



JUSTICE DENIED: SEXUAL VIOLENCE & INTERSECTIONAL DISCRIMINATION

Barriers to Accessing Justice
for Dalit Women and Girls
in Haryana, India



TABLE OF CONTENTS

3	ACKNOWLEDGEMENTS	16	THE BARRIERS TO JUSTICE
4	EXECUTIVE SUMMARY	16	Community pressure and stigma
7	THE LEGAL FRAMEWORK FOR ADDRESSING SEXUAL VIOLENCE	19	Police attitudes, inaction , corruption and discrimination
7	International human rights obligations	22	SURVIVOR STORIES: SAVITRI
8	National legal framework	24	Problems relating to the medico-legal examination
9	PREVALENCE OF RAPE CASES IN HARYANA	25	SURVIVOR STORIES: REENA AND ROSHANI
10	SURVIVOR STORIES: PALLAVI	26	Issues related to the judicial process
11	ANALYSIS OF THE FORTY CASES STUDIED	28	Impact on the survivor/family & lack of support services
11	Methodology	29	SURVIVOR STORIES: KAMLA AND GUDIYA
12	Background of the cases and the victims/accused persons	33	RECOMMENDATIONS
14	Forms of sexual violence inflicted on Dalit women and girls	37	Endnotes
15	SURVIVOR STORIES: REKHA		

About Swabhiman Society

Swabhiman Society is an organisation led by and comprised of young Dalit women, created with the goal of uniting and organising Dalit women in Haryana to end caste based oppression at the grassroots level. Since 2012, Swabhiman Society has provided paralegal support and legal aid to survivors of sexual violence from marginalised communities, and works against oppression and injustice towards Dalit, Muslim and trans women and girls in Haryana. In addition to our work seeking justice for survivors of sexual violence, Swabhiman Society works to empower Dalit women and girls and create strong, self-reliant leaders within the community. Manisha Mashaal and Rajni Mashaal, the founders of Swabhiman Society, also run the Maha Dalit Women Andolan and the Bobo Gang Network, Haryana.

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About Equality Now

Founded in 1992, Equality Now is an international human rights organisation that works to protect and promote the rights of all women and girls around the world. Our campaigns are centred on four programme areas: Legal Equality, End Sexual Violence, End Harmful Practices, and End Sex Trafficking, with a cross-cutting focus on the unique needs of adolescent girls. Equality Now combines grassroots activism with international, regional and national legal advocacy to achieve legal and systemic change to benefit all women and girls, and works to ensure that governments enact and enforce laws and policies that uphold their rights.

As a global organisation, Equality Now has offices in the USA (New York), Africa (Nairobi), Europe (London), and MENA (Beirut) and partners and members all around the world.

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EXECUTIVE SUMMARY

Dalits - officially designated as Scheduled Castes by India's Constitution - are at the bottom of caste and class hierarchies in India.ⁱ Dalit women in particular face intersecting forms of gender, caste and class discrimination. Violence, including rape and gang rape, have been systematically utilised as weapons by dominant castes to oppress Dalit women and girls and reinforce structural gender and caste hierarchies.ⁱⁱ The recent Hathras gangrape case which took place in Uttar Pradesh in September 2020 resulting in the death of a Dalit woman has led to widespread public outrage across India and thrown a spotlight on the issue of caste-based sexual violence.



i The caste system is a form of social and economic governance whereby people are divided into social groups (castes) fixed by birth, descent and work. These castes are assigned at birth and are rigid and hereditary. The caste system is based on ritual purity and is inherently unequal. Dalits, who fall outside the caste system, are considered as “untouchables” and face social exclusion, ostracisation and discrimination from other caste groups. They are designated as “Scheduled Castes” by India's Constitution and provided constitutional protection against discrimination and untouchability.

Culture of “violence, silence and impunity”

Almost 10 Dalit women or girls are raped every day across the country,¹ demonstrating the endemic nature of this crime, with rape also being used as a means of power to oppress Dalit women and girls. However, even these alarming figures are considered to be a gross underestimate of the prevalence of sexual violence as only a fraction of cases are reported.ⁱⁱⁱ Survivors of sexual violence, Dalit women and girls in particular, are known to be systematically silenced - through threats and pressure from other communities to keep quiet, repression of complaints by their own family or community due to fear or threats by dominant castes, and failure to register complaints on the part of the police² - resulting in a culture of “violence, silence and impunity”³ in such cases.

Very high rates of violence against women

In the northern state of Haryana, where Dalits make up around one-fifth of the state's population, a deeply-rooted caste-based and patriarchal society still flourishes. There are high rates of violence against women - data from the National Crime Records Bureau in 2019 indicates that 4 women are raped every day in this state alone.

“Almost 10 Dalit women or girls are raped every day across the country”

ii For the purposes of this report, the term “dominant castes” is being used to refer to all castes other than those notified as Scheduled Castes by the Haryana government under Article 341 of the Constitution of India.

iii One estimate, based on data from the National Family Health Survey- 4 (2015-16), indicates that 99% of sexual violence cases in India remain unreported. See Prमित Bhattacharya, Tadit Kundu, 99% of Sexual Assaults go unreported, govt data shows, Livemint, 24 April 2018, <https://www.livemint.com/Politics/AV3sIKoEBAGZozALMX8THK/99-cases-of-sexual-assaults-go-unreported-govt-data-shows.html>

Barriers to accessing justice

In this context, this report aims to understand and analyse the specific barriers to accessing justice faced by Dalit survivors of sexual violence in Haryana. This report draws from Swabhiman Society's experience of working directly with Dalit survivors of sexual violence in Haryana over the past decade and highlights insights from this work. While all survivors of sexual violence in India face difficulties in accessing the criminal justice system, this report focuses on the particular issues faced by Dalit women and girl survivors and utilises an intersectional approach to document their experiences. By taking into account the various forms of social stratification faced by people at the intersections of various identities, including caste (which is an overarching system of oppression and discrimination), class, age and gender, we find that the nature and forms of discrimination and violence faced by women and girls at these interstices are severe⁴ and will require specific intentional interventions to address.

The key data findings based on the 40 cases of rape against Dalit women and girls studied in Haryana are as follows:

- **Caste-based Sexual Violence:** The vast majority of sexual violence cases against Dalit women and girls (over 80%) were committed by men from dominant castes.
- **Difficulty in obtaining convictions:** The only cases in which convictions were obtained against all accused persons involved either rape and murder together, or were committed against very young girls (under the age of 6). It remains exceptionally difficult to obtain convictions in cases other than those deemed to be the most extreme violations such that adolescent girls and adult women struggle to obtain justice.
- **Community role in impeding access to justice:** Community and social pressure plays a major role in impeding access to justice through pushing or forcing the survivor or her family into compromises or extra-legal settlements (as happened in 57.5% of the cases studied). Unofficial village councils, known as *khap panchayats*, also attempted to interfere with the justice process in over 80% of the cases, by using their economic, social and political power to threaten, intimidate and coerce the survivor or her family into staying silent or refrain from pursuing the criminal case.
- **Lack of support services:** Survivors find it extremely difficult to access support services, including those which are required to be provided by law, such as victim compensation, psycho-social care and police protection, for various reasons including inaccessibility of services, caste-based discrimination etc.
- **Intrusive medical examinations:** The banned two-finger test^{iv}, a traumatising and unscientific vaginal examination, continues to be conducted as part of the medico-legal examination of rape survivors in many cases.

^{iv} This test involves a medical practitioner inserting two fingers into the vagina in an attempt to determine if the hymen is broken and to test laxity. The test is often used to declare sexual assault survivors "habituated to sex", and consequently they are less likely to be believed to have been raped.

Specific targeting of Dalit women and girls

This report finds that not only are Dalit women and girls in Haryana effectively denied access to justice in cases of sexual violence due to the prevalent culture of impunity, particularly when the perpetrators are from a dominant caste, but that there are indications Dalit women and girls are specifically targeted for rape by dominant caste men who can rely on such impunity. In almost all cases, survivors who seek justice for sexual violence are subjected to stigma, retaliation, threats, violence and extreme pressure to stay silent or stop pursuing the criminal process. They live in fear - of their own safety, of losing their access to livelihood (often controlled by dominant caste communities), of being forced out of their homes, and of facing caste-based abuse and discrimination from the police, prosecutors and other officials in the criminal justice system. This fear, trauma and pressure faced by survivors and their families is compounded by the obstacles to accessing justice within the criminal justice system itself.

Addressing impunity - our recommendations

The time for action is now.

The barriers to accessing justice faced by Dalit survivors of sexual violence makes it highly unlikely that the perpetrators of sexual violence will be prosecuted or convicted. This impunity must be addressed and prevention and response to sexual violence cases drastically improved in order to end this cycle of violence.

Based on these findings, our report provides recommendations for improvement of the police, medico-legal and judicial processes in Haryana to improve access to justice for survivors of sexual violence, particularly Dalit women and girls.

The key recommendations put forward in this report include:

- increased police accountability and provision of effective victim and witness protection
- addressing impunity for perpetrators of sexual violence particularly when they are from dominant castes
- taking steps to limit community intervention in cases of sexual violence, including by banning *khap panchayats*
- combating the intersectional forms of discrimination faced by Dalit women and girls while dealing with law enforcement officials
- improved resourcing and utilisation of existing funds for sexual violence prevention and response programmes.



THE LEGAL FRAMEWORK FOR ADDRESSING SEXUAL VIOLENCE

International human rights obligations

India has ratified numerous international human rights treaties including the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Elimination of All Forms of Racial Discrimination (CERD). These treaties require India to ensure that laws relating to sexual violence (including procedural laws) are not discriminatory, as well as to exercise due diligence to “prevent as well as to investigate, prosecute, punish and provide reparation” for acts or omissions by both State and non-State actors which result in gender-based violence against women.⁵

Being able to live a life free from sexual violence is not only a fundamental human right, but also necessary to meeting Goal 5 on Gender Equality and Empowerment of all Women and Girls of the 2030 Agenda for Sustainable Development (the SDGs) that all UN member States, including India, have committed to. Goal 5 includes targets to “end all forms of discrimination against all women and girls everywhere” (Target 5.1) and “eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation” (Target 5.2). Additionally, Target 16.3 of the SDGs requires States to “promote the rule of law at the national and international levels and ensure equal access to justice for all”.

In its *Concluding Observations on the 4th and 5th periodic reports of India*, the United Nations Committee on the Elimination of Discrimination Against Women in 2014 expressed concern about the “[e]scalation of caste-based violence, including rape, against women and girls and the downplaying by key State officials of the grave criminal nature of sexual violence against women and girls” as well as the “[p]oor implementation of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and the impunity of perpetrators of serious crimes against women”.⁶



National legal framework

Legal right to equality and prohibition of discrimination

India's Constitution guarantees the rights to equality and equal protection of the law and forbids discrimination on the basis of religion, race, caste, sex or place of birth.⁷ Recognising the historical forms of discrimination and oppression faced by the Dalit community, Article 17 of the Constitution also expressly abolishes 'untouchability' and forbids its practice in any form. In order to give effect to these constitutional guarantees, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act [SC & ST (PoA) Act] was passed in 1989 with the aim of preventing and effectively addressing caste-based atrocities. The SC & ST (PoA) Act specifies a list of prohibited atrocities. In addition, serious offences under the Indian Penal Code, including rape, which are committed against a person because they belong to a Scheduled Caste are also subjected to increased punishment. All cases under the SC & ST (PoA) Act must be investigated by a police officer of a rank not lower than Deputy Superintendent of Police (DSP). The law also includes provisions for protection and rehabilitation of victims.

