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With this thought, we hereby present to you

W H I T E B L A C K
L E G A L

DALIT RAPE VICTIM'S QUEST FOR JUSTICE

AUTHORED BY - SANGEET SAROHA¹ &

DR. SANTOSH KUMAR TIWARI²

“Dalits” refers to the members of society who have historically been referred to as outcasts or untouchables and who fall beneath the entire caste system. They have been subjected to discrimination and persecution by higher caste groups for generations, despite the existence of rigorous Indian laws protecting the community. Even after 75 years of independence, India has not succeeded in liberating itself from the chains of the caste system and Brahmanical patriarchy-centric ideology. While all Dalits experience violence and discrimination, it is the Dalit women that suffer the most. Dalit women lack fundamental human rights. Respect and dignity continue to be unattainable goals for Dalit women because our policies and legal procedures, despite having the intention of protecting Dalit women's human rights, are unable to do so in practice. They are the most marginalized members of society since the existing caste system and the Brahmanical patriarchy expose them to the triple oppression of gender, caste, and economic deprivation. Their subservient position makes them a target for exploitation by those who are in power, who are therefore free to commit attacks without fear of repercussions as a result. As a result, Dalit women are the most at risk of experiencing violence. The bodies of Dalit women are envisaged as indicators of their caste identity, and rape is used to exert dominance and subjugate Dalit women. Rape is among one of the most heinous types of crime against women as its traumatic repercussions might remain long after the original agony and suffering have passed. The number of rapes committed against Dalit women is growing at an alarming rate. According to the most recent data from the NCRB total of 3870 incidents of Rape against Dalit women have been recorded in 2021 out of which 1285 were minors. On average, 11 Dalit women and girls are raped daily in India. The number of recorded rapes of Dalit women increased by 52 percent between 2016 and 2021. The paper aims to address the plights of Dalit rape victims in their quest for justice.

Keywords: Rape, Dalit women, Sexual Violence, Patriarchy, discrimination, survivor

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INTRODUCTION

The caste system in India, which is founded on ceremonial purity of birth and is a well-known practice in India and elsewhere, is one of the most backward social structures in the world.³ According to Brahmanical orthodox Hindu mythology, the Indian caste system can be broadly divided into four Varnas, or classifications, based on dominance. The so-called "Untouchables" were the fifth varna, or Panchmas, who were excluded from the Varna system. The 'untouchables' were denied access to land, water, education, and other resources under the Brahmanical regime.⁴

DALITS

The term "Dalits" refers to the social groups formerly referred to as outcasts or untouchables who are at the bottom of the caste system. In its original use, the word "Dalit" refers to a person who is poor and downtrodden⁵, but it now also refers to people who have been purposefully and actively broken down by those in positions of power. As per the 2011 census, with an estimated 201.4 million in total, Dalits currently make up around one-fifth of India's (20.6 %) population yet are disproportionately burdened by socioeconomic issues. In addition to continuously doing poorly on practically all indicators of economic well-being, Dalits are India's only underprivileged group left to bear the brunt of the most egregious social humiliation inflicted on them by the long-standing practice of untouchability. Despite the legal protections provided by the law, Dalits continue to be subjected to atrocities that violate their most fundamental rights.

THE PROBLEM

Even while Dalit people as a whole experience violence and prejudice, Dalit women suffer the most. They make up 48% of the country's whole Dalit population and 16% of its entire female population.⁶ For decades, it has been observed that Dalit women and girls have been victims of extreme types of violence, notably sexual abuse frequently accompanied by cruel killings. Dalit women, in particular, face bias because of their caste, gender, and status. In order to subjugate and degrade Dalit males, higher-caste men use the bodies of Dalit women. The

³ Dalit Women Rise for Justice: Status Report (2014-2020), AIDMAM-NCDHRC, 2021, Pg 22

