

**A Hand Book for Human Rights Defenders
On
Fact-Finding & Documentation of
Sexual Assault Cases**



Civil Society Forum on Human Rights (CSFHR)

uninvited
unsolicited
violent
unwanted
non-consensual
unwelcome
forceful
unasked for

asked for
welcomed
agreed upon
mutual
consensual
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welcomed
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mutual
consensual
wanted
invited
solicited

hugs
Snuggled
sexual contact
intercourse
penetration
intercourse
kissing
hugs
k

penetration
intercourse
Snuggling
hugs
touching
hugs
touching

Learn what sexual assault is. Know your rights, set boundaries,
practice active consent, be an empowered bystander.

THE NEW SCHOOL

SEXUAL ASSAULT AWARENESS KNOW IT, LIVE IT

Yes means yes.

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Sexual Assault Cases**



**Civil Society Forum on Human Rights (CSFHR)
NAWO, JANA VIKAS, CSNR**

A Hand Book for Human Rights Defenders on Fact-Finding & Documentation of Sexual Assault Cases

Civil Society Forum on Human Rights (CSFHR)

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NO. : _____/SCW (O)

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MESSAGE

I am glad to know that Civil Society Forum on Human Rights (CSFHR) is publishing a booklet for Human Rights Defenders on “Fact finding and Documentation of Sexual Harassment cases”. Hope, this book will help the grassroot human rights defenders at large to fact find & document the cases of sexual harassment and also will help the victims in the process of getting justice.

I compliment such efforts of CSFHR and wish them all success.

Lopamudra Baxipatra
CHAIRPERSON

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PREFACE

Violence against women is a pervasive and increasing phenomenon. According to the National Crime Records Bureau, an average of 92 women is raped in India every day. The total number of reported rapes rose to 33,707 in 2013 from 24,923 in 2012. While reports continue to increase sexual assault remains an unreported crime. Reasons that victims do not report include those related to the nature of the crime, such as embarrassment, humiliation and fear of retaliation. Some victims also fail to report out of their fear of treatment by the justice system. On the one hand the victims are not able to get justice and on the other hand the defenders working for them are found to be threatened and victimized. Human Rights Defenders (HRDs) are mostly seen to be clueless about the appropriate procedures of fact-finding. Therefore, it is important to note that, fact-finding and documentation on sexual assault cases are quite different from regular fact-finding and it involves handling the subject matter more sensitively and precisely.

With this aim to capacitate their knowledge and skills of the defenders on fact-finding, documentation and attaining justice, CSFHR is happy to publish "A Hand Book for Human Rights Defenders on Fact-Finding & Documentation of Sexual Assault Cases." Although it is prepared primarily for the Human Rights Defenders, it is hoped that it will prove useful as well for Human Rights Institutions, individuals and the broader society in dealing with cases of sexual assault.

We do express our sincere thanks to Saumya Uma, lawyer and a women's rights activist and Assistant Professor at the National Law School of India, Bangalore and Kurity Roy, human rights activist and secretary of Banglar Manabadhikar Suraksha Mancha (MASUM). The handbook seeks to integrate and consolidate their expertise on the subject of fact-finding and documentation. The handbook incorporates materials and inputs in the training programmes on Fact Finding and Documentation of Sexual Assault cases organised by Odisha State Commission for Women, NAWO and CSFHR in 2014 and 2015, where Saumya Uma, Kurity Roy and others have contributed as the resource persons. The handbook also includes works of many non-governmental and humanitarian organizations such as Human Rights Law Network and Amnesty International.

We are thankful to Odisha State Commission for Women for their collaborations to organise the training workshops.

We also express heartfelt thanks to NAWO, Jana Vikas and CSNR for their constant cooperation in our efforts to strengthen the civil society in protection and promotion of Human rights.

Last but not the least, CSFHR wishes to convey hearty thanks to Troicair (Ireland) for their encouragement and financial support to bring out this handbook.

Sincerely,
Dhirendra Panda
Convener
Civil Society Forum on Human Rights (CSFHR)

Introduction to Women Rights

Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible¹. According to the Protection of Human Rights Act 1993 "Human Rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.

"Women's Rights Are Human Rights"(a term used in the women's rights movement and became a slogan at the United Nations Fourth World Conference on Women in Beijing.). All human beings are born free and equal in dignity and rights. Yet, 60 years after these words were first enshrined in the Universal Declaration of Human Rights, many women still struggle daily to have their most basic rights protected.

Non-discrimination and equality between women and men are central principles of human rights law. Both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights prohibit discrimination on the basis of sex and guarantee women and men equality in the enjoyment of the rights covered by the Covenants. Article 26 of the International Covenant on Civil and Political Rights also provides for equality before the law and equal protection of the law.

CEDAW enshrines the principle that women are entitled to have their human rights protected on an equal basis with men. The

The United Nations, Office of the High Commissioner of Human Rights, What are human rights?

Convention defines discrimination against women as "...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

Human Rights Violations Related to Women

The constitution of India has granted equal rights to the men and women. Although various efforts have been taken by the government to improve the status of women in India, the dream of gender equality is miles away from becoming a reality.

