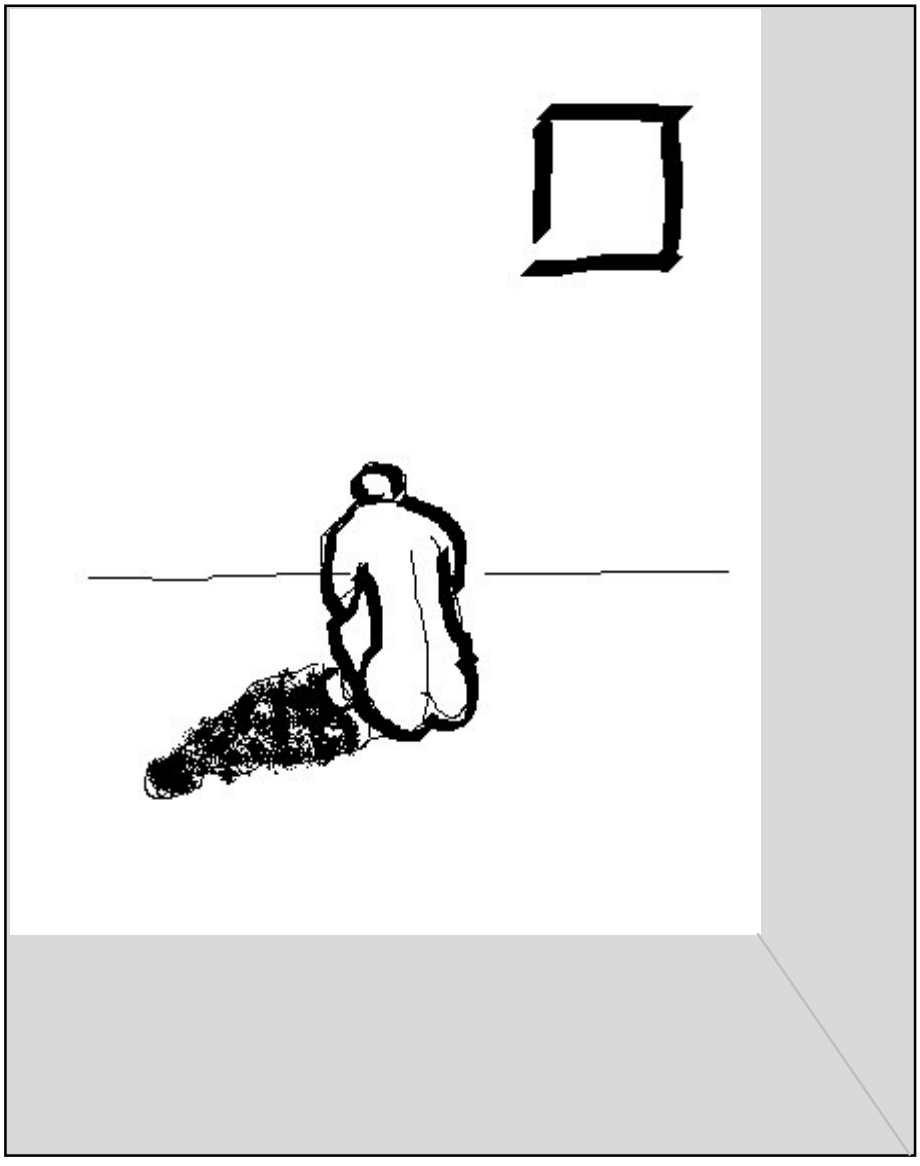
In Custody

An Investigation into 5 cases of Sexual Assault



Peoples Union for Democratic Rights, Delhi
May 2004

There is no difference between being raped
and being pushed down a flight of cement steps
except that the wounds also bleed inside.

There is no difference between being raped
and being run over by a truck
except that afterward men ask if you enjoyed it.

……

There is no difference between being raped
and going headfirst through a windshield
except that you are afraid afterward
not of cars
but half the human race.

……

Fear of rape is a cold wind blowing
all of the time on a woman's hunched back.
The fear of the dark side of hedges,
the back seat of the car, the empty house…
The fear of the smiling man in whose pocket is a knife.
The fear of the smiling man in whose fist is locked hatred.

All it takes to cast a rapist is seeing your body
as jackhammer, as blowtorch, as adding- machine- gun.

…….

All it takes is to push what you hate,
what you fear onto the soft alien flesh.
To bucket out invincible as a tank
armored with treads without senses
to possess and punish in one act,
to rip up pleasure, to murder those who dare
live in the leafy flesh open to love.

- Marge Piercy

In early April, a city court in Delhi framed charges against 4 accused belonging to the Presidential Body Guard for raping a University student inside a park in October last year. The student had gone there with her boy friend and the accused gang raped her. The four were on duty at that time. The incident had sparked off a public furore about the capital being an unsafe place for women. The memory of the rape of a Swiss diplomat was fresh, as it had happened just a little before.

In mid March, another city court in Delhi acquitted two policemen accused of raping a woman in July 1995. The grounds for acquittal were insufficient evidence. The woman, a domestic help was accused of theft by her employer and taken into custody. According to her, the two accused accepted a bribe from her employer and raped her within the precincts of the police station from morning to evening. No medical examination was conducted and no test identification parade either. When PUDR investigated the incident (a year later when the FIR was filed) the police were adamant that the accused had been falsely implicated. According to them the woman had dubious morals and had framed charges against the police because she had been caught stealing.

While the two cases discussed above are not the only cases of ongoing trials, the difference in reception in court and in and by the media is very noticeable. The first case received a lot of media attention because the survivor is a young college student and the accused belong to the military's elite, the 61 Cavalry. As the President's Body Guard, the incident was embarrassing for the high officials in the army. The medical examination proved that rape had indeed happened. The survivor had obviously shown immense grit in registering the case and going through the medical almost immediately. In the second case, the survivor is a domestic help who lived in a slum colony at the time of the incident. She herself had been accused of stealing money (a paltry sum of 260/=) and had spent some time in judicial custody. The incident was reported in the press a year later when the FIR was filed.

Both survivors had alleged rape but this testimony by itself is not sufficient evidence. Conclusive medical examination, test identification parade, consistency between statements before the police and court, and the background of the survivor all play a crucial role in establishing the reliability of the survivor before a court of law. Twenty years after the law was suitably amended to address the precariousness of the survivor and to punish the accused adequately, the questions remain.

What happens if there is a delay in lodging the FIR and in the medical examination? What happens if the nature of the assault is not conclusively 'rape' but a very serious assault, nonetheless? What happens if the survivor is a male or a child who has been sexually assaulted? What is the status of all these questions in existing law and how do investigations proceed? These are not mere academic questions.. These are the problems that investigations into reported cases of 'rape' have led to. Hidden behind these questions are the lives and trauma of real people who have survived incidents of sexual assault. This small report seeks to highlight some incidents that happened in the year 2003 and raise the question of the adequacy of present law and its implementation, and reiterate the need for the search for justice.

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I. Introduction

PUDR investigated 5 reported cases of sexual assault that took place either in an official, institutional space like a hospital or police station, or were perpetrated by police or army personnel in uniform. These included the following custodial rapes and sexual assault -by the police at Badarpur P.S (28 January 2003), by a hospital employee at Shanti Mukund Hospital (7 September), by a doctor in the Holy Angels Hospital (23 September), by members of the Presidents Body Guard on duty (6 October), by the police of Seemapuri P.S. (4 December). The victim/ survivors are a male school student, a private nurse, a schoolgirl, a female college student and a female domestic worker.

