

# **GENDER VI LENCE IN INDIA**

**A PRAJNYA REPORT**

**2022**

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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
CAA	Citizenship Amendment Act
CBI	Central Bureau of Investigation
CEDAW	The Convention on Elimination of All Forms of Discrimination Against Women
CEFM	Child, Early and Forced Marriage
CII	Crime In India
CMPO	Child Marriage Protection Officer
CrPC	Code of Criminal Procedure
DC	District Collector
DCW	Delhi Commission for Women
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
IPS	Indian Psychiatric Society
IPV	Intimate Partner Violence
LCC	Local Complaints Committee
LGBTQIA+	Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual and other persons
MTP	Medical Termination of Pregnancy
NALSA	National Legal Services Authority
NCT	National Capital Territory
NCR	National Capital Region
NCRB	National Crime Records Bureau
NCW	National Commission for Women
NFHS	National Family Health Survey
NGO	Non-Governmental Organisation
NIA	National Investigative Agency
NMC	National Medical Commission
NRC	National Register of Citizens
OCIA	Organized Crime Investigative Agency
OHCHR	The Office of the United Nations High Commissioner for Human Rights
OSC	One Stop Centre
PCMA	Prohibition of Child Marriage Act
PCPNDT	Pre-Conception and Pre-Natal Diagnostic Techniques Act
PIL	Public Interest Litigation
PoA	The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act
POCSO	Protection of Children from Sexual Offences Act
POSH	Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act

PTI	Press Trust of India
PWD	Persons with Disability
PWDVA	Protection of Women from Domestic Violence Act
RPWD	Rights of Persons with Disabilities Act
RTI	Right to Information
SC	Supreme Court
SC	Scheduled Castes
SDG	Sustainable Development Goals
ST	Scheduled Tribes
SEAH	Sexual Exploitation and Abuse and Harassment
TVPA	Victims of Trafficking and Violence Protection Act
UN	United Nations
UNCAT	United Nations Campaign against Torture
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. The report is meant to be used as a ready reference for activists, journalists, students, lawyers and anyone with an interest in gender justice. This year, the Gender Violence Report has been updated and prepared by Kausumi Saha.

The Gender Violence in India Report is a continually evolving document, and every year, we take some time to reassess how it can be a more accurate reflection of the realities of gender-based violence. Over the last few years, we have expanded the Report's initial focus on the various forms of gender violence to encompass a more intersectional perspective on 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 (caste, class, sexuality, race, ethnicity, indigeneity, immigration status, age, disability, and so on) to produce unique experiences of violence.<sup>2</sup> In an unequal society, an intersectional lens allows for a more concrete and realistic analysis of structural discrimination, and can help combat the specific barriers that women and gender minorities from different communities may face in overcoming the threat of gender-based violence.

In 2022, we have restructured the Gender Violence in India Report into two distinct sections, with the aim of furthering our intersectional approach to compiling the report. This, we hope, will allow readers to contextualize individual acts of violence and situate them within the wider systems in which they take place. As a result, the report has been divided into two parts: *Part I: The Intersections of Gender-Based Violence*, and *Part II: The Forms of Gender-Based Violence*.

Part I of the report presents an overview of key markers of identity that can shape experiences of gender-based violence in India. The five chapters in this section address, respectively: caste and indigenous identities; queerness; old age; disability; and the experiences of religious minorities. We hope, in the coming years, to build on this section by accounting for ethnicity, language, race, and other hierarchical systems that can lend themselves to different forms of marginalisation in the Indian context. Part II of the report defines the various forms of gender-based violence by drawing on their conceptualisation in national and international legal and policy frameworks. It is important to note that in all forms of gender-based violence that are detailed, intersecting identities have an important role to play in how they are experienced. Finally, as we try to do every year, we have

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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, 2022 at <http://surl.li/astuo>

attempted to rework the report to ensure that it is more sensitive, empathetic, and inclusive in its reporting of gender-based violence.

Each chapter of the report presents definitions, statistics, where available, and highlights recent cases of gender-based violence that have appeared in the news. The data is primarily collected from the National Crime Records Bureau. However, with the understanding that NCRB data is based on reported cases, which generally comprise a fraction of the overall incidence of violence, it also draws from relevant statistics by other state agencies and NGOs, both international and domestic. In addition, the report reviews the previous years' significant developments in law, policy, as well as important judicial decisions.

We hope you will find this report useful.

# GENDER VIOLENCE IN INDIA: STATISTICAL TABLE

The following table primarily draws on multiple issues of *Crime in India*, the flagship report of the National Crime Record Bureau, 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	2019 <sup>3</sup>	2020	2021
<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	52	51	70
<b>FORCED MARRIAGE</b>										
Forced or Child Marriage	-	-	-	-	-	-	32177	-	-	-
Kidnapping and abduction of women and girls	5529	7927	11139	16051	14063	15750	-	72780	62300	75369
Kidnapping and abduction of women to compel her for marriage (S. 366 IPC)	-	-	-	-	-	-	31778	32260	24745	28012
Prohibition of Child Marriage Act							293	525	785	1050

<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; 2015-2021 are from the same Census.

TYPE OF VIOLENCE	1955	1965	1975	1985	1995	2005	2015	2019	2020	2021
<b>DOMESTIC VIOLENCE</b>										
Domestic Violence							461	553	446	507
Torture <sup>5</sup>					31127	58319	-	-	-	-
Cruelty by Husbands and Relatives					28579	58319	1,13,403	125298	111549	137234
<b>HONOUR KILLING</b>										
							192	24	25	33
<b>DOWRY</b>										
Dowry Death				2814	4648	6787	7634	7115	6966	6753
Dowry Prohibition Act					2814	3204	9894	13287	10366	13568
<b>SEXUAL VIOLENCE</b>										
Molestation <sup>6</sup>					26856	34175	82422	-	-	-
Assault on Women								48586	48037	49761
Assault or Use of Criminal Force on Women with Intent to Disrobe							8613	11238	10580	11102
Assault by Police on Women to Outrage their Modesty							7	-	-	-
Rape			3376	7289	13754	18359	34651	32033	28046	31677
Incest Rape <sup>7</sup>						750	557	2916	2502	2424
Rape by Family Friends/Neighbours/Employer or Other Known Persons								10938	13555	15196

<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	2019	2020	2021
Custodial Rape <sup>8</sup>						7	95	47	29	26
Rape by Relative/Teacher/Guardian/ Person in position of Trust [Sec. 376(2)(f)]								1999	1410	1654
Rape on Pregnant Women [Sec. 376(2)(h)]								35	39	28
Rape on Women below 16 years of Age [Sec. 376(2)(i)]								790	244	246
Rape on Women incapable of giving Consent [Sec. 376(2)(j)]								393	244	256
Rape by Persons in Control or Dominance over Women [Sec. 376(2)(k)]								182	119	53
Rape on Women with Mental or Physical Disability [Sec. 376(2)(l)]								116	94	117
Endanger Life of Women after Rape [Sec. 376(2)(m)]								34	24	23
Repeated Rape on Same Women [Sec. 376(2)(n)]								2373	2879	4155
Other Custodial Rapes								772	875	1359
Attempt to Commit Rape <sup>9</sup>							4434	3944	3741	3800
Murder with Rape/Gang-Rape								283	219	284

<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	2019	2020	2021
<b>HARASSMENT IN PUBLIC PLACES</b>										
Street Sexual Harassment (Eve teasing IPC 509)					4689	9984	8685	6939	7065	7788
Sexual Harassment in Public Transport							315	606	375	357
Voyeurism							838	1399	1260	1513
Stalking							6266	8890	8512	9285
<b>WORKPLACE SEXUAL HARASSMENT</b>										
Harassment at the Office and Places related to Work (under IPC 509)							833	505	485	418
Rape of Employees/Co-workers							557	-	-	-
<b>SEXUAL HARASSMENT IN OTHER PLACES</b>										
<b>ACID ATTACKS</b>							222	150	105	102
Attempt to Commit an Acid Attack							46	42	33	48
<b>TRAFFICKING</b>										
Procuration of Minor Girls (Sec. 366A IPC)							3087	3117	2471	2566
Immoral Traffic (Prevention) Act					8447	5908	2641	1645	1294	1678
Importation of Girls					191	149	6	3	0	1
Human Trafficking <sup>10</sup> (Sec. 370 and 370A IPC)							1027	1334	646	1219

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

TYPE OF VIOLENCE	1955	1965	1975	1985	1995	2005	2015	2019	2020	2021
<b>CYBER CRIMES</b>										
Cyber-crimes against Women <sup>11</sup>								8379	10405	10730
Cyber-crime with Intent to Insult Modesty of Women							606	-	-	-
Cyber Blackmailing/Threatening (Sec 506, 503, 384 IPC R/W IT Act)								113	74	200
Cyber Pornography/Posting/Publishing Obscene Sexual Materials (Sec 67A/67B (Girl Child) of IT Act R/W IPC SLL)								1158	1655	1896
Cyber Stalking/Cyber Bullying of women (Sec 354D IPC R/W IT Act)								791	887	1172
Defamation/Morphing (Sec 469 IPC R/W IPC and Indecent Rep of Women (P) Act)								61	251	276
Fake Profile (R/W IPC SLL)								289	354	225
Other Cyber-crimes against Women								5967	7184	6961
<b>CRIMES AGAINST WOMEN FROM SCHEDULED CASTES</b>										
Assault on Women with Intent to Outrage their Modesty (Scheduled Castes)							2800	3375	3373	3724
Insult to the Modesty of Women (Sec. 509) (SC)							58	143	144	157

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

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

# PART I: THE INTERSECTIONS OF GENDER-BASED VIOLENCE

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

Dalit women experience multiple layers of marginalisation due to their caste, gender, and often class, and are disproportionately subjected to gender-based violence in the form of sexual exploitation, abuse and harassment (SEAH).<sup>12</sup> They are at risk of violence both by oppressor castes and within their own communities. Often, caste-based atrocities by oppressor castes are meant to be a demonstration of power, and sexual violence, including rape and gang rape, are systematically utilised as weapons to reinforce structural gender and caste hierarchies.<sup>13</sup> Beyond sexual violence, Dalit women are also subjected to forced prostitution, human trafficking, domestic violence, and other discriminatory practices such as untouchability, bonded labour, denial of education and access to land and resources, and manual scavenging.<sup>14</sup>

Similarly, for indigenous women, gender-based violence is shaped both by discrimination and a context of ongoing colonisation, militarism, racism and social exclusion, and poverty-inducing economic and ‘development’ policies.<sup>15</sup> In India, Adivasi women have been at the forefront of activism against harmful development and discrimination projects, putting them at further risk of violent backlash by the state. This is especially true of those tribal regions where laws like the Armed Forces Special Powers Act (AFSPA) are in place, and sexual violence by state military forces are regularly invisibilised.<sup>16</sup> Adivasi communities are overrepresented in the remotest parts of the country, and often have little access to nutrition, healthcare, education, or employment opportunities. Girls and women from these communities are susceptible to violence in the form of sexual exploitation, trafficking, and

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<sup>12</sup> Lama, Pupul. “Sexual and Gender-Based Violence Against Dalit Women and Girls in India”. *COFEM*. Accessed November 10, 2022 at <https://cofemsocialchange.org/sexual-gbv-dalit-women-girls-india/>

<sup>13</sup> Equality Now. 2021. *The Rape of India’s Dalit Women and Girls*. Accessed November 10, 2022 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)

<sup>14</sup> Ramalingam, Thilagam. “Caste based gender violence – Dalit women’s security and access to justice”. *OHCHR*. Accessed November 10, 2022 at <https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/MinorityIssues/Session7/item6/AsignedSpeakers/MsThilagamRamalingam.doc>

<sup>15</sup> Sharma, Kriti. 2018. “Mapping Violence in the Lives of Adivasi Women: A Study from Jharkhand”. *Economic and Political Weekly* 53(42): 44-52.

<sup>16</sup> Baker, Jo. “Sisters in Crisis: Violence against women under India’s Armed Forces Special Powers Act”. Accessed November 10, 2022 at <https://www.jobakeronline.com/wp-content/uploads/2014/03/Violence-Against-Women-under-Indias-AFSPA-J-Baker.pdf>

bonded labour. Additionally, other forms violence targeting women such as witch-killing and witch-blaming are still found in different forms in some regions of Jharkhand.<sup>17</sup>

Numerous cases of brutal violence against women from marginalised communities, from the rapes of Mathura in 1972 and Bhanwari Devi in 1992, Thangjam Manorama's rape and murder in 2004, the Khairlanji rape and massacre in 2006 to the Unnao and Hathras cases in 2017 and 2020 respectively, all make it clear that the lens of caste and tribe are imperative to the analysis of gender-based in India.<sup>18</sup>

### 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 Scheduled Tribes		Crimes against Scheduled Castes	
	2020	2021	2020	2021
<i>Acid Attack</i>	3	2	1	1
<i>Assault on Women with Intent to Outrage her Modesty</i>	3373	3764	885	881
<i>Sexual Harassment</i>	613	673	195	158
<i>Assault or use of Criminal Force on Women with intent to Disrobe</i>	267	336	40	35
<i>Voyeurism</i>	66	32	8	5
<i>Stalking</i>	221	216	68	58
<i>Insult to the Modesty of Women</i>	144	157	24	29
<i>Kidnapping and Abduction of Women to Compel her Marriage</i>	394	309	34	35
<i>Procuration of Minor Girls</i>	24	21	4	9

<sup>17</sup> Burgos, Annisa. 2022, January 26. "The multi-layered abuse of Adivasi women in India". Upstream Journal. Accessed November 10, 2022 at <https://upstreamjournal.org/adivasi-women/>

<sup>18</sup> More details on these cases can be found here: Pandey, Geeta. 2017, March 17. "Bhanwari Devi: The rape that led to India's sexual harassment law" *BBC News*. Accessed November 10, 2022 at <https://www.bbc.com/news/world-asia-india-39265653> ; Dasarathi, Amala. 2017, March 09. "Remembering Thangjam Manorama | #IndianWomenInHistory". *Feminism in India*. Accessed November 10, 2022 at <https://feminisminindia.com/2017/03/09/thangjam-manorama-essay/> ; Gupta, Shivangi. 2019, August 05. "The Khairlanji Massacre Still Continues To Haunt The Brahmanical State". *Feminism in India*. Accessed November 10, 2022 at <https://feminisminindia.com/2019/08/05/khairlanji-massacre-haunt-brahmanical-state/> ; 2019, August 02. "Unnao rape case: a timeline". *The Hindu*. Accessed November 10, 2022 at <https://www.thehindu.com/news/national/unnao-rape-case-a-timeline/article28794509.ece> ; Pandey, Geeta. 2021, September 19. "Hathras rape case: Prisoners in their own home, lives on hold, a village divided". *BBC News*. Accessed November 10, 2022 at <https://www.bbc.com/news/world-asia-india-58706861>

<i>Rape</i>	3372	3870	1137	1324
<i>Attempt to Commit Rape</i>	90	100	25	25

Source: National Crime Records Bureau, Crime in India 2020 and 2021 reports, accessed November 10, 2022 at <https://ncrb.gov.in/en/crime-india>

### **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 Dalit and Adivasi persons:

*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>19</sup>

### **In Recent News**

Violence against Dalit and Adivasi women and children is alarmingly common, with news reports detailing cases almost every day. In recent years, cases like Unnao and Hathras have led to public uproar. 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>20</sup> Another report in 2022 led by the National Council of Women Leaders studied 50 cases of

<sup>19</sup> PRS India. 2018. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Bill, 2018. Accessed November 10, 2022 at <https://prsindia.org/billtrack/the-scheduled-castes-and-the-scheduled-tribes-prevention-of-atrocities-amendment-bill-2018>

<sup>20</sup> AIDMAM. 2021. Dalit Women Rise for Justice: Status Report 2021. Accessed November 10, 2022 at <https://gcap.global/wp-content/uploads/2021/04/AIDMAM-report-final-cutmarks.pdf>

sexual violence against Dalit women between 2015-2021. The report systematically analysed the patterns of violence perpetrated by men of dominant caste groups, systemic barriers and delays faced by victims-survivors and their families in within the justice system and subsequent challenges, access to support services for victims-survivors and their families, and also highlighted major efforts by Dalit women activists to enable the justice process and recommendations to the Central and state governments.<sup>21</sup>

A state-wide study by the Tamil Nadu Citizens Vigilance and Monitoring Committee on the implementation of the SC/ST (Prevention of Atrocities) Act in Tamil Nadu observed that there has been a 11.4% rise in crimes against scheduled communities in the state, between 2019 and 2020. Between 2010 and 2020, cases of rape rose by 1150% -- from one every 33 days to one every 3 days. Additionally, more young girls are raped than adult women, for instance, of the 126 cases of rape in 2020, 81 (66%) victims were children. The report also highlights the abysmal rate of conviction under the Act in Tamil Nadu.<sup>22</sup>

### **Recent Case Law**

#### *Conviction in the Unnao Rape Case (2019)*<sup>23</sup>

In this case of the rape of a Dalit girl and related murders, detailed in the 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>21</sup> National Council of Women Leaders. 2022. *Caste Based Sexual Violence and State Impunity*. Accessed November 10, 2022 at <https://www.ncwl.org.in/ebook/caste-based-sexual-violence-and-state-impunity/>

<sup>22</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 10, 2022 at <https://www.cvmc.in/wp-content/uploads/2021/11/2020-PoA-Annual-Report-English.pdf>

<sup>23</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 10, 2022 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>

## 2. GENDER-BASED VIOLENCE AGAINST LGBTQIA+ PERSONS

Sexual violence against people belonging to LGBTQIA+ communities is does not receive adequate news coverage in India, even though global estimates suggest that these communities are at much greater risk of such violence than cisgendered and heterosexual persons.<sup>24</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 themselves perpetrators of violence against them.<sup>25</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>26</sup>, and along with other motives of sexual assault, they are additionally subjected to hate crimes and corrective rape.<sup>27</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 intersex people, enforced dress codes, confinement within the home, and several others.<sup>28</sup> Transgender populations face additional violence in the form of refusal to accept their chosen gender identity, deadnaming<sup>29</sup>, stereotyping, discrimination (for example by medical

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<sup>24</sup> Human Rights Campaign. Sexual Assault and the LGBTQ Community. Accessed November 10, 2022 at <https://www.hrc.org/resources/sexual-assault-and-the-lgbt-community>

<sup>25</sup> Mishra, Jigyasa. 2022, July 07. “Raped, Mocked By Police For Seeking Justice: India’s Rape Laws Do Not Cover Transwomen”. *Article 14*. Accessed November 10, 2022 at <https://article-14.com/post/raped-mocked-by-police-for-seeking-justice-india-s-rape-laws-do-not-cover-transwomen--62c65919a04a3> ; Bhattacharjee, Puja. 2022, June 22. “4 Years After SC Decriminalised Homosexuality, Police Violence Against LGBTQIA+ People Hasn’t Stopped”. *Article 14*. Accessed November 10, 2022 at <https://article-14.com/post/4-years-after-sc-decriminalised-homosexuality-police-violence-against-lgbtqia-people-hasn-t-stopped-629820915541e>

<sup>26</sup> Stop Violence Against Women. 2013. Custodial Sexual Assault. Accessed November 10, 2022 at [https://www.stopvaw.org/custodial\\_sexual\\_assault#](https://www.stopvaw.org/custodial_sexual_assault#)

<sup>27</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.