Violence against women can fit into several broad categories. These include violence carried out by 'individuals' as well as 'states.' Some of the forms of violence perpetrated on women are rape, domestic violence, dowry deaths; witchcraft related murders, sexual harassment, female infanticide and female foeticide, child marriage, acid attack, human trafficking and forced prostitution, honour killings, dowry violence, marriage by abduction and forced marriage.

FACT-FINDING

What is a fact-finding?

- Is an important part of Human Rights monitoring.
- Is a process by which the facts relevant to violation of human rights are determined, gathered and verified on the basis of standard human rights law.
- A mission / visit instituted by an NGO, group of individual activists to gather & ascertain relevant facts / information related to an alleged human rights violation / concern.

- The Human rights violation could be committed by state or non-state actors.

Why do we do fact-finding?

- To improve protection of Human Rights
- To reinforce state responsibility to protect Human Rights
- To highlight facts that may not have been discovered or highlighted earlier
- To draw public attention to procedural irregularities / cover ups / scuttling of justice
- To highlight indirect complicity of perpetrators this may not be obvious
- To seek urgent assistance for victims / survivors
- To highlight issues for urgent action
- To identify problems, diagnose their causes, consider potential solutions & help in problem-solving
- To prevent further violations from happening

Why do we do fact-finding on sexual violence?

- Women may be reluctant to report the crime
- Women may have delayed in reporting the crime
- Recording of FIR and investigation may have been improper / done negligently
- To ensure there is no discrimination / bias at play
- To highlight aspects of the violence that may not be visible so far
- To help women access justice through larger support / campaign / advocacy

Basic principles of Human Rights Monitoring

- Safety - Do No Harm: safety of victims, witnesses, others who give information is of utmost importance.

- Use Good Judgment, Consult: No personal judgment. Use one's discretion & common sense at all times and in all circumstances. Consult colleagues or experts when in doubt or in difficult situations.
- **Respect the authorities:** Encourage authorities to improve their behaviour, as the team members cannot take over govt responsibilities or services. Should encourage implementing govt policies and practices that will continue even after the operation has ended.
- **Credibility:** Credibility is crucial to monitoring. Do not make false promises that cannot be fulfilled. Unless credibility is ensured, victims and witnesses will not trust the team, cooperate with it and give reliable information.
- **Confidentiality:** Persons interviewed should be assured of strict confidentiality of the information given. Special measures should be taken to safeguard the confidentiality of information gathered - protect identity of victims and witnesses, use of passwords, codenames.
- Consistency, Persistence, Patience: Collecting credible information of a HR violation can be a long & difficult process. We cannot expect instant results. Respond to urgent cases, but persist in getting information and in ensuring follow up with govt authorities.
- **Accuracy, Precision:** Accurate and precise information is possible through well-documented reports. Rumours, unsubstantiated or ambiguous, unverified statements should be avoided. Precise questions should be asked - example, in an attack, not just whether a person was beaten but how many times, to which parts of the body, with what weapon, where, by whom etc.

- Impartiality, Objectivity: Violations by all parties should be investigated with equal thoroughness. When collecting information, consider and weigh all the facts. Objective attitude and appearance should be maintained at all times.
- Sensitivity to Local Context, Gender-sensitivity: Have sensitivity to the trauma suffered by the victim-survivor. The questioning should not cause repeated trauma or vicarious victimization.

Stages / processes in fact-finding

- Intake of initial information
- Fact-finding
- Analysis to arrive at findings
- Organising & recording, creating & storing database
- Intervention & communication (reports, press conferences, workshops, public meetings)
- Analysis of trends & patterns

Fact-finding on sexual violence: composition of the team

- Ensure adequate no. of women in team
- All team members should have a reputation for being gender-sensitive
- Have experts from legal, medical, psychological fields
- Have local experts who are familiar with the cultural context, geographical area, language
- Make a small, strong team to avoid intimidation and being conspicuous
- Fair representation of religious or linguistic minority / dalit / adivasi / LGBTIQ community (LGBTIQ stands for Lesbian, Gay, Bisexual, Transgender, Intersex and Questioning) where relevant

- Add academic / government official with noted credibility / retired judge for added impact

Information Gathering, Corroboration and Assessment of Evidence

Information Gathering: Methodology of Events

What happened?

- Determine act (a rights violation - killing / torture / rape)
- Act can be a commission (by state & non-state actors) or omission (by state actors)
- Determine event (series of related/simultaneous acts, from beginning to end) e.g. arrest illegal detention rape / torture

To whom ?

- Individual victims / survivors
- Groups (families / communities / organisations / castes / classes / ethnic or religious group)

By whom ?

- Individual perpetrator or group
- State or non-state entity
- Their name, age, address, marital status, employment status, where employed

How ?

- Direct means - commission - use of weapons etc
- Indirect means - gave orders / planned / prepared for the violation, by enforcing a discriminatory law / misusing legal provisions
- Active - personally carried out the attack
- Passive - was an accomplice / was present at the site / omission of a state official in performing his duty

Where & when?

- State / district / town or city / village
- Specific places - police station / jail / remand home / government homes for children or women / orphanage / hospital / workplace / school or college / ashram
- Year / Month / Date / time

What action was taken?

