

4.3.90

CUSTODIAL RAPE



People's Union for Democratic Rights

Delhi

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CUSTODIAL RAPE IN DELHI : 1988 - 1990

No.	Date	Police Station	No. of Accused	Action taken	State of the Case
1.	19-01-88	Harl Nagar	1	NA	Lapsed
2.	01-02-88	Badarpur	1	Suspended	Pending
3.	02-05-88	Adarsh Nagar	1	Suspended	Pending
4.	23-05-88	Kotwall	4	Suspended	Pending
5.	25-11-88	Gokulpuri	2*	One Suspended	Pending
6.	22-04-89	Narela	1	Suspended	Pending
7.	22-06-89	Defence Colony	1	Suspended	Pending
8.	12-07-89	Kotwall	1	Suspended	Pending
9.	20-07-89	Khanjawala	1	Suspended	Pending
10.	29-07-89	Jehangirpuri	1	Suspended	Pending
11.	01-11-89	RK Puram	3	Suspended	Trial yet to start
12.	25-12-89	Kotwall	2*	One Dismissed	Trial yet to start
13.	10-01-90	Seemapuri	3*	Two Dismissed	Trial yet to start
14.	11-02-90	Kalkaji	1	Dismissed	Trial yet to start

- NOTE**
1. Dates refer to FIRs and are not necessarily the dates of the incident.
 2. In the second Kotwall case (No.8) the victim committed suicide
- * Cases in which one of the accused is a civilian

Source: Delhi Police

THIS is a report on custodial rape. Custodial rape differs in many respects from rape in general. The social power that men have over women gets intensified with the legally sanctioned authority and power of policemen. Rape is also an instrument of political repression in some situations. Even the limited supportive mechanisms that exist for women become less effective when the rapist is a policeman. The intimidative power of the police, especially over poor people, enables them to isolate the woman. The more the isolation the lesser the chances of resistance, a fact used as evidence of her 'consent' later in the court. And the prosecution and evidence in custodial rape cases is more prone to manipulation. Thus custodial rape is an aggravated form of rape.

As a report on rape this should have been a report on the lives and struggles of women, their physical and social vulnerability to sexual assault, the consequences and the fear of consequences. In other words, this should be a report on women as individual human beings and as a social group. But, as we shall see, this will be a report on rape victims and not on women. Therein lies a crucial distinction.

As a physical assault, rape is no less damaging than other forms of physical violence against the human body. But no rape is a mere physical violation and injury. Its significance lies in the physical repugnance, the mental and emotional trauma and its severe social repercussions. Each time a rape takes place, the woman becomes a socially ostracised victim of assault. In the process, she ceases to be a person and a social being and becomes merely a 'rape victim'.

Let us first unravel a seeming paradox. Rape is both socially and legally deemed a crime. At the same time, socially and judicially the victim is deemed an accomplice to the crime. The contradiction between formal condemnation of rape and simultaneous belief in the complicity of the victim arises from social attitudes towards female sexuality and chastity. Female chastity is valued and is to be protected. Hence the condemnation of assault on a woman's chastity. But rape means that the chastity is "lost irrevocably". This loss, no matter how involuntary, is nevertheless viewed as a moral and social transgression of desired ideals of inviolate female chastity. The raped woman thus becomes simultaneously victim and transgressor. The sense of moral outrage against rape, seemingly centred around the offence and the offender, becomes inexorably and inherently a judgement on the woman. Rape becomes a social stigma, a sign of her fallen status, her shame. Formally the injured party, the woman becomes in essence, the principal offender.

Before going into the legal definition of rape, we should note that law makes some exceptions to rape. For, the explanation provided (Exp. 1, S.375, Indian Penal Code, IPC) and the clauses relating to restitution of conjugal rights in effect give legal sanction to marital rape. For the purposes of law, rape is physical coercion, sexual intercourse against a woman's will and consent, or even with it, under certain specified circumstances (S.375, IPC). It becomes simply a physical assault, like any other physical assault, part of the category of "Offences affecting the human body". It becomes a matter of medical record corroborated (or not) by circumstantial evidence, hard evidence to be tested by various clauses of law with all its qualifying sub-clauses. But then in law, rape is the only offence where the complicity of the victim ("the prosecutrix") becomes a relevant consideration in the trial and the punishment.

