

**GENDER
VI  LENCE
IN INDIA 2020**

A Prajnya Report

GENDER VIOLENCE IN INDIA 2020

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

This year's report was prepared by Kausumi Saha whose work was supported by a donation in memory of R. Rajaram. It builds on previous reports authored over the years by: Kavitha Muralidharan, Zubeda Hamid, Shalini Umachandran, S. Shakthi, Divya Bhat, Titiksha Pandit, Mitha Nandagopalan, Radhika Bhalerao, Jhuma Sen and Suchaita Tenneti.

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GLOSSARY

AA	Appropriate Authority
AFSPA	Armed Forces Special Powers Act
AHTU	Anti Human Trafficking Unit
AIDWA	All India Democratic Women’s Association
CBI	Central Bureau of Investigation
CEDAW	The Convention on Elimination of All Forms of Discrimination Against Women
CEFM	Child, Early and Forced marriage
CMPO	Child Marriage Prohibition Officer
GNCT	Government of National Capital Territory
FGM	Female Genital Mutilation
FIR	First Information Report
HC	High Court
ICC	Internal Complaints Committee
IPC	Indian Penal Code
IPV	Intimate Partner Violence
LGBTQIA+	Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual and Others
MTP	Medical Termination of Pregnancy
LCC	Local Complaints Committee
NALSA	National Legal Services Authority
NCRB	National Crime Records Bureau
NCT	National Capital Territory
NCW	National Commission for Women
NFHS	National Family Health Survey
OCIA	Organized Crime Investigative Agency

OHCHR	The Office of the United Nations High Commissioner for Human Rights
PCMA	Prohibition of Child Marriage Act
PIL	Public Interest Litigation
POSH	Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act
PTI	Press Trust of India
PWDVA	Protection of Women from Domestic Violence Act
TVPA	Trafficking Victims Protection Act
UT	Union Territory
UN	United Nations
UNCAT	United Nations Campaign Against Torture
UNFPA	United Nations Population Fund
UNICEF	United Nations Children's Fund
UOI	Union of India
VAWG	Violence Against Women and Girls
WHO	World Health Organisation

ABOUT THIS REPORT

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

The Report is meant to be used as a ready reference for activists, journalists, students, lawyers and anyone with an interest in gender justice. It defines the various forms of gender-based violence, including their conceptualisation internationally as well as in national laws and policies. The data is primarily collected from the National Crime Records Bureau, but wherever possible, relevant statistics by other state agencies, NGOs – international as well as domestic – have been included. Finally, the report also reviews the previous years' significant developments in law, policy as well as important judicial decisions.

2020 is in many ways a landmark year because it witnessed, and continues to witness one of the deadliest pandemics in living memory. Women and other marginalised identities are disproportionately affected by COVID-19, as they are at much higher risk of infection, loss of livelihood, and gender-based violence in and outside the home. As situations changed, so did the forms of violence. For example, increased migration of labourers led to higher instances of trafficking of persons, and as classrooms and workspaces shifted online, cases of cyber violence escalated. In that regard, the pandemic is much more than a health crisis. It has had a profound impact on our economic, social, and political lives. At the heart of crisis mitigation is the work of women, as caregivers in the domestic sphere and as the majority of frontline health workers. In such a situation, pre-existing inequalities are coupled with new economic and social stresses, and increased isolation and reduced access to social safety measures mean that it is women who are most prone to facing violence.

The problems of gender violence in a pandemic are, therefore, both amplified and in many ways, unique. This report hopes to capture these issues and serve as an important resource in the road to tackling gender-based violence.

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	2017	2018	2019 ¹
DECLINING SEX RATIO										
Sex Ratio (census years) ²	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	84	54	52
FORCED MARRIAGE										
Forced or child marriage							32177			
Kidnapping and abduction of women and girls	5529	7927	11139	16051	14063	15750		66333	72751	72780
Kidnapping and abduction of women to compel her for marriage (S. 366 IPC)							31778	30614	33354	32260
Prohibition of Child Marriage Act							293	395	501	525
HONOUR KILLING							192	92	30	24

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

² Census of India, 2011; 2015-2019 are from the same Census.

TYPE OF VIOLENCE	1955	1965	1975	1985	1995	2005	2015	2017	2018	2019
DOMESTIC VIOLENCE										
Domestic Violence							461	616	579	553
Torture ³					31127	58319	-	-	-	-
Cruelty by husbands and relatives					28579	58319	1,13,403	1,04,551	103272	125298
DOWRY										
Dowry Death				2814	4648	6787	7634	7466	7167	7115
Dowry Prohibition Act					2814	3204	9894	10189	12826	13287
SEXUAL VIOLENCE										
Molestation ⁴					26856	34175	82422	-	-	-
Assault on Women								46098	47355	48586
Assault or use of criminal force on women with intent to disrobe							8613	9720	9949	11238
Assault by police on women to outrage their modesty							7			
Rape			3376	7289	13754	18359	34651	32559	33356	32033
Incest Rape ⁵						750	557	3155	2780	2916
Rape by Family Friends/Neighbours/Employer or Other Known Persons								586	557	648

³ Torture” and “Cruelty by Husband and Relatives” both refer to cases registered under IPC 498A; they are used interchangeably across a single NCRB report and across reports, with some tables listing one, some the other. More often than not, the numbers are the same, but occasionally, they are not.

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

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

TYPE OF VIOLENCE	1955	1965	1975	1985	1995	2005	2015	2017	2018	2019
Custodial Rape ⁶						7	95	89	60	47
Rape by Relative/Teacher/Guardian/ Person in position of Trust [Sec. 376(2)(f)]								2835	2226	1999
Rape on Pregnant Women [Sec. 376(2)(h)]								22	24	35
Rape on Women below 16 years of Age [Sec. 376(2)(i)]								1746	1546	790
Rape on Women incapable of giving Consent [Sec. 376(2)(j)]								474	396	393
Rape by Persons in Control or Dominance over Women [Sec. 376(2)(k)]								216	136	182
Rape on Women with Mental or Physical Disability [Sec. 376(2)(l)]								88	87	116
Endanger Life of Women after Rape [Sec. 376(2)(m)]								102	16	34
Repeated Rape on Same Women [Sec. 376(2)(n)]								1652	2472	2373
Other Custodial Rapes								27	99	772
Attempt to Commit Rape ⁷							4434	4154	4097	3944
Murder with rape/Gang-Rape								223	294	283

⁶ Custodial rape began to be listed in 1997 in a newly introduced chapter on Custodial Crimes. Crime in India 1996 carried a section on “Complaints against the Police.” In the 2014 and 2015 reports, custodial rape includes rape in hospitals, police stations or judicial custody and is included in the section on rape, disaggregated further into rape and gang-rape. Currently, Rape in Custody includes data for rape by police Personnel, by public servant, by member of armed forces, by management/staff of jail/remand home/place of custody, and by management/staff of hospital.

⁷ Introduced in 2014.

TYPE OF VIOLENCE	1955	1965	1975	1985	1995	2005	2015	2017	2018	2019
HARASSMENT IN PUBLIC PLACES										
Street Sexual Harassment (Eve teasing IPC 509)					4689	9984	8685	7451	6992	6939
Sexual harassment in public transport							315	599	730	606
Voyeurism							838	1090	1313	1399
Stalking							6266	8145	9438	8890
WORKPLACE SEXUAL HARASSMENT										
Harassment at the office and places related to work (under IPC 509)							833	479	401	505
Rape of Employees/Co-workers							557	-	-	-
SEXUAL HARASSMENT IN OTHER PLACES							7537	19326	19124	16750
ACID ATTACKS							222	244	131	150
Attempt to commit an acid attack							46	65	37	42
TRAFFICKING										
Procuration of minor girls (Sec. 366A IPC)							3087	3382	3039	3117
Immoral Traffic (Prevention) Act					8447	5908	2641	2127	1882	1645
Importation of girls					191	149	6	5	4	3
Human Trafficking ⁸ (Sec. 370 and 370A IPC)							1027	1127	1313	1334

⁸ Gender neutral offence.

TYPE OF VIOLENCE	1955	1965	1975	1985	1995	2005	2015	2017	2018	2019
CYBER-CRIME⁹								4242	6030	8379
Cyber-Crime with intent to insult modesty of women							606	-	-	
Cyber blackmailing/ threatening (Sec 506, 503, 384 IPC R/W IT Act)								132	113	113
Cyber pornography/ posting/ publishing obscene sexual materials (Sec 67A/67B (Girl Child) of IT Act R/W IPC SLL)								271	862	1158
Cyber stalking/ cyber bullying of women (Sec 354D IPC R/W IT Act)								555	738	791
Defamation/ morphing (Sec 469 IPC R/W IPC and Indecent Rep of Women (P) Act) ¹⁰								50	62	61
Fake Profile (R/W IPC SLL)								147	207	289
Other cyber-crimes against women								3087	4048	5967
CRIMES AGAINST WOMEN FROM SCHEDULED CASTES										
Assault on Women with Intent to Outrage their Modesty (Scheduled Castes)							2800	2903	3091	3375
Insult to the Modesty of Women (Sec. 509) (Scheduled Castes)							58	72	148	143
Kidnapping and abduction of women to compel her for marriage (SC)							455	527	493	357

TYPE OF VIOLENCE	1955	1965	1975	1985	1995	2005	2015	2017	2018	2019
Rape (Scheduled Castes)							2326	2714	2936	3486
Attempt to Commit Rape (Scheduled Castes)							74	105	132	124
CRIMES AGAINST WOMEN FROM SCHEDULED TRIBES										
Assault on Women with Intent to Outrage their Modesty (Scheduled Tribes)							818	925	854	880
Insult to the Modesty of Women (Sec. 509) (Scheduled Tribes)							12	21	18	24
Kidnapping and abduction of women to compel her for marriage (Scheduled Tribes)							60	54	48	54
Rape (Scheduled Tribes)							952	1041	1008	1110
Attempt to Commit Rape (Scheduled Tribes)							15	22	17	21
OTHER										
Indecent Representation of Women					539	2917	40	25	22	23
Sexual Harassment in Shelter Homes for Women and Children								544	707	473

⁹ Total of all cyber-crimes against women.

¹⁰ 18 of the 2017 cases were reported in Tamil Nadu and 25 in West Bengal.

1. THE POLITICS OF SEXUAL AND GENDER-BASED VIOLENCE AGAINST DALIT WOMEN

by

Semmalar Selvi

Structural Violence as the Context of Dalit Women's Lives

All forms of violence against Indian women is an outcome of Brahminical patriarchy. The Code of Manu defines how a woman should behave and how her bodies must be controlled and tamed by men. Consequently, women who do not comply with the rules defined in the code are subjected to violence. However, the experiences of all women are not the same. While they may all be bitter, traumatic and in need of urgent intervention, the severities of these experiences and the access to remediation are markedly different based on other aspects of their identity.

Hence, there is a crucial need for an intersectional approach in attempts to understand the complex issues of gender, class and caste. Otherwise, the unique experiences and pains of Dalit women will be subsumed under the banner of working-class women.

Countless challenges are part of daily lives of Dalit women. They battle for their livelihood as daily wage labourers in the fields of landlords, usually from the dominant caste. Gender-bases discrimination manifests in multiple ways in the lives of these women. The economic exploitation of Dalit women is a common phenomenon; they are paid less than their male counterparts, even when working for the same landlord. Dalit women are assigned subordinate roles at their workplace. Dalit women are also subjected to sexual violence by the landlord; this is typical of the power-dynamic that persists due to caste-discrimination. The severity of the sexual violence against them and the pernicious disrespect they face makes their economic exploitation pale in insignificance.

Caste plays a major, divisive role in Dalit women trying to find solidarity with other women at their workplace, and in society in general. The practice of untouchability barricades their association with women who identify as dominant castes, isolating their experiences and invalidating their assertions.

Electoral politics in India are determined by caste and the right-wing political ideologues work closely with caste outfits all across India. Members of caste and majoritarian outfits such as the Bharatiya Gau Raksha Dal, Hanuman Sena, Bajrang Dal are given both political and arms training as part of what has been called a social engineering strategy. (BBC 2016; Wankhede 2019)

Often, these militant groups are directly linked with BJP's Ministers, MLA or MPs. Much of their direction and activities occur with malevolent intent, often creating unrest and mistrust in Dalit settlements and Muslim habitations. There is a pattern of lack of culpability among these groups. Political analyst Sajjan Kumar states that the mix of traditional Hindutva with an anti-dominant caste narrative gives an unprecedented advantage to the BJP in electoral politics. (Mahaprashasta, 2019)

The resistance and dissent against the caste and associated power structures triggers increased

violence against Dalit women. Hence, Dalit women are stuck in a cycle of being victimised by society, which includes women, men and the State. This begins at home, with the treatment they receive from their families, who often practise Brahminical patriarchal norms.

Dalit women, in general, have less access to wealth and resources, largely owing to their economic dependency on landlords from dominant castes, usually categorised as OBCs. With the BJP-led government strategically grouping OBCs by sharpening the need for caste identities, they choose to prove their superiority over Dalits using muscle power, both by physical and sexual assaults against Dalit women. A report documented by Human Rights Watch revealed that landlords and the police often used sexual assault and other forms of violence against Dalit women to teach them "political" lessons and suppress dissent. (Human Rights Watch, 1999)

In this present political spectrum, Right-Wing political parties make calculated efforts towards inciting and perpetuating violence against Dalits, to deepen the animosity between Dalits and other *Shudra* castes (OBCs).

Hate crimes against Scheduled Castes and Scheduled Tribes members

Crimes against members of Scheduled Castes and Scheduled Tribes communities increased by 7.3% and 26.5% respectively in 2019, according to the latest "Crime in India" 2019 report by the National Crime Record Bureau (NCRB). A total of 45,935 cases of crime or atrocities against Dalits and a total of 8,257 cases of crime against tribal people were recorded in the year 2019.

Even in the NCRB data, there is no disaggregated data on violence against SC/ST women. Non availability of disaggregated data on all types of crimes against Dalit women by itself shows the reluctance of the government in addressing this issue. Violence against SC/ST women have been calculated from the data available under the section of overall atrocities against SC/ST (*Table 1*). It shows that rape, kidnapping and sexual harassment of SC women is considerably higher in the states mentioned in the table than in other states. All these states had BJP and allied parties in the administration when these crimes were committed.

Crimes/Atrocities against Scheduled Caste Women (2019)

States	Haryana	Madhya Pradesh	Maharashtra	Rajasthan	Uttar Pradesh	Total	Percentage of Cases against Total in the country	Total Cases in the country
SC/ST (Prevention of Atrocities) Act								
<i>Attempt to Commit Rape - Sec 376/511 IPC</i>	12	2	0	72	12	98	79.03%	124
<i>Rape - Sec 376 IPC</i>	221	511	378	556	545	2211	62.92%	3514
<i>Rape of Women (>18 years) - Sec 376 IPC</i>	120	296	197	493	474	1580	66.22%	2386
<i>Sexual Harassment - Sec 354A IPC</i>	61	86	116	66	229	558	81.22%	687
<i>Assault or use of Criminal Force on</i>	20	23	8	25	105	181	67.29%	269

women with intent to Disrobe - Sec 354B IPC								
Assault on Women with intent to Outrage her Modesty	43	356	173	373	346	1291	69.33%	1862
Assault on Women (>18 years)	143	506	333	496	698	2176	71.72%	3034
Assault on Adult Women with Intent to Outrage her Modesty - Sec 354 IPC	173	620	414	532	796	2535	73.22%	3462

Calculated by the author from NCRB data on atrocities against SC/ST, 2019 (NCRB, 2019)

The above table shows that 'Attempt to Commit Rape' data from just these five states constitute 79% of the entire country's crimes of this type. Similarly, sexual harassment data from these four states (Mahaprashasta, 2019) constitute 81% of the whole country's sexual harassment against SC women. It is clear that right wing politics is outwardly against Dalits and Minorities.

