

# INDIA

## The battle against fear and discrimination The impact of violence against women in Uttar Pradesh and Rajasthan

A demonstration led by a women's organization outside Sarwar Police Station in Rajasthan on 14 September 1999 protesting about abuses of the rights of a *dalit* woman and her family by police.  
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### I. Introduction

Amnesty International has expressed concern for many years about the torture and ill-treatment of women in custody in India. In 1992 the organization's campaign against torture in India highlighted the problem of rape in custody. In January this year, as part of its third international Campaign against Torture which focuses on three major areas: preventing torture, confronting discrimination and overcoming impunity, Amnesty International published a series of detailed recommendations for the prevention of torture in India focussing on custodial situations including the particular problems of women in custody and their vulnerability to torture and ill-treatment including rape.<sup>1</sup> In that report Amnesty International commented on its concern at a widespread tolerance and social acceptance of forms of torture and ill-treatment in India. It pointed out that publicised cases of torture and ill-treatment of domestic employees, the routine use of violence by political groups against one another's cadres, the beating and stripping of *dalits*<sup>2</sup> and other vulnerable groups as a method of community punishment, as well as the widespread use of violence against women in the home and community underline the urgent need for steps to be taken to end torture and ill-treatment prevalent throughout society.

The organization's concerns led it to carry out research into the area of violence against women in the community and the state's response to such violence. Under international

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<sup>1</sup> See *India - Words into action: recommendations for the prevention of torture*, January 2001, AI Index: ASA 20/03/2001.

<sup>2</sup> This term -- meaning "oppressed" -- is widely used to describe members of the "Scheduled Castes". This is a group, formerly known as "untouchables" designated in the Constitution of India as "Scheduled Castes". The schedule (list) currently includes many groups which are isolated and disadvantaged by their low status in the traditional Hindu caste hierarchy and therefore exposed to discrimination and social, economic and cultural injustice.

standards states clearly have an obligation to act with due diligence to prevent, investigate and punish abuses of human rights even if not carried out directly by agents of the state (see below). Amnesty International considers that acts of violence against women constitute torture for which the state is accountable when they are of the nature and severity envisaged in the definition of torture in international standards and the state has failed to fulfil its obligation to provide effective protection.

This report provides background information on the context of violence against marginalised groups of women in Uttar Pradesh and Rajasthan, demonstrating the vulnerability of certain groups of women to violence in the context of gender as well as caste and other forms of social and racial discrimination. It then looks in some detail at the problems these groups have in obtaining access to justice and sets the theory of safeguards and judicial process against practices of non-implementation, inaction and discrimination that are a reality for many victims. Presenting evidence of connivance by public servants in covering up crimes of violence against women and ensuring that perpetrators are not prosecuted as well as evidence of discrimination within organs of the criminal justice system, it argues that the state has failed to act with due diligence to prevent, investigate and punish many acts of violence against women which occur in the community. It recommends a series of actions which Amnesty International believes are necessary in order for India to fulfil its international human rights obligations towards women.

By raising its concerns about this aspect of torture within its Campaign against Torture, Amnesty International is seeking to broaden the debate about torture in India and the specific conditions -- social, economic, legal and cultural -- which allow the torture of women to occur and persist in India in many different contexts. By focussing on the situation of *dalits*, "backward caste"<sup>3</sup>, *adivasis*<sup>4</sup> and women otherwise marginalised by their economic position, the report also seeks to highlight the role of discrimination within society and the state -- also highlighted in its earlier recommendations -- in not

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<sup>3</sup> Many caste groups in India are designated as "backward", indicating their social and economic vulnerability and the consequent need for positive discrimination and other means of development for these groups.

<sup>4</sup> *Tribal people in India, also known as Scheduled Tribes (because of their special designation within the Constitution), are commonly known as adivasis, meaning "original inhabitants". This term also denotes their position as an indigenous population. The Government of India has taken a consistent position at the UN Working Group on Indigenous Populations that Scheduled Tribes are not equivalent to indigenous peoples.*

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only increasing the vulnerability of women to torture but reducing their chances of obtaining justice.

While recognizing that violence against women in India takes many serious forms including trafficking and sexual exploitation, Amnesty International delegates limited their research to crimes of rape and other violent acts, such as assault (including stripping) which occur in the community. Amnesty International delegates also looked at the issue of violence against women in the home and the state's response. Amnesty International's intention is to address concerns arising from its findings on this issue in a separate submission to the Government of India at a later date.

In December 2000, Amnesty International delegates visited Uttar Pradesh and Rajasthan to conduct research into the torture and ill-treatment of women. A request had also been made to visit the state of Bihar. However, by the time delegates arrived in India the Bihar government had not yet responded to the Union Government concerning its willingness to cooperate with the visit so with regret this part of the visit was cancelled. The research carried out in Uttar Pradesh and Rajasthan focussed on the particular vulnerability of socially and economically disadvantaged women to torture and ill-treatment and problems of accessing justice that they face. An emphasis was placed on the situation of scheduled caste and scheduled tribe women, given the large populations of these communities in those two states<sup>5</sup> and the existence of specific legislation designed to protect them; it is widely held that this legislation is not being fully implemented. Meetings were held with human rights organizations and victims of torture and ill-treatment, as well as lawyers and others involved in processing cases through the criminal justice system. Meetings were also held with officials in the Home and Women and Child Departments of the two state governments, as well as police officials in those states. Meetings were also held in Rajasthan with the State Commission for Women and the State Human Rights Commission. Amnesty International delegates were grateful to the Rajasthan government for open and frank discussions held with officials and for detailed information on crimes against women provided by the government. Unfortunately, despite requests prior to, during, and following meetings with officials in the Home department of the government of Uttar Pradesh, for details concerning government policy and figures in relation to violence against women and in relation to violence against members of the scheduled caste and scheduled tribe communities, it is regretted that no such information has been made available to Amnesty International to date. Prior to leaving the country, Amnesty International delegates met with officials in the Union Department of Women and Child Development in New Delhi to convey a preliminary impression of their findings and to hear of central government policies concerning violence against women.

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<sup>5</sup> According to the 1991 census figures 21% (29 million) of the population of Uttar Pradesh were scheduled castes and 0.2% (287,000) were scheduled tribes and 17% (8 million) of the population of Rajasthan were scheduled castes and 12% (5 million) were scheduled tribes.

Amnesty International does not claim that the situation in Uttar Pradesh and Rajasthan is representative of the whole of the country. Both have particularly feudal and patriarchal societies where caste divisions are strong and where landowning classes continue to wield significant power in many areas. However, the organization believes that many of the problems identified and the recommendations made will be applicable across the country and hopes that they will be fed into discussions concerning women's empowerment which are currently taking place at the government level in India (see below) and that they will support the numerous initiatives of the women's movement in the country.

### **International standards and the Government of India's responsibilities and commitments**

The responsibility of states for acts which impair the rights of women is sometimes mistakenly perceived as applying only when state agents or officials are the actual perpetrators of acts which violate human rights. The protection afforded by human rights law is far greater. There is a clear responsibility on states under international law which extends beyond violations by those acting on behalf of the state and its organs. Human rights treaties spell out the obligations of the State, including: to promote those rights; to secure those rights for all and translate them into policies and strategies; to prevent violations of the rights under the Conventions and to provide remedies to the victims should their rights be violated. The Declaration on the Elimination of Violence against Women, adopted by the UN General Assembly in 1993, affirms that states must "exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons".

Applying international human rights law without understanding the responsibility of the state for abuses of women's rights by private actors -- including employers, partners, husbands, family members or neighbours -- simply robs women of protection and of remedies for the majority of abuses against them. Human rights law is not silent on these abuses. It clearly points to a positive responsibility on the part of the state<sup>6</sup>.

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<sup>6</sup> For further discussion of state responsibility for abuses by non-state actors see Amnesty International's report *Respect, protect, fulfil - Women's human rights: State responsibility for abuses by 'non-state actors'*, September 2000, AI Index: IOR 50/01/00.

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As a party to the Convention on the Elimination of All Forms of Racial Discrimination since 1968 and the International Covenant on Civil and Political Rights since 1979, India has been committed for many years to ensuring civil and political rights to all its citizens without discrimination of any kind. This commitment was reinforced with its ratification of the Convention on the Elimination of All Forms of Discrimination against Women (Women's Convention) in July 1993. India's Constitution sets out fundamental rights made available to all its citizens which it explicitly states are to be realised without discrimination. The Constitution upholds the right to equality before the law (Article 14) and prohibits discrimination on the grounds of religion, race, caste, sex or place of birth. Various laws reinforce safeguards against discrimination and provide for positive discrimination for certain groups identified as vulnerable within society. These include scheduled castes and scheduled tribes and women.

As a vast democracy with many regional variations and a "developing" economy, India has an enormous amount to achieve and an enormous amount of commitments to fulfil to all its citizens, including women. Recognizing its international commitments towards the rights of women and urged on by a dynamic women's movement, successive governments have unveiled policies of empowerment for women which have sought to address the full range of women's human rights. As a result, there are many positive aspects of women's empowerment which have taken place in recent years in India. This includes political representation of women at the lowest levels of government, increases in life expectancy amongst women and education. There have been several government initiatives to empower women economically and politically, many of which are operational in Uttar Pradesh and Rajasthan. In Uttar Pradesh the government-backed *Mahila Samakya* development scheme has contributed to the increased empowerment of thousands of marginalised women through education and other programs. Amnesty International delegates were told by officials of the Government of Uttar Pradesh of schemes which provide financial support to widows who often find themselves ostracised socially and economically, pension schemes and self-help schemes running in 20% of the districts of the state for women to mobilise savings and run rural banks. In Rajasthan, the state-sponsored women's development programme posed a challenge to feudal patriarchal values by empowering women at the local level to question and oppose feudal practices such as child marriage. Amnesty International delegates were told of the establishment of self-help groups in rural areas in Rajasthan encouraging economic empowerment through thrift groups and how training programs presented opportunities for women to have their complaints heard by local officials.

Political representation of women has increased at the local level. The 73<sup>rd</sup> Constitutional Amendment Act, 1992 (Panchayati Raj), included a provision for statutory minimum reservation of 33% seats for women in Panchayati Raj Institutions (this Amendment came into force on 24 April 1993). This has allowed a number of women to participate in

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community decision-making processes, including those from marginalised communities given that there are also reservations for scheduled caste, scheduled tribe and backward caste categories. The involvement of women in *Panchayats* [village councils] was noted by Amnesty International delegates in both Uttar Pradesh and Rajasthan -- there are reported to be around 3,000 women *Sarpanches* [village heads] and 33,000 elected women representatives on *Panchayats* in Rajasthan -- although there are continuing problems associated with womens' participation (see below). Political reservation for women at the central level has however proved more problematic and successive parliamentary sessions have failed to reach a consensus on the Constitutional (85<sup>th</sup> Amendment) Bill 1999 which would provide 33% reservation for women in the national parliament and state legislatures.

Following the Fourth UN World Conference on Women in Beijing in 1995, the Government of India promised several measures to ensure the advancement of women's rights in India. The Department of Women and Child Development began work on a National Policy on Women which would seek to bridge the gap between the equal de-jure status and unequal de-facto position of women in the country. In January 2000, while hearing India's first periodic report, the Committee on the Elimination of Discrimination Against Women (CEDAW) recommended that a national plan of action be developed to address in a holistic manner the issue of gender-based violence, in line with the Committee's general recommendation 19.<sup>7</sup> In January 2001 the Prime Minister of India announced that 2001 would be the year of Women's Empowerment and that a National Policy on Women's Empowerment would soon be unveiled. The policy (Amnesty International has so far been unable to obtain a copy) reportedly included a plan to ensure that all laws deemed discriminatory to women be reviewed and suitably amended by 2003. It also included plans to establish an effective machinery to monitor the delivery of justice to women in a context of rising crimes against women and suggested requesting State Governments to set up District Committees to monitor and expedite disposal of cases of atrocities against women. On 22 March 2001 it was announced that the Cabinet had cleared the policy.

Amnesty International delegates were interested to see the Rajasthan government's Women's Policy which was launched in March 2000 and to obtain a copy of the Uttar Pradesh government's draft Women's Policy. Both refer in part to measures to ensure justice to women victims of violence although the majority of these policies relate to economic empowerment of women.

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<sup>7</sup> General recommendation 19 relates to gender-based violence and recommends amongst other things that states should take all legal and other measures that are necessary to provide effective protection of women against gender-based violence including effective legal measures (including penal sanctions), preventive measures (including public information and education programs) and protective measures (including refuges).

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Amnesty International welcomes these indications that the Government of India and state governments wish to address continuing problems of violence against women throughout the country. However, it is concerned that these policies should be more than just further rhetoric and should firmly address ongoing problems of non-implementation and/or discriminatory implementation of safeguards and impunity for perpetrators of violence against women. By highlighting some of the problems it identified in the course of its research in two states in India and by suggesting remedies, Amnesty International hopes to contribute to discussions about how to change this situation.

The reality of the situation on the ground for women and members of vulnerable groups continues to be extremely harsh despite the Constitutional, legislative and administrative framework in place in India. The failure to implement protective provisions and continuing gender, caste and class biases within society ensures that Constitutional and legal safeguards are rendered meaningless to many. In January 2000, CEDAW, hearing India's first periodic report made a series of recommendations on the basis of a broad range of concerns about implementation of the Women's Convention. These included the establishment of a comprehensive and compulsory system of registration of births and marriages and implementation of laws. The Committee expressed concern at the failure of the Government of India to provide adequate information relating to the general issue of violence against women.

Amnesty International acknowledges that at the highest levels of government the directives are clear that the fundamental rights set out in the Constitution should be granted without discrimination. It also acknowledges that numerous policies for the empowerment of women are in place around the country. However, Amnesty International is concerned that its research in Uttar Pradesh and Rajasthan indicates that despite this, at the level of implementation there is sufficient discrimination and inaction in bestowing rights to argue that the Government of India is failing to exercise due diligence in preventing abuses.