Hence the elaborate edifice built on "consent". The presumption of consent is of course the basis of all defence arguments. Unless the victim exhibits a mauled body, her own, as evidence of physical coercion, or of the offender, as evidence of her resistance, preferably both, she is deemed to be complicit. Evidence of her complicity may range from trivial circumstantial evidence to medical reports. Whatever the variations on the theme, the basic premise is that by being "in the company" of the offender she invited the

sexual act. As though a woman can fathom the intentions of the offender from every gesture, word, action prior to the rape and as if, even if she could, she has complete control over her circumstances. In a society where so little autonomy and volition is granted to women, it is an exercise in sheer hypocrisy to suddenly expect her to be in command of the situation. Particularly when, as in most cases, the offender combines disarming friendliness and reassurances with coercion and threats. Yet the woman is routinely treated as an accomplice in the offence against her.

Ordinary commonsense would suggest this is preposterous. The IPC, for instance, lists over 500 criminal offences against the state, public tranquillity, against the human body, against property, and others. Include in any of them, or in all of them, the possibility that the victim is an accomplice to the crime. A state against whom you conspire would then have to prove that it is not part of a conspiracy to overthrow itself. A man stabbed would have to prove that he has no tangible benefit in getting stabbed and a hundred other such myriad and bizarre consequences would follow. The entire jurisprudence as we know it would simply collapse. Yet this is what is assumed in the case of rape. In the case of women, the legal system thus negates the very principles that govern it. In doing so, notwithstanding all its progressive amendments, law becomes an articulation and coded regulation of the duplicity of social attitudes towards women. The cumulative effects of the retrogressive social attitudes reflected in the convoluted labyrinth of law is, that all critique of rape, all attempts and agitation against it, tends to become a legal discourse. The human beings disappear.

I

Almost two decades ago, March 1972, in Desarganj, district Chandrapur of Maharashtra, a 16 year old tribal girl Mathura was involved in a relationship with a young man against the wishes of her family. The family sought the help of the police. A decade later, August 1981, in Nagpur, the metropolis neighbouring Chandrapur, 19 year old Shamimbanu and Mohamed Shafi (25) decided to get married against the wishes of their respective families. They eloped, went to Bombay and contracted marriage through a kazi. On their return they were accosted by the police. Both sets of parents disowned them. A few years later, March 1984, Suman Rani, a young girl from Bhiwani Khera, Haryana, decided to elope with her boy friend. Enroute to Jammu, they were accosted by two constables of the Patram Gate police post in Bhiwani. The act of custodial rape of Mathura, Shamimbanu, Suman Rani, has obscured the other factor common to all these well known cases: the denial of the right of young women, especially of poor families, to choose their own partners, their freedom and right to love. The parental and societal objections in such instances can attract in fact certain legal provisions against the man, such as kidnapping and abduction (S.336, IPC). At least in two of the above cases the police threatened the use of this law to coerce the couple into going to the police station, separating them and then raping the woman. And in one case (Mohamed Shafi) the police actually foisted charges on the man (S.110 and 117 of the Bombay Police Act relating to "misbehaviour in public") which the prosecution itself withdrew later "for want of material to sustain the charge." In the Suman Rani case, her friend himself was made a co-accused, along with the two policemen. He was however acquitted by the High Court.