Sexual and Gender-based Violence Against Dalit Women

The UN Special Rapporteur on Violence against Women has noted that Dalit women "face targeted violence, even rape and death from state actors and powerful members of dominant castes, used to inflict political lessons and crush dissent within the community..." (IDSN, 2014) Especially for dominant caste men, Dalit women are easy prey to attack, as they know that the entire society would remain silent when it comes to atrocities against Dalits.

Ariyalur Nandhini Gang Rape Case (2016)

The body of Nandhini, a 17-year-old Dalit minor girl, was found by Ariyalur Police in a decomposed state with her hands tied, from a well on January 14, 2017. She was raped and murdered allegedly by her estranged boyfriend and three of his friends on December 29, 2016.

According to the police, the 17-year-old girl had been in a relationship with Manikandan, the prime accused in the case, for one year. They had worked together. The girl was a daily wage labourer and Manikandan was a mason. He was also working as the union secretary of the Hindu Munnani (a fringe pro-Hindu outfit founded in 1980) and belonged to *Vanniyar* caste. Manikandan also had a criminal record. He worked under Rajasekar, the district secretary of Hindu Munnani, It emerged during the investigation that Nandhini had been pregnant and asked Manikandan to marry her. He had refused and attempted to coerce her into aborting the child. Eventually, Nandhini was gangraped and murdered, allegedly by her boyfriend and his three accomplices. The family members of the victim said that the police were delaying the process protect the accused, even though they approached the police station the very next day when they found her daughter missing. Only a 'missing' complaint was filed. This was in violation of Section 361 of the Indian Penal Code, which clearly states that when a minor is taken away without legal consent of her guardian, it amounts to kidnap.

This is another example of how a combination of Right-wing outfit's involvement Dominant *Vanniyar* caste's identity of the perpetrator creating structures of power that aid heinous crimes.

Hathras Case (2020)

A 19-year-old Dalit girl was gang raped and brutalised in Hathras, Uttar Pradesh. On September 14, 2020, around 9.30 a.m. She and her mother had been working in the fields of *Thakurs*, collecting fodder for their cattle, when her mother suddenly heard her daughter screaming. She rushed to find her, she was found lying on the ground covered in blood (100meters away), with her tongue cut off. With the help of her son, the mother took the girl was taken to a police station. The family alleges that the police significantly delayed registering FIR and told them to take her away. The video which was circulated on social media showed victim telling police "They strangled me". Later, she was taken to the district hospital and admitted for 14 days and later her condition worsened. On September 19, in her statement, she named the main accused Sandeep and named other accused Luvkush, Ravi and Ramu. Though the police filed case under charges of gang rape and attempt to rape, medico legal examination report mentions "use of force". On September 29, the victim's condition became critical, leading to her death. The final diagnosis says, "alleged post strangulation with cervical spine injury with sepsis and cardiopulmonary arrest." After political parties demanded for justice, early next morning (September 30), the police forcefully cremated the body without the consent of her family. Later, the UP government filed an affidavit at the Supreme court justifying the state police's decision to cremate the body of the victim at 2.30 a.m., "to avoid large scale violence". The UP government also said the decision was taken based on intelligence inputs (Compiled from different news reporting from *The Hindu*, *Indian Express*, *The Wire*).

In this case, given that the political elite of Uttar Pradesh is primarily from the *Thakur* caste, the special impunity enjoyed by members of a specific caste comes as no surprise. Thus, a protest in defence of the gang-rape accused must be understood in this context (Indian Express, October 2020). The accused caste group seems to enjoy special immunity from the law despite the prima facie evidence against them. However, the nation saw protests in defence of the accused rapists, rather than in support of seeking justice for the victim. (Indian Express, October 2020)

Dalit women bodies are repeatedly subjected to violence, exploited and controlled by the dominant castes. Even after their death the state takes authority over their bodies; it is clear in this case where the raped victim's body was burnt by UP police without even intimating her family.

Understanding Political Violence against Dalit Women

"Political violence involves a heterogeneous repertoire of actions oriented at inflicting physical, psychological and symbolic damage to individuals and/or property with the intention of influencing various audiences for affecting or resisting political, social, and/or cultural change. It is used by actors across the political spectrum and includes actions such as attacks on property, bodily assaults, the planting of explosive devices, shooting attacks, kidnappings, hostage taking and the seizure of aircraft or ships, high profile assassinations, public self-immolation, to mention only a few." (Bosi & Malthaner, 2014)

Violence against Dalit women is causing physical as well as psychological damage to individuals. Dalit women activists or reporters who report factual news about this violence against Dalit

women are also attacked. Journalists and three others travelling to Hathras were prevented, arrested and booked under a sedition case by the UP police. Tanushree Pandey, a reporter who works with *India Today*, has been maligned by the ruling government by tapping her phone call with the deceased's brother and being accused of misreporting. These actions are seen as deliberate attacks against the fair reporting of these crimes.

The Legal-Constitutional Framework

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 PoA Act, 1989; it was later amended in the year 2015. The new Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Rules, 2016, notified by the government, include the words rape and gang rape specifically in the definition of atrocities against SC/ST women to enable them to get relief under the Act.

Some of the important provisions under the new rule are:

- (i) Completion of investigation and filing of charge sheet in the court within sixty days
- (ii) Provision of relief for offences of rape and gang rape (this provision has been introduced for the first time)
- (iii) Delinking requirement of medical examination for getting relief amount for non-invasive kind of offences against women like sexual harassment, gestures or acts intended to insult the modesty of women, assault or use of criminal force with intent to disrobe, voyeurism, stalking
- (iv) Provision of admissible relief amount to SC/ST women for offences of grievous nature, on conclusion of trial, even though not ending in conviction
- (v) Increase in the existing quantum of relief amount from between Rs. 75,000/- to Rs. 7, 50,000/- to between Rs. 85,000/- to Rs. 8, 25,000/-, depending upon the nature of the offence
- (vi) Provision of admissible relief in cash or in kind or both within seven days to the victims of atrocity, their family members and dependents

The provisions under the act seem exemplary. However, when victims of caste violence try to access justice, often the first stumbling block they encounter is at the police station; police officials in the station are usually from an influential, dominant caste. They are often reluctant to take the case and file a FIR because violence against Dalit women is normalised by society. When this is the reality, a bench of Justices UU Lalit and AK Goel (in 2018) stated that the Atrocities Act has been misused. The Dalit human rights defenders are forced to fight it out in the police station to make the police file the case under the act.

The process of justice redressal for Dalit women in itself leads to new levels of harassment. The hierarchies of caste and gender are deeply entrenched in state structures. Societal apathy for crimes against Dalits, nonchalance of law enforcement towards investigating and prosecuting hate crimes, and the systemic adoption of Brahminical patriarchy stand as insurmountable barriers for Dalit women, who are already denied access to resources and agency.

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- [9] J. Sinha, "Near Hathras victim's village, Thakurs protest: No proof against accused," *The Indian Express*, 3 October 2020.

2. 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 extensively¹¹, 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 report¹² on pre-natal selection has stated the acceptable male to female ratio to be 105:100, and this ratio has been found to be skewed in several countries across Asia. This includes India, China, the Republic of Korea, China, Armenia, Georgia, Azerbaijan, Hong Kong, and several others.

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

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

Technology played a critical role in the practice of selective abortion of female fetuses, a phenomenon often referred to as leading to “missing women”. Diagnostic technologies that can be used to monitor the health of the foetus and any possible medical conditions in utero have been available in India since the 1980s. However, while playing a crucial role in women’s health (as well as that of the unborn child), the same technology also made it possible to determine the sex of the foetus and subsequently abort those that were female. Parents were thus presented with an alternative way to achieve the preferred sex composition of children. Indeed, starting from the late 1980s, there has been a steep increase in male to female ratios at birth, which has been attributed to the increasing practice of sex-selective abortion.¹³

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,

¹¹ Hu, Luoja, Schlosser, Analía. 2011. “Prenatal Sex Selection and Girls’ Well-Being: Evidence from India”. IZA Discussion Paper No. 5562. Accessed October 10, 2020 at <http://ftp.iza.org/dp5562.pdf>

¹² United Nations Population Fund (UNFPA). 2009. *Guidance Note on Prenatal Sex Selection*. Accessed October 10, 2020 at http://www.unfpa.org/sites/default/files/resource-pdf/guidenote_prenatal_sexselection.pdf

¹³ Hu, Luoja, Schlosser, Analía. 2011. “Prenatal Sex Selection and Girls’ Well-Being: Evidence from India”. IZA Discussion Paper No. 5562. Accessed October 10, 2020 at <http://ftp.iza.org/dp5562.pdf>

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.¹⁴

Data on Sex-Selective Abortion

	1961	1971	1981	1991	2001	2011
<i>Sex Ratio of Birth in India</i>	941	930	924	927	933	940
<i>Child Sex Ratio</i>	976	964	962	945	927	914

Source: *Census of India 2011, Provisional Results*, “Chapter 5: Gender Composition of the Population”, Figure 21, page 90, accessed October 10, 2020 at http://censusindia.gov.in/2011-prov-results/data_files/india/Final_PPT_2011_chapter5.pdf

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

A study undertaken in 2011 estimated that from 1980-2010, between 4.2 and 12.1 million sex-selective abortions took place¹⁵. 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.¹⁶

Similarly, The Population Research Institute in its 2019 report¹⁷ on sex-selective abortions in India identified 16 million as the number of girls who have been eliminated through sex-selective abortions since 1990, a phenomenon they termed “gendercide”. The report states that at

¹⁴ Patel, Tulsi, 2007. Informal social networks, sonography and female foeticide in India. *Sociological Bulletin* 56(2): 243-262.

¹⁵ Jha, P., Kesler, M. A., Kumar, R., Ram, F., Ram, U., Aleksandrowicz, L., Banthia, J. K. 2011, June 04. Trends in selective abortion of female foetuses in India: analysis of nationally representative birth histories from 1990–2005 and census data from 1991–2011. Accessed October 20, 2020 at <https://pratigyacampaign.org/wp-content/uploads/2019/09/trends-in-selective-abortions-of-girls-in-india.pdf>

¹⁶ Quackenbush, Casey. 2018, January 30. India Says 21 Million of its Girls are 'Unwanted' Due to a Preference for Sons. *Time*. <http://time.com/5124337/india-unwanted-missing-girls-women/> Last accessed October 10, 2020. Original source: Government of India, Chapter 7: Gender and Son Meta-Preference: Is Development Itself an Antidote? *Economic Survey 2017-18*, Volume 1, pages 112 and 105 (respectively). Accessed October 10, 2020 at <https://ideas.repec.org/p/ess/wpaper/id12445.html>

¹⁷ 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 10, 2020 at <https://www.pop.org/sex-selective-abortion-in-india/>

present, the ratio of boys to girls in India is 110.7:100. An increase in the number of single men risks increasing the incidence of child marriage and sex trafficking. The report also identifies the following as the lead causes for high sex-selective abortion in India:

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

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

1. Effective enforcement of laws to ban sex selection;
2. Promotion of equal status and dignity to women;
3. Enhancement of public awareness to combat stigma against girls;
4. Promotion of the rights of girls to be born and discourage recourse to abortion;
5. Overall socio-economic development;
6. Introduction of conditional cash transfer schemes and other incentives to encourage couples to have daughters;
7. Involvement from women's rights groups and NGOs;
8. Termination of India's population control policies since the two-child policy and laws that tacitly promote forced sterilisation, 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* report¹⁸ 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 Regulating Abortion and Prohibiting Sex Selection

The Medical Termination of Pregnancy (Amendment) Bill, 2020

The 2020 Bill proposes that medical termination of pregnancy be legalised up to 24 weeks of gestation, with only one registered medical practitioner's opinion being required up to 20 weeks, as opposed to the previously mandated two. The opinions of two registered medical practitioners would be required between 20-24 weeks. In case of foetal abnormalities, there is no upper time limit to seek termination. The Bill also aims at enhancing the gestational limit for "special categories" of women, which include survivors of rape, incest, and other vulnerable women like minors and those with disabilities. It also stipulates that the name and other details of the woman seeking an abortion should remain confidential, except to a person authorised in any law that is currently in force.

¹⁸ United Nations Population Fund. 2020. State of the World Population 2020. Accessed October 9, 2020 at https://www.unfpa.org/sites/default/files/pub-pdf/UNFPA_PUB_2020_EN_State_of_World_Population.pdf

The Medical Termination of Pregnancy Act, 1971 (amended in 2002)

The MTP Act provides for an abortion to be performed by a registered medical practitioner in a government hospital provided, in their opinion, continuance of the pregnancy, (which at the time must not exceed twelve weeks and) involves a risk to the life of the woman or a grave injury to her physical or mental health; or, there is a substantial risk that the child, when born, would suffer such physical or mental abnormalities as to be seriously handicapped.

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.

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).

Recent Case Law

*Federation of Obstetricians and Gynaecological Societies of India (FOGSI) v. The Union of India and Others (2019)*¹⁹

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 centres working in the area of pre-natal diagnostic testing owing to improper documentation. The petitioners stated that their machinery is often sealed when there is suspicion of them undertaking sex-selection procedures, although there might not be sufficient evidence for the same. The petitioners claimed that *Form F*, which is meant for patient information, is often found to contain inadequate information. This leads to criminal charges against the medical establishment and that no clear distinction is made between clerical errors and criminal action.

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

*Union of India v. Indian Radiological and Imaging Association and Others (2018)*²⁰

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)*²¹

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

¹⁹ Federation Of Obstetrics And ... vs Union Of India. 2019. Accessed October 10, 2020 at <https://indiankanoon.org/doc/123238150/>

²⁰ Union Of India vs Indian Radiological And Imaging 2018. Accessed October 10, 2020 at <https://indiankanoon.org/doc/37864053/>

²¹ Sabu Mathew George vs Union Of India And Ors. 2017. Accessed October 10, 2020 at <https://indiankanoon.org/doc/192654466/>

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.

3. 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.²²

According to UNFPA²³, child marriage is a marriage in which one or both spouses are under 18 years old. These varied definitions suggest that the realities of child marriage can be complicated with both the words ‘child’ and ‘marriage’ interpreted differently at times. According to the Office of the United Nations High Commissioner for Human Rights (OHCHR), child marriage is ‘a marriage in which at least one of the parties is a child.’ The United Nations Children’s Fund (UNICEF)²⁴ defines it as ‘a formal marriage or informal union before age 18.’ UNICEF maintains that ‘child marriage is a violation of child rights, and has a negative impact on physical growth, health, mental and emotional development, and education opportunities. UNICEF also states that girls are affected in much larger numbers than boys and in greater intensity. Indian Law defines child marriage as a ‘contract of marriage between two people of which either or both parties is a child’²⁵. 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’.²⁶ OHCHR notes that child marriage is often accompanied by early and frequent pregnancy and childbirth, resulting in higher than average maternal morbidity and mortality rates. Early and forced marriages often result in women and girls attempting to flee their communities or committing suicide to avoid or escape the marriage.

