



IX. ATTACKS ON DALIT WOMEN: A PATTERN OF IMPUNITY

Singularly positioned at the bottom of India's caste, class, and gender hierarchies, largely uneducated and consistently paid less than their male counterparts, Dalit women make up the majority of landless laborers and scavengers, as well as a significant percentage of the women forced into prostitution in rural areas or sold into urban brothels.¹⁵ As such, they come into greater contact with landlords and enforcement agencies than their upper-caste counterparts. Their subordinate position is exploited by those in power who carry out their attacks with impunity.

Throughout this report, Human Rights Watch has documented the use of sexual abuse and other forms of violence against Dalit women as tools by landlords and the police to inflict political "lessons" and crush dissent and labor movements within Dalit communities. In Laxmanpur-Bathe, Bihar, women were raped and mutilated before being massacred by members of the Ranvir Sena in 1997; in Bihar and Tamil Nadu, women have been beaten, arrested, and sometimes tortured during violent search and raid operations on Dalit villages in recent years. Like other Indian women whose relatives are sought by the police, Dalit women have also been arrested and raped in custody as a means of punishing their male relatives who are hiding from the police. As very young women, they are forced into prostitution in temples under the devadasi system.

Cases documented by India's National Commission for Women, by local and national nongovernmental women's rights organizations, and by the press, reveal a pattern of impunity in attacks on women consistent with our findings. In all cases of attacks on women documented in this report, the accused state and private actors escaped punishment; in most cases, attacks were neither investigated nor prosecuted. Until recently, the plight of Dalit women has also been neglected by various political movements. As explained by Ruth Manorama, head of the newly constituted National Federation for Dalit Women:

Dalit women are at the bottom in our community. Within the women's movement, Dalit issues have not been taken seriously. Within the Dalit movement, women have been ignored. Caste, class, and gender need to be looked at together. Dalit women have contributed to this discourse... Women's labor is already undervalued; when she is a Dalit, it is nil... The atrocities are also much more vulgar.¹⁶

Other activists echo the notion that women are hit the hardest in everyday life and during caste clashes. One activist told Human Rights Watch, "Sexual violence is linked to debt bondage in rural areas."¹⁷ Another commented on the need to give priority to women's cases:

Making women eat human defecation, parading them naked, gang rapes, these are women-specific crimes. Gang rapes are mostly of Dalit women. These cases should be given top priority, requiring immediate action and immediate punishment.¹⁸

This chapter examines some of the constitutional, statutory, and international treaty protections afforded to women in India. It then offers several case studies to illustrate the government's failure to prosecute cases of rape and the manner in which differential rates of prosecution are compounded by corruption and caste and gender bias, even at the trial level.

Women and the Law

India's constitution

Article 14 of India's constitution 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(1) provides 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) prohibit discrimination in general, 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."

Part IV of the constitution lists the Directive Principles of State Policy, including Article 39(b) of the constitution which provides that the state direct its policy toward ensuring equal pay for equal work for men and women. Section (a) of the same article provides that the state shall, in particular, direct its policy toward securing that citizens, men and women equally, have the right to an adequate means of livelihood. Section (c) requires that the state secure the health of workers, men and women, and ensure that children are not abused, and citizens are not forced by economic necessity to enter vocations that are unsuited to their age and strength. Finally, Article 44 of the constitution, asks that the state strive to introduce a uniform civil code for citizens so that varying religious codes do not dictate the personal laws governing women's lives. These provisions cannot be enforced in the state through courts as they are a "directive principles" of state policy.¹⁹

Penal and criminal codes

In recognizing the history of police abuse against women, amendments to the Indian Penal Code and Criminal Procedure Code afford women a variety of legal protections in their dealings with state agents. For instance, when a woman is searched upon arrest, it must be done by a female officer with "strict regard to decency and modesty."²⁰ A police officer has no power to compel a woman or a child below the age of fifteen to appear in a police station to obtain information from her, and must instead visit the place in which the informant resides.²¹ When searching a place occupied by a person sought to be arrested, if the place is occupied by a female (not being the person to be arrested) the police must give notice to her before entering that she has the liberty to withdraw.²²

The Indian Penal Code also provides for stricter punishments when the crime of rape is committed in custody. 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.

