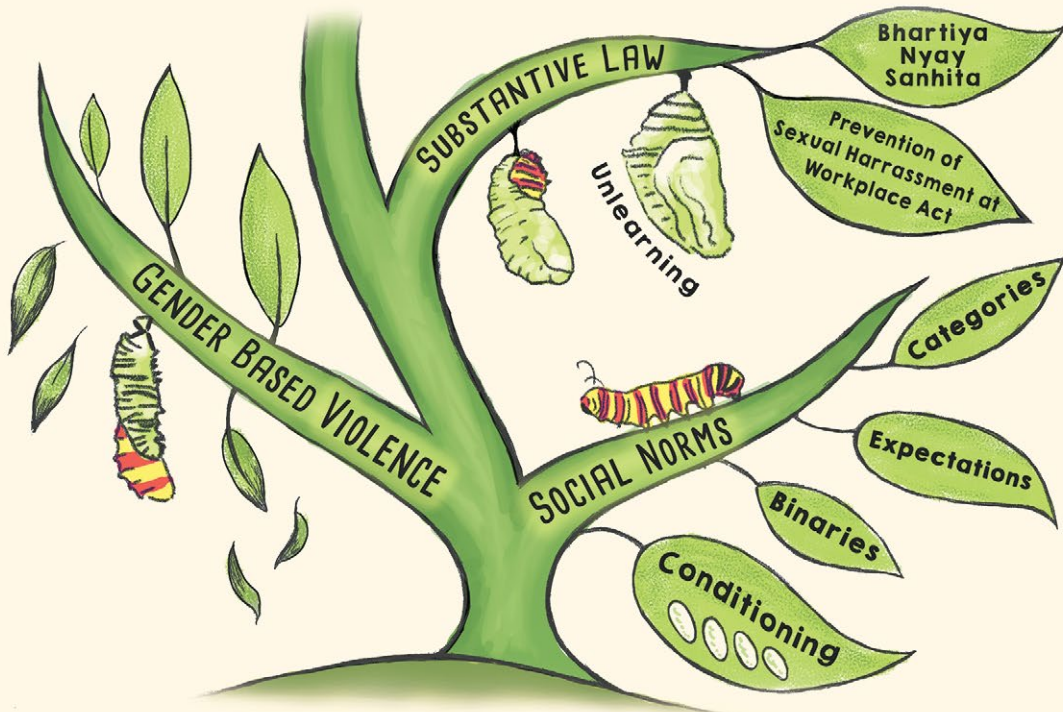


TOWARDS TRANSFORMATION

A LEARNING RESOURCE ON GENDER AND
LAW IN THE CONTEXT OF VIOLENCE AGAINST WOMEN



TOWARDS TRANSFORMATION

**A LEARNING RESOURCE ON GENDER AND
LAW IN THE CONTEXT OF VIOLENCE AGAINST WOMEN**

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The stories contained in this publication are fictional and created solely for illustrative purposes to aid the understanding of legal concepts. Though inspired by real-life situations, they do not depict actual events or individuals.

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About Department of Justice, Ministry of Law and Justice

Keeping in view the increasing workload and formulating many policies and programmes on judicial reforms in the country, a separate department namely the Department of Justice was carved out from the Ministry of Home Affairs and placed under the charge of Secretary to the Government of India, and it started working as such from 1st January 2010 under the Ministry of Law and Justice. The Department of Justice introduced a scheme on access to justice titled 'Designing Innovative Solutions for Holistic Access to Justice' for a period of five- years (2021-2026). It aims to secure 'justice' for the people of India as enunciated in the Preamble and under Articles 39A, 14 and 21 of the Constitution of India. It widens the outreach of its Tele-Law, Pro Bono Legal Services (Nyaya Bandhu) and Legal Literacy and Legal Awareness programmes, both qualitatively and quantitatively. It further aims to create awareness and dissemination through the use of technology and developing simplified Information, Education and Communication (IEC) material for the masses.

About National Law University Delhi

Being a premier law university in India and securing a second rank in the National Institutional Ranking Framework for three consecutive years, National Law University Delhi (NLUD) believes in imparting legal education that is socially relevant. It endeavours to make legal education an instrument of social, political and economic change. Other than the legal education that it provides through undergraduate, postgraduate and Ph.D. programmes, it also regularly conducts capacity-building programmes for vital stakeholders involved in implementing the law, such as police officers, revenue officers, the Central Reserve Police Force, etc.

About Centre for Law, Justice and Development, National Law University Delhi

Established in 2018, the Centre for Law, Justice and Development (CLJD) envisions revisiting, analysing, and engaging with development discourse and its interface with legal discourse. It has been specifically working on the rights of the marginalised communities through empirical research, policy interventions, training and the creation of resource materials.

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About

The Centre for Law, Justice and Development (CLJD), National Law University Delhi (NLUD) undertook a project titled *Adhikaaron ka Gyaan, Unnati ki Pehchaan*, under the aegis of the Department of Justice, Government of India, as part of its broader scheme of 'Designing Innovative Solutions for Holistic Access to Justice (DISHA)'. The project focused on gender sensitisation and raising legal awareness on violence against women. This learning resource has been prepared as a part of this project.

Violence against women can be understood through many perspectives. One of these is to condemn it as a crime to be addressed through laws and executive measures. However, this only addresses those acts of violence that have been criminalised under prevailing criminal law. What remains outside the purview of this are those acts of apparent, subtle or masked violence that are not recognised as crimes. This learning resource titled '*Towards Transformation: A Learning Resource on Gender and Law in the Context of Violence Against Women*', rather than ignoring this dichotomy, seeks to creatively unpack it for the readers primarily by providing analytical tools for engaging with the law as well as, to a limited extent, by identifying the limits of the law that are too glaring. In doing so, it seeks to creatively push learners beyond itself in their journey towards more illuminated horizons. This resource is thus not a simplistic presentation of how law seeks to prohibit and address violence against women but seeks to guide the learners towards a more nuanced understanding leading to more robust approaches to addressing violence against women.

The words '*Towards Transformation*' signifies a journey from the present to a hopeful future, where the concern of violence against women is also identified as a structural problem rather than merely as a wrongful action. The learning resource questions the existing ways of thinking and being. By moving away from providing simplistic solutions, it focuses on developing an appropriate understanding of the problem, which as this resource will demonstrate – is a difficult, but not an impossible task. The content of this learning resource is expressed through two characters, *Haqiqat* (Reality) and *Umeed* (Hope) represented by a caterpillar and a butterfly respectively. The questions posed by *Haqiqat* are sought to be answered by *Umeed*, with the hope that the approaches to addressing violence against women are transformatory in nature, while not being oblivious to the complexities and challenges involved.

This learning resource is divided into three parts. Part I discusses social expectations that emanate from socially prevailing norms. Though this part starts with a

conversation between a mother and her son, the process of dissecting these norms will aid the reader in applying this to any other situation where there is a conflict between what one wants and what is expected of them. It hopes to enable the reader to think about questions such as *whether these norms are inclusive and infallible, how do they determine expectations, whether the expectations fall equally on everyone, when do these expectations become discriminatory*, etc. The explanations corresponding to these questions are discussed in the specific context of sex and gender, and masculinity and femininity to foreground the concerns arising out of thinking in 'binaries'. This part also deploys gender as an analytical category to discern the structures within which we exist and to understand violence against women as that which is rooted in gender-based discrimination. This discrimination is further complicated on account of the complex multitude of identities and contexts in which women live.

Part II introduces the notion of crime and how specific crimes are defined under penal laws. Specific actions and state of mind that constitute different crimes against women are introduced through stories drawing the attention of the learners to those aspects of the story that go on to make up a crime. Visual illustrations indicating crimes and flowcharts pertaining to essential ingredients of crimes have been used to raise awareness regarding the laws on crimes against women. It also discusses a few special laws which seek to provide civil remedies instead of criminal ones, for certain acts of violence against women.

Mere knowledge of what constitutes a crime is inadequate to secure redress in cases of violence against women. It is equally important to know the procedures followed by various agencies involved in the criminal justice system, the processes through which such crimes are redressed, and the parallel civil remedies available under special laws for certain acts of violence. Considering that survivors of violence need assistance to navigate these processes and may require various other forms of support during the course of legal proceedings, several support structures established under legislation and executive schemes aim to assist the survivors in multiple ways. Thus, the processes through which various forms of violence against women can be redressed, along with the support structures that exist for the survivors of such violence, form the focus of Part III.

Since it is intended to be a self-learning resource, it is interspersed with exercises which will help the learners not only assess their level of learning but also encourage them to think beyond the content of this resource, thereby building their capacities.

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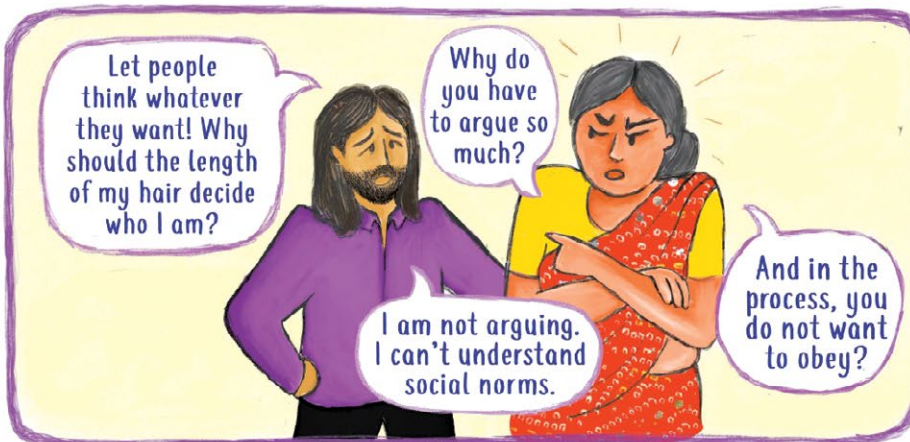
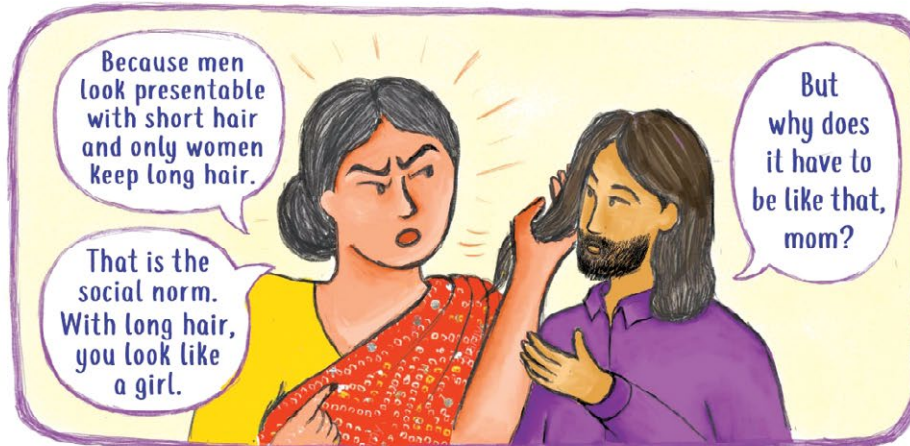
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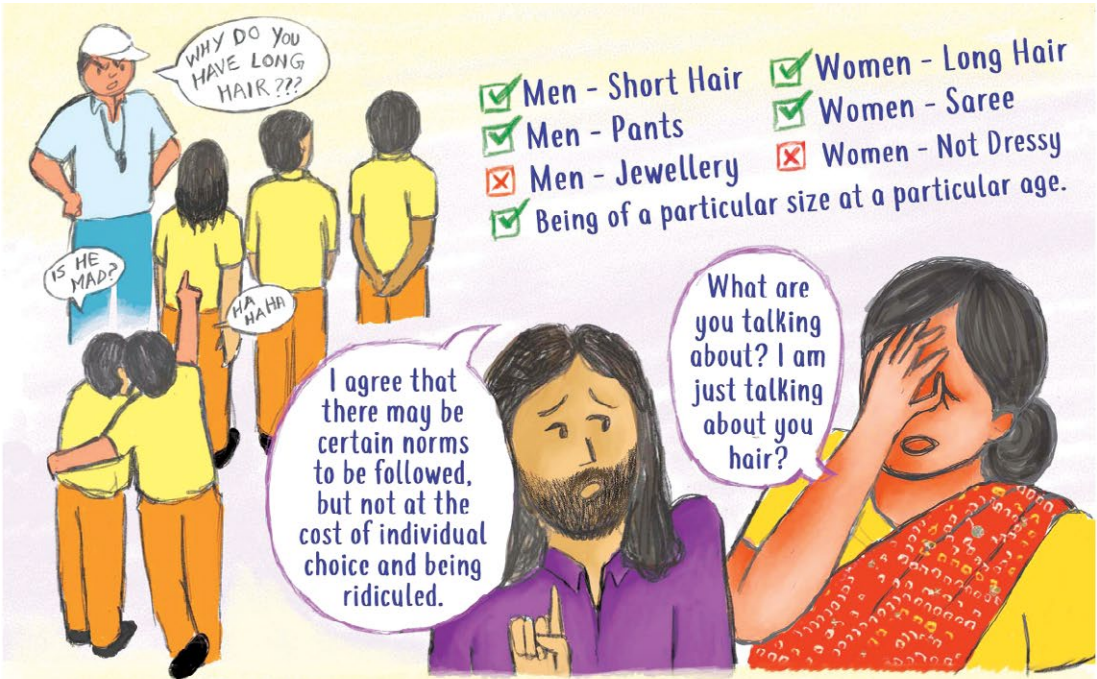
PART I



Engaging with Social Expectations & Social and Legal Norms

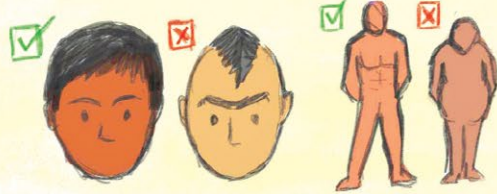
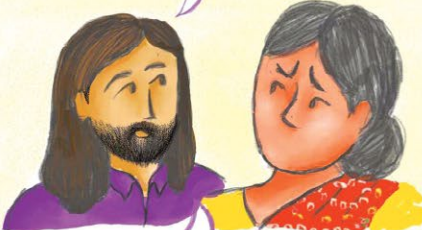






I'm talking about the pattern that gets replicated under the garb of 'social norms'.

It may start from a hair cut, but then there are 'social norms' on clothes, body shapes and sizes for everyone.



Too thin or too fat is not good, but after a particular age, it does not matter what size you are!

Too dark is not good, but if that person is rich and married and has a family, then it does not matter...

...but if that person is not married, dark complexion is a problem!





Hmmm....

I remember I was asked to reduce my weight before marriage to be able to get married easily.

My body size was the focus of everyone's criticism. It was so hard and such a struggle to lose weight.

IT'S DIFFICULT FOR CHUBBY GIRLS TO GET A RISHTA, MANU!

DO YOU KNOW WHY THEY REJECTED HER?

ONLY ONE GULAB JAMUN FOR YOU, OK BETA?

It made me feel bad about my body and lose my confidence.





Haqiqat: I don't like how this boy is being so disrespectful to his mother. Doesn't he know that we shouldn't speak like this or argue with our elders?



Umeed: I can understand your feelings, Haqiqat. However, what exactly are we seeing as disrespectful here? If we treat the expression of reflections, deliberations and engagement as disrespect, then meaningful dialogue can never happen. I rather felt that the boy was only trying to understand why his mother wanted him to cut his hair. We must understand that there is a distinction between voicing your opinion and disrespecting the other person.



Haqiqat: But don't you think this boy just dragged the conversation? There was no reason for him to do this after his mother told him that this is what has been accepted by society and followed for centuries.

Exercise No. 1

Have you ever been asked to do anything because it's what other people in your community usually do? Write about your experiences.



Umeed: Should any practice continue only for the reason that it has been followed for centuries? Shouldn't we, as rational individuals, continue to introspect so that we continuously evaluate our choices and decide whether any practice is worthy of being continued or not? Isn't it true that many social reforms have been a result of such introspection and evaluation, for instance, banning the practice of *sati*, allowing widows to remarry as well as our continuing efforts at eliminating child marriage?



Haqiqat: But what is being questioned or evaluated here is socially harmless. One should also learn to ignore such issues.



Umeed: On the contrary, if it is socially inconsequential and doesn't harm anyone else, shouldn't a person have the freedom to decide for themselves?

Even the boy's mother felt the same at the end of the conversation. She remembered being pressured to conform to social norms and expectations about looking a particular way despite the fact that her body size neither affected anyone in society nor her own health.



Haqiqat: But the mother was only interested in the well-being of the boy and did not want him to be ridiculed, as he had been by the two boys in his PT class.



Umeed: You are right, Haqiqat. However, we must try to inquire what the real threats to the boy's well-being in this situation are. The threats to well-being that I can think of are the fear of ridicule, exclusion, disrespect, and the misrecognition of the boy being feminine, and therefore being considered less of a male.



Haqiqat: We can simply punish those who disrespect or devalue anyone, right? Rejection of what has been settled centuries ago is not required.



Umeed: Of course, if ridicule amounts to a crime such as defamation, i.e., injuring the reputation of the person, it is punishable under the Bharatiya Nyaya Sanhita, 2023. Prior to July 2024, such crimes were punishable under the Indian Penal Code, 1860. Punishment will be imposed only if that ridicule amounts to the crime of defamation and the same is proved in the court of law. However, we must recognise that punishing those who violate someone's dignity will only address the symptom of the problem and not its cause. One of the major factors that encourage people to react in this way is their conditioning by the prevailing social norms and practices.



Haqiqat: Can you explain what you mean by prevailing social norms and practices?



Umeed: Sure! **Social norms and practices** consist of behaviour that is exhibited repetitively as 'normal,' 'desirable' and 'acceptable'

by most of the people in society. Choice of clothes, hairstyle, mannerisms, lifestyle and other similar aspects of our existence are generally governed by what we see prevailing around us. Thus, we can say that social norms and practices include beliefs regarding how different individuals and groups should behave, what qualities they must possess, what role they should perform, etc. Such dominant majoritarian practices emerge as normal and unquestionable. Anything different or any act that does not match such normalised practice is then labelled as deviant or wrong. The more dominant and stronger the association of people with a particular image or practice, the more deeply ingrained it becomes in our minds. Consequently, the stronger the reaction to any deviation from it.



Figure 1: Anything that deviates from the norm is labelled as deviant or wrong

Exercise No. 2

Which of the following are the characteristics of social norms?

- (a) beliefs about roles, behaviour, etc.
- (b) accepted by the majority of the people
- (c) followed by only certain individuals
- (d) dominant practices of the society
- (e) repetitive practices
- (f) accepted by all members of the society



Haqiqat: Doesn't acceptance of a norm by the majority of people actually indicate the worth and value of the norm? Should we be challenging the wisdom of the majority and accept that deviants are right? Isn't it like putting things upside down? Many laws, like those prohibiting murder, assault or theft are based on the wisdom of the majority. Should we be questioning even these basic rules that govern us?



Umeed: Good question, Haqiqat. The issue is whether the only test for the continuation of a practice can be the acceptance of a norm by the majority of people. If we adopt this test, the practices of minorities will always be overridden by that of the majority. Our moral standards would then become merely a product of numbers. Morality will be a slave of the majority. Therefore, we need to adopt more robust criteria to decide these matters.



Haqiqat: Can you suggest a criterion which is more robust than this?



Umeed: One such criterion that some thinkers have suggested is the harm test, i.e., we need to differentiate between acts that cause harm to others and those that do not.



Haqiqat: Yes, but in this conversation between mother and son, the mother is sad at the way her son is behaving with her. Isn't that harm as well?



Umeed: Not exactly, Haqiqat! Aspects of our collective existence are not as straightforward. We need to distinguish between physical harms and mental harms. Physical harms are absolutely unacceptable in any society and for those, we have laws like the ones I mentioned before. However, if all mental harms like feeling bad about something done by another person are made punishable then our freedom will be in danger. Different persons may have different thresholds or standards for what might make them feel bad. Even in the dialogue between the mother and son, did the mother feel bad because the son was arguing with her or was she worried about what their relatives and other people would say about him and the way she has brought him up?

This conversation demonstrated that the mother's major concern was the latter. If society had not been conditioned to believe that men must have short hair, or else they would be under the threat of being ridiculed, probably her son's long hair wouldn't have bothered her. The mother's mental stress is not due to the son's behaviour, but rather the deviation from the societal norm that males should have short hair. She felt the same stress when she was young and was expected to have a slim body to be able to get married easily.



Haqiqat: It means that all of us are conditioned by prevailing social norms. All of us feel bound or constrained by these norms. The form in which they may constrain us varies and may affect us at different points of time in life. Both the son and the mother were so constrained in different ways at different points of time in life. We are all affected by these norms, but we still remain carriers of these norms. Our lives oscillate between accepting, contesting and negotiating these norms while navigating our social relationships. So, should we discontinue all societal norms?



Umeed: Haqiqat, to be able to think about the continuation or discontinuation of social norms we need to understand how they emerge and the possible ways in which they may discontinue.



Haqiqat: Can you help me understand this better?



Umeed: Traditional societies of the past were governed only through social norms that emerged slowly through repetitive practices prevailing in society. These repetitive practices gradually became recognised as standards for assessing the behaviour of everyone in any society. In those societies, the legality or illegality of an action was determined by referring to the prevailing repetitive practice which people had come to regard as a standard to identify deviation in society. We call such repetitive practices customs which were the only rules governing such societies.

Exercise No. 3

Can you think of any customs which we follow in our everyday interactions with other persons?



Haqiqat: Umeed, apart from social rules, legal rules also bind us today. Do they also emerge like customs in traditional societies of the past?



Umeed: In traditional societies of the past, the only rules that prevailed were those rules that had emerged socially through repetitive practices. Since society recognised them as standards of behaviour for everyone and also ostracised those who did not follow them, we can say that these social rules were binding, i.e., they had the force of law. However, this changed with the emergence of modern politically organised societies.



Haqiqat: What are modern politically organised societies?



Umeed: Generally, modern politically organised societies are those societies that have politically recognised bodies or institutions which are authorised to make, implement and enforce laws. Today in India, the Parliament and state legislatures are such politically recognised authorities. So, in modern societies, legal rules are mostly laid down by the state, i.e., they are state-made laws. Even in such societies some customs may continue to socially bind individuals. The state may also recognise some of the customs as legally binding. The law laid down or recognised by the state is enforced through the power and authority granted to institutions such as the police and courts.

Traditional Societies of the Past	Modern Societies
No political organisation– only collective existence	Politically organised
Only social norms exist. They are considered to be legally binding.	Legal and social norms co-exist. Some customs may also be recognised as legal norms.
Social norms gradually emerge in society through repetitive practices.	Legal norms are laid down or recognised by politically recognised authorities – like King, Parliament, etc.

Figure 2: Difference between Traditional Societies of the Past and Modern Societies



Haqiqat: So, in modern politically organised societies both legal and social rules coexist. Legal rules are enforced by the state while social rules are enforced through social pressure rather than by the state. However, can these authorised institutions make any law or lay down any rule which may or may not align with the social rules?



Umeed: Yes, in principle they can.



Haqiqat: What does that mean? Is it that they can but generally they don't?



Umeed: There is a complexity involved here. Legal rules may have the following relationship with social rules:

- Legal rules may be aligned with social rules, i.e., both of them may be based on the same principle but may vary in their scope.
- Legal rules may be the same as social rules, i.e., where legal rules are the mirror image of social rules or social rules are recognised as legal rules.
- Legal rules may be ahead of time from social rules, i.e., legal rules may be based on progressive principles.

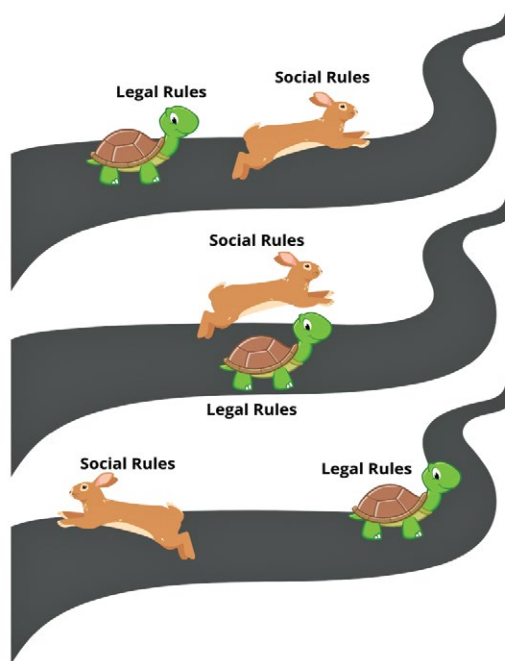


Figure 3: Relationship between Social and Legal Rules



Haqiqat: Umeed, can you elaborate upon all the three relationships between social and legal rules separately?



Umeed: Sure, Haqiqat!

(i) Legal Rules and Social Rules Based on the Same Principles

Certain norms have been crucial for the co-existence of people in every society. In traditional societies of the past, such norms existed in the form of social norms but now they have been incorporated into state-made law. These norms curtail everyone's freedom to the same extent in order to allow everyone to enjoy equal freedom. They have been incorporated into the laws that have been enacted in modern societies. For instance, a norm like the prohibition of murder which has prevailed in societies for ages, now stands incorporated in the official criminal code of the country, i.e., Bharatiya Nyaya Sanhita, which replaced the Indian Penal Code. One may say that certain social norms have thus become legal norms. In such cases, legal norms reinforce the principles behind particular social norms. These are generally principles like freedom, equality and social justice which have been enshrined in the Constitutions of many democratic countries.

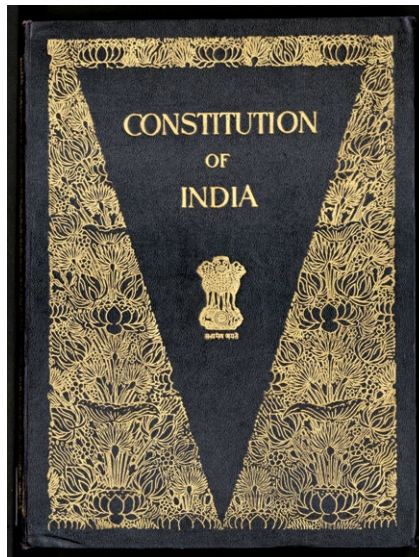


Figure 4: The Constitution of India is the fundamental document that lays down the framework according to which the country must be governed.

(ii) Legal Rules Based on Social Rules Irrespective of Alignment of Principles

In our legal system, certain social, cultural or religious norms have been recognised as having the force of law. These are especially those norms that relate to matters like marriage, divorce, inheritance, succession, adoption, etc. Broadly they are related to relationships, both personal and material, among family members. Here the social rules may have been recognised as legal rules on account of certain policies of the state, like non-interference with religious freedom, supporting prevailing traditions, or on account of expediency. This position may be taken by the state despite the lack of alignment of the principles informing social rules with that of the legally recognised principles. Such norms, which are inconsistent with the principles of the state legal system prevail only through due recognition and specific enforcement by the state. In the absence of such specific recognition, these norms would not qualify as law. India being a democracy, the power to withdraw this recognition and ensure alignment of such laws with the general principles can be secured through the decision of the legislature, which is the law-making body, in this regard. Thus, in certain cases during the codification of law, i.e., the process of documenting already prevailing norms coherently, social norms may be rationalised completely or to a certain extent to ensure their alignment with legally recognised principles.

(iii) Legal Rules Ahead of Times from Social Rules

Political authority is not bound to make laws only according to the prevailing social rules. As mentioned earlier, modern states and the law-making in modern states differ from those in traditional societies of the past in this regard. If a social rule is found to violate the harm principle, curtail the liberty of anyone without any reasonable basis, or be unjust, political authorities like the Parliament may declare the social rule to be illegal. For instance, the practice of *sati* is outlawed by the Commission of Sati (Prevention) Act, 1987 and that of giving or taking dowry has been banned by the Dowry Prohibition Act, 1961.

Exercise No. 4

Give examples of social practices which were considered acceptable in the past, but are now illegal. Write about two such practices.

As long as social rules and legal rules align, they reinforce and strengthen each other, ensuring the rule remains deeply embedded in society. However, when a legal rule is justified by principles that the social rule appears to disregard then real and long-lasting change occurs only when people internalise the new legal rule. Internalisation means that people internally accept and value the new rule and give up the prevailing practice. For instance, the Dowry Prohibition Act which prohibits the giving or taking of dowry was enacted by the Parliament of India in 1961; however, we still find the prevalence of this practice. Since changes in social practices that have been in existence for a long time require a change in the mindset of people, the process is slow and requires questioning, discussing and debating these practices to dismantle our own conditioning and raise consciousness among people.



Haqiqat: Umeed, I think I am slowly beginning understand why we should not stop anyone from questioning and engaging with socially prevailing practices, however deeply they may have been entrenched and for however long they may have been followed. I now see value in allowing the boy to engage with his mother with

respect to the social practice that men should have short hair. After all, the length of hair that someone may want to have is too harmless an act that an individual should have complete freedom to decide for oneself.

But what about practices that are not harmless and actually cause harm to others? You mentioned dowry earlier. I can think of the practice of child marriage, untouchability, etc. There are laws that prohibit them but people don't seem to have internalised the same. Why is this so?



Umeed: All of us are so deeply conditioned by prevailing social practices and ways of thinking that we seldom question them. We silently internalise these practices and simply start treating them as unchangeable as if they are cast in iron. Many such practices affect different people in different ways. As we noticed in the conversation between the mother and the son earlier, there are different social practices pertaining to persons of different age, gender, social group, etc.

Encouraging us to reflect on our age-old practices
Gurudev Rabindranath Tagore wrote in his poem titled
“Where the Mind is Without Fear”:

“...Where the clear stream of reason
has not lost its way into the
dreary desert sand of dead habit;
Where the mind is led forward
by thee into ever widening
thought and action-
into that heaven of freedom...”



Haqiqat: Umeed, are you saying that all social norms impose different obligations on people from different groups?



Umeed: Not all, but many social norms do impose different obligations. Since most societies have historically been organised around certain differences like gender, class, caste, region, religion and so on, social norms continue to govern people's behaviour based on their membership in specific groups.

Exercise No. 5

Are expectations from women different from those of men? Do you find the expectations from or obligations imposed on women more restrictive or exclusionary?



Haqiqat: Do legal norms also categorise individuals and impose different obligations on different groups of persons?



Umeed: Before we get into whether legal norms are also category-specific, we need to have a clear understanding of a range of differences that exist in society, how differentiation is dealt with, and how it relates to discrimination.



Haqiqat: Isn't differentiating among individuals and treating them differently itself discrimination? I think any distinction is discrimination. Everyone should be treated alike.



Umeed: Haqiqat, mere **differentiation**, i.e., the existence of differences among individuals or groups in society is a fact or reality. Differences will anyways exist. All of us are different from each other, our capacities are different, our views are different, our likes and dislikes are different, the way we look is different, we live in different regions, follow different religions, speak different languages, etc. Difference is a social fact, there is nothing just or unjust about it. However, how any society deals with such differences may be just or unjust.



Haqiqat: Is justness or unjustness based on whether the differentiation itself is reasonable or unreasonable?



Umeed: Yes, Haqiqat. Unreasonable differentiation is unacceptable.



Haqiqat: How do we know which differentiation is reasonable and which is unreasonable?



Umeed: We know that differences exist among people in any society. Not everyone is alike. Differences may be based on one's internal capacities like propensity to work hard, valuable skills that are innate or have been acquired, an innovative mind, etc., or, as mentioned earlier, these differences may relate to the colour of skin, gender, religion, ethnic identity, caste, etc. In order to encourage the tendency of hard work among individuals, society may reward hard work and better skills more than laziness or lack of skills. Such distinctions are regarded as reasonable in any society provided enabling conditions are created for people to imbibe certain values and hone their skills. However, differentially rewarding or burdening people only on the basis of their religion, caste, gender, etc. is absolutely irrational. That is the reason why practices like untouchability stands abolished by the Constitution of India. The Constitution also prohibits discrimination on the basis of religion, race, caste, sex or place of birth. Differential treatment that prejudicially affects human dignity, basic rights and fundamental freedoms of an individual or group amounts to **discrimination**.

Differentiation \neq **Discrimination**



Haqiqat: So, differential treatment may be reasonable or may be discriminatory. The one that infringes upon one's rights is discriminatory treatment. Can you elaborate upon differential treatment that is reasonable and thus not discriminatory?



Umeed: Haqiqat, as per the Constitution, the law in India ought not to discriminate against an individual or a group. However, society has bred prejudices that have prevailed with respect to various groups over time.

PREJUDICE

Prejudice means to judge other people negatively or see them as inferior. When we think that only one particular way is the best and right way to do things we often end up not respecting others, who may prefer to do things differently. (NCERT, 2020, page 14)

Prejudices foster inequality. Therefore, a society that fails to eliminate prejudices remains an unequal society. The Constitution of India thus mandates the state to take steps towards building a society that is based on equality. Differential treatment is therefore given to different groups of people who have historically suffered from prejudice. Differential treatment is also given to groups that currently suffer from prejudices that exist against them in society. The historical and cultural disadvantages suffered by certain groups justify such differential norms, such as legal norms relating to reservation of seats in educational institutions, elected bodies or public employment. This is how legal norms laid down by the Parliament and the State Legislatures seek to foster equality in a society that is historically marked by inequalities in different aspects of life.

Difference	Discrimination
It is a social fact.	It manifests in how society deals with social facts.
Differences remain benign if they don't result in prejudice, exclusion, oppression, inequality or exploitation.	When differentiation results in prejudice, exclusion, oppression, inequality or exploitation, it transforms into discrimination.
Human rights mandate respecting differences.	Discrimination violates human rights and fundamental freedoms.

Figure 5: Distinction between Difference and Discrimination



Haqiqat: Haven't we ever had legal norms that are also conditioned by social processes and socially prevailing ways of thinking?

Exercise No. 6

Mention a few laws made by the Parliament or State Legislatures which you think are based on prevailing social practices.



Umeed: To believe that legal norms are completely immune from social processes and socially prevailing ways of thinking would be wrong. For example, consider section 377 of the now-repealed Indian Penal Code, 1860. It, among other things, criminalised consensual sexual activity between people of the same sex. This emanated from the social norm of heteronormativity where homosexuality was considered to be ‘unnatural’. Prevailing modes of thinking and how human beings make sense of this world form the background in which both the social as well as legal norms emerge. However, since legal norms are made consciously through the process of deliberation, this process offers a greater opportunity to remain critical of our own ways of thinking, question them and start afresh. The deliberation also led to the Supreme Court of India reading down the aforesaid provision of law in 2018, leading to the decriminalisation of consensual sexual activity between adults of the same sex in private space [*Navtej Singh Johar v. Union of India, (2018) 10 SCC 1*].

This is a continuous process and requires us to keep thinking and engaging with what prevails socially.

Elaborating Socially Prevailing Ways of Thinking



Haqiqat: While explaining how legal norms relate to social norms, Umeed, you mentioned homosexuality. I have also come across the terms sex, gender and sexual orientation, but I'm not sure what they mean and how they differ. Can you help me understand them better?



Umeed: Sure, Haqiqat. I will first elaborate on how these terms are generally understood, and then I'll explain why they are understood this way and how they may be understood differently. Only after we understand the difference between what prevails dominantly and how it may be understood differently will we be in a position to appreciate the contribution of the Supreme Court of India in decriminalising homosexual acts between two consenting adults in private.



Haqiqat: I would like you to start by explaining the dominant understanding of the term 'sex'.



Figure 6: Sex refers to the biological differences between individuals' bodies.



Umeed: Sex is the most preliminary way of identifying any person. It refers to the categorisation of people based on their biological and physiological characteristics, including reproductive organs, chromosomes, hormones, and other such traits. It is assigned at birth. The dominant understanding of the term sex restricts it to two categories, i.e., male and female.



Haqiqat: But I have also heard of male and female as two genders. Is it the same as sex? If not, are the two related to each other?



Umeed: Sex is primarily related to the biological distinction between bodies that individuals have, whereas **gender**, though connected to sex, yet is informed much more by the attributes, roles, and expectations that society has constructed around the biological sex. Gender also encompasses a person's identity and expression.

SEX
~~≠~~
 GENDER

Figure 7: 'Sex' is different from 'Gender'

Exercise No. 7

Identify whether the following relate to sex or gender:

- Malti and Ravi recently became parents to a baby girl.
- When Samir gets hurt while cycling, his parents tell him to not cry like a girl.
- Aira's family expects her to learn cooking and help her mother in the kitchen.
- Jatin started growing facial hair when he turned 15 years old.
- Suman was born with male genitalia, but his internal reproductive organs are that of a female.



Haqiqat: So basically, sex is biological while gender is socially constructed. In this context, I have also come across terms like masculinity and femininity. Do they relate to sex or gender?



Umeed: Yes, Haqiqat. Masculinity and femininity are based on the social description of the male and female sexes.

Look at the pictures below. Can you tell me which of these pictures indicate acts that you ordinarily see around and the ones that seem a little uncommon?



Female weightlifter



Woman driving a car



Female firefighter



Man being emotional



Boy shaping his nails



Male chef



Strong father



Caring mother



Female school teacher

Figure 8: Different representations of women and men



Haqiqat: Hmm! That's slightly tricky, Umeed! A caring mother, a strong father, a male chef, a female teacher—all of this feels so normal and is appreciated. It seems like an everyday scene. However, I'm

not sure if it's normal for women to perform heavy physical stunts, or for men to be too emotional or vulnerable or to shape their nails. It seems a little odd, doesn't it?



Umeed: Haqiqat, you find certain roles and qualities 'odd' or 'normal' in these pictures because there are characteristics that we associate typically with males and some with females.

MASCULINITY & FEMININITY

The characteristics which are typically associated with males constitute masculinity, whereas the ones associated with females constitute femininity. What is regarded as masculinity or femininity is based on the characteristics that society associates with males and females respectively. Thus, characteristics that may neither be considered fully masculine nor feminine or might be a combination of two continue to remain unrecognised.

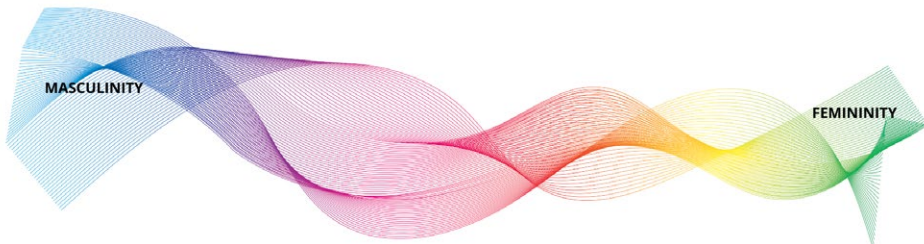


Figure 9: Masculinity and Femininity

The following table mentions some characteristics that are considered masculine and feminine.

Boys/ Men		Girls/ Women	
Strong	These characteristics are associated with males.	Weak	These characteristics are associated with females.
Confident		Timid	
Unyielding		Accommodative	
Assertive		Receptive	
Domineering		Submissive	
Independent		Dependent	
Logical		Emotional	



Haqiqat: The masculine and feminine characteristics that you have enumerated only indicate that men and women are different. As I now know, they are different, so what's the problem in recognising this distinction?



Umeed: Is it mere difference, Haqiqat? We discussed earlier that benign differentiation is not a problem. In fact, **diversity** is valuable.



Figure 10: Diversity

WHAT IS DIVERSITY?

Diversity refers to the co-existence of a variety of differences around us, such as those relating to gender, region, religion, language, etc.

In the context of gender, it means that people may or may not follow the established gender norms. They may choose to identify and express themselves differently from the prescribed gender roles and traits as per their choice and preferences. This makes each individual different and unique.

However, **two concerns** arise in this regard:

- (i) When we identify men and women as different we also assume that they exhibit homogeneous characteristics. In other words, all men exhibit only masculine characteristics and all women exhibit only feminine characteristics. It does not

recognise diversity within the categories of men and women itself. Further, it invisibilises those who don't identify as either of those categories or locate themselves in a spectrum within these categories. It creates a single image of both men and women, thus creating a stereotype, while at the same time obscuring all other categories.

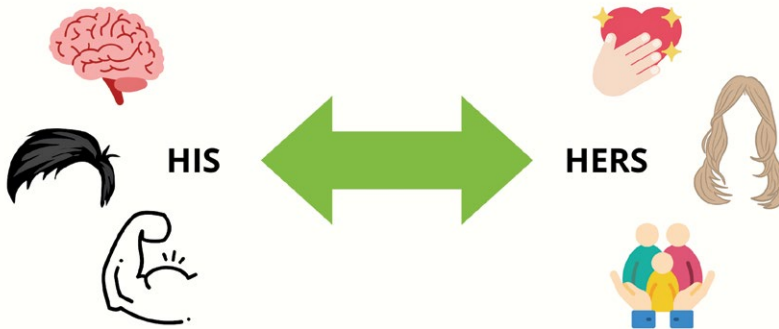


Figure 11: Stereotypes about men and women

(ii) The gender distinctions are not merely differences. Mere differences may be benign but the differences associated with different sexes are valued differently creating a hierarchy between them. When disadvantages get attached to differences then they no longer remain harmless but result in inequality.



Figure 12: Unequal valuation of men's and women's roles and attributes



Haqiqat: I'm confused! Let's talk about these one by one. Starting with the first issue—what do you mean by a stereotype?

STEREOTYPES

When we fix people into one image, we create a stereotype. These stereotypes may be based on their birth, the region they belong to, how they look, religion they follow, their gender, caste, socio-economic status or any other such aspect of their life. (NCERT, 2020, page 17)



Umeed: Stereotypes create a single image of all persons who live in a specific region, follow a particular religion or come from a certain cultural or socio-economic background, etc. Stereotypes can lead to prejudice.

GENDER STEREOTYPES

These are stereotypes which pertain to the socio-cultural construction of women and men, due to their different physical, biological, sexual, and social functions. It includes beliefs and assumptions about behaviour, traits, roles, occupations, and physical appearance. (Cook & Cusack, 2010, page 20)



Figure 13(a): Gender Stereotypes



Figure 13(b): Gender Stereotypes



Haqiqat: But this fixation of persons into a single image may not be true for everyone in that group, right?



Umeed: Yes, you are right, Haqiqat. Stereotypes are not always true, yet different groups in society nurture a single image of individuals belonging to other groups. We do tend to nurture a peculiar image of people from a particular region, people practising a particular lifestyle or people belonging to a particular gender, etc.

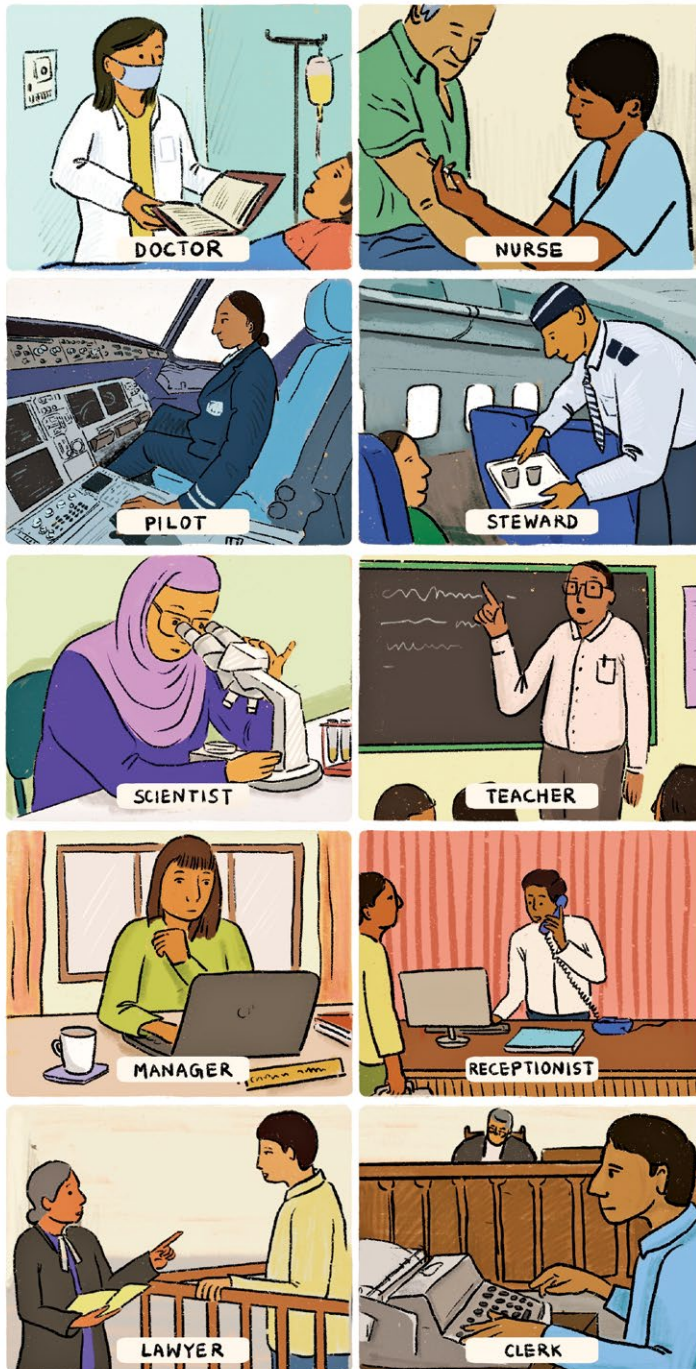


Figure 14: Challenging stereotypes based on gender roles

Exercise No. 8

Gender norms determine how we are expected to act, speak, dress, groom and conduct ourselves, based on the sex we are assigned at birth.

(a) Write about the gender roles that you undertake or have undertaken in your life.

(b) Do you think that the above gender roles would have been different had you been born as a different sex? Write about them.



Umeed: The ascribed gender attributes frequently form the basis for deciding what kind of professions one should pursue. They often lead to the perception that men are more suitable for certain professions and females for others.

Exercise No. 9

Look at the two sets of job advertisements below.

<p>COMPUTER OPERATOR</p> <p>OPERATION EXECUTIVE (Male) exp min 2 years, working knowledge of Excel, min typing speed of 35wpm & Age upto 30 years, CTC 22,000/-</p>	<p>बिक्री और विपणन</p> <p>आवश्यकता है पढ़े - लिखे या अनपढ़ लड़कों की जो घर से बाहर रह कर काम कर सकें। अच्छा वेतन+कमीशन और आना जाना, रहना - खाना फ्री।</p>
<p>TAGORE MODERN public school, Motia Khan, ND 55 Reqs. male accountant with prior Exp. of School & Fees A/C management. Should be good in MS</p>	<p>MULTIPLE VACANCIES</p> <p>EXCELLENT opportunity for Courier Boys / Delivery Boys / Collection Boys. Earn Rs. 20,000/- to Rs. 25,000/- plus mobile & travel expenses</p>

<p>ADMINISTRATION/ SECRETARIAL</p> <p>REQD. FEMALE Personal Secretary, cum office assistant, pleasing personality, age below 30, also good salary. Fresher may apply,</p>	<p>RECEPTIONISTS & TEL OPERATORS</p> <p>REQUIREMENT for Receptionist Female candidate Fluent English Area Hari Nagar Delhi. Salary-15k .</p>
<p>Requires Female applicants residing nearby preferred</p> <ul style="list-style-type: none"> > Academic Coordinator > TGT Hindi & Sanskrit > Art & Craft Teacher 	<p>REQD Female Educated Nurse /Caregiver for Home Care of young person, 9:30am to 6 pm, Good Salary, Send Biodata.</p>

II.

Now, think about the following:

(a) Do you observe anything common in each set of advertisements?

(b) Why do you think certain types of jobs had the requirement of being male and female respectively?



Umeed: These perceptions about people, including who they are, what qualities they possess and what they should do and not do, leave little space for personal choices or preferences. They limit the ability of individuals to pursue their interests by confining them to a set of fixed roles and characteristics.



Haqiqat: Now I understand this better, Umeed! In that case, I would also like to know more about the second concern that you were talking about—how gender distinctions are not mere benign differences.



Umeed: Sure! Consider the following:

- Weakness and timidity are viewed as drawbacks in life. Similarly, being compassionate and accommodating are popularly seen as reflective of indecisiveness and pliability.
- Emotional people are often perceived as unsteady and thus not able to forge ahead in life with conviction, strength and rigour.
- In this competitive world, the keenness and capacity to move ahead at any cost and achieve one's goals are highly valued. This is often reflected in being assertive and logical.

