
DEALING WITH DANGEROUS WOMEN: SEXUAL ASSAULT UNDER COVER OF NATIONAL SECURITY LAWS IN INDIA

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ABSTRACT

This article illustrates the gendered impacts of India's national security laws, through two case studies of women suspected of threatening national security in India. In 2004, Manorama Devi was arrested by paramilitaries on suspicion of belonging to a violent separatist group, and was found murdered several hours later. I look at her family's attempts to hold the armed forces accountable for her death. I also look at the ongoing criminal proceedings against Soni Sori, an indigenous rights activist in central India accused of membership in an armed radical-left group. Through my discussion of these two case studies, I argue that individuals suspected of security offences in India are highly vulnerable to unlawful abuse by security forces because of the way that security laws are structured at a formal level and the manner in which they are applied in practice. I suggest that female suspects in particular are disproportionately vulnerable to sexualized forms of extra-legal violence by state actors. I then argue that Indian governments misapply statutory immunity provisions to shield security forces who commit violence against women. I go on to argue that the state's tolerance of unlawful violence against female suspects is compounded by serious, gendered gaps in the law, and I consider briefly how these gaps could be addressed.

INTRODUCTION

This article illustrates the gendered impacts of India's national security laws, through two case studies of women suspected of threatening national security in India. While the literature on women's experience during armed conflict¹ and on the human rights impacts of national secur-

¹ See, e.g., Christine Chinkin, *Feminist Reflections on International Criminal Law*, in *INTERNATIONAL CRIMINAL LAW AND THE CURRENT DEVELOPMENT OF PUBLIC INTERNATIONAL LAW* 127, 137-38 (Andreas Zimmermann ed., 2002); Kelly D. Askin, *Prosecuting Wartime Rape and Other Gender-Related Crimes under International Law: Extraordinary Advances, Enduring Obstacles*, 21 *BERKELEY J. INT'L L.* 288 (2003); Hilary Charlesworth & Christine Chinkin, *The Gender of Jus Cogens*, 15 *HUM. RTS. Q.* 63 (1993); Rosalind Dixon, *Rape as a Crime in International Humanitarian Law: Where to from Here?*, 13 *EUR. J. INT'L L.* 697 (2002); Judith Gardam & Hilary Charlesworth, *Protection of Women in Armed Conflict*, 22 *HUM. RTS. Q.* 148 (2000); Judith Gardam, *The Neglected Aspect of Women and Armed Conflict-Progressive Development of the Law*, 52 *NETH. INT'L L. REV.* 197 (2005); Judith Gardam, *Women and the Law of Armed Conflict: Why the Silence?*, 46 *INT'L & COMP. L.Q.* 55, 59 (1997); Kathleen M. Pratt & Laurel E. Fletcher, *Time for Justice: The Case for International Prosecutions of Rape and Gender-Based Violence in the Former Yugoslavia*, 9 *BERKELEY WOMEN'S L.J.* 77 (1994).

For human rights and policy analysis, see ELISABETH REHN & ELLEN J. SIRLEAF, *WOMEN, WAR AND PEACE: THE INDEPENDENT EXPERTS' ASSESSMENT ON THE IMPACT OF ARMED CONFLICT ON WOMEN AND WOMEN'S ROLE IN PEACE-BUILDING*

ity laws² is sizeable, research concerning the gendered impacts of national security laws on women, particularly in India, is much more limited.³ This gap deserves to be addressed, particularly given the expansion of national security regimes in scope and intensity in many states after September 11, 2001,⁴ often at the expense of individual rights.⁵

(Gloria Jacobs ed., 2002); see also U.N. Secretary-General, *Women, Peace and Security*, 1325, U.N. Doc. S/2002/1154 (Oct. 16, 2002); Charlotte Lindsey, *Women Facing War*, INT'L COMMITTEE OF RED CROSS (Dec. 31, 2001), <https://www.icrc.org/eng/resources/documents/publication/p0798.htm>; Amnesty Int'l, *Making Rights a Reality: Violence against Women in Armed Conflict* ACT 77/050/2005 (June 30, 2005).

² See, e.g., SOUTH ASIA HUMAN RIGHTS DOCUMENTATION CENTRE, ALTERNATE REPORT AND COMMENTARY TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE ON INDIA'S THIRD PERIODIC REPORT UNDER ARTICLE 40 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (July 1997); HUMAN RIGHTS WATCH, BACK TO THE FUTURE: INDIA'S 2008 COUNTERTERRORISM LAWS (2010) [hereinafter HRW, BACK TO THE FUTURE]; HUMAN RIGHTS WATCH, GETTING AWAY WITH MURDER: 50 YEARS OF THE ARMED FORCES SPECIAL POWERS ACT (2008) [hereinafter HRW, GETTING AWAY WITH MURDER]; SOUTH ASIAN HUMAN RIGHTS DOCUMENTATION CENTRE, PREVENTION OF TERRORISM ORDINANCE 2001: GOVERNMENT DECIDES TO PLAY JUDGE AND JURY (2001); Amnesty Int'l, *A 'Lawless Law': Detentions Under the Jammu & Kashmir Public Safety Act* AI Index ASA 20/001/2011 (2011); South Asian Human Rights Documentation Centre, *Super TADA: Undeclared Emergency through the Backdoor*, HUM. RTS. FEATURES (Dec. 24, 1999) <http://hrdc.net/sahrdc/hrfeatures/HRF12.htm>. See generally COORDINATION OF DEMOCRATIC RTS. ORGS., THE TERROR OF LAW: UAPA AND THE MYTH OF NATIONAL SECURITY (2012); PEOPLES UNION OF DEMOCRATIC RTS., NOT ANOTHER TERRORIST LAW PLEASE!: A CRITIQUE OF THE PROPOSED CRIMINAL LAW AMENDMENT BILL (2000); PEOPLE'S UNION OF DEMOCRATIC RTS., THROUGH THE LENS OF NATIONAL SECURITY: THE CASE AGAINST DR. BINAYAK SEN AND THE ATTACK ON CIVIL LIBERTIES (2008).

³ A few scholars, including Anjuman Ara Begum, Namrata Gaikwad, Mandy Turner, and Binalakshmi Nepam, have studied violence against women by armed forces in the northeast of India. Singh has touched on the gendered effects of human rights abuses in conflict areas across India. See, e.g., Anjuman Ara Begum, *Rethinking Justice for Sexual Crimes: Realities in North Eastern States of India*, in THE FUTURE OF ASIAN FEMINISMS: CONFRONTING FUNDAMENTALISMS, CONFLICTS AND NEO-LIBERALISM 266 (Nursyahbani Katjasungkana et al. eds., 2012); Namrata Gaikwad, *Revolting Bodies, Hysterical State: Women Protesting the Armed Forces Special Powers Act (1958)*, 17 CONTEMP. S. ASIA 299 (2009); Mandy Turner & Binalakshmi Nepam, *The Impact of Armed Violence in Northeast India: A Mini Case Study for the Armed Violence and Poverty Initiative*, CTR. INT'L COOPERATION & SEC. 28-29 (2004); Navsharan Singh, *Thinking Reparations in the Context of Impunity*, in LANDSCAPES OF FEAR: UNDERSTANDING IMPUNITY IN INDIA 300, 311, 315-16 (Patrick Hoenig & Navsharan Singh eds., 2014).

⁴ For a discussion of such expansion in other states, see William C. Banks, *United States Responses to September 11*, in GLOBAL ANTI-TERRORISM LAW AND POLICY 490, 495 (Victor V. Ramraj et al. eds., 2005). For a discussion focusing on the Indian context, see Sudha Setty, *What's in a Name? How Nations Define Terrorism Ten*

India's security laws grant the state extraordinary coercive power over individuals, expanding government powers to, *inter alia*, arrest, detain, and use force against individuals, while diluting checks and balances over these decisions and limiting citizens' rights to due process.⁶ While India's security regime is notably robust, women's status within Indian society is strikingly weak.⁷ In both the public and private spheres, Indian women routinely encounter discrimination and violence.⁸ As such, given the entrenched marginalization of women in India, they are likely to face particular, gendered risks and vulnerabilities in the national security context.

I concentrate below on the experiences of two women suspected by the state of threatening national security: Thangjam Manorama Devi ("Manorama Devi") and Soni Sori ("Sori"). In 2004, Manorama Devi was arrested by paramilitaries on suspicion of belonging to a violent separatist group, and was found murdered several hours later. I look at her family's attempts to hold the armed forces accountable for her death.⁹ I also look at the ongoing criminal proceedings against Soni Sori, an indigenous rights activist in central India accused of membership in an armed radical-left group.¹⁰

Through my discussion of these two case studies, I argue that individuals suspected of security offences in India are highly vulnerable to unlawful abuse by security forces because of the way that security laws are structured at a formal level and the manner in which they are applied in practice. I argue further that female suspects in particular are dispropor-

Years After 9/11, 33 U. PA. J. INT'L L. 1, 34 (2011). The Indian Parliament passed anti-terrorism legislation soon after September 11, 2001, even though similar legislation had been repealed a few years previously. For a discussion of this, see Surabhi Chopra, *National Security Laws in India: The Unraveling of Constitutional Constraints*, 17 OR. REV. INT'L L. 1, 8 (2015).

⁵ See Colin Harvey, *And Fairness for All? Asylum, National Security, and the Rule of Law*, in GLOBAL ANTI-TERRORISM LAW AND POLICY 152, 158 (Victor V. Ramraj et al. eds., 2005) (generally discussing how changes to immigration and asylum law since 2001 have damaged the rule of law).

⁶ See Chopra, *supra* note 4, at 11-33.

⁷ In 2015, India ranked 130th out of 188 countries on the United Nations Development Programme's Gender Inequality Index. See U.N. Development Programme, *Gender Inequality Index*, in HUMAN DEVELOPMENT REPORT 2015: WORK FOR HUMAN DEVELOPMENT 226 (2015), http://hdr.undp.org/sites/default/files/hdr_2015_statistical_annex.pdf.

⁸ U.S Dep't of State, Bureau of Democracy, H.R. and Lab., *India Human Rights Report* (2014). See generally Rashida Manjoo (Special Rapporteur on Violence Against Women), *Rep. on Violence against women, its causes and consequences: Mission to India*, U.N. Doc. A/HRC/26/38/Add.1 (Apr. 1, 2014), http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A-HRC-26-38-Add1_en.doc.

⁹ See *infra* Section II.A.

¹⁰ See *infra* Section II.B.

tionately vulnerable to sexualized forms of extra-legal violence by state actors. I then argue that Indian governments, both at the national and state levels,¹¹ misapply statutory immunity provisions to shield security forces who commit violence against women. I go on to argue that the state's tolerance of unlawful violence against female suspects is compounded by serious, gendered gaps in the law, and I consider briefly how these gaps could be addressed.

In section I, I describe India's legal regime on national security. In section II, I discuss what happened to Manorama Devi and Soni Sori when they were suspected of threatening national security. In section III, I reflect upon both case studies, highlighting the state's violence, as well as the law's failures, and then discuss the larger implications for women viewed as threats to national security.

I. NATIONAL SECURITY LAWS IN INDIA

National security laws in India are structured in ways that expand the powers of the government, lower checks and balances on government decisions, and dilute the rights of suspects and defendants. Below, I discuss Indian security laws related to preventive detention, anti-terrorism, and military policing. I highlight legal provisions that facilitate human rights abuse by government functionaries. I then discuss the immunity granted to government officials and the armed forces under Indian law and examine why it is difficult to prosecute state actors who abuse their security powers.

A. Preventive Detention Laws

The Constitution of India expressly authorizes administrative detention without charge,¹² or without trial,¹³ on the grounds that a person poses a *potential* threat to “the security of a State, maintenance of public order, or maintenance of supplies and services essential to the community.”¹⁴

¹¹ India is a federal country divided into twenty-nine states that are further divided into districts. I describe the government of the Union of India as the “central” or “national” government throughout this article. I describe the governments of individual states as “state governments.” See *Political Structure: Republic of India*, ECONOMIST INTELLIGENCE UNIT, <http://country.eiu.com/article.aspx?articleid=1903584174&Country=India&topic=Summary&subtopic=Political+structure> (last visited Oct. 30, 2015). For a discussion of these laws, see generally Chopra, *supra* note 4; see also Anil Kalhan et al., *Colonial Continuities: Human Rights, Terrorism, and Security Laws in India*, 20 COLUM. J. ASIAN L. 93, 96 (2006).

¹² INDIA CONST. art. 22, §§ 4-5.

