

# INDIA

SUBMISSION TO THE UN  
COMMITTEE ON THE  
ELIMINATION OF  
DISCRIMINATION AGAINST  
WOMEN, 58<sup>TH</sup> SESSION  
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# INTRODUCTION

Amnesty International submits the following information to the United Nations (UN) Committee on the Elimination of Discrimination against Women (the Committee), in advance of its examination of the combined fourth and fifth periodic reports of India, submitted under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women (the Convention). India signed the Convention on 30 July 1980 and ratified it on 9 July 1993. However, it has not yet signed the Optional Protocol to the Convention, despite many recommendations to this effect in its second Universal Periodic Review at the UN Human Rights Council in May-September 2012.<sup>1</sup>

This submission focuses on violence against women and highlights key issues in relation to discriminatory provisions in law and the deficient implementation of legislation protecting women's rights. Some of the concerns this briefing raises directly relate to issues 9, 10 and 17 in the List of Issues prepared by this Committee in relation to the combined fourth and fifth periodic reports of India.<sup>2</sup> The concerns listed here are not exhaustive.

Amnesty International is concerned that violence against women remains widespread and pervasive. According to the National Crime Records Bureau (NCRB), a total of 244,270 incidents of crimes against women, including nearly 25,000 cases of rape, were reported in 2012, an increase of 6.4% over 2011<sup>3</sup>. NCRB figures show that the number of reported crimes against women have been continuously rising since 2009. It is widely believed that these numbers may be underestimates, because of widespread under-reporting due to issues of security, social stigma and fear of reprisals.

The documentation draws on Amnesty International's ongoing work on India, which involves interactions with local and international non-governmental organisations, victims and survivors of human rights violations and their families, lawyers, governmental officials and other individuals. It also relies on media monitoring and reliable research on India from other sources.

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<sup>1</sup> Report of the Working Group on the Universal Periodic Review, India, A/HRC/21/10, 9 July 2012, recommendations 138.19 (Brazil); 138.21 (Czech Republic); 138.23 (Republic of Korea); 138.37 (Timor-Leste); and 138.38 (Costa Rica).

<sup>2</sup> Committee on the Elimination of Discrimination against Women (CEDAW), 28 October 2013, CEDAW/C/IND/Q/4-5.

<sup>3</sup> National Crime Records Bureau, Ministry of Home Affairs, Crime in India 2012 (NCB 2012) available at <http://ncrb.nic.in/CD-CII2012/Home.asp>

These statistics are likely to under-represent reported cases of violence, because they only consider the 'principal offence' in each case. See Rukmini S, "India officially undercounts all crimes including rape", *The Hindu*, 13 September 2013. <http://www.thehindu.com/news/national/india-officially-undercounts-all-crimes-including-rape/article5121114.ece>

# LEGISLATIVE FRAMEWORK AND DISCRIMINATORY PROVISIONS IN LAW

The Constitution of India guarantees equality under Article 14, which states that “the State shall not deny to any person equality before law or equal protection of the laws within the territory of India.” Article 15(1) states that “the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.” In addition, Article 15(3) leaves scope for affirmative action for women: “nothing in this Article shall prevent the State from making any special provision for women and children.” However, the country fares poorly on gender inequality, and was ranked 132 out of 187 countries in the Gender Inequality Index of the UN Development Programme.<sup>4</sup>

The country’s National Mission for Empowerment of Women states the government’s commitment to “strengthening the process that promotes holistic development of women, gender equality and gender justice through inter-sectoral convergence of programmes impacting women.”<sup>5</sup> It highlights violence against women as one of the key focus areas for the mission.<sup>6</sup>

Following an incident of gang-rape and murder in Delhi in December 2012, and widespread protests against perceived government inaction, authorities undertook wide-ranging reforms to laws on violence against women. However these laws suffer from various deficiencies and incidents of gruesome violence and assault continue to be reported from various parts of the country.

