CUSTODIAL RAPE

a report on the aftermath

People's Union for Democratic Rights
Delhi
May 1994

Rape in India

	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991
India	5023	5409	5427	6019	6740	7289	7952	8559	9099	9752	10068	10410
Bombay	49	74	70	107	81	102	102	85	108	108	107	114
Calcutta	17	24	26	21	22	27	31	19	18	27	27	17
Delhi	42	78	71	74	99	71	72	88	100	137	153	195
Delhi U.T.	56	79	73	79	102	83	89	103	121	152	177	214
Madras	16	10	19	22	21	13	16	23	23	25	20	26

Source: Crime in India, relevant years

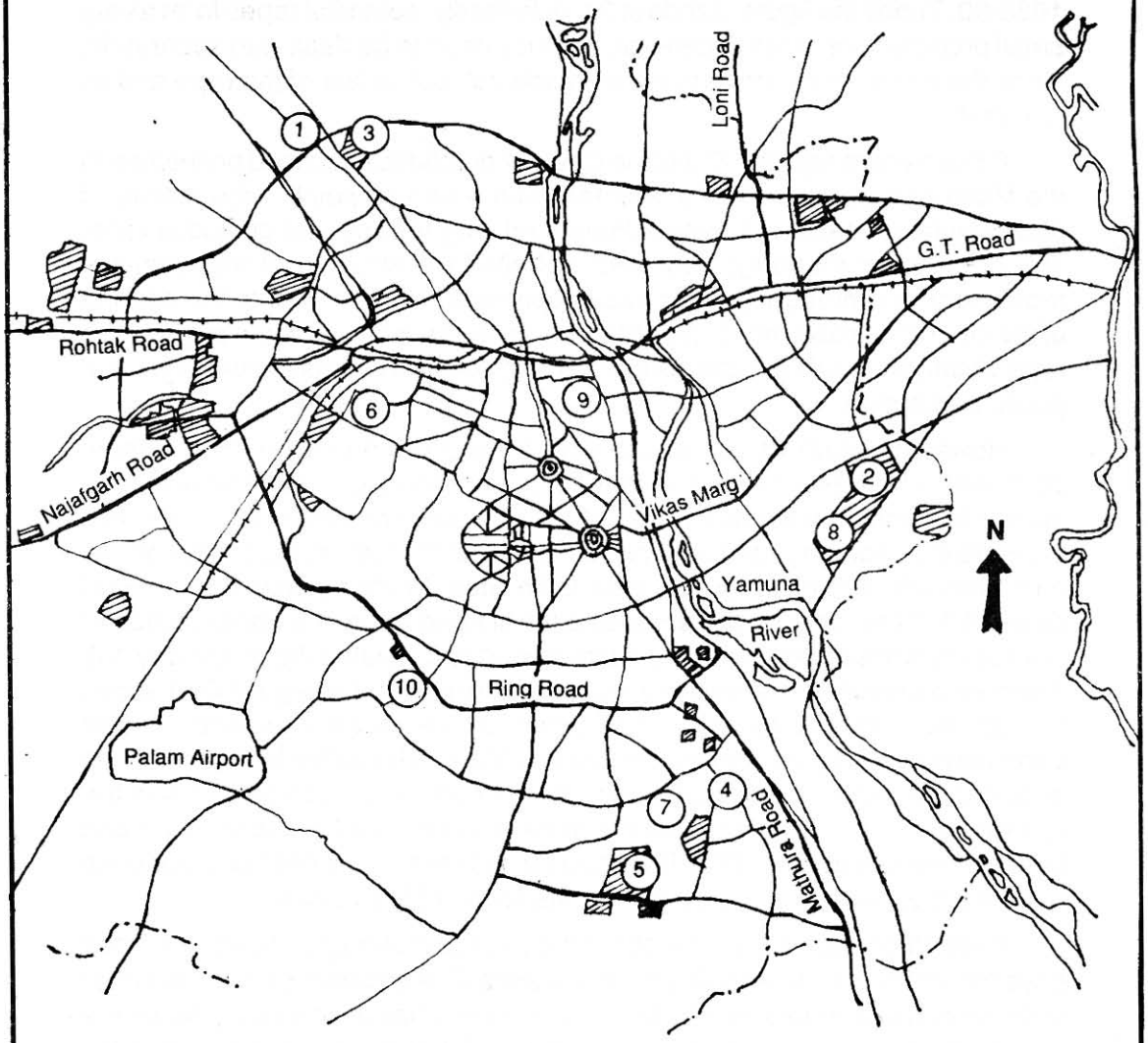
This is a report on custodial rape in Delhi. In 1990 we had published a report, *Custodial Rape*, in which we had listed 14 cases between the period 1988-90. Today the figure stands at 21. Admittedly, custodial rapes form a very small proportion of rapes in general. Yet they need to be dealt with separately, since the power of the uniform is not incidental, but a fact of the rape and its aftermath.

Fifteen years ago, the Supreme Court acquitted the accused policemen in the Mathura rape case. The judgement was a turning point in the history of public agitation, leading to amendments relating to rape and custodial rape. The furore over the judgement also signalled the strength of the women's movement, and brought gender-based oppression forcefully onto the agenda of the civil rights movement. Impelled by a greater sensitivity to the plight of the rape victim, women's groups sought to bring about changes in both legal and public perception.

However, much of our public debate and discourse on rape remain confined to legalese, to laws amended or unchanged, to clauses and their certain fine print that creates ways out, and judgements setting or unsettling a precedent. A woman raped begins her life as a statistical artefact in the official crime records, and ends up as a case to be cited (Mathura case, Suman Rani case, etc). Obfuscated in the process is the life and living of a whole section of our society whose bodily integrity is threatened and violated day in and day out. The media's focus on the sensation surrounding rape and on legal deliberations through its exclusive focus on patriarchal judicial pronouncements, further confines rape within the existing discourses. What is forgotten is that each time a rape takes place, the woman becomes the socially ostracized victim of the assault. In the process, she ceases to be a person and a social being and becomes merely a rape victim. Precisely for this reason, it is not her experience but the judgement of a court that sets the terms of the debate.

A report on rape should be about the lives and struggles of women, their physical and social vulnerability to sexual assault, the consequences, and fear of those consequences. In practice, a rape investigation can rarely reach the woman and accommodate her experience. Regrettably, this report is no exception. However, this is a specific investigative account of recent instances of custodial rape in Delhi, and a reconsideration of the laws on rape and amendments to them, as they bear on these cases. We also examine the ways in which courts have interpreted the law, and the limitations of the law. PUDR hopes that this reflective report will help those fighting against gender-based oppression.

यहां से शहर को देखो



Custodial Rapes in Delhi 1989-1993: *Police Stations involved*

1. Samaipur Badli
2. Seemapuri
3. Jehangirpuri
4. Okhla
5. Dakshinpuri
6. Patel Nagar
7. Kalkaji
8. Seemapuri
9. Kotwali
10. R.K. Puram

Resettlement Colonies

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The Forgotten Stories

Cases From November 1989 Onwards

Since 1989, we have investigated 10 cases of custodial rape. In the process of investigating the two latest incidents, one of which involved a minor migrant girl, we decided to check the aftermath of the earlier cases. What started as a relatively simple task of compilation and updating proved more and more difficult, as the follow-up on the administrative and judicial proceedings pointed to very disturbing findings.

The task of returning to the old cases was arduous, as proceedings at Sessions Courts are virtually inaccessible. The difficulty of locating victims or their families, the visits to the various police stations, meetings with various police officers, serving or now retired, approaching the Central Administrative Tribunal which had to reinstate quite a few of the accused policemen, trying to take copies of the judgements from the record rooms of the Sessions Court — these rounds made us realize that behind a rape case was a much larger story. A story in which almost every policeman has been acquitted and some have been reinstated.

1. A 36-year-old woman, originally from Dabra near Gwalior, was living with Hari Om, servant at a dhaba in Dhaula Kuan. Mother of four children, she had been turned out by her husband. She came to Mathura where she was probably raped by a swami. She then found her way to Delhi. On 1 November 1989, she was raped by SI Bishamber Singh and constables Amarjeet Singh and Azad Singh at R.K.Puram police station, where she had been detained after an altercation between Hari Om and the policemen at the dhaba. (They had refused to pay for the meal they had eaten.)

The 3 policemen were suspended. SI Bishamber Singh was dismissed under Article 311 ii (b) of the Constitution. A departmental enquiry concluded a year later that there were sufficient grounds for the dismissal. Cases were registered under Sections 506 and 376 IPC. The victim was kept in Nari Niketan for a few days, but she disappeared before the case came up to court. SI Bishamber Singh was acquitted of criminal charges by the Court of ASJ Rekha Sharma on 30 April 1991. He appealed to the Central Administrative Tribunal and was reinstated by its orders. He is currently in the 2nd Battalion of Delhi Armed Police. Yet another departmental enquiry was ordered subsequently. Information about the other two policemen is not available.