¹³ *Id.*

¹⁴ Past preventive detention laws included the Preventive Detention Act, No. 4 of 1950, INDIA CODE (1955) (repealed 1969), and the Maintenance of Internal Security Act, No. 26 of 1971, INDIA CODE (1971). On preventive detention in India, see Derek P. Jinks, *The Anatomy of an Institutionalized Emergency: Preventive Detention and*

Under the Constitution, an individual subject to “preventive detention” of this nature is not granted the due process rights that are granted to an individual facing criminal proceedings.¹⁵

Based upon these constitutional provisions, the National Security Act (“NSA”) establishes a preventive detention regime that allows the government to detain individuals for up to one year at a time, and repeatedly renew detention orders with little restraint.¹⁶ The NSA allows government officials to issue detention orders “if satisfied with respect to any person that such an order is necessary.”¹⁷ The government’s decision to detain someone without charge is not reviewed by the judiciary; should a detainee want to challenge her detention, she can do so before an administrative board whose members are appointed by the same government whose decision they are reviewing.¹⁸ Detainees have only bare-bone procedural rights during these administrative review proceedings, and are not entitled to disclosure of evidence, legal representation, or a public hearing.¹⁹ Neither the Constitution nor the NSA defines “either the range of acts considered threatening to ‘public order’ and ‘national security’ or the range of acts (or associations) supporting the inference that an individual is likely to commit such acts.”²⁰

Thus, the NSA grants the executive branch broad discretion with ambiguous boundaries, and limits judicial scrutiny over decisions that deprive individuals of liberty for considerable lengths of time. These expansive detention powers are highly vulnerable to abuse.

B. *Anti-terrorism Laws*

Like the preventive detention law discussed above, anti-terrorism laws in India have created far-reaching, broadly drafted offences while diluting the rights of the defendant.²¹ The anti-terrorism laws currently in force

Personal Liberty in India, 22 MICH. J. INT’L L. 311, 341-42 (2001), and A.G. Noorani, *Preventive Detention in India*, 26 ECON. & POL. WKLY. 2608, 2608 (1991).

¹⁵ See INDIA CONST. art. 22, § 3.

¹⁶ The National Security Act, No. 65 of 1980, INDIA CODE (1980), §§ 13, 14(2) [hereinafter NSA].

¹⁷ *Id.* § 3.

¹⁸ *Id.* § 9(3).

¹⁹ *Id.* §§ 8(2), 11.

²⁰ Jinks, *supra* note 14, at 332.

²¹ The first anti-terrorism law in India was passed in 1984, soon after the prime minister at the time, Indira Gandhi, was assassinated. See The Terrorist Affected Areas (Special Courts) Act, 1984, No. 61, Acts of Parliament, 1984 (India). The Terrorist Affected Areas (Special Courts) Act was repealed and replaced with the Terrorist and Disruptive Activities (Prevention) Act (“TADA”), 1987, No. 28, Acts of Parliament, 1987 (India), in 1985, which had a sunset clause requiring it to be renewed every two years. In 1995, the Indian Parliament declined to renew TADA and allowed it to lapse. See HRW, BACK TO THE FUTURE, *supra* note 2, at 1. Following the terrorist attacks in New York on September 11, 2001, the Indian government

are the Unlawful Activities (Prevention) Act (“UAPA”), as amended,²² and the National Investigation Agency Act.²³ These laws criminalize committing or supporting terrorist acts of varying degrees of seriousness. They give the police enhanced powers to search, arrest, detain, and prosecute individual suspects and to search and seize property.²⁴

The powers of the police and prosecution under anti-terrorism laws are considerably more expansive than the state’s powers under the Code of Criminal Procedure,²⁵ which is ordinarily and generally applicable in India.²⁶ Under the UAPA, suspects can be held in pre-trial detention for up to 180 days.²⁷ Thirty of the permissible 180 days can be in police custody, during which time the accused are highly vulnerable to torture and pressure to make confessions.²⁸ Moreover, suspects detained under the UAPA face a higher threshold for securing bail than individuals charged under ordinary criminal law.²⁹

Trials for offences under the UAPA take place in special courts,³⁰ which, while technically open to the public, are often located inside prisons, far from public view.³¹ During trial, the UAPA allows judges to presume guilt based on certain types of circumstantial evidence, and lays down a low threshold for shifting the burden of proof to the accused in relation to serious offences that carry severe punishment.³² For example, evidence of the accused person’s fingerprints found on “anything” used in connection with the offence, or evidence of the accused person having

claimed international obligations and cross-border terrorism as reasons to propose new anti-terrorism legislation, which became the Prevention of Terrorism Act, 2002, No. 15, Acts of Parliament, 2002 (India). On November 26, 2008, within a month of multiple, brutal terrorist attacks in Mumbai, the Unlawful Activities (Prevention) Act, 1967, No. 37, Acts of Parliament, 1967 (India) was amended by the Unlawful Activities (Prevention) Amendment Act, 2008, No. 25, Acts of Parliament, 2008 (India), to incorporate provisions similar to those contained in TADA and the Prevention of Terrorism Act.

²² Unlawful Activities (Prevention) Amendment Act, 2008, No. 25, Acts of Parliament, 2008 (India) [hereinafter UAPA].

²³ National Investigation Agency Act, 2008, No. 34, Acts of Parliament, 2008 (India) [hereinafter NIAA].

²⁴ *Id.* § 9(3).

²⁵ See generally Code of Criminal Procedure Act, No. 2 of 1973 CODE CRIM. PROC. (1974) (India) [hereinafter CCP].

²⁶ See Chopra, *supra* note 4, at 18-22.

²⁷ See CCP, *supra* note 25, § 167; UAPA, *supra* note 22, § 43D(5).

²⁸ See generally HRW, BACK TO THE FUTURE, *supra* note 2.

²⁹ UAPA, *supra* note 22, § 43D(5).

³⁰ NIAA, *supra* note 23, §§ 11-21.

³¹ Jayanth K. Krishnan & Viprav Sharma, *Exceptional or Not? An Examination of India’s Special Courts in the National Security Context*, in GUANTÁNAMO AND BEYOND 283, 296 (Fionnuala Ni Aoláin et al. eds., 2013).

³² See UAPA, *supra* note 22, § 43E.

arms or explosives that might have been used in a terrorist offence is sufficient to displace the presumption of innocence.³³

Previous anti-terrorism laws went as far as allowing confessions made in police custody to be admitted as the prosecution's evidence during trial,³⁴ even though custodial confessions would not ordinarily be admissible during criminal trials in India. While the UAPA does not permit the prosecution to include custodial confessions into evidence, it nevertheless expands the powers that the police and prosecution would ordinarily have and considerably reduces the rights that defendants would ordinarily exercise under Indian law.³⁵

C. *Military Policing Laws*

In addition to preventive detention and anti-terrorism laws, India also has in force "military policing" legislation, that allows the armed forces to be deployed domestically in order to maintain public order and security. Under the Armed Forces (Special Powers) Act ("AFSPA"), the central government can designate any part of India, and state governments can designate any part of their respective states, as being "disturbed."³⁶ Once an area is declared to be "disturbed," the AFSPA gives the armed forces a civilian policing role within that area.³⁷ Thus, within a disturbed area, soldiers and paramilitary personnel perform many of the same functions as the civilian police.

Moreover, while performing these functions, the armed forces are given considerably greater powers to arrest, search, and use force against individuals under the AFSPA, than the civilian police under ordinary criminal law.³⁸ For example, the AFSPA grants broad "shoot-to-kill" powers to the armed forces, forgoing any requirement that force should be proportionate to the threat at hand.³⁹ Specifically, Section 4(a) of AFSPA provides that a member of the armed forces can, after giving "such due warning as he may consider necessary," "fire upon or otherwise use force, even to the causing of death" against any person who is contravening a law or an executive order related to public gatherings of over five people or carrying weapons, if he feels such force is needed to maintain public order.⁴⁰ By contrast, Section 130 of the Code of Criminal Procedure, which regulates the maintenance of public order in areas that

³³ *Id.*

³⁴ See Prevention of Terrorism Act, 2002, No. 15, § 32, Acts of Parliament, 2002 (repealed but not retroactive) [hereinafter PTA].

³⁵ See Krishnan & Sharma, *supra* note 31, at 283, 296.

³⁶ The Armed Forces (Special Powers) Act, 1958, No. 28, § 3, Acts of Parliament, 1958 (India) [hereinafter AFSPA].

³⁷ *See id.*

³⁸ *Id.* § 4.

³⁹ CCP, *supra* note 25, § 130.

⁴⁰ AFSPA, *supra* note 36, §4(a).

are not declared “disturbed,” requires the police to use “as little force, and do as little injury to persons and property, as may be consistent with dispersing the [unlawful] assembly.”⁴¹

The AFSPA also fails to specify how long the armed forces can hold people in their custody before handing them over to the police. In contrast, someone arrested under the Code of Criminal Procedure cannot be held in custody for more than twenty-four hours without being charged of an offence.⁴² The coercive powers that the AFSPA grants the armed forces in disturbed areas are so expansive as compared to ordinary policing powers that they also carry a strong potential for abuse.

D. *Immunity Provisions*

As discussed above, preventive detention, anti-terrorism, and military policing laws in India grant government officials wide discretion, while diluting checks and balances on their decisions. The manner in which these laws are structured creates the risk of abuse, and this risk has been borne out in practice. As will be discussed below, human rights documentation reveals that national security laws in India are strongly associated with custodial torture, biased detention, and improper prosecution.

Human rights abuse is facilitated not only by the security laws that enlarge executive powers while minimizing checks and balances, but also by legal barriers to punishing officials who abuse their powers. Indian law grants a substantial degree of legal immunity to civil servants, police officers, and soldiers for their actions while exercising national security powers.

The AFSPA has the most far-reaching immunity clause in this regard: no legal proceedings — criminal or civil — can be launched against a member of the armed forces acting under the AFSPA, unless the central government permits such proceedings.⁴³ This means that the prosecutor on the ground must apply to the National Ministry of Home Affairs (“Home Ministry”) in New Delhi for permission to prosecute allegations against armed forces personnel.⁴⁴

India’s Code of Criminal Procedure similarly requires the Home Ministry’s permission before prosecuting civil servants.⁴⁵ As a result, a senior police official who sanctions torture in custody could not be prosecuted without express permission from the central government.

Thus, on the one hand, national security laws loosen restraints on the state’s power to use force in ways that facilitate unlawful violence. On

⁴¹ CCP, *supra* note 25, § 130.

⁴² *Id.* § 151(2).

⁴³ AFSPA, *supra* note 36, § 6.

⁴⁴ Amnesty Int’l, *Briefing: The Armed Forces Special Powers Act: A Renewed Debate in India on Human Rights and National Security*, AI Index ASA 20/042/2013 (Sept. 2013), <https://www.amnestyusa.org/sites/default/files/asa200422013en.pdf>.

⁴⁵ CCP, *supra* note 25, § 197.

the other hand, Indian law offers considerable protection to senior officials from criminal prosecution, and the AFSPA in particular protects *all* members of the armed forces — however senior or junior — who exercise military policing powers, from both criminal prosecution and civil suit. Although prosecution is not entirely barred, the limited information available⁴⁶ suggests that the Indian government rarely allows it,⁴⁷ thereby expanding the partial immunity granted under the law into blanket immunity from legal action in practice.⁴⁸

These are the legal parameters within which the state's violence against Thangjam Manorama Devi and Soni Sori unfolded. I discuss each of their cases next.

II. CASE STUDIES OF TWO FEMALE SUSPECTS

Below, I recount the experiences of two women suspected of threatening national security in India. I highlight the circumstances in which each of them raised the suspicion of the authorities, the manner in which the police and armed forces abused their national security powers and inflicted unlawful violence on both women, and the challenges involved in seeking redress and accountability in each case. I suggest that these case studies illustrate how Indian security laws facilitate human rights abuse. I then discuss the gaps and weaknesses in the law revealed by these case studies in Section III.

A. *The Extrajudicial Execution of Thangjam Manorama Devi*

In 2004, the year that she was extra-judicially executed, 28-year-old Thangjam Manorama Devi was living with her family in Imphal East district, in the northeast Indian state of Manipur.⁴⁹ She worked as a weaver,

⁴⁶ There are no publicly available statistics on the number of applications for permission to prosecute government officials, civil or military. A human rights report by the South Asia Human Rights Documentation Centre states that, as of 1995, no individual from the northeast states had applied for permission to file a civil suit. See SOUTH ASIA HUMAN RIGHTS DOCUMENTATION CENTRE, ARMED FORCES SPECIAL POWERS ACT: A STUDY IN NATIONAL SECURITY TYRANNY (1995), http://www.hrdc.net/sahrhc/resources/armed_forces.htm (last visited Oct. 18, 2015). Research that used India's Right to Information Act of 2005 to seek information about applications and permission to prosecute under Section 197 of the Code of Criminal Procedure recorded that the Ministry of Home Affairs refused multiple requests to disclose the information requested. See Surabhi Chopra, *Holding Public Officials Accountable, in ON THEIR WATCH* 285-86 (Surabhi Chopra et al. eds., 2014).

