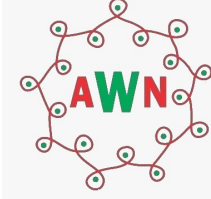




Dalit Human Rights
Defenders Network



India

Submission to the UN Universal Periodic Review
Forty First Session of the UPR Working Group of the Human Rights Council

Date: 31 March 2021

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Please see the Annex for information about the submitting organisations.

Introduction and Summary

1. This submission outlines the challenges in the criminal justice system, gaps in legislative protection and barriers to accessing justice for survivors of sexual violence, particularly from Dalit, Adivasi and Muslim communities which are marginalised based on caste, tribe and religion respectively.¹ Developing effective criminal law mechanisms for the elimination of sexual violence is a fundamental step in achieving substantive and transformative equality for women and girls in India.
2. During the previous UPR cycle, India received eleven recommendations to criminalize marital rape; nine recommendations relating to steps to implement and strengthen laws and policies aimed at eliminating sexual violence; as well as recommendations to investigate and sanction perpetrators of violence against Dalits; and to “ensure effective implementation of the Scheduled Castes and Scheduled Tribes Act, notably through the training of State officials”.²
3. This submission analyses the extent to which these recommendations have been implemented by the Indian government, and provides further recommendations for improving access to justice for sexual violence through improving legislation and criminal justice procedures, including specific recommendations with an intersectional approach which is required to improve access to justice for Dalit, Adivasi and Muslim women and girls.

Legislative Standards on Sexual Violence & Failure to Criminalise Marital Rape

4. In 2013, amendments to the law have expanded the definition of rape. However, Indian criminal law explicitly excludes marital rape from the scope of the rape provision. Sections 375 and 376 of the Indian Penal Code, 1860 (‘IPC’) criminalise non-consensual penetrative and non-penetrative sexual intercourse by a man with a woman. Exception 2 to Section 375 states that “*Sexual intercourse or sexual acts by a man with his own wife, the wife not being fifteen years of age, is not rape*”. Thus, the marital status and age of a woman becomes a defence to rape perpetrated by her husband.
5. The constitutional validity of the marital rape exception has been challenged before the Delhi High Court in the case of *RIT Foundation v. Union of India*, and a decision in this case is expected to be issued soon. The Karnataka High Court also issued a significant judgment on 23 March 2022, allowing charges of rape to be framed against the husband, while noting that the marital rape exception violates the right to equality under Article 14 of the Indian Constitution.³ The Indian government failed to take a concrete stance on the issue of marital rape in the proceedings before the Delhi High Court, and instead stated that the government was undertaking widespread stakeholder consultation before coming to a final decision. This is despite the fact that the Indian Supreme Court has already held that marital rape of girls

¹ Dalits and Adivasis are officially designated by the Indian Constitution as Scheduled Castes and Scheduled Tribes respectively.

² Human Rights Council, Report of the Working Group on the Universal Periodic Review - India, A/HRC/36/10, 2017, https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/36/10

³ *Hrishikesh Sahoo v. State of Karnataka*, Order dated 23 March 2022, <https://www.livelaw.in/top-stories/marital-rape-exception-regressive-violates-article-14-husband-not-ruler-of-wifes-body-mind-karnataka-high-court-194834>

under the age of 18 violated their right to bodily integrity⁴ - the same logic ought to apply to adult women as well.

6. A presumption of ongoing consent in a marital relationship violates a woman's right to her autonomy, security and bodily integrity. Findings from the National Family Health Survey - IV show that 6.6% of ever-married women between the ages of 15-49 have faced sexual violence committed by their husband, during their lifetime. This is higher than the rates of sexual violence generally, where 5.8% of all women and girls from the same age group have faced sexual violence (committed by both partners and non-partners). Further, in the case of married women, 91.8% of all acts of sexual violence experienced by them were committed by their current or former husband.⁵ Thus, criminalisation of marital rape is imperative to ensure that married women are able to access justice for rape to the same extent as unmarried women are.

High Prevalence & Prevailing Impunity for Sexual Violence, particularly when committed against women and girls from marginalised communities

7. Cases of particularly brutal rape, gang rape and murder continue to occur, particularly towards women and girls from the Dalit (Scheduled Caste), Adivasi (Scheduled Tribe) and Muslim communities in the country. The Hathras gang rape case in 2020 and the Delhi Cantonment rape case in 2021 (where a nine-year Dalit girl was allegedly raped and murdered by a priest and two other accomplices), both caste-based crimes of sexual violence, also drew widespread public attention and brought the issue of caste-based sexual violence into the national spotlight.
8. On 29 September 2020, in Hathras (Uttar Pradesh), a 19 year-old Dalit girl died after a 14-day hospitalisation following a gang rape and brutal assault by four upper caste men, the victim's neighbours. The authorities forcibly cremated her body at night without the consent of her family. Police Officers from Uttar Pradesh also initially denied the rape having taken place, and arrested journalists and human rights defenders who took place in public protests surrounding the case; or tried to meet the victim's family.⁶ Reacting to national and global outrage, the state government promised a proper investigation and a fast track court to ensure justice. Though four men have been charged, the trial in this case remains pending. Despite fairly progressive laws on sexual violence, the involvement of the state authorities in prevention of, and response to cases of alleged rape and murder has not been as per international human rights standards; as highlighted in the section on Barriers to Accessing Justice below.
9. Official statistics from the National Crime Records Bureau (NCRB) show that 3,486 cases of rape against Dalit women and girls were registered in 2020. This amounts to almost ten Dalit women and girls being raped every day in the country. NCRB data shows that there has been a 45% increase in the number of rape cases against Dalit women and girls registered between 2015 and 2020.⁷ With regard to Adivasi women and girls, there were 1,110 reported rape