⁴ Ibid

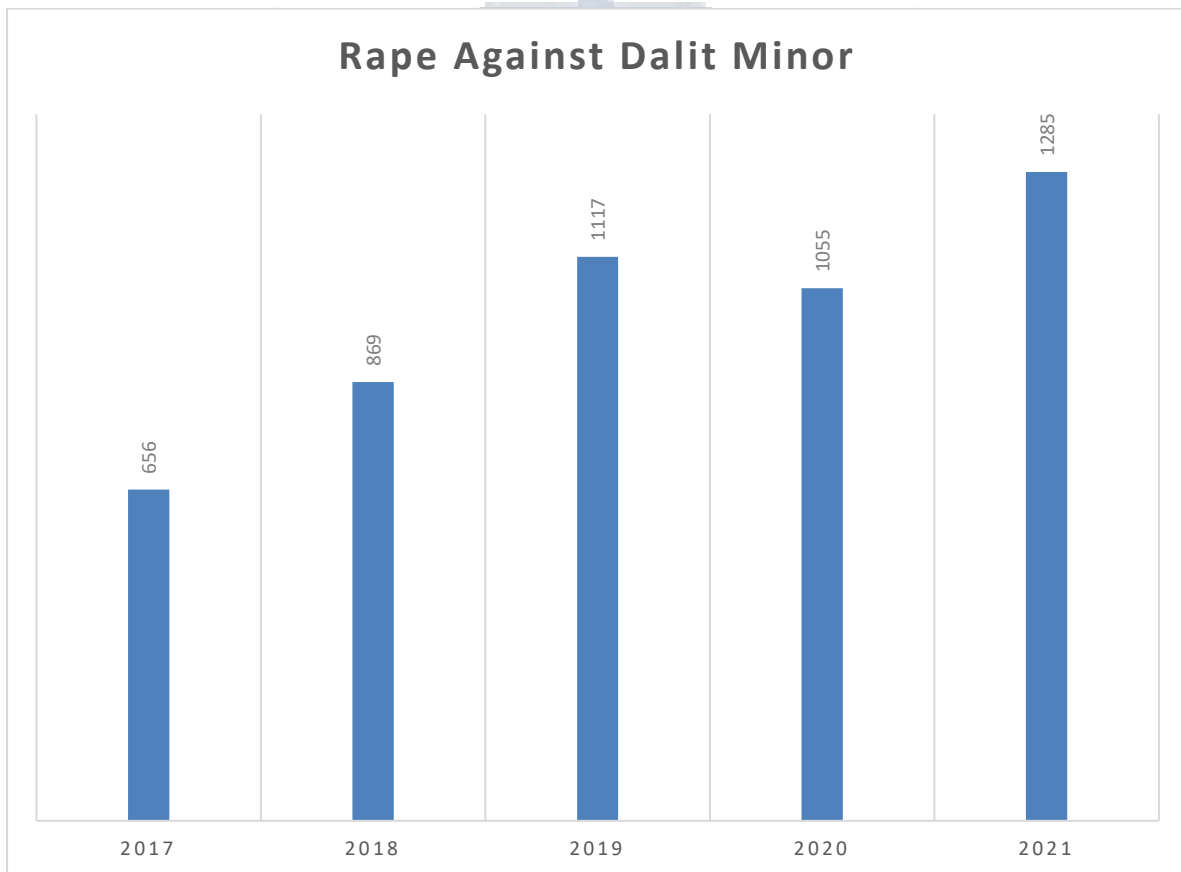
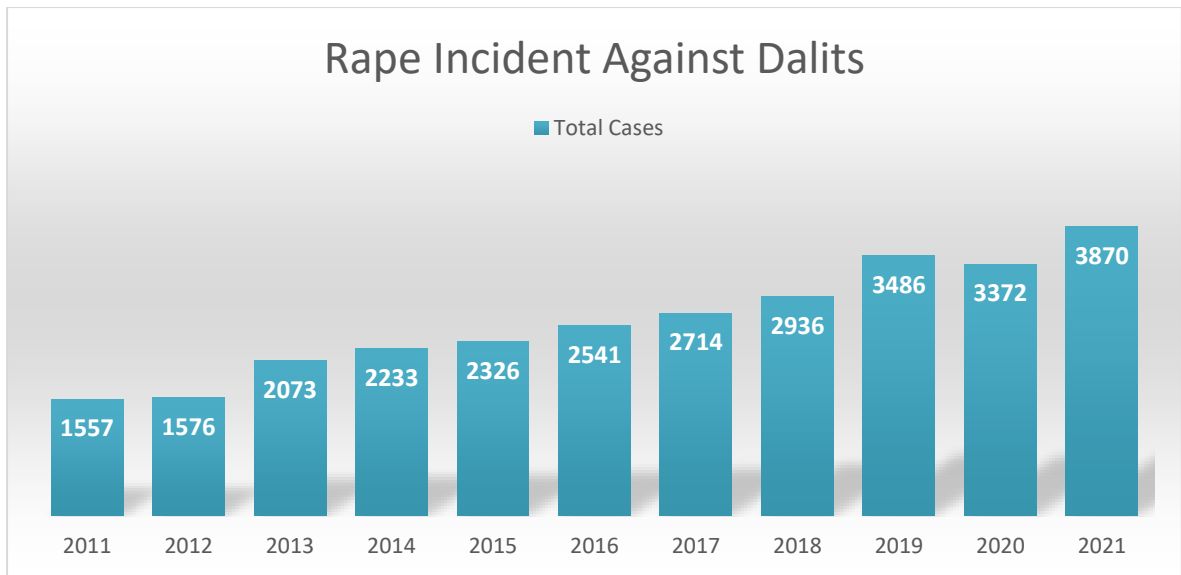
⁵ Saikia, Sailajananda: Discrimination of Fundamental Rights: A Critical Review on the Present Caste Based Status of Dalit's in India, Journal of Social Welfare and Human Rights March, Vol. 2, Iss. 1, 2014