Early marriage has been defined as ‘marriages where both spouses are 18 or older but other factors make them unready to consent to marriage, such as their level of physical, emotional, sexual and psychosocial development, or a lack of information regarding the person’s life options’.²⁷

²² United Nations Human Rights, Child, Early and Forced Marriage including in humanitarian settings, accessed October 9, 2020 at <https://www.ohchr.org/EN/Issues/Women/WRGS/Pages/ChildMarriage.aspx>

²³ United Nations Population Fund. 2020. Child Marriage—Frequently Asked Questions, accessed November 23, 2020 at <https://www.unfpa.org/child-marriage-frequently-asked-questions>

²⁴ UNICEF India, *End Child Marriage*, accessed November 23, 2020 at <https://www.unicef.org/india/what-we-do/end-child-marriage#:~:text=Estimates%20suggest%20that%20each%20year,15%2D19%20are%20currently%20married>

²⁵ The Prohibition of Child Marriage Act 2006 accessed October 9, 2020 at <https://indiacode.nic.in/handle/123456789/2055>

²⁶ The Indian Penal Code 1860, accessed October 9, 2020 at <https://indiacode.nic.in/handle/123456789/2263?locale=en>

²⁷ Rangita, S. 2008. Child Marriage and the Law. Legislative Reform Initiative Paper Series. UNICEF: New York.

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.

Data on Child Marriages

According to Census 2011 data, there were 33.8 million child marriages reported in India over the decade.²⁸ This figure includes both girls below the age of 18 and boys below the age of 21. Since 2001, child marriage rates in India have fallen from 9.1% in 2006 to 2.2% in 2015²⁹. A 2014 UNICEF report stated that India had the second highest number of child marriages, with 43% of women aged 20-24 having been first married by the age of 18 between 2005-2013³⁰. Another report³¹ in the same year by UNICEF ranked India 8th in its list of countries where child marriage is most prevalent. In February 2019, yet another UNICEF report³² stated that one in three of the world's child brides lived in India and over half of them lived in Uttar Pradesh, Bihar, West Bengal, Maharashtra and Madhya Pradesh. Child marriage and forced marriage often lead to earlier pregnancies and subsequently higher mortality rates. According to the National Family Health Survey 2015-16³³, more than 26% of women aged 20-24 were pregnant at 18 years old, and 8% of girls aged 15-19 were already mothers or pregnant. The same survey also highlighted that West Bengal currently tops the list among the states with the most child marriages in India.

The NCRB 2019 data identifies 32260 cases of the kidnapping and abduction of minor girls to compel them for marriage (Section 366) and 525 instances of violation of the Prohibition of Child Marriage Act. These numbers have increased steadily over the last few *Crime In India* reports.

²⁸ 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 9, 2020 at <https://www.younglives-india.org/news/launch-analysis-child-marriage-india-based-2011-census>

²⁹ Ministry of Health and Family Welfare Government of India, "TABLE - A.24 Percentage of Females by Age at Effective Marriage by Residence, India and Major States (SRS), 2006 to 2015," Health and Family Welfare Statistics in India 2017, page 125, accessed October 9, 2020 at https://nrhm-mis.nic.in/PubStatistical_Publications/Family%20Welfare%20Statistics%20in%20India/FW%20Statistics%20in%20India%202017.pdf

³⁰ UNICEF. 2014. Improving Children's Lives, Transforming the Future 25 years of Child Rights in South Asia, page 68, accessed October 9, 2020 at https://www.unicef.org/publications/files/Improving_Children_s_Lives_-_Transforming_the_Future_9_Sep_2014.pdf

³¹ UNICEF. 2014. Ending Child Marriage: Progress and Prospects. New York. Accessed October 9, 2020 at <https://data.unicef.org/resources/ending-child-marriage-progress-and-prospects/#>

³² UNICEF. 2019. Ending Child Marriage: A profile of progress in India. Accessed October 9, 2020 at <https://data.unicef.org/resources/ending-child-marriage-a-profile-of-progress-in-india/>

³³ National Family Health Survey-4, India, 2015-2016. Accessed October 9, 2020 at http://rchiips.org/nfhs/factsheet_nfhs-4.shtml

Laws addressing Child Marriage in India

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

Some important provisions of the 2006 Act are as follows:

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

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

In Recent News

In February 2020, Finance Minister Nirmala Sitharaman in her Budget Speech 2020-21, expressed interest in increasing the age of marriage of girls in India. She announced that a task force would be constituted to look into the issue and that it would present its recommendations in 6 months' time.³⁴ Sitharaman stated that the decision came with an aim to working towards better maternal and child health outcomes, as well as providing better educational and employment opportunities to women. However, experts have suggested that merely increasing the legal age of marriage will not have the desired effect, if overall gender and social inequality is not addressed.³⁵ The UNFPA's *State of the World Population 2020* report³⁶ 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

³⁴ Javid, Arfa. 2020, June 19. Government to revise the legal age of marriage for women: All you need to know. *Jagran Josh*. Accessed October 9, 2020 at <https://www.jagranjosh.com/general-knowledge/legal-age-of-marriage-for-women-1592559459-1#:~:text=Thus%2C%20the%20Government%20of%20India,erstwhile%20Sharda%20Act%20of%201929.>

³⁵ 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 9, 2020 at <https://scroll.in/article/966034/ending-early-marriage-in-india-will-take-more-than-legal-action-it-needs-real-belief-in-equality>

³⁶ United Nations Population Fund. 2020. State of the World Population 2020. Accessed October 9, 2020 at https://www.unfpa.org/sites/default/files/pub-pdf/UNFPA_PUB_2020_EN_State_of_World_Population.pdf

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.

With the advent of the COVID-19 pandemic, another UNFPA report³⁷ released in late April suggested that the pandemic and subsequent lockdowns could lead to an increase in 13 million child marriages globally over the next decade. India is already witnessing this trend, with the Indian government reportedly stopping over 5,584 child marriages across the country during the lockdown, as of July 2020.³⁸

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)*³⁹

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

³⁷ United Nations Population Fund. 2020. Millions more cases of violence, child marriage, female genital mutilation, unintended pregnancy expected due to the COVID-19 pandemic. Accessed October 9, 2020 at <https://www.unfpa.org/news/millions-more-cases-violence-child-marriage-female-genital-mutilation-unintended-pregnancies>

³⁸ Dogra, Nupur. 2020, July 28. Are Pandemic Induced Child Marriages a Wakeup Call for India? *The Leaflet*. Accessed October 9, 2020 on <https://www.theleaflet.in/are-pandemic-induced-child-marriages-a-wakeup-call-for-india/#>

³⁹ Hardev Singh vs Harpreet Kaur. 2019. Accessed October 9, 2020 at <https://indiankanoon.org/doc/169642291/>

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)*⁴⁰

The petitioner in this case had challenged the validity of Exception 2 to Section 375 of the Indian Penal Code [as amended by the Criminal Law (Amendment) Act, 2013, as violating Articles 14, 15 and 21 of the Constitution to the extent that it permits intrusive sexual intercourse with a girl child aged between 15 to 18 years only on the ground that she has been married. Exception 2 to Section 375 (rape) of IPC states that sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape. The petitioner underlined the inconsistency between Exception 2 and clause sixthly of Section 375, which has increased the age of consent for sexual intercourse for a girl child to 18 years. Therefore, sexual intercourse with a girl child under 18 years would constitute rape, with or without her consent. The Supreme Court accepted this pleading and held that sexual intercourse with wife, wife under 18 years of age would constitute rape. The judgment noted that ‘it is only through this reading that the intent of social justice to the married girl child and the constitutional vision of the framers of our Constitution can be preserved and protected and perhaps given impetus.’ This case settled the legal confusion over marital rape within prohibited child marriages in India.

*M. Janaki v. K. Vairamuthu (2016)*⁴¹

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)*⁴²

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.

⁴⁰ Independent Thought vs Union Of India. 2017. Accessed October 9, 2020 at <https://indiankanoon.org/doc/87705010/>

⁴¹ M.Janaki vs K.Vairamuthu. 2016. Accessed October 9, 2020 at <https://indiankanoon.org/doc/196038778/>

⁴² Yunusbhai Usmanbhai Shaikh v/s State of Gujarat. 2015. Accessed October 9, 2020 at <https://www.lawyerservices.in/Yunusbhai-Usmanbhai-Shaikh-Versus-State-of-Gujarat-2015-09-23>

4. 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 or services, 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.⁴³ As stated by Yakin Ertürk, former Special Rapporteur on Violence against Women, its Causes and Consequences (Special Rapporteur on VAWG)⁴⁴, 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 the trafficking.⁴⁵

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.⁴⁶

⁴³ The Inter-Agency Coordination Group Against Trafficked Persons (ICAT). 2017. The Gender Dimensions of Human Trafficking. Issue Brief 4. Accessed October 10, 2020 at <https://icat.network/sites/default/files/publications/documents/ICAT-IB-04-V.1.pdf>

⁴⁴ 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 9, 2020 at <https://www.ohchr.org/Documents/Issues/Women/15YearReviewofVAWMandate.pdf>

⁴⁵ Fernandez, Gema, Yoshida, Keina. 2018, June 28. “Human Trafficking as a Gendered Phenomenon – Part I”. *INTLAWGRRLS*. Accessed October 9, 2020 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'>

⁴⁶ ICAT. (2017). Ibid.

Data on Human Trafficking

According to the NCRB 2019 report, a total of 2260 cases of human trafficking were registered, showing a decrease of 0.8% from 2018. 6616 victims have been reported as trafficked, of which 4079 were women. 6571 people were reported to have been saved from potential trafficking. Of the 2914 under-18 victims reported as trafficked, 1742 were males and 1142 females. Of adult victims of trafficking, 2907 were females and 795 males.⁴⁷

The 2020 Trafficking in Persons Report⁴⁸, 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.

Relevant Laws on Human Trafficking in India

The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018⁴⁹

In July 2018, the Lok Sabha passed the highly controversial Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill which creates a law for investigation of all types of trafficking, and rescue, protection and rehabilitation of trafficked victims. The salient features of the Bill are as follows:

- The Bill creates a law for investigation of all types of trafficking, and rescue, protection and rehabilitation of trafficked victims.
- The Bill provides for the establishment of investigation and rehabilitation authorities at the district, state and national level. Anti-Trafficking Units will be established to rescue victims and investigate cases of trafficking. Rehabilitation Committees will provide care and rehabilitation to the rescued victims.
- The Bill classifies certain purposes of trafficking as 'aggravated' forms of trafficking. These include trafficking for forced labour, bearing children, begging, or for inducing early sexual maturity. Aggravated trafficking attracts a higher punishment.
- The Bill sets out penalties for several offences connected with trafficking. In most cases, the penalties set out are higher than the punishment provided under prevailing laws.

The Bill has been criticised for its 'failed carceral approach to trafficking, based on a prosecution- driven, raid-rescue-rehabilitation model'.⁵⁰ The OHCHR noted that, 'Its focus

⁴⁷ Also see Global Slavery Index 2018. 2018. Country Study: India. accessed October 10, 2020 at <https://www.globalslaveryindex.org/2018/findings/country-studies/india/>

⁴⁸ U.S Department of State. 2020. 2020 Trafficking in Persons Report: India. Accessed October 10, 2020 at <https://www.state.gov/reports/2020-trafficking-in-persons-report/india/>

⁴⁹ PRS India. 2018. The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018. Accessed October 10, 2020 at <http://www.prsindia.org/billtrack/the-trafficking-of-persons-prevention-protection-and-rehabilitation-bill-2018-5277/>

⁵⁰ 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 9, 2020 at <https://www.hindustantimes.com/analysis/how-india-can-go-forward-on-tackling-human->

on addressing trafficking from a criminal law perspective is not sufficiently complemented by a human-rights based and victim-centred approach, and this risks further harming already vulnerable individuals.’ In other words, the bill has been criticized for promoting ‘rescue raids’ by the police, and the institutionalisation of victims in the name of rehabilitation, rather than applying appropriate screening methods and standard operating procedures for the identification and referral of victims or potential victims of trafficking and social integration programs which are respectful of their rights. In the context of COVID-19, recognition of new forms of trafficking such as ‘post-disaster trafficking’ is also required.⁵¹

The Indian laws on trafficking are governed by the following laws:

1. *The Indian Penal Code, 1860* contains several provisions that are relevant to trafficking in persons and prescribe penalties for offences such as kidnapping, abduction, buying or selling a person for slavery or labour, buying or selling a minor for prostitution, importing or procuring a minor girl and rape among others. Some of them are as follows:
 - *Section 365*: Kidnapping or abduction with intent to secretly and wrongfully confine a person
 - *Section 366 A*: Procuration of minor girls for the purpose of illicit intercourse with another person
 - *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.

[%20trafficking/story-nlm1deYwCMn6ApdwuFRs6K.html](#)

⁵¹ Lekhi, Meenakshi. 2020, August 19. Anti-trafficking Bill has scope for confusion. Here’s what will work: BJP MP Meenakshi Lekhi. *The Print*. Accessed October 10, 2020 at <https://theprint.in/opinion/anti-trafficking-bill-has-scope-for-confusion-heres-what-will-work-bjp-mp-meenakshi-lekhi/484637/>

In Recent News

It has been stated that one of the effects of COVID-19 is a higher vulnerability of people, especially children, to becoming victims of human trafficking, abuse and exploitation. Higher incidents of migration have caused greater vulnerabilities to trafficking. In addition, the lockdown had slowed down rescue initiatives, while one survey stated that only 27% of the Anti-Human Trafficking Units (AHTUs) are functional following the pandemic.⁵² Increased economic instability during the lockdown has also been a major contributor.

Recent Case Law

*Geeta Arora @ Sonu Punjaban v. State (2020)*⁵³

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

*2019 Case in Rajasthan*⁵⁴

In a landmark verdict in Rajasthan, magistrate Vandana Rathode gave a human trafficker a life sentence as opposed to the norm of simply imposing a fine. This verdict was hailed by human rights activists who consider 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.

*State of Uttarakhand v. Sartaj Khan (2017)*⁵⁵

The appeal of the state against Sartaj Khan for the kidnapping and trafficking of a woman from

⁵² Das, Prajanma. 2020, September 7. “Trafficking Jam: Why India's human trafficking problem has skyrocketed during the COVID-19 pandemic” *EdexLive*. Accessed October 10, 2020 at <https://www.edexlive.com/people/2020/sep/07/trafficking-jam-why-indias-human-trafficking-problem-has-skyrocketed-during-the-covid-19-pandemic-14464.html>

⁵³ PTI. 2020, July 23. “Sonu Punjaban Gets 24 Years Imprisonment For Trafficking Minor Girl”. *Outlook*. Accessed October 10, 2020 at <https://www.outlookindia.com/website/story/india-news-sonu-punjaban-gets-24-years-imprisonment-for-trafficking-minor-girl/357236>

⁵⁴ Nagaraj, Anuradha. 2019, August 29. New hope for child rights after India gets tough on traffickers. *Thomas Reuters Foundation News*. Accessed October 10, 2020 at <http://news.trust.org//item/20190829142656-swuxc/>

⁵⁵ State Of Uttarakhand vs Sartaj Khan. 2017. Accessed October 10, 2020 at <https://indiankanoon.org/doc/4044462/>

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

*Freedom Firm v. Commissioner of Police, Pune & Others (2015)*⁵⁶

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)*⁵⁷

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.

⁵⁶ Freedom Firm Versus Commissioner Of Police, Pune And Ors. 2015. Accessed October 10, 2020 at <http://www.the-laws.com/Encyclopedia/Browse/Case?CaseId=315102532300>

⁵⁷ Prajwala v. Union of India (UOI) and Ors. 2015. Accessed October 10, 2020 at <https://www.legitquest.com/case/prajwala-v-union-of-india-uoi-and-ors/184c3a>

5. 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.⁵⁸

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’.⁵⁹

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

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

Data on Sexual Harassment (with a Focus on Street Sexual Harassment)

	<i>Assault on Women with Intent to Outrage her Modesty</i>	<i>Assault on Women</i>	<i>Sexual Harassment</i>	<i>Street sexual Harassment (Eve Teasing IPC 509)</i>	<i>Sexual Harassment in Public Transport</i>	<i>Assault on Women with Intent to Disrobe</i>	<i>Voyeurism</i>	<i>Stalking</i>
2018	89097	47355	20962	6992	730	9949	1313	9438
2019	88367	48586	18334	6939	606	11238	1399	8890

Source: National Crime Records Bureau, Crime in India 2018 and 2019 reports, accessed October 11, 2020 at <https://ncrb.gov.in/en/crime-india>

⁵⁸ Sanitation First. What is ‘Eve-Teasing’ and Why Should We Be Angry About it? Accessed October 11, 2020 at <http://sanitationfirst.org/blog/eve-teasing-angry/>

⁵⁹ Stop Street Harassment. 2015. *What is Street Harassment?* Accessed October 11, 2020 at <http://www.stopstreetharassment.org/about/what-is-street-harassment/>

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).

