The STATE and SEXUAL VIOLENCE:
CHALLENGING IMPUNITY,
DEMANDING JUSTICE

WOMEN AGAINST SEXUAL VIOLENCE AND STATE REPRESSSION
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FOREWORD

And I always thought: the very simplest words
Must be enough. When I say what things are like
Everyone’s hearts must be torn to shreds
- Brecht

We live in times when even strong words do not have the desired impact. We are made to believe that actions speak stronger and louder than words. Some years ago there was a powerful protest, unprecedented in its mode of expression of outrage. In 2004 several women in the north-eastern state of Manipur shed their clothes in protest outside the headquarters of the Assam Rifles in Imphal and walked naked on the streets, carrying placards that said “Indian Army Rape us”. This compelling protest conveyed to the world the sexual violence inflicted upon women by security personnel, and at the same time effectively exposed the ‘nakedness of the emperor’. The specific trigger for this unique protest was the rape and brutal murder of a young woman, Manorama, by jawans of the Assam Rifles. Even this strong action, sadly, has not moved the powers-that-be in this largest constitutional democracy called India to ensure that the guilty are punished and justice is done.

What is even more alarming is that Manorama’s case is not an isolated one. This document brings together several such cases – of rape and murder, or rape and imprisonment, by security forces in several parts of the country. They have taken place in the so-called conflict areas, in the name of tackling insurgency; they are also taking place to keep dalits, tribals, minorities in place, to teach them a lesson.

The report goes beyond de-humanised statistics to describe instances of individual
women subjected to torture, rape and murder. Each case that is presented describes the violence and the responses of the various government agencies entrusted with the task of ensuring law and justice. All this together bring out the active obstacles in the process of securing justice. This document is an attempt to share the pattern that we find in incidences of custodial sexual violence, (either by police and security forces acting independently, or by giving a long leash to dominant caste groups), and the subsequent attempts by the state agencies to overlook, or cover-up, or obfuscate the sexual violence, and ultimately to completely deny justice.

The brutality of the Indian state is not a recent development. For the past half century, the Indian government has stifled the democratic aspirations of the people and given a free hand to the police, military, para-military and other security forces. In recent times, new laws have been introduced to suppress any resistance, peaceful or otherwise, against land acquisition and privatisation of natural resources. These laws have vested enormous and arbitrary powers with the security forces. As a consequence, life and liberty have become a distant dream for people in large swathes of India, particularly in the states of the North-east and in Jammu & Kashmir where struggles for self-determination have been brutally squashed.

Since the neo-liberal turn of the 1990s, there has been an increased onslaught by the state on the lives and livelihoods of large sections of our population in the name of ‘development’ projects such as mining and special economic zones, and communities are being deprived of their lands, rivers, forests and other common property resources. Pushed to desperation, people are organising themselves in several ways to resist this large-scale displacement and dispossession. Presently, driven by aggressive corporatisation, state violence in Chhattisgarh, Jharkhand, Orissa, West Bengal and other states is being systematically used to evict people from their land and destroy their livelihood. All this is being done in the name of “development” or “maintaining law and order”.

In several cases women have been at the forefront of the mass movements resisting these moves. It has been seen that women are specifically targeted in such cases and their political participation is suppressed by use of rape and other kinds of violence. In this bleak scenario, as women activists, we have been enormously concerned about the worsening situation of the women in these regions. Women are already bearing the brunt of the loss of livelihood. The presence of large number of paramilitary and military forces now makes them extremely vulnerable targets of sexual violence too.

When we got together as Women Against Sexual Violence and State Repression (WSS), we were not unaware of the extent of violence being perpetrated against women by the police, the para-military and the military. We only knew that the violence would not end without the end of the police state that India is fast becoming. The connivance of
the police with casteist and communal forces, particularly the Hindu communalists, was also a cause of concern as this also completely subverted the cause of justice.

This situation lent itself to action on three fronts: i) changing the discourse to political strategies and eschewing forcible methods of settling issues, ii) working against corporatisation that is causing displacements in large parts of the country and requires use of force to clear the path for diversion of people’s natural resources, and iii) seeking justice and action against sexual violence perpetrated deliberately to undermine the honour of a community, to instil fear and even routinely to punish women who do not toe the line or just happen to come face to face with security forces as they comb the countryside for militants or Maoists or insurgents.

Sexual violence has become the weapon of choice in the state’s repressive arsenal, by any parliamentary party in power. Women become the most vulnerable targets of violence during war, communal violence or military occupation. Rape and violence are not simply acts of a few depraved individuals but a weapon used systematically by individuals, society and state to subjugate women or ‘teach them a lesson’. Thus when a Bhanwari Devi steps out of her expected social and gender role and organises people against child marriage, she is violently gang raped. In Bastar, the state forces and the notorious Salwa Judum have unleashed a reign of terror through rape and other forms of sexual assault.

In both Kashmir and the North-east in particular, time and again cases of abuse by the troops have come to light, but the state has never punished them for their crimes. According to a 1994 UN report, between 1990-92 alone there were 882 rape cases by the security forces in Kashmir. According to the National Human Rights Commission (NHRC), there were 1,039 cases of human rights violations by the security forces from 1990-1999, an average of 109 per year (which include rapes, terrorising, abduction and killing of innocent women, children and youngsters and communal violence). These are just the official figures. The real numbers must be even higher as most of the cases go unreported out of sheer fear and active intimidation. The perpetrators of these crimes are given legal sanction by the Armed Forces Special Powers Act (AFSPA) in Kashmir and North-
east, the Public Security Act (PSA) in Kashmir, the Disturbed Areas Act (DAA) etc. AFSPA also protects military personnel responsible for serious crimes from prosecution.

Invasion of women’s bodies is the consequence of the privilege and power enjoyed by security forces in the North-east. In Manipur alone, countless incidents of molestation and rape have gone unreported, while few women who do report do not get a fair hearing. Miss Rose (1974), Neelam Panchabhaiya (1986), Tamphasana (1990), Ahanjaobi Devi (1996) tried fighting legal battles against their rapists, but all of these cases were dropped on the grounds of insufficient evidence. One can only hope that solidarity with women’s organisations and civil rights groups from across the country can make a dent in this dismal record.

Be it the North-east, or Kashmir, or Nandigram or Singur, or Chhattisgarh, the rapists and murderers are yet to be convicted. In 2007, in Vakapalli in Andhra Pradesh, eleven tribal women were brutally gang-raped by the notorious Greyhound police force. The victims await justice till date. In Chhattisgarh numerous cases of rape by the para-military forces as well as the Salwa Judum goons have been reported but these are not even registered. In the recently launched Operation Green Hunt in Chhattisgarh too, the COBRA battalion in one instance had cut the breasts of 70-year-old Dudhi Muyea. In Lalgarh, where the Central Reserve Police Force (CRPF) has been stationed for more than ten years, there is continuous harassment and molestation by the security forces. Women have been regularly molested on the pretext of ‘body checks’. They are asked to show their genitals to the security forces in order to prove that they really are women.

Thus, instances of women being targets of state repression and sexual assault are all-pervasive. What is even more disturbing is that the state and judiciary have done almost nothing to prevent these heinous assaults on women by security forces.

Our intention in bringing out such a document is to highlight the pattern that is emerging from our experience over the past three years, to make visible a barbaric, unlawful face of the Indian state, which is being obfuscated and hidden from the public view in various ways. We wish to share widely the grave implications of our findings and our concerns. We believe that no citizen can be subjected to such inhuman violence anywhere, more so in a constitutional democracy. Sexual assault on women by the security forces is not acceptable and cannot be justified or condoned or overlooked under any circumstances.
Collateral Damage in the Anti-Naxal Campaign: Soni Sori

“By giving me electric shocks, by stripping me naked, or by brutally assaulting me and inserting stones and pebbles into my body - will the problem of Naxalism end?” Soni Sori from Raipur Jail, January 2012

Soni Sori, a 36-year old adivasi school teacher from the war-torn district of Dantewada in Chhattisgarh, sought refuge in Delhi in September 2011. Hounded by the Chhattisgarh police, she tried meeting with the nation’s media, intelligentsia, lawyers and politicians, telling them how she and other adivasis were being implicated in false cases, termed as being Maoists, and put away for many years in nameless prisons. She claimed that she had evidence – evidence to share with the media and put before the Supreme Court. However, in the midst of the flurry over multi-million dollar scams, stories of hapless adivasis in far-away Chhattisgarh and the plight of a school teacher did not command much media attention.

On October 4, 2011, before Soni could file her petition in the Supreme Court, she was arrested in Delhi. Fearing vengeance from the Chhattisgarh police, whose workings she had exposed in a sting operation conducted with Tehelka, she pleaded with the judges in the Delhi District Court and the Delhi High Court for permission to stay in Delhi for a few more days, till she could finish filing her petition in the Supreme Court. (The delay was due to the court holidays on account of Dussehra). She recounted her earlier interactions with the Chhattisgarh police and showed old scars of injuries received at their hands, and repeatedly assured the court of her readiness to stand trial while in the custody of the Delhi police. However, on October 7, the courts dismissed her concerns, and awarded her custody to the Chhattisgarh Police, albeit with explicit directions to the police to ensure her safety and an order that a report be filed before the Delhi High Court, outlining steps taken to keep her safe.

In blatant violation of human rights and the Honourable Court’s explicit directions, the Chhattisgarh police subjected Soni to horrendous physical sexual torture during the two days that she was in their custody. Here is how Soni described her ordeal in a
letter from jail.

On the night of Saturday, 8.10.2011, in the new police station in Dantewada which has been built next to the old police-station, I was tortured. That night, when I was sleeping, I was woken up by two policewomen. I asked them, why am I being woken? I was told that SP Ankit Garg has come. I was taken to another room. In that room, SP Ankit Garg and the SDPO of Kirandul Police Station were seated. I was made to sit in that room for some time along with the women police.

[Ankit Garg said] “Bitch, do you know who I am? I am SP Ankit Garg ... who used to be in Bijapur earlier, and am soon going to be promoted from an SP to an official of the big range.” He banged on the table and said, “Everything happens from here. Whatever we order will be carried out. We are the administration, authority and government. Do you understand, you bitch?”

For a long time, he verbally abused me and tortured me psychologically. I have referred to the verbal abuse in my earlier letter. I was asked to sign on some papers and was asked to write some things. When I refused, I was pressurised through stern talk. I still refused, and then they passed (electric) current through my feet, legs and my clothes.

I did not sign the papers on which they had written something. “Bitch, sign the papers which we have written!”—a lot of pressure was put on me. I told them that it is better that they kill me. He [SP Ankit Garg] said, “I will send you back only after punishing you. You will be so ashamed of yourself; you will bang your head against the walls of the jail and die of shame. You are an educated woman; you will not be able to live with this shame.”

He ordered that electric shocks be given. After repeatedly giving me electric shocks, my clothes were taken off. I was made to stand naked. SP Ankit Garg was watching me, sitting on his chair. While looking at my body, he abused me in filthy language and humiliated me. After some time, he went out and in a little while he sent three boys. These boys started molesting me and I fell down on being pushed. Then they put things inside my body in a brutal manner. I couldn’t bear the pain, I was almost unconscious. After a long time, I regained consciousness and found myself in the room in which I had slept. By then, it was already morning.

(Excerpt from Soni Sori’s letter, filed before the Hon’ble Supreme Court, January 2012)
Thus, Soni Sori, who had been in good health in Delhi on October 7, 2011 when she was remanded to the Chhattisgarh police, was in such a poor shape on October 10, that she could not even get down from the police van and go to the courtroom to present herself before the Magistrate. Her statement was taken by a court babu, and the Magistrate, in a clear travesty of justice, remanded her to judicial custody without even seeing her or talking to her. The police claimed, and the Magistrate accepted, that ‘she had slipped in the bathroom and hurt her head’. Indeed, it was Soni Sori herself who had to remind the Magistrate of her duties several days later. In a letter dated 26.11.2011, Soni writes:

*I try to inform the court about everything that is happening to me. Still, the judge madam in the court (the magistrate) doesn’t take me seriously...
Madam said that when you were brought to the court on 10.10.2011, why did you not tell all this in the court then? I would have taken immediate action.

Then I asked her that why did you not call me inside your court?

She started to say that they [the police] told me that you had fallen in the bathroom and cannot get up.

Even then, Madam, you should have given the order that I should be brought into the court in whichever manner. If that had happened, I would have surely tried to tell you everything that was happening. You kept me outside the court and passed the order that I should be moved into jail. Outside the court, how could I tell all this in front of those very policemen who were responsible for my condition?*

**Delay, Dismiss, Disparage: The State’s Response to Torture Allegations**

News of Soni Sori’s torture became public only when a grainy video of Soni writhing in pain in Dantewada Hospital, made by an anonymous journalist on a cell phone camera, was uploaded on Youtube on October 10, 2011. While the police downplayed the seriousness of the injuries, with the ADG (Naxal) Ramnivas saying that this was nothing more than a “routine check-up”¹, the examining doctors at the District Hospital in Dantewada told reporters that “she [Soni] was unconscious when she was brought in.” The X-ray images confirmed injuries on her head and back, “She has contusions on the right side of her head in the occipito pareital region. She also has tenderness in the lumbar region of the back,” the examining doctor told reporters.² Soni was subsequently taken to the Jagdalpur Maharani Hospital by the police,
after the Jagdalpur jail authorities refused to take her into judicial custody in view of her fragile condition. She spent a day in the Jagdalpur hospital, where also the doctors noted her inability to stand due to pain and history of unconsciousness, and was then sent on a 10-hour journey to the Ambedkar Memorial Hospital in Raipur. The Raipur hospital, treating her four days after her torture, did not find any abnormality in the CT scan and did not recommend any intervention other than simple pain killers, and sent her into judicial custody in Raipur Jail.

Back in jail, Soni’s condition started to deteriorate. She could still not walk. Initially silent about her torture, she gradually started revealing some details to her family and friends. Meanwhile, a three-judge Bench of the Supreme Court, acting on her petition, observed that the injuries against her person did not appear to be as simple as the State was making them out to be, and ordered an independent medical examination in NRS Medical College Hospital in Kolkata.

The extent of her torture was finally revealed when the Medical Board of the NRS Hospital presented its findings in court on November 25, 2011: three stones had been found inserted deep inside her private parts, which were the primary cause of her abdominal pain and discomfort in walking. The MRI scan also showed that she had annular tears on her spine.

In light of these facts, it is notable that despite Soni’s complaints of severe lower back pain, her inability to stand, tenderness in the lower back and difficulty in walking, none of the three hospitals in Chhattisgarh which ‘examined her’ found inflammation in her private parts, the stones lodged in her vagina and rectum or the injuries to her spine. In fact, Dr. Vivek Choudhary, Medical Superintendent of the Ambedkar Hospital in Raipur, not only gave a clean chit to the police but also blamed Soni Sori, the victim, of “feigning injuries.” Talking to the Hindustan Times, he said, “Medical tests reveal Sori is a malinger [sic].”