⁴ AIR 2017 SC 4904

⁵ National Family Health Survey - 4, 2015-16, <http://rchiips.org/nfhs/NFHS-4Reports/India.pdf>

⁶ The Wire, *Hathras Case: UP Govt Smells 'International Conspiracy'*, Files 19 FIRs, 5 October 2020, <https://thewire.in/rights/hathras-case-up-govt-smells-international-conspiracy-files-19-firs>

⁷ National Crime Records Bureau, *Crime in India, 2015-2020*, available at <https://ncrb.gov.in/en/crime-in-india>

cases against them in 2019 and 1,137 cases of rape was reported in 2020, amounting to 13.7% of the crimes against Adivasi community. This was followed by 885 cases of assault on women with intent to outrage her modesty amount to 10.7% of the cases.⁸

10. This official data is an under-representation of the cases as they only reflect those which have been successful in filing a First Information Report (FIR). Many victims and survivors of caste based sexual violence are not able to file a FIR due to pressure from the perpetrator, dominant caste community members and the police, while the lack of knowledge on procedures and laws related to caste based sexual violence compound matters. Moreover, the lack of disaggregated data on rape and murder cases sometime blur the real numbers behind the available statistics.
11. Data from the National Family Health Survey-4 (2015-2016) show that rates of sexual violence are highest amongst Adivasi (7.8%) and Dalit (7.3%) women, followed by Other Backward Castes (5.7%) and Muslim women (5.15). This is higher than the rates of sexual violence faced by women and girls not marginalized based on caste/tribe (4.5%).⁹
12. Another alarming form of accepted sexual violence, in fact of sexual slavery and child rape, is the *devadasi* (meaning servant of god) tradition. Despite the system being banned in 1988, in the Indian states of Karnataka, Maharashtra, Tamil Nadu and Telangana, girls between the ages of 10 and 12, belonging to the Maha Dalit caste, are subjected to a ceremony in which they are dedicated to a goddess. In reality, they become servants of men, used for sex. While there are no official statistics on their numbers, a report in 2015 had pegged the number to be 450,000.¹⁰ As recently as February 2021, a 19 year old girl was rescued after she alerted the police that her parents were about to push her into the devadasi tradition.¹¹ These four states have enacted special legislations to tackle the *devadasi* practice, some of which were enacted pre-independence and have not been reviewed or amended since.¹² There are other general legislations that also address the devadasi practice and the rights of devadasi women and girls.¹³ However, too little is being done by the state governments to implement these legislations (as has been recognised by the Indian Supreme Court)¹⁴, and young girls in these states continue to be forced into the *devadasi* practice and sexually abused.
13. As noted above, Adivasi women and girls face the highest rates of sexual violence compared to any another community in India, though such cases are severely under-reported. Many Adivasi women face sexual violence for issues related to the protection of their traditional sacred land and the water and forest associated with them. They have also faced sexual

⁸ <https://ncrb.gov.in/sites/default/files/CII%202020%20SNAPSHOT%20STATES.pdf>

⁹ India National Family Health Survey (NFHS-4) 2015-16, <https://dhsprogram.com/pubs/pdf/FR339/FR339.pdf>

¹⁰ Sampark, *Gender based Violence on Scheduled Caste Girls: A Rapid Assessment of the Devadasi Practice in India*, 2015, <https://www.sampark.org/wp-content/uploads/2021/01/A-Rapid-Assessment-of-the-Devadasi-Practice-in-India.pdf>

¹¹ Newslick, *Why Women continue to be dedicated 74 years since the First Devadasi Protection Laws came into being*, 20 December 2021 <https://www.newslick.in/Why-Women-Continue-Dedicated-74-Years-Since-First-Devadasi-Protection-Laws-Came-Into-Being>

¹² Center for Law and Policy Research, *Intersections of Caste and Gender: Implementation of Devadasi Prohibition Laws*, 2019, <https://clpr.org.in/wp-content/uploads/2019/11/Policy-Brief-on-Devadasi-Legislations.pdf>