Recent Case Law

*Shanta Kumar v. CSIR & Others (2017)*⁶⁰

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)*⁶¹

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

⁶⁰ Shanta Kumar vs Council Of Scientific And ... 2017. Accessed October 11, 2020 at <https://indiankanoon.org/doc/161594683/>

⁶¹ Jishu Sengupta & Others vs The State Of West Bengal & Anr. 2017. Accessed October 11, 2020 at <https://indiankanoon.org/doc/143017740/>

*T Manikandan v. The State (Govt of NCT of Delhi) & Another (2017)*⁶²

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)*⁶³

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

*Deputy Inspector of General of Police and Another v. S. Samuthiram (2012)*⁶⁴

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

⁶² T. Manikandan vs The State (Govt Of Nct Of Delhi) & ... 2017. Accessed October 11, 2020 at <https://indiankanoon.org/doc/34693422/>

⁶³ Pawan Kumar vs State Of H.P. 2017. Accessed October 11, 2020 at <https://indiankanoon.org/doc/50939276/>

⁶⁴ Dy.Inspector Gen.Of Police & Anr vs S.Samuthiram. 2012. Accessed October 11, 2020 at <https://indiankanoon.org/doc/193665812/>

6. 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.⁶⁵

The General Assembly Resolution 48/104 on the *Declaration on the Elimination of Violence Against Women*⁶⁶ 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)*⁶⁷ 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*⁶⁸ recognizes sexual harassment as a form of violence against women and as a form of discrimination, and calls on multiple actors including government, employers, unions, and civil society to ensure that governments enact and enforce laws on sexual harassment and that employers develop anti-harassment policies and prevention strategies.

In Indian Law

In India, in 1997, the Supreme Court in *Vishaka v. State of Rajasthan* defined sexual harassment at the workplace, pronounced preventive, prohibitive and redressal measures, and gave directives towards a legislative mandate to the guidelines proposed.⁶⁹ *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH)*

⁶⁵ Usman, Shah. 2019, December 19. Sexual Harassment Of Women At Workplace: A Brief Analysis Of The POSH Act, 2013. *Mondaq*. Accessed October 15, 2020 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>

⁶⁶ OHCHR. Declaration on the Elimination of Violence against Women. Accessed October 15, 2020 at <https://www.ohchr.org/en/professionalinterest/pages/violenceagainstwomen.aspx>

⁶⁷ UN Women. General Recommendations. Convention on the Elimination of All Forms of Discrimination against Women. Accessed October 15, 2020 at <https://www.un.org/womenwatch/daw/cedaw/recommendations/index.html>

⁶⁸ UN Women. 1995. Beijing Declaration and Platform for Action. *The Fourth World Conference on Women*. Accessed October 15, 2020 at <http://www.un.org/womenwatch/daw/beijing/platform/>

⁶⁹ Vishaka Guidelines against Sexual Harassment at Workplace. Accessed October 15, 2020 at <http://www.nitc.ac.in/app/webroot/img/upload/546896605.pdf>

was enacted sixteen years after *Vishaka*. While sexual harassment at workplace is primarily a civil offence, criminal law has also been used from time to time, especially in the absence of a specific law, to frame sexual harassment.⁷⁰

*The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*⁷¹

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

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

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

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

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

The POSH Act provides for two kinds of complaints mechanisms: the Internal Complaints Committee (ICC) and the Local Complaints Committee (LCC). All workplaces with more than ten workers are required to have an Internal Complaints Committee. A 2016 amendment dropped the word ‘Complaints’ so that these are now to be known as Internal Committee and Local Committee⁷², signalling a broader role than grievance redressal.

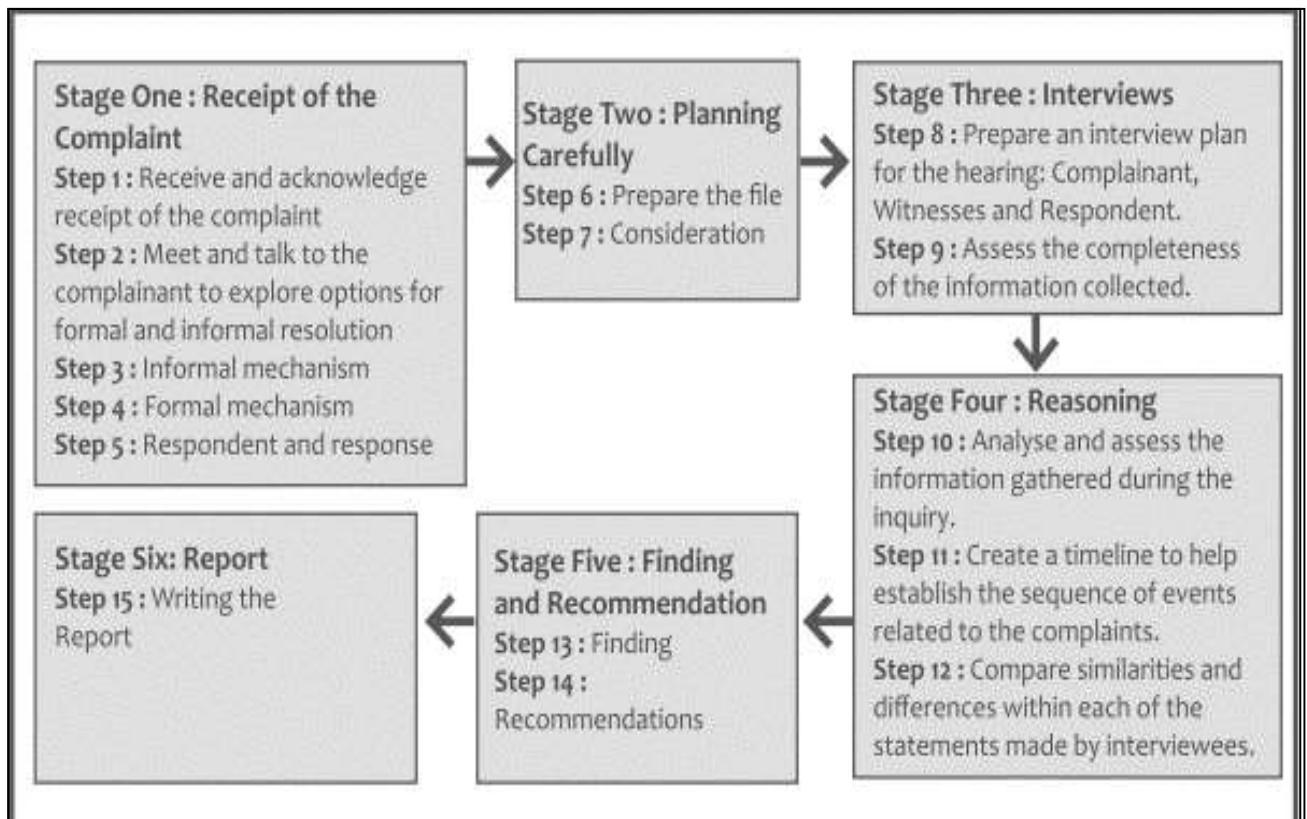
In a workplace with less than ten workers, any woman employee can complain to the Local Complaints Committee with support of the Nodal Officer. The written complaint should contain a description of each incident, relevant dates, timings and locations; name of the respondent(s); and the working relationship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

⁷⁰ Mrs. Rupan Deol Bajaj & Anr vs Kanwar Pal Singh Gill & Anr. 1995. Accessed October 15, 2020 at <https://indiankanoon.org/doc/579822/>

⁷¹ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Accessed October 15, 2020 at <http://legislative.gov.in/sites/default/files/A2013-14.pdf>

⁷² Repealing and Amending Act, 2016, The Second Schedule. 2016, May 16. Accessed October 15, 2020 at <http://extwprlegs1.fao.org/docs/pdf/IND169760.pdf>

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 15, 2020 at <https://wcd.nic.in/sites/default/files/Handbook%20on%20Sexual%20Harassment%20of%20Women%20at%20Workplace.pdf>

The respondent is entitled to:

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

According to Anagha Sarpotdar, chairperson of the Mumbai city district local committee on sexual harassment at the workplace, one of the major milestones of the Sexual Harassment 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. However, the lack of data when it comes to understanding the functioning of the local committees remains a significant roadblock.⁷³

⁷³ Sarpotdar, Anagha. 2020, May 16. Examining Local Committees under the Sexual Harassment of Women

Other Relevant Provisions of Indian law

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

- a. *Section 294*: Making a girl or a woman target of obscene gestures, remarks, songs or recitation.
- b. *Section 354 A*: Sexual harassment: Causing (unwanted) physical contact and advances involving unwelcome and explicit sexual overtures, demand or request for sexual favours, showing pornography against the will of a woman or making sexually coloured remarks.
- c. *Section 354 B*: Assault with the intent to disrobe a woman.
- a. *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.
- b. *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.
- c. *Section 499*: Defamation by words either spoken or intended to be read.
- d. *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.
- e. *Section 509*: Obscene gestures, indecent body language and negative comments directed at any woman or girl. Further, it includes exhibiting any object which intrudes upon the privacy of a woman.

In Recent News

According to the NCRB's Crime In India Report, 505 cases of workplace sexual harassment were registered in 2019. It has been observed that most #MeToo accusations made after 2017 have by and large blown over with many of the accused resuming their professional lives. Those who made the allegations, on the other hand, have suffered personal and professional damage.⁷⁴ Sexual harassment at the workplace continues to escalate, meanwhile, with one study by the Network of Women in Media India and Gender at Work finding that out of 456 cis and trans women working in media, over one-third had faced sexual harassment at the workplace, and half of them did not report the incident.⁷⁵

A report by Human Rights Watch in October 2020, titled "*No Me Too for Women Like Us*" found that women who work in India's informal sector are constrained by stigma, fear of

at Workplace Act. *Economic and Political Weekly* 55(20). Accessed November 2, 2020 at <https://www.epw.in/journal/2020/20/review-womens-studies/examining-local-committees-under-sexual-harassment.html>

⁷⁴ Jain, Jhalak. 2020, February 3. India and its #MeToo Movement in 2020: Where are we Now? *Feminism in India*. Accessed October 17, 2020 at <https://feminisminindia.com/2020/02/03/india-metoo-movement-2020/>

⁷⁵ Gender at Work and NWMI. 2020. Creating Safe Workplaces: Prevention and Redressal of Sexual Harassment in Media Houses in India. Accessed October 17, 2020 at https://genderatwork.org/wp-content/uploads/2020/03/Creating_Safe_Workplaces.pdf

retribution, and institutional barriers to justice, and are unable to report sexual violence in the workplace. The report concludes that the central and local governments have failed to promote, establish, and monitor complaints committees—a central feature of the POSH Act—to receive complaints of sexual harassment, conduct inquiries, and recommend actions against abusers.⁷⁶

While a lot of workplaces have shifted online due to the COVID-19 pandemic, sexual harassment pertaining to workplaces has remained rampant. As students and employees spend more time on the Internet than ever before, they are also more vulnerable to cyber violence.⁷⁷ For instance, several cases have been reported of teachers being sexually harassed by students as more and more classes are now being held online.⁷⁸ Cyber-crimes as a whole have increased, and in some cases, taken new forms over the pandemic, an issue dealt with in greater detail in a chapter that follows.

Recent Case Law

*Anita Suresh vs Union of India & Others (2019)*⁷⁹

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

*Samuel Tennyson vs The Principal and Secretary (2019)*⁸⁰

The case entailed a writ petition filed by the petitioner seeking to quash the Fact-Finding report of

⁷⁶Human Rights Watch. 2020. “No Me Too for Women Like Us”: Poor Enforcement of India’s Sexual Harassment Law. Accessed October 17, 2020 at <https://www.hrw.org/report/2020/10/14/no-metoo-women-us/poor-enforcement-indias-sexual-harassment-law>

⁷⁷ Halder, Debarati. Covid-19: Online Harassment of Women during work from home. *Karnavati University*. Accessed October 17, 2020 at <https://karnavatiuniversity.edu.in/uid/blogs/2020/covid-19-online-harassment-of-women-during-work-from-home/>

⁷⁸ ‘Enough is Enough’: Kerala’s Women Teachers Harassed Online. 2020, June 2. *The Quint*. Accessed October 15, 2020 at <https://www.thequint.com/neon/gender/kerala-women-teachers-harassed-online>

⁷⁹ Anita Suresh vs Union Of India & Ors. 2019. Accessed October 15, 2020 at <https://indiankanoon.org/doc/98792027/>

⁸⁰ Samuel Tennyson vs The Principal & Secretary. 2019. Accessed October 15, 2020 at <https://indiankanoon.org/doc/79788274/>

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

*The Management of Christian vs Mr SG Damodharan (2018)*⁸¹

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

*Ms Renuka Mukherjee v. Vodafone (2017)*⁸²

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

*Shanta Kumar v. CSIR & Others (2017)*⁸³

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

⁸¹ The Management Of Christian vs Mr.S.G.Dhamodharan. 2018. Accessed October 15, 2020 at <https://indiankanoon.org/doc/39453860/?type=print>

⁸² Renuka Mukherjee vs Vodafone Essar Ltd & Ors. 2017. Accessed October 15, 2020 at <https://indiankanoon.org/doc/161861542/>

⁸³Shanta Kumar vs Council Of Scientific And 2017. Accessed October 15, 2020 at <https://indiankanoon.org/doc/161594683/>

7. 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'.⁸⁴ According to human rights activist and director of Evidence, Kathir Vincent, women constitute 97% of honour killing victims in India.⁸⁵

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'.⁸⁶ Feminists have framed 'honour' crimes as a form of custodial violence as well. Generally, perpetrators of honour crimes are seen to be male members of a family, such as brothers, fathers, uncles, nephews and/or husbands. It may also include lovers or ex-lovers.

Data on Honour Crime

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

Type of Motive	<i>Honour Killing</i>	<i>Illicit Relationship</i>	<i>Casteism</i>	<i>Love Affair</i>	<i>Class Conflict</i>
2018	30	1658	36	1571	128
2019	24	1602	60	1570	44

Source: National Crime Records Bureau, Crime in India, 2018 and 2019 reports, accessed October 4, 2020 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

⁸⁴ Stop Violence Against Women. 2008. Crimes Committed in the Name of "Honor". Accessed October 14, 2020 at http://www.stopvaw.org/honor_killings

⁸⁵ Sundaravelu, Anugraha. 2020, April 21. Why India Needs a Separate Law for Honor Killings. *The Swaddle*. Accessed October 14, 2020 at <https://theswaddle.com/honor-killings-india-law/>

⁸⁶ OHCHR. 15 Years of the United Nations Special Rapporteur on Violence Against Women, Its Causes and Consequences. Accessed October 17, 2020 at <https://www.ohchr.org/Documents/Issues/Women/15yearreviewofVAWMandate.pdf>

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.”⁸⁷

In 2012, the Law Commission in their 242nd 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.’⁸⁸

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 are to house a 24-hour helpline for such complaints.⁸⁹

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.⁹⁰

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

⁸⁷ Karat, Brinda. 2016, March 22. Honour killings are a separate horror. *The Hindu*.