One such reform was the establishment of the Justice Verma Committee on Amendments to Criminal Law, a panel of legal experts headed by a retired Supreme Court Chief Justice to analyse existing laws on sexual assault and recommend reforms.<sup>7</sup> In January 2013, the

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<sup>4</sup> Gender Inequality Index of the UN Development Programme, available at <https://data.undp.org/dataset/Table-4-Gender-Inequality-Index/pq34-nwq7>

<sup>5</sup> National Mission for Empowerment of Women, Ministry of Women and Child Development, Mission Statement, <http://www.nmew.gov.in/WriteReadData/1892s/nmew%20eng%20brochuer-65882532.pdf> /

<sup>6</sup> Ibid.

<sup>7</sup> “Committee of Eminent Jurists to Suggest Amendments to Criminal Law” available at <http://pib.nic.in/newsite/erelease.aspx?relid=91179>. The Committee asked members of the public, judiciary, media, public figures, academicians and human rights organizations for their suggestions, and also expanded its mandate to include “connected areas such as gender justice, respect towards

Justice Verma Committee submitted its report to the Government, after consultations with members of the public and civil society groups.<sup>8</sup> The report contained recommendations on a wide range of issues that impact the safety of women and gender discrimination. In April 2013, the government passed the Criminal Law (Amendment) Act (the Act), which, while it contained some positive reforms, also ignored several important recommendations made by the Justice Verma Committee.<sup>9</sup>

The Act expanded the definition of rape in the Indian Penal Code and specifically criminalized several forms of violence against women including acid attacks, stalking and voyeurism. It was more sensitive to the needs of disabled persons, provided for certain victim-friendly evidentiary procedures and removed the requirement of government permission for prosecution of public servants accused of rape and some forms of sexual violence. However, the Act was seriously deficient in other respects, including on the issue of marital rape, the discriminatory concept of modesty in the criminal code, the imposition of the death penalty for certain sexual assault crimes.

### MARITAL RAPE EXCEPTION

The Indian Penal Code continues to retain a rape exception when committed by a man on a wife who is over 15 years of age.<sup>10</sup> Only rape committed within a marriage when the spouses are living separately can be punished, and then with a lower sentence than that given to rape outside a marriage.<sup>11</sup>

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womanhood, and ancillary matters". See "Justice J.S.Verma Committee holds its First Meeting", available at <http://pib.nic.in/newsite/erelease.aspx?relid=91179>

<sup>8</sup> Justice J S Verma, Justice Leila Seth and Gopal Subramaniam, "Report of the Committee on Amendments to Criminal Law" (Report of the Committee on Amendments to Criminal Law), 23 January 2013. Available at [http://www.mha.nic.in/sites/upload\\_files/mha/files/JS-VermaCommittee-2013.pdf](http://www.mha.nic.in/sites/upload_files/mha/files/JS-VermaCommittee-2013.pdf). The report lists organizations and individuals consulted during drafting.

<sup>9</sup> Amnesty International, *India: New Sexual violence law has both positive and regressive provisions* (Index: PRE01/146/2013), 22 March 2013, <http://www.amnesty.org/en/for-media/press-releases/india-new-sexual-violence-law-has-both-positive-and-regressive-provisions-2>

See also, Amnesty International, *India: vote for a new law on violence against women in India* (Index: ASA 20/011/201311), March 2013, <http://www.amnesty.org/en/library/info/ASA20/011/2013/en>

And Amnesty International, *Submission to the Justice Verma Committee* (Index: 20/002/20134), January 2013, available at: <http://www.amnesty.org/en/library/asset/ASA20/002/2013/en/26fed035-db4a-4873-afbd-b23eceb11fd0/asa200022013en.pdf>

<sup>10</sup> Exception 1 to Section 375 of the Indian Penal Code states: "Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape."

<sup>11</sup> Section 376B of the Indian Penal Code states: "Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine." Under Section 376, anyone found guilty of rape can be punished with "rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder

This Committee<sup>12</sup> and the Special Rapporteur on Violence against Women<sup>13</sup> have called on the government to remove the exception for marital rape and define marital rape as a criminal offence.

