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“Everyone Blames Me”

Barriers to Justice and Support Services for Sexual Assault Survivors in India

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**Barriers to Justice and Support Services for Sexual Assault
Survivors in India**

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Summary

In May 2017, a 23-year-old woman was murdered in Haryana state's Rohtak district. The victim's body was found four days after she was allegedly kidnapped by two men, who raped her, smashed her head with a brick, and then ran their car over her body. The autopsy revealed internal injuries due to brutal and sadistic sexual assault.

The family of the victim alleged that a month before the incident they had complained to the police, naming the main accused, who had been harassing the victim for refusing to marry him. Family members said that the police failed to take any action.

Five years after the gang rape and death of a young student in Delhi in December 2012 that spurred legal and other reforms, girls and women survivors of sexual violence and rape in India continue to face significant barriers in access to justice and to support services such as health care, counseling, and legal aid. In April 2013, the Indian parliament unanimously amended laws, adding new categories of offenses regarding violence against women and girls and making punishment more stringent. "Such legislation has come to India for the first time and the parliament has given its approval," the then-home minister, Sushilkumar Shinde, said after the law was passed. "It will create a revolution in the country."

While positive steps have been taken indicating greater political will of Indian politicians and officials, the promised changes have fallen far short of being realized. In the May 2017 case from Rohtak, the police defended themselves, claiming that the family made only a verbal complaint and had later withdrawn it. It was only after public protests over the rape and murder that state authorities suspended two police officers and transferred another for negligence in handling the case. Human Rights Watch also found that women and girls in India are often afraid to report attacks because of fear of being stigmatized, and because they feel unable to overcome institutional barriers in a criminal justice system that offers no protection to victims or witnesses.

Survivors, particularly among marginalized communities, find it difficult to register police complaints. They often suffer humiliation at police stations and hospitals, are still subjected to degrading tests by medical professionals, and feel intimidated and scared

when the case reaches the courts. Said Anjali Dave of the School of Gender Studies at the Tata Institute of Social Sciences in Mumbai: “Rape is still constructed as women’s shame and there are so many social barriers for women to talk about it.”

India now has several laws to address gender-based violence such as the Criminal Law (Amendment) Act, 2013, Protection of Children from Sexual Offences Act, and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act if the victim belongs to a Dalit (formerly “untouchable”) or tribal community. Between the time the legal changes went to effect and the end of 2015 (the most recent year for which data is available), there was a 39 percent increase in the number of rape complaints reported to the police—from 24,923 cases in 2012 to 34,651 cases in 2015—likely reflecting a greater willingness of survivors to take their cases to the justice system.

However, Human Rights Watch research shows persistent gaps in enforcing the laws, relevant policies, and guidelines aimed at justice for victims of sexual violence. This report details the scope of the problem drawing on in-depth research into 21 cases—10 involving girls under the age of 18 at the time of the incident, research by Indian organizations, and more than 65 Human Rights Watch interviews with victims, their family members, lawyers, civil society activists, advocates, doctors, forensic experts, and government and police officials. The report uses these cases to make detailed recommendations on how the authorities can ensure that the criminal justice system treats the victims and their families with sensitivity, dignity, and without discrimination.

Poor Police Response

Indian law provides that in cases of sexual assault or attempted sexual assault, a trained female police officer should gather testimony from the survivor, videotape her statement, and have her statement recorded by a judicial magistrate as soon as possible.

Amendments to the Code of Criminal Procedure in 2013 also make it mandatory for police officials to register sexual assault complaints; those who fail to do so can be imprisoned for up to two years.

Human Rights Watch found that police do not always adhere to these rules. They resist filing the First Information Report (FIR), the first step to initiating a police investigation, especially if the victim is from an economically or socially marginalized community. Police

sometimes pressure the victim's family to "settle" or "compromise," especially if the perpetrator is from a powerful community.

For instance, police in Lalitpur district in Uttar Pradesh state refused to file a complaint after 22-year-old Barkha and her husband were attacked by three men from their village around midnight in their home on January 30, 2016. Barkha said two men beat her husband and took him away while the third, belonging to a dominant caste, raped her, abused her using caste slurs, and threatened to kill her if she went to the police. Barkha says the police were reluctant to act because the main accused is a local leader of the ruling political party. Finally, after Barkha approached the judiciary, on March 2, the courts ordered the police to file an FIR and take appropriate action. However, the police took another eight months to register the FIR. Meanwhile, Barkha and her husband had to flee the village and move hundreds of miles away after repeated threats and harassment from the accused and others in the village. Barkha says she has lost hope for justice:

How long will we be on the run like this? Not able to see our family, our homes, our village? The entire family is scattered. The police do not want to investigate the case. We weren't able to stay in the village because they [the accused] are ready to kill us and the police did not take any action against them. We also went to the village headman, but he didn't listen to us either. There's no one for us.

Although the 2013 amendments criminalized police failure to register a rape complaint, no action was taken under section 166A of the Code of Criminal Procedure against police officials who refused to file Barkha's case. The magistrate too, failed to direct the police to file a case against police officials responsible.

In another case, police allegedly arbitrarily detained, beat, and threatened a rape survivor and her father to force them to change their statements. After Kajal, 23, filed a complaint of gang rape on September 14, 2015, the police in Madhya Pradesh state refused to give them a copy of the FIR, asking them to return the following day so that their statements could be recorded by a magistrate. Kajal told Human Rights Watch that when they arrived at the police station, the police detained her father, and asked her to tell the court that she filed a false complaint of rape at her father's behest. Kajal says the police also made her sign

several blank pages, slapped her, and beat her with a stick. Police also allegedly threatened to arrest Kajal's father on false charges if he did not sign a statement that his daughter had filed a false complaint. Kajal says that out of fear she gave a false statement to court. Police filed a closure report in December 2015, saying Kajal and her father filed a false case because of a land dispute with the main accused. She has since filed an appeal describing the intimidation.

The Criminal Law (Amendment) Act of 2013 expanded the definition of sexual offenses to include new offenses such as voyeurism and stalking. However, a 2014 study by the Commonwealth Human Rights Initiative in Delhi and Mumbai suggests that these offenses are underreported to the police, and even where reported, the police often fail to register FIRs or properly investigate these crimes. Parents told Human Rights Watch that they feared for their daughters' safety after filing police complaints because the accused received bail and then made threats against the girls. Often, girls end up curbing their own activities that take them out of their homes or parents put greater restrictions on their movement.

In October 2016, after 16-year-old Meena filed a police complaint against three men who assaulted her in a village in Jhansi in Uttar Pradesh state, the families of the accused began to threaten her family, warning that they would be killed. Meena's parents appealed to the police, including the superintendent of police, seeking protection. But the police failed to take any action regarding the threats and are yet to file charges. Meanwhile, Meena's parents were so concerned about her safety that they would not let her out of the house, not even to attend school. Her mother told Human Rights Watch:

We stopped our daughter's education because we were scared to send her to school after that. If the accused are in jail, then we won't be scared to send her to school. But until then, we have to keep her safe with us. We reported the incident but now we have lost our honor.

In several north Indian states such as Haryana, Uttar Pradesh, Punjab, and Rajasthan, unofficial village caste councils, called *Khap Panchayats*, pressure Dalit or other so-called "low-caste" families not to pursue a criminal case if the accused is from the dominant caste. Local politicians and police are often sympathetic or turn a blind eye to the councils' edicts, implicitly supporting the violence. This is despite the Supreme Court of India

describing their actions as “wholly illegal” in April 2011. Sube Singh Samain, spokesperson for the powerful Sarv Khap Panchayat, an umbrella body of all Jat caste councils in Haryana, told Human Rights Watch that laws against rape were being largely misused: “One man can never rape a woman without consent. Sometimes in a consensual relationship, things go bad and then they take the name of rape.”

Kalpana, 30, a Dalit from Haryana, filed an FIR on March 10, 2015, saying that she was gang-raped by six men belonging to the dominant Jat caste. On March 28, the police filed charges including rape, kidnapping, and assault under the Prevention of Atrocities Act. However, with the trial delayed awaiting forensic results, a frequent problem because of insufficient forensic labs, the family said they began to be harassed and threatened by the *Khap Panchayat*. Kalpana eventually turned hostile witness in court and all the accused were acquitted. She and her family moved away from the village.

Failure to Provide Access to Adequate Health Services

Doctors in India are legally obligated to provide first aid or medical treatment, free of cost, to women and girls who approach them and disclose rape. The medical examination not only serves a therapeutic purpose, but also helps gather possible forensic evidence. Under Indian criminal law, the prosecution can secure a conviction for rape based solely on the testimony of the rape survivor where it is cogent and consistent in so-called material particulars. Forensic corroboration is considered legally relevant but not essential. But in practice, judges and police give significant weight to forensic evidence, therefore necessitating standardized medico-legal evidence collection and awareness around its limitations.

In 2014, the Ministry of Health and Family Welfare issued guidelines for medico-legal care for survivors of sexual violence to standardize healthcare professionals’ examination and treatment of sexual assault survivors. The guidelines integrate processes geared to respect women’s and children’s rights to privacy, dignity, creating a non-threatening environment, and informed consent.

The guidelines also provide scientific medical information and processes that aid in correcting pervasive myths and degrading practices around rape that have been reinforced by common medico-legal practices. It eliminates what is known as the “two-finger test” by limiting internal vaginal examinations to those “medically indicated” and rejects the use of

medical findings for unscientific and degrading characterizations about whether the victim was “habituated to sex.”

Under India’s federal structure, health care is a state matter, so state governments are not legally bound to adopt the 2014 guidelines. So far, only nine states have adopted the guidelines, including Uttar Pradesh, Madhya Pradesh, and Maharashtra where Human Rights Watch interviewed survivors and doctors. But Human Rights Watch found that medical professionals, even in states that have adopted the guidelines, do not always follow them. In Uttar Pradesh and Madhya Pradesh, Human Rights Watch found that doctors examining sexual assault survivors failed to give them adequate information about the tests and lacked sensitivity in dealing with them. In six cases from these states, the doctors allowed female police personnel to be present during the examination, even as they sometimes refused to allow a family member.

The case of Palak, an 18-year-old Dalit woman who was kidnapped and raped in Madhya Pradesh, shows health professionals engaged in victim blaming, further harming the survivor. Palak’s mother, who was in the room with her daughter during her medical examination, told Human Rights Watch that the doctor tried to insinuate that Palak was lying and that the sex was consensual:

The doctor said to my daughter “If they had forced themselves on you, there should have been marks on your body, but you don’t have any. You must have done this of your own free will.” My daughter became even more scared after the exam.

A senior gynecologist at a municipal hospital in Mumbai, who has often been called upon to testify in court, told Human Rights Watch that judges, especially in lower courts, are often unaware of the medico-legal guidelines and that police requisition forms also ignore the guidelines. “The police always ask us whether forceful [sexual] assault has taken place, whether semen is present,” the doctor said. “They haven’t been trained and that’s why they ask such questions. For the police, sexual assault is only [penile] penetrative.”

Many states have their own guidelines, but they are often outdated and lack the detail and sensitivity of the 2014 central government guidelines, requiring procedures and medical examinations that may not be necessary. For instance, the standard form used in

Rajasthan hospitals still has a column that seeks information on the status of the hymen, and doctors do the finger test to fill it. “These forms are dated from even before I was born,” said a medical jurist at the department of forensic evidence in a Jaipur hospital. While the Haryana state government issued its own medico-legal manual in 2012—pre-dating the superior 2014 guidelines—hospitals do not always follow those protocols either. In a government hospital in Hisar district, Human Rights Watch found that the doctors used a two-page form instead of the detailed 17-page form issued by the government. The resident medical officer said: “The government proforma is long. The internet doesn’t always work, then sometimes the printer doesn’t work, so we mostly use the old manual forms.”

Even as authorities take small steps toward implementing guidelines to standardize collection of forensic evidence, the healthcare system has largely failed when it comes to providing therapeutic care and counseling to survivors. This includes advice on access to safe abortions and tests for sexually transmitted diseases. The 2014 guidelines lay out psychosocial care for survivors saying that health professionals should themselves provide first-line support or ensure someone else trained at the facility can provide it. This includes addressing the survivor’s well-being, encouraging her to express her feelings and seek crisis counseling, making a safety assessment and safety plan, and involving family and friends in the healing process. In nearly all the rape cases documented by Human Rights Watch, women and girls said that they received almost no attention to their health needs, including counseling, even when it was clear they had a great need for it.

Kajal was abandoned by her husband and his family and was in urgent need of medical and counseling support for months after she reported being gang-raped in September 2015. She returned to live with her parents, but soon they were forced to relocate after threats from the accused. However, the doctor who examined her had not provided any referral for counseling. Kajal told Human Rights Watch:

I have lost everything and everyone blames me. I didn’t even leave my home for a month after the incident. I was tired of listening to neighbors’ taunts. I had stopped eating, just lay like a mad woman at home. It felt like I had lost my mind.

Lack of Access to Effective Legal Assistance

A trial process can be intimidating and confusing, and “the attempt at shaming the victim is still very much prevalent in the courts,” said Rebecca Mammen John, a senior criminal lawyer in Delhi. “We need to work to change the language in the courtroom.” All too often, Indian trial procedures have perpetuated harmful stereotypes. Biased and derogatory language toward sexual assault survivors is still too often used in courtrooms not only by judges but by defense lawyers. Effective legal assistance for survivors could help to address such bias.

Inadequate legal assistance is especially a concern for survivors who come from poor and marginalized communities. A 1994 Supreme Court ruling says that sexual assault victims should be provided legal assistance, and that all police stations should keep a list of legal aid options. While in Delhi there are efforts to ensure this—the Delhi Commission for Women operates a rape crisis cell that coordinates with police stations, even though experts say even this is ad-hoc and not entirely effective—it is rare in other parts of the country, particularly rural areas. In none of the 21 cases documented by Human Rights Watch did the police inform the victim of their right to legal assistance or offer legal aid.

The central government has established about 524 fast-track courts across the country for expeditious trials in cases dealing with crimes against women and children. There are no nationwide studies yet to determine their effectiveness. Anecdotally, however, it appears that setting up fast-track courts alone is insufficient: equal focus should be given to other key concerns such as legal assistance to help victims navigate the system.

In cases involving children, the law provides for a support person to assist the child throughout the process of investigation and trial. While implementation is lacking in this regard, as Human Rights Watch found, when it comes to adult survivors of rape, there is no such provision. Geetanjali Goel, special secretary at the Delhi State Legal Services Authority, told Human Rights Watch: “[S]upport persons should be provided in rape cases like in POCSO [Protection of Children from Sexual Offences Act]. It need not be mandatory, but there should be an option, because the victim does not even know the status of the case, of the police investigation, whether charge-sheet was filed, whether accused applied for bail.”

Lack of Coordinated Support Services

India does not have a holistic national program to guide the work of various ministries and state governments in their efforts to prevent and respond to sexual violence against women and girls. As a result, there is a patchwork of programs. And these ad hoc efforts are not properly monitored because India does not have a nationwide monitoring and evaluation framework to assess the implementation and effectiveness of laws governing violence against women and children, including sexual violence.

In 2013, the central government established the Nirbhaya Fund for programs aimed at the prevention, protection, and rehabilitation of women, allocating 3,000 crore rupees (US\$450 million) from 2013 to 2017. A 2017 report by the Delhi-based think-tank Centre for Budget and Governance Accountability and the nongovernmental organization Jagori found that Nirbhaya budget allocations for two critical schemes, the 24-hour women's helpline and the one stop crisis centers, only started being utilized in 2015-16, three years after the plan was introduced.

As part of the fund, the national government set up a central victim compensation fund in 2015 under which a rape victim should receive a minimum of 3 lakh rupees (US\$4,650). However, every state has its own compensation scheme, each providing a different amount in compensation to sexual violence survivors. The system is inefficient and survivors wait a long time or are unable to access the scheme. Out of 21 cases documented by Human Rights Watch, only three survivors had received compensation. "If the scheme remains on paper, what is the point of it?" said Chitra Joshi, in charge of Dilaasa, a crisis center for women in Mumbai.

The One Stop Centre Scheme, a place providing integrated services—police assistance, legal aid, medical and counseling services—remains ineffective in practice. According to the government, as of August 2017 it had set up 151 centers across the country, but anecdotal evidence collected by Human Rights Watch and other groups shows a lack of coordination among the various relevant departments and ministries. There is also little public awareness about these centers.

Moreover, the scheme has not integrated existing crisis-intervention centers that were already providing services to women or built on good practices from models developed in various parts of the country. And it has not maximized its reach to victims of gender-based violence who usually come to hospitals, police stations, and courts.

India's Obligations Under International Law

India is party to core international human rights treaties that obligate the government to protect the rights of survivors of sexual violence. The failure of the state to protect victims of abuse can in itself be a violation of human rights.

In May 2017, during India's third Universal Periodic Review at the United Nations Human Rights Council, three dozen UN member countries raised concerns over violence and discrimination against women, and some countries specifically asked the Indian government to better implement existing policies and laws to ensure acts of violence against women and girls are registered, investigated, and appropriately prosecuted. Several countries also asked India to ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, which would allow the committee that monitors the treaty to receive and consider complaints from individuals or groups within India.

The Indian government responded by citing specific laws and policies addressing violence against women. However, beyond the laws and institutions, India needs a concerted government effort to educate the public and alter mindsets, to enforce promised protections, and ensure legal safeguards.

Key Recommendations:

The Indian central and state governments should:

- Enforce the Criminal Law (Amendment) Act 2013 and policies announced to help survivors of sexual violence.
- Ensure regular trainings and refresher courses to sensitize police officers, judicial officials, and medical professionals on the proper handling of cases of sexual violence.
- Enact a witness protection law, which includes protection for women and girls, and their families, who face retaliation for filing criminal complaints of sexual violence.
- Adopt and implement the Ministry of Health and Family Welfare *Guidelines and Protocols for Medico-Legal Care for Survivors/ Victims of Sexual Violence*.
- Ensure that one stop crisis centers are properly equipped and accessible, establish a monitoring mechanism for these centers, publish accountability reports periodically, and ensure the Nirbhaya Fund disburses funds transparently.

- Work with women’s rights groups, civil society organizations, urban planners, and others to develop and implement concrete plans within a fixed timeline to make public spaces safer and more accessible to women.

Methodology

This report examines the implementation of India’s criminal laws governing sexual offenses, as amended by the Criminal Law (Amendment) Act, 2013, and the Protection of Children from Sexual Offences, Act, 2012. We particularly focus on implementation in rural areas and among marginalized communities.

While recognizing that boys and men also experience sexual violence, this report focuses on women and girls because they are disproportionately likely to have been targeted. Also, the 2013 laws are not gender neutral and only address the rights of women and girls. Boys are protected under the Protection of Children from Sexual Offences Act, but adult males in India have legal recourse for sexual violence only under a colonial-era law which criminalizes even consensual sex among same-sex adults.¹ We did not include in this report the distinct set of challenges faced by boys and men. Human Rights Watch is working separately on issues specific to women and girls with disabilities.

We conducted field research and interviews in four Indian states—Haryana, Uttar Pradesh, Madhya Pradesh, and Rajasthan—from December 2016 to August 2017. These four states were chosen because of large numbers of rape cases reported from them, and the presence of strong local nongovernmental organizations that could facilitate access to legal, medical, and police documents.² Interviews were also conducted in the cities of New Delhi and Mumbai.

Jan Sahas, a nongovernmental organization, assisted with access to sexual assault survivors and documents related to both pre-trial and trial stages in Madhya Pradesh, Rajasthan, and Uttar Pradesh states. Interviews with survivors and their families were conducted in Haryana with the help of their lawyers.

Human Rights Watch interviewed more than 15 survivors and 25 family members of victims of sexual offenses, mostly rape, in these states. A number of them were interviewed in

¹ Human Rights Watch, “India: Supreme Court Ruling Undermines LGBT Rights,” December 12, 2013, <https://www.hrw.org/news/2013/12/12/india-supreme-court-ruling-undermines-lgbt-rights>.

² Madhya Pradesh recorded the highest number of rape cases at 4,391 in 2015, followed by Maharashtra at 4,144, Rajasthan at 3,644, and Uttar Pradesh at 3,025. Haryana recorded 1,070 cases of rape. “Crime in India, 2015,” National Crime Records Bureau, Ministry of Home Affairs, Government of India, http://ncrb.nic.in/StatPublications/CII/CII2015/FILES/Statistics-2015_rev1_1.pdf (accessed August 15, 2017).

Delhi when they traveled to share their experiences at a national consultation. Based on the interviews, the report closely examines 21 cases that highlight institutional barriers for access to justice and health services, and gaps in implementation of laws and government policies. Human Rights Watch has retained copies of relevant documents. Of the 21 cases documented in the report, nearly half involved victims who were under age 18 at the time of the incident.

In addition, Human Rights Watch spoke with more than 15 lawyers, civil society activists, and advocates in these parts and in Mumbai and Delhi who work on gender-based violence, as well as six doctors and forensic experts. Human Rights Watch also interviewed 12 government officials, including seven serving police officials.