The SC & ST (PoA) Act was substantially amended in 2015 and the amended law includes an expanded list of caste-based atrocities, which includes sexual

harassment and assault against a Scheduled Caste woman committed with the knowledge of her caste identity. The 2015 Amendment Act also requires the state government to set up Exclusive Special Courts for the trial of offences under the SC & ST (PoA) Act. These special courts are meant to provide speedy trials, to be completed within two months. The state government is also required to appoint Exclusive Special Public Prosecutors for prosecution of offences before these courts. However, this law has been very poorly implemented. For instance, Haryana has not set up any Exclusive Special Courts or special police stations for offences under the SC & ST (PoA) Act, instead only demarcating existing Sessions Courts as special courts to try offences under the Act.⁸ These Sessions Courts designed as special courts do not exclusively try cases of caste-based atrocities, affecting prioritization of cases and workload, and causing delays in the adjudication of cases.⁹

Sexual violence offences

India's law on rape underwent a notable transformation in 2012-13, with the passing of the Protection of Children from Sexual Offences Act, 2012 (POCSO) to deal with sexual offences against children under the age of 18 and the passing of the Criminal Law (Amendment) Act in 2013, which made substantial amendments to substantive and procedural provisions relating to sexual violence under the Indian Penal Code and other procedural

laws. The 2013 amendments expanded the definition of rape and included new offences to recognise the gradation of sexual offences, incorporated new forms of aggravated rape, introduced a clear definition of consent and made changes to evidentiary and procedural laws aimed at improving access to justice for victims. However, a major loophole remaining in the rape law is the continued non-recognition of marital rape as a criminal offence, in the case of adult women.

Structural issues

Despite the expansive and progressive amendments to the law, many of the structural issues with the Indian criminal justice system's responses to rape, particularly in relation to police, medical and judicial systems remain unaddressed. The high number of pending rape cases and long delays in investigation and prosecution, lack of infrastructure, lack of comprehensive witness protection mechanisms and other systemic issues contribute to severe obstacles to justice and low conviction rates in rape cases in India generally. Some of these procedural issues affecting access to justice are demonstrated through the official crime data from Haryana.

PREVALENCE OF RAPE CASES IN HARYANA

Official data from the National Crime Records Bureau (NCRB) from 2018 and 2019¹⁰ provides the following data on rape cases in Haryana:

	2018		2019	
	All Women & Girls	Dalit Women & Girls	All Women & Girls	Dalit Women & Girls
Rape under section 376, IPC	1296	171	1480	221
Rape cases under POCSO (girl child victims only) ^v	1020	72	1117	101

Though the data shows a fairly low number of rape cases against Dalit women, it must be noted that the data in relation to Dalit women is dependent on the registration of a First Information Report (FIR)^{vi} under the SC & ST (PoA) Act. Evidence from grassroots groups and lawyers indicates that in many cases of rape against Dalit women and girls, even where the rape case is registered by the police, the FIR does not normally include offences under the SC & ST (POA) Act. Due to pressure from high-level politicians to clamp down on caste-based atrocities within the state, district-level authorities aim to bring down the number of rape cases registered under the SC & ST (POA) Act.¹¹ This often has the negative impact of incentivising police inaction and refusal to register cases, as opposed to increasing efforts to prevent such crimes.¹²

v This figure is for rape cases only - i.e. penetrative sexual assault and aggravated penetrative sexual assault punishable under sections 4 and 6 of POCSO. The total number of POCSO cases registered in Haryana for 2018 is 1839, including 633 cases of sexual assault and the remaining of other crimes under POCSO such as sexual harassment etc. For 2019, it is 1976, including 859 cases of sexual assault and the remaining of other crimes under POCSO such as sexual harassment etc.

vi A First Information Report (FIR) is the official document filed by the police when they receive information about a cognizable offence (a serious criminal offence). The information is usually received through a complaint from the victim or someone on her behalf.

vii Just to note generally that only a tiny percentage of reported rapes are actually thought to be false and the fact that a sexual violence crime cannot be proved does not mean that the accusation was false, as indicated by the cases highlighted in this report.

viii A Charge sheet is the final report submitted by the police after investigation to a criminal court, which sets out the specific criminal offences under which the accused is being charged.

An analysis of the data on rape cases in Haryana from 2018 & 2019 demonstrates the following key points:

- **Relationship of perpetrator with the victim (2019 data):** In 97% of cases, the offender was known to the victim.
- **Cases designated 'false' by the police (data from both 2018 & 2019):** In 2018 nationally only around 6% of total rape cases under investigation by the police were concluded with a final report as false.^{vii} However, in Haryana, over 33% of total rape cases under investigation by the police were concluded with a final report as false.¹³ Similarly, in 2019, in cases of atrocities against Scheduled Castes, the police in Haryana again declared **around 37% of total cases as false cases. This is an increase from 2018 where around 30% of the cases disposed off by the police under the SC & ST (PoA) Act were declared false.** In contrast, the national rate at which such cases were declared false by the police was 7% in 2018 and 12% in 2019.
- **Chargesheeting^{viii} Rate (2018 data):** Haryana's chargesheeting rate (i.e. the number of cases followed up with a charge being lodged against the perpetrator out of the total cases in which investigation is completed by the police) in rape cases was 58%.^{ix} This implies that around 42% of rape cases are dropped during the police investigation itself (without charges being filed), leaving the survivor with no access to justice through the courts. Charges are not filed usually because the case is designated as false by the police (as described above) or due to lack of evidence. Haryana's chargesheeting rate is significantly lower than the national chargesheeting rate of 85% in rape cases. In fact, Haryana's chargesheeting rate in cases of crimes against women is the third lowest amongst all states and union territories in the entire country.
- **Conviction Rate (2018 data):** There were 2162 rape cases for trial in 2018 in Haryana, out of which the trial was completed for 685 cases during the year (1477 cases were pending at the end of the year). Out of the 685 completed cases, there were convictions only in 148 cases, i.e. a conviction rate of 21.6% (lower than the national conviction rate of 27.2% in rape cases).

ix The National Crime Records Bureau report does not provide a state-wise breakdown of the chargesheeting rate in rape cases, only in for all crimes against women in general. Haryana's chargesheeting rate for rape cases is retrieved from the Crime in Haryana -2018 data published by the State Crime Records Bureau. This data is not available for 2019.

SURVIVOR STORIES: PALLAVI*

**Names have been changed*

Pallavi was 16-years-old and on the way to visit her grandmother when she was kidnapped and gang-raped by 12 young men. They filmed her attack and threatened to share the video if she told anyone.

The perpetrators lived locally and eight were from the dominant Jat caste. Pallavi, who is from the Dalit community, was so fearful that she remained silent for nine days. But eventually the emotional and physical trauma became too much to bear and she confided to her parents.

Her father Ramesh, a farm labourer, turned to the village elders who questioned the accused. Ramesh then set out with Pallavi to go to the police station to file a FIR (First Information Report). On the way, they were confronted by the gang of rapists, who terrorised the pair and again threatened to spread the graphic footage of Pallavi being abused.

Ramesh and Pallavi returned home without going to the police. Distraught after seeing the video of what his daughter had been subjected to and fearing reprisal from the perpetrators, Ramesh committed suicide that night. The next day, heartbroken with grief, Pallavi went to the police station to report the rape and death of her father.

Four days passed before the police eventually arrested one of the accused men, and it took another four days for officers to detain a further seven of the gang.

Pallavi's family faced pressure from influential people in their village to withdraw the case. Following threats from the accused, police protection was provided to

Pallavi and her relatives. But instead of safeguarding Pallavi, some of them tried to force her into having sexual relations, saying that as she had been gang-raped, "You have had sex with so many people now, so why don't you have sex with us also".

Pallavi bravely spoke out about this horrific revictimisation by the police and her security personnel was later replaced. Her attack happened in 2012 but to this day, she and her family remain in grave danger. She is now protected by an officer from the Dalit community and she feels much safer.

The case went to court and Pallavi was appalled by the outcome. Only four of the gang were convicted and although they were sentenced to life imprisonment, they were awarded parole and were let out on bail pending an appeal at the High Court. They are now back in jail, but a further four men charged with rape were acquitted, alongside two others who were on trial for harbouring the accused.

Pallavi is now studying law and her fight for justice continues. She is working with Swabhiman Society and is helping other Dalit women and girls who have experienced sexual violence and abuse to get the support and legal protection they deserve.

Pallavi's family faced pressure from influential people in their village to withdraw the case.

ANALYSIS OF THE FORTY CASES STUDIED

Methodology

This report analyses the progress through the criminal justice system of 40 rape cases against Dalit women and girls in Haryana. All the case studies were directly or indirectly supported by Swabhiman Society and are thus limited in scope to 11 districts in Haryana. The information related to these cases included in the report are based on fact-finding reports and interviews with survivors and their families conducted by Swabhiman Society's team since 2012, FIRs filed with the police, medico-legal reports, court orders and follow-up with lawyers representing the survivors. Based on this data, this report analyses the nature and forms of sexual violence perpetrated against Dalit women and girls in Haryana as well as the effectiveness of the criminal justice system in providing redress for them. This qualitative research study also highlights the stories of several survivors to demonstrate the impact of sexual violence and the subsequent criminal justice process on the life of the survivor.

The sample is not representative, so the findings may not reflect the general findings for all cases of sexual violence in Haryana or even all cases of sexual violence against Dalit women and girls in Haryana. Additionally, the legal and paralegal support provided by Swabhiman Society to the survivors in these cases could have had an impact on various aspects of the findings, such as registration of cases with the police, or even the conviction rate, which may vary in cases where a survivor does not have the support of a non-governmental organisation. The information included in this report includes the status of these cases as of August 2020, though the status of some cases is subject to change in the future because many of the cases are still ongoing. The lockdown necessitated by the COVID-19 pandemic has delayed the trials in a number of cases which are still ongoing.