⁴⁷ See *infra* Section III.B.

⁴⁸ *Id.*

⁴⁹ Biographical details about Thangjam Manorama Devi are largely drawn from legal documents filed by her mother and brother, under Article 226 of India's Constitution. See Writ Petition, at 9, Devi et al. v. Union of India et al., No. 10192, (2010) SJC [hereinafter "Writ Petition"] [on file with author].

having given up her undergraduate studies some years prior in order to financially support her family.⁵⁰ Manorama Devi lived in an area that had long been designated as “disturbed” under the AFSPA, and had therefore been subject to military policing. All or part of Manipur had been categorized as such since the AFSPA first came into force in 1958.⁵¹

This long-running deployment of the armed forces was in response to protracted separatist insurgency in Manipur.⁵² Militant groups in this region have sought independence from India for many years, their demands and their violence fueled by ethnic conflict, weak governance and high unemployment.⁵³ The armed forces stationed in Manipur to tackle militant groups have frequently targeted non-violent civilians instead; wanton brutality by soldiers and paramilitary personnel has further alienated many Manipuris.⁵⁴

On July 10, 2004, a group of paramilitary personnel belonging to the Assam Rifles (“Rifles”) arrived at Manorama Devi’s house around midnight.⁵⁵ They searched the premises, locked Manorama Devi’s family in the house and dragged her outside, where she was gagged, beaten, drenched with water and attacked with a knife.⁵⁶ Her family could only partially see what was happening through the window, but they could

⁵⁰ See *id.* at 6.

⁵¹ See AFSPA, *supra* note 36, § 1.

⁵² See *Singh v. Manipur*, AIR 2006 Gau 33 ¶ 6 (India). See also Shamil Shams, *Insurgency and Isolation Define India’s Manipur State*, DEUTSCHE WELLE (Apr. 20, 2012), <http://www.dw.com/en/insurgency-and-isolation-define-indias-manipur-state/a-15900103>.

⁵³ *India’s Wild Northeast: The Mayhem in Manipur: Violence, Extortion and a Yearning for Independence*, ECONOMIST (Mar. 1, 2007), <http://www.economist.com/node/8786297>; M. Sajjad Hassan, *Explaining Manipur’s Breakdown and Manipur’s Peace: The State and Identities in North East India 10-11* (unpublished), <http://eprints.lse.ac.uk/28150/1/wp79.pdf>.

⁵⁴ See Christof Heyns (Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions), *Mission to India: Comments by the State on the Report of the Special Rapporteur*, U.N. Doc A/HRC/23/47/Add.7 (May 27, 2013); Civil Society Coalition, Memorandum of Extrajudicial, Summary or Arbitrary Executions Submitted to Christof Heyns (Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions) 11 (Mar. 28, 2012). See also Namrata Gaikwad, *Revolting Bodies, Hysterical State*, 17 CONTEMP. S. ASIA 299 (2009); Dolly Kikon, *The Predicament of Justice: Fifty Years of Armed Forces Special Powers Act in India*, 17 CONTEMP. S. ASIA 271 (2009); Meenakshi Ganguly, *Extrajudicial Killings Corrode Democracy in India*, N.Y. TIMES (July 15, 2013), <http://india.blogs.nytimes.com/2013/07/15/extrajudicial-killings-corrode-democracy-in-india/>; Sandeep Joshi, *Court-Appointed Panel Highlights Misuse of AFSPA in Manipur*, HINDU (July 17, 2013), <http://www.thehindu.com/news/national/other-states/courtappointed-panel-highlights-misuse-of-afspa-in-manipur/article4921637.ece>.

⁵⁵ See Writ Petition, *supra* note 49, at 6.

⁵⁶ See *id.* at 6-8. See also HON. C. UPENDRA SINGH, REPORT OF THE COMMISSION OF THE JUDICIAL INQUIRY ¶¶ 5-11 (2004), <http://www.hrln.org/hrln/images/stories/>

hear what the Rifles were doing.⁵⁷ After torturing Manorama Devi for about half an hour, the Rifles told her to change her clothes.⁵⁸ They handed the family an arrest memo, and forced them to sign a “no-claims” certificate stating that Manorama Devi’s arrest had been a lawful one and that the security personnel had “not misbehaved with women folk or . . . damaged any property.”⁵⁹ Against the query about the arrestee’s health and bodily injuries on the arrest memo, the Rifles recorded the word “healthy.”⁶⁰ The Rifles took Manorama Devi away, and she was found dead and abandoned early the next morning.⁶¹ She had been shot several times.⁶² An official inquiry would reveal that she had been tortured through the night and raped, before being killed.⁶³

Manorama Devi’s family complained to the police even before they knew she was dead, in an effort to secure her release.⁶⁴ Once they learned that she had been killed, they lobbied to access the official post-mortem report, and pressed for the Assam Rifles personnel to be prosecuted.⁶⁵ The Rifles, in turn, also lodged a criminal complaint, alleging that Manorama Devi was active in a violent separatist group and further, that she had escaped while she was under arrest, forcing them to shoot her.⁶⁶ The police filed a criminal case against the dead woman and began investigating what had happened, but on the basis of the Rifles’ complaint.⁶⁷ Manorama Devi’s family had refused to claim her body from the morgue until the police investigated her death as a matter of urgency — the family wanted to ensure that her injuries were properly recorded.⁶⁸ The police cremated her body without her family’s permission.⁶⁹

Manorama Devi was by no means the first person to be extra-judicially executed and tortured by the armed forces.⁷⁰ But her killing was so bru-

pdf/report-of-commission-of-the-judicial-inquiry-manorama-death.pdf [hereinafter Devi Commission of Inquiry].

⁵⁷ Writ Petition, *supra* note 49, at 6-7.

⁵⁸ *Id.* at 8-9.

⁵⁹ Copy of Arrest Memo and No Claims Certificate [on file with author].

⁶⁰ *Id.*

⁶¹ Writ Petition, *supra* note 49, at 6-12.

⁶² *Id.* at 11-12; Devi Commission of Inquiry, *supra* note 56, at 218-19.

⁶³ Writ Petition, *supra* note 49, at 6-7.

⁶⁴ *Id.* at 10-11.

⁶⁵ *Id.* at 14-15

⁶⁶ First Information Report, No. 30(7)04 U/S 302/34 IPC, July 12, 2004 [on file with author].

⁶⁷ See Writ Petition, *supra* note 49, at 6-7.

⁶⁸ *Id.* at 19.

⁶⁹ *Id.*

⁷⁰ First Information Report, *supra* note 66.

tal that it triggered extensive public protests in Manipur.⁷¹ In response, the government of Manipur established a commission led by a judge to inquire into Manorama Devi's death.⁷² The Rifles resisted appearing before the commission, leading to repeated delays and postponements.⁷³

While the Rifles were evading the commission's requests, this fact-finding inquiry was also challenged before the Gauhati High Court ("High Court") by the Assam Rifles and the central government.⁷⁴ They argued that, within India's federal system, the armed forces fell under the constitutional aegis of the *central government*, and therefore, the Manipur *state* government could not initiate an inquiry against the actions of the armed forces.⁷⁵ The High Court initially agreed with the Rifles and the central government.⁷⁶ Declaring the commission of inquiry unconstitutional, the High Court held in 2006 that it was for the central government to examine the commission's report, to react to relevant findings, and to decide whether or not to release the report.⁷⁷

However on appeal, the High Court reversed its previous decision, and in 2011, it held that the inquiry was constitutional because the state government was responding to a serious disruption of public order, and maintaining public order is the express responsibility of the state rather than the central government within the federal division of labor under the Indian Constitution.⁷⁸ The central government refused to accept the High Court's decision, and filed an appeal in the Supreme Court of India.⁷⁹ Four years later, the Supreme Court has yet to conclusively resolve this dispute.⁸⁰

Thus, the Rifles refused to cooperate with the commission of inquiry, and challenged its existence in court;⁸¹ they also ducked criminal investi-

⁷¹ See *Protests Erupt Over Custodial Death of Woman, Many Nail AR Different Bodies Unite Under 48 HR Bandh Call*, SANGAI EXPRESS (July 12, 2004), <http://www.e-pao.net/epRelatedNews.asp?heading=1&src=130704>.

⁷² Gov't of Manipur Secretariat, Home Department Notification No. 8/1(1)/2004-H(Pt.-2), July 12, 2004, reproduced in *Singh v. Manipur*, AIR 2006 Gau 33 ¶ 6 (India) [on file with author].

⁷³ Devi Commission of Inquiry, *supra* note 56, ¶¶ 8-10.

⁷⁴ *Singh v. Manipur*, 2006 AIR 33 ¶ 6 (India).

⁷⁵ *Id.* ¶ 6.

⁷⁶ *See id.*

⁷⁷ *Id.* ¶¶ 27-28.

⁷⁸ *Singh v. Manipur*, (2011) 6 GLR 577 ¶¶ 56-59 (India).

⁷⁹ Petition for Special Leave to Appeal, Nos. 14726 & 14730, *India v. Manipur*, (2011) SJC [on file with author] [hereinafter Petition for Special Leave].

⁸⁰ On December 18, 2014, the Supreme Court of India granted the central government leave to appeal against the Gauhati High Court's decision in *Singh v. Manipur*, (2011) 6 GLR 577. The substantive question before the Supreme Court — the scope of the state government's powers to institute a commission of inquiry following Manorama Devi's killing — has not been conclusively decided.

⁸¹ Devi Commission of Inquiry, *supra* note 56, ¶¶ 9-10.

gation by the simple expedient of moving out of Manipur.⁸² Given this situation, in 2010, Manorama Devi's family petitioned the High Court, arguing that the Rifles had violated Manorama Devi's constitutional right to life, and seeking compensatory damages as well as injunctive relief of having the government release the inquiry report and prosecute the individuals who killed Manorama Devi.⁸³

In filing this constitutional petition, Manorma Devi's family followed the example of several victims of abuse by the armed forces who have sought monetary compensation before the High Court and the Supreme Court, on the grounds that their constitutional rights to life and freedom from torture had been violated.⁸⁴ In a watershed decision in the early 1980s, the Supreme Court granted compensation to the widows of two men who had been extra-judicially executed by soldiers using AFSPA powers in Manipur.⁸⁵ In the wake of this decision, many victims of abuse by soldiers have filed similar "constitutional tort" petitions seeking judicial remedies – monetary compensation in particular — for the violation of their rights under the Constitution.⁸⁶

The petition filed by Manorama Devi's family remains pending before the High Court.⁸⁷ It is unlikely to be decided until the Supreme Court resolves the dispute between the central and state governments about the constitutionality of the commission of inquiry into Manorama Devi's death. While the case before the Supreme Court has yet to be conclusively decided, it finally made some substantive progress in 2014, after three and a half years of preliminary hearings: the central government proposed that it would give Manorama Devi's family a sum of Rs 1,000,000⁸⁸ and the Supreme Court accepted the proposal.⁸⁹

⁸² Singh v. Manipur, (2011) 6 GLR 577 ¶¶ 57 (India).

⁸³ Writ Petition, *supra* note 49, at 15-16.

⁸⁴ See, e.g., Kinjinbou Liangmei v. India, 1999 ACJ 1236; Kusumkamini Singha v. India, 1999 (2) GLT 361; Kangujam Ongbi Thoibi Devi v. Manipur, 1999 Cri LJ 3584; Khumanthem Ongbi Pangabam Ningol Ibemhal Devi v. Manipur, 2006 Cri LJ 1166; Gaingamliu Zemei v. India, 2010 (4) GLT 215; Kiutaliu. v. India, (2011) 6 GLR 87; Khungdom Manisana Singh v. India, MANU/MN/0078/20; S. Kahaowon v. India, 2007 (1) GLT 26.

⁸⁵ Hongray v. India, AIR 1984 SC 571 (India).

⁸⁶ *Rights Group To Pursue Petition For Prosecution*, TIMES OF INDIA (Dec. 21, 2014), <http://timesofindia.indiatimes.com/city/guwahati/Manorama-killers-may-face-trial/articleshow/45588863.cms>.

⁸⁷ See *id.* (reporting that counsel for Manorama Devi's family was still pursuing the petition for redress filed before the High Court).