The Justice Verma Committee also recommended the removal of the marital rape exception, noting that “the exemption for marital rape stems from a long out-dated notion of marriage which regarded wives as no more than the property of their husbands”.<sup>14</sup> The Committee added that the law ought to specify that a marital or other intimate relationship must not be regarded as a mitigating factor to justify lower sentences for rape. It also stressed that the legal prohibition on marital rape must be accompanied by changes in the attitudes of prosecutors, police officers and society, and recommended widespread measures to raise awareness of women’s rights to autonomy and physical integrity, regardless of marriage or other intimate relationship.<sup>15</sup>

However, the Government of India ignored the recommendations of the Verma Committee when it drew up amendments to the criminal law in March 2013. A report prepared by a parliamentary committee opposed the removal of the exception on marital rape, stating:

“The Committee felt that if a woman is aggrieved by the acts of her husband, there are other means of approaching the court. In India, for ages, the family system has evolved and it is moving forward. Family is able to resolve the problems and there is also a provision under the law for cruelty against women. It was, therefore, felt that if the marital rape is brought under the law, the entire family system will be under great stress and the Committee may perhaps be doing more injustice.”<sup>16</sup>

Courts in India have used the exception provided in Section 375 to acquit men accused of committing marital rape. In May 2014, a ‘fast-track’ court in Delhi designated to hear cases of sexual assault against women relied on this exception to rule that sexual intercourse

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of that person's natural life, and shall also be liable to fine.”

<sup>12</sup> Concluding Comments of the Committee on the Elimination of Discrimination against Women: India (CEDAW/C/IND/CO/3), 2 February 2007, para. 23.

<sup>13</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, Mission to India (A/HRC/26/38/Add.1), April 2014, para. 78(c).

<sup>14</sup> Report of the Committee on Amendments to Criminal Law, pp. 113-118.

<sup>15</sup> *Ibid.*

<sup>16</sup> Rajya Sabha Parliamentary Standing Committee on Home Affairs, One Hundred and Sixty Seventh Report on the Criminal Law (Amendment) Bill, 2012, <http://www.prsindia.org/uploads/media/Criminal%20Law/SCR%20Criminal%20Law%20Bill.pdf>. When the bill was debated in Parliament, similar arguments were made about the criminalization of marital rape weakening the institution of the family. See comments by Sumitra Mahajan, BJP MP, in debate on floor of Lok Sabha, 19 March 2013, p.78. Available in Hindi at <http://164.100.47.132/debatetext/15/XIII/1903.pdf>

between a legally wedded husband and wife “even if forcible, is not rape.”<sup>17</sup>

Studies have shown that marital rape is a reality a number of women face in India. In 2012, in over 98 per cent of reported rape cases, the alleged perpetrators were known to the victims.<sup>18</sup> A 2011 survey by the International Centre for Research on Women said one in five surveyed men in India had admitted to forcing their partners into sex.<sup>19</sup> In an official nationwide family health survey conducted in 2005-06, 10 per cent of married women – and over 20 per cent in some states - said their husbands had raped them or forced them to commit sexual acts against their will.<sup>20</sup>

## CONCEPT OF MODESTY IN CRIMINAL CODE

The laws relating to sexual assault passed by Parliament in 2013 did not amend Section 354 and 509 of the India Penal Code, which define crimes based on notions of ‘modesty’ and ‘morality’ rather than emphasizing their effect on the physical and mental integrity of the victim.

In 1995, the Indian Supreme Court used the Oxford English Dictionary to understand the meaning of ‘modesty’ as follows: “the quality of being modest and in relation to woman means “womanly propriety of behavior; scrupulous chastity of thought, speech and conduct ... it appears to us that the ultimate test for ascertaining whether modesty has been outraged is, is the action of the offender such as could be perceived as one which is capable of shocking the sense of decency of a woman”.<sup>21</sup>

The use of the concepts of morality and modesty in legislation and judicial decisions perpetuate stereotypes about women’s expected conduct and behavior and can impede women’s access to justice. Their use does not adequately protect the human rights of women and girls, including their right to live free from violence. They also violate India’s international legal obligations to amend all laws containing gender discriminatory provisions.

