-on-lgbtqia-rights-394610.pdf](https://www.livelaw.in/pdf_upload/madras-hc-judgment-on-lgbtqia-rights-394610.pdf)

<sup>246</sup> Firstpost Staff. 2021, June 9. “Explainer: As Madras HC prohibits conversion therapy, a look at history of traumatic 'cures' for queer individuals”. *Firstpost*. Accessed October 15, 2021 at

*Navtej Singh Johar vs Union Of India (2018)*<sup>247</sup>

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

*Justice K. S. Puttaswamy v. Union of India (2017)*<sup>248</sup>

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

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<https://www.firstpost.com/india/explainer-as-madras-hc-prohibits-conversion-therapy-a-look-at-history-of-traumatic-cures-for-queer-individuals-9699261.html>

<sup>247</sup> Navtej Singh Johar vs Union Of India Ministry Of Law And ... 2018. Accessed October 15, 2021 at <https://indiankanoon.org/doc/168671544/>

<sup>248</sup> Justice K.S. Puttaswamy Vs. Union Of India. 2017. Accessed October 15, 2021 at <https://translaw.clpr.org.in/case-law/justice-k-s-puttaswamy-anr-vs-union-of-india-ors-privacy/>

## 16. GENDER-BASED VIOLENCE AGAINST DALIT AND ADIVASI PERSONS

Gender violence cannot be read independently of the intersecting identities of caste, tribe, economic class, sexual orientation, disability and so on. Power dynamics lie at the centre of gender-based violence, and the economic, social, and cultural marginalisations that Dalit and Adivasi women face in addition to their gender lead to multiplying vulnerabilities. Violence, including rape and gang rape, are systematically utilised as weapons by dominant castes to oppress Dalit women and girls and reinforce structural gender and caste hierarchies.<sup>249</sup> Numerous cases of brutal violence against women from marginalised communities, from the rapes of Mathura in 1972 and Bhanwari Devi in 1992, the Khairlanji rape and massacre in 2006 to the Unnao and Hathras cases in 2019 and 2020 respectively, all make it clear that it is imperative to analyse gender-based violence through an intersectional framework. This chapter is an attempt to focus specifically on gender-based violence against the Dalit and Adivasi communities, without taking away from the fact that caste and tribal identities are integral to understanding the forms of violence and its many facets detailed in all the chapters preceding it.

### Data on GBV against Scheduled Castes and Scheduled Tribes

The NCRB's Crime In India report provides disaggregated data on some crimes/atrocities against scheduled castes and scheduled tribes.

	Crimes against SCs		Crimes against STs	
	2019	2020	2019	2020
<i>Acid Attack</i>	3	3	0	1
<i>Assault on Women with Intent to Outrage her Modesty</i>	3375	3373	880	885
<i>Sexual Harassment</i>	676	613	162	195
<i>Assault or use of Criminal Force on Women with intent to Disrobe</i>	266	267	38	40
<i>Voyeurism</i>	18	66	7	8
<i>Stalking</i>	195	221	84	68
<i>Insult to the Modesty of Women</i>	143	144	24	24

<sup>249</sup> Equality Now. 2021. The Rape of India's Dalit Women and Girls. Accessed November 5, 2021 at [https://www.equalitynow.org/the\\_rape\\_of\\_india\\_s\\_dalit\\_women\\_and\\_girls](https://www.equalitynow.org/the_rape_of_india_s_dalit_women_and_girls)

<i>Kidnapping and Abduction of Women to Compel her Marriage</i>	357	394	54	34
<i>Procuration of Minor Girls</i>	25	24	4	4
<i>Rape</i>	3486	3372	1110	1137
<i>Attempt to Commit Rape</i>	124	90	21	25

Source: National Crime Records Bureau, Crime in India 2019 and 2020 reports, accessed November 5, 2021 at <https://ncrb.gov.in/en/crime-india>

A report by the Parliament Standing Committee on Home Affairs on atrocities and crimes against women and children stated that while crimes against women and children from SC and ST communities had risen by 15.5% in the three years between 2017-2019, the conviction rate under Prevention of Atrocities (PoA) Act in the same period has been as low as 26.86%, with pendency at 84.09%.<sup>250</sup>

### In Recent News

Violence against Dalit and Adivasi women and children are alarmingly common, with news reports detailing cases almost every day. In recent years, cases like Unnao and Hathras have led to public uproar. In 2021, a nine-year-old girl was raped and cremated by a priest and three others in Delhi, and the perpetrators have been witnessed as stating that they raped her because of her Dalit identity.<sup>251</sup>

According to a 2021 report by the All India Dalit Mahila Adhikar Manch (AIDMAM), the major forms of violence against Dalit women include rape, gangrape, attempt to rape, sexual assault, sexual harassment, murder (accompanied by rape, gangrape or kidnapping), witch-hunting, mass attacks with physical assault, loss of lives and property, and social boycott. AIDMAM's legal intervention in 81 cases of atrocities on Dalit women and girls evidenced a delay in registration of FIRs, discouragement or refusal by police to file complaints at the first instance, delay by the police in producing the survivor before the judicial magistrate in recording the statement, false counter cases filed against victims of caste and gender-based violence, and survivors being denied by the administration. The report also pointed out in many cases there was no effective implementation of provisions of the SC/ST (Prevention of Atrocities) Act.<sup>252</sup>

A report by the Tamil Nadu Citizens Vigilance and Monitoring Committee on the implementation of the PoA Act in Tamil Nadu observed that there has been a 11.4% rise in crimes against scheduled communities in the state, between 2019 and 2020. Between

