

*Investigation into
Custodial Male Rape at
Shakarpur Police Station*

An Invisible Crime

People's Union for Democratic Rights, Delhi
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There is no recognition of custodial male rape in law. In society too rape of boys and adult men remains invisibilised. The strong protests after the Mathura Rape case, in which policemen accused of custodial rape of a poor tribal woman had been acquitted by the Supreme Court, led to recognition of custodial rape of women in society as well as in law. A separate category of aggravated rape including custodial and gang rape was introduced in the Indian Penal Code.

The prevalence of male custodial rape in children's homes, police stations and jails is an incontrovertible fact. However, even the statistics compiled by institutions like the National Commission of Human Rights do not include male custodial rape. Today, a policeman accused of custodial rape is prosecuted under Section 377 of the IPC. This provision titled 'unnatural offences' makes no difference between consensual and non-consensual sex and is used by the police to harass and persecute gay and homosexual men. The constitutionality of provision is currently under challenge in the Delhi High Court. There is an urgent need to have a law to deal with male custodial rape. The present report is a small attempt towards recognition of this grave offence as well as for changes in the law.

During the course of its investigation, PUDR met the victim, his father, the police station officials where the crime was committed, staff and superintendent of the Children's Home where the boy was kept, members of the Child Welfare Committee, and the staff of Pratidhi, the NGO which has taken up the boy's case in court.

Prologue

Every year more than 2 lakh people come to Delhi from states like Uttar Pradesh, Bihar, Orissa and Chattisgarh in search of jobs. Many of them are children, barred from working by different laws and articles of the constitution, and yet forced to seek work because of circumstances which are much more powerful. They come to eke out a living working in factories and *dhabas* to avoid being a burden on their families, and perhaps even send some money back home once in a while.

Suraj (name changed) is one of them. He came to Delhi first in 2001 from his village Mankauli in Darbhanga district of Bihar when he was eleven years old. His father, Balram (name changed), is a landless daily wage labourer who works in brick kilns and road construction projects. His two other younger brothers study in the village school.

For the first three years, Suraj made bead necklaces in a handicrafts factory in Laxmi Nagar. He was not paid any money for this work. The employer kept him and the other boys confined within the factory. One day in 2004, he managed to run away and came to the Shakarpur police station. With permission of the police station officials, he started working in the station canteen. He worked there for 2-3 months and was paid Rs. 400-500 every month (Rs. 13-16 per day) along with food and a place to sleep.

After this, he went back to his village. He lived with his family for the next two-and-a-half to three years. Suraj returned to Delhi around September 2006. The canteen in the police station had shut down, so he took up the work of making tea and washing utensils at a *dhaba* adjoining the wall of the police station. For the five months he worked there, the *dhaba* owner Keher Singh Thapa paid him Rs. 2400.

The nightmare

On the evening of 18 January, Suraj had a petty fight with Hafiz, another boy working at the same *dhaba*. At around midnight, Hafiz called Prakash – the SHO's cook – and both of them beat up Suraj. When Suraj went to complain at the police station, Head Constable Mohd. Sajid refused to register his complaint and sent him away with abuses.

When he came outside, the *dhaba* owner Thapa handed him and Hafiz over to Head Constable Rajender Singh, who was drunk. HC Rajender took both the boys to his room at the Shakarpur police station. There he beat them with his belt and told them to do 500 sit-ups each. Whenever the boys stopped the sit-ups due to exhaustion, they were beaten with the constable's belt and stick. Suraj even fainted once during this torture.

At around 2:45 in the night, Rajender allowed Hafiz to go to the bathroom. After Hafiz left, he asked Suraj to remove all his clothes. When Suraj refused, he beat him with the belt till he agreed to do so. After this, Rajender sodomised and raped Suraj. The seventeen year old boy clung to Rajender's feet and pleaded with him to stop. When Hafiz returned to the room, Rajender made both the boys massage his feet. He released them only after they pleaded with him many times to be allowed to go and eat dinner.