⁶ Kumar, Ajay: Sexual Violence against Dalit Women: An Analytical Study of Intersectionality of Gender, Caste, and Class in India. Journal of International Women's Studies, Vol. 22: Iss. 10, 2021

primary reason for this concern is that any assault on a Dalit woman is an assault on their entire community and their men's masculinity. The rape of a Dalit woman is an act that violates the human rights of the social group to which she belongs, not just one individual. Generally, Dalit rape victims are usually discouraged from reporting such incidents in the first place by embarrassment and a feeling of humiliation. When she has the courage to complain, the police are often reluctant to file FIRs, either due to governmental pressure to keep crime rates low or because of their own caste and gender prejudices caused by their socio-cultural background. Furthermore, even if she is able to move the necessary pieces, there is still a limited chance that she would succeed in getting justice because the conviction rate in Dalit rape cases is on the lower side. They usually lack adequate compensation along with proper legal assistance. Many times the victims have no way to afford the financial costs related to taking legal action against their rapist.

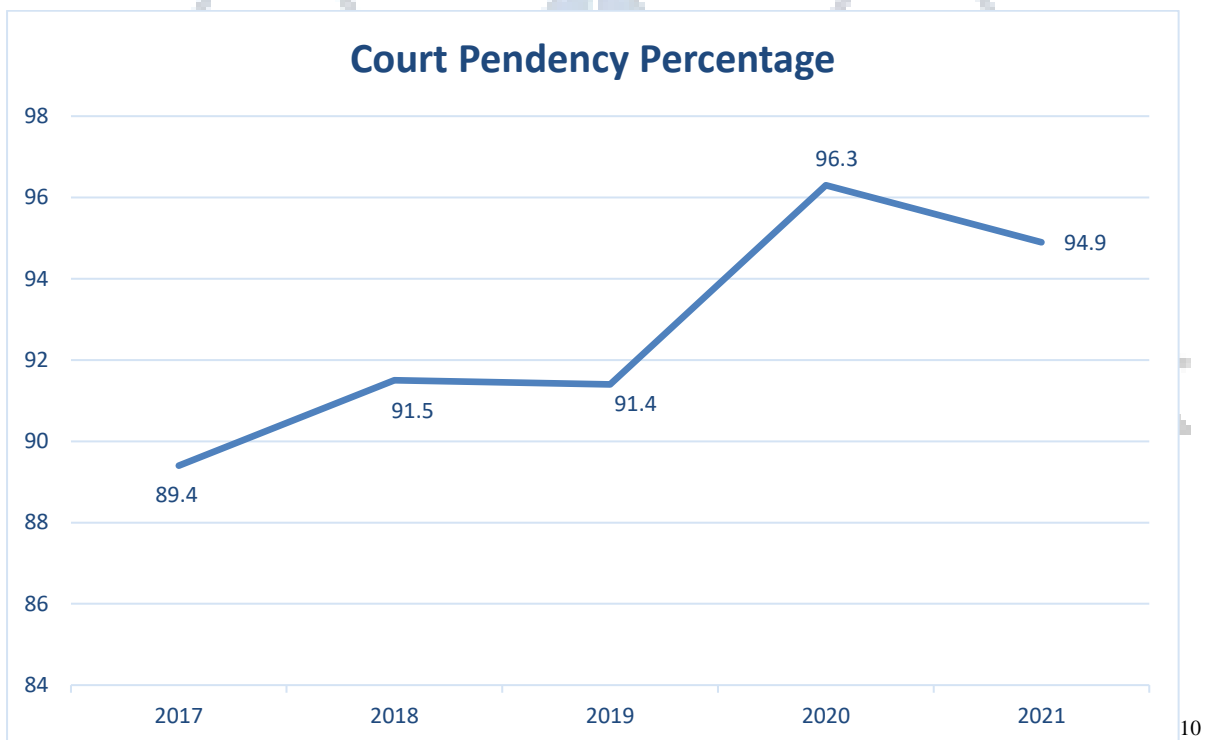
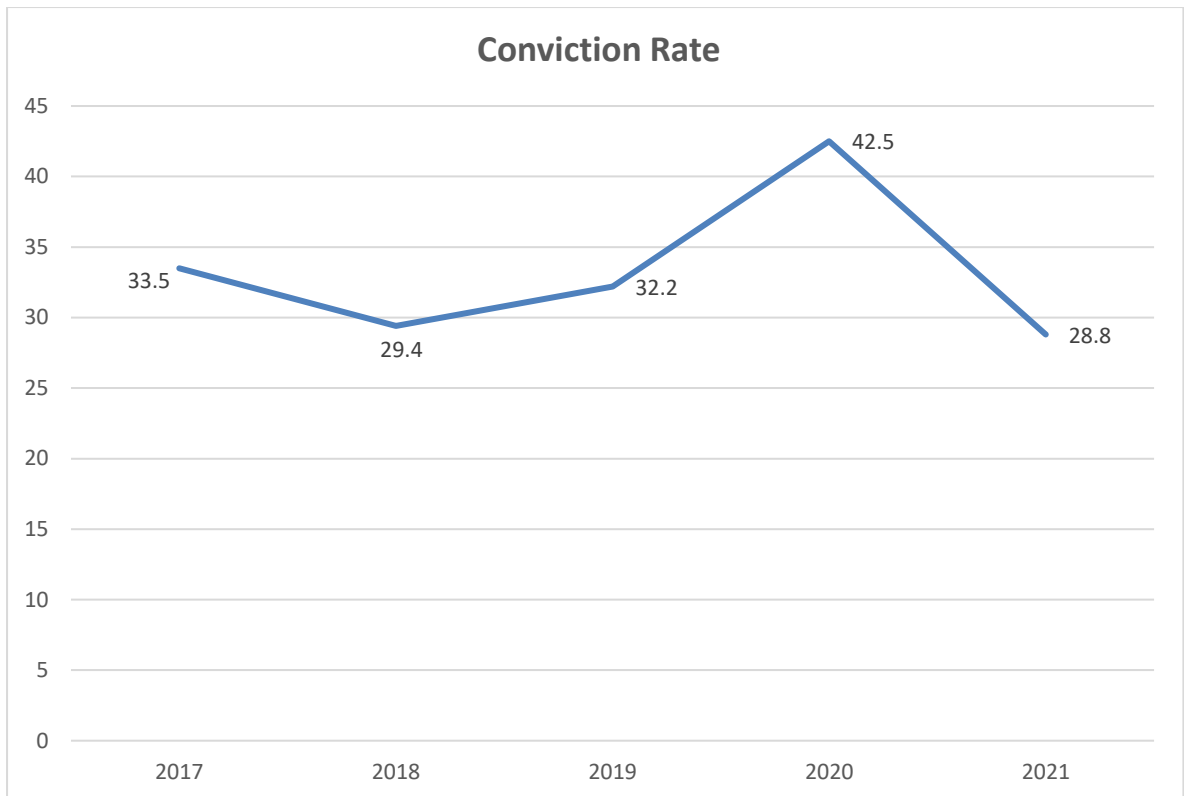
MAGNITUDE OF PROBLEM

In India, Dalit sexual violence victims have a difficult time getting justice through the legal system. According to the National Crime Records Bureau, 3,870 incidences of rape against Dalit women were reported in 2021 out of which 1285 were against minors. This indicates that every day in the nation, 11 Dalit women are raped on average. The number of rape crimes against Dalit women in a decade that were reported between 2011 and 2021 increased by 148%. Rape against Dalit minor girls increased by 96% in the last 5 years. But this is just the very tip of the iceberg. Numerous incidents are either underreported or not reported at all, which prevents them from ever reaching the criminal justice system. Low conviction rates apply to those victims who do make it through the challenging and hostile police and court institutions. As per the latest data available, the conviction rate remains low at 28.8%, and 94.9 percent of cases are still pending at various levels of trials and investigations.