<sup>250</sup> Dasgupta, Sravasti. 2021, March 23. "Crimes against SC/ST women, children up 15%, but conviction rate low, says House panel". *The Print*. Accessed November 5, 2021 at <https://theprint.in/india/governance/crimes-against-sc-st-women-children-up-15-but-conviction-rate-low-says-house-panel/626548/>

<sup>251</sup> Mohan J, Anand. 2021, September 24. "Accused raped 9-year-old because she was Dalit: Delhi police chargesheet quotes witnesses". *Indian Express*. Accessed November 8, 2021 at

<https://indianexpress.com/article/cities/delhi/delhi-rape-murder-priest-9-year-old-dalit-caste-7530920/>

<sup>252</sup> AIDMAM. 2021. Dalit Women Rise for Justice: Status Report 2021. Accessed November 8, 2021 at <https://gcap.global/wp-content/uploads/2021/04/AIDMAM-report-final-cutmarks.pdf>

2010 and 2020, cases of rape rose by 1150% -- from one every 33 days to one every 3 days. Additionally, more young girls are raped than adult women, for instance, of the 126 cases of rape in 2020, 81 (66%) victims were children. The report also highlights the abysmal rate of conviction under the Act in Tamil Nadu.<sup>253</sup>

### **Laws related to Violence against SCs and STs**

While all other Indian laws against gender-based violence are applicable, a separate law is also in place for atrocities committed against SCs and STs:

*The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Amended last in 2015):* Article 17 of the Constitution abolished untouchability and made its practice illegal. The parliament enacted the Untouchability (Offences) Act in 1955 to punish the practice of untouchability. Later, this was amended to the Protection of Civil Rights Act, 1976, and then to the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The Act prohibits the commission of offences against members of the Scheduled Castes and Scheduled Tribes and establishes special courts for the trial of such offences and the rehabilitation of victims. The 2018 amendment states that an investigating officer will not require the approval of any authority for the arrest of an accused and it provides that a preliminary enquiry will not be required for the registration of a FIR against a person accused under the Act. The amendment, like the original Act, clarifies that the provisions of section 438 of the Criminal Code shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court.<sup>254</sup>

### **Recent Case Law**

#### *Conviction in the Unnao Rape Case (2019)*<sup>255</sup>

In this case of the rape of a Dalit girl and related murders, detailed in the earlier chapter titled *Rape*, ex-BJP MLA Kuldeep Singh Sengar was convicted of both the rape of the 17-year-old girl and culpable homicide and criminal conspiracy in her father's murder. He was convicted under Section 376 IPC and Sections 5(c) and 6 of POCSO, and later in March under Sections 299 and 120A.

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<sup>253</sup> Tamil Nadu Citizens Vigilance and Monitoring Committee. 2021. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989: Review of implementation in Tamil Nadu 2020. Accessed November 15, 2021 at <https://www.cvmc.in/wp-content/uploads/2021/11/2020-PoA-Annual-Report-English.pdf>

<sup>254</sup> PRS India. 2018. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Bill, 2018. Accessed November 5, 2021 at <https://prsindia.org/billtrack/the-scheduled-castes-and-the-scheduled-tribes-prevention-of-atrocities-amendment-bill-2018>

<sup>255</sup> Chaudhuri, Nilashish. 2019, December 20. "Unnao Case: Court Sentences Former BJP Member Kuldeep Singh Sengar To Life Term Till End Of Life For Rape Of Minor". *LiveLaw.in*. Accessed November 1, 2021 at <https://www.livelaw.in/top-stories/unnao-case-court-sentences-former-bjp-member-kuldeep-singh-sengar-to-life-sentence-till-end-of-life-for-rape-of-minor-150980>



**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 cell-phone shots you may have taken. Keep the original files as they will be called upon later at the stage of trial.
5. Ask for the statement to be recorded in a language you understand. In case that is not possible, make sure the statement is translated and explained to you by the officer recording it. Insist on every detail being recorded.
6. In case the statement is not recorded as per your wishes, please sign it “under protest,” recording your reservations. Submit your written complaint and obtain an acknowledgement on the copy you have.
7. If that is not possible, go home and send the written complaint by registered post AD and be sure to record that your Complaint was not recorded as per your narration. Keep the acknowledgment.
8. Do not leave the police station without your copy of the FIR. As the Complainant, you have a right to this.
9. You may be called to the Police Station for further statements – including identification of seized goods, identifying arrested persons, clarifications etc. Leave a reliable contact number for the police to get in touch with you.
10. If the Police refuse to lodge an FIR or record an NC when the case is cognizable, this is what you can do:
  - a. Go to the Senior Inspector of Police of the Police Station and make your Complaint.
  - b. If that fails, visit the Office of the ACP of the Division and make your Complaint.
  - c. If that fails, go before a Magistrate with all your documents and a written Complaint and ask that he direct that an FIR be lodged at the Police Station. You may require a lawyer for this.

## AFTER YOU LODGE THE FIR

1. Keep the FIR copy safely. There will be an FIR Number which will be the reference for the Case until the investigation is over.
2. Follow up with the Police until the chargesheet is filed. The chargesheet is filed when the investigation is over and the Police believe that they have a case which can lead to a conviction.

3. You can also follow up to find out whether anyone has been arrested, and as a Complainant/Victim you have the right to be heard when these Accused apply for Bail/Anticipatory Bail.
4. When the chargesheet is filed, the Case will go to trial. As a victim/complainant you have the right to appoint a lawyer to assist the Prosecution.
5. In case you are not satisfied with the investigation, on concrete grounds, you can approach a Magistrate/The High Court for directions in appropriate cases, if you can show that there has been a miscarriage of justice.

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