If the power of the uniformed policeman, especially over poor and marginal sections of the population is all pervasive, it is doubly so in the case of women. Police can and routinely do threaten the woman with harm to herself or to her dear ones. And if by chance the woman is single there is always the Immoral Traffic (Prevention) Act handy. The social consequences of being charged under this Act would be sufficient to cow down the woman. In the Seemapuri case, two days after the victim had filed a complaint, naming

RAMA KRISHNA PURAM

Nirmala Gupta (36) was sitting with Hari Om in a dhabha at Dhaula Kuan, where the latter works, around noon time on 1 November, 1989 when policemen led by SI Bishamber Singh, from R.K. Puram police station came and arrested them. Both of them were slapped and abused. Earlier, it appears Hari Om had an altercation with the SI when the latter refused to pay after eating at the dhabha. They were taken in the jeep to R.K. Puram police station. The station was deserted as most policemen were busy on an escort duty to the then ruling party candidate in South Delhi parliamentary constituency. Hari Om was beaten and was later let out. But Nirmala was not released. Constable Azad Singh escorted her upto the market and she thus remained in custody. Shortly afterwards she was brought back to the thana. It was then, at around 2.30 p.m. that she was raped. First in the Investigating Room itself, later in a room above it and then in the toilet. Three policemen, SI Bishamber Singh (54), constable Amarjeet Singh (25) and constable Azad Singh (25) were involved. After the rape she was given some tea and was also offered money which she refused.

Nirmala was originally a resident of the village Dabra, near Gwalior, Madhya Pradesh. She was married and had four children. However her husband turned her out of the house after which she came and stayed at an ashram in Brindaban, Mathura. She was reportedly raped there by a swami. She left Mathura and came to Delhi and was living with Hari Om whose quarrel with police eventually landed her in the police thana.

After the rape she was let out. She came and reported the matter to Hari Om. The following day both of them complained to the ACP. The three policemen were immediately suspended. A case was registered against them (FIR: 379/2-11-89, R.K. Puram) and they were arrested. The charges include criminal intimidation (S 506, IPC). The charge was also that all the three had committed the offence "in furtherance of common intention" (S 34, IPC). On the crucial question of rape initially the charge was sexual intercourse by a public servant with a woman in his custody, not amounting to the offence of rape (S.376-B). But later the charge was converted to 376. Ordinarily the offence should attract the clauses relating to custodial rape and gang rape [S 376(2) (a) and (c), IPC]. The attitude of some of investigating officials in this case must be noted. Going by their version, it is clear that they are building a case of consent. Much is being made of the short duration of her absence from the police station without caring to note that all the while a policemen remained with her.

After her complaint she was initially sent to Nari Niketan on 2 November itself. A magistrate was to record her statement as is the usual practice under the law (S. 164, Cr.P.C.). But it took quite some time as normal judicial activities were severely affected by the election process then in progress. We made an attempt to meet her at Nari Niketan, in vain. It appears some time immediately after the elections on 22 November, the statement was recorded to which we have had no access. She was discharged from the Nari Niketan on 25 November, a fact that we learnt only two weeks later. The forwarding address left was a Mathura address. Our enquiries there suggest that it probably was a false address. In the meantime, through our own informal enquiries we learnt that she was very much in Delhi. The few leads we got, an address in a village on the outskirts of South Delhi, a relative supposedly living near Dhaula Kuan itself, did not lead us anywhere. The dhabha owner, people living in the vicinity and Hari Om himself have now become very reticent. For the present, Nirmala Gupta has disappeared. What is going to happen to the case against the guilty policemen?

the offending policemen, she "failed" to identify the cops, presumably under such threats.

Single women and widows with young children, who have to eke out a living against all odds become easy prey if only because they are already deprived of supportive mechanisms. Devi, a widow with a young son, works in a shop in Barao Gulwara village in Agra. One evening in March 1989, when she was taking food to her son she was dragged into a house by two young men and raped. Courageously she went to Shamsabad police station to lodge a complaint. She was taken to Agra for medical examination and brought back to Shamsabad police station the same evening. That night one SI and a senior police officer raped her in the police station.