To avoid trauma associated with recounting experiences of sexual violence and the process of accessing justice, Human Rights Watch investigated cases by first seeking information from civil society activists, social workers, lawyers, and advocates, and reviewing documents where we had such access, before interviewing survivors and their families. We focused on their experiences of filing and pursuing their criminal complaints and accessing medical treatment and care. We did not ask the survivor to recount details of the rape.

Human Rights Watch provided no remuneration or other inducement to the interviewees. In some cases, funds were provided to cover food and travel expenses. All interviews were conducted either in Hindi or English and with their informed consent. Names of all sexual assault survivors have been changed and all identifying information has been withheld to protect their privacy and safety.

In addition to interviews, this report also draws upon secondary literature where relevant and accessible: government statistics, reports of local nongovernmental organizations, Supreme Court decisions, and the amicus brief prepared by advocate Indira Jaising and Lawyers Collective in *Nipun Saxena & Anr. Etc. v. Union of India & Ors.*

Terminology

The term “child” is used to refer to anyone under the age of 18, consistent with usage under international law. “Girl” refers to female children under age 18. The term “sexual offenses” is used to describe all offenses of a sexual nature criminalized under Indian law.

I. Sexual Violence in India

The legislature has responded with amendment of laws but what about enforcement?

—Kumari Selja, member of parliament, September 2016

In December 2012, the gang rape and murder of Jyoti Singh, a 23-year-old woman in Delhi, sparked massive nationwide demonstrations and swayed political momentum in favor of reforming India’s inadequate criminal laws governing sexual violence.³ This led to amendments to existing criminal laws to strengthen them and add new categories of sexual offenses. At that time, discussions had been under way for several years to reform the Indian Penal Code, the Code of Criminal Procedure, and the Evidence Act—which collectively form the backbone of criminal laws dealing with sexual offenses. The Criminal Law Amendment Act, 2013, amended all three pieces of legislation.

Even before these amendments, India witnessed several legislative reforms governing sexual offenses. For instance, following years of deliberation with rights groups across India, in June 2012 the Indian government introduced the Protection of Children from Sexual Offences Act (POCSO), legislation that aims to deal with child sexual abuse in a comprehensive manner.⁴

Prevalence Data

Since the changes in laws, according to the National Crime Records Bureau (NCRB), an office located in the Ministry of Home Affairs, there was a 39 percent increase in the number of criminal complaints reported to the police in 2015 (34,651) over 2012 (24,923).⁵ In cases reported in 2015, 11,393 of the 34,771 rape victims were girls. In March 2015, the government

³ “India: Rape Victim’s Death Demands Action,” Human Rights Watch, news release, December 29, 2012, <https://www.hrw.org/news/2012/12/29/india-rape-victims-death-demands-action>.

⁴ The Protection of Children from Sexual Offences Act, 2012, No. 32 of 2012, June 19, 2012, <http://indiacode.nic.in/amendmentacts2012/The%20Protection%20of%20Children%20From%20Sexual%20Offences%20Act.pdf> (accessed June 29, 2017).

⁵ “Crime in India, 2015,” National Crime Records Bureau, Ministry of Home Affairs, Government of India, <http://ncrb.gov.in/StatPublications/CII/CII2015/FILES/Compendium-15.11.16.pdf> (accessed November 15, 2016); “Crime in India, 2012,” <http://ncrb.nic.in/StatPublications/CII/CII2012/Statistics2012.pdf> (accessed November 15, 2016). According to the NCRB data, in 96 percent of rape cases, the offender was known to the victim, which included close family members, and 32 percent of rape victims were under 18 years of age.

told parliament that the number of rape cases registered had “dramatically risen” since 2013 after the Indian Penal Code was amended to make it a punishable offense if a police officer fails to register a First Information Report (FIR) in response to rape complaints.⁶

Activists say these numbers still vastly understate the problem. India is yet to develop periodic population-based studies capturing crimes against women, including sexual violence based on disaggregated data.⁷

Stigma, Victim-Blaming, and the Awareness Deficit

Even though the growing trend of registered criminal complaints for rape shows that the culture of silence is shifting, still far too many in India are afraid to report sexual violence because of a combination of factors: fear of being stigmatized, shamed, retribution from family and friends, and a criminal justice system that offers little protection to victims or witnesses.

Since 2013, there have been efforts by central and state governments to spread greater awareness of the issue and deal with it more sensitively.⁸ However, the tendency to blame the victim persists, with questions often raised, including by those in authority such as politicians, police, and even judges, about their clothing, sexual history, or behavior.

⁶ “Dramatic rise in rape cases registered: Govt,” *Press Trust of India*, March 18, 2015, <http://indianexpress.com/article/india/india-others/dramatic-rise-in-rape-cases-registered-govt/> (accessed July 2, 2016).

⁷ This gap was partially filled by the National Family Health Survey—IV, which estimates “spousal violence.” See Ministry of Health and Family Welfare, “National Family Health Survey,” 2015-16, <http://rchiips.org/nfhs/pdf/NFHS4/India.pdf> (accessed August 7, 2017).

⁸ In August 2014, even the newly elected prime minister, Narendra Modi, spoke on the need to change the patriarchal mindset that put greater value on sons over daughters, and to treat all children equally. Full text of Prime Minister Narendra Modi’s Speech on India’s 68th Independence Day, August 15, 2014, <http://indianexpress.com/article/india/india-others/full-text-prime-minister-narendra-modis-speech-on-68th-independence-day/> (accessed February 20, 2017).

Examples of Remarks by Officials on Sexual Violence

Below are comments by prominent figures—including politicians from various political parties across India; senior police officials; women leaders; and officials from statutory bodies such as women’s commissions mandated to protect rights of women—that illustrate how deeply entrenched victim-blaming still is in India when it comes to sexual offenses:

When it [a vehicle] is parked in the garage at home, accidents can be avoided, right?... Similarly, in older times, when women were housewives, they were safe from all kind of atrocities, except discrimination... When they are exposed to the society they are more prone to eve-teasing, harassment, atrocities, rape and kidnap. Is it not? If they do not leave home, it doesn’t happen. ⁹
–Kodela Shivaprasad, speaker, Andhra Pradesh State Legislative Assembly, Telugu Desam Party, February 2017

They try to copy Westerners, not only in mindset, but even the dressing. Some girls are harassed, these kind[s] of things do happen. ¹⁰
–G. Parameshwara, state home minister from Congress Party, Karnataka state, January 2017

Boys are boys, they make mistakes. ¹¹
–Mulayam Singh Yadav, chief, Samajwadi Party, Uttar Pradesh state, April 2015

Such incidents [rapes] do not happen deliberately. These kinds of incidents happen accidentally. ¹²
–Ramsevak Paikra, home minister from Bharatiya Janata Party, Chhattisgarh state, June 2014

Rapes take place also because of a woman’s clothes, her behaviour and her presence at inappropriate places. ¹³
–Asha Mirje, Nationalist Congress Party and member of State Women’s Commission, Maharashtra state, January 2014

⁹ “How to Avoid Rape? Stay Home Like Parked Car, Says Sexist Minister,” *Quint.com*, February 11, 2017, <https://www.thequint.com/india/2017/02/11/sexism-misogynist-rape-wont-happen-if-women-parked-at-home-like-cars-andhra-assembly-speaker> (accessed June 21, 2017).

¹⁰ “Bengaluru Molestation: On New Year’s Eve Horror, Politician Abu Azmi’s ‘Naked Women’ Shocker,” *NDTV.com*, January 3, 2017, <http://www.ndtv.com/india-news/on-bengaluru-new-years-eve-horror-politician-abu-azmis-naked-women-shocker-1644496> (accessed June 20, 2017).

¹¹ Anant Zanane, “Mulayam’s shocker on rape: Boys make mistakes, why hang them?” *NDTV.com*, April 11, 2014, <http://www.ndtv.com/elections-news/mulayams-shocker-on-rape-boys-make-mistakes-why-hang-them-556875> (accessed June 20, 2017).

¹² “Indian politician’s ‘accidental rape’ remark adds to rising public anger,” *AFP*, June 8, 2014, <https://www.theguardian.com/world/2014/jun/08/indian-minister-rape-remark-anger-violence-women> (accessed June 20, 2017).

¹³ Shyamantha Asokan and Angus MacSwan, “Female politician suggests Indian women invited rape,” *Reuters*, January 29, 2014, <http://uk.reuters.com/article/uk-india-rape-idUKBREAOsOP520140129> (accessed June 20, 2017).

Women display their bodies and indulge in various obscene activities. Women are unaware of the kind of message [their actions] generate. ¹⁴

–Vibha Rao, chair, Chhattisgarh State Women Commission, January 2013

Women should not venture out with men who are not relatives. What is the need for roaming at night with men who are not relatives? This should be stopped. Such incidents [as the Delhi gang rape] happen due to influence of Western culture. ¹⁵

–Abu Azmi, member of legislative assembly, Samajwadi Party, January 2013

Just because India achieved freedom at midnight does not mean that women can venture out after dark. ¹⁶

–Botsa Satyanarayana, Congress party, Andhra Pradesh state, December 2012

The judiciary too is not free from such harmful stereotypes. For example, a 2016 study examining 45 High Court judgments across the country noted many judges were continuing to describe rape as a crime that “dehumanizes” the woman, kills her personality, or ruins her marriage prospects—adding to the stigma, rather than framing rape as a violation of a woman’s bodily dignity and integrity.¹⁷ In Sadhana’s case from Bharatpur in Rajasthan, the magistrate, while recording her statement under the Criminal Procedure Code, asked questions that intimidated and scared her. Sadhana told Human Rights Watch:

The lady magistrate asked me whether I had relations with the accused. She said, “You all women come here like this only, you must have had some kind of a setting [previous relationship] with him.”¹⁸

¹⁴ Suvojit Bagchi, “Women equally responsible for crimes against them,” *The Hindu*, January 5, 2013, <http://www.thehindu.com/news/national/women-equally-responsible-for-crimes-against-them/article4273827.ece> (accessed June 20, 2017).

¹⁵ “Women should not venture out with males who are not kin: Abu Azmi,” *Press Trust of India*, January 8, 2013, <http://www.dnaindia.com/india/report-women-should-not-venture-out-with-males-who-are-not-kin-abu-azmi-1786920> (accessed June 20, 2017).

¹⁶ “Rape victim should have been careful: Andhra Pradesh Congress chief,” *Times of India*, December 25, 2012, <http://timesofindia.indiatimes.com/india/Rape-victim-should-have-been-careful-Andhra-Pradesh-Congress-chief/articleshow/17748819.cms> (accessed June 20, 2017).

¹⁷ Aradhana CV, “We Went Through 45 High Court Judgments of Rape Cases in 2016, So You Don’t Have To. Really, You Don’t Want To,” *TheLadiesFinger.com*, January 4, 2017, <http://theladiesfinger.com/high-court-judgments-2016-in-rape-cases/> (March 1, 2017).

¹⁸ Human Rights Watch interview with Sadhana, Bharatpur, Rajasthan, January 16, 2017.

Lack of Victim Support Services

India does not provide any government support services where women, men, and children can report sexual or other forms of violence against them and seek support to make decisions about whether to file criminal complaints, and cope with its ramifications. Many women are afraid to report rape because they fear they will not be believed, not just by the police but also by their family members. Often, women face the stigma as much at home as outside. Especially in cases of child sexual abuse, where the abuser is often a family member, it is extremely difficult for children to report the abuse in the absence of strong support.¹⁹

Four examples from Human Rights Watch's research highlight the critical need for support services before and after victims file criminal complaints to the police. Rashi, 40, from Ujjain in Madhya Pradesh state, said she was raped by a neighbor in her village. She told her husband and they decided to report it to the police.²⁰ But Rashi told Human Rights Watch that for months after that, she was shamed and blamed at home and in her village:

After the rape, my husband started beating me. He said, "go live with him [the accused]." One day my son told my husband "Why don't you kill her? Because of her, we have lost face in the village." People filled his head with so much nonsense that he took it out on me.²¹

Kajal, 23, from Neemuch in Madhya Pradesh, said that her husband left her, and the villagers drove her and her parents out of the village after she was gang-raped and filed a police complaint:

My mother-in-law said, "if you want to stay here, stay in the fields, don't enter the home." So, I moved in with my parents in the same village. But the neighbors taunted us and the accused men's families used to come and

¹⁹ Human Rights Watch, *Breaking the Silence: Child Sexual Abuse in India*, February 2013, <https://www.hrw.org/report/2013/02/07/breaking-silence/child-sexual-abuse-india>.

²⁰ First Information Report, Ujjain, Madhya Pradesh, September 5, 2015. Copy on file with Human Rights Watch.

²¹ Human Rights Watch interview with Rashi, New Delhi, December 8, 2016.

threaten to kill us if we didn't compromise. Everyone in the village blamed me and threatened us to leave. We were so scared, we left the village.²²

Sadhana, 28, was three months pregnant when she was raped in a village in Bharatpur, Rajasthan state. She said that many in her village accused her of maintaining illicit relations with a so-called healer whom she accused of raping her:

I hesitate to step out of the house, afraid someone will say something. No one in the village talks to us. But what can we do? We have to stay in the village. If he is acquitted, then the blame will shift even more to me. The villagers will say, "See we knew she had lied, her character is flawed."²³

In case of Palak, a Dalit in Madhya Pradesh who was 18 when she was allegedly kidnapped and raped, her parents withdrew her from school and married her to someone from another village because of fear and stigma. Palak and her parents did not tell her husband or his family about the rape fearing they would blame her and not accept her.²⁴

Preventing Gender-Based Violence and Sexual Offenses Against Children

Some Indian civil society organizations have taken a lead in the last few years to make public spaces safer for girls and women.²⁵ Safety audits take several factors into account, including lighting, ability to walk with ease, diversity of genders occupying that space, and whether there is easy access to security or police.²⁶

Women's rights groups in India, in consultation with international movements and organizations, are also developing innovative ways of enhancing public safety. For instance, a pan-India movement called *Why Loiter* brings together young women who walk or cycle in the streets during the day and at night, or sit in parks, asserting their freedom of movement.²⁷ Groups have also come up with technological tools. For instance, SafetiPin, a

²² Human Rights Watch interview with Kajal, Chittorgarh, Rajasthan, January 13, 2017.

²³ Human Rights Watch interview with Sadhana, Bharatpur, Rajasthan, January 16, 2016.

²⁴ Human Rights Watch interview with Palak's parents, New Delhi, December 8, 2016.

²⁵ See, for example, Safe Delhi Campaign, Jagori, <http://www.safedelhi.in/womens-safety-audit.html> (accessed May 29, 2017).

²⁶ "What is a Safety Audit?" *Safetipin Blog*, June 27, 2014, <http://safetipin.com/blog/1/what-is-a-safety-audit/> (accessed May 29, 2017).

²⁷ Why Loiter? <https://twitter.com/whyloiter?lang=en> (accessed May 29, 2017).

mobile-based app, crowdsources information from women on which public spaces they deem to be safe.²⁸ Said Kalpana Vishwanath, co-founder of SafetiPin: “It’s not just infrastructure but also design and social usage of public spaces. Right now, public spaces are designed only for cars. That has to change.”²⁹

In 2015, the Indian government launched the “Smart Cities” mission, an ambitious program that seeks to create model cities across India. However, it has yet to make women’s safety a core pillar of what make cities “smart.” Often, when the government speaks of women’s safety, they install more closed-circuit television (CCTV) cameras. “There is opportunity as part of smart cities to address women’s safety in public spaces but so far we haven’t seen this,” said Vishwanath.³⁰

India has no mandatory program for age-appropriate sexuality education covering all children, especially adolescents in and out of schools and colleges. “There is no government program that aims to change things with men. We never talk about how men have to be engaged,” said Anjali Dave of the School of Gender Studies at the Tata Institute of Social Sciences, Mumbai.³¹ Some local nongovernmental organizations are attempting to fill this massive gap.³²

Efforts aimed at prevention of violence against women could also bolster larger development goals such as education and sanitation. For instance, as Human Rights Watch research has found, women are especially vulnerable to violence, including sexual violence and rape, when they go to defecate in the fields or in the jungles because of lack of sanitation facilities at home.³³ Prevention efforts in such cases would involve building

²⁸ SafetiPin, <http://safetipin.com/> (accessed May 29, 2017).

²⁹ Human Rights Watch phone interview with Kalpana Vishwanath, New Delhi, January 27, 2017.

³⁰ Human Rights Watch phone interview with Kalpana Vishwanath, New Delhi, January 27, 2017.

³¹ Human Rights Watch interview with Anjali Dave, Mumbai, February 18, 2017.

³² Forum to Engage Men is an informal network of individuals and organizations aimed at working with boys and men to make them responsible for a gender just and equitable society, <http://www.femindia.net/> (accessed August 20, 2017). Population Foundation of India works on women’s empowerment and gender equality, improving quality of care and counseling services, expanding contraceptive choices, and meeting the sexual and reproductive health needs of young people in rural and urban settings. Though women, adolescents, and children are its primary target groups, it sees male involvement and their engagement within the family and with community institutions as integral to its work, <http://www.populationfoundation.in/> (accessed August 20, 2017). Actor Farhan Akhtar leads a social campaign called Men Against Rape and Discrimination, <http://therealmard.org/> (accessed August 20, 2017).

³³ See cases of Sameena and Sarita from Rajasthan in chapter II; Julie McCarthy, “How A Lack Of Toilets Puts India’s Women At Risk Of Assault,” *NPR.org*, June 9, 2014, <http://www.npr.org/sections/parallels/2014/06/09/319529037/indias-rape-uproar-ignites-demand-to-end-open-defecation> (accessed August 19, 2017).

toilets for households and communities, which would also end open defecation.³⁴ Similarly, effective protections will stop parents from withdrawing adolescent girls from schools because of fears for their safety.

One of the targets of the Indian government's twelfth five-year plan for 2012-2017 was improving women's safety, mobility, and access to public services. However, the central and the state governments are yet to make any systematic effort to implement these commitments. On the contrary, some states such as Uttar Pradesh and Jharkhand, ruled by the Bharatiya Janata Party, have initiated short-sighted and counterproductive approaches like Anti-Romeo Squads, a vigilante response supported by police teams. But mostly, these squads morally police and harass young couples, compounding problems around women's safety.

³⁴ Sagar, "Down The Drain: How the Swachh Bharat Mission is heading for failure," *Caravan*, May 1, 2017, <http://www.caravanmagazine.in/reportage/swachh-bharat-mission-heading-failure> (accessed August 19, 2017).

II. Poor Police Response

The police asked me to take some money from the accused and to just let it go. When I refused to compromise, they scolded me and said, “We will put you in lock-up if you don’t compromise.”

—Malini (name changed), rape survivor, describing what happened when she went to report her rape, Haryana, March 2017

Despite important changes in the law aimed at improving police accountability, a combination of police apathy, victim-blaming, and blatant misuse of police powers hampers investigations of rape and other acts of sexual violence.³⁵ Victims from economically and socially marginalized communities are even more vulnerable to such police apathy or abuse. Where victims report that the police themselves are perpetrators, the backlash and impunity are heightened, with harassment and intimidation extending to human rights defenders and journalists.³⁶

In several cases that Human Rights Watch researched in Rajasthan, Madhya Pradesh, Haryana, and Uttar Pradesh (described in detail below), the police not only failed to discharge their official duties to promptly register and investigate complaints, but abused their power, threatening women and their families to drop or settle their rape complaints.³⁷

³⁵ Abhishek Bhalla and G. Vishnu, “The rapes will go on,” *Tehelka magazine*, April 14, 2012, <http://www.tehelka.com/2012/04/the-rapes-will-go-on/?singlepage=1> (accessed February 20, 2017).

³⁶ A lack of police accountability is a larger systemic problem in India. In 2006, the Supreme Court ordered state governments to set up independent police complaints authorities. To date, however, most states have failed to comply with the court’s directives to ensure operational complaints authorities at both state and district levels, and the composition of the authorities that exist are rarely in compliance with the court’s directive. See Suparna Jain and Aparajita Gupta, “Building smart police in India: Background into the needed police force reforms,” Niti Aayog, 2016, http://www.niti.gov.in/writereaddata/files/document_publication/Strengthening-Police-Force.pdf (accessed August 17, 2017). The report found that Uttar Pradesh refused to constitute these authorities, Rajasthan was yet to constitute them, Madhya Pradesh had constituted them at district level but not at state level, and the composition of these boards in Haryana failed to comply with the court’s directive. See also “India: High Cost for Reporting in Chhattisgarh,” Human Rights Watch news release, April 18, 2016, <https://www.hrw.org/news/2016/04/18/india-high-cost-reporting-chhattisgarh>; Human Rights Watch, *Bound by Brotherhood: India’s Failure to End Killings in Police Custody*, December 19, 2016, <https://www.hrw.org/report/2016/12/19/bound-brotherhood/indias-failure-end-killings-police-custody>.