⁸⁸ Rs. 1,000,000 was approximately US \$16,000 at the currency exchange rate on Dec. 1, 2014. See Press Release, *Historical Rates for the Indian Rupee*, FED. RES. (Oct. 19, 2015), http://www.federalreserve.gov/releases/h10/hist/dat00_in.htm. See also Petition for Special Leave, *supra* note 79, ¶ 1; *Pay Rs. 10 Lakh to Family of Manorama, SC Tells Govt.*, HINDU (Dec. 19, 2014), <http://www.thehindu.com/news/>

The sum of money that Manorama Devi's family received from the central government was somewhat larger than sums typically given to families bereaved as the result of extra-judicial execution.⁹⁰ However, the government has pointedly classified the money as "ex-gratia," i.e., voluntary financial aid, not as compensatory damages that were owed to Devi's family. As such, the government has not conceded any fault in relation to her death.⁹¹ Further, the men who killed Manorama Devi have not been investigated, let alone charged or prosecuted.

The state's response to the extrajudicial execution of Manorama Devi exemplifies how unlawful violence by state actors is tolerated in practice: unequivocal findings of torture, rape and unlawful killing by a government-appointed commission of inquiry⁹² have not moved the central government to prosecute those responsible. Not only has the government withheld permission to prosecute, it has failed to formally acknowledge, either in court or in settlement, the commission's finding that paramilitary forces raped and killed an innocent person.

B. *The Custodial Torture of Soni Sori*

Soni Sori is a public school teacher and an indigenous rights activist from the central Indian state of Chhattisgarh.⁹³ Like a large proportion of Chhattisgarh's inhabitants, Soni Sori belongs to a minority tribal community that has historically been impoverished and marginalized.⁹⁴ She lives in the district of Dantewada, a mineral-rich area with an active min-

national/other-states/pay-rs-10-lakh-to-family-of-manorama-sc-tells-govt/article6705588.ece.

⁸⁹ See Petition for Special Leave, *supra* note 79, ¶ 3. *Defence Ministry releases Rs. 10 lakhs ex-gratia for Manorama's Mother as per Supreme Court order*, IMPHAL FREE PRESS (Mar. 13, 2015), <http://kanglaonline.com/2015/03/defence-ministry-releases-rs-10-lakhs-exgratia-for-manoramas-mother-as-per-supreme-court-order/>.

⁹⁰ In *Devi v. Manipur*, in 2006, the High Court awarded Rs. 350,000 in damages to the family of Jugindro Singh, who had been arbitrarily detained, tortured, and killed by the army eight years previously. *Devi v. Manipur*, 2006 Cri LJ 1166. In another case *Zemei v. India*, decided in 2010, the High Court granted Rs. 400,000 as compensation to the applicant ten years after her husband was killed by soldiers in Manipur. *Gaingamliu Zemei v. India*, 2010 (4) GLT 215. In a more recent case *Kiutaliu v. India*, the High Court awarded damages of Rs. 500,000 each to the families of eight men who had been summarily shot by soldiers in Manipur eleven years previously. *Kiutaliu v. India*, (2011) 6 GLR 87.

⁹¹ See *supra* text accompanying note 90.

⁹² See generally *Devi Commission of Inquiry*, *supra* note 56.

⁹³ *Who is Soni Sori?*, STAND UP FOR SONI SORI (2013), <https://sonisori.wordpress.com/aboutsoni/> [hereinafter *Who is Soni Sori?*].

⁹⁴ Ilina Sen, *A Situational Analysis of Women and Girls in Chhattisgarh*, NAT'L COMM'N FOR WOMEN 4, 5 (2004), http://ncw.nic.in/pdfReports/Gender_Profile_Chhattisgarh.pdf.

ing industry, whose inhabitants remain amongst the most deprived in Chhattisgarh.⁹⁵

The mining industry in Chhattisgarh has enriched a corrupt political class, but has brought little benefit to the state's indigenous inhabitants.⁹⁶ Continued poverty, combined with socio-political disruption, has fueled non-violent criticism as well as violent challenges against the government.⁹⁷ Radical-left "Maoist" groups, often targeting government officials and public property, have killed many people over the years.⁹⁸ The Chhattisgarh government has responded with heavy-handed, hair-trigger policing, severe restrictions on expression and peaceful protest, and covert support for informal militias to counter insurgent groups.⁹⁹ As a result, Chhattisgarh's inhabitants find themselves vulnerable to violence from both government forces as well as the insurgents.¹⁰⁰ Critics of the government and of the Maoist groups face a particularly high risk of violence from both sides.¹⁰¹

In September 2011, the police in Dantewada accused Soni Sori and her nephew Lingaram Kodopi ("Kodopi"), of extracting protection money from a mining company on behalf of a Maoist group.¹⁰² A few weeks later, a police constable from Dantewada admitted to a newsmagazine that the police had pressured Sori and her nephew to entrap an agent of the mining company, and framed them when they refused to do so.¹⁰³ Kodopi and Sori were accused of sedition, conspiring to "wage war"

⁹⁵ *See id.*

⁹⁶ *Id.* at 5.

⁹⁷ HUMAN RIGHTS WATCH, BEING NEUTRAL IS OUR BIGGEST CRIME 6 (2008), <http://www.hrw.org/report/2008/07/14/being-neutral-our-biggest-crime/government-vigilante-and-naxalite-abuses-indias> [hereinafter HRW, BEING NEUTRAL].

⁹⁸ *Id.* at 6.

⁹⁹ *See, e.g., id.* at 17; HUMAN RIGHTS WATCH, DANGEROUS DUTY: CHILDREN AND THE CHHATTISGARH CONFLICT 33-45 (2008), <https://www.hrw.org/report/2008/09/05/dangerous-duty/children-and-chhattisgarh-conflict>; NAT'L COMM'N FOR PROTECTION OF CHILD RTS., REPORT OF THE VISIT TO INVESTIGATE THE PROTECTION OF CHILDREN'S RIGHTS IN THE CONFLICT-AFFECTED AREAS OF CHHATTISGARH'S DANTEWADA DISTRICT (2009) [on file with author]. *See also* Chhattisgarh Special Public Security Act, 2006, No. 14 of 2006 (2006), sec. 2(e)(v). This law provides the state government wide discretion and power to ban organizations for speech and actions. For a brief discussion of this statute, see Chopra, *supra* note 4, at 13.

¹⁰⁰ *See* Sen, *supra* note 94, at 6; HRW, BEING NEUTRAL, *supra* note 97, at 14-19.

¹⁰¹ *See supra* note 100

¹⁰² Press Release, Amnesty Int'l, *India: Release Soni Sori on International Women's Day* (Mar. 7, 2012), <https://www.amnesty.org/en/press-releases/2012/03/india-release-soni-sori-international-women-s-day/> [hereinafter AI India].

¹⁰³ Shoma Chaudhury, *The Inconvenient Truth Of Soni Sori*, TEHELKA MAG. (Oct. 15, 2011), http://archive.tehelka.com/story_main50.asp?filename=Ne151011coverstory.asp.

against the government as well as belonging to and supporting an unlawful organization.¹⁰⁴

The legal provisions corresponding to these allegations are highly problematic; the language concerning the criminalized actions is vague, failing to provide adequate notice to civilians while granting a disconcerting amount of discretion to the state. Specifically, Section 120B of the Indian Penal Code (“IPC”) criminalizes “waging war against the government of India,” which is punishable with life imprisonment or the death penalty.¹⁰⁵ In addition, Section 124A of the IPC defines “sedition” as “bring[ing] or attempt[ing] to bring into hatred or contempt, or excite[ing] or attempt[ing] to excite disaffection” against the central or state governments — also punishable with imprisonment up to a life sentence.¹⁰⁶

Moreover, Section 8 of the Chhattisgarh Special Public Security Act (“CSPSA”) — a law that has stirred a great deal of controversy¹⁰⁷ — criminalizes belonging to an unlawful organization or aiding such an organization, with a maximum imprisonment of three years; this provision covers an extremely wide swathe of activity, as the CSPSA defines an unlawful organization as one that engages in any unlawful activity and defines an unlawful activity as any speech or action that, *inter alia*, “constitute[s] a danger or menace to public order, peace and tranquility” or “encourage[s] or preach[es] disobedience to established law and its institutions” or “interferes or tends to interfere with the administration of law.”¹⁰⁸

The police had accused Sori and Kodopi of threatening national security on prior occasions too.¹⁰⁹ Five criminal cases against Sori in this

¹⁰⁴ Lingaram Kodopi and Soni Sori were suspected by the Chhattisgarh police of having committed offences “under Sections 121, 124(1) and 120B of the Indian Penal Code as well as Sections 8 (1), (2), and (3) of the Chhattisgarh Jansuraksha Adhiniyam and Sections 10 & 13 of the Unlawful Activities of the Act.” *Kodopi v. Chhattisgarh*, (2014) 3 SCC 474; *Sori v. Chhattisgarh*, (2014) 3 SCC 482 ¶ 3.

¹⁰⁵ Indian Penal Code Act, No. 45 of 1860, § 120B, PEN. CODE (1860) [hereinafter IPC].

¹⁰⁶ *Id.* § 124A.

¹⁰⁷ See, e.g., GRACE PELLY, STATE TERRORISM: TORTURE, EXTRA-JUDICIAL KILLINGS AND FORCE DISAPPEARANCES IN INDIA, REPORT OF THE INDEPENDENT PEOPLE’S TRIBUNAL 148-150 (2008).

¹⁰⁸ See *National convention to protest against the passage of the Chhattisgarh Public Safety Act, 2005*, PEOPLES UNION FOR DEMOCRATIC RTS., <http://www.pudr.org/?q=content/national-convention-protest-against-passage-chhattisgarh-public-safety-act-2005> (discussing CSPSA sections 2(e) and 2(f)). Sections 10 and 13 of the UAPA also criminalize participating in or aiding an unlawful organization. UAPA, *supra* note 22, §§ 10, 13.

¹⁰⁹ See Chaudhury, *supra* note 103; Nida Najar, *Tribal Activist Candidate Poses a Problem for Aam Aadmi*, N.Y. TIMES (Mar. 27, 2014), <http://india.blogs.nytimes.com/2014/03/27/tribal-activist-candidate-poses-a-problem-for-aam-aadmi/>.

regard had been previously dismissed for lack of evidence.¹¹⁰ Her nephew, Kodopi, had faced similar harassment in his work as a journalist.¹¹¹ Two years prior, he had been held, without formal arrest or charge, in the toilet of the local police station for forty days, until a successful habeas corpus petition organized by Sori secured his release.¹¹²

Against this backdrop, fearing what the police might do, Sori absconded to Delhi to evade arrest.¹¹³ When she was arrested in Delhi on October 4, 2011 and brought before a court, she pleaded not to be sent back to Chhattisgarh.¹¹⁴ The judge refused her request and handed the matter to the judiciary in Dantewada district, who in turn handed her over to the local police for questioning after warning the police not to torture her.¹¹⁵

Almost as soon as the police had Soni Sori in their custody, they tortured her over the course of two days.¹¹⁶ When she appeared in Dantewada district court on October 10, 2011 for a hearing, she was barely able to walk.¹¹⁷ In a recent interview, she recounted the details of being tortured:

The superintendent, Ankit Garg, asked me to sign documents that would confirm I was involved with the Maoists. I refused. He then asked the lady constables to leave . . .

The police officials started abusing me, calling me a whore and saying I indulge in sexual acts with Maoists. They stripped me naked, made me stand in an “attention” position and gave me electric shocks on various parts of my body. I still didn’t relent. They then shoved red chili powder inside my vagina. By now, I was losing consciousness, but I refused to sign the documents. The cops started inserting stones into my private parts. Many stones — so many that they started falling out. I finally collapsed.

The next morning, I could barely move when I was taken to court. My biggest complaint is that the magistrate didn’t even see me once

¹¹⁰ Kodopi v. Chhattisgarh, (2014) 3 SCC 474; Sori v. Chhattisgarh, (2014) 3 SCC 482 ¶ 3 [on file with author].

¹¹¹ Tusha Mittal, *They Dared to Speak Up. But That’s Not Done in Dantewada*, TEHELKA (June 30, 2012), <http://www.tehelka.com/2012/06/they-dared-to-speak-up-but-thats-not-done-in-dantewada/>.

¹¹² See Kodopi v. Chhattisgarh, (2014) 3 SCC 474; Sori v. Chhattisgarh, (2014) 3 SCC 482 ¶ 7. See also Chaudhury, *supra* note 103.

¹¹³ *Who is Soni Sori?*, *supra* note 93.