Such **differential valuation**, involving the valuing of certain qualities and parallel devaluation of others, leads to hierarchy and ultimately inequality.



Figure 15: Differential valuations of certain attributes

Exercise No. 10

Consider which of the following attributes are generally valued more, and which are valued less. Think about the questions that follow.

- | | | | |
|-------------|-------------|--------------|---------------|
| • Brave | • Emotional | • Incoherent | • Gentle |
| • Sensitive | • Decisive | • Confident | • Competitive |
| • Ambitious | • Tough | • Timid | • Submissive |

More valued attributes (Dominant attributes)	Less valued attributes (Subordinated attributes)

(a) Do you think that attributes associated with a particular gender are valued more in society than the ones associated with the other gender?

(b) Do you think only the dominant attributes have a role to play in society and subordinated attributes are useless?

(c) Do you think it is correct to attach such values to any individual only based on gender?



Umeed: The problem is that the popularly valued attributes are generally associated with men (i.e., they are considered masculine) whereas the less valued attributes are associated with women (i.e., they are considered feminine). This results in the creation of a hierarchy between males and females. And for everyone who doesn't identify themselves clearly as belonging to one of these genders, the exclusion continues.



Haqiqat: But does it mean a woman who shows masculine attributes would be valued more?



Umeed: Masculinity and femininity are viewed as opposites with there being no scope of a spectrum or combination. Any person exhibiting traits contrary to their assigned attributes is seen as deviant or abnormal. Such persons feel socially excluded because both others and they themselves often view them as different from others. Further, their attributes are devalued as they do not align with those that are considered appropriate as per their gender. Females and males are expected to have desires that match their gender. For instance, wearing ornaments, putting on makeup, having different hairstyles, wearing heels, etc. are associated with females. Masculine characteristics are valued in men and feminine characteristics are valued in women and not vice-versa. A woman exhibiting male characteristics or behaviour is looked down upon. Similarly, men exhibiting characteristics associated with females are belittled.

- A woman displaying bravery or having very short hair is referred to as '*mardani*' (manly).
- A male not exhibiting strength or who doesn't react with brute force in certain situations is usually devalued by saying—"*haathon mein chudiyon pehen rakhi hain kya*" (Have you got bangles on your wrists?).
- A man seen crying often gets to hear – "*kya ladkiyon ki tarah ro rahe ho? mard bano!*" (Why are you crying like a girl? Be a man!).



Haqiqat: This means that these standards, in turn, affect the way individuals are treated by others in their relationships with one another.



Umeed: Yes! Broadly, this happens in the following three ways, i.e., through what is allowed, expected and valued in each of the genders.

- **What is allowed:** While boys are allowed to play outdoor games and engage in a wide range of physical activities, girls are often restricted to indoor games and activities. While boys are allowed to roam around freely, restrictions are generally imposed on the movements of women.



Figure 16: Distinct standards for women

- **What is expected:** Women are expected to learn domestic chores from a young age and to carry them out for the rest of their lives. Boys, on the other hand, are expected to be responsible for the financial needs of the family. In a family, women are primarily expected to be caregivers, while men are expected to be primary breadwinners and decision-makers.
- **What is valued:** Compassion, docility, and passivity are valued in women, whereas men are appreciated for qualities like confidence, courage, and physical strength. Deference is a trait valued only in females while expression of authority and control over others in the family is valued in males.

Thus, what is allowed to, expected of and valued in an individual is determined by the socially constructed gender roles and attributes, which indicate not just differences between genders but prioritisation of attributes of one gender and devaluation of those associated with others.

Exercise No. 11

Identify the qualities that have been associated with women in the following matrimonial advertisements. Do you think men are also required to possess such qualities? If not, what qualities do you think are preferred in men?

WANTED A Beautiful Homely Girl For Fair, Smart, Handsome Boy, Garg, August 1996 Born/ 6'1", B.Tech, Restricted Broker, Contact:	SM 4 B'ful, Very fair, Arora Girl 5'6"/ 27.5.89/4.25am/Delhi, Convent Edu. BE, Sr. Software Engr in Ggn 15 LPA seeks Prof Qlfd Job/B'ness boy.
NRI 54+ /5'10"/76KG/Hindu, US Citizen, Self Emp., Divorced, B.Com, Non-smoker & Non-drinker. Seeking Issueless, homely, slim, tall & pretty girl, qlfd. pref. Caste no bar. Ph: 201	

Unpacking Our Ways of Thinking: Contesting Gender Binary



Umeed: As we identified earlier, social norms emerge through repetitive practices that prevail in society. These repetitive practices are generally based on social valuation and socially prevailing ideas of what is normal or usual.

Ever since we are born, often unknowingly, we are conditioned to think in certain ways. Most often our perceptions of what is right and what is wrong, what is good and what is bad, what is normal and what is abnormal, who is supposed to act in what way and which attributes are valuable in whom are strongly influenced by what we see around being accepted, valued, rewarded or condemned. It is therefore necessary to unpack our own ways of thinking which are conditioned by various social and cultural factors.



Haqiqat: I'm confused! How do we make sense of this world? How is our way of thinking conditioned?



Umeed: One of the most prevalent and dominant ways we are conditioned is to understand the world around us in binaries. **Binary** refers to the idea of understanding something in pairs, or as two parts, which are generally depicted as opposites of each other. These two parts operate in an 'either - or' manner meaning that either one may be placed on the left side of the binary or its right side. Based on this worldview or way of thinking, everything in this world is divided into two opposite categories. These categories pertain to varied aspects of our existence, for instance:

- rich – poor (categorisation relating to economic condition)
- good – evil (categorisation relating to virtue)
- sane – insane (categorisation relating to mental capacity)
- fat – thin (categorisation pertaining to the size of the body)
- public – private (categorisation pertaining to spheres of our life)
- reason – emotion (categorisation pertaining to one's way of thinking)

- heterosexual – homosexual (categorisation pertaining to sexual orientation)

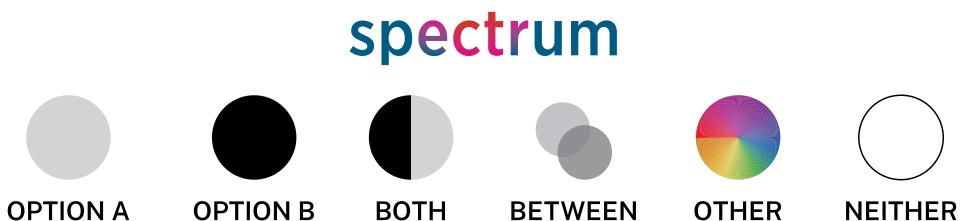
Taking a binary view convinces us that the world around us can only be understood in terms of two opposing categories. In other words, it restricts our understanding of this world. This approach results in the following:

- A binary view renders invisible all those who do not strictly fall into the two opposite categories, thereby excluding them completely from social imagination and policy initiatives.
- Non-conformity with either of the binary projects them as ‘other’ than ‘normal’ making them subjects of ridicule or focus of transformation so that they conform to at least one side of the binary.
- It also projects all those falling in one category as absolutely same, thus ignoring the differences that still exist since human beings are not clones of each other.

Figure 17: A binary view limits our understanding of the world

Conditioned by the binary way of thinking, sex is conceptualised as a binary, consisting of only ‘male’ and ‘female’. However, people may also be born with biological features, including reproductive organs, genes, chromosomes, and hormones, which do not manifest all the characteristics typically associated with either the male or the female sex. The term **intersex** is used to refer to biological variations which are not strictly male or female. Intersex individuals may possess a combination of any of the male and female biological traits.

Though sex is usually determined by a person’s biological predisposition at birth, intersex traits are sometimes unidentifiable at the time of birth and may develop later in life. Thus, sex exists as a spectrum which consists of a range of biological variations, with male and female being the two extremes.



*Figure 18: Spectrum Thinking
(Ozchen, 2022)*

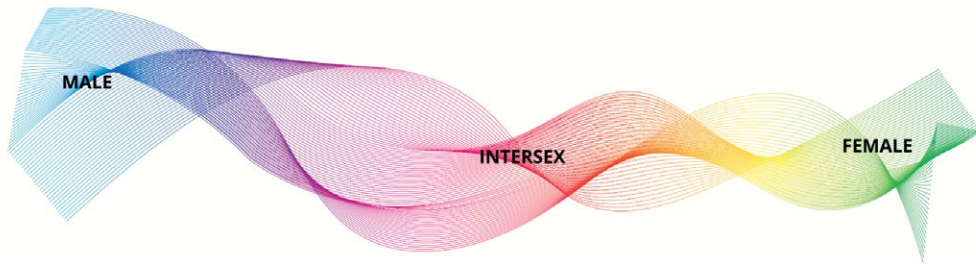


Figure 19: Understanding the sex spectrum

This means that though some individuals may be clearly identified as belonging to either male or female sex, some may be born with genitals which are difficult to classify strictly as either male or female. It is also possible that some persons' hormonal development at puberty differs from the sex they are assigned to at birth. One may have genitals which are classified as male, but their hormonal development during puberty may not be in accordance with the one which is generally associated with males. Additionally, variations in the development of one's hormones while growing up may also make their sexual identity fluid. Similarly, an individual's chromosomal identification may be varied and not strictly as per the binary of male and female.

Furthermore, a person's gender identity may or may not align with the sex they were assigned at birth.



Haqiqat: What do you mean when you say a person's gender identity may or may not correspond to their assigned sex?



Umeed: When we are born the doctor usually says that "it is a boy or a girl," i.e., either male or female based on what the bodies look like. Many persons who are labelled male at birth turn out to identify as men. Similarly, many persons who are assigned female at birth also identify as women. However, some people's internal knowledge of who they are is different from what was told to them.

A person's internal feelings or sense of being a man, woman, both or neither is their **gender identity**. It is deeply personal and may correspond to the sex assigned at birth or differ from it. A person's own experience of gender, i.e., what a person thinks and feels about their gender can be different from the one society categorises them in. For instance, a person who was assigned the male sex at birth may feel like

a woman caged in a male body or vice versa because we take a certain characteristic as completely defining a category say, for instance, genitals as completely proving whether a person is male or female, or chromosomes absolutely proving the same. We categorise this world into strict binaries like male and female or man and woman. So dominantly, a person must fall under one of these categories. Once at birth a person is determined to fall into one category, for instance, male, then the social norms and binary way of thinking forever classify that person as a man. However, sometimes a person born with a particular body whether male or female feels in early childhood or later in life as if that person is captivated in the wrong body.



Figure 20: Experiences of transgender persons growing up



Figure 21: Gender Identity

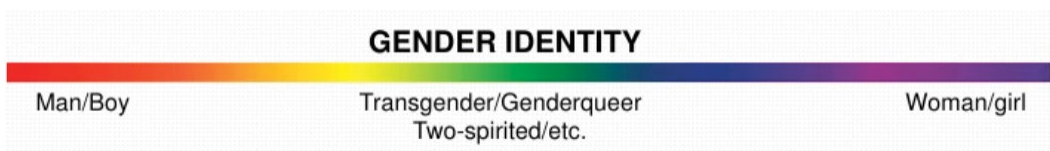


Figure 22: Gender Identity Spectrum
(Scaler, 2016)

Gender identity also exists as a spectrum. It comprises a range of identities which exist outside the binary of man and woman such as:

- **Cis-gender:** Someone whose gender identity aligns with their sex assigned at birth. A cis-gender woman is someone who identifies as a woman and was also assigned female sex at birth. A cis-gender man is someone who identifies as a man and was also assigned male sex at birth.
- **Transgender:** A person whose gender identity differs from the sex assigned to them at birth. A transgender woman is someone who lives as a woman today, but was thought to be man when she was born. A transgender man lives as a man today, but was thought to be woman when he was born.
- **Non-binary gender:** People who identify neither entirely as a man nor as a woman are non-binary. It is an umbrella term, apart from man and woman, this term can be used for all gender identities.

This is by no means an exhaustive set of gender identities.



Haqiqat: So, a person's sex assigned at birth can be male, but they may actually identify as a woman. Similarly, a person who identifies

as a woman may have been assigned male sex at birth. Further, some persons may not identify as exclusively a man or woman.



Umeed: Yes! Looking at persons as only man and woman restricts the recognition of other gender identities. Non-recognition of their identities completely ignores their existence.



Haqiqat: Oh no! A binary way of thinking renders various other identities invisible. I never thought that this meant complete non-recognition of the existence of a person as if they are not a human being but a thing.



Umeed: Further, this has deeper repercussions in terms of denial of dignity, rights and freedom, adverse effects on their mental and physical well-being, restrictions on their ability to participate in social life, etc.



Haqiqat: I have also heard of sexual orientation. Are gender identity and sexual orientation the same?



Umeed: No, Haqiqat. People often get confused between one's internal sense of themselves and one's sexual attraction to others. The former is known as gender identity, but the latter relates to sexual orientation.

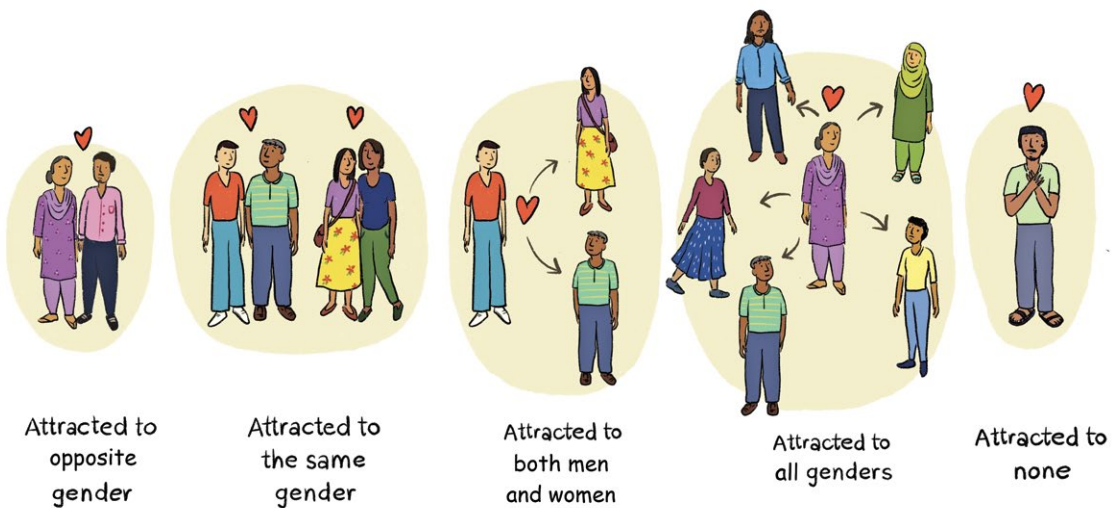


Figure 23: Sexual Orientations

Sexual orientation is an individual's romantic or sexual attraction to another person. It also exists as a spectrum whereby people can be attracted to persons of the same sex, opposite sex, both or neither. Many people choose to love and spend their lives with people of the same sex. A range of orientations fall under this spectrum, such as:

- **Heterosexual:** A person who is romantically or sexually attracted to people of the opposite gender. For example, a woman being attracted to a man.
- **Homosexual:** A person who is romantically or sexually attracted to people of the same gender. For example, a woman feeling drawn to another woman.
- **Bisexual:** A person who is romantically or sexually attracted to people of more than one gender. For instance, a man being attracted to both men and women.
- **Asexual:** A person who does not experience sexual attraction to others. Some asexual persons may still experience romantic attraction.

These are just a few sexual orientations, there exists many other.

Gender queer people typically reject notions of static categories of gender and embrace a fluidity of gender identity and/ or sexual orientation. **LGBTQIA+** is an acronym for “lesbian, gay, bisexual, transgender, queer, intersex, asexual” with a ‘+’ sign to recognise the limitless sexual orientations and gender identities that people may have.

I would also like to point out that, while we may use commonly used terms like ‘man’ or ‘woman’ throughout our discussion, I hope you can appreciate that these terms do not fully encompass the diverse range of identities that exist.

Exercise No. 12

State whether the following statements are true or false.

- (a) A person's gender identity always corresponds to the sex assigned at birth.
- (b) Transgender man is a person who was assigned female sex at birth but identifies as a man.
- (c) Gender identity and sexual orientation are the same.
- (d) Homosexual is a person who is attracted towards persons of the opposite sex.
- (e) A person can feel attracted towards both males and females.



Haqiqat: So basically, sex is primarily biological while gender is socially constructed. Moreover, there are not just two sexes or genders. Sex, gender identity and sexual orientation exist as a spectrum.



Umeed: Yes, Haqiqat! Yet, societal norms continue to be constructed around the binary of man and woman.

Take the notion of masculinity and femininity for example that we discussed earlier. They are based on the social descriptions of the binary man and woman.



Haqiqat: Umeed, I understand that right from our childhood, we are told by people around us to do or not do certain acts like the boy who wanted to have long hair was told by his mother to get a haircut in the comic with which we started our conversation. But how are expectations and values communicated? Who communicates them, and how?



Umeed: All of us are carriers of these gendered notions. As we are born and grow up in society our minds get used to seeing certain people performing certain roles, we also find certain attributes being valued depending on one's gender. Just take a moment to think about who does what in your family or community. Who is praised for which actions? Who is reprimanded for which actions? What media project as good or valuable in whom? We grow up amidst these various verbal and non-verbal communications, which condition us to broadly differentiate between what is valued or expected of us and what is not. In order to remain accepted and valued in society we act in a way that is generally approved in society. It makes our life easy as neither are we pushed into being questioned for our actions nor required to give explanations or debate with others to defend our thoughts, as the boy in the comic had to do. All of us unknowingly imbibe these standards or behaviour, without even realising that the expectations vary depending on how one is classified, i.e., in which category one falls.



Haqiqat: We are all human beings. As human beings, we are the same. So what classification or categories are you referring to, Umeed? What is classification or categorisation?



Umeed: Classification or categorisation can be based on sex, gender, the religion that one follows, the region that one lives in, the caste that one belongs to, etc. As human beings, we are the same but at the same time, we are also different from each other in terms of the bodies that we have, the looks that we have, the health conditions that we have, the age we are, etc. There are further differences in terms of the language we speak, the culture we practice, the religion we follow, etc. Classification or categorisation is therefore made on the basis of differences. Categories are a creation of the prevalent social norms or the way we make sense of this world.

Social norms are created on the basis of what we find normal and comfortable, as these may have prevailed and been practiced for a very long time. But the role of norms is not limited to prescribing behaviour, they also shape our ways of thinking. They condition us to view the world in neat and exclusive categories. This categorisation creates a sense of order and leaves no room for ambiguity about where we belong. Our minds find it easier to navigate the world when there is clarity rather than when there is confusion.



Haqiqat: But I'm unable to understand how categorisation is harmful. I remember you mentioned earlier about how the Constitution of India authorises categorisation for the purposes of addressing historical, social, and cultural prejudice and disadvantages that certain groups happen to face.



Umeed: What is harmful is the gendered hierarchical categorisation. As explained earlier this categorisation is not benign as the attributes and roles are assigned differentially to different genders and certain attributes and roles are valued more than others. It is based on preference and greater valuation of characteristics associated with one gender which makes all other gender identities subordinate to it. This informs our ways of thinking and that thinking then conditions the norms that are made, behaviour that is viewed as appropriate, the tasks that are considered suitable for different genders and so on.



Haqiqat: Oh! Now I understand. When we categorise individuals into the binary of male and female or man and woman, we tend to attach roles and attributes to individuals based on their sex or gender, some of which are valued more than others. Further, social norms continue to be constructed around these binary categories which invisibilise those who do not fit into them.



Umeed: Exactly! An alternative way of understanding this world is to acknowledge that things/beings don't always exist in binaries, instead they are fluid and ever-shifting.

WHY IS UNDERSTANDING GENDER AS A SOCIOCULTURAL CONSTRUCT IMPORTANT?

It helps us to:

- gauge how gender binary homogenises diversity.
- identify stereotypes, prejudices, and discrimination.
- challenge the binary categorisations and prevailing norms and practices.
- steer towards a more inclusive existence.

Recognising Gender-Based Discrimination



Haqiqat: Umeed, I remember you mentioned that there is a need to move beyond categorisation but considering how innately we are conditioned into thinking in terms of binary categories, can we expect legal norms to move beyond this categorisation?



Umeed: This question does not elicit an easy response, Haqiqat!

We identified that in modern societies legal norms emerge through a process of debate and discussion. Therefore, it is possible to review and repeal discriminatory social norms. But, as you have rightly identified, even legal norms do not emerge and exist outside the processes and ways of thinking that prevail in society. In that sense, it is important to note that even legal norms can never be comprehensively inclusive. However, raising consciousness and critical reflection on our own ways of thinking results in the gradual reform of legal norms to progressively include the excluded categories. For instance, anti-rape laws have constantly evolved but it still keeps marital rape outside of its purview, because of social norms and practices associated with marriage.

In our earlier discussion, we observed how sex and gender are dominantly conceptualised as a binary of male and female, and man and woman, respectively. However, in 2014 the Supreme Court of India recognised transgender persons as a third gender, apart from the binary gender. Thereafter, the legislature also enacted the Transgender Persons (Protection of Rights) Act, 2019 which aims to provide for the protection of the rights of transgender persons and their welfare. This shows that the law has made some headway towards recognising and protecting the rights of individuals who do not fit into the traditional binary categories.

DO YOU KNOW?

The Supreme Court of India in the case of *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438 observed that the recognition of transgenders as a third gender is not a social or medical issue but a human rights issue. Transgender persons are equally entitled to the fundamental rights guaranteed in our Constitution. They have the right to decide their self-identified gender. (*paras 66, 111, 129*)



Haqiqat: I understand that the law has recognised the equal rights of transgenders, but the reality speaks a different story. Look at these testimonies of transgender persons I found.

“I used to go to the female toilet and then the females used to tell me that I should go to the gent’s toilet...”

(International Commission of Jurists, 2019)

“Housing is a big issue for everyone. Transgender people are considered sex workers so most of the landlords are afraid of soliciting and sex work happening in their rented home. Beyond that there is also the stigma...”

(International Commission of Jurists, 2019)

“None of the hospitals had gender-neutral toilets. I had to use the men’s toilet and was sexually harassed by a government staff member working at the hospital every day...”

(Your Story, 2023)

“At the age of 17, everybody at home hit me a lot and tried to break my knee. They wanted to break my knee so I can’t go out. They would take an iron rod and hit my knee...”

(International Commission of Jurists, 2019)

“It became hard for me because everyone made fun of me, they didn’t sit with me, and they didn’t even touch me as if I had some disease...”

(International Commission of Jurists, 2019)

Figure 24: Testimonies of Transgender Persons

These testimonies show that transgender persons continue to receive ill treatment across different social settings including their own homes, markets, hospitals, workplaces, schools and other public spaces.

Why do transgender persons still face so much harassment, despite their rights being recognised by the law?



Umeed: The society finds it difficult to understand and accept what is different from the dominantly prevailing social norms. Since transgender persons do not conform to the traditional gender norms of the male and female binary, they are viewed as deviant or abnormal. We also discussed earlier, how legal norms that seek to dismantle a prevailing social norm only get firmly entrenched

in society gradually. This is because it requires a process of social transformation based on a change in ways of thinking and thus a changed mindset. Legal norms however are important as they pave the way for such a change and reflect a principled position challenging the dominant prevailing social reality. The law thus becomes a mechanism for social change.



Haqiqat: In such a hostile environment, I don't think they can even freely express their gender identity.



Umeed: You're right, Haqiqat. Those who attempt to do so are often beaten up at home, bullied at school, ridiculed in society, and isolated from others. Families often turn to quack physicians or religious gurus to 'fix' or 'cure' their transgender children.

This often manifests in exclusion from families or communities, lack of employment opportunities, physical and sexual violence, and denial of basic facilities such as toilets, food, housing, healthcare, etc.



Haqiqat: It is such a disappointing reality that individuals have to deal with prejudice, harassment, and violence simply for expressing their true identities. Women also face a lot of discrimination at home, at work and in society when they show any deviance from social expectations or reflect insubordination to men.

Are there any principles which forbid such exclusion or ill-treatment?



Umeed: Yes, Haqiqat. The principle of non-discrimination embodied in our Constitution seeks to ensure that difference does not lead to ill-treatment or exclusion.



Haqiqat: Does this principle prescribe that everyone must be treated the same? Won't that also result in exclusion? When do we say someone has been discriminated against? Is it always the case when anyone is treated differently? Can you explain the principle of non-discrimination?



Umeed: Sure, Haqiqat. The Convention on the Elimination of all Forms of Discrimination against Women, 1979 defines discrimination against women as follows:

Discrimination is any kind of—

- different treatment,
- restriction, or
- exclusion

that results in either of the following:

- nullifies or impairs the recognition,
- nullifies or impairs the enjoyment, or
- nullifies or impairs the exercise

of an individual's freedom and rights.

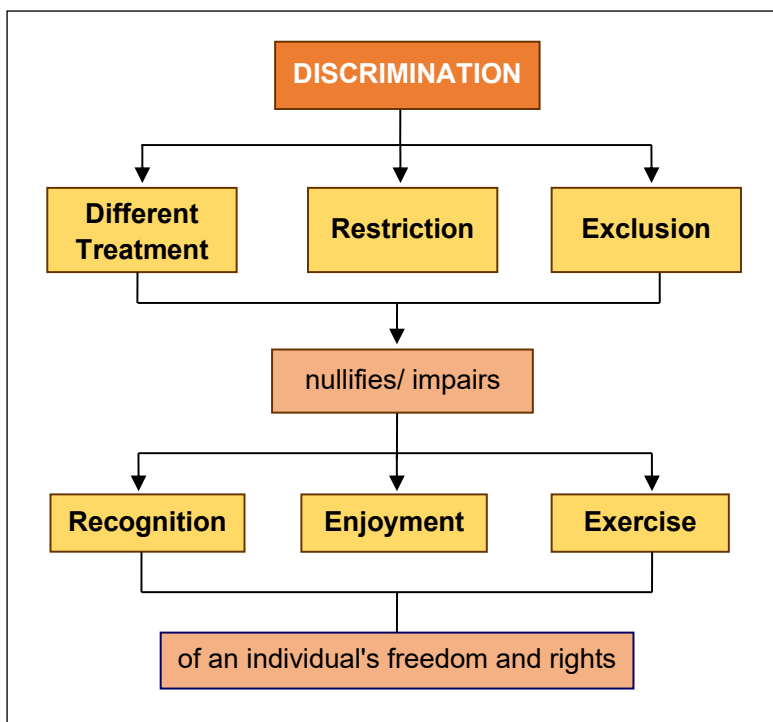


Figure 25: Understanding Discrimination

Thus, discrimination may be understood in two steps. The first step relates to the kind of treatment which may be in the form of different treatment, restriction or exclusion. The second step relates to the effect of the kind of treatment undertaken in the first step, i.e., only that treatment that results either in nullification or impairment of recognition, enjoyment, or exercise of an individual's freedom and rights amounts to discrimination.



Haqiqat: Can you elaborate upon and clarify each of these aspects?

Umeed: Sure, take a look at the following two illustrations.

Illustration 1: Soumya and Sanjay are brother and sister. Reema and Rajeev are their cousins. They all live together in a joint family.



Figure 26: Discrimination as different treatment, restriction and exclusion

- **Differential treatment:** Soumya and Reema have always only worn traditional attire, i.e., salwar suit at home and when they step out of their home they always wear a dupatta. On the other hand, Sanjay and Rajeev wear shorts, t-shirts, pants, and any other western or traditional attire they choose. They both have the freedom to wear anything they want publicly and at home. Soumya and Reema are only allowed to wear traditional Indian clothes at all times.

When it comes to attire, Soumya and Reema are treated differently from Sanjay and Rajeev, whether it be inside the home or in public spaces. Similarly, most of the women in their neighbourhood do not wear western attire at home or in public spaces. This clearly shows that Soumya and Reema are *treated differently* than Sanjay and Rajeev in their own home as well as in the society they live in.

- **Imposition of restriction:** Soumya and Reema can only go out during the day, whether it be shopping, or going for a tuition class. Both Soumya and Reema are not allowed to be in public spaces after it gets dark. Sanjay goes to a tuition class which starts at 6:30 pm and goes up until 8.30 pm, however on most days he only comes back home after 10 pm. Rajeev's job is usually a night shift and he is out all night. On the days Rajeev does not have night duty he usually only comes back by 9:00 pm after spending some time with his colleagues.

This is a *restriction* imposed on Soumya and Reema. They are not allowed to go out after dark because most people in the neighbourhood believe it is unsafe for women and girls to be outside at night. However, that is not the case for Sanjay and Rajeev, whose lifestyles are similar to those of most boys and men in the neighbourhood. The restriction on Soumya and Reema's movement is imposed not only by their family but also by the surrounding society and culture.

- **Exclusion from certain activities:** Soumya and Reema are not allowed to go out with friends or engage in any outdoor leisure activities. Even when they step out of the house to go to the market, school, or any relative's place, they have to be accompanied by either Sanjay or Rajeev or ask them to drop and pick them up. If Sanjay or Rajeev is not around to accompany them, they cannot leave the house. But Sanjay and Rajeev, who own a bike and scooter respectively, can come and go wherever and whenever they want. Similarly, most women and girls in their neighbourhood are not allowed to participate in any outdoor activities.

Soumya and Reema are *excluded* from going to any public space to hang out with friends or partaking in any social activities.

(PLD, 2004, page 28-29)

Exercise No. 13

Take a look at the following two examples from popular cinemas. Identify how the women in these are excluded, treated differently and subjected to restrictions.

Secret Superstar: In this movie, Insia wants to become a singer. She is a talented singer who wants to pursue her dream, but Farookh, her father, is absolutely against it. Since her father does not approve of her singing, she only sings secretly. Insia's mother is seen struggling to support her daughter because of her husband's violent behaviour towards them.

Insia's father detests the fact that Insia wants to sing, without even knowing how good she is. He comes from a place of bias as he doesn't consider music a career women should pursue.





Dil Dhadakne Do: This is the story of an affluent and educated family. Despite their exposure to and awareness of all kinds of things in the world, they restrict their daughter from inheriting their family business.

When their son, Kabir, expresses his desire to pursue an alternate career, even though they are aware that he does not have the capabilities to handle the family business, they do not see their daughter, Aisha, as a

natural 'heir' to take the family business forward, despite Aisha running a successful independent business after marriage. Instead, her parents and her in-laws want Aisha to focus on her husband and building a family, which is considered to be her primary responsibility.

Illustration 2: Suppose a country has for the first time established rules and regulations allowing women to join the armed forces. However, this recruitment is subject to certain conditions—

- **Differential Treatment:** Even though women can join the army, they cannot be recruited permanently. They will be enlisted for a fixed term of ten years, after which they can apply for an extension of up to four years. Thus, they will not be eligible to serve until the age of retirement prescribed for men in the army, nor will they be entitled to retirement benefits like their male counterparts.
- **Imposition of Restriction:** Women will not be eligible to apply for positions in difficult terrains, isolated locations, and extreme climates. These posts will be exclusively occupied by male officers.
- **Exclusion from activities:** Women can only join certain branches of the army such as the Army Education Corps, Intelligence Corps, and Corps of Engineers. They cannot join combat arms such as infantry and armoured corps.



Haqiqat: From the way girls and boys are treated differently within their homes to how rules and policies are framed in many cases, discrimination shows up in all spheres of our lives, public or private.



Umeed: True! Differential treatment, imposition of restriction, and exclusion are not only limited to a particular home, neighbourhood, village, city, or even country. It exists in societies and cultures throughout the world, whether at home, educational spaces, workplaces or others.

Exercise No. 14

In the movie '*Chak De India*', Vidya Sharma, a hockey player is asked whether she will quit hockey after marriage. Why are such questions typically asked to women and not posed to men? Think.



Exercise No. 15

Ruby got selected for a job in the Department of Maintenance of Citizens' Safety and Security. Upon selection, she was required to complete a year of training at the Personnel Training Institute. As a part of the training, they were required to participate in a variety of outdoor activities such as P.T., horse-riding, yoga, shooting, swimming, etc. Each personnel was mandated to attend all the outdoor classes every week, failing which they would be debarred from the training programme. During the first week of the training, Ruby had to miss her outdoor classes for two days because of menstrual cramps. She was reprimanded by the authorities for the same. When she discussed this issue with her female colleagues, they too came forward expressing their difficulty in attending the outdoor sessions during menstruation.

They thus decided to request the instructors to allow them to not join swimming, yoga, P.T. and horse riding for five days a month. Their request was, however, turned down.

Do you think it was appropriate on the part of the administrative authorities to deny the request? Why do you think the needs of women are often neglected?



Haqiqat: I see that discrimination also relates to the idea of superiority and inferiority between groups. It all goes back to the stereotypes, hierarchies and different valuations of men and women and the lack of recognition of other identities.



Umeed: Yes, discrimination is directly linked to hierarchies within society. However, we need to know that gender is not the only basis of hierarchies.

Within a social hierarchy, certain individuals or groups enjoy a higher status than others in society. It determines a person's position, which in turn dictates how they are treated both within and outside their families. These hierarchies may be based on gender, caste, class, etc. For instance, women and Dalits have traditionally been regarded as having a lower status. Thus, an individual's position in a hierarchical society determines the way discrimination is practiced or experienced.

Even within the category of women, there are hierarchies wherein upper-caste women are considered to have a higher status than lower-caste women. As a result, women who belong to the Dalit community experience discrimination differently from women belonging to an upper caste. This means different women experience discrimination in different ways on account of various factors including caste, class, religion, etc.

Dalit woman gang-raped in Rajasthan village, 5 booked

The case was registered against five people under section 376 (D) (gang rape) of the Indian Penal Code and sections of the SC/ST Act.



FILE - Demonstrators hold signs during a protest condemning the alleged gang rape and killing of a Dalit woman, in Bengaluru, India, Sunday, Oct. 4, 2020. (Photo | AP)

(New Indian Express, 2023)

THE Hindu

Uttar Pradesh Dalit girl, victim of brutal gang rape, dies in Delhi hospital

The 19-year-old Dalit girl from Hathras village in Uttar Pradesh, who was brutally assaulted by four upper-caste men, succumbed to injuries in Delhi's...

29 Sept 2020

(The Hindu, 2020)

Figure 27: Examples of violence against Dalit women from news reports



Haqiqat: So, as I understand, women experience discrimination not only on the basis of their gender but also based on their caste, class, religion, ethnic group, etc. All these identities operate simultaneously and determine the peculiar experiences of discrimination faced by different women, transgender persons and other members of the LGBTQI+ community. It is the multiplicity of hierarchies that must be dismantled.

So, do the legal norms in our country also prohibit this kind of discrimination and try to dismantle the multiple hierarchies that continue to prevail?



Umeed: Yes, Haqiqat. Article 15 of the Constitution of India prohibits discrimination on various grounds like religion, race, caste, sex, and place of birth. Furthermore, we have several laws that seek to prohibit discrimination on different grounds. For instance, the Equal Remuneration Act, 1976 prohibits discrimination against women on grounds of sex in matters of employment. Similarly, the Transgender Persons (Protection of Rights) Act, 2019 prohibits discrimination against transgender persons. The courts in India have also recognised the multiple grounds of discrimination emerging from a combination of the categories and have been mindful of the experiences of those excluded or oppressed on multiple grounds.

In 2021, the Supreme Court of India explicitly recognised the intersectional nature of gender-based violence against women. The case involved a nineteen-year-old girl visually impaired girl from a Scheduled Caste community, who was raped by a man known to her family. The Court recognised that while the experience of violence would be traumatic for any woman, the experience of a woman with a disability belonging to a Scheduled Caste community is different. It noted that when the identity of a woman intersects with her caste, disability, religion, etc., she may experience discrimination or violence on more than one ground. [*Patan Jamal Vali v. State of Andhra Pradesh*, 2021 SCC OnLine SC 343]

Thus, the multiple intersecting identities exacerbate discrimination against persons belonging to certain communities or groups, whether based on gender, religion, caste, class, disability, or sexual orientation.



Haqiqat: However, as we discussed earlier, mere legal norms cannot result in the establishment of an egalitarian society but social norms and practices must also change. To achieve that, we need to be conscious of our own ways of thinking and commit to change ourselves, so that we can dismantle hierarchies and move towards a more egalitarian existence.

Understanding Gender-Based Violence Against Women



Figure 28: News headlines on gender-based violence against women



Umeed: Haqiqat, take a look at the above news headlines.



Haqiqat: Aren't all of these reports related to crimes?



Umeed: Yes! To be more specific, each of these is an instance of gender-based violence against women.



Haqiqat: Isn't this simply violence against women? Why do we call it gender-based violence against women?



Umeed: Gender-based violence against women is the violence that:

- (i) is aimed **specifically** at a woman because she is a woman, or
- (ii) **disproportionately** affects women.

Gender-based violence against women constitutes a form of discrimination against women based on gender (CEDAW General Recommendation No. 19). The expressions ‘aimed specifically at a woman’ and ‘disproportionately affects women’ used in gender-based violence against women must be understood in relation to the gender roles, attributes, behaviour, and other expectations that society imposes on women.



Haqiqat: Can you elaborate on how gender-based violence is related to the notion of ‘gender’?



Umeed: The ideology of gender restricts the ability of women to do what they want as they are constraint by—

- what is **allowed** to them
- what is **expected** of them
- what is **valued** in them

In order to be accepted and respected in society, individuals tend to live by societal norms and expectations. These norms and expectations bind individuals from different genders to distinct roles and value specific attributes among them. However, such expectations restrict individual actions and prioritise traits associated with masculinity. These norms and practices particularly constrain the actions of women and other subordinated genders as they are based on stereotypes and hierarchies. This stereotypical and hierarchical positioning of actions and attributes excludes individuals from subordinated genders from various areas of life. Even when accepted, their position within those spheres remains inferior to the gender which is primarily viewed as possessing the appropriate attributes to be in that particular domain. This results in discrimination.

However, women and other gender minorities who defy these societal norms and expectations are often subjected to different kinds of violence. The infliction of violence is used to exert control over them and maintain the hierarchies.



Figure 29: Neeta works in a paper factory. One day she got very late to get home from work. She had an argument with her husband over the dinner not being prepared. The next day when she was getting ready to leave for work, her husband Ratan stopped her.

A reality check explained in the following paragraphs will enable us to better understand how these expectations and valuations, in turn, justify violence perpetrated against women. This is to the extent that not only men but often women themselves believe that it is right, just and proper to be beaten if one fails to meet these expectations.

Every five years, the Ministry of Health and Family Welfare, Government of India conducts the National Family Health Survey (NFHS) which collects data on, *inter alia*, the attitudes of persons towards the beating of wives by their husbands. The survey draws attention to the prevalence of wife-beating by asking the persons being surveyed whether they agree that a husband is justified in hitting or beating his wife under given circumstances. In simpler words,

- Whether the individual thinks that hitting or beating a wife by her husband is justified?
- If yes, then on which of the following seven grounds?

goes out without telling her husband

neglects the house or the children

argues with her husband

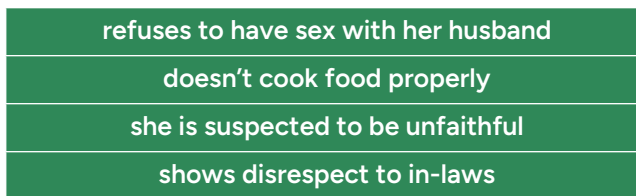


Figure 30: Seven grounds on which the husband is believed to be justified in hitting or beating his wife (NFHS)

As per the 2019-21 survey, about 45% of the persons in India who were surveyed agreed that a husband is justified in beating his wife on at least one of these seven grounds. This implies that a wife deserves to be beaten up by her husband if she does not act in a way which is in conformity with the expectations underlying these grounds. In other words, it is normal or acceptable to be beaten up for one of these reasons, i.e., such violence in the belief of 45% of people is not violence or a crime but it is probably a justified corrective measure that a husband is authorised to undertake.

CAN WIFE REFUSE TO HAVE SEX WITH HUSBAND?

- According to NFHS (2019-21), about 10 % of men believe that a husband is justified in beating his wife if she refuses to have sexual intercourse with him. This means that one in every ten men believes that a husband is entitled to have sex with his wife, irrespective of the wife's consent.
- Unfortunately, even our criminal law reflects and reinforces this mindset as marital rape is still not criminalised in India. The law fails to recognise non-consensual sex within marriage as a crime, except when the wife is under the age of eighteen, thereby effectively undermining a woman's autonomy within marriage.
- However, non-consensual sexual activity within marriage would constitute sexual abuse under the Protection of Women from Domestic Violence Act, 2005 which provides civil remedies instead of criminal ones.

One can notice that the seven grounds themselves are based on stereotypical notions about the roles, responsibilities and attributes of women. Non-conformity to such stereotypical notions makes everyone consider such women as deviant. This deviation then becomes a ground for perpetrating violence against women to reprimand or correct them.

Here are some examples illustrating the differences in expectations placed on wives and husbands and how these roles shape their lives.



Figure 31: What is expected of wives and husbands-I



Figure 32: What is expected of wives and husbands-II



Figure 33: What is expected of wives and husbands-III

The ideology of gender conditions all human beings to think in certain ways, i.e., to judge what is appropriate or inappropriate for a person of a particular gender to do or not do. These then become the dominant ways of thinking that prevail in society. Every person, whether a man, a woman, or someone belonging to any other gender, living in society is conditioned to think this way. One remains trapped in this way of thinking unless one begins observing broader behavioural patterns that exist, tries to understand how these ways of thinking benefit some and burden others, and then starts questioning whether it is the only way of thinking.

Exercise No. 16

Identify the stereotypes inherent in the seven grounds identified in the NFHS.

Exercise No. 17

Think about the following questions:

(a) Are gendered expectations the basis of wife-beating?

(b) Does the ideology of gender normalise wife-beating?

(c) What happens when wife beating is normalised?

(d) Do both men and women start accepting such violence as part of ordinary life?

(e) Are women who are beaten up expected to call out and cry out for being subjected to violence?

(f) Are their calls or cries for having been slapped or kicked once a week taken seriously?

(g) Are they expected to approach the police for the same? Will the police view it as a crime?



Haqiqat: I understand that gender-based violence seeks to maintain and reinforce gender hierarchies by engaging people within fixed categories that define their acceptable roles and behaviours, gender-appropriate attributes, etc. Any deviation from gendered expectations invites rectification, one of which is rectification through violence. This is also clear from the NFHS which indicates that 45% of the people believe that wife beating is justified if the wife behaves in a certain way. The social hierarchy is initially enforced by socialising persons of different genders into their stereotyped roles and attributes, and if that does not happen then enforcement through violence is seen as justified.



Umeed: Moreover, it's not just women, but other gender and sexual minorities such as transgenders and other members of the LGBTQ+ community are also invariably subjected to violence as they do not conform to traditional societal norms pertaining to gender and sexuality.



Figure 34: Ways in which violence against women is justified



Haqiqat: Gender-based violence includes violence that ‘affects women disproportionately’. What does this mean? How can the same act of violence affect victims differently?



Umeed: Certain forms of violence may be perpetrated against both men and women but on account of the social and cultural context in which we live, it affects women disproportionately. For instance, violence in the form of rape, acid attack or publishing of obscene material can be perpetrated against a person of any gender, but these offences disproportionately affect women because they are socially viewed not only as acts against the physical or mental well-being of a woman but also as acts robbing the woman of her beauty, charm and honour. As per the traditional societal norms, these attributes are highly valued in women that must be protected at all costs.

In movies, we often hear victims of sexual assault or rape say– “*Isse achha to mai mar gayi hoti.*” (It would’ve been better had I rather died.) This statement indicates

how much women are socially conditioned to prioritise and value their honour even at the cost of their lives. This idea of sexual purity is embedded into people's ways of thinking on account of the role played by culture, religion, caste and class in our society. Further, the media through movies, advertisements and television continue to reinforce these ideas. As a result, gender-based violence affects women disproportionately compared to men even when the two are subjected to the same act of violence.

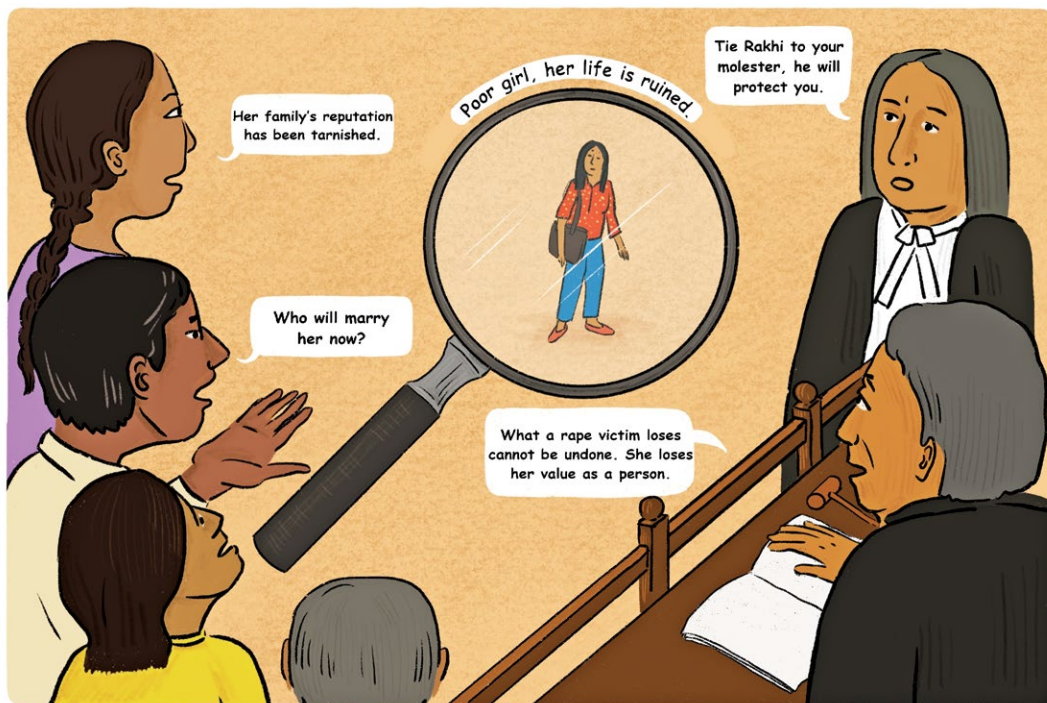


Figure 35: How a victim of gender-based violence must not be treated



Figure 36: How a victim of gender-based violence must be treated

Exercise No. 18

Given below are a few newspaper clippings. Read them and answer the questions that follow:

(i)	(ii)
<p>Out on bail, rape accused throws 'acid' on Dalit victim; arrested</p> <p>The woman was rushed to a hospital with burn injuries on her shoulder and the back, said police, adding that her condition is stable.</p> <p>By: Express New Service Lucknow March 20, 2023 03:13 IST</p>	<p>Dad strangles daughter for relationship with Dalit boy in Karnataka's Kolar</p> <p>TNN / UPDATED: JUN 29, 2023, 08:17 IST</p> <p>KOLAR: In a suspected incident of honour killing, a 20-year-old girl was strangled to death by her father for falling in love with a Dalit boy, 22, in Bodagurki, a small village in Bangarpet taluk and about 100 km from Bengaluru, early on Tuesday.</p>

<p>A 26-year-old rape accused, out on bail, was arrested on Sunday for allegedly attacking the 19-year-old Dalit victim with “acid” outside her residence in Sant Kabir Nagar district, police said.</p> <p>According to the police, the woman alleged that when she stepped out of her house for some work on Friday, the accused — an upper-caste farmer — attacked her with acid, and when she raised an alarm he fled the spot on a motorcycle. The woman was rushed to a hospital with burn injuries on her shoulder and the back, said police, adding that her condition is stable.</p> <p>Based on her family’s complaint, the accused was booked under relevant sections. The motive behind the attack is yet to be ascertained, said an officer.</p>	<p>Dharani Devi, the superintendent of police, KGF, said Krishnamurthy, 42, a plumber by profession, was arrested after he confessed to killing his daughter Preethi.</p> <p>On Monday evening, Krishnamurthy and Preethi had a fight over the issue, police said. With tension still simmering between the father and daughter, Krishnamurthy strangled Preethi to death early on Tuesday.</p>
(iii)	(iv)
<p>‘Man kills niece for marrying person from different caste’ <small>The accused surrendered at a police station along with the murder weapon, said the ASP.</small></p> <p>By: Express News Service Lucknow Updated: May 7, 2023 05:31 IST</p> <p>In a suspected case of honour killing, a man dragged his niece out of her house and allegedly slit her throat in a Sitapur village on Saturday for eloping and marrying a man of a different caste, police said.</p> <p>The man surrendered at a police station with the murder weapon, a sickle, they said.</p> <p>When the woman’s uncle came to know about their relationship, he sent her to Ghaziabad where her father worked, the officer said.</p> <p>However, after a few months, the man visited Ghaziabad, and the woman eloped with him, said the officer, adding that they got married at a court in November last year.</p> <p>He said the couple returned to the village a few days ago.</p> <p>On Saturday, her uncle reached the house where the couple was living, dragged the woman out and slit her throat with a sickle, said the officer.</p>	<p>Manipur: Shocking Video Shows Two Kuki Women Paraded Naked; One Was Allegedly Gang-Raped</p> <p><small>The incident occurred in B Phainom village in Kangpokpi district on May 4, one day after the ongoing ethnic clashes between the Meiteis and Kukis began.</small></p> <p>20/JUL/2023</p> <p>A video that is circulating on social media, showing two Kuki women being paraded naked by a mob, is from May 4, a day after the ongoing clashes in Manipur began, <i>The Wire</i> has confirmed.</p> <p>The incident occurred in B Phainom village in Kangpokpi district on May 4. One of the women was gang-raped, the first information report (FIR) filed in connection with the incident says.</p> <p>The video shows several men, apparently Meiteis, walking alongside the two women as they are led into some fields. The video shows at least some of the men groping the women. Surrounding them are hundreds of other men, some bystanders others apparently part of the mob.</p>

(a) Identify the aggrieved person in each case. (mention their gender, age, region, caste, etc.)

