

INDIA

Reports of rape in 1993

In March 1992, Amnesty International published a report, *India: Torture, Rape and Deaths in Custody*, which described rape as a common form of torture in India. In Jammu and Kashmir rape was found to be systematically practised as part of attempts to humiliate and intimidate the local population.

This document describes several recent reports of rape perpetrated by police and security forces in several Indian states during 1993 which demonstrate that rape continues to be a disturbing aspect of custodial violence in India. It focuses on incidents of rape in four states. They include the allegation of rape by security forces in Jammu and Kashmir of a young woman reportedly killed by them immediately afterwards. Earlier allegations of rape in that state published by Amnesty International were dismissed by the government, despite strong evidence to the contrary¹. Two more cases involve women belonging to Scheduled Castes and Scheduled Tribes communities in

¹See India: New allegations of rape by army personnel in Jammu and Kashmir, AI index ASA 20/02/92, and India: Comments on the government's response to allegations of rape in Shopian, Jammu and Kashmir, AI index ASA 20/47/93.

Orissa and Tamil Nadu respectively. They were selected to highlight the particular vulnerability of these groups in Indian society. The alleged gang-rape of women from a Scheduled Caste village in Orissa highlights an apparent pattern of violations against scheduled caste communities in which villagers have been tortured and raped by police acting in collusion with local ruling groups such as landowners². The document also describes the gang-rape of a Bangladeshi girl by police officers at a police station in New Delhi at a time when Amnesty International is concerned at mounting reports of torture by police in Delhi, leading to the death of the victims in nine reported cases during 1993.

JAMMU AND KASHMIR

On 22 November 1993, Sara, a young woman, was reportedly raped by members of the security forces in Warapora, Sopore, Jammu and Kashmir, and was subsequently killed by them.

The village of Janwarpora was cordoned off by the army on 22 November and soldiers were also deployed in the neighbouring village of Warapora. Eyewitnesses claim that they saw five soldiers approaching Sara, wife of Mohammad Rajab Ganai of Warapora village, Sopore, who was out collecting firewood. They reportedly saw the soldiers returning some time later. Sara's body was found by residents later that day. Her clothes were reportedly torn off, she had

²See India: Torture, rape and deaths in custody, ASA index 20/06/92 p.16 for a similar incident in which 23 women were allegedly raped as part of a land dispute in Bihar in 1988.

apparently been raped before being killed and there were multiple marks of violence on her body.

Police registered a case and sent her body for post-mortem. The post-mortem concluded that:

"There were marks of violence on neck, breasts, left knee and there was a massive vulval edema and extensive vaginal tear.... Death was due to asphyxia due to ligature put on her neck and a constant power applied."

Amnesty International believes that there is substantive evidence that Sara was raped by soldiers and calls for an independent inquiry into the incident.

Victims of rape by the security forces in Jammu and Kashmir are reluctant to report rape but a number of their complaints have been substantiated by medical examinations carried out shortly afterwards. However, members of the security forces are rarely held responsible for such violations of human rights. Amnesty International knows of only two cases in which members of the security forces have reportedly been sentenced to undergo terms of substantive imprisonment. Two members of the security forces were reportedly sentenced to ten and 12 years' imprisonment respectively for raping a Canadian tourist in October 1990. The case attracted considerable international protest because of the involvement of a foreign national. More recently, Amnesty International was told by the government

that four soldiers had been court martialled and sentenced to ten years imprisonment for raping a mother of four in May 1993 in Srinagar. A medical report apparently confirmed the rape.

TAMIL NADU/PONDICHERRY

At midnight on 29 July 1993, Vijaya, a 17-year-old tribal girl from Athiyur village in the South Arcot district of Tamil Nadu, was taken to the Pondicherry³ police station to be questioned about her cousin, who was suspected of theft. She was taken from the house of her aunt in the nearby village of Sitharasur. She alleged that she was raped on the same night in a cattle shed by five police constables of the Pondicherry police force. She was driven back to her aunt's home in Sitharasur at 4.00 am on 30 July where she told her mother about the rape. The police later admitted going to the village but denied raping Vijaya.

Vijaya and her mother went to the Ananthapuram police station to complain the same morning. However, the Sub-Inspector on duty reportedly refused to record the complaint, sending the women away. Only when the Sub-Collector, Tindivanam, had visited Athiyur village

³Pondicherry is a Union Territory and separate from the Indian state of Tamil Nadu which surrounds it. It is therefore under separate administrative and judicial jurisdiction.

in response to many local appeals and examined Vijaya and her parents on 11 August, was a First Information Report (FIR) about her complaint registered by police on 13 August 1993. According to one report, the complaint which was filed was not that of Vijaya herself but one compiled by the Sub-Inspector, to which he imposed her thumb print. This FIR stated that Vijaya had been raped by five "unidentified persons" rather than specifying that they were police officers.