¹³ Ibid

¹⁴ *Vishal Jeet v. Union of India* [1990] 3 SCC 318; *S.L Foundation v. Union of India* [2014] W.P.(Civil) 127/2014

violence at the hands of security forces.¹⁵ Sexual violence as a form of punishment, intimidation or retribution is common. Widespread poverty amongst Adivasi communities force Adivasi women and girls to migrate in search of work, and they often become bonded labourers and face sexual violence from their contractors and other non-tribal men.¹⁶ Adivasi women are also vulnerable to trafficking. Most of such victims of trafficking and exploitation are below 18 and illiterate or semi-literate and are forced to work in households, brothels, restraints and factories.¹⁷ Lockdowns during the pandemic made it even more difficult to track those who were trafficked.¹⁸ There are reports of young Adivasi girls being forcibly impregnated and their babies being sold.¹⁹ There is also a lack of systematic research and data on the specific forms of sexual violence and barriers to accessing justice faced by Adivasi women and girls. The lack of awareness of intersectionality and the specific forms of sexual violence faced by Adivasi women and girls, combined with prevailing impunity for these crimes, makes it extremely difficult for Adivasi women to access justice. The Indian government needs to be put in place strengthened processes for prevention, for encouraging filing of complaints by survivors (including by improving language accessibility at police stations), training of law enforcement officials and steps to improving responses to such cases of sexual violence.

Barriers to Accessing Justice for Survivors of Sexual Violence

Lack of Police Accountability

14. Despite the fact that it is a criminal offence for police officers to refuse to register a FIR in cases of rape survivors of sexual violence,²⁰ survivors of sexual violence, particularly those from marginalised communities, routinely face difficulties in ensuring that the police register cases of rape. Police officers often pressure the survivor to drop the complaint or delay registration of the FIR. Such delays in registration of the FIR often have a direct impact on the success of the case, as they can affect the quality of medical evidence available and give perpetrators and community members more time to pressure survivors to drop the case among other consequences.²¹ A study conducted by NCWL and DHRDNet in 2021 which analysed 50 cases of sexual violence against Dalit women and girls showed that delays caused by the police in registering the FIR ranged from half a day to three months. The most

¹⁵ Women against Sexual Violence and State Repression, *Bearing Witness: Sexual Violence in South Chhattisgarh* (2017); NHRC indicts Chhattisgarh police for sexual violence against Adivasi women in Bastar, 11 January 2017, <https://indianculturalforum.in/2017/01/11/nhrc-indicts-chhattisgarh-police-for-sexual-violence-against-ativasi-women-in-bastar/>

¹⁶ Newslick, *Tribal Migrant Workers from MP Harvest Tales of Exploitation, Sexual Abuse*, 23 February 2022, <https://www.newslick.in/Tribal-Migrant-Workers-MP-Harvest-Tales-Exploitation-Sexual-Abuse>

¹⁷ The Wire, *Rights Groups Call for Probe Into Trafficking Networks After Rape of Adivasi Migrant Worker*, 2 June 2020, <https://thewire.in/rights/human-trafficking-ativasi-worker-bangalore>

¹⁸ Ibid.

¹⁹ Adivasi Resurgence, *Adivasi Girls trafficked, traded, enslaved, raped and made to conceive babies for adoption*, 2017, <http://adivasiresurgence.com/2017/06/22/ativasi-girls-trafficked-traded-enslaved-raped-made-conceive-babies-adoption/>

²⁰ Section 166A, Code of Criminal Procedure 1973, as inserted by the Criminal Law (Amendment) Act, 2013

²¹ Equality Now and Swabhiman Society, 2020, *Justice Denied: Sexual Violence and Intersectional Discrimination, Barriers to Accessing Justice for Dalit women and girls in Haryana, India*, <https://www.equalitynow.org/resource/justicedenied/>

common length of delay was between 2-5 days. In many cases, the FIR was registered by the police only after pressure from activists, lawyers or local NGOs who supported the survivor or family of the victim.²²

15. Even when the FIR is registered, failure to include key information or important legal provisions [such as offences under the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act] in the FIR can jeopardise chances of success of conviction. There have also been reports of police officers pressuring survivors to drop the complaint or compromise the case, using casteist slurs and abuses against Dalit women and girls, and failing to take complaints filed by women and girls from marginalised communities seriously.
16. According to NCRB data, in 2020, nationally, around 8.51% of cases of atrocities against Scheduled Castes were termed in its final report as 'false'. However, in the states of Haryana and Rajasthan respectively, 37.2% and 36.9% of cases of atrocities against Scheduled Castes were designated as false by the police, much higher than the national average, indicating a possible institutional bias.

Medical Examinations of Rape Survivors are not Survivor-friendly

17. Indian law mandates that the medical examination be conducted within 24 hours of receiving the complaint. However, survivors have had many challenges to this. One survivor in the NCWL and DHRDNet study noted that the medical examination was not conducted until four days after the police report was filed, resulting in scant medical evidence to support her testimony that she was raped.²³ Survivors report that often, though they were sent for medical examination in accordance with the provisions of the law after reporting the case to the police, they did not receive sufficient medical treatment for the injuries or in some cases, pregnancy, caused by the sexual assault. The failure to provide medical treatment is a violation of section 357-C of the Criminal Procedure Code, which provides that all hospitals, both public and private, are required to immediately provide first aid and medical treatment free of cost to rape survivors.²⁴
18. The unscientific and traumatising two-finger test is still being used as part of the medical examination for rape survivors in India, as confirmed by numerous reports and evidence provided by survivors.²⁵ For instance, the NCWL & DHRDNet report from 2021 found that out of 7 rape cases included in the study from the state of Tamil Nadu, six survivors reported