(i) _____

(ii) _____

(iii) _____

(iv) _____

(b) Who are the perpetrators of violence in each case? (mention their gender, age, region, caste, etc.)

- (i) _____ (ii) _____
- (iii) _____ (iv) _____

(c) What are the similarities and differences between the aggrieved persons in each case?

(i) Similarities:

(ii) Differences:

(d) What would be the immediate needs of the aggrieved women in cases (i) and (iv)?

(e) What do you think would be the impact of these crimes on the future of the aggrieved women in cases (i) and (iv)?



Umeed: Haqiqat, could you identify the perpetrators and victims of crimes reported in news reports in the last exercise?



Haqiqat: Yes, Umeed! In all these cases, the perpetrator was a man and the victim was a woman.

News Report	Perpetrator	Victim
(i)	Upper-caste man	Dalit woman
(ii)	Father	Daughter
(iii)	Uncle	Niece
(iv)	Men of one dominant ethnicity	Women of other ethnicity



Umeed: But did you notice that apart from gender, these crimes were committed in the context of differences of caste and ethnicity? What this tells us about violence against women is that gender is not the only factor that is relevant in the commission of these crimes. Gender identity mediates through other identities and contexts to influence who may be victimised, when, by whom, and on what grounds. Social structure is not based only on gender but is constituted by other identities which are constructed in a manner similar to gender, i.e., through the categorisation of individuals into different groups based on factors like caste, religion, region, ethnicity, race, age, etc.

Apart from these identities, another factor that seems relevant in these crimes [news report (ii) to (iv)] is the association of women with the honour of the family, caste or community. Caste purity is believed to be defiled if a woman from an upper caste marries a man from a lower caste. Since women are symbolically viewed as the bearers of honour, subjecting women from any community to violence is seen as dishonouring the entire community. The men of the community that have been dishonoured stand vanquished by the men of the community that dishonours their women, thus proving the men of the former community as weak for failing to protect their women. One finds that the tussle for superiority among castes, regions, ethnic groups, races, etc., is often mediated through women. It reduces women to objects through which different groups stake their claim to superiority. All of us thus become carriers and upholders of these separate identities that emerge through

the process of categorisation. Therefore, individual acts of violence must also be understood in relation to the structures they are related to, how they manifest these structures and the role they play in reinforcing them.



Haqiqat: Umeed, I think I have got your point. We need to understand—

- news report (i) not just as violence perpetrated by a man on a woman but also as violence perpetrated by an upper caste man on a Dalit woman.
- news reports (ii) and (iii) as violence perpetrated by people who are related to the victim by blood, i.e., father and uncle but could not bear the defiling of their caste by the actions of their daughter or niece in marrying a person from a lower caste.
- news report (iv) as disgracing of one community by another through the victimisation of the women belonging to the former community so as to disgrace the entire community.

It is clear that cases of gender-based violence against women must be understood after locating the same within the other structures of domination and specific contexts in which they occur.



Umeed: Do you know that over 4 lakh cases of crimes against women were reported in 2022? Can you guess which was the most reported crime against women? Here are some statistics.

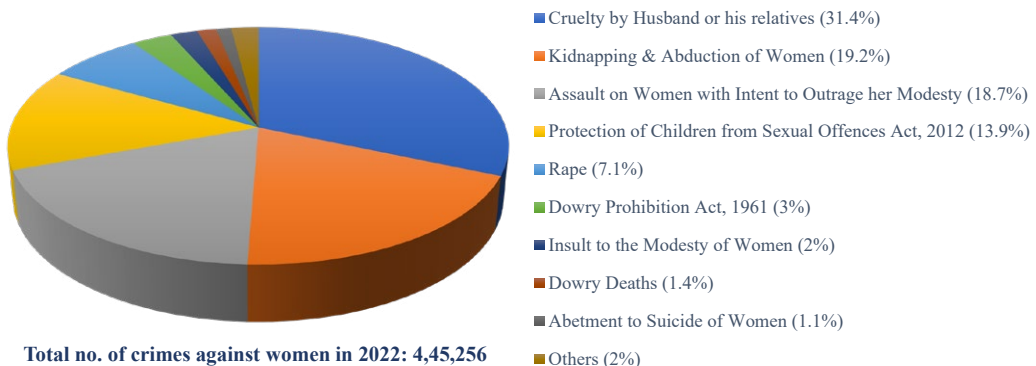


Figure 37: Crimes against women in 2022

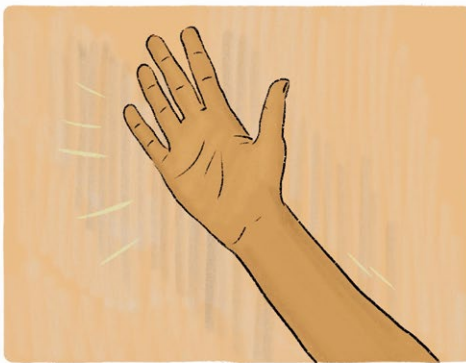


Haqiqat: This is such an alarming number. I had no idea that violence against women could be committed in so many different forms.

I have heard that violence is not just physical in nature, but it can also be psychological.



Umeed: Yes! Violence against women can take different forms, including physical, sexual, financial, and psychological abuse. The most obvious form of violence against women is physical and sexual violence. However, violence can also occur in equally tormenting ways, in which there are no visible signs of physical harm or injury. Women are often coerced, abused, and deprived of their liberty without the use of any physical force. This results in violence in the form of emotional or psychological abuse.



Physical



Sexual



Psychological



Financial

Figure 38: Different forms of violence

Emotional and psychological abuse is a form of non-physical violence which may or may not be a result of physical violence. Verbal abuse, threats, dominance, control, isolation, ridicule, or manipulation are a few examples of how this type of violence occurs. The same can grievously impact the victim's mental and physical health, causing injuries that could distress them immeasurably for life.



Haqiqat: We use the word 'victim' frequently when talking about violence. Could you elaborate on its meaning?



Umeed: Generally speaking, **victim** is someone who has experienced harm, abuse or violence. This term is commonly used in our criminal justice system to refer to individuals against whom a crime has been committed. The person who commits the crime is known as the perpetrator.



Haqiqat: I have also heard people use the word 'survivor' to refer to those who have experienced violence. What does this term mean?



Umeed: The term **survivor** refers to an individual who is currently going through or has gone through the process of healing and recovery, whether or not the crime has been adjudicated.



Haqiqat: What is the difference between the two terms? Which term should we use?



Umeed: The term 'victim' emphasises the harm or injury that a person has suffered. It is frequently used within the legal system when dealing with crimes. On the other hand, the term 'survivor' shifts the focus from the act of violence or crime to the person who has endured it. It acknowledges the strength and resilience of an individual and emphasises on their journey of recovery.

The word victim can sometimes carry a negative connotation implying powerlessness, passivity or helplessness which often leads to stigmatisation and may cause the person to experience a sense of re-victimisation. Whereas the use of survivor is often associated with hope, empowerment and affirmation of an individual's agency.

The terms ‘victim’ and ‘survivor’ are often used interchangeably depending on the context and the preferences of individuals being referred to. Additionally, we may also use the term **aggrieved person** or **aggrieved woman** to refer to those who have been subjected to any kind of harm, abuse or violence.



Haqiqat: So, in a legal sense, women who have been subjected to violence are victims, but they are also survivors who have endured or overcome that violence. I believe we should not allow their lives to be solely defined by the violent experiences they have suffered.

Exercise No. 19

Given below are examples of gender-based violence in popular Hindi cinema. Reflect on the questions raised.



Darr: Rahul’s love and obsession for Kiran makes him go to great lengths to have Kiran in his life. Rahul follows, stalks and obsesses over Kiran. Kiran is caught between one man’s love and another man’s obsession and fear. When we watched the movie, we must have seen Rahul simply as an obsessed lover

who would do anything for the love of his life. But what about Kiran and the fear she felt from Rahul’s behaviour?



Kabir Singh: An alcoholic surgeon battling temper issues often ends up inflicting emotional and physical violence on his girlfriend and other women. Though Kabir loves Preeti dearly and cannot see a life without her, his anger and rage end up hurting Preeti. Is that not violence?



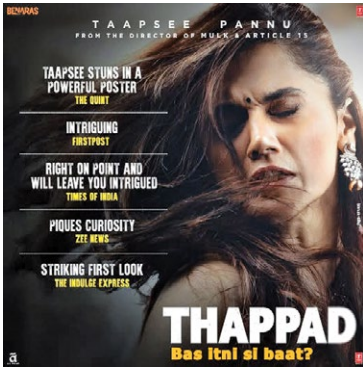
Khoon Bhari Maang: A man marries a rich widow for her money and abuses her. He plots to murder the woman which disfigures her face. The woman returns to take her revenge after getting plastic surgery on her face. Why do you think the woman feels so angry?



Provoked: Kiranjit Ahluwalia is a woman who has been subjected to abuse for 10 years, and in self-defence kills her husband. Do you think Kiranjit should be punished?



Raanjhanaa: Kundan falls in love with Zoya at an early age and often stalks her when she visits college, market or school. When Zoya returns from Delhi after graduation, she wants to marry Akram. However, Kundan continues to follow her and tries to persuade her to leave Akram and marry him. It depicts the forceful and obsessive behaviour of Kundan who cannot seem to accept Zoya's refusal of his proposal. Is this not a violation of Zoya's freedom of choice?



Thappad: Amrita and Vikram Sabharwal are happily married. Vikram works in a reputable company while Amrita is a homemaker and her life only revolves around him. Vikram gets a promotion and they are soon going to relocate to London. They throw a celebration party. However, at the party, Vikram finds out that he won't be heading the London office after all and will have to work under the person who was supposed to be his junior employee. Vikram gets in a fight during the party

and slaps his wife as she tries to intervene. The movie is about Amrita's legal battle for separation based on the slap. Do you think one slap is forgivable? Does it not count as violence?



Haqiqat: Just as violence can take different forms— physical, sexual, emotional and economic, I'm sure the impact of violence on the victim would also vary.



Umeed: Yes! When a victim experiences violence, they may experience not just various impacts, but may also respond to it in multiple ways. The possible impact of or response to violence on women can be categorised into the following three types:

Impact/ Response		
Physical	Psychological	Socio-economic
External or internal injuries	Shock and disbelief	Loss of livelihood due to hospitalisation or inability to work
Nausea	Fear and constant crying	Accumulation of financial debt resulting from the cost of treatment or hospital stay
Numbness or tingling sensations	Anger and urges for retaliation	Withdrawal of financial support by the alleged perpetrator or their family

Impact/ Response		
Physical	Psychological	Socio-economic
Increased heart rate or trembling	Depressive thoughts or feelings of helplessness	Loss of social security and support from family or friends who supported or condoned the violence, don't believe the survivor, or fear the repercussions of getting involved.
Feeling cold or experiencing hot flashes	Nightmares or disturbed sleep	Financial and social challenges in seeking mental health support or legal assistance.
Loss of appetite	Loss of self-confidence	Inability to maintain healthy social relations due to the trauma of the violence.

Figure 39: Impact of or response to violence against women

The impacts of and responses to experiences of violence can be varied. There is no question of dismissing or rejecting any response as an invalid one. The circumstances in which women experience violence, that is, their social, financial and psychological circumstances, determine the kind of impact the incident may have on their life, both short-term and long-term. This, in turn, affects how they respond to the incident.

Exercise No. 20

Take a moment to think about any experience that has been difficult for you. It does not necessarily have to involve violence. Now,

(a) Think about how that incident made you feel, physically or psychologically. Did you also experience any socio-economic effects?

(b) How does thinking about it make you feel now?

Exercise No. 21

Consider the pictures below:



Answer the following questions:

(a) Explain what is happening in these pictures.

(i) _____

(ii) _____

(iii) _____

(iv) _____

(b) Write down whether you have experienced something similar to the instances shown in the pictures.

(c) Why do you think you had to experience it or why not?



Umeed: Let's take the help of some illustrations to better understand the impact of violence on women's lives.

Illustration 1



A deeply aggrieved woman is struggling to deal with the violence she has experienced. She is finding it difficult to share her ordeal with others or even carry on with her normal routine. There could be many reasons why she may not be able to discuss the incidents that caused her physical or emotional harm. For some survivors, it can take time to fully process the trauma and gather the strength to speak out about the violence they have experienced.

Figure 40: Impact of violence on women's lives-I

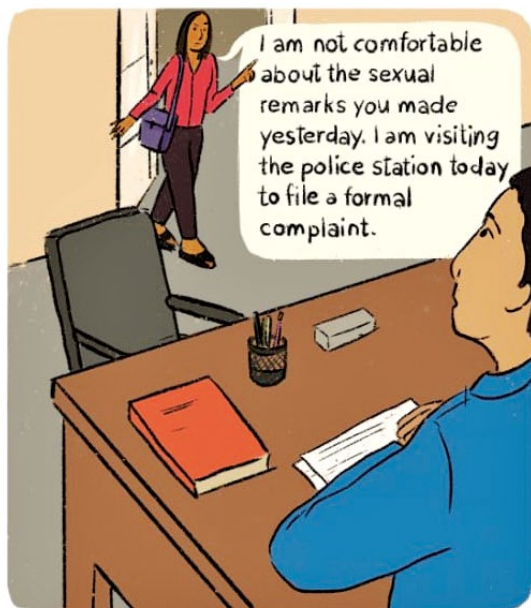
Illustration 2

Figure 41: Impact of violence on women's lives-II

A woman who has experienced violence not only confronts the perpetrator but also decides to take recourse to the legal process of redress after assessing the harm inflicted upon her. This decision requires not only strength and courage but also an awareness of one's rights and the laws that exist to protect women from various forms of abuse and violence.

Illustration 3

Figure 42: Impact of violence on women's lives-III

A woman who is perhaps coping with the violence through denial. Despite incurring visible physical injuries, she seems to want to overlook the incident, carry on with her everyday life, and leave it behind in her past. Denying domestic violence could be a form of coping mechanism because the fact that your own loved ones are causing you pain is a difficult reality to accept. Moreover, disciplining children or young adults through physical punishment is often normalised and individuals are not expected to question or complain about it. The realisation that what is happening to her is wrong can come with increased

awareness of the patterns of abuse and assault, and a further realisation that such violence is unlawful and unacceptable. This requires creating a safe space for the woman to talk about what is happening to her.



Haqiqat: It appears that violence against women is a complex issue. Many women struggle to find the courage or support they need to speak out about the violence in their lives, while some may find a way to do so. I think that raising legal awareness about gender-based discrimination and violence against women is crucial for effectively addressing and combating violence against women.



Umeed: Absolutely, Haqiqat. Furthermore, it is important to remember that none of these illustrated responses are more or less valid than the others. Each of these responses reflects the different ways in which women experience and navigate their trauma. None of these responses should be seen as a reflection of the survivor's strength. Instead, each survivor's response and choice of dealing with her experience of violence should be respected. She should be given the necessary space and support to process her emotions and experiences while fostering an environment of trust so that she feels adequately informed and empowered to choose the course of action that she thinks is best for her.



Haqiqat: You are right! Whether silent, aggressive or in denial about the violence, every survivor of violence should be heard and taken seriously.



Umeed: Haqiqat, now can you summarise some of the key points we have discussed so far?



Haqiqat: Of course!

- Prevailing modes of thinking and the ways in which human beings make sense of the world form the background against which both social and legal norms emerge.
- A complex relationship exists between legal norms and social norms. While both may remain conditioned by the prevailing modes of thinking, the deliberative lawmaking process allows us to ensure that legal norms counter discrimination and promote fairness and equality.

- Diversity is a social fact, but when differentiation results in prejudice, exclusion, oppression, inequality or exploitation, it transforms into discrimination.
- The Constitution of India prohibits discrimination. However, prevailing modes of thinking many times promotes discrimination by creating hierarchies between identities.
- One of the prominent prevailing modes of thinking involves thinking in term of binaries.
- Binary refers to the concept of understanding something in pairs or as two parts, which are generally depicted as opposites. These two parts operate in an ‘either-or’ manner.
- ‘Man and woman’ is a binary based on sex. ‘Masculine and feminine’ is a binary based on gender. ‘Heterosexual and homosexual’ is a binary based on sexuality.
- Binary ways of thinking ignore the spectrum of diversity and invisibilises many identities.
- Those who do not fit into the binary in terms of their roles and attributes are often perceived as deviant, which, in turn, leads to discrimination and normalises violence as a means of correcting the deviance.
- Gender-based violence against women is violence perpetrated against them because they are women or it is violence that disproportionately affects women.

POINTS TO PONDER

We often unquestioningly internalise many practices as the norm, probably because of what we may have witnessed while growing up. However, we must consider:

- Do norms unequally burden certain sections of people and undermine their right to equality, autonomy and dignity?
- Do social practices normalise violence against women?
- How can we challenge prevailing practices that perpetuate inequality, discrimination and violence?
- Isn't it necessary to continuously reflect on and question our beliefs, biases and ways of thinking?

References

Aljazeera, 2021: Payal Dhar, 'I have sacrificed a lot': Growing up LGBTQ+ in India, 21 June 2021, <https://www.aljazeera.com/features/2021/6/21/i-have-sacrificed-a-lot-growing-up-lgbtq-in-india>.

CEDAW General Recommendation No. 19: UN Committee on the Elimination of Discrimination against Women, General Recommendation No. 19: Violence against women, 11th Session, 1992.

Cook & Cusack, 2010: Rebecca J Cook and Simone Cusack, Gender Stereotyping: Transnational Legal Perspectives, University of Pennsylvania Press, Philadelphia.

Feminism in India, 2018: The Trauma of Growing up as a Trans Man in a Heteronormative, Casteist Society, 17 October 2018, <https://feminisminindia.com/2018/10/17/trauma-trans-man-growing/>.

Hindustan Times, 2024: Coovercolly Indresh, Cab driver arrested for stalking, raping woman in Bengaluru, 6 August 2024, <https://www.hindustantimes.com/india-news/cab-driver-arrested-for-stalking-raping-woman-in-bengaluru-101722885095669.html>.

Hindustan Times, 2025: Asmita Ravi Shankar, Drugged, raped over 6 days by 23 across hotels: 19-year-old's horrific gang rape in Varanasi, 11 April 2025, <https://www.hindustantimes.com/india-news/drugged-raped-over-6-days-by-23-across-hotels-19-year-olds-horrific-gang-rape-in-varanasi-101744373106304.html>.

International Commission of Jurists, 2019: Living with Dignity: Sexual Orientation and Gender Identity Based Human Rights Violations in Housing, Work, and Public Spaces in India, <https://www.icj.org/wp-content/uploads/2019/06/India-Living-with-dignity-Publications-Reports-thematic-report-2019-ENG.pdf>.

NCERT, 2020: Diversity and Discrimination, Social and Political Life-I: Textbook for Class VI.

New Indian Express, 2023: Dalit woman gang-raped in Rajasthan village, 5 booked, 23 October 2023, <https://www.newindianexpress.com/nation/2023/Oct/23/dalit-woman-gang-raped-in-rajasthan-village-5-booked-2626538.html>.

New Indian Express, 2024: Rahul P Gopal, Kerala: Newlywed woman assaulted by her husband, charged with domestic violence, 14 May 2024, <https://www.newindian-express.com/states/kerala/2024/May/14/kerala-newlywed-woman-assaulted-by-her-husband-charged-with-domestic-violence>.

Ozchen, 2022: Binary vs Spectrum Thinking, <https://ozchen.com/binary-vs-spectrum-thinking/>.

PLD, 2004: Partners for Law in Development, CEDAW: Restoring Rights to Women, 2004, https://www.academia.edu/15474066/CEDAW_Restoring_Rights_to_Women_English.

Scaler, 2016: Gender Identity Spectrum, <https://scalar.usc.edu/works/index-2/media/the-gender-spectrum>.

The Hindu, 2020: Uttar Pradesh Dalit girl, victim of brutal gang rape, dies in Delhi hospital, 30 September 2020, <https://www.thehindu.com/news/national/other-states/dalit-girl-gangraped-by-upper-caste-men-in-uttar-pradesh-hathras-dies-in-delhi-hospital/article32721406.ece>.

The Hindu, 2021: Geetika Sasan Bhandari, Growing up non-binary in today's India, 1 August 2021, <https://www.thehindu.com/society/growing-up-non-binary-in-todays-india/article35625327.ece>.

The Hindu, 2024: Snehal Mutha, Two minor girls sexually assaulted in school van, accused arrested, 3 October 2024, <https://www.thehindu.com/news/national/maharashtra/two-minor-girls-sexually-assaulted-in-school-van-accused-arrested/article68713952.ece>.

The News Minute, 2016: Ragamalika Karthikeyan, I fought, I won: The inspiring journey of a transman in India, 27 December 2016, <https://www.thenewsminute.com/features/i-fought-i-won-inspiring-journey-transman-india-tnm-interview-54890>.

Times of India, 2025: Keshav Agarwal, 6 of family booked for killing 26-yr-old woman for dowry, 18 March 2025, <https://timesofindia.indiatimes.com/city/bareilly/6-of-family-booked-for-killing-25-yr-old-woman-for-dowry/articleshow/119173138.cms>.

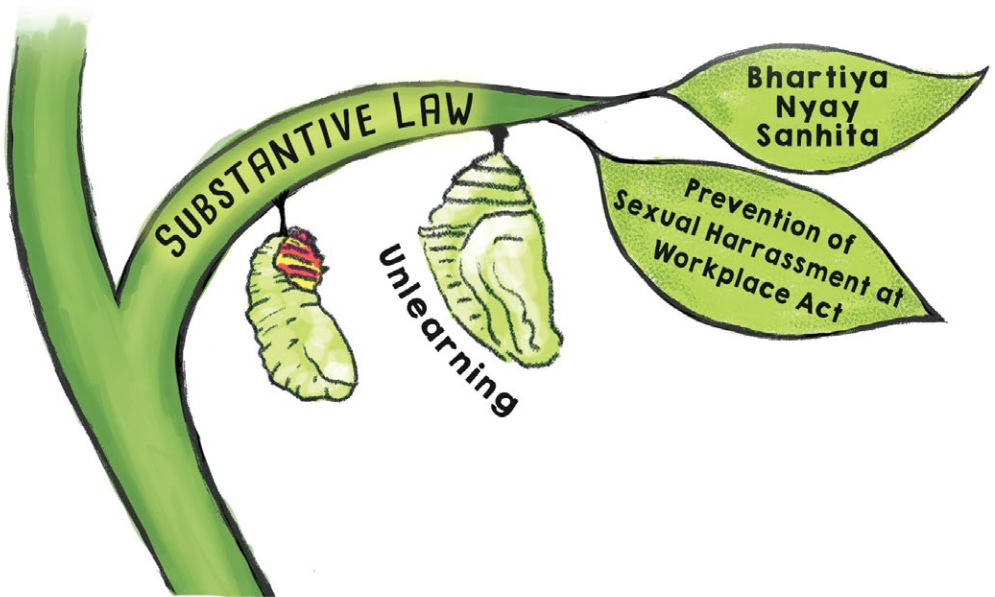
Xtramagazine, 2021: Urmi Bhattacheryya, How I survived lockdown with my parents after coming out to them as trans, 2 July 2021, <https://xtramagazine.com/power/india-dispatch-trans-coming-out-202900>.

Your Story, 2023: Saranya Chakrapani, A decade after NALSA judgment, trans lives continue to get lost to systemic violence, 4 December 2023, <https://yourstory.com/socialstory/2023/12/trans-lives-continue-to-get-lost-to-systemic-violence>.

Answers

2. (a), (b), (d), (e)
4. Practices such as untouchability, child marriage, sati, giving or taking of dowry.
6. Hindu Marriage Act 1955, Hindu Succession Act 1956.
7. (a) Sex, (b) Gender, (c) Gender, (d) Sex, (e) Sex
12. (a) False, (b) True, (c) False, (d) False, (e) True
18. (a) (i) Dalit woman, 19 years old, Uttar Pradesh; (ii) Daughter, 20 years old, Karnataka; (iii) Niece, Ghaziabad; (iv) Kuki women, Manipur.
 (b) Similarities: In each case, the aggrieved person or victim is a woman.
 Differences: The victims differ in age, caste, and region.
 (c) Medical and legal assistance
 (d) Psychological trauma, social stigma, anxiety, and related issues.
21. (a) (i) The daughter is doing the household work while the son is studying, (ii) The girl is being subjected to sexual harassment, (iii) The woman is facing domestic violence, (iv) An elderly woman is abandoned or compelled to leave her house.

PART II




Understanding The Substantive Laws


Unknown man booked for stalking, harassing women
(Hindustan Times, 2024)

Minor girl 'raped' by co-passenger in running train's washroom
(Deccan Herald, 2025)

Water purifier technician molests woman
(Times of India, 2019)

Man pours kerosene on wife, burns her alive
(India Today, 2024)

 Times of India 



India records 51 cases of crime against women every hour; over 4.4 lakh cases in 2022: NCRB report

India News: The National Crime Records Bureau (NCRB) released its annual crime report, revealing a concerning surge in crimes against women in India.

(Times of India, 2024)

Figure 1: News headlines pertaining to cases of crimes against women



Haqiqat: Umeed, there has been a concerning surge in reports of crimes against women.



Umeed: Yes! Gender-based violence against women is one of the most prevalent forms of violence and it can take many different forms. That's why we have a range of laws in place which prescribe punishment for such acts. These acts of violence are punishable under the law dealing with crimes.



Haqiqat: I would like to know about all these laws.



Umeed: Before that, we need to first understand what constitutes a crime under the law.

A **crime** is an act or omission which is punishable by law.

An essential pre-requisite for the existence of any society is that the individuals do not harm each other. This harm may be to a person or their property. Duties are therefore imposed on everyone not to harm others through their actions or inactions. Anyone who violates this duty commits a crime or an offence.

What is a Crime?

Crime is an act/omission that is punishable by law. Punishments include death penalty, imprisonment, fine, probation, etc.

Figure 2: Definition of a crime



Haqiqat: How can one determine whether a violation of this duty has happened or not?



Umeed: A violation of this duty happens when the following elements are present:

- A person does an act that is prohibited under the criminal law (guilty act). This is the physical aspect of the crime which results in harm or injury to the victim.
- The act is done with the intent to cause harm or injury (guilty mind). This is the mental aspect of the crime which makes the harm caused blameworthy and therefore establishes that the person causing it deserves punishment.



Haqiqat: So, this means that if one wants to know what makes up an offence, one needs to know the following two aspects:

- What particular act does the definition of an offence entail?
- What is the state of mind that is integral to the offence?



Umeed: Exactly! Each offence can be read as a combination of certain actions and the mental state with which it was committed. An act has to strictly fall within these two aspects of the definition of an offence to be designated as such.



Haqiqat: How can one know what the correct definition of an offence is? Where is it laid down?



Umeed: Such definitions of various offences exist in the **Bharatiya Nyaya Sanhita, 2023** (hereinafter referred to as 'BNS'). BNS also prescribes the punishments with respect to these offences. These were previously provided under the Indian Penal Code, 1860 (hereinafter referred to as 'IPC'). However, IPC has been replaced with BNS, which came into effect on July 1, 2024.

In addition to the BNS, there are other laws called 'special laws' which define certain offences that are not defined in BNS and prescribe punishment for the same.



Haqiqat: Could you tell me about the offences related to gender-based violence and what makes up these different crimes under the BNS and special laws that you mentioned?



Umeed: Of course, let's discuss the following **crimes or offences against women:**

1. Stalking
2. Sexual harassment
3. Publishing or transmitting sexually explicit material in electronic form
4. Acid attack
5. Insulting the modesty of a woman
6. Obscene acts or songs
7. Voyeurism
8. Violation of privacy
9. Outraging modesty of a woman
10. Disrobing
11. Kidnapping
12. Abduction
13. Trafficking
14. Cruelty
15. Giving or taking dowry
16. Dowry death

17. Abetment of suicide
18. Sex determination
19. Causing miscarriage
20. Honour killing
21. Rape
22. Caste-based atrocities
23. Sexual offences against children



Figure 3: Offences against women under BNS



Haqiqat: This is such a long list of offences. Although I'm curious to know about these laws, I think understanding them would be a daunting task considering how complicated their composition sounds.



Umeed: Don't worry, Haqiqat! We will do our best to understand these offences in the simplest manner possible. I think it would be a good idea to take the help of some stories pertaining to different crimes to learn about them. Through the facts of the stories, we would be able to gain a better understanding of the different elements that make up a particular offence.

Story 1: Farida's Story

Farida is an 18-year-old girl who has recently joined a college. She has a speech disorder which makes it difficult for her to speak clearly. After her good results in her Class XII board exams, she was allowed to complete her graduation at *Kendriya Mahavidyalaya*. Her college was about 3 km away from her home so she used to take a bus from the Central Market bus stop to the *Kendriya Mahavidyalaya* bus stop. When she started college, her parents bought a smartphone for her so that she could use it to communicate with others. The phone was Farida's pride and joy because it had been promised to her if she did well in her board examinations. She was excited not just to be able to talk and interact with her friends on Facebook and WhatsApp, but also because it was essential for accessing online resources. She could also use the smartphone to communicate with her family while commuting.

As Farida started commuting to college regularly, she noticed that a man who looked no less than 35-40 years old would always stand next to her and stare. He would continue to do so without moving his gaze away from her even for a second. This made Farida uncomfortable so she would start looking down or pretending to be busy on her phone, but the man's eyes remained fixed on Farida. He would look at her from head to toe, and Farida could feel his gaze on her the entire time she waited for her bus. Even when she tried to move away from him, she would again find him standing next to her. The 5-10 minutes wait at the bus stop felt like a lifetime to her, and she would want to just run away.

Every time Farida looked up to see whether anyone else saw her discomfort, she realised that no one else seemed to notice that the man was staring at her, so she assumed that her discomfort was just in her head. Initially, she thought that since it is in the mornings when most people go to work or other places, their commute times must be the same, which is why he is always there at the same time. But after a few days, it became clear to Farida that he was always present near the bus stop just to watch her. She noticed that the moment she boarded her bus and was out of his sight, he would get onto his motorcycle and leave.

Out of fear, Farida asked her brother to drop her off at college or at least the bus stop. However, her brother mockingly said, "You always wanted freedom, why do you need me, your little brother, to keep you safe?" Farida's mother and father were also not able to pick up on her discomfort and said "*beta*, this commute is new to you, you are a brave girl, you will get used to travelling by bus, it's just new that's all." So,

Farida had to swallow her fear and discomfort. She continued to travel through the same route for about two months till summer break.

During the break, Farida was a little relieved that she didn't have to commute to college and encounter that man. She didn't know whom to tell about this, because she had the impression that he only looked at her when she was waiting at the bus stop. She hoped it would stop eventually.

A few days into her vacation, Farida created an account on Facebook. She was elated as the account allowed her to freely express herself and her thoughts. After one week, she received a message, "hello", from an unknown person she had not added as her 'friend' on Facebook. His name was Lal Chauhan, but she did not know any person with that name. When she looked at his profile more closely and clicked to open his profile picture, Farida's stomach sank. She realised that this person was the same man who would stare at her every day at the bus stop. Farida got very scared and logged out from her account.

The next day, she logged into her Facebook account to see whether that man had sent her any more messages. When she saw that there were no new messages from him, she felt a little relieved and continued with her day. The day after, Farida logged into Facebook at the same time, but this time she saw that there were more messages from that man. All of these messages were media files, and when she clicked on them, she discovered that they contained pornographic photos and videos. Under these messages, the man wrote that he loved her and wanted to touch and feel every part of her body. Upon seeing these messages, Farida burst into tears. The messages made her anxious and she became too scared to step outside of her house. She became very terrified and did not know who to confide in. She did not respond to any of his messages and logged out of Facebook.

A few days later, she logged into her Facebook account again to find that Lal had sent her more messages. This went on for several days. In each of these messages, he would talk about his love for her, how he wanted to touch and feel her body, and what he would do to her once she was close to him. His messages included sexually explicit content. Farida, not knowing what to do, finally responded to his messages asking him not to bother her. However, he kept sending her messages saying that he was eagerly waiting for the day her college would reopen so that he could see her. Seeing that he did not understand that she was not interested in him, Farida stopped responding to his messages.

Two weeks later, on the evening before her college was about to reopen, Farida checked her inbox on Facebook. She was afraid at the prospect of encountering him the next day and was hoping that her silence would have discouraged him from bothering her. However, when she saw her inbox, she found that the man had been upset and angry with her for not responding to his messages. He said that he could see that she was online every day for about three hours on Facebook and that he also knew the time she would come online. As soon as she read his messages, she received a threatening message from him saying “I am aware of your online activities, so how dare you ignore me when you are online.” He continued to send hateful messages saying that she was ugly and that no one would ever marry her if she kept posting pictures of herself in sleeveless tops and jeans.

Farida felt a little bit of relief after reading his last messages. She thought that maybe he had lost interest in her and would no longer bother her. The next day, around 7.25 am, Farida was waiting for the bus with her brother. Earlier that morning, she had again insisted that her brother drop her off at the bus stop. Her brother was annoyed by this, but he reluctantly agreed to do so. She was relieved that she did not find the man anywhere when she arrived at the bus stop. She thought that maybe he finally understood and would not harass her anymore. However, on her way home from college in the evening Farida saw Lal Chauhan standing at the bus stop and staring at her. She rushed towards her home and decided to share this with her family. Later, Farida along with her parents reported everything to the police.



Figure 4: Lal Chauhan stalking Farida



Haqiqat: I can't imagine how uncomfortable Farida must have felt when Lal repeatedly followed her. Isn't this clearly stalking?



Umeed: You are right, Haqiqat! In Farida's case, Stalking occurred in two forms —

- (i) Lal Chauhan repeatedly followed Farida and attempted to contact her despite her clear disinterest: Lal waited for Farida every day at the bus stop. He would always stand next to her and stare at her continuously. Even when she tried to move away from him, she would again find him standing next to her.
- (ii) Lal Chauhan monitored Farida's online activities: Lal used to message Farida continuously on Facebook and showed anger when she did not respond to his messages. As soon as she read his messages, she also received threatening messages from him. He told her that he was aware of her online activities and how dare she ignore him when she was online.

Both of these actions of Lal individually as well as together constitute the offence of **stalking** under section 78, BNS (354D, IPC). Since Lal Chauhan committed the offence of stalking, he will be punished under section 78, BNS (354D, IPC).

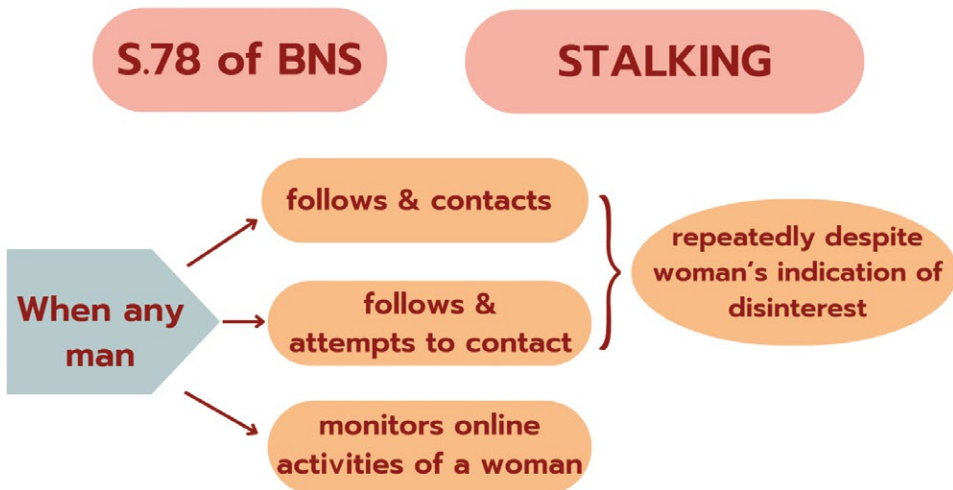


Figure 5: Stalking under section 78, BNS



Figure 6: A man stalking a woman

STALKING

Under this law, the offender can be imprisoned for up to three years and be made to pay a fine. If he is found to be a repeat offender, i.e., he has also been found guilty of stalking in the past then he may face five years in jail as well as be made to pay a fine again.



Haqiqat: As if stalking was not enough, Lal Chauhan also sexually harassed her by showing her pornography against her will and making sexually coloured remarks.



Umeed: You are right, Haqiqat!

- (i) **Pornography against her will:** He sent pornographic photos and videos to her. She ignored him and did not respond to any of his messages, but still, he continued to send her unwanted messages which included pornographic content.
- (ii) **Sexually coloured remarks:** He sent her messages containing sexually explicit content in which he talked about his love for her, how he wanted to touch and feel her body and what he would do to her once she was close to him.

He must also be held liable for the offence of **sexual harassment** under section 75, BNS (354A, IPC).

In addition to the two aforementioned acts, this law also takes the following two kinds of acts within its fold:

- (i) making physical contact and advances that involve unwanted and explicit sexual gestures, and
- (ii) making a demand or request for sexual favours.



Figure 7: Sexual Harassment

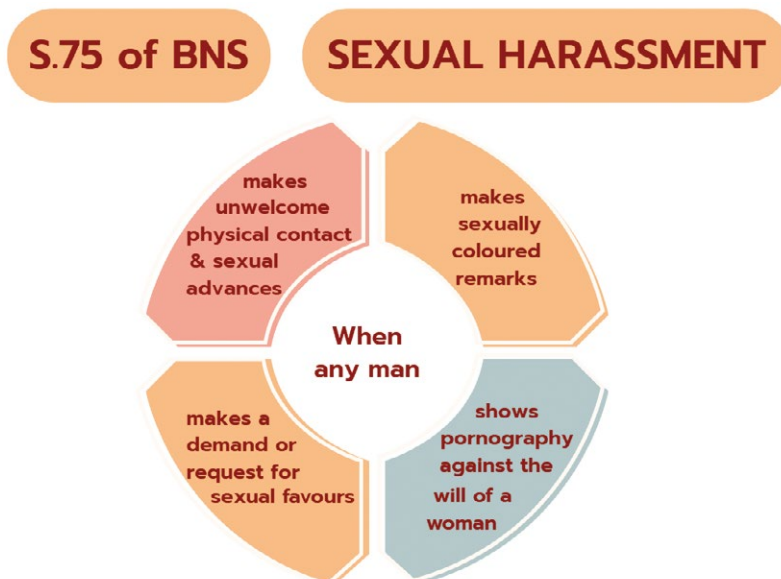


Figure 8: Sexual harassment under section 75, BNS

SEXUAL HARASSMENT

For making physical contact and advances that involve unwanted and explicit sexual gestures, demanding or requesting sexual favours or showing pornography against will, an offender can be imprisoned for up to three years and may also be required to pay a fine.

For making sexually coloured remarks to a woman, he may spend up to one year and may also be made to pay a fine.



Haqiqat: Are there any other laws under which Lal's actions would be punishable?



Umeed: Yes! Lal Chauhan sent pornographic photos and videos to Farida on Facebook which was followed by messages which contained sexually explicit content. In other words, he shared messages having sexually explicit content over social media. This falls under the crime of **publishing or transmitting material containing sexually explicit act or conduct in electronic form** under section 67A of the Information Technology Act, 2000 (hereinafter referred to as 'IT Act').

PUBLISHING OR TRANSMITTING MATERIAL CONTAINING SEXUALLY EXPLICIT ACTS, ETC., IN ELECTRONIC FORM

As per this law, the offender can be punished with imprisonment of up to five years along with a fine which may extend to ten lakh rupees. However, the term may extend up to seven years in case of a repeat offender.



Haqiqat: This story clearly shows how women are exposed to the threat of violence in all kinds of spaces such as streets, public transport, and even the internet. The lack of public spaces which women can access freely and safely can have detrimental effects on their freedoms. As we saw, Farida's biggest concern about telling her family or friends about Lal Chauhan was the fear that she would not be allowed to go out anymore and, as a result, would not be able to attend college.



Umeed: Yes! Women are entitled to have access to higher education but the lack of safe public spaces not only poses a threat of violence to women but also affects their social mobility and access to opportunities.

Exercise No. 1

Choose the most appropriate option for the questions below.

- (i) Lal Chauhan will be punished for stalking under section 78, BNS (354D, IPC) because:
- (a) He showed up every day at the bus stop, would stare at Farida constantly, and leave once she got on the bus. He also repeatedly sent her messages on Facebook even though she did not respond to his earlier messages.
 - (b) He cannot be punished for stalking because he never made any gestures or comments that showed he was there at the bus stop for Farida.
 - (c) He cannot be punished for stalking because he never got onto the bus.
- (ii) Lal Chauhan will be punished for sexual harassment under section 75, BNS (354A, IPC) because:
- (a) He stared at Farida at the bus stop every day and that made her very uncomfortable.
 - (b) He sent Farida pornographic messages on Facebook which was very disturbing for her.
 - (c) After Farida showed no interest in having any contact him, he tried to become friends with her on Facebook.

Story 2: The Story of Five Nurses

Lalitha, Gurleen, Rajkumari, Emily and Passang work as nurses in a government hospital. One day during lunch, Lalitha does not speak to anyone and appears upset. Gurleen asks her what happened but she refuses to talk about it. However, at the insistence of everyone, she finally opens up and tells them that something happened to her yesterday.



Figure 9: Five nurses talking to each other about their experiences of sexual harassment at workplace

Lalitha: “Yesterday was quite uncomfortable for me. I was on duty in the operation theatre where Dr. Tyagi was going to perform surgery. While I was standing and making arrangements for the operation, he was constantly trying to brush his hand against my hip and come closer. Later that day, I ran into him when I was leaving for home after my shift was over. He caught the corner of my top and asked me why I was in such a hurry while continuously staring at my chest. I quickly ran and left.”

Gurleen: “I am very sorry to hear this, but it looks like this is a very common problem in our hospital. This is why I have decided to quit the job. When I told my husband about what all happened to me, he said that I shouldn’t be working anyway, I should stay at home now. It’s not safe for women.”

Gurleen starts sobbing. Everybody asks her what happened. She tells the other nurses that since she has been a nurse at the hospital for 10 years, she is due for a promotion. Yesterday she went to the office of the head of their department to ask about her promotion. He spoke to her very kindly and praised her work. He told her that she was a perfect candidate for the promotion and would most likely get it if she did one last thing. After saying this, he slowly stood next to her, put his hand on her shoulder, and asked her to have sexual relations with him for one night. Due to him standing so close to her, she froze and continued to sit on the chair. He told her that doing so would help her not only with this promotion but also the subsequent promotions.

Rajkumari: “I think the head of the department has a history of behaving inappropriately with the female staff. Last month, I went to offer him some sweets on the occasion of my sister’s marriage. He asked me to sit down, and after asking about work, he began to compliment my *salwar kameez* and said that my body looked very shapely and attractive in it. He smirked and said that I should wear such dresses more often and come to see him in the office. His comments made me very uncomfortable, and since then, I have been avoiding seeing him.”

Emily: “Unfortunately, I also have a similar ordeal to share. A few days ago, I went to the meeting room to collect some folders, there I saw a group of male doctors sitting and watching something on the laptop. All of them were staring at it intently, laughing and making snide comments. When I entered the room, Dr. Vishwas, joked that I should come and join them. When I went there, I realised that all of them were watching a pornographic video. I immediately started to leave the room. While I walked out, I heard them laughing loudly, repeatedly asking me to join them and not feel shy.”

Passang: “I have also found myself in similar situations. I have often heard many of our male colleagues compare us to heroines, rate how we are looking on a certain day, and have also seen them make lewd gestures with their hands and tongues.”

All of them are now sitting quietly.



Umeed: Haqiqat, do you find any similarity between this story and Farida’s story?



Haqiqat: I think, these women, like Farida, were also subjected to sexual harassment.



Umeed: Yes! But the experiences of these five women also constitute sexual harassment at workplace.



Haqiqat: What is sexual harassment at workplace?



Umeed: **Sexual harassment at workplace** refers to an unwelcome action or words of a sexual nature made towards women working in any institution or workplace. These include:

making physical contact and sexual advances (Lalitha)
demands or requests for sexual favours (Gurleen)
sexually coloured remarks (Rajkumari)
showing pornography (Emily)
other unwelcome physical verbal or non-verbal conduct of sexual nature (Passang)

Figure 10: Different forms of sexual harassment under the law



Haqiqat: I see! Are these actions also punishable under section 75, BNS (354A, IPC)?



Umeed: Yes! But there also exists a special law with regard to sexual harassment women face at their workplace. The **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013** (hereinafter referred to as 'POSH Act') is a special law which provides protection against each of the five types of behaviour we came across in this story. It lays down the system that must be established at workplaces to address acts that create hostile work environment for women. Thus, all the five aggrieved women can also file a complaint under the POSH Act.



Haqiqat: This means, sexual harassment at workplace can also be redressed under the POSH Act, in addition to being punishable under the BNS.



Umeed: Yes, Haqiqat. The process under the two laws is different. BNS is a criminal law while POSH offers civil remedies for acts of sexual harassment at workplace. Punishment like imprisonment or fine is imposed under criminal law whereas POSH provides remedies like transferring the perpetrator, warning him, withholding his promotions, terminating his services, etc.

Story 3: Shalini's Story

Shalini is a saleswoman who belongs to a Dalit community in Pushkar, Rajasthan. Shalini's brother Rajat works as a mechanic in an automotive repair garage. Rajat loves Dhara who hails from a Rajput family. They studied at the same school, but their families belong to different communities. Both of them wanted to get married, but they knew that their families wouldn't accept their relationship, particularly Dhara's family since she belonged to an upper-caste community. Hence, they decide to elope and get married.

Dhara and Rajat ran away together and left the town. When Dhara's family came to know that Dhara had run away from home, they looked all around their town for her, but couldn't find her. After a few days, someone informed them that Dhara was seen boarding a bus towards Bikaner with a boy. After discovering that the boy was Rajat who lived in the same town, Dhara's father and brother went to Rajat's home. Rajat's parents told them that they didn't know anything and were unaware of their whereabouts. However, Dhara's father threatened Rajat's parents saying that they would ruin their entire family if their daughter didn't return. Days passed, but neither Dhara nor Rajat could be located. Dhara's family was infuriated as they were being labelled as a family whose daughter ran off with a boy from lower-caste. Dhara's brother, Madan vows that he will take revenge on Rajat's family saying, "I'm going to teach these low lives, a lesson. How dare they get involved with our family's daughter, the reputation of our family."

One day when Shalini was on her way to work, she noticed that two men riding a motorcycle were following her. Shalini was so terrified that she did not turn her head and tried to rush towards her office. One of the men yelled, "Make sure you ruin her face, Madan! A lesson must be taught to these lower-caste people." The next thing Shalini felt was a splash of a harsh acidic liquid on the side of her face and the back of her neck. She fell down screaming in pain. One of her colleagues came rushing to pick her up and called for help. A few others assisted them to reach the nearest hospital for immediate medical assistance. The acid caused multiple severe burns and injuries to her face and neck. The incident was reported to the Police Station, Ramesh Nagar which was the nearest police Station to the bus stop where the incident had occurred.



Figure 11: Madan following Rajat's sister Shalini



Haqiqat: I don't understand why Madan attacked Rajat's sister with acid. She had nothing to do with Madan.



