

INDIA

20 Years of the UNSC Resolution 1325



ASIAN CENTRE FOR HUMAN RIGHTS



**INDIA : 20 Years
of the UNSC
Resolution 1325**

INDIA: 20 YEARS OF THE UNSC RESOLUTION 1325

First published: October 2020

© Asian Centre for Human Rights, 2020

No part of this publication can be reproduced or transmitted in any form or by any means, without prior permission of the publisher.

ISBN: 978-81-88987-94-8

Suggested contribution: Rs. 1995/-

Published by:

ASIAN CENTRE FOR HUMAN RIGHTS

[ACHR has Special Consultative Status with the United Nations ECOSOC]

C-3/441-C, Janakpuri, New Delhi-110058, India

Phone/Fax: +91-11-25620583

Email: director@achrweb.org

Website: www.achrweb.org



Acknowledgement: This report is being published as a part of the ACHR's "Campaign Against Torture in India: Prevention, Accountability and Rehabilitation", a project funded by the European Commission under the European Instrument for Human Rights and Democracy – the European Union's programme that aims to promote and support human rights and democracy worldwide. The views expressed are of the Asian Centre for Human Rights, and not of the European Commission.

Table of Contents

1. Executive summary: India took no measures to implement UNSC Resolution 1325/2000	9
2. UN action against sexual violence in conflict situations (1325)	17
2.1 UN SC Resolution 1325 – Extent of implementation in India	17
2.2 Special Rapporteur’s India mission report says women in J & K and northeast states face sexual violence from security forces	17
2.3 India fails to give information to CEDAW on measures taken to protect women in ‘disturbed areas’	19
3. Sexual violence in conflict situations	23
3.1 Extent of the internal conflicts since 2000 and the extent of sexual violence	23
3.2 Sexual violence in conflict situations	24
A. Andhra Pradesh (3 cases)	50
B. Arunachal Pradesh (6 cases)	53
C. Assam (21 cases)	55
D. Chhattisgarh (17 cases)	64
E. Jammu & Kashmir (16 cases)	72
F. Jharkhand (7 cases)	80
G. Manipur (18 cases)	82
H. Maharashtra (1 Case)	91
I. Meghalaya (6 cases)	92
J. Odhisa (5 cases)	94
K. Tripura (14 cases)	97
3.3. Sexual violence by AOGs	103

4.	India's refusal to criminalise sexual violence in conflict situations	109
4.1	Recommendations of the Justice Verma Committee	109
4.2	Recommendations of Justice Verma Committee relating to sexual violence in conflict situations not implemented	112
4.3	The state of prior sanction under the AFSPA	113
5.	Conclusions & recommendations	125
ANNEXURE-1: UN SECURITY COUNCIL RESOLUTION 1325/2000		127
ANNEXURE-2: Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo on Mission to Indi, 2014		131
ANNEXURE-3: Concluding observations of the UN CEDAW on the combined fourth and fifth periodic reports of India, 2014		153
ANNEXURE-4: Section 45 and 197 of the Code of Criminal Procedure, 1973		169
ANNEXURE-5: Criminal Law Amendment Act, 2013		171
ANNEXURE-6: Armed Forces Special Powers Act, 1958		187

GLOSSARY

ACHR	Asian Centre for Human Rights
AFSPA	Armed Forces Special Powers Act
AOG	Armed Opposition Group
AR	Assam Rifles
ASI	Assistant Sub Inspector
Bn	Battalion
BNCT	Borok National Convention of Tripura
BSF	Border Security Force
BOP	Border Out Post
CBI	Central Bureau of Investigation
CEDAW	Committee for Elimination of Discrimination Against Women
CID	Criminal Investigation Department
CrPC	Criminal Procedure Code
CRPF	Central Reserve Police Force
CTJW	Counter Terrorism and Jungle Warfare
CoI	Court of Inquiry
CWC	Child Welfare Committee
DAR	District Armed Reserved
DGP	Director General of Police
D/o	Daughter of
FIR	First Information Report
FSL	Forensic Science Laboratory
GCM	General Court Martial

GNLA	Garo National Liberation Army
GoI	Government of India
IED	Improvised Explosive Device
INPT	Indigenous Nationalist Party of Twipra
IPC	Indian Penal Code
IRBN	India Reserve Battalion
ITBP	Indo-Tibetan Border Police
JAP	Jharkhand Armed Police
J &K	Jammu and Kashmir
JKLI	Jammu and Kashmir Light Infantry
LWE	Left Wing Extremism
MHA	Ministry of Home Affairs
MoS	Minister of State
NHRC	National Human Rights Commission
NCPCR	National Commission for Protection of Child Rights
NGO	Non-Governmental Organization
OBC	Other Backward Community
OC	Officer-in-Charge
PIL	Public Interest Litigation
PLA	People's Liberation Army
POCSO	Protection of Children from Sexual Offences Act
PS	Police Station
PSO	Personal Security Officer
PUCL	People's Union of Civil Liberties
Retd.	Retired

RR	Rashtriya Rifles
RPC	Ranbir Penal Code
SSB	Sashastra Seema Bal
SC/ST	Scheduled Caste/Schedule Tribe
SIT	Special Investigation Team
ST	Scheduled Tribe
SOG	Special Operation Group
SPO	Special Police Officer
TRC	Tourist Reception Centre
TSR	Tripura State Rifles
TTAADC	Tripura Tribal Areas Autonomous District Council
ULFA	United Liberation Front of Asom
UNLF	United National Liberation Front
UNSC	United Nations N Security Council
NCW	National Commission for Women
UN	United Nations
UNHRC	United Nations Human Rights Council
UNSR	United Nations Special Rapporteur
UNLF	United National Liberation Front
u/s	Under Section
VAW	Violence Against Women
VW	Victim Witness
WPS	Women, Peace and Security

1. Executive summary: India took no measures to implement UNSC Resolution 1325/2000

*“Is it true that you may have alleged rapists in the army? “Did you close the case because you didn’t get any help from army or is your helplessness a tacit understanding you have with the forces,” - asked the Supreme Court during the hearing of *Extra Judicial Executions Victim Families Association & Anr versus Union of India & Ors* on 18 April 2017.¹*

The above questions by the Supreme Court of India depict the extent of violence, including sexual violence perpetrated by the armed forces and the level of immunity enjoyed in the areas declared ‘disturbed’ under the Armed Forces Special Powers Act (AFSPA).

On 31 October 2000, the United Nations Security Council (UNSC) adopted Resolution 1325, among others, calling upon all parties to armed conflict to *“respect fully international law applicable to the rights and protection of women and girls, especially as civilians, in particular the obligations applicable to them under the Geneva Conventions of 1949 and the Additional Protocols thereto of 1977, the Refugee Convention of 1951 and the Protocol thereto of 1967, the Convention on the Elimination of All Forms of Discrimination against Women of 1979 and the Optional Protocol thereto of 1999 and the United Nations Convention on the Rights of the Child of 1989 and the two Optional Protocols thereto of 25 May 2000, and to bear in mind the relevant provisions of the Rome Statute of the International Criminal Court”*. It also called on all parties to armed conflict to *“take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict”* while Clause 11 emphasized the responsibility of all States to *“put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes including those relating to sexual and other violence against women and girls, and in this regard stresses the need to exclude these crimes, where feasible from amnesty provisions”*.²

¹. SC pulls up centre, Manipur govt for not probing cases of rape against army men, Livemint, 18 Apr 2017; available at: <https://www.livemint.com/Politics/gBhFbUy769JKeEDmRxOrCP/SC-pulls-up-centre-Manipur-govt-for-not-probing-cases-of-ra.html>

². United Nations Security Council Resolution 1325/2000; available at: <http://unscr.com/en/resolutions/doc/1325>

Twenty years later, it is evident that India has to take effective measures to implement the UN Security Council resolution 1325, especially with respect to all forms of violence against women and girls committed in conflict and post-conflict situations and establishing accountability where those acts amount to violations of international human rights and humanitarian law both by the security forces and the armed opposition groups.

Internal armed conflicts have been a feature of India and India has been facing insurgencies from the Left Wing Extremism (LWE) in 11 States of Andhra Pradesh, Bihar, Chhattisgarh, Jharkhand, Kerala, Madhya Pradesh, Maharashtra, Odisha, Telangana, Uttar Pradesh and West Bengal; six North Eastern States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Nagaland and Tripura; and Jammu and Kashmir.

As per the official figures, a total of 9,448 people were killed in conflict areas during 2009 to 2019 including 3,747 persons in the LWE affected areas; 3,070 persons in the North East; and 2,631 persons in Jammu and Kashmir.

From the adoption of the UNSC Resolution 1325 from 31 October 2000 to 30 October 2020, at least 114 cases of rape, molestation and other forms of sexual violence against women and girls perpetrated by armed forces of the Central government as well as state police were reported from 11 States afflicted by armed conflicts i.e. Andhra Pradesh, Arunachal Pradesh, Assam, Chhattisgarh, Jammu & Kashmir, Jharkhand, Maharashtra, Manipur, Meghalaya, Odisha and Tripura.

The maximum cases were reported from Assam (21) followed by Manipur (18), Chhattisgarh (17), Jammu & Kashmir (16); Tripura (14); Jharkhand (7) and Meghalaya (6); Arunachal Pradesh (6); Odisha (5); Andhra Pradesh (3) and Maharashtra (1).

A total of 224 women and girls were victimized and the maximum number of victims were reported from Chhattisgarh (92 victims); Assam (26 victims); Manipur (21 victims); Jammu & Kashmir (20 victims); Tripura (19 victims); Andhra Pradesh (16 victims); Jharkhand (nine victims); Meghalaya (seven victims); Arunachal Pradesh (seven victims); Odisha (five victims); and Maharashtra (two victims).

These sexual violence against women and girls included 42 cases of gang rape, six cases of murder, three cases of rape of pregnant women, four cases of rape of differently-abled, three cases of being shot dead for resisting molestation and rape, attempt to rape, stripping, molestation etc. often perpetrated during counter-insurgency operations.

Minor girls were particularly vulnerable to sexual violence and 74 out of the 224 total victims constituting 33% were minor girls between 7 -17 years.

Tribal women and girls were disproportionate victims as 156 out of the 224 total victims constituting 69.6% were tribals.

The perpetrators of sexual violence against women by the state actors included persons serving with the Indian Army, Central Reserve Police Force (CRPF), Sashastra Seema Bal (SSB), Indo-Tibetan Border Police (ITBP), Border Security Force (BSF), Assam Rifles (AR), Indian Reserve Battalion (IRBN), Jammu and Kashmir Light Infantry (JKLI), the State police, Greyhounds Special Police of Andhra Pradesh, Special Police Officers (SPO), Jharkhand Armed Police (JAP), State Police Commandos, Manipur Rifles, Tripura State Rifles (TSR), and the Special Operation Group (SOG).

Members of the armed opposition groups (AOGs) were also responsible for rape and other sexual violence. There were reports of forced marriage and rape in Jammu & Kashmir by the AOGs, mass rape of tribal women by the members of United National Liberation Front (UNLF) in Manipur, killing for resisting rape attempt by the AOGs in Meghalaya; and rape and sexual exploitation by the Maoists. The perpetrators of sexual violence against women by the non-state actors included Borok National Convention of Tripura (BNCT), Laskhar-e-Toiba, Hizb-ul-Mujahideen, United National Liberation Front (UNLF), Garo National Liberation Army (GNLA), United Liberation Front of Asom (ULFA), and the Maoists.

The Government of India provided impunity to the security forces while it failed to bring the members of the AOGs to justice.

The members of the Indian Army and the armed forces enjoyed immunity from prosecution through the requirement of prior sanction

of the appropriate authorities under sections 197³ and 45 of the CrPC⁴ until the enactment of the Criminal Law Amendment Act, 2013. Further, Section 6 of the Armed Forces Special Powers Act (AFSPA), 1958⁵ and Section 7 of the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990⁶ also provided similar immunity through the requirement of prior sanction.

The denial of permission for prosecution of the members of the armed forces personnel serving in disturbed areas, for the offences of rape and murder under Section 6 of the AFSPA is an admitted fact. Replying to a question on the number of requests for sanction of prosecution received by Government for the prosecution of armed forces personnel serving in disturbed areas, then Defence Minister Late Manohar Parrikar in a written reply dated 24 February 2015 before the Rajya Sabha stated that permission was denied in 30 out of the total 38 requests for sanction of prosecution received under the AFSPA during 16 June 1991 to till date while requests in 8 case were pending.⁷ Subsequently, the Minister of State in the Ministry of Defence **Dr. Subhash Bhamre** in a written reply in the Rajya Sabha on 1 January 2018 stated that permission for prosecution was denied in 47 out of total 50 requests, including four cases of molestation and rape, received from the J&K Government during 2001–2016 for prosecution sanction against armed forces personnel under the AFSPA while requests in three cases were pending as on 1 January 2018.⁸ It implies that no sanction under the AFSPA had been given ever.

³. See Chapter X IV “Prosecution of Judges and Public Servants” <http://www.icf.indianrailways.gov.in/uploads/files/CrPC.pdf>

⁴. See Chapter V “Protection of members of the Armed Forces from Arrest” at <http://www.icf.indianrailways.gov.in/uploads/files/CrPC.pdf>

⁵. http://mha.nic.in/sites/upload_files/mha/files/pdf/armed_forces_special_powers_act1958.pdf

⁶. http://mha.nic.in/sites/upload_files/mha/files/pdf/Armedforces%20J&K%20Splpowersact1990.pdf

⁷. Rajya Sabha Unstarred Question No. 59 asked by Member of Parliament by Mr. Avinash Pandey and answered on 24 February 2015 by former Defence Minister late Manohar Parrikar; available at: <https://rajyasabha.nic.in/rsnew/Questions/QResult.aspx>

⁸. Rajya Sabha Unstarred Question No. 1463 asked by Member of Parliament by Mr. Hussain Dalwai and answered on 1 January 2018 by Dr. Subhash Bhamre, MoS, Ministry of Defence; available at: <https://rajyasabha.nic.in/rsnew/Questions/QResult.aspx>

Consequently, India's failure to implement the UNSC Resolution 1325 of 2000 has been repeatedly highlighted at national and international level.

In her report dated 1 April 2014 to the United Nations Human Rights Council (UNHRC) during the twenty-sixth session, the United Nations Special Rapporteur (UNSR) on violence against women following her mission to India during 22 April – 1 May 2013 stated that *“Women living in militarized regions, such as Jammu and Kashmir and the north-eastern states, live in a constant state of siege and surveillance, whether in their homes or in public. Information received through both written and oral testimonies highlighted the use of mass rape, allegedly by members of the State security forces, as well as acts of enforced disappearance, killings and acts of torture and ill-treatment, which were used to intimidate and to counteract political opposition and insurgency”*.⁹

India rejected the report of the UNSR on Violence Against Women as ‘baseless’ and ‘full of sweeping generalisations’¹⁰ and did not implement the recommendations.

India also did not implement the recommendations made by the Committee for Elimination of Discrimination Against Women (CEDAW) on 24 July 2014 for addressing violence against women in conflict situations.¹¹ Despite reminders on 6 December 2016¹² and 21 September 2017,¹³ India has so far failed to give information to

⁹. Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo (A/HRC/26/38/Add.1) dated 1 April 2014 on her mission to India during 22 April – 1 May 2013; available at: <https://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/CountryVisits.aspx>

¹⁰. See A/HRC/26/38/Add.4, Addendum - Mission to India: comments by the government to the report of the Special Rapporteur

¹¹. The Concluding Observations of the UN CEDAW Committee on the combined fourth and fifth periodic reports of India dated 24 July 2014 are available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/IND/CO/4-5&Lang=En

¹². First reminder dated 6 Dec 2016 sent to India by the Rapporteur on Follow up; available at: https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/Ind/INT_CEDAW_FUL_Ind_25972_E.pdf

¹³. Second reminder dated 21 Sept 2017 sent to India by the Rapporteur on Follow-up; available at: https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/Ind/INT_CEDAW_FUL_Ind_28967_E.pdf

the CEDAW on measures taken to prevent and protect women and girls from violence, including sexual violence, during military operations in areas declared “disturbed” under the AFSPA.

India even refused to implement the key recommendations of Justice Verma Committee established by it following the Nirbhya gang rape and murder case to amend the AFSPA to remove the requirement of prior sanction in cases of sexual assault.¹⁴

India enacted the Criminal Law (Amendment) Act, 2013 to implement the recommendations of the Justice Verma Committee report. While amending Section 197 of the CrPC, the Criminal Law Amendment Act of 2013 declared that “*no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376, section 376A, section 376C, section 376D or section 509 of the Indian Penal Code*”.¹⁵ This implies that rape committed by a member of the armed forces deployed in an area by the Central or a State Government under Section 376(1)(2)(c) of IPC as per the Criminal Law (Amendment) Act, 2013, prior sanction is still required. Further, prior sanction is required for prosecution including in cases of sexual offences under the AFSPA.

In the light of these, India’s position at the UN Human Rights Council at its 45th Session (14 September – 07 October 2020) is not surprising. The UNHRC adopted Resolution No. 45/28 titled “*Promoting and protecting the human rights of women and girls in conflict and post-conflict situations on the occasion of the twentieth anniversary of Security Council resolution 1325 (2000)*”, *inter alia*, requesting the UN High Commissioner for Human Rights “*to present to the Human Rights Council, at its forty-eighth session, an analytical report, based on the contributions of States and other stakeholders, to be followed by an interactive dialogue, on the current state of play of the mainstreaming of the human rights of women and girls in conflict and post-conflict situations in the work of the Council, namely in relevant resolutions and in its*

¹⁴. Justice Verma Committee report is available at <https://www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committee%20report.pdf>

¹⁵. The Criminal Law (Amendment) Act, 2013 is available at: http://egazette.nic.in/WriteReadData/2013/E_17_2013_212.pdf

mechanisms, with a view to making recommendations, as applicable, to States, Council mechanisms and relevant stakeholders".¹⁶ Though the resolution was adopted without a vote, India in its statement stated that *"the Human Rights Council, which is also subsidiary body of the General Assembly is not the appropriate forum for discussing an issue like WPS agenda. Bringing a resolution on this Agenda with an outcome goes beyond the scope of the Council."*¹⁷

India, instead of opposing any scrutiny of implementation of the UNSC Resolution 1325, must end impunity provided through the requirement of prior sanction in cases of sexual offences committed by the armed forces deployed in an area by the Central or a State Government.

Suhas Chakma
Director

¹⁶. UN Human Rights Council Resolution No. 45/28 "Promoting and protecting the human rights of women and girls in conflict and post-conflict situations on the occasion of the twentieth anniversary of Security Council resolution 1325 (2000)" is available at <https://undocs.org/en/A/HRC/RES/45/28>

¹⁷. General Comments by India on Consideration of the Resolution "Promoting and protecting human rights of women and girls in conflict and post conflict situations on the occasion of the 20th anniversary of United Nations Security Council resolution 1325" at the 45th Session of the Human Rights Council (14 September – 07 October 2020) delivered by Mr. Pawankumar Badhe, First Secretary, Permanent Mission of India is available on the extranet of the UN Human Rights Council.

2. UN action against sexual violence in conflict situations (1325)

2.1 UN SC Resolution 1325 – Extent of implementation in India

At its 4213th meeting on 31 October 2000, the United Nations Security Council (UNSC) adopted resolution 1325. Among others, clause 9 of the UNSC Resolution calls upon all parties to armed conflict to “*respect fully international law applicable to the rights and protection of women and girls, especially as civilians, in particular the obligations applicable to them under the Geneva Conventions of 1949 and the Additional Protocols thereto of 1977, the Refugee Convention of 1951 and the Protocol thereto of 1967, the Convention on the Elimination of All Forms of Discrimination against Women of 1979 and the Optional Protocol thereto of 1999 and the United Nations Convention on the Rights of the Child of 1989 and the two Optional Protocols thereto of 25 May 2000, and to bear in mind the relevant provisions of the Rome Statute of the International Criminal Court*”. Clause 10 calls on all parties to armed conflict to “*take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict*” while Clause 11 emphasizes the responsibility of all States to “*put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes including those relating to sexual and other violence against women and girls, and in this regard stresses the need to exclude these crimes, where feasible from amnesty provisions*”.¹⁸

2.2 Special Rapporteur’s India mission report says women in J & K and northeast states face sexual violence from security forces

The implementation of the UNSC resolution 1325/2000 remained unimplemented in respect of protection of women and girls in armed conflict situations. This has been confirmed by the Report of 1 April 2014 submitted to the United Nations Human Rights Council during the twenty-sixth session by the United Nations Special Rapporteur (UNSR) on violence against women, its causes and consequences,

¹⁸.United Nations Security Council Resolution 1325/2000; available at: <http://unscr.com/en/resolutions/doc/1325>

Rashida Manjoo on her mission to India during 22 April - 1 May 2013.

In her report, the UNSR stated: *“Women living in militarized regions, such as Jammu and Kashmir and the north-eastern states, live in a constant state of siege and surveillance, whether in their homes or in public. Information received through both written and oral testimonies highlighted the use of mass rape, allegedly by members of the State security forces, as well as acts of enforced disappearance, killings and acts of torture and ill-treatment, which were used to intimidate and to counteract political opposition and insurgency. Testimonies also highlight the impact of that situation on women’s health, including psychological disorders such as post-traumatic stress disorder, fear psychosis and severe anxiety, with such conditions having a negative impact on women’s physical well-being. Additionally, the freedoms of movement, association and peaceful assembly are frequently restricted. The specific legal framework that governs those areas, namely, the Armed Forces (Special Powers) Act and its variations, allows for the overriding of due process rights and nurtures a climate of impunity and a culture of both fear and resistance by citizens”*.¹⁹

Among others, the UNSR recommended to India to repeal, as a matter of urgency, the Armed Forces (Special Powers) Act (AFSPA) and the Armed Forces (Jammu and Kashmir) Special Powers Act and ensure that criminal prosecution of members of the armed forces is free from legal barriers.²⁰ The UNSR also urged India to take effective measures to ensure access to justice and effective redress for all victims of violence against women, including (i) monitoring the implementation of judicial decisions on cases relating to violence against women, and ensure that victims have prompt access to effective remedies; (ii) ensuring that all allegations of violence against women are adequately investigated by the police, and that perpetrators are punished; and (iii) ensuring that women and family members wishing to lodge complaints are free from any act of intimidation, threat or

¹⁹. Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo (A/HRC/26/38/Add.1) dated 1 April 2014 on her mission to India during 22 April – 1 May 2013; available at: <https://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/CountryVisits.aspx>

²⁰. Paragraph 77(f) of the Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo of 1 April 2014; available at: <https://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/CountryVisits.aspx>

harassment, and that protection is provided free of cost for the victim, if necessary.²¹

However, India called the findings in the report of the Special Rapporteur as ‘baseless’ and ‘full of sweeping generalisations’. India’s response to the report listed 16 allegations, which it said were not backed up by facts. The examples it gave included Special Rapporteur’s claim that “*women living in military regions such as the Jammu & Kashmir and the North Eastern States lives in a constant state of siege and surveillance*” and that members of the security forces had committed mass rapes.²²

2.3 India fails to give information to CEDAW on measures taken to protect women in ‘disturbed areas’

That the UNSC Resolution 1325/2000 has remained unimplemented is also established by the failure of India to give information sought by the CEDAW on measures taken to prevent and protect women and girls from violence, including sexual violence, during military operations in “disturbed areas”, in particular in Jammu and Kashmir and in the north-eastern states. India also did not respond to the question as to how many of the 1,429 registered complaints of human rights violations allegedly committed by military and paramilitary forces correspond to violence against women, including sexual violence. India further failed to provide information to the CEDAW Committee on measures taken to repeal the Armed Forces Special Powers Act (1958).²³

²¹. Paragraph 79(a) of the Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo of 1 April 2014; available at: <https://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/CountryVisits.aspx>

²². See A/HRC/26/38/Add.4, Addendum - Mission to India: comments by the government to the report of the Special Rapporteur

²³. CEDAW - List of issues and questions in relation to the combined fourth and fifth periodic reports of India (CEDAW/C/IND/Q/4-5 Para.10); available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fIND%2fQ%2f4-5&Lang=en and Replies of India (CEDAW/C/IND/Q/4-5/Add.1); available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fIND%2fQ%2f4-5%2fAdd.1&Lang=en

In its Concluding Observations (para 12) on the combined fourth and fifth periodic reports of India published on 24 July 2014, the CEDAW expressed deep concerns on the “*reported high level of violence, including rape and other forms of sexual violence, enforced disappearance, killings and acts of torture and ill-treatment, against women in conflict-affected regions (Kashmir, the north-east, Chhattisgarh, Odisha and Andhra Pradesh)*”. The CEDAW Committee raised particular concern about the: “*(a) Provisions of the Armed Forces (Special Powers) Act requiring prior authorization by the Government to prosecute a member of the security forces and the reportedly high risk of reprisals against women who complain about the conduct of the security forces*”; “*(d) Lack of centres providing medical, psychological, legal and socioeconomic support to women and girls who are victims of sexual violence in conflict-affected areas*”; and “*Absence of women in peace negotiations in the north-eastern states.*”

The CEDAW Committee, inter alia called upon India “*(a) To, in accordance with the recommendations of the Justice Verma Committee, promptly review the continued application of the Armed Forces (Special Powers) Act and related legal protocols and to enforce special powers protocols in conflict areas and assess the appropriateness of their application in those areas*”; “*(b) To amend and/or repeal the Armed Forces (Special Powers) Act so that sexual violence against women perpetrated by members of the armed forces or uniformed personnel is brought under the purview of ordinary criminal law and, pending such amendment or repeal, to remove the requirement for government permission to prosecute members of the armed forces or uniformed personnel accused of crimes of violence against women or other abuses of the human rights of women and to grant permission to enable prosecution in all pending cases*”; “*(c) To amend section 19 of the Protection of Human Rights Act and confer powers to the National Human Rights Commission to investigate cases against armed forces personnel, in particular cases of violence against women*”; “*(d) To ensure that the security sector is subject to effective oversight and that accountability mechanisms, with adequate sanctions, are in place, to provide systematic training on women’s rights to the military and other armed forces involved in security operations and to adopt and enforce a code of conduct for members of the armed forces to effectively guarantee respect for women’s rights*”; and “*(g) To ensure that women in the north-eastern states participate in peace negotiations and in the prevention, management and resolution of conflicts in line with Security Council resolution 1325*”

(2000) and the Committee's general recommendation No. 30 on women in conflict prevention, conflict and post conflict situations."²⁴

At paragraph 48 of its Concluding Observation, the CEDAW requested India to provide, within two years, written information on the steps taken to implement, among others, the following recommendations: (a) promptly review, in accordance with the recommendations of the Justice Verma Committee, the continued application of the AFSPA and related legal protocols and assess the appropriateness of their application in those areas and (b) ensure that the security sector is subject to effective oversight and that accountability mechanisms, with adequate sanctions, are in place, to provide systematic training on women's rights to the military and other armed forces involved in security operations and to adopt and enforce a code of conduct for members of the armed forces to effectively guarantee respect for women's rights.

The follow up information was due in July 2016, but India failed to provide it to the CEDAW. The CEDAW sent two reminders to India on 6 December 2016²⁵ and 21 September 2017²⁶ but no information has been provided by India.

²⁴. Concluding observations on the combined fourth and fifth periodic reports of India (CEDAW/C/IND/CO/4-5 Para.12 & 13) 24 July 2014; available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fIND%2fCO%2f4-5&Lang=en

²⁵. First reminder dated 6 Dec 2016 sent to India by the Rapporteur on Followup; available at : https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/Ind/INT_CEDAW_FUL_Ind_25972_E.pdf

²⁶. Second reminder dated 21 Sept 2017 sent to India by the Rapporteur on Follow-up; available at: https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/Ind/INT_CEDAW_FUL_Ind_28967_E.pdf

3. Sexual violence in conflict situations

3.1 Extent of the internal conflicts since 2000 and the extent of sexual violence

Internal armed conflicts has been a feature of India and the country has been facing insurgencies in 10 Left Wing Extremism (LWE) affected areas namely Chhattisgarh, Jharkhand, Odisha, Bihar, West Bengal, Andhra Pradesh, Telangana, Maharashtra, Madhya Pradesh, and Uttar Pradesh; six North Eastern States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Nagaland and Tripura; and Jammu and Kashmir since the adoption of the UNSC resolution 1325.

As per the official figures, a total of 9,448 people were killed in conflict areas during 2009 to 2019 including 3,747 deaths/killings in the LWE areas; 3,070 persons in the North East and 2,631 in Jammu and Kashmir.

As per the Ministry of Home Affairs (MHA), the north-east region reported 3,070 conflict related killings during 2009-2019. Those killed included 1,812 extremists, 239 members of the security forces, and 1,019 civilians.²⁷

The annual reports of the MHA have recorded 2,631 killings in Jammu and Kashmir during the period 2009-2019. These included 670 security forces, 373 civilians and 1,588 terrorists.²⁸

And, in the Left Wing Extremism affected states²⁹, a total of 3,747 deaths/killings were reported in Naxalite-Maoist insurgency during 2010-2018. Out of these, 81 deaths were reported from Andhra Pradesh, 387 from Bihar, 1370 from Chhattisgarh, 997 from Jharkhand, 4 from Madhya Pradesh, 256 from Maharashtra, 334 from Odisha, 13 from Telangana, 303 from West Bengal and 1 from Uttar Pradesh, and 1 from other state.³⁰

²⁷. Insurgency in Northeast, Ministry of Home Affairs, https://www.mha.gov.in/sites/default/files/NE_Insurgency.pdf

²⁸. Annual Report 2014-2015, Annual Report 2017-2018, Annual Report 2018-2019, Ministry of Home Affairs, accessible at <https://www.mha.gov.in/>

²⁹. The States of Chhattisgarh, Jharkhand, Odisha, Bihar, West Bengal, Andhra Pradesh, Telangana, Maharashtra, Madhya Pradesh, and Uttar Pradesh

³⁰. Annual Report 2018-2019, Ministry of Home Affairs, https://www.mha.gov.in/sites/default/files/AnnualReport_English_01102019.pdf

3.2 Sexual violence in conflict situations

From the adoption of the UNSC Resolution 1325 from 31 October 2000 to 30 October 2020, at least 116 cases of rape, molestation and other forms of sexual violence against women and girls perpetrated by armed forces of the Central government as well as state police were reported from 11 States afflicted by armed conflicts i.e. Andhra Pradesh, Arunachal Pradesh, Assam, Chhattisgarh, Jammu & Kashmir, Jharkhand, Maharashtra, Manipur, Meghalaya, Odisha and Tripura as given below:

Table 1: Reported cases of VAW in conflict situations in India from October 2000 to 30 October 2020

SL No.	Date of incident	State	Number of victims	Social category	Age (minor or major)	Types of sexual offences	Alleged perpetrators	Source
1	April-2011	Andhra Pradesh	1	Unknown	Minor (14 years)	Rape and impregnation of a mentally-challenged minor girl	CRPF	Proceedings of the NHRC dated 13.04.2012 in NHRC case no. 1389/1/23/2011-WC
2	22-Jan-10	Andhra Pradesh	4	Scheduled Tribe (ST)	All Majors	Mass gang rape of four Kondh tribal women	Greyhounds Special Police	https://timesofindia.india.com/city/hyderabad/Cops-booked-for-rape/articles/5502999.cms
3	20-Aug-07	Andhra Pradesh	11	Scheduled Tribe (ST)	All Majors	Mass gang rape of 11 Kondh tribal women	Greyhounds Special Police	https://www.thenewsminute.com/article/after-11-years-trial-andhras-vakapalli-gang-rape-case-begin-85688

4	21-Jun-18	Arunachal Pradesh	1	Scheduled Tribe (ST)	Minor (10 years)	Molestation of a 10-year-old girl by an army soldier	Sikh Regiment	Soldier accused of molesting minor, Times of India, 25 June 2018; available at: https://timesofindia.indiatimes.com/city/itanagar/soldier-accused-of-molesting-minor/articleshow/64728617.cms
5	15-Jan-18	Arunachal Pradesh	1	Scheduled Tribe (ST)	Minor	Rape of a minor girl	Assam Regiment	https://www.telegraphindia.com/states/north-east/jawan-arrested-for-rape/cid/1440098
6	02-Mar-13	Arunachal Pradesh	1	Scheduled Tribe (ST)	Minor (12 years)	Rape of a minor girl	IRBN	https://www.thehindu.com/news/national/other-states/girl-student-forced-to-drink-alcohol-and-raped-by-irb-man/article4476074.ece
7	08-Jul-10	Arunachal Pradesh	1	General	Major	Rape and murder of Dolly Chetri	SSB	http://www.arunachaltimes.in/archives/jul%2026%20.html

8	20-Oct-07	Arunachal Pradesh	2	Scheduled Tribe (ST)	All Minors	Molestation	ITBP	https://www.oneindia.com/2007/10/23/students-protest-against-alleged-molestation-by-itbp-jawan-1193204379.html
9	May-06	Arunachal Pradesh	1	Scheduled Tribe (ST)	Minor (12 years)	Gang rape of a minor girl	Rajputna Rifles	https://www.oneindia.com/2006/05/20/army-jawans-arrested-for-rape-1148122486.html
10	05-Jun-19	Assam	1	Unknown	Minor (7 years)	Molestation	BSF	https://www.pratidinime.com/bsf-jawan-allegedly-molests-7-year-old-in-mankachar/
11	13-Apr-18	Assam	1	Unknown	Minor (14 years)	Rape in police custody	Police	https://indianexpress.com/article/north-east-india/assam/assam-14-year-old-accuses-police-officer-of-rape-5170264/
12	12-Oct-17	Assam	1	Unknown	Major	Rape and murder	BSF	https://www.hindustantimes.com/india-news/diksha-murder-case-assam-police-arrests-bsf-jawan/story-toeCcsaIUcstSnJbe16KCK.html

13	10-Aug-15	Assam	1	Scheduled Tribe (ST)	Major	Rape of a pregnant woman	Army personnel	https://timesofindia.indiatimes.com/city/guwahati/Pregnant-woman-raped-by-Army-jawan-in-Kokrajhar/articleshow/48428540.cms
14	06-Apr-15	Assam	3	Scheduled Tribe (ST)	2 Major 1 Minor (13 years)	Gang rape of three tribal women	Jat Regiment	https://www.dnaindia.com/india/report-assam-rape-accused-army-jawan-commits-suicide-2077225
15	15-Sep-13	Assam	1	Unknown	Major	Attempt to rape	Army personnel	https://www.indiatoday.in/india/northeast/story/army-jawan-held-for-rape-attempt-in-train-assam-211106-2013-09-15
16	Jun-13	Assam	1	Unknown	Minor	Sexual assault of a girl by five army personnel	Army personnel	https://www.indiatvnews.com/news/india/five-army-jawans-arrested-for-sexually-assaulting-girl-in-assam-23850.html

17	03-Jan-13	Assam	1	Unknown	Major	Gang rape of a differently-abled woman	CRPF	https://www.indiatoday.in/india/northeast/story/crpf-jawan-arrested-for-raping-differently-abled-woman-150771-2013-01-04
18	13-Jul-12	Assam	1	Unknown	Minor	Attempt to rape	Army personnel	https://timesofindia.indiatimes.com/city/guwahati/Army-jawan-caught-molesting-girl-in-Assam-held-Police/articleshow/14938165.cms
19	10-Sep-11	Assam	1	Scheduled Tribe (ST)	Major (35 years)	Gang rape of a deaf and dumb tribal woman	SSB	https://timesofindia.indiatimes.com/city/guwahati/Rape-slur-on-SSB-jawans/articleshow/9952160.cms?referral=PM
20	18-Jul-11	Assam	1	Scheduled Tribe (ST)	Major	Rape	Police	https://www.telegraphindia.com/north-east/trohmoria-oc-held-on-rape-charge/cid/372545-Z:text=Dibrugarh%20C%20July%2018%3A%20The%20officer,a%20married%20woman%20of%20Rohmoria.