In certain instances, the assault is not only against an individual woman who might by chance fall prey to the police but is an organised and conscious attempt to intimidate a social group or community. Here the woman is treated as a 'representative' of a political or social cause. Given the prevalent value placed on female chastity, rape or the threat of rape becomes a source of intimidation and torture against activists and their families. Mothers, wives, sisters of activists or wanted people and women activists themselves are the target of this form of police violence and coercion. In recent times, police and paramilitary forces are known to have raped women in numerous cases, be it the peasant movement in Andhra and Bihar, anti-terrorist operations in the Punjab, or the struggles in Manipur, Nagaland and Bodo areas of the North-East. In some cases, they have perpetrated gang rape.

In a large metropolis like Delhi the most common victims seem to be migrant women. Delhi has over 1.6 million migrant labour, of whom at least four lakh are women. Although they do usually have relatives or fellow villagers, they are practically devoid of any support mechanisms. Friends and neighbours, fellow workers at place of work, local leaders and the usual informal social network are virtually absent. More than one fourth of the custodial deaths that took place in the eighties in Delhi, for instance, were those of migrants. All the four women whose cases we have investigated and included in this report are migrants. Chance circumstances more than organised social protest brought these cases to light. But the story does not end with the filing of the FIR. Alone in the confused mazes of metropolitan life, frightened by the rape and demoralised by its aftermath, the woman usually goes into forced anonymity and "disappears." If the "prosecutrix" disappears after the initial complaint, the prosecution itself, for all practical purposes, will collapse. The policemen in due course of time will be acquitted.

As a woman who not only has "lost" her chastity but has had the temerity to go public about it by lodging a complaint, the rape victim risks social chastisement and ostracism. Acceptance by husband or families, marriage in case of unmarried girls, all become a problem. Jhunu Majumdar, a maid servant, was raped in April 1985 by a constable in Hari Nagar police post (Tilak Nagar P.S. Delhi). In an attempt to make her drop charges, the police pushed her into marriage with an invalid, one Vijay Bara. In the Chandni Chowk case, the policeman offered the victim, an already married young woman, arrangement of marriage with a rich (albeit alcoholic) person. The promise of social rehabilitation through marriage is clearly an acceptable means of attempting to buy the silence of the women.

Maid servants, widows with young children, political activists or their relatives, tribals and dalits, migrant labour in metropolitan cities — these are some of the women who have been victims of custodial rape. The pervasive social attitudes towards female sexuality, chastity and rape is compounded in their case with their existence on the margins, socially and economically. The legal procedure essentially takes it out of this cultural and social context. Let us follow the contradictory complexities of law through its faltering steps towards the final judgement, which in any case, is not always, justice.

CHANDNI CHOWK

A young woman (20) and her husband, residents of Chattarpur, a small town in Madhya Pradesh, came to Delhi in the third week of December 1989. The husband needed medical help for burns on his hands. He had also work with the Registrar of Newspapers in R.K. Puram. They initially stayed at two dharmasalas in Chandni Chowk. But two days before the incident, they shifted to a rent free vacant room in a house under repair at Chahalpuri, Kinari Bazar, with the help of a friendly contractor.

On the evening of 24 December when her husband did not return on schedule, the young woman went to look for him at the bus terminal near Phuwara. But when some young men began harassing her, she started back home. Near Jubilee cinema constable Satinder Kumar and his friend Vijay Kumar accosted her. Vijay Kumar is a resident of Jahangirpuri and supplies boxes to mithai shops Chandni Chowk area. Satinder, at the relevant time was attached to the Chandni Chowk police post (Kotwali PS) and was on patrol duty at Jubilee cinema. Both of them accused her of being a loose character (chalu) out on the streets. She told them of her background and took them to her place in Kinari Bazar for verification. But as the couple had moved just a day before, unfortunately for her no one in the gali could speak for her. Then the two took her to Jubilee cinema and after some time to a deserted police assistance booth near Kanya Madhyamik Higher Secondary School on the Diwan Hall Road. It was there, at around 10 p.m. that she was raped first by the constable and later by Vijay Kumar. After the rape they alternately threatened her (that they would kill both her and her husband) and made promises to her (of shawls and saris apart, they also offered to get her married to a rich man). After the incident the constable went back to his duty and told Vijay Kumar to drop her at her house. It was on her way back that she met her anxious husband. With him were two gentlemen who played a crucial role in the case. One of them is a teacher and the other a shop owner. Prominent citizens of Kinari Bazar, they were also Special Police Officers (SPO), civilians conferred with honorary police status to help the local police in maintaining law and order. The victim, while narrating the incident broke down and also fainted. Vijay Kumar was immediately caught there itself by the two SPOs who also immediately lodged a complaint at the Kotwali police station. Confession by Vijay Kumar and also a tell tale feature, his speech defect, led to the easy identification of constable Satinder Kumar.