Vijaya was not sent for a medical examination until August 15, 17 days after the alleged rape took place. She was then examined at the Cuddalore Government Hospital. Amnesty International has not seen the medical report but due to the delay in examining Vijaya the report is unlikely to provide authoritative evidence to confirm her allegation. Medical examinations can only establish conclusive evidence of rape if they are conducted immediately afterwards.

Following reports about the incident in newspapers, the Inspector General of Pondicherry Police, Mr J.P. Singh, issued a statement on 7 September 1993 confirming that the police had gone to the area to arrest Vijaya's cousin in connection with a theft and had interrogated Vijaya. As to whether she had been raped by the police, he said that a committee had been set up, with the Superintendent as its head, to inquire into the allegations, that a report would be available in a week's time and that if police were found guilty, "the severest action" would be taken against them. However, to date the report is not

known to have been published, nor is it known whether any action has been taken against the police involved.

In September 1993, the District Collector (the most senior administrative official from the district), Mr G. Ramakrishnan, ordered a probe into the alleged rape, to be conducted by the District Revenue Officer, Mr T.A. Subramanian. The inquiry took place on 20 September. A fact finding committee on behalf of the Human Rights Movement, Tindivanam, was present at this inquiry and on the basis of an on-the-spot study and examination of documents, the committee found that there was sufficient evidence to support Vijaya's claim of rape, alleging that police had suppressed the truth about the incident.

ORISSA

On 26 and 27 October 1993, police entered a Scheduled Caste village in Jagasinghpur district of Orissa during a search operation, and reportedly gang-raped several women, ransacked houses and looted property.

The background to the incident lies in a land dispute. According to police accounts, several of the villagers had been employed as share croppers in a neighbouring village. When the landowner moved to sell the land to a third party in 1990, the share croppers resisted and

got a stay order from the local additional district magistrate and took possession of the land in October 1993. When the new landowner lodged a case against the villagers in an attempt to move them off his property, about 25 armed policemen went to the village to arrest the share croppers. On the night before the incident took place, villagers had prevented a police party from taking five people into custody in connection with the land dispute, injuring four policemen in the process.

Reports suggest that between nine and 20 women who had taken shelter in a house in fear of reprisals for the attack on police the previous day, were raped at gunpoint in front of relatives and children during the police search of the village. These included a 35-year-old woman, Sabita, who was allegedly gang-raped in front of her 12-year-old son, and a 12-year-old girl. This victim was only sent for a medical check-up eight days after the incident. Newsmen who visited the village a week later were told of the rape and looting and a team of social activists from Delhi who subsequently visited the village reportedly confirmed that "at least nine women were gang-raped by the police".

When confronted with the allegations, the Deputy Superintendent of Police denied that police had raped women in the village, calling the allegations "an after-thought to demoralize the administration".

The allegations were confirmed by an official body, though the State Commission for Women concluded that on the basis of interviews with

the women no such rape had occurred. However, the National Commission for Women, whose representative Mrs Padma Seth claimed that the police and administration wanted to hush up the incident, subsequently found the policemen guilty of rape after conducting investigations. On the basis of their report, the Chief Minister of Orissa ordered a judicial inquiry into the incident on 12 November 1993, the outcome of which is not known.

DELHI

An 11-year-old Bangladeshi girl was allegedly raped by policemen attached to Seemapuri police station, in north-east Delhi, during the week 6 to 15 June 1993. The girl had allegedly previously been raped by a relative and other men whom he introduced her to. She alleges that five policemen raped her in the Seemapuri police booth.

A medical examination confirmed that the girl had been raped.

Police were criticised for their slow reaction and poor handling of the case. They reportedly took four days to find an interpreter to take the girl's statement. During an identification parade called so that the girl could identify her attackers, the police attempted to put up 35 people, though the Metropolitan Magistrate ruled that there should be

only ten. One of those picked out by the girl in the identification parade managed to escape arrest due to the length of time it took for the magistrate to prepare a report on the identification parade and send it to the area police chief and the concerned courts dealing with the case. He was picked up by police a few days later and an inspector was subsequently transferred. The investigating officer, a Sub-Inspector from Seemapuri police station, was criticised by the Metropolitan Magistrate for his lack of action in the case and it was requested that a senior inspector from outside Seemapuri police station should be appointed. It is not known whether these instructions were carried out.

Subsequently, the Hindustan Times of 14 July 1993 reported that five police constables had been arrested and charged with rape and criminal intimidation of the girl, three of whom were in jail and two of whom were remanded to 14-day judicial custody. It is not known whether legal proceedings have been instituted against them.