³⁷ Section 217 of the Indian Penal Code states that any public servant disobeying direction of law with intent to save person from punishment or property from forfeiture can be punished with up to two years in jail, <https://indiankanoon.org/doc/1441158/> (accessed August 19, 2017).

Legal Procedure Governing Criminal Complaints and Investigation

First Information Reports

A victim of a sexual offense, her family, or anyone aware of the crime can file a complaint with the police. The police should register this complaint in writing—a document known as a First Information Report (FIR). Police investigation can begin only after the FIR is filed. A copy of the FIR must be given to the informant for free. An informant can file an FIR at any police station anywhere in the country. The police then transfer the FIR to the police station which has territorial jurisdiction over the crime.³⁸

If the informant is the victim herself, then a female police officer or any woman officer should record her statement, including on video, and also have it recorded by a judicial magistrate as soon as possible.³⁹ When giving their statement to the police about rape, girls and women have the right to have the police, a woman officer wherever possible, record their statement in a location they consider safe.⁴⁰

Police should not conduct a “preliminary inquiry” before registering an FIR for sexual offenses because the “reliability, genuineness, and credibility of the information are not conditions precedent” to register an FIR.⁴¹ The police have a small window of discretion—a seven-day period—to conduct a “preliminary inquiry” when there is an “abnormal delay,”

³⁸ Where an informant first approaches a police station that does not have territorial jurisdiction over a crime, the police should register the FIR, assign it the number zero (commonly known as a “zero number FIR”), and then transfer it. Upon transfer to the relevant police station, the zero number FIR is re-numbered.

³⁹ Criminal Law (Amendment Act), No. 13 of 2013, chapter III, Amendments to the Code of Criminal Procedure, 1973, s. 154 (b) and (c), <http://indiacode.nic.in/acts-in-pdf/132013.pdf> (accessed March 12, 2017).

⁴⁰ See POCSO Act, s. 24. Girls under 18 have a right to ask police to record their statement in their place of residence or another place of their choosing for all sexual offenses. See also, Criminal Procedure Code, section 157. Adult women making a complaint of rape similarly have a right to have the police record their statement at home or other place of their choosing. While female police officers being entrusted with investigation into rape cases is a good step, activists say the change would be cosmetic unless the women officers are better trained. “While the sex of the investigating officer may at first glance provide comfort to the rape victim, the conviction rate will rise only if the investigating officer is competent, professional, and conducts investigation as per the law. Professional investigation is the most effective way to undercut prejudice and insensitivity. Untrained but well-meaning women officers can seriously botch up the investigation, and this cosmetic change will not provide any justice to the victim,” said Delhi-based lawyer Vrinda Grover. Human Rights Watch phone interview, New Delhi, October 16, 2017.

⁴¹ *Lalita Kumari vs. Government of Uttar Pradesh*, (2014) 2 SCC 1. In February 2014, the Ministry of Home Affairs issued a circular to all state home departments communicating the Supreme Court verdict. Ministry of Home Affairs, “Compulsory Registration of FIR under section 154 CrPC when the information makes out a cognizable offence,” Circular No. 15011/91/2013 – SC/ST–W, http://www.mha.nic.in/sites/upload_files/mha/files/AdvisoryCompulsoryRegistrationFIRs_141015.pdf (accessed August 7, 2017); *Ibid*.

that is, where the informant first reports an act of sexual violence to police three months or more after the alleged crime “without satisfactorily explaining the reasons.”⁴²

Investigation

During the investigation, all actions of the police should be noted on a daily basis in the police station General Diary.⁴³ The investigation should be completed without “unnecessary delay,”⁴⁴ and in cases involving rape of children, “may be completed within three months” from the date of the FIR.⁴⁵

After completing the investigation, the police should file a final report in court. Depending on the evidence, the final report can either be a charge-sheet (laying out the offenses against the accused and the evidence), or a report closing the case (commonly known as a closure report).⁴⁶ Complainants, including children or their representatives have a right to receive a copy of the final report.⁴⁷ Where the police close a case, the judge issues notice to the informant and gives them an opportunity to file a protest petition before accepting the report, or ordering re-investigation.⁴⁸ Police and trial courts cannot “settle” rape cases.⁴⁹

Bail

In sexual offense cases, the police cannot themselves release the accused on bail.⁵⁰ Only a criminal court is empowered to release the accused on bail under certain conditions.⁵¹

Criminal Penalties Against Police

The law criminalizes police failure to register a rape complaint.⁵²

⁴² Ibid.

⁴³ Ibid. Criminal Procedure Code, section 172(1).

⁴⁴ Criminal Procedure Code, s. 17 3(1).

⁴⁵ Ibid., s. 173 (IA).

⁴⁶ Ibid., s. 173

⁴⁷ POCSO Act, s. 25 (2).

⁴⁸ Criminal Procedure Code, s.173.

⁴⁹ Ibid., s. 320.

⁵⁰ Ibid., First Schedule, Classification of Offences.

⁵¹ Ibid.

⁵² Indian Penal Code, section 166A, introduced by the Criminal Law Amendment Act, 2013; POCSO Act, s. 21.

Police Dereliction in Resisting, Delaying, or Refusing to File FIRs

Human Rights Watch found numerous examples in the states in which we conducted research where, despite clear legal obligations, the police were apathetic or put pressure on the victim's family to settle the case, especially where the alleged perpetrator was from a powerful community.

Based on our discussions with women, girls, and their families in the 21 cases we investigated, Human Rights Watch also found that the police were often either unaware or simply ignored procedures, especially new ones introduced in 2012 and 2013, meant to assist women and children. Police rarely informed the victims and their families about provisions related to compensation and free legal aid, and often failed to inform child welfare committees. One reason is that government circulars and guidelines do not reach police in villages and smaller towns.

Overview of Police Inaction and Abuse in the Cases Human Rights Watch Researched

The cases Human Rights Watch researched in Rajasthan, Haryana, Madhya Pradesh, and Uttar Pradesh include multiple instances in which the police:

- Delayed filing the FIR, blatantly disregarding the law;
- Threatened the victim or her family, asking that they compromise or withdraw their complaint;
- Did not arrest the accused even though the victim had clearly identified the accused in the FIR;
- Failed to promptly respond to victims' or their families' complaints about threats from the accused after filing an FIR; in some of these cases, the accused threatened the victim after bail or acquittal and almost never did the police respond to complaints about threats;
- Stalled investigations even after the FIR was registered.

Malini, Haryana

Malini, 28, a divorcee in Haryana, went to a police station in Jind district on March 2, 2017, to file a complaint that her ex-husband's brother had raped her that day.⁵³ Since the divorce, Malini lived with her parents and son. But the police took six days to register the

⁵³ Human Rights Watch interview with Malini (pseudonym), Jind, Haryana, June 7, 2017.

FIR and take her for a medico-legal examination, contributing to the loss of possible critical evidence.⁵⁴ Malini said that the police put pressure to settle:

The police asked me to take some money from the accused and to just let it go. When I refused to compromise, they scolded me and said, “We will put you in lock-up if you don’t compromise.” I went to the police station every day before they gave me a copy of the FIR.⁵⁵

The police finally filed an FIR for rape, trespassing to assault, and criminal intimidation, but Malini said that instead of investigating, the police continued to call her to the police station to force a settlement.⁵⁶ At this writing, the police have yet to file a charge-sheet or arrest the perpetrator.

Leela, Rajasthan

On April 19, 2016, 15-year-old Leela was found dead, her body hanging from a tree in a village in Pratapgarh district in Rajasthan. Leela’s parents had traveled outside the village on April 18, leaving Leela with her grandmother, but rushed back that night when they received a neighbor’s call saying Leela was missing. They were unable to find her until the morning, when they discovered her body. The police said it was suicide. However, her parents believe that Leela was likely raped and then murdered. Her mother told Human Rights Watch:

When we found her body hanging from the tree, she was not wearing her underwear, even though she always wore it. She also had swelling on her lower abdomen, scratches on her back.⁵⁷

Leela’s father added that she could not have hanged herself from the tree given the height at which she was found.⁵⁸ On April 24, Leela’s father wrote to the police officer in charge of investigating his daughter’s death, urging him to investigate it as a murder. He alleged that

⁵⁴ Medico-legal report, Jind, Haryana, March 8, 2017. Report on file with Human Rights Watch.

⁵⁵ Human Rights Watch interview with Malini, Jind, Haryana, June 7, 2017.

⁵⁶ Ibid.

⁵⁷ Human Rights Watch interview with Leela’s (pseudonym) parents, Chittorgarh, Rajasthan, January 13, 2017.

⁵⁸ Ibid.

she was killed by some men in the village who had been stalking her for a year.⁵⁹ But no action was taken.

In May, he wrote letters to the chief minister, state home minister, inspector general of police, deputy inspector general of police, and the Pratapgarh superintendent of police, urging them to direct the police to investigate the case as a murder and not suicide.⁶⁰ On June 3, Leela's father finally approached the courts, asking the chief judicial magistrate to order an investigation into his daughter's death.⁶¹ Meanwhile, in reply to an inquiry from the State Human Rights Commission, in June, the superintendent of police said that based on police investigation and autopsy report, Leela had committed suicide.⁶² The autopsy concluded that Leela died of asphyxia due to hanging.⁶³

In July, in response to a court directive, the police finally filed a complaint of murder against the four men named by the family.⁶⁴ In September, Leela's father wrote to the superintendent of police again, alleging that police officials, instead of investigating the case and filing a charge-sheet, were trying to force a settlement with the accused. He also complained of threats and intimidation by the accused and called for a proper investigation into Leela's death.⁶⁵ At the time of writing, the police had not taken any further action in the case.

Sameena, Rajasthan

Sameena, a 25-year-old Muslim woman from a village in Bharatpur district, went to the police station with her husband and his family members on March 14, 2016, to register a complaint of gang rape a couple of hours after the incident. Sameena told Human Rights Watch that she had gone to defecate in the jungle along with her sister-in-law. She had her six-month-old son with her. Five men from the village accosted them. Her sister-in-law

⁵⁹ Letter from Leela's father to police, Pratapgarh, Rajasthan, April 24, 2016. Copy on file with Human Rights Watch.

⁶⁰ Letter from Leela's father to several senior police officials, the chief minister and the home minister, May 23, 2016. Copies on file with Human Rights Watch.

⁶¹ Letter from Leela's father to the chief judicial magistrate, June 3, 2016. Copy on file with Human Rights Watch.

⁶² Letter from superintendent of police, Pratapgarh district to the Rajasthan State Human Rights Commission. June 22, 2016. Copy on file with Human Rights Watch.

⁶³ Post mortem report, Pratapgarh, Rajasthan, April 19, 2016. Copy on file with Human Rights Watch.

⁶⁴ First Information Report, Pratapgarh, Rajasthan, July 4, 2016. Copy on file with Human Rights Watch.

⁶⁵ Letter from Leela's father to the superintendent of police, Pratapgarh, Rajasthan, September 19, 2016. Copy on file with Human Rights Watch.

managed to escape but the men held Sameena’s baby hostage and threatened to kill him if she attempted to sound an alarm.⁶⁶

Sameena and her family complained that the police failed to lodge an FIR. Only after Sameena’s family approached the superintendent of police did the police file an FIR on March 25, 11 days later, for gang rape.

Subsequently, the family wrote letters of complaint in July 2016 to several senior police officials, the state’s home minister and the State Human Rights Commission that they were facing threats and demands to withdraw the case from the accused, and appealed that the investigation be carried out by a senior police official or another officer.⁶⁷ In October 2016, the police filed a charge-sheet against the five accused for assaulting a woman with intent to outrage her modesty and for sexual harassment, but ruled out rape.⁶⁸ The police said that it had examined a video clip recovered from the mobile phone of one of the accused, which proved that the men had harassed Sameena and her sister-in-law, and even threatened Sameena’s child, but did not show rape. The charge-sheet also quoted the medico-legal report by the doctor to say that Sameena did not have any injuries on her body and “was habituated to intercourse.”⁶⁹

Sarita, Rajasthan

On January 27, 2016, 17-year-old Sarita, a student in a village in Bharatpur district, went to the jungle to defecate. She alleged that she was raped by two men from the village, who then video-recorded her while she was naked. The men threatened to share the video on social networking sites if she told anyone about the rape. Terrified, Sarita initially complied, but after a few days told her mother, and the family went to file a police complaint on February 13.⁷⁰ Her father told Human Rights Watch that the police refused to file an FIR that day. The next day, the police asked him to pay 300 rupees (US\$5) to register

⁶⁶ Human Rights Watch interview with Sameena (pseudonym), Bharatpur, January 16, 2017.

⁶⁷ Letters from Sameena to superintendent of police, Bharatpur; director general of police, Jaipur; inspector general of police, Rajasthan; State Women’s Rights Commission; and home minister of Rajasthan, July 26, 2016. Copies on file with Human Rights Watch.

⁶⁸ Charge-sheet filed by police in Bharatpur, October 25, 2016. Copy on file with Human Rights Watch.

⁶⁹ Ibid. Medico-legal report of Sameena, March 27, 2016. Copy on file with Human Rights Watch.

⁷⁰ Human Rights Watch interview with Sarita’s (pseudonym) father, Bharatpur, Rajasthan, January 16, 2017.

the FIR. Her father said he only had 200 rupees (US\$3) which he paid, and after he said he would complain to senior officers, the police filed the FIR on February 14.⁷¹

In September 2016, Sarita reported threats from the accused to the police. She said that one of the accused, after being released on bail in September, came with his uncle to her house and threatened to “destroy her life,” abduct her brother, and kill her family members if she did not retract her statement. The accused and his relatives sat outside Sarita’s house with sticks and other weapons. Sarita sought protection from the police.⁷² Her father said that the police warned the accused from approaching Sarita and her family and since then, things had improved.⁷³ Her case is currently pending in trial court.

Barkha, Uttar Pradesh

Police in Lalitpur district refused to accept a complaint of rape and kidnapping in the case of Barkha, 22, from a Dalit family in a village in Lalitpur district when they first approached the police in January 2016.

On January 30, 2016, Barkha and her husband were attacked by three men from their village around midnight in their home. Barkha said two men beat her husband and took him away while the third, belonging to a dominant caste, raped her, and abused her using a caste slur. When Barkha went with her parents to the police station on January 31, she was turned away.⁷⁴ Barkha’s husband was still missing on February 3 when she wrote to the superintendent of police in Lalitpur district asking him to investigate the rape and kidnapping. In her letter, Barkha complained that the police had refused to lodge an FIR because the main accused is a local leader of the then ruling Samajwadi Party.⁷⁵ But when that also did not yield any results, Barkha approached the courts with the help of the nongovernmental organization Jan Sahas.

⁷¹ Ibid.

⁷² Letters to superintendent of police, district collector, police station in the village, September 2016. Copies on file with Human Rights Watch.

⁷³ Human Rights Watch interview with Sarita’s father, Bharatpur, Rajasthan, January 16, 2017.

⁷⁴ Human Rights Watch interview with Barkha (pseudonym), Agra, January 17, 2017.

⁷⁵ Barkha’s letter to the superintendent of police, Lalitpur, Uttar Pradesh, February 3, 2016. Copy on file with Human Rights Watch.

On February 6, Barkha filed a petition in the magistrate's court requesting the court to direct the police to file an FIR and investigate the case.⁷⁶ Barkha's husband returned 10 days after going missing. On March 2, the court ordered the police to file an FIR and investigate charges of rape, criminal intimidation, trespassing, voluntarily causing hurt, and offenses under the Prevention of Atrocities Act.⁷⁷ Even after the court order, it took eight months for the police to finally register an FIR.⁷⁸ Meanwhile, Barkha, who said she was pregnant when she was raped, had a miscarriage. At this writing, even though months had passed since the police filed an FIR, the family believes the investigation is formally ongoing because they have no information about a closure report or final charge-sheet.

Kajal, Madhya Pradesh

On September 14, 2015, Kajal, a 23-year-old married woman from Neemuch district, hitched a ride with a male acquaintance to bring food to her sick mother who lived in a nearby village. Kajal says that the man, and two of his friends, raped her and left her by the side of the road.⁷⁹ Her screams drew passers-by and one of them informed her father, who took her to the police the same day. The police filed a complaint of gang rape and took her for a medical test. But the police did not give them a copy of the FIR.⁸⁰

According to Kajal, a day after she filed the rape complaint, the police called her father asking him to bring her to the police station so that they could take her to court to depose before a magistrate. At the police station, Kajal told Human Rights Watch, the police detained her father, and a policewoman took her to court alone. There, the policewoman received a call on her mobile phone and took Kajal back to the police station without letting Kajal give her statement to a magistrate. Kajal said that the police then took her to the spot where she was raped and asked her to tell the court that she filed a false complaint of rape at her father's behest. They threatened to drug her and jail her if she failed to comply. Kajal told Human Rights Watch that the police brought her back to the police station and made her sign several blank pages, slapped her and beat her with a

⁷⁶ Barkha's petition in Additional Chief Judicial Magistrate's Court, Lalitpur, Uttar Pradesh, February 6, 2016. Copy on file with Human Rights Watch.

⁷⁷ Order from Additional Chief Judicial Magistrate Court, Lalitpur, Uttar Pradesh, March 2, 2016. Copy on file with Human Rights Watch.

⁷⁸ First Information Report, Lalitpur, Uttar Pradesh, November 8, 2016. Copy on file with Human Rights Watch.

⁷⁹ First Information Report, Neemuch, Madhya Pradesh, September 14, 2015. Copy on file with Human Rights Watch.

⁸⁰ Human Rights Watch interview with Kajal (pseudonym), Chittorgarh, Rajasthan, January 13, 2017.

stick. She said she gave a false statement to court out of fear, saying she had filed a false case at her father's behest.⁸¹

Kajal told Human Rights Watch that the police also threatened her father with arrest under false charges if he did not sign a statement that she had filed a false complaint.⁸² The police also beat her father and detained him for two more days.⁸³

In a letter to the several senior police officials of the state and the State Human Rights Commission on September 26, 2015, Kajal detailed police intimidation and abuse against her and her family.⁸⁴ At this writing, no action was initiated against the police.

In December 2015, the police filed a closure report, saying their investigation had revealed that Kajal and her father had filed a false complaint because of a land dispute with the main accused.⁸⁵ However, the chief judicial magistrate disagreed with the closure report and has asked the investigating officer to depose before the court. Kajal also testified in court in November 2016 and said that she had been forced by the police to lie in her earlier statement.⁸⁶

Sangeeta, Uttar Pradesh

Sangeeta, 15, a Dalit from Lalitpur district, said that she was raped on June 6, 2016. She said that a man from her village entered her home at night, gagged her, threatened her with a pistol, and took her out to the terrace and raped her.⁸⁷ Sangeeta's parents were away, so she told her sister-in-law. When her parents returned, they went to the police station on June 12 to file a complaint. The police completed the investigation in a timely manner and arrested the accused for rape, trespassing, and criminal intimidation. The medical report properly followed the template provided by the 2014 guidelines.

⁸¹ Human Rights Watch interview with Kajal (pseudonym), Chittorgarh, Rajasthan, January 13, 2017.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Letter to superintendent of police, Neemuch; director general of police, Ratlam; inspector general of police, Ujjain; and State Human Rights Commission, Bhopal, September 26, 2015. Copy on file with Human Rights Watch.

⁸⁵ Police closure report, December 29, 2015. Copy on file with Human Rights Watch.

⁸⁶ Kajal's statement to the chief judicial magistrate, November 28, 2016. Copy on file with Human Rights Watch.

⁸⁷ Human Rights Watch interview with Sangeeta (pseudonym) and her parents, Lalitpur, Uttar Pradesh, January 19, 2017.

However, police officials appeared unaware of provisions under the Protection of Children from Sexual Offences Act requiring that they provide information regarding access to legal aid or medical counseling services. The police are also required to bring every case of child sexual abuse to the attention of the Child Welfare Committee within 24 hours of receiving the report, but failed to do so. Also, the police failed to ensure that Sangeeta was not subjected to secondary traumatization during recording of her statement. Sangeeta told Human Rights Watch that she was asked to repeat her story multiple times:

First, a male policeman took my statement. Then a policewoman came to the station and she also took the statement and recorded it on a mobile phone. Then two days later, we went for the medical exam and the doctor also asked me what had happened. Then I was called again to give my statement in front of a senior police officer in the town nearby. Then, I gave my statement at the ladies' police station in Lalitpur. I felt bad because again and again, they were asking me the same questions and I had to narrate the whole incident.⁸⁸

Informal Khap Panchayats

Unofficial village caste councils, called *Khap Panchayats*, in several north Indian states such as Haryana, Uttar Pradesh, Punjab, and Rajasthan operate as moral police, wielding control over society, including women's behavior.⁸⁹ They are known to issue edicts condemning couples for marrying outside their caste or religion and condemn marriages within a kinship group (*gotra*), considered incestuous even though there is no biological connection.⁹⁰ To enforce these decrees and break up such relationships, family members have threatened couples, filed false cases of abduction, and killed spouses to protect the

⁸⁸ Human Rights Watch interview with Sangeeta (pseudonym), Lalitpur, Uttar Pradesh, January 19, 2017.