In all the cases the accused were arrested, FIRs were lodged and medical examinations were conducted. This picture of apparently exemplary official action is marred when one considers the condition of the survivors and the status of the cases. The survivor in the Shanti Mukund case for instance, lost one eye while trying to defend herself and consequently her job. In the case of the minor survivor in the Holy Angels hospital case, the doctor who conducted the medical examination stated that rape did not happen and the court mitigated the guilt while granting bail on the grounds that the accused was a family man with grown up daughters. In both cases the concerned hospitals shrugged off all responsibility. In the case of the rape by the President's Body Guards, the army refused to acknowledge the rape as custodial even though the men were in uniform, on duty and in an army vehicle.

The present definition of rape (S.375 IPC) with its sole emphasis on sexual intercourse with a woman involving penile penetration is wholly inadequate to deal with the range of sexual assault and violence that occurs. This is borne out in the investigations in this report. The law is, for example, unable to deal with instances of child sexual abuse, sexual assaults on men, marital rape or other kinds of sexual assault on women not amounting to the legal definition of rape (such as anal or oral penetration or penetration by objects, or sexual assault not involving penetration etc). The only other sections, which could be said to cover cases of sexual violence under the present law, are defined in archaic terms as assault or criminal force (of word, gesture or act) intended to outrage the 'modesty' of a woman (S. 354 and 509 IPC) and bear a lower punishment. Such definitions inevitably are inadequate in dealing with the grossly violative acts of assault and molestation that occur. Besides, assaults on women, sexual offences against children do not merit any special provision or law and all cases of child abuse are currently booked under S. 377 IPC (unnatural offences), which is highly retrogressive and archaic.

The Criminal Law Amendment (1983) recognized some of the problems in existing law and certain changes happened thereafter. For instance, the broadening of the definition of custodial rape to include not only police stations but hospitals, remand homes, jails (S.376(2),IPC), the enhancement of punishment for custodial and aggravated rape, punishment for offences not amounting to rape (Sections A, B, C, D of 376 IPC), in camera trial (S. 327 Cr.PC), punishment for disclosure of victim's identity (S.228 IPC) and presumption of non consent if the prosecutrix says so in court (S. 114 IEA) were added after 1983. However, the retention of S.155(4) IEA (impeachment of the prosecutrix based on her past sexual history), which was dropped as late as 2002, showed that the 1983 amendments did not address the entire lacuna in existing law. In fact judicial pronouncements have repeatedly shown a

tendency to hark back to the pre amendment era in rape trials. Over the years women's groups have voiced their own dissatisfactions with present law and some have also petitioned the Supreme Court in this matter. Accordingly, the Law Commission in 2000 prepared a review (Review of Rape Laws, 2000 *See Box on page 20*), which takes up most of the problems outlined above. Notwithstanding the Commission's intervention, the cases investigated by PUDR fall within the ambit of existing law. The present report raises the problems and inadequacies of the same.

Lacuna apart, the problem also is one of implementation. The reluctance of the police to apply the section on aggravated rape (376(2) IPC) is evident. The rape of the private nurse (Case no. 2) falls within this section, yet the police have simply filed it as a case of rape, which naturally has a lower punishment (7 years as opposed to 10 years). Besides this denies the survivor the benefit of 114-A IEA i.e. presumption of non-consent as it is only available to the survivor in cases of custodial and aggravated rape 376(2). In fact, in none of the cases investigated by PUDR has the police used the aggravated section or even those sections on sexual intercourse not amounting to rape (376 A-D, IPC). (The court, however, has framed charges in accordance with aggravated rape in 1 case that of the college student who was gang raped by men in uniform). Despite changes in law in favour of the victim/survivor, dominant societal attitudes continue to colour police investigation. Questions regarding the survivor's character, chastity and modesty remain the focus of both police investigations and judicial pronouncements.

Where the present law and due procedure is followed, it often works, by omission and commission, against the survivor. For instance, as per due procedure the victim/survivor has to be medically examined within 24 hours of the incident. However, there are countless reasons why there can be delay in getting the examination done and yet, the fact of delay is often used against the survivor during investigation. The case of rape of a domestic help by a policeman in Seemapuri (Case No. 5) is an obvious example where the police have maintained that the rape charges are false because the medical examination was delayed as the FIR was filed 4 days later.

PUDR's past investigation and follow up into cases of custodial rapes (rapes by policemen and others in uniform) have shown how in spite of changes in law, the state of conviction is abysmally low. The reasons are several. Besides biased police investigations and judicial pronouncements, the harassment of the survivor both by the police and society plays an important role in retraction in court. In such a situation it is important to reflect on the importance of the term 'custody' as it raises the question of vulnerability of the survivor in the hands of custodians of law. While the term 'custody' in S. 376(2) IPC is meant to distinguish men in uniform from others, yet institutional accountability is nowhere factored in existing law. If the accused is a man in uniform who rapes a woman in his custody, then it should follow that besides punishing the accused, the particular institution should also be penalized because the enhanced power of the accused is derived from his official position. But rape is always treated as a crime that is committed by an individual, albeit aberrant. This very 'individual' definition of rape severely limits the scope of addressing the roots of the crime. The nature of the cases investigated show why the term custody needs to be widened beyond its present scope and more urgently, why institutional accountability needs to be factored into the definition of custody.

II. The Cases

1. Sexual Assault of youth in custody in Badarpur PS.

On 28 January 2003, at around 9 p.m., a 17-year-old male student of class 9 was picked up by policemen of Badarpur PS, kept in illegal custody in the barracks inside the police station and brutally anally sexually assaulted for 4 hours. He was allowed to leave only after the intervention of family members and senior police officers. The incident took place in the context of *hafta* collection.

The survivor's family members are roadside vendors who sell fruit on the main Badarpur road. In the evenings, after school and tuition, he helps his brother in their business. The police station is just across the road and the police collect *hafta* regularly from the vendors. On the previous day (27 January), the police increased the rate from Rs. 700 to Rs. 1000, and threatened eviction to those who refused or were unable to pay. The survivor's family expressed their inability to pay. The following day, Head Constable Rajbir caught the youth while he was alone attending the cart and locked him inside one of the barracks. Rajbir then returned with 3 other policemen and proceeded to sexually assault the boy. At this point it is not clear whether he was sexually assaulted by a number of policemen or were the others present as spectators. Newspaper reports mention that at least 2 policemen sexually assaulted the survivor but the police in their account to the PUDR team admitted to the involvement of only 1 policeman, HC Rajbir.

Since the area from where the youth was picked up is busy and near his residence, one of his brothers rushed to the PS but was turned away. He went again after some time but did not manage to find his brother there. The family then contacted a police officer known to them and returned to the P.S after midnight. The SHO who was on duty rescued the youth and took him immediately for a medical examination to AIIMS.

An FIR u/s 377 ('carnal intercourse against the order of nature') and 511 (punishment for attempting to commit offences punishable with imprisonment for life or other punishment) IPC was registered at the Badarpur P.S. The FIR was made only against HC Rajbir even though there were others who were present at the time of sexual assault. Rajbir was absconding for 3 days but was arrested on 1 February and placed under suspension. He was then sent to judicial custody and after some months he obtained bail. Within a fortnight the case was transferred to the District Investigation Unit (DIU), South District presumably for greater transparency and impartiality. Currently, Rajbir has been granted bail and the case is on at the Sessions level.

The youth refused to meet the PUDR team but the team was told and it was reported in the newspapers that even 3 days after the incident, he was not able to sit or walk properly owing to injuries and unable to eat food. After the initial meeting with the team, the family members also refused to talk. It is said that the police was pressurising the family not to talk to anyone and both threatened them with eviction and also offered money to bribe them into silence. A local political leader of the area who took interest in the case supported the police story.