Convention on the Elimination of All Forms of Discrimination against Women, 1979

Under Article 2 of the International Convention on the Elimination of All Forms of Discrimination against Women, states parties are required to "establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination." They must also "refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation."²³ Women are also entitled to equal remuneration and protection of health and safety in working conditions.²⁴

With respect to the situation of rural women, the convention requires states parties to take into account the "significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy," and to, "take all appropriate measures to ensure the application of the provisions of this Convention to women in rural areas."²⁵

Failure to Prosecute Rape Cases

Beginning with the lodging of the First Information Report (FIR) at the local police station through to the judge's opinion, should a case reach that far, women in India are faced with daunting obstacles in prosecuting cases of rape. If a woman is poor, belongs to a lower caste, and lives in a rural area, it is even more difficult for her to gain access to the justice system. Those who are able to pursue cases of sexual assault have to battle entrenched biases at every stage of the process: with the police, the doctors,²⁶ the judges, and even their own families.

Even if the police agree to file the FIR, they often fail to efficiently and deliberately collect the necessary evidence. Witnesses, should they exist, rarely agree to come forward to testify or corroborate the victim's statement for fear of retribution from the perpetrators, who are often in positions of relative power in the community. If the case manages to get filed and investigated despite these obstacles, then new problems arise when the woman goes before a judge whose gender biases and caste affiliations can greatly influence the judgment in the case.

For the reasons outlined above, and because of low reporting, conviction in rape cases is uncommon. From 1989 to 1993, reported crimes against women in India increased by 25.2 percent. At the same time, the National Crime Records Bureau's 1994 report revealed that convictions for crimes against women were minimal.²⁷

Out of the total (rape) cases in which trials were completed, 41.5 percent ended in conviction during 1990, 34.2 percent in 1991 and 33.8 percent in 1992 and 30.3 percent in 1993. Thus the acquittal percentage is showing an upward trend over the years. The rate of disposal of cases in courts was 23.9 percent in 1992 and 16.8 percent in 1993. On an average, 80 percent of the cases remained pending for trial. This is a disquieting status.²⁸

The average conviction rate for rape has also been consistently lower than the less serious crimes of burglary and theft.²⁹

In addition to compiling testimony on cases of rape by the police and during caste clashes, Human Rights Watch also interviewed several victims of rape on their experience with the legal system. Two illustrative cases are outlined below. Also included is the well-known case of Bhanwari Devi—whose rapists were acquitted on a judge's reasoning that “an upper-caste man could not have defiled himself by raping a lower-caste woman.”³⁰—and other cases illustrating gender bias at the trial level.

M. Meena

M. Meena is a twelve-year-old Dalit girl; her name has been changed to protect her identity. She was raped in September 1997 by a twenty-one-year-old Thevar man in a southern district of Tamil Nadu.³¹ Successful prosecution of her case was thwarted when the accused paid bribes to the police. Because of Meena's young age, Human Rights Watch obtained details of her rape and subsequent experience with the police largely from interviewing a social worker who had been active in her case; we then met with Meena to confirm the reports. The social worker described the incident:

On her way home from a local store, a Thevar boy named Karuppaswami called Meena over on the pretext that she would help him pick something up. She refused and kept going. He then showed her a bill hook and threatened her.³² He pulled her to a nearby tree, undressed her, and raped her. She was unconscious and could not walk. Some people took her home and called the Manur police station. The police said to come and file a report. So they took her there and gave a complaint. The Thevar people also went to the police station and gave Rs. 10,000 (US\$250) to the police and threatened the girl's father not to divulge the facts or the family would face dire consequences.³³

As a result of pressure from the rapist's family, the police filed a case under Section 75 of the Madras City Police Act—instead of sections 375 and 376 of the Indian Penal Code for rape and punishment for rape. Section 75 of the Police Act refers to creating a nuisance in a public place and carries a fine as its punishment. With the help of the social worker, Meena's parents again approached the police to file a rape case.