⁸⁹ Local politicians and police are often sympathetic or turn a blind eye to the councils' edicts, implicitly supporting the violence. Supreme Court of India, *Arumugam Servai v. State of Tamil Nadu*, 2011 (2), SCC 405, April 19, 2011, <https://indiankanoon.org/doc/1337458/> (accessed June 23, 2017).

⁹⁰ In some cases, the Khap Panchayats have also allegedly decreed women to be raped as retribution or put pressure on families, especially Dalit or those considered "low-caste," not to pursue a criminal case if the accused is from the dominant caste.

family's "honor."⁹¹ The practice persists even though the Supreme Court of India has declared such actions by Khap Panchayats to be "wholly illegal" in April 2011.⁹²

Sube Singh Samain, spokesperson for Sarv Khap Panchayat (umbrella body of all Jat caste councils), in Haryana, told Human Rights Watch that laws against rape were being largely misused:

One man can never rape a woman without consent. Gang rape is possible and such people should get the maximum punishment. But no man can ever sexually harass a woman without her consent. Sometimes in a consensual relationship, things go bad and then they take the name of rape.⁹³

Human Rights Watch found that in multiple cases in Haryana—where we examined the role of Khap Panchayat—victims did not report a case or turned hostile during trial because of the pressure from the councils. Rajat Kalsan, a lawyer in Haryana who has assisted several rape survivors and child sexual abuse victims, said:

In Haryana, whenever a girl or woman from a lower caste is raped, the khaps gather people in front of the police station, put pressure on the police to say that it was consensual and that the victim's family is doing this for compensation. Police also support the khaps and put pressure on the victim's family. So often, an FIR is not registered. If the victim's family decides to pursue a criminal complaint, they are forced to leave the village.⁹⁴

Four Dalits, Haryana

On March 23, 2015, four female Dalits, two of them under 18, who had gone to the jungle in the evening to defecate, were allegedly abducted by four men and a boy in a car from their village in Bhagana in Hisar district. One of the women later told the police that the men

⁹¹ "India: Prosecute Rampant 'Honor' Killings," Human Rights Watch news release, July 18, 2010, <https://www.hrw.org/news/2010/07/18/india-prosecute-rampant-honor-killings>.

⁹² Supreme Court of India, *Arumugam Servai v. State of Tamil Nadu*, 2011 (2), SCC 405, April 19, 2011, <https://indiankanoon.org/doc/1337458/> (accessed June 23, 2017). The court asked state governments to suspend district magistrates and senior police officers if they failed to act against these councils, but no such action had been taken at time of writing.

⁹³ Human Rights Watch telephone interview with Sube Singh Samain, June 28, 2017.

⁹⁴ Human Rights Watch interview with Rajat Kalsan, lawyer, Hisar, Haryana, June 5, 2017.

drugged them and took them to an isolated hut. She said she became unconscious after one of them raped her. Next morning, the four woke up at a railway station in the neighboring state of Punjab.⁹⁵ The parents complained that the village chief, who like the accused belonged to the dominant Jat caste, told them where to find their daughters, raising suspicions over his involvement.⁹⁶ The families found their daughters at the railway station and went to file a police complaint on March 25.

The police were initially reluctant to file an FIR or have the survivors medically examined, a fact-finding report by civil society groups found.⁹⁷ Two of the accused are reportedly related to the village chief. Pressure from families and local Dalit activists eventually compelled the police to file an FIR for rape, kidnapping, criminal conspiracy, and causing hurt with the intent to commit an offense under penal code, and charges under the Prevention of Atrocities Act and Protection of Children from Sexual Offences Act.⁹⁸ But soon, the families had to leave the village due to the harassment and threats from the Khap Panchayat.⁹⁹

In August 2015, a fast-track court in Hisar acquitted the four adults.¹⁰⁰ The juvenile was also acquitted later. In September 2015, the Punjab and Haryana High Court asked the state government if it had filed an appeal against the acquittal.¹⁰¹ Subsequently, the government filed an appeal but it is pending at this writing. Sube Singh Samain, a khap leader, dismissed the case as consensual sex, and alleged the family had filed false cases for extortion:

⁹⁵ First Information Report, Hisar, Haryana, March 25, 2014. Copy on file with Human Rights Watch.

⁹⁶ "Sexual Assault on Four Girls in Haryana in the Context of Dalit Rights to Common Land: A Status Report on Bhagana by AFDR, PUDR and WSS," Countercurrents.org, July 2014, <http://www.countercurrents.org/pudro10714.htm> (accessed June 23, 2017).

⁹⁷ Ibid.

⁹⁸ First Information Report, Hisar, Haryana, March 25, 2014. Copy on file with Human Rights Watch.

⁹⁹ "WSS Condemns the Sexual Assault of Four Dalit Girls from Village Bhagana, District Hisar, Haryana," *wssnet.org*, April 24, 2014, <https://wssnet.org/2014/04/24/wss-condemns-the-sexual-assault-of-four-dalit-girls-from-village-bhagana-district-hisar-haryana/> (accessed June 23, 2017).

¹⁰⁰ "4 youths acquitted in gangrape case of Dalit girl," *Press Trust of India*, August 13, 2015, http://www.business-standard.com/article/pti-stories/4-youths-acquitted-in-gangrape-case-of-dalit-girl-115081300812_1.html (accessed June 23, 2017).

¹⁰¹ "Punjab and Haryana High Court seeks report on Dalit families of Bhagana village," *Indian Express*, September 25, 2015, <http://indianexpress.com/article/cities/chandigarh/punjab-and-haryana-high-court-seeks-report-on-dalit-families-of-bhagana-village/> (accessed June 23, 2017).

The parents don't stop their girls from doing all this, and then they allege rape. They were Dalit girls so they took advantage of the SC/ST Act [Prevention of Atrocities Act]. In such cases, they take money to compromise.¹⁰²

Kalpana, Haryana

Kalpana, 30, a Dalit from Kaithal district, told the police on March 10, 2015, that six men from the Jat community gang-raped her in Jind that day. Kalpana's brother-in-law was with her when she raped, and was beaten up. The police filed an FIR that day and both underwent a medical examination.¹⁰³ The police, after an investigation, filed a charge-sheet on March 28 against all six including gang rape, kidnapping, and abuses under the Dalit protection laws.¹⁰⁴

However, with the trial delayed as the police awaited forensic results, the family began to be harassed and threatened by the Khap Panchayat. Kalpana's lawyer said that he too came under pressure, and was even offered a bribe, but he refused.¹⁰⁵ However, Kalpana altered her testimony in the court, and all the accused were acquitted. She and her family moved away from the village.

Kalpana's brother-in-law said: "If you want to live in the village, you have to listen to the khaps. They [Kalpana and her family] didn't have another way. No one can fight and win from the khaps."¹⁰⁶

Inadequate Responses to Sexual Harassment

The Indian Penal Code was amended to introduce new offenses of sexual harassment, voyeurism, and stalking. Anecdotal evidence from Delhi and Mumbai suggests that these offenses are underreported to the police, and even where reported, the police fail to register FIRs or properly investigate these crimes.¹⁰⁷

¹⁰² Human Rights Watch telephone interview with Sube Singh Samain, June 28, 2017.

¹⁰³ First Information Report, Jind, Haryana, March 10, 2015. Copy on file with Human Rights Watch.

¹⁰⁴ Police final report, Jind, Haryana, March 28, 2015. Copy on file with Human Rights Watch.

¹⁰⁵ Human Rights Watch interview with Kalpana's lawyer, Jind, Haryana, June 7, 2017.

¹⁰⁶ Human Rights Watch interview with Kalpana's (pseudonym) brother-in-law, Jind, Haryana, June 7, 2017.

¹⁰⁷ For example, a 2014 study by the nongovernmental organization Commonwealth Human Rights Initiative in Delhi and Mumbai cities found that sexual harassment crimes were significantly under-reported. Out of 125 cases of sexual harassment recorded in the study, only 11 were reported to the police, and police registered an FIR in only two of them. The women surveyed said they did not report the crimes because they did not want to be caught up in police or court matters. Several

In the four cases documented by Human Rights Watch of sexual harassment against girls, the police failed to inform the child welfare committees. There were delays by police in investigating the crimes and filing charge-sheets. Parents say they fear for their daughters' safety after filing complaints because the accused receive bail easily and then make threats.

Aarti, Uttar Pradesh

Aarti, 15, was repeatedly heckled and harassed by three young men. In October 2016, after they had hovered in front of her house in Agra district shouting obscenities, Aarti's parents complained to the parents of the young men. The three then came to Aarti's house and abused her family, and beat up her brother and father.

The next day, October 9, Aarti's parents went to the police station to file a complaint, but they were refused.¹⁰⁸ They had to approach the superintendent of police before the local police finally filed an FIR on October 14 against the three men for stalking and voluntarily causing hurt under the Indian Penal Code and sexual assault under Protection of Children from Sexual Offences Act.¹⁰⁹ Since they filed the complaint, Aarti's parents said, they have been getting threats from the accused to settle the case. The investigating officer, too, is putting pressure on the family to withdraw the case, they said, intimidating them by saying they will go to prison for seven years if the case is proved unfounded.¹¹⁰ A year after the complaint, the police have yet to make any arrests, complete an investigation, or file a charge-sheet in the case.

Meena, Uttar Pradesh

In October 2016, Meena, 16, was returning from the fields after giving lunch to her father, when she was stopped by three men from her village in Jhansi who attempted to drag her away. When she resisted, they beat her up and wounded her hand with an axe. After hearing her screams, her parents went to the spot. There, the men, joined by a fourth man, also assaulted them. Meena's mother told Human Rights Watch that they kicked her and

women also said they avoided reporting because they lacked evidence, or they felt the police would not entertain the complaint or would not be able to do anything about it. "Crime Victimization and Safety Perception: A Public Survey of Delhi and Mumbai," Commonwealth Human Rights Initiative, 2015, http://www.humanrightsinitiative.org/download/1461662128Crime%20Victimisation_Soft%20File_distribution.pdf (accessed May 29, 2017).

¹⁰⁸ Human Rights Watch interview with Aarti's (pseudonym) parents, Agra, January 17, 2017.

¹⁰⁹ First Information Report, Agra, Uttar Pradesh, October 14, 2016. Copy on file with Human Rights Watch.

¹¹⁰ Human Rights Watch interview with Aarti's parents, Agra, January 17, 2017.

beat her husband with a wooden stick.¹¹¹ The police filed an FIR against the four men for assault with the intention to disrobe a woman, voluntarily causing hurt, and criminal intimidation under the Indian Penal Code and sexual harassment under Protection of Children from Sexual Offences Act.¹¹²

Soon after, according to Meena's parents, the families of the accused began to threaten Meena's family, telling them not to pursue the case or they would be killed. Meena's parents brought a complaint to the police, including the superintendent of police, seeking protection.¹¹³ But the police took no action. The police arrested one of the accused, releasing him on bail the same day. The rest were not arrested even though they were clearly identified in the FIR. The police have yet to complete the investigation and file a charge-sheet. Meena's mother said they decided to stop Meena's schooling:

We stopped our daughter's education because we were scared to send her to school after that. If the accused are in jail, then we won't be scared. But until then, we have to keep her safe with us. We reported the incident but now we have lost our honor.¹¹⁴

Payal, Uttar Pradesh

Payal, 14, complained to her parents that a 25-year-old youth from their neighborhood was stalking her. On September 17, 2016, when she saw him across the road staring at her as she waited for her school bus, she went back home and told her parents. Her father tried to speak to the man but he threatened to abduct Payal and shoot the father. He then allegedly returned to Payal's home with his parents and two brothers and they verbally abused Payal. The man also threw stones at them, injuring Payal's father. Payal and her parents decided to file a police complaint.¹¹⁵

The police filed an FIR for stalking, intentional insult with intent to provoke breach of peace, rioting, voluntarily causing hurt, and criminal intimidation under the Indian Penal

¹¹¹ Human Rights Watch interview with Meena (pseudonym) and her parents, Jhansi, Uttar Pradesh, January 18, 2017.

¹¹² First Information Report, Jhansi, Uttar Pradesh, October 24, 2016. Copy on file with Human Rights Watch.

¹¹³ Human Rights Watch interview with Meena and her parents, Jhansi, Uttar Pradesh, January 18, 2017.

¹¹⁴ Ibid.

¹¹⁵ First Information Report, Lalitpur, Uttar Pradesh, September 17, 2016. Copy on file with Human Rights Watch.

Code, and sexual assault under the Protection of Children from Sexual Offences Act.¹¹⁶ But strangely, the police applied section 4 of the POCSO Act, which deals with punishment for penetrative sexual assault, even though the complainant had not alleged rape. Payal's father said that the accused and his family members had been telling them not to pursue the case and threatening them.¹¹⁷ Payal said that the stalking persisted even as they waited for police to file a charge-sheet:

I am really scared because I have to go alone to my coaching center and he keeps waiting for me on the way there. He threatened to kidnap me. I am scared to even cross the road because whenever I go on my bicycle, he follows me on his motorbike.¹¹⁸

Surbhi, Uttar Pradesh

On March 30, 2016, Surbhi, 13, was accosted by a man known to her from her village in Lalitpur district. He grabbed her hand and tried to drag her away. Her mother heard her screams and managed to rescue her from the man. Surbhi and her parents went to the police station and filed an FIR under the Protection of Children from Sexual Offences Act.¹¹⁹

However, over a year later, the police have yet to arrest the accused, complete the investigation, or file a charge-sheet. Surbhi's parents told Human Rights Watch that the accused threatened to kill them and their daughter was traumatized after the incident.¹²⁰ At time of writing, the police had arrested the accused but had yet to file a charge-sheet.

Lack of Witness Protection

The lack of a witness protection law or a nationwide scheme contributes to the likelihood that alleged perpetrators will locate and threaten sexual violence survivors or their family members. As noted above, such intimidation at times forces them to flee their homes. The lack of witness protection deters victims from cooperating with investigations and

¹¹⁶ Ibid.

¹¹⁷ Human Rights Watch interview with Payal's (pseudonym) parents, Lalitpur, Uttar Pradesh, January 19, 2017.

¹¹⁸ Human Rights Watch interview with Payal, Lalitpur, Uttar Pradesh, January 19, 2017.

¹¹⁹ First Information Report, Lalitpur, Uttar Pradesh, March 31, 2016. Copy on file with Human Rights Watch.

¹²⁰ Human Rights Watch interview with Surbhi's (pseudonym) parents, Lalitpur, Uttar Pradesh, January 19, 2017.

testifying truthfully in court, and makes it more likely they will turn “hostile” and retract their earlier statements, contributing to unwarranted acquittals.

The Supreme Court has repeatedly observed that India needs a witness protection scheme.¹²¹ More than a decade ago, the Law Commission of India issued detailed recommendations for “administrative or legislative action” for witness protection.¹²² Yet, India has not enacted a law or developed a nationwide scheme governing and witness protection. The capital, Delhi, however, introduced a Witness Protection Scheme in 2015.¹²³

A key barrier to an effective witness protection scheme in India is the lack of independence and accountability of the police, who have an important role to play in any such scheme.¹²⁴ In some cases documented by Human Rights Watch, instead of providing protection to victims who reported threats from the accused, the police themselves pressured the survivor and her family to stop pressing the case or failed to respond to complaints that the accused was threatening them.

The following cases illustrate how victims of sexual violence often come under extreme pressure or face direct threats from the accused when they tell others what happened to them.

Rachana, Haryana

After Rachana, a Dalit from Hisar, accused a man from the dominant Jat caste of raping her in July 2015, the family began receiving threats and was denied daily wage jobs. Rachana’s parents earn daily wages by working in the fields, which are mostly owned by those belonging to the Jat caste. Her uncle said:

They [the accused and his family members] keep threatening us saying, “We will throw you out of the village if you don’t settle.” They also made me

¹²¹ *NHRC v. State of Gujarat*, 2003 (9) SCALE 329; *PUCL v. Union of India*, 2003(10) SCALE 967; *Zahira v. State of Gujarat*, 2004(4) SCC 158; *Sakshi v. Union of India*, 2004 (6) SCALE 15; *Zahira v. Gujarat*, 2006 (3) SCALE 104.

¹²² Law Commission of India, “198th report on Witness Identity Protection and Witness Protection Programmes,” August 2006, <http://lawcommissionofindia.nic.in/reports/rep198.pdf> (accessed August 19, 2017).

¹²³ Delhi Witness Protection Scheme, 2015, <http://dlsa.org/wp-content/uploads/2015/12/Delhi-Witness-Protection-Scheme-2015.pdf>.

¹²⁴ Existing law gives criminal justice officials some room to maneuver protection for survivors and witnesses, including by imposing bail conditions on the accused; enhancing bail conditions where needed; applying to have the accused’s bail canceled; or filing fresh criminal complaints against the accused and his associates when they threaten the victim.

shut down my shop for a day. The shop owner [who owned the premises] was Jat so he convinced them to open the next day.¹²⁵

Harshita, Rajasthan

Harshita, a 30-year-old married woman from Chittorgarh, accused a relative who was also a neighbor of repeatedly raping her. In her complaint to the police on July 12, 2016, she said she did not tell anyone when it first happened because the accused had forcefully intoxicated her, taken nude photos and videos, and threatened to tell her husband. But when the blackmail continued, and he raped her multiple times over several months, she said she was fed up and told her husband.¹²⁶ The police filed an FIR including sections of rape, assault with intention to disrobe, voyeurism, and extortion.

Harshita told Human Rights Watch that the accused's father is a policeman and his brother is in the army, and the accused's family put a lot of pressure on the couple to settle. Due to threats and stigma the couple were forced to move.¹²⁷ The police filed the charge-sheet on October 30, 2016. The accused was arrested but is currently out on bail.

Sadhana, Rajasthan

Sadhana from Bharatpur told Human Rights Watch she was facing pressure from the accused's family to withdraw her complaint.¹²⁸ A month after filing the police complaint, in June 2016, Sadhana had written to the superintendent of police saying that the investigating officer wanted her to reach a settlement with the accused.¹²⁹ In July, she also wrote similar letters to the district collector, chief minister, and the inspector general of police alleging threats and intimidation by the family of the accused.¹³⁰ But the threats persisted.

Sangeeta, Uttar Pradesh

Sangeeta, a 15-year-old Dalit girl, was raped by a man from Thakur, a dominant caste in her village in Lalitpur district in June 2016. Sangeeta's family was under tremendous pressure

¹²⁵ Human Rights Watch interview with Rachana's uncle, Hisar, Haryana, June 5, 2017.

¹²⁶ First Information Report, Chittorgarh, Rajasthan, July 12, 2016. Copy on file with Human Rights Watch.

¹²⁷ Human Rights Watch interview with Harshita (pseudonym), Chittorgarh, Rajasthan, January 12, 2017.

¹²⁸ Human Rights Watch interview with Sadhana, Bharatpur, Rajasthan, January 16, 2017.

¹²⁹ Sadhana's letter to the superintendent of police, Bharatpur, Rajasthan, June 6, 2016. Copy on file with Human Rights Watch.

¹³⁰ Sadhana's letter to the district collector, Bharatpur, Rajasthan, July 14, 2016. Sadhana's letter to the inspector general of police and chief minister, Rajasthan, July 27, 2016. Copies on file with Human Rights Watch.

from the accused's family and other families belonging to his caste in the village. Sangeeta's father told Human Rights Watch that eventually, fearing for his family's safety, he decided to leave the village and move 16 kilometers away. Sangeeta's family was just one of four Dalit families in the village, which had predominantly Thakur families.¹³¹ Her father said:

They [accused's family and the villagers] are threatening us. But we are doomed either way. If we compromise we are in trouble, because they can do something even worse in the future. And if we don't compromise, we are in trouble. They are after our lives.¹³²

Barkha, Uttar Pradesh

Barkha, 22-year-old Dalit woman from a village in Lalitpur district in Uttar Pradesh, alleged that she was raped in January 2016 by a man with powerful political and caste affiliations. Barkha told Human Rights Watch that the family was forced to leave the village after she filed the complaint because they were regularly threatened by the accused, and police and elected local officials refused to help. Barkha said she had lost any hope for justice or of return to the village: "How long will we be on the run like this? Not able to see our family, our homes, our village? The entire family is scattered."¹³³

Padma, Uttar Pradesh

Padma, 16, said she was raped on January 16, 2016, in Lalitpur district by a man from her village. Fearing his threats to kill her if she told anyone, Padma, a high school student, remained silent. But six months later, when she found out that she was pregnant, she told her parents. On July 12, her parents wrote to the superintendent of police in the district asking for an investigation.¹³⁴ Police filed an FIR the next day and a medical test was also conducted as per the format prescribed by the 2014 health ministry guidelines.¹³⁵ But the police failed to notify the child welfare committee or provide any information to the family regarding legal assistance.

¹³¹ Ibid.

