

***Report of independent fact-finding into the incident of gang-rape and death of an
ASHA worker Somwati Tyagi, in Muzaffarnagar District Uttar Pradesh, India***

Annexure 1: Legal provisions that apply in this case

Section 376 in The Indian Penal Code

376. Punishment for rape.—

(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever,—

(a) being a police officer commits rape—

(i) within the limits of the police station to which he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) on a woman in his custody or in the custody of a police officer subordinate to him; or

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

(d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

(e) commits rape on a woman knowing her to be pregnant; or

(f) commits rape on a woman when she is under twelve years of age; or

(g) commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine: Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

Explanation 1.—Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section. Explanation 2.—“Women's or children's institution” means an institution, whether called an orphanage or a home for neglected woman or children or a widows' home or by any other name, which is established and maintained for the reception and care of woman or children. Explanation 3.—“Hospital” means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.]

Section 306 in The Indian Penal Code

306. Abetment of suicide.—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 292 in The Indian Penal Code

292. Sale, etc., of obscene books, etc.

(1) For the purposes of sub-section (2), a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt person, who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.]

[(2)] Whoever—

(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or

(b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or

(c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or

(d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or

(e) offers or attempts to do any act which is an offence under this section, shall be punished [on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and also with fine which may extend to five thousand rupees].

[(Exception)]—This section does not extend to—

(a) any book, pamphlet, paper, writing, drawing, painting, representation or figure— (i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature, art or learning or other objects of general concern, or (ii) which is kept or used bona fide for religious purposes;

(b) any representation sculptured, engraved, painted or otherwise represented on or in— (i) any ancient monument within the meaning of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), or (ii) any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.]

Section 66A in The Information Technology Act, 2000

66A Punishment for sending offensive messages through communication service, etc. -Any person who sends, by means of a computer resource or a communication device,-
(a) any information that is grossly offensive or has menacing character; or
(b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device; or
(c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages,
shall be punishable with imprisonment for a term which may extend to three years and with fine. Explanation. -For the purpose of this section, terms "electronic mail" and "electronic mail message" means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message.]

Section 66E in The Information Technology Act, 2000

Punishment for violation of privacy. (Inserted Vide ITA 2008)

Whoever, intentionally or knowingly captures, publishes or transmits the image of a private area of any person without his or her consent, under circumstances violating the privacy of that person, shall be punished with imprisonment which may extend to three years or with fine not exceeding two lakh rupees, or with both Explanation.- For the purposes of this section— (a) —transmitll means to electronically send a visual image with the intent that it be viewed by a person or persons; (b) —capturell, with respect to an image, means to videotape, photograph, film or record by any means; (c) —private areall means the naked or undergarment clad genitals, pubic area, buttocks or female breast; (d) —publishesll means reproduction in the printed or electronic form and making it available for public; (e) —under circumstances violating privacyll means circumstances in which a person can have a reasonable expectation that— (i) he or she could disrobe in privacy, without being concerned that an image of his private area was being captured; or (ii) any part of his or her private area would not be visible to the public, regardless of whether that person is in a public or private place.

Annexure -2 : News coverage in [The Hindu](#)

MEERUT, January 15, 2016

[MOHAMMAD ALI](#)

Muzaffarnagar tense after rape victim commits suicide

Police fear issue may take a communal turn; security in village tightened.

Muzaffarnagar is on the boil again and this time because of the alleged rape of an ASHA (Accredited Social Health Activist) worker and the subsequent suicide after her rapist circulated the video of the act.

The victim, a 40-year-old health worker, committed suicide last week after the “rape” video was circulated on WhatsApp allegedly by her rapist, Shahid, who is also a resident of the same village.

Tension prevailed in the village and its vicinity.

The fact that the accused is a Muslim youth has led to the incident of crime taking a communal spin.

MP visits village

BJP Member of Parliament from Muzaffarnagar Sanjeev Baliyan visited the village and told the agitating crowd that “harassment of our sisters and women won’t be tolerated.”

Though the local administration has deployed heavy security force in the village and in the vicinity, the issue can potentially become a rallying point for communal mobilisation.

BJP MLA from Sardhana in Meerut Sangeet Som, and another BJP MLA Suresh Rana are expected to visit the victim’s family in the next few days.

Senior Superintendent of Police, Muzaffarnagar, K.B. Singh, told *The Hindu* that the issue was sensitive as it “involved two communities.”

“We have arrested the culprit on Tuesday. During preliminary investigations, he has confessed to raping the victim and circulating the video through WhatsApp,” he said. The accused is in jail after cases of rape and abetment of suicide were registered against him by the victim’s husband.

“Sufficient force has been deployed in the village and its vicinity,” said the SSP.

Call records

Mr. Singh said the call records of the victim showed that she and the accused were in touch for over two months.

He said the victim’s husband registered the FIR against the accused after her suicide and he did not mention the date and place of the crime.

Annexure -3 Photos of the family and house



On the tenth day at the pooja and public memorial meeting

