

# **amnesty international**

## **INDIA**

### **ALLEGATIONS OF RAPE BY POLICE: THE CASE OF A TRIBAL WOMAN IN GUJARAT, GUNTA BEHN**

**MARCH 1988**

**SUMMARY**

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Amnesty International has received a number of reports in recent years that disadvantaged members of Indian society, notably members of Scheduled Castes and Scheduled Tribes, have been victims of unlawful arrest and detention, of ill-treatment and torture and of unlawful killings at the hands of police and others in authority.

Allegations of torture have been received by Amnesty International from all over India, but this paper focuses attention on allegations of rape by policemen of a tribal woman from Gujarat. The state government has so far failed to take effective action against police and other officials whom a commission appointed by the Supreme Court had identified, more than a year ago, as being involved in the rape and its subsequent cover-up.

According to reports issued by the Ministry of Welfare in 1986, over half the rape cases officially registered in India concern women belonging to the Scheduled Castes and Tribes. On average, around one thousand such cases of rape are reported each year. Indian press reports have repeatedly commented that many such complaints concern allegations of rape by the police, but that they are often not investigated, are difficult to prove and only very rarely result in those responsible being brought to justice.

Amnesty International believes that the investigation of credible complaints of torture and ill-treatment, including rape, by an impartial and independent body can serve to prevent the further occurrence of torture, particularly if prompt action is taken to bring to justice those found responsible of such illegal acts.

This summarizes a 8-page document, India: Allegations of Rape by police: the case a Tribal Woman in Gujarat, Gunta Behn (AI Index: ASA 20/04/88), issued by Amnesty International in March 1988. Anyone wishing to have further details or to take action on this issue should consult the full document.

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INDIA:  
ALLEGATIONS OF RAPE BY POLICE:  
THE CASE OF A TRIBAL WOMAN IN GUJARAT, GUNTA BEHN

Introduction

Amnesty International has received a number of reports in recent years that disadvantaged members of Indian society, notably members of Scheduled Castes (many calling themselves "Dalits" but generally referred to as "Harijans" or traditionally as "Untouchables") and Scheduled Tribes (who call themselves "Adivasis") have been victims of unlawful arrest and detention, of ill-treatment and torture and of unlawful killings by police and others in authority. Allegations of torture have been received by Amnesty International from all over India but this paper focuses attention on allegations of rape by police from Gujarat where the state government has so far failed to take effective measures to redress the alleged abuses. Amnesty International considers rape in police custody to be a form of torture or cruel, inhuman or degrading treatment.

The case is exceptional in so far as it was first investigated by the Central Bureau of Investigation, which found prima facie evidence of rape against several policemen. Subsequently, the Supreme Court of India established its own commission of Inquiry. After recording statements from 584 persons, the commission found that eight police officers, local officials and doctors had conspired to cover up the rape and, in its report of October 1986, recommended that action be taken against them. But, more than a year later, in December 1987, the Supreme Court of India noted that even though two official commissions had identified those responsible for the rape and its subsequent cover-up, no serious attempt has been made to pursue the matter" by the Gujarat government.

According to reports issued by the Ministry of Welfare in 1986, over half the rape cases officially registered in India concern women belonging to the Scheduled Castes and Tribes. On average, around one thousand such cases of rape are reported each year. Indian press reports have repeatedly commented that many such complaints concern allegations of rape by the police, but that they are often not investigated, are difficult to prove and only very rarely result in those responsible being brought to justice.

Amnesty International believes that the investigation of credible complaints of torture and ill-treatment by an impartial and independent body can serve to prevent the further occurrence of torture particularly if prompt action is taken to bring to justice those found guilty of such illegal acts. In appropriate cases, adequate compensation should be granted

to the victims. It draws attention to these allegations in the hope that such action will now speedily be taken in Gunta Behn's case.

Allegations of rape of a tribal woman in Gujarat: the case of Gunta Behn.

A woman, Gunta Behn Ramji, aged 22, was taken away from her house in Devidao village in Baruch district of Gujarat state on 5 January 1986 in connection with an investigation into the kidnapping of a relative from her house. According to Gunta Behn, she was stripped naked by the police before a crowd - a charge which the police reportedly admitted - and subsequently raped by several policemen in the driver's cabin of a police truck when it was stopped on its way to the Sagbara town police station. She said she was again assaulted and raped at the police station itself. Released after two days she said she was taken to the Rajpipla police station for a medical examination, but the doctors refused to examine her without instruction from the chief of police. She was then seen by a private doctor. The police have denied the allegations of rape.

On 12 January a complaint of rape - which the police had initially refused to record - was received by the police. Gunta Behn was asked to give a statement to the Deputy Superintendent of Police and was again taken into custody for two days. She said she was made to sign an affidavit - in which the police claimed she denied her earlier allegation of rape - under threat of further rape and was not allowed to read the statement.