⁷ National Crime Records Bureau, Crime in India, 2011-2021, available at <https://ncrb.gov.in/en/crime-in-india>

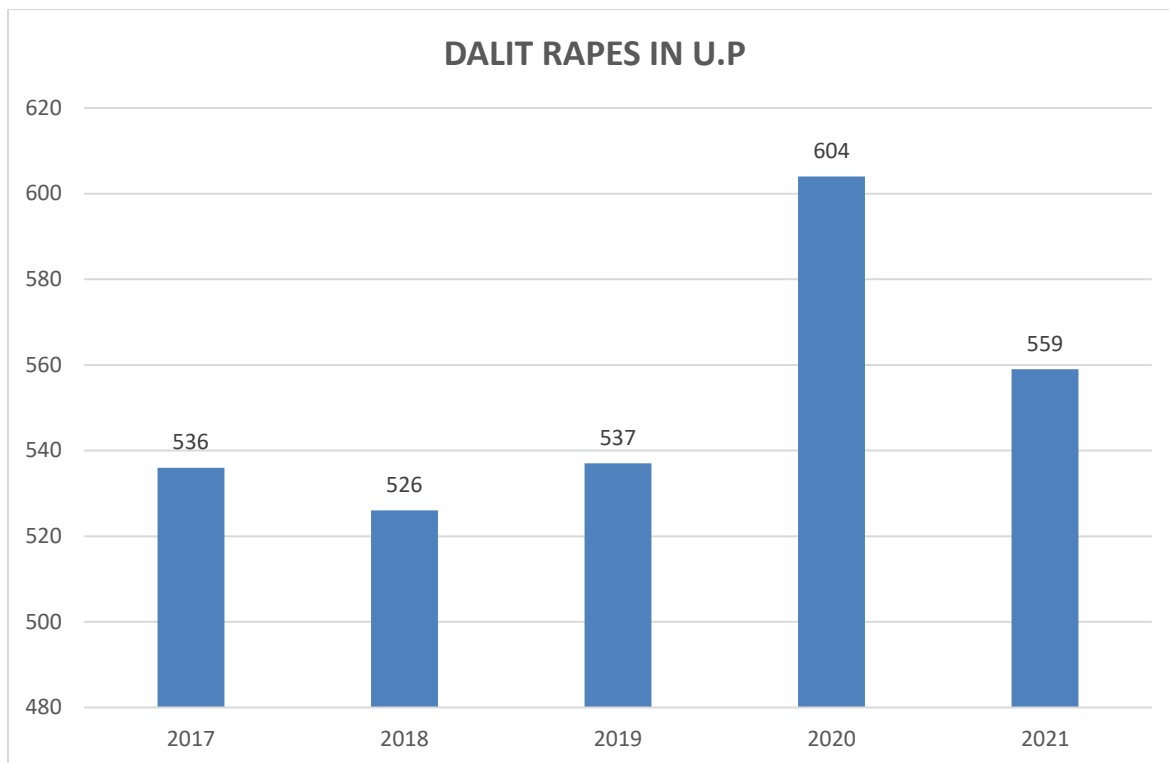
⁸ National Crime Records Bureau, Crime in India, 2017-2021, available at <https://ncrb.gov.in/en/crime-in-india>



The position of the number of Rape against Dalits in Uttar Pradesh is reflected in the figure below.

⁹ Ibid.

¹⁰ National Crime Records Bureau, Crime in India, 2017-2021, available at <https://ncrb.gov.in/en/crime-in-india>



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LEGAL FRAMEWORK

Considering the inequality that people of the scheduled castes faced, the constitution framers made sure to incorporate fundamental rights as well as positive discrimination to put a stop to all sorts of prejudice. Furthermore, protective legislation has been enacted to address societal biases and crimes committed against Dalits.¹²

The Indian Constitution's Preamble commits to uphold "social, economic, & political justice, equality of status and opportunities, and to foster brotherhood while protecting the dignity of the person", therefore encouraging the abolition of caste-based discrimination. In order to guarantee equality, freedom, and a dignified existence for all Indian people, Part III of the Indian Constitution outlines several essential rights.¹³

Considering the hierarchical inequality present in Indian society, Article 14 of the Indian Constitution grants every person including Dalits the right to equality before the law and equal

¹¹ Ibid.

