



Australian Government
Refugee Review Tribunal

Country Advice

India

India – IND37712 – Illegitimate Children –
Premarital Sex – Student Teacher Affair –
Police Effectiveness – Punjab – Community
Mob Violence
12 November 2010

1. What would community reaction be in the Punjab to the birth of a child out of wedlock resulting from an affair between a teacher and student?

Multiple sources indicate that having a child outside of wedlock in Punjab, and in India generally, is frowned upon by society and that illegitimate births are not readily accepted. Community members killing an illegitimate baby after birth, however, may be an unusual reaction. No reports were found describing similar circumstances where harm was visited on the child after birth as a result of an extra-marital affair. Couples have been harmed, and sometimes killed, by a community for forming relationships outside of customary religious bounds and caste membership. In most cases, however, the female is the victim of this violence. Even in many extensive accounts of 'honour killings', where an eloping female is killed for not marrying the family's designated suitors within her caste, no reports were located indicating that resulting illegitimate children were also killed. Female feticide, favouring the birth of sons over daughters, is a significant problem in Punjab, however, extensive reports on this particular problem with unwanted offspring do not make reference to any similar grave harm coming to babies born out of wedlock.

Having a child out of wedlock in India would not be well received by community members as it runs counter to cultural and religious standards. An 11 November 2010 *BBC News*¹ article entitled 'India's Changing Sexual Mores and the Supreme Court' notes that sexual mores are changing, but slowly. The article comments:

Marriage in India is intimately tied to sexuality. "It is almost if marriage laws exist to legalise sexuality, punish any deviation from legally sanctioned rules and, of course, to legitimise the children of the marriage," says lawyer Indira Jaisingh.

The same article reports that a popular Indian actress was the subject of 22 criminal cases filed by citizens disapproving of her alleged endorsement of pre-marital sex in interviews with the media.

Several other popular websites devoted to caring for single mothers in India all report that bearing a child out of wedlock is difficult because it is not generally accepted, even though modernity is slowly changing societal values. These sources report that single mothers may be the subject of community ridicule, they may feel shame, report being ostracised, and stigmatised, and they may be the target of negative stereotyping. Only one site reported that

¹ 'India's changing sexual mores and the Supreme Court' 2010, *BBC News*, 22 October
http://www.bbc.co.uk/blogs/thereporters/soutikbiswas/2010/10/indias_changing_sex_mores_and_the_supreme_court.html - Accessed 11 November 2010 – Attachment.

single mothers may experience violence along with social problems, but did not provide examples.²

The only reports located of illegitimate children being killed in India involved desperate mothers taking their own child's life to avoid harm coming to herself from communities. In an extreme example of societal pressures against extramarital affairs, a woman from Punjab attempted to kill her own illegitimate baby rather than face her community. In an article located on newsflavor.com, describing these events, it was reported that she tried to dispose of the baby '...because she is unmarried and Indian culture is usually staunchly against having children out of wedlock'.³ A 2007 *Reuters* report stated that a new-born Indian baby was found stabbed 26 times and abandoned at a garbage dump in Mumbai. The article comments that: 'Babies are sometimes abandoned by unwed Indian mothers, who fear severe social repercussions for having a child out of wedlock'.⁴ An Indian Government source also confirms that community pressures on unwed mothers is a serious problem resulting in many abortions. The Indian Government website on population and reproduction promoted youths engaging in responsible sexual behaviours in order to avoid unwed and unwanted pregnancies, which: '...often culminate in unsafe abortions in India, due to the stigma attached to pregnancies out of wedlock'.⁵ The website, significantly, does not address a problem of families or communities killing illegitimate children born to unwed mothers.

Other sources, such as the US Department of State⁶ (USDOS) have reported on serious communal prejudices which produce significant female infanticide (feticide) problems in India, and particularly in Punjab. According to the 2010 USDOS *Country Report on Human Rights Practices* states that Punjab had recorded 294 cases of female feticide since 2006. It is even likely that the official record under represents the occurrence. While this problem is significant and highlighted in the report, there was no corresponding report of a problem associated with communities killing children born out of wedlock. The absence of such information in this report indicates that it is not likely to be a pervasive problem. Another credible source, Freedom House⁷, reports that female children are often neglected, and it corroborates USDOS information on the significant female feticide problem. However, similarly, there is no mention of communities killing, or harming, children born out of wedlock.

² 'Single Moms by Choice' 2010, I Love India website <http://www.iloveindia.com/parenting/single-parenting/choosing-to-be-single-mom.html> - Accessed 12 November 2010 – Attachment & 'Tasks uphill for single mothers: Study' 2001, *The Times of India*, 9 September <http://timesofindia.indiatimes.com/india/Tasks-uphill-for-single-mothers-Study/articleshow/1380507412.cms> - Accessed 12 November 2010 – Attachment & 'Deadly Secrets: The loneliness of India's abused teenagers' 2010, Crossroads website <http://www.crossroads.org.hk/our-news/deadly-secrets-the-loneliness-of-india2019s-abused> - Accessed 12 November 2010 – Attachment.