Accessed October 17, 2020 at <https://www.thehindu.com/opinion/lead/Honour-killings-are-a-separate-horror/article14168010.ece>

⁸⁸ 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 17, 2020 at <http://lawcommissionofindia.nic.in/reports/report242.pdf>

⁸⁹ Ministry of Home Affairs. 2018, July 31. Honour Killings. *Press Information Bureau*. Accessed October 17, 2020 at <https://pib.gov.in/PressReleaselframePage.aspx?PRID=1540824>

⁹⁰ Sundaravelu, Anugraha. 2020, April 21. Why India Needs a Separate Law for Honor Killings. *The Swaddle*. Accessed October 17, 2020 at <https://theswaddle.com/honor-killings-india-law/>

- d. *Section 191-204: Destroying or concealing evidence*
- e. *Section 299 and Section 301: Culpable homicide not amounting to murder*
- f. *Section 300: Murder*
- g. *Section 306: Abetment to suicide*
- h. *Section 307: Attempt to murder*
- i. *Section 321: Voluntarily causing grievous hurt*
- j. *Section 339: Wrongful restraint by voluntarily obstructing any person so as to prevent that person from proceeding in any direction*
- k. *Section 343, 344: Wrongful confinement by wrongfully restraining any person so as to prevent that person from proceeding beyond certain circumscribing limits*

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

In Recent News

Several instances of honour killings have made headlines over the last year, including during the lockdown. Many of them were caste-motivated crimes.⁹¹

How to Access Justice

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

Despite the preventive measures taken by the State Police, if it comes to the notice of the local police that the Khap Panchayat has taken place and it has passed any diktat to take action against a couple/family of an inter-caste or inter-religious marriage (or any other marriage which does not meet their acceptance), the jurisdictional police official shall cause to immediately lodge an F.I.R. under the appropriate provisions of the Indian Penal Code including Sections 141, 143, 503 read with 506 of IPC.

Upon registration of F.I.R., intimation shall be simultaneously given to the Superintendent of Police/Deputy Superintendent of Police who, in turn, shall ensure that effective

⁹¹ See Rajasekaran, Ilangova. 2020, April 2. Honour killing in the time of lockdown in Tamil Nadu. *Frontline*. <https://frontline.thehindu.com/dispatches/article31235723.ece>; Krishnamoorthy, R. 2019, November 20. Girl in Nagapattinam dies after being set afire by mother, honour killing suspected. *The Hindu*. <https://www.thehindu.com/news/national/tamil-nadu/girl-in-nagapattinam-dies-after-being-set-afire-by-mother-honour-killing-suspected/article30025190.ece>; Kumar, Raghavan. 2019, October 14. Girl in Nagapattinam dies after being set afire by mother, honour killing suspected. *Times of India*. <https://timesofindia.indiatimes.com/city/amaravati/ap-minor-girl-found-dead-honour-killing-alleged/articleshow/71573047.cms>; 2020, October 11. Honour killing: Cousins adamant on marriage poisoned to death in Chhattisgarh, bodies burnt. *The New Indian Express*. <https://www.newindianexpress.com/nation/2020/oct/11/honour-killing-cousins-adamant-on-marriage-poisoned-to-death-in-chhattisgarh-bodies-burnt-2208941.html>; 2020, October 17. 19-year-old killed in suspected honour killing in Karnataka; father, two others held. *The New Indian Express*. <https://www.newindianexpress.com/states/karnataka/2020/oct/17/19-year-old-killed-in-suspected-honour-killing-in-karnataka-father-two-others-held-2211630.html>; 2020, October 9. Delhi: Mohammad Afroz, Mohammad Raj and 3 others murder 18-year-old Rahul over love affair with a Muslim girl. *OpIndia*. <https://timesofindia.indiatimes.com/city/delhi/18-year-old-beaten-to-death-in-delhi-over-his-friendship-with-a-woman-her-brother-relative-arrested/articleshow/78581150.cms>

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

*The Udumalpet Murder Case of 2016*⁹²

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

*T. Padmaja vs The State of Telangana (2019)*⁹³

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)*⁹⁴

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."

⁹² 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 17, 2020 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>

⁹³ T. Padmaja vs The State Of Telangana. 2019. Accessed October 17, 2020 at <https://indiankanoon.org/doc/95632531/>

⁹⁴ Shakti Vahini vs Union Of India. 2018. Accessed October 17, 2020 at <https://indiankanoon.org/doc/92846055/>

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

*B. Dilipkumar v. The Secretary to Government and Others (2016)*⁹⁵

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)*⁹⁶

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.

⁹⁵ B.Dilipkumar vs The Secretary To Government. 2016. Accessed October 17, 2020 at <https://indiankanoon.org/doc/171256546/>

⁹⁶ Baby @ Sebastian & Anr vs Circle Inspector Of Police ... 2016. Accessed October 17, 2020 at <https://indiankanoon.org/doc/16985200/>

8. 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.⁹⁷

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.

	2018	2019
<i>Acid Attacks</i>	131	150
<i>Attempted Acid Attacks</i>	37	42

Source: National Crime Records Bureau, Crime in India 2018 and 2019 reports, accessed October 4, 2020 at <https://ncrb.gov.in/en/crime-india>

Laws Relevant to Acid Attacks

1. Indian Penal Code, 1860
2. *Section 100*: Right of self-defence under apprehension of an acid attack
 - a. *Section 326 A*: Voluntarily causing grievous hurt by use of acid, etc.
 - b. *Section 326 B*: Voluntarily throwing or attempting to throw acid
3. 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
4. The Rights of Persons with Disabilities Act, 2016
 - a. Limited compensation for victims of acid attacks

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

⁹⁷ UN Women. (2011). "Acid Attacks". Accessed October 4, 2020 at <https://www.endvawnow.org/en/articles/607-acid-attacks.html>

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.⁹⁸

How to Access Justice

- The financial relief granted under NALSA's *Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes* is not linked with the trial in such cases, and the victim can approach the state legal services authority for compensation immediately after the incident. The scheme also empowers the legal services authority to take *suo moto* cognizance of cases of acid attack to grant interim relief to victims.⁹⁹
- Please see the Prajnya FIR Ready Reckoner (Appendix).

Recent Case Law

*Sonali Mukherjee v. Union of India and Others (2019)*¹⁰⁰

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)*¹⁰¹

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

⁹⁸ Acid Survivors Trust International. Country Files. Accessed October 4, 2020 at <https://www.asti.org.uk/a-worldwide-problem.html>

⁹⁹ For procedure for compensation, see: http://wcd.nic.in/sites/default/files/Final%20VC%20Scheme_0.pdf

¹⁰⁰ Sonali Mukherjee @ Sonali vs The Union Of India & Ors. 2019. Accessed October 4, 2020 at <https://indiankanoon.org/doc/173011481/>

¹⁰¹ Raja vs State of Haryana. 2019. Accessed October 4, 2020 at <https://indiankanoon.org/doc/86904145/>

respondent to pay a compensation of Rs. 50,000 and the state Rs. 3 lakhs to the victim within six months. Failing to pay the amount would result in rigorous imprisonment for the respondent and he would have to pay the compensation amount in addition to what was imposed by the trial court.

*Piyali Dutta v. State of West Bengal (2017)*¹⁰²

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)*¹⁰³

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)*¹⁰⁴

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)*¹⁰⁵

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.

¹⁰² Piyali Dutta vs State of West Bengal. 2017. Accessed October 4, 2020 at <https://indiankanoon.org/doc/21784779/>

¹⁰³ Renu Sharma vs Gncet Of Delhi And Ors. 2016. Accessed October 4, 2020 at <https://indiankanoon.org/doc/149678491/>

¹⁰⁴ Parivartan Kendra & Anr vs U.O.I & Ors. 2015. Accessed October 4, 2020 at <https://indiankanoon.org/doc/16029001/>

¹⁰⁵ Laxmi vs Union Of India & Ors. 2015. Accessed October 4, 2020 at <https://indiankanoon.org/doc/90443079/>

9. 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)¹⁰⁶ 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.¹⁰⁷ 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 is 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.¹⁰⁸

In India, FGM is known as *Khatna* or *Khafz*, which involves a procedure of partially removing the clitoral hood. Young girls at the age of six or seven, primarily from the Dawoodi Bohra community, undergo these procedures conducted by doctors and midwives.¹⁰⁹

Data on Female Genital Mutilation

- According to the submission by the Indian Ministry for Women and Child Development, there is no

¹⁰⁶ WHO. Eliminating Female Genital Mutilation. Accessed October 15, 2020 at <https://www.who.int/reproductivehealth/topics/fgm/about/en/>

¹⁰⁷ Amnesty International. Female Genital Mutilation in India. Accessed October 15 2020 at <https://amnesty.org.in/female-genital-mutilation-in-india/>

¹⁰⁸ Ibid.

¹⁰⁹ Baweja, Harinder. India's Dark Secret. *Hindustan Times*. Accessed October 15 2020 at <https://www.hindustantimes.com/static/fgm-indias-dark-secret/>

data on FGM in India as it is not seen as a specific offence or covered under any 'crime-head'. According to estimates by the UN, as of February 2020, approximately 200 million girls across 30 countries are affected by this practice.¹¹⁰

- 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.¹¹¹
- According to UNFPA, 4.1 million girls around the world are at risk of being subjected to FGM in 2020¹¹².

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: The section encompasses various kinds of bodily pain, disease or infirmity that may be termed 'grievous'.

2. Protection of Children from Sexual Offences Act, 2012

Defines and prescribes punishment for various types of sexual assault. It also defines and prescribes punishment for abetment of offences under the law.

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.

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

¹¹⁰ UN News. 2020, February 06. Female Genital Mutilation costs \$1.4 billion annually: UN health agency. Accessed October 15, 2020 at <https://news.un.org/en/story/2020/02/1056802>

¹¹¹ Anantnarayan, Lakshmi, Diler, Shabana, Menon, Natasha. 2018. *The Clitoral Hood: A Contested Site. WeSpeakOut and Nari Samta Manch*. Accessed October 15, 2020 at https://www.wespeakout.org/site/assets/files/1439/fgmc_study_results_jan_2018.pdf

¹¹² UNFPA. 2020, February 06. UNFPA exhibition: A Piece of Me stresses that globally 4.1 million girls are at risk of FGM in 2020. Accessed October 16, 2020 at <https://www.unfpa.org/press/unfpa-exhibition-piece-me-stresses-globally-41-million-girls-are-risk-fgm-2020>

Recent Case Law

Sunita Tiwari v Union of India

The Supreme Court referred the plea seeking complete ban on FGM to a constitutional bench.¹¹³ Several Dawoodi Bohra women have filed interventions in the ongoing case.¹¹⁴

¹¹³ Rajagopal, Krishnadas. 2018, September 24. SC refers plea against female genital mutilation to Constitution Bench. *The Hindu*. Accessed October 16, 2020 at

<https://www.thehindu.com/news/national/sc-refers-pil-against-female-genital-mutilation-to-constitution-bench/article25026340.ece>

¹¹⁴ Shelar, Jyoti. 2018, July 18. FGM case: more women file interventions. *The Hindu*. Accessed October 16, 2020 at <https://www.thehindu.com/news/cities/mumbai/fgm-case-more-women-file-interventions/article24446383.ece>

10. 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.”¹¹⁵

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

In 2018, the criminal law relating to child rape was further amended after the brutal Kathua gang rape case to prescribe harsher punishment, including death penalty.¹¹⁶

Date Rape & 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 law protects marital rape from being criminalized.

Data on Rape in India

According to NCRB's data in 2019, approximately one rape occurs every 16 minutes in India, and this is not accounting for the numerous cases that go unreported. The data also reveals that the conviction rate of rape cases in India is under 30%. As per data from the National Family Health

¹¹⁵ International Criminal Tribunal for Rwanda, Prosecutor vs. Akaseyu, Case No. ICTR-96-4-T, September 1998.

¹¹⁶ The Criminal Law (Amendment) Bill, 2019. Accessed November 11, 2020 at <http://164.100.47.4/BillsTexts/RSBillTexts/asintroduced/crimnal-E-12719.pdf>

Survey 2015-16, around 99.1% of sexual violence cases against females aged 15-49 are unreported in the country. Institutional help, in general, was sought by just over 5% of those surveyed, with the vast majority turning to relatives and friends for support.¹¹⁷

The *Crime In India* 2018 and 2019 reports have published the following data for rapes in India over the last two years.

	2018	2019
<i>Rape</i>	33356	32033
<i>Incest Rape</i>	2780	2916
<i>Rape by Family Friends/Neighbours/Employer or Other Known Persons</i>	557	648
<i>Custodial Rape</i>	60	47
<i>Rape by Relative/Teacher/Guardian/Person in position of Trust [Sec. 376(2)(f)]</i>	2226	1999
<i>Rape on Pregnant Women [Sec. 376(2)(h)]</i>	24	35
<i>Rape on Women below 16 years of Age [Sec. 376(2)(i)]</i>	1546	790
<i>Rape on Women incapable of giving Consent [Sec. 376(2)(j)]</i>	396	393
<i>Rape by Persons in Control or Dominance over Women [Sec. 376(2)(k)]</i>	136	182
<i>Rape on Women with Mental or Physical Disability [Sec. 376(2)(l)]</i>	87	116
<i>Endanger Life of Women after Rape [Sec. 376(2)(m)]</i>	16	34
<i>Repeated Rape on Same Women [Sec. 376(2)(n)]</i>	2472	2373
<i>Other Custodial Rapes</i>	99	772
<i>Attempt to Commit Rape</i>	4097	3944
<i>Murder with rape/Gang-Rape</i>	294	283

Source: National Crime Records Bureau, Crime in India 2018 and 2019 reports, accessed October 4, 2020 at <https://ncrb.gov.in/en/crime-india>

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

¹¹⁷ Bhattacharya, Prमित, Kundu, Tadit. 2018, April 24. 99% cases of sexual assaults go unreported, govt data shows. *LiveMint*. Accessed November 11, 2020 at <https://www.livemint.com/Politics/AV3sIKoEBAGZozALMX8THK/99-cases-of-sexual-assaults-go-unreported-govt-data-shows.html>

- *Criminal Procedure Code, 1973*
 - a. *Section 53*: Collection of evidence by examination of accused by medical practitioner at the request of police officer
 - b. *Section 164 A*: Medical examination of victim of rape
 - c. *Section 327*: Trial to be conducted in-camera
- *Indian Evidence Act, 1872*
 - a. *Section 114 A*: Presumption as to absence of consent in certain prosecutions for rape

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

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

How to Access justice

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

In Recent News

On September 14, 2020, a 19-year-old Dalit woman was gangraped by four upper caste *Thakur* men in Hathras, Uttar Pradesh. The woman, whose spinal cord was damaged in the process, passed away a few days later in the hospital. The victim's family alleged that the men had been harassing the woman for quite some time. Late on September 29, the night of the victim's death, Uttar Pradesh police officers cremated her body. The family has claimed that the cremation was done without their consent and that they were locked inside their houses when it took place.¹¹⁸ Simultaneously, the police alleged that no rape ever took place.¹¹⁹ The case has received widespread political and media attention, and many politicians and journalists were detained over the course of events in the next few days.¹²⁰ The incident has underscored the casteism ingrained in India society, and sparked

¹¹⁸ 2020, September 30. Hathras rape victim's body forcibly cremated by police, family says not allowed to take body home. *Scroll.in*. Accessed November 11, 2020 at <https://scroll.in/latest/974482/hathras-gangrape-woman-cremated-by-police-at-midnight-family-says-they-were-forced-to-do-it>

¹¹⁹ 2020, October 1. Forensic report shows there was no rape in Hathras case, claim UP Police. *Scroll.in*. Accessed November 11, 2020 at <https://scroll.in/latest/974638/forensic-report-shows-there-was-no-rape-in-hathras-case-claim-up-police>

¹²⁰ Rashid, Omar. 2020, October 7. Journalist and three others, arrested on their way to Hathras, booked for sedition in U.P. October 10. *The Hindu*. Accessed November 11, 2020 at <https://www.thehindu.com/news/national/other-states/malayalam-journalist-3-others-arrested-near-hathras-booked-under-sedition-law/article32791003.ece#:~:text=The%20Uttar%20Pradesh%20police%20on,sent%20them%20in%20judicial%20remand> ; Ellis-Peterson, Hannah. 2020, October 1. Rahul and Priyanka Gandhi arrested on way to meet

outrage, protests, and political unrest. The four accused have been arrested on charges of attempt to murder, gang rape and violations of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. The forced cremation led the Allahabad High Court to take *suo moto* cognizance and the bench asked the victim's family, the District Magistrate and the Superintendent of Police to appear before it.¹²¹ The state government suspended the five police officers involved in the cremation, including the Superintendent of Police.

