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'Astitva' Battles Rape

Dinaz Contractor

Before discussing the subject, first let us see the definition of rape. As per I.P.C. Section 375, 376 A.B.C.D., rape is counted as a severe crime, cognisable, non-bailable, liable for five to ten years imprisonment and fine and the case can be filed only in the Sessions Court of a First Class Magistrate. But the main hindrance is that it is extremely difficult to prove that 'consent' was not given by the victim, this being the main criterion in proving rape cases.

As per the definition, a man is said to commit rape if

He has sexual intercourse with a woman against her, will, without her consent.

With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

With her consent when the man knows that he is not her husband but she thinks otherwise.

Consent given by a woman of unsound mind or when intoxicated.

With or without consent, when she is under sixteen.

I.P.C. Sections 375, 376 relate to rape and punishment while I.P.C. Sections 376A, 376B are for illicit intercourse of a public servant with women in his custody - that is, a Superintendent of a jail, remand home etc. and 376 C is related to illicit intercourse by the manager or doctor of a hospital with a patient. As per the law, gang-rape is also a very severe offence and each perpetrator is sentenced to rigorous imprisonment for life or for not less than 10 years.

But as aforesaid, the main hitch lies in the term 'consent' in proving the offence of rape. Consent will have to be free and voluntary. Passive submission is not tantamount to consent. As per the psychological study of women, there is a wide difference between the sex urge of men and women. No woman enjoys sex if she is not prepared for it mentally or physically. A sudden attack definitely makes her dumb-stricken and too paralysed to oppose. Besides what strength has she

compared to a man's physical strength and power? As per the Law, 'Consent' is deemed when there is no proof of skirmish, pulling, snatching; if there are no injuries or scratches either on the body of the victim or on the body of the accused, then the law gives the benefit of doubt and dismisses such cases or lessens the sentence. Thus most of the rapists or molesters are acquitted. Secondly the court asks for witnesses, which is really strange, for if there is an eye witness, generally rape cases won't occur. And even if a woman submits, she submits because of some fear or less resistance against masculine strength or she may have become aghast or dumb by the sudden attack. So both these aspects of law are baseless and improper.

The same problem must have arisen in the well-known Mathura case. The police, being the guardians of law, violated the law and that too in police premises and still they were acquitted by the Supreme Court on the ground that the Prosecution failed to prove that her consent was not there. They failed to take into consideration the violence and torture that the innocent immature girl might have suffered during such forcible intercourse, It was a clear case of rape. In fact not only villagers but ordinary citizens also get scared of the police, while she was a tribal girl of 16, with very little exposure to the urban world; to her the police must be like a monster. Besides she must have been threatened by the police that they would imprison her lover Ashok, as a complaint was lodged by Mathura's brother that she was kidnapped by Ashok and his family. She must have surrendered on account of that threat also. Just imagine her state of mind at that time, all alone in the police station, as the police asked others to leave and detained her only. They put off the lights, and she was all alone in this situation with those two demons, shivering like a timid deer, left near a huge lion, waiting for its destiny. Naturally the sudden attack would have deprived her of speech, or her mouth must have been closed by them to stop her screaming, her hands must have been caught by them to prevent resistance. As a consequence there might not be any visible injury on herself or on her assailants when she was raped. But under no condition can this be counted as 'consent,' if you ponder on Mathura's situation. I discuss her case here in detail just to produce the exact picture of women who become victims of men's uncontrollable passion or vengefulness. So to give justice to the woman, her testimony should be accepted by the court and if she states that she did not consent to sexual intercourse, the court should presume that the victim did not consent.