## DEATH PENALTY FOR CERTAIN SEXUAL ASSAULT CRIMES

The Act introduced the death penalty for sexual assault that results in death or a persistent vegetative state for the victim, or in the case of certain repeat offenders. In April 2014, three

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<sup>17</sup> *State vs. Vikash*, decided by Special Fast Track Court, Dwarka, New Delhi on 7 May 2014. Unique Case ID No. 02405R0349722013.

<sup>18</sup> NCB 2012.

<sup>19</sup> International Centre for Research on Women, International Men and Gender Equality Survey, 2011, p.46, available at <http://www.icrw.org/publications/evolving-men>

<sup>20</sup> International Institute of Population Studies, *National Family Health Survey (NFHS-3), 2005-6*, <http://hetv.org/india/nfhs/nfhs3/NFHS-3-Chapter-15-Domestic-Violence.pdf>, Table 15.8 on p.507 and Table 15.14 on p.519.

<sup>21</sup> *Rupan Deol Bajaj v. KPS Gill*, decided on 12 October 1995. AIR 1996 SC 309.

men convicted in multiple cases of rape were sentenced to death under the new law.<sup>22</sup>

The punishment with the death penalty of crimes that do not involve intentional killings do not meet the threshold for the use of the death penalty under international human rights standards. Amnesty International is further concerned that the authorities have justified the use of the death penalty as a solution to ongoing violence against women, despite convincing evidence that the death penalty is not a particular deterrent to crime and its use will not eradicate violence against women in India.<sup>23</sup>

## CRIMINALISATION OF SAME-SEX RELATIONSHIPS

The government has failed to repeal section 377 of the Indian Penal Code, which makes consensual same-sex relations among adults punishable with imprisonment up to a life term. In a dismaying verdict in December 2013, India's Supreme Court overturned a historic ruling by the Delhi High Court in 2009 which had decriminalized consensual same-sex activity among adults.<sup>24</sup> The Supreme Court said that Section 377 - which criminalizes "carnal intercourse against the order of nature"- was a matter for the legislature to repeal, not the Court, resulting in Section 377 remaining valid law.

The Delhi High Court had ruled in 2009 that the outlawing of consensual adult same-sex relations was discriminatory and violated the rights to equality, privacy and dignity set forth in the Indian Constitution. It had said the criminalization of homosexuality forced "a sizeable section of society... to live their lives in the shadow of harassment, exploitation, humiliation, cruel and degrading treatment at the hands of the law enforcement machinery".<sup>25</sup> In its Universal Periodic Review in 2012, the Government of India had quoted the Delhi High Court's decision to signify its progress on human rights issues.<sup>26</sup>

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<sup>22</sup> BBC, 4 April 2014: <http://www.bbc.com/news/26887723>

<sup>23</sup> Amnesty International, "Death penalty will not end violence against women". AI Index: PRE01/463/2013. <http://www.amnesty.org/en/news/india-death-penalty-will-not-end-violence-against-women-2013-09-13>

<sup>24</sup> *Suresh Kumar Koushal v. Naz Foundation*, decided on 11 December 2013. Civil Appeal No. 10972 OF 2013. See Amnesty International, *Dismaying top court ruling recriminalizes homosexuality* (Index: PRE01/648/2013), <http://www.amnesty.org/en/for-media/press-releases/india-dismaying-top-court-ruling-re-criminalizes-homosexuality-2013-12-11>

<sup>25</sup> *Naz Foundation v. Government of NCT of Delhi*, decided on 2 July 2009. 160 (2009) D.L.T. 277

<sup>26</sup> National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 for the 13<sup>th</sup> session of the UPR Working Group (A/HRC/WG.6/13/IND/1).