<sup>28</sup> Tenneti, Suchaita. 2019. Curative Violence against LGBT+ People in India: Key Issues and Perspectives. Prajnya Trust. Accessed November 10, 2022 at [https://www.academia.edu/43853924/Curative\\_violence\\_against\\_LGBT\\_people\\_in\\_India\\_Key\\_issues\\_and\\_perspectives](https://www.academia.edu/43853924/Curative_violence_against_LGBT_people_in_India_Key_issues_and_perspectives)

<sup>29</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.

personnel<sup>30</sup>) and various forms of dehumanisation. While most of these cases go unseen and unheard of, the few that do get reported do not find redressal in the justice system of India.<sup>31</sup>

### Laws related to LGBTQIA+ people in India

Until recently, Section 377 of the Indian Penal Code, a British-era legislation, criminalised homosexuality as being “against the order of nature”. In 2018, the Supreme Court decriminalised Section 377, with a five-judge bench invoking the right to sexual privacy, dignity, right against discrimination and freedom of expression.<sup>32</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>33</sup>

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 offense, 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 more difficult for transgender persons to report such crimes. The act therefore fails to provide judicial protection to transgender persons who are victims of sexual abuse, thus denying

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<sup>30</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 10, 2022 at <https://scroll.in/pulse/856285/transphobia-among-indian-doctors-study-aims-to-uncover-reasons-for-bias-against-transgender-people>

<sup>31</sup> Bose, Rakhi. 2022, September 23. “Why Safety Is Still A Distant Shore For Transgender Persons In India”. *Outlook India*. Accessed November 10, 2022 at <https://www.outlookindia.com/national/why-safety-is-still-a-distant-shore-for-transgenders-in-india-magazine-223472>

<sup>32</sup> Navtej Singh Johar vs Union Of India Ministry Of Law And ... 2018. Accessed November 10, 2022 at <https://indiankanoon.org/doc/168671544/>

<sup>33</sup> Chhabaria, Rishabh, Tripathi, Abhigyan. 2020, May 23. “Transgenders and Rape Law: Is equal protection of law still a pipe dream?”. *The Leaflet*. Accessed November 10, 2022 at <https://www.theleaflet.in/transgenders-and-rape-law-is-equal-protection-of-law-still-a-pipe-dream/#>

equal protection in law and downplaying the graveness of sexual offences committed against a particular section of the population.<sup>34</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.

### In Recent News

Eight men were accused of gang raping a transgender woman in Andhra Pradesh in July 2022. All eight have been arrested.<sup>35</sup>

In August 2022, the National Medical Commission (NMC) released a directive warning doctors that offering or prescribing conversion therapy to LGBTQIA+ youths will be deemed as “professional misconduct” and called to take disciplinary action against practitioners offering such therapy. Earlier in February, Dr Prasad Dandekar, a radiologist and the head of Health Professionals for Queer Indians (HPQI) wrote to the Indian Psychiatric Society (IPS) about one of its members promoting conversion therapy online.<sup>36</sup>

### Recent Judgements related to Sexual Violence against the LGBTQIA+ community

*S Sushma v. Commissioner of Police (2021)*<sup>37</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 the Madras High Court, while hearing the case of a lesbian couple from Madurai who had eloped to Chennai and were being harassed by their families. The families had filed police complaints, following which the petitioners approached the court for protection. Upholding the rights of LGBTQ individuals under Article 21 of the Constitution, Justice Venkatesh's order prohibits “any attempts to medically cure or change the sexual orientation of LGBTIQ+ 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

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<sup>34</sup> Banerjee, Ajita. 2019. November 26. “Why India’s transgender people are protesting against a Bill that claims to protect their rights”. Scroll.in. Accessed November 10, 2022 at <https://scroll.in/article/944882/why-indias-transgender-people-are-protesting-against-a-bill-that-claims-to-protect-their-rights>

<sup>35</sup> Express News Service. 2022, July 22. “Trans woman gang-raped in Andhra Pradesh's Kadapa, eight arrested”. *The New Indian Express*. Accessed November 10, 2022 at <https://www.newindianexpress.com/states/andhra-pradesh/2022/jul/22/trans-woman-gang-raped-in-andhra-pradeshs-kadapa-eight-arrested-2479352.html>

<sup>36</sup> DH Web Desk. 2022, September 06. “Offering 'conversion therapy' will be deemed 'professional misconduct' by doctor, warns NMC”. *Deccan Herald*. Accessed November 10, 2022 at <https://www.deccanherald.com/national/offering-conversion-therapy-will-be-deemed-professional-misconduct-by-doctor-warns-nmc-1142679.html>

<sup>37</sup> W.P.No.7284 of 2021. Accessed November 10, 2022 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)

conversion therapy.<sup>38</sup>

*Navtej Singh Johar vs Union Of India (2018)*<sup>39</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. Puttuswamy v. Union of India (2017)*<sup>40</sup>

Justice K. S. Puttuswamy 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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<sup>38</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 November 10, 2022 at <https://www.firstpost.com/india/explainer-as-madras-hc-prohibits-conversion-therapy-a-look-at-history-of-traumatic-cures-for-queer-individuals-9699261.html>

<sup>39</sup> Navtej Singh Johar vs Union Of India Ministry Of Law And ... 2018. Accessed October 15, 2021 at <https://indiankanoon.org/doc/168671544/>

<sup>40</sup> Justice K.S. Puttaswamy Vs. Union Of India. 2017. Accessed November 10, 2022 at <https://translaw.clpr.org.in/case-law/justice-k-s-puttaswamy-anr-vs-union-of-india-ors-privacy/>

### 3. GENDER-BASED VIOLENCE AGAINST ELDERLY PERSONS

Old age provides yet another dimension to gender-based violence, as elderly people can be targeted due to the vulnerabilities associated with their age, and perpetrators are usually those in some sort of position of power over them. The World Health Organisation (WHO) defines elder abuse as ‘a single or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person’.<sup>41</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.

Elder abuse can often have an element 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>42</sup> Despite this, sexual violence against elderly women is an under-researched phenomenon. The issue is further complicated due to the conflation of sexual violence with other types of violence in existing research.<sup>43</sup> This kind of violence may occur in settings such as nursing homes or other healthcare centres, and vulnerability of elderly women increases due to dementia and other age-related health concerns.<sup>44</sup>

#### Data on Elder Abuse

Data by the NCRB is not gender disaggregated and it includes any crime committed against

<sup>41</sup> World Health Organisation. 2021, June 15. Elder Abuse. Accessed November 11, 2022 at <https://www.who.int/news-room/fact-sheets/detail/elder-abuse>

<sup>42</sup> Agewell Foundation. 2015, January. Gender Discrimination among Older Women in India. Accessed November 11, 2022 at <https://www.agewellfoundation.org/pdf/reports/GENDER%20DISCRIMINATION%20AMONG%20OLDER%20WOMEN%20IN%20INDIA.pdf>

<sup>43</sup> Nobels A, Vandeviver C, Beaulieu M, Cismaru Inescu A, Nisen L, Van Den Noortgate N, Vander Beken T, Lemmens G, Keygnaert I. 2020. ““Too Grey To Be True?” Sexual Violence in Older Adults: A Critical Interpretive Synthesis of Evidence.” *International Journal of Environmental Research and Public Health* 17(11). DOI: <https://doi.org/10.3390%2Fijerph17114117>

<sup>44</sup> ElderAbuse.org. *Elder Sexual Abuse*. Accessed November 11, 2022 at <https://elderabuse.org/elder-sexual-abuse/>

senior citizens, for example, cheating, extortion, culpable homicide, assault and rape. It does not specify if the perpetrator is someone who is a caregiver to the victim.

	2020	2021
<i>Total crimes against senior citizens</i>	24794	26110
<i>Simple Hurt (IPC Sections 323 and 324)</i>	6396	7396
<i>Assault on [senior] women with intent to outrage their modesty (Section 354)</i>	204	280
<i>Rape of senior women (Section 376)</i>	57	78

Source: National Crime Records Bureau, Crime in India, 2020 and 2021 reports, accessed November 11, 2022 at <https://ncrb.gov.in/en/crime-india>

### 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>45</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>45</sup> *The Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2019.*

Accessed November 11, 2022 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).

### In Recent News

A survey among the elderly by Helpage India in 2021-2022 showed that 35% of elders reported abuse at the hands of their sons and 21% were abused by their daughters-in-law. About 2% of elders were abused by domestic workers in the house. The forms of abuse included disrespect, verbal abuse, neglect, and physical violence.<sup>46</sup> According to Longitudinal Ageing Study in India (LASI), a national survey of scientific investigation of the health, economic, and social determinants and consequences of population aging in India, at least 5% of India's population aged 60 and above stated that they experienced ill-treatment in 2020.<sup>47</sup>

Chronic health conditions among the elderly means that a significant number of them become disabled, which causes further vulnerability for this demographic group. 21% of the disabled population in India are aged 60 and above. Elderly disabled women are at a greater risk of abuse and this vulnerability worsens for women who have multiple disabilities and who are not highly educated and/or belong to a lower economic status.<sup>48</sup>

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<sup>46</sup> Helpage India. 2022. *Bridge the Gap: Understanding Elder Needs*. Accessed November 11, 2022 at <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.helpageindia.org/wp-content/uploads/2022/06/Bridge-the-Gap-Understanding-Elder-Needs-a-HelpAge-India-2022-report-1.pdf>

<sup>47</sup> Pihal, Deepak and Kundu, Jhumki. 2021, February 16. "Elderly abuse a growing concern in India, shows LASI". *Down to Earth*. Accessed November 11, 2022 at <https://www.downtoearth.org.in/news/health/elderly-abuse-a-growing-concern-in-india-shows-lasi-75554>

<sup>48</sup> Raman Shreya. 2022, October 22. "Why Elderly Women With Disabilities Are At Highest Risk Of Abuse, Neglect". *BehanBox*. Accessed November 11, 2022 at <https://behanbox.com/2022/10/12/why-elderly-women-with-disabilities-are-at-highest-risk-of-abuse-neglect/>

## Recent Case Law

### *Sandeep Gulati v. Divisional Commissioner (2020)*<sup>49</sup>

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

### *Pramod Ranjankar v. Arunashankar (2018)*<sup>50</sup>

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

### *Dattatrey Shivaji Mane v. Lilabai Shivaji Mane (2018)*<sup>51</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>52</sup>

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

### *Sunny Paul and Another v. State NCT of Delhi (2017)*<sup>53</sup>

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

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<sup>49</sup> 2020, March 27. "Senior Citizens Act: Parents entitled to evict the children even if there is no ill treatment". *LatestLaws.com*. Accessed November 11, 2022 at <https://www.latestlaws.com/latest-news/parents-entitled-to-evict-the-children-even-if-there-is-no-ill-treatment/>

<sup>50</sup> Pramod Ranjankar vs Arunashankar. 2018. Accessed November 11, 2022 at <https://indiankanoon.org/doc/96605779/>

<sup>51</sup> Mr. Dattatrey Shivaji Mane vs Mrs. Lilabai Shivaji Mane And Ors. 2018. Accessed November 11, 2022 at <https://indiankanoon.org/doc/93887975/>

<sup>52</sup> Santosh Surendra Patil vs Surendra Narasgonda Patil And Ors. 2017. Accessed November 11, 2022 at <https://indiankanoon.org/doc/31053306/>

<sup>53</sup> Sunny Paul vs State Of Nct Of Delhi & Ors. 2017. Accessed November 11, 2022 at <https://indiankanoon.org/doc/193708272/>

## 4. GENDER-BASED VIOLENCE AGAINST PERSONS WITH DISABILITY

Having a physical, mental, or intellectual disability adds yet another layer of vulnerability for women who are already at risk of violence due to their gender. When it comes to sexual violence, women and girls with disabilities are considered to be a particularly “high risk” demographic. They are more likely to experience rape, sexual violence other than rape, physical violence, stalking, psychological aggression, and control of reproductive or sexual health by an intimate partner, than women without a disability.<sup>54</sup> Perpetrators can be caregivers, either at home or in institutional settings, and this vulnerability is exacerbated by the fact that women with disabilities are often financially and socially dependent on others for survival.<sup>55</sup>

Access to justice is significant problem in India for women and girls with disabilities. This can be due to the stigma associated with their sexuality and disability; as perpetrators are often members of the family, the presence of an accompanying family member may discourage or even prevent women from reporting such violence. Police often perceive women with intellectual disabilities as a non-credible witness and are disinclined to investigate such reports. Other factors that hinder access to the justice system can be lack of physical mobility, inadequate policies and standards, negative attitudes, other lacks such as information availability, communication, and service provision, and the fact that women with disabilities are often not involved in decisions that directly affect their lives.<sup>56</sup>

Use of ableist language is yet another way in which persons with disabilities are marginalized. India’s legal system continues to use derogatory terms such as “mental retardation” and “handicap”, which have negative connotations. Similarly, the disability community have criticized the Indian Railways’ decision to use ‘Divyang’, a term coined by Prime Minister Narendra Modi, to refer to persons with disabilities. The term, meaning ‘divine gift’, has been called paternalistic and regressive, stating further that disability is not a divine gift, and a simple shift in language will not ensure de-stigmatisation or end discrimination on the basis of disability.<sup>57</sup>

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<sup>54</sup> Centre for Disease Control and Prevention. *Sexual Violence and Intimate Partner Violence Among People with Disabilities*. Accessed November 13, 2022 at <https://www.cdc.gov/violenceprevention/sexualviolence/svandipv.html>

<sup>55</sup> *Fact Sheet: Violence again Women and Girls with Disabilities*. Accessed November 13, 2022 at [https://www.un.org/womenwatch/daw/csw/csw57/side\\_events/Fact%20sheet%20%20VAWG%20with%20disabilities%20FINAL%20.pdf](https://www.un.org/womenwatch/daw/csw/csw57/side_events/Fact%20sheet%20%20VAWG%20with%20disabilities%20FINAL%20.pdf)

<sup>56</sup> Ibid.

<sup>57</sup> Pisharoty, S.B. 2016, March 01. “Use of ‘Divyang’ is Regressive and Patronising, Say Persons With Disabilities”. *The Wire*. Accessed November 13, 2022 at <https://thewire.in/rights/use-of-divyang-is-regressive->

## Data on GBV against Persons with Disability

The NCRB Crime In India report 2021 registered 256 incidences of rape of women “incapable of giving consent”, and 117 incidences of rape of women “with mental or physical disability”.