Amnesty International is well aware of the Government of India's argument that changing discriminatory attitudes and practices which are so deeply ingrained within society is something which cannot be done overnight, and that they are making progress in particular in bestowing economic and political rights on women throughout the country regardless of caste, religion or other identity. The organization recognizes the challenges presented to the state given the size and complexity of the country, and the continuing need for women to be provided with state help to access the most basic amenities such as food and water. Amnesty International is publishing this report to highlight the continuing problems of violence against marginalised women in Uttar Pradesh and Rajasthan which occur in the context of many other abuses of women's rights -- many of

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them social and economic -- because it believes that women cannot enjoy the full range of rights while being repressed through violence and while sections of the administration and the criminal justice system reflect and perpetuate discriminatory practices prevalent in society. Violence against women does not only have a physical impact but also an impact on their ability to enjoy the full range of rights including social, economic and political: the right of women to enjoy the full range of rights is indivisible.

## **II. The context of violence against women in Uttar Pradesh and Rajasthan**

Despite the many positive developments in securing women's human rights, patriarchy continues to be embedded in the social system in many parts of India including Uttar Pradesh and Rajasthan, denying the majority of women the choice to decide how they live. The over-riding importance of "community" in a patriarchal sense ensures that women rarely have an independent say in community issues. The way in which the concept of "honour" is used is also a severe barrier to the realisation of women's rights. Practices persist which led one member of the UN Human Rights Committee to observe in 1997 that "women are expendable in India". Female foeticide continues to be common. Impoverished families have little interest in educating girl-children and will often engage them in marriage as children<sup>8</sup> as a means of ensuring that they are provided for economically from an early age.

As in many parts of India, levels of violent crime against women in Uttar Pradesh and Rajasthan are extremely high (alarm at these high levels have led to recent calls for the imposition of the death penalty for crimes of rape).<sup>9</sup> According to National Crime Records Bureau (NCRB) figures for 1998 issued by the Ministry of Home Affairs, Uttar Pradesh ranked first and Rajasthan ranked fourth in the ratings of recorded crimes against women. These include rape, kidnapping, dowry death, mental and physical "torture", molestation, sexual harassment and trafficking. According to Rajasthan government statistics, crimes against women in the year 1999 reported an increase of 6.7% over the year 1998. In particular "torture" (which they categorise as crimes under section 498A of

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<sup>8</sup> This is in violation of Indian law and international standards: Article 16(1)(b) of the Women's Convention requires states to ensure the same right of men and women "freely to choose a spouse and to enter into marriage only with their free and full consent". In addition, para 23 of the Human Rights Committee's General Comment 28 states that the age for marriage should be set by the State on the basis of equal criteria for men and women and that those criteria should ensure women's capacity to make an informed and uncoerced decision (UN doc: CCPR/C/21/Rev.1/Add.10, CCPR General Comment 28, 29 March 2000).

<sup>9</sup> Amnesty International fundamentally opposes this proposal initially put forward by the Minister of Home Affairs in October 1998. Happily, the women's movement has largely rejected this proposal.



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the Indian Penal Code<sup>10</sup> (IPC)) registered an increase of 9.66% and "molestation" (crimes of sexual violence not amounting to rape) an increase of 6.91% although rape registered a decrease of 5.37%. The draft Policy on Women of the Uttar Pradesh government claims that every year more than 1,500 cases of rape, nearly 2,500 cases of indecent behaviour and nearly 200 kidnappings are recorded in the state.

Violence within the home is also widespread in both Uttar Pradesh and Rajasthan and affects women throughout society -- in wealthy urban households as much as the poorest rural households, across all religious, class and caste boundaries. It includes beating, slapping, kicking and rape. Methods of killing women in the home include soaking them with kerosene and setting light to them and poisoning, either claiming that the death was accidental or that the woman committed suicide. Violence within marriage in India is often associated with the practice of "dowry"<sup>11</sup> although it is by no means the only cause of violence. The practice of dowry has been prohibited in law since 1961 when it was recognised that it was contributing to high levels of violence against women as husbands and their families harassed wives for increased dowry. However, the practice continues. According to the Annual Report for 1999 of the Rajasthan Police, dowry deaths over the period 1997-1999 increased by 24.43%.

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<sup>10</sup> Crimes relating to violence within marriage.

<sup>11</sup> "Dowry" is property or valuables given by one party to a marriage to another party to the marriage or by the parents of either party to a marriage at or before a wedding.

Women activists in India have played a crucial role in highlighting the problems faced by women. Amnesty International delegates saw clear evidence of this in Rajasthan and Uttar Pradesh where alliances of women's organizations come together regularly in protest against incidents of violence and put pressure on the authorities to take action against the perpetrators. Without such pressure, many victims would be left alone and without any means of obtaining justice. Many of the positive initiatives of the state have been taken as a result of the forceful arguments of the women's movement in the country. However, for women in Uttar Pradesh and Rajasthan as in many other parts of India, the challenge in defending human rights is compounded by gender discrimination inherent within traditional societies as well as within state structures. Women are often condemned by their own families as well as their community for speaking out against discrimination and abuse. When they seek help from the state to enable them to carry out their legitimate activities they are often confronted with further discrimination from the criminal justice system and from the state machinery which pushes them to conform to a gender stereotype which decrees that women should not question the *status quo* and thereby undermine family and community.<sup>12</sup>

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<sup>12</sup> See *Persecuted for challenging injustice: Human rights defenders in India*, April 2000, AI Index: ASA 20/08/00, Part III, Chapter 5.

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## **Violence and discrimination: *dalit*, *adivasi* and other marginalized groups of women**

*The right of equality is a fundamental one. However, the institutional forces arraigned against it are equally powerful and exert control and shape people's mindsets. Factors like caste, class, community, religion, locality, family, occupation all combine to affect women and men alike, making them accept gender inequality as something given without the need for questioning.*

[India's report to CEDAW, UN doc: CEDAW/C/IN/1, 1 March 1999, para 83].

Women in India are subject to discrimination not just on the basis of gender but on numerous other factors such as caste, community, religion etc. This report looks at the particular problems faced by *dalit* and other marginalised women who face this complex web of discrimination.

Amnesty International saw evidence of the intersection of gender inequality and other forms of discrimination throughout its visit to areas of Uttar Pradesh and Rajasthan. The concept of gender equality continues to be alien to many communities and many state institutions particularly at the local level. In the areas of Uttar Pradesh and Rajasthan visited, caste and land rights are crucial factors which impact on political, social and economic relationships. In Uttar Pradesh political parties representing *dalit* and lower-caste communities have played a role in recent years in empowering some of these groups in certain areas. While it is difficult to generalise about a situation in which caste groups and relationships between them are extremely complex, groups such as *dalits*, *adivasis* "backward castes" and others continue to be most socially and economically vulnerable as a result of lack of access to land ownership, meaningful political participation and free employment. Estimates suggest that at least two thirds of the bonded labourers in India are *dalits* and that over half the *dalit* workforce are landless agricultural labourers. Sixty-six per cent of all women agricultural labourers are *dalits* earning between Rs.8-25 [\$0.17-0.54] per day. *Dalit* women, and often children, dominate certain spheres of work, such as civic sanitation, scavenging and leatherwork.

Many of those who belong to *dalit* castes are expected to stay in the profession which they are born into. In Lucknow, Uttar Pradesh, Amnesty International delegates learnt of the situation of members of the *Balmiki* "sweeper" caste of whom there are around 10,000 in that city. The majority work as sweepers, often cleaning latrines and live in slum areas close to sewers and gutters as those are the only areas that they are able to obtain for habitation. *Dalit* activists from the *Balmiki* caste told of how they had struggled to set up an office in the city and how their neighbours while eventually accepting them socially, continue to refuse to eat or drink anything from the office. *Dalits* are also expected to marry within their own caste and relationships between *dalits* and

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other castes often result in punitive acts. In July 1999 it was reported that a *dalit* woman was gang-raped and burnt alive in front of villagers in Bhavanipur village in Kanpur district of Uttar Pradesh. 17-year-old Usha Yadav [a caste Hindu] had eloped with the woman's son, a *dalit* boy, in June. The girl's father detained the boy's mother and brother-in-law in his house where the mother is reported to have been gang raped and tortured. She was then burnt alive. Three policemen were suspended for negligence.

#### **Discrimination on the basis of "descent"**

India's caste system involves a social hierarchy and is a feature of Hinduism. Individuals are born into a particular caste and remain in that caste throughout their lives. Broad caste categories (*varnas*) separate caste groups according to occupation (although mobility between occupations seen in more recent times does not lead to changes in caste identity). Outside these caste categories are the "untouchables", now commonly known as *dalits* whose occupations -- sweepers, tanners etc -- were viewed as "polluting". Untouchability of *dalits* continues to be practised in India in many forms, reinforcing an iniquitous social hierarchy and allowing for the continuing disempowerment and humiliation of millions of people. Localities housing *dalits* are often segregated from those housing non-*dalits*, a segregation which often extends to the provision of separate wells, eating places and temples and restrictions on the use of land to defecate. These conditions of segregation were described by many of the victims of violence with whom Amnesty International delegates spoke in Uttar Pradesh and Rajasthan in December 2000.

*Adivasis* are also subjected to forms of untouchability in some areas of India including Uttar Pradesh and Rajasthan where the economic and social differences between *adivasis* and *dalits* are often indistinguishable making them vulnerable to similar abuses and exploitation. In its 1996 examination of India's 10th to 14th periodic reports, the Committee on the Elimination of Racial Discrimination stated clearly that discrimination to which both communities are subjected falls within the scope of the Convention under its definition of racial discrimination set out in Article 1 which includes the notion of "descent"<sup>13</sup>. There are also castes in India not designated as scheduled castes but as "backward castes". While not "polluting" and therefore subject to untouchability, they are recognised as continuing to suffer from severe social and economic discrimination.

Article 17 of the Constitution of India states that the practice of untouchability is abolished and its practice in any form forbidden. It further prescribes that the enforcement of any disability arising out of "untouchability" shall be an offence punishable in accordance with law. Nonetheless, *dalits* and *adivasis* regularly suffer verbal and physical abuse at the hands of higher castes. Uttar Pradesh accounted for 25.4% of the total crimes committed against *dalits* in India during 1998 and Rajasthan 21.8%, both far higher than the next highest: Madhya Pradesh with 15.8%. Rajasthan accounted for 26.5% of the total crimes committed against *adivasis* in India during 1998, Uttar Pradesh accounting for 2.6% (its population of *adivasis* is significantly smaller). According to the 1999 Annual Report of the Rajasthan Police there was a significant increase in crimes recorded under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (see below) between 1997 and 1999. There were 808 cases registered in 1997 and 1,041 in 1999.

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<sup>13</sup> *The Government of India has vehemently rejected this definition and is currently attempting to ensure that the issue of caste discrimination is not placed on the agenda of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance to be held in South Africa in September 2001.*

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Overall, members of *dalit* and *adivasi* communities are less well educated than their non-*dalit* counterparts. Within *dalit* communities in Uttar Pradesh and Rajasthan, literacy levels amongst *dalit* women are amongst the lowest in the country. In Rajasthan an average of 8.3% (dropping to 4.73% in rural areas) of scheduled caste women are literate as opposed to 42.38% of the scheduled caste male population. In Uttar Pradesh an average of 10.96% of scheduled caste women are literate as opposed to 40.79% of the scheduled caste male population. The national average for female and male scheduled caste literacy is 27% and 49.91% respectively.<sup>14</sup> The national average for non-scheduled caste literacy is reported by the UN Development Program to be 38% and 66% respectively.

While poverty is not directly responsible for violence -- when Amnesty International delegates asked victims whether they felt they had been targets of violence because they were a *dalit*, they often felt that it was impossible to distinguish between their caste and their economic position of poverty, i.e. that exploitation was the root cause -- the dependency of these groups on more powerful groups in the community encourages exploitation which is often accompanied by violent acts. While this situation affects both men and women from these groups, given that women embody the concept of honour, violence against women becomes a symbolic gesture of exploitation and discrimination within communities. During the hearing of India's initial report under the Women's Convention in January 2000, the Government of India representatives acknowledged that women bore the brunt of caste-based atrocities.

*Dalits* living in Munni Khera village in Hassanganj, an area in Unnao district of Uttar Pradesh, live in an area separated from the rest of the village. Thirty-five per cent of the village are upper castes, 25% are "backward castes", 12% are Muslim and the rest are *dalit*. Ram Chandra, a *dalit* from the village was married to Ramvathi and they owned a piece of land on which they had a house. Upper caste villagers were trying to take the land from them and Ram Chandra and Ramvathi had objected to this.

In September 1998, Ramvathi was gang-raped by five men. Higher caste villagers are believed to have raped her as a means of isolating her and her husband within the village and the *dalit* community because of the stigma attached to rape and to punish them for refusing to give up their land.

After the rape, Ram Chandra went to Hassanganj police station to lodge a complaint. However, police refused to lodge a First Information Report (FIR).<sup>15</sup> There are

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<sup>14</sup> Figures based on 1991 Census Data.

<sup>15</sup> An FIR is an official record of a complaint filed by police.

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allegations that police took money from one of the accused. The couple were constantly threatened by influential people in the village and their house was attacked. Ram Chandra finally made an application to the Superintendent of Police of Unnao district concerning the rape and the failure of the police to lodge an FIR. However, despite the Superintendent of Police ordering that the incident should be investigated (no action was taken against police for refusing to lodge an FIR) local police again managed to ensure that the incident was not investigated. Finally under severe pressure, the couple moved to Ramvathi's parent's village some distance away.

They returned to the village on 30 January 1999, reportedly determined to reclaim their property. They were met by three men armed with sticks and axes who were soon joined by others. Ram Chandra sent his wife to the house, fearing violence. He was then beaten by around 17 men with sticks. His left leg and left hand were broken. When he started screaming, Ramvathi and several other women came to find out what was happening. Ram Chandra described what happened next:

*"They attacked my wife with stick, she fell down then and there. After that my wife came to me and laid over my body to save me, then they had beaten my wife with sticks and axes. She got deep injuries on the head and shoulder and her right hand and leg broken. [one of the attackers] put off all the clothes of my wife, raped her and inserted and pushed the stick in her private part".*

The attackers left Ramvathi for dead and ran away. Ram Chandra and his wife were taken to the district hospital where Ramvathi died the next morning.