After this painful, traumatic and humiliating experience, Suraj and Hafiz had dinner at the *dhaba* and went to sleep, their earlier fight of the evening long forgotten. Early next morning, when Suraj asked Thapa for medicine for the pain in his anus, he was refused and was told to resume work.

One day after this (on 20 January) Suraj gathered courage, went to Pratidhi – a collaborative NGO of Delhi Police and Association for Development for helping victims of crime – and narrated the entire incident to them. Pratidhi has its office within the premises of the Shakarpur police station. Pratidhi's staff took Suraj to Lal Bahadur Shastri Hospital for a medico-legal examination (MLC No. 504/07). They helped him file an FIR (No. 74/07) at the Shakarpur police station the same day. The FIR was filed under sections 377 and 511 of IPC ('carnal intercourse against the order of nature with any man' and 'punishment for attempting to commit offences').

Pratidhi then took Suraj to the Children's Home at Lajpat Nagar run by the Department of Social Welfare of the Delhi government. Suraj's nightmare had only begun.

And afterwards...

The impunity with which every rule of law was broken by the guardians of law to protect the accused and silence the victim in this case, is no less shocking than the actual act of sexual violence by the accused.

HC Rajender was arrested on 21 January, sent to judicial custody and subsequently dismissed from service. He is presently out on bail. He and his accomplices in the police and at the Children's Home have tried every trick in the book – physical and verbal intimidation, threats, beatings and bribes – to silence Suraj. At the Children's Home, Sanjay Butt, first Investigating Officer (IO) of the case, and Alka Rawat, social welfare officer of the Home, both repeatedly threatened Suraj and told him to change his statement.

On 24 January, Suraj was taken to Guru Teg Bahadur Hospital by inspector Virendra and constable Ajay of the Crime Branch. After an X-ray test, he was taken back to the Crime Branch. There he was told by policemen to accept money and change his statement. "We will kill you otherwise", they said. The SHO Crime Branch told him to jump the wall of the Home and run away.

Meanwhile, Hafiz – the boy who was with Suraj that night – was thrown out of his job by Keher Singh Thapa and told to leave the city. Thapa and another person named Mukesh went to Suraj's village Mankauli to meet his family. They told his family that Suraj was having fits and had lost his power of speech. Worried about his son, Balram came to Delhi immediately with both of them.

Thapa and Mukesh took Balram to the Shakarpur police station. There he was received by Ajay (Rajender's lawyer) and constable Bhopal. Bhopal told Suraj's father that his son had run away somewhere and that he should do as was told to him by the lawyer. Around 11 p.m., Balram was taken to a pump house inside the police station where Ajay was waiting for him. He threatened Balram with a knife and said that he should get his son's statement to the police changed. If he did not do so, he was told, neither of them would reach Bihar ever again.

Balram was imprisoned by Thapa and Ajay at the pump house and was continuously threatened. He was told, "Your son should say to the judge that two fat men met him near the Yamuna drain and forced him to sign on blank letterheads of Pratidhi. Advise him to say at the court that nothing wrong had happened with him". Realising what had happened to his son and the dire danger they were in, Suraj's father agreed to their wishes.

Suraj was to appear in front of the metropolitan magistrate at the Karkardooma court on 14 February. On 11 February, Ajay took Balram to meet his son at the Children's Home. Ajay told Suraj to repeat the same story in the court that he had told to Suraj's father.

After they had left, Alka Rawat (social welfare officer) and the Home superintendent called Suraj and told him that his father was in their custody and therefore he should do exactly as he was being told. He was offered two lakh rupees to implicate Pratidhi and 'settle' the case with Rajender.

On 14 February, Suraj was taken to Karkardooma court by inspector Virendra and constable Ajay in a private car. Under the Juvenile Justice Act and Rules, the victim cannot be sent alone outside the Home premises and a staffer from the Home must accompany him. Under no circumstances can a policeman be allowed to accompany the juvenile, especially in a case where a policeman is the accused.

According to Pratidhi, Virendra did not even inform the Child Welfare Committee (CWC) before taking Suraj to court. CWC is the competent judicial authority to deal with children in need of care and protection under the JJ Act. The five-member committee is supposed to investigate, judge and take action in incidents like these and has its office in the same building as the Home.