Other than rape, the National Crime Records Bureau does not maintain disaggregated data on gender-based violence against persons with disabilities as a separate category. In September 2019, the Committee on CRPD (United Nations Convention on Rights of Persons with Disabilities) recommended to the Indian Government to adopt and implement national and state strategies to identify, prevent, combat and end all forms of violence against persons with disabilities, including against women, girls and boys with disabilities. It was also recommended that the National Crime Records Bureau collect data disaggregated by disability in cases of violence and exploitation, including gender-based violence. In 2020, the National Human Rights Commission (NHRC) reaffirmed the importance of such data in its Advisory on Rights of Persons with Disabilities in the context of COVID-19, specifically mentioning the NCRB.<sup>58</sup> In 2021, 90 disability rights organisations in India wrote a letter to the Home Ministry on the need to maintain disaggregated data on violence against women with disabilities.<sup>59</sup>

## Relevant Laws

The *Rights of Persons with Disabilities Act, 2016* (RPWD Act, 2016) was enacted to give effect to the United Nations Convention on the Rights of Persons with Disabilities and connected matters. The Act stresses on non-discrimination, full and effective participation and inclusion in society, respect for difference and acceptance of disabilities as part of human diversity and humanity, equality of opportunity, accessibility, equality between men and women, respect for the evolving capacities of children with disabilities, and respect for the right of children with disabilities to preserve their identities.<sup>60</sup>

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

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and-patronising-say-persons-with-disabilities

<sup>58</sup> Sengupta, Shampa. 2020, October 26. “Data On Violence On Girls & Women With Disabilities: Need Of The Hour”. *Feminism in India*. Accessed November 13, 2022 at <https://feminisminindia.com/2020/10/26/women-girls-disabilities-violence-data/>

<sup>59</sup> Nath, Damini. 2021, January 22. “Crimes against persons with disabilities | Rights organisations want NCRB to maintain data”. *The Hindu*. Accessed November 13, 2022 at <https://www.thehindu.com/news/national/crimes-against-persons-with-disabilities-rights-organisations-want-ncrb-to-maintain-data/article33635243.ece>

<sup>60</sup> CJP. 2022, September 02. *Indian laws pertaining to persons with disabilities*. Accessed November 13, 2022 at <https://cjp.org.in/indian-laws-pertaining-to-persons-with-disabilities/>

mental healthcare and services and for matters connected therewith or incidental thereto.”<sup>61</sup>

Other relevant statutes laws in India for Persons with Disabilities are:

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

Despite the recent legislations implemented in an effort to ensure equal rights for persons with disabilities in India, there is considerable criticism of their ability to do so. For instance, Clause 3 (3) of the RPWD Act<sup>62</sup> has been criticized for having a loophole that allows implementing agencies to discriminate against persons with disabilities as it leaves open the interpretation to the bureaucracy. The rules of the Act also only call upon the government establishments to implement it, leaving private establishments outside of the purview of the Act.<sup>63</sup> Similarly, while the 2017 Act has increased the number of recognized disabilities under its clauses, a wide number of disabilities continue to remain unconsidered. Getting a Disability Certificate is in itself a harrowing, time consuming, and often expensive task.<sup>64</sup>

The legal system also plays a role in the oppression of women with disabilities by denying certain basic rights to them. A report by Prajnaya Trust in collaboration with Shanta Memorial Rehabilitation Centre (SMRC) discusses this at length. India’s family laws deny women with disabilities the capacity to marry, to stay married, to adopt, to inherit, to terminate a pregnancy, to choose pregnancy, and to acquire a new domicile. The Hindu Marriage Act allows the spouse of a woman with disability to seek divorce on grounds of “unsound mind”. The report finds that women designated as of “unsound mind” are not allowed to independently manage their financial affairs: banks do not allow them to open individual accounts and they cannot file cases of violence in courts as they are usually financially dependent on the perpetrator. They cannot hold public offices under the Constitution, such as the posts of President, Vice-President, Ministers, and Members of Parliament and State Legislatures, nor can they form organisations or associations as per the Contract Act 1872 – thus preventing them from representing their own political interests.<sup>65</sup>

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<sup>61</sup> *The Mental Health Care Act, 2017*. Accessed November 13, 2022 at <https://main.mohfw.gov.in/sites/default/files/Final%20Draft%20Rules%20MHC%20Act%2C%202017%20%281%29.pdf>

<sup>62</sup> The clause states that ‘No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim’.

<sup>63</sup> Bhatnagar, G.V. 2017, March 24. “Disability Activists Slam Regressive Clause in New Act That Allows Discrimination”. *The Wire*. Accessed November 13, 2022 at <https://thewire.in/health/disability-sector-aghast-silence-draft-rules-controversial-clause-rights-pwds-act-2016>

<sup>64</sup> Kulkarni-Petcoski, K. 2017, February 13. “How Language Shapes the Disability Experience in India”. *Pulitzer Center*. Accessed November 10, 2022 at <https://pulitzercenter.org/stories/how-language-shapes-disability-experience-india>

<sup>65</sup> SMRC. 2020, December 03. *Sexual and Gender Based Violence against Women with Disabilities in India*.

## Relevant Judgements

### *Patan Jamal Vali v. The State of Andhra Pradesh (2021)*<sup>66</sup>

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

### *Suchita Srivastava v. Chandigarh Administration (2009)*<sup>67</sup>

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

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<sup>66</sup> Barriga, Shantha Rau. 2021, June 1. "Landmark Ruling in India for Survivors of Sexual Abuse with Disabilities". *Human Rights Watch*. Accessed November 13, 2022 at <https://www.hrw.org/news/2021/06/01/landmark-ruling-india-survivors-sexual-abuse-disabilities>

<sup>67</sup> CJP. 2022, September 02. *Indian laws pertaining to persons with disabilities*. Accessed November 13, 2022 at <https://cjp.org.in/indian-laws-pertaining-to-persons-with-disabilities/>

## 5. GENDER-BASED VIOLENCE AGAINST RELIGIOUS MINORITIES

Studies have suggested that when it comes to phenomena such as religious violence, religious persecution, or religious oppression, the experiences of women and gender minorities are distinct from those of men.<sup>68</sup> Both in war and in peacetime, women from religious and ethnic minorities are singled out for physical and sexual violence because. There is a need for systematic attention to be paid to the gendered implications of religious persecution or the religious dimensions of gender-based violence. Rape against women can be a deliberate tactic in religious conflicts not only because it demoralizes the enemy, but also, in the words of one scholar, leaves women with a “stigma of impurity that consequently erodes their reproductive potential...because women are perceived as the producers of posterity, rape is employed as an instrument of cultural genocide.”<sup>69</sup>

In India, every major incidence of sectarian and communal violence has been accompanied by large-scale violence against women in the form of mass rapes, torture, and murder. For instance, it is estimated that at least 100,000 Hindu, Muslim, and Sikh women were abducted on both sides during the partition of India.<sup>70</sup> The 2002 Gujarat riots saw mass violence against women, particularly Muslim women. This included stripping women naked, rape and gang rape, acid attacks, beatings, torture of pregnant women, and burning to death. An international fact-finding committee on the issue from US, UK, France, Germany and Sri Lanka reported, “sexual violence was being used as a strategy for terrorizing women belonging to the minority community in the state.”<sup>71</sup> Academic Kalpana Kannabiran wrote that the rapes were understood to be part of a well-organized, deliberate and pre-planned strategy, placing the violence into the categories of political pogrom and genocide.<sup>72</sup> Other incidences of communally motivated riots in subsequent years have seen similar, targeted

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<sup>68</sup> Herrington, L. M. 2022, November 08. “Probing the Intersection of Religion, Gender, and Political Violence”. *E-International Relations*. Accessed November 15, 2022 at <https://www.e-ir.info/2022/11/08/probing-the-intersection-of-religion-gender-and-political-violence/>

<sup>69</sup> Caiazza, Amy. 2002. “Why Gender Matters in Understanding September 11: Women, Militarism, and Violence.” Pp. 379-391 in Reed, Betsy (ed.) *Nothing Sacred: Women Respond to Religious Fundamentalism and Terror*. New York: Thunder’s Mouth Press/Nation Books.

<sup>70</sup> Major, Andrew. 1995. Abduction of women during the partition of the Punjab. *South Asia: Journal of South Asian Studies*, 18(1). DOI: [10.1080/00856409508723244](https://doi.org/10.1080/00856409508723244). Also see Butalia, U. 1993. Community, State and Gender: On Women’s Agency during Partition. *Economic and Political Weekly*. 28(17), WS12–WS24. <http://www.jstor.org/stable/4399641>

<sup>71</sup> PTI. 2002, December 19. “Intl experts spoil Modi’s party, say Gujarat worse than Bosnia”. *Express India*. Accessed November 15, 2022 at <https://web.archive.org/web/20070630044324/http://www.expressindia.com/fullstory.php?newsid=17823>

<sup>72</sup> Kannabiran, Kalpana. 2012. *Tools of Justice: Non-discrimination and the Indian Constitution*. Routledge.

violence against women, such as the gang rapes during the Muzaffarnagar riots in 2013.<sup>73</sup> Similarly, in highly militarized parts of the country such as Kashmir, sexual violence by armed security forces is a rampant yet invisibilised phenomenon, with ethnic and religious minority women being major targets. A 1993 Human Rights Watch report states that security forces in Kashmir use rape as a method of retaliation against Kashmiri civilians during reprisal attacks after militant ambushes, with most cases occurring during cordon-and-search operations.<sup>74</sup> These cases are often not reported due to shame within the community and fear of further retaliation by security forces, leading to exact numbers being difficult to gauge. Even in the highly publicized case of the rapes in Kunan Poshpora, the number of incidents is unclear, with Human Rights Watch estimating it anywhere between 23 and 100.<sup>75</sup>

### Data on GBV against Religious Minorities

There is no data to determine the extent of gender-based violence in the country against religious minorities. Among religiously motivated crimes, the NCRB's Crime In India report 2021 registered 10 cases under the category of murder due to "communal/religious motives", and 378 and 139 cases of riots due to communal/religion and sectarian reasons respectively. The NCRB discontinued collecting data on mob lynchings and hate crimes in 2017, citing it to be unreliable.<sup>76</sup>

Some information on the issue is captured by non-governmental entities. For instance, the United Christian Forum stated that between January to the end of May 2022, 207 cases of violence against Christians have been recorded in India, including incidents of sexual violence. In June 2022, a 3-member international panel compiled a report on alleged violations against India's Muslims since 2019, building on documentation by the media, academic institutions, civil society groups, and United Nations organs.<sup>77</sup> There is however no gender disaggregated data on the issue.

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<sup>73</sup> Iyer, Aishwarya. 2022, June 24. "Nine years after Muzaffarnagar riots, the only woman who pursued rape charges still awaits justice". *Scroll.in*. Accessed November 15, 2022 at <https://scroll.in/article/1026696/nine-years-after-muzaffarnagar-riots-the-only-woman-who-pursued-rape-charges-still-awaits-justice>

<sup>74</sup> *Rape in Kashmir: A Crime of War*. Asia Watch & Physicians for Human Rights A Division of Human Rights Watch. Accessed November 15, 2022 at <https://www.hrw.org/sites/default/files/reports/INDIA935.PDF>

<sup>75</sup> *Abdication of Responsibility: The Commonwealth and Human Rights*. 1991. Human Rights Watch. Accessed November 15, 2022 at <https://www.hrw.org/reports/pdfs/g/general/general291o.pdf>

<sup>76</sup> Bhardwaj, Ananya. 2021, December 21. "NCRB stopped collecting data on lynching, hate crime as it was 'unreliable', govt tells LS". *The Print*. Accessed November 15, 2022 at <https://theprint.in/india/governance/ncrb-stopped-collecting-data-on-lynching-hate-crime-as-it-was-unreliable-govt-tells-ls/785201/>

<sup>77</sup> *Report of the Panel of Independent International Experts to examine information about alleged violations of international law committed against Muslims in India since July 2019*. 2022. UFS Law and Amsterdam Law Clinics. Accessed November 15, 2022 at [https://www.ufs.ac.za/docs/librariesprovider21/default-document-library/piie-report-final.pdf?sfvrsn=624e4920\\_0](https://www.ufs.ac.za/docs/librariesprovider21/default-document-library/piie-report-final.pdf?sfvrsn=624e4920_0)

## Related Laws

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

Over the last few years, a number of laws and policies have been adopted in India that have systematically targeted minorities, particularly Muslims. In most of these, women in particular are expected to be disproportionately affected. The Citizenship Amendment Act (CAA), 2019 is the first time in the history of India that religion has been made a basis for citizenship, and it actively discriminates against Muslims. It is expected that women, including Muslim women, will be the most at risk of losing their citizenship status under this Act and the related exercise of the National Register of Citizens (NRC), due to rarely owning land or having documents in their names.<sup>78</sup>

Early in 2022, a government college in Udupi, Karnataka, refused to allow Muslim female students to wear the hijab inside the classroom. Similar bans were followed in other educational institutions in Karnataka and a few other states. The decisions were met with protests from many students, and many Muslim girls skipped class and exams. In Karnataka, the girls from Udupi challenged the verdict in the High Court, which upheld the ban, stating that the hijab is not an “essential practice” of Islam and therefore educational institutions had the right to disallow it as part of their uniform. The case reached the Supreme Court, where a split verdict was delivered in October. While Justice Gupta of the two-judge bench upheld the ban, Justice Dhulia said in his order that it was a wrong path to focus on whether the hijab was an essential religious practice, and that wearing it was ultimately a matter of choice.<sup>79</sup> The ban on Muslim girls wearing the hijab in public places have been criticized by many feminists, who have stated that such a decision will have far-reaching impact on the ability of Muslim girls to get an education, especially those coming from socially underprivileged sections. Several girls have already dropped out of school in Karnataka since the ban, and a report in the Deccan Chronicle has shown a 16% drop in women attending college in Mangalore since the HC ruling.<sup>80</sup>

Recent incidences of so-called “Love Jihad”, a belief that Muslim men are targeting Hindu women through means of seduction in an effort to marry and convert them, have led to a number of anti-conversion laws in different states. Such laws have been passed in the last few years in Jharkhand (2017), Uttarakhand (2018), Uttar Pradesh (2020), Madhya Pradesh (2021), and Karnataka (2022), amid growing intolerance against religious minorities, especially Christians and Muslims who have been repeatedly attacked under the pretext of

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<sup>78</sup> Rahman, S.U. 2020, June 30. “Anti-CAA Movement Changed Muslim Women Forever”. *NewsClick*. Accessed November 15, 2022 at <https://www.newsclick.in/Anti-CAA-Movement-Changed-Muslim-Women-Forever>

<sup>79</sup> 2022, October 13. “Hijab verdict: India Supreme Court split on headscarf ban in classrooms”. *BBC News*. Accessed November 19, 2022 at <https://www.bbc.com/news/world-asia-india-63225351>

<sup>80</sup> Bose, Rakhi. 2022, October 10. “Hijab Ban And Muslim Women's Right To Education: 'Reform Needed, Not Coercion'”. *Outlook India*. Accessed November 19, 2022 at <https://www.outlookindia.com/national/hijab-ban-and-muslim-women-right-to-education-reform-needed-not-coercion-news-228667>

illegally converting people from Hinduism.<sup>81</sup> These laws and the overall narrative of love jihad have been used to justify moral and social sanctions against women's rights to choose their partner for marriage.

Similarly, the Uttar Pradesh Population (Control, Stabilisation and Welfare) Bill introduced in 2021 seeks to disqualify those having more than two children from contesting Panchayat and other local body elections, applying for state government jobs, receiving subsidies and benefits from government welfare schemes, and also disqualifies public servants from any promotions or increments. The Bill has been criticized for a number of reasons, one of them being that it will increase women's vulnerability and their ability of political participation and exercise of choice and agency, especially those from marginalized communities. Moreover, while the Bill does not explicitly mention Muslims, experts have expressed their apprehensions about it being used to target the Muslim community (and Muslim women), closely related to the myth of Muslim overpopulation in India.<sup>82 83</sup>

### In Recent News

Lack of data notwithstanding, there have been numerous incidents of gender-based violence against religious minority women over the last year alone. In April 2022, a video went viral of a Hindu priest openly calling for the rape of Muslim women and girls in front of a crowd in Uttar Pradesh.<sup>84</sup> Another video by a *Sadhvi* calling for Hindu men to rape and impregnate Muslim women came to light earlier in February.<sup>85</sup> In March, a youth from Delhi

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<sup>81</sup> Vatican News Staff Reporter. 2022, September 23. "India's Karnataka state passes anti-conversion law despite opposition". *Vatican News*. Accessed November 15, 2022 at <https://www.vaticannews.va/en/church/news/2022-09/karnataka-passes-anti-conversion-law-despite-opposition.html>

<sup>82</sup> Hussain, Eisha. 2021, August 11. "Why The UP Population Bill Harms Women And Marginalised Populations". *BehanBox*. Accessed November 15, 2022 at <https://behanbox.com/2021/08/11/why-the-up-population-bill-harms-women-and-marginalised-populations/>

<sup>83</sup> The myth of Muslim overpopulation is the idea that Muslims in India are deliberately producing more children in an attempt to become a numerical majority in India and capture political power. The notion that a large number of Muslim men practice polygamy, hence produce more children, have added fuel to this idea. However, this theory has been debunked through various sources. Data has shown that the total fertility rate (TFR) of Muslims has been falling at a similar rate as Hindus, and the prevalence of polygamy among Muslims is actually less than that among Hindus, Buddhists, Jains, and tribal populations. Larger family sizes among Muslims is directly related to poverty, just like it is among other religious communities, and poorer Muslim families have no more children than similarly poor Hindu families.