A significant dimension in this case was that the duty officer and the SHO who is also the investigating officer maintained that the woman gave her consent. Much was made out of the fact that she did not raise alarm in the 45 minute period she was with them before the incident of rape. The inability of a frightened migrant woman under the custody and power of a uniformed policeman to raise alarm was argued as proof of her consent. Meanwhile constable Satinder Kumar was dismissed under 'orders from above'. The government invoked the powers conferred on it by the constitution to summarily dismiss its employees even without an enquiry if it is satisfied that, "in the interests of the security of the state, it is not expedient to hold such an enquiry" [Article 311 (2)(c)]. A case was also launched against the two who were arrested immediately. In addition to all the charges included in the R.K. Puram case they were also charged with "abduction of a woman" [S 366, IPC]. But the couple, after the traumatic incident, left the capital and went back to their native place. Will they ever return? What will happen in this case?

II

In 1979 the Supreme Court judgement acquitting the guilty policemen involved in the custodial rape of Mathura led to wide-spread protest. Civil rights organisations, women's groups and academics of law joined together demanding a change in law. Eventually in 1983 an amendment to rape law was brought into force in which, among other things, the minimum punishment in case of custodial rape was made ten years (S.376(2) IPC) and the onus of proof in all such cases was shifted to the policemen involved (S.114-A, Indian Evidence Act, IEA).

But what is custodial rape? The law is sufficiently vague in defining CUSTODY (which the dictionary defines as care, guardianship, safe-keeping). While a police station or the premises of any station house are clearly identified, 'custody' itself is not. If it is taken that when a policeman accosts or detains a woman in pursuance of a complaint or investigation then it is a custody, then it should be noted that both in Chandni Chowk and Seemapuri included here neither was an investigation in progress nor was there any complaint on which the police were acting.

Altogether in 1989, the Delhi police lists only one as a 'custodial rape' while all others are listed as 'rape by policemen.' Such fine distinctions about custody are no longer made in case of custodial death. Presumably if the initial interaction of the policeman is in pursuance of his official duties then it becomes 'custodial', otherwise, it is not. But for any ordinary citizen of this country a policeman represents authority and power, if not violence and fear, whether or not he is on duty. To ignore this monstrous social reality is to carry a false distinction to the extent of a fraud.

There is also another complication concerning gang rape where 'a woman is raped by one or more in a group of persons acting in furtherance of their common intention' (Explanation 1, S.376 (2), (g)). The 'gang' sometimes consists of both civilians and policemen. But the trial procedure and the punishment are different for them. In three out of the fourteen cases listed in the table, including Chandni Chowk and Seemapuri, one of the accused is a civilian.

SEEMAPURI

A recent woman migrant from Himachal Pradesh lives in G-Block, Seemapuri, East Delhi. She is a widow with four children. On the night of 10 January, 1990 when she went to fetch food from a nearby dhaba she was accosted by Jasraj also known as Pammi. He is an auto rickshaw driver. She was dragged to the barracks opposite the Municipal Corporation dispensary which was closed at that time. The empty barracks in the premises seem to be a meeting place for all kinds of elements. In our visits we found policemen playing cards there. We also learnt that it is an adda for drinking. Pammi dragged her into these disreputable barracks. He was joined by two constables Mool Chand and Satish Kumar of Seemapuri police station. All three of them raped her. Next morning she filed a complaint identifying the two policemen. As in the Kotwali case the two constables were summarily dismissed [A.311 (2)(c)]. A case was launched and both of them were arrested. The charges, apart from similar charges mentioned in other cases [S.376, 506 and 34, IPC], also included in this case, wrongful confinement [S.365, IPC].