# VIOLENCE BY ARMED GROUPS AND SECURITY FORCES

Amnesty International has documented cases of sexual violence allegedly perpetrated against women and girls by armed groups and security forces.<sup>27</sup> Women victims of sexual violence often face challenges while seeking access to justice, including barriers to registering complaints and impediments to effective investigation and prosecution. This is true of the situation in the state of Jammu and Kashmir and the north-eastern states of India, which have experienced several years of conflict.

Under the Armed Forces Special Powers Act (AFSPA), versions of which are in force in Jammu and Kashmir and parts of north-eastern India, prior permission from the central government is mandatory before a member of the armed forces can be prosecuted.<sup>28</sup> Such permission is virtually never granted, providing virtual immunity to members of the armed forces, and violating victims' rights to an effective remedy.<sup>29</sup> In the state of Jammu and Kashmir, not a single soldier has been prosecuted in a civilian court since the introduction of the AFSPA in 1990.<sup>30</sup>

The Justice Verma Committee noted that "impunity for systematic or isolated sexual violence...is being legitimized by the Armed Forces Special Powers Act."<sup>31</sup> The Committee recommended amendments to remove the requirement of prior permission from the government for prosecuting government officials or soldiers for certain crimes involving

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<sup>27</sup>Amnesty International, *Casualties of War: Women's Bodies, Women's Lives*, AI Index: ACT 77/072/2004.

<sup>28</sup> Section 7 of the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 states: "No prosecution, suit or other legal proceeding 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." Section 6 of the Armed Forces (Special Powers) Act, 1958 contains an identical provision. Similar provisions exist in laws like the Jammu and Kashmir Public Safety Act, 1978 and the Jammu And Kashmir Disturbed Areas Act, 1992

<sup>29</sup>Amnesty International, *The Armed Forces Special Powers Act: Time for a renewed debate in India on human rights and national security* (Index: ASA 20/042/2013)  
<http://www.amnesty.org.in/show/entry/briefing-afspa-time-for-a-renewed-debate-in-india-on-human-rights-and-natio>

<sup>30</sup> International People's Tribunal on Human Rights and Justice in Indian-Administered Kashmir [IPTK]. *Alleged Perpetrators: Stories of Impunity*. December 2012.  
[http://kashmirprocess.org/reports/alleged\\_Perpetrators.pdf](http://kashmirprocess.org/reports/alleged_Perpetrators.pdf)

<sup>31</sup> Report of the Committee on Amendments to Criminal Law, p.149.

violence against women.<sup>32</sup>

The Criminal Law (Amendment) Act amended section 197 of the Code of Criminal Procedure to remove this requirement for government officials<sup>33</sup>, and imposed harsher punishments for certain kinds of rape committed by security forces.<sup>34</sup> However, the Act did not amend the AFSPA to remove the requirement of government permission for the prosecution of members of security forces. The Act hence continues the legal immunity that members of security forces effectively enjoy under laws like the AFSPA, which prevents victims from taking their cases to the courts.

**Box 1: Impunity for violence against women in conflict areas**

Thangjam Manorama Devi, a 32-year old woman, was arrested from her home in Manipur on 11 July 2004 by Assam Rifles personnel and taken for 'questioning'. A few hours later, her corpse was found a few kilometres away by villagers, bearing bullet wounds on her back and genitals, and signs of rape and other torture.<sup>35</sup> Demonstrations broke out across the state. In an iconic protest, a group of elderly women stripped naked in front of the headquarters of the Assam Rifles, carrying banners that read 'Indian Army, rape us' and demanding justice. But to this day, nobody has been tried in the case. The Army claims that Thangjam Manorama Devi was shot while trying to escape from custody, and insist that any prosecution for this act can take place only with the sanction of the central government, under the Armed Forces Special Powers Act.

The military is extremely reluctant to share substantive information about inquiries and courts-martial into allegations of human rights violations. The government of India has stated in its Addendum to the combined fourth and fifth periodic reports that 1,332 of 1,412 investigated complaints of human rights violations by members of the armed forces were found to be false. However, it has not shared details of the inquiries into these complaints. Further, no information is publicly available regarding the number of allegations of human rights violations committed by the paramilitary forces.