The next day I went to the village and saw the girl. She was in bad condition. She had a fever, and she was unconscious. I talked to the parents and said, "Let's go to the police and government hospital." We took the girl to the superintendent of police's (SP) office. We only saw him at 5:00 p.m. Then the SP said that he will call the police to file a case and asked us to take the girl to a government hospital at High Ground Paliangotti. I was with them the whole time. The doctors refused to do a check-up without an FIR. We then took her in a van and came back to the police station. There was no inspector there. The police refused to register an FIR. At 11:00 p.m. the inspector came and registered an FIR. He then sent the police constable with us to the hospital. At 12:30 a.m. we reached the hospital. They did the check-up. At 10:00 a.m. the next morning we took her to court. The magistrate asked to admit her in the hospital. She was there for ten days. The police collected her panties. There were blood stains on it. She recovered and went back to school.³⁴

After much persistence, Meena's parents were finally able to register a case of rape under Section 376 of the Indian Penal Code. However, the police refused to simultaneously register the case under the Atrocities Act. The accused spent forty-five days in jail and was subsequently released on bail. In December 1997, soon after his release, he physically assaulted the husband of the social worker who had been helping Meena with her case. According to the social worker, "The rapist and his relatives blocked and damaged my husband's vehicle with their van and beat him. We went back and beat one of those boys, and they filed a case against us. But we also filed a case in a different police station."³⁵ As of December 1998 no charges had been filed in the rape case, and the accused remained out on bail.

R. Chitra

In 1996, twenty-six-year-old R. Chitra (also an alias) of Kammappatti village, Tirunelveli district, southern Tamil Nadu, was gang raped by Thevars from a neighboring village. After much public pressure from residents of her village, the police took up the case, but despite her positive identification of the rapists, and despite many eyewitnesses to the event, they ultimately dropped the investigation. Chitra told Human Rights Watch of her experience with the Thevars:

It happened one and a half years ago. Another girl named Savariammal and I went to the forest for grass for our goats. There is a dilapidated building in the forest. Behind that building, four persons hid themselves... The four people came out and said "Where are you coming from?" I said I am from Kammappatti. They asked my village name, so they knew I was a Dalit. They left and went five steps ahead. When they passed, me and my friend started gathering our goats and prepared to leave. The men were holding bill hooks in their hands, and we knew it was not a safe place to be. All of a sudden, one man turned around and grabbed my hand. I tried to resist them for two hours. Among the four, one hid and the remaining three boys took turns. They had weapons, I only had a stick. They then took away my stick so I had no defense... Some other people from that village saw the struggle but did not come close, because the men had weapons. Three men raped me. It lasted for an hour. There was no bleeding, but there were bruises all over. When one committed penetration, the other two stood by and watched. In turn they all raped me. The fourth one was hiding and saw the whole thing. I had bruises all over, on my chest, my hip. My skin was torn and full of nail marks. I was hurt because I was trying to escape.³⁶

After a failed attempt to commit suicide by pouring kerosene on her body and setting herself on fire, Chitra was convinced by her family to go to the police. She did not know her rapists but recognized that they were Thevars from a neighboring village. She was also able to provide the police with details on their clothing, their appearance, and their age: "I gave an oral complain, and the constable reduced it to writing. That was the only time they were sympathetic."³⁷ The day of her suicide attempt, Chitra visited the Tirunelveli government hospital, where four female doctors examined her and collected specimens. She also handed over to police the clothes she had been wearing when raped. Despite the strength of the evidence, the police told her brothers to persuade her not to register a complaint. But her brothers were persistent, and most of the residents of her Dalit-dominant village insisted that the police arrest the accused. They argued that if "anything was committed by Dalits, the police do not allow it, so why are they allowing this?"³⁸ The day after the rape, the police arrested two persons and presented them for identification. The following day Chitra's brother complained to the deputy superintendent of police that the two remaining accused had not been arrested. After the police took the mothers of the two absconding men to the police station, they too surrendered.³⁹