RAPE AND THE LAW

Rape is defined in Section 375 of the Indian Penal Code (IPC) as "sexual intercourse with a woman" in specific circumstances, the most important being "against her will" and "without her consent". Ordinarily a minimum term of seven years' imprisonment may be imposed on a convicted rapist (IPC, Section 376(1)) In 1979 the Indian Government referred revision of the law on rape to the Law

Commission of India. The Commission's 84th Report suggested changes to the law relating to rape. Some of these were incorporated into the Criminal Law (Amendment) Act (1983). Amongst other things this Act introduced a new offence: "custodial rape".

Consequently, since 1983, Section 376(2)(a) of the IPC provides a more severe punishment for police officers who commit rape within the limits of a police station on the premises of any police station, or while a woman is in their custody: 10 years' imprisonment is the mandatory punishment, but life imprisonment and a fine may also be imposed. The harsher sentence also applies to some other instances of rape including where a man is found guilty of raping a pregnant woman, a girl under 12 years of age, or of gang rape. Section 376(2) provides for a prison sentence of less than 10 years if there are "adequate and special reasons to be mentioned in the judgement". Another important change brought about by the Criminal Law (Amendment) Act (1983), was that the burden of proof regarding consent was shifted to the accused in cases where rape occurs in custody. The accused police or other official must therefore prove that the woman did consent rather than the woman having to prove that she did not.

However, convictions of policemen for raping women in their custody remain rare. In September 1993, a policeman was sentenced to life imprisonment for the rape of a pavement dweller in West Bengal, but such a harsh sentence is seldom imposed. In December 1993, four

police officers including an inspector were sentenced to eight years "rigorous imprisonment" for the rape of a 23-year-old school teacher in Tamil Nadu in July 1988. The case was reported in an Amnesty International report published in March 1992, *India: Torture, Rape and Deaths in Custody*.

As far as rape by the army and security forces personnel is concerned, Section 376(2)(b) confers the same enhanced punishment on any "public servant" who rapes a woman in his custody or in the custody of a subordinate public servant. The phrase "public servant" is defined in Section 21(2) of the IPC, as including "every commissioned officer in the Military Forces of India". Many of the reported instances of rape and ill-treatment in India have occurred outside the strict limits of police stations or army detention centres. Amnesty International considers that such offences occurred while the women concerned were in the effective custody of the police or security forces.

Previous High Court and even Supreme Court judgements on rape have come under criticism from legal quarters and women's groups for their alleged bias against women. Often the investigation of cases encounters delays and never comes to court or policemen are suspended and transferred but later reinstated.

The recently appointed National Human Rights Commission was reported in December 1993 to have instructed District Magistrates and Superintendents of Police in all Indian States to inform them about all cases of custodial deaths and rape alleged to have occurred

in their state within 24 hours of their occurrence or of having come to their knowledge. The report said that failure to report them promptly would be treated as an attempt to suppress evidence. Amnesty International does not know whether the Commission has taken up any specific allegations of rape by the police but welcomes the attention the Commission apparently pays to the problem of custodial violence and its stated determination to pursue allegations of such human rights violations promptly.

Scheduled Castes and Scheduled Tribes

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act was passed in September 1989, making illegal some 24 social and economic abuses of the scheduled groups to which they have traditionally been subjected. The Act makes it a criminal offence for legal and administrative proceedings to be deliberately abused by police or security forces in cases involving members of scheduled groups. Women are singled out for special protection under the Act: sexual assault of women of the scheduled groups "with intent to outrage her modesty" is an offence. Public servants, including police, are liable to punishment for these and other offences identified in the Act. The Act obliges state governments to provide adequate facilities including legal aid to victims of offences to obtain justice. It even provides the victims and witnesses with travel and maintenance expenses during investigation and trial. The Act also provides for special courts in states to try such cases.

It was reported in April 1993 that the State of Tamil Nadu, where the case of the rape of a tribal woman by police was reported, was considering the setting up of "four more" such special courts. It is not known whether these proposals were implemented. In a letter addressed in April 1992 by the Home Ministry in Delhi to the Chief Minister of Tamil Nadu, Ms Jayalalitha Jayaraman, regarding a Home Ministry review of the problem of caste conflicts in India, it was stated that "The Police [in the state of Tamil Nadu] seem unaware of the provisions of the special enactments such as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act with the result that not many cases have been booked under this important Act". The government informed Amnesty International in November 1992 that three special courts had been set up in Andhra Pradesh and six in Rajasthan.

Amnesty International believes that the government should take steps to ensure that the provisions of the Act are widely published and implemented in every Indian state, and that immediate measures are taken to facilitate the creation of adequate numbers of special courts to try offences under the Act in all states where such human rights violations against members of Scheduled Caste and Tribe communities have been reported.

AMNESTY INTERNATIONAL RECOMMENDATIONS:

- ◆ Amnesty International urges the government immediately to order fully independent and impartial inquiries into the allegations of rape described in this document and to take steps to ensure