A voluntary organisation that learned about her case submitted a petition to the Supreme Court in January 1986. The Court immediately ordered an inquiry by the Central Bureau of Investigation (CBI). Two months later, the state unit of the CBI found that there was a prima facie case against the police and that Gunta Behn had been illegally detained. In March 1986, the state CBI arrested six policemen, but they were released on bail, apparently on the technical grounds that the CBI had failed to charge them within the prescribed time limit.

On 13 February 1986, the Supreme Court of India constituted its own Commission of Inquiry into the allegations; it included K V Joseph, a senior police officer from outside the state and Ms Ela Pathak, a social worker. It recorded statements from 584 persons. The Commission submitted its report to the Supreme Court on 26 October 1986 and found there was evidence against at least eight men: police officers, other officials and two doctors, whom it named, and recommended that disciplinary action be taken against them for participating in the rape or its cover-up. The Commission of Inquiry found evidence of allegations that four policemen had twice participated in raping Gunta Behn. According to a press report of 14 February 1988, the Commission had found that: "Gunta Behn was asked to sit in the cabin of the truck on the driver's side. Two policemen sat on either side of Gunta Behn ... In between Gorda and Devmogra villages, the truck was stopped and the driver got down. There the four policemen were alleged to have raped Gunta Behn in the cabin...they reached Sagbara police station around 4 o'clock in the morning and she was taken to an adjacent vacant balcony of the building which is in the possession of the Forest Department. The four policemen are alleged to have raped her again there and the last man also inserted the lathi (a bamboo rod) inside her vagina due to which she started bleeding profusely." The Commission of Inquiry also said that four other police officers and two doctors could be charged with "having hatched the conspiracy for destroying the evidence and thereby

keeping the accused constables from being prosecuted in a court of law". It found evidence that the following local officials and police had conspired to cover up the rape:

- the Collector of Bharuch district, who was held responsible for failing to visit the site of the offence when he received news of the allegations from the Superintendent of Police. He is required by law to carry out such a visit within 24 hours;
- the Deputy 'mamlatdar', (a junior village official), who was found to have obtained false affidavits from Gunta Behn stating that she was not raped;
- the two doctors at the Rajpipla hospital, who were found guilty of professional misconduct for failing to treat the victim and for shielding the guilty policemen by writing that Gunta Behn had been raped by four men, without saying they were policemen;
- the Deputy Superintendent of Police, who was held responsible for bringing pressure on the medical doctor, so that the doctor issued a false certificate concerning the rape;
- the circle inspector, who was found responsible for failing to order a medical examination of the policemen alleged to have raped Gunta Behn and for failing to order their arrest until the case was handed over to the CBI;
- the Superintendent of Police, Bharuch district who was found guilty of threatening Gunta Behn in order to give false affidavits to deny their complaints;
- the Sub-Inspector in charge of Sagbara police station, found responsible for trying to obstruct the case being registered, demanding Rs. 3,000 for Gunta Behn's release and trying to force her to withdraw the charge of rape.

A year later the Gujarat State Government had apparently failed to take any action on the report of the Supreme Court Commission, and on 15 December 1987 the Supreme Court issued a statement which described the attitude of the state government in not taking action against those named as responsible for Gunta Behn Ramji's rape and its subsequent cover-up as disclosing a "pathetic state of affairs". The Supreme Court commented that, nearly two years after the incident had taken place and despite two investigation commissions identifying the culprits, the state government had failed to take any action. The Supreme Court in its order reportedly said: "In the affidavit filed on 20 January 1987, a statement was made by the Deputy Secretary of the State Government indicating the stage at which proceedings have been taken in respect of the several officers mentioned in the report submitted by the Joseph Commission. Thereafter an affidavit dated 16 November 1987 was filed by the Joint Secretary of the State Government. On a comparison of the contents of the two affidavits, it is clear that no serious attempt has been made to pursue the matter." The Supreme Court ordered the Gujarat Government to bring all original records of the case to the court and to have submitted to the Supreme Court any charge sheets issued to the policemen held responsible.

## Background

Although most cases of rape in India, as in other countries, are believed to go unreported, several thousand cases of rape are reported to the police each year all over India. A large proportion of these - estimated at between a third and half of all reported rape cases - concern members of Scheduled Castes and Tribes. For example, the Minister of State for Welfare informed the Rajya Sabha (Upper House of the Indian parliament) on 14 November 1986 that of all the 936 rape cases reported between January and June that year 492 concerned women belonging to the Scheduled Castes and Tribes. The same Ministry reported the following year that rape of women belonging to Scheduled Castes and Tribes was particularly common in the northern Indian states. On 5 March 1987 the Deputy Minister of Welfare was reported as saying that Uttar Pradesh (India's most populous State) headed the list with 229 such cases reported during 1986 and the first months of 1987, followed by 151 cases in Madhya Pradesh and 73 in Bihar during the same period. But complaints about the rape of women belonging to Scheduled Castes and Tribes came from all over India: a December 1986 report before the Rajya Sabha noted 4,400 reports of rape registered by such women in the four and a half years between March 1982 and October 1986.

