



Forum for Fact-finding Documentation and Advocacy
Towards a Violence Free World

Defending Human Rights in India



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RAPES BY POLICE AND SECURITY FORCES RISE: THE UGLY FACE OF LAW KEEPERS

Security forces deployed in Chhattisgarh to check Naxal activities are charged with many allegations of rape and torture against the tribals, and other forest dwellers, including abuses against the relief camp inmates. Mostly the incidents are denied without any investigation. The gang rape incident of 3rd February 2007 in Dantewda was brought to the attention of the Forum for Fact-finding Documentation and Advocacy.

This is not an isolated case or an exception. It exposes the inhuman and barbaric face of our custodians.

In India, human rights violations against women are relentless, systematic and widely tolerated. This public epidemic of inequality, discrimination and violence against women spreads to the authorities that are employed to protect them. The raping of women in police custody and by security forces deployed to provide their protection, is a gross but common violation of their rights.

There are discouraging obstacles for victims prosecuting cases of custodial rape in India; beginning from the lodging of the First Information Report (FIR) at the police station, through to the judge's verdict. Woman can be further discriminated against if they are poor, belong to a lower cast, or are from a rural area making it harder for them to gain admission to the justice system. If the victims do pursue their cases, they can receive bias and discrimination from police, doctors and judges. The Forum for Fact-Finding Documentation and Advocacy has found considerable evidence of custodial rape and rape by security forces in India. There is also evidence that state's accountability mechanisms are inadequate. Those who are employed to protect the laws of the country are in fact the ones breaking them. This is leading to increasing impunity.

Recent reported cases:

1. Gangrape by security forces in the tribal State of Chhattisgarh

On February 3rd 2007, while returning from market at 5 P.M., a young tribal woman (name withheld) was dragged into the forest by 4 members of the Mizo Security forces deployed in Dantewada, and gang raped. The men of the Mizo Security force gagged her to prevent her from shouting and she then lost consciousness. When she regained consciousness, she was alone and naked in the woods. Her back was badly injured and her arms and legs were scratched and bruised from rocks and branches in the forest and now she can hardly move. A group of Mizo Security force went to her village and threatened her and her family. The case has now been registered at Kuakonda police station in Dantewda of Chhattisgarh.

2. Rape in Karnal police custody in Chandigarh

On November 28th 2006 a slum dweller woman (name withheld) from Shiv Colony in Karnal was falsely arrested and raped in police custody by constable Ram Kumar and detained for 14 days. The Chandigarh Police recommended a regular departmental inquiry, and placed the head constable under suspension. The police denied her allegations without any investigation.

3. Rape in Sundarpur police station of Jharkhand

Three women were illegally detained at Sundarpahar police station on January 9th 2007, where they were brutally beaten and raped. The victims claim that that they were stripped and paraded naked round the police station, and that police stole Rs.120 from them. They identified the perpetrators as the officer-in-charge, Dipnarayan Mandel and another officer, Mahadev Oraon. Rajmahal Member of Parliament Hemlal Murmu visited the women in jail and alleges to have seen marks of violence on their bodies. A doctor from Godda sadar hospital who examined the women also confirmed that the bleeding of one of the victims had not yet stopped. The Godda police officer, Biglal Oraon denied these allegations; however the deputy commissioner, S.S. Meena has since constituted a three-member inquiry committee to look into the allegations. Although an inquiry is now underway, justice for the rape victims is in jeopardy as the reliability of the report maybe questionable.

4. Rape in Surguja of Chhattisgarh

The Chhattisgarh High Court has issued a notice to the Government of India and 13 other state authorities, including State Government of Chhattisgarh and the Superintendent of police of Balrampur in Surguja district, regarding the gang rape of a tribal woman. The victim (name withheld) filed a case to the Chhattisgarh High Court of her husband's murder by superintendent police officer, S.R.P Kalluri and his subordinates. When registering the FIR at Sankargar police station she was gang raped by policemen in front of her parents. She was then forcefully detained in isolated police custody for 14 days being raped by officers regularly.

Road to impunity, victims' struggle end at crying

Ineffective prosecution makes reporting and convicting rape charges difficult. The average conviction rate for rape is lower than crimes of burglary and theft. The National Crimes Record Bureau (NCRB) confirmed that the number of rapes reported declined from 16,373 in 2003 to 14,809 in 2004, while reported molestations decreased from 33,943 to 31,716. However, the NCRB pointed out that the number of rapes increased sharply at the end of 2004 to 17,633 cases. According to the NCRB, every hour to rapes take place, 1 in 5 victims is a child, and 19 out of 20 of the perpetrators arrested aren't punished¹

The NCRB records report that the courts tried 132 policemen for custodial rape in 2002 but only 4 were convicted. The Ministry of Defence reported that it filed 17 rape cases against army personnel from 2003-2004. To date only one rape case ended in a guilty verdict. In the remaining cases, the investigations are still in process or the charges have been ruled false².