²² National Council of Women Leaders, Dalit Human Rights Defenders Network, Tata Institute of Social Sciences, *Caste Based Sexual Violence and State Impunity*, March 2022. <https://www.ncwl.org.in/ebook/caste-based-sexual-violence-and-state-impunity/>

²³ Equality Now and Swabhiman Society, 2020, *Justice Denied: Sexual Violence and Intersectional Discrimination, Barriers to Accessing Justice for Dalit women and girls in Haryana, India*, <https://www.equalitynow.org/resource/justicedenied/>

²⁴ National Council of Women Leaders, Dalit Human Rights Defenders Network, Tata Institute of Social Sciences, *Caste Based Sexual Violence and State Impunity*, March 2022. <https://www.ncwl.org.in/ebook/caste-based-sexual-violence-and-state-impunity/>

²⁵ Equality Now, 2021, *Sexual Violence in South Asia: Legal and Other Barriers to Justice for Survivors*, <https://live-equality-now.pantheonsite.io/resource/sexualviolencesouthasia/> Equality Now and Swabhiman Society, 2020, *Justice Denied: Sexual Violence and Intersectional Discrimination, Barriers to Accessing Justice for Dalit women and girls in Haryana, India*, <https://www.equalitynow.org/resource/justicedenied/> NCWL report.

being subjected to the two-finger test.²⁶ The continued use of the two-finger test in Tamil Nadu is also borne out by the allegations of an Indian Air Force officer in September 2021, whose case received widespread media coverage after she noted that she had been subjected to the two-finger test in a military hospital after she was raped.²⁷ A study of fast-track court judgments in the state of Karnataka found that 25% of the judgments made explicit reference to the two-finger test and to the victim being habituated to sexual intercourse.²⁸

19. This test involves a medical practitioner inserting two fingers into the vagina of a rape survivor in an attempt to determine if the hymen is broken, as well as to test laxity of the vagina. The test is often used to declare rape survivors as “habituated to sex”. From a human rights perspective, conducting a test on rape victims that has no probative value is a violation of the personal integrity of the women and girls and could cause further trauma to these rape survivors. The two-finger test was banned by India’s Supreme Court in 2013.²⁹ The 2014 guidelines released by the Ministry of Health also clarify that the two-finger test has no bearing on cases of sexual violence. However, many states in India have not yet adopted the national guidelines for medico-legal care of survivors of sexual violence.³⁰

Compromises in Cases of Sexual Violence

20. Every year, a number of rape cases are compromised or compounded (i.e. settled) by the courts, despite the fact that rape is a non-compoundable offence and the Supreme Court has held that compromises in rape cases are not permissible under law.³¹ Even when the compromise is not officially recorded by the criminal justice system, unofficial compromises or out-of-court settlements are undertaken by the accused and the general community putting pressure on the survivor or her family through various means - filing of spurious counter-cases with the police; threats of physical violence and assault, including threats to the life of the survivor, her children or her family; use of political influence with the police and health care providers to impact the results of the criminal investigation; societal pressure through social boycott, or banishing the family from the village (or threatening to do so); and economic retaliation by threatening loss of jobs of the survivor or her family, particularly when they are dependent on the dominant castes for their livelihood.³²

²⁶ National Council of Women Leaders, Dalit Human Rights Defenders Network, Tata Institute of Social Sciences, *Caste Based Sexual Violence and State Impunity*, March 2022. <https://www.ncwl.org.in/ebook/caste-based-sexual-violence-and-state-impunity/>

²⁷ The New Indian Express, Doctors performed two-finger test to prove I was raped: Woman IAF officer, 30 September 2021, <https://www.newindianexpress.com/states/tamil-nadu/2021/sep/30/doctors-performed-two-finger-test-to-prove-i-was-raped-woman-iaf-officer-2365584.html>

²⁸ National Council of Women Leaders, Dalit Human Rights Defenders Network, Tata Institute of Social Sciences, *Caste Based Sexual Violence and State Impunity*, March 2022. <https://www.ncwl.org.in/ebook/caste-based-sexual-violence-and-state-impunity/>

²⁹ *Lillu v State of Haryana* (2013)14 SCC 643

³⁰ Centre for Enquiry into Health and Allied Themes, *Understanding Dynamics of Sexual Violence : Study of case records*, 2018.