The police story is built on the lines of prior relationship. According to the local police at the P.S, the incident had been blown out of proportion since it was known that the accused had had a relationship with the youth. While the DIU officials were tightlipped about the incident, it is clear that the local police story was doing its rounds. According to the doctor, the medical examination for anal sexual assault of men

hinges on the fact of injuries. The examination conducted that night did not show any external injuries, though samples had been sent for further investigation. The accused was not medically examined. For the doctor too, this was the first such case of custodial sexual assault of a male youth that he had examined.

Certain obvious questions remain unanswered in the follow up. Why wasn't the accused medically examined? Why didn't the FIR mention the other policemen and why were they not arrested, as it is clear that they were at least accomplices in the case? Since the sexual assault was preceded by illegal detention why wasn't the accused charged for the same? In fact, since the crime was committed in the precincts of the P.S, the entire P.S was involved. By holding only one accused responsible, the police have got away from the question of collective responsibility. Moreover, the local police story is difficult to believe as it is obviously a motivated one put forward by fellow policemen in a bid to protect the guilty.

2. *Rape of private nurse in Shanti Mukund Hospital*

On 7 September 2003, at around 1.00 a.m., a 22-year-old private nurse was raped in Shanti Mukund Hospital (East Delhi) by Bhure, a sweeper working there. She had been hired by family members of an aged, paralysed patient and had been attending on him in Room 208 since 26 August.

When she resisted he gouged out her right eye with his fingers and nails, dragged her to the bathroom attached to the patient's room and locked her in. Bleeding profusely, she remained locked inside, through the night.

Finally at around 6.20 a.m. she was discovered there by a ward-boy, Vyas Sharma when he came to change the sheets on the patient's bed. He noticed blood in the room and near the bathroom. Finding the nurse missing he checked the bathroom. As she stepped out of the bathroom she lost consciousness. Her right eye was hanging out; she had injuries on head and neck and was suffering from fever and nausea. The ward-boy alerted the duty nurses and took the survivor to the Casualty ward. The survivor's mother was informed over the phone and told to reach the hospital. The police were also called.

The doctors at the hospital examined and bandaged her eye but did not x-ray it. None of the 4 senior ophthalmologists on the panel of the hospital were contacted. Next, the hospital conducted a gynecological examination that established rape. In the meantime, before the police from Anand Vihar PS arrived, the hospital room, the site of the rape was cleaned up, destroying crucial evidence like blood and semen. The hospital authorities then washed their hands off the matter saying that they would not treat her eye as it was a 'police case' and referred her to Guru Tegh Bahadur (GTB) Hospital.

The survivor then left for GTB Hospital with her mother. No police personnel escorted her. She reached GTB Hospital with her family at 11.00 a.m., but received treatment only by 1.00 p.m. The doctor bandaged her injured eye, but refused other medical assistance, stating that she had only been referred for eye treatment, despite the fact that she was clearly suffering from fever, nausea and her other injuries, and was unable to stand. She waited outside the GTB hospital till evening. Her mother then called the Shanti Mukund Hospital ambulance and took her there in hope of medical assistance but was turned away. When the ambulance reached her house, the local people, who had learnt that she had not been attended by the doctors, got angry, and sent the ambulance with the young woman right back to Shanti Mukund. She thus spent the entire night in the

ambulance. Next day (8 September) a large number of agitated people, friends and neighbours marched to the hospital demanding that she be admitted and duly treated. The Anand Vihar police on their arrival however questioned why she was demanding admission in Shanti Mukund as she had been referred to a government hospital (GTB). Due to continuous public pressure, she was finally admitted to Shanti Mukund Hospital on 8 September. The hospital then demanded Rs. 7000 for treatment. Unable to pay this amount, the survivor again returned to GTB hospital. By this time the infection had spread, infecting the left eye as well. Her right eye had to be surgically removed, depriving her permanently of sight in that eye.

According to the Anand Vihar police they received a call from Shanti Mukund Hospital about the incident only around 8.00 am on 7 September 2003. As the SHO told us, they reached the hospital immediately and found the survivor unfit for making a statement. They took the statement of Vyas Sharma, the ward boy who found the survivor. The accused, Bhure, had been on duty with Vyas the previous night and they had tea together. At around 12.45 a.m. Bhure left, saying he was going to wash his glass but did not return.

The police registered the case (FIR no. 350/03 dated 7.9.03) listing the offence as having occurred between 12.45 a.m. to 6.20 a.m. under sections 323 (causing hurt) and 376 (rape) IPC. Later, Sections 325 (causing grievous hurt) and 307(attempt to murder) IPC were added. S. 376(2) d i.e. rape by the staff of a hospital on a woman in that hospital was not used. They photographed the scene of the crime and sealed the clothes at the site. The MLC was made at the Shanti Mukund Hospital. According to the SHO, a policewoman Sarla Jain then accompanied the survivor to GTB hospital. When the PUDR team tried to meet Sarla Jain we were surprised to learn that no policewoman of the name was posted in the Anand Vihar P.S. The accused, Bhure, was arrested on 8 September and medically examined in Swami Dayanand Hospital. He confessed to his crime.

The survivor has filed a case in the Delhi High Court, against the Shanti Mukund Hospital for failing to report the incident and denying her treatment, and attempting to destroy evidence. Owing perhaps to the fact that the case got wide media coverage the Delhi govt. announced a compensation of Rs. 50,000/- and a permanent job in a government hospital.

The National Commission for Women (NCW) conducted an inquiry into the incident and found both Shanti Mukund Hospital and Guru Tegh Bahadur (GTB) Hospital "culpable due to the serious case of medical negligence''. However the Commission has found greater culpability in the case of Shanti Mukund Hospital and asked for cancellation of this hospital's license. The Commission also recommended a job be given the survivor. The Delhi Nurses' Union and All India Nurses' Government Federation demanded that a compensation of Rs. 10 lakhs be paid by Shanti Mukund Hospital, failing which its license be cancelled and criminal cases filed against the management for negligence and denying treatment.

The survivor is a trained nurse and the sole earning member of the family. The family is currently trying to meet her medical expenses with the compensation amount given by the Delhi government. She is yet to get the promised job.

Meanwhile officials associated with the Shanti Mukund Hospital management have been castigating the family of the survivor for going to the press, stating that such incidents were commonplace. The owner and manager of the hospital AP Goyal has denied all responsibility for the incident.

Yes, Your Honour!

Allowing bail to the accused on the grounds that he is middle aged and a father of daughters might seem absurd, but ceases to be so given the past history of the judiciary in cases of sexual assault on children. In two cases one, Chittaranjan Das vs. the State of UP (AIR 1974 SC 2352) the Supreme Court reduced the punishment of the accused to two months imprisonment *because he was a highly educated and cultured individual*. Similarly in Om Prakash vs. State of Haryana (1994 [2] Crimes 250[P & H]) the Punjab and Haryana HC reduced the sentence of a school- teacher who had committed sodomy on a class 8th student because of *the educational background of the accused*. Clearly, the 'respectability' of the accused and the professional positions they occupy as doctors and teachers go a long way in influencing the decisions of the courts in their favour.

In allowing bail on the abovementioned grounds in the Holy Angels case the judge also seems to have completely disregarded the statement of the accused. This when there exists a precedent to the contrary. In Kartar Singh vs. State 1993 (Criminal L J 1483), a case of oral sex and attempted anal and vaginal penetration of two girls aged 6 and 8, the accused appealed against the trial court conviction on the grounds that not enough evidence of the attempts at penetration was supplied. In its judgment the Delhi High Court ruled that *the statement made by the girls on the attempts at penetration was to be accepted prima facie.*. The conviction u/s 377 for oral assault and s. 376 read with 511 IPC (attempt) was upheld and the appeal rejected. This judgment is however an exception. Case law on HC and SC trials in general illustrates how the statements of minor survivors are completely rejected on reasons ranging from the age of the survivor, to their susceptibility to adult influence, to its being uncorroborated evidence, to lack of penetration. The judiciary has thus only furthered the official and adult power of the accused over minor victims.