On their way to the court, Virendra slapped Suraj many times and told him to accuse Pratidhi in front of the magistrate. When the boy refused to do so, a revolver was put to his head. Suraj got scared and agreed to say in court as he was told. Sanjay Butt (IO) met Suraj and repeated the same instructions. He told him, "Say in court that Raj Mangal Prasad (vice president (prog.) Pratidhi) and Ravi Raj (another worker with Pratidhi) had threatened you with a knife and forced you to say to what you did in the FIR. And that you weren't raped by anyone". Suraj was again detained in the bathroom by Thapa, Jai Singh (pump operator at the pump house) and the lawyer Ajay.

Finally, in front of the judge, Suraj stated (under section 164 of CrPC) that he was pressurised by Pratidhi workers to falsely incriminate Rajender in the case and say what he had said earlier in the FIR. Rajender's friends had won their first victory in their effort to save Rajender.

The next day (15 February), Suraj's father came to the Children's Home to take his son but he wasn't allowed to do so. When Pratidhi workers came to meet Suraj, he told them what had happened in court the day before. Pratidhi contacted a private television channel (NDTV) and requested them to conduct a sting operation in the case. The channel provided Raj Mangal Prasad (vice-president of Pratidhi) with a hidden camera when he went to meet Suraj on 16 February. Suraj's story was recorded on camera. Pratidhi has a copy of the interview.

For unknown reasons, the channel later refused to broadcast the story. But Times of India (ToI) published two stories on 22 February and 12 March describing the circumstances under which Suraj had to change his statement and the collusion between the accused, the police and the Home staff.

Raj Mangal Prasad also registered a complaint with the Home superintendent. For this, Suraj was beaten up by the guard and another worker of the Home the next day. When Suraj was asked about the incident in the presence of the CWC members, he again lied as he had in the Karkardooma court.

Suraj was released from the Home on 22 February around 3-4 pm in the evening. He and his father were taken to the ToI office by Rajender and Alka Rawat. Rajender instructed Suraj to tell ToI that it was Pratidhi which was trying to falsely implicate him and the Home staff in the entire case. When Suraj told this to a ToI reporter, he refused to accept the story saying that the boy seemed to be under pressure.

After this, Rajender and two of his friends took Suraj and Balram to a *mazaar* near Karkardooma court and took their signature and fingerprints (respectively) on 4-5 blank sheets of paper. They also photocopied Balram's voter identity card and his ration card.

That night Suraj and his father were kept in a *jhuggi* near the *mazaar*. The next day they were put by the same people on a train to Darbhanga, Bihar.

The harassment of Suraj and his family did not end here. Rajender even called Suraj at the PCO booth in his village and told him to come back to Delhi if he wanted Rs. 15,000-20,000. On 15 April, Senior HC Umesh Singh and HC Sehensor Pal went to meet Suraj and his family as part of the official investigation. The investigation was now being carried out by the office of the DCP (East District) in Delhi. In a reply to a RTI complaint filed by Pratidhi, the DCP's office has claimed that Suraj and his father "met the police team but they did not cooperate. They did not give any statement not came to Delhi even though they were offered the fare from their village to Delhi and back to their village."

But according to Suraj, what had actually transpired was a little different. The policemen offered Suraj a bundle of notes of Rs. 100, 500 and 1000 denominations and asked him to come to Delhi with them. Suraj refused to accept the money saying that he would take it

once he had appeared again before the court. They agreed to this and told him to do what he was told to by lawyer Ajay. Umesh Singh and Sehensor Pal went away the next day.

After they had left, Suraj called up and informed Pratidhi. Throughout his stay in the village, Suraj was in constant touch with Pratidhi and told them that he wanted to tell the truth to the court and fight the case in Delhi. Finally, with the help of Pratidhi, Suraj and Balram returned to Delhi in the hope of justice on 29 May.

Will there ever be an end?

Suraj's decision of returning to Delhi and fighting the case is a rare example of courage and conviction. This is especially so considering his socio-economic status, the efficacy of the criminal justice system in case of the poor, and particularly in cases of custodial rape. The obstacles that stand in the way of his getting justice are immense.