This denial extended to the highest levels of the Chhattisgarh government. At a meeting with Principal Secretary, N. Baijendra Kumar in Delhi on October 14, 2011, concerned women’s groups were assured that she was ‘safe in jail and that her wounds were not serious.’ He also said that the Health Secretary had ‘confirmed the fact, so there was no need for concern about her safety; that he had been told by Dantewada Superintendent of Police Ankit Garg and state DGP Anil M Nawaney that Ms. Sori had not been ill-treated.

While on the one hand, the state tried to belittle the serious injuries sustained by Soni Sori because of custodial torture, on the other, it was busy painting her as a “dangerous criminal” who was a serious threat to the nation. After her arrest Soni discovered that the State had slapped eight different criminal cases against her, accusing her of a number of very serious crimes, including sedition and waging war against the nation. The flimsy nature of these charges is evident from the fact that Soni has already been acquitted in two of these cases, while the main complainant
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in a third case has admitted in court that he did not name her in his complaint and the police appears to have added her name to the FIR on its own. The state’s intentions of keeping her behind bars for a significant amount of time is apparent from the fact that Soni has yet to be arrested in two cases, in which she is still shown as “absconding” despite being in judicial custody for over a year.

Rewarding the Perpetrator, Punishing the Victim

Soni Sori’s case is remarkable in the amount of evidentiary material that exists to corroborate the charges of harassment and torture that the victim makes against specific police officers. Yet, it is also remarkable in the absolute impunity that seems to have been granted to these very police officers.

In September 2011, Soni informed the media how she and Linga Kodopi, her journalist nephew, were being framed by local police who claimed that they were conduits for carrying money to the Naxals. She named the policemen who had been harassing her: Constables Mankar and Basant. These policemen, in a taped phone conversation with her, conducted from the offices of the Delhi-based magazine Tehelka, admitted to their role in the conspiracy. Yet, not only did the Chhattisgarh police establishment not take any note of this frame-up, it is disturbing to note that these same police constables were present at the interrogation of Soni Sori after her arrest, and complicit in her torture.

By November 2011, letters that Soni Sori had written in prison after her torture had reached Delhi and it had become amply clear that the then-Dantewada Superintendent of Police, Ankit Garg, was primarily responsible for torturing Soni and had ordered others to sexually violate her. Even without this explicit role, case law laid down by the Supreme Court holds that the police officer in-charge of a prisoner is assumed to be responsible for any injuries sustained by him or her while in police custody. Yet, despite Soni Sori’s letters explicitly holding Ankit Garg accountable, and despite the Kolkata medical report proving that stones and pebbles were inserted into Soni’s private parts in police custody – the Chhattisgarh state has not ordered a departmental inquiry into this torture.

Even more shocking is that even as the various women’s groups demanded severe punishment for SP Ankit Garg, far from placing him under the scanner and investigating his role in the custodial violence suffered by Soni Sori, the Union of India awarded him the President’s Police Medal of Gallantry on the 63rd Republic Day of the nation, on the recommendation of the Chhattisgarh government.

While the State’s attitude towards the perpetrators of the heinous crime of sexual torture is one of indulgence and approbation; its response to the victim-survivor has been to discredit and torment her. Following Soni’s medical examination in Kolkata in October 2011, jail authorities withheld further medical attention from
her until March 2012, even as she complained of serious complications arising from the torture. Inside the jail, she was refused visitors when women’s groups from across the country tried to meet her and ascertain her condition. She wrote to the Supreme Court Judge from prison in a letter dated 7.3.2012:

> It was upon the order of the Supreme Court that I was taken to Kolkata for treatment. ...the doctor advised me to be regular in taking my medicines till the internal pains do not subside. But I am not being given these medicines. I have complained about this in the Jagdalpur jail. After coming to the Raipur jail, I have told the Jailor Madam many times about this. Even in the lower court in Dantewada, I said that my internal (medical) problems are increasing. My medicines should be made available to me. Inspite of all this, I have not been given medicines till date. Troubled by such circumstances, I even asked the Doctor Madam of the Jail that I need to be treated. The Doctor Madam began to say, “You have come here through the Administration...” and put in writing that I am a Naxalite woman. ... My pains go on increasing.

Full medical treatment was only forthcoming after Supreme Court’s intervention ordering her to be examined at the premier medical institute, All India Institute of Medical Sciences (AIIMS), in Delhi in May 2012. In August 2012, she reported that she was being strip searched within the prison. In a letter to the Supreme Court, Soni wrote that she was being made to sit naked on the ground, and parts of her body were inappropriately touched on the pretext of searching.

On August 21, Soni was stripped in front of a 100 other female prisoners in Raipur jail. Soni Sori responded to her ill-treatment by refusing meals and restricting her diet to liquids and the few fruits she could make available inside the jail. Her health, which had started recovering after the treatment at AIIMS, once again is declining. On October 19, 2012, slightly over a year after her arrest, she fainted during her court visits and had to be hospitalized once again due to weakness and exhaustion.

It has to be noted that the jails of Chhattisgarh today are full of Soni Soris. Once in a while, an incident of custodial torture and violence may break through the barriers of language and distance to challenge the conscience of a nation, but the vast majority of such cases remain buried within the thick walls of police stations and prisons. Soni Sori herself reminds us in a letter written to a social activist in Delhi, from Jagdalpur jail, soon after her arrest:

> There are many other women prisoners suffering in this jail. Around 60 women.... They tell me that they were not able to fight back because there was no one to support them. ...After hearing their stories of torture, my own suffering appears small. You have to do something for these women also, Didi.
Deafening Silence, Decisive Inaction

As the tag of “Naxalite” continues to attach to Soni Sori, all the democratic institutions have shied away from any intervention in this case. While the “Naxalite” tag is decidedly misplaced in Soni’s case – it is well documented that her family has, in fact, been accused by the Naxalites of being pro-establishment – yet, this begs the larger question: What if Soni was, indeed, a Maoist sympathizer? Does that make such horrendous treatment tolerable? Are human rights only to be accorded to some humans agreeing with certain ideological precepts? Is sexual torture acceptable in this war against Maoists?

While sympathy for Soni’s case could not really be expected from the Raman Singh government in Chhattisgarh, which has a lot at stake riding on its “tough-on-Naxalites” image, yet the open hostility shown to the Justice for Soni Sori Campaign leaves one speechless. On December 1, 2011, when Raman Singh arrived in Delhi, he refused to even meet with the 40-odd representatives of Delhi-based women’s groups, democratic rights groups, and other progressive individuals at Chhattisgarh Sadan. Instead, the Chief Minister ordered the Delhi Police to forcibly remove all the campaigners from the premises and had them dragged out of the way so that he could proceed to ‘his next meeting’.

The meetings of the Campaign with representatives of the Central Government, though conducted with more finesse and diplomacy, have also been equally futile. The Home Minister, the President and the Tribal Affairs Minister all hid behind the façade of the rights of the state of Chhattisgarh, conveniently overlooking the fact that the Center is empowered to intervene in the case of Adivasi rights in Scheduled Areas, and especially, when fundamental rights of individuals are under threat.

The response of the autonomous institutions — the National Human Rights Commission and the National Women’s Commission — has been the most disappointing. Both these commissions have steadfastly refused to take any action in the case, despite multiple representations made by various groups. Both these commissions plead lack of jurisdiction since the case is already being heard in a court. Not only does this excuse overlook the fact that many facets of Soni Sori’s case are not part of any court record, it also underemphasizes the extensive powers given to these Commissions to intervene in court matters.
The Commissions have refused intervention not only in the matter of Soni’s custodial torture, but have also failed to act on the subsequent harassment of her family by the police, the denial of medical care to Soni within the jail, her humiliating treatment by regular strip searches, refusal of the jail authorities to allow her provisions for daily needs, her feet being chained to the hospital bed etc.

Finally, even as the judiciary holds out the last remaining glimmer of hope in her case, it must be acknowledged that the judiciary too has miserably failed Soni Sori. In the very first instance, there was reasonable apprehension that Soni Sori’s life was at risk in the custody of Chhattisgarh police. Yet, she was handed into their custody by the very judiciary that should have been alert to her vulnerability.

Immediately after the torture, Soni was in such a weak condition that she could not be presented to the Dantewada Magistrate. Yet, the Magistrate was content to accept the police story of a fall in the bathroom, instead of hearing Soni’s explanation of her injuries.

The Supreme Court did provide significant relief to Soni Sori by ordering a medical examination in Kolkata, after the Chhattisgarh hospitals had failed to treat her. But it is the lack of action by the apex court even after receiving the shocking report from Kolkata—revealing that stones were shoved into her private parts—that is inexplicable. How could a humane court, acting in interests of justice, hand over the victim of such a heinous crime, back to the same tormentors in Chhattisgarh and refuse Soni’s plea to be transferred out of Chhattisgarh, to Delhi?

What perhaps is most frustrating is the inexplicable delay in hearing the case. In the year that has elapsed since the Supreme Court received the shocking report from Kolkata, it has managed to hear this case only once, and that too after three urgent applications were placed before it pleading that Soni needed immediate medical attention which she was not able to get in the Raipur Jail. In that lone hearing, the apex court addressed the limited issue of providing
urgent care to her, but left the larger question of custodial torture and violence untouched. In mid-November, a three-member team from the NHRC visited Soni Sori in Raipur Central jail. The ill-treatment seems to have reduced and she has withdrawn her two and a half month long hunger-strike. Meanwhile, as Soni struggles against the daily humiliations of prison life, the Supreme Court has listed the next hearing in her case on January 27, 2014 – more than a year after her last hearing, and more than two years since the incident of torture. Meanwhile, all other institutions of this largest democracy in the world sit idle by the wayside, passively watching the entire spectacle, under the guise of the matter being “sub-judice”.

END NOTES


5 State of Uttar Pradesh v. Ram Sagar Yadav, 1985 SCC (1) 552

6 Dantewada district of Chhattisgarh is a Scheduled Area under the Fifth Schedule of the Constitution. Clause 3 of the Fifth Schedule places the administration and control of these areas directly under the President and states that “executive power of the Union shall extend to the giving of directions to the State as to the administration of the said areas.”

7 In the case of the National Commission for Women, its website in fact has a page titled Important Court Interventions (http://ncw.nic.in/frmImplInterventions.aspx) listing out important cases where the NCW played an important role. These range from Bhanwari Devi’s gang rape case to the entitlement of Muslim women to maintenance beyond the period of Iddat.
Raid and Rape as Anti-Naxal Operations: Arati Majhi

Eye-witnesses to the gang rape are fearful of speaking out in the atmosphere of terror in Gajapati district. Some witnesses are themselves in jail, others threatened with murder.

Before day-break on the morning of February 12, 2010, 20-year-old Arati Majhi was carrying out her usual morning chore of pounding rice inside her house in village Jadingi village. Her father Dakasa Majhi, mother, brother and sister-in-law were asleep in the same room. Security forces came to her house and demanded that the door be opened. She replied that she would open it after dawn, but they broke open both the front and the back doors and barged in. They started beating her and dragged her outside to the verandah, accusing her of mixing with the Naxals. Lajar Majhi, who lives just a house away, was also dragged out. Another person called Prasanna Majhi was picked up, with the forces insisting that he was ‘Sagar’.

About 40 Special Operations Group (SOG) and police personnel from Adava Police Station had stormed into the village. They were looking for specific individuals – ‘Sagar’ and ‘Azad’ – who they claimed were Naxalites. Demanding to know the whereabouts of ‘Sagar’, they insisted that he had come to the village the night before. They also manhandled several people saying: “So you are a Naxalite!”; “Your village has become a Naxal village”; “Why did you join the Naxals?” Many villagers reported being kicked and threatened at gun-point.

A couple of villagers were asked to identify ‘Sagar’ from amongst the people present. When they replied that they didn’t know ‘Sagar’, everybody in the village was asked to be identified by name. Martha Majhi, another woman in the village, was also treated roughly. The security forces asked her if Arati had joined the (Maoist) party, and Martha denied any such knowledge. Without further discussion, the force took Arati into custody.

The security forces also took Arati’s cousin, Lajar Majhi and Prasanna Majhi with them. Her younger brother, Lalu Majhi, followed the force as they were taking his sister
away. The security forces with the four persons picked up from Jadingi, reached Tangili, about 4 km from Jadingi. They were asking for one ‘Hemant’ in this village, but on not finding him, they picked up Shyama Majhi, Hemant’s brother and another boy, Dakua Majhi.

**Context**

Village Jadingi, Gram Panchayat (GP) Katama, Block Mohana in Gajapati district, is a small village of 29 families. Majority of the people in this area are Christian Kondh adivasis, who speak the Kui language. Jadingi is a prime example of the government neglect typical of the entire area. It is located 8 km from the nearest motorable road in GP Katama. The walk itself is gruelling with most of the route being uphill. None of the girls have studied beyond primary school as there are no facilities beyond that in the village. For middle school, some boys stay in the hostel in Katama. People eat whatever they grow – beans, ragi (millets), paddy etc. For several months of the year they depend on casual labour and forest produce. Young men and women from some families go out as migrant workers to distant places like Hyderabad.

Gajapati is one of the southern districts in Orissa. Adivasis constitute 51 percent of the population in the district. The terrain is hilly and heavily forested. Parlakhemundi, on the southern tip, is the district headquarters.

According to news reports, Naxalites have been active in the district since the 90s.

On March 24, 2006, Maoists freed over 40 prisoners lodged in jail. They also kidnapped two government officials (who were later released safely) and looted arms from the jail, a local Orissa Special Armed Forces camp and the police station. There have also been reports of a land mine blast that injured 12 SOG personnel on February 16, 2009; calls for boycott of the 2009 Assembly elections; and blowing up of a forest beat office by Maoists on July 11, 2009. A mobile tower blast and a late night attack on four passenger buses of the Orissa State Road Transport Corporation near Nalaghat in Gajapati district during its Orissa bandh on December 27, 2009 were also reported.

There is heavy deployment of the Central Reserve Police Force (CRPF) and SOG of the State Police in the district. Reports of harassment of innocent villagers by the CRPF and false cases accusing them of ‘being associated with the Naxals’, are common in the area. In November 2008,
in the nearby Panigonda Panchayat, the CRPF killed one man and seriously injured another. As established by the fact finding report of the Human Rights Forum Andhra Pradesh, these two men had nothing to do with Maoist activities. Several false cases have been filed against the local leaders, including the elected representatives in the Gram Panchayats and Panchayat Samitis, for protesting against the irregularities of the forces. There are also reports of extra-judicial killings.

**Enroute in the jungle**

Arati and some of the boys were blindfolded for a long stretch while walking in the jungle. The villagers reported that between Tangili and Baliponka, the troop also met another villager, Ravi, on the nallah. He was looking after his field and was making sounds to drive away the birds. The security forces made him walk with them too, alleging that by making sounds he was giving signals to the Maoists. They let him off after a while.

The security personnel also asked two or three boys to return. Prasanna left somewhere on the journey, but Dakua and Lalu continued, saying that they would go back only if the personnel also released the woman. They were finally forced to return to the village from Baliponka, which is very near the dam. Ahead of the dam, there is a pucca road and a vehicle would pick the raiding team from there.