3. Sexual assault of minor patient in Holy Angels hospital

On 23 September, a 13-year-old Tibetan girl suffering from bone TB was severely sexually assaulted by a 54 year old doctor in the South End Rotunda Holy Angels Hospital during a check-up. The survivor, a student of class 8, studying in Dehra Dun had come to Delhi for a check up and to be with her parents. Her parents work as staff in a diplomat's house in Chanakya Puri. Before the incident she had gone to the hospital on 9 September and then again on 22 September. Her case had been referred to Dr. Nigam, physician cum consultant cardiologist. The girl reached the hospital with her aunt on the morning of 23 November and went in to the doctor's chamber by about 11 a.m. Her aunt was told to wait outside. Dr Nigam told the girl that he wanted to examine her knee and that she should take off her clothes. When she did so he sexually assaulted her in multiple ways ranging from molestation to anal penetration.

The doctor told her to wear her clothes, comb her hair and leave the room. After getting out she met her aunt and narrated the incident. They raised an alarm and went to the Medical Superintendent who sent them away. Frustrated and unclear about what to do next, they returned to her parents' home at Chanakyapuri. A little later, the girl, her aunt and some other relatives went to Ram Manohar Lohia Hospital since they were familiar with it. The hospital did not medically examine her and instead told her that the police must accompany her for a medical examination since it was a case of 'rape'.

The search for the right police station was by no means easy. They first went to the Chanakya Puri PS thinking that 'right' PS means the one next to one's residence. The police there enlightened them that the Vasant

Vihar PS is the correct one as the hospital falls within its jurisdiction. By the time they reached the V.V. Police Station it was past 6 p.m. and her complaint was lodged at 6.45 p.m. (contrary to newspaper reports which say that the official complaint was lodged at 9.50 p.m., ten hours after the incident). The accused was arrested and a FIR (no. 284/2003) was lodged u/s 376 and 377 IPC. The police subsequently took her for a medical examination in Safdarjang Hospital. Vaginal and anal swabs and other samples were taken and sent for further tests. The MLC was registered at around 11 p.m. the same evening. The accused was also medically examined in the same hospital.

On 24 September he was remanded to judicial custody till 15 October, when he got bail from the High Court. According to newspaper reports (*The Indian Express, 17/10/03*) the grounds for granting bail was primarily delay in lodging the FIR. The judge also pronounced the accused as a deserving one as he is 54 years old, married and has grown up daughters himself *(see Box).*

The hospital authorities refused to talk to the PUDR team and the survivor's family also did not wish to talk to the team. The team however, met the doctor who examined the survivor, and the police investigating this case in Vasant Vihar PS. The doctor informed that it was a case of 'attempted rape' but not really rape as there wasn't sufficient penile penetration of the vagina. The survivor's statement however did not state that she had been raped but mentioned how she was sexually assaulted in other ways. But if, as in this case, the fact of rape is not the real issue then what will the medical examination establish? Of course, swabs, semen and other details such as injuries can show the gamut of sexual assault that a victim may suffer but since the existing definition hinges on establishing penile penetration of the vagina, the chances of this conviction seem doubtful. When the police was asked (by the PUDR team) why S. 376 was included in the FIR when the survivor had not stated rape, the answer was revealing. They said that even though they knew that rape had not happened, they needed a 'tough' section so as to make the case serious. Also, the fact that S. 377 had been included made the case pretty watertight, as the maximum punishment under this section is life imprisonment. The problem is that neither of the two sections explains what happened to the girl that morning in the medical room.

4. Custodial gang rape of College Girl by President's Body Guards

On 6 October, a 17-year-old female student of Delhi University was raped by 2 men of the President's Body Guards while 2 others looked on. The incident occurred at about 11.30 a.m. in the jungle next to Buddha Jayanti Park. This area lies under the jurisdiction of the President's estate.

The survivor had gone to the Buddha Jayanti Park with her friend, having left Jesus and Mary College (where she had taken permission to sit for classes) at about 10.30 a.m. As they were walking there they were confronted by 4 men in Army uniform, who asked them why they were there. The men belonging to the President's Body Guard had come to the park and the jungle area adjacent to it in a truck on duty, for maintenance work of the riding tracks. They began abusing and slapping the young woman's friend and took away Rs. 200 from him (*The Indian Express, 9/10/03*). The 4 men later identified and arrested were Harpreet Singh (20 years), Satinder Singh (29 years), Kuldeep Singh (26 years) and Manish Kumar (28 years). While 3 of the accused pulled the girl inside the truck, Harpreet caught hold of her friend and told him to leave. He too then jumped inside the truck and they drove it for about 5 minutes to a wooded area, where they dragged out the young woman, and Harpreet and Satinder

raped her while the other two stood guard. All accused except Harpreet left in the truck while he stayed back. The young woman's friend had meanwhile informed the police, and a number of police personnel were available nearby since there was a programme where the Dalai Lama was speaking, and a number of VIPs were attending it. The police started combing the area and came upon her as she was emerging from a thicket. She immediately told them what had happened. One of the accused, Harpreet, was caught as he was in the thicket, and he told the police about the others. A medical examination of the survivor confirmed rape. An FIR (no. 247/2003) was lodged in the Chanakya Puri Police Station. Charges of rape (S.376 IPC) and kidnapping (S. 363 IPC) were imposed. All the accused were arrested the following day and presented in court on 8 October. They were remanded to judicial custody where they still remain. The survivor identified the accused in a Test Identification Parade, and Satinder and Harpreet have been accused of rape and the two other men have been accused of abetment and kidnapping.

Almost 6 months later, a city court framed charges of gang rape (376, 2(g)) against all the accused as well as kidnapping (366). Three of the accused have been charged with robbery (392) and for causing hurt while committing robbery (394). One accused has been charged with dishonestly retaining stolen property as he was found in the possession of rupees, which he had obviously stolen, from the victim or her friend. All four have pleaded not guilty.

5. Rape of a domestic worker by policeman

On 8 December 2003 an FIR of rape was lodged at PS Seemapuri u/s 376 (2)(b) IPC. The survivor- a 21-year-old domestic help who had been raped by ASI Karan Singh of District Lines in the presence of Constable Subhash of PS Seemapuri. The incident occurred on Dec. 4 when the two policemen called at the young woman's employer, Seema Bhattacharya's residence and finding her absent perpetrated the sexual assault.

After the FIR was lodged, the survivor and the accused were medically examined at Guru Tegh Bahadur Hospital (GTB). The accused were arrested and produced before a magistrate at the Karkardooma Court and remanded to judicial custody. The Seemapuri police are investigating the case.

Their attitude on the case is that the police had more than done the needful in taking the complaint at face value and sending the accused into judicial custody. When our team met the SHO Seemapuri he systematically proceeded to undermine the credibility of the complaint. According to him it was a case of extortion and blackmail. According to him the survivor is a 21-year-old divorcee who works for and lives at the residence of a local social activist, Seema Bhattacharya, who also publishes a newspaper. The survivor's employer had tried to extort rupees one lakh from the accused on the pretext of rape, failing which she had put the survivor up to making the complaint. The delay of 4 days in the filing of the FIR was due to this reason. According to him Seema Bhattacharya is notorious in the locality for such activities. The age of the main accused ASI Karan Singh who was close to retirement was cited as another reason why the SHO felt the rape complaint was a false one.