2. A 20-year-old woman, resident of Chhatarpur, a small town in Madhya Pradesh, had come to Delhi with her husband in December 1989. He needed medical aid for burn injuries and also had work with the Registrar of Newspapers. They had moved from a dharamshala the previous day, into a room near Jubilee Cinema offered by a friendly contractor. On 24 December 1989, her husband did not return on time. As she searched for him at the bus stop, she was accosted by Constable Satinder Kumar (attached to Kotwali police station) and civilian Vijay Kumar, and accused of being a 'loose character' (chalu), and taken into custody. She was raped by both of them in a deserted police assistance booth in the area.

Satinder Kumar was dismissed under Art.311 ii (c). Cases were registered under Sections 506, 376 and 366 IPC. The prosecutrix appeared in court and denied that she had been raped, though medical evidence indicated otherwise. Satinder Kumar was acquitted of criminal charges by the Court of ASJ R.K.Sain on 12 April 1991. He appealed to CAT and was reinstated by its orders. He is currently at the District Lines at Maurice Nagar. A departmental enquiry has been ordered.

3. A 35-year-old resident of Seemapuri was a migrant from Himachal Pradesh. A widow with four children, she was probably engaged in prostitution to support herself, according to many of her neighbours. On 10 January 1990, as she went out in the evening to buy groceries, she was accosted by Jasraj alias Pammi, a local resident. She was forcibly taken to the barracks nearby, and raped by Jasraj and Constables Mool Chand and Satish Kumar.

The 2 constables were dismissed under Art.311 ii (c). Cases were registered under Sections 376, 506, 34 and 365 IPC. A few days later, in the presence of the magistrate who came to record her statement, she "failed" to identify the two policemen.

4. In January 1990, a 27-year-old woman came to

Delhi from West Bengal in search of work. Her husband and children were still in West Bengal and she was staying with her sister and her brother-in-law, in the squatter settlement at Alaknanda. On 11 January 1990, just five days after she had come to Delhi, Head Constable Phool Singh and Constable Nadish Kumar intervened in a quarrel between her family and the neighbours. Both parties were asked to come to the police station to register a complaint. The Head Constable left the woman with Constable Nadish Kumar, who took her to a police post being built in the area, and gagged and raped her.

Phool Singh was suspended for neglect of duty and reverted to the position of Constable. Nadish Kumar was dismissed under Art.311 ii (b). A case was registered under S.376 IPC. The prosecutrix appeared in court and denied that (a) she had been raped, (b) medical examination had taken place, (c) the signature on the FIR was hers, (d) the clothes in police custody were hers. Nadish Kumar was acquitted of criminal charges by the Court of ASJ S.K.Gupta on 2 August 1991. He appealed to CAT and was reinstated by its orders. He is currently with the 8th Battalion, Police Training School, Malviya Nagar.

5. A 25-year-old woman living with her husband in Baljit Nagar in 1990, had migrated with him from Nepal seven years earlier. They had two children. The husband worked as a mason. The woman was illiterate and had never been to work. They had no relatives in Delhi, and were living in a jhuggi on illegally occupied land, for which they had paid hafta to the policemen from Patel Nagar PS. On 9 May 1990, she was raped by Constable Sunder Singh, while Constable Suresh Kumar kept watch outside her jhuggi. The culprit was apprehended by local residents when he came back five days later on a second attempt.

Both constables were suspended. Cases were registered against both under Section 506, and against Constable Sunder Singh under Sections 376 and 354 IPC. He was dismissed under Art.311 ii (b). The case against Constable Suresh Kumar was discharged from the Court of ASJ P.K.Dham on 5 January 1991, as the prosecutrix could not identify him in a Test Identification Parade. He was reinstated and is currently at the District Lines, Tilak Nagar. Constable Sunder Singh was acquitted of criminal charges by the Court of ASJ P.K.Dham on 26 May 1991, for lack of proof. The prosecutrix did not appear in court and has since shifted residence. Sunder Singh has appealed to CAT.

6. A woman in her thirties in Dakshinpuri, was the second wife of Gyan Singh, a scooter mechanic who runs a small repair workshop in Lajpat Nagar. He, his two wives and five children have been living in the resettlement colony at Dakshinpuri for some years. On 17 December 1991, Gyan Singh was arrested by the police because his brother, who had stabbed a neighbour in a brawl, had absconded. His second wife was picked up as well. She was beaten and mauled by constables in the police station at Dakshinpuri, and then raped by SI K.L.Yadav.

No action was taken against the accused policeman, in spite of public protest by local residents and activists. Gyan Singh was remanded to judicial custody on 21 September, on a charge of attempt to murder. 3 days later, the victim denied the allegation of rape in front of the ACP in charge of the Vigilance inquiry, who met her in the presence of K.L.Yadav and some reporters. Her husband was still in jail.

7. A woman whose age it was not possible to ascertain, was living with her husband in Pul Prahladpur, Okhla. He worked in a factory nearby, and according to unconfirmed reports, she was probably engaged in "dubious" activities. On the evening of 10 January 1993, while her husband was away on night shift, ASI Srikrishan of Okhla PS, and two constables in plainclothes went to her house and told her that she must accompany them to the police station, where her husband was detained. The 2 constables were dropped off on the way back. The ASI then took the woman to the Medical Stores belonging to Vinod Gupta at Pul Prahladpur, and raped her.

The accused policeman was dismissed under Art.311 ii (b). Cases were registered under Sections 366, 376 and 34 IPC. A medical examination was conducted. The prosecutrix retracted, and ASI Srikrishan was acquitted of criminal charges by the Court of ASJ D.S.Siddhu on 25 November 1993. The Okhla police maintain that this was not a custodial rape because it did not happen within the precincts of the police station.

8. In July 1993, a 26-year-old woman was living in the LIG Colony at Rohini with her husband who was an autorickshaw driver. According to the Samaipur Badli Police Station, some residents of Rohini had

complained to the police about the large number of people visiting the victim's house. Summoned to the P.S., the woman and her husband promised the SHO that they were willing to shift from the premises if it was causing inconvenience to the neighbours. Some time after midnight on 16 July, 3 constables — Kishan Singh, Daya Nand Surinder — came to her house along with a local resident, Pradeep Kumar. They abducted her, took her to an unknown place, and raped her.

The accused constables were dismissed under Art.311 ii (b). Cases were registered under Sections 366, 376, 34 and 506 IPC. A medical examination was conducted. Soon after, the victim and her husband shifted from their tenanted residence at Rohini without leaving any address. She later resurfaced briefly to retract her charge of rape in front of a Circle Magistrate. And the police added, by way of helpful explanation, that she was a "loose woman."

9. At 1:25 a.m. on the morning of 20 June 1993, an FIR was lodged at the Seemapuri Police Station, reporting the rape of an 11-year-old Bangladeshi migrant girl. Among the accused were two local Congress (I) henchmen and two policemen. A large number of the settlers in New Seemapuri are migrants from Bangladesh and West Bengal, who eke out a living through rag-picking. A well-entrenched traffic in women from across the border has supported the rise of lumpens like Om Prakash and Mehtab, co-accused in the rape of this minor girl. Both are patronized by the Congress (I).

The victim was lured to Delhi by her 40-year-old uncle, Rashid, with the promise of work. For three months she was kept at his house in Trilokpuri and raped by him. Pressure from the neighbours forced Rashid to shift his niece out. She was handed over to Mehtab, who kept her in Om Prakash's pucca house at New Seemapuri. They raped her repeatedly, and made her available to local policemen. She was raped and gangraped in police booths. After a week of this ordeal, the girl managed to escape on 18 June 1993.

On hearing of her experience, a local resident who is associated with a women's organization, approached local leaders of the Janata Dal and Bahujan Samaj Party for support. With their help, a complaint was finally lodged on 20 June, after initial resistance at the Seemapuri PS. Om Prakash and Mehtab were arrested on the same night and charged under Sections 376, 504 and 34 IPC. Medical examination of the victim showed that the swelling on her stomach was due to prolonged abuse. Her statement was recorded on 25 June. Om Prakash and Mehtab named Constable Damodar as an accomplice. In a Test Identification Parade, the girl identified Constable Subhash. The latter in turn named Constables Bhopal Singh, Satish and Head Constable Mahmud.