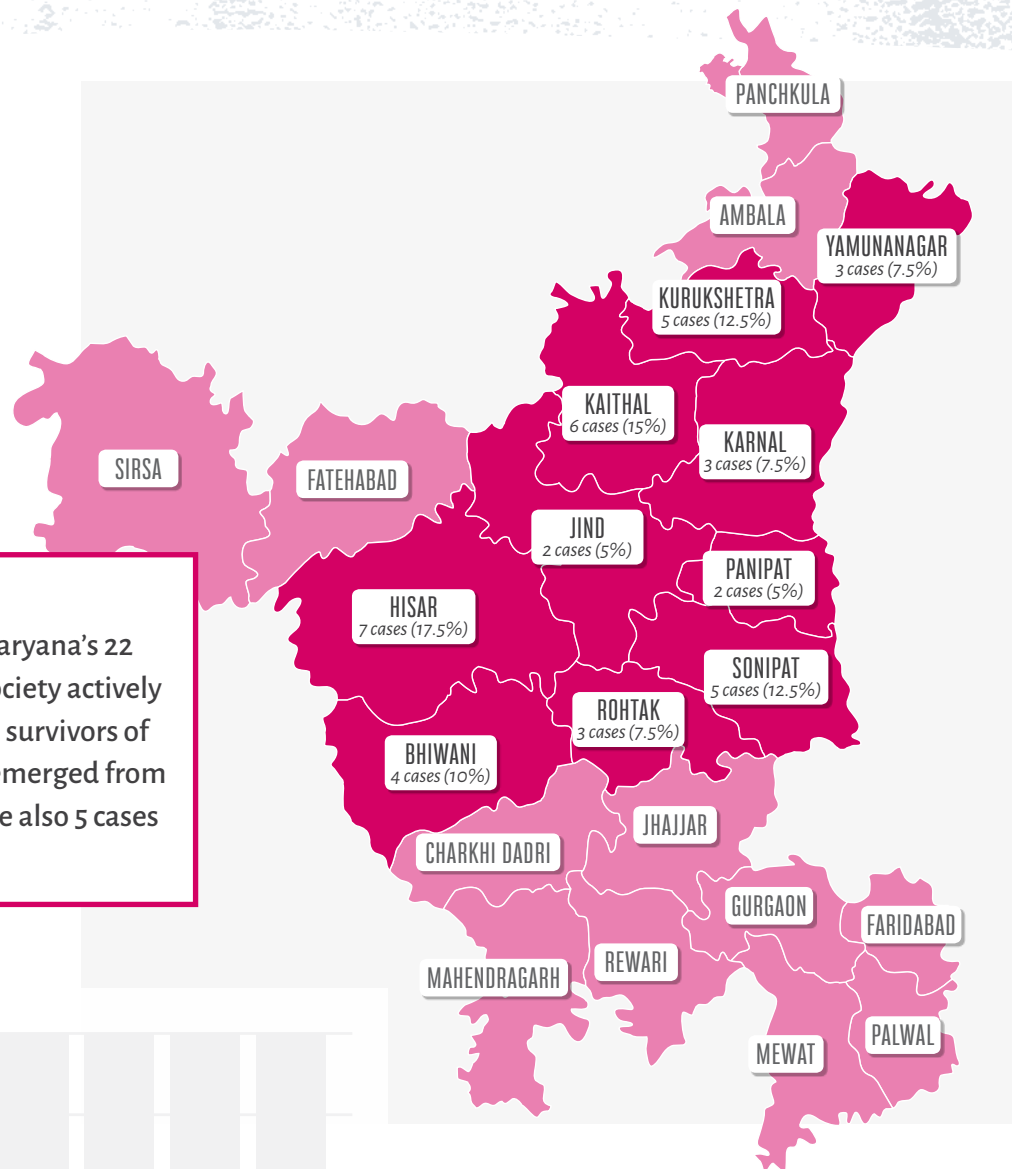
Background of the cases and the victims/accused persons

An overview of the location and year of the incidents in the 40 documented cases and in the ages and caste background of the victim and accused persons provides a background against which to read the research findings on the journey of these cases through the criminal justice system.

All 40 cases studied were cases of rape committed against Dalit women and girls.

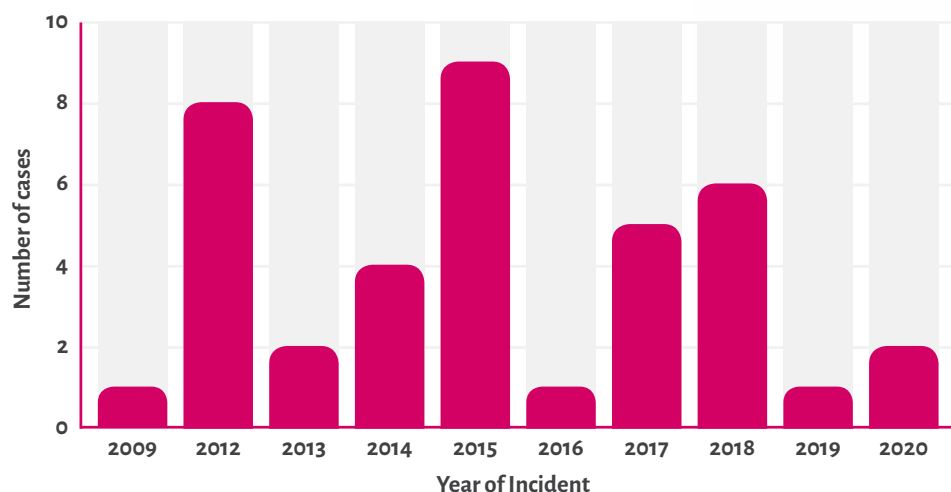
Location of the incident

The cases studied were drawn from 11 out of Haryana's 22 districts. This is simply because Swabhiman Society actively works in these districts in providing support to survivors of sexual violence. The highest number of cases emerged from Hisar (7 cases) and Kaithal (6 cases). There were also 5 cases each from Sonipat and Kurukshetra districts.



Year of the incident

The cases included in this report were based on incidents of rape which took place over a span of 12 years, from 2009 - 2020.



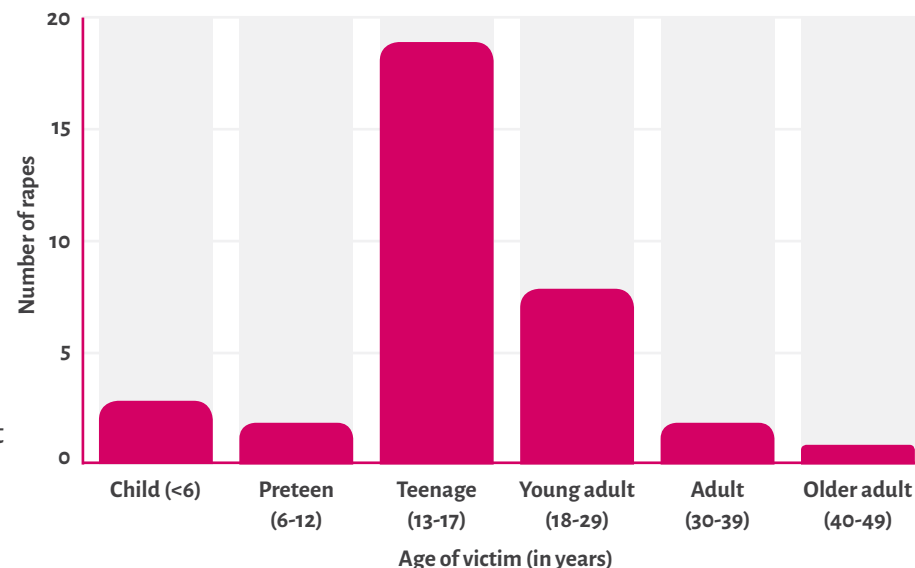
Age of the survivor/victim

The survivors/victims in the cases studied spanned all age groups, with the youngest victim being a girl who was only 3 years old. In 4 cases the exact age of the victim is not recorded, with the available data only demonstrating that 2 of these cases were against adult women, while 2 were against girls under the age of 18.

Out of the cases for which data is available, the highest number of victims came from the age group of 13 to 17 years old. Further,

the vast majority of these 40 cases overall concern girls and young women aged between 13 and 29 years old.

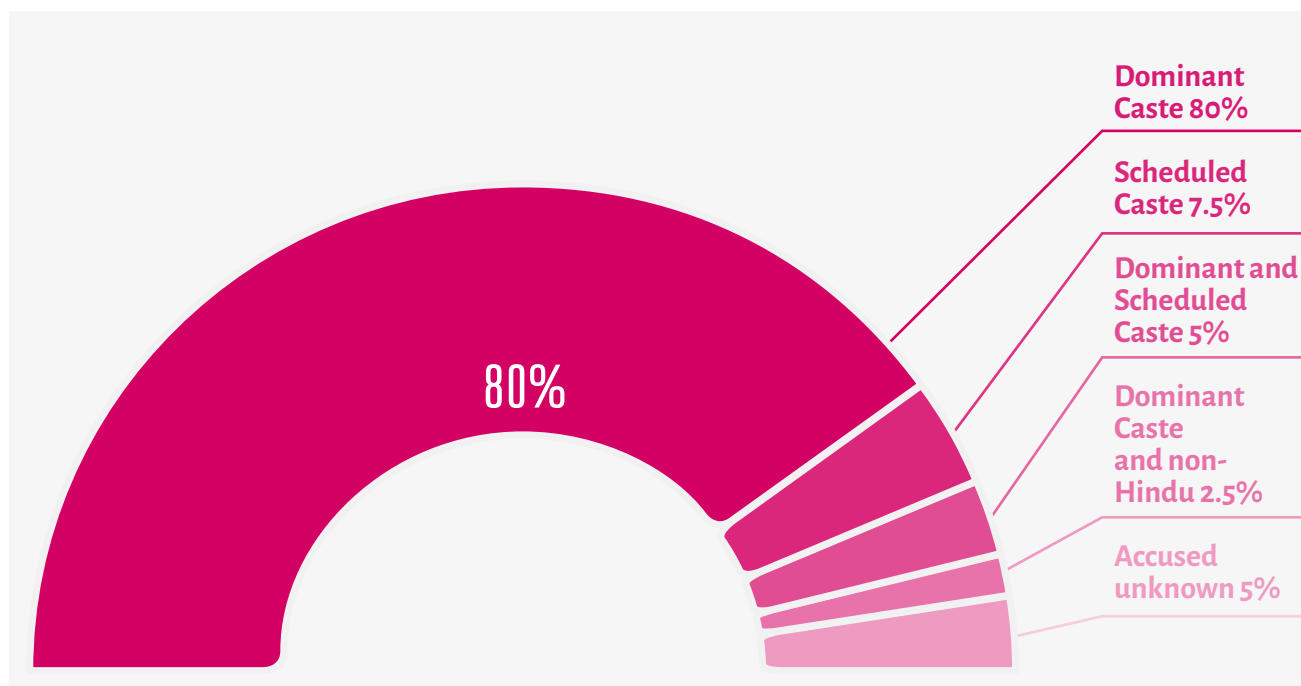
The high number of cases against young Dalit girls demonstrates the vulnerability of adolescent girls to sexual violence. The high number of child victims is confirmed by the official NCRB statistics for Haryana for 2019, wherein 101 of the 221 rape cases against Dalit women and girls registered in 2018 (around 45%) involved girls under the age of 18.



Caste background of the accused persons

In cases of crimes against Dalit women and girls, the caste and social status of the accused often play a key role in impacting the access to justice of the victims. In over 80% of the cases in this study, all the accused persons involved in the case were from a dominant caste, and in over 90% of cases, at least one of the accused persons was from a dominant caste.

These findings mirror official data from the Haryana SCRB in 2019, which show that in 105 cases of rape against Dalit women, the perpetrators were from a non-Scheduled Caste community in 88.5% of the cases.¹⁴ The high rate at which these crimes of sexual violence are perpetrated against Dalit women and girls by men from dominant caste communities doubly underscores that rape is a crime of power, as opposed to sex. In such cases, rape as an expression of power is often aimed at reinforcing dominant caste, social and political power dynamics.



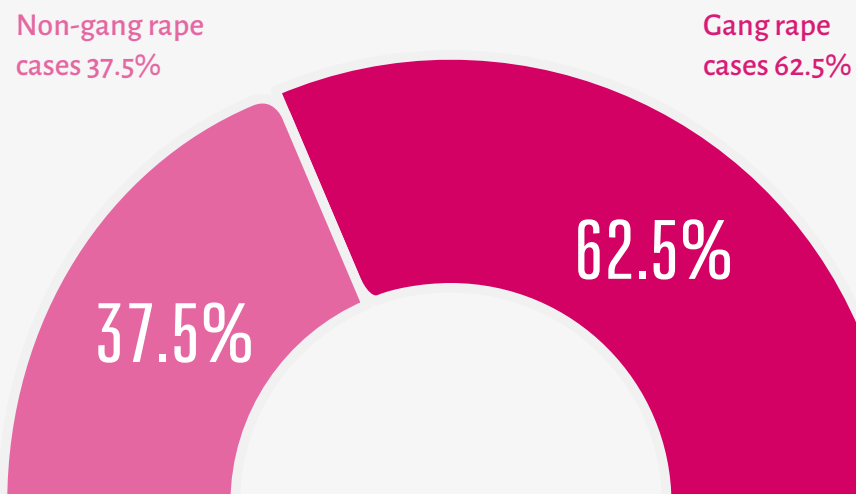
Forms of sexual violence inflicted on Dalit women and girls

Gang rape

Haryana is often referred to as the “Gang Rape capital” of India, due to the high number of gang rapes which take place in the state.¹⁵ Official data recorded by the NCRB in 2018 demonstrate that around 12% of the total number of rape cases involved gang rapes, while in 2019, around 11% of the total rape cases involved gang rapes.^x There are no official, state-wide disaggregated data available regarding the number of gang rapes committed specifically against Dalit women and girls.