<sup>84</sup> Zee Media Bureau. 2022, April 08. "Priest issues rape threat to Muslim women in Uttar Pradesh's Sitapur as crowd cheers, probe ordered". *Zee News*. Accessed November 15, 2022 at <https://zeenews.india.com/india/priest-issues-rape-threat-to-muslim-women-in-uttar-pradesh-s-sitapur-as-crowd-cheers-probe-ordered-2451805.html>

<sup>85</sup> Asthana, N.C. 2022, February 12. "Sadhvi Vibhanand's Call to 'Rape' Muslim Women With Impunity Shows Hindutva's Politics of Fear". *The Wire*. Accessed November 15, 2022 at <https://thewire.in/communalism/sadhvi-vibhanands-call-to-rape-muslim-women-with-impunity-shows-hindutvas-politics-of-fear>

posted on social media that it is the right of Hindus to rape and kill Muslim women.<sup>86</sup> In August 2022, all eleven persons convicted of the 2002 gang rape of Bilkis Bano during the Gujarat communal pogrom were released from prison.<sup>87</sup> It was reported that the convicts were greeted with garlands and sweets at a Vishwa Hindu Parishad office post their release.<sup>88</sup> In the previous years also, several cases of targeting of Muslim women, such as online harassment through apps such as Sulli Deals and Bulli Bai<sup>89</sup> and open calls for forcibly marrying and converting Muslim women by Hindu men<sup>90</sup> have come to light.

In November 2022, during India's fourth Universal Period Review (UPR) at the United Nations Human Rights Council (UNHRC), UN member states urged India to take a tougher stand on sexual violence and religious discrimination, and ratify the torture convention.<sup>91</sup> Earlier in April, the US Commission on International Religious Freedom (USCIRF) alleged that India was engaging in and tolerating systematic, ongoing, and egregious violations of religious freedom, and called for the US state department to place India on the list of "countries of particular concern".<sup>92</sup>

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<sup>86</sup> Maktoob Staff. 2022, March 26. "Hindu youth says he has right to rape, kill Muslim women, Delhi Police, Women Commission take cognizance". *Maktoob Media*. Accessed November 15, 2022 at <https://maktoobmedia.com/2022/03/26/hindu-youth-says-he-has-right-to-rape-kill-muslim-women-delhi-police-takes-cognizance/>

<sup>87</sup> Katakam, Anupama. 2022, August 25. "All 11 persons convicted of rape in 2002 Bilkis Bano case released". *Frontline*. Accessed October 21, 2022 at <https://frontline.thehindu.com/news/all-11-persons-convicted-of-rape-in-the-2002-bilkis-bano-rape-case-released/article65774788.ece>

<sup>88</sup> Ghanghar, Gopi M. 2022, August 17. "Bilkis Bano rape case: Released convicts greeted with garlands at VHP office". *India Today*. Accessed October 21, 2022 at <https://www.indiatoday.in/india/story/bilkis-bano-rape-case-convicts-greeted-garlands-vhp-office-1988996-2022-08-17>

<sup>89</sup> Jafri, Alishan and Aafaq, Zafar. 2021, May 21. "Unchecked Tsunami Of Online Sexual Violence By Hindu Right Against India's Muslim Women". Article 14. Accessed November 15, 2022 at <https://article-14.com/post/unchecked-tsunami-of-online-sexual-violence-by-hindu-right-against-india-s-muslim-women>

<sup>90</sup> Kundu, Indrajit. 2018, September 19. "Marry Muslim women and convert them, VHP advice to Bengali Hindu men". *India Today*. Accessed November 15, 2022 at <https://www.indiatoday.in/india/story/marry-muslim-women-and-convert-them-vhp-advice-to-bengali-hindu-men-1344133-2018-09-19>

<sup>91</sup> 2022, November 11. "India urged to improve its human rights record at the UN". *AlJazeera*. Accessed November 15, 2022 at <https://www.aljazeera.com/news/2022/11/11/india-urged-to-improve-its-human-rights-record-at-un-review>

<sup>92</sup> Ibid.

# PART II: THE FORMS OF GENDER-BASED VIOLENCE

## 6. 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 fetuses 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>93</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>94</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 has played a critical role in the practice of selective abortion of female fetuses, leading to a phenomenon often referred to as “missing women”.<sup>95</sup> 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 increase in male to female ratios at birth, which has been attributed to the increasing

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<sup>93</sup> Hu, LuoJia, Schlosser, Analía. 2011. “Prenatal Sex Selection and Girls’ Well-Being: Evidence from India”. *IZA Discussion Paper No. 5562*. Accessed October 13, 2022 at <http://ftp.iza.org/dp5562.pdf>

<sup>94</sup> United Nations Population Fund (UNFPA). 2009. *Guidance Note on Prenatal Sex Selection*. Accessed October 13, 2022 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)

<sup>95</sup> See Sen, Amartya. 2003. Missing women—revisited. *BMJ* 327(7427):1297-1298.

practice of sex-selective abortion.<sup>96</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>97</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	943
<i>Child Sex Ratio</i>	976	964	962	945	927	919

Source: “Sex Ratio of India” in Census 2011. Accessed October 13, 2022 at <https://www.census2011.co.in/sexratio.php>

The NCRB 2021 identified 70 cases under the PC-PNDT Act. Despite the high rates of sex-selective abortion and female foeticide in India, NCRB does not provide gender segregated data on the incidence of these crimes.

According to the National Family Health Survey-5 (2019-21), the aggregate sex ratio in India has increased to a healthy 1020 females per 1000 males, increasing from 991 females per thousand males in the NFHS-4 (2015-16).<sup>98</sup> However, it is important to note that some of the most populated states and union territories in India continue to have a lower sex ratio of females to male, such as Haryana (926), Punjab (938), Gujarat (965), Madhya Pradesh (968), Maharashtra (966), Delhi NCT (917), and Chandigarh (913). Additionally, child sex ratio in India remains skewed, with NFHS-5 recording 929 female births for 1000 males in the last five years.

Moreover, experts have warned that the numbers in the latest NFHS pointed towards a significant amount of inaccuracy, as the data collection methods and timelines did not account for the large-scale migration that India saw at the wake of the COVID-19 pandemic. More specifically, the fieldwork for the survey was conducted in two phases, one from June 17, 2019-January 30, 2020 and another from January 2, 2020-April 30, 2021. The second phase took place at the height of the novel COVID-19 pandemic, at a time when large numbers of migrant workers had returned to their home villages. It was during this period

<sup>96</sup> Hu, LuoJia, Schlosser, Analía. 2011. Ibid.

<sup>97</sup> Patel, Tulsii, 2007. “Informal social networks, sonography and female foeticide in India”. *Sociological Bulletin* 56(2): 243-262.

<sup>98</sup> Ministry of Health and Family Welfare. 2022. National Family Health Survey-5 (NFHS-5) 2019-21. Accessed October 13, 2021 at [http://rchiips.org/nfhs/factsheet\\_NFHS-5.shtml](http://rchiips.org/nfhs/factsheet_NFHS-5.shtml)

that data was collected from states with large but floating populations like Uttar Pradesh, Odisha, Rajasthan and Madhya Pradesh, and yet the change in figures due to migration remained unaccounted for.<sup>99</sup>

A study undertaken in 2011 estimated that from 1980-2010, between 4.2 and 12.1 million sex-selective abortions took place.<sup>100</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>101</sup> A more recent study by the Pew Research Centre has found that in India, there is a correlation (but not necessarily causation) between certain parameters and the prevalence of sex-selective abortions, such as caste, religion, and education. Hindus and Sikhs, for instance, accounted for a disproportionate share of India's "missing" girls. Upper caste Indians, particularly in Northern and Western India, displayed more son-preference than lower castes. Higher education levels usually correlate with more equitable sex ratios. The report also highlighted that female foeticide in India has resulted in a shortage of marriageable women, or what the authors called a "marriage squeeze".<sup>102</sup>

Similarly, The Population Research Institute in its 2019 report<sup>103</sup> on sex-selective abortions in India identified the number of girls who have been eliminated through sex-selective abortions since 1990 to be 16 million, a phenomenon they termed "gendercide". The report states that at present, the ratio of boys to girls in India is 110.7:100. An increase in the number of single men risks increasing the incidence of child marriage and sex trafficking. The report also identifies the following as the lead causes 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;

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<sup>99</sup> Mishra, V. 2021, November 25. "NFHS-5: No, women don't outnumber men in India just yet. Here is why". *Down to Earth*. Accessed October 13, 2022 at <https://www.downtoearth.org.in/news/health/nfhs-5-no-women-don-t-outnumber-men-in-india-just-yet-here-is-why-80390>

<sup>100</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 fetuses in India: analysis of nationally representative birth histories from 1990–2005 and census data from 1991–2011. Accessed October 13, 2022 at <https://pratigyacampaign.org/wp-content/uploads/2019/09/trends-in-selective-abortions-of-girls-in-india.pdf>

<sup>101</sup> Government of India, Chapter 7: Gender and Son Meta-Preference: Is Development Itself an Antidote? Economic Survey 2017-18, Volume 1, pages 112 and 105 (respectively). Accessed October 13, 2022 at <https://ideas.repec.org/p/ess/wpaper/id12445.html>

<sup>102</sup> Tong, Yunping. 2022. India's Sex Ratio at Birth Begins To Normalize. *Pew Research Centre*. Accessed October 13, 2022 at <https://www.pewresearch.org/religion/2022/08/23/indias-sex-ratio-at-birth-begins-to-normalize/>

<sup>103</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 October 13, 2022 at <https://www.pop.org/sex-selective-abortion-in-india/>

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>104</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*

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

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

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

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<sup>104</sup> United Nations Population Fund. 2020. *State of the World Population 2020*. Accessed October 13, 2022 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)

### *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 Karnataka's Belagavi district, seven aborted fetuses were found abandoned in a canister on the outskirts of a village in June, 2022. The District Health Officer (DHO) suspected it to be a case of illegal sex detection and female foeticide, and it is the second such case to take place in the region since 2013.<sup>105</sup> In September 2022, a group of Hindu priests in Varanasi, UP, performed a *Shraddh* ceremony for an estimated 13,000 fetuses that had fallen victim to female foeticide. This was done in an attempt to send a strong message to the community against the practice.<sup>106</sup>

The Pune Health Department in October 2022 decided to rejuvenate an initiative it has been running known as the Khabri Yojana, meant to keep tabs on illegal sex determination and female foeticide. The scheme stipulates that those who notify the authorities of suspicious activity related to sex determination and female foeticide will be eligible for a reward of Rs 1 lakh by the government. The scheme was initiated in 2011 and, till now, more than 15

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<sup>105</sup> Abraham, Bobbins. 2022, June 25. "Seven Foetuses Found Dumped In A Canister In Karnataka's Belagavi; Female Foeticide Suspected". *India Times*. Accessed October 13, 2022 at <https://www.indiatimes.com/news/india/seven-foetuses-found-dumped-in-a-canister-in-karnatakas-belagavi-573124.html>

<sup>106</sup> HT Correspondent. 2022, September 19. "Remembering souls lost to female foeticide in Pitra Paksh". *Hindustan Times*. Accessed October 13, 2022 at <https://www.hindustantimes.com/cities/others/remembering-souls-lost-to-female-foeticide-in-pitra-paksh-101663609887520.html>

people in the state have reported illegal cases.<sup>107</sup>

### Recent Case Law

#### *Shobha Gupta and Another v. UOI & Others (2022)*<sup>108</sup>

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

#### *Federation of Obstetricians and Gynaecological Societies of India (FOGSI) v. The Union of India and Others (2019)*<sup>109</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.

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<sup>107</sup> Pathare, Vicky. 2022, October 13. "Khabari scheme back to keep tabs on illegal sex determination" *Pune Times Mirror*. Accessed October 13, 2022 at <https://punemirror.com/pune/others/Khabari-scheme-back-to-keep-tabs-on-illegal-sex-determinati/cid8809033.htm>

<sup>108</sup> Biju, R.M. 2022, September 5. "PCPNDT Act : Supreme Court Asks Union Govt To Inform State Steps Taken For Enforcement". *Live Law*. Accessed October 13, 2022 at <https://www.livelaw.in/top-stories/supreme-court-pre-conception-pre-natal-diagnostic-techniques-act-1994-implement-208474>

<sup>109</sup> Federation Of Obstetrics And ... vs Union Of India. 2019. Accessed October 13, 2022 at <https://indiankanoon.org/doc/123238150/>

*Union of India v. Indian Radiological and Imaging Association and Others (2018)*<sup>110</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.

*Sabu Mathew George v. UOI and Others (2017)*<sup>111</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>110</sup> Union Of India vs Indian Radiological And Imaging ... . 2018. Accessed October 13, 2022 at <https://indiankanoon.org/doc/37864053/>

<sup>111</sup> Sabu Mathew George vs Union Of India And Ors. 2017. Accessed October 13, 2022 at <https://indiankanoon.org/doc/192654466/>

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

Child, early and forced marriage (CEFM) is a human rights violation and a harmful practice that disproportionately affects women and girls globally, preventing them from living their lives free from all forms of violence.<sup>112</sup>

According to the UNFPA<sup>113</sup>, a child marriage is one in which one or both spouses are under 18 years old. 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>114</sup> defines it as ‘a formal marriage or informal union before age 18.’ The many varied definitions available of child marriage suggest that its realities can be complicated, with both the words ‘child’ and ‘marriage’ interpreted differently at different times. 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>115</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>116</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 dying by 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>112</sup> United Nations Office of the High Commissioner. Child and forced marriage including in humanitarian settings. Accessed October 13, 2022 at <https://www.ohchr.org/EN/Issues/Women/WRGS/Pages/ChildMarriage.aspx>

<sup>113</sup> United Nations Population Fund. 2020, January 20. Child Marriage—Frequently Asked Questions. Accessed October 13, 2022 at <https://www.unfpa.org/child-marriage-frequently-asked-questions>

<sup>114</sup> UNICEF India. Ending child marriage and adolescent empowerment. Accessed October 13, 2022 at <https://www.unicef.org/india/what-we-do/end-child-marriage#:~:text=Estimates%20suggest%20that%20each%20year,15%2D19%20are%20currently%20married>

<sup>115</sup> The Prohibition of Child Marriage Act 2006. Accessed October 13, 2022 at <https://legislative.gov.in/sites/default/files/A2007-06.pdf>

<sup>116</sup> The Indian Penal Code 1860. Accessed October 13, 2022 at [https://indiacode.nic.in/handle/123456789/2263?sam\\_handle=123456789/1362](https://indiacode.nic.in/handle/123456789/2263?sam_handle=123456789/1362)

person's life options'.<sup>117</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>118</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>119</sup>

### Data on Child Marriages

According to Census 2011 data, there were 33.8 million child marriages reported in India over the decade.<sup>120</sup> This figure includes both girls below the age of 18 and boys below the age of 21. A 2014 UNICEF report<sup>121</sup> ranked India 8<sup>th</sup> in its list of countries where child marriage is most prevalent. In February 2019, yet another UNICEF report<sup>122</sup> stated that 223 million, or 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.

According to the National Family Health Survey 2019-21, 23.3% women surveyed got married before attaining the legal age of 18 years, a reduction of 3% from the NFHS-4.

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<sup>117</sup> Rangita, S. 2008. *Child Marriage and the Law*. Legislative Reform Initiative Paper Series. UNICEF: New York.

<sup>118</sup> United Nations Population Fund. 2020. *State of the World Population 2020*. Accessed October 13, 2022 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>119</sup> Nezami, Sheezan. 2021, October 12. "Suicidal tendency in girls due to early marriage". *The Times of India*. Accessed October 13, 2022 at <https://timesofindia.indiatimes.com/city/patna/suicidal-tendency-in-girls-due-to-early-marriage/articleshow/86946405.cms>

<sup>120</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 October 13, 2022 at <https://www.younglives-india.org/news/launch-analysis-child-marriage-india-based-2011-census>

<sup>121</sup> UNICEF. 2014. *Ending Child Marriage: Progress and Prospects*. New York. Accessed October 13, 2022 at <https://data.unicef.org/resources/ending-child-marriage-progress-and-prospects/#>

<sup>122</sup> UNICEF. 2019. *Ending Child Marriage: A profile of progress in India*. Accessed October 13, 2022 at <https://data.unicef.org/resources/ending-child-marriage-a-profile-of-progress-in-india/>

Among men and boys, the percentages reported were 17.7% (NFHS-5) and 20.3% (NFHS-4). 43% women aged 20-24 years were married by age 20, and 61% were married by age 21. West Bengal and Bihar remained the states with the highest reported child marriages.<sup>123</sup>

The NCRB 2021 data identified 28012 cases of kidnapping and abduction of minor girls to compel them for marriage (Section 366) and 1050 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 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 December 2021, an Amendment to the Prohibition of Child Marriage Act was introduced in the Lok Sabha seeking to increase the minimum age of marriage of girls to 21 years.<sup>124</sup> The 2021 Bill, if passed, will override any other law, custom, or practice.