Umeed: Haqiqat, most acid attacks on women are motivated by a desire to take revenge. This comes from the inability to handle disappointment, rejection, or a simple refusal like 'no'. In many cases, it has been seen that when women do not reciprocate the feelings of the preparator, unable to deal with rejection, they turn to attacking women with acid.

However, in Shalini's case, the perpetrator couldn't control the actions of his sister who ran away with Rajat. He wanted to seek revenge on Rajat's family and Shalini seemed like an easy target because she is a woman.



Haqiqat: Now, I understand why Madan attacked Shalini with acid. He along with his friend must be punished for their actions.



Umeed: Absolutely! As we saw, when Shalini was going to her office,

- (i) Madan threw acid on Shalini's face and neck. The acid caused multiple severe burns and injuries to her face and neck. This fulfils the requirement of the action required to constitute the offence of throwing acid.

(ii) When Madan was about to throw acid on Shalini, his friend yelled, “Make sure you ruin her face, Madan!”. This statement fulfils the mental requirement of intention to cause permanent damage to Shalini’s face. The perpetrators also had the knowledge that this action would permanently disfigure her face.

This act of throwing acid together with the intention to cause serious hurt constitutes the offence of **voluntarily causing grievous hurt by use of acid** under section 124, BNS (326A, IPC). According to this law, not only throwing acid on someone with the intention of causing them hurt is a crime, but even throwing acid on someone knowing that doing so may cause them hurt is a crime.



Haqiqat: What you just said implies that even if Madan had not intended to hurt Shalini, but knew that throwing acid on her may cause her injuries, he would still have been held liable.



Umeed: Yes! Apart from this, administering acid to any person or using it in any way to cause serious injuries to that person is also an offence. Further, it is an offence to even attempt to do any of the aforesaid actions which means that if the acid hadn’t fallen on Shalini’s body then also the incident would have been regarded as a crime, i.e., an attempt to commit acid attack.

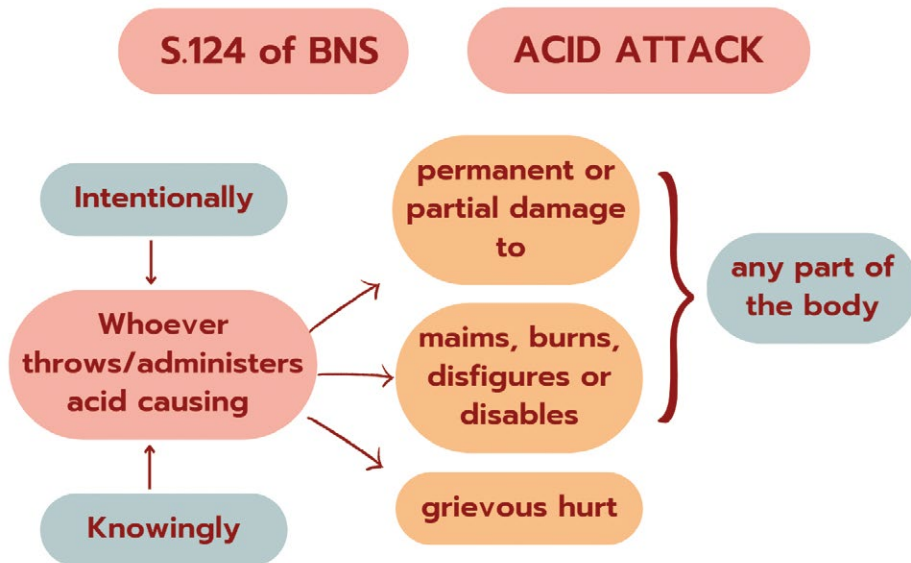


Figure 12: Acid attack under section 124, BNS

Furthermore, even though most acid attacks are committed against women, under the law the victim of acid attacks can be anyone, regardless of gender.



Figure 13: Acid Attack

ACID ATTACK

This law punishes the offender with a minimum imprisonment of ten years which may extend to imprisonment for life. In addition, they would also have to pay a fine, which would go towards covering the survivor's medical expenses.



Haqiqat: I cannot even begin to think what Shalini would have gone through. Besides causing physical discomfort and pain, the alteration in one's physical appearance due to acid can become a source of immense social and psychological suffering, especially for women, given how much importance our society gives to the appearance of women.

Umeed, don't you think the perpetrators of such crimes need to be punished more severely?



Umeed: I understand that this kind of violence needs to be dealt with seriously, but its elimination may not be achieved just by enhancing the punishments for such crimes, it requires creating a gender-just culture in our society. Crimes like acid attacks are a consequence of

the deep-rooted gender norms upheld by the society. We must take every manifestation of these norms seriously to prevent them from escalating into such harmful actions.

Exercise No. 2

Choose the most appropriate option for the questions below.

Madan will be punished under section 124, BNS (326A, IPC) for causing injuries to Shalini by throwing acid because:

- (a) He cannot be punished under section 124, BNS (326A, IPC) because the acid was thrown only to scare and not hurt her.
- (b) He threw acid on Shalini, and it is evident from the statement made by his friend 'Make sure you ruin her face, Madan!' that he intended to cause damage to Shalini's face.
- (c) He cannot be punished because it was not him but his friend who threw the acid.

Exercise No. 3

Arya works as a software engineer in Delhi. His family lives in a small district in Bihar. He was assigned the female sex at birth but identifies as a man. He had always wanted to share this with his family; however, he was afraid that they wouldn't accept this. Recently, he started undergoing gender-affirming care to physically transition into a male. He decided to tell everything to his family during his next visit home. When he told his parents about this, they locked him up in their house and tried to forcefully marry him to Vinod, a childhood family friend. Vinod had always liked Arya. A day before their marriage Arya managed to flee from his house and never returned. After a few years, Arya now completely transitioned into a man was going to a club one evening. He was unaware that Vinod had been watching him for quite a few days. Vinod was enraged that Arya fled a day before their marriage which damaged his reputation in the society. When Arya came out of the club, Vinod threw a glass of acid on his face and ran away on his bike. Can Vinod be punished under section 124, BNS (326A, IPC)?

Story 4: Jhumpa's Story

Jhumpa, a *safai karamchari*, was heading to work in a rickshaw at around 6:30 in the morning. She got off the rickshaw at the *chowk* near the railway station where she was assigned her duty and started walking towards the railway station. After a while, she noticed that a few men were following her. Soon, they started singing vulgar songs and whistling at her. At one point one of the men came very close to her and sang loudly, “*Choli ke peeche kya hai, Choli ke peeche...arreee dikha toh de* (come on, just show it).” Jhumpa got scared and she quickly ran inside a public bathroom at the railway station. She decided to wait there till those men left. In the meantime, she changed into the clothes which she usually wears while working. After waiting for about fifteen minutes and having changed into her work clothes, she stepped out to see that those men were not there. She felt relieved and then went to work.

Later in the evening, when she was preparing to head back home, she noticed that all her co-workers were looking at her strangely and murmuring something amongst themselves. She asked them what happened but none of them responded. After some time, a female friend of hers informed her that a video of her changing clothes had been shared on WhatsApp among the staff. When Jhumpa insisted on seeing the video, she realised that it was from this morning and must have been shot by the same men who were singing songs at her. She ran away feeling humiliated and scared. When she reached home, she shared with her husband everything that happened to her during the day. Her husband tried to comfort her. Both of them were furious that such an incident could take place in a public place filled with security cameras. This suggested that not only Jhumpa but so many other women and girls, were at risk of such crimes.

Jhumpa and her husband go to a nearby police station. The two along with a constable go to the railway station to see where the incident had taken place and whether the group of men were still around. As soon as they go near the bathroom where Jhumpa had changed her clothes, she sees two out of those three men who followed her in the morning, standing there and singing songs at women passing by. The constable approaches those two men and asks them why they were just standing around and whether they recognised Jhumpa. One of the men screams “come on, Raju, lets get out of here quickly...” and then both of them run away. The police constable catches the two men and takes them to the police station. They are made to furnish details of the third man who was with them when the video was recorded in the morning. The men plead that it was not just their fault. The head of security at the railway station, Suresh Chand is the one who actually came up with

this idea and directed them to film women and girls who use the public bathroom at the station. They have been doing this for several months now. It was Suresh Chand who subsequently distributed the videos. Jhumpa files a complaint against Suresh Chand, Raju Narain, Jackie Singh, and Imran Fateh at the nearby Police Station. The four are charged with committing the crime of obscene acts in a public place and voyeurism.



Haqiqat: I find it baffling that some people can derive pleasure in such perverse behaviour which causes women to feel uncomfortable, annoyed and fearful for their safety.

Jhumpa was simply on her way to work when those three men started following her. They kept on singing vulgar songs and whistling at her. One of the men even came very close to her and sang loudly, *“Choli ke peeche kya hai, Choli ke peeche...arreee dikha toh de.”*



Umeed: Clearly, those three men intended to tease and cause discomfort to Jhumpa by loudly singing lewd songs along with the intention of grabbing her attention. Their actions fall within the offence of **insulting the modesty of a woman**.

Apart from using words and gestures, the use of any object in any form to insult the modesty of a woman also amounts to a crime under section 79, BNS (509, IPC).

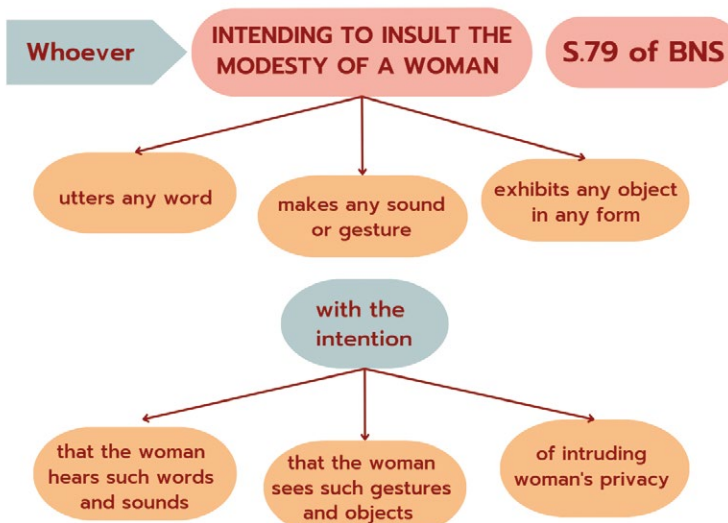


Figure 14: Insulting the modesty of a woman under section 79, BNS

INSULTING THE MODESTY OF A WOMAN

The offender is liable to face a punishment of up to three years in jail and will also be made to pay a fine.

Further, the act of singing lewd or obscene songs such as singing “*Choli ke peeche kya hai*” to annoy Jhumpa in a public place constitutes the offence of **obscenity** under section 296, BNS (294, IPC).

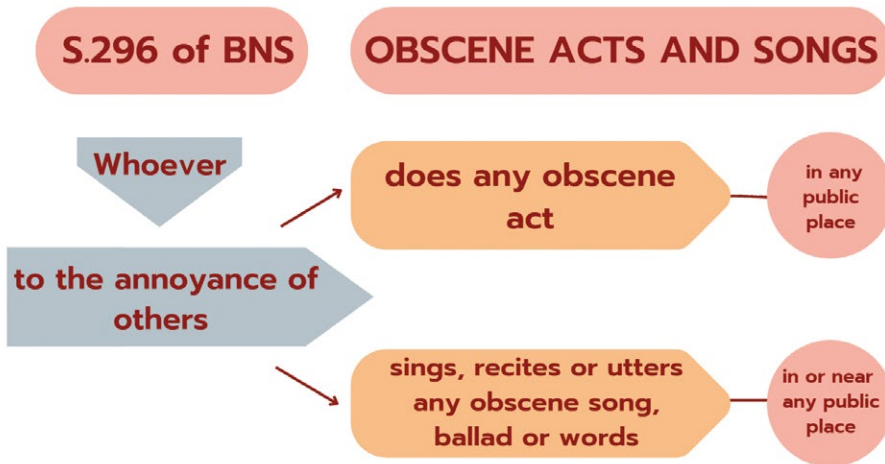


Figure 15: Obscenity under section 296, BNS

OBSCENE ACTS AND SONGS

The offender may be punished with imprisonment which may go up to three months, or a fine of up to one thousand rupees, or a combination of both.



Haqiqat: They also took her videos and circulated them to other people. What about that?



Umeed: There was more to it than that. When Jhumpa was changing her clothes in the public bathroom,

- (i) The three men watched Jhumpa engaging in a private act in an environment where she would not have expected anyone to observe her.

- (ii) They captured a video of her engaging in a private act in an environment where she would not have expected anyone to observe her.
- (iii) They shared that video with Suresh Chand, who then circulated the video further.

All three of these actions, individually as well as together constitute the offence of **voyeurism** under section 77, BNS (354C, IPC). All four of them— Suresh Chand, Raju Narain, Jackie Singh, and Imran Fateh would be held liable for committing voyeurism. We must also know that, under the law, the perpetrator of voyeurism can be anyone, regardless of gender.



Figure 16: Voyeurism

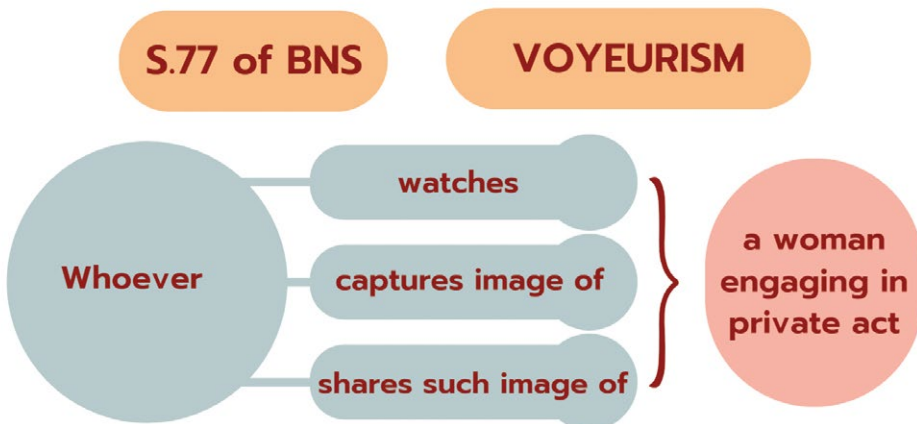


Figure 17: Voyeurism under section 77, BNS

VOYEURISM

The offender would face a minimum of one year in prison, which may be increased to three years along with a fine. However, if any of them is a repeat offender then he will receive an imprisonment between three to seven years.



Haqiqat: Umeed, since the video was circulated over WhatsApp, this should also be punishable under the IT Act, right?



Umeed: Yes! A video of Jhumpa changing her clothes was recorded without her consent in a private setting where she would not have expected anyone to see her, and the video was further shared with others in electronic form via WhatsApp.

This is also punishable under section 66E of the IT Act as the offence of **violation of privacy**.

VIOLATION OF PRIVACY

This law punishes the offender with imprisonment of up to three years or a fine which may extend to two lakh rupees or both.

Exercise No. 4

Malti works as a live performer in a restaurant in Mumbai's Colaba locality. After her shift was over, she went to a food stall to buy some food. As she was waiting for her parcel, she sensed two men gazing at her. She immediately recognised them as she had encountered them before at the restaurant where she worked. Even though she chose to ignore them, she started feeling uncomfortable and anxious. As soon as she picked up her food, she started walking towards the bus stand. The men began following her and called her names like '*chhammak chhallo*' and '*nachaniya*' in a derogatory way. She quickened her pace and hopped onto the first rickshaw she could find.

Based on the above facts, choose the most appropriate option from the following:

- (a) The two men are innocent as they were just trying to impress Malti and wanted to befriend her.

- (b) The two men have not committed any offence because they did not touch Malti.
- (c) The two men have committed the offence of insulting the modesty of a woman under section 79, BNS (509, IPC).

Story 5: Rukmini's Story

Rukmini lives with her husband Shambhu and their two children in a small village. She volunteers for her community as an ASHA worker, and her husband is a daily-wage agricultural labourer, in wheat fields belonging to the pradhan of the village.

One day a woman named Sinumai, the daughter-in-law of the Pradhan, approached Rukmini and told her that she was pregnant for the fourth time and did not want to have any more children after this. However, her husband does not listen to her and tells her that it is her duty as a wife and daughter-in-law to follow her in-laws' wishes and that it is God's will as to how many children they will have. Sinumai shares with Rukmini that she feels extremely weak and thinks that her body will not be able to carry any more children.

Rukmini is a hardworking and courageous woman who fulfils her duties as an ASHA worker with dedication. She believes that women should be made aware of all medical facilities and services available to them as this will encourage them to take care of their health. Rukmini informs Sinumai about the gynaecologist who visits the village every Saturday and Sunday. She assures Sinumai that the gynaecologist would help her in preventing unwanted pregnancies by suggesting appropriate birth control measures.

The next Saturday, Sinumai visited the doctor without telling her husband. However, someone from the village informed Sinumai's husband, Rajendra, that he saw Sinumai visiting the gynaecologist all by herself. Rajendra then compelled Sinumai to tell why she went to the gynaecologist alone. Sinumai, in tears, tried to explain to her husband that she did not want to have any more children so she went to the gynaecologist, who told her about birth control methods. Rajendra screams at her saying "Who is teaching you this nonsense? Who told you to go to a doctor? Tell me where did you find out about these things?" He threatens her while grabbing her harshly.

A terrified Sinumai tells her husband that Rukmini, the ASHA worker, informed her about the gynaecologist who visits the village every weekend and that the doctor would help her understand the measures to prevent unwanted pregnancies and help her in adopting suitable measures. Rajendra gets furious upon hearing this. He lets go of Sinumai and whispers under his breath “How dare that ASHA worker spoil the minds of our women with this nonsense. I will knock some sense into her.” Rajendra calls on his three friends, who accompany him to Rukmini’s house.

Rukmini was putting up posters about menstrual health and hygiene awareness near her home. On the way, Rajendra notices her and yells at her saying “*arre*, so you are Rukmini, the wife of Shambhu who works in my farm. You have grown wings ah, who do you think you are, some high government officer trying to change our women! You have no right to tell my wife or anyone else’s wife how many children they should have, stop ruining our women!” On hearing this Rukmini answers back saying “These are services provided by the government and it is the right of every woman to make use of such services!”

When Rajendra hears this, he becomes enraged and walks up to Rukmini, while attempting to seize her hair, shouting “I will show you who you are!” He pulls the *palla* of her saree and slaps her. Thereafter, his friends push Rukmini to the ground, hit her, and tear her blouse. They rip off her saree and blouse till she is bare naked from the top. They instruct her to walk back to her home half-naked. Rajendra yells at Rukmini, “Right now, we are only giving you a warning, if you try and do any more of this nonsense, we will show you and your husband what it means to go against the way our society is supposed to be. Remember you and your family are just labourers, you are not a government officer, you are only a servant of ours!” Rukmini was left in tears and shock.



Haqiqat: Why did Rajendra and his friends do this to Rukmini? She was simply trying to create awareness and help Sinumai exercise her rights.



Uneed: In our society, many people believe that it is against the norms and culture of our society for women to assert their rights or raise their voice as Rukmini does for Sinumai when she supports her in asserting her agency over her body and health. So, to curb the assertion of rights, people like Rajendra and his friends resort to violent measures such as this—outraging the modesty of women.



Haqiqat: What does the law on outraging the modesty of women say? Can you please explain?



Umeed: In this case,

(i) Firstly, Rajendra tries to threaten Rukmini by yelling at her. But when she answers back to him, he becomes enraged and walks up to Rukmini and while attempting to seize her hair shouts “I will show you who you are!”

This action amounts to assaulting a woman with the intention of outraging her modesty.

(ii) Secondly, Rajendra and his friends used force against Rukmini. Rajendra pulled the *palla* of Rukmini’s saree and slapped her. Then his friends pushed her to the ground, hit her, and ripped off her clothes.

This action amounts to using criminal force on a woman with the intention of outraging her modesty.

Both of these actions individually as well as together are punishable under section 74, BNS (354, IPC) as the offence of **outraging the modesty of a woman**.

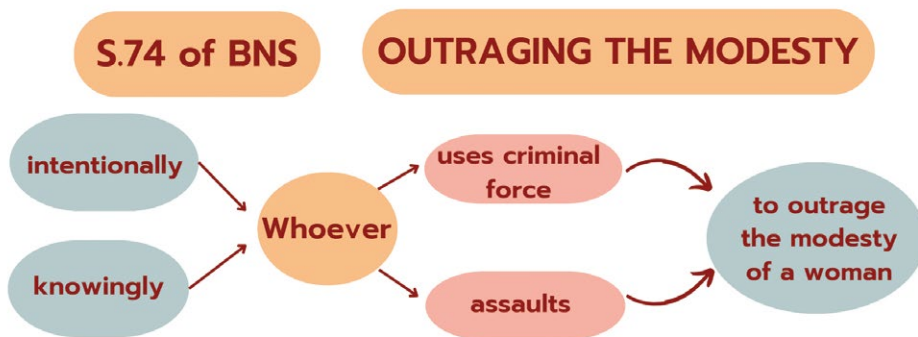


Figure 18: Outraging the modesty of a woman under section 74, BNS

OUTRAGING THE MODESTY OF A WOMAN

The offender will have to serve a minimum of one year in prison which may go up to five years. They will also be made to pay a fine.

Further, the act of disrobing Rukmini by pulling her *palla* and ripping off her clothes would also be punishable under section 76, BNS (354B, IPC) within the offence of **assault or use of criminal force to a woman with intent to disrobe**. Under this law, compelling or forcing any woman to take off her clothes also amounts to a crime. Further, the offender can be anyone, irrespective of gender.



Figure 19: Disrobing a woman

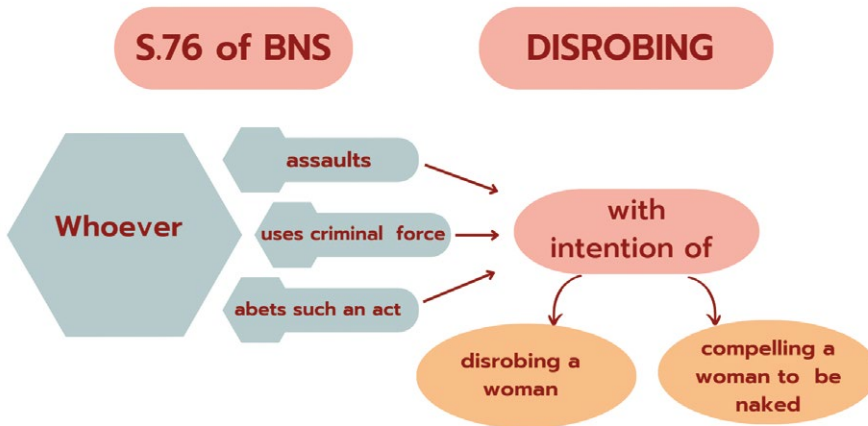


Figure 20: Disrobing a woman under section 76, BNS

DISROBING

The offender is liable to imprisonment for a term between three to seven years along with a fine.



Haqiqat: I have a question. How is the offence of insulting the modesty of a woman under section 79, BNS (509, IPC) different from outraging the modesty of women under section 74, BNS (354, IPC)?



Umeed: That's a good question. You may have noticed that section 74, BNS (354, IPC) mentions assault or use of criminal force. Both of these actions are physical in nature, which means that they involve physically touching the victim in some way. However, under section 79, BNS (509, IPC) mere use of words, gestures, etc. is enough.



SECTION 74, BNS: PHYSICAL TOUCH IS ESSENTIAL



SECTION 79, BNS: MERE WORDS OR GESTURES ARE ENOUGH

Figure 21: Difference between section 74 and section 79, BNS

Exercise No. 5

- (i) Can Rajendra be punished under section 76, BNS (354B, IPC) for disrobing Rukmini:
 - (a) He cannot be punished because he only slapped her and removed her *palla*. It was his friends who disrobed Rukmini.
 - (b) He can be punished because he used force on Rukmini by slapping her and also disrobed her by pulling off her *palla*.
 - (c) He cannot be punished because he intended to protect the women of his community.
- (ii) Rajendra's friends will be punished under section 76, BNS (354B, IPC) for disrobing Rukmini because:
 - (a) They used criminal force by pushing her to the ground and tearing off her saree and blouse.
 - (b) Rukmini was the one at fault for retaliating like that. Rajendra and his friends were simply protecting their own women.

- (c) They cannot be punished because it was Rajendra who slapped Rukmini and pulled her *palla*. He was the one who intended to disrobe Rukmini, they only helped.

Exercise No. 6

Bonita is a sex worker. She caters to several customers every day. One of her regular customers is Ranjit who often pays her nicely. On a Sunday morning, she was going to the market to buy some groceries when she encountered Ranjit. He stopped her and told her to come with him. Bonita told him that she was not working right now and would not like to see him outside her business hours. However, Ranjit held her hand tightly and tried to drag her along with him. Discuss whether Ranjit has committed any offence.

Story 6: Puvali's Story

Puvali is a twelve-year-old girl from a small locality in Bankura, West Bengal. She lives in a friendly neighbourhood where she is adored by everyone. Everyone praises Puvali for her chirpiness. She suffers from a mobility impairment which makes it difficult for her to walk without the support of canes. On a monsoon evening, a man named Harideb, whom Puvali's mother knows as an old resident of their locality visits them. Puvali's mother greets him and he immediately gets friendly with Puvali. After an hour, he expresses his regret for visiting them empty-handed and insists on taking Puvali with him to the sweet shop in the nearby market, about 200 metres away from their home. Harideb assures Puvali's mother that they will return shortly. Puvali's mother, unable to refuse since Harideb is much older than her, agrees to let Puvali go with him. An hour goes by and it gets dark, but neither Puvali nor Harideb come back. Puvali's mother becomes terrified and shares this with her neighbours. Everyone immediately starts looking for them. Soon after, someone informs them that he saw Puvali board an intercity bus with a man. Puvali's parents inquire about the location of the bus stop and they are informed that it was the one on the main road outside their locality, which was about 450 metres away from Puvali's home. Puvali's parents are distraught and don't know what to do, so they go to the Police and register an FIR.

About two months pass without any information about Puvali. One morning, Puvali's mother was stitching clothes while watching the news on television. She sees that a criminal has been caught in the Malda district who kidnapped girls for selling them to brothels. Puvali's mother immediately identifies the criminal as Harideb, the same person who visited their house two months ago and took away Puvali. She is convinced that he kidnapped Puvali. Puvali's mother calls her husband to tell him about the news. Both of them leave for Malda right away and come back a few days later with Puvali.

Puvali tells her parents that when Harideb took her to the sweet shop, he threatened her saying if she did not come with him, he and his friends would hurt her mother and father, as well as Puvali. She was afraid of what he would do to her parents so she did as she was told to. Harideb made her board a bus at the bus stop outside of the locality and then a car. Puvali's canes were taken away, she was blindfolded, and her hands and feet were tied. She struggled to free herself, but she soon fell unconscious. The next morning when Puvali woke up she found herself in a basement locked up with four other girls aged 18, 19, 22 and 23. All the girls slept, ate, and bathed in the same basement which had a makeshift bathroom. The food was pushed through the door twice a day. If any of the girls tried to escape, they came back badly bruised and even more terrified. For days, those girls would cry and suffer.

Puvali counted every day they spent in that basement. Without her canes, Puvali couldn't even stand up, so every time she had to rely on the support of other girls. Then one day, they were taken outside of the basement. They were again blindfolded and put in a van. When they arrived at a bus stop, Harideb pulled out a knife. He threatened the girls that if any of them tried to run away or do anything, they and their families would suffer. However, one of the girls gathered the courage to reach out to a tea vendor at the bus stop under the pretext of going to the bathroom urgently. She informed him that she and four other girls were kidnapped and were being forced to board a bus headed towards Mumbai. The tea vendor hurried over to the police booth at the bus station and alerted the police. Harideb along with two other men were arrested at the city inter-state bus terminal while they were trying to escape from Malda to Mumbai with all the five girls. The girls were rescued and sent to a shelter home where they were kept safely until their families could be contacted.

Further, the police arrested Harideb along with two other men for kidnapping the girls for the purpose of selling them to brothels. They were charged with multiple crimes.



Haqiqat: It is so terrifying to see that Puvali was kidnapped right in front of her mother's eyes from her own home.



Umeed: When Puvali and Harideb reached the sweet shop, Harideb threatened Puvali that if she did not come with him, he and his friends would hurt her mother and father, as well as Puvali. He thus made her board a bus at the bus stop outside her locality without obtaining consent for the same from her mother.

As Harideb took Puvali, a child, away from her legal guardian, i.e., her mother without her mother's consent, he committed the offence of **kidnapping from lawful guardianship** under section 137, BNS (361, IPC). Under this law, not only taking forcefully but even luring a child away from their legal guardian is a crime.



Haqiqat: I have heard that boys are also kidnapped for similar purposes. Does this law also protect them?



Umeed: Yes, this law applies to all children, regardless of gender as well as to any person who suffers from any mental disability.

KIDNAPPING

As per this law, the offender is liable to be punished with imprisonment of up to seven years and is also required to pay a fine.



Haqiqat: This law implies that only persons who are below a certain age can be kidnapped. But we know that this can happen with persons of any age, what about them?



Umeed: Then it is known as **abduction**. As per section 138, BNS (362, IPC), abduction involves making someone go from any place either forcibly or deceitfully. Here, the person may be of any age.

However, abduction alone is not punishable. It is punishable when it is done with some other specific intent, such as to obtain a ransom.

We must also know that the commission of an offence may attract harsher punishment depending upon various circumstances such as— the number of victims, age of the victim, place of crime, purpose of crime and the offender’s position of authority. These are called aggravated forms of the offence. The BNS lays down more severe punishment for the aggravated forms of kidnapping and abduction.

Section	Aggravated form of Kidnapping & Abduction	Punishment
87, BNS (366, IPC)	When a woman is kidnapped or abducted to compel her to marry, etc.	up to 10 years imprisonment + fine
97, BNS (369, IPC)	When a child under ten years is kidnapped or abducted to steal something from them	up to 7 years imprisonment + fine
139, BNS (363A, IPC)	When a child is kidnapped to be used for the purpose of begging	minimum 10 years which may extend to life imprisonment + fine
140(1), BNS (364, IPC)	When a person is kidnapped or abducted for being murdered	up to 10 years or life imprisonment + fine
140(2), BNS (364A, IPC)	When a person is kidnapped or abducted to compel someone else to do something or pay a ransom	life imprisonment or death + fine
140(3), BNS (365, IPC)	When a person is kidnapped or abducted in order to be confined	up to 7 years imprisonment + fine
140(4), BNS (367, IPC)	When a person is kidnapped or abducted for being subjected to grievous hurt, slavery, or unnatural lust of any person	up to 10 years imprisonment + fine



Haqiqat: So, Harideb will be punished for kidnapping. What about his other acts? He was also caught in Malda for kidnapping children to sell them to a brothel. Puvali was one of those children.



Umeed: You are right, Haqiqat! Harideb along with two other men were arrested at the city inter-state bus terminal while they were trying to escape from Malda to Mumbai with all the five girls. With a knife in hand, Harideb threatened the girls that if any of them tried to run away or do anything, they and their families would suffer. Further, the children were kidnapped to be sold to brothels as Puvali’s mother saw on the television news.

Harideb was thus transferring Puvali and other girls to engage them in sex work by using force and threats. This falls within the offence of **trafficking** under section 143, BNS (370, IPC). Under this law, any person who is involved in the buying or selling of persons for the purpose of exploiting them is liable to be punished.

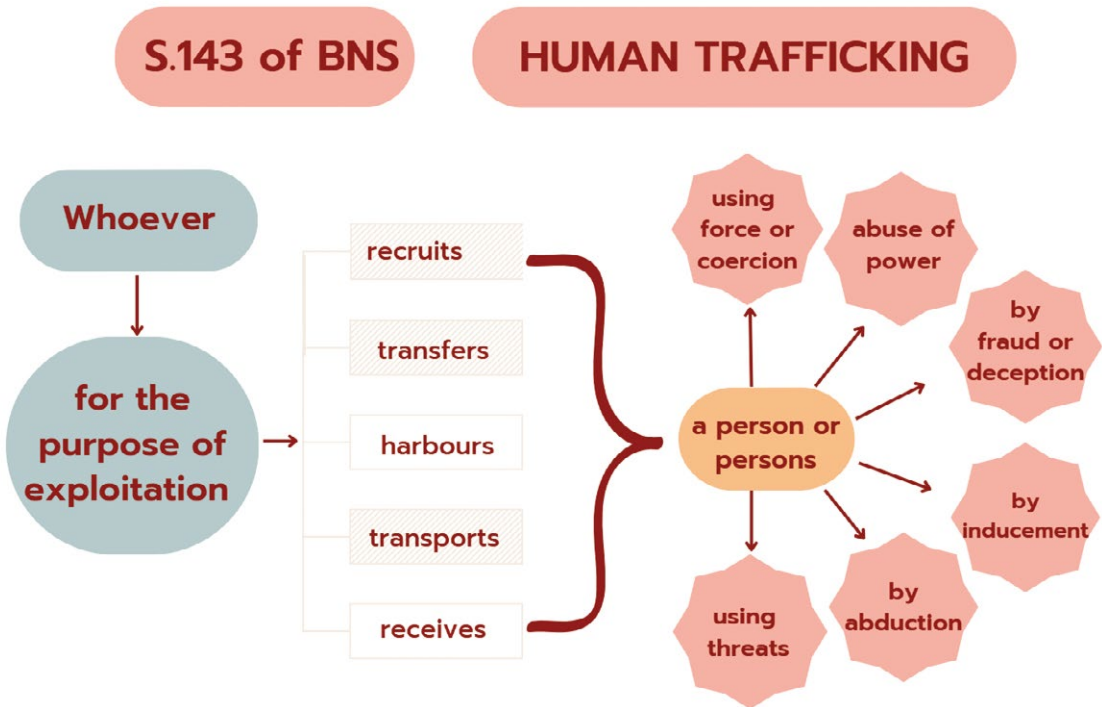


Figure 22: Human trafficking under section 143, BNS

TRAFFICKING

The offender faces an imprisonment of a minimum of seven years which may extend to life imprisonment along with a fine.

However, since Puvali was a child, Harideb’s punishment would be more severe. He will have to spend a minimum of ten years in jail which may be extended to life imprisonment. He will also be liable to pay a fine.



Haqiqat: I see, Harideb would be punished more severely because Puvali was a child. What are the other aggravated forms of trafficking under the law?



Umeed: The following are the other aggravated forms of trafficking and their punishments:

Section	Aggravated form of Trafficking	Punishment
143(3), BNS [370(3), IPC]	When the victims are more than one	10 years to life imprisonment + fine
143(5), BNS [370(5), IPC]	When victims are more than one child	14 years to life imprisonment + fine
143(6), BNS [370(6), IPC]	When the criminal is a repeat offender in cases involving a minor	imprisonment for natural life + fine
143(7), BNS [370(7), IPC]	When the criminal is a public servant or a police officer	imprisonment for natural life + fine
144(1), BNS [370A(1), IPC]	When a person sexually exploits a trafficked child knowingly	5 years to 10 years imprisonment + fine
144(2), BNS [370A(2), IPC]	When the person sexually exploits a trafficked person knowingly	3 years to 7 years imprisonment + fine
145, BNS [371, IPC]	When the victim is trafficked as a slave	up to 10 years or life imprisonment + fine



Haqiqat: This story is a typical example of how women who are kidnapped are trafficked and forced into sex work. It is so difficult to even attempt to escape such a situation. Even those who manage to find a way out later, may have to deal with so much trauma and humiliation.



Umeed: True! The effects of crimes like kidnapping and human trafficking can be devastating.

Exercise No. 7

Choose the most appropriate option for the questions below.

- (i) Puvali's kidnapper will be punished for kidnapping under section 137, BNS (363, IPC) because:
- (a) He didn't tell Puvali's mother where he was taking her.

- (b) He took Puvali away from her mother by deceiving her mother.
 - (c) He cannot be punished for kidnapping because Puvali's mother expressly consented to her going with the kidnapper.
- (ii) Puvali's kidnapper will be punished under section 140(4), BNS (367, IPC) because:
- (a) He kidnapped the girls with the intention of forcing them into sex work.
 - (b) He cannot be punished as the other girls were not minors.
 - (c) He cannot be punished as he has already been charged with kidnapping.
- (iii) Puvali's kidnapper will be punished for trafficking under section 143, BNS (370, IPC) because:
- (a) He cannot be punished as there was no evidence of them being forced into sex work.
 - (b) He was transferring them to force them into sex work.
 - (c) He was transferring Puvali after kidnapping her.

Story 7: Maria's Story

Maria and James got married seven years ago. Maria works as a pharmacist in a government hospital, and James is a clerk at a District Court. They do not live in a joint family, their families live in the village about 40 kilometres away from their small town. Maria and James are 29 and 31 years old, respectively. Although they are not yet parents, they intend to save enough money in order to move to a bigger city and improve their financial situation so that their future children will have access to a better education.

Since their marriage, Maria has experienced many highs and lows in their relationship. James gets angry from time to time on the smallest of things. For instance, if Maria does not call to inform him that she has reached home or if he returns home to find his dinner not prepared. He talks to her at such a high pitch that it terrifies her. He even uses abusive language towards her, occasionally questioning her character. His rage turns into physical beatings when he drinks alcohol. However, after these bouts of anger, James transforms into an extremely

caring and loving husband. All the time he would convince her that she made him angry with her actions. Maria is most of the time confused, overwhelmed, and scared. She thinks that it is always her fault when James gets angry.

The next month, James would be celebrating his 40th birthday. They both planned to spend James's special day together. On the day of his birthday, Maria made some special arrangements and asked James to come home early. But he came quite late and was drunk. When Maria questioned James about his behaviour, he scolded her and began shouting. The following conversation takes place between them:



Maria: I have been waiting to spend some time with you all evening. Where were you?



James *screams*: Why do you care? Did I ask you to wait? Did I ask you to make dinner? What is there for you to celebrate anyway?



Maria *elevated pitch*: Then why am I here if you don't want me? Don't you care that I made so many arrangements for your birthday? Are you having an affair? Last week we decided that we would celebrate this day together and now all of a sudden you do not want to?



James: Why are you concerned? Even if I do have an affair? What do you give me? Now you will tell me how I should lead my life.

James abuses and slaps Maria, he picks up a metal vase that is near him and throws it at her. Maria runs into the other room, and James follows her. He pushes her to the wall and punches her in the stomach once, yelling "I do not know why you are like this Maria!" Maria screams in pain but James hits her even more. Later in the night, James forces himself on Maria and has sex with her. Maria tells him that she does not want the same and that she is in severe pain. However, he doesn't listen to her at all.



Haqiqat: Homes are perceived as safe spaces where one is supposed to receive love and respect. It is so daunting to see that Maria was subjected to violence in her own house for something as trivial as expecting her husband to come home on time.



Umeed: Yes, violence may take place within a person's own home. The intimate and closed nature of these private spaces also restricts a woman's resistance to such violence. Thus, many such incidents are perceived as normal and go unreported.

What happened with Maria is known as **domestic violence**.



Haqiqat: Can you elaborate on what domestic violence is?



Umeed: Domestic violence can be described as mental, physical, economic, sexual, verbal and emotional abuse that is committed against a woman who is in a domestic relationship with the perpetrator.



Haqiqat: So, physical, emotional, psychological, sexual and verbal abuse are all different forms in which domestic violence can take place. Can you please explain each of them?



Umeed: Yes, of course! We can understand them through this story itself.

- (i) James often talked to Maria at such a high pitch that terrified her. He even used abusive language towards her, occasionally questioning her character. Thus, Maria was put through **verbal abuse**.
- (ii) James used to hit Maria whenever he was angry and drunk. On his birthday, James slapped Maria and threw a metal vase at her during an argument. When Maria ran into the other room, he followed her, pushed her to the wall and punched her in the stomach. This amounts to **physical abuse**.
- (iii) After their fight on his birthday, James forced himself on Maria and had sex with her despite her resistance. Even when she was too hurt, physically and mentally, to do so. This amounts to **sexual abuse**.
- (iv) James used to get angry with Maria about the smallest of things from time to time. He ill-treated her rather than showing her love and respect when Maria asked for his time. Sometimes he even questioned her character. This is known as **emotional abuse**.

- (v) After his moments of anger, James would transform into an extremely caring and loving husband. All the time he would convince her that she made him angry with her actions. This would make Maria confused, overwhelmed, and scared, most of the time. All this made her think that it is always her fault when James gets angry. Thus, the verbal, emotional, and physical abuse Maria experienced affected her mental health. She also suffered **psychological abuse**.

All of these forms of abuse fall within the meaning of domestic violence.



Figure 23: James committing domestic violence against Maria



Haqiqat: Umeed, why do you think James mistreated Maria in this way?



Umeed: Unfortunately, men, directly or indirectly in the process of socialisation develop this belief that they are superior to women. Further, when they see their mothers and sisters being treated wrongly, they learn the same and behave similarly in both public and private spaces. A lot of them believe that they own their wives

or partners. Violence against women at home is viewed as part of everyday life without anyone questioning or contesting this kind of behaviour. The same happened in the case of Maria and James. The manner in which James treated Maria was a way of exerting his control over her.

Story 8: Kinjal's Story

Kinjal and Saakar reside in a two-bedroom flat in Valsad, Gujarat. Kinjal works as an accountant for an IT company, while Saakar is a data entry officer at the Income Tax Office. Kinjal and Saakar live with Saakar's parents and younger sister. Apart from her job, Kinjal takes care of all the household work such as cooking, laundry, cleaning and organising, as well as looks after the daily needs of her in-laws. Though Kinjal's sister-in-law occasionally helps her out around the house, the primary responsibility of the household lies on Kinjal. Before their marriage, Saakar had assured Kinjal that she would only be required to do the household work along with her job temporarily. They will hire a house help, as soon as they save up some money. They have been married for four years, yet nothing has changed. Kinjal still has to bear the burden of all the household responsibilities alone, without any help from any other family member. Saakar even stopped her from sending money to her own parents in the name of saving money.

Kinjal feels extremely controlled and lacks freedom, something she never experienced while growing up in her parents' home. Her parents never placed any restrictions on her freedom to go out, get her education, follow her career choices and work. When she got her first job, her parents told her that her finances were her own and that neither they nor anybody else would interfere with how she managed her money. However, Kinjal's situation has changed since her marriage. Even though Saakar gets paid well, he often takes money from Kinjal, has full control over her bank account, and keeps track of every transaction and every rupee spent. He frequently questions her about having an affair as well.

One day after a team meeting at her office, some of her colleagues decided to go out to have some *dhokla* and *jalebi*. Kinjal was not sure whether she should go out because she was worried about getting late for her daily household chores. However, it had been a long time since she had spent time with her friends so she decided to join them.

Kinjal got a little late and was not back home at her usual time. When she walked in, her in-laws were sitting in the living room and Saakar was walking around back and forth. Thereafter, the following conversation takes place:



Saakar: Show me your phone. Where were you this late? Whom were you with?



Kinjal: Why do you think I was with someone?



Saakar: I have been waiting for you for an hour. Do you realise I haven't had anything to eat? Do you know how tired I am, yet I had to sit here and wait for you?



Kinjal: Today we had a team meeting, after which all of my colleagues were going out for a snack. I hadn't been with them in a long time so I joined them this time.



Saakar *shouts*: I know you were with someone else. Stop making excuses. You are of no use! Your parents should know the kind of daughter they raised. So, ask them to take you away or just call that lover of yours.

Give me your purse, from tomorrow you will not go to work. I will empty your bank account so you can't go out with that lover of yours.



Kinjal: Which lover? Why are you saying this?

Saakar's mother sees all this and intervenes



Saakar's Mother: It would have been so much better if Saakar had married a *sanskari* girl who cared about her family more than her job. Your money is of no use if you do not feed your husband on time. What else do you do besides tormenting my child? If you die, all of this concern will also be over.

Kinjal is in shock as Saakar and his mother storm out of the room. Kinjal goes to her room and cries, she is unable to get out of bed for more than an hour. Later, her mother-in-law comes in and starts to taunt her.



Saakar's Mother: “Now, you won't cook for your family and torture us all? What have we done to you? You couldn't have asked for a more respectful family and house, still, you don't even fulfil your basic responsibilities?”

Kinjal tried speaking to her mother and sister about it, but her appeals often go unheard even within her own family. In the end, Kinjal had to quit her job, but the abuse at home got worse. She was severely tormented by all of this, and as a result, she developed depression. She often had the urge to walk to their building's terrace and jump off it. There were days when she thought that the only way she could be happy was to not be alive.



Haqiqat: It is disheartening to see how families often try to silence women who speak out against violence. Women's voices are pushed behind closed doors to protect the pride of their families. This harms both the physical as well as mental well-being of women.



Umeed: True! Kinjal was going through a lot already. As you would have noticed Saakar's insecurities, both financial and personal, would often turn into abuse and anger towards Kinjal.

- (i) Kinjal carried the burden of all the primary household responsibilities along with her job. Saakar, however, often questioned Kinjal about having an affair. The day she returned home late from work, he openly accused her of having an affair. He also scolded her for making him wait for his food and questioned the upbringing she received from her parents.

Even when Kinjal was extremely hurt by all that happened, her mother-in-law kept taunting her about how she didn't fulfil her basic responsibilities or properly look after Saakar. She even went so far as to say that all their worries would be over if Kinjal died. Further, Kinjal got severely tormented by all of this and developed depression. This constitutes **emotional abuse** as well as **psychological abuse**.

- (ii) Kinjal has no control over any aspect of her life, not even her finances. Sakaar took charge of all her financial decisions. Despite being well paid, he would often take money from Kinjal, had full control over her bank account, and kept track of every transaction and every rupee spent. He even stopped her from sending money to her own parents in the name of saving money.

Further, the day Kinjal went out with her colleagues and arrived home a little late, he took away her purse and told her that she wouldn't be going to work from tomorrow. He also threatened to empty her bank account so that she wouldn't be able to go out again. This amounts to **economic abuse**. This also falls within the meaning of domestic violence.



Haqiqat: Saakar never physically hurt Kinjal, however, he often questioned her loyalty, shouted at her and controlled her finances. So, he may not have resorted to physical violence, but his actions nevertheless amounted to a kind of domestic abuse which affected Kinjal financially as well as emotionally.

Both Kinjal and Maria were aggrieved with domestic violence. While Maria faced a lot of physical and sexual abuse, Kinjal experienced economic abuse and emotional abuse to a greater extent.



Umeed: It is important to know that in cases of domestic violence, the perpetrator is not always the husband. The next two stories will illustrate this.

Story 9: Harini's Story

Harini resides in a village called Rangapur in Telangana. She has been married for four years and has a two-year-old daughter. Her husband is a small farmer and they live in a joint family setup. Despite Harini belonging to a poor family, her mother-in-law keeps taunting her that her parents didn't give them a bike, cash or any other valuable item at her marriage and often mistreats her. Since the birth of her daughter, she has been subjected to more unduly demands and continuous verbal abuse for giving birth to a daughter.

Throughout her pregnancy, Harini's mother-in-law made her do all the household chores such as cleaning, cooking, and washing clothes all by herself. Every time Harini took a break from the housework, her mother-in-law would yell at her and claim that she had been resting all day. All of this continues to date. Although her husband is very caring towards her, he doesn't raise any objections against his mother's behaviour with Harini.

Story 10: Anung's Story

Anung aged sixteen years is a school student, who lives with her mother, brother and sister-in-law. Her brother, Wapang, has been married to Vanita for about six years and has a four-year-old son. About two years ago, Anung's and Wapang's father passed away in a road accident. Since then, Anung's and her mother's circumstances have changed. Vanita makes Anung and her mother do all the household chores alone and misbehaves with them. She often taunts them by saying that since Anung's father passed away, Anung and her mother have become a burden on the family. Wapang often witnesses this, but never says anything to Vanita and rather supports her.

A day before the beginning of her exams, Anung requested Vanita to excuse her from doing the housework so that she could focus on studying. Anung's mother supported her and asked Vanita to let her study for the exams. However, Vanita pushed her mother-in-law to the ground and told Anung, "If you will not do it, I will make your mother do it.". Vanita then complained to Wapang, who threatened Anung that he would make her stop going to school if she didn't listen to her sister-in-law. When Anung protested against him, he slapped her and locked her in the store room.



Haqiqat: Now, I understand what you meant. In Harini and Anung's story, we can see that the preparator of domestic violence was not the husband. In Harini's case, the preparator of domestic violence was her mother-in-law, whereas, in the case of Anung and her mother, it was her brother and sister-in-law.