The crime against Suraj is not even recognised as 'rape' under IPC. Sections of IPC dealing with rape (375 and 376) take cognizance of only rape of a woman. This means that the accused in the present instance will not even be tried under these sections, notwithstanding the problems associated with the sections themselves. This is a shocking lacuna given the known prevalence of male rape in our society (particularly in state institutions like juvenile homes, jails and police stations). All cases of male rape are tried under section 377, which deals with 'unnatural offences'. This archaic and regressive law describes 'carnal intercourse against the order of nature with any man, woman or animal' as an unnatural offence. This section is designed to deal with homosexuality (which is considered a crime by the Indian State) and is used by the police to harass and persecute homosexuals. It is singularly unequipped to deal with rape since it does not differentiate between consensual and non-consensual sex.

This failing of law also means that the important question of custody will not be dealt with in Suraj's case (since provisions and punishment for custodial rape exist only in 376 (subsection 2) and 376B). In cases of custodial rape, the aggressor derives his power over the victim solely by virtue of his official authority. This becomes a determining factor in the act of sexual violence. The relationship of power between a head constable of the Delhi police and a migrant child who has no relatives in the city and works in a *dhaba* for daily wages need not be explained.

The existence of section 377 is also justified on the grounds that it is needed to penalise child sexual abuse (as in the case of Suraj who is a minor). Sexual assault of any kind is much more traumatising for a child than it is for an adult, as children are physically weaker and psychologically more vulnerable. A separate and a more sensitive legislation is required to deal with the issue of child sexual abuse, as Section 277 is ill-suited for the purpose.

Sections 375 and 377 both require 'penetration' as a condition for the crime to be recognised as rape. The law thus only punishes sexual intercourse (which requires penetration) rather than the act of sexual assault itself (which may or may not involve actual penetration by the assailant). This is a serious anomaly. Further, even if penetration has taken place, it often becomes difficult to prove by way of medical examination.

The law relies on corroboration of crime through medical examination. The medico-legal certificate of Suraj is inconclusive and refers the case to a forensic expert to determine whether he was actually sexually assaulted or not. Given the fact that the medical examination of Suraj was conducted 40 hours after the incident and that forensic experts are rarely available for such cases, reliance on medical examination for proof of rape will adversely affect the prosecution's case, as it indeed does in many other cases.

The law also does not penalize the institution to which the aggressor belongs in cases of custodial rape. This is again a serious shortcoming as the institution obviously is also responsible for the crime. This is especially so in cases like that of Suraj where the crime is committed within the premises and in presence of other members of the institution. In cases where the accused is a policeman, he is actively shielded by his fellow policemen. They also try silence the victim using different ways and obstruct the procedures of law. All this was amply demonstrated in Suraj's case. The critical role of colleagues of the offender and of institutional custody is ignored by punishing only the individual accused.

The actual course of law in Suraj's case has been even more disappointing than the problems in the law itself. And this even before a chargesheet has been filed and before the trial has begun in the case.

To begin with, the main accused **Rajender Singh** is punishable under many more sections of IPC than just under the two he has been charged with in the case "State vs. Rajender" at the Karkardooma

court. Sections which were deliberately left out at the time of filing the FIR are 321 (voluntarily causing hurt), 323 (punishment for voluntarily causing hurt), 340 (wrongful confinement), 342 (punishment for wrongful confinement), 350 (criminal force) and 352 (punishment for assault or criminal force...).

And with all that has happened since 18 January, the accused is now also culpable under sections 214 (offering gift or restoration of property in consideration of screening offender), 503 (criminal intimidation) and 506 (punishment for criminal intimidation).