The Government gave the NHRC the authority to recommend interim compensation in cases relating to human rights abuses by the armed forces. Officers of the rank of colonel were designated at the command, corps, division and counter-insurgency headquarters to monitor human rights issues. According to the NHRC, there were 1,039 cases of human rights violations by the security forces from 1990-1999, an average of 109 per year. The NHRC reported a marked decline since that period, with 16 cases reported in 2003, and 4 in the current year. The NHRC reported that it registered 756 cases against the military, 172 against paramilitary forces and 109,902 against the police since 2001³.

Laws and Standards

The Indian Penal Code provides strict punishments for the crime of custodial rape. Section 376 states that "the crime of rape, when committed by a private actor, is punishable by a minimum of seven to ten years and a maximum of life imprisonment." Under subsection (2), the rape is punishable by "rigorous imprisonment" for a term of ten years to life if it is committed by a police officer against a woman in his custody (or in the custody of a police officer subordinate to him), or on the premises of his police station or a station house."⁴

The lack of convictions in cases of custodial rape raises serious questions about the law in following the Indian Constitution. Rape laws created to assist women in prosecuting their perpetrator are discriminatory in nature. According to Section 155 (4) of Indian Evidence Act, "When a man is prosecuted for rape or an attempt to ravish, it may be shown that the victim was of generally immoral character." Section 54 of Indian Evidence Act says, "In criminal proceedings (including rape)

¹ Country Reports on Human Rights Practices - 2005 Released by the Bureau of Democracy, Human Rights, and Labour March 8, 2006

² Country Reports on Human Rights Practices - 2005 Released by the Bureau of Democracy, Human Rights, and Labour March 8, 2006

³ Country Report on Torture Related Issues – India Last updated March 2006 - <http://www.irct.org/>

⁴ Human Rights Watch.

the fact that the accused person has a bad character is irrelevant, unless evidence has been given (by him) that he has a good character, in which case it becomes relevant."

This law contradicts Article 14 of India's constitution that ensures equality by providing that: "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." Article 15 states that the "State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them," while articles 16(1) and 16(2) general prohibit discrimination and gender discrimination in matters of public employment. To promote equality, Article 15(3) provides that the state is free to make "any special provision for women and children".

Section 114-A of the 1983 Criminal Law Amendment, introduced in the Indian Evidence Act, states that the court shall assume lack of consent in cases of custodial rape where sexual intercourse by the perpetrator is proven and the victim states that there was no consent. Police officers, public servants, jail, hospital and gang rape are included in the section. The widespread impression was that the burden of proof in cases of rape in police custody had been shifted onto the accused.

In practice, no overall shift of burden-of-proof was brought about by the amendment. The legal position is not that the accused has to prove his innocence in cases of custodial rape. The prosecution needs first to establish the fact of sexual intercourse. The entire length of lodging a FIR, medical examination, recording of statements by the police and depositions in court have to be gone through. Many victims are denied justice due to delays in lodging FIR's, delays in medical examinations, inconsistencies in FIRs, contradictions in statements made to the police and testimonies in court remain prime factors in the accuser's defence⁵. The next stage of the process is to conclude the identity both physically and medically of the perpetrator.

The Indian Penal Code and Criminal Procedure Code have recognised the ongoing police abuse against women and made amendments to ensure a variety of legal protections to prevent custodial rape. The amendments state that a female cannot be forced to go to any police station for questioning against her will and she must instead be visited at home. The police must request permission to enter if a female is present where an arrest is being attempted unless she is the person sought for arrest. The bill also prohibits the arrest of women after sunset and before sunrise except in "exceptional circumstances." When a woman is arrested, a female officer must do the search with "strict regard to decency and modesty". However, the females make up only 5.4% of the Indian police force, so the realities of implementing the amendment are assumed not to be so straight forward.

⁵ Rakesh Shukla (2004) 'Flaw in the law: Custodial rape, inadequate evidence and acquittal'

Conclusion

Evidence shows the rise in rapes by police and security forces and the State's absence of accountability. There is a lack of ability to ensure women protection from the ugly faces of Indian law keepers.

The Forum for Fact-Finding, Documentation and Advocacy insists that it is essential that existing safeguards and guidelines relating to custodial rape be meticulously enforced. To achieve this FFDA recommends that all actions, which are incompatible with those procedural requirements, be made punishable offences.

Police reforms are desperately needed to for all of its law enforcement agents. The Government of India must show itself sincere in its efforts to tackle custodial rape and discrimination against women. The Government of India must take immediate steps to ratify the United Nations Convention against Torture and other Cruel and Degrading Forms of Punishment.

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