### **In Recent News**

In October 2022, The Kailash Satyarthi Foundation led by Nobel Peace Prize Laureate and child rights activist Kailash Satyarthi launched a nationwide campaign called 'Child Marriage Free India' to end the social evil of child marriage. The Foundation called the drive the

<sup>123</sup> Ministry of Health and Family Welfare. 2022. National Family Health Survey-5 (NFHS-5) 2019-21. Accessed October 13, 2022 at [http://rchiips.org/nfhs/factsheet\\_NFHS-5.shtml](http://rchiips.org/nfhs/factsheet_NFHS-5.shtml)

<sup>124</sup> *The Prohibition of Child Marriage (Amendment) Bill, 2021*. Accessed October 13, 2022 at [https://prsindia.org/files/bills\\_acts/bills\\_parliament/2021/The%20Prohibition%20Of%20Child%20Marriage%20\(Amendment\)%20Bill,%202021.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2021/The%20Prohibition%20Of%20Child%20Marriage%20(Amendment)%20Bill,%202021.pdf)

“world’s biggest-ever grassroots campaign against child marriage.” The campaign involved women and girls leading lighting of lamps and torchlight procession in around 10,000 villages from over 500 districts in 26 states.<sup>125</sup> In a state-level consultation held by the Foundation before the campaign, it stated that at least 96% of child marriage cases were pending trial across the country by the end of 2021.<sup>126</sup>

In September 2022, the Bharatiya Muslim Mahila Andolan (BMMA), a secular organisation that working for the welfare of Muslim women, demanded that the incidents of child marriages among the Muslim community should be registered under the Prohibition of Child Marriage Act (PCMA), as opposed to being governed by Muslim personal law, which does not explicitly prohibit marriage below a certain age limit. The BMMA stated that the new law must specifically mention Muslim women.<sup>127</sup>

The 2021 Amendment Bill to the PCMA has been met with some criticism, which suggested that increasing the age of marriage in itself is not an effective method to curb the practice without addressing economic and cultural factors related to it, just as the 2006 Act has not led to a significant decrease in cases of child marriage. Numerous studies show that raising the age of marriage alone does not lead to higher participation of women in education or employment, as long as attitudinal changes and greater access and infrastructure for development are not ensured. Without economic enablers, such a law can lead to child marriage taking place more clandestinely, and persecution of families that are already socially and economically vulnerable. Furthermore, such a law can also be used to criminalise and prevent young people from exercising their right to choose their marriage partner, especially by disapproving parents. This is particularly true of inter-faith and inter-caste marriages. Critiques also stated that this increase in age is not in conjunction with other laws that continue to see 18-year-olds as legal adults who can vote, buy property, consent to sexual relations, and work.<sup>128</sup>

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<sup>125</sup> FP Staff. 2022, October 16. “Child Marriage Free India: Nobel winner Kailash Satyarthi starts 'biggest-ever grassroots drive' against child marriage”. *Firstpost*. Accessed October 16, 2022 at <https://www.firstpost.com/india/nobel-peace-laureate-kailash-satyarthi-launches-nationwide-child-marriage-free-india-campaign-11460501.html>

<sup>126</sup> India News. 2022, October 5. “96% child marriage cases pending trial across India by 2021: Rights body”. *Hindustan Times*. Accessed October 13, 2022 at <https://www.hindustantimes.com/cities/chandigarh-news/96-child-marriage-cases-pending-trial-across-india-by-2021-rights-body-101664912525692.html>

<sup>127</sup> Saigal, Sonam. 2022, September 24. “BMMA seeks inclusion of Muslims under Prohibition of Child Marriage Act”. *The Hindu*. Accessed October 13, 2022 at <https://www.thehindu.com/news/national/other-states/bmma-seeks-inclusion-of-muslims-under-prohibition-of-child-marriage-act/article65930768.ece>

<sup>128</sup> Rajalaksmi, T.K. 2022, January 14. “The Prohibition of Child Marriage (Amendment) Bill has a flawed notion of gender justice. *Frontline*. Accessed October 13, 2022 at <https://frontline.thehindu.com/social-issues/gender/the-prohibition-of-child-marriage-amendment-bill-has-a-flawed-notion-of-gender-justice/article38054966.ece> ; Deswal, Vageshwari. 2022, January 25. “Prohibition of Child Marriage (Amendment) Bill, 2021: A critique”. *The Times of India*. Accessed October 13, 2022 at <https://timesofindia.indiatimes.com/blogs/legally-speaking/prohibition-of-child-marriage-amendment-bill-2021-a-critique/> ; Muttreja, Poonam. 2020, June 30. Ending early marriage in India will take more than legal action – it needs real belief in equality. *Scroll.in*. Accessed October 13, 2022 at <https://scroll.in/article/966034/ending-early-marriage-in-india-will-take-more-than-legal-action-it-needs-real-belief-in-equality>

## 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>129</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>130</sup>

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

<sup>129</sup> Hardev Singh vs Harpreet Kaur. 2019. Accessed October 13, 2022 at <https://indiankanoon.org/doc/169642291/>

<sup>130</sup> Independent Thought vs Union Of India. 2017. Accessed October 13, 2022 at <https://indiankanoon.org/doc/87705010/>

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>131</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>132</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>131</sup> M.Janaki vs K.Vairamuthu. 2016. Accessed October 13, 2022 at <https://indiankanoon.org/doc/196038778/>

<sup>132</sup> Yunusbhai Usmanbhai Shaikh v/s State of Gujarat. 2015. Accessed October 13, 2022 at <https://www.lawyerservices.in/Yunusbhai-Usmanbhai-Shaikh-Versus-State-of-Gujarat-2015-09-23>

## 8. HUMAN TRAFFICKING

The UN Trafficking in Persons protocol defines trafficking in persons as ‘the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.’ 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>133</sup> As stated by Yakin Ertürk, former Special Rapporteur on Violence against Women, its Causes and Consequences (Special Rapporteur on VAWG)<sup>134</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>135</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>136</sup>

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<sup>133</sup> The Inter-Agency Coordination Group Against Trafficked Persons (ICAT). 2017. The Gender Dimensions of Human Trafficking. Issue Brief 4. Accessed October 13, 2022 at <https://icat.un.org/sites/default/files/publications/icat-ib-04-v.1.pdf>

<sup>134</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 October 13, 2022 at <https://www.ohchr.org/Documents/Issues/Women/15YearReviewofVAWMandate.pdf>

<sup>135</sup> Fernandez, Gema, Yoshida, Keina. 2018, June 28. “Human Trafficking as a Gendered Phenomenon – Part I”. *INTLAWGRRLS*. Accessed October 13, 2022 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>136</sup> ICAT. (2017). Ibid.

## Data on Human Trafficking

According to the NCRB 2021 report, a total of 2189 cases of human trafficking were registered, showing an increase in about 400 cases since 2020. 6533 victims have been reported as trafficked, of which 4062 were women. 6213 victims of trafficking were reported to have been rescued.

Of the 2877 under-18 victims reported as trafficked, 1570 were males and 1307 females. Of adult victims of trafficking, 2755 were females and 901 males.<sup>137</sup>

The 2022 Trafficking in Persons Report<sup>138</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 does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so. The government demonstrated overall increasing efforts compared with 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 trafficking victims, primarily victims of bonded and forced labor."

## 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>139</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>140</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>137</sup> Also see Global Slavery Index 2018. 2018. Country Study: India. Accessed October 14, 2022 at <https://www.globallslaveryindex.org/2018/findings/country-studies/india/>

<sup>138</sup> U.S Department of State. 2022. 2022 Trafficking in Persons Report. Accessed October 14, 2022 at <https://www.state.gov/reports/2022-trafficking-in-persons-report/>

<sup>139</sup> Journals of India. 2021, July 6. "Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021". Accessed October 14, 2022 at <https://journalsofindia.com/trafficking-in-persons-prevention-care-and-rehabilitation-bill-2021/>

<sup>140</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 October 14, 2022 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>141</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 Anti-Human Trafficking Units or AHTUs at different levels in different parts of the country, the absence of community-based rehabilitation, missing definition of reintegration and other such technical issues. Moreover, representatives of Durbar, the largest sex worker collective in Kolkata, have emphasized that the proposed Bill criminalizes sex work and the choice of sex work as profession.<sup>142</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*: Procurement of minor girls for the purpose of illicit intercourse

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<sup>141</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 October 14, 2022 at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23392>

<sup>142</sup> Singh, Shiv Sahay. 2021, July 18. "Concerns remain over anti-trafficking bill". *The Hindu*. Accessed October 14, 2022 at <https://www.thehindu.com/news/national/concerns-remain-over-anti-trafficking-bill/article35388874.ece>

with another person

- *Section 366 B*: Importation of girls from foreign country
- *Section 370*: Defines the offence of trafficking in persons
- *Section 372*: Selling minor for purposes of prostitution, etc.
- *Section 373*: Buying minor for purposes of prostitution, etc.

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

### Recent Case Law

*Geeta Arora @ Sonu Punjaban v. State (2020)*<sup>143</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.”

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<sup>143</sup> PTI. 2020, July 23. “Sonu Punjaban Gets 24 Years Imprisonment For Trafficking Minor Girl”. *Outlook*. Accessed October 14, 2022 at <https://www.outlookindia.com/website/story/india-news-sonu-punjaban-gets-24-years-imprisonment-for-trafficking-minor-girl/357236>

*2019 Case in Rajasthan*<sup>144</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.

*Freedom Firm v. Commissioner of Police, Pune & Others (2015)*<sup>145</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>146</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>144</sup> Nagaraj, Anuradha. 2019, August 29. “New hope for child rights after India gets tough on traffickers”. *Thomas Reuters Foundation News*. Accessed October 14, 2022 at <http://news.trust.org//item/20190829142656-swuxc/>

<sup>145</sup> Freedom Firm Versus Commissioner Of Police, Pune And Ors. 2015. Accessed October 14, 2022 at <http://www.the-laws.com/Encyclopedia/Browse/Case?CaseId=315102532300>

<sup>146</sup> Prajwala v. Union of India (UOI) and Ors. 2015. Accessed October 14, 2022 at <https://www.legitquest.com/case/prajwala-v-union-of-india-uoi-and-ors/184c3a>

## 9. 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>147</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>148</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 Section 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>2020</b>	85392	48037	17003	7065	375	10580	1260	8512
<b>2021</b>	89200	49761	17539	7788	357	11102	1513	9285

Source: National Crime Records Bureau, Crime in India 2020 and 2021 reports, accessed October 13, 2022 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>147</sup> Sanitation First. What is ‘Eve-Teasing’ and Why Should We Be Angry About it? Accessed October 16, 2022 at <http://sanitationfirst.org/blog/eve-teasing-angry/>

<sup>148</sup> Stop Street Harassment. 2015. *What is Street Harassment?* Accessed October 16, 2022 at <http://www.stopstreetharassment.org/about/what-is-street-harassment/>

experienced groping.<sup>149</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>150</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>151</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>149</sup> Senthilingam, Meera. 2017, November 29. "Sexual Harassment: How it stands around the globe". *CNN*. Accessed October 16, 2022 at <https://edition.cnn.com/2017/11/25/health/sexual-harassment-violence-abuse-global-levels>

<sup>150</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 October 16, 2022 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>151</sup> Safetipin. 2021, June 21. "Street Harassment: An Epidemic of Gender Violence". Accessed October 16, 2022 at <https://safetipin.com/street-harassment-an-epidemic-of-gender-violence/>

## Recent Case Law

*Shanta Kumar v. CSIR & Others (2017)*<sup>152</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>153</sup>

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

*T Manikandan v. The State (Govt of NCT of Delhi) & Another (2017)*<sup>154</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>155</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. The court stated that no one can compel her to love and she has the absolute right to reject anyone.

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<sup>152</sup> Shanta Kumar vs Council Of Scientific And ... 2017. Accessed October 16, 2022 at <https://indiankanoon.org/doc/161594683/>

<sup>153</sup> Jishu Sengupta & Others vs The State Of West Bengal & Anr. 2017. Accessed October 16, 2022 at <https://indiankanoon.org/doc/143017740/>

<sup>154</sup> T. Manikadan vs The State (Govt Of Nct Of Delhi) & ... 2017. Accessed October 16, 2022 at <https://indiankanoon.org/doc/34693422/>

<sup>155</sup> Pawan Kumar vs State Of H.P. 2017. Accessed October 16, 2022 at <https://indiankanoon.org/doc/50939276/>

## 10. 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>156</sup>

The General Assembly Resolution 48/104 on the *Declaration on the Elimination of Violence Against Women*<sup>157</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>158</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>159</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.

### Data on Workplace Sexual Harassment

The NCRB 2021 recorded 418 cases of sexual harassment at work or office premises over

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<sup>156</sup> Usman, Shah. 2019, December 19. "Sexual Harassment Of Women At Workplace: A Brief Analysis Of The POSH Act, 2013". *Mondaq*. Accessed October 16, 2022 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>157</sup> OHCHR. Declaration on the Elimination of Violence against Women. Accessed October 16, 2022 at <https://www.ohchr.org/en/professionalinterest/pages/violenceagainstwomen.aspx>

<sup>158</sup> UN Women. General Recommendations. Convention on the Elimination of All Forms of Discrimination against Women. Accessed October 16, 2022 at <https://www.un.org/womenwatch/daw/cedaw/recommendations/index.html>

<sup>159</sup> UN Women. 1995. Beijing Declaration and Platform for Action. *The Fourth World Conference on Women*. Accessed October 16, 2022 at <http://www.un.org/womenwatch/daw/beijing/platform/>

the last year.

### **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 measures, and gave directives towards a legislative mandate to the guidelines proposed.<sup>160</sup> *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013* was enacted sixteen years after *Vishaka*. While sexual harassment at workplace is primarily taken as 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>161</sup>

*The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*<sup>162</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);

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<sup>160</sup> Vishaka Guidelines against Sexual Harassment at Workplace. Accessed October 16, 2022 at <http://www.nitc.ac.in/app/webroot/img/upload/546896605.pdf>

<sup>161</sup> Mrs. Rupan Deol Bajaj & Anr vs Kanwar Pal Singh Gill & Anr. 1995. Accessed October 16, 2022 at <https://indiankanoon.org/doc/579822/>

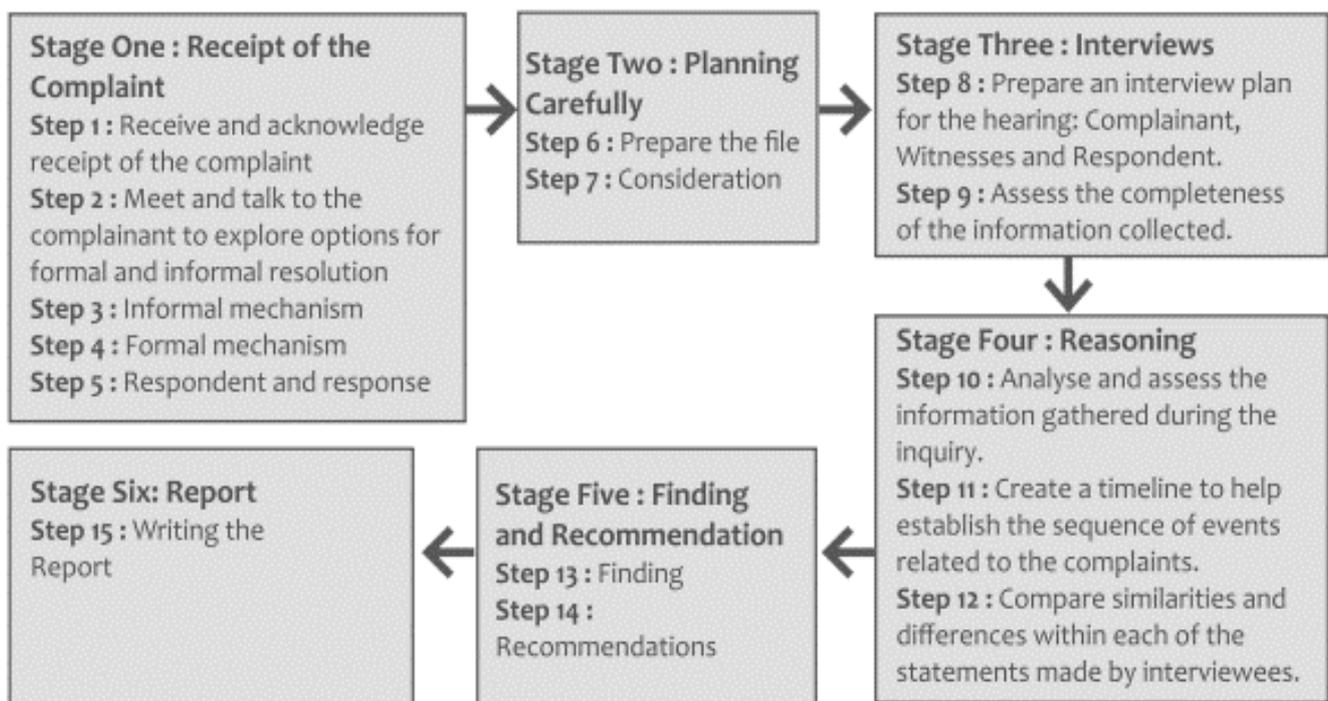
<sup>162</sup> The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 Accessed October 16, 2022 at <http://legislative.gov.in/sites/default/files/A2013-14.pdf>

- A student

The Act provides for two kinds of complaints mechanisms: the Internal Complaints Committee (ICC) and the Local Complaints Committee (LCC). All workplaces with more than ten workers are required to have an Internal Complaints Committee. A 2016 amendment dropped the word 'Complaints' so that these are now to be known as Internal Committee and Local Committee<sup>163</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 October 16, 2022 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

<sup>163</sup> Repealing and Amending Act, 2016, The Second Schedule. 2016, May 16. Accessed October 16, 2022 at <http://extwprlegs1.fao.org/docs/pdf/IND169760.pdf>

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

According to Anagha Sarpotdar, chairperson of the Mumbai city district local committee on sexual harassment at the workplace, one of the major milestones of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is to provide a special redress mechanism for complaints in the unorganised sector. Section 7 of this act mandates the constitution of local committees by the state government.<sup>164</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>165</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>166</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:

- Section 294:* Making a girl or a woman target of obscene gestures, remarks, songs or recitation.
- 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.
- Section 354 B:* Assault with the intent to disrobe a woman.