¹² Ajay: Atrocities on Dalits- A Human Rights Perspective, ILI Law Review, Vol 1, Iss. 54, 2010

¹³ Ibid.

protection under the law.¹⁴ Among others, Caste-based discrimination is prohibited by Article 15. The Constitution not only forbids present injustices but also grants Dalits some legal protections to make up for decades of previous discrimination against them. As a result of this "positive discrimination," the state is able to enact special laws and regulations that are beneficial to them.¹⁵

Untouchability, a long-standing practice that resulted in numerous humiliations and rights denials for Dalits is outlawed under Article 17.¹⁶ Untouchability is now a criminal offence with legal repercussions. In a continuous effort to ensure that Article 17 aims are completely fulfilled, Parliament enacted the Untouchability (Offences) Act in 1955. In accordance with the Act, civil rights are granted and remedies are provided for those who have their rights violated due to untouchability.

The Constitution's Article 23 forbids bonded labour in order to end the practice of the lower castes serving the upper castes without complaint.¹⁷ This will stop the dominant castes' abuse of the marginalized castes. The constitution also provides for reservations in elections and Union and State services, to ensure political representation to scheduled castes and improve their economic situation.

THE SCHEDULED CASTE AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989 (POA ACT)

Dalits are still susceptible to atrocities based on caste despite several attempts to ameliorate their socio-economic situation. Therefore, the PoA Act, was passed by Parliament in order to stop caste-based atrocities against Dalits.¹⁸ There is a list of atrocities that are forbidden by the Act. Additionally, it provides enhanced punishment for major crimes under the IPC, such as rape, committed against a member of a Scheduled Caste. The Act establishes a Special Court and Exclusive Special Court for the prompt trial of atrocity offences,¹⁹ appoints a Special

¹⁴ Art. 14: "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth."

¹⁵ Supra note 12.

¹⁶ Art. 17: "Untouchability is abolished and its practice in any form is forbidden The enforcement of any disability arising out of Untouchability shall be an offence punishable in accordance with law"

¹⁷ Art. 23(1): "Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law."

¹⁸ Agrawal Girish & Gonsalves, Collin: Dalits and The Law, Human Right Law Network, New Delhi, 2005

¹⁹ S. 14, The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

Public Prosecutor and Exclusive Public Prosecutor²⁰, investigation to be done by a police officer with a rank of at least Deputy Superintendent of Police²¹, denies the accused the anticipatory bail,²² and disqualifies a convict (more than 18 years) from being released on probation²³. The law also contains measures for victim protection and rehabilitation.

PREVENTION OF CHILD SEXUAL OFFENCES ACT, 2012 (POCSO ACT)

The POCSO Act addresses incidents of sexual offences against minors (including Dalit minors), which prohibits all forms of sexual violence with both male and female children, including various forms of sexual abuse, including penetrative and non-penetrative assault, as well as sexual harassment and pornography.

IMPEDIMENTS FACED BY DALIT WOMEN IN ACCESS TO JUSTICE

FIR REGISTRATION

The Law requires that the police must register an FIR for cognizable crimes like rape.²⁴ If they don't, they could be sentenced to two years in prison.²⁵ However, police officers do not always register FIR, particularly when the victim was economically or socially underprivileged. Dalit women survivors face difficulties in registering their cases. Caste-based remarks as well as other inappropriate and derogatory words used by police personnel against survivors or their relatives are frequent occurrences.²⁶

Dalit victims who attempt to report an offence confront several challenges. The bulk of criminal cases are never even registered. Many studies have documented that Police personnel sometimes exert pressure on the victim to withdraw the complaint or postpone filing the FIR.²⁷ Such delays in filing the FIR frequently have a direct bearing on the outcome of the case, as they can, among other things, undermine the nature of the medical evidence and give offenders and community members more opportunities to convince survivors to withdraw the case.²⁸

²⁰ S. 15, The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

²¹ Rule 7(1), Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995

²² S. 18, The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

²³ S. 19, The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

²⁴ Section 154, Code of Criminal Procedure, 1973

²⁵ Section 166 A(c) Indian Penal Code, 1860

²⁶ Dalit Women Rise for Justice: Status Report (2014-2020), AIDMAM-NCDHRC, 2021, at 72.