On March 20, 2020, the four men convicted in the infamous December 2012 Nirbhaya gang rape case were hanged in Tihar jail. Another convict in the case, Ram Singh, died by suicide while in jail. The sixth man convicted, underage at the time of the rape, was released from the juvenile correctional home in 2015.

A 26-year-old veterinary doctor was raped and murdered in Hyderabad in November 2019. Four men were accused of gangraping her, smothering her and subsequently burning her corpse under a bridge. The men were arrested and confessed to the crime, according to the police.¹²² A few days later, all four accused were killed in a police encounter while at the crime scene, supposedly after trying to escape during a reconstruction of the crime. Human rights activists have strongly criticized the extrajudicial nature of the killings.¹²³

Cases of rape continue to be reported even amidst the COVID-19 pandemic, with several taking place in quarantine centers.¹²⁴

Indian rape victim's family. Accessed November 11, 2020 at <https://www.theguardian.com/world/2020/oct/01/rahul-gandhi-arrested-way-indian-rape-victim-family>

¹²¹ Sharma, Sanjay. 2020, October 1. Hathras case: Allahabad HC takes suo moto cognizance, seeks report from UP govt, police. India Today. Accessed November 11, 2020 at <https://www.indiatoday.in/india/story/hathras-case-allahabad-hc-seeks-report-from-up-govt-police-1727477-2020-10-01>

¹²² Khan, Omar. 2019. November 30. Four men confess to gang rape of woman they later burned alive, Indian police say. *CNN*. Accessed November 11, 2020 at <https://edition.cnn.com/2019/11/30/asia/india-gang-rape-intl/index.html>

¹²³ 2019, December 9. Extrajudicial killing fears as Indians cheer Hyderabad 'shootout'. *Al Jazeera*. Accessed November 11, 2020 at <https://www.aljazeera.com/news/2019/12/9/extrajudicial-killing-fears-as-indians-cheer-hyderabad-shootout>

¹²⁴ See 2020, October 13. Attendant held for raping 20-year-old at COVID-19 quarantine centre in Thane. *Firstpost*. <https://www.firstpost.com/india/attendant-held-for-raping-20-year-old-at-covid-19-quarantine-centre-in-thane-8812111.html> ; 2020, July 24. 14-year-old patient raped in India's largest Covid-19 facility. *Hindustan Times*. <https://www.hindustantimes.com/delhi-news/minor-raped-in-covid-care-centre/story-zMgjZBLGrEqdkgAGmDRLdM.html>

Recent Case Law

*Conviction in the Unnao Rape Case (2019)*¹²⁵

In the well-known Unnao rape case and related murders¹²⁶, 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)*¹²⁷

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

*Sandeep & Others v. Neelam & Another (2018)*¹²⁸

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

*Hemudan Nanbha Gadhvi v. State of Gujarat (2018)*¹²⁹

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.

¹²⁵ 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 11, 2020 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>

¹²⁶ 2019, December 19. Chronology of events in Unnao rape case. *The Tribune*. Accessed November 11, 2020 at <https://www.tribuneindia.com/news/nation/chronology-of-events-in-unnao-rape-case-14641>

¹²⁷ Criminal Justice Society Of India vs Union Of India. 2018. Accessed November 11, 2020 at <https://indiankanoon.org/doc/164599854/>

¹²⁸ Sandeep vs Neelam. 2018. Accessed November 11, 2020 at <https://indiankanoon.org/doc/58555996/>

¹²⁹ Hemudan Nanbha Gadhvi vs The State Of Gujarat. 2018. Accessed November 11, 2020 at <https://indiankanoon.org/doc/171003922/>

*Yogesh v. State of Maharashtra (2018)*¹³⁰

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

*State of Uttarakhand v. Karandeep Sharma (2018)*¹³¹

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)*¹³²

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

*Independent Thought v. UOI (2017)*¹³³

The petitioner in this case had challenged the validity of Exception 2 to Section 375 of the Indian Penal Code [as amended by the Criminal Law (Amendment) Act, 2013, as violative of Articles 14, 15 and 21 of the Constitution to the extent that it permits intrusive sexual intercourse with a girl child aged between 15 to 18 years only on the ground that she has been married. Exception 2 says that sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape. The petitioner underlined the inconsistency between Exception 2 and 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 a 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.

*Akshay Manoj Jaisinghani v. State of Maharashtra (2017)*¹³⁴

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

¹³⁰ Yogesh S/O. Gajanan Sayankar And ... vs The State Of Maharashtra. 2018. Accessed November 11, 2020 at <https://indiankanoon.org/doc/45242209/>

¹³¹ Karandeep Sharma Alias Razia ... vs State Of Uttarakhand. 2018. Accessed November 11, 2020 at <https://indiankanoon.org/doc/148366568/>

¹³² The State Of Maharashtra vs Bandu @ Daulat. 2017. Accessed November 11, 2020 at <https://indiankanoon.org/doc/96251512/>

¹³³ Independent Thought vs Union Of India. 2017. Accessed November 11, 2020 at <https://indiankanoon.org/doc/87705010/>

¹³⁴ Akshay Manoj Jaisinghani vs The State Of Maharashtra. 2017. Accessed November 11, 2020 at <https://indiankanoon.org/doc/173973806/>

healthy, objective and legal approach towards such incidents. The complaint stated that consent for sexual intercourse was obtained fraudulently by falsely promising marriage. The court reiterated an earlier judgment that stated that withdrawal of a bonafide promise of marriage excludes from the ambit of rape, previous consensual sexual intimacy. The court further reflected upon circumstances that qualify for rape; for example, consent for sexual activity obtained from an illiterate woman under the promise to marry.

*Mahmood Farooqui v. State (Govt of NCT of Delhi) (2017)*¹³⁵

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)*¹³⁶

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’.

¹³⁵Mahmood Farooqui vs State (Govt Of Nct Of Delhi). 2017. Accessed November 11, 2020 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.)

¹³⁶ State Of M.P vs Madanlal . 2015. Accessed November 11, 2020 at <https://indiankanoon.org/doc/84388891/>

11. 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.”¹³⁷

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.¹³⁸ 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.¹³⁹

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.”¹⁴⁰

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

Dowry Death

Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband

¹³⁷ United Nations. 2009. Good Practices in Legislation on “Harmful Practices” against Women. Accessed November 10, 2020 at https://www.un.org/womenwatch/daw/egm/vaw_legislation_2009/Report%20EGM%20harmful%20practices.pdf

¹³⁸ 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 November 10, 2020 at <https://www.sciencedirect.com/science/article/pii/S1752928X20301426#bib19>

¹³⁹ Stop Violence against Women. Dowry Related Violence. Accessed November 10, 2020 at https://www.stopvaw.org/dowry-related_violence

¹⁴⁰ See Dowry Prohibition Act, India, 1961, Art. 2

or relative shall be deemed to have caused her death. Punishment is minimum 7 years in dowry death and can extend to life imprisonment [S. 304 B of the Indian Penal Code].

Cruelty

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

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

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

[S. 498A of the Indian Penal Code].

Data on Dowry-related Violence

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

	<i>Dowry death</i>	<i>Dowry Prohibition Act violations</i>	<i>Cruelty by husband or his relatives</i>
2018	7267	12826	103272
2019	7115	13297	125298

Source: National Crime Records Bureau, Crime in India 2018 and 2019 reports, accessed October 4, 2020 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.¹⁴¹ On January 17, 2020, it was reported that 17 cases of dowry violence had been reported across the city of Bangalore in the first 16 days of the year.¹⁴² In March 2020, a dowry harassment complaint was filed against Sachin Bansal, co-founder of prominent Indian e-commerce website Flipkart, by his wife Priya Bansal.¹⁴³ The investigation is ongoing.

Recent Case Law

*Rupali Devi vs State of Uttar Pradesh (2019)*¹⁴⁴

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

¹⁴¹ See 2020, October 8. Madhya Pradesh MLA's daughter alleges dowry harassment by husband. *The New Indian Express*. <https://www.newindianexpress.com/nation/2020/oct/08/madhya-pradeshmlas-daughter-alleges-dowry-harassment-by-husband-2207580.html> ; 2020, October 23. Hyderabad: Harassed for dowry, pregnant techie dies by suicide. *The New Indian Express*. <https://www.newindianexpress.com/cities/hyderabad/2020/oct/23/hyderabad-harassed-for-dowry-pregnant-techie-dies-by-suicide-2214017.html> ; 2020, September 18. Tamil Nadu man uploads private photos of wife on social media demanding dowry, held. *The New Indian Express*. <https://www.newindianexpress.com/states/tamil-nadu/2020/sep/18/tamil-nadu-man-uploads-private-photos-of-wife-on-social-media-demanding-dowry-held-2198596.html> ; 2020, July 21. Dowry death: Hyderabad woman hangs self at home. *The New Indian Express*. <https://www.newindianexpress.com/cities/hyderabad/2020/jul/21/dowry-death-hyderabad-woman-hangs-self-at-home-2172521.html> ; 2020, September 12. Cop, wife booked, son arrested for dowry death. *Times of India*. <https://timesofindia.indiatimes.com/city/ludhiana/cop-wife-booked-son-arrested-for-dowry-death/articleshow/78065442.cms> ; 2020, July 22, 2020. Telangana: Rise in dowry harassment cases. *Times of India*. <https://timesofindia.indiatimes.com/city/hyderabad/rise-in-dowry-harassment-cases/articleshow/77095798.cms>

¹⁴² Prasad, Preeja. 2020, January 17. 17 dowry cases in 16 days of new year. *The New Indian Express*. Accessed November 10, 2020 at <https://www.newindianexpress.com/cities/bengaluru/2020/jan/17/17-dowry-cases-in-16-days-of-new-year-2090576.html>

¹⁴³ 2020, March 6. Sachin Bansal's wife files dowry harassment case against him. *The Economic Times*. Accessed November 10, 2020 at <https://economictimes.indiatimes.com/small-biz/startups/newsbuzz/dowry-case-against-sachin-bansal/articleshow/74503368.cms>

¹⁴⁴ *Rupali Devi vs. State of Uttar Pradesh*. 2019. Accessed November 10, 2020 at <http://lawtimesjournal.in/rupali-devi-vs-state-of-uttar-pradesh/>

*Sri Sukha Ranjan Das vs The State Of Tripura (2019)*¹⁴⁵

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 Anir (2018)*¹⁴⁶

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

*State of M.P. v. Basant Kumar (2018)*¹⁴⁷

This was a case of dowry harassment filed against the respondent. The accused were acquitted of dowry charges for want of sufficient evidence.

*Social Action Forum for Manav Adhikar v. UOI (2018)*¹⁴⁸

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.

¹⁴⁵ Sri Sukha Ranjan Das vs The State Of Tripura. 2019. Accessed November 10, 2020 at <https://indiankanoon.org/doc/137055360/>

¹⁴⁶ Aniket Subhash Tupe vs Piyusha Aniket Tupe And Anr. 2018. Accessed November 10, 2020 at <https://indiankanoon.org/doc/26774800/>

¹⁴⁷ State Of M.P. vs Basant Kumar. 2018. Accessed November 10, 2020 at <https://indiankanoon.org/doc/14748165/>

¹⁴⁸ Social Action Forum vs Union Of India And Ors. Ministry Law ... 2018. Accessed November 10, 2020 at <https://indiankanoon.org/doc/81618143/>

*Ashok v. State of Delhi (2017)*¹⁴⁹

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

*Bajjnath & Others v. State of Madhya Pradesh (2016)*¹⁵⁰

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

*Bobbili Ramakrishna Raju Yadav v. State of Andhra Pradesh (2016)*¹⁵¹

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

¹⁴⁹ Ashok vs State (Gnct Of Delhi). 2017. Accessed November 10, 2020 at <https://indiankanoon.org/doc/109151123/>

¹⁵⁰ Bajjnath And Ors vs State Of M P. 2016. Accessed November 10, 2020 at <https://indiankanoon.org/doc/73277952/>

¹⁵¹ Bobbili Ramakrishna Raju Yadav & ... vs State Of A P Rep. By Its Public ... 2016. Accessed November 10, 2020 at <https://indiankanoon.org/doc/12564942/>

12. 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.*¹⁵²

According to the National Family Health Survey 2015-16, around 32% of women have experienced spousal violence—physical, sexual or emotional—in their lifetimes. Only 14% of women who experienced domestic violence have sought help.¹⁵³

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.¹⁵⁴ 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.

¹⁵² OHCHR. 1993. Declaration on the Elimination of Violence against Women. Accessed November 1, 2020 at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ViolenceAgainstWomen.aspx>

¹⁵³ Ministry of Health and Family Welfare. National Family Health Survey 4. Accessed November 1, 2020 at http://rchiips.org/nfhs/factsheet_nfhs-4.shtml

¹⁵⁴ WHO. 2012. Intimate Partner Violence. Accessed November 1, 2020 at https://apps.who.int/iris/bitstream/handle/10665/77432/WHO_RHR_12.36_eng.pdf;jsessionid=F1859C87849F0612045624695E0B22EB?sequence=1

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

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

Data on Domestic Violence

	2018	2019
<i>Cases registered under PWDVA</i>	579	553

Source: National Crime Records Bureau, Crime in India, 2017, 2018 and 2019 reports, accessed November 1, 2020 at <https://ncrb.gov.in/en/crime-india>

In Recent News

The COVID-19 pandemic and subsequent lockdown have led to an alarming surge in cases of domestic violence and intimate partner violence, while at the same time making it difficult for victims to seek help. The National Commission for Women (NCW) reportedly registered 587 domestic violence complaints between March 23 and April 16 and 396 complaints in the previous 25 days between February 27 and March 22.¹⁵⁵ The number of distress calls also doubled between March and April. The increase in violence against women during the pandemic, in particular domestic violence, has often been referred to as a “shadow pandemic”.¹⁵⁶

Globally as well, domestic violence cases rose significantly in the months leading up to the pandemic. UN Women reported that between April 2019 and 2020, 243 million women and girls aged 15-49 were subjected to intimate partner violence. It also stated that cases are only likely to increase during the pandemic, as worries over security, health and money lead to heightened tensions and stress are accentuated by cramped and confined living conditions.¹⁵⁷ The numbers suggest that these claims were well-founded. According to economist Ashwini Pandey, “The abuser feels frustrated and angry because of lack of control due to the constraints imposed by lockdown. This prompts him to exercise greater control by abusing his partner and/or children, often with violence.”¹⁵⁸

¹⁵⁵ S, Rukmini. 2020, April 18. Locked down with abusers: India sees surge in domestic violence. *Al Jazeera*. Accessed November 1, 2020 at <https://www.aljazeera.com/news/2020/04/18/locked-down-with-abusers-india-sees-surge-in-domestic-violence/>

¹⁵⁶ Gupta, Gayatri. 2020, September 24. Domestic Violence During Lockdown: Dealing With The 'Shadow Pandemic'. *The Logical Indian*. Accessed November 3, 2020 at <https://thelogicalindian.com/gender/domestic-violence-during-lockdown-23944>

¹⁵⁷ UN Women. 2020. COVID-19 and ending violence against women and girls. Accessed November 3, 2020 at <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/issue-brief-covid-19-and-ending-violence-against-women-and-girls-en.pdf?la=en&vs=5006>

¹⁵⁸ 2020, June 2. What India's lockdown did to domestic abuse victims. *BBC*. Accessed November, 2, 2020 at

According to the Domestic Violence Act, state governments are required to appoint protection officers in each district in the country. Protection officers, usually women, act as a liaison between the aggrieved women and the system. They are empowered to provide first-hand assistance to an aggrieved woman by informing her of her rights, making a domestic incident report or submitting an application, and ensuring that facilities such as legal aid, shelter homes and medical facilities are provided.¹⁵⁹ However, due to restrictions imposed by the lockdown, it has become increasingly difficult for women to get help from protection officers. A number of social workers and lawyers have highlighted the restricted access to protection officers as a cause of concern, and have suggested that the work of protection officers, counselling and crisis centres should be declared as essential services. The Delhi High Court directed that appointing temporary protection officers, until regular appointments are made, be considered. Other states such as Orissa and Tamil Nadu have started a 'phone-up programme' and asked concerned departments and social welfare workers to check upon or contact women who had earlier complained about domestic violence.¹⁶⁰

The National Legal Services Authority (NALSA) decided to open online legal assistance services by setting up a panel of women lawyers in each district that would come to the aid of victims of domestic violence and child abuse.¹⁶¹ According to the Ministry of Women and Child Development, legal aid has been provided in 2878 legal aid cases by NALSA during April-June.¹⁶²

Indian Laws Addressing Domestic Violence

Protection of Women from Domestic Violence Act (2005)

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

- 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

<https://www.bbc.com/news/world-asia-india-52846304>

¹⁵⁹ Gupta, Gayatri. 2020, September 24. Domestic Violence During Lockdown: Dealing With The 'Shadow Pandemic'. *The Logical Indian*. Accessed November 3, 2020 at <https://thelogicalindian.com/gender/domestic-violence-during-lockdown-23944>

¹⁶⁰ Ibid.