³¹ Over a thousand rape cases were officially compromised by Indian Courts between 2015 and 2020 as per data from the National Crime Records Bureau. See National Crime Records Bureau, *Crime in India, 2016-2020*, available at <https://ncrb.gov.in/en/crime-in-india>

³² Equality Now and Swabhiman Society, 2020, *Justice Denied: Sexual Violence and Intersectional Discrimination, Barriers to Accessing Justice for Dalit women and girls in Haryana, India*, <https://www.equalitynow.org/resource/justicedenied/>

21. The role of the community in impeding access to justice for cases of sexual violence is often particularly acute in cases of sexual violence against women and girls from marginalised communities, with perpetrators from dominant caste families. The accused and their families use their casteist influences, and political, social and economic clout and influence to threaten or pressure survivors and their families.³³ This is often done with the support of officials within the criminal justice system.³⁴

Delays & Discriminatory Approaches in Investigation and Trial

22. Long delays in investigation and trial of rape cases has a serious impact on access to justice for survivors of sexual violence in India. The Code of Criminal Procedure mandates a time limit of two months for the completion of investigation of rape cases by the police.³⁵ However, despite this time limit, it is seen that there are often delays in completion of investigation and filing of the chargesheet by the police. The report by NCWL and DHRDNet found that the delay in filing the charge sheet in the cases studied (beyond the two month limit provided by law) ranged from 0.5 months to 6 years.

23. With regard to trials, official NCRB data show that there were 1,59,660 cases of rape pending trial at the end of 2020. The pendency percentage in cases of rape against Dalit women and girls (i.e. % of cases pending before courts at the end of the year) was 96.3%. The impact of the COVID-19 pandemic and associated measures and lockdowns in causing delays in trials can also be clearly seen, since the pendency percentage has increased from 91.4% in 2019 to 96.3% in 2020.³⁶

24. NCRB data from 2020 show a charge-sheeting rate of 82.2% under the categories of rape and a conviction rate of 39.3%.³⁷ As per data from the National Crime Records Bureau, the conviction rate (i.e. the number of convictions in the cases in which the trial was completed) in rape cases against Dalit women and girls in 2020 was 42.5%. This is an improvement over the 32.2% conviction rate in such cases recorded in 2019, and in fact is the highest conviction rate in cases of rape against Dalit women and girls recorded in the last five years.³⁸

25. However, judges deciding sexual violence cases continue to have victim-blaming and gender discriminatory attitudes which affect the possibility of successful convictions. For example, the Nagpur bench of the Bombay High Court had ruled that in cases of child sexual assault there must be a “skin-to-skin contact” with sexual intent, and mere groping is not sufficient to constitute sexual assault (though this order was swiftly overturned by the Supreme

³³ Human Rights Watch, 2017, ‘Everyone Blames Me:’ Barriers to Justice and Support Services for Sexual Assault Survivors in India

³⁴ Equality Now and Swabhiman Society, 2020, Justice Denied: Sexual Violence and Intersectional Discrimination, Barriers to Accessing Justice for Dalit women and girls in Haryana, India, <https://www.equalitynow.org/resource/justicedenied/>

³⁵ Section 173, Code of Criminal Procedure, 1973

³⁶ National Council of Women Leaders, Dalit Human Rights Defenders Network, Tata Institute of Social Sciences, *Caste Based Sexual Violence and State Impunity*, March 2022. <https://www.ncwl.org.in/ebook/caste-based-sexual-violence-and-state-impunity/>

³⁷ <https://ncrb.gov.in/sites/default/files/CII%202020%20SNAPSHOTS%20STATES.pdf>

³⁸ National Council of Women Leaders, Dalit Human Rights Defenders Network, Tata Institute of Social Sciences, *Caste Based Sexual Violence and State Impunity*, March 2022. <https://www.ncwl.org.in/ebook/caste-based-sexual-violence-and-state-impunity/>

Court).³⁹ Similarly, a Supreme Court bench headed by the then Chief Justice of India asked a rape accused in open court whether he was ready to marry the complainant.⁴⁰ In 2022, a Kerala court acquitted a former bishop accused of raping a nun 13 times over three years in a convent, citing lack of evidence. This was despite 39 witnesses, most of them nuns, stepping forward to provide evidence in support of the survivor and being cross-examined in court. Discounting this crucial evidence, the Court instead focused on irrelevant evidence relating to the past sexual history of the survivor; relied on discriminatory gender stereotypes, and engaged in victim blaming, while acquitting the accused.⁴¹ In 2020, nine concerned citizens filed a special leave petition with the state of Madhya Pradesh accusing the state of failing in its responsibility to oppose the high court's order of granting bail to the accused in a case of sexual assault case. Bail was granted on the basis of patriarchal notions and discriminatory gender stereotypes that the accused should make the victim a "sister" on the day of Raksha Bandhan, an Indian festival that honours the role of sisters, and pledge to protect her in the future.⁴²

Failure to Effectively Implement provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

26. Evidence from grassroots groups and lawyers indicates that in many cases of rape against Dalit women and girls, even where the rape case is registered by the police, the FIR does not normally include offences under the SC & ST (POA) Act. Due to pressure from high-level politicians to clamp down on caste-based atrocities within the state, district-level authorities are responding to this by registering fewer cases under the SC & ST (POA) Act⁴³ rather than taking measures to prevent the atrocities.
27. The 2015 amendment to the SC & ST (PoA) Act requires the state government to set up Exclusive Special Courts for the trial of offences under the SC & ST (PoA) Act.⁴⁴ These special courts are meant to provide speedy trials, to be completed within two months. The state government is also required to appoint Special Public Prosecutors for prosecution of offences before these courts. However, only 13 out of the 36 states and Union Territories across the country have set up Exclusive Special Courts to try offences under the SC & ST (PoA) Act as required by the 2015 amendment.⁴⁵