Arati Majhi reported that at this point the SOG and police forces separated her from the main group and gang-raped her in the jungles. This was a little before the police vehicle picked them up and took them to the headquarters. The perpetrators showed her obscene pictures on their mobiles before raping her. Her brother was also present, and kept protesting the rape. Arati believes that there were five or six people who raped her. When she protested, abusive language and taunts followed: ‘how would you handle a rifle’s butt if you cannot take in a man’s penis’. As regards the identity of the rapists, she was able to describe that they were uniformed and were speaking Oriya.

**Police Station, Adava - February 12**

Later in the day that Arati and the others were picked up, several people including the victim’s parents and family members of the other two arrested, accompanied by the local sarpanch, panchayat samiti members and other villagers, went to the neighbouring police station in Adava. The CRPF personnel on guard at the gate did not let them into the barricaded police station, and threatened to shoot the villagers if they came too close to the police station.

The villagers waited outside the thana the whole day, but no information was provided about where the three were being detained. By evening, they were told that they must go away or they would be killed. A written complaint was given to the Collector on the next day, stating the innocence of the three picked up and
enquiring after their whereabouts. The letter was signed by around 20 villagers and local political representatives. There was no response to this complaint.

The Sarpanch supplied the information that Sagar was another name for Pramod Majhi, the second son of Dakasa Majhi and brother of Arati Majhi. Pramod Majhi’s parents as well as other people volunteered the information that Pramod Majhi was from their village. He was studying in Class 10, in a school in Mahuda and after failing twice, asked for money from home for tuitions or to do something else. Since the family could not provide financial support, he left home about five years ago. The family does not know where he is and he has not come back to the village, but they hear that he has joined the Maoists.

**Police Version**

The arrest memos give the timings of Arati’s arrest as 4 pm on February 12; the station diary noted by D.Mohapatra, who was in charge of the entire operation and was the Investigating Officer for this case, has a recording at 9 pm on February 12 that says ‘Returned to the base with three Naxals and SOG and staff. One Single Barrel Muzzle Loading has been seized’.

The arrest records at the Police Station showed that all the three persons were charged under the following sections – 41S, 147, 148, 149, 435, 120-B, 121, 121A, 124-A of IPC, 25/27 of Arms Act, 3 of Prevention of Damage to Public Property Act, 17 of Criminal Amendment Act. The PS case numbers differ (43, 45, 46, etc.) but are all dated 28.12.2009, and therefore suggest that the cases were all filed on the same date.

It was alleged that the three persons arrested were involved in the blasting of a telecom tower and the burning of four state transport buses on December 28, 2009 in/near the village of Raipanka in the Mohana Block located on the Gajapati-Rayagada District Border.

It was separately noted in the arrest records of the thana that one man, Babula of Gurjhuli village, was also arrested in the same case/s on February 16, 2010.

The villagers also mentioned a ‘Babula’ and said that he had been brought dressed in a uniform of the security personnel and he had identified the house of ‘Hemant’ in the second village. It can be assumed that Babula had been kept in illegal detention for the days between February 11 and 16 (we don’t have details of when and where he was picked up), and had been brought in to point out the houses and family members of the two main people the security forces were pursuing.

As per the arrest records, the witness for all these arrests (even on differing dates) has been the same person, Mr. Rajeshwar Pujari s/o Simanchal Pujari, resident of Adava. The uniformity in the writing, same witness in all these arrests and the ink used indicates that the entries in the arrest records have been created in a fictitious manner, and could have also been done on a single day and all at the same time, instead of (as shown in the records) on differing dates.
When the present the Station In-charge (SI) was asked by the Fact-Finding team the grounds for arresting Arati, he first said that her brother was a prominent member of the Maoist party and moved with the senior party people of the area, and was involved in the blowing up of the tower. When it was countered that this is about her arrest, and not her brother’s, he claimed that she was also alleged to have been involved.

As per police records, the three arrested were taken to the court at 3 pm on February 13. Arati was not asked if she needed a medical examination or legal representation. Thus, no lawyer represented her. Nor did her family know where she was. She was asked to sign a paper, but there was no discussion or question asked by the Magistrate about whether she had been ill-treated. (It is doubtful from her description of events if she was even physically presented in the Magistrate’s court).

During the medical examination on entry in jail, she reported pain due to being hit by rifle butts. The jail pharmacist also confirmed that she had said this, and said that he had given a painkiller, and also subsequently given her other medicines.

He and the jailer added that it was common for new detainees to complain of being beaten up while in police custody. Most of the fresh inmates need medication when they are first brought to the jail. However, they (the pharmacist and jailer) treat this as a normal occurrence, and limit their responsibility to providing treatment. They do not see this as a human rights violation or a violation of law, and so do not intervene.

**Violation of civil liberties**

The arrests by the forces seem to have been arbitrary, because when they did not get the people they were searching for (Azad and Sagar), they picked up anyone available. They did not even detain persons who were later shown as ‘surrendered Maoist rebels’. Lalu Majhi who followed the force for a long distance was not considered a risk in February 2010, but later, when he surrendered in March 2010, he was presented as a cadre of the (CPI-Maoist) party. Similarly, there was no specific complaint or evidence against Arati Majhi. People were being arbitrarily picked up and allowed to go back on whim; the purpose only being to meet whatever criteria of a ‘successful’ raid as laid down by the authorities.

In contravention of the law, and the NHRC guidelines, an accused woman was picked up at night, without any female security personnel present. All rules for detention and arrest of women were violated even though there was no immediate threat from her, and she was peacefully in the midst of routine chores at her residence.

Arbitrary arrests leave everyone feeling insecure. The security forces and the police are able to claim some success with these ‘arrests’ but this does not make a place more secure for the residents of the area. Indeed, one of the intentions of arbitrary and illegal detention is to terrorize the
general population so as to scare them away from Maoist sympathies.

The norms of civil life have been seriously shaken. Merely living in the area has made a person liable to be arrested. People say they have ‘surrendered’ because they were being ‘suspected’, not because they have committed any crime. Women worry about family members and extended relatives being in jail. People have to safeguard against their own arrests.

There were eye-witnesses to the gang rape, who are fearful of clearly voicing what they saw. The atmosphere of terror in the district does not make it easy for them to do so. Some of the witnesses are themselves in jail and have been threatened with murder.

If we take the case of Lalu Majhi, his sister and cousin are inside the jail with an uncertain future, while one brother is ‘wanted’ for his Maoist links. He has himself ‘surrendered’ to avoid arrest. Being a helpless witness to his sister being gang-raped has not only left him traumatized, but without any hope of justice. He is unlikely to take another risk by speaking about the atrocities of the authorities.

Arrests have been shown at 4 pm for those picked up from the first village, Jadingi and 5 pm for Shyama Majhi, who was picked up from Tangili village. This is 12 hours after the actual pick-up. Thus that the security forces have tried to conceal the actual time of arrest.

The family members were not given a custody memo when they were picked up from their homes in the villages. Instead of taking the local villagers or the family members as witnesses at the time of arrest, a person unknown to the arrested has been used to sign as a witness. No information was given to the family members, even though they were waiting to get news of their children and/or husband outside the thana the whole day.

The sketchy information received about ‘Babula’ also shows that guidelines for arrest and detention are being flouted for men and women easily. The risk of sexual exploitation, physical torture and fake encounters of detainees is very high.

Arati was given practically no opportunity or conducive situation to reveal to the magistrate or jail authorities that she had been raped and ill-treated.

Although it is mandatory that under-trial prisoners should be presented in the court once every 15 days, she has been presented in the court only once during the entire period of over seven months of judicial custody till the petition on the rape case was filed.

Present Status

In June 2011, R. Udaygiri, Judicial Magistrate First Class (JMFC) refused to take cognizance of the case as he ‘did not find sufficient grounds for further investigation into the allegations of gang rape by security forces’. An appeal by Arati for revision of order by R Udaygiri had been accepted by Orissa High Court but has not yet come up for hearing.
In March 2012, Maoists issued a 13 point demand in exchange for the release of abducted Italians. The fourth demand of these 13 demands was the arrest and trials of police officials involved in the gang rape of Arati Majhi and false encounter cases and custodial deaths in the region.

The release of 32 Adivasis including Maoist sympathizers was also one of the major demands, and Arati Majhi’s name was included in this list. However, she was not released during the hostage exchange.

In May 2012, Arati Majhi and others arrested in February 2010 have been acquitted in the case related to burning of a bus in December 2009. But six other cases continue, of burning of four other buses and blasting a mobile tower. The High Court had also directed the district court for speedy trial of the eight cases against her. She has been acquitted in six cases at the time of writing this report.
Custodial Rape of Janki Bai: Redress in Distress?

“What is happening is right. If you had given the money, this would not have happened” said the policemen, while raping her, warning her to remain silent, and threatening that they would implicate her sons in false cases.

On June 2, 2009, Janki Bai, a 50-year-old Dalit woman was raped by four policemen at the thana in Amla, Betul district, Madhya Pradesh. She had been charged on a complaint of dowry related harassment filed by her daughter-in-law. The policemen demanded money if she wanted the case to be dropped. When Janki Bai’s family refused, they were booked on the given charge. Her bail was denied and she was remanded to judicial custody. The police, instead of taking her to the Betul jail, took her back to the police station in Amla. There, four policemen, including the Thana-in-Charge (TI), raped her in the thana premises.

The chronology of events

On June 2, 2009, Janki Bai, her husband and younger son were called to Amla thana with regard to a case filed by her daughter-in-law under Section 498A. On May 31, the TI and Assistant Sub-Inspector (ASI) had come to their house demanding Rs. 10,000 to avoid going to jail. The family went to court-arrest and had brought a zamanatdaar to try for bail. They arrived at the thana at around 10 am. The police again demanded money from them, stating that they would have to pay if they wanted bail. Janki Bai said that she was a poor woman and did not have the money.

They were formally arrested and Janki Bai was in the custody of the Amla police station since then. She, her son and her husband were taken to Multai court. At Multai court bail was denied and they were remanded to judicial custody. Jail warrants were made for them.

The men were taken to Multai jail while the woman was supposed to be taken to Betul jail as there is no women’s ward in Multai jail. However she was brought back to Amla Thana instead.
Illegal acts characterise this case right from the start:

The arrest in itself seems arbitrary: On the basis of a single complaint, first the older son was arrested, and then, after he was released on bail, the police decided to arrest the others co-accused under the same complaint. Why were they all not arrested at the same time?

It is apparent that the police demanded a bribe and were angry at not being appeased.

There was no woman constable throughout the time that Janki Bai was in custody at Amla Thana. No woman constable accompanied her to Multai court. This is a violation of the law and the legal rights of a woman detainee.

After bail was denied, the woman should have been taken to Betul instead of Amla thana. The police could have requested the Judge to make a special request for late admission in Betul jail. But this was not done. In cases where the police anticipates a delay in reaching the jail, they are supposed to ask the judge to give an order of late admission, in accordance with the Supreme Court guidelines for treatment of prisoners. While the police says that they did not take her to Betul jail because it was beyond 6:30 pm, the jail manual - rule 285 - clearly says that a woman should be admitted at any time if she has a jail warrant.

Knowing that there was no woman constable at the thana, taking her back to a Amla thana and keeping her there at night is a serious lapse and a case of illegal/wrongful detention on the part of the Thana-in-charge.

Janki Bai’s admission into jail took place on July 3, 2009 - more than 24 hours after she was taken into custody by Amla thana, and more than 19 hours after she was remanded to judicial custody. She was without a woman constable throughout.

The Rape

On July 2, 2009, late in the night around 1:00 am, Janki Bai was woken up by the Assistant Sub-Inspector (ASI) and asked to go and sleep in an inner room in the thana. When she tried to explain that she had taken his permission to sleep in the main room, he forcibly dragged her into the inner room.

Her sari was taken off and thrown to one side. The gamcha on which she was sleeping was used to hold her hands back as she lay on the ground so that her bangles would not break. The TI asked someone to get condoms (phugga), which they used. Two of the policemen stood at the door and the other two were in the room, one forcibly held her hands while the other raped her in turns. She was raped by four policemen, including the TI - Thakur, The ASI - Mishra, and two other policemen - all four from the upper caste. These latter two she did not know by name, but could recognise and identify.

The woman stated that even while raping her they were constantly saying - “Jo ho raha hai woh theek hi ho raha hai. Tum
"paise de deti to aisa nahi hota..." ["What is happening is right. If you had given the money, this would not have happened"]
They also warned her to not tell any one of the rape, otherwise they would implicate her sons in false cases and put them behind bars.

The aftermath

In the afternoon of June 3, Janki Bai was taken to Betul by train. There was no woman accompanying her even then. At Betul, they went to the police lines where they were met by a woman aarakshak (guard) who accompanied them to Betul jail. Janki Bai was admitted into Betul jail at 1:10pm, as per the jail register.

Janki bai was admitted to Betul jail at 1:10 pm as per the jail register. After being taken to the female barracks, she rested for a while. She then revealed the rape incident to the jail attendant and the compounder, also asking them for medicines for pain in her lower abdomen. They reported this to the Jailer, who came immediately with his Deputy Jailer and met the woman. On hearing the details, the jailer made a call to the Superintendent of Police (SP) immediately.

The SP sent the Sub Divisional Officer Police (SDOP) and the ADSP to the jail. They met with the jailer and also heard about the incident from Janki Bai in person. The SDOP, in the presence of the woman jail attendant on duty, raised Janki Bai’s clothes and saw the wounds on her body that evening. This fact finding team was informed by the media that the Collector and the SP also visited Janki Bai in jail that night.

The police officials asked the Jailer to make a written testimony of the incident as described by the woman, on the basis of which they would file an FIR. He said he wrote half of the testimony that night and completed it the next day and sent it. The Jailer also stated that he called the RI to send for a police escort so that he could send Janki Bai for a medical examination as he could not send her out without police custody. However, no one was sent.

On June 4, around noon, the jailer sent a letter to the Sub Divisional Magistrate (SDM) requesting arrangements for Janki Bai’s medical examination. Fearing outside pressure (from the media and the police), the jailer suggested that a medical team be sent to the jail for conducting the medical examination. The doctor’s team (one gynaecologist, 2 nurses and 1 bai) finally came to the jail around 12 noon. The medical team collected the woman’s clothes (but not the gamcha that she had used to tie around herself after the incident) and conducted a medical examination. The medical report, clothes in a sealed packet and the slide of the vaginal swab were sealed and given to the jailer.

This medical examination took place about 32 hours after the incident and 18 hours or more, after the victim reported the rape. The medical examination report is very vague. When the State Commission for Women (SCW) members (who got another medical examination done the next day)
questioned the doctor about the inconclusiveness and laxity in the description, she told them that she did not conduct a rape investigation and had done a routine medical examination.

The Jailer also sent the written testimony of Janki Bai, with a covering letter, to the SP, Collector and senior jail authorities. On the basis of this document, an FIR was lodged in the Anusuchit Janjati Kalyan (Scheduled Tribes Wekfare) thana at 3:00pm on June 4, 2009.

The police presently claims that they could not take any action (like carrying out a medical examination or taking testimonies from the woman or sealing the place of crime etc.) until they had an FIR. Therefore, the jailer is being blamed for all the delays although he had promptly called the senior-most police authority in the district, the SP, as soon as he got to know about the incident.