Many individuals (including many public servants) have actively attempted to make Suraj give up his pursuit for justice. They include:

Keher Singh Thapa (under sections 503, 506 and 344 – the last deals with wrongful confinement for ten or more days, as had happened with Balram);

SI Sanjay Butt (sections 503, 506 and 217 – public servant disobeying direction of law with intent to save person from punishment);

Alka Rawat, social welfare officer and **superintendent** of the Children's Home (sections 214, 217, 503 and 506)

Inspector Virendra and **constable Ajay** of the Crime Branch (sections 217, 321, 323, 503 and 506);

Ajay, Rajender's lawyer (sections 214, 344, 503 and 506),

Jai Singh, pump house operator (sections 321, 323, 344, 503 and 506); and

Umesh Singh, senior Head Constable and **HC Sehensor Pal** (sections 214).

The role of all these individuals must also be investigated in this case.

The dismissal of the accused from service is a very serious decision on part of the police as opposed to normal suspension or transfer. It has been seen in previous cases of custodial rape that easy dismissal is actually a ploy for reinstatement, as the case never materializes and the accused uses this obvious reason before CAT for reinstatement.

The intimidation of Suraj hasn't ended even now. Pratidhi had filed an application in Karkardooma court for the fresh recording of Suraj's statement under section 164 of CrPC. On 7 June when Suraj and his father went to court for the hearing of the appeal, they were

accosted by Rajender and three of his friends inside court premises. When both tried to run away, Rajender again offered them money. Pratidhi filed a complaint at the police post in Karkardooma court regarding this incident.

A statement submitted to the court by SI Khayali Ram of DIU (East) the same day claims that "Since 26 February, Shri [Suraj] is sending number of complaints to various quarters alleging therein that nothing wrong was done by HC Rajender Singh. He was threatened by Rajmangal Prasad and others of Pratidhi". Regarding the appeal for the rerecording of statement it says "now he [Suraj] is again supporting his first statement. The applicant is changing his statements every time".

Clearly this statement is a lie and an attempt to discredit the victim. That it emanates from the prosecution's side shows the complicity between the prosecution and the accused and indicates the lack of chances of a successful conviction in the case.

The court has dismissed the appeal for a fresh recording of Suraj's statement. Instead it has ordered that Suraj can change his statement during the actual trial. The police have not yet filed a chargesheet in the case. This case has been handled by at least four investigating officers. Initially, it was with SI Sanjay Butt of the Shakarpur police station. It was given to the Crime Branch at Pratidhi's request since Butt was from the same police station as the accused. Then it went to the office of DCP (East District) where it was investigated by inspector Pramod Kumar of DIU/East. When this official was promoted as the SHO of Malviya Nagar, the case remained unattended for sometime. It was then handed over to inspector Daan Chand of Vigilance at the Preet Vihar police station, who is the present IO. The lackadaisical attitude of the police towards the entire case is suggestive of where their sympathies actually lie.

The role of other state institutions also needs to be looked into in the present case. The CWC is yet to complete its inquiry or take any action. When PUDR gave a written application to CWC demanding to know the details of the case, it was denied saying that the "matter was under investigation". The Department of Social Welfare of the Delhi government carried out its own investigation of the role of the Children's Home officials. It has concluded that the private security agency hired by the Children's Home is responsible for the lapses that occurred during the boy's stay. Thus, it completely absolved the Home staff and officials from any blame.

Whether eventually Rajender Singh and his associates are convicted and punished for their crimes or not, only time will tell. But what is certain is that the scars acquired by Suraj on the night of 18 January 2007 will never heal completely. He is presently living with a community worker of Pratidhi and learning the work of a peon at the NGO office in the hope of acquiring a more secure and safe employment in the future. This case is an ugly and real example of how organs of the State designed to take care and protect its citizens, often do the opposite. Suraj's story highlights the way in which, in cases of custodial rape, the entire machinery of the State is actively involved in shielding the accused and denying the crime instead of ensuring justice and rehabilitation for the victim.

PUDR demands that

1. Criminal cases should be filed against the aforementioned persons who were responsible for intimidating Suraj and Balram and for obstructing the course of justice.
2. The chargesheet should be filed immediately in the case and a time period should be fixed for the trial.
3. The bail of the accused should be cancelled for intimidating and harassing the victim of the crime.
4. Section 377 of IPC should be repealed.
5. There should be separate laws dealing with adult male rape and child sexual abuse.

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