But there is an added dimension to this case. According to many of her neighbours, the victim is engaged in prostitution. This might have been used to silence her. A few days later, in the presence of the magistrate who came to record her statement, she "failed" to identify the two constables. Practically there is no case against the guilty policemen now.

What is rape? The law defines it as "sexual intercourse with a woman (I) against her will and (II) without her consent. In addition four conditions are identified in which even with consent, a sexual intercourse is an offence: threat, deception, mental instability of victim, or when she is a minor (S.375, IPC). In other words, neither sexual intercourse by itself even within a police station nor such an act with consent (save in specified circumstances) is an offence. But when it is brought within the purview of S.376-B, a public servant who induces or seduces a woman to have sexual intercourse, even when it does not amount to rape, it becomes punishable with a minimum punishment of five years of jail. In Rama Krishna Puram, the case was originally registered under S.376-B but was later converted to S.376.

In any case, the punishment in all cases can still be less than the prescribed minimum (7 years in case of rape, 10 years in case of custodial rape) provided the court is satisfied that there exist "adequate and special reasons" to do so. What those adequate and special reasons are left to the will and wisdom of the judges. The only condition imposed on them is that they must record their reasons in the judgement.

The 1983 amendment also brought a change in the Indian Evidence Act (IEA) (S.114-A) by which in the case of custodial rape if the woman "states in her evidence before the court that she did not consent, the court shall presume that she did not consent." It is for the accused policemen to prove the contrary. The particular manner in which this clause is phrased was to lead to glaring loopholes. For the presumption is not made absolute but is made subject to proving the contrary. The amendment did not make sexual intercourse in a police station by a policeman an offence in absolute terms but only when it is done without consent.

Now what happens if it is suggested or effectively proved that the woman gave consent. Then she becomes an accomplice. And an "accomplice shall be competent witness against an accused person" (S.133 IEA). But if this be the rule of law then in the rule of practice an accomplice can also be "unworthy of credit, unless he is corroborated in material particulars". Further being a victim of sexual assault herself she is "competent to testify" (S.118 IEA). But even competent witnesses can be asked questions which tend to shake their creditability by injuring his or her character (S.146 (3) IEA). And finally a particular clause still remains on the statutes which states that when a man is prosecuted for rape, "it may be shown that the prosecutrix was of generally immoral character" (S.155(4) IEA). In other words the moral conduct of a rape victim remains a legally permitted category notwithstanding all the progress made in the past years. If this be the law, let us see now the judicial process in actual operation.

At the outset we should note that it is usually difficult for the woman to lodge a complaint for rape. In fact the Supreme Court elaborately enumerated such difficulties in the "Indian setting." (Bharwada Bhognibhai Hirjibhai vs State of Gujarat, 3 SCR, 280, 1983). In the case of custodial rape it is much more difficult. Yet courts often find even delay in lodging the complaint as grounds to doubt the testimony of the victim. The High Court in the Shamimbanu case (Nagpur) and the Supreme Court in the Suman Rani case (Haryana) have done so. But the fact remains that lodging a complaint, the time it takes for a woman to muster enough strength and support, registration of a case and its trial are riddled with uncertainties in our society. The four case studies included here are all recent incidents in which the trial is yet to start. If not imagination, at least time would indicate the fate of these cases.