Out of the 40 cases in the study, 62.5% (25 cases) are gang rape cases, which is significantly higher than the 11-12% of gang rapes in rape cases involving *all* women and girls in Haryana. The high percentage of gang rapes, as found in this study, indicates the collective nature of this crime, whereby sexual violence against Dalit women and girls takes the form of a collective exercise of power and authority by dominant caste members.¹⁶

Percentage of gang rape cases



Rape/gang rape and murder

Out of the 40 cases, four (10%) were cases of murder with rape/gang rape whereas in 2018, 26 of the 1296 rape cases in Haryana against all women and girls were cases of rape and murder (around 2%). In 2019, this figure was even lower, with 6 of the 1480 rape cases against all women and girls Haryana being cases of rape and murder (around 0.4%).

These findings indicate that Dalit women and girls face more aggravated and severe forms of rape such as gang rapes and rape/gang rape with murder, as compared with *all* women and girls in Haryana.

^x In 2018, NCRB data shows that there were 155 gang rapes registered in Haryana out of total of 1296 rape cases. In 2019, NCRB data shows that there were 159 gang rapes registered out of a total of 1480 rape cases in Haryana.

SURVIVOR STORIES: REKHA*

**Names have been changed*

Rekha, a 16-year-old Dalit girl, visited a grocery shop in her neighbourhood. At the store, the 46-year-old shop owner offered to give her free snacks and called her to come inside. When she refused, the man forced Rekha into his store, raped her, and threatened to kill her if she told anybody. After the attack, the man followed her home and began stalking her. Multiple times, he came to her house when she was alone and her parents were out working. He began appearing at other places where she went, including a playground where she practised sport. For six months, the accused repeatedly raped Rekha and threatened to kill her and her parents unless she kept silent. In fear of her life, she spoke to nobody about the abuse.

Eventually, Rekha became pregnant but did not realise until she felt a pain in her stomach and her family took her to a doctor who informed Rekha that she was six months pregnant. It was then that Rekha confided to her family about what she had been enduring.

Rekha filed a police complaint but officers were slow to take action and the shop owner's family put pressure on the police to drop the case. It was only after a medical report confirmed evidence of rape that

Rekha filed a police complaint but officers were slow to take action

the accused was arrested. The police investigation into Rekha's case is ongoing and the government has not provided her with any counselling or other rehabilitation services. She had to leave her village to have the baby and during her pregnancy, government authorities confined her in a small, dirty hospital room without sufficient food to keep her and her child healthy.

Rekha was pregnant during the COVID-19 pandemic and government lockdown measures meant it was difficult for her family to deliver food to her every day from their village. When activists supporting Rekha complained to the authorities about the poor

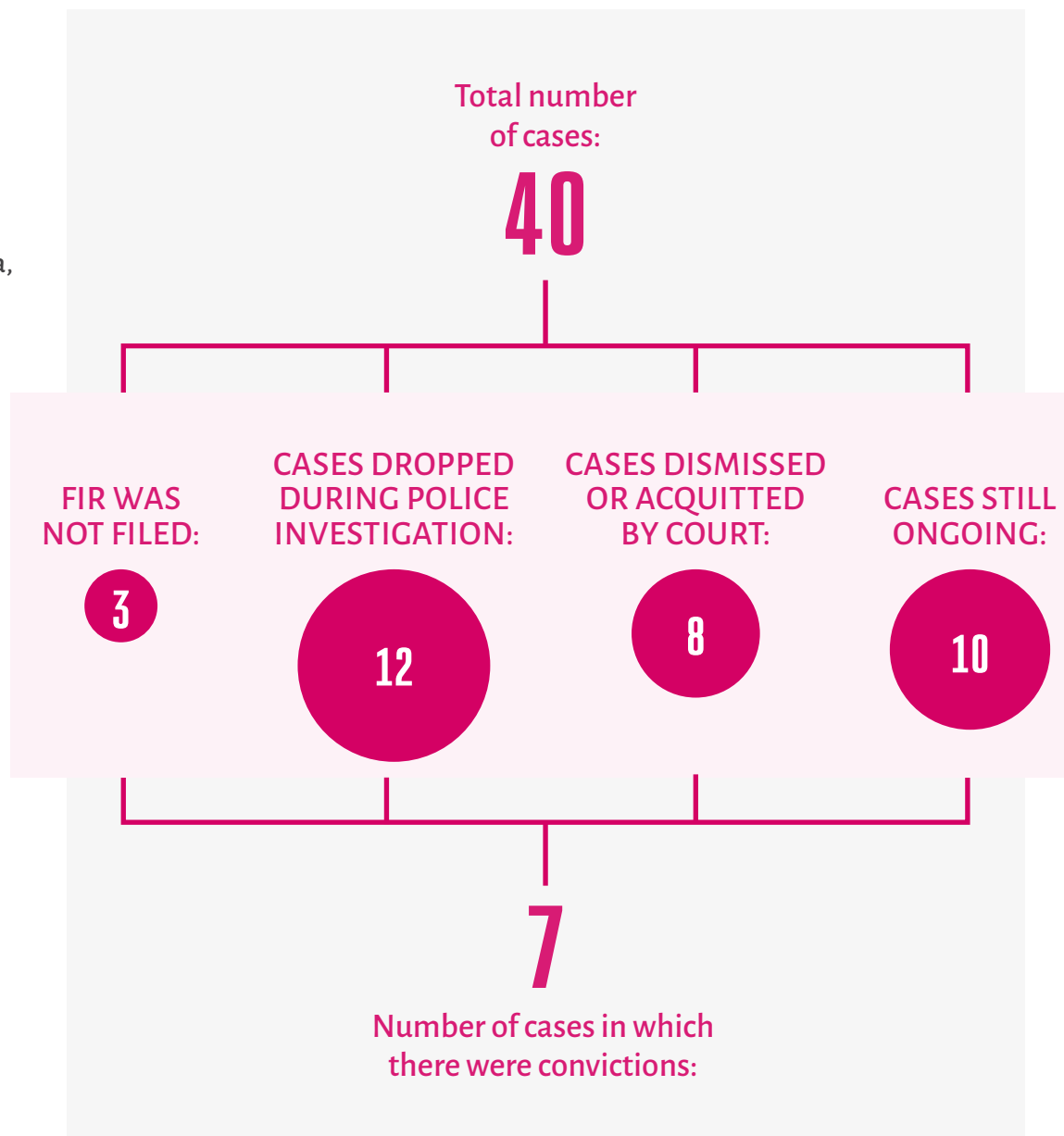
conditions she was being kept in, they were barred from visiting her. However, after further intervention by her supporters, Rekha was eventually moved to a better room and gave birth to her baby.

After her daughter's arrival, Rekha returned home to study for the school exams she had missed in hospital. She is legally entitled to compensation from the government but when she applied she was informed that state authorities do not currently have sufficient resources to make the payment. Without this money it has been a struggle for Rekha and her family to make ends meet and they have opted to put the baby up for adoption.

COVID-19 quarantine rules have delayed progress in the police investigation and the DNA report is still pending. Rekha and her family were provided with police protection until she gave birth. This was subsequently withdrawn and they are now vulnerable to coercion, threats and violence from people in their community who are pressuring them to not pursue the criminal case. However, they are determined to see the case through to the end and are hopeful of eventually obtaining justice.

THE BARRIERS TO JUSTICE

The cases of sexual violence analysed as part of this study demonstrate the severe obstacles to accessing justice that exist for Dalit survivors of sexual violence in Haryana, who face intersectional forms of caste, class and sex discrimination while accessing the criminal justice system. Below we set out some of these obstacles.



Community pressure and stigma

Interference by community groups in rape cases is probably the biggest obstacle to justice for Dalit women and girls in Haryana. Data from the National Family Health Survey indicates that 90% of women and girls who have experienced sexual violence have never sought help.¹⁷ The vast majority of sexual violence cases remain unreported due to the stigma attached to reporting cases of rape. This problem is compounded for Dalit women and girls, particularly when the perpetrator is from a dominant caste. The lack of social, economic and political power on the part of Dalit women and girls makes them particularly vulnerable to coercion and intimidation by dominant caste groups.

Stigma and pressure attached to reporting rape cases

An FIR was filed in 37 out of the 40 cases studied, i.e. in 92.5% of the cases. In the three cases in which an FIR was not filed, the survivors were unable to access any legal remedies due to various factors, including social and community pressure and the culture of silence and stigma around rape, which forced them to stay

silent. We cannot state whether the cases studied in this report are representative or not of the rape cases which remain unreported. Typically, cases come to the attention of Swabhiman Society only when a police complaint is filed or if the survivors or their families seek help with their case.

A Dalit survivor may face threats of retaliation and violence by the dominant caste perpetrators, less support from the wider community and fear of pressure on her family if she speaks out about violence. Such retaliation could include threats of further violence, the loss of home and livelihood and the possibility of imposition of spurious ‘counter’ criminal cases by the perpetrator. Internal patriarchal and sexist cultural understandings within Dalit communities also propel such situations, as survivors who choose to report cases often face stigmatisation and ostracisation from their families and the community.¹⁸

In one case, a Dalit woman was raped by three dominant caste men including the *Sarpanch* (head) of the village. When the survivor went to the police station to register a FIR, she was threatened with sexual and physical assault in the police station itself by the perpetrators and the *Sarpanch* threatened to banish her from the village if she pursued the complaint. The survivor did not receive any help or protection from the police despite these threats being issued in the police station. Without any support from her family (her husband threatened to divorce her if she filed a police complaint), the survivor was dissuaded from filing a police complaint.

Compromises

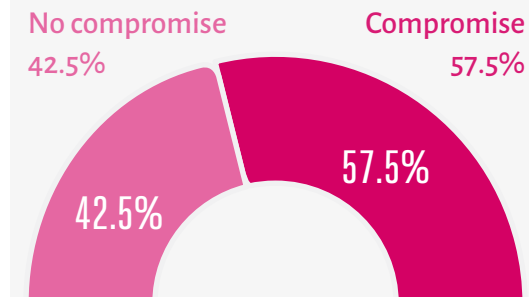
One of the most striking findings of the study is that in 57.5% of the cases (n: 23 of the 40 cases), the survivor or her family was pressured or forced into accepting an extra-legal settlement or ‘compromise’ with the accused person(s), whereby they agreed not to pursue the criminal case.

Such “compromises” in these cases were brought about by the accused and the general community putting pressure on the survivor or her family through:

- **filing of spurious counter-cases with the police** (for instance, in one case, the accused attempted to blame the death of a family member on the family of the survivor and filed a criminal complaint of abetment to suicide against the survivor’s husband)
- **threats of physical violence and assault**, including threats to the life of the survivor, her children or her family
- **use of political influence** with the police and health care providers to impact the results of the criminal investigation
- **societal pressure** through social boycott, or banishing the family from the village (or threatening to do so)
- **economic retaliation** by threatening loss of jobs of the survivor or her family, particularly when they are dependent on the dominant castes for their livelihood

Such compromises are not permitted under the law and are not supposed to be taken into account by courts when deciding rape cases. Irrespective of such compromise, the justice process does not officially recognise it and will continue until the case is officially closed or disposed of by either the police or the courts.