Laxity in collecting evidence

Only the sari and the blouse worn by Janki Bai on June 2 were taken for investigation and evidence. The gamcha was not taken from her even though she had it with her all the time, in the thana and the jail. She had covered herself with it after the rape and tied it around her belly. It was also used by the policemen to hold back her hands. Even though this has been mentioned in every statement given by her, it was not taken by the police or the investigation team.

When this fact-finding team met the woman at her house in the village, she again mentioned the gamcha. She showed how she still has it wrapped around her stomach because of the pain that she was having since the incident. Upon inquiring why she had not submitted it with her clothes, she said that no one had asked for it. After she returned home, she had also washed it.

A clipping from Dainik Bhaskar, Bhopal, June 5, 2009
The fact finding team spoke to the government investigating team about it and they responded that the woman should have given it to the police and it was her fault that she washed it.

It is important to note that Janaki bai has been repeatedly mentioning the gamcha and its use during the incident. In all the versions of the crime that have been reported to the team by the Compounder, Jailer, SCW etc., the gamcha was mentioned. It was clearly the responsibility of the police to collect this important piece of evidence. The responsibility of collecting evidence carefully squarely lies with the police and not with the victim (who is also illiterate in this case), who may or may not be conversant with rape laws and evidence collection. The fact that the police did not collect an important article used in the crime points to their lapse. The gamcha was later collected by the police from Janaki Bai on June 24, 2009 - after members of this fact finding team brought up the issue with the ADSP Harda.

State Commission for Women

Two members of the State Commission for Women (SCW), Ms Sushma Jain and Dr. Kamala Wadima (a medical doctor) met Janki Bai in the jail on June 4, 2009. They took her testimony and also physically examined her. In their subsequent statement to the press, they said that they completely believed in what Janki Bai was saying, and her physical and emotional state clearly depicted what she had undergone. They also stated that there would be tremendous pressure to suppress the truth in this case, but they would take a strong stand to ensure justice for the woman. They also encouraged the woman to give her statement to the press.

The SCW member and medical doctor, Dr. Kamala Wadima, also stated in her press statement that there were problems with the official medical exam and that it was not carried out properly.

At noon

Later in the day, Janki Bai was taken to the Multai court for her bail hearing. On the way, accompanied by two woman constables and one woman police inspector, she was taken to Amla Thana in the police van. Here an investigation was carried out in the presence of SDOP and other police officers. They made her identify the scene of crime. She was asked if she could identify any of the people in the Thana. According to Janki Bai, none of the people she saw at the thana on the night of the crime - including TI, ASI and the other two policemen - were present that day. She also said that she was made to give her thumb impression on a blank piece of paper. She was not accompanied by any person from her family or her lawyer during this investigation. A video was being taken of her testimony.

It is important to note here that the scene of crime was identified and investigation carried out only three days after the crime had occurred and two days after the news of the rape broke out. The rape accused were still in charge of the Thana all this
while. And had ample time to tamper with any evidence in the thana.

On the evening of June 5, Janki Bai was granted bail. However, she was brought back to the jail as it was late and released on June 6, 2009.

The SDOP took the medical report and the slide for forensic investigation from the jail authorities.

The Inquiry and the petition

An internal police inquiry was initiated. Earlier only two local police officials from Betul comprised the team for the inquiry. This was later expanded to include other police officials, but no arrests were made. The TI and ASI were transferred to other districts, but were not suspended or line-attached (transferred). The other two accused continued to serve in the same thana.

Even though an FIR was lodged against the four policemen, only three of them were charged with rape, leaving aside the TI, who was charged with minor officces like dereliction of duty etc. Also, it took the police more than two months to issue arrest warrants against the accused. This too happened after many public protests and continuous pressure by women’s groups and Dalit rights groups at the local and state level.

As mentioned earlier, the charges against the TI were not that of rape but lighter ones. One can see a manifestation of the caste dynamics at play here where the victim is a Dalit woman and the upper caste accused police persons are let off with lighter charges. And using the biases against women and Dalits, rumours were spread that these charges were false and motivated for ulterior gains.

It took a petition by activist groups (Madhya Pradesh Mahila Manch and Shramik Adivasi Sangathan) in the Jabalpur Bench of the MP High Court, to get rape charges registered against the TI, as well as getting the other three accused arrested, who were till then being shown as absconding.

While this case had been reported at the local, district and state level as well as in the national media, not one official statement, showing concern against such a serious crime, came from the Chief Minister’s (CM) office or any other authority.
Towards more accountability of law keepers

Janki Bai has shown great courage by reporting the crime and has also withstood all kinds of pressure, on herself and her family, to withdraw her statement. Pressures tactics on her included attempts to bribe her to take back her complaint, targeted rumour-mongering with misleading information about the case, questioning of the veracity of her statements, maligning of her character and threat to life and livelihood of her family members.

This brings to light the crying need to have very clear guidelines for action to be taken when such a case is reported, where a marginalised Dalit woman stands up to face and challenge the so-called law-enforcers. The peculiarity here is that the police is the accused and the police itself is also the enforcement and the investigating authority. When such a case is registered, it becomes a case not just against the said accused, but against the entire department and at times the state. Departmental solidarity makes the chances of policemen empathising with their colleague/s very high. Thus, destruction of evidence may take place and go unchecked.

Command line responsibility

Once the custodial rape came to light in jail, the first person to be informed by the Jailer was the SP. The SP and the Collector of Betul should have ensured immediate action, but instead the case has been confused with needless inquires and no action. The SP is the person who is responsible for the thanas under his charge. The fact that not only did a rape occur in one of the thanas under his charge, but that no action was taken against the accused for a long time clearly indicates a visible attempt to defer action and investigation.

Members of the State Commission for Women (SCW) pointed out that the medical exam of the victim was delayed and not correctly done. Who will be brought to book for the shoddy investigation?

Incidentally, even though the SCW took a strong stand in support of the women and questioned the role of the police, there was very little follow-up from their side to try to bring the accused to books.

Questions must also be asked of the state government and administration: why was such serious crime being treated so callously? Why have no questions been asked about the non-conclusiveness of inquiries and delay in action by the state government? Why did it take agitations and protests and a petition in the high court to include rape charges against the upper caste TI?

The struggle continues...

In 2012, the case against the police men continues, now the primary accused are out on bail, and it has been almost three years since she is struggling for justice. A lone woman facing a battery of lawyers and policemen, she has been participating in
the court proceedings in a very hostile environment, despite all the pressures on her and her family.

This case also highlights the issue of safety of women prisoners. Our investigation reveals that there are very few women constables posted in small thanas. For instance, Amla thana had no woman constable posted when the crime took place there. This in itself is a serious issue, if there is no woman constable, then the police thana has no right to keep women in their custody.

Also, the fact that procedures of treating women prisoners can be flouted with impunity is of serious concern. A woman is extremely vulnerable while in custody and serious and strong efforts are needed to ensure her safety. Mechanisms also need to be put in place to enable her to seek redressal if her rights are violated.

A woman is not in the police station out of choice, but because the law enforcement forces have brought her there. Her safety, therefore, is their responsibility. There needs to be a re-looking at the condition of women prisoners and their vulnerability to crimes committed against them by the police and jail authorities. A detainee’s chances of being able to speak out are minuscule, given the general intimidation in such institutions. Only some will be able to bring this abuse out in the open. The lawlessness of the police force is more serious a crime than the lawlessness of a marginalised citizen.
On September 9, 2007 in village Chouthiya, Tehsil Multai in Betul district of Madhya Pradesh, a woman who belonged to the majority caste (Kunbi) was murdered. The blame was put on the Pardhi community that lived on the outskirts of the village. It must be noted that the Pardhi tribe was declared a ‘criminal tribe’ under the Criminal Tribes Act of 1871. Even after it was de-notified in 1952, and is now officially called a ‘nomadic’ tribe, public perception has not changed. The Pardhis continue to be stigmatised and live marginalised lives on the edges of the ‘mainstream’.

On the next day, in the evening, the district administration came to the Pardhi settlement saying that since there was a threat of violent retaliation by the farmers on the Pardhis, all the Pardhis should immediately vacate their houses and flee to Bhopal. They were first taken to the Thana in Multai and then brought back to their basti where they were barely allowed to take just a minimum of their possessions, herded into police vans and put on Bhopal-bound trains. The Pardhis were told that they should not bother about their possessions and just flee to Bhopal to save their lives and that the administration would take care of their property and houses.

Left with no choice, the whole community left for Bhopal under duress, but while the others were being put into vans, 10 women were asked to stay back because there was no place in the vans. These women, who were detained inside one of the pucca houses of the Pardhis were then gang-raped by politicians and a Sub-divisional Officer (SDO) of the police. They were told “we will do to you what your men did to the other woman”. After they were raped, the woman were then taken in a jeep to the railway station and put on a Bhopal-bound train.

The next day, a Pardhi couple who stayed back in the nearby jungle, was murdered in the field of a farmer. The woman (Dodel...
Bai) was raped and then thrown into the well. The eyewitness to this was her daughter and son, and three other men who hid in the forest when they saw the police come into the settlement and take away the others in vans. Their act of hiding on seeing the police is a natural response of these people, who, because of their ‘criminal’ label and constant run in with the law, have constantly faced harassment at the hands of the police. In the morning, when this group saw a mob coming in, the woman and her husband went out to the road to inquire what was happening. The two - Dodel Bai and Bondru - were picked up by the mob. The woman was raped and the man was murdered. Eyewitnesses say that the woman seemed to be alive when she was thrown into the well.

Subsequently, the entire Pardhi settlement of Chouthiya was burnt down and pucca houses were demolished by a mob of 2000 instigated and led by a Congress Member of Legislative Assembly (MLA), along with many other office bearers of the Congress Party and Bharatiya Janata Party (BJP). The media covered the entire episode and all the leaders even boasted about their acts before the media. Many officers of the administration including the District Magistrate and the Superintendent of Police were present during this act of violence which continued for almost six hours from 8 am onward. Within a span of 24 hours, there was arson and looting, 11 rapes and two murders. All of this was an open act of revenge against the Pardhi community which carries the stigma of being a criminal tribe. It is worth mentioning that in the matter of the rape of the Kunbi woman, whose revenge triggered the whole act of violence against the Pardhis in Multai, not one Pardhi resident of Multai was arrested. Four other men were later arrested in relation to this case, none of whom were from Multai.

Meanwhile, the affected Pardhis stayed in Bhopal, and on the basis of their complaints and intervention by social activists, complaints were submitted to the State Human Rights Commission and the Denotified Tribes Commission which investigated the violence against the Pardhis. The affected woman reported the rapes to them. They recorded this in their report and ordered the district administration to investigate. The district administration instituted an inquiry where the women’s statements were recorded and they were also sent for medical examination. This was more than a month after the incident. No First Information Report (FIR) was filed, but the police gave the women the impression that the investigation was on.

In September 2010, hearing the petition filed by a local social activist, Anurag Modi, the court ordered that the investigation be handed over to the Central Bureau of Investigation (CBI). The petitioners (Anurag Modi and the affected people) informed the CBI about the rapes and the fact that they had been never formally recorded. They were then assured that in the absence of an FIR the CBI would investigate the cases of rape since it was a part of a sequence of events. In the
subsequent inquiry carried out by the CBI, they recorded the statements of the women who had reported of rape, and assured them of proper investigation. The women’s statements were also video-graphed.

But in 2012, after a long delay and several protests against the delay by the Pardhi community and social activists, when the CBI finally filed its charge-sheet on the incident, they remained silent on the issue of rapes. They made no mention of the rapes or of the fact that they had investigated them and recorded the statements. Why did the CBI first record the women’s statements and then choose to ignore them? By recording the statements, they created an impression in the minds of the victims that the cases had been registered. But by not tabling the statements and not filing any charges, they have now left the victims in a situation where they do not even have a formal FIR registered five years after the incident. This looks like a deliberate obfuscation by the CBI and the police.

**Expunging evidence**

In the other incident of rape and murder of Dodel Bai and Bondru, all the records, including the deceased’s injury panchnamas prepared by the station house in-charge of Multai police station and the Executive Magistrate, the post-mortem report prepared by the Medical Officer of Multai hospital, were all manipulated and doctorred. This is not uncommon in the case of caste-based crimes where the dominant community, in collusion with politicians, were involved in the violence. At first, the deaths were shown as ‘accidental deaths’ and the case of murder was concealed. The FIR of murder under Section 302 of IPC was registered one full year after the incident. The CBI submitted its report in 2012, but it withheld the selective records of two years of investigation from the court and complete records were not filed along with the charge-sheet.

The important records of eyewitness accounts recorded by CBI, between August 31, 2009 and October 2011, especially eyewitness accounts of the deceased couple’s daughter, along with three other Pardhis, are missing. Not surprising, as these witnesses in their statements have named an MLA of Congress Party from Multai; Betul Zila Panchayat Vice Chairman and leader of BJP and, an SDO of the police as the main culprits behind the rape and subsequent murder of the woman - Dodel Bai - along with her husband - Bondru. The CBI, after dropping eyewitness accounts of members of the Pardhi community, in the third year of investigation, recorded the statements of the witnesses, all of whom were in one way or the other part of the majority crowd of perpetrators of violence. Some were party with local authorities in doctoring the inquest panchnamas. These, however, should have been either named as accused or approvers, instead of making them simple witnesses in the case.

These witnesses are being used by the CBI to create contradictions in the eyewitness
accounts of members from the Pardhi community and to prepare an alibi for the three main accused. The Medical Officer who altered the post-mortem report of the murdered couple, the Executive Magistrates and police officers who were involved in not recording the injuries in the inquest panchnama of the deceased, should have also been prosecuted. None of this was done, instead, it seems that by creating contradictory cases, and allowing people, who were a part of the mob, as eye witnesses, they have deliberately weakened the case.

Arson and looting are heinous crimes and should be viewed as caste-based crimes where a dominant group uses violence on a marginalised community and in this case, a traditionally stigmatised community. The rapes of women to avenge another rape exemplifies how sexual violence is used as a tool of oppression. The fact that the cases of rapes have been completely ignored, both by the CBI and the police investigation, also highlights how it is subsequently suppressed and there is impunity to the better placed perpetrator.

While the women have been brave to boldly talk about the incident to various investigating agencies (and undergo...
humiliating questioning), their cases have not been brought to any logical conclusion. The CBI or the police cannot be the adjudicator of a crime. As per established law and procedures, they must register FIRs, and it is up to the court to judge the case on its merits. The fact that both the investigating agencies have gone through the motion of first recording the statements of the women, and then suppressing them, points to the fact that they are protecting the perpetrators.

However, the long delay in investigation and continued pressure on the victims to withdraw their complaints has not deterred the women and they continue to stand by their statements.

The victims along with social activists have filed a petition in the High Court against the CBI charge-sheet and the suppression of the rape cases. There is a long and hard battle ahead. This is also a community that is fighting for its survival, since they have not yet been rehabilitated, even five years after the incident and are now living in a cleared-out garbage dump and survive through begging.

The community carries the burden of a distorted understanding of their origins. There is a history of violence against the Pardhi community and other de-notified tribes all over the country. In Betul district itself this is the third incident in the past decade, of vigilante actions by the majority community. Such incidents have also been recorded in the neighbouring state of Maharashtra which has a sizeable Pardhi population. The collusion of the administration and the law enforcement agencies with the politicians who exploit such biases makes the situation worse.
Encountering Injustice: Meena Xalxo

A sixteen-year old is raped and killed. The police stage a ‘Naxal encounter’ to cover-up their crime.