All 5 policemen were suspended, and arrested on charges under Sections 506/34 and 376/34 IPC. Subsequently all of the accused policemen except for Subhash were released on bail, when the victim was unable to recognize them in repeated Test Identification Parades. She was, however, able to recognize the two police booths where she was gangraped. The case has now come up for hearing in the Court of ASJ B.N.Chaturvedi. Unable to speak any language except Bengali, and having nowhere else to go, the victim has been kept in the Observation Home for Girls at Nari Niketan for eleven months now.

The residents of New Seemapuri who had fought for the girl and taken up the issue, are also being harassed and threatened. Their insecurity and disillusionment are heightened by the release of four of the accused policemen on bail. Rape of minors is treated more stringently since consent does not have to be proved, and convictions have taken place (See Table *Court Judgements since 1983*). In this case, however, by an entirely irrelevant argument, the child is under threat of deportation as an illegal migrant.

10. In January 1993 two young boys who were brothers belonging to a Banwaria family in Majnu ka Tila, were taken by the Criminal Investigation Agency, Haryana, to their Interrogation Centre at Sukhrali. They were kept there for two days and badly beaten. On 9 February, 1993, their uncle Ashok was picked up by the Jahangirpuri police in connection with a case of murder. He died in custody in March 1993. The 39-year-old mother of the two boys was also detained at the Jahangirpuri police station and kept there from 9-11 February. She was tortured, molested and raped.

The Banwarias are a tribe settled in villages in Uttar Pradesh, Rajasthan and Haryana. In Delhi they live mainly in Jahangirpuri and Majnu ka Tila. Most of the men work as truck drivers, or apply grease to trucks. The women have had very little formal edu-

Relevant Sections of the Indian Penal Code (IPC)

34 Acts done by several persons in furtherance of common intention

114 Abettor present when offence is committed

330 Voluntarily causing hurt to extort confessions or to compel restoration of property.

348 Wrongful confinement to extort confession or to compel restoration of property

354 Assault or criminal force to woman with intent to outrage her modesty

365 Kidnapping or abducting with intent secretly and wrongfully to confine person

366 Kidnapping, abducting or inducing woman to compel her marriage etc.

376 Punishment for rape. S.2 reads as follows: "Whoever

(a) being a police officer commits rape —
   i. Within the limits of the police station to which he is appointed; or
   ii. In the premises of any station house whether or not situated in the police station to which he is appointed; or
   iii. On a woman in his custody or in the custody of a police officer subordinate to him; or

(b) being a public servant, takes advantage of his position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

(c) being on the management or on the staff of a jail etc.; or

(d) being on the management or on the staff of a hospital; or

(e) commits rape on a woman knowing her to be pregnant; or

(f) commits rape on a woman when she is under twelve years of age; or

(g) commits gang rape,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine.

506 Punishment for criminal intimidation

cation. In the nineteenth century, they were declared a "criminal tribe" by the British Government. The stereotype of a community inherently given to crime has persisted, as Banwarias get routinely picked up in any case of robbery and murder, not only in Delhi but elsewhere in North India too. An organization that they formed in Delhi some years ago to resist police harassment, Banwaria Samiti, is now defunct.

The suspect's family — his mother, two brothers, the sister (the victim) and two others — were all detained, ostensibly for interrogation. The sister told us how they were made to stand up and salute each time a policeman walked into the room. On the morning of 11 February as her condition deteriorated, she was allowed to leave. The SHO threatened her with dire consequences if she reported the matter. Under the pressure of this threat and her daughter's impending marriage, she did not get herself medically examined. With the help of her husband and a local activist, she tried to lodge a complaint, first at the Jahangirpuri PS and then in an informatory letter, dated 12 February 1993, to the DCP (North West). They got not response.

The brother was still in police custody. He was shifted to the Interrogation Centre at Sukhrali around the third week of February. On 10 March he was admitted to the Rohtak Medical Hospital and died there on 20 March, 40 days after he was first picked up.

On 7 April 1993, the woman filed a complaint in the Court of Metropolitan Magistrate Narinder Kumar. On the basis of her testimony and that of six

other eye-witnesses, the magistrate framed charges under Sections 330, 348, 354 and 376 IPC against Head Constable Inder Pal, Sections 330, 348, 354 read with S.114 and 506 IPC against SHO Ishwar Singh, and Sections 330, 348 and 354 IPC against Constable Ramesh. The magistrate further observed, "These acts cannot be said to have been committed in discharge of official duties."

The case first came up for hearing on 17 December 1993, and SHO Ishwar Singh was granted bail. Head Constable Inder Pal subsequently moved the High Court for anticipatory bail. The next hearing there is scheduled for July 1994. The victim has attended six court hearings since December 1993. Meanwhile the police grapples with the difficulty of producing Constable Ramesh in court, since there were 3 constables by that name present in the police station between 9-11 February 1993. In the process they have effectively stalled the court proceedings. More than a year has gone by and the woman is still waiting for Godot.

The Law

In the 10 cases investigated, the similarity between the incidents and their aftermath shows the recurring pattern behind rape trials. In the light of the amended provisions in the rape law and our own findings, we decided to look back.

The Supreme Court verdict in the Mathura case had raised serious legal questions regarding a raped woman's consent and her character. Amendments were made in 1983 and certain provisions were added with specific reference to custodial rape. The amendments attempted to redress the exclusive emphasis on the question of character and consent, and thus Section 114 of the Indian Evidence Act (IEA) and Section 376 IPC were suitably modified. Yet, ten years later, in its judgement on the 1978 Karnataka case, the apex court regarded as significant the fact that "the prosecutrix voluntarily came and stayed in the same room." It also believed that "the accused in a fit of passion committed the rape." In these intervening years the debate has shifted from the vulnerability of women in police custody to the reduction of sentences in rape cases. But the focal points have remained the same: victim's character, conduct and consent.

In law, rape is defined as sexual intercourse with a woman (i) against her will and (ii) without her consent. Since it is a woman's consent or absence of it which makes the sexual act distinct from the offence of rape, this becomes the crucial issue in rape cases. Recognizing that the term "consent" is defined far too vaguely as it stands now, the Law Commission (84th Report, 1980) recommended that the qualification "free and voluntary" be prefixed to the term "consent," implying "an active mental participation of a woman." This suggestion was not incorporated into the law however.

Section 375 IPC identifies certain conditions in which, even with the woman's consent, the sexual act constitutes rape: namely consent obtained under threat, through deception, when the victim is mentally unsound or under influence of drugs or intoxicants, or when she is a minor, ie, below the age of sixteen. In marital rape, however, the wife should be below the age of fifteen. Thus consent does not have to be proved in all categories of aggravated rape. Further, rape by a policeman, public servant, jail and hospital staff and management, all falling within the broad category of custodial rape, carry a more stringent punishment of ten years, instead of seven years, imprisonment. So do three other categories of rape — rape of a pregnant woman, of a child under twelve years of age, and gang rape. The ten years may be reduced by the court "for special and adequate reasons." [See Box]

All offences falling under Section 376 (ii) attract the amended provision S.114A of the Indian Evidence Act. What this section states is that if the sexual act is proved by the prosecution, and the woman states in court that she did not consent, then the court "shall presume that she did not consent." Given this presumption, the onus (legal burden) of proving that she consented falls on the accused. This is a welcome corrective to the judicial practice of treating the testimony of the prosecutrix on par with that of an accomplice, in which the unstated presumption is that the woman was a consenting partner. In which case the legal burden falls on her to prove that she did not consent. The testimony of an accom-

For Special and Adequate Reasons

Appeals for reduction of sentence are routine in all criminal cases. The appellate courts have the discretion to do so. But they have to state the special circumstances of the case for exercising this discretion. What has been alarming in rape cases is not simply the substantial number of cases where the higher courts have reduced the sentence, but also the stated grounds for it. Which seem neither special nor adequate to the ordinary public.

There are cases where the appellate courts have not interfered with the sentence given by the trial court. For instance, the Indore Bench of the Madhya Pradesh High Court found no extenuating circumstances to reduce the ten-year jail sentence for the principal accused in a 1984 gang rape case (Nawab Khan and Others vs State, 1990 Cri.L.J. 1179). Similarly, the Delhi High Court confirmed the sentence in a 1985 custodial rape case. The judgement explicitly pointed to the legislative intent in amending the rape law (Aman Kumar and Others vs State0. The case involved a 14-year-old Bengali maidservant who was taken to the Harinagar police post for questioning in a theft case. Later, the Supreme Court dismissed the appeal of the accused and confirmed the sentence (unreported).