The police refused to say why the accused had visited Seema Bhattacharya's residence in the first place. Solely concerned with protecting their own, the police exhibited a marked laxity towards collection of evidence and investigation. The SHO informed us that no evidence would be found against the accused, as "it was a false case against innocent policemen". In this case the

possibility of justice for the survivor seems remote, as the police have shown wonderful efficiency in arriving at a conclusion even before the investigation has been completed!

The clues provided by the police, for instance that Seema Bhattacharya brought out a publication in the locality helped us locate her residence that also serves as the office of a newspaper "Red Handed". Some people who were present informed us that the survivor would not meet us in the absence of her employer. When contacted, her employer said that the survivor was not ready to meet us. She herself also refused to do so. She said that they had nothing to fear and would make their statements in court when the matter came up for trial. The delay in the filing of the FIR was due to the survivor's fear of social stigma and ostracism, she stated.

This case particularly brings to the fore the vulnerability to sexual assault of women working as domestic helps. It also reveals how their only access to and chances of getting justice are through the employer. This dependence can also lead to a denial of justice as in this case where the alleged reputation of her employer and her dealings with the police are being used to cloud the issue.

III. Law and its Limitation

The implementation of law and investigation has serious problems and limitations. Besides the insufficiency of existing legal provisions, the problems in definition as well as the conception of certain other sections need examination. Some of these problems start emerging in the immediate aftermath, not to speak of the detailed follow-up. For a survivor of sexual assault, this immediate aftermath is harrowing. Besides lodging an FIR, it becomes mandatory for the survivor to undergo a medical examination as the existing section in law (on rape) demands specific corroboration through medical examination. This in itself is an extremely traumatic experience as the medical procedures like the two-finger test, seizure of clothes, vaginal smears etc are violative of the victim. Though the law specifies the presence of a female medical practitioner (S. 53, Cr.PC), it is not impossible that in smaller towns and villages given the paucity of medical facilities, survivors have to submit to male doctors.

It is the responsibility of the local police to take the survivor for medical tests. Delays are common due to various factors, including stigma attached to rape in general as in the Seemapuri case, fear of powerful accused or simply ignorance of the victim and her family about procedure, as in the Holy Angels case. In the 5th case (the Seemapuri one) it is clear that a delayed medical examination cannot conclusively establish the charge of rape. Given the overwhelming reliance on physical medical evidence like establishing of sexual intercourse, and of injuries establishing resistance, the police are well aware that the lack of these in this case means that their brethren will be let off precisely on this account. Existing medical procedures are also inadequate and can often be inconclusive in a wide range of cases. In the Holy Angels case the medical examination has not proved rape and medical examination for other types of sexual assault including anal penetration don't appear to have been conducted. Thus in spite of the brutality of the assault and the seriousness of the charges i.e. S. 376 and S. 377 the victim might fail to get justice.

Male rape or forced anal penetration is also not often properly investigated. In the first case, Badarpur PS, the medical examination of the accused was not done. It is for these reasons that the recommendations made by the Law Commission (2000) offer certain guidelines for medical practitioners to adhere to including obtaining consent from

the survivor, recording both physical and mental conditions, giving cogent reasons for the conclusions arrived at and dispatching the results without delay to the police (*See Box on Law Commission*). The Commission recognizes that the medical examination can provide a number of other details (such as physical and mental conditions for both the accused and the survivor), which can help in determining circumstantial evidence. With these changes the medical examination can become useful as an evidentiary tool in an entire gamut of sexual assault cases including those not involving penetration that currently cannot be 'proved' by the limited extant methods of medical examination.

Custody

In existing law, the term 'custody' is used to define certain specific situations within which rape must be treated as a more serious offence. Policemen, public servants and staff of a jail, remand home or women's and children's home are covered under this definition [S.376(2)(a),(b),(c),IPC]. The understanding of custody, as it currently exists, is premised on the perception of power wielded by individuals by virtue of their official authority. Presumably, the law envisages greater accountability for these individuals though no real difference is made between the procedures or punishment for custodial and other forms of aggravated rape. The punishment for custodial rape and those of rape by doctor or staff of a hospital, rape of a pregnant woman, child rape and gang rape (S. 376[d, e, f, g]) is the same: 10 years but which can extend up to life. However, all 7 subsections are covered under the amendment to S. 114-A, India Evidence Act. (This section refers to the survivor's testimony of non- consent in court and treats it as truthful)

Perhaps it is necessary to examine the usage of the term 'custody' in the present framework. As of now the term is used to distinguish between state and non-state institutions. This is most evident in its omission from subsection, (d), of S.376(2), which refers to hospitals. In the context of custody, the obvious meaning of guardianship or care overlaps with another obvious meaning, 'imprisonment'. 'Custodial rape' happens both in the care and/or confinement of the aggressor. While care and trust is obvious in the cases of minors and children, the fact of confinement is evident when the aggressor is an official who can actively intimidate the victim. Since, rape is premised on a situation of coercion and non-consent, the situations for custody can be many. It can be argued that each and every instance of rape is a 'custodial' one precisely because of the above. To retain the validity of the definition and to acquire means by which the penalizing can be extended to cover the institution to which the aggressor belongs (whether state or otherwise), certain expansion of the term custody is required. The few cases, which PUDR investigated, illustrate the need for such extension.

The existing definition of 'custody' does not have any provision to penalize the institution to which the aggressor belongs. By recognizing the importance of the institution (police station or government offices or jails and remand homes) but by not including penalizing of the same institution means that the definition of custody is limited to only the individual accused. In practice, what invariably happens is that colleagues of the accused shield him from the accusations of the victim and place the onus on the victim. This is particularly evident in the manner in which fellow policemen (who are also the investigating agency) gang up in favour of the guilty policeman. The hostility that is expressed towards the victim, coupled with the infirmities in the medical examinations and the biases of the investigating agency and judges mean that even the stringent

punishment envisaged in this section hardly works. It is true that rape is an individual offence (unless it is a gang rape) and that the punishment for the same must be borne by the accused alone. But if the accused derives his power 'officially' and that, it is crucial to the reasons why rape happened, then, the punishment must extend beyond the accused. The reason for this extension lies in the fact that state institutions have a responsibility in such aggravated offences and that accountability of the institution should also be included in the punishment. As of now, law treats the offence as an aberration by an individual guilty officer.

Besides factoring institutional accountability into the punishment for rape in existing law, the term 'custody' needs to be widened. Other than state institutions there exist situations where individuals exercise power by virtue of their official positions and where rape and sexual assault are frequent occurrences e.g. sexual assault on school children by teachers and school staff. These situations are currently not recognized as aggravated rape either in terms of the severity of punishment or the application of the term 'custody'.. The only exception is in the case of hospitals presumably because the patient is in the doctor's care and is physically vulnerable. However S.376 (2d), which refers to hospitals

Workplace: Vishaka Judgement

This landmark judgement delivered by the Supreme Court, writ petition Vishaka and Others vs. State of Rajasthan and Others, on 13 August 1997 stated that every incident of sexual harassment at the workplace amounted to violation of the fundamental rights of 'Gender Equality' and the 'Right to Life and Liberty', under Articles 14, 15 and 21 of the Constitution. It was also a violation of the victim's fundamental right under Article 19 (1)(g) 'to practice any profession or to carry out any occupation, trade or business', which is dependent on a 'safe' working environment.

The judgment laid down certain guidelines on sexual harassment at the workplace that would be binding on all workplaces in the public and the private sector. It noted that the present civil and penal laws do not adequately provide for specific protection of women from sexual harassment in workplaces. It made it the duty of the employer or 'other responsible persons in workplaces and other institutions' to prevent or deter commission of acts of sexual harassment and provide procedures for resolution, settlement or prosecution of acts of sexual harassment.