So I identified all four. The sub-inspector recorded my statement. The police also talked to Savariammal, the girl who was with me. She said she saw it happen but did not know the identity of the people. But she must have known. She simply kept away from saying the truth. She was probably threatened. All surrounding villages belong to Thevars. The police arrested and remanded them to Koilpatti jail. I went for the line-up in front of the magistrate. They put eighteen persons in a row. They put the four among them. Even then I identified them.⁴⁰

After many promises of state compensation for Chitra, the money never came. Despite initial cooperation from the police, the case never went to trial. Chitra was not even informed if the culprits were arrested after she identified them: "I don't know how many days they were in jail. I haven't been contacted again by the police." She was denied access to her own medical records. "The doctors said they have to give them to police and they will send them to court."⁴¹ For social and monetary reasons, Chitra's family has been unwilling and unable to pursue the case. "My family is afraid to proceed because of their reputation," she explained. "The FIR should be there. I was never invited to court to depose, so I think the trial was not held. I didn't go again... We don't have money for an advocate, and we cannot travel frequently to court. Even if I decide to pursue I have to get permission from my mother and brothers."⁴²

Caste and Gender Bias in the Courts

The lack of law enforcement leaves many Dalit women unable to approach the legal system to seek redress. Women are often also unaware of the laws; their ignorance is exploited by their opponents, by the police, and, as illustrated by the cases below, by the judiciary. Even when cases are registered, the lack of appropriate investigation, or the judge's own caste and gender biases, can lead to acquittal, regardless of the availability of evidence or witnesses. The failure to successfully prosecute cases of rape also allows for crimes against women to continue unabated, and in the caste context, encourages the use of rape as a tool to punish and silence Dalit communities.⁴³

Bhanwari Devi

Bhanwari Devi's case is a typical example of the influence of caste bias on the justice system and the inability of lower-caste women to obtain redress. It is also a striking example of rape as a weapon of retaliation used to punish and silence women's rights advocates. The nature of the district judge's opinion sounded many alarms, and the case itself was taken up by several women's rights organizations in north India.

Bhanwari Devi joined the Rajasthan Government's Women's Development Programme (WDP), called Sathin, in 1985 as a grassroots worker.⁴⁴ In April 1992 she reported the child marriage of the one-year-old daughter of Ram Karan Gurjar to WDP authorities. The police came to the village and tried to stop the marriage, but the family proceeded with the ceremony in secret. On September 22, 1992, in the presence of her husband, Bhanwari was gang raped by members of the Gurjar family in retaliation for her intervention in the child marriage. Upon approaching the police, Bhanwari was told, however, that she was too old and unattractive to merit the attentions of young men.

The trial judge acquitted the accused on the reasoning that "rape is usually committed by teenagers, and since the accused are middle-aged and therefore respectable, they could not have committed the crime. An upper-caste man could not have defiled himself by raping a lower-caste woman."⁴⁵ Those accused of raping Bhanwari also enjoyed political support. BJP leader Kanhaiya Lal Meena reportedly organized a rally in support of the accused.⁴⁶ As of February 1999, Bhanwari was still in court appealing the acquittal.

Bhanwari's case, and in particular the manner in which it was handled by the police and the courts, is not an isolated incident. Cases at all levels have the potential to be influenced by the judge's personal perceptions of caste and gender that are brought to bear in determining the credibility of evidence or the likelihood of guilt. The case material that follows, though not specific to the report, is intended to illustrate the atmosphere of prejudice that Dalit women face—both as Dalits and as women. These biases are pervasive all the way to the top of the

legal system. The few cases that manage to reach the Supreme Court still do not escape these deep-seated prejudices.