According to several Indian press reports, a substantial number of complaints concern rape committed by the police on women and girls of Scheduled Castes and Tribes, either during police operations or in police custody. Such reports have come from all over India: the government of the southern state of Kerala established the Sreedevi Commission which heard "ample evidence" that at least 88 policemen were involved in atrocities, including mass rape, during a raid on a village in Idukki district when the Superintendent of Police ordered that all the men in the village be taken into custody. In December 1987 the report was accepted in the state assembly and the state government promised to take action, but Amnesty International has no details about what follow-up action was taken. After the two most recent incidents of police rape in Bihar and of tribal women in Assam in February 1988, an editorial in The Telegraph, Calcutta, on 3 March 1988 also commented on the frequency of rape by the police and the persistence of its occurrence all over India:

"The fact that the two incidents [in Bihar and Assam] occurred within a span of less than three weeks and in two states far removed from each other shows that such lawlessness by lawmen is not peculiar to any particular region. Nor are rapes by constables a recent phenomenon. There have been many cases of individual women being victims of one or more on-duty or off-duty policemen outside or within police stations, but mass rape is quite another thing."

The Times of India had earlier commented in an editorial of 31 March 1986 on the plight of women, particularly those from the poorer sections of society, notably of the tribal community. It noted that reports of rape in police custody are common but extremely difficult to prove:

"Indeed, custodial rapes seem to be occurring so frequently that "cop molests woman" has become an



almost daily fare for newspaper readers: Considering that as many as 97 percent of rape cases are either cancelled or sent back as "untraced" by the police according to its own admission, the difficulties in dealing with custodial rape cannot be underestimated. Rape in custody is not only extremely difficult to investigate but is equally difficult to prove. Not only do the police not cooperate in such an investigation, they have been known to harass even those who take up the cases of custodial rape."

In cases where publicity is given to such allegations, the state government may establish an inquiry, but such investigations are rarely conducted by an independent body. For example, in Bihar, on 22 February 1988 the then Director-General of Police, S N Roy, directed the Crime and Investigation Department (C.I.D.) to investigate allegations - widely published in the state of Bihar - that 36 policemen entered Pararia village, Deogarh district, on the night of 18/19 February, beat up men and raped at least five women. Fourteen policemen were suspended pending further investigations. According to a press report the new Bihar Chief Minister stated on 6 March that "appropriate action" would be taken against the policemen responsible after the receipt of the C.I.D. report. On 12 March it was reported that the government ordered the filing of a chargesheet against 17 policemen, including a sub-inspector and two assistant sub-inspectors.

Sometimes, however, an independent judicial investigation is ordered: on 23 February 1988 the Assam Government was reported to have ordered a high level one-man inquiry into allegations that the Assam police raped at least ten tribal women, including girls between twelve and seventeen years old, between 23 and 27 February 1988 in Bhumka village, Kokrajhar district, Assam. After a preliminary investigation ten policemen were suspended, and on 10 March eight were arrested. The Guwahati High Court was informed by the government that it had decided to constitute a judicial inquiry into the case and assured severe punishment for the policemen found guilty. The press reported that the authorities were initially reluctant to register complaints of rape, but that they did so after the Subdivisional Medical Officer of the Kokrajhar Civil Hospital examined five of the victims and confirmed they had been raped. The outcome of the legal proceedings are not known as of writing.

Police accused of rape are often released on bail on technical grounds. For example, the Chief Justice of the Orissa High Court, according to a press report of 10 February 1988, inquired why bail had been granted by a lower court to a police inspector accused of raping a 19-year-old girl while in custody in the Bargarh police station on 3 December 1987. The accused police officer was, according to press reports, first suspended and transferred from Bargarh, but had been arrested after newspaper reports published his involvement in the alleged rape. On 28 January 1988 the subdivisional judicial magistrate released the policemen on bail, on the technical grounds that there had been a delay in filing a First Information Report and that the statement of the alleged victim did not establish rape. However, the police had failed to have the alleged victim medically examined, and the Orissa High Court judge is now reconsidering whether bail should have been granted to the policemen allegedly involved.

Convictions of policemen for committing rape on women in their custody are extremely rare. This was illustrated in the state of Haryana. An Assistant Commander of the Central Reserve Police Force was reported in the Indian Express of 22 November 1983 as saying that:

"In Haryana alone, a total of 828 women were raped in police custody between 1966 and 1980. Of these 210 were from the Harijan community. Only one constable was sentenced to five years imprisonment while others were simply dismissed or let off for want of sufficient evidence".