So, the preparator can be anybody, whether male or female, within a household— husband, mother-in-law, brother, sister-in-law, parents or any other member of the family.



Umeed: Exactly! Domestic violence can be committed by a partner, inflicted by parents on their child, or perpetrated against women by their families, in-laws or relatives. In many cases, power hierarchies within the family determine the culprits. Although the perpetrators don't necessarily belong to one gender, in the majority of cases they are men.



Haqiqat: Kinjal, Maria, Harini, Anung & Anung’s mother—all five of them were victims of domestic violence. What does the law say about this?



Umeed: Domestic violence can be addressed under two different laws—

- Cruelty by husband or relatives of the husband under section 85, BNS (498A, IPC) and
- Protection of Women from Domestic Violence Act, 2005

Section 85, BNS (498A, IPC) makes **cruelty by husband or relatives of husband** against a woman a crime, the violation of which results in punishment for the preparator. Cruelty under this law can take two forms— physical or mental, but it must be of grave nature which causes danger to the life of the woman. Apart from this, it also punishes conduct that is likely to drive a woman to suicide and harassment of women due to dowry-related demands.

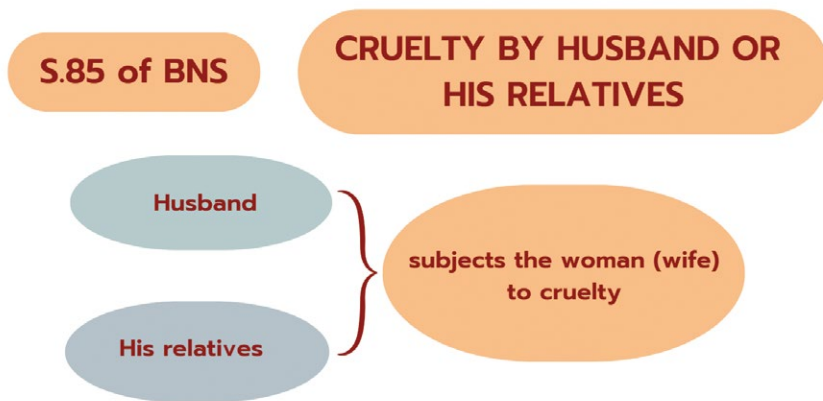


Figure 24: Cruelty under section 85, BNS

CRUELTY BY HUSBAND OR HIS RELATIVES
 Under this law, the offender can be punished with imprisonment for up to three years along with a fine.



Haqiqat: How is the Protection of Women from Domestic Violence Act, 2005 different from section 85, BNS (498A, IPC)?



Umeed: First, the **Protection of Women from Domestic Violence Act, 2005** (hereinafter referred to as ‘PWDV Act’) provides protection from all forms of domestic violence— physical abuse, sexual abuse, verbal and emotional abuse, and economic abuse.

Second, this law does not provide remedies in the form of punishment to the preparator, rather it offers reliefs which focus on ensuring violence-free homes for women while upholding other rights that women are entitled to. Under this law, the aggrieved woman can obtain relief from the court in the form of orders against the preparator such as those which prevent the preparator from committing further acts of domestic violence.

Reliefs under PWDV Act	
1.	Protection Order: An order prohibiting the perpetrator from committing any further acts of domestic violence against the aggrieved woman.
2.	Residence Order: An order restraining the perpetrator from evicting or excluding the aggrieved woman from the shared household where she resides with the perpetrator. It seeks to secure a safe space for the aggrieved woman within the shared household.
3.	Monetary Relief: An order directing the perpetrator to pay money to the aggrieved woman on a monthly basis to maintain herself.
4.	Custody Order: An order granting the temporary charge or keeping or supervision of the child(ren) to the aggrieved woman.
5.	Compensation Order: An order directing the perpetrator to pay compensation for any kind of injury caused to the aggrieved woman.

Third, the ambit of the PWDV Act is broader than section 85, BNS (498A, IPC). While section 85, BNS (498A, IPC) provides remedy under criminal law only to the wife, the PWDV Act covers every woman who is in a domestic relationship. This implies that a sister, mother, daughter and woman in a live-in relationship can also file a complaint under the PWDV Act.



Haqiqat: This also means that a complaint under section 85, BNS (498A, IPC) can be filed against either the husband or his relatives whereas the complaint under the PWDV Act can be filed against any member of the household.



Umeed: Right! Kinjal, Maria and Harini can report their respective instances of violence to the police as cruelty by the husband or

his relatives under section 85, BNS (498A, IPC) as well as domestic violence under the PWDV Act. Whereas Anung and her mother can file a complaint against Anung's brother and sister-in-law only under the PWDV Act.



Haqiqat: I'm sure that every person has at some point in their lives either experienced or heard about domestic violence. I understand that the victims of domestic violence might not be able to speak openly about it, but why do others remain silent or take no action?



Umeed: Sometimes it is difficult to tell if this kind of abuse is happening within a home as things may appear to be fine from the outside. However, even when there are visible signs of abuse, people refrain from intervening as it is often perceived to be a personal matter between two individuals. This allows for more violence to take place.

In addition, the fact that abuse and ill-treatment of women are so prevalent that they also go unnoticed or are ignored as an ordinary occurrence.

Exercise No. 8

Fill in the sentences below with regard to the kind of violence, whether physical, sexual, verbal, emotional or economic abuse. Refer to the stories of Maria, Kinjal, and Harini that were discussed before.

- (i) James abusing with foul language is a form of _____ abuse.
- (ii) James forcing Maria to have sex with him despite their fight and her not wanting to have sex results in _____ abuse.
- (iii) Saakar's statements such as:
 - (a) "I know you were with someone. Stop making excuses. You are of no use! Your parents should know the kind of daughter they raised. So, ask them to take you away. Or just call that lover of yours." is a form of _____ abuse.
 - (b) "Give me your purse, from tomorrow you will not go to the office. I will empty your bank account so you can't go out with that lover of yours." is a form of _____ abuse.

- (iv) In Harini's story, her mother-in-law taunts her for her parents not giving them a bike and cash at the time of the wedding. Further, her mother-in-law taunting Harini whenever she rested during her pregnancy would amount to _____ abuse.

Exercise No. 9

Roop and Shankar are actors who met each other on the sets of a television show. After a few years of knowing each other, they decided to get married. Before getting married, Shankar was quite supportive of Roop's career and never tried to interfere in her work. But, he now prohibits Roop from taking any assignments which involve any kind of cosy scenes with a male actor. He expects Roop to comply with his demands even though he continues to perform intimate scenes with his co-actors without even telling Roop about it.

One day, while Shankar was taking a walk in a neighbourhood park, he met Madhuri, a supporting actor on Roop's show. Shankar questioned Madhuri as to why she didn't go for shooting today. Madhuri told him that the shoot was postponed owing to some technical issues so everybody went home. Later, when Roop returned home, Shankar inquired her where she had been. Roop told him that she was at the shoot practicing for an important scene with Samar, her co-actor. However, Shankar went on to accuse Roop of having an affair with Samar and slapped her even before Roop could respond to his false accusations.

Answer whether Shankar has committed domestic violence on Roop. If so, what form(s) of domestic violence was it, and why?

Story 11: Shirin's Story

Shirin has been married to Roshan for five years, they got married on December 13, 2017. They have a child who recently has started school. Apart from looking after their home and child, Shirin stitches clothes at home to earn a living. Roshan and Shirin live with Roshan's parents. After two months of their marriage, Shirin's in-laws started demanding money from her and her family. This was after they

had already received a bike, a washing machine, and gold jewellery from Shirin's parents at the time of her marriage.

When Shirin's parents were not able to fulfil their demands, Roshan's mother started abusing and torturing Shirin. All this affected her so much that she was not able to carry out even her day-to-day tasks. After some time, Roshan joined his parents in hurting Shirin both physically and emotionally. He would frequently beat Shirin after coming home late. Apart from this, there were various other ways Roshan's parents harassed Shirin. They would often not allow her to step out of the house, eat food, or use the bathroom. She rarely spoke to anyone in her surroundings.

Shirin constantly experienced body pain and had noticeable wounds on her body. After a point, she stopped complaining about all this to her parents. The torture became a part of her daily routine, which severely affected both her physical and mental health. She couldn't speak to anyone about this and because of the constant beatings, she developed many internal injuries. However, one day her neighbour saw Shirin, deeply wounded, hanging clothes out on her veranda. When the neighbour asked what had happened, she simply refused to speak. Her neighbours were well aware of Shirin's troubles and her in-law's behaviour. Many times, they had heard her screams and cries coming from the house. At times, people tried to intervene but Shirin's in-laws would tell them, "This is a matter of our family, a private issue between us. Please don't interfere in it."

Even after years of abuse, on December 13, 2022, Shirin wanted to celebrate her and Roshan's fifth wedding anniversary. She cooked dinner for the whole family and made everyone's favourite dishes. To this, Shirin's mother-in-law smirked and commented "Yes, now she wants to waste money by cooking all this food, but the moment something is said about her parents giving us their daughter empty-handed, she gets upset." Shirin was used to such statements of her mother-in-law as she had heard such taunts many times over the last five years. However, she could not take it this time. She started feeling suffocated and could not see clearly or breathe normally. She went inside her room and locked the door. Her husband and in-laws continued complaining about how she was always sulking in her room.

An hour later her husband goes inside their room and says "What is this daily drama of yours? You start crying over every little thing. Mother didn't say anything wrong." To which Shirin yelled "You don't understand my pain, all this will kill me one day." Roshan leaves the room furiously and comes back with a knife. He throws it next to her on the bed and yells "Then go ahead and die, you're useless anyway," and storms out of the room. Shirin gets up, locks the room and cuts her wrist with

the knife. Roshan and his family continued to think she was sulking in her room and would be fine the next morning. However, Shirin lost a lot of blood and when her mother-in-law came knocking the next morning, they came to know Shirin had taken her own life.

After her death, on the complaint of Shirin's parents, the police registered a case against Roshan and his family.



Umeed: Many women share experiences similar to Shirin's. They are forced to bring dowry from their parent's homes. Shirin tolerated the demands of dowry and the cruelty by her husband and his relatives for five years before she could no longer bear it.



Haqiqat: Could you explain what constitutes dowry under the law?

Umeed: Generally, dowry is understood to be any property or valuable things that the family of the bride gives to the bridegroom or his family, such as gifts, cash, jewellery, car, motorcycle, etc. in connection with the marriage. Often, marriages don't take place unless such gifts or cash are given. You might have noticed that many negotiations for marriage do not materialise into reality because the bride's family is unable to give as much dowry as demanded by the groom's family.



Haqiqat: I see! Shirin's in-laws took dowry from Shirin's parents at the time of her marriage. They received a bike, washing machine, and gold jewellery from Shirin's parents at the time of Shirin and Roshan's marriage.



Umeed: Such **giving or taking of dowry** is prohibited under a special law called the **Dowry Prohibition Act, 1961**. Section 3 of this law makes giving or taking dowry an offence.

It would like to emphasise that not just taking dowry, but giving dowry is also punishable under this law.

GIVING OR TAKING DOWRY

An offender is liable to spend a minimum of five years in jail. He or she will also be made to pay a fine of at least fifteen thousand rupees or a fine equal to the value of the dowry.



Haqiqat: So, dowry is given in order to marry off the bride?



Umeed: It is not necessary that dowry is given or agreed to be given in order to marry off the bride or for the marriage to take place in the first place. Dowry is usually demanded at the time of marriage, but it is common for such demands to persist even after marriage. Thus, the giving or taking of dowry may take place before the marriage, at the time of marriage or even any time after the marriage. It can be for anything in connection with marriage.

As we saw, Shirin's in-laws started demanding money from her and her family after two months of their marriage.



Haqiqat: Yes! On her wedding anniversary, her mother-in-law again made a demand for dowry indirectly by saying "Yes, now she wants to waste money by cooking all this food, but the moment something is said about her parents giving us their daughter empty-handed, she gets upset." Shirin's in-laws demanded dowry from Shirin and her family even after their marriage.



Umeed: Yes, these actions of **demanding dowry** is an offence under section 4 of the **Dowry Prohibition Act, 1961**.

DEMANDING DOWRY

Making a demand for dowry is punishable with an imprisonment of six months which may extend to two years along with a fine which may extend to ten thousand rupees.



Haqiqat: But this wasn't all. When Shirin's parents were not able to fulfil their demands, Roshan's mother started harassing Shirin, both physically and mentally. Shirin used to experience continuous body pain and had noticeable wounds on her body. On her fifth wedding anniversary, her mother-in-law again taunted her for not fulfilling their demand for dowry and Roshan supported his mother. That day Shirin could no longer take it and cut her wrist with a knife. The following day she was found dead as a result of

significant blood loss. Over time, the continuous dowry demands and cruel behaviour impacted Shirin’s mental health to the point that she took her own life.



Umeed: I agree! Shirin’s death did not occur under normal circumstances as she committed suicide. She died within seven years of marriage and soon before her death, she was subjected to cruelty and harassment by her husband and in-laws for not being able to fulfil their demands for dowry.

This constitutes the offence of **dowry death** under section 80, BNS (304B, IPC). Apart from death caused under abnormal circumstances, death caused by any burns or bodily injury also amounts to dowry death.

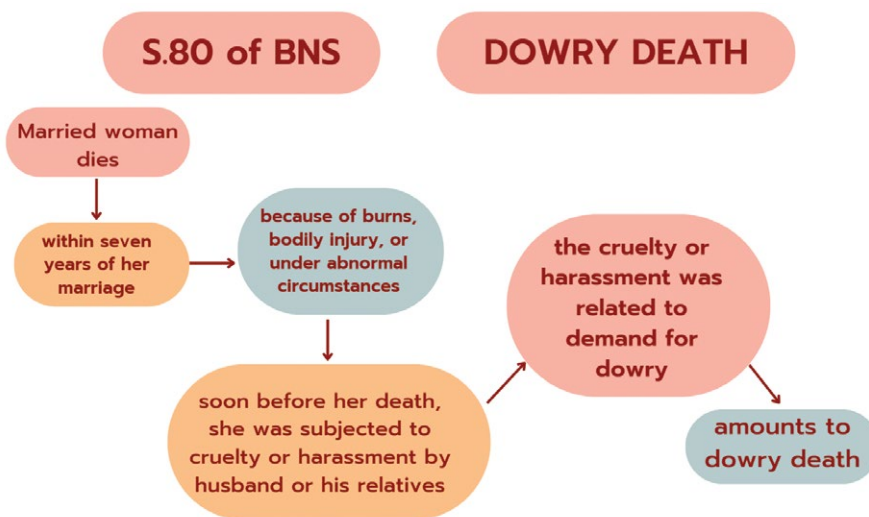


Figure 25: Dowry death under section 80, BNS

DOWRY DEATH

Under this law, the offender faces a minimum imprisonment of seven years which may extend to life imprisonment.

Further, Shirin’s husband and in-laws used to harass her in various ways because she could not fulfil their dowry demands. Her physical and mental health suffered greatly as a result of the abuse she experienced daily. She was again taunted for dowry on the day of her wedding anniversary, which prompted her to go inside her

room and lock it. Later, when Roshan went to scold her, she told him that she was in so much pain that she might die. However, Roshan brought a knife and threw it next to her on the bed and yelled “Then go ahead and die, you’re useless anyway.” As he left the room, Shirin was triggered to cut her wrist with that knife. The continuous torture for dowry, the disrespect, and the physical, mental and verbal abuse on a daily basis pushed Shirin to end her life.

Thus, Shirin’s husband and her in-laws instigated her to commit suicide.

This amounts to the offence of **abetment of suicide** under section 108, BNS (306, IPC).

ABETMENT OF SUICIDE

A person guilty of abetment to suicide may be punished with imprisonment up to ten years and is also liable to pay a fine.



Haqiqat: I never thought that demands of dowry could lead to such dire consequences as it did in Shirin’s case. Shirin was not directly killed by her husband or in-laws, but the constant physical and mental abuse led her to the point where she no longer wanted to live. All because she was not able to keep up with the demands of her husband and his family.



Umeed: Indeed. Often a woman’s family gives into the demands for dowry, even long after the wedding, well beyond their means. However, when they are unable to satisfy such demands, the woman is excessively tortured, so much so that for her, even living becomes intolerable.



Haqiqat: I think Roshan and his family should also be charged for their cruel behaviour towards Shirin under section 85, BNS (498A, IPC) which punishes the offence of **cruelty by the husband or his relatives**.



Umeed: Absolutely, right!

Exercise No. 10

Select the most suitable response based on Shirin's story.

- (i) What was the primary cause for Shirin to commit suicide?
 - (a) The physical and mental harassment inflicted by Roshan and his family on Shirin along with demands for dowry.
 - (b) Roshan used to regularly beat her because of which she had constant body pain.
 - (c) Shirin was running a boutique, taking care of the child and house, and making sure there was enough money for food and other household necessities, which drained her.
- (ii) Select the kind of abuse and harassment done on Shirin which will prove that Roshan and his family committed the offence of dowry death under section 80, BNS (304B, IPC).
 - (a) Shirin had to financially contribute to the income of the household from the money she made from her stitching job.
 - (b) Shirin died within seven years of marriage by committing suicide and soon before her death, she was subject to cruelty and harassment by her husband and in-laws for not being able to fulfil their demands for dowry.
 - (c) Shirin's own parents did not help her enough and she was unable to share her pain with her own parents.
- (iii) How does Shirin's case come under section 108, BNS (306, IPC) which deals with Abetment of Suicide?
 - (a) Roshan and his family regularly harassed Shirin which caused her immense physical and mental suffering. One day, Roshan even gave her a knife and told her to die.
 - (b) Shirin had too much responsibility of running her business, house and taking care of the child.
 - (c) Shirin felt Roshan did not love her.

Story 12: Sahiba's story

Sahiba was a 24-year-old woman who lived with her husband, Dalbir, and his parents on the outskirts of Hoshiarpur. She married Dalbir when she was 19 and he was 21 years old. She worked in a small paddy field along with Dalbir. Some of their relatives objected to Sahiba working together with Dalbir in the fields, however, her in-laws used to shut them down by saying that they supported both of them equally.

After three years of marriage, Sahiba found out that she was pregnant. The entire family was overjoyed. Her in-laws took great care of her throughout her pregnancy. Sahiba gave birth to a daughter. Though Sahiba and Dalbir were elated, her in-laws were disappointed as they had always wished for a grandson. They didn't love the baby girl as much as the grandparents of a newborn would. Soon, Sahiba also began to notice a change in their behaviour towards her.

Two years later, Sahiba found out that she was pregnant again. Her in-laws rejoiced and started taking care of her again. Sahiba was happy to see a positive change in their behaviour. After two months, they insisted on taking her to the family doctor for an examination. Without Sahiba's knowledge, the doctor conducted an illegal sex determination test. When Dalbir's parents found out that Sahiba was pregnant with a girl, they advised her to get an abortion. They told her that they desired a son to carry on their family name.

Sahiba immediately detested the idea of getting an abortion. However, she feared that if she did not get the foetus aborted, her husband might desert her and marry again. She had also seen her elder sister-in-law being maltreated by her in-laws because she gave birth to two daughters. It was only after she gave birth to her third child who was a male that the maltreatment stopped. Sahiba's first pregnancy was not very smooth, and she found the reproductive process extremely draining and stressful. Because of this, she never wanted to have more than two children. These fears led her to agree to abort this foetus.

Sahiba along with Dalbir and his parents went to a small clinic which was recommended by the doctor at the nursing home where she had been tested earlier. The doctor prescribed her some pills which she took unaware of the fact that the doctor was not a licensed doctor but was instead running an illegal clinic. Shortly after taking the pills, Sahiba complained of having a severe stomach ache. She was immediately admitted to a hospital. After a few hours, the hospital's doctors informed

her family that they could not save Sahiba as the pills prescribed to her had an adverse effect on her body and she had lost too much blood due to her miscarriage.



Haqiqat: What happened to Sahiba is terrible, Umeed! This story clearly shows that violence can occur at any point in a woman's life, including before she is born. But isn't it illegal to determine the sex of a foetus in India?



Figure 26: A display board highlighting the prohibition on pre-natal sex determination



Umeed: Yes! Even though pre-natal sex determination, i.e., the process of finding out the sex of a foetus, is illegal, people conditioned by the preference for sons continue to practice it.



Haqiqat: Sahiba's in-laws did not want her to give birth to a daughter as they wanted a son to carry on their family name. But the daughter would also have been a member of their family, why can't she carry the family name?



Umeed: Many families prefer sons over daughters for a variety of reasons ranging from socio-cultural to economic considerations. One of them is the belief that sons carry the family name whereas women bear the name of their husband's family. Women are seen as liabilities by their families who are supposed to be married off and sent to their husband's homes, unlike men who are expected to earn and provide for their families for the rest of their lives. The families of women are also expected to pay a dowry for their daughter's marriage. Further, as per several religious traditions, only sons are allowed to carry out the last rites of their parents. It is believed that

the deceased won't attain *moksha*/salvation if the last rites are not performed by a son.



Haqiqat: I think women are also conditioned to embrace these patriarchal beliefs and values. We saw how the mother-in-law of Sahiba also preferred a son over a daughter. Sahiba initially opposed having an abortion but eventually changed her mind after considering how having another daughter would impact her own future. She consciously submitted to the desire of her in-laws to abort the female child for her own survival and well-being in the family of her in-laws.



Umeed: I agree! Considering all these issues, a law banning the practice of sex determination was brought in an effort to prevent female foeticide.



Haqiqat: What does this law provide? Would Sahiba's in-laws be held accountable under this law?



Umeed: Sahiba's in-laws took her to a doctor to conduct a sex determination. This act of her in-laws as well as the doctor who conducted the sex-determination test on Sahiba constitutes an offence under section 23 of the **Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994** (hereinafter referred to as PCPNDT Act).

SEX-DETERMINATION

This law punishes the offender with imprisonment of up to three years along with a fine. In the case of a repeat offender, the imprisonment may extend to five years.



Haqiqat: And Sahiba? Would she have also been liable under this law?



Umeed: No, the sex determination was conducted without any knowledge of Sahiba. She was compelled to undergo the sex determination test under the pretext of a regular check-up.



Haqiqat: I understand that the PCPNDT Act punishes pre-natal sex determination. But what about Sahiba's miscarriage, which also resulted in her death?



Umeed: It would fall within the offence of **causing miscarriage** under section 88, BNS (312, IPC). The miscarriage was caused by the pills prescribed by the doctor. However, Dalbir, his parents and Sahiba all contributed to it. So, they would be equally liable for this offence.

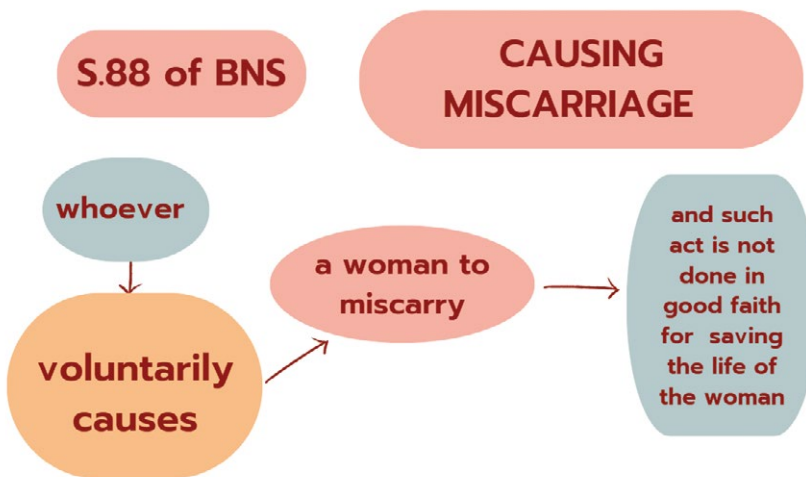


Figure 27: Causing miscarriage under section 88, BNS

CAUSING MISCARRIAGE

As per this law, the offender shall be punished with imprisonment of up to three years and may also be liable to pay a fine. However, if the woman is at an advanced stage of pregnancy, i.e., when the movement of the foetus could be felt, then the offender faces an imprisonment of up to seven years along with a fine.

If Sahiba's miscarriage had been caused without her consent, then it would have constituted the offence of **causing marriage without the woman's consent** under section 89, BNS (313, IPC).

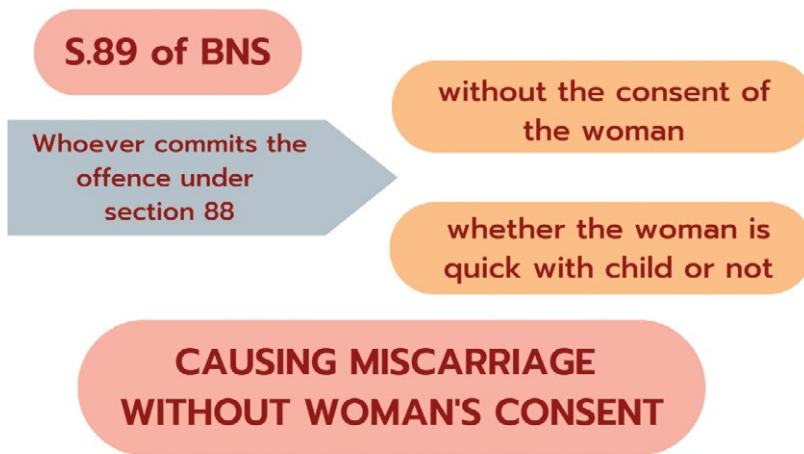


Figure 28: Causing miscarriage without woman's consent under section 89, BNS

CAUSING MISCARRIAGE WITHOUT WOMAN'S CONSENT

Under this law, the offender is punished with either imprisonment for life or imprisonment for up to ten years along with a fine.

Moreover, Sahiba was given the pills with the intention of causing her miscarriage, but the pills caused her death. This constitutes the offence of **death caused by act done with the intent to cause miscarriage** under section 90, BNS (314, IPC).

DEATH CAUSED BY ACT DONE WITH THE INTENT TO CAUSE MISCARRIAGE

This law punishes the offender with imprisonment of up to ten years along with a fine. However, if the act was done without the consent of the woman, then the offender may also face imprisonment for life.



Haqiqat: It is unbelievable that some families go to such extents to fulfil their desire for a son, completely oblivious to the potential adverse effects such uninformed practices can have on the mother's health. I now realise how deeply our thoughts and desires are conditioned by the deep-rooted ideology of gender which strongly informs our social life.



Umeed: Yes, that is why the law makes the sex determination of an unborn child illegal to prevent female foeticide.



Haqiqat: Sahiba's in-laws would also be punished for causing her miscarriage. Does this mean that abortion is illegal in all cases?



Umeed: No, abortion is not illegal in all cases. All women, whether married or unmarried, have the **right to access safe and legal abortions in certain specified cases and conditions** under a special law called the **Medical Termination of Pregnancy Act, 1971**. Women who fulfil the criteria and conditions laid under this law can seek safe and legal abortions without the fear of any penal consequences.

Exercise No. 11

Select the most suitable option.

- (i) Sahiba went through an abortion because she was pregnant with a girl child. Is this type of abortion legal or illegal?
 - (a) Legal
 - (b) Illegal
- (ii) Sahiba's in-laws would be punished for causing miscarriage because:
 - (a) They took her to the clinic for an abortion because she was pregnant with a female child.
 - (b) They cannot be punished as Sahiba agreed to get an abortion.
- (iii) Under section 88, BNS (312, IPC), Sahiba's in-laws will be liable to be punished for three years imprisonment and not seven years. Why?
 - (a) Because nobody intended to cause Sahiba's death.
 - (b) Because Sahiba was at the advanced stage of pregnancy when the movement of the foetus could be felt.
 - (c) Because Sahiba was at the early stage of pregnancy when the movement of the foetus could be not felt.

Story 13: Deja's Story

Deja works as a full-time house helper in Jasmeet's house. Jasmeet is married to Makarand, with whom she has a five-year-old son named Darsh. On a Saturday afternoon, while Deja was working in the kitchen, Jasmeet informed her that they were going to attend the birthday party of one of Darsh's classmates. Jasmeet told her to not cook dinner and asked her to close the door. Deja closed the door and returned to her work. Deja was cleaning utensils in the kitchen when someone grabbed her from behind and said, "Why don't we spend some time together?" Deja became petrified as she was under the impression that she was alone in the house.

When Deja turned around, she was shocked to see Makarand and immediately told him to let go of her. However, Makarand exerted physical force on her and refused to let her go. He kept repeating that he knew she also wanted to spend some time with him. Deja denied it and tried to free herself from his grip. An angry Makarand slapped her and told her that if she continued to resist, he would tell Jasmeet that she tried to force herself upon him. He added, "Jasmeet will fire you! Then how will you pay your child's school fees? Nobody will hire you. Even your drunkard husband will abandon you and your daughter." This made Deja freeze in disbelief and she let go of any resistance.

Makarand forcefully opened Deja's mouth and inserted his penis inside her mouth. He then went on to have sexual intercourse with her. While putting on his trousers, he turned back and said "Don't even think of complaining to anyone. Keep in mind that your job and your family's reputation are on the line. Otherwise, I'll tell everyone that you forced yourself on me. As a man, I would face no consequences." Thereafter, he exited the house slamming the door behind him.



Haqiqat: What Makarand did to Deja is heinous. He must held accountable for his actions. What does the law say about this?



Umeed: Before we get into the legal consequences of Makarand's actions. We must understand the importance of 'consent'.



Haqiqat: What is consent?



Umeed: Consent simply means agreeing to or giving permission for something.

Consider this example. Sharan who is Jenny's boyfriend wanted to hug Jenny, so he asked for her permission and she consented by saying 'yes'. She could have also conveyed her consent through actions such as nodding or going ahead and hugging him. While Sharan and Jenny were hugging, he also tried to kiss her. She moved away and got angry. Jenny's reaction shows that she consented or agreed to only hug Sharan and not kiss him.



Haqiqat: This means that although a person may consent to do certain things, they may not consent to others. In the same manner, a person may consent to certain sexual activities or the touching of some parts of their body, but not others.



Umeed: Exactly! Further, consent can also be withdrawn while any sexual activity is underway. In such cases, the other person must recognise the former's discomfort and respect their choice.

It is important to note that some women may not be able to clearly say 'no' or refuse due to fear of any kind of injury or because of how women are generally treated or positioned in society. In such cases, it may seem that a person has given consent even when they have not explicitly said so. However, such an assumption would be wrong. People may express displeasure or denial even through bodily gestures.



Haqiqat: I understand. Before making any physical contact or engaging in any kind of sexual activity with someone, it is necessary to obtain their consent. It is important to respect their boundaries and pay attention to both verbal as well as non-verbal gestures.



Umeed: In every case of sexual violence, there is a violation of consent. It is essential to understand that when a woman does not physically resist sexual intercourse, it does not mean that she has given her consent. There could be various reasons why a woman might not physically resist having sexual intercourse.



Haqiqat: I think there was a violation of consent in Deja’s case. Makarand threatened Deja that if she refused to have sexual intercourse with him, he would accuse her of trying to force herself upon him, which would ultimately lead to her losing her job. This made Deja let go of any kind of resistance as she feared for her children’s future. Just because she didn’t stop Makarand from proceeding to have sexual intercourse with her, it doesn’t mean that she gave her consent. Her consent was absent.



Umeed: You are right, Haqiqat! Makarand didn’t obtain Deja’s consent. He forced open Deja’s mouth and put his penis inside it, then he went on to have sexual intercourse with her. Makarand’s acts fall under the offence of **rape** under section 63, BNS (375, IPC).



Haqiqat: Could you please explain what all constitutes rape?



Umeed: Rape is defined as the act of penetrating a penis, any object or any body part into the mouth, vagina or other private parts of a woman, as well as putting the mouth on the private parts of a woman without her consent. Even making a woman do any of these acts with any person also falls under rape. Under this law, consent is considered to be absent when any of the aforesaid acts are carried out—

- (i) against her will
- (ii) without her consent
- (iii) when consent has been gained by putting her in fear of hurt or death or any person she cares for in fear of hurt or death
- (iv) when the consent is given under a false pretence, where the woman believes that the perpetrator is her husband
- (v) when consent is given by a woman with a mental disability or an intoxicated woman
- (vi) when she is under the age of eighteen
- (vii) when she is unable to express or communicate her consent.

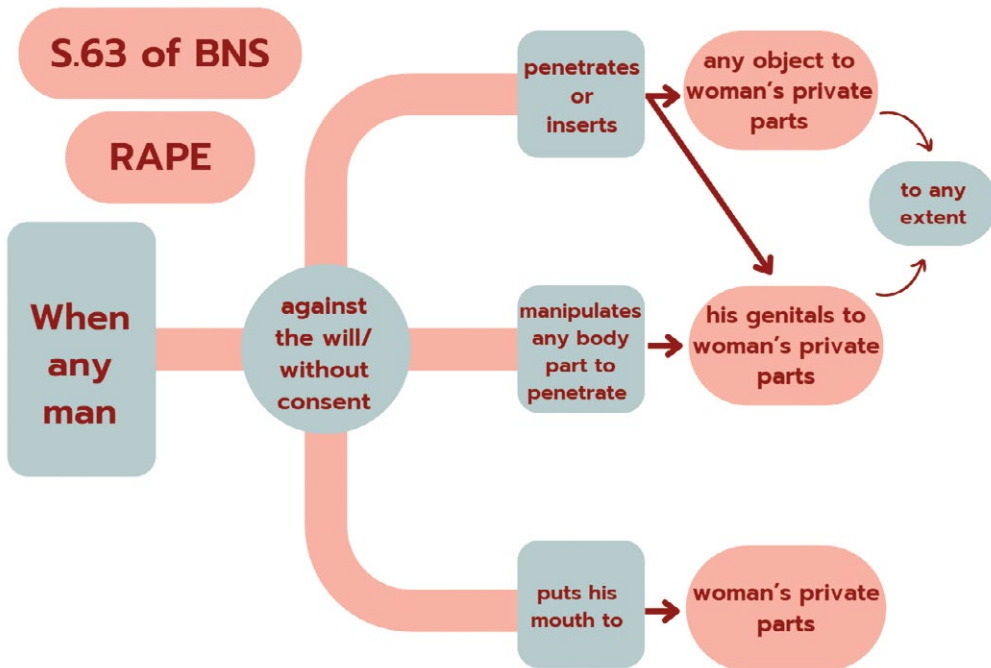


Figure 29: Rape under section 63, BNS

RAPE

This law punishes the offender with a minimum of ten years of rigorous imprisonment which may be extended to imprisonment for life. The offender is also liable to pay a fine.



Haqiqat: There is no doubt that this incident not only harmed Deja physically, but it must have also affected her mental well-being. This incident happened at her workplace, and such an instance might deter her from going back to work. She might not even report or file a complaint against Makarand because of his high social status.



Umeed: True! What happened with Deja in this instance is a common setting in which men rape women, that is when they are able to dominate a woman using their power or status. Part of the reason Makarand could even think about forcing himself on Deja was that she was a woman and a domestic worker. He exercised his power as a man and an upper-class person to have his way.

Story 14: Asang's Story

Asang works in a government dispensary. Next to the dispensary is a school where Jimmy works as a personal assistant to the school principal. The two met each other at the bus stop near their workplaces and fell in love. After six months of knowing each other, Jimmy started insisting that Asang get physically intimate with him and they engage in sexual intercourse. Asang was uncomfortable with the prospect and always responded to him by saying that she would only enter into a physical relationship with him when they got married.

One day after work, both of them were sitting at a local park. Jimmy hugged her saying "I cannot wait for the day I can hold you more closely and do many more things to you." To which Asang replies, "I want to hold you too, but I will be more comfortable and happier if we do this after we are married in our own home." Later, they went to Jimmy's place to watch a movie together, however, Asang started to have a headache. On the pretext of offering her medicine for the headache, Jimmy gave her some other pills which made Asang start losing her consciousness. That night, Jimmy had sexual intercourse with Asang while she was half-asleep. The next day, when Asang woke up, she realised what had happened last night. She looked around for Jimmy but couldn't find him. Later, Jimmy did not meet her at their regular spot after work.

After ten days of not hearing from him, Asang goes to the school where Jimmy worked to enquire about him. There she got to know that Jimmy had left the job and moved back to his village since his wife was expecting to give birth to a child. Upon hearing this Asang was perplexed. She goes to the police station to file a complaint against Jimmy.



Umeed: Haqiqat, did you notice that Jimmy drugged Asang to have sex with her when he realised that she was not ready to have sexual relations with him?

Asang's experience is not uncommon. Sometimes when men are not able to exert control or obtain consent or permission from women, they use intoxicating substances to force sexual intercourse. Several times women have no idea what happened to them and only come to find out about it later.



Haqiqat: You are right, Umeed! When Jimmy and Asang went to Jimmy's place to spend some time together and Asang started to have a headache, Jimmy gave her some pills under the pretext of offering her medicine for the headache. The pills contained some intoxicating substances which made Asang start losing her consciousness. Jimmy had sexual intercourse with Asang while she was half-asleep.

This constitutes **rape** under section 63, BNS (375, IPC) since Asang was not in her right mind to give consent due to intoxication. As per the law on rape, Jimmy will have to serve a minimum of ten years of rigorous imprisonment which may be extended to imprisonment for life along with a fine.



Umeed: Absolutely, right! In Asang's case, she was given the intoxicating substance involuntarily, i.e., without her knowledge. However, there may also be a case where a woman has voluntarily, i.e., with complete knowledge consumed intoxicating substances such as alcohol and she is raped while under the influence of alcohol. Even such cases fall within the offence of rape.



Haqiqat: Umeed, I have heard that sometimes married women are also forced to have sexual intercourse with their husbands against their will or without their consent. Some are also compelled to give in to such demands out of fear of being hurt. Does this also constitute rape?



Umeed: This is called **marital rape**. At present, our law doesn't have a provision that allows a woman to file a complaint against her husband for raping her, except when she is below the age of 18 years. It was in 2017 when the Supreme Court of India declared that sexual intercourse by a man with his wife, if she is under 18 years of age, amounts to rape [*Independent Thought v. Union of India*, (2017) 10 SCC 800]. This position was later incorporated into BNS in 2023.

However, forced consent for any sexual activity in a marriage would constitute sexual abuse under the Protection of Women from Domestic Violence Act, 2005 which offers civil remedies instead of criminal ones.

MARITAL RAPE: WHEN CONSENT DOESN'T COUNT

Despite marital rape being widely recognised as a violation of a woman's right to equality, autonomy, dignity and bodily integrity, Indian law continues to exempt a husband from prosecution for non-consensual sex with his wife, except when the wife is under the age of eighteen. According to Exception 2 to Section 63, BNS (previously 375, IPC), a husband forcing sexual intercourse on his wife without her consent is not considered rape. This provision is referred to as the marital rape exemption.

The validity of this exemption was challenged before the Delhi High Court which delivered a split verdict in 2022. [*RIT Foundation v. Union of India*, 2022 SCC OnLine Del 1404] While one judge ruled that the exemption violates women's fundamental rights guaranteed under the Constitution, the other upheld the exception stating that the relationship of wife and husband entails a legitimate expectation of sex. Currently, multiple petitions challenging the marital rape exemption are pending before the Supreme Court of India, the highest court in the country. These challenges highlight the need to redefine our understanding of the institution of marriage as one based on mutual respect, consent and equality, rather than one based on control and domination. As the Supreme Court has not yet decided the matter, there remains hope that the court will address the issue in a manner that upholds and protects the rights of women and further nurtures the institution of marriage.

Story 15: Kunti's Story

Kunti was an eighteen-year-old girl who lived with her parents right outside a small village in Uttar Pradesh. She belonged to a Dalit community. Kunti's family primarily worked as cleaners and sweepers in the homes of upper-caste people. After a lot of struggles and saving money, they were able to send their son to the city where he earned a bachelor's degree and a job as a *safai karamchhari* at a government office. The only benefit of the job was its permanent nature and regular income which, however, was meagre. The son's salary provided them with sufficient money to send Kunti to a community college.

Kunti's family eventually saved enough money to build a small concrete house leaving the hut they had lived in their entire lives. This enraged some upper-caste families in the village who believed that Kunti's family did not deserve to live in such a house. A few of them were also furious that their children were receiving the same education as the children of people whose primary occupation was cleaning and sweeping. They expected Kunti and her brother to follow the same path as their

parents. One day, Kunti was heading back from college around 2 p.m. when three upper-caste men, two Brahmins and one Thakur, stopped her and dragged her into a field. They beat her with a rod and raped her. The Thakur man yelled, “How can you Dalits think you can live inside the village boundary and build concrete houses? You are not supposed to own land or live in concrete houses; you are meant to live outside the village boundaries! You and your family deserve to be punished. This should teach them a lesson!” After the three men raped Kunti, they left her lying in the field.

When Kunti’s parents went looking for their daughter, they found an unconscious and injured Kunti lying in a field approximately 300 metres from their home. They went to file a complaint with the police despite the fear that if they did, they would also be threatened and tortured.



Haqiqat: Umeed, this case would also fall under the offence of rape, right?



Umeed: Kunti was raped by more than one man. This is known as **gang rape** which is an offence under section 70, BNS (376D, IPC).

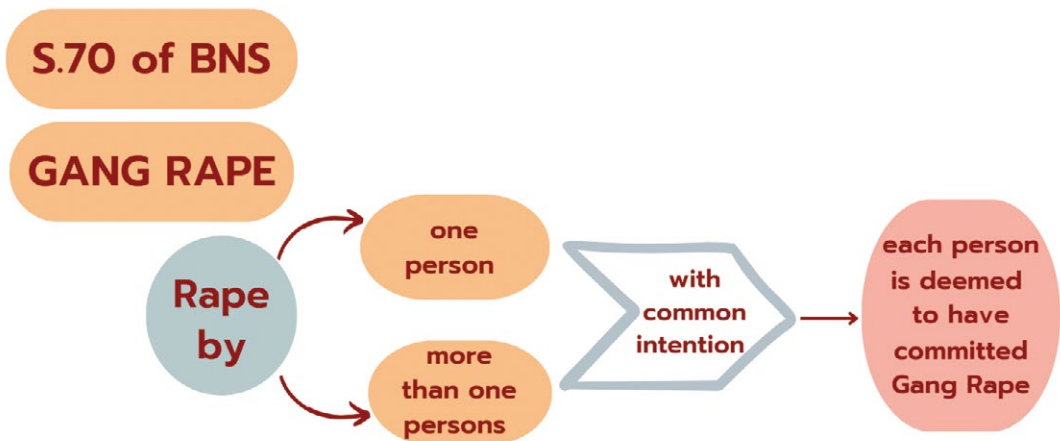


Figure 30: Gang rape under section 70, BNS

GANG RAPE

Under this law, the offenders are punished with a minimum sentence of twenty years in prison, which can be extended to imprisonment for life, meaning for the remainder of the offender's natural life. They will also be liable to pay a fine which goes towards the victim's medical expenses and rehabilitation.



Umeed: Haqiqat, can you tell why those men raped Kunti?



Haqiqat: The three men who gang-raped Kunti belonged to an upper-caste community. They wanted to teach a lesson to Kunti's family for not following the regressive norms imposed on Dalit communities by the so-called upper castes. This was a case of asserting the power and dominance of one caste over another.



Umeed: Right! Kunti was not raped solely because she was a woman and was regarded as socially inferior by men. She was also raped because she belonged to a Dalit community. Her case demonstrates how some upper-caste men believe they can control or exert force over women from communities that are considered lower caste.

Since the upper-caste men committed an offence against Kunti knowing that she belonged to a Scheduled Caste, a case will also be registered under the **Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989** (hereinafter referred to as 'SC/ST Act').



Haqiqat: What is the SC/ST Act? What does this law do?



Umeed: The SC/ST Act provides for the protection of the members of the Scheduled Castes (SC) and Scheduled Tribes (ST) communities from discrimination and violence. It uses the term 'atrocities' to refer to acts of violence against these marginalised communities. This law defines twenty-two offences related to various forms of behaviour and practices that violate the rights of SC and ST communities.

The denial of social, economic, and democratic rights, as well as discrimination, exploitation, and practices of untouchability, are examples of ongoing atrocities against them. The law also protects them from exclusionary practices such as denial of access to public places.

In this case, the upper-caste men committed an offence under the BNS against a member of a Scheduled Caste community, which is punishable with a minimum of ten years of imprisonment. According to section 3(2)(v) of the SC/ST Act, any person who is not from an SC or ST community and commits an offence under the BNS punishable with ten years of imprisonment against a member of the SC or ST community, must face life imprisonment and a fine.



Haqiqat: So, these three upper-caste men must be punished more severely because not only did they commit rape, but they committed gang rape on a woman belonging to a scheduled caste. Thus, they must be punished with imprisonment for life along with a fine.

I remember that the commission of an offence may attract harsher punishment depending upon various circumstances such as the age of the victim, the gravity of the offence and the offender's position of authority.



Umeed: Yes! The following are the other aggravated forms of rape and their punishments:

Section	Aggravated form of Rape	Punishment
64(2), BNS [376(2), IPC]	When the offender is a police officer, public servant, member of the armed forces, or position of trust or authority towards the woman, etc.	Minimum 10 years of rigorous imprisonment which may extend to imprisonment for the remainder of natural life + fine
65(1), BNS [376(3), IPC]	When the woman is under sixteen years of age	Minimum 20 years of rigorous imprisonment which may extend to imprisonment for the remainder of natural life + fine

Section	Aggravated form of Rape	Punishment
65(2), BNS [376AB, IPC]	When the woman is under twelve years of age	Minimum 20 years of rigorous imprisonment which may extend to imprisonment for the remainder of natural life + fine or, death
66, BNS [376A, IPC]	When the injuries cause the woman to die or to be in a persistent vegetative state.	Minimum 20 years of rigorous imprisonment which may extend to imprisonment for the remainder of natural life or death
70(2), BNS	When the woman is under eighteen years of age is gang raped	Imprisonment for the remainder of natural life + fine, or death
71, BNS [376E, IPC]	When the criminal is a repeat offender	Imprisonment for the remainder of natural life, or death

Exercise No. 12

Choose the most suitable option for the question:

- (i) Makarand forced himself onto Deja. She was unable to move and was so scared that she neither created any noise nor did she try to physically fight Makarand so he would stop. Because Deja did not clearly say 'No' and did not fight back, did she give her consent?
- (a) Yes
- (b) No
- (ii) Jimmy would be punished for committing the offence of rape under section 63, BNS (375, IPC) because:
- (a) The consent was gained by threatening Asang that if she did not agree he would kill her.
- (b) The consent was given under a false pretence, where Asang believed that she was lawfully married to Jimmy.

- (c) Jimmy had sexual intercourse with Asang under the influence of an intoxicating substance given to her by Jimmy. She was drugged and therefore was unable to fully understand the consequence of what she was doing.
- (iii) The three upper-caste men who raped Kunti will be punished under the SC/ ST Act because:
- (a) Kunti and her family built a concrete house inside the village. Since Kunti's family is from a Dalit community, they were not allowed to build a house inside the village. The upper-caste men were only trying to prevent this. Therefore, the SC/ST Act does not apply.
 - (b) They raped Kunti to threaten her and her family. It was an assertion of upper-caste power and control over the lower-caste community. The three men knew they were raping a girl from a Dalit community.
 - (c) A Dalit girl cannot be touched by upper-caste men, therefore, they won't be punished under the SC/ST Act.

Exercise No. 13

Santuri and Tilak are neighbours. They love each other, but their parents do not approve of their relationship since they come from different communities. Both of them decide to elope and get married. They fled together and checked into a hotel temporarily. After a while, Tilak wanted to have sexual intercourse with Santuri so he was attempting to get closer to her. When Santuri realises that he wants to have sex with her, she tells him she loves him but would like to wait till they get married. Tilak tells her that he doesn't want to wait and goes on to have sexual intercourse with her, despite her resistance. Discuss whether Santuri gave consent to have sexual intercourse with Tilak.

Story 16: Shilpi's Story

Shilpi and Deepak, both aged twenty-three years, work in a garment factory. They met each other two years ago when they first joined the factory as trainees. One day after finishing their shift, they decide to go to a market near the factory. Shilpi and Deepak have kept their relationship a secret up until this point and mostly interact during lunch hours. Except for two of their closest friends at the factory, they have not told anybody else about their relationship, not even their families.

