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INDIA

@Archana Guha - 16 years awaiting justice: the lack of speedy and effective redress mechanisms for torture victims

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On 8 February 1994 the Supreme Court of India expressed concern about the way in which police officers accused of torturing a woman in their custody had been able to abuse the Indian legal system to escape justice by repeatedly seeking the higher courts' interference to delay judicial proceedings at the lower courts on one pretext or other. Dismissing the appeals of two policemen challenging their trial, since 1978, by a magistrate on charges of torturing Archana Guha in Calcutta in 1974, the Supreme Court judges reportedly said: "It should not be that a man with enough means is able to keep the law at bay. That would mean the failure of the very system." They concluded: "The facts of this case impel us to say how easy it has become today to delay the trial of criminal cases. An accused so minded can stall the proceedings for decades together, if he has the means to do so."

Archana Guha, then headmistress of a junior high school in Calcutta, capital of West Bengal, was arrested by the Indian police in the middle of the night on 17 July 1974 in place of her brother whom the police believed to be involved in a left-wing armed opposition group - the *Naxalites*. She was taken to Calcutta Police Headquarters where she was tortured over the next 27 days. She later described how five policemen tied her hands and feet and slung her from a pole. Her feet were beaten, her hips were kicked and her feet were burned with cigarettes. She was threatened with rape and told that her family would also be tortured if she did not cooperate.

Although she was never charged or brought to trial, she remained in jail for three years. The torture she suffered caused paralysis of her legs and she left the jail in a wheelchair in May 1977. After prolonged medical treatment abroad she is now able to walk, although with difficulty. Soon after her release, Archana Guha herself began court proceedings in a private complaint against five policemen who had tortured her. As a result, on 20 December 1978, the magistrate committed the accused policemen to stand trial on various criminal charges in a sessions court.

However, nearly sixteen years later, they have still not been brought to justice. The officer in charge, who has since been promoted, has sought to use every legal avenue to keep the case out of court. Three of the police officers allegedly involved have died, one has retired, leaving only one in service. In 1988 the Calcutta High Court quashed the case on the grounds that it had exceeded the time limit on criminal cases, even though Archana Guha had yet to give evidence in court. Her appeal against that ruling was allowed, on the grounds that those accused of torturing her had "at every stage" taken "steps which prolonged and intended to frustrate the proceedings". Since then a further array of applications for "stay orders" have impeded any progress towards bringing the police officers who tortured Archana Guha to justice.

Objecting to such practices, the Supreme Court found: "Any and every single interlocutory is challenged in the superior court and the superior courts, we are pained to say, are falling prey to the stratagem. We expect the superior courts to resist all such attempts". Lawyers for the police had argued in the Supreme Court that it was not in the public interest to proceed with the case, on the grounds that only one of the accused was still in active service, and that the offence happened 20 years ago. Rejecting the police arguments, the judges of the Supreme Court directed the concerned magistrate to proceed with the trial of the policemen expeditiously and on a daily basis.

The Supreme Court's observations underline the gross ineffectiveness of the Indian legal system to provide speedy and effective remedies to victims of human rights violations, as Amnesty International concluded in its March 1992 report [India: Torture, rape and deaths in custody](#). Amnesty International urges the government, as it recommended in that report, to provide an effective machinery for prompt and adequate redress and compensation for victims of torture, including rape, and deaths in custody.

WHAT YOU CAN DO

Please send appeals to the Prime Minister of India and the Chief Minister of West Bengal:

- ◆ Expressing your concern about the way in which the police have been able to frustrate the judicial process to escape justice;
- ◆ Urging them to take all necessary measures to ensure that the Supreme Court directives to proceed with the trial of those accused of torturing Archana Guha without any further delay are carried out;
- ◆ Requesting that the government establish an effective machinery to provide prompt and adequate redress and compensation to all victims of torture and the families of those who have died as a result of such practices.

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KEYWORDS: IMPUNITY1 / TORTURE/ILL-TREATMENT / DISABLEMENT / DETENTION WITHOUT TRIAL / SEXUAL HARASSMENT / WOMEN / TEACHERS / FAMILIES / POLICE /

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