Number of cases which involved a compromise



Supreme Court of India in *Ramphal v. State of Haryana*:

[I]t is imperative to emphasise that we do not accept such compromise in matters relating to the offence of rape and similar cases of sexual assault. Hence the aforesaid compromise is of no relevance in deciding this matter.¹⁹

However, in practice, when survivors are pushed into entering into such extra-legal settlements, there is usually a huge impact on the criminal justice process. The compromise results in survivors either changing their statements to the police, withdrawing their co-operation to the criminal justice process, becoming unresponsive or turning “hostile” as a witness which usually renders a conviction close to impossible due to the disputed evidence. To our knowledge, the police do not make any further enquiries of the survivor as to the reason for her change of heart, nor do they offer to support her in any way to continue the process or decide to move ahead with the case without her participation in the interests of justice.

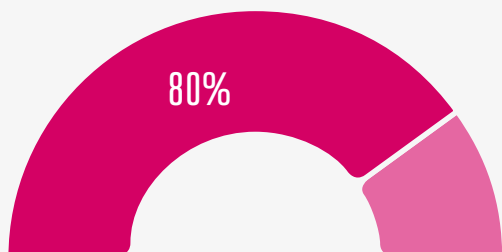
Role of khap panchayats as informal quasi-judicial bodies

Another notable feature of communities impeding access to justice is the role of traditional *khap panchayats* (unofficial village councils) in supporting the accused person(s) and intimidating or coercing the survivor or her family into accepting a compromise. These *khap panchayats* are caste-based community groups, normally composed of dominant caste members which often act informally as quasi-judicial bodies in settling disputes. These *khap panchayats* have also been known to decree

or encourage ‘honour’ killings or other atrocities and attempt to prevent inter-caste marriages.

There was some form of intervention by the khap panchayat members in at least 80% of the cases studied. There was no *khap panchayat* intervention in 2.5% of the cases and for the remaining 17.5% of the cases, no information is available.

% of cases with some form of intervention by the khap panchayat



The Supreme Court has held that *khap panchayats* “take the law into their own hands and amount to kangaroo courts, which are wholly illegal.”²⁰ However, the functioning and influence of *khap panchayats* remains particularly strong in Haryana, with a 2013 study finding that 50% of the respondents accepted the

decisions issued by *khap panchayats*.²¹

Since these *khap panchayats* are usually made up of persons from the dominant caste in a particular village, they often support the perpetrator if he is also from a dominant caste.²² The enormous social and political power wielded by these *khap panchayats* allows them to pressure survivors and their families to compromise the case, including through using their social and political power to intimidate or bribe the police officers investigating the case, threats of economic and physical retaliation, social boycott, banishment from the village or other such means.

In one of the cases supported by Swabhiman Society, a 13-year-old girl was gang raped by a group of 3 men from a dominant caste community. Though her family immediately registered a criminal case, they were threatened with murder by family members of the accused. Many people from the village came together to intimidate and threaten the family, including through threats of social boycott. The survivor’s mother, who was a widow, worked with a family from the same dominant caste as the accused persons and was fearful of losing her job. After the incident, the survivor’s mother had applied for a widow’s pension which was legally due to her. However, the *sarpanch* used his position as panchayat head to retaliate against the family and refused to pay this pension. He eventually paid it out only after members of the Dalit community collectively organised and pressured him into doing his duty. The combined social, economic and political pressure and intimidation imposed by these community members forced the family into compromising the case.

Potential for panchayat members to actively interfere with justice process

Additionally, a customary practice in Haryana is for the police to appoint the *sarpanch* (village headman) as the *Panch* (independent observer or witness) during the on-the-spot investigation of the crime scene in cases of sexual violence. In rape cases against Dalit women and girls, this official role of the *sarpanch* provides *panchayat* members (largely drawn from dominant caste communities) with a greater ability to interfere and obstruct the criminal justice process in rape cases.

Police attitudes, inaction, corruption and discrimination

Out of the 37 cases in which an FIR was filed, 12 were dropped during the police investigation itself - either by the police declaring the case as false, or by citing reason of insufficient evidence and so failing to file a charge sheet. In all these 12 cases, compromises/ extra-legal settlements took place.

In many of the cases which were dropped during the police investigation, the police themselves had actively impeded access to justice, including by pressuring and intimidating the survivor and her family to drop the case, and sometimes even colluding with the perpetrators. The various issues faced by survivors of sexual violence while dealing with the police are discussed below.

Problems related to the FIR

Police refusal to register rape - Despite the fact that it is a criminal offence for police officers to refuse to register an FIR in cases of rape,²³ survivors of sexual violence, particularly Dalit women and girls, routinely face difficulties in ensuring that the police register cases of rape. Police officers often pressure the survivor to drop the complaint or delay registration of the FIR. Such delays in registration of the FIR often has a direct impact on the success of the case, as they can affect the quality of medical evidence and give perpetrators and community members more time to pressure survivors to drop the case among other consequences.

Police failure to inform - Even in cases where the FIR was eventually filed, the police officers often do not provide the survivor with a copy of the FIR, even though the complainant has the right to receive this under the law.²⁴ Most survivors are unaware of their rights under the law and in many cases, even with intervention by grassroots activists and lawyers supporting the survivor, the police either refuse, or inordinately delay providing a copy of the FIR. This becomes a particular problem in tracking the case,

and undermines the ability of the survivor to hold her attackers to account. In other instances, police officers have been known to change the details in the FIR, without informing the survivor, including by amending details of the incident, changing dates (so the accused is able to establish an alibi), deleting names of accused persons, etc.

Police reluctance to register caste discrimination - The difficulty of getting cases filed under the SC & ST (PoA) Act has been widely documented.²⁵ Out of the 40 cases studied for our report, in three cases (in addition to the three for which no FIR was filed at all), though the accused was from a dominant caste community, the police failed to register an FIR under the SC & ST (PoA) Act. Even in the remaining cases, the police registered cases under the SC & ST (PoA) Act only after repeated visits and representations by activists though they are supposed to do so based on the information contained in the complaint. In cases without outside intervention by media, courts or activists, the police is extremely reluctant to file cases of caste atrocities against Dalit women and girls.²⁶

Police attitudes and victim blaming

Due to sexist and casteist attitudes, police officials tend to disbelieve survivors who complain of rape, particularly Dalit women and girls. Instances of police officers using highly inappropriate and abusive language against survivors or their families, including caste-based slurs, is common. The insensitive and often abusive behaviour shown by police officials towards the survivors in turn victimises them further.

In a gang rape and murder case from Kaithal district, when the victim's family went to the police station along with activists to inquire about the progress of the investigation, the police officials treated the activists with respect, asking them to sit down and offering tea. However, their behaviour was markedly different towards the victim's family. The police officers yelled at the family and insulted them as follows: "Oh! So you have come. You are from the Dhanak community (a Dalit caste). Who will take the name of your caste? What do you want? We told you that if we get any information, we will inform you. Then why do you keep coming here? Go...and don't come here to trouble us." The victim's family also believes that in this case, after taking a bribe, the police changed the date of the incident in the FIR so that the accused could show that he was in another city at the time of the offence.

Rape survivors turned away from police stations - In an effort to address the issues relating to police attitudes and lack of sensitivity, the 2013 criminal law amendments made it mandatory for information in cases of sexual violence to be recorded by a female police officer.²⁷ One of the means by which the 2013 amendments were implemented was through setting up all-women police stations. Police officers in other stations often turn away rape survivors and ask them to approach the all-women police stations, even though it is not legally required for rape cases to be registered only in all-women police stations. Haryana has set up only 34 all-women police stations,²⁸ so in many districts there is only one all-women police station for the entire district. Requiring rape survivors to travel further away, sometimes over long distances, to file complaints at these specific all-women police stations often adds to their distress, as opposed to benefiting them; it makes the process of pursuing justice practically more difficult and more costly.²⁹

Police lack training and also discriminate - Requiring sexual violence complaints to be registered by women police officers has not resulted in the expected improvement in the treatment meted out to rape survivors, as female police officers lack training and are also often insensitive towards rape survivors. Further, when the survivor is from the Dalit community, police officers (whether male or female) most of whom are from dominant caste communities, also discriminate on the basis of caste and are therefore prone to disbelieving the survivors due to their caste and are influenced by the political and economic power often held by the dominant caste perpetrators.

Lack of caste diversity in the police

Haryana reserves 15% of its posts for police personnel from Scheduled Caste communities. However, despite this reservation quota, only 6.15% of total posts in the police are filled by Dalit police officers. This means that Haryana has filled only 41% out of the reserved posts and is one of the worst states in the country when it comes to meeting this quota, second only to Uttar Pradesh.³⁰ Additionally, women police stations rarely have Dalit police officers.³¹ This lack of diversity and general caste-based discrimination in the police force itself impacts the treatment of Dalit survivors of sexual violence by the police.

In a 2014 report to the Human Rights Council, the United Nations Special Rapporteur on Violence against Women highlighted the violence and “multiple and intersecting forms of discrimination” faced by Dalit and Adivasi women and noted that there are numerous complaints of “de facto caste-based discrimination, perpetrated by police officers, public representatives and community members, with regard to access to services.”³²

Corruption within the police

Another major issue is that of corruption within the police force. In some cases, it is alleged the police take money from financially influential accused persons and direct the evidence in their favour which can result in the filing of fake counter cases against the victims.^{xi} Many times, the police also pressure the survivor into a compromise, even though the police are not legally allowed to settle such cases.³³ Such acts are prohibited under section 166-A of the IPC which makes it an offence for public servants to knowingly disobey, to the prejudice of any person, any direction of the law regulating the manner for conduct of a criminal investigation.³⁴ However, to our knowledge, police officers are hardly ever prosecuted or otherwise held accountable for such an offence.

For example, in one case, the principal of a school was accused of raping one of his students, an adolescent Dalit girl. The perpetrator, who was from an “upper” caste community, rallied his community members and the village panchayat to put pressure on the survivor’s family to settle the case. He also reportedly bribed the police who then delayed the investigation and also pushed the survivor’s family to agree to a compromise. With the survivor and her siblings being forced to leave the school where the perpetrator was the principal and facing overwhelming pressure from all sides including the police and community, the survivor’s family was forced into accepting a settlement on her behalf. The police then closed the case.

^{xi} See generally Transparency International India & Local Circles, *India Corruption Survey 2019*, which found that 44% citizens of Haryana had paid bribes in the past year, with bribes to police being the top area of corruption.

SURVIVOR STORIES SAVITRI*

*Names have been changed

Like many in India's marginalised communities, Savitri and her husband Parshu work as labourers in the informal sector, where employment is badly paid, insecure, and often involves toiling long hours in exploitative and unsafe conditions.

Parshu borrowed money from a man called Aman but struggled to keep up with the repayments. One day Aman, who was from a dominant caste, came to collect money and when Parshu asked for more time, Aman began beating him. Later that evening he returned with a family member and the pair shouted caste-based slurs at Parshu and Savitri. The couple telephoned the police asking for help, but nobody came.

Aman brought 20 more people to attack Savitri and Parshu in their home. The mob cut off the electricity to the house and under cover of darkness, they beat Parshu and his brother. As for Savitri, they battered her with punches, clubs and sticks, tore her clothes and raped her.

Upon hearing the dreadful noise, neighbours rushed to the family's rescue and the assailants fled. However, before leaving, they threatened Savitri and Parshu

that if they reported the attack to the police they would be killed. Traumatized by their experience and in fear of reprisals, the couple did not make a police complaint. Instead, they went to the hospital to obtain treatment and asked for a forensic medical examination to be done in secret but hospital staff refused to examine them because no police complaint had been filed. Savitri's injuries were so severe that she spent a week in hospital recuperating. Meanwhile, Aman continued his campaign of harassment, breaking Parshu's leg by running him over with a motorbike.