When the next day activists approached the Superintendent of Police about the incident which had been reported in the media, he reportedly denied that the incident had occurred and said that the media had exaggerated the facts. Activists went to the village to investigate but villagers were too scared to speak about it. They found Ramvathi's husband in the district hospital. He could only move his neck because he had been beaten so badly. He had not even been told that his wife had died.

After a series of demonstrations by activists, an FIR was filed against the accused under section 302 [murder] of the Indian Penal Code (IPC). They were arrested after some time. The court to which the case was sent is as of March 2001 hearing evidence although no evidence has yet been placed before it. Amnesty International delegates were told that the post mortem on Ram Vathi had not recorded all her injuries that there were fears that due to this and the reluctance of witnesses to come forward, there would not be sufficient evidence to convict the accused.

Eight months later activists heard that Ramvathi's husband had been prevented from entering the village as the accused and their relatives were continuing to threaten him.

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Activists tried to pursue the case with the National Human Rights Commission and the National Commission for Women but they reportedly took no further action.

As of December 2000, Ram Chandra was staying with his wife's parents in their home away from Hassanganj, continuing to fear for his life, and reluctant to pursue the case. He has received no compensation.

Placed within the context of both gender and caste discrimination, more often than not inhabiting rural areas of severe impoverishment, *dalit* women become an easy target for exploitation and violence. Male members of *dalit* families often leave to go to cities to find work leaving *dalit* women heading households. Sexual harassment by landowners, moneylenders and their hired thugs is common.

In June 1999 Amnesty International delegates interviewed Kali Bai [name changed for security], a Kol tribal (a community designated as scheduled caste in Uttar Pradesh -- the same community is designated as scheduled tribe in neighbouring Madhya Pradesh) working for a contractor in Banda district of Uttar Pradesh. The area is largely inhabited by Kol tribals where many of them work as bonded labourers in stone quarries breaking large stones into chippings for construction work. Kali Bai and her husband had been working for ten years and were earning Rs.300 [\$6] for every trolley of small stones filled -- several days work. They were bonded to the contractor from whom they had borrowed Rs.3,500 [\$75].

In August 1998 Kali Bai and her husband heard that another contractor in another village was offering Rs.600 [\$13] for every trolley filled so they went to the contractor they were working for and asked him what they owed as they didn't want to work for him any more. The contractor along with three other men started beating them. He took Rs.9,000 [\$193] from Kali Bai's husband and started pulling at her hair and clothes. Her whole sari was removed and she was left in a blouse and petticoat and her bangles were broken. She was dragged around the outside of her house. She ran away, embarrassed at her nakedness. She ran to her sister-in-law's house and borrowed a sari and went to the nearby town of Shankergah. She tried to file a complaint with police but they refused saying that her quarrel was with the contractor and not with them. A few days later the police came to Kali Bai's village in connection with another case. The Station House Officer reportedly advised her to leave the village.

An activist working against bonded labour also attempted to file an application to release Kali Bai and her husband from bondage.<sup>16</sup> An application was filed with the Sub-Divisional Magistrate but no action was taken. When interviewed, Kali Bai expressed her helplessness: "they've stripped me. They can only now kill me". As a result of losing the Rs.9,000, she and her family were living a bare existence and continued

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<sup>16</sup> Bonded labour is prohibited in law under the Bonded Labour System (Abolition) Act 1976.

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working for upper castes who kept half of their earnings. Kali Bai has two children. A third child died of cholera when he was one-and-a-half years old. Kali Bai had approached the contractor who employs her for a loan to pay for medicines when he got sick but he had refused and the child had died.

Of serious crimes against scheduled castes including murder, rape, kidnapping and abduction, *dacoity* [banditry], robbery and arson, rape was the highest in the period 1996-1998 according to NCRB figures. The same was true of serious crimes against scheduled tribe women. While 516 cases of murder of scheduled castes were recorded in 1998, 923 cases of rape were recorded in the same year. Rajasthan officially recorded 136 cases of rape of scheduled caste women during 1999. This is certainly a severe underestimate. Well-known journalist P. Sainath, after researching the situation of *dalits* in Rajasthan, reported that on average a *dalit* woman is raped every sixty hours and that one *dalit* is murdered every nine days.

*Dalit* women also suffer violence within their own communities. Cases were documented by Amnesty International delegates of *dalit* women being raped by *dalit* men of the community. Despite the fact that they are forced by economic circumstance to leave their homes in order to work and thereby enjoy greater mobility and economic independence than many middle-class women, it is also clear that *dalit* women suffer domestic violence.

While it is undoubtedly the case that some economic development has benefited women, the pervasiveness of corruption and exploitation and disregard by economic actors of the livelihood of under-privileged groups has meant that women have often borne the brunt of economic "development" or economic empowerment of powerful groups. The fight against policies of economic development and corrupt economic practices which are perceived as benefiting only a privileged few such as the illegal liquor trade have often been led by women from marginalised communities who are adversely affected by these policies and practices through the break-up of the family or community unit, exploitation, the loss of income etc. In addition, economic empowerment of women has not been matched by equality of property rights. While many women in poor families are forced to contribute to the family income out of economic necessity, they do not have rights over property either in relation to their parents or within marriage so that in the event of the break-up of a marriage they are left destitute. In Rajasthan Amnesty International delegates heard of the widespread practice of *Natha* in which women are married several times. While a small percentage of these second or third marriages are reported to be through choice, the majority occur when women are pressurised into remarriage through desertion by their husbands and are forced by their families into a further marriage. In many of these cases women are literally sold by one man to another with her parents, former husband or relatives often acting as intermediary. In those circumstances where women do have rights over property -- usually after becoming widows -- they often become the target of violence by family or community members wishing to take the



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property from them. Property is thereby not only a context for violence but a reason for women being unable to escape violence.

Violence against women within the community is often characterised by attacks on the honour of women and by association their communities by one group against another. The stripping and parading of women who are seen to have broken the community's rules including the position of certain castes or to have called into question the community's honour in some way, is common in many states throughout India. It can also be accompanied by social ostracization. In some areas this extends to the killing of women as witches or *dayans*. Amnesty International delegates were unable to document this practice which is reported to be common in Bihar although it has also been reported in Rajasthan. It is widely believed that most women killed as *dayans* are in fact targeted as a result of property disputes -- the majority are widows.

*Atrocities on dalit women are an increasing trend. They are victims of landlord oppression, police excesses and goondaism. In all instances of caste tensions dalit women are victimised. Many of the women who have stood against the local landlords or supported inter-caste marriage are punished by being paraded naked. It was reported that on an average three dalit women get raped every day.*

[Report of discussions during a session on Dalit Women at the Sixth National Conference of Women's Movements held in Ranchi, Bihar, December 28-30 1997].

In May 1999 it was reported that a young widow named Chunni was tied to a tree and brutally beaten on the orders of the *panchayat* (which included seven women) for failing to prevent the deaths of livestock in Amara village of Banda district in Uttar Pradesh. She was reportedly hung upside down, her genitals stuffed with chilli powder and thrashed with lathis. She died of her injuries. Villagers told police she had committed suicide. All 13 *panchayat* members were arrested and charged with murder.

It also has to be recognised that the process of empowerment of women can lead itself to violence as male members of a family or community react in anger to challenges to the patriarchal social structure which benefits them. Of grave concern to Amnesty International in this context is the apparent punitive nature of much violence against *dalit* and other marginalised groups of women by other members of society including men from their own community, in response to attempts to assert their rights or fight against discrimination. This can be in relation to assertion of their economic rights regarding labour conditions, including attempting to extract themselves from situations of bonded labour as well as their political rights. While the advent of reservation for the participation of a certain number of women in the *panchayats* has had some positive impact, there have also been backlashes against women, particularly *dalit* women, who

are elected to the *panchayat* and who attempt to assert their rights within that forum, especially when they challenge corrupt and illegal practices.

A study of the experiences of women *panchayat* members in four districts of Rajasthan found that many women had been subjected to abuse and violence within the *panchayat*. "In Pyari Devi Balai's *panchayat*, Mokhunda, the *Upsarpanch* [deputy village head], Gisulal Ganna, ran the affairs of the *panchayat* in the beginning. When some scandals involving embezzlement came to light, Pyari Devi took over the control of the *panchayat*. Since then he went against her. He would hurl casteist abuses at her and practice untouchability with her. He would say: 'A low caste woman cannot be the *Sarpanch* [village head]; ever have your grandfathers become *sarpanches*?'".<sup>17</sup> In its conclusions, the study commented: "*The 1993 Amendments to the Constitution had raised hopes that the gender and caste ridden society would lose some of its strength with the support of the state. But our association with the work of Women in Panchayati Raj Institutions made us realise that the road to such change was not that simple. We realised that the state, while agreeing to share political power with women through enactment, was yet unwilling at the grassroots for such a change. The society had a major role in denying real flow of power to women*".<sup>18</sup>

### **Testimony of a *dalit* woman in Rajasthan recorded by Amnesty International delegates, December 2000**

Bhanvari Devi is from a *dalit* caste and lives in a village in Ajmer district where there are four to five houses of upper castes and around 20 belonging to other *dalit* castes and *adivasis*.

*"Dalit people have been kept repressed for years. Even when dalit women were raped nobody would say anything about it. Even if a dalit person is riding a cycle or even a dalit person wears shoes in front of an upper caste person then they are harassed by members of the upper caste. If someone from a dalit family dies none of the upper caste will come to carry the dead body.*

*There is a caste system within the dalit community also -- it has permeated even these communities. Those from the dalit community who get a good job will change their name so that they can survive in the upper caste community.*

*We have to go and get water from a well about 2km away from the village and always have go wearing dupatta [scarf worn over the head]. We would not be allowed to pray in temples. Therefore a lot of the time we used to pray at home. I was married at the age of seven then started to go to my in-laws when I was 14. When I went to school my father used to plead with the teacher to educate me. From about 18 to 26 I used to teach about 20 women. Some of the servants of the upper castes started to come to my class. Once an organisation visited the area which started to tell us about our rights*

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<sup>17</sup> From *Women in Panchayats in Rajasthan: Study and a Public Hearing*, Mahila Jan Adhikar Samiti, Ajmer, Rajasthan, 1999, page 4.

<sup>18</sup> *ibid*

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and that we should drink from the same well as the upper castes. Then I started to make sure that everyone got their water from the same well as that used by the upper castes. When I started to do this I was questioned on my audacity to take water from the same well as upper castes used. After I started using the water for the class participants the upper castes beat my 11-year-old daughter. They beat her so badly that she became unconscious. Some of the others from my community found her and brought her back to my house. The youngsters from the upper castes then came to my house and destroyed my house. I did not lose my strength. I went and talked to the other men from my community and said that if they stood by me then we could defeat the upper castes.

I went to the police station but they already knew what had happened. The constable told me to leave the premises -- he called me a whore. I thought that they had written my complaint but it later turned out that they had not registered anything. I went to DIG (Deputy Inspector General of Police) who phoned the police station. When I came back the police officer was standing at the bus stop and started shouting at me. The police officers from Ajmer sent police to the village to protect me. But the police officers who had come to help started to side with the upper castes. The kids who I used to teach came to tell me about the police colluding with the upper castes. I then told the police to leave. I was scared of what they would do now that they were siding with the upper castes. I then went to the police station in Ajmer and told the SP (Superintendent of Police) that I did not want the police. Then that evening about between ten and 20 Jadavs [higher castes] came to my house to beat me and my husband. They tore my blouse off me. Then they grabbed me by my hair. I got so angry that I grabbed a wooden stick and started to beat them. When I started to beat them they ran away. I started to get so angry that I started to say to them that I was going to kill them. My husband tried to keep me in the house. He was scared that I was going to be killed. I asked a neighbour for help as he had previously said that he would help me if I was being harassed by others. When I approached him for help he said that he had seen nothing. He was from the higher caste -- Jadav. I then went to the police station. They told me to bring my husband but my husband was too scared to go as he thought that he would be detained. My husband went into hiding.

Some time after this incident I started to take water from the hand pump. When I did this I was told that I would be killed. But I told them that I was going to take water from here. They told me that if I touched the handpump that they would have to disinfect it. I would clean the pump myself in defiance. I used to go alone to the hand pump because others were too scared to accompany me. After some time they then made another hand pump for the dalits but in time they soon tried to take over this hand pump as well. So still despite having a hand pump in the village dalits used to have to go 2km away by foot to the hand pump.

At one time my daughter went alone to the hand pump. She had to pass the Jadav's fields on the way. While on the way to the pump my daughter was raped by two or three Jadav men who convinced the girl (at that time 12 years old) to get fruit from their field. She was bleeding when she came home. I went to the field to find them but could not find them. I went to the police station about 9/10 kms away -- I sat at the bus stop for hours. Other dalit villagers told me to come back. One of the men from the panchayat said that the matter should be decided by the panchayat because otherwise he said that the girl's respect would be lost and she would not be married. Then after this my daughter started to have mental health problems. In the panchayat meeting I was ostracised. Even the dalits did not talk to me. But even then I kept going to the school to teach the children in defiance. I would even keep sitting there when no other children would come to the school. The only person that helped me was the land registrar. My husband kept trying to push me into a compromise. I filed the FIR some months later

*because the police initially would not let me. When the court case started they asked me for witnesses but I did not have any. The constable nor the person from the panchayat came to court. Thereafter with no notification the case was closed after six months. I would have taken it higher but I did not even receive notification of closure. My daughter who was raped was eventually married in Ajmer. However after two years he died and my daughter completely disappeared. I have not been able to find her or her body. I could deal with anything but not losing my daughter.*

*I founded a Mahila panchayat [women's council] about four years ago as part of the Mahila Jan Adhikar Samiti (Women's Rights Union). The very same people who used to harass me now come to me for help. I have managed to mobilise 200 women for the panchayats. The reason why the women's panchayat was set up was because we don't get justice from the police. There are so many different types of cases that we hear about. If we hear of a rape case then we take the Mahila panchayat to the perpetrator's house and stand outside to embarrass him. Police don't normally know that the meetings are taking place. If they do find out then they normally take money or threaten to put cases on us."*

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### III. Access to justice: a case for negligence?