The 1989 Supreme Court decision to lower the sentence in the Suman Rani case and the 1993 decision reducing the sentence in the Karnataka rape case, have raised several pertinent questions. It has been argued that the knee-jerk response by the legislature in raising punishments for socially horrifying crimes is counterproductive. For harsher penalties possibly lead to lower conviction rates. (In narcotics-related crimes, for instance, the conviction rate is as low as 2%.) Judges will naturally scrutinize more strictly whether the prosecution case has been proven beyond all reasonable doubt, when the offence attracts a more severe sentence. And then there are the appalling conditions in the jails, which contribute to the further criminalization of the criminal. However pressing the debates on the desirability or otherwise of more stringent punishments, the point is that courts have to give satisfactory reasons for reducing the statutory minimum punishment.

In the judgements on both these rape cases, the focus is on the conduct of the victim. The conduct of the complainant is of course relevant as evidence at the trial stage. But what relevance does it have after conviction? Surely it is factors relating to the convicted person which ought to press on the judicial mind. This is conspicuously absent in the Suman Rani case. Here the grounds taken by the defence that the young woman who had eloped with her lover was of a "lewd" and "lascivious" character, and the fact that there had been a week's delay in registering her complaint, were found to have merit enough to reduce the sentence. In the Karnataka case (1978), the court does refer primarily to the accused. But the young woman's agreeing to share a room with the two youths who had "befriended" her is partly responsible for the extension of judicial sympathy to them. The woman had been travelling from Bangalore to Hasan by bus to attend her brother's marriage, and the youths had persuaded her to spend the night at a lodge en route and raped her at knifepoint. She had raised an outcry immediately and the lodge staff had come to her rescue. In the court's opinion the young men may initially have been motivated by "genuine desire to help the girl," but then in the close proximity of the shared room they became "victims of sexual lust" (Times of India, 21 Nov.1993 Supplement). It seems mere common sense that rapes would involve some element of "sexual lust," else the sexual act is simply not possible biologically. And in the past decade it has been amply pointed out that rapes are less crimes of sexual passion than of aggression and contempt towards women. It may be noted that the reasoning in the above judgement is by no means an aberration. For even the 1980 Law Commission Report, otherwise very sensitive to the situation of the rape victim, subscribes to such a reading of the psychology of a rapist: "a person out to commit rape is motivated by a strong uncontrollable passion or the lust of a savage' (p.8). But the Report in no way suggests this as an extenuating circumstance. That unfortunate leap, articulating and reinforcing popular perception of rape as a `fit of passion,' was regrettably made by the apex court. We protest.

...and after the amendment

Court Judgements since 1983

	Date of incident	Accused	Complainant	Sessions Court	High Court	Supreme Court	Comments
1.	10.9.78	Constable Prakash & Sudhakar, a businessman; PS Pathrot, Amravati	Married woman, husband daily labour, rural	Convicted, 3 years RI	Acquitted, August 1981, Bombay	Convicted, 3 years RI, 24.3.92	1992 Cri.L.J. 1924, State of Maharashtra vs Prakash & another, Cri.Appeal No.459 of 1983, D/-24-3-92
2.	22.8.81	C.K.Jain, SI, Nagpur	19-20 year old urban lower middle class; cloped and married	Convicted, 5 years RI	Acquitted, Nagpur	Convicted, 5 years RI, 18.1.90	1990 Cri.L.J. 889, State of Maharashtra vs Chandra-prakash Kewalchand Jain, Cri. Appeal No.220 of 1986 D/-18-1-90
3.	23.1.84	Constables Prem Chand, Kushi Ram, Bhiwani	Young girl; eloped; father rickshaw puller	Convicted, 10 years RI, 13.12.84	Convicted, Chandigarh, 28.11.85, 10 years RI	Convicted, reduced sentence, 5 years RI, 31.1.89	AIR 1989 SC 937, Prem Chand & Another vs State of Haryana, Cri.Appeal No. 545 of 1986 D/-31-1-89
4.	8.9.80	Constable V.M.Devre, PS Dhadaon, Dhule	Adivasi married to labourer	Acquitted 26.2.81	Acquitted 18.7.88, Bombay	N.A.	1989 Cri.L.J. State of Maharashtra vs Vasant Madhav Devre, Cri.Appeal No.551 of 1981, D/-18-7-88
5.	3.4.85	Constable Aman Kumar, abetted by Constables Satbir Singh & OmPrakash, PS Tilak Nagar, Delhi	14 year old maidservant	Convicted, 10 years RI	Convicted, 10 years RI, Delhi	Convicted, 10 years RI (Unreported)	32(1987) Delhi Law Times 319, Aman Kumar & Others vs State, Cri.Appeal Nos. 196,194,191 of 1986 D/-8-5-87

plice, it may be noted, is permissible, but it has to be treated with caution: "an accomplice is unworthy of credit, unless he is corroborated in material particulars" (S.114, Illustration [b]). Such judicial prudence and caution became a "rule" of corroboration, with evident adverse and harsh results to the complainant.

Even before the amendment, courts had objected to making corroborative evidence a legal necessity. For example, in the case of Chander Pal vs State of Punjab, the court stated that, "The rule of corroboration is meant to be applied to accomplices or tainted witnesses. A girl or woman on whom rape has been committed is the victim of an outrage and she is neither an accomplice nor a tainted witness" (Cr.Appeal no.557-SB of 1980. Cri.L.J. 1983, NOC 194). The landmark Supreme Court judgement in this matter was of course the Gujarat case of rape of a minor girl where the Court held that "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" (Bharwada Bhognibhai Hirjibhai vs State of Gujarat, Cri.L.J. 1983, p.1096 SC). This judgement was relied upon in upholding conviction in the Shamim Bano case of custodial rape. The incident, involving a young couple who eloped and married, took place in 1981. The Bombay High Court had reversed the Sessions Court conviction and acquitted the accused, SI C.K.Jain, on the grounds that the woman's testimony stood uncorroborated in material particulars. "The degree of proof required must not be higher than is expected of an injured witness" (State of Maharashtra vs Chandraprakash Kewalchand Jain, 1990 Cri.L.J. 889).

The amendment to S.114A thus incorporated judicial unease and social protest against the absolute necessity of supportive evidence in custodial and other aggravated forms of rape. But that does not solve the problem. For what are the ways in which the accused can rebut the court's presumption that "the woman did not consent"? The routine practice remains, as in other rape cases, to bring in evidence that the woman's testimony is unreliable. And here the same familiar terrain may be covered, specially if the complainant is past the age of puberty: lack of visible marks of physical injury, her conduct before and after the incident. Medical evidence is needed for proving injury, and that may be lacking or inconclusive. Her conduct may involve circumstances showing that she willingly accompanied the accused, that she did not raise an alarm, or that she did not disclose the happening immediately to someone, or that there was a delay in registering the complaint. And then there are provisions in cross examination for impeaching the credit of a witness. This includes a specific provision that in a prosecution for rape, "it may be shown that the prosecutrix was of generally immoral character" [S.155(4), IEA]. In a sense we are back to square one.

Why the legislature in its wisdom did not delete this last provision despite the specific recommendation of the Law Commission as well as the public debate following the Mathura and Rameeza Bee cases may be best left to the imagination. For it defies reason. Why should the past sexual and marital history of a complainant with persons other than the accused be relevant as evidence? The continuing impact of the retention of this provision is exemplified in the interpretation of S.114A given by the Madhya Pradesh High Court. It is a 1985 case involving a charge of gang rape of a 25-year-old Gond labourer woman who had a chequered marital and sexual history. The accused involved were the local contractor and his men, all belonging to a minority community. There are circumstances given in the judgement to suggest doubts about the veracity of the charge. For example, the initial complaint was made by a neighbour in whom the complainant had not confided. He later turned hostile. The woman herself made the complaint to the police five days after the event. What can be read between the lines,

Public Interest Litigation

1. 18-year-old tribal gangraped by local police, Dhanbad district. SC awarded Rs.50,000/- compensation a few months later. Directed State of Bihar to deposit Rs.45,000/- in fixed deposit and Rs.5,000/- for immediate expenses (*National Herald*, 8-7-89)
2. Married tribal woman raped by police in 1993, Bharuch district. SC awarded Rs.50,000/-. Directed State of Gujarat to deposit amount. (SCALE 1993 (2) 631. P. Rathinam vs State of Gujarat and Others.)