³⁹ The Wire, *Groping Without Skin-to-Skin Contact Is Not 'Sexual Assault' Under POCSO: Bombay HC*, 24 January 2021,

<https://thewire.in/law/groping-without-skin-to-skin-contact-is-not-sexual-assault-under-posco-bombay-hc>

⁴⁰ Hindustan Times, *'Are you willing to marry her?' Supreme Court to rape accused*, 2 March 2021,

<https://www.hindustantimes.com/india-news/are-you-willing-to-marry-her-supreme-court-to-rape-accused-101614646926673.html>

⁴¹ Feminism in India, *The Acquittal of Franco Mulakkal: How One Woman's agony becomes every woman's agony*, 19 January 2022, <https://feminisminindia.com/2022/01/19/the-acquittal-of-franco-mulakkal-how-one-womans-agony-becomes-every-womans-agony/>

⁴² The Wire, *SC Must Stop Courts From Asking for 'Compromise Between Parties' in Sexual Assault Cases*, 12 October 2020,

<https://thewire.in/law/sc-courts-bail-compromise-cases-sexual-assault-rape>

⁴³ Equality Now, 2020, *Justice: Sexual Violence and Intersectional Discrimination, Barriers to Accessing Justice for Dalit women and girls in Haryana, India*

⁴⁴ Section 14, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, as amended in 2015

⁴⁵ Ministry of Social Justice and Empowerment, Annual Report 2020-21,

https://socialjustice.nic.in/writereaddata/UploadFile/ANNUAL_REPORT_2021_ENG.pdf

28. Further, the SC & ST (PoA) Act requires Special and Exclusive Special Courts set up to try offences under the Act to provide travelling and maintenance expenses during the investigation and trial.⁴⁶ However in practice, these maintenance expenses are hardly ever provided to survivors/victims, who are not aware of their rights under the law.
29. The SC & ST (PoA) Act also requires state governments to identify atrocity-prone districts so that measures can be taken within these areas to prevent atrocities and improve safety - including through the appointment of a special officer in these areas to monitor implementation of the SC & ST (PoA) Act. However, of the 36 states and Union Territories in the country, only 12 states have identified atrocity-prone areas.⁴⁷
30. Despite the SC & ST (PoA) Rules mandating the provision of the relief amount within 7 days,⁴⁸ in most cases, the payment of compensation was delayed significantly. The period of delay ranged between 2 months - 1 year. For the payment of interim compensation (due after filing the charge sheet), delays were more commonly reported, with the compensation in one case being received only 3 years after the charge sheet was filed. These long delays in the provision of immediate and interim relief defeat their purpose since the relief is meant to provide support for the essential needs of the survivor or her family after the rape.

Lack of Caste and Gender Diversity in the Criminal Justice System

31. The systemic casteism and patriarchy in India's justice system is exacerbated by an acute lack of caste and gender diversity within justice system officials. Nationally, on an average, only 10% of the police force is made up of women.⁴⁹ The Parliamentary Standing Committee on Atrocities against Women and Children in its report highlighted that this is despite repeated advisories issued by the Ministry of Home Affairs to ensure that 33% of police forces are women while recommending special recruitment drives to fill these posts.⁵⁰ Bihar and Himachal Pradesh have the highest ratio of female police officers (25.3% and 19.2% respectively). With respect to caste diversity, all States and Union Territories have a reserved quota in the police force for Scheduled Caste candidates. However, only 8 States and Union Territories meet or exceed their Scheduled Caste constable quota.⁵¹
32. With respect to the judiciary, only 13% of judges in the High Courts across the country are women, while only 30% of judges in subordinate courts are women.⁵² Since Independence, there have been only six Dalit Judges appointed to the Supreme Court, with only one Dalit

⁴⁶ Section 15A, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 as amended in 2015

⁴⁷ Ministry of Social Justice and Empowerment, Annual Report 2020-21, https://socialjustice.nic.in/writereaddata/UploadFile/ANNUAL_REPORT_2021_ENG.pdf

⁴⁸ Rule 12(4), The Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Rules 1995 (as amended in 2016).

⁴⁹ Tata Trusts, India Justice Report: Ranking states on police, judiciary, prisons and legal aid, January 2021, <https://www.tatatrusts.org/insights/survey-reports/india-justice-report>

⁵⁰ <https://prsindia.org/policy/report-summaries/atrocities-and-crimes-against-women-and-children>

⁵¹ Tata Trusts, India Justice Report: Ranking states on police, judiciary, prisons and legal aid, January 2021, <https://www.tatatrusts.org/insights/survey-reports/india-justice-report>

⁵² Tata Trusts, India Justice Report: Ranking states on police, judiciary, prisons and legal aid, January 2021, <https://www.tatatrusts.org/insights/survey-reports/india-justice-report>