In the rare cases where police have been convicted of custodial rape, it has taken many years for the police to be brought to justice and this has usually only happened in cases where the rape victims did not belong to the weaker sections of society. In one recent case, which attracted nationwide publicity, the court decided to hand out exemplary punishment. It concerned Maya Tyagi, a pregnant woman from a land-owning rural family who, on 18 June 1980 in Baghpat, Uttar Pradesh had been dragged out of a car, stripped naked, paraded naked through the market and abused. Her husband and two other men, who had protested against her treatment, were shot by the police. Delivering its judgment nearly eight years after the incident, the Bulandshar sessions judge sentenced six policemen to death and four other policemen to life imprisonment on 23 January 1988. But the Uttar Pradesh Home Minister was quoted as saying that an appeal would be filed against the judgment and on 28 January 1988, the four policemen sentenced to life imprisonment by the Sessions Court were released on bail.

#### Amnesty International's Concerns

Amnesty International has on many occasions raised the use of torture and other forms of cruel and degrading treatment in police stations with local and central authorities in India. It has urged that steps be taken to stop torture and ill-treatment, that all complaints about torture and ill-treatment by police be fully and impartially investigated, that the outcome of inquiries be fully published and that those guilty of such abuses always be brought to justice. It has also requested that the prohibition against torture by police personnel involved in the detention, interrogation or treatment of detainees be emphasized in police training, as the United Nations Convention against Torture requires and as the UN Declaration against Torture provides. Amnesty International has also consistently emphasized that victims of torture should be given due compensation.

The Indian government has itself repeatedly reaffirmed its commitment not to permit torture. In 1977 the Indian government co-sponsored United Nations General Assembly Resolution 32/62, which asked for the drafting of a convention against torture and other forms of ill-treatment. It also sponsored Resolution 32/64 which called on member states to reinforce their support for the Declaration against Torture by making unilateral declarations against torture and other ill-treatment. In 1979 India made such a unilateral declaration, in which it declared that it would comply with the principles contained in the Declaration against Torture and would "implement, through legislation and other effective measures the provisions of the Declaration". The need for such measures was recognized by the then

Prime Minister, Indira Gandhi, who, in early 1980 was quoted as saying that there must be "basic faults in police training to make them so inhumane". The present Prime Minister Rajiv Gandhi has however denied that torture occurs in India. In January 1988 he told the British Broadcasting Corporation: "We don't torture anybody and you can check on that. Whenever we have had complaints of torture we have had it checked and we have not found it to be true."

Amnesty International is concerned by reports suggesting that members of the Scheduled Castes and Scheduled Tribes appear to be particularly vulnerable to torture and ill-treatment in police custody. Amnesty International is also concerned that, rather than taking effective measures to prevent torture, local officials have often refused to receive complaints of police abuses or have denied that such abuses have occurred and that, in those cases where torture has been given publicity, they apparently sought to cover up crimes committed rather than take measures to redress them, as the Supreme Court found in the case of Gunta Behn.

### Recommendations

Amnesty International recommends that the government takes note of the report of the Joseph/Pathak Commission appointed by the Supreme Court and immediately take measures to ensure that its recommendations are implemented and that those identified in the report as responsible for rape and its subsequent cover-up be brought to justice forthwith. It further recommends that, if rape is established, the victim be given due compensation.

Especially in view of the recent and widely publicized incidents of police rape, particularly of women belonging to the Scheduled Castes and Scheduled Tribes, Amnesty International also recommends that the government consider establishing or strengthening local independent procedures and institutions to which these and other forms of torture and ill-treatment could be reported and where immediate and effective remedies could be given to halt or prevent abuses. The government should also take steps to ensure that the policemen against whom there is evidence of involvement in such cases be brought to justice without delay. One way to facilitate such prosecutions would be to withdraw the protection of immunity from prosecution relating to official duties, available to police officers under Section 132 and Section 197 of the Code of Criminal Procedure of 1973 in respect of allegations concerning the treatment by police of suspects in their custody, as the National Police Commission recommended. Amnesty International also recommends that the government consider implementing that Commission's recommendation that special units be created in police departments to investigate complaints from members of the Scheduled Castes and Tribes and that these units identify areas which require special attention for protecting members of the Scheduled Castes and Tribes.

Finally, Amnesty International recommends that the central and state governments issue strict instructions to all police personnel and police training schools that arrested persons should always be brought before a magistrate within 24 hours as required by law, and that the torture and ill-treatment of detainees - including rape - is a criminal offence which will not be tolerated and which will invariably lead to criminal prosecution. To that effect, the government could consider incorporating



the 1979 UN Code of Conduct for Law Enforcement Officials in the training of all law enforcement personnel.