¹³² Human Rights Watch interview with Sangeeta's father, Lalitpur, Uttar Pradesh, January 19, 2017.

¹³³ Human Rights Watch interview with Barkha, Agra, January 17, 2017.

¹³⁴ Letter from Padma's father to the superintendent of police, Lalitpur district, Uttar Pradesh, July 12, 2016. Copy on file with Human Rights Watch.

¹³⁵ First Information Report, July 13, 2016. Copy on file with Human Rights Watch.

Padma's parents told Human Rights Watch they are under tremendous pressure from the accused to privately settle the case. The father said that the accused's family asked him to find a suitable man to marry his daughter, saying they will take care of the costs. The father said, "The accused have threatened us that 'If you don't compromise, we will kill you.' All the villagers support them because they are wealthy."¹³⁶

Rashi, Madhya Pradesh

After she was raped by another villager on September 5, 2015, 40-year-old Rashi filed a police complaint.¹³⁷ But after the accused was released on bail, he started threatening and harassing Rashi and her family.

In March 2016, Rashi wrote to the police asking for protection.¹³⁸ When no action was taken by the police and the accused continued to threaten them, Rashi wrote another letter in April to the superintendent of police in Ujjain.¹³⁹ When that failed and the threats continued, in June 2016 she wrote a letter to the inspector general of police seeking protection.¹⁴⁰ Rashi told Human Rights Watch that local police told her husband to settle the dispute.¹⁴¹ But she said she continued to fight her case with the help of a nongovernmental organization, and in July 2017, the accused was convicted and sentenced to seven years in prison.

Palak, Madhya Pradesh

Palak, 18, was abducted from her home at about 1:30 a.m. in a village in Indore district by two men from dominant caste on June 20, 2013. According to details she later provided to her parents and the police, the men held a knife and threatened to kill her if she made any sounds, and then gagged her. Her kidnappers took her to a house in a different town where one of them raped her several times. Her parents filed a missing person's report at the police station the same day.

¹³⁶ Human Rights Watch interview with Padma's (pseudonym) parents, Lalitpur, Uttar Pradesh, January 19, 2017.

¹³⁷ First Information Report, Ujjain, Madhya Pradesh, September 5, 2015. Copy on file with Human Rights Watch.

¹³⁸ Letter from Rashi to the station in charge, police station in Ujjain district, Madhya Pradesh, March 18, 2016. Copy on file with Human Rights Watch.

¹³⁹ Letter from Rashi to superintendent of police, police control room, Ujjain, Madhya Pradesh, May 30, 2016. Copy on file with Human Rights Watch.

¹⁴⁰ Letter from Rashi to the inspector general of police, Madhya Pradesh, June 18, 2016. Copy on file with Human Rights Watch.

¹⁴¹ Human Rights Watch interview with Rashi (pseudonym), New Delhi, December 8, 2016.

The parents recounted to Human Rights Watch what they heard from Palak after she returned home: on June 23, one of the men dropped her at a bus stand, telling her to go home, but threatened to kill her and her family if she complained about what had happened. On the day she returned, her parents took Palak to the police station but she told the police she went with the men of her free will. But later, she told her parents she had been scared to tell the police the truth because of the threats by the accused.¹⁴² Her father told Human Rights Watch that when she finally divulged details to them, they went back to police station to file a FIR on June 29.¹⁴³ But, her parents said the police did not immediately arrest the accused and it took media reports to put the pressure on them. Even after filing the FIR, the family was terrified that the accused would act on their threats and kidnap Palak again.

Her father said Palak was too scared to go to school because of the threats. “The school was about two miles away and we were afraid something might happen again and we arranged her marriage with a man from a distant village within six months.”¹⁴⁴ The police filed the charge-sheet on August 31, 2013, for repeated rape, trespassing, kidnapping, and offenses under the Prevention of Atrocities Act. The trial is ongoing at this writing.

Police Mistrust

Gender-related crimes suffer from deeply entrenched bias from the authorities as well as society.¹⁴⁵ A significant challenge for rape survivors is police attitudes and suspicion about the veracity of the complaint.

Authorities can be quick to dismiss reports of sexual assault, a problem that is exacerbated when the victim knows the offender. India’s national crime data from 2015 shows that this was the case in 96 percent of rape cases that year and it was true in

¹⁴² Human Rights Watch interview with Palak’s (pseudonym) parents, New Delhi, December 8, 2016.

¹⁴³ First Information Report, Indore, Madhya Pradesh, June 29, 2013. Copy on file with Human Rights Watch.

¹⁴⁴ Human Rights Watch interview with Palak’s parents, New Delhi, December 8, 2016.

¹⁴⁵ In July 2017, India’s Supreme Court ordered changes to section 498A of the Indian Penal Code dealing with anti-dowry complaints, citing misuse of the law. “India top court orders changes in anti-dowry law to stop misuse,” *BBC*, July 28, 2017, <http://www.bbc.com/news/world-asia-india-40749636> (accessed August 22, 2017). The decision was widely criticized by senior advocates and women’s rights activists saying it was biased against women and based on erroneous analysis of insufficient data. See Indira Jaising, “Victim in the Dock,” *Indian Express*, August 2, 2017, <http://indianexpress.com/article/opinion/columns/victim-in-the-dock-law-of-cruelty-against-women-supreme-court-judgment-rajesh-sharma-and-ors-v-state-of-up-and-anr-4777931/> (accessed August 22, 2017).

virtually all of the cases documented by Human Rights Watch. In several cases where the suspects were already known to the victims, the police harassed the victim by insinuating that she had engaged in consensual sexual activity or eloped with the accused voluntarily.

“The primary challenge we face in our work is the misuse of the anti-rape laws,” said a female police officer in Haryana. “Sometimes, families have disputes over water or land or something else, and then one family will come and allege rape.”¹⁴⁶

Sadhana’s case exemplifies the kind of police hostility survivors often encounter. Sadhana, 28, was three-months pregnant when she said she was raped on May 12, 2014. She said that she and her husband had visited a so-called healer, who took her into the fields alone, under the guise of performing some rituals, asked her to eat some concoction that made her feel heavy and unable to move or scream, threatened her with a knife, and then raped her.¹⁴⁷ Sadhana, who belongs to a tribal community from Bharatpur district in Rajasthan, filed a police complaint two days later on May 14. Although the police eventually arrested the suspect on August 21 and filed a charge-sheet on October 14 of that year, Sadhana told Human Rights Watch that police personnel repeatedly doubted her claims. “They asked me whether I had relations with the accused, ‘Tell the truth.’ I started crying, told them there was no such thing.”¹⁴⁸

There is an entrenched belief among many officials in India that only “stranger rape” is rape. But where the accused is known to the survivor, the police tend to distrust survivors, suspecting some level of consent. Rajasthan’s assistant commissioner of police, Dipti Joshi, in charge of a women’s protection cell, told Human Rights Watch that in most cases, the victim knew the perpetrator, and the complaints had an ulterior motive.¹⁴⁹ She said:

¹⁴⁶ Human Rights Watch interview with a female police officer, Hisar, Haryana, June 6, 2017.

¹⁴⁷ First Information Report filed in Bharatpur, Rajasthan, May 14, 2016. Copy on file with Human Rights Watch.

¹⁴⁸ Human Rights Watch interview with Sadhana (pseudonym), Bharatpur, Rajasthan, January 16, 2017.

¹⁴⁹ To discover the ratio of “genuine” to spurious cases, police in Rajasthan said they analyzed the 330 rape complaints filed in Jaipur city in 2016. According to Joshi, there were only three cases where the offenders were unknown to the victim; 89 where the victim had known the accused for about 3-6 months; 48 where the victim went willingly with the accused, but then filed a case under the influence of parents; 95 where the woman was angry because the man broke a promise of marriage or job; and finally, 95 where the woman wanted to extort money or there was some other dispute between the families. Human Rights Watch interview with Dipti Joshi, assistant commissioner of police, Jaipur, Rajasthan, June 16, 2017.

The main fear for women is only when they see the accused for the first time [accused is unknown]. That's only a few cases. That tells us our law and order [in respect of women's safety] is effective.¹⁵⁰

Joshi's assumption—that rape claims are spurious, or nearly always so, when made by women who know their attacker—is serious cause for concern. Even assuming that some of these cases may involve an ulterior motive, as she claims, that does not warrant an across-the-board dismissive attitude toward women or girls who report acquaintance rape.

Police officers seek to justify their bias pointing to “false cases” filed especially where women and girls enter into consensual sexual relationships against the wishes of their parents, and subsequently the parents or relatives bring abduction and rape cases against the lover. The risk of parents or relatives using retaliatory criminal complaints against men and boys was only made worse in 2012, when the age of consent to sex was raised from 16 to 18.¹⁵¹

Such cases are challenging. But the underlying social problems need to be addressed to help tackle them. Even many adult women lack agency to choose a partner, a situation that is further exacerbated when the person is from a different caste or religion. There have been numerous reports of violence against women who dare to choose their partner, including “honor killings.”¹⁵² The same risks of violence extend to adolescent girls. Access to victim support services could help mitigate the risk of false complaints by women and their families fearing community shame or retaliatory violence.

For example, Human Rights Watch interviewed Pallavi, a Hindu girl, who she said she left home when she was 17 with her 23-year-old married Muslim lover because her parents opposed the relationship. Pallavi's parents retaliated by filing a false complaint of kidnapping and rape against her lover, misstating their daughter's age as 15. Pallavi's lover was jailed, implicated in the rape case, but at time of writing was out on bail. Pallavi's mother admits to filing a false case. Her testimony reveals her own fears of being

¹⁵⁰ Human Rights Watch interview with Dipti Joshi, assistant commissioner of police, Jaipur, Rajasthan, June 16, 2017.

¹⁵¹ See chapter VI.

¹⁵² “India: Prosecute Rampant ‘Honor’ Killings,” Human Rights Watch news release, July 18, 2010, <https://www.hrw.org/news/2010/07/18/india-prosecute-rampant-honor-killings>.

ostracized as well as the potentially life-threatening pressures women and girls face in many parts of the country for merely exercising their agency:

We told her, “Why didn’t you find someone of your own religion, we would have happily married you to that man.” We told his [the accused’s] parents to bring our daughter back but they didn’t listen to us. So, then we went to the police station. We will not let her go to him. We can’t show our face anywhere because of the shame she brought on us. We loved her so much. If she was born to some other parents, they would have cut her into pieces by now.¹⁵³

In March 2017, an academic and activist, Madhu Kishwar, filed a petition in Delhi High Court challenging the 2013 amendments, saying they were being abused by women to file false cases, motivated largely by revenge. The petition claimed a majority of false cases were about breach of promises to marry and consensual elopements. The petition also challenged the expanded definition of rape to include non-penovaginal penetration, arguing such acts cannot be medically corroborated.¹⁵⁴ In response to this argument, during a hearing in July the bench said: “In most of such cases, there is no medical evidence. Oral testimony of the victim is sufficient. Just because some false cases are filed, we cannot deny justice to real victims.”¹⁵⁵ The court has allowed the Anti-Rape Coalition (ARC), a coalition of 17 women’s groups and organizations that opposes the petition, to be included as a party in the case.¹⁵⁶

Mrinal Satish, a professor at the National Law University, Delhi, and author of a book examining shortcomings of the judicial process in prosecuting sexual violence cases in India, says the laws have enough safeguards to deal with false allegations of rape and sexual violence:

¹⁵³ Human Rights Watch interview with Pallavi’s (pseudonym) mother, Agra, January 17, 2017.

¹⁵⁴ *Madhu Purnima Kishwar v. Union of India*, W.P. (C) No. 2487/2017, <http://www.livelaw.in/delhi-hc-seeks-centres-response-pil-2013-amendment-rape-law-read-petition/> (accessed August 22, 2017).

¹⁵⁵ “Delhi High Court: Can’t deny rape victims justice for lack of medical proof,” *Press Trust of India*, July 5, 2017, <http://indianexpress.com/article/india/delhi-high-court-cant-deny-rape-victims-justice-for-lack-of-medical-proof-4737494/> (accessed August 25, 2017).

¹⁵⁶ Application for impleadment on behalf of Anti-Rape Coalition in the matter of *Madhu Kishwar v. Union of India*, file:///C:/Users/User/Downloads/ARC-Impleadment-MadhuKishwarv.Uol-1.7.2017.pdf (accessed August 31, 2017).

That women frequently make false allegations of rape is one of the most prevalent rape myths across the world. It is deeply rooted in patriarchal and misogynistic thoughts. Rape law is as misused as any other law. It is ironic that when it comes to gender-related crimes, the false allegation argument is immediately made, whereas one does not hear such arguments for other offences.¹⁵⁷

¹⁵⁷ Saikat Datta, "Interview: Though India's rape law has been overhauled, it still lacks a sentencing policy," *Scroll.in*, December 13, 2016, <https://scroll.in/article/823982/interview-though-indias-rape-law-has-been-overhauled-it-still-lacks-a-sentencing-policy> (accessed August 22, 2017).

III. Access to Therapeutic Care and Medical Examination

Women, men, and children who experience rape should be encouraged to pro-actively seek medical treatment and counseling and there is now a law providing for such a right. Medical examinations not only serve a therapeutic purpose but can also help gather forensic evidence.

Under Indian criminal law, the prosecution can secure a conviction for rape based solely on the testimony of the rape survivor where it is “cogent and consistent” in material particulars.¹⁵⁸ Forensic corroboration is considered legally relevant but not essential. In practice, however, judges and police give significant weight to forensic evidence, therefore necessitating the need for standardizing medico-legal evidence collection and awareness around its limitations. This section describes the law and policy governing medical treatment and evidence collection in India, and the lack of progress made in implementing them.

Key Legal, Policy, and Programmatic Reforms

Doctors are obligated to provide first-aid or medical treatment, free of cost, to women and girls who approach them and disclose rape. Denial of treatment to rape survivors is punishable under section 166B of the Indian Penal Code with imprisonment for up to a year.¹⁵⁹ Doctors are also duty-bound to report to the police all sexual offenses, including cases where women and children approach them only for treatment, irrespective of whether the victim wants the case reported to the police.¹⁶⁰

In 2014, the central government’s Ministry of Health and Family Welfare issued guidelines and protocols to handle sexual violence cases.¹⁶¹ The 2014 Guidelines aim to ensure that survivors receive proper treatment in a sensitive and non-discriminatory manner respectful

¹⁵⁸ See for example, *State of Punjab v. Gurmeet Singh*, 1996 Cri LJ 1728 and *State of Maharashtra v. Chandraprakash Kewalchand Jain*, 1990 Cri LJ 889.

¹⁵⁹ Indian Penal Code, s. 166B.

¹⁶⁰ Criminal Procedure Code, 357 CrPC. See below, Section on Therapeutic Care and Counseling for more information.

¹⁶¹ Guidelines and Protocols, Medico-legal care for survivors/victims of sexual violence, Ministry of Health and Family Welfare, Government of India, March 19, 2014, <http://mohfw.nic.in/sites/default/files/953522324.pdf> (accessed February 15, 2017).

of the privacy, dignity, and autonomy of each survivor and to standardize the collection of medical evidence in cases of sexual assault, including by requiring the patient’s informed consent prior to medical procedures.¹⁶²

The 2014 Guidelines integrate processes geared to respect women’s and children’s rights to privacy, dignity, creating a non-threatening environment (for example, police should not be present in the room and a support person of the woman’s or child’s choice should be), and informed consent.

They also set forth scientific medical information and processes to aid in correcting pervasive myths and degrading practices around rape, which are reinforced by medico-legal practices. First, they eliminate what is commonly known as the “two-finger test” by limiting internal vaginal examinations to cases where it is “medically indicated” and by emphasizing that doctors should not use their medical findings to make unscientific and degrading comments about whether the victim was “habituated to sex.”¹⁶³

Second, they direct doctors to conduct full-body examinations, tailoring the examination to the specific survivor after listening to her account of the episode of sexual violence, including non-penile penetrative forms of sexual violence. Such a carefully tailored approach reduces doctors’ ability to conduct cursory medical examinations based on common misconceptions about rape—the most common one being that a victim who does not “resist rape” and present signs of resistance or vaginal injuries could not have been raped.¹⁶⁴

Third, it directs doctors to record the victim’s activities after rape (bathing, urinating, douching, changing clothes, and so on) and the time elapsed between the offense and the medical examination to document any reasons that may have contributed to the loss of medical evidence. This enables doctors to explain the limitations and possible loss of medical findings in their written opinions and during trials.¹⁶⁵

The 2014 Guidelines also correct a key misconception about doctors’ roles, stating that doctors cannot comment about whether “rape” occurred since that is a decision for the trial court.¹⁶⁶ Finally, the 2014 Guidelines also ask the doctor to give a copy of all

¹⁶² Ibid.

¹⁶³ Ibid.

¹⁶⁴ Ibid.

¹⁶⁵ Ibid.

¹⁶⁶ Ibid.

documentation, including medico-legal examination and treatment, to the survivor, free of cost.¹⁶⁷ To help improve women and children’s access to health and other services after experiencing gender-based violence, the Ministry of Women and Child Welfare introduced the One Stop Crisis Centre Scheme.¹⁶⁸

Poor Implementation of the 2014 Health Ministry Guidelines

Under India’s federal structure, health is a state subject and therefore, the state governments are not legally bound to adopt the central government’s guidelines. But the central government has also not provided any oversight to encourage the adoption and implementation of the guidelines. This is in stark contrast to the central government’s political will to implement other nationwide health programs, notably the National Health Mission and state health insurance schemes where the central government has developed guidelines and programs that states should implement.

So far, only nine states have adopted the guidelines, including Uttar Pradesh, Madhya Pradesh, and Maharashtra where Human Rights Watch conducted interviews with survivors and doctors.¹⁶⁹ Many states have their own guidelines, but they are often outdated and lack the detail and sensitivity of the 2014 Guidelines of the central government, requiring procedures and medical examinations even when they may not be necessary. For instance, the standard form used in Rajasthan hospitals still has a column that asks for a comment on the status of the hymen and doctors do the two-finger test to fill it. “These forms are dated from even before I was born,” said a medical jurist at the department of forensic evidence in a hospital in Jaipur.¹⁷⁰

While the Haryana state government issued its own medico-legal manual in 2012—which pre-dates the 2014 Guidelines and needs to be revised—hospitals do not always follow those protocols either. In a government hospital in Hisar district, Human Rights Watch found that the doctors used a two-page form instead of the detailed 17-page form issued by the government. The resident medical officer said: “The government proforma is long.

¹⁶⁷ *Ibid.*, p. 22.

¹⁶⁸ See chapter V for a discussion on one stop centers.

¹⁶⁹ Letter from Arvind Narayan Mishra, special secretary, government of Uttar Pradesh, May 6, 2015; Letter from Directorate of Health Services, Madhya Pradesh, June 29, 2014, <http://www.health.mp.gov.in/guideline/sexual-violation-1109-19-6-14.pdf> (accessed September 1, 2017).

¹⁷⁰ Human Rights Watch interview, Jaipur, Rajasthan, June 15, 2017.

The internet doesn't always work, then sometimes the printer doesn't work, so we mostly use the old manual forms."¹⁷¹

But, even in a state like Maharashtra that implements the guidelines, beyond big cities like Mumbai, doctors are rarely aware of the medico-legal guidelines. "While doctors in Mumbai may be aware of the guidelines, those at district level and lower do not know better. They always answer these questions. And during trial, the defense team benefits from these questions and misleads the court," said Manisha Tulpule, a lawyer with many years of experience assisting rape survivors and a former member of a child welfare committee in Maharashtra.¹⁷²

Ragini's case, where she reported rape in 2013, before the 2013 amendment and the 2014 Guidelines, reveals many problems in the way the doctor handled medical examination and testimony during trial, which were sought to be rectified in the thus critical 2014 Guidelines. Ragini, 32, from a village in Dewas in Madhya Pradesh, said her medical examination experience was harrowing. She said she was raped and attacked with a knife, leaving her with a visible injury on her hand. She went for a medical exam within 24 hours of the rape.

In the medical report, the doctor noted that Ragini "is used to sexual intercourse as she is mother of 3 children, so we cannot say [anything] about rape."¹⁷³ The medical report said there is an "abrasion mark on left forearm, injury absent." Ragini told Human Rights Watch that the doctor was abrupt in her dealings with her, failed to secure informed consent, and ignored her external injuries:

I had a knife injury on my hand and it was swollen and hurting [when I went to the doctor]. But she said she we will look at it later. Then she put something inside me. I was so scared I couldn't even say anything. After she finished her test she told me, "Nothing has happened. If something

¹⁷¹ Haryana Medico-Legal Manual 2012, <http://haryanahealth.nic.in/userfiles/file/pdf/PM%20Branch/Medico%20Legal%20Manual/2.%20Haryana%20Medicolegal%20Manual%202012%2031.1.2012.pdf> (accessed June 15, 2017); Human Rights Watch interview, Hisar, Haryana, June 6, 2017.

¹⁷² Human Rights Watch interview with Manisha Tulpule, lawyer, Mumbai, February 10, 2017.