Chief Justice having held office till date.⁵³

Sexual Violence against Muslim Women & Girls

33. There are no disaggregated data available on the number of reported cases of sexual violence against Muslim and girls, and rape against Muslim women is often invisibilised and under-reported, though survey data from the National Family Health Survey shows rates of sexual violence against Muslim women (5.1%) which is slightly higher than against non-marginalised communities. Religious riots in the country have sometimes resulted in sexual violence against Muslim women as was the case in the Delhi riots in 2020.⁵⁴ Even individual cases of rape against Muslim women and girls have indicated an element of hate as can be seen in the rape of an eight year old from the Muslim nomad community in Kashmir in 2018.⁵⁵ In recent years, threats of sexual violence against Muslim women, particularly in online spaces, have been associated with increasing intolerance of the community in the country.⁵⁶
34. In 2021, Muslim women were “auctioned” online (in a mock auction) with their photographs doctored and sourced without their permission, in the “Sulli Deals”, hosted by GitHub. However, the state failed to take action against the perpetrators of this online harassment, which then led to a similar app, “Bulli Bai” (an Islamophobic slur), being established in 2022, again hosted by GitHub. Many women found themselves “auctioned” in both the incidents, in an act of clear targeting of Muslim women based on their religious identity.⁵⁷

Provision of Support Services to Survivors of Sexual Violence & Budget Allocation

35. In 2013, a dedicated fund was established called ‘Nirbhaya Fund’ for implementation of initiatives aimed at enhancing the safety and security for women in the country. Many Ministries have initiated many mechanisms to help deal with sexual assault. However, according to the latest data in July 2021, only 46.21% of the total money allocated to the Nirbhaya Fund until July 2021 has been spent. Till 2021, Rs. 6212.85 crore (USD

⁵³ American Bar Association, Challenges for Dalits in South Asia’s Legal Community, Chapter III: Dalit Justice Defenders in India, October 2021, https://www.americanbar.org/content/dam/aba/administrative/human_rights/justice-defenders/dalit-india-chapter-3.pdf

⁵⁴ News18, *Beaten, Molested and Homeless: How Women Became Worst Victims of Delhi Riots* <https://www.news18.com/news/india/beaten-molested-and-homeless-hindu-or-muslim-women-became-the-undocumented-victims-of-delhi-riots-2520457.html>

⁵⁵ Al Jazeera, *Rape as a political tool in India*, 19 April 2018, <https://www.aljazeera.com/opinions/2018/4/19/rape-as-a-political-tool-in-india>

⁵⁶ Article 14, *Unchecked Tsunami Of Online Sexual Violence By Hindu Right Against India's Muslim Women*, 21 May 2021, <https://article-14.com/post/unchecked-tsunami-of-online-sexual-violence-by-hindu-right-against-india-s-muslim-women>

⁵⁷ The Wire, *‘Bulli Bai’, ‘Sulli Deals’: On Being Put Up for ‘Auction’ as an Indian Muslim Woman*, 16 January 2022, <https://thewire.in/communalism/indian-muslim-woman-auction-bulli-bai>

816,024,399) was allocated (this included Rs 500 crores (USD 65,681,544) for the Ministry of Women and Child Development), Rs. 4087.37 crore (USD 536,895,260) was released but only Rs. 2871.42 crore (USD 377,086,544) was utilised.⁵⁸

36. Several key schemes addressing violence against women, including for example, One Stop Centres (which aim to facilitate women affected by violence with a range of integrated services under one roof) and Women Helpline (a 24*7 helpline aimed at helping women in distress) were subsumed under umbrella schemes named ‘Sambal’ and ‘Samarthya’ in 2021-22, with significant resource cuts. For 2022, the allocation for Samarthya has been marginally increased to Rs 2,622.1 crore (USD 344,211,771), while that for Sambal has declined from last year by over 4.2 per cent to Rs 562 crore (USD 73,773,772).⁵⁹ Therefore, violence against women continue to be caught up in a cycle of underfunding and underutilisation.
37. In the Union budget of 2022-23, only INR 1.8 billion (USD 23,506,340) was allocated to improve access to justice for Dalit and Adivasi women for the scheme ‘Strengthening of Machinery for Enforcement of Protection of Civil Rights Act, 1955 and PoA Act, 1989’. Given the vulnerability of the women from stigmatised communities to discrimination and violence and the scale of violence that they face, this allocation to improve their access to justice is not enough, and in fact only 0.87% of India’s total budget is allocated for Dalit women and 0.47% for Adivasi women.⁶⁰
38. The One Stop Centre (OSC) Scheme, implemented across the country since 2015, aims to facilitate women affected by violence with a range of integrated services under one roof. As per data released by the Union Minister for Women and Child Development, in a written reply in the Lok Sabha in August 2021, around Rs 445.63 crore (USD 58,448,424) has been released to states from 2018 to 2021 for setting up centres across the country. However, only Rs 89.79 crore (USD 11,690,425) have been utilised by states so far – around 20% of the released funds.⁶¹
39. With regard to payment of victim compensation, in 2018, noting the disparity in amounts of compensation awarded under various state compensation schemes, the Supreme Court ordered that all states should abide by the compensation scheme developed by the National Legal Services Authority, under which the minimum compensation payable should be INR 4,00,000 (~USD 4500) for rape victims and INR 5,00,000 (~USD 6800) for gang rape

⁵⁸ Ministry of Women and Child Development, *Utilisation of Nirbhaya Fund*, Press Information Bureau, 22 July 2021, <https://pib.gov.in/PressReleasePage.aspx?PRID=1737773>.