<sup>164</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 October 16, 2022 at <https://www.epw.in/journal/2020/20/review-womens-studies/examining-local-committees-under-sexual-harassment.html>

<sup>165</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 October 16, 2022 at <https://scroll.in/article/987583/eight-years-on-indias-law-to-prevent-workplace-sexual-harassment-is-marred-by-poor-data-collection>

<sup>166</sup> Prajnya Trust. Replies to RTI on Local Complaints Committees. Accessed October 16, 2022 at <https://www.prajnya.in/lcc-rti-replies>

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

### In Recent News

In September 2022, the Delhi Commission for Women (DCW) submitted a report to the city government pointing out several ‘lapses’ in the implementation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) law.<sup>167</sup> The law requires that a functioning Local Complaints Committee (LCC) is to be constituted in every district. Based on notices issued by the DCW to all district magistrate in Delhi seeking information on its complaint committees, it was observed that the LCCs received only 40 complaints between 2019-21. These cases were also not being dealt with efficiently, the report by DCW claimed.

In a survey conducted by the Association for Advocacy and Legal Initiatives (AALI) Trust in Jharkhand, 63 working women out of a group of 138 interviewed between 2019 and 2021 reported experiencing some form of sexual harassment at their place of work. Additionally, none among the 138 respondents had any information regarding the POSH Act.<sup>168</sup>

A study among Nifty 50 companies has suggested that with an increasing number of companies resuming work from offices post the COVID-19 pandemic, cases of sexual harassment at workplaces have increased over the last fiscal year. Data from annual reports showed a 20% increase in the number of harassment complaints received by Nifty 50 companies in the 2022 financial year.<sup>169</sup>

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<sup>167</sup> PTI. 2022, September 19. “DCW seeks strict implementation of law against sexual harassment of women at workplace”. *The Print*. Accessed October 16, 2022 at <https://theprint.in/india/dcw-seeks-strict-implementation-of-law-against-sexual-harassment-of-women-at-workplace/1134453/>

<sup>168</sup> Shikha, Swati. 2022, July 5. “Most sexual harassment cases at workplaces go unreported: Study”. *The Times of India*. Accessed October 16, 2022 at <https://timesofindia.indiatimes.com/city/ranchi/most-sexual-harassment-cases-at-workplaces-go-unreported-study/articleshow/92665840.cms>

<sup>169</sup> Bhattacharyya, Richa. 2022, October 3. “Sexual harassment cases rise as India Inc resumes WFO”. *Economic Times*. Accessed October 19, 2022 at <https://economictimes.indiatimes.com/news/company/corporate-trends/sexual-harassment-cases-rise-as-india-inc-resumes-wfo/articleshow/94819887.cms>

## Recent Case Law

### *Civic Chandran @ CV Kuttan v. State of Kerala (2022)*<sup>170</sup>

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

### *P vs A & Ors., 2021 (Subsequent order dated March 2022)*<sup>171</sup>

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

### *Acquittal of Tarun Tejpal (2021)*<sup>172</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>173</sup> The Goa Government has appealed the judgement, citing the trial court's lack of understanding of a rape victim's post-

<sup>170</sup> Jain, Anubhuti. 2022, August 31. “Kerala court granting bail to Chandran highlights sexism, misogyny within Indian judiciary”. *The Print*. Accessed October 16, 2022 at <https://theprint.in/campus-voice/kerala-court-granting-bail-to-chandran-highlights-sexism-misogyny-within-indian-judiciary/1109469/#>

<sup>171</sup> POSH at Work. 2022. Bombay High Court: Privacy Guidelines for POSH Cases is Case-Specific. Accessed October 16, 2022 at <https://poshatwork.com/bombay-high-court-privacy-guidelines-for-posh-cases-is-case-specific/>

<sup>172</sup> Saigal, Sonam. 2021, May 21. “Tarun Tejpal acquitted in Sexual Harassment Case”. *The Hindu*. Accessed October 16, 2022 at <https://www.thehindu.com/news/national/other-states/tarun-tejpal-acquitted-in-sexual-harassment-case/article34611849.ece>

<sup>173</sup> 2021, June 5. “Judgment in Tejpal case a huge setback, says Network of Women in Media”. *The Hindu*. Accessed October 16, 2022 at <https://www.thehindu.com/news/national/nwmi-critiques-judgment-in-tarun-tejpal-case/article34740769.ece>

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>174</sup>

*Mobashar Jawed Akbar Vs. Priya Ramani (2021)*<sup>175</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.

*Anita Suresh vs Union of India & Others (2019)*<sup>176</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.

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<sup>174</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 October 16, 2022 at <https://www.livelaw.in/top-stories/goa-government-appeal-tarun-tejpal-bombay-high-court-tehelka-174986>

<sup>175</sup> Mobashar Jawed Akbar Vs. Priya Ramani. 2021. Accessed October 16, 2022 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)

<sup>176</sup> Anita Suresh vs Union Of India & Ors. 2019. Accessed October 16, 2022 at <https://indiankanoon.org/doc/98792027/>

*Samuel Tennyson vs The Principal and Secretary (2019)*<sup>177</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.

*Ms Renuka Mukherjee v. Vodafone (2017)*<sup>178</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.

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<sup>177</sup> Samuel Tennyson vs The Principal & Secretary. 2019. Accessed October 16, 2022 at <https://indiankanoon.org/doc/79788274/>

<sup>178</sup> Renuka Mukherjee vs Vodafone Essar Ltd & Ors. 2017. Accessed October 16, 2022 at <https://indiankanoon.org/doc/161861542/>

# 11. CRIMES COMMITTED IN THE NAME OF “HONOUR”

“Honour killing” is the murder of a person accused of “bringing shame” upon their family. Human Rights Watch defines honour killings as ‘acts of violence, usually murder, committed by male family members against female family members who are perceived to have brought dishonour upon the family’. This form of violence may be motivated due to perceptions of violation of accepted social norms of sexuality, for example, romantic involvement with a partner from a different caste or religion, inter-caste marriages, etc. Violence in the name of honour can also mean ‘any kind of abusive behaviour, torture, mutilation, rape, and forced marriage, keeping confined within the house...with the intention to preserve and protect the family honour’.<sup>179</sup> Honour killing in India is largely a product of casteist patriarchy<sup>180</sup> and religious intolerance, with women constituting 97% of honour killing victims in India.<sup>181</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>182</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>183</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>179</sup> Stop Violence Against Women. 2008. Crimes Committed in the Name of “Honor”. Accessed October 16, 2022 at [http://www.stopvaw.org/honor\\_killings](http://www.stopvaw.org/honor_killings)

<sup>180</sup> Gupte, Manisha. 2013. “The Concept of Honour: Caste Ideology and Patriarchy in Rural Maharashtra”. *Economic and Political Weekly* 48 (18): 72-81. Accessed October 16, 2022 at <https://www.jstor.org/stable/23527311>

<sup>181</sup> Sundaravelu, Anugraha. 2020, April 21. “Why India Needs a Separate Law for Honor Killings”. *The Swaddle*. Accessed October 16, 2022 at <https://theswaddle.com/honor-killings-india-law/>

<sup>182</sup> Government of India, Ministry of Home Affairs, Lok Sabha starred question no. 23. Answered on 04.02.2020. Accessed October 16, 2022 at <http://164.100.47.194/Loksabha/Questions/QResult15.aspx?qref=11406&lsno=17>

<sup>183</sup> OHCHR. 15 Years of the United Nations Special Rapporteur on Violence Against Women, Its Causes and Consequences. Accessed October 16, 2022 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>2020</b>	25	1588	27	1443	20
<b>2021</b>	33	1559	33	1566	99

Source: National Crime Records Bureau, Crime in India, 2020 and 2021 reports. Accessed October 16, 2022 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>184</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>185</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>184</sup> Karat, Brinda. 2016, March 22. “Honour killings are a separate horror”. *The Hindu*. Accessed October 16, 2022 at <https://www.thehindu.com/opinion/lead/Honour-killings-are-a-separate-horror/article14168010.ece>

<sup>185</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 October 16, 2022 at <http://lawcommissionofindia.nic.in/reports/report242.pdf>

are to house a 24-hour helpline for such complaints.<sup>186</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>187</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 few years. 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

<sup>186</sup> Ministry of Home Affairs. 2018, July 31. Honour Killings. *Press Information Bureau* Accessed October 16, 2022 at <https://pib.gov.in/PressReleaselframePage.aspx?PRID=1540824>

<sup>187</sup> Sundaravelu, Anugraha. 2020, April 21. "Why India Needs a Separate Law for Honor Killings". *The Swaddle*. Accessed October 16, 2022 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

*Sachin Laxman Dandekar v. State of Maharashtra (2022)*<sup>188</sup>

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

*Judgement in the Cuddalore Honour Killing Case of 2003 (2021)*<sup>189</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

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<sup>188</sup> Hakeem, Sharmeen. 2022, October 15. "[Honour Killing With Hammer] Bombay HC Says Father Wanted To Teach Daughter's Young Lover A Lesson, No Intention To Kill, Sets Aside Life Sentence". *Live Law*. Accessed October 16, 2022 at <https://www.livelaw.in/news-updates/honour-killing-with-hammer-bombay-hc-says-father-wanted-to-teach-daughters-young-lover-a-lesson-no-intention-to-kill-sets-aside-life-sentence-211719>

<sup>189</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 October 16, 2022 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>

imprisonment, including a deputy superintendent of police, and a sub inspector.

*Judgement in the Udumalpet Murder Case of 2016 (2020)*<sup>190</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 a Dalit caste, in 2015. Shankar was hacked to death a year later and Kowsalya also suffered injuries. Along with acquitting Chinnasamy, the court also commuted the death sentence awarded to the five assailants to life imprisonment.

*T. Padmaja vs The State of Telangana (2019)*<sup>191</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>192</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."

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<sup>190</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 October 16, 2022 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>

<sup>191</sup> T. Padmaja vs The State Of Telangana. 2019. Accessed October 16, 2022 at <https://indiankanoon.org/doc/95632531/>

<sup>192</sup> Shakti Vahini vs Union Of India. 2018. Accessed October 16, 2022 at <https://indiankanoon.org/doc/92846055/>

*B. Dilipkumar v. The Secretary to Government and Others (2016)*<sup>193</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>194</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>193</sup> B.Dilipkumar vs The Secretary To Government. 2016. Accessed October 16, 2022 at <https://indiankanoon.org/doc/171256546/>

<sup>194</sup> Baby @ Sebastian & Anr vs Circle Inspector Of Police ... . 2016. Accessed October 16, 2022 at <https://indiankanoon.org/doc/16985200/>

## 12. ACID ATTACKS

An acid attack is a form of gendered violence that involves the voluntary and premeditated throwing of acid on a person, usually female, and usually on her face. 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>195</sup> In cases where acid attacks are perpetrated by an intimate partner, it is also a form of intimate partner violence/domestic violence.

### 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.

	2020	2021
<i>Acid Attacks</i>	105	102
<i>Attempted Acid Attacks</i>	33	48

Source: National Crime Records Bureau, Crime in India 2020 and 2021 reports, Accessed October 16, 2022 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

<sup>195</sup> UN Women. (2011). Acid Attacks. Accessed October 16, 2022 at <https://www.endvawnow.org/en/articles/607-acid-attacks.html>

of Law Commission of India (2009) specifically dealt with acid attacks and recommended a separate law defining the offence as well as a liberal compensation scheme for survivors.

Thereafter, with the Criminal Law (Amendment Act) 2013, Sections 326A and 326B were inserted into the Indian Penal Code providing punishment for acid attacks and attempted acid attacks, making it a separate, cognizable and non-bailable offence under the IPC. Under this law, an acid attack includes causing permanent or partial damage or deformity to, or burning or maiming or disfiguring or disabling, any part or parts of the body of a person, or causing grievous hurt by throwing acid on or by administering acid to that person, or by using any means 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>196</sup>

### How to Access Justice

- The financial relief granted under National Legal Services Authority (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>197</sup>
- Please see the Prajnya FIR Ready Reckoner (Appendix).

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<sup>196</sup> Acid Survivors Trust International. Country Files. Accessed October 16, 2022 at <https://www.asti.org.uk/a-worldwide-problem.html>

<sup>197</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)

## Recent Case Law

*Hakim and Another v. State (NCT of Delhi and other connected matter (2022))*<sup>198</sup>

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

*Mahesha v. State by Malebennur Police (2021)*<sup>199</sup>

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

*Sonali Mukherjee v. Union of India and Others (2019)*<sup>200</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>201</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

<sup>198</sup> Thaplial, Nupur. 2022, October 13. "[Section 326A IPC] 'Acid' Includes All Substances Having Burning Nature, Not Merely Those Classically Termed as Acids: Delhi High Court" Accessed October 16, 2022 at <https://www.livelaw.in/news-updates/acid-substances-burning-nature-disfigurement-permanent-temporary-disability-delhi-hc-211587>

<sup>199</sup> Mahesha vs State by Malebennur Police. 2021. Accessed October 16, 2022 at <https://indiankanoon.org/doc/26956323/>

<sup>200</sup> Sonali Mukherjee @ Sonali vs The Union Of India & Ors. 2019. Accessed October 16, 2022 at <https://indiankanoon.org/doc/173011481/>

<sup>201</sup> Raja vs State of Haryana. 2019. Accessed October 16, 2022 at <https://indiankanoon.org/doc/86904145/>

addition to what was imposed by the trial court.

*Piyali Dutta v. State of West Bengal (2017)*<sup>202</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>203</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.

*Parivartan Kendra v. Union of India and Others (2015)*<sup>204</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>205</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>202</sup> Piyali Dutta vs State of West Bengal. 2017. Accessed October 16, 2022 at <https://indiankanoon.org/doc/21784779/>

<sup>203</sup> Renu Sharma vs Gncd Of Delhi And Ors. 2016. Accessed October 16, 2022 at <https://indiankanoon.org/doc/149678491/>

<sup>204</sup> Parivartan Kendra & Anr vs U.O.I & Ors. 2015. Accessed October 16, 2022 at <https://indiankanoon.org/doc/16029001/>

<sup>205</sup> Laxmi vs Union Of India & Ors. 2015. Accessed October 16, 2022 at <https://indiankanoon.org/doc/90443079/>

## 13. FEMALE GENITAL MUTILATION

Female genital mutilation (FGM), also known as female genital cutting and female circumcision, is the ritual cutting or removal of some or all of external female genitalia. In December 2012, the UN General Assembly adopted a unanimous resolution on the elimination of FGM. The World Health Organisation (WHO)<sup>206</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>207</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>208</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>206</sup> WHO. 2022, January 21. Female Genital Mutilation. Accessed October 16, 2022 at <https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation>

<sup>207</sup> Amnesty International. What is Female Genital Mutilation? Accessed October 16, 2022 at <https://www.amnesty.org/en/documents/act77/005/1997/en/>

<sup>208</sup> Ibid.

community, undergo these procedures conducted by doctors and midwives.<sup>209</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 Women, as of February 2021, approximately 200 million girls across 31 countries are affected by this practice, and 4.16 million girls and women are at risk in 2021.<sup>210</sup>
- A study across the Dawoodi Bohra community was published by the NGO Sahiyo, detailing the practice and its repercussions on Bohra women and girls.<sup>211</sup> 80% of Bohra women surveyed for this study stated that there is a need for this practice to end.
- An independent study titled *The Clitoral Hood: A Contested Site* shows that 75% of girls interviewed above the age of 7, from the Bohra community, had been subjected to FGM.<sup>212</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.

<sup>209</sup> Baweja, Harinder. "India's Dark Secret". *Hindustan Times*. Accessed October 16, 2022 at <https://www.hindustantimes.com/static/fgm-indias-dark-secret/>

<sup>210</sup> UN Women. 2021, February 4. Ending FGM is essential to give girls control over their own lives. Accessed October 16, 2022 at <https://www.unwomen.org/en/news/stories/2021/2/feature-ending-fgm-is-essential>

<sup>211</sup> Sahiyo. 2017. Understanding Female Genital Cutting in the Dawoodi Bohra Community: An Exploratory Study. Accessed October 16, 2022 at [https://sahiyo.files.wordpress.com/2019/05/sahiyo\\_report\\_final-5.21.19.pdf](https://sahiyo.files.wordpress.com/2019/05/sahiyo_report_final-5.21.19.pdf)

<sup>212</sup> Anantnarayan, Lakshmi, Diler, Shabana, Menon, Natasha. 2018. "The Clitoral Hood: A Contested Site". *WeSpeakOut and Nari Samta Manch*. Accessed October 16, 2022 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)

- 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>213</sup> Several Dawoodi Bohra women have filed interventions in the ongoing case.<sup>214</sup>

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<sup>213</sup> Rajagopal, Krishnadas. 2018, September 24. "SC refers plea against female genital mutilation to Constitution Bench". *The Hindu*. Accessed October 16, 2022 at <https://www.thehindu.com/news/national/sc-refers-pil-against-female-genital-mutilation-to-constitution-bench/article25026340.ece>

<sup>214</sup> Shelar, Jyoti. 2018, July 18. "FGM case: more women file interventions". *The Hindu*. Accessed October 16, 2022 at <https://www.thehindu.com/news/cities/mumbai/fgm-case-more-women-file-interventions/article24446383.ece>

## 14. RAPE

Rape is defined in most jurisdictions as sexual intercourse, or other forms of sexual penetration, committed by a perpetrator against a victim without their consent. Incidents of rape are classified into 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>215</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 legal amendments made in 2013, rape had a narrow definition and there was no definition of consent.