In July 2011, newspapers continuously carried reports about an ‘encounter’ in Karcha village of Balrampur district in Chhattisgarh that took place on the night of the 5 and 6 July. A minor adivasi girl named Meena Xalxo was killed. According to the police version, there was an encounter with Naxalites and that Meena who was killed, was part of the Naxal group. The police further claimed that they had found Naxal literature, arms and explosives in her possession. But people from Meena’s village including the sarpanch and her family refuted claims that she was a Naxalite, or that there was any encounter with Naxalites.

On July 7, Meena’s father and other people from the village lodged a complaint in the office of Superintendent of Police, Balrampur. In his complaint, Meena’s father refuted the claim that she was a Naxalite, and also stated that there was no encounter between the security forces and Naxalites on the date of the incident. The doctor who conducted the post-mortem said that the girl’s body bore wounds of two gun shots from very close range and there was indication of intercourse by more than one person. These revelations created shock waves among human right activists and the media. People demanded to know: who was Meena Xalxo? Why was she killed? Who is lying and why?

In the state capital Raipur, the Director General of Police (DGP) ordered a magisterial enquiry and the Chief Minister declared a Rs two lakh compensation for the family. All the staff of the thana, who were on duty that day, were line attached i.e. transferred to a different place and post. A team from the State Congress Committee visited the area and made a statement to the press, terming the police version as suspicious and that the girl who was killed in the so-called encounter was never involved in Naxal activities. The Committee demanded an impartial enquiry.

Context

Karcha, Meena’s village is not very easy to reach, and becomes even more inaccessible during the rainy season.
Public transport is unavailable and people here walk for miles on a daily basis. The majority population of this area is adivasi, with the Urav tribe being the most dominant. Sixteen-year old Meena Xalxo too belonged to this community. Her mother and father are farmers, and the family lives in a small mud house surrounded by their fields. She has two brothers, one older and one younger. Meena had never been to school so she didn’t know how to read and write. However she was very knowledgeable about her surroundings and used to help her family in the fields. Her primary work responsibility was to graze cattle in the jungle, and her favourite pastime was to ride her bicycle.

Sambhari, the site of a bauxite mine is located close by and loaded trucks from this mine regularly cross Meena’s village. She became friends with a truck driver and they often met near the Chedra Nala, a river about 3 km from her village.

The Incident

That day, on the evening of July 5, 2011, around 4:30 pm, she came home from the fields and got dressed. She took out her bicycle and told her family that she was going to see her friend and that she would return soon. Her friend lived on the other side of the village. When Meena didn’t return, her family thought that because it was late and dark, she might have stayed back with her friend and would return in the morning.

Early the next morning her father was in the fields when someone from the village rushed to him and said that something had happened to Meena. “She is seriously ill, go to Chando Hospital,” he informed. Meena’s parents immediately left for the hospital, but before they could reach there they were intercepted by the police and made to wait at the Thana. After some time they were taken to Balrampur Hospital in a police vehicle where they were told that Meena was dead. The police handed over her body by the evening and gave Rs 10,000 to the family for the funeral. On the same evening Meena was buried.

As Balrampur district is considered a “Naxal affected area”, a special security force is deployed. This special security force is also deployed in Chando Thana, near Karcha village. Often, teams consisting of police and security forces combed the

Photo credit: http://www.pratirodha.com/politics-and-society-news/
surrounding areas for routine searches, and usually returned before dark. At the time, 25 personnel of the police and security forces were on duty at Chando. On the day of the incident, one team from the thana had set out on a routine search in the same area. The possibility is that on their return they saw Meena with her male friend nearby the river. A truck had been seen standing on the other side of the river on the same evening.

Meena’s whereabouts between the evening of July 5 and the early morning of July 6 are unknown. People from Meena’s village and nearby Navadih village reported hearing the sound of three gun shots at about 3 am. This is the time when village life starts, people start going to the jungle and fields. But the police had cordoned off the area and did not allow people to come out. The police were shouting: “Whoever wants to surrender, come out of your house”. The truck which had been standing on the other side of the river was now standing where the incident took place, and the bicycle was lying on it. Nobody was allowed to cross the area till police took Meena’s body.

Around 6:30 am the police took her body to a primary health centre (PHC), and a compounder examined her for almost 10 minutes. At the time, she was alive but unconscious. The compounder recommended taking her to Balrampur hospital because she had two gun shots which had to be attended to surgically. The facilities were not available at the PHC. She died in Balrampur hospital. Her life might have been saved if the police had acted swiftly and ensured timely medical intervention.

**Unanswered Questions**

- Why was there a delay?
- What happened to the truck and its driver?
- Why did Meena’s bicycle disappear from the truck where it was last spotted?

A house, which is very close to the spot where Meena was shot, was closed from outside by the police and security forces. Soon this family was pressurized to give a statement that there was an encounter and that they had heard several rounds of firing. It was only after this family met the Collector to complain about police pressure did the police stop coming to their house. People of the area were so scared that they stopped talking to outsiders. Even the sarpanch was under pressure.

In February 2012, six months after the incident, the state Criminal Investigation Department (CID), which was handling the investigation, ordered a DNA test of all 25 security personnel who were on duty the day that Meena was killed. A sample of Meena’s tissue was also sent to the government forensic laboratory at Sagar, MP, but no tests were conducted as the samples sent were deemed to be insufficient. Yet, the police declared that the Sagar forensic lab had given clean chit to all the policemen.
Silence around rape in police version

The police on their part completed their encounter report. According to the FIR, that night an encounter took place and a Naxal girl name Meena Xalxo was killed. The government reportedly gave a compensation of Rs 2 lakh to her family and a school job to her brother. However, the question remains unanswered: If Meena was a Naxalite, under what scheme was her family given these benefits/compensation?

However, there is no FIR recorded about the gang rape and killing of Meena Xalxo, even though her family made a complaint to the police. In a travesty of justice, the Thana-In-charge of that time has received a promotion and other police and security force personnel remain posted at different places.

The incident was highlighted not only by the state level media but also at the national level.

Because the State Congress Committee took up this case in the Vidhan Sabha question hour, it became a political issue. It created pressure on the government and its administration to take action. A judicial inquiry was ordered in June 2012 so the initial magisterial inquiry was superceded. Even after six months, the inquiry is incomplete.

In June 2012, a judicial enquiry was ordered, and a Judicial Inquiry office was set up in Ambikapur. Initially, announcements were made, calling anyone who knew anything about the incident to come forth and give their statement. The Inquiry had a time limit of three months, but it was extended for three more months, which ended in November 2012.

It is significant to note that Justice Anita Jha, the judge in charge of the Judicial Inquiry has not visited the area even once. When Meena’s family went to the Meena Xalxo Judicial Inquiry Office, Ambikapur, they did not find anyone there.

Meena’s family has recorded their statement at every possible forum. Now it has very little hope for justice.
Political Expediency Subverts Justice: Gang Rape and Murder in Shopian

It is not just that two women were buried, exhumed and buried again, justice itself is well and truly buried in graves all across the state—in Shopian for certain,” IWJ Report 2009.

On May 29, 2009, two young women, Neelofar 22, and Asiya 17, left home around 4.30 PM to go to their orchard. The two were sisters-in-law - Neelofar was married to Asiya’s brother Shakeel Ahmad, and had an infant son. Asiya, a teenager in Class XI in the Greenlands Public School, aspired to become an engineer.  

When they did not return home till late evening, Shakeel, with the help of friends and family, began to search for them in the orchard and surrounding areas, and through all the lanes in town leading to their home. After 10.30 pm, Shakeel sought the help of the police and together they searched from the orchard to Shopian town, using searchlights and handheld flashlights. They also searched in the nallah around the bridge.  

The search included the area between the police and the Central Reserve Police Force (CRPF) camps and police residential buildings and Rashtriya Rifles, considered a ‘Red Zone’ (high security zone). After daylight hours, civilians are not allowed to move in its vicinity, and searchlights are turned on. The place is patrolled through the night.  

The police called off the search at 2.30 am, promising to restart at the crack of dawn. Around 5.30 am Shakeel resumed his search. An hour later the local police joined and almost immediately the SHO Shafeeq Ahmed pointed to Neelofar’s body at a shallow spot located about 100 m upstream from Zavora bridge over the nallah. This exact spot had been thoroughly searched by the family and police till 2.30 am the previous night. Asiya’s body was found further downstream, 1.5 km from the army camp, at an elevated dry spot.  

Those who helped retrieve the bodies of the two women saw enough to suspect that this was a case of rape and murder. The photographs of the bodies taken as they were being recovered from the nallah
showed visible signs of injury. Eyewitnesses testified that Neelofar’s body lay face down, the head resting on a stone in the nallah. Her eyes were open and hands outstretched. The *phiran* had been lifted, revealing the upper part of her body, and her clothes were torn. There were scratch marks on her neck, arms and buttocks. There were also scuffmarks on her face, chest, neck and wrists. The *dupatta* she had been wearing the day before had been removed from her head. Neelofar Jan’s gold jewellery had not been removed, indicating that the women had not been apprehended by robbers. Asiya had a fracture on the forehead, where she had presumably been struck. Her body too lay face down. Her clothes were torn and blood-stained. Those who found her body stated that her clothes were dry, and foam covered the area around the mouth.

Neelofar Jan’s body was found in-between the police camp and the orchard, on the nallah, at the very spot where the search party had been active the night of May 29-30, until 2.30 am. It is unlikely that the bodies could have been carried there without attracting the attention of the security forces. The placement of the bodies in the Rambi-Ara nallah would have required either heavy vehicle(s), given the stony ground of the nallah, or two or more persons physically carrying each body, or an animal, such as a horse.

Regarding the events of the night of May 29-30, local community members surmised that the bodies of Neelofar and Asiya must have been placed there after the search party stopped its work at approximately 2.30 am, and before the SHO, appeared at the nallah the next morning at about 6.30 am to meet Shakeel Ahmad.

**Shoddy investigation amidst politics and public pressure**

No evidence was collected from the spots where the bodies had been recovered. The bodies were then taken to the District Hospital, Shopian, where three doctors conducted the post-mortem, and later stated that the two had died due to drowning. The SP, who was also present in the hospital, went to the post-mortem room, and then left the hospital. The statement made by the hospital led to protests amid the crowd that had gathered.

Despite two post-mortems, the facts remained unconfirmed. People then took the bodies of Asiya and Neelofar, in a procession, from the hospital to the office of the District Collector of Shopian. In response to public demand, he summoned a team of physicians from nearby Pulwama district to conduct a second post-mortem at the District Hospital in Shopian. Dr. Nighat Shaheen, a woman gynaecologist, was part of this team. Dr. Shaheen, in her capacity as a specialist, was asked to conduct a gynaecological examination to determine sexual assault. She was not asked to conduct an autopsy. The statement by this doctor was delivered in the presence of the SP and other security personnel. Dr. Shaheen was tearful, and is reported to have announced: ‘Yeh janwaro ka kaam hai. Gang rape hua hai.’ [This is the work of animals. Gang rape has been committed.]
The bodies were then taken to Shakeel Ahmad’s home to prepare for burial rites. The women who performed the ritual bath and other rites on the bodies confirmed, what in their estimation were, marks of sexualized violence.

Despite the report of violence and death, despite the angry protests by the people the police did not register a first information report (FIR). Chief Minister Omar Abdullah went a step further and, without any basis, denied that there was rape and declared it to be death by drowning. Strange for two adult women to have drowned in a nallah where there is no history of anyone, not even a child, drowning.

Under public pressure, the CM changed his stance and on May 31 2009, he appointed Justice (Retired) Muzaffar Jan to carry out a probe and complete the inquiry in one month’s time.

The first report of the Forensic Science Laboratory (FSL) in Srinagar took five days to be released. FSL personnel have since commented that, subjected to pressure from senior police officials, they had delayed the release of the report. This report confirmed rape, while remaining ‘inconclusive’ with regard to the cause of death.

On June 5, 2009, the Jammu and Kashmir High Court Bar Association filed a Public Interest Litigation (PIL) seeking the registration of an FIR of the Shopian incident. The offences included kidnapping, rape and murder. The High Court accepted the petition and began to monitor the case.

The police lodged an FIR only on June 7, at the Shopian Police Station, under Section 376 (rape) of the Ranbir Penal Code. While the police failed to register an FIR until eight days in the case of rape and murder of Asiya Jan and Neelofar Jan. An FIR against members of the public, charging them with stone pelting, was recorded promptly after the incident.

On June 8, 2009, a Special Investigation Team (SIT) was constituted by the Director General of Police (DGP).

On June 10, 2009, police added charges under Section 302 of the Ranbir Penal Code, to the FIR, regarding the murder of Asiya Jan and Neelofar Jan by undetermined killers.

On June 12, 2009, a second FSL report confirmed the presence of multiple spermatozoa establishing the ‘gang rapes’ of Asiya Jan and Neelofar Jan. Physicians who had conducted the post-mortem of the bodies also testified before the Justice Jan Commission, reportedly attesting to the ‘gang rapes’, and stating that the deaths had not been caused due to drowning or suicide.

What followed subsequently shows that at every stage, those who should have been responsible for unmasking the culprit/s, have instead systematically and deliberately destroyed, tampered with and diluted the evidence and thus misdirected and obfuscated the investigation, in order to deflect attention and shield the perpetrators of these heinous acts of sexual violence.

However, public outrage was intense.
Shopian town shut down for 48 days in protest of the attempts to cover-up what was a case of rape and murder. Large numbers of school students, particularly girls, participated in the demonstrations in Shopian in the months of June and July, demanding justice for the two dead women. People of Jammu also joined the cause.

Too many cooks or too many crooks

Apart from the Commission of Inquiry under Justice Jan, SIT and the High Court were also looking into the case.

Through the Jan Commission the following emerged:

1. That the bodies of Asiya Jan and Neelofar Jan must have been placed in two locations in the Rambi-Ara nallah between 2.30 am and 6 am on May 30, 2009;
2. That civilians likely could/would not enter a Red Zone to dispose off the bodies;
3. That two witnesses maintained that they reportedly saw a police vehicle, (Tata) 407, and personnel on the bridge on the Rambi-Ara nallah at around 8 pm on May 29, 2009;
4. That security personnel suppressed and destroyed evidence, and from this, it may be inferred that suppression and destruction of evidence attested to culpability;
5. That the number of errors executed by police personnel permits an informed assumption that the errors were deliberately deployed with the intent to disobey the police manual and rules in use regarding cognizable offences.

On July 12, Justice (Retired) Muzaffar Jan distanced himself from the narrative established in the annexure of the report, which contained character assassination and charges against the family. The admission tampering by Justice (Retired) Muzaffar Jan raised critical questions regarding the involvement of government institutions and security forces in destabilizing the investigations. It also raised questions regarding what the ‘truth’ of the matter was, who were in the know, and what was being shielded. Justice (Retired) Muzaffar Jan also claimed that his version of the report did not carry any allegations against the character and family of Asiya Jan and Neelofar Jan. It stands to reason that such allegations, as documented in the report, and other charges in the annexure, if not authored by Justice Jan, may have been ordered by very senior security/other officials at the state level.
The case in the High Court was proceeding smoothly and it was taking a balanced approach. The High Court had ordered arrest of four police officials who had been investigating the case, none was accused of rape and murder, but of fouling up the enquiry. The police officers were denied bail by the court, and the court on two separate points, commented that efforts were being made to shield someone. In July the High Court ordered exhumation of the bodies.