The area of accessing justice for women victims of violence in the community is one which brings into sharp focus continuing problems of discrimination at the grass-roots level in Indian society: where concepts of patriarchy, caste, community and honour have an immediate impact on victims and contribute directly to a situation of impunity for perpetrators. Given that the ability of women to access justice is part of the overall empowerment process essential to women's development and bearing in mind the priority being given to women's empowerment by the present government, Amnesty International believes that this crucial area must be addressed urgently by the state.

In its first periodic report to CEDAW, India acknowledged that "A large number of women have not been able to fully avail the benefits under the Constitution and other legal provisions. There are several deterrents in the way of women seeking legal redress. Insufficiency of legal aid, procedural lacunae and delays, lack of basic knowledge about the law and procedures and long drawn out trials continue to hamper women's access to legal redress."<sup>19</sup> Amnesty International agrees that these problems are real for women attempting to access justice. However, these problems are also apparent for many others in India and are characteristic of an overloaded criminal justice system which mitigates against a range of marginalised groups in society. Amnesty

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<sup>19</sup> UN doc: CEDAW/C/IND/1, 10 March 1999, para 97.

International believes that the problems faced by underprivileged and marginalised women in accessing justice go beyond those identified above by the government. Notably these involve gender, caste and class discrimination within society, organs of government and the criminal justice system.

*Even today, as we approach the 21<sup>st</sup> century, violence against women is usually treated as a marginal issue by the law-enforcement machinery in our country, whether it be the police, the prosecutors or the medico-legal fraternity or often even the judiciary. It is essential to sensitize this entire machinery to gender issues, particularly violence against women. Often, the police and other personnel are unaware of the legal safeguards for women and the amendments to laws relating to such safeguards.*

[Annual Report 1992-93 of the National Commission for Women, Chapter II, page 42]

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## The theory of justice for women: the legal and administrative framework

### The law

The central government and state governments have taken several steps to protect woman through enactment of legislation and to prosecute those who perpetrate violence against them. The Indian Penal Code (IPC) has been amended several times in relation to crimes against women largely as a result of campaigns against violence led by the women's movement in the country.

*Almost every campaign against gender based violence on women in the 1980s resulted in a new legislation providing protection to them. Each enactment resulted in making the punishment provisions more stringent, setting time limits for pending cases and extending compensation to the victims. Violence in its different dimensions has been sought to be tackled by legislative reforms, innovations in the structure and working of the police force, measures to sensitise the bureaucracy, media campaigns and new institutional structures*

[Extract from the Government of India's report to CEDAW, UN doc: CEDAW/C/IND/1, 10 March 1999, para 93.]

Section 375 of the IPC<sup>20</sup> defines the offence of rape as sexual intercourse against the will or consent of a woman (punishable with between seven years and life imprisonment). Penetration is explained as "sufficient to constitute sexual intercourse". This has long been criticised for being too narrow a definition of rape. Section 354 of the IPC provides for punishment for "assault or criminal force to woman

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<sup>20</sup> Section 376 of the IPC sets out punishment for rape of seven years or more.

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with intent to outrage her modesty", a wide-ranging provision which is commonly used in incidents of violence not amounting to rape (defined as penetration) but which invites a far lesser punishment of imprisonment of up to two years. The National Commission for Women and several women's organizations have been involved in attempts to establish a crime of "sexual assault" in its place -- even drawing up a Sexual Assault Draft Bill, 1993 -- but so far without success. In 1995 and 1996 numerous suggestions were made by lawyers and women's activists to strengthen legal safeguards regarding rape and other related issues in response to questionnaires on the criminal law distributed by the Law Commission of India. An Ad hoc Subcommittee of the National Commission for Women (NCW) conducted fairly widespread consultations about laws relating to rape culminating in a set of recommendations produced in September 1999. In March 2000, again after apparently widespread consultation, the Law Commission of India issued a Review of Rape Laws.<sup>21</sup> The NCW also published a further study in August 2000, *Rape: A legal study*, again making recommendations for amendments to the law. In December 2000, Amnesty International delegates were told by officials of the Department of Women and Child Development of the Government of India that they were awaiting a final report on necessary amendments to the law from the NCW which would become part of the Empowerment Policy for 2001. It appears that the NCW had been asked by the government to consolidate its recommendations on laws regarding rape of women and children.

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<sup>21</sup> Its 172<sup>nd</sup> Report, available via its website at [www.nic.in/lawcom/rapelaws.htm](http://www.nic.in/lawcom/rapelaws.htm)



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However, it is not known what role the Law Ministry was to play in drawing up such legislation. Amnesty International is concerned that given the numerous discussions and studies that have taken place on this issue without a bill having been drawn up by government, draft legislation should be prepared and disseminated for discussion at the earliest opportunity with a time frame for its entry into parliament.

While the IPC provisions concerning rape are on paper available to women from all backgrounds in India, there are also special provisions in law which apply to sections of society, including women, who are deemed to be particularly vulnerable to abuses. Special protection exists in law for members of scheduled caste and scheduled tribe communities. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was enacted in order "to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for special courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto". Sub-sections of section 3(1) of the Act specifies "atrocities" against scheduled castes and scheduled tribes which are punishable with imprisonment of a minimum of six months and maximum of five years, and with a fine. While many of these atrocities are intended to protect men and women alike, some are specific to women (i.e. the assault or use of force against a women with intent to dishonour or outrage her modesty or using a position of dominance over a woman to exploit her sexually) or are atrocities to which women are particularly vulnerable -- being stripped and paraded naked. Government officials have a

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central role to play in the implementation of the Act which contains a list of prescriptive measures, described as "the duty of the government to ensure effective implementation of the Act". Listed in Section 21(2) are some of the measures which include the provision of legal aid, expenses for the witness and victims of atrocities, the provision of economic and social rehabilitation to the victims, the appointment of officers to supervise the action, periodic surveys, and special measures. The state government is instructed to designate one Sessions Court in each district to be a Special Court for trial of persons accused of offences under the Act.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995<sup>22</sup> provide for reactive, preventive and promotional measures that can be taken in an effort to ensure that there is redress for the violations of the rights of scheduled castes and scheduled tribes and that such violations do not recur.

### **The administration**

Special administrative measures as a means of ensuring implementation of legislative protections for women were apparent in both Uttar Pradesh and Rajasthan. *Mahila thanas* -- "all-women" police stations established to encourage women to bring their complaints to police by staffing them with women police officers -- had been established in both states. Both also had Crime Against Women Cells in their police departments where cases of crimes against women are investigated and monitored.

In Rajasthan Amnesty International delegates heard from government officials and activists about *Zilla Mahila Sahayata Samitis* (ZMSS) [District Women's Support Committees]. These were established in Rajasthan on 6 August 1997 as a result of pressure from the women's movement in the state who were concerned about

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<sup>22</sup>Announced by the Ministry of Welfare, New Delhi, in the Gazette of India on 31 March 1995.

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implementation of legal provisions designed to protect women and provide them with redress. The Committees were designed to establish a forum at the district level which women could approach and which would address complaints at that level and in a comprehensive manner, dealing with several aspects of a situation at once: the criminal aspect, the welfare aspect and potentially the civil law aspect, ensuring that throughout the process the woman was assured justice. They are headed by the District Collector (the senior-most administrative official in a district) and consist of the district Superintendent of Police, a judge of the Family Court and representatives of non-governmental organizations from the district. The Member Secretary of each committee is the Project Director of the district Women's Development Program who operate under the government's Women and Child Department looking after women and children's development programs. The committees are provided with and collect their own funds to distribute to women in the districts. Complainants can come to these committees and hearings are held *in camera*. The committees review cases with officials from the local administration and police. However, Amnesty International is concerned that there appear to be no guidelines for the operation of these committees, or specialised training given to those involved. Women activists in Rajasthan claimed that the majority of the ZMSSs are "defunct". They also complained that those chosen to be representatives of non-governmental organizations on the committees were from amongst organizations such as rotary clubs rather than from grass-roots organizations who represented women and members of disadvantaged communities at the local level, thereby ensuring that they ceased to be a representative public platform. The State Women's Commission estimated that around 40% of districts in the state had functioning committees.

Amnesty International delegates were interested to learn during discussions with officials of the Department of Women and Child Development in Delhi subsequent to their visit to Rajasthan that the central government intends to replicate these committees throughout the country as part of its Women's Empowerment Policy.

### **The National and State Commissions for Women**

The National Commission for Women was established in January 1992 under the 1990 National Commission for Women Act. A statutory body, its aim was to check incidents of violence against women and to promote social, legal and economic equality of women. In addition to the NCW, several states of India have established State Women's Commissions (there is no formal relationship between the state and national bodies). As of March 2001, there were reported to be State Women's Commissions in 17 states.

The Rajasthan State Women's Commission was established in May 1999 under the Rajasthan State Commission for Women Act, 1999. The Chair, appointed by the state government, is to be an "eminent woman committed to the cause of women with sufficient knowledge and experience in dealing with problems of women". Its function is

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to inquire into "unfair practice" (the definition includes "mental or physical torture" of a woman), address inadequacies in laws, monitor enforcement of laws, inspect prisons, police stations, lock-ups, refuges for women victims of violence or other places of custody where women are held as prisoners or shelters and make recommendations for prosecution in individual cases. Between 1 April and 30 September 2000 the Commission received a total of 354 complaints, 154 of which were reported as "resolved".

Uttar Pradesh has no State Women's Commission. When Amnesty International delegates asked Home Ministry officials in Lucknow, they were not able to say when one might be established. In January 2001 it was reported that the National Commission for Women had directed the Uttar Pradesh government to establish a women's commission, alarmed at the number of complaints relating to atrocities on women received from Uttar Pradesh (the largest number from any state). The Policy on Women drafted by the Uttar Pradesh government states its intention to establish a Commission which will "work towards women's rights, relief against exploitation and also keep an eye on the implementation of the Policy". The Policy envisages task forces under the Commission in every district "to make available to the Commission, regular district level information on women's exploitation, domestic violence, misbehaviour towards women and also cases of non-compliance to laws". It will also have the function of reviewing laws. Uttar Pradesh has no State Human Rights Commission either. As an apparent alternative it has a human rights wing of the police department headed by an Additional Director General of Police to which all complaints against police are directed. However, when interviewed by Amnesty International delegates he appeared to be unaware of how special provisions for women victims of violence were operating in the state.

While the good intentions of the staff and members of the NCW and the State Women's Commissions are not doubted, they have suffered greatly from inadequate powers and resources. The Commissions have no powers to enforce or to exert pressure for the enforcement of their recommendations. In Rajasthan, recommendations are made on the basis of hearings, individual investigations or simply on the basis of the complaint. Many cases are simply "monitored". In many cases the Commission asks police to investigate and make recommendations on the basis of police reports. Amnesty International delegates were told that in only 168 out of the total number of the almost 1,000 complaints received by the Commission so far had hearings been held at the Commission itself.

In January 2001 it became apparent that as part of the Women's Empowerment Year, amendments would be made to the National Commission for Women Act 1990. In January 2000 CEDAW had recommended that the NCW's powers should be as wide as those of the National Human Rights Commission (NHRC)<sup>23</sup> and include a complaints

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<sup>23</sup> The NHRC was established in 1993 under the Protection of Human Rights Act, 1993. It has

procedure.<sup>24</sup> Media reports in January implied that the Commission's powers would indeed be enhanced along the lines of the NHRC allowing it to recommend initiation of prosecution proceedings against individual perpetrators following inquiry. Reports also indicated that a new Section 10(1)(e) of the NCW Act would empower the Commission to "take up cases of violation of the provisions of the Constitution, and of other laws relating to women, with appropriate authorities and recommend measures for the effective implementation of those provisions". No draft of the amendment Bill was available at the time of writing.

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over 200 staff to deal with the thousands of complaints it receives every month.

<sup>24</sup> UN doc: CEDAW/C/2000/1/CRP.3/Add, 1 February 2000, para 41.

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## The practice of justice for marginalised women

Attempts by women to seek justice through the criminal justice system are regularly forestalled. Although legislation exists, measures to ensure its full implementation -- including communicating provisions to the public, training officials responsible for administering the legislation, providing legal support services to enable beneficiaries to invoke legislation, monitoring implementation and ensuring further development of legislation in response to the reality on the ground -- have not been sufficient. Unless supported by male relatives or a strong social group, women victims of crime are at a severe disadvantage within the criminal justice system. Threats and harassment by perpetrators and their communities and social pressures which exist within families and communities force them towards compromise or withdrawal rather than pursuing justice. Gender biases which exist within institutions of redress are often exacerbated by ingrained caste and other biases against members of disadvantaged communities.

*Not many of these cases reach the courts for trial, partly in view of the shame and honour involved and partly due to the existing difficult and complicated procedural laws. It was also noticed that the police are generally apathetic to the registration of complaints involving rape. Even in those cases which come up to courts for trial after going through all the investigations and medical examinations; our courts had not been sensitive to the trauma undergone by the rape victims, both during the actual commission of the offence and during trial in the courts. The courts are also oblivious of the social stigma and ostracism a victim of rape has to face throughout her life and all rapists to be acquitted on wholly irrelevant and flimsy grounds of age, religion, caste, status and other considerations.*

[National Commission for Women Annual Report for 1995-96]

### a. Registering a complaint

Non-registration of crimes is a general problem in India. Political influence over the police and caste, class, religious and gender biases mean that it is extremely difficult for members of disadvantaged groups to file complaints, particularly against powerful individuals. A case cannot continue and a victim cannot receive justice if a First Information Report (FIR) is not completed and registered by police on the basis of a person's complaint.