	Date	Age of Victim	Background	Marital Status	Police Station	Place of incident
1.	16.7.93	26	Wife of autorikshaw driver, residing in LIG Colony; shifted residence after incident	Married	Samaipur Badli	Unknown place in this PS area
2.	20.6.93	11	Bangladeshi migrant; living in resettlement colony; now shifted to Nari Niketan	Minor	Seemapuri	Police booths
3.	11.2.93	39	Wife of DTC driver, slum resident	Married	Jahangirpuri	Police station
4.	16.1.93	n.k.	Wife of factory worker, resident of urban village; now shifted residence	Married	Okhla	Medical shop
5.	20.9.91	mid 30s	Wife of scooter mechanic, living in resettlement colony	Second wife	Dakshinpuri	Police station
6.	9.5.90	25	Nepali migrant, wife of mason, in squatter settlement; now shifted residence	Married	Patel Nagar	Victim's house at Baljit Nagar
7.	11.1.90	27	Bengali migrant, family in West Bengal, residing in squatter settlement, now shifted residence	Married	Kalkaji	Police post being built in area
8.	10.1.90	35	Himachal migrant in resettlement colony	Widow	Seemapuri	Barracks in area
9.	24.12.89	20	Visitor from small town in Madhya Pradesh, wife of printer; left the city	Married	Kotwali	Deserted police assistance booth area
10	1.11.89	36	Living with servant at dhaba, originally from village in Madhya Pradesh; left the city	Deserted by husband	R.K.Puram	Police station

Note: In the column 'Persons involved' P/C stands for 'Policemen/Civilians'
In the column 'Action taken' S/D stands for 'Suspensions/Dismissals'
n.k. stands for 'not known'

tten Stories

Public response	Persons involved (P/C)	Action taken (S/D)	Medical Examination	Victim's testimony	Status of case	Date of acquittal	Reinstate-ment
None	3P+1C	3D	Yes	Retracted	~~Under trial~~ n.k.		
Local leaders of JD, BSP, activists and local residents took up the matter	Gang rape, 5P+2C	5S	Yes		Under trial		
Activists took up the matter	3P	None	No		Under trial (complaint case)		
None	1P	1D	Yes	Retracted	Closed	25.11.93	n.k.
Activists and local residents took up the matter	1P	None	No	Retracted	~~Closed~~ Case not registered	n.k.	
Local residents helped to catch policeman	2P	1D+1S	n.k.	Did not appear in court	Closed	26.5.91	n.k.
Local BJP leader took up the matter	2P	1D+1S	Yes	Retracted	Closed	2.8.91	Yes
None	2P+1C	2D	Yes	Retracted	Closed	n.k.	n.k.
None	1P+1C	1D	Yes	Retracted	Closed	12.4.91	Yes
None	3P	1D+2S	Yes	Did not appear in court	Closed	30.4.91	Yes

but not mentioned as grounds for a trial, is the surcharged communal tensions in the village. But, prominent among the grounds mentioned is the old demon of sexual history. The judge acknowledges that "it will not help the defence merely to show that the woman was of easy virtue." But, it goes on to state, "It must be conceded that immoral character would still not be an absolutely irrelevant circumstance. It may render the story itself as incredible. It may take away probative force (evidential value, reliability) of the story, told as it is by a woman with no scruples or morals" (Banti vs. State of Madhya Pradesh, 1992, Madhya Pradesh Law Journal, p.38). With all the cautious hedgings of "may", the focus still falls on sexual morals. The woman is held to lack credibility because she has "no morals". This interpretation is ominous. Ominous because S.114A read with S.155(4) legally permits it. Ominous because the live ghost of the "accomplice" assumption haunts it.

What emerges is that, there is, in essence, no substantial difference in the actual trial procedure for rapes that come under S.376(2) IPC. The presumption in favour of the complainant can effectively be diluted if not totally eroded by the grounds available to the defence. The main evidence in all rape trials is that of the complainant herself and conviction depends on the judicial evaluation of evidence relating to the credibility of the woman. The provision of S.114A remains thus subject to all the infirmities of other provisions of the Indian Evidence Act and the prejudices of civil society.

Finally, the amendment to the Criminal Procedure Code (CrPC) may be noted. It provides for in camera trial in rape cases [S.327(2)]. Individuals may be permitted by the court on application by either complainant or accused. Though brought in partially on the demand of democratic sections, the provision for in camera trial is clearly double-edged. Particularly in the case of custodial rape, it is advantageous to the accused. There are also judicial restrictions on media and other reporting [S.2, 327(3)], but thanks to vociferous public protest, in practice, to our knowledge, there has been no repressive curtailment of the right to report court proceedings.

The above discussion is entirely irrelevant, however, for the women of Jayashankpur, a small village in Orissa, 70 km from Cuttack on the Cuttack-Paradip road. From 26-29 October 1993, members of the Orissa State Armed Police raped the women of the village, arrested some men, and indulged in torture, looting and wanton destruction of property. The repressive power of the police was manifested not only in this gross abuse of authority, but further in the subsequent cover-up. Police denial was echoed by the denial of the State Commission for Women, of any

Yes, Your Honour

In 1986, an enquiry commission was appointed to investigate the allegation of custodial rape of a married tribal woman in Rajpipla, district Baruch, Gujarat. The report, punctually submitted by the Joseph Commission, indicted the policemen. Departmental enquiries based on the findings of the Commission were initiated. A year passed. The Supreme Court found to its dismay "a pathetic state of affairs," for "no serious attempt has been made to pursue the matter." Two affidavits filed by the Deputy Secretary of the State in 1987 were found to be basically procrastinating on the matter. Judicial reprimand notwithstanding, five years later, the enquiries were still pending. Exasperated, the Court ordered that the enquiries be completed within 3 months, and that "even if criminal proceedings are pending, the enquiries need not be held up and shall proceed promptly." The court also ordered Rs.50,000/- to be paid to the victim as interim compensation. It is possible that the State has complied with the order for compensation. Fewer hopes can be placed on the execution of the orders to complete the enquiries. What is interesting is the dilatory methods used by the state bureaucracy. Of them, taking recourse to the excuse of criminal proceedings is standard. And totally specious, as the Court has pointed out. But the excuse has been routinely used in cases of communal riot-related offences. And quite as effectively.

(P.Rathinam vs State of Gujarat and Others, SCALE 1993 (2) 631 and SCALE 1987 (2) 1464).

incident of mass rape; it was also strengthened by the retraction of the leading Oriya daily, Samaja, of its story covering the incident. The women of Jayashankpur are thus still awaiting a judicial enquiry, for the law to take cognisance of the atrocity they have been subjected to.

The amendment and its implications also remain a matter of academic interest as far as the recent cases of custodial rape in Delhi (1989-93) are concerned. Barring two convictions by the High Court (see Table), the accused policemen in all the cases we have investigated, have been successful in scuttling the judicial process. The judicial aftermath of each of these cases points to just one inexorable conclusion: that a policeman can sexually molest and assault a woman and successfully fight for his acquittal and his subsequent reinstatement. The social backgrounds of these victims of custodial rape have their own story to tell. Caught between a variety of vulnerabilities, these victims of violence are perpetual targets for police intimidation.

A Tale of Two Cities

Lodged between the city's skyscrapers and pleasure parks are a number of housing localities whose social profile bears testimony to the fact of unequal distribution of resources. These squatter settlements, slums and unauthorized colonies, byproducts of migration and urban plan administration, house about 77% of Delhi's population: the urban poor. It is estimated that on an average over 2 lakh people migrate to Delhi every year. While the maximum number of people came at the time of the Asiad, a substantial number have stayed on in the city from the early 60s. Belonging mainly to the northern states of Rajasthan, Uttar Pradesh and Bihar, these poor people come to the city in search of employment and livelihood, and in the process find themselves living in jhuggi-jhopris, slums or even on the pavements. Confined to the margins both economically and socially, this floating population lives in conditions that are unhygienic and prone to disease and epidemics. Forever prey to the ravages of nature, the vulnerability of these people is doubled because of their illegal status as squatters on public or private land. The insecurity of livelihood and the threat of being evicted or penalized increases the possibility of their being arrested by the police. For the women, the fear of the police means not only fear of harassment, it also means fear of assault on their bodies. In the 10 cases investigated, the course of events leading to the rape indicates the complex relationship between the power of the police and migrant lives in unauthorized colonies.