SIT investigation was not making much progress. Finally, the case was handed over to the Central Bureau of Investigation (CBI) in August, with the state government almost accepting its inability to investigate the cases because its police did not know its job (as for twenty and more years all it was doing was fighting civilians or the 3000 insurgents). The family of the victims and the local Majlis also welcomed the CBI, and was prepared to cooperate in a thorough enquiry.

Simultaneously, the Central Government also jumped into the fray and in a statement before the Parliament, P. Chidambaram exonerated the security forces of the crime that was still under investigation. It was thus clear as to what conclusion the CBI was going to reach, because it is not without cause that this bureau under the Home Ministry is called “His Master’s Voice”.

**CBI, Police, CRPF and Rashtriya Rifles sab Bhai Bhai**

When the CBI assumed charge of the case it did not bother to even question the role of the suspended police officers. It went after the bodies of the victims and came up with findings completely at variance from the earlier versions. Though asked specifically by the court to stay away from the press, CBI ‘findings’ were systematically leaked to the press.

According to the CBI, the doctors and witnesses were liars and were acting under pressure from the insurgents represented by Majlis and Shopian Bar association. The doctor was made to confess that she had taken her own vaginal swabs and specimen gloves which were seized from the gynaecology department three months later. Witnesses who had heard the women shouting for help were also called liars and made to retract from their testimony.

But the highlight of the CBI investigation was the intact hymen on a body buried four months earlier. This means that Asiya Jan was still a virgin and her honour was intact; but more than that, there was one less crime to solve. Even so, in medical jurisprudence, breaking of hymen is not a necessary condition for rape to be established. This hymen found by the team doing the third post-mortem must have been very sturdy indeed, as it had survived intact the onslaught of rot, worms and maggots while remaining buried through the summer.

Then appeared the intact lungs of both the bodies on which a floatation test could not possibly have been done earlier. And for this the doctors were again blamed for having used the heart for a floatation test.
instead of lungs. The last test proved beyond doubt that death indeed was due to drowning. The bodies told another story – if this were accidental drowning, then the victims would have tried to clutch at something with their hands. But nothing was there for the CBI to discover.

All the same, the CBI failed to answer how the bodies came to be on the scene between the time that the police and relatives stopped searching for them at 2:30 am and resumed their search by 6:30 am. And like Gandhi’s monkeys, no one saw or heard anything in the flood-lit area. There was no explanation of the wound on Asiya’s forehead. There was no justification of how the claim of Asiya’s intact hymen could be interpreted to mean that Neelofer was also not raped.

One must remember that the first two post-mortems were done soon after the bodies were found whereas the third one was done after the bodies had decomposed and could therefore not be as accurate. At the third post-mortem the court had asked for the supervision of the Principal, Medical College, Srinagar. This order was ignored. The third post-mortem should also have included the doctors from the first two, to either confirm or refute earlier findings, but this too was not done. Indeed, the first two post-mortems were done in more neutral surroundings where the anger of the public had not erupted but the third one was done when the police officers were already suspended and the heat was on against the security forces.

Nevertheless, the CBI shut its case and got confessions from doctors, and against all convention, re-recorded the statements of witnesses. It has pronounced these deaths as ‘natural’. The witnesses and doctors have been denying these confessions before all who would care to listen.

But if we go by the CBI version the entire town of Shopian is peopled with insurgents and the lawyers who practice in the courts.
are mischief-making separatists and therefore the armed forces and the police have got a clean chit. Needless to say that in the midst of it all, many innuendoes resonate about Asiya’s ‘affairs’ and the reason for them to visit the orchard in the first place. Allegations about Shakeel possessing money beyond known means etc. were also floated to muddy the waters.

**Delhi Protests**

The first protest in Delhi was carried out by the Centenary Committee for International Women’s day on June 19, 2009. This was followed by a fact finding visit to the area by five women. A press conference was held on December 13, 2009 after the CBI report had pronounced these to be natural deaths. Statements were issued when CBI wanted to exonerate the police officials. An open letter was sent to the Supreme Court, NHRC and NCW to point out the flaws in the CBI investigation and conclusions. This was signed by more than 40 organisations and 70 individuals from all over the country.

The suspended policemen were reinstated on the basis of the CBI recommendations even as the case was sub-judice in the Jammu and Kashmir (J&K) High Court, which refused to treat the CBI report as the gospel truth. The reinstatement also highlights the impunity enjoyed by the men in uniform and the patronage extended to them by the political authority at the helm of affairs in the state as well as the Centre. Instead of ensuring an impartial enquiry into the episode, the government has allowed the security agencies including the CBI to nail the whistle blowers. In a telling move, Justice Barin Ghosh was transferred as he refused to accept the CBI version that the police was innocent. The Ahmad family continues its struggle through the High Court.

No one took cognisance, so finally on December 13, 2010, women’s groups from all over the country presented the CBI with bed sheets from all over the country, to symbolize their cover-up of the case.

We maintain what we said three years back:

The situation in J&K is completely unacceptable to anyone with a conscience. The substance of democracy is the rule of law and justice for all. However, widespread militarisation and the Armed Forces Special Powers Act (AFSPA) in the Kashmir valley have provided impunity to security personnel in countless cases of rape, murder, disappearances and fake encounters. A few transfers, a camp removed, a few heads rolling, will not end the intolerable situation in J&K. The signals are clear: AFSPA must go if people are to live normal lives; else the case of Shopian will not be the last.
Khairlanji: Upholding Upper Caste Domination

The only ‘crime’ the Bhotmanges committed was to attempt to lift themselves out of the de-humanized existence to which most Dalits are condemned. The reprisal: rape, torture and murder.

In the village Khairlanji, district Bhandara in Maharashtra, on September 29, 2006, four members of a Dalit family were brutally assaulted and murdered: Surekha Bhotmange, 45, the mother, her two sons Sudhir Bhaiyyalal Bhotmange, 21, Roshan Bhaiyyalal Bhotmange, 19 and daughter Priyanka Bhaiyyalal Bhotmange, 17. They were dragged from their hut, strapped on to a bullock cart and paraded naked in the village. Subsequently this humiliation was followed by an orgy of violence, sexual assault and murder. A mob of around 70 dominant caste people, including women had taken part in this gruesome massacre which was carried out in front of the whole village, and the dead bodies were thrown into the canal nearby. Later a village meeting was called and everyone was instructed not to speak about this incident to any outsider.

Bhaiyyalal, the head of the Bhotmange family was the only survivor as he was not at home at the time of attack. Hiding from the mob, he helplessly witnessed the entire incident, and somehow managed to reach the police station to report it. The police filed the FIR only the next day when the mutilated bodies were recovered.

Situated about 120 km from Nagpur, Khairlanji is a village with 181 households, with a population of about 700 people. The village has three Dalit families, the Bhotmanges being one of them, and is dominated by the kunbi and kalar castes listed as ‘Other Backward Classes’ in Maharashtra. The brutal attack on the family was not a sudden occurrence. The Bhotmange family was being harassed for about twenty years. Unlike most Dalit families in India, the Bhotmanges were relatively better off than some of the dominant caste families. They ‘dared’ to educate all their three children; they wanted to build a pucca house for themselves. This was seen as defiance by the dominant castes.

The village panchayat had consistently refused to enter Bhaiyyalal’s name in the
revenue records, thereby preventing him from building a pucca house. Whenever he tried to build a house, it was forcibly demolished and he was warned of serious consequences if he dared to go ahead. As a result, they were forced to live in a hatched hut. In this instance not economic affordability but social status (on caste basis) was the determining factor for a pucca house. The Bhotmanges originally had seven acres of land on which they grew rice and cotton, two acres of this had been taken away in 1996 by farmers of the dominant caste farmers to build a road.

The immediate cause for the incident was the beating up of one Mr Sidharth Gajbhiyea a Dalit Police patil by some people from Khairlanji on September 3, 2006. Members of the Bhotmange family members saw the incident, like responsible citizens testified before the police, resulting in the arrest of some dominant caste people of the village. When they were released on bail, the upper caste people of the village decided ‘to teach a lesson to the dalits’ who had defied their authority.

The police were aware of such imminent action but still did not take any steps to prevent it. On that particular day after the murder the Police Inspector along with other constables of the nearby thana came to the village and met the sarpanch on the outskirts and went back. When Bhaiyyalal went to the police station to file a complaint, the police refused to register the complaint initially but registered a formal FIR, the next day when the bodies of the victims were traced.

The attitude of the medical establishment was also one of apathy and indifference. The Medical Officer without conducting a thorough gynaecological examination reported that the death of Priyanka and Surekha (who was gang raped before the murder) was due to trauma and injuries on their bodies. Blood samples were not taken in spite of a written requisition from police.

In fact even though there was a large incision on Surekha’s head, this was not mentioned in the post-mortem report. The first post-mortem report on September 30 claimed that there had been no rape at all. Under pressure from Dalit and other activists the bodies were later exhumed and a second post-mortem done on October 5, 2006. This time also they gave a very vague and evasive report of the sexual assault on the victims, and the FIR did not mention sexual assault.

The case was finally tried in a fast track Sessions Court in Bhandara which in its verdict on September 15, 2008 declared eight people guilty of murder and acquitted three of the eleven accused. Out of the eight convicted, it awarded capital punishment to six persons and life imprisonment to two. In the verdict it is clear that “Khairlanji was a case of murder spurred by revenge for an earlier case of assault involving the police patil of a nearby village.” The Judge did not see any ground for invoking the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, (PoA Act)—a legislation regarded as radical though it is rarely invoked in letter and
spirit. The judge also did not invoke Sections 354 (assault or criminal force with intent to outrage the modesty of a woman) or Sections 375 and 376 (that deal with rape and punishment for rape, respectively) of the Indian Penal Code, though it had been amply demonstrated by several independent fact-finding reports in October-November 2006 that the mother and daughter, Surekha and Priyanka Bhotmange, had not only been raped repeatedly but tortured in ghastly ways (bullock cart spokes were reportedly thrust into their vaginas). Besides, the judge did not invoke Sections 120A and 120B that deal with criminal conspiracy and punishment for criminal conspiracy and ruled outcaste hatred, sexual violence and any criminal conspiracy in the case and viewed it as merely revenge killing.

Even though the victims were Dalit and the perpetrators are from upper caste and specific abuses with reference to the caste were hurled at the victims during the massacre and the statute has provided the institutions of state with an instrument, the PoA Act, for prosecuting caste-based crimes, the court found no reason to invoke it. The caste of the crime was ignored in favour of a more secular rationale. According to the judgement, the convicted persons were enraged by their arrest earlier for assaulting Sidharth Gajbhiye, on the basis of evidence given by Surekha and Priyanka. The eleven charge-sheeted in the Khairlanji murders also figured as accused in the assault on Gajbhiye. Having thus deduced that it was just revenge killing, the judge convicted them of murder under Sections 302, 148 (for rioting, armed with deadly weapons), 149 (every member of an unlawful assembly guilty of offence committed in prosecution of a common object), and 201 of the IPC for destroying evidence or giving false evidence to protect offenders.

Regarding charges under Section 354 of the IPC, he said the prosecution was not able to establish whether the two women were stripped off their clothes before or after the assault.

That the prosecution tried its best to destroy all evidence relating to caste-based atrocities and did not apply the Scheduled Castes and Scheduled Tribes Act, reveals the systematic and institutionalized nature of caste. Moreover, that the massacre took place in full public view without any opposition, indicates how deeply ingrained the ideology of caste is. Not holding these spectators complicit in the crime further reveals how state institutions tolerate caste-based atrocities.

The award of capital punishment by the
Sessions Court obscures the fact that neither the PoA Act nor the rape laws were invoked in framing and judging the case. Many feel that though the quantum of punishment was appropriate, the quality of the judgment was bad. There are good reasons for this ambiguity. On the one hand, a system notorious for its lethargic attitude to atrocities against Dalits has awarded strong punishment to the perpetrators of this particularly crime. The punishment of such a crime, being unusual, is in itself the source of some satisfaction, for despite the existence of the PoA Act, legal remedy for Dalits has been negligible. However, caste hatred and rape, the two most obvious aspects of the crime, were rejected even as capital punishment was awarded to six persons.

The case was in fact a massacre to uphold feudal values, a barbaric and regressive social structure persisting in society. The perpetrators did not massacre the family in a fit of rage; their anger was not momentary. It did not emanate from any personal enmity; the family had not done anything to provoke or annoy them. The only ‘crime’ the Bhotmanges had committed, was their effort to escape the low social status ascribed to their untouchable caste. Trying to come out of the dehumanized existence Dalits have been condemned to for centuries was enough provocation for the killers belonging to the dominant castes.

Therefore, the death sentence announced by the district court in this case was no victory for social justice. Apparently the judiciary was convinced by the prosecution’s shoddy investigation and poor arguments attempting to pass off the case as mere revenge killing.

The Khairlanji massacre is the negation of the very idea of India, revealing the decayed and deficient democracy we have evolved into. Unfortunately, it is no isolated case of rogue elements within the Indian society. Rather, it is one among many incidents.

The ruling was appealed to the Nagpur division bench of the Bombay High Court where hearings began in April 2010. On July 14, the Nagpur bench of the High Court commuted the death penalty awarded to the six convicted to a 25-year rigorous imprisonment jail sentence. The two others who received life sentences received a similar sentence.

Understandably Bhaiyalal Bhotmange and most activists who had worked on the case expressed shock and disappointment on the verdict. They were expecting that CBI would appeal the commutation in the Supreme Court. However, CBI has so far taken no action. Bhotmange has appealed to Supreme Court, the decision is still pending.
Impunity under AFSPA: Rape and Murder of Thangjam Manorama

“We mothers have come. Drink our blood. Eat our flesh. Maybe this way you can spare our daughters,” Meira Paibi’s protest, July 15, 2004.

This is the story of 32-year-old Thangjam Manorama Devi, who lived in Imphal East district in Manipur. In the early hours of July 11, 2004, the paramilitary Assam Rifles, suspecting her of links to an underground separatist group, picked her up from her home. The soldiers raided her home in Bamon Kampu village a little after midnight, asking the family to wait outside while they questioned her. They then signed an “arrest memo,” an official acknowledgement of detention, put in place to prevent “disappearances”, and took her away. Later that day, her semi-clad body, covered with bruises, was found in a nearby village. She had been shot through the lower half of her body, raising suspicion that bullets had been used to hide evidence of rape.

The security forces’ role in Manorama’s killing triggered intense outrage in the state and also captured widespread media attention. Protests erupted in Manipur, while domestic and international human rights groups demanded an immediate investigation and prosecution of those responsible. Concerned that the government would fail to hold soldiers accountable for the killing, as had repeatedly been the case, citizens of Manipur took to the streets. Students, lawyers, traders, mothers, journalists, and human rights activists marched every day, demanding justice. One young man committed self-immolation in protest, several others attempted suicide.