Shri Satish Mehra v. Delhi Administration and Another

Gender bias that blames women for the actions of men also persists at the Supreme Court level. In *Shri Satish Mehra v. Delhi Administration and Another*, a July 1996 case of the rape of a three-year-old girl by her father, the Supreme Court concluded that there lacked sufficient evidence to proceed to trial and pointed to the “seemingly incredulous nature of the accusations against a father that molested his infant child.” The court instead accused the mother of leveling false accusations to take revenge on her husband for an unhappy marriage.⁴⁷

The opinion added that the judge presiding over the case prior to the Supreme Court appeal ought not to have overlooked the peculiar circumstances of the case, including the fact that the accused’s wife found their marital life to be “extremely painful and unhappy from the very inception” and that she had accused him of being an alcoholic and prone to inflicting severe physical violence.⁴⁸ Based on these circumstances, the Supreme Court concluded that the wife’s “attitude to the petitioner, even de hors the allegation involving the child, was vengeful.”⁴⁹ As in the Bhanwari Devi case, despite the legal basis it claimed for the decision, the court only briefly touched on evidentiary matters and seemed instead to be motivated by its professed disbelief that such crimes could actually take place.

Suman Rani (Prem Chand and Another v. State of Haryana)

As described in Chapter V, Dalit women are frequent victims of custodial rape. Section 376(2) of the Indian Penal Code mandates minimum sentences for state agents who rape women in their custody. Other loopholes in the law, however, allow the judiciary to sidestep mandatory sentencing. In the famous Suman Rani custodial rape case, the Supreme Court refused to apply the minimum ten-year sentence to the police officers charged because of the victim’s “questionable character.” The court’s opinion quoted a medical officer who testified that the “victim girl [was] used to frequent intercourse and parturition and there was no mark of violence of sexual assault on any part of her body.” The opinion further added:

[T]he victim Suman Rani was a woman of questionable character and easy virtue with lewd and lascivious behavior and that the very fact that this girl had not complained of the alleged rape said to have been committed at [the] police station by these two appellants to anyone till [five days after the incident] shows that the present version is not worthy of acceptance.⁵⁰

The court ultimately held that the peculiar facts of the case, coupled with the conduct of the victim, did not warrant the imposition of the minimum ten-year sentence.⁵¹ The court instead invoked the proviso to Section 376(2), which allows for the judge to use his discretion in reducing the minimum sentence, and cut the sentence in half.

15 Human Rights Watch interview with T. K. Chaudary, Joint Commissioner of Police, Mumbai (Bombay) Police, February 5, 1998. 16 Human Rights Watch interview with Ruth Manorama, Bangalore, July 25, 1998. The National Federation for Dalit Women is a secular, democratic organization with representatives from twenty-seven Indian states and union territories. It represents the first major effort to nationalize the Dalit women’s movement. 17 Human Rights Watch interview, Bangalore, July 25, 1998. 18 Ibid. 19 See also Chapter V for a discussion of constitutional amendments allowing for increased representation of women and of scheduled caste and scheduled tribe members, in panchayats (village councils) and urban municipalities. Many have viewed these amendments as an important opportunity to solidify women’s participation in the political process and in the decisions that affect their communities and lives most intimately. The Parliament, along with several non- and intergovernmental organizations, has been training women elected into panchayats. As the “panchayat maintains the social justice in the area... [w]omen members play a very important role against the violence and atrocities inflicted on women. [These amendments are seen as] a turning point in the patriarchal system.” “Women in Panchayats,” Project Progress Report, UNIFEM, p. 4. 20 P. D. Mathew, *What You Should Know About the Police* (New Delhi: Indian Social Institute, 1996), p. 10. 21 Ibid., p. 24. 22 Ibid., p. 11. 23