Police officers shouted abusive slurs at the NGO staff supporting the survivor...

Although it is the legal duty of the police to register an FIR when criminal allegations are made, the police officer refused to assist. Instead, he justified the accused's actions on the basis that Parshu owed Aman money. The police officers shouted abusive slurs at the NGO staff supporting the survivor and had them thrown out of the police station.

The police eventually agreed to file an FIR the following day. The backlash in response to the filing of the FIR was swift, with the khap panchayat (unofficial village council) and other members of the community subjecting Savitri and her family to hostility and threats. They were forced to leave their village and their problems were compounded when a false counter-case was filed against them by Aman's family.

Savitri and Parshu were only allowed to return to their home after they agreed to compromise the case. As the couple no longer felt able to testify, this meant that no further legal action was taken and the case was closed by the court. Denied access to justice because of prejudice within the police and local community, Savitri and Parshu continue to face antagonism in their village but feel they have no other choice but to endure it as it is the only way they can remain living in their house.

Lack of effective victim and witness protection

The lack of effective victim and witness protection at the ground level leaves rape survivors and their families vulnerable to threats, retaliation, coercion and intimidation from perpetrators and their families, including through use of physical violence, as a result of which survivors are often coerced into changing their testimony and refusing to co-operate with the investigative or judicial process.³⁵



Police protection difficult to obtain - The national Witness Protection Scheme 2018 has been endorsed by the Supreme Court,³⁶ but it has yet to be effectively implemented by most state governments, including Haryana. The Haryana government posted the legal notification of the state-level Haryana Witness Protection Scheme in the official gazette in September 2020, almost two years after the central scheme was approved by the Supreme Court.³⁷ At the ground level, it still remains difficult to obtain police protection for survivors and witnesses, despite repeated complaints to the authorities. The police often claim unavailability of police officers for provision of protection. It remains to be seen how effectively the Haryana Witness Protection Scheme will be implemented.

Any protection obtained inadequate and short-lived - Another major obstacle to effective victim and witness protection is the lack of cooperation by the police.³⁸ It is seen that even in the few cases where police officers are assigned to protect the survivor, they often sympathise with, or are alleged to take bribes from, the accused persons and therefore do not provide adequate protection or turn a blind eye to acts of the accused persons and their accomplices. Also there are limitations on the amount of time for which the protection is provided - it is usually withdrawn after a few months. In most cases, protection is not provided after the judgment by the trial court has passed, even though the survivor may still be at risk of reprisal from the family or community members of the accused.

In a rape case from 2014, a landlord from the Jat (dominant) caste had raped a Dalit girl and threatened her by saying “*What can you do to me? I have done this to 9-10 girls of your caste*”. After the survivor filed the police complaint, while she was being taken to the medical examination in the police van, the family of the accused and other Jat community members drove their cars parallel to the van to intimidate her. The next day, when she was going to court to give her statement to the magistrate, they stopped her vehicle on the way and threatened to kill her and her family members if she pursued the case. When the survivor attempted to complain about these instances to the Deputy Superintendent of Police, the female police officer who had accompanied her to the medical examination denied the fact that they were harassed by the accomplices of the accused on the way to the hospital. The police officers refused to believe the survivor’s experiences of being threatened and did not take any action. Without protection or support from the police, the survivor, in fear of her life, compromised the case and changed her statement regarding the rape.

Problems relating to the medico-legal examination

Poor implementation of national guidelines on medico-legal care

In 2014, the Ministry of Health and Family Welfare issued guidelines on medico-legal care for survivors/victims of sexual violence (the 2014 Guidelines).³⁹ These guidelines require healthcare providers who carry out the forensic examinations to provide psychosocial support to women and girls who disclose sexual violence, or to refer them to another healthcare provider for such services. They also include protocols for conduct of the forensic examination of the rape survivor to ensure that the privacy, dignity and autonomy of the survivor is respected. However, these guidelines are poorly implemented in many hospitals in Haryana.

Procedures not followed amid allegations of discrimination and poor practice - The prescribed procedures and protocols for conduct of the forensic examination is not followed and caste-based discrimination and alleged corruption among some of the medical health professionals has resulted in them issuing inconclusive reports or medical reports slanted in favour of the accused.⁴⁰ The copy of the medical report is often not provided to the survivor or the victim's family. The conduct of the medical examination is often held up due to delays by the police officers in referring the case to the hospital, or lack of availability of healthcare providers or

equipment in the hospitals. This is despite the 2014 guidelines noting that the value of forensic evidence is “greatly reduced” if the medical examination is done over 72 hours after the rape incident.

In a case from Kurukshetra district, which involved the rape of a five-year-old child, the family of the survivor took her to the hospital around 12:30 pm, immediately after filing the FIR. However, after asking the family to wait because a doctor was apparently not available, the hospital failed to conduct the medical examination for an entire day. At around 3 pm the next day, the staff at the hospital informed the survivor's family that the medical equipment for the forensic examination was not available. The survivor finally had to be taken to another hospital in Sonipat district (over 100 kilometres away), with the support of human rights activists, in order to have the medical examination.

Survivors still subjected to traumatic “two-finger test”

Our study found that the unscientific and intrusive “two-finger test” is still conducted by hospitals in many cases in Haryana as part of the medico-legal examination of rape survivors. This test involves a medical practitioner inserting two fingers into the vagina in an attempt to determine if the hymen is broken and to test laxity. The test is often used

to declare sexual assault survivors “habituated to sex”. Although sexual history is irrelevant in a rape trial, medical evidence of past intercourse is not infrequently used to cast doubt on the allegation, either to suggest a complainant lied about the rape, to imply that the rape wasn't harmful or to suggest the moral impropriety of the complaint and therefore her lack of entitlement to justice. If the hymen is still intact, the test is used to declare that rape could not have taken place, though it is scientifically proven that rape can take place without breaking the hymen. Further, from a human rights perspective, conducting a test on rape victims that has no probative value is a violation of the personal integrity of the women and girls and could cause further trauma to these rape survivors.

Unscientific, traumatising and a human rights violation, the two-finger test was banned by India's Supreme Court in 2013.⁴¹ The 2014 guidelines released by the Ministry of Health also clarify that the two-finger test has no bearing on cases of sexual violence.

Supreme Court of India in *Lillu v. State of Haryana*⁴²:

[U]ndoubtedly, the two finger test and its interpretation violates the right of rape survivors to privacy, physical and mental integrity and dignity.

SURVIVOR STORIES REENA AND ROSHANI*

*Names have been changed

One day, Reena and Roshani went to gather firewood along a dirt road by a field. Both in their twenties, Reena was six months pregnant and Roshani had recently married. The pair was accompanied by six other Dalit women and girls from their neighbourhood. While the group were collecting wood, they were confronted by two men from the Sikh community, one of whom was the landowner.

He began to molest a young girl with the group, grabbing and rubbing himself against her body. She shouted in protest and Reena, Roshani and the other women rushed to her aid.

The attacker called on his mobile phone for others to come and soon a gang of four men arrived with sticks and began to strike the women and girls. Some managed to escape and went in search of help but Reena and Roshani were trapped by their assailants. They were gang-raped by five men and beaten so severely that by the time help arrived, the women were unconscious.

Their ordeal continued in the hospital where medical staff subjected them to a traumatic, intrusive, and

unnecessary medical examination known as the “two finger test” (described above). In this case, the test was particularly ridiculous, being performed on a woman who was pregnant and another who was married.

After the attack, Reena, Roshani and their families faced intimidation and threats of violence from the local Sikh community. The women were warned that if they persisted in pursuing a complaint against the perpetrators, who were from a dominant caste, they would be forced to leave the village. As the two families were not originally from the area, they did not receive assistance from others in their village.

The rapists and their supporters were reportedly able to get a local political leader to co-opt the doctor who was overseeing Reena and Roshani’s case. As a consequence of this alleged corruption, the results of the DNA report from the gang-rape were apparently interfered with to show that the DNA of the five men who had been charged did not match the samples collected during the women’s medical examinations. The allegations against the accused were however seemingly borne out by the fact of the later settlement initiated by them.

Their rapists went unpunished because members of the dominant caste were able to exploit their own privileged social, economic and political position...

Reena gave birth to her baby but endured a difficult pregnancy and delivery due to complications arising from the violent attack she was subjected to and her child still suffers from health problems.

Confronted with overwhelming opposition and struggling in poverty, Reena and Roshani were eventually forced into accepting money in an out-of-court settlement in exchange for withdrawing cooperation in the legal case. As a result, the case was dismissed by the trial court.

Reena and Roshani were unable to get the justice they deserved and their rapists went unpunished because members of the dominant caste were able to exploit their own privileged social, economic and political position to prevent the legal case from progressing within India’s criminal justice system.

Issues related to the judicial process

Of the 40 cases studied for this report, only 25 reached the trial stage. Ten cases of these 25 cases are still ongoing. A trial has been completed in 15 cases (though in one of these cases - a gangrape case - the trial is completed only for two of the accused persons, while the trial of the remaining accused is still ongoing).

Of these 15 completed cases, over 50% (8 cases) were either dismissed by the Court or ended in acquittal. In 6 of these 8 cases, there was a compromise between the perpetrator and the survivor whereby the survivor changed her statement or turned into a “hostile” witness, that is she refuted her original statement. One case was dismissed due to the death of the accused while he was out on bail. In another case, there was an acquittal even though there was no compromise. In that case, the survivor was poor and unable to hire a private lawyer. According to the survivor, the government prosecutor was not interested in the case and did not take it up seriously.

Out of the 30 cases which have been concluded, convictions were only obtained in 23.3% of the cases.

Out of the seven cases in which there were convictions, in three of the cases, not all the accused persons were convicted (all three were gang rape cases). In these three cases, some of the accused were either acquitted

or their trial is still ongoing. In one of these cases, two of the accused persons pressured the survivor into changing her statement regarding their identities. Only the remaining accused, who was a juvenile and came from a poor family, was convicted and sentenced to two years’ imprisonment.

In the 4 cases which ended in a successful conviction for all accused, it is relevant to note that two of the cases were of rape and murder and three cases (including one of the rape and murder cases) involved the rape of very young girls (ages 6 or under).

This sample leads to our conclusion that it remains extremely difficult to obtain convictions in cases other than those deemed to be the most extreme violations such that adolescent girls and adult women struggle to get full justice, while those perpetrators of a dominant class escape liability, even when there is support provided by human rights activists and lawyers to the survivors in these cases. Clearly this system is not effective in deterring perpetrators from committing such crimes since accused persons from dominant classes can count on a more than good chance of impunity.

Some of the specific issues faced by survivors during the trial process are outlined below.

Survivors not advised of their rights

Police officers rarely inform survivors or their families about the legal process or their rights, including their right to a victim’s advocate. The public prosecutors appointed by the state often do not interact with the survivor or her family at all and do not provide them with updates or information as to the process for, or progress of, the case. This disincentivises survivors and their families from staying motivated and continuing to fight the case. There are also reports of public prosecutors pushing survivors to compromise or settle the case.⁴³ In a few cases, the prosecutors failed to even show up for hearings.

For example, in a rape case from Yamunanagar district, after filing the complaint with the police, the family of the minor girl who was raped simply received a notice from the court asking them to attend a hearing. When they went to court, there was no lawyer present for the prosecution and the survivor’s family did not even know whether a lawyer had been appointed.

Survivors denied access to an advocate of their choice

Under the SC & ST (PoA) Act and rules prescribed thereunder, survivors have the right to request that an eminent advocate of their choice be appointed as a “special public prosecutor” in their case. This provision was introduced to inspire confidence in the survivors in the administration of justice.⁴⁴ However, such applications are stymied in a number of ways by the government authorities. Often if such an application is made, the original public prosecutor refuses to appear in the case. This, coupled with inordinate delays by the state to appoint such a special prosecutor, results in the case being stalled.