¹⁷³ Medical examination report, March 13, 2013. Copy of report on file with Human Rights Watch.

happened with you, there should have been evidence.” She didn’t look at my injured hand, didn’t even give me a medicine for pain.¹⁷⁴

The format used to write the medical report did not require the doctor to note down whether Ragini had bathed, urinated, or washed before coming for the exam, omitting important information that allows doctors to explain during trial possible reasons contributing to the loss of medical evidence. However, the report did note that she was menstruating. As an expert witness during trial, the doctor deposed that she found no internal injuries. While she mentioned that Ragini was menstruating at the time of medical exam, she made no observations on the possible loss of evidence.¹⁷⁵

In some cases documented by Human Rights Watch in states that had adopted the 2014 Guidelines, medical staff permitted a police officer to be present during the examination. And they often failed to secure informed consent or explain the purpose of the examination.

For instance, health authorities did not explain the test or seek informed consent from Rashi, 40, in Madhya Pradesh, when her medical examination was conducted in September 2015. Instead the doctor asked her husband to sign the form.¹⁷⁶ The medical report concluded that as a married mother of two, there is “no clear cut opinion to give about rape.”¹⁷⁷ Hospital staff allowed a female police officer to be present throughout the medical exam, which Rashi found intimidating. Rashi told Human Rights Watch:

It started burning when she put her fingers inside me as if someone put chilies in me. But I was scared to say anything because of the policewoman standing next to me.¹⁷⁸

Role of Police, Judges, and Doctors

The state-level home department, which governs the police, plays a critical role in ensuring that government guidelines are adopted. After the police register an FIR, they take a victim for a medical examination along with a requisition form for the medical examination. The

¹⁷⁴ Human Rights Watch interview with Ragini, New Delhi, December 8, 2016.

¹⁷⁵ Doctor’s testimony in court, November 18, 2015. Copy of her deposition on file with Human Rights Watch.

¹⁷⁶ Medico-legal report of Rashi, September 5, 2015, Ujjain, Madhya Pradesh. Copy on file with Human Rights Watch.

¹⁷⁷ Medico-legal report for Rashi, September 5, 2015, Ujjain, Madhya Pradesh. Copy on file with Human Rights Watch.

¹⁷⁸ Human Rights Watch interview with Rashi, New Delhi, December 8, 2016.

form typically lists one or more questions for doctors' opinions. Where poorly framed, these questions leave doctors feeling pressured to answer them rather than following the 2014 Guidelines.

For example, the 2014 Guidelines include directives on addressing the full array of sexual offenses, not simply penile penetration, and provide detailed guidance on how medical opinions should be developed. But Human Rights Watch interviews with both police and doctors revealed that police continue to direct doctors' attention to answering whether semen was found or focus on "forcible" rape which may or not be relevant to the facts. A senior gynecologist from Mumbai told Human Rights Watch:

The police always ask us whether forceful [sexual] assault has taken place, whether semen is present. They haven't been trained and that's why they ask such questions. For the police, sexual assault is only [penile] penetrative. For us it is many things: oral sex, molestation, other things. That's what annoys us – the weightage in the police requisition forms given to [penile] penetrative [sexual] assault.¹⁷⁹

Judges also may be unaware or fail to adhere to the 2014 Guidelines in many cases. The practice of citing doctors' unscientific and degrading findings about the two-finger test in judgments has not yet ended, even though the Supreme Court has discouraged the practice.¹⁸⁰ For example, a study of Karnataka fast-track court judgments found that 25 percent of the judgments made explicit reference to the test and to the victim being habituated to sexual intercourse.¹⁸¹

Beyond the need to wipe out the use of "two-finger test" findings, judges need training to understand the limitations of medical evidence. This will go a long way in curbing rape myths and stereotypes among the lower and higher judiciary—especially around "resisting rape" and how such resistance can always be gleaned from medical reports. A senior gynecologist at a municipal hospital in Mumbai who has often been called upon to testify about rape said that she often needs to explain basic facts to the court, and noted that the 2014 Guidelines can be a useful tool:

¹⁷⁹ Human Rights Watch interview with a senior gynecologist, municipal hospital, Mumbai, February 10, 2017.

¹⁸⁰ *Narayanamma v. State of Karnataka* with *State of Karnataka v. Muniyappa and others*, (1994) 5 SCC 728, para. 4(iv). See also, *State of Punjab v. Ramdev Singh*, (2004) 1 SCC 421, para. 5. 144.

¹⁸¹ Jayna Kothari, "Sexual Offences Court on Trial: Neither Fast nor Just," *The New Indian Express*, July 1, 2015, <http://clpr.org.in/sexual-offences-court-on-trial-neither-fast-nor-just-2/> (accessed March 1, 2017).

I have decided that in future I am going to carry to court the central government's guidelines and the order by the Maharashtra government. Because rather than fighting and arguing, it is better to show them guidelines.¹⁸²

Anecdotal evidence suggests that where doctors are trained and equipped to implement the guidelines well, they are subsequently able to field questions regarding absence of injuries and loss of evidence without being pressured. “We have found that in cases where doctors have been able to explain limitations of medical evidence in courts, it has strengthened the survivors’ cases,” says Aarthi Chandrashekhar, a research officer at the Mumbai-based Centre for Enquiry into Health and Allied Themes.¹⁸³

Lack of Attention to Therapeutic Care and Counseling

Health providers have a dual role when it comes to responding to sexual violence. Apart from collecting forensic evidence for use during any criminal investigation and prosecution, they must provide therapeutic care to survivors—including addressing their sexual, reproductive, and mental health problems. The 2014 Guidelines detail how the doctor should provide treatment, including for sexually transmitted infections, provide emergency contraception, assess risks of HIV, and if needed, provide post exposure prophylaxis.¹⁸⁴ The guidelines also lay out psychosocial care for survivors saying that health professionals should themselves provide first line support or ensure someone else trained at the facility can provide it.¹⁸⁵ However, doctors usually prioritize the collection of forensic evidence, and spend little, if any, time on essential therapeutic care.

In nearly all the rape cases documented by Human Rights Watch, women and girls said that they received almost no attention to their health needs, including counseling. Instead of being nonjudgmental and providing a safe environment to seek treatment and examination, doctor attitudes toward women who report rape can leave them

¹⁸² Human Rights Watch interview with a senior gynecologist, municipal hospital, February 10, 2017.

¹⁸³ Human Rights Watch interview with Aarthi Chandrashekhar, research officer, Centre for Enquiry into Health and Allied Themes, Mumbai, February 9, 2017.

¹⁸⁴ 2014 Guidelines, p. 33.

¹⁸⁵ 2014 Guidelines, pp. 37-40. This includes addressing the survivor's well-being, encouraging her to express her feelings and seek crisis counseling, making a safety assessment and safety plan, and involving family and friends in the healing process. The guidelines also say the health professional should inform survivors about available resources, referrals, and legal rights so that they can make an informed decision.

retraumatized. For example, the doctor who examined 18-year-old Palak, a Dalit teenager from Madhya Pradesh, engaged in victim blaming rather than offering her immediate counseling and other referral services.¹⁸⁶

Palak's mother, who was in the room with her daughter during her medical examination, told Human Rights Watch that the doctor tried to insinuate that Palak was lying about rape:

The doctor told my daughter, "Why are you causing such trouble for your parents. If they had forced themselves on you, there should have been marks on your body, but you don't have any. You must have done this of your own free will." During the test, my daughter screamed with pain saying it's hurting her. But the doctor just reprimanded her. My daughter became even more scared after.¹⁸⁷

Kajal, 23, from Neemuch district, did not have support from her husband's family, and was in urgent need of medical and counseling support for months after she was raped in September 2015. Her husband and his family abandoned her, and she returned to live with her parents. She and her parents were forced to move away from their home after threats from the accused. But the doctor who examined her had not provided any referral for counseling. She said:

I have lost everything and everyone blames me. I didn't even leave my home for a month after the incident. I was tired of listening to neighbors' taunts. I had stopped eating, just lay like a mad woman at home. It felt like I had lost my mind.¹⁸⁸

Inadequate Access to Safe Abortion After Rape

Women and girls should have access to safe abortions if they become pregnant after rape. The Medical Termination of Pregnancy, Act, 1971 allows registered doctors to terminate pregnancies up to 20 weeks "where the continuance of the pregnancy would involve a risk

¹⁸⁶ In her medical report, the doctor concluded that there were "no signs of struggle or injury" and the hymen was "old torned [sic]." Medico-legal report, Indore, Madhya Pradesh, June 30, 2013. A copy on file with Human Rights Watch.

¹⁸⁷ Human Rights Watch interview with Palak's parents, New Delhi, December 8, 2016.

¹⁸⁸ Human Rights Watch interview with Kajal, Chittorgarh, Rajasthan, January 13, 2017.

to the life of the pregnant woman or of grave injury physical or mental health.”¹⁸⁹ The law also says that “where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.”¹⁹⁰

Human Rights Watch documented two instances where girls below age 18 became pregnant as a result of the rape. By the time 16-year-old Padma from Lalitpur district discovered the pregnancy after her rape, she was 28 weeks pregnant.¹⁹¹ After her medico-legal examination, which included an ultrasound test, Padma’s family was told by the gynecologist that it was too late to abort. Her doctor did not provide or recommend counseling. Her parents withdrew her from school. Her mother said, “Now, we are so embarrassed that we don’t go anywhere in the village or visit anyone’s house. Our unwed daughter has become a mother.”¹⁹² In September 2016, Padma delivered a baby girl and when Human Rights Watch interviewed her family in January 2017, she was still waiting for the state to process her compensation request.

In April 2016, Gayatri, 17, told the police in Khargone district in Madhya Pradesh that her father had been raping her for months. Her brother said he had witnessed the abuse.¹⁹³ During her medical examination, the doctor advised her family to take her to the district hospital for an ultrasound because she was pregnant. The ultrasound revealed that she was three-months pregnant, Gayatri’s aunt said that the gynecologist told her that because Gayatri was under 18, they would need permission from the court to abort, even though the law does not require that.¹⁹⁴

Gayatri’s uncle filed a petition in the lower court but the court denied the permission to abort. Her uncle then appealed to the high court, which in May 2016, gave Gayatri permission to terminate her pregnancy. By the time Gayatri terminated her pregnancy, she was five-months pregnant. According to her aunt, Gayatri was not offered any follow-up care

¹⁸⁹ Medical Termination of Pregnancy Act, 1971, section 3. Under the law, doctors are not limited by the 20-week period where a registered doctor is of the opinion that the “termination of such pregnancy is immediately necessary to save the life of the pregnant woman.” See section 5(1) of the law.

¹⁹⁰ *Ibid.*, section 3, Explanation.

¹⁹¹ Medico-legal examination report of Padma, July 13, 2016. Copy of report on file with Human Rights Watch.

¹⁹² Human Rights Watch interview with Padma’s parents, Lalitpur, Uttar Pradesh, January 19, 2017.

¹⁹³ First Information Report, Khargone district, Madhya Pradesh, April 17, 2016. Copy on file with Human Rights Watch.

¹⁹⁴ Human Rights Watch interview with Gayatri’s aunt, New Delhi, December 18, 2016. Medical Termination of Pregnancy Act, s. 4 (a) states that pregnancy can be terminated for those under the age of 18 years with the consent in writing of her guardian.

or psychosocial counseling after the abortion and was ill for some time.¹⁹⁵ The police and the hospital also failed to contact the child welfare committee to notify them about the case and ensure Gayatri received support from them. In February 2017, a court in Madhya Pradesh sentenced Gayatri's father to life in prison and directed she be paid compensation.¹⁹⁶

Recently, several rape victims have petitioned the courts seeking safe abortion when denied by doctors.¹⁹⁷ In the most recent case, a 10-year-old girl from Chandigarh who became pregnant after rape was repeatedly denied access to safe abortion. By the time the appeal went to the Supreme Court, her request was denied citing the medical opinion of an ad hoc board.¹⁹⁸ In a public statement, health rights groups called on the Indian government to ensure access to safe abortions to all victims of rape without imposing any upper time limit (as already permitted under section 5 of the MTP Act) recognizing that in such cases, "pregnancy constitutes a serious risk to the life, health and mental health of the child and adolescent (as well as the woman)," and a safe abortion is far less risky than childbirth for underage girls, which risks death.¹⁹⁹

¹⁹⁵ Ibid.

¹⁹⁶ Court order, Madhya Pradesh, February 14, 2017. Copy on file with Human Rights Watch.

¹⁹⁷ "India rape victim, 13, seeks court approval for abortion," *BBC*, August 28, 2017, <http://www.bbc.com/news/world-asia-india-40996629>(accessed August 29, 2017).

¹⁹⁸ Krishnadas Rajagopal, "SC rejects abortion plea of 10-year-old," *The Hindu*, July 28, 2017, <http://www.thehindu.com/news/national/sc-rejects-plea-seeking-nod-for-10-year-old-rape-survivors-abortion/article19377784.ece> (accessed August 21, 2017).

¹⁹⁹ "Sexual abuse of girls followed by refusal of abortion: a statement of concern," Statement of Concern, <http://www.commonhealth.in/Sexual%20abuse%20of%20girls%20followed%20by%20refusal%20of%20safe%20abortion%20India.pdf> (accessed August 9, 2017).

IV. Lack of Access to Effective Legal Assistance

In 1994, the Supreme Court ruled that rape victims should be provided legal assistance at police stations. The court also ordered all police stations to keep a list of advocates willing to provide legal assistance in such cases where victims do not have a lawyer.²⁰⁰

Legal assistance is important to help victims navigate the legal system and protect their rights. Such assistance is especially important because public prosecutors are often overburdened and come unprepared to court.²⁰¹

Rebecca Mammen John, a senior criminal lawyer in Delhi, said:

A victim's lawyer can make a huge difference because there is no bar on a victim's lawyer on preparing the victim for examination in court, he/she can help to orient the victim, keep her abreast of legal proceedings, make necessary interventions in courts when the public prosecutor is lacking especially when it comes to legally admissible evidence and objection they should raise.²⁰²

However, even though more than two decades have passed since the Supreme Court order, India does not have a nationwide program in which police stations are systematically linked with legal aid services.

In one positive example, the Delhi Commission for Women (DCW), a statutory body of the government, operates a rape crisis cell that coordinates with police stations and legal assistance. However, even this model at times falls short when it comes to actual implementation. For example, a 2017 study by the Delhi-based Partners for Law in

²⁰⁰ *Supreme Court of India, Delhi Domestic Working Women's Forum v. Union of India and Ors.*, 1995 SCC (1) 14, Oct. 19, 1994, available at <https://indiankanoon.org/doc/1765970/> (accessed May 13, 2017).

²⁰¹ See, for example, "Towards victim-friendly responses and procedures for prosecuting rape: A study of pre-trial and trial stages of rape prosecutions in Delhi (Jan 2014-March 2015)," Partners for Law in Development, May 1, 2017, <http://pldindia.org/wp-content/uploads/2017/06/A-STUDY-OF-PRE-TRIAL-AND-TRIAL-STAGES-OF-RAPE-PROSECUTIONS-IN-DELHI-2017.pdf> (accessed June 26, 2017).

²⁰² Human Rights Watch interview with Rebecca John, New Delhi, September 1, 2017.

Development of 16 rape trials in fast-track courts in Delhi in 2014 and 2015 observed that the DCW scheme was “not monitored and is not working as intended.”²⁰³

The quality of legal aid is another challenge. Even in Delhi, victims complained that legal aid lawyers did not turn up in courts, did not file applications in time, and in some cases, were allegedly involved in corruption. “It’s really your luck if you run into a good lawyer,” said Delhi-based lawyer Vrinda Grover, who has many years of experience assisting rape survivors.²⁰⁴ Low remuneration provided to legal aid lawyers is a significant hurdle to getting effective legal service, she said, but she also highlighted lack of accountability: there is no good mechanism to evaluate the services provided by legal aid counsel.²⁰⁵

In Haryana, the police say they call legal service authorities in rape cases and a lawyer is present when the police record the victim’s statement. Legal aid counsel also assists the victim when she records her statement in front of a magistrate. But the lack of training and awareness of legal aid lawyers means that they may fail to inform victims about their right to compensation, and some harbor prejudice against rape victims. For instance, Rekha Mittal Kathuria, a lawyer with District Legal Services Authority in Hisar, Haryana, said, without backing up her statistics:

Women are misusing these anti-rape laws a lot. Eighty percent of rape cases are false. The victim comes to the police station either because they want money or there was some other dispute. Even when it is real rape, the women themselves are responsible for these circumstances. Why doesn’t anyone rape us?²⁰⁶

None of the women Human Rights Watch interviewed reported receiving any referrals for legal assistance after approaching the police. In several cases described in the previous chapters, the women wrote letters to senior police officials, various state authorities, and filed applications in courts seeking justice with the help of local NGOs. Emerging studies show that legal assistance alongside witness protection are critical to help make fast-track

²⁰³ “Towards victim-friendly responses and procedures for prosecuting rape,” Partners for Law in Development, May 1, 2017.

²⁰⁴ Human Rights Watch interview with lawyer Vrinda Grover, New Delhi, June 22, 2017.

²⁰⁵ Ibid.

²⁰⁶ Human Rights Watch interview with Rekha Kathuria, Hisar, Haryana, June 6, 2017.

courts effective. The government has established around 524 fast-track courts across the country to expeditiously try cases and dealing with crimes against women and children.²⁰⁷

There are no nationwide studies to determine the effectiveness of fast-track courts. Anecdotally, however, the focus on setting up fast-track courts alone, without equal focus on other key concerns, including legal assistance to the victim to help her navigate the system, undermines their effectiveness.²⁰⁸

In cases involving girls, the law provides for a support person to provide assistance to the child throughout the process of investigation and trial.²⁰⁹ Implementation is often lacking in this regard, as Human Rights Watch found in the cases documented in its 2013 report on child sexual abuse.²¹⁰

Another major problem is that sexual violence survivors are unable to access up-to date information about their case, according to a 2016 report by the Delhi State Legal Services Authority in collaboration with the police. Geetanjali Goel, special secretary at the Delhi State Legal Services Authority, said:

This is why we say that support persons should be provided in rape cases like in POCSO [Protection of Children from Sexual Offences Act]. It need not be mandatory, but there should be an option, because the victim does not even know the status of the case, of the police investigation, whether charge-sheet was filed, whether accused applied for bail.²¹¹

Delays in Investigations and Trials

Criminal trials in India last for months and often for years in part because court sessions are held intermittently and there can be frequent adjournments. However, the Code of Criminal Procedure requires rape trials to be conducted day-to-day until all witnesses are examined and where adjournments beyond the following day are necessary, the reasons

²⁰⁷ Information provided by the Ministry of Law and Justice, Government of India, to a question in Lok Sabha, April 5, 2017, <http://loksabha.nic.in/Members/QResult16.aspx?qref=51629> (accessed August 23, 2017).

²⁰⁸ "Towards victim-friendly responses and procedures for prosecuting rape," Partners for Law in Development, May 1, 2017.

²⁰⁹ POCSO Rules, 2012, rule 4(7).

²¹⁰ Human Rights Watch, *Breaking the Silence*, 2013.

²¹¹ Human Rights Watch interview with Geetanjali Goel, Delhi State Legal Services Authority, New Delhi, August 1, 2017.

should be recorded. Further, “as far as possible,” all rape trials should be completed within two months from the date of filing the charge-sheet.²¹² The amended Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act also makes similar provisions for a speedy trial if the victim belongs to a Dalit or tribal community.²¹³

However, the two-month period for completing a trial is not realistic and may also threaten the right to fair trial of the accused, as the 2017 study by Partners for Law in Development found.²¹⁴ The report cites delays in forensic reports; adjournments sought by defense counsel, prosecution, or the officers of the court; lawyers’ strikes; and the caseload of the court as some of the common reasons for the delays. At the same time, as the report notes and Human Rights Watch found, a delay in trial makes the survivor and her family further susceptible to pressures from the accused to drop the proceedings.²¹⁵

Delays in forensic reports can cause a critical bottleneck in rape investigations. Hundreds of cases are held up as forensic laboratories struggle with inadequate resources and under-staffing.²¹⁶ Assistant Commissioner of Police Dipti Joshi from Jaipur said it takes a minimum of three to four months for a forensic report.²¹⁷ In December 2015, a report by the Parliamentary Standing Committee on Home Affairs on Functioning of Delhi Police “expressed anguish” over the inadequacy of forensic infrastructure and recommended that the capacity and strength of labs be enhanced to ensure proper and speedy investigation and trials.²¹⁸

²¹² Code of Criminal Procedure (Amendment) Act, No. 5 of 2009, s. 309 (1).

²¹³ The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, No. 1 of 2016, <http://www.tribal.nic.in/DivisionsFiles/mj/4-preventionofAtrocities.pdf> (accessed May 12, 2017), section 4. In addition, the Atrocities Act states that the police should aim to conclude the investigation and file a charge-sheet within 60 days and explain any delay in writing.