21	20-Apr-11	Assam	1	Scheduled Tribe (ST)	Major	Gang rape	Dogra Regiment	https://www.telegraphindia.com/states/north-east/tardy-rape-probe-rued/cid/396076
22	18-Jul-10	Assam	1	Other Backward Community (OBC)	Major (33 years)	Rape in custody	Police	Complaint of Asian Centre for Human Rights to National Human Rights Commission, 21 July 2010
23	16-Mar-08	Assam	2	Unknown	All Minors	Stripping and sexual abuse	Police	http://www.uncat.org/wp-content/uploads/2019/05/torture2009.pdf
24	01-Feb-07	Assam	1	Unknown	Major	Rape	Police	NHRC Case No. 21/3/11/07-08-WC
25	07-Feb-05	Assam	1	Scheduled Tribe (ST)	Minor (12 years)	Rape	Assam Rifle	https://www.outlookindia.com/newswire/story/12-year-old-allegedly-raped-by-assam-rifles-constable/278778
26	29-Jun-04	Assam	1	Scheduled Tribe (ST)	Major	Gang rape of a pregnant Adivasi woman	Army personnel	https://www.telegraphindia.com/north-east/jawans-rape-advansi-in-gossaigaon/cid/734588

27	Nov-03	Assam	1	Scheduled Tribe (ST)	Major (21 years)	Rape of a mentally retarded tribal woman	Army personnel	https://www.rediff.com/news/2003/nov/27assam1.htm
28	08-Aug-03	Assam	1	Scheduled Tribe (ST)	Major (23 years)	Gang rape	Army personnel	NHRC Case No. 52/3/2003-2004-AF
29	04-Jan-03	Assam	1	Unknown	Minor	Gang rape of a handicap girl	CRPF	NHRC Case No. 14/3/12/2013-PF
30	19-Jun-02	Assam	3	Scheduled Tribe (ST)	All Minor	Attempt to rape	Army personnel	https://khrw.wordpress.com/human-rights-violation/
31	27-Jul-20	Chhattisgarh	1	Scheduled Tribe (ST)	Major (21 years)	Rape	CRPF	https://www.deccanherald.com/national/north-and-central/crpf-jawan-held-for-raping-tribal-woman-in-chhattisgarh-867647.html

32	23-May-18	Chhattisgarh	3	Unknown	All Minors	Molestation of three tribal minor girls	ITBP	https://www.business-standard.com/article/pti-stories/c-garh-itbp-jawans-accused-of-molesting-three-minor-girls-118052401388_1.html
33	31-Jul-17	Chhattisgarh	16	Scheduled Tribe (ST)	All Minors	Mass sexual assault on 16 tribal girls	CRPF	https://scroll.in/article/913445/how-chhattisgarh-schoolgirls-who-accused-crpf-men-of-sexual-assault-were-denied-justice
34	01-Mar-17	Chhattisgarh	1	Scheduled Tribe (ST)	Minor (14 years)	Gang rape	Security Forces	https://thewire.in/politics/villagers-in-chhattisgarh-traumatised-allege-security-forces-rape-14-year-old-girl
35	13-Jun-16	Chhattisgarh	1	Scheduled Tribe (ST)	Major (23 years)	Rape and murder	Security Forces	https://scroll.in/article/813146/discrepancies-in-two-postmortems-of-young-woman-killed-by-chhattisgarh-police

36	11-14-Jan-16	Chhattisgarh	13	Scheduled Tribe (ST)	All majors	Mass/gang rape of 13 Adivasi women	Security Forces	https://amnesty.org.in/news-update/chhattisgarh-must-investigate-police-inaction-sexual-assault-case/
37	19-24-Oct-15	Chhattisgarh	40	Scheduled Tribe (ST)	39 majors 1 minor	Mass rape, sexual and physical assaults of at least 40 Adivasi women	Police	https://indianexpress.com/article/india/india-news-india/bijapur-policemen-raped-women-indulged-in-loot/
38	Oct-11	Chhattisgarh	1	Scheduled Tribe (ST)	Major (36 years)	Stripping and sexual abuse	Police	https://www.indiatoday.in/india/north/story/soni-sorin-joins-aap-says-i-was-stripped-naked-and-given-electric-shocks-in-jail-181720-2014-02-19
39	06-Jul-11	Chhattisgarh	1	Scheduled Tribe (ST)	Major (16 years)	Gang rape and murder	Police	https://indianexpress.com/article/india/india-others/rape-and-murder-in-maoist-zone-many-cops-probed-few-punished/

40	29-Apr-11	Chhattisgarh	2	Scheduled Tribe (ST)	All minors (15, 17 years)	Rape	Counter Terrorism and Jungle Warfare (CTJW)	https://timesofindia.indiatimes.com/india/2-Chhattisgarh-cops-held-for-rape/articleshow/8131119.cms
41	Mar-11	Chhattisgarh	3	Scheduled Tribe (ST)	All majors	Mass/gang rape	SPOs	https://indianexpress.com/article/india/india-others/rape-and-murder-in-maoist-zone-many-cops-probed-few-punished/
42	09-Nov-10	Chhattisgarh	2	Unknown	1 major 1 minor	Gang rape	Police	http://www.uncat.org/wp-content/uploads/2019/05/torture2011.pdf
43	12-Oct-10	Chhattisgarh	1	Scheduled Tribe (ST)	Major	Gang rape	Koya Commandos	http://www.uncat.org/wp-content/uploads/2019/05/torture2011.pdf
44	Jun-08	Chhattisgarh	3	Scheduled Tribe (ST)	All major	Mass rape	SPOs	http://www.aitpn.org/wp-content/uploads/2019/10/Tribal_Peoples_2009.pdf

45	Jan-08	Chhattisgarh	1	Scheduled Tribe (ST)	Minor (17 years)	Gang rape	Police	https://www.thehindu.com/news/national/other-states/acquitted-after-7-years-tribal-woman-says-she-was-tortured/article7050393.ece
46	Jul-07	Chhattisgarh	2	Scheduled Tribe (ST)	All major	Gang rape	SPOs	https://indianexpress.com/article/india/india-others/rape-and-murder-in-maoist-zone-many-cops-probed-few-punished/
47	03-Feb-07	Chhattisgarh	1	Scheduled Tribe (ST)	Major	Gang rape	Mizoram IRBN	http://www.aitpn.org/wp-content/uploads/2019/10/Tribal_Report2008.pdf
48	28-Apr-18	Jammu & Kashmir	1	Unknown	Major	Rape	CRPF	https://www.greaterkashmir.com/news/jammu/woman-alleges-rape-by-crpf-trooper-in-jammu-case-registered/
49	14-Apr-18	Jammu & Kashmir	1	Unknown	Minor (17 years)	Abduction	Sikh Regiment	https://kashmirlife.net/police-arrests-soldier-for-abducting-minor-in-mendhar-sector-171549/

50	12-Apr-16	Jammu & Kashmir	1	Unknown	Minor	Molestation	Rashtriya Rifles	https://kashmirreader.com/2016/04/28/handwara-girl-prisoner-of-the-state-of-affairs/
51	19-Jul-11	Jammu & Kashmir	1	Unknown	Major	Gang rape	Army Personnel	https://www.outlookindia.com/newswire/story/guilty-wont-be-spared-omar-on-rape-charge-on-army/728450
52	04-Sep-10	Jammu & Kashmir	1	Unknown	Minor (17 years)	Sexual assault	Police	https://www.hindustantimes.com/india/cop-arrested-for-sexual-assault-of-a-teenager-in-udhampur/story-G0uSMmVy29FmrUKVyMraYI.html
53	Jun-09	Jammu & Kashmir	1	Unknown	Minor (16 years)	Rape	IRBN	NHRC Case No. 43/9/3/09-10-AR
54	29-May-09	Jammu & Kashmir	2	Unknown	All majors	Rape and murder	Police	https://2009-2017.state.gov/j/drl/r1s/hrrpt/2009/sca/136087.htm
55	01-Jun-08	Jammu & Kashmir	1	Unknown	Minor (17 years)	Gang rape	Police	NHRC Case No. 50/9/5/08-09-WC

56	20-Jan-07	Jammu & Kashmir	1	Unknown	Minor	Rape	CRPF	https://www.news18.com/news/india/crpf-jawan-rapes-minor-arrested-256764.html
57	06-Nov-04	Jammu & Kashmir	2	General	1 major 1 minor (12 years)	Rape	Army Personnel	https://zeenews.india.com/home/handwara-rape-case-court-martial-against-major-begins_192472.html
58	04-Nov-04	Jammu & Kashmir	1	General	Major	Gang rape	Security Forces	https://www.amnesty.org/download/Documents/84000/asa200252005en.pdf
59	27-Oct-04	Jammu & Kashmir	1	Unknown	Major (20 years)	Gang rape	Army Personnel	https://www.outlookindia.com/newswire/story/army-to-hold-inquiry-into-gang-rape-incident-in-kashmir/258507
60	03-Jul-04	Jammu & Kashmir	1	Unknown	Minor	Rape	Police	https://www.onebillionrising.org/42830/appeal-for-an-independent-international-enquiry-into-all-the-sexual-violence-cases-in-jammu-and-kashmir-from-kunaposhpora-to-kathua/

61	16-Apr-02	Jammu & Kashmir	1	Unknown	Minor (17 years)	Gang rape	BSF	https://www.tribuncindia.com/2002/20020421/main4.htm
62	09-Feb-02	Jammu & Kashmir	1	Unknown	Major	Rape of a pregnant woman	Rashtriya Rifles	https://www.onebillionrising.org/42830/appeal-for-an-independent-international-enquiry-into-all-the-sexual-violence-cases-in-jammu-and-kashmir-from-kunaposhpora-to-kathua/
63	03-Jun-01	Jammu & Kashmir	3	Unknown	All majors	Gang rape	Rashtriya Rifles	https://www.onebillionrising.org/42830/appeal-for-an-independent-international-enquiry-into-all-the-sexual-violence-cases-in-jammu-and-kashmir-from-kunaposhpora-to-kathua/
64	15-May-19	Jharkhand	1	Unknown	Minor	Gang rape and trafficking	Police	https://www.hindustantimes.com/india-news/four-policemen-among-suspects-in-rape-trafficking-of-minor/story-wBntf74db92E8m1NUkBg0I.html

65	13-Mar-18	Jharkhand	1	Unknown	Major	Gang rape	Police	NHRC Case No.388/34/4/2018-WC
66	08-Sep-14	Jharkhand	1	Scheduled Tribe	Major (25 years)	Molestation	CRPF	https://indianexpress.com/article/india/india-others/advansi-leaders-demand-probe-into-alleged-molestation-by-crf-jawan-in-jharkhand-district/
67	Sep-14	Jharkhand	1	Scheduled Tribe	Major	Molestation	JAP	https://indianexpress.com/article/india/india-others/advansi-leaders-demand-probe-into-alleged-molestation-by-crf-jawan-in-jharkhand-district/
68	Apr-13	Jharkhand	3	Unknown	All majors	Molestation	Police	https://www.indiatvnews.com/news/india/7-cops-suspended-on-molestation-charges-in-jharkhand-21955.html

69	24-Jan-08	Jharkhand	1	Scheduled Tribe (ST)	Minor (10 years)	Rape	Police	http://www.aitpn.org/wp-content/uploads/2019/10/Tribal_Peoples_2009.pdf
70	13-Jul-01	Jharkhand	1	Scheduled Tribe (ST)	Major	Rape	Police	https://nhrc.nic.in/sites/default/files/AR03-04ENG.pdf
71	18-Nov-19	Manipur	1	Scheduled Tribe (ST)	Major	Stripping and sexual assault	Assam Rifles	https://www.nationalheraldindia.com/india/manipur-woman-sexual-assault-case-nhrc-directs-dgp-to-file-status-report-by-dec-21
72	14-May-13	Manipur	1	Unknown	Major	Molestation and attempt to rape	CRPF	http://e-pao.net/GP.asp?src=2..160513.may13
73	20-Oct-12	Manipur	1	Unknown	Minor	Molestation and attempt to rape	Manipur Police Commando	http://e-pao.net/GP.asp?src=1..020213.feb13
74	21-Mar-12	Manipur	1	Scheduled Tribe (ST)	Major (40 years)	Abduction and gang rape	IRBN	https://zeenews.india.com/news/north-east/four-persons-arrested-for-alleged-rape-in-manipur_765960.html

75	14-Jul-11	Manipur	1	Unknown	Major (18 years)	Abduction & gang rape	IRBN	https://humanrightsmanipur.files.wordpress.com/2014/01/manipur-perils-of-war-and-womanhood1.pdf
76	09-Nov-10	Manipur	1	Unknown	Major (36 years)	Rape	Army personnel	https://humanrightsmanipur.files.wordpress.com/2014/01/manipur-perils-of-war-and-womanhood1.pdf
77	13-Mar-07	Manipur	1	Scheduled Tribe (ST)	Major (18 years)	Rape	38 Assam Rifles	http://www.e-pao.net/GP.asp?src=1..150307.mar07
78	21-Feb-06	Manipur	1	General	Major	Gang rape	Manipur Police Commando	https://www.hrw.org/reports/2008/india0908/4.htm
79	27-Sep-05	Manipur	2	General	All majors (19 years)	Gang rape	Security Forces	https://shodhganga.inflibnet.ac.in/bitstream/10603/65419/10/10_chapter%203.pdf
80	30-Jul-05	Manipur	3	Unknown	All majors	Sexual assault	Security Forces	https://shodhganga.inflibnet.ac.in/bitstream/10603/65419/10/10_chapter%203.pdf

81	22-Jan-05	Manipur	1	Unknown	Major	Rape	Manipur Rifles	https://humanrightsmanipur.files.wordpress.com/2014/01/manipur-perils-of-war-and-womanhood1.pdf
82	17-Jan-05	Manipur	1	General	Major (22 years)	Sexual harassment	Grenadier Rifles	https://lib.ohchr.org/HRBodies/UPR/Documents/Session1/IN/COHR_IND_UPR_S1_2008anx_Annex%20XV_Cases%20of%20Human%20Rights%20Violations%20in%20Manipur%20till.pdf
83	12-Feb-04	Manipur	1	Unknown	Major	Rape	IRBN	https://shodhganga.inflibnet.ac.in/bitstream/10603/65419/10/10_chapter%203.pdf
84	14-Jan-04	Manipur	1	Unknown	Minor	Rape	Police	http://www.e-pao.net/GP.asp?src=7.13.090404.apr04
85	10-11 July 2004	Manipur	1	General	Major	Gang rape and murder	Assam Rifles	https://bhrpc.files.wordpress.com/2014/11/manoramareport.pdf

86	04-Oct-03	Manipur	1	General	Minor (15 years)	Gang rape	Army personnel	https://sci.gov.in/supreme-court/2012/29000/29000-2012-Judgement_14-Jul-2017.pdf
87	30-Jun-02	Manipur	1	General	Major	Suicide following gang rape	Manipur Rifles	https://shodhganga.inflibnet.ac.in/bitstream/10603/65419/10/10_chapter%203.pdf
88	06-Oct-01	Manipur	1	General	Major	Rape	Assam Rifles	https://vlex.in/vid/meinam-ongbi-bina-devi-577366662
89	20-Jan-17	Maharashtra	2	Scheduled Tribe (ST)	All majors	Gang rape	Police	https://scroll.in/article/827999/gadchiroli-cops-rescue-two-women-from-lawyers-office-as-they-mull-filing-rape-case-against-forces
90	02-Feb-18	Meghalaya	1	Unknown	Major	Rape	Police	https://www.thehindu.com/news/national/other-states/another-rape-case-rocks-meghalaya-policeman-held/article23543203.ecc

91	12-Oct-14	Meghalaya	1	Unknown	Minor (17 years)	Molestation	Police	https://www.business-standard.com/article/news-ians/meghalaya-police-officer-arrested-for-molesting-minor-114101301285_1.html
92	28-Dec-13	Meghalaya	1	Unknown	Minor	Gang rape	Police	https://www.business-standard.com/article/news-ians/three-meghalaya-cops-arrested-for-sexual-assault-114010400678_1.html
93	13-Mar-13	Meghalaya	2	Unknown	All minors (14, 17 years)	Rape	Police	https://www.news18.com/news/india/meghalaya-police-officer-rapes-two-minor-girls-617663.html
94	06-Feb-11	Meghalaya	1	Unknown	Minor (14 years)	Gang rape	BSF	https://meghalayetimes.info/rape-accused-bsf-personnel-located-in-wb/
95	22-Jan-10	Meghalaya	1	Unknown	Major	Rape	Assam Rifles	NHRC Case No. 3/15/3/2011-PF

96	01-Jul-20	Odisha	1	Scheduled Tribe (ST)	Minor (13 years)	Rape	Police	https://timesofindia.indiatimes.com/city/bhubaneswar/former-inspector-dismissed-for-rape-minor-inside-police-station-in-odisha/articleshow/print/76723659.cms
97	24-Feb-20	Odisha	1	Unknown	Major	Rape	BSF	https://www.indiatoday.in/crime/story/odisha-bsf-jawan-arrested-rape-woman-marriage-1649670-2020-02-25
98	10-Feb-19	Odisha	1	Unknown	Minor (15 years)	Rape	Police	https://timesofindia.indiatimes.com/city/bhubaneswar/police-among-2-arrested-for-teen-gang-rape-in-odisha-bargarh-district/articleshow/67948594.cms
99	10-Oct-17	Odisha	1	Scheduled Caste (Dalit)	Minor	Gang rape	Security Forces	https://cjp.org.in/waging-wars-on-womens-bodies/

I00	12-Feb-10	Odisha	1	Scheduled Tribe (ST)	Major (20 years)	Gang rape	Security Forces	http://www.sacw.net/article1593.html
I01	09-Aug-20	Tripura	1	Unknown	Minor (17 years)	Rape	CRPF	https://www.hindustantimes.com/india-news/crpf-jawan-accused-of-rape-by-minor-girl-in-tripura-case-lodged/story-oF7DMe2suScBH2bej7NKTP.html
I02	08-Apr-17	Tripura	2	Scheduled Tribe (ST)	All majors	Rape	BSF	http://www.uniindia.com/bsf-jawans-accused-of-rape-of-two-tribal-ladies/other/news/840391.html
I03	17-Mar-17	Tripura	1	Scheduled Tribe (ST)	Major	Shot dead for resisting molestation	BSF	https://www.thehindu.com/news/national/other-states/bsf-jawans-in-row-over-death-of-3-tribals-in-tripura/article17527733.ece
I04	22-Jul-16	Tripura	1	General	Major	Shot dead for resisting rape	BSF	https://www.thehindu.com/news/national/other-states/BSF-men-alleged-to-have-killed-young-woman-after-rape-attempt/article14503042.ece

105	11-Nov-11	Tripura	1	Unknown	Minor (15 years)	Rape	Police	NHRC Case No. 61/23/5/2011-WC
106	23-Feb-11	Tripura	1	Scheduled Tribe (ST)	Minor (15 years)	Rape	TSR	NCPDR Case No. TR-19023/21623/2010-11/COMP
107	19-Feb-11	Tripura	1	Scheduled Tribe (ST)	Major (27 years)	Rape and murder	TSR	See NHRC Case No. 8/23/4/2011-PF
108	30-Nov-10	Tripura	2	General	1 Major 1 Minor (16 years)	Mother shot dead for resisting rape attempt on her minor daughter	BSF	https://timesofindia.indiatimes.com/india/NHRC-raps-BSF-for-rape-and-murder-by-jawans/articleshowprint/22016568.cms
109	27-Oct-10	Tripura	1	Unknown	Minor (14 years)	Rape	Police	http://www.assamtribune.com/scripts/detailsnew.asp?id=oct2910/at044

110	04-Jun-09	Tripura	2	Scheduled Tribe (ST)	All minors	Gang rape	SPOs	NHRC Case No. 8/23/4/09-10-AR
111	12-Mar-08	Tripura	2	Scheduled Tribe (ST)	Major (21 years)	Rape and murder	SPOs	http://www.aitpn.org/wp-content/uploads/2019/10/TribalPeoples2009.pdf
112	May-04	Tripura	3	Scheduled Tribe (ST)	All majors	Gang rape	CRPF	https://www.telegraphindia.com/states/north-east/rape-slur-on-crpf-jawans-iftar-donation/cid/704728
113	26-May-03	Tripura	1	Scheduled Tribe (ST)	Minor (16 years)	Gang rape	SPOs	https://nhrc.nic.in/press-release/2-tripura-government-pays-compensation-gang-rape-victim
114	Oct-01	Tripura	1	Scheduled Tribe (ST)	Major (20 years)	Rape	Police	https://timesofindia.indiatimes.com/city/kolkata/HC-orders-probe-into-custody-rape-charge/articleshowprint/1281889324.cms
Total			224					

From the adoption of the UNSC Resolution 1325 until 30 September 2020, at least 116 cases of rape, molestation and other forms of sexual violence against women and girls perpetrated by armed forces of the Central government as well as state police were reported from 11 States afflicted by armed conflicts i.e. Andhra Pradesh, Arunachal Pradesh, Assam, Chhattisgarh, Jammu & Kashmir, Jharkhand, Maharashtra, Manipur, Meghalaya, Odisha and Tripura.

An analysis of these 116 cases of sexual violence show that the maximum cases were reported from Assam (21) followed by Manipur (18), Chhattisgarh (18), Jammu & Kashmir (16); Tripura (14); Jharkhand and Meghalaya (seven cases each); Arunachal Pradesh (6); Odisha (5); Andhra Pradesh (3) and Maharashtra (1).

Analysis of these 116 cases also reveal that all together 228 women and girls were victimized. The maximum number of victims were reported from Chhattisgarh (95 victims); Assam (26 victims); Manipur (21 victims); Jammu & Kashmir (20 victims); Tripura (18 victims); Andhra Pradesh (16 victims); Jharkhand (9); Meghalaya (8); Arunachal Pradesh (7 victims); Odisha (five victims); and Maharashtra (2 victims).

The analysis also reveals that minor girls remain highly vulnerable to sexual violence as 71 victims constituting 31.44% of total 228 victims were minor girls between 7 -17 years.

Among the total 228 victims, 140 constituting 61.13% were identified as tribals (Scheduled Tribes) and two victims - one victim each from Dalit community (Scheduled Caste) and Other Backward Community (OBC).

Further analysis reveal that out of the 21 cases in Assam, the Border Security Force (BSF) personnel were allegedly involved in two cases, Police in five cases, Army personnel in 10 cases, the Central Reserve Police Force (CRPF) personnel in two cases, Assam Rifles personnel in one case and Sashastra Seema Bal (SSB) personnel in one case. In Manipur, out of the 18 cases, Assam Rifles (AR) personnel were allegedly involved in four cases, CRPF personnel in one case, Manipur Police Commandos in two cases, Indian Reserve Battalion (IRBN) personnel in three cases, Army personnel in four cases, police in two cases, Manipur Rifles personnel in two cases and unknown security personnel in one case. In Maoist affected state of Chhattisgarh, out

of the 18 cases, CRPF personnel were involved in two cases, Indo-Tibetan Border Police (ITBP) personnel in one case, Special Police Officers (SPOs) in three cases, police in eight cases, Koya Commandos in one case, Mizoram's IRBN in one case and unknown security personnel in two cases. In militancy-affected Jammu & Kashmir, out of 16 cases, the CRPF personnel were involved in two cases, army personnel in seven cases (including jointly with police in one case), police in four cases (including jointly with army in one case), IRBN personnel in one case, BSF personnel in one case and unknown security personnel in two cases. Out of total 14 cases in Tripura, CRPF personnel were involved in two cases, BSF personnel in four cases, police in three cases, Tripura State Rifles (TSR) personnel in two cases and SPOs in three cases. In Jharkhand, out of the seven cases, police were involved in five cases, Jharkhand Armed Police personnel in one case and CRPF personnel in one case. Out of seven cases from Meghalaya, police were involved in four cases, BSF personnel in two cases and Assam Rifles personnel in one case. In Arunachal Pradesh, out of six cases, army personnel were involved in three cases, IRBN personnel in one case, SSB personnel in one case and ITBP personnel in one case. In Odisha, out of the five cases, State police were involved in three cases including jointly with Special Operation Group (SOG) in one case, and BSF in one case and unknown security personnel in one case. Out of three cases from Andhra Pradesh, CRPF personnel were involved in one case and Greyhounds personnel in two cases. In one case of Maharashtra, C-60, an anti-Naxal force, personnel were allegedly involved.

The details of the cases are provided below.

A. Andhra Pradesh (3 cases)

Case 1: Rape and impregnation of a mentally-challenged minor girl by a CRPF personnel

In April 2011, a 14-year-old mentally challenged girl was raped by a Central Reserve Police Force (CRPF) personnel near the CRPF camp in Warangal district, Andhra Pradesh. The victim was an inmate of a Shelter Home run by an NGO. The matter came to light only when the victim was admitted to a local hospital and gave birth to a premature baby on 5 November 2011. Acting on a complaint filed by ACHR on 14 November 2011, the NHRC directed the Director General, CRPF, New Delhi and Superintendent of Police, Warangal district to submit

reports (NHRC case no. 1389/1/23/2011-WC). In compliance, the Director General, CRPF submitted a report dated 03.02.2012 stating that on 29 October 2011, Ms Dara Madhuri, social worker associated with Sai Vikas School for mentally retarded children at Bheemaram, Palivelpula Road, Hanamkonda, Warangal lodged a complaint with Station House Officer, Kakatya University Campus Police Station that out of 11 children of the said school, one girl namely “Gudya” (name changed), aged about 14 years, was complaining of stomach ache. Smt. Sithayamma, the Caretaker of the School revealed that this girl was pregnant as a result of rape by a CRPF Constable in the month of April 2011. Based on the above complaint, an FIR No. 256/2011 dated 29-10-2011 was registered u/s 376 IPC (punishment for rape) at Kakatya University Campus Police Station against unidentified CRPF person and Sithayamma, Caretaker of Sai Vikas School.³¹ On 17 September 2012, the NHRC closed the case because the National Commission for Protection of Child Rights had taken suo-moto cognizance of the incident on 9 November 2011.³²

Case 2: Mass/gang rape of four Kondh tribal women by Greyhounds personnel

In the early hours of 22 January 2010, four tribal women belonging to Kondh tribe were allegedly gang raped by the personnel of the Greyhounds Special Police, an anti-Naxal force, at Baaluguda village under Munchingput police station in Visakhapatnam district during an anti-Naxal operation. A team of Greyhounds Special Police arrested nine persons on alleged charge of helping the Maoists from Baaluguda village. Following the arrest, the special police team entered the houses of the four tribal women and allegedly gang-raped them. The four victims were relatives of arrested persons. Following protests, a criminal case was registered against the personnel of the special police team on 26 January 2010 under section 376 of IPC as well as section 3(12) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Earlier, the police did not register a case when the villagers approached them. The residents of Baaluguda village claimed that the police threatened the tribals with dire consequences if they speak about the incident. Further, the police had reportedly tried to

³¹. Proceedings of the NHRC dated 13.04.2012 in NHRC case no. 1389/1/23/2011-WC

³². Proceedings of the NHRC dated 07.09.2012 in NHRC case no. 1389/1/23/2011-WC

cover up the matter as no witness examination, collection of circumstantial evidence, medical and laboratory examination and identification parade were conducted.³³

Case 3: Mass/gang rape of 11 Kondh tribal women by the Greyhounds personnel

On 20 August 2007, personnel of the Greyhounds Special Police allegedly gang raped at least 11 Adivasi women, belonging to Kondh tribe at Vakapalli hamlet in Nurmati panchayat under Visakhapatnam district of Andhra Pradesh at gunpoint during a search operation against the Maoists.³⁴ The Adivasi women alleged that Greyhounds personnel entered their village to conduct routine anti-Maoist combing operations. Seeing that the men in the area had gone to work, they allegedly raped the women in their homes and in the fields. A criminal case was first registered with the Paderu police, under Section 376 (2) (rape by police officer) of the IPC and the relevant sections of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. 1989.³⁵ However, even before registration of the case, then Director General of Police, Andhra Pradesh, Mr M.A. Basith dismissed the allegation as a “baseless ploy” of the Maoists to discourage the police from combing the forest areas.³⁶

The gang rape survivors had faced an uphill battle to get justice. The police personnel contested the rape allegations against them even as the women battled social stigma at home – as part of a local custom of purification, they were separated from their husbands and children. The gang rape survivors had alleged that a massive cover-up was

³³. Cops booked for ‘rape’, The Times of India, 27 January 2010, <https://timesofindia.indiatimes.com/city/hyderabad/Cops-booked-for-rape/articleshowprint/5502999.cms>

³⁴. After 11 years, trial in Andhra’s Vakapalli gang-rape case to begin, The Newsminute, 30 July 2018; available at: <https://www.thenewsminute.com/article/after-11-years-trial-andhras-vakapalli-gang-rape-case-begin-85688>

³⁵. 2007 Vakapalli gangrape: AP cops delay trial claiming documents ‘untraceable’, The News Minute, 9 February 2020, <https://www.thenewsminute.com/article/2007-vakapalli-gangrape-ap-cops-delay-trial-claiming-documents-untraceable-117832>

³⁶. Rape finger at cops, The Telegraph, 22 August 2007, <https://www.telegraphindia.com/india/rape-finger-at-cops/cid/1568415>

carried out by the police.³⁷ The Crime Branch- Criminal Investigation Department (CB-CID) report found that no incident of rape had happened. In 2008, the rape survivors challenged the CB-CID's report before the local magistrate, following which the case moved to the High Court and then to the Supreme Court in 2012. In September 2017, the Supreme Court issued orders to begin the trial at the Scheduled Caste/Scheduled Tribe Special Court at Vishakapatnam. The trial began in August 2018 at the special court but by then, two of the 11 rape survivors had died. On 9 February 2020, the media reported that the Andhra Pradesh police was stalling the probe by not producing key documents claiming that they were "untraceable".³⁸

B. Arunachal Pradesh (6 cases)

Case 4: Molestation of a 10-year-old girl by army soldier

On 21 June 2018, police arrested a soldier of the 19th Sikh Regiment identified as Gurlal Singh in Longding district on the charge of molesting a minor girl aged 10 years. According to an FIR lodged by the mother of the victim, the accused who was part of a patrolling team, entered the house of the victim's house at Bonia village under Pongchau circle at around 10 am on the pretext of using the toilet and finding the victim alone, molested her. A case was registered under the Protection of Children from Sexual Offences Act, 2012 and the soldier was produced before the Longding judicial magistrate.³⁹

Case 5: Rape of a minor girl by personnel of Assam Regiment

On 15 January 2018, Gake Kamra, a soldier of the Assam Regiment, allegedly raped a minor girl after forcefully entering her house at Daporijo village in Daporijo district. The victim was alone when the

³⁷. After 11 years, trial in Andhra's Vakapalli gang-rape case to begin, The Newsminute, 30 July 2018; available at: <https://www.thenewsminute.com/article/after-11-years-trial-andhras-vakapalli-gang-rape-case-begin-85688>

³⁸. 2007 Vakapalli gangrape: AP cops delay trial claiming documents 'untraceable', The News Minute, 9 February 2020, <https://www.thenewsminute.com/article/2007-vakapalli-gangrape-ap-cops-delay-trial-claiming-documents-untraceable-117832>

³⁹. Soldier accused of molesting minor, Times of India, 25 June 2018; available at: <https://timesofindia.indiatimes.com/city/itanagar/soldier-accused-of-molesting-minor/articleshow/64728617.cms>

crime took place. The victim's family members lodged a complaint at Daporijo police station and the accused was arrested. The victim also alleged that she was raped by the accused in 2007.⁴⁰

Case 6: Rape of a 12-year-old minor girl by an IRBN jawan

On 2 March 2013, a 12-year-old girl studying in Class VI at a government school in Longding district was raped by a constable of the Indian Reserve Battalion after forcing her to drink alcohol. The girl was found lying unconscious beside the circuit house. The IRBN constable, Lukbom Yonggam, was arrested on 3 March 2013 after local people caught him and handed him over to police.⁴¹

Case 7: Rape and murder of a woman by SSB personnel

On 8 July 2010, Kanchana Chetri (name changed) was allegedly raped and killed by the personnel of 38th Battalion of Sashastra Seema Bal (SSB) at Nagmandir village under Rupa Police Station in West Kameng district. On the day of the incident, the SSB personnel reportedly constructed a camp at Nagmandir on their way to Tawang from Tezpur, Assam. On 9 July 2010, the brutally abused body of the victim was found by the local people and they lodged a complaint with the Rupa police station against four suspected SSB personnel. Following the complaint, the police reportedly intimidated the Commandant of 38th SSB not to transfer or let any personnel leave the camp without prior permission. On 25 July 2010, the four suspected SSB personnel were caught by the residents while they were trying to flee their camp. They were handed over to the police.⁴²

Case 8: Alleged molestation of two girl students by an ITBP personnel

On 20 October 2007, an Indo-Tibetan Border Police (ITBP) personnel posted at Kimin-iro road in Papumpare district allegedly molested two girl students. Angry locals led by the local Member of Legislative Assembly and All Arunachal Pradesh Students' Union blocked the

⁴⁰. Jawan arrested for rape, The Telegraph, 24 January 2018, <https://www.telegraphindia.com/states/north-east/jawan-arrested-for-rape/cid/1440098>

⁴¹. Girl student forced to drink alcohol and raped by IRB man, The Hindu, 5 March 2013; available at: <https://www.thehindu.com/news/national/other-states/girl-student-forced-to-drink-alcohol-and-raped-by-irb-man/article4476074.ece>

⁴². Villagers hold up SSB personnel, The Arunachal Times, 25 July 2010, <http://www.arunachaltimes.in/archives/jul%2026%20.html>

Kamin- iro road protesting the sexual harassment by the ITBP personnel.⁴³

Case 9: Gang rape of a minor girl by two Army personnel

In May 2006, a 12-year-old girl was allegedly gang raped by two personnel of 2nd Rajputna Rifles at Kaikepathar village in Kharsang Circle under Changlang district. The two accused were arrested following public protests. The incident took place when an army patrol had gone to the village. The accused identified as Lance Naik Pradip Kumar and Rifleman Kishan Singh had gone to the house of a village elder and in the absence of family members, they raped the victim, while their accomplice stood guard outside the house.⁴⁴

C. Assam (21 cases)

The Armed Forces (Special Powers) Act, 1958 continued to be in force in Assam. On 18 March 2020, the Government of Assam declared the entire state as “Disturbed Area” upto six months beyond 28 February 2020.⁴⁵

Case 10: Molestation of a minor girl by BSF personnel

On 5 June 2019, a seven-year-old girl was allegedly molested by a BSF jawan at Kakoripara village under Mankachar police station in Dubri district. The minor victim and her mother had gone near the BSF guardroom for drying areca nut. When the mother was not nearby, the accused BSF jawan identified as Amar Nayak allegedly asked the victim to bring him some ‘gutkha’, a chewing tobacco product and when the girl brought the same, Nayak took her inside the guardroom and tried to molest her. The villagers heard the girl’s

⁴³. Students protest against alleged molestation by ITBP jawan, Oneindia, 24 October 2007; available at: <https://www.oneindia.com/2007/10/23/students-protest-against-alleged-molestation-by-itbp-jawan-1193204379.html>

⁴⁴. Army jawans arrested for rape, One India, 20 May 2006, <https://www.oneindia.com/2006/05/20/army-jawans-arrested-for-rape-1148122486.html>

⁴⁵. See <https://www.outlookindia.com/website/story/india-news-armed-outfit-may-exploit-assam-to-remain-disturbed-area-under-afspa-for-another-6-months/348976>

cries for help and they rushed to the guardroom and rescued the girl.⁴⁶

Case 11: Rape of a 14-year-old girl in police custody

On 13 April 2018, a 14-year-old girl was allegedly raped by the Officer-in-Charge (OC) of a police outpost under Hajo police station in Kamrup (Rural) district.⁴⁷ The victim alleged that the OC identified as Binod Chandra Das sent Dipali Rabha, the woman officer present at the station, out and locked the door, made her touch his private parts. When the victim started crying, the accused called the woman officer back, but sent her out again. Thereafter, he raped the victim. On 30 April 2018, the victim's parents filed an FIR against the accused officer, following which he was arrested.⁴⁸

Case 12: Rape and murder of woman by BSF personnel

On 12 October 2017, police arrested a serving soldier of the BSF on charges of rape and murder of woman, a mother of two children, in Sibsagar district. The accused BSF personnel was identified as Pranjal Pratim Saikia (30 years) raped and murdered the woman identified as Diksha Rajkumari, an employee with Airtel in August 2017.⁴⁹

Case 13: Rape of a pregnant tribal woman by army personnel

On 10 August 2015, an eight-month pregnant tribal woman was allegedly raped by an army personnel at Thaisouguri village in Kokrajhar district. As per the FIR filed by the victim at Kachugaon police station, a group of army personnel from 10th Bihar Regiment stationed at Mwinaguri area in the district came to the woman's house

⁴⁶. BSF Jawan Allegedly Molests 7-Year-Old In Mankachar, Pratidin Time, 6 June 2019, <https://www.pratidintime.com/bsf-jawan-allegedly-molests-7-year-old-in-mankachar/>

⁴⁷. Assam: 14-year-old accuses police officer of rape, The Indian Express, 9 May 2018; available at: <https://indianexpress.com/article/north-east-india/assam/assam-14-year-old-accuses-police-officer-of-rape-5170264/>

⁴⁸. Assam: 14-year-old accuses police officer of rape, The Indian Express, 9 May 2018; available at: <https://indianexpress.com/article/north-east-india/assam/assam-14-year-old-accuses-police-officer-of-rape-5170264/>

⁴⁹. BSF soldier arrested for rape and murder of mother of two in Assam, Hindustan Times, 13 October 2017; available at: <https://www.hindustanimes.com/india-news/diksha-murder-case-assam-police-arrests-bsf-jawan/story-toeCcSaIUcstSnJbel6KCK.html>

along with police looking for her husband. As the husband was not present at home, the security personnel had left. But two personnel including the accused returned and took her to the nearby Gwjwnpara Lower Primary School, where she was allegedly raped by one of them.⁵⁰

Case 14: Gang rape of three tribals including a minor girl by Army personnel

On 6 April 2015, a team of eight personnel belonging to the 8th Jat Regiment of the Indian Army allegedly raped two women and a 13-year-old girl at Khorsim Athor village in Anjukpani under Dokmoka police station in Karbi Anglong district. The personnel on patrol reached the village and allegedly took the minor girl to the neighbouring forest. The girl's mother and another women relative followed them to rescue her but the personnel allegedly raped them as well. On 8 April, villagers lodged an FIR in Dokmoka police station and produced the three victims before the police while thousands of women under the banner of the Karbi Nimso Chinthur Asong (Karbi Progressive Women's Association) took out a protest rally demanding a high-level inquiry.⁵¹ On 13 April 2015, one of the accused army personnel identified as Satyabir Dara of the 8th Jat Regiment, committed suicide by shooting himself with his rifle.⁵²

Case 15: Attempt to rape a woman by army personnel in train

On 15 September 2013, an army personnel was arrested on charges of attempting to rape a sleeping woman passenger in a train. The incident took place in the Guwahati-Ledo Inter City Express. The accused jawan was from the 299th Field Regiment, posted at Maiballa in Sonari under Sibsagar district. According to the FIR lodged by the woman, she was sleeping on the upper berth of an AC 3-tier coach,

⁵⁰. Pregnant woman 'raped' by Army jawan in Kokrajhar, Times of India, 11 August 2015; available at: <https://timesofindia.indiatimes.com/city/guwahati/Pregnant-woman-raped-by-Army-jawan-in-Kokrajhar/articleshow/48428540.cms>

⁵¹. Protest over rape of 3 women in Assam, The Telegraph, 10 April 2015; available at: <https://www.telegraphindia.com/india/protest-over-rape-of-3-women-in-assam/cid/1475777>

⁵². Assam: Rape accused Army jawan commits suicide, DNA India, 13 April 2015; available at: <https://www.dnaindia.com/india/report-assam-rape-accused-army-jawan-commits-suicide-2077225>

while the jawan was sleeping in the middle, her mother in the lower berth and her brother on a side berth. The woman suddenly jolted and woke up to see that the personnel identified as Krishan Lal Saini (43 years) hailing from Rajasthan, was trying to rape her. The personnel also tried to prevent her from shouting by gagging her mouth with his hand but she managed to raise an alarm after which her family members and other passengers woke up and caught the accused personnel.⁵³

Case 16: Mass sexual assault of a girl by five army personnel

In June 2013, five army personnel were arrested for allegedly molesting a girl in Dibrugarh railway station. On 13 June 2013, a teenage girl and her brother, hailing from Lakhimpur district, arrived at the Dibrugarh railway station and as they went to separate rest rooms, the group of personnel from 58th Engineers Regiment allegedly molested the girl. According to the police, the accused personnel first locked the brother's rest room door and then entered the girl's rest room and sexually assaulted her. As she screamed for help, nearby people came to her rescue and beat up the personnel and handed them to police, while one escaped. The arrested personnel were identified as Mandip Singh, PC Joshi, Bishnu Bahadur Rana, Arinder Singh and Kamal Bahadur Chetri.⁵⁴

Case 17: Gang rape of a differently-abled woman by four CRPF personnel

On 3 January 2013, four CRPF personnel forcibly took a differently-abled woman, who was passing by the CRPF camp on National Highway-52, to the nearby jungle and gang raped her at Chauldhowa village in Lakhimpur district. Some local residents raised an alarm and managed to catch Mohan Singh, one of the CRPF personnel red

⁵³. Army jawan held for rape attempt in train, Indiatoday, 15 September 2013; available at: <https://www.indiatoday.in/india/northeast/story/army-jawan-held-for-rape-attempt-in-train-assam-211106-2013-09-15>

⁵⁴. Five army jawans arrested for sexually assaulting girl in Assam, India TV, 15 June 2013, <https://www.indiatvnews.com/news/india/five-army-jawans-arrested-for-sexually-assaulting-girl-in-assam-23850.html>

handed while three of his colleagues fled the spot. The accused personnel was handed over to the police⁵⁵ and was later arrested.⁵⁶

Case 18: Attempt to rape a girl by army personnel

On 13 July 2012, police arrested an army personnel identified as Anil Kumar Upadhaya after he was caught red hand for allegedly attempting to rape a girl at Panidihing Dolpa village under Dimow police station in Sibsagar district. The incident took place when a 13-member army team from the Nitaipukhuri Naujan-based camp was patrolling the flood-affected Dolpa area and Upadhay attempted to rape a local girl who was collecting firewood near the breached part of the embankment. Some other women working in the embankment saw the accused trying to manhandle the girl and raised an alarm, helping the girl escape. The local residents gheraoed the army personnel and demanded punishment for the guilty.⁵⁷

Case 19: Gang rape of a deaf and dumb tribal woman by SSB personnel

On the night of 10 September 2011, a group of 10th Sashastra Seema Bal (SSB) personnel belonging to 16th Battalion allegedly gang raped a 35-year-old Bodo tribal woman who was deaf and dumb at No.1 Sonapur village under Bismuri police station in Kokrajhar district. The woman was allegedly raped in front of her husband. An FIR filed by the victim's husband stated that the SSB personnel barged into his hut at night and beat him up and allegedly raped his wife in

⁵⁵. CRPF jawan arrested for raping differently-abled woman in Assam, *Indiatoday*, 4 January 2013; available at: <https://www.indiatoday.in/india/northeast/story/crpf-jawan-arrested-for-raping-differently-abled-woman-150771-2013-01-04>

⁵⁶. Assam: CRPF jawan held for allegedly raping mentally challenged woman, *DNA*, 4 January 2013; available at: <https://www.dnaindia.com/india/report-assam-crpf-jawan-held-for-allegedly-raping-mentally-challenged-woman-1785276>

⁵⁷. Army jawan caught molesting girl in Assam, held: Police, *Times of India*, 15 July 2012; available at: <https://timesofindia.indiatimes.com/city/guwahati/Army-jawan-caught-molesting-girl-in-Assam-held-Police/articleshow/14938165.cms>

front of him. Later, they dragged her outside to the forest where she was again raped.⁵⁸

Case 20: Rape of a married tribal woman by a police officer

On 18 July 2011, a married tribal woman was allegedly raped by the officer-in-charge of Rohmoría police station identified as Pabitra Pran Bora at Rohmoría in Dibrugarh district. According to the victim, the accused police officer came to her house for fetch something but he raped her finding her alone in the house. The accused was arrested following a complaint.⁵⁹

Case 21: Gang rape of a married woman by Army personnel

On 20 April 2011, a woman, wife of Manek Goyari of Tharaibari village in Kokrajhar district was allegedly gang raped by two personnel belonging to the 15th Dogra Regiment stationed in Adabari area of Kokrajhar district. According to the victim, six personnel forcefully entered into the house and she was raped by two personnel while four others held her down.⁶⁰ The victim's husband who was not present at the house arrived a few hours after the accused jawans had left and informed the police about the crime. However, the police initially refused to register an FIR, which was subsequently registered after a week on the direction of the chief judicial magistrate of Kokrajhar. A medical examination report confirmed rape and injury as alleged by the victim.⁶¹

⁵⁸. Rape slur on SSB jawans, Times of India, 12 September 2011; available at: <https://timesofindia.indiatimes.com/city/guwahati/Rape-slur-on-SSB-jawans/articleshow/9952160.cms?referral=PM>

⁵⁹. Rohmoría OC held on rape charge, The Telegraph, 19 July 2011, <https://www.telegraphindia.com/north-east/rohmeria-oc-held-on-rape-charge/cid/372545~:Z:text=Dibrugarh%2C%20July%2018%3A%20The%20officer,a%20married%20woman%20of%20Rohmeria>.