In 2018, the criminal law relating to child rape was further amended after the brutal Kathua gang rape case to prescribe harsher punishment, including death penalty.<sup>216</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 recognized as rape by many societies around the world, repudiated by international conventions, and increasingly criminalized. Indian rape laws, however, includes an explicit

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<sup>215</sup> International Criminal Tribunal for Rwanda, Prosecutor vs. Akaseyu, Case No. ICTR-96-4-T, September 1998.

<sup>216</sup> The Criminal Law (Amendment) Bill, 2019. Accessed October 21, 2022 at <http://164.100.47.4/BillsTexts/RSBillTexts/asintroduced/crimnal-E-12719.pdf>

exemption for marital rape.

### Data on Rape in India

According to data by the NCRB, an average of 86 rapes were reported every day in India in 2021, an increase from the average of 77 in the previous year. The data also reveals that nearly 89% of reported rapes were committed by persons known to the victim. Latest data for marital rape, a crime which is exempt from Indian rape laws, painted a particularly dire picture. As per data from the National Family Health Survey 5 (2019-21), 95% of married women aged 18-49 who experienced sexual violence identified their husbands or former husbands to be the perpetrator. Over 90% of the women who endured sexual violence did not seek help from anyone, and among women who did seek help, none sought legal recourse. More than 70% sought help from their own family or husband's family.<sup>217</sup> The *Crime In India* 2020 and 2021 reports have published the following data for rapes in India over the last two years.

	2020	2021
<i>Rape</i>	28046	31677
<i>Incest Rape</i>	2502	2424
<i>Gang Rape</i>	1933	2200
<i>Rape by Family Friends/Neighbours/Employer or Other Known Persons</i>	13555	15196
<i>Custodial Rape</i>	29	26
<i>Rape by Relative/Teacher/Guardian/Person in position of Trust [Sec. 376(2)(f)]</i>	1410	1654
<i>Rape on Pregnant Women [Sec. 376(2)(h)]</i>	39	28
<i>Rape on Women below 16 years of Age [Sec. 376(2)(i)]</i>	244	246
<i>Rape on Women incapable of giving Consent [Sec. 376(2)(j)]</i>	244	256
<i>Rape by Persons in Control or Dominance over Women [Sec. 376(2)(k)]</i>	119	53
<i>Rape on Women with Mental or Physical Disability [Sec. 376(2)(l)]</i>	94	117
<i>Endanger Life of Women after Rape [Sec. 376(2)(m)]</i>	24	23
<i>Repeated Rape on Same Women [Sec. 376(2)(n)]</i>	2879	4155
<i>Other Custodial Rapes</i>	875	1359
<i>Attempt to Commit Rape</i>	3741	3800
<i>Murder with rape/Gang-Rape</i>	219	284

Source: National Crime Records Bureau, Crime in India 2020 and 2021 reports, accessed October 21, 2022 at <https://ncrb.gov.in/en/crime-india>

<sup>217</sup> Benu, Parvathi. 2022, May 16. "Marital rape: Most married women are sexually abused by their husbands, says NFHS data". *BusinessLine*. Accessed October 21, 2022 at <https://www.thehindubusinessline.com/data-stories/data-focus/marital-rape-most-married-women-are-sexually-abused-by-their-husbands-says-nfhs-data/article65409875.ece>

## 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 (PWDVA), 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’, which includes two bills, the Maharashtra Shakti Criminal Law (Maharashtra Amendment) Act, 2020, and the Special Court and Machinery for Implementation of Maharashtra Shakti Criminal Law, 2020. The former was passed in December 2021, while the latter has been sent to a joint select committee for further discussions. The Act provides for death penalty for rape and has increased the minimum punishment for crimes such as acid attacks on women and sexual assault of children. It also included provisions to tackle gender-based violence perpetrated through digital and social media, and set a time limit of 30 days

from the day of complaint to complete the probe.<sup>218</sup> The two bills have previously received wide criticism by feminists, lawyers, and academicians, who called it “draconian” and that it fed into the patriarchal construction of consent and conduct of women. The Act’s mandate towards the death penalty also met with critique because data suggests that capital punishment for a crime has historically led to reduced reporting and conviction rates.<sup>219</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 August 2022, all 11 persons convicted of the 2002 gang rape of Bilkis Bano were released from prison in Gujarat. The gang rape took place during the Gujarat communal pogrom, at which time the survivor Bilkis Bano was reportedly pregnant. Her six-year-old daughter and other members of her family were also killed.<sup>220</sup> The Gujarat government stated that the release of the convicts was because they had completed 14 years of imprisonment, the term given for a life sentence, and also due to displaying “good behaviour” during their imprisonment.

The Dera Sacha Sauda (an Indian spiritual organization) Chief Gurmeet Ram Rahim, who was convicted in several cases of rape and murder, was released on 40 days’ parole on October 14, 2022. This is reportedly the third time in the past year and the sixth time overall that Rahim has been released from prison, either on parole or on furlough.<sup>221</sup> On October 29, the Delhi Commission for Women (DCW) chief Swati Maliwal wrote to to Prime Minister Narendra Modi seeking stronger laws and policies to restrict the remission and paroles of rape convicts. In the letter she called for the convicts of the Bilkis Bano rape case and Dera Sacha Sauda chief Gurmeet Ram Rahim to be sent back to jail.<sup>222</sup>

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<sup>218</sup> Jain, Bhavika. 2021, December 24. “Maharashtra assembly unanimously OKs Shakti bill seeking death for rape”. *Times of India*. Accessed October 21, 2022 at <https://timesofindia.indiatimes.com/city/mumbai/maharashtra-assembly-unanimously-oks-shakti-bill-seeking-death-for-rape/articleshow/88463298.cms>

<sup>219</sup> Phadke, Manasi. 2020, December 17. “The Maharashtra Shakti bill on crimes against women, children & why it’s called ‘draconian’”. *The Print*. Accessed October 21, 2022 at <https://theprint.in/theprint-essential/the-maharashtra-shakti-bill-on-crimes-against-women-children-why-its-called-draconian/567660/>

<sup>220</sup> Katakam, Anupama. 2022, August 25. “All 11 persons convicted of rape in 2002 Bilkis Bano case released”. *Frontline*. Accessed October 21, 2022 at <https://frontline.thehindu.com/news/all-11-persons-convicted-of-rape-in-the-2002-bilkis-bano-rape-case-released/article65774788.ece>

<sup>221</sup> India News. 2022, October 20. “Dera chief Gurmeet Ram Rahim’s 3 releases this year coincide with elections”. *Hindustan Times*. Accessed October 21, 2022 at <https://www.hindustantimes.com/india-news/dera-chief-gurmeet-ram-rahim-s-3-releases-this-year-coincide-with-elections-101666203536850.html>

<sup>222</sup> Jain, Pankaj. 2022, October 29. “Send Bilkis Bano rapists, Gurmeet Ram Rahim back to jail: Delhi women’s panel chief writes to PM Modi”. *India Today*. Accessed October 30, 2022 at <https://www.indiatoday.in/india/story/bilkis-bano-rapists-gurmeet-ram-rahim-jail-dcw-chief-swati-maliwal-pm-modi-2290836-2022-10-29>

## Recent Case Law

### *The State Of Jharkhand v. Shailendra Kumar Rai @ Pandav Rai (2022)*<sup>223</sup>

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

### *Farhan v. State & Anr (2022)*<sup>224</sup>

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

### *Babu Khan v. State Of U.P. And Another (2022)*<sup>225</sup>

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

### *Naasir and Others v. State Of U.P. Thru. Prin. Secy. Home and Anr (2022)*<sup>226</sup>

The Lucknow bench of the Allahabad High Court stayed a rape case against two brothers who were reportedly encouraged by their father to commit the rape. The judge stated while staying the trial that it is "unbelievable" that a father would encourage his sons to commit

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<sup>223</sup>Chowdhury, Sohini. 2022, October 31. "Supreme Court Bans Two-Finger Test; Says It's Based On Patriarchal Mindset That Sexually Active Women Can't Be Raped". *Live Law*. Accessed October 31, 2022 at <https://www.livelaw.in/top-stories/breaking-supreme-court-bans-two-finger-test-says-its-based-on-patriarchal-mindset-that-sexually-active-woman-cant-be-raped-212806>

<sup>224</sup> Singh, Soibam R. & Chandra, Jagriti. 2022, May 11. "Delhi HC delivers split verdict on marital rape". Accessed October 21, 2022 at <https://www.thehindu.com/news/cities/Delhi/delhi-high-court-delivers-split-verdict-on-marital-rape/article65403832.ece>

<sup>225</sup> Abraham, Bobins. 2022, June 01. "Unnatural In Indian Culture That Father-In-Law Would Rape Daughter-In-Law, Says Allahabad HC". *India Times*. Accessed October 21, 2022 at <https://www.indiatimes.com/news/india/unnatural-father-in-law-would-rape-daughter-in-law-allahabad-hc-571047.html>

<sup>226</sup> Lucknow News. 2022, July 24. "HC stays trial of father, two sons in 2019 rape case of Pratapgarh". *Hindustan Times*. Accessed October 21, 2022 at <https://www.hindustantimes.com/cities/lucknow-news/hc-stays-trial-of-father-two-sons-in-2019-rape-case-of-pratapgarh-101658684854213.html>

rape.

*Aparna Bhat v. The State of Madhya Pradesh (2021)*<sup>227</sup>

The Supreme Court Justice Ravindar Bhat addressed the ‘entrenched paternalistic and misogynistic attitudes’ in judgments and orders around gendered sexual violence cases, and laid down a set of dos and don’ts for progressive judgment writing. These include, but are not restricted to, the need for judges to appear impartial, provide appropriate protections to complainants when necessary, and gender sensitization for all judges. It also stated that bail orders should not reflect patriarchal notions such as commenting on women’s morals, physical weakness, capability to take decisions, position in the family, submissiveness or motherhood. Neither should any comment be made or inference drawn from women’s sexual activity, clothes, consumption of alcohol/cigarettes or lack of physical harm.

*Irappa Siddappa Murgannavar v. State of Karnataka (2021)*<sup>228</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>229</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>230</sup>

In this case of rape by a student of IIT Guwahati against a fellow student, the HC decided to

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<sup>227</sup> R, Kruthika and R, Mihir. 2021, March 20. "Justice Bhat’s Dos and Don’ts for Progressive Judgment Writing on Gender Violence Cases". *Supreme Court Observer*. Accessed October 21, 2021 at <https://www.scobserver.in/journal/justice-bhats-dos-and-donts-for-progressive-judgment-writing-on-gender-violence-cases/>

<sup>228</sup> *Irappa Siddappa Murgannavar v. State of Karnataka*. Accessed October 21, 2022 at [https://www.livelaw.in/pdf\\_upload/irappa-siddappa-murgannavar-vs-state-of-karnataka-ii-2021-sc-632-1-403664.pdf](https://www.livelaw.in/pdf_upload/irappa-siddappa-murgannavar-vs-state-of-karnataka-ii-2021-sc-632-1-403664.pdf)

<sup>229</sup> *Santhosh v. State of Kerala*. 2021. Accessed October 21, 2022 at [https://www.livelaw.in/pdf\\_upload/santhosh-v-state-of-kerala-397813.pdf](https://www.livelaw.in/pdf_upload/santhosh-v-state-of-kerala-397813.pdf)

<sup>230</sup> *Utsav Kadam versus the state of Assam*. 2021. Accessed October 21, 2022 at [https://www.livelaw.in/pdf\\_upload/iit-guwahati-gauhati-hc-rape-case-399073.pdf](https://www.livelaw.in/pdf_upload/iit-guwahati-gauhati-hc-rape-case-399073.pdf)

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>231</sup>

#### *Conviction in the Unnao Rape Case (2019)*<sup>232</sup>

In the well-known Unnao rape case and related murders<sup>233</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>234</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’.

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<sup>231</sup> 2021, August 26. “AIDWA Condemns Gauhati HC’s Decision to Grant Bail to IIT-Guwahati Rape Accused”. *NewsClick* Accessed October 21, 2022 at <https://www.newsclick.in/AIDWA-Condemns-Gauhati-HC-Decision-Grant-Bail-IIT-Guwahati-Rape-Accused>

<sup>232</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 October 21, 2022 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>233</sup> 2019, December 19. “Chronology of events in Unnao rape case”. *The Tribune*. Accessed October 21, 2022 at <https://www.tribuneindia.com/news/nation/chronology-of-events-in-unnao-rape-case-14641>

<sup>234</sup> Criminal Justice Society Of India vs Union Of India. 2018. Accessed October 21, 2022 at <https://indiankanoon.org/doc/164599854/>

*Sandeep and Others v. Neelam and Another (2018)*<sup>235</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>236</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.

*Yogesh v. State of Maharashtra (2018)*<sup>237</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>238</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>239</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>240</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

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<sup>235</sup> Sandeep vs Neelam. 2018. Accessed October 21, 2022 at <https://indiankanoon.org/doc/58555996/>

<sup>236</sup> Hemudan Nanbha Gadhvi vs The State Of Gujarat. 2018. Accessed October 21, 2022 at <https://indiankanoon.org/doc/171003922/>

<sup>237</sup> Yogesh S/O. Gajanan Sayankar And ... vs The State Of Maharashtra. 2018. Accessed October 21, 2022 at <https://indiankanoon.org/doc/45242209/>

<sup>238</sup> Karandeep Sharma Alias Razia ... vs State Of Uttarakhand. 2018. Accessed October 21, 2022 at <https://indiankanoon.org/doc/148366568/>

<sup>239</sup> The State Of Maharashtra vs Bandu @ Daulat. 2017. Accessed October 21, 2022 at <https://indiankanoon.org/doc/96251512/>

<sup>240</sup> Akshay Manoj Jaisinghani vs The State Of Maharashtra. 2017. Accessed October 21, 2022 at <https://indiankanoon.org/doc/173973806/>

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>241</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 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>242</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>241</sup>Mahmood Farooqui vs State (Govt Of Nct Of Delhi). 2017. Accessed October 21, 2022 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.)

<sup>242</sup> State Of M.P vs Madanlal . 2015. Accessed October 21, 2022 at <https://indiankanoon.org/doc/84388891/>

## 15. DOWRY-RELATED VIOLENCE

The United Nations Division for the Advancement of Women defines dowry-related violence or harassment as “any act of violence or harassment associated with the giving or receiving of dowry at any time before, during or after the marriage.”<sup>243</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>244</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>245</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>246</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*

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

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<sup>243</sup> United Nations. 2009. Good Practices in Legislation on “Harmful Practices” against Women. Accessed October 24, 2022 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>244</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 24, 2022 at <https://www.sciencedirect.com/science/article/pii/S1752928X20301426#bib19>

<sup>245</sup> Stop Violence against Women. Dowry Related Violence. Accessed October 24, 2022 at [https://www.stopvaw.org/dowry-related\\_violence](https://www.stopvaw.org/dowry-related_violence)

<sup>246</sup> See Dowry Prohibition Act, India, 1961, Art. 2

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

### *Cruelty*

According to the law, 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>2020</b>	6966	10366	111549
<b>2021</b>	6753	13568	136234

Source: National Crime Records Bureau, Crime in India 2020 and 2021 reports, accessed October 24, 2022 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, with conviction rates being alarmingly low. Earlier this year, an Indian government advertisement on road safety, featuring prominent Bollywood actor Akshay Kumar invited criticism for featuring what appears to be an incidence of giving dowry, which, critics claimed, normalizes the practice.<sup>247</sup> The ad continues to be aired on various platforms.

In April 2022, a Rajya Sabha MP brought to attention statements made regarding the dowry system in a Sociology textbook which is part of the curriculum for B.Sc Nursing students. The book lays down ‘merits and advantages’ of the dowry system, and states at one point, “ugly looking girls can be married off with attractive dowry with well or ugly looking boys.” The MP, Priyanka Chaturvedi brought this to the attention of the Union Education Minister, calling to stop the circulation of textbooks propagating regressive practices like these.<sup>248</sup>

### Recent Case Law

#### *Vismaya Case Judgement (2022)*<sup>249</sup>

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

#### *Mukesh Bansal v. State of UP (2022)*<sup>250</sup>

An Allahabad High Court bench issued a set of guidelines and safeguards to prevent the

<sup>247</sup> Jain, Nikita. 2022, September 20. “Dowry Was Banned 60 Years Ago. But Cases Are Rising, While Grieving Families Find Justice Harder Than Ever”. *Article 14*. Accessed October 24, 2022 at <https://article-14.com/post/dowry-was-banned-60-years-ago-but-cases-are-rising-while-grieving-families-find-justice-harder-than-ever-63291fa11a171>

<sup>248</sup> Bajeli-Datt, Kavita. 2022, April 04. “Dowry helps in marrying off ugly looking girls, says textbook for nursing students; draws flak”. *The New Indian Express*. Accessed October 24, 2022 at <https://www.newindianexpress.com/nation/2022/apr/04/dowry-helps-in-marrying-off-ugly-looking-girls-says-textbook-for-nursing-students-draws-flak-2437856.html>

<sup>249</sup> Staff Reporter. 2022, May 24. “Kiran Kumar sentenced to 10 years’ RI in Vismaya case”. *The Hindu*. Accessed October 24, 2022 at <https://www.thehindu.com/news/national/kerala/kiran-kumar-sentenced-to-10-years-ri-in-vismaya-case/article65456964.ece>

<sup>250</sup> Srivastava, Pankaj. 2022, June 16. “‘FIR not porn literature’: Allahabad HC denies arrest during cooling-off period in matrimonial dispute case”. *India Today*. Accessed October 24, 2022 at <https://www.indiatoday.in/law/story/fir-not-porn-literature-allahabad-hc-denies-arrest-during-cooling-off-period-in-matrimonial-dispute-case-1962971-2022-06-16>

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

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

*Rupali Devi vs State of Uttar Pradesh (2019)*<sup>251</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 498A of the IPC against her husband and in-laws at the place where she is currently sheltered. The judgement thus expanded the jurisdiction of courts to provide relief to victims of dowry harassment, and relaxed the rigours of the Code of Criminal Procedure (CrPC). Section 177 of the Code mandates that criminal cases can be filed and tried only in courts within whose jurisdiction the crime occurred.