²¹⁴ “Towards victim-friendly responses and procedures for prosecuting rape,” Partners for Law in Development, May 1, 2017.

²¹⁵ See Kalpana’s case, as documented in chapter II, section on Informal Khap Panchayats. With the proceedings delayed as the court awaited the forensic report and under pressure from the Khap Panchayat, she turned hostile witness.

²¹⁶ Sana Shakil, “Forensic delay is defeat of justice: Experts,” *Times of India*, November 7, 2015, <http://timesofindia.indiatimes.com/india/Forensic-delay-is-defeat-of-justice-Experts/articleshow/49696258.cms> (accessed June 25, 2017).

²¹⁷ Human Rights Watch interview with Dipti Joshi, assistant commissioner of police, Jaipur, Rajasthan, June 16, 2017.

²¹⁸ Action taken by the Government on the Recommendations/Observations contained in the 176th Report on the Functioning of Delhi Police, Report no. 189, December 2015, <http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20Home%20Affairs/189.pdf> (accessed June 26, 2017).

Madhulika Sharma, director of the only government forensic science laboratory in Delhi, said that they are working double-shifts to tackle the backlog of cases that goes back to 2014:

Police, but especially judiciary, now ask for DNA in all cases. More than 60 to 70 percent of the cases we receive are regarding rape. We have about 2,200 pending cases, which we hope to finish by next year. At the same for new cases, we try to report back to the police within 60 to 90 days.²¹⁹

The experience of Palak, the 18-year-old Dalit who was kidnapped and raped in Madhya Pradesh in June 2013 as noted above, illustrates how the lack of adequate legal assistance may also contribute to such delays in trials. Because of repeated adjournments, it took the prosecutor three years to record Palak's complete statement, and the criminal case against the alleged perpetrator is still pending before the trial court. Palak does not have a lawyer and relies on the public prosecutor.²²⁰ At the most recent hearing, in April 2017, the court noted that a police report that her parents had filed when she went missing was not included in the records submitted by the police. Police asked for two months' time to respond, but had not responded at time of writing.

Palak's parents said they wished they were better informed about the legal proceedings: "We asked the public prosecutor about what's happening in the case but he said he will call us when our date comes in court. We don't know anything about the case and we cannot even ask anybody."²²¹

Said Delhi-based lawyer Vrinda Grover: "The role of the complainant's counsel is extremely limited. They have the right to give written arguments, but can't lead the evidence. It's the public prosecutor who examines the witness and leads evidence. It's a miracle we get a conviction in this country."²²²

²¹⁹ Human Rights Watch interview with Madhulika Sharma, Delhi, July 28, 2017.

²²⁰ Human Rights Watch interview with Palak's parents, Madhya Pradesh, August 23, 2017.

²²¹ Human Rights Watch interview with Palak's parents, Madhya Pradesh, August 23, 2017.

²²² Human Rights Watch interview with lawyer Vrinda Grover, New Delhi, June 22, 2017.

V. Initiatives to Support Sexual Assault Survivors

India does not have a national program to guide the work of various ministries and state governments in their efforts to prevent and respond to violence against women. As a result, there is a patchwork of programs either initiated by central or state governments. Even these ad hoc efforts are not properly monitored because India does not have a nationwide monitoring and evaluation framework to assess the implementation and effectiveness of laws governing violence against women and children, including sexual violence. Said Anju Pandey, head of the Ending Violence Against Women unit at UN Women: “Even in basic access to justice, we are not seeing any change really. Where is monitoring and oversight of all of these programs?”²²³

In 2013, the central government established the Nirbhaya Fund for schemes aimed at prevention, protection and rehabilitation of women allocating 3,000 crore rupees (US\$450 million) from 2013 to 2017.²²⁴ Three years later, most of the funds allotted for this remained unutilized. In May 2016, the Supreme Court issued a notice to the central and all state governments seeking an explanation on why the funds were not spent.²²⁵

A 2017 report by the Delhi-based think-tank Centre for Budget and Governance Accountability (CBGA) and nongovernmental organization Jagori found that Nirbhaya budget allocations for two critical schemes, the 181 women’s helpline and the one stop crisis centers, remained unutilized in the first three years after their introduction in 2012-13. The report also noted how an important scheme, the Financial Assistance and Support Services to Victims of Rape: A Scheme for Restorative Justice, was not implemented despite funds being allocated for it and was eventually discontinued in 2015-16.²²⁶

²²³ Human Rights Watch interview with Anju Pandey, Ending Violence Against Women Unit, UN Women, New Delhi, January 27, 2017.

²²⁴ “Government Issues Guidelines for Administration and Operationalization of ‘Nirbhaya Fund,’” Press Information Bureau, Government of India, April 1, 2015, <http://pib.nic.in/newsite/PrintRelease.aspx?relid=117914> (accessed February 18, 2017).

²²⁵ “Why has the Nirbhaya Fund not been used: SC to Centre,” *Newsx.com*, May 26, 2016, <http://www.newsx.com/national/29955-why-has-the-nirbhaya-fund-not-been-used-sc-to-centre> (accessed February 20, 2017).

²²⁶ Centre for Budget and Governance Accountability and Jagori, “Safety of Women in Public Spaces in Delhi: Governance and Budgetary Challenges,” 2017, <http://www.cbgaindia.org/wp-content/uploads/2017/01/Women-safety-in-delhi.pdf> (accessed August 25, 2017).

Helplines

India has a number of helplines for women and girls to report gender-based violence. For example, several state governments operate a 24-hour helpline to assist women or children who need help, including victims of violence.²²⁷

In 2013, the central government announced another helpline—181—under the Nirbhaya Fund and said it would become a national helpline for women.²²⁸ This new universal helpline is aimed at addressing the existing gaps including dispatching emergency services or referring the caller to relevant support services.²²⁹ The helpline also proposes to address the needs of persons with disabilities, including being accessible through text message for those who are unable to speak.²³⁰ In August 2017, the Ministry of Women and Child Development said the helpline was functional in 22 states and one stop centers would be connected to them.²³¹ However, there are concerns that these helplines are inadequately staffed to handle the large volume of calls received.²³²

Central Victim Compensation Fund

The government also announced a Central Victim Compensation Fund (CVCF) scheme in 2015 for women survivors of violence from the Nirbhaya Fund allocating 200 crore rupees (US\$31 million) to supplement existing state victim compensation schemes.²³³

In February 2017, the Ministry of Women and Child Development announced that it would set up a compensation fund under the Nirbhaya scheme to assist child victims of sexual

²²⁷ “Women Helplines,” vawhelp.org, <http://vawhelp.org/women-helpline/> (accessed August 24, 2017).

²²⁸ “Govt launches ‘181’ women’s helpline number for all states,” *Press Trust of India*, January 21, 2013, <http://timesofindia.indiatimes.com/india/Govt-launches-181-womens-helpline-number-for-all-states/articleshow/18114371.cms> (accessed February 17, 2017).

²²⁹ These include police assistance, medical aid, shelter, legal aid, or a one stop center (providing integrated services to sexual violence survivors) if one exists in the area.

²³⁰ “Universalisation of Women Helpline Scheme,” Ministry of Women and Child Development, Government of India, July 2016, <http://www.wcd.nic.in/sites/default/files/Revised%20WHL%20Scheme%20120716.pdf> (accessed February 18, 2017).

²³¹ Press release by Ministry of Women and Child Development, Press Information Bureau, Government of India, August 4, 2017, <http://pib.nic.in/newsite/pmreleases.aspx?mincode=64> (accessed August 25, 2017).

²³² Centre for Budget and Governance Accountability and Jagori, “Safety of Women in Public Spaces in Delhi: Governance and Budgetary Challenges,” 2017, <http://www.cbgaindia.org/wp-content/uploads/2017/01/Women-safety-in-delhi.pdf> (accessed August 25, 2017).

²³³ Circular and guidelines on the scheme from Ministry of Home affairs, Government of India to all state and union territories governments, October 14, 2015, http://mha.nic.in/sites/upload_files/mha/files/CVCFGuidelines_141015.pdf (accessed August 25, 2017).

crimes. But as rights activists note, while these funds are important, the government has largely failed to put in place the systems required for victims to access them. Bharati Ali, co-founder of child rights group HAQ: Centre for Child Rights said, “You can create a fund but who will help children access these funds?”²³⁴

One Stop Centre Scheme

A major scheme under the Nirbhaya Fund is the One Stop Centre Scheme (OSC scheme), a place where integrated services—police assistance, legal aid, and medical and counseling services—would be available to victims of sexual violence.²³⁵ Governed by standard treatment and examination protocols, they can play a key role in ensuring care and collection of forensic evidence for survivors of sexual violence. They can also serve as an educational resource for healthcare workers, police, lawyers, and judges.²³⁶

However, the OSC scheme was set up hastily, without meaningful consultations with local rights groups and NGOs already running crisis-intervention centers in different parts of the country operating in hospitals, police stations, or courts.²³⁷ The government also failed to integrate these existing centers or build on good practices from models developed in various parts of the country.²³⁸ It did not maximize its reach to victims of gender-based

²³⁴ “For Child Victims of Sexual Crimes, Government Announces Compensation Fund,” *Press Trust of India*, February 23, 2017, <http://everylifecounts.ndtv.com/for-child-victims-of-sexual-crimes-government-announces-compensation-fund-10441> (accessed March 1, 2017).

²³⁵ “One Stop Centre Scheme,” Ministry of Women and Child Development, Government of India, <http://www.wcd.nic.in/sites/default/files/ProposalforOneStopCentre17.3.2015.pdf> (accessed February 21, 2017). This scheme was developed, in part, responding to the recommendations made by the Working Group on Women’s Agency and Empowerment set up by the planning commission for the five-year plan 2012-2017, and another 2013 report by Justice Usha Mehra Commission, set up by the ministry of home affairs after the 2012 gang rape in Delhi. Twelfth five-year plan, Report of the Working Group on Women’s Agency and Empowerment, Ministry of Women and Child Development, Government of India, 2011, http://planningcommission.nic.in/aboutus/committee/wrkgrp12/wcd/wgrep_women.pdf (accessed February 18, 2017). Report of Justice Usha Mehra Commission of Inquiry, February 22, 2013, http://mha.nic.in/sites/upload_files/mha/files/UshaMehraReport_170913.pdf (accessed February 17, 2017).

²³⁶ WHO, “Guidelines for medico-legal care of victims of sexual violence,” p. 2, <http://apps.who.int/iris/bitstream/10665/42788/1/924154628X.pdf>.

²³⁷ “Petition to WCD from women’s groups from across the country: Seeking more consultation on the proposed Nirbhaya Centres,” November 24, 2015, <http://feministlawarchives.pldindia.org/wp-content/uploads/Petition-to-WCD-on-OSCC.pdf> (accessed August 29, 2017).

²³⁸ Certain versions of one stop centers have existed for over a decade. In Maharashtra, the Mumbai-based nongovernmental organization CEHAT and the public health department of Mumbai’s municipal corporation set up Dilaasa, a hospital-based center to provide psychosocial support, health services, emergency shelter, legal aid and police support to women victims of violence. (See more about Dilaasa here <http://www.cehat.org/go/Dilaasa/Home>). This kind of crisis intervention center has been replicated by the Maharashtra government in 11 additional hospitals. While these hospital-based services have been effective in providing support to survivors of violence, they do not have the means to adequately support survivors through prosecution and trial. The other model is a police station-based crisis intervention center. The first such centers were established as a collaborative effort of the government and Mumbai-based Tata Institute of Social

violence who usually come to hospitals, police stations, and courts. Anjali Dave, in charge of special cells run by Tata Institute of Social Sciences in police stations, said, “To be effective, one stop centers need to be situated in multiple institutions—hospitals, police, and courts—and they need to coordinate with each other.”²³⁹

According to the government, as of August 2017, it had set up 151 centers across the country.²⁴⁰ As some anecdotal evidence below illustrates, coordination between the various relevant departments and ministries has been lacking to ensure the centers work seamlessly to provide integrated services. There is little public awareness regarding the centers too. “Walk-in patients in our one stop centers are very few. Not much awareness. [Survivors] are mostly brought by police. They are not even aware such a facility exists,” said Puneeta Mahajan, medical superintendent at the Baba Saheb Ambedkar Hospital in Delhi, which operates a One Stop Center under the Delhi government scheme.²⁴¹

Anecdotal evidence from Human Rights Watch research suggests that some of the OSC centers that have been set up are not effective in providing services for survivors of sexual violence. For example, Jaipur’s Aparajita center at Jaipuria hospital, established in 2013, was set up as one of the first pilots before the OSC scheme was developed. At this writing, this center is acting more as a counseling center for marital disputes. “Rape victims don’t really come here. They go to the hospital that is connected to the police station where they registered a FIR,” said a counselor from the NGO in charge of running the center. “If a rape

Sciences and since then have been replicated in other states such as Rajasthan, Andhra Pradesh, Haryana, and Madhya Pradesh. They are operated often by nongovernmental organizations in police stations (Special Cell for Women and Children, Maharashtra, <http://www.tiss.edu/view/11/projects/all-projects/special-cell-for-women-and-children-maharashtra/>). Renuka Pamecha, in-charge of one such center at a police station in Jaipur, Rajasthan, told Human Rights Watch that the new one stop centers devised by the government had failed to consult existing centers or learn from them. “There’s no oversight or monitoring of any of these institutions,” she said. (Human Rights Watch interview with Renuka Pamecha, Jaipur, Rajasthan, June 15, 2017). Another concern is outsourcing the day-to-day running of these centers to nongovernmental organizations, according to Rege of CEHAT. “The minute you hand over to an NGO, there is no monitoring of any kind. Accountability of the government is zero,” she said. (Human Rights Watch interview with Sangeeta Rege, Coordinator, Centre for Enquiry into Health and Allied Themes, Mumbai, February 7, 2017).

²³⁹ Human Rights Watch interview with Anjali Dave, Mumbai, February 18, 2017. The Delhi government operates a two-tier one stop center scheme. The first tier is based in hospitals and the second-tier centers are inside court complexes. The Delhi State Legal Services Authority prepared a comprehensive standard operating procedure for the centers to follow, <http://dlsla.org/wp-content/uploads/2015/12/Comprehensive-Standard-Operating-Procedure-SOP-for-One-Stop-Centre-in-Delhi.pdf> (accessed August 24, 2017). But Human Rights Watch found that the centers at hospitals and courts are not inter-linked and suffer from shortage of resources, and the support provided to survivors is often ad-hoc.

²⁴⁰ Press release by Ministry of Women and Child Development, Press Information Bureau, Government of India, August 4, 2017, <http://pib.nic.in/newsite/pmreleases.aspx?mincode=64> (accessed August 25, 2017).

²⁴¹ Human Rights Watch interview with Puneeta Mahajan, Delhi, July 28, 2017.

victim comes here, we help her to file the FIR in the related police station. But for her medical exam, she has to go to the related hospital because a magistrate will only accept that.”²⁴² A doctor at the Jaipuria hospital where Aparajita center is located, said:

It’s a failed project. The concept was that police investigations, medical, and legal help, all would be provided in one place. But if the victim has to go back to the police station which has the territorial jurisdiction, what’s the point of the one stop crisis center? Plus, very few people get any legal aid. These centers are mostly being used to solve marital disputes.²⁴³

Lack of adequate resources, including trained counselors, and failure to link these centers with helplines reduces their effectiveness, and ultimately does not serve victims. In Hisar, Haryana, a temporary One Stop Center is located inside the women’s police station while the government waits for a properly funded and adequately staffed one to be constructed within the court complex. The woman who took charge of this center two months ago told Human Rights Watch that she did not have staff or resources:

The truth is we can’t follow up on these cases because we have no resources. We are asked to speak with the victims and help them but we don’t have expert psychologists. I have read some books but to apply bookish knowledge to practical cases, it’s not the same.²⁴⁴

²⁴² Human Rights Watch interviews with an NGO counselor and a sub-inspector of police deputed at Aparajita, one stop center, Jaipur hospital, Jaipur, Rajasthan, June 15, 2017.

²⁴³ Human Rights Watch interview, Jaipuria hospital, Jaipur, Rajasthan, June 15, 2017.

²⁴⁴ Human Rights Watch interview, One Stop Center, Hisar, Haryana, June 6, 2017.

VI. National and International Legal Framework

While enforcement of Indian law remains a challenge, efforts by women's rights groups and activists in recent years have contributed to both strengthening of existing laws and enactment of new laws to address sexual violence.

Criminal Law Amendments in 2013

Following protests after the 2012 gang rape in Delhi, the national government formed a three-member commission headed by a former Indian Supreme Court chief justice, Jagdish Sharan Verma, to “review the present statute so as to provide for speedier justice and enhanced punishment in cases of aggravated sexual assault.”²⁴⁵

The committee invited views and suggestions from civil society groups and received over 70,000 responses.²⁴⁶ Based on extensive consultations and comparative law research, the commission submitted a report to the government in January 2013, with detailed recommendations, many of which were incorporated into law.²⁴⁷

The Criminal Law (Amendment) Act was enacted in April 2013.²⁴⁸ The amendment broadened the definition of rape to include non-peno-vaginal forms of penetration, introduced a minimum mandatory sentence of seven years for rape, and enhanced punishments in certain circumstances, including when rape occurs during “communal or sectarian violence.”²⁴⁹ It also tackled some pervasive myths about rape. For example, it

²⁴⁵ “Delhi gang rape case: Parliament session decision after Verma Committee report, says P Chidambaram,” *Press Trust of India*, December 31, 2012, http://articles.economictimes.indiatimes.com/2012-12-31/news/36079350_1_special-session-parliament-p-chidambaram (accessed July 4, 2016).

²⁴⁶ “India: HRW Letter to Justice Verma, Chair of the Commission on reforms on sexual assault and Former Chief Justice of the Supreme Court of India,” Human Rights Watch news release, January 5, 2013, <https://www.hrw.org/news/2013/01/05/india-hrw-letter-justice-verma-chair-commission-reforms-sexual-assault-and-former>.

²⁴⁷ Report of the Committee on Amendments to Criminal Law, January 23, 2013, <http://www.prsindia.org/uploads/media/Justice%20overma%20committee/js%20overma%20committee%20report.pdf> (accessed July 7, 2016). The committee made several important recommendations including on police reform, educational reforms for greater gender sensitization, and electoral reforms. The report also recommended introducing new categories of sexual offenses, including stalking and voyeurism; amending rape laws to make marital rape an offense; increasing the punishment for rape; and reviewing security laws such as Armed Forces Special Powers Act, which provide effective immunity from prosecution.

²⁴⁸ The Criminal Law (Amendment) Act, 2013, No. 13 of 2013, <http://indiacode.nic.in/acts-in-pdf/132013.pdf> (accessed February 16, 2017).

²⁴⁹ Indian Penal Code, s. 375; Indian Penal Code, s. 376(1); *Ibid.*, s. 376(2).

clarified in the Indian Penal Code that merely because a woman does not “physically resist,” that alone cannot be construed to say she consented to the sexual activity, and it defined consent as an “unequivocal voluntary agreement” in which the woman communicates (either verbally or non-verbally) her willingness to participate in the specific sexual act.²⁵⁰ It improved protections against introducing evidence or cross-examining victims about their sexual past.²⁵¹

Other new offenses were introduced, including sexual harassment, stalking, voyeurism, and forcible disrobing.²⁵² The right of victims of rape and acid attacks to receive medical treatment was recognized through a statutory obligation on doctors to provide free and immediate medical treatment, and doctors’ refusal to comply was made a punishable offense.²⁵³ Police failure to register criminal complaints for some offenses, including rape, was also made a crime.²⁵⁴ The amendment removed the need for government sanction to prosecute public servants for sexual offenses.²⁵⁵

However, many women’s groups criticized key aspects of the amendment. It fails to abolish the requirement of government authorization to initiate prosecution against public officials. For instance, armed forces personnel implicated in sexual offenses during domestic operations are still protected under the Armed Forces Special Powers Act (AFSPA), ignoring a Verma commission recommendation.²⁵⁶

Instead of accepting the demand of many women’s rights and human rights groups to return to 16 as the age of consent, which the Protection of Children from Sexual Offences Act (POCSO Act) 2012, had raised to 18, the amendment harmonized the POCSO Act with

²⁵⁰ Ibid., s. 375. These amendments added to an existing presumption regarding “absence of consent” in section 114 of the Evidence Act.

²⁵¹ Ibid., s. 119 and s. 53A.

²⁵² Ibid., s. 354A; Ibid., s. 354D; Ibid., s. 354C; Ibid., s. 354B.

²⁵³ Criminal Procedure Code, s. 357C; Indian Penal Code, s. 166B.

²⁵⁴ Ibid., s. 166A.

²⁵⁵ Criminal Procedure Code. s. 197. However, the amendments adopted by the Jammu and Kashmir state in 2014 left intact the need of prior government sanction for public servants for sexual offenses. The Jammu and Kashmir Criminal Laws (Amendment) Act, 2013, No. 11 of 2014, <http://rgp.jk.gov.in/pdf/GAZETTE%202014/2014/Gazette%20No.%203%20dated%2017th%20April%202014.pdf> (accessed October 18, 2017).