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A lawyer in Uttar Pradesh estimated that a maximum of 20% of cases of rape are registered and reach the courts. An activist working with *dalit* women estimated that only 5% of cases of violence against *dalit* women are registered. The under-reporting of cases was also acknowledged by officials with whom Amnesty International delegates spoke in both states.

It is clear that many women victims of violence in India do not approach police with a complaint because they know that they will be dismissed or further abused. Amnesty International delegates visiting Uttar Pradesh and Rajasthan in December 2000 were repeatedly told by activists working with women that the majority of cases were not reported to police for fear of dishonour or reprisals. Most women will only visit a police station with a male relative or will think twice about making a complaint without the support of a male relative. During a training program carried out by the United Nations Development Program in India in 1999, several police officials including one woman police officer, were sent in plain clothes to a police station to file a complaint. Out of 14 visits to file complaints in only two cases did the officials manage to file complaints after waiting 6-7 hours despite the fact that police are legally obliged to take down in writing a complaint of a cognizable offence. The woman police officer who tried to file a complaint of molestation was verbally abused by the Station House Officer, who refused to file her complaint.

In a study of women's participation in *Panchayats* carried out by the *Mahila Jan Adhikar Samiti* in Ajmer in 1999, it was found that "Of all the respondents who had to deal with the police in their four years of term 17.5% women said they experienced uncooperative attitude. But in the case of many *sarpanches* wherever there was sexist, casteist or other type of abuse or violence the women desisted from reporting to the police because they felt they would take the side of the powerful of the village. Ninety percent of the cases registered in connection with abuse/violence against women *sarpanches* were found to have been closed by the police. Most cases were claimed to have been closed because the investigation felt they were registered by the women for political rivalry."

As mentioned above, as a means of encouraging women to bring their complaints to police, many states have established *mahila thanas* (women's police stations). However, the majority of these are in large cities, thereby denying access to the most marginalised women in rural areas and there are few of them even in large cities. Rajasthan currently has nine *mahila thanas* and as of December 2000 was planning to establish a further three. This to cover a population of well over 44 million in the state. Uttar Pradesh's draft Women's Policy stated its intention of establishing *mahila thanas* in every district of the state. The *mahila thana* in Ajmer, Rajasthan was said to have been headed by a male Station House Officer until recently and there is no evidence that women police officers dealt significantly more sensitively with women victims or recorded a higher number of FIRs than men, given that they were provided with no specialist training. Women police

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officers working in *mahila thanas* have reported that investigations into complaints of rape are always carried out by male police officers although sometimes accompanied by women. Amnesty International knows of no systematic evaluation of the role of *mahila thanas* having been carried out by police or the administration as a means of assessing whether they are an effective means of providing an accessible and safe avenue of redress for women. Several women's organizations, notably in Mumbai, have argued that *mahila thanas* marginalise women's issues and studies carried out by the Ford Foundation at the Tata Institute of Social Studies have reportedly identified several problems with them.

Crimes against Women Cells have also been criticised for not responding appropriately or effectively to cases of violence against women although the majority of crimes referred to these cells relate to violence within the family.

Police are reluctant to file FIRs citing offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, because the perpetrators -- often powerful individuals within the community or even caste group to which police officers themselves belong -- receive such stringent punishments. Amnesty International delegates were told that *dalits* and others are so reliant economically on upper castes that they are afraid to even think of filing a case under the Act because of the possible consequences. Several days prior to Amnesty International's visit to Lucknow in Uttar Pradesh, a *dalit* woman had reportedly been gang-raped by a group of men at gunpoint. Rather than registering an FIR the woman simply disappeared for fear of further consequences. Many *dalits* are not aware of provisions of the Act and their rights under it and it is rare for police to voluntarily inform them of those rights.

Many of the cases documented in this report demonstrate the refusal of police officers at the local level to file complaints brought by disadvantaged groups and particularly women and the problems members of these groups face in even approaching police. Well-known journalist P. Sainath during a visit to Rajasthan was told that there is an entry fee into police stations in Bharatpur district (Rs.225 [\$5]) and more for filing a complaint.<sup>25</sup> When Amnesty International delegates raised the problem of non-registration of FIRs by police, officials in Uttar Pradesh admitted that this was a general problem but maintained that they were dealing with it by issuing executive and departmental instructions to police to respond according to the law to complaints made by women and other sections of the community. However, they gave no indication that they followed up such orders with mechanisms for monitoring adherence.

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<sup>25</sup> *A dalit goes to court*, P. Sainath, in *The Hindu*, 11 July 1999.



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In September 1999 the Ad hoc Subcommittee of the NCW recommended an amendment to the IPC to provide for punishment of a police officer who refuses to record a complaint relating to the commission of a cognisable offence. This proposed amendment -- and the many others which accompanied it -- has never been pursued.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules strengthen the procedures in the Code of Criminal Procedure (CrPC) for the recording of an offence by the police, and specify that the officer-in-charge of a police station should record any offence under the Act, whether given verbally or in writing and give a copy to the informant, free of charge. Recognising the difficulties that a person may have in registering an offence under the Act, rule 5(3) states: *"Any person aggrieved by a refusal on the part of an officer in-charge of a police station to record the information ... may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who after investigation either by himself or by a police officer not below the rank of Deputy Superintendent of Police, shall make an order in writing to the officer in-charge of the concerned police station to enter the substance of that information to be entered in the book to be maintained in that police station."* While many of the victims interviewed by Amnesty International delegates had pursued their complaints with higher authorities having been refused at their local police station, in many cases the directions of higher authorities continued to be ignored by police officials locally (see case of Ramvathi, pages 12-13). Amnesty International did not come across a single case in which action had been taken against a police official who had failed to register an FIR or otherwise neglected his duties under the Act despite the fact that Section 6 of the Act provides for up to one year imprisonment for public servants wilfully neglecting their duty.

During Amnesty International's visits to Uttar Pradesh and Rajasthan, repeated concern was expressed about the failure of police to file proper FIRs in cases of rape and other forms of violence against women. Biassed handling of the original complaint by police can have disastrous effects on a case. Police were alleged to often record cases under section 354 IPC (*assault or criminal force to woman with intent to outrage her modesty*) which is bailable or section 376 read with section 511 (*attempt to rape*) both of which invite lesser penalties than section 376 (*rape*) which is also non-bailable, despite the fact that the victim clearly indicated that she was raped. Lack of legal or even basic literacy on the part of complainants means that it is rare for them to detect that an inaccurate provision has been used until it is too late. Attempting to amend FIRs can also have serious consequences as complainants can be accused of changing their story for malicious motives.

## **b. Problems of evidence**

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Police are also accused of withholding and destroying evidence in many cases, often at the behest of the alleged perpetrators who might have caste or other community links with the police officers. Police also have the ability to delay the recording of medical evidence. It is not a legal requirement for police to send women who allege that they have been raped for an immediate medical examination. Much medical evidence is lost because this simple procedure is not followed. In one case that Amnesty International documented in Rajasthan (see case of Narbada, page 35) when the victim asked about a medical examination she was told by police that she didn't need to have one until several days later by which time valuable medical evidence was lost.

Poor access to medical facilities necessary to document violence, including rape, is also a problem. Health centres are often scarce in rural areas leading to delays which mean that valuable evidence is lost. Obtaining sufficient evidence to prove rape -- as strictly defined in Indian law and by the courts as penetration by the penis -- can be very difficult. However, while prompt medical examination can provide strong, and in some cases irrefutable evidence, a victim's testimony also constitutes vital evidence. Contrary to the apparent view of many judicial officers in India, lack of medical evidence of sexual penetration should not refute an allegation of sexual abuse. According to the Istanbul Protocol<sup>26</sup>, "even on examination of the female genitalia immediately after rape there is identifiable damage in less than 50% of cases [and lesions] in less than 30% of cases [of anal rape]". This underlines the importance of victim testimony as well as careful expert medical interview, examination, with the informed consent of the victim, and laboratory testing of specimens.

In the case of Narbada, when the medical examination did take place, police officers were present throughout and spoke to the medical officer carrying out the examination. This is in clear violation of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Principles -- see above) which have been endorsed by the UN Special Rapporteur on Torture<sup>27</sup>, article 6a of which states that "the examination must conform to established standards of medical practice. In particular, examinations shall be conducted in private under the control of the medical expert and outside the presence of security agents and other government officials".

In September 1999, the Ad hoc Subcommittee of the NCW recommended making the refusal or failure of a medical practitioner to conduct a medical examination of an alleged

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<sup>26</sup> The Istanbul Protocol (The Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) is the product of three years work by a network of medical, legal and human rights experts. It was presented to the UN High Commissioner for Human Rights, Mary Robinson, in August 1999 and will be published by the UN. It is currently available at the website of Physicians for Human Rights: [http://www.phrusa.org/research/istanbul\\_protocol](http://www.phrusa.org/research/istanbul_protocol)

<sup>27</sup> UN doc: A/54/426, 1 October 1999.

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victim of sexual assault punishable with imprisonment of up to one year. It also recommended inserting specific procedural guidelines in the Code of Criminal Procedure for medical examination of victims of sexual assault. Neither of these recommendations have yet been taken up by the government and there are reports that many victims of rape are given cursory examinations by doctors with no attempt to document the testimony of the victim.

Reliance on the evidence of witnesses is also extremely problematic. It is common for witnesses in cases of violence against women to withdraw their testimony, often having arranged a financial deal with the accused. A lawyer in Uttar Pradesh estimated that around 25% of witnesses withdraw their testimony because of pressure placed on them by the accused or members of their community and noted that in cases regarding women this percentage would only increase because of the patriarchal pressures which exist in these contexts. It is also reported that in many cases witnesses give contradictory statements in court because they have been planted by police or defence lawyers.

### **c. Time and money**

The length of time it takes to pursue a case of torture through the courts encourages victims to make compromises under pressure from perpetrators and often their own community or family. All lawyers and activists interviewed by Amnesty International spoke of the reluctance of victims to file cases because of the time and money involved. There are often significant distances between the village where a victim lives and the block [administrative unit within a district] court where a case is being heard. Money is lost in attending hearings not just on travel expenses but lost working hours for those women in employment and their male relatives who accompany them to the hearings.

*The average time period taken for a case of rape to find its way from the Sessions Court to the Supreme Court was between 10-15 years*

*[Gender and Judges: A judicial point of view, A preliminary Report based on research findings by a non-governmental organization Sakshi, June 1996, p.28]*

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules provide for transport and other expenses for victims to enable them to attend hearings and in the case of women for an attendant to accompany them and covering of wages lost during days attending hearings. However, MARG's study, "Efficacy of the Enforcement System in Delivering Justice to Raped Scheduled Caste Women"<sup>28</sup> found that many sections of the

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<sup>28</sup> A report prepared for the Scheduled Caste Development Wing of the

Rules had not been implemented in any of the fifty rape cases that were studied in Meerut and Banda districts of Uttar Pradesh, including provision for travelling and maintenance expenses (see also under Relief and Rehabilitation below). Often women simply do not have the money to pursue a case and having no economic independence, if their family do not support them in pursuing the case they drop it (see also under Legal support below).

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*Ministry of Welfare, Government of India, by the Multiple Action Research Group (MARG), June 1995. The report is concerned with 50 cases in which FIRs have already been filed.*

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Amnesty International is interested to note statements in the draft women's policy drawn up by the Uttar Pradesh government which reads "The government will ask the High Court to undertake periodic review of crimes against women in the state and to set a time limit for settlement of cases relating to serious criminal offenses against women". It also talks of reaching decisions in rape cases with efficiency and promptness. "Officials found guilty of laxity in such cases will be punished and successful officials rewarded". In its Third Report covering the period 1994-95 & 1995-96, the National Commission for Scheduled Castes and Scheduled Tribes recommended that "Police should take timely and effective action in investigating the cases and submitting the chargesheet in the Court which would greatly help in curbing crimes. It is necessary that investigation on complaints are initiated soon after the FIR is lodged. It is also necessary to have regular monitoring and examination of cases which are closed without *challanning* [charges being filed in court], so that genuine cases are not closed".<sup>29</sup>

Extract from a report on a series of attacks on women in Kanpur district of Uttar Pradesh by a *Sarpanch* (also the local landlord) including the rape of a *dalit* woman, Ram Rathi, in 1985. The extract is describing the perception of villagers concerning redress for the victims. The case against the perpetrator, which was pursued by Ram Rathi has been closed as he is reported to have killed the main witness.

*Above all, to get justice the judicial process is no less than the suffering of rape itself. Criminals will blame her as a characterless woman. She will have to prove that she was raped and the criminal has to prove that he has not raped. Questions and answers during arguments are no less than rape.*

*If it would be decided to tolerate this and fight till the end, even then the judgement is not made up of only the courage of a woman. A lot of money is required to have good advocate, to pay bribes to clerks, peons, servants, even to bribe the judge as it is said. Anybody needs a lot of money too for travelling from Pali to Kanpur court, Allahabad High Court and Supreme Court. Getting justice is a game of money. Krishna Pratap Singh [the accused] has sufficient money and means to escape from the punishment. Ram Rathi's husband is a labourer in a factory. Providing meals to his family is enough for him. Ram Rathi can get justice only from god.*

It is clear that time and money involved in pursuing cases leads to a large number of women deciding not to file complaints or to withdraw complaints once filed. The long time periods allow victims to feel the effects of social ostracisation, harassment and intimidation and for witnesses to withdraw their testimony under similar pressures.

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<sup>29</sup> page 298, para 8.3.

#### **d. Legal support**

The legal aid system in India is entirely inadequate to deal with the number of people who require legal aid. This is particularly the case for women victims of crime. In three years of sitting on the district legal aid board, one lawyer that Amnesty International spoke to in Uttar Pradesh said that she was aware of legal aid being given in only two cases of violence against women. Under the Legal Services Authorities Act 1987, a wide range of groups including members of scheduled castes or scheduled tribes, women and children are all entitled to legal services. It is common knowledge that legal aid cases are given the worst lawyers and even if not taking legal aid, poor victims are at the mercy of unscrupulous lawyers who exploit their lack of knowledge of the legal system.