¹⁶¹ 2020, June 7. NALSA: Legal aid widened as Domestic Violence rises amid Lockdown. *LatestLaws.com*. Accessed November 2, 2020 at <https://www.latestlaws.com/latest-news/nalsa-legal-aid-widened-as-domestic-violence-rises-amid-lockdown/>

¹⁶² PTI. 2020, September 17. Legal aid provided in 2,878 domestic violence cases by NALSA during Apr-Jun: WCD ministry. *The Hindu*. Accessed November 2, 2020 at <https://www.thehindu.com/news/national/legal-aid-provided-in-2878-domestic-violence-cases-by-nalsa-during-apr-jun-wcd-ministry/article32628758.ece>

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 (PO¹⁶³ as the interface b/w the woman and the court)
- Intended specifically to protect women (children, both male and female). Covers mothers, daughters, sisters, widows, relations through adoption etc
- Recognition of “relationships in the nature of marriage”—victims of bigamous/fraudulent marriages, cohabitation
- Mix of both civil and criminal laws through a two-stage process:
 1. Civil orders passed by a Magistrate on Application u/S. 12
 2. On breach of civil orders by the perpetrator, arrest (imprisonment &/or fine)

Other relevant laws

- a. *IPC Section 376 A*: Forcible sexual intercourse by a man with his wife when separated legally, by custom or by usage
- b. *IPC Section 498 A*: Conduct which is likely to cause grave injury or danger to the life, limb or health (mental or physical), of a woman

How to Access Justice

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

Recent Case Law

Decision by Jammu and Kashmir High Court (2020)¹⁶⁴

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

¹⁶³ The Protection Officer is the key authority appointed under PWDVA by the State governments and acts as the nodal agency between the various stakeholders. Their duties include receiving the complaint, informing the victim of her rights and facilitating her access to support services and the Court. The PO also enforces the orders of the Court.

¹⁶⁴ Court on Its Own Motion v/s Union Territories of Jammu & Kashmir and Ladakh through Secretaries, Social Welfare Department. 2020. Accessed November 2, 2020 at https://www.livelaw.in/pdf_upload/pdf_upload-373329.pdf

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)*¹⁶⁵

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

*Kasturi v. Subhash (2017)*¹⁶⁶

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 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)*¹⁶⁷

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)*¹⁶⁸

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.

¹⁶⁵ All India Council Of Human Rights, Liberties And Social Justice versus Union Of India & Ors. 2020. Accessed November 2, 2020 at https://www.livelaw.in/pdf_upload/pdf_upload-373793.pdf

¹⁶⁶ Kasturi vs Subhas. 2017. Accessed November 2, 2020 at <https://indiankanoon.org/doc/195470812/>

¹⁶⁷ Vinay Gupta vs Saveri Nayak. 2017. Accessed November 2, 2020 at <https://indiankanoon.org/doc/131522846/>

¹⁶⁸ Bioin v. Meera D.S. 2016. Accessed November 2, 2020 at <https://www.casemine.com/judgement/in/583ec332bc4168371fe34008>

*Kunapareddy @ Nookala Shanka Balaji v. Kunapareddy Swarna Kumari (2016)*¹⁶⁹

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.

¹⁶⁹ Kunapareddy @ Nookala Shanka Balaji Vs. Kunapareddy Swarna Kumari & ANR. 2016. Accessed November 2, 2020 at <https://www.advocatekhoj.com/library/judgments/announcement.php?WID=7449>

13. ELDER ABUSE

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’.¹⁷⁰

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

However, elder abuse is also a form of gender-based violence. A study by Agewell Research and Advocacy Centre in India found that 50.59% of the 50,000 participants said that elderly women have to face marginalisation or isolation due to gender discrimination. According to the same study, almost one-fourth of the respondents in rural areas said that the legal rights of elderly women were most often violated due to their gender and 38.9 % of the male and 39.7% of the female respondents said that the human rights of elderly women were violated more in comparison to elderly men.¹⁷¹

Data on Elder Abuse

	2017	2018	2019
<i>Crimes against senior citizens</i>	22727	24349	27696
<i>Simple Hurt (IPC Sections 323 and 324)</i>	6234	5347	6042
<i>Assault on [senior] women with intent to outrage their modesty (Section 354)</i>	165	212	187
<i>Rape (Section 376)</i>	79	63	63

Source: National Crime Records Bureau, Crime in India, 2017, 2018 and 2019 reports, accessed November 1, 2020 at <https://ncrb.gov.in/en/crime-india>

Recent studies indicate the increasing number of elder abuse and neglect cases.¹⁷² Data by the NCRB is not gender disaggregated and it includes any crime committed against senior citizens, for example,

¹⁷⁰ World Health Organisation. Elder Abuse. Accessed November 4, 2020 at https://www.who.int/ageing/projects/elder_abuse/en/

¹⁷¹ Agewell Foundation. 2015, January. Gender Discrimination among Older Women in India. Accessed November 4, 2020 at <https://www.agewellfoundation.org/pdf/reports/GENDER%20DISCRIMINATION%20AMONG%20OLDER%20WOMEN%20IN%20INDIA.pdf>

¹⁷² See Shankardass, Mala Kapur. 2018, May 9. We can no longer ignore the rise in elder abuse cases. *Hindustan Times*. <https://www.hindustantimes.com/opinion/we-can-no-longer-ignore-the-rise-in-elder-abuse-cases/story-6mHYOKICB3AViEGyncBbaL.html> ; 2020, July 22. The silent evil of elder abuse in India. *The New Indian Express*. <https://www.newindianexpress.com/opinions/2020/jun/22/the-silent-evil-of-elder-abuse-in-india-2159626.html> ; Chaurasia, Himanshu, Srivastava, Shobhit, 2020. Abuse, Neglect, and Disrespect against Older Adults in Indi. *Journal of Population Ageing*. <https://link.springer.com/article/10.1007/s12062-020-09270-x>

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

A report on elder abuse by the Agewell Foundation found that 71% of elderly people suffered abuse by family members. The report also found that humiliation was the most common form of elder abuse in old age; it linked this humiliation of the elderly to the poor financial status of the family, limited space, interpersonal differences among family members, chronic illnesses, changing moral systems and notions about caring for the elderly.¹⁷³

In Recent News

Another study was conducted by the Agewell Foundation during the pandemic, between June 1 to June 12, 2020, among 5,000 elderly people in different parts of the country. 71% of respondents stated that they have faced increased abuse during the COVID-19 lockdown. Elderly people are already at increased risk of catching the virus, and abuse at the hands of family members have added to the trauma. 56.1% of the respondents said they were experiencing abuse meted out by their families or by society. The forms of abuse included disrespect and verbal abuse, silent treatment, neglect of their daily needs, denying proper food, denying medical support, being cheated financially, physical and emotional violence and forcing the elderly to work. 79% of those who faced abuse said that it was financial in nature, wherein they were denied control over the funds of the household. Many respondents reported that they were facing increased isolation due to the lockdown.¹⁷⁴

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.¹⁷⁵ The Bill proposes registration and maintenance of minimum standards for senior citizens' care homes, besides registration of home care service

¹⁷³ PTI. 2019, June 13. Over 71 pc senior citizens in India victims of abuse by family members: Survey. *Economic Times*. Accessed November 2, 2020 at <https://economictimes.indiatimes.com/news/politics-and-nation/over-71-pc-senior-citizens-in-india-victims-of-abuse-by-family-members-survey/articleshow/69777963.cms>

¹⁷⁴ Pandit, Ambika. 2020, June 15. Abuse has increased during lockdown, say 71% of elderly. *Times of India*. Accessed November 2, 2020 at <https://timesofindia.indiatimes.com/india/abuse-has-increased-during-lockdown-say-71-of-elderly/articleshow/76377324.cms>

¹⁷⁵ The Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2019. Accessed November 2, 2020 at <https://www.prsindia.org/billtrack/maintenance-and-welfare-parents-and-senior-citizens-amendment-bill-2019>

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 tribunal constituted under this Act.
 - b. For offences under Section 24, the police must be approached to file an FIR. According to Section 25, an offence under this Act is to be tried summarily by a Magistrate.
- 2) *Protection of Women against Domestic Violence Act, 2005*
 - a. Section 4 specifies that a victim or someone on behalf of the victim can give information of domestic violence to the police or to the Protection Officer (most states do not have one appointed yet). In case the informant is not the victim, he/she must produce the complaint in writing and sign it before having it delivered to the police. A complaint can only be filed if the victim wishes to initiate legal proceedings.
- 3) First Information Report: Please see the Prajnya FIR Ready Reckoner (Appendix).

Recent Case Law

*Sandeep Gulati v. Divisional Commissioner (2020)*¹⁷⁶

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

*Pramod Ranjankar v. Arunashankar (2018)*¹⁷⁷

The Chhattisgarh High Court has held that a senior citizen can ask for son's ejectment 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)*¹⁷⁸

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

¹⁷⁶ 2020, March 27. Senior Citizens Act: Parents entitled to evict the children even if there is no ill treatment. *LatestLaws.com*. Accessed November 2, 2020 at <https://www.latestlaws.com/latest-news/parents-entitled-to-evict-the-children-even-if-there-is-no-ill-treatment/>

¹⁷⁷ Pramod Ranjankar vs Arunashankar. 2018. Accessed November 2, 2020 at <https://indiankanoon.org/doc/96605779/>

¹⁷⁸ Mr. Dattatrey Shivaji Mane vs Mrs. Lilabai Shivaji Mane And Ors. 2018. Accessed November 2, 2020 at <https://indiankanoon.org/doc/93887975/>

*Shri Santosh Surendra Patil v. Shri Surendra Narasgonda Patil & Others (2017)*¹⁷⁹

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)*¹⁸⁰

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

*Hiral Harsora v. Kusum Harsora (2016)*¹⁸¹

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

¹⁷⁹Santosh Surendra Patil vs Surendra Narasgonda Patil And Ors. 2017. Accessed November 2, 2020 at <https://indiankanoon.org/doc/31053306/>

¹⁸⁰ Sunny Paul vs State Of Nct Of Delhi & Ors. 2017. Accessed November 2, 2020 at <https://indiankanoon.org/doc/193708272/>

¹⁸¹ Hiral P. Harsora And Ors vs Kusum Narottamdas Harsora And Ors. 2016. Accessed November 2, 2020 at <https://indiankanoon.org/doc/114237665/>

14. 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.¹⁸² 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.*¹⁸³

- 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.

The Violence against Women (VAW) Learning Network includes six broad categories of violence against women in cyberspace:

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 15.¹⁸⁴ A survey by Feminism in India, a digital platform, found that 28% of women who experienced online abuse said they intentionally reduced their online presence.¹⁸⁵

¹⁸² Pinto, Shiromi. 2017, November 17. What is online violence and abuse against women? *Amnesty International*. Accessed November 2, 2020 at <https://www.amnesty.org/en/latest/campaigns/2017/11/what-is-online-violence-and-abuse-against-women/>

¹⁸³ 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 November 2, 2020 at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23235&LangID=E>

¹⁸⁴ European Union Agency for Fundamental Rights. 2014. Violence against women: an EU-wide survey. Accessed November 2, 2020 at https://fra.europa.eu/sites/default/files/fra_uploads/fra-2014-vaw-survey-main-results-apr14_en.pdf

¹⁸⁵ Feminism in India. 2016. #DigitalHifazat: Combat Cyber Violence Against Women in India. Accessed November 2, 2020 at <https://feminisminindia.com/2016/11/16/digitalhifazat-campaign-cyber-violence-women-india/>

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.¹⁸⁶

NCRB 2019 documents cybercrimes against women in detail.

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

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

In Recent News

Data suggests that there has been a significant increase in cybercrimes against women, especially sextortion¹⁸⁷, during the COVID-19 lockdown. Online traffic has escalated due to a larger number of people working or studying from home during the lockdown, thus increasing video conferencing, meetings, online classes, and chatting. The use of apps such as Paytm, Google Pay, BHIM, PhonePe and others as a mode of making payments has also witnessed a surge.¹⁸⁸ As workplaces shift online, many instances of online sexual violence also qualify as workplace sexual harassment, such as those faced by teachers.¹⁸⁹

¹⁸⁶ Salim, Mariya. 2018, July 8. Online Trolling of Indian Women Is Only an Extension of the Everyday Harassment They Face. *The Wire*. Accessed November 2, 2020 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.>

¹⁸⁷ Sextortion refers to the broad category of sexual exploitation in which abuse of power is the means of coercion, as well as to the category of sexual exploitation in which threatened release of sexual images or information is the means of coercion.