The paramilitary Assam Rifles claimed that Manorama was shot dead while trying to escape. In later affidavits, the soldiers implicated said that she was helping the army locate another militant, when she instead tried to escape. It is a difficult account to accept: an unarmed, handcuffed woman, wearing the tightly-bound Manipuri sarong that does not lend itself to big strides, supposedly managed to escape the custody of an armed escort. And if she did, it does not explain why the soldiers were unable to apprehend her and instead had to shoot to kill. There has also been no explanation why Manorama had not been handed over to police custody.
by the Assam Rifles, as the law requires. Or why no female security personnel had been brought in at the time of this night arrest, as is the rule.

The security forces were able to arrest and take away Manorama because they are empowered to do so under the Armed Forces (Special Powers) Act (AFSPA). AFSPA is the 1958 emergency law under which the armed forces are deployed in internal conflict areas and enjoy broad powers to arrest, search, and shoot to kill. This 55-year-old law also provides security forces immunity from prosecution and has thus protected members of the Assam Rifles -- as well as soldiers in Jammu and Kashmir, and other states in India's North-east. Soldiers responsible for killings, such as Manorama’s, have been saved from being brought before a civilian judge to be prosecuted for murder and other offences.

The Sequence of Events

Security officials claimed that Thangjam Manorama Devi was a dangerous member of the separatist People’s Liberation Army. According to them, she was responsible for a number of bomb blasts, including one that killed some soldiers. Her family insists that she was a peaceful activist and not involved in any criminal activities. Most human rights activists and journalists agree privately that she was a member of an underground group but they differ on the details, including the role she played. The truth may never be fully known because no police complaint was ever filed against Manorama; she was never given an opportunity to be tried in court.

A. The Arrest

Assam Rifles’ version

According to the Assam Rifles, on July 10, 2004, officials gathered reliable information that a member of the banned People’s Liberation Army, identified as “PLA No. 1262, Corporal Manorama Devi alias Henthoi,” a militant since 1995, was in the area of Bamon Kampu Mayai Leikai. She was identified as an expert in improvised explosive devices (IEDs) and as an informer for the PLA.

A petition filed by Col. Jagmohan Singh, the commandant of the 17th Assam Rifles, says that officials posted at Sinjamei were alerted to her presence in the area. A little after midnight, on July 11, a preliminary check post was set up in the area, which confirmed that Manorama was at her residence in the village. The Assam Rifles immediately launched an operation and troops were dispatched to cordon off the area. At around 3 am troops knocked on the door to arrest Manorama. The soldiers produced an arrest memo and took her into custody.

Manorama’s Family’s Version

Manorama’s relatives say that seven or eight Assam Rifles personnel first arrived a little after midnight to confirm her presence at home. According to her younger brother, Dolendro Singh, several personnel from the 17th Assam Rifles
entered their home from the main road. They rushed into the house and began searching without providing any explanation for their action. Manorama’s elderly mother, Thangjam Khumanleimai Devi, was awake. One soldier pointed his gun at her and asked for Manorama. Meanwhile, Manorama had woken up and come out of her room. The men began to drag Manorama out of the house. When her brothers tried to stop the soldiers, they were beaten up.

Manorama’s mother, brothers, and other relatives were told to wait in the courtyard at the back of the house while she was taken to the front. Her relatives claim that the soldiers interrogated Manorama and tortured her. At around 3:30 am, soldiers came into the courtyard and informed the family that Manorama was being taken into custody. The arrest memo was signed and Manorama’s mother and brothers were also asked to sign a “No Claims Certificate” which stated that they had no claims against members of the Assam Rifles who had searched the house and made the arrest and that the troops “haven’t misbehaved with women folk and not damaged any property.”

Manorama was alive when she was taken away from her home that night by the soldiers of Assam Rifles.

B. The Killing

Manorama’s bullet-ridden body was found by villagers at around 5:30 am, on July 11, 2004, near Ngariyan Maring, about four kilometers from her house. According to the Assam Rifles, after taking Manorama into custody the soldiers had intended to hand her over to the nearest police station. They said that Manorama claimed that one of her militant colleagues, a woman called SS Lt. Ruby, had an AK-47 assault rifle and that this information “led to a hot chase.” However, when the group reached the area based on Manorama’s directions, she reportedly calimed to have made an error and then proceeded to lead the soldiers to a number of different locations, each time saying that she had made a mistake. After almost two hours of driving around like this, at daybreak, they claimed that Manorama tried to escape and they shot her.

Even if this account were accurate, the troops involved acted in violation of Indian law. As Justice D. Biswas of the Guwahati High Court, who heard the Assam Rifles petition quoted above, noted in his final verdict:

“It is evident that the raid was conducted without presence of a lady constable; though the house was cordoned off, no attempt was made to contact the Superintendent of Police to provide the services of a lady constable; the arrested person was not handed over to the nearest police station; she was interrogated after arrest and moved from place to place in search of another lady cadre and there was no FIR [First Information Report] pending against Km Th. Manorama Devi at the time of her arrest.”
Apart from these procedural failures, there are numerous other reasons to doubt the version of events described by the Assam Rifles. On July 12, 2004, the state government of Manipur ordered a commission of inquiry into Manorama’s killing. Although the commission’s final report has not been made public, lawyers representing Manorama’s family had access to depositions made to the commission by members of the Assam Rifles, investigating officials, doctors, witnesses, and relatives. The lawyers told Human Rights Watch that:

- Members of the arresting party, who later deposed before the inquiry commission, said that Manorama’s hands were tied while she was in custody. Her relatives also said that she was wearing the traditional Manipuri sarong when she was arrested. This clearly indicates that running very far would have been impossible for Manorama with her hands tied and wearing a tightly bound sarong.

- No member of the Assam Rifles claimed that any member of the patrol party actually ran after Manorama to try and stop her. They said that after shouting a warning, troops opened fire, causing her death.

- Manorama was unarmed while in custody which makes it hard to understand why the soldiers chose to keep a safe distance and open fire. No empty cartridges were found in the area, bringing into question the patrol party’s claim that desperate shots were fired to try and stop her.

- No blood was found near the body despite the fact that Manorama had suffered at least six bullet wounds. This raises suspicions that she was killed elsewhere and her body later dumped at the site of the recovery.

- The police surgeon and forensics specialist, who was a commission witness, said that the nature of the bullet wounds suggested that the shots were fired at close range and that Manorama was lying down at the time she was shot. He also deposed that the body bore a number of other injuries that indicated that Manorama had been tortured before she was killed.

- A report from the Central Forensic Science Laboratory found semen stains on Manorama’s garments, suggesting that she may have been raped before her death.
After the autopsy, the police offered to hand over Manorama’s body to the family for cremation, but her relatives said that they would not claim the body until the perpetrators had been punished and the AFSPA withdrawn from the state. On July 24, 2004, the Manipur government ordered the police to cremate the body.

C. The Protests

When Manorama’s body was found, it bore scratch marks and a gash wound on her right thigh, probably made by a knife. Her body, according to her relatives, bore other signs of torture, such as bruises. There were also gunshot wounds on the genitals, which lent credence to the theory that she was raped before being shot dead.

There was a widespread eruption of rage in Manipur after Manorama’s killing. On July 12, 2004, several civil society groups called a 48-hour protest strike. Tyres were burnt and marchers carried placards demanding justice.

A powerful protest on July 15, 2004 made Manorama’s killing national news. A group of women gathered in front of the 17th Assam Rifles headquarters and then stripped their clothes off, calling the army to come rape them as Manorama had been raped. The women belonged to the Meira Paibi, literally “Torch Bearers,” but also often called the Mother’s Front, which had started out as a support group to address social issues, particularly problems of alcoholism among men and drug abuse among children. But as the armed conflict deepened, the Meira Paibi also became involved in activities to prevent human rights abuses, and joined the campaign to repeal the AFSPA. L. Gyaneshori, one of the women who took part in the protest is quoted as saying:

Manorama’s killing broke our hearts. We had campaigned for the arrest memo to protect people from torture after arrest. Yet, it did not stop the soldiers from raping and killing her. They mutilated her body and shot her in the vagina. We mothers were weeping, “Now our daughters can be raped. They can be subjected to such cruelty. Every girl is at risk.” We shed our clothes and stood before the army. We said, “We mothers have come. Drink our blood. Eat our flesh. Maybe this way you can spare our daughters.” But nothing has been done to punish those soldiers. The women of Manipur were disrobed by AFSPA. We are still naked.
Soon the protests had spread all over the state, with many defying curfew orders. A number of government offices were torched. Many civilians were injured as police tried to control the crowds. On July 24, 2004, five young men attempted self-immolation in front of the chief minister’s office, calling for the repeal of the AFSPA. Three of them were severely burnt.

In August, in an attempt to quell the protests, Chief Minister O. Ibobi Singh decided to withdraw the use of the AFSPA in Imphal city. But the protests continued, with demanding the complete repeal the AFSPA. On August 15, 2004, there was another attempt at self immolation. This time, Pebam Chittaranjan of the Manipur Students Federation lost his life. Chittaranjan’s death sparked yet another round of protests that continued until November, when Prime Minister Manmohan Singh went to Manipur. After meeting a delegation of the apex body of civil society groups, Apunba Lup, Singh said he would order a review of the law “and also consider how a more humane Act can be put in place.”

**D. Failure of Justice**

On July 12, 2004, after the discovery of Manorama’s body, her brother Thangjam Dolendro Singh filed a written complaint at the Irilbung police station. The police registered a First Information Report and ordered forensic tests to determine if rape had occurred and DNA testing to identify the perpetrators.

Few believed that the police would investigate an allegation of murder against members of the Assam Rifles. As a result of the protests, the Manipur government immediately ordered a commission of inquiry headed by retired district judge C. Upendra Singh. The brief was to “inquire into the facts and circumstances leading to the death,” “identify responsibilities on the person/persons responsible,” and “recommend measures for preventing recurrence of such incident in the future.” The commission was given a month to submit its report.

On August 19, 2004, the Assam Rifles filed a writ petition before the Guwahati High Court saying that the state government of Manipur had no authority to appoint a commission of inquiry to examine the conduct of federal armed forces, and thus the personnel could not be compelled to appear before such a commission. It also claimed that an army court of inquiry was in progress and thus there was no need for another inquiry covering the same aspects.

The petition said that Assam Rifles operated in Manipur under the AFSPA, which provides under section 6 that “[n]o prosecution, suit or other legal proceedings shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act.” The Upendra Commission, the Assam Rifles said, could be described as “other legal proceedings.” As no sanction from the central government had been obtained,
the notification by the Manipur government setting up the commission was “null, void and of no legal effect.” While the petition was being considered, the Assam Rifles asked for a stay on the proceedings of the commission.

In an interim order on August 28, 2004, the High Court refused to stay the proceedings of the Upendra commission. However, the judge said that the final report could not be published without prior permission from the court and that the findings would be subject to a final decision on the writ petition. The court also ordered that Assam Rifles personnel be allowed to depose in-camera with its access limited to the concerned parties and their lawyers.

Judge Upendra Singh submitted his final report to the Manipur government on November 22, 2004, but it was not made public because of the court order. Justice C Upendra Singh said, “I gave a finding against the security people and then the security people made an appeal to the High Court. They do whatever they like, they have no regard for the law of the land.”

On June 23, 2005, in its final verdict, the High Court declared that the state government of Manipur did not have administrative control over the armed forces deployed in the state, which are controlled by the central government. The judge thus asked the central government “to deal with the report and take follow-up action as may be necessary in accordance with the provisions of the law.”

The Manipur government appealed to the Guwahati High Court in order to protect its right to set up such inquiries in the interest of “public order,” which is a state government responsibility. It said that incidental encroachment during the course of the inquiry into the activities of the armed forces should not oust the jurisdiction of the state government. Manorama’s family also appealed in favour of the order. The family submitted that:

*Merely because the State of Manipur has been declared a disturbed area under the Armed Forces (Special Powers) Act, 1958, can it be said that all actions of the security forces, including rape, torture and killing of unarmed citizens will fall within the definition of ‘in aid of civil power’ as set out in section 3 of the Act?*

The Assam Rifles also filed an appeal saying that since the Manipur government did not have legal authority to establish the inquiry commission, the report should be considered invalid.

The court of inquiry instituted by the Assam Rifles concluded on July 27, 2004 but the report was not made public. Major SD Goswami, defense spokesman in Imphal, only said that, “There were some lapses by the Assam Rifles personnel in the implementation of the instructions by army authorities for such operations. We are holding further inquiries and anyone found guilty will be dealt with severely.”
Regarding the appeals on the Upendra Commission report and the powers of the state government vis-a-vis AFSPA, in August 2010, the Guwahati High Court made a significant ruling. On the three writ appeals filed by the family members of Manorama, the State Government and the Assam Rifles on separate pleas against the earlier single bench ruling of June 22, 2005 it allowed the State Government to open and act upon an inquiry report. Justices Amitava Roy and BD Agarwal, in their Principal seat at Gauhati, pronounced the judgment on August 31.

Following this ruling a representation was made to the state government by the lawyers and the family members of Manorama to place the inquiry report before the State Cabinet and take appropriate actions on the basis of its findings without further delay.

E. Continuing injustice

At the time of publication of this report the case pertaining to the rape and murder of Manorama Devi is pending before the Supreme Court as the Centre filed a Special Leave Petition (SLP), challenging the verdict passed by a division bench of Guwahati High Court in September, 2010, allowing the state government to open the sealed inquiry report on the facts and circumstances leading to Manorama’s killing and act upon it.

Manorama’s family is still waiting for justice, eight years after her murder, hoping that she will not enter the long list of Manipuri women subjected to sexual assault and murder who have not received justice.
CONCLUSION

When we came together as WSS, one of the objectives that we had set for ourselves was to systematically follow up on cases that came to us. We did not want justice to be denied due to cases getting ignored and vested interests having their way. Our experience of this follow-up and approaching various agencies (NHRC-NCW) highlights the following concerns:

1. **Beware of the law keepers**: Even in everyday situations a police station is a dangerous place, particularly for a poor or Dalit woman. The rape in Amla, a non-disturbed area, is meant to drive this reality home. From then on, one can only imagine how the horror multiplies as political and caste hegemonies complicate the situation.

2. **Systematic tampering with evidence**: Collusion of investigating agencies, politicians and administration is rampant. In Shopian, Betul, Khairlanji the manipulation has gone to such an extent that the crime has done a vanishing trick and evidence has been styled to show just that. Whether it is the passers-by of Shopian who saw the women shouting from a truck, or Dodel Bai’s rape and murder in Betul witnessed by members of their community, or the case of rape and murder of Dalit women in Khairlanji where the entire family was violated and killed except for one member who was an eyewitness, their statements are discounted. The post mortems of dead women are carried out so casually that, even after repeated autopsies, there are doubts till the end about their having been subjected to sexual assault.