Sexual harassment according to the guidelines includes all kinds of unwelcome verbal or non-verbal sexual advances. It amounts to a 'safety and health hazard'. Particularly so if there is reason to fear that the victim's objection to the harassment would be disadvantageous to her in connection with her work The single most important thrust in the guidelines is towards creating a non-hostile work environment for women. Employers are required to take measures to ensure this through methods like publicising the message and most importantly *setting up institutional mechanisms such as Complaint Committees to deal with sexual harassment at the workplace.* Besides takeing disciplinary action against the accused, they are also required, when the harassment amounts to a specific offence under the IPC or any other law, to initiate appropriate action in accordance with the law by making a complaint with the appropriate authority. The employer is also required to ensure that victims, or witnesses are not victimised or discriminated against Therefore the institution's role in both preventive action and support is crucial.

There appear to be no such complaint mechanisms in most private and public institutions in India. Private hospitals like Shanti Mukund and Holy Angels are no exceptions.

and allows for the same punishment as in the case of custodial rape doesn't use the term custody. While the wording of this section allows for penalizing the accused (so long as he belongs to either the management or staff of a hospital) against *any* woman in the hospital, the section nowhere focuses on the particular relation between a doctor and a patient. The incident in Holy Angels Hospital is a clear case in which the doctor took advantage of his official power over the minor girl. The girl, a patient, had no choice but to submit to the doctor's 'commands'.. In such a situation, the doctor cannot be treated as a mere individual accused, as the sexual assault must be seen as occurring in the context of medical authority, care and confinement. However, the hospital shouldered no responsibility towards what the doctor did to the patient precisely because the law does not have any provision to ensure the same.

Restricting the term 'custody' to state institutions leaves out non-state institutions of custody like schools, private institutions for the physically and mentally disadvantaged. Typically what happens is when the accused belongs to the private institution, the offence of rape is not treated as an aggravated one and the institution has no accountability whatsoever. In the Shanti Mukund hospital case where a private nurse was raped by a safai karamchari, the aggravated section was not incorporated nor was the hospital penalized despite the recommendations made by the National Commission of Women. The hospital is responsible for delay in reporting the case, denial of treatment for injuries of the survivor, leading to the loss of her eye, destruction of evidence at the site of occurrence, apart from a general failure in providing a safe work-space for women, and a failure to constitute any committee to deal with sexual harassment cases (as per the 1997 Supreme Court guidelines. *See Box on Vishakha judgment*). Yet no charges have been framed against either hospital management, nor efforts made to cancel their licenses. Institutional accountability has to be factored into the rape law in various sub-sections of S.376 (2) clearly and unequivocally.

Consent

The question of consent is crucial to cases of rape with defence arguments centering on the issue. It is with this in mind that the Evidence Act was amended in 1983. S.114A was added to argue that where sexual intercourse was proved, non-consent on the part of the woman would be presumed if she so stated in her evidence before the court. However this amendment only covers S. 376 (2) i.e. aggravated and custodial rape. The question of consent is also held to be immaterial where the girl is under 16 years of age.

The law however recognizes certain situations where the question of consent gets blurred. These situations under the category of " sexual intercourse not amounting to rape" are covered under S.376 A-D. Sec 376 A deals with intercourse by a men with his wife without her consent during separation. Sec. 376 B and C cover offences where a public servant or Superintendent of jails, remand homes etc takes advantage of his official position to induce a woman in his custody to

But She Consented

In November 2002 the newspapers reported the instance of the rape of a woman at Vasant Kunj by an SI Pankaj Pandey where she had filed a complaint against her in-laws. The SI who was the investigating officer in this case used his position to further the acquaintance, made false promises of marriage and then raped her. The police filed an FIR after 8 months and the accused managed to get anticipatory bail. S. 376 B i.e. sexual intercourse not amounting to rape by a public servant with a woman in his custody was not applied in the FIR.

have sexual intercourse with him, S. 376 D brings hospitals under a similar law. The problem of implementation remains. In all PUDR"s investigations into custodial rape we have never known the police to apply these sections (see Box: *But She Consented*).

S. 376A-D are the only sections in law that recognizes that sexual violence occurs even where there seemingly appears to be consent. However criminal law is limited in its range as it does not recognize the widespread nature of the problem and limits the category of "sexual intercourse not amounting to rape" to only certain institutions. Also, under this section, for it to be considered an offence, sexual intercourse has to take place and be established. Other forms of sexual assault that a woman might 'consent' to because of the official power wielded by the accused, find no space under criminal law. Extending the definition of custody to include non-state actors and institutions could then cover all those situations of sexual intercourse not amounting to rape where official power is taken advantage of by the accused e.g. at the workplace. However, enhancement of punishments to cover non-state institutions and their inclusion under S.376 (2) will have to be argued for individually and specifically.

In spite of Sec. 114A, in actual rape trials the question of consent remains a vexed one. Firstly, even for non-consent to be presumed sexual intercourse has to be proved. The judges are not inclined to believe the prosecutrix's testimony of non-consent, if there is a delay in medical examination, if injuries are not recorded as signs of resistance and if the survivor is habituated to sex all of which make it impossible to prove intercourse. Mere stating of non-consent doesn't shift the burden of proof on to the accused. Besides delay in lodging of the FIR and infirmities in medical examination, any contradiction in statement between the police and court goes in favour of the accused. The accused in the Seemapuri case are likely to be given the benefit of lack of evidence as the survivor is habituated to sex and both the FIR and medical examination were delayed. With the police already presenting theories of sex for extortion etc. consent is likely to be used as an argument by the defence in court.

IV. Sexual Assault on Minors

Sexual assault on minors and children form a whole range of offences that find no separate provision in law. To begin with, consent in this matter is unclear because of discrepancies in existing law. While girls below 12 are clearly considered minors, the matter is not so clear if the girl is in the age group of 12-16. The definition of rape, S. 375 states that consent is not an issue if the girl is below 16 but the enhanced punishment for aggravated rape is when the girl is below 12 years (376, 2 (f)). S.114A of the Evidence Act, which presumes non-consent and shifts the burden of proof to the accused only covers S. 376 (2). In such a situation, what happens to the fate of the survivor in the Holy Angels case? She is supposedly 13 years and therefore it is not clear whether the law will recognize her as a child or not.

The question of consent is not even taken into account in cases of male rape or sexual assault on men as in the Badarpur case. Currently these are dealt with under S.377 where it is the *kind* of sex act, which is at issue, and not consent. S.377 does not distinguish between consensual or non-consensual sex. Arguing consent in such cases can not only deny justice to the survivor, but also transform him into an accomplice. The police's statements that the victim in the Badarpur case had a previous sexual history

of homosexuality point in this direction.

Child Sexual Abuse

The violent sexual assault of a young girl who had gone in for treatment of TB as well as the assault on a schoolgirl by her teacher (given below) – both raise squarely the question of child sexual abuse. The almost total refusal of society to take cognizance of the occurrence of child sexual abuse and the complete inadequacy of the law to deal with such acts is brought out clearly by these cases. In the Holy Angels case, the survivor's own account does not state that there was vaginal penetration. The medical examination too does not show evidence of this. In the absence of penetration, the offence is not classified as rape and is registered only under Sec 377 (unnatural act) or Sec 354 IPC (outraging the

Chronicling S. 377

Between the years 1884 and 2000, approximately 43 cases of Sec. 377 came up for appeal in the various High Courts and the Supreme Court of India. Of these, seven appear to be cases of consensual homosexual activity. Of the cases of sexual assault booked under S. 377, noticeably more than 88% are of anal and oral intercourse with children, 2/3rds of whom are boys. These figures suggest that sexual assault on men, and anal and oral and non-penile penetration of women do not get addressed. Noticeably less than 12% of the cases of sexual assault booked u/s 377 are cases of sexual assault other than rape against adults (including women).