- Interventions made
- Legal / medical processes undertaken

Who took the action?

- Police / magistrate / medical officer / CID / CBI / Investigation Officer (IO) / family / community

COLLECTING EVIDENCE**Collecting background information:**

Collecting Background Information may include:

- What is the status of women in the society?
- What are the power dynamics in the relevant society? (Dalits-upper class, religious majority-minority etc.)
- Have there been past incidents of violence against women in the area?
- How is women's virginity or sexuality considered?
- How is violent behaviour within the family considered?
- What are the anti-women customs prevalent in the society? (Dowry, child marriage etc.)
- What are the medical consequences for the victim in the context of the situation in her place (i.e. prevalence of sexually transmitted diseases, including HIV)?
- Are there any institutions or professionals working with rape victims? If yes, how accessible are they to the woman?

- Are there any facilities for medical check-ups for STDs, including HIV/AIDS?
- What are the facilities and provisions for reproductive health (including abortion)?
- Are women likely to report acts of sexual violence?
- Are there any legal professionals specializing in cases of rape?
- Are rural and/or poor women likely to find access to such professionals?
- Are police officers specially trained to deal with victims of sexual violence?
- Are police officers likely to discourage women who have been raped from filing a complaint?
- What are the social and economic consequences (i.e. unable to work because of trauma or pregnancy, ostracism)?
- What are the consequences in terms of her relationship with, or status within, her family or community?
- What are the consequences for the other members of the family or the community?

Collecting evidence of sexual violence

Possible evidence includes a) medical records; b) photographs; c) official acknowledgment; d) official documents; e) autopsy report; f) physical signs / marks; g) mental state of victim; h) testimonies / interviews

1. **Medical records** - Certificate issued after medical examination; injuries recorded; treatment given. There may be biased statements, so this will need to be analysed carefully.

2. **Photographs** - photos of marks of injury on the woman, photo of perpetrator if known to her
3. **Official acknowledgment** - Any statement by a govt official, acknowledging that sexual violence has taken place
4. **Official documents** - police records, court records, FIR, statements of victim-survivor, eye witnesses
5. **Autopsy / post mortem report** - would show cause of death, injuries on dead body of the woman
6. **Physical signs / marks** - This is not necessary in every incident of sexual violence. But where it exists, this can be documented - injuries to genital areas, other parts of the body
7. **Mental state of victim** - this can be recorded. Depression / shock etc. (different women react & respond differently)
8. **Testimonies / interviews** - with victim-survivors, eye witnesses, other experts.

Evidence of sexual violence may not be very obvious; woman may be reluctant to talk about it; others around her may deny such an incident. Developing trust with the woman is important. Note down her words and language - which may only hint at sexual violence

- Look beyond the obvious
- Persevere & persist
- Be extra observant

Assessing the evidence of sexual violation:

- Check reliability of initial source
- Consistency with patterns of violations in that area
- Consistency of medical evidence - get help from a medical expert / be very observant

- Reliability of testimony - survivor's narration -
 - ◆ Symptoms following the rape
 - ◆ Current symptoms & illnesses
 - ◆ Circumstances, locations, persons involved
 - ◆ Sequence and timing of event
 - ◆ Consistency of the testimony

Note : A survivor under trauma may appear inconsistent and unreliable

Documentation :

Stages in documentation: fact-finding documenting acting

Purpose of documentation: a) For preparing a legal case; b) For preparing a campaign

Intended audience: a) National; b) International; c) both

Information needed for a legal case:

- Name and personal details of the victim (date and place of birth, citizenship, etc.)
- contact details for the victim
- specific time and place of the violation or crime
- people involved (perpetrator, witnesses)
- nature of the crime
- legal definition of the crime
- citation of relevant legal provisions (in the domestic system and, if applicable, in human rights treaties)
- Medical evidence and/or certificates.

Information needed for a campaign

- Identification of the main problem to be addressed;
- Context in which the campaign will operate:
- key factors, within the organization and externally, which are likely to affect the overall goal
- potential allies

- potential sources of resistance to the campaign and its message(s);
- the persons who or institutions that must be influenced in order for the campaign to succeed;
- Establishment of concrete objectives:
 - legislative change;
 - change in the practices of a given community;
 - the steps needed to reach the overall goal;
 - the time frame for the campaign;
- Identification of a preferred strategy:
 - partners for the campaign;
 - the difficulties likely to be encountered and how to deal with them;
- Design of specific activities (for example):
 - organizing training sessions, meetings, candlelight vigils, demonstrations;
 - producing leaflets or posters;
 - writing and staging street theatre;

Interviewing:

Why interview persons on sexual violence?