Over the years, the various acts passed which aimed at urban development — the DDA Act (1957), DMCA (1957), Slum Clearance Act (1956), the National Capital Region Planning Board Act (1982) have had nothing to do with the rights of the homeless. At the time of the Emergency, 1.5 lakh squatter families were 'resettled' without any attention paid towards establishing social, cultural and economic ties with their new surroundings. Their earlier social coherence was disrupted. Transported many miles from their workplace, the relocated families faced greater problems in basic amenities. Thus, although there are as many as 46 'resettled' colonies today, in which over 1.2 million people live, the living conditions are as bad as those in jhuggi jhopris. While the Slum Wing's system of nomenclature (urban village, unauthorized regularized colonies, slum designated areas, etc.) contributes to the academic debates on urban planning, the harsh realities remain unacknowledged. In a country where the right to shelter is not recognized as a Fundamental Right under the Constitution, where 7 million people live in "substandard areas" (a term used by the Slum Wing) in the national capital and where the official census does not record their existence, the question of smooth functioning of law and order doesn't arise. In the eyes of the law, men, women and children living in such unauthorized settlements are lawbreakers, guilty of committing various cognizable offences and liable to be evicted from their homes. Not surprisingly, the interface between the police and such settlements is marked by a long history of repression and harassment. In Baljit Nagar, the police collected 'hafta' every time a family put up a makeshift structure. Since the land was illegally occupied and had

sprawled into a Nepali basti, the police regularly surveyed the area and extorted money from the settlers. According to our investigation, the custodial rape committed in this basti in May 1990 was preceded by the harassment of the victim's family. The victim and her husband, a mason, were living in this basti since they had migrated from Nepal 7 years earlier. Although they had paid their 'obligatory' fee of Rs.100/- to the police a year before when they had constructed their own jhuggi, the constables and thanedar of Patel Nagar Police Station used to patrol the area and scrutinize the documents of the residents. On one such visit, late at night, the victim was raped.

The manner in which the police has made inroads into these colonies is not restricted to hafta collection alone. The proximity of the police stations, the similar social moorings of the police constables and the ever growing lack of employment opportunities together create a powerful basis for the police to be familiar with local residents. Many of the police constables have an intimate knowledge of the localities concerned, and very often their links with these social worlds go much beyond their capacities as custodians of the law. At the same time the power of their uniform sets them apart from society as guardians of law and order. This combination of authority and social affinity intensifies masculine aggression and reconfirms the police's power over ordinary people and women in particular.

The familiarity between the police and local residents explains the relative ease with which the policemen can gain the company of lone women. In our investigation we found that at least 5 civilians were involved in 4 different rape cases. In G Block of Seemapuri in January 1990, the victim of a gang-rape was a Himachal migrant who had gone to purchase food in a nearby dhaba in the evening. She was accosted by a local resident, who was joined by two constables from the Seemapuri Police Station, and all three raped her. In another more recent case, in the LIG Housing Colony in Rohini in July 1993, 3 police constables of Samaipur Badli Police Station and one local resident forcibly abducted a young woman, took her to an unknown place and raped her. She was allowed to return home only on the next morning. This nexus between the police and civilians is mutually beneficial because it offers, to the police a social base in the particular locality, and to the civilians the power and the privilege of knowing the police.

The problem is further intensified because many of the civilians who are on friendly terms with the local policemen are also politically powerful. Often with an eye on land speculation, politicians find it prudent and profitable to have a permanent foothold in the unauthorized colonies. The power of the politicians over the local community is not simply linked to their election promises of social welfare alone, but extends also to the furthering of lumpenization. In the June 1993 Seemapuri case, the two civilians involved are known to be patronized by the Congress (I). However local politicians may sometimes take up cases of custodial violence, whether of custodial death in Najafgarh in 1993 or of custodial rape in Alaknanda in 1990.

The nexus between the police, politicians and their local henchmen is embedded in the social fabric of these localities. These colluding factors empower the police to intervene in the local quarrels, interrogate the residents, illegally detain them and perpetuate various kinds of physical and psychic violence — a violence manifested in the cases of torture and death in police custody in such areas. For women living in such conditions, the vulnerability is doubled as they are twice removed from the norms of justice. And many who belong to marginal sections or are refugees are easier targets of police repression. In the Jahangirpuri case in 1993, the entire family of a suspect involved in a murder case was detained at the police station for interrogation. The suspect himself died a month later, succumbing to prolonged police brutality. His sister was detained and raped in the same police station. From the sister's account it emerges that she went to look for him after the initial arrest. The driving force behind the police's atrocities was the fact that she was a Banwaria, therefore a lawbreaker, therefore guilty, therefore deserving of punishment. Her own crime was that she went to visit her brother at the police station.

The sequence of events which culminate in rape often have their beginnings in situations seemingly unrelated. A quarrel between two families can become the ground for intervention. In the January 1990 Alaknanda case, the altercation between the sister's family and the neighbours was the pretext used by the police to force the victim to accompany

them to the thana. Significantly, the police had gone to the Bengali settlement not to settle the row between the two families, but for some other altercation. More importantly, the jhuggi settlement did not come under their jurisdiction. Yet they insisted that the victim go with them.

Thus the course of events leading to rape is different in different cases, because this sequence is determined by the particular circumstances of the victim. However, the media versions of rape inevitably iron out these differences. Tucked away in a corner of the newspaper is a small mention of a rape by a policeman, and each of these items reads identically: a woman was accosted and assaulted, and the case was registered at a particular thana. The reception of this information strengthens the popular understanding of rape as masculine aggression on female helplessness. The larger questions as to who these victims are, why they were assaulted and what happened subsequently, remain unanswered.

Procedures

On 18 January 1993, an FIR was lodged at the Okhla Police Station. On 25 November 1993, the accused was acquitted and the case was closed. On 18 May 1990 an FIR was lodged at the Patel Nagar Police Station. On 26 May 1991 the case was closed. On 11 January 1990 an FIR was lodged at the Kalkaji PS. On 2 August 1991 the accused was acquitted and the case was closed. Between 1989 and 1993, 22 policemen have been involved in rape charges. None of them have been convicted. In a different mode the question is: which story has greater power and authority: a physically battered and traumatized woman's uphill fight for justice or an accused policeman's vigorous battle for acquittal and reinstatement? The dice are clearly loaded.

Compared with the normal pace of court hearings and the delays and postponement that accompany them, the speed and efficiency with which these cases close is truly astonishing. In fact it is horrifying because the status of these trials is no more than a formality, empty ritual that needs to be enacted in order to ensure the acquittal of the accused. Once acquitted, reinstatement follows and then it is business as usual. How does this happen? How does an act of assault and rape get transformed in the course of legal proceedings? Let us examine the mechanism of law and order involved in this situation.

According to normal procedure (CrPC), the FIR is registered by the police on the initial complaint lodged at the police station. By itself, the FIR cannot be treated as a substantive piece of evidence, but it is a necessary step to initiate investigation. The medical examination of both the complainant and the accused is part of this process. After the completion of the investigation, the police submits a report to the magistrate who holds a preliminary hearing to hear the evidence and commit the accused to trial. The case is discharged if there are not sufficient grounds for proceeding against the defendant.

In practice the process is not straightforward. The police can use various dilatory methods to fob off the lodging of the complaint. In the most recent case that we have been investigating, at Jahangirpuri PS, the victim was not allowed to lodge her complaint at all. In fact, since an FIR could not be lodged, the case came up for hearing through a complaint in the court. Or, the victim may not be aware that the lodging of the FIR is extremely important. In a society where little autonomy is granted to women, it is hypocritical to expect a victim of rape to leave her trauma behind and swing into the rhythms of legal routines. In all 10 cases, the rape was committed either late in the evening or at night. It must also be remembered that rape is very often preceded by abduction and followed by intimidation and fear of social ostracism. Under such circumstances delay in lodging the complaint is inevitable because the woman has to muster courage and get her statement recorded in a police station. In the Baljit Nagar case (May 1990), there was a delay of five days in lodging the FIR and this provided the grounds for granting bail to the accused. More importantly, delay in lodging the complaint can provide the grounds for doubting the testimony of the victim.

Investigations can be delayed also around specific procedures, such as filing of the charge sheet, which can then become the grounds for granting bail. The Test Identification Parade is a routine procedure where the complainant has to identify her assailant.

In the 1993 Seemapuri case, the 11-year-old victim was gang-raped repeatedly by policemen and men in plain clothes in dimly lit police booths. The police took one week to record her statement because they could not find a translator. She was then made to go through three such test parades. She initially recognized 2 policemen. But in the course of 3 parades she failed to identify her other assailants. Subsequently 4 of the 5 accused policemen have been released on bail. Not only are these tests accompanied by intimidation, in themselves repeated test parades harass the victim further. Delay is thus built in at several levels into the mechanism of law and order.

Total number of policemen involved	Number suspended	Number dismissed	Number reinstated	Number on bail	No action taken	Not known
24	9	10	3	5	5	6

Suspension or dismissal, on the other hand, is carried out without any delay. Particularly in the recent cases, dismissal or suspension has taken place within a matter of a day or two, under Article 311 ii(b) of the Constitution. Dismissal is commendable insofar as it signifies the police response to a charge of such gravity, and works as a kind of deterrent. However, the routine disregard for procedure counters the spirit behind the prompt action as it conveniently leaves the back door open for the ultimate reinstatement of the policemen.