The rate of conviction in cases of sexual assault on adults under 377 is poor and shows a marked tendency against sexual assault on men. In the cases of sexual assault on adults that had come up for appeal before the higher courts, the only conviction till 2000 was in the case of rape and oral penetration of a woman (*Orissa High Court: Manmath Biswal vs. State of Orissa [Crimes IX-1997(3) 536]*). In another case of anal and oral penetration of a woman without consent S.377 was not used because the complainant happened to be the wife of the accused and there is no provision under criminal law that deals with marital sexual assault, including rape (*Karnataka High Court: Grace Jeyramani vs E P Peter [AIR 1982 Karnataka 46]*).

In cases of sexual assault against children and minors the record of convictions is better. However the sentences are extremely light given the gravity of the crimes and the punishments prescribed under the section. Punishments have ranged largely between 2 months RI to 3 years RI with the higher courts displaying a tendency to reduce the sentences given by the lower courts on reasons ranging from that force was not used (*SC: Fizal Rab Choudhury v. State of Bihar [AIR 1983 SC 323]*), to that as a minor her statement could be tutored, to oral sex being not as severely punishable as anal sex (*Orissa HC: Calvin Francis v State of Orissa [1992(2) Crime Revision 455]*). Sentences of 5 years or more are predominantly in cases involving girls. Instances of severe sexual assault on boys eg of gang rape of a minor boy by 3 men (*Gujarat HC: Lohana Vasantlal Devchand v State[AIR 1968 Gujarat 252]*), sexual assault on a 13 year old boy by a policeman (*Madhya Pradesh High Court: Chandrashekhar v State of MP [1995 CCR 86]*), have merited only slight punishments – 18 to 9 months, and 18 months sentences respectively- or none at all. Thus in a case of aggravated sexual assault and murder of a young boy working in a teashop by a policeman (*Madras High Court: Muthuramalingam v SI of Police [1989(1) Crimes 296(DB)])* in spite of the injuries on the penis of the accused and anus of the boy the HC cancelled the conviction. The worst effected in such cases are boys in the age group of 12 to 18 who form the greater number of male victims but are awarded the least number of convictions. The male adolescent survivors of sexual assault like in the Badarpur case clearly have little hope of justice at the hands of the judiciary.

modesty of a woman). The latter involves a paltry punishment of two years. The question of custody is here not even allowed to arise. Using categories like penetration to define rape in the case of children is doubly unjust, since first, it presumes the child can understand and use these adult categories. If one has never had sex or knows what it means, it is hard to know what constitutes penetration. Second, sexual assault of whatever nature is enough to leave deep scars on a child's mind. The experience of, and power dynamics around sexual violations is different for children and adult women. Adults wield greater power over children and this compounds their vulnerability. If the adult attacker is additionally an institutional authority figure, a doctor as in the Holy Angels Hospital case, his power over the child-victim is further enhanced. These specificities should inform the understanding and perspective underlying the laws as well as the procedures needed for investigation and trial.

Sexual Assault in School

In October 2003 a class 3 student in a government girls' school in Rohini was sexually assaulted by a male teacher. The teacher had forcibly inserted his penis into her mouth. The case was registered under S.377 IPC and the teacher arrested. As per the policemen it was routine practice to register cases of this kind u/s 377, there being no other section that covered such acts. Noticeably s. 354 and 509 were not used in this case either.

By virtue of the fact that the teacher is in a position of trust vis-à-vis the student and also that by virtue of his official position the teacher wields authority over the student and can restrict the freedom of the student, the student is in the custody of the teacher. The sexual assault perpetrated by the teacher should then fall within the purview of custodial sexual assault and attract enhanced punishments. However schools and schoolteachers are not covered under the definition of custody even where the provision of custody exists i.e. u/s 376 (2b), not to speak of sexual assault other than rape currently tried u/s. 377 where the category of custody doesn't exist at all.

While the absence of 'custody' need make no difference, as the maximum punishment that offences attract under s.377 is life imprisonment that is the same as in the case of custodial rape, the rationale for the two is quite different. Oral and anal sex with children attracts enhanced punishments under the law u/s 377 on an understanding that subjecting children to such sexual activity would produce sexually deviant adults. (*See box: Khanu vs. Emperor)*.. The rationale behind enhanced punishment in cases of custody is on the basis of equity where some perpetrators are to be held more culpable than others because of the positions they hold. Sexual assault by a schoolteacher against his student should attract enhanced punishment on the basis of this as also the power he exercises as an adult, rather than being left to

Khanu vs. Emperor

In *Khanu vs. Emperor*, *Sind High Court*, *1925* a child was locked up by the accused and orally assaulted. The accused who was tried and sentenced under S. 377 by the Sessions Court filed an appeal on the grounds that the assault "was not against the order of nature" and so not covered by S.377. In its judgment the Sind High Court held that oral sex was punishable under the section for "vitiating and depraving hundreds of children with perfect immunity".. The sin of Sodom was punishable for indoctrinating young persons into sex prematurely. However the court reduced the sentence to 5 years RI on the basis that oral sex was less dangerous than anal sex as it could not be performed if the other person was unwilling, and two, it did not result in permanent damage!

the judiciary's deciding the severity of the sentence as per its opinion of the relative 'unnaturalness' of the act under S. 377 (*see box: Khanu vs Emperor*).

Assault on young men and Section 377, Indian Penal Code

The Badarpur case was the first case of custodial rape of a male that PUDR has investigated. While such cases would have been occurring in custodial contexts like juvenile homes, jails and police stations, they have remained invisible, in much the same way perhaps as rape of women long remained unreported. This was the first case, which was reported in the press, where the survivor and his family were able to press charges.

It is a lacuna of the present law that the case is registered as an unnatural offence under Section 377 of the IPC. The section defines the offence as 'carnal intercourse against the order of nature'. The section does not distinguish between consensual and non-consensual participation. This at times leads to attaching dubiousness to the testimony of a survivor of an assault or rape, akin to that of an accomplice who is voluntarily involved in the act. A person who has been subjected to violent assault against his/her will can in no way be equated to an accomplice.

In the present case the young boy was raped in custody by a policeman within the police station. Yet no case of rape can be registered. The present definition of rape under S. 375 IPC does not cover sexual assault on men. Therefore the question of the aggravated offence of custodial rape under S. 376 (2) does not arise in the context of the rape of any male in custody. Similarly the amendment brought in the Evidence Act through S. 114 A regarding presumption of non-consent has no application to rape of males in custody.

The survivor in the Badarpur case refused to talk to the PUDR team. While this is routine in all cases of rape, the situation of male rape is slightly different. Societal prejudice against homosexual intercourse, makes the situation that much more burdensome for the survivor of male rape. Since law treats such instances as 'unnatural offences' and makes the victim an accomplice in the crime, the investigation of the same is also governed by prejudice and suspicion. Male rapes illustrate the stranglehold of the power and position of masculinity in society for the act confers on the rapist an added masculinity whilst it deliberately and humiliatingly denies the victim his. The extent of such rapes can be gauged by what happens routinely in jails and lockups.

V. Conclusion

Sexual assault is not necessarily confined to acts of aggression by men against women.. The instance of the assault on the young boy by a policeman in Badarpur PS shows the exercise of sexual power by a man in uniform against the son of a fruit vendor. More particularly, rape is never a private act between two individuals. It is a particular expression of brutality, a manifestation of existing power relations and prejudices in society. Contrary to popular imagination and myths, such acts do not happen only in lonely dark parks. They happen in broad daylight, at place of work, in medical rooms, in schoolrooms and in police stations. It is indeed ironic that the in the above instances discussed, the survivors' search for the fulfillment of basic rights such as education, employment, medical aid brought them in contact with the accused and resulted in brutal violation of human dignity.