- To give voice to those victim-survivors, who are often forgotten, intimidated and pressurised into silence & validate their experience
- To collect evidence of the crime for fact-finding - when, where, what and how the crime happened
- To understand / document the condition, survivor skills, challenges faced by victim-survivor
- To identify immediate needs of the victim-survivor that need to be met
- To provide avenues for redress

Psychological, social & political constraints in testifying on sexual violence

- Survivors may appear unreliable - The survivor may be confused with dates & vital information, may hold back information, reluctant to talk about the experience.
- May be undergoing various forms of emotion: fear, shame and guilt, self-blame, embarrassment. Do not conclude that they are lying!
- Survivors may exaggerate - does not mean their entire testimony is untrue. Needs to be filtered out.
- Very difficult for survivors to talk about sexual torture - stigma, ostracism, shame, pressure from family & community to remain silent, likely to lose a lot by talking out
- It would be therapeutic for the survivor to speak about her experience in an interview, provided the interview is conducted with due sensitivity.

Preparing for an interview :

- Make a checklist of all information to be obtained through the interview.
- Leave room for modification of questions.
- Build trust with the survivor
- Cross-questioning approach will be counter-productive
- Show the list of questions to a local expert for feedback
- Pens, notepads, voice recorders - check if in order prior to interview
- Seek person's permission for jotting down / recording
- The interview may, in the short run, remind the survivor of painful experiences, and cause trauma - arrange a possible support person beforehand.

Interviewing the Survivor : Do's and Don'ts		
<p>Beginning of the interview</p> <p>Have a private, safe, secure setting - to enable frank and honest testimony without fear</p> <p>Ensure privacy from male family members and dominating / interfering female family members</p> <p>The interviewing team should be as small as possible (2 persons), preferably women</p> <p>At least 1 of the 2 women should act as the translator / interpreter, be familiar with local language</p> <p>Introduce yourself - what you do, organisation you</p>	<p>While conducting the interview</p> <p>Ask open-ended questions</p> <p>Listen to what the survivor says</p> <p>Do not interrupt</p> <p>Seek clarifications if information seems unclear</p> <p>Encourage her to talk</p> <p>Show concern - ask about health, possible physical pain</p> <p>Probe without intimidating</p> <p>Avoid suggesting answers, do not divulge what other witnesses have said</p> <p>Establish clear chronology of events - establish time, day, week, month of incident with reference to domestic schedule</p> <p>Stay calm, make eye contact,</p>	<p>Concluding the interview</p> <p>Ask the survivor if she wants to add anything more</p> <p>Ask if she has any questions</p> <p>Ask the survivor if you can use the information and how</p> <p>Do not make promises you cannot deliver</p> <p>If appropriate, refer the survivor to a local organisation for support</p> <p>Demonstrate support</p> <p>Provide emotional support</p> <p>Do not feel guilty or stressed</p> <p>Take care of your mental health as well</p>

<p>represent</p> <p>State clearly the purpose of the interview & how the information will be used. She should understand consequences of providing the information</p> <p>Acknowledge limits of your work, do not give false promises!</p> <p>Seek permission for voice recording / for taking her photo / for using her name in report</p>	<p>listen with empathy and without being judgmental</p> <p>If the survivor talks non-stop and repetitive politely calm her be gentle, persist, patiently probe</p> <p>If the survivor is crying constantly, depressed, not in a position to talk best is to re-visit her</p>	
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Interviewing family members of survivor and Government Officials

Family Members	Government officials
<p>Interview each member separately, in privacy</p> <p>Cross-check, verify and clarify information that is already available</p> <p>Do not mention what the survivor has told you - she may not have told all details to her family members</p> <p>Assess who is likely to support the survivor, encourage them to provide her emotional support</p> <p>Make no false promises</p> <p>Filter out hearsay evidence</p>	<p>Establish your credibility - use business card, introduce yourself and your work</p> <p>Be respectful to them at all times</p> <p>Be persistent in taking information</p> <p>Do proper homework, gather all background information</p> <p>Make the questions short, crisp and precise - they may not give you much time</p> <p>Observe their demeanour, body language, make a note of it</p> <p>Do not record the conversation unless they permit you to</p> <p>Do not share information given to you by survivor or others you have interviewed - maintain confidentiality</p> <p>Request relevant documents - in writing, if necessary</p> <p>Ask for explanations with an open mind</p> <p>Do not be judgmental</p>

Fact-finding on sexual violence: points to keep in mind

- Sexual violence cannot be condoned / excused under any circumstances
- Both Indian & international law clearly prohibit sexual violence
- Home is not necessarily a safe place for a woman. The perpetrator / abettor may be from the family
- Acts of sexual violence may be committed by an individual / group / state or non-state entity
- Sexual violence may also lead to violation of other rights of the woman
- Ensure documenting affected woman's voice / views / experience
- Be cautious about attempts to blame victim, defame her character, name her a liar
- Observe who are her sources of support & pay extra attention to conversing with them
- Go in smaller teams to make it less obvious, esp for interviews on sexual violence - personal and intimate
- Go to the direct source of evidence; do not rely on hearsay
- Verify and cross check all vital evidence
- All evidence should be corroborated. Questions that get at corroboration include: "Who else did you see there?" (and then check to see if those people saw the witness); and "How do you know this?" (and then check on the witness; source of information)
- Look out for contradictions, seek clarification
- Use your own eyes and ears to observe the general human rights condition. (How is the victim reacting? How are her

community people responding? What is the body language of the police tell you? Is there some hidden / unexplained information?)