Convention on the Elimination of All Forms of Discrimination against Women, adopted and opened for signature, ratification and accession by U.N. General Assembly Resolution 34/180 of December 18, 1979 (entered into force September 3, 1981), Art. 2, (c, d). India ratified the convention on July 9, 1993. See Chapter X for the applicability of other international conventions to the situation of Dalits. 24 Ibid., Art. 11 (1). 25 Ibid., Art. 14. 26 When a thirty-seven-year-old woman was gang raped in Amina Nagar, a slum area in Jogeshwari, Bombay, she was refused a proper medical examination when taken to the hospital. The doctor was afraid of even broaching the subject for fear of legal liability: "How can we routinely do a rape check-up when a case of assault on a woman is reported? It is such a delicate subject." As quoted in Rupande Panala, "When a Poor Woman Gets Raped," *Manushi* (New Delhi) Sept. - Oct. 1990, p. 36. The police also hastily turned her away and shouted, "Do you know the meaning of rape?" They then recorded the incident as a case of outraging a woman's modesty, a bailable offense under Section 354 of the Indian Penal Code, punishable with just one year's imprisonment. Both the police and the doctors reportedly said: "If it was a young girl with injuries on her breast, we would suspect rape." Ibid., pp. 35-36. 27 Sakshi, "Gender and Judges: A Judicial Point of View," (New Delhi, 1996), p. 8. 28 National Crime Records Bureau (Ministry of Home Affairs), *Crime in India 1994*, as quoted in Sakshi, "Gender and Judges: A Judicial Point of View" (New Delhi, 1996), p. 9. 29 Ibid. 30 "In Brief: Recent Rape Cases," in *Kali's Yug* (New Delhi), November 1996, p. 20. 31 The Thevars are a powerful "backward caste" in Tamil Nadu. For more on Thevars, see Chapter V. For more on backward castes generally, see Chapter III. 32 A bill hook is an agricultural instrument with a hooked blade. 33 Human Rights Watch interview with Vijayakumari, Society for Rural Development Trust, Managing Trustee, Tirunelveli district, Tamil Nadu, February 17, 1998. 34 Ibid. 35 Ibid. 36 Human Rights Watch interview with R. Chitra, Tirunelveli district, Tamil Nadu, February 17, 1998. 37 Ibid. 38 Ibid. 39 For more information on the practice of police hostage-taking of women whose male relatives are hiding from the authorities, see Chapter V. 40 Human Rights Watch interview with R. Chitra, Tirunelveli district, Tamil Nadu, February 17, 1998. 41 Ibid. 42 Ibid. 43 For more on rape as a tool of political repression see *The Human Rights Watch Global Report on Women's Human Rights* (New York: Human Rights Watch, 1995); Asia Watch (now Human Rights Watch), *The Human Rights Crisis in Kashmir: A Pattern of Impunity* (New York: Human Rights Watch, 1993); Human Rights Watch/Africa, *Shattered Lives: Sexual Violence during the Rwandan Genocide and its Aftermath* (New York: Human Rights Watch, 1996); Americas Watch (now Human Rights Watch), *Untold Terror: Violence Against Women in Peru's Armed Conflict* (New York: Human Rights Watch, 1992). 44 "In Brief: Recent Rape Cases," p. 20. 45 Ibid. 46 K. S. Tomar, "Atrocities against Rajasthan women on the rise: Report," *The Hindustan Times*, May 28, 1998. 47 In the Supreme Court of India, Criminal Appellate Jurisdiction, Criminal Appeal No. 1385 of 1995, p. 6. 48 Criminal Appeal No. 1385 of 1995, p. 6. 49 Ibid. 50 1989 Supp (1) SCC, p. 287. 51 In a rape case in the state of Karnataka, decided by the Supreme Court in October 1983, the sentence was also reduced to less than what was provided by law. In a letter to the chief justice dated October 27, 1993, women's organizations noted that gender bias was pervasive at all levels of the judiciary that seeks to blame the victim for the crimes committed against her. References in the judgment to the victim's character, her clothes, and her behavior were severely criticized, as was the categorization of rape as an "act of passion," and of the criminals as "victims of sexual lust." The letter also noted that the Karnataka judgment blamed the girl because "she agreed to share a room with the two men." "Some judgments which reflect a similar patriarchal and Gender Biased approach towards victims of rape," (New Delhi: 1996), obtained from attorney Kirti Singh, All-India Democratic Women's Association.