¹¹⁴ Case history submitted by counsel for Soni Sori to the Supreme Court was summarized in the Order. See Sori v. Chhattisgarh, (2011) SCR 206 ¶ 1.

¹¹⁵ *Id.* ¶ 3.

¹¹⁶ See AI India, *supra* note 102; Supriya Sharma, *NHRC Seeks Facts on Soni Sori’s ‘Torture,’* TIMES OF INDIA (Oct. 12, 2011), <http://timesofindia.indiatimes.com/india/NHRC-seeks-facts-on-Soni-Soris-torture/articleshow/10330499.cms?prtpage=1>.

¹¹⁷ *Who is Soni Sori?*, *supra* note 93.

and sent me to prison. In the days that followed, I was admitted to the hospital, where they chained me to the bed. When I asked why, they said it was procedural.¹¹⁸

Sori went on a hunger strike in protest and petitioned the Supreme Court for relief.¹¹⁹ Detailing how she had been tortured, she asked to be moved to New Delhi for a medical examination.¹²⁰ The Supreme Court wavered and postponed a decision on Sori's request.¹²¹ As an interim measure, the Supreme Court ordered that Sori be medically examined in a hospital outside of Chhattisgarh, in Kolkota, the capital of the neighboring state of West Bengal.¹²² The medical examination in Kolkota confirmed her allegations, revealing sexual and non-sexual physical injuries,¹²³ finding remnants of the stones that had been forced into her body.¹²⁴

Despite this medical evidence, Soni Sori was not granted bail.¹²⁵ Instead, the Supreme Court transferred her from Dantewada to a prison in another part of Chhattisgarh¹²⁶ and then to Delhi so she could receive medical treatment.¹²⁷ Sori was still in custody two years later when her husband died in August 2013.¹²⁸ She was denied a visit home on temporary bail even to perform his last rites and to see her three young children on the occasion of their father's death.¹²⁹

It was not until November 2013 that the Supreme Court granted Sori bail conditioned upon her living in Delhi, furnishing a surety and reporting weekly to her local police station.¹³⁰ Most onerously, Sori was barred from entering Chhattisgarh, which separated her from her children even

¹¹⁸ Priyali Sur, *The long and lonely fight: Q&A with Indian tribal rights activist Soni Sori*, WOMEN UNDER SIEGE (July 29, 2014), <http://www.womenundersiegeproject.org/blog/entry/the-long-and-lonely-fight-qa-with-indian-tribal-rights-activist-soni-soni>.

¹¹⁹ Sharma, *supra* note 116.

¹²⁰ Sori v. Chhattisgarh, (2011) SCR 206 ¶ 5 (noting that Sori had requested the Supreme Court to order the government of Chhattisgarh to transfer Sori to New Delhi and to order admit her to the All India Institute of Medical Sciences, a public hospital, for medical treatment) [on file with author].

¹²¹ *Id.* ¶ 8.

¹²² *Id.* ¶ 9.

¹²³ *See id.* ¶ 3. *See also Who is Soni Sori?*, *supra* note 93.

¹²⁴ The medical report is summarized by the Supreme Court Order dated May 2, 2012, in Sori v. Chhattisgarh, (2012) SCR 206, CRL.M.P. Nos. 1104, 4981 & 8976 [on file with author].

¹²⁵ *Who is Soni Sori?*, *supra* note 93.

¹²⁶ Sori v. Chhattisgarh, (2011) SCR 206 ¶ 9 [on file with author].

¹²⁷ *See supra* note 121.

¹²⁸ *See Sur*, *supra* note 118.

¹²⁹ *Id.*

¹³⁰ *See Kodopi v. Chhattisgarh*, (2013) SCR 7879, http://www.sacw.net/IMG/pdf/Soni_Sori_Order.pdf.

after her release from prison.¹³¹ In February 2014, the Supreme Court ameliorated Sori's bail conditions, and she was able to return to her home in Chhattisgarh.¹³² She joined a recently formed political party and contested, unsuccessfully, in India's 2014 Parliamentary elections as a candidate from her local constituency.¹³³

The criminal cases against Soni Sori are still pending.¹³⁴ The government of Chhattisgarh does not appear to have initiated legal proceedings against the police personnel who tortured her. In the absence of any accountability or protection, Sori remains a target: on February 20, 2016, unknown assailants threw acid in her face.¹³⁵ She has stated that she suspects the local police of involvement in the attack.¹³⁶

From reviewing the two cases, it is evident that both Soni Sori and Manorama Devi suffered extreme violations of their fundamental rights in the name of national security. They were denied the rights to freedom from bodily harm, to privacy, and to due process. Manorama Devi was further denied her right to life. Her family has struggled to get redress for these violations, and so has Soni Sori, with very little success in each case.

¹³¹ Ashutosh Bhardwaj, *This Isn't Bail, We Are Still Living in Jail, Says Soni Sori, 'Exiled' in Delhi*, INDIAN EXPRESS (Dec. 26, 2013), <http://archive.indianexpress.com/news/this-isnt-bail-we-are-still-living-in-jail-says-soni-sori-exiled-in-delhi/1211809/>.

¹³² Amnesty Int'l, *Amnesty India Welcomes Bail for Prisoners of Conscience Soni Sori and Lingaram Kodopi* (Feb. 7, 2014), <http://www.amnesty.org.in/show/entry/amnesty-india-welcomes-bail-for-prisoners-of-conscience-soni-sori-and-linga>.

¹³³ Anuja Jaiswal, *Election Results: BJP Conquers Tribal Heartland*, TIMES OF INDIA (May 17, 2014), <http://timesofindia.indiatimes.com/news/Election-results-BJP-conquers-tribal-heartland/articleshow/35227006.cms>; Anuja Jaiswal, *Help Pours in for AAP Candidate Soni Sori in Bastar*, TIMES OF INDIA (Apr. 1, 2014), <http://timesofindia.indiatimes.com/home/lok-sabha-elections-2014/news/Help-pours-in-for-AAP-candidate-Soni-Sori-in-Bastar/articleshow/33047960.cms?prtpage=1>.

¹³⁴ Sori's petition to the Supreme Court challenging her bail conditions and other aspects of the criminal proceedings against her is listed as "pending" on the website of the Supreme Court of India, with the next court hearing scheduled for March 29, 2016. SUP. CT. OF INDIA, NOTICE OF MATTERS, http://supremecourtindia.nic.in/FileServer/2016-03-16_1458125892.pdf (last visited on Mar. 20, 2016). This indicates that the criminal proceedings continue against Sori in relation to allegations of assisting violent radical-leftist groups.

¹³⁵ Pavan Dahat, *AAP leader Soni Sori Attacked*, HINDU (Feb. 21, 2016), <http://www.thehindu.com/news/national/other-states/soni-sori-attacked/article8262627.ece>.

¹³⁶ Soni Sori, *Police Framing My Family For Attack On Me*, INDIAN EXPRESS (Mar. 12, 2016), <http://indianexpress.com/article/india/india-news-india/police-framing-my-family-for-attack-on-me-soni-sori/>.

III. THE STATE'S VIOLENCE AND THE LAW'S FAILURES

In this section, I draw upon the two case studies discussed above to consider the predicament faced by women who are suspected of threatening national security in India. I focus first on women's vulnerability to violence from state actors wielding national security powers. I then turn to failings and gaps in the law that facilitate unlawful violence. I argue that women are especially vulnerable to sexual violence and that such violence aims to intimidate not just individual victims but also the communities in which they live. I argue that, rather than holding culprits accountable, the state has misused statutory immunity provisions to shield them from legal action. Furthermore, the law — even if applied in good faith — fails to adequately criminalize the serious violence against women by state actors. With respect to each of the gaps in the law and flaws in state practice that I identify, I briefly discuss potential reform.

A. *Vulnerability to Sexual Violence*

As discussed in Section I, India's national security laws, with their expanded powers of search, arrest, detention, and other related policing practices, create far greater room for unlawful violence, sexual and otherwise, than ordinary criminal laws. Soni Sori's and Manorama Devi's experiences suggest that women who are processed under national security laws are highly vulnerable to sexual violence in addition to other forms of physical violence by state actors.¹³⁷

Media reports and human rights documentation indicate that female suspects face sexual violence not just in state custody, but even before they are detained or arrested.¹³⁸ Reports over a period of twenty-five years reveal numerous sexual assaults against women and girls by security forces.¹³⁹ Many of these incidents have taken place during searches of people's homes by soldiers and the police.¹⁴⁰ Other incidents of sexual violence have taken place in public; civil society reports recount instances when security forces have inflicted mass sexual violence, committing

¹³⁷ See, e.g., HRW, *BACK TO THE FUTURE*, *supra* note 2; HRW, *GETTING AWAY WITH MURDER*, *supra* note 2.

¹³⁸ Mandy Turner & Binalakshmi Nepam, *The Impact of Armed Violence in Northeast India: A Mini Case Study for the Armed Violence and Poverty Initiative*, CTR. INT'L COOPERATION & SEC. 26-29 (2004).

¹³⁹ See NORTH EAST NETWORK, *BASELINE REPORT: WOMEN IN ARMED CONFLICT SITUATIONS IN INDIA* (2008), http://s3.amazonaws.com/zanran_storage/www.iwraw-ap.org/ContentPages/16787803.pdf [hereinafter NEN].

¹⁴⁰ Turner & Nepam, *supra* note 138, at 28; NEN, *supra* note 139, at 29-33, 39-40, 47, 50, 54. Moreover, in August 1996, Arubi Devi was raped by two soldiers of the Maha Regiment in her home in Manipur while her husband and child were forced to watch, and Lilabati Bahsya and Maniki Bezbaruah were similarly raped in 1998 by soldiers searching their homes for armed insurgents. See Begum, *supra* note 3, at 266-67.

rapes and other types of sexual assaults against groups of women in a town or village.¹⁴¹ Mass sexual violence by soldiers and the police has often been “retaliatory,” and intended to punish local residents after an attack against the state by militants.¹⁴²

Despite wide media coverage and civil society activism, sexual violence by security forces has not subsided. In January 2016, police personnel raped and assaulted thirteen women in remote villages in Chhattisgarh,¹⁴³ only months after reports of mass sexual assaults against women and teenage girls by the police in another part of the state.¹⁴⁴

Manorama Devi, like many of the women discussed in media and human rights reports, was tortured in her home, within the sight and hearing of her family members, before being arrested.¹⁴⁵ Such open sexual violence, whether witnessed by family members or the public, tends to suggest that the police and armed forces feel a real sense of impunity when wielding security powers. It also tends to suggest that security forces are using sexual violence to terrorize not just individual victims but

¹⁴¹ In 1987, the army occupied Oinam village in Manipur for four months, torturing and attacking local residents. Many women in Oinam were sexually assaulted; two women in labor were denied medical help and forced to give birth while soldiers watched. *See* Manipur Baptist Convention v. India, (1988) 1 GLR 433; Turner & Nepram, *supra* note 136, at 28-29. In another example of mass sexual violence, in 1991, paramilitaries sexually assaulted at least thirty-seven women while conducting a search operation in the villages of Baghmara and Agrungguri in the Barpeta district in Assam. *See* Begum, *supra* note 3, at 266. A couple of years before the mass sexual violence in Barpeta, a similar episode occurred in Ujanmaidan in the state of Tripura, when the Assam Rifles raped fourteen women belonging to tribal communities in Purba Gobindabari village. *Id.* at 281; Turner & Nepram, *supra* note 138, at 29.

¹⁴² On December 27, 1994, for example, soldiers attacked civilians in Mokokchung town in Nagaland after their commanding officer was killed in an exchange of fire with militants. In the violence that ensued, many women in Mokokchung were raped, sexually assaulted, and stripped of their clothes. NEN, *supra* note 139, at 28.

¹⁴³ Chitrangada Choudhury, *In Two Districts of Bastar, Adivasi Women Report Sexual Assaults by Security Forces During Military Operations; Police Delay and Resist Filing FIRs*, CARAVAN MAG. (Jan. 24, 2016), <http://www.caravanmagazine.in/vantage/bastar>.

¹⁴⁴ Malini Subramaniam, *Chilling Rape Allegations Force Police To Conduct Rare Investigation Of Security Forces In Chhattisgarh*, SCROLL.IN (Nov. 23, 2015), <http://scroll.in/article/770330/chilling-rape-allegations-force-police-to-conduct-rare-investigation-of-security-forces-in-chhattisgarh>. *See also* Chitrangada Choudhury, *Bijapur Villagers Recount Widespread Sexual Assaults By Men In Uniform*, HINDUSTAN TIMES (Dec. 20, 2015), <http://www.hindustantimes.com/india/bijapur-villagers-recount-wide-spread-assaults-by-men-in-uniform/story-K4U8MxPSS3mO8OkczJVjhL.html>.