CHECK LIST FOR INTERVIEW OF RAPE SURVIVOR

I. INTERVIEW

- Date
- Location of the interview
- Interviewer
- Interpreter
- Others present

II. OBSERVATION: INJURIES

- Marks/scars/bruises
- Missing hair

If rape was accompanied by other forms of torture:

- Fractures
- Deformities
- Burns
- Amputations
- Other distinguishing marks
- Medical certificates

III. OBSERVATION: HOW IS THE INTERVIEWEE BEHAVING?

- Tone of voice (soft, loud, emotionless)
- Gaze (little eye contact)
- Tears (at which point during the interview?)
- Silence or non-stop talk
- Body language (nervous movements, no movements)

- Responses (hesitations after questions, asking for questions to be repeated)
- Other

IV. PERSONAL INFORMATION

- Surname and first name, nick name
- Mother's name and father's name (if relevant)
- Date of birth
- Marital status
- Number of children
- Address
- Ethnic origin (SC / ST etc.)
- Region of origin
- Religion
- Occupation

V. CIRCUMSTANCES OF ATTACK

- When (day, time?)
- Where was the victim at the time?
- Were other persons present?
- Who carried out the attack? (Description of the individuals involved: number, uniforms, whether they were armed)
- What did they say?
- Was violence used?
- Was the victim the only one attacked?
- Were there any witnesses?

VI. CIRCUMSTANCES OF THE RAPE

- Location (detention centre, private prison, home of the victim)

- Were any questions asked?
- Who participated? (number of persons involved; personnel such as security, military, other)
- Did the survivor see a medical officer before/after the torture?
- Other forms of physical torture
- Other forms of psychological torture
- Duration and frequency of rape (several times a day, twice a week)
- Physical pains experienced immediately following the rape
- Mental reactions immediately following the rape
- Was the survivor made to sign any statements?
- Were charges filed against the victim?

VII. CIRCUMSTANCES FOLLOWING THE RAPE

- How long did the victim remain in detention / with the perpetrators?
- Date and circumstances of the release
- Did the survivor lodge an FIR?
- Who accompanied her to the police station?
- What were her experiences at the police station?
- Was a medical examination done?
- If yes, where, by whom, at what time?
- Type of examination and diagnosis
- Did the government investigate the survivor's accusations?
- Circumstances of the trial

VIII. CURRENT SITUATION AND SYMPTOMS

- Survivor's state of health before the incident (i.e. past

illnesses, previous injuries)

- Current physical symptoms
- Current mental symptoms
- Medical or other treatment the survivor is currently receiving
- What does the survivor want?

Adapted from: Amnesty International (1999), Documenting Human Rights Violations by State Agents: Sexual Violence

Report writing

How should the report be written?

- Determined by who is the audience? How informed are they? What would they want to know?
- Accurate & clear
- Reader-friendly
- Objective & balanced, refrain from bias
- Substantiated with facts / evidence, no sweeping generalisations
- Distinguish between established facts, uncorroborated information & perceptions
- Identify standards against which the information obtained is weighed
- Use maps, photographs, drawings, quotes from people generously
- Ensure the photographs used do not divulge confidential information
- Use stories & experiences of interviewed persons
- Use pseudonyms for victim-survivors / key witnesses if danger to them is foreseen

- No factual / spelling / grammatical errors
- Have someone do content & language editing

What should the report contain?

- i. an executive summary;
- ii. the mandate of the sending NGO;
- iii. the reason for the visit and terms of reference of the mission;
- iv. the names of the delegation members, including brief particulars as to their relevant expertise and experience, to assure transparency;
- v. the dates of the visit;
- vi. sufficient background information to enable readers to contextualise the evidence;
- vii. the methodology used during the visit, especially regarding interviews;
- viii. Measures used to protect identity of those interviewed ;
- ix. as appropriate and where safety and confidentiality would not be compromised, a list of the sites visited and organisations and categories of people interviewed;
- x. the applicable law;
- xi. where applicable, complementary secondary sources should be identified as such;
- xii. identification of any circumstances relevant to the mission, including anything that impeded it;
- xiii. the findings of the report;
- xiv. an acknowledgment of any contributions by people or organisations who rendered assistance to the delegation or NGO, where it would not compromise their safety;

- xv. conclusions and recommendations, indicating to whom the latter are addressed;
- xvi. details of any significant developments occurring after the conclusion of the mission.

Sample Fact Finding Reporting Format

- 1. Reference no. :
- 2. Date of the incident:
- 3. Date of Fact finding:
- 4. Source of Information:
(Primary Or Secondary; if secondary then it will be good to attach a copy)
- 5. Fact finding team members' details: (Brief particulars as to their relevant expertise and experience)
- 6. Victim / s Details:
 - a. Name of the Victim:
 - b. Age:
 - c. Religion
 - d. Caste
 - e. Father Name / Husband Name :
 - f. Resident of Village:
 - g. Post office:
 - h. Police station:
 - i. District:
 - j. Contact no. (If any)
- 7. Socio-economic status of the victim /s:
- 8. Perpetrator/s details:
 - a. Name:

- b. Designation:
- c. Office address:
- 9. Map of the place of incidence of offence (optional):
- 10. Background of the case in short:
- 11. Present case details:
- 12. (Individual statements, Documentary evidence available, photographs, etc. can be annexed)
- 13. The law applicable:
- 14. The law or standards violated:
- 15. Contradiction of law with the violation:
- 16. Findings of the report:
- 17. Signature of all fact-finding team members

Follow up activities:

- Post-fact finding - de-briefing with team members
- Translation
- Publication of report by concerned NGO
- Dissemination of the report through
 - ◆ Press conference
 - ◆ Public meeting
 - ◆ Distribution to government sources
- Use the report as an advocacy document to negotiate with the government for improved action / intervention
- Use the report for international
- advocacy
- Monitoring, writing letters to officials to comply with laws & procedures
- Counseling for fact-finders if required

Supreme Court guidelines for rape cases²

- The Complainants of sexual assault cases should be provided with legal representation. It is important to have someone who is well acquainted with the criminal justice system. The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in court but to provide her with guidance as to how she might obtain help to different nature from other agencies, for example, mind counselling of medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station represent her till the end of the case;
- Legal assistance will have to be provided at the police station since the victim of sexual assault might be very well be in a distressed state upon arrival at the police station, the guidance and support of a lawyer at this stage and whilst she was being questioned would be of great assistance to her;
- The police should be under a duty to inform the victim of her right to representation before any questions were asked of her and that the police report should state that the victim was so informed;
- A list of advocates willing to act in these cases should be kept at the police station for victims who did not have particular lawyer in mind or whose own lawyer was unavailable;
- The advocate shall be appointed by the court, upon application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without

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undue delay, advocates would be authorized to act at the police station before leave of the court was sought or obtained;

- In rape trials anonymity of the victim must be maintained, as far as necessary.
- It is necessary, having regard to the Directive Principles contained under 38(1) of the Constitution of India to set up Criminal Injuries Compensation Board, Rape victims frequently incur substantial financial loss. Some, for example, are too traumatized to continue in employment.
- Compensation for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of childbirth if this occurred as a result of the rape.

Delhi Domestic Working Women's Forum versus Union of India and Others (Supreme Court -1995)

Victim statement ?

The statement of the victim shall be recorded by a woman police officer or any woman officer. The statement shall be recorded at her residence or at a place of her choice in the presence of her parents or guardians or relatives or social worker of the locality or any other person in whom the victim has trust. (S. 161 Proviso 2 Cr.PC and S. 157 (1) (b) Proviso Cr.PC)

The statement of a mentally or physically disabled (temporarily or permanently) child shall be recorded with the assistance of a special educator or any person that the child can communicate with. The police officer can take the help of professionals and experts in the field. (S. 26 (3) POCSO Act, 2012)

The statement of a victim shall be recorded by a Judicial Magistrate in accordance with S. 164 (5A) (a) Cr. PC. (S. 154 (1) (c) of Cr.PC) The statement of the child victim shall be recorded at

her/his residence or at the place of her/his choice. The statement shall be recorded by a woman police officer not below the rank of sub inspector in presence of the child's parents or any person in whom the child has trust. (S. 24 (1) POCSO Act, 2012)

While recording the statement of the child victim the woman police officer shall not be in uniform. (S. 24 (2) POCSO Act, 2012) While recording / investigating an offence under POCSO Act, 2012 the police officer shall ensure that the child victim does not come in contact with the accused at any point of time. (S. 24 (3) POCSO Act, 2012)

What is an FIR ?

Any person having information of an offence can lodge an FIR. It is not necessary that the information must be given by the aggrieved person. As soon as information is given to the Police, an FIR shall be recorded without waiting for the appearance of aggrieved party.

If an aggrieved woman gives information herself then the FIR shall be registered by a woman police officer or any woman officer.

S. 154 (1) Cr.PC Provision) - If a mentally or physically disabled (temporary or permanent) victim wants to report the commission of an offence or an attempt to commit an offence, the information shall be recorded by the police officer at her residence or at any place of her choice in the presence of an interpreter or a special educator. (S. 154 (1) (a) Cr.PC Provision)

A copy of the FIR should be given immediately and free of cost to the informant. (S.154 (2) Cr.PC)

If a police officer refuses to register an FIR, it is a cognizable offence. (S.166A (c) IPC)

If information of an offence committed is given to a police station within whose jurisdiction the offence was not committed, that police station must register a 'Zero' FIR and immediately transfer the same to the concerned police station.