¹⁸⁸ Singh, Ridhima, Singh, Arshdeep. 2020, September 22. Growth in Cyber-Crimes in the COVID-19 times and Fragile Cyber Laws in India. *LatestLaws.com*. Accessed November 2, 2020 at <https://www.latestlaws.com/articles/growth-in-cyber-crimes-in-the-covid-19-times-and-fragile-cyber-laws-in-india/>

¹⁸⁹ Halder, Debarati. Covid-19: Online Harassment of Women during work from home. *Karnavati University*. Accessed October 17, 2020 at <https://karnavatiuniversity.edu.in/uid/blogs/2020/covid-19-online-harassment-of-women-during-work-from-home/>; Enough is Enough': Kerala's Women Teachers Harassed Online. 2020, June 2. *The Quint*. Accessed October 15, 2020 at <https://www.thequint.com/neon/gender/kerala-women->

According to National Commission for Women (NCW) data, 54 cybercrime complaints were received online in April in comparison to 37 complaints in March, and 21 complaints in February. However, others have suggested that the actual numbers are much higher. Akancha Srivastava, founder of the Akancha Foundation, an organisation working towards cyber safety, has reportedly received a total of 412 genuine complaints of cyber abuse from March 25 till April 25. Of these, as many as 396 complaints from women were serious, ranging from abuse, indecent exposure, unsolicited obscene pictures, threats, malicious emails claiming their account was hacked, ransom demands, blackmail and more.¹⁹⁰

In May 2020, a member of an Instagram group titled “Bois Locker Room” leaked chats from the group, which included nonconsensual and obscene images of around 15 underage girls. Members of the group, said to be “Class 11 and 12 students from some of Delhi’s top schools”, posted photos of teenage girls without their consent along with offensive comments. A number of conversations showed members talking about sexually assaulting their classmates. According to social media accounts that posted the screenshots, members of “Bois Locker Room” threatened to leak nude photographs of the women who reported them.¹⁹¹ The Delhi Commission for Women chief Swati Maliwal has moved to rush the investigation of the case¹⁹², and the Delhi High Court has directed that police expeditiously investigate the matter¹⁹³ and several arrests have been made. The controversy has sparked conversations on rape culture, objectification, and misogyny in Indian schools.

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

[teachers-harassed-online](#)

¹⁹⁰ PTI. 2020, May 3. "Significant" Increase In Cyber Crimes Against Women During Lockdown: Experts. *NDTV*. Accessed November 2, 2020 at <https://www.ndtv.com/india-news/significant-increase-in-cyber-crimes-against-women-during-lockdown-experts-2222352>

¹⁹¹ Dutta Roy, Divyanshu. 2020, May 5. #BoysLockerRoom. A Delhi Students' Group Chat Is Every Parent's Nightmare. *NDTV*. Accessed November 2, 2020 at <https://www.ndtv.com/india-news/boyslockerroom-bois-locker-room-delhi-schoolboys-chat-on-gang-rape-on-instagram-2223185>

¹⁹² Yadav, Jyoti. 2020, May 4. Delhi women’s commission wants ‘Bois Locker Room’ probed, sends notice to Instagram, police. *The Print*. Accessed November 2, 2020 at <https://theprint.in/india/delhi-womens-commission-wants-bois-locker-room-probed-sends-notice-to-instagram-police/414350/>

¹⁹³ PTI. 2020, May 18. Court Asks Police To Expeditiously Probe "Bois Locker Room" Incident. *NDTV*. Accessed November 2, 2020 at <https://www.ndtv.com/delhi-news/delhi-high-court-asks-police-to-expeditiously-probe-bois-locker-room-incident-2231036>

- h. *Section 72*: Breach of confidentiality and privacy
- 2) *Indian Penal Code, 1860*
 - a. *Section 292*: Sale, etc. of obscene books, etc.
 - b. *Section 292 A*: Printing, etc., of grossly indecent or scurrilous matter or matter intended for blackmail
 - c. *Section 406*: Punishment for criminal breach of trust
 - d. *Section 419*: Punishment for cheating by personation
 - e. *Section 441*: Criminal trespass is entering into property of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property
 - f. *Section 499*: Defamation by words either spoken or intended to be read
 - g. *Section 501*: Printing or engraving matter known to be defamatory
 - h. *Section 503*: Criminal intimidation: Threatens to cause injury to person, reputation or property to the person or someone he is interested with an intent to cause alarm or cause that person to act or omit to do an act as the means of execution of such threat.
 - i. *Section 509*: Obscene gestures, indecent body language and negative comments directed at any woman or girl. Further, it includes exhibiting any object which intrudes upon the privacy of a woman.

Recent Case Law

*Public Interest Litigation by Prajwala (2016)*¹⁹⁴

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)*¹⁹⁵

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.

¹⁹⁴ IANS. 2016, December 6. SC Issues Notice To Facebook, Google, Other Internet Majors on Sharing of Sexual Assault, Cybercrime Videos. *The Wire*. Accessed November 2, 2020 at <https://thewire.in/uncategorised/supreme-court-google-facebook-microsoft-sexual-offence-cybercrime-videos>

¹⁹⁵ Kamlesh Vaswani v. Union of India & Others. 2016. Accessed November 2, 2020 at <https://www.legitquest.com/case/kamlesh-vaswani-v-union-of-india-others/A2B21>

15. SEXUAL VIOLENCE IN CUSTODY

Sexual assault occurring in custody, such as in police or judicial custody, and committed by a person of authority is a form of custodial as well as gender-based violence. The former United States Special Rapporteur on Violence Radhika Coomaraswamy states that custodial rape can also occur outside of an institutional setting, such as instances when member of the police or military personnel enter homes to search, question, intimidate and/or harass.¹⁹⁶ 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.¹⁹⁷

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 376.¹⁹⁸

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 tougher sentences.¹⁹⁹

¹⁹⁶ 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 November 11, 2020 at <https://digitallibrary.un.org/record/82143?ln=en>

¹⁹⁷ Stop Violence Against Women. 2013. Custodial Sexual Assault. Accessed November 11, 2020 at https://www.stopvaw.org/custodial_sexual_assault#

¹⁹⁸ Peoples Union for Democratic Rights. 2004. In Custody: An Investigation Into 5 Cases Of Sexual Assault. Accessed November 11, 2020 at <https://puodr.org/custody-investigation-5-cases-sexual-assault>

¹⁹⁹ Murthy, Laxmi. 2013, June 08. From Mathura to Bhanwari. Economic and Political Weekly 48(23). Accessed November 11, 2020 at <https://www.epw.in/journal/2013/23/commentary/mathura-bhanwari.html>

Data on Custodial Sexual Violence

	2018	2019
<i>Custodial Rape</i>	60	47
<i>Other Custodial Rapes</i>	99	772

Source: National Crime Records Bureau, Crime in India 2018 and 2019 reports, accessed October 4, 2020 at <https://ncrb.gov.in/en/crime-india>

Custodial rape is a grossly underreported crime.²⁰⁰ 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.²⁰¹ 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.²⁰² Rape by other inmates in prison is another form of custodial sexual violence that is common, but yet go unreported.²⁰³

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*

²⁰⁰ Bhog, Sahar. 2019, August 16. What Is Custodial Rape And Why We Need To Be Discussing It. Feminism in India. Accessed November 11, 2020 at <https://feminisminindia.com/2019/04/16/custodial-rape-india/>

²⁰¹ 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 November 11, 2020 at <https://thewire.in/culture/rape-security-forces-afspa>

²⁰² National Campaign Against Torture. 2020. India: Annual Report on Torture 2019. Accessed November 11, 2020 at <http://www.uncat.org/wp-content/uploads/2020/06/INDIATORTURE2019.pdf>

²⁰³ See Shekhar, Raj. 2015, June 11. Rampant sexual abuse is a real nightmare in Tihar. *Times of India*. <https://timesofindia.indiatimes.com/city/delhi/Rampant-sexual-abuse-is-a-real-nightmare-in-Tihar/articleshow/47621742.cms> ; Mendiratta, Raghav, Tewari, Shreya. 2018, April 3. 'Rape is not supposed to be a part of the penalty': On rapes and sexual abuse in Indian prisons. *Medium*. <https://medium.com/@hrln/rape-is-not-supposed-to-a-part-of-the-penalty-on-rapes-and-sexual-abuse-in-indian-prisons-698b919f7429> ; Rahman, Farah. 2013, March 12. Rape behind prison bars. *LiveMint*. <https://www.livemint.com/Opinion/BzOQYSLEsQ9YrXmcbipwrN/Rape-behind-prison-bars.html> ; Kumar, Pramod G. 2013, March 12. Ram Singh's death: Rape and ugly sexual violence in Indian jails. *Firstpost*. <https://www.firstpost.com/india/ram-singhs-death-rape-and-ugly-sexual-violence-in-indian-jails-657071.html>.

India signed the United Nations Convention Against Torture in 1997, but is yet to ratify it. In its 273rd 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 15th Lok Sabha in 2014. Another Bill was drafted in 2017 but has not been passed yet.²⁰⁴

In Recent News

In June 2020, during the COVID-19 pandemic and subsequent lockdown, two Dalit men, P. Jayaraj and his son, J. Bennix, were picked up by police personnel in Sathankulam, in the Thoothukudi district of Tamil Nadu, allegedly for flouting lockdown regulations. Soon after, the duo died from custodial brutality, and eye witnesses claimed that they had been sexually assaulted by rods. Both were found bleeding profusely from their rectums before they died.²⁰⁵ Following massive outrage, two sub inspectors and an inspector were suspended, and the case is currently being investigated by the CBI.

Recent Case Law

*State of Punjab v. CBI (2011)*²⁰⁶

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.

²⁰⁴ Indian Journal of Law and Public Policy. Anti-Torture Law In India: Urgent Need For A Legislation. Accessed November 11, 2020 at <https://ijlpp.com/anti-torture-law-in-india-urgent-need-for-a-legislation/>

²⁰⁵ Sen, Sumanti. 2020, June 25. Tamil Nadu: Father-Son Duo's Custodial Death Sparks Outrage, Eyewitnesses Claim They Were Sexually Assaulted. *The Logical Indian*. Accessed November 11, 2020 at <https://thelogicalindian.com/news/tamil-nadu-custodial-deaths-21908>

²⁰⁶ State Of Punjab vs Cbi & Ors. 2011. Accessed November 11, 2020 at <https://indiankanoon.org/doc/718708/>

16. SEXUAL VIOLENCE AGAINST THE LGBTQIA+ COMMUNITY

Rape of people belonging to LGBTQIA+ communities are largely overlooked in India, even though global estimates suggest that these communities are at much greater risk of sexual violence than cisgendered and heterosexual people.²⁰⁷ Until recently, Section 377 of the IPC made gay sex illegal, as an “unnatural offense”. There was no separate provision for rape, as any sexual activities between men were deemed a criminal offense. Not only do members of the transgender community find themselves victim to sexual violence with no legal recourse, law enforcement officials are often observed to be the biggest perpetrators of violence against them.²⁰⁸

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.²⁰⁹ 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.²¹⁰

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

²⁰⁷ Human Rights Campaign. Sexual Assault and the LGBTQ Community. Accessed November 11, 2020 at <https://www.hrc.org/resources/sexual-assault-and-the-lgbt-community>

²⁰⁸ See 2016, April 18. Police harass transgenders most, says study. *Times of India*. <https://timesofindia.indiatimes.com/city/chennai/Police-harass-transgenders-most-says-study/articleshow/51869919.cms> ; Banerjee, Ajita. Discard Regressive Laws That Legitimise Violence Against Transgender People. *The Wire*. <https://thewire.in/lgbtqia/discard-regressive-laws-that-legitimise-violence-against-transgender-people> ; Ramgopal, Ankita. 2018, March 3. Rape laws: Why is sexual violence against India’s transgender community not being taken seriously?. *Scroll.in*. <https://scroll.in/article/868907/rape-laws-why-is-sexual-violence-against-indias-transgender-community-not-being-taken-seriously> ; Gaur, Kshitiz. 2014, June 11. Transgender alleges gang-rape by cops in Ajmer. *Times of India*. <https://timesofindia.indiatimes.com/city/jaipur/Transgender-alleges-gang-rape-by-cops-in-Ajmer/articleshow/36365899.cms>

²⁰⁹ Navtej Singh Johar vs Union Of India Ministry Of Law And ... 2018. Accessed November 11, 2020 at <https://indiankanoon.org/doc/168671544/>

²¹⁰ Chhabaria, Rishabh, Tripathi, Abhigyan. 2020, May 23. Transgenders and Rape Law: Is equal protection of law still a pipe dream?. *The Leaflet*. Accessed November 11, 2020 at <https://www.theleaflet.in/transgenders-and-rape-law-is-equal-protection-of-law-still-a-pipe-dream/#>

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 complicated for transgender persons to report such crimes. The act therefore fails to provide judicial protection to transgender persons who are victims of sexual abuse, thus denying equal protection in law and downplaying the graveness of sexual offences committed against a particular section of the population.²¹¹

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 prisons²¹², and along with other motives of sexual assault, they are additionally subjected to hate crimes and corrective rape.²¹³ 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.²¹⁴ While most of these cases go unseen and unheard of, the few that do get reported²¹⁵ do not find a place in the justice system of India.

²¹¹ Banerjee, Ajita. 2019. 2019, November 26. Why India’s transgender people are protesting against a Bill that claims to protect their rights. Scroll.in. Accessed November 11, 2020 at <https://scroll.in/article/944882/why-indias-transgender-people-are-protesting-against-a-bill-that-claims-to-protect-their-rights>

²¹² Stop Violence Against Women. 2013. Custodial Sexual Assault. Accessed November 11, 2020 at https://www.stopvaw.org/custodial_sexual_assault#

²¹³ Corrective rape is a hate crime in which someone is raped because of their perceived sexual orientation or gender identity. The common intended consequence of the rape, as seen by the perpetrator, is to turn the person heterosexual or to enforce conformity with gender stereotypes. Some recent cases: TNN. 2015, June 10. Victims of corrective rape speak up. <https://timesofindia.indiatimes.com/life-style/relationships/parenting/Victims-of-corrective-rape-speak-up/articleshow/47602170.cms>; Fenton, Siobhan. 2017, January 19. Indian parents arrange ‘corrective rape treatment’ for son after discovering his sexuality. *Independent*. <https://www.independent.co.uk/news/world/asia/parents-gay-son-corrective-rape-treatment-gay-son-discover-sexuality-kolkata-homosexual-lgbt-a7535741.html>

²¹⁴ Tenneti, Suchaita. 2019. Curative Violence against LGBT+ People in India: Key Issues and Perspectives. Prajnya Trust. <http://prajnya.in/storage/app/media/rrgritpaper1.pdf>

²¹⁵ See Mehta, Gaurav. 2018, September 27. Gay Men in India Reveal Terrifying Tales Of Rapes And Extortion on Dating App Grindr. *News 18*. <https://www.news18.com/news/buzz/gay-men-in-india-reveal-terrifying-tales-of-rapes-and-extortion-on-dating-app-grindr-1884845.html>; Krishnan, Aishwarya. 2017, January 4. Guy raped by men; Gay from Delhi could not report it due to fear of Section 377!. *India.com*. <https://www.india.com/viral/guy-raped-by-men-gay-from-delhi-could-not-report-it-due-to-fear-of-section-377-read-viral-facebook-post-1740140/>; Rozario, Anthony S. 2019, September 3. The Dark Side of Gay Dating Apps. *The Quint*. <https://www.thequint.com/videos/dating-apps-for-gay-men-in-india-extortion-harassment-gang-rape>; Pandey, Siddhant. 2019, May 17. Bengaluru: Three men gang-rape two Manipuri transgender students. *NewsBytes*. <https://www.newsbytesapp.com/timeline/india/46230/209112/two-manipuri-trans-students-gang-raped-in-bengaluru>

Relevant Laws Addressing Sexual Violence against LGBTQIA+

*Justice K. S. Puttaswamy v. Union of India (2017)*²¹⁶

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

*Navtej Singh Johar vs Union Of India (2018)*²¹⁷

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".

²¹⁶ Justice K.S. Puttaswamy Vs. Union Of India. 2017. Accessed November 11, 2020 at <https://translaw.clpr.org.in/case-law/justice-k-s-puttaswamy-anr-vs-union-of-india-ors-privacy/>

²¹⁷ Navtej Singh Johar vs Union Of India Ministry Of Law And ... 2018. Accessed November 11, 2020 at <https://indiankanoon.org/doc/168671544/>



Appendix: FIR READY RECKONER
A Prajnaya 16 Days Campaign against Gender Violence Resource
Prepared by Amba Salelkar
December 2013

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.

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