Article 311 clearly states that "No person who is a member of a civil service of the Union or an all-India service or a civil service of a state or holds a civil post under the Union or a state shall be dismissed or removed by an authority subordinate to that by which he was appointed." Further, clause ii states that "No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges." In practice, the directives provided in the clauses are seldom carried out. A senior official of the Central Administrative Tribunal said that reinstatement of a charged officer can rarely be prevented because of the deliberate violation of the directives provided. The dismissing authority is often the duty officer and not equivalent to or higher than the appointing authority. Moreover, the charged officer has to be given a copy of the summary of allegations and must be allowed to cross-examine and produce his own witnesses. Also, there is often pressure on the inquiry officer to exonerate the charged officer on humanitarian grounds.

Dilatory tactics not only harass the victim but also prepare the grounds for granting bail to the accused. What they further signify is the institutionalized reluctance of the police to prosecute charges against their brethren. In the 1993 Seemapuri case, the release of 4 policemen on bail has disillusioned the local community which had taken up the issue and rallied around the victim. In the long run such mechanisms discourage any form of collective resistance.

Ten years ago, specific provisions were made in the law for custodial rape. The shifting of onus has been seen as a decisive gain, because now in the context of the trial the woman's sexual history and her character are not necessary areas of inquiry. But ten years later the Sessions Court judgement in the RK Puram case which was delivered on 30 April 1991, reads: "She (the victim) was a vagabond and had no permanent place of abode. She herself stated that she used to roam during daytime and at night used to sleep with the servant of the dhaba . . . Her association with the servant of a dhaba certainly doesn't paint her in good hues." What relevance does her association with a worker in a dhaba have with the act of rape? And yet it is relevant, because with the concluding remarks the case was closed and the accused was acquitted. The victim was raped by 3 different policemen in the premises of the RK Puram PS. She was offered money to keep quiet. After recording her statement before the metropolitan magistrate, she disappeared. Our team tried to track her outside Delhi but failed. The accused was reinstated in the Second Battalion of the Delhi Armed Police. Just a small coincidence, the judge who delivered these lines which return to character and consent, was also a woman.

Police Stories

The official accounts provided by the police attempt to explain the "real story." Given the fact that the investigating authority is the police and witnesses are perhaps colleagues, the concerned fraternity offers protection and support to the accused. The version at the local police station is often an unequivocal denial of the rape charges levelled against the accused.

These police accounts are motivated by their concern for their accused brethren and by their own image as guardians of the law. The modus operandi of the counter arguments is to contest the credibility of the woman and her complaint, to point to the contradiction between the complaint and the real story. Depending upon the circumstances of a particular case, various arguments are offered. If the victim is below 16 years, then disproving her age becomes the focal point. If it is proven that sexual intercourse did take place then the argument hinges on proving that she consented. Or the account denies that it was a custodial rape: i.e. the police will acknowledge that a rape was committed by the accused, but not in custody. This was what the police at the Okhla PS, for instance, told us. That the accused had raped the victim but not within the precincts of the police station. Such fine distinctions are no longer made in the case of custodial death, because the initial interaction of the policeman is in pursuance of his official duties. The same criterion should apply in defining custodial rape. In the ten cases which we regard as custodial rapes, seven took place outside the precincts of the police station, but in all seven the police had intervened and interacted in their official capacities. Since both the Home Ministry and the courts interpret a rape by a policeman to be custodial whether the policeman is on duty or not, the distinction offered by the police is specious.

Which is not to say that there is no distinction between custodial rape and rape by a policeman. In the past, there were indications in two cases which we investigated, that there was prior acquaintance between the victim and the policeman. But rape did take place.

1. On 3 July 1990, a 35-year-old woman residing in Avantika (Rohini) was raped by ASI Ramesh Chand of the Crime Branch. The accused was a frequent visitor to Avantika, and was known to the victim. Her husband, who is in the Air Force, was away at the time of the incident. Ramesh Chand was suspended and rape charges were pressed against him.

2. On 2 June 1992, a 16-year-old minor girl studying in Class X and residing in Azadpur, was raped by Constable Subhash of the Delhi Armed Police. The victim knew her assailant and had been on friendly terms with him. Subhash was arrested and charged under Sections 363 and 376 IPC. There was conclusive medical evidence, but the case did not progress any further because the victim's family did not want any more publicity.

Besides quibbling over definitions of custody, the police also suggest that the rape charge was fabricated — i.e. either the victim and her family have a grudge, or that organizational groups or parties have a vested interest in framing the charge to gain political mileage out of it. For instance, at Patel Nagar the SHO was certain that the accused had been framed and claimed that there were two possible motives. Either the woman was having an affair with the policeman and had subsequently accused him of rape when her 'liaison' came to light, or that her husband had some enmity with the accused and this was a form of revenge. Both defence lawyers and police make the standard allegations of revenge and illicit love in charges of rape. In Dakshinpuri (1991), the police claimed that the victim was forced by local activists to charge the ASI with rape because her husband had been detained by the police for a stabbing incident. The police disputed the veracity of the complaint and investigation was thereafter deemed unnecessary. Perhaps under the pressure of her husband's detention by the police, the victim then withdrew her charge within a matter of days. Hence no action was taken against the accused. Thus the police was effectively able to counter the public agitation which was demanding the prosecution of the guilty policeman.

Yet another way of disputing the validity of the complaint is to cast aspersions on the victim's character and deny the charge of rape by inferring her

resources, and altercation. Protest from the local community is rare as the neighbours' hostility, suspicion and refusal to participate is often linked to the fear of publicity in a police case.

In certain cases, however, the neighbours did protest. In Baljit Nagar, they kept a watch over the area and caught the accused when he returned for a second attempt. Despite this collective effort, the woman did not appear in court. Subsequently when our team went back in 1994 to revisit the area, the entire basti had disappeared, perhaps changed location. In certain areas, organized help has also impelled the local community to protest against police atrocities. In the 1993 Seemapuri case in particular, the local residents rallied round the victim, but the dilatory tactics of the police and its persistent intimidation have disillusioned them. The recent Supreme Court judgement confirming conviction of the accused in a case of custodial rape in Delhi in 1985 is heartening however, because it was continuous intervention by an organization from the time of medical examination onwards, which provided the necessary help and assistance to the victim, a minor girl working as a maidservant.

Organizational support and protests from the local community are limited, but at least possible in the JJ colonies. The response of the neighbours in an LIG colony is more unhelpful. The social attitudes of these colonies are exemplified in the Rohini case. The neighbours had initially complained against the victim and her family. After the incident the neighbours denied that they had ever complained, while the police insisted that they had. The victim retracted and subsequently shifted residence.

Together with the institutional cover-up (police versions) and dilatory strategies, the mechanism of law and order ensures that the manner in which the trials are carried out, exerts the maximum pressure on the victim, who capitulates and retracts. For a poor, migrant woman, the legal procedures only add to her trauma, because her identity as a raped woman and her lack of resources and support place her at a disadvantage and render her struggle for justice meaningless and futile.

In a recent writ petition in the Supreme Court, on behalf of 4 women who were raped by Army jawans while travelling on the Muri Express in February 1993, the petitioner pleaded that the trial be shifted from Aligarh to Delhi. The women who are tribals, and who work as domestic help in Delhi, cannot possibly keep going to Aligarh in order to attend court proceedings. The petitioner submitted that unless the trial was shifted to Delhi, there was every chance of the victims losing the case. In our own investigation we discovered that the migrant status of the victim was substantially responsible for the conclusion of trials. For those who do not belong to the city, the delays in trial proceedings and repeated appearances in court add to the existing harassment and trauma. Some of the victims just

The Fallen Indian Woman

In February 1988, five women of Pararia village were gangraped by 16 men (7 policemen, 3 Home Guards and 6 chowkidars). In the Sessions Court, charges of rape were dropped and instead 8 policemen were convicted for one year under S.323 (voluntarily causing hurt), S.342 (wrongful confinement) and S.448 IPC (house trespass). The Additional Sessions Judge's conclusions rested on several a priori assumptions. Firstly, that Indian women do not speak falsehood about rape because of fear of social ostracism. Secondly, that the victims belonged to the category of menials and daily wagers and could not be compared with those women who "hail from respectable and decent society." Thirdly, that such women can speak falsehood "under political and economic pressures." While the stereotyping of women is patriarchal, class assumptions are also revealed in the moral distinction the judgement makes between "menials and daily wagers" and women "from respectable and decent society." Particularly insidious and damaging is the way in which it defines who is an Indian woman and why these women should not be confused with her. If the identity of an Indian woman is defined in moral and class terms, then very few rape victims will ever get justice. Because along with the familiar story of sexual history, the economic and material facts of their lives are held against them.

disappeared and others made a brief appearance to deny their charges of rape.