²⁵⁶ Report of the Committee on Amendments to Criminal Law, chapter IV, January 23, 2013, <http://www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committe%20report.pdf> (last accessed October 18, 2017)

the Penal Code, keeping the age of consent at 18.²⁵⁷ The change in age of consent is more concerning after an amendment to India's Juvenile Justice (Care and Protection of Children) Act in 2015, which allows boys older than 16 to be tried as adults if accused of rape, with the punishment extending up to life imprisonment.²⁵⁸

The 2013 amendment also made it mandatory for healthcare providers to report all sexual offenses to the police, a requirement which has been criticized by many health rights groups.²⁵⁹ The amendment failed to criminalize marital rape and introduced the death penalty for rape, running contrary to Justice Verma Commission and recommendations from rights groups.²⁶⁰

Protection of Children from Sexual Offences Act

In June 2012, India enacted its first comprehensive law specifically outlawing child sexual abuse, creating a number of sexual offenses.²⁶¹

Procedures and infrastructure have been made child-sensitive—for example, interviewing procedures the police must follow and special courts to exclusively deal with sexual offenses against children. The law forbids aggressive questioning of a child during trial, includes measures to protect his or her identity, and encourages courts to complete the trial within a year of taking cognizance of the offense.²⁶²

²⁵⁷ "India: Reject New Sexual Violence Ordinance," Human Rights Watch news release, February 11, 2013, <https://www.hrw.org/news/2013/02/11/india-reject-new-sexual-violence-ordinance>. Indian law should continue to acknowledge that below a certain age, sexual contact with a child or adolescent who is unable to give meaningful consent should be criminalized. But the law should also take into account adolescents' evolving capacity and maturity to make decisions about engaging in sexual conduct for themselves, age differentials between those engaging in sexual activity, and remove inappropriate penalties. The legal framework should help adolescents deal with their sexuality in an informed and responsible way, and not punish the same population that it is designed to protect.

²⁵⁸ The Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2 of 2016, http://trackthemissingchild.gov.in/trackchild/readwrite/JJAct_2015.pdf (accessed February 16, 2017).

²⁵⁹ Criminal Law (Amendment) Act, 2013. Amendment to Code of Criminal Procedure, s. 357C. See Jagadeesh N. Padma Deosthali, and Sangeeta Rege, "Ethical concerns related to mandatory reporting of sexual violence," *Indian Journal of Medical Ethics*, November 2016.

²⁶⁰ Report of the Committee on Amendments to Criminal Law, January 23, 2013.

²⁶¹ "Parliament clears bill against child abuse," *Times of India*, May 23, 2012, <http://timesofindia.indiatimes.com/india/Parliament-clears-bill-against-child-abuse/articleshow/13402687.cms>.

²⁶² The Protection of Children from Sexual Offences Act, No. 32 of 2012, <http://indiacode.nic.in/amendmentacts2012/The%20Protection%20of%20Children%20From%20Sexual%20Offences%20Act.pdf> (accessed May 12, 2017).

There are two widely criticized problems with the law: it raised the age of consent not only for sex but also for “any other act with sexual intent” from 16 to 18 and introduced a presumption of guilt for certain offenses.²⁶³

Prevention of Atrocities Against Scheduled Castes and Scheduled Tribes

If the victim of sexual violence belongs to a Scheduled Caste also known as Dalit (formerly “untouchable”) or a Scheduled Tribe, the police must also register the offense under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The amended act in 2015 provides that all trials for offenses registered under the law should be conducted on a day-to-day basis until all witnesses are examined and as far as possible, should be completed within two months from the date of filing a charge-sheet. In addition, the law states that the police should conclude the investigation and file charges within 60 days.²⁶⁴

India’s Obligations Under International Law

India is party to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of Persons with Disabilities (CRPD).

Under international law, India has an obligation to ensure that the rights of survivors of sexual violence or abuse are protected. Article 4 of the Declaration on the Elimination of Violence against Women, adopted by the UN General Assembly in 1993 to address violence against women, states that governments should pursue by all appropriate means and without delay, a policy of eliminating violence against women and, to this end, should exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the state or by private persons.²⁶⁵

²⁶³ POCSO Act; *ibid.*, s. 29.

²⁶⁴ Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, No. 1 of 2016, <http://www.tribal.nic.in/DivisionsFiles/mj/4-preventionofAtrocities.pdf> (accessed May 12, 2017).

²⁶⁵ UN Declaration on the Elimination of Violence against Women, adopted on December 20, 1993, UN Doc A/RES/48/104, <http://www.un.org/documents/ga/res/48/a48r104.htm> (accessed March 1, 2017), article 4(c).

Article 12 of the ICESCR guarantees the right to the highest attainable standard of health, including sexual and reproductive health, and mental health. The Committee on Economic, Social and Cultural Rights, the international expert body that monitors compliance with the treaty, stated in its General Comment on the right to health, that a state’s obligation to protect women’s rights includes health in the context of gender-based violence.²⁶⁶ Health services—preventive, curative, and rehabilitative—should be physically and economically accessible.²⁶⁷

Article 7 of the ICCPR states that no person can be subjected to “cruel, inhuman or degrading treatment.”²⁶⁸ The UN Human Rights Committee, its treaty-monitoring body, in its general commentary on article 7, noted that the “aim of the provisions of article 7...is to protect both the dignity and the physical and mental integrity of the individual.”²⁶⁹ It specifies that the prohibition under article 7 applies to “patients” in “medical institutions.”²⁷⁰ Governments should protect everyone through “legislative and other measures as may be necessary against acts prohibited by article 7.”²⁷¹

UN Body Recommendations to India

The UN Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, visited India in April 2013 and raised concerns over obstacles women face in gaining access to redress mechanisms, including legal aid, counseling services, and shelters. Manjoo criticized informal trials or negotiations between families and community leaders, saying they revictimized women and exposed them to further risk of violence through the denial of redress. In her report a year later, Manjoo called on the

²⁶⁶ UN Committee on Economic, Social and Cultural Rights, General Comment 14, The right to the highest attainable standard of health (Twenty-second session, 2000), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI\GEN\1\Rev.1 (1994), para. 35.

²⁶⁷ *Ibid.*, para. 19.

²⁶⁸ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1996, G.A. Res. 2200A (XX1), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by India on April 10, 1979, art. 7.

²⁶⁹ UN Human Rights Committee, General Comment 20 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI\GEN\1\Rev.1 (1994), para. 2.

²⁷⁰ *Ibid.*

²⁷¹ *Ibid.*

government to take effective measures to ensure access to justice and effective redress for all victims of violence against women, and also ensure the full ban on Khap Panchayats.²⁷²

In 2014, the CEDAW Committee, in its concluding observations on India's fourth and fifth periodic reports, recommended that the government strengthen the police to protect women and girls against violence, adopt standard procedures in each state on gender-sensitive investigations and treatment of victims and of witnesses, and ensure that FIRs are duly filed.²⁷³ It recommended that the government put an effective system in place to monitor and evaluate the implementation, effectiveness, and impact of the law to combat sexual violence; monitor the availability and efficiency of the Legal Services Authorities, implement legal literacy programs, increase the awareness of Dalit and tribal women and girls of all legal remedies available to them, and monitor the results of such efforts.²⁷⁴

The Committee on the Rights of the Child, in its concluding observations on India's third and fourth periodic reports in 2014, expressed concern that the 2013 Criminal Law (Amendment) Act did not criminalize sexual abuse of married girls over the age of 15 and recommended that all forms of sexual abuse of girls under 18 years of age, including marital rape, be fully criminalized.²⁷⁵ The committee also asked the government to ensure proper investigation, prosecution, and punishment of perpetrators; conduct awareness-raising activities to prevent child sexual abuse and address stigmatization of victims of sexual abuse; and put in place an effective, accessible, and child-friendly reporting system.²⁷⁶

In May 2017, during India's third Universal Periodic Review, about 33 United Nations member countries raised concerns over violence and discrimination against women, and some countries specifically asked the Indian government to better implement existing

²⁷² Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, to the UN Human Rights Council, Addendum: Mission to India, A/HRC/26/38/Add.1, April 1, 2014.

²⁷³ Committee on the Elimination of Discrimination against Women, concluding observations on the combined fourth and fifth periodic reports of India, July 18, 2014, CEDAW/C/INC/CO/4-5, http://cedawsouthasia.org/wp-content/uploads/2010/12/CEDAW_C_IND_CO_4-5_17678_E.pdf (accessed March 2, 2017).

²⁷⁴ Ibid.

²⁷⁵ In October 2017, the Supreme Court of India criminalized sex with a girl below 18 years of age regardless of whether she is married or not, saying the exception for married girls was arbitrary, discriminatory, and violative of the rights of the girl child. However, the judges refrained from making any observation on adult marital rape. Supreme Court of India, *Independent Thought v. Union of India*, W.P.(C) No. 382 of 2013, October 11, 2017, available at <https://indiankanoon.org/doc/87705010/> (accessed October 19, 2017).

²⁷⁶ Committee on the Rights of the Child, concluding observations on the combined third and fourth periodic reports of India, July 7, 2014, CRC/C/IND/CO/3-4, file:///C:/Users/User/Downloads/G1407612.pdf (accessed August 17, 2017).

policies and laws to ensure violence against women and girls are registered, investigated, and prosecuted properly.²⁷⁷

²⁷⁷ Human Rights Watch, “Submission from Human Rights Watch for the Universal Periodic Review of India,” September 2016, <https://www.hrw.org/news/2017/05/01/submission-human-rights-watch-universal-periodic-review-india>; Draft report of the Working Group on the Universal Periodic Review: India, UN Human Rights Council, A/HRC/WG.6/27/L.8, May 8, 2017. See recommendations from Ghana and Mexico.

VII. Recommendations

Promising law and policy initiatives in India often falter due to poor implementation. Laws designed to support access to justice and therapeutic care for women and girls in cases of sexual violence are no exception. The Indian national government should take urgent action—in collaboration with state governments, the police, medical treatment and forensic facilities, the justice system, child welfare committees, national and state commissions for women, civil society organizations, and legal aid services to ensure the implementation of these laws and programs, and remove barriers to women’s access to justice and health care for women and children.

To the Indian Parliament

- Routinely call upon the government to provide details of implementation and enforcement of laws to support protection of women and children.
- Enact a witness protection law that includes protections for women and girls, and their families, who face retaliation for filing criminal complaints of sexual violence. The law should direct the central and state governments to adequately fund witness protection programs.
- Pass amendments to the Medical Termination of Pregnancy Act, 1971, to recognize the right of all women and girls to a safe abortion.
- Amend the Juvenile Justice (Care and Protection) Act to ensure that no child under 18 years of age can be prosecuted as an adult.
- Use an evidence-based approach to legislative drafting, including existing evidence of consensual sexual contact among adolescents under age 18. Consider recommendations to lower the minimum age of consent for sexual contact to reflect the evolving capacity and maturity of adolescents, and respect their rights to freedom from all forms of gender-based violence, and their rights to sex education, access to reproductive and sexual health without discrimination, and to help adolescents deal with their sexuality in a responsible way. Ensure that the law does not punish the same population—children—that it is designed to protect; under-18-year old’s who engage in consensual sexual contact with peers should not be criminally punished.
- Abolish the death penalty for all offenses, including sexual offenses. Human Rights Watch opposes capital punishment in all circumstances because it is unique in its cruelty and finality, and it is inevitably plagued with arbitrariness, prejudice, and error.

To the Central Government and State Governments

- Enforce the Criminal Law (Amendment) Act, 2013 and policies announced to help survivors of sexual violence.
- Better train and sensitize police officers, judicial officials, and medical professionals on the proper handling of cases of gender-based violence.
- Ensure that one stop crisis centers are properly equipped and accessible, establish a monitoring mechanism for these centers and publish accountability reports periodically, and ensure the Nirbhaya Fund disburses funds transparently.
- Develop, adopt, and implement standard operating procedures that are statutorily binding and universally applicable for police, forensics experts, and the judiciary to ensure uniformity in application and interpretation of the law and policies dealing with violence against women.
- Work with women’s rights groups, civil society organizations, urban planners, and others to develop and implement concrete plans within a fixed timeline to make public spaces safer and more accessible to women.
- Conduct a public information campaign to create awareness among women and girls about their rights and the procedures for accessing justice in cases of sexual abuse.
- As part of the government’s right to education policy, initiate and institutionalize a curriculum for children to prevent sexual abuse by helping children participate in their own protection through age-appropriate information, skills, and self-esteem.
- Introduce mandatory sexuality education in schools and colleges.

Medical Treatment and Examination

- Adopt and implement the Ministry of Health and Family Welfare *Guidelines and Protocols for Medico-Legal Care for Survivors/ Victims of Sexual Violence*.
- Hold periodic trainings for doctors, paramedics, nurses, and other health professionals on these guidelines.
- Ensure that medical forms and consent forms are available in local languages, and in easy-to-read and in other accessible formats.
- Issue guidance on access to safe abortions for all victims of rape who become pregnant from the rape, clarifying that registered medical practitioners should exercise their discretion under section 5 of the Medical Termination of Pregnancy Act to conduct safe abortions for rape victims beyond the 20-week mark.
- Map out and develop a district-wise database of counselors and mental health specialists, and coordinate with the 181 Helpline, the OSC scheme, and the Fast Track Courts Scheme to make this information accessible to staff.

Judicial Reform

- In consultation with national and state judicial academies and experts on women's, children's, and health rights, expand existing training for trial and appellate court judges and public prosecutors on the rights of survivors in cases of sexual violence to include training on provisions under the Criminal Law Amendment Act, 2013 and the Protection of Children from Sexual Offences Act, 2012.
- Ensure that magistrates and judges are aware of the 2014 medico-legal guidelines.
- Establish guidelines on *in-camera* trials and ensure that judicial officers participating in all fast-track courts and courts dealing with violence against women and children have appropriate training.
- Establish standard operating procedures for prosecutors that better meet the needs of survivors, including meeting the survivor in advance of the trial and briefing her about trial proceedings. The SOP should also include detailed explanations of medical evidence and its interpretation.

Child Welfare Committees

- Develop guidelines and training in consultation with child rights groups and activists to properly implement the Protection of Children from Sexual Offences Act.
- Ensure that all states have functioning child welfare committees and appoint qualified and independent individuals to serve on them. Adopt standard operating procedures and ensure that the committees have sufficient resources for members to carry out all their responsibilities. Ensure that professional counseling services are available for children that have suffered sexual abuse.
- Ensure that committee offices are safe and suitable for interviewing children and that potential committee members do not have conflicts of interest. Train all child welfare committee members in interviewing children before they take up their posts.

Compensation and Rehabilitation

- Ensure all states adopt the minimum amount mandated by the central government for compensation for victims of rape.
- Conduct public information campaigns to create awareness regarding the compensation scheme. Ensure the scheme is publicized through guidelines in police stations, hospitals, and courts so that rape survivors are aware of the provision and the procedure to access it.

To the Union and State Home Ministries, and Police Services

- Commission periodic independent studies—both quantitative and qualitative—to monitor whether police are complying with procedures that safeguard the rights of victims of gender-based violence; publish the results of such studies and respond with suitable reforms.
- Develop and implement an action plan to increase the number of women police officers with annual targets to be achieved in each state and address their promotion opportunities. Ensure that all female police officers are sensitized to the needs of survivors of gender-based violence, including sexual violence, and the needs of at risk groups such as women and girls with disabilities.
- Periodically collect and publish information on enforcement of the section 166A of the Penal Code and section 21 of the POCSO Act to document the number of police officers who were prosecuted for refusing to file an FIR under these sections.
- Organize, in consultation with state police academies, judges, and rights experts (women’s, children’s, disability, and health), special programs for police related to investigating and prosecuting sexual offenses, and on the rights of survivors. Training content should include:
 - Training on provisions under the Criminal Law Amendment Act, 2013 and the Protection of Children from Sexual Offences Act, 2012.
 - Sensitization on supporting survivors of sexual assault to register complaints, receive immediate medical attention, and access legal representation and other support services.
 - Mandatory training for investigating officers regarding sexual violence. Training should include investigative methods applicable to sexual violence cases, working with traumatized victims, protecting victims from harassment through providing police protection and using bail conditions, and collecting and preserving evidence.
- Implement police reform as recommended by the Supreme Court in *Prakash Singh v. Union of India* case, including the establishment of an independent complaint mechanism to address police abuse and dereliction of duty.
- Implement the Supreme Court’s directive in the *Prakash Singh v. Union of India* case to separate investigation and law and order functions of policing by assigning a significant proportion of trained officers exclusively to investigation duties.
- Provide training in and access to technology that can assist investigations, and take steps to attract instructors qualified to teach forensic science. Train investigating officers on modern, non-coercive techniques for suspect and witness interviewing and questioning. Provide sufficient resources to state and regional

forensic labs, including mobile forensic labs, to permit them to return evidence evaluation reports to police within a reasonable period.

- Work closely with the Ministries of Health and Family Welfare and the national and state judicial services to map out and create a district-wise database of psychologists and legal aid lawyers available to support women and children who approach the police in cases of gender-based violence.

To the National Legal Services Authority

- Set annual targets to increase the numbers of empaneled lawyers, especially at the district and sub-district levels, and progressively monitor its achievement.
- Create a board of senior criminal lawyers at the state and district levels to periodically guide and train the work of empaneled legal aid lawyers, including on the latest judicial precedents and technical procedures.
- Provide adequate resources to volunteers, often known as para-legals, who work in communities with sexual assault survivors on behalf of legal service authorities.
- Develop a training program for State, District, and Sub-District Legal Services Authorities on the criminal procedure that should be used by lawyers to effectively help victims of gender-based violence, including sexual violence.
- Raise awareness among women and girls and women's rights organizations about access to free legal services in cases of sexual violence.
- Hold public awareness campaigns on the issue of compensation for rape victims.

To National and State Commissions for Women

- Ensure that women's and children's helplines are available across the country, 24 hours a day, for women and girls seeking relief in cases of sexual violence. Consult people with diverse disabilities and their representative organizations, and disability rights experts, to ensure that helplines are accessible for persons with different disabilities. For instance, phone helplines should be text-enabled for women who are deaf or hard of hearing.
- Provide effective support services to sexual assault survivors, especially in courts. Ensure support persons are well-trained in laws regarding sexual violence, and in dealing sensitively with survivors.

To the United States, UK, EU, Australia, Canada, Other Concerned Governments, Foreign Donors, and Aid Agencies

- Encourage the Indian government to respect its international commitments to implement laws protecting girls and women.
- Provide technical support to India's central and state governments to ensure the effective implementation of the laws governing sexual offenses.
- Provide support to local civil society groups to undertake periodic quantitative and qualitative studies regarding access to justice after experiencing sexual violence.
- Support initiatives to increase awareness of violence against women among women and engage men in prevention and response efforts.
- Provide increased support for Indian civil society organizations engaged in supporting women and girls to access justice in cases of sexual violence as well as those developing programs to engage men and boys in prevention and response efforts.

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Public protests in India after the December 2012 gang rape and death of Jyoti Singh Pandey, a student in Delhi, spurred legal and other reforms. However, despite stronger laws and new policies, rape survivors in the country face significant barriers to justice and critical support services such as health care, counseling, and legal aid.

“Everyone Blames Me” documents the humiliating treatment women and girls who survive rape and other sexual violence still too often suffer at police stations and hospitals. Victims and witnesses receive little protection, and medical professionals still compel degrading “two-finger” tests to make characterizations about whether the victim was “habituated to sex.” The report, based on research in four Indian states and Mumbai and Delhi, details 21 cases—10 involving girls under the age of 18.

Although Indian law makes it mandatory for police officials to register rape complaints, Human Rights Watch found that police still resist doing so, especially if the victim is from an economically or socially marginalized community, and sometimes press the victim’s family to “settle” or “compromise.” The authorities have begun to standardize collection of forensic evidence, but state healthcare systems have largely failed to provide therapeutic care and counseling to rape survivors. Lack of effective legal assistance is another significant gap in the system. Without a monitoring and evaluation framework, government initiatives to support sexual assault survivors largely remain inadequate or ineffective.

Human Rights Watch calls on the Indian government to strictly enforce existing laws and implement programs to assist survivors of sexual violence, and to ensure that police officers, judicial officials, and medical professionals receive regular training in appropriately responding to such cases.

(above) A candlelight vigil marking the first anniversary of the gang rape in New Delhi that occurred on December 16, 2012. Several assailants raped 23-year-old Jyoti Singh Pandey on a moving bus, and then beat and pushed her out onto the street along with her male companion. She died two weeks later amid protests across India and around the world.

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(front cover) “Mansi,” 13, was raped by a man behind a railway station in Maharashtra in 2012. She reported the assault to the railway police but the man responsible was a financially well-off member of a landowning community. Instead of taking action on her behalf, the police held Mansi in custody for 12 days while they tried to get her to retract her complaint.

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