¹⁴⁵ HUMAN RIGHTS WATCH, *THESE FELLOWS MUST BE ELIMINATED* 31 (2008), <https://www.hrw.org/report/2008/09/29/these-fellows-must-be-eliminated/relentless-violence-and-impunity-manipur>.

entire neighborhoods and communities, and that the public nature of these attacks is deliberate, not aberrant.

In addition to being vulnerable to violence while being investigated, searched, and arrested, female security suspects arguably also tend to be vulnerable to violence once they are in the state's custody. This vulnerability is heightened by the parameters of India's national security laws — namely, the possibility of administrative detention without charge, the extended periods of pre-charge detention,¹⁴⁶ the higher thresholds for securing bail,¹⁴⁷ and the reduced judicial scrutiny over detention.¹⁴⁸

Protracted stretches in state custody expose security suspects to a high risk of violence. Case records suggest that the judge who remanded Soni Sori to police custody in 2011 was clearly aware that she would likely be mistreated — police officers would not ordinarily be cautioned against torturing a defendant in their custody.¹⁴⁹

When officials abuse the leeway that they are granted by expansive security laws in India, their abusive behavior tends to manifest in misogynist form, when directed at women. Misogyny is evident in the fact that the police tortured Sori by attacking and seeking to humiliate her in a sexual manner. Misogyny is also evident in the verbal abuse that, as Soni Sori stated, the police directed at her; she noted that the police called her a “whore” and accused her of having sex with Maoists insurgents,¹⁵⁰ a gendered slur that may not have been directed at a politically active man, even while a male indigenous rights activist may have been just as vulnerable to custodial torture.

The violence inflicted on Manorama Devi was also gendered, targeting her very specifically as a female suspect. Not only was she raped, she was also shot on the breasts and genitals multiple times by the men from the Rifles.¹⁵¹ The gendered nature of abuse by security forces is also starkly evident during “retaliatory” violence in a particular area. On these occasions, security forces have arguably targeted women instrumentally, as a community resource to be violated in the same way that the property in that area would be attacked.

Since security laws grant government officials considerable discretion, while reducing judicial scrutiny over how this discretion is exercised,

¹⁴⁶ See *supra* Section I.A; see also HUMAN RIGHTS WATCH, IN THE NAME OF SECURITY 72-73 (2012), https://www.hrw.org/sites/default/files/reports/global0612ForUpload_1.pdf.

¹⁴⁷ UAPA, *supra* note 22, § 43D(5). See Chopra, *supra* note 4, at 20.

¹⁴⁸ See *supra* Section I.A.

¹⁴⁹ See *supra* Section II.B.

¹⁵⁰ See *id.*

¹⁵¹ Postmortem Report No. 2118/04 in FIR / UD Case No. 29(7) 04, Iribung Police Station, Imphal East District, July 24, 2004 [on file with author]; Postmortem Report No. 211/04 in FIR / UD Case No. 29(7) 04, Iribung Police Station, Imphal East District, July 12, 2004 [on file with author]. See also Devi Commission of Inquiry, *supra* note 56, ch. II.

these laws allow officials more room to breach the limits of their power.¹⁵² As the ambit of *lawful* force under security laws is wide, the penumbra of *unlawful* force administered by state actors correspondingly involves quite extreme acts of violence.¹⁵³ As a result, individuals who are investigated or arrested under security laws are highly vulnerable to extra-legal violence. Women who fall within this group are particularly at risk of sexual violence, both within and outside of the confines of state custody.

Media and human rights reports indicate that many sexual assaults by security forces have never been formally investigated.¹⁵⁴ Below, I discuss how partial immunity provisions under the law have served to shield soldiers and the police from accountability for sexual violence against female security suspects.

B. *Immunity Provisions As An Alibi*

There is little doubt that the allegations made by Soni Sori and by Manorama Devi's family are credible. Medical evidence produced under the supervision of the Indian Supreme Court confirms Soni Sori's allegations of custodial torture.¹⁵⁵ Manorama Devi's family can give eyewitness testimony about what the Assam Rifles personnel who came to their house did.¹⁵⁶ Post-mortem medical reports show that Manorama Devi was sexually assaulted, beaten, knifed and shot several times.¹⁵⁷ Further, an official commission of inquiry has examined how she was killed and affirmed the account that emerges from witness testimony and medical records.¹⁵⁸

Despite such overwhelming evidence of assault and extrajudicial execution, the central government and armed forces have spent a decade contesting the Manipur government's commission of inquiry.¹⁵⁹ The staunch resistance of the central government to this fact-finding exercise suggests a blanket rejection of accountability for human rights abuse by soldiers, regardless of the particular circumstances at issue. Less dispiritingly, the commission of inquiry demonstrates that people are willing to be examined and give evidence about unlawful violence by security forces, notwithstanding any fears of retaliation. Twenty-seven people, not including witnesses for the Rifles and the central government, gave

¹⁵² See *supra* Section I; see also Chopra, *supra* note 4, at 24-30.

¹⁵³ See HRW, *GETTING AWAY WITH MURDER*, *supra* note 2.

¹⁵⁴ See, e.g., NEN, *supra* note 139; Begum, *supra* note 3.

¹⁵⁵ Sori v. Chhattisgarh, (2011) SCR 206 ¶ 9 (India) [on file with author].

¹⁵⁶ Writ Petition, *supra* note 49, at 6-7.

¹⁵⁷ For the Post-Mortem reports, see *supra* note 151.

¹⁵⁸ Devi Commission of Inquiry, *supra* note 56, at 218.

¹⁵⁹ See *supra* Section II.

evidence before the commission of inquiry into Manorama Devi's death.¹⁶⁰

Despite the possibility of pursuing a credible case in court, the governments of Manipur and Chhattisgarh have not prosecuted the serious crimes committed against Manorama Devi and Soni Sori. As discussed in Section I above, the central government's permission to prosecute is a precondition for actions by state personnel that are taken "in good faith," that is, actions meant to enforce the law or official policies.¹⁶¹ However, in relation to sexual violence committed in both cases, any statutory insulation from criminal proceedings should inherently be irrelevant.

Sexual violence, by its very nature, can and should never constitute acts lawfully committed in the service of a law or government policy. Other forms of physical force by state actors — restraining, shooting to impair, or even shooting to kill an individual — can, under some circumstances, be lawful.¹⁶² In order to control crime and maintain public order, the police and armed forces necessarily have the legal power to use force. When considering whether physical force by state actors constituted an offence in a particular instance, a court would have to evaluate whether violence exceeded the threshold of force legally permitted in those circumstances.¹⁶³

By contrast, there is no circumstance under which sexual force or violence by state actors is, or could be, legally permissible. A soldier or police officer who rapes, sexually assaults, or sexually harasses someone is, unequivocally and archetypically breaching his lawful authority and acting in bad faith.

The central government does not disclose information concerning the number of requests for permission to prosecute state functionaries. However, civil society research indicates that permission has been granted very rarely by the central government.¹⁶⁴ These reports¹⁶⁵ tend to sug-

¹⁶⁰ Devi Commission of Inquiry, *supra* note 56, at 229-32.

¹⁶¹ CCP, *supra* note 25, § 197.

¹⁶² See Criminal Law (Amendment) Bill, 2013, No. 63, § 375, Acts of Parliament, 2013 (India) (amending the IPC, the CCP, as well as two other laws).

¹⁶³ *Id.*

¹⁶⁴ Srivastava Devyani, *Rights-based Critique of AFSPA*, in ARMED FORCES SPECIAL POWERS ACT: THE DEBATE 72 (Vivek Chadha ed., 2012).

¹⁶⁵ A civil society report before the United Nations Human Rights Committee in 1991 indicated that no soldiers had been prosecuted up to that point in any of the northeastern states where the AFSPA has been applied consistently for decades. See SAHRDC, ARMED FORCES SPECIAL POWERS ACT: A STUDY IN NATIONAL SECURITY TYRANNY (1995). More recent research focusing on the state of Jammu and Kashmir indicates that the central government withheld permission to prosecute soldiers in response to all the applications it received in this regard between 1989 and 2011, declining twenty-six applications expressly and failing to respond to the remaining twenty-four. See Freny Manecksha, *Shroud of impunity*, INDIA TOGETHER (Dec. 10, 2011), <http://indiatgether.org/afspa-human-rights>. Similarly, a submission by human

gest that the central government withholds permission to prosecute soldiers as a tacit, default policy, regardless of the specific allegations made in any particular case. By maintaining this stance, the central government is arguing, implicitly, that sexual violence by state personnel could potentially constitute actions “in good faith.” This position is legally untenable.

The central government should explicitly have clarified many years ago that acts of sexual violence do not fall within the immunity provisions discussed above, and can be prosecuted without its permission. In 2013, such a clarification was finally included in the Code of Criminal Procedure (“Code”). Section 197 of the Code, which provides that the central government’s permission is necessary in order to prosecute senior officials, now includes the explanation that such permission is *not* required when a government official is accused of a sexual offence.¹⁶⁶ While this amendment came too late to benefit Soni Sori, cases of sexual assault by state actors now have a greater chance of proceeding to trial without being stymied by the central government. Disappointingly, the even broader immunity provision in the AFSPA has not been similarly clarified, despite the frequent incidents of sexual assault by soldiers as well as the repeated calls for clarification by civil society and a number of public authorities.¹⁶⁷

Even in the absence of such clarification, the central government could improve its response to sexual violence by soldiers and police by granting permission to prosecute sexual offences as a matter of course, recognizing that the criminality alleged in such cases automatically falls outside the scope of actions that might have been taken in good faith.

With the central government misapplying legal immunity provisions to cases of sexual violence by security forces, I argue that state governments should do more to foster accountability. State governments should investigate allegations of abuse by security forces robustly, and apply for permission to prosecute each time they confront a credible case. The restrictions on *prosecuting* soldiers and the police under Indian law do not implicate or bar *investigating* allegations of serious crime. The relevant provisions in the Code of Criminal Procedure require the central

rights groups in Manipur to the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions also suggests that soldiers have rarely been prosecuted for committing unlawful violence against civilians. CIV. SOC’Y COALITION ON HUM. RTS. IN MANIPUR & THE UN, MANIPUR: A MEMORANDUM OF EXTRAJUDICIAL, ARBITRARY OR SUMMARY EXECUTIONS 11 (2012), which was submitted to Christof Heyns, United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions.

¹⁶⁶ CCP, *supra* note 25, § 197.

¹⁶⁷ Sudha Ramachandran, *India’s Controversial Armed Forces (Special Powers) Act*, DIPLOMAT (July 2, 2015), <http://thediplomat.com/2015/07/indias-controversial-armed-forces-special-powers-act/>.

government's permission for "legal proceedings" against government officials or the armed forces, but do not touch upon police powers to investigate crime.¹⁶⁸ A judicial decision has also clarified that the immunity provision in the AFSPA does not affect the police's powers to register and investigate criminal complaints.¹⁶⁹

In neglecting to investigate complaints by victims like Soni Sori or Manorama Devi's family, the police allowed evidence to be lost and destroyed, which in turn, has weakened the prospect for effective prosecution, should permission to do so be granted. More generally, prosecution of sexual crimes becomes very difficult if medical and forensic evidence is not gathered soon after the offence occurs.¹⁷⁰

If an investigation discloses sufficient evidence to initiate criminal proceedings, state governments should apply to the central government for permission to prosecute the suspects, and demand prompt, reasoned responses. If the central government refuses permission to prosecute state actors accused of committing sexual violence, state governments should challenge such refusal in court, on the ground that sexual crimes cannot constitute acts done "in good faith," in pursuit of an official purpose. Without effort of this nature, legal immunity for government officials and soldiers will continue to be misapplied to cases of sexual violence, facilitating an environment where national security powers can be abused with impunity.

C. *Failure to Acknowledge Sexual Violence*

While women face a heightened risk of sexual violence when they fall under the ambit of national security laws, they also encounter several barriers in seeking redress.

One basic barrier is that particular types of sexual violence are not acknowledged as criminal offences by the law. For instance, rape has been a long-standing offence under Indian criminal law,¹⁷¹ but until very recently, rape was defined to include only penile penetration of the vagina.¹⁷² Therefore, the sexual assault against Soni Sori when the police forced stones into her body¹⁷³ did not fall within this definition of "rape."

¹⁶⁸ CCP, *supra* note 25, § 197.