In rape cases, another hindrance for a victim and her relatives is that Society and Law both make the victim feel guilty. So in most of the rape cases, the girl's parents do not even lodge the complaint to save her reputation and her future. Another reason for not filing the suit is that the defendant's lawyer, to save his client, tries to perplex and humiliate the poor victim in the worst possible manner to the extent of making her feel guilty. Thus a competent lawyer can

make the case topsyturvy by his cross-examination and can terrorize the victim till she breaks. The law must protect her in such a situation. Lawyers must be human, not just professional persons. So to save the reputation of a girl or a woman, such a trial should be secret, and be held in camera. And the publication of the proceedings should be done only with the permission of the court. The victim's medical report at such times is very crucial. So it must be taken in time and it should also be ensured that the F.I.R. is recorded immediately by the police and the report should be sent promptly to the Magistrate, otherwise there is a real possibility of tampering with the doctor's report. This procedure must be conducted by a registered medical practitioner only. The victim must have a right to get herself examined by a registered medical practitioner of her choice or of her assurance. The fact is that ordinary people don't have the knowledge of all these procedures, so the sufferer does not rush to the doctor or police in time and then it becomes too late to prove the case. In our Legal Literacy Camps we are enlightening the participants with all these details as to how to proceed, how to prove the charges, etc.

Women always feel insecure in dealing with the police. So there must be a check on the police to prevent abuse of their powers. The laws passed in favour of women relating to the police should be strictly observed. A woman cannot be interrogated anywhere except at her dwelling place. She should not be arrested between sunset and sunrise. She should have a right to be accompanied by a relative to the police station. She cannot be detained except in a place of custody meant exclusively for the detention of women. She should not be called to the police station without severe offence. Arrest without any investigation or examination should be done by a woman police officer or by a lady doctor only. The police should not hesitate to record a complaint in such cases when a cognisable offence is reported, even if the accused is an influential personality - a big boss or a known notorious character. The charge sheet also must be put up in time, so that the accused don't get any loophole for evasion. If the protectors of the law violate the law then they must be punished more rigidly than others. Not only rape, but other heinous offences like molestation, must be counted as liable to punishment.

In brief, severe punishment and speedy judgement are the only alternatives to prevent this social evil. It is rightly said that 'Justice delayed is justice denied.' With the passage of time the accused get the maximum chance to tamper with the evidence. The case becomes slack, the tempo lessens and then the accused are freed or the sentence diminished near to nil. In connection with this I would like to narrate one such case. Just a week ago, I read the Supreme Court's judgement, for a proven rape case, which is really shocking. The case history is as follows.

In 1978, a 21-year-old nurse of Karnataka was raped by two men named Krishna and Raju. They were caught red-handed. Still the court of Hasan City acquitted Krishna and fined Raju only Rs. 500/-. The poor victim appealed to the Karnataka High Court where both the accused were ordered to undergo seven years rigorous imprisonment. Against that judgement, the accused appealed to the Supreme Court and the Supreme Court lessened their sentences from 7 to 3 years, on various grounds, including mental torture to the accused for 15 years. The judges did not take into consideration what mental torture and humiliation the girl must have suffered for such a long period. Her suffering, her fight for justice for 15 years goes in vain. Such judgements undoubtedly give encouragement to ruffians while common people become distrustful of the law; it restricts the victims and their parents from going to the court of law. A month ago in Surat, a doctor raped a girl patient in his clinic. A crowd gathered on hearing the girl's screams but then the girl and her parents denied that anything had happened. This incident was narrated in a local paper. Another incident occurred in Valsad itself. A shopkeeper tried to molest a little girl of twelve years by taking her into the rear room. The crowd gathered near the shop because of too much commotion and disorder. The police also arrived. But the girl's parents refused to complain. The members of our organization, Astitva, tried their best to persuade them but in vain. The police did not investigate on the ground that no complaint was filed. As per the figures given by the district police of Valsad for the last three years, the complaints are as under:

Year	Reported	Charge Sheet Given	Pending
1990	12 cases	12 cases	--
1991	6 cases	5 cases	1
1992	10 cases	9 cases	1

As per our knowledge far more cases occur than are reported. People avoid going to the court because of various reasons. They distrust the law. They lack knowledge of court procedures and the law. The police misconduct towards and harassment of victims as also the police habit of using third degree methods deters them. The violence and possibility of rape in the police station also worries them. They are also worried about the expenses and the elaborate formalities involved.