After spending some time together at the market, they start walking towards the bus stop. Shilpi notices that a friend of her father who is a Pradhan of a neighbouring village sees her. Shilpi waves at him gesturing a namaste and tells Deepak to quickly walk towards the bus stop. Shilpi says to Deepak, "I hope this uncle does not go and tell anything to my father." Deepak responds, "He also often comes to our village. He's a Pradhan, right? He knows my father too, as my father is also the Pradhan of our village." They both nervously smile at each other as they board the bus. As Deepak drops Shilpi off on the main road of her village, he feels a sense of nervousness and anxiety. So, he decides to walk back to his village.

Shilpi belongs to the Thakur community and her father owns the most land in their village. Their village is dominated by people from their community and Shilpi's father is one of the most admired and respected men in their area, as her family owns vast amounts of land that has been passed down from one generation to the next. Shilpi's father finds out that Shilpi was seen with a boy in the market. The Thakur Pradhan from the neighbouring village who saw Shilpi in the market the other day identifies Deepak as the son of a Pradhan of a Dalit village 9 kilometres away from Shilpi's village.

After coming home, Shilpi's father asks her how long this has been going on. Shilpi could only say, "Father, we both work together." To this her father yells, "You have ruined my name! We hold such high respect in this society, and you were roaming around with a boy." Shilpi adds, "It's not like that, Father. We want to marry each other." Her father replies, "In our community, we only marry our daughters to Thakurs. How could you make such a big mistake? You didn't even consider our family's reputation. We can never let our daughter marry a Dalit." Before Shilpi could say anything further, her mother intervenes and slaps her. Shilpi's mother takes away her phone and locks her inside the room. Shilpi makes several attempts to explain herself to her family, but nobody is ready to listen to her. Shilpi's father

threatens and shouts at her, “If you again talk about marrying him, we’ll kill you both. Don’t even think that this marriage can ever take place.” Shilpi’s father tells her that it is better to not have a daughter than to have one who has ruined his reputation and the family’s honour. Thereafter, Shilpi was again locked inside her room.

In between these days, Shilpi’s brother calls Deepak to a nearby field outside his village. They threaten Deepak and warn him to stay away from Shilpi, to which Deepak politely says, “I will stay away from her,” requesting that they not hurt Shilpi. About two months after this incident, Shilpi finally manages to meet Deepak secretly. However, when her family comes to know about their whereabouts, Shilpi is forcibly brought back home and her mother and other women in the family make her go through a purification ritual.

The next day after sunset Shilpi’s brother and his friends abduct Deepak from his village. They take him to a shed in one of the fields owned by Shilpi’s father where he is tied up and beaten with rods and hockey sticks continuously for hours. Soon after, Deepak dies because of multiple injuries caused by the beatings. Deepak’s friends and family search for him everywhere but fail to find him. After some time, one of Deepak’s friends finds out that Deepak was beaten so badly that he died on the spot.

Shilpi overhears her father and brother talking about Deepak at their home. She finds out that Deepak is dead and that her brother and his friends are responsible for his death. A terrified Shilpi tries to run away, but her father catches her and hurls out abuses at her for ruining his name and reputation. He slaps her so hard that Shilpi faints. When Shilpi regains consciousness, she again tries to run away from her home, but her father catches her fleeing. She is brought back into the house and beaten to death.



Haqiqat: I can’t even begin to imagine the suffering Shilpi and Deepak must have been through. This is so cruel. Shilpi’s family murdered both Deepak and Shilpi in such a gruesome manner.



Umeed: This isn’t just a murder case. What happened with Shilpi and Deepak is known as ‘honour killing’.



Haqiqat: What do you mean by honour killing?



Umeed: **Honour killing** refers to the act of murdering a person, whether a family member, relative or someone outside the family, for bringing dishonour or shame to the family or community. For instance, choosing to love someone who belongs to a different caste, community or religion is believed to be one of the causes of such dishonour. The main reason behind honour killings is the idea of protecting the ‘honour’ of one’s family or community.



Haqiqat: I don’t understand how marrying someone outside of your community brings dishonour.



Umeed: This idea of honour is believed to reside in the body and sexuality of the female members of the family or community who bear children. For example, if an ‘upper caste’ woman marries someone from a ‘lower caste’, it breaks the chain of upper-caste associations that runs through generations. In such cases, the blood lineage is considered to have become ‘polluted’. This notion of ‘purity’ associated with caste lies at the heart of these honour killings. Many families can’t accept the idea of their genes being passed down to other communities. To maintain the purity of lineage, women are often married to families belonging to the same caste or religion. Consequently, women’s bodies and sexuality are seen as property to be controlled by families or communities. Any violation of these patriarchal norms or values, such as inter-caste or inter-religious relationships is viewed as a threat to the purity of lineage and the honour of the entire family or community. Therefore, honour killings are seen as a way to restore their honour and maintain the social hierarchy.



Haqiqat: Oh! In this case, Shilpi was considered to be the carrier of the family honour because she was a woman. Being an upper-caste woman, her relationship with a man belonging to a lower caste was seen as a threat to the family’s honour. Hence, both of them were subjected to violence.



Umeed: Yes! Unfortunately, despite the fact that the Constitution of India prohibits discrimination based on caste, the caste hierarchy

still persists socially, especially in the context of marriage. Shilpi and Deepak's honour killing demonstrates that caste continues to play a significant role in deciding the acceptability of romantic relationships or marriages.



Haqiqat: Equality and non-discrimination are the fundamental principles enshrined in our Constitution. In accordance with this, the caste system was outlawed. However, the fact that honour killings are still happening shows that people continue to adhere to caste-based practices in their social interactions.



Umeed: You are right, Haqiqat! Legally, the caste system stands outlawed, but we still haven't been able to eliminate it from our social lives completely.



Haqiqat: How can we eliminate the caste system completely from society?



Umeed: The founding father of our Constitution, Dr. B.R. Ambedkar, viewed the practice of endogamy, i.e., the practice of marrying within one's own caste (in this context), as a mechanism to preserve caste hierarchies. He suggested that exogamy, i.e., marriage across caste groups, can be instrumental in eliminating the caste system.



Haqiqat: Alas! Honour killing as a social response to inter-caste relationships serves to reinforce the caste system. Is there a law for punishing the crime of honour killing?



Umeed: There is no specific law against honour killing in India. The crime of 'honour killing' has not yet been given the status of a distinct crime.

However, since the crime of **honour killing** results in the death of a person, it falls within the offence of either **culpable homicide** or **murder** under sections 100 and 101, BNS (299 and 300, IPC) respectively. Both of these offences involve the 'killing of a person,' but the difference lies in the gravity of the offender's act.

Thus, Shilpi's father and her brother will be punished for causing the death of Shilpi and Deepak respectively.

HONOUR KILLING

Depending upon the gravity of their acts, the offender can face imprisonment for up to ten years, imprisonment for life, or death penalty. They shall also be liable to pay a fine.

Further, since Deepak belonged to the Dalit community, a case would also be registered under the **Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989**.

Exercise No. 14

From Shilpi and Deepak's story, answer the following questions.

- (i) What was the main reason behind Shilpi and Deepak's death?
 - (a) Shilpi fell in love, but her parents wanted an arranged marriage for her. They believed that since they had educated her, she had become too modern which was unacceptable in her family.
 - (b) Deepak was a Dalit boy and Shilpi was a Thakur girl. Shilpi's family did not approve of their relationship since they believed it would pollute their Thakur lineage and compromise the honour of their family.
 - (c) Deepak was a Dalit boy so he was considered 'poor' in comparison to Shilpi's Thakur family.
- (ii) For what offence will Shilpi's father and brother be punished?
 - (a) They will not be punished as there is no law against honour killing in India.
 - (b) Only Shilpi's brother will be punished for causing the death of Deepak. Her father has not committed any offence as he was just trying to protect his daughter.
 - (c) Both of them will be punished for committing the offence of either culpable homicide or murder.

Story 17: Summi's Story

Summi is a ten-year-old girl who lives with her parents in a slum near an under-construction residential colony. Her parents are daily wage labourers who work at the nearby construction site. While they work, Summi along with the children of other labourers, plays outside the site. Passersby often give these children biscuits, bread or other food items.

One day a security guard approaches Summi and asks if she wants to eat something. Summi follows the guard who leads her into the security guard room. The room is located outside one of the small exits of the site. Under the guise of giving her biscuits, the guard asks Summi to come near him and sit on his lap. Summi refuses and keeps asking for the biscuit. However, the guard insists that she sit on his lap and later tries to grope her inappropriately.

Summi: Uncle, please give me biscuits.

Guard: Of course, come inside and take it.

Summi enters the guard room and tries to take the biscuits from the guard. Guard resists playfully.

Guard: You have to first sit on my lap and give me a peck on my cheek. You'll get the biscuits only after that.

Summi resists.

Guard: I will give you biscuits if you lift your frock.

Summi: No. Just give me the biscuits.

Guard tightly grabs Summi and covers her face. Summi tries to resist and scream but is unable to push him away. Guard inappropriately touches her on her chest.

Summi keeps resisting. Even though she starts crying, the guard doesn't let her go.

Guard starts to record a video of Summi on his phone.

Guard: If you tell about this to anyone, I will share your video with everyone so they can see what a naughty girl you are.

He shows her a pornographic video. After a thirty-minute struggle, Summi manages to escape.

Summi broke down in tears thinking it was her fault. Unfortunately, she kept quiet about this because she had previously been subjected to similar abuse by her *chacha*, i.e., paternal uncle in her own home in the slums when she was nine years old. Summi's *chacha* had also touched her inappropriately when her parents were not around. When she shared that incident with her mother, her mother told her to not talk about it with anyone. As a result of this, Summi became awfully quiet and timid.



Umeed: Let's read another story that is similar to Summi's.

Story 18: Mishti's Story

Mishti, a thirteen-year-old, studies in the eighth standard. She usually rides her bicycle on her way home from school. But these days, her uncle Sanjoy picks her up in his car because she is staying at her *Naani's* place as her parents are out of town for a few days. Sanjoy is married and has a four-year-old son. Mishti enjoys playing with her cousin a lot.

On the third day of her stay at her *Naani's* house, Sanjoy insists on taking Mishti to a fast-food restaurant when they are returning from school. He takes a different route than usual, one that is not familiar to Mishti. However, instead of taking Mishti to the restaurant, Sanjoy takes her to his friend's house, which is much further from both her school and *Naani's* house. It takes them about thirty-five minutes to get there. Sanjoy tells her that he needs to pick up something from his friend's place and asks her to accompany him to his friend's house. Mishti initially objects, but since Sanjoy is her uncle and close relative, she eventually goes with him. When they enter the house, Sanjoy closes the door behind him. Sanjoy touches Mishti inappropriately on her leg. He then forces himself on her. Mishti resists and shouts, but Sanjoy silences her by putting his hand on her mouth. While Mishti keeps crying, Sanjoy lifts her skirt and puts his mouth on her private parts. Then he goes on to touch himself and gratify his lust. Sanjoy threatens her, saying that if she tells anyone about this then he will keep punishing her like this. Mishti goes into shock and does not speak about this with anyone, not even her parents.



Haqiqat: Summi and Mishti's stories are clear cases of child sexual abuse. It is so astonishing to see that children can experience sexual abuse within their homes as well as outside.



Umeed: You are right, Haqiqat. In the first case, Summi was sexually abused by a security guard of a local park whom she did not know before the incident of abuse. She experienced violence from someone who was not known to her. Mishti, on the other hand, was sexually abused by her own uncle. She experienced violence at the hands of a close family member.



Haqiqat: Umeed, Summi had also experienced similar sexual abuse by her *chacha* in her own house. Why did she not tell her parents about what happened at the park?



Umeed: Because when she had told her mother about the first instance of sexual abuse, she was asked to keep quiet by her mother. Since her mother discouraged her from speaking out about someone from her own family the first time, she chose to remain silent the second time she became a victim of sexual abuse. Further, Mishti didn't speak with anyone because she was extremely intimidated and traumatised. The threats she received from the perpetrator along with his close familial ties and proximity to her contributed to her silence.

Even when the children report such crimes to their guardians, many times these instances are pushed under the rug. People often worry that reporting a crime to the authorities could damage the reputation of their families. They also fear that if they report cases of child sexual abuse, it would ruin the child's life as once others find out, the child would be treated differently. Many are also unable to report it due to the proximity or fear of the abuser. Sometimes the abuser may be in a powerful position and can manipulate family members to stay silent. When the perpetrator is a family member or relative, one might not want to disclose such crimes to maintain family ties.



Haqiqat: I think it is really important to report such crimes. In addition to physical abuse, such assaults can cause a lot of mental and emotional trauma to the child. It may hinder their growth and undermine their confidence. Such crimes must be reported to the appropriate authorities to protect the child from continuing trauma of sexual abuse.



Umeed: You are right! If Summi and Mishti’s case is reported to the police, the perpetrators would be charged under the **Protection of Children from Sexual Offences Act, 2012** (hereinafter referred to as ‘POCSO Act’).



Haqiqat: Is this a special law for the protection of children?



Umeed: Yes! The POCSO Act is a special law to protect children, irrespective of their gender, against various forms of sexual abuse such as— sexual assault, sexual harassment and pornography.



Haqiqat: Could you please explain these offences?



Umeed: Of course! When Summi followed the security guard inside his room to take biscuits, the guard did the following acts with sexual intent —

- (i) He asked her to sit on his lap and give him a peck on his cheek under the pretext of giving her biscuits. He then tells her that he will give her the biscuits if she lifts her frock.
- (ii) He recorded a video of her while he was touching her on the chest.
- (iii) He threatened her saying “If you tell about this to anyone, I will share your video with everyone so they can see what a naughty girl you are.”
- (iv) He also showed her a pornographic video.

Each of these actions of the security guard individually as well as together constitute the offence of **sexual harassment upon a child** under section 11, POCSO Act.

SEXUAL HARASSMENT UPON A CHILD

Under this law, the offender can be punished with imprisonment of up to three years along with a fine.

The security guard also touched Summi inappropriately on her chest. Thus, he touched Summi's private parts with sexual intent.

This falls under the offence of **sexual assault against a child** under section 7, POCSO Act. Besides this, the offence also covers the acts where anyone with sexual intent makes a child touch the private parts of any person or does any other act involving physical contact without penetration.

SEXUAL ASSAULT AGAINST A CHILD

This law punishes the offender with a minimum imprisonment of three years which may go up to five years. The offender is also liable to pay a fine.



Haqiqat: Umeed, the security guard who committed sexual assault upon Summi also recorded a video of her while he was touching her on the chest.



Umeed: Yes, Haqiqat! The security guard made a video indecently representing a child. This constitutes the offence of **use of a child for pornographic purposes** under section 13, POCSO Act.

USE OF A CHILD FOR PORNOGRAPHIC PURPOSES

This law punishes the offender with a minimum of five years in prison along with a fine. In case, a person gets convicted for the same crime again then imprisonment will not be less than seven years.

Further, a greater punishment may also be imposed on the offender depending on how the person intended to use the stored pornographic material under section 15, POCSO Act.



Haqiqat: What about Mishti's case?



Umeed: In Mishti's case, her uncle Sanjoy inappropriately touched Mishti's leg and then lifted her skirt and put his mouth on her private parts. This falls under the offence of **penetrative sexual assault against a child** under section 3, POCSO Act.

PENETRATIVE SEXUAL ASSAULT AGAINST A CHILD

Under this law, the offender is punished with imprisonment between ten years to imprisonment for life along with a fine.

However, since Sanjoy was related to Mishti through blood as he was her mother's brother, he would be liable for committing **aggravated penetrative sexual against a child** under section 5, POCSO Act. Therefore, Sanjoy will have to serve a minimum of twenty years in prison which may extend to imprisonment for the remainder of his life, or death. He shall also be liable to pay a fine.



Haqiqat: So, the POCSO Act punishes both penetrative as well as non-penetrative sexual assault. Further, in both kinds of sexual assaults, a more severe punishment is imposed upon offenders who are relatives of the child by blood, adoption, marriage and guardianship, and who share the same household with the child.

Exercise No. 15

Select the most appropriate answers relating to Summi and Mishti's stories:

- (i) In Summi's story, if the crime is reported to the police, then the guard could be convicted of committing sexual assault under section 7, POCSO Act because:
 - (a) When Summi tried to take her ball from the guard, the guard asked her to come inside the room.
 - (b) The guard touched Summi inappropriately on her chest with sexual intent.
 - (c) The guard will not be punished because Summi managed to escape and the guard only asked for a peck on the cheek from her.
- (ii) In Mishti's story, her uncle can be punished for penetrative sexual assault under section 3, POCSO Act because:
 - (a) He inappropriately lifted Mishti's skirt and put his mouth on her private parts.

- (b) He cannot be punished because he is Mishti's family relative who cannot be said to have committed such acts of sexual assault.
 - (c) He cannot be punished because Mishti herself went along with him to his friend's place.
- (iii) In Summi's story, the guard will also be punished for the use of a child for pornographic purposes under section 13, POCSO Act because:
- (a) When Summi followed the guard, he teased her saying that he wouldn't give the ball back until she came inside the guardroom. When Summi went inside, there was a television displaying the CCTV recording.
 - (b) The guard recorded a video of Summi on his phone while he was touching her chest.
 - (c) The guard cannot be punished because Summi managed to run away while the guard was trying to record her video.



Umeed: Haqiqat, did you notice that some of our laws reflect a complete shift away from outdated social beliefs? For instance, the PCPNDT Act prohibits the sex determination of an unborn child to prevent female foeticide, a practice rooted in societal preferences for sons. Similarly, the Dowry Prohibition Act makes the long-standing tradition of giving or receiving dowry, especially for marrying off brides, illegal.

Furthermore, earlier our law used to only criminalise non-consensual penile-vaginal intercourse. However, after the Nirbhaya rape case, the Criminal Law (Amendment) Act, 2013 was introduced which expanded the definition of rape to include non-penetrative sex. The amendment also added provisions related to acid, attack, sexual harassment, stalking, voyeurism, etc.



Haqiqat: Yes, but we still have certain laws that are largely based on outdated social norms. For instance, the marital rape exemption reinforces the belief that a husband is entitled to have sex with his wife, regardless of her consent. Such provisions continue to perpetuate the archaic notion that women are the property of men.



Umeed: You're right, Haqiqat! This highlights the need for continuous engagement with both social and legal norms to ensure that our law evolves along with societal progress.

POINTS TO PONDER

The law defines various types of crimes, specifies what constitutes each of these crimes, and prescribes appropriate punishments for them. However, we must consider:

- Do harsher punishments actually deter people from committing crimes?
- Do these laws address the underlying reasons why people commit crimes?
- Can laws alone really prevent crimes, or is a broader social and cultural shift also needed alongside law?



Haqiqat: Laws are necessary, but they alone cannot bring about real change in society. The fear of punishment might deter some people from committing crimes, but punishment does not necessarily ensure prevention as it does not address the root causes of why people commit crimes in the first place. We must dismantle the practices and ways of thinking that create social hierarchies where certain individuals or groups feel justified in exerting power over or committing violence against others. Without addressing these structures of inequality, we are merely treating the symptoms and not the underlying causes. Tackling something so deeply embedded in society is an extremely challenging task that requires a fundamental shift in the way we think and act. However, we can begin by questioning our practices that maintain social hierarchies and normalise violence. When we start challenging these structures, we create space for real transformation.

References

Deccan Herald, 2025: Minor girl 'raped' by co-passenger in running train's wash-room, 4 April 2025, <https://www.deccanherald.com/india/telangana/minor-girl-raped-by-co-passenger-in-running-trains-washroom-3478754>.

Hindustan Times, 2024: Vinay Dalvi, Unknown man booked for stalking, harassing women in Colaba, 14 December 2024, <https://www.hindustantimes.com/cities/mumbai-news/unknown-man-booked-for-stalking-harassing-women-in-colaba-101734115711949.html>.

India Today, 2024: Shweta Kumari, Man pours kerosene on wife, burns her alive in Delhi: Cops, 6 March 2024, <https://www.indiatoday.in/cities/delhi/story/delhi-man-pours-kerosene-on-wife-burns-her-alive-in-rohini-cops-2511116-2024-03-06>.

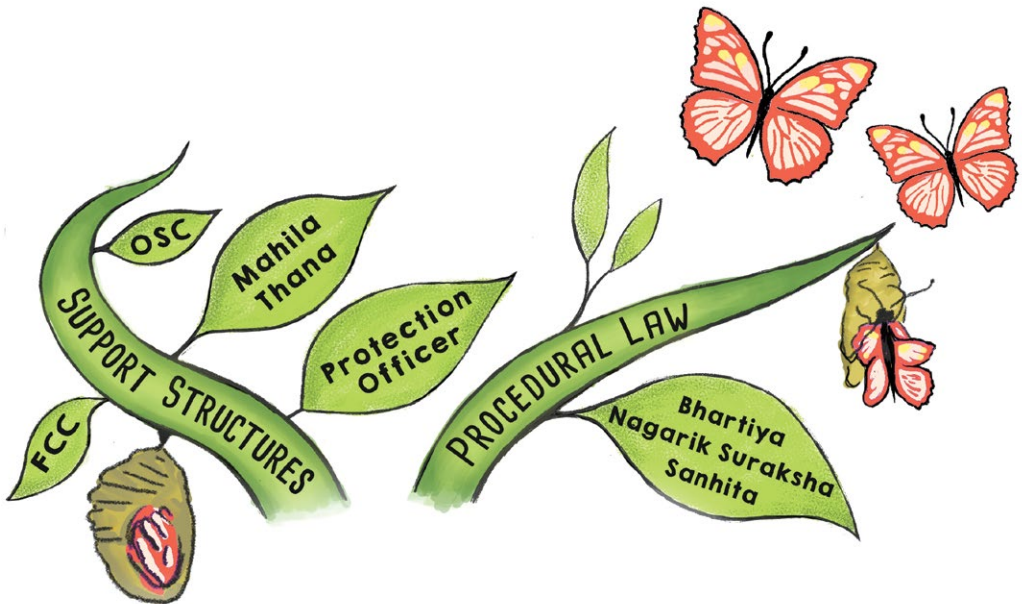
Times of India, 2019: Water purifier technician molests woman, 6 February 2019, <https://timesofindia.indiatimes.com/city/ahmedabad/water-purifier-technician-molests-woman/articleshow/67858277.cms>.

Times of India, 2024: Sonali Verma, India records 51 cases of crime against women every hour; over 4.4 lakhs cases in 2022: NCRB report, 3 April 2024, <https://timesofindia.indiatimes.com/india/india-records-51-cases-of-crime-against-women-every-hour-over-4-4-lakh-cases-in-2022-ncrb-report/articleshow/105731269.cms>.

Answers

1. (i) (a); (ii) (b)
2. (b)
3. Yes, because under the law the victim of acid attacks can be anyone, regardless of gender.
4. (iii)
5. (i) (b); (ii) (a)
6. Yes, Ranjit has committed the offence of outraging the modesty of a woman under section 74, BNS (354, IPC).
7. (i) (b); (ii) (a); (iii) (b)
8. (i) verbal abuse; (ii) sexual abuse; (iii) emotional, economic; (iv) emotional
9. Yes, Shankar committed both physical and emotional abuse against Roop.
10. (i) (a); (ii) (b); (iii) (a)
11. (i) (b); (ii) (a); (iii) (c)
12. (i) (b); (ii) (c); (iii) (b)
13. No, Santuri did not give consent to have sexual intercourse with Tilak.
14. (i) (b); (ii) (c)
15. (i) (b); (ii) (a); (iii) (b)

PART III



From Crime to Punishment: Procedure for Securing Legal Remedies



Figure 1: News headlines highlighting various stages of criminal justice process



Umeed: Haqiqat, are you familiar with the process that follows after a crime is committed?



Haqiqat: I know that the perpetrator of a crime can be punished under the *Bharatiya Nyaya Sanhita, 2023* (BNS) which provides for the definitions of various offences and their punishments. Earlier, these were provided under the *Indian Penal Code, 1860* (IPC).

Is there anything else I should know if I want to seek justice in the case of a crime?



Umeed: While knowing what constitutes a particular crime is important, it is not enough to seek redress. It is also necessary to know which authorities or agencies an aggrieved person may approach and what procedure they follow. Familiarity with all these aspects will enable a person to understand and secure a proper remedy in the event of an offence.



Haqiqat: That makes sense! Could you tell me the procedure that is followed for availing redress for a crime that has been committed?



Umeed: Of course! Before we proceed with that, we should know about two kinds of laws:

- First, we have a general law—the ***Bharatiya Nagarik Suraksha Sanhita, 2023*** (hereinafter referred to as ‘BNS’). General laws lay down the general rules which are applicable to a wide range of circumstances.

The BNS provides the general procedure which is followed by agencies that are involved in the criminal justice process like the police, courts, etc. This was previously provided under the *Code of Criminal Procedure, 1973* (hereinafter referred to as ‘CrPC’). However, CrPC has been replaced with BNS, which came into effect on July 1, 2024.

- Second, we have special laws such as—the ***Protection of Women from Domestic Violence Act, 2005*** (hereinafter referred to as ‘PWDV Act’) and the ***Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*** (hereinafter

referred to as 'POSH Act'). Special laws govern specific subject matters, and the remedies provided thereunder are different from the general laws. Such special laws also lay down specific procedures to be followed with respect to the offence that they deal with.

The PWDV Act and POSH Act provide civil remedies for women aggrieved by domestic violence and sexual harassment at workplace respectively.



Haqiqat: Umeed, you mentioned the term 'criminal justice process.' What does it mean?



Umeed: Criminal justice process may be understood as the process that has been established for providing redress in the case of the commission of an offence. The process aims to determine whether a person has committed an offence and, if so, to impose an appropriate punishment.



Figure 2: Agencies involved in finding out and punishing criminals



Haqiqat: How does this process start?



Umeed: It typically begins with the reporting of the commission of an offence to the police authorities who investigate the crime. Investigation involves visiting the scene of a crime, gathering information, collecting evidence, talking to witnesses, conducting searches, and going through documents, messages, phone records, CCTV footage, etc. After that, the matter reaches the court, where the judge decides whether the person accused of having committed an offence, based on the police investigation, has indeed committed the offence. This is done after the scrutiny of evidence in the court of law.



Haqiqat: Umeed, does the court go by the story told by the police and evidence collected only by them? What if the police have missed out on some crucial evidence? Are there any checks against the police as well?



Umeed: Yes! The system is marked by overlapping checks and balances between various entities to ensure that justice is done. The accusation against a person has to be proved in a court of law before the person can be declared guilty of committing the offence. Apart from the police and court, the other entities involved in the criminal justice process are:

- Prosecution
- Defence
- Witnesses, including the aggrieved person
- Accused

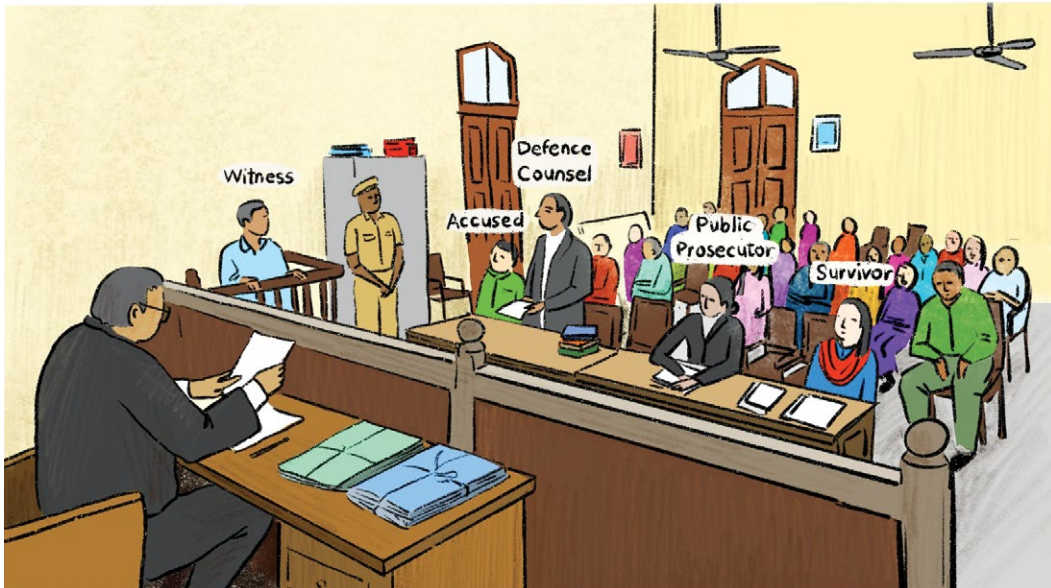


Figure 3: View of a court trial



Haqiqat: The accused is the one who has committed the offence, right?



Umeed: No, Haqiqat. An **accused** is a person against whom there is an accusation that she or he has committed a crime. The accusation is an unproved claim that is made either by the aggrieved person, police or witnesses. This claim has to be proved in a court of law before the accused can be held guilty of committing that crime.



Haqiqat: Oh! I remember learning through my school textbook that one of the fundamental principles on which criminal law is based is that “a person is presumed to be innocent until proven guilty.”



Umeed: Yes, this principle is necessary to secure individual freedom and avoid undue infliction of restraints by the State which is very powerful as compared to ordinary individuals. However, this does not mean that the individual has no recourse or support. This will become clear as we go ahead with understanding the criminal justice process step by step.



Haqiqat: Can you tell me more about the criminal justice process?

Umeed: There are three main stages in the criminal justice process:

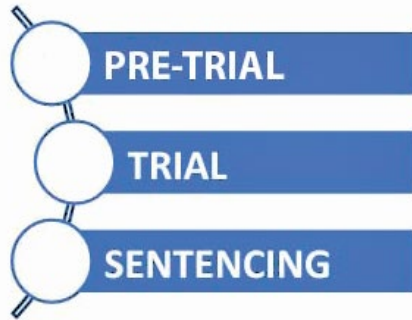


Figure 4: Three main stages in criminal justice process

I will elaborate upon these stages through a fictional story of Manju against whom a crime has been committed. We will see how she makes use of the recourses available under criminal law to remedy the crime. Along with this, we will learn about various rights of aggrieved persons that are available to them at different stages of the criminal justice process. The method of securing remedies, the functionaries involved, the procedure regarding the collection of evidence and the process of the trial conducted by the court are provided in the BNSS.



Haqiqat: I have heard that there is a separate law regarding evidence pertaining to crimes.

Umeed: Yes, the **Bharatiya Sakshya Adhiniyam, 2023** (hereinafter referred to as 'BSA') governs the matters pertaining to what evidence can be taken note of by the court, what facts are relevant while adjudicating and when those facts stand proved or not proved in the court of law. On the basis of facts proved in the court of law, an accused person is adjudged guilty or innocent. This was formerly governed by the Indian Evidence Act, 1872 (hereinafter referred to as 'IEA'). However, IEA has been replaced with BSA, with effect from July 1, 2024.

A. Procedure for Redressing Offences Against Women under the Bharatiya Nagarik Suraksha Sanhita, 2023



Umeed: Before we begin the story, I would like to let you know that we'll be using the offence of outraging the modesty of a woman only as illustrative of the procedure that is generally followed after the commission of any crime or offence.

Manju's Story— Part 1

(The Beginning)

Manju, a college student, is being subjected to eve-teasing by an unknown person. She takes a shared tempo from her college in the city back to her village. A few weeks ago, she started noticing that a boy was following her on his bicycle. Recently, he has begun passing some lewd and uncomfortable comments about her clothes. One day he was humming, "Aaayi chikni chameli chhup ke akeli..." while looking at her. Yesterday, he even tried to pull her dupatta and touch her from the side of the tempo. Manju is now afraid of going to her college. She wants to take some action so that the boy stops bothering her and learns a lesson to not bother any girl like this. However, she has heard from someone at her college that the boy who has been harassing her belongs to a very wealthy and influential family. Manju fears that initiating a criminal case against him would not lead to any justice for her.



Haqiqat: Umeed, what actions can be taken in Manju's case?



Umeed: If Manju wants to take legal action, she can directly approach any of the following authorities:

- (i) Police officer
- (ii) Magistrate

Besides them, she can also approach any government or non-governmental organisation that works for the welfare of women

and offers support to survivors of crimes. They would assist her in reporting this to the appropriate authorities.



Haqiqat: If Manju decides to undertake direct action through the magistrate or the police, then what should she do? What is the difference between the two approaches?



Umeed: That's a wonderful question. Let me start with the Magistrates. Each district-level court in the country has judicial officers called **Magistrates**. Each Magistrate adjudicates upon criminal acts committed in the area that the Magistrate oversees. We have the right to approach the Magistrate in case a crime has been committed and urge them to take legal action. The process of doing so is known as filing a complaint.



Haqiqat: Can you please elaborate on what is a 'complaint'?



Umeed: A **complaint** is an allegation made to a Magistrate informing them about the commission of a crime. It must indicate an intention to take legal action against the person who has committed the crime. There is no specific format for a complaint. It can be submitted either orally or in writing to the Magistrate.¹



Haqiqat: How can one approach the police authorities?



Umeed: One can simply visit their nearest Police Station and give all the information to the officer on duty, either orally or in writing. Depending on the nature of the information given, the police officer decides whether a cognisable or non-cognisable offence has been committed.



Haqiqat: But what are cognisable and non-cognisable offences?

1. section 2(h), BNSS [2(d), CrPC].



Umeed: Cognisable offences are those offences which are considered more severe and grave as compared to other offences. In case of such offences, the police have the power to make arrests without a warrant and conduct an investigation without the permission of the Magistrate.

Whereas, **Non-cognisable offences** are less serious in nature. The police can neither arrest without a warrant nor investigate without the order of the Magistrate.



Haqiqat: Why is this categorisation important?



Umeed: When it comes to cognisable offences, police officers are required to register what is known as a **First Information Report (FIR)** under section 173, BNS (154, CrPC).

In Manju's case, from the nature of the information, the police should be able to deduce that her case involves the offence of outraging the modesty of a woman under section 74, BNS (354, IPC) as well as insulting the modesty of a woman under section 79, BNS (509, IPC). Since these are cognisable offences, the police officer would register an FIR.

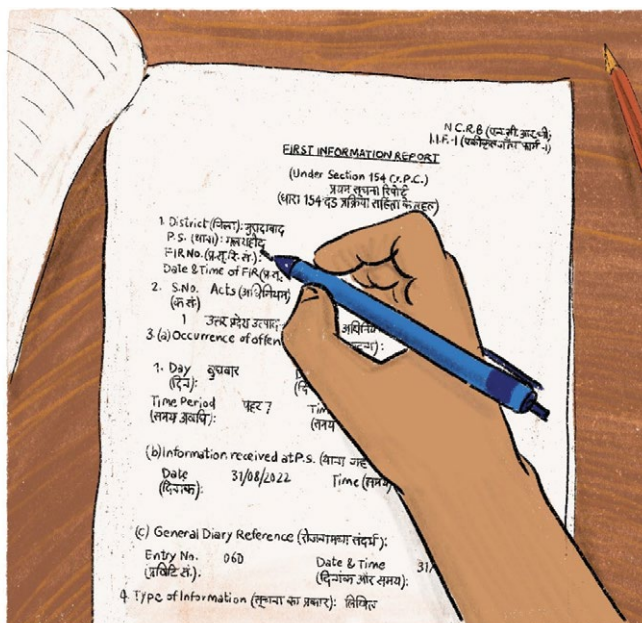


Figure 5: Recording of an FIR

An FIR is a document which contains all the information that police receive in relation to the commission of a cognisable offence. Based on this information, the police authorities can begin their investigation. Thus, the filing of an FIR sets the criminal justice process in motion. After filing an FIR, the person who gives the information is entitled to get a copy of the same. Take a look at the format in which the police record an FIR.

<u>FIRST INFORMATION REPORT</u>		
(Under Section 173, BNSS)		
1.	District:	P.S.: Year:
	FIR No.	Date & Time of F.I.R.:
2.	(i) Act:	Sections:
	(ii) Act:	Sections:
	(iii) Act:	Sections:
3.	(a) Occurrence of offence:	
	Day: Date from: Date to:	
	Time Period: Time from: Time to:	
	(b) Information received at P.S.:	Date Time
	(c) General Diary Reference:	Entry No. Time
4.	Type of Information: Written / Oral	
5.	Place of Occurrence:	
	(a) Direction and distance from P.S.	Beat No.
	(b) Address.....	
	(c) In case, outside the limit of this Police Station, then	
	Name of P.S.: District:	
6.	Complainant / Informant:	
	(a) Name	
	(b) Father's/Husband's Name	
	(c) Date/Year of Birth	
	(d) Nationality	
	(e) UID No.	
	(f) Passport No.Date of IssuePlace of Issue	
	(g) ID details (Ration Card, Voter ID, Passport No., UID No. Driving License, PAN)	
	S. No.ID Type..... Id Number	
	(h) Occupation	
	(i) Address	
	(j) Phone No.	

Figure 6: First Information Report (FIR)-I

7. Details of known/suspected/unknown accused with full particulars: (Attach separate sheet, if necessary)

(1)

(2)

(3)

8. Reasons for delay in reporting by the complainant / informant

.....

9. Particulars of properties stolen (Attach separate sheet, if necessary)

.....

10. Total value of property stolen (in Rs.):

11. Inquest Report / U.D. case No., if any:

12. First Information contents (Attach separate sheet, if required):

.....

.....

.....

.....

13. Action taken: Since the above information reveals commission of offence(s) u/s as mentioned at Item No. 2:

(1) Registered the case and took up the investigation or

(2) Directed (Name of I.O.) Rank No. to take up the Investigation or

(3) Refused investigation due to or

(4) Transferred to P.S. District on point of jurisdiction.

F.I.R. read over to the complainant/informant, admitted to be correctly recorded and a copy given to the complainant /informant, free of cost.

R.O.A.C. **Signature of Officer in charge, Police Station**

Name:

Rank: **No.**

14. Signature / Thumb impression of the complainant/informant.

15. Date and time of despatch to the court

Figure 7: First Information Report (FIR)-II



Haqiqat: Since cognisable offences are more serious in nature, are they dealt with more strictly?



Umeed: Yes! As mentioned, the police have been given the power to arrest the accused person without a warrant in the case of a cognisable offence. Whereas in the case of non-cognisable offences, the police can only arrest with a warrant or an order of a Magistrate.



Haqiqat: Oh, I understand! But what is a warrant?



Umeed: A **warrant** is a legal document issued by a court allowing a police officer to arrest an accused.



Haqiqat: But if there is only an accusation against a person, why should they be arrested?



Umeed: The purpose of arrest is to ensure the availability of the accused person for investigation into the offence and to prevent them from committing any further crimes, disrupting the investigation, destroying evidence, or threatening the aggrieved persons or witnesses. Since only an accusation exists against the person who may have been arrested and the person is presumed to be innocent until proven guilty, arrests are only made to ensure proper investigation and to enable the legal process to identify the person guilty of the offence.

As mentioned earlier, the criminal justice system balances the liberty of an individual against the requirements of the criminal justice process to punish the person if he or she is guilty. This is done by allowing the police to arrest the accused and also providing for the accused's conditional and temporary release pending the completion of the criminal justice process.

The conditional and temporary release of the accused pending the completion of the criminal justice process is known as **bail**. It implies that the accused does not remain in custody while the criminal justice process is pending, however, he is required to join the process whenever directed to do so either by the police or the court.



Haqiqat: Can bail be granted in all kinds of cases?



Umeed: The grant of bail depends upon the nature of the offence and the concerns involved in releasing the accused. The BNSS divides offences intoailable and non-ailable offences.

Bailable offences are those in which the accused who has been arrested is entitled to be released on bail by police on certain terms and conditions. This implies that the police cannot deny bail to the accused.

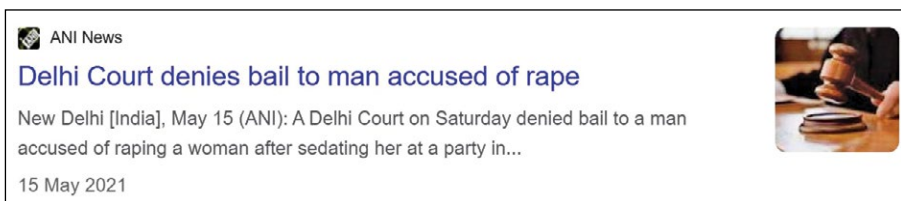
Non-bailable offences are those where the police do not have the power to grant bail but the court has the discretion whether to release the arrested accused on bail or not. There are certain factors that are kept in mind by the court while exercising this discretion.



Haqiqat: So, in Manju's case, can the accused be granted bail?



Umeed: The offences involved in Manju's case, i.e., offences under section 74, BNS (354, IPC) and section 79 BNS (509, IPC) are non-bailable offences which means that only the court would have the discretion to grant bail to the accused after his arrest.



(ANI, 2021)

Figure 8: Denial of bail in case of a non-bailable offence

All offences against women under the BNS are cognisable and most of them are non-bailable.

Classification of Offences under BNSS				
Section	Offence	Cognisable or Non-Cognisable	Bailable or Non-Bailable	By what Court triable
64, BNS [376, IPC]	Rape	Cognisable	Non-bailable	Court of Session
74, BNS [354, IPC]	Outraging Modesty	Cognisable	Non-bailable	Any Magistrate
75, BNS [354A, IPC]	Sexual Harassment	Cognisable	Bailable	Any Magistrate
76, BNS [354B, IPC]	Disrobing	Cognisable	Non-bailable	Any Magistrate

Classification of Offences under BNSS				
Section	Offence	Cognisable or Non-Cognisable	Bailable or Non-Bailable	By what Court triable
77, BNS [354C, IPC]	Voyeurism	Cognisable	Bailable. However, it is non-bailable when the person is accused of this offence for the second time.	Any Magistrate
78, BNS [354D, IPC]	Stalking	Cognisable	Bailable. However, it is non-bailable when the person is accused of this offence for the second time.	Any Magistrate
79, BNS [509, IPC]	Insulting Modesty	Cognisable	Bailable	Any Magistrate
80, BNS [304B, IPC]	Dowry Death	Cognisable	Non-bailable	Court of Session
85, BNS [498A, IPC]	Cruelty	Cognisable, if FIR is filed by the aggrieved woman or any person related to her by blood, marriage or adoption.	Non-bailable	Magistrate of the First Class
124, BNS [326A- 326B]	Acid Attack	Cognisable	Non-bailable	Court of Session

Figure 9: Classification of offences under BNSS



Haqiqat: But what if the police refuse to register the FIR in the first place?



Umeed: The registration of an FIR in the case of a cognisable offence is mandatory.

However, if the police refuse to register an FIR, the aggrieved person can approach the following higher authorities in this order:

- the Superintendent of Police,
- the Magistrate, or
- file a petition before the High Court of the state where the offence was committed.

Section 199 BNS [section 166A(c), IPC] makes the refusal to record an FIR in cognisable cases an offence, and the police officer can be punished for such refusal.

REGISTRATION OF FIR IS MANDATORY

Bhola Kamat lived in Ghaziabad, Uttar Pradesh. He had a daughter named Lalita who was about six years of age. One evening, Lalita stepped out of her house around 9 pm. She did not return for a long time, which worried Bhola. He went out looking for his daughter but was unable to trace her. He went to Loni Police Station to file a missing person report. About a week later, Bhola was informed that Lalita had been kidnapped and was being kept under unlawful confinement by some people. But the police refused to act on his complaint. Aggrieved by such inaction, Bhola wrote to the Senior Superintendent of Police. After that, an FIR was registered against Lalita's kidnappers. But, even after the FIR was registered, the police did not take a single step to trace Lalita. Bhola alleged that he was asked to pay money to initiate an investigation and to get the accused persons arrested. Left without choice, he filed a petition before the Supreme Court of India.

The Supreme Court concretely held that *"if the information received discloses the commission of a cognisable crime, the registration of FIR is mandatory under section 154, CrPC and no preliminary investigation is permissible in such a case. However, if the information does not reveal a cognisable offence but suggests the need for an inquiry, a preliminary inquiry may be conducted. If the inquiry reveals the commission of a cognisable offence, the FIR must be registered. If this is not the case, a copy of the entry of the closure report must be sent to the first informant immediately and no longer than one week."* [Lalita Kumari v. Govt. of U.P., (2014) 2 SCC 1]



Haqiqat: Since the boy has been misbehaving with Manju, is she the only person who can file a complaint or FIR against him?



Umeed: No, since a crime is considered to be wrong against the entire society, therefore, anyone can file a complaint or FIR on Manju's behalf. For example, you and I can also file a complaint or FIR on Manju's behalf.

However, in the case of some offences, only the aggrieved or certain specified persons can file the FIR or complaint. For instance, the FIR or complaint in the case of cruelty against the wife by the husband or his relatives [section 85, BNS (498A, IPC)] can only be filed by the aggrieved woman or any person who is related to her by blood, marriage or adoption.²

2. First Schedule, BNS [First Schedule, CrPC].



Haqiqat: Is there anything one should keep in mind while filing an FIR?



Umeed: The person who is filing the FIR must narrate the incident in detail. They must mention the date(s) when the acts amounting to the offence were committed, the place where each of these acts was committed, and the details of the acts committed by the accused. It is important to state all this as FIR forms the basis of the criminal justice process and a lot depends on what is or is not mentioned in the FIR. When a person immediately reports the commission of an offence to the police, they must ensure that they can recollect what happened and narrate it coherently.



Haqiqat: In case we forget to mention any fact, would that be detrimental to the case later on?



Umeed: While it is preferable that all details are mentioned in the FIR, the Supreme Court has held multiple times that the FIR need not be an encyclopaedia of facts. So don't worry!

I would like to remind you that alternatively a complaint can also be filed before the Magistrate. If needed, the FIR or complaint can be made by seeking the support of any other person or organisation working to redress crimes against women such as One Stop Centres which offer medical, legal, psycho-social support as well as shelter.

Exercise No. 1

- (a) Fill in the blanks: Radha is a performer in a dance troupe. Her show usually ends at midnight. For the past few days, two boys have been whistling at her on her way home from work. They also made subtle requests for sexual favours from her. She went to the police to file a report against them, but the police officer refused to register the FIR, saying that she should expect such things as a dancer. Radha is left distressed. When Julie, her neighbour, hears about this, she suggests Radha to approach the _____ with her complaint.
- (b) In the above case, could the police refuse to file an FIR on the grounds that Radha is a dancer and that such incidents are an ordinary part of her profession, and therefore do not constitute any offence?

Exercise No. 2

Answer the following in 'Yes' or 'No'.

- (a) Can a police officer refuse to register an FIR if the commission of a cognisable offence is reported?
- (b) Can an aggrieved woman directly approach the Magistrate to file a complaint?

Manju's Story— Part 2

(Investigation Stage)

Manju finally decides to report the incidents to the police. When she reaches the police station, she feels confused and anxious but soon approaches a male police officer. The officer directs her to a female police officer and Manju begins to narrate the incidents to her. As Manju speaks, the officer records the information. Once the officer finishes writing, she reads the content of the report back to Manju for confirmation. The officer also offers to let Manju read the report herself and verify all the facts. After verifying all the contents of the written report, Manju is asked to sign the FIR. Once she signs the FIR, the police stamp it. A signed and stamped copy of the FIR is then handed over to her, free of cost.

----- *FIR is registered* -----



Haqiqat: When Manju arrived at the police station, why was she directed to a woman police officer?



Umeed: In cases of sexual harassment, disrobing, voyeurism, stalking, acid attack, rape, or insulting or outraging the modesty of a woman, the law requires that the FIR of an aggrieved woman be recorded by a woman police officer or woman officer.³

3. section 173(1) proviso, BNSS [154(1) proviso, CrPC].

Further, if the aggrieved person is a woman with a mental or physical disability, the FIR must be recorded at her residence or place of her choice in the presence of an interpreter or special educator. Moreover, the recording of such information must be videographed.⁴

IMPORTANT ELEMENTS OF AN FIR

1. The information must be related to the commission of a cognisable offence.
2. It should contain details regarding the date, place and specific offence committed.
3. It can be given orally or in writing. If given orally, it must be reduced to writing by the police officer.
4. It must be signed by the informant, i.e., the person who gives the information to the police.

Exercise No. 3

What information do you think an FIR in Manju's case would have? Using the information discussed in the story, fill in the following entries of an FIR.

1. (i) Act: _____ Section: _____

(ii) Act: _____ Section: _____

2. First Information Contents:



Haqiqat: What happens after the registration of an FIR?



Umeed: The police begin their investigation. The investigation involves collecting evidence pertaining to the offence to find out who might have committed the offence. During the investigation, the

4. section 173(1) proviso II, BNSS [154(1) proviso II, CrPC].

police may ask anyone who seems to be familiar with the facts and circumstances of the case to present herself or himself before them. The police may then ask questions and record their responses. Every person is obligated to honestly answer the questions of the police. Ordinarily, a woman can only be questioned at her place of residence.⁵ However, she is allowed to go to the police station if she so desires.