⁶⁰. Tardy rape probe rued, Telegraph, 3 May 2011; available at: <https://www.telegraphindia.com/states/north-east/tardy-rape-probe-rued/cid/396076>

⁶¹. 2011 Assam gangrape: Police officer charged with refusal to file FIR in case involving Indian Army personnel, First Post, 25 April 2018; available at: <https://www.firstpost.com/india/2011-assam-gangrape-officer-in-charge-of-kokrajhar-police-pulled-up-for-refusing-to-file-fir-in-case-involving-indian-army-personnel-4444829.html>

Case 22: Rape of Maloti Kalandi in police custody

On 18 July 2010, a 33-year-old woman, wife of Badal Kalandi, belonging to the Adivasi Tea Tribe, which is recognised as Other Backward Community (OBC) in Assam, was allegedly raped by Sub-Inspector Sahidul Rahman of Tamulpur police station at his official quarter at the Tamalpur police station premises in Baksha district. The victim along with children who were rescued from being trafficked, were handed over to the Tamulpur police station by a student organisation for safe custody. At night, Sub-Inspector Sahidur Rahman summoned the victim to his official quarter and raped her.⁶²

Case 23: Stripping and sexual assault of two minor girls in police custody

On the night of 16 March 2008, two minor girls were allegedly stripped and sexually abused by Sub-Inspector L. Ali inside the lock-up of the Bharalumukh police station in Kamrup district. The victims had gone to the police station to lodge a complaint after they were raped by three youths.⁶³

Case 24: Rape of tribal woman Sabitri Shau by a police officer

On the night of 1 February 2007, a tribal woman, wife of Anup Shau, was allegedly raped by police sub-inspector Utpal Nath at Bodiaguri under Gossaigaon police station in Kokrajhar district. The victim and her husband Anup Shau, a handicapped man, alleged that at about 10 pm on the night of 1 February, Utpal Nath of Gossaigaon police station came to their house. He forcibly entered the house and repeatedly raped the victim in front of her husband and three children till 3 am. The police officer also physically assaulted Anup Shau and their 10-year-old son Raju when they tried to resist.⁶⁴

Case 25: Rape of a 12-year-old tribal girl by an Assam Rifle personnel

On 7 February 2005, an Assam Rifles personnel identified as Gautam Tamang deployed at the Assam Rifles Training School in Diphu,

⁶². Complaint of Asian Centre for Human Rights to National Human Rights Commission, 21 July 2010

⁶³. Torture in India 2009, ACHR, <http://www.uncat.org/wp-content/uploads/2019/05/torture2009.pdf>

⁶⁴. See NHRC Case No. 21/3/11/07-08-WC

Headquarter of Karbi Anglong district abducted a 12-year-old tribal girl belonging to the Karbi tribe and repeatedly raped her in custody.⁶⁵ Medical examination of the victim confirmed that she was raped after being sedated with sleeping tablets and she had bruises and scratch marks on her body. Acting on an FIR lodged by the victim's family, she was rescued the next day while the accused personnel was trying to whisk her away to Dimapur.⁶⁶ On 9 February 2005, the accused was arrested on a direction from the court of Chief Judicial Magistrate and sent to police custody.⁶⁷

Case 26: Gang rape of a pregnant Adivasi woman by two Army personnel

On the night of 29 June 2004, a pregnant Adivasi woman of Padmapukri village under Gossaigaon Subdivision under Kokrajhar district was raped by two Army personnel stationed at Habrubil in Gossaigaon. The accused personnel belonging to the 11th Jammu and Kashmir Light Infantry Regiment (JKLI), who came to the Kokrajhar railway station to receive several colleagues returning from leave, crossed over to the village adjoining the railway station and allegedly raped the pregnant woman at gunpoint inside her house in the presence of her husband. On 30 June 2004, the victim was examined and treated for injuries at the Gossaigaon Civil Hospital.⁶⁸ The Army instituted court martial proceedings against the accused, which found two personnel identified as Havildar Satish Kumar and Rifleman Rajinder Kumar guilty and ordered their dismissal from service in August 2004. The army court also awarded 10 years rigorous imprisonment to them in a civil jail.⁶⁹

⁶⁵. 12-year-old allegedly raped by Assam Rifles constable, Outlookindia.com, 9 February 2015; available at: <https://www.outlookindia.com/newswire/story/12-year-old-allegedly-raped-by-assam-rifles-constable/278778>

⁶⁶. Rape taints Assam Rifles again, Telegraph, 9 February 2005, available at: <https://www.telegraphindia.com/india/rape-taints-assam-rifles-again/cid/677079>

⁶⁷. 12-year-old allegedly raped by Assam Rifles constable, Outlookindia.com, 9 February 2015; available at: <https://www.outlookindia.com/newswire/story/12-year-old-allegedly-raped-by-assam-rifles-constable/278778>

⁶⁸. Jawans rape Adivasi in Gossaigaon, The Telegraph, 30 July 2004, <https://www.telegraphindia.com/north-east/jawans-rape-adivasi-in-gossaigaon/cid/734588>

⁶⁹. Jawans get 10 years for rape, The Telegraph, 13 August 2004, <https://www.telegraphindia.com/north-east/jawans-get-10-years-for-rape/cid/727470>

Case 27: Rape of a mentally retarded tribal woman by two personnel of J&K Light Infantry Regiment

In November 2003, a magisterial inquiry was ordered into the alleged rape of a mentally retarded tribal woman (21 years) by two army jawans at Sapekata in Kokrajhar district. Police registered a criminal case against the two accused jawans from the Jammu and Kashmir Light Infantry based at Sapekata in Kokrajhar. The accused jawans had reportedly gone to the residence of a private medical practitioner, Lonkeswar Koch of Matiapara village under Gossaigaon sub-division and found the victim, who was undergoing treatment for mental problems, alone in the house. They allegedly raped her repeatedly for three hours before Lonkeswar Koch arrived. An FIR was filed with the Sapekata police outpost. However, on hearing about the FIR, some members of the JKLI gheraoed the police outpost and ransacked it.⁷⁰

Case 28: Gang rape of a 23-year-old tribal woman by two Army personnel

On 8 August 2003, a 23-year-old tribal woman, wife of Manoj Narzary of Laodangi village under Dhekiajuli subdivision in Sonitpur district, was allegedly gang raped by two Army personnel at her house. The accused personnel from Batasipur camp entered the victim's house and finding her alone raped her. The victim was a mother of an eight-month-old baby. When her husband, who was nearby along with the baby, arrived on the spot after having seen Army personnel entering his house, he had to remain a dumb spectator to the armed jawans' inhuman act out of fear. A police complaint was filed at Dhekiajuli police station.⁷¹

Case 29: Gang rape of a handicap girl by the CRPF personnel

On 4 January 2003, a handicap girl was allegedly gang raped by four CRPF personnel attached with D Company of 34th Battalion of the CRPF at Adarsha Gaon of Chawul Dhowa Ghat under Bogenadi police station in Lakhimpur district. The four accused personnel dragged the victim into a bush and raped her. Some villagers managed to catch one of the accused identified as Mohan Singh and handed

⁷⁰. Probe into rape charge against JKLI jawans, Rediff.com, 27 November 2003, <https://www.rediff.com/news/2003/nov/27assam1.htm>

⁷¹. See NHRC Case No. 52/3/2003-2004-AF

over him to the police. Pursuant to intervention of the NHRC, reports were submitted which stated that appropriate departmental action against the accused would be taken on finalisation of the police case/departmental enquiry against him. It was also informed that the Guwahati High Court had taken cognizance of the matter as a PIL (suo motu) case No.14/2012 and interim compensation of Rs. 100,000 was ordered in favour of the victim on 22 February 2013.⁷²

Case 30: Alleged attempt to rape of three minor tribal girls by army personnel

On 19 June 2002, army personnel allegedly attempted to rape three minor tribal girls at Dikhlem Barbi village under Kheroni police station in Karbi Anglong district during a search operation in the village. The victims, all aged under 16 years, were students. The army personnel allegedly molested them at gunpoint after forcing them to take off their clothes. A complaint was lodged with the police.⁷³

D. Chhattisgarh (17 cases)

Case 31: Rape of a tribal woman by CRPF constable

On 27 July 2020, a 21-year-old tribal woman was allegedly raped by a CRPF jawan, deployed in Sukma district in Chhattisgarh for anti-Naxal operations. The accused identified as Dulichand, a constable, was arrested on 30 July 2020 based on a complaint lodged by the victim and her parents. As per the victim's complaint, she was raped by the accused near Dubbakota CRPF camp under Dornapal police station area when she had gone to graze cattle.⁷⁴

Case 32: Molestation of three minor girls by ITBP personnel

On 23 May 2018, three personnel of the Indo-Tibetan Border Police (ITBP) were arrested by police for allegedly molesting three minor girls, one of them a national-level tennis player, in Kondagaon district, Chhattisgarh. The accused ITBP personnel were identified as Head Constables Manish Kumar (24 years), Nagendra Bhagor (26 years)

⁷². See NHRC Case No. 14/3/12/2013-PF

⁷³. See Karbi Human Rights Watch at <https://khrw.wordpress.com/human-rights-violation/>

⁷⁴. CRPF jawan held for raping tribal woman in Chhattisgarh, Deccan Herald, 30 July 2020 <https://www.deccanherald.com/national/north-and-central/crpf-jawan-held-for-raping-tribal-woman-in-chhattisgarh-867647.html>

and Prabhu Dayal (25 years) of the ITBP's 29th battalion stationed in the district for anti-Naxal operations. The victims in their police complaint stated that on 22 May 2020 they were returning after practice at a club in Kondagaon town when the three accused accosted them. The three accused asked the girls for phone numbers, touched one of them inappropriately, and made lewd comments. The accused fled when a relative of one of the victims arrived at the spot.⁷⁵

Case 33: Mass sexual assault on 16 tribal girls by CRPF personnel at school

On 31 July 2017, at least 16 tribal girl students were allegedly subjected to sexual assault by the CRPF personnel during celebration of Rakshabandhan event at a girl school in Palnar in Dantewada district, Chhattisgarh. The victims were from two schools, 13 girls from the Kanya Awasya and three from the Pre Metric Girls' School. More than 100 CRPF personnel attended the festival. In their statements, the victims, in Classes 5 to 10, recounted how the CRPF personnel allegedly groped them on the pretext of conducting security checks. One of the victims, a Class 9 student, stated that she had gone to the toilet and when she came out a CRPF man told her to stand up against a wall because he needed to frisk her. He told her to turn towards the wall and raise her hands. Thereafter, he allegedly slid his hands slowly and purposefully up from her feet to her chest. In their written statements, the victims described in harrowing detail what the CRPF personnel had subjected them to. A Class 5 student said she was accosted by a CRPF man when she went to wash her hands after lunch. He asked her to sit on a bench and began harshly fondling her breasts until she cried in pain. He let her go but not before warning her not to open her mouth. Three girls from the Pre Metric School alleged that they were made to stand facing a wall and groped. Two CRPF personnel were arrested for the sexual assault on the school girls in August 2017.⁷⁶

⁷⁵. C'garh: ITBP jawans accused of molesting three minor girls, Business Standard, 24 May 2018; available at: https://www.business-standard.com/article/pti-stories/c-garh-itbp-jawans-accused-of-molesting-three-minor-girls-118052401388_1.html

⁷⁶. How Chhattisgarh schoolgirls who accused CRPF men of sexual assault were denied justice, Scroll.in, 3 March 2019, <https://scroll.in/article/913445/how-chhattisgarh-schoolgirls-who-accused-crpf-men-of-sexual-assault-were-denied-justice>

Case 34: Gang rape of 14-year-old Adivasi girl by security forces

On 1 March 2017, a 14-year-old Adivasi girl was allegedly gang raped by security forces at Chintagufa village in LWE affected Sukma district of Chhattisgarh. According to journalist Pawan Shaha of Hindi daily “*Nayi Duniya*”, who visited Chintagufa village and interviewed the victim, her family members and other villagers, a group of five uniformed security forces barged into the hut at around 4 am on 1 March, dragged the victim to a corner and took turns raping her. The victim’s mother, sister-in-law and her children were also beaten when they tried to prevent the rape while the security forces also beat up a few villagers, who heard the girl screaming, came out to defend her. The villagers could not tell whether the security personnel were from the police or paramilitary forces. However, they told the journalist that the forces entered the village in search of Sangham (village-level unarmed units of the CPI (Maoist) members). While the victim stated that around five or six uniformed people barged into the house alleging that the men of the house were Naxalites.⁷⁷

Case 35: Rape and killing of a 23-year-old tribal woman by security forces

On 13 June 2016, a tribal woman (23 years) was allegedly picked up by security forces and killed in an alleged encounter at Gompad village in Sukma district. The state police claimed that the deceased was a Maoist cadre and was killed in an encounter between security personnel and armed Maoist. However, in a petition before the Chhattisgarh High Court filed on 20 June 2016, the deceased woman’s parents, Madkam Lakshmi and Kosa, alleged that the security forces had raped and killed the deceased after she was picked up from home. The deceased’s parents claimed that she was wearing a *lungi* (a cloth worn below the waist), blouse and *gamchha* (stole) when the security personnel took her away from home. While the police claimed to have recovered her “uniformed body” in the forests at the end of a fierce gun battle. There were several discrepancies in the post-mortem examinations conducted. The first post mortem

⁷⁷. Villagers in Chhattisgarh Traumatized, Allege Security Forces Raped 14-Year-Old Girl, The Wire, 6 April 2017, <https://thewire.in/politics/villagers-in-chhattisgarh-traumatized-allege-security-forces-rape-14-year-old-girl>

report recorded in a single statement “no evidence of rape”. However, “*no vaginal swab was sent to FSL examination or no viscera taken*” in violation of the NHRC guidelines, which makes it imperative to keep slides of vagina, semen or any other material in the course of autopsies.⁷⁸

Case 36: Mass/gang rape of 13 Adivasi women by security forces

Between 11 and 14 January 2016, 13 Adivasi women were allegedly raped and sexually assaulted by police and security force personnel during search operations at Nendra village in Bijapur district. The personnel allegedly also raped or sexually assaulted other women, threatened and beat up villagers, and stole poultry, food and money. One of the victims’ statements reads: “Two men caught hold of me and dragged me inside my house. They took off my clothes, tore my blouse and pressed my breasts. One policeman raped me and said, “We will burn down your houses. If it wasn’t daytime, we would have killed you.” Initially, the police even refused to register an FIR.⁷⁹ Acting on a complaint, the NHRC intervened into the matter and directed a spot investigation by a team of its Investigation Division and Law Division on 22 February 2016.⁸⁰

Case 37: Mass rape, sexual and physical assaults of at least 40 Adivasi women by police

Between 19 and 24 October 2015, at least 40 women from five villages of Pegdapalli, Chinnagelur, Peddagelur, Gundam and Burgicheru in LWE affected Bijapur district were allegedly subjected to sexual assaults, gang rape, molestation and beatings by police personnel during search operations. One of the victims included a 14-year-old,

⁷⁸. Postmortems cast doubt on Chhattisgarh police version of how alleged Maoist was killed, Scroll.in, 5 August 2016, <https://scroll.in/article/813146/discrepancies-in-two-postmortems-of-young-woman-killed-by-chhattisgarh-police>

⁷⁹. Chhattisgarh Must Investigate Police Inaction In Sexual Assault Case, Amnesty International India, 25 January 2016, <https://amnesty.org.in/news-update/chhattisgarh-must-investigate-police-inaction-sexual-assault-case/>

⁸⁰. See NHRC Press Release, 7 January 2017 at <https://nhrc.nic.in/press-release/nhrc-finds-16-women-prima-facie-victims-rape-sexual-and-physical-assault-police>

who was allegedly blindfolded and gang raped. The police personnel also carried out looting and destruction of properties in the villages.⁸¹

On 7 January 2017, the NHRC, which conducted on the spot investigation, in a press statement stated it had found that 16 women were prima facie victims of rape, sexual and physical assault by the police personnel. Accordingly, it issued show cause notice to state government of Chhattisgarh to show cause as to why it should not recommend interim monetary relief of Rs 37 lakh, including Rs. 3 lakh each to eight victims of rape, Rs. 2 lakh each to six victims of sexual assault and Rs. 50,000/- each to two victims of physical assault. The NHRC found that there were 34 victims mentioned in the FIRs, of which it could record statements of only 14 victims. The NHRC further stated that all the victims were tribals but the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act was not invoked in any of the cases.⁸² In its report (29 April 2016), the National Commission for Scheduled Tribes, which also conducted investigation, stated that no progress was made in identifying the security personnel who attacked the women villagers, and recommended a judicial enquiry.⁸³

Case 38: Torture and sexual assault of Adivasi teacher by police

In October 2011, a 36-year-old Adivasi school teacher and human rights activist in Dantewada district was arrested by police and she spent over two years in jails in Raipur and Jagdalpur and then in Tihar jail, Delhi. In custody, she was allegedly tortured, stripped and sexually assaulted. In an interview with media, the victim stated “*I was brutally tortured in Raipur jail. While in the custody of the Dantewada police, I was stripped naked and given electric shocks at the orders of (then) district police Superintendent Ankit Garg. I was sexually assaulted by three of his men.*” Subsequently, she was given medical

⁸¹. Bijapur: ‘Policemen raped women, indulged in loot,’ The Indian Express, 2 November 2015, <https://indianexpress.com/article/india/india-news-india/bijapur-policemen-raped-women-indulged-in-loot/>

⁸². See NHRC Press Release, 7 January 2017 at <https://nhrc.nic.in/press-release/nhrc-finds-16-women-prima-facie-victims-rape-sexual-and-physical-assault-police>

⁸³. The NCST’s Report On Gangrapes And Assaults In Bastar Says There Is A Breakdown Of Discipline Among Security Forces, The Caravan, 12 May 2016; available at: <http://www.caravanmagazine.in/vantage/bastar-ncst-report-gangrapes-assaults-result-breakdown-discipline>

treatment at the Kolkata Medical College Hospital where doctors removed stones inserted into her vagina and rectum.⁸⁴

Case 39: Gang rape and killing of a 16-year old tribal girl by police

On 6 July 2011, a 16-year-old tribal girl was allegedly gang raped and killed by police at Karcha village in Surguja district. While the police claimed that she was killed in an encounter with the Maoists, the villagers claimed that they heard only two or three shots when an encounter usually involves at least 50 to 60 rounds. The girl's body was found with two bullet wounds i.e. in the chest and between the legs. The post mortem confirmed serious injuries to her private parts and semen on her clothes, and the doctor suggested multiple intercourses. But the post-mortem report had a footnote marked with an asterisk which mentioned "*Habitual about sex. Having dilated vagina*".⁸⁵

Case 40: Alleged rape of two minor tribal girls by two policemen

On 29 April 2011, two minor girls, aged 15 and 17 years respectively, of Patharri village were allegedly raped by the accused police personnel identified as Lekhraj Sonwani and Suresh Kumar Baiga near the Counter Terrorism and Jungle Warfare (CTJW) College in Kanker district. The accused were attached to the Counter Terrorism and Jungle Warfare School as cooks. The accused allegedly raped the girls when they went to the nearby jungles to attend nature's call. The incident came to light when the accused fled after committing the crime as they were spotted by some villagers who went to the nearby jungles to look for a pair of ox. Both the accused were arrested following a police complaint.⁸⁶

⁸⁴. Soni Sori says torture in Chhattisgarh jails forced her to join AAP, India Today, 19 February 2014, <https://www.indiatoday.in/india/north/story/soni-sori-joins-aap-says-i-was-stripped-naked-and-given-electric-shocks-in-jail-181720-2014-02-19>

⁸⁵. Rape and murder in Maoist zone: many cops probed, few punished, Indian Express, 25 June 2014; available at: <https://indianexpress.com/article/india/india-others/rape-and-murder-in-maoist-zone-many-cops-probed-few-punished/>

⁸⁶. 2 Chhattisgarh cops held for rape, The Times of India, 1 May 2011, <https://timesofindia.indiatimes.com/india/2-Chhattisgarh-cops-held-for-rape/articleshow/8131119.cms>

Case 41: Mass/gang rape of three Adivasi women by the SPOs

In March 2011, three women were allegedly raped and several houses burnt down, allegedly by the Special Police Officer (SPOs) and security forces in Morpalli and Tadmetsla villages in Dantewada district. The victims wrote to the CBI and the Supreme Court. In July 2011, the court asked the CBI to investigate and a team visited the spot early in 2012, but its officials were attacked by the SPOs. A CBI affidavit alleged that *“the SPOs, heavily armed with automatic weapons, hand grenades etc, rushed towards the CBI team... The team was holed up in a room... The CBI team was confined for around three to four hours and was rescued by CRPF”*. It requested the court to direct the government to provide security.⁸⁷

Case 42: Mass/gang rape of two persons including a minor by policemen

On 9 November 2010, two persons (names withheld) including a minor were allegedly gang raped by four police personnel inside the Dharmjaigarh police station premises in Raigarh district. The victims had gone to the police station to see their relatives who were picked up by the police. However, the accused police personnel forcibly took the victims to a house in the police station premises and gang raped them. The accused allegedly threatened the victims with dire consequences if they complained to anybody.⁸⁸

Case 43: Gang rape of a tribal woman by Koya police commandos

On the night of 12 October 2010, a tribal woman was allegedly raped by Koya commandos of Chhattisgarh Police during a raid in Bade Bidme panchayat in Dantewada district. The victim stated that she was sleeping when four uniformed policemen forced into the house at 2 am and raped her. According to the villagers, the raid was conducted after cutting off power supply in two Panchayats namely Bade Bidme and Phulpar panchayat in the district.⁸⁹

⁸⁷. Rape and murder in Maoist zone: many cops probed, few punished, The Indian Express, 25 June 2014, <https://indianexpress.com/article/india/india-others/rape-and-murder-in-maoist-zone-many-cops-probed-few-punished/>

⁸⁸. Torture in India 2011, ACHR, <http://www.uncat.org/wp-content/uploads/2019/05/torture2011.pdf>

⁸⁹. Torture in India 2011, ACHR, <http://www.uncat.org/wp-content/uploads/2019/05/torture2011.pdf>

Case 44: Mass rape of three tribal women by SPOs

In June 2008, the police detained three Special Police Officers (SPOs) identified as Rakesh, Dhamru and Rakesh for allegedly abducting and raping three tribal women at gunpoint near Kirandul in Dantewada district. The victims in their complaint before the Kirandul police station alleged that they came to Kirandul to work as manual labourers from Pulpad village. The accused abducted them at gunpoint and took them to the nearby forests and raped them.⁹⁰

Case 45: Alleged illegal detention, rape and torture of 17-year-old tribal girl by police

In January 2008, a 17-year-old Adivasi girl (name withheld) was picked up from a village fair in Dantewada district. The minor was accused of being a part of a team of over 350 Maoists that killed policemen in July 2007 and was charged under various sections of the IPC and the Arms Act. For the first three months after arrest, she was lodged in different police stations and subjected to all kinds of torture. She was allegedly chained, beaten, raped and tortured in police custody. She was deprived of her dignity as they kept her naked during detention. She sustained serious injuries and had to undergo two surgeries. She was acquitted by a court in Dantewada, cleared of all charges.⁹¹

Case 46: Alleged rape of two tribal women by the SPOs

In July 2007, two tribal women alleged that they were raped by SPOs at Arlampalli village in Sukma district. In 2008, in a letter to the Supreme Court and the NHRC, one of the victims stated that four SPOs came to her house and when she ran inside they dragged her out and took her about 1 km away where she was raped. She identified three of the SPOs as Rajesh from Polampalli, Kiche Soma of Korrapad and Linga from Palamadgu. The police registered an FIR but none of the SPOs identified by her in the letter was named in it.⁹²

⁹⁰. The State of India's Indigenous and Tribal Peoples 2009, AITPN, http://www.aitpn.org/wp-content/uploads/2019/10/Tribal_Peoples_2009.pdf

⁹¹. Acquitted after 7 years, tribal woman says she was tortured, *The Hindu*, 31 March 2015; available at: <https://www.thehindu.com/news/national/other-states/acquitted-after-7-years-tribal-woman-says-she-was-tortured/article7050393.ece>

⁹². Rape and murder in Maoist zone: many cops probed, few punished, *The Indian Express*, 25 June 2014, <https://indianexpress.com/article/india/india-others/rape-and-murder-in-maoist-zone-many-cops-probed-few-punished/>

Case 47: Gang rape of a tribal woman by IRBN personnel

On 13 February 2007, a tribal woman filed a complaint alleging gang rape by some personnel of the Mizoram 2nd India Reserve Battalion (IRBN) in Dantewada district of Chhattisgarh.⁹³ Earlier on 3 February 2007, several tribal women were allegedly gang raped by personnel of IRBN (F Company) at Nakulnar village in Dantewada district. In response to a complaint, Chhattisgarh State Human Rights Commission (No. 7644/HRC/DTW/13/2007) closed the case by attaching a report from the Director General Police (DGP), Chhattisgarh that confirmed the gang rape but the DGP pleaded inability to act upon the culprits as the women were unable to recognise the perpetrators during the identification parade. As an action, the Central Reserve Police Force replaced the IRBN (Mizo Battalion) which was deployed to fight the Naxalites.⁹⁴

E. Jammu & Kashmir (16 cases)**Case 48: Alleged rape of a woman by CRPF jawan**

On 28 April 2018, a woman, a resident of Poonch district, lodged a written complaint with Domana police station in Jammu, alleging that she was waylaid by a group of three CRPF personnel, taken inside their camp and raped by one of them on 10 March 2018. She also alleged that the accused filmed the assault and threatened to release the video on social media if she disclosed the incident to police or someone else. In her complaint she stated that on the day of the incident she alighted from a bus around 7.30 pm and was on way to her relative's home. She lost her way and was intercepted by three personnel in uniform outside their camp half an hour later. They took her inside on the pretext of helping and instead one of them raped her.⁹⁵ A case was registered on charges of rape and wrongful confinement against unidentified CRPF personnel. The CRPF stated

⁹³. The State of India's Indigenous and Tribal Peoples 2008, AITPN, http://www.aitpn.org/wp-content/uploads/2019/10/Tribal_Report2008.pdf

⁹⁴. Submission to UPR by Action Aid, 20 November 2007, https://lib.ohchr.org/HRBodies/UPR/Documents/Session1/IN/AA_IND_UPR_S1_2008_ActionAid_uprsubmission.pdf

⁹⁵. Woman alleges rape by CRPF trooper in Jammu; case registered, Greater Kashmir, 29 April 2018; available at: <https://www.greaterkashmir.com/news/jammu/woman-alleges-rape-by-crpf-trooper-in-jammu-case-registered/>

that the three accused CRPF personnel were placed under suspension.⁹⁶

Case 49: Abduction of a 17-year-old girl by an Army personnel

On 14 April 2018, police arrested a soldier belonging to 11th Sikh Regiment for allegedly abducting a 17-year-old girl from Mendhar area in Poonch district. A police team rescued the girl. The police claimed that the soldier resisted arrest and thrashed one of the policemen during arrest. An FIR No. 53/2018 u/s 363 RPC was registered against the accused soldier.⁹⁷

Case 50: Alleged molestation of a minor school girl by an Army personnel

On 12 April 2016, an unidentified soldier of the 21st Rashtriya Rifles (RR) allegedly molested a school girl at a toilet in Handwara town in Kupwara district. The girl raised an alarm and shopkeepers and passerby gathered at the spot rescued the girl. A police official who reached the spot soon after dragged the minor girl to the nearby police station and her cell phone was taken away. While in police custody, a statement of the minor girl was video recorded which was shared with media. The girl remained in police custody at the Handwara police station while her father and aunt were picked up on 13 April and detained, their mobile phones taken away. The three spent about three weeks in the custody at the police station and at two other different places. Pursuant to direction of a court, police produced the father-daughter duo before a Chief Judicial Magistrate to record their statements. But both were allegedly coerced to give false statements including asking the girl to testify that she was born in 1997 to show that she was not a minor. For days, the victim and her family members remained guarded by policemen and they were barred from travelling to Srinagar despite the intervention of the

⁹⁶. 3 CRPF men suspended after woman alleges illegal confinement and rape by one of them; Times of India, 29 April 2018; available at: http://timesofindia.indiatimes.com/articleshow/63962340.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

⁹⁷. Police arrests soldier for abducting minor in Mendhar sector, Kashmirlife.net, 15 April 2018; available at: <https://kashmirlife.net/police-arrests-soldier-for-abducting-minor-in-mendhar-sector-171549/>

J&K Women Commission.⁹⁸ The incident led to massive public protests for days in which five people were killed in firing by security forces.⁹⁹

Case 51: Alleged abduction and rape of a woman by two Army personnel

On 19 July 2011, a young woman alleged that she was allegedly abducted and raped by two Army personnel in Kulgam district of south Kashmir. The woman, a resident of Gujjardara-Manzgam in the district, reported to police that she was abducted by some unidentified army personnel from Kheranbal Behak on 19 July and gang raped. She claimed that she was released on the night of 20 July. People protested against the alleged abduction and rape of the woman demanding strict action against the erring personnel. The police had registered a case under sections 366 (abduction) and 376 (rape) of Ranbir Penal Code (RPC).¹⁰⁰

Case 52: Alleged sexual assault of a minor girl by police constable

On 4 September 2010, a 17-year-old girl was sexually assaulted by Police Constable Shyam Lal at Siyal Salan in Udhampur district. The accused constable misbehaved, eve-teased and sexually assaulted the minor at Siyan Salan area of Udhampur city during the night when the victim was returning home. When the victim raised an alarm the accused constable was caught and handed over to the police. The accused was arrested in connection with the case and suspended.¹⁰¹

⁹⁸. Molested', isolated, pressurised, shuffled around, Kashmirreader, 28 April 2016; available at: <https://kashmirreader.com/2016/04/28/handwara-girl-prisoner-of-the-state-of-affairs/>

⁹⁹. HC dismisses plea for judicial probe into Handwara case, Tribune, 5 May 2016; available at: <https://www.tribuneindia.com/news/jammu-kashmir/community/hc-dismisses-plea-for-judicial-probe-into-handwara-case/232143.html>

¹⁰⁰. Guilty Won't Be Spared: Omar on Rape Charge on Army, Outlook, 21 July 2011, <https://www.outlookindia.com/newswire/story/guilty-wont-be-spared-omar-on-rape-charge-on-army/728450>

¹⁰¹. See NHRC Case No. 176/9/14/2010-WC & <https://www.hindustantimes.com/india/cop-arrested-for-sexual-assault-of-a-teenager-in-udhampur/story-G0uSMmVy29FmrUKVyMraYI.html>

Case 53: Alleged rape of 16-year-old girl by a constable of Indian Reserve Police

In June 2009, a 16-year-old girl was raped by Nazir Ahmad, police constable of 10th Indian Reserve Battalion at Khushipora in Tangmarg area in Baramulla district. According to parents of the victim, the accused police constable lured away the victim, who was a student of Class IX, on the pretext of providing employment. He allegedly drugged her and raped her. Later, on the accused police constable allegedly threatened the family members of the victim with dire consequences if they revealed the matter to anyone. On 8 June 2009 the family members of the victim decided to report the matter to the police. As they proceeded towards the police station, the accused police constable, Nazir Ahmed stopped them which resulted in a tussle leading to the death of Fazi Begum, the victim's grandmother.¹⁰²

Based on a complaint filed by Asian Centre for Human Rights, the NHRC took cognizance of the case and issued notice to the Director General of Police, J&K on 19 June 2009.¹⁰³

Pursuant to the directions of the Commission, DGP, J&K, vide communication dated 7.9.2009 submitted a report that a case FIR No. 47/2009 u/s 363, 376 RPC was registered against the said constable. Regarding the death of victim's grandmother, another case FIR No. 48/2009 u/s 147, 149, 302, 376 RPC was also registered in Tangmarg police station and both the cases were under investigation. On 10 May 2010, the NHRC held that since the offence of rape "was not committed during official discharge of his duties by the constable, the State is not liable to compensate the victim." As the criminal cases had already been registered against the culprit, the Commission said it was not desirous to make any further intervention and closed the case.¹⁰⁴

¹⁰². Complaint dated 15 June 2009 filed by the National Campaign for Prevention of Torture with the NHRC (Case No. 43/9/3/09-10-AR)

¹⁰³. Proceedings of the NHRC dated 19.06.2009 in Case No. 43/9/3/09-10-AR

¹⁰⁴. Proceedings of the NHRC dated 10.05.2010 in Case No. 43/9/3/09-10-AR

Case 54: Alleged rape and murder of two sisters

On 29 May 2009, two sisters (names withheld) were found dead in a stream in Shopian district. As per media reports, local residents and examining doctors alleged that the security forces committed gang rape before killing the two sisters, while government officials stated that police involvement in the killings could not be ruled out. On 15 July 2009, the High Court of Jammu & Kashmir ordered the arrest of four police officers on charges of suppressing and destroying evidence in the case. On 12 September 2009, the court granted bail to the officers. On 17 September 2009, the CBI took charge of the case from the Special Investigation Team, and on 29 September 2009, the CBI exhumed and collected samples from the bodies of the two women. On 14 December 2009, the CBI submitted its report to the High Court concluding that the women died of drowning and ruled out foul play. The report prompted renewed protests and a general strike in the state.¹⁰⁵

Case 55: Abduction and gang rape of 17-year-old girl by three persons including a policeman

On 1 June 2008, a 17-year-old girl from Nowshera was allegedly raped by three persons including a constable identified as Shabir Ahmed at his home in Block No. 6 at Gulshan Ground in Nowshera under Gandhi Nagar police station in Rajouri district of Jammu and Kashmir. The victim was kidnapped by the two other accused while she was on her way to school on the morning of 31 May 2008. She was taken to the residential quarter of police constable Shabir Ahmed and gang raped by Shabir Ahmed and his two associates. The girl managed to escape from the spot and was found by some residents of the quarters in a critical condition. She was reportedly profusely bleeding and her clothes were torn. Pursuant to NHRC's intervention, J&K government informed that the accused police constable was dismissed from service and the President's Police Medal awarded to him was withdrawn. The Commission was also informed by the J&K government that FIR No.100/08 u/s 363, 366A, 342, 376, 109, 354 & 511 the Ranbir Penal Code was registered against accused Shabir

¹⁰⁵. United States Department of State, 2009 Country Reports on Human Rights Practices - India, 11 March 2010, available at: <https://2009-2017.state.gov/j/drl/rls/hrrpt/2009/sca/136087.htm>

Ahmed and his two accomplices and after completion of the investigation charge sheet was filed in the court on 11.7.2008.¹⁰⁶

Case 56: CRPF Jawan arrested for raping a minor girl

On 20 January 2007, a Central Reserve Police Force (CRPF) jawan was arrested for allegedly raping a minor girl in Kishtwar area in Doda district. The victim, aged 15 years, was rescued by the police.¹⁰⁷

Case 57: Rape of a woman and her minor daughter by Army Major Rahman Hussain

On the night of 6 November 2004, a woman and her 12-year-old daughter were allegedly raped by an Army Major identified as Rahman Hussain after he forcefully entered the victims' house at Bhadra Payeen in Handwara area in Kupwara district. The alleged rape of mother and her daughter provoked widespread protests. The Army initiated general court martial (GCM) proceedings against the accused Major on five charges including rape and molestation on 20 December 2004. The other charges against the Army officer included unauthorised entry inside their house, not taking women police along with him during the operation and violating the Army discipline and conduct. The district administration ordered an inquiry into the incident and blood samples of the accused and the victims were sent to Central Forensic Laboratory at Chandigarh for a DNA test.¹⁰⁸ On 31 January 2005, the GCM ordered the dismissal of Major Rahman of 30th Rashtriya Rifles after finding him guilty of using criminal force and outraging the modesty of a minor girl. But the Major was absolved of the rape charge of the minor's mother following a negative DNA report.¹⁰⁹

¹⁰⁶. Proceedings of the NHRC dated 02.04.2010 in Case No. 50/9/5/08-09-WC

¹⁰⁷. CRPF jawan rapes minor, arrested, News18.com, 21 January 2007; available at: <https://www.news18.com/news/india/crpf-jawan-rapes-minor-arrested-256764.html>

¹⁰⁸. Handwara rape case: Court martial against Major begins, see News, 20 December 2004, https://zeenews.india.com/home/handwara-rape-case-court-martial-against-major-begins_192472.html

¹⁰⁹. Major dismissed for outraging minor's modesty, The Tribune, 1 February 2005, <https://www.tribuneindia.com/2005/20050201/main4.htm>

Case 58: Gang rape of a woman by security forces

On 4 November 2004, a woman (name withheld) was allegedly gang raped by security forces at Mattan in Anantnag district, according to the 2005 report titled “India: Briefing on the Armed Forces (Special Powers) Act, 1958” of the Amnesty International.¹¹⁰

Case 59: Alleged gang-rape of 20-year-old woman by seven persons including army and police personnel

On the night of 27 October 2004, a 20-year-old woman was gang raped by seven persons including two Army jawans and three policemen in Sahara Guest House at Ero Bridge, Rajbagh in Srinagar. The victim, who was from Sopore in Baramullah district, reportedly reached the Tourist Reception Centre (TRC) in Srinagar late in the evening from Jammu in a TATA Sumo. A man at the TRC reportedly misled her and took her to the Sahara Guest House, where she was allegedly gang raped by seven accused. Upon receiving information, a police party raided the place on the morning of 28 October 2004 and found the girl in an unconscious condition. She was removed to hospital for medical examination, where the doctors confirmed that the girl was gang raped. A case in this connection was registered and the police arrested six accused identified as Bal Krishan of 6th Jammu and Kashmir Light Infantry, Rakesh Kumar of 4th Jammu and Kashmir Light Infantry, Ashwani Kumar, Personal Security Officer (PSO) of Superintendent (Vigilance) Mushtaq Sadiq, Sanjiv Kumar, a policeman, and Shamas-u-Din, a driver and Karnal Singh, a government employee. On 30 October 2004, the Army promised to conduct a detailed inquiry in the case.¹¹¹

Case 60: Torture and rape of a minor girl in police custody

On 3 July 2004, a minor girl was picked up from her school and taken to Achaldara Police Post in Kupwara district, where she was tortured and raped. The then Deputy Superintendent of Police, Altaf Khan tore off her clothes and kicked her in the abdomen until she

¹¹⁰. Amnesty International, India: Briefing on the Armed Forces (Special Powers) Act, 1958, AI Index: ASA 20/025/2005, available at <https://www.amnesty.org/download/Documents/84000/asa200252005en.pdf>

¹¹¹. See NHRC Case No. 135/9/2004-2005-CR & <https://www.outlookindia.com/newswire/story/army-to-hold-inquiry-into-gang-rape-incident-in-kashmir/258507>

lost consciousness. The girl later realised that she had been raped while unconscious as she was bleeding profusely from her vagina. The girl was hospitalized for close to 50 days where she was operated upon and her uterus removed. She filed a complaint at Handwara Police Station but no FIR was filed. She approached the State Human Rights Commission, which in its final decision on 19 November 2008, indicted Altaf Khan and recommended an investigation into the case.¹¹²

Case 61: Gang rape of a 17-year-old girl by three BSF personnel

On 16 April 2002, a 17-year-old girl was allegedly gang raped by three personnel of 58th Battalion of the Border Security Force (BSF) in the Khullar Nad area in Pahalgam district. The incident sparked protests demanding stern action against the accused BSF personnel. The medical examination reportedly confirmed the rape. On 20 April 2002, the Union Home Ministry said that exemplary action would be taken against the three accused BSF personnel following an enquiry. Apart from a police inquiry, the BSF had simultaneously instituted a Staff Court of Inquiry.¹¹³

Case 62: Alleged rape of a pregnant woman by Army personnel

On the night of 9 February 2002, a woman from Korafali Haand in Doda district was allegedly raped by armed personnel from the 10th Rashtriya Rifles in her neighbour's house, where she and her mother-in-law had taken refuge as the army men had allegedly threatened them during the day. The victim was seven months pregnant at the time and developed serious complications in her pregnancy after the incident. She filed a complaint in Doda police station on 22 February 2002.¹¹⁴

¹¹². See <https://www.onebillionrising.org/42830/appeal-for-an-independent-international-enquiry-into-all-the-sexual-violence-cases-in-jammu-and-kashmir-from-kunan-poshpora-to-kathua/>

¹¹³. Pahalgam rape: BSF men 'not to be spared', The Tribune, 21 April 2002, <https://www.tribuneindia.com/2002/20020421/main4.htm>

¹¹⁴. See <https://www.onebillionrising.org/42830/appeal-for-an-independent-international-enquiry-into-all-the-sexual-violence-cases-in-jammu-and-kashmir-from-kunan-poshpora-to-kathua/>

Case 63: Mass rape of three women of a family by Army personnel

On 3 June 2001, three women from a single family from Bihota in Doda district were allegedly raped by personnel from the 8th Rashtriya Rifles. An FIR was registered at Doda police station and their medical examination was conducted in District Hospital Doda. No information of any investigation was known.¹¹⁵

E Jharkhand (7 cases)**Case 64: Rape and trafficking of a minor girl by police**

On 15 May 2019, a complaint was lodged against four police officials and others at the Telco police station in Jamshedpur, Jharkhand in connection with rape and trafficking of a 15-year-old girl. According to the complaint filed by the Child Welfare Committee (CWC), the minor girl from Jamshedpur was allegedly raped and abused by several people, including four police personnel, and they forced her into sex trade in two states of Odisha and Chhattisgarh in the past one-and-half-months. The victim was rescued by police from a hotel on 7 May 2019 and handed over to the CWC. The victim identified the accused police personnel by their uniforms and the photographs shown to her.¹¹⁶

Case 65: Gang rape of a woman by police

On 13 March 2018, a woman was gang raped by two police constables identified as Deepak Kumar Pandey and Vikas Kumar Pandey in a village under Tundi police station in Dhanbad district. Pursuant to the directions of the NHRC, a report dated 26 July 2018 was submitted by the Inspector General of Police (Human Rights), Jharkhand which stated that a case was registered against the two police constables and after completion of investigation, a charge sheet was submitted against them. Observing that the human rights of the woman was violated by the accused police constables and the State is vicariously liable to provide compensation to the victim, the

¹¹⁵. See <https://www.onebillionrising.org/42830/appeal-for-an-independent-international-enquiry-into-all-the-sexual-violence-cases-in-jammu-and-kashmir-from-kunan-poshpora-to-kathua/>

¹¹⁶. Four policemen among suspects in rape, trafficking of minor in Jamshedpur, Hindustan Times, 17 May 2019, <https://www.hindustantimes.com/india-news/four-policemen-among-suspects-in-rape-trafficking-of-minor/story-wBntf74db92E8m1NUkBg0J.html>

Commission vide proceedings dated 11 December 2018 recommended to the State Government to pay compensation of Rs. 2,00,000 to the victim and submit compliance report. The case is currently pending for want of the compliance report.¹¹⁷

Case 66: Alleged molestation of Adivasi woman by a CRPF personnel

On 8 September 2014, a 25-year-old Adivasi (tribal) woman was molested by a CRPF personnel at Kudmud village under Jalsar panchayat in West Singhbhum district. The victim was molested by the accused during an anti-Naxal operation. Following refusal of the police to register a case, the Adivasi leaders protested to demand investigation of the case. The victim stated that she was at home when the accused walked in, demanding water, while two of his colleagues were standing outside. She also stated that the accused handed her two bottles to fill water and when she asked for caps to close the bottles, he began stripping himself and caught hold of her. The victim screamed for help and the three personnel escaped into the jungle. On the next day, the village elders took the victim to the police station, but police officers refused to file an FIR.¹¹⁸

Case 67: Alleged molestation of pregnant Adivasi woman by the JAP personnel

In the first week of September 2014, an Adivasi woman, who was pregnant, was allegedly molested by a personnel of the Jharkhand Armed Police (JAP) at Tebo village in West Singhbhum district. Following the incident, the police registered an FIR.¹¹⁹