In fact if we check the given figures and records of the National Crime Bureau submitted in Parliament, a rape case occurs in our country every 54 minutes and harassment to a woman every 34 minutes. In 1987 the reported cases of harassment were 16292 which increased to 20611 in 1991 so the ratio increase is 26.5%, while in rape cases the figure increased from 7767 to 9738, the percentage increase being 26.1%. So many cases that we have successfully handled in our

Family Counselling Centre are those where a man has seduced girls by false promises of marriage and then retracted. In the case of an unmarried boy, we forcibly get him married to the jilted girl, in some cases with the help of the police also. Lots of cases have to be handled very carefully, specially when there is harassment to a widow or a married woman in their in-law's house. We also have handled the cases of girls cheated by false promises of marriage by married men. Reference to actual cases will bring out the horrendous nature of the crimes and the problems faced by our Association in dealing with them.

We have in our possession photographs of victims which make us shudder. A girl named Jignasha, 8 years old, staying in a village, was taken by two men to a field at night at about 8 o'clock when her mother had gone to attend a marriage ceremony next door. She was actually kidnapped by them and raped but the girl put up a tremendous fight, so she was badly injured. The father was out of station. The mother being illiterate and a backward class woman had no idea about any procedure. She approached us as she is aware of Astitva Association because of our Camps, in different villages. We took her to the police station. The F.I.R. was lodged. The accused, on knowing this fact, ran away from the village but we were after the police. So they were arrested. We were very particular about the charge sheet to be given within time and had seen that their bail was not granted so the case is still pending but they are in jail. In another case, a married woman was raped. It was a gang rape and the sentence given was seven years' imprisonment.

Another photo is of a poor victim Sangita. After two years of marriage she was driven out by her husband. He wanted to divorce her. But the girl wanted to stay so we had taken her to her in-laws' place with the help of the police. But looking to the situation of the house with a big compound, quite aloof from other residents and taking into account their opposition and attitude, we did not find it safe to leave her. We tried our level best to strike a compromise or arrange a divorce, but the man was not ready to pay anything as alimony. Our staff, being very sincere and devoted, had arranged more than 30 meetings for settlement, but he did not give the least response to us as he is a well-to-do and influential person and a known ruffian too. He was annoyed by our intervention, as otherwise he would have easily driven her out or finished her. But one day he lured the girl in the name of compromise, took her to the field, raped her, beat her, and injured her badly. She and her parents contacted us. We had taken the photos of her injury, and a medical report and filed a suit against him on charges of rape and injury as per I.P.C. Section 354, 376 and 364 as a man cannot have intercourse with his wife against her will, in the period of separation. So he is liable to have a punishment of at least two years imprisonment or fine or both. As he is not ready to compromise we lodged a case for maintenance.

The third case I would like to mention is of an orphan girl, Gita Mistry, 8 years old, staying in village Gundlav, after her father's death. They were from Rajasthan so none of her relatives are there. She was working and staying in the house of the village Sarpanch. A businessman having a tractor agency raped her. The Sarpanch and other villagers lodged the complaint but then that accused started giving threats of various sorts. So the villagers did not want to let her stay there and they brought her to the police station to give her custody to the police but the police turned a deaf ear to them. So at about 6 o'clock in the evening they brought her to us with the final decision to leave her at our office. We were in a dilemma as we have also no place to give her shelter. We again took her straight to the D.S.P. and explained the situation to him and made arrangements to send her to Nari-Gruha, VANSDA.

Such cases often come to us when a real urgency arises to give shelter to deserted women. So we want to construct a building where we can give immediate shelter to such women. Valsad Nagarpalika has allotted us land also in the heart of the city, very near to the police station but we are short of funds. We are endeavouring to raise funds for a building, a short-stay facility home for the deserted women with a Training Centre and a Creche, where we want to conduct income-generating programmes for poor needy women to make them economically independent.

Some of our other efforts deserve mention. We arrange various camps in villages like 'Awareness Generation Camps,' 'Legal Literacy Camps', 'Non-professional Training Camps' to make village women aware and enlightened. We also run a Family Counselling Centre and two Legal Aid Centres. As a result we have been able to intervene successfully in property disputes. One of our successes was when we were able to obtain one lakh rupees as alimony in a divorce case. Another was the payment of one lakh and forty thousand to a widow as her share of the sale of the family property by her husband's relatives. These relatives had driven her and her children out of the family home and offered her Rs. 5000 to sign the sale document. Too poor to fight the case in court, it was through us that this woman could obtain justice. Such successes give us the encouragement to continue.