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POLICE	DOCTOR	MEDIA	JUDGES
<p>Should intervene in the case with utmost sensitivity. Should register the case as soon as they receive complaint. Should provide legal and medical assistance to the victim. Investigating officer must be a trained lady police officer. Only a lady police officer can talk to the victim and her family in a comfortable and private place, for the statement and accompany the victim to the hospital for Medico Legal Check up (M .L C), and during trails.</p>	<p>Should cater the medical needs of victim with utmost priority. No hospital can deny conducting medical legal check up (M.L.C.) of victim who has come to the hospital without police referral. They have to be sensitive in handling these cases. Should record their findings clearly</p>	<p>Should be sensitive while reporting the issue. Should not reveal the identity of the victim including other details, which is related to the identity of the victim. Should not pressurize any victim and her family members for an interview.</p>	<p>Should conduct in-camera trails for these cases. Should not be a silent spectator while the victim of the crime is being cross-examined by the defence. Should have effective control in recording the evidence of the court. Should ensure that through cross - examination the victim is not further harassed, humiliated and traumatized. Should handle or deal with such cases with</p>

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<p>Investigating officer should produce the victim before a magistrate for recording statement under 164 of Cr.P.C. at the earliest.</p> <p>They should visit the victim's place in plain clothes, and not call the victim to the police station.</p> <p>Investigating officer should be guided by a senior police officer of the department.</p> <p>If a victim gets pregnant due to the incident and wants to terminate the pregnancy, then it is the duty of the investigating officer to get medical termination of pregnancy (M.T.P.) done in a government hospital and should preserve the tissue for further investigation.</p>			<p>utmost sensitivity and appreciate the evidence in totality of the background of the entire case and not in isolation.</p> <p>Court while acquitting the accused on benefit of doubt should be cautious to see that the doubt should be a reasonable doubt. Judges can order investigation.</p>
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Shelter homes and child welfare committees

- On receiving information of an offence under POCSO Act, 2012, if the police officer is satisfied that the child victim is in need of care and protection, then she/he shall record the reason in writing and provide protection to the child immediately / within 24 hours; this includes admitting the child in a Shelter Home or Hospital. (S. 19 (5) POCSO Act, 2012)
- Information about an offence under POCSO Act, 2012 as well as steps taken to provide protection to the child shall be reported within 24 hours by the police officer to Child Welfare Committee and the designated Special / Session Court. (S. 19 (6) POCSO Act, 2012).

Complaint Filing procedures with the NHRIs/SHRIs

National Commission for Women/ Odisha State Commission for Women.

NCW receives complaints through Fax, Email & Post. They also have their online complaint registering mechanism available in their website. However, the online complaint filing system is not available with OSCW. NCW and OSCW receive complaints related to domestic violence, harassment, dowry, torture, desertion, bigamy, rape, and refusal to register FIR, cruelty by husband, deprivation, gender discrimination and sexual harassment at work place.

OSCW receives complaints on

- i. atrocities on women and offences against women
- ii. Deprivation of women of their rights relating to minimum wages, basic health and maternity rights

- iii. Non-compliance of policy decisions of the Government relating to women
- iv. Atrocities on women in custody and take up with authorities concerned for appropriate remedial measures.

Cases falling under following categories are ordinarily not entertained by the National Commission for Women and the Odisha State Commission for Women:

- Complaints is illegible or vague, anonymous or pseudonymous;
- The complaint is that of frivolous or like nature;
- The Complaint relates to civil dispute between the parties such as contractual rights obligations and the like;
- The Complaint relates to service matters not involving any deprivation of women's rights;
- The Complaint relates to labour/industrial disputes not involving any deprivation of women's rights;
- Matter is sub judice before a Court/Tribunal;
- The Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force;
- The Commission shall not inquire into any matter after the expiry of one year from the date on which the Act constituting violation or deprivation of Women's Rights is alleged to have been committed;
- Matter already decided by the Commission.

National Human Rights Commission:

Complaint can be sent by Fax, Email & Post in any language under the Eighth schedule of the Constitution (22 language) but usually most complaint are scribed in English language. Complaint also can be scribed in the same format for lodging complaint in to other commissions also, individual commission also have their individual complaint registering process available in their website.

Complaints not entertainable by the NHRC/OHRC:

Complaints of the following nature shall not be entertained by the Commission and shall be dismissed.

- (a) Complaints which are illegible, anonymous or pseudonymous.
- (b) Complaints which are vague, trivial or frivolous.
- (c) Complaints which do not prima-facie disclose specific violation of Human Right.
- (d) Complaints which are pending before a State Commission or any other Commission duly constituted under any law for the time being in force.
- (e) Complaints which involve any matter after expiry of one year from the date on which the Act constituting violation of Human Rights is alleged to have been committed.
- (f) Complaints relating to civil disputes such as property rights, contractual obligation and the like.
- (g) Complaints relating to deficiency in service covered by the provisions of Consumers Protection Act, 1986.

- (h) Complaints relating to service matters or labour or industrial disputes or to claim and grievances arising out of conditions of service or service rules or labour laws and the like.
- (i) Complaints relating to any matter which is subjudice before a Court or Tribunal or is covered by a judicial verdict.
- j) Complaints relating to matters being enquired into by the National Human Rights Commission or any other Commission duly constituted under any law for the time being in force and matters covered by decision of the National Human Rights Commission or any such Commission.
- (k) Complaints addressed to any other authority, copy of which is received in the Commission.
- (l) Complaints relating to matters outside the purview of the Commission on any other ground.

Guidelines on how to file complaint with the NHRC:

1. Complaint may be made to the Commission by the victim or any other person on his behalf.
2. Complaint should be in writing either in English or Hindi or in any other language included in the eighth schedule of the Constitution. Only one set of complaint needs to be submitted to the Commission.
3. Complaint may be sent either by Post or Faxed at Nos.91-11-24651329 or through e-mail - covdnhrc@nic.in
4. No fee is chargeable on such complaints.