Survivors subjected to offensive cross examination

Rape stereotypes and myths remain common in the judicial process, particularly in relation to the sexual history of the victim. The defence lawyers, during the trials, ask offensive, insensitive and hostile questions which are often irrelevant. Such questioning is often an attack on a woman’s dignity and is used deliberately to undermine her and her case. Though the Supreme Court has prescribed numerous safeguards to protect the survivors from offensive questions during cross-examination,⁴⁵ these are not usually followed in practice. There are also reports of Dalit survivors and families of victims being intimidated and humiliated by judges and lawyers on the basis of their caste.⁴⁶

Delays in conducting trials

The Code of Criminal Procedure was amended in 2018 to mandate a time limit of two months for the completion of investigation of rape cases by the police. Prior to the 2018 amendment, the law required the completion of police investigation within three months in cases of child rape only.⁴⁷ In addition, the trial must be completed within two months of filing of the chargesheet.⁴⁸ As such, the police investigation and trial together are now required to be completed within four months of filing the FIR.

In the seven cases studied in which a conviction was obtained, the fastest time in which the investigation and trial was completed was around 8.5 months, with the longest case taking 2 years and 8 months between the date of registration of FIR and the issuance of the judgment. The average time taken for completion of investigation and trial in these seven cases was approximately 18 months. All these cases were decided before the COVID-19 pandemic and thus the timelines were not affected by the lockdown. It is anticipated that timelines in ongoing cases will be even longer due to the further delays caused by the lockdown.

In the cases which are still pending, the incident of rape took place between 2017 and 2020. The oldest case which is still pending dates from July 2017. The police investigation in this case was completed within 3 months. However, the trial, which began in October 2017, has not yet been completed even though it has been over three years since the start of the trial. This far exceeds the statutory limit even accounting for COVID-19 delays.

Impact on the survivor/family & lack of support services

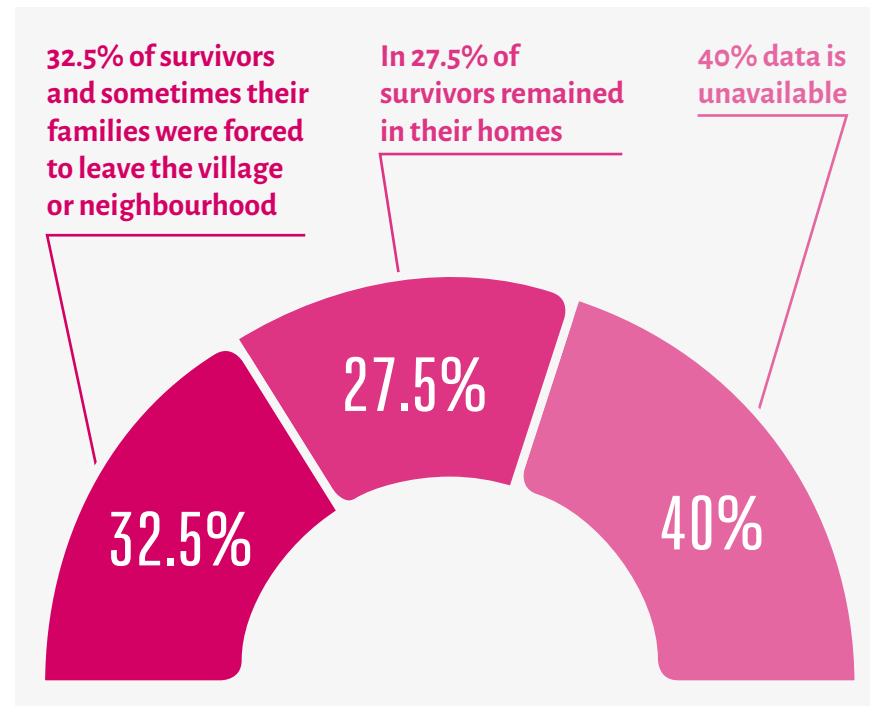
In 32.5% of the cases, the survivor and sometimes her family were forced to leave the village or neighbourhood due to the stigma surrounding the rape incident and/or community pressure. Some 27.5% remained in their homes and data is unavailable for 40% of the cases. In many cases, the survivor and sometimes her family were only able to continue living in the village because they had agreed to a compromise.

An ongoing case pending trial involves the gang rape of a minor Dalit girl by three men (two of whom were from the Jat community - therefore dominant caste - and the third a Dalit). The police informed the family that the accused persons had committed similar crimes in the past. The trial is currently underway and the family is determined to pursue the case. However, the family has faced severe backlash from the 'upper' caste members of the village. One of the members of the *panchayat samiti* (block development council) threatened the survivor's mother and said: "I will get your daughter snatched by upper caste men." Due to the pressure from the community as well as the panchayat members, the survivor and her family were forced to leave the village while they continue to fight the case.

Another concerning finding is that in a number of cases, the education of the survivor (even the survivor's children in the case of rape against adult women) is interrupted, sometimes permanently. Families withdraw girls from school in the aftermath of such cases in fear of reprisals, which means their daughters are kept confined to the home.

The stigma and backlash faced by Dalit women and girl survivors who report rape cases has a life-long impact on survivors and their families, who are uprooted from their homes or have their education interrupted or stopped entirely as a result. In many cases, this has a huge impact on the success of the criminal case as well, as survivors or victim's families are forced into compromising the case so that they will be able to continue living in their homes.

Despite the devastating impact that rape cases have on survivors or the families of victims, there is a woeful lack of good support services provided to survivors or families, as outlined below.



SURVIVOR STORIES KAMLA AND GUDIYA*

*Names have been changed

Kamla is a young mother of four. One night while her husband was away for work, she fed her children and put them to bed. When she woke in the morning, her elder daughter came to her crying that Gudiya, the youngest child, was missing.

At first, Kamla assumed that the six-year-old was playing near their house and went to look for her close by. She searched in vain and eventually reached the next village. It was then that a neighbour confirmed Kamla's worst fears - Gudiya had been murdered and her body dumped at the side of a road.

The horror of her daughter's death was too much for Kamla to bear and she fainted. By the time she regained consciousness, the police had already removed Gudiya's body and Kamla was denied the opportunity to see her child. For five agonising days, the authorities failed to inform the grieving family about where Gudiya had been taken. They received no support from the police or any other government institution, no arrests were made, and Kamla and her husband had no idea what their legal rights were.

Thanks to intervention from human rights organisations, the police eventually provided Kamla

Kamla and her family faced such severe backlash and stigma from members of the perpetrator's community for seeking a conviction that they were forced to move from their village.

with a copy of the FIR. And because Gudiya was from the Dalit community, human rights activists ensured that a charge was also filed for the crime of committing a caste atrocity, in addition to the rape charge.

Following an investigation, police informed Kamla that Gudiya had been brutally raped and tortured before being killed. A neighbour from a dominant caste was charged and the trial progressed quickly, despite associates of the accused attempting to pressure Kamla's family not to pursue the case. Within nine months, the perpetrator was found guilty by the court and sentenced to 20 years in prison with hard labour. In accordance with the law, the family also received a compensation payment of eight lakhs (approximately USD 11,000).

Although legal justice was achieved, Kamla and her family faced such severe backlash and stigma from members of the perpetrator's community for seeking a conviction that they were forced to move from their village. They continue to suffer greatly from the emotional trauma of Gudiya's death and have not received any counselling or other support services from the government.

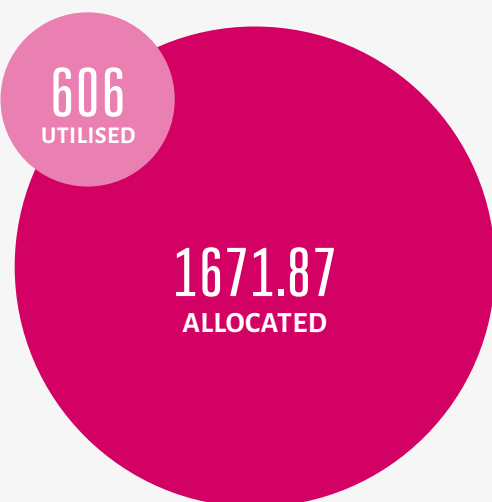
Under-utilisation of funds to end violence against women

The “Nirbhaya Fund” has been set up by the Government of India for implementation of initiatives aimed at enhancing the safety and security of women in the country. These funds are allocated to state governments for various purposes, including setting up of one-stop service centres, safe city projects, funding of the Central Victim Compensation Fund and the like. However, data released by the central government in November 2019 shows that the Haryana government has utilised only around 36% of the total amount allocated to it under the Nirbhaya Fund.⁴⁹

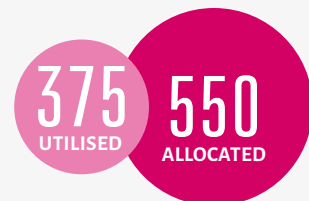
Utilisation of Nirbhaya Fund by Haryana Government

Amounts in lakhs (INR)

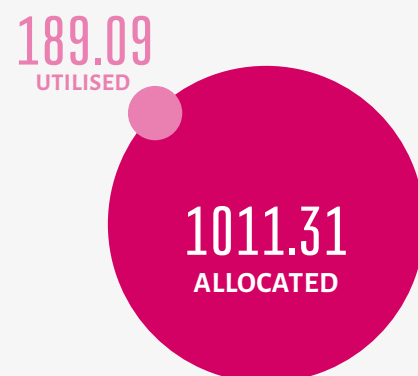
Total funds



Victim Compensation Fund



One-Stop Center Scheme



Problems with functioning of One-Stop Centres

A large portion of the money allocated under the Nirbhaya Fund is set aside for the setting up of One Stop Centres (OSCs). These OSCs were intended to provide integrated support and assistance under one roof to women affected by violence, as well as to facilitate immediate, emergency and non-emergency access to a range of services including medical, legal, psychological and counselling support in one place to fight against any forms of violence against women.⁵⁰ The first OSC in Haryana was set up in Karnal in 2015 and information from the Ministry of Women and Child Development indicates that there are 22 OSCs currently operating in Haryana.⁵¹

Out of the 24 cases studied for this report which took place post 2015, the survivor was not referred to an OSC in a single case. In some instances, even when the survivor or her lawyer made specific requests for provision of shelter, counselling or psychological support for the survivor, she was not referred to the OSC by the police or provided these services. It needs to be further explored as to whether this non-referral is due to issues with the non-functioning of the OSCs, lack of awareness on the part of the police or for other reasons.

As demonstrated in the above figure, as of November 2019, the Haryana government had utilised less than 20% of the funds allocated to it for setting up of OSCs. This under-utilisation of funds is reflected in the functioning of the OSCs, with media reports indicating that some of the OSCs are not operational and many others lacking basic amenities, infrastructure and staff for functioning.⁵² Further, survivors have to wait for long periods of time, which goes against the objective of the OSC to provide speedy access to services.⁵³ In some cases, the staff at the OSC also attempt to mediate and push the survivor into compromising the case due to patriarchal conceptions relating to “honour” and stigma.⁵⁴

Survivors not provided with psycho-social and rehabilitation support services

The lack of psycho-social support services provided to survivors of sexual violence is prevalent. In almost all of the 40 cases studied for this report, survivors were not provided with counselling, rehabilitation or any other support from the healthcare providers, who were more concerned with the conduct of the forensic examination.