¹⁶⁹ *India v. Manipur*, (1992) AIR 23.

¹⁷⁰ The close contact between the assailant and the victim of a sexual crime often, though not always, leaves physical traces on the body that provide evidence of the violence. Such forensic material deteriorates rapidly, however, and should be collected and analyzed promptly if it is to have evidentiary value. See WORLD HEALTH ORG., GUIDELINES FOR MEDICO-LEGAL CARE FOR VICTIMS OF SEXUAL VIOLENCE 57 (2003).

¹⁷¹ IPC, *supra* note 105, §§ 375-76 (concerning punishments for rape).

¹⁷² See *id.* But cf. Criminal Law (Amendment) Bill, 2013, No. 63, § 9, Acts of Parliament, 2013 (India).

¹⁷³ See *supra* Section II.B.

While the assault would potentially have been treated as the offence of “causing hurt using a dangerous weapon or means” under the Indian Penal Code,¹⁷⁴ categorizing it as such neither captures the sexual, intimate and traumatic violation at issue, nor provides for proportionately serious punishment.¹⁷⁵

The offence of rape under Indian law was amended in 2013, in the wake of strong public protests after a young woman was brutally gang raped and died as a result of her injuries.¹⁷⁶ This recent amendment redefined the offence of rape to include non-consensual oral, vaginal or anal penetration of the victim’s body with parts of the perpetrator’s body or with physical objects.¹⁷⁷

When the *actus reus* of the offence of rape was defined only as the penetration of the victim’s vagina with the perpetrator’s penis, the law tacitly treated other types of forced, penetrative sexual acts as less serious than this particular act. Had the law been designed instead to punish the infliction of an invasive sexual act on a non-consenting person, it would have treated sexual penetration of the victim’s body as the core of the offence of rape, rather than limiting the offence to the penetration of one particular orifice of the victim’s body by one particular part of the assailant’s body. The traditional definition of rape, with its exclusive and heteronormative focus on penile penetration, placed the gravity of the violence at issue at least partially on the perceived breach of a woman’s chastity, the risk of pregnancy, or the possible loss of virginity. When the law recognizes that the essence of the offence is the intimate sexual violation of the victim’s body, and prioritizes the protection of bodily integrity, it is better able to respond to the sort of serious sexual violence that was inflicted upon Soni Sori.

Similarly, stripping a female prisoner in front of prison guards, as the police did to Soni Sori, would only have constituted the antiquated offence of “outrag[ing] the modesty of a woman” under Indian law.¹⁷⁸ This is a mild charge, which carries a potential maximum sentence of two years.¹⁷⁹ It avowedly aims to preserve a woman’s “modesty” rather than to protect her rights to dignity and bodily integrity, and simply does not

¹⁷⁴ IPC, *supra* note 105, § 324 (voluntarily causing hurt by dangerous weapons or means).

¹⁷⁵ IPC § 324 is punishable with imprisonment for a maximum of 3 years as compared to the offence of rape which is punishable, under IPC § 376, with imprisonment for a mandatory minimum of seven years.

¹⁷⁶ See *Explaining India’s New Anti-Rape Laws*, BBC (Mar. 28 2013), <http://www.bbc.com/news/world-asia-india-21950197> (providing an overview of the law, including the cause for the change).

¹⁷⁷ IPC, *supra* note 105, § 375, as amended by Criminal Law (Amendment) Bill, 2013, No. 13, § 9, Acts of Parliament, 2013 (concerning rape).

¹⁷⁸ *Id.* § 374 (assault or criminal force to a woman with intent to outrage her modesty).

¹⁷⁹ *Id.*

capture the particular act of gendered violence that Soni Sori suffered in an adequate or specific way. In the Indian context, the failure to recognize stripping another person's clothes as an offence was particularly salient; public stripping has been a form of violence historically directed at women who, like Soni Sori, belong to traditionally "low" castes and tribal communities in India.¹⁸⁰

If the law's failure to criminalize certain forms of sexual violence has allowed perpetrators to escape punishment, so has the failure of officials to adequately apply existing laws and policies. For instance, sexual violence might not be detected because investigating authorities might have neglected evidence that the violence had occurred. The initial post-mortem report on Manorama Devi's body underreported the sexual injuries she sustained.¹⁸¹ Manorama Devi's lawyers had to lobby the Chief Minister of Manipur for a second post-mortem report to put the full extent of her more intimate injuries on the record.¹⁸²

Similarly, the first medical report after Soni Sori was tortured catalogued her visible injuries, but did not acknowledge the sexual assault she had faced.¹⁸³ Soni Sori had to petition the Supreme Court of India to allow her to be examined at a hospital in another state, in order to have her injuries properly recorded and to receive the medical treatment that she needed.

These gaps in the law and the neglect by officials who enforce it are particularly troubling given the societal barriers that victims encounter when reporting sexual violence. Women who are sexually assaulted by state actors are likely to face considerable societal stigma, often from their closest family members. Experience suggests that victims typically might be pressured to hide what happened to them.¹⁸⁴ They might also fear reprisals by the security forces.¹⁸⁵ The law's failings compound the difficulties that victims face in pursuing redress.

¹⁸⁰ See LAURA BRUECK, AT THE INTERSECTION OF CASTE AND GENDER: RESCRIPTING RAPE IN DALIT FEMINIST NARRATIVES IN SOUTH ASIAN FEMINISMS 226 (Ania Loomba et al. eds. 2012). See also HUMAN RIGHTS WATCH, BROKEN PEOPLE: CASTE VIOLENCE AGAINST INDIA'S "UNTOUCHABLES" (1999), <https://www.hrw.org/reports/1999/india/index.htm#TopOfPage>.

¹⁸¹ For the Post-Mortem reports, see *supra* note 151.

¹⁸² See *supra* Section II.A.

¹⁸³ See *supra* Section II.B.

¹⁸⁴ Begum, *supra* note 3, at 266. Begum discusses the case of Arubi Devi who fought to bring the soldiers who raped her to justice; even while doing so, she was rejected and mistreated by her husband. See also NEN, *supra* note 139, at 28-29, 31, 49.

¹⁸⁵ NEN, *supra* note 139, at 40, 47, 49. After mass sexual violence in Mokokchung town in Nagaland, only four women were willing to say they had been assaulted, even though at least fifteen were raped or assaulted in other ways.

D. *Failure to Recognize Torture*

Recognizing particular types of sexual violence as distinct offences would, in theory, make the law better able to respond to violence against women. At the same time, when state actors are violent, there are other fundamental gaps in the law that hinder attempts to hold them accountable.

As an initial matter, the Indian Penal Code stipulates a higher punishment for a public servant who commits custodial rape¹⁸⁶ or has intercourse “not amounting to rape” with a woman in his charge or custody.¹⁸⁷ However, Indian law does not include more general offences related to custodial violence or torture. India has not ratified the Convention Against Torture,¹⁸⁸ and nor has it criminalized torture and cruel, inhuman and degrading treatment as distinct offences within national law. These gaps weaken the response to sexual as well as non-sexual violence by the state.

Just as Soni Sori and Manorama Devi suffered forms of sexual assault not recognized by the law at the time, this violence also simultaneously, and archetypically, constituted torture. Torture is defined in the Convention Against Torture as “any act by which severe pain or suffering, whether physical or mental, is . . . inflicted” by or with the consent or encouragement of a public official or a person acting in an official capacity, in order to obtain information or a confession, or to punish, or to intimidate or coerce the victim or a third person, or “for any reason based on discrimination of any kind.”¹⁸⁹ Each element of this definition is evident in the violence suffered by Soni Sori and Manorama Devi.

Criminalizing torture would allow for the types of physical violence and sexual assault inflicted on both women to be recognized as acts of torture. Moreover, recognizing the infliction of torture and cruel, inhuman and degrading treatment as discrete offences would allow a public official’s entire course of abusive conduct to be taken into account, including actions that might not be pre-existing, freestanding criminal offences but cumulatively intensify the victim’s suffering.

For example, when the Rifles locked Manorama Devi’s family inside their house, this act arguably constituted cruel, inhuman and degrading treatment by international standards. Under the Convention Against Torture, “cruel, inhuman, and degrading treatment or punishment” includes acts committed, facilitated, or allowed by public officials that

¹⁸⁶ IPC, *supra* note 105, §§ 375-76.

¹⁸⁷ *Id.* §§ 376B, 376C (prior to 2013 amendment).

¹⁸⁸ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, U.N. GAOR 39th Sess., Supp. No. 51, at 197, U.N. Doc. A/39/51 (Dec. 10, 1984) (India signed on Oct. 14, 1997 but has yet to ratify the Convention) (The list of State parties to the Convention Against Torture is available at <http://indicators.ohchr.org/>).

¹⁸⁹ *Id.* art. 1.

“do not amount to torture.”¹⁹⁰ These words broadly cover acts that inflict physical, mental or psychological suffering¹⁹¹ that is serious but is not severe enough to rise to the threshold of torture. The United Nations Committee Against Torture has clarified that, unlike torture, cruel and inhuman treatment does not require proof of an intention to obtain information or elicit a confession, or to punish, intimidate, or coerce the victim or a third person, or to discriminate against the victim or any other person.¹⁹² Manorama Devi’s family, able to hear paramilitaries torturing her, but unable to go to her aid,¹⁹³ undoubtedly would have experienced acute mental distress from her confinement and torture, directly and deliberately inflicted by state functionaries.

Similarly, the act of handcuffing Soni Sori to her hospital bed¹⁹⁴ would arguably constitute actionable torture under international law. The restraints placed on her would have caused her mental suffering, and, depending on the state of the injuries previously inflicted by the police, possibly caused her acute physical suffering as well. Sori could credibly argue that the police treated her in this way in order to obtain a confession from her, or to punish, intimidate, or coerce her, echoing their motives when they had tortured her previously. Even if the motives of the police at this juncture were unclear, Sori could argue, at a minimum, that handcuffing her to her hospital bed constituted cruel, inhuman, and degrading treatment by international standards.

Criminalizing torture and cruel, inhuman, and degrading treatment in line with the Convention Against Torture would thus allow Indian law to recognize and label abuse by soldiers and the police that does not fit within traditional offences. It would have allowed the brutality surrounding the sexual assaults and physical violence visited upon Soni Sori and Manorama Devi to be more adequately acknowledged.

E. *Failure to Recognize Ethnic Bias as an Aggravating Factor*

Just as sexual violence against Soni Sori and Manorama Devi was a form of torture, it may also have been a form of ethnic persecution. Soni Sori, as the member of an indigenous tribe, belongs to an ethnic minority that has faced discrimination.¹⁹⁵ The type of violence that Sori faced when she was stripped of her clothes has characteristically been directed at women belonging to disadvantaged castes and tribes in the Indian con-

¹⁹⁰ *Id.* art.16.

¹⁹¹ U.N. Human Rights Committee, General Comment No. 20, art. 7 (44th Sess., 1992), U.N. Doc. HRI/GEN/I/Rev.1 (Mar. 10, 1992) ¶ 5 (clarifying that “torture” includes the infliction of mental and psychological suffering in addition to physical suffering).

¹⁹² *Id.* ¶ 2.

¹⁹³ *See supra* Section II.A.

¹⁹⁴ *See supra* Section II.B.

¹⁹⁵ Najar, *supra* note 109.

text, as mentioned above. Similarly, Manorama Devi, a Manipuri woman, also belonged to a minority group — people indigenous to north-eastern India, including Manipur, are racially distinct from people belonging to other parts of the subcontinent.¹⁹⁶ This region is also culturally distinctive; women from northeastern communities typically face fewer societal restrictions on their autonomy than women from other parts of India.¹⁹⁷ These differences are often met with insensitivity and suspicion.¹⁹⁸ People from the northeast sometimes encounter racial abuse and discrimination from other Indians, and northeastern women are often stereotyped as sexually promiscuous.¹⁹⁹

While we do not know the specific details of what the police and paramilitaries said to each woman, or to their families, or to one another while attacking them, genuinely reckoning with what happened involves examining whether racial and ethnic bias motivated or shaped the violence inflicted on both women. Investigating whether prejudice was at play is particularly important when state actors commit unlawful violence while wielding national security powers. In regions where terrorist or insurgent movements are active, state personnel might regard the stereotypes that attach to differences of ethnicity, race, or religion as intrinsic to the violence they are trying to control. Prejudice and bias, in turn, would tend to make it easier to dehumanize entire communities, and view them as disloyal, dangerous and deserving of brutality.