*Sri Sukha Ranjan Das vs The State Of Tripura (2019)*<sup>252</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.

*Aniket Subhash Tupe vs Piyusha Aniket Tupe and Anr (2018)*<sup>253</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

<sup>251</sup> Rupali Devi vs. State of Uttar Pradesh. 2019. Accessed October 24, 2022 at <http://lawtimesjournal.in/rupali-devi-vs-state-of-uttar-pradesh/>

<sup>252</sup> Sri Sukha Ranjan Das vs The State Of Tripura. 2019. Accessed October 24, 2022 at <https://indiankanoon.org/doc/137055360/>

<sup>253</sup> Aniket Subhash Tupe vs Piyusha Aniket Tupe And Anr. 2018. Accessed October 24, 2022 at <https://indiankanoon.org/doc/26774800/>

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>254</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>255</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.

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<sup>254</sup> Social Action Forum vs Union Of India And Ors. Ministry Law ... 2018. Accessed October 24, 2022 at <https://indiankanoon.org/doc/81618143/>

<sup>255</sup> Ashok vs State (Gnct Of Delhi). 2017. Accessed October 24, 2022 at <https://indiankanoon.org/doc/109151123/>

## 16. 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>256</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>257</sup> The most common form of intimate partner violence is situational couple violence ('situational violence'), and is more likely to occur among younger couples, including adolescents (teen dating violence) and those of college-going age.

IPV refers to any behaviour within an intimate relationship that causes physical,

<sup>256</sup> OHCHR. 1993. Declaration on the Elimination of Violence against Women. Accessed October 24, 2022 at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ViolenceAgainstWomen.aspx>

<sup>257</sup> WHO. 2012. Intimate Partner Violence. Accessed October 24, 2022 at [https://apps.who.int/iris/bitstream/handle/10665/77432/WHO\\_RHR\\_12.36\\_eng.pdf;jsessionid=F1859C87849F0612045624695E0B22EB?sequence=1](https://apps.who.int/iris/bitstream/handle/10665/77432/WHO_RHR_12.36_eng.pdf;jsessionid=F1859C87849F0612045624695E0B22EB?sequence=1)

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

### Data on Domestic Violence

	2020	2021
<i>Cases registered under PWDVA</i>	446	507

Source: National Crime Records Bureau, Crime in India, 2020 and 2021 reports, accessed October 24, 2022 at <https://ncrb.gov.in/en/crime-india>

According to the National Family Health Survey 5 (2019-21), 30% of women between the age of 18 and 49 have experienced physical violence since their 15th birthday, and two in five women surveyed have experienced physical or sexual violence by their husbands or partners. Moreover, only 14% of women who experienced physical or sexual violence brought the issue to up to anyone.<sup>258</sup>

### In Recent News

According to data submitted by the National Legal Services Authority (NALSA) before the Supreme Court, a total of 4,71, 684 original cases and 21,088 appeals are pending under the PWDVA in the country as of July 1, 2022. The state-wise data on the pendency of disposal of cases under the DV Act showed that the maximum number of original cases were pending in Uttar Pradesh, followed by Maharashtra.<sup>259</sup>

The exponential increase in domestic violence cases during the COVID-19 pandemic have been recorded in previous reports, with the National Commission for Women (NCW) receiving 26,513 complaints from women in 2021-21, an increase of 25.09% from the 20,309 complaints in 2019-20.<sup>260</sup> In 2022, The NCW reported receiving 17,348 complaints from women. The alarming numbers have brought into the fore the need, and lack, of One Stop Centres (OSCs) for women across the country. One Stop Centres (OSCs) are intended to

<sup>258</sup> Paul, Chokita. 2022, May 30. "NFHS-5 Shows 30% Women In India Face Sexual Violence: Where Are The Laws?". *She The People*. Accessed October 24, 2022 at <https://www.shethepeople.tv/top-stories/opinion/nfhs-5-report-on-sexual-violence/>

<sup>259</sup> Ojha, Srishti. 2022, September 02. "Over 4 lakh cases pending under Domestic Violence Act, Supreme Court told". *India Today*. Accessed October 25, 2022 at <https://www.indiatoday.in/law/supreme-court/story/over-four-lakh-cases-pending-domestic-violence-act-nalsa-tells-supreme-court-1995554-2022-09-02>

<sup>260</sup> Arya, Prachi. 2022, August 29. "The Indian domestic violence scenario is chilling". *The Leaflet*. Accessed October 25, 2022 at <https://theleaflet.in/the-indian-domestic-violence-scenario-is-chilling/>

support women affected by violence in private and public spaces, within the family, community, and at the workplace. Data suggests that most states do not have enough functional OSCs, with West Bengal, which reports very high numbers of crimes against women, having zero. In total, out of 758 approved One Stop Centres, 708 were found to be functional in 35 states and union territories.<sup>261</sup>

Based on a longitudinal analysis conducted on the NCRB annual reports, a study published in BMC Women's Health found that domestic violence cases had increased by 53 % between 2001 to 2018. The analysis further highlighted the under-reporting and almost stagnant data on the issue.<sup>262</sup> Another study said that 1 in 3 women in India is likely to have been subjected to intimate partner violence but only 1 in 10 of these women formally reports the offence. Based on these figures, India is highly unlikely to meet the Sustainable Development Goal 5 (SDG-5), which focuses on gender equality and the elimination of all forms of violence against women and girls by 2030.<sup>263</sup>

## Indian Laws Addressing Domestic Violence

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

Section 2 of the PWDVA, which is essentially a civil law, 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:

- 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>264</sup> as the

<sup>261</sup> VP, Sashikala. 2022, July 25. "As NCW Registers 17,348 Complaints In 2022, Increasing One Stop Centres For Women Is Need Of The Hour". *India Ahead*. Accessed October 25, 2022 at <https://indiaaheadnews.com/india/as-ncw-registers-17348-complaints-in-2022-increasing-one-stop-centres-for-women-is-need-of-the-hour-224977/>

<sup>262</sup> Dandona, R., Gupta, A., George, S., Kishan, S., Kumar G.A. 2022. Domestic violence in Indian women: lessons from nearly 20 years of surveillance. *BMC Women's Health* 22(128): 1-14. <https://doi.org/10.1186/s12905-022-01703-3>

<sup>263</sup> Dwivedi, Vineeta. 2022, August 22. "Darlings, domestic violence needs attention!". *The Times of India*. Accessed October 25, 2022 at <https://timesofindia.indiatimes.com/blogs/voices/darlings-domestic-violence-needs-attention/>

<sup>264</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

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).

#### **Recent Case Law**

*Sh Jagmohan Kashyap v. Govt. of Nct of Delhi & Anr (2022)*<sup>265</sup>

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

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orders of the Court.

<sup>265</sup> Thapliyal, Nupur. 2022, May 30. “Right To Claim Maintenance Under Domestic Violence Act & U/S 125 CrPC Not Mutually Exclusive: Delhi High Court”. *LiveLaw*. Accessed October 25, 2022 at <https://www.livelaw.in/news-updates/right-maintenance-domestic-violence-act-sec-125-crpc-delhi-high-court-200396>

*Satish Chander Ahuja v. Sneha Ahuja (2020)*<sup>266</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>267</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>268</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 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>269</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 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

<sup>266</sup> Satish Chander Ahuja versus Sneha Ahuja. 2020. Accessed October 25, 2022 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>267</sup> Court on Its Own Motion v/s Union Territories of Jammu & Kashmir and Ladakh through Secretaries, Social Welfare Department. 2020. Accessed October 25, 2022 at [https://www.livelaw.in/pdf\\_upload/pdf\\_upload-373329.pdf](https://www.livelaw.in/pdf_upload/pdf_upload-373329.pdf)

<sup>268</sup> All India Council Of Human Rights, Liberties And Social Justice versus Union Of India & Ors. 2020. Accessed October 25, 2022 at [https://www.livelaw.in/pdf\\_upload/pdf\\_upload-373793.pdf](https://www.livelaw.in/pdf_upload/pdf_upload-373793.pdf)

<sup>269</sup> Kasturi vs Subhas. 2017. Accessed October 25, 2022 at <https://indiankanon.org/doc/195470812/>

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>270</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>271</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>272</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>270</sup> Vinay Gupta vs Saveri Nayak. 2017. Accessed October 25, 2022 at <https://indiankanoon.org/doc/131522846/>

<sup>271</sup> Bioin v. Meera D.S. 2016. Accessed October 25, 2022 at <https://www.casemine.com/judgement/in/583ec332bc4168371fe34008>

<sup>272</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>

## 17. 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>273</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>274</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>275</sup> A survey by Feminism in India, a digital

<sup>273</sup> Pinto, Shiromi. 2017, November 17. "What is online violence and abuse against women?" *Amnesty International*. Accessed October 31, 2022 at <https://www.amnesty.org/en/latest/campaigns/2017/11/what-is-online-violence-and-abuse-against-women/>

<sup>274</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 31, 2022 at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23235&LangID=E>

<sup>275</sup> European Union Agency for Fundamental Rights. 2014. Violence against women: an EU-wide survey. Accessed October 31, 2022 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>276</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>277</sup>

The NCRB 2020 and 2021 documents cybercrimes against women in detail.

	2020	2021
<i>Cyber blackmailing/threatening (Sec 506, 503, 384 IPC R/W IT Act)</i>	74	200
<i>Cyber pornography/posting/publishing obscene sexual materials (Sec 67A/67B (Girl Child) of IT Act R/W IPC SLL)</i>	1655	1896
<i>Cyber stalking/cyber bullying of women (Sec 354D IPC R/W IT Act)</i>	887	1172
<i>Defamation/morphing (Sec 469 IPC R/W IPC and Indecent Representation of Women (P) Act) <sup>112</sup></i>	251	276
<i>Fake Profile (R/W IPC SLL)</i>	354	225
<i>Other cybercrimes against women</i>	7184	6961

Source: National Crime Records Bureau, Crime in India 2020 and 2021 reports, accessed October 31, 2022 at <https://ncrb.gov.in/en/crime-india>

## In Recent News

Data has suggested that there has been a significant increase in cybercrimes against women during and after the COVID-19 pandemic. Online traffic escalated due to an increase in online platforms for video conferencing, meetings, online classes, chatting, and so on, increasing the likelihood of cyber violence.<sup>278</sup> A study by ICRW and Quilt.AI showed many emerging forms of cyberviolence during the pandemic in urban areas, such as exploitation,

<sup>276</sup> Feminism in India. 2016. #DigitalHifazat: Combat Cyber Violence Against Women in India. Accessed October 31, 2022 at <https://feminisminindia.com/2016/11/16/digitalhifazat-campaign-cyber-violence-women-india/>

<sup>277</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 31, 2022 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>278</sup> Bhattathiripad, P. V. 2021. "Cybercrimes Against Indian Women: Before and During COVID-19". In: George, I., Kuruville, M. (eds) *Gendered Experiences of COVID-19 in India*. Palgrave Macmillan, Cham. [https://doi.org/10.1007/978-3-030-85335-8\\_13](https://doi.org/10.1007/978-3-030-85335-8_13)

hacking, doxing<sup>279</sup> and image-based abuse.<sup>280</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
  - 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.

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<sup>279</sup> Doxing (also spelled doxxing) is the act of revealing personally identifiable information about another individual or organization (this can be the name of an anonymous individual or organization, address, phone numbers, etc.) on the internet without the owners' consent.

<sup>280</sup> Quilt.AI and ICRW. 2021. COVID-19 and Online Violence in India: Digital Intelligence Report. Singapore and Washington, DC. Accessed October 31, 2022 at <https://www.icrw.org/publications/covid-19-and-online-violence-digital-intelligence-report/>

## Recent Case Law

### *Public Interest Litigation by Prajwala (2016)*<sup>281</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>282</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>281</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 31, 2022 at <https://thewire.in/uncategorised/supreme-court-google-facebook-microsoft-sexual-offence-cybercrime-videos>

<sup>282</sup> Kamlesh Vaswani v. Union of India & Others. 2016. Accessed October 31, 2022 at <https://www.legitquest.com/case/kamlesh-vaswani-v-union-of-india-others/A2B21>

## 18. GENDER-BASED VIOLENCE IN CUSTODY

Sexual assault occurring in custody, such as in police or judicial custody, and committed by a person of authority is a form of custodial as well as gender-based violence. The former United Nations Special Rapporteur on Violence Radhika Coomaraswamy states that custodial rape can also occur outside of an institutional setting, such as instances when member of the police or military personnel enter homes to search, question, intimidate and/or harass.<sup>283</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>284</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>285</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>283</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 31, 2022 at <https://digitallibrary.un.org/record/82143?ln=en>

<sup>284</sup> Stop Violence Against Women. 2013. Custodial Sexual Assault. Accessed October 31, 2022 at [https://www.stopvaw.org/custodial\\_sexual\\_assault#](https://www.stopvaw.org/custodial_sexual_assault#)

<sup>285</sup> Peoples Union for Democratic Rights. 2004. In Custody: An Investigation Into 5 Cases Of Sexual Assault. Accessed October 31, 2022 at <https://puodr.org/custody-investigation-5-cases-sexual-assault>

tougher sentences.<sup>286</sup>

### Data on Custodial Sexual Violence

	2020	2022
<i>Custodial Rape</i>	29	26
<i>Other Custodial Rapes</i>	875	1359

Source: National Crime Records Bureau, Crime in India 2020 and 2021 reports, accessed October 21, 2022 at <https://ncrb.gov.in/en/crime-india>

Custodial rape is a grossly underreported crime.<sup>287</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>288</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>289</sup> Rape by other inmates in prison is another form of custodial sexual violence that is common, yet goes unreported.

### Laws Addressing Custodial Sexual Violence

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

- *Indian Penal Code, 1860*
  - a. *Section 376 A: Rape by a police officer:*
    - (i) within the limits of the police station to which he is appointed; or
    - (ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or
    - (iii) on a woman in his custody or in the custody of a police officer subordinate to 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*

<sup>286</sup> Murthy, Laxmi. 2013, June 8. From Mathura to Bhanwari. *Economic and Political Weekly* 48(23). Accessed October 31, 2022 at <https://www.epw.in/journal/2013/23/commentary/mathura-bhanwari.html>

<sup>287</sup> Bhog, Sahar. 2019, August 16. "What Is Custodial Rape And Why We Need To Be Discussing It". *Feminism in India*. Accessed October 31, 2022 at <https://feminismindia.com/2019/04/16/custodial-rape-india/>

<sup>288</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 31, 2022 at <https://thewire.in/culture/rape-security-forces-afspa>

<sup>289</sup> National Campaign Against Torture. 2020. India: Annual Report on Torture 2019. Accessed October 31, 2022 at <http://www.uncat.org/wp-content/uploads/2020/06/INDIATORTURE2019.pdf>

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>290</sup>

### **In Recent News**

In October 2022 the Punjab State Police Complaints Authority (SPCA) chairman Satish Chandra wrote a letter to senior IPS officer Sharad Satya Chauhan that a Special Investigation Team (SIT) formed to probe allegations of extortion and custodial rape against Inspector General (AIG) Ashish Kapoor did not conduct an enquiry and recommended a closure report to the court. The custodial rape and extortion allegations were leveled by a woman inmate while Ashish Kapoor was posted as superintendent of Amritsar Central Jail. Following an FIR, the woman had approached the SPCA alleging inaction, and subsequently, the then state police chief had constituted the SIT in January 2020.<sup>291</sup>

### **Recent Case Law**

*State of Punjab v. CBI (2011)*<sup>292</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.

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<sup>290</sup> Indian Journal of Law and Public Policy. Anti-Torture Law In India: Urgent Need For A Legislation. Accessed October 31, 2022 at <https://ijlpp.com/anti-torture-law-in-india-urgent-need-for-a-legislation/>

<sup>291</sup> Gopal, Navjeevan. 2022, October 10. "SIT never probed extortion allegation against AIG, gave him clean chit in custody rape case." *Indian Express*. Accessed October 31, 2022 at <https://indianexpress.com/article/cities/chandigarh/sit-never-probed-extortion-allegation-against-aig-gave-him-clean-chit-in-custody-rape-case-8199613/>

<sup>292</sup> State Of Punjab vs Cbi & Ors. 2011. Accessed October 31, 2022 at <https://indiankanoon.org/doc/718708/>



# 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>