Case 68: Alleged molestation of three women by police officers

In April 2013, seven officers, undergoing training at the Police Training Centre of Padma in Hazaribagh district, were suspended for allegedly

¹¹⁷. See NHRC Case No.388/34/4/2018-WC

¹¹⁸. Adivasi leaders demand probe into alleged molestation by CRPF jawan in Jharkhand district, The Indian Express, 22 September 2014, <https://indianexpress.com/article/india/india-others/adivasi-leaders-demand-probe-into-alleged-molestation-by-crpf-jawan-in-jharkhand-district/>

¹¹⁹. Adivasi leaders demand probe into alleged molestation by CRPF jawan in Jharkhand district, The Indian Express, 22 September 2014, <https://indianexpress.com/article/india/india-others/adivasi-leaders-demand-probe-into-alleged-molestation-by-crpf-jawan-in-jharkhand-district/>

attempting to molest three women passengers on a bus. The seven accused were suspended after the bus passengers handed them over to the police following the incident. Police stated that the three victims were returning home by the private bus when the officers allegedly passed vulgar remarks and tried to molest them.¹²⁰

Case 69: Alleged rape of a 10-year-old girl by a police constable

On 24 January 2008, a 10-year old tribal girl (name withheld) was allegedly raped by police constable Arvind Kumar Das at Chandli village in Giridih district. The accused constable was arrested and suspended following a complaint by the victim's family.¹²¹

Case 70: Rape of a tribal woman in police custody

On 13 July 2001, a tribal woman, mother of three children, was allegedly raped by police constable Chakkan Sao in police custody at Khadgarha police post in Ranchi district. Acting on a press report which appeared in the *The Indian Express*, the NHRC intervened and issued notice to the State government to submit reports. In response to the notice, the Chief Secretary and DGP, Jharkhand submitted a report indicating that a case No.69/2001 dated 14 July 2001 under section 376 IPC was registered at Lower Bazar Police Station and the accused Constable was arrested and sent to judicial custody. Later, it was also informed that the State government paid compensation to the victim under the Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Rules 1995.¹²²

G. Manipur (18 cases)

The Armed Forces (Assam and Manipur) Special Powers Act was signed into law in September 1958, and was later renamed the Armed Forces (Special Powers) Act (AFSPA). To combat four insurgent

¹²⁰. 7 cops suspended on molestation charges in Jharkhand, India TV, 16 April 2013, <https://www.indiatvnews.com/news/india/7-cops-suspended-on-molestation-charges-in-jharkhand-21955.html>

¹²¹. The State of India's Indigenous and Tribal Peoples 2009, AITPN, http://www.aitpn.org/wp-content/uploads/2019/10/Tribal_Peoples_2009.pdf

¹²². Case No. 415/34/2001-2002-AR/FC reported in the NHRC Annual Report, 2003-2004, <https://nhrc.nic.in/sites/default/files/AR03-04ENG.pdf>

groups who were active in the state at the time, the state of Manipur was first declared as 'disturbed area' in 1980.¹²³

Some of the emblematic cases from Manipur are given below:

Case 71: Alleged sexual assault of a tribal woman by an Assam Rifles personnel

On 18 November 2019, a tribal woman was allegedly sexually assaulted by a female Assam Rifles (AR) personnel during checking and frisking at Khudengthabl AR check post at Moreh. According to the victim, the female AR personnel inserted her finger deep inside her private part during the body search. When the victim complained of severe pain, the AR personnel paid no heed. The personnel was also not wearing any hand gloves. Later she was allowed to go but on the way in the van she realized that she had started bleeding. However, the van was stopped again by four people including two women near Lokchao area. She was dragged out of the vehicle by the two women, while the men were holding guns. Thereafter, one of the women forcibly removed her clothes and photographed her naked body. The victim claimed that they introduced themselves as from the AR. She was suspected of in possession of illegal gold pieces. As a result, the victim had suffered abdominal pain and difficulty in passing urine and was bleeding while urinating. The Manipur Human Rights Commission intervened into the matter and directed the Director General of Police to submit reports.¹²⁴

Case 72: Alleged molestation and attempt to rape a woman by CRPF personnel

On 14 May 2013, a constable of 69th Bn of the CRPF identified as Rakesh Kumar Yadav allegedly molested and attempted to rape a woman sweeper posted at the State Bank of India branch at MG Avenue, Imphal. The accused jawan posted as security at the bank made the rape attempt at around 7.30 am when the victim was

¹²³. The AFSPA and Manipur: 10 key points, Times of India, 9 August 2019; available at: <https://timesofindia.indiatimes.com/the-afspa-and-manipur-10-key-points/listshow/53613784.cms>

¹²⁴. Manipur woman sexual assault case: MHRC directs DGP to file status report by Dec 21, National Herald, 2 December 2019, <https://www.nationalheraldindia.com/india/manipur-woman-sexual-assault-case-mhrc-directs-dgp-to-file-status-report-by-dec-21>

mopping the first floor of the Bank building. Following a complaint filed by the victim at City Police Station, police arrested the accused personnel from the bank. However, while interrogation was ongoing, a team of CRPF personnel led by an officer whisked away the accused without informing any of the police personnel present at the police station. On 15 May 2013, a local court issued a non-bailable warrant against the accused CRPF personnel, who had been absconding.¹²⁵

Case 73: Abduction and gang rape of a school girl by a Manipur police commando

On 20 October 2012, a rifleman in Manipur Police Commando identified as Yumnam William (28 years) and his friend, Thongam Tarun (28 years), a Manipuri digital film actor abducted a student of TG Higher Secondary School from Imphal East district and gang raped her inside a cabin at Tampha Fast Food Restaurant located at Changangei Ucheckon along Imphal Airport Road after spiking her soft drinks with sedatives.¹²⁶ The accused were arrested and tried. On 9 December 2013, Sessions judge (Manipur East) A Guneshwor Sharma convicted both accused of gang-raping the survivor and sentenced them to 15 years rigorous imprisonment.¹²⁷

Case 74: Abduction & gang rape of a tribal woman by two IRBN personnel and others

On 21 March 2012, two Indian Reserve Battalion personnel identified as Havildar Chungkham Ibomcha (37 years) and Rifleman Khetrimayum Kenedy (36 years) and their friends identified as Salam Bijen and Laikhuram Rojit¹²⁸ abducted a 40-year-old tribal woman, a resident of Tamenglong district and gang raped her at Keinou village in Bishnupur district. According to the police, the woman was going to Imphal in a truck with her relatives to sell firewood and chilly

¹²⁵. CRPF man accused of molesting, rape bid of woman sweeper, E-Pao.net, 15 May 2013; available at: <http://e-pao.net/GP.asp?src=2..160513.may13>

¹²⁶. Rape of TG girl: Accused charge-sheeted, E-Pao.net, 1 February 2013; available at: <http://e-pao.net/GP.asp?src=1..020213.feb13>

¹²⁷. Cop, actor get 15 years' RI for raping schoolgirl, Times of India, 12 December 2013; available at: <https://timesofindia.indiatimes.com/city/guwahati/Cop-actor-get-15-years-RI-for-raping-schoolgirl/articleshow/27235955.cms>

¹²⁸. Four persons arrested for alleged rape in Manipur, 25 March 2012; available at: https://zeenews.india.com/news/north-east/four-persons-arrested-for-alleged-rape-in-manipur_765960.html

early on 21 March 2012 when suddenly the accused came in a car and stopped the truck and abducted the woman. The victim was taken to an isolated place where she was sexually assaulted by two persons. Following a complaint lodged by the victim, police arrested the four accused from different parts of Imphal.¹²⁹ In June 2013, the four accused were sentenced to life by a local court.¹³⁰

Case 75: Rape of 18-year-old girl by IRBN personnel

On 14 July 2011, an 18-year-old girl (name withheld), resident of Kongba Khunou Mayai Leikai in Imphal East district was allegedly raped by personnel of Indian Reserve Battalion. This was one of the cases submitted by the Civil Society Coalition on Human Rights in Manipur and the UN Imphal on 28 April 2013 to Rashida Manjoo, UN Special Rapporteur on violence against women, its causes and consequences during her official visit to India from 22 April – 1 May 2013 upon the invitation of the government.¹³¹

Case 76: Rape of a 36-year-old woman by Army personnel

On 9 November 2010, a 36-year-old woman of Ukhongshang Awang Leikai, Thoubal district, was allegedly raped by Army personnel. This was one of the cases submitted by the Civil Society Coalition on Human Rights in Manipur and the UN Imphal on 28 April 2013 to Rashida Manjoo, UN Special Rapporteur on violence against women,

¹²⁹. Woman gang-raped in Manipur, 2 India Reserve Battalion jawans held, Times of India, 24 March 2012; available at: <https://timesofindia.indiatimes.com/city/guwahati/Woman-gang-raped-in-Manipur-2-India-Reserve-Battalion-jawans-held/articleshow/12386307.cms>

¹³⁰. Four rapists get life in Manipur, Telegraph, 26 June 2013; available at: <https://www.telegraphindia.com/states/north-east/four-rapists-get-life-in-manipur/cid/292123>

¹³¹. “MANIPUR: PERILS OF WAR AND WOMANHOOD” submitted by The Civil Society Coalition on Human Rights in Manipur and the UN Imphal 28 April 2013 to Rashida Manjoo Special Rapporteur on violence against women, its causes and consequences; available at: <https://humanrightsmipur.files.wordpress.com/2014/01/manipur-perils-of-war-and-womanhood1.pdf>

its causes and consequences during her official visit to India from 22 April – 1 May 2013 upon the invitation of the government.¹³²

Case 77: Rape of 18-year-old by an Assam Rifles personnel

On 13 March 2007, 18-year-old tribal girl (name withheld), daughter of Themang Haokip was allegedly raped and assaulted by a personnel of the 38 Assam Rifles at Veitum Khullen village in Senapati district. The victim, a student of a local school, had gone to a nearby spring to wash clothes when she was raped by the accused personnel of the Assam Rifles identified as Nungthui Gangmei. The accused also hit her with a large stone on her head and waist, following which she lost her consciousness. When she regained her sense, she was without cloth and somehow reached home fully naked. The women of the area protested at the Assam Rifles camp but they were beaten by the Assam Rifles personnel.¹³³

Case 78: Torture and sexual assault of a woman by Manipur Police Commandos

On 21 February 2006, a woman (name withheld) was picked up by police after she was found in the funeral of a militant identified as Bikash who was killed in an encounter, in which four police officials were also killed on 20 February 2006. The victim was known to be Bikash's girlfriend. When the police found her at the funeral, she was allegedly beaten and then dragged out of the house. The police took her away without issuing an arrest memo. The villagers immediately went to the police station to secure her release and a petition was filed with the Manipur Human Rights Commission. She was eventually produced before a magistrate two days after she was arrested and accused of associating with a militant group as the "girlfriend of Bikash." On 2 March 2006, the victim was released by a magistrate, citing lack of evidence to substantiate the charges. After her release, the victim alleged at a press conference that she had been beaten and sexually assaulted in custody. She said that she was barely

¹³². "MANIPUR: PERILS OF WAR AND WOMANHOOD" submitted by The Civil Society Coalition on Human Rights in Manipur and the UN Imphal 28 April 2013 to Rashida Manjoo Special Rapporteur on violence against women, its causes and consequences; available at: <https://humanrightsmanipur.files.wordpress.com/2014/01/manipur-perils-of-war-and-womanhood1.pdf>

¹³³. Sheltering rape accused' slur on AR, E-pao, 14 March 2007, <http://www.e-pao.net/GP.asp?src=1..150307.mar07>

conscious because of the beatings that she had suffered but could remember being “disrobed” and “groped.” On 4 March 2006, the Manipur government suspended five police commandos for the alleged torture of the victim. A judicial inquiry by S.P. Rajkhowa, a retired High Court judge, was ordered. Although his report was submitted to the state government in August 2006, it was not made public.¹³⁴

Case 79: Alleged assault and molestation of two women by three security personnel

On 27 September 2005 at 6.15 am, three security personnel allegedly assaulted and molested two young women (names withheld) on the road at Khuga Tampak in Churachanpur district. One of the victims sustained injury on her right side of belly. They lodged a complaint and accordingly FIR No. 127 (9) 05 CCP-PS (Churachanpur Police Station) under section 354/325/454/34 of the Indian Penal Code, was registered. A case was also filed with the Manipur Human Rights Commission.¹³⁵

Case 80: Alleged sexual torture of three women in police custody

On 30 July 2005, three women (names withheld) were picked up by security personnel and detained in police custody at New Bazar in Churachandpur district. They were detained from 11 am to 8 pm. When they were in the police station, the Officer in charge (OC) of the police station identified as Janchinthang along with his team allegedly subjected them to abusive questions. The three women were allegedly tortured, stripped and molested. Some of the personnel allegedly put stick into the private parts of the victims one after another led by the OC. On release, the victims filed a complaint with the Manipur Human Rights Commission for justice.¹³⁶

¹³⁴. See <https://www.hrw.org/reports/2008/india0908/4.htm>, Human Rights Watch

¹³⁵. Case No. 100 of 2005 filed with the Manipur Human Rights Commission, see https://shodhganga.inflibnet.ac.in/bitstream/10603/65419/10/10_chapter%203.pdf

¹³⁶. Case No. 93 Of 2005 filed with the Manipur Human Rights Commission, see https://shodhganga.inflibnet.ac.in/bitstream/10603/65419/10/10_chapter%203.pdf

Case 81: Alleged abduction and rape of a woman by personnel of Manipur Rifles

On 22 January 2005, a woman of Wangban Canal in Thoubal District was allegedly abducted and raped by personnel of 3rd Manipur Rifles. This was one of the cases submitted by the Civil Society Coalition on Human Rights in Manipur and the UN Imphal on 28 April 2013 to Rashida Manjoo Special Rapporteur on violence against women, its causes and consequences during her official visit to India from 22 April – 1 May 2013 upon the invitation of the government.¹³⁷

Case 82: Alleged sexual harassment of a 22-year-old woman by an Army personnel

On 17 January 2005, a 22-year-old woman, w/o Kongbrailatpam Bimol Sharma of Phubala Awang Leikai, Bishenpur District was allegedly sexually harassed by personnel of the 11th Grenadier Rifles. The accused personnel, a member of a patrolling party, went to the victim's house under the pretext of drinking water and allegedly molested her.¹³⁸

Case 83: Alleged rape of a woman by an IRBN personnel

On 12 February 2004, a woman (name withheld) was allegedly raped by a rifleman of the 3rd Indian Reserve Battalion at Wangjing Village in Thoubal district. A case was filed with the Manipur Human Right Commission. Following the rape, the victim became very weak and went into depression.¹³⁹

¹³⁷. "MANIPUR: PERILS OF WAR AND WOMANHOOD" submitted by The Civil Society Coalition on Human Rights in Manipur and the UN Imphal 28 April 2013 to Rashida Manjoo Special Rapporteur on violence against women, its causes and consequences; available at: <https://humanrightsmipur.files.wordpress.com/2014/01/manipur-perils-of-war-and-womanhood1.pdf>

¹³⁸. Submission to UPR by Committee on Human Rights Manipur, available at https://lib.ohchr.org/HRBodies/UPR/Documents/Session1/IN/COHR_IND_UPR_S1_2008anx_Annex%20XV_Cases%20of%20Human%20Rights%20Violations%20in%20Manipur%20till.pdf

¹³⁹. Case No. 106 of 2004 filed with the Manipur Human Rights Commission, see https://shodhganga.inflibnet.ac.in/bitstream/10603/65419/10/10_chapter%203.pdf

Case 84: Alleged repeated rape of a minor girl by Superintendent of Police

On 14 January 2004, a minor girl was allegedly raped by T Samte, Superintendent of Police at his official quarters in Chandel district. The victim was working as domestic helper at the accused's house. On 27 March 2004, the victim lodged a complaint with the Imphal West police stating that she was raped by the accused on 14 January 2004 around 10 pm and on 3 February 2004 at his official quarters. On 5 April 2004, the father of the victim reportedly withdrawn the case against the accused police officer, stating the charges were falsely filed. However, on 8 April 2004, the Manipur Human Rights Commission had directed the Director General of Police (DGP) to furnish a detailed report of the case to the Commission. A case under FIR number 80 (3) 2004 u/s 376 IPC was registered at Imphal police station.¹⁴⁰

Case 85: Rape and murder of Thangjam Manorama Devi

In the intervening night of 10-11 July 2004, Thangjam Manorama Devi was arrested by a team of the 17th Assam Rifles (AR) on the charge of being a member of a banned outfit from her house at Bamon Kampu Mayai Leikai under Irilbung police station in Imphal East district. The multiple bullet-ridden dead body of Manorama Devi was found on a roadside near Yaiphorok village on the morning of 11 July. The AR claimed that Manorama Devi was shot dead when she attempted to escape from their custody. However, the report of the judicial Inquiry Commission constituted by the State Government of Manipur which was submitted to the Supreme Court in November 2014 revealed the torture including sexual assault suffered by Manorama Devi before being killed while in the custody of the AR personnel. The report stated that the "escape theory" and "firing at her legs" claimed by the AR was a "naked lie". There was no injury on the legs. The report on the basis of medical reports and injuries sustained by the victim stated that the victim fell down after receiving the first gunshot injury, but the personnel continued firing aiming at her vital parts of the body including the vaginal part. On the allegation of rape on Manorama Devi, Chairman of the Commission, C. Upendra Singh stated, "*I am completely at the lost to understand how*

¹⁴⁰. MHRC takes up Chandel rape case, E-pao, 8 April 2004, <http://www.e-pao.net/GP.asp?src=7.13.090404.apr04>

*the Assam Rifles personnel had chosen as a target for firing the vaginal/genital organ of an unmarried girl and after she was taken by them under arrest and taking to places unknown to the family members of the victim. Moreover, it cannot be received on the first shot and thus these evidences and circumstances clearly indicate that victim Manorama Devi might have been subjected to rape and sexual harassment. The arresting team of the Assam Rifles with a view to cover up the crime over the person of the victim, they had specifically fired on genital organ of an unmarried girl after taking her under arrest from the house. It appears to me that this aspect exposes not only barbaric attitude but also their attempt to fabricate false evidence with a view to cover up the offence committed by them”.*¹⁴¹

Case 86: Suicide by 15-year old girl after gang rape by the Army personnel

On 4 October 2003, a 15-year old girl (name withheld) was gang raped by two personnel of 12th Grenadiers Regiment of the Indian Army at a farmhouse in Jiribam district. The victim had gone there to provide food to her father, who worked in a nearby rubber farm. The two accused personnel followed her and raped her by turns at gunpoint. Unable to bear the trauma, the victim committed suicide on the same day. In 2005, the report of the judicial commission headed by retired judge C. Upendra Singh confirmed that the minor girl was gang raped by two soldiers of the 12 Grenadiers and out of shock and shame she had committed suicide. This was one of the cases raised before the Supreme Court in the case of *Extra Judicial Executions Victim Families Association & Anr. Versus Union of India & Ors.* [Writ Petition (Crl.) No. 129 of 2012 with Writ Petition (C) No. 445 OF 2012]. However, the court declined to direct investigation/prosecution in this case on the technical ground that the said case was not mentioned in the Writ petitions.¹⁴²

¹⁴¹. The Report of the Judicial Inquiry Commission on the death of Thangjam Manorama Devi was submitted to the Supreme Court in November 2014 by the State Government of Manipur after the apex court had demanded it as part of a hearing on a PIL seeking probe into custodial deaths in the north-east States. Since then it is in the public domain and available at: <https://bhrpc.files.wordpress.com/2014/11/manoramreport.pdf>

¹⁴². Judgment available at: https://sci.gov.in/supremecourt/2012/29000/29000_2012_Judgement_14-Jul-2017.pdf

Case 87: Alleged rape of a woman by a personnel of the Manipur Rifles

On 30 June 2002, a woman (name withheld) was allegedly raped by a rifleman of the 1st Battalion of Manipur Rifles in Imphal West district. A case was filed with the Manipur Human Right Commission, Lamphel in this incident.¹⁴³

Case 88: Rape of a woman by an Assam Rifles personnel

On 6 October 2001, a woman (named withheld), a resident of Luwangsangbam Matai village in Imphal East district, was raped by Ram Singh Rawant, a personnel of the 12 Assam Rifles at Mantripukhri. The victim was inside her house along with her husband, preparing the evening meal, when all of a sudden, an armed personnel of the Assam Rifles in civilian dress banged upon their door and forcibly entered the house. He caught hold of the hand of the victim and dragged her out. When her husband and her sister tried to resist, they were hit by the accused. Thereafter, the victim was dragged into a bush near a pond where she was raped. On 7 October 2001, the victim's husband filed a complaint at Heingang Police Station, following which the accused was arrested and produced before the court. Later, the Assam Rifles initiated Court Martial proceedings under the Army Act. In 2003, the Assam Rifles court found him guilty of rape and was convicted and was sentenced to seven years imprisonment as well as dismissal from service. In 2004, the Manipur High Court provided a compensation of Rs. 200,000 to the victim after she approached the court.¹⁴⁴

H. Maharashtra (1 Case)

Case 89: Alleged rape of two Adivasi women by police

On 20 January 2017, two Adivasi women from Chhattisgarh were travelling across the state border in Gadchiroli in Maharashtra to visit relatives. They alleged that commandos belonging to the C-60 battalion detained them overnight and raped them. On the next

¹⁴³. Case No. 11 of 2003 filed with the Manipur Human Right Commission, Lamphel, see https://shodhganga.inflibnet.ac.in/bitstream/10603/65419/10/10_chapter%203.pdf

¹⁴⁴. See Writ Petition (C) No. 304 of 2004, Meinam Ongbi Bina Devi Vs The State of Manipur, available at <https://vlex.in/vid/meinam-ongbi-bina-devi-577366662>

morning, they released the two women and allegedly gave them Rs 100 each and warned them not to tell anybody of what had transpired.¹⁴⁵ The two women later informed the Bombay High Court that they were not assaulted by the police and claimed they had been forced to make false accusations. However, a local sarpanch (village head) and her husband had alleged that the women were under pressure and threats since they accused the police of sexual assault.¹⁴⁶

I. Meghalaya (6 cases)

Case 90: Alleged rape of a woman by a police officer

On 2 February 2018, the Officer-in-Charge of Mawngap police station in the East Khasi Hills district allegedly raped a woman in her tea shop. Pursuant to an FIR filed by the victim, police arrested the accused officer in Kolkata, where he was undergoing training, and brought him back to Shillong on 13 April 2018.¹⁴⁷

Case 91: Alleged molestation and attempt to rape of a minor girl by a police inspector

On 12 October 2014, police arrested Inspector Alarick J. Sangma from Williamnagar in the West Garo Hills district based on an FIR lodged against him for molesting and attempting to rape a 17-year-old girl. According to police, the accused molested the victim inside his vehicle while travelling from Tura to Williamnagar as well as in his official quarter at the police reserve. He was booked under various sections of the IPC and POCSO and was placed under suspension.¹⁴⁸

¹⁴⁵. Gadchiroli cops 'rescue' two women from lawyer's office as they mull filing rape case against forces, Scroll.in, 30 January 2017, <https://scroll.in/article/827999/gadchiroli-cops-rescue-two-women-from-lawyers-office-as-they-mull-filing-rape-case-against-forces>

¹⁴⁶. Adivasi Women Tell Court There Was No Sexual Assault By Police, The Wire, 31 January 2017, <https://thewire.in/uncategorised/adivasi-women-tell-court-there-was-no-sexual-assault-by-police>

¹⁴⁷. Another rape case rocks Meghalaya; policeman held, The Hindu, 14 April 2018; <https://www.thehindu.com/news/national/other-states/another-rape-case-rocks-meghalaya-policeman-held/article23543203.cce>

¹⁴⁸. Meghalaya police officer arrested for molesting minor, Business Standard, 13 October 2014; available at: https://www.business-standard.com/article/news-sians/meghalaya-police-officer-arrested-for-molesting-minor-114101301285_1.html

Case 92: Alleged gang rape of a minor girl by three police sub-inspectors

On 28 December 2013 night, three police officers identified as Sub-Inspector Bankerlang Kharshanoh and probationary sub-Inspectors Ronald Nongrum and Sylvester Chyne, in an inebriated state, intercepted an auto-rickshaw in which a minor girl along with her uncle were travelling at the Janga area in Tura in West Garo Hills. They falsely accused the victim's uncle of being a militant, and sexually assaulted the girl inside the three-wheeler. The policemen took the uncle and the girl to the Chandmari police beat house and forced them to sign some papers. Pursuant to an FIR police arrested the three accused officers and they were placed under suspension.¹⁴⁹

Case 93: Alleged rape of two minor sisters by a police officer

On 13 March 2013, a 14-year-old minor girl was raped in police custody by Nurul Islam, Officer-in-Charge of Ampati police station in the West Garo Hills district. Later, on 31 March 2013, the accused officer raped the elder sister (17 years) of the rape victim at gun point in their house. He was arrested on 1 June 2013 but he escaped from police custody after two days of arrest and absconded.¹⁵⁰ Police stated that the accused officer not only threatened to kill both the victims, he even threatened to implicate them in criminal cases if they dared to disclose the incidents.¹⁵¹

Case 94: Alleged gang rape of a 14-year-old minor girl by two BSF personnel

On 6 February 2011, two personnel from the 40th Battalion of BSF identified as Abdul Khaliq Barbhuya and Shailendra Singh allegedly gang raped a 14-year-old minor at Thapa Danggre in Mendhipathar Police Station area in the East Garo Hills district. The victim had

¹⁴⁹. Three Meghalaya cops arrested for sexual assault, Business Standard, 4 January 2014; available at: https://www.business-standard.com/article/news-ians/three-meghalaya-cops-arrested-for-sexual-assault-114010400678_1.html

¹⁵⁰. Meghalaya: Police officer rapes two minor girls, News18, 21 June 2013; available at: <https://www.news18.com/news/india/meghalaya-police-officer-rapes-two-minor-girls-617663.html>

¹⁵¹. Meghalaya cop arrested for rape of two minors escapes custody, First Post, 3 June 2013; available at: <https://www.firstpost.com/india/arrested-for-rape-meghalaya-police-officer-escapes-from-custody-834639.html>

gone to a nearby jungle along with her siblings to collect betel nut. The accused BSF personnel dragged the minor girl after scaring away the others and raped her. A case was registered against the two accused at Mendhipathar police station, but they were transferred from Tura to Kalyani town in West Bengal.¹⁵²

Case 95: Alleged rape of a woman by an Assam Rifles personnel

On 22 January 2010, a woman (name withheld) was allegedly raped by Madanga Lyngdoh, an Assam Rifles personnel at Lashkein in Jaintia Hills district. The victim, a mother of two children, was threatened by the accused not to disclose the incident to anyone. Acting on a complaint, the NHRC registered a case and called for reports. Pursuant to the direction of the NHRC, Director General of Assam Rifles submitted that Madanga Lyngdoh, an employee of Assam Rifles raped the victim and was suspended.¹⁵³

J. Odhisa (5 cases)

Case 96: Rape of a minor tribal girl in police custody

On 1 July 2020, Ananda Majhi, Inspector-In-Charge of Biramitrapur police station in LWE affected Sundargarh district was arrested and dismissed from service for raping a 13-year-old tribal girl inside the police station for several months. The minor victim was also raped by another five persons including a police personnel of Biramitrapur police station. The victim was also forced to go for abortion. Initially, the police attempted to hush up the case. The crime came to the light after the girl, who was seen crying outside the police station was rescued by a local NGO and later handed over to the Child Welfare Committee (CWC) in Sundargarh. The girl told the CWC that she had come to Biramitrapur to watch a local fair a few days before lockdown in March 2020. While she was waiting to catch an auto-rickshaw to return home, the Biramitrapur police patrolling van spotted her and took her to the police station where Majhi allegedly raped

¹⁵². Rape accused BSF personnel located in WB, The Meghalaya Times, 30 March 2014; available at: <https://meghalayatimes.info/rape-accused-bsf-personnel-located-in-wb/>

¹⁵³. See NHRC Case No. 3/15/3/2011-PF

her. She alleged that the local police dropped her in her village. But Majhi often allegedly called her to the police station and raped her.¹⁵⁴

Case 97: Alleged rape of a woman by BSF personnel

On 24 February 2020, a personnel of the Border Security Force (BSF) was arrested by police on charges of raping a woman on pretext of marriage. The accused was posted at BSF camp near Badatota in Jatni of Khordha district. A number of BSF battalions were deployed in Odisha to counter the Naxal menace.¹⁵⁵

Case 98: Alleged rape of a minor girl by a police officer

On 10 February 2019, Banamali Kuanra, Assistant Sub Inspector (ASI) of Sohela police station in LWE affected Bargarh district was suspended and arrested on the charge of raping a 15-year-old girl. On 8 February 2019, the minor girl was allegedly abducted by one Kaibalya Nag when she had gone for tuition classes. The abductor took her to the rented house of ASI Banamali Kuanra at Sohela and sexually assaulted her. Later, he locked her in the house and left from there, following which ASI Kuanra brought the minor girl to his official quarters in Sohela police station premises and allegedly raped her. On 9 February 2019, the accused ASI brought the victim to his rented house and later dropped her at a bus stand.¹⁵⁶

Case 99: Gang rape of a minor Dalit girl by four security personnel

On 10 October 2017, a minor Dalit girl, 9th standard student in the government run Sorisapada residential school for Scheduled Caste and Scheduled Tribe, was allegedly gang raped at gun-point by a group

¹⁵⁴. Former inspector dismissed for ‘raping’ minor inside police station in Odisha, The Times of India, 1 July 2020, <https://timesofindia.indiatimes.com/city/bhubaneswar/former-inspector-dismissed-for-raping-minor-inside-police-station-in-odisha/articleshowprint/76723659.cms> & Odisha Police Sacks Cop Over Conduct in Minor’s Rape Case, Apologises to Survivor, The Wire, 2 July 2020, <https://thewire.in/rights/odisha-tribal-minor-rape-case>

¹⁵⁵. BSF jawan arrested in Odisha for raping woman on pretext of marriage, India Today, 25 February 2020, <https://www.indiatoday.in/crime/story/odisha-bsf-jawan-arrested-raping-woman-marriage-1649670-2020-02-25>

¹⁵⁶. Police among 2 arrested for teen gang rape in Odisha’s Bargarh district, The Times of India, 12 February 2019, <https://timesofindia.indiatimes.com/city/bhubaneswar/police-among-2-arrested-for-teen-gang-rape-in-odishas-bargarh-district/articleshow/67948594.cms>

of four persons in security uniform in a forested area near Lenjiguda village in Potangi Police Station limit in LWE affected Koraput district. The minor victim was on her way home from Kunduli, where she had gone to get a passport sized photograph required for academic purposes. After the incident, she was dumped inside the forest. The passersby heard her screams and rescued her. She was taken to the nearest community health centre from there and was later shifted to the District Headquarters Hospital, Koraput.¹⁵⁷ A fact finding investigation by People's Union of Civil Liberties in October 2017 reported several discrepancies in the shoddy manner in which the investigation was conducted. The report had drawn attention to the fact that though the complainant had mentioned in her FIR that those who assaulted her were wearing uniform similar to worn by security forces, the investigation team did not pursue this angle seriously. The investigation also did not include information about the security forces coming to the area from Andhra Pradesh for joint combing operation and did not consider verifying mobile telephone records to ascertain the presence of force personnel in the area.¹⁵⁸

In December 2017, police, citing medical reports, had ruled out rape.¹⁵⁹ On 22 January 2018, the victim committed suicide. On 2 August 2019, Orissa High Court constituted a three-member Special Investigation Team (SIT) to investigate the alleged rape of a minor girl in December 2017 and her subsequent suicide.¹⁶⁰

¹⁵⁷. Waging Wars on Women's bodies: Reflections from the Institutional Murder of Kunduli minor girl, 25 January 2018; available at: <https://cjp.org.in/waging-wars-on-womens-bodies/>

¹⁵⁸. Waging Wars on Women's bodies: Reflections from the Institutional Murder of Kunduli minor girl, 25 January 2018; available at: <https://cjp.org.in/waging-wars-on-womens-bodies/>

¹⁵⁹. Orissa high court-constituted SIT to probe Kunduli 'rape-suicide', The Times of India, 3 August 2019, <https://timesofindia.indiatimes.com/city/cuttack/orissa-high-court-constituted-sit-to-probe-kunduli-rape-suicide/articleshowprint/70506829.cms>

¹⁶⁰. Orissa high court-constituted SIT to probe Kunduli 'rape-suicide', The Times of India, 3 August 2019, <https://timesofindia.indiatimes.com/city/cuttack/orissa-high-court-constituted-sit-to-probe-kunduli-rape-suicide/articleshowprint/70506829.cms>

Case 100: Gang rape of Kond Adivasi woman by security forces in custody

On 12 February 2010 at about 4 am, the security forces comprising Special Operation Group (SOG) and police carried out combing operations at Jadingi village in the LWE affected Gajapati district. During the combing operation the security forces raided the house of a Kond Adivasi family in the village and allegedly beat up a 20-year-old Kond Adivasi woman in front of her parents and other family members. They also picked her up along with two of her male cousins and took them along with them to be handed over to Adava police station. During the journey through the forest, the security personnel isolated the woman from her cousins, thereafter she was allegedly blindfolded and gang raped. According to the victim, the security personnel threatened her and her cousins not to disclose the matter to anyone.¹⁶¹

K. Tripura (14 cases)

Case 101: Alleged rape of a minor girl by CRPF personnel

On 9 August 2020, a CRPF personnel was charged with allegedly raping a minor girl (17 years) and making her pregnant. The incident occurred at a village of Kailasahar in Unakoti district. The accused personnel, aged 35 years, was posted at CRPF 124th Battalion located in Shalbagan. In her complaint to police, the victim stated that the CRPF personnel raped her repeatedly for nearly seven months. Based on the girl's complaint, the police registered a case under Section 417, 376 (c) (m) and 506 of IPC and Section 6 of the POCSO Act.¹⁶²

Case 102: Alleged rape of two tribal women by BSF personnel

On 8 April 2017, two personnel of 10th Battalion of the Border Security Force allegedly raped two tribal women at a village in Dhalai district when they were returning home from their agriculture fields in the forest along with a male family member. The accused BSF personnel

¹⁶¹. WSS Press Release on Sexual Assault of 20 year old Adivasi Woman in Gopathi district of Orissa, Women Against Sexual Violence and State Repression, 5 October 2010; available at: <http://www.sacw.net/article1593.html>

¹⁶². CRPF jawan accused of rape by minor girl in Tripura, case lodged, Hindustan Times, 11 August 2020, <https://www.hindustantimes.com/india-news/crpf-jawan-accused-of-rape-by-minor-girl-in-tripura-case-lodged/story-oF7DMe2suScBH2bej7NKTP.html>

allegedly directed the male identified as Mangaljoy Tripura to go away while detained the two women and raped them. The accused threatened both the victims with dire consequences if they disclose or complaint about the rape. The victims along with family members registered a complaint at Ganganagar police station.¹⁶³

Case 103: Killing of three tribal civilians including a woman for resisting molestation by the BSF personnel

On 17 March 2017, Border Security Force personnel posted at Bhangamura border out post along the Indo-Bangla border in Sabroom sub-division in South Tripura district allegedly shot dead three tribal villagers, including a woman for resisting molestation. According to an FIR lodged by the villagers, the deceased including the woman were returning home from work in the evening from a nearby rubber plantation when three BSF jawans attempted to molest the woman. Villagers rushed to the spot as she raised an alarm. A clash ensued and the BSF jawans opened fire, killing the woman and two other villagers on the spot besides injuring two others.¹⁶⁴

Case 104: Woman shot dead by the BSF personnel for resisting rape bid

On 22 July 2016, a Border Security Force personnel belonging to the 145th Battalion posted at Dhanpur border out post (BOP) along the Indo-Bangla border allegedly shot dead a 25-year-old woman identified as Maya Khatun at Tarapukur in Sonamura after she resisted rape.¹⁶⁵ Tarak Ali, a local resident said that when the deceased had come for bath, the assailant BSF trooper tried to pull her and bring to the temporary camp site, but as she resisted, the trooper fired upon her

¹⁶³. BSF jawans accused of rape of two tribal ladies, United News of India, 13 April 2017; available at: <http://www.uniindia.com/bsf-jawans-accused-of-rape-of-two-tribal-ladies/other/news/840391.html>

¹⁶⁴. BSF jawans in row over death of 3 tribals in Tripura, The Hindu, 18 March 2017; available at: <https://www.thehindu.com/news/national/other-states/bsf-jawans-in-row-over-death-of-3-tribals-in-tripura/article17527733.ece>

¹⁶⁵. BSF men alleged to have killed young woman after rape attempt, The Hindu, 22 July 2016; available at: <https://www.thehindu.com/news/national/other-states/BSF-men-alleged-to-have-killed-young-woman-after-rape-attempt/article14503042.ece>

killing her on the spot.¹⁶⁶ Ali added that often the BSF in the name of search and other activities, targets innocent civilians living on the borders and continue with their atrocities on them. Ali and other annoyed villagers demanded severe punishment for the BSF trooper, who immediately after the incident, took shelter at a nearby BOP.¹⁶⁷

Case 105: Rape of a minor girl by a police constable

On the night of 11 November 2011, a 15-year-old minor girl was allegedly raped by a police constable identified as Rana Kishore Debbarma attached to Manu police station in Dhalai district. The victim used to stay as paying guest at the house of one woman home guard under Manu police station. The victim was raped by the accused police constable when she was alone in the house. The accused was arrested and sent to judicial custody for trial.¹⁶⁸

Case 106: Rape of a minor tribal girl by a TSR personnel

On 23 February 2011, a 15-year-old minor tribal girl was raped by a personnel of the Tripura State Rifles (TSR) identified as Tejendra Barui at Nandakumarpara village in Khowai subdivision in West Tripura district. The accused was deployed in the Village Committee Election for the Tripura Tribal Areas Autonomous District Council. According to the family members, the accused TSR personnel dragged the victim to a nearby jungle forcefully when she was returning home from her relatives' house and raped her. On 25 February 2011, ACHR filed a complaint with the NCPCR. Pursuant to NCPCR's intervention, the District Magistrate and Collector, West Tripura district vide letter dated 13 May 2011 informed the NCPCR that compensation was recommended to the victim under the Tripura Victim Compensation Fund Rules, 2007.¹⁶⁹

¹⁶⁶. Housewife killed in BSF firing in Tripura, trooper charged for murder and rape, Indian Express, 23 July 2016; available at: <https://indianexpress.com/article/india/india-news-india/housewife-killed-in-bsf-firing-in-tripura-trooper-charged-for-murder-and-rape-2930969/>

¹⁶⁷. Tripura: BSF trooper shot dead woman after attempting rape, say villagers, DNAIndia, 23 July 2016; available at: <https://www.dnaindia.com/india/report-tripura-bsf-trooper-shot-dead-woman-after-attempting-rape-say-villagers-2237279>

¹⁶⁸. See NHRC Case No. 61/23/5/2011-WC

¹⁶⁹. NCPCR Case No. TR-19023/21623/2010-11/COMP

Case 107: Alleged rape and murder of tribal woman by TSR personnel

On 19 February 2011, a tribal woman (27 years) (name withheld) was allegedly raped and killed by the TSR personnel near the 6th TSR Battalion camp at Shikaribari village in the West Tripura district. The deceased was a contestant of National Conference of Tripura (NCT) for the upcoming election of village committees scheduled to be held on 24 February 2011 under the Tripura Tribal Areas Autonomous District Council (TTAADC). The deceased was allegedly gang raped and strangled by the accused when she went to a villagers' house for campaigning near the 6th TSR Battalion Camp.¹⁷⁰

Case 108: Killing of Khoka Mia by BSF personnel for resisting rape attempt on his daughter

On 30 November 2010, three BSF personnel allegedly shot dead one Khoka Mia, a resident of Amzad Nagar village in South Tripura's Belonia subdivision ostensibly for resisting a rape attempt on his 16-year-old daughter by patrolling BSF personnel. The FIR filed by the victim's family stated that the deceased's 16-year-old daughter (name withheld) was moving along the border road near Amzad Nagar village when three unidentified BSF personnel patrolling the border road allegedly tried to rape her. Hearing her screams, the deceased and his two sons Badsha Mia and Abul Kalam rushed to the spot.¹⁷¹ Both sons of the deceased were also injured in the firing.¹⁷²

Acting on a complaint filed by the Asian Centre for Human Rights, the National Human Rights Commission (NHRC) awarded compensation of Rs. 8 lakh to the family of the deceased. The NHRC criticised the BSF and noted the prime concern of the Court of Inquiry (CoI) ordered by the BSF was to protect the delinquent colleagues rather than upholding the law. The NHRC found that the BSF's CoI absolved the three constables accused in the case. On a stern note, the commission said, "*This was almost invariably the case with the BSF's*

¹⁷⁰. See NHRC Case No. 8/23/4/2011-PF

¹⁷¹. BSF bullet kills villager, Telegraph, 1 December 2010; available at: <https://www.telegraphindia.com/states/north-east/bsf-bullet-kills-villager/cid/454118>

¹⁷². NHRC raps BSF for rape and murder by jawans, Times of India, 24 August 2013; available at: <https://timesofindia.indiatimes.com/india/NHRC-raps-BSF-for-rape-and-murder-by-jawans/articleshowprint/22016568.cms>

court of inquiry, staffed by junior officers, whose primary concern seemed to be to protect their colleagues rather than to uphold the law".¹⁷³

Case 109: Alleged rape of a minor girl by a police officer

On 27 October 2010, a 14-year-old girl was allegedly raped by Officer-in-Charge of Kamalpur police station Dilip Guha at his official residence at Kamalpur in Dhalai district. The accused officer asked his domestic help to bring the victim to his residence promising a job. Later in the night, the minor victim was forced to drink liquor by the accused police officer and raped repeatedly. On the next morning, the minor victim escaped from the house and narrated the incident to her father. The accused was arrested following a police complaint.¹⁷⁴