The fact that authorities have in effect deemed about 94 percent of the complaints they investigated to be "false," without disclosing details of the inquiries or even the nature of the complaints appears to reflect a culture of impunity rather than an absence of wrongdoing. Serious questions remain about whether the military have been able to effectively investigate

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<sup>32</sup> These included rape, sexual assault, sexual harassment, voyeurism and stalking.

<sup>33</sup> Under the amended Section 197, prior permission for prosecuting government officials is not needed in cases of crimes involving violence against women.

<sup>34</sup> Section 376(2)(c) of the amended Penal Code makes rape by a member of the armed forces punishable with imprisonment for a period between ten years and the remainder of the person's life.

<sup>35</sup> Human Rights Watch, The Killing of Thangjam Manorama Devi, <http://www.hrw.org/reports/2008/india0908/3.htm>

and prosecute alleged human rights violations by their personnel, and provide civilian victims with an adequate remedy.

The Special Rapporteur on Violence against Women noted that the AFSPA and its variations “allow for the overriding of due process rights and nurtures a climate of impunity and a culture of both fear and resistance by citizens”<sup>36</sup> and called for its repeal. This is in line with the recommendations made by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions<sup>37</sup> and the UN Special Rapporteur on the situation of human rights defenders during their visits to India.<sup>38</sup>

## VIOLENCE AGAINST WOMEN FROM DISADVANTAGED GROUPS

Another major concern for authorities is the widespread incidence of violence against women from marginalised castes and communities, including Dalits (so-called ‘untouchables’) and Adivasis (indigenous people). The figures for total number of reported cases of violence against women is not disaggregated by caste, ethnicity or religion, so full figures of the extent to which women from these groups report violence is not known. However, there is special legislation relating to crimes committed against Scheduled Castes (Dalits) and Scheduled Tribes (Adivasis) and when specific crimes are registered under that legislation as well as the Indian Penal Code then separate figures are available. The National Crime Records Bureau recorded 1,576 cases of rape reported against Dalit women and 729 cases against Adivasi women in 2012.<sup>39</sup>

This figure is likely to be a significant underestimate. Activist groups say that systemic bias against Dalits and Adivasis make it less likely that crimes against women will be reported, investigated and prosecuted effectively. A 2005 study on 500 cases of violence against Dalit women in four states found that two out of five women who had experienced violence did not seek legal remedies, primarily out of fear of the perpetrators or social stigma, ignorance of the law, or the belief that they would not get justice.<sup>40</sup>

Dalit and Adivasi women face multiple levels of discrimination and violence. Members of dominant castes are known to use sexual violence against Dalit women and girls as a political

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<sup>36</sup> A/HRC/26/38/Add.1, para. 23

<sup>37</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, on his mission to India (A/HRC/23/43/Add.1), para 21-28.

<sup>38</sup> Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, Mission to India (A/HRC/19/55/Add.1), para 145.

<sup>39</sup> NCRB 2012.

<sup>40</sup> A Irudayam, JP Mangubhai, and J Lee, *Dalit Women Speak Out: Violence against Dalit Women in India*, 2006. [http://idsn.org/uploads/media/Violence\\_against\\_Dalit\\_Woment.pdf](http://idsn.org/uploads/media/Violence_against_Dalit_Woment.pdf)

tool for punishment, humiliation and assertion of power. Police are also known to collude with perpetrators from dominant castes in covering up crimes by not registering or investigating offences against Dalits.<sup>41</sup>

In an incident in May 2014, two girls from a lower caste from the Baduan village of the northern province of Uttar Pradesh were allegedly gang raped and hanged from a tree.<sup>42</sup> The girls - aged 14 and 16 – went missing after they had gone to a field to relieve themselves. The father of one of the girls said he sought the help of the local police to find them, but the policemen on duty refused to register or investigate the complaint and slapped him instead. The next morning, the bodies of the girls were found hanging from a tree near their houses.