³ 'Baby Flushed Down Plane Toilet' undated, Newsflavor website <http://newsflavor.com/world/latin-america/baby-flushed-down-plane-toilet/> - Accessed 12 November 2010 – Attachment.

⁴ 'India to tighten laws to stop female infanticide' 2006, Reuters 14 June, Pakistani Defence Forum website <http://forum.pakistanidefence.com/lofiversion/index.php/t56205.html> - Accessed 12 November 2010 – Attachment.

⁵ 'Straight Answers' 2010, National Population Stabilisation Fund website <http://www.jsk.gov.in/faq.asp#b8> - Accessed 12 November 2010 – Attachment.

⁶ US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – India*, 11 March. Attachment.

⁷ Freedom House 2010, *Freedom in the World Country Report: India 2010*, 24 June <http://www.unhcr.org/refworld/docid/4c2312422.html> – Accessed 25 June 2010. (CISNET India CX245474)

Prejudices, discrimination, and stigma may be attached to illegitimate children and their parents, however, reports of violence by families or communities, including murder, are mostly targeted at females who enter into unsanctioned relationships. Punjab is frequently mentioned in such reports as an area where this violence occurs at alarming rates, but once again all examples involved caste transgressions, which result in violence toward the women. No reports were located of children resulting from informal relationships within an approved caste being murdered. In 'Why are Hindu Honour Killings Rising in India',⁸ Madhur Singh comments on this violence in Punjab:

Activists say dozens of people, both women and men, are killed for "honor" every year, falling victim to the deeply entrenched caste system, which dictates an individual's social standing based on the caste they are born into. The majority of these killings take place in the agrarian states of Punjab, Haryana, Uttar Pradesh and Rajasthan, where land ownership and caste go hand in hand and an honor culture thrives by maintaining caste and gender hierarchies. "

2. Would a teacher be dismissed in Punjab for having an affair with a student?

It is entirely possible that a teacher would be dismissed for having an affair with a student. Such a relationship would likely be viewed as inappropriate by parents and school administrators, especially if the student was a minor.

A student – teacher relationship may also violate statutory laws against sex with minors, depending on the circumstances. The UK Home Office⁹ reports that the age of consent for heterosexual sex in India is 16, except for the state of Manipur where it is 14. The USDOS¹⁰ reported that on 2 July 2010 the Delhi High Court decriminalised consensual sexual activities between adults, by ruling to overturn provisions in Indian law. Prohibitions against sex with minors and coercive sex were retained. Several religious groups challenged the ruling on grounds it would encourage sexual exploitation of children and the issue now lies before the Supreme Court with no date set for further hearings.

Corrective action is taken against teachers in India, indicating that it is possible that a teacher would be dismissed for an inappropriate relationship with a student, though only grievous examples were located. This includes a report in the 2010 USDOS *Country Reports on Human Rights Practices for 2009*¹¹ that states:

...a fast-track court sentenced six teachers of the Gujarat Patan Government Women's Teacher Training College to life imprisonment for repeatedly gang-raping a Dalit student. After the matter was reported, several other students came forward complaining of sexual harassment from the male teachers. The state government decided to replace all male teachers with female ones.

⁸ Singh, Madhur 2010, 'Why are Hindu honor killings rising in India?', *Time*, 25 May <http://www.time.com/time/world/article/0,8599,1991195,00.html> – Accessed 26 May 2010. (CISNET India CX244073).

⁹ UK Home Office 2010, *Country of Origin Information Report: India*, 21 September, p.86/para.20.24. - Attachment.

¹⁰ US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – India*, 11 March - Attachment.

¹¹ US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – India*, 11 March - Attachment.

3. Would police turn a blind eye to community violence in these kinds of circumstances?

It is conceivable that police could turn a blind eye to community violence, even in a murder case. Multiple sources reveal that police are generally ineffective, ill-equipped, lack training, and suffer from corruption. Several sources report that police are often negatively influenced by community leaders and pressures, laws are not always enforced, and not all crimes are investigated.

Human Rights Watch¹² (HRW) reports that police fail to investigate honour killings and other marriage violating customs or religion and caste norms. There is considerable evidence that couples violating customary caste rules on unions and arranged marriages face significant communal violence. Most often, the female is killed in unsanctioned unions. Since police have been accused of failing to report all murders surrounding these unsanctioned unions, it is plausible that police would also turn a blind eye to the murder of a child born out of wedlock. Specific examples of children born of illegitimate relationships being murdered were not located. HRW reported in 2010, that: 'Police routinely fail to investigate apparent 'honor' killings...' HRW criticised police actions in response to communal violence in regard to honour killings, but also generally criticised police response to communal violence, recommending that: 'The Indian government should ensure that its police officials impartially investigate "honor" killings without bowing to political or other pressure from powerful local leaders. In 2009, another HRW report on police reform found that police were often not able to function free from improper political interference. HRW also expressed concern that traditional biases have often interfered with the ability of police to enforce laws objectively.