In custodial rape cases the investigation is conducted by fellow policemen, often of the same police station as is the case with three out of four cases included here. It is they who conduct the 'spot panchnamas'. If there are witnesses they are most likely fellow comrades in arms. Medical examination is done by police doctors or other government doctors. Corroborative evidence that reaches the trial court is the one that survives these

inherent infirmities. And here it is not the victim or her lawyer but the prosecuting counsels who conduct the case. And they are notoriously close to the police, especially at the sessions court level.

Much value is placed on corroborative medical evidence. Semen, blood group, marks of resistance and injury, proof of penetration, tags of granular tissues in the vagina, and interpretations drawn on the evidence based on the principles of medical jurisprudence are all part of the corroborative medical evidence.

But in reality it would be difficult to obtain such medical evidence. The victim would probably instinctively set about to clean herself and remove any signs of sexual intercourse or struggle. A victim of rape, that too of custodial rape, can not be expected to rush from the scene of crime, even when she is free and in a condition to go, to the police station to record an FIR in that state of mental and physical injury. Moreover, even when the police decide to conduct it immediately, in vast parts of the country facilities for medical examination do not exist. And to be of any use, the examination has to be conducted within twelve hours. In any case, medical evidence often remains inconclusive.

Usually the doctors who undertake these examinations for the police are not known for their independence and objectivity, if the accused are policemen themselves. The sessions court in the Suman Rani case and the Supreme Court in the case of Jhunu Majumdar disputed and rejected the interpretation given by the doctor. The latter was a doctor from the Central Forensic Science Laboratory (CFSL), Delhi. The importance of corroborative evidence itself is a source of conflicting judicial pronouncements. In 1983, in the Gujarat case cited earlier, the Supreme Court said that "In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury." Three years later in the Shamimbanu case, the Nagpur High Court stated that "except in rarest of rare cases ... the Court should ordinarily look for corroborative evidence." Four years later in the same case the Supreme Court stated that "ordinarily" the court need not look for corroborative evidence (State of Maharashtra vs Chandra Prakash Kewal Chand Jain, Criminal Appeal No. 220 of 1986, judgement delivered in January 1990).

The testimony of the victim, to which all other evidence is corroborative (or otherwise) itself is clouded by legal contradictions. The character of the victim can be questioned as earlier stated, under the law (S. 155(4) IEA). That is what the Supreme Court did in the Mathura case. Following the furore, the new amendment comes into force which implicitly assumes that the moral character of the victim is not a relevant consideration (S. 114-A, IEA). But the government does not rescind the earlier objectionable clause, despite the recommendations of the Law Commission (84th Report). The sessions judge in the Suman Rani case categorically states that, "all said and done, even a girl of easy virtue is also entitled to all the protection of law" and rejects the arguments based on the alleged immoral character of the victim. But later in the same case the Supreme Court judgement refers to the defence counsel's argument about her "lewd and lascivious behaviour" and reduces the sentence on the guilty policemen on the ground of the "conduct of the girl," among other things. When the Mahila Samyukta Morcha, a joint forum of fourteen women's organisations, filed a review petition on the judgement the court clarifies that by "conduct of the girl" it was referring not to the moral character of the victim but to the delay in her filing a complaint. And then, it also rejected the review petition.

Thus in this case very tenuous and specious arguments are cited as the "adequate and special reasons" to reduce the sentence on the cops to half the minimum prescribed punishment of ten years imprisonment. But almost a year later, the Supreme Court also stated in the Shamimbanu case (reversing the Nagpur High Court acquittal) that "when a person in uniform commits such a serious crime of rape on a young girl in her late teens,

ALAKNANDA

Chittaranjan Park and its surrounding areas in Delhi are populated, largely, by Bengali settlers. The neighbouring Alaknanda thus has a Bengali migrant jhuggi settlement. Renu Mandal (27) came here, just five days before the incident, in search of work. Her husband and children are still in West Bengal. She was staying with her sister and her husband Bablu Devnath.