Case 110: Gang rape of two tribal minor girls by the SPOs

On 4 June 2009, two tribal minor girls were gang raped by four persons including three Special Police Officers (SPOs) of the Tripura Police identified as Sany Debbarma, Uttam Debbarma and Gopal Debbarma and motor mechanic, Samir Debbarma at Mungiakami village of Atharomura foothills in West Tripura district. Both the girls were studying in Class VI. On the evening of 4 June, both the victims were abducted by the accused while they were returning home after watching TV at their neighbour's house. They were taken to a nearby jungle and raped. The victims were released on the morning of 5 June following which the victim's families reported the incident to the police. Acting on a complaint filed by ACHR, the NHRC directed the state government to pay compensation of Rs. 300,000 to each of the two victims, which was accordingly paid.¹⁷⁵

Case 111: Alleged rape and murder of tribal woman by a SPO

On 12 March 2008, a tribal woman (21 years), wife of Polo Mog, was allegedly raped and killed by Jagadish Shil, a Special Police Officer (SPO) of District Armed Reserved (DAR) at Avangacherra village (Chefru Mog Para) under Baikhura police station in South Tripura

¹⁷³. NHRC raps BSF for rape and murder by jawans, Times of India, 24 August 2013; available at: <https://timesofindia.indiatimes.com/india/NHRC-raps-BSF-for-rape-and-murder-by-jawans/articleshowprint/22016568.cms>

¹⁷⁴. Policeman arrested for raping minor in Agartala, The Assam Tribune, 29 October 2010, <http://www.assamtribune.com/scripts/detailsnew.asp?id=oct2910/at044>

¹⁷⁵. See NHRC Case No. 8/23/4/09-10-AR

district. An investigation by the police confirmed that the SPO had killed the victim after rape. On 12 March 2008, the victim went to her rubber plantation which is located near the DAR camp of Avangacherra out post. The SPO Jagadish Shil accosted the victim and raped her. After the rape, the SPO killed the victim to keep his offence secret. In an attempt to mislead others, the SPO immediately slipped into his camp and came back to the rubber plantation as if he was reporting on duty for the first time during the day.¹⁷⁶

Case 112: Alleged gang rape of three tribal women by the CRPF personnel

In May 2004, CRPF personnel allegedly gang raped three tribal women at Dehtabari village under Teliamura police station in Khowai district. A group of CRPF personnel based in Teliamura had gone for special search operations in Dehtabari village following reports that All Tripura Tiger Force militants were camping in the area. After ransacking the houses and beating up tribal civilians, the CRPF personnel took three tribal women to the nearby jungle at gun-point and allegedly gang raped them. On 13 May 2004, a delegation of the Indigenous Nationalist Party of Twipra registered a police complaint after an interview with the victims.¹⁷⁷

Case 113: Torture and gang rape of a minor tribal girl by the SPOs

On 26 May 2003, a 16-year-old tribal girl belonging to the Reang tribe was raped by three Special Police Officers near Manoranjan Das Para Camp in Dalai district. Acting on a complaint from the Asian Centre for Human Rights, the NHRC sought reports from the State government. The victim's family complained to the police station naming the three accused but their complaint was not recorded. In response to the notice, a report received from the DGP, Tripura indicated that a case No. 6/2003 u/s 366 (A), 376, 326 and 34 IPC was registered in Police Station Raishyabari against the three accused. The medical report confirmed that the victim was sexually assaulted and raped. The three SPOs had been discharged from the

¹⁷⁶. The State of India's Indigenous and Tribal Peoples 2009, AITPN, http://www.aitpn.org/wp-content/uploads/2019/10/Tribal_Peoples_2009.pdf

¹⁷⁷. Rape slur on CRPF jawans Iftar donation, Telegraph, 14 May 2004; available at: <https://www.telegraphindia.com/states/north-east/rape-slur-on-crpf-jawans-iftar-donation/cid/704728>

service, arrested and sent to jail. The NHRC recommended compensation to the victim and it observed that *“the offence of rape not only amounts to violation of the human rights of the victim but it also tends to violate the mind and scar the psyche of a person permanently. Besides, it carries a social stigma for the victim and her family.”*¹⁷⁸

Case 114: Alleged custodial rape of tribal woman by police

In October 2001, a tribal woman (20 years) (name withheld) was allegedly raped by three police personnel in police custody at Manu police station in Dhalai district. The victim, a teacher of Rising Citizen School at Kanchancherra in the district, was arrested on 9 October 2001 in connection with militancy. Tripura State Rifles arrested the victim allegedly with firearms and incriminating documents following an encounter with militants in a remote village. In a statement made to the Chief Judicial Magistrate of West Tripura, she alleged custodial rape at the police station. In November 2001, the Agartala bench of Gauhati high court ordered a CID inquiry into the custodial gang rape allegation made by the victim. The victim’s lawyer, in a petition before the high court, stated that she was falsely implicated in the case.¹⁷⁹

3.3. Sexual violence by AOGs

Women and children were also subject of sexual violence by the Armed Opposition Groups (AOGs) in conflict areas of India. However, the cases are hardly reported due to fear of retaliation or social stigma. Some of the emblematic cases documented by CAT are as follows:

Case 1: Mass rape of Chakma tribal women by BNCT cadres, Tripura

On the night of 11 March 2004, six tribal women belonging to the Chakma tribe were gang-raped by armed members of Borok National Convention of Tripura (BNCT) at a remote village, Paisaram Karbaripara in Dhalai district of Tripura. One of the male villagers identified as Gunachitra Chakma was also beaten to death by the

¹⁷⁸. Case No. 5/23/2003-2004-WC, See NHRC Press release at <https://nhrc.nic.in/press-release/2-tripura-government-pays-compensation-gang-rape-victim>

¹⁷⁹. HC orders probe into custody rape charge, The Times of India, 12 November 2001, <https://timesofindia.indiatimes.com/city/kolkata/HC-orders-probe-into-custody-rape-charge/articleshowprint/1281889324.cms>

members of the armed group. According to the police, the BNCT members directed all male members to assemble at a place and started beating them. The armed men then forced their way into homes and started raping the women as some others stood guard outside.¹⁸⁰

Case 2: Forced marriage and rape of a 14-year-old girl by militants, Jammu & Kashmir

In October 2005, a 14-year-old tribal girl belonging to Gujjar tribe was abducted by a group of Laskhar-e-Toiba militants from remote Lurkoti village on the Indo-Pak border in Jammu & Kashmir, and was forcibly married to a militant. She was gang-raped by her husband and his militant friends and shifted from one hideout to another. She escaped later but her family had to flee their native village and move to Jammu. The minor victim was among the many young girls in Jammu & Kashmir who were forced into marriages at gunpoint by militants. There were no surveys or studies but the police records show that the 14-year-old was among such 50 victims.¹⁸¹

Case 3: Forced marriage of a 15-year-old girl to a militant, Jammu & Kashmir

In December 2005, a 15-year-old girl (name withheld) from village Bajoni in Doda district, Jammu & Kashmir was forced to marry Nazir Ahmed, a Hizb-ul-Mujahideen militant. Her family was asked to choose between death and marrying off their daughter to him. The marriage was performed by a local maulvi (Muslim priest) with a gun pointed to her father's head.¹⁸²

Case 4: Mass rape of Hmar tribal women and girls by ULLE, Manipur

On 26 January 2006, at least 21 women and minors, belonging to the Hmar tribal community, were allegedly raped by members of United

¹⁸⁰. Six tribal women gangraped in Tripura, The Times of India, 14 March 2004, <https://timesofindia.indiatimes.com/india/Six-tribal-women-gangraped-in-Tripura/articleshowprint/559184.cms>

¹⁸¹. Married to brutality, Deccan Herald, 25 February 2006, <https://web.archive.org/web/20140315172145/http://archive.deccanherald.com/Deccanherald/feb242006/she1749442006223.asp>

¹⁸². Married to brutality, Deccan Herald, 25 February 2006, <https://web.archive.org/web/20140315172145/http://archive.deccanherald.com/Deccanherald/feb242006/she1749442006223.asp>

National Liberation Front (UNLF) in three villages of Tipaimukh sub-division in Churachandpur district of Manipur. The victims, including a 13-year-old minor girl, were subjected to mass rape by the cadres of the UNLF at Lungthulien, Parbung and another village in Tipaimukh. However, the UNLF denied the allegations. A 21-year-old witness (name withheld) from Lungthulein village told the media that UNLF members went to her village on 16 January and beat up several male residents. She stated *“They then targeted the fairer girls of the village, dragging some of them into the jungle or to nearby houses. All these girls were sexually assaulted.”*¹⁸³ Following the alleged mass rape of the women, a team of the National Commission for Women (NCW) visited the villages to conduct an inquiry, and it observed that the “atrocities” committed against women were a “shocking incident”. The NCW confirmed that some of the victims were minors.¹⁸⁴

Case 5: Woman’s head blown off for resisting rape attempt by militants, Meghalaya

On 3 June 2014, a woman’s head was blown into pieces as she resisted an alleged attempt of molestation and rape by suspected the Garo National Liberation Army (GNLA) militants at Raja Rongat in the South Garo Hills district of Meghalaya. The deceased woman was at home with her husband and children when four to five armed militants of the GNLA entered their house and locked up her husband and five children inside the house and pulled out the woman. She was first assaulted and molested. When she resisted, they shot her with automatic assault rifles from point blank range blowing her head it into almost two pieces.¹⁸⁵

Case 6: Minor girl gang-raped by alleged members of ULFA (Independent), Assam

On 10 May 2018, a minor girl was allegedly gang-raped by three armed cadres of United Liberation Front of Asom (ULFA) at

¹⁸³. Mass rape charge against militants - 21 girls assaulted in Manipur: Forum, The Telegraph, 8 March 2006, <https://www.telegraphindia.com/india/mass-rape-charge-against-militants-21-girls-assaulted-in-manipur-forum/cid/811365>

¹⁸⁴. See <http://ncw.nic.in/sites/default/files/rmjun2006e.pdf>

¹⁸⁵. Woman Shot Dead While Resisting Rape in Meghalaya, The New Indian Express, 4 June 2014, <https://www.newindianexpress.com/nation/2014/jun/04/Woman-Shot-Dead-While-Resisting-Rape-in-Meghalaya-621216.html>

Kolakota Mazhi village under Sapekhathi in Charaideo district of Assam. The accused, who barged into the house of the victim after midnight, were reportedly identified as members of ULFA (Independent). They then forced the victim's elder brother and his family and gang-raped the minor girl at gunpoint. However, the ULFA chief Paresh Baruah denied that any member of his group was involved in the incident.¹⁸⁶

Case 7: Rape and sexual exploitation by the Maoists

There were allegations of rape and sexual abuse of female Maoist cadres by their male colleagues in States affected by the Maoist movement. Several surrendered Maoists have raised the issue of sexual exploitation of women in the Maoist ranks.

In January 2010, a 17-year-old tribal girl (name withheld) was abducted and gang raped by two alleged Maoists identified as Sub-
onal Commander Pappu Lohra and Arun Yadav in Latehar district of Jharkhand. The victim lodged an FIR against the accused. On 4 March 2010, three Maoists shot at the victim near the Latehar Railway Station for daring to lodge the FIR against them.¹⁸⁷

A 24-year-old woman (name withheld), a former Maoist cadre, who surrendered before police in Keonjhar in Odisha on 11 February 2010, alleged sexual exploitation by seniors. She told the media, "*My repeated pleas to stop the harassment fell on deaf as seniors in my camp continued to exploit me. I was so frustrated, I decided to surrender.*" "*Most women cadres face sexual harassment at nights,*" she further alleged.¹⁸⁸

On 2 March 2010, a Maoist couple surrendered before the police in Keonjhar district of Odisha alleging torture by the Maoists. The couple (names withheld) accused the Maoists of torturing and outraging the modesty of women Maoist cadres. The duo reportedly told the police that the drunken male cadres also molested women and girls during their raids in villages in the night.¹⁸⁹

¹⁸⁶. MINOR RAPED BY THREE 'ULFA' MILITANTS, PARESH BARUAH CLAIMS CADRES OF HIS OUTFIT NOT INVOLVED, News Live, 10 May 2018, <https://www.newslivetv.com/minor-raped-by-three-ulfa-militants-paresh-baruah-claims-cadres-of-his-outfit-not-involved/>

¹⁸⁷. See Torture in India 2011, ACHR

¹⁸⁸. See Torture in India 2011, ACHR

¹⁸⁹. See Torture in India 2011, ACHR

In May 2016, two women Naxals, who surrendered in Bastar district of Chhattisgarh, had alleged that they were raped by Maoist leaders of their squads in forest camps. The victims were among the 40 rebels who surrendered to the police. One of the victims, aged 25 years from Mudenar village in Bastar district alleged that she was repeatedly sexually exploited by a Maoists' commander. Following the rape, she became pregnant. The other victim from Kodenar village had alleged that she was raped several times by in-charge of Barsoor area committee of Maoists and his associate. In their complaints to the police, they stated that the Maoists used to give anti-pregnancy injections and other related tablets for sexual exploitation. According to the victims, the continuous sexual exploitation by senior colleagues was one of the reasons for their surrender.¹⁹⁰

¹⁹⁰. Two Surrendered Women Naxals Allege Rape by Senior Cadres, Outlook, 29 May 2016, <https://www.outlookindia.com/newswire/story/two-surrendered-women-naxals-allege-rape-by-senior-cadres/941695>

4. India's refusal to criminalise sexual violence in conflict situations

Impunity for public servants was an integral part of colonial administration by the British in India. After independence, India embedded “good faith” clause in all the legislations to protect virtually all illegal and criminal acts by public servants through requirement of prior sanction from the concerned authorities for prosecution or institution of suit or other legal proceeding.

Section 197 of the Criminal Procedure Code (CrPC)¹⁹¹ provides that no government official or member of the armed forces alleged to have committed a criminal offence while acting or purporting to acting in the discharge of his official duty can be prosecuted except with the prior sanction of the Central or State government. Section 45¹⁹² of the CrPC specifically protects members of the armed forces from arrest without prior sanction of appropriate government for anything done or purported to be done in the discharge of official duties.

Further Section 6 of the AFSPA, 1958 provides “*No prosecution, suit or other legal proceedings shall be instituted, except with the previous sanction of the Central Government against any person in respect of anything done or purported to be done in exercise of powers conferred by this Act.*”¹⁹³ Section 7 of the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 provides the same immunity.¹⁹⁴

4.1 Recommendations of the Justice Verma Committee

Following the brutal gang rape of a 23-year-old female physiotherapy intern in Delhi on the evening of 16 December 2012, the Government of India constituted a Committee of eminent jurists with Justice J.S. Verma (former Chief Justice of India) as Chairman and Justice Leila Seth (former Chief Justice of Himachal Pradesh) and Mr. Gopal

¹⁹¹. See Chapter XIV “Prosecution of Judges and Public Servants” <http://www.icf.indianrailways.gov.in/uploads/files/CrPC.pdf>

¹⁹². See Chapter V “Protection of members of the Armed Forces from Arrest” at <http://www.icf.indianrailways.gov.in/uploads/files/CrPC.pdf>

¹⁹³. http://mha.nic.in/sites/upload_files/mha/files/pdf/armed_forces_special_powers_act1958.pdf

¹⁹⁴. http://mha.nic.in/sites/upload_files/mha/files/pdf/Armedforces%20J&K_%20Splpowersact1990.pdf

Subramaniam (former Solicitor General of India, former Chairman of Bar Council of India) as Members on 23 December 2012 to look into the possible amendments to the Criminal Law to provide for quicker trial and enhanced punishment for criminals committing sexual assaults of extreme nature against women.¹⁹⁵

This Committee in its report titled “Report of the Committee on Amendments to Criminal Law” dated 23 January 2013 made the following specific observations/conclusions in respect of “**Offences against women in border areas/conflict zones**”:

“10. We now address a very important, yet often neglected area concerning sexual violence against women – that of legal protections for women in conflict areas. Our views on this subject are informed by the plight of a large number of women from areas in Kashmir, the North-East, Chhattisgarh, Odisha and Andhra Pradesh who were heard at length in the course of preparing our report. We are indeed deeply concerned at the growing distrust of the State and its efforts to designate these regions as ‘areas of conflict’ even when civil society is available to engage and inform the lot of the poor. We are convinced that such an attitude on the part of the State only encourages the alienation of our fellow citizens.

11. At the outset, we notice that impunity for systematic or isolated sexual violence in the process of Internal Security duties is being legitimized by the Armed Forces Special Powers Act, which is in force in large parts of our country. It must be recognized that women in conflict areas are entitled to all the security and dignity that is afforded to citizens in any other part of our country. India has signed the International Convention for the Protection of All Persons from Enforced Disappearance¹⁹⁶, which has to be honoured. We therefore believe that strong measures to ensure such security and dignity will go a long way not only to provide women in conflict areas their rightful entitlements, but also to restore confidence in the administration in such areas leading to mainstreaming.”

¹⁹⁵. Notification No. S.O. 3003(E) dated 23 December 2012; available at: <http://www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committe%20report.pdf>

¹⁹⁶. <http://www2.ohchr.org/english/law/disappearanceconvention.htm>

In the light of the above observations/conclusions, Justice Verma Committee made the following specific recommendations:

“12. To this end, we make the following recommendations for immediate implementation:

- a) Sexual violence against women by members of the armed forces or uniformed personnel must be brought under the purview of ordinary criminal law;
- b) Special care must also be taken to ensure the safety of women who are complainants and witnesses in cases of sexual assault by armed personnel;
- c) There should be special commissioners – who are either judicially or legislatively appointed – for women’s safety and security in all areas of conflict in the country. These commissioners must be chosen from those who have experience with women’s issues, preferably in conflict areas. In addition, such commissioners must be vested with adequate powers to monitor and initiate action for redress and criminal prosecution in all cases of sexual violence against women by armed personnel;
- d) Care must be taken to ensure the safety and security of women detainees in police stations, and women at army or paramilitary check points, and this should be a subject under the regular monitoring of the special commissioners mentioned earlier;
- e) The general law relating to detention of women during specified hours of the day must be strictly followed;
- f) Training and monitoring of armed personnel must be reoriented to include and emphasize strict observance by the armed personnel of all orders issued in this behalf;
- g) There is an imminent need to review the continuance of AFSPA and AFSPA-like legal protocols in internal conflict areas as soon as possible. This is necessary for determining the propriety of resorting to this legislation in the area(s) concerned; and

h) Jurisdictional issues must be resolved immediately and simple procedural protocols put in place to avoid situations where police refuse or refrain from registering cases against paramilitary personnel.”

4.2 Recommendations of Justice Verma Committee relating to sexual violence in conflict situations not implemented

The Government of India enacted the Criminal Law (Amendment) Act, 2013 to implement the Justice Verma Committee report and criminalise various forms of sexual violence. While amending Section 197 of the CrPC, the Criminal Law Amendment Act of 2013 declared that “*no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376, section 376A, section 376C, section 376D or section 509 of the Indian Penal Code*”.¹⁹⁷ It implies that for sexual violence committed by the armed forces and the police in areas not covered by the AFSPA, prior sanction is no longer required for prosecution.

The Government of India (GoI) however refused to implement the recommendation of the Justice Verma Committee report to amend Section 6 of the AFSPA to remove the requirement of prior sanction in cases of sexual assault.¹⁹⁸

In a reply dated 8 May 2013 to a question in the Rajya Sabha, the Minister of State (MoS) in the Ministry of Home Affairs (MHA) stated that the recommendations of amending the AFSPA have not been incorporated in the Criminal Law (Amendment) Ordinance, and subsequent Criminal Law (Amendment) Act 2013 because of multitude and divergence of opinion on the issues.¹⁹⁹ Subsequently, in a reply dated 3 December 2014 in the Rajya Sabha, the MoS, Home Affairs, stated that the Justice Jeevan Reddy committee in its report

¹⁹⁷. The Criminal Law (Amendment) Act, 2013 is available at: http://egazette.nic.in/WriteReadData/2013/E_17_2013_212.pdf

¹⁹⁸. The Criminal Law (Amendment) Act, 2013 is available at: http://egazette.nic.in/WriteReadData/2013/E_17_2013_212.pdf

¹⁹⁹. Rajya Sabha Unstarred Question No. 4590 dated 8 May 2013 asked by Member of Parliament Smt. Jharna Das and answered by Shri R.P.N. Singh, Minister of State in the Ministry of Home Affairs, available at: <http://mha.nic.in/par2013/par2013-pdfs/rs-080513/4590.pdf>

submitted to Government on 06.06.2005, recommended repeal of AFSPA and suggested to amend the Unlawful activities (Prevention) Act, 1967 by inserting a new Chapter VI-A in respect of North Eastern States so as to provide for provisions contained in Armed Forces (Special Powers) Act. The MoS said the recommendations of the Committee were under consideration of the Government.²⁰⁰

It effectively implies that the armed forces deployed in the areas declared to be 'disturbed' under the AFSPA shall continue to have protection for sexual offences including rape, gang rape etc through the requirement of prior sanction for prosecution. The victims of sexual violence residing in the areas declared disturbed under the AFSPA continue to be denied the same protection as those given to victims in areas not declared disturbed under the AFSPA.

4.3 The state of prior sanction under the AFSPA

The denial of permission for prosecution of the members of the armed forces personnel serving in disturbed areas, for the offences of rape and murder under Section 6 of the AFSPA is an admitted fact.

In a reply to a question on the number of requests for sanction of prosecution received by Government for prosecution of armed forces personnel serving in disturbed areas, for the offences of rape and murder under Section 6 of the Armed Forces (Special Powers) Act, 1958 since its enactment in 1958, then Defence Minister Manohar Parrikar in a written reply dated 24 February 2015 in the Rajya Sabha stated that permission was denied in 30 out of the total 38 requests for sanction of prosecution received under AFSPA during 16 June 1991 to till date while requests in 8 case have been pending.²⁰¹

Subsequently, the Minister of State, Ministry of Defence, in a written reply in the Rajya Sabha on 1 January 2018 stated that in permission for prosecution was denied in 47 out of total 50 requests, including

²⁰⁰. Rajya Sabha Unstarred Question No. 1127 asked by Member of Parliament by Dr. Pradeep Kumar Balmuchu and answered on 3 December 2014 by Mr. Kiren Rijiju, MoS, MHA; available at: <https://rajyasabha.nic.in/rsnew/Questions/QResult.aspx>

²⁰¹. Rajya Sabha Unstarred Question No. 59 asked by Member of Parliament by Mr. Avinash Pandey and answered on 24 February 2015 by former Defence Minister late Manohar Parrikar; available at: <https://rajyasabha.nic.in/rsnew/Questions/QResult.aspx>

four cases of molestation and rape, received from the J & K Government during 2001 – 2016 for prosecution sanction against armed forces personnel under AFSPA, 1990 while requests in three cases were pending as on 1 January 2018. He said the reason for “denial/ pendency” of prosecution sanction is on account of lack of sufficient evidence to establish a prima facie case.²⁰²

It implies that no sanction under the AFSPA had been given ever.

The cases for which sanction was sought included “killing after abduction” “outraging the modesty of a woman”, “the disappearance of civilians, rape, and torture and killing.” The highest number of cases sent for the prosecution sanction by the State government was in 2006 and 2007. In 2006, the state government had sent 17 cases and 13 cases for the prosecution sanction in 2016 and 2007 respectively. From 2008 to 2014, when Omar Abdullah was Chief Minister, 14 cases were sent for sanction of prosecution and one case was sent for prosecution sanction to Mehbooba Mufti-led government.²⁰³

The following cases show that how sanction for prior permission has been used to provide impunity.

Case 1: Torture, rape and murder of Thangjam Manorama in the custody of 17th Assam Rifles in Imphal, Manipur in 2004

In the wee hours of 11 July 2004, a group of security personnel of the 17th Assam Rifles picked up Thangjam Manorama (32 years) from her home in Bamon Campu Mayai Leikai, P.S, Irilbung in Imphal East District. The next day, her dead body with multiple gunshot and other injuries on various parts, including on her genital organs and thighs was found on the roadside land of Ngariyan Yairipok Road, near Yaiphorok Maring village.

According to the Assam Rifles, Manorama had been picked up as she was a member of the insurgent group *People's Liberation*

²⁰². Rajya Sabha Unstarred Question No. 1463 asked by Member of Parliament by Mr. Hussain Dalwai and answered on 1 January 2018 by Dr. Subhash Bhamre, MoS, Ministry of Defence; available at: <https://rajyasabha.nic.in/rsnew/Questions/QResult.aspx>

²⁰³. In 20 Years, Centre Denied Prosecution Sanction Under AFSPA In All Cases Recommended By J&K Govt Against Armymen, 20 January 2018; available at: <https://www.outlookindia.com/website/story/in-20-years-centre-denied-prosecution-sanction-under-afspa-in-all-cases-recommen/307132>

Army (PLA) and was responsible for several bomb blasts, including one that killed several army officers. It was alleged that Manorama had been a PLA militant since 1995, and was an expert on improvised explosive devices (IEDs). The security forces said they had set up a check post near Manorama's house and received information confirming that she was home on the night of 10th July. Troops cordoned off the area around her house and she was arrested and taken into custody at 3 a.m, with an official arrest memo. A First Information Report [No. 29(7)2004 u/s 10/13 Unlawful Activities Prevention Act, 307 Indian Penal Code and 6((LA) 6(1-A) IWT Act and 5 Explosive Substance Act)] lodged at about 8.30 a.m. on 11.07.2004 by Digamber Dutt, Naib Subedar No. 172262 F of 17th Assam Rifles at Irilbung Police Station stated that after handing over one Kenwood and Chinese hand grenades, Monorama @ Henthoi led the party of 17th Assam Rifles to hand over one AK 47 to Chingarnakha, Nambol, Tulihal and finally moved towards Yairipok. On reaching Yairipok road on the pretext of urinating, she got down from the Army vehicle but on seeing some persons working in the nearby paddy fields, she started running towards them through the hedges. Then, the arresting party of the 17th Assam Rifles in order to stop her running fired in the air and then shot at her legs and as a result, she succumbed to the injuries at about 3.30 a.m. on that day on Ngarian Road near Yaipharok Maring village.²⁰⁴

On 12 July 2004, another FIR [Case No.3 0(7) 2004 u/s 302/34 IPC] was lodged at Irilbung PS by the deceased's younger brother Th. Dolendro Meitei alleging that his sister who was taken under arrest by the 17th Assam Rifles around 0030 hours of 11th July 2004 after issuing an arrest memo was found dead on Wangkhem Ngarian Yairipok Road and on the basis of that FIR, the second case was registered by the Officer in Charge, Irilbung PS against un-named personnel of 17th Assam Rifles.²⁰⁵

In this case it is not disputed that deceased Monorama was taken under arrest by the troops of 17th Assam Rifles from her house at Bamon the Kampu Mayai Leikai in the night between 10 and 11 July, 2004. In order to make arrest of Monorama Devi the troops of the

²⁰⁴. Report of the Commission of Judicial Inquiry into the death of Thangjam Manorama; available at: <https://hrln.org/wp-content/uploads/2018/07/report-of-commission-of-the-judicial-inquiry-manorama-death.pdf>

²⁰⁵. Ibid

17th Assam Rifles had cordoned off her house in the night. By that time deceased Monorama, her mother Khumanleima Devi (V.W.No.1), her two younger brothers namely Th. Basu Singh (V.W.No.2) and Th. Dolendro Meitei (V.W.No.3) were the only members of their family who were present at their house and were in their respective rooms which were accessible from one to the other adjoining room. The main entrance door which faced on the east of the verandah was affixed to the room of Th. Basu (V.W.No.2), in other words, the room abutted the verandah of the house.²⁰⁶

As per accounts of Th. Dolendro Meitei, his younger brother Th. Basu Singh and their mother Khumanleima Devi, at about 0.30 hours in the intervening night of 10th and 11th July 2004, a group of 7 – 8 persons in army uniform and two in civil dress entered broke opened the main door of their home and asked for a person by the name of “Henthoi.” One of the two security personnel in civil dress caught hold of the Manorama and started pulling her away towards the veranda through the main door. As Manorama was screaming the security personnel gagged her mouth with his hand and when her mother Khumanleima tried to stop taking away Manorama, the security personnel pushed her and as a result she fell down near the bed. Then Manorama was forcibly lifted away by the security personnel who held her and took her to one side of the verandah. The brothers and mother of the deceased witnessed the security personnel torturing Manorama at the verandah. First, they slapped her when she replied in the negative about whereabouts of some arms. Then, they tortured her by pouring water on her face covered with some cloth. Her hands were tied at back and she was made to lie on her back and they disrobed and tortured her while she was interrogated. Thereafter, she was brought inside the house and asked to change her dress and as she completed changing her clothes, three security personnel dragged her out of the home. After she and her younger brother Dolendra were forced to sign the arrest memo and giving a copy of the same to the family members, the security forces took away Manorama with them in their vehicles.²⁰⁷

However, in both cases registered by the Irilbung Police Station with regard to murder of Manorama, no suspect or culprit was identified

²⁰⁶. Ibid

²⁰⁷. Ibid

and no arm used in killing her was seized by the police as the 17th Assam Rifles did not cooperate. The para-military force did not allow the police to examine the accused personnel of the 17th Assam Rifles on flimsy and unsustainable grounds, stating amongst others that till the completion of the Army's Court of Inquiry, the Civil Police could not be permitted to examine the accused personnel.²⁰⁸

Pursuant to submission of joint memorandum by Dolendra Meitei, youngest brother of the deceased and heads of three different NGOs to the Chief Minister of Manipur for taking up proper action in the custodial killing of Km. Th. Monorama Devi, the Government of Manipur constituted a Commission of Inquiry headed by C. Upendra Singh, a retired District and Session Judge, Manipur under Section 3 of the Commission of Inquiry Act to make inquiry into and report on the matters with the following terms of reference: (a) to inquire into the facts and circumstances leading to the death of Km. Th. Manorama Devi on 11 July 2004; (b) to identify responsibilities on the person/persons responsible for the death of Km. Th. Monorama Devi; (c) to find out any matters incidental thereto; and (d) to recommend measures for preventing recurrence of such incident in future.²⁰⁹

The 17th Assam Rifles whose personnel arrested Manoram and were responsible for her death initially did not cooperate with the Commission of Inquiry. The para-military force did not produce any of its personnel sought to be examined by the Commission of Inquiry. To secure the presence those persons whose names were known from the records available before it, the Commission of Inquiry issued summons to five persons of the 17 Assam Rifles viz. Col. Jagmohan Singh, Commandant, 17th Assam Rifles and four others viz. Naib Subedar Digambar Dutt, the informant of the FIR Case No. 29(7) 2004 Irilbung, Hav. Suresh Kumar who appeared in the Arrest Memo as arresting authority for arresting Km. Thangjam Manorama Devi and two attesting witness on the Arrest Memo, viz. Rifleman T. Lotha, Rifleman Ajit Singh. But the summons issued on them was returned without service. Thereafter, the Commission issued fresh summons to the Commandant and on the said four personnel of the Assam Rifles. At last the service was affected by way of substituted services

²⁰⁸. Ibid

²⁰⁹. Ibid

through publishing in most of the local dailies, including two English dailies.²¹⁰

In the meantime Col. Jagmohan Singh, the Commandant, 17th Assam Rifles and Commander of 9 Sector, Assam Rifles filed a Writ Petition (C) No. 5817 of 2004 before the Gauhati High Court at Guwahati challenging the competence of the State of Manipur to appoint a Commission of Inquiry vide Notification No. 8/1(1)/2004/H (Pt-2) dated 12th July 2004 with prayer for other consequential reliefs. Writ Petition (C) No. 6187 of 2004 had been filed by JC-172262F Nb Digambar Dutta of 17th Battalion Assam Rifles and three others also challenging the aforesaid notification.²¹¹ In an interim order dated 18 August 2004, the High Court exempted that appearances of Col. Jagmohan and Commander, 9 Sector, Assam Rifles before the commission but no such exemptions were allowed to the four junior ranking personnel. Yet, the four junior ranking Assam Rifles personnel did not appear before the commission until 28 August 2004 pursuant to issuance of bailable arrest warrants against them by the Commission.²¹²

Vide its judgment and order dated 28 August 2004, the High Court directed that the sitting of the Commission be held at the Central Jail at Imphal to record the statements of the Assam Rifles personnel/officers. It stated that the hearing shall be held in camera, wherein the counsel for the Commission, Union of India and the counsel for the Assam Rifles, if any, shall be allowed. In compliance of order of the High Court dated 28 August 2004, the Commission of Inquiry examined the Assam Rifles personnel/officers in camera at the Imphal Central Jail.²¹³

After consideration of all evidence on record, post-mortem reports, opinions of the doctors, ballistic expert and oral testimony of independent witnesses, the Commission of Judicial Inquiry into the

²¹⁰. Ibid

²¹¹. Judgment and order dated 23 June 2005 passed by the Gauhati High Court in Writ Petition (C) No. 5817 of 2004 Writ Petition (C) No. 6187 of 2004; available at: <https://indiankanoon.org/doc/38473/?type=print>

²¹². Report of the Commission of Judicial Inquiry into the death of Thangjam Manorama; available at: <https://hrln.org/wp-content/uploads/2018/07/report-of-commission-of-the-judicial-inquiry-manorama-death.pdf>

²¹³. Ibid

circumstances leading to the death Thangjam Manorama Devi concluded thus:

*“Thus, in this inquiry, the contention of the Assam Rifles that victim Manorama was shot at her legs while she was running in order to escape from the custody of the 17 Assam Rifles is a naked lie. Not a single-injury was found on the legs. On the other hand, most of the injuries will reveal that they were shot with an intention while the victim was in prone, while lying, bending positions with an intention to kill and even after she was in helpless condition. This apart, the opinion of Dr. Ksh. Manglem that some of the injuries might be caused after Post Mortem is very meaningful and requires to be investigated thoroughly”.*²¹⁴

In its judgment and order dated 23 June 2005, the Gauhati High Court disposed of both writ petitions with direction to the State of Manipur to hand over the report of the Commission of Inquiry headed by Judge C. Upendra Singh to the Ministry of Home Affairs (MHA), Government of India. It was directed that the MHA will examine the report and pass orders/take appropriate action against the 17th Assam Rifles personnel, if any, indicted in the report without loss of time. It was further directed that the MHA shall also take an immediate decision about publication of the report in tune with the citizens’ right to information.²¹⁵

The Court held thus: *“... The State of Manipur is not the appropriate Government having any administrative control over the armed forces deployed in the State. On the other hand, the members of the Armed Forces are entitled to protections as per provisions of Section 6 of the Act of 1958 which provide that no prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government. The Central Government being the appropriate Government and having absolute control over the armed forces deployed in a disturbed area has to deal with the report and take follow-up action as may be necessary in accordance with the provisions of law. Since the subject-matter of dispute is a definite matter of public importance, the Union Government is required to take appropriate decision without least possible delay.”*²¹⁶

²¹⁴. Ibid

²¹⁵. Judgment and order dated 23 June 2005 passed by the Gauhati High Court in Writ Petition (C) No. 5817 of 2004 Writ Petition (C) No. 6187 of 2004; available at: <https://indiankanoon.org/doc/38473/?type=print>

²¹⁶. Ibid

Yet, nothing substantial happened in this case to establish accountability for the rape and murder of Manorama Devi as the GoI has not taken any action on the report Commission of Inquiry headed by Judge C. Upendra Singh as on date. Manorama Devi's rape and murder was one of the cases raised before the bench of Justice Madan B. Lokur and Justice U.U Lalit of the Supreme Court in the case of *Extra Judicial Executions Victim Families Association & Anr. Versus Union of India & Ors.* [Writ Petition (Crl.) No. 129 of 2012 with Writ Petition (C) No. 445 OF 2012] but the court declined to direct investigation/prosecution in this case on the ground that the issues involved in this case are pending in the Supreme Court in Civil Appeal Nos. 65-69 of 2015 preferred by the Union of India as Special Leave Petition.²¹⁷ While the said civil appeals have not been listed for hearing during the last one year since 7.9.2018, the Government of India has taken refuge in the pendency of the cases to evade any action to fix accountability in the Manorama Devi rape and murder case.²¹⁸

Case 2: Gang rape of a 15-year old girl in Jiribam, Manipur on 4 October 2003 by soldiers of 12th Grenadiers²¹⁹

On 4 October 2003, a 15-year old girl Nandeibam Sanjita Devi was allegedly gang raped by two personnel of Indian Army's 12th Grenadiers Regiment in Jiribam district of Manipur at a farmhouse when the minor girl had gone there to deliver food to her father, who worked in a nearby rubber farm. Two 12 Grenadiers personnel then followed her and raped her by turns at gunpoint and unable to bear the trauma, she committed suicide on the same day.

Judge (retired) C. Upendra Singh Commission which held inquiry into incident following widespread public protests confirmed that the minor girl was gang raped by two soldiers of the 12 Grenadiers and out of shock and shame the teenage girl had committed suicide almost immediately after the incident on 4 October 2003. The judge made

²¹⁷. Judgment available at: https://sci.gov.in/supremecourt/2012/29000/29000_2012_Judgement_14-Jul-2017.pdf

²¹⁸. As per status of the daily orders passed in Civil Appeal Nos. 65-69 of 2015, both cases have not been listed after 7.9.2018; available at: <https://sci.gov.in/daily-order>

²¹⁹. Report confirms rape by another jawan, Times of India, 17 Jan 2005; available at: <https://timesofindia.indiatimes.com/india/Report-confirms-rape-by-another-jawan/articleshow/993207.cms>

the observation after talking to the mother and elder sister of Sanjita - two persons close to her and on whom she had confided in moments before she took the extreme step. Quoting the victim, who was in school when she was raped, her mother Thoibi Devi and sister Nomita Devi apparently said the incident happened at a Jiribam House near a rubber farm.

The army initially denied that any of its jawans raped the girl, but instituted a court of inquiry when the protests grew louder.²²⁰

This was one of the cases raised before the bench of Justice Madan B. Lokur and Justice U.U Lalit of the Supreme Court in the case of *Extra Judicial Executions Victim Families Association & Anr. Versus Union of India & Ors.* [Writ Petition (Crl.) No. 129 of 2012 with Writ Petition (C) No. 445 OF 2012]. However, the court declined to direct investigation/prosecution in this case on the technical ground that the said case was not mentioned in the Writ petitions.²²¹

Case 3: Torture and sexual violence on M Naobi Chanu by Manipur Police commandos

On 21 February 2006 around noon, Manipur Police commandoes picked up Maibam Naobi Chanu d/o M. Shyamjai Singh from the residence of slain Peoples' Liberation Army cadre Kh Bikash where she had come to take part in the funeral service of deceased Bikash. The deceased PLA cadre was killed in retaliatory fire by police commandoes during a clinical attacked on police at Thoubal on the previous day in which Officer-in-charge of Thoubal police commando Inspector N Lokhon and three other commandos have been killed.²²²

According to Naobi, after the funeral of Bikash she was taking rest along with his two younger sisters at their residence when the police commandos came and called all occupants out directing them to stand in the court yard. She said some commandoes took her to the side of a pond and beat her up. Thereafter they dragged her by the hair and

²²⁰. Sanjita rape charges are baseless: Army, Times of India, 5 January 2005; available at: http://timesofindia.indiatimes.com/articleshow/994431.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

²²¹. Judgment available at: https://sci.gov.in/supremecourt/2012/29000/29000_2012_Judgement_14-Jul-2017.pdf

²²². Five personnel suspended in Naobi's case, The Sangai Express, 5 March 2006; available at: <http://www.e-pao.net/GP.asp?src=1.17.050306.mar06>

dumped onto a Gypsy and driven away. She stated that the commandoes beat her up brutally inside the vehicle and groped her all over. They allegedly blindfolded and disrobed her and fondled with her private parts. She said after some time, the vehicle stopped and she was asked to get down. There again she was told to undress and made to lie on the ground and then to stand up again. Thereafter, she was made to lie down in the police Gypsy with her posterior naked and the commandoes violated her private parts again and again. She said most of the time she was half conscious but whenever she regained consciousness, she found the commandoes molesting her with someone atop. She stated that at about 7 pm that day she was taken to the Commando barracks and was told to change her clothes in full view of all the men.²²³ The medical examination of Naobi at Regional Institute of Medical Sciences reportedly found tell tale signs of her being made to endure physical exertions both in the external and internal body parts.²²⁴

The Judicial Magistrate First Class, Thoubal released M Naobi Chanu without any condition, a day short of the remand period granted by the same Court. Naobi was set free following the failure of police to substantiate the charges levelled against her.²²⁵

Following widespread public protest across Manipur, the State government led by Chief Minister Ibobi Singh ordered a magisterial inquiry into the allegations of Naobi.²²⁶ On 4th March 2006, five personnel of Thoubal police commandos including a Sub-Inspector were placed under suspension in connection with the arrest and alleged harassment, torture and molestation of Maibam Naobi Chanu in police custody.²²⁷ On 18 March 2006, the Manipur government ordered a judicial inquiry headed Justice S.P. Rajkhowa, a retired High Court judge to probe Naobi's allegations of torture and sexual violence.²²⁸

²²³. Naobi freed, recounts sordid tale: Stripped, beaten, molested, read the harrowing tale of Naobi, The Sangai Express, 2 March 2006; available at: <http://e-pao.net/epRelatedNews.asp?heading=3&src=030306>

²²⁴. Ibid

²²⁵. Ibid

²²⁶. Available at: <http://e-pao.net/epRelatedNews.asp?heading=3&src=040306>

²²⁷. Five personnel suspended in Naobi's case, Sangai Express, 4 March 2006, available at: <http://e-pao.net/epRelatedNews.asp?heading=1&src=050306>

²²⁸. Rajkhowa to head probe panel, The Sangai Express, 19 March 2006; available at: <http://e-pao.net/epRelatedNews.asp?heading=4&src=200306>

Although Justice Rajkhowa submitted his probe report to the state government in August 2006 but it was not immediately made public.²²⁹

Meanwhile, on 29 March 2006, a Division Bench of the Gauhati High Court comprising of Justices MBK Singh and TNK Singh issued notice of motion to the State respondents making them returnable within three weeks in a PIL filed Panjaobam Sakhi (70) and Yumlembam Mema (63), secretary and active member respectively of Nongpok Leingak Nupi Lup, Imphal. The PIL alleged that Naobi was tortured and sexually assaulted while in custody of the Manipur police commandos and it further contended that the commandos neither issued arrest memo while arresting the girl nor followed the legal formalities prescribed by the Supreme Court.²³⁰ On 9 November 2006, a division bench comprising of Justices Rajen Gogoi and MBK Singh of the Guwahati High Court ordered the District and Sessions Judge, Manipur East to probe the allegations of excesses and molestation perpetrated on Naobi by the police commandos and to submit its findings within three months.²³¹

Based on an interim order dated 8 March 2007 passed by the Chief Judicial Magistrate, Thoubal in Cril (C) Case No.3 of 2007, Maibam Naobi Chanu submitted a representation dated 12 March 2007 to the Chief Secretary, Manipur for grant of sanction under 197 of Cr. P.C. for prosecution of 6 (six) police personnel whom she accused of perpetrating torture and sexual violence on her. As she did not get any response, she filed another representation on 29 June 2007 to the Chief Secretary, Manipur as a reminder to her earlier representation. Unable to get any response from the State govt, Naobi moved the Gauhati High Court which in a judgement and order dated 4 January 2008 in WP (C) No. 732 of 2007 directed that the petitioner (Naobi) shall file a copy of representation dated 17-12-2007 to the Principal Secretary (Home) along with a certified copy of the Hon'ble High Court's order and Principal Secretary (Home) will dispose the

²²⁹. Human Rights Watch interview with Kh. Mani, Maibom Naobi's lawyer, Imphal, February 26, 2008; available at: <https://www.hrw.org/reports/2008/india0908/4.htm>

²³⁰. PIL filed in Naobi's case, The Sangai Express, 29 March 2006; available at: <http://e-pao.net/epRelatedNews.asp?heading=6&src=300306>

²³¹. Fresh probe into Naobi's case ordered, The Sangai Express, 9 Nov 2006; available at: <http://e-pao.net/epRelatedNews.asp?heading=3&src=101106>

representation, if filed, within a period of two months from the date of receipt of the order. Naobi complied with order of the court. However, in an order dated 27 June 2008, the Principal Secretary (Home), Government of Manipur rejected Naobi's request for grant of prosecution sanction against the said 6 (six) SPO personnel under section 197 of Cr.P.C.²³²

²³². Order dated 27 June 2008 passed by the Principal Secretary (Home) Manipur Government rejecting M. Naobi Chanu's request for grant of sanction for prosecution of 6 police commandos under Sec. 197 CrPC; available at: <https://humanrightsmanipur.files.wordpress.com/2014/01/manipur-perils-of-war-and-womanhood1.pdf>

5. Conclusions & recommendations

The failure to remove the requirement of prior sanction under Section 197 of the CrPC with respect to rape by a member of the armed forces deployed in an area by the Central or a State Government under Section 376(1)(2)(c) of IPC and the Armed Forces Special Powers Act implies that India provides virtual immunity for sexual violence by the armed forces deployed in an area by the Central or a State Government.