*Constitutionally women have equal access to legal services but because of low levels of education, limited exposure to laws and legal procedures, social taboos and limited financial means, women cannot always utilize legal services... government has sought to remedy this condition by providing legal aid, legal literacy and promulgating the Family Courts Act.*

[India's report to CEDAW, UN Doc: CEDAW/C/IND/1, para 360].

MARG's study in Uttar Pradesh again found that in not a single of the 50 cases of women victims of rape studied had legal aid been provided to the victims as envisaged under section 21(2)(i) of the Act. Victims were merely given monetary relief of a few thousand rupees. The study concluded: "...we have seen that though on paper there are provisions for legal aid in the form of fees of lawyers, in reality the victims get no such aid. It seems either the Legal Aid Committee is not functioning at all or, people are not aware of its existence and procedures involved or, corruption amongst the lawyers has rendered it ineffective".

The draft women's policy of the Uttar Pradesh government states: "Women will be made aware of the various legal provisions affecting them, in their local language. For this, the government will set up camps at the village level, with the help of voluntary organizations and *Panchayats*... No fees will be charged from women for cases related to violence, property, divorce and maintenance. Women will be given free legal assistance on cases relating to violence and sexual exploitation". However, this policy is a draft policy and such provisions are far from being incorporated into law.

#### **e. Discrimination within the criminal justice system**

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As argued earlier, state institutions continue to reflect discrimination within society and Amnesty International believes that insufficient steps -- both preventive and punitive -- have been taken to address this. The effects of discrimination can range from direct connivance of police with perpetrators to inaction by police or members of the legal profession, to cursory treatment of trials by members of the judiciary.

Women demonstrating against police abuses in Rajasthan, September 1999.

© Mahila Jan Adhikar Samiti

Police officers have their own caste and gender biases and often behave towards *dalits* and *adivasis* in a discriminatory way -- acting within the norms of their social surroundings. The presence of caste biases within the police force was confirmed repeatedly to Amnesty International delegates by activists, government officials and police alike. Officials in Rajasthan also acknowledged that gender sensitivity is not institutionalised within the police force. Amnesty International delegates were told that a new syllabus was being developed with a topic on women for Constables, Sub-Inspectors and Deputy Superintendents of Police.

The state must train police and other state officials to separate their caste, gender and other prejudices from their duty to protect citizens if legislative and administrative policies are to have any meaning. The state cannot afford to overlook this problem any longer otherwise all its sincere efforts will be wasted. In its recommendations for the prevention of torture submitted to the Government of India in December 2000, Amnesty International referred at length to the need for reform of the police -- emphasising amongst other things the continuing problem of political influence over the police which invites discriminatory behaviour. In its brief response to these recommendations, Amnesty International was disappointed to note that no indication was given by the Government of India that it would be taking action in this regard.

Reference has been made above to the problems within the police force in relation to registration and investigation of offences. Amnesty International is concerned that discrimination and abuse within the police demonstrated by individual incidents of connivance, extends to the administration of policing and the manner in which crimes against women are viewed. Amnesty International delegates visiting Rajasthan were extremely concerned to hear of a large number of cases of violence against women which after the filing of an FIR were subsequently logged as found "false" after investigation. The labelling of these cases as "false" is itself a concern as it implies that women have falsely or maliciously filed the cases and plays into the hands of those who argue that women misuse legal provisions to wrongfully accuse men as a means of punishment. In fact, government and police officials explained in Rajasthan that it usually meant that the victim had reached a compromise with the perpetrator of violence, witnesses had turned hostile or there were other reasons for withdrawing the complaint. In these cases "Final Reports" were filed, indicating that a complainant had formally withdrawn a complaint.

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The Rajasthan government indicated that 30% of all cases of crimes against women in the state had been found to be "false" after investigation. As noted earlier, information was not provided by the government of Uttar Pradesh.

The case of Narbada, an *adivasi*, documented by Amnesty International delegates in Rajasthan clearly demonstrates the problems of discrimination faced by marginalised women throughout the process of trying to access justice through all stages of the criminal justice system. In Narbada's village in Udaipur district of Rajasthan -- Samdhora -- Rajputs (upper caste landowning caste) dominate, owning more than 50 acres. They practice untouchability in relation to the *adivasis* who are not permitted to take food or water from upper castes. Most of the *adivasi* villagers work for Rajputs as sweepers or agricultural workers and no-one dares speak out against them. However, Narbada and her uncle, when interviewed by Amnesty International delegates in December 2000, said that there were no previous incidents of rape of women by Rajputs in the village.

Narbada's family owns three *bighas* [2.5 *bighas* is the equivalent of one acre] of land. They do not work for the Rajputs. Narbada was married in 1999 and normally lives with her husband's family around 12 kilometres from Samdhora village. However, at the time of the incident she was staying with her mother for a holiday.

18-year-old Narbada testified that she was raped by a Rajput landlord on the afternoon of 10 March 2000. The incident took place about one and a half kilometres from her house when she went to buy a chicken in the upper caste area of the village. She was kneeling by a river and the Rajput threw her into the river and then raped her. Her attacker's mother reportedly heard Narbada's screams but did nothing to stop her son and when Narbada ran crying back to her section of the village his mother caught hold of her, beat her and told her not to go to the police.

Narbada told her mother and brother what had happened and they called her uncle. When they tried to go to the police station around 50 Rajputs stopped them. However, they went to the police station in Jhallara district on 12 March. An FIR was lodged but Narbada's uncle was not given a copy. He questioned the fact that they had filed the FIR under section 354 of the IPC [*Assault or criminal force to woman with intent to outrage her modesty*] rather than section 376 [*rape*]. One of the constables reportedly threw her uncle out of the police station saying: "who do you think you are". Police told her uncle that if he wanted a "true" FIR he would have to give them Rs.500 [\$11] which he refused to do. Narbada and her uncle asked police for a medical examination but were told by police that this would be done only after an initial investigation. The two constables recorded a fresh FIR once the uncle was out of the police station. He was given a copy of the FIR the next day, 13 March. No case had been filed under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.



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The police constables were themselves Rajputs and are reported to be close to the accused who sells illegal alcohol in a shop which is a regular haunt of police.

On 15 March Narbada and her uncle went to Udaipur, the district headquarters, to see the Superintendent of Police (SP). Udaipur is 90 kilometres and a three and a half hour journey from Samdhora. They told the SP about the rape and their subsequent treatment at the police station. The SP recorded their complaint and ordered an investigation to be carried out into the allegation of rape. No action was taken against police officials who had originally refused to file the FIR and abused Narbada and her uncle. On 26 April the Deputy Superintendent of Police went to Samdhora to begin an investigation.

A medical examination was not carried out until 8 April at Bhopal District Hospital. Police constables who had earlier abused Narbada and her uncle went with them to the hospital. Narbada told Amnesty International delegates that the police officers were present when she was undergoing medical tests and x-rays and that her uncle was not allowed to stay with her. She said that the police spoke constantly to the doctors but she could not make out what they were saying. Narbada and her uncle were told that no medical evidence of rape was found during the examination but they were not given copies of the medical records.

After strong protests from local human rights organizations, the case was challaned in the special court for crimes against scheduled castes and scheduled tribes in Udaipur under section 376 IPC and sections 3(i) and 3(ii)v of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. On 20 May Narbada was told to come to the court at 10am to record her statement. The Public Prosecutor made her and members of her family who were present as witnesses wait for two hours after which he reportedly urged them to make a compromise with the accused and withdraw the complaint. He reportedly told Narbada and her family that if she pursued the case she would just do the rounds of the court and not obtain justice. Narbada and her family refused to withdraw the complaint. They waited until 4pm when the statements of Narbada's aunt and mother were recorded. However, there was no presiding officer or public prosecutor in the court when their statements were recorded by the clerk. Only the lawyer for the accused was present.

The accused, his mother and members of the Rajput community continued to put pressure on Narbada and her family to compromise. Her relatives were also reportedly threatened with detention by police as a means of putting pressure on her to compromise. On 11 October at midnight two police constables (including one of those who had originally refused to file the FIR) came to her parent's house and threatened her. They were drunk. They knocked on the door and asked her to come out. When she refused they went to her

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uncle's house insisting that she be sent to the Police Station. He refused and eventually the police went away.

On 6 October 2000 Narbada and her uncle gave their statements to the Additional Superintendent of Police, Udaipur, who is heading the investigation. However, no further progress has been made in the case. Narbada has not been provided with legal aid or received any immediate financial relief as required under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, but has been helped by a local union with legal fees.

Narbada's husband was initially supportive of her following the incident but has now indicated that he will not take her back. Although Narbada described villagers as supportive, she said that they had encouraged her to compromise with the Rajputs.

Section 15 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act provides for the state government to specify a public prosecutor or appoint an advocate. Amnesty International delegates were told that public prosecutors regard cases of poor women as easy money. There is little communication with the victims and it is common for prosecutors to take money from the accused's side in return for putting pressure on the victim to compromise or withdraw the complaint. The judiciary is also blamed for failing to take sufficient care in cross-questioning witnesses and investigating officers during hearings. The draft women's policy of the Uttar Pradesh government says that "The government will make required changes in laws to ensure that court cases related to sexual exploitation of women are presided over by women judges only" and that "Persons associated with the legal processes to increase sensitivity towards girls/women will be provided training from time to time". A further problem appears to be the failure of prosecuting authorities to oppose bail (see also under Threats and Harassment below) which is routinely sought by the accused who often have the means to pay significant amounts of security in order to obtain bail.

Judicial decisions have also shown clear bias against women. In a now famous verdict given in November 1995, a lower court in Rajasthan commented that an incident of alleged rape could not have taken place because upper caste men would not rape a woman of a lower caste and acquitted the alleged perpetrators.

Bhanwari Devi, a *saathin* (village development worker) working to eradicate child marriage with the state-sponsored Women's Development Programme, was raped on 22 September 1992 in Bhatari village, Rajasthan, by five men of a higher Gujjar caste. The rape was widely seen as punishment for her actions in challenging accepted social and cultural norms including a particular child marriage which occurred in the village. Police had come to the village and attempted to stop the marriage, which had already secretly taken place, and the Gujjars held Bhanwari Devi responsible for the police intervention.

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The police initially refused to record Bhanwari Devi's statement. She was also initially prevented from undergoing a medical examination. After much protest, the government ordered an inquiry to be carried out by the Central Bureau of Investigation. It finished its investigation in September 1993 but was reported to have subjected Bhanwari Devi to unnecessarily excessive questioning about the incident. It found Bhanwari Devi's allegations to be true and chargesheets were filed against five men. The trial began in a lower court only in October 1994. In a verdict given in November 1995, the Court found that the delay in filing her complaint with police and in obtaining a medical examination indicated that she had made the story up. Shockingly, it commented that the incident could not have taken place because upper caste men, including a Brahmin, would not rape a woman of a lower caste. The men were acquitted of the charge of gang rape but convicted of minor crimes.

Bhanwari Devi has been ostracised from the village community since the incident in 1992. Throughout, constant pressure was put on her to withdraw the case by members of the local community as well politicians.

Central and state government officials with whom Amnesty International delegates talked, all acknowledged that sensitisation of the judiciary was lacking, a central government official commenting that it had not been "mainstreamed". Officials of the Department of Women and Child Development in New Delhi told Amnesty International delegates that the government had set up a national centre for gender training and sensitisation at the Indian Administrative Service<sup>30</sup> Academy in Mussoorie. However, they indicated that the centre had not yet started functioning having been approved a year previously. It was explained that this Academy would be the apex agency for mainstreaming gender in all government departments.

The law itself includes provisions which facilitate discrimination against women. Section 155(4) of the Indian Evidence Act provides that "when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character". This is in clear violation of Article 2(g) of the Women's Convention which requires state parties to repeal all national penal provisions which constitute discrimination against women. While successive Supreme Court judgements have ruled that the antecedents of victims are not relevant, lower courts continue to refer to these legal provisions in making their judgements and section 155(4) has never been repealed.

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<sup>30</sup> The Indian Administrative Service is the national cadre of administrative officials.

## f. Threats and harassment

This report focuses on violence against marginalised groups, much of it perpetrated by those in powerful social, economic or political positions and able to exert enormous influence over victims and their communities as well as state institutions if threatened by criminal action.

Despite this, there is no protection program for victims or witnesses in India leading generally to a very high number of acquittals in criminal cases due to victims or witnesses withdrawing testimony and the resulting lack of evidence. In the case of women victims from marginalised communities, the odds are stacked against them and without some form of protection or removing them from the context in which they might be receiving threats it is not surprisingly rare for women to pursue complaints through the courts. In numerous cases documented by Amnesty International, victims received direct or indirect threats from perpetrators but received no protection from the state despite complaining to the authorities -- ensuring that perpetrators could continue to harass them and in several cases commit further acts of violence (see case of Ramvathi pages 12-13).

Interestingly, in 1995 the Supreme Court upheld the validity of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act in its entirety in the face of a challenge to Section 18 of the Act which denies anticipatory bail (provided for in section 438 of the CrPC) to those charged under the Act. The Supreme Court argued that Section 18 "has to be viewed in the context of the prevailing social conditions which give rise to such offences, and the apprehension that perpetrators of such atrocities are likely to threaten and intimidate their victims and prevent or obstruct them in the prosecution of these offenders, if the offenders are allowed to avail of anticipatory bail".<sup>31</sup> Amnesty International is concerned that the same fears about threats and intimidation have not been addressed by establishing victim and witness protection programs, recognizing that perpetrators of violence against such women exercise enormous influence over the victim, their community and sections of the administration, even from inside jail, and by extending these safeguards to all vulnerable members of the community who may not be covered by the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

Gangawati, a 25-year-old "Backward Caste" woman, was allegedly raped by an upper-caste Thakur [higher caste] on the evening of 31 May 1999 in her home in Lalua Nagla village in Badaun district of Uttar Pradesh. The village is dominated by the Thakur caste and Gangawati's house is surrounded by houses belonging to Thakur families. Her attacker [N] entered her house with a gun while her husband was away. Her nine-year-old

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<sup>31</sup> (1995) 3 SCC 221.