²⁷ See Caste Based Sexual Violence and State Impunity, DHRDNet, March 2022; Dalit Women Rise for Justice, AIDMAM-NCDHR, March 2021; Justice Denied: Sexual Violence and Intersectional Discrimination - Barriers to Accessing Justice for Dalit women and girls in Haryana, India, Equality Now & Swabhiman Society, November 2020

²⁸ CEHAT, Role of Medico-legal Evidence in Rape Trials: A Review of Judgments at the Sessions Court in Mumbai, 2020

INVESTIGATION STAGE

BIASED INVESTIGATION

Dalit women suffer injustice due to incomplete and biased inquiries that are driven by caste and gender discrimination. To protect the offenders and undermine the case of Dalit women and young girls, the police purposefully avoided citing the relevant parts of the SC/ST Act and POCSO Act in the FIR.²⁹ As the police write the complaints, they deviate from the account that was told verbally. The names of the accused will be discovered to be absent. The atrocity's description will be diluted. The real abusive language will be removed. Also, there is a deliberate delay in the arrest of the accused, which leads to incidents involving Dalit women and their families later on.

FILING COUNTER CASES

False counter-cases are being lodged by dominant-caste offenders against Dalit victims of atrocity. It is done in retaliation against Dalits who have begun to report crimes. The members of the dominant castes use this tactic in a systematic attempt to ultimately undermine the POA Act.³⁰ When it comes to filing counter charges against Dalits, the police appear to move promptly whereas Dalits frequently have a tough challenge, even with the help of Dalit groups and organizations, merely to get the police to record their complaints. As a result, Dalit victims, the majority of whom cannot afford to hire lawyers or exercise their bail rights, are frequently the ones rotting in jail as a type of double punishment meted out by state authorities operating in cooperation with dominant caste offenders. The alternative choice imposed on Dalit victims is to accept a compromise and renounce all claims to justice for the atrocities committed against them.

DELAYED CHARGE SHEET

The Code of Criminal Procedure and PoA Act stipulates a 60 days deadline for the conclusion of the police investigation in rape cases.³¹ Despite this, there are frequent delays in the conclusion of the investigation and the submission of the chargesheet. In situations involving sexual offences against Dalit women, the investigation officers take an excessive amount of

²⁹ Caste Based Sexual Violence and State Impunity, DHRDNet, March 2022

³⁰ Justice Denied: Sexual Violence and Intersectional Discrimination - Barriers to Accessing Justice for Dalit women and girls in Haryana, India, Equality Now & Swabhiman Society, November 2020

³¹ Section 173, Code of Criminal Procedure, 1973 & Rule 7(2) SCs & STs PoA, Act 1989

time to file the charge sheet. Delay in submission of charge sheet within the statutory delays the outcome of the cases and gives the accused opportunity to tamper witness and shreds of evidence.³²

FORENSIC EXAMINATION

The Ministry of Health and Family Welfare developed guidelines for medico-legal care of survivors of sexual abuse in 2014 to standardize the assessment and treatment of sexual assault survivors by healthcare professionals.³³ According to these guidelines, medical professionals who perform medical examinations must offer psychological assistance to women who report rape or redirect them to a medical professional who can give that help. Additionally, they provide guidelines for carrying out the survivor's medical examination to guarantee that the dignity, privacy, and autonomy of the survivor are honored.³⁴ Dalit survivors still struggle to access healthcare services and treatment protocols that offer holistic care. The medical personnel frequently treats them in a degrading and abusive way.³⁵

The guidelines oppose the so-called "two-finger test" by limiting internal vaginal inspections to those that are "medically indicated," as well as the exploitation of medical results to make unscientific and demeaning judgments about the victim's "sex habit."³⁶ But in many cases, hospitals still subject rape survivors to the invasive and unscientific "two-finger test" as part of the medico-legal investigation.