Figure 10: Police investigating a crime scene

Further, the statement of an aggrieved woman, in cases of sexual harassment, disrobing, voyeurism, stalking, rape and insulting or outraging modesty, can only be recorded by a woman officer. In such cases, as soon as the offence is reported to the police, the aggrieved woman's statement is also recorded by the Magistrate.⁶ As far as practicable, the statement is to be recorded by a woman Magistrate and in her absence, by a male Magistrate in the presence of a woman. This statement is recorded under section 183 of BNSS (164, CrPC). If the aggrieved woman has a mental or physical disability, the statement is recorded with the help of an interpreter or special educator and is also videographed.⁷

5. section 179, BNSS [160, CrPC].

6. section 183(6), BNSS [164(5A), CrPC].

7. section 183(6)(a) proviso IV, BNSS [164(5A)(a) proviso II, CrPC] and section 125, BSA [119, IEA].

After the registration of the FIR, Manju's statement is recorded before the Magistrate. The police interrogate and record the statement of the tempo driver who regularly drives Manju home. The police also record the statement of the accused. After collecting all available evidence, the police form a preliminary opinion that the accused has likely committed the offence.

----- **Investigation is complete** -----

STATEMENTS OF WITNESSES UNDER SECTION 183, BNSS (164, CRPC)

1. The statements under section 183 can be recorded only by a Magistrate.
2. The Magistrates can administer oaths to the person whose statement is being recorded.
3. In cases of sexual harassment, disrobing, voyeurism, stalking, rape and insulting or outraging the modesty of a woman, the statement of the aggrieved woman has to be recorded by a Magistrate as soon as the offence is reported to the police. The statement must, as far as possible, be recorded by a woman Magistrate, and in her absence, by a male Magistrate in a woman's presence.
4. The statement of a woman with a mental or physical disability shall be recorded with the help of an interpreter or special educator and shall also be videographed.
5. If the maker of the statement is presented as a witness in a trial, then such statements can be used to support or oppose their claims in the courts.



Haqiqat: What happens if the police form the opinion that the accused has not committed the offence?



Umeed: Upon the completion of the investigation, if the police form the opinion that no offence has been made out against the accused, they file a closure report before the Magistrate.



Haqiqat: If Manju had chosen to file a complaint before a Magistrate instead of registering an FIR with the police, what would the procedure have been?



Umeed: In the case of a complaint before a Magistrate, if a case is made out against the accused on the face of it, the Magistrate takes cognisance of the offence.⁸ If required, the Magistrate may conduct

8. section 223, BNSS (200, CrPC).

an inquiry themselves or order a police investigation to determine whether sufficient ground exists to proceed with the case.⁹ If the Magistrate finds no sufficient grounds, the complaint is dismissed.

Exercise No. 4

State whether the following statements are true or false.

- (a) Any police officer, whether male or female, can record a woman's complaint of sexual harassment.
- (b) A woman witness cannot be called to the police station for questioning unless she is willing to attend.

Manju's Story— Part 3

(Initiation and Commencement of Proceedings)

After completing the investigation, the police prepare a chargesheet or challan and file it before the Magistrate. The investigation discloses that the accused has committed an offence under section 74, BNS and section 79, BNS. The police inform Manju of the action they have taken on her FIR.

----- *Chargesheet is filed* -----



Haqiqat: Umeed, what is a chargesheet or challan?



Umeed: After the investigation is complete, all the evidence collected by the police is submitted to the court in the form of a **chargesheet** or **challan**, as it is commonly known. It contains the names of the parties involved, i.e., the accused and the aggrieved person, as well as persons who appear to be acquainted with the circumstances of the case. It also includes the statements made by various witnesses to the police during the investigation, all of which indicate whether

9. section 225, BNSS (202, CrPC).

an offence appears to have been committed, by whom it appears to have been committed, etc. Additionally, the chargesheet specifies the law and the section of the law under which the accused is charged. For example, Bharatiya Nyaya Sanhita, 2023, section 74 and section 79.

A chargesheet implies that, on the face of it, the accused appears to have committed the offence they are charged with, and therefore, the accused must be tried for it in court.



Figure 11: Filing of a Chargesheet or Challan



Haqiqat: What happens in the case of a complaint before the Magistrate? Is the procedure the same?



Umeed: No, it's slightly different. In the case of a complaint before the Magistrate, if the Magistrate finds sufficient ground to proceed with the case, the Magistrate initiates the **issue of process**. The issue of process refers to the commencement of proceedings against the accused which includes summoning the accused or issuing of warrant against them.¹⁰

10. section 227, BNSS 204 (CrPC).

Further, you must have also noticed how Manju was duly informed of the action taken by the police on her FIR.¹¹ As per BNSS, the police are required to inform the informant or the victim about the progress of the investigation within a period of ninety days.¹² Similarly, if the police had concluded that there was no sufficient ground for entering into the investigation at all, Manju would have been informed of this decision as well.¹³

After the chargesheet is filed, the Magistrate finds that a case is made out against the accused, on the face of it. As a result, the proceedings against the accused continue and the accused is not discharged. In Court, arguments are heard from both the defence (side representing the accused) and the public prosecutor (side representing the state which pursues the matter on behalf of the victim, i.e., Manju) on the framing of charges. After considering the arguments from both sides, the Court frames charges against the accused under sections 74, BNS (354, IPC) and 79, BNS (509, IPC) for the offence of outraging the modesty of a woman and insulting the modesty of a woman respectively.

----- **Charges are framed** -----



Haqiqat: What would have happened if the Magistrate had found that no case was made out against the accused?



Umeed: In such a case, no charges would be framed, and the accused would be discharged.

Exercise No. 5

Fill in the blanks:

- (a) A chargesheet is filed before a _____.
- (b) When the police decide not to enter into an investigation, they must inform the _____.
- (c) When no case is made out against the accused, the accused is _____.

11. section 193(3)(iii), BNSS [173(2)(ii), CrPC].

12. section 193(3)(ii) BNSS.

13. section 176(2), BNSS [157(2), CrPC].

Manju's Story— Part 4

(Trial Stage)



Haqiqat: Before we get to what happens at the trial stage in Manju's case. I have a few questions. I have heard that trials can be quite lengthy. Could you briefly explain what the trial process entails?



Umeed: The accused is tried in the court based on the charges framed by the court. Only after the trial is it determined whether the accused has or has not committed the offence. The process in the court of law is primarily carried out by two parties-

- Public Prosecutor – on behalf of the State and the aggrieved person (prosecution side), and
- Defence Counsel – on behalf of the accused (defence side)

As the accused is presumed to be innocent until proven guilty, the responsibility to produce evidence and prove that the accused has committed the crime lies on the prosecution. The prosecution has to prove beyond reasonable doubt that the accused has committed the crime.

At the stage of evidence, the witnesses are questioned by the party producing them. For instance, a witness from the prosecution side known as the prosecution witness (PW) is first questioned by the prosecution itself which means that the PW is brought before the court to state what they saw, heard, etc. Since the police collect evidence and produce it in the form of a chargesheet in the court, the testimonies of witnesses are already on record. However, during the trial, they are expected to testify before the court under oath about what they witnessed. After the prosecution has questioned the PWs, the opposite party, i.e., the defence counsel, also has the opportunity to cross-question the witness with regard to what the witness had said to the police and then what they said in the court. Thus, the prosecution witness is first questioned by the prosecutor and then cross-questioned by the defence.

Thereafter, a procedure similar to the prosecution evidence stage is followed at the stage of defence evidence.



Haqiqat: Umeed, I have also heard that female victims or survivors of violence against women often face character assassination by

defence lawyers during the trial. An infinite number of fingers are pointed at them, questioning their character and friendships with men.



Figure 12: A victim/ survivor facing character assassination during trial



Umeed: I understand your concern. You are not wrong in saying that women often face horrible allegations about their morality and character when they take their harassers to court. However, the law does not permit questioning the character of the aggrieved woman. Under section 48, BSA (53A, IEA), the character or previous sexual experience of an aggrieved woman is irrelevant in cases of outraging the modesty of a woman, sexual harassment, disrobing, voyeurism, stalking or rape. This provision can be used to make sure that the victims are not re-victimised during the trial.

Now, let's see what happens in Manju's case during the trial.

After the charges are framed, the trial begins. The evidence of the prosecution is presented before the Court. The prosecution witnesses (PWs) depose before the Court, first being examined by the prosecutor and then cross-examined by the defence. Next, the accused is examined by the Court and his statement is recorded. Thereafter, the defence evidence is produced before the Court through the examination and cross-examination of the defence witnesses (DWs). Afterwards, final arguments between the prosecution and the defence take place. The Court then proceeds to decide whether the accused has committed any offence on the basis of the evidence produced before it. The Court convicts the accused under sections 74, BNS (354, IPC) and 79, BNS (509, IPC).

----- Trial is complete -----



Haqiqat: At the end of the trial, if the court determines that the accused has not committed any offence, the accused is released, right?



Umeed: Yes! If the court concludes that the accused is innocent, the accused is acquitted and the court passes an order of acquittal.

Manju's Story— Part 5

(Sentencing Stage)



Haqiqat: How does the court decide what punishment should be given to the convicted person?



Umeed: The court hears arguments from both the prosecution as well as the defence regarding the appropriate punishment to be imposed on the convict. The BNS which defines offences also mentions the punishments that may be imposed for different offences. It mentions the kinds of punishments with respect to specific offences including the minimum and/or maximum periods of imprisonment (wherever it provides for imprisonment), and it is up to the judge to decide the kind and duration of punishment that is adequate for that particular convict. At this stage, when the accused has been proved to be guilty beyond reasonable doubt, the focus of the court is on the convict, and the background of the convict therefore becomes relevant along with other related aspects, in determining the appropriate punishment.

After the accused is convicted, arguments between the prosecution and the defence on the punishment to be imposed, i.e., the quantum of the sentence takes place. The Court sentences the accused to rigorous imprisonment of two years along with a fine. In the end, Manju is relieved and satisfied with the outcome of the case. Although the process was quite long, it was necessary to ensure just treatment for all the parties involved. In the end, Manju believes it was worth it.

----- Case is closed -----

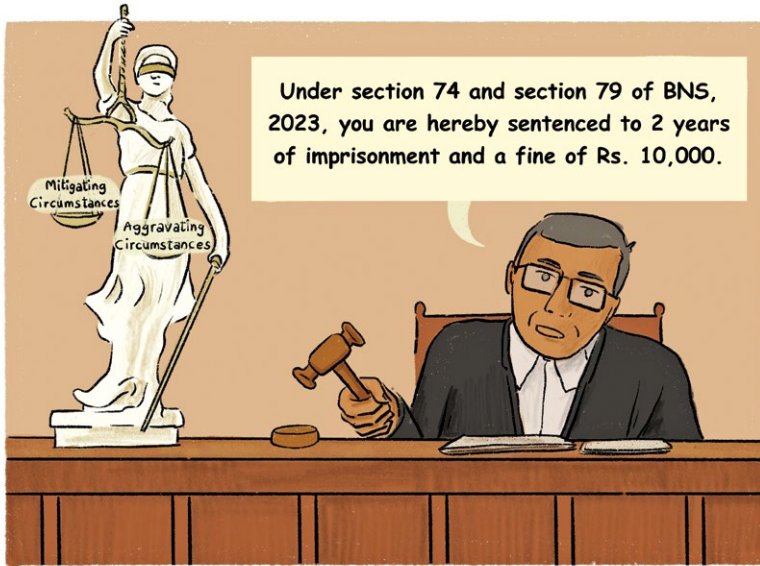


Figure 13: A judge pronouncing a sentence to the accused



Haqiqat: Umeed, where does the fine go? Does the aggrieved person receive any of it?



Umeed: Yes, they can. The law confers wide powers on the Magistrate to grant compensation to the aggrieved persons. It includes the following:

- The Magistrate can order a part of the fine imposed on the accused to be paid as compensation to the aggrieved person.¹⁴
- The Magistrate can order the accused to pay compensation to the aggrieved person even when the punishment imposed on the accused does not include a fine.¹⁵
- In cases where the compensation awarded is inadequate, or the accused is acquitted or discharged, the Magistrate may recommend the legal services authority to grant compensation to the aggrieved person under the state victim compensation schemes.¹⁶

14. section 395(1)(b), BNSS [357(1)(b), CrPC].

15. section 395(3), BNSS [357(3), CrPC].

16. section 396, BNSS [357A, CrPC].

Exercise No. 6

Based on the example from Manju's story and her experience of reporting violence against women, write dialogues for the following:

Last night Jennifer went to the wedding of one of her relatives. She met an old neighbour. They started talking, and reminiscing about their childhood memories. The neighbour insisted on showing his new house to Jennifer. After taking her to his house, he forced himself upon her and had sexual intercourse with her despite her resistance.

Jennifer goes to the police station to report her case. Think about what Jennifer would inform the police and what questions the police would ask her to write her FIR. Using your imagination, write dialogues for Jennifer who is reporting the incident, and the Police Officer who is writing the FIR, in Column I and Column II respectively.

Column I	Column II



Haqiqat: Wow! It was a lot of information, Umeed. Can you please summarise the procedure from the filing of FIR or complaint to the pronouncement of judgement and sentence as provided under BNSS?



Umeed: Sure!

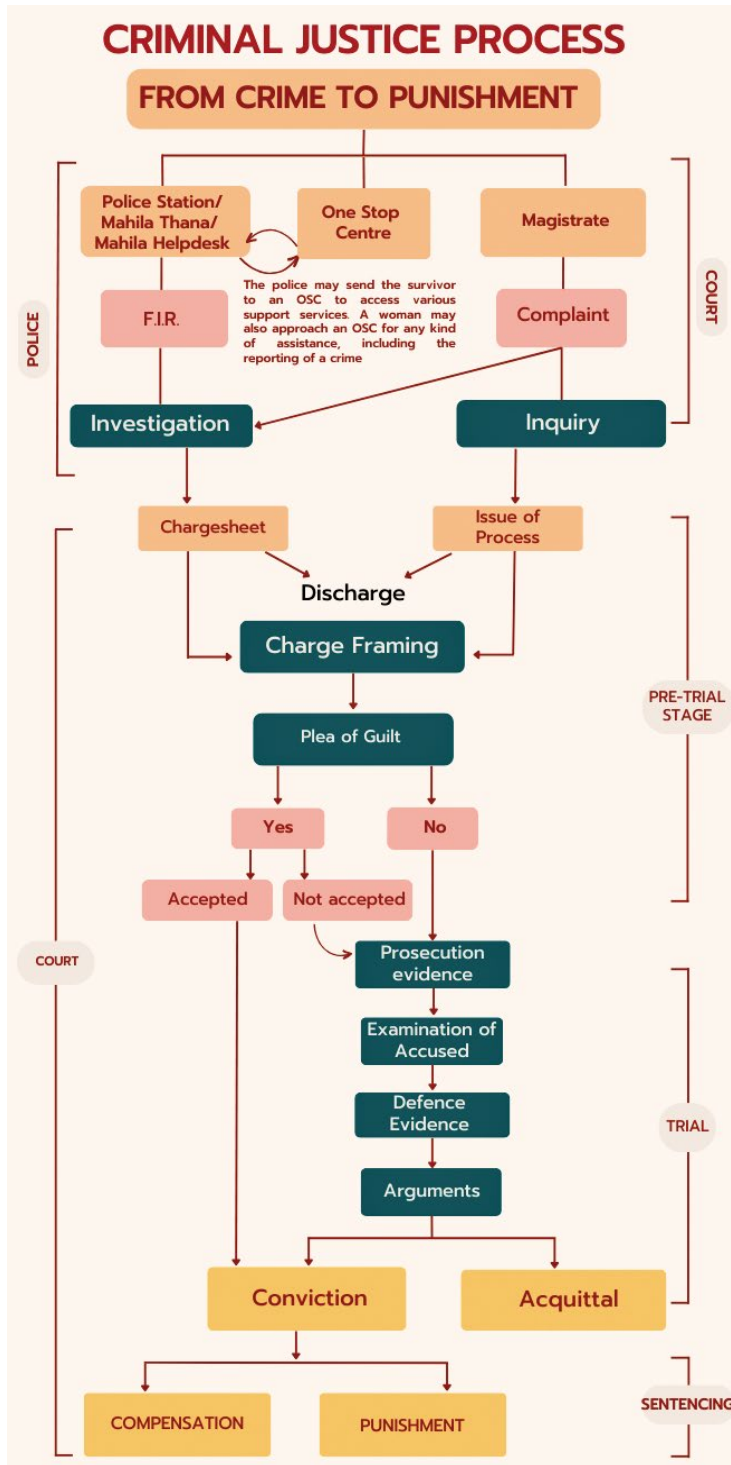


Figure 14: Summary of procedure under the Bharatiya Nagarik Suraksha Sanhita, 2023



Haqiqat: This is so helpful. While learning the procedure that is followed when an offence under BNS is committed, I also noticed certain rights that the law provides for those against whom an offence is committed.



Umeed: Yes, we did. Can you list those rights?



Haqiqat: Of course, I can.

RIGHTS OF AGGRIEVED WOMEN

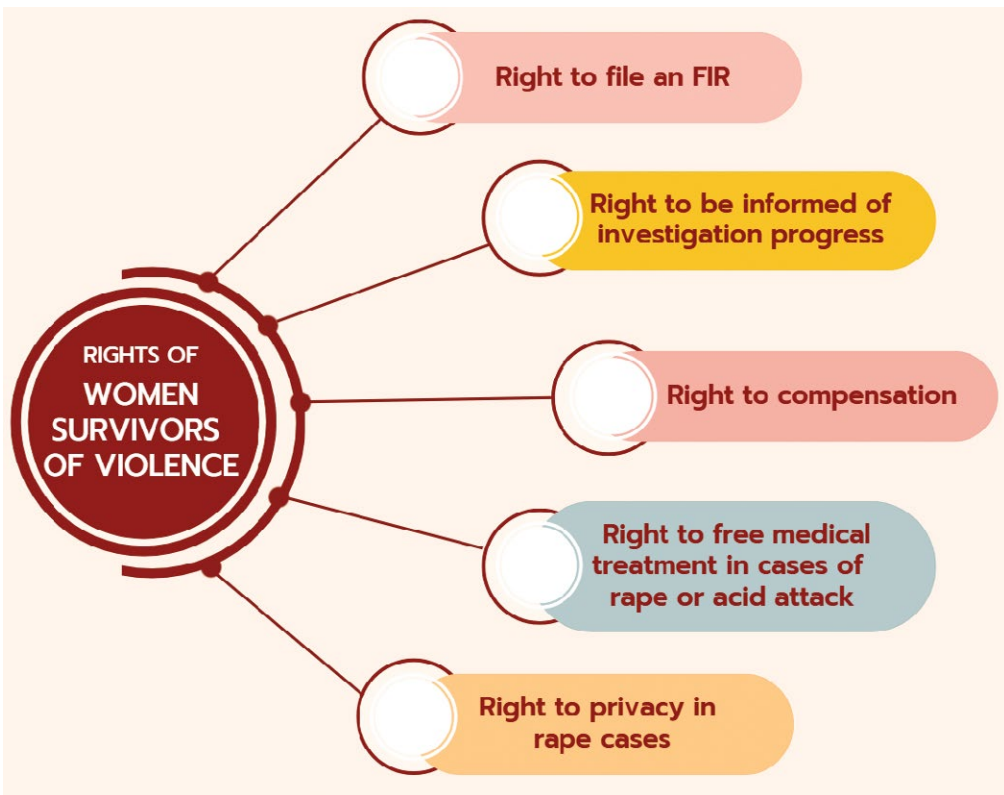


Figure 15: Rights of women survivors of violence under the law

1. Right to file an FIR

- (a) An aggrieved person has a right to file an FIR at any nearest police station.¹⁷
- (b) In cases of sexual harassment, disrobing, voyeurism, stalking, acid attack, rape and insulting or outraging modesty,
 - (i) If the informant is the aggrieved woman herself, the FIR must be recorded by a woman police officer.¹⁸
 - (ii) If the aggrieved woman has a mental or physical disability, then the FIR has to be recorded at her residence or place of her choice in the presence of an interpreter.¹⁹
- (c) The informant has the right to receive a copy of the FIR free of cost.²⁰
- (d) If any police officer refuses to register an FIR, the aggrieved person can approach the Superintendent of Police.²¹

2. Rights during Investigation

- (a) The informant has a right to be informed if the police decide to not investigate the case. This decision is taken if there is no sufficient ground for conducting the investigation.²² As per the new law, the police officer shall also, within a period of ninety days, inform about the progress of the investigation to the informant or the victims.²³
- (b) A woman witness can be questioned by the police only at her place of residence.²⁴ However, under the new law, the woman can be called to the police station too, if she is willing.
- (c) In cases of sexual harassment, disrobing, voyeurism, stalking, rape and insulting or outraging modesty-

17. section 173(1) BNSS [154(1), CrPC].

18. section 173(1) proviso I, BNSS [154(1) proviso I, CrPC].

19. section 173(1) proviso II(a), BNSS [154(1) proviso II (a), CrPC].

20. section 173(2), BNSS [154(2), CrPC].

21. section 173(4), BNSS [154(3), CrPC].

22. section 176(2), BNSS [157(2), CrPC].

23. section 193(3)(ii) BNSS [173(2), CrPC].

24. section 179(1) proviso, BNSS [160(1) proviso, CrPC].

- (i) The statement of an aggrieved woman before the police has to be recorded by a woman officer.²⁵
- (ii) The statement of an aggrieved woman before a Magistrate has to be recorded as soon as the offence is reported to the police. As far as possible, the statement must be recorded by a woman Magistrate, and in her absence, by a male Magistrate in a woman's presence.²⁶

Further, if the aggrieved woman has a mental or physical disability then the statement must be recorded in the presence of an interpreter.²⁷

- (d) The informant has the right to be informed of the action taken by the police upon completion of the investigation.²⁸

3. Rights during Trial

- (a) The aggrieved person may, if the court permits, engage an advocate of her choice to assist the prosecution.²⁹
- (b) The character or previous sexual experience of an aggrieved woman is irrelevant in cases of sexual harassment, disrobing, voyeurism, stalking, rape and insulting or outraging modesty.³⁰

4. Other rights of the aggrieved person

- (a) A witness may file a complaint in case they are being threatened or intimidated.³¹
- (b) Those subjected to acid attacks or rape have the right to receive first-aid or medical treatment, free of cost, in all hospitals.³²
- (c) Even in cases where the offender is untraceable or unidentified, the aggrieved persons or their dependents have the right to make an application for compensation to the State or District Legal Services Authority.³³

25. section 180 proviso, BNSS [161 proviso, CrPC].

26. section 183(6), BNSS [164(5A), CrPC].

27. section 183(6) proviso III, BNSS [164(5A) proviso II, CrPC] and section 125, BSA [119, IEA].

28. section 193(3)(iii), BNSS [173(2)(ii), CrPC].

29. section 18(8) proviso, BNSS [24(8) proviso, CrPC].

30. section 48, BSA [53A, IEA].

31. section 216, BNSS [195A, CrPC].

32. section 397, BNSS [357C, CrPC].

33. section 396(4), BNSS [357A(4), CrPC].

- (d) The aggrieved persons have a right to prefer an appeal against the decision of the court, including for inadequate compensation.³⁴
- (e) An aggrieved woman belonging to a Scheduled Caste (SC) or Scheduled Tribe (ST) community is entitled to receive compensation under the SCs and STs (Prevention of Atrocities) Act, 1989 in the following cases:³⁵
- intentionally touching without consent,
 - sexual harassment,
 - disrobing,
 - voyeurism,
 - stalking,
 - acid attack,
 - rape, and
 - insulting or outraging the modesty of a woman.

This relief is in addition to the right to claim compensation under any other law.



Umeed: In addition to the rights you have already mentioned, there are some additional rights specifically for the survivors of rape that we should also be aware of.

RIGHTS OF SURVIVORS OF RAPE

1. The recording of statements of rape survivors must be conducted at their residence or place of their choice by a woman police officer in the presence of her parents/ guardians/ or a social worker.³⁶
2. The medical examination of a rape survivor must be conducted with the consent of the survivor or any other person competent to give consent on her behalf within twenty-four hours.³⁷

34. section 413, BNSS [372, CrPC].

35. rule 12(4) read with Annexure I of the Schedule, Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995.

36. section 176(1) proviso, BNSS [157(1) proviso, CrPC].

37. section 184, BNSS [164A, CrPC].

3. The offence of rape must be tried by a woman judge as far as possible.³⁸
4. The evidence of a rape survivor below the age of eighteen years must not be obtained in the presence of the accused.³⁹
5. The trial of rape cases must be conducted *in camera* by a woman judge.⁴⁰ *In camera* means in private, i.e., where only the parties to the case along with the prosecutor, defence counsel and the judge are present. No one else is allowed in the court at that time.
6. Nobody can print or publish anything related to *in camera* proceedings without permission of the court.⁴¹
7. Nobody is allowed to reveal the identity of rape survivors without prior authorisation from the survivor herself or the appropriate authority.⁴²
8. The absence of consent is presumed in certain cases of rape such as custodial rape, rape of a pregnant woman, rape of a woman suffering from mental or physical disability, and rape of a woman incapable of giving consent.⁴³
9. The general moral character or sexual experience of rape survivors cannot be put into question in cross-examinations.⁴⁴
10. The survivors of rape have the right to receive first-aid or medical treatment, free of cost, in all hospitals whether public or private.⁴⁵
11. The use of two-finger test on rape survivors is prohibited.

DO YOU KNOW?

- Refusal to treat survivors of acid attacks or rape, by both public & private hospitals, is punishable under law. [section 166B, BNS]
- Disclosure of the identity of rape survivors without permission is punishable under law. [section 72, BNS]

38. section 21(a), BNSS [26(a), CrPC].

39. section 308, BNSS [273, CrPC].

40. section 366(2), BNSS [327(2), CrPC].

41. section 366(3), BNSS [327(3), CrPC].

42. section 72, BNS [228 A, IPC].

43. section 120, BSA [114A, IEA].

44. section 149, BSA [146, IEA].

45. section 397, BNSS [357C, CrPC].

PROHIBITION ON THE USE OF THE TWO-FINGER TEST

In 2001, a thirteen-year-old girl was raped in the Jind district of Haryana. After the incident, a medical examination of the aggrieved woman was conducted. During the examination, the medical officer performed what is known as a “two-finger test” in which two fingers are inserted into the vagina of a woman to examine whether the woman had recent sexual intercourse. Based on the examination, including the two-finger test, the medical officer stated that the possibility of the aggrieved woman being “habitual to sexual intercourse” couldn’t be ruled out. Hence, the accused pleaded before the Court that the aggrieved woman was habitual to sexual activities. However, the Supreme Court of India held that the two-finger test is a violation of the right to privacy, integrity and dignity of the rape survivor and that past sexual experience cannot give rise to the presumption of consent. [*Lillu v. State of Haryana*, (2013) 14 SCC 643]

Recently, the Supreme Court restated the above position and held:

“This so called (two-finger) test has no scientific basis and neither proves nor disproves allegations of rape. It instead re-victimizes and re-traumatizes women who may have been sexually assaulted, and is an affront to their dignity. The “two-finger test” or pre-vaginum test must not be conducted.”

[*State of Jharkhand v. Shailendra Kumar Rai & Pandav Rai*, (2022) 14 SCC 299]

Exercise No. 7

State whether the following statements are true or false.

- (a) A rape survivor cannot be called to the police station for questioning.
- (b) During rape trials, the sexual history of a woman can be called into question.



Haqiqat: So, women have certain rights as complainants. But what if a woman is the one being arrested? Women already lack safety while walking down a busy street, and navigating the criminal justice system is certainly difficult for them. I’m sure that the possibility of oppression on account of sexism and patriarchy that women face in society is magnified even further when women are the ones being arrested.



Umeed: You are right! Hence, women have been granted certain additional rights as arrested persons to ensure their safety and security.

RIGHTS OF ARRESTED WOMEN

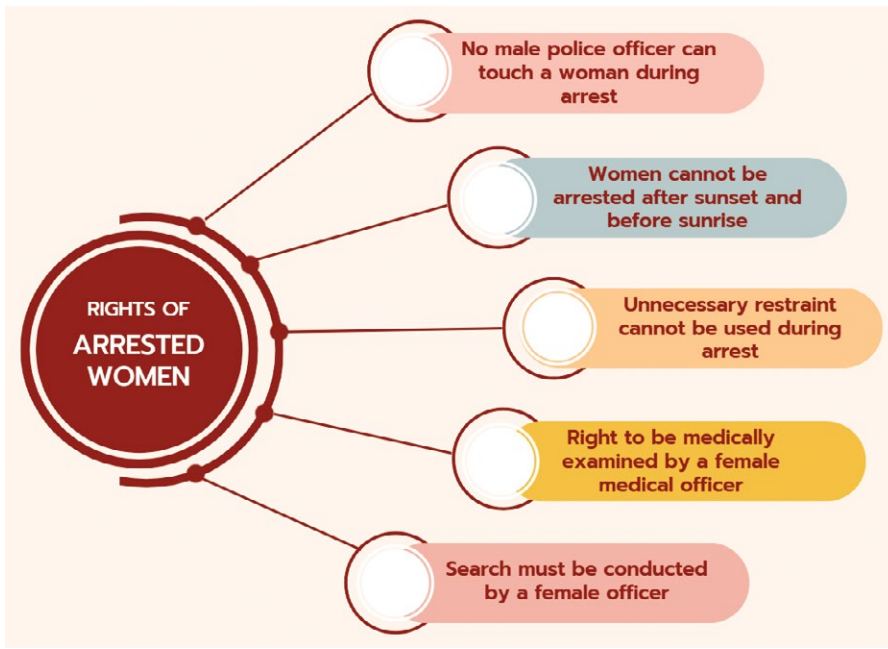


Figure 16: Rights of arrested women under the law

1. A police officer cannot touch a woman for arresting her unless the police officer is a female.⁴⁶
2. Women cannot be arrested after sunset and before sunrise, except in exceptional circumstances. Where such exceptional circumstances exist, a woman police officer should make a written report and obtain the prior permission of a Judicial Magistrate of the First Class.⁴⁷
3. No unnecessary restraint should be used in making and securing the arrest of any person.⁴⁸
4. An arrested person is entitled to get themselves medically examined. The medical examination of a female arrested person shall be conducted by a female medical officer.⁴⁹

46. section 43(1), BNSS [46(1), CrPC].

47. section 43(5), BNSS [46(4), CrPC].

48. section 46, BNSS [49, CrPC].

49. section 53, BNSS [54, CrPC].

5. The search of a female arrested person can only be carried out by another female with strict regard to decency.⁵⁰



Haqiqat: Umeed, I would also like to know about the redressal mechanism for availing the civil remedies under the PWDV Act and POSH Act.



Umeed: Sure! I'll explain the procedure that is generally followed under these special laws through two more stories.

B. Procedure for Securing Remedy under the Protection of Women from Domestic Violence Act, 2005

Mary's Story— Part 1

(The Beginning)

Mary is subjected to different kinds of abuse by her husband including physical and mental abuse. She experiences domestic violence almost every other day but has received no help from her friends or family. Her neighbour, Rinzen, tells her to file a report with the police authorities. However, she is afraid that if she reports it, her husband and in-laws will throw her out of the house and separate her from her children. Further, since she is a homemaker with no independent source of income, she is unsure how she will be able to support herself or her children.

One day Rinzen tells Mary about a local activist, Chandrashekhar, who lives in their neighbourhood. She informs her that he works for women's welfare and might be able to help her figure out what can be done in her situation. Mary visits Chandrashekhar's office and shares her ordeal with him. Chandrashekhar informs her about the remedies available under the law.

50. section 49(2), BNSS [51(2), CrPC].



Haqiqat: What kinds of legal remedies are available in Mary’s case?”



Umeed: Violence perpetrated against a woman in her household can be redressed through two types of remedies under the law:

- (i) Civil remedy
- (ii) Criminal remedy

The remedies under criminal law (section 85, BNS) result in the punishment of the perpetrator. Remedies under civil law (PWDV Act) focus on ensuring violence-free homes for women while upholding their other rights. Therefore, Mary can file an FIR with the police as well as seek remedies available under the PWDV Act.

The ambit of the PWDV Act is broader than section 85, BNS (498A, IPC). While section 85, BNS (498A, IPC) provides remedy under criminal law only to the wife, the PWDV Act covers every woman who is in a domestic relationship. This means that a sister, mother, daughter and woman in a live-in relationship can also file a complaint under the PWDV Act.

AGAINST WHOM CAN A COMPLAINT BE FILED?

Any person, whether male or female, who has been in a domestic relationship with the aggrieved woman.⁵¹ It includes:

- family related by marriage such as husband, mother-in-law, father-in-law, brother-in-law, sister-in-law and other relatives of husband
- family related by blood such as father, mother, brother, sister, son, and daughter
- family related by adoption
- live-in partners
- other family members living together in a shared household.

[*Hiral P. Harsora v. Kusum Narottamdas Harsora*, (2016) 10 SCC 165]



Haqiqat: How can an aggrieved woman learn more about the remedies available under the PWDV Act?

51. section 2(q) read with section 2(f), PWDV Act.



Umeed: She can approach the Protection Officer (PO) of her area with her complaint. The PO will apprise her about all her rights and the reliefs available under the PWDV Act.⁵²

Otherwise, she can also approach the nearest police officer, service provider or Magistrate directly with her complaint. All of them are duty-bound to inform the woman aggrieved by domestic violence about the rights, reliefs and services that are available under the PWDV Act.⁵³



Protection Officer



Magistrate



Survivor



Police Officer

Figure 17: Key persons involved in a case of domestic violence under the PWDV Act



Haqiqat: Who is a Protection Officer? What do they do?

52. section 4 and 5, PWDV Act.

53. section 5, PWDV Act.



Umeed: Protection Officers (PO) are officers appointed by the State Government under the PWDV Act to assist women aggrieved by domestic violence.⁵⁴

They are entrusted with the duty of providing all kinds of support that a woman facing domestic violence may need. They assist the aggrieved woman with registering a complaint, applying to court for relief, availing the services of shelter homes or hospitals if needed, and ensuring access to free legal services.⁵⁵ A PO is generally a woman.⁵⁶



Haqiqat: How can an aggrieved woman approach the PO?



Umeed: She can directly visit the office of the designated PO in her area with her complaint or ask the local police to help her approach the PO. She can also go to a One Stop Centre (OSC), which has been established in all districts across India, and they will help her reach the PO.

The **complaint** can be made either orally or in writing. If the woman gives the information orally then the PO shall reduce it to writing.⁵⁷

Alternatively, she can approach any service provider. **Service providers** are organisations working for the rights and interests of women and are registered as service providers with the State Government under the PWDV Act.

Both the PO and the service providers are under a mandate to assist the aggrieved women in registering their complaints and submitting an application for relief to the Magistrates.⁵⁸



Haqiqat: Can only the aggrieved woman give the information to the PO?

54. section 8, PWDV Act.

55. section 9, PWDV Act.

56. section 8, PWDV Act.

57. rule 4, The Protection of Women from Domestic Violence Rules, 2006 (hereinafter referred to as 'PWDV Rules').

58. section 10, PWDV Act.

RELIEFS THAT CAN BE OBTAINED FROM THE MAGISTRATE

1. Protection Order: An order prohibiting the perpetrator from committing any further acts of domestic violence against the aggrieved woman.⁵⁹
2. Residence Order: An order restraining the perpetrator from evicting or excluding the aggrieved woman from the shared household where she resides with the perpetrator. It seeks to secure a safe space for the aggrieved woman within the shared household.⁶⁰
3. Monetary Relief: An order directing the perpetrator to pay money to the aggrieved woman on a monthly basis to maintain herself.⁶¹
4. Custody Order: An order granting the temporary charge or keeping or supervision of the children to the aggrieved woman.⁶²
5. Compensation Order: An order directing the perpetrator to pay compensation for any kind of injury caused to the aggrieved woman.⁶³



Umeed: No. Anyone who has a reason to think that an act of domestic violence has been or may be committed can inform the PO.⁶⁴



Haqiqat: What happens after registering the complaint with the PO?



Umeed: Upon the receipt of a complaint, the PO prepares a **Domestic Incident Report (DIR)** under section 9(b) of the PWDV Act. A DIR is a complaint of domestic violence made in the prescribed format, called Form I, under the PWDV Act. The DIR is then submitted to the Magistrate and copies of the DIR are also forwarded to the police station.⁶⁵

Further, with the help of the PO, the aggrieved woman can submit an application to the Magistrate for any of the reliefs provided under the PWDV Act.⁶⁶

59. section 18, PWDV Act.

60. section 19, PWDV Act.

61. section 20, PWDV Act.

62. section 21, PWDV Act.

63. section 22, PWDV Act.

64. section 4, PWDV Act.

65. section 9(1)(b), PWDV Act.

66. section 9(1)(c), PWDV Act.



Haqiqat: What kind of reliefs can a Magistrate order under the PWDV Act?



Umeed: An application can be submitted to the Magistrate for any of the following reliefs—protection order, residence order, monetary relief, custody order, or compensation order.



Haqiqat: Does the aggrieved woman have to submit the application for relief to the Magistrate herself?



Umeed: No, Haqiqat. An aggrieved woman or any other person on her behalf can submit the application to the Magistrate. Further, she can seek the assistance of the PO for making such an application.⁶⁷

Exercise No. 8

Which kind of order can be passed for the following cases?

(a) To restrain the respondent from entering into any portion of the shared household.

(b) To provide maintenance for the aggrieved woman and her children.

(c) To provide damages for injuries, whether mental or physical inflicted on the aggrieved woman.

67. section 12, PWDV Act.

Mary's Story— Part 2

(Filing the Complaint)

Mary decides to approach the PO in her area with her complaint. She reaches the office of the PO and narrates her ordeal to the PO orally.⁶⁸ The PO writes down the information as Mary narrates and thereafter asks her to sign it.⁶⁹ Mary signs the recorded information and the PO gives her a copy of the information, free of cost.⁷⁰

----- Complaint is registered -----



Haqiqat: What if the aggrieved woman does not have visual signs of violence on her body? Can she still report such violence? Would she be believed?



Umeed: That's not a problem, she can still report it to the authorities. An aggrieved woman can file a complaint about domestic violence even if it happened in the past. There is no time limit for reporting a case under the PWDV Act. Moreover, domestic violence often takes the form of emotional and verbal abuse, in which case there may not be signs of visible injury.

I would also like to tell you that if an aggrieved woman has suffered any physical injuries, the PO will have her medically examined and then forward a copy of the medical report to the police and Magistrate.⁷¹ The PO will also assist her in obtaining the required medical aid and will make a shelter home available for her, if needed, and report the same to the police and the Magistrate.⁷²

Exercise No. 9

One evening, Mani came home drunk. Madhuri questioned him about this. He got furious and threw a plate at Madhuri. Then, her mother-in-law made her forcefully eat on the plate that Mani threw at her. Against whom can Madhuri file a complaint?

68. rule 4(1), PWDV Rules.

69. rule 4(2), PWDV Rules.

70. rule 4(3), PWDV Rules.

71. section 9(1)(g), PWDV Act.

72. section 9(1)(f), PWDV Act.

- (a) Only against the husband
- (b) Only against the mother-in-law
- (c) Both husband and mother-in-law

After Mary’s complaint is registered, the PO prepares a Domestic Incident Report (DIR) with the help of the information provided by Mary.⁷³ Mary signs the DIR, and the PO countersigns it along with a seal. A copy of the DIR is given to Mary. The PO then submits the DIR to the Magistrate and forwards its copies to the police.⁷⁴

----- *DIR is submitted* -----



Umeed: Alternatively, if Mary had approached a service provider with her complaint, then the service provider would have prepared the DIR and submitted copies of the same to both the Magistrate and the PO.⁷⁵

Mary’s Story— Part 3

(Filing application for reliefs)

The PO informs Mary of her right to make an application to the Magistrate to obtain reliefs under the PWDV Act. She further explains to Mary the different kinds of relief orders that Mary can obtain from the Court.⁷⁶ The application to the Magistrate must be made in the prescribed format provided under the PWDV Act. Mary decides she wants to file an application for a protection order, monetary relief and custody of her children.⁷⁷ The PO assists Mary in preparing the application for reliefs under section 12 of the PWDV Act.⁷⁸ The application is then filed before the Magistrate.

----- *Application for reliefs is filed* -----

73. rule 5(1), PWDV Rules.

74. rule 5(1), PWDV Rules.

75. rule 5(2), PWDV Rules.

76. section 5(1), PWDV Act.

77. section 12, PWDV Act.

78. rule 6(2), PWDV Rules.



Haqiqat: Umeed, you mentioned earlier that Mary can also approach the Magistrate directly with her complaint. Could she have also filed the application for reliefs on her own?



Umeed: Yes! Mary could have filed the application for relief herself, or anyone else on her behalf could have also done so.⁷⁹ However, in all cases, the application has to be submitted to a Magistrate who has jurisdiction over the area where:⁸⁰

- the aggrieved woman temporarily or permanently resides or works; or
- the respondent resides or works; or
- the incident of domestic violence took place.

Further, when the Magistrate is approached directly, the Magistrate can call for a DIR from the PO.⁸¹



Haqiqat: What happens after the application under section 12 of the PWDV Act is filed?



Umeed: On receipt of the application, the Magistrate fixes the first date of hearing which is within three days from the date of receipt of the application.⁸² Thereafter, a notice is sent to respondents.⁸³



Haqiqat: What is a notice? Who are the respondents?



Umeed: A **notice** is a direction issued by the court to any person to appear before the court on a particular date. The person or persons against whom a complaint of domestic violence is made are called **respondents** under the PWDV Act.

79. section 12(4), PWDV Act.

80. section 27, PWDV Act.

81. section 12(1), PWDV Act.

82. section 12(4), PWDV Act.

83. section 13(1), PWDV Act.

The Magistrate fixes the first date of hearing of Mary’s case. The Magistrate orders the PO to serve the notice of the first date of hearing to the respondent. The PO serves the notice of the first date of hearing to Mary’s husband.

----- *Notice is served* -----



Haqiqat: What if the respondent ignores or avoids the notice?



Umeed: Even in the absence of the respondent, the Magistrate can pass an order granting any of the desired reliefs to the complainant, if the Magistrate is satisfied that the application, on the face of it, discloses that the respondent has committed domestic violence upon the complainant. Such orders are called *ex-parte orders*.⁸⁴

Exercise No. 10

Nengcha lives with her mother and brother in Imphal. She works two jobs and takes care of the household. Her brother, Shibhom, often beats her up for money. She filed an application to the Magistrate to obtain relief under the PWDV Act against her brother. The Court issued several notices to Shibhom, her brother, but he neither appeared before the Court nor filed any reply. What steps can the Court take?

Mary’s Story— Part 4

(Proceedings before the Magistrate)



Haqiqat: I’m sure Mary must be feeling anxious as the hearing of her case is about to begin. In such cases, many women are afraid that the details of their personal lives will become a matter of

84. section 23 (2), PWDV Act.

public discussion. They might not be comfortable with sharing such details openly.



Umeed: You're right, Haqiqat. That's why, in such cases, women have a right to request the Magistrate to conduct the proceedings *in camera*, i.e., in private.



Haqiqat: Oh, that's a relief. I would also like to know how long it takes for the Magistrate to process the application. I don't think all women can afford the expenses of lengthy legal proceedings.



Umeed: I understand your concern. The processes of the court can be lengthy; however, the court is under an obligation to make all the efforts to dispose of the application within sixty days from the first date of the hearing.⁸⁵

As far as legal expenses are concerned, though one can appoint a lawyer of their choice, they also have the right to free legal services through the State Legal Services Authority under the Legal Services Authorities Act, 1987.⁸⁶



Haqiqat: That's a relief! But if the conclusion of the proceedings before the Magistrate takes a very long time, how will an aggrieved woman protect and sustain herself and her children in the meantime?



Umeed: The aggrieved woman has the option of submitting an application for the grant of interim relief to the Magistrate under the PWDV Act.



Haqiqat: What are interim reliefs?



Umeed: **Interim reliefs** are temporary reliefs which a Magistrate can grant until a final decision is made. The Magistrate can adjudicate upon the aggrieved woman's application for interim relief pending the completion of proceedings.⁸⁷

85. section 12(5), PWDV Act.

86. section 5(d), PWDV Act.

87. section 23(1), PWDV Act.



Haqiqat: Could you explain the procedure for obtaining interim relief?



Umeed: Of course! As you may already know now, the proceedings before the court begin after the notice is served to the respondent. If any application for interim relief is pending, the court may, after hearing the parties, adjudicate upon the pending interim application and pass such interim relief as it considers suitable.⁸⁸

For instance, in the case of an interim application for a protection order, if the Magistrate is *prima facie* satisfied that the respondent has committed or may commit domestic violence upon the complainant, the Magistrate can pass a protection order in favour of the complainant. However, before any such order is passed, both the respondent and complainant are given an opportunity of being heard.⁸⁹

The respondent is required to appear before the court and file a written reply. The complainant may submit a written response to the reply of the respondent, if required. After hearing both parties, if the Magistrate forms the opinion that, at first impression, a case exists against the respondent, the Magistrate will pass a protection order.

Furthermore, the Magistrate is also empowered to grant temporary custody of the child(ren) to the complainant at any stage of the proceeding.⁹⁰



Haqiqat: But what if the respondent delays even the granting of interim relief by not appearing before the Magistrate?



Umeed: Interim reliefs can also be granted *ex-parte*, i.e., in case the respondent fails to present himself before the court in response to the notice issued to him.⁹¹

88. rule 12(3), PWDV Rules.

89. section 18, PWDV Act.

90. section 21, PWDV Act.

91. rule 7, PWDV Rules.

Further, if the respondent breaches the protection order or any other interim order, he shall be liable to be punished with imprisonment for up to one year, a fine or both.

Following the disposal of the interim applications, if any, the proceedings move to the stage of the complainant and respondent evidence. It must be noted that, at any stage of the proceedings, the Magistrate can direct the parties to the case to undergo counselling, whether individually or jointly.

The proceedings in Mary's case begin before the Magistrate. The complainant evidence is presented before the Court. Following this, the respondent cross-examines. Then, the evidence of the respondent is presented before the Court and the complainant cross-examines. Afterwards, final arguments between the complainant and respondent take place. The Court passes an order of monetary relief against the respondent, i.e., her husband and grants the temporary custody of the children to her. Mary feels a sense of satisfaction with the decision of the Magistrate. She never expected that such remedies would be available for women like her. She expresses her gratitude to Chandrashekar and Rinzen for their support.

----- **Application is disposed** -----



Umeed: In Mary's story, we came across the various steps involved when a complaint is filed under the PWDV Act. Mary's case was only illustrative of the procedure which is generally followed under the PWDV Act to address domestic violence.