This ought to be addressed and Asian Centre for Human Rights makes the following recommendations to the Government of India:

- Amend Section 197 of the CrPC to remove the requirement of prior sanction with respect to rape by a member of the armed forces deployed in an area by the Central or a State Government under Section 376(1)(2)(c) of IPC;
- Amend the Armed Forces Special Powers Act to remove the requirement of prior sanction with respect to sexual offences
- Implement the recommendations contained in Para 12 (c) of Justice Verma Committee report dated 23 January 2013 to the effect i.e. *“There should be special commissioners – who are either judicially or legislatively appointed – for women’s safety and security in all areas of conflict in the country. These commissioners must be chosen from those who have experience with women’s issues, preferably in conflict areas. In addition, such commissioners must be vested with adequate powers to monitor and initiate action for redress and criminal prosecution in all cases of sexual violence against women by armed personnel”*;
- Implement the recommendations of the UN Special Rapporteur on Violence against Women, its causes and consequences, Rashida Manjoo by taking effective measures to ensure access to justice and effective redress for all victims of violence against women, including (i) monitoring the implementation of judicial decisions on cases relating to violence against women, and ensure that

victims have prompt access to effective remedies; and (ii) ensuring that all allegations of violence against women are adequately investigated by the police, and that perpetrators are punished;

- Implement the recommendations of the Committee on Elimination of All Forms of Discrimination against Women by: (i) amending section 19 of the Protection of Human Rights Act and conferring powers to the National Human Rights Commission (NHRC) to investigate cases against armed forces personnel, in particular cases of violence against women; and (ii) ensuring that the security sector is subject to effective oversight and that accountability mechanisms, with adequate sanctions, are in place, to provide systematic training on women's rights to the military and other armed forces involved in security operations and to adopt and enforce a code of conduct for members of the armed forces to effectively guarantee respect for women's rights; and
- Promptly provide the follow up information on the implementation of recommendations of the CEDAW made on 24 July 2014 as reminded to the Government of India on 6 December 2016 and 21 September 2017.

ANNEXURE-1: UN SECURITY COUNCIL RESOLUTION 1325/2000

United Nations

S/RES/1325 (2000)

**Security Council**Distr.: General
31 October 2000

Resolution 1325 (2000)

**Adopted by the Security Council at its 4213th meeting, on
31 October 2000**

The Security Council,

Recalling its resolutions 1261 (1999) of 25 August 1999, 1265 (1999) of 17 September 1999, 1296 (2000) of 19 April 2000 and 1314 (2000) of 11 August 2000, as well as relevant statements of its President, and *recalling also* the statement of its President to the press on the occasion of the United Nations Day for Women's Rights and International Peace (International Women's Day) of 8 March 2000 (SC/6816),

Recalling also the commitments of the Beijing Declaration and Platform for Action (A/52/231) as well as those contained in the outcome document of the twenty-third Special Session of the United Nations General Assembly entitled "Women 2000: Gender Equality, Development and Peace for the Twenty-First Century" (A/S-23/10/Rev.1), in particular those concerning women and armed conflict,

Bearing in mind the purposes and principles of the Charter of the United Nations and the primary responsibility of the Security Council under the Charter for the maintenance of international peace and security,

Expressing concern that civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict, including as refugees and internally displaced persons, and increasingly are targeted by combatants and armed elements, and *recognizing* the consequent impact this has on durable peace and reconciliation,

Reaffirming the important role of women in the prevention and resolution of conflicts and in peace-building, and *stressing* the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution,

Reaffirming also the need to implement fully international humanitarian and human rights law that protects the rights of women and girls during and after conflicts,

S/RES/1325 (2000)

Emphasizing the need for all parties to ensure that mine clearance and mine awareness programmes take into account the special needs of women and girls,

Recognizing the urgent need to mainstream a gender perspective into peacekeeping operations, and in this regard *noting* the Windhoek Declaration and the Namibia Plan of Action on Mainstreaming a Gender Perspective in Multidimensional Peace Support Operations (S/2000/693),

Recognizing also the importance of the recommendation contained in the statement of its President to the press of 8 March 2000 for specialized training for all peacekeeping personnel on the protection, special needs and human rights of women and children in conflict situations,

Recognizing that an understanding of the impact of armed conflict on women and girls, effective institutional arrangements to guarantee their protection and full participation in the peace process can significantly contribute to the maintenance and promotion of international peace and security,

Noting the need to consolidate data on the impact of armed conflict on women and girls,

1. *Urges* Member States to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict;

2. *Encourages* the Secretary-General to implement his strategic plan of action (A/49/587) calling for an increase in the participation of women at decision-making levels in conflict resolution and peace processes;

3. *Urges* the Secretary-General to appoint more women as special representatives and envoys to pursue good offices on his behalf, and in this regard *calls on* Member States to provide candidates to the Secretary-General, for inclusion in a regularly updated centralized roster;

4. *Further urges* the Secretary-General to seek to expand the role and contribution of women in United Nations field-based operations, and especially among military observers, civilian police, human rights and humanitarian personnel;

5. *Expresses* its willingness to incorporate a gender perspective into peacekeeping operations, and *urges* the Secretary-General to ensure that, where appropriate, field operations include a gender component;

6. *Requests* the Secretary-General to provide to Member States training guidelines and materials on the protection, rights and the particular needs of women, as well as on the importance of involving women in all peacekeeping and peace-building measures, *invites* Member States to incorporate these elements as well as HIV/AIDS awareness training into their national training programmes for military and civilian police personnel in preparation for deployment, and *further requests* the Secretary-General to ensure that civilian personnel of peacekeeping operations receive similar training;

7. *Urges* Member States to increase their voluntary financial, technical and logistical support for gender-sensitive training efforts, including those undertaken by relevant funds and programmes, inter alia, the United Nations Fund for Women and United Nations Children's Fund, and by the Office of the United Nations High Commissioner for Refugees and other relevant bodies;

8. *Calls on* all actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective, including, inter alia:

(a) The special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction;

(b) Measures that support local women's peace initiatives and indigenous processes for conflict resolution, and that involve women in all of the implementation mechanisms of the peace agreements;

(c) Measures that ensure the protection of and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary;

9. *Calls upon* all parties to armed conflict to respect fully international law applicable to the rights and protection of women and girls, especially as civilians, in particular the obligations applicable to them under the Geneva Conventions of 1949 and the Additional Protocols thereto of 1977, the Refugee Convention of 1951 and the Protocol thereto of 1967, the Convention on the Elimination of All Forms of Discrimination against Women of 1979 and the Optional Protocol thereto of 1999 and the United Nations Convention on the Rights of the Child of 1989 and the two Optional Protocols thereto of 25 May 2000, and to bear in mind the relevant provisions of the Rome Statute of the International Criminal Court;

10. *Calls on* all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict;

11. *Emphasizes* the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes including those relating to sexual and other violence against women and girls, and in this regard *stresses* the need to exclude these crimes, where feasible from amnesty provisions;

12. *Calls upon* all parties to armed conflict to respect the civilian and humanitarian character of refugee camps and settlements, and to take into account the particular needs of women and girls, including in their design, and recalls its resolutions 1208 (1998) of 19 November 1998 and 1296 (2000) of 19 April 2000;

13. *Encourages* all those involved in the planning for disarmament, demobilization and reintegration to consider the different needs of female and male ex-combatants and to take into account the needs of their dependants;

14. *Reaffirms* its readiness, whenever measures are adopted under Article 41 of the Charter of the United Nations, to give consideration to their potential impact on the civilian population, bearing in mind the special needs of women and girls, in order to consider appropriate humanitarian exemptions;

15. *Expresses* its willingness to ensure that Security Council missions take into account gender considerations and the rights of women, including through consultation with local and international women's groups;

16. *Invites* the Secretary-General to carry out a study on the impact of armed conflict on women and girls, the role of women in peace-building and the gender dimensions of peace processes and conflict resolution, and *further invites* him to

S/RES/1325 (2000)

submit a report to the Security Council on the results of this study and to make this available to all Member States of the United Nations;

17. *Requests* the Secretary-General, where appropriate, to include in his reporting to the Security Council progress on gender mainstreaming throughout peacekeeping missions and all other aspects relating to women and girls;

18. *Decides* to remain actively seized of the matter.

ANNEXURE-2: Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo on Mission to Indi, 2014

United Nations

A/HRC/26/38/Add.1

**General Assembly**Dist.: General
1 April 2014

Original: English

Human Rights Council

Twenty-sixth session

Agenda item 3

Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development**Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo**

Addendum

Mission to India**Summary*

The present report contains the findings of the Special Rapporteur on violence against women, its causes and consequences, on her visit to India from 22 April to 1 May 2013. In the report, the Special Rapporteur examines violence against women in the country, including root causes and consequences, and the implications of such violence on the effective exercise of human rights by women. She also discusses the State's responses and provides recommendations.

* The summary is being issued in all official languages. The report itself, contained in the annex to the summary, is being issued in the language of submission only.

GE.14-12827

1412827

Please recycle



Annex
[English only]

**Report of the Special Rapporteur on violence against women,
its causes and consequences, on her mission to India
(22 April–1 May 2013)**

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1–6	3
II. Manifestations of violence against women and girls, its causes and consequences	7–28	3
A. Violence against women in the family.....	8–11	4
B. Violence against women in the community.....	12–22	5
C. Violence against women condoned or perpetrated by the State.....	23–26	7
D. Violence against women in the transnational sphere.....	27–28	8
III. Implications of inequality, discrimination and violence on women’s enjoyment of their human rights.....	29–46	9
A. Civil and political rights.....	32–36	9
B. Economic rights and the right to development.....	37–43	10
C. Social and cultural rights.....	44–46	12
IV. Challenges in fulfilling the State’s obligation to act with due diligence to eliminate violence against women.....	47–74	12
A. Prevention.....	49–58	12
B. Protection.....	59–61	15
C. Investigation, prosecution and punishment.....	62–68	15
D. Provision of effective redress, including reparations.....	69–71	17
E. Remedies for specific groups at risk.....	72–74	18
V. Conclusions and recommendations.....	75–81	18

I. Introduction

1. At the invitation of the Government of India, the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, conducted an official visit to that country from 22 April to 1 May 2013.
2. The Special Rapporteur would like to thank the Government for its invitation. She appreciates the opportunity provided to assess the situation directly. In New Delhi, consultations were held with officials of the Ministry of Women and Child Development, the Ministry of Home Affairs, the Ministry of Health and Family Welfare, the Ministry of Labour and Employment, the Ministry of External Affairs and the Delhi Police. The Special Rapporteur also met with the chief secretaries and State officials in Rajasthan, Gujarat and Manipur. She also held meetings with officials from the National Mission for the Empowerment of Women, the National Commission for Women and the National Human Rights Commission. The Special Rapporteur regrets that, despite her specific requests prior to and during the mission, no visits to State-run shelters, prisons or detention centres were programmed. She also regrets that no meeting was arranged with the Committee on Amendments to Criminal Law (Verma Committee).
3. The Special Rapporteur consulted extensively with civil society and victims in various locations within the country.
4. The Special Rapporteur is grateful to the United Nations country team for its support prior to and during her visit. She is grateful to all interlocutors, including survivors of violence who shared their experiences with her. She looks forward to a fruitful dialogue with the Government and other stakeholders on the implementation of her recommendations.
5. The Special Rapporteur's mission was underpinned by knowledge of the ongoing struggle in India for women's rights and its present complexities. The establishment of self-governance during the colonial period was influenced by the leadership of Mahatma Gandhi, whose discourse included the need to address recurrent issues affecting women in India, such as caste-based discrimination, harmful customary and religious practices and sexual violence. The historical struggle against patriarchy was also shaped by the role of the women's rights movements in exposing the root causes of inequality, discrimination and violence against women.
6. While due recognition of the complexities inherent to the country's size and diversity need to be taken into account, it is imperative that those are not used to explain, defend or justify violence against women or the failure to address it.

II. Manifestations of violence against women and girls, its causes and consequences

7. Violence against women in India is systematic and occurs in the public and private spheres. It is underpinned by the persistence of patriarchal social norms and inter- and intra-gender hierarchies. Women are discriminated against and subordinated not only on the basis of sex, but on other grounds, such as caste, class, ability, sexual orientation, tradition and other realities. That exposes many to a continuum of violence throughout the life cycle, commonly referred to as existing "from the womb to the tomb". The manifestations of violence against women are a reflection of the structural and institutional inequality that is a reality for most women in India.

A. Violence against women in the family

8. According to numerous interlocutors, the physical, sexual and psychological abuse of women in the private sphere is widely tolerated by the State and the community. The perpetrators include husbands, in-laws and other family members. Many victims live in family settings that are rooted in deeply entrenched patriarchal and customary practices that are sometimes harmful to women. The widespread socioeconomic dependency of women subordinates them to their husbands and other family members. The fear of social exclusion and marginalization, and the lack of effective responses to violence, keeps them in a context of continuous violence and intimidation.

9. Violence and killings linked to dowry payments are alarming across the country. Data from the National Crime Records Bureau reflect an increasing trend of crimes reported under the Dowry Prohibition Act since 2008, and a significant increase in such crimes since 2010.¹ Marriage is often used by the husband and/or his family to obtain property or other assets from the wife and/or her family, either directly or indirectly. While its practice has evolved through time, the payment of dowry today is based on the idea that women are a burden. It is also commonly considered to be crucial to ensure the safety of the bride, especially within poor communities. Despite the payment of dowry, many women and girls find themselves forced into a life of servitude and experience repeated acts of harassment, intimidation, sexual abuse and violence by their husbands and other family members as part of demands for more dowry.

10. "Honour crimes" are usually perpetrated by family members, often with the complicity of community leaders. Reasons range from a woman's refusal to be forced into marriage and retaliation for marrying the man of her choice, to refusal to follow prescribed and expected dress codes. Women and girls suffer a wide range of physical and psychological abuse and the denial of basic freedom of movement and expression, and are sometimes killed in the name of "honour".

11. Customary practices in the family and community point to a pattern of daughter aversion and son preference. Research has documented a trend of declining girl-child sex ratio from 962 per 1,000 males in 1981, to 945 in 1991, to 927 in 2001, to 914 in 2011.² Patriarchal norms and socioeconomic factors have reportedly fuelled the decline. The desire for sons has led to a "policing" of pregnancies by spouses and families through prenatal monitoring systems. The results can lead to sex-selective abortions, which are often forced on women in violation of their sexual and reproductive rights. Despite specific legislation to address this problem,³ including stringent measures in case of contravention, there is a continuing prevalence of sex-selection practices in some states. Furthermore, some of those measures are perceived as the State policing pregnancies broadly and violating women's sexual and reproductive choices.

B. Violence against women in the community

12. Sexual violence, including rape and sexual harassment, is widespread across the country and perpetrated in public and private spaces. According to the National Crime

¹ India, National Crime Records Bureau, *Crime in India 2012: Statistics* (2013), p. 81, table 5(A).

² United Nations Children's Fund (UNICEF), *The Situation of Children in India: A Profile* (2011), p. 36.

³ Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, amended in 2003.

Records Bureau, in 2012, 2.84 cases of rape were reported every hour.⁴ Many interlocutors stated that there was a general sense of insecurity for women in public spaces, especially in urban settings. Women are easy targets of attacks, including sexual violence, whether while using public transportation or sanitation facilities or on the way to collect wood and water. Many victims of sexual violence carry a deep sense of shame, which is further exacerbated by the stigma and exclusion they experience, especially from family members and the community, and which may result in suicide.

13. With regard to early and/or forced marriages, the implementation of the Prohibition of Child Marriage Act, 2006 has resulted in some reduction in the overall percentage of early marriages.⁵ However, the high prevalence of such marriages continues to endanger the lives of girls, whether in respect of domestic violence, marital rape or early pregnancies. It also deprives them of numerous human rights, including the right to education and the enjoyment of their childhood.

14. The Special Rapporteur was informed about the high incidence of acid attacks on women in the country, despite the development of new legislative measures.⁶ Victims of acid attacks are predominantly women who challenge patriarchal norms, including by opposing a marriage or partner proposal.⁷ The disfiguring of the victim's face and body forces the survivors to live in stigma, shame and exclusion. It also creates a climate of fear for other women as regards the consequences of failing to abide by and respect traditional practices and roles.

15. Violence against various groups is also of concern. Dalit and Adivasi women and women from other scheduled castes and tribes and other "backward classes" are frequent victims of multiple and intersecting forms of discrimination, as well as violence. Caste-based discrimination, which also includes intra-caste hierarchies, continues to be pervasive and widespread. The intergenerational nature of caste-based discrimination condemns women to a life of exclusion, marginalization and disadvantage in every sphere of life. Many of these women are denied an education and economic opportunities, and perform dangerous and unprotected work, including bonded labour (debt bondage) and manual scavenging, which are both widely regarded as forms of forced labour and modern forms of slavery. Women represent the vast majority of manual scavengers in the country, and are commonly from scheduled castes and minority groups. While legislation has been adopted to eradicate bonded labour and manual scavenging,⁸ reports and interlocutors indicate that there is a consistent failure in the implementation of such laws⁹ and a tendency to minimize the significance of the problem.

16. Numerous testimonies shared on recurrent episodes of communal violence against religious minorities, including Muslims and Christians, reflect a deep sense of insecurity and trauma of women living in those communities. Experiences included women being

⁴ India, *Crisis in India*, snapshots, p. 6.

⁵ UNICEF, *The Situation of Children*, p. 31.

⁶ Criminal Law (Amendment) Act, 2013, amendment of section 100 of the Penal Code.

⁷ Avon Global Center for Women and Justice at Cornell Law School et al., "Combating acid violence in Bangladesh, India and Cambodia" (2011), p. 3. Available from http://www2.ohchr.org/english/bodies/cedaw/docs/cedaw_crc_contributions/AvonGlobalCenterforWomenandJustice.pdf.

⁸ The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013, superseding the The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993; and the Bonded Labour System (Abolition) Act, 1976.

⁹ Ravi S. Srivastava, "Bonded labour in India: its incidence and patterns", International Labour Organization working paper (2005), p. 35; and International Dalit Solidarity Network, "Manual scavenging", briefing paper (2012), p. 1.

stripped, burned, attacked with objects inserted into their vaginas and sexually assaulted in myriad ways because of their religious identity. It was reported that perpetrators of these crimes usually held positions of authority and often went unpunished. Further, these minorities are allegedly excluded from access to education, employment and adequate housing on equal terms with other citizens, despite the existence of affirmative action schemes and measures by the Ministry of Minority Affairs and the National Commission for Minorities aimed at empowering minority women through the provision of knowledge, tools and training.

17. Women employed as domestic workers are often irregular migrants and unregistered women who operate in a poorly regulated labour market and who are usually considered as belonging to the bottom of a social class. They become easy targets for abusive employers, who force them to work long hours in return for low salaries and often deduct amounts for leave days taken. Many are prevented from using the employer's sanitary facilities and are forced to defecate and bathe in public, and are subjected to various forms of harassment and violence. Many women are primary breadwinners, either as a result of widowhood or unemployed spouses, and their low pay makes it difficult to assume financial responsibility, including for their children's health and education needs. Alcohol abuse by husbands was also reported to be a contributing factor to the violence many of these women experienced.

18. Women with disabilities face multiple challenges, including, for example, the lack of adequate access to public spaces, utilities and buildings, and often experience harassment in public. The Special Rapporteur was informed of a troubling practice whereby a payment incentive was offered, either as a State scheme or a dowry from the family, in exchange for marriage to a woman with disabilities. She was also informed of violence perpetrated against women with disabilities in State-sponsored shelters.

19. Women in same-sex relationships and transgender women also confront violence and exclusion. Section 377 of the Penal Code criminalizes sexual activities "against the order of nature". This particularly affects the protection rights of lesbian and transgender women and has been used by parents as an excuse to prevent homosexuality in their families. The mere perception of different sexual orientation is sufficient to put people at risk of violence and is a contributory factor to the inability of the lesbian, gay, bisexual, transgender and intersex community to report cases of violence.¹⁰

20. Sex workers are exposed to a range of abuse, including physical attacks, and harassment by clients, family members, the community and State authorities. Many sex workers are forcibly detained and rehabilitated, and they also face a consistent lack of legal protection. Many face challenges in gaining access to essential health services, including for treatment for HIV/AIDS and sexually transmitted diseases. A recent order of the Supreme Court of India took the position that a sex worker engaged in such work to survive and was "not leading a life of dignity".¹¹ In her discussions with interlocutors, the Special Rapporteur noted a tendency to conflate sex work with trafficking in persons, and when sex workers are identified as victims of trafficking, the assistance that is provided to them is not targeted to their specific needs.

¹⁰ In a recent decision, *Stresh Kumar Koushal and another v. Naz Foundation (India) Trust*, 2013, the Supreme Court, while setting aside the decision of the Delhi High Court on section 377 of the Indian Penal Code, ruled that the Parliament had to legislate on the issue and upheld section 377, as it still remained in the statutes of the country.

¹¹ See the order of the Supreme Court of India, criminal appeal No. 135 of 2010, *Budhadev Karmastkar v. State of West Bengal*, 2 August 2011, para. 12. Available from www.thehindu.com/multimedia/archive/00740/Supreme_Court_order_740930a.pdf.

21. Widows also face particular vulnerabilities, as they are often denied and dispossessed of property by their in-laws following the death of a spouse. In addition, social exclusion and poverty lead some widows to engage in sex work and prostitution, and their children to perform hazardous labour or beg on the streets.

22. The Special Rapporteur was also informed of brutal acts of violence against women, including executions, commonly referred to as “witch-hunting”. The stigma that is attached to women who are labelled a “witch”, and the rejection they experience within their communities, leads to various violations and is an obstacle to gaining access to justice. Such labelling affects family members across generations. There is reportedly little or no official investigation into such violations.

C. Violence against women condoned or perpetrated by the State

23. Women living in militarized regions, such as Jammu and Kashmir and the north-eastern states, live in a constant state of siege and surveillance, whether in their homes or in public. Information received through both written and oral testimonies highlighted the use of mass rape, allegedly by members of the State security forces, as well as acts of enforced disappearance, killings and acts of torture and ill-treatment, which were used to intimidate and to counteract political opposition and insurgency. Testimonies also highlight the impact of that situation on women’s health, including psychological disorders such as post-traumatic stress disorder, fear psychosis and severe anxiety, with such conditions having a negative impact on women’s physical well-being. Additionally, the freedoms of movement, association and peaceful assembly are frequently restricted. The specific legal framework that governs those areas, namely, the Armed Forces (Special Powers) Act and its variations, allows for the overriding of due process rights and nurtures a climate of impunity and a culture of both fear and resistance by citizens.

24. Violence against women in custodial settings remains a concern. In 2012 there were 20 women’s prisons and 21 centres for the rehabilitation of juvenile offenders.¹² Furthermore there are rehabilitation centres for sex workers. Women account for 4.4 per cent of all inmates in the country.¹³ Women prisoners are scattered across the country, often in violation of international standards aimed at ensuring that those wishing to maintain family relationships during custody can do so.¹⁴ Concerns were raised about a lack of adequate protective measures to ensure the safety of inmates, including from gender-related killings. In 2012, 55 deaths of female inmates were registered, of which eight were suicides.¹⁵ There was also a reported lack of access to essential services, including medical care, for inmates due to limited resources.¹⁶

25. Women were also found to suffer violence in the context of forced evictions. The State’s efforts to foster economic growth and implement development projects are allegedly often conducted without adequate consultations with affected communities, with the sole objective being one of economic growth at any cost. The consequences for women include being forced to live in insecure environments, displacement, the degradation of their environment, the loss of land and livelihoods and forcible evictions. Many victims are left without adequate relocation alternatives, forcing them to live in slums or on the streets. The Government’s twelfth Five-Year Plan, 2012–2017 includes elements to improve housing

¹² India, National Crime Records Bureau, *Prison Statistics India 2012*, snapshots, p. i.

¹³ *Ibid.*

¹⁴ See article 79 of the Standard Minimum Rules for the Treatment of Prisoners.

¹⁵ India, *Prison Statistics*, snapshots, p. ii.

¹⁶ *Ibid.*, pp. 140 and 152.

A/HRC/26/38/Add.1

conditions through a new slum rehabilitation programme and schemes to assist States to improve livelihood opportunities in urban areas.¹⁷

26. The Special Rapporteur noted concerns with regard to profit-oriented microfinance institutions involving microfinance products for women, and the failure of the State to protect and prevent abuses. Vulnerable women reportedly receive multiple loans and are sold financial products with little or no information, and the unequal bargaining power between such institutions and clients is not addressed by regulation. Such practices result in over-indebtedness and the inability to pay back, which leads to harassment and threats and women being excluded from their families and communities. Some have reportedly committed suicide as a result of such abuse. It is unclear if the larger problem is a lack of, or inadequate, regulation of microfinance institutions.

D. Violence against women in the transnational sphere

27. Many women refugees and asylum seekers are unskilled workers who often perform hazardous labour in urban and informal settings. While access to education and health care is provided for free by the Government, access to livelihoods is still a challenge, particularly in urban or semi-urban areas. Many of those women earn low wages and are forced to live in small and overcrowded apartments, with a lack of access to basic sanitation in less developed urban settings. Such factors contribute to poor health conditions and other vulnerabilities. Language barriers often impede their ability to gain access to health care, education and the justice system. Despite improvements in criminal law and police procedures, women refugees and asylum seekers continue to voice safety concerns, as they are frequent targets of attacks and harassment by employers, landlords and community members in public and private spheres.

28. The trafficking of women and girls from, and to, India was reported as widespread. Disadvantaged women from minority groups, scheduled castes and tribes and the "backward castes" are usually the main victims. Young unskilled women are allegedly given false work promises, resulting in forced domestic servitude in foreign countries. Women who are trafficked and forced into prostitution are left unable to defend their rights, and lack access to rehabilitation and compensation for such crimes. This lack of protection and prioritization of the problem by the State has intensified the violence perpetrated against them by criminals or those involved in trafficking practices. The complicity of State officials in human trafficking was also reported as a concern. The Immoral Traffic (Prevention) Act, 1956 and its amendments¹⁸ are reportedly more directed at safeguarding public moral than combating trafficking in line with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

¹⁷ *Twelfth Five-Year Plan (2012–2017): Economic Sectors*, p. 338. Available from <http://planningcommission.gov.in>.

¹⁸ See also the new sections 370 and 370A of the Penal Code (2013). Trafficking is introduced under section 370, which establishes stringent prison terms of 7 to 10 years for anyone who "for the purpose of exploitation (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons".

III. Implications of inequality, discrimination and violence on women's enjoyment of their human rights

29. The protection of human rights has advanced significantly since India achieved independence. The adoption of the first democratic Constitution in 1949 marked progress towards developing a normative framework conducive to the protection of women's human rights. For the first time, the Constitution recognized freedoms and rights of women, strengthened the principle of equality between men and women and afforded legal protection to all, without discrimination on the basis of sex, among other criteria. It also allowed for affirmative action measures for women.

30. India has ratified numerous international human rights instruments, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.

31. At the national level, laws and policies have been put in place to prevent and respond to violence against women. These include the Penal Code, the Criminal Law (Amendment) Act 2013, the Sexual Harassment of Women at Workplace (Prohibition, Prevention and Redressal) Act, 2013, the Protection of Women from Domestic Violence Act, 2005, the Indecent Representation of Women (Prohibition) Act, 1986, the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, the Dowry Prohibition Act, 1961, the Commission of Sati (Prevention) Act, 1961, the Immoral Traffic (Prevention) Act, 1956 and the Bonded Labour System (Prohibition) Act of 1976, among others. Despite those positive developments, effective implementation of those laws and the allocation of financial resources to support their execution adequately is reportedly lacking in many instances.

A. Civil and political rights

32. In terms of women's participation in political and public affairs, significant challenges remain at both the national and local levels. According to the Inter-Parliamentary Union, India ranks 111th of 188 States in terms of women's participation in parliaments.¹⁹ The Special Rapporteur was informed that a bill aimed at reserving one third of all seats for women in the lower house of the Parliament (the Lok Sabha) and the State legislative assemblies was still outstanding.²⁰ In terms of the judiciary, the proportion of female judges is very low.²¹ At the local level, citizens may participate in community-level self-government institutions, named Gram Panchayats (village councils). The Special Rapporteur regrets that she was not able to engage directly with that sector of Government, despite her requests.

33. Measures have been put in place to ensure greater representation of women in positions of authority in village councils, including women belonging to marginalized groups. The Government has also piloted a programme for women Gram Panchayat representatives, who would serve as counsellors for women victims at the community level. Their main function is to facilitate information-sharing on issues relating to women, and

¹⁹ Inter-Parliamentary Union, "World classification" (January 2017). Available from www.ipu.org/wmn-e/classif.htm.

²⁰ The Constitution (108th Amendment) Bill, 2008, known as the Women's Reservation Bill.

²¹ For a list of Supreme Court and High Court judges, see <http://doj.gov.in/?q=node/86>.

A/HRC/26/38/Add.1

forge interdepartmental links within states. However, there have been numerous allegations of abuse of authority by and patriarchal attitudes of women elected to Gram Panchayats (whether by choice or through coercive influences), and of abuse by community leaders, including members of the illegal²² informal courts of the Khap Panchayats.

34. The lack of registration and the difficulty in obtaining an identity card were noted as impeding women's participation in public life, including their access to essential services. No information was available to ascertain the measures in place to address that problem.

35. Fair trial rights, equality before the law and equal protection of the law were affected by numerous challenges, beginning with the reporting of cases of violence against women to the police. Many interlocutors said that victims were often discouraged from reporting to the police and that many women did not file a complaint owing to fear of reprisals or lack of guarantees of adequate shelter and access to livelihoods. Informal dispute settlement alternatives are often sought, allegedly by police, family members or community leaders. Many interlocutors described the complete or partial absence of legal, housing, security and financial assistance measures for victims. To be able to officially report complaints and continue throughout the often lengthy judicial process in safety and with an adequate standard of living is not an option for many women.

36. The Special Rapporteur received information indicating that human rights defenders, including women's organizations, face numerous challenges, including harassment, intimidation and reprisals. Those concerns echo the findings contained in the 2011 report of the Special Rapporteur on the situation of human rights defenders (A/HRC/19/55/Add.1), the 2012 report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/23/47/Add.1 and Corr.1) and concerns voiced during the universal periodic review of India in 2012.

B. Economic rights and the right to development

37. India recently underwent a significant wave of reforms to liberalize its economy, which has resulted in unprecedented growth and prosperity. Economic growth reportedly constitutes an overriding priority in the run-up to the May 2014 general elections. The country's twelfth Five-Year Plan, 2012–2017 is focused on economic sustainability and is aimed at making such growth irreversible. Unfortunately, the economic development focus for women remains one of subsistence and does not necessarily take into account, or address sufficiently, the gendered and class nature of systemic and structural inequality and discrimination. Gender budgeting, as a tool to establish gender differential impacts and to ensure that gender commitments are translated into budgetary commitments, was highlighted by the Ministry of Women and Child Development.²³ However, its implementation across the country is not consistent.

38. Whereas the participation of all citizens in the economy is considerable, women's labour force participation is significantly lower, at 25.7 per cent, as compared to men, at 77.4 per cent.²⁴ Moreover, job opportunities for women are in decline.²⁵ Women are also

²² See India, Governance Knowledge Centre, "Supreme Court accepts recommendation to ban Khap Panchayats", 12 November 2012. Available from <http://india.governance.gov.in/news.php?id=1816>.

²³ India, Ministry of Women and Child Development, "Budgeting for gender equity", <http://wed.nic.in/>.

²⁴ India, Ministry of Labour and Employment, "Report on the Second Annual Employment and Unemployment Survey (2011–12)", press note, third page. According to the Ministry, the annual unemployment rate stands at 3.8 per cent (ibid.). An International Labour Organization source indicates that the participation of women in the workforce fell from 37.3 per cent in 2004/05 to 29.0 per cent in 2009/10; only 44 per cent of the decline can be explained by the increased enrolment of

found in precarious jobs requiring low skills and offering low and unequal wages. According to official statistics, the general trend of daily earnings for women in recent decades has been comparatively lower than those of men in virtually all sectors, including manufacturing, mining and service sectors.²⁶

39. Labour legislation in India provides for safeguards to ensure respect for the rights of women at work, and schemes are in place to help women improve their skills in specific occupations, thus moving beyond subsistence labour skills. For example, there are training institutes to help women gain access to the labour market, including industrial training institutes, with 14,059 centres across the country. Public/private schemes have been designed by companies and public institutions to provide training for women in key industrial areas, but there is no commitment to future employment in those companies.

40. Legal measures have been instituted to address sexual harassment in the workplace. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 defines sexual harassment comprehensively and is largely in line with the 1997 Vishaka judgement.²⁷ It provides for complaints committees in all workplaces employing at least 10 persons. Moreover, while penalties are prescribed in the event of a false or malicious complaint, the Act seeks to prevent the revictimization of victims who are unable to provide adequate proof or substantiate a complaint.

41. In terms of safety and health at work, in 2009 the Government instituted the National Policy on Safety, Health, and Environment at the Workplace, including an action programme for implementation, which is to be reviewed every five years. The policy is guided by constitutional principles relating to work, which include maternal protection, health and strength at work, prohibition of child labour, and participation in decision-making.²⁸

42. Microcredits are used widely in the country, particularly by poor and vulnerable women. Most loans are provided by microfinance institutions, including non-banking financial (or "Section 25") companies. Despite concerns about a lack of adequate regulation and abusive practices, the adoption of legislation at the Union level, such as the Micro Finance Institutions (Development and Regulation) Bill, 2011 is still pending. Some States have adopted legislative frameworks, but the overall view is that those institutions operate in a largely unregulated market.

43. In terms of the prohibition of slavery and slavery-like practices, such as bonded labour, the Bonded Labour System (Prohibition) Act, 1976 was enacted as a deterrent.

women in secondary education (International Labour Organization *Global Employment Trends 2013*, p. 78, available from www.ilo.org/wcmsp5/groups/public/-/dgreports/-/dcomm/-/publ/documents/publication/wcms_202326.pdf).

²⁵ Occupational sectors where women are likely to be concentrated, which include basic agriculture, sales and elementary services and handcraft manufacturing, have not created new employment. See International Labour Organization, "India: Why is women's labour force participation dropping?", 13 February 2013. Available from www.ilo.org/global/about-the-ilo/newsroom/comment-analysis/WCMS_204762/lang-en/index.htm.

²⁶ India, Labour Bureau, Statistics: Occupational Wage Surveys. Available from www.labourbureau.gov.in/OWS%20New%201%20table.htm.

²⁷ See Supreme Court of India, *Vishaka and others v. State of Rajasthan and others*, 1997. Available from www.jiap.res.in/files/VishakaVsRajasthan_1997.pdf.

²⁸ Constitution, Directive Principles of State Policy, Part IV.

C. Social and cultural rights

44. Pervasive gender stereotyping, whether in the media, in the community or in discourses by public officials, was highlighted as an impediment to women's development. The pervasive culture of denigrating and marginalizing women's perspectives, concerns and also their identity was an issue that was raised by several interlocutors. Concerns were also raised about the resulting impact on the social standing of women. According to official data, between 2011 and 2012 the number of cases involving insult to the modesty of women increased by 7 per cent.²⁹ In 1986, the Indecent Representation of Women (Prohibition) Act was enacted to prohibit indecent representation in advertisements, publications, writings and paintings or in any other manner. New amendments have been proposed to include new forms of communication, to strengthen penalties and to provide for preventive measures. No official information was shared as to accountability measures to address the continuing occurrence of such stereotyping by either State or non-State actors.

45. Effective implementation of legislation is dependent on the cultural and social norms that exist in a society. Women's role in participating and shaping such norms is essential, but is dependent on whether gender equality is the dominant culture and whether the status of women allows for their effective participation. As indicated above, women's participation in shaping the culture of equality is restricted by the dominant patriarchal culture that is deeply entrenched and pervasive.

46. Many interlocutors also pointed to the denial of the rights to social goods such as education, health and social benefits as a barrier to the fulfilment of the rights necessary for a life of dignity.

IV. Challenges in fulfilling the State's obligation to act with due diligence to eliminate violence against women

47. States are required to exercise due diligence to prevent and respond to all acts of violence against women. A comprehensive system of prevention and protection, with real prospects of mitigating harm, altering outcomes and ensuring accountability, must be the norm.

48. A framework of analysis to assess the obligation of India to prevent, protect, investigate, prosecute and punish, and provide for effective redress measures for acts of violence against women, in accordance with international and national law, is provided below.

A. Prevention

49. Violence against women became a priority political issue following the brutal gang rape, on 16 December 2012, and tragic death of a young student in New Delhi. The outrage and condemnation that followed in India, and beyond, was accompanied by widespread social mobilization of citizens demanding justice, accountability and more protection for women and girls. As a consequence, the Verma Committee was established by the Government to review existing normative gaps. The committee's January 2013 report included observations and recommendations on addressing sexual violence in the country, with respect to, inter alia, reforms to the police, judiciary, political institutions and

²⁹ India, *Crime in India* (footnote 1 above), p. 84.

education; improvement of security in public spaces; and protection in the family. The recommendations led to the adoption of new legislation, notably the new Criminal Law (Amendment) Act, which recognizes acid attacks as a new criminal offence; provides for penalties for sexual harassment, assault against or use of criminal force on a woman with the intent to disrobe, voyeurism and stalking; introduces the crime of trafficking; and criminalizes rape and gang rape. The Act improved the legislative framework significantly, introducing new criminal offences and stronger sanctions.

50. However, the laws that were adopted did not fully reflect the recommendations of the Verma Committee. The opportunity to adopt a holistic approach to violence against women, including addressing the root causes and consequences of such violence, was lost. In fact, the Criminal Law (Amendment) Act failed to: criminalize existing beliefs and practices linked to chastity; protect women with disabilities, unmarried women, lesbian, gay, bisexual and transgender persons, religious minorities, and girls below 18 years of age from sexual violence; or recognize marital rape as a criminal offence. Moreover, gang rapes and mass crimes involving brutal acts of sexual violence are not considered as multiple crimes against women, but as a single punishable crime under this law. Many concerns were raised about the deterrent effect of the application of the death penalty, as provided for in the Act. This is a statutory option for the courts in cases of gang rape where a perpetrator is a repeat offender, or if sexual violence results in the death of the victim, or puts the victim in a permanent vegetative state. It is of concern that conviction in such cases may entail higher evidential burdens for the victim, since the death penalty is a consideration in sentencing. The current legislative framework is therefore still in need of reform.