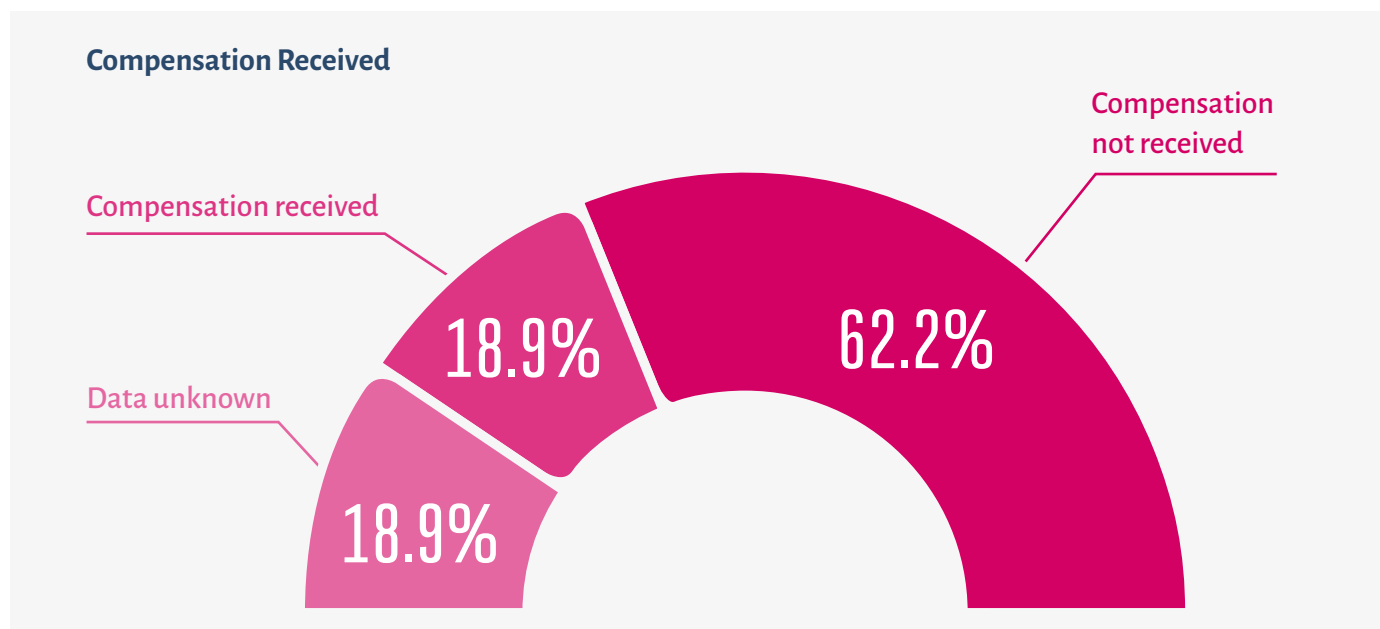
Rehabilitation services and temporary shelters for housing survivors and protecting them from difficult circumstances are often unavailable and, in many of the cases studied, shelter or rehabilitation was not provided to the survivor despite repeated requests to government authorities. Even where available, their conditions are woefully inadequate.⁵⁵ Worse, there are rising reports of sexual exploitation and abuse within these shelter homes, which were set up with the aim of protecting women and children.⁵⁶

Difficulties in obtaining compensation

Section 357-A of the Code of Criminal Procedure, 1973, requires every state to set up a victim compensation fund for payment of compensation to victims of crimes. The payment of compensation is not dependent on conviction and the survivor is entitled to claim a portion of the compensation immediately after filing the police complaint. In 2018, noting the disparity in amounts of compensation awarded under various state compensation schemes, the Supreme Court ordered that all states should abide by the compensation scheme developed by the National Legal Services Authority, under which the minimum compensation payable should be INR 4,00,000 (USD 4500) for rape victims and INR 5,00,000 (USD 6800) for gang rape victims.⁵⁷

Compensation was received by the rape victims only in seven out of the 37 cases in this study in which a police complaint had been filed. Compensation was not received in 62% of the cases.

Even in the two out of the seven cases where compensation was received, the compensation was not received through the official legal process, but rather allotted by the central government or the Department of Women and Child Development in the Haryana government in response to public outcry and extensive media coverage of those rape cases. In another two cases, compensation was only received after conviction, as a result of a court order allotting such compensation.



It has been previously documented how, generally, compensation is inaccessible to survivors, because the survivors or their families are not informed about their rights and are unaware of the complex process for making an application for compensation.⁵⁸ This is also seen in Haryana with regard to Dalit survivors, as often even police officials are unaware of the right of survivors to receive compensation. Survivors and their families also struggle to provide all the documents required while making such applications for compensation. Further, as shown in this study, even where there is access to support from grassroots activists and lawyers in navigating the application process for compensation, it is extremely difficult to ensure that the compensation is allotted by the government authorities and actually reaches the survivor or her family.

In a number of cases, though an application for compensation was made to the Haryana State Legal Services Authority, no compensation was allotted despite the legal requirement. In some cases, the authorities specifically cited lack of funds as the reason for non-payment of compensation. In a few cases, compensation was not received by the survivor or her family even though it was allotted by the court after conviction. For example, in one case involving the rape of a five year-old child from 2018, the judgment of the court in May 2019 convicted the accused and granted a compensation of INR 8,00,000 (USD 10,900). However, at the time of print, that is 18 months after the court order was passed, the amount is yet to be received by the survivor and her family, with state government authorities claiming that they do not have the funds. As highlighted above (see figure on Under-utilisation of Nirbhaya Fund by Haryana Government), the Haryana government has not utilised all the funds allotted to it by the central government under the Victim Compensation Fund so the excuse of lack of funds is entirely insupportable.⁵⁹



RECOMMENDATIONS

The Indian government, Haryana state government and all public authorities under their purview, need to take urgent action to effectively implement the laws against sexual violence and caste-based atrocities and address the barriers to accessing justice faced by survivors of sexual violence in Haryana, including by taking steps to combat the intersectional forms of discrimination faced by Dalit women and girls.

The Indian government should:

- Send a clear message of zero tolerance for sexual violence and accompanying violence meant to silence or intimidate survivors of sexual violence or their families, irrespective of the class, caste or community that the accused persons or the survivors belong to.
- Comply with India's human rights obligations relating to sexual violence, including by implementing the recommendations of the CEDAW Committee in this regard.
- Implement all the recommendations made by the Justice Verma Committee, including police reforms, reforms in the management of cases related to crimes against women and education reforms, most of which are yet to be implemented.
- Support civil society organisations working on caste and gender issues and lift the strict restrictions which inhibit the operations of NGOs, including restrictions on obtaining funding.



The state government should:

General

- Institute state-wide programmes to ensure that all women and girls are aware of the rights under the law in relation to sexual violence. Ensure that Dalit women and girls are made aware of the legal provisions against caste-based discrimination and atrocities and available legal redressal mechanisms.
- Collect state-level caste-disaggregated data on cases of rape, gang rape, rape with murder and other crimes of violence against women and girls.
- Ban *khap panchayats* and ensure that such ban is enforced, including by taking action against panchayat members who threaten, pressure or force rape survivors or their families into extra-legal compromises in rape cases.

Provide supporter services to survivors and their families

- Strengthen support systems for survivors and their families, including through provision of counselling and psycho-social support services, improved access to and improved conditions of shelters for women and girls, assistance with continuing education, rehabilitation programmes and the like.
- Ensure that all One Stop Centres in the State are provided with required amenities, staff and funds for functioning.
- Provide full and regular training for the staff of the One Stop Centres so they are equipped to work with survivors of sexual violence and act appropriately.

Ensure effective implementation of the SC & ST (PoA) Act

- Establish special police stations and Exclusive Special Courts for investigation and trial of offences under the SC & ST (PoA) Act which allow sufficient access by communities.
- Conduct a review by the Haryana State Commission of Scheduled Castes to study the implementation of the SC & ST (PoA) Act, particularly in relation to sexual offences against Dalit women in Haryana and take positive action on the recommendations of the review.
- Protect Dalit and women human rights defenders and ensure that they are not persecuted by either government officials or the public for carrying out their work, including by having a zero tolerance approach against any persons who threaten, intimidate or use violence against human rights defenders.

Ensure adequate resourcing of programmes to prevent and address sexual violence

- Increase allocation of resources towards sexual violence prevention and response programmes, beginning with utilisation of the entire allocation to Haryana under the Nirbhaya Fund.
- Ensure that sufficient funds are allocated for the payment of victim compensation in accordance with the law and the orders of the Supreme Court.

The state government and Haryana police, to improve police responses to cases of sexual violence, should:

- Take strict action, including through filing of criminal cases and taking disciplinary action, against police officers who refuse to register FIRs, tamper with evidence, push survivors or their families to compromise or in any way obstruct justice in sexual violence cases.
- Ensure gender sensitisation and anti-bias training of all police officers. Training police officers on the applicable legal provisions relating to sexual violence, the provisions of the amended SC & ST (PoA) Act and the rights of victims in these cases is also necessary.
- Ensure that every survivor of sexual violence who files an FIR is provided with a support person to explain the legal process and assist them with obtaining legal aid.
- Improve the gender and caste diversity of the police force and voluntary paralegal officers appointed to support victims. At the very minimum, the state must ensure that the reservation quotas for government posts that Haryana has set for itself is met.
- Implement the police reforms recommended by the Justice Verma Committee on Amendments to Criminal Law in 2013, including in relation to improving accountability of police officers and the setting up of an effective complaints process.
- Ensure that panchayat members or the sarpanch (village headman) are not appointed as the Panch (independent observer or witness) by the police during the on-the-spot investigation of the crime scene in cases of sexual violence particularly those against Dalit women and girls.
- Immediately and effectively implement the provisions of the Witness Protection Scheme 2018 and the Haryana Witness Protection Scheme 2020 including by setting up Witness Protection cells in each district, allocating adequate resources to the State Witness Protection Fund and ensuring that police officers and other relevant government officials are made aware of the provisions of the new scheme and are held accountable for implementing them.

The state government and the Haryana State Legal Services Authority should:

- Take measures to increase awareness about the rights of victims under the state victim compensation scheme, including by providing such information in police stations, and support victims in making such applications.
- Monitor and hold to account officials from the District Legal Services Authority who fail to release victim's compensation to rape survivors despite applications by the survivors or court orders.



The state government and healthcare professionals, to ensure survivor-friendly medical examinations, should:

- Adopt and implement the 2014 Guidelines for Medico-legal care for survivors/victims of Sexual Violence issued by the Ministry of Health & Family Welfare, Government of India and ensure that all healthcare providers are made aware of the content of these guidelines.
- Ensure that the Health Department issues directives to all hospitals and healthcare providers regarding the ban on the two-finger test and raise awareness.
- Take action against healthcare professionals who perform the two-finger test, including through disciplinary action by the medical association.
- Conduct the appropriate post-rape forensic medical examination in a timely and sensitive way and provide medical care and counselling services to survivors through state hospitals without insisting on prior registration of a police complaint.

The state government, law officers and public prosecutors should:

- Improve availability of legal aid to survivors of sexual violence and ensure that survivors are informed in a timely way about the criminal justice process and their rights under the law.
- Appoint more women public prosecutors, particularly in sexual violence cases.
- Remove bottlenecks which hold up trials. For instance, to improve timely submission of DNA and forensic reports there is an urgent need to set up additional Forensic Science laboratories and ensure that all laboratories are fully staffed.
- Complete deposition of the survivor and other witnesses on a day-to-day basis once the trial has begun in accordance with the Criminal Law (Amendment) Act, 2013.



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JUSTICE DENIED: SEXUAL VIOLENCE & INTERSECTIONAL DISCRIMINATION

Barriers to Accessing Justice for Dalit Women and Girls in Haryana, India

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