This phenomenon might have influenced the Rifles' neglect of protocol and legality in relation to Manorama Devi: the police had never received any complaints about her, nor was she suspected of separatist activity by any other security agency.²⁰⁰ The Rifles did not inquire with the local police station about Manorama Devi's record before raiding her house; they also ignored the requirement that they work alongside the civilian police and ensure that a female police officer be present when a woman is to be searched or arrested.²⁰¹ The Rifles' actions suggest that they might have been motivated by discriminatory stereotypes rather than reasonable suspicion, let alone any genuine necessity or fact.

Soni Sori, who had campaigned for indigenous rights for many years, is also likely to have been particularly vulnerable to bias. She had been

¹⁹⁶ Khathing Ronrei, *Reflections on the Ethnic Crisis in Manipur*, IMPHAL FREE PRESS (Sept. 26, 2015), <http://kanglaonline.com/2015/09/reflections-on-the-ethnic-crisis-in-manipur/>.

¹⁹⁷ NEN, *supra* note 139, at 11-12.

¹⁹⁸ DUNCAN MCDUIE-RA, *NORTHEAST MIGRANTS IN DELHI: RACE, REFUGE AND RETAIL 6* (Paul van der Velde ed., 2012). Ministry of Home Affairs, Gov't of India, Report of the Committee Under the Chairmanship of Shri M.P. Bezbaruah to Look Into the Concerns of the People of the Northeast Living in Other Parts of the Country 8-10 (2014).

¹⁹⁹ See *supra* note 198.

²⁰⁰ See generally Devi Commission of Inquiry, *supra* note 56, ch. II.

²⁰¹ *Id.*

charged with criminal offences, tried and acquitted on a number of occasions, suggesting not only that she had been targeted on frivolous legal grounds but also that the authorities were quick to conflate her non-violent activism with serious security offences.

India has a law that criminalizes identity-based violence against individuals from traditionally disadvantaged castes and tribal groups.²⁰² However, in neither of these two cases does the state appear to have investigated whether violence was fueled by bias.

CONCLUSION

When Manorama Devi was killed, the government of Manipur set up a commission of inquiry.²⁰³ These proceedings, inquisitorial rather than adversarial, are supposed to identify administrative failures rather than determine the guilt of particular individuals.²⁰⁴ As discussed in Section II, this commission of inquiry was challenged not just by the Assam Rifles, but also by the central government.²⁰⁵ Given the government's refusal to countenance even a fact-finding exercise, it is not surprising that the men responsible have not been prosecuted, despite the inquiry confirming that Devi was raped and murdered.

After Manorama Devi's death, public outrage drove the Manipur government to initiate an official inquiry, and then to defend its authority to do so for the next decade.²⁰⁶ In comparison, the Chhattisgarh government did not even establish a commission to inquire into Soni Sori's treatment in custody.²⁰⁷ In fact, the police officer who supervised the torture was awarded a national honor for his services to counterinsurgency operations in Chhattisgarh.²⁰⁸

These two cases tend to exemplify how Indian governments are passive, if not outright hostile, towards women who are victims of sexual

²⁰² Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, No. 33 of 1989, INDIA CODE (1989).

²⁰³ HRW, THESE FELLOWS MUST BE ELIMINATED, *supra* note 145, at 5.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ While neither the government of Chhattisgarh nor the central government seem to have publicly stated that they will not set up an administrative inquiry into Soni Sori's torture, their failure to do so speaks for itself. Several months after Sori was tortured, Human Rights Watch wrote to the Prime Minister of India, noting that the incident had not been investigated, and asking the central government to do so. See HUMAN RIGHTS WATCH, LETTER TO PRIME MINISTER MANMOHAN SINGH REGARDING SEXUAL ASSAULT CASE IN POLICE CUSTODY (Mar. 7, 2012), <https://www.hrw.org/news/2012/03/07/india-letter-prime-minister-manmohan-singh-regarding-sexual-assault-case-police>.

²⁰⁸ Aman Sethi, *Activists Shocked at Gallantry Award for Chhattisgarh Cop*, HINDU (Feb. 14, 2012), <http://www.thehindu.com/news/national/activists-shocked-at-gallantry-award-for-chhattisgarh-cop/article2834675.ece>.

assault and torture by security forces. In failing to prosecute perpetrators, the state implicitly accepts such violence against women. In staunchly contesting even baseline fact-finding, the state goes further and defends this violence.

As a result, victims and their families are forced to seek accountability on their own. Criminal prosecution is controlled by the state. Civil litigation, which is expensive and under-developed in India,²⁰⁹ is also subject to limitations under the AFSPA, namely the procedural hurdle of requiring the prior permission of the central government before filing suit.²¹⁰ With limited options, victims have to advocate for themselves, in the courtroom, in their communities, and farther afield. When Manorama Devi was taken away by the Assam Rifles, her brother turned to local community groups for support, and their collective advocacy and protest moved the Manipur government to establish an inquiry.²¹¹ Soni Sori, an experienced activist in her own right, was assisted by human rights groups in India and beyond when she was tortured.²¹² Victims of abuse by security forces have also petitioned the judiciary for relief as a matter of constitutional law. They have argued that their constitutional rights to life and freedom from torture have been violated by the state, and sought redress.²¹³

Manorama Devi's mother petitioned the High Court in Manipur, asking that the state government compensate her and prosecute the individuals who killed her daughter.²¹⁴ As discussed earlier, it was not until 2014 that the tangled litigation following Manorama Devi's death resulted in monetary aid for her family. However, the judiciary has not, so far, ordered the government to prosecute the perpetrators.²¹⁵ Moreover, the

²⁰⁹ See generally Ananyo Basu, *Torts in India: Dharmic Resignation, Colonial Subjugation, or "Underdevelopment"?*, 100(4) S. ATLANTIC Q. 1053 (2001).

²¹⁰ AFSPA, *supra* note 36, § 7 (prohibiting "prosecution, suit or other legal proceedings" without the prior permission of the central government).

²¹¹ Writ Petition, *supra* note 49, at 10-16.

²¹² See, e.g., AI India, *supra* note 102; Amnesty Int'l *supra* note 132; PUDR et al., ANYTHING GOES. . . IN THE NAME OF NATIONAL SECURITY: STORY OF SONI SORI (2012), http://www.pudr.org/sites/default/files/soni%20sori%20english%20report_2.pdf; PEOPLE'S UNION OF CIVIL LIBERTIES, LETTER TO THE NATIONAL HUMAN RIGHTS COMMISSION OF INDIA (2012), <https://icrindia.wordpress.com/2012/03/06/send-fact-finding-team-to-ensure-medical-facilities-to-soni-sodi-lodged-in-dantewada-jail-in-chhattisgarh/> (requesting that the NHRC establish a fact-finding mission and ensure medical care for Sori). See also FREE SONI SORI & LINGARAM, <https://freesonisoriantlingaram.wordpress.com/about/>.

²¹³ For a list of such cases, see *supra* note 84.

²¹⁴ Writ Petition, *supra* note 49, at 15-16.

²¹⁵ Neither the Supreme Court of India nor the High Court have ordered the government to investigate or prosecute the paramilitary officers responsible for Manorama Devi's death. Constitutional litigation in relation to the killing remains pending before both courts. See Section II.A.

money granted is pointedly not compensatory — the government has not conceded any fault for Manorama Devi's death.

Soni Sori has been petitioning the Supreme Court since October 2011 to grant her an unusual remedy directed towards prosecuting her torturers. She has asked the court to appoint a special investigation team, comprising of police officers from outside of Chhattisgarh, to investigate her complaints of custodial torture.²¹⁶ Notwithstanding the merits of her argument, the Supreme Court may be hesitant to order the police force of one state within India's federal political system to supplant the work of the police force in another based on several political considerations, which are beyond the scope of the article. So far, Sori's request has not been granted.²¹⁷

Pursuing justice as Soni Sori and Manorama Devi's family have done requires prodigious effort. When Soni Sori was tortured, it took five court hearings over five weeks to persuade the Supreme Court to order a medical examination outside Chhattisgarh, to ensure the order was implemented, and then to confirm that the Supreme Court had received the medical report.²¹⁸ It took four additional hearings over the course of five months before the Supreme Court ordered that Sori be transferred to New Delhi for follow-up medical treatment.²¹⁹ As discussed above, Sori's request that the Supreme Court order criminal investigation of the

²¹⁶ See Order, *Sori v. Chhattisgarh*, (2011) SCR 206 ¶ 1 [on file with author].

²¹⁷ See *id.*

²¹⁸ The Supreme Court ordered the government of Chhattisgarh to transfer Sori to Kolkota for a medical exam on October 20, 2011. See Order, *Sori v. Chhattisgarh*, (2011) SCC 206, 9 (Oct. 2011) [on file with author]. At a hearing on November 15, 2011, the Supreme Court noted that it had not received a medical report from the hospital in Kolkota, and that the hospital had confirmed that the report had been sent by speed post to the Court. See Order, *Sori v. Chhattisgarh*, (2011) SCC 206 ¶ 1 (Nov. 2011) [on file with author]. At subsequent hearings on November 17 and 23, 2011, the Supreme Court noted that it had yet to receive the report, and expressed surprise that a document sent by speed post should take so long to arrive. At a hearing on November 25, 2011, the Supreme Court confirmed that it had received the medical report and would be releasing it to both parties later that day. A hearing on December 1, 2011 served only to postpone the case to the following day. The next day, the Supreme Court ordered that Soni Sori should be transferred from the prison in Jagdalpur where she was being held on remand to the prison in Chhattisgarh's capital city, Raipur. See Order, *Sori v. Chhattisgarh*, (2011) SCC 206 ¶ 4 (Dec. 2011) [on file with author]. At a hearing on January 19, 2012, the Supreme Court noted, but did not decide upon, Sori's request that she be allowed to have medical treatment in Kolkota. It was not until May 2 2012 that the Supreme Court ordered that Sori be transferred to New Delhi, where she would be examined and treated at a public hospital. See Order, *Sori v. Chhattisgarh*, (2011) SCC 206 ¶¶ 6-9 (May 2012) [on file with author].

²¹⁹ *Supra* note 218.

police officers who tortured her remains pending, four and half years after she was assaulted.²²⁰

Manorama Devi's family has been engaged in litigation for even longer. Khumanlei Devi had to persist with legal proceedings for ten years to secure access to the report of the government-appointed commission of inquiry into her daughter's death.²²¹ Litigation such as this is burdensome not just because it is so protracted, but also because the burden of gathering evidence, and persuading people to testify, is borne by the petitioners alone rather than the state.

Both Manorama Devi's and Soni Sori's cases are so appalling that they could be considered *sui generis*, unrepresentative of women's experiences under national security laws more widely. However, while these particular, grave cases might lie at the end of a spectrum, they alert us nevertheless to women's vulnerability to unlawful violence under the cover of security laws, and the challenges victims face in seeking redress. Several equally serious cases documented by civil society organizations indicate that extreme abuse by security forces is not unusual.

I have argued above that the content of security laws makes it easier for state personnel to commit unlawful violence against female suspects. Gaps in Indian law, some gendered, such as the dated definition of rape, and others more general, such as the failure to criminalize torture, have meant that violence against women like Manorama Devi and Soni Sori escapes adequate legal recognition. Particularly, with regard to sexual violence, the executive has amplified statutory immunity provisions in ways that are legally untenable. In doing so, it facilitates such violence.

Mitigating the hazards of being a "national security suspect" for women requires legal reform, checks and balances on executive decision-making, as well as sustained scrutiny and legal challenge by civil society. While some overarching reforms have been discussed above, detailed discussion of such reforms is beyond the scope of this article. However, effective reform requires understanding the experiences of women like Soni Sori and Manorama Devi, and pinpointing the gaps and failures that allowed such egregious violence in the past.

²²⁰ See *supra* Section II.B.

²²¹ Manorama Devi's mother filed a writ petition in 2010 before the High Court, requesting, *inter alia*, compensation, criminal prosecution of Devi's killers, and access to the report of the commission of inquiry established by the government of Manipur. See Writ Petition, *supra* note 49. The Supreme Court ordered the central government to pay Manorama Devi's next of kin Rs. 10,00,000 on December 1, 2014. While the Supreme Court's Order to this effect does not expressly address access to the report of the commission of inquiry, the Supreme Court appears to have released the report to the petitioners. Shortly after the Court's Order, the family's lawyers made the report available online. See HUM. RTS. LAW NETWORK, THANGJAM MANORAMA CASE: SC DIRECTS CENTRE TO PAY RS 10 LAKH AS INTERIM COMPENSATION (2014), <http://www.hrln.org/hrln/womens-justice/-pils-a-cases/1665-thangjam-manorama-case-sc-directs-centre-to-pay-rs-10-lakh-as-interim-compensation.html>.