51. Serious concerns were expressed with regard to the insensitive and taunting attitude of some members of Parliament with regard to the Criminal Law (Amendment) Act. The Special Rapporteur regrets that some political leaders are not fully committed to the process of legal and social change as regards women's human rights.

52. The Protection of Women from Domestic Violence Act, 2005 seeks to protect, and prevent harm to, women who are or have been abused by a male spouse or a family member. The law broadly defines domestic violence and upholds the right of victims to live in the household, irrespective of title rights, and has a number of provisions for the issuing of protection orders. Other aspects include procedures for obtaining relief, such as financial assistance, and a detailing of the role and powers of service providers.

53. The National Mission for Empowerment of Women has a National Mission Authority at the apex level under the Chairmanship of the Prime Minister. It is mandated to ensure policy convergence among ministries and state governments and to strengthen the overall processes that promote the all-round development of women. The Mission facilitates the convergence of gender-sensitive schemes for women; carries out research, awareness-raising, education and capacity-building activities; and works to strengthen the institutional framework. However, challenges were noted in terms of collaboration with some states, notably those in which the ruling political party was different to that of the central Government. Moreover, some interlocutors noted that the budget allocation for women's issues was much lower than that for children's issues in the Ministry of Women and Child Development. The Mission confirmed the lack of gender programmes in that ministry, and also the need to designate gender convergence officers in every ministry to address the gaps.

54. As regards early marriages, good practices were reported in Rajasthan, whereby specialized local officers were assigned to conduct prevention activities. Despite some positive developments, there are significant gaps in the legislation, particularly in the Penal

A/HRC/26/38/Add.1

Code, whereby child marriages are allowed through the practice of declaring them voidable, not void, despite the protection provided in the Prohibition of Child Marriage Act, 2006.³⁰

55. The prevalence of dowry-related practices throughout the country was raised as a serious concern. The Dowry Prohibition Act prohibits the giving of, taking of and demand for dowry, and establishes dowry prohibition officers to ensure the implementation of the law. Data from the National Crime Records Bureau reflects an increasing trend of reported dowry-related deaths since 2008.³¹ Concerns about the lack of effective implementation of the law were noted.

56. In order to better address “honour crimes”, the Law Commission of India issued a report entitled “Prevention of interference with freedom of matrimonial alliance (in the name of honour and tradition): a suggested legal framework”, in August 2012. While the report is only recommendatory in nature, the Special Rapporteur was informed that such recommendations are given due consideration by the Government.

57. National human rights institutions are crucial to promoting and monitoring the effective implementation of legislation and the State’s obligations under both national and international law. India has the National Human Rights Commission and 23 state human rights commissions dealing with human rights. The National Human Rights Commission has a broad human rights mandate, which includes women’s rights. The National Commission for Women has the specific mandate to review constitutional and legal safeguards for women, recommend remedial legislative measures, facilitate redress of grievances, including on violence against women, and advise the Government on all policy matters affecting women.

58. The Special Rapporteur received reports indicating that the legal basis of the National Commission for Women is not in accordance with international standards; that the institution lacks foundational, functional, operational, political and financial independence; and that the Commission is generally unable to adapt to the evolving and transformative demands of the human rights of women. According to section 3 of the National Commission for Women Act, 1990, the Commission’s composition is determined by the central Government. A number of allegations highlighted the Commission’s inability to deal with complaints effectively and undertake independent investigations into violations of women’s rights. Reports also reflect the Commission’s failure to address the causes and consequences of violence against women, including, for example, by finding that no particular religious group was targeted during the 2002 Gujarat massacre,³² by consistently

³⁰ In 2012, the Delhi High Court held that: “Consent below the age of 16 years is immaterial, except when the rape is committed by a male who is married to the girl. Section 376 [Indian Penal Code] does not treat the rape committed by a husband on his wife above the age of 15 years as an offence”. Moreover, the Court also held that the marriage was not void but voidable: “if the girl is more than 16 years, and the girl makes a statement that she went with her consent and the statement and consent is without any force, coercion or undue influence, the statement could be accepted”. According to section 3 of the Prohibition of Child Marriage Act, such marriages are “voidable at the option of the contracting party who was a child at the time of the marriage”. See the Court’s judgement of 27 July 2012 on the Hindu Marriage Act, 1955, paras. 47 and 51. Available from www.delhicourts.nic.in/July12/Court%20on%20its%20own%20Motion%20Vs%20State.pdf

³¹ India, *Crime in India*, p. 81.

³² See *Report of the Committee Constituted by the National Commission for Women to Assess the Status and Situation of Women and Girl Children in Gujarat in the Wake of the Communal Disturbance*, (2002). See also “NCW faces flak for riot report”, *Times of India*, 26 April 2002. Available from http://articles.timesofindia.indiatimes.com/2002-04-26/ahmedabad/27114492_1_new-cases-of-sexual-assault-women-and-children.

justifying sexual assault on women as a result of “provocative dressing”;³³ by its inability, over many years, to promote much needed law reform; and by denying reports of sexual violence by security forces, including in regions governed by the Armed Forces (Special Powers) Acts.

B. Protection

59. The lack of implementation of the Protection of Women from Domestic Violence Act was a concern often raised. Under the Act, women victims require the assistance of a protection officer to lodge a complaint and to file a domestic incident report. The recruitment and deployment of protection officers in the country is limited; they often work part-time and lack the resources to assist victims to file complaints. For instance, in the State of Rajasthan, with a population including approximately 27 million women,³⁴ there are only 607 designated protection officers and 118 organizations registered as service providers.³⁵ The inadequacy of resources to provide a mandatory service is a reflection of a failure to act with due diligence. The Special Rapporteur was informed that the central Government is considering providing financial assistance to states to fund full-time protection officers. In addition, concerns were raised with regard to the lack of protection for people in same-sex relationships, due to the language in the law as regards jurisdiction.

60. Although telephone hotlines are available, the police are usually the first point of contact for many women, according to reports received. Victims of violence, who require from the State special security, shelter, public housing, health care and socioeconomic protection, often face significant challenges. Many services are channelled through providers that lack sufficient resources. Numerous allegations were made of de facto caste-based discrimination, perpetrated by police officers, public representatives and community members, with regard to access to services.

61. Another concern highlighted was that the criminal justice system does not operate fully on the basis of the rule of law in accordance with international standards. The Special Rapporteur was informed of cases in which courts have criminalized women victims of violence, including victims of sexual and communal violence. Also repeatedly raised was the concern that legal aid, a right guaranteed in article 39A of the Constitution, was not equally granted to women in practice, and in particular to poor and marginalized women.

C. Investigation, prosecution and punishment

62. Concerns were voiced with regard to the investigation of cases and the prosecution and punishment for crimes committed against women. The proportion of women in the police and in the judiciary is seriously low, which contributes to a lack of attention to women’s issues.

³³ See, for example, “Ciswathi molestation: NCW chief Manita Sharma advises women to dress ‘carefully’”, *India Today*, 18 July 2012. Available from <http://indiatoday.in/story/guwahati-molestation-ncw-chief-manita-sharma-advises-women-to-dress-carefully/1/208869.html>. See also Sonal Makhija and Swagata Raha, “A review of the working of the Karnataka State Human Rights Commission and the Karnataka State Commission for Women”, Daksh & Accountability Initiative, April 2011, sec. 5.2.2. Available from www.accountabilityindia.in/sites/default/files/daksh_kshrc_lscw_apr_2011.pdf.

³⁴ 2001 census.

³⁵ Interview with representatives of the government of Rajasthan.

A/HRC/26/38/Add.1

63. Deeply entrenched patriarchal attitudes of police officers, prosecutors, judicial officers and other relevant civil servants, with regard to the handling of cases, further contribute to victims not reporting, withdrawing complaints and not testifying. Also, the attitudes and prejudices of many village leaders in Khap Panchayats, who act as informal judicial officers, often lead to a pre-arranged settlement between the families, thus failing to provide effective redress for victims. Few police stations have specialized women's mechanisms to address the concerns of women, including violence cases, and to provide the assistance and protection that is required during the investigation phase. Impunity for abuses committed by police officers and the need for civilian oversight was highlighted.

64. Concerns were also raised about evidence gathering, including the practice of degrading medical and forensic examinations, such as the "two-finger test" for victims of sexual violence. The test is often carried out without the victim's consent, and despite the practice being officially discontinued by the Director General of Health Services in 2011, and a Supreme Court decision of 2013 branding it as a violation of the victims' right to privacy.

65. The Special Rapporteur heard complaints about the failure by the justice system in some states to ensure that women victims and witnesses of acts of violence benefit from adequate safety measures and judicial safeguards. Numerous allegations were received of women being subjected to acts of coercion and duress in a deliberate attempt to prevent the investigation of cases and punishment of perpetrators. Other accounts highlight the denial of the right of women to a fair trial, owing to a failure to receive legal assistance to pursue their cases.

66. The overall conviction rate in India for crimes listed in the Penal Code was 38.5 per cent in 2012, the lowest in 10 years, largely owing to delays in the finalization of cases.³⁶ According to the National Crimes Records Bureau, the average conviction rate for crimes against women is 21.3 per cent for cases of kidnapping and abduction of women and girls, assault on women, insult to the modesty of women, cruelty by family members and trafficking of girls.³⁷ Moreover, the annual analysis provided by the Bureau indicates that in 2012, reports of crimes against women had increased by 6.8 per cent over 2011 and by 24.7 per cent over 2008.³⁸ The proportion of registered cases of crimes committed against women vis-à-vis crimes in total increased from 8.9 per cent in 2008 to 10.2 per cent in 2012.³⁹ The low conviction rate and the higher number of cases registered will not act as a deterrent for future crimes against women, nor will it engender trust in the judicial system.

67. Impunity for crimes relating to communal violence is the norm. The recommendations of the Committee on the Elimination of Discrimination against Women relating to the Gujarat massacre (CEDAW/C/IND/CO/SP.1) have not been fully addressed as yet. Moreover, the draft Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill has been pending in Parliament for over eight years; despite the necessity for such a law.

68. In terms of the Armed Forces (Special Powers) Act and the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990, which provide a wide range of powers to the army, the Special Rapporteur was informed that their powers are broader than those

³⁶ India, *Crisis in India*, p. 77. By the end of 2012, 84.6 per cent of criminal cases under the Penal Code remained pending for trial in various courts of the country (*ibid.*, p. 73).

³⁷ *Ibid.*, Figures at a Glance-2012.

³⁸ *Ibid.*, p. 81. By number of crimes registered as cases of violence against women, the tendency also increased significantly, from 143,795 in 2001 to 244,270 in 2012 (*ibid.*, Additional Tables, "Cases registered under crimes against women in India during 2001-2012").

³⁹ *Ibid.*, p. 81.

permissible under states of emergency. Under the Acts, special powers are granted to the security forces in the “disturbed” regions of Jammu and Kashmir and the north-eastern States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura. Due to the enforcement of those laws, numerous allegations of human rights abuses were shared. These include violations of the right to life; sexual violence; arbitrary detention; torture and ill-treatment; violations of freedom of movement, expression, peaceful assembly and association; and violations of due process and equal protection before the law. The Special Rapporteur was not informed of any measures to ensure accountability and redress for victims. On the contrary, reports have been received alleging a total disregard of the non-derogable nature of some rights, provided for in article 4 of the International Covenant on Civil and Political Rights, and also an overall failure to justify restrictions of fundamental freedoms in a manner that is in compliance with the Covenant, a requirement reiterated by the Human Rights Committee on numerous occasions.⁶⁹ Moreover, the Army Act, 1950 limits the scope for civil courts to consider allegations of violence against women perpetrated by army officials, including killings and sexual violence. According to that legislation, only victims not subjected to military, naval or air force law can access civil courts, which effectively excludes persons living in the territories under the Armed Forces (Special Powers) Acts.

D. Provision of effective redress, including reparations

69. As noted above, the Special Rapporteur was not provided with data on any measures to ensure redress for women victims of violence in the areas under the Armed Forces (Special Powers) Act and its variations. The norm of impunity that governs those territories is of great concern, as victims and their families are prevented from exercising their right to know the truth about violations, have no access to effective remedies and are not given guarantees of non-recurrence.

70. With regard to systemic failures, the low rate of prosecution and conviction for acts of violence against women contributes to the lack of effective redress provided to victims. Redress begins with the filing of domestic incident reports and a First Information Report. As noted above, this is deficient in many respects. Compensation payment is dependent on the filing of a case, which is dependent on the availability of protection officers and the provision of some form of legal identification. Women belonging to marginalized groups, including irregular migrants, domestic workers, scheduled castes and tribes and so-called backward castes are often unregistered citizens, or lack identification cards. Such factors contribute to a culture of normalization of violence against women.

71. Women experience obstacles in gaining access to mechanisms of redress, including legal aid, counselling services and shelters. They are also revictimized and exposed to further risk of violence through the denial of redress in the context of informal trials or negotiations between families and community leaders. The payment of financial compensation by the perpetrator or his family for acts of violence against women, in lieu of legal remedies, was a recurrent concern *vis-à-vis* the formal and informal justice systems.

⁶⁹ See Human Rights Committee general comments No. 27 (1999) on freedom of movement, para. 13; No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 6 and No. 34 (2011) on the freedoms of opinion and expression, para. 21.

E. Remedies for specific groups at risk

72. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 lists the entitlements for persons with disabilities and the obligations of the central and state Governments and local bodies. The Act contains no provisions to address the specific needs of women with disabilities who are victims of violence. Responses to violence against women with disabilities often fail to adapt to the type of impairment, whether psychological, physical, sensory or intellectual. Moreover, reports highlight a consistent lack of disaggregated data collection on disabilities, which renders the violence committed against women with disabilities invisible. In 2006, the Government issued a National Policy for Persons with Disabilities which, according to information received, needed to be harmonized with the Convention on the Rights of Persons with Disabilities.⁴¹ Following the ratification by India of the Convention, a new bill amending the 1995 Act was proposed, with specific provisions to protect women from violence.⁴²

73. In 2012, the Government expanded protection to refugee women, by allowing all refugees recognized by the United Nations High Commissioner for Refugees to apply for long-stay visas and work permits. This allowed refugees and asylum seekers access to health and education services on equal terms with Indian citizens. However, adequate measures are still required to ensure access to these services by women, including those who have been forcibly displaced within the country. Reports indicate that many victims do not have access to the necessary services provided by the women's protection clinics of the Office of the United Nations High Commissioner for Refugees, as those are either not present in the area where they live or lack sufficient resources. Specific programmes are needed to address the lack of livelihood opportunities for refugees and asylum seekers, as they are often excluded from gaining access to services and participating in decision-making.

74. The Special Rapporteur was informed that the draft Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill envisages offering protection to religious and linguistic minorities and to scheduled castes and tribes, while providing standards for addressing communal violence. The Bill reaffirms the importance of non-discrimination when public officials discharge their responsibilities, in particular with regard to addressing violence against religious and linguistic minorities and scheduled castes and tribes. However, as noted by the Committee on the Elimination of Discrimination against Women, the Bill should include, inter alia, "a comprehensive system of reparations for victims of such crimes; and gender-sensitive victim-centred procedural and evidentiary rules" (CEDAW/C/IND/CO/3, para. 25).

V. Conclusions and recommendations

75. **The Government of India has recognized the need to address violence against women as a human rights violation, and also as an issue that detracts from the country's path to prosperity and inclusive development. It has taken legislative measures in that regard, including measures to address rape and sexual violence. However, significant gaps remain in the legislative framework as regards the failure to**

⁴¹ National Human Rights Commission, *Know Your Rights: Rights of Persons with Disabilities* (2010), p. 17.

⁴² Draft Rights of Persons with Disabilities Bill, 2012. Available from <http://socialjustice.nic.in/pdf/draft/wd12.pdf>.

recognize all forms of violence against women and to adopt a holistic approach that addresses the root and structural causes of violence against women. Moreover, there is a lack of effective remedies to address the main manifestations of violence against women, owing either to the absence of specific programmes or to a lack of implementation. The inability to ensure accountability and redress for victims has led to an increase of violence against women and the continued discriminatory treatment of victims.

76. The persistence of harmful practices, pervasive gender stereotypes and deeply entrenched patriarchal social and cultural norms is of serious concern. Based on the idea of superiority of men over women, those manifestations exacerbate women's position of dependence and subordination and significantly obstruct effective implementation of relevant legislative and policy measures. Without a comprehensive effort to address them, in schools or university, at work, in the family, in the community and in printed and electronic media, the elimination of violence against women remains a challenge. It is essential that the authorities do not underestimate the negative effects of this challenge in their efforts to eliminate all forms of violence against women.

77. The Special Rapporteur would like to address the recommendations listed below to the Government.

Law and policy reforms

78. The Special Rapporteur recommends that the Government:

- (a) Ratify all outstanding international human rights instruments;
- (b) Withdraw the declarations and reservation to the Convention on the Elimination of All Forms of Discrimination against Women, in particular regarding articles 5 (a); 16, paragraphs 1 and 2; and 29, paragraph 1;
- (c) Amend the Criminal Law (Amendment) Act, 2013 and in particular review the provisions that provide for the death penalty in section 376A; include a definition of marital rape as a criminal offence; expand the scope of protection of the law and include other categories of women, including unmarried women, lesbian, transgender and intersex women, religious minorities and underage citizens; and define gang rape as multiple crimes requiring appropriate punishment (section 376D);
- (d) Repeal section 377 of the Penal Code, which criminalizes consensual same-sex behaviour;
- (e) Review the Immoral Traffic (Prevention) Act, 1956 that de facto criminalizes sex work and ensure that measures to address trafficking in persons do not overshadow the need for effective measures to protect the human rights of sex workers;
- (f) Repeal, as a matter of urgency, the Armed Forces (Special Powers) Act and the Armed Forces (Jammu and Kashmir) Special Powers Act and ensure that criminal prosecution of members of the Armed Forces is free from legal barriers;⁴¹
- (g) Adopt the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005 and ensure that the Bill incorporates the recommendations of the Committee on the Elimination of Discrimination against Women in that regard (CEDAW/C/IND/CO/3, para. 25);

⁴¹ See also A/HRC/23/47/Add.1, para. 101.

A/HRC/26/38/Add.1

- (h) Adopt the Indecent Representation of Women (Prohibition) Bill, 2012, to ensure that gender stereotypes are also banned in electronic media;
- (i) Ensure women's participation in elected parliamentary bodies, through the adoption of legislation, including the Women's Reservation Bill;
- (j) Ensure a rights-based approach in the Rights of Persons with Disabilities Bill, 2012, in line with international standards;
- (k) Strengthen the implementation of the Protection of Women from Domestic Violence Act, 2005, by:
- (i) Allocating sufficient resources to ensure that an adequate proportion of protection officers are employed;
- (ii) Ensuring that protection officers are properly equipped to conduct their activities, in terms of administrative and logistical resources, and that funds are made available for their full-time employment;
- (iii) Ensuring that the systems and procedures established under the Act are adequately adapted to deal with violence against women with disabilities;
- (l) Ensure that police stations are equipped with sufficient and trained human and financial resources to handle all cases of violence against women and establish specific gender mechanisms, where possible;
- (m) Take effective measures to ensure that the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is adequately implemented, in particular with regard to the establishment and functioning of the complaints system;
- (n) Harmonize the framework of the National Commission for Women Act, 1990, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), to ensure independence, transparency and accountability. In particular:
- (i) Amend the Act to ensure a system for the nomination and selection of the Commission's members and chairperson that is transparent, democratic and non-partisan; apply an eligibility criteria for membership with clear requirements regarding expertise and professional experience on women's issues; prohibit members of Parliament or state legislatures or persons connected with political parties from being appointed; apply the same selection principles as regards staff; and allow the Commission more autonomy in appointing its own personnel;
- (ii) Further ensure that the Commission is empowered to undertake independent investigation into alleged violations of women's rights;
- (iii) Undertake a comprehensive qualitative review of the performance of the Commission, in particular with regard to its achievements in addressing violence against women and systemic, gender-related social, economic and legal issues pertaining to women, including accountability for crimes against women;
- (o) Take appropriate measures to address the situation of irregular and domestic migrant women, including women refugees and asylum seekers; strengthen temporary special measures, including by ensuring that they are included in governmental and National Commission for Women programmes and projects, to enable them to better access services and improve their participation and representation in public life; strengthen and expand the services of the women protection clinics across the country;

(p) Make available increased resources to support income-generating activities for women, including marginalized women and women with disabilities. In that context, adopt the Micro Finance Institutions (Development and Regulation) Bill, 2011 to ensure that microfinance institutions operate within a single regulatory framework to eradicate poverty and extreme poverty in accordance with international standards, including through transparent pricing, the provision of adequate financial products and the prohibition of multiple lending, which results in over-indebtedness;

(q) Take measures to ensure that displaced populations and civetied families have adequate access to livelihoods, including access to health and education;

(r) Establish an independent national inquiry mechanism to review the current situation and challenges with regard to the fulfilment of women's human rights;

(s) Ensure that programmes and projects designed for women are periodically and qualitatively reviewed;

(t) Consider adopting a State policy to address the structural causes of all levels of poverty of women;

(u) Intensify efforts to ensure that training initiatives for women are designed to improve access to all occupational groups and industries.

Accountability

79. The Special Rapporteur recommends that the Government:

(a) Take effective measures to ensure access to justice and effective redress for all victims of violence against women. In particular, it should:

(i) Ensure that the full ban on Khap Panchayats by the Supreme Court is implemented throughout the country;

(ii) Ensure that cases of violence against women are addressed by the judiciary and not by informal justice mechanisms;

(iii) Monitor the implementation of judicial decisions on cases relating to violence against women, and ensure that victims have prompt access to effective remedies;

(iv) Ensure that all allegations of violence against women are adequately investigated by the police, and that perpetrators are punished;

(v) Ensure that women and family members wishing to lodge complaints are free from any act of intimidation, threat or harassment, and that protection is provided free of cost for the victim, if necessary;

(vi) Ensure legal, housing, security and financial assistance measures for victims of violence that enable them to pursue accountability for crimes and also to rebuild their lives.

Societal transformation, including awareness-raising, addressing gender stereotypes and women's empowerment

80. The Special Rapporteur recommends that the Government:

(a) Design and launch a comprehensive training and awareness-raising programme for police officers charged with the responsibility of filing complaints of violence against women, including First Information Reports and domestic incident reports;

A/HRC/26/38/Add.1

(b) Design and launch targeted awareness-raising campaigns at the community level on harmful customary practices, including, inter alia, dowry-related practices, acid attacks, so-called honour crimes and witch-hunting;

(c) Carry out measures to train and sensitize media on issues relating to women's rights and violence against women in particular, so as to contribute to changing cultural and social beliefs based on patriarchal norms that perpetuate harmful stereotypes and myths about women;

(d) Develop and implement, in cooperation with international partners and civil society, capacity-building and training activities for service providers, including public officials, members of Parliament and the judiciary, health-care professionals and others, on issues relating to violence against women.

Statistics and data collection

81. The Special Rapporteur recommends that the Government:

(a) Strengthen the current system hosted by the National Crime Records Bureau of the Ministry of Home Affairs for the collection and analysis of data relating to crimes against women, by disaggregating data by sex, age, caste, disability, religion, language and other relevant characteristics;

(b) Establish intergovernmental linkages among the ministries responsible for gender-related work to ensure consistent and standardized collection of data by each respective ministry;

(c) Periodically conduct a thorough analysis of data, to understand the different trends and evolutions of manifestations of violence against women;

(d) In cooperation with civil society organizations, develop monitoring and evaluation tools to assess progress in eradicating violence against women and integrate such tools in the design of relevant schemes and programmes.

ANNEXURE-3: Concluding observations of the UN CEDAW on the combined fourth and fifth periodic reports of India, 2014

United Nations

CEDAW/C/IND/CO/4-5



**Convention on the Elimination
of All Forms of Discrimination
against Women**

Distr.: General
24 July 2014

Original: English

**Committee on the Elimination of Discrimination
against Women**

Concluding observations on the combined fourth and fifth periodic reports of India*

1. The Committee considered the combined fourth and fifth periodic reports of India (CEDAW/C/IND/4-5 and Corr.1 and Add.1) at its 1219th and 1220th meetings, on 2 July 2014 (see CEDAW/C/SR.1219 and 1220). The Committee's list of issues and questions is contained in CEDAW/C/IND/Q/4-5 and the responses of India are contained in CEDAW/C/IND/Q/4-5/Add.1.

A. Introduction

2. The Committee appreciates that the State party submitted its combined fourth and fifth periodic reports. It also appreciates the State party's written replies to the list of issues and questions raised by the pre-session working group and welcomes the oral presentation by the delegation and the further clarifications provided during the dialogue. The Committee regrets, however, that the delegation did not provide responses to some questions posed orally by the Committee.

3. The Committee notes the State party's delegation, which was headed by the Secretary of the Ministry of Women and Child Development, Shankar Aggarwal, and included representatives of the ministries responsible for home affairs, external affairs, health and family welfare, social justice and empowerment and human resource development.



B. Positive aspects

4. The Committee welcomes the progress achieved since the consideration in

* Adopted by the Committee at its fifty-eighth session (30 June-18 July 2014).

CEDAW/C/IND/CO/4-5

2007 of the State party's combined second and third periodic reports (CEDAW/C/IND/2-3) in undertaking legislative reforms, in particular the adoption of the following:

- (a) Criminal Law (Amendment) Act, in 2013;
- (b) Prohibition of Employment of Manual Scavengers and their Rehabilitation Act, in 2013;
- (c) National Food Security Act, in 2013;
- (d) Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, in 2013;
- (e) Protection of Children from Sexual Offences Act, in 2012;
- (f) Right of Children to Free and Compulsory Education Act, in 2009.

5. The Committee welcomes the State party's efforts to improve its institutional and policy framework aimed at accelerating the elimination of discrimination against women and promoting gender equality, such as the:

- (a) Establishment of a financial services banking company for women in 2013, intended to advance the economic empowerment of women;
- (b) Creation of a national mission for empowerment of women in 2010 to address women's issues in a coordinated manner at the central and state levels;
- (c) Introduction of the Indira Gandhi Matritva Sahyog Yojana maternity benefit scheme in 2010.

6. The Committee welcomes the fact that, in the period since the consideration of the previous reports, the State party has ratified or acceded to the following international instruments:

- (a) Convention on the Rights of Persons with Disabilities, in 2007;
- (b) United Nations Convention against Transnational Organized Crime; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; and the Protocol against the Smuggling of Migrants by Land, Sea and Air, in 2011.

C. Principal areas of concern and recommendations

Parliament

7. The Committee stresses the crucial role of the legislative power in ensuring the full implementation of the Convention (see the statement by the Committee on its relationship with parliamentarians, adopted at the forty-fifth session, in 2010). It invites Parliament to take the necessary steps regarding the implementation of the present concluding observations between now and the next reporting period under the Convention.

Equality and non-discrimination

8. The Committee notes that article 15 of the Constitution guarantees equal protection under the law for women and men and prohibits discrimination on the

ground of sex. The Committee is concerned, however, at the absence of a comprehensive anti-discrimination law addressing all aspects of direct and indirect discrimination against women and all the forms of intersectional discrimination, as explicitly listed in paragraph 18 of the Committee's general recommendation No. 28 on the core obligations of States parties under article 2 of the Convention.

9. The Committee recommends that the State party:

- (a) **Adopt comprehensive anti-discrimination legislation that prohibits discrimination on all grounds referred to in general recommendation No. 28;**
- (b) **Protect women from multiple or intersectional forms of discrimination and other grounds referred to in general recommendation No. 28;**
- (c) **Include a comprehensive definition of discrimination against women, in accordance with articles 1 and 2 of the Convention and the principle of equality between women and men.**

Violence against women

10. The Committee notes the State party's efforts to enact a legal framework to prevent and respond to violence against women, including women from the marginalized castes and communities, such as Dalit and Adivasi women, and the establishment in 2013 of the Justice Verma Committee on Amendments to Criminal Law to review existing normative gaps. The Committee is concerned, however, about the:

- (a) Stark increase in violent crimes against women, especially rape and abduction, and the high number of cases of rape reported by the National Crime Records Bureau in 2012, indicating an increase by 902.1 per cent since 1971, and confining impunity for such acts;
- (b) Retention in the Penal Code of an exemption from punishment when a rape is committed by the victim's husband if the wife is above 15 years of age;
- (c) Escalation of caste-based violence, including rape, against women and girls and the downplaying by key State officials of the grave criminal nature of sexual violence against women and girls;
- (d) Poor implementation of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and the impunity of perpetrators of serious crimes against women;
- (e) High number of dowry-related deaths since 2008;
- (f) Persistence of so-called "honour crimes" perpetrated by family members against women and girls;
- (g) Declining girl child sex ratio from 962 per 1,000 in 1981 to 914 per 1,000 in 2011;
- (h) Criminalization of same-sex relationships, as referred to in the ruling of the Supreme Court (*Suresh Kumar Koushal and another v. NAZ Foundation*, 2013);
- (i) Increasing number of acid attacks against women since 2002, the underreporting of such crimes notwithstanding.

11. The Committee urges the State party:

CEDAW/C/IND/CO/4-5

(a) To implement the recommendations of the Justice Verma Committee regarding violence against women;

(b) To promptly enact the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill and to ensure that it provides for a comprehensive system of reparations for victims and for gender-sensitive, victim-centred procedural and evidentiary rules;

(c) To amend the Criminal Law (Amendment) Act, ensuring that marital rape is defined as a criminal offence, as requested by the Committee in its previous concluding observations (CEDAW/C/IND/CO/3, para. 23), expanding the scope of protection of the law to cover all prohibited grounds of discrimination and defining gang rape as constituting an aggravating factor meriting a more severe punishment;

(d) To enact specific legislation to introduce heavier sentences for perpetrators of acid attacks, to regulate the sale and distribution of acid substances and to conduct large-scale campaigns to raise public awareness of the criminal nature of such attacks;

(e) To strengthen the efficiency of the police, to ensure that police officers fulfil their duty to protect women and girls against violence and are held accountable, to adopt standard procedures for the police in each state on gender-sensitive investigations and treatment of victims and of witnesses and to ensure that first information reports are duly filed;

(f) To establish, without delay, one-stop crisis centres providing women and girls who are victims of violence and rape with free and immediate access to medical attention, psychological counselling, legal aid, shelters and other support services;

(g) To provide systematic training on women's rights to all law enforcement personnel, medical staff and judicial officials;

(h) To put in place an effective system to monitor and evaluate the implementation, effectiveness and impact of legislation to combat sexual violence;

(i) To make efforts to eliminate any criminalization of same-sex relations by studying the possibility, as accepted by the State party during its universal periodic review (see A/HRC/21/10/Add.1), and to take note of the ruling of the Supreme Court (*Suresh Kumar Koushal and another v. NAZ Foundation*, 2013) in this regard;

(j) To take urgent measures to adopt a national plan of action for improving the girl child sex ratio;

(k) To allocate sufficient resources for the immediate enforcement of legislation on violence against women and for the establishment of special courts, complaints procedures and support services envisaged under that legislation in a time-bound manner.

Violence against women in border areas and conflict zones

12. The Committee is deeply concerned about the reported high level of violence, including rape and other forms of sexual violence, enforced disappearance, killings

and acts of torture and ill-treatment, against women in conflict-affected regions (Kashmir, the north-east, Chhattisgarh, Odisha and Andhra Pradesh). It is particularly concerned about the:

(a) Provisions of the Armed Forces (Special Powers) Act requiring prior authorization by the Government to prosecute a member of the security forces and the reportedly high risk of reprisals against women who complain about the conduct of the security forces;

(b) Significant number of displaced women and girls, in particular in the north-east, including as a result of sporadic communal violence, their precarious living conditions and exposure to serious human rights violations and the lack of gender-sensitive interventions at all stages of the displacement cycle;

(c) Continued marginalization and poverty of the women and girls who survived the Gujarat riots and are living in the relief colonies and their precarious living conditions with limited access to education, health care, employment and security and poor infrastructure in terms of sanitation, water, transportation and housing;

(d) Lack of centres providing medical, psychological, legal and socioeconomic support to women and girls who are victims of sexual violence in conflict-affected areas;

(e) Limited regulation of the arms trade and the proliferation of small arms and light weapons and their impact on the security of women;

(f) Restrictions imposed on women human rights defenders, in particular those operating in conflict areas, including restrictions on international funding and the surveillance under which they are placed;

(g) Absence of women in peace negotiations in the north-eastern states.

13. The Committee calls upon the State party:

(a) **To, in accordance with the recommendations of the Justice Verma Committee, promptly review the continued application of the Armed Forces (Special Powers) Act and related legal protocols and to enforce special powers protocols in conflict areas and assess the appropriateness of their application in those areas;**

(b) **To amend and/or repeal the Armed Forces (Special Powers) Act so that sexual violence against women perpetrated by members of the armed forces or uniformed personnel is brought under the purview of ordinary criminal law and, pending such amendment or repeal, to remove the requirement for government permission to prosecute members of the armed forces or uniformed personnel accused of crimes of violence against women or other abuses of the human rights of women and to grant permission to enable prosecution in all pending cases;**

(c) **To amend section 19 of the Protection of Human Rights Act and confer powers to the National Human Rights Commission to investigate cases against armed forces personnel, in particular cases of violence against women;**

(d) **To ensure that the security sector is subject to effective oversight and that accountability mechanisms, with adequate sanctions, are in place, to**

CFD/W/C/IND/CO/4-5

provide systematic training on women's rights to the military and other armed forces involved in security operations and to adopt and enforce a code of conduct for members of the armed forces to effectively guarantee respect for women's rights;

(e) To ensure the full and effective implementation of the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, as soon as it has been enacted;

(f) To adopt an integrated policy to enhance the living conditions of women and girls who survived the Gujarat riots, including by adopting appropriate economic recovery measures, allocating below-poverty-line cards and providing other benefits under government schemes, and to step up witness protection and security measures, especially for women and girls living in relief colonies;

(g) To ensure that women in the north-eastern states participate in peace negotiations and in the prevention, management and resolution of conflicts in line with Security Council resolution 1325 (2000) and the Committee's general recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations;

(h) To remove restrictions on the work of human rights defenders, such as restrictions on their funding and by not placing them under surveillance.

Extraterritorial State obligations

14. While commending the State party's cooperation programme in post-conflict areas such as a housing project in the north-east of Sri Lanka, the Committee expresses concern at the lack of a gender perspective in and consultations with women on this project. The Committee is also concerned about the impact on women, including in Nepal, of infrastructure projects such as the Lakshmanpur dam project, including with regard to displacement and loss of livelihood, housing and food security as a result of the subsequent floods.

15. The Committee reaffirms that the State party must ensure that the acts of persons under its effective control, including those of national corporations operating extraterritorially, do not result in violations of the Convention and that its extraterritorial obligations extend to actions affecting human rights, regardless of whether the affected persons are located on its territory, as indicated in the Committee's general recommendation Nos. 28 and 30. Accordingly, it recommends that the State party:

(a) Immediately review the impact of the housing project in Sri Lanka, adopt a consultative and gender-sensitive approach in implementing the current and future phases of the project and address the needs and concerns of the most disadvantaged and marginalized groups of women;

(b) Adopt all necessary measures, including an assessment of the impact of the Lakshmanpur dam project on women in Nepal, so as to, among other things, prevent or remedy women's loss of livelihood, housing and food security, and provide adequate compensation whenever their rights have been violated.

National machinery for the advancement of women

16. While the Committee welcomes measures taken to strengthen the government strategy and the national machinery for the advancement of women, including the Ministry of Women and Child Development, such as the adoption of the National Mission for Empowerment of Women (2010-2015) and the proposed amendment to the National Commission for Women Act, it continues to be concerned at the limited operational and financial independence of the National Commission for Women and the state commissions and at the lack of a transparent system for nominating the members and Chair of the Commission, which undermines its independence and capacity to fulfil its broad mandate effectively. The Committee is also concerned that budgets allocated for women's empowerment in the Ministry of Women and Child Development and under the gender budget statements of ministries are insufficient.

17. The Committee encourages the State party to strengthen the independent status, capacity and resources of the National Commission for Women in line with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), ensure that the composition and activities of the Commission are gender sensitive and increase the budget for the empowerment of women in the Ministry of Women and Child Development and under the gender budget statements.

Temporary special measures

18. The Committee is concerned that the State party may not have full understanding of the purpose of temporary special measures in accordance with article 4 (1) of the Convention and the Committee's general recommendation No. 25 on the subject. It is also concerned that no temporary special measures have been or are being applied as part of a necessary strategy to accelerate the achievement of substantive equality of women and men in areas in which women are disadvantaged, such as education or in the judiciary, and for promoting the participation of women from religious minorities and scheduled castes and scheduled tribes in various areas under the Convention.

19. The Committee calls upon the State party to ensure that all relevant officials are familiar with the concept of temporary special measures and to encourage their application in accordance with article 4 (1) of the Convention and the Committee's general recommendation No. 25, especially measures aimed at increasing the:

(a) **Number of girls, including from disadvantaged groups, enrolled in secondary and tertiary education in all states;**

(b) **Number of women in the judiciary, through a quota system for the recruitment of women judges and special scholarships and other support schemes for female law students.**

Stereotypes and harmful practices

20. The Committee notes with concern that the State party has maintained its declarations regarding articles 5 (a) and 16 (1) and (2) of the Convention and reiterates its view that this is incompatible with the State party's constitutional guarantees of equality and non-discrimination. It is also concerned at the persistence of patriarchal attitudes and deep-rooted stereotypes entrenched in the social,

CEDAW/C/IND/CO/4-5

cultural, economic and political institutions and structures of Indian society and in the media that discriminate against women. It is further concerned about the persistence of harmful traditional practices in the State party, such as child marriage, the dowry system, so-called "honour killings", sex-selective abortion, sati, devadasi and accusing women of witchcraft. The Committee is particularly concerned that the State party has not taken sufficient sustained and systematic action to modify or eliminate stereotypes and harmful practices.

21. The Committee reiterates its previous concluding observations (CEDAW/C/IND/CO/3, para. 11) and urges the State party:

- (a) **To review its declarations regarding articles 5 (a) and 16 (1) and (2) with a view to withdrawing them;**
- (b) **To put in place without delay a comprehensive national campaign and strategy, with specific goals and timelines, to eliminate patriarchal attitudes and stereotypes that discriminate against women, in accordance with article 2 (f) of the Convention;**
- (c) **To strengthen its awareness-raising and educational efforts, targeting both women and men, with the involvement of civil society and community leaders, to eliminate all harmful traditional practices and to collaborate with the media to enhance a positive, non-stereotypical and non-discriminatory portrayal of women.**

Trafficking in women and exploitation of prostitution

22. The Committee takes note of the establishment of anti-trafficking units, awareness-raising programmes and a task force on human trafficking. It remains concerned, however, at the alarming persistence of trafficking, both internal and cross-border, the lack of protection and services available to women and girls who are victims of trafficking and sexual exploitation and the lack of efforts to tackle the root causes. The Committee is also concerned at the persecution of women in prostitution as a result of measures taken to address trafficking, such as raid and rescue operations.

23. The Committee recommends that the State party:

- (a) **Review the Immoral Traffic (Prevention) Act and include provisions addressing the prevention of trafficking in women and girls and the economic and emotional rehabilitation of victims;**
- (b) **Address the root causes of trafficking by promoting alternative income-generating activities developing the economic potential of women and raise awareness among the population in rural areas of the risks of trafficking and the way in which traffickers operate;**
- (c) **Ensure that traffickers are effectively investigated, prosecuted and punished and collect data and establish appropriate mechanisms aimed at the early identification and referral of, and assistance and support for, victims of trafficking, including foreign women, and provide them with remedies;**
- (d) **Ensure that trafficked women and girls have access to victim and witness protection shelters, high-quality medical care, counselling and support programmes for alternative income-generation activities and for their**

reintegration into the education system and labour market, in addition to access to adequate housing and free legal aid, regardless of their ability or willingness to testify against traffickers.

Participation in political and public life

24. While noting that there are six women ministers in the 23-member Cabinet, the Committee remains concerned about the low representation of women in political and public life, for example in the lower house of Parliament, where only 62 of the 543 parliamentarians are women, or on the Supreme Court, where only 1 of the 26 sitting judges is a woman. The Committee is also concerned about the delay in the adoption of the Constitution (108th Amendment) Bill, intended to ensure a 33 per cent quota for women in Parliament and in the state legislatures, which has been pending before Parliament since 2010.

25. The Committee recommends that the State party:

(a) Enact the Constitution (108th Amendment) Bill to reserve at least 33 per cent of the seats in the State and central legislative bodies for women candidates, as recommended in its previous concluding observations (CEDAW/IND/CO/3, para. 43), and ensure that political parties increase the representation of women in their decision-making bodies at all levels;

(b) Create an enabling environment for women to participate in all democratic processes, including elections, and in particular strengthen the participation of women in *gram sabhas*, *mahila sabhas* and other formal and informal governance forums at the local level.

Education

26. The Committee takes note of the Right of Children to Free and Compulsory Education Act, which guarantees free and compulsory education for all children between 6 and 14 years of age. It remains concerned, however, that only 4 per cent of the gross domestic product is spent on education, that girls with disabilities and minorities continue to register low enrolment rates and that the dropout rate among adolescent girls is as high as 64 per cent, making them particularly vulnerable to child marriage. The Committee is also concerned about the low retention and completion rates of girls at the secondary level owing to early marriage, harmful practices and poverty, especially in rural areas. The Committee is equally concerned that girls are subjected to sexual harassment and violence, including in conflict-affected regions where the reported occupations of schools by the security forces contribute to girls dropping out of school.