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daughter was present and witnessed the rape. After her husband returned and she told him about the incident they visited the Khader Chowk Police Station the next day to file a complaint. On their way to the police station, [N] reportedly threatened them with a gun saying he would kill them. The Station House Office (SHO) of Khader Chowk Police Station refused to file an FIR. A Police Inspector reportedly told the Circle Officer [police official] not to register a case against [N] as he was one of their caste -- a Thakur -- and useful to the police. The Circle Officer reportedly advised the family not to pursue the case and also told them that too many days had elapsed so that there would be no medical evidence.

Gangawati then went to the Senior Superintendent of Police of Badaun and requested him to order the registration of a complaint. An order was sent to the Khader Chowk Police Station but no complaint was registered by police at the police station.

On 4 July the SHO of Khader Chowk police station visited Gangawati's house after first visiting [N's] house and asked Gangawati to go with him to have a medical examination conducted. Fearing some trick and in light of the fact that he refused even to take her statement, Gangawati refused.

On 3 June 1999, Gangawati had gone to Lucknow (325km from Gangawati's village) and presented a complaint to the Chief Minister. She had also sent petitions to the National Human Rights Commission. Apparently as a result of these petitions, the Superintendent of Police (SP) of Badaun District was ordered to conduct an inquiry. An FIR (No.259 of 1999) was finally filed on 15 October 1999 accusing [N] under sections 376 (*rape*), 452 (*house-trespass*) and 506 (*criminal intimidation*) of the IPC. However, an initial inquiry carried out by local police dismissed Gangawati's claims and the case was closed for lack of evidence: no medical reports were produced and no statement was taken from Gangawati. The NHRC also closed the case on the basis of this police report.

However, in February 2000, Gangawati made a statement before the court of the Chief Judicial Magistrate, Badaun and the court reopened the case. Amnesty International understands that examination of Gangawati's clothes have now substantiated her claims of rape.

[N] was arrested on 13 April 2000. Immediately after his arrest his brother and several of his supporters threatened to kill Gangawati and her husband and other of their relatives. A complaint to this effect was sent to the SP, Badaun on 15 April 2000. The SP reportedly ordered the SHO to ensure the safety of Gangawati. However, on 29 April [N] was released on bail and threats against Gangawati and her husband continued to be received from [N] and also from the SHO. The prosecution reportedly raised no objection to the granting of bail.

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On 12 May 2000 the National Commission for Women wrote to the Uttar Pradesh police asking them to protect Gangawati and her family and to transfer the SHO and other police officers accused of connivance from the area. No action was taken.

On 10 October 2000, Gangawati's husband, Suresh Chand, went to Khader Chowk Police Station to make a complaint about further threats. In a statement, Suresh Chand has given the following account of his encounter:

*"I told him [the SHO] that I was working as the district correspondent for Dalit Hitaishi, a national monthly newspaper published in Delhi and asked him to help me. [The SHO] stood up from his chair and said, "swine you recorded a case under 376 against [N] and you have got three policemen from amongst my staff into trouble, today, swine, I will kill you and dispose of you". Then [the SHO] searched my pockets. He removed seven hundred rupees I had in my pocket and removed my Dalit Hitaishi press card from my pocket, tore it up and threw it away. He also tore up my statement and threw it away and gave me a severe beating. He locked me in the cell and pointed a revolver at me and said, "swine, either settle with [N] or else I will call [N's] wife and have her register a case under 376 against you. And I will charge you with 3-4 cases and let you rot in prison". Then [the SHO] summoned [N] from the village in a jeep and said to him "look I have your enemy in my hand today. Do what you want".*

Suresh Chand was beaten with a stick on the back and buttocks and threatened at gunpoint to withdraw the case of rape against [N]. His detention was subsequently recorded under section 151 of the Code of Criminal Procedure.

Following this incident Suresh Chand went to Lucknow to appeal to a local Minister with influence in the area to intervene in the matter. The Minister reportedly told him that if he continued to pursue the case against [N] he would be sent to jail. On 18 November 2000, a criminal case of theft was filed against Suresh Chand. He was arrested but released on bail pending investigation of the case by police which is ongoing. Amnesty International has learnt that non-bailable warrants for the arrest of Suresh Chand have subsequently been issued -- reportedly at the instigation of [N] -- and that he is now in hiding. Gangawati also continues to receive threats from police officials and from [N]. Amnesty International was informed in March 2001 that further threats had been made to Gangawati and her daughter. They are reported to have left the village to live with relatives.

The National Human Rights Commission and the National Commission for Women are reported to have taken up their cases and requested information from the state government. However, as of mid-March 2001, both Commissions were said to be still awaiting a final report from the Uttar Pradesh authorities. Amnesty International delegates provided information about Gangawati and Suresh Chand's case to officials

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with whom they met in Uttar Pradesh in December 2000 and requested a response to the concerns raised. However, to date, no response has been received.

### **g. Justice or impunity?**

One of the main factors in assessing whether governments have shown due diligence in addressing violence by non-state actors is whether those responsible for such violence are brought to justice. As can be seen above, a very high percentage of crimes against women go unpunished because cases are not filed, end in compromise and/or complaints are withdrawn. This is clearly so in cases where the victims are from marginalised communities and particularly vulnerable to discrimination, threats and pressure.

Figures produced by the National Crime Records Bureau (NCRB) under the Ministry of Home Affairs indicate a relatively high percentage of cases of crimes against women investigated by police in comparison to very low percentages for the number of cases processed through the courts (see below). These percentages hide the fact that many incidents of violence against women do not reach the stage of registration because of the role of compromises, threats and harassment as well as direct refusal by police to register such cases.

According to the NCRB figures, in cases of rape overall, the number of trials completed within a year is extremely low. Of 58,655 cases of rape pending trial at the start of 1998, 48,685 remained pending trial by the end of the year. Only 16% of those cases went to trial during 1998 and only 4.4% of the 58,655 cases resulted in conviction. 83% remained pending trial. The percentages are similar for molestation (under section 354 IPC).

In its research undertaken in Uttar Pradesh and Rajasthan, Amnesty International found evidence of complicity of the police in covering up the crime in several cases of violence against women. While in several cases action has subsequently been taken to arrest the perpetrators, those state officials guilty of complicity invariably went unpunished. Transfer of officials was the only form of punishment which Amnesty International delegates heard of. Transfer is often temporary and delegates learnt that a common "punishment" is to be transferred to "police lines" for a period. This in effect means that police are removed from a community policing situation and placed within police accommodation and training areas, the primary punishment being that they are no longer able to exert power and influence including by obtaining bribes from members of the public as a means of supplementing their income.

Mohini Devi and her husband Laxman Singh are *dalits* who live in Guthakar village in Bharatpur district of Rajasthan. Mohini Devi recounted to Amnesty International delegates how she was raped in the early morning of 10 April 1999 by three of her

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neighbours while her husband was away. When her husband returned they attempted to file a complaint at the Wire police station nearby but they were stopped by the perpetrators who reportedly threatened to kill them. Laxman Singh took Mohini Devi to Sawai Mansingh hospital in Jaipur on 12 April 1999 for treatment for injuries sustained during the rape. As a result of the medico-legal report compiled by medical staff at the hospital, an FIR was filed (No.46 of 1999) alleging rape (under section 376 IPC) of Mohini Devi.

The investigating police officer is reported to have immediately put pressure on Mohini Devi, her husband and several witnesses (who saw the rapists running away) to withdraw their statements. On 24 April 1999 the perpetrators and several of their supporters from the village reportedly went to the home of Mohini Devi and Laxman Singh and forced Laxman Singh to sign a piece of paper withdrawing the complaint of rape. Attempts to complain to police about their being forced to withdraw the complaint were ignored by police. Human rights activists tried to put pressure on the authorities to order an independent investigation into the incident but no action was taken.

Mohini Devi was subsequently accused by police of Wire police station of making a false statement against the perpetrators at the instigation of one of the witnesses -- Bhagwan Singh -- who is also a *dalit* and member of the Bharatpur *Zilla Parishad* [District Council]. Mohini Devi did not pursue the case and no action was taken against police officials who appear to have been complicit in the cover-up of this crime. Shockingly, this complicity was repeated more recently when Laxman Singh and his brother were repeatedly attacked by upper caste members of the village -- Gujjars. On the last occasion in October 2000, Laxman Singh's legs were beaten with iron rods and after developing gangrene, both of his legs were amputated. Local police from Wire police station consistently ignored complaints of threats and attacks filed by Laxman Singh and his brother and abused them for daring to file complaints against the Gujjars. No protection was offered to the *dalits* and the police reportedly told the Gujjars that if they killed Laxman Singh they would be protected. Although some of those responsible for beating Laxman Singh were arrested, they continued to harass Laxman Singh and his family members as well as Bhagwan Singh who gave his support to the family; they were released on bail in January 2001. In March 2001 police registered a case of rape against Laxman Singh's brother and Bhagwan Singh. Human rights activists allege that police and Gujjar villagers have falsely filed the complaint of rape as a means of pressurising Laxman Singh to withdraw the case and to harass Bhagwan Singh who has consistently supported the family. At no stage has action been taken to investigate the involvement of police in this series of incidents or to initiate action against them for unlawful activities.

## **h. Relief and Rehabilitation**



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The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1989 provide for compensation to be paid to members of those communities who have suffered abuses including Rs.50,000 [\$1,073] to a woman who has had her "modesty" "outraged" or been sexually exploited and Rs2 lakh to a woman who has been raped. However, MARG's study found that many sections of the Rules had not been implemented in any of the fifty rape cases that were studied in Meerut and Banda districts of Uttar Pradesh: there was no economic or social rehabilitation for the victims and there were serious delays in the sanction of monetary relief for victims.

A lawyer involved in numerous cases of violence against *dalits* and *adivasis* in Rajasthan told Amnesty International delegates that he had not come across a single case in which a woman was given immediate compensation and travel and maintenance expenses as set out in the Act. He did however refer to financial relief provided by the Chief Minister of Rajasthan from his discretionary fund or by statutory bodies such as the National Commission for Women. Amnesty International delegates learnt that the Rajasthan government had set up a rehabilitation scheme for victims of rape which provides them with Rs.10,000 [\$215] in immediate relief if they need financial assistance. The Rajasthan government's welfare measures for scheduled castes and scheduled tribes include payment of Rs.100,000 [\$2,147] for victims of rape from those communities. However, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules indicate that in cases of murder, death, massacre, rape, mass rape and gang rape at least Rs.200,000 [\$4,294] should be given in compensation. Rajasthan government officials with whom Amnesty International delegates spoke in December 2000 recognised the need for a cohesive rehabilitation policy for victims of rape and other forms of violence.

Many women victims of violence are in desperate need of relief and rehabilitation. Many need to be at least temporarily and sometimes permanently placed outside the community where the offence took place. This rarely happens. There are no efforts towards social rehabilitation of women victims of violence. They are left entirely on their own or subject to the mercy of their families and the social pressures inherent in that situation. Professional counselling of women victims is virtually unheard of.

Outside the formal criminal justice system, women in India can turn to other bodies for support and redress. There are a large number of active non-governmental and voluntary organizations which provide legal support and temporary shelter and economic support to women. However, given their localised nature, the lack of resources available and the vulnerability of such initiatives to pressure from families, police, community or state, these initiatives cannot wholly address the scale of the problem in a country the size of India. There is clearly room for discussion on ways in which the state can address the needs of abused women through supporting the work of voluntary sector organizations.

### **i. The role of the community**

Members of the victim's caste community or their family members can place enormous pressure on women victims of violence to either compromise or not pursue justice at all through formal justice systems. Dominated by men, caste groups often consider that women victims of violence should suffer their ordeal in silence. In many cases, women who insist on pursuing justice are punished in some way -- often by social ostracisation, but also by being abandoned by their husbands and his family -- for what is seen as bringing further dishonour to the community. MARG's study referred to earlier found that "In almost all the cases we find that the victim has got no support from the village in fighting for justice. This as it is leads to psychological stress on both the victim and her family. People in the village do not forget such incidents especially when the official summons keep coming to the victim, and so the ostracization continues, increasing the psychological trauma."

Maya Devi, a 22-year-old domestic worker and member of a "backward caste" was raped by two backward caste and one *dalit* man in the late afternoon on 18 April 1999 in Bhadasa village, Kanpur district in Uttar Pradesh. The rest of her household were in the fields cutting wheat. Her children were playing outside the house. The men were constructing a wedding tent behind her house and attacked her when she was returning from fetching water from the well some way from the house. One of the men hit Maya and she fell down. They closed the door tied her hands behind her back and then all three raped her. She described to Amnesty International delegates how they kept arguing with each other as to who would have a go first.

*"All three of them tore off my blouse and stuffed it into my mouth. They then took off all my clothes, tied my hands behind my back and proceeded to rape me. After raping me they tied me up with more strings and then poured the bucket of water over me and started beating me. Then they pulled off my gold bangles, took out about 11,000 rupees from my husband's money box and ran away."*

When her husband, Chotelal Sahu, returned he found her in the dark house, unconscious and naked. Seeing that money had been stolen he immediately filed an FIR concerning the theft. He did not immediately report the rape but when Maya Devi regained consciousness the next morning and told her husband of the rape he took her to a nearby hospital -- Ursula Kanpur Convent hospital -- and filed a fresh FIR with police under section 376 IPC (*rape*). A woman police officer went to the hospital and looked through Maya's medical records. Maya subsequently recorded her statement in front of the local magistrate.

Following protests by women's organizations the accused were arrested ten days after the incident. However, they are currently on bail and are continuing to threaten Maya and her relatives. Maya has complained to police about the threats but no action has been taken.

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Maya and her family received very little help from villagers. Those who did sympathise are too scared to help. Maya's family have been told that they should compromise or they will be killed. When Amnesty International delegates interviewed Maya and her husband, he clearly wished to drop the case but she was keen to pursue it. One of the accused had previously been in jail for the murder of the local *sarpanch*.