The HRW report specifically criticises police response to communal violence indicating that it is plausible that police would turn a blind eye. The report states:

The Indian government should, through public campaigns and the media, promote the right of individuals of legally marriageable age to marry persons of their choice, without having to fear violence or other abuse, Human Rights Watch said. The government should instruct police to protect those in consensual relationships who fear family or community reprisals.

... "Police should be held accountable when they turn a blind eye and fail to investigate alleged 'honor' crimes," Ganguly [South Asia director for Human Rights Watch] said. "The unholy nexus between caste, politics, and impunity should be broken."

The same HRW report also provides strong evidence indicating that that police in India frequently fail to register crime complaints or investigate crimes, including murders. HRW interviewed several police officers, who stated:

... they are often under pressure from political leaders to show a reduction in crime by registering fewer FIRs [First Information Reports]. Some said that they face suspension or reprimand if they register too many. Police also blame their failure to

¹² Human Rights Watch 2010, 'Prosecute rampant 'Honor' killings', 18 July <http://www.hrw.org/en/news/2010/07/16/india-prosecute-rampant-honor-killings> – Accessed 19 July 2010. (CISNET India CX246306)

investigate cases on insufficient personnel and a reluctance to take on new cases that add to an already heavy workload.¹³

The 2010 USDOS *Country Reports on Human Rights Practices for 2009 – India*¹⁴ criticised police professionalism and responsiveness, indicating that it is plausible that community pressures and influence could encourage police to turn a blind eye to violence, including murder. The report states:

Officers at all levels acted with impunity, and officials rarely held them accountable for illegal actions. When a court found an officer guilty of a crime, the punishment often was a transfer. Human rights activists and NGOs reported that citizens often had to pay bribes to receive police services.

The USDOS report also specifically commented on police corruption and misconduct in Punjab, stating that it was worst in this state and involved human rights abuses. The report stated: ‘In October 2008 the Punjab State Human Rights Commission stated that most cases it took up concerned atrocities that Punjab police allegedly committed. According to the commission, 6,000 of 10,000 complaints registered through September pertained to police atrocities’. These figures indicate significant unprofessional conduct, and it is plausible that a citizen would not always expect that police would respond appropriately to communal violence.

A 2010 Freedom House¹⁵ report on India also indicates that it is possible that police would turn a blind eye to community violence in segments of the population, knowing that there are few consequences and the legal system is ineffective. The report states: ‘Despite legal reforms in recent years, the criminal justice system still generally fails to provide equal protection to minorities, lower castes, and tribal members.’ Freedom House also cites a report released in 2009 by the Delhi-based Lawyers' Collective, which indicated that enforcement of the law was poor in many states, especially in the northwestern states of Punjab and Haryana. The report lamented police ineffectiveness in the face of significant problem such as honor killings to punish perceived sexual or moral transgressions.

A 3 April 2010 article in *The Australian*¹⁶ recounted how initial police attempts to investigate a community mob murder were completely thwarted by community members. The case involved a man who was found murdered after attempting to retrieve his wife from her family, which held her in captivity for marrying outside her caste in Haryana, a state which borders Punjab. One police officer was demoted after the local station did not pursue the investigation in the face of overpowering community and mob resistance to the police, and bowing to powerful local village councils insisting on meting out their own justice.

¹³ Human Rights Watch 2009, *Broken System: Dysfunction, Abuse, and Impunity in the Indian Police*, 4 August, p.9. - Accessed 12 November 2010- Attachment.

¹⁴ US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – India*, 11 March - Attachment.

¹⁵ Freedom House 2010, *Freedom in the World Country Report: India 2010*, 24 June <http://www.unhcr.org/refworld/docid/4c2312422.html> – Accessed 25 June 2010. (CISNET India CX245474)

¹⁶ Hodge, A. 2010, ‘India at odds as caste culture turns to killing’, *The Australian*, 3 April <http://www.theaustralian.com.au/news/world/india-at-odds-as-caste-culture-turns-to-killing/story-e6frg6so-1225849033844> - Accessed 10 November 2010 – Attachment.

Attachments

1. 'India's changing sexual mores and the Supreme Court' 2010, *BBC News*, 22 October http://www.bbc.co.uk/blogs/thereporters/soutikbiswas/2010/10/indias_changing_sex_mores_and_the_supreme_court.html - Accessed 11 November 2010
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