3. **Difficulty of registering cases**: Many cases go unreported. Aarti Majhi’s is a case in point as the reader will note that she was assaulted enroute to the police station and went missing for two months before her family could contact her. All this while there was no one she could possibly complain to who would take it upon themselves to initiate action. How is an ordinary village girl to know how to make a complaint? How does she know what would constitute proof? The mass rape of Pardhi women is another such instance where the entire community is dislodged and not allowed to gain a foothold in five years. In the meantime the case goes unregistered. The CBI appears to have made some motion towards placing the case on board with its investigations but relents fast to favour the Congress (I) politicians who were involved, and erases the entire complaint of sexual violence.
4. **The judiciary falls short:** Soni Sori was apprehensive about Chhattisgarh police even before she was taken to Chhattisgarh and tortured. Yet no alternative provision was made for her safety. She was handed over by the sessions court at Saket, New Delhi to the very police who lied before the court and asked for a three day remand, and flouted court orders for safe custody with impunity. How is this action to be redressed? Despite confirmed proof of torture, her case has not even been heard for nearly one year.

5. **Brotherhood among security forces:** The best example of this is the case of double rape and murder in Shopian. This case reconfirms the assertion of women’s groups that police shields other security forces, also observed by the Jan Commission and the High Court as well. But the net result is that the police officials, who failed even to photograph the crime scene, went unpunished even for that vital lapse. The CBI made up a fantastic story that had only one element of consistency – the police was innocent as there had been no crime. It did not matter that it charge-sheeted every one else who did not fall in line.

6. **Preying on social prejudice:** Making the crime insignificant using social attitudes towards Maoism, extremism, insurgency and moral character, Soni Sori, Meena Xalxo and Aarti Majhi have been branded Maoists as Manorama was labelled an insurgent. This then has an adverse effect on common public who feel less sympathy towards an armed fighter, and public opinion and the media often come across as believing that insurgents or militants are not entitled to basic civil rights. These charges can be made without any basis because in all FIRs of the police a long string of names follow after a long section under which a crime is booked. Needless to say, there is rampant exaggeration. For instance Aarti is close to being absolved in all the cases against her and Soni Sori has been absolved in the two where a judgement has been reached.

7. **Caste prejudice:** Discrimination based on dissent always works against Dalit and tribal victims who are not considered fit enough to be human. In the case of Pardhis an entire community is classified as thieves. This makes for an uphill task, every step of the way, to get justice. Likewise, character assassination is common not only in these cases but practically in all cases of rape.

All this prejudice needs to be dealt with independently. The Indian penal system does not prescribe rape as punishment for any crime. The crime of violence or soliciting or extortion has well laid out punishments and the public attitude of glossing over the excesses of the police in this regard, leads to making custodial torture seem justifiable.

8. **Arrest as proxies:** The failure of security personnel is tided over by arresting relatives, sisters, daughters in proxy. This is how Aarti Majhi was nabbed by the police who were actually looking for her brother. Similarly, in March 2009, in Gadchiroli,
Maharashtra, a minor girl was simply picked up by policemen during combing operations, blindfolded, gang-raped, and then imprisoned. Though not included in this account, in October 2010, WSS met three school girls in Jharkhand who were arrested in lieu of Maoists and then paraded before the media as ‘hard-core Maoists‘. Their innocence was proved when none of the charges were followed through by the police after just one query from the National Commission for Protection of Child Rights (NCPCR). Such tactics are commonly used by the police, and often women of petty criminals’ families are routinely threatened with sexual violence in a bid to get information about suspects.

9. Vulnerable youth: Young girls are extremely vulnerable in areas where there are combing and search operations; further, there is violation of provisions of the Juvenile Justice Act, as minor girls are shown as adults.

10. Vanishing women: Women go missing and have no access to justice for months together. Women in prison on other charges lose access and judiciary has no proactive system to ensure the safety of under-trials, complainants and witnesses.

11. Media culpability: Media, along with the police, is responsible for creation of public apathy either by non-reporting or only carrying police-fed reportage. The police gets mileage and recognition and even funds when it nabs Maoists, and hence is fast to make reports to the media that does little to ascertain the truth of the matter. The girls in Jharkhand, surrendered Maoist women in Odisha as well as sexual violence by insurgents and Maoists are exaggerated and used to win cookie points.

12. Apathetic Commissions: Commissions seem to be passing the buck in not following their basic mandate and creating a distance from people’s organizations defending human rights. In Soni Sori’s case of custodial torture, People’s Union for Civil Liberties (PUCL) as well as WSS asked for NHRC intervention. It did not respond. In Shopian case there was no response to the open letter sent to them. NCW refused to act despite repeated complaints from and on behalf of Soni Sori, maintaining throughout that they would not take it up as the matter was sub-judice. The fact of the matter is that for one year the NCW did not even bother to find out the nature of litigation pending before the Supreme Court and even closed her file without this information.

13. Quelling dissent: Despondency is widespread in areas like Kashmir, Jharkhand, where no one wants to even complain. Cordon and search operations or combing operations have resulted in mass rapes in areas where army and paramilitary forces are given power to quell dissent. This led to the WSS slogan: “Cordon, search and rape is no way to administer a state”.

14. Witnesses at risk: Harassment of witnesses and families is driving them to the point of killing and suicides. Sodhi Sambho from Chhattisgarh was a witness for a case of false encounter. She herself was shot in the leg. The police caught her and now she has
been untraceable since two years. Safety of witnesses is a major concern in conflict areas. In fact, in Khairlanji, that itself triggered the violence. In Shopian, 13 people have been charge-sheeted as their statements and findings did not concur with the fairy tale spun by CBI.

The police has a strong nexus with lumpen elements, and uses it rampantly as people’s voice against fact finding and solidarity teams. Soon after the formation of WSS, in December 2009, a women’s team went to Narayanpatna in Orissa to conduct investigations into reports of harassment of women during combing operations. This harassment had led to mass protests and police firing at the crowd, in which a leader of the movement was killed. The women’s team was prevented from going to the concerned area, detained in the police station, where they were hounded by goons. Similarly, when a contingent of WSS tried to go to Dantewada, it was hounded first by the police and then by goons, who would not allow them to proceed. On their return to Raipur from this unfinished trip, they were left to deal with the goons to the point where they could not even hold a press conference. Making a jail visit to Soni Sori and meeting her in the hospital was also denied to women’s organisations. In November 2011, when a team went to meet a so-called surrendered Maoist woman in Orissa, it was forced to return without completing its visit. Newspaper reports indicated that the concerned woman was also harassed later by the police, who arrested her along with her brother. Such is the extent of abridgement of civil rights that WSS has experienced within a short span of two years since it was formed.

The message of the State is clear – bear violations in silence because we will neither allow justice to be done, nor allow anyone to show solidarity or support.

There have been very few active survivors of this violence. As we stated before, dim chances of justice silence many villages, where combing operations have taken place. From Kashmir to North-east and from Jharkhand to Orissa, our teams have found silence on sexual violence unless death or murder or suicide has followed. Hence Soni Sori’s lone voice as a surviving fighter is unique. Her repeated hunger strikes in the jail and her letters, for which she has been routinely stripped and searched, are a moving testimony of the reality faced by countless women, imprisoned in overcrowded jails and being assaulted by the police and jail authorities.
WAY FORWARD

The cases in this document represent only the tip of the proverbial iceberg. We have been protesting against custodial rape since 1979, but the situation seems only to have worsened, with the State violently repressing struggles of people who are attempting to achieve their legitimate aspirations in accordance with their rights to life and livelihood.

Our demands are not limited to redressal of specific cases but a radical change in the approach of the state to democratic movements.

Hence we demand that:

- A democratic, constitutional political establishment must not deploy the army or the Central Armed Police Forces against its own people, but address the grievances and demands of all citizens of this country through democratic processes and institutions.

- Besides the immunity provided under the AFSPA, the prior right of the army and CAPF to conduct trials of accused personnel only through court martials and not before the ordinary criminal court provides them immunity which militates against all democratic principles and rule of law. Draconian laws like the Armed Forces (Special Powers) Act must be repealed and immunity provided to security forces through laws like the Army Act must be done away with.

- Undemocratic laws, such as the Chhattisgarh Special Public Security Act (CSPSA); Unlawful Activities Prevention Act (UAPA); the National Security Act (NSA), the penal provision of sedition contained in Sec. 124A Indian Penal Code, which are currently being used against peoples’ movements and struggles for justice, dignity, and livelihoods, must be repealed.

- All state-supported private militias and vigilante groups, such as salwa judum and others in the conflict areas of Central India, Manipur and Kashmir must be disbanded. Action must be taken against the members of these groups accused of sexual violence and other human rights violations.

- While dealing with the violence against women belonging to marginalised groups like Dalits, Adivasis and Minorities, the dominant position of the perpetrators should be kept in mind and such cases are to be probed under the specific laws applicable to these atrocities.
• Restrictions on movements and intimidation of women’s groups and democratic rights groups, while conducting fact-findings of incidents of sexual and other forms violence in conflict areas, have to stop. Repression, labelling and intimidation of women activists and human rights defenders must end.

• Arbitrary or proxy arrests and illegal detention of women and children during search operations have to stop.

• The maligning in the media of arrested people, and the perverse use and manipulation of incidents of rape or arrest of women by the police as a propaganda tool, has to stop immediately. In this context, the media must also display more responsibility and sensitivity in its reporting.

• The district-level administration and judiciary should ensure strict adherence to the required procedures and safeguards (such as the DK Basu guidelines) for arrest, interrogation and detention, and for police/judicial custody, and ensure fair and speedy trials, especially in the cases of people belonging to vulnerable and disadvantaged groups.

• Institutions such as the National Human Rights Commission (NHRC), National Commission for Schedule Castes (NCSC), National Commission for Scheduled Tribes (NCST), National Commission for Minorities (NCM), National Commission for Women (NCW) and the corresponding State Commissions, created for safeguarding constitutional provisions and protection of vulnerable groups, have to be more proactive. They should be made to respond to all complaints lodged with them in a time-bound manner.

Specific demands:

Special guidelines: For investigation in cases of custodial violence, it cannot be expected that an aggrieved person/family who has been violated by personnel of the thana of her/their area, will go back to report the violation to that very same thana. Special guidelines must be evolved for such cases along the lines of the NHRC guidelines for encounter killings.

Defining custodial violence: Any incident of sexual assault by security forces or police/SPOs accompanying them, irrespective of where it occurs, should be treated as custodial violence since the perpetrators exercise power and control over the people of that area owing to their position of authority.

Expanding the scope of the Prevention of Atrocities Act: The scope of the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 should be expanded to include custodial violence; torture; abetting such violence; and any form of sexual violence, verbal or physical; as well as humiliation of Dalit and tribal women. Amendments must
recognise the specific nature of caste-based violence and also the immense social, political and economic power differential when these violations are committed by the upper castes.

**Registering cases:** FIR of all victims should be registered, whether the perpetrators are from the army or the Central Armed Police Forces, and refuge must not be taken under impunity provided under unjust laws such as the AFSPA.

**Criminal prosecution:** Sexual assault by the army or the Central Armed Police Forces must be brought under criminal law. In cases of sexual offences, the law should clearly state that the army has no jurisdiction to prosecute the accused member of the armed forces. The accused must be handed over and all investigation must be done by the police strictly in accordance with the law, and supervised by a senior police officer. The requirement of sanction for prosecution under Sec. 197 of the Criminal Procedure Code should be done away with in cases of custodial sexual violence and other human rights violations.

**Facilitating investigation:** Immediate arrest of the accused and suspension of all accused from their posts, once the FIR is registered, is essential.

- The accused should not be allowed to exercise any authority in the area where the complaint of sexual violence is made, till the final determination of the complaint.
- All persons in civil, political and administrative authority or any other public official exercising state power (including all public servants) must be made accountable and criminally liable for failure to perform statutory duties.

**Command responsibility:** In cases of sexual assault committed by State personnel, the authorities higher up in the hierarchy (SP and the Collector or any other senior officer in the chain of command of the Central Armed Police Forces) should be held criminally liable for crimes committed by those under their command or within their control. Ignorance or lack of information about sexual violence committed in his/her jurisdiction cannot be an excuse for inaction.

**Speedy investigation:** Inefficient, prejudiced or delayed investigation must be penalised. The responsibility of a proper investigation falls on the investigating agency. Any delay, shoddiness, partisanship and inefficiency in collection of evidence and lack or delay in medical exam etc should be seen as criminal offences and negligence of duty, and the concerned officers or personnel should be penalised for negligence or dereliction of duty and/or charged with complicity in the crime.

**Security of women detainees:** The lack, especially in remote/small thanas, of women constables (in whose presence women under-trials and prisoners are more likely to be safe) is a serious issue. If there is no woman constable on duty, that particular police thana must not be allowed to detain women.
**Vulnerability in conflict situations:** There must be a serious response from the district and state administration when a woman shows the courage to make a complaint of sexual violence. Instead the rape survivor, her family and other witnesses only get further terrorised by the people in authority. The administration should take *suo moto* cognisance of such complaints, whether they come directly, through the media or any other source.

**Rule of law:** There must be strict adherence to the procedures and safeguards for protecting women in custody and women should be produced before the court at the earliest opportunity, even before the mandatory 24 hours, to be able to disclose original violations as well as further ill-treatment (if any) while in custody of police or jail authorities.

**Judicial recognition:** The judiciary must take *suo moto* cognisance of any irregularity in the arresting procedure and delays in presenting the accused before the magistrate. Any non-compliance of the D.K. Basu guidelines and other provisions of the Criminal Procedure Code should attract strict action and accountability from the Court. Once the woman has been presented before the magistrate, it is the responsibility of the judiciary, to ensure that her dignity and safety is ensured and her complaints of violations of her rights addressed. If any violation of the rights of a woman takes place in police or judicial custody, the judiciary should take the strictest action against the perpetrators in a time-bound manner.

**Protection of victims and witnesses:** Protection of victims and witnesses has to be ensured, from the pre-trial to post-conviction stages, in accordance with recent jurisprudential developments and the Law Commission’s 198th Report of August 2006 and decisions of the Supreme Court.

**Liability and damages:** It is the government’s responsibility and duty to protect the rights of women; the responsibility grows manifold when the woman is in the custody of the State. Considering the gravity of the crime, the rape survivor has a right to reparation. While financial compensation cannot erase the pain and suffering caused, it is the duty of the State to pay exemplary damages without any bureaucratic delays.

**Reparative Justice:** The State must be obliged by law to make provisions for medical treatment, psychological care, shelter and livelihood in order to overcome possible destitution and social ostracism. This should be done through effective implementation and budgetary support of existing legal provisions and schemes for compensation/rehabilitation for sexual assault. Such compensation should not be linked to the criminal trial and prosecution. Schemes include, but are not limited to, the Victims Compensation Scheme (brought about through a 2008 amendment to section 357A of the Cr PC) as well as the National Commission for Women’s scheme for assistance and support services to victims of rape.
About WSS

Women Against Sexual Violence and State Repression (WSS) is a non funded grassroots effort initiated in November 2009, to challenge and put an end to the violence being perpetrated upon women’s bodies and societies. We are a nationwide network of women from diverse political and social movements comprising women’s organizations, mass organizations, civil liberties, student and youth organizations, mass movements and individuals. We unequivocally condemn state repression and sexual violence on our women and girls by any perpetrator(s).

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Suggested contribution: Rs 30.00