⁵⁹ Centre for Budget and Governance Accountability, *In Search of Inclusive Recovery An Analysis of Union Budget 2022-23*, <https://www.cbgaindia.org/wp-content/uploads/2022/02/In-Search-of-Inclusive-Recovery-An-Analysis-of-Union-Budget-2022-23.pdf>

⁶⁰ Behan Box, *Budget For Adivasi, Dalit Schemes Is Too Little, Gender-Skewed: Report*, 8 February 2022, https://behanbox.com/2022/02/08/budget-for-adviasi-dalit-schemes-is-too-little-gender-skewed-report/?utm_source=rss&utm_medium=rss&utm_campaign=budget-for-adviasi-dalit-schemes-is-too-little-gender-skewed-report

⁶¹ Press Information Bureau, Nirbhaya Scheme, 6 August 2021, <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1743231>

victims.⁶² According to the NWCL report, which studies 50 cases of caste based sexual violence across 13 states, compensation was not received in 31% of cases for which the information is available (i.e. in 14 out of 44 cases). In a few other cases, compensation was not paid due to the lack of registration of FIR, or only a limited amount was received due to failure of the police to file the charge sheet. Even in the cases where compensation was received, it required repeated follow-up from Dalit activists and civil society organisations supporting the survivor with government authorities before the amount was released. Where there is no support from activists, survivors are often unaware of the entitlement to receive compensation/relief and the steps required to do so.⁶³ The money is particularly important in cases where the victim or her family are negatively targeted by the communities in which they live.

40. Survivors have also noted difficulties in accessing police protection during rape cases, and the short term of such protection even when provided.⁶⁴ This allows perpetrators and their communities to threaten, retaliate against and pressure victims into changing their testimonies, including by use of physical violence against the victim and her family.

Recommendations

41. We respectfully urge the following recommendations to be issued to India:

- Adopt preventive and supportive measures to ensure Dalit, Adivasi and Muslim women and girls their rights to security of life, equal protection of, and equal standing before the law are given topmost priority.
- Develop and implement a comprehensive strategy to address impunity and ensure access to justice for Dalit, Adivasi and Muslim women and girls, by identifying and eliminating the barriers that they face in their struggle for justice.
- Undertake immediate country wide police reforms to ensure sensitivity and prompt action in cases of sexual violence against marginalised women and girls. Police must be held accountable for lapses in access to and denial of justice to women by ending police impunity.
- Urgently bring the criminal justice system under effective monitoring to ensure the efficient delivery of justice for Dalit, Adivasi and Muslim women and girls.
- Ensure the full and strict implementation of the SC & ST (PoA) Act and the Protection of Children from Sexual Offences Act, 2012 and the timely investigation and disposal of cases of violence against Dalit, Adivasi and Muslim women and girls.

⁶² Equality Now and Swabhiman Society, 2020, Justice Denied: Sexual Violence and Intersectional Discrimination, Barriers to Accessing Justice for Dalit women and girls in Haryana, India, <https://www.equalitynow.org/resource/justicedenied/>

⁶³ National Council of Women Leaders, Dalit Human Rights Defenders Network, Tata Institute of Social Sciences, *Caste Based Sexual Violence and State Impunity*, March 2022. <https://www.nwcl.org.in/ebook/caste-based-sexual-violence-and-state-impunity/>

⁶⁴ Equality Now and Swabhiman Society, 2020, Justice Denied: Sexual Violence and Intersectional Discrimination, Barriers to Accessing Justice for Dalit women and girls in Haryana, India, <https://www.equalitynow.org/resource/justicedenied/>

- Amend Section 375 of the Indian Penal Code to remove Exception 2, and criminalise marital rape in all circumstances.
- Provide immediate, holistic and gender sensitive support to victims and survivors of sexual violence from marginalised communities. Adequate allocation of resources must be ensured for support services both at the national and sub-national levels. Mass-scale awareness campaigns must be initiated by the national and state governments at all levels. Effective monitoring of these support services must be undertaken on a regular basis by the relevant Ministries.
- Disaggregate all criminal data on the basis of gender, caste, indigeneity/ethnicity and religion. Correlate the data to map out violence prone areas and build a comprehensive system for prevention and assistance to victims and survivors.
- Processes for the prevention and redressal of online sexual exploitation and abuse must be strengthened with appropriate training, awareness for all stakeholders involved and immediate legal processes for smooth investigation across multiple jurisdiction put in place. These must be backed with appropriate resources.
- Grant powers to relevant national human rights institutions to enable them to make legally binding recommendations and establish an independent complaints and monitoring mechanism to redress the discrimination and violence inflicted against Dalit women.