Such acts expose the vulnerability that women face in the hands of men, that children face in the trust of their guardians and adults, that young boys and men face in the hands of stronger and superior men. More particularly, as the above cases illustrate, aggravated assaults occur when the aggressor is in a position of official power over the survivor. All the accused assaulted in their capacity of official power even though a doctor, men in uniform and a safai karamchari are hardly equal in social or even official power. What is common is their official power.

For the survivor of sexual assault, the violation of dignity doesn't end with the act itself. Harassment and intimidation by the accused, fear and humiliation of society and trauma of trials leaves many scarred for life. Those who have the courage to lodge FIRs and undergo medical examinations often retreat and retract in court preferring anonymity to countless cross examination and hectoring by defence lawyers. Poor convictions and general apathy to the aftermath leaves many disillusioned as far as justice is concerned. Which is why a vast majority of cases are never reported in the first place.

The question of justice is never seriously addressed as societal prejudices and lacuna in law leave very little space for even legal remedy. Law treats rape as a particular private instance between two heterosexual individuals in which violence is a private matter. The larger question of the social roots of this violence are nowhere in the purview of law. The classic instance is the refusal to recognize the issue of marital rape because it has to do with domestic affairs of the two individuals. To prevent sexual violence, laws governing sexual assault have to simultaneously take into account the question of safe public spaces and workplaces besides envisaging the wider nature of sexual assault besides rape. Which is why unless institutional accountability is built into the provisions of law, the above issues cannot really be addressed adequately.

Law Commission and its Recommendations

- ***Should laws on sexual assault be gender specific?***

The Law Commission's recommendations are based primarily on the suggestions made by SAKSHI, which in 1997 had petitioned the Supreme Court on the inadequacy of the definition of rape. Subsequently, three other organizations- IFSHA, AIDWA and NCW- also made their suggestions. The Commission's report, the 172nd Report on Review of Rape Laws prepared in 2000, asserts that laws on sexual assault should be gender neutral in order to check child sexual abuse and custodial rapes. Accordingly, changes are made in definitions and procedures, IPC and Cr.PC. Some of them are listed below.

- ***Redefining S. 375***

The redefinition is meant to cover the gamut of sexual offences involving any kind of penetration (oral, anal and of course vaginal) by any part of the human body or by any object. The words "sexual intercourse" is substituted by "sexual assault".

- ***Deletion of S. 377***

The deletion of S. 377 (unnatural offences) is a much needed one. A new section on "Unlawful Sexual Contact " has been added to check child sexual abuse and sexual harassment at the workplace.

- ***Punishment***

The Commission recommends the need for enhanced punishment (not less than 10 years extending up to life) for sexual assault committed by a near relative or a person in a position of trust upon a young person. The punishment for sections B, C, and D of 376 is enhanced to a minimum of 5 years. The punishment for S. 509 is enhanced to 3 years.

- ***Procedures***

While no statutory provision is made for female police officers, the Commission recommends that for girl survivors below 18 years, the investigating officer must be a woman or a qualified social worker. For both girls and boys the presence of a relative or friend or a social worker during investigation is recommended. The medical examination is modified so as to be able to address the mental and physical condition of the survivor and accused and the practitioner has to give valid reasons for conclusions arrived at. When the case is committed to trial, the defence will not be allowed to put questions or adduce evidence on the matter of the survivor's character and previous sexual experience.

- ***What the Commission Omits***

While it is debatable whether laws on sexual assault must be gender neutral, it is curious to note that the Commission refuses to engage with the issue of marital rape. The context is the Exception in S.375, which the petitioners had wanted deleted as it made an exception for marital rape. The Commission simply stated "We are not satisfied that this Exception should be recommended to be deleted since that may amount to excessive interference with the marital relationship" (!)

No attempt is made in the recommendation to redefine custody or build in institutional accountability as far as punishments are concerned. Sexual assault thus, is treated as an individual offence (unless it is a case of gang rape).

About PUDR

Over the last 20-30 years, the civil rights movement in India has emerged as an independent one in defense of civil liberties and democratic rights of our people. The Peoples Union for Democratic Rights (PUDR), Delhi, is part of this movement. In 1976-77, it was part of a larger national forum of PUCL and DR and became PUDR on 1 February 1981.

In the last two and a half decades of its existence the organisation has taken up hundreds of instances of violations of democratic rights, covering most parts of the country and involving the rights of many sections of society. The right to life, liberty and equality, the freedom of expression, the right to struggle against oppression and the right to association are essential for the functioning of a just democratic state and society.

Some of the issues taken up by PUDR over the years include workers' rights, agrarian movements, forest policy, displacement, communal riots, caste massacres and repression on dalits, encounter killings, deaths and rapes in custody, anti-democratic laws, death penalty etc. PUDR conducts investigations, publishes reports, issues statements, distributes leaflets, organizes public meetings, demonstrations and dharnas, and fights legal cases to highlight the violation of peoples' rights, and to help towards their redressal.

PUDR is a non-funded democratic rights organization meeting its expenditures entirely through the sale of its literature and small donations and activists give their time on a voluntary basis. PUDR is not affiliated to any political party. Any one can come for the weekly activist meetings, where ideas, issues and suggestions are discussed and debated in an informal atmosphere. To date, not a single weekly meeting has been missed. Members include people from all walks of life. If you wish to know more about us or become associated with PUDR, please write to us at the addresses given below or visit our website at www.pudr.org

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1.	यतीम लहूः *पुलिस हिरासत में मौतें, दिल्ली 1980-1997*	10 रु
2.	कामगारों की मौतें और कामगार ज़िन्दगियांः *वरगो वाशिंग कंपनी में दुर्घटना*	3 रु
3.	तिहाड़ जेलः *ज़िन्दगी भी नर्क, मौत भी अजीब*	2 रु
4.	औद्योगिक मुनाफे का असली चेहराः *हिन्डैलको में श्रमिकों की परिस्थिति*	5 रु
5.	बेगार की दास्तानः *झलानी टूल्स लिमिटेड, फरीदाबाद के मज़दूरों पर एक रिपोर्ट*	2 रु
6.	एक और टाडा नहींः *प्रस्तावित प्रिवेंशन ऑफ टैरोरिसम बिल की आलोचना*	3 रु
7.	ऊंचा नगर, नीचा नगरः *अशोक विहार पुलिस की हिरासत में मौत और फायरिंग*	3 रु
8.	ये फसल उमीदों की हमदमः *मध्य बिहार में जनसंहार और किसान संघर्ष*	5 रु
9.	सतपुड़ा की घाटीः होशंगाबाद में जन आन्दोलन	4 रु
10.	मृत . . . अतः दोषी ः *भवानीपुर ब्वयू.पी.ऋ में फज़ीं मुठभेड़*	3 रु
11.	झज्जर में दलितों की हत्याः हरियाणा में गौरक्षा की राजनीति	5 रु
12.	मारो! कापो! बालो! गुजरात में राज्य सत्ता, समाज और साम्प्रदायिकता	5 रु
13.	गुजरात जनसंहार 'दूसरी पारी'ः छः महीने बाद	3 रु
14.	यहाँ प्यार करना मना है! अंतर्जातीय विवाह, समाज और राज्य	5 रु
15.	पूंजी का पहियाः मारूति उद्योग में मजदूरी के हालात और मजदूर आंदोलन	5 रु
16.	होंडा पावर प्रोडक्टसः रुद्रपुर की कहानी	1 रु