On 11 January, Devnath's child had a quarrel with the child of a neighbour Lakhman Mandal. Renu slapped Mandal's child which later in the night developed into a row between the two families. Just around that time Head Constable Phool Singh and constable Nadish Kumar were visiting the area in connection with some other altercation, although it was not under their jurisdiction. They intervened in this row also and called Renu Mandal and others to the police post. Mandal was beaten and was let off. Renu was asked to come to the thana for writing a report. Her brother-in-law, who was accompanying her all the while, was sent home to fetch a blanket for her. It was a winter night and the thana was more than a kilometer distance from the post. Meanwhile the Head Constable left the scene. It was then, at around 10.30 p.m. that constable Nadish Kumar took her to a new police post being built opposite Shivalik apartments. He threatened that she would be locked up all night. Then he gagged her and raped her.

Shortly afterwards Renu came back home and related the incident to her brother-in-law and others. They took her to the local pradhan who then took them to Ms. Poornima Sethi, a BJP member of the dissolved metropolitan council. They lodged a complaint with the Kalkaji police, under whose jurisdiction the area falls. Both Renu and the constable were sent to an examination at the All India Institute of Medical Sciences (AIIMS).

Constable Nadish Kumar was dismissed under Article 311 (2) (b) and Head Constable Phool Singh was suspended for negligence of duty. A case was registered under S. 376, IPC (FIR No. 52, 52/90, Dt. 12-2/90 P.S. Kalkaji). The accused was arrested and sent to jail. We would like to add that of all the four cases included here, this is the only case where we were able to meet the victim, although she too, like others was a migrant. But Renu Mandal, being a recent migrant from Bengal, is not conversant with Hindi.

there is no room for sympathy or pity. The punishment must in such cases be exemplary." Let it be noted for record that the actual punishment awarded or confirmed in both cases is the same, only five years imprisonment.

The endless paradoxes and absurdities of these judicial pronouncements can be attributed firstly to the so-called material facts and circumstances of the cases whose infirmities we have already noted. Secondly, the contradictions can also be due to the inherent sexist biases and prejudices of the judges. But it is difficult to conclusively establish such attitudes unless one goes into the past "conduct and character" of the learned judges themselves. But what is the most striking feature of all these conflicting judicial pronouncements is that each of them is backed by an appropriate clause of law and a suitable "precedent"

This harsh reality must be recognized lest the movement against rape loses itself in the labyrinth of legal discourse. Rape victims should not be allowed to become objects of sensation, condemnation, pity or charity. For they are not merely victims of sexual violence demanding punishment, they are also women, human beings, and citizens fighting for just rights in a democratic society.

HUM LADENGE SAATHI UDAS MAUSAM KE KHILAF

During the last months of the emergency, in January 1977, the Delhi unit of the People's Union for Civil Liberties and Democratic Rights (PUCL & DR) came into existence. At the national level the organization had been formed earlier in October 1976 by the late Shri Jaya Prakash Narayan. Its Delhi unit was one of the few units that functioned during the Janata interregnum (1977-80). Later in 1981, it became the People's Union for Democratic Rights (PUDR).

PUDR's endeavour has been to focus attention on those issues and people who otherwise do not get attention. Numerous issues concerning different sections of people and their struggles were taken up by it. Although a Delhi based organisation, it has taken up issues in over 14 states of the country.

Courts, parliament and the press are the institutions through which PUDR is conducting its campaign. But it is also making efforts to build independent channels of consciousness through the publication and distribution of its reports. Over 110 such reports have been published so far. The money generated through sales of the reports forms the main source of funds for the organisation.

In the last thirteen years the political situation in the country has become more unstable and complicated. Governments changed four times and the Prime Minister six times. Over eight specially repressive laws were promulgated. Police, military and paramilitary forces are becoming part of the day to day functioning of our democracy. And the rationalisations that facilitate their intrusions are gripping public opinion. As corruption and communalism came to the fore, the issues relating to oppression and repression of the masses are receding into oblivion. The modest and meagre efforts of PUDR are an attempt to fight against this process. The People's Union for Democratic Rights appeals for help and support from all those who think it should continue its work.