WHITE BLACK AT TRIALS

LACK OF EFFECTIVE LEGAL ASSISTANCE

Legal assistance and the protection of one's rights are critical for those who have been victimized. Such help is critical since public prosecutors are typically overworked and underprepared for court appearances. A lack of efficient legal help for victims of sexual assault, particularly those from low-income and marginalized populations, is another problem. Another issue is the quality of legal aid. There have been complaints from victims that legal aid lawyers have failed to appear in court or have not filed their applications on time, and in some cases,

³² Dalit Women Rise for Justice: Status Report (2014-2020), AIDMAM-NCDHRC, Pg 75

³³ Guidelines and Protocols, Medico-legal care for survivors/victims of sexual violence, Ministry of Health and Family Welfare, Government of India, March 19, 2014.

³⁴ Ibid.

³⁵ Supra note 26 at 81

³⁶ Supra note 33

they have been accused of corruption. Another significant issue is that victims of sexual assault are unable to get information about their case that is most recent and relevant.

DELAYED TRIALS

A two-month time restriction has been imposed on the police investigation of rape allegations under an amendment to the Code of Criminal Procedure that was made in 2018.³⁷ Furthermore, the trial must be finished within two months following the chargesheet's submission.³⁸ As a result, the police investigation and trial must now be finished within four months of the filing of the FIR. But it is not being followed in reality. As the pendency percentage for rape cases against Dalit women and girls stands at 94.9% for 2021.

LOW CONVICTION RATE

After the completion of the trial only in 28.8 percent of Dalit rape cases, was the accused convicted, and rest 71.2 percent of cases ended in the acquittal of the accused.³⁹ As per the official record, the conviction rate for the year 2021 is the lowest conviction rate recorded in the last 5 years.

LACK OF VICTIM AND WITNESS PROTECTION

Due to the lack of effective victim and witness protection on the ground, rape survivors and their families are exposed to threats, revenge, coercion, and intimidation from offenders and their relatives. The survivors are frequently intimidated into modifying their testimony and refusing to cooperate with the investigation or judicial process.⁴⁰ The police's unwillingness to work with victims and witnesses is another significant barrier.

CONCLUDING REMARKS

One of the biggest barriers to building an equitable and just society is violence against women. Violence against women in any form is abhorrent. Rape is the most horrific crime that can be perpetrated against a Dalit woman or any woman, yet it has become a tool for settling scores against Dalits, particularly in rural India. Dalit women are the most marginalized members of

³⁷ Section 173, Code of Criminal Procedure, 1973

³⁸ Section 309, Code of Criminal Procedure, 1973 & Section 14(2) SCs & STs (PoA) Act, 1989

³⁹ National Crime Records Bureau, Crime in India, 2021, available at <https://ncrb.gov.in/en/crime-in-india>

⁴⁰ Justice Denied: Sexual Violence and Intersectional Discrimination - Barriers to Accessing Justice for Dalit women and girls in Haryana, India, Equality Now & Swabhiman Society, November 2020, at 23

society since the existing caste system and the Brahmanical patriarchy expose them to the triple oppression of gender, caste, and economic deprivation. Upper castes have utilized violence, particularly rape and gang rape, to subjugate Dalit women and impose fundamental caste and gender inequalities. The number of Rape against Dalit women and girls is on the rise. It shows that the laws already in place intended to protect the rights and dignity of Dalit women and girls are not being properly implemented. As a result, they are more marginalized and become more vulnerable among the vulnerable. Dalit women's fundamental rights to equality, life, and dignity are violated when they are subjected to sexual violence. Dalit survivors' pain is exacerbated by the stigma attached to it and the caste prejudice practiced by state officials, which also serves as a barrier to their ability to receive justice. Dalits are protected and benefited by a variety of anti-discrimination laws and positive-benefit clauses in Indian law, but these laws are not effectively applied or enforced. The police often treat Dalit women in the police station in a disrespectful and indecent manner. They generally refuse to register cases in the first instance. If a case gets registered the relevant provisions of the PoA Act are omitted in several cases. Even when cases get registered, there are delays in the investigations which in turn lead to delays in the conclusion of trials. Due to the lack of effective legal assistance and victim and witness protection scheme majority of cases ends in compromise or acquittal of the accused. For the Dalit survivors, access to justice is hampered by discriminatory attitudes and practices within the community as well as by functionaries under the criminal justice system. Due to the inability to address these problems, legislative and procedural changes have not always had a significant impact on preventing caste-based sexual violence against Dalit women and securing justice for victims and survivors.

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