This problem is also exacerbated by the widespread presence of *khap panchayats*, unelected village councils usually composed entirely of men from a so-called 'high' caste who prescribe rules for social behaviour and interaction in villages. In 2011, the Indian Supreme Court described these panchayats as 'kangaroo courts' and said their decrees were illegal<sup>43</sup>; however, these bodies continue to exist and flout the law. For example, in January 2014, in the state of West Bengal, an elected council of village males allegedly ordered 13 men to gang-rape an Adivasi woman as punishment for falling in love with a man from a different religion.<sup>44</sup>

Some public officials and political leaders have contributed to the culture of impunity for violence against women by appearing to justify violence against women. Commenting on the trial of a gang-rape case from Mumbai in April 2014, a former Chief Minister from the state of Uttar Pradesh stated, "Should rape cases be punished with hanging? They are boys, they make mistakes."<sup>45</sup> In May 2014, responding to the rape and murder of two Dalit girls, the Home Minister of the state of Madhya Pradesh said rape was a social crime which was "sometimes right and sometimes wrong".<sup>46</sup>

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<sup>41</sup> Violence against Dalit Women. Briefing note prepared for the 11<sup>th</sup> session of the Human Rights Council International Dalit Solidarity Network – Cordaid – Justice & Peace Netherlands – National Campaign on Dalit Human Rights – Feminist Dalit Organisation Nepal, available at [http://idsn.org/fileadmin/user\\_folder/pdf/New\\_files/Key\\_Issues/Dalit\\_Women/HRC-11\\_briefing\\_note\\_-\\_Violence\\_against\\_Dalit\\_Women.pdf](http://idsn.org/fileadmin/user_folder/pdf/New_files/Key_Issues/Dalit_Women/HRC-11_briefing_note_-_Violence_against_Dalit_Women.pdf)

<sup>42</sup> *The Times of India*, 29 May 2014 <http://timesofindia.indiatimes.com/city/lucknow/Minors-gang-raped-hanged-in-Badaun/articleshow/35698317.cms>

<sup>43</sup> *Arumugam Servai v. State Of Tamil Nadu* decided on 19 April, 2011

<sup>44</sup> NDTV, 23 January 2014: <http://www.ndtv.com/article/india/20-year-old-tied-to-tree-gang-raped-on-orders-of-village-council-say-police-474433>

<sup>45</sup> NDTV, 10 April 2014: <http://www.ndtv.com/elections/article/election-2014/mulayam-s-shocker-on-rape-boys-make-mistakes-why-hang-them-506823?pfrom=home-lateststories>

<sup>46</sup> *The Hindustan Times*, 5 June 2014: <http://www.hindustantimes.com/india-news/mp-minister-defends-mulayam-akhilesh-over-badaun-rape/article1-1226343.aspx>

# RECOMMENDATIONS

## **Amnesty International recommends that the Indian authorities:**

- Sign and ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;
- Withdraw the declarations and reservation to the Convention, or amend the declarations in such a way that they are compatible with the object and purpose of the Convention;
- Remove the exception on marital rape from the definition of rape in section 375 of the Penal Code;
- Revise sections 354 and 509 of the Penal Code to correctly identify assault as a crime against the physical and mental integrity of the woman, not a crime against her modesty;
- Immediately remove from the law the provisions on the imposition of the death penalty in breach of international human rights law and standards, including those imposing the death penalty for sexual assault crimes;
- Repeal section 377 of the Penal Code which criminalizes consensual same-sex relations;
- Pending the repeal of the Armed Forces Special Powers Act, remove the requirements for government permission to prosecute soldiers accused of crimes involving violence against women and other human rights abuses, and grant that permission in all pending cases;
- Investigate and hold to account members of armed groups and security forces having committed crimes against women, and take all necessary measures to combat the culture of impunity for abuses committed by security forces;
- Publicly disclose information about the investigation of complaints into the alleged human rights violations by members of the armed forces;
- Take measures to prevent and address the systematic discrimination of women from marginalized groups, including gender-based violence;
- Register, investigate and prosecute all crimes involving violence against women from marginalized groups.

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