Haqiqat: The procedure from the filing of the complaint to obtaining the reliefs under the PWDV Act can be summarised as follows:

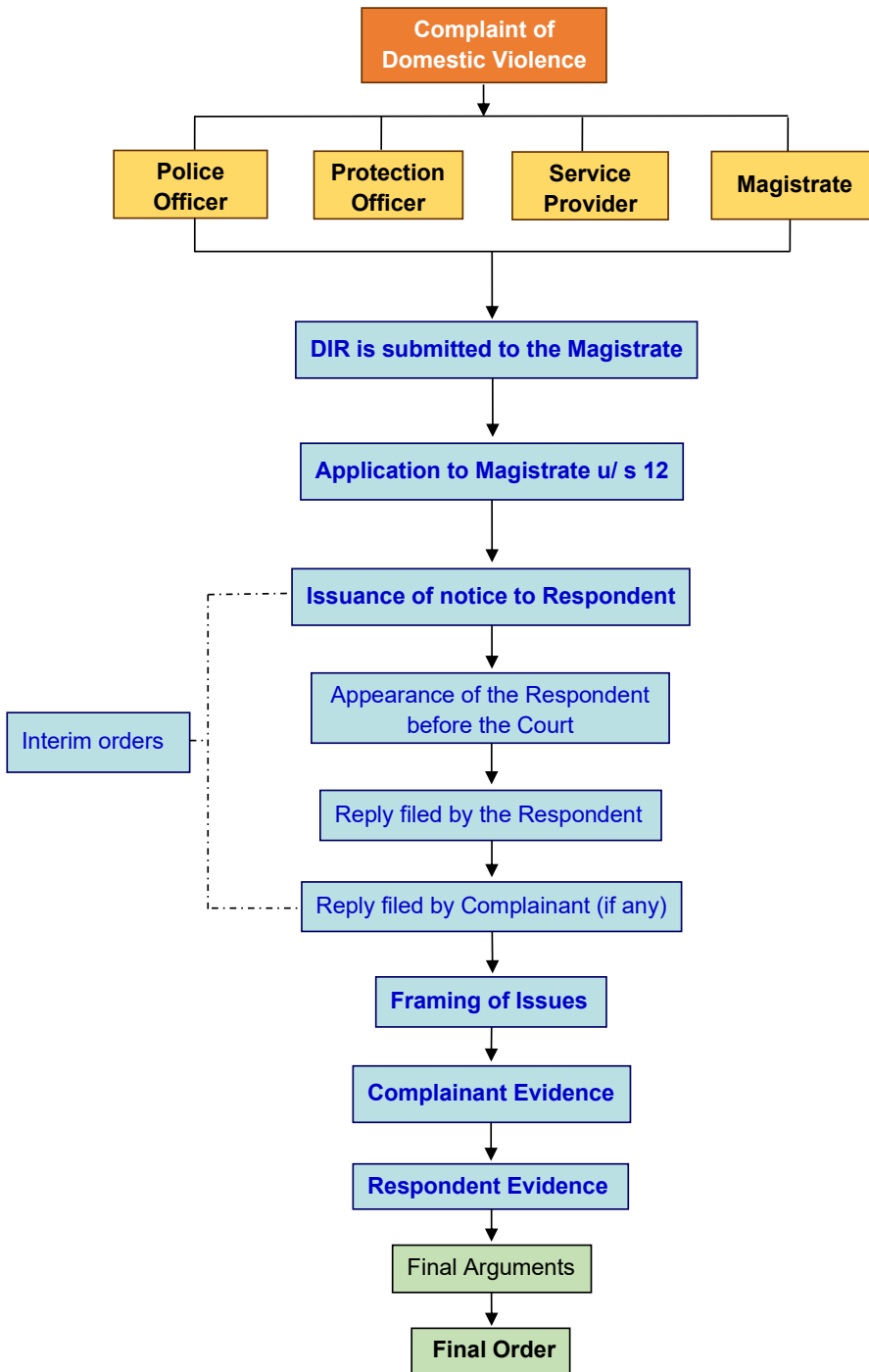


Figure 18: Summary of procedure under the Protection of Women from Domestic Violence Act, 2005

Exercise No. 11

State whether the following are true or false:

- (a) The Court cannot grant any kind of relief to the complainant before the completion of the proceedings.
- (b) The Magistrate has the power to order the parties to the case to undergo counselling together.

DO YOU KNOW?

The application of the PWDV Act is not limited to marital relationships. It covers the relationship between two persons who live or have ever lived together in a shared household, whether it is a marital, live-in or familial relationship.

Exercise No. 12

Aliya has been in a romantic relationship with James for about five years. They have been living together for the past three years. They share their household work and expenses. Lately, James has started hurling abuses at Aliya and accusing her of being involved with other men. Can Aliya file a complaint against James under the PWDV Act? Explain your answer.

C. Procedure for Securing Remedy under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013



Umeed: Now, let's talk about the POSH Act. As you may already know, sexual harassment of women can happen anywhere—whether in public parks, on the streets, in institutions, libraries, colleges, hotels, or even on public transport.



Haqiqat: Yes, the BNS provides a criminal remedy for sexual harassment of women occurring anywhere.



Umeed: That's right! However, we also have a special law specifically to deal with sexual harassment of women at workplace, which offers civil remedies.



Haqiqat: So, this means that two types of remedies are available in cases of sexual harassment of women at workplace:

- (i) Civil remedy
- (ii) Criminal remedy



Umeed: Right! As discussed earlier, remedies under criminal law result in the punishment of the perpetrator. Whereas remedies under civil law focus on ensuring a safe environment at the workplace, free from sexual harassment through reliefs, which may be in the form of warnings to the perpetrator, withholding his promotions, terminating his services, etc.



Haqiqat: Does this mean a woman aggrieved by sexual harassment at workplace can avail remedies either under criminal law or civil law?



Umeed: No, a woman aggrieved by sexual harassment at her workplace has the option of availing of either or both remedies. She can file an FIR against the preparator under BNSS as well as make a complaint under the POSH Act.⁹²

92. section 9(1), POSH Act.



Haqiqat: So, the procedure provided under BNSS is applicable in case a criminal remedy is sought by the aggrieved woman. However, when a civil remedy under the POSH Act is sought then the procedure given under the POSH Act is followed.



Umeed: Yes! Now, let's understand the procedure under the POSH Act with the help of Nazia's story.

Nazia's Story— Part 1

(The Beginning)

Nazia is a daily wage labourer at a small masala factory. Her supervisor at the factory, often sexually harasses her by making unwelcome physical contact and advances towards her. One day, on the way to her work, she comes across an Anganwadi worker who is talking about women's rights with a small group of women. She decides to talk to the Anganwadi worker about her situation. She tells the Anganwadi worker that her supervisor often touches her by putting his hands around her shoulders while she works or by holding her hand when he gives her wages at the end of the day. All this makes Nazia feel very uncomfortable, but she is unable to say anything to him because she is afraid she might lose her job. The Anganwadi worker tells her about all the remedies available under the law.



Umeed: A woman aggrieved with sexual harassment at workplace has two remedies. She can:

- (i) file an FIR with the police against the perpetrator, and
- (ii) report it, in writing, to the Internal Committee (IC) of her workplace, which is constituted under the POSH Act.⁹³

If she wants, she can avail of both remedies simultaneously.



Haqiqat: What is an Internal Committee?

93. section 9(1), POSH Act.



Umeed: The Internal Committee (IC) earlier known as the Internal Complaints Committee (ICC) is a committee which looks into complaints of sexual harassment at workplace. Under the POSH Act, the employer of every workplace having ten or more workers is required to constitute an IC.⁹⁴

COMPOSITION OF THE INTERNAL COMMITTEE⁹⁵

1. Presiding Officer: A senior-level woman employee.
2. Two or more Internal Members: Employees who are committed to the cause of women, have experience in social work or have legal knowledge.
3. One External Member: A person from an NGO committed to the cause of women or familiar with issues of sexual harassment.

Note: Fifty per cent of the members of the IC should be women.



Haqiqat: What happens in the case of a workplace having less than ten workers?



Umeed: In that case, the aggrieved woman can write to the Local Committee (LC) of her district.⁹⁶ The LCs are also constituted under the POSH Act to look into the complaints of sexual harassment at workplaces. In certain circumstances, the complaint is necessarily dealt with by the LC. These circumstances are as follows:

- (i) If there is no IC in the workplace, the complaint can be filed with the LC.⁹⁷
- (ii) If the complaint is against the employer himself, and not against a co-worker or any other employee, whether senior or junior, then also the matter is dealt with by the LC.⁹⁸

94. section 4 read with section 9, POSH Act.

95. section 4(2), POSH Act.

96. section 9(1), POSH Act.

97. section 6(1), POSH Act.

98. section 6(1), POSH Act.

COMPOSITION OF THE LOCAL COMMITTEE⁹⁹

1. Chairperson: Nominated from amongst eminent women in the field of social work.
2. Internal Member: Nominated from amongst women working in the block, taluka or tehsil, or ward or municipality of the district.
3. Two External Members: Nominated from NGOs committed to the cause of women or a person familiar with issues of sexual harassment. At least one of the external members must be a woman.

Among all these nominated members, at least one of them must have legal knowledge and at least one of them must be a woman belonging to SC, ST, OBC, or a minority community.

4. Ex-officio Member: Officer dealing with social welfare or women and child development in the district.

In every block, taluka or tehsil in rural areas, and every ward or municipality in urban areas, there is a designated Nodal Officer for receiving complaints of sexual harassment at workplace. The Nodal Officer fulfils the task of forwarding these complaints to the LC.¹⁰⁰ The Nodal Officer is designated by the District Officer.

A District Officer is generally a District Magistrate, Additional District Magistrate, Collector or Deputy Collector.¹⁰¹ The District Officer is appointed by the government to exercise the powers and discharge functions under the POSH Act.¹⁰²

So, the aggrieved woman can also submit her complaint to the Nodal Officer designated to receive complaints in her area, who will subsequently forward her complaint to the LC within seven days.¹⁰³ The aggrieved woman who files the complaint is referred to as the **complainant** and the person against whom the complaint is made is referred to as the **respondent**.

99. section 7(1), POSH Act.

100. section 6(2), POSH Act.

101. section 5, POSH Act.

102. section 5, POSH Act.

103. section 6(2), POSH Act.

Exercise No. 13

Who can the following aggrieved woman approach with their complaints?

- (a) Atiya works as domestic help at Manveer's house who makes sexually suggestive comments and jokes at her. _____
- (b) Sunita works at a large company. Her colleague, Sudipto made certain inappropriate advances by brushing up against her. _____



Haqiqat: But women like Nazia might be illiterate or not very educated and may not know how to read or write.



Umeed: The members of the IC and LC are under an obligation to provide the aggrieved woman with every possible assistance to make her complaint in writing.¹⁰⁴ Further, she can seek help from any person to write her complaint.



Haqiqat: What happens after the complaint has been received by the LC?



Umeed: There are two recourses available to the aggrieved woman:

- (i) initiate an inquiry, or
- (ii) settle the matter through conciliation.

If the aggrieved woman wants conciliation, she can request the LC to settle the matter between her and the person against whom the complaint is made through conciliation. It is only at the request of the aggrieved woman that the LC can initiate settlement through conciliation.¹⁰⁵



Haqiqat: What is conciliation?



Umeed: **Conciliation** is a method of dispute resolution where the parties resolve their dispute by arriving at a mutually agreed settlement.

104. section 9(1) proviso, POSH Act.

105. section 10(1), POSH Act.

If the parties reach a settlement, then no further inquiry is carried out by the LC.¹⁰⁶ We must also know that in cases of sexual harassment at the workplace, no monetary settlement can be made the basis of conciliation.¹⁰⁷



Haqiqat: This means if the complainant does not request to settle the matter through conciliation or if a request is made but no settlement is reached through conciliation, the LC will then initiate an inquiry into the complaint.¹⁰⁸



Umeed: Right! Further, it is important to note that the aggrieved women must report the incident of sexual harassment within a period of three months from the date of the last incident of sexual harassment, whether the complaint is submitted to an IC or LC.



Haqiqat: Is it necessary to file the complaint within three months?



Umeed: Yes, Haqiqat. It is a general rule to file a complaint of sexual harassment at workplace within three months from the date of the last incident of sexual harassment.¹⁰⁹

However, if there are certain circumstances that prevented the aggrieved woman from filing her complaint within the specified time, the LC or IC has the power to extend the time limit for filing the complaint by a maximum of three months.¹¹⁰



Haqiqat: What else should one keep in mind before proceeding to file a complaint?



Umeed: As I said earlier, your complaint must be in writing. Further, you need to submit six copies of your complaint along with supporting documents, and names and addresses of the witnesses.¹¹¹

106. section 10(4), POSH Act.

107. section 10(1) proviso, POSH Act.

108. section 11(1), POSH Act.

109. section 9(1), POSH Act.

110. section 9(1) proviso II, POSH Act.

111. rule 7(1), Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 [hereinafter referred to as 'POSH Rules'].



Figure 19: Checklist for filing a complaint under the POSH Act

When the aggrieved woman is unable to file the complaint herself on account of certain circumstances then some other persons are authorised to file a complaint on her behalf.

The persons authorised under different circumstances are as follows:¹¹²

- (i) on account of her physical incapacity
 - her legal heir, relative or friend
 - her co-worker
 - officer of the National or State Women's Commission
 - any other person with her written consent
- (ii) on account of her mental incapacity
 - her legal heir, relative or friend
 - a special educator
 - a psychiatrist or psychologist
 - her guardian
 - any other person jointly with any of the persons mentioned above
- (iii) on account of her death
 - her legal heirs

112. section 9(2), POSH Act and rule 6, POSH Rules.

- any other person with the written consent of her legal heir.
- (iv) for any other reasons
- any person with her written consent.

Exercise No. 14

State whether the following are true or false:

- (a) The LC and IC have to provide all reasonable assistance to an aggrieved woman for making a complaint in writing.
- (b) A complaint of sexual harassment at workplace has to be made within three months from the date of the first incident of sexual harassment.
- (c) If the complainant and the person against whom the complaint is filed do not arrive at a settlement, then the LC cannot initiate an inquiry.
- (d) LC or IC can initiate conciliation proceedings if they consider it appropriate without any request from the aggrieved woman.
- (e) The LC and IC have the power to extend the time limit for filing a complaint of sexual harassment at workplace.



Umeed: Now, let's see what happens when Nazia goes to file her complaint.

Nazia's Story— Part 2

(Filing the complaint)

Nazia, with the help of the Anganwadi worker, prepares a written complaint. Since her workplace does not have an IC, she files her complaint with the office of the Nodal Officer designated to receive complaints of sexual harassment at workplace in her area. She submits six copies of the written complaint along with all necessary documents to the Nodal Officer. She doesn't make any request for conciliation. The Nodal Officer forwards the complaint to LC within seven days of receiving the complaint.

----- *Complaint is filed* -----



Haqiqat: If Nazia’s workplace had an IC, she would have submitted the complaint to the IC.¹¹³ Further, if she had made any request for conciliation, the LC or IC, as the case may be, would have taken steps to settle the matter through conciliation.¹¹⁴



Umeed: Absolutely right!

Before proceeding ahead, let’s keep in mind that the procedure followed by the LC and IC for conducting an inquiry is the same unless it is differently specified in the POSH Act.

Nazia’s Story— Part 3

(Initiating the Inquiry)



Haqiqat: Umeed, don’t you think that after Nazia’s supervisor gets to know that she has filed a complaint against him, he will make things more difficult for her at work?



Umeed: That’s possible. Hence, during the pendency of inquiry, an aggrieved woman has the option of writing to the LC or IC, as the case may be, expressing her concern and requesting the LC or IC to do the following:¹¹⁵

- (i) Transfer her or the respondent,
- (ii) Restrain the respondent from reporting on the work performance of the complainant or writing her confidential report,
- (iii) Grant the complainant leave from work for up to a period of three months. This leave is in addition to the leave that the complainant is otherwise entitled to.
- (iv) In the case of an educational institution, the complainant may also request the LC or IC to restrain the respondent from supervising any of her academic activity.

113. section 6(1), POSH Act.

114. section 10, POSH Act.

115. section 12, POSH Act and rule 8, POSH Rules.

Further, on proceeding with the inquiry, if the LC finds that on the face of it or at the first impression, a case exists against the respondent, the LC is required to forward the complaint to the police within a period of seven days for registering a case under the BNS.¹¹⁶

Since Nazia made no request for conciliation, the LC proceeds to initiate the inquiry which it is mandated to complete within ninety days.¹¹⁷ The LC sends one copy of the complaint to the respondent within seven working days.¹¹⁸ The respondent is directed to file a reply to the complaint within ten working days.¹¹⁹ The LC then calls the witnesses before it and examines them after administering an oath to them.¹²⁰ Both the complainant and the respondent are given an opportunity to be heard.¹²¹ After considering both sides, the LC comes to the conclusion that the allegations against the respondent are true.

----- ***Inquiry is complete*** -----



Haqiqat: I noticed that there was no mention of a lawyer or counsel. So, this means that at any stage of proceedings before the LC or IC, neither the complainant nor the respondent is allowed to be represented by a legal practitioner/lawyer.¹²²



Umeed: That's correct!

Exercise No. 15

During the pendency of an inquiry, an aggrieved woman can request the LC or IC for which of the following reliefs? Tick mark the correct ones.

- (a) suspend the respondent until the inquiry is complete.
- (b) restrain the respondent from reporting on the complainant's work performance.

116. section 11, POSH Act.

117. section 11(4), POSH Act.

118. rule 7(2), POSH Rules.

119. rule 7(3), POSH Rules

120. section 11(3), POSH Act.

121. section 11(1) proviso, POSH Act.

122. rule 7(6), POSH Rules.

- (c) transfer the respondent to any other workplace.
- (d) transfer the complainant to any other workplace.
- (e) grant the respondent leave from work.
- (f) grant the complainant leave from work.
- (g) restrain the respondent from writing the confidential report of the aggrieved woman.

Nazia's Story— Part 4

(Submitting inquiry report)



Haqiqat: What happens after the inquiry is complete and the respondent is found to be guilty of sexual harassment at workplace?



Umeed: If the LC concludes that the allegations against the respondent are proven, it shall recommend taking action for sexual harassment as misconduct against the respondent as per the service rules or deducting an appropriate sum from the salary or wages of the respondent for being paid to the complainant.¹²³

WHERE NO SERVICE RULES EXIST, THE LC OR IC CAN RECOMMEND THE FOLLOWING ACTIONS FOR SEXUAL HARASSMENT AGAINST THE RESPONDENT:¹²⁴

- written apology
- warning
- reprimand
- withholding of promotion
- withholding of pay rise or increments
- termination from services
- undergoing counselling session
- community service

123. section 11(3), POSH Act.

124. rule 9, POSH Rules.

The LC forwards the report of its findings to the District Officer within ten days of the completion of the inquiry.¹²⁵ A copy of the report is also made available to both Nazia, i.e., the complainant and her supervisor, i.e., the respondent.¹²⁶ The LC recommends the District Officer to take action for sexual harassment as misconduct against the respondent and deduct a certain sum from his salary. The District Officer is mandated to act upon the recommendation within sixty days.¹²⁷

----- **Case is closed** -----



Umeed: In case the complaint was filed with the IC then the report of the IC's findings is submitted to the employer.¹²⁸



Haqiqat: What happens if the LC or IC concludes that the allegation against the respondent has not been proven?



Umeed: In that case, the Committee records that finding and recommends the District Officer or Employer, as the case may be, to take no action against the respondent.¹²⁹

Exercise No. 16

Fill in the blanks:

- Before initiating an inquiry, the LC or IC may consider a request for _____.
- During the course of an inquiry, both parties are given an opportunity of being _____.
- If the respondent is found guilty, the IC can recommend the employer to take action _____ and _____.



Haqiqat: Like Manju's and Mary's stories, Nazia's case was only illustrative of the procedure which is generally followed to address sexual harassment at workplace when a complaint is filed under the POSH Act.

125. section 11(1), POSH Act.

126. section 11(1), POSH Act.

127. section 11(4), POSH Act.

128. section 13(1), POSH Act.

129. section 11(2), POSH Act.

Here is an outline of the procedure from the filing of the complaint to obtaining relief under the POSH Act.

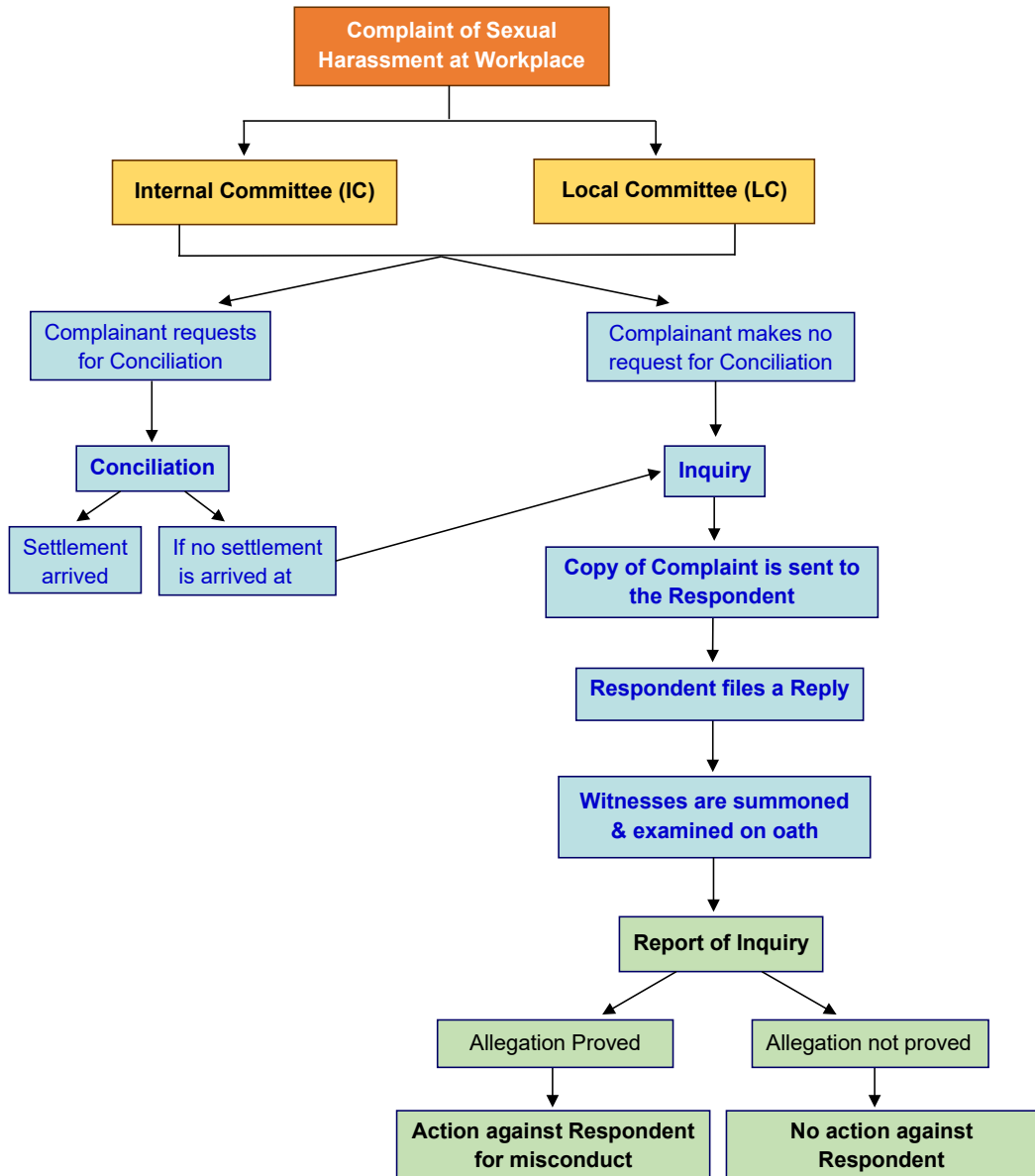


Figure 20: Summary of procedure under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

Exercise No. 17

Given below are some components that may be included in the written complaint against sexual harassment. Circle the correct components and add any missing components.

- (a) Name of the complainant
- (b) Name of the respondent
- (c) Address of the workplace
- (d) Residential address of the respondent
- (e) Appointment letter of the respondent
- (f) Dates of the incidents of sexual harassment
- (g) Description of the incidents of sexual harassment
- (h) Signature of the respondent
- (i) Signature of the complainant

Support Structures Available for Women Aggrieved by Various Forms of Violence



Haqiqat: There are various redressal mechanisms available under different laws that address violence against women. The aggrieved women can approach relevant authorities such as police officers, magistrates, and protection officers with their complaints.

Umeed, I remember you mentioning that an aggrieved woman can also file a complaint to the concerned authorities with the support of organisations working towards addressing violence against women. Could you tell me more about these organisations?



Umeed: Of course! These organisations also known as **support structures** offer a wide range of services to survivors of violence against women. These are a result of various schemes formulated by the Government over time.

Let's familiarise ourselves with some of these organisations, which we call support structures for women, in detail. We'll do this with the help of Jyothi's story.

Jyothi's Story

Jyothi is a sex worker who is in her early twenties. She works in the Ganga Jamuna area of Itwari, Nagpur which is a 200-year-old red light district. On average, she gets 3-4 clients to work with each day. One afternoon, she receives a notification on Facebook. When she checks, she sees that there is a message from Vinod, a former client. Vinod once tried to beat up Jyothi, so she refused to provide her services to him and forbade him from visiting her workplace. Vinod's message consisted of pleas to let him become her client once again. He expressed regret about his behaviour. Jyothi ignores his messages. However, this does not stop him, and he continues to send her messages. One day, Jyothi notices that he has sent her some images and videos. When she clicks on them, she sees intimate pictures and videos of herself that she never knew were captured. The pictures and videos are followed by a threat, that if she does not respond to his earlier messages, he will share the pictures and videos on social media

as well as sell them to other people. Jyothi is shocked upon seeing the images and videos. She wants to report this to the police authorities, but she is afraid that no one will believe her since she is a sex worker. She feels helpless. Filled with despair, she decides to share this with Rajlaxmi, a senior sex worker in her area. Rajlaxmi advises her to visit a nearby NGO working for women’s rights. She also offers to accompany Jyothi to the NGO. The next day, Jyothi and Rajlaxmi go to the NGO where they meet Meenakshi, a social worker. Jyothi shares her ordeal with Meenakshi who then tries to comfort her. Meenakshi then informs Jyothi and Rajlaxmi about the various support services available for women.



Umeed: The existing support structures for women can be viewed under three categories.

SUPPORT STRUCTURES AVAILABLE FOR WOMEN AGGRIEVED BY VARIOUS FORMS OF VIOLENCE

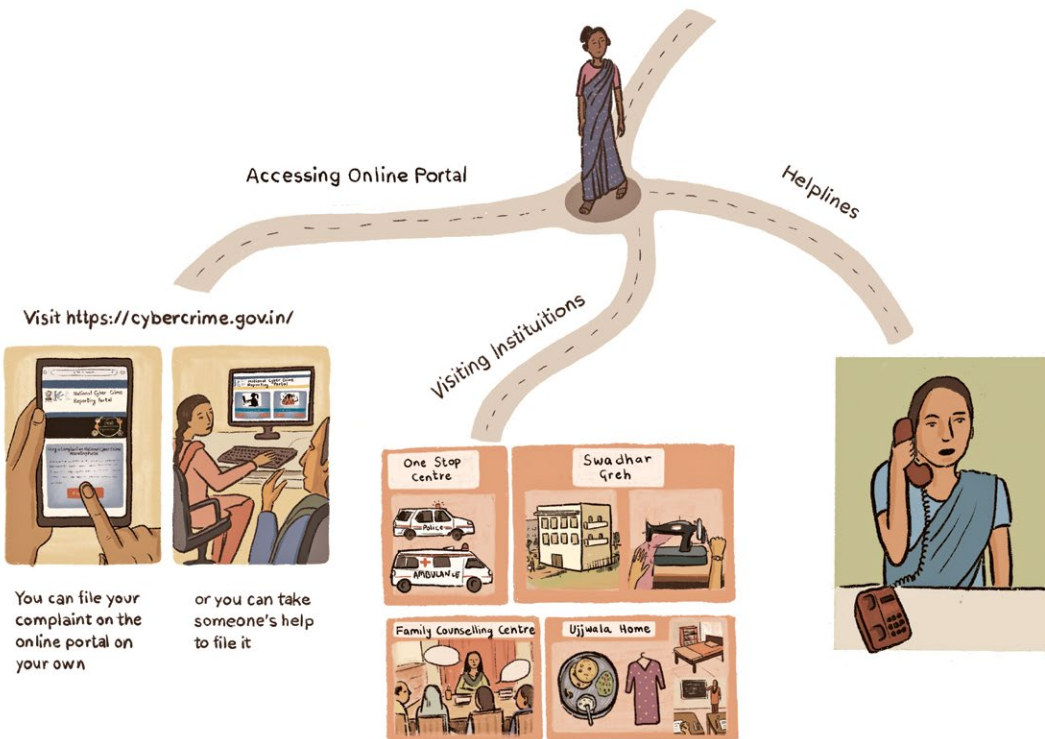


Figure 21: Support structures available for women aggrieved by various forms of violence

1. Accessing Online Portals

National Cyber Crime Reporting Portal: The National Cyber Crime Reporting Portal is an online portal that allows people to report cyber-crimes online. Cyber-crimes are offences which are committed through the use of a computer or the internet. This portal allows users to report all types of cyber-crimes including those committed against women and children. Below is a screenshot of this portal:

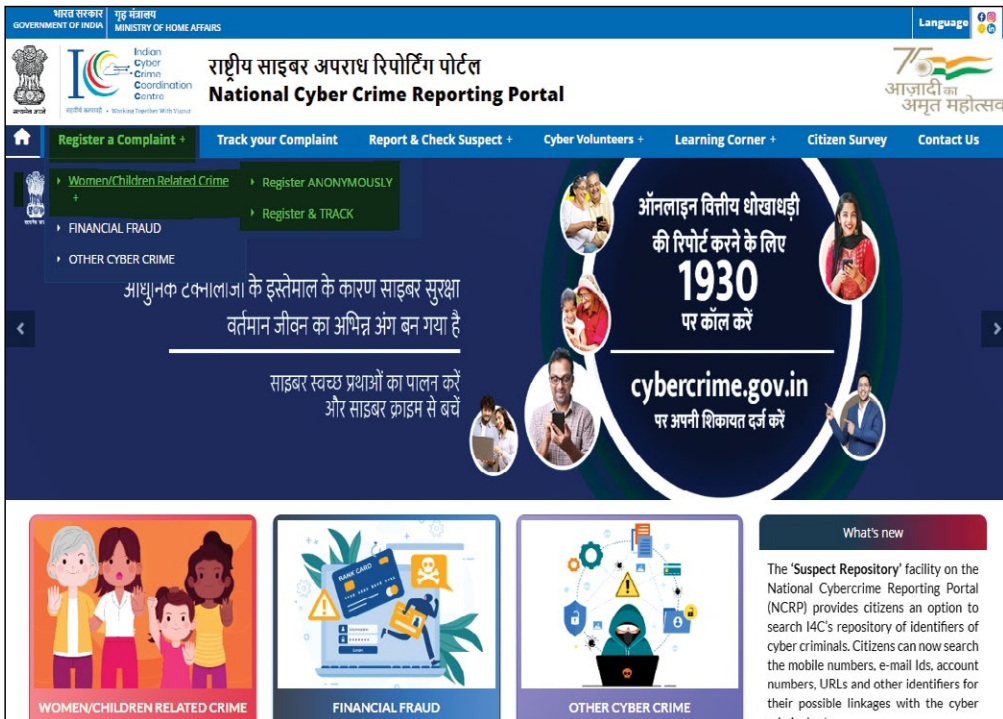


Figure 22: A screenshot of the National Cyber Crime Reporting Portal

Any complaint concerning a ‘cyber-crime related to women/ children’ can be filed through one of the following ways:

- (a) **Register Anonymously:** Under this option, the complainant can choose to report the crime anonymously, i.e., without disclosing their identity. Here no personal information needs to be entered. The complainant only needs to provide details of the incident so that police authorities can take appropriate action.
- (b) **Register and Track:** Under this option, the complainant needs to necessarily provide information such as their name, phone number, email address, details of the complaint and necessary information supporting the complaint. This

allows the police to take appropriate action as well as keep the complainant informed of any developments.

Complaints related to financial fraud or other cyber-crimes can also be registered through this portal.

The portal can be accessed at: <http://www.cybercrime.gov.in>

2. Institutions working towards supporting women survivors

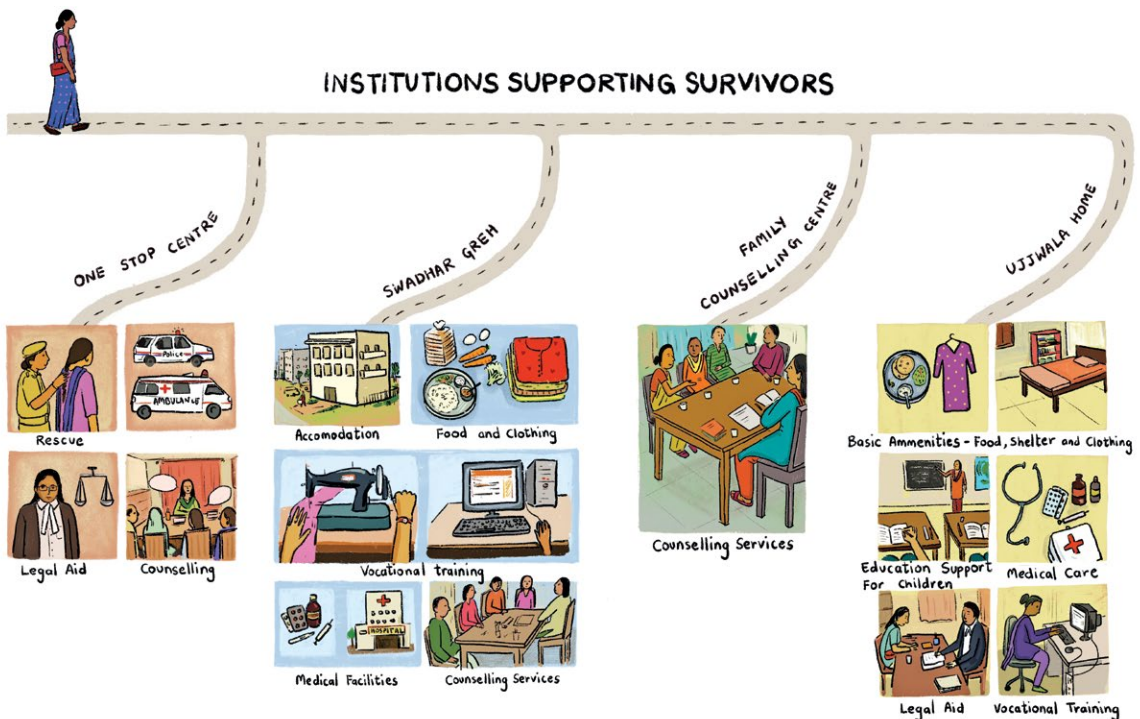


Figure 23: Institutions supporting survivors of violence

(a) **One Stop Centres (OSC):** These provide support to women aggrieved with violence, whether in public or private spaces, including family, community and workplace. OSCs offer a wide range of services under one roof which survivors of violence may require, including:

- (i) **Emergency Response and Rescue:** As soon as a case is brought to the notice of an OSC, the centre rescues the aggrieved woman from the location, refers her to the closest medical facility if needed, or provides any other assistance necessary to meet her immediate needs.

- (ii) **Medical Assistance:** Women in need of medical attention are referred to the nearest hospital for treatment.
- (iii) **Psycho-social support/ counselling:** Women who have experienced emotional trauma are provided with psycho-social counselling services through counsellors.
- (iv) **Legal Aid and Counselling:** OSC also offers legal aid services through lawyers to help women in accessing justice.
- (v) **Shelter:** OSC provides temporary shelter for five days and basic amenities like food, clothing and hygiene kits to women in distress.
- (vi) **Police Assistance:** OSC facilitates the lodging of FIR/ DIR/ NCR.

OSCs have been established in almost all districts throughout India. Women facing any kind of physical, emotional, sexual, psychological and economic abuse can approach an OSC for assistance, irrespective of their age, caste, class, education status, religion and marital status. She can visit the centre by herself or with another person or through any helpline.

The survivor on reaching the OSC can ask to meet the Centre Administrator, the Case Worker or the Counsellor.



Haqiqat: What happens to the survivor after 5 days? What if she does not feel safe after she leaves the OSC?



Umeed: The **Swadhar Grehs** are there to assist such women.

(b) Swadhar Grehs: These are shelter homes for women in difficult circumstances and without any social and economic support. The primary objective of Swadhar Grehs is to provide shelter, food, clothing and health care as well as economic and social security to such women. This is to ensure that they live with dignity and conviction. A Swadhar Greh usually offers the following facilities:

- (i) Temporary residential accommodation including food and clothing
- (ii) Medical treatment and care
- (iii) Vocational and skill upgrading trainings for economic rehabilitation of such women

- (iv) Counselling services and behavioural training
- (v) Legal aid services

The facility of Swadhar Grehs is available to women above the age of 18 years who do not have any social or economic support including:

- (i) Women who have been deserted
- (ii) Women survivors of natural disasters who have been rendered homeless
- (iii) Women prisoners released from jail who are without family support
- (iv) Women victims of domestic violence or family disputes who are made to leave their homes without any means of subsistence and have no special protection from exploitation and/ or facing litigation on account of marital disputes
- (v) Women rescued from trafficking operations or those who have run away from brothels or other places where they face exploitation
- (vi) women affected by HIV/AIDS

Further, girls up to the age of 18 years and boys up to the age of 12 years are also allowed to stay with their mothers in the Swadhar Grehs.



Haqiqat: I recently read about this newly approved Mission Shakti under which Swadhar Greh for women in difficult circumstances and Ujjawala for Prevention of Trafficking have been merged and renamed as Shakti Sadan which is an Integrated Relief and Rehabilitation Home.



Umeed: Yes! **Shakti Sadans** has similar provisions for shelter, food, clothing, and primary health care among others. In a lot of districts, this merging and renaming is still underway.

HOW IS THE SHELTER PROVIDED AT OSC DIFFERENT FROM THE ONE AT SHAKTI SADAN OR SWADHAR GREH?

OSC only provides short term shelter upto 5 days. If a woman needs shelter beyond 5 days she will be sent to Shakti Sadan or Swadhar Greh.

DO YOU KNOW?

Currently there are 13 Shakti Sadans in different districts in Uttar Pradesh.



Haqiqat: Could you also tell me about Family Counselling Centres?



Umeed: Of course!

(c) Family Counselling Centres (FCC): These provide counselling, referral, and rehabilitation services to women and children who have survived abuse, violence, family maladjustments and social ostracism. Every FCC has two counsellors, one of whom is a female. They provide counselling services to individuals, families or their relatives to bring about reconciliation, mutual settlement or any other resolution in a range of cases including:

- | | |
|---------------------------|----------------------------|
| (i) domestic violence | (vi) drug addiction |
| (ii) family maladjustment | (vii) property disputes |
| (iii) marital discord | (viii) economic crisis |
| (iv) dowry | (ix) extra marital affairs |
| (v) alcoholism | (x) other family disputes |

Every FCC works closely in collaboration with local administration, police, courts, free legal aid cells, medical and psychiatric institutions, vocational training centres and other support institutions such as One Stop Centres and Shakti Sadans.



Haqiqat: I have also seen some women help desks in police stations which also help women in distress.



Umeed: Yes! **Women Help Desks** can be found in every district at a police station or in a building close to it. The officials at the help desk are the first point of contact for any woman who walks into a police station.

The objectives of the women help desk are:

- (i) make the police station more women-friendly and approachable.
- (ii) to increase the confidence of women in visiting police stations.
- (iii) to reduce the response time by law enforcement agencies to react to crises or to track and identify criminals.

We also have some helplines which are easily accessible.

3. Helpline Numbers



Figure 24: Helplines for women aggrieved with violence

- (a) **Women Helpline (WHL)– 181:** Women Helpline 181 is a toll-free 24-hour helpline for women. Through a single uniform number, i.e., 181, it provides two types of services:
- immediate and emergency response to women who are aggrieved with violence through referral services.
 - information about women-related government schemes and programmes.

Thus, women who are aggrieved by violence can contact the WHL for help. The helpline facilitates immediate response to aggrieved women through the nearest police station, hospital, protection officer, one-stop centre, or other authorities.

When an aggrieved woman or somebody on her behalf contacts the helpline, the call responder facilitates a response through referral to relevant support services. The response may be an emergency or non-emergency response depending on the urgency of the situation and the immediate needs of the woman. Emergency response includes referral to the nearest police station or ambulance services, whereas non-emergency response may include referral to relevant district legal service authority or counselling services.

Women who are survivors of any form of violence such as physical, sexual, emotional, psychological or economic can contact the helpline irrespective of their age, class, caste, educational status, marital status, religion and location.

(b) Emergency Response Support System (ERSS)– 112: Emergency Response Support System (ERSS) is a toll-free 24-hour helpline that responds to the different emergencies of the citizens through a pan-India single emergency number ‘112’. Every state in India has Emergency Response Centres (ERC) to handle emergency requests. The range of services includes police, fire and rescue, health, etc. Any citizen in need of emergency assistance may contact the ERC by:

- (i) Dialling 112 from their phone
- (ii) Pressing the power button on their smartphone 3 times quickly to activate a panic call
- (iii) Using the ‘112 India’ Mobile App to activate a panic call to ERC

Other ways include—long pressing the ‘5’ or ‘9’ key to activate a panic call in case of a feature phone, placing an SOS request by logging on to the State ERSS website and emailing an SOS alert to State ERC.

More details about the ERSS can be found at: <https://112.gov.in/>

(c) Women Power Line (WPL)– 1090: Women Power Line 1090 is a dedicated helpline for responding to the cases of eve-teasing and sexual harassment against women across Uttar Pradesh. Following are some important points to note regarding this helpline:

- (i) A complaint can only be lodged by a victim or any other female on her behalf, with her consent. The survivor is contacted by the Women Power Line 1090 to confirm the complaint.
- (ii) A registration number is automatically sent to the survivor for future reference.
- (iii) The identity of the survivor is never disclosed to anyone.
- (iv) The survivor is never called to the police station.
- (v) The power line personnel remains in touch with the survivor till the resolution of the complaint.

Some of the situations in which one can call up the power line 1090 are:

- (i) Bullying in cyber space, i.e., through Facebook, Whatsapp, email, etc.
- (ii) Being followed or stalked in public spaces anywhere in Uttar Pradesh
- (iii) Harassment by an individual or a group who gather at a place to tease girls passing by.

(d) National Commission for Women Helpline– 7827170170: In order to help the women in registering complaints and provide psychological support, the NCW has started this helpline. Any woman above eighteen years of age in distress seeking help can call this helpline. Additionally, this helpline also facilitates referral to appropriate agencies such as police, hospitals, District Legal Service Authority, Protection Officer, One Stop Centre; and provides information about the appropriate support services, government agencies, etc.



Haqiqat: Umeed, I'm sure all this information must have been as new to Jyothi as it is to me. I would like to know what Jyothi decides to do.

Jyothi decides to seek the assistance of the nearest OSC as she is not familiar with using a computer to file a complaint. When she visits the OSC the next morning, Jyothi asks the security guard to take her to the Centre Administrator. Upon meeting the Centre Administrator, Jyothi is first made to feel at ease before she shares her predicament. The OSC officials try to comfort her and ask whether she needs any kind of assistance, such as legal or psychosocial counselling. Jyothi tells them that she wants to take legal action against Vinod.

Thereafter, Jyothi is introduced to Salma, a Legal Personnel at the Centre who assists women with their legal concerns. After hearing Jyothi, Salma suggests that the most hassle-free way of registering a complaint for anything that happened online is through the 'National Cyber Crime Reporting Portal.' Salma tells Jyothi that she would not have to disclose any personal information but would only need to give some details about the incident for the authorities to take cognisance of the matter. Jyothi sighs in relief after learning this. She then files a formal complaint on the portal with Salma's help. Salma also helps Jyothi in filing an FIR against Vinod for beating her as well as threatening to share her intimate images and videos. Salma tells Jyothi that she could visit the centre if she ever experiences any kind of violence again.



Umeed: We witnessed how Jyothi was apprehensive about the idea of reaching out to police authorities directly, but the prospect of filing an online complaint relieved her. Many other women might feel the same way about approaching police authorities for a variety of reasons or they might be in need of immediate assistance. In such circumstances, they can make use of the services offered by support structures such as One Stop Centres to access legal remedies. With the help of these support structures, women are not only encouraged to take action against violence but it is also ensured that their rights are upheld and voices heard.

POINTS TO PONDER

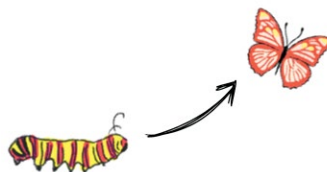
Our legal system establishes a mechanism for accessing legal remedies in cases of crimes and provides various procedural safeguards to protect the rights of victims, particularly those affected by gender-based violence. However, law enforcement needs to be sensitised regarding the deep-rooted biases and prejudices to ensure these do not hinder the support that the system offers to the survivors of violence. We must consider:

- Do we need to take steps to ensure that victims or survivors feel safe and confident while approaching the appropriate legal authorities?
- Is there a need for a larger cultural shift in the mindset of people so that women can access legal remedies without fear of being judged or criticised?



Haqiqat: It all begins with challenging our own ways of thinking. If we truly want to bring about a meaningful change in our society, including how we interact with one another, how institutions operate, or how our laws are enforced, we must begin with ourselves. We need to critically question our own beliefs and biases, only then we will be able to challenge the unjust norms we have long accepted as standards and dismantle the structures that reinforce inequality, discrimination and violence.

~ Let's not only hope but also act. ~



References

ANI, 2021: Delhi Court denies bail to man accused of rape, 15 May 2021, <https://www.aninews.in/news/national/general-news/delhi-court-denies-bail-to-man-accused-of-rape20210515141330/>.

Bangalore Mirror, 2021: Charge sheet filed in rape case, 8 July 2021, <https://bangaloremirror.indiatimes.com/bangalore/crime/charge-sheet-filed-in-rape-case/articleshow/84218055.cms>.

News 18, 2025: Salil Tiwari, Allahabad HC Denies Bail To Man Accused Of Forcing Wife Into Prostitution, 6 January 2025, <https://www.news18.com/india/allahabad-hc-denies-bail-to-man-accused-of-forcing-wife-into-prostitution-9178963.html>.

The Hindu, 2019: Police refuse to register FIR in Vasai woman's domestic violence case, 13 April 2019, <https://www.thehindu.com/news/cities/mumbai/police-refuse-to-register-fir-in-vasaai-womans-domestic-violence-case/article26824560.ece>.

The Hindu, 2025: Main accused arrested in gang-rape case in Raebareli, 29 March 2025, <https://www.thehindu.com/news/national/uttar-pradesh/main-accused-arrested-in-gang-rape-case-in-raebareli/article69390569.ece>.

The Print, 2025: Man gets 20-year jail term in minor's rape case, 4 March 2025, <https://theprint.in/india/man-gets-20-year-jail-term-in-minors-rape-case/2532307/>.

Times of India, 2025: Rajeev Dikshit, FIR after family cancels wedding seeking dowry, 27 March 2025, <https://timesofindia.indiatimes.com/city/varanasi/fir-after-family-cancels-wedding-seeking-dowry/articleshow/119553615.cms>.

Answers

1. (a) Superintendent of Police or Magistrate; (b) No
2. (a) No, (b) Yes
3. 2. (i) Act: Bharatiya Nyaya Sanhita, 2023, Section: 74
(ii) Act: Bharatiya Nyaya Sanhita, 2023, Section: 79

12. First information contents: My Name is Manju. I'm a resident of XYZ village. I'm a student at ABC College. On (date) , I started noticing that an unknown boy was following me on a bicycle on my way home from my college. For a few days, he has been passing lewd comments about my clothes, which makes me feel very uncomfortable. On (date) , around 4:00 PM he tried to pull my dupatta and touch me while I was riding a tempo back home.

(Please note that the answer is only illustrative.)

4. (a) False, (b) True
5. (a) Magistrate, (b) informant or the person who files the FIR, (c) discharged
6. Jennifer: Namaste, Ma'am! I want to report a crime.

Police officer: What is your name?

Jennifer: My name is Jennifer.

Police officer: Jennifer, please tell me.

Jennifer: I was raped.

Police officer: When did this happen?

Jennifer: Last night.

Police officer: Do you know this man?

Jennifer: Yes, he is my old neighbour, Ramesh.

Police officer: Where did this happen?

Jennifer: At his house. Last night I went to the wedding of one of my relatives, I met him there.

Police officer: Can you please elaborate?

Jennifer: When I met him at the wedding, we started talking. We talked for a long time, remembering our childhood. He told me he had bought a new house and would like to show me. Initially, I said no. But when he insisted, I agreed.

Police officer: What happened thereafter?

Jennifer: When we reached his house, he forced himself upon me. Despite my resistance, he had sexual intercourse with me.

Police officer: Can you share the address of the place?

Jennifer: Yes...

Police officer: Where are the clothes that you were wearing last night?

Jennifer: At my home.

Police officer: Did you wash them?

Jennifer: No

Police officer: Please don't wash them. We will need to send them for forensic examination....

(Please note that the answer is only illustrative.)

7. (a) True, (b) False
8. Residence order, (b) Monetary relief, (c) Compensation order
9. (c) Both husband and mother-in-law.
10. The Court can grant ex-parte reliefs to Nengcha.
11. (a) False, (b) True
12. Yes, a complaint can be filed against a live-in partner under the PWDV Act.
13. (a) Local Committee of her district, (b) Internal Committee of her workplace
14. (a) True, (b) False, (c) False, (d) False, (e) True
15. Correct reliefs: (b), (c), (d), (f), (g)
16. (a) conciliation, (b) heard, (c) take action against the respondent as per the service rules or deduct an appropriate sum from the salary or wages of the respondent.
17. Correct components: (a), (b), (c), (f), (g), (i)



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JUSTICE
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