5. The complaint shall disclose i) violation of human rights or abetment thereof or; (ii) negligence in the prevention of such violations, by a public servant.
6. The jurisdiction of the Commission is restricted to the violation of human rights alleged to have been committed within one year of the receipt of complaint by the Commission.
7. Documents, if any enclosed in support of the allegations in the complaint must be legible.
8. Name of the victim, his/ her age, sex, religion/ caste, State and District to which the incident relates, incident date etc. should invariably be mentioned in the complaint.
9. Please submit the complaint preferably in the enclosed format.

Address details of the NHRIs and SHRIs

NATIONAL HUMAN RIGHTS COMMISSION

Manav Adhikar Bhawan, Block -C, GPO Complex, INA
New Delhi-110023, Tel. No. 91-11-24651330,
Fax no. 011-24651329, Email- covdnhrc@nic.in, ionhrc@nic.in

NATIONAL COMMISSION FOR WOMEN

4, Deen Dayal Upadhayaya Marg,
New Delhi-110 002.
Tel. No. : 91-11-23234918, 23222845
Complaints Cell: 91-11-23213419, 91-11-23219750,
91-11-23236153 (Telefax), Email: ncw@nic.in

ODISHA STATE COMMISSION FOR WOMEN

3rd Floor, Toshali Plaza, Satya Nagar, Bhubaneswar-7
Phone: (0674) 2573850, Fax: (0674) 2573870
Email: oscw.od@nic.in

ODISHA HUMAN RIGHTS COMMISSION

Toshali Bhawan(2nd Floor),Satyanagar, PO: Satyanagar,
Bhubaneswar-751007, Fax:(0674)-2572010,
Tel. No. 0674-2570060(EPABX), Email:ohrc@nic.in

ODISHA COMMISSION FOR PROTECTION OF CHILD RIGHTS

Quarter No. 1, Type - A, Unit- V, Bhubaneswar - 751001
Tel: 0674-2394041 , Fax: 0674-2394043
oscpcr.od@nic.in, Email:oscpcr2012@gmail.com

NATIONAL COMMISSION FOR SCHEDULED CASTE (SC)

National Schedule Caste (SC) Commission:
Email: chairman-ncsc@nic.in

Complaint can be sent to the below address:

Sl. No.	Address & Contact No.	Headquarters & Jurisdiction
1	Mayukh Bhawan, (Ground Floor), Salt Lake City, Kolkata-700091. Tel : 033-23370977,23213259	Kolkata (Odisha, West Bengal, Sikkim, Andaman and Nicobar Islands)

Toll Free: No.1800 1800 345 (for all State Offices of the NCSC)

Complaint can be registered on line using the following link :

<http://www.ncscmis.nic.in/NCSCCMIS/new>

Complaintforpetitioner.do?method=initPetitioner

NATIONAL COMMISSION FOR SCHEDULED TRIBES

6th Floor, 'B' Wing, Loknaya Bhawan, Khan Market, New Delhi-110003.

Name	Designation	Office Tel No/ Mail ID	Res. Tel No
Dr.Rameshwar Oraon	Chairperson	24635721, 2462462(Fax) Mail: chairperson@ncst.nic.in	09868180394 011-26119495

Toll Free: No.1800117777 (for all State Offices of the NCST)

o Complaint can be sent to the below address:

Location & Address of Office	Name & Designation of the Officer in charge	Jurisdiction
N-1/297, IRC Village, BBSR-751015	Shri S. R. Triya, Research Officer (Addl. charge) Ph:0674 2551616 0674 2551818(F)	Odisha, Andhra Pradesh, Tamilnadu Nadu, West Bengal & Union Territories of Andaman & Nicobar Islands, and Pondicherry

NATIONAL COMMISSION FOR MINORITIES (NCM):

5th Floor, Lok Nayak Bhavan, Khan Market,
New Delhi 110003, Tel.011-24615583
Fax 24693302, 24642645, 24698410
E-mail: ro-ncm@nic.in
Toll Free No. 1800110088

CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES

Sarojini House, 6 Bhagwan Dass Road
New Delhi- 110001
Phone No.-91-11-23386154, 23386054
Fax- +91-11-23386006
Email: ccpd@nic.in

ODISHA STATE COMMISSION FOR PERSONS WITH DISABILITIES (OSCPWD)

SIDR Building, Capital Hospital Campus,
Unit-6, Bhubaneswar-751001
Phone No. 0674-2390006

CRIME AND PUNISHMENT

354C Voyeurism

354D Stalking

359 Kidnapping

363 Punishment for kidnapping

365 Kidnapping or abducting with intent secretly and wrongfully to confine a person

376B Sexual intercourse by husband upon his wife during separation

376C Sexual intercourse by a person in authority

447 Punishment for criminal trespass

506 Punishment for criminal intimidation

509 Word, gesture or act intended to insult the modesty of a woman.

"... in practice the standard for what constitutes rape is set not at the level of women's experience of violation but just above the level of coercion acceptable to men."

Judith Lewis Herman (An USA born psychiatrist, researcher, teacher and author)

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