For women who are single and have nowhere else to go, the State provides protective custody and shelter for short periods. The Nari Niketan is modelled on this concept of a proxy home to cater to the needs of the wronged woman. While they project themselves as rehabilitation centres complete with counselling and psychiatric treatment, the actual situation is often quite the reverse. Housed within the jail complex, they offer little solace in their attitude to victims of sexual assault. While the protective custody is necessary to ensure the safety of the victims, nevertheless, these victims are treated with severity, as they are not allowed to meet outsiders, or even allowed out. One minor victim is still in the Observation Home, a part of the complex, but efforts to meet her have been consistently thwarted.

The precarious existence of raped women makes the intimidatory power of the police that much greater, impelling them to drop their charges. The threats can be direct, or else promises can be made. In the Kotwali case the victim was alternately threatened and promised gifts of shawls and sarees and even offered a proposal of marriage to a rich man. Such promises of social rehabilitation are made in an attempt to silence the victim. While different from brute force, these are methods of persuasion where the aim is just as clear: to force the victim to drop her charges by buying her silence.

Given the nature of these socio-economic pressures, threats and the harassment of investigation and trial proceedings, the victim prefers to seek anonymity to save herself from further publicity. Only two choices offer themselves in this situation: either to retract or to disappear completely. From the high proportion of retractions it is evident that the victim's anonymity is never complete until and unless the accused is acquitted. Anonymity followed by a shift in residence indicates, that while the victim has to pay a heavy price in terms of social and economic rehabilitation, there is still the possibility of a new beginning. But for those victims who continue to reside in the same locality, retraction means an end to publicity and the harassment of the police. Their lives can be marked by formidable isolation, however, and they may be treated with hostility and suspicion long after the incident.

This is precisely why the efforts of the woman in the Jahangirpuri case need to be lauded, because in this case, ironically, it is the accused who is refusing to appear in court. In spite of the numerous court hearings, her courage has not failed her. She continues to reside in the same locality, and the familial and organizational help has enabled her to reach this far. It is perhaps her own status as a member of a "criminal tribe" which positions her outside the consensual framework of civil society and its attitude towards rape and the loss of dignity. However, since this is a complaint case, the police authorities have refused to recognize the charges levelled against the accused. They now insist that a Test Identification Parade be carried out. Since it is well over a year since the incident happened, there is every chance that the victim may not recognize one offender and the case against him might collapse.

Conclusion

A victim of custodial rape is not a mere victim of assault and aggression. The violation of her rights and the loss of her dignity is not confined to the rape alone. It extends to her struggle for the restoration of those very rights and to her efforts to lead a normal life thereafter. Because the women targeted in custodial rape belong to sections of our society which are routinely subjected to police brutality. Because the patriarchal attitudes encoded in familial and social values and norms regard rape as a loss of chastity. Public perception commonly acknowledges that rape is a violent crime against a woman and as such must be punished. At the same time, custodial rape is treated as merely another category of rape. Thus public response is limited to the belief that deviant policemen must be punished. And yet in not acknowledging the crucial role of the state's power in cases of custodial rape and their aftermath, civil society tacitly justifies the abuse of authority by the state. Whether it is in the involvement of civilians with policemen, or in its hostility to the victims, civil society colludes with the State. To expect that a victim will overcome her vulnerabilities and also be in a position to challenge the power and authority of

a policeman is a wilful denial of the existing inequalities in our society. Unless and until there is a continuous intervention into the mediation between rule of law and civil society, meaningful changes cannot be brought about. And the vulnerabilities of a raped victim will remain unacknowledged.

At the same time, the democratic struggle against a victim's plight must build pressure on the institutions of the state, to give to these women what is theirs by right: redressal and restitution. Routine acquittal following upon retraction cannot justify the state's negligence towards these victims of custodial rape. Since the accused are public servants, offences committed by them are very serious matters, and ought to receive the utmost attention from all the institutions concerned. The lack of any effective response from those institutions only goes to prove that the state is not seriously committed to prosecuting charges against these policemen. In fact, there is greater concern for protecting the accused than for restoring the dignity of the victim.

If acquittal rests solely on the woman's denial or her absence, then the judicial process in the lower courts shows a complete disregard for the victim's socio-economic vulnerability. In fact the letter and spirit of the amendment are not apparent at all, because in none of these cases was the accused asked to prove his innocence. Since the state prosecutes charges against the accused, it must be made mandatory for it to appeal against the acquittal of the accused, on the basis of the FIR and circumstantial evidence.

In this context it is necessary to understand the relationship at the Sessions Court level between the police, judiciary and civil society : how civilians are involved with policemen in custodial rape; the collusion between the doctors and the police; the manner in which the police can actively stall court proceedings; and of course the intimidation of the victim and her fear of the uniform.

In cases of gang rape, what is particularly striking is the collective presence and arguments of the defence lawyers, as opposed to the ineffectiveness of the lone public prosecutor arguing on behalf of the victim. Often the public prosecutor, an employee of the state, might not necessarily be convinced by the argument of his 'client' who is routinely allocated to him as part of his duty. Therefore, while the case does come up for hearing, the unequal relationship between the victim and the police is replicated in the unequal balance of forces between the prosecution and the defence. In a recent judgement (Kartar Singh vs State of Punjab, 11-3-93) the Supreme Court has also recognized that public prosecutors work not on behalf of the public but on behalf of the police. Unless provisions are made for special prosecuting lawyers for each case of custodial rape (as in dowry deaths), acquittal of the accused policeman will remain the most likely outcome of the trial.

More importantly, the state owes a responsibility to the victims by way of compensation. As of today conviction of an accused policeman as well as redressal of the injury done to the victim are both equally rare. In the past, the Supreme Court has directed two State Governments to pay a sum of of Rs. 50,000/- to the victims in two cases. In 1989 the Delhi High Court directed an ASI involved in the rape of a minor girl to pay a compensation of Rs.4,000/- and fine of Rs.1,000. But apart from these occasional instances, compensation remains relatively infrequent.

In a writ petition filed by the Delhi Domestic Working Women's Forum in September 1993, the petitioner maintained that measures towards redressal such as compensation and rehabilitation need to be necessarily linked to the criminal prosecution. Since the Government of India has ratified the International Covenant on Economic, Social and Cultural Rights (1966), it has an obligation to victims who suffer violent crimes on their bodies, and are unable to secure meaningful and speedy justice. Sufficient constitutional and legal justifications do exist for the imposition of liability on the state to bear the burden of compensatory and rehabilitatory measures.

The 1983 amendment offered a certain degree of hope that the state would treat particularly victims of custodial rape with greater sensitivity, and punish offenders with greater severity. For us the aftermath of the ten cases has revealed that those hopes have been belied, because while the letter of the law has changed, the attitudes of police and judicial authorities have remained the same. These attitudes and the entire approach to custodial rape have to be changed, to recognize that custodial rape is an assault on the democratic, individual and personal rights of the woman.

Custodial Rape in Delhi: 1988-89

	Date	Age of Victim	Background	Marital Status	Police Station	Persons involved (P/C)	Action taken (S/D)	Comments
1.	29.7.89	n.k.	n.k.	n.k.	Jahangirpuri	1P	1S	
2.	20.7.89	27	n.k.	n.k.	Khanjawala	1P+2C	1S	
3.	12.7.89	22	Wife of peon, residing in New Police Lines	Married	Kotwali	1P	1S	Victim committed suicide
4.	22.6.89	12	Daughter of Head Constable	Minor	Defence Colony	1P	1S	Sentence of life imprisonment for accused ASI; compensation of 4,000/-, fine of *1,000/-*
5.	22.4.89	n.k.	n.k.	n.k.	Narela	1P	1S	
6.	25.11.88	n.k.	n.k.	n.k.	Gokulpuri	1P+1C	1S	
7.	23.5.88	25	Manipuri migrant, living in camp at Vijay Ghat	n.k.	Kotwali	4P	4D	
8.	2.5.88	5	n.k.	Minor	Adarsh Nagar	1P	1S	
9.	1.2.88	15-16	n.k.	Minor	Badarpur	1P	1S	
10	19.1.88	n.k.	n.k.	n.k.	Hari Nagar	1P	nil	Case dismissed on 21.7.88

Note: In the column titled 'Persons involved', P/C stands for 'Policemen/~~Constables~~ Civilians'
In the column titled 'Action taken', S/D stands for 'Suspensions/Dismissals'
n.k. stands for 'not known'
Two cases of 1989 not included here. See table *The Forgotten Stories*

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