27. The Committee reiterates its previous concluding observations (CEDAW/IND/CO/3, para. 31) and calls upon the State party to allocate increased resources for the implementation of the Right of Children to Free and Compulsory Education Act and to take measures:

(a) To ensure that schools are girl-friendly, within a reasonable distance of communities, and have supplies of potable water and separate hygienic toilets for girls;

(b) To address safety issues for girls in and out of school, including escorts to schools for girls in unsafe areas and effective investigation and

CEDAW/C/IND/CO/4-5

prosecution of acts of corporal punishment, harassment or gender-based violence against girls at school;

(c) To adopt a life-cycle approach to girls' education and ensure that the special needs of disadvantaged and marginalized girls are integrated into policymaking;

(d) To improve the literacy rate of women and girls and organize programmes for girls affected by conflict who leave school or university prematurely;

(e) To address the causes of the low enrolment rate of girls from minorities and girls with disabilities and the high dropout rates of adolescent girls, including those living in conflict areas, such as gender stereotypes, poverty and sexual harassment in school and early marriage, and formulate re-entry policies enabling young women to return to school after pregnancy;

(f) To prohibit the occupation of schools by security forces in conflict-affected regions in compliance with international humanitarian and human rights law;

(g) To improve the quality of education by providing teachers with systematic and gender-sensitive training and by revising the curriculum and textbooks to remove gender stereotypes.

Employment

28. The Committee notes with concern the declining participation of women in the labour force, both in rural and urban areas, and at the situation of women working in the informal economy (agriculture, domestic and home-based work) not covered by labour laws and other social protection measures. It is concerned at the gender wage gap indicating that women earn only 50 to 75 per cent of the wages earned by men and statistical data showing that women only own 9 per cent of land. The Committee is further concerned that the newly enacted Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act includes clauses that could undermine its efficiency, such as prescribing conciliation as a preliminary step, that it includes no effective complaints mechanism for domestic workers and that the State party has not ratified the Domestic Workers Convention, 2011 (No. 189), of the International Labour Organization.

29. The Committee urges the State party:

(a) To adopt effective measures in the formal labour market, including temporary special measures, to increase female participation, to narrow and close the wage gap between women and men and to ensure the application of the principle of equal pay for work of equal value, in addition to equal opportunities at work;

(b) To adopt the draft national policy on domestic workers and to ensure that the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act are reviewed and applied to domestic workers;

(c) To ratify the Home Work Convention, 1996 (No. 177), and the Domestic Workers Convention, 2011 (No. 189), of the International Labour Organization and to amend the relevant national legislation accordingly.

Health

30. While noting efforts by the State party to achieve greater coverage of maternal health services, the Committee is concerned about the persistently high rate of maternal mortality in some states and the high rate of deaths resulting from unsafe abortion, lack of access to safe abortion, post-abortion care and high-quality services for the management of complications arising from unsafe abortion. The Committee is also concerned at the scant budgetary resources allocated to health services, the disparities in maternal health care, including between urban and rural areas, the limited availability and accessibility of modern forms of contraception, including emergency contraception to prevent unwanted pregnancy, the lack of information and education on reproductive and sexual health, conditional maternity benefits that exclude some women and the lack of a mechanism for universal and accurate reporting of maternal deaths.

31. The Committee urges the State party:

(a) To review reproductive health policies to make them more inclusive, with a view to increasing high-quality maternal health services in the states in which they are lacking, removing conditions from maternal benefits, ensuring adequate funding for reproductive health services, including provision of reproductive health information and education, and that they effectively cover urban and rural areas;

(b) To provide women with access to high-quality and safe abortion services, including to manage complications arising from unsafe abortion, and to increase access to and use of effective and affordable methods of contraception, including by subsidizing them, in order to reduce the use of abortion as a method of family planning;

(c) To adopt a policy for mandatory and accurate reporting of maternal deaths, irrespective of whether the deaths occur in public or private health facilities, homes or on the way to a health facility, and to establish a system to monitor the delivery of transparent health-care services effectively.

Rural women

32. The Committee is concerned at the prevalence of customs and traditional practices that prevent rural women, especially women from scheduled castes and scheduled tribes, from inheriting or acquiring land and other property. It is also concerned at the difficulties faced by rural women and women living in remote areas in gaining access to health and social services and in participating in decision-making processes at the community level, in addition to the fact that rural women are particularly affected by poverty and food insecurity, lack of access to natural resources, safe water and credit facilities.

33. The Committee recommends that the State party:

CFDAW/C/IND/CO/4-5

(a) **Abolish traditional practices and customs that prevent rural women from inheriting and acquiring land and from fully enjoying their rights and guarantee land ownership rights to women;**

(b) **Strengthen its efforts to address the needs of rural women and provide them with enhanced access to health services, education, safe water and sanitation services, fertile land, natural resources, credit and income-generating opportunities.**

Women from scheduled castes and scheduled tribes

34. The Committee is concerned that Dalit women and women from scheduled tribes face multiple barriers in gaining access to justice, owing to legal illiteracy, lack of awareness of their rights and limited accessibility of legal aid. It notes with concern the financial, cultural and physical barriers faced by Dalit women and women from scheduled tribes in gaining access to gynaecological and maternal health services, their limited knowledge of birth registration procedures and the existence of bureaucratic obstacles and financial barriers that prevent them from registering births and obtaining birth certificates for their children.

35. The Committee recommends that the State party:

(a) **Monitor the availability and efficiency of the legal services authorities, implement legal literacy programmes, raise the awareness of Dalit women and women and girls from scheduled tribes of all legal remedies available to them and monitor the results of such efforts;**

(b) **Strengthen public awareness-raising campaigns and take specific measures to ensure that Dalit women and women from scheduled tribes are aware of the procedures for registering births and obtaining birth certificates and ensure their access to those facilities;**

(c) **Provide training to medical and health professionals in order to ensure that Dalit women and women from scheduled tribes are attended by trained health-care personnel.**

Women with disabilities

36. The Committee, noting that a bill on the rights of persons with disabilities is pending before Parliament, is concerned that women with intellectual or psychosocial disabilities can be denied legal capacity and committed to institutions without their consent and without recourse to any meaningful remedy or review. It is particularly concerned that women with intellectual disabilities can be sterilized without their consent. The Committee is further concerned that women with disabilities experience a high rate of poverty, lack access to education, employment and health services, especially in rural areas, face multiple challenges, including the lack of adequate access to public spaces and utilities, often experience harassment in public and are excluded from decision-making processes. It is equally concerned at the lack of disaggregated data on persons with disabilities and that responses to violence against women with disabilities fail to take account of the type of impairment, whether physical, sensory or intellectual.

37. The Committee urges the State party:

(a) To enact the bill on the rights of persons with disabilities without delay and incorporate a specific section to protect women and girls with intellectual disabilities from forced sterilization and to repeal laws regarding and prohibit disability-based detention of women, including involuntary hospitalization and forced institutionalization;

(b) To ensure that the rights of women with disabilities are mainstreamed within the national strategies and action plans for women, to develop support services in the community in consultation with organizations of persons with disabilities and to intensify efforts to provide social and health services support to families with girls and women with disabilities;

(c) To facilitate advocacy by and on behalf of women and girls with disabilities;

(d) To create a database and ensure regular collection of data on persons with disabilities, disaggregated by sex, age, type of disability and region, and to promote the regular analysis and dissemination of such data and develop capacity to do so.

Marriage and family relations

38. While noting that the implementation of the Prohibition of Child Marriage Act has led to a certain decrease in the number of cases of early and forced marriage, the Committee is concerned that the State party's declaration regarding article 16 (2) has not been withdrawn. The Committee also notes with concern the high prevalence of such marriages and that victims of child marriage must file a petition with a court to void the marriage within two years after reaching the age of majority. The Committee is equally concerned at reports that judges often authorize marriages of underage girls based on Muslim personal laws and that no legislation ensuring the registration of all marriages in the State party has been adopted.

39. The Committee urges the State party:

(a) To speedily enact legislation to require compulsory registration of all marriages and to consider withdrawing its declaration regarding article 16 (2) of the Convention;

(b) To ensure that the Prohibition of Child Marriage Act is implemented without exception;

(c) To automatically void all child marriages and ensure that the Protection of Children from Sexual Offences Act applies also to child brides;

(d) To strengthen efforts to raise awareness about the prohibition of child marriage and the harmful effects of the practice on the health and education of girls and to effectively investigate, prosecute and punish cases of forced and early marriage.

40. The Committee is also concerned about the coexistence of multiple legal systems with regard to marriage and family relations in the State party, applying to the various religious groups, which results in deep and persistent discrimination against women, and notes with concern the State party's continuing reluctance to review its policy of non-interference in the personal affairs of communities without their initiative and consent and withdraw its declarations regarding articles 5 (a) and

CEDAW/C/IND/CO/4-5

16 (1) of the Convention. It is further concerned about the procedural requests of the Special Marriage Act, which de facto hamper couples, especially women, from seeking permission to marry and register marriages. The Committee is particularly concerned that spousal property is overall governed by a regime of separate property so that women are not awarded their share in the property accumulated during marriage and that the proposed amendments to the Special Marriage Act and Hindu Marriage Act provide only a limited and discretionary possibility for distribution of marital property.

41. The Committee reiterates its previous concluding observations (CEDAW/C/IND/CO/3, para. 55), recalls article 16 of the Convention and calls upon the State party to ensure equality between women and men in marriage and family relations by:

(a) Ensuring that all the laws on marriage and family relations governing the various religious groups, in addition to their further amendment, are in full compliance with articles 15 and 16 of the Convention and the Committee's general recommendation No. 21 on equality in marriage and family relations and general recommendation No. 29 on the economic consequences of marriage, family relations and their dissolution;

(b) Reviewing the application of the Special Marriage Act to remove procedural barriers regarding the application for permission to marry and the registration of marriages;

(c) Reviewing the existing legal framework on spousal property relations so as to ensure that women are provided with their share in the marital property in the light of the Committee's general recommendations Nos. 21 and 29.

Optional Protocol and amendment to article 20 (1) of the Convention

42. The Committee encourages the State party to ratify the Optional Protocol to the Convention and to accept, as soon as possible, the amendment to article 20 (1) of the Convention concerning the meeting time of the Committee.

Beijing Declaration and Platform for Action

43. The Committee calls upon the State party to use the Beijing Declaration and Platform for Action in its efforts to implement the provisions of the Convention.

Millennium Development Goals and the post-2015 development framework

44. The Committee calls for the integration of a gender perspective, in accordance with the provisions of the Convention, into all efforts aimed at the achievement of the Millennium Development Goals and into the post-2015 development framework.

Dissemination

45. The Committee recalls the obligation of the State party to systematically and continuously implement the provisions of the Convention. It urges the State party to give priority attention to the implementation of the present concluding observations and recommendations between now and the submission of the next periodic report. The Committee therefore requests that the present concluding

observations be disseminated in a timely manner, in the official languages of the State party, to the relevant State institutions at all levels (national, regional and local), in particular to the Government, the ministries, Parliament and the Judiciary, to enable their full implementation. It encourages the State party to collaborate with all stakeholders concerned, such as employers' associations, trade unions, human rights and women's organizations, universities, research institutions and the media. It recommends that the present concluding observations be disseminated in an appropriate form at the local community level to enable their implementation. In addition, the Committee requests the State party to continue to disseminate the Convention, the Optional Protocol thereto and relevant jurisprudence, in addition to the Committee's general recommendations, to all stakeholders.

Technical assistance

46. The Committee recommends that the State party consider seeking international assistance and avail itself of technical assistance in the development and implementation of a comprehensive programme aimed at the implementation of the above recommendations and the Convention as a whole. The Committee also calls upon the State party to continue its cooperation with specialized agencies and programmes of the United Nations system.

Ratification of other treaties

47. The Committee notes that the adherence of the State party to the nine major international human rights instruments¹ would enhance the enjoyment by women of their human rights and fundamental freedoms in all aspects of life. The Committee therefore encourages the State party to consider ratifying the following instruments to which it is not yet a party: the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; and the International Convention for the Protection of All Persons from Enforced Disappearance.

Follow-up to the concluding observations

48. The Committee requests the State party to provide, within two years, written information on the steps taken to implement the recommendations contained in paragraphs 11 (a) and (e)-(h) and 13 (a), (d) and (f)-(h) above.

Preparation of the next report

49. The Committee invites the State party to submit its sixth periodic report in July 2018.

¹ The International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the International Convention for the Protection of All Persons from Enforced Disappearance; and the Convention on the Rights of Persons with Disabilities.

CFDAW/C/IND/CO/4-5

50. The Committee requests the State party to follow the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents (HRI/MC/2006/3 and Corr.1).

ANNEXURE-4: Section 45 and 197 of the Code of Criminal Procedure, 1973

Section 45 of the Code of Criminal Procedure, 1973

45. Protection of members of the Armed Forces from arrest.

(1) Notwithstanding anything contained in sections 41 to 44 (both inclusive), no member of the Armed Forces of the Union shall be arrested for anything done or purported to be done by him in the discharge of his official duties except after obtaining the consent of the Central Government.

(2) The State Government may, by notification, direct that the provisions of sub-section (1) shall apply to such class or category of the members of the Force charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section shall apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

Section 197 of the Code of Criminal Procedure, 1973

197. Prosecution of Judges and public servants.

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government: ¹ Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

(3A) ¹ Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991 , receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.]

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.

ANNEXURE-5: Criminal Law Amendment Act, 2013

रजिस्ट्री सं० डी० एल०—(एन)०४/००७/२००३—१३

REGISTERED NO. DL—(N)04/007/2003—13



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 17] नई दिल्ली, मंगलवार, अप्रैल 2, 2013/चैत्र 12, 1935 (शक)
No. 17] NEW DELHI, TUESDAY, APRIL 2, 2013/CHAITRA 12, 1935 (SAKA)

इस भाग में धिन पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 2nd April, 2013/Chaitra 12, 1935 (Saka)

The following Act of Parliament received the assent of the President on the 2nd April, 2013, and is hereby published for general information:—

THE CRIMINAL LAW (AMENDMENT) ACT, 2013

No. 13 of 2013

[2nd April, 2013]

AN ACT further to amend the Indian Penal Code, the Code of Criminal Procedure, 1973, the Indian Evidence Act, 1872 and the Protection of Children from Sexual Offences Act, 2012.

Be it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Criminal Law (Amendment) Act, 2013.
- (2) It shall be deemed to have come into force on the 3rd day of February, 2013.

Short title and commencement.

CHAPTER II

AMENDMENTS TO THE INDIAN PENAL CODE

45 of 1860.

2. In the Indian Penal Code (hereafter in this Chapter referred to as the Penal Code), in section 100, after clause *Sixthly*, the following clause shall be inserted, namely:—

Amendment of section 100.

“*Seventhly*:—An act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act.”.

2 THE GAZETTE OF INDIA EXTRAORDINARY [PART II—

Insertion of new sections 166A and 166B

3. After section 166 of the Penal Code, the following sections shall be inserted, namely:—

Public servant disobeying direction under law

“166A. Whoever, being a public servant,—

(a) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or

(b) knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation, or

(c) fails to record any information given to him under sub-section (f) of section 154 of the Code of Criminal Procedure, 1973, in relation to cognizable offence punishable under section 326A, section 326B, section 354, section 354B, section 370, section 370A, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509,

2 of 1974.

shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine.

Punishment for non-treatment of victim

166B. Whoever, being in charge of a hospital, public or private, whether run by the Central Government, the State Government, local bodies or any other person, contravenes the provisions of section 357C of the Code of Criminal Procedure, 1973, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.”

2 of 1974.

Amendment of section 228A.

4. In section 228A of the Penal Code, in sub-section (f), for the words, figures and letters “offence under section 376, section 376A, section 376B, section 376C or section 376D”, the words, figures and letters “offence under section 376, section 376A, section 376B, section 376C, section 376D or section 376E” shall be substituted.

Insertion of new sections 326A and 326B.

5. After section 326 of the Penal Code, the following sections shall be inserted, namely:—

Voluntarily causing grievous hurt by use of acid, etc.

326A. Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.

Voluntarily throwing or attempting to throw acid.

326B. Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

Explanation 1.—For the purposes of section 326A and this section, “acid” includes any substance which has acidic or corrosive character or burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability.

Explanation 2.—For the purposes of section 326A and this section, permanent or partial damage or deformity shall not be required to be irreversible.’

6. In section 354 of the Penal Code, for the words "shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both", the words "shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine" shall be substituted.

Amendment of section 354

7. After section 354 of the Penal Code, the following sections shall be inserted, namely:—

Insertion of new sections 354A, 354B, 354C and 354D.

354A. (1) A man committing any of the following acts—

Sexual harassment and punishment for sexual harassment.

- (i) physical contact and advances involving unwelcome and explicit sexual overtures; or
- (ii) a demand or request for sexual favours; or
- (iii) showing pornography against the will of a woman; or
- (iv) making sexually coloured remarks,

shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

354B. Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.

Assault or use of criminal force to woman with intent to disrobe.

354C. Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

Voyeurism.

Explanation 1.—For the purpose of this section, "private act" includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.

Explanation 2.—Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.

354D. (1) Any man who—

Stalking.

- (i) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or

(ii) monitors the use by a woman of the internet, email or any other form of electronic communication,

commits the offence of stalking:

Provided that such conduct shall not amount to stalking if the man who pursued it proves that—

(i) it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or

(ii) it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or

(iii) in the particular circumstances such conduct was reasonable and justified.

(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Substitution of new sections 370 and 370A for section 370.

8. For section 370 of the Penal Code, the following sections shall be substituted, namely:—

Trafficking of person

'370. (i) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by—

First.— using threats, or

Secondly.— using force, or any other form of coercion, or

Thirdly.— by abduction, or

Fourthly.— by practising fraud, or deception, or

Fifthly.— by abuse of power, or

Sixthly.— by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received,

commits the offence of trafficking.

Explanation 1.—The expression "exploitation" shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Explanation 2.—The consent of the victim is immaterial in determination of the offence of trafficking.

(2) Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.

(3) Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(4) Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

(5) Where the offence involves the trafficking of more than one minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine.

(6) If a person is convicted of the offence of trafficking of minor on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

(7) When a public servant or a police officer is involved in the trafficking of any person then, such public servant or police officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

370A. (f) Whoever, knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine.

Exploitation of a trafficked person

(2) Whoever, knowingly by or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than three years, but which may extend to five years, and shall also be liable to fine.

9. For sections 375, 376, 376A, 376B, 376C and 376D of the Penal Code, the following sections shall be substituted, namely:—

Substitution of new sections for sections 375, 376, 376A, 376B, 376C and 376D.

375. A man is said to commit "rape" if he—

Rape.

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

under the circumstances falling under any of the following seven descriptions:—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.—With or without her consent, when she is under eighteen years of age.

Seventhly.—When she is unable to communicate consent.

Explanation 1.—For the purposes of this section, "vagina" shall also include *labia majora*.

Explanation 2.—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1.—A medical procedure or intervention shall not constitute rape.

Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

Punishment
for rape.

376. (1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever,—

(a) being a police officer, commits rape—

(i) within the limits of the police station to which such police officer is appointed; or

(ii) in the premises of any station house; or

(iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

(b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

(c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or

(d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

(e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or

(f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or

(g) commits rape during communal or sectarian violence; or

(h) commits rape on a woman knowing her to be pregnant; or

(i) commits rape on a woman when she is under sixteen years of age;

or

- (j) commits rape, on a woman incapable of giving consent; or
- (k) being in a position of control or dominance over a woman, commits rape on such woman; or
- (l) commits rape on a woman suffering from mental or physical disability; or
- (m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or
- (n) commits rape repeatedly on the same woman,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Explanation.—For the purposes of this sub-section,—

(a) "armed forces" means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;

(b) "hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;

(c) "police officer" shall have the same meaning as assigned to the expression "police" under the Police Act, 1861;

(d) "women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.

376A. Whoever, commits an offence punishable under sub-section (1) or sub-section (2) of section 376 and in the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death.

Punishment for causing death or resulting in persistent vegetative state of victim.

376B. Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.

Sexual intercourse by husband upon his wife during separation.

Explanation.—In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375.

376C. Whoever, being—

- (a) in a position of authority or in a fiduciary relationship; or
- (b) a public servant; or
- (c) superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force, or a women's or children's institution; or
- (d) on the management of a hospital or being on the staff of a hospital,

abuses such position or fiduciary relationship to induce or seduce any woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than five years, but which may extend to ten years, and shall also be liable to fine.

Sexual intercourse by a person in authority.

Explanation 1.—In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375.

Explanation 2.—For the purposes of this section, *Explanation 1* to section 375 shall also be applicable.

Explanation 3.—"Superintendent", in relation to a jail, remand home or other place of custody or a women's or children's institution, includes a person holding any other office in such jail, remand home, place or institution by virtue of which such person can exercise any authority or control over its inmates.

Explanation 4.—The expressions "hospital" and "women's or children's institution" shall respectively have the same meaning as in *Explanation* to sub-section (2) of section 376.

Gang rape:

376D. Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.

Punishment for repeat offenders.

376E. Whoever has been previously convicted of an offence punishable under section 376 or section 376A or section 376D and is subsequently convicted of an offence punishable under any of the said sections shall be punished with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death.

Amendment of section 509.

10. In section 509 of the Penal Code, for the words "shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both", the words "shall be punished with simple imprisonment for a term which may extend to three years, and also with fine" shall be substituted.

CHAPTER III

AMENDMENTS TO THE CODE OF CRIMINAL PROCEDURE, 1973

Amendment of section 26.

11. In the Code of Criminal Procedure, 1973 (hereafter in this Chapter referred to as the Code of Criminal Procedure), in section 26, in the proviso to clause (a), for the words, figures and letters "offence under section 376 and sections 376A to 376D of the Indian Penal Code", the words, figures and letters "offence under section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code" shall be substituted.

2 of 1974.

45 of 1860.

Amendment of section 54A.

12. In section 54A of the Code of Criminal Procedure, the following provisos shall be inserted, namely:—

"Provided that, if the person identifying the person arrested is mentally or physically disabled, such process of identification shall take place under the supervision of a Judicial Magistrate who shall take appropriate steps to ensure that such person identifies the person arrested using methods that person is comfortable with:

SEC. IJ

THE GAZETTE OF INDIA EXTRAORDINARY

9

Provided further that if the person identifying the person arrested is mentally or physically disabled, the identification process shall be videographed."

13. In section 154 of the Code of Criminal Procedure, in sub-section (1), the following provisos shall be inserted, namely:—

Amendment
of section
154.

"Provided that if the information is given by the woman against whom an offence under section 326A, section 326B, section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer:

45 of 1860.

Provided further that—

(a) in the event that the person against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;

45 of 1860

(b) the recording of such information shall be videographed;

(c) the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5A) of section 164 as soon as possible."

14. In section 160 of the Code of Criminal Procedure, in sub-section (1), in the proviso, for the words "under the age of fifteen years or woman", the words "under the age of fifteen years or above the age of sixty-five years or a woman or a mentally or physically disabled person" shall be substituted.

Amendment
of section
160.

15. In section 161 of the Code of Criminal Procedure, in sub-section (3), after the proviso, the following proviso shall be inserted, namely:—

Amendment
of section
161.

"Provided further that the statement of a woman against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code is alleged to have been committed or attempted shall be recorded, by a woman police officer or any woman officer."

45 of 1860.

16. In section 164 of the Code of Criminal Procedure, after sub-section (5), the following sub-section shall be inserted, namely:—

Amendment
of section
164.

"(5A) (a) In cases punishable under section 354, section 354A, section 354B, section 354C, section 354D, sub-section (1) or sub-section (2) of section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code, the Judicial Magistrate shall record the statement of the person against whom such offence has been committed in the manner prescribed in sub-section (5), as soon as the commission of the offence is brought to the notice of the police:

45 of 1860.

Provided that if the person making the statement is temporarily or permanently mentally or physically disabled, the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement:

Provided further that if the person making the statement is temporarily or permanently mentally or physically disabled, the statement made by the person, with the assistance of an interpreter or a special educator, shall be videographed.

10	THE GAZETTE OF INDIA EXTRAORDINARY	[PART II—
	<p>(b) A statement recorded under clause (a) of a person, who is temporarily or permanently mentally or physically disabled, shall be considered a statement in lieu of examination-in-chief, as specified in section 137 of the Indian Evidence Act, 1872 such that the maker of the statement can be cross-examined on such statement, without the need for recording the same at the time of trial."</p>	1 of 1872.
Amendment of section 173.	<p>17. In section 173 of the Code of Criminal Procedure, in sub-section (2), in sub-clause (h) of clause (i), for the words, figures and letter "or 376D of the Indian Penal Code", the words, figures and letters "376D or section 376E of the Indian Penal Code" shall be substituted.</p>	45 of 1860.
Amendment of section 197.	<p>18. In section 197 of the Code of Criminal Procedure, after sub-section (1), the following Explanation shall be inserted, namely:—</p>	
	<p>"Explanation.—For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376, section 376A, section 376C, section 376D or section 509 of the Indian Penal Code."</p>	45 of 1860.
Insertion of new section 198B.	<p>19. After section 198A of the Code of Criminal Procedure, the following section shall be inserted, namely:—</p>	
Cognizance of offence.	<p>"198B. No Court shall take cognizance of an offence punishable under section 376B of the Indian Penal Code where the persons are in a marital relationship, except upon <i>prima facie</i> satisfaction of the facts which constitute the offence upon a complaint having been filed or made by the wife against the husband."</p>	45 of 1860.
Amendment of section 273.	<p>20. In section 273 of the Code of Criminal Procedure, before the Explanation, the following proviso shall be inserted, namely:—</p>	
	<p>"Provided that where the evidence of a woman below the age of eighteen years who is alleged to have been subjected to rape or any other sexual offence, is to be recorded, the court may take appropriate measures to ensure that such woman is not confronted by the accused while at the same time ensuring the right of cross-examination of the accused."</p>	
Amendment of section 309.	<p>21. In section 309 of the Code of Criminal Procedure, for sub-section (1), the following sub-section shall be substituted, namely:—</p>	
	<p>"(1) In every inquiry or trial the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded:</p>	
	<p>Provided that when the inquiry or trial relates to an offence under section 376, section 376A, section 376B, section 376C or section 376D of the Indian Penal Code, the inquiry or trial shall, as far as possible be completed within a period of two months from the date of filing of the charge sheet."</p>	45 of 1860.
Amendment of section 327.	<p>22. In section 327 of the Code of Criminal Procedure, in sub-section (2), for the words, figures and letter "or section 376D of the Indian Penal Code", the words, figures and letters "section 376D or section 376E of the Indian Penal Code" shall be substituted.</p>	45 of 1860.
Insertion of new sections 357B and 357C.	<p>23. After section 357A of the Code of Criminal Procedure, the following sections shall be inserted, namely:—</p>	
Compensation to be in addition to fine under section 326A or section 376D of Indian Penal Code.	<p>"357B. The compensation payable by the State Government under section 357A shall be in addition to the payment of fine to the victim under section 326A or section 376D of the Indian Penal Code.</p>	45 of 1860.
Treatment of victims.	<p>357C. All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under section 326A, 376, 376A, 376B, 376C, 376D or section 376E of the Indian Penal Code, and shall immediately inform the police of such incident."</p>	45 of 1860.

SEC. 1] THE GAZETTE OF INDIA EXTRAORDINARY 11

45 of 1860.

24. In the First Schedule to the Code of Criminal Procedure, under the heading "I-OFFENCES UNDER THE INDIAN PENAL CODE",—

Amendment of First Schedule.

(a) after the entries relating to section 166, the following entries shall be inserted, namely:—

1	2	3	4	5	6
"166A	Public servant disobeying direction under law.	Imprisonment for minimum 6 months which may extend to 2 years and fine.	Cognizable	Bailable	Magistrate of the first class.
166B	Non-treatment of victim by hospital.	Imprisonment for 1 year or fine or both.	Non-cognizable	Bailable	Magistrate of the first class";

(b) after the entries relating to section 326, the following entries shall be inserted, namely:—

1	2	3	4	5	6
"326A	Voluntarily causing grievous hurt by use of acid, etc.	Imprisonment for not less than 10 years but which may extend to imprisonment for life and fine to be paid to the victim.	Cognizable	Non-bailable	Court of Session.
326B	Voluntarily throwing or attempting to throw acid.	Imprisonment for 5 years but which may extend to 7 years and with fine.	Cognizable	Non-bailable	Court of Session";

(c) for the entries relating to section 354, the following entries shall be substituted, namely:—

1	2	3	4	5	6
"354	Assault or use of criminal force to woman with intent to outrage her modesty.	Imprisonment of 1 year which may extend to 5 years, and with fine.	Cognizable	Non-bailable	Any Magistrate.
354A	Sexual harassment of the nature of unwelcome physical contact and advances or a demand or request for sexual favours, showing pornography.	Imprisonment which may extend to 3 years or with fine or with both.	Cognizable	Bailable	Any Magistrate.
	Sexual harassment of the nature of making sexually coloured remark.	Imprisonment which may extend to 1 year or with fine or with both.	Cognizable	Bailable	Any Magistrate.

12 THE GAZETTE OF INDIA EXTRAORDINARY [PART II—					
1	2	3	4	5	6
354B	Assault or use of criminal force to woman with intent to disrobe.	Imprisonment of not less than 3 years but which may extend to 7 years and with fine.	Cognizable	Non-bailable	Any Magistrate.
354C	Voyeurism.	Imprisonment of not less than 1 year but which may extend to 3 years and with fine for first conviction.	Cognizable	Bailable	Any Magistrate.
		Imprisonment of not less than 3 years but which may extend to 7 years and with fine for second or subsequent conviction.	Cognizable	Non-bailable	Any Magistrate.
354D	Stalking.	Imprisonment up to 3 years and with fine for first conviction.	Cognizable	Bailable	Any Magistrate.
		Imprisonment up to 5 years and with fine for second or subsequent conviction.	Cognizable	Non-bailable	Any Magistrate.*

(d) for the entries relating to section 370, the following entries shall be substituted, namely:—

1	2	3	4	5	6
370	Trafficking of person.	Imprisonment of not less than 7 years but which may extend to 10 years and with fine.	Cognizable	Non-bailable	Court of Session.
	Trafficking of more than one person.	Imprisonment of not less than 10 years but which may extend to imprisonment for life and with fine.	Cognizable	Non-bailable	Court of Session.
	Trafficking of a minor.	Imprisonment of not less than 10 years but which may extend to imprisonment for life and with fine.	Cognizable	Non-bailable	Court of Session.
	Trafficking of more than one minor.	Imprisonment of not less than 14 years but which may extend to imprisonment for life and with fine.	Cognizable	Non-bailable	Court of Session.

Sec. 1] THE GAZETTE OF INDIA EXTRAORDINARY					
1	2	3	4	5	6
	Person convicted of offence of trafficking of minor on more than one occasion.	Imprisonment for life which shall mean the remainder of that person's natural life and with fine.	Cognizable	Non-bailable	Court of Session.
	Public servant or a police officer involved in trafficking of minor.	Imprisonment for life which shall mean the remainder of that person's natural life and with fine.	Cognizable	Non-bailable	Court of Session.
370A	Exploitation of a trafficked child.	Imprisonment of not less than 5 years but which may extend to 7 years and with fine.	Cognizable	Non-bailable	Court of Session.
	Exploitation of a trafficked person.	Imprisonment of not less than 3 years but which may extend to 5 years and with fine.	Cognizable	Non-bailable	Court of Session*.

(e) for the entries relating to sections 376, 376A, 376B, 376C and 376D, the following entries shall be substituted, namely:—

1	2	3	4	5	6
376	Rape.	Rigorous imprisonment of not less than 7 years but which may extend to imprisonment for life and with fine.	Cognizable	Non-bailable	Court of Session.
	Rape by a police officer or a public servant or member of armed forces or a person being on the management or on the staff of a jail, remand home or other place of custody or women's or children's institution or by a person on the management or on the staff of a hospital, and rape committed by a person in a position of trust or authority towards the person raped or by a near relative of the person raped.	Rigorous imprisonment of not less than 10 years but which may extend to imprisonment for life which shall mean the remainder of that person's natural life and with fine.	Cognizable	Non-bailable	Court of Session.

14 THE GAZETTE OF INDIA EXTRAORDINARY [PART II—					
1	2	3	4	5	6
376A	Person committing an offence of rape and inflicting injury which causes death or causes the woman to be in a persistent vegetative state.	Rigorous imprisonment of not less than 20 years but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life or with death.	Cognizable	Non-bailable	Court of Session.
376B	Sexual intercourse by husband upon his wife during separation.	Imprisonment for not less than 2 years but which may extend to 7 years and with fine.	Cognizable (but only on the complaint of the victim)	Bailable	Court of Session.
376C	Sexual intercourse by a person in authority.	Rigorous imprisonment for not less than 5 years but which may extend to 10 years and with fine.	Cognizable	Non-bailable	Court of Session.
376D	Gang rape.	Rigorous imprisonment for not less than 20 years but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life and with fine to be paid to the victim.	Cognizable	Non-bailable	Court of Session.
376E	Repeat offenders.	Imprisonment for life which shall mean imprisonment for the remainder of that person's natural life or with death.	Cognizable	Non-bailable	Court of Session.*;

(f) in entry relating to section 509, in column 3, for the words "Simple imprisonment for one year, or fine, or both," the words and figure "Simple imprisonment for 3 years and with fine " shall be substituted.

CHAPTER IV

AMENDMENTS TO THE INDIAN EVIDENCE ACT, 1872

1 of 1872.	25. After section 53 of the Indian Evidence Act, 1872 (hereafter in this Chapter referred to as the Evidence Act), the following section shall be inserted, namely:—	Insertion of new section 53A.
45 of 1860.	<p>"53A. In a prosecution for an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code or for attempt to commit any such offence, where the question of consent is in issue, evidence of the character of the victim or of such person's previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent."</p> <p>26. For section 114A of the Evidence Act, the following section shall be substituted, namely:—</p>	Evidence of character or previous sexual experience not relevant in certain cases. Substitution of new section for section 114A.
45 of 1860.	<p>"114A. In a prosecution for rape under clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause (l), clause (m) or clause (n) of sub-section (2) of section 376 of the Indian Penal Code, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent.</p>	Presumption as to absence of consent in certain prosecution for rape.
45 of 1860.	<p><i>Explanation.</i>— In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375 of the Indian Penal Code.</p> <p>27. For section 119 of the Evidence Act, the following section shall be substituted, namely:—</p>	Substitution of new section for section 119.
	<p>"119. A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court, evidence so given shall be deemed to be oral evidence:</p> <p style="padding-left: 2em;">Provided that if the witness is unable to communicate verbally, the Court shall take the assistance of an interpreter or a special educator in recording the statement, and such statement shall be videographed."</p>	Witness unable to communicate verbally.
45 of 1860.	<p>28. In section 146 of the Evidence Act, for the proviso, the following proviso shall be substituted, namely:—</p> <p>"Provided that in a prosecution for an offence under section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code or for attempt to commit any such offence, where the question of consent is an issue, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the victim as to the general immoral character, or previous sexual experience, of such victim with any person for proving such consent or the quality of consent."</p>	Amendment of section 146.

16 THE GAZETTE OF INDIA EXTRAORDINARY [PART II—SEC. 1]

CHAPTER V

AMENDMENT TO THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

Substitution
of new
sections for
section 42.
Alternate
punishment.

29. For section 42 of the Protection of Children from Sexual Offences Act, 2012, the following sections shall be substituted, namely:— 32 of 2012.

“42. Where an act or omission constitutes an offence punishable under this Act and also under sections 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376, 376A, 376C, 376D, 376E or section 509 of the Indian Penal Code, then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment under this Act or under the Indian Penal Code as provides for punishment which is greater in degree. 45 of 1860.

Act not in
derogation of
any other law.

42A. The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency.”

CHAPTER VI

MISCELLANEOUS

Repeal and
savings.

30. (1) The Criminal Law (Amendment) Ordinance, 2013 is hereby repealed. Ord. 3 of 2013

(2) Notwithstanding such repeal, anything done or any action taken under the Indian Penal Code, the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of those Acts, as amended by this Act. 45 of 1860.
2 of 1974.
1 of 1872.

P.K. MALHOTRA,

Secretary to the Govt. of India.

CORRIGENDA

In the Readjustment of Representation of Scheduled Castes and Scheduled Tribes in Parliamentary and Assembly Constituencies Ordinance, 2013 (Ord. 2 of 2013) as published in Gazette of India, Extraordinary, Part II, Section 1, dated the 30th January, 2013 (Issue No. 7):—

1. At page 1, in the long title, for “the inclusion”, read “inclusion”.
2. At page 2, in line 9, for “Ssheduled”, read “Scheduled”.
3. At page 3,—
 - (i) in line 31, for “disolution”, read “dissolution”;
 - (ii) in line 37, for “ommission”, read “omission”;
 - (iii) in line 40, for “expedient”, read “expedient”.

CORRIGENDA

The Criminal Law (Amendment) Ordinance, 2013 (Ord. 3 of 2013) as published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 3rd February, 2013 (Issue No. 8):—

1. At page 11, in line 30, for “proviso”, read “provisos”.
2. At page 15, in column 3 against section 354C, in line 38, for “year”, read “years”.
3. At page 16, in line 1, for “sections”, read “section”.

PRINTED BY THE GENERAL MANAGER, GOVT. OF INDIA PRESS, MINTO ROAD, NEW DELHI
AND PUBLISHED BY CONTROLLER OF PUBLICATIONS, DELHI—2013

GMGPMRND—08G(S4)—02-04-2013.

ANNEXURE-6: Armed Forces Special Powers Act, 1958

THE ARMED FORCES (SPECIAL POWERS) ACT, 1958

ACT NO. 28 OF 1958

[11th September, 1958.]

An Act to enable certain special powers to be conferred upon members of the armed forces in disturbed areas ¹[in the States of ²[³[Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura]]].

BE it enacted by Parliament in the Ninth Year of the Republic of India as follows:—

1. Short title and extent.—(1) This Act may be called ⁴[the Armed Forces (Special Powers) Act, 1958].

⁵[(2) It extends to the whole of the States of ²[³[Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura]]].

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) “armed forces” means the military forces and the air forces operating as land forces, and includes any other armed forces of the Union so operating;

(b) “disturbed area” means an area which is for the time being declared by notification under section 3 to be a disturbed area;

(c) all other words and expressions used herein, but not defined and defined in the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), shall have the meanings respectively assigned to them in those Acts.

⁶[3. **Power to declare areas to be disturbed areas.**—If, in relation to any State or Union territory to which this Act extends, the Governor of that State or the Administrator of that Union territory or the Central Government, in either case, is of the opinion that the whole or any part of such State or Union territory, as the case may be, is in such a disturbed or dangerous condition that the use of armed forces in aid of the civil power is necessary, the Governor of that State or the Administrator of that Union territory or the Central Government, as the case may be, may, by notification in the Official Gazette, declare the whole or such part of such State or Union territory to be a disturbed area.]

4. Special powers of the armed forces.—Any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the armed forces may, in a disturbed area,—

(a) if he is of opinion that it is necessary so to do for the maintenance of public order, after giving such due warning as he may consider necessary, fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of fire-arms, ammunition or explosive substances;

1. Subs. by Act 7 of 1972, s. 2, for “in the State of Assam and the Union territory of Manipur” (w.e.f. 5-4-1972).

2. Subs. by Act 34 of 1986, s. 40, for “Meghalaya, Nagaland and Tripura and the Union territories of Arunachal Pradesh and Mizoram” (w.e.f. 20-2-1987).

3. Subs. by Act 69 of 1986, s. 43, for “Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura and the Union territory of Arunachal Pradesh” (w.e.f. 20-2-1987).

4. Subs. by Act 7 of 1972, s. 3, for “the Armed Forces (Assam and Manipur) Special Powers Act, 1958” (w.e.f. 5-4-1972).

5. Subs. by s. 3, *ibid.*, for sub-section (2) (w.e.f. 5-4-1972).

6. Subs. by s. 4, *ibid.*, for section 3 (w.e.f. 5-4-1972).

(b) if he is of opinion that it is necessary so to do, destroy any arms dump, prepared or fortified position or shelter from which armed attacks are made or are likely to be made or are attempted to be made, or any structure used as a training camp for armed volunteers or utilised as a hide-out by armed gangs or absconders wanted for any offence;

(c) arrest, without warrant, any person who has committed a cognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence and may use such force as may be necessary to effect the arrest;

(d) enter and search without warrant any premises to make any such arrest as aforesaid or to recover any person believed to be wrongfully restrained or confined or any property reasonably suspected to be stolen property or any arms, ammunition or explosive substances believed to be unlawfully kept in such premises, and may for that purpose use such force as may be necessary.

5. Arrested persons to be made over to the police.—Any person arrested and taken into custody under this Act shall be made over to the officer in charge of the nearest police station with the least possible delay, together with a report of the circumstances occasioning the arrest.

6. Protection to persons acting under Act.—No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act.

7. [*Repeal and Saving.*] *Rep. by the Repealing and Amending Act, 1960 (58 of 1960), s. 2 and the First Schedule (w.e.f. 26-12-1960).*



ASIAN CENTRE FOR HUMAN RIGHTS

C-3/441-C, Janakpuri,
New Delhi-110058, India
Phone/Fax: +91-11-25620583
Email: director@achrweb.org
Website: www.achrweb.org

Asian Centre for Human Rights is dedicated to promotion and protection of human rights and fundamental freedoms in the Asian region by:

- providing accurate and timely information and complaints to the National Human Rights Institutions, the United Nations bodies and mechanisms as appropriate;
- conducting investigation, research, campaigning and lobbying on country situations or individual cases;
- increasing the capacity of human rights defenders and civil society groups through relevant trainings on the use of national and international human rights procedures;
- providing input into international standard-setting processes on human rights;
- providing legal, political and practical advice according to the needs of human rights defenders and civil society groups; and
- by securing the economic, social and cultural rights through rights-based approaches to development.