In the face of a hostile and discriminatory criminal justice system, many communities look within to provide "solutions" to violence against women. During their visit to Uttar Pradesh and Rajasthan, Amnesty International delegates heard of several cases in which caste *panchayats* (councils made up of representatives of particular castes from a particular area) had sat in judgement over cases of violence against women. These *panchayats* are dominated by men and gender biases mean that even within the same caste women are often punished for bringing dishonour or forced to come to a compromise with the perpetrator. An activist in Rajasthan has commented: "Our experience in Rajasthan of combatting cases of violence against women in the last few years has shown that most institutions of justice at the village and community level have been used against women, the poor and *dalits*... On the other hand, the performance of the state institutions of justice like the courts and police has been as dismal."<sup>32</sup> Reports of the judgements of these caste *panchayats* include women being forced to marry the man who has raped them as a means of "solving" the problem of lost honour and future economic dependence (due to lack of marriage offers) that confronts many victims of rape.<sup>33</sup>

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<sup>32</sup> *Colloquium on Justice for Women - Empowerment through Law*, p.131

<sup>33</sup> See General Comment 28, paragraph 24 of the Human Rights Committee which states: "A different factor that may affect women's right to marry only when they have given free and full consent is the existence of social attitudes which tend to marginalise women victims of rape and put pressure on them to agree to marriage. A women's free and full consent to marriage may also be undermined by laws which allow the rapist to have his criminal responsibility extinguished or mitigated if he marries the victim." UN doc: CCPR/C/21/Rev.1/Add.10, 29 March 2000.

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## IV. Conclusion

Amnesty International welcomes the Policy on Empowerment of Women as a symbol of the government's commitment to empower women and to bestow rights with equality. However, the contradictory character of the Indian state continues to be seen in the gap between its constitutional promises and forward-looking policies of legislative and administrative action and implementation which remains under the administrative and social control of the existing power structure which is conservative, and invariably dominated by upper caste, patriarchal interests and prejudices.

Good administrative policies and practices were apparent to Amnesty International delegates who visited Uttar Pradesh and Rajasthan. The idea behind the *Zilla Mahila Sahayata Samitis* [District Women's Support Committees] in Rajasthan for example was a positive one. However, they appear to have suffered from apathy in implementation and rather than becoming a dynamic force for dealing with cases of violence, they have become another part of the bureaucracy. In Rajasthan, Amnesty International delegates learnt that regular meetings are held between members of the women's movement and the Home Commissioner and Additional Director General of Police (Crime) where activists bring cases to the attention of the officials who indicate what immediate action can be taken. This appeared to be an extremely effective mechanism for ensuring that action is taken in several individual cases. However, it is clearly dependent on a measure of goodwill established between the women's movement and organs of government -- something which is absent in many states.

Amnesty International hopes that the year of empowerment will mark some changes in implementation as well as policy. As part of any commitment towards implementation, Amnesty International sees the role of monitoring and evaluation of policies with an active role for non-governmental organizations as crucial. There is a clear need to assess the success of legislative and administrative measures before replicating or expanding them as has been suggested with the ZMSS and the *mahila thanas* for example.

Amnesty International is concerned that its research found that the Government of India has failed to take sufficient steps -- including relevant training, implementation of legal safeguards, taking action against officials found to have acted in a discriminatory manner -- to ensure that sections of the administration and the criminal justice system do not reflect and perpetuate discriminatory practices prevalent in society in carrying out their public services and to ensure that public officials are accountable towards all those whom they are representing without distinction.

While long-term prevention of violence against women must involve economic and social empowerment of women, only with a fully supportive and accountable administrative and

criminal justice system and a vibrant human rights movement will women become truly empowered. Only then will perpetrators of violence and the communities who protect them realise that such acts will no longer be tolerated. State officials and politicians have a crucial role to play in ensuring rights to women and particularly disadvantaged groups of women. The shielding of powerful individuals who perpetrate crimes against women must be condemned and stopped.

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## V. Recommendations

Amnesty International is addressing the following recommendations to both the central and state governments. Acknowledging the universality and indivisibility of human rights and the requirement of the state to address the full range of women's human rights they seek to address the particular needs of women victims of violence. Amnesty International hopes that these recommendations will be discussed for implementation as a priority considering the importance attached to the empowerment of women during this "Year of Empowerment".

### **Address gender and caste and class-based discrimination within the criminal justice system:**

- All government and police officials should publicly condemn violence against women. Any officers found to be condoning it or to be guilty of violence against women in their public and private capacity should be removed immediately from office as a clear message that there will be no tolerance of violence against women;
- Take prompt and severe action against police and other state officials found to have connived in or otherwise played a role in covering up crimes against women, including by refusing to file a complaint made by a woman of a cognizable offence. The recommendation of the National Commission for Women that such a refusal should be made a criminal offence should be urgently considered;
- Explore and implement ways of monitoring responses of police to women victims of violence to ensure that they are acting impartially. For example, the Chief Minister of Rajasthan, is reported to have ordered a review of a selection of cases of violence against women where the cases has been closed to assess whether the decision to close the case was taken impartially;
- Make it mandatory for the reasons for cases of violence against women being withdrawn to be documented rather than labelling them all as "false" and thereby reinforcing discriminatory attitudes;
- Create an environment of accountability of police towards all people in the community, not just those with power and influence or those from the same caste or community. Ensure that people from all caste and ethnic groups are given opportunities for entry, training and promotion with police forces so that all sections of society are represented in all levels of the police. In order to ensure

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this, urgent consideration should be given to reform of the police system as it exists;

- Undertake a study of registration, chargesheeting and conviction rates in respect of crimes of violence perpetrated against women, in order to evaluate whether the existing legal and judicial system discriminates against women victims of abuses and with the aim of ensuring that revictimization of women victims of violence does not occur because of gender-insensitive laws or judicial or enforcement practices. Ensure that the courts do not perpetuate the inertia and stigma associated with rape which further perpetuates violence against women.
- Conduct proper and regular gender sensitisation and orientation courses for police personnel of all levels, irrespective of gender. Individuals from other backgrounds who have a role in ensuring the rights of women should be invited to address police and provide information on their roles and experiences in dealing with women victims of violence -- these can include non-governmental organizations, counsellors and health professionals. Training should be provided to new recruits and then as on-the-job training periodically. Implementation of practices taught during training should be monitored and evaluated. Sufficient resources should be allocated to ensure that programs of training can be carried out effectively and followed up appropriately.
- Courts, including magistrates' courts, should identify specialized prosecutors to handle cases of sexual abuse and rape, who should receive additional training in the issues surrounding gender violence. A forum for complaints against prosecutors should be available to victims who are concerned about their failure to obtain a fair representation;
- It must be mandatory for all public officials, medical practitioners and social workers not only to be familiar with provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and Rules, but also how and where to apply them;
- Provide mandatory training to all judges, magistrates, lawyers and public prosecutors to enhance their understanding of violence against women, its causes and consequences. Programs of gender-sensitization and awareness-raising should be integrated and made mandatory through continuing legal education seminars or workshops for judges;

**Put in place effective mechanisms for ensuring justice to women which can be regularly monitored and evaluated and amended if it is found that they are not achieving the desired result:**

- Address the problems of women in accessing legal aid including by exploring ways of raising awareness of the availability of legal aid and encouraging women to apply for legal aid;
- Put in place a referral system which involves police, medical professionals, non-governmental organizations, teachers and all appropriate organs of the state, making clear the procedure for dealing with women victims of violence in a systematic manner. Make all sections of this referral system aware of their responsibilities in dealing with women victims of violence;
- Provide women who have been subjected to violence with information on their rights and on how to obtain remedies, in addition to information about participating in criminal proceedings. This should include disseminating information about the National and State Commissions for Women and how to access them. Information should be provided in a manner which is accessible to both literate and non-literate women in both rural and urban areas;
- Put in place mechanisms to monitor the number and nature of complaints made to women's police stations and crime against women cells including the social background of the complainants and perpetrators as well as information regarding the progress of complaints. This information should be made public on a regular basis and fed into a systematic evaluation of the role of women's police stations and crime against women cells in supporting women victims of violence and ensuring justice;
- Any other mechanisms designed to ensure redress should be monitored and evaluated;

**Take concrete steps to protect women victims of violence from threats and harassment as a means of encouraging them to pursue avenues to justice:**

- Put in place a victim and witness protection mechanism which can be activated as soon as a victim complains of threats or harassment;
- Those including police found guilty of harassing and threatening victims or their families should be prosecuted in accordance with law including under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.



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- An opportunity should be given to the victim to present information regarding threats in the court hearing the case. It should be a requirement that prosecutors place such information on record and that this information along with information on steps taken to provide protection to victims and witnesses is taken into account during consideration of bail;

**Ensure the supportive role of medical professionals in identifying women victims of violence and supplying adequate medical evidence:**

- Provide gender sensitive training to health professionals to cover all forms of violence against women as well as information on forensic examinations;
- Establish special units or procedures in hospitals to help identify women victims of violence and provide them with medical care. Ensure that women have access to female doctors as a means of encouraging them to discuss their ordeal;
- Ensure that counselling of victims of violence is undertaken only by trained professionals able to provide impartial non-judgmental and sympathetic counsel;
- Ensure that it is incumbent on medical professionals to report incidents of violence against women to police. In all cases the doctor should receive the consent of the victim for a medical examination and explain to the victim all possible medical and judicial options;
- Introduce detailed guidelines for the medical examination of victims of rape and other sexual violence to ensure that health professionals conduct a full assessment of the physical and psychological health of the victim. This should include: a full and detailed history of the complaint and resultant physical and psychological symptoms and signs, in the patients own words; a full medical history and recording of forensic evidence (including all marks of injury as well as clothing). The Guidelines should incorporate those set out in the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Make it mandatory in law for police officials to send a victim of rape or sexual assault immediately for a medical examination and prohibit the presence of police officers during medical examinations;

**Address gender and caste-based discrimination within the community**

- Take steps through public education and other means to ensure societal and attitudinal changes amongst the population towards the human rights of women.

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These should include incorporating changes in school curricula to create attitudes which would help combat violence against women and to guard against reinforcing gender and caste stereotypes and training teachers to ensure non-discriminatory approaches to education;

- Adopt all appropriate measures, especially in the field of education, so as to instil values which will prevent caste-based and gender-based violence. These should include ensuring that schools provide a safe environment void of gender and caste-based violence;
- Place the elimination of violence against women and caste-based violence on the agenda of *Panchayats* and other organs of government down to the lowest levels throughout the country. Ensure that knowledge of legal rights and various laws related to women and scheduled castes and scheduled tribes feature in any training program for newly elected *Panchayat* members as well as *Sarpanches*, *Upsarpanches*, *Gram Sevaks* and others and involve non-governmental organizations in such training. Encourage organs of government including *Panchayats* to conduct programs of work which challenge gender and caste biases in the community and within the *Panchayat* itself;
- Ensure that all programs for the empowerment of women have a component addressing problems of violence against women and that all officials implementing those programs provide education to women about their rights against violence and avenues of redress.

**Take steps to ensure the establishment of sufficient numbers of accessible, safe and professionally-run shelter homes or refuges for women victims of violence where staff are qualified to counsel victims in both rural and urban areas in the event that they are unable to remain in their homes or with relatives:**

- Ensure that women are sent to shelter-homes only with their consent;
- Women victims must be provided with sufficient economic resources to ensure that they can receive economic support during their stay and prior to obtaining alternative economic support through training etc as well as finding housing etc. Measures to ensure this could include a crisis fund which could be accessed by those running shelters to distribute to victims in accordance with agreed guidelines;
- Security of the refuges should be assured and space provided for the children of women who seek shelter;

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- Legal literacy should be provided to women at refuges to inform them of their rights;
  - Refuges should play an effective role in transforming women's lives by providing them with opportunities to reduce their socio-economic and psychological vulnerability and creating opportunities for them, as well as providing a secure environment to protect them against further violence. In no circumstances should refuges be places where women are subjected to further violence or other violations of their human rights including discrimination on the basis of caste;
  - Programs of rehabilitation should respond to the particular needs of women presented by existing prejudices within society;

**Recognize the role of and provide support to women's organizations which represent communities and play a constructive role in responding to the needs of women who have faced violence:**

- Take steps to ensure that directories of governmental and non-governmental services available to women who have been subjected to violence are developed and information distributed to police stations and magistrates courts as well as to district hospitals and other health care facilities, schools, panchayat members and development officers. Information about locally available referral services for women who have been assaulted should be made available in several languages to ensure that women from all communities are made aware of their rights;
- Cooperate with non-governmental organizations in establishing shelter-homes through provision of financial and material resources;

**Strengthen the National Commission for Women and take steps to ensure that State Women's Commissions are established in all those states who have not yet established one. Commissions should be established in line with the Principles relating to the status and functioning of national institutions for protection and promotion of human rights (Paris Principles) and be granted adequate resources. Staff should be given adequate training to ensure relevant professional expertise.**

**Enact and implement legal provisions to ensure that those responsible for violence against women are brought to justice. A time frame for the enactment of amendments to existing law or new legal provisions should be provided:**

- Amend the law to establish an offence of sexual assault rather than the narrow definition of rape which currently exists;

- Delete section 155(4) of the Indian Evidence Act which allows the "moral character" of a victim of rape be taken into account in a trial;
- Ensure implementation of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Rules of 1995 and take action against officials who have failed to implement the Act and its Rules;

**Increase cooperation with national and international bodies in the fight to end torture:**

- Ratify the Optional Protocol to the UN Convention on the Elimination of All Forms of Discrimination against Women to at the earliest opportunity to enable individuals to bring complaints to the Committee on the Elimination of Discrimination against Women about violations of their rights under the Women's Convention once they have exhausted national remedies;
- Invite the Special Rapporteur on Torture and the Special Rapporteur on Violence against Women to India to investigate patterns of violence against women in the community and in the home including in the context of caste and other forms of discrimination;
- In light of the CEDAW Committee's regret that insufficient detailed information was provided to the Committee about the subject of violence against